

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION
DECISIONMAKING HEARING

LICENSE COMMISSION BOARD MEMBERS:

Richard V. Scali, Chairman
Robert C. Haas, Police Commissioner

STAFF:

Christopher O'Neil

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Thursday, January 28, 2010
10:10 a.m.

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P R O C E E D I N G S

MR. O'NEIL: License Commission Decisionmaking Hearing, Thursday, January 28, 2010. We're in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room.

Before you are the Commissioners: Chairman Richard Scali and Commissioner Robert Haas.

MR. SCALI: We have Mr. O'Neil here in place of Mrs. Lint; she's on vacation. And Deputy Chief Turner is out this morning, so we have a quorum of two.

We're going to be voting on the hearings from January 5 and January 19. The minutes are not ready from the last meeting so we'll take that next time.

MR. O'NEIL: Start with the Cantab?

MR. SCALI: And you're here for?

MR. TUCKER: Parkside Place.

MR. SCALI: And Mr. Rafferty?

MR. RAFFERTY: Charlie's Beer Garden,
the winter --

MR. SCALI: Let's go to January 5,
which would be the item -- the second on the first
page, Disciplinary matter against the Cantab
Lounge.

Discussion, Commissioner?

MR. HAAS: After the last hearing,
I went back and I talked to Detective Muey
(phonetic) and kind of got a better sense of the
investigation. Clearly in light of what I think
the court magistrate's ruling was, and also there
really was not any kind of clear evidence that the
Cantab did in fact have an active role in terms of
the incident that was reported to us, I don't know
if there's sufficient grounds to go forward on the
complaint for a disciplinary matter.

MR. SCALI: My feeling was that there

was a person who was a witness. As I understand it, she gave different testimony in court from the testimony we heard here, and then it was just really the word of the victim who was here. Then the bartender did not testify; am I right?

MR. HAAS: He didn't testify.

MR. SCALI: So it's your feeling that this should be dismissed?

MR. HAAS: I think the fact that the court magistrate did not see sufficient grounds to issue a complaint, I guess that's also an added weight with respect to us taking that into consideration. I think if they don't feel there's sufficient grounds in light of all the testimony, the witness statement, and they have problems with the fact that the witness did in fact give two different stories: one at the time the officers interviewed her from what was testified to in court, to what was testified here. I don't think there is sufficient basis to uphold any kind of action against the Cantab regarding this matter.

MR. SCALI: Just a point of

clarification, too. I'm just a little concerned about the issue of them using a flashlight on people in the bar. First of all, it shouldn't be that dark in there that they're using flashlights.

MR. RAMSEY: It's not. The bartenders don't have a flashlight at all times. This must have been an isolated situation. The doormen do, okay, just in case you need to check the IDs more thoroughly than a 40-watt bulb will give you, and that's the only people that do have flashlights. And they're nothing more than a pin light flashlight, not one of these big gigantic flashlights, if you would.

I wasn't there. It was a Sunday night. I'm there six nights a week. Sunday night is one of the quietest ones so I get to see my family. I don't know any reason why he would have.

MR. SCALI: I guess my point is that it shouldn't be that dark in there that you can't see people's faces. And if it is that dark and they need a flashlight, flashing it in people's faces is not appropriate.

MR. RAMSEY: I have plenty of lighting. There's plenty of lighting. In fact, we still have our Christmas lights up too. But regardless, that's not the case. That is not the case.

MR. O'NEIL: I think a lot of people use them just to get people's attention.

MR. SCALI: I don't think you should be flashing light in people's faces to get their attention. If it's that dark and noisy, something is wrong.

The other issue has to do with food in there too. I know that Mr. Fitzgerald had mentioned that there was a menu there before, there used to be a menu. I know you're a grandfathered bar and all that in the City but there should be something more than just alcohol going on there.

MR. RAMSEY: We have been discussing that.

MR. SCALI: I think that probably is part of the issue.

MR. RAMSEY: It's something I really

want to do. It's something I want to do, and I'm very vocal on that part about it. I keep pushing the envelope and they're listening.

MR. SCALI: I guess my recommendation is that they should listen a little harder about what is happening there.

The last point I made at the hearing is the issue of people hanging out on the sidewalk there. I have seen at lunchtime people questionably intoxicated on the sidewalk staggering around smoking cigarettes in front of your establishment. These are not homeless people; these are customers that are out in front of your store. There's something that's not happening that should happen there with that and it's not homeless people that are hanging out in front of your bar. I just find that there is something that needs to be done about that.

MR. RAMSEY: Okay.

MR. HAAS: I would just echo what the Chairman's concerns. If there are people in fact that are hanging out in front of your establishment

causing a problem with your patrons, then call us.

MR. RAMSEY: Oh, I do quite often.
You can check the history.

MR. HAAS: As long as you're calling us, and that's the Chairman's point.

MR. RAMSEY: There are a couple or three names that make the hit parade when I do call. A lot of your officers know these people on a first name basis and they're not allowed in my establishment, these people, at all. As a matter of fact, I have trespassed more than one.

MR. SCALI: Motion.

MR. HAAS: I would make a motion that the matter regarding the Disciplinary complaint be dismissed.

MR. SCALI: Due to?

MR. HAAS: Lack of sufficient evidence.

MR. SCALI: That is moved, seconded.
All in favor?

MR. HAAS: Aye.

MR. SCALI: Thank you.

MR. RAMSEY: Thank you very much.

MR. SCALI: January 5, Red House, Charlie's Kitchen patio approval for year-round use. Mr. Rafferty is here.

I guess I'm not understanding what the gentleman -- there was one gentleman that came in and complained that he thought somehow that this was going to be noisy or that he could see out from his window onto the patio. It's there nine or ten months out of the year already, and I'm not sure how much noisier it's going to be in December and January when it's cold out.

Am I misreading this in some way?

MR. HAAS: No. It would seem to me that during the winter months especially that the windows are going to be closed anyway.

MR. RAFFERTY: That gentleman wasn't a resident. He lives on Farwell Place. He was here for another matter. He's friendly with a woman who he claimed was a subtenant in the building and she has a psychotherapy office, and he was concerned about that.

As you know, this is the condition

that has existed. There's been no history on that patio of any complaints since it opened.

I think we wanted to make clear that it wouldn't go late into the evening; a 9:00 or a 10:00 close would be fine. It's really anticipated on those occasional days. In this economy, they're looking to capture business where they can. If a balmy day like we had last week were to come along, particularly at lunch time in Harvard Square, in a matter of ten minutes he can have some tables and chairs out there and he can capture some people.

He has the same experience next door at the Red House where he does, because they're part of his cap number, he operates that and he does do business there. That patio does operate and it has proven to be a good source of business and a nice feature for people who like to have an opportunity to enjoy the outdoors when the weather permits.

That's what led to his thinking that he could replicate that service, if you will, at this location. It's totally private in the sense

that it's no public property, it's enclosed. He has a history of running those patios without any complaints or disturbances.

MR. HAAS: I would imagine he would want to try to do it this season then, if we voted in the affirmative at this point?

MR. RAFFERTY: I think he could theoretically start Saturday.

MR. SCALI: It's going to be 19 on Saturday.

MR. RAFFERTY: There's no question that we're only --

MR. SCALI: It's a very short window and very few days that I would anticipate that it's going to happen.

MR. RAFFERTY: There's a long weekend coming up in February. Maybe 40 degrees on a Saturday at 4:00, people might bundle up and sit out there. He really is trying to create a little bit of a buzz and he calls it an Alpine scene that you'd see, you know -- if you go up to Stowe, Vermont, they're sitting outside having lunch when

the sun is shining.

MR. SCALI: Is he going to have the heaters out there?

MR. RAFFERTY: No. I don't think so. He had a fireplace that the fire department looked at and told him they didn't like it so he took that out. So at one point he had more of a fireplace.

MR. HAAS: Mr. Chair, I would be willing to support the application on a trial basis for the rest of this season and come back and evaluate it prior to moving forward for next season.

MR. SCALI: So a review in the fall?

MR. HAAS: Or if you wanted to do it in the spring or something like that just to kind see how things went, and that way, if everything went well, for the remainder of this season we can just go ahead and grant the permit going forward.

MR. SCALI: Let's review it in early May, Mr. O'Neil, our first hearing in May.

So motion to approve, temporary.

MR. HAAS: Approve with a review.

MR. SCALI: Temporary approval with a review in May. That's moved and seconded. All in favor?

MR. HAAS: Aye.

MR. SCALI: Thank you, Mr. Rafferty.

MR. SCALI: Let's go to January 19. Parkside Place, which I guess was the last item, or one of the last items on the agenda amending their Garage license. I guess there was an issue with regard to the Verizon section of that.

MR. O'NEIL: They were going to add diesel fuel for a generator. Deputy Chief Dan Turner sent Elizabeth an e-mail about it if you'd like me to read it into the record.

MR. SCALI: That would be good because I'm not really clear on what that means.

MR. O'NEIL: The e-mail says, "Elizabeth, the additional flammables approved for use at this location is 210 gallons of diesel fuel for a generator. Since there are no objections to the amendment in the original application in which this additional amount was discussed openly during the hearing, I propose to include this amount in the final approval on 1/28/2010, without having the applicant re-advertise and re-apply for another hearing. Thank you, Deputy Chief."

MR. HAAS: Can we do that?

MR. SCALI: We're supposed to advertise it again and re-notify. You can always subtract but you can't add on. Does it add up to more?

MR. O'NEIL: It's still less than their original license.

MR. SCALI: Still less gallonage than the original license?

MR. TUCKER: Than what was on the original license.

MR. HAAS: Than what was advertised? Than was advertised as far as what you're applying for?

MR. SCALI: Did we re-advertise it?

MR. HAAS: When you advertised it would this amount take into account this additional amount from Verizon?

MR. TUCKER: No, that was not advertised. The original license was more. The existing license was more so we were amending that to correct the gallons of gasoline and diesel.

MR. HAAS: I'm just wondering if this

would fall underneath that umbrella or not, this additional gallonage that Verizon is going to need for its generator.

MR. TUCKER: This is still less in total consumption of flammable liquids. It's less than our original license.

MR. SCALI: But what he's saying is we advertised it for our hearing on January 19 with a certain amount, so this would be more than that amount that we advertised before for January 19, but it was less than what you originally had.

MR. TUCKER: The advertisement did say what was originally advertised, what was the original consumption, and then what we were advertising and what we were adding. This is still lower, but the 210 gallons was not included in the original advertisement. And who it had to go to was City of Cambridge, City of Belmont, that's it. No other entities really had to be legally notified.

MR. SCALI: Let's just do this the correct way so it doesn't come back later to bite

us. We won't make you come in again but we'll have to re-advertise it to include that. Do your abutter notifications but you won't have to re-appear. We'll just put it on our next available agenda just to vote that additional gallonage. It shouldn't be an issue. No one appeared in opposition anyway. We just want to make sure it's correctly advertised that way so legally there's not a problem in the future for you.

MR. TUCKER: So I should go upstairs and --

MR. SCALI: Just talk to Mr. O'Neil. He'll just add it on to the application and we will just re-advertise it with that portion back on for our next available hearing. You will not have to come in again and we'll just put it on our agenda to be voted, unless someone appears and objects, but I don't think that they will. Then there shouldn't be an issue and we'll vote it on that evening.

MR. O'NEIL: I have everything I need from him. It looks like he already submitted an

amended application that lists the 210 gallons.

MR. TUCKER: It was my understanding that it wouldn't need to be re-advertised where it was only going to the City of Cambridge and the Town of Belmont.

MR. SCALI: It is not about who the abutters are, it's just what the ad says and it being in the paper and it just being advertised.

MR. HAAS: It would be a potential technicality. Somebody could come in here now and raise an issue that you're operating outside what was advertised. They weren't given proper notice and it could just get really messy. So rather than take that chance, and I think you pretty much got an indication from the Commission that we're in support of the application. It's just a matter of making sure we just do it right and nobody can raise an objection later on.

MR. SCALI: It's just the legal procedure.

MR. TUCKER: So I should then send out the registered letters again?

MR. SCALI: Yes. It's just Cambridge and Belmont so you're not going to have really a big problem.

Motion then to re-advertise for our next available hearing. No need to re-appear. That's moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. SCALI: Is February 23 still available?

MR. O'NEIL: I can advertise it for that date.

MR. HAAS: It's probably a five-minute proposition, right, even if we had a full agenda, I think.

MR. SCALI: It will just take us a minute.

MR. TUCKER: Do I have to get you a check?

MR. SCALI: We won't require you to pay again.

MR. TUCKER: I'll look in the paper on what date?

MR. O'NEIL: It will be February 4, next Thursday's Chronicle.

MR. TUCKER: Thank you.

MR. SCALI: Sticking with January 19, Basha Cafe. This is an application to extend hours until 2:00 a.m. I guess there was some discussion about whether there was anything we needed to do about the disciplinary matter on this. I don't know if you wanted to comment on that.

MR. HAAS: My one question is, do we have any prior violations regarding Basha Cafe?

MR. SCALI: No.

MR. HAAS: I want to kind of impress upon the owners that we did in fact have a violation as a result of investigation where they can't allow people into the establishment for whatever reason, and make it very clear to that person that if we're going to grant a 2:00 a.m. extension, it's with the clear understanding that nobody can be in that establishment other than employees beyond the 2:00.

MR. SCALI: If we give them a 2:00, it means people can be on the premises until 2:30.

MR. HAAS: Right, but not until 4:00 or 4:30.

MR. SCALI: Even for private meetings or whatever you want to call it, or employee functions.

MR. HAAS: What I would recommend, Mr. Chairman is that this matter be carried over to the next available hearing and then take it back up again in conjunction with that one incident for the Commission to review and decide what action to take with respect to that.

MR. SCALI: Do you wish to call it a disciplinary matter?

MR. HAAS: No, just continue this matter.

MR. SCALI: Continue this and talk about the --

MR. HAAS: And introduce that other incident at that point in time. With no prior violation, the practice of this Commission is to generally out the matter on file. My sense is that's what's going to happen with this situation because we don't have any other evidence there's an ongoing problem.

We actually sent inspectors and investigators out on subsequent nights after we found out about this and couldn't find any violations. I just want to make sure that this was an aberration and that the owners also understand that in the future they already have one matter on file as a result of this last incident and that it would in fact trigger a further disciplinary action.

MR. SCALI: You just want this continued so we can talk about that previous alleged violation.

MR. HAAS: I want to have the ability to put it on file. I think it's been thoroughly investigated. I don't think there's anything in dispute; that there was in fact, non-employees in the establishment past the authorized closing time.

MR. SCALI: So wouldn't that be advertised as a disciplinary then, if we had that information as evidence?

MR. HAAS: I suppose you could.

MR. SCALI: I don't want to make it

appear as if it wasn't -- it won't be a violation on the record if you don't advertise it as a disciplinary matter. It will be just discussed but it won't be considered to be a violation.

MR. HAAS: We have two e-mails from residents basically citing that as a concern for the 2:00, so I think we have an obligation to take this matter up, so I guess we would have to advertise it.

MR. SCALI: So we need to advertise it as disciplinary. Continue this matter -- I mean to notify them of a disciplinary matter.

MR. O'NEIL: So we're bringing them in for a disciplinary?

MR. SCALI: Along with this application.

MR. O'NEIL: What is the disciplinary regarding?

MR. SCALI: The documentation we had on the violation of people being on the premises after-hours. Is there a police report on that?

MR. HAAS: Yes.

MR. SCALI: There should be a police report and there's two e-mails. We'll have to look up that information.

MR. SCALI: Motion then to continue this matter along with notifying of the disciplinary matter to the applicant for our next available hearing. Moved.

MR. HAAS: Moved.

MR. SCALI: Seconded. All in favor?

MR. HAAS: Aye.

MR. SCALI: Is February 23 stacking up as being very busy?

MR. O'NEIL: No.

MR. SCALI: Still minimal.

MR. O'NEIL: It's decent.

MR. SCALI: There are no other disciplinaries in there. I just don't want to load it up because that's our one hearing in February.

MR. O'NEIL: The biggest thing for February is going to be the biotech place.

MR. SCALI: We have Idenix that night?

MR. O'NEIL: Idenix.

MR. SCALI: Let's look at the make-up of that meeting. I don't want to load it up for the Commissioners.

MR. SCALI: Broadway Supermarket transferring to a new owner for an All Alcoholic Package Store. There was information that we needed on their plan.

MR. HAAS: Did they send us anything?

MR. O'NEIL: They sent us an amended floor plan.

MR. SCALI: The black areas are their new plan.

MR. HAAS: Is this expanding upon what they already had their license for in terms of linear?

MR. SCALI: This is what they have here.

MR. HAAS: This is what's been approved in the past?

MR. SCALI: Right.

MR. HAAS: Are these additions?

MR. SCALI: Some are additions. I think they're just clarifying where they want their displays.

MR. HAAS: We're voting not so much on

the end caps but also on the square footage in which -- right?

MR. SCALI: Linear feet, yes.

MR. HAAS: What is the total square footage now we're going to be voting here, the linear feet?

MR. SCALI: It's 2,000 square-feet of total retail package.

MR. HAAS: What's that translate to?

MR. SCALI: So this is 1,500 square-feet, 200 square feet.

MR. HAAS: Right, and 150. And these end caps?

MR. SCALI: I don't know what those are.

MR. HAAS: It looks like wine, wine, wine.

MR. SCALI: My only concern that I mentioned to Mr. O'Neil is what they're adding at the checkouts are wine displays at the checkout counters. Is that a little weird?

MR. HAAS: Yeah.

MR. SCALI: You shouldn't be having wine at your registers; right?

MR. HAAS: No. It looks like you're pushing alcohol.

MR. SCALI: It's okay for these displays on the floor, but I guess people shouldn't have to see that when they're checking out in a market.

I guess what I would ask Mr. O'Neil, is if you could have been them amend this plan to eliminate the checkout portions. If you're in a market, you shouldn't be seeing wine at the checkout counter because there could be kids there, and it's just not appropriate.

MR. HAAS: Do you need total linear feet now?

MR. SCALI: Yeah.

MR. HAAS: So you need that as well; right?

MR. SCALI: Yes. So if you could amend it just to eliminate those two sections and give us total linear feet of the other package

space, not square feet but linear feet.

MR. O'NEIL: Okay.

MR. SCALI: Do you want to continue this matter?

MR. HAAS: I would make a motion that we approve the application contingent upon the two stipulations just mentioned. One, that the displays at the registers be removed, and if he's in agreement with that, that's one issue. And the second one is just getting an amended version with what the total linear feet are going to be for all the displays including the end caps.

MR. SCALI: I would agree.

MR. HAAS: And the only way I'd continue it is if he doesn't agree and wants to discuss it further, then I think we would have to continue it at that point.

MR. SCALI: Motion then to eliminate the displays at the register and get the total linear feet. And approval subject to him just agreeing with that. If he wants to come back, we'll have to continue it at that point.

MR. HAAS: So in other words, if he's got an issue with the registers then we'll have to reschedule it for a hearing.

MR. SCALI: That's moved, seconded.
All in favor?

MR. HAAS: Aye.

MR. O'NEIL: 21-Proof training?

MR. HAAS: He's a new owner; right?

MR. SCALI: Yes, 21-Proof training as well, for him and his staff.

MR. SCALI: Fire and Ice continued to February 23.

MR. HAAS: I've got to get out to Fire and Ice and take a look at that.

MR. SCALI: I actually went down there. They've closed on the outside. It looks actually very nice.

MR. HAAS: I think what we're more concerned about is him being able to come up with some kind of defined marketing plan as opposed to just --

MR. SCALI: Putting it out there.

MR. HAAS: And just seeing what happens. Maybe Denise can help him sit down and think about from past experience, what doesn't typically work. We've had some -- what do you call it?

MR. SCALI: Objection?

MR. HAAS: No, types of entertainment that just really have not been conducive to Harvard Square. Maybe it would be beneficial for him to at least eliminate those initially and see how his

business goes on, and then if he wants to gradually expand, then take a look at that type of genre. There are certain types of genre that don't do well in Harvard Square.

MR. SCALI: This can be on the record if you want it to be. I was at a meeting their, Commissioner, at Border Cafe, and I had gone there to see Fire and Ice. I happened to -- and I could be completely wrong, but I guess this is for the police. It seemed to me that there were people who maybe selling something they shouldn't be selling walking up and down on Church Street. It looked to me to be I guess allegedly prostitutes that may be up and down on Church Street. To me, I kept seeing these two people walking back and forth is if they were --

MR. HAAS: What time was this?

MR. SCALI: This was about 3:00 p.m. in the afternoon and I think they were probably -- they were very good-looking people but they seemed to be there consequent walking up and down the block. I could be wrong.

Anything else?

Just an update on the taxi school. We voted on Tuesday at the taxi school board to expand the Board to 13: three drivers, two owners, two radio services, and to add a consumer to the Board, a resident. They will not be doing that until the fall when we have our October vote, and they voted not to add an additional person on right now until that's done. The school, pending I guess Superintendent Williams' schedule will reopen March 20, the week of March 20, Monday through Friday.

MR. HAAS: Monday through Friday?

MR. SCALI: Monday through Friday.

MR. HAAS: They'd rather just do it in one week?

MR. SCALI: Mr. Ewing preferred to do it five nights in a row with the testing given on the Friday night. And adding in the teachers as you suggested, new teachers. I guess Superintendent Williams is going to talk to Mr. Ewing about what police officers were available and coming up with a new booklet and all of that.

They also talked about potentially increasing the fee from \$75 to \$100 for the school, but not for 90 days at least. And then to potentially amend Mr. Ewing's contract to add in two more days.

MR. HAAS: The only thing I would encourage Mr. Ewing to think about between now and March is if there's an opportunity to start to develop some video material because I think that's going to be extremely helpful for the class members. It's one thing to talk about it, it's another to kind of show them what some of the issues are.

I know that right now, Boston has developed a small library of tapes that they are using in their class. I think we can modify them for Cambridge, and maybe if there's an opportunity, Officer Arcos and Szeto can actually kind of cover some of the issues and show where it's done correctly and where it's not done correctly; show the drivers that this is not the kinds of things we want to see. Go to a taxi stand and show them

where they're actually expanding beyond the confines of the taxi stand, and some other kinds of things we continue to kind of watch.

I think it would be extremely helpful for the new drivers to see it and I think have a better appreciation of what we're talking about if they could see it.

MR. SCALI: I know that Mr. Ewing contacted CCTV and they agreed to do filming for him. He's going to talk with to each teacher about a section in there. a video section in each one of the sections, particularly about what you're talking about with the cab stands and locations and appropriate behavior.

MR. HAAS: I still want to see Benny's Complaint Book and see if there are situations we're finding that are recurring that we can film. Again, I would rather not just show them what's wrong but also show them the correct way that things should be done.

MR. SCALI: I think they talked about -- it may not be ready for March 20 but that we

would phase that in.

MR. HAAS: Even if it's in a rough form, anything is going to be helpful. We've got the facilities to do those kinds of projections and things like that so we should take advantage of it.

MR. SCALI: They were very excited about being at the police station and doing that there. It seems like all went very well and they were very happy with the results.

Anything else?

MR. O'NEIL: No.

MR. SCALI: Motion to adjourn.

MR. HAAS: Motion.

MR. SCALI: Moved, seconded.

All in favor?

MR. HAAS: Aye.

MR. SCALI: Aye.

(Whereupon, the proceeding was concluded at 10:41 a.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

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

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

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

In Witness Whereof, I have hereunto set my hand this 2nd day of January, 2010.





ANNE OUELLETTE
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March 16, 2012

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