

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Tuesday, February 10, 2009
6:00 p.m.

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P R O C E E D I N G S

MS. LINT: License Commission
General Hearing, Tuesday, February 10, 2009, 6:00
p.m. We're in the Michael J. Lombardi Municipal
Building, Basement Conference Room, 831
Massachusetts Avenue.

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

You need to vote to accept the
minutes from January 20 and January 29.

MR. SCALI: Motion to accept the
minutes from January 20 and January 29.

MR. HAAS: Motion.

MR. HAAS: Seconded.

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

MR. SCALI: Aye.

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: The first matter on the agenda?

MS. LINT: Disciplinary Matter, New Inman Associates, Incorporated d/b/a Ryles, Gary Mitchell, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 212 Hampshire Street for two police reports dated January 1, 2009, stating that in two separate incidents, two women were punched by an unknown male at Ryles. Also for having inadequate security and failing to cooperate with the License Commission.

MR. SCALI: Good evening. Ms. Boyer, Officer, have a seat up here, please, if you would. Just tell us your name for the record, please. We'll start with the officer and we'll move down this way.

OFFICER DEAN: My name is Officer Cameron Dean.

MS. BOYER: Andrea Boyer, B-O-Y-E-R, License Commission.

MR. MITCHELL: Gary Mitchell, S and S Restaurant and Ryles Jazz Bar.

MR. SCALI: We'll start with Ms. Boyer on the report from New Year's Eve; correct?

MS. BOYER: Yes, sir. Thank you.

There were actually two police reports submitted to us pertaining to New Year's Eve from the establishment located at 212 Hampshire Street.

The first is the police report which was submitted for the Commission to review also with your packet. A woman gave a walk-in statement to Officer Austin Maxwell that on New Year's Eve 2009, she was struck by a man at the Ryles establishment. The woman claims in the written statement, and when I spoke with her on the telephone also that no one in the club assisted her during the incident. The woman had requested a hearing in front of the Commission. I'm not sure if she's here this evening.

MR. SCALI: Do you have her name?

MS. BOYER: Yes, I do. I'm sorry, excuse me for one second. It was redacted. I do have the name.

MR. SCALI: Is there anybody here?

Oh, she is here. I see her hand is raised.

MS. BOYER: Is that Ms. Flores?

MS. FLORES: Yes.

MR. SCALI: We'll go back to her later.

MS. BOYER: The second police report, a woman had given a statement on location to an officer, Cameron Dean, stating that she had been punched by an unknown assailant on New Year's Eve at the Ryles establishment, also.

Investigation has shown that the incidents allegedly happened within four minutes of one another, though on the police report, the second police report, actually, the offender is listed as unknown. Both alleged victims stated on the phone to me that it was the same man that had struck them. Which is probably redacted for your files but we do have that information. It's in the original police report.

On January 7, 2009, I spoke with the owner of Ryles, Gary Mitchell, to submit information regarding the incident. We always try

to get both sides of the story, one from the employees and/or the establishment, and from the police, and from the alleged victims, but at this time, I have not received that information. I'm under the impression that he knew there was a hearing and probably will give that information tonight.

I called witnesses that were listed on the police reports that were allegedly at the event on New Year's Eve. There were four things that they had mentioned; that the event took place on the second floor, because there are two floors of Ryles; the event that was held on New Year's Eve was coordinated by a promoting company called Super Shag, and is run by a gentleman called Alfredo Valaho. I apologize if he's here and if I pronounced his name incorrectly. He also holds a weekly night at Ryles, but usually it's on a Saturday. New Year's Eve, this was a different night.

The witnesses also stated that the crowd who attended the New Year's Eve event is not

the usual crowd that attends the Saturday night events. One witness stated that during the event on New Year's Eve, there was one doorman, one bartender, and two barbacks. They did not notice any additional security on premise to assist except for the already noted doorman. And that was a concern of one of the witnesses; that it's New Year's Eve and there was not really a lot of people on staff.

MR. HAAS: Could you go over the staffing again?

MS. BOYER: The staffing stated that there was one doorman, one bartender and two barbacks.

MR. HAAS: Tell me what a barback is.

MS. BOYER: What is a barback?

MR. HAAS: Yes.

MS. BOYER: Someone who supplies the bar with ice, juices, beer to fill the coolers, or get liquor.

Mr. Valaho was actually upstairs; that would be possibly the one doorman. There was a

doorman who was downstairs who was for the other part of Ryles, allegedly. And that's the information that I have for that evening's incidents.

MR. SCALI: Did you have a conversation with the complainant, too, Ms. Flores?

MS. BOYER: Yes. And basically my questioning to her was, was there someone on premise to assist her? She also stated that she would be here this evening, and fortunately she is, to give further information on the incident that transpired.

MR. SCALI: Do you have any other details other than that?

MS. BOYER: Just from what was in the police report and that was from the walk-in from Officer Maxwell.

MR. SCALI: And you spoke with Officer Dean about this report as well?

MS. BOYER: No. I knew that Officer Dean was going to be coming, but his incident was separate. I did speak with the woman who had

actually gotten struck. That was the second report.

MR. SCALI: You spoke to her about the second incident and Officer Dean spoke to her about the first?

MS. BOYER: No, sorry. The first report about the woman -- Ms. Flores is actually here. I'm not sure if the second woman is here. She had stated that she was assisted and actually there was a police officer who helped her with that situation. She is not someone who was pushing for a hearing about the incident.

MR. SCALI: What time of the evening did the incidents occur, do you know?

OFFICER DEAN: It's 1:34.

MS. BOYER: 1:34 a.m.

MR. SCALI: Any questions for Ms. Boyer?

MR. HAAS: You mentioned that the assailant was identified as the same assailant in the two incidents. How did you establish that?

MS. BOYER: By speaking with both of

the alleged victims. The woman who was hit on the second occasion saw the first woman get struck. It happened very quickly.

MR. HAAS: So they are cross-witnessing each other's account of what happened?

MS. BOYER: Yes. This woman did, Ms. Flores. I'm not sure what she might say, but it seems as if it's the same gentleman.

MR. SCALI: Questions?

MR. TURNER: Through you Mr. Chair to Ms. Boyer, or the officer may cover this, but it says a "walk-in statement." Does that mean she walked into the police station?

MS. BOYER: Yes.

MR. SCALI: Mr. Mitchell, you'll have an opportunity to question or ask questions of both after we hear from Officer Dean. So we haven't forgotten about you yet.

All right, Officer Dean, we'll take your report.

MR. MITCHELL: Can I make any corrections to what is said?

MR. SCALI: Make a note and we'll correct everything all at once because that way we don't lose track of what we're talking about.

Officer Dean?

OFFICER DEAN: On New Year's Eve 2009, at 1:34 in the morning, I was summonsed to Ryles Liquor. A woman had called stating she was struck in the face. When I arrived on scene I spoke to Ms. Teresa Boucher. She had a visible injury to her nose.

We spoke and she stated that she was upstairs at a private function; that the gentleman had been asked to leave, and in the process had become argumentative. As he was backing himself up to the doorway, he stepped on her foot and she pushed him off her foot, and he turned around and punched her in her face.

She then stated that the gentleman, Alfredo Valaho, and some other individuals who were with this male -- Mr. Valaho insisted that he leave. The other males pulled what apparently was their friend out of the bar, pulled him downstairs

out the front door, and they jumped into a black Cadillac limousine. The registration came back as revoked but it did come back to a black Cadillac limousine. So I forwarded that information on to the detective bureau.

She was treated by Professional Ambulance, and she refused any medical treatment. They just basically mopped up some of the dried blood on her nose and she went about her business that night.

As far as from the bar, I spoke to a gentleman that appeared to be in some sort of bar attire as a doorman. I assumed he was the doorman. He was originally checking IDs at the very front door as you enter from Hampshire Street. As far as who was upstairs, Mr. Valaho essentially said that he was the one that asked the person to leave but he didn't elaborate as to who else might be upstairs. So as far as commenting on who was upstairs, I'm not sure.

I was not made aware of a second victim while I was there and I specifically asked

Mr. Valaho or any of the other people that were in the first-floor if there was anyone else involved. I took a walk up to the top of the stair; nobody made themselves known to me at that point in time. So I went with Ms. Boucher's statement.

MR. SCALI: The person you spoke to, was she the second person supposedly that it happened to?

OFFICER DEAN: Supposedly, yes, she was the second person. I wasn't aware that there was another. When I arrived, she was standing outside the front door and she had again, a visible injury to her nose.

MR. SCALI: Was she taken to the hospital?

OFFICER DEAN: She was not. She refused medical treatment. She allowed them to kind of clean up her nose, but she refused any further medical.

MR. SCALI: Who cleaned up her nose?

OFFICER DEAN: Professional Ambulance.

MR. SCALI: Where was the doorman or

the owner of the premises at that point in time?
Did you speak to them at any point?

OFFICER DEAN: I spoke to a -- there was two gentlemen who said that they were employees of Ryles. One was in an obvious -- like I said, I assume he was the doorman. He was in some sort of a black shirt that I think had a Ryles logo on it.

The second man was in just a button-down shirt. He appeared to be some sort of either manager, bartender. I don't know exactly what he was but he identified himself as representing Ryles.

And then there was Mr. Valaho who represented himself as being the organizer of the event upstairs.

MR. SCALI: Did they seem concerned, or were they trying to get you to help them? I'm just trying to figure out what the attitude was at that point.

OFFICER DEAN: She was outside with the original doorman, like I first stated, and she basically approached me right out of the board.

They had given her some napkins to put on her nose. Other than that, she didn't seem to have any complaints about who assisted her, at least to me anyway. She made no statements in my direction concerning that.

MR. SCALI: So you said the person who assaulted her left the premises, got into this car, and was gone. So there was no --

OFFICER DEAN: Correct, all I had was a license plate. And I received the information about a black Cadillac basically as I arrived on the scene, so I never even got a chance to look for it.

MR. SCALI: Did you feel that somehow Ryles was not cooperating with you? Did you feel that they weren't assisting you? I guess I'm trying to figure out what was going on with Ryles.

OFFICER DEAN: I didn't feel that way, no. I felt as though they -- There wasn't a whole lot -- like I said, the person who I assumed -- I did ask him that night what his position was at Ryles. I just forget exactly what he told me, but

I know he was in charge of the downstairs area or whatever that was. I spoke to that individual and they were accommodating as far as finding me a place to sit her down, and finding a place for the EMTs to treat her. I didn't find any real issues with the staff there, no.

MR. SCALI: Commissioner?

MR. HAAS: Officer Dean, so the sequence of events is Mr. Valaho made a determination for this gentleman to leave, and while he was escorting him out, he assaulted the victim?

OFFICER DEAN: That's how he explained to me. He stated to me, and the victim here seemed to corroborate that event, which was this individual was acting up, he was asked to leave, he became more boisterous as he was asked to leave. Then as his friends -- the way it was explained to me, his friends kind of got a hold of him and were saying I think it's time to go, and he stepped on Ms. Boucher's foot. Then like I said, and then that chain of events took place.

But then she claimed after she was punched in the face that he was argumentative and combative with Mr. Valaho, although Mr. Valaho did not give me that version of events. He just said that he had asked the person to leave, and that they took him down the stairs, and that his friends essentially pulled him out of the club and put him in that black limousine, and then they left.

MR. HAAS: Did Mr. Valaho make any reference to the gentleman's state of sobriety? Did he attribute it to being intoxicated or anything like that?

OFFICER DEAN: He didn't really. He attributed it to him, in his own words, "being a jerk."

MR. SCALI: Any questions?

MR. TURNER: No questions.

MR. SCALI: Mr. Mitchell, we'll let you clarify or amend.

MR. HAAS: Do you want to give the woman a chance to speak?

MR. SCALI: Why don't we have Mr.

Mitchell speak first and then we'll have Ms. Flores come up.

MR. MITCHELL: First of all, on behalf of myself and my family I would like to personally apologize. I was not there that evening. It was a dreadful evening that evening. The snow, the wind, et cetera. We had sold 80 tickets for downstairs. I believe Officer, when you arrived the downstairs at 1:30 on New Year's Eve was virtually empty.

OFFICER DEAN: It was.

MR. MITCHELL: Upstairs, I don't think we had -- we had sold I think 110 tickets, but many no-shows, many returns.

MR. SCALI: It was bad weather and it was storm and all that.

MR. MITCHELL: Bad weather. My family, between the S and S and Ryles have been in the restaurant business 105 years. In the last 30 years, I have never missed a New Year's Eve. I was stuck in weather in another city. And of course, I left another family member in charge.

Needless to say, when you put all the

little pieces together there's more to the story. Obviously we had many more people than four people working that night on New Year's Eve. There were four people upstairs, six people downstairs.

We used to open New Year's Eve for dinner. We don't want people partying in the club from 6:00 to 1:00 in the morning. We open at 8:00, and believe it or not, for the same price we offer an all-you-can-eat buffet, because we don't want people to drink too much. So food from the S and S, and whatever the cover charge was, you got an all-you-can-eat buffet including dessert.

I think anyone knows in the liquor business, if you give someone a piece of cake, they're not going to have anymore to drink. The night is over. It's usually coffee. So we've kind of got our New Year's Eve down to a science.

Without belaboring everything, again, I want to apologize. Andrea, you had asked me for a written statement to put in the file as to what took place. I asked four to five -- and as you would understand Police Commissioner -- what took

place that night. Each written statement from my staff was different. It's not like it is on TV. But to the best of my ability, and I'll go on record, and I'm sure you'll maybe collaborate with this that the gentleman -- I don't know his name. Yes, and I don't know if you know the gentleman or what have you. Obviously --

MS. FLORES: I don't know him.

MR. MITCHELL: You don't know him?

MS. FLORES: I know his girlfriend.

MR. MITCHELL: Oh, you know his girlfriend.

MR. SCALI: Why don't you just tell me your version of the story first, and then we'll have Ms. Flores testify to what she wants to say.

MR. MITCHELL: Somehow this gentleman hit this woman. We've never had like bouncers or security people. Upstairs, there were three people: a gentleman running it and two people at the door, just for the upstairs. It just happened so quickly, the gentleman exited and as you said Officer, stepped on another woman's toes, and

whether he meant to hit a woman or not, pushed her aside, obviously hit her in the face and went out, and then commotion ensued. So I think that both --

MR. SCALI: Is that the first incident or the second?

MR. MITCHELL: They both happened together. The first one was I believe this woman's, and on his way out, exiting, he hit the other lady, a regular patron of ours. I know her very well.

MR. SCALI: So you're saying it happened kind of one right after the other as he was he was going out.

MR. MITCHELL: One right after the other. As he was being escorted out, and they were trying to get him out, he stepped on her toes. So I believe both were really within five minutes of each other.

MR. SCALI: That's not right in a row.

MR. MITCHELL: The way the police report says is one incident happened and then a half-hour later -- it I believe happened together.

But at any rate, again, I personally and professionally apologize. We have been watching the club very carefully. This Saturday night we had the Compact Big Band. It felt like Lawrence Welk in there.

Upstairs was this dance thing. There's a beginners lesson, an intermediate, and advanced. Do we need -- and to me it sounded like at the beginning of this hearing is, do we need bouncers in Ryles? We don't sell Budweiser and we don't sell Miller products.

MR. SCALI: What does that have to do with having bouncers?

MR. MITCHELL: We're not the kind of place -- pitchers of beer and that kind of -- where there's a cover charge. We regard the people at the door as greeters, not bouncers, as security. So we don't feel as if we have created a space where we have bouncers going around the room, which you do in other clubs, Richard, I guess. If that is the question of this evening? If we in fact think that we're running that type of operation, I

will hire people at the door that work as security or bouncers, not as greeters taking a reservation and showing you to your seat on New Year's Eve.

MR. SCALI: I think the concern -- well, before I say anything else let me hear from Ms. Flores.

MR. MITCHELL: Richard, in 15 years, I've never been here for an incident.

MR. SCALI: We're not questioning past behavior.

MR. MITCHELL: We're mortified. Richard, I'm mortified.

MR. SCALI: We're talking about people who certainly had something happen to them and they want to speak. So of course, we let them. Getting a police report obviously is an important thing for us.

MR. MITCHELL: It seems to me that the person in question when he goes into a car which has a license plate that is -- what is it?

MR. HAAS: Revoked.

MR. MITCHELL: Revoked. We got a bad

apple. Is Ryles a bad apple? I don't think so.

MR. SCALI: Ms. Flores, do you want to come forward?

MS. FLORES: Good evening.

MR. SCALI: Tell us your name.

MS. FLORES: Saadia Flores.

MR. SCALI: Saadia?

MS. FLORES: S-A-A-D-I-A.

MR. SCALI: Where are you from?

MS. FLORES: Puerto Rico. Where I live?

MR. SCALI: Where do you live?

MS. FLORES: In Everett.

MR. SCALI: Can you tell us what happened that evening?

MS. FLORES: I also want to say that Ryles is a great place. I've been there many times and this is the first time that something like this happens.

MR. SCALI: You've been there before?

MS. FLORES: I have. Maybe as he stated, it probably came because it was somebody

that we knew.

MR. SCALI: You knew this person?

MS. FLORES: I didn't know him, I know his girlfriend. So she's like a troublemaker.

I'm not going to say much because we are pressing charges on this gentleman, but what I am going to say is that I -- he had hit -- before he hit me, he had hit two more people. These other two are not pressing charges. So I think there should have been somebody there. After he hit me, he punched me in the face, I fell, I lost consciousness for like five or four minutes.

MR. SCALI: You were on the floor?

MS. FLORES: I was on the floor and nobody came up to me. There was this other girl that was coming with a bottle, and nobody hold her back. So he did a few things before he got to me. So I do think that they should have had --

MR. SCALI: Where was the staff? Was anyone helping? Did they see this happen? Or, they didn't see you fall?

MS. FLORES: There was people around

me but nobody just --

MR. SCALI: No one helped you?

MS. FLORES: I guess they got scared because this guy went into a rampage hitting people. He's six-five; he's a big guy. I guess he was with four other people.

All I know that when he -- when I was on the dance floor and I seen all this commotion that I went towards where the seats were at, this female was coming towards me with a bottle. And I'm looking around like who's going to stop her. There's nobody stopping her, so now I'm going to take my shoe off because I'm like, I have to hit her with something. She's going to knock me out with the bottle. So that's when the gentleman also punched me and knocked me out.

MR. SCALI: So you said someone hit you, the gentleman hit you, and then you passed out, and you were out for like four minutes. So how then did you see what happened after that?

MS. FLORES: I didn't see what happened after that.

MR. SCALI: Did you see that woman get hit?

MS. FLORES: I didn't see the other woman get hit, no.

MS. BOYER: When I had given my statement it was actually the second woman who saw her get hit.

MR. SCALI: At that point, when you were passed out then at some point, did someone assist you? Did your friends assist you or something?

MS. FLORES: Yeah, my friend, yeah. A female friend that was at the bar, she came up to me and she helped me get up. But there was one guy, I don't know if he worked there, but he helped me look for my shoe, because they had taken my other shoe and threw it out somewhere and they found it.

I did feel that -- you know, and I could have -- I remember that I hurt myself on the chin, also. So he could have really like -- my head could have hit the chair or something big

would have happened there. I couldn't open my mouth for about two weeks because he hurt my jaw. So it was just bad.

I'm not criticizing Ryles. I think it is a great place, but I do think that maybe it is a bad apple like he says, but they need somebody there at least once.

MR. SCALI: There are good establishments here that sometimes get bad customers that come in and cause commotion when they shouldn't be, but then there should be procedures for the establishment to follow then to assist you and keep the patrons safe.

MS. FLORES: That's what I thought. It gave me time to get out and nobody came up to me. I walked towards the bathroom, nobody came up to me. I remember I think an officer coming up, but I was already on my way out. I just wanted to go home and decided to go to the hospital after that.

MR. SCALI: Did you go to the hospital?

MS. FLORES: I went to the hospital.

MR. SCALI: That evening?

MS. FLORES: In the morning because I couldn't open my mouth.

MR. SCALI: Commissioner?

MR. HAAS: Ms. Flores, at the time of the attack, how many people were in the establishment would you estimate?

MS. FLORES: It was almost close to 1:30, so maybe there were probably about 70 people just about.

MR. SCALI: On the second-floor?

MS. FLORES: On the second-floor.

MR. HAAS: From your standpoint, when you were attacked by this gentleman, it was unprovoked? There was nothing you did?

MS. FLORES: No.

MR. HAAS: Did you form any impressions about his state when he came at you? Was he intoxicated, just angry, just wild?

MS. FLORES: No, because he was coming towards -- the other two persons that he hit, he

knew them. So I guess he got into a fight with them, but since I knew them, and I was standing there, she comes up to me, one of the girls with a bottle to hit me. I wasn't even close. I was like really close to the dance floor, but all this happened in the dance floor.

She comes up to me with the bottle, so I'm looking around and I don't see that anybody is going to come and get her out. So that's when I took my shoe off and I'm going to get ready like to either hit her or we were going to get at it, when he comes this way, and that's when he punches. I didn't think he -- I thought he was going to stop either one of us. He just knocked me out.

MR. HAAS: Did you talk to any employees that night after the attack?

MS. FLORES: Only with the gentleman that helped me with my shoe. Then when I went to the restroom I seen they were taking one of the girls that was hurt, that she's not pressing charges, towards the back for protection. I asked the other lady -- I think she worked at the

kitchen, I don't know, she was a black female. But I asked her if I could go towards the back, and she said no. I said but I was hurt. I don't know if they're in the front. She said no. I'm like all right. Because we don't know if they were waiting downstairs.

MR. SCALI: Commissioners, questions?

MR. TURNER: Mr. Chair, through you to Ms. Flores, I'm trying to make a connection. Do I have the testimony correct? I'll throw this out that the gentleman was escorted from the scene by Mr. Valaho; is that accurate?

MS. FLORES: I didn't see him.

MR. TURNER: In other words, we keep referring to this guy being escorted downstairs to a Cadillac driven off. I guess Officer Dean, did we establish who escorted this gentleman?

OFFICER DEAN: What I understand is that Mr. Valaho had asked him to leave; that this incident took place and Mr. Valaho insisted that he leave, but that it was actually the friends of the individual who helped him out.

MR. TURNER: I'm just trying to make a connection.

OFFICER DEAN: I know Mr. Valaho followed them down the stairs but given the size discrepancy between this gentleman and Mr. Valaho, I don't think Mr. Valaho was escorting him out by any means, from this general description.

MR. TURNER: So there's no connection between them.

OFFICER DEAN: I know Mr. Valaho made sure that he left the club, and that's as far as he testified to me anyway.

MR. TURNER: Then Officer Dean, you responded to the scene I assume by a radio dispatch?

OFFICER DEAN: Correct.

MR. TURNER: I assume Ryles called 911.

OFFICER DEAN: There's two separate phone calls. Ms. Boucher had made a call from a cell phone, and we also received a call from the club, to my knowledge.

MR. TURNER: Thank you. No more questions.

MR. SCALI: Ms. Boyer, anything else you want to say?

MS. BOYER: I did check for the CAD calls and it was just the reporting of the situation. There was no reporting -- usually there's a reporting person of someone who called, and that wasn't listed on there.

MR. SCALI: So it wasn't clear who called?

MS. BOYER: Right, from Ryles.

MR. MITCHELL: Again, I personally and professionally apologize. But when I look at the police reports, there's no names here, but we do know who this person is?

MR. SCALI: The reports are redacted for purposes here.

MR. MITCHELL: So it's the car that didn't have identification, but we still know who the person is.

MS. BOYER: There is actually a

detective working on the case.

MR. MITCHELL: Again, I wish you had called me and I would have helped you and done anything else to help you. It's the first time I'm meeting you and if I had --

MS. FLORES: Called you where?

MR. MITCHELL: At Ryles the next day. Hi, I'm so and -- you know, I would have --

MR. SCALI: I think she was looking for assistance that evening.

MR. MITCHELL: I know, but besides that evening --

MS. FLORES: Oh, I didn't know.

MR. MITCHELL: -- if you had reached out to us if you were in the hospital, et cetera, you know, I need to do --

MR. SCALI: I don't want to speak for her but she may not have felt that anyone was helping that evening so why should I call the next day. I don't know.

MR. MITCHELL: We're pretty visible people though, Richard. I'm not hiding from this

at all. If you call Ryles and say I'm the person, gee, I would have -- I had no way of covering this with our insurance or things of that sort, because everything has been whited out. Again, I apologize.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Through you to Mr. Mitchell, at what point were you made aware that an incident had occurred?

MR. MITCHELL: The next morning, January 1.

MR. HAAS: Mr. Mitchell, what's the relationship with Mr. Valaho to you?

MR. MITCHELL: What we have is for the last 14 years upstairs, we have dance evenings. They run Super Shag Dance Club, and they run that there on Saturday evenings. He requested that evening. Not only was he up there, there were two other people. I think as in the report there were eight people working upstairs that evening, besides the downstairs people; two people carding at the

door; my sister there. There were quite a few employees there.

Again, I apologize, but we're just not the kind of place watching the club for fights. Never have we been in that type of situation. If we were told that this woman felt that she was endangered by someone there, immediately we would have called the police. I think what we did do is attempt to do the right thing and ask the person to leave. It just caught us way off guard that this type of behavior would happen in our club.

MR. HAAS: You've had a relationship with this gentleman for 14 years as a promoter?

MR. MITCHELL: Yes. This is not just a one-time thing.

MR. SCALI: Is he in charge of your entertainment there on certain evenings?

MR. MITCHELL: On Saturday evenings, you get a dance lesson, beginner, advanced, beginner, or what have you.

Let me just say this, Richard, the average beverage sale on the dance night is six

dollars a person. So it is not a big drinking. It's typically \$15 cover and as -- you know, you'd say it's just a good clean fun time.

MS. FLORES: It is.

MR. MITCHELL: Is that typically what it is?

MS. FLORES: I've been there many times and there's never been any problems, I can say that. I've never seen any fights.

MR. HAAS: Have you been at this type of event before with this type of promoter?

MS. FLORES: No. I mean, not on New Year's. Is that the only time that he --

MR. MITCHELL: He's there every Saturday evening.

MS. FLORES: I've been there.

MR. SCALI: Are you pressing charges against Ryles, too?

MS. FLORES: No.

MR. SCALI: Just against the gentleman who assaulted you?

MS. FLORES: Yes. But that's the

reason why I just came here because I feel that maybe on those big events there should be somebody there. But I always felt safe there, not that I've been involved in any problems, but yeah.

MS. BOYER: One of my witnesses actually sent me an e-mail that I can also back up. It says, "Generally, the Super Shag crowd at Ryles on Saturdays is a friendly and a safe crowd. Patrons tend to drink less than regular bar crowds and are more interested in dancing than drinking. Other times I've seen altercations start on Saturday nights, but they've usually been handled by the Super Shag upstairs door person before there was violence.

New Year's Eve 2008 was an exception. I was anticipating the usual ballroom dance crowd and a typical safe night with a crowd of people whom I mostly knew. When I arrived at around 11:30, I was surprised to find that the majority of the people there were not dancers and were people I did not recognize. On regular dance nights, people are prohibited from standing on the dance floor if

they're not dancing. On this particular night, over half the people on the dance floor were not dancing, which is something I've never seen before."

And that's actually the person who stated that there didn't seem to be enough people on premise to handle the situation.

MR. SCALI: Who was that person?

MS. BOYER: They wanted to be anonymous, the witness, but they spoke highly of Ryles for the other evening. It was just this particular New Year's event.

MR. SCALI: Is there anybody else who wants to be heard on this matter at all? Any other questions, Commissioners?

MR. HAAS: No question.

MR. TURNER: No other questions.

MR. SCALI: Mr. Mitchell, you get the last word, if you want.

MR. MITCHELL: Thank you. Hopefully I'll never be here again.

MR. SCALI: Motion to take the matter

under advisement?

MR. HAAS: Motion.

MR. SCALI: Seconded. All in favor?

MR. TURNER: Aye.

MR. SCALI: Aye.

MR. HAAS: Aye.

MR. SCALI: We are scheduled to vote on this February 26 at 10:00 a.m. You don't have to be here for that. If you want to be here, you certainly may, but it's at 10:00 a.m. right here on February 26.

MS. LINT: Disciplinary matter:
Allied Waste Systems, Gino Dugan, for violation of
City of Cambridge Noise Ordinance 8.16.080
Paragraph E in six different occasions by making
dumpster pickups before the allowable time of 7:00
a.m.

MR. SCALI: Good evening. Tell us who
you are for the record, please.

MR. DUGAN: My name is Gino Dugan.
I'm the Division Manager for Allied Waste Systems,
Revere, Mass.

MR. SCALI: All right, Ms. Boyer, this
is your report?

MS. BOYER: I received complaints
pertaining to Allied Waste Systems. The claim is
based on early morning dumpster pickup before the
allowable time of 7:00 a.m. at the Sackler Museum
located at 35 Quincy Street. As you know, dumpster
pickup before 7:00 a.m. is a violation of the
Cambridge Noise Ordinance described as noise
disturbance in 8.16.080 Paragraph E.

The violation at said address had been

ngoing since since October 1, 2001.

MR. SCALI: 2000 and what?

MS. BOYER: One, yes. But when BFI, since bought by Allied Waste, was the disposal company that unloaded the dumpster at the Sackler Museum, when BFI was bought by Allied Waste I was still directed to speak to the same representatives that were formerly known to the attached BFI, and Mr. Dugan is one of those people. Rick Collelus and Philip Caufield.

In the past years, I have spoken consistently with Philip Caufield regarding all violations at the Sackler Museum. When each of those violations occurred I would leave a message for Mr. Caufield and the pickups would stop for a very large period of time. So even from 2001 it wasn't as if it happened every day. Once I spoke about it, it would stop. But since October 2008, there had been many violations at the 35 Quincy Street, and the violations were listed on the paper. I could read them for you.

MR. SCALI: Just list the dates for

us.

MS. BOYER: October 16, 2008 at 5:40 a.m.; October 29, 2008 at 6:40 a.m.; November 5, 2008 at 6:35 a.m.; December 3, 2008 at 6:30 a.m.; December 31, 2008 at 5:30 a.m.; and January 15, 2009 at 5:45 a.m.

I had been told that there was a recent change in management at Allied Waste which may explain why the pickups have not ceased for October, November, December, and January. That was many in a row. But the resident did ask for me to schedule a hearing so that this could be addressed by the Commission to resolve the situation permanently.

After this hearing, I'm actually going to speak with the Sackler Museum also, to have them post no pickups or deliveries before 7:00 a.m., which may help for this situation. But the driver, whomever is picking up is picking up before 7:00 a.m., but also has been told not to do that anymore.

MR. SCALI: These are not violations

that you observed directly, but the resident observed.

MS. BOYER: This is the resident.

MR. SCALI: Is the resident here?

MS. BOYER: I'm not sure.

MR. DUGAN: He is.

MS. BOYER: That would be Mr.

Robertson, Jamie Robertson.

MR. SCALI: Mr. Robertson is here?

There he is. We'll take you in one minute.

So you spoke with Allied about these violations, Ms. Boyer?

MS. BOYER: Yes. I left messages and I got a call back actually from Philip Caufield. If I called about the December 3, I left a message for him and he actually called me back on the 12th and stated -- really, his words were "he's going to ring the driver's neck." Then on the 31st, I got a call from Mr. Robertson and I called Philip Caufield.

It was around that time that actually I spoke with -- the new Allied Waste was going to

be Tony Martoccio. He was the gentleman that actually told me -- that was on the 13th -- that there's a new rep. Maybe one of the problems was that there was a little bit of a changeover going on.

MR. SCALI: Every time you had a violation you talked to them in October, November, December?

MS. BOYER: Yes, every time.

MR. SCALI: And it still continued all those months though.

MS. BOYER: Yes, actually, if you look at the paper, it did.

MR. SCALI: Somebody wasn't talking to somebody there I guess, or not talking to the driver.

MS. BOYER: They may have and you know, sometimes as I found in the past with -- as you we know, this is not our only disposal company where the driver doesn't listen to the representatives, and then we try to send someone out to actually find the driver. But with this

particular situation I have always seem to have a good relationship with BFI, and now Allied Waste. I felt comfortable speaking with them directly, and on other situations that maybe someone picks up early, they stop. It just happens to be this particular location. I don't know if it's because of Harvard Square traffic or whatever, but the neighbor shouldn't suffer.

MR. SCALI: Questions, Commissioners?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Robertson, do you want to come forward?

MR. ROBERTSON: Sure.

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

MR. ROBERTSON: James Robertson, 95 Prescott Street, Apartment No. 6. Just right behind the Sackler Museum. My windows look out onto the back of their loading dock. That's why this is relevant.

MR. SCALI: You are awakened every

time this happens?

MR. ROBERTSON: Oh, yeah.

MR. SCALI: And you wake up, and how do you know it's Allied?

MR. ROBERTSON: How do I know it's them?

MR. SCALI: Yes.

MR. ROBERTSON: If it wakes me up enough that I can't get back to sleep or I'm totally disturbed, I get up and I go to the window and I look. I put on my glasses and go -- I see there's this big truck. It had been BFI for a longtime. When I would call Andrea, she would call and it would seem to stop. Then maybe -- I don't know what the record would show -- every few months or so it might happen again, and she would call and it would stop.

When it shifted to Allied, I didn't even know it was a different company at first. She said are you sure that was BFI, and I said, I'm not sure. So the next time it happened, I went outside and looked at the truck before it left to make sure

because I couldn't see it. It was backed up behind part of the barrier. So then I realized it's a different company.

MR. SCALI: So you verified it was Allied?

MR. ROBERTSON: Yes. And the only other thing I wanted to say is the reported incidents are really just the tip of the iceberg. Those are the times that I actually called or wrote it down when it happened, and bothered to call and complain about it. After repeated being woken up and not being able to sleep, it just really got to me.

MR. SCALI: Questions, Commissioners?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Dugan.

MR. DUGAN: Can I ask, has it happened since January 15?

MR. ROBERTSON: I don't think so.

MR. SCALI: Is that when you fired the driver?

MR. DUGAN: I fired the operations manager, actually.

MS. BOYER: Is that Tony; he just started?

MR. DUGAN: No, not Tony. That was Phil Caufield. So --

MR. SCALI: I'm sorry, I'll let you speak first.

MR. DUGAN: Again, I want to apologize. Actually through the years, we've serviced Harvard for almost 20 years. When we started SCA, there was name changes but it's been the same division. I've been with the company for 28 years, SCA and we're Allied now. It's just a name change.

We usually have consistent drivers. For a long time, it was Timmy O'Keefe and his brother Franny, for 15 years, and Ed Greterecks, another person. Mr. Greterecks had to retire for health reasons this fall and then his spare driver, Eddy Bettencourt who took the route over after that was actually hired by Harvard. So then we've had

inconsistent drivers through October, November, and December. Now I have a consistent driver.

Then also, when Tony brought it to my attention that there were issues out at Harvard, and I had seen all the dates where it hadn't been addressed, I had other issues that I had to deal with. But after speaking to the driver personally and rerouting it, he doesn't get to the area now until 7:30. That's why I asked to make sure that since the 15th when I became aware of it that there were no further incidences.

MR. SCALI: As of January 15, you have one particular driver assigned to that route every week, once a week?

MR. DUGAN: It's a two-man truck. It's actually assigned. It only services Harvard University. It's a two-man route and both have licenses so that if one is out, the other person just takes the route over with a person. So now both people know how the route is to be done, what timeframe, and where the noise issues are with the neighbors and abutters.

MR. SCALI: Who do they report to? Do they report to you?

MR. DUGAN: Now they report to me, yes.

MR. SCALI: Before they reported to Mr. Caufield?

MR. DUGAN: Before they reported to Phil Caufield, yes.

MR. SCALI: You're saying these violations probably happened, or are you disputing the fact?

MR. DUGAN: No. I'm not disputing that, no.

MR. SCALI: I think Mr. Robertson was probably at the window looking out to make sure every time he heard that noise, the beep, beep, beep, and the banging I'm sure were the issues.

MR. ROBERTSON: Yes.

MR. SCALI: So you think you've resolved the problem this time?

MR. DUGAN: I believe I have, yes. Just an informational point, the truck that

actually works at Harvard is a natural gas truck that we've had for several years. That was a requirement from Harvard. It's much quieter than a diesel except for when you're dumping the trash. It's the same noise.

MR. SCALI: Questions?

MR. HAAS: I guess from Mr. Robertson standpoint, his sanity, how can we be sure now that you've fixed the problem permanently, because it sounds like it's intermittent. You'll go for a period of time, be fine, it will start again.

MR. DUGAN: Those issues usually happen when you have a spare driver to cover the routes, someone banged out. Now, we have two people that -- those are the two people that are on the route.

The original issue that kind of -- in the fall what happened was the original driver left for retirement, ill, and then he retired. The second person who was with him all the time and took the route over, he then actually got hired by Harvard University. Then I had two people out

there that didn't know where they were going. We had several changes in drivers there, and now I have a consistent tenured employee. There's no issue with them leaving, both.

MR. HAAS: The reason for terminating this other employee was because of this incident, or a variety of things?

MR. DUGAN: It was partially. There were several other issues that recently developed. It was one of multiple issues that made us make the decision.

MR. HAAS: With respect to this particular incident, you would think you'd go after the driver as opposed to the operations manager. Why did you zero in on the operations manager?

MR. DUGAN: Because when I questioned the drivers, they said that nobody talked to me about it. And also, again, I wouldn't jeopardize my relationship with Harvard University. And they're aware of the issue and they police it themselves also, actually.

MR. HAAS: Thank you.

MR. SCALI: Anybody else want to testify on this matter? Questions?

MR. TURNER: No questions.

MR. SCALI: Ms. Boyer, anything else?

MS. BOYER: No.

MR. SCALI: Mr. Robertson, we haven't voted on this yet, but I'm hoping that this solves your problem this time. Of course, if it hasn't, then our next step is -- as we have before -- is to place an officer out there at that time in the morning. At that point in time, we ticket the driver directly as we have in the past.

MS. BOYER: We can also -- excuse me. I'm sorry.

MR. ROBERTSON: Posting the signs might help.

MR. SCALI: Yeah. I was going to say, have you spoken to Harvard about that, about posting signs?

MR. DUGAN: I'm sure they wouldn't have an issue with it.

MR. ROBERTSON: They are doing a lot

of construction there as you're probably aware. It seems like they're taking everything out of the Sackler because they haul in huge construction dumpsters and fill them in about half-hour, and put in a new one. They do that after seven or eight. They're pretty consistent about that.

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

MR. HAAS: Motion.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

We'll vote on February 26.

Do we have a past history, Mrs. Lint, on that?

MS. LINT: What's that?

MR. SCALI: Is there a past history?

MS. BOYER: Yeah, but a lot of it also is connected to BFI.

MR. SCALI: Before Allied?

MS. BOYER: Correct.

MR. SCALI: Is there a past fine for Allied, do you know? I'm sure there must be some fines on Allied too? We'll look it up before the 26th.

MS. BOYER: It's pretty much BFI.

MR. SCALI: Thank you.

MS. LINT: Disciplinary matter: Z Harvard Square, LLC d/b/a Z Square, David Zebny, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 14 JFK Street for failure to apply for a change of manager, failure to have current Workers' Compensation insurance, a noise complaint within the six month probationary period on your Entertainment license, and unpaid police details.

There's also Review: Z Harvard Square, LLC d/b/a Z Square, David Zebney, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 14 JFK Street for review of the 60 banked seats held by Z Square.

MR. SCALI: Z Square? Not here. You didn't think they would be here.

MS. LINT: No, I didn't. I believe all three of their locations have closed.

MR. SCALI: I know that there are a number of things going on with this license, according to Mrs. Lint. I believe that the bank is also represented here. Mr. Rafferty is here. Why

don't you come forward, Mr. Rafferty, and tell us what's happening with the loan issues, I guess.

MR. RAFFERTY: Good evening, Mr. Chairman and member of the Commission. For the record, James Rafferty on behalf of the pledge holder in this case, the 1834 Realty Corp., or its principal, Cambridge Savings Bank.

There was a pledge recognized by the Commission at the time the license was transferred to Z Square, which serves as security for a loan that was used to acquire the license, and the loan amount is in the neighborhood of \$540,000. That would be my memory.

The licensee is in default under that loan and proceedings have commenced in the Superior Court for payment judgment to that effect, which would then enable the pledge holder to come before the Commission and ask to be recognized and have the license assigned to it, so it could begin the process of trying to locate a successor. It is a prominent location.

The pledge holder also, through a

related entity happens to be the landlord. So there's the issue of the premises themselves, and now there's been a judgment for possession on behalf of the landlord, and execution occurred on that judgment earlier this week.

It is my understanding that the licensee is no longer in possession of the premises, and the landlord has obtained possession and execution pursuant to a judgment at the District Court, a Summary Process Action whereby the tenant was defaulted for failure to appear at that proceeding.

MR. SCALI: So I'm assuming you don't want us to get rid of the license so you can hopefully have some equity, capital left over to -- if you get in line with the rest of the people that are already owed money as well.

MR. RAFFERTY: I think what's going to need to happen here would be -- I mean, this license is a long-standing license in Harvard Square. It historically had been the license of the Worsthaus at that location for decades. So

certainly as the pledge holder that lent the money to allow for this transaction to occur, the pledge holder would not want to see the license canceled, thereby eliminating any opportunity for recovery and being able to find a viable tenant in that location.

So whatever disciplinary action the Commission deems appropriate, the pledge holder would hope that that would not extend to a determination that would cancel or revoke the license, in which case their security interest would be lost.

MR. SCALI: What stage are you at in court?

MR. RAFFERTY: That's being handled by different counsel but I had a conversation with the gentleman last week. That will take some time in terms of service, and return, and answers, and the like. I suspect at the moment that we're probably another -- I think a conservative guess would be about 30 days before that would get sorted out.

MR. SCALI: My only concern is that of

course, not having control of the license now, there's no standing at this point on the license, unless someone from Z Square appears to request that it be held as inactive. I suppose we could continue the matter and figure out what's going to be happening with you in terms of your pledge, but you don't have any standing right now to request that the license be held as inactive.

MR. RAFFERTY: No, and that's clear, we don't. I would imagine the Commission could choose to suspend it in terms of its ability to be operated upon, so there couldn't be any unilateral attempt by the licensee to try to use the license. I would think that the suspension was limited to the current licensee; that whatever conclusions were made with regard to the pledge that it could be reactivated or the suspension might be appropriately lifted if a suitable transferee were identified and presented to the Commission.

But you're correct, we don't have standing before the Commission. I wouldn't want to make any requests on behalf of the licensee with

regard to what would happen to the license. Other than the fact that recognizing my client has a security interest in that asset and an action by the Commission that would result in a cancellation or elimination of that would raise I would suggest issues of equity and fairness with regard to my client's loss of their security interest.

MR. SCALI: I'm guessing that there are DOR issues, and meals taxes, and all that as well, which means they may take the license ahead of you anyway; am I correct?

MR. RAFFERTY: In my experience, the DOR is effective at looking for a deep pocket, and I would think that if they would, as they demonstrated in a recent case in Harvard Square, they would try to persuade someone who had an interest I suspect, to clear it.

Because obviously if this were to be transferred someday, it would have to be clear and free of liens and attachments. The holder of the security interest would obviously be on the hook to clear that indebtedness. If that indebtedness is

less than what that indebtedness is on the pledge, which is in excess of 500,000, then I suspect that the pledge holder would work out an arrangement with the DOR so as to effectuate a transfer.

At the end of the day, the public should be served by this license. That location is a popular one in the heart of our strongest commercial district. The bank both as a pledge holder and a landlord would like to see the successful enterprise operated well in that location. We would certainly work with the Commission to try to achieve that outcome.

MR. SCALI: Questions?

MR. HAAS: I think, Mr. Chair, for all intents and purposes, they're not in a position to operate. I think there's no point in them having an active license. I agree with Mr. Rafferty. I think the least we should do is suspend it. That would preclude the current owner until we can resolve the disciplinary issues from operating this license.

MR. SCALI: Comments?

MR. TURNER: Mr. Chair, I would concur with Mr. Haas' observations and support the decision of the Chair.

MR. RAFFERTY: Just a technical matter, since we have a transfer. I wasn't suggesting a suspension, I was just suggesting an alternative to cancellation. I had a prior relationship with the licensee. I wouldn't want it to appear that I came here and advocated for them.

MR. HAAS: To relieve your conscience, Mr. Rafferty, I was thinking along the lines of suspension before you even mentioned it.

MR. RAFFERTY: I'm sure, and I wouldn't suggest at all it was the result of my --

MR. SCALI: It was your idea.

MR. HAAS: I'll take the blame for it.

MR. RAFFERTY: I think that's where I heard about it.

MR. SCALI: Is there anybody else that wants to heard on this Z Square matter? You have to come forward. Have a seat please. Just for our stenographer's purpose, we'll get you on the

record. Tell us your name.

MR. DUFFY: Michael Duffy from the law firm of Roberto, Israel and Weiner, also representing the landlord and the pledgee. My name has been listed on the sheet. I defer to Mr. Rafferty's comments and support his advocacy here.

MR. SCALI: You have no objection to what he said?

MR. DUFFY: None.

MR. SCALI: Thank you very much.

MR. RAFFERTY: Thank you.

MR. SCALI: Do you wish to take this under advisement or would you like to vote this evening, Commissioners?

MR. HAAS: I'm prepared to vote for the suspension.

MR. TURNER: Suspension.

MR. SCALI: The Commissioners wish to make a motion for a suspension of the All Alcoholic Beverages as a Restaurant license, which would also include the Entertainment license as well.

Suspension indefinite until further notice?

MR. HAAS: Or pending a resolution to the outstanding complaints or whatever outcome may come from the judgments being imposed.

MR. SCALI: As a clarification then, until items are resolved with regards to the disciplinary matter or the pledge and means issue as well.

MS. LINT: Mr. Chair, just for the record, the licenses have been turned into us.

MR. SCALI: So you do have the licenses?

MS. LINT: I have them right here.

MR. SCALI: Who turned them in, do you know?

MS. LINT: I don't.

MR. RAFFERTY: My understanding was when the issue arose with the Workers' Comp, they were directed to surrender the license, and I believe they would have complied with that. I heard that from a bank representative.

MR. SCALI: On the motion?

MR. HAAS: Moved.

MR. SCALI: Seconded?

MR. TURNER: Second.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

MS. LINT: At the top of Page 2, Shire Human Genetic Therapies is off the agenda. They do not need a license according to the Fire Department.

MR. SCALI: All right, next item.

MS. LINT: Application: Swiss Traders, Incorporated d/b/a Hoffa's of Harvard Square, Bernard Imhof, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 114 Mount Auburn Street has applied to further extend the inactive status of the alcohol license.

MR. SCALI: Good evening.

MR. CONROY: Good evening.

MR. SCALI: Tell us who you are for the record, please.

MR. CONROY: My name is Frederick Conroy, the attorney representing Hoffa's.

MR. SCALI: Mr. Rafferty.

MR. RAFFERTY: Good evening, Mr. Chairman, James Rafferty again. I represent the landlord, Bullfinch Companies.

MR. SCALI: Mr. Conroy, you represent who, again? Who do you represent?

MR. CONROY: Mr. Imhoff who operates under the name Hoffa's of Harvard Square, a derivative of the name Imhoff.

MR. SCALI: So why are we asking for

another extension?

MR. CONROY: We're still in a holding pattern here, Mr. Chairman. Mr. Rafferty will speak for the developers but until the building gets up, we're still in a holding pattern, waiting for the space to become available.

MR. SCALI: Is it the intention for Hoffa's to reopen in that space?

MR. CONROY: If they can.

MR. SCALI: If they can? That doesn't sound too confident.

MR. CONROY: We want to and the landlord wants to, but you can't have a lease on no space.

MR. SCALI: Are there plans that are drawn up that you've looked at?

MR. CONROY: Yes. There's 27 to 2800 square-foot of space that we're talking about on the first-floor of the building.

MR. SCALI: So the plans have a space potentially for you to be in but you haven't made an agreement with them; is that what it is?

MR. CONROY: The space is there. We do not have a written agreement, that's correct.

MR. RAFFERTY: Just to be accurate, the space would hope to be there someday. The issue is -- and not to interrupt but --

MR. SCALI: The plans are ready but the space is not built, of course.

MR. RAFFERTY: The space is not built. We have the plans, and since this matter was before the Commission on November 10, 2008, the Planning Board approved a special permit to authorize the construction of a new structure at that location. As a result, the appeal period has expired and the building plans have all been prepared.

But as I'm sure the Commission is well aware, in the current economic climate the development does not yet have the necessary commitments in place to go ahead at the present time, but the space is designed and approved, and the plans that were approved by the Planning Board contain as a critical element of the design, ground floor retail space, hopefully a restaurant, and

hopefully Mr. Conroy's client, or perhaps a successor depending on how those terms can be reached.

At the moment, we are in a bit of limbo occasioned by the fact that the building has begun -- it has been shut down and is being prepared for ultimate demolition. The Historical Commission approved the demolition of the building and the Planning Board then approved a successor structure.

Financing approval has proven to be more elusive than municipal approval, at this point. At the current time, we do not have the necessary go-ahead to report to you when we would commence that. I know that the landlord is optimistic that things will improve, but at the moment, we support our former tenant's request and are prepared to allow that location, which does exist physically, to remain for purposes of the inactive status of the license.

MR. SCALI: How long have you been closed?

MR. CONROY: Two years.

MR. SCALI: So six months isn't going to cut it, you're telling; right? Nothing is going to happen in six months?

MR. RAFFERTY: We won't have a building built, but we might be underway. We certainly -- we won't be cutting any ribbons in six months, so I think that that's fair to say in terms of we wouldn't have any construction completed. I think we would consider it a significant milestone if we have commenced construction within six months.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. HAAS: No questions.

MR. SCALI: Anyone from the public want to be heard? No hands.

I know that the economy is an issue for everybody at this point in time. There are a number of people who are requesting licenses that are coming in looking for new licenses in Harvard Square. I think a couple of them are on this

evening or at our next hearing. This issue of landlords holding onto licenses hoping that someday they're going to build something or find a tenant to go in there is not the best scenario for people who are looking for licenses in the Square.

I think we have to really weigh that out in terms of how we balance out what's needed and what's being used. The idea that someday something may be built and somehow we're going to get money to do this -- you know, it may be that you have to sell off to somebody and apply for a license later on.

I don't know, but I'm starting to feel that people are asking for new licenses thinking, oh well, I'm not going to go and ask to buy that license because that landlord is holding onto that license and he's going to do something with and he's never going to let go of it. Landlords are not in control of licenses.

MR. RAFFERTY: I should be clear, there's no assertion here the landlord is. I don't represent the licensee; Mr. Conroy does. The

landlord did make a determination about the premises and has gone about the process of shutting down the building.

There are precedents where licensees through no fault of their own find themselves in this state. I will say that the landlord is very committed to proceeding, but I'm not aware of anyone who has approached Mr. Conroy concerning the license.

We don't have an ability to dictate the future of the license. I don't disagree at all. I think the licensee would like an opportunity -- as he's explained it to us -- would like an opportunity to return there. It's a long-standing license at that location, and we've expressed a willingness to work with him, moving on a very fast-track up until this fall.

Frankly, this was moving on a very fast track up until this fall. We were actually -- we moved very quickly through the approval process, had identified in all likelihood a single tenant office building, and things changed quite

dramatically in the last few months.

I understand the Commission's concern. I would say that if we could have the Commission revisit the issue in the customary fashion, we would be able to give you an update in six months.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Through you to Mr. Rafferty: Has there been any consideration or perhaps thought process that because of today's economics, of perhaps reopening the current building and kind of returning to the pre-anticipated redevelopment stages days?

MR. RAFFERTY: Not that I'm aware of but I wondered that myself. I'm not sure physically -- I know there were some steps taken when the building was shut down in terms of utilities and the like. I don't know what the condition of the building is. I know it's been unoccupied for the better part of a year or two, two years. I don't have the answer; it's a legitimate question. Could that be a potential

outcome? I suspect, but I haven't heard anything.

There's been quite a bit of effort committed in terms of design and architectural fees. This was a part of a larger project associated with the historic Conductor's Building located next door. Mr. Freedman and the Carpenter Company formed a joint venture with the Bullfinch Companies. Bullfinch happens to own this building. The Carpenter entity owns the Conductor Building. They've worked well through the Historical Commission and Planning Board process so it's a two-part development.

It's something for which there was great enthusiasm and support in the community. I know everyone would like to see the restoration of the Conductor's Building and see this new building take shape, but we are facing the challenges that we're all aware of at the moment.

MR. TURNER: Thank you.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Motion to take the matter

under advisement?

MR. HAAS: Moved.

MR. TURNER: Second.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

MR. RAFFERTY: Thank you very much.

MS. LINT: Application: Notre Dame De Cambridge, Incorporated, David Bunker, Manager, holder of an All Alcoholic Beverages as a Club license at 2322 Massachusetts Avenue has applied for a change of manager from David Bunker to G. Francis Duffy.

MR. SCALI: Good evening.

MR. DUFFY: Good evening.

MR. SCALI: Tell us who you are for the record, please.

MR. DUFFY: G. Francis Duffy.

MR. SCALI: You've been a member of the Association of Notre Dame for a long time; am I correct?

MR. DUFFY: That's correct. I was the manager from 1999 to 2005, and Dave Bunker took over at that time. He's a retired Somerville police officer. December 11, he was walking up the stairs of the Association of Notre Dame and for the lack of breath he just collapsed. He was in the hospital for almost two weeks before he passed away, and they still have not determined the cause

of death.

MR. SCALI: I didn't know that. I'm sorry to hear that.

You're stepping in to fill the shoes you've had before?

MR. DUFFY: Yes.

MR. SCALI: Background check?

MS. LINT: Fine.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard on the Association of Notre Dame? All right.

And you know your responsibilities? You had it before.

MR. DUFFY: Yes, I do.

MR. SCALI: Motion to approve.

MR. HAAS: Motion.

MR. SCALI: Moved. Seconded?

MR. TURNER: Second it.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you, Mr. Duffy.

Good luck.

MR. DUFFY: Thank you.

MS. LINT: Application: Kun Myung, Incorporated d/b/a Takemura, John Woo, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 18 Eliot Street has applied for a change of manager from John Woo to Myung Ja Kim.

MR. SCALI: Good evening.

MR. DEVINE: Good evening, Mr. Chairman.

MR. SCALI: Tell us who you are, please.

MR. DEVINE: My name is Charles Devine, D-E-V-I-N-E. I'm the attorney Kun Myung, Inc. I have with me Mrs. Myung Ja Kim and Mr. David Yoo who's an employee of Kun Myung, Inc. They operate Takemura at 18 Eliot Street in Cambridge, Massachusetts.

We're here because the present manager, John Woo, is returning to his home in Korea, and Mrs. Kim who is the owner of Kun Myung, Inc. is undertaking the responsibilities of manager and wishes to be added to the liquor license.

Mrs. Kim is only partially conversant in English which is why we have David Yoo here to translate for her. She's been involved in the businesses since its inception in September of '03. She typically works 60-plus hour weeks, so she is very familiar with the business. As a result of a recent divorce she's assumed full ownership of the corporation.

MR. SCALI: Is that the corporation that holds the license.

MR. DEVINE: The corporation that holds the license, Kun Myung, Inc., yes.

MR. SCALI: Have you changed the ownership on that corporation?

MR. DEVINE: My understanding is that -- and my office is not handling the divorce, but that's sort of part of this pending divorce, which isn't finalized yet. Apparently it will be finalized within a reasonable period of time and I think that any internal documents will then be drafted.

MR. SCALI: Is it anticipated that she

will become full owner if they settle this matter?

MR. DEVINE: Yes. She's a 50 percent owner I think. Well, I think she's de facto the full owner today. I believe that the husband has essentially given her the business. I don't believe that there is any formal documentation to that effect as of today. Although, am I wrong about that?

You know what, on second thought I believe that there is a document evidencing Mr. Kim's conveyance of the entire business over to Mrs. Kim. I do not have one in my file but I believe that it was told me that a document does exist. Correct?

MR. YOO: Yes.

MR. SCALI: So has that taken place in court where she's been given ownership?

MR. YOO: Yes.

MR. SCALI: So I think we need to straighten that out too.

MR. DEVINE: Yes. I think that as far as filing a final agreement for the divorce and

having that allowed by the court, that hasn't occurred yet.

MR. SCALI: Is that still part of the package? Documents show that she has ownership but it hasn't been finalized yet?

MR. DEVINE: Between the two parties there is a document conveying his ownership interest to her. That has not yet been incorporated into a judgment of divorce yet because the divorce is still pending. Although the conveyance has occurred and the document exists, with the court's approval I can arrange to have one delivered here.

MR. SCALI: You need to apply for a hearing. You need to apply for a change of corporate officers and stockholders once the decree is issued.

MR. DEVINE: We shall do that.

But as of today, we're just trying to fill Mr. Woo's position as he's leaving for Korea.

MR. SCALI: So Mr. Woo is gone?

MR. DEVINE: I think he's still here,

but he's preparing to leave. I think probably upon allowance of this petition, he's on the next flight I would imagine.

MR. SCALI: Ms. Kim has been there all along as owner and she is familiar with the rules and regulations. Background check and citizenship, and all that is okay?

MS. LINT: Everything is fine.

MR. SCALI: In terms of our office reaching someone there at the restaurant, we have always had issues in certain situations where the person that we try to reach is not able to understand what we're saying on the phone or doesn't read the letters. Who should we contact that's going to be available to reach that will be able to speak with us if we have a question?

MR. DEVINE: David Yoo is a full-time employee there. He's there every day, David Yoo, Y-O-O.

MR. SCALI: You're David Yoo?

MR. YOO: Yes.

MR. SCALI: Are you saying you're

there every day helping Ms. Kim?

MR. YOO: Except on Monday and Tuesday.

MR. SCALI: I'm just worried about if documents come to Ms. Kim by letter or by phone call, will she understand what they are?

MR. DEVINE: I think that she understands enough to be able to send them either to me or to have one of the employees read it.

MR. YOO: If I'm not there then my younger brother is there for her. So you don't have to worry about the phone conversations.

MR. SCALI: We just don't want letters to get put into the trash barrel because she doesn't understand what they mean. My staff gets very upset.

MR. YOO: I'll make sure that doesn't happen.

MR. SCALI: Mrs. Lint will be very upset with all of you.

Questions, Commissioners?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Anyone from the public?

All right. Motion to approve.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: All right.

MR. DEVINE: Thank you.

MR. SCALI: And as soon as you know about the other issue please notify Mrs. Lint about the application.

MS. LINT: Application: James and Carol, Incorporated d/b/a as Thai and Mandarin Kitchen, Chih-Cheng Lin, Manager, holder of a Common Victualer license at 2261 Massachusetts Avenue has applied for a change of d/b/a to Pho House.

MR. LIN: My name is Chih-Cheng Lin. I'm the manager of the Thai and Mandarin Kitchen. I would like to change my name, the d/b/a from Thai and Mandarin Kitchen to Pho House.

MR. SCALI: Why are we changing our name?

MR. LIN: Because as you know the economy is very bad so the restaurant business is pretty tough so far, very slow here. I want to keep up here so I'm trying to do something different. Try to pick up the business for myself, for the place.

MR. SCALI: Is it a new menu?

MR. LIN: Yes.

MR. SCALI: So new menu, new name.

MR. LIN: Yeah.

MR. SCALI: Is it a new kind of food altogether?

MR. LIN: Still selling Thai food and the noodle soups.

MR. SCALI: So no change of ownership?

MR. LIN: No.

MR. SCALI: No change of corporation?

MR. LIN: No, just change the d/b/a.

MR. SCALI: No change of seats or interior design?

MR. LIN: No, nothing.

MR. SCALI: Does anybody want to be heard? Comments?

MR. HAAS: I'm still trying to figure out why you're changing the name. How is that going to change your business?

MR. LIN: This is my second time changing the name. The first time was Thai Kitchen. After that, I wanted to try some Chinese food there so I chose the name to be Thai and Mandarin Kitchen. Now my regular customers are all gone. I don't know why. So I couldn't find any.

So I try to find some new customer to come over here, so I try to find new Asian people to come to the place. It's usually always American.

MR. SCALI: You think new name, new customers, people think you're new?

MR. LIN: I don't know.

MR. SCALI: Better food; right?

MR. LIN: Yeah, better food. No choice if I want to keep up.

MR. SCALI: All right. Motion.

MR. HAAS: Motion to approve.

MR. SCALI: Moved. Seconded?

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: It has to go to the ABCC, you know that?

MR. LIN: Yeah, sure.

MR. SCALI: And when that comes back, then you can change. Thank you.

MR. LIN: Thank you. Have a nice day.

MR. SCALI: No, I'm sorry. This is a Common Victualer.

MS. LINT: This is a Common Victualer.

MR. SCALI: You're not alcohol. So as soon as you can get your paperwork to Mrs. Lint we can give you the new license upstairs.

MR. LIN: Excuse me?

MR. SCALI: In the next couple of days, you can come in.

MR. LIN: In the next couple of days, yeah.

MR. SCALI: Yes.

MR. LIN: I'm in no hurry. That's fine.

MR. SCALI: Thank you.

MR. SCALI: Application: Science Partners, Incorporated d/b/a Tigers and Bears, Matthew Curtis, Manager, holder of an approved Wine and Malt Beverages as a Restaurant license (not yet issued) has applied to further extend the inactive status of the approval.

MR. SCALI: Tigers and Bears? Not here? He was here. It's Mr. Lutz. All right, no-show. We'll take the matter under advisement. Actually we have to find out why he didn't show up.

Next matter?

MR. HAAS: Mr. Chair, before we move on, since he's not here to make formal application, what happens to the status of the license? Is he just allowed to continue inactive?

MR. SCALI: Technically the license should die or be canceled. He hasn't opened; right? Never opened?

MS. LINT: Never opened.

MR. SCALI: What is the status of his construction? Do you know?

MS. LINT: I'm not aware.

MR. HAAS: Is this a valued license or no-value license?

MS. LINT: No value.

MR. SCALI: It was a new license we gave to him for free.

MR. HAAS: Is this the one that has multiple restaurants?

MS. LINT: Uh-huh.

MR. TURNER: Mr. Chair, is this the Miracle of Science?

MR. SCALI: Yes.

MR. HAAS: That's still in operation, yes?

MR. SCALI: Middlesex Miracle of Science and the pizza place on Church Street.

MR. TURNER: So it's safe to say that the manager or the licensee is still around.

MR. SCALI: I'm sorry?

MR. TURNER: I said it's safe to say the licensee is still around.

MR. SCALI: Still around.

MR. HAAS: Can I make a recommendation

on that? I would recommend that we send them a notice telling them that we'll set him up for one more date, and if we don't hear from him by that date then we'll move to cancel the license.

MR. SCALI: You're being generous.

MS. LINT: Very.

MR. HAAS: Do you want to cancel it now?

MR. SCALI: I was going to make a motion to take the matter under advisement and cancel it at the end of the month, but that's up to you all.

MR. HAAS: I'll defer to the Deputy Chief.

MR. TURNER: I think Commissioner Haas' motion just kind of bumps that up a couple of days. I would concur by next hearing. He has one more opportunity to appear and that's it.

MR. SCALI: So appear at the next hearing?

MR. HAAS: We have another hearing between now and decision; right?

MR. SCALI: February 24.

Motion to send a letter asking why they did not appear, and to appear on February 24, or the license will be canceled. Moved.

MR. HAAS: Moved.

MR. SCALI: Seconded?

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MS. LINT: Application: Shine Entertainment LLC d/b/a Shine, Rosa Ostheimer, Manager, holder of an All Alcoholic Beverages as a Restaurant license at One Kendall Square has applied to further extend the inactive status of the alcohol license.

MR. SCALI: Good evening. Tell us who you are for the record, please.

MR. DICKISON: I'm Mark Dickison. I'm the attorney representing Shine Entertainment LLC. To my left is Ms. Ostheimer. She's the manager of record. To my further left is Ira Rashap. He can speak to the efforts that have been made since last July regarding the efforts to sell the license.

In sum and substance, we are here to further extend the inactive status of the license for at least six months. Ms. Ostheimer -- as you may recall, this license -- we were before you I believe in July of this past year requesting that we be put on inactive status.

Almost immediately following the approval that we received from the Commission, we

went and sought a broker, and we have been in touch and had Mr. Rashap working on behalf of the license to make -- he can speak in more detail as to the efforts that have been made to try and sell the license.

Ms. Ostheimer has also made efforts as well. The Commission has been kind enough I think when they've heard of potential buyers looking for licenses in the area, they've referred them to us.

We've most recently been in communication with a woman named Carlene Ranoso, who owns I believe it's either the title or the style of food, the Caribbean Restaurant on Cambridge Street. We have been in touch with her. We've had offers go back and forth as recently as last week. We haven't finalized anything. I can't report that we've got anything really in the works; it may fall flat.

But we have been doing everything possible including substantial -- you know, due to the economic climate as you well know, we have substantially lowered the price that we've been

seeking for the license.

MR. SCALI: That was going to be my question, whether you're asking a reasonable price. Because I mean there are a number of people who have high prices and high hopes, but those days are long gone I think for a lot of businesses, not just you.

MR. DICKISON: Right. If you want the details on that, I mean, essentially I think you --

MS. OSTHEIMER: We dropped it down to 100,000, and the next person was 150,000, but he knows more about that than I do.

MR. SCALI: That's not unreasonable by any means. I thought you were asking over 200.

MS. OSTHEIMER: Oh, no. Everything was just cut in half.

MR. RASHAP: I've gotten response. One of the issues that we have -- I basically primarily broker businesses and I broker a lot of restaurants. We have a fair amount of interest, but in this economic climate I think getting people to pull the trigger on something becomes the issue.

I did speak to Ms. Lint and she gave me the name of some attorneys to speak to in Cambridge. I've spoken to Jim Rafferty; I've spoken to Bill Goldberg; I've spoken to a Kevin Crane; Mark Manger; and a number of other attorneys to let them know that there was a license available in the event that they had a client that might be interested.

We've done all the typical ways that brokers tend to get the word out including speaking to other brokers. We'll be happy to co-broke a deal with someone else. I'm friendly with some of the people who exclusively broker restaurants. I've been in touch with them to make them aware if they have someone interested to contact us. So I think the efforts have been made.

MR. SCALI: Is the landlord willing to find a space in that same spot, or are you looking for other locations?

MR. RASHAP: From speaking to Ms. Lint, I think the issue was it has the potential to be moved as long as Harvard Square is not the area,

correct me if I'm wrong.

MS. LINT: Not exactly. It has the potential to be moved with the understanding that if it was then sold again, it would go back to the original area and it's making a showing area that there's a need in any of the areas for another license.

MR. RASHAP: The notion was that there's a potential to move it from its location. I'm not sure what the status is of the location where your club is; whether they have a tenant in there now?

MR. SCALI: No.

MR. RASHAP: I actually did speak to someone who was also speaking with the attorney, I guess it was a Dennis Benzin, and he was speaking to someone about the license for someplace called Anise.

MR. SCALI: That's in the same complex.

MR. RASHAP: The same complex, so we've had conversations, and he was trying to

negotiate to see about acquiring a license. That was the most recent conversation. So it's gotten some activity. It's just a question of getting someone to make a move in this environment.

MR. SCALI: Questions?

MR. HAAS: Mr. Chair, I think they are trying to make an earnest effort to sell the license. I would be inclined to extend the license.

MR. SCALI: Comments?

MR. TURNER: No comments.

MR. SCALI: Anyone from the public want to be heard on this matter?

All right. Motion to extend six months?

MR. HAAS: Motion.

MR. SCALI: Moved. Seconded?

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

Good luck. Hopefully before six
months you'll have a buyer.

MR. DICKISON: Thank you.

MS. LINT: Application: Shrimp Market of Boston LLC d/b/a Shrimp Market, Justin Gould, Manager, has applied for a Common Victualer license at 100 Cambridgeside Place, Suite F5. Said license if granted would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have hours of operation from 11:00 a.m. until 9:00 p.m. seven days per week.

MR. SCALI: Good evening.

MR. GOULD: How are you?

MR. SCALI: Just tell us your name.

MR. GOULD: Justin Gould.

MR. SCALI: What happened? Did you guys originally apply before or something, and then not open?

MR. GOULD: I came in to apply. We sent the paperwork down to the contractor, whoever was handling the paperwork at the time, and then I believe Vanessa, the President had to reapply. I'm not positive.

MR. SCALI: I think your time expired; am I right?

MS. LINT: Yes.

MR. SCALI: Your time expired. You didn't open within six months; is that what happened? Are you guys open?

MR. GOULD: We opened in June of last year.

MR. SCALI: You guys opened without a license.

MR. GOULD: Yeah. We've been up and operating. It wasn't until recently that we received a letter.

MS. LINT: They were approved. I remember Vanessa. They were approved.

MR. SCALI: And they just didn't pick up the license?

MS. LINT: And didn't pick up the license.

MR. SCALI: No one came down to pick up the license.

MS. LINT: It was in April of '08.

MR. GOULD: So they were approved in April.

MS. LINT: Never got the licenses. Vanessa was just supposed to come in and notify us of who the manager would be, because she had applied in her name but would not actually be operating the business after a period of time, because she's out of Florida; isn't she?

MR. GOULD: Yeah. We're all based out of Miami. There is new management over there now.

MR. SCALI: Somebody dropped the ball I guess maybe because Vanessa left or something. Is that what it is?

MR. GOULD: We didn't get up to the Boston area, myself or my team, until June. Vanessa and Christian, the contractors, were probably the only two people that were up here in April. My assumption is that the ball fell through her hands. I'll be sure to let her know.

MR. SCALI: Technically we should have closed you down.

Comments?

MR. TURNER: Mr. Chair, through you to Mr. Gould: do you currently have contracts to have

your hood suppression system serviced and extinguishers, because we did an inspection the other day and they're all outdated. The suppression system needs inspection, the extinguishers need inspecting, and the hood cleaning sticker was expired. You might want to just --

MR. GOULD: The Cambridge Galleria Mall is the one who handles all the hoods. They handle the cleaning and inspections. They're the ones that maintain those hood systems for all the restaurants in the mall.

MR. TURNER: When you say the Galleria Mall, I assume they contract out?

MR. GOULD: Yes.

MR. TURNER: Who's the contact person at the Galleria for that, do you know?

MR. GOULD: I only know marketing. I don't have any -- I can get that information.

MS. LINT: Peter -- I can't think of it.

MR. TURNER: I can find out and pass

that along. Other than that Mr. Chair, I didn't notice anything unusual other than the fact that I was informed they were open since last July.

MS. LINT: Peter DeVino.

MR. SCALI: So you're saying the mall is responsible for cleaning each one of those hoods.

MR. DUGAN: Yeah. It's part of our rent. They handle all the hood systems. They have a company that comes in once a month to clean the hoods. They were actually in three days ago. They set the alarms off and I get the phone call. It happens every time. They are maintaining them. As far as inspections go, I have no idea.

MR. SCALI: Comments?

MR. HAAS: Deputy Chief, I have a question for you. What does this mean in terms of them continuing to operate?

MR. TURNER: Just by virtue of them being out of date doesn't mean that the systems will not function. It just means that perhaps they haven't paid bills or the service company has been

delayed in coming out and just doing an inspection of the extinguishing systems.

As far as the hood cleaning, from what I observed, it didn't appear to be overly used or in any kind of a state where it needed immediate cleaning, but six months is the general requirement to have the hoods serviced.

I would not have a problem -- I'm going to contact management, Galleria management tomorrow and see what I can find out as far as where they are in this. It's the first I've heard of it.

MR. SCALI: Let him do it.

MR. TURNER: This is the first I've heard of it. I'd like to see if that's in fact a policy.

MR. SCALI: The Shrimp Market can take care of that for you, I'm sure, in a minute.

MR. GOULD: Absolutely.

MR. SCALI: The Deputy Chief has got other things to do beside call management down there, I'm sure.

MR. HAAS: I would suspect the Deputy Chief would want to hear back from you then at that point once you've worked that out.

MR. SCALI: I'm sure that Mr. Gould can give you call, Deputy Chief, as soon as it's done; correct?

MR. GOULD: It will be taken care of tomorrow morning.

MR. SCALI: Good. All right.

Motion to take the matter under advisement. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Report back to the Deputy Chief when that's completed, and then we'll vote February 26.

MR. SCALI: Thank you.

MS. LINT: Application: The Upper Crust Harvard Square, LLC d/b/a The Upper Crust, Jordan Tobins, Manager, holder of a Common Victualer license at 498 Brattle Street has applied for a new Wine and Malt Beverages as a Restaurant license. The proposed seating capacity is 20 and the proposed maximum occupancy is 50 persons. The hours of operation are 11:00 a.m. to 11:00 p.m. seven days per week. This address is located in Cap Area No. 1.

MR. SCALI: Good evening.

MR. TOBINS: Good evening.

MR. SCALI: Tell us who you are.

MR. TOBINS: My name is Jordan Tobins.

I'm one of the owners and manager of The Upper Crust Pizzeria. We're here before the Board today to apply for a new -- I think they're called restricted licenses.

MR. SCALI: Beer and Wine, no value, non-transferable.

MR. TOBINS: No value, non-transferable license.

I do have my receipts, the abutters. They are 76 of them so I couldn't attach them all, but there were two that were returned.

MS. LINT: Do you have the affidavit?

MR. TOBINS: Yeah. I have the affidavit here as well. Here's the notice, the affidavit, and this was the certified copy from the Clerk's office.

MR. SCALI: How long has Upper Crust been there?

MR. TOBINS: We've been there seven months.

MR. SCALI: And the reason why you're applying for a license? What's the plan?

MR. TOBINS: A lot of customers do come in and ask for it. And they come in and joke around and comment that it would be great to have a beer with the pizza.

We are a restaurant; we're not a bar establishment. If you guys have even seen, we don't even really have a bar setup. Food is served at the tables or counter service, so it would be

just serving a beer or a glass of wine with food.

MR. SCALI: Do you have other locations?

MR. TOBINS: Yes, sir.

MR. SCALI: Do you have beer and wine at those locations?

MR. TOBINS: Yes, sir.

MR. SCALI: Where are they?

MR. TOBINS: We have on Newbury Street in Downtown Boston, we have a beer and wine license. We have a beer and wine license at our Brookline location in Coolidge Corner. We just recently opened up in the South End in Boston on Tremont Street. We were issued one of the Boston non-transferable licenses there as well.

MR. SCALI: They got that idea from us you know.

MR. TOBINS: That's what they said.

So we're familiar with that. We're not doing it to add any value or try to sell, we're just doing it so we can help supplement when the customers ask for a beer or something like that.

MR. SCALI: You are the manager of record?

MR. TOBINS: Yes, sir.

MR. SCALI: What is your experience in the alcohol business?

MR. TOBINS: I have been operating the Upper Crusts now for eight years, starting in 2001. So I've been operating -- we've got locations with beer and wine licenses as well. We actually have two locations with All Alcohol licenses and knock-wood, we're lucky. In eight years we've never even had one incident.

MR. SCALI: No violations?

MR. TOBINS: Never one violation, nothing that the ABCC ever -- so you know, it is a restaurant.

MR. SCALI: Has your name been on any of the licenses?

MR. TOBINS: Yes.

MR. SCALI: Which one?

MR. TOBINS: The South End location and I think the Newbury Street location I'm on as

well.

MR. SCALI: Still?

MR. TOBINS: Yes.

MR. SCALI: So you're on all of those
now?

MR. TOBINS: Yeah.

MR. SCALI: Do you divide up your time
between all of those locations?

MR. TOBINS: Yeah. I'm here with two
of my business partners, Josh and Brendan. They're
actually listed as managers as well in the Boston
locations. Our general manager and two other
managers are actually at the shops tonight. They
couldn't be here but they are all listed on those
licenses as managers as well. We've all been TIP
trained, Serve-Safe certified. All of our
management staff is required to.

MR. SCALI: We have our own training
program here, 21-Proof. So we require that any new
licensee go through that training, all managers,
owners, and now we're looking at all staff to do
that as well.

There is a fee for that through the Cambridge Prevention Coalition. Frank Connolly is our contact person and there's a sliding scale depending on the number of people. They also combine trainings too. If there's a training in the area, you can go to that training and be added on. Or, they can come to your restaurant and do the training right there. We do require you go through that if you are granted a license here in Cambridge.

MR. TOBINS: You said Frank --

MR. SCALI: Frank Connolly, and we'll give you the information to contact him.

MR. SCALI: So tell me why you are going to have overwhelming neighborhood support, proof of need, lack of harm, so that -- tell us why you haven't bought a license in the area or in the City.

MR. TOBINS: As far as support goes I do have a letter here from Denise Jillson from the Business Association offering support. The neighbors are wonderful there. They've all been

really supportive, not just of our business and the restaurant, like you know, coming in and getting pizza, but over this application.

Like I said, it's an addition. That's really all we're looking for. We want to add the ability to have a drink when you're coming in for a pizza or for dinner.

MR. SCALI: Tell me about your seating. You've got 20 seats but you're looking for 50 capacity?

MR. TOBINS: We're not going to change the seating. There's enough space for standing room if people want to come in and wait.

MR. SCALI: Where are you going to fit 50 people in that tiny little space.

MR. TOBINS: I know.

MR. SCALI: The Fire Department was down and said you can barely turn around with 20 people. I can't imagine you can fit 50 people in there.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: With that said, Mr. Chair, myself and Captain Francis inspected the establishment today. I am pleased. It's a very nicely run, very clean establishment. I was very surprised, I think there was seven employees working making pizzas and serving customers, and it was quite busy. However, we are concerned.

The place is limited in space. I think we counted 16 seats currently being utilized, and at that, it was kind of pretty tight between the people standing placing their orders and the people maneuvering to sit at the tables. Twenty would certainly make it that much more crowded, and of course 50 I think is absolutely out of the question.

The only other concerns we had, there were some minor issues in the basement. We did speak to the employees about that, which I think they're not a big deal.

The other concern is, I am concerned where you're going to store the alcohol, the beer and the wine? And then where is it going to be

served in relation to the counter service? Do you have a drawing I guess, a floor plan or something to indicate how you're going to store it and where the refrigerators will go.

MR. TOBINS: I don't have a floor plan here. We have in the basement the walk-in cooler, which is where we would propose to store the kegs. In the wall at the front counter, the person at the POS system, we're the ones who will actually be serving the beer. So behind where we'll be standing up against the wall there is actually a space that was left for shelving, but the shelving didn't actually come all the way down, so we were going to just put a four-head tap system there, and the lines would then run into the walk-in in the basement.

MR. TURNER: This would be just keg tap service with no bottles, except for wine.

MR. TOBINS: We would do wine bottles as well. Then we would ask actually to serve beer bottles. We wouldn't have a big selection, but in that same space underneath with the tap we could

put a two-door back bar refrigerator with the glass doors that you see through the front.

MR. TURNER: Thank you.

MR. SCALI: Questions, Commissioner?

MR. HAAS: I don't understand how you're going to address the space issue.

MR. SCALI: How are 30 people going to stand? That's like a bar room to me, standing.

MR. TOBINS: I mean, the more you talk about it and I think about it, like 50 seats actually is -- or 50 people is more than we really need. We really would just want the seats for the people who are there.

MR. SCALI: I think you need to have the Building Department look at the plan and determine how many you can actually fit.

MR. TOBINS: We actually went and we spoke with the Building Department and they said it was a matter of a parking situation. They said come to the Board and ask you, and if you guys said no. They said there was no -- what they actually had said is there was no concrete procedure for

determining that.

MR. SCALI: Believe me, I understand perfectly. You don't have to say any more.

MR. TOBINS: So they said to come and plea before you guys. I mean, honestly we would be very happy if it was just for 20 seats.

MR. TURNER: Mr. Chair?

MR. SCALI: Do you have a handicapped bathroom?

MR. TOBINS: Yeah. We have a unisex handicapped restroom.

MR. TURNER: Mr. Chair, through you to Mr. Tobins, whoever the architect or engineer that drew this drawing up for you, there is a mathematical formula that the building code does prescribe for sprinklered and non-sprinklered occupancy load calculations. So I would turn to this person for some guidance in that respect.

Again, the only other concern, the refrigerator would be -- you said the primary storage is in the basement with your general storage and the cooler, and then you just schlep up

some cases and throw it in the cooler, which is on this side of the counter, not the customer side but the kitchen side.

MR. TOBINS: It would be like right behind us against that wall.

MR. TURNER: I was concerned about that back area towards the bathroom where the public would be frequenting.

MR. TOBINS: We won't put anything back there, nothing back there. Anything that won't be upstairs will be in our basement storage.

MR. TURNER: Thank you.

MR. SCALI: I think we need to clarify the capacity and number, and I think you need to go back to your architect with a plan, and back to the Building Department to determine the number. It sounds like you have 16 seats there now and you're looking for some number bigger than that, but I'm not sure what that number is. So we need to revisit that.

The other issue, as I was talking with the other people that came in here before in terms

of licenses that are for sale, I know that there are a number of All Alcohol licenses that are out there that are for sale. Cambridgeport Saloon has 60 seats; they've been for sale for the last two years. And it's able to be transferred into any different area that they can prove need.

We've got Three Aces Pizza that's up for sale now. We just learned that their Beer and Wine license is up for sale as well. That's towards the Porter Square area, or up that way on Massachusetts Avenue. I know they're looking for a buyer. I'm just trying to -- these are people who have been waiting and waiting and waiting for buyers and we keep issuing new licenses. It's tough.

MR. TOBINS: Just to address that: The only problem is -- you had asked that question and I apologize I didn't answer. The reason we haven't bought a license honestly is the financial burden. We have spoken to a few people and to be honest with you, nobody is really being reasonable with the price for a Beer and Wine license.

So what you were saying about these high prices and high hopes, it doesn't help with the businesses that are trying to succeed and stay in business. They're saying that they're already out of business and what they're doing is they sit there and they hold the license, because they figure, what the heck, let's see who's going to come up with the most amount of money.

We heard the young lady up here talking about her All Alcohol license for sale for 100,000, and we've talked to a couple people about their Beer and Wine licenses, and we were quoted 130,000 for one, and 140,000 for another one, and actually roughly 100,000 for another one.

MR. SCALI: That's a starting point, but you know that.

MR. TOBINS: It's funny though, no matter how hard you try some people keep their attitude, you know, it doesn't matter, we're going find a buyer. And we're not going to be selling so much that it can justify us spending 150,000 for a Beer and Wine license.

MR. SCALI: You do know that our annual fee for a no-value non-transferable license is double the fee that it would be if you bought a license, and you have no equity in that license.

MR. TOBINS: I did not know that, but we're amenable to that. I mean that for us would work because that's much more affordable to us to pay a double fee than to try and spend 140,000 per license, or 100,000 for a license.

MR. SCALI: But you can't use it as capital or equity.

MR. TOBINS: I understand.

MR. HUGGARD: If I could just add to that.

MR. SCALI: Just tell us your name.

MR. HUGGARD: I'm Josh Huggard. I'm one of the owners of the Upper Crust.

One of the main purposes of us getting this license, like Jordan said before, was to just appease the customer. We're not looking to really drive business by the Beer and Wine license.

If someone comes in and they order a

pizza and it's about 15, 20 minutes to make the pizza, they would love to sit there and watch one of the plasma TVs with the game on and just have a beer while they're waiting. And if you're one of the lucky few people to get a table, you might want to have a glass of wine or a bottle of wine with your food. But we're really not looking to pile 50 people in there.

Sort of our intentions were to just get it so that it complements the whole experience of the Upper Crust. We have it at some of our other stores. To go out and try to buy this license it's just -- because we're not opening a bar room. We're not opening a place where we're going to generate enough money from that to pay it off. We're just looking to kind of just complement it. And that's what I think we're looking for.

MR. SCALI: Anybody else want to be heard? Ms. Jillson, do you want to come forward?

MS. JILLSON: Hello.

MR. SCALI: Good evening. How are you?

MS. JILLSON: Fine. For the record,

my name is Denise Jillson. I'm the executive director for the Harvard Square Business Association. We certainly would support this.

I think that there are some questions. Certainly 50 seats and 30 people standing is not practical. So we would defer on that issue, of course, back to the Commission.

But as was mentioned, you know what would be helpful is a list of potential buyers -- I mean sellers -- for us to have, because we do from time to time get questions. You know, are there any available? And for the most part, at least in Harvard Square, as far as I know there are none.

Now that we can transfer them from other parts of the city, if I know that, we can certainly help accommodate that, and I think it would be useful for our members to know, and it certainly would be helpful for other people that are trying, like ABC or some of the others. Mr. Rafferty mentioned one to me this evening that I didn't know about. So that would be helpful.

I think in the interim maybe going

back to the drawing board and making sure that particularly Deputy Turner is comfortable with the number of people that are going to be standing around having a glass of wine or beer might be helpful, but to that extent we would certainly support this. And thank you.

MR. SCALI: We do have a list actually. It's an inactive list that Chris O'Neil has in our office, and Mrs. Lint could get that to you. It's been available for many years. I think maybe people have just kind of given up because the prices were so high years ago, but as I was just saying, the prices are coming down lower and lower and lower over the past -- and you know during our committee we had in 2006, it talked about the prices of licenses and how expensive they were and people just couldn't afford them.

MS. JILLSON: Which is what prompted the change in the policy. So if we just had that available. I'll e-mail you in the morning and get that and it would be really helpful, because we do get members who would like to know where they are

available. And right now, there aren't any in Harvard Square, as you know.

And can I just say one more thing for the record? I happened to be at the License Commission in Somerville three weeks ago, and you guys are to complimented. Because first of all, they don't have a microphone system so if you're in the back of the room, you can't hear anything. And secondly, the chairman -- they make you sign in, and then they decide halfway through that they're not taking any public comment. It was horrible. So I went and wasted two-and-a-half hours there and they never called me, and I signed in. I was just absolutely offended and thought, boy, I welcome my meetings in Cambridge. I love the Cambridge License Commission. Anyway, thank you.

MR. SCALI: Everybody gets heard here. You know that.

MS. JILLSON: I know, and it's so fair. And you never make fun of anybody. They were just horrible.

MR. SCALI: Thank you, Ms. Jillson.

Anybody else want to be heard? No hands.

Comments?

MR. HAAS: I understand your limited capacity. I do agree that the proposed 50 seats - I don't know how you're going to accommodate that. I also understand that that has an impact in terms of your -- your market plan has in terms of how much you can afford to spend on a liquor license. So I think you've got to kind of reconcile all that stuff in terms of, you know, if you could buy a license, how much you can afford based on your market plan.

Also, I think you need to resolve the space issue. I don't think you've got enough space for 50 people.

MR. SCALI: I think I'm going to make a motion to continue the matter until you can clarify the capacity issue, and I think we can probably do that at our Decisionmaking meeting, which is --

MS. LINT: February 26.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Again, on this license application, I think the applicant was correct, it would enhance the operation. However, overwhelming public support, I question whether that was actually met. There weren't really that many letters of support or petitions. However, on the other hand, there were no letters of objection either. So nothing on the overwhelming side on that one.

Again, I'm concerned with the capacity. I would like to take a better look at that. Again, I have no objection I think on the granting, or I would support the granting of the Wine and Malt license.

MR. SCALI: Motion then to continue to February 26. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: So if you could work with

Mrs. Lint between now and then to come up with a number. Go back to your architect, get your plan laid out in terms of this number of seats, and then the standing. I'm going to guess, just guessing from past experience that probably no more than 10 people could stand in that area. It's simply a guess though, just from past experience.

MR. HUGGARD: Which you're probably right.

MR. SCALI: If that many at all. The Deputy Chief may not agree with me, but I think you need to look at the numbers and come back to us with a number. I'm going to amend your application.

MR. TOBINS: Okay. Can I do that with Ms. Lint?

MR. SCALI: Yes. Do that with Mrs. Lint or see Chris O'Neil in my office. Thank you. Good luck.

MR. TOBINS: Thank you.

MS. LINT: Application: Brattle Film Foundation d/b/a Brattle Theatre, Edward Hinkle, Manager, holder of a Common Victualer license and Entertainment license at 40 Brattle Street has applied for a new Wine and Malt Beverages as a Restaurant license at said address. This address is located in Cap Area No. 1.

MR. SCALI: Good evening. Tell us who you are.

MR. HINKLE: My name is Ned Hinkle. I am the creative director at the Brattle Film Foundation.

MS. MOYLAN: And I'm Ivy Moylan and I'm the executive director at the Brattle Film Foundation.

MR. SCALI: So this is an exiting theater?

MR. HINKLE: Yes.

MR. SCALI: Which has been in operation for how long?

MR. HINKLE: The cinema itself has been in operation since 1953; Brattle Film

Foundation has been an Entertainment license holder and operator of the space since 2001.

MR. SCALI: What's the theory; that people are not coming to the theater without a glass of wine, or you want them to?

MR. HINKLE: It's not so much that people are staying away, but that it is a -- it certainly would be a complement to their experience in the theater. It's something we've discussed for a long time. Somerville Theatre acquired a Beer and Wine license I believe two years ago or 18 months ago, and we sort of thought the time was right to jump in.

I hate to harp on the economic climate but --

MR. SCALI: That's not always a reason to get a license.

MR. HINKLE: No, no, no. In general, movie theaters are looking at different ways to make their spaces more appealing to people, and this is just another way for us to approach that.

MR. SCALI: I'm confused on how it's

going to work. Are people going to go up to the concession stand; someone is going to ID them there?

MR. HINKLE: Yes.

MR. SCALI: So that means all your staff has to be trained on doing that; correct?

MR. HINKLE: Absolutely.

MR. SCALI: Are you going to bracelet people or just card them?

MR. HINKLE: Our plan is along the same lines of what the Somerville Theatre does, which is, they will card anybody who requests an alcoholic beverage and then they're given a plastic bracelet as you would get at a nightclub, and then be given a beverage and allowed to go upstairs.

MR. SCALI: So they can drink it in the lobby?

MR. HINKLE: We're going to discourage people from drinking in the lobby, actually, because I'm sure you gentlemen are familiar with the space. It's a very small lobby. We really don't want to encourage people to use it as a bar.

We actually would encourage people to buy their beverage and go upstairs into the theater.

What has concerned us in the past is the issue obviously of transfer between people. The Somerville Theatre, the process they use is they have a staff person or a manager make a round through the theater space at least twice during the course of the film with a visible presence to make sure that there is no transfer going on. That's our plan as well.

We currently have a volunteer usher program. The people who rip the tickets at the entrance to the theater are volunteers. They would be stationed within the then used space for the course of the film. Then we would also have a manager do a circuit of the theater at least twice depending on the length of the film.

MR. SCALI: I'm guessing, but it's not really a youth-oriented type theater; am I correct? That's my recollection.

MR. HINKLE: No. The days of the Harvard undergrad flocking to the Brattle are

unfortunately gone.

MS. MOYLAN: I'm not so sorry about that.

MR. HINKLE: Our clientele is predominantly, the main swath of people that come to the theater are 25 to 40 years old, young professionals, grad students. The fair that we offer is generally classic film, art film. It's not mainstream movie theater kind of environment.

MR. SCALI: Do you guys serve food now at the concession stand?

MR. HINKLE: The usual accoutrement to a movie theater experience: popcorn and candy and cookies, and we're always looking at new items to try out.

MS. MOYLAN: No prepared food.

MR. SCALI: Is it just wine, or both beer and wine?

MR. HINKLE: We were initially just thinking of beer, and some people in our community voiced interest in wine as well. So we decided you can have beer or wine.

MS. MOYLAN: We do have two fund-raising events per year at the theater where we do always serve wine. And if we were -- we found out we couldn't reapply to expand to wine, so we were like well that way at least it will cover the fund-raising events as well, so that we don't have to get a one-day to go over that.

The one thing that he didn't mention was that people can only buy one beer. So one bracelet, one beer.

MR. SCALI: Or a glass of wine.

MS. MOYLAN: Or one glass.

MR. SCALI: So that's your policy, one drink per person.

MS. MOYLAN: And only buying like -- if someone is waiting for a movie, like people buy popcorn and soda and stuff, and they can certainly enjoy that, but they have to have a ticket.

One of the things we don't want is people coming in and hanging out, not that they really would. It's not the most exciting environment.

MR. HINKLE: But we have discussed that possibility.

MS. MOYLAN: Yeah. We were sort of trying to plan on all of the potentials.

MR. HINKLE: It's certainly something we would discourage.

One thing somewhat in pursuant to what Ivy was just saying is that certainly our experience with selling concessions in general is that people will not come downstairs and get -- or very few people will come downstairs and get another popcorn or another coffee or soda or something like that during the course of a film. So our anticipation, although obviously we haven't done this, is that most patrons would buy one beer or glass of wine at the beginning of a screening and not replenish.

MR. SCALI: Have either of you had a license in your name before?

MR. HINKLE: No.

MR. SCALI: So this is your first experience with serving alcohol?

MR. HINKLE: Yes. I worked for a brief period of time for the Middle East as a night manager and booking agent, so I have some experience with that environment, which as we all know has its ups and downs, and that was many years ago.

MR. SCALI: So you know that we have a 21-Proof training program and we require all staff to go through that training.

MR. HINKLE: We've been in communication with Passim and they invited us to attend their managers and staff training, which is tomorrow. So we're actually going to go ahead and just attend and get it taken care of right away. Our staff will be trained at a later date but the managers and owners will be tomorrow.

MS. MOYLAN: And we're planning on actually joining CLAB as well.

MR. SCALI: Questions?

MR. HAAS: You mentioned the Somerville Theatre a couple of times. Do you have evidence or do you believe that your patrons are

now moving to that theater because they have a liquor license?

MS. MOYLAN: It's only incidental evidence so far.

MR. HINKLE: Right. We offer a different quality of films so we don't share that much of an audience. I think for the Film Festival crowd, people who might attend a film in a festival setting, which does take place at the Somerville Theatre as well as the Brattle, it would put us on more equal footing. In some ways that's our focus; that we want to stay competitive and make sure that we're offering a similar service to other movie theaters in the area. In other --

MR. SCALI: Doesn't Arrow Street have like Arrow Street --

MR. HINKLE: Arrow Street does, but as a theater, as a live theater and not as a cinema.

Of course, we've looked at the models presented by the ART space in terms of how they served alcohol at other sort of more traditional theaters.

MS. MOYLAN: When we first started talking about it, the main thinking was how to keep the movie theater experience an attractive experience so that people don't stay at home and watch movies. Our major competitor is not the Somerville, although the other independent theaters are our competitor, but it's On-Demand, DVD, and home theaters.

As a nonprofit, what we actually think of as the Brattle is as a community meeting place and as a place to get together. It's one more way to make the experience of going out and seeing -- like tonight it's Pillow Talk and Top Hat on screen; to make it something that you actually want to get up and leave your house to do.

MR. SCALI: Comments?

MR. TURNER: Mr. Chair, you mentioned there are two fund raisers a year and you get a one-day license application?

MS. MOYLAN: Yeah. We've been getting one-day licenses since 2001.

MR. TURNER: Any history of problems?

None whatsoever. Mr. Chair, I certainly would support this application. It sounds like they've done some good background, a lot of good thought process on this.

We did go, myself and Captain Francis did go by the establishment and it was closed unfortunately, but we shared the same concern. We peaked in the door and saw the small concession area, of course. So I think through discussion --

MR. SCALI: You have to go at night when the movies are running.

MR. TURNER: I do have a copy of our Fire Company Inspection Report. Generally, it's a good satisfactory report; however, there are just a couple of issues I'd bring to your attention. One is the occupancy load; it needs to be posted by the entrance. So you need to look at your Certificate of Occupancy or Certificate of Inspection.

MR. SCALI: We didn't ask that question actually. What is the occupancy going to be?

MS. MOYLAN: The occupancy of the

theater is 230 seats.

MR. HINKLE: I think the legal occupancy is 231 or 236, or something like that. Currently --

MS. MOYLAN: I wonder if it's because we just got our new inspection. But we should have had our expired one up.

MR. TURNER: This would be a separate sign there. What you want to do is make up a separate --

MR. HINKLE: I don't believe that I realized that we should have something like that, so of course will make one up, a sign.

MR. TURNER: Do you have different theater rooms or is it one?

MR. HINKLE: Just one.

MR. TURNER: It's been a while since I've been in there.

The other thing, Emergency Action Plans on file. I've got a no on that one. Basically, are you familiar with what they are?

MR. HINKLE: We have a plan and they're

posted for our staff.

MS. MOYLAN: We just haven't filed it with you, I guess.

MR. TURNER: Generally, it's like a document that hopefully you and your staff review on occasion so you're aware of that. So if we dig that one out and dust it off and have it updated.

MS. MOYLAN: They're actually posted. We have the Emergency Exits and the Evacuation Plan posted.

MR. TURNER: This is separate. This is a document that's something that you should have all your staff look at and has emergency numbers.

MR. HINKLE: We do have that.

MS. MOYLAN: That's what I'm saying is that we have that.

MR. HINKLE: But they want a copy of it.

MS. MOYLAN: Oh, I see.

MR. TURNER: And that should be readily available. So if we can locate that and update information on it and what have you. Thank

you.

MR. SCALI: Anybody want to be heard on this matter? Ms. Jillson.

MS. JILLSON: I'm Denise Jillson, Executive Director for the Harvard Square Business Association, and we do express our overwhelming support for this application.

I had the opportunity to speak to some Board members of the Brattle Foundation and this doesn't come easily for them. It was a long decision, one that really -- there were many Board meetings because it's a little bit scary. Ned and Ivy, who are husband and wife, by the way. Ned manages the Foundation and manages the theater, and they are very concerned and thoughtful people. It's a big responsibility and it didn't come easily.

I know that the Board has talked a lot about this and really they're very concerned with making sure everybody has a good time but keeping people safe. And also, you know, trying to manage this process in the dark. They've given it a lot

of thought. The Board is fully aware and fully behind this, and feel confident that both Ned and Ivy are capable and thoughtful good people, and will make sure that all of the rules and the regulations and concerns are addressed, and will do a good job.

They've been wonderful members of the Harvard Square community for -- even though they're very young -- for a long time. They are really -- they attend all of our meetings and they always ask appropriate questions, and many people look to them for advice including as they mentioned, Club Passim, but we always look to Ned and Ivy when we want to know what's cool, because we're clearly older and not so cool.

Anyway, I think I've said enough. We appreciate your consideration. Thank you.

MR. SCALI: Thank you very much.

MR. HINKLE: I'd just like to make one quick note pursuant to what Denise was saying. We had to hand in a copy of the vote of our Board of Directors obviously, and I'm not sure if you noted

that they voted for us to pursue the license, but that they have to have a second vote before we begin operation with the license. So that just tells you a little bit how clear --

MR. SCALI: They want to make sure you get it and then they want to tell you how you're going to use it.

MR. HINKLE: Exactly. They want to be clear that we know everything that we're doing.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Discussion Commissioners?

Vote?

MR. HAAS: I'll make a motion.

MR. SCALI: Motion to approve?

MR. HAAS: Motion to support.

MR. TURNER: Seconded.

MR. SCALI: Motion to approve, moved, seconded. All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: And that's subject to the 21-Proof training, the Emergency Action Plan that the Deputy Chief wanted.

MS. LINT: Posting the Occupant Load.

MR. TURNER: Should hours be --

MR. SCALI: No value non-transferable, so that means you can't use it as equity, you can't use it for liens or loans, and if you should leave or close down, it comes back to us.

MS. LINT: And a copy of our Rules and Regs.

MR. TURNER: Should we note the hours?

MR. SCALI: What are the hours, again?

MR. HINKLE: I think the current hours on the Entertainment license are slightly different; until 12:00 a.m. Friday and Saturday.

MS. MOYLAN: I think it's seven days a week, 12:00 to 12:00 and they covers matinees.

MR. SCALI: Just clarify that.

MR. HINKLE: We'll clarify it, but I believe it's --

MR. SCALI: So 12:00 midnight, you're

usually closed?

MR. HINKLE: At 12:00 midnight, we're usually wrapping up.

MR. SCALI: People are gone at 12:00 midnight?

MR. HINKLE: People are exiting the theater by that time, in general.

MR. SCALI: If we grant you a license, it means that you can serve the alcohol up until 12:00; people have to be off the premises and everything cleared by 12:30.

MR. HINKLE: Does that include the staff?

MR. SCALI: No. That's just customers who are drinking.

All right. Thank you very much. Good luck.

MR. HINKLE: Thank you very much.

MS. LINT: Application: Ma Magoo's, Incorporated d/b/a Ma Magoo's, James Demetropoulos, Manager, has applied for a Common Victualer license and an Entertainment license to include an audio tape machine/CD playing music at, above, or below conversation level. Said license if granted would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have a total occupancy of 24. The hours of operation are 6:00 a.m. until 12:00 a.m., seven days per week.

MR. SCALI: Good evening. Tell us your name.

MR. DEMETROPOULOS: James Demetropoulos.

MR. SCALI: You've been sitting there patiently in the front row.

MR. DEMETROPOULOS: I learned a lot tonight, actually.

MR. SCALI: That's what people say. I don't know how true it is.

Tell us what you're doing. Is this a change?

MR. DEMETROPOULOS: Yeah. It's a family business. My family bought it 20 years ago and I took over a few years back. Basically what I'm doing here tonight is the accountant told me to turn it into a corporation. So I did, and then I chose a name, but the name apparently was close to someone else's name, which was Leonidis, Inc. Now I'm just making it Ma Magoo's, Inc., simple.

MR. SCALI: Who's in the corporation, just you?

MR. DEMETROPOULOS: Just me, yeah. I do everything.

MR. SCALI: Sole owner, bottle washer.

MR. DEMETROPOULOS: Secretary, president, yeah.

MR. SCALI: No change in hours?

MR. DEMETROPOULOS: No.

MR. SCALI: No change in seats?

MR. DEMETROPOULOS: Nothing.

MR. SCALI: Just the corporate name?

MR. DEMETROPOULOS: Just the name, yeah.

MR. SCALI: Background?

MS. LINT: It's a CV.

MR. SCALI: It's a CV, so no alcohol.
No intent to apply for alcohol.

MR. DEMETROPOULOS: No, no. I want
people out, in and out. That's how I make my
money, in and out.

MR. SCALI: What time are you open
until, again; midnight?

MR. DEMETROPOULOS: No. Well, we're
allowed until midnight, but we close at 9:00.

MR. SCALI: So do you really need the
midnight closing?

MR. DEMETROPOULOS: Just in case for
future reference if things ever go bad, I guess,
you know, I could stay open a little later. But
usually by 9:30, we're usually out the door.
People are in there cleaning after.

MR. SCALI: We try to keep our
licenses as accurate as possible to make sure that
we know that if a customer is expecting you to be
open until 12:00, that's what the license says. So

it's more about convenience for the customer.

MR. DEMETROPOULOS: Oh, all right.

MR. SCALI: If they say what pizza places are open or sandwich places are open until midnight, and we give them your name and then you're not open. Then that's the problem. So what if we say we give you until 10:00. Does that give you enough time to wrap up.

MR. DEMETROPOULOS: Yeah, but there's people cleaning after hours.

MR. SCALI: That's okay. So 6:00 a.m. to 10:00 p.m., seven days a week.

MR. DEMETROPOULOS: Yes.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Comments from the public?

Motion to approve.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: All right. Good luck.
See, when you're at the end it gets a lot easier.

MS. LINT: Application: Angelo's Pizza, LLC d/b/a Angelo's Pizza, Claudio DelMaestro, Manager, has applied for a Common Victualer license at 444 Broadway. Said license if granted would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have a total occupancy of 47. The hours of operation are 11:00 a.m. until 12:00 a.m., Monday through Saturday, and from 12:00 p.m. to 12:00 a.m. on Sunday.

MR. SCALI: Good evening. It looks like you're the last man standing. Tell us your name for the record.

MR. DELMAESTRO: Claudio DelMaestro.

MR. SCALI: Tell us what you're doing.

MR. DELMAESTRO: The only thing I'm doing is changing from a d/b/a to an LLC.

MR. SCALI: So you're going to an LLC. How long have you been there?

MR. DELMAESTRO: Twenty-seven years.

MR. SCALI: Was it in your name personally all that time?

MR. DELMAESTRO: Yes.

MR. SCALI: Are you the only person on the LLC?

MR. DELMAESTRO: Right.

MR. SCALI: No change of hours, no change of menu, seat?

MR. DELMAESTRO: Everything stays the same. Just the students change.

MR. SCALI: Any questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mrs. Lint, comments? No. We don't have to do a butter notifications; right?

MS. LINT: No.

MR. SCALI: Motion to approve.

MR. HAAS: Motion.

MR. SCALI: Seconded.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: That was easy.

MR. DELMAESTRO: In enough time to see
the last period.

MS. LINT: Policy discussion: The Board of License Commissioners will hold a hearing to discuss increasing the administrative fees for licensees who fail to renew their licenses on time from \$25 to \$50. All of the foregoing fees are set by regulation of the License Commission. If raised to \$50, the fee increase will take effect on May 1, 2009.

MR. SCALI: This is in regard to our administrative fee for those who did not renew on time. I think our staff feels that \$25 is much too cheap for all of those.

MS. LINT: The staff this year in particular was extremely put out by the number of people that they had to chase, the number of phone calls they had to make, the number of letters they had to send out, the pile that Andrea had to go hand deliver. It was unbelievable.

MR. SCALI: I think you had like 30 or 40 of them this year, different people who didn't pay on time.

MS. LINT: And \$25 does not cover the

administrative costs.

MR. SCALI: The only thing I would say is that if we are going to vote this is that it start April 1 as opposed to May 1, because we renew license during the month of April as opposed to May.

MR. HAAS: How would you notify the community that we're increasing this fine or fee.

MS. LINT: We send out a memo to all licensees.

MR. SCALI: And this was in the paper as well; right?

MS. LINT: Yes.

MR. SCALI: This was in the Chronicle and the Tab.

MS. LINT: But just as they don't open the mail from the License Commission --

MR. SCALI: Comments?

MR. HAAS: Would this pay for a second officer?

MR. SCALI: It would probably pay for maybe a week.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Since this was posted in the newspaper for the hearing, did you receive any calls from anyone in regard to this?

MS. LINT: I did not, no.

MR. TURNER: I would be in full support of this where there has been no comments or objection.

MR. SCALI: No comments at all.

MR. HAAS: Does the date change have any impact in terms of the advertisement?

MR. SCALI: We just notify people of the change.

MR. HAAS: Okay.

MR. SCALI: Motion to approve starting April 1.

MR. HAAS: Motion.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: Ratifications: Medallion
186, 32, 86, 96, and 228. They were just all
refinances.

MR. SCALI: Is the paperwork in order?

MS. LINT: Yes.

MR. SCALI: Comments?

MR. HAAS: No comments.

MR. SCALI: Motion to accept.

MR. HAAS: Motion.

MR. SCALI: Moved. Seconded?

MR. TURNER: Second.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Anything else before the
Commissioners? Motion to adjourn.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

(Whereupon, the proceeding was
concluded at 8:35 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 16th day of February, 2009.

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