

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION
DECISIONMAKING HEARING

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Thursday, November 5, 2009
10:09 a.m.

REPORTERS, INC.
CAPTURING THE OFFICIAL RECORD
23 Merrymount Road, Quincy, MA 02169
617.786.7783/FACSIMILE 617.786.7723
reportersinc.com

INDEX OF AGENDA PROCEEDINGS

<u>Agenda Matters</u>	<u>Page</u>
Disciplinary: AFKOR, Inc.	4
Policy: Disposal Companies	10
Review: Burdick's Chocolates	26
Review: Cafe of India	52
Application: Idenix Pharmaceuticals	54
Application: Go Café	114
Discussion: Taxi School Board	129

P R O C E E D I N G S

MS. LINT: License Commission
Decisionmaking Hearing, Thursday, November 5, 2009
at 10:10 a.m. We're in the Michael J. Lombardi
Municipal Building, 831 Massachusetts Avenue,
Basement Conference Room. Before you the
Commissioners: Chairman Richard Scali, Deputy
Chief Dan Turner, and Commissioner Robert Haas.

MR. SCALI: Motion to accept the
minutes from our October 27 meeting.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We're kind of all over the
place here today because we've got a number of
different things to do.

MS. LINT: October 27, I believe it's the last item on the agenda.

MR. SCALI: I think Traffic and Parking is here, Ms. Lawrence.

MS. LINT: AFKOR, Inc. d/b/a Cafe Anatolia.

MR. SCALI: Do you want to come up? Good morning. Nice to see you.

When we were here last on the 27th, we talked about your tickets and all that you owed the City. So we're hoping that you had a chance to talk to Ms. Lawrence in Traffic and Parking, and come up with some solution. I don't know whether that's happened or not. Is there an update you can give us?

MS. LAWRENCE: He actually made a payment on 10/27, and he came in again on 11/3 and made -- he made small payments. We are willing to accept that as long as he makes an effort to pay the tickets. He said he would come in on a regular basis and make payments.

MR. SCALI: Are you understanding what

she just said?

MR. HOCAGIL: Yeah.

MR. SCALI: That means she's not going to chase you. You're going to go and pay them on a regular basis, meaning that if she comes back to us again and says you're not paying whatever it may be, a small amount, big amount, the next step is for us to suspend your license. That's the only option we have. We can't force you to pay it. The only power we have is to close you down. Is that understand?

MR. HOCAGIL: Yes.

MR. HAAS: The only issue for me, Mr. Chairman, and I don't know how you're going to deal with this but it seems to me during your testimony you're still getting parking tickets. I don't how you're ever going to get in front of this thing if you're going to continue to park illegally and get parking tickets, and you've got a very large balance already due to the City with respect to prior tickets.

I'm not sure how we put an end to this

other than the fact -- and I don't know if it's feasible -- if Traffic and Parking can notify us if we start to see another set of tickets coming in with respect to this particular establishment so that we can bring it back up for review. I just don't think waiting to see if the \$4,000 is going to get paid off, and meanwhile, you've got tickets still being issued. You've got to park legally in the City.

MR. HOCAGIL: The main problem is I'm doing deliveries during the lunchtimes and there is an only space. I have a commercial plate and the only space is across the street. We never know. Sometimes I'm staying over there like 15 minutes, sometimes there's no deliveries. I have to peak in. That's the only spot I have to park in.

MR. SCALI: You're making excuses. You can't park illegally. Just because you are the only one making deliveries and you only have a few minutes, that doesn't give you an excuse to parking illegally. You can't. As I said to you at the hearing before, and that's what the Commissioner

is trying to tell you, you have to park legally no matter how much time you have or don't have, or whether you're the only one working or not working, there are no exceptions for you.

MR. HAAS: You're never going to get in front of this thing if you continue to park the way you're parking, because you can't get an exemption from parking illegally for deliveries. What I'm saying to you is you've got to figure out a way that you can make deliveries without exposing yourself to constantly getting parking tickets. This thing will keep on looming in front of you and I don't know how you'll get in front of it. You've got to figure that out.

MR. HOCAGIL: I tried to figure it out for the last five-and-a-half years.

MR. SCALI: It's very simple: park legally and continue making the payments. That's the only thing we want to hear from you. Everything else doesn't make any sense at this point.

So if we hear from Traffic and Parking

that you're not making the payments and they ask us to put it back on the agenda again, our next step then is to close you down. And that way you won't be making any payments if you're not making any money; right?

MS. LAWRENCE: Thank you very much.

MR. SCALI: Motion then to place the matter on file, or continue? Do you want a review, Commissioners?

MR. HAAS: I think it's got to be reviewed. It's an open issue. I don't know how you can just place it on file. We've asked Traffic and Parking to let us know if they have concerns about continued payments, and also, if we start to see more parking tickets coming in.

MR. SCALI: Why don't we put it on for our first hearing in January. I think it is January 5. Motion to continue for review on January 5. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: See you January 5. I think that's the date. If I have the date incorrect -- I mean, we'll send you a letter. It's the first Tuesday in January as I recall.

MS. LINT: It is the 4th or the 5th.

MR. TURNER: It's the 5th.

MR. SCALI: Is Randy here from Public Works? Randy, come on up. We are going to the agenda of October 6, which is the second to last item on Page 2: License Commission review or change in the regulations of disposal companies proposed by Public Works.

Good morning. Just tell us who you are for the record.

MS. MAIL: Randy Mail, Recycling Director with the Public Works Department.

MR. FITZGERALD: My name is John Fitzgerald. I'm the Environmental Services Manager with the Public Works Department.

MR. SCALI: We heard a number of people testify that evening. I know you've taken it very seriously. And I know Commissioner Peterson has read the minutes and gone through and made some suggested amendments; am I correct?

MS. MAIL: Yes.

MR. SCALI: I think she had sent to us her changes. Did you all get a chance to review the changes?

MR. HAAS: Yes.

MR. SCALI: She is suggesting, No. 1: That we require licensees to provide collection services for garbage and recycling either directly or through a subcontract. In addition, request information as to whether they are able to provide compost collection and hauling services, leaving out the vegetable oils section.

Number 2: Requiring licensed applicants to list all subcontractors and solid waste collection and hauling services on the application, which most of them do now already.

Number 3: Continue to require that license applicants list all Cambridge accounts. In addition, require licensees to indicate what other services are being provided to each account. Are there other services besides just hauling; is that what that means?

MS. MAIL: That means trash and recycling, or just trash, or just recycling.

MR. SCALI: So provide which services they provide.

MS. MAIL: Which service each customer is receiving.

MR. SCALI: And No. 4: Require licensees to describe how they promote recycling services and how potential and existing customers are informed that recycling is mandatory in Cambridge. I think that they said that they didn't mind doing that; that they provide that information already to their customers.

Number 5: Require that licensees distribute to their customers once a year a copy of the City ordinances regarding noise, waste, recycling, and other issues. We can provide that to them. Any information will be provided by the City.

Any comments? Did you want to say anything else about the changes? It sounded like they were amenable to all those items.

MS. MAIL: Yeah. The terms in No. 4 describing how they promote services and how they inform customers that recycling is mandatory, we're really just asking for a description on the

application of how they do that. So that's just a onetime requirement. Just tell us at the time of the application how you do that.

We had a good discussion about these items at the Recycling Advisory meeting where we had a couple of haulers there as well and got some good feedback. So that's one of the things that was amenable in that discussion as well.

MR. HAAS: There were a number of issues that were raised at that hearing but one of the ones that stuck with me is where are you going to place the burden with respect to reporting of violations. Initially you were thinking about the haulers being responsible. Has that shifted?

MS. MAIL: No, not with this. Since the City already gets a list of accounts from haulers, having the information as to which service each customer is getting, it really helps consolidate the reporting requirements through haulers. And they're already reporting to the City. It is something that we are going to look at, whether we are going to ask businesses to once

again submit recycling plans, but from a staff standpoint, it's going to be a lot easier to get the information from 20 or so haulers rather than thousands of businesses.

MR. HAAS: It seems to me going forward too, one of the things we talked about was the notion that that has to be part of the application process. Is that through this body that we would have them submit that?

MR. SCALI: We'd have to amend our renewal or application process just to include those questions on the questionnaire.

MR. HAAS: I think that would help you a lot, too, especially for any new businesses or transfers of businesses to know this is what they're going to do with respect to their trash collection. And also, get an indication early on whether or not they're going to engage actively in recycling. I just want to make sure we don't lose that connection going forward.

MS. MAIL: I think the other follow-up that is not part of this but was brought up was

that with construction/demolition permits that the City require licensed haulers to be chosen for construction projects.

MR. SCALI: That would be through Inspection Services. That wouldn't be through us.

MR. HAAS: I think that was a good suggestion as well. It has to be regulated at that level as well to make sure that --

MS. MAIL: Just to make sure that we are not allowing unlicensed haulers to provide services in the City.

MR. SCALI: Comments?

MR. TURNER: No comments.

MR. SCALI: Anybody from the public want to be heard on these changes? Pleasure of the Commissioners? We eliminated a couple of things that were on there that would have required maybe a City Council hearing on the main change and then a couple of the other things that we thought were just -- the fee issue.

MS. MAIL: The cost.

MR. SCALI: The cost, yes. It was

kind of a little bit more intrusive than we had thought.

MR. HAAS: So you're going to provide the flyer information that's going to go out once a year, or are you leaving it up to the haulers to develop their own?

MS. MAIL: We will provide it. We'll have to work with Inspectional Services and License regarding the noise and other ordinances that we want them to be aware of.

MR. HAAS: I'm just afraid that if we leave it to them we could have 20 different versions going out. So I just want to make sure it's kind of uniform.

MS. MAIL: I think that they won't do it unless we provide it to them.

MR. HAAS: They said that too.

MS. MAIL: If I may, I did want to ask about oil; how the City views oil?

MR. SCALI: The vegetable oil?

MS. MAIL: Yes. Is that not a waste?

MR. SCALI: I think the testimony was

that the companies we license don't provide that service at all.

MR. FITZGERALD: The rendering companies that do provide that service though, I think it was along the lines of would the City require them to be licensed haulers as they require trash haulers to have a license. Correct?

MS. MAIL: Right, because they're removing a waste. The question from us is how are we determining that they're not subject to the waste disposal company license?

MR. SCALI: That's a good question.

MR. TURNER: It is a food waste. Is that reused, re-processed oil.

MS. MAIL: The oil is typically reused, increasingly reused.

MR. HAAS: They're called "rendering companies," which they made a distinction. But I don't see why they wouldn't be required to be registered with the City so you'd make sure they're meeting certain --

MR. TURNER: They're not dumping it

down the sewer somewhere.

MR. HAAS: Yeah. Well, first of all, the other question you have to ask yourself is if you know that you have an establishment that's going to generate food oils, part of that plan should say, how are you disposing of that and not just -- because if they're not doing it, and they say they don't do it, then it's really a rendering company that provides that service. It seems to me that part of the application process is going to have to be -- if it's I'm guessing most food establishments, we'd want to at least ask the question: Are you going to generate food oils and what is your plan to dispose of them?

MR. SCALI: I think at this point in time we've haven't permitted any of those companies.

MS. MAIL: I think the issue at the last discussion was that the hauling companies that we currently license don't want to provide that because it is a different type of business which makes sense, but that the businesses that do

provide that, whether they would have to get a license to operate.

MR. SCALI: I think we probably should investigate that more in terms of who they are. I know we don't have them permitted now, so that means that we would have to then go after those companies and get them to come in to be licensed. We certainly can look into that and whether that's a huge process. It probably is not huge.

MS. MAIL: I think there's only like three or four companies.

MR. FITZGERALD: It's a small number.

MR. SCALI: We can certainly find out more about those rendering companies.

Motion, Commissioners?

MR. TURNER: Motion to adopt.

MR. SCALI: Motion to adopt the proposed changes and regulations along with investigating the rendering companies, moved by Deputy Chief Turner.

MR. HAAS: Are we going to make sure that ISD and ourselves incorporate that as part of

the review process upon application? So for example, you have a new construction site, ISD now will verify that they have a licensed hauler that's going to be removing waste from the construction site; right?

MR. SCALI: We probably have to make sure that they do that somehow.

MR. HAAS: But I don't know how you do that. We can't regulate it, but I just want to make sure it's communicated back that's it's a recommendation so that -- or would that go through your shop?

MS. LINT: They would have to check with us; that would come from them.

MR. FITZGERALD: I think it was brought up in the October 6 meeting that there are other municipalities that incorporated that into the building permit process. I think generally speaking that was successful, at least according to the haulers who spoke on the 6th. Maybe that's something to investigate. I don't know.

MS. MAIL: It might be the building

permit and/or a dumpster license. Like when someone is getting a dumpster license, saying who are you going to have haul your dumpster? Who are you getting the dumpster from?

MR. SCALI: We might need to have a conversation with Ranjit about that to make sure that that's being done. I don't know that I can order him to do anything.

MR. HAAS: No, no. I'm saying that.

MR. SCALI: I probably should talk to them about that process and checking with us.

MR. HAAS: Then I'd off that we really should make two motions. One to adopt the rules and regulations as proposed, but the we should adopt a second motion with respect to us incorporating that being part of the application process for CV licenses relative to them submitting a disposal plan; make that part of the requirement for the application process for ourselves.

MR. SCALI: So you want to require all restaurants when they come in --

MR. HAAS: I think we should ask the

question: Are you going to have disposal -- do you have a need for a disposal company? And if so, who is the disposal company and what is your disposal plan? So we can verify at the beginning stages that they're at least separating their waste and recycling it appropriately.

MS. MAIL: If we get a list of customers and which services they get from each hauler, and let's say that Joe's Restaurant is listed for trash and not recycling, we want to know how they're recycling. And maybe they're listed on another haulers list, but if they're not then that would be information we get from the business directly.

MR. HAAS: I think it would be easier for you at the application process to at least know that we're getting that kind of waste management plan. First of all, a forewarning to them that they need to have a waste management plan; and secondly, we can verify at that stage as a condition of the license that they have a plan and it's going to be in accordance with the City's

rules and regulations.

MR. SCALI: Add that to our procedure for application.

MR. HAAS: Right.

MR. SCALI: We didn't really advertise it that way in terms of adding it on as a responsibility for Common Victualers. So I'm not sure if we need to require that as a hearing. We probably need to look into whether we need a hearing for that. But if we just ask the question informally.

MR. HAAS: I think at some point I'd like to see it become a formal process of the application process so it becomes part of a systematic approach in terms of how we deal with it.

MR. SCALI: I think we need to probably --

MS. LINT: That would have to be advertised because this was advertised as strictly changing the rules and regulations as they relate to the disposal companies, not to the CVs.

MR. SCALI: We will investigate that more.

MS. MAIL: I think Public Works and the License Commission can talk about that a little bit more in terms of staffing.

MR. HAAS: You're going to provide staffing?

MS. MAIL: To follow-up on all of the businesses would be considerable.

MR. HAAS: Right. I'm just thinking just in the front end of the process.

MS. MAIL: Just to ask the question.

MR. SCALI: The motion is to adopt the regulations as amended, and also checking on the rendering companies to see if we permit them; to amend our application and questionnaire process to include these questions that are now the amendments; and then to investigate and hear if necessary a change in the Common Victualer procedure to ask about disposal companies.

Discussion?

MR. HAAS: No discussion.

MR. TURNER: No further discussion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much.

MR. SCALI: Let's go to Burdick's which was -- what date was that on?

MS. LINT: I believe it was the 6th of October, the second item on Page 1.

MS. WATSON: Good morning.

MR. SCALI: We originally heard this a number of months ago, and then we had a review on October 6. It has been an interesting few weeks in terms of comments and discussions that have been going on back and forth with my staff and I guess with yourself and with Settebello.

The last time we were here we talked about three things, and that's what we're talking about today, three things. The issue of the sign being posted; the issue of whether a divider was going to be placed between the two doors; and then the capacity issue and making sure we were going to maintain that and how that was going to be done.

I know that Mr. Hedley has been working with you all about that and Ms. Lint has a report. Can you tell us what Mr. Hedley found?

MS. LINT: He said signage is in place

right near the front door indicating the occupancy limit of 49. He also said that when he was there on November 3 at 5:30, there were 12 patrons inside. There is also another sign posted for the employees of Burdick's telling them basically not to have any discussions about Settebello.

MR. SCALI: There's a sign where?

MS. LINT: For the employees.

MR. SCALI: Where?

MS. WATSON: By the time clock for them for their own, so they know that we are telling them that there's not to be any discussion if anybody comes in and asks why we have these barriers out front. It's because we're complying with city ordinances.

MS. LINT: The divider is in place.

MR. SCALI: I know that the Deputy went by there this morning and it wasn't there because you must take it in at night.

MS. WATSON: Yeah.

MR. SCALI: I meant to go by there last night and I went by and forgot to take a look

at it.

MS. WATSON: Vin Best, I have a letter from him. He e-mailed me yesterday that he's going to meet us today because I have to fill something out now because we are on the sidewalk. He's going to meet me with the paperwork.

MR. SCALI: You're on the public sidewalk portion?

MS. WATSON: It kind of comes out a little bit I guess and that's why we had called him. I had gotten a hold of him on October 13 after the last meeting to talk to him about the barrier, because we were going to put the wall up. Then we ended up putting like a roping system you would say. He went down and looked at it and he said it looks great. He would just like me to fill this paper out.

MS. LINT: It's a sidewalk obstruction permit.

MS. WATSON: Yes. He said because the sidewalk is wide he doesn't see any problem with it. He's meeting us today so I can fill that out.

MR. HAAS: Is it working?

MS. WATSON: It is.

MS. LINT: It's Henderson's opinion that it absolutely is effective; that the way it's designed forces customers to go away from the Settebello store completely.

MS. WATSON: They do wait outside and we do have a doorman, Carlton the Doorman.

MR. SCALI: Telling them to move along.

MS. WATSON: Yes, when they come out, but they don't have any choice but to move along because there are on weekends people standing outside waiting to come in. He is just kind of keeping the flow going.

MR. SCALI: When is that person out there; all the time?

MS. WATSON: Yeah. There's somebody appointed to the door. We hired somebody specifically for weekends, like Thursday through Sunday, and then there's somebody assigned to the door, a staff member all the other days.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Did Inspector Henderson do any other capacity checks other than 11/3?

MS. LINT: Not that I'm aware of.

MR. SCALI: Just so there's no confusion, we will continue to monitor. We always monitor anything anyway. We will continue to monitor for capacity. And if we do vote that everything is okay, we will continue to monitor the divider and as long as Public Works says it's okay.

So I guess -- and I know that Settebello probably wants to speak about the issues. My main concern was that everybody was doing really great, staying really calm, and everyone was doing their own thing. Then of course, when you have a hearing everything kind of gets dredged up again, and people's feelings get hurt. So it went kind of backwards a little bit. So now you've advised your people to kind of just do their own thing and let's not interfere with Settebello's business, and they not interfere in

your business. I think that's the big key right here. Everybody kind of just do their own thing.

MS. WATSON: And get on with their lives.

MR. BURDICK: I know you don't want to dredge up old things, but I still think that there's very little for them to be complaining about. We're doing everything possible to make sure there is nothing to complain about. I do think it's getting to the point where is this ever going to go away? And knowing my neighbors, it never will go away.

MS. WATSON: So we just have to do what we can.

MR. BURDICK: So we'll just keep doing what the City wants us to do. We'll keep doing our own thing. I think the whole thing is a shame to be honest and a waste of everybody's time.

MR. SCALI: Everyone has got their own point of view, and everyone has their own feelings, and they're entitled to those. So we just need to focus on what you need to do, and let

them focus on what they need to do. Make sure your employees and your customers realize that too.

MR. BURDICK: I guess what I'm implying is that there is nothing we can do that will stop what I'm beginning to view as harassment. I'm just saying it will never go away and that's my experience being there for 11 years.

MR. SCALI: I have been here for 24 years and miracles do happens. Things do change.

MR. BURDICK: I hope so.

MR. SCALI: If you were here in the '80s you'd be surprised what we used to see in Central and Harvard Square. Things are a lot different now.

MR. BURDICK: I grew up in Dorchester and hung out there in the '70s, and it's a much different place.

MR. SCALI: There you go.

MS. WATSON: We're doing everything we can do to be able to keep moving on with our lives.

MR. SCALI: Discussion?

MR. HAAS: No discussion.

MR. TURNER: No further discussion.

MR. SCALI: I know Mr. Levin, you probably want to speak. If you want to speak about those three subject matters, that's fine. If there are complaints about something different, we will investigate those complaints. This is not the forum for dredging up old stuff again. We want to talk about solutions, about what the solutions are here, and how that's going to go forward.

So you're welcome to comment on those solutions. I don't want to prevent you from speaking by any means. Do you want to come up? Come on up. Can you guys just step back and let them come up.

Good morning. Tell me what you think about the three items.

MR. LEVIN: I understand your concern. I do not accept what happened. That's all I want to say. I don't accept it.

So first of all, believe it or not I was very pleasantly surprised when I saw the plan that they put in place on the 16th and 17th. For

the first time in more than two years I actually could see the potential for this getting resolved. Why it's taken two years is a topic for another discussion.

MR. BURDICK: And I can explain why.

MR. SCALI: Mr. Levin is talking.

MR. LEVIN: There are I think some modifications that could be made pretty easily that would just probably resolve it. What I did was I have photographs, not to indict but to demonstrate where the issue is because I think it's a little bit harder to describe.

MR. SCALI: The divider, are you talking about?

MR. LEVIN: No. There are still some remaining issues even with the rope. I think the rope gives a very good visual cue to people but even so, to my surprise, there are still some minor issues that like I say, I think can be resolved. They should be pointed out because look it just started.

MR. SCALI: Can you point those out to

Mr. Hedley, give them to him and he can provide them to Burdick's as to what you think. Because they're going to work with Public Works on that divider.

MR. LEVIN: I think it's very simple to state. It really is. In fact, I came up with just a very brief description of what I would prefer to see. Just designate an area in front of the store that's -- there's a strip of flagstone in front of our store, both of us have it. It's triangular. Just simply state that that area, plus four feet of the adjacent sidewalk, which is required by law apparently to keep clear, keep it clear.

The problem that was happening -- the person they had there as a door person was doing a good job but he probably doesn't have the direction to do the following, which is simply stated: keep that area clear. It's okay with us if you see people who are in that area -- you can pretty easily tell they're not Settebello customers looking in the window, particularly if they're

holding Burdick's cups and so forth -- politely ask them to move. That's it. That's what I was proposing because that's the area.

They have a crowd manager, which I think already is a dedicated employee to manage the crowd inside and outside of Burdick's. I said here that I was thinking is what we see as Friday, Saturday, and Sunday -- now those are kind of like must periods for us because they're always busy. I understand that it's burdensome for any small business to have someone full-time for the number of hour they're open all the time, all the year. I admit it, sometimes there's one person in there so what's the point.

So I'm willing to compromise on that to just have something that's reasonable that will both address our concerns and also not be burdensome to Burdick's Chocolates. And that is that they should have someone there Friday, Saturday, and Sunday, all the holiday periods and local special events like Head of the Charles, and whenever the number of occupants exceeds 49.

I have a copy of this and you're welcome to take it.

MR. SCALI: If you want to submit that that would be great.

MR. LEVIN: Yes, I will.

Just two other points. So their duties would include just to politely insure that the clear area is maintained at all times, maintain inside occupancy, and monitor and maintain the line behind the roped area.

Here's the problem that came, it's very simple. People were crowded still in front of our store even when traffic was light, and it's okay with us if they ask them to move.

What I did notice which I would appreciate getting resolved is that they were handing out free samples to people in the street, which is fine, but what happens is that just draws a huge crowd. I think they can do it, it's just that they should make sure they're not getting drawn to our little area. That's all. It's just a point that I'm sure that if this person is advised

of it, they'll get the message and they'll do it properly.

In general, I would like them to see them keep the roped standing in place year-round. By the way, I don't know what's going on. I hear this thing about a partition. Frankly, it's okay with me if they use what they have. It seems to work.

MR. SCALI: I think they are.

MR. LEVIN: We don't need anything more complicated than what's there. What really helps is a person, and I'm just asking that that person be there a reasonable number of days.

There are just three other general measures. I'd like to just make sure that they have employees regularly monitor and maintain the clear area when the crowd manager isn't there. Or whatever you're calling them.

It would be helpful I think to install some signage at the point-of-sale location just requesting something to the effect of "Please don't congregate outside on the sidewalk." I think signs

alone don't do anything but with other measures they can be helpful.

MR. SCALI: I think a person is better than a sign.

MR. LEVIN: I agree. I'm simply saying it's helpful. It would be great if they stated that to everyone but I'm not asking them to do that.

The final point is that I would like to just make sure that someone at Burdick's responds -- let me back up. To me, it's putting a lot of faith in the process to say don't have someone there all the time because that would be the easiest solution. It would be burdensome but easy. I could just say put someone there all the time; that way we won't have a problem. So I understand the compromise.

On the other side, I want to be confident that if there is a problem, if for whatever reason there is a lapse in coverage that our staff in a reasonable way -- they're going to be directed -- our staff will just call up and say,

please could you ask these people who are in front -- and I'm going to expect a response.

MR. SCALI: If that doesn't happen just call Andrea or my office. Put the burden on us.

MR. LEVIN: I'm hoping it does happen, but that's the point. I don't count on Burdick's to do this. I can't.

MR. SCALI: I think it might be helpful if you all just kind of -- I think you've kind of tried the idea of the back and forth issue. Maybe if you just maintain your separate businesses as you have been doing and let us take care of the complaints as they come in. We'd be happy to do that.

MR. LEVIN: It's fine, Mr. Scali. I simply want to state it. You've got infinitely more experience than I do in these matters. This is a little bit unusual situation I think given a lot of the parameters. I hope that if we have to, I just want you to be confident that it's not my purpose to be calling every day. I have other

things to do. It's only if we perceive there to be a significant lapse; that's my promise to you. And if you hear from us, that's why we're doing it.

MR. SCALI: Okay. I think that makes sense.

MR. LEVIN: Not because we feel like getting someone in trouble.

MR. SCALI: I understand fully.

MR. LEVIN: Just the final point is that I would just appreciate that we have a review of this in the spring of 2010, because that's when the busiest season is finished.

MR. SCALI: Questions Commissioners?

MR. HAAS: I just want to offer one question right now. This is a public sidewalk so you have to be careful that if an employee suggests to somebody or asks them to move along and they don't, I don't see how that becomes Burdick's responsibility. I don't want to create false expectations on your part that if people still gather in front of Cafe India, in front of your store, in front of Burdick's, in front of the other

eatery just on the other side of that, that somehow that now becomes Burdick's responsibility, and the Commission is going to be able to do something about people on a public sidewalk. I just want to be very careful about that.

MR. LEVIN: My response -- and I may be correct or not -- is that I understand that. It is a public sidewalk. However, as far as I know there are regulations for that. There is the ADA requires four feet of clear access on a sidewalk. If someone is throwing a party there or someone is even having a demonstration, they have to have four feet of access. We have customers who are in wheelchairs. That's the purpose of it is to allow for wheelchairs.

So I don't know how that mixes in with what you've just said, but what I'm saying is it's not as if they have no right in terms of some law. There has to be this minimum four foot width. Maybe you're right in I don't who is the person to enforce it, but it's not like there's nothing backing them up.

MR. SCALI: I think that refers to some kind of permanency you're putting on the sidewalk. You'd have people there temporarily standing; that's not blocking something on a regular basis.

MR. LEVIN: If you can't get a wheelchair.

MR. SCALI: The law is more related to something that is permanently placed there blocking the access. People are standing; they're not placed there.

MR. LEVIN: I can't say. All I know is that regulations like that don't generally allow blockage. At the very least, this piece of flagstone, which my understanding is that it's private property.

MS. LEVIN: I just wanted to address that as well. We just don't want to be obstructed. We have to clear out baby carriages, dogs, umbrellas. We have policing to do in front of our store just to open our door, just to invite our customers. When there is that obstruction and it's

socialized kind of overflow from Burdick's, et cetera, or people pending, waiting for delivery of hot cocoa or whatever it might be, there's that positioning of them that they tend to be there 15 or 20 minutes, and that's the issue we have. Whether it's in front of our window or within that four foot range of access.

MR. HAAS: I just want to point out that it becomes very gray. Also, you have a number of folks that walk up and down that sidewalk and they don't go to any of those businesses, but they also add to the mix.

MS. LEVIN: But they're moving. There's a flow.

MR. HAAS: Or they're stopping and talking. There could be a variety of activities going on, on the sidewalk that you would expect to see on a public sidewalk. So I want to be very careful that somehow that becomes a condition of a violation that because there's a group of people that are parked or stopped on a sidewalk who may have nothing to do with Burdick's at all, but

somehow they become responsible. It gets very gray and I want to be very careful about saying that this is a requirement for them to continue to operate their business because I don't know how you enforce that to tell you the truth.

MR. SCALI: It's a big problem.

MR. LEVIN: But you are allowed to enforce the notion of who he brings to his business and how they act, in other words. I believe that's correct.

So in truth, you may not be able to say you've got to have a four foot wide path, but you could say it a different way. The fact that he brings so many people to his business where they purchase their products inside, they go outside and use it as an outdoor standup cafe, that's something you do have a right.

MR. SCALI: Let's see how this plan works. I think we've come a very long way. I think they've come up with some great solutions. They're got their person they're going to be putting at the door at their busy times, which is

Thursday through Sunday, and the holidays. I think we've got this divider that's a good start. Let's go with that and see how it works.

You can certainly call anytime and we will certainly go out and check. I know that Ms. Boyer and Mr. Hedley will be definitely be checking capacity and checking the issues. We don't do it every day but on a random basis, it's something we do for anybody. I think we have come a real long way and your ideas are a great way to expand on that as well.

MR. LEVIN: Contrary to what Larry Burdick says, this can end. It's just up to him.

MR. SCALI: Let's try, please.

MR. LEVIN: It's up to him. That's how I feel.

MR. SCALI: I think you've both come a long way. I think you both can do it. I think you really can. You're both very professional people so I know you can do it.

MS. LEVIN: I just have one other comment and I'm really not sure how to -- this may

be outside of your domain. But it is this parallel universe where we have been threatened with a protest in front of our store. We've received calls left on the answer machine.

MR. SCALI: That's not going to happen. We've straightened that out. I know that's come up with Ms. Boyer and I know that Mr. Hedley has spoken with them and spoken with you. I think they've made it quite clear that --

MR. BURDICK: Richard, this insinuation that it's coming from us is -- I resent that.

MR. SCALI: Mr. Burdick, please, stop. Stop please.

MR. BURDICK: I just don't want to be accused of threatening people. That is really quite --

MR. SCALI: Please sit down. We've already dealt with those issues and this is not the forum for it.

MS. LEVIN: I know. I'm wondering where.

MR. SCALI: As of when Mr. Hedley spoke with everybody, everyone has agreed that that will not happen.

MR. BURDICK: If they're being threatened, they should call the police or the FBI.

MR. SCALI: Everyone has agreed that that will not happen.

MR. LEVIN: I don't think the FBI would be interested in this.

MS. LEVIN: That's why I'm really asking for some help here. I just feel that there are some anger issue that should be addressed.

MR. SCALI: You've got many options, and of course, the Police Department would be happy to advise you if anybody is being threatened. That's certainly a criminal matter.

MS. LEVIN: Even coming into our store to make it difficult for us to really know how to experience it and what it really is. And then we realize when they're gone that we've --

MR. LEVIN: We have had a person who made a physical presence as well besides what we've

described.

MR. BURDICK: They should call the police. It has nothing to do with Burdick's.

MR. SCALI: Sit down, please. Thank you.

Discussion?

MR. HAAS: No discussion.

MR. SCALI: This is a review. The motion then would be that we continue with the sign as placed; that you complete the process on the divider.

MS. LINT: What they said they were willing to do is done.

MR. SCALI: I know but I want them to complete the process with Public Works as they need to.

MR. TURNER: The permitting process.

MR. SCALI: Yes. And that capacity be maintained and monitored by our department along with the sidewalk issue. That's a motion.

MR. HAAS: Motion.

MR. TURNER: Seconded.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you all very much.

MS. WATSON: I was just going to suggest that maybe they have somebody at their door also. That might help them.

MR. SCALI: They could do that if they wish to.

MS. WATSON: Because we have had -- okay. We never get to say what we need to.

MR. BURDICK: Shouldn't they call the police if they're being threatened.

MR. SCALI: They certainly should.

MR. BURDICK: I've been there 11 years and I've never seen a customer in their store in 11 years.

MR. SCALI: I can't decide what their business is like. All you can do is take care of your own business.

MR. BURDICK: But this will never end.

MS. WATSON: And that's what we're doing. They should put a person at their door to take care of their sidewalk.

MS. LINT: The only item you have left on the October 6 agenda is the question of banked seats for Cafe of India, and I have the answer to that.

MR. SCALI: Cafe of India.

MS. LINT: On February 10, 2000, you as the executive officer sent a letter to Mr. Goldberg which stated that 103 seats may be banked but are to remain at the location and may not be sold separately.

MR. SCALI: I did that?

MS. LINT: Well, I'm guessing whoever the chairman at the time was did that.

MR. SCALI: It was probably Commissioner Barnes. So that means that they can't sell them. So there are no banked seats. No, there are banked seats for their own use.

MS. LINT: Yes.

MR. SCALI: Discussion on that, Commissioners?

MR. HAAS: How will you communicate that back to -- so that's the position of the

Commission and that's what you'll communicate back to the owners?

MS. LINT: Yes.

MR. SCALI: Motion then to maintain the ruling with regards to 103 banked seats to remain at the location.

MR. HAAS: I would say that unless they're going to apply for us to reconsider then that's our position; right?

MR. SCALI: If they want reconsideration, they certainly can apply for that.

MS. LINT: I would recommend that you place the review on file in recognition of the decision of 2000.

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

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: We have Idenix; we have Go Cafe. Is that it?

MS. LINT: That's it.

MR. SCALI: Let's go to Idenix then. We're going to the agenda from September 8, which is an application for a variance to the noise ordinance. It was heard September 8. We discussed it in general at our Decisionmaking meeting in September, or actually the first week of October. It was continued until today for discussion and possible decision.

I know that Mrs. Lint has provided to us a number of documents that were updates and responses to the hearing. So I do have a document or a couple of documents in response to the variance application from Mr. Lindquist. I have a number of e-mails from different neighbors.

MS. LINT: Yes, several e-mails, mostly voicing opposition. There was however one that is in favor of the variance who supports the business being part of the City. I also have letters from Councilor Toomey and Councilor Davis

in opposition to the application.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: To open this up, having reviewed the letter that we all received from Idenix with regards to some additional work they have done, I was just going to throw this out. I know we've all been working very hard to get it resolved through this whole issue. Based on this letter and then additional work that's been done, would it be I guess wearing to continue this again and get some more readings with the additional work installed, to once again continue the matter.

MR. SCALI: I think we should have a discussion number one about what the criteria is. Number one is the hardship issue is really the criteria, and then what conditions or items that could be used in relation to that as well. We've got to look at what can be done and what can't be done, and then what burdens are placed on both parties.

I think it's been laid out quite

clearly in a number of the documents that there are burdens on both sides, burdens by the residents, burdens by Idenix.

I know that people look at this district as a buffer zone, some people look at it as a buffer zone. Some people look at it as office space with lab use. But I know that Idenix is there, the units are there.

They've made a number of updates. They've made a number of proposed changes that they're going to be doing. I know they had e-mailed to Mrs. Lint that they will be consolidating five of their units to one unit; that they're continuing with the curtains being placed.

I guess I have a couple of questions for you all. I'm kind of struggling with the fact of the 60 decibels issue. So I'm wondering really if maybe if this relates to what the Deputy Chief is talking about. With the curtains and with the consolidation of the five units to one, which is a great thing, we should have suggested that a long time ago, but what's really the proposed goal? The

goal is not 60 decibels I'm hoping.

What you stated to us at the last hearing is that you probably are going to be -- probably, I'm not saying definitely -- under a certain decibel level. I think you said 53 or 54; am I right? That that would be about what you think you may be?

MR. FANNING: Probably not. I actually think it's probably likely to be higher than that because ambient itself -- some of the modeling suggest that at 6:00 or 7:00 p.m. on a summer night can be in the low 50s. And we add to that noise, clearly. It probably can get upwards to -- we're not exactly sure -- the mid-50s, easy. I think the 60 was because of the fact that we right now know we're probably getting up into -- not we, but the totality of the noise -- the 58 range actually. I think that's about where we are right now at peak time.

MR. PRUSSIA: If I could just add some color to that and clarify, it's really a range. At any one point in time it could be 54, it could be

52, it could be 55. As we explained last time, the reason for having the 60 is to build in some cushion to account for windy nights, to account for really hot nights when there are a lot of air conditioners being used.

MR. SCALI: I don't think we've ever hit 60.

MR. PRUSSIA: In the papers that we submitted, Cavanaugh-Tocci did get close to 60. I think it was like 59 or something like that at one point at night. So that's where 60 came from; it didn't come out of thin air and that was the basis for it.

It's hard for us to say we're definitely going to be 54 or we're definitely going to be 53 because --

MR. SCALI: I'm not saying you will be. But I'm saying you don't plan on being 60?

MR. PRUSSIA: That's absolutely not our plan, absolutely not.

MR. SCALI: Let's say we give you a variance to 60 which means nothing really changes.

MR. PRUSSIA: We have the most recent readings from Ms. Boyer in April, and we're certainly not moving backwards from there because we're not taking anything off. If anything, we've made improvements; we've done additional things to try to decrease sounds even further.

My concern is that as Deputy Turner mentioned, it may be advantageous to go out and get some additional readings. I hope the expectation there isn't that if we get additional readings that there's going to be some dramatic decrease based on what we've done. As we explained --

MR. SCALI: That's what I'm hoping.

MR. PRUSSIA: I don't think you're necessarily going to get that and that's because of the high background sounds. It's just not really possible to achieve one, two, three decibels decreases because we're already running up against background noise, and any little thing we do will put us in the mid-50s.

MR. SCALI: Well that's better than 60.

MR. PRUSSIA: We're not at 60.

MR. GILMAN: Richard, if I could jump in? To Dan's point about doing some readings right now, we're definitely not going to be anywhere near 60 right now because it's not the cooling season. The loudest sounds we're getting are June, July, August, and the best we could do this time of year would be to simulate that, to model that because there's no way to replicate what goes on at the noisiest times.

Every time Cavanaugh-Tocci has come, I've been out there helping them do their readings and we have yet to have two nights even close to the same conditions.

MR. SCALI: I guess the issue is where are the readings from?

MR. GILMAN: We've been doing them from the three locations on Clark Street.

MR. SCALI: Ground level?

MR. GILMAN: At ground level and with a pole. We're 20 feet off the ground with a pole. We've also been doing some -- just to get an idea

for a baseline -- some ambient readings over on Bristol Street.

MR. FANNING: But back to your original question, absolutely our intent is to continue to improve it, reduce it, for sure. The curtains are helpful but to Kevin's point, they don't get us three decibels reduction. They are more incremental changes. But we are going to continue to do them because we know that by adding the curtains it can mean another half a decibel. By the consolidation, it can mean another bit.

Our intent is to continue to work on things even though we know it may only get us to -- I don't want to say "only," but it may be a decibel, or a decibel-and-a-half, but that helps. So that is absolutely the goal, to continue to try to make incremental improvements.

MR. SCALI: What is the Deputy Chief's suggestion? You want to take readings for what purpose and at what point in time?

MR. TURNER: Since the existing curtains have been extended and -- when will this

new equipment be installed? The consolidation, is that going to be done?

MR. FANNING: The consolidation is a year-end -- I think we can get that by the year-end.

MR. TURNER: My thought process, Mr. Chair, was with these new improvements to perhaps see where we are, but I suppose it's a moot point if everyone is agreeing that no matter what's done there it will never get to what the ordinance is saying it should be at. It's a conundrum.

MR. SCALI: I think we all agree we're not going to be at 50. That I can't imagine, unless for some reason everything gets shut down completely and you're out of business.

MR. PRUSSIA: At certain times at night, maybe.

MR. SCALI: That's the issue of the hardship I guess. We have to consider that as well.

Comments at all, Commissioner?

MR. HAAS: I've thought really long

and hard about this issue and I agree with the Chairman. I think it's a matter of balancing hardships. The court is telling us we have to balance hardships with respect with who bears the greater hardship, and not minimizing the hardship on either side whether the residential community or the business. There are clearly hardships on both sides. I guess the pressing question for me and I've been really thinking hard about this is whose hardship is the greatest. Being particularly sensitive to quality-of-life issues, I appreciate that.

The other implication or concern I have is that you have a recognized -- you have a collision between two zones, a residential zone and an office zone, and there is an implication that this is a buffer zone. So what does that mean?

The buffer zone to me would suggest that there has to be some allowance made where the occupying entity can't go to the level that would normally be subscribed, in this case 65 decibels. I think that would be unreasonable and I think it

would be ignoring the fact that Idenix is in a buffer zone.

The question I have been wrestling with and struggling with is what does that mean? Is 50 a realistic level to impose upon a company when it is within a rightful zone? The problem is that it's buttressing itself right next to a residential zone. And clearly, I don't believe 65 decibels is an appropriate level because of the proximity of the business to the residential area. That's kind of a tipping point that I've been really wrestling with, with respect to what is a reasonable level to set.

I think we've been through a lot of discussions. And also to the credit of Idenix, we've actually established a baseline where you can back yourself back into the enforcement thing. One of the things I asked early on is let's say for the sake of argument, the Commission grants this variance, how do we in the future then be able to hold you to that variance? By virtue of the fact that you did shut your equipment down, we do have a

baseline. We know how much you're contributing to the ambient area. The difficulty as you point out though also is it fluctuates so much.

So I can see situations where we're going to have an excess of 60 decibels, and the question I've always asked you is why are you taking that responsibility on? Because as soon as it reaches that threshold, the first place the finger is going to be pointed is back to you because you have the special variance.

So those are the things that I've been thinking long and hard about. I have to acknowledge that I think Idenix has worked very hard to try to work with the residents in the neighborhood and be sensitive to it. I just want to be sure that if you do in fact get a favorable decision that it doesn't stop; that this has to continue because you are adjacent to a residential neighborhood.

Again, I think absent some other considerations because I think you've demonstrated to us there are things you can do to try to

minimize the impact and the noise level within that area. So those are the things that I have been kind of wrestling with and it hasn't been an easy proposition for me because it is very complex. We're asked to look at things about ambient noise levels, and noise levels, and it's far beyond me in terms of what that is. I think really the baseline for us is what is truly reasonable, and we have to use a reasonable standard with respect to this application.

MR. WEIDENBRUCH: We've wrestled with the exact same issues, and what happens if it goes over 60 or it goes over whatever the threshold is, and it's certainly not a burden that we are anxious to take on. We don't want to be back here. We don't want your engineer to come out and say there's a continued problem. So we wrestle with the same thing and we're hoping, Mr. Scali, there will be a miracle coming here as well.

MR. SCALI: There's a lot of miraculous cases lately.

MR. WEIDENBRUCH: We don't have an

answer as well. As we have also talked about, the answer that seems to give us the greatest increase, or improvement, if you will, putting up a wall, is something that has not been received well. If putting up the wall would get us the certainty we need to comply with either the variance or the regulation, we would certainly do that.

But by the same token, we don't want to be back here based upon building something that is further aggravating to the neighbors. So we to some extent throw our hands up and say we share the concern and we do not want to be in the situation of being in violation.

MR. HAAS: I think we all kind of agreed and heard testimony from the residents that the wall would just be a greater hardship for the residents. You'd have an impact with respect to light and things like that to the houses immediately adjacent to the property. Even by Tocci's estimate, you're still not going to get down to a 50-decibel level. So I don't know what that establishes. It may minimize the noise but

you're only talking about a couple of decibels.

MR. WEIDENBRUCH: To some extent, you know, throwing it back to the Commission, we're in a situation that we believe is impossible to get down to a certain threshold. We are committed to do what we can but we need something that we can work with that will get us so we're not back here another time.

MR. SCALI: I think you will get further with your solution by the consolidation. I really do. What is the possibility of further consolidation past the five you're talking about?

MR. GILMAN: We picked those five in particular because they're similar uses of the building where it wouldn't impact flow through the building. We've spent more than a few minutes trying to figure out what could be eliminated, what could be removed, consolidated, and things like that. Beyond that we've got mixed usage things: office, lab, and things like that. So this would probably be the last consolidation we could do in that regard without getting into some really weird

dampering things that just would impact the airflow in the building.

MR. FANNING: Bit with that said, there are other options that we can consider that would be more like replacement like we talked about before. Replacement of --

MR. SCALI: Newer machines?

MR. FANNING: Exactly, of some of the older equipment, right. That's probably the next stage. In fact, we actually got some preliminary quotations and a more firm quotation not long ago. So the consolidation and the curtains are the things that we are doing. Or, the consolidation hasn't exactly started yet but will be shortly.

The replacement we're looking at but that starts to -- and it can lead to sound reduction for certain but again it is only incremental, a half-decibel, three-quarters decibel.

MR. SCALI: That's what my point was. I don't feel really comfortable with the 60 decibels. Even if you got some kind of special

variance, I don't really feel comfortable with the 60. That was my point before at the hearing. Is there a way you can get closer to 55, or 58, or wherever it may be by the consolidation and the curtains and all that. Because 60 to me means we can continue to do what we're doing now, and even if we consolidate we don't really have to do that because we're not up to 60 as we are. So what's really the benefit to the residents by us saying 60?

I kind of agree a little bit with the Deputy Chief in terms of seeing what the readings are but I don't want this process to go on and on and on because it's been two years and nothing has changed for the residents at all. They're still there. You're still operating and doing what you're doing. They're still being disturbed. Court actions don't help them immediately. It could take years before that's resolved. The goal has been all along to do something sooner than later.

I know that the curtains are helping a

small bit. I know the consolidation is going to help whether it's one decibel or two decibels. The residents would appreciate that a lot more than waiting in court for two years I'm sure. So I'm kind of weighing that out more. What's the immediate benefit now to the residents? They want to see something now before they see something in 2012 when a court orders you to do it.

MR. GILMAN: I guess in one sense you may think we're being evasive.

MR. SCALI: No, no. I don't think that at all.

MR. GILMAN: We're not exactly sure to be honest with you. If we put some curtains up, it will gain us something but we're not sure until we do it. So that's been the problem here right along.

MR. FANNING: There has been improvement, reduction because of the curtains that have happened, the silencers. The work is being done.

MR. SCALI: The readings show that.

MR. FANNING: Even last summer, some of the modulation of the units, there's additional baffling we put up. So depending on what starting point you want to use, we have definitely reduced it, including this past summer. It's gotten quieter.

MR. SCALI: I think we've seen that. That's my point really. You can do it. I know Tocci says maybe you'll get to 60 but I don't think you're going to get to 60 with the changes you're going to make.

MR. PRUSSIA: Mr. Chairman, I agree. We have very rarely gotten to that point. I think if you were to take a pie, it would probably be half of one percent where readings ever get to that point. The concern we have with going lower than that is if you stand there long enough on the right day, you will get something over 56, you'll get something over 57, and then we're right back here again. Then we're running up into the problem that the Commissioner has explained.

What we propose, of course, is to give

us this cushion, and we of course, will extend to you what we have done for the past two years is our word, our show of good faith that we will continue to work on this issue. Of course, there comes some point in time where there is very little much more that you can do. But we'd be willing to submit to biannual reports, status reports, status updates on the work the company has done to continue working on the issue.

MR. SCALI: That would be a given no matter what we do. We wouldn't just go away, I guarantee you that.

MR. PRUSSIA: To show you that we still are working; that we're not just sitting on our hands. And oh, we've got this 60 variance, we can just skirt by now. that's not the intention at all.

MR. SCALI: I don't get that feeling but to me 60 means you can do what you're doing now. Not that you would, but I mean there's no goal for making it really better at that point.

Deputy Chief, I interrupted you. I'm

sorry.

MR. TURNER: Just another thought that I had had is the ordinance itself; it's just another concern. If this thing keeps dragging on, and it's already begun its stages in the court process, my concern is that during this court process or at the end of this court process if Idenix should prevail, what does that speak of the ordinance itself? Does that mean we no longer have an ordinance? Would it be in question? would it be legal? Would it be unconstitutional? Do we lose the ordinance itself? So I'm just trying to take that into consideration as well.

It's kind of a balancing act. Do we go with the variance with restrictions; is that a better move than losing the ordinance itself through the court system? It's just another concern to throw in the mix.

MR. SCALI: A big question.

MR. PRUSSIA: Mr. Chair, if I may?

MR. SCALI: Yes.

MR. PRUSSIA: I'm not your counsel so

I don't want to be -- I don't want this to be --

MR. SCALI: We've already been advised.

MR. PRUSSIA: I just want to be clear for purposes of the record. What we are challenging under the ordinance is simply, not the constitutionality of it, but how one takes measurements under the ordinance, whether you should be on the ground, whether you can be up in the air; what's the meaning of a lot line; whether there's certain controls that need to be taken under considerations, things of that nature.

So if we were to prevail in that scenario that this were to go all the way through litigation, there would still be an ordinance. It would just be a matter of how you implement the ordinance, how you enforce it. That is what we're challenging.

MR. SCALI: That would be your interpretation but a judge may interpret it differently. According to our council has told us that -- well, in terms of what -- anything is

possible is what I'm trying to say. A judge could order anything.

MR. PRUSSIA: That's not the remedy that we've asked for.

MR. SCALI: I need my counsel to tell me to keep my mouth shut.

MR. PRUSSIA: The remedy that we have asked for has been very narrow in that sense. We have not asked the judge to throw out the ordinance.

MR. WEIDENBRUCH: Final comment from me: certainly as the Deputy Chief indicated if the ambient level is at such a level that is above the ordinance, the issue of the reasonableness of the ordinance is certainly something that needs to be considered. I think it's a very germane question. What does that mean vis-à-vis the ordinance? If that is something that will have to get raised with the judge -- but again, it's something that's beyond our control if the ambient is above that threshold, it is virtually literally impossible to get below that level.

MR. SCALI: Does anybody else want to comment? If you guys can move aside, we'd appreciate that very much.

You've been very patient. Just tell us your name for the record, please.

MR. LINDQUIST: Peter Lindquist, 11 Market Street. I just don't understand why this does not get solved. It is a solvable problem. It's a matter of dollars and cents.

MR. SCALI: Tell me what it is, please.

MR. LINDQUIST: According to their acoustical engineers that equipment could have been designed and put on that roof in different locations, a combination of split systems and that type of thing so that they would have met the standard. And they knowingly put this equipment up there knowing that there was a noise issue since 2005, and the vast majority of the equipment was placed up there post-2005. So I just don't understand why they can't go back and do this properly.

MR. SCALI: You are saying that the consolidation is part of it but they could do more besides the consolidation.

MR. LINDQUIST: I think I described it as Band-Aids and it may be very expensive Band-Aids but Band-Aids nonetheless. They were told by Cavanaugh-Tocci that these things would not solve the problem; it would only reduce the noise a small amount. And they know that anything they're going to do in the future like this is only going to reduce the noise a small amount. They need to take some major steps in order to quiet this.

MR. SCALI: Are you of the realization or the idea that we're never going to get to 50 without them shutting down? I hope the neighbors realize realistically thinking that we're not going to get to 50 without them completely shutting everything off.

MR. LINDQUIST: I think 51, 52 is certainly doable if they took the proper steps, even with the background noises as measured in July 2008, which I believe are the true ambient noise.

Granted, it is different at 6:00, at 6:01 p.m. than it is at 9:00, or 2:00 in the morning. There is certainly more noise at 6:00 p.m. or 6:01 p.m., but once you get -- and on weekends, it is a quiet neighborhood, or it used to be.

MR. SCALI: Is it quieter at 6:00 when they stop working? Are they still working after 6:00 p.m.?

MR. LINDQUIST: No. I'm saying that the neighborhood, the background noise in the neighborhood varies dramatically during the day and in the early evening hours, but come 7:30, 8:00 at night, and particularly on the weekends, it used to be very very quiet neighborhood, contrary to the way it has been characterized.

I don't understand why this can't be done. It is a solvable problem.

MR. SCALI: I am glad to hear you are so optimistic about it.

MR. LINDQUIST: I've had a lot of years experience with this type of thing and it is a solvable problem. It's a matter of dollars and

cents.

MR. SCALI: Thank you. Anybody else?

MS. VANBEUZEKOM: My name is Minke Vanbeuzekom, V-A-N-B-E-U-Z-E-K-O-M, and I'm here on behalf of the neighborhoods of Cambridge, but most specifically the Area 4 neighborhood, which is this specific Market Street area as part of the Area 4 Neighborhood Coalition. So I'm asking you to think about this from the precedent-setting nature.

We have been following it from the specifics of Idenix versus the Market Street neighborhoods, but this is I think the beginning of what you're going to see. With the continued development of commercial properties in Cambridge there is just by definition going to be more interaction between the neighborhoods and these commercial entities. Most of them won't make as much noise as a fully functioning lab with lots of fume hoods, but of course, air-handling equipment is loud.

So No. 1, I want to make sure that there is some kind of process to make sure that

anyone who applies for a building permit, or any licensee really takes a serious look at what kind of noise they will be creating, especially when they are so close to a neighborhood.

And No. 2, there's no way that I think you should allow them to get this free lunch. So probably 60 decibels is probably the highest that they would ever get, and for you to give them that much of a buffer is as you pointed out sort of essentially saying you don't need to do anything different. If you give them the variance, there is no more pressure on them to continue making the changes that Peter Lindquist has said they can make, and they have said that they can make. It's not cheap but you can't monetize the hardship that the neighborhood is -- I don't want to use the word "suffering" -- experiencing, and you can so easily and clearly monetize what their hardship is.

I know you're taking all this into consideration but I am one more voice to say think about the precedent-setting nature of giving them this variance? And also figure out what kind of

process you can put in place to make sure it doesn't happen again where after the fact, we're saying, "Oops, we probably shouldn't have allowed them to put all that equipment on the roof."

MR. SCALI: I just want to point out -- I mean I know you're involved in City politics and you were a City Council candidate. I don't know whether the results have come through or not.

MS. VANBEUZEKOM: I did not win. Are you sorry?

MR. SCALI: I'm sorry for any candidate that didn't win.

MS. VANBEUZEKOM: That's 21 people.

MR. SCALI: The process is bigger than us in terms of the noise ordinance. We just enforce --

MS. VANBEUZEKOM: You're one small part of it.

MR. SCALI: It may take city councilors and the city manager to look at the process to order other departments to do that.

MS. VANBEUZEKOM: There are various

pieces that interacted with you guys. When the flammable permit came before you there might have been a point to intervene at that juncture. I don't know when the other permits or licenses came before you, but to have a comprehensive look at all of this is part of what your mandate is I think. But it is bigger than you too. And the fact that only three city councilors wrote something is a little bit disappointing, but they were probably busy with other things like their re-election.

MR. SCALI: Thank you very much.

MS. LINT: Actually more than three city councilors did; I just had two today.

MS. VANBEUZEKOM: How many did total?

MS. LINT: Councilor Toomey, Councilor Davis, Councilor Lemar, Councilor Kelley.

MS. VANBEUZEKOM: Four of nine.

MR. BERGMAN: Gerald Bergman, 82 Elm Street. I just wanted to just briefly say again, I was involved in the down-zoning of that property in the '90s and we spent a lot of time trying to get it to a one-story building thinking that it would

be office, and it turns out that we end up with a pharmaceutical laboratory. Then I have the sense that we've created the concept of a buffer zone and I'm not sure where that buffer zone exactly comes in the world of Zoning.

There is an allowance, magically or otherwise, that people living next to it can now have the expectation that they may be faced with doubling the noise. When we did this down-zoning we had no idea. A, we weren't smart enough to know you could put a lab in. We did not know that the Commission, or whoever, can create this concept of a buffer zone that allows a doubling of the noise. That's something that I think your decisions really affect concepts of zoning. And we just didn't know that, and if that was the case then, you know, that we could double noise on this buffer zone concept, we may have done something differently. But I think we have to know kind of what the rules are.

I think Idenix knew what the rules were when they moved in, when they signed off with their engineering report; that when we're in

operation, we're going to meet the ordinance. That's something that they signed on. What does that mean? Does that hold them to any obligation when they get all these permits?

When they came in I remember we had problems with their increase in the licensing, knowing that that would increase their capacity, and they added more roof top things. Again, I think that was addressed. If you're going to do licensing things, can't we ask about other kinds of violations of City ordinances.

So I don't know where we go on this slippery slope of zoning concepts. This concept of a buffer zone; where does that come from? Why couldn't we have held something on increased licensing?

And then I want to go into just the last sense of a moral blackmail that I see. Not a legal one but a moral one. It is clear that the Deputy is very concerned about lawsuits, and I'm sure everybody is; that could this be the end of the ordinance? From my experience, I see this as

sort of a moral blackmail. If we can get what we want, be it 60 decibels, this lawsuit is going to go away. I believe that that's part of the bargain.

I want to talk about the moral blackmail on maybe a 14 or 16 foot wall. If we don't get what we want, we will build a 14 or 16 foot wall, which is more than double what the zoning really had in mind. We're not talking about consolidating our equipment, we're not talking about moving it to the far end of the building so we can build another structure that wouldn't block the light. We're not going to spend that kind of money.

MR. SCALI: They're willing to spend \$1.4 million to build the wall, which to me -- that they'll take that money and put it elsewhere is what you're saying; right?

MR. BERGMAN: They're going to build a wall. They don't say where they're going to build it. We've talked about a consolidation of equipment so a wall or some structure would be on

the other end of the building. They have not agreed to any of that.

We have said that we're dealing with a multibillion-dollar corporation, so if you're going to raise the money of what they're spending, we can go through that scenario of their ability to pay. I see a moral blackmail in the community with the wall with the intent of that where they are threatening to but not just the building the placement government and a moral blackmail a lawsuit and thank you.

MR. HAAS: Mr. Bergman, this notion of a buffer zone is not a creation of the Board; it's actually contained within the ordinance. I spent a lot of time talking to the City Solicitor about the interpretation of that buffer zone. It was there for a reason. I just want to make it very clear --

MR. BERGMAN: I didn't know how it related to the ability to give a variance, which I don't know if you've ever done in the history of this Board.

MR. SCALI: No, but it is in the

ordinance as to --

MR. BERGMAN: The concept that there's a buffer zone that would allow the doubling of the actual noise level.

MR. SCALI: I think that's the question we're struggling with. If in fact we do accept the concept that they're within a buffer zone that you can't have a commercial zone and a residential zone coming together and all of a sudden expect that at that line the noise stops. The concept of the buffer zone was that we need to know that there's some kind of mitigation that takes place from those two zones coming together.

So the question is in my mind: What does that buffer zone mean? It's there for a reason and I think realistically you can't expect noise, just by its very nature, to stop right at an imaginary line that's been drawn with respect to it.

So the question we're working with, or I'm struggling with, and it's an important one, and I've spent a lot of time talking to the City

Solicitor about is: What does that all mean; that buffer zone? How should it come into play with this application?

MR. BERGMAN: Believe me, when we did down-zoning knowing that could be a staffing issue that we never had explained to us that a buffer zone concept would ever in our wildest imagination double the noise level. Does that mean then that any business or corporation that's in a buffer zone can have the expectation that they may be allowed to double the noise? I don't know that that was -- we created, you know -- we had other understandings.

MR. HAAS: I don't think there's an automatic connection between --

MR. SCALI: It's a case by case basis.

MR. HAAS: Yes. Just because you're in a buffer zone automatically there's a rule now that you double it. I think that's the thing we're struggling with.

MR. SCALI: It's not automatic but it's possible.

MR. BERGMAN: I understand that, but there is that feeling of how do you -- then we get into hey, they did it for us, we go to court again, and where are we? What is the whole meaning of this?

MR. SCALI: We don't make our decision on whether there's a court case or not. There are many court cases that the City has during the year so it's not a matter of being afraid of that. On one side or the other there could be a court case.

MR. BERGMAN: Maybe I misinterpreted the Deputy Chief's comments.

MR. SCALI: I think he was just trying to point out that there was that process ongoing but we're not afraid of that by any means. It doesn't determine our decision by any means.

MR. BERGMAN: I got a little different sense, that's all.

MR. SCALI: Thank you.

MR. LINDQUIST: Just one issue about the buffer zone.

MR. SCALI: Yes.

MR. LINDQUIST: It seems to me that if there was a buffer zone there and this buffer zone existed, then why did the company put 80 percent of their equipment in this buffer zone?

MR. SCALI: They probably didn't know they were in a buffer zone. We would have to determine whether that is a buffer zone. That's not an automatic type of thing. It's a noise ordinance creation. It's not a zoning creation.

MR. LINDQUIST: We're talking about granting a variance because this is in a buffer zone and now you're saying you haven't ruled whether this is a buffer zone? I think there are two buffer zones here.

MR. SCALI: We're not talking about zoning; we are talking about a noise issue, whether this is a buffer zone for noise.

MR. LINDQUIST: But when this was downed-zoned the neighborhood understood that this building was going to be a buffer to the industrial zone to the south. That was the intent. This whole concept of if there is a buffer zone there

and it's 50 feet from the midline of the road, because that's where the 01 and the residential zone meet, 50 feet on either side of that. So the first 35-feet, four-inches of that building is in that buffer zone.

If you look at photographs of it, of the roof top, most of the equipment is placed in that 35 feet, which was placed there, most of it after they knew there was an issue about the noise. So I don't see how this concept of a buffer zone is very valid if you put the noise generating equipment in the buffer zone.

MR. SCALI: I'm not sure I'm following you. We're not talking about a particular section of the building, we're talking about the total district of it.

MR. LINDQUIST: The first 35 feet of that building all along Clark Street lies in that buffer zone, supposedly.

MR. SCALI: I think we are talking about the building itself, the whole district.

MR. LINDQUIST: There are two things.

There's the concept of the whole building being a buffer to the industrial zone to the south, which back in the '90s was what the neighborhood asked for and was given.

MR. SCALI: I think we're talking two different things. You're talking zoning and we're talking noise. So it's two different concepts.

MR. LINDQUIST: That's one concept. The other concept is the noise buffer as in the ordinance. I'm saying that the first 35 feet of that building lies within Idenix' half of that buffer zone. The buffer zone is 50 feet on either side of the property or the line that separates the two zones.

MR. SCALI: Where are you getting the 50 feet?

MR. LINDQUIST: I believe that's in the ordinance.

MR. SCALI: You're talking zoning. We're talking two different ordinances; that's why we're getting confused. You're talking a zoning ordinance, we're talking a noise ordinance.

There's no 50 foot ruling in the noise ordinance.

MR. LINDQUIST: It doesn't define?

MR. SCALI: I don't believe so. I could be wrong but I don't think it defines by feet.

All right. Thank you.

MR. PRUSSIA: Could I just make a couple of comments in rebuttal?

MR. SCALI: If you can do it very briefly.

MR. PRUSSIA: I just want to be clear that the units are on that side of the building because that's where the labs are and that's where it needs to be exhausted.

I also want to be clear about something else. If you look at the Cavanaugh-Tocci report, the base building alone, the base building equipment alone, if that were running it would be over 50 with the high background sounds. I just want to make that clear also.

As to the precedent point --

MR. SCALI: I'm not sure that that's

true according to the Cavanaugh-Tocci report but I'll look at it again.

MR. PRUSSIA: The last one, the one submitted last year.

As to the precedent point, I also want to be clear that this is a very unique situation with the buffer zone issue in the sense that where we are located, it's just one building zoned office and directly next to us there's this huge industrial zone that can emit 70. And that is what is creating all of this additional noise, and that is what makes this situation in particularly unique. As opposed to just having a new zone running up against a residential zone -- I mean, a non-residential zone running up against a residential zone. It's a residential zone, an office zone. That's one building and a huge industrial zone that emits at 70, and that's what's contributing significantly to the background noise. So there is no huge precedent that is being set here.

Lastly, I just want to say, and I wish

the councilors that had submitted their letters were here and had participated in this process for the past two years, they would know that we didn't just walk in this door last month asking for 60. We've been here for two years working on this issue. This is not a free pass.

When Ms. Boyer took her first measurements way back in April of 2007, I think she read 65. Last December, she read 55 from the window and 50 at the ground. That is a significant reduction. And anyone that can suggest that somehow the company is just --

MR. SCALI: I think we admit that that we've been working on this for a long time.

MR. PRUSSIA: I just want to make it clear for --

MR. SCALI: I think the Commissioners realize that but people who may be newer to the process don't know that. We certainly have taken note that you all have been working on this very diligently, and what the solution is I don't think anybody knows at this point.

MR. PRUSSIA: Thank you for your time.

MR. SCALI: Pleasure of the
Commissioners?

MR. HAAS: It sounds like --

MR. SCALI: You don't have to talk,
Commissioner.

MR. HAAS: It sounds like you've
already made up your mind.

MR. SCALI: No, I haven't made up my
mind. I have an idea of what you might want to
hear. I think I like the idea that the Deputy
Chief is talking about in terms of finding out --

MR. HAAS: That's what I mean.

MR. SCALI: Well, I haven't made up my
mind. This is discussion. In terms of discussion,
in terms of the idea about finding out what the
five consolidated units can do, and what the
curtains can do. I'm not really sure that during
the wintertime that that can take place without the
AC on and all that. I think that will tell quite a
lot as to what direction we are moving in.

MR. HAAS: I guess there's two things.

One of the things Ms. Lint and I have talked about is what is the current standard of the HVAC units 18 years later. You admit that your units are 18-years-old, so what is the current standard in terms of noise emission from comparable units? Not that you'd have to replace those units but my thinking would be that you need to bring them with line of what the current standard is.

Secondly, I think -- I lost my train of thought. I guess the question is, and I don't expect an answer because it's following your line of discussion, Mr. Chairman, with respect to the viability of it being 60 or something less.

MR. SCALI: I don't feel comfortable giving them 60 even if they corrected everything at this point.

MR. TURNER: Mr. Chair?

MR. SCALI: Are you finished?

MR. HAAS: I'm done.

MR. SCALI: Deputy Chief.

MR. TURNER: I think clearly at this point I would not be comfortable making a decision

one way or the other, and yet clearly, I think a decision needs to be made. I don't want to see this dragged on, and on, and on as it appears it's going to be.

However, I feel that every time we have these meetings and I get input from both Idenix and from the neighborhood, I pick a little bit more out of the conversations that kind of gets my thought process thinking in other directions. I've got a couple thoughts that I would like to run before the Commission and perhaps other City departments again, before a decision is made if that's at all possible. So I would be looking to continue this in some manner at this point.

MR. SCALI: I think I agree that there has got to be some process whether what department does what I guess is the issue in terms of when those units get put on the roof. Someone says to somebody, I'm not sure who that is, whether it's Building or some other department that says don't place it over here, place it over there. I don't know exactly how that works, and maybe there isn't

a process for that. I don't know. Maybe the Building Department doesn't do that.

When you sign that building permit that says I'm going to comply with the noise ordinance, whether you really realize what you're signing and whether you can comply with that is the other issue. I know people just think just I'm going to comply and hopefully it's going to be okay when I sign it. And when those units get up there on the roof everything is going to be great. And it's not just you, it's any company in the City that puts units on the roof or elsewhere in the City. So I think you're right, there should be better process for that, but that is of course, above us.

So I guess I'm going to make a suggestion because I don't think either of you have any other comments. I think I would really like to see those five units consolidated and see what that does, and what those curtains are doing up there.

I like the idea of what the

Commissioner is saying, and what the neighbors are saying, too; that there are other things you can do to consolidate and update those units. I'm not sure how old the other units are. I know Ms. Boyer has had great luck with just small buildings where they tighten a wheel or change the unit to a newer model, because 18 years later, these units become worn out and noisy. I don't know how expensive it is to change or consolidate further units, but I do think you can get a long way with those five.

I know you said maybe a half-decibel, I think you'll probably get more than that with those five units being consolidated. I really do. I think you probably can do better with other units being updated and changed and consolidated. I think if we can kind of work towards that goal by a certain date that we can reconsider the special variance at that point in time.

Discussion on that?

MR. HAAS: Like I said, the one thing I would like to know is given the sizing of the units, what is today's standards with respect to

this noise decibels?

MR. TURNER: Could you repeat that?

MR. HAAS: I have to believe technology has advanced itself in the last 18 years that HVAC units have gotten quieter. I could be wrong but. . .

MR. FANNING: There's only one unit that's 18 years out.

MR. SCALI: Other than the five you're talking about?

MR. FANNING: All the other ones have been done, replaced as of 2002, 2003, or newer. There's only one unit that's up there that's older than that, so it's not -- I just want to --

MR. HAAS: Regardless, I would like to know what a new unit standard would be as compared -- because you have three units up there; right, as I understand it? Is it three HVAC units that are up on the top of the roof?

MR. FANNING: There's more than that.

MR. HAAS: The others are hoods and vents and things like that.

MR. TURNER: Some are ventilation.

MR. SCALI: There's 18 different structures.

MR. HAAS: I know there's 18 structures. I thought there were three units.

MR. TURNER: Specific to HVAC.

MR. SCALI: Five of them are going to be made into one soon.

MR. HAAS: How many are there? There's more than three.

MR. GILMAN: HVAC units?

MR. HAAS: Yes.

MR. GILMAN: There's 16.

MR. HAAS: Those are all HVAC units?

MR. GILMAN: There are 16 HVAC units.

MR. HAAS: How many structures on the roof right now? There's 18; right?

MR. GILMAN: Individual, air?

MR. HAAS: Whatever, vents?

MR. GILMAN: There's 35 or 40 units up there.

MR. HAAS: Pieces of equipment?

MR. GILMAN: Right, including exhaust fans and HVAC units.

MR. PRUSSIA: Mr. Chairman, if I can offer just a quick thought in response to -- I don't know if that was a thought or if that was a proposal that you're making.

MR. SCALI: Discussion.

MR. PRUSSIA: My concern is that the company spends some more money, they do this, they change this out, they change that out, they consolidate this, and we're right back here with a half-decibel decrease and we still have no variance. I would propose instead that you issue a variance with those conditions.

MR. SCALI: I'm not sure you'll like what I have to propose if that's the case, because I'm not in favor of giving you 60 decibels. My feeling is, and I'm only one vote, is I'm looking at 55 decibels. If you can adhere to 55 decibels with the conditions, that would be my suggestion for a special variance. From what you're telling me, you don't think you can get that close.

I'm not sure how the other Commissioners feel about that. And then we'll be heading right back in court again, which is probably where we're going either way, anyway, I'm guessing. That's why I'm hoping that if you make these changes and you take the readings, and we kind of figure out where we are, if we're at 56, 58, okay, we're in the right direction. During the slow period -- maybe we'll figure out what it's like in the slow period as opposed to when it gets a little warmer in the spring.

MR. PRUSSIA: Can I just ask one point of clarification?

MR. SCALI: Yes.

MR. PRUSSIA: Where is your measuring point for that 55? Is it from the window or from the ground?

MR. SCALI: You're using measuring points that Cavanaugh-Tocci gave you, and we're thinking of the measuring points where Ms. Boyer measured. Ms. Boyer measured from the window across the way from Mr. Lindquist's property, so

our readings are probably a little bit closer to the point of impact than from where you were measuring from.

MR. PRUSSIA: Thank you.

MR. SCALI: Would you want me to consider the 55?

MR. PRUSSIA: Of course, what I would prefer is that you would consider our proposal, but I think that what we need to do is to confer on that.

MR. WEIDENBRUCH: Again, the concern is that 55 with the requirement of making the change, if we spend several hundred thousand dollars and we don't get to 55, we haven't accomplished --

MR. SCALI: That's why I was going to give you the opportunity to figure out if you can make it first.

MR. WEIDENBRUCH: I think we ought to do that.

MR. SCALI: I think 55 is more reasonable for the neighborhood. They're saying

51, 52. We're not going to get to 50. You're not going to ever be 60.

MR. WEIDENBRUCH: I think if we have the 55, to some extent our hands are going to be tied that we're going to have to build a wall.

MR. SCALI: I don't think that that's a real consideration from our point of view.

MR. WEIDENBRUCH: No, I'm not saying it is. I'm saying that if you mandate a 55, I think we're left with few options other than to build a wall. Because we may be able to get to 55 with a wall; whereas, it seems with the other changes we likely will not. So for us, if we were to spend several hundred thousand dollars to build a wall to get it to 55, rather than spending several hundred thousand dollars to get to a point that may not attain that.

MR. SCALI: I'm not sure you'll get past a lot of the requirements for building a wall. Structurally, zoning-wise, all of that will come into play as well. It's way beyond us for building a wall.

MR. WEIDENBRUCH: Neither here nor there, we've done that analysis and I think it's something that can be done. And we're not anxious to build a wall is the point.

MR. SCALI: No, and neither is the neighborhood I don't think. Their reasoning is that they'd prefer you to look at all of those units, see what you can consolidated -- I mean I'm just gathering, I'm just guessing what they're telling me. They want to see it at 50. I know that. That's their ultimate goal.

But if it's not going to be 50, they're saying consolidate, move some of those units. Put them in a spot where you know it's going to be a little less burdensome to the neighborhood. Take your \$1.4 million that you were going to build a wall with and do all that work to move those over to where they might be less burdensome.

Is it a risk? Probably it's going to be a risk for you because you can't guarantee it's going to come down to 50, 52, or 53, or whatever it

may be, but it may guarantee you being there for a long period of time. I don't know. I don't think anybody wants to be in court for three years testifying about five decibels. They just want quiet.

Further discussion?

MR. HAAS: No discussion.

MR. SCALI: The motion is --

MR. HAAS: I don't have a motion.

MR. SCALI: My motion is then to continue the matter for them to consolidate the five units, continue with the curtains, and come back to us with readings on those items before we consider the special variance, and other solutions if you can as well.

MR. TURNER: Timeframe on that?

MR. SCALI: Did you say by the end of the year you're going to plan on doing this.

MR. FANNING: We can do the five by the end of the calendar year, yeah.

MR. PRUSSIA: If I can just interject? The real issue seems to be during the cooling

season so it seems to make sense if anything, to continue this until that point.

MR. SCALI: We're talking six months down the road.

MR. PRUSSIA: I know, but we have to plan in the real world. That's what's giving us the issue.

MR. FANNING: The curtains as you probably know, we have to remove the bottom part just to work with the snow load. So to Kevin's point, the winter is less than ideal in terms of measurements.

MR. GILMAN: And to Paul's point, I'm not sure exactly when we would do this on a routine basis, but we've kind of targeted November 1 for taking those skirts off each year because of the snow. So I'm planning on after today taking them off so we don't get in trouble.

MR. SCALI: What I would hope you do then is when you have those units consolidated, you put those curtains back on; take your readings with the curtains and with the five consolidated units

and figure out where we are from there on a non-snow day, maybe. Does that make sense?

MR. GILMAN: Yes. We can do that.

MR. SCALI: Discussion?

MR. HAAS: No discussion.

MR. SCALI: Adding to the motion then for review our first hearing in February. We don't have a hearing in February, do we?

MS. LINT: Yes, at the end of February.

MR. SCALI: It's February 27 then because we only have one hearing in February.

The motion then is to continue to the hearing in February for discussion and review of the results of the consolidation of the five units with the curtains on for readings from I guess, Cavanaugh-Tocci and then from Ms. Boyer as well.

MS. LINT: I can't hear if you're speaking. Could you repeat that please?

MR. SCALI: February 23 is the date.

MS. LINT: No, it's not. Oh, yes, it is. Sorry. I had my dates wrong.

MR. SCALI: The motion is to continue

until February 23 for our review and discussion with regards to readings from Cavanaugh-Tocci and Ms. Boyer on the consolidation of the five units, and with the curtains, and for any further solutions you may have on the updating. I think you wanted information with regard to the standard.

MR. WEIDENBRUCH: Would you like us to coordinate with Ms. Boyer?

MR. SCALI: Yes, please. Discussion?

MR. HAAS: Would it be the intent of the Commission at that point in time to render a decision with regard to the application?

MR. SCALI: I would hope. I can't guarantee, but we hope. I guess what I'm trying to say to you is the goal is let's do what we can do to bring it closer to 55 than to 60, so we can kind of resolve this issue without -- we're going around and around and around. We're getting absolutely nowhere. So let's just be plain about it. Fifty-five is my goal. I don't know what the other Commissioners will vote. I think the neighbors would be happy with something less than 60. I'm

sorry, they'd be happy with 50 but would consider something more than 50, and you'd be really happy if you could continue to operate and have your units going.

All right. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thanks.

MS. LINT: Can we go off the record for a minute?

MR. SCALI: Sure.

MR. SCALI: Let's go back on the record. I think we have only one other matter which is Go Cafe from October 27; right?

MS. LINT: That's it.

MR. RAFFERTY: We submitted a letter. I don't know if the Commission was --

MS. LINT: Yes. I was able to outline it to Commissioner Haas this morning.

MR. SCALI: I didn't see that. Why don't you pass it this way, please.

MR. RAFFERTY: And Mr. Goldstein could just briefly -- he did meet with the proprietor of the adjacent business. I do think that there's a macro solution particularly around the trash. We didn't get an opportunity really to -- we didn't want to say anything that could be viewed as critical of our predecessor because it's a wonderful establishment and we have a lot of respect for him.

But Mr. Goldstein brings a whole different business model to issues around trash, recycling, the ecology. So to listen to all the

stories about the past, they're certainly relevant but I think in this case, and Mr. Goldstein can certainly share with you, it's going to be a whole different approach to every aspect of the food business. His whole motivation in getting into a cafe of this nature is to bring the same business model and green concepts of the Clear Conscience Cafe to a more full-service restaurant.

It's an exciting opportunity for him and Mr. Kutner but they're not -- they're looking to become a model, frankly.

MR. SCALI: I was confused about who has rights to that back alley? Is it your alleyway?

MR. RAFFERTY: If you look at the property line, the only one with the rights to the alley, as that term is defined under real estate parlance, is the owner of the property. There is an agreement in place between Mr. Gaudet and Mr. Christopher, the operator of the Westside Lounge, where he actually allows him to store his dumpster there. That's an agreement that Mr. Goldstein is

prepared to work with Mr. Christopher. He said they met together and he found him exceptionally receptive.

Do you want to speak for a minute?

MR. GOLDSTEIN: Yes. Just to be clear, it was a phone conversation. I haven't really met this guy. We had a great conversation. I've got five or six businesses, all of which are distinctly different but linked by this interest and passion I have for environmentalism. So this is no different.

In my current environment I'm composting, I'm recycling. Everything that I send out of that shop regardless of what waste stream it goes into has a reduced eco footprint. The content of the Cafe is all organic, and while the common acceptance of organics is about personal health, for me it's a correlate to agricultural sustainability.

So I'm using that same principle here, right. For me, opening up a business that doesn't have that threaded through its operations is of no

interest to me.

MR. RAFFERTY: Specifically though to the parking lot, right, the rear entrance of the Westside exits onto their property, but they through this agreement have the dumpster there.

MR. SCALI: So it's just you and Westside that's going to be back there?

MR. GOLDSTEIN: Westside.

MR. SCALI: You're giving them a spot, and you have a spot for your dumpster?

MR. GOLDSTEIN: That's right.

MR. SCALI: Where is their dumpster going to be on the lot?

MR. RAFFERTY: Probably where it is today.

MR. SCALI: Same spot where it is. So Charlie's is going to be on --

MR. GOLDSTEIN: It's on my property.

MR. RAFFERTY: The two dumpsters are next to each other.

MR. SCALI: And no one else has any rights to have a dumpster back there?

MR. GOLDSTEIN: That's correct.

MR. SCALI: Who is parking back there?

MR. RAFFERTY: It's his property so employees, patrons.

MR. GOLDSTEIN: Sy Gaudet who is the current owner, or previous owner, has a cooperative relationship with the owner of the Westside Lounge. He affords him one parking spot there. I have committed to meeting with Charlie for a cup of coffee, and he's open to the ideas that I have, and I'm telling him that I would like to be a cooperative neighbor. On the phone, he seems like a very cool, nice, pleasant, reasonable guy.

MR. RAFFERTY: You know the way you'd like businesses to operate so they don't have to come here and have walls and things put up. They're going to talk and make it work.

MR. SCALI: How many spaces are back there?

MR. RAFFERTY: The area itself appears to accommodate several number of cars. It's been used as parking since 1949. It is clear that the

parking can't spill onto the sidewalk. It serves as -- it does accept some loading but it is a back private driveway surface parking area. It would appear that it can accommodate several cars.

MR. SCALI: So you're not going to give me a number?

MR. RAFFERTY: No, we're not.

MR. GOLDSTEIN: The message that I tried to outline in my letter is that for sure, we're the kind of proprietors that understand that if there's a sidewalk thoroughfare, that it needs to be unobstructed, and we're committed to being vigilant.

MR. SCALI: So you can't block the sidewalk; you can't park on the sidewalk; you can't block the driveway; and you can't block the street.

MR. GOLDSTEIN: I think it's more common sense than anything.

MR. SCALI: No one is paying for parking?

MR. RAFFERTY: No. No issues about a parking license.

MR. SCALI: So it will be your patrons, your employees?

MR. RAFFERTY: And probably fewer patrons. Remember the big issue is who's going in and out of the door. And as you see in the restriction here, the door is not going to be accessible for patrons.

MR. SCALI: No customers can go in and out that door?

MR. RAFFERTY: No customer in or out that door. It will accommodate deliveries during delivery hours, and only used as secondary emergency egress. And that was a condition that's been around the license admittedly for a long time, and perhaps -- we've heard stories that the attentiveness to that issue may not have been as diligent as time went on. I suspect that the change in the smoking ordinance may have led to some practices in the back alley.

MR. SCALI: So no smoking back there?

MR. RAFFERTY: No, absolutely no smoking back there. That is not an area where

patrons can go.

MR. SCALI: Customers or employees.

MR. RAFFERTY: Right, I mean it's not a place to gather. Customers can't go out the door there. So if a customer wants to smoke, there is the sidewalk on Mass. Ave.

MR. SCALI: Employees can get out there but they can't smoke out there?

MR. RAFFERTY: Not as a gathering point, no. But if an employee were to light a cigarette on his way to a car, I don't think --

MR. SCALI: No one is going to be hanging out there?

MR. RAFFERTY: Exactly.

MR. SCALI: So no cleaning your mats back there and all that?

MR. GOLDSTEIN: No.

MR. SCALI: You're not going to do that. Your trash will be picked up?

MR. RAFFERTY: He's already been to the place to examine the drains and all that. There are adequate ways to address that within the

system now; right?

MR. GOLDSTEIN: Yeah. I think that I tried to answer the questions as best I understood the issues to be presented.

MR. SCALI: So three times a week pickup?

MR. GOLDSTEIN: That's the current schedule.

MR. SCALI: Is that what you're going to maintain you think, maybe?

MR. GOLDSTEIN: I'm maintaining that because it seems prudent. Then, and I think you have some insight into my current operation that there's an implication about that. When you start to have this focus on A, recycling, and B, composting, and C --

MR. SCALI: So the truck will be coming to the back?

MR. RAFFERTY: Right, as it does now. But I think the interesting thing here is there are opportunities for economies to be achieved with the abutting landlord. There are shared dumpster

concepts, there are compactors depending on what the waste is. Sometimes if it becomes less a bigger container, there's less frequent pickups so less conflict with pedestrians.

MR. SCALI: Well, you know we have a new dumpster law. If you have a dumpster, you have to have a permit for the dumpster. So if you have a toter or a big huge barrel, you don't need a permit for that, and your pickup could be in the front as opposed to the back.

MR. RAFFERTY: I think between the two of them -- and then you have active loading going on at the Evergood on the corner, and they are also in the back. I think he's very committed to coming up with a macro solution and improving on the condition.

MR. SCALI: Discussion?

MR. HAAS: I'm very confident about Mr. Goldstein's operation in Central Square, and I'm also very familiar with the fact that he has a very distinct philosophy that's going to improve not just his business, but the entire area. I know

Mr. Goldstein is active enough that he's not going to be quiet about it. So I think he's going to have influence in terms of his neighbors, and I think it's going to be a positive impact for that neighborhood. I'm confident that we'll see a change over there.

MR. SCALI: Comments?

MR. TURNER: No comments.

MR. RAFFERTY: Do you know the title Mr. Goldstein has acquired?

MS. LINT: I do.

MR. RAFFERTY: They call him the young --

MR. SCALI: Mayor of Central Square.

MS. LINT: Carl Baron.

MR. SCALI: The young Carl Baron.

MR. RAFFERTY: And as Mr. Rossi noted, anyone under 90 is considered young.

MR. SCALI: Big shoes to fill, if you can.

Does anybody want to comment?

MR. PATEL: Just because it was such a

disorganized presentation the last time it should be clear that a lot of the neighbors -- I've sent them photographs of his business and they're all in support of the business basically as it has been run, and as it's probably going to be run in the new space.

We really distinctly only have two concerns and they're going to be addressed already because the abutter has already agreed to that and there's already a solution in place.

MR. SCALI: I think you'll see a huge change just knowing how he operates his business already from our past experiences. It's not the same concepts at all.

MR. PATEL: And I've been to his business plenty of times.

The only thing I wanted to make sure is clear as part of the process of the hearing is will patrons be able to park in the back?

MR. RAFFERTY: Yes.

MR. SCALI: But they can't block the sidewalk, and they can't block the street.

MR. RAFFERTY: And they can't go in the back door.

MR. PATEL: So they can go around. All right, thank you.

MR. SCALI: Motion then to approve the transfer of license. It's 11:00 to 1:00 a.m. seven days a week. Is that what it's going to be?

MR. RAFFERTY: We thought it was a 2:00 a.m. license and we learned later that it's a 1:00 a.m. There's something in the record that suggested it's a 2:00.

MR. SCALI: The capacity is 110; 80 seats, 20 standing. You're looking for also audio tape machine/CD player below, at, or above conversation level, three TVs, one video, one pinball, one juke box.

MR. GOLDSTEIN: No change.

MR. RAFFERTY: I think it's everything that's there.

MR. SCALI: But it starts all over again.

MR. RAFFERTY: Exactly, but I just

meant in terms of the context of it.

MR. SCALI: So motion to approve subject to no blocking the sidewalk, no parking in the back, no parking on the sidewalk, no customer access to the back door, and no smoking.

MR. HAAS: Motion.

MS. LINT: 21-Proof training?

MR. SCALI: Have you already been to 21-Proof? No, you don't have a liquor license.

MR. GOLDSTEIN: I haven't.

MR. SCALI: So 21-Proof training for you and your staff. They will come to you.

Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. RAFFERTY: Thank you very much.

MR. PATEL: I forgot one thing.

I looked at my notes and I didn't mention it. We were having DPW repair the sidewalk there across the whole driveway, and Bill Dwyer had suggested

that we try to prevent the dumpster trucks from backing back and forth over it and chewing it up again.

MR. SCALI: Say that again.

M. PATEL: The DPW just put a concrete driveway in and some of the neighbors helped compensate for that to help get it expedited, but obviously making sure the dumpsters don't chew it up again when backing in and out during the snow is what the issue was. It's an agreement we just made with Dan separately; it's not something you can --

MR. SCALI: I think he's be happy to work with you on that to make sure that -- you want it to look better anyway so I'm sure you don't want trash trucks chewing up your sidewalk back there. So if you could work with Public Works and Mr. Patel.

MR. GOLDSTEIN: I've had several conversations with neighbors on this issue.

MR. RAFFERTY: Thank you very much.

MR. HAAS: Any other issues?

MS. LINT: No.

MR. HAAS: Will you entertain a motion to adjourn?

MR. SCALI: I just want to tell you two things: Next Tuesday, November 10, is our hearing here in the evening, but we also have in the morning an update to the school curriculum at 10:00 a.m. at the Inn at Harvard, if anyone would like to come and see the updates to the curriculum; and the vote of the School Board on the new Board of Directors is November 18 at 10:00 a.m. at the Inn at Harvard, just so I'm not keeping any of this from anybody. It's all public information.

MR. HAAS: What time is it?

MR. SCALI: The vote of the Board of Directors of the school is November 18 at 10:00 a.m.

MR. HAAS: What's on the 10th?

MR. SCALI: The 10th is the school board, discussing the new curriculum.

MR. HAAS: What time is that?

MR. SCALI: That's at 10:00 a.m.

MR. HAAS: Where is that?

MR. SCALI: The Inn at Harvard and Mr.

Carbone may be serving food.

MR. HAAS: What would you call that?

MR. SCALI: It's a meeting of the school board.

MR. HAAS: Which school board?

MR. SCALI: The taxicab school board.

Motion to adjourn. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

(Whereupon, the proceeding was concluded at 12:22 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

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

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

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

In Witness Whereof, I have hereunto set my hand this 9th day of November, 2009.

**THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME
BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL
AND/OR DIRECTION OF THE CERTIFYING REPORTER.**