LICENSE COMMISSION BOARD MEMBERS:

Michael P. Gardner, Chairman
Robert Haas, Police Commissioner

STAFF: ELIZABETH LINT, EXECUTIVE DIRECTOR

AT: Michael J. Lombardi Building
Basement Conference Room
831 Massachusetts Avenue
Cambridge, Massachusetts 02139

DATE: Thursday, July 11, 2013

TIME: 10:13 a.m. to 11:17 a.m.

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## PROCEEDINGS

EXECUTIVE DIRECTOR ELIZABETH LINT:

Before we get started, if anybody has a phone on, please turn it off.

This is License Commission Decision

Making Hearing, Thursday, July 11th at 10:13 a.m.
We're in the Michael J. Lombardi

Building, 831 Mass Ave Basement Conference Room.
Before you're Commissioners: Michael

Gardner and Police Commissioner Robert Haas.

We have matters left over from the

June lith hearing and the June 26 th hearing.

Superintendent Burke and Captain Cahill
are unavailable.

So the first matter that was heard
continued from June 11th was Moska.

CHAIRMAN MICHAEL GARDNER: So, Mr. Hope,
why don't you just identify yourself for the record?

ATTY. SEAN HOPE: Good morning,

Mr. Chairman and members of the Commission. For the record, Attorney Sean Hope, Hope Legal Law Offices in Cambridge.

CHAIRMAN MICHAEL GARDNER: That's
$\mathrm{H}-\mathrm{O}-\mathrm{P}-\mathrm{E}$.

ATTY. SEAN HOPE: H-O-P-E.

CHAIRMAN MICHAEL GARDNER: Unfortunately,
we were not able to put together a majority of
the Board who actually heard the matter on

June 11th.

And we've actually intended to put out a notice to say we wouldn't make a decision on it today. So my apologies for any inconvenience and expense that caused.

But seeing that you're here and seeing
that on that evening essentially we were asking
for the applicant to -- I'm sorry, the licensed
premise to consider what kinds of additional

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steps could be taken to improve public safety
issues related to the kinds of events that were a
matter of concern for us. I thought, well, lets
-- if you've got anything to update the
Commission on in terms of activities or
developments, we'd love to hear it and put it in
the record, although we won't be making any
decisions today.
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    ATTY. SEAN HOPE: Sure. Only that I
    think this is significant that we have decided
not to have a promoter.
There was a promoter on those two
Thursday nights that is the subject of the last
disciplinary hearing.
We have just decided internally that they
were no longer going to have that promoter. We
feel like that is going to lessen maybe even some
of the incidents that happened.
I just do want to create for the record
at the last hearing, $I$ know we're not making a decision tonight, but even there was no evidence or allegations that there was any wrongdoing by the operators, we still felt like the situation that happened on Mass Ave was enough that we felt to take the action to be able to remove the promoter.

This is in response to the incident that happened at the last hearing to remove the promoter.

> I was told right before the hearing that
they were going to continue. So I think the operator didn't bring some of the other people. If we were going to have a decision tonight, we may have had more of a presentation this morning. So that's all we have as a statement.

CHAIRMAN MICHAEL GARDNER: My memory is
that at least the Commission was suggesting to
you that exploration of some sort of joint or
cooperative action among the number of the different licensed premises in the immediate area. Do you have any report about that? ATTY. SEAN HOPE: I know that
conversation is ongoing. And I would hope by the next rescheduled hearing that we would have some more information on what that plan might be, and what other operators would be involved in the collective effort to handle the crowds that are happening now on Mass Ave on the Thursday through Sunday.

EXECUTIVE DIRECTOR ELIZABETH LINT: In
fact, I think we're looking at next Thursday for
meeting. Robin will be facilitating that.

CHAIRMAN MICHAEL GARDNER: Just identify
for the record, Robin.

EXECUTIVE DIRECTOR ELIZABETH LINT: Robin

Lapidus, L-A-P-I-D-U-S, the executive director of
the Central Square Business Association. And
she's contacted many of the restaurants in

Central Square, and they're all amenable to
getting together for a meeting.

CHAIRMAN MICHAEL GARDNER: This is on the 18th?

EXECUTIVE DIRECTOR ELIZABETH LINT: We're hoping for the 18 th.

CHAIRMAN MICHAEL GARDNER: Commissioner, any questions? I know you didn't participate in the hearing, but $I$ know you're also familiar with the incident.

POLICE COMMISSIONER ROBERT HAAS: You
know, $I$ think we have some concerns about the fact that there's this notion that if something happens outside of the premises, it's all the operators' responsibilities. We're not tolerant of that kind of behavior. We've experienced that with other venues and that's not acceptable.

There has to be some commitment or responsibility

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in terms of patrons, the type of patrons that
come to an establishment, and the kind of
environment that's created that may spill out on
the establishment.
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So some of the things that $I$ would be
interested in hearing about is: What are some of
the mitigating steps that the operators going to
take?
I'm encouraged that the operators are
going to have a joint meeting because $I$ think now
with the number of venues that are in a close
proximity of one another have very large, perhaps
the potential for large amount of patrons coming
and going that there has to be some kind of
collaboration that takes place. I'm encouraged
by that.
But simply just saying a certain promoter
won't come back, I think there's enough
experience with the operator to know what types

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of entertainment draws what types of crowds, and
there's some contribution or volatility in some
crowds based on the kind of entertainment being
brought in. I think the operators have to be
mindful of that given the proximity, location in
Central Square, and the fact that there are other
operations that going to be impacted by this as
well.
                    I mean, everybody has an economic
interest in this. And if we have enough bad
incidents taking place, it will have an impact on
all the vendors. So I think that is something
that has to be taken into consideration.
I think -- I'm not going to be very
tolerant. I know, again, Superintendent Burke
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and $I$ spoke about this, and somebody saying
"Well, geez, it's is not our problem"; it's all
our problems. You need to work on that
collaboratively.

ATTY. SEAN HOPE: I would simply add that
it's a work in progress. This is new location
even though this is an experienced operator.

This is on Mass Ave, there's the volume of the
other operators, so we're going to work with the different operators, and we definitely understand what you're expressing and we take that to heart. CHAIRMAN MICHAEL GARDNER: Thank you. Since we don't have a quorum to deal with
the issue, $I$ won't even offer a motion to defer again.

But tell me, Ms. Lint, when you think
it's most appropriate for us to hear this matter
with three people who were there, if you know
now?

EXECUTIVE DIRECTOR ELIZABETH LINT:

July 31 st.

POLICE COMMISSIONER ROBERT HAAS: I'll
just verify that Superintendent Burke will be
here.

CHAIRMAN MICHAEL GARDNER: Just for
information of anybody in the audience who may
have an interest this, we'll be sending out a
notice that August 1st decision hearing will
be -- which was scheduled and published as 10:00
will be moved to 1:00 on the 31st of July for
scheduling purposes, so that notice will be out
within the time period.

EXECUTIVE DIRECTOR ELIZABETH LINT:

Today.

CHAIRMAN MICHAEL GARDNER: Mr. Hope,
thank you very much. Appreciate it. And my
apologies again for any inconvenience this
caused.

EXECUTIVE DIRECTOR ELIZABETH LINT: The
other matter from that date was Alga Mekonen for
a livery license.

CHAIRMAN MICHAEL GARDNER: Good morning.

Please be so kind as to state and spell your name for the record again.

ALGA MEKONEN: My first name is $A-L-G-A$,
my last name is $M-E-K-O-N-E-N$.

CHAIRMAN MICHAEL GARDNER: Again, sir, my
apologies to you for the same reasons as stated in the last party who was here. We don't have a majority of the Board available to make a
decision in your case today. I understand that is not your fault. That is entirely our fault for not being able to -- or failing to get you notice, and $I$ apologize for that.

We're creating a record, however, this
morning, so $I$ would ask you if there's any
additional information you can tell us about any
steps you've taken to put your business plan in
place or to familiarize yourself with the
requirements and regulations of this Commission
with respect to a livery service? Anything you

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want to add to -- anything that's developed in
the last month since you were here.
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    ALGA MEKONEN: Just there's -- I have to
    be now licensed first to see any progress. So,
according that, $I$ cannot have any addition. I
have to hold the licence to do any progress.
CHAIRMAN MICHAEL GARDNER: All right. I
think if $I$ understood you're saying you really
haven't got any more to report to us because
you're waiting to find out about that license
before you take any more action?
ALGA MEKONEN: Yes.
CHAIRMAN MICHAEL GARDNER: All right.
Commissioner, anything you wish to
inquire about or ask about?
POLICE COMMISSIONER ROBERT HAAS: No.
CHAIRMAN MICHAEL GARDNER: Ms. Lint, your
advice about this matter?
EXECUTIVE DIRECTOR ELIZABETH LINT: Same.

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I would say July 31st.
    CHAIRMAN MICHAEL GARDNER: We're going to
consider this again on July 31 at 1:00 p.m.
    ALGA MEKONEN: July.
    CHAIRMAN MICHAEL GARDNER: July 31st at
    1:00 p.m., that's almost three weeks from now.
    I'm so sorry to have inconvenienced you with this
    delay this morning.
    ALGA MEKONEN: Thank you. I appreciate
it.
            CHAIRMAN MICHAEL GARDNER: Good luck.
                    EXECUTIVE DIRECTOR ELIZABETH LINT: Shake
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Shack.
CHAIRMAN MICHAEL GARDNER: Good morning,
Mr. Rafferty. I'll ask you to spell your name,
although I could spell "Hope," I'm not sure I
could just rattle your name off in the same
manner.
Just identify yourself for the record.

ATTY. JAMES RAFFERTY: Happy to do so.

Thank you, Mr. Chairman and Commissioner.

James Rafferty, R-A-F-F-E-R-T-Y. To my
left is Daniel Tavan, $T-A-V-A-N$. You may recall

Mr. Tavan's the proposed manager of this
location.

CHAIRMAN MICHAEL GARDNER: Just briefly
summarize for us, if you would, the nature of the application here. I have a good sense of it, but

I would like to have it in the record.

ATTY. JAMES RAFFERTY: Certainly. This
is an application to transfer the license
formerly held by Bourbon Coffee at the former
marina's location in North Cambridge.

CHAIRMAN MICHAEL GARDNER: No, no. Is this Om?

EXECUTIVE DIRECTOR ELIZABETH LINT: Om.

ATTY. JAMES RAFFERTY: All right. Can I start over?

This is an application for a location
which fronts on Winthrop Street, but carries a JFK address. It's a transfer through the bankruptcy court of a license formerly held by

Om. I forget what the corporate entity is called.

## EXECUTIVE DIRECTOR ELIZABETH LINT:

Everest Crossing.

ATTY. JAMES RAFFERTY: Everest Crossing.

The application seeks a transfer of that license.

Shake Shack, potentially, the premises remains the same. We're building a slight vestibule, it's a two-story space.

In addition to the transfer, there's also
a request to pledge the license, the pledge holder would be the landlord, the landlord is present this morning with his counsel. I know there had been some inquiry about Shake Shack's decision to finance and create this financing
structure.

They're using a loan from the landlord to pay the acquisition of the license.

CHAIRMAN MICHAEL GARDNER: Thank you.

And, Ms. Lint, $I$ believe the number of
our inquires focused on the legality of such a pledge, and $I$ think Mr. Rafferty gave us some information with respect to how to distinguish some of the provisions of the statute, which he felt were different from the arrangements in this pledge document that we have seen. And he also made some representations that there have been a number of landlord pledges that had been
approved by the Commission in recent years. I
think we asked you to do some research.

## EXECUTIVE DIRECTOR ELIZABETH LINT: I

think we came up with three or four.

CHAIRMAN MICHAEL GARDNER: I think we're
fully prepared to act on this matter today.

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    I just would ask you Mr. Rafferty in
    terms of your representation of this client, in
    the unlikely event that there were a default on
the loan for the pledge, what is your
understanding of the legal proceedings that your
client would face in terms of essentially both
the potential loss of the license and sort've
where the license goes?
    It may be that the bankruptcy proceeding
with Om is a reasonable model for us to
understand. But I think what we're struggling
with is trying to understanding what happens to
the license on a pledge should the current
license holder default.
ATTY. JAMES RAFFERTY: Well, I can cite
several examples. I recall the location now
where the former Worst House (phonetic) location
was for many years is now called Russell House
Tavern and the Cambridge Savings Bank was the
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landlord there and they also had a pledge, and
there was a prior licensee there that operated Z

Square and $Z$ Square defaulted under their loan.

Just as a matter of law, a default would entitle
the holder of the loan to make demand for
payment. And if the payment wasn't provided,
then they seek a remedy for a judgment on the note.

Once one had such a judgment, they could
then come before the License Commission and ask
to be recognized as the holder of the license,
but they couldn't operate the premises.

So the pledge holder would have rights
and could ultimately seek an involuntary transfer
of the license to a successor.

But it's not a case where the pledge
holder can act unilaterally. The pledge holder would first have to have the pledge recognized at the Commission and then a determination would be
made by the Commission as to the status of the license.

In the case of both $Z$ square and the predecessor in this location, there was a bankruptcy proceeding. It's not always the case, but often the case if one is paying the debt that there are other debts associated with the business.

But as was noted by the chair, the entity
is well capitalized. Operates locations
literally all over the world, several in this
country, and if there's anyone that has an
expectation that they wouldn't be able to satisfy
their obligation, $I$ think there is financial
evidence to suggest that this operator is
unlikely to be able to meet the financial
obligations associated with this note.

CHAIRMAN MICHAEL GARDNER: Okay. We do
have 2008 as an experience which is like who
knows what happens where.

ATTY. JAMES RAFFERTY: True. No, I
wouldn't want to make any fiduciary obligations of my own. But $I$ would say that there are a series of procedural steps involving the

Commission and other forums and judicial venues that would have to take place before the pledge holder, but at the end the day, it's not as though the pledge holder can simply step in one night and say "Okay. Now I'm in charge of this place."

CHAIRMAN MICHAEL GARDNER: Thank you.

Miss Lint, do you have anything else to add?

EXECUTIVE DIRECTOR ELIZABETH LINT: I
think that sums it up very nicely.

CHAIRMAN MICHAEL GARDNER: Commissioner,
any questions or comments?

POLICE COMMISSIONER ROBERT HAAS: I want
to make sure $I$ understand this.

Mr. Rafferty, what you're just saying is
that should there be a default on the loan, and I understand that there could be the domino effect, there be would some legal proceedings to go through. The pledge holder couldn't just simply say "Well, geez, I'm going to take the license now," and as part of the sales -- hold that as part of the sale, it becomes automatic that person's legal tender.

## ATTY. JAMES RAFFERTY: That's correct.

The governing documents here both of which is required by the statute before the Commission and will be reviewed by the ABCC as well, involve a note and the security instrument itself.

So the security instrument is in effect a mortgage, if you will, on the license, a default under note, a demand for payment if payment isn't made, then there's a procedure to foreclose, a judicial -- a judgment is needed for the rights
in the assignment to take place. And then a
recognition or acknowledgment by the local entity
that the pledge holder now has rights, but those
rights are highly limited and they don not extend
to the right to operate the premises, just to
control the disposition of the license.

CHAIRMAN MICHAEL GARDNER: Which in the
end requires our approval anyway.

ATty. JAMES RAFFERTY: True. I think
sometimes there's a misnomer that, oh, a pledge
holder can simply step in the shoes of the
operator and begin operating the business
unilaterally. That is far from the case.

CHAIRMAN MICHAEL GARDNER: Thank you for
helping to clarify the record.

Can $I$ have the original agenda for that,
please?

So, I will make the motion to approve the
transfer of the license, which in our records is

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held by Everest Crossing, LLC to Shake Shack
Harvard Square, Boston, LLC doing business as
Shake Shack and to allow the operation of 110
seats inside and 24 patio seats on the public
sidewalk. All assuming other permitting has been
approved for that seating with the operating
hours 11:00 a.m. to 1:00 p.m., seven days per
week, including the entertainment license as
described in the original agenda with the
notation that the license has been pledged to
Crimson Galleria Limited Partnership.
    And are we also approving the manager as
part of this?
    EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.
    CHAIRMAN MICHAEL GARDNER: And approving
Daniel Tavan as the manager subject to 21 Proof
training, and any other administrative
requirements on the Commission -- background
check having been completed?
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EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.

POLICE COMMISSIONER ROBERT HAAS: I
second that motion.

CHAIRMAN MICHAEL GARDNER: The motion
have had been made and seconded, all those in
favor, signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye.

COMMISSIONER MICHAEL GARDNER: Aye.

None opposed.

So, welcome to Cambridge. I know there were extensive capital renovations, but I don't remember when you expected to be open.

ATTY. JAMES RAFFERTY: I think

Mr. Deanglis indicated it was late November and December, in that range.

MR. TAVAN: Good luck, Mr. Chairman.

ATTY. JAMES RAFFERTY: Thank you.

EXECUTIVE DIRECTOR ELIZABETH LINT: All

Asia.

ATtY. JAMES RAFFERTY: James Rafferty,
same spelling. Mark Shulman, S-H-U-L-M-A-N.

CHAIRMAN MICHAEL GARDNER: Why don't you
give us a summary of what the application is
about?

ATTY. JAMES RAFFERTY: If you recall, the

Commission approved a change of corporate name
and the change of location several months ago, but at the time the advertising didn't indicate that the licensee proposed a 2:00 a.m. closing.

So we were back before Commission last
month for just that singular aspect, an increase in hours to 2:00 a.m.

There had been some discussion by

Commission members about the overall concerns about night live in Central Square at that hour.

Mr. Shulman, as a result of a suggestion
made by the Chairman, reached out to Ms. Boyer
because, as you know, he currently operates in

Central Square and has been operating, so he has familiarity with both the environment and the staff and expressed a willingness to participate
in and even help organize a meeting of the

Central Square licensees. And she reported to
him that such a meeting was in the works and she would inform him of that.

So we understand the importance of that
issue. You might recall, Mr. Shulman spoke at
length about what he believes distinguishes his operation from these others, particularly the use
of promoters, entities not directly related to
the operation of the business and he will not be
involved in that. They're going to be handling
their own promotions, they're going to have a
restaurant and kitchen focus, but it's very much
a case of the public demand is there at those
hours and there's an environment in Central

Square where other licenses in relative proximity
also are closing at that hour. And so, he's
hoping the Commission would be willing to give
him an opportunity to demonstrate that he's
capable of holding the license, understanding the

Commission, as it often does, may choose to do a
review after a few months to demonstrate it. It struck me very similar to the
situation with Sinclair. I recently ran into

Ms. Gifford, who has a long history of activism
in Harvard Square, and she wanted to compliment me and the operators of the Sinclair because she was quite convinced it was going to pose
tremendous risk and threat to Harvard Square, and
it's been nothing fine she reports to me.

I think that's evidence of the Commission
having adequate safeguards within its purview to ensure that licensees should be given an
opportunity to demonstrate that they can execute
on the representations that they make before the

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Commission. I hope the Commission would find
Mr. Shulman in a similar light.
    CHAIRMAN MICHAEL GARDNER: So Ms. Gifford
didn't compliment the Commission with respect to
the gravity of the manner in which it addressed
that issue?
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    ATTY. JAMES RAFFERTY: No, but I did that
    as I often do, private and public settings.
CHAIRMAN MICHAEL GARDNER: Well, I
think -- are you aware, sir, of the July 18 th
meeting and do you intend to participate in that?
MARC SHULMAN: Absolutely, yes.
CHAIRMAN MICHAEL GARDNER: Anything else
you wish to add about planning discussions since
the last time we were together with you?
MARC SHULMAN: Just referencing the
choice of programming is essential to set the
stage for the ambience and crowd, and that's our
first and foremost Commission statement when we
talk to our internal staff is to set that stage for success and for peace, because it's a
longevity question as well.

CHAIRMAN MICHAEL GARDNER: Thank you.

Any questions?

POLICE COMMISSIONER ROBERT HAAS: NO questions.

I just want to add, I want to compliment you in terms of being a new vendor and things
like that, but being part of that conversation, I think it's extremely important. I think there has got to be some kind of mutual understanding of how everybody is going to kind've will work collaboratively together in that process.

CHAIRMAN MICHAEL GARDNER: I think the

Commission is concerned that something was
happening and been happening in Central square that we don't want to be happening.

There was some very negative developments

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and we have relatively limited powers with
respect to try to effect those things. But we're
encouraged and pleased that the license holders
are -- appear to be taking the issue seriously
and trying to work together to come to some
common solutions. Discipline and effecting
closing hours are such blunt instruments that we
really need the license holders to step up and we
appreciate your efforts in that regard.
    So is the issue before us the change in
closing time?
EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.
CHAIRMAN MICHAEL GARDNER: From 1:00 to
2:00?
EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.
CHAIRMAN MICHAEL GARDNER: Is it 1:00
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Sunday through Wednesday and 2:00 Thursday through Saturday?

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EXECUTIVE DIRECTOR ELIZABETH LINT: Yes.
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CHAIRMAN MICHAEL GARDNER: I make a

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motion to approve the change in the closing hours
to allow a 2:00 closing Thursday through Saturday
evenings.
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    POLICE COMMISSIONER ROBERT HAAS: I
    second the motion.
CHAIRMAN MICHAEL GARDNER: Motion having
made and seconded, all those in favor, signify by
saying "aye."
POLICE COMMISSIONER ROBERT HAAS: Aye.
CHAIRMAN MICHAEL GARDNER: Aye.
None opposed.
That will take effect when, Ms. Lint?
EXECUTIVE DIRECTOR ELIZABETH LINT: As
soon as the --
ATTY. JAMES RAFFERTY: They're under
construction now and the corporate change is
still pending at the ABCC, so we're probably a
few months away.

CHAIRMAN MICHAEL GARDNER: Good luck and thank you very much.

EXECUTIVE DIRECTOR ELIZABETH LINT: The open air license for 65 Bishop Allen.

CHAIRMAN MICHAEL GARDNER: Good evening.

If you would again be so kind as to state and spell your last name for the record?

ATTY. LARRY ROWE: Attorney Larry Rowe, R-O-W-E.

I represent the applicant, TPM CSQ A, LLC.

CHAIRMAN MICHAEL GARDNER: My memory,

Ms. Lint, there were a number of applications for
a transfer of parking lot licenses up on that evening. We approved all of them but one based on some public safety concerns represented by some neighbors and asked for cooperative work between the transferee and the Police Department with respect to how to address some of the safety

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concerns that had been cited by neighbors.
    EXECUTIVE DIRECTOR ELIZABETH LINT:
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That's absolutely correct.
CHAIRMAN MICHAEL GARDNER: So I don't
know Commissioner, if you want to speak, or if
you'd like to --
ATTY. LARRY ROWE: I can update you on
what we're done in the interim.
First we, right after that hearing last
time, I did go over to the site which I'm
familiar with, but wanted to take another look
and noted that everything was secure. The only
thing $I$ noted and spoke directly to the owner was
that there are 11 -- eight light stanchions for
11 lights -- they're about 25,30 feet high --
illuminating the entire parking lot. Three of
the bulbs had been out. They have been notified,
they've now changed. It's fully illuminated and
that has been taken care of.

I have spoken at least four times with Sergeant Murphy. She -- it's my understanding she has been out to the site four times on her own, and sent another officer whom $I$ only understood his name to be Buck -- sorry -- who I understand is not available to test there, so but even last night about 9:00 p.m., I had a site visit with Officer Murphy, primarily because although she had been satisfied with her own diligence internally, records checking, there have been, as $I$ understand it, no records of complaints from anyone notwithstanding the representation that was made here the last time. She had photographs that she took and
that Buck had taken and forwarded them and circulated them, I understand, and that she -- I don't want to speak for her -- but it's my
impression that she feels that this parking lot
is as secure and safe as any in the neighborhood,
both with its time, access and security of a gate that opens and closes and automatically closing behind when people leave for only allowing, I believe, time for one car to come in and out. She did not, nor did I when we visited
last night see any evidence on the ground of any of the allegations of public safety issues that have been raised.

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\text { And that she really -- my impression }--
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felt that everything was in good order there.

The only suggestion she may have made and

I think is fine to do, I'll just suggest, there are two trees on the sidewalk that have overhanging branches over the front from Bishop Allen Drive, and she suggested maybe a little trimming so that some of site lines were just a little bit more open there. And she may have mentioned that to you also.

But beyond that, she felt everything was
in good order and that we should come here today and hopefully conclude.

> CHAIRMAN MICHAEL GARDNER: Thank you.
> Commissioner, is there anything you wish
to add?

POLICE COMMISSIONER ROBERT HAAS: I just
want to reaffirm your reporting with Sergeant

Murphy and I also want to compliment you being as aggressive in terms of dealing with that made it
a lot of easier to resolve the issues. And not
knowing what the history was of the parking lot since we had a chance to go back and look at the record and things like that, you're correct, there's hasn't by any ongoing complaints.

So I do appreciate the fact that you have taken measures to clean up the area, improved the lighting, make sure the fencing is in place and again for the protection of people using that parking lot, but also making sure we don't

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attract nuisances as a result of the operation of
that parking lot. My compliments to you and your
client for taking those steps.
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ATTY. LARRY ROWE: Thank you.
CHAIRMAN MICHAEL GARDNER: So sometimes
buzz words come about in public discourse, and for, I don't know the last decade or so, the buzz word in policing has been community policing have been really a buzz word in the past.

But I just want to say on the record that
it did seem to me that this was an example of
what, in fact, people in the business mean by
community policing as a positive force for good
using substantial resources of the Police

Department to try to effect public safety and security in ways which are not just a quick
answer to a 911 call.

And the community policing includes the
active engagement of the community and $I$ think,

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your client's represented that in an very
exemplary way. So, thank you for that.
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    Make a motion to approve the transfer of
    the parking lot license at the location that we
didn't approve which you could just give us in
the record, Ms. Lint?
EXECUTIVE DIRECTOR ELIZABETH LINT: 65
Bishop Allen Drive.
POLICE COMMISSIONER ROBERT HAAS: I'll
second the motion.
CHAIRMAN MICHAEL GARDNER: The motion
having been made and seconded, all those in
favor, signify by saying "aye."
POLICE COMMISSIONER ROBERT HAAS: Aye.
CHAIRMAN MICHAEL GARDNER: Aye.
None opposed.
Thank you again for your efforts.
ATTY. LARRY ROWE: Thank you very much.
EXECUTIVE DIRECTOR ELIZABETH LINT: And

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the last remaining matter is Elias Livery.
    I should address the Polish American
Citizens Association, we did notify them not to
appear today and I would suggest that also go on
for July 31st.
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    CHAIRMAN MICHAEL GARDNER: That is,
    again, because we didn't have a quorum for that
because of my having recused myself from that.
EXECUTIVE DIRECTOR ELIZABETH LINT:
That's correct.
ELIAS OMICHAEL: Hello.
CHAIRMAN MICHAEL GARDNER: Hello. I ask
you to just state and spell your name for the
record again.
ELIAS OMICHAEL: First name is Elias,
E-L-I-A-S, last name is Omichael,
$O-M-I-C-H-A-E-L$.
CHAIRMAN MICHAEL GARDNER: You applied
for a livery license?

ELIAS OMICHAEL: Yes.

CHAIRMAN MICHAEL GARDNER: My memory is
that you did not yet have a vehicle, that you were going to be parking the vehicle in the residence that $I$ believe you rent now, or you have residential space for, and did you confirm that, in fact, you're able to park there?

ELIAS OMICHAEL: Yeah. Because I park my private car there, so $I$ put my car on the street and put the limo in the parking spot. POLICE COMMISSIONER ROBERT HAAS: SO I
think the concern we have is sometimes landlords don't want to have commercial vehicles parked even though you have the authority to park a private vehicle there.

I think the question from the Commission
was: Did you get permission from your landlord, him knowing that now you're going to be parking a commercial vehicle, a livery vehicle there?

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    ELIAS OMICHAEL: I don't see any
difference parking my private car than my limo.
    POLICE COMMISSIONER ROBERT HAAS: No, no,
no, no. I think what you need to do so you don't
find yourself running into more difficulties is
check with your landlord to let him know that you
plan on getting a livery license and that you
want to park your vehicle in the spot, right?
    I think that's going to be an important
step for you because that's going to inform you
as to whether or not you want to go forward with
this or find some other parking arrangements if
he says "No, you can't do that." See what I'm
saying?
    ELIAS OMICHAEL: Yeah, I understand. I
will ask him, no problem. But in case what about
the alternative, can I park it on the street, a
limo, is that possible?
    CHAIRMAN MICHAEL GARDNER: My memory
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about that is -- we inquired on this issue a
number of months ago and that the Traffic
Department found no prohibition against parking
on the street by a resident, or in a vehicle
registered in Cambridge, is that right?
EXECUTIVE DIRECTOR ELIZABETH LINT:
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That's my recollection.

ELIAS OMICHAEL: The last one is I could park it in the Alewife parking lot nighttime. They charging us money. I live close to that. POLICE COMMISSIONER ROBERT HAAS: Yeah, but $I$ think the easiest thing for you to do is go back to your landlord and see if he's going to allow you to do that.

ELIAS OMICHAEL: Yeah, but I'm saying in the alternative, $I$ can park in the parking lot at Alewife.

POLICE COMMISSIONER ROBERT HAAS: If he
says it's okay, that eliminates all this other

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stuff you have to do. See what I'm saying?
    I think that's got to be a key point for
us to inform us whether or not you can legally
park the vehicle before, in my view, take any
action with respect to your application.
    CHAIRMAN MICHAEL GARDNER: So, Ms. Lint,
I think when we addressed this matter recently,
we asked for a little bit of research from the
Commission about the number of livery licenses
there are in Cambridge now, and how recently any
have been issued, and I know you reported on that
to us by email. You got any memory of that?
    EXECUTIVE DIRECTOR ELIZABETH LINT: Let
me see if I can find it. I'm not going to be
able to do it.
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    CHAIRMAN MICHAEL GARDNER: Our sense it
    was a relatively small number.
EXECUTIVE DIRECTOR ELIZABETH LINT:
Around $14 . \quad$ There was -- the Commission did
approve a larger livery company. They have not
picked up their licenses yet. We also just
received a report Monday from the City clerk's
Office that tells us all the business that have
registered with them during the month, the
proceeding month, and we found several liveries
that have taken out business certificates that
have not applied to the commission as of yet, so
we're researching that as we speak and i think
there were five of them.

Commissioner, do you have any thoughts on appropriate steps to take here? We're in the context of at least getting some complaints from
the hackney industry that liveries are not
following our rules or encroaching on business without the required eight-hour prearrangements,
and we're also satisfied that to the extent
there's a problem there, by volume, some of it

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may, in fact, be from liveries that are not
licensed in Cambridge, but --
EXECUTIVE DIRECTOR ELIZABETH LINT: That
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would be correct.
CHAIRMAN MICHAEL GARDNER: -- are
operating here with our having limited capacity
to effect or influence their positions.
EXECUTIVE DIRECTOR ELIZABETH LINT:
That's correct.
I know part of the problem is a lot of
the livery vehicles will congregate in certain
areas, say, in Central Square around the larger
establishments in the hopes of picking up groups
of people, but that's still a violation of our
rules and regulations.
CHAIRMAN MICHAEL GARDNER: In terms of
the prearrangement?
EXECUTIVE DIRECTOR ELIZABETH LINT: The
prearrangement. And I think it's generally

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understood that livery does not operate as a
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hail, but, in fact, that's what they're starting
to do.
CHAIRMAN MICHAEL GARDNER: So you,
understand, sir, that our rules require eight
hours of notice, that is, prearranged
appointment, a contract, an understanding, I'll
pick you up, you get a call at noon, I'll pick
you up at 8:00 p.m. and that's okay. But calling
at noon and saying I'll pick you up at 3:00 p.m.
is not okay. And driving around and picking up
people without any prearrangement is not all
right.
ELIAS OMICHAEL: It's not allowed, right?
CHAIRMAN MICHAEL GARDNER: Not allowed.
EXECUTIVE DIRECTOR ELIZABETH LINT: Or
hanging out at the hotels, can't do it.
CHAIRMAN MICHAEL GARDNER: My memory is
that you had said you thought you could get some

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your business by working with the hotels on
prearranged trips, is that --
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    ELIAS OMICHAEL: Yeah, I arrange myself,
    plus some companies they offer jobs through the
computer, you know.
CHAIRMAN MICHAEL GARDNER: Through the
computer?
ELIAS OMICHAEL: Yeah. Like three or
four companies, they offer a job.
CHAIRMAN MICHAEL GARDNER: Are you
talking about like smart phone services?
ELIAS OMICHAEL: Yes, smart phone.
CHAIRMAN MICHAEL GARDNER: But on the
smart cell phone services remember the eight
hours limitation still applies.
I mean, somebody could go into a smart
phone application maybe and try to arrange for a
livery service, but it still needs an eight-hour
window.

ELIAS OMICHAEL: Well, I understand the point is from what $I$ saw, I'm getting oriented myself through some friends and companies. They give the least the person what time to pick up so there's a difference of time.

CHAIRMAN MICHAEL GARDNER: Are you saying that the companies give you a time range for the pickup?

ELIAS OMICHAEL: Yes. A printout on the smart phone.

CHAIRMAN MICHAEL GARDNER: Ms. Lint, do you have any information about that?

EXECUTIVE DIRECTOR ELIZABETH LINT: My
understanding is the way they operate, the person
requesting the service puts it into the phone,
they tell them when they want to be picked up.

Generally it's right away.

POLICE COMMISSIONER ROBERT HAAS: That's proximity.

## EXECUTIVE DIRECTOR ELIZABETH LINT: So

you get whoever is closest.

CHAIRMAN MICHAEL GARDNER: Commissioner,
any questions or comments or thoughts?

POLICE COMMISSIONER ROBERT HAAS: SO I
guess my biggest dilemma is we have a
longstanding moratorium, meaning that the

Commission a long time decided it was going to
stop issuing these kinds of licenses until, I
think, we had an opportunity to revisit the
regulations, because Ms. Lint indicates a lot of
the regulations are unenforceable. We can't
enforce a lot of the complaints that we're now
getting. And $I$ think we need a much more viable
way of if we're going to issue these licenses to
make sure people in this industry are adhering to
the regulations and $I$ think the regulations were
adopted a long, long time ago, probably outdated,
and you have technology that's changing.

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    I have some reluctance aside from the
fact I don't think you're ready yet for us to
take an action on this, to move forward until we
have an opportunity to kind've review the
regulations for the liveries, and kind've vet
them and make sure we have a viable way to issue
licenses that we can make sure that there's
adherence to the conditions that are set forth in
the licensing that we can't do right now.
CHAIRMAN MICHAEL GARDNER: So what is
your recommendation, Commissioner?
    POLICE COMMISSIONER ROBERT HAAS: With
respect to this application, I would defer from
my perspective any decision at this point in
time.
    I would also recommend that the License
Commission at some point needs to sit down and
think about -- again, look at the rules and
regulations of liveries and use this opportunity
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to either revamp them or decide that they're okay, and then make a decision whether or not the moratorium is gonna be lifted or remain in place. EXECUTIVE DIRECTOR ELIZABETH LINT: We
actually already started doing that, and we know they have to be rewritten, they're very outdated. CHAIRMAN MICHAEL GARDNER: So I guess my general view about it is that there's an
appropriate place in the transportation
infrastructure of the city for livery operations
and $I$ think as there is an appropriate place for
the city to be aware of and responsive to changes
in technology that can help service the traveling
public, both within the city and from the city to
other destinations.
But myself, $I$ presently don't feel
confident that we know enough about the steps we
need to take to justify acting one way or another
on this application.

That doesn't help you, $I$ understand, but the Police Commissioner's view that we should defer any action on the application for the time being while this matter is reviewed, $I$ think is the appropriate one.

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            Again, I think with -- in terms of a
perspective for the Commission and the Commission
staff to take in reviewing the regulations to
ensure that there's flexible response within the
city and a variety of components for higher
traffic infrastructure in the city to be
responsive to the needs of the traveling public.
    So, on that basis, I'll make the motion
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that this matter be deferred generally and to be
taken up at at some point in the future as part
of a more comprehensive review of the
transportation of infrastructure needs within the
city.

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second that motion.
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CHAIRMAN MICHAEL GARDNER: Motion having made and seconded, all those in favor, signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye. CHAIRMAN MICHAEL GARDNER: Aye.

So none opposed.

So we are not approving your application, and I will say to you, although we got some concerns as to how ready you are to, in fact, run a business and to run a business according to our rules, the primary reason we are not taking action on your application is because we feel that we need to do a more comprehensive review of how the livery service fits within the structure of how people are able to get around in the city.

So I regret that we can't be more
responsive to your clear desire to strike out as an entrepreneur and create a new business for
yourself here. At this point we just don't think we're ready to do that.

Thank you very much.

ELIAS OMICHAEL: You're welcome.

CHAIRMAN MICHAEL GARDNER: Any other
business before the Commission?

EXECUTIVE DIRECTOR ELIZABETH LINT:

There's not.

CHAIRMAN MICHAEL GARDNER: Are there
minutes that we can approve?

EXECUTIVE DIRECTOR ELIZABETH LINT: I was
just going to suggest in that, June 6th, that was just decisions. The only -- that was the Beantown Taqueria.

CHAIRMAN MICHAEL GARDNER: I'll make the
motion to approve the June 6th decision hearing minutes.

POLICE COMMISSIONER ROBERT HAAS: Second.

CHAIRMAN MICHAEL GARDNER: Motion having
made and seconded, all those in favor, signify by saying "aye."

POLICE COMMISSIONER ROBERT HAAS: Aye. CHAIRMAN MICHAEL GARDNER: Aye.

I'll just raise to the Commissioner who
is here and to the staff, my understanding is
that typically in decision hearings in the past, we didn't take any additional testimony, and more frequently than not, there were no inquires made by the Commission to any of the applicants, but we simply discussed it amongst ourselves. I
think that's right. You can tell me if I'm wrong about that.

But my own comment today is I found it actually quite useful to have the applicant back and to hear from the applicant or give us a
chance to talk to the applicant about both our concerns and also sort've positively reinforce the kind of behavior that we thought was useful.

> I'm just wondering for a general reaction
from both Ms. Lint and Commissioner Haas about that.

POLICE COMMISSIONER ROBERT HAAS: I know
from time to time we've actually had applicants come back in and clarify --

EXECUTIVE DIRECTOR ELIZABETH LINT:

That's good.

POLICE COMMISSIONER ROBERT HAAS: -- some
issues, but $I$ think we probably do want to
reserve the ability to make that discretionary as
opposed to just having them back in the regular
forum because $I$ think sometimes we've taken all
the testimony we need to have, and $I$ think what
we need to do is either go back to do more
research or kind've like was testified before us,
and I think the Commission needs to have the
ability to decide in these meetings whether or
not it wants to because $I$ think the other thing

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\begin{aligned}
& \text { you would have to get is a whole new renewal of } \\
& \text { testimony that was never obtained before, and I } \\
& \text { think we found ourselves sometimes with } \\
& \text { difficulty being able to allow some people to } \\
& \text { speak and not others to speak. } \\
& \text { So, I think, my view would be to preserve }
\end{aligned}
$$

the Commission's discretionary ability to decide whether or not it needs clarification, update, and also be able to talk to the applicants again. When we think those things are appropriate, we should make that known to the applicant at the time we're deferring the decision, and that we may look for more further clarification. I think there's a lot of times we'll know that time, and as you indicated, Mr. Chair, there are times when the applicant will come anyway. And it's been
helpful for them to just update us in terms of what they have done relative to the last hearing with some of our recommendations, which $I$ think
is another key a lot of times; for example, like
the parking lot. We had a situation where, in
our view, there was outstanding issues, we gave
him the opportunity to come back and tell us what
they have done in response to our concerns, which
better informs us how we want to move on that particular application.

So, i guess the bottom line, in my view,
is to maintain a discretionary posture with
respect to decision meetings and not have it
become a policy matter where we will take
follow-up testimony. I think it should really be
up to the Chair whether or not that changes.

CHAIRMAN MICHAEL GARDNER: Thank you for
that. That's very helpful to my thinking.

As part of it is when generally at least
in recent experience when we've held something
over for a decision hearing, it's because, in
fact, we wanted more information and there were
more developments that needed to be reported to
us whether it was by staff or otherwise.

EXECUTIVE DIRECTOR ELIZABETH LINT: I
would just add to what the Commissioner said.

Traditionally, it was that testimony would not be
taken really from the general public.
So if there had been a hearing where 20
people came to oppose an application or support
an application, that the Commission really didn't
need to hear more of that at a decision making hearing.

And then if there was any information for clarification, that either for questions that the Board had, or things that an applicant could add
that that certainly is what you wanted to hear and also within the Chair's discretion.

CHAIRMAN MICHAEL GARDNER: Thank you.

What is your sense about the livery review which
is really part of a much bigger picture?

## EXECUTIVE DIRECTOR ELIZABETH LINT: It

is.

CHAIRMAN MICHAEL GARDNER: Apps and all. EXECUTIVE DIRECTOR ELIZABETH LINT: It
is. It's becoming increasingly difficult to
regulate. Very few cities and towns actually do license liveries. We're one of the very few that does and with the introduction of these apps, I don't -- I just -- how do you --

CHAIRMAN MICHAEL GARDNER: So, I mean in
terms of thinking about regulations, $I$ thought
well, one of the first things you always do is go look at what other communities have done.

Does Boston regulate liveries.

EXECUTIVE DIRECTOR ELIZABETH LINT: They
do not.

CHAIRMAN MICHAEL GARDNER: So they have
this hackney industry with all of its various
layers of complication of regulation and,
tradition and yet, there are no barriers to somebody setting up a livery company?

EXECUTIVE DIRECTOR ELIZABETH LINT: There
really isn't. You just -- you know, Boston you
decide you're going to be a livery and you
purchase your vehicle, you get a commercial
plate, you start advertising and off you go.

CHAIRMAN MICHAEL GARDNER: So, they don't
let you in the taxi stands or hackney stands, but other than that, you're free to drive around and pick people up?

EXECUTIVE DIRECTOR ELIZABETH LINT: You
have to be permitted through, if you want to do the airport, Massport. It's just one of those businesses, that's kind've...

CHAIRMAN MICHAEL GARDNER: So, is there
any possibility that, in fact, we shouldn't be
licensing liveries?

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think that would be part of our review.
POLICE COMMISSIONER ROBERT HAAS: Well, I
think we'd set ourselves up for failure if we try
to regulate it and then there's some notion that
we can actually take action when somebody
violates some of the regulations associated with
it.
    So, I don't know if -- I don't know if
it's just being irresponsible saying it's just an
unregulated industry and they can go out and do
that when it's going to be hard to regulate
liveries.
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    I mean, I think in the meantime, I think
    what we should do anytime somebody does make
application for a livery license is put them on
notice that we're not going to entertain it until
we have completely new regulations.
I mean, $I$ feel bad people for coming in
here and then us deferring our decisions on them

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and not setting up some form expectation. They
come in to get a license when we're not prepared
to move on it.
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EXECUTIVE DIRECTOR ELIZABETH LINT: Let
me say this, though. When people come in to
apply for a livery license, we tell them that
there's a moratorium, that you're taking a risk
that there will be either a denial or no action
for -- we tell them why, and they choose to apply
anyway and we cannot accept an application.
POLICE COMMISSIONER ROBERT HAAS: I want
to make sure we put them on notice --
EXECUTIVE DIRECTOR ELIZABETH LINT: Oh,
we do.

POLICE COMMISSIONER ROBERT HAAS: We're not prepared to move forward on these things. EXECUTIVE DIRECTOR ELIZABETH LINT: No, we do.
memory is that since I've been here we've approved at least two. Do we have any
information about how they're doing? Are these businesses that, in fact, have been successful or are they operating within the regulations? Is there any way to --

## EXECUTIVE DIRECTOR ELIZABETH LINT:

There's no way to know. If we get complaints from drivers, taxi drivers, but all we hear is
there's so many livery vehicles out there, you know, they're hanging out at the hotels, they're picking up on the street. You need to do something.

What do you do? Because if a police
officer approaches them, they're gonna say that this was a prearranged ride.

POLICE COMMISSIONER ROBERT HAAS: There's
some suspicion that a number of livery business
have actually made arrangements with some of the

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concierges in the hotels. So there's some --
there's been some indication there's been an
exchange or payment in order to get those
privileges and things like that.
    Again, we have tried a couple times to
try to regulate it. It's virtually impossible to
actually identify those types of practices taking
place.
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    To Ms. Lint's point, we've got the
    complaints from the hackney industry and we've
kinda put ourself in that position because we're
licensing them, and saying to them, we're going
to regulate that business, I'm not sure how we do
that.
CHAIRMAN MICHAEL GARDNER: So, I mean,
I've had the recent experience of doing airport
to hotel and hotel back to airport arrangements
using potentially a van, which I suppose that
made multiple pickups at different hotels and

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multiple dropoffs which I suppose --
    EXECUTIVE DIRECTOR ELIZABETH LINT:
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That's actually.
CHAIRMAN MICHAEL GARDNER: -- it's in
form of -- I mean, it's a form of a livery
service.
EXECUTIVE DIRECTOR ELIZABETH LINT: We
don't consider that a livery. The shuttles or
jitneys are on a fixed route for a fee. So, we
do license those.
And the problem with those are we get,
again, tremendous pushback from the hackney
industry. So the jitneys actually -- the Board
does not approve. They recommend approval to the
City Council and the City Council can approve it
or deny it.
If it's denied, the jitneys have a right
to appeal to the DPW, and they generally overturn
us all the time and then they license liveries
through the state and we don't get the revenue from that.

CHAIRMAN MICHAEL GARDNER: Well, I guess
in terms of the hackney industry complaints about
it, it seems -- if we defer this, we do. But, in
fact, the traveling public is entitled to options.

EXECUTIVE DIRECTOR ELIZABETH LINT: Of
course.

CHAIRMAN MICHAEL GARDNER: Thank you.

Any other business before us or any other
ruminations anybody would like to make?

I'll make -- seeing none, I'll make the
motion to adjourn at approximately 11:15 on the morning of July 11th. POLICE COMMISSIONER ROBERT HAAS:

Seconded.

EXECUTIVE DIRECTOR ELIZABETH LINT: For
anyone who cares, today is 7/11, so 7-Eleven

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gives out free slurpees.
    CHAIRMAN MICHAEL GARDNER: With that last
order of business, all those in favor, signify by
saying "aye."
    POLICE COMMISSIONER ROBERT HAAS: Aye.
CHAIRMAN MICHAEL GARDNER: Aye.
We're adjourned.
(Whereupon, the decision hearing was
concluded at 11:17 a.m.)
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ERRATA SHEET.

INSTRUCTIONS: After reading the transcript of this hearing, note any change or correction to and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet (before a Notary Public, if required).

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I have read the foregoing transcript of the hearing, and except for any corrections or changes noted above, $I$ hereby subscribe the transcript as an accurate record by me.

## CERTIFICATE

Commonwealth of Massachusetts

Norfolk, ss.

I, Jill Kourafas, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That the hearing herein before set forth
is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set
my hand this 18 th day of July 2013.

Jill Kourafas
Certified Shorthand Reporter
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