

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, January 5, 2010
6:15 p.m.

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INDEX OF AGENDA PROCEEDINGS

<u>Agenda Matters</u>	<u>Page</u>
Disciplinary - Amelia's Trattoria	5
Disciplinary - Crystal Lunch	11/51
Application - Boston Food Cooperative	12
Application - RB Kendall Fee	15
Application - Unusual Suspects	22
Application - Whole Foods Market	84
Application - Tomolly, Inc.	92
Application - JFS Group, LLC	108
Review - AFKOR, Inc.	155
Application - North Point Café	161
Application - GR & EG, Inc.	165
Application - Auror, LLC	169
Ratifications - Medallions:	185
39, 117, 150, 232, 226, 50, 242, 60, 207, 104, 90, 149, 113	

P R O C E E D I N G S

MS. LINT: License Commission General Hearing, Tuesday evening, January 5 at 6:15 p.m. We're in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room. Before you are the Commissioners: Chairman Richard Scali, Deputy Chief Dan Turner, and Commissioner Robert Haas.

MR. SCALI: Are there any matters that are off the agenda?

MS. LINT: No.

MR. SCALI: Motion to accept the minutes from the December 16 meeting.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Any CLAB member's.

MS. LINT: No. Active CLAB members?

MR. SCALI: We have the Red

House/Charlie's Kitchen.

MS. LINT: He's not active CLAB member. He never comes to the meetings.

MR. SCALI: We have a police officer here too. What item is that for?

MR. HAAS: The first one.

MR. SCALI: Let's do the first one.

MS. LINT: Disciplinary matter:
Amelia's Trattoria II, LLC d/b/a Amelia's
Trattoria. Delio Susi, Manager, holder of an All
Alcoholic Beverages as a Restaurant license due to
a police report dated October 11, 2009, which
states that Mr. Susi was on premises after the
place's closing hour. The police report also
states that repairs to the establishment were being
done without proper permitting from the Building
Department.

MR. SCALI: Officer, why don't you
have a seat over here and tell us who you are for
the record, please.

OFFICER BIKOFSKY: I'm Officer
Bikofsky from the Cambridge Police Department.

MR. SUSI: I'm Delio Susi, Jr., owner
of Amelia's Trattoria.

MR. SCALI: Officer, we're going to
start with your report first and then we'll go from
there.

OFFICER BIKOFSKY: On October 11,
2009, at 3:17 a.m., while performing a routine

patrol in the area of the Newtown Court and Washington Elms, I observed the lights on in Amelia's Trattoria. I observed people inside walking around. I saw a vehicle that was backed up to it in an odd way. I believed that the place may have been broken into.

My partner and I stopped, knocked on the window, made ourselves known as Cambridge police officers, and introduced ourselves. We spoke to the gentleman seated next to me. He stated that they were doing some repairs in the building. Again, it was 3:17 in the morning.

While in there I observed sandwiches and open beer bottles on the bar, which were being consumed. We went downstairs to confirm that work was being done. The toilets and sinks were out, some of the walls were ripped apart. They had no building permits.

MR. SCALI: No building permits to be working?

OFFICER BIKOFSKY: No building permits.

MR. SCALI: Did you observe them drinking the beer or just open bottles of beer?

OFFICER BIKOFSKY: They were opened on the bar and they appeared to be drinking. Also, the Police Department was not notified that they would be in there after hours.

MR. SCALI: Did you talk to anybody there on the premises?

OFFICER BIKOFSKY: I did. I talked to the gentleman seated next to me.

MR. SCALI: What did he say to you?

OFFICER BIKOFSKY: He stated he didn't realize what time it was. I checked their license and it states that their closing time is 1:00 a.m.

MR. SCALI: Questions?

MR. HAAS: Were they generally cooperative when you did speak to them?

OFFICER BIKOFSKY: Yes.

MR. SCALI: Mr. Susi.

MR. SUSI: It was a complete mistake. I lost track of the time. We were replacing some tiles. We had a flood a month prior. Late night

was the only time we could do it. I just didn't know that I had to call the Police Department to let them know that I was there late.

MR. SCALI: What were you doing with beer on the bar and who was there?

MR. SUSI: I had an employee with me and a tile man. It's totally my fault. He's correct; there was beer on the bar and there were sandwiches made. I made them a sandwich and I offered him a beer like I would offer him a coke. I lost track of time because we started at like 12:00 or quarter-of-12.

MR. SCALI: You know you can't have alcohol past your closing hour, for anybody.

MR. SUSI: I know it now.

MR. SCALI: For anybody, whether it's for employees or any other person.

MR. SUSI: For sure I know it now.

MR. SCALI: How come no building permits?

MR. SUSI: We were just replacing tile so I didn't know that I had to have a building

permit.

MR. SCALI: Just floor tile?

MR. SUSI: And wall tile.

MR. SCALI: Did you get a permit after that, or did you finish it that night?

MR. SUSI: I wanted to go get it. Monday was Columbus Day and it was closed, and we were finished already with the tiling.

MR. SCALI: I think this is your first offense; right?

MR. SUSI: Yes.

MR. SCALI: No previous history?

MR. SUSI: Yes, 10 years almost.

MR. SCALI: Comments, Commissioners?

MR. HAAS: No comments.

MR. TURNER: No comments.

MR. SCALI: Anybody from the public want to be heard in this matter? No hands.

It sounds like this is an unfortunate incident. I know you've had a pretty good track record and you were cooperative with the officers. I'm sure our decision will reflect that.

Pleasure of the Commissioners?

MR. HAAS: I think in view of the fact that you were cooperative with the police and forthcoming, I would recommend we put it on file, note the violation and put it on file.

MR. SCALI: Discussion?

MR. TURNER: No.

MR. SCALI: Motion to place on file.

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you, Officer, very much. Now you know the rules.

MR. SUSI: For sure.

MS. LINT: Disciplinary matter:
Crystal Lunch, Inc. d/b/a Cantab Lounge and The
Third Rail, Stephen Ramsey, manager, holder of an
All Alcoholic Beverages as a Restaurant license
(2:00 a.m.) and Entertainment license at 738
Massachusetts Avenue due to a police report which
states an alleged altercation took place between
your bartender and a patron.

MR. SCALI: Cantab, come on up.
Police report on this, Mrs. Lint?

MS. LINT: I was told the officer was
coming. I have an e-mail from Officer Bates that
he would be here.

MR. SCALI: Officer Bates?

MR. HAAS: I think he's in Central
Square. He might just be tied up on a call.

MR. SCALI: Why don't we give you a
second call, Mr. Fitzgerald. We're just waiting
for Officer Bates. Please just back for a second
and then we'll take you as soon as he gets here.

MS. LINT: Application: Boston Food Cooperative, Inc. d/b/a Harvest Co-op Supermarket, Garland MacQueen, manager, holder of an All Alcoholic Beverages as a Package Store license (seven day) at 581 Massachusetts Avenue has applied for a change of manager from Garland MacQueen to Mark Cutler.

MR. SCALI: Good evening, just tell us who you are, please.

MR. CUTLER: Mark Cutler.

MR. SCALI: Weren't you the manager before?

MR. CUTLER: I was. I moved over to the Jamaica Plain store and switched to the Boston license for a while. I found I was on premise and it's just easier to do that. I run both stores as operation manager so I'm back on this. I've been there 10 years; that's my experience with the beer and wine and the liquor license.

MR. SCALI: You'll be going back and forth to the two stores?

MR. CUTLER: I'm based in Cambridge

again now.

MR. SCALI: So you're in Cambridge full-time?

MS. CUTLER: Garland is actually gone from the company. He's moved away.

MR. SCALI: Background check, Mrs. Lint?

MS. LINT: All set.

MR. SCALI: Does anybody want to be heard on Harvest Co-op change of manager? Comments?

MR. TURNER: TIPS training?

MR. SCALI: Did you go through our 21-Proof training before?

MR. CUTLER: We have had it and I'm going to call Frank to do it again because we're out of date by a couple of years. I'm inactive with CLAB. I'm going to start going to the meetings. I just joined up actually.

MR. SCALI: It moves you up a little bit on the agenda.

MR. CUTLER: I do have a couple of

items that I owe you. I spoke to Eric in the office and he said I could bring them tonight.

MS. LINT: Chris.

MR. CUTLER: Chris -- and it's the Board vote and a copy of the birth certificate. I have the original here but I can't let you keep it, and a picture ID.

MS. LINT: That's fine.

MR. SCALI: Pleasure of the Commissioners?

MR. TURNER: Motion to approve.

MR. SCALI: Moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Subject to 21-Proof training.

MR. CUTLER: Yes. I've even let Frank use our community room a couple of times.

MR. SCALI: We appreciate that very much and welcome back.

MR. SCALI: Let's go to the top of Page 2, Mrs. Lint.

MS. LINT: Application: RB Kendall Fee, LLC, the owner of One Kendall Square has applied to amend the 1990 cap policy of One Kendall Square. This amendment, if approved, would increase the total capacity of One Kendall from 899 to 1,350. The new agreement would also limit the number of alcohol restaurants at One Kendall to seven.

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

MR. HOPE: Attorney Shawn Hope on behalf of the petitioner, Beale Companies. I'm here tonight with Erin Johnson, the Assistant Property --

MS. ORPIK: Orpik, Erin Orpik, O-R-P-I-K. I just got married.

MR. SCALI: What is your position again?

MS. ORPIK: Assistant Property Manager.

MR. SCALI: So when last we were here we were going to have you talk with Mrs. Lint about amending the agreement and coming up with a draft. Have you come up with a draft?

MS. LINT: We have a draft that is really very simple that was agreeable to One Kendall.

MR. SCALI: Basically what we are doing is amending the agreement to allow an additional license but not issuing. It's going to be a subject matter to be discussed when you get the tenant, and then allowing up to 1,350 seats from 899 that we originally had from 1990. Does the agreement reflect just those two items?

MS. LINT: Just those two items.

MR. SCALI: Discussion at all?

MR. HAAS: I have a question. Are we approving a new license or is this going to allow them to purchase a license.

MR. SCALI: That's a good question. Meaning you could purchase a new license and bring it to that location or apply for a new license for

that location.

MR. HOPE: Right. Is that something that we can decide based on -- maybe not at this hearing, but based on other vendors and what the property owner would like to do at that occasion? I don't know if they've quite decided that. I was understanding that we would have to decide whether -- I know there is another hearing tonight that's a potential vendor of that location so I think a lot of that would have to do with how that goes and whether or not we need to seek a new tenant or not.

MR. SCALI: There are a few licenses that are for sale out there right now that would fit your needs or the property owner's needs.

MR. HOPE: This would just allow us to have an additional one because right now the maximum is six so we couldn't even have bought one before this agreement.

MR. SCALI: You want to be able to go out there and any potential tenants know that there is a possibility of a license.

MR. HOPE: Exactly.

MR. HAAS: So it would be I guess that any prospective tenants that would then seek to purchase a license? At this point in time, you're just allowing the capacity for the additional seating; is that the idea?

MR. HOPE: Yes.

MR. SCALI: Have you discussed with your tenants that are there already now the -- is there anybody that's looking for more seats that's already currently there, or does everybody have what they want right now, the ones that are existing?

MS. ORPIK: At this time that we're aware of, yes.

MR. SCALI: The common patio area, there was always a little bit of a battle going on about people encroaching on other people's spaces.

MS. ORPIK: I think we've resolved any issues as far as that from what I'm aware of.

MR. SCALI: I just want to make sure everybody has a defined area and no one is using anybody else's space.

MS. ORPIK: Each lease that we have with our tenants spells out exactly where there patio begins and ends.

MR. SCALI: Okay. Does anybody from the public want to be heard on this matter? Have you had any discussions with the Lilac Court people at all on this particular matter? Did they have an opinion on this?

MS. LINT: No.

MR. HOPE: At the first hearing, we reached out to not specifically Lilac Court but their neighborhood group, Wellington-Harrington Neighborhood Association, which they're a part of, and just let them know that we had the initial hearing. I don't think there was any feedback. There may be some about any potential tenant but not just about the increase. I think they see the vacancies at Pompanoosic Mills space and the Shine space and understand that we want to get tenants in there.

MR. HAAS: So just remind me, at the last hearing we did have residents from Lilac. Are

their concerns addressed now or are they still pending, do you think?

MR. HOPE: From what I remember, their concerns weren't really based on the cap increase, they were about the type of vendor that would be moving into the Shine space. I would rather let them speak on that.

MR. HAAS: Okay, that's fine.

MR. SCALI: Any further discussion?

MR. TURNER: No further discussion.

MR. HAAS: No.

MR. SCALI: Anybody from the public want to be heard on this matter? No hands. Pleasure of the Commissioners?

MR. HAAS: Motion to approve.

MR. TURNER: Seconded.

MR. SCALI: Motion made to approve the amendment to the 1990 agreement allowing up to potentially seven licenses, either purchased or applied for.

MR. HAAS: We would prefer purchased, right, if they're available?

MR. SCALI: We'd prefer you to purchase one I guess would be the preference.

MR. SCALI: And allowing up to 1,350 seats total. That would include your patio and your inside seats?

MR. HOPE: Yes.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much.

MS. LINT: Application: Continued from November 24, 2009. Unusual Suspects, LLC d/b/a Think Tank, Vincent Conte, manager, has applied for a new All Alcoholic Beverages as a Restaurant license at One Kendall Square, Building 300, with proposed hours of operation from 11:00 a.m. to 2:00 a.m. seven days per week and an occupancy of 226 (143 seats inside, 24 seasonal seats outside on a private patio, and 59 standing). Applicant is also applying for an Entertainment license to include: audio tape machine/CD playing music below, at, or above ordinary conversation level, dancing by patrons, comedy shows, darts, live musical instruments and/or vocalists with amplification, karaoke, juke box, pool or billiard table, five video games or other automatic amusement devices, eight TVs, and a photo booth.

MR. SCALI: Good evening. Just tell us your name for the record, please.

MR. MUROF: Mitchell Murof.

MR. CONTE: Vincent Conte.

MR. SCALI: When we were here last we

had some neighbors that were in here that were concerned.

MR. MUROF: We actually had one woman who was not a neighbor who said she was representing and was friendly with the neighbor. That's who was here.

MR. SCALI: Didn't she live on Lilac Court?

MR. MUROF: No, she did not live on Lilac Court.

MR. SCALI: What have we done to reach out to these people?

MR. MUROF: At your request and it was my understanding that the purpose of this adjournment was in order to address that and another issue which you asked us to do; to reach out to the other business owners of One Kendall was my understanding. So we've done that. We immediately sent a certified letter to Ms. Robinson.

MR. CONTE: She was the neighbor that was addressed by Ms. Gamble, the person that showed

up. Along with the certified letter, I hadn't heard for a significant amount of time which then I believe Elizabeth received an e-mail, which I followed with a phone call to Ms. Robinson and did get in touch with her.

Let me preface this by saying that I had a lengthy conversation with Ms. Gamble as well as I gave her full contact information to please forward along to Ms. Robinson that I'd be happy to meet with them. I didn't hear, sent the certified letter, finally got a conversation with Ms. Robinson who was very nice but just had her general concerns over what we are trying to accomplish there. She said that other neighbors had expressed her but she didn't want to be in the middle, and this was actually today that I spoke with her. She would just like to know more about us in the future.

MR. MUROF: She was aware of tonight's hearing and she indicated that other residents of Lilac Court were also aware of the hearing on November 24, as well as tonight.

MR. SCALI: So there was no meeting and there was no discussion with anybody?

MR. CONTE: There was a discussion but nobody tried to contact me after the letters or up until recently when I finally was able to acquire a phone number and spoke to her on the phone. I have a receipt for the certified letter.

MR. SCALI: So what does that mean?

MR. MUROF: We reached out to the woman who was here who doesn't live there. We reached out to her contact who lives there and the feedback is that there are no concern --

MR. SCALI: So you're telling me no one cares?

MR. CONTE: Not enough to count.

MR. MUROF: There's no concern about what we're doing and in fact, she said that --

MR. SCALI: I don't believe that for one minute that no one cares.

MR. CONTE: The address Ms. Robinson who I spoke to referenced that people talked to her but she didn't want to be in the middle of it but

nobody else other than a representative of hers has came forward. Like I said, she was very nice on the phone. She just expressed that it would be nice if you could write a letter. So I was like I reached out to you. She said she hasn't been around and this and that. It didn't seem overly --

MS. LINT: If I may, Mr. Chair, I spoke to Ms. Robinson as well today. She did not receive the letter and was unable to be available because of health reasons. She expressed to me that a lot of the other neighbors of Lilac Court did have concerns. One in particular had a hearing out in Springfield today and just wasn't able to make it back in time. And that they were more concerned because generally whenever there is anything going on in the One Kendall area, they receive notification of that. We had put it in our letter, which I discovered late this afternoon that in addition to notifying abutters, they needed to notify Lilac Court.

MR. SCALI: I was kind of hoping that you were going to have a date when you met with

everybody. Put a date out there and say we're having a meeting about this and you're invited to attend.

MR. CONTE: That's what I tried to do actually in the letter, which I have a copy of the letter that I sent to her, as well as I actually asked if there were any other contacts from Lilac Court, and I never received any. So I assumed that because first of all, it's not on the abutters list, so I didn't know first of all how to get in touch with anybody in the first place. So I went directly for Ms. Robinson who was the only person who had a voice. They expressed that they knew the other two dates that were here and supposedly -- she said the same thing to me about potentially one who's a lawyer that would have liked to have been here but he was out of town. So I don't know what more I could have done really.

MR. HAAS: How many residents are in Lilac Court, do you know?

MR. CONTE: There's approximately I think probably about 20 condos in there.

Ms. Robinson is actually right on what is Portland -- what is it, Monsignor something now, Portland Street? Her location is right there and everybody of is kind of inset off the street.

MR. SCALI: Is it your feeling Mrs. Lint that they need further discussion? What was the indication?

MS. LINT: It's hard to say. As you know, I frequently get e-mails and telephone calls from people who have concerns about something going in. My name is put in the ad with my contact information and I didn't hear from anyone.

Ms. Robinson seemed to -- the biggest concern was that it not be another Shine, and talked about that they love One Kendall and that it's a vibrant place and there is so much going on. So she's not really opposed to something going in, she just wants to understand better what it is.

MR. CONTE: Which I ended the conversation today with her saying I'm still happy to invite everybody into the space as I expressed in the letter.

MR. MUROF: And that letter went to her and she received it.

MR. CONTE: No, she did not. She expressed her health concerns and that she had relatives moving in and out so her mail --

MR. SCALI: It's during the holidays too so I'm sure people were away or maybe may not have been able to be available.

MR. MUROF: This is six weeks.

MR. SCALI: All right. So you're still looking for --

MR. MUROF: In addition to that Vincent met with -- we were asked to meet with all the other business owners and we have done that. I think if we could characterize it, and Vincent will talk specifically about each and every one of them, but if you could characterize what it is that they were saying, they were concerned about splitting up the existing piece of pie, if you will. It's just another restaurant, another place. They were concerned about someone else going into One Kendall and just doing an after-work and

dinner, and just going after the same business that each of them were already having a hard time with quite frankly. No one seems to be doing that great.

When they were made to understand that one of the goals of Think Tank will be to bring people in from other parts of Cambridge and from Boston, and to bring a vibrancy to One Kendall from people who are not necessarily there from other parts of the City and Boston, they were excited about that. It made a lot of sense to them to have other folks introduced to One Kendall that are not there anymore in addition to just being a restaurant.

MR. CONTE: Basically there's six venues feeding from the same pie from 12:00 to 5:00. After 5:00, there's five and those are crucial, and all of them expressed how after 7:00 is a really difficult time for them right now.

They're interested in the opportunity that we have a market from Boston that we want to attract to the space, and they're interested also

in a unified front which they really haven't done in a long time as far as marketing to outside of the market, which is generally -- the basis of most of the conversations that I had was about how to group market.

Now, they don't want to market each other if they're competing for the same thing, but marketing a whole experience in the Square as a whole is what they had a lot of interest in, as well as showing a unified front to the landlord and making them work for the group's more. Things have changed from when they had 2,500 residents a couple of years ago to 800 in the actual capacity of the thing, so to split up the existing pie for just another restaurant is scary to them.

MR. SCALI: Wasn't it your idea to bring more night life to it but in a responsible fashion? I guess that was your idea to bring more entertainment but not a Shine entertainment.

MR. CONTE: The last point I want to reference is that Shine was a failed business. Those businesses always fail due to improper

concept, and management and ownership. Our experience far outweighs the amount of experience going into it. There will always be experienced management on site at all times.

Just my experience in mixed venues, you know, most recently and closest to your hearts is Red Line, which Patrick Lee actually joined us today, which is the closest thing in concept to what we're trying to accomplish, which is a very vibrant venue that basically offers dancing. The only one that actually is technically a dance club, if you want to use the term "dance club."

MR. SCALI: The biggest concern at least on my part is to make sure that number one, the neighbors are not afraid that this is going to turn out to be what happened before with the noise of people leaving, fights, commotion being caused at 2:00 a.m., people getting out. I think that that's what the tenants that are there want as well, to make sure that their businesses are not disturbed by your customers, and from a police point of view, I'm sure the same as well.

MR. CONTE: The reason we sought after this location is because it is the best. It has the least amount of potential resistance in affecting a neighborhood. That's all residential parking. People shouldn't be parking over there anyway. The fact that we're talking about one hour of difference between the places that are already there and the places that could be there is really minimal.

And when you were talking about policing it's easier to police this location than it is a half-mile of Central Square with many different venues. I think you referenced before taking ownership for your customer. You're going to know who our customers are. You're going to be able to say that person was in there; what are you going to do about it? Why did this happen? And you know what, it will probably be me you'll be talking to because I will be there.

MR. HAAS: It won't be me talking to you.

MR. CONTE: Your people would be

talking to me directly.

MR. SCALI: Between 1:00 and 2:00 in the morning, it will be your customers.

MR. CONTE: Our ability to bring people from the outside market really hinges on the 2:00 a.m. license. The only thing in that neighborhood right now which does well, Flat Top Johnny's, can draw to a later market but pretty much that's not -- they don't have a time restriction they're worried about because people will play pool at any time and leave at 1:00 if that's what happens.

The movies let out sometimes past 12:30, and these people are leaving, completely vacating the vicinity. After 9:00, it's a ghost town down there and we want to help responsibly bring that neighborhood, the closest to the city, some energy. There are no 2:00 a.m. licenses south of Central Square, other than Paradise, the gay nightclub, which basically is 9:00 to 2:00 a.m. three nights a week. We just want to have that opportunity to attract our clientele, what we

conceptually devised, the image we conceptually devised from the get-go.

MR. SCALI: I think we understand your concept and I think that was the whole idea to bring a different kind of concept there; to bring the people later, but in a fashion that we want to make sure that is not going to cause more disturbance.

So we understand your concept and what you want, and the neighbors do as well. I think we just want to make sure that you understand that when people are getting out at 2:00 a.m. that they can't be whooping and hollering, and squealing down the street, making noise going down Cardinal Medeiros.

MR. CONTE: Absolutely it shouldn't be.

MR. SCALI: If that happens then you won't be there long.

MR. CONTE: I even referenced with Beale paying for a police detail to disallow cars from leaving the garage to go right into, so they'd

have to go left. So there wouldn't be that drag racing potential issue.

I talked to the other owners about that too and they were like fine, if that's what seems to be the problem. But right now, they don't feel the garage is being used as much so we've got to get to that point too.

The point of me meeting with them and actually the outcome of it is that I want to be a good neighbor to them as well as anybody on the outskirts. I've been responsible to my neighbors at every place that I've ever been. And again, at Red Line we had store owners and things right there, as well as a resident across the street that voiced opinions once in a while.

MR. SCALI: I was just hoping that you were going to meet these people so they would know you and see you face-to-face. That's what I was hoping was going to happen.

MR. CONTE: The thing is, it wasn't made readily available so that we had contact other than Sue Robinson to contact, and again, when I did

she was very polite. I said I'd be happy -- not to mention, I gave her my card which has my cell phone number and said you can contact me at any time directly if there's a problem, as well as Jay Leo, who you met last time, and Mitchell Murof.

MR. SCALI: So nothing has changed in your request; everything is the same?

MR. CONTE: Everything is that same. I think you wanted a little definition.

MR. MUROF: Billiards, we took out billiards. We're not looking for billiards.

MR. SCALI: I'm sorry, did you eliminate something from here?

MR. MUROF: Yes, billiards.

MR. CONTE: I sent a letter right after our meeting outlining exactly how the entertainment is used and why we requested --

MR. SCALI: What are we eliminating?

MR. CONTE: The billiard table is eliminated from that, and even in the dart boards I think I eliminated from that last letter.

MR. SCALI: Do we have the alternate

floor plans for the dance floor?

MR. CONTE: Yes. They were in the original. You have both versions.

MR. MUROF: Since that time we also have a fully executed lease.

MR. SCALI: You do?

MR. MUROF: We do.

MR. SCALI: I'm sure it's conditional upon you getting a license.

MR. MUROF: Frankly, it's conditional upon our getting a 2:00 a.m. for three days but it is here and it's fully executed.

MR. SCALI: Discussion?

MR. HAAS: We talked about this before in terms of how you're going to control for patrons coming out of the other establishments and then trying to get into your establishment. We've had this problem before where people will leave one establishment, go to another establishment, and then you have the double duty of making sure who's ever is coming into your establishment is not intoxicated or you're not contributing to their

intoxication.

MR. CONTE: Here's what I basically expressed to you the last time: I have generally a strict policy, which again, with Pat Lee we did the same thing, after 1:30, no new customers in the door.

However, in talking with the other owners, it's the responsibility of your staff regardless if they're coming at 1:30 or 9:30, to evaluate a person's condition. It's not our wish to pull them from these other places into our place. That is going to happen so obviously you've got a responsibility in managing your door effectively, which myself, I spend a significant amount of time at the front door during that and I train all my staff specifically, as well.

Most of the staff is actually already hired and already have 10-plus years of worth of experience in bartending.

MR. SCALI: You've already hired them?

MR. CONTE: Yeah, actually yeah.

They come from Boston markets, most of that staff.

I've been around a long time.

MR. MUROF: Not exactly.

MR. SCALI: They're waiting in the wings.

MR. CONTE: Pretty much, yeah.

MR. SCALI: Does anybody from the public want to be heard in this matter at all? Mr. Lee?

MR. LEE: My name is Patrick Lee. I'm the owner of Red Line Food and Drink. As Vince mentioned, I've known Vince for the last six years. For three of those years, Vince was the GM at Red Line. Some of the concerns that I've heard from the Commission tonight I think Vince is the type of manager that has the attributes and the qualifications and the experience to handle all of the issues that may arise.

I think it was a difficult tenancy, the last person who was in this space. I think he brings unique qualities that would turn this space around. I think it would really bring a lot to that One Kendall area.

MR. SCALI: So he's going to manage it as well as your three establishments; right?

MR. LEE: Excuse me?

MR. SCALI: He's going to manage it as well as your three establishments are managed; right?

MR. LEE: Yes. I have to say from what I've heard of what this venue is going to be like -- not just Red Line, Vince has worked in a lot of other places in Boston and also in Rhode Island that have similar issues. So he's dealt with these over his whole career. There wouldn't be anything that would happen at a venue like this that would shock him. He would sort of understand what the difficulties were and probably solve them before they arose.

MR. SCALI: So from your observation and past experience, you think that between 1:00 and 2:00 and 3:00 a.m. the issues that we talked about are not going to exist?

MR. LEE: Certainly not to the extent that they existed at Shine. I think what

eliminates a lot of those problems, and it is a unique area down there because you do have a lot of people leaving at the same time, so you're not going to eradicate everything. What you will be able to do with an experienced owner is to be able to change the crowd so that everyone leaving there is responsible, and I'm confident that that's what he would do.

MR. SCALI: Thank you. Questions?

MR. HAAS: No other questions.

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

MS. ORPIK: Erin Orpik.

MR. SCALI: Can you come up again?

MS. ORPIK: As the landlord representative, obviously signing a lease with them we've experienced Shine and we don't want to experience that again. We are confident that the concept that they have and the experience that they have is certainly bring a different vibe and a positive vibe to One Kendall.

We have vacancy. We are excited to

fill that vacancy and bring vibrant life to the complex. We are in support of them, and from our perspective, we don't see any issues with them coming on board.

MR. SCALI: I know you had a lot of trouble with the previous tenant there, and so did we. You feel very confident that these gentlemen can handle the situation?

MS. ORPIK: We would not sign a lease with someone that we felt would even be a comparison to Shine, for our own sake.

MR. SCALI: Questions?

MR. HAAS: Mr. Chairman, I would agree with you. My only reservation is that I wish you had spoken to or at least reached out to the 20 residents on Lilac, just because I think that's one unresolved issue. You probably could make a compelling case for them to understand that this is not going to be a situation for them to be concerned about and then be supportive of it. So that's the one outstanding issue for me that has yet been resolved.

MR. SCALI: I really was hoping that between November and now, you would have at least had a meeting with them; at least set up a date and say whoever is available, please come to the site and see us.

MR. CONTE: That's actually what the letter did say.

MR. SCALI: I think your letter said please call me if you have any concerns.

MR. CONTE: I said, "I'd be happy to meet with the neighbors in order to alleviate your concerns and to answer any questions. I can make myself available any (underlined) afternoon or early evening at the space so I can walk you through the concept. We intend to make Think Tank the kind of business that will be a good and responsible neighbor to all the residents of Kendall Square. I look forward to meeting with you soon. Please contact me at your earliest convenience. I can be reached by phone and by e-mail." That's basically what the letter said.

MR. HAAS: Yeah, but I think what

you're doing is you're placing the burden on one resident to communicate with the other 19, and what you really should have done is --

MR. CONTE: But my understanding when it first came was Ms. Gamble was coming for this person and I addressed her immediately, and I still haven't heard from another person outside that wasn't Ms. Robinson.

MR. SCALI: That's assuming that she notified all those people.

MS. LINT: She wasn't able to.

MR. CONTE: She wasn't able to but she was the one that was actually making the contact for it. So I didn't know outside of getting everybody's individual names and addresses, or going and handing a door-to-door leaflet, I don't know what was --

MR. SCALI: That's normally what people do; set up a time and say come and meet with me on this date, if you're available.

MR. MUROF: Would you suggest that that would be the case to do with a 12:00 license?

MR. SCALI: It doesn't make any difference what time it closes. It's anybody who has concerns.

Do the Commissioners wish to have a continuance for further meetings on this?

MR. HAAS: When is our next hearing date of Decision date?

MR. SCALI: The 19th.

MR. HAAS: What I'd be willing to do is if you could distribute that flier to those 20 residents, set up a date, and then come back on that date, I think I'd feel comfortable providing we don't have any major opposition to support it. I hate to put you through another continuance which means you have to come back to another hearing and then it delays it further. So if we take the matter under advisement, as long as we get some kind of assurance that you're at least going to make a good-faith effort to --

MR. CONTE: Like I said, I'm happy to meet with them at all levels. I have no problem with transparency in what we're trying to

accomplish. Again, I had that whole conversation with Ms. Robinson today and she had no problem. She said there were some people who would have liked to -- but I just don't see -- if those people didn't make any effort to show up any of the three times, why again are we being -- August 8, 2008, is when I started this process. It's been a long time.

MR. SCALI: I think we meet again on the 28th, is it? Is it the 28th we make decisions? We meet on the 19th and we make decisions what date?

MS. LINT: I don't know; I'm gone.

MR. SCALI: Is it after that?

MR. TURNER: In February?

MR. HAAS: Is there another hearing date before the Decision meeting?

MS. LINT: On the 19th.

MR. SCALI: Which is in two weeks, and then we decide before you go away?

MS. LINT: That's what I can't remember.

MR. HAAS: Typically what would happen is if we take it under advisement, it's not going to come up on the 19th, it's going to come up to the Decision meeting which is probably another week or two weeks beyond that, which is a month out. So I think if you could just at least send a flier. If nobody shows up, that's fine.

MR. MUROF: What do you want us to specifically do, send -- I don't even know the names of the residents.

MR. SCALI: I think maybe you should probably leaflet those condos on Lilac Court. Set up a time to meet and just say you're having a meeting and for you to come.

MR. MUROF: If we leaflet and there is no response?

MR. HAAS: Then at least you made a good-faith effort.

MR. CONTE: But I think we've made a good-faith effort to this point.

MR. SCALI: I think you've depended on one person who didn't live there to notify

everybody on Lilac Court and I don't think she was able to do that.

MR. CONTE: If she's the one representing, I just don't understand why it's -- if she's the only one that contacted, why she -- if she can't communicate with the other.

MR. SCALI: We are scheduled to decide this on January 28 at 10:00 a.m. So between now and January 28, if you can do that then that would be very helpful.

MR. HAAS: If you could get this for the 19th, we can make a decision on the 19th.

MR. CONTE: I can get it done by the 19th if I could at least --

MR. SCALI: Let's try and do it by the 19th then.

Any other comments?

MR. HAAS: No other comments.

MR. TURNER: No.

MR. SCALI: Motion to continue.

MR. HAAS: Is it continued or is it taken under advisement?

MR. SCALI: Whatever you'd like. We can continue it and decide it or take it under advisement and then decide it. If we're going to take further testimony, it would be a continuance.

MR. HAAS: Yes, probably. I'll make a motion to continue it.

MR. SCALI: Motion to continue to January 19 at 6:00 p.m. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: See you on the 19th.

MS. LINT: Second call for the Cantab. Officer Bates, has he arrived?

MR. HAAS: Sergeant Framatino.

MR. SCALI: Come on up. Sergeant, pull up a chair over here. Good evening and thank you for coming in. Just tell us your name for the record, please.

SGT. FRAMATINO: Edward J. Framatino.

MR. FITZGERALD: Richard J. Fitzgerald.

MR. RAMSEY: Stephen R. Ramsey.

MR. SCALI: This is for the incident that was -- there's no date on here. Sergeant, can we start with you?

SGT. FRAMATINO: It was approximately 11:52 p.m. I was Car 18. Supervising officer, Billy Bates, he was walking Central Square.

The original call came in as a disturbance at The Tavern. That was the original call, at The Tavern. We went to the area and we were looking around. A few minutes later, seven or eight minutes --

MR. SCALI: Sergeant, I'm sorry. People, could you all take a seat please. Thank you. I'm sorry, Sergeant, go ahead.

SGT. FRAMATINO: A few minutes later, the victim Amani Komein (phonetic).

MR. AMANI: Excuse me, that's me, so I have to sit down there.

MR. SCALI: Come on up, sir. You're welcome to listen. There's a chair right over here. Have a seat.

Continue, Sergeant.

SGT. FRAMATINO: A few minutes later, he approached us and he told us he had been assaulted by the bartender at the Cantab. I said that the call came in for The Tavern, and he said no, it's this place over here.

Officer Bates interviewed him. All parties were separated. There was no assault happening at that time. Billy Bates got his report. He stated that racial slurs and he pushed him out the door and he kicked him -- or he kneed him, he kneed him. The victim stated he was kneed

out by the 7-11.

Then we spoke with a witness, Stefanie Downey.

MS. DOWNEY: That's me.

SGT. FRAMATINO: She kept throwing out the name Chester, Chester, Chester. I didn't know who Chester was but I later found out that the alleged suspect is Jay Shaughnessy, not Chester. She stated to us that she is hearing impaired but she did hear something about a country and she possibly saw his leg in a kicking motion. The victim stated knee, the witness stated kick.

We interviewed the alleged suspect. He stated to us that he was the bartender, Mr. Shaughnessy, and he observed the victim, Kouame, being disruptive in the bar, at which point he asked him to leave. He had him near the door. He said he felt threatened so he escorted him out. They had words outside. He said he never threatened him, never assaulted him.

MR. SCALI: This is the bartender you're talking about.

SGT. FRAMATINO: Yes. He stated he had no derogatory talk towards him.

After all the statements were taken, Billy Phillips -- excuse me, Billy Bates was going to do a report. I stayed there. I asked Mr. Kouame to leave the area. I stated that the incident is all over and we're going to file a police report. I gave him a file number, I gave him the time, the date, I gave him my name. I was the supervisor on scene. I gave him Officer Bates' name and badge number, and I asked him to leave the area to eliminate any further --

MR. SCALI: So there was no arrest?

SGT. FRAMATINO: There was no arrest.

MR. SCALI: The bartender came outside and Mr. Kouame was outside as well?

SGT. FRAMATINO: When we first arrived, it was just Mr. Kouame outside, and we weren't notified that he was the victim for about five or seven minutes.

MR. SCALI: You didn't know it was him?

SGT. FRAMATINO: We didn't know it was him until he walked over to us later on. Like I said, the original call came in for The Tavern, which is next-door, but we were looking in the area of The Tavern to see what was happening.

MR. SCALI: Who was outside when you arrived; the bartender?

SGT. FRAMATINO: No, Mr. Kouame was.

MR. SCALI: What did he tell you at that point when you saw him?

SGT. FRAMATINO: He told us, like I said, he was assaulted. He was kicked. He was threatened and derogatory -- I'd rather not get into the --

MR. SCALI: It's all a matter of public record right here in the record, anyway, which we have in front of us.

So at that point, then you took -- did he identify who the person was to you?

SGT. FRAMATINO: Yes. He said it was the bartender.

MR. SCALI: So you identified the

bartender?

SGT. FRAMATINO: Yes.

MR. SCALI: Who's the bartender? Is he here?

SGT. FRAMATINO: Jay Shaughnessy.

MR. SCALI: Mr. Shaughnessy is here, okay.

SGT. FRAMATINO: That's him right there.

Like I said, we spoke with a witness, Stefanie Downey. She kept stating that Chester, the bartender did this, Chester, the bartender did this.

MR. SCALI: So she thought the bartender's name was Chester, but that isn't his name?

SGT. FRAMATINO: Right.

MR. SCALI: What's her name again?

SGT. FRAMATINO: Stephanie Downey. She stated to us that she's hearing impaired or she had some type of a loss. She couldn't hear what was going on but she did hear something about a

country. The bartender stated something to the victim about his country, and she saw a possible kick. She said a kick. The victim stated a knee. It's hard to decipher; we weren't there.

After everything was all squared away, what I did was I furnished him with all the important facts that he needed, and I requested that he -- there was no need for him to stay there.

MR. SCALI: Right, at that point you were going to -- leaving it up to him then to file a complaint?

SGT. FRAMATINO: No. We were taking a report. I gave him a file number. Officer Bates was filing a report. I said you can pick up a copy of the report in the next couple of days at the Cambridge Police Department. I gave him all the information as well as the phone number of the records and so forth.

MR. SCALI: Did he contact the unit later?

SGT. FRAMATINO: He didn't leave the scene for about five to seven minutes. I had to

ask him again to leave.

MR. SCALI: So he was still there?

SGT. FRAMATINO: He was still there. I didn't want any more confrontation. The bar was starting to let out. I didn't know if the bartender was going to come out. I just wanted to eliminate it, but he gave me a little bit of a hard time at first when I tried to eliminate any problems.

MR. SCALI: You cleared the scene. Mr. Kouame finally left.

SGT. FRAMATINO: Yes.

MR. SCALI: What happened after that?

SGT. FRAMATINO: Officer Bates filed a report and the detectives followed up on it. I don't know what happened with the detective division.

MR. SCALI: Was there a criminal case?

SGT. FRAMATINO: I don't know. At that point, I was out of it.

MR. SCALI: Questions from the Commissioners for the officer?

MR. TURNER: No.

MR. HAAS: Sergeant, you weren't able to make a determination whether an actual assault took place other than the fact that there was some circumstantial evidence by virtue of the witness that there was some kicking action possibly at that point; right?

SGT. FRAMATINO: Correct. The victim stated knee, the witness stated that it looked like he possibly kicked him. The alleged suspect had flip-flop shoes on.

It's an alcohol establishment. People had been drinking. There was nobody hurt so we just decided at that point just to take a report and let the detectives follow up on it.

MR. HAAS: Was Ms. Downey able to identify the bartender other than by name? In other words, did she physically point out who the bartender was that she saw involved with the victim?

SGT. FRAMATINO: I'm not sure. I recall that she kept saying Chester, Chester,

Chester, and I know the suspect's name was Jay Shaughnessy, not Chester.

MR. HAAS: No other questions.

MR. TURNER: No questions.

MR. SCALI: Thank you, Sergeant. Just stay right where you are. We will take Mr. Kouame's testimony at this time. Just tell us who you are for the record.

MR. AMANI: My name is Kouame Amani.

MR. SCALI: Could you spell that?

MR. AMANI: K-O-U-A-M-E A-M-A-N-I.

MR. SCALI: I mispronounced your name before, I apologize.

Tell us what happened that evening.

MR. AMANI: It was on Sunday night around 11:00. I was standing at a club, Cantab, and the bartender was many times he used the flashlight putting on people's faces. There were two bartenders. I approached one of them and I told him, please could you tell to the other guy not to put the flashlight on my face because I don't support it.

MR. SCALI: Why were they doing that, do you know?

MR. AMANI: If you could ask him that would be very nice.

MR. SCALI: I've never heard of anybody using a flashlight like that. Was it dark?

MR. AMANI: No. People was dancing and singing and for 45 minutes he was playing this game. So I continue story.

When the other bartender told him the gentleman or this person doesn't like it the way you are using the flashlight. He asked him who is, who is? And I point to me. He came to me and he said, what did you say? I said, "I don't support the flashlight in my face." And he said, "I allow myself to do it because you did not pay the cover charge." And I said, "Okay, how much does it cost?" He said five dollar.

When I put my hand in my pocket trying to give him the five dollar, and he ask me, where you come from? At first I say I come from Salem, which is where a live. And he said, no, where do

you come from, your country? I say, are you an agent? Right away, he make a turn and he say, "follow me." So I follow behind him and when we went outside trying to insult me, "Dirty black nigger. I'm going to send you back to your country." And he asked me to touch him. I said I know better than that. I cannot touch you.

MR. SCALI: Do you mean to hit him?

MR. AMANI: Yes.

MR. SCALI: Which you didn't do, I'm assuming. Or, did you?

MR. AMANI: So he pushed me and I did not react, and he said touch me, and I said no. So when I turned back I was dressed in jacket, he grabbed me, knocked my head against the window, and at this point, used his knee to kick me in the back.

I saw many people standing there and no one did tell him to stop.

MR. SCALI: Were you there by yourself that evening?

MR. AMANI: Yes.

MR. SCALI: You were just there having a drink?

MR. AMANI: I got only one glass of wine and it was the other bartender who served me, not him.

MR. SCALI: Was this your first time there?

MR. AMANI: I've been there many times.

MR. SCALI: So you go there all the time?

MR. AMANI: Yeah, but maybe after four months.

MR. SCALI: You haven't been there in a long time?

MR. AMANI: I never met him. I don't know who he is, just the bartender.

So the lady, Downey came to me and said I witnessed everything.

MR. SCALI: Ms. Downey, you're talking about?

MR. AMANI: Yes.

MR. SCALI: Do you know her?

MR. AMANI: Never. I call her my angel guardian. She said what he did to you, we are not anymore in the '30s. He should not treat you -- and before that, sir, he spit on me. And Cambridge Police asked my T-shirt and I kept it for DNA purpose because at one point we did find his saliva on me. So she said to call the police, I witnessed everything.

MR. SCALI: Did you call the police?

MR. AMANI: I did. I saw the police officer looking for the address, and I went to him and I said it's me.

First, he start checking my eyes if I was drink. And I say, okay, the thing you are doing I like it but please do this too to the bartender because while he was talking to me I smell alcohol. He said that is not your business. License Commission will call you. I said okay.

So from this point, I was standing there talking to them and writing down what had happened to me, my nightmare.

MR. SCALI: Did you file a report or a complaint in court? Did you go to court?

MR. AMANI: From this point I have not talked to two police officers any more. It was another guy who called, Muey(phonetic) --

MR. HAAS: Detective Muey.

MR. AMANI: -- who was handling my case. So I asked him for this matter do I need a lawyer? He said no, the District Attorney would take care of the matter. We went to the court and from nowhere I saw two people talking on behalf of the bartender. One was a taxi driver and one was an electrician telling -- that is in Medford -- they said I was bouncing some girls, and that's why they went to report me to the bartender, and he was using the flashlight in my face.

MR. SCALI: They said you were doing what?

MR. AMANI: Bouncing two girls in the bar.

MR. SCALI: Bouncing?

MR. AMANI: Yes. I don't want to tell

you what word he was using. So two girls went to report to him that I was harassing them. So that's the story. And as a matter of fact, my case was denied.

MR. SCALI: The judge denied the --

MR. AMANI: Yes, even with the presence of my witness.

MR. SCALI: So there were no charges?

MR. AMANI: Yeah. That was maybe criminal court but I have the ability to go further for civil action or something.

MR. SCALI: Did you testify with what you just said before the judge?

MR. AMANI: Yes, I did. I said it but it did not go through.

MR. HAAS: Was Ms. Downey at the court to testify?

MR. AMANI: Yes.

MR. SCALI: I'm not sure if maybe you know the terminology, but what was the reason why the clerk didn't grant the --

MR. AMANI: No valid cause.

MR. SCALI: Is there anything else you want us to know?

MR. AMANI: No. That is my --

MR. SCALI: Questions of Mr. Amani?

MR. HAAS: No.

MR. TURNER: No.

MR. SCALI: Thank you very much. Ms. Downey, do you want to come up? Take a seat right there if you would, ma'am. Just tell us your name for the record.

MS. LINT: Stefanie Downey,
D-O-W-N-E-Y.

MR. SCALI: Can you tell us what happened on the evening of September 20, at the Cantab.

MS. DOWNEY: I was there quite some time before Mr. Amani. The bartender, Mr. Shaughnessy was aggravating everybody in that bar with his flashlight. He was shining -- it's one thing if a bartender wants to shine a flashlight on the lead singer, but if he's just going to shine it at everybody's face and aggravate

them, I don't know why.

MR. SCALI: What's the purpose of that? Do you have any idea? Was it because they couldn't see people's faces or money or something?

MS. DOWNEY: No, to be a pain in -- to start a fight. Let's start a fight. That's what it seemed like. When you shine a flashlight in my face, well, I'll ham it up for you. If you shine a flashlight in someone else's face, they might not like that.

MR. SCALI: So what happened after the flashlight?

MS. DOWNEY: I went outside to smoke a cigarette because I'm a smoker, so I didn't see what happened inside the bar to Mr. Amani. But I was outside on the sidewalk watching the whole thing. And I didn't hear too much because I was too busy screaming at the bartender to please stop, okay, and he wouldn't stop.

When I realized it was going to be a physical thing, well, I'm a 58 year old woman, I backed away. I don't want to get injured. So I

basically watched Mr. Shaughnessy mop the sidewalk with Mr. Amani, and that's why I came forward and said I will be a witness, because this is not 1930, and you can't just beat somebody up and throw them up against a glass window, and kick them in the butt, and yell and scream, and you know, call a person names, and tell them you're infiltrating my country.

MR. SCALI: You actually saw all of that happen?

MS. DOWNEY: Yeah, I did.

MR. SCALI: And you heard things?

MS. DOWNEY: And I heard that; you're infiltrating my country. That's when I started -- they moved from the doorway out to the sidewalk. It's a wide sidewalk but closer to the street, and that's when I followed. I didn't hear too much of the conversation because I was too busy yelling at the bartender to stop being so ridiculous.

Of course, he had lied to us in the bar and told us his name was Chet. So I'm screaming to someone who's inside the bar actually.

The other bartender's name is Chet.

MR. SCALI: The other bartender's name?

MS. DOWNEY: The other bartender's name is Chet, yeah.

So they moved all the way down the sidewalk from the Cantab around the corner from the 7-11.

MR. SCALI: Did you go to court too, and testify?

MS. DOWNEY: I did. I was very surprised that nothing came of that. I mean is this still 1930? I don't know what to think or say.

MR. SCALI: Do you know Mr. Amani at all?

MS. DOWNEY: I never met him before that and I've never seen the bartender before that. I don't go there that often. I usually frequent the Cantab on Wednesday night and that particular night was a Sunday night. I happened to have an extra night off. It's a different crew that works

from Wednesday nights.

MR. SCALI: Were you there by yourself?

MS. DOWNEY: I was.

MR. SCALI: Questions, Commissioners?

MR. HAAS: The gentleman sitting behind you is the gentleman you saw with Mr. Amani.

MS. DOWNEY: Uh-huh.

MR. SCALI: Mr. Shaughnessy?

MS. DOWNEY: Mr. Shaughnessy.

MR. HAAS: No other questions.

MR. TURNER: No questions.

MS. DOWNEY: Actually Mr. Shaughnessy has been fired as a bartender and barred from other bars. That would be the Genoa in Somerville.

MR. SCALI: How do you know that?

MS. DOWNEY: I did go to the Genoa at one point many years ago.

MR. SCALI: Thank you very much.

Mr. Fitzgerald, you have the right to ask questions of the Sergeant, of Mr. Amani, and Ms. Downey.

MR. FITZGERALD: Unfortunately I wasn't there that night so I don't know what really happened. I've only heard what you're hearing now. I'm here to kind of testify to the character of Shaughnessy. He has worked in other bars and he was hired at the Cantab because of recommendation from other bar owners. I've known him for years and I always kind of wanted him to work for me. So I don't understand why this all happened.

As far as racial stuff, the Cantab is known for a mixed crowd. It's always got -- all different people come in that place and there's no trouble. We don't have any trouble over there.

MR. SCALI: What's the deal with the flashlights?

MR. FITZGERALD: I don't know. In fact, that's the first I've heard about a flashlight.

MR. SCALI: Mr. Shaughnessy, can you tell me about that?

MR. SHAUGHNESSY: Yeah. A couple of girls came up and told me that this gentleman was

bumping them. I said well, you're on a dance floor. They said no, he really bumped us. So I kind of kept an eye on him and that's when the flashlight came out. I flashed it on him and he said get that out of my eyes. That's when I went around and escorted him out. That's the only time the flashlight came out.

MR. SCALI: Do you use it on a regular basis to get people to do what you want?

MR. FITZGERALD: I don't know. Instead of going around to get his attention because he was bumping girls.

MR. FITZGERALD: I know that we do sometimes use a flashlight if somebody might stand up on a table or something, and kind of dance on the table. The bartender can't get out there so he'll flash a light on them to draw attention to them to get them off the table or get them off the chair.

MR. SCALI: People are dancing on the tables there?

MR. FITZGERALD: Not really.

MR. SCALI: I'm not sure that statement helps you very much.

MR. RAMSEY: They'll stand up against the benches that are along the wall and he'll catch them. You really can't just yell over there so he just flashes the light and gets their attention and just motion for people to get down.

MR. FITZGERALD: I have a copy of the thing from the courthouse in respect to the Show Cause Hearing regarding Jay shaughnessy. The court found no probable cause with respect to both counts on the application. I have a copy of that if you want it.

MR. SCALI: And was the Show Cause for Assault?

MR. FITZGERALD: It says, "Please be advised that with respect to the Show Cause Hearing regarding Jay Shaughnessy, the court has found no probable cause with respect to both counts on the application."

MR. SCALI: Do you know what the counts were?

MR. RAMSEY: It was Assault and Civil.

MR. SCALI: Is there anything else you want us to know? Sergeant?

SGT. FRAMATINO: I want to add from Officer Bates' report, the witness statement.

"The above named witness, Downey states that she was standing outside smoking and witnessed two men come out. She has substantially hearing loss and could not discern the conversation, except for the bartender saying something about Amani's country.

During this confrontation the bartender made gestures like he intended to kick Amani but did not contact him. She did not observe the bartender spit on Amani. She states that she observe the bartender grab Amani's collar and push him out."

She stated here that she saw him wipe the sidewalk with him. She never told that to the officer.

MR. SCALI: That's why I asked her if she actually saw what she said she saw. Her statement here says something different.

SGT. FRAMATINO: I'm a little confused with the statement from that night and the statements now.

MR. SCALI: Anybody else you want to testify, Mr. Fitzgerald?

MR. FITZGERALD: I don't think so.

MR. HAAS: Do you want to give Mr. Shaughnessy an opportunity to testify?

MR. SCALI: I assume he's a witness for Mr. Fitzgerald; am I right? We would like to talk to Mr. Shaughnessy if you'd like.

MS. LINT: If he's going to take it further we shouldn't have anything on the record.

MR. SCALI: I'm sorry, Mrs. Lint explain to me --

MS. LINT: Well, if he intends to have further action then Mr. Shaughnessy could potentially be giving testimony against himself, which would be on the record and could follow him into further court action.

MR. SCALI: Is there further court action on this?

MR. AMANI: Absolutely, hitting me, spitting on me. You cannot do that to a dog.

MR. SCALI: Are you proceeding civilly on this matter?

MR. AMANI: That is my intention.

MR. SCALI: You have not done so yet, though?

MR. AMANI: It will be in a few days.

MR. SCALI: We'd like to ask you some questions, Mr. Shaughnessy, at your will I guess to speak or not speak.

MR. SHAUGHNESSY: I wouldn't feel right if he's going to go on further and this could hurt me. I don't know why it's gone this far anyhow.

In that hearing you could see what kind of fellow he actually was sitting there across the room smiling, laughing through the whole hearing. Then the magistrate had to ask him four times at the end like when he was doing his rebuttal to look at him and not me. He just kept on digging and digging and this is the way the

fellow is.

I'm sorry it had to come to all this but you know, to protect the other people.

MR. SCALI: I'm assuming that I can ask him questions, Mrs. Lint, or not?

MS. LINT: I wouldn't.

MR. HAAS: You were at the bar that night?

MR. RAMSEY: No, I was not. I'm not there on a Sunday night so I basically know as much as Mr. Fitzgerald knows hearing the two different sides of the story here.

MR. SCALI: Is the kitchen closed there?

MR. RAMSEY: I have since begun serving food.

MR. SCALI: Amazing.

MR. RAMSEY: Some of the best hot dogs you ever want to have.

MR. SCALI: As I recall, you used to serve more than hot dogs there. It seems like I notice there's less and less food there all the

time.

MR. RAMSEY: We sell a lot of hot dogs though and we're not losing a lot of money.

MR. SCALI: I know you're one of the grandfathered bar rooms in the City.

MR. RAMSEY: Since I put it in, the hot dog steamer, people are happy about it. I know it's not cuisine but. . .

MR. SCALI: I think my point is that if you serve more food, there is less potential alcoholic behavior. And I've noticed a lot of people standing out on the sidewalk lately seemingly allegedly intoxicated.

MR. RAMSEY: Those are not always my customers. If you look in front of 7-11, also, and on that bench that was put out there for Mabel.

MR. SCALI: No, they're your customers because they're standing there smoking a cigarette in front of your place. So I have noticed that lately working in the Square every day. This is in the daytime at lunchtime. I know our investigators have spoken to you about that. I'll say allegedly

intoxicated because I don't have any proof that they are intoxicated.

MR. FITZGERALD: Mr. Scali, I can tell you that some of those people who are standing outside don't come in the place. They're not even allowed in the place. Some of their friends might go out and have a cigarette. They all come from the shelter.

I always say the City should be paying me for keeping some of these people off the street. They come and they meet there; they're not allowed in the bar.

MR. SCALI: Anybody from the public want to be heard on this matter? Mr. Clifford?

MR. CLIFFORD: John Clifford from 55 Aberdeen Avenue in Cambridge. I'm also an aide to City Councilor, Ken Reeves who's now Acting Mayor. He would like to be here but he can't because he's chairing the School Committee meeting.

I wrote a letter and he wrote a letter about the Cantab and the credibility of the Cantab, and especially with people of color and African-

American people, minorities. There's a large population that go in there. I've been in there many times and there's just not racial problems in there. I mean there just isn't, and they treat people with respect and dignity.

So I just wanted to make that clear. I think I sent you a copy of the letter of the dismissal of the court cases.

I would also like to add one more thing. I quite frequently -- I work at City Hall and I go over to the ABC House of Pizza and order lunch often. There is a very very rough crowd out there on the benches drinking that is not from the Cantab. They seem to congregate out there almost every single day, every single nice day, and they fight and they push each other, and it's not the Cantab people.

I'm there every single day, I mean I've been there every single day for four years, and maybe even before that when I owned the Green Street Grill. There's a very large element of shelter people out there. The police do not police

it, and there's drinking out there. I see it. There's also dope, you know. It's just a matter of fact.

They look like they are people out of jail. There's a lot of white people, white women and white men. Ken Reeves, I know he's mentioned it to the Commissioner I think, and other people that there seems to be an influx in the last couple years of these type of people in Central Square.

MR. SCALI: I know we do have your letter on file here. We did receive it so it's part of the record from Councilor Reeves.

MR. CLIFFORD: And Reeves wrote a letter also.

MR. SCALI: Yes, we have both.

Thank you, Mr. Clifford. Anybody have any other questions?

MR. HAAS: No question.

MR. TURNER: No questions.

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

Pleasure of the Commissioners?

MR. HAAS: Take the matter under advisement.

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

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: We're scheduled to vote Thursday morning, January 28, at 10:00 a.m. You're welcome to be here if you want to. You don't have to be here.

MR. RAMSEY: In this room?

MR. SCALI: It will be right here.

Thank you Sergeant. Thank you, Mr. Amani.

MS. LINT: Application: Whole Foods Market Group, Inc. d/b/a Whole Foods Market, Phillip DeVito, Manager, holder of a Wine and Malt Beverages as a Restaurant license at 340 River street has applied for a change of premise description.

MR. SCALI: Good evening.

MR. RAFFERTY: Good evening, Mr. Chairman, members of the Commission. For the record, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive, Cambridge, appearing this evening on behalf of the applicant Whole Food Markets Group, Inc.

Seated to my immediate right is Mr. Rick Bonin, B-O-N-I-N. Mr. Bonin is the Regional Vice President for Whole Foods. And to Mr. Bonin's right is Mr. Phillip DeVito. He is the store manager and the manager on the license.

I'm sure the Commission is familiar with Whole Foods on River Street. It was a much sought-after use about 10 years ago when the Stop

and Shop closed and that neighborhood was faced without any opportunity for groceries.

There were challenges associated with building the store, a second-level store which most grocery stores don't really like to be on the second-floor. But Whole Foods committed to the location and have been serving the neighborhood now for the better part of 10 years.

The application tonight is to allow for the display and merchandising of some beer and wine on a few of the end caps throughout the store. Mr. DeVito can share with you the thinking behind that.

The Whole Foods concept and what they're doing is they're trying pairing foods with wines in an effort to respond to customer desires. So over by the seafood they might have some wine and in a few other locations. They don't like to treat the alcohol necessarily, or the wine and beer as a separate entity.

Most of the customers who go there to purchase beer and wine are food customers. They

report to me that they get very few people who come in simply to make wine and beer purchases although that might happen on occasion.

Whole Foods, as you know, is the successful operator of retail food establishments throughout the region and this is a concept that they have been employing very successfully. They have a new store in Dedham, which is receiving great reviews.

They have this concept in Hadley, and it really is an opportunity to pair food with wine and allow people as they're making purchases to be able to look at wines that are nicely compatible with particular food groups.

The area attached on the plan is the existing and that's unchanged. See the large rectangle square at kind of the top third of the paper. That's the existing, and where they're looking to add you'll see are these end cap places where they would like to be able to distribute the wine.

MR. SCALI: So the big area is really

along this wall right here; right? It says 18 square feet.

MR. RAFFERTY: That's the big new area.

MR. SCALI: Oh, 77 square feet.

MR. RAFFERTY: Right.

MR. SCALI: And the small little end caps are like 18 square feet or 8 square feet. What's the total additional square footage, do you know?

MR. DEVITO: Yes, it's 205. Where you see the large wall that's actually our Prepared Foods case, so it would not be a full display of wine as would be in our actual beer and wine department. It would just be cross merchandising on the level below it to be able to pair that with the food you buy.

MR. RAFFERTY: You might go for a lasagna and there would be a Chianti right below it, Mr. Scali. I'm not ethnic stereotyping with you, I'm just suggesting.

MR. SCALI: No offense taken.

MR. RAFFERTY: I thought of that after I uttered that.

MR. SCALI: Do you know what square footage you have now?

MR. DEVITO: Our current square feet is 1,010, I believe. That's the total square footage of the floor.

MS. LINT: You have 800 square feet for wine and malt and then increasing to 1,003.

MR. RAFFERTY: I think they did square footage of floor area, and we did linear feet. The architect did the footprint of a 1,000. It's actually less than that in terms of actual display.

What I also did include with the application is that Whole Foods has a very sophisticated system in place to prevent any sale of beer or wine on a Sunday prior to noontime. There is significant staff training around the issue. There's signage to customers. And most importantly, the computerized checkout registers will not accept the code numbers for any beer or wine before noontime on Sunday, so there can be no

inadvertent sales of beer and wine.

MR. SCALI: Refresh my memory, isn't it required on Sundays to cover up and lock up the alcohol that's not being sold at that time?

MR. RAFFERTY: I'm not aware of a requirement to lock up.

MR. SCALI: I know it's supposed to be covered up.

MR. RAFFERTY: They do have an area where they place signage and it remains in place until noontime.

MR. DEVITO: And there's stanchions also.

MR. SCALI: On the end caps? What are you going to do with the end caps?

MR. DEVITO: The end caps, it's really up to the Commission on that. If you want it to be blocked off, it can be blocked off and covered.

MR. RAFFERTY: They have stanchions that they put up now. They can certainly put them around the end caps.

MR. DEVITO: That blocks off the

entire department but we could block off the end cap, and also signage.

MR. SCALI: I don't think you want to block off your entire area, you want to block off where the alcohol is; right?

MR. RAFFERTY: There's just a cap there so if you couldn't -- you can only approach it so if they put something in front of those caps.

MR. BONIN: We use the tension barriers.

MR. SCALI: That's what I meant, not blocking off the whole area.

MR. RAFFERTY: No, the aisles remain open.

MR. SCALI: So you have a plan to block those off?

MR. DEVITO: Absolutely.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard on this matter? No hands.

Abutter notifications?

MS. LINT: That's what he just threw at me.

MR. SCALI: I'm sure Mr. Rafferty did not mean to throw it at you.

MR. RAFFERTY: I did not mean to.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Motion to approve.

MR. TURNER: Seconded.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much.

MS. LINT: Application: Tomolly, Inc., d/b/a The Red House/Charlie's Kitchen, Paul Overgaag, Manager, holder of an All Alcoholic Beverages as a Restaurant license, 2:00 a.m., has applied for annual use of the patio located at said address. The patio is located on private property.

MR. SCALI: Good evening, again.

MR. RAFFERTY: Good evening, Mr. Chairman. You may remember me from the prior case. The name is Rafferty here on behalf of Tomolly's. Seated to my left is Mr. Paul Overgaag, the manager of record.

As you know, Mr. Overgaag operates a successful double d/b/a enterprise, The Red House and Charlie's Kitchen, and they really are great contributors to the life of Harvard Square.

As part of his operation in the last year or so an outdoor garden was established, a former loading area. It's proven to be very successful. It's a private patio.

What the applicant would like to do is that he's discovered that certain hearty New

Englanders are willing to spend some time outdoors beyond the conventional seasonal time that the sidewalk seating is, the period between the end of November and is it April 1 or May 1?

MR. SCALI: It's March 1. SO like an evening tonight people would be sitting out there drinking?

MR. RAFFERTY: I think the expectation is that it wouldn't have much evening activity. Mr. Overgaag in describing it to me thought it would be like an Alpine -- on a nice snowy Sunday with the sun there it could be like an alpine village where people would sit around.

MR. SCALI: If you had a hot tub that would probably be great.

MR. RAFFERTY: We have that application pending.

MR. SCALI: I'm sorry, I didn't mean to make a joke about it.

MR. RAFFERTY: I understand the solemnity of these proceedings.

MR. SCALI: It's just so cold.

MR. RAFFERTY: It's even a little bit colder. There used to be a little fireplace but that's gone I'm told. But the idea, and I'll let Mr. Overgaag tell you -- as you know, he is a very successful operator, very responsive to customer trends.

MR. OVERGAAG: The disappointment on December 4 of last year when it was 75 degrees outside that you were not able to have a beer in the beer garden was absolutely ludicrous to customers.

Three years ago in 2007, this day it was 65 degrees. So there are these periods of warm weather that can be used for people to enjoy a beer in the beer garden and a hamburger.

MR. SCALI: It would be at your discretion when it was warm, at a point in time when it may be unusually warm.

MR. OVERGAAG: When the snow melts and we have it set up. It's probably mostly during the day when there's a little bit of sun and it warms up. We can serve some lunch and a beer and burger.

MR. SCALI: Questions?

MR. TURNER: No questions.

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard in this matter? This gentleman right here and then Ms. Jillson.

MR. CHAFETZ: My name is Gary Chafetz. I have some concerns about this.

MR. SCALI: What is your address, sir?

MR. CHAFETZ: 106 Winthrop Street.

For the last 10 years, abutting this property has been psychotherapy offices. I'm not a psychotherapist but I do rent space there where I write. The leasee -- I'm a sub-leasee, her name is Doctor Carolyn Rider -- rents this two-office suite with a waiting room, and has for the last 10 years.

The owner of this property, his name is Robert Banker. He's an owner of numerous properties in the Harvard Square area, both commercial and residential. He orally told Doctor Rider that he would never put anything in this beer garden without her okay.

My concern is notice. The area that Mr. Rafferty described, as far as I knew was not a loading area. It's simply an area that wasn't being used. It's historic. If I'm not mistaken the abutment, the walls are the original embankment of the Charles River, so it's very historic.

And the reason I bring that up is that I believe, and I could be mistaken, maybe it was Inspectional Services that required a variance, or maybe in addition to, it required historic approval. Notices were put up, which we never saw. They were removed mysteriously. Historic told us that they were then put up again. They were again mysteriously removed.

MR. SCALI: At what point in time are you talking about?

MR. CHAFETZ: When this beer garden was originally established about two years ago.

So the abutters were never notified and the preceding was approved without our notification, without our ability to comment. And once again, this is occurring. I'm here for

another matter. I didn't even know about this. I just happened to look on the list and see that this was on the agenda.

Our concerns are that we need quiet. Maybe that's not legitimate; maybe you have a right to open a beer garden where people drink and talk. We asked that no tables be put directly under the psychotherapy windows. They were put there. People talk, people throw beer bottles sometimes, but that's not very common. I don't mean to --

MR. SCALI: Are you being disturbed as it is now?

MR. CHAFETZ: It's noisy but there's the white noise effect because of the air conditioners in the summertime. So it kind of drowns out the noise. We can't run air conditioners in the wintertime. So on balmy global warming days, there will be conversations, loud, and we won't be able to white noise these conversations away with air conditioners.

So those are my concerns and I just wanted to share them with the Commission.

MR. SCALI: Ms. Jillson, good evening.

MS. JILLSON: For the record, my name is Denise Jillson. I'm the Executive Director for the Harvard Square Business Association. I'm delighted to hear that -- we had talked about the possibility of keeping patios in Harvard Square open longer, and had actually looked at various ways of doing it be it with heaters and that sort of thing.

So to have this application come, and have it on private property, and have it in Paul's beer garden for just a few days during the winter would be a great opportunity for us to sort of pilot it and see how it goes.

We would be wholeheartedly in support of this. It adds to -- you know, there's a wonderful opportunity to see people outside in the street on a good day. And even if it's not terribly warm, if it's cool and people want to be outside and have a cup of coffee and sit out there with hot chocolate, it's a good thing. It adds to the atmosphere.

I understand that people have concerns about noise, but it's Harvard Square and we get eight million visitors a year in the Square and it's really difficult to keep the noise level down. I would say that this, again, is just a great opportunity to pilot a program whereby some of the patios could be open for a longer extended period of time. So we would support this application. Thank you very much.

MR. SCALI: Anybody else?

Ms. Gifford, welcome back.

MS. GIFFORD: My name is Pebble Gifford and I live at 15 Hilliard Street, and I'm in the same situation as Mr. Chafetz, the previous speaker, in that I didn't come here for this particular event, but it raises a lot of issues.

I'm a patron of both Paul's places. I either have lunch in one or dinner in the other, and I think the beer garden -- I didn't know quite what it was going to be like but I think it's been manageable.

But once again, you're having to

decide between a balancing act between residents and professional needs, people who live and work in the Square, and those who come to party or have a drink on a sunny December day. I think it's very unwise, as much as I have faith in Paul to leave it on that kind of a discretionary basis; that when he decides it's warm and sunny that he opens the garden and serves a hot dog or a hamburger.

I think that's just respect for the people who rent professional space in the Square and have a right to have some quiet days, or not have the Square be a commercial enterprise 365 days a -- it is a commercial enterprise, but not have all its open spaces dedicated to commercial enterprise.

We can take all of Elliot Square and Brattle Square and put tables out there just like on the Oktoberfest. They're great but that's what it should be, a one -- those events are great and that's what they're designed for, but to create an Oktoberfest in little niches around the Square on a whim or on a periodic basis I don't think is fair.

It's tipping the balance too much the other way.
Thank you.

MR. SCALI: Does anybody else want to be heard? This lady right here.

MS. HOLMES: My name is Olive Holmes and I live at 22 Farwell Place. It's the Church Street parking that's right behind and in the establishment we're talking about. I must say --

MR. RAFFERTY: Excuse me, Farwell Place is not close to this at all.

MS. GIFFORD: I spoke on another case. It's not the Fire and Ice.

MS. HOLMES: I'm sorry.

MR. SCALI: We'll take you when the other matter comes up.

MR. RAFFERTY: It's just confusing because Mr. Chafetz also lives on Farwell Place. As he said in his testimony, he sub-leases an office from the same landlord that leases to Mr. Bank.

But by way of record, there were no variances involved here. This is an allowed use.

There was notice provided statutorily to the owners of property. So if you are a sub-tenant of someone else in an office, you wouldn't get a notice but there was public notice.

The issue involved this Commission. There's a patio in front of the Red House. That patio functions quite well and the experience here at the beer garden is that there has not been any problems.

Certainly Mr. Overgaag is sensitive and I imagine if there is anyone in that building that's having a problem, he would be happy to talk with them. We're talking about a time of year when windows would be closed and probably not a lot of activity during the week. It's probably likely to generate more activity on a weekend than during the week. But I'm sure if we could get some phone numbers, Mr. Overgaag prides himself on his neighborly relations.

MR. SCALI: Questions from the Commissioners?

MR. HAAS: Ms. Jillson portrays it as

being somewhat of a pilot project. I wonder would your client be interested in doing something on the weekends initially just to see how it works before encroaching into the business week.

MR. OVERGAAG: The patio at the Red House is open all year long and we use it all year long. It's more a matter of are we going to allow the seasonal seats to be open all year.

Like on December 4, the patio at the Red House was full from 11:00 to 3:00, 4:00 in the afternoon because we're the only place that serves outside because I have seats that are licensed for the whole year.

MR. RAFFERTY: I think the point would be, Commissioner, these opportunities may be few and far between. So if a sunny Friday arrives and office-goers and others wanted to go there, he may not be able to use it Saturday and Sunday.

I think we could certainly suggest a review, and if there was a problem, have it reviewed.

MR. SCALI: It would have to be hot on

a Saturday and Sunday in December, January, and February.

MR. OVERGAAG: Right, you limit your use.

MR. HAAS: So the building next door, are they all owned by the same owner?

MR. RAFFERTY: The beer garden itself is owned by Mr. Banker. It's in the rear of the building. As I understand Mr. Chafetz' testimony, he or someone he's familiar with rents also from Mr. Banker. So there's a common landlord at work here. So it seems to me if an office tenant -- if my land lord was having something occur outside my building that was disturbing me, I would approach my landlord and ask to have the remedy there.

MR. HAAS: Has Mr. Banker taken a position on this application?

MR. OVERGAAG: He fully supports it.

MR. SCALI: Questions?

MR. TURNER: The only question I have is the timeframe for the patio policy?

MR. SCALI: March 1 to November 30.

MR. TURNER: Is that in an ordinance?

MR. SCALI: That's our policy.

MR. TURNER: Does that apply to both public and private, or just public?

MR. SCALI: It applies most definitely to public property patios and then at our discretion for the private patios.

MR. TURNER: Thank you.

MS. GIFFORD: What is that date again?

MR. SCALI: The patios are open March 1 to November 30. Really all you have left is December, January, and February. It's a very short cold season supposedly.

MR. OVERGAAG: But if the infrastructure is there and the opportunity presents itself, it's a condition that exists --

MR. SCALI: It could be cold in September too.

MR. RAFFERTY: But I'm saying that the patio is there eight months of the year so if there's a problem in February, it's likely to be more of a problem in April. You've got to fix the

problem. You don't need to worry that the four cold months are going to have a different problem. I think one could reasonably conclude that there would be less activity and less opportunity for noise to travel when the windows are closed during the winter.

MR. SCALI: Are we going to rehash?

MR. CHAFETZ: No. There's a drawing above and just for informational reasons, even though it's not quite to scale, the rectangle on the left is the Red House. The rectangle on the right is the psychotherapy office. The gap in the middle, which is depressed approximately 10 feet is the beer garden. So when the Red House has its patio there's quite a difference. They're eating and drinking but it's quite a difference in the distance from the windows. The windows are closed in the summertime and the wintertime because conversations are confidential.

So I just wanted you to two know that there's a difference between talk on the patio, which is 30 feet away, and talk in the beer garden,

which is directly under the windows.

MR. SCALI: Okay.

Pleasure of the Commissioners?

MR. HAAS: Take it under advisement.

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

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: We're scheduled to vote on January 28.

MS. LINT: Application: JFS Group, LLC d/b/a Fire & Ice, John Schall, Manager, holder of an All Alcoholic Beverages as a Restaurant license and Entertainment license at 50 Church Street has applied for a change of premises description and an alternate floor plan for entertainment. Applicant is applying to amend their current Entertainment license which includes an audio tape machine/CD, which may play music below, at, or above conversation level, and two TVs. The new Entertainment license, if approved, would include dancing by patrons, live musical instruments and/or vocalists with amplification, trivia night, karaoke, and six TVs.

I believe it was also included in the ad that it would be 2:00 a.m.

MR. SCALI: Also an extension to 2:00 a.m.?

MS. LINT: Yes.

MR. SCALI: Good evening, tell us who you are.

MR. SCHALL: My name is John Schall.

I'm the owner and manager of Fire & Ice in Harvard Square. I'm the original owner of Fire & Ice in Harvard Square from 1997 to 2000. I sold it in 2000 and I bought it back in 2007, just the Harvard Square location.

I also reside at 19 Hilliard Street.

MR. SCALI: You're a neighbor of Ms. Gifford's?

MR. SCHALL: I am almost a next-door neighbor of Ms. Gifford's.

MR. SCALI: Have you knocked on her door and said hello.

MR. SCHALL: I am now.

MS. GIFFORD: We've met.

MR. SCHALL: We have met.

MR. SCALI: I'm glad to hear that.

So this application is --

MR. SCHALL: This application is actually the result of the construction that has occurred at the 50 Church Street building, which has resulted in the covering my originally permitted courtyard.

In the application it shows that the initial footprint of Fire & Ice included an open courtyard that was surrounded by the restaurant. This space that was formerly my courtyard, which was permitted to have a bar in this space, so I had two permitted bars and that doesn't change. It's just now that this courtyard has been covered.

MR. SCALI: Covered, meaning that you can't see --

MR. SCHALL: Meaning there's a building on top of it.

MR. SCALI: Meaning you can't see out any more, outside.

MR. SCHALL: I still have a small little courtyard at the far end and there is a wall here. This is a green wall and this is all sort of green space here. So now there's a little tiny courtyard that's at the end of this space.

MR. SCALI: The covered area you want to use as what?

MR. SCHALL: It's going to --

MR. SCALI: Is it restaurant seats?

MR. SCHALL: It's going to have restaurant seats. It's going to have a small bar in it just like the outside courtyard did, but I also want to be able to -- because this space is completely enclosed from the rest of the restaurant, I want to be able to use it for example, as a private function room. I want to be able to use it to sort of -- to have its own sort of little independent identity apart from the restaurant.

MR. SCALI: Are you asking for an increase in your capacity?

MR. SCHALL: No. My capacity at 276 is completely fine.

MR. SCALI: So same capacity, the space is covered. You're looking to use it as a function room and/or restaurant space?

MR. SCHALL: Yes.

MR. SCALI: Which you already use it for now; right, restaurant space?

MR. SCHALL: I use it as restaurant space now; now it's an outside courtyard that --

MR. SCALI: So it's going to be an inside restaurant --

MR. SCHALL: Now it's an inside restaurant with a little outside courtyard.

MR. SCALI: The additional use then would be to add the entertainment to that space?

MR. SCHALL: To add the entertainment to just that space.

MR. SCALI: You do not have entertainment in the other spaces?

MR. SCHALL: I have the entertainment which is already in the license, which is two televisions and an audio system that plays digital music.

MR. SCALI: But nothing live?

MR. SCHALL: Nothing live and there's no dancing.

MR. SCALI: How often are we going to be doing the entertainment?

MR. SCHALL: Probably this will just -- I mean you know, I would plan on having a karaoke night on a Monday, or trivia night on a

Tuesday; to do those kinds of things in the space on a regular basis.

In terms of it being used as a dance floor, if there's a wedding reception in there, I would want to be able to use it as a dance floor. That would be only the times that I used live music in there. In general, live music is not intended in that space.

MR. SCALI: So dancing and live entertainment only for functions?

MR. SCHALL: The dancing would occur at other times as well. There would be private parties in there, there could be other Friday and Saturday nights where there is dancing in the space.

MR. SCALI: I'm just trying to figure out your plan, because if you want to do it for functions and weddings, that's fine. Do you want to have it seven days a week where you have the option of having live entertainment and dancing, or is it just going to be one night a week you're going to be doing it?

MR. SCHALL: I would want to have the option to do it seven nights a week. It's not my intention to do that but if there is for some reason a group that wants to be able to dance on a Tuesday night, I wanted to be able to be permitted for that.

MR. SCALI: I'm just trying to figure whether it's for special groups seven nights a week, or is it going to be billed as entertainment for the public to come into seven nights a week?

MR. SCHALL: Yes. I want it to be permitted for entertainment for the public to come in seven nights a week.

MR. SCALI: The concept, the idea of what crowd you were going to be marketing to? Eighteen-plus, twenty-one-plus.

MR. SCHALL: It would always be 21-plus. Right now, the only place to have functions in Harvard Square is the Charles Hotel. My intent is to be able to market this space for private parties and functions sort of heavily.

MR. SCALI: What kind of music?

MR. SCHALL: Well, music will depend on who's -- on what function is there.

MR. SCALI: You don't have a plan, do you?

MR. SCHALL: The plan is to be able to utilize the space in a more efficient way.

MR. SCALI: I'm just trying to get an idea of your concept, what the marketing tool will be to bring people in. Is it to bring in jazz; is it to bring in hip-hop; is it to bring in -- what's the marketing tool?

MR. SCHALL: The space has been created, right. That has --

MR. SCALI: So the idea is open?

MR. SCHALL: Right. And so it's now to be able to utilize the space in a more effective way and to have business in the place instead of having it end at 10:00 or 11:00 at night, to have it go until 1:00 or 2:00 at night. And to do that by like I said, marketing private events, marketing functions, marketing functions, marketing parties, marketing using it as a function space. Then also

as a place to go after you've had dinner.

One of things that happens so often is people come out of Border Cafe and Fire & Ice at 7:00, 8:00, 9:00, 10:00 at night saying now where do we go? Because this space is completely enclosed, it can keep operating as a late-night venue for food and entertainment after.

MR. SCALI: This does in some way kind of fit the plan of -- we have a nightlife committee that has been meeting over a number of months now talking about bringing more vibrancy to the Square and other parts of the City as well.

We haven't quite gotten to the complete concept yet, but that idea is in the works. So this would kind of lead in that direction as to what the nightlife committee is looking at.

MR. SCHALL: Partly, I'm responding here to sort of situation that has been handed to me. When I signed the lease three years ago when I bought space back, one of the things I agreed to was to be able to have my courtyard space covered.

So I now have this covered space and I'm developing a plan for sort of utilizing it in a more efficient way.

MR. SCALI: I think what would be helpful to me anyway, I don't know how the other Commissioners feel, is for you to have a little bit more defined plan as to what direction you're going to go in. It sounds like you've got the function/private party thing nailed down. That sounds like a perfect idea because people are looking for space to rent other than the hotel, although Charles Hotel is very nice. This would be a different space.

I guess I'm having a little trouble with the idea of it being seven nights a week in terms of what you're going to market it towards. I have no trouble with the function, because that's a private party coming in, and people having a dance party or a wedding or a birthday, and that's great. But if you had a better idea of what you would do like on a Friday and Saturday night until 2:00 a.m., that's a -- you've got to have a defined

idea as to what that's going to look like, I think, in terms of being better prepared. I'm not saying it's a bad idea, I'm just saying a more defined idea.

MR. SCHALL: Right.

MR. SCALI: Maybe you don't know.
I don't know.

MR. SCHALL: But the point here, partly the point the here is because the space is created and it exists, so it's one of those things where sort of testing things out and sort of seeing, and that's why doing karaoke on a Monday night, doing trivia on a Tuesday night, just utilizing this space.

The marketing approach is going to be to market it as heavily as I can as private functions. Figuring out how it's best to do it is one which I would like to be able to sort of explore. The space is there, it exists, it's part of my operation. How it gets utilized is what I want to have the flexibility to sort of explore.

MR. SCALI: When the dance floor gets

put out there are you taking tables and chairs away.

MR. SCHALL: There are scalloped booths around this side. There's a regular banquette on either other side. These are all window walls where the courtyard is now, so those windows are staying. Then there will be eight tables, four-top tables in the middle where sort of the dance floor will be. There's a storage room right here where those eight tables are the only ones that go away. All the rest of the seating will stay.

MR. SCALI: The middle tables will go?

MR. SCHALL: The middle tables.

MR. SCALI: What is your standing capacity going to be in that room?

MR. SCHALL: Right now, I'm not doing it any other than just -- there's 39 tables, 39 seats that are being stored.

MR. SCALI: What I'm saying is if you take the tables and chairs out, you need a total occupancy of people standing without the tables and

chairs. Do you know what that number is going to be?

MR. SCHALL: Right.

MR. SCALI: The architect should have given you a number. When they designed that space they give you --

MR. SCHALL: For the square footage here it's 82.

MR. SCALI: So total, 82 people standing and seated in that space, or just standing?

MR. SCHALL: The total in the space is 102. The total seating in here is 102.

MR. SCALI: So 102 taking away how many seats?

MR. SCHALL: Taking away 39.

MR. SCALI: How many seats will be left then?

MR. SCHALL: Sixty-three.

MR. SCALI: So 63 seats left and 82 standing? I don't think you know.

MR. SCHALL: All I'm saying is that

there's going to be 39 on the dance floor, the same number of people on the dance floor as were there seating.

MR. SCALI: That's not going to make sense. When you take away tables and chairs it brings more space for people to stand and dance, so it's not going to be the same number as just tables and chairs. Do you understand what I'm saying? It's going to give you more space for people to dance and stand.

MR. SCHALL: So you want to know what the maximum number is?

MR. SCALI: So you need a safety number.

MR. SCHALL: That number is 82.

MR. SCALI: So 63 seats remaining, and 82 people standing.

MR. SCHALL: That's what the capacity would be.

MR. HAAS: Where does the 102 come from?

MR. SCHALL: The number of seats that

are on the seating plan.

MR. SCALI: Maybe you should go back and take a look at this again and make sure that's the number you want. It's a number that you're going to have to post. Ms. Boyer will give you a sign that says this is the maximum number in this space that can stand and be seated. It's a safety number. So we have to give you that number in order for it to be a safe space. So you have to know what you can fit in there safely.

If you want 82, that's fine, but if you want to look at it again, that's okay, too. I don't think you really have an idea of what you really want; that's what I'm feeling right now. Am I right?

MR. SCHALL: I guess I'm not sure what the -- because I'm not changing the capacity of the space. I'm not changing the capacity of the space which has a capacity of 276, and that's not changing as part of this.

MR. TURNER: Just that section or the entire restaurant?

MR. SCHALL: The entire space.

MR. TURNER: The entire restaurant is
276?

MR. SCHALL: So of the 276 there's 102
that are in this space, 174 in the remaining space.

MR. SCALI: So the idea is that if you
keep it at 102 and you take away all those tables
and chairs, you're going to have a real big open
space with probably 39 people standing. That's
going to look pretty bare.

What you need to do is go back and
look at your plan, figure out how many you can fit
safely in that open space to be standing, so people
can dance and sit down at the same time. It may be
more than 102, if you can safely fit that without
tables and chairs. That may mean a different
inspection and then apply to come to us and say
this is the number I want to be able to be standing
in the space.

If you're at a wedding and people are
dancing in the middle of that floor, there's going
to be more than 39 people dancing on that floor,

I'm assuming; right? It would have to be a real small wedding party dancing at 39 people.

MR. SCHALL: The space is what it is. It's not a space for a 150 person wedding.

MR. TURNER: Mr. Chair, I'm getting lost here. Just so I understand, are you asking the applicant to request an increase in capacity to his current capacity; is that what you're requesting?

MR. SCALI: I think I'm asking him what he wants. If he wants to keep it at 102 --

MR. TURNER: That's what he wants, that's what he gets.

MR. SCALI: -- with 63 seats and 39 standing, you have to maintain it at that number.

MR. SCHALL: Right. Having 102 people in this space is --

MR. SCALI: Total.

MR. SCHALL: Right.

MR. TURNER: If that works for him --

MR. SCALI: All right.

MR. TURNER: Does the applicant

understand -- and I'll just repeat what you just said -- that you cannot exceed that number. If you have a dance floor as big as this room and there's only five people, for example, they're allowed to have five people dancing in this whole room, that's all you're allowed to have. So as long as you're aware of that.

MR. SCALI: And you've got to monitor that number. If you want 39 people standing, that's it, 39 people standing. If you have 40, you're in violation.

MR. SCHALL: So if there's 40 people sitting, there can't be 62 people dancing?

MR. SCALI: If you have 63 seats out, existing, you can only have 39 people standing. The total number in that room is 102.

MR. HAAS: You're not bound by that number. I think that's what Mr. Chairman is getting at. What you may want to think about is you're actually talking about dual use of that space. You're talking about seating capacity for when you're serving meals and things like that, and

then you're talking about altering the space to become somewhat of a dance floor.

That would suggest to us that there's two numbers you're looking for; right? One for your seating capacity, and one for your -- if you were going to change it into a dance floor, what is that capacity that you want to allow for those people to be on that open space on the floor? Does it make sense?

MR. SCHALL: Right, and that's the 82 number. When the architect looked at what's the capacity on the dance floor that number is 82.

MR. HAAS: So you're saying the capacity -- so 63 plus 82?

MR. SCHALL: Right.

MR. SCALI: Which means you're requesting an increase in capacity for that space, which is not a bad thing. I'm not saying it's bad, it's just what you're requesting.

MR. SCHALL: I don't need to have -- because at the time that that is going on the other 174 in the restaurant -- it's not there. It

doesn't need to have more than 276 total.

MR. SCALI: All right. I'm not getting through. I'm going to say it one more time: What the Commissioner is telling you is that when you turn that space into a dance floor, it's not the same as people being seated. There's more space to dance than to be seated.

So most likely when people get up to dance there's going to be more than 39 people dancing on that dance floor. So we have to know that you know what that number is. If it's 63, it's 63. If it's 82, it's 82. But whatever that number is you have to maintain that number.

If you request it to be more than 102 in that space, that's fine, but just have to know what that number is.

MS. GIFFORD: Commissioner, I think I can shed some light on this.

MR. SCALI: Let's just finish with Mr. Schall first and then we'll take comments.

MS. LINT: There's a little piece missing. I think you're focused on the other 174.

Because that's a different part of the space, it has absolutely no bearing on that separate room that you're talking about.

MR. SCALI: Each room has it's own space capacity.

MS. LINT: So that if five people from the outside --

MR. SCHALL: The space now is not identified that way. I guess that's what's confusing. The space really isn't changing, there's just a roof over the part that already exists as a courtyard, and the courtyard doesn't have a defined capacity at this point.

MR. SCALI: Let's move on and you can think about that a little bit and we'll go from there.

Is there anything else you want us to know about that space? Let's take comments then.

MR. HAAS: Mr. Schall, you keep on saying the space is completely enclosed. Is it completely enclosed or is it open in the front? This courtyard, does it have open access to the

street?

MR. SCHALL: No.

MR. HAAS: So it's completely enclosed?

MR. SCHALL: It's completely enclosed in that respect. This courtyard is down below street level about eight feet. So this is a wall right here that is about eight feet tall.

MR. TURNER: Any photographs, any pictures? I've got to go look at it.

MR. HAAS: I'm having a hard time visualizing it.

MR. SCALI: If you haven't been in that building in a while you wouldn't --

MR. TURNER: The last I remember Fire & Ice, you go in the front door, you go down the stairs. It's in the basement. I don't remember any courtyards. That was years ago.

MR. SCHALL: There was a whole courtyard that was there and now that courtyard is enclosed.

MR. TURNER: I would need to see

pictures of it. I'm lost at this point.

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

MS. GIFFORD: It's quire a coincidence -- first of all, I'm Pebble Gifford, 15 Hilliard Street -- that I'm a neighbor of the applicant. We chatted for a bit out in the hall because I was as confused as you are about what is happening here, but I'll begin at the beginning.

This is not the right place for a nightclub, which is what we're talking about. The function idea is not a problem because somebody books a room for a wedding or the business association or whatever association wants to have their annual anniversary there, or whatever they have. I don't see any problem with that because it's controlled, people book the space.

If it's open generally to the public seven nights a week it becomes a very very different animal. If I was an up-and-coming rock star in Harvard Square, and wanted a venue, I'd be the first one to go in there and rent the premises

and get all my friends in there and have a hell of a time. I think it would be great, but not on Church Street, which is a block from my house. And it's also less than a block from the residents who live on Farwell Place.

Once again, I'll make my point. We see Church Street as a buffer zone and it's been a hard-won battle just to sort of restrict the Square's expansion out to Brattle, up -- well, it's gotten into Story Street. But we do not want to see that breach of Church Street as far as night time entertainment is concerned, especially live music. I tried to explain to John that you don't always control your clientele when you open these places, as we've see before.

I think the best example we've had is the House of Blues and -- what's the other one I'm really thinking of that has dancing or did have dancing. People get the word that this place is going to be open, they'll be a good band, and you can you come into this space where -- I don't care where it is, it's going to attract a different

clientele than people coming in for dinner and a drink.

I got the impression that perhaps John -- the occupancy situation there is a little tricky. I think he thinks people will go in and have a nice dinner in the Fire & Ice part, which is going to remain a restaurant.

Where's that colored one? This is more helpful. That sort of gives you an idea a little bit better. You're looking at Church Street and this is Fire & Ice. This is a so-called courtyard. This is what's been closed in, this little Square. So now it's this space that he's talking about from here up through here.

Are you saying that people can't go in and have dinner here, and then get up and go over here to dance if he's got it set up for dancing? I think that's what you had in mind, in addition to the functions.

He definitely said, which he told you that he wants it open to be a dance floor seven nights a week if there is a demand. And I think

that's totally out of the question for that particular street, because I think it's something that will fast get out of control.

According to your numbers, you're talking -- if he goes for an increase in the occupancy, we'll be talking 145 people in the room once he removes the tables. Oh, no, it was the House of Blues that removed the tables. At a certain time every night the tables vanished and went up against the wall.

MR. TURNER: OM.

MR. SCALI: Tommy Doyle's does the same thing.

MS. GIFFORD: I can't say I frequent that place, but I do frequent just about every other place. SO I think that's something that has to be taken into consideration.

Could you explain to me, is this like a hotel bar? Is it one bar for the whole premises with one license? Or, is he operating two different licenses?

MR. SCALI: Just one alcohol

restaurant license.

MS. GIFFORD: I think that explains some other questions.

As I said, if you're going to do functions, why can't there be a special license for that? Isn't there something like that when he wanted to book events like a wedding?

MR. SCALI: Not in space that's already licensed us, no.

MS. GIFFORD: It isn't, okay. When it's not used for functions the idea is that he can clear out the tables and hope that a dancing crowd will come. What time would that occur? I don't think that makes any difference because I think the idea of a dance hall there, a nightclub, or whatever you call it, seven nights a week is too much for the people living there in the residential streets. And it's not just my street, there's a lot of resident on Story Street, which is closer. You've got Ash Street.

We still do exist as residents. They need us in Harvard Square. They don't realize it

but we're the ones that are there every day. We shop. I bought all my Christmas presents in Harvard Square. This attitude that we're not necessary to the well-being of Harvard Square is ridiculous. I'm there every day and most nights.

Another issue I think is important, remember where the movie theater is, and people of all ages are coming out of the movie theater until it closes. In the old days when the Oxford Ale House was there you couldn't get home safely without being accosted. The windows were being broken in the street and Charlie Sage was always in here complaining about his broken windows. It was a nightmare and it was very unpleasant.

You Commissioners have done a very very good job of cleaning that up, and Harvard helped by building a stonewall in the back of the parking lot. I don't know if they police the parking lot but the outpouring from these places into the parking lot and what it did to the lives of the people on Farwell Place was a nightmare. They had music, they had drunks, they had bottles.

They had urination, fights.

MR. SCALI: You have to admit that's long gone.

MS. GIFFORD: But nobody's drinking habits have changed, Commissioner. People still drink if given the opportunity, and if they don't have food to eat, they drink more. I know everybody likes to think there's been this great change in human behavior; there hasn't. Drinking is just as big a problem now as it was then. You have to control the circumstances where people are drinking.

And I mean it when I say that if somebody wants to bring a rock-and-roll band in there, what happens?

I wanted to ask you about this nightclub committee.

MR. SCALI: It's a nightlife committee, which the City Manager through the City Council has established I believe it was over six months ago. There are numerous people that are on this committee from different factions of the City,

different departments, residents, Ms. Jillson?

MS. GIFFORD: who are the so-called residents?

MR. SCALI: There are number of them. I can't think of who they are at this point in time. But there's a membership list of people through --

MS. GIFFORD: I'm surprised no one from the Harvard Square Defense Fund was asked to join.

MR. SCALI: Mr. Jillson, who is the head of that committee?

MS. JILLSON: It's the Economic Development.

MR. SCALI: Stella Johnson's committee, yeah.

MS. JILLSON: On the committee one of the residents is from North Cambridge, as well as -- there are several --

MS. GIFFORD: Do you think it makes sense if a committee is being formed -- is this for nightlife for the whole city?

MR. SCALI: Yes, nightlife to bring

different types of vibrancy to the City. They've been meeting over a number of different months with different ideas.

MS. GIFFORD: Well Harvard Square is obviously a focus of this committee's discussions, and not to have a resident from around the edge of the Square who's there frequently on this committee -- I hope there is one, and I think it's a big oversight which I will bring to the Manager's --

MR. SCALI: There is a membership committee. I'm sure you can get a list from Ms. Johnson. She'd be happy to let you know.

MS. GIFFORD: I know here. She's very nice. But do you see my point here, not to have any input -- because you'll hear from us afterwards if you don't hear from people around Harvard Square who live there.

And that's this balancing act I keep talking about. You've got to remember the residents. It's very hard because you hear from good advocates and applicants who need money. They want to increase their revenues and maybe their

rent is going up, and you hear it from their point of view, but we have nothing to gain from this. It's not a monetary thing for us, it's where we live, it's a quality of life, and we look to you to protect us just as much as you protect the commercial interest.

Thank you very much.

MR. SCALI: Does anybody else want to be heard? Mr. Chafetz.

MR. CHAFETZ: I'm Gary Chafetz. I own a house 20 Farwell Place. I've lived on Farwell Place since 1986, actually just as the Oxford Ale was dying. And I apologize, but I am opposed to this proposal, and I'll tell you why.

I'm not sure if you're all familiar with Farwell Place. It's a small dead-end street running from Brattle to the back of the Christ Church. On the right-hand side there are four residential structures, one of them is mine. In our backyard is this brick wall that Pebble mentioned, and then there's the Church Street parking lot on Church Street. And you have the

Coop, and you have Passim, you have Border, you have Fire & Ice. So there's no obstruction in terms of sound transmission.

So we do hear the loudspeaker outside of Passim. We do hear the loudspeaker outside of Border. I would be opposed to what I'm reading here: live musical instruments and/or vocalist with amplification. And I would be opposed to this especially at 2:00 in the morning because the noise come wafting into our little micro neighborhood, and we are, you know, I feel attacked from all sides. Oktoberfest may be a great thing for the Harvard Square Business -- I'm sorry, I forget the name of it.

MS. LINT: Business Association.

MR. CHAFETZ: But I feel encroached every year. It used to be back that I could get out of Farwell Place. Now they've actually moved it so that I'm blocked in Farwell Place. I can't even come or go without great difficulty from my street because they've moved the stalls towards Apian Way.

So I would be very concerned about there being noise, dancing. Look, young people like to party. They have a lot of energy, they like to drink. They like to get into fights. There have been fights outside of Fire & Ice. I happen to know this because my 16-year-old son was pummeled by this bald 30-year-old bouncer from Fire & Ice. I called the police about it. I was hoping that the camera that operates in the Church Street parking lot would pick up this person's features.

So I'm very very concerned about the quality of life on Farwell Place, not only from Fire & Ice, but I'm really concerned about the exploration of nightlife. I hear the member is from North Cambridge, but I'd sure like there to be a member from Harvard Square. So I am opposed to this and I'm sorry. Thank you.

MR. SCALI: Ma'am.

MS. HOLMES: I live at No. 24 Farwell Place.

MR. SCALI: Just tell us your name again.

MS. HOLMES: Olive Holmes, and I live at 24 Farwell Place, and I have lived on Farwell Place for over 40 years. So I've seen the establishment that you now call Fire & Ice, which was the Oxford Ale House before. There have been times when all of sudden, you'll be sound asleep, and there goes all the noise and the cops will be coming and lights would be flashing. So it's very calm now. It's run so much better recently than in some of the times past.

I think to expand into the activities you want creates and generates perhaps -- I'm not sure what the activities were before and why is has changed as it is now, but we have no protection from the people when they come out and if they get in fights. And then there's the whole parking lot. It has been in the past more turbulent, and now I think that it's pretty reasonably run, and that I haven't been awakened and listened to fights, but I'm losing my hearing. Maybe that's a huge advantage at this point. That's all I have to say about it.

MS. GIFFORD: You have a letter from Professor (inaudible) who lives on Farwell Place to put it in the record.

MR. SCALI: Ms. Jillson.

MS. JILLSON: For the record my name is Denise Jillson. I'm the Executive Director for the Harvard Square Business Association. I got an opportunity a couple weeks ago to tour this space with John, and I look forward to having both Deputy Turner and Commissioner Haas over there to take a look at the space, because I think once you see it, you'll realize that we're talking about a completely enclosed space that's actually quite set back from the sidewalk.

So in terms of noise, it's almost inconceivable that you would even be standing on the sidewalk in front of Dado Tea and be able to hear anything at all because Dado Tea would be buffering, and besides the fact that it's about eight feet underground below the sidewalk.

So I did take a look at the space and I would like to make a recommendation, if I may,

because I think Mr. Schall should really reconsider this application and come back actually looking for an increase in capacity for that space.

It's an enormous space and it's going to be quite beautiful. It is going to lend itself exactly to the kind of activity that in fact the nightlife committee is looking for, which is another venue for late night entertainment, for dancing, and for other uses.

Perhaps John could take a look with his architect and come back with an application that is actually more suitable to the space, and one that does increase the capacity especially for dancing.

MR. SCALI: That's what I was trying to convey to him and I know it was very lengthy and probably convoluted. I'm trying to find a way to convey to you that perhaps looking at it in a different light, you know, maybe having a function piece and then maybe having a smaller -- maybe starting with some kind of a public piece but with a number and with the kind of quality of what

entertainment you want it to look like.

Not having a concept as to what you're gearing it for lends itself to the trouble that the others are talking about. If you have a concept and a way you're going to market it, and who you're going to bring in there, Ms. Jillson has an idea from being on the committee as well as myself, and many others that are on the committee too, can kind of guide you in terms of what we're looking for to bring responsibly to the City.

I know that the committee really does want some kind of nightlife to come to the City, it's just what that's reasonable can come to the City. I think Ms. Jillson's idea is a really good one that you should look at the space as a room in terms of what number you want to see, how you want to do that, what nights may work, and what nights may not work, and come back with a more concrete plan, because it may mean an increase in capacity.

That's not always a bad thing, because trying to -- even at a function, say you just have the function piece, you're not going to have 39

people just standing there dancing. That's just not realistic. You know when you're having a party there may be 100 people, and that's not a bad thing either, but you've got to count those people, and you're going to say, okay, number 40, you've got to sit down. You're not going to do that.

MS. JILLSON: I just think that if he does then talk about capitalizing on the space and utilizing it to its utmost is really what we're looking for. So I think just going back and revisiting the issue, and getting a diagram, and having it more defined will probably be helpful.

I will also say that we've been working with John for a couple of years. He is very active on our restaurant committee. He's an incredibly responsible owner. As you know, there's been no trouble at all as far as I know with any -- really, I haven't heard of any issues with Fire & Ice.

We're so excited about this building and the changes that are occurring in this building, and it really lends itself to exactly

what we're looking for. So that would be my recommendation. Thank you.

MR. HAAS: Just to augment what Mr. Chairman has been adding to Mr. Schall, is also think about your parameters in terms of what kind of entertainment you want to have in that space. We've had business owners decide that certain forms of entertainment is not conducive to their businesses. So you may want to think about that a little bit and not just open it up and then find out there's a whole series of types of entertainment that are not going to be conducive to your restaurant, and also not conducive to the Square. So you may want to think about what that looks like and what your themes are going to be that you kind of want to embrace for a business model.

MS. JILLSON: I would add one more thing. If the neighbors, and they certainly have concerns, and that there are noise ordinances and all kinds of things that can be tested so that their concerns should certainly be addressed, and I

think they can properly be addressed by going forward with a more expanded plan.

MR. SCALI: Thank you very much. Anybody else want to be heard?

MS. GIFFORD: I have one question.

MR. SCALI: Hold on one second. We'll come back. Everyone gets to talk, Ms. Gifford.

MR. DIGIOVANNI: Good evening and I'll be brief. I realize how late it is.

MR. SCALI: Tell us your name for the record.

MR. DIGIOVANNI: John Giovanni with Trinity Properties in Harvard Square at 50 Church Street. I'll be brief here and start with a question. Denise's suggestion about potentially bifurcating this and actually deciding on the ability to do functions, and then coming back to talk about either a capacity change and a more defined concept on the other nights. Is that something that he could proceed with so that he gets into the program?

I'm assuming you need to re-advertise

if there's a change of capacity. So the question is what's before you tonight, and whether you do that piece and he comes back, or do you continue it? I sort of ask that question to the Commission.

MR. SCALI: I think it's not really fleshed out enough for us to be able to -- I mean from my point of view, because I think as a dance floor you have to have an occupancy number and capacity.

MR. DIGIOVANNI: Even for a function space, yes.

MR. SCALI: For any space.

MR. DIGIOVANNI: So is that something that should be continued and he come back later this month?

MR. SCALI: We can certainly continue it and come back. And if you need to amend the application, we'll re-advertise it to amend for a different capacity. But I think you need to think a little more about what you really want because that's really my point.

MR. DIGIOVANNI: I appreciate that.

And I really think it's great if the Commissioners came by and saw it. It's actually more than eight feet below grade. It's entirely behind Dado Tea and down completely, and enclosed.

I can assure you just as this Commission and the Chairman in particular, all the years working to get Harvard Square in the condition it's in, I don't want to see the concerns that the neighbors are talking about happening on that street, but we do want to see some vibrancy, some activity. So we want to work with you.

And as always, the Commission, if they're not operating that way, these are not in perpetuity and there are remedies through this Commission if they are violating and causing a problem.

John has been, and Fire & Ice has been a great contribution to Harvard Square. It is something unique and I think his goal is to add to that. So that's my support of it and in support of the Commission's recommendations. Thank you.

MR. SCALI: Just before you go, the

committee has been working on looking at what spaces could potentially be available because there's not really a lot of space out there in the City in terms of where you can dance or congregate. A lot of those spaces are just gone. So this actually happens to be a space where you potentially can do this in the right way, of course. So I think the committee would be happy to see that the space is being used responsibly and reasonably. I'm not saying to go back to the old days. I'm saying we're going to kind of come back a little bit towards the middle.

MR. SCHALL: I wasn't here for the old days but in the 13 years that I've been sort of connected with this, we haven't had a single issue. I'm not sure -- I've never employed a bouncer so I don't think this was a Fire & Ice issue. I've never had a fight outside, it's just we've never had it. And it's the only way that I would operate the space as well.

MR. SCALI: Thank you very much.
Yes, Ms. Gifford.

MS. SCALI: I'm delighted to hear that Fire & Ice hasn't had these difficulties. I take my grand-grandchildren there and we love it.

We're talking about introducing a different element, and we've seen that element come and go in the Square many times. It discourages me to hear you encourage him to apply for this and increase his occupancy. That seems to fly in the very face of what you've heard from residents but maybe you're not seeing it that way.

MR. SCALI: I think if you come to the committee meetings -- I'm sure Ms. Johnson will be happy to invite you and anybody else who wants to come to the meetings. You'll hear a number of different points of view from residents and from businesses about what is needed in the City.

MS. GIFFORD: Harvard Square residents are on the committee?

MR. SCALI: It's a gamut of many different people from all around the City.

MS. GIFFORD: You know how that is.

MR. SCALI: Believe me, I've been here

24 years. I know exactly what you're talking about. I know exactly what it used to be like. I know exactly what the problems were, and all of that has not gone out of my mind from the old days.

MS. GIFFORD: Good.

Does anybody else want to be heard?

Thank you very much. Motion.

MR. HAAS: Motion to continue the matter.

MR. SCALI: Motion to continue to an indefinite date until Mr. Schall comes back.

MR. HAAS: How much time do you want?

MR. SCHALL: I mean can be ready by the 19th.

MR. HAAS: I'd feel more comfortable with maybe February 23.

MR. SCALI: Our next meeting is February 23. That gives you a good four weeks to figure it out, four to six weeks. We only meet once in February. That's our only date in February.

MR. SCHALL: We can't do it for

January 19.

MR. SCALI: If you're planning on re-advertising for any reason, there would not be time for the 19th.

MR. SCHALL: I understand if I'm re-advertising.

MR. SCALI: I really think you need the time to think about it. I think the Commissioner is right. So let's continue it to February 23. Motion to continue to February 23, moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: AFKOR, Inc. d/b/a Cafe Anatolia, Alp Hocagil, manager, holder of a Common Victualer license at 251 Cambridge Street for review of the License Commission's November 5, 2009, Disciplinary Decision, which states that Mr. Hocagil must start paying his outstanding parking tickets.

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

MR. HOCAGIL: My name is Alp Hocagil. I own a restaurant, AFKOR, Inc.

MR. SCALI: What's your name?

MR. HOCAGIL: Alp Hocagil.

MR. SCALI: So you are the manager and the owner?

MR. HOCAGIL: Yeah.

MS. LINT: I have an update.

MR. SCALI: Mrs. Lint has --

MR. HOCAGIL: I've been paying the tickets.

MR. SCALI: Did you pay all the tickets?

MR. HOCAGIL: No, not all but I still keep paying.

MR. SCALI: Mrs. Lint, give me an update.

MS. LINT: He recently paid. He had accrued over \$350 in new tickets so Ms. Lawrence sent the boot truck down. He came running out and the boot man decided to show him mercy a let him go, and he came in the next day and made a payment. Then today, he paid another \$250. So he hasn't really made a dent.

MR. HAAS: So he paid the \$350 of new tickets and then \$250?

MR. SCALI: Is that what you paid: \$350 and \$250?

MR. HOCAGIL: Yeah.

MR. SCALI: How much more do you owe?

MS. LINT: Over \$3,000.

MR. HOCAGIL: I don't know. I just keep paying it.

MR. SCALI: Are you going to keep on paying? How much are you going to pay? Are you

going to pay it month by month?

MR. HOCAGIL: This season is open right now for me, then I will go pay more every month.

MR. HAAS: I think you realize you're running the risk of getting your truck booted and then you're not going to have any access to the vehicle at all. You're dangerously close to losing access to your vehicle.

MR. HOCAGIL: The problem is, as I told you at the other two hearings, I have to use the car to take delivery during the lunch times, and that is the only place. I'm parking across the street and I'm parking more in the -- I have this space right now, and after them, I'm parking over there.

But during the time it was like three or four minutes away, maybe five minutes away, the parking spot I got. So it takes more time to go in and out especially cold days with the hot food. That's why I have to use that space during the lunch times.

MR. HAAS: I know, but it's not going to solve your problem. You'll continue to accumulate tickets if you don't find a place where you can legally park. I suspect it's not just in front of your restaurant; it's probably where you make deliveries too that you're getting tickets. You're not just getting them in front of your restaurant; right? You're getting them in other places as well?

MR. HOCAGIL: I'm getting them in front of -- like I have a couple of tickets from the meters and a couple tickets from the Loading Zone; that's the only tickets. The tickets -- I have one bus stop I got the same day before I come over here from the last hearing. I have loading stuff, unloading stuff. I take the stuff, put it in, and I saw the ticket just in front of the shop. I'm trying to not to get tickets but. . .

MR. SCALI: If you keep accruing tickets at \$300, you're never going to make a dent in the payments.

MR. HOCAGIL: I will get paid the

other tickets more as soon as -- well, as soon as I can. Right now, the season is open and I've got the mailings and it's getting better.

MR. SCALI: The next step the Traffic and Parking Department told us is to boot your truck. If you stop making the payments, you're done for.

MR. HOCAGIL: I will make them.

MR. SCALI: The next step after that is that you're going to lose your license.

MR. HOCAGIL: I will make payments.

MR. SCALI: Does anybody from the public want to be heard in this matter?

Do you want to do a review?

MR. TURNER: Another two months.

MR. SCALI: Two months?

MR. TURNER: See where they are.

MR. HAAS: Motion to make it a two-month review.

MR. SCALI: Review in two months, moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: We'll see you in two months. Keep making the payments.

MS. LINT: Application: North Point Cafe, Inc. d/b/a Lingo, Colleen Duddy, Manager, holder of an All Alcoholic Beverages as a Restaurant license and Entertainment license at One Education Street has applied for a change of manager from Colleen Duddy to Jeffrey Barnhart.

MR. SCALI: Aren't you glad you waited? Tell us who you are for the record, please.

MR. BARNHART: Jeffrey Barnhart.

MS. GYLLENHAAL: Rosa Gyllenhaal, I'm an officer of the corporation.

MR. SCALI: So Mr. Barnhart, you want to be the new manager. Tell us your experience in the restaurant business.

MR. BARNHART: I've been with my current company for six years in Massachusetts. I used to run a country club in Upstate New York, as well, for three years. So nine years total in professional experience, and I have a Bachelor's in Hotel/Restaurant/Travel Administration from Endicott College.

MR. SCALI: You are familiar with the rules and regulations of the License Commission in the state?

MR. BARNHART: I have been reading them, yes.

MR. SCALI: Have you been through our 21-Proof training?

MR. BARNHART: I'm TIPS certified. I believe I'm expired. I've been looking into it. All my bartenders at Lingo are 21-Proof checked.

MR. SCALI: We require all new managers and new servers to go through our 21-Proof training because it's geared toward Cambridge, and I suggested you might want to become a real active member of CLAB. It's very helpful.

MR. BARNHART: I'm going to make an e-mail tomorrow morning. I have her address at the top of my inbox. I just got the certificates for the cab ride.

MR. TURNER: But you have to admit, this didn't cost you anything.

MR. BARNHART: Very true, very true.

MR. TURNER: Tickets were free.

MR. BARNHART: I'll reserve my comment, but I agree.

MR. SCALI: Questions from the Commissioners?

MR. HAAS: No questions.

MR. SCALI: Do have any trouble out there in your driveway or your area down there with the neighbors? I know there was a Pizza place that was applying across the way to go into the Museum Towers. But I haven't heard that you've had any issues with neighbors and residents in terms of noise.

MS. GYLLENHAAL: I don't think so.

MR. BARNHART: The neighbors across the street are actually looking forward to the new menu that we're rolling out.

MR. SCALI: How is that Duck Tour going past your restaurant; is that a problem?

MR. BARNHART: No.

MS. GYLLENHAAL: They stop the truck and quack at us sometimes.

MR. BARNHART: They stop and talk about the Berlin Wall piece.

MS. GYLLENHAAL: We have the Berlin Wall piece in front of the building. Although the one Duck Tour I went on, they didn't talk about the building.

MR. SCALI: Motion to approve.

MR. HAAS: Motion to approve.

MR. TURNER: Seconded.

MR. SCALI: Moved and seconded, subject to 21-Proof training. All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Welcome, congratulations.

I look forward to seeing you at our next CLAB meeting.

MS. LINT: Application: GR & EG, Inc. d/b/a Stefani's House of Pizza, Afi Mohammed, Manager, has applied for a Common Victualer license to be exercised at 783 Main Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have a seating capacity of 18. The hours of operation will be from 11:00 a.m. to 11:00 p.m. seven days per week. Applicant is also applying for an Entertainment license to include a TV.

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

MR. DRILIS: My name is George Drilis. I'm the new owner and manager of Stefani's House of Pizza at 783 Main Street.

MR. SCALI: What is your last name?

MR. DRILIS: Drilis, D-R-I-L-I-S.

MR. SCALI: Are you currently there operating?

MR. DRILIS: Yes.

MR. SCALI: Is the old owner there

operating with you?

MR. DRILIS: Still, yeah.

MR. SCALI: What is his name?

MR. DRILIS: Mohamed, Afi.

MR. SCALI: Keeping everything the same?

MR. DRILIS: Keeping everything the same except the menu. Change only the menu. Will become more Greek.

MR. SCALI: So less pizza, more Greek food?

MR. DRILIS: The pizza going to be just a little bit different.

MR. SCALI: The hours the same?

MR. DRILIS: Yeah.

MR. SCALI: Eighteen seats?

MR. DRILIS: Uh-huh.

MR. SCALI: 11:00 to 11:00?

MR. DRILIS: Except Friday and Saturday, if it possible until midnight, 12:00?

MR. SCALI: We've only advertised it until 11:00, so if you wish to come back and

reapply, you can.

MR. SCALI: Does anybody from the public want to be heard on this matter? Comments?

MR. HAAS: No comments.

MR. TURNER: The only I'll bring up is -- I assume there's not going to be an issue. We have the Stefani's Pizza on Brookline Street.

MR. SCALI: It's a different one.

MR. TURNER: So it's Stefani's House of Pizza; that's not too close?

MR. DRILIS: That's a different one.

MR. SCALI: That's not related to you.

MR. TURNER: As long as it's not a problem.

MR. SCALI: Motion to approve.

MR. HAAS: Motion to approve.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Congratulations. Make sure you come in and get our license and bring your

sign-offs in.

MR. DRILIS: Thank you.

MS. LINT: Application: Auror, LLC d/b/a Flat Patties, Thomas Brush, Manager, has applied for a Common Victualer license to be exercised at 33 Brattle Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have a seating capacity of 38 seats (22 inside and 16 outside on the public sidewalk). The hours of operation will be from 7:00 a.m. to 2:00 a.m. seven days per week. Applicant is also applying for an Entertainment license to include background music.

MR. SCALI: Good evening, just tell us your name.

MR. BRUSH: Thomas Brush.

MR. GETZ: I'm Richard Getz.

MR. SCALI: Nice to see you both. So this is a change of location; right?

MR. BRUSH: Yes.

MR. SCALI: Moving to 33 Brattle Street, 38 seats. Outside seats on the public sidewalk?

MR. BRUSH: Yes.

MR. SCALI: Have you applied for that through City Council, Public Works?

MR. BRUSH: I have. I have a copy of the application stamped by them. I don't think it's heard until their next meeting but I do have a copy of that. I think I included that in the file.

MR. SCALI: Has Public Works been out there to measure yet for you?

MR. BRUSH: I don't know that they have. There's 13 feet clear between the front and there's like a planter so there should be plenty of room there. I think the requirement -- you have to have at least five feet.

MR. SCALI: Against the wall?

MR. BRUSH: Between the storefront and the wall is 13 feet so there would be 13 feet in which to put the seats. So if you put tables along the window, it still leaves like seven feet.

MR. SCALI: But not on the curb?
You're doing it against the wall?

MR. BRUSH: Correct.

MR. SCALI: The same menu?

MR. BRUSH: Yes.

MR. SCALI: 7:00 a.m. to 2:00 a.m.; is that an extension of hours?

MR. BRUSH: My current hours are until 2:00 a.m. also, in the garage.

MR. SCALI: You had wanted until 4:00 originally. Didn't you want later hours?

MR. BRUSH: That was Philippe.

MR. SCALI: Seven days a week, 7:00 to 2:00 a.m.?

MR. BRUSH: Yes.

MR. SCALI: Are you a full-service or a fast-service restaurant?

MR. BRUSH: We are a full-service.

MR. SCALI: So knives and forks, china, menus.

MR. BRUSH: Everything will be done with silverware, glasses, and plates.

MR. TURNER: Which space are you taking over? Who moved out?

MR. BRUSH: Caliope.

MR. TURNER: Was that the flower shop?

MR. BRUSH: It's right next door to the Brattle Street Florist.

MR. TURNER: What was Caliope?

MR. BRUSH: Children's clothing.

MR. TURNER: I've never been in there.

Thank you.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard in this matter? Mr. DiGiovanni.

MR. DIGIOVANNI: Good evening. John DiGiovanni, Trinity Properties at 50 Church St. I sent a letter for the record to the Commission regarding my concerns and my attempts to discuss my concerns about a food use going in to this location.

Primarily, as I mentioned, exhaust. There are other issues that I know Mr. Getz has been concerned about as well back there. I'm surprised that this is not a fast-food establishment. I'm not exactly sure how you handle

the 80/20 issue. I think the china is correct. You can obviously do that but your 80/20 is a difficult one to monitor.

If that's something you intend to do, that's terrific. And I really don't want to oppose this at all but I think there are some legitimate concerns that I'm expressing. Unfortunately, and I've tried -- I have a copy of my e-mails to Mr. Getz regarding exhaust in particular.

This building is a one-story building. On either side we have office levels, and in particular the Sage Building that has operable windows. There's not much we can do about the existing exhaust. When a tenants complains we tell them it's sort of how the wind blows. We can't control that, their existing exhaust.

Adding another on there is a concern. I'm not exactly sure how you solve it. I don't know if you can solve it but it's a concern that we have and I'd like to discuss that.

There are other issues such as loading and trash and recycling and water and sewer

and grease, all of which I think are probably much more easily solved than the exhausted. But unfortunately -- I actually learned about this from a prospective tenant that wanted to lease your space for dry goods who was looking at a space in one of our buildings. I asked about this location and you've chosen to go with food which for 23 years, we've had a great rapport. It's unfortunate that we're here.

His statement has always been no food there because of the added burden in the back area. We didn't even discuss the exhaust issue, but that's a real issue for us and I just want to put that forward to the Commission.

MR. SCALI: The building he's going into abuts your building and the exhaust fan would come out the back.

MR. DIGIOVANNI: I'm assuming it's going to go through the roof. I don't know because nothing has been shown, but I'm assuming the exhaust is only going one way. On Elliot Street at the parking garage, three times we've had fires

there. Most recently this past year, there was a fire at the Chinese restaurant right beside the parking garage because of grease in the hood.

There may be ways to limit the amount to smoke coming out of there. I don't know. There are issues as the city is getting more involved and we're attempting to figure a way to do more recycling. I think Mr. Brush does a fair amount of that with Crema Cafe, and I think it's terrific. I think there are ways to solve those issues.

MR. BRUSH: We recycle everything, all food, everything is recycled.

MR. DIGIOVANNI: So when we have more food there's more issues about how to store and manage this with the existing back area.

You had put letters to me about your concerns back there when we were removing parking spaces, and that had nothing to do with loading. I really don't want to have the discussion here because I think we ought to have it, and I think it can be solved, and I just want to put that forward

to the Commission that I'm particularly concerned about the exhaust because of operable windows that we have on the Sage Building.

MR. SCALI: Adding a new restaurant use is always an issue for any restaurant or other abutting properties.

MR. DIGIOVANNI: I don't know how you deal with the 80/20 issue on that street.

MR. SCALI: I guess the issue of it being full-service was a decision that you made that you can adhere to; am I right?

MR. BRUSH: Yes.

MR. SCALI: That's 20 percent take-out and 80 percent eating on the premises.

MR. BRUSH: Yes. And currently our numbers, our sales at Flat Patties currently in the garage are slightly under. We're running 18 percent take-out and 82 percent -- and that's all monitored. We tabulate it every day so I can produce those figures for you if you would like to see them, but we are currently under 20 percent take-out.

MR. SCALI: If it becomes an issue I'm sure we'll be able to ask you for it.

MR. SCALI: So Mr. DiGiovanni, do you want to have a meeting with these gentlemen outside and come back to us, or is there an issue we can help you resolve?

MR. DIGIOVANNI: There's been a couple of e-mails in November that were not responded to, and I'm happy to do that now. It's late. I'm happy to talk to you about any of this, particularly Dick, because he's the property manager and represents the owners, and it's unfortunate that we're here in this fashion. So I'm happy to do that now.

MR. SCALI: Do you think you gentlemen can resolve this between now and the 19th?

MR. BRUSH: I'm not quite sure what the issues are. Crema Cafe has exhaust that goes over. You have Bertucci's Restaurant.

MR. DIGIOVANNI: That's right, which are pre-existing, and we don't debate those. So you're right, and they're not great. They're part

of the issue and the existing problem for our tenants, but they have to live with that. That exists. This is adding another stack.

MR. BRUSH: I have never heard of a single solitary complaint or anyone has ever mentioned ever to me.

MR. DIGIOVANNI: I believe that because I'm not going to call you about that because that was pre-existing, and I wouldn't infringe on the existing operations.

MR. BRUSH: But any tenant in this building, if there's smoke -- I'm just saying --

MR. SCALI: Why don't we look at it this way, Mr. Brush, I mean we've been through all these other discussions in the past and you know how this works. So let's look at a plan in terms of what your exhaust is going to look like, how that's going to be worked out; what you're loading and unloading is going to be, where that's going to be, the times, of course can't be -- well, actually in Harvard Square it can be before 7:00 a.m., believe it or not.

MR. BRUSH: The loading and unloading is with the exact same vehicle and at the same time as we do at the Crema Cafe, so there is absolutely no additional load whatsoever on vehicles or parking, or any of those. And we recycle everything.

MR. SCALI: Where would the loading and unloading take place?

MR. BRUSH: It's all done from a parking lot inside the back. There's no street loading. It's all on private property.

MR. GETZ: The unloading is not an issue because it's on our property.

MR. SCALI: And trash pickup the same?

MR. BRUSH: We have a private hauler. We all share a compactor together both for trash and cardboard. We separately maintain a pickup. We save that stuff, all of our co-mingled stuff, all of our food waste, all our organic food waste and all of our returnable bottles are all returned.

MR. SCALI: When does that happen? When is that picked up?

MR. BRUSH: Twice a week they pick up on Mondays and Fridays.

MR. SCALI: During the day?

MR. BRUSH: In the morning, early in the morning before anyone pulls in the lot. They're there usually before 6:00 in the morning, and that's also when the cardboard and the trash is picked up.

MR. SCALI: So the issue really is I guess the exhaust; right?

MR. DIGIOVANNI: Well, two things. I'd say that it's impossible to have a place do this kind of business and not have additional activity in the back, versus a children's clothing shop, which is going to get UPS deliveries in the front. So there's more activity. It may be the same vehicle but if you are actually having substantially more business in that capacity where in fact, you're not getting stuff through cardboard boxes, you're actually getting foodservice, food product coming in and the waste going out.

As I said at the beginning of this, I

think that's something that can be solved, and I hope it can. And Dick, I take a little bit of exception to the fact that you say there's no problem back there. I have a letter from you in 2008, saying how difficult things are. And I'm actually the one thinking you can solve it back there and there are things that we need to do to improve that and cooperate on that.

MR. BRUSH: It's all on private property. It has nothing to do with any traffic on the street or parking or any issue that affects anyone except the tenants back there.

MR. DIGIOVANNI: There is a connection, but anyway, there are some issues there but as I mentioned, I think they can be solved.

MR. SCALI: Let's look at the issues in terms of what we can help you with because that's part of the extent of our powers. Exhaust, food product, and deliveries, and loading and unloading are our jurisdiction.

Why don't we look at the plan that you have and try to come up with what it would look

like for us and what that back area would look like in terms of loading and unloading, and how that would affect the other properties back there. If you can submit something like that to Mrs. Lint before our next meeting that would be very very helpful. We're not scheduled to vote until January 28.

MR. GETZ: The next meeting is when?

MR. SCALI: We meet January 19 again, but we generally decide everything from the month of January on the last Thursday of the month.

So would you like them to come back on the 19th with a plan?

MR. TURNER: I assume you're going to do a tenant fit-up? We're going to do a new construction on this to fit this out. Wouldn't we want to see the plans on that? Do we have conceptual plans?

MR. BRUSH: Yeah, I have. You've got a small plan here that I included today that shows you the floor plan and the seating, but I can give you something more detailed. It's on an eight-and-

a-half-by-eleven, but I can give you a full --

MR. SCALI: Is that an architectural engineer's?

MR. BRUSH: Yes, it is. There's an architectural drawing in there and there's two pages showing the seating as well as the floor plan. This actually was the one that was submitted when I applied for the hearing. There's a newer one that I handed you in that file today that's updated. That's a full architectural drawing in the other file.

MR. TURNER: Okay. I just wanted to know we had something to work with.

MR. SCALI: So the concerns I guess are the use of the back area and the exhaust; am I correct? Have I narrowed it down?

MR. DIGIOVANNI: The exhaust primarily and the additional load in that back area, which I think will spill out into the street. And I think that's exactly what you've said to me in --

MR. BRUSH: How does that spill out?

MR. GETZ: It's our property; it's in

the back. That's the whole purpose of having this back entrance.

MR. SCALI: Let's do it this way: instead of you guys going back and forth, you're not going to solve it right here. You can come back to us with what your plan is going to look like, we'll determine whether it's reasonable and legal and all that.

Any other questions, Commissioners?

MR. HAAS: No.

MR. SCALI: Motion to continue.

MR. HAAS: Motion to continue to
January 19.

MR. TURNER: Seconded.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: See you all on the 19th.

MS. LINT: Ratifications: Medallion 39, 117, 150, 232, 226, 50, 242, 60, 207, 104, 90, 149, and 113.

MR. SCALI: These are all refinances?

MS. LINT: Two of them are lines of credit.

MR. SCALI: All the paperwork in order?

MS. LINT: Yes.

MR. SCALI: Motion to accept.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Any other business?

MS. LINT: No.

MR. SCALI: We're meeting next on the 19th and the 20th; right?

MR. HAAS: The 28th.

MR. SCALI: The 20th is --

MR. SCALI: Motion to adjourn.

MR. HAAS: Motion.

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

MR. HAAS: Aye.

MR. TURNER: Aye.

(Whereupon, the deposition was
concluded at 9:15 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 12th day of January, 2010.

Anne Ouellette
Notary Public
My Commission Expires:
March 16, 2012

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