

COMMONWEALTH OF MASSACHUSETTS
CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Tuesday, September 8, 2009
6:00 p.m.

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P R O C E E D I N G S

MR. SCALI: I think we're ready to begin. All right. Let's start.

MS. LINT: License Commission, General Hearing, Tuesday evening, September 12 [sic] at 6:00 p.m. We're in the Michael J. Lombardi Municipal Building, 831 Mass. Ave, Basement Conference Room.

Before you are the Commissioners, Chairman Richard Scali, Deputy Chief Dan Turner and Commissioner Robert Haas.

If anyone is here for the matter of Desfina Restaurant, that's been continued to September 22nd.

MR. SCALI: Anyone here on Desfina?
(No response.)

September 22nd for Desfina then.

All right. Anything else continued, Ms. Lint?

MS. LINT: Just checking.

MR. SCALI: All right. We'll go to our second item.

Idenix Pharmaceuticals

MS. LINT: Application: Idenix Pharmaceuticals, Christopher Gilman, Associate Director of Facilities, has applied for a Special Variance from the requirements of the City of Cambridge's Noise Control Ordinance, Cambridge City Code, Chapter 8.16 pursuant to Cambridge City Code, Section 8.16.090(B).

MR. SCALI: First of all, welcome back, happy fall, everybody, it's September. Nice to see you all.

If you all could come forward. There's Idenix people here I see.

Just tell us your name for the record, please? Let's start over here.

MR. FANNING: Paul Fanning.

MR. SCALI: Mr. Fanning.

MR. JOHNSTON: Richard Johnston.

MR. SCALI: Mr. Johnston.

MR. TOCCI: Gregory Tocci,

T-o-c-c-i.

MR. SCALI: Mr. Tocci. All right.

So, this is with regards to a variance, Special Variance on the Noise Ordinance. I think we'd just like to get an update from Ms. Lint first.

I know that we hadn't heard a request like this before, and so this would be your second request in the same vein; am I correct.

MS. LINT: Yes.

MR. SCALI: Okay. And the status of anything else is still continuing?

MS. LINT: That's correct. There's pending litigation.

MR. SCALI: And that's still --

MS. LINT: I am not at liberty to discuss it.

MR. SCALI: So that's still continuing in the court system --

MS. LINT: As far as I know.

MR. SCALI: This is not related to that application.

MS. LINT: That's correct.

MR. SCALI: All right.

MS. LINT: The Noise Ordinance does allow for a reapplication.

MR. SCALI: Okay. So this is a reapplication of what the previous request was as if you were starting from scratch.

All right. You'll get an opportunity to ask all your questions. I'm just trying to clarify the parameters here so we don't go back to the beginning. We're kinda starting afresh here.

All right. So who's going to be speaking?

MR. JOHNSTON: I will. My name again is Richard Johnston, I'm from the law firm of Wilmer Hale.

My partner, Rob Tutman has been here previously. You may recall him. He is partly retired from practicing law. He sends his regards even though he won't be here this evening.

As has been noted Idenix previously filed a Special Variance application in June of 2008. It was denied in October, about a year or so ago. There is a case pending in Middlesex Superior Court which challenges that denial, among other things, and as, Ms. Lint has said, that litigation is still pending.

As we discussed last year when we brought the original Variance Application, Idenix filed the lawsuit mainly to preserve its legal rights and continues to do so, but although the court case is pending, Idenix has continued its efforts to try to reevaluate the sound levels as well as to take a look at alternative remedial measures in large part because it is concerned about its relations with its neighbors.

The August 6th, 2009 variance proposal is based on technical information that has either been collected or made known to Idenix by its acoustical consultants after

the denial of the first variance application last year.

We believe that this new information provides sufficient grounds for the issuance of a Special Variance under the Noise Ordinance.

And we have made available to you this evening an additional packet of information above and beyond the application itself.

Some of that information will be the subject of Mr. Tocci's discussion this evening.

To be specific, Idenix requests relief from the applicable 50 decibel nighttime limit, and asks, in particular, the Commission allow an alternative limit pursuant to the variance of 60 decibels.

In simplest terms, the consultants for Idenix, including Cavanaugh Tocci Associates of which Mr. Tocci's a representative, have determined that the

neighborhood in which the building is located is so noisy that sound measurements inevitably will exceed the 50 decibel level even if Idenix stopped operating.

So, in other words, continuous compliance with a 50 decibel limit is a practical impossibility due to technical factors outside of Idenix's control, and since I don't purport to be the same sort of technical expert that Mr. Tocci is, I'd like to turn it over to him so that he can go through some of the details of the testing that he's done, and the realities of the neighborhood that he's confronted through his testing.

MR. TOCCI: Thank you. We have chalks here. Should those be --

MR. JOHNSTON: They should be mounted, I think, on the easels.

MR. SCALI: Why don't you put that one over here, if you would then. The easel would probably fit right best to the side

here.

Anybody in the audience who would like to see them can certainly come up closer. You can go up and stand on this side or in front if you'd like to see them.

MR. TOCCI: While we're setting up here, I might just introduce myself first.

Again, my name is Gregory Tocci. I'm senior principal consultant and president of Cavanaugh Tocci Associates in Sudbury, Massachusetts.

Our firm was founded in 1975 and we've worked with firms, architectural engineering firms and building owners like Idenix since that time on environmental and architectural noise problems.

I'm a graduate of Tufts University where I got a Master's Degree in Mechanical Engineering in 1970, and then Massachusetts Institute of Technology where I received a Master's Degree in 1973, Mechanical Engineering and a specialty in acoustics.

I am fellow of the Acoustical Society of America. I'm past president of the National Council of Acoustical Consultants, president and board certified and past president and board certified member of the Institute of Noise Control Engineering, and I'm a registered professional engineer in Massachusetts.

My -- what I was gonna do is -- is go through some of the chronology of the work that we did. I think it easiest to present it that way.

On June 2008, we were retained by Idenix in order to address noise complaints that they have received, that they were not in conformance with the City of Cambridge's Noise Ordinance.

We undertook a number of measurements and determined that the background sound level is most typically above 50 dba for most of the night and most of the day.

The lowest background sound level we measured actually was under an unusual circumstance. We were able to provisionally shut down most of the activities or operations of Idenix for a brief period, from 1:45 a.m. to 3:15 a.m. on June 17th, 2008.

During this temporary shutdown along the locations that are closest to Idenix, are locations we called Location 1, 2 and 3. I think Location 1 is 11 Clark Street. This is Clark Street alongside the building.

We had measured sound levels at those locations with the facility shut down and measured a background sound level of 47 to 50 dba during those very quiet early morning hours.

At proxy locations in order to understand how background sound level varies over a longer period of time, rather than just the middle of the night for a brief period of time, but rather for an eight-day period, we set up monitors at proxy locations

that were near enough to the facility, but in order to be in the same general acoustical environment but yet far enough away not to be affected significantly by Idenix rooftop mechanical equipment.

And in those locations background sound levels depending upon time of day and environmental conditions, weather and so forth, it varied between 46 and 57 dba over that eight-day period.

MR. SCALI: Are you saying the background locations where it says "proxy locations"?

MR. TOCCI: Right. These are proxy locations.

The reason why we had to select these is we couldn't measure for eight days without Idenix operating. We could only do it for about an hour-and-a-half. So we wanted to get some idea about how sound levels vary over a 24-hour period, over a several-day period.

So we picked locations that sort of are similar in terms of same type of neighborhoods, same type of traffic and so forth.

MR. SCALI: Where were they placed, on the ground or --

MR. TOCCI: No. They were placed on poles, phone poles in this area here.

MR. SCALI: How high up were they?

MR. TOCCI: About -- I think about ten feet off the ground, not at eye level.

And these locations were -- were selected again as they were relatively isolated from Idenix, but they did give us an idea about what background sound level is as non-facility sound levels would be generally throughout this neighborhood area.

MR. SCALI: How were you able to determine it's the same background as it would be over where Idenix is if it's a different neighborhood? I'm not following you.

MR. TOCCI: It is -- it is definitely not the same location, and it's a judgment that we made, and it's our opinion that it would be similar to the background sound levels that would otherwise be along Clark Street. This is one block over.

It is customary in acoustics, environment acoustics to seek out proxy locations in situations where a facility can't be shut down, and we need to have some understanding about what background sound is in the absence of an operating facility.

MR. SCALI: Okay.

MR. TOCCI: Based on our modeling and measurements, we determine -- we advised -- it was our opinion that in order to control sound levels produced by Idenix's rooftop equipment that fan silencers needed to be installed. There were 11 installed. And a 14-foot wall needed to be installed to produce emissions of the facility down to 50 dba at those nearest locations, residential

locations along Clark Street.

We learned or came to know that the Commission really enforces sound levels, enforces or evaluates compliance with 50 dba noise limit on the basis of actual sound measurements.

Since Idenix can't be separated from non-Idenix facilities sound, a study of background was initiated in order to understand, well, gee, what are the background sounds.

Since we can't measure Idenix alone, what would be measured was this 14-foot wall to be constructed.

In December of 2008, we took a closer look at background sound levels in -- well, first of all, background sounds were looked at in a couple of ways. First, by this temporary shutdown in June -- on June 17 by measuring sounds of proxy locations, and at that particular time, we measured sound levels were higher. They were

47 to 60 dba at proxy locations.

And then the problem is that even without Idenix measured sound levels, for the most part, are greater than 50 dba.

So, it makes compliance measurements of Idenix sound just about impossible to do because you would, without Idenix, be measuring for the most part about 50 dba.

Well, just to summarize this data --

MR. SCALI: Sir, you need to come -- are you sitting here for a reason?

UNIDENTIFIED SPEAKER: For the meeting.

MR. SCALI: You have to come in or out here or come into the room, sir. Standing in the door is a safety hazard.

There you go. Thank you.

MR. TOCCI: Just to summarize on Tuesday, June 17, between 1:45 and 3:15, during temporary shutdown at 60 Hampshire Street, we measured sounds that varied from 47 to 50, quite low at the time, it's early

morning hours, very little wind, very quiet conditions.

June 14 to June 22, 2008, all nighttime hours, that's 6:00 p.m. and 7:00 a.m. each day at proxy locations at One Bristol Street -- Bristol Street is a street parallel to Clark Street, one block over -- we measured 46 to 57 dba.

And then on Wednesday, July 29, 2009, which is late evening, it's 9:00, 10:30 p.m. at proxy locations along Bristol Street, we measured 54 to 56 dba.

This particular time it's very warm out, it's very hot and humid, the wet ball was something like 75 dba's -- 75 degrees Fahrenheit. So, what happens is somebody's air conditioner was running and it was breezy, so there was a lot of foliage noise as well.

So, between the air conditioner and the foliage noise, the background was relatively elevated, and, again, we measured

a range of 54 to 56 dba at a location removed from Idenix.

Okay. Continuing, the December 2008 report also concluded that even if Idenix's levels were 50 dba, the measured sound levels would be higher than 50 because of the contributions of the non-Idenix facility.

And this is where I'd like to just go into a little bit about how sound levels add because that can become a source of confusion.

So, if you could bring up that next slide.

This is a -- let's look at the first condition. We set it at the background at the lowest locations 47 dba when we shut the facility down and that Idenix's omissions were 50 dba. What would the total be? Well, it's 47 dba plus 50 dba is 52 dba. Okay. It adds logarithmically.

The table above gives us sort of a relationship that can be used for adding

decibels together. And what we do is we simply take the difference of the two, 50 minus 47 is three. It's a difference of three means that we add two to the higher level, 2 plus 50 is 52. That's easier than the long way, but it's still confusing.

We have this odd situation that if we had 50 dba and 50 dba, just by way of example, the total is 53.

Well, what might that be? 53 -- 50 minus 50 is a difference of zero, so we add three to the higher, 50 plus 3 is 53.

And there are other -- others here. One night we -- in July of this year, we averaged 54 to 56. Well, if we say the average is 50 and the facilities were at 50, 55 plus 50 is a difference of -- difference of five, and so, we add one to the higher, so that total is 56 dba.

So that if we were to go out there and measure, we may have omissions of 50, but we're going to be measuring 56 dba, and

presumably, that doesn't comply with a city ordinance.

This goes on with other -- other examples. 57 dba is one of the higher ambient background sound levels we've measured plus 50 is 58 dba.

So, you can see that as the background increases, the total starts to approach 60 pretty quickly, and that's largely the reason for asking for the 60 dba variance.

Now that doesn't -- well, let's continue because that's not meaning that Idenix is not intending on doing anything. That's not the case at all. But what it does is it brings out the difficulty in trying to do a compliance measurement that it would almost be impossible, practically speaking, to get a compliance measurement done.

In August of 2009, we measured sound levels again during warm weather, and we measured sound levels as high as 59 dba at

receptors, proxy background at Bristol Street to repeat with range between 54 and 56. So, again, we're recommending a variance -- I am personally professionally recommending a variance of 60 dba as a request.

Now, the major points I'd like to make are -- you know, 60 Hampshire Street is a noisy -- relatively noisy urban area where sound levels generally don't get below 50 dba even at night.

And even if the background is below 50, which occasionally it does get to 50, were Idenix's omissions to be at 50, the total would exceed 50, and the measurement would indicate a violation, which would not really be the case were you to eliminate, if it were possible, background sound from the measurement.

The conclusion is that a further reduction of Idenix's sound omissions will not reduce sound level meter readings per se to 50 dba when Idenix sound levels are just

at 50.

We're requesting the variance at 60, and we think it has a couple of advantages, three advantages, particularly.

First of all, it accommodates high levels of background sound that exist in the environment which vary considerably; second, it alleviates the city from the need of separating background sound from Idenix sound in its noise measurements, which is really not possible, it's not practically possible; and number three, what it does is it permits Idenix to pursue noise attenuation methods because a 14-foot wall was considered by the neighborhood as being unacceptable.

Having the 60 dba variance gives Idenix the leeway to pursue other kinds of noise control that are less predictable, and that's one of the problems we've had is that they would say, "Well, can't we do something less than a 14-foot wall"?

Well, yes, you can, but we can't say

that you're going to get to 50 for certain.

So, what it does is it opens up a whole lot of other noise control techniques that would be difficult to say that, yeah, for sure, you're going to get to 50, but certainly it would reduce sound levels significantly, and maybe even possibly to 50.

So we think that the variance request does offer opportunities both to Idenix, the community and the city as well.

MR. SCALI: I'm sorry. The request is for a variance to 60 decibel without doing any additional work?

MR. TOCCI: Well, I think Idenix is going to describe the work that has been done and work that they hope to do, but, you know, on a surface, it may look that way, but that's certainly not Idenix's intention.

Idenix's intention is to work towards 50, however, it would not be able to be -- it would not be possible to demonstrate that it actually got to 50 because of

background sound levels.

And so, this is not intended to relieve Idenix by any means. They have an intention of implementing noise controls and have done so, but what they're doing is implementing controls that don't involve a 14-foot wall, but other -- several other kinds of methods that they are going to be discussing.

MR. JOHNSTON: As you'll hear from Mr. Fanning later, the proposed remedial efforts are part of an overall package in which the variance will be granted because there isn't much point in their view in undertaking certain remedial measures if the variance isn't allowed, and they're going to be in non-compliance in any event because of the way you do your measurements against the background.

MR. SCALI: So, is it my understanding you're going to present information that will show that it will bring

it under 60 if you do certain other things?

MR. JOHNSTON: Well, Mr. Tocci can talk about that more closely, but the idea is to have it under 60 and that's why we're requesting the variance only up to 60, not higher.

MR. TOCCI: I would say we would be, you know, expecting to get a good deal below 60.

MR. SCALI: That's why I'm confused about the request for 60 because if you intend to do something, your intention is to bring it under 60 and it's close to 50 as you possibly could.

I assume you're going to show us what you can do in order to do that, right?

MR. TOCCI: Yeah. One of the problems is we measured ambient -- the background sound levels as high as 57 to 60 on occasions, and what we're concerned about is we say "Jeepers, sound levels are above 60, is that because of Idenix or is that

because of background sound?"

MR. SCALI: I guess the confusion is what is background sound, you know, and neighbors and residents don't understand that, and it's very hard to explain as to try to do, and I've heard this argument before about how background measurements come into play, but there are a number of neighbors that are in that area who are disturbed by this, of course.

So that's why I'm confused about the proxy locations and that kind of thing because if there are other sounds that interfere with those locations, I'm sure that are not the same, interfere with the noise at the Idenix location. So, I'm not following the proxy locations analogy here.

If it's noisy in that neighborhood, why would it be as noisy or noisy in the other neighborhoods? It doesn't --

MR. TOCCI: Presumably it would be less noisy in the proxy locations because

Idenix is not present.

MR. SCALI: But there could be some other property that it would be noisier --

MR. TOCCI: There would be air conditioners and foliage sound, and there are all the other things that are present in that neighborhood as there are along Clark Street, so that's the point.

MR. JOHNSTON: I think that what Mr. Tocci tried to explain was that they did make one effort to shut down Idenix for a very short period of time, which, you know, Idenix can't do given OSHA requirements on a sustained --

MR. SCALI: Right.

MR. JOHNSTON: -- basis, but they did that to get one sense of readings and then they did the proxies to see in a very close-by neighborhood whether that would be more or less be replicated.

And their experience seems to be pretty much the same in the proxy areas as it

was for the precise location that there's heavy background noise in both sets of readings, and it makes it pretty much impossible to ever isolate Idenix alone and conclude that it isn't the background noise causing the problem.

And look, nobody is pretending that this is simple. If it was simple, we might have come to these same conclusions a year ago rather than after the first variance application, and it was really the additional efforts by Tocci and other acoustical consultants that, I think, brought Idenix to the conclusion that there just is no way to separate Idenix out from the rest of the world in that neighborhood, and that no matter what it does, it's probably going to see measurements above 50 even if it shuts down.

MR. FANNING: And, Mr. Tocci, when we were looking at the proxy, it's only the street over, but we tried to intentionally

choose that, in his expert opinion it was going to be sufficient where Idenix is being blocked out, but a lot of the same sources, and a lot of them are coming over from One Kendall, you know, the Amgen Building, the subway and even right -- our own neighbor, so it's a lot of -- some of it's coming over, but I guess because it's only one street over, I think was the selection, it's very, very representative of what we have on Clark Street, but, yet, the Idenix part should be blocked out by a couple of the houses because -- you selected so we'd be shielded essentially, right?

MR. TOCCI: That's right. If I could just show these data here. This is the background sound level that we measured in a proxy location on Bristol -- the corner of Bristol and Hampshire Street.

When we shut Idenix down, sound levels did get low, but they weren't as low as with Idenix operating later on in the week

on two other occasions.

So that kinda brings out the point that this particular location is not dominated by Idenix, but really is dominated by everything other than Idenix. I don't know if that helps you understand.

MR. SCALI: Well, it does actually because if you're saying that during the same period of time when Idenix was off the noise readings at a different time when it was on during the middle of the night the sound levels were lower later into the evening as if like --

MR. TOCCI: Well, this was between 1:00 and 3:00 in the morning. This is about the same time period the next day, and this is a little bit wider time period than the second day two days out, so -- two nights out, so...

MR. SCALI: At the same time frame, same time frame at night?

MR. TOCCI: The same time frame,

yeah. That's right.

MR. SCALI: With Idenix running as it normally would?

MR. TOCCI: As Idenix running as it normally would.

Actually, Idenix has implemented noise control since then, so Idenix was a little bit quieter, but still it wouldn't change the picture too much or change it at all.

MR. SCALI: Okay.

UNIDENTIFIED SPEAKER: When was this data collected?

MR. TOCCI: Sure.

MR. SCALI: Why don't you come up so you can see. This is the information you did last year in June?

MR. TOCCI: Yes. That's right. It was June 14 to June 22, 2008.

MR. SCALI: Why don't you come around this way. Come over on this side here so you can see. You can stand over here and

you can see it.

Anybody else that wants to do that, too, please come on up.

MR. TOCCI: So that the purple line is a background sound level. The other lines are indicative of transient sounds produced by cars passing and so forth.

It's the background sound that we're mostly interested in here, and partly because Idenix is a constant sound level. So, it's going to affect the purple line, it's not going to affect these other lines here, so...

And this is where we had the Idenix facility shut down for about an hour and 15 minutes, and it gets low, but not as low as it is two nights, one night later and two nights later in the same time frame at this location one block from Idenix.

So that we know -- our feeling is that, yeah, this is a pretty good picture of the ambient if you accept Bristol Street as being about this having the same ambient.

UNIDENTIFIED SPEAKER: Did you account for the large AC unit on top of the building on the corner of Hampshire and Brewster?

MR. SCALI: We're going to get all your questions. Let them finish and then we'll go on to questions from the audience, so...

All right. Mr. Tocci, is there anything else that you wanted us to know in your presentation tonight? I'm assuming that there's going to be information about what other ideas you have, am I correct?

MR. TOCCI: Yes.

MR. SCALI: You're going to do that, okay.

Is there anything else you want to --

MR. TOCCI: That's all I have to say. Thank you.

MR. HAAS: Mr. Chairman, I just have, I guess, two questions: One, if I

understand -- I just want to try and understand this correctly -- in essence, what you're saying is you had a difficult time separating Idenix sound away from the rest of the neighborhood, and I guess for the sake of argument, if we were to grant the 50 decibel variance, I mean, at some time in the future, it's --

MR. SCALI: 60.

MR. HAAS: 60. I'm sorry, 60 decibels.

-- how do we determine if you're exceeding that threshold, or is it something else that's been added to the environment, so I -- you know, I think we could set a limit, but the question is if you can't isolate, I don't know what the value of that limit's going to be.

MR. TOCCI: I understand what you're saying, and what it does is it takes or it requires Idenix to police their own equipment to make sure that it is as quiet as possible,

and certainly, if sound levels were to go start approaching 60, it, you know, could be an issue in the community. So, it's not -- what we're saying is that as it stands to -- this would be a problem even if you had a compliance. If you went with a 50 limit per omissions because there's no way of measuring the omissions without the contribution of background, so you get out and make the measurements. You say "Is it background or is it Idenix," and that's always a bit of a problem, and, frankly, when we make these judgments, we somewhat abuse the judgment and say, "Look, I hear a tone and I think it's that thing over there," and, frankly, that's a good part of a lot of the judgment that comes into play in making decisions in situations with high background sound levels.

MR. HAAS: I guess the other is more common. I would -- it would seem to me by Idenix taking on this responsibility, it's accepting responsibility for the noise in

that entire area not for this, the one that's applying for this variance and, in essence, anytime you're going to have anything to do with the threshold in the first place, I think it would come back to, is, well, it's Idenix, you know.

Again, my concern then how do we backfire so from six months from now or a year from now having the same discussion and now we're up to 65 decibels, you know.

MR. TOCCI: How do we separate then, so it was a problem. That's, you know, if -- and the only way to do it is to, you know, have this 14-foot wall that is high enough that through modeling you'd be confident that sound levels are -- from Idenix are below 50. And so, when sound levels do show up to be high, you know, we would be confident that it's not Idenix.

And, you know, I agree with you although Idenix is employing screening and so forth. It's not nearly as high as the

14-foot wall, but, you know, has its effectiveness because it's able to step in and out around equipment.

MR. JOHNSTON: Yeah, it may go without saying, but obviously the 60 isn't just for Idenix, so if Idenix gets out with the 60, it's to accommodate the background along with Idenix, and the feeling from Mr. Tocci is that much of what would be in that would be the background, not Idenix itself.

MR. SCALI: What are the daytime readings now, do you know? I don't have a recollection as to what the daytime readings were. I was wondering whether they go above 60 during the day already.

MR. TOCCI: We don't go above 60 during the day for background sound levels. Idenix and background sound levels together range between 57 and 59 usually at the highest. That was during, you know, this windy condition we had in July.

MR. SCALI: So that's what you've addressed during the day?

MR. TOCCI: That's -- well --

MR. SCALI: Was that at night?

MR. TOCCI: It was at night, 7:30 to 9:30.

CHRIS GILMAN: I don't think we've done any day readings for a while.

MR. TOCCI: No, we haven't because we're consistent ourselves, are consistently below 60. It's nighttime is really what the issue is.

MR. FANNING: I think it would be louder because the ambient -- we haven't done any readings --

MR. SCALI: I was just wondering whether it would be noisier than at night than the daytime if we allow 60. I'm just wondering what --

MR. FANNING: You're wondering whether --

MR. SCALI: I'm wondering whether

you'd be as noisy or noisier at night if we allow the 60 decibel as opposed to your daytime readings being in the 50s still. I don't think you're at 60. I don't remember whether we have daytime readings done.

MR. FANNING: But the day, I'm sure is -- I'm guessing is louder because the ambient being loud in the day.

MR. TOCCI: Usually the ambient would be a little bit higher, but, again, it's much weather dependent as it is time dependent, you know.

MR. FANNING: And, Greg, wouldn't we use modeling? I mean, you mentioned modeling, but that's what we really looked at as far as kinda monitoring. I think we relied very heavily on the computer modeling.

MR. TOCCI: That's right, yeah. The reason for the modeling is it allows us to estimate sound levels in the absence of background sound, and that's how the 14-foot wall came about where you're using the

modeling to look at other alternatives much lower screening of individual sources to work towards the 50.

The problem with that is that when you start using, you know, a lot of little barrier, little screening pieces now the confidence in modeling isn't quite so great as it is when you say let's use this big, one single wall.

So, I think the, you know, it's not the getting to the 50 is impossible, it's that being able to predict it with enough confidence ahead of time is really a problem.

MR. SCALI: Any other questions?

MR. TURNER: No questions.

MR. SCALI: All right. So, that concludes your testimony.

MR. TOCCI: My presentation, yes.

MR. SCALI: Are we going to hear now the other information?

MR. JOHNSTON: Yeah. We can do either way that you prefer, I'm just going to

talk very briefly about the legal standard and the legal arguments.

Mr. Fanning's going to talk about what the company has done and is prepared to do, so however you desire it.

MR. SCALI: I'm really curious, I mean, having heard the presentation last year, I know, you know, basically the issues. I'm curious between the difference between six-foot and 14-foot wall issues and the cost, obviously, that that has to -- been associated with that, but what that means in different sound levels and then what you're prepared to do from those two that you presented last year.

MR. JOHNSTON: To address those two issues, you may have to have a bounce-back between Mr. Fanning and Mr. Tocci.

MR. SCALI: Okay.

MR. FANNING: Mr. Tocci can address the sound impact and Mr. Johnston can talk about what the company has looked at and what

it's prepared to do.

So talking about over the past year what we did was look very closely at the wall approach, and at the same time, hired mechanical engineers, structural engineers, steel fabricators as well -- 'cause we're likely to need them for the wall -- as well as Mr. Tocci and a separate firm, Copley & Associates, also from an acoustics perspective to -- two things: One, instead of an independent set of eyes in addition to Mr. Tocci, but also to do some brainstorming because what Mr. Tocci and his group had indicated was, as he just said, that the 14-foot wall was the only way that we would, with some level of confidence, get down to 50 decibel, meaning 50 that we're admitting, that Idenix has created.

Mr. Copley was trying to help us with a different approach which was "Okay, what can we do not meaning the 14-foot fall, but sort of incremental approaches.

So, we started, particularly this spring, adjustments to motor drive frequencies, replacement of exhaust fans, of bearings, compressors and blow units, and then operational adjustments a little over a month ago that I know it helped.

Again, these are more incremental, can't say -- let's say they got 4 db out of it, but didn't; on the other hand, I do know from feedback that it has improved. It has helped.

In addition to that we even right now what we're looking at is existing sound screens that we have, we sort've going down to the deck floor. In some cases they -- there's a gap between the curtain and the roof.

So, looking at going down to the deck floor for a number of those things to kind of tighten it up and make sure the sound doesn't escape, so to speak, from underneath the curtain.

And then in some cases, there's some curtains that we don't have that we -- or don't have in place, I should say, that we are contemplating adding, putting in place, and there's an exhaust fan as well that we know by eliminating and consolidating into another exhaust fan that we're going to get a good pickup from -- you know, one of the things that we're sensitive to are some of the esthetics of the neighborhood as well and knowing that it's not visually the most attractive roofs, so we're also looking at other things that may not have quite an impact from a sound remediation perspective, but it will look better, you know, and that includes some consolidation in some cases from some units.

We've also engaged an expert in terms of drive frequencies because sometimes those drives, the motors get really shrill and they kinda create a whine, and this fellow we finally connected with is really

making an impact. He's helping calibrate and get a better tone out of it, if you will.

So, we've done a number of those things and we will continue to do -- again, the ones in particular I think I'm enthusiastic about is dropping the screens down to the deck floor because that gap -- I'm pretty sure that's gonna help.

In fact, Greg, that's the best -- the best bet. It's kinda like putting a skirt over it so that we can -- we still have to look at the snow load in the wintertime, but I think we've got a good approach to drop it down without causing any problems.

MR. SCALI: And that's what you have now? You're putting that into what you have now?

MR. FANNING: Yeah. So that dropping it down to the deck floor hasn't happened yet.

MR. SCALI: Right.

MR. FANNING: That's one that we're

confident we can do and get some improvement out of it as well.

MR. SCALI: Okay.

MR. FANNING: Actually, we've ordered materials for one section already.

MR. SCALI: And that can be done very inexpensively?

MR. FANNING: Yeah. That one's not too expensive. Some of the other ones that we looked at, additional screenings and consolidations, we haven't actually costed some of those out yet, so I don't know, you know, we'd have to look at, but the section that we're talking about we've actually already gone ahead with it.

MR. JOHNSTON: Well, if it hasn't been made clear, maybe you should distinguish between the things that you have done during the course of this year and the things that are still on the table.

MR. FANNING: Sure.

MR. SCALI: Is it on the list here,

proposed?

MR. FANNING: Right, right. So the ones that I mentioned first, the silencers -- 'cause you know about those -- but the motor drive frequencies, the exhaust fans, the exhaust bearings and then the operational adjustments all happened, all done.

MR. SCALI: And the reading 54 to 60 is just a guess?

MR. FANNING: Well, it depends on the time of day, you know.

MR. SCALI: No actual readings have been done, though?

MR. FANNING: No, we have done some readings, yeah. Yeah.

MR. SCALI: So those are the actual readings with what you've already done?

MR. FANNING: Yes.

MR. JOHNSTON: Including background.

MR. FANNING: Yeah, that's including background.

MR. SCALI: Nighttime?

MR. FANNING: Yes.

MR. SCALI: Nighttime readings?

MR. FANNING: Yes. I think we did it a couple different times, Greg, right?

MR. TOCCI: That's right. Bill is -- yeah, that's right. We've done it two or three different times.

MR. FANNING: Typically earlier in the evening, so we haven't done a lot of these at 2:00 in the morning.

Now, we've kinda gone with the 7:00 and 9:00 time frames.

MR. SCALI: And this is in the three locations that you've always taken the readings from?

MR. FANNING: Bill, is that correct?

MR. ELLIOT: Yeah, that's correct.

MR. SCALI: From the ground or from the --

MR. FANNING: Up and, I'm sorry, those are up in the pole.

MR. SCALI: Ten foot up?

MR. ELLIOT: It's about 16 foot.

MR. SCALI: 16 feet.

MR. ELLIOT: Right.

MR. SCALI: Okay.

MR. FANNING: Those are modeled numbers, too. So those are either -- because you can't isolate Idenix, so just be clear.

MR. JOHNSTON: Okay. So, just for the record, you're reading off a chart called "Idenix Sound Attenuation"?

MR. FANNING: Yes.

MR. SCALI: The very last page of your...

MR. FANNING: And then the proposed would be extending it down to the deck as well as the elimination of the exhaust fan.

MR. SCALI: So, obviously, the -- what you have done already hasn't made the residents happy, obviously, what you've done already, so I'm guessing the proposed is something you wish to do, or if you could do, but you're not going to be able to get it

down to 50 at all points in time, so the second-to-the-last one is something you could do, which is less expensive and easier to do, and the last one is the most difficult?

MR. FANNING: Correct.

So if you're saying the last one is the 14-foot wall --

MR. SCALI: That's a whole different -- right, right. And the other one's above that, the extension of the sound screens, the roof deck and then the exhaust fan, those are ones we've actually already embarked on. We just haven't put them up yet. We hope to actually have the material and we're ready to go within the next -- I'd say the next few weeks, Chris, right?

MR. SCALI: So what's your guess, Mr. Tocci, if you -- if they took one of these proposed plans, best case scenario, you're saying they could get down to 52?

MR. TOCCI: You know, it's interesting. If you look at these, the

spread is really not the spread in the estimated sound level, it's the spread in the estimated sound level plus the range in background.

So, the difference between the 52 and the 59 is not because of an uncertainty in the calculation of omissions, it's because of the spread in background sound level that occurs in the area.

MR. SCALI: So if something unusual happens, it could be up to 59 --

MR. TOCCI: If it were a warm day with people's air conditioners on, it's going to be towards 59. On a quiet day, no wind, no air conditioners, it will be down towards 52.

MR. FANNING: And it's always 6:00 or 7:00 -- the pattern is we see 6:00, 7:00 p.m. at night, it's always, you know, the loudest, and then 2:00 in the morning, it's much closer to lowering that range.

MR. TOCCI: Yeah.

MR. FANNING: So a lot of that range reflects the time of day, too.

MR. SCALI: If you're looking at the two proposals, which I'm assuming are a lot different in pricing --

MR. FANNING: Oh, yes.

MR. SCALI: -- 59 and 58, that's really not getting you anywhere in terms of what the residents would want, am I right?

MR. TOCCI: That's right. The problem is that we're really now, with the improvements we've made and the forthcoming improvements, we're starting to drop in the background. So, our measurements really are being more and more dominated by background.

MR. SCALI: But there is a possibility on the best case scenario that could be under 50?

MR. TOCCI: Yes. Yes. Yes.

MR. FANNING: What is the ambient, you mean or --

MR. TOCCI: No.

MR. FANNING: No, the foot wall.

MR. TOCCI: The 14-foot wall. Under the best case scenario, the lowest background where the 14-foot wall is, there's a possibility for that.

MR. FANNING: The ambient usually isn't below 50, so...

MR. TOCCI: Maybe a few minutes a night, you know, you're talking about --

MR. FANNING: If you want to put it that way, yes, okay.

2:00 in the morning you might get below 50.

MR. TOCCI: Yeah, for an hour, two hours.

MR. SCALI: All right. Questions? Anything else you want to say?

MR. JOHNSTON: Why don't I just quickly finish up with the legal standard.

I think you are fully aware of what it is. It includes the balancing of the hardships between the neighbors and the

company, but also there's another factor here in that you have to consider whether the noise disturbance occurs in a buffer zone, which this is, and I think Mr. Tocci may be able to just briefly explain how the 60 is reasonable given the fact that it is in a buffer zone by making reference to what's around -- what's around.

MR. TOCCI: Okay. How are you defining -- how are you defining "buffer zone"?

MR. JOHNSTON: Well, it comes between manufacturing in a residential area, so they just explain what's --

MR. SCALI: So this area abuts, it's residential abutting. Is it industrial or office, that's what I'm always -- I think it's office. No, I believe it's -- I mean, I think it's office. Yeah, it's office.

MR. TOCCI: It's right there. Yeah, Office 1.

MR. SCALI: Which is 65.

MR. TOCCI: So that's where we are. I, industrial, right here and this is residential here. So, it is acting as a buffer between an industrial zone and a residential zone.

MR. SCALI: Which brings the decibel level down to --

MR. TOCCI: Yeah. What happens in an office zone, the limit is 65 dba anytime, for business 65 dba. So --

MR. SCALI: And the argument is that there's some special standard because there's a buffer zone or, I guess, some legal argument?

MR. JOHNSTON: Well, your ordinance requires you to take into account the fact that it is a buffer zone. I think if you didn't have that requirement, things might be done more in a vacuum, but given the requirement of a buffer zone, I think you better consider whether the fact that it's in an area that's closer to a heavier noise

manufacturing area means that there should be some more lenience with respect to this particular zone.

In general, the balance of hardships here are not in favor of Idenix because of the fact that it is just about impossible to get Idenix down to levels where the background noise isn't going to get a violation.

No matter -- as Mr. Tocci says, no matter what Idenix does, when you go out and measure the way you measure, you're going to find that with the combination of the background noise that Idenix is not in compliance.

So, it suggests that there is really very little that they can do to stay within or below the 50, according to the way you measure.

In addition, the fact that the background levels are already as high as they are means that although, we're not trying to

downplay the impact on the neighbors with the noise from what happens in the overall area, the fact is that most of it comes from sources that have nothing to do with Idenix.

And so, the negative impact on the neighborhood is not being caused by Idenix, but by a lot of existing background sources.

Second of all, the noise reduction options that have been discussed, some of which are feasible and some of which are less feasible in terms of financial, include some of the things that Mr. Fanning has already discussed in terms of changing the screens and doing stuff with the equipment.

On the other hand, the wall, which has been proposed, which is obviously a lot more expensive, also seems to have a lot of opposition in the neighborhood.

And the company has considered very actively and very much in conjunction with experts the construction of the wall. But, you know, there's some reluctance to commit

to a wall if all it's going to do is bring litigation from neighbors who don't really want that.

So the company feels it's caught between a rock and a hard place.

The thing that might be the best solution from a purely noise standpoint is not something that's been favored based on the discussions that the company's had with neighbors by those neighbors.

MR. SCALI: Have you been having discussions with neighbors in the past recently?

MR. JOHNSTON: I'll leave that to Mr. Fanning.

MR. FANNING: Yeah, we have.

MR. SCALI: Okay. And is there -- I guess there was at one point in time a suggestion of a six-foot wall, is that not on the table or --

MR. TOCCI: Let me -- we did look at a six-foot wall in order to try to adhere to

a 55 dba criteria. We were uncomfortable with the commitment of a six-foot wall achieving it because the lower the wall in this particular case, the less confidence we had in its ability to provide a noise reduction.

It was easier to say a 14-foot wall is going to do it, but as the wall --

MR. SCALI: Just thinking esthetics, 14 versus six. Is it going to help at all?

MR. TOCCI: No. Let's put esthetics aside. It's just that the 14 foot was a more confident kind of calculation.

When you start dropping down to six foot, and many of the noise sources start to either poke their heads above the wall or be very close to the top of the wall in terms of having a line of sight from receptor to sources, then the modeling starts to become really shaky.

And so when it happens, say, "Yeah, we'll build a six-foot wall to try to get to

55," and we don't get to 55, what do we do? We can't add height to the wall once it's built.

But with a 14-foot wall, you know that the sources are all a good distance below the top edge, that the wall does break the line of sight between the source and receptor. It's a much more confident kind of calculation, and that's why we kinda said, "Well, yes, six foot would be a less expensive way to go, but it'd be harder to provide, you know, a confident estimate for what would amount to be, you know, a two or three decibel reduction in sound level in total, so -- which we think now can be obtained through, you know, other means.

MR. JOHNSTON: So the 14-foot barrier is something which has been opposed within the neighborhood. It's something that the company can and has considered, but it doesn't seem to be the optimal solution from the standpoint of the neighborhood.

One of the other alternatives is shutdown, but just is not a palatable thing for a company which is attempting to research the development -- develop pharmaceuticals.

And I think that it's been discussed before in previous hearings, and I think that both Chief Reardon and Deputy Chief Turner know that because of various OSHA requirements and also city, by regulations, they have to continually operate the HVAC, and it's not an option for them to shut it down even for a short period of time during the night.

And if they did shut it down, it effectively would terminate all of their research operations, and that would severely compromise their ability to operate.

MR. SCALI: What about the idea that moving units on the roof to a different side? And what about reduction of units on the roof?

MR. JOHNSTON: Well, Mr. Fanning

talked a little bit about consolidation. Why don't you take on that issue.

MR. FANNING: Sure. We have and are continuing to look at those. The problem with moving, and Greg has advised us, that that doesn't get you from a sound reduction perspective much, really any reduction at all.

So the elimination of sources, consolidation is one that we are continuing to look at. Still even there, there's that small incremental, but that won't get us the 3 db, 4 db kinda drop. But we are -- there are a couple of things that we're looking at that are consolidation as much as moving.

So, yeah --

MR. SCALI: I'm thinking a combination of reduction and the proposal here may get you closer to 50 than you think. I'm not sure if that will impact your business as much as you would, you know, adjusting the --

MR. FANNING: I agree with you. The modeling when we actually stopped pulling a number of the items out, it does help, but not -- you know, it essentially gets you half a db, one db, so you might be going from, you know, let's say, 56 to 55, 55 to 54, it's not to you actually pull more than half -- you'd have to pull a lot of the units, darn near all the units or not all, but quite a few before you really get a significant, like down to 50 in a summer.

And by the way, that's the other thing. It's when the air conditioner is running --

MR. SCALI: People's windows are open --

MR. FANNING: Well, no, ours, too.

MR. SCALI: That's what I mean, yeah.

MR. FANNING: We get much, much quieter come October, you know, and then the noise starts up again in the spring, May-June

time frame, yeah.

MR. TOCCI: In respond to moving units, we did a test where we shut off the four noisiest systems.

MR. FANNING: That's right, yes.

MR. TOCCI: And sound levels did go down, but --

MR. FANNING: Not by much, right?

MR. TOCCI: Yeah, by a small amount, by an amount that other means of noise control would be much more effective, screening, some VFD changes, maintenance, these kinds of things would be actually more effective than just simply removing those, or removing them to a much more distant location.

MR. SCALI: Can I ask you why are they the noisiest units, are they the biggest?

MR. TOCCI: When we do noise control on sources, you also start with the noisiest piece of equipment first. If you start out

of that order, then the --

MR. SCALI: I just asked you why are they the noisiest? Why would they be --

MR. TOCCI: Oh.

MR. FANNING: The noisiest is old. It's, I don't even know, 15 or 18 years old or something like that.

MR. SCALI: So replacement of those, would that be an option?

MR. FANNING: That's one.

MR. SCALI: The four noisiest ones?

MR. FANNING: That particular unit is a big unit and we've actually been doing some repair and maintenance of the motors, for example, which have been loud.

The actual removal and replacement would be a fairly significant investment. I don't know exactly how much, we'd have to cost that one out, but --

MR. SCALI: Less than a 14-foot wall?

MR. FANNING: It would be less than

a 14-foot wall, yes.

MR. SCALI: It would be.

MR. FANNING: And, again, I think -- maybe it was a db, it was surprising when you took the top four what the actual reduction was. I thought it would be more and maybe it was a db, but it wasn't like five db or four.

MR. SCALI: Well, I was thinking it might get you one or two down to closer to 50.

All right.

MR. JOHNSTON: Let me just quickly finish up.

MR. SCALI: Yep. Go ahead.

MR. JOHNSTON: In addition to the balancing of hardships which we suggest while I was in favor of the company given the difficulties of separating out what the company's noise levels are from the background and the fact that there are difficulties with putting in the most advantageous thing, i.e., the walls from the

neighbors' standpoint. It seems that the Commission should decide the balancing in favor of the company.

But let me just go back to this issue of the buffer zone because that adds another layer of analysis to what you're doing because the buffer zone concept appears to be designed to deal with situations like this where zoning districts don't act as complete barriers to sound or other things, but particularly sound.

I mean, sound can walk across a zoning district, and so, there's a great deal of value in having some flexibility to what you're doing in an area of a buffer zone particularly when you figure that industrial zones are allowed to have up to 70 decibels. And, you know, what we're talking about here is 60 which is probably halfway between the ordinary standard for this district and what the standard would be for industry as I recall.

So, as sort of a bottom line, the company has been interested in trying to come up with solutions to this ongoing problem. It has considered a lot of different alternatives from the technical standpoint. It has spent a lot of time and effort with consultants like Mr. Tocci, and is proposing certain things to be done by remedial measures, but really wants to have the variance in place so that it isn't confronted with having done all this work only to find it to be a futile gesture because people come back and measure later and say, "Well, you're at 60, when really most of that, if not all of that, is because of the background."

So we urge you to take into account the variance application itself, the additional papers that we've submitted tonight, the sheets that you have stapled together, including all of the matters that Mr. Tocci and Mr. Fanning discussed, and grant the variance.

I understand that you are not likely to do it this evening, but we hope that you will be able to do it in the relatively near future.

MR. SCALI: It's two years already now, so I guess we're not any closer at this point, but...

MR. JOHNSTON: Well, the fact is there is litigation ongoing and the company would prefer to be able to focus on moving ahead from a business standpoint and with its neighbors as good relations as opposed to being in litigation. Obviously, if we don't come to a resolution, the litigation will not only continue since it's already there, but there probably will be another one with respect to the variance. And that's not the company's desire. The company desires to try to work out something that is acceptable to the Commission as well as to the company.

MR. SCALI: Okay. Did you want to talk about the neighborhood meetings or did

you have any -- did you get anywhere with that or...?

MR. FANNING: Well, we have had meetings mainly with -- and that was -- I think it has been helpful in the sense that, you know, I guess Peter's talked -- it's just the dialogue knowing and getting some feedback as to have things changed or beating the wall.

That was, you know, helpful because we were going pretty -- charging pretty hard down the path of the wall, and then more recently, through neighborhood meetings, we realized that may not -- that may not be the most attractive or desirable wish on their part, so that's why we went back to the variance, started looking at what else can we do more incremental like the belts, the consolidations and so forth.

So I think it has been helpful from our perspective.

MR. FANNING: And just to finish on

the wall, if it wasn't clear from the earlier presentations, you know, there was a suggestion last year that the wall be constructed with the expectation that they could get down to 50 or thereabouts. As it turned out, two things happened: One was that the work done by Mr. Tocci suggests that no matter what they did with the wall, the overall ambient levels would probably get your measurements up above the original proposed variance.

And the second problem is that they ran into opposition from neighbors whose interest and concerns they want to be sensitive to. I mean, the wall could be built and maybe their problems at the company side would diminish somewhat, but it wouldn't necessary make the neighbors any happier and we'd end up back in some other, you know, dilemma as opposed to a pure noise dilemma.

MR. SCALI: Well, I think there's some other solutions here besides the wall.

The wall never was the ideal solution at all, I mean, from an esthetic point of view or for a dba point of view. I think you were hoping you were going to come up with some other ideas that were more esthetically pleasing and would help you get below -- at least below closer to 50 anyways.

MR. JOHNSTON: Well, I think what you've heard is that the company is considering other alternatives and that although maybe you can never get your measurements all the way down to 50 that in all likelihood from what Mr. Tocci has said is a realistic matter, the levels will drop down close to that.

Questions?

MR. HAAS: I guess one of the concerns you have also is -- and this came out last year, I mean, your expansion is pretty much something that was driven by the industry, and that just kept on growing, growing, growing. I just want to make sure

you don't find yourself in the same situation where you get this variance, and, all of a sudden, now you find the industry's taking a very different direction, it's going to require even more units on the roof. I mean, are you at capacity now?

MR. FANNING: We're at capacity, yeah.

MR. HAAS: So there's nothing else you can do to that building.

MR. FANNING: No. There's no more expansion plans at all and there won't be by us. I can't speak for the owners, MetLife, after we move out, but, you know, we're at capacity as far as all that.

MR. SCALI: Comments?

MR. TURNER: No comments.

MR. SCALI: So now we're going to take comments from the public, residents and then you can come back and say something more if you'd like to, but if you could kind of move to the side, I'd appreciate it very

much.

MR. JOHNSTON: Okay. Thank you.

MR. SCALI: Thank you very much for your presentation.

Anybody else want to be heard?

Mr. Lindquist or...? Take your shot. It's now or never.

Come on up. You've got to come up.

MR. CARUSO: I have some questions.

MR. SCALI: That's good. Sit down. Sir, sir. You've got to sit down and you've got to face us.

MR. CARUSO: This is very official.

MR. SCALI: Yes. We've got to have it on the record. We want to make sure we get you all on the record.

MR. CARUSO: Great.

MR. SCALI: Tell us your name first.

MR. CARUSO: Hi. I'm Dave Caruso. I live at 64 Hampshire Street which is a fine little house.

MR. SCALI: I don't think we've seen

you before. Are you new to the neighborhood?

MR. CARUSO: Well, yes and no. So, somewhat. This is the first meeting I've been to.

MR. SCALI: How long have you lived there?

MR. CARUSO: How long now? 2000 -- about a year-and-a-half, I guess.

MR. SCALI: So you're fairly new.

MR. CARUSO: Yeah.

MR. SCALI: Okay.

MR. CARUSO: Right. Anything else?

MR. SCALI: No.

MR. CARUSO: Cool.

So a quick little parallel and then a question.

It's common, I guess, in the sense to -- the parallel is that in the world of the scientific community, people study leafhoppers. Leafhoppers live in my little garden at 64 Hampshire Street which gets some sun. I prefer not a 15-foot wall. But

leafhoppers actually communicate by vibrating pieces of grass. And how do people know this? They measure a various specific frequency that happens when leafhoppers vibrate grass. So there's work around measuring specific frequencies. It's come up a number of times that there are specific frequencies associates with motor drives and other things. It seems like it's, you know, a fairly established method or there must be a method somehow to measure a frequency especially if motor drives are making noise and they vibrate. So I wonder what due diligence has been done around that specifically to isolate these sounds. It seems like people know they exist, but instead we're hearing generals rather than specific --

MR. SCALI: You are new to these hearings. You're very, very new. I didn't mean we could give you a very long dissertation about how frequencies and --

MR. CARUSO: Cool.

MR. SCALI: We've been down this road. If we could isolate each one of those sounds, Mr. Tocci would have done that from the very beginning.

MR. CARUSO: Okay. All right. Just a question.

MR. SCALI: Yeah.

MR. CARUSO: And so then I'll leave my comment. I invite anyone in this room to come sleep in my bed. It's the second floor. Actually I look straight up at an air conditioning unit. I suppose, anyone at all. I'll cook breakfast in the morning from the garden. It's very good, but I guarantee you, you'll need lots of coffee.

MR. SCALI: What do you see? What do you look at?

MR. CARUSO: Let's see. So I look -- is there a map? I can --

MR. SCALI: That's the building right there in the -- oh, up there, no, 01.

Further up, 01, the middle right there.

MR. CARUSO: I'm trying to figure out where I am here. 64 Hampshire would be this or this?

MR. SCALI: Just tell us what you see from your window. What do you see?

MR. CARUSO: Air conditioning units.

MR. SCALI: Of the Idenix building?

MR. CARUSO: Yeah.

MR. SCALI: And what end of the building are you on, the south side?

MR. CARUSO: I'm on the Hampshire side, some on the -- not on -- not looking at Hampshire, but instead looking across Clark.

MR. SCALI: Okay.

MR. CARUSO: Sorry to raise something that's been -- I just had that question.

MR. SCALI: Okay. All right. Thank you very much.

MR. CARUSO: Cool. Thanks.

MR. SCALI: Anybody else? Come on

up, ma'am, two ladies in the back. Why don't you come, too, we'll kinda...

MS. KAUFMAN: 66C Hampshire Street, K-a-u-f-m-a-n.

MR. SCALI: 60?

MS. KAUFMAN: 6C.

MR. SCALI: 66C.

MS. KAUFMAN: The three townhouses, the third one.

MR. SCALI: What street?

MS. KAUFMAN: Hampshire.

MR. SCALI: Hampshire Street. Okay. Yes. How long have you been there?

MS. KAUFMAN: Since '96 I purchased it.

I just -- I keep hearing Idenix asking, asking, asking, but I feel like the responsibility of the Commission and the responsibility of the city and the reason that the laws are in place is to protect the citizens, the people that work there and the people that visit. And I really haven't

heard an excuse for why -- from Idenix from why these need to be raised except that they want to do business there, but I really feel like it's your responsibility to protect the people that live there.

And the reason it's 50 decibels is for -- there must have been some reason in the beginning to set it there, and I can understand if the whole city -- if the city wants to re -- you know, like look at that again and say is 50 the right decibel level. But if that's what it is, that's what it should be maintained at, you know, for the benefit of everyone that lives there and works, and all the kids that go to school there.

MR. SCALI: That's the balancing act.

MS. KAUFMAN: Good luck.

MR. SCALI: Thank you.

MS. ERICKSON: Hello. I'm Bethany Erickson. I live at One Lilac Court. I'm at

Webster and Lilac and the reason you never see any of us, and the reason I'm representing a bunch of people is we're all new parents. You've got young, two or less kids three houses in on Lilac Court right there.

If we could shave off the edge of that building on Hampshire Street, we'd look directly at Idenix.

What I'm hearing in here is, one, to change the precedent for the -- which is what you've been saying for the decibel level which will only just keep on happening, it seems a bad idea for obvious reasons. I'm hearing people would like to conduct industry in a buffer zone, so go do that in an industrial zone, obviously, it isn't working out.

And I'm not hearing anybody talking about health, noise pollution, quality of life, my house value, and I don't understand the logic of saying other people are being

loud, so we can, too. That doesn't make any sense to me.

I live on this end of Lilac Court 'cause the other end you can't conduct a conversation outside of during the day or night easily because of the Amgen building. If they're breaking laws or -- I don't know. Frankly, I don't want to find out what that's like by it getting any possibly louder. This is what I'm hearing in here.

What I hear at my house if I open the windows, and I most want to do that in the summer when it's the loudest, is ahhhhhhhhhhh. I take pharmaceuticals to help this. They're not made by Idenix. It's not helping you.

So, I don't understand the logic, and you're affecting my life in a negative way and my children's life and the children that live on my street, and it's just not okay. I'm sorry that it affects your business.

MR. SCALI: Thank you.

You've got to come up here, sir.

MR. KONG: Yeah.

MR. SCALI: Wait, wait. Tell us who you are first. Tell us your name.

MR. KONG: My name is K-o-n-g, Kong, I live in One Crossland Street.

MR. SCALI: One --

MR. KONG: Crossland. They're near there. We just think it's a too big noise and the noise, air -- and air -- air pollution. Sometime when it's nighttime, I go out. I can some air -- their badest air from Idenix company throughout. So just, you know, when it's nighttime is serious. So, you know, you should have more life of quality. So it cannot be so close to citizens area make so much noise. That's all.

MR. SCALI: Thank you very much.

Sir, tell us your name, please.

MR. JOAQUIM: Ron Joaquim,

J-o-a-q-u-i-m. I live at 61 Hampshire Street. I've lived there all my life.

A couple quick points. One is the -- I understand where they're taking these levels and so forth on Bristol Street. They should've been doing it right on Hampshire Street in front of it 'cause that's where we are. We're abutted right directly across the street from it, and from my house, I can see the -- all of the equipment on the roof.

MR. SCALI: Are you in the front of the building?

MR. JOAQUIM: I'm on Hampshire Street right across the street from Idenix's lawn. Actually, it's Area 3. Area 3 borders it. And the noise at times at night is unbearable. But beyond that, I hear them say about the, "Well, if we didn't have this, you'd still hear the background noise if the Idenix wasn't there," and so forth.

Well, back a year ago, the noise wasn't there until they started putting all

this equipment. First it was one piece, two pieces, three and then the whole roof is filled. And it just got noisier and noisier and noisier. Worst of all is early in the morning. You open your window up, you want to, you know, get some air, anything; you can't, you have to close the window.

And just recently they have done some repairs on some of the equipment. There's no question about it and that did break down some of the noise. The noise is still there. And it's unbearable at times. Hopefully they'll continue to try to repair that. I understand we're abutters. I've been there all my life and I went through the Morning Star problems and, you know, all that we fought, and they finally moved out, and their noise was much more theirs will ever be.

MR. SCALI: Who's that?

MR. JOAQUIM: Morning Star used to be there. There was a manufacturing company

there, and they had all this large equipment. The noise was unbearable.

MR. SCALI: How many years ago was that?

MR. JOAQUIM: Oh, I would say probably 30 years ago perhaps, you know, right in that area there.

MR. SCALI: Okay.

MR. JOAQUIM: They moved out and other companies moved in which were all more like business-like, not industrial or pharmaceutical, but law firms and so forth and there was no noise from them. There was nothing.

So for years we've had good times, if you know what I'm saying as far as noise goes.

Another point which was brought up by another individual here was property value. I have two houses there, 59 and 61-63. I mean, the values -- if you brought someone in and tried to sell it -- I'm not

trying to sell it, but that is affecting us also as abutters.

And I understand we need to get along, but there's got to be other solutions to this. I mean, what you said, replace some of this equipment, perhaps that's one of them. Walls or barriers.

One thing I heard say was that they were going to put a 14-foot wall along -- they're talking about it, Bristol -- I mean, Clark Street. Don't forget Hampshire Street because there's a whole bunch of abutters right there, too, and on the other side of where Market Street comes into Broadway. Again, on the other side of that street, there's more abutters over there.

I don't know if any of them are here and I'm not speaking for them, don't get me wrong.

MR. SCALI: We traditionally had mostly people on Clark Street that have complained. A lot of new faces are here

tonight as opposed to people who had complained in the past.

MR. JOAQUIM: I'm just concerned going from 50 to 60, I mean, they're numbers to me. I mean, what does that really mean as far as noise goes, and at night especially? During the day it's noisy.

MR. SCALI: Right.

MR. JOAQUIM: Since they put the police department down there, the sirens are going even more and more, but that's normal. It's just an example.

Anyway, that's my point. Thank you.

MR. SCALI: Thank you very much.

Anybody else.

Mr. Bergman? Funny how I know all your names.

MR. BERGMAN: Jerry Bergman, 82 Elm Street. This has been going on for a while. I just wanted to let you know that, gee, since the last meeting I turned 65, my son graduated from the University of Chicago.

MR. SCALI: Has it been that long?

MR. BERGMAN: And that's only since the last meeting. I don't even want to go back the years before that.

I just wanted to say that, you know, back in the '90s when we down-zoned that property, we really had envisioned keeping that as a one-story building. And if there's some feel for history, it's the community coming together and down-zoning and saying we want to preserve some light, some air, some -- some openness, you know, as a buffer zone.

So there's a long history to, I think, why people have opposed a story plus wall, and I think that's not new. That was probably at least a year ago, if not two years ago, when I was first being -- kind of suggested that that would be a possible solution.

So I just wanted to say there's a long history and people have talked about it for a long time, and I hope people understand

what people were trying to do.

Down-zoning, I think we see it as a huge loophole in the zoning regulations, you know, to allow something like that. And I think that's problematic if you down-zone to one story and then you can build a 14-foot wall to deal with mechanics -- mechanicals.

I wanted to mention at past meetings we've talked about the relative hardship. Sometimes the issue of cost comes up. Why can't Idenix afford to do certain things?

We have brought in on occasion some of the financials around some of the key players, the Gensyme, Idenix and the landlord for Idenix, MetLife. We're talking a multi-billionaire property owners and developers.

If you look at recent dealings with Idenix, it's not the tens of millions, but it's the hundreds of millions of dollars in their financial negotiations for some of their pharmaceuticals and other things.

So when we look at relative costs, I know people say "Is this less costly"? I think some people don't understand the players here, and I think that should be somehow clear when it becomes if it's hardship around monetary issues, we have to look at what their resources are.

The thought of 18-year-old equipment, if, indeed, a replacement of 18-year-old equipment -- and I know what it's like with an 18-year-old air conditioner across my -- my residential space a foot from my property line what their 20-year-old air conditioner does to my property.

Why not put on the table what the possibilities are for equipment -- real equipment, moving real equipment, replacement, I mean, why can't we -- with their financials, why can't we hold them to that test instead of rushing in all saying "Well, it might be more expensive than a repair because it is relative and we are

dealing in the hundreds of millions of dollars.

So, I think with the issue of hardship -- and I guess the last point is, what I started with, the question is how many years can a case like this go on? I mean, we're threatened by a good neighbor supposedly with a 14-foot wall, which is sort of hanging it over our heads because people don't -- they know the history already, what would that mean to light and to air and litigation?

So we're sort've being clobbered by the good neighbors of Idenix, but that's their right apparently.

How many years does the neighborhood have to go on? When can we kind of call a halt? I hope there's a three to nothing vote to reject the kind of -- as I think the Police Commissioner has suggested, is a slippery slope. If you raise it to 60, what does that mean? And then is it MetLife's

higher building in the background, the landlord for Idenix, are they the ones that are causing the ambient noise that allows their tenant to get away from what the License Commission has set for the noise ordinance? So it's a sign of a little bit of collusion.

So, if it's at 60, somebody else says "Well, why can't it be 65?" I mean, I think there's no end to it, and I think we have to limit it to what you have seen in your good sense to limit it at 50.

Thank you.

MR. SCALI: Thanks very much.

Anybody else?

Ms. Flores.

MS. FLORES: Hello. My name is Lila Flores. I live at 64 Hampshire Street right across from the labs and what I can see from the way -- I live with Mr. David Caruso, he's my husband, I see the roof, part of the roof close and like some protruding metallic

structures on the top.

And so, I think that Idenix makes pharmaceuticals and their concern is health, they should also be concerned by the health of the neighbors and I think health is priceless.

So I do worry when I sleep at night in the summer nights with my window open to get a little air, instead my ears keep working all night long. Sometimes I can, I guess, be able to sleep, but sometimes I can't sleep and the next day it affects my work performance and ethics how I feel. I feel grouchy, I feel irritated. So it does alarm me that because we don't have an air conditioner system, if we don't open the windows at night, we can't sleep because it's too hot even with the fan on.

So that's one of the things that I'm concerned so I wish that both the company and the Commission take that in consideration that it's like a health issue and that,

indeed, noise can be a great source of pollution. So I guess mainly that's what I wanted to say. I hope for a very good night's sleep. Thank you.

MR. SCALI: Anybody else? I guess Mr. Lindquist is waiting until the very end I can tell.

MR. POLUM: I'm Michael Polum, I live at 183 Clark Street. Been here -- I've spoken here, I think, maybe three times before. And I live right across from Idenix, where their air conditioning system is and I've actually worked on heating, ventilating and air conditioning systems myself and I know if my boss and I were to go up there, it would -- we would say -- we would recommend replacing it. You know, I'm sure it's quite inefficient.

MR. SCALI: You want to do some work for them, is that what you're --

MR. POLUM: Sure. I know all the equipment abuts Clark Street and there's a

huge area with nothing there, you know. So, you know, I would -- I said it before, like why not move everything back. It just means adding maybe more ducts or whatever, and if that systems does get replaced -- to move it to the other end of the building as well. And if all the equipment was at the other end of the building, there may be a wall up there as a baffle which would not affect the neighborhood.

But, you know, I'll just reiterate that it is loud, it's 24 hours a day. During the summer it is louder and it was mentioned, I think by Chris Gilman, that when they were up there measuring one night, it might've been early August, there was some foamy substance coming out that was dripping from the roof down and it created a pile like white foam about the size of this -- maybe about a foot high. I don't know what it was. It looked like it could've been suds from a mop and bucket. I don't know. But why would

it be there, you know. But it looked like it was coming from the top down.

And I know, you know, obviously air conditioning systems do have some sort of drainage system, but I've never seen a drain like that before. So, I don't know.

And also, I'd like to reiterate what Mr. Coning said. Usually it's around 4:30, 5:00 I smell very strong ethylene smell, you know, odor. It's very strong for a few minutes at time and often sometimes -- sometimes later at night, too.

So, I, you know, I'd just like to, you know, bring that up, too. I have asthma, I have allergies and that affects my breathing, too.

Anyway, thank you very much.

MR. SCALI: Thank you. Your turn, Mr. Lindquist.

MR. LINDQUIST: Thank you.

Peter Lindquist, 11 Market Street on the corner of Clark and Market.

It's kind of a procedural thing. I was kind of surprised by this hearing. When was this hearing requested?

MR. SCALI: That's the application date?

MS. LINT: August 6th.

MR. LINDQUIST: Then why are we here? The city ordinance says that after a decision that if any person is aggrieved by the decision, they have ten days to request --

MR. SCALI: They made a Special Variance request last year, we denied that and they appealed it to court. So this is a different request starting over again, and they are allowed to make an additional request for a Special Variance.

So we're hearing a brand-new request.

MR. LINDQUIST: I see. I'm a little confused.

MR. SCALI: That's the way the

ordinance is written and they're allowed to apply for a variance. Again, we have to hear it --

MS. LINT: Because they presented new information based on more work that they had done.

MR. LINDQUIST: Okay. Speaking of the information, you know, the only thing that's important to me or any of my neighbors is a little peace and quiet, and those charts that they had up there that were taken -- showed the readings on June, whatever the date was --

MR. SCALI: Last year?

MR. LINDQUIST: Yeah. June 17th, I think it was, when they shut the units off at 2:00 in the morning.

MR. SCALI: Right.

MR. LINDQUIST: And the noise levels even at Bristol Street, but also along Clark Street, all dropped below 50 decibels, when they shut everything off on the roof.

I happened to be out there. I was out there with Bill Elliot when he was taking readings that night, and it was spooky, it was so quiet out there.

Now, I don't know -- I've heard all sorts of things about different times of the night it's going to be louder, yeah, if a car comes down or another air conditioner kicks on somewhere, yes, it's going to be louder. But to me it's very simple; without that equipment running, it's perfectly acceptable. With it running, it's unacceptable.

And for all the reasons that all these people have said, I think the problem that we have really shouldn't have been here in the first place, a year, more than a year before Idenix applied for the flammable liquid license, I spoke with Chris Gilman on a number of occasions about what seemed to be a growing amount of noise and a growing amount of equipment on the roof.

Is that right, Chris?

MR. GILMAN: Yes.

MR. LINDQUIST: At that time he said, "Well, we'll work on it and we'll get a barrier up or something or" -- I can't remember, but that year passed, nothing had happened and we ended up in the hearing process. During which time they continued to put equipment up on the roof. All during that hearing process in 2000 -- I forget the year now, '8, I guess -- during the springtime and into the summer, continued to put equipment up there, continued to take out building permits that architects and engineers signed off on saying that the work complied with the city ordinance, and, obviously, it didn't because the levels -- the noise levels got louder and louder and louder.

Now, we, the neighbors, are being to -- are being asked to suffer for their mistakes. We're suffering in terms of quality of life issues as well as what

they've done to that building has, I believe, severely devaluated our properties in the neighborhood.

I'd like to ask Mr. Tocci just one thing.

MR. SCALI: Why don't you ask us? It's easier that way.

MR. LINDQUIST: I'd like to know if Mr. Tocci could explain how much louder is 60 decibels than 50 decibels.

MR. SCALI: You finish your comments then we'll find out.

MR. LINDQUIST: How much more -- what happens when you raise, say, sound at 50 decibels to 53 decibels? What's happening to that noise energy?

You know, I think that needs to be -- you know, you can -- you can kind of guibbly say, "Well, we'd like a sound limit of 60 decibels." Well, what does that mean?

And I'd appreciate it if Mr. Tocci would explain that.

MR. SCALI: We'll have him explain that. Why don't you finish all your comments for us.

MR. LINDQUIST: That's basically it. I think granting a variance to the noise ordinance is a terrifying proposition for any residential area in Cambridge, and I think it would set a precedent that I don't believe any citizens in this city would want.

And I'd just speak one last thing. They talk about a 14-foot wall. This is taken from -- actually elevated, it's not even standing in my yard -- a projection of what this wall might look like.

MR. SCALI: Are you talking about the screened area?

MR. LINDQUIST: Yeah, I just drew this in on -- so you could get some idea.

MR. SCALI: That would be about 14 feet?

MR. LINDQUIST: Roughly 14 feet. And this is directly across from my house,

not down the other end. Which from the standpoint of sunlight at high noon, it wouldn't be affected, but in morning and particularly in winter, it would be --

MR. SCALI: Blocking the sunlight.

MR. LINDQUIST: Dramatically affect -- plus the air.

MR. SCALI: Thank you very much.

MR. LINDQUIST: Thank you.

MR. SCALI: Mr. Tocci, if you could explain and answer Mr. Lindquist's question, the difference between 50 and 53, what basically would someone hear if that would be the difference in levels?

MR. TOCCI: In the absence of background sound, if it were just a broadband sound produced by some system and it were to go from, say, 50 to 53 that would be barely perceptible.

50 to 55 is clearly perceptible. 50 to 60 is a perceived doubling in loudness.

Now, this is obviously affected by

background sound if we're talking about a specific source like Idenix. If Idenix went from 50 to 53 in background and we're already 55, that breaks down, the perceived increase would be smaller and that's the kind of thing we've been driving off.

MR. LINDQUIST: I just have one more thing.

MR. SCALI: Go ahead.

MR. LINDQUIST: And Mr. Tocci keeps referring to this background noise and, you know, I'm really only interested in our immediate area, all right? And I've been out there in the middle of the night when all the units were off, when they're on and I can tell you that a good deal of this background noise is coming from the applicants, not Idenix, but Metropolitan Life who is really the applicant, for the license is coming from their next building down, the Camp, Dresser McKee building.

MR. SCALI: Okay. That's a whole

different ball of wax.

MR. LINDQUIST: No. I understand, but if you're saying, you know, if Metropolitan Life seems to be very supportive of this whole thing, then maybe they have to clean up their act elsewhere in the neighborhood. If this background noise is such a critical issue in getting Idenix off the hook, let's see what we can do about cleaning up some of this background noise.

And this issue of a buffer -- my last point -- I didn't -- you know, I was kind of blind-sided by this whole thing, so I didn't come --

MR. SCALI: The buffer zone issue?

MR. LINDQUIST: No, no. This presentation.

MR. SCALI: Oh.

MR. LINDQUIST: I wasn't made privy to this. But the issue of the buffer zone was when that building was rezoned in the '90s, to my understanding, I did not live in

Cambridge at that time, but from what I gleaned from speaking to people that were involved in that, that that building was to be remain a one-story building and it was down-zoned to an office zone to prevent exactly what's happening there today.

Now the issue of the wall, I might guess if they wish to put up a wall might have to go zoning, bring out the records as to why that building was to be kept a one story, although the wall does not constitute a second story, it effectively does in terms of blocking light and air which were serious concerns with people --

MR. SCALI: There's a process just for the wall itself.

All right. Thank you.

Sir. I think you're the last comment.

MR. MARQUARDT: I'll be last. I'll be quick.

MR. SCALI: Just tell us your name.

MR. MARQUARDT: First name's Charlie, last name's M-a-r-q-u-a-r-d-t.

MR. SCALI: Your address?

MR. MARQUARDT: 10 Roger Street.

So I'm one of those folks that he eloquently spoke about concern about other parts of the city. I just want to make sure the Commission especially now that Commissioner Haas is in our neighborhood, that we recently went through an upzone, so we're about to have significant additional up development. And if we're going to consider background noise as a mitigant to the needs to keep noise ordinance, we need to make sure that that's something that's considered going forward before they start building.

I'm quite sure that the applicants here knew about the noise ordinance before they started. So it would've been nice to have background measurements before you started the work. I would hope that the Commission would work with out departments

within the city to require such measurements before our friends Alexandria & Beale start their building.

MR. SCALI: Well, that's really not our function in terms of beforehand. We are an enforcement mechanism --

MR. MARQUARDT: I understand that.

MR. SCALI: -- after the fact.

MR. MARQUARDT: Now seeing this you learn something, so maybe we could request beforehand so we don't have this problem coming back at us.

MR. SCALI: That would be a Building Department issue beforehand.

MR. MARQUARDT: I agree wholeheartedly. I would hope you would pass that along to them or I'll feel free to as well.

But I do support their approach to work together as a neighborhood. I know the neighborhood has been working with the company and the developer to get to a good

resolution, and I think they need to keep working. Granting a variance sets a really bad precedent that I'm very scared about for our neighborhood and other neighborhoods where we really don't have those buffers because we are the buffer.

MR. SCALI: Thank you.

Anybody else after this gentleman?

Mrs. Lint has to speak, okay?

Okay. Sir, just tell us your name. You're the last comment.

MR. ZEVIN: Barry Zevin, Z-e-v-i-n, 67 Hampshire Street.

I'm about a hundred feet from the northwest corner of the Idenix building.

Just anecdotally, I've been there since 1985. This summer, just a general background, or late at night, it's really quite alarming. It's a real interruption in the rhythm of the day and on Sunday mornings of the week. There's never a quiet time. It's sort of the acoustical equivalent of

leaving the sun up all night. It never gets quiet and that really is important, I think.

And the other thing I'd like to say, I spent a couple years on the Eastern Cambridge Planning Study Committee which drafted the zoning for this part of town. And I think we sort've missed the fact that research labs are now the sort've acoustically incompatible use that industrial used to be when zoning was first instituted. And it really needs to be separated somehow, and I'm afraid you guys have wound up inheriting the only ordinance that actually takes care of it because the zoning doesn't. Maybe it should, but doesn't.

So the issue of setting precedence for neighborhoods all the way from Cambridgeport to East Cambridge is really crucial and pretty scary.

I wrote you guys a letter last time and I think that's still -- it still stands.

MR. SCALI: Thank you very much,

Mr. Zevin.

All right. You get the last word -- does anyone wish to speak?

Okay. Tell us what you want us to know.

MS. LINT: Thank you.

I have an email from John Paul on Spring Street who is opposed to the variance being granted. He says that the neighborhoods that surround Kendall Square are already severely impacted by non-stop noise emanating from the labs which have been built in the area and that the impact of car and industries needs to be reduced not added to.

I also have a letter from Councilor Toomey who says he's writing again to express continued opposition to an application by Idenix Pharmaceuticals to receive a variance from the noise ordinance relieving this particular business of its responsibility to comply with this ordinance that sets a very

dangerous precedent especially considering its proximity to residences.

He goes on to say that the neighbors have shown patience in trying to work with Idenix and that they have other avenues that they should be exploring in order to help reduce the noise.

MR. SCALI: Thank you very much.

Mr. Kopman (sic), do you wish to comment? Final word --

MR. JOHNSTON: Please.

MR. SCALI: -- about rehashing?

MR. JOHNSTON: There were obviously numerous comments from neighbors and the company respects and appreciates the comments that neighbors have made. I want to respond to several since it would be difficult to respond every one of them.

First, Idenix occupies and used property that was zoned for laboratory work and it does so as of right. It doesn't need a variance to do that sort of laboratory

work. So, I mean, the questions have suggested that maybe it was improper at one point or not a smart idea to down-zone, you know, is sort of beside the point because the isn't really a zoning hearing, it's property that has been zoned that way for some time.

At the same time your ordinance has dealt with the concept of a buffer zone which, as I said earlier, reflects the fact that there can be zones that are between two other types of zones like manufacturing, residential and the buffer zone is supposed to be somewhat of a weigh station between them, not a hard and fast line because noises are not always hard and fast, but something that reflects flexibility in that area.

There has been suggestion that equipment has been added in the last year or so that caused the noise to go way up. My understanding from the company is that equipment was put in in 2004 and other equipment was put in in early 2007, which is,

you know, more than two years ago, and not something that's been done recently.

So, to the extent that there have been suggested or perceived increases in the noise, it may just be a reflection of the fact that there are other things going on in the neighborhood through ambient noise.

There also has been some discussion about the landlord, MetLife. Now, Idenix represents itself in this discussion. MetLife is a separate entity. To the extent that MetLife has another building out there, that's not really Idenix's issue. And if, in fact, MetLife has another building that's causing part of the ambient noise, well, I think it helps serves Idenix's point that there are other sources out there besides the Idenix facility. And Idenix can't speak totally from MetLife. There are realistically discussions that have gone on between the two, but they've been complicated discussions, as you might expect, and so,

Idenix is here really representing its own interest.

There's been some suggestion as well that Idenix has, if not unlimited vast resources at its disposal. There is no question that Idenix has had business partnerships with other entities, but that does not speak to what money is available to work on these projects.

And I don't want to suggest that some of the things that are being suggested are being proposed tonight are financially impossible. Indeed, the things that have been discussed tonight are within the realm of financial possibility, and that's why they're being discussed.

But, as I said earlier, Idenix doesn't want to get into the situation where it spends additional amounts of money whether they are modest or whether they are huge, only to find out that they're sort've caught -- hoisted by their own batard because later

on it turns out that they're exposed to ambient levels which gets them above the threshold.

So, this endeavor like last year's endeavor for the variance was intended to try to establish some parameters so that Idenix can do things that will make the situation better while being protected against the fact that the neighboring and ambient noises make it pretty much impossible for Idenix ever to get down to the existing levels that you have set.

I hope that you and the neighbors as well will take seriously Idenix's intention to try to continue working to evolve a proposal, and to some extent what we suggested tonight are pieces of a proposal which Idenix is anxious to carry out. But it really needs the flexibility of the variance in order to make those changes realistic.

So, in sum, Idenix requests again that you grant the variance requested to go

up to 60 decibels and Idenix will work in corporation with the Commission to try to carry that out in the most feasible and neighbor-friendly way.

MR. SCALI: Thank you very much.

MR. LINDQUIST: Can I just ask one --

MR. SCALI: No, no, no. We can go on back and forth all night long. I think we've heard all the arguments --

MR. LINDQUIST: This isn't an argument. It's a question. It's not -- it was not the license issued to Metropolitan Life, they were the applicant. They're the landlord.

MR. SCALI: I guess we're -- you know --

MR. LINDQUIST: Isn't that correct?

MR. SCALI: That's a legal question I guess we'd have to --

MR. LINDQUIST: Their name was on the application.

MR. SCALI: We can certainly inquire about that. All right.

Questions for the Commissioners?

MR. TURNER: Take it under advisement.

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

MR. HAAS: Seconded.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: All right. Also before I forget, I didn't accept the minutes of the last meeting. We vote to accept the minutes from our last meeting of August 12, I believe it was.

MR. TURNER: Yes.

MR. SCALI: Moved.

MR. HAAS: Seconded it.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you.

Let's take a moment to just change
the tape and we'll be right back.

(Short recess.)

120 Realty Trust

MR. SCALI: Sorry for the delay. I know you've been waiting patiently since 6:00 p.m., we'll try and move as quickly as we can on your subject matter.

MS. LINT: Disciplinary matter, 120 Realty Trust, Joe Perroncello, Manager, due to a resident complaint about the company's violation of Cambridge Municipal Code Section 8.16.080. The date of the alleged violation was Sunday, August 16, 2009.

MR. SCALI: Good evening.

MR. RAFFERTY: Good evening, Mr. Chairman, members of the Commission. For the record, my name is James Rafferty. I am attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive in Cambridge.

I'm appearing on behalf of the Realty Trust that is the record title owner of the property. They received this notice.

MR. SCALI: So, they're not here.

MR. RAFFERTY: The Realty Trust is not here. I'm their authorized agent.

MR. SCALI: All right.

MS. LINT: If you'd like some background?

MR. RAFFERTY: I would. I'm confused.

MS. LINT: This came to the License Commission from Mr. Singanyagam who received it from the City Manager. There was a complaint by a resident at 3 Wilson Ave., which is a dead end street abutting St. John's construction project on Rindge Ave. that on Sunday, the 16th at 3:00 p.m., there was construction work going on at the site. That's the short story.

MR. RAFFERTY: Okay.

MS. LINT: As a result of that, I believe Mr. Byrne did an investigation and he's here. He can refer to that.

I do have a CAD report that, in

fact, there was a call to the police station at about 3:00, that they did go up and stop whatever was going on at that location at that time.

MR. RAFFERTY: That was the day, Sunday, the 16th?

MS. LINT: Yes.

MR. RAFFERTY: Excuse me. Just for clarification. I don't think the report says they stopped what was going on, they said they went to the location. I can't find any reference to "they stopped what was going on."

MS. LINT: It says "Construction will be ceased."

MR. SCALI: All right. Why don't we -- so, the issue here is that this particular -- at this particular location on Sunday, the 16th, there was a violation of the noise ordinance by work being done on Sunday?

MS. LINT: Yes.

MR. SCALI: That's the question.

And, Mr. Byrne, you have a report of an investigation that you did?

MR. BYRNE: Yes.

MR. SCALI: Okay. Why don't you come forward then. Have a seat.

Just tell us your name and your position in the city.

MR. BYRNE: Dave Byrne, senior building inspector, Inspectional Services Department.

MR. SCALI: Okay. Tell us what you know.

MR. BYRNE: What I know is I went up there on about the 18th, which, I believe, may have been a Tuesday on a complaint that was received on the 18th.

MR. SCALI: The 18th of August?

MR. BYRNE: 18th of August.

The complaint had to do with construction taking place at that site, 120 Rindge Ave. on, I believe it was the 16th by the complaintee, Peter Blake from 3 Wilson

Ave. I went up there at that time and I had a conversation with the job super, and what he said took place was there was a truck there and they were unloading -- they were loading the forms to remove them from the site.

There was a confrontation with the owner of Wilson Ave. and this contractor who was taking his equipment off the site. I wouldn't say he was working. From what I'm told, he was removing his forms from the construction site.

MR. SCALI: Okay. So, you weren't there on the 16th?

MR. BYRNE: I did not see anything there.

MR. SCALI: Was anyone there on the 16th from your department?

MR. BYRNE: The police department was there on the 16th.

MR. SCALI: Okay. So you had a conversation with the building manager.

MR. BYRNE: Building super.

MR. SCALI: Two days later.

MR. BYRNE: Two days later.

MR. SCALI: I'm kinda --

MR. BYRNE: I asked him what transpired up there.

MR. SCALI: Right.

MR. BYRNE: And I also asked him why was this construction person having a confrontation with somebody from the neighborhood.

MR. SCALI: So someone from the neighborhood called the police, is that your understanding?

MR. BYRNE: Called the police, three o'clock about them violating the noise ordinance by working on a Sunday.

MR. SCALI: Okay. Did you have any violation beforehand before the 16th?

MR. BYRNE: The noise ordinance, no, no violation, I did not.

MR. RAFFERTY: Mr. Chairman, will I

have a chance to --

MR. SCALI: Yes, you will. Everyone will have a chance to speak. I just had to figure out what Mr. Byrne's role was in this whole thing.

MR. BYRNE: I investigated --

MR. SCALI: So, you were there after the fact?

MR. BYRNE: After the fact.

MR. SCALI: Okay. Comments?

Questions, Mr. Byrne?

MR. BYRNE: No thank you.

MR. SCALI: Sorry you had to wait all this time. I didn't realize you weren't there the day of.

MR. BYRNE: I was not there the day of.

MR. SCALI: I thought you investigated that particular day from what...

MR. BYRNE: No.

MR. SCALI: Okay. All right.

So the gentleman who made call is

here, so why don't we -- why don't you come forward.

MR. BLAKE: Sure.

MR. SCALI: Instead of even having the CAD report, we'll have the direct person who made the call.

MR. RAFFERTY: I still would like to be permitted to --

MR. SCALI: I certainly will.

Just tell us your name, please.

MR. BLAKE: Peter Blake.

MR. SCALI: Mr. Blake, what is your address?

MR. BLAKE: 3 Wilson Avenue.

MR. SCALI: Okay. So tell us what you know about that day on the 16th.

MR. BLAKE: So around 3:00 p.m., I was inside my house and I heard a truck start up on the lot, and I went outside to see what was going on, and the guy started his truck and put down the things to plant the side of the truck. So, I went out like this, I

couldn't -- he couldn't hear me over the noise, so he came over and was like "What?"

I said, "You can't work on Sunday."

So I went back inside. He was still doing whatever he was doing out there with his truck. I called the police. Then I went outside to leave because he was still making noise and working, and that's when he had words -- we had words.

MR. SCALI: So 3 Wilson Ave. is right next door --

MR. BLAKE: Directly -- right next door.

MR. SCALI: -- to this location?

MR. BLAKE: Here's the construction site, my window's right here.

MR. SCALI: And what construction company was it, do you know?

MR. BLAKE: The name on the truck was Ken Mernane & Sons, so that must be the contractor.

MR. SCALI: All right. At 3:00 p.m.

you called the police?

MR. BLAKE: 3:00 p.m.

MR. SCALI: So you are the person that -- on the CAD report that made the complaint?

MR. BLAKE: Yes.

MR. SCALI: And did they continue doing work after you complained?

MR. BLAKE: I left, so I don't know.

MR. SCALI: Do you know if the police showed up there?

MR. BLAKE: This is the first I heard that there was actually a response.

MR. SCALI: Okay.

MR. BLAKE: But I also emailed my city council members, so I did receive several responses and Dave Byrne left his card for me and we did communicate later.

MR. SCALI: Okay. Questions?

No questions.

Thank you very much.

Anybody else want to be heard?

Come on up for a second.

Tell us your name and address,
please.

MR. RUGGIERO: My name is Gerald Ruggiero, R-u-g-g-i-e-r-o, 37 Yorkshire Road and I abut the construction site. I'm right next to the old convent building.

MR. SCALI: Are you in back?

MR. RUGGIERO: On Yorkshire Road. Do you know the old convent building?

MR. SCALI: I do. But I'm just trying to figure out what side --

MR. RUGGIERO: I'm on the Rindge Ave. side.

MR. SCALI: You're on the Rindge Ave. side. Okay.

MR. RUGGIERO: The convent building separated by a grass lawn between the two.

MR. SCALI: Okay.

MR. RUGGIERO: Well, I was not around the morning over that Sunday, but I was there -- I did register two noise

complaints that week.

MR. SCALI: To who? To the police?

MR. RUGGIERO: Both to the police who responded both times and I also emailed Andrea Boyer. I have the email that I will give you.

MR. SCALI: That same week?

MR. RUGGIERO: The first occurred on Wednesday, the 12th, and it was hammering and power tool noises at 6:45 p.m. The police responded. I called the Cambridge Police, they responded very quickly. But by the time they had got there, they were -- they had stopped doing that, but they did talk to the workers who were still there.

The next incident occurred Saturday, the Saturday before the --

MR. SCALI: The Sunday work which would be the 15th?

MR. RUGGIERO: It was the 15th.

MR. SCALI: Okay.

MR. RUGGIERO: Truck noise, power

tool noise and hammering at 7:30 a.m. That was Saturday morning, and I believe the ordinance says no construction before 9:00.

Police responded fairly quickly to that and they got there in time to tell them to stop and they did cease and, you know, left the area and came back at 9:00.

And, as I said, I was not -- I left early Sunday morning and I was not at home.

MR. SCALI: So you weren't there the 16th?

MR. RUGGIERO: Yeah. But I'd like to show you --

MR. SCALI: Why don't you pass it around this way?

MR. RUGGIERO: This is my email to Andrea and actually Andrea told me, she called me back. As a way of a little bit of history, I'm primarily the person who complained at the meeting. I documented all of the events leading to the action that was taken last summer.

MR. SCALI: On the Yorkshire Street --

MR. RUGGIERO: Yeah. And unfortunately -- I have your report --

MR. SCALI: Right.

MR. RUGGIERO: -- Andrea gave me, but I unfortunately was not able to attend that meeting and I wish I had --

MR. SCALI: I see.

MR. RUGGIERO: -- because this is an ongoing issue. And it seems that Mr. Perroncello -- I have not talked to him directly in person -- and he has a way of, you know, he will tell you that he's going to stop and accommodate you, but he has no control over his contractors, and he actually told me that. He's like, "I can't control the guys, you know, these guys are basically paid by the job." He said it -- he basically told me he had no control over them.

MR. SCALI: This was at the same site as this site this year?

MR. RUGGIERO: All of this -- I'll show you your report.

MR. SCALI: I have it right here from 2008, right?

MR. RUGGIERO: Summer of 2008.

MR. SCALI: Right.

MR. RUGGIERO: I actually called in all of those events.

MR. SCALI: But it's a different site.

MR. RAFFERTY: It's different building.

MR. RUGGIERO: Oh, I'm sorry.

MR. SCALI: I'm just trying to figure out whether it's the same noise site or a different noise site.

MR. RAFFERTY: It's a three-building site.

MR. RUGGIERO: I'll show you. This is a map -- I'm sorry, I'm not very prepared because I just found out --

MR. SCALI: You're doing very well.

MR. RUGGIERO: Thank you. I just found out about this this morning and I was out of town all weekend, but our house, it's a three-story. This is where actually -- I won't get into the history -- but it's a three-story building. I live on the third floor. The old convent building is here. This is the St. John's School, these two buildings, the old St. John's School.

MR. SCALI: Okay.

MR. RUGGIERO: And this is all -- they worked on this last summer, the convent.

MR. SCALI: Okay. Yep.

MR. RUGGIERO: And they're working primarily on these two buildings now.

MR. SCALI: You complained about the other building last year?

MR. RUGGIERO: Just generally, yeah. I mean, there's trucks and all sorts of stuff back and forth.

MR. SCALI: We fined them last year for that site.

MR. RUGGIERO: No, actually you didn't fine them. You post -- you held -- you said that there was another incident --

MR. SCALI: It was held for six months.

MR. RUGGIERO: Right. If there was another incident, and this is the other incident. It is after six months, yeah.

There was a cessation in the work at the site for other reasons. They were told to halt construction because they had violated building code, agreements that they had made prior to the construction.

MR. SCALI: Okay. All right.

MR. RUGGIERO: So it's been relatively quiet until this summer which it started back up again.

MR. SCALI: All right.

Unfortunately what we cited them for was the Sunday work and not the two days you're complaining about, so Mr. Rafferty's going to object that he was given proper notice on

your complaints and I understand why.

MR. RUGGIERO: Well, I'll pursue that with Andrea.

MR. SCALI: You certainly can take it up at a later date if that should be the case.

MR. RUGGIERO: Thank you.

MR. SCALI: Thank you very much.

Questions from the Commissioners?

What we have before us, I guess, is Mr. Blake's testimony with regards to the Sunday work, Mr. Rafferty.

Do you have any questions of Mr. Blake?

MR. RAFFERTY: No.

MR. SCALI: Thank you.

MR. RAFFERTY: Well, he was, by his own admission, he wasn't there on the date that's the subject of the hearing.

MR. SCALI: And this affidavit is from --

MR. RAFFERTY: This is an affidavit

that I've submitted today of Kenneth Mernane. As you can see from Mr. Mernane's affidavit, I spoke with him.

Mr. Mernane is apparently a subcontractor of the contractor. He operates a concrete form business, and indeed he states in his affidavit that on or about 2:45 on August 16th, he arrived at the job site for the express purpose of collecting some concrete forms that had been used and to place them on his truck and remove them from delivery to a different job site. He was not there for the purpose of doing any construction nor did he perform any construction activities.

He states in his affidavit within a few minutes of his arrival and before he was able to place a single form on the truck, an individual appeared and began yelling at me. I went to speak to the individual and he told me that it was Sunday and that he had called the Cambridge Police.

After a few minutes, I decided to call the Cambridge Police myself in order to get a better understanding of the situation.

Mr. Mernane goes on to state in his affidavit that he described the situation to the individual who answered the telephone, and that person transferred him to a shift commander. He says that as he began to speak to the shift commander, a patrol car appeared. He spoke with the police officer in the patrol car and explained what he was doing at the location. The officer did not inform him that his conduct was unlawful, however, after talking with the officer, Mr. Mernane states he voluntarily declined to collect the forms. He explained to the officer that he did not wish to create any problems with the neighbors and that he would return the next morning to collect the forms.

It goes on to state that the police officer thanked him for his consideration and left the job site without having moved a

single form.

MR. SCALI: So he called the police. There's no record of him calling the police, is there?

MR. RAFFERTY: Well, I don't maintain the police records. I think you'd have to ask the police department that, but there was a telephone call and there was a patrol car that arrived.

So, if he waited for the police and he was there to collect the forms, he's a subcontractor, he was not there to perform any construction activity.

And it was regrettable. It sounds like his conduct with the neighbor was less than ideal, and had he been more polite, I think -- and it sounds like there may be a good cause for neighbors to be exacerbated with this particular operation. It has been a long period of construction activity.

But with regard to the date in question, a review of the ordinance would

suggest that there'd have to be some determination that noise from construction activity was taking place, the mere presence there.

MR. SCALI: Well, I guess we could call Mr. Blake back up and ask him whether he saw construction going on or whether he saw him trying to load forms, I guess is the question.

Am I correct, is that what you're stating is the case?

MR. RAFFERTY: Well, I'm stating that there's an affidavit here by the individual involved who's name is consistent with the name Mr. Blake. If you want to call Mr. Blake up and ask him questions, that's totally your prerogative. I have no questions of Mr. Blake.

MR. SCALI: Well, I guess I'm curious as to what he actually saw now because I didn't see the difference between getting there and starting work and not doing

work and then actually doing work.

Mr. Blake, if you want to come back up, you can tell me exactly what you saw, whether they were loading or unloading or starting work or...

MR. BLAKE: It's good that he admitted that he was there and he started up his truck, so his intention was to do work, and I saw him start up the truck and the engines were quite loud. He put down the planters on the truck so that he could begin doing something, I assume, and that's when I went out and stopped him.

MR. SCALI: Okay.

MR. BLAKE: So I'm glad I stopped him.

MR. RAFFERTY: I think you did a fine thing, but there seems to be skepticism on the part of the chair and I know he's not going to make any judgment, but the affiant acknowledges he was there for the purpose of removing -- we don't have a factual dispute.

He was there for the purpose of removing the forms. Before that activity got underway, Mr. Blake arrived and told him "You can't do this," and he informed him that he called the police.

MR. SCALI: I didn't understand Mr. Blake's testimony. I just wanted to make sure I had the right information because I thought he said he saw them doing work. That's what I thought you said. Am I wrong? You didn't see them doing work.

The sun come up, he started -- he --

MR. RAFFERTY: He started it and was doing stuff on his truck, so...

MR. SCALI: And then you called the police and that's when he stopped?

MR. BLAKE: Yeah. My complaint was about the noise, not whether he was doing work or not.

MR. SCALI: Well, what we cited him for was actually doing work on Sunday, so I guess we have to -- that's the legal

terminology. I'm sure Mr. Rafferty will point out to me that, you know, if he had actually done work and was violating the noise ordinance, that might have been a different reference in the citing of the violation.

MR. RAFFERTY: So it was an idling truck not doing work?

MR. BLAKE: My concern is the consistent pattern of behavior and these people were cited last year. There were four complaints, as I understand it, they got off scott free -- they got off scott free and now they're doing it again. There were other complaints. This is all about noise and them doing work when they're not supposed to.

I would like to come away from this being clear when they are allowed to do work, when they're not allowed to do work, and I would really like to see him get fined.

MS. LINT: If I may, Mr. Chair, specifically what the letter stated was that

they were in violation of the Cambridge noise ordinance on the Sunday. It wasn't specifically that they were working on Sunday.

MR. SCALI: I think if you --

MS. LINT: It's all part of the noise ordinance.

MR. SCALI: If you look up what -- Mr. Rafferty will probably clarify --

MS. LINT: I'm sure he will, but it is all part of the noise ordinance.

MR. SCALI: The actual cite, if you look up the actual cite reference in there, it's the Sunday ordinance.

I'm not trying to, by any means say that what they're doing is correct, Mr. Blake, at all, I'm just trying to make sure that we do things correctly here. There are legal notices, so...

Does your client understand that he's not allowed to work on Sundays?

MR. RAFFERTY: My client perfectly

understands. But if you think of the chain of events, and my client's popularity is not something I'm here to work on, that would take much longer than the night allows, but this is a subcontractor of a contractor that went to a site on a Sunday to collect forms so he could take them to his next job, an exercise he describes as taking 20 minutes.

When he discovered he shouldn't be doing that -- I wish he had been more polite to Mr. Blake, but -- and I understand the property owner has some responsibility for the conduct of his contractor. His contractor certainly knows that and they know they can't work on a Sunday.

This individual believed, and I'm not sure that law is clear that he couldn't, that he couldn't remove -- whether removing the forms was work.

MR. SCALI: Loading and unloading.

MR. RAFFERTY: What's that?

MR. SCALI: Loading and unloading

would be a violation.

MR. RAFFERTY: Well, I have the relevant section. Under construction activity, it's somewhat different, but I agree that I think it's an area where he best not do it, but when the police got involved, the indiv -- so he didn't do the work. He acknowledges -- in fairness to his credibility, he acknowledges it was his intention to do that.

So you can suggest that but for the intervention of Mr. Blake -- and, in fact, perhaps the violation wouldn't have occurred -- Mr. Perroncello has been made aware of this. His contractor has been -- for quite some time, there's a new contractor on the job because of difficulties with the prior contractor, this is a subcontractor of a contractor. The property owner has an obligation and responsibility, but I do think in weighing all of the issues here, a truck was started, the noise of the truck alerted

the neighbor to the fact that there was activity. He went out and told him he shouldn't be there. The man didn't do anything further until the police arrived.

I only became -- I gave this information as earliest as this afternoon to the License Commission if there was a desire to corroborate the further police calls. I only learned about it this morning myself when I spoke with Mr. Mernane.

MR. SCALI: I guess if one thing could be very clear from last year up to this year, no work before 7:00 a.m., no work after 6:00 p.m. Monday through Friday, no work before 9:00 a.m. on Saturdays and no work on Sundays.

So, if you can convey that to your client, that would be the easiest thing.

You certainly could re-markup Mr. Ruggiero's complaint because those are valid complaints that have not been heard. We can do that, Mr. Lint, if we choose to.

I'm not sure how we'll rule on this particular violation. I have some difficulty with the facts, but I think Mr. Blake and Mr. Ruggiero would like us to make sure that your client understands the noise ordinance at this point after a year.

MR. RAFFERTY: Well, I want to make clear, did my client have knowledge or should he have seen to it that a subcontractor on a Sunday afternoon didn't decide on his own to do it? It doesn't excuse his responsibility, but I think to infer that my client doesn't understand the noise ordinance --

MR. SCALI: Just asking if he does, that's all.

MR. RAFFERTY: He fully does. He's fully aware of it and he's very respectful of the Commission, understands the issues here. He's very eager to complete the project. It has been an arduous project in this environment. I think the only thing for which there is a consensus is everyone,

abutters, city officials and Mr. Perroncello will be very happy the day this project ends, and we're trying to move to a point where we can all see those things pack up and leave.

MR. SCALI: All right.

MS. LINT: I do have a letter from Councilor Kelly --

MR. SCALI: Okay.

MS. LINT: -- who states that the developer has a history of problematic work at the site with dust, noise and bothersome conditions being a regular complaint of the neighbors.

He goes on, but he really feels that the developer needs to address the issues. He said it gets better and then it starts to slide again leaving residents bearing the mess whenever they leave their homes.

MR. SCALI: Comments? Motion?

MR. BLAKE: I have one more. It seems to put the onus on the neighbors to police the behavior at the site rather than

on your client.

MR. SCALI: No. He made it very clear that his client has to understand --

MR. BLAKE: So if his client is not held responsible for the behavior of the subcontractors, then he'll never learn and that puts on the onus on me to go out there on my Sunday to tell people not to work, which is not something I really want to do.

MR. SCALI: Fully understood.

MR. BLAKE: All right. I'd like to see them get fined.

MR. SCALI: We haven't voted yet.

MR. BLAKE: I'm just putting my --

MR. RAFFERTY: I'd only note that we're fortunate we live in a system of jurisprudence where popularity -- if we took a poll, everyone would like to see him get fined. They'd like him to get fined every day for this and countless other violations, but we operate in a system with some parameters around due process.

In this case, I would respectfully suggest that the evidence does not lead to a conclusion that there was a violation of the ordinance that would warrant it. I think there's a strong message that you can go back to the owner and the contractor that even something as seemingly as innocuous as picking up material on a Sunday has legal consequences.

MR. SCALI: Can't pick up. Picking up, loading, unloading is a violation of the noise ordinance. That's what your client should understand.

MR. RAFFERTY: You might want to show me the section of the ordinance where it says that. I'll save that discussion --

MR. SCALI: It's in there, I guarantee you.

MR. RAFFERTY: No. I know exactly where it is.

MR. RUGGIERO: One final comment?

MR. SCALI: Yeah. Just this last

comment, then we're going to vote.

MR. RUGGIERO: Well, first of all, my understanding of the ordinance is that there can be 50 dba within -- well, it's within 50 feet.

MR. SCALI: That's a different section pertaining to something different. We're talking about construction loading and unloading. It's set by time.

MR. RUGGIERO: Well, it generates noise that is audible from 50 feet away from the construction site, so, therefore, it's in violation of the city ordinance.

MR. RAFFERTY: That's not a correct conclusion.

MR. SCALI: The interpretation is complicated. If you want to clarification, Mrs. Lint can get one for you.

MR. RUGGIERO: I would like a clarification.

MR. SCALI: She can certainly help you with that.

MR. RUGGIERO: The other thing is that Mr. Perroncello has been asked repeated times to not have his subcontractors work at hours they're prohibited to work and it hasn't worked. The warnings have not worked and that's all I need to say.

MR. SCALI: All right. Thank you.

Motion? Take the matter under advisement?

MR. HAAS: Seconded?

MR. SCALI: All those in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

We vote October 1st at 10:00 a.m.

MR. RUGGIERO: Okay. Thank you.

P.F. Chang's China Bistro

MS. LINT: Application continued from August 10, 2009, P.F. Chang's China Bistro, Incorporated doing business as P.F. Chang's China Bistro, Michael Penna, Manager, has applied for a transfer of the all alcoholic beverages as a restaurant license at 100 Cambridgeside Place for 148 seats currently held by BBRG Operating, Incorporated doing business as Papa Razzi, Mary Ann Silverman, Manager. Hours of operation will be Sunday through Thursday from 11:00 a.m. to 11:00 p.m. and Friday and Saturday from 11:00 a.m. to 12:00 midnight. Applicant is also applying for an Entertainment License to include audio tape machine/CD which may play music below, at, or above conversation level and four TVs.

You may recall this was continued specifically to clarify the occupancy load, which I have done. I have a letter signed by

David Byrne from Inspectional Services that the occupancy load is 219 as was applied for.

MR. SCALI: First, tell us your name, I'm sorry.

MR. UPTON: Andrew Upton from the law firm of DiNicola, Sullivan and Upton representing P.F. Chang's.

MR. SCALI: Okay. So the occupancy is now 219?

MR. UPTON: 219.

MR. SCALI: With how many seats and how many standing?

MR. UPTON: 148 seats.

MR. SCALI: 148 seats and you're going to make me do the math.

MR. UPTON: 52, 62, 71.

MR. SCALI: 71 standing. 71 standing is waiting room, bar area?

MR. UPTON: We count the kitchen. Entry area, bar area, waiting area.

MR. SCALI: And that was signed off by the Inspectional Services Department?

MS. LINT: It was.

MR. UPTON: And as Mrs. Lint said we have a letter attesting to same signed by David Byrne.

MS. LINT: Mm-hmm.

MR. SCALI: And we have a plan that matches that?

MR. UPTON: Yep.

MR. SCALI: The plan matches.

MR. UPTON: Yep.

MR. SCALI: All right. Questions?

MR. TURNER: No questions.

MR. SCALI: No public comments in this matter?

Motion to approve?

MR. HAAS: Seconded.

MR. SCALI: This is for the whole application, right?

MS. LINT: The whole application.

MR. SCALI: So your client is a new licensee in our city which requires our 21-proof training?

MR. UPTON: Yes.

MR. SCALI: Okay. So it's 21-proof training. When you recommend to managers and owners, but we're now also including serves in that.

MR. UPTON: I believe we discussed this at the first hearing and the operating manager said he would be --

MR. SCALI: And they'll come to their site?

MR. UPTON: Yep.

MR. SCALI: Any other conditions?

MS. LINT: No value and non-transferrable.

MR. SCALI: There's a no value license, non-transferrable. So if they should leave, it gets turned back into us and then someone else can reapply.

MS. LINT: Just a clarification, Mr. Chair, this is a license that's specifically assigned to the Cambridgeside Galleria, is it the new license fees or the

old license fees?

I would suggest it would be the old license fees because it's technically the license that existed for that spot.

MR. SCALI: In the same site, yeah.

The new license fees are double what the old license fees were because of the new cap policy or the new non-cap policy actually. But because it's in the same location, tied to that site, it would be the same fees then.

MR. UPTON: Okay.

MR. SCALI: The old fees. That's moved.

Seconded?

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

Thank you very much, Mr. Upton.

MR. UPTON: Thank you very much.

President & Fellows of Harvard College

MS. LINT: Application: President & Fellows of Harvard College, Karen Somerlad, Senior Campus Planner, has applied for a garage license for 695 cars and 6950 gallons of gasoline in the tanks of cars only at 1585 Mass. Ave. Applicant is also applying for additional flammables storage for 2000 gallons of Class II diesel in an aboveground storage tank.

MR. SCALI: Good evening.

MS. SOMERLAD: Hi.

MR. SCALI: How are you?

MS. SOMERLAD: Good.

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

MS. SOMERLAD: Karen Somerlad, Harvard University.

MR. JOHNSON: Mark Johnson with Harvard University.

MR. SCALI: Okay. So you notified

abutters. This is for a garage license for 695 cars and this is a -- what kind of --

MS. SOMERLAD: This is garage that's currently under construction at Mass. Ave. and Everett Street. It's a four-story -- four-story below grade parking garage with an aboveground building with a basement level. So there's actually five levels below -- that will be below grade.

MR. SCALI: Five levels of parking?

MS. SOMERLAD: No, no. Four levels of parking, basement level, appropriate space for the building and then an aboveground building.

MR. SCALI: So there's four levels of parking?

MS. SOMERLAD: Four levels of parking.

MR. SCALI: All right. And the building is used for?

MS. SOMERLAD: The building, in addition to the parking, will be for Harvard

University Law School. It will be -- Mark, maybe I'll let my colleague speak.

MR. JOHNSON: Student center, classrooms, offices, academic offices.

MR. SCALI: This is a new student center?

MR. JOHNSON: Yes.

MR. SCALI: Classroom and offices.

MR. JOHNSON: Academic offices, that's correct.

MR. SCALI: Who's going to park in these parking spaces?

MR. JOHNSON: They are affiliates of Harvard University meaning like mostly student -- not students, mostly faculty, staff and maybe some students.

MR. SCALI: Is it paid-for parking?

MS. SOMERLAD: It's not like -- you get like a permit for the whole year. It's how we manage all of our parking garages.

MR. SCALI: You pay something and you get a permit for the whole year?

MS. SOMERLAD: Yeah.

MR. JOHNSON: It doesn't represent new spaces. Under the agreement that Harvard has, it's housing of existing spaces.

MR. SCALI: So students won't park there, you said?

MR. JOHNSON: We have colleagues here from the parking --

MR. SCALI: You've got to come forward, I'm sorry, just because of our taping mechanism, it's not very -- it doesn't get that far.

MR. SARAFIN: It would be predominantly faculty and staff who will be parking there. There could be some students there.

MR. SCALI: How does the student get in there?

MR. SARAFIN: They would register for a parking permit and they would have a transponder in their car.

MR. SCALI: Would it be a law

student or --

MR. SARAFIN: Yes. It's strictly for institutional use.

MR. SCALI: Fire department comments?

MR. TURNER: The fire department comments is that we reviewed the application and it's currently under construction. It does still have to go through inspection and certificate of occupancy process, but everything's reviewed and approved on our end. I did have one inconsistency, but I just corrected it on our end, so...

Motion to approve?

MR. SCALI: No problems?

MR. TURNER: No problems. I would recommend approval.

MR. SCALI: May people want to comment on this issue.

MS. LINT: And I also have a letter.

MR. SCALI: Go ahead and then we'll take the comments from the public.

MS. LINT: From George Smith at Lesley University who is in support of the application.

He said the new building and underground garage would be a definite improvement to the surrounding neighborhood.

MR. SCALI: From Lesley? Lesley wants to park --

MS. LINT: They didn't say that.

MR. SCALI: Can Lesley students park there?

MS. LINT: No.

MR. SCALI: Anyone from the public want to be heard? Okay.

Tell us who you are, please?

MS. ANTHONY: Yeah, I'm Barbara Anthony. I'm chair of the board of the 1580 House Trust which is directly across the street from the proposed garage at 1580 Mass. Ave. in Cambridge. I live there in Apartment 6G.

MR. SCALI: Okay. You're

representing the trust?

MS. ANTHONY: Yeah. We have -- our condo building is 47 unit owners. I'm the chair of that.

MR. SCALI: Okay. Tell us what you want to know.

MS. ANTHONY: I wanted to say a couple of things, and thanks for the opportunity to do that and you guys do a great job.

The last time I was in this building was my last meeting as chair of the Cambridge Rent Control Board. I've been in recovery ever since and so, I have a great deal of admiration for the work that you do.

At any rate, the first issue I want to raise is not -- has to do with notice to owners, and I can speak for myself as an owner. This may be a question, first of all, so we can dispense of it: Are the parties to the proposal required to give ten calendar or ten business days' notice to abutters?

MR. SCALI: Ms. Lint?

MS. LINT: I would say ten business days.

MR. SCALI: When did you get notification?

MS. ANTHONY: If it's ten business days, and I thought it should be, I did not receive notice. I should've received notice and my -- all of the units I represent should've received notice no later than Monday, August the 24th because that would be ten business days from today. We don't count Labor Day or the weekends.

The first notice that was attempted to be delivered by the post office to me was August the 27th, a full three days late.

So if that's correct, and I really -- I object to the hearing and I want my objection noted. I think that, frankly -- I understand that Harvard usually does better than that in terms of notice, but I think that it's not fair to us who have some

interest in these matters to be given less than the standard ten days, which isn't that long anyway, to talk to people, to do some investigating and -- with the holiday weekend in between, it really was not very much notice.

So I think that's a serious problem.

MR. SCALI: When was it in the paper? What was the published date?

MS. ANTHONY: August the 20th in the paper which I did not see. It was sent to me that was part of the notice. I don't know if that suffices for the ten -- I think if you're an abutter, you're required to receive individual notice.

So, my 47-unit owners and myself, if my first notice was not attempted to be delivered -- and, by the way, you know, obviously, I wasn't there on the 27th, I work during the day, but August 27th -- so do most of the unit owners. Second notice was 9/2. Again, unable to do that and then I went and

picked it up just recently.

MR. SCALI: So it wouldn't be enough time.

MS. LINT: Well, no, they're required to have it -- to make an attempt, but the fact that a person doesn't pick it up is not the responsibility of the person making notice.

MR. SCALI: Right. It's the actual first attempt --

MS. ANTHONY: Well, the first attempt was August 27th, still off. In addition, I did speak with Harvard about this. Miss Mary Power and their Community Affairs Office. She told me she had a return receipt that I had received the letter, and I said, "I have not received the letter."

And I went to the post office, I said, "How come, you know, the sender received a return receipt when I never received this? There's no way the sender could've received it."

Here's the green card.

MR. SCALI: He can very easily go through the listings and find out whether those are valid or not, and I'm sure we can do all that for you.

MS. ANTHONY: Okay. So, but I do object the hearing. It's less than ten days' notice, we're entitled to it and I don't think there's any reason not to -- there's no way it could've been provided because the letters were dated August the 24th.

MR. SCALI: Okay. Assuming that -- putting that aside, do you have comments other than that?

MS. ANTHONY: Yeah, I do.

MR. SCALI: Okay. Why don't you do that then?

MS. ANTHONY: I have a number of questions.

MR. SCALI: Okay.

MS. ANTHONY: And my questions really go to a couple of things. I'd like

some verification, if possible, that there are no additional new parking spaces. I know there was a garage there previously, and I don't know what the capacity was.

I think if you could the garage plus stuff that was on the street, it's supposed to come out the same. I just don't know what was on the street.

The second thing that we're concerned about is the 2000 gallons of diesel fuel that is the emergency generator aspect of this. It's supposed to be aboveground in the garage, and I have a few questions about that. And let me simply say that my questions and my concerns are, in part -- and this is not Harvard's complete responsibility, but there was a dry cleaner immediately across the street from where this garage is being constructed, that's Harvard property.

And for years the dry cleaner was dumping contaminated cleaning solvents into

the ground, and when the construction started, I believe that that was discovered. Supposedly it has not contaminated the water in my building. I really have no idea, but that's what we've been told and assured there have been a lot of tests done.

My concern here is that Harvard, as a landlord was not very vigilant about the illegal conduct of this dry cleaner, and that action has contaminated property that's about, you know, 50 yards away from where I live. So I don't have a lot of confidence in the university's ability or, you know, incentive to deal with this 2000 gallons of diesel fuel that's going to be about a hundred yards from where I sleep.

MR. SCALI: We can certainly find out about that.

MS. ANTHONY: So what I wanted to ask is this: In terms of the 2000 gallons of diesel fuel that's part of this emergency generation system, I don't know if this -- I

know this is sort of the end of the line in terms of the licensing, but was this something that was actually aired fully during the permitting process? I don't know the answer to that question.

Was it clearly a matter -- this is 2000 gallons of diesel fuel in the middle of a residential community that has not hitherto been there before. So that's one, two or three however we're counting.

Secondly, I'd like to know what -- if this is the first time we're focusing on it, then I think we, you know, would like to understand what it involves, what the security around this diesel, you know, situation's going to be, how secure will it be, what are the safety precautions to prevent leakage, to detect leakage since going back to the ground water contamination by the dry cleaner, again, the confidence is something that needs to be addressed here.

And the other question I have is:

Are there similar tanks in Harvard properties around the campus, how old are they and have there been any problems with them, and if so, are those problems being addressed so that there will not be any recurrence with this -- with this new tank?

So those are all I have for questions of my primary concern in addition to the numbers of cars.

MR. SCALI: You certainly will --

MS. SOMERLAD: I can answer that one.

MR. SCALI: Which one?

MS. SOMERLAD: The number of cars. Okay. This is part of the Harvard University inventory of parking spaces, these are considered relocated spaces, and it's all in their inventory, they can't exceed their inventory.

MR. SCALI: Okay.

MS. ANTHONY: Thank you.

MR. SCALI: Thank you very much.

Anybody else want to be heard? This lady right here. Of course.

MS. WALLRAFF: Thank you.

MR. SCALI: Just tell us your name.

MS. WALLRAFF: Barbara Wallraff, last name is spelled W-a-l-l-r-a-f-f.

MR. SCALI: And your address?

MS. WALLRAFF: 1572 Mass. Ave. in Unit 47, so I have a new neighbor, right?

And I've owned the unit in this building for a couple of years, but I've only been a resident there full time since early last summer, so I'm kind've late to this.

Three points. One of them that in that brief time that I've been there, I have not found Harvard to be a particularly respectful neighbor who that is capable of following through on the rules that they have agreed to.

There are a number of us in our building who are quite upset last summer about work beginning before the day -- before

7:00 a.m. and I vividly remember a conversation with the mitigation office. I wasn't aware that I could come to you, I was going to the mitigation office. I called into them and said, "But they're working before 7:00."

And he said, "No, no, no. That's impossible. We had a meeting yesterday," and they only believed me when I was able to take a cell phone photograph of the trucks coming and going at 6:45.

You're probably better aware, more fully aware than I am than I could possibly be of ways in which Harvard is not always the most respectful of neighbors, or always fully complying with the rules that it agrees to, so I would respectfully suggest that you look out for that.

MR. SCALI: Okay.

MS. WALLRAFF: I'm also concerned because Mass. Ave. is a very busy road, it's where all the fire trucks come, it's where

all the police cars come, all the safety equipment comes, 700 cars coming and going from one garage at particular times of day, to me, it sounds almost more concerning if it's staff because they're all going to be arriving at 9:00 and leaving at 5:00 or whatever that would be, I wonder whether the traffic pattern have been considered because driving down Mass. Ave. is already not much fun, there's a lot of traffic backups, and it could really be a mess, so I don't know to what extent you have to do with the traffic situation, but that worries me.

And a third point would be I'm hearing that of course only Harvard people are going ever be allowed to use this garage, and I wonder whether some sort of concession would be made to the neighbors under snow conditions, when, of course, it's going to be just empty of Harvard people. We have kind of a long way to go to be off the street for plowing purposes, and that might go some way

to making us feel a little -- our affection toward Harvard might be reciprocated in that way.

MR. SCALI: I'm not sure of the answer to that question. I know they have to adhere to the use for certain reasons, but I'm not sure what exceptions to the rules, so...

MS. LINT: I think that would have to be a discussion with traffic and parking.

MR. SCALI: Traffic and parking, yeah.

There's a PTDF program.

MR. McCARTHY: That was the rule of the day in the old parking lot that during snowstorms we'd be parking there.

MR. SCALI: Oh, really?

MR. McCARTHY: When they offered us to park at Oxford Street, but --

MR. SCALI: You have to just tell us your name for the record.

MR. McCARTHY: Chester McCarthy. I

live at 1572 Mass. Ave.

MR. JOHNSON: Can we offer this just as a point of information?

MR. SCALI: Sure, go ahead.

MR. JOHNSON: We still offer the program and it's at the corner of Oxford and Everett Street, 52 Oxford Street garage during declared snow emergencies, the City of Cambridge, we allow people to come in as soon as the snow emergency is declared and they can stay one hour after the emergency has been lifted.

We do select that garage because it's our largest garage, it's underground, and it is staffed 24/7, so if there's any issues with anyone needing to come in at 2:00 in the morning, 3:00 in the morning, you'd have someone there that can welcome the neighbors.

MR. McCARTHY: That's the Oxford Street garage?

MR. JOHNSON: Right. That's one

block down the street.

I'm not sure if that was discussed on using two garages, it -- at this point all I can tell you is everything's under consideration. Right now and proceeding forward, we're going to allow the P2 Harvard Street garage. Again, because that is the garage that is staffed 24/7 so people can have access to their vehicles at all times.

MR. SCALI: Thank you very much. We'll try to get the answers to your other questions as well.

Anybody else want to be heard?

Hello. Tell us your name.

MS. SHUTTLEWORTH: My name is Ingrid Shuttleworth and I live at 1572 Massachusetts, too. I've lived there for about 15 years. I just wanted to add to the comments about the noise and construction, trucks coming and going on weekends, during ice storms at 4:00 in the morning, a lot of beeps.

Again, I didn't think I could come to you folks to make complaints. It's kind of maybe too late, but in talking about another case earlier about noise, it probably doesn't apply to this one, but there's also been a lot of noise during the construction time period with sort of the venting system that they have all hours of the day and night.

MR. SCALI: That's still going on now?

MS. SHUTTLEWORTH: Not recently, but we've documented when it's happened. It's been pretty extremely loud. Unfortunately we're in a courtyard shape building and things echo at night to the wee hours of the morning.

MR. SCALI: If that happens again, you certainly should call our investigator to find out if there's something that can be done. So, if it's not happening now, it would be more difficult to investigate

obviously.

MS. SHUTTLEWORTH: Okay. I just wanted to echo concerns about the traffic and parking. We, all of a sudden have a stop sign at the end -- is it Chauncy Street -- it was never there before, it makes our commute home a lot longer. We have a lot of Harvard students coming and parking on our strip of Little Mass. Ave. to go into the Harvard facility, and I'm sure that's going to be exacerbated when the building's there.

So, the suggestion about the snow parking in this particular building when we have your students coming -- and have their students coming to park there in the winter to take advantage of Little Mass. Ave., the emergency parking would maybe be a good trade because we sort've get pushed out of the way in the winter.

And, again, I had one question related to the tanks. What's the life of a tank and when will this need to be replaced

in the future and what kind of impact will that have on traffic in the neighborhood at that time?

MS. LINT: Thank you very much.

MR. SCALI: Thank you. All right.

Anybody else want to be heard?

MS. LINT: All right.

MR. SCALI: All right. You can -- if you can answer some of the questions now, that would be great, if you can't, then we can certainly get more information later.

MS. SOMERLAD: I think we can answer pretty much all of them right now.

MR. SCALI: Oh, great.

MS. SOMERLAD: I'll let Mark start with the safety of the tank and sort of the operational issues that were addressed.

Tom Lucey can talk about -- this is Tom Lucey from the Office of Government Affairs, he can talk about the neighborhood process that we went to, but before, I guess, I give it to them, I would like to say with

respect to the traffic, during the whole process -- and Tom will talk a little bit more about it in detail, we did go through the process of doing a traffic study at that intersection which had to be approved by Sue Clippinger's office at Parking, Traffic and Transportation.

And so, we went through that. That was approved. We are doing considerable improvements to the intersection at our expense and those -- some of those have been done. And I don't know, maybe Mark can talk a little more about the timing of those improvements, and then with respect to the parking and where it's located, as we said we're not adding to the parking inventory, and all of the cars that will be parked there in this garage are located within a pretty close proximity. There's maybe a handful that are being located from, you know, other parts of campus, but most are included in that.

MR. SCALI: So is that included in the traffic study, the impact of cars coming out at a certain time which is required?

MS. SOMERLAD: Yes. We looked at it with Harvard. In peak travel times, it's not consistent with everybody's normal traffic pattern consistency times because people at Harvard tend to come and go at different hours rather than off peak. I mean, they are more off peak than they are at 8:00 a.m.

MR. SCALI: No one gets out right at 5:00.

MS. SOMERLAD: Exactly.

MR. JOHNSON: Plus the improvements that we're doing at the intersection anticipate the cars that are going to be coming out of the garage and it will improve the level of service at that intersection. So this was done at the satisfaction of the Planning Board.

MR. LACEY: Just to put some further context on this, this really is the

culmination of about six years worth of work, six years worth of public process. It included the City Manager for the committee that had residents from Neighborhood 9 on their side of Massachusetts Avenue, Agassiz Baldwin, as well as professional staff from the city. Prior to ever entering the public permitting process, we met with those residents for years. After the culmination --

MR. SCALI: Not these neighbors here.

MR. LACEY: They weren't there. They might not have been appointed to the City Manager public process, but we had several, multiple, multiple public meetings and open houses about this.

So, at the end of that process, we then entered the public process that included the approvals from the Board of Zoning Appeals, it had approvals from the Cambridge Historic Commission and then it included

approvals from the Cambridge Planning Board. We've been through all that. And folks might remember, also was part of this, we moved the houses up Mass. Ave. This has all been part of that process that we've all worked very hard on with the neighbors as well.

So, there has been plenty of public discussions about this for many, many years, and we think the process has been very good.

I did hear some questions about the mailing. As you know with the process what happens, is we get informed, a letter from the Commission, gives us three business days to send them out. We met that standard. I think the receipts that Ms. Lint has will prove the fact that we have to wait for the letter from you and we have to wait for the ad to appear in the *Cambridge Chronicle*, we then have three business days and we follow that standard and we met that standard.

So, in terms of notice, we complied as far as we understand.

MR. SCALI: I have to research a little bit more to find out what -- when it was advertised and when you got notice. We'd have to look at all the dates. I'm not -- it's hard to do that here.

MR. LACEY: I completely understand that, but I did want that on there -- on the record.

MR. SCALI: Okay.

MR. LACEY: Also, there's a couple other comments about the dry cleaners. There's no proof that we were negligent or that they wantonly polluted the area with dry cleaning solvents.

There is an issue there and we've been addressing it, working with both the City of Cambridge and the Mass. Department of Environmental Protection we've been addressing that issue as well. So we do note that there was dry cleaning -- a dry cleaning solvent leak prior to Harvard's taking the property -- taking possession of the

property.

MR. SCALI: Right.

MR. LUCEY: No one knows you can't -- there's not a way to find out. We know it was leaked before that, and there's no way that as you're addressing it to find out when it actually took place.

MR. SCALI: Are you still investigating that or --

MR. LUCEY: No. We're at the point where we're mediating. We've gone through an investigation working, again, very closely with DEP and the City of Cambridge.

MR. SCALI: Are there certain conditions you have to meet from the DEP?

MR. LACEY: Oh, absolutely. The regulations are very clear.

MR. SCALI: So, it's something you have to do?

MR. LACEY: Something we have --

MR. JOHNSON: We are doing.

MR. SCALI: It was something that

was found and then they --

MR. LACEY: As part of the soil investigation for the construction project, we found the dry cleaning solvent. That kicks in a lot of regulations that we have to follow, and it includes an investigation which we've done, and then it requires remediation which we're doing now. And both of those have been very aggressive and very thorough on Harvard's part.

MR. SCALI: And is that continuing before the project is being --

MR. LACEY: It's simultaneous. We're undertaking it right now.

MR. SCALI: It would be helpful to disclose to the neighbors what you're doing in terms of the remediation.

MR. LACEY: Absolutely. I've sent out thousands of letters letting them know. They were informed about the finding, they were informed about our investigation and they've been informed about every

remediation.

MR. SCALI: Some neighbors didn't get it, so maybe you need to just backtrack a little bit and get them the information as to what you are actually doing to remediate.

MR. JOHNSON: If I could speak just a little bit about the tank itself.

MR. SCALI: What's the tank for, by the way, the 2000 gallons of diesel is for --

MR. JOHNSON: This is for an emergency generator to support life safety systems, the operation of elevators in case of an emergency.

MR. SCALI: Which is pretty standard for emergency standards.

MR. JOHNSON: It is standard and these tanks are found throughout the city and throughout every city. Unlike most of those tanks which are single-walled, this is actually a double-walled tank, as a leak detection or it will have a leak detection system. It's being placed on the lowest

level of the garage so even though it will be located in that sense of a low grade, it is considered an above grade tank so it's available for visual inspection.

MR. SCALI: It's not buried underground.

MR. JOHNSON: It's not buried in the earth, it's one that you can actually go into the room where it's located and look around it and see leaks, if any were to occur through the double walls.

In terms of security, one of Barbara Anthony's questions, it is in a locked room. It was here during the permitting process, it is called a Foreign Art Building Permit Application. There are similar tanks at Harvard throughout the city and elsewhere.

Let's see. We discussed the 700 or 695 cars in the garage. This has been proven to the satisfaction of the Planning Board that it won't clog the intersection and -- just making sure we've addressed all the

comments...

I think that's all. Yes, I did.

Do you want me to go one by one through the comments?

MR. SCALI: No. I think we can go through our questions. We did a little investigation anyway.

MR. TURNER: No comments.

MR. SCALI: Do the Commissioners wish to continue the matter for further investigation or --

MR. HAAS: Well, I think we have to reconcile the mailing issue. I do agree that Mr. Lucey followed the standard procedure and I think it's a point of technical correctness with respect to adequate notice, so perhaps we can research that piece.

MR. JOHNSON: I guess in the meantime I don't know if it makes sense for Harvard to try and reach out to the three or four different neighborhoods that have come forward with serious questions and try to get

those resolved before the next hearing so that we can go forward on this issue, but it seems to me we probably have to renote the neighborhoods, I imagine, and maybe it's part of that process of the community and see what comes to it and we can address those questions.

MR. SCALI: It sounds like you've had a number of meetings already.

MR. JOHNSON: Right.

MR. SCALI: Maybe you haven't reached a certain number of people in that small group. Maybe you could do that without a meeting, maybe you could do that by going there and talking to all of them.

MR. McCARTHY: Mr. Chair?

Mr. Lucey, is this information available to the public to answer these questions? In other words, is there an office or a website or newspaper or --

MR. LACEY: There are multiple ways to garner the information. We do have a

construction mitigation website that has a lot of information on it. You can call our office. In fact, Barbara Anthony, I know, has been in communication with our office in asking questions, and I know there's been a dialogue with her.

I was away last week, so it happened with a colleague of mine, Mary Power, so we did the best we can to get our names out there, and to give people a place to go to to ask questions if they have them.

MR. SCALI: Okay. Mrs. Lint, the next hearing is September 22nd, but if they renotice -- they have to -- first of all, they have to renotice, there wouldn't be time to do that on September 22nd, am I right? That's already done.

I think we need to research it a little bit more to find out exactly what you've done first. We need to look at all those notices and find out exactly what dates were on there. We can make you renotice

everyone all over again.

MR. McCARTHY: Be happy to help.

MR. SCALI: Yeah. Let's just continue the matter, Commissioners, until we find out what that notice requirement is.

Motion to continue?

MR. HAAS: Seconded.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: Would that be to October?

MR. SCALI: I think we need to find out what we need to do first before we can continue to a date.

If they need to renotice everybody, then there will be a hearing in October. If they don't, then we can take it up before then.

MS. ANTHONY: Mr. Chairman, if I may? Would the Commission want -- I don't have a copy, but -- my letter that has the

dates when I --

MR. SCALI: If you'd like to give us that, but we have all the actual notices that were given to us with the slips, but we'd be happy to take it, if you'd like.

So, we will notify -- if you all have given Mrs. Lint your addresses, we can make sure you're noticed of when the next meeting would be on this -- hearing on this.

Thank you.

K.W. Hotel Corp.

MS. LINT: Application: K.W. Hotel Corp. doing business as Hotel Tria, Shannon Smith, Manager, holder of an all alcoholic beverages as a hotel license at 220 Alewife Brook Parkway has applied to amend the existing entertainment license at said address to include a pool table, one additional TV, video screen, or projector screen, and three video games, pinball machines, or other automated amusement devices.

MR. SCALI: Well, this is going to be a short hearing, Mrs. Lint. The Commissioner is starving over here.

MR. RAFFERTY: I don't know why he's looking at you, Mrs. Lint, you haven't said five minutes' worth.

MS. LINT: Thank you, Mr. Rafferty.

MR. RAFFERTY: I'm sorry. Good evening again. Nice to see you again. James

Rafferty on behalf of the K.W. Hotel. This will be the shortest one on your agenda. To my right is Shannon Smith, and Ms. Smith was here a few weeks ago, about a month-and-a-half ago, and the Commission approved a change of premises description.

And on the floor plan there was a little rectangle, but no one told me what it was and it was a pool table. So the entertainment application didn't notice pool tables. So if you look at A1-3 of the floor plan, it's actually been on there all the while, but --

MR. SCALI: It's been --

MR. RAFFERTY: This is what I say. No one told me, so when I prepared the entertainment application, I didn't check the box for the pool table --

MR. SCALI: Is it labeled now?

MR. RAFFERTY: No. It's a rectangle, but it should say --

MR. SCALI: Why don't we put a label

on it.

MS. LINT: Oh, over there.

MR. RAFFERTY: See, I put the blue around it, yes. It was there, but not only did I not label, but the application, the advertisement didn't say it. So, I called your office and they informed me that we had to.

We notified the neighbors and whatever we were told and it was in the newspaper and it's a pool table and I think a couple of video machines are in the amendment.

MR. SCALI: It says three.

MR. RAFFERTY: Three, and a TV.

MR. SCALI: And where are they going to be, in the lobby?

MR. RAFFERTY: They're right next to the pool table.

MR. SCALI: Which is where?

MR. RAFFERTY: Off the lobby.

MR. SCALI: Separate room?

MR. RAFFERTY: Yes.

MR. SCALI: Like an entertainment room, a little game room?

MS. SMITH: We're calling it an activity area.

MR. SCALI: Activity, like a little game area?

MR. RAFFERTY: Where you send the kids to get away for a half hour.

MR. TURNER: Does it matter if it's a coin-operated pool table?

MR. SCALI: I don't know, is it?

MS. SMITH: We have determined that yet. I was waiting for the outcome of this to decide.

MR. SCALI: I think they're all coin-operated anyways. They have it -- on the bottom there's a coin thing and there's no more like a pool hall.

MR. RAFFERTY: I don't spend as much time in pool rooms as Mr. Scali.

MR. SCALI: Having a seven-year-old,

I know that I spend a lot of time playing video games.

MR. RAFFERTY: So this is an amendment to an entertainment application. We did the hard work the last time when you approved the premises description with the new lobby and the additional 60 plus rooms and all that. The construction's complete. I just heard from the ABCC today that their investigation's complete and we anticipate approval tomorrow.

MR. SCALI: One of the few that have been approved this month?

MR. RAFFERTY: That proved to be a challenge. If every agency could demonstrate the efficiency of the License Commission, I think the government would run much smoother.

MR. SCALI: Questions,
Commissioners?

Anyone from the public want to be heard on this matter?

Motion to approve?

MR. TURNER: Motion.

MR. SCALI: Seconded. All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

Thank you very much.

Muqueca Restaurant, Inc.

MS. LINT: Application: Muqueca Restaurant, Incorporated doing business as Muqueca Restaurant, Antonio Gomes, Manager, has applied for a new Wine & Malt Beverages as a Restaurant License at 1008 Cambridge Street with proposed hours of operation from 7:00 a.m. to 11:0 p.m. seven days per week and a seating capacity of 48 and an occupancy level of 60 (48 seats, 7 waiting area, 5 standing). Applicant is also applying for an entertainment license to include live entertainment without amplification, an audio tape machine/CD playing music below ordinary conversation level, one TV and a radio and this is an outside cafe.

MR. SCALI: All right. Good evening again.

MR. RAFFERTY: Good evening again. For the record, James Rafferty on behalf of the applicant. Seated to my fair right is

Antonio Gomes. Mr. Gomes is the proposed manager, and to my immediate right is Ms. Fatima Gomes.

Mr. and Mrs. Gomes are married and they have operated for several years the Mujqueca Restaurant on Cambridge Street, and this would be a new venture for them coming across the street and a few blocks down into a building, a commercial building that was -- that's across from the gas station, the Shell gas station Mr. Bertuba used to own right near Roosevelt Towers. It was the -- it's been a -- it was a market Mr. Rogers' grandparents operated the Cambridge Street Market there for many years. It's been a retail market. It's been vacant now for the past year, and you might recall that Mr. and Mrs. Gomes looked at another location closer to Inman Square awhile ago, a bigger restaurant closer to some residents which resulted in a lot of concerns, away from the pejorative attached to objections.

This case is very different. It's a different environment. It's a different setting. It's surrounded by a municipal parking lot. In fact, there's a parking around the back and on both sides of the building. It's in a commercial district and it really has a very well established patronage of local people.

The request here in addition to CV is for a beer and wine license to allow for a complement to the food. The menu is extensive. It's a Brazilian style restaurant, if I may.

MR. SCALI: Is it the same menu that you have now?

MR. GOMES: Yes.

MR. SCALI: So nothing's changing with the location, all right?

How many seats do you have where you are now?

MR. GOMES: About 24.

MR. SCALI: So this is a little

larger, this is 60 seats?

MR. GOMES: 60 seats. 40 --

MR. SCALI: 48 seats --

MR. GOMES: We've got about 60.

MR. RAFFERTY: 60 occupancy, that includes seven standing, 42 at seats and seven at the bar -- six at the bar.

MR. SCALI: And the beer and wine is to complement the food?

MR. GOMES: Yes.

MR. SCALI: No bar?

MR. GOMES: No bar.

MR. RAFFERTY: No, there is a bar. There's a bar, but it's really designed for -- they get a lot of single diners, people that come in in that neighborhood and just want to have dinner and sit at the bar, but it's only beer and wine, there's no alcohol and sitting there, it's a full service dining seat. You can sit at that location and get a full meal.

MR. TURNER: I assume they'll be

undergoing a renovation to build it out?

MR. RAFFERTY: Yes.

MR. SCALI: Are you getting your building permit?

MR. GOMES: We're just waiting to move.

MR. RAFFERTY: One thing at a time, right?

MR. SCALI: What's your time frame if you -- to open?

MR. GOMES: Would be from 10:00 in the morning to late 11:00, something like that, 11:00.

MR. SCALI: Are you going to be serving breakfast at all? You have 7:00 a.m. here.

MR. GOMES: Yes. Not yet, but maybe yes.

MR. SCALI: I need to know what you're going to actually do right now.

MR. RAFFERTY: Well, I think we discussed you wanted serve breakfast?

MR. GOMES: Yes.

MR. SCALI: You're actually going to do the breakfast?

MR. GOMES: Yes.

MR. SCALI: Because if you say 7:00 a.m., and the public calls and they say "What time does Mr. Gomes open," I have to say 7:00 a.m.

This is non-capped area?

MRS. GOMES: That's right.

MR. SCALI: So we need to do the whole cap argument, Mr. Rafferty.

All right. Comments?

MR. TURNER: Will this be the second restaurant? Are you moving from your present location to this new location?

MR. GOMES: We're moving the present location to serve that kind of menu. The old one is going to be a juice bar, coffee -- a coffee shop.

MR. SCALI: So you're still keeping the old one?

MR. RAFFERTY: Keeping the old one, but kind of make that a more casual menu. This will -- this will become really the Muqueca that people know now and Cambridge Street will be bigger, better and have beer and wine and the old restaurant will be more of a cafe style restaurant.

MR. TURNER: Where's the present location now?

MR. GOMES: 1093 Cambridge Street.

MR. TURNER: 1093.

MR. RAFFERTY: It's very small, but very popular. And this is really a response to great reception and the demand expressed by neighbors.

I believe Councilor Toomey --

MRS. GOMES: Thank you.

MR. GOMES: We also have a letter from Inman Square Business Association which supports us and the MAPS, Massachusetts Alliance for Portuguese Speakers and the president also said that. And some neighbors

-- I also have over a hundred signature of neighbors.

MR. TURNER: When are you people going to be in this new building?

MR. GOMES: As soon as we can finish.

MR. RAFFERTY: Would you make it by the end of this year, do you know?

MR. GOMES: I hope so.

MRS. GOMES: Oh, yes.

MR. RAFFERTY: I think their thinking was that they would begin construction shortly.

MR. GOMES: As soon as possible.

MR. SCALI: Do the public want to be heard on this?

No voices, no hands.

Comments?

MR. HAAS: No comments.

MR. SCALI: Questions?

MR. GOMES: No questions.

MR. SCALI: Questions to the

Commissioners?

MR. TURNER: No.

MR. SCALI: All right. Motion to approve?

Move to --

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

All right. So this is a non-value, non-transferrable license, meaning there's no -- I believe you turn it in. There's no value to it, so you can't use it as collateral for any loans. They require 21-proof training for you and your staff and 7:00 a.m. to 11:00 p.m., all right?

MR. HAAS: In a non-capped area you impose these limitations?

MR. SCALI: Under no value? This is a new license.

MR. RAFFERTY: That has not been the practice.

MR. SCALI: No value license in a capped -- in a non-capped area?

MR. HAAS: Certainly the non-transferability issue. I mean, there have been --

MR. SCALI: I refer to -- it wouldn't be a --

MR. HAAS: I'm familiar with those restrictions that have historically been put in place on capped licenses, but in a non-capped area, I'm considering the Miracle of Science years ago, that was in a non-capped area.

MS. LINT: When we amended the rules, it became any new license. It wasn't just relative to a capped area.

MR. SCALI: My recollection is that when we changed that cap policy --

MS. LINT: And it would be the new --

MR. SCALI: In a non-capped zone?

MS. LINT: We'll have to review it.

MR. SCALI: We'll find out.

All righty. That's a motion on that moved and seconded.

All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

Thank you very much. Good luck.

MR. GOMES: Thank you and come for dinner.

Pizza Ring Corp.

MS. LINT: Review: Pizza Ring Corp., Katherine Ferrari, Manager, holder of a common victualer license at 210-212 Wester Avenue for a review of the 4:00 a.m. closing hour.

MR. SCALI: Pizza Ring, waiting patiently.

Just tell us your name.

MS. FERRARI: Katherine Ferrari.

MR. SCALI: Ms. Ferrari, have you had any trouble there at all at 4:00 a.m.?

MS. FERRARI: No.

MR. SCALI: No trouble, Mrs. Lint?

MS. FERRARI: No. It was interesting when after you approved the 4:00 a.m., I had one phone call asking why we allowed it, but I said, "Is there a complaint? Is there an issue?"

They said, "No."

MR. SCALI: Anybody from the public

want to be heard?

Concerns, Commissioners?

Motion to place on file?

MR. HAAS: Motion to place on file.

MR. SCALI: Seconded. All in favor.

Thank you. Good luck. Hopefully
you'll have no trouble at all.

MS. FERRARI: Thank you very much.

Lara Milhem

MS. LINT: Application: Lara Milhem has applied to transfer 24 Cambridge Taxi Medallions to Walid Nakhoul.

MR. SCALI: Okay. The whole back row has just come up to the front.

All right. Just tell us who you are. We'll start over here.

MR. NAKHOUL: My name is Walid Nakhoul.

MR. FITZGIBBONS: Joseph Fitzgibbons, I'm an attorney, I represent Mr. Nakhoul.

MR. FREEDMAN: My name is Michael Friedman from the firm of Brickley, Sears & Sorrett, we represent Lara Milhem as trustee of the estate of Mel Milhem. Mel Milhem is one of the operators of the various enterprises.

MR. SCALI: All right. Mr. Milhem.

MR. MILHEM: Yes.

MR. SCALI: All right. So,
Mr. Nakhoul.

MR. NAKHOUL: Yes.

MR. SCALI: You are the proposed
buyer?

MR. NAKHOUL: Yes.

MR. SCALI: There are 24 medallions?

MR. NAKHOUL: Yes.

MR. SCALI: 24 medallions.

Who's going to do the presentation?

MR. FRIEDMAN: Basically the
transaction is structured in the manner to --
24 medallions are held in, I believe, it's 11
separate corporations, and there are two
operating companies in addition to which the
companies that own the medallions operate.

The structure of the transaction is
that the corporations are being sold rather
than the medallions. And so, this is a stock
transfer rather than a sale of medallions,
but they'll be a new operator, and therefore,
the License Board is required to offer its

approval, although we haven't quite figured out what forms we need to provide you in order to get that approval.

The buyer has obtained financing commitments from Mercantile Bank and we believe that there is a participating bank, but we do not have the name of that; however, we do have a commitment from the Mercantile Bank and Mr. Fitzgibbons has obtained that.

MR. SCALI: Okay. So, you're buying the stock of the corporations, right? It still would be like a regular transfer under our regular transfer form just going under the same thing with the total purchase price for all of the medallions on one agreement as you've submitted to us.

MR. FRIEDMAN: But in addition, there's a business that one of the corporations owns, a radio --

MR. SCALI: A radio service?

MR. FRIEDMAN: A radio service --

MR. SCALI: Right.

MR. FRIEDMAN: And the radio service is included in the purchase price. We haven't allocated amongst the various corporations what each corporation's purchase price will be.

Now, the package price for the entirety, and if you're interested in the price, the price is \$7.4 million.

MR. SCALI: I guess if you can all work together to come with that, because what's going to happen is in order to maintain the value of your medallions, you're gonna have to have some standard by which -- what that medallion's worth in order to consider it for financing and transfers in the future.

So, if it's offered as a package deal, that's fine, but at some point you have to have some expectation as to what that medallion's worth.

MR. FRIEDMAN: My expectation is that that's going to be a fully secured --

it's going to be fully secured by the -- essentially by the medallions so each of the corporations is no doubt going to have to assign the medallions to secure the financing, but we have not spoken with the bank's attorney as of yet to determine what collateralized documents and the type of documentation they require from us. We do have a commitment, but we haven't taken it to the next step because we needed to come here before we go to them.

MR. SCALI: Am I to understand that the courts have approved this?

MR. FRIEDMAN: The other part of that is that Salem Probate Court which is in control of the estate has approved the transaction, and we have obtained -- I've prepared and presented to the court a motion to approve the sale and the motion to come based on the offer as accepted by Lara and the court has issued its approval.

MR. SCALI: And so, there's no

further sign-offs by the judge?

MR. FRIEDMAN: No further sign-offs by the court -- by that court. I don't know whether there's any courts --

MR. SCALI: This is the Probate Court we're talking about?

MR. FRIEDMAN: That's correct.

MR. SCALI: So, are there any liens against these medallions at all?

MR. FRIEDMAN: There are existing -- there are existing liens from prior financings, but those liens are on record with the -- I believe with the -- you have those.

MR. SCALI: But there are no liens for court cases or anything like that, family members?

MR. FRIEDMAN: Gone, resolved.

MR. SCALI: Gone.

MR. FRIEDMAN: Everything is resolved, this is the last piece.

MR. SCALI: It took long enough.

MR. FRIEDMAN: It certainly did.

MR. SCALI: I'm sure Mrs. Milhem was very, very happy to be getting to this point in time.

So, the other part of this is really meeting you, Mr. Nakhoul because this is a huge transfer, okay, of power here, if you want to call it power. This check has been around forever and ever and ever and the Milhems have been running it for years and years and years.

MR. FRIEDMAN: Yes.

MR. SCALI: So, we need to know now your experience and then how you plan on running this. I know you're going to be around for a while to help him right?

MR. MILHEM: Yes, of course.

MR. SCALI: This is a huge operation, so --

MR. NAKHOUL: Mr. Mel, I know was a friend of mine. I work with him since 1994 or whatever it was, and I never work with

someone else, so I knew the business very well and, you know, I watch the operations and how they operate.

MR. SCALI: Were you a driver?

MR. NAKHOUL: Yes.

MR. SCALI: You were a driver.

MR. NAKHOUL: Yes.

MR. SCALI: Did you work in the office with him or --

MR. NAKHOUL: No, but I'm always there.

MR. SCALI: You were there.

MR. NAKHOUL: I helped, you know, I always helped and I see -- and I'm a fairly educated person as well with a Bachelor of Science in civil engineering and, you know.

MR. SCALI: Tell us how you're going to operate the business? Are you going to be dispatching like Mel did or are you going to be -- are you going to be running a tight ship down there making sure that things are done?

MR. NAKHOUL: I'm going to be running a tight ship, absolutely, and I'm gonna dispatch one shift to make sure everything there all right. That's how Mel did it, you know, he was a friend to everybody basically, absolutely. Absolutely, I intend to be there like -- come to work seven days a week, you know, especially in the very beginning, you know.

MR. SCALI: What do the drivers view you as in terms of being -- are they going to be okay with him in terms of him operating?

MS. MILHEM: Yes. They always are.

MR. NAKHOUL: They like me. I have to supervise, you know, and everything.

MR. SCALI: I think we have a couple of little incidents on our record with you. As I recall, there's a few incidents.

MR. NAKHOUL: Yes. But, you know, like parking. I remember parking.

MR. SCALI: There's a couple of things in there that -- it can't happen

again.

MR. NAKHOUL: 15, 16 years of driving, you know.

MR. SCALI: You're on the other side of the table now. You're going to be able to sit at the table.

MR. NAKHOUL: Of course. Of course.

MR. SCALI: So your behavior is going to be what the drivers look at.

MR. NAKHOUL: Absolutely. I mean, we're going to go by the law. Absolutely we follow the law.

MR. SCALI: So, where are you parking all these vehicles?

MR. NAKHOUL: We're parking on -- on the parking meters on the streets, and besides --

MR. SCALI: Parking where?

MR. NAKHOUL: Actually, all the cabs are out anyway. I mean, the drivers usually park their cars, you know, at parking meters and that's it.

MR. SCALI: Well, the police station is right there --

MR. NAKHOUL: Of course, of course. And the neighbors, you know, we look out for.

MR. SCALI: There are a number of complaints about cabs being parked on the street there. So, you want to make sure that those cabs are not parked up and down that street.

MR. NAKHOUL: They will park legally. Put it this way: Whatever the law says you can park, they will park. They are not going to be parked where they're not suppose to park, you know, like any regular car.

MR. SCALI: Not on the sidewalks.

MR. NAKHOUL: Absolutely not.

MR. SCALI: Not up on other people's driveways.

MR. NAKHOUL: No, no.

MR. SCALI: No, it means yes, you thought it's not going to happen.

MR. NAKHOUL: I mean -- I mean, I don't know what they do now, but when I take over, absolutely, they, you know, they will be following the law, plain and simple. No fooling around. As I said before, I'm going to run a tight ship.

MR. SCALI: You know we just passed a new rule that if you transfer a medallion or sell a vehicle that all those new cabs have to have credit card systems in them. Are you prepared to put in credit card systems?

MR. NAKHOUL: I don't see any reason why not. I mean, that will probably increase our revenues.

MR. SCALI: I'm glad to hear you say that. Some people don't believe that, but...

MR. NAKHOUL: We'll get more jobs?

MS. MILHEM: Yeah.

MR. NAKHOUL: Oh, yeah.

MR. SCALI: Would you go and tell all the drivers that were complaining a

couple of weeks ago about that?

MR. MILHEM: No matter what we do, they're never satisfied.

MR. NAKHOUL: The systems, so I could talk to the bank and they will provide like the machines?

MR. SCALI: Well, we passed a rule that you can pick your own system, although we recommended a system that people didn't agree with, but you can pick your own system.

MR. NAKHOUL: Our own system, okay. But definitely, definitely, I mean, I don't see why not, I mean, especially nowadays, you know, people have to pay by credit card. I mean, why lose the fare? I mean -- I mean, you go to any store, I mean they take credit cards. I don't have a problem with the credit card, absolutely not.

MR. SCALI: So nothing else is changing, the telephone numbers are staying the same?

MR. NAKHOUL: Still the same.

MR. SCALI: The colors of the cab?

MR. NAKHOUL: We're keeping the same. Can't change the number.

MR. HAAS: Do you know how quickly this transfer will take place?

MR. FITZGIBBONS: We hope to have this transfer by September 30th at the end of the month with your approval, of course.

MR. NAKHOUL: It's now the bank, waiting for that.

MR. MILHEM: Mr. Scali, could I speak for a minute?

MR. SCALI: You certainly can.

MR. MILHEM: I've got disk in my bank and come down to my home, I have to make operation if you'd like to help me a little bit.

MR. SCALI: I just want to make sure that Mr. Nakhoul understands all the rules and regulations because when you start off fresh like this, this is the perfect opportunity to have a complete understanding

of the Commission with the owner, and so that's the reason why we wanted to meet him and make sure that the Commissioners --

MR. MILHEM: We will never leave him until hundred percent. That's Mel, like baby, like baby Mel that come.

MR. NAKHOUL: I never work for anybody else except them. From day one, you know, other people that come and go, you know, I've always been loyal.

MR. SCALI: Okay.

MR. FRIEDMAN: It sounds like you've got a standard you're going to have to meet and maintain because the family's known by its reputation and you have to maintain that reputation. I think you have to be very clear about what your expectations are, make sure your drivers abide by rules and regulations 'cause it's going to be a reflection on you.

MR. NAKHOUL: Of course. We here to serve the public in a professional way and a

courteous way and there is no reason why they should have any problems. I mean, they're asked to pick up a passenger from A to B, you know, and do it in a professional way, courteous way and get paid for it, thank you very much. That's it. They shouldn't have any problem.

And anybody that has a problem, you know, if I'm gonna have a problem with some guy, then I let him go, you know, people who don't understand the law and, you know, and have problems, you know -- anybody that's, you know, aren't going to take orders, we can do without.

MR. SCALI: And one thing we always say to the drivers is that we expect them to be respectful to you and to your operators and dispatchers, and on the other side, I would also expect that your operators and dispatchers are respectful to the drivers. That is a big complaint on both sides. So I hope that you can get --

MR. NAKHOUL: Because I was on the other side, so, you know, I could, you know, relate to both sides. So, you know -- and I'm sure I'll, you know, be able to handle that. You know, I mean, that's -- that's the things that, you know, that, you know, I came from different side, you know, so I know, I went through it, you know, I lived it so I know what it is like.

MR. HAAS: No comment.

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

Comments from the Commissioners?

MR. HAAS: What was his background?

MR. SCALI: Well, he's already a licensed driver.

So you're the sole owner?

MR. NAKHOUL: Yes.

MR. SCALI: You'll be owning all the stock yourself?

MR. NAKHOUL: Yes.

MR. SCALI: Under each of the 11

corporations, plus the radio service under a separate corporation?

MR. NAKHOUL: Yes.

MR. SCALI: All right. Motion, Commissioners?

MR. HAAS: Motion to approve.

MR. SCALI: Motion to approve.

Moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

All right. Good luck to both of you. Hope to get to see you before you leave.

MR. FRIEDMAN: Just out of curiosity when the bank wants to do this closing, they want to collateralize these medallions, we're going to have to come -- are we going to come before you again?

MR. SCALI: We actually do that over the counter with financing, so as long as you

have individual papers from each of the banks
or the bank -- Mrs. Lint takes care of all
the financing.

MR. FRIEDMAN: Perfect.

Ayothaya, Incorporated

MS. LINT: Ayothaya, Incorporated doing business as Aiyara Thai Cuisine, Aphantree Mraysuk, Manager, has applied for a new Wine and Malt Beverages as a Restaurant License at 16-18 Eliot Street with proposed hours of operation from 11:30 a.m. to 11:00 p.m. seven days per week and a seating capacity of 130. This is located in Cap Area No. 1.

MR. SCALI: Good evening. Just tell us your name for the record.

MR. HEOS: Yes, Mr. Chairman, my name is George Heos, I'm an attorney in Boston, 132 Lincoln Street. I apologize for my lack of pronunciation, but I have here Aphantree Mraysuk, the manager, the close manager of the restaurant in question. I've spent some time with her. She got the full 90-page printout of Chapter 130A and I've highlighted all of the more important parts

and it was -- in most part, we were more in reading what's very important. She understands that -- she's worked to license to establish before twice in Salem, Mass and once in Gloucester, Mass, all time restaurants that had service of beer and wine, she understands responsibilities and she, along with the other waitstaff will be taken, if approved, the course here. In addition, it's my practice to have every client to have an annual TIPS certification done at the restaurant at additional cost, but it's safer. And we've also started -- all my clients at least have started purchasing the hand-held scanners that are used mostly at clubs, but -- restaurants also because especially if you're close to an educational institution, it's amazing the quality and quantity of fake IDs that the students come up with, and I think it helps waitstaff fare something to check the bar code on a lot of these masterpieces that are

being used by the students.

MR. SCALI: So what's there now?

MR. HEOS: There's a Thai restaurant on the second floor. I did notice and I clarified it with my client that there was, I guess, a misunderstanding in the application. There is not a bar present, there's actually a service counter present. And that was listed as a bar in the application along with the notice out there.

MR. SCALI: There's a service bar?

MR. HEOS: It's not even a service bar. All it is is a counter where the waiters will put the food on. It's in front of the kitchen area to begin the service. There will be no bar, there will be no bar seating. And the capacity's 130, right?

All service will be at the tables just on the beer and wine.

MR. SCALI: Is it Tacamora that's upstairs? What's upstairs?

MR. HEOS: Downstairs.

MR. SCALI: And where are you going to be, upstairs?

MR. HEOS: They are upstairs.

MR. SCALI: You're already there now?

MR. HEOS: They're already there.

MR. SCALI: Oh, this is for the beer and wine portion.

MR. HEOS: This is for the beer and wine, right.

MR. SCALI: So you're already there.

MR. HEOS: They've been there -- they acquired the restaurant in January of '08, and they have quite a few customers that will come in especially if there's a Friday and Saturday, and when they find that there's no beer and wine, they'll go downstairs instead.

MR. SCALI: Have you tried to buy a license? Are there any licenses available?

MR. HEOS: We've contacted a number of brokers, I've contacted Atlantic, the

Perkins Family, HRI and we haven't found anything available anywhere.

MS. LINT: We don't have any.

MR. SCALI: None that are for sale. And you feel this is needed because?

MR. HEOS: It's needed because the restaurant started off fairly well when they took it over because they changed the quality of the food a little bit and there's been a noticeable drop-off especially on Thursday, Friday and Saturdays and that a lot of people do come in, Tacamora is popular, but sadly without the ability to have a glass of wine or beer with the meal, people go elsewhere.

And I know that there's no economic incentive to go before the Board, there's not a reason that you're gonna like grant the license, but they are struggling in their present capacity. They're working very hard to stay above water and they feel if they are granted a beer and wine license, even a non-transferrable license, that will allow

them to maintain a better service to their customers and allow them to come closer to the volume that they thought they would have on a regular basis when they acquired the restaurant.

MR. SCALI: You know our new fees where it's a non-transferrable non-value license are higher than our regular fees, is that going to be a detriment at all to you?

MR. HEOS: Just out of curiosity, what are the fees?

MR. SCALI: I think the new fee is \$4,000 a year.

MR. HEOS: They'll be able to pay that. And, again, it's a situation where and I've seen this happen a lot in Boston where people love food, but it seems nobody can go out and order a meal without drinking. And I go to a lot of restaurants in Boston, and when I go in, people look at me funny if I don't order a drink.

MR. SCALI: The reason I ask

questions, a lot of places that are smaller like yourself, think they can afford the license and they come in looking for a reduction in the fee and we're not granting a reduction in the fee, so --

MR. HEOS: I understand.

MR. SCALI: That's why we want to make sure you can afford the fee per year.

MR. HEOS: They have -- they fully advertise, they have no debt on the premises and, you know, the family has worked hard to get to where they are right now, and they're just trying to keep the restaurant itself viable, and I think that this will get them over the hump to retain customers on those busier nights that they would normally lose them to establishments that can allow service with a glass of wine or a beer along with the meal.

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

Commissioners?

All right. Motion to approve non-value, non-transferrable, 21-proof training for you and your staff.

MS. MRAYSUK: Thank you.

MR. HEOS: Will the Board contact my client or should we contact you?

MR. SCALI: We send you a letter. You probably will not get a letter until next week, though, because Mr. O'Neil is on vacation.

MR. HEOS: No problem.

MR. SCALI: And then it will go to the ABCC from there, so that's how it will work.

All right. So that's moved and seconded? All favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

All right.

MS. MRAYSUK: Thank you very much.

MR. HEOS: Thank you very much.

Sun Shine Transportation

MS. LINT: Application: Sun Shine Transportation, Anouar Daissaoui, Manager, has applied for a jitney license to operate two vans, which can accommodate 15 passengers from Logan Airport to seven hotels in Cambridge. The operating hours will be from 10:00 a.m. until 1:00 a.m. seven days per week.

MR. SCALI: Good evening.

MR. DAISSAOUI: Good evening.

MR. SCALI: Tell us your name.

MR. DAISSAOUI: Anouar Daissaoui, Revere, Mass.

MR. SCALI: So that's your experience in the jitney business?

MR. DAISSAOUI: I've been in the business for about four years and a half, almost five, I drive for a few companies. I manage company. I have a jitney license with Boston.

MR. SCALI: You manage that company?

MR. DAISSAOUI: Yeah.

MR. SCALI: So what company was that again?

MR. DAISSAOUI: I manage a company Boston.

MR. SCALI: With what company?

MR. DAISSAOUI: JC Transportation.

MR. SCALI: JC?

MR. DAISSAOUI: Transportation.

MR. SCALI: So, you still are going to do that?

MR. DAISSAOUI: I'm trying to open my own. But I drive for actually -- I don't know if you know, Day & Night.

MR. SCALI: You drive for Day & Night now?

MR. DAISSAOUI: I drive -- yeah, I drive and I manage JC. I drive two days for that because I know the owner.

MR. SCALI: So you want to go off on your own?

MR. DAISSAOUI: Correct.

MR. SCALI: It's going to be you driving?

MR. DAISSAOUI: No.

MR. SCALI: Who else?

MR. DAISSAOUI: It's going to be a few drivers that drive actually for -- one of them drives for JC, one of them drives for Star and one of them actually drives for Day & Nights.

MR. SCALI: So why do we need another jitney in the city?

MR. DAISSAOUI: I'm not --

MR. SCALI: Why do we need you?

MR. DAISSAOUI: Okay. A lot of people they think, you know, a lot of cab think we are taking a lot of business from them, you know. I will come up to you the right way if I tell you like, okay, if I'm applying for -- I didn't want to apply for Boston, but they will not give it to me.

In the airport, Logan Airport, that

is bull. Two or three companies does Cambridge. If you compare Boston, probably about six. So there's a difference between that. I should have the right to apply for a jitney if I get approved, I cannot apply for a run to the airport. They would issue me a run like every hour, every two hours, that's what I'm doing.

But like, you know, a lot of -- a lot of cabs, Cambridge Cab, they think we're taking business from them, but we not 'cause usually Boston taxis they're allowed to pick up from the Logan. Cambridge taxis they don't allow to pick up from Logan. I don't know if you know that or not.

MR. SCALI: Oh, believe me, I do know. More than I want to know.

So what hotels do you want to be at?

MR. DAISSAOUI: Only seven hotels.

MR. SCALI: Do you have permission from each hotel?

MR. DAISSAOUI: I did actually had

a --

MR. SCALI: You have to have written permission from each hotel to be on the property.

MR. DAISSAOUI: I did.

MR. SCALI: You do have it?

MS. LINT: I don't have it.

MR. DAISSAOUI: I did give it to the Adam.

MR. SCALI: But do you actually have a written letter from each hotel?

MR. DAISSAOUI: I do actually.

MR. SCALI: We need to see those. We need to see the written permission from each hotel because you're going on their property and they have to say that they allow you there.

MR. DAISSAOUI: I did actually --

MR. SCALI: Do you have copies for us?

MR. DAISSAOUI: I can get you copies, positive, 'cause the reason why when

I, you know, this is what I get from Adam, that's what I, you know, when I applied for --

MS. LINT: That's the route. I have the routes.

MR. SCALI: Adam approved the route.

MR. DAISSAOUI: Correct. Okay.

MR. SCALI: So how many vans are you going to have?

MR. DAISSAOUI: Only two.

MR. SCALI: Two vans.

MR. DAISSAOUI: I don't know if you need to add another one in the future, I may or may not. It depends.

MR. SCALI: We only hear what you give us, so...

MR. DAISSAOUI: I only want two, that's the reason why I want.

MR. SCALI: 10:00 a.m. to 1:00 a.m.?

MR. DAISSAOUI: Correct.

MR. SCALI: Two drivers.

MR. DAISSAOUI: There are going to

be more than two drivers 'cause a few of them -- there's five days a week. I may drive a few days a week for that.

MR. SCALI: How many drivers?

MR. DAISSAOUI: Probably like four or five driving two vans, yeah, 'cause, you know, driving, it's not easy, so...

Four drivers.

MR. SCALI: Okay.

You have the route, Mrs. Lint?

MS. LINT: I have it.

MR. SCALI: How are you coming, from the airport over the -- what's the route?

MR. DAISSAOUI: O'Brien Highway. From Storrow Drive, from the tunnel.

MR. HAAS: You're not going to do any pickups from the hotels?

MR. DAISSAOUI: No. Dropoff only. The paper I'm going to actually bring you from the hotel is only allowed dropped off, so that's what I need.

MR. SCALI: So you're not picking up

any passengers at the hotels and bringing them to the airport?

MR. DAISSAOUI: No. And another thing I want to tell you, I know O'Brien Highway I try and apply for the DCR, you know, the permit for Memorial Drive, they told me they only issue that in probably December. To drive on Memorial Drive, you have to have a permit. Adam told me that and he has it here actually in the proposal that I have to have a permit from the DCR. I went actually to Causeway Street, the seventh floor or the ninth and when I spoke with the lady, she told me "I'm going to send you an application the end of October. You file it and we could send you" -- they only issue permit in December that's all, the beginning of the year.

MR. SCALI: So you can go on Memorial Drive then?

MR. DAISSAOUI: The company is not going to start yet.

MR. SCALI: If you have to apply for a permit in December, then you've got a ways to go, so...

MR. DAISSAOUI: No, no. This is the permit only like Storrow Drive.

MR. SCALI: Storrow Drive?

MR. DAISSAOUI: Correct.

MR. SCALI: So you can't go Storrow Drive if you have permission here.

MR. DAISSAOUI: No.

MR. SCALI: Background checks?

MS. LINT: No.

MR. SCALI: No background checks. Okay. We are only the hearing process here, we're not the final say. So we make a recommendation to the City Manager who makes a recommendation to the City Council. So whether we approve or deny, it goes through that process and then the City Council will then make the decision.

So, if we do, either way, you have to make sure you're at that hearing before

the City Council and you have to sign up beforehand if you want to speak on their agenda to speak before the Councilors speak.

MR. DAISSAOUI: When is it going to be?

MR. SCALI: Well, we don't know. It would probably be a week from Monday, I would think.

So your application is not complete yet until we see the letters from the hotels.

MR. DAISSAOUI: Can I bring the applications here like tomorrow?

MR. SCALI: You can bring them anytime you want, but we don't meet again until the 22nd or October 1st, so...

MR. DAISSAOUI: You mean the final decision?

MR. HAAS: Just our piece --

MR. SCALI: Our recommendation.

MR. HAAS: So you have to wait for our recommendation before you go to the Board of Selectmen -- I'm sorry, the City Council.

MR. SCALI: What we need from you are the letters from the hotels, in writing. Once Mrs. Lint gets that, then she presents that to us in one of our next hearings to make sure that we know that you have permission from the hotels, okay?

MR. DAISSAOUI: Okay. 'Cause the reason why -- the reason I didn't brought them with me 'cause I thought Adam -- I give him the whole application, I thought he present that to you.

MR. SCALI: You just need to get a copy from him then and bring it to us.

MR. DAISSAOUI: No, I have copies at the house. Anytime that I can bring --

MR. SCALI: Once you bring it to us, Mrs. Lint will put it back on the agenda and then you'll come in again at that point.

MR. DAISSAOUI: Okay. I will.

MR. SCALI: All right?

MR. DAISSAOUI: Thank you.

MR. SCALI: Motion, take that under

advisement?

MR. HAAS: Motion.

MR. SCALI: Seconded and all in
favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

All right. Thank you.

MR. DAISSAOUI: You're welcome.

Rita's Enterprises, Inc.

MS. LINT: Application: Rita's Enterprises, Incorporated doing business as Rita's Catering, Paul Rossi, Manager, has applied for a Common Victualer license for 163 seats and 12 standing at 250 Massachusetts Avenue. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served and consumed on said premises and will have operating hours from 7:00 a.m. until 2:00 p.m. Monday through Friday.

MR. SCALI: This has got to be an easy operation, I hope.

Tell us who you are, please?

MR. ROSSI: I'm Paul Rossi and president of Rita's Catering, Rita's Enterprises d/b/a Rita's Catering.

MR. SCALI: Okay. So this is for -- is this for a dorm?

MR. ROSSI: This is for a Cafeteria

Novartis.

MR. SCALI: I'm sorry, Novartis Cafeteria. And you are taking over for?

MR. ROSSI: Sebastian's.

MR. SCALI: So this tells what your experience is in the restaurant business or catering business.

MR. ROSSI: Sergeant's in '65 was a little sub shop that grew to a restaurant many years in Chelsea and we started catering for -- we started doing social catering early '80s. The blossomed and then we branched up to do corporate cafeterias. We run five now and we're adding one more, six, for a company called Meditech. We've been doing business with them for almost 30 years running their operations.

Also run Mass. Medical Society up on Winter Street and in Waltham. We've had a few that come and go, but right now we have six Meditech and the Novartis one. We've catered private jets for many years. We've

been in the business a long time.

MR. SCALI: This is the first time for Novartis?

MR. ROSSI: We've been catering off premise for Novartis for about seven years now, so -- Fidelity which is -- Sebastian's is owned by Fidelity. That was a big process as well, so...

MR. SCALI: All right.

MR. ROSSI: The only thing I see is that it says 2:00. I believe they close the serverly at 2:00, but they're allowed to have snacks until 3:00 and come in and grab cookies or whatever.

MR. SCALI: What time would you prefer?

MR. ROSSI: 3:00 if possible.

MR. SCALI: Do you want to amend your application to 3:00?

MR. ROSSI: Yes.

MR. SCALI: All right. Questions from the Commissioners?

MR. HAAS: No questions.

MR. TURNER: No questions.

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

Abutter notifications needed? No?

So do the Commissioners approve?

Motion to approve amending to 3:00
p.m.?

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. ROSSI: Thank you.

MR. SCALI: Thanks for your
patience.

MR. ROSSI: Do I come back to get
that?

MR. SCALI: No. You'll get a letter
in the mail telling you when to come in. You
do need your sign-offs, your building, fire
and health sign-offs.

MR. ROSSI: Yeah, that's all set.

MR. SCALI: And then pay your fee.

MR. ROSSI: Okay. Great. Thank you
very much.

Avis Rent A Car System, LLC

MS. LINT: Application: Avis Rent A Car System, LLC doing business as Avis Rent A Car System, Robert Bouta, has applied for a letting of motor vehicles license at 1 Bennett Street.

MR. SCALI: Avis. Either they gave up and went home or they --

MS. LINT: Maybe. And it's just going from a corporation to an LLC.

MR. SCALI: They still have to come in, though.

All right. No show. If you'd find out, Mrs. Lint, why they didn't appear.

MS. LINT: Yep.

Compass Group

MS. LINT: Application: Compass Group doing business as Bon Appetit at Lesley University, Ed Fogarty, Manager, has applied for a Common Victualer license for 175 seats at 99 Brattle Street in Washburn Hall. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served and consumed on said premises and to have operating hours from 7:00 a.m. until 3:00 p.m. Monday through Friday.

MR. SCALI: Hello.

MR. FOGARTY: Hello. How are you.

MR. SCALI: Back row the whole time. Tell us your name.

MR. FOGARTY: I'm Ed Fogarty. I'm the general manager for Bon Appetit at Lesley University.

MR. CARR: I'm Larry Carr, direct campus services for Lesley University.

MR. SCALI: Okay. So this is for 99

Brattle Street which is -- what kind of a building is that?

MR. FOGARTY: Right now it was the EDS refectory. There's a full service kitchen and seating area for 175 seats.

MR. SCALI: So it's like a cafeteria?

MR. FOGARTY: Yes.

MR. SCALI: It's for Lesley students only?

MR. FOGARTY: Correct.

MR. CARR: Well, actually EDS, it's a combined campus community so we would serve both groups.

MR. SCALI: So do you have to have an ID to get in and all that, student ID to be served or --

MR. FOGARTY: Yes.

MR. SCALI: Can anybody from the public walk in as well?

MR. FOGARTY: Well, we do have the public on campus.

MR. SCALI: Students and guests, faculty members and guests.

MR. FOGARTY: Correct.

MR. CARR: Correct. From both campuses.

MR. SCALI: 7:00 a.m. to 3:00 p.m. Monday through Friday?

MR. FOGARTY: That's right.

MR. SCALI: No alcohol?

MR. FOGARTY: No.

MR. CARR: Breakfast and lunch.

MR. SCALI: Questions?

MR. HAAS: No.

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

Motion to approve? Moved, seconded, all in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. FOGARTY: Thank you very much.

Central Brew

MS. LINT: Application: Continued from August 10, 2009, Central Brew, LLC doing business as Central Brew, Michael Theodorakakos, Manager, has applied for a Common Victualer license for 26 seats (20 seats inside and six on an outdoor seasonal patio) at 350 Massachusetts Avenue. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served and consumed on said premises and to have operating hours from 5:00 a.m. to 1:00 a.m. seven days per week.

MR. SCALI: How did you get to be last? Luck of the draw, I guess.

MR. THEODORAKAKOS: I guess.

MR. SCALI: Just tell us your name, I'm sorry.

MR. THEODORAKAKOS: My name is Michael Theodorakakos, representing Center Brew which is at 350 Mass. Avenue, and I

guess we screwed totally on our accounting of seats.

MR. SCALI: Okay.

MR. THEODORAKAKOS: It shouldn't be 20, it should be 19. That's correct.

MR. SCALI: So 19 seats inside.

MR. THEODORAKAKOS: Inside.

MR. SCALI: 19 inside.

MR. THEODORAKAKOS: And finally, another problem with the Department of Public Works for the permit for the outside seating, the permit has been approved and I already paid for it.

MR. SCALI: Okay.

MR. THEODORAKAKOS: Unfortunately, I didn't know I had to carry the liability certificate which I'm going to be bringing them in the next couple of days so we can finalize it.

MR. SCALI: How many seats on the patio?

MR. THEODORAKAKOS: They approved me

for eight seats actually.

MR. SCALI: Eight seats. So eight on the patio.

MR. THEODORAKAKOS: And 19 inside.

MR. SCALI: So a total of 20 seats.

MR. THEODORAKAKOS: Seven actually.

MR. SCALI: Have you gone before the City Council yet for the DPW -- for the patio? Did you go to the City Clerk?

When you applied at the DPW, did you also apply to the City Clerk to be heard on their agenda?

MR. THEODORAKAKOS: No.

MR. SCALI: All right. Tomorrow, whenever you feel like it, go next door to the City Clerk's office.

MR. THEODORAKAKOS: Let me put it this way: I'm trying to open up sometime between the next couple days. Being inside of the store, I'm at the point where I can go to the Inspectional Services for the certificate of occupancy.

For the outside -- I mean, the seasons is already gone.

MR. SCALI: Right. We're not worried about the inside. The inside we can take care of very easily, but --

MR. THEODORAKAKOS: So should I come by tomorrow?

MR. SCALI: Just give Mrs. Lint a call tomorrow.

MR. THEODORAKAKOS: I'll go by.

MR. SCALI: All you have to do is file the information.

MS. LINT: Don't come too early.

MR. THEODORAKAKOS: I don't think I'm going to be waking up too early tomorrow.

MR. SCALI: I don't think so.

MR. THEODORAKAKOS: So I have to go and apply or --

MR. SCALI: You have to go -- yeah.

MR. HAAS: To approve the interior seats this point, right?

MR. SCALI: We can approve it

pending the City Council's approval.

All right. So motion to approve 19 seats inside moved, seconded.

All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

Motion to approve eight seats on the patio pending City Council and final DPW approval. Moved, seconded.

All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: You're all done with us. You just have to work with Mrs. Lint.

MR. THEODORAKAKOS: We'll take care of that.

Thank you very much.

MS. LINT: After 10:30 because I have a meeting tomorrow morning.

Ratifications

MS. LINT: Ratifications.

MR. SCALI: Refinances, Mrs. Lint.

Everything in order?

MS. LINT: Yes.

MR. SCALI: Motion to accept?

MS. LINT: Do you want me to read them all?

MR. SCALI: Please.

181, 164, 235, 159, 220, 57, 17, 181, 139 and 24.

Move to accept? Seconded.

All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

Anything else on the agenda?

MS. LINT: No.

MR. SCALI: Motion to adjourn.

All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

(Whereupon, the proceeding
was adjourned.)

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH COUNTY, ss.

I, Linda E. William, an Approved
State Court Transcriber, 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 to the best of my
knowledge, skill and ability.

In Witness Whereof, I have hereunto
set my hand this 23rd day of September 2009.

Linda E. Williams.
Approved State Court Transcriber
Notary Public

My Commission expires: 12/14/12