

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION
DECISIONMAKING HEARING

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Thursday, March 4, 2010
10:00 a.m.

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INDEX OF AGENDA PROCEEDINGS

<u>Agenda Matters</u>	<u>Page</u>
Third District Court Building	4
Master Auto Sales, Inc.	6
Basha Café	8
JFS Group, LLC	12
Café of India	18
Idenix Pharmaceuticals	30
Coleman Murray, Inc.	53

P R O C E E D I N G S

MS. LINT: License Commission
Decisionmaking Hearing, Thursday, March 4, 2010.
We are in the Michael J. Lombardi Municipal
Building, 831 Massachusetts Avenue, Basement
Conference Room. Before you the Commissioners:
Chairman Richard Scali, Deputy Chief Dan Turner,
and Commissioner Robert Haas.

MR. SCALI: Good morning everybody.
Thank you all for being here.

At some point when our Law Department
gets here we're going to go into Executive Session,
but in the meantime we will go to some items that
we can decide from our February 23 meeting. Let's
see what we have from our agenda that we can go to.

MR. HAAS: Are we going to go in
order?

MR. SCALI: Let's go in order, sure. So the first one is -- So Mrs. Lint, on the Third District Court there were some things that --

MS. LINT: Andrea is trying to get in touch with Rosa Chavez. Apparently all the phone numbers that we had are not right so we're actually drafting a letter today that will go out.

MR. SCALI: I know that we reached her last time with the letter, the hand delivered letter.

MS. LINT: Yes.

MR. SCALI: I guess the jurisdiction of the building, number one, but are they willing to cooperate and try to fix it still. So in the letter is that what it says; are you willing to still work with us?

MS. LINT: That's what we asked her.

MR. SCALI: Pleasure of the Commissioners on this? Ms. Boyer has been working on this for years. There was a solution and then the units were changed, the barriers were thrown away by mistake. If they'd just put the barriers

back up again, I guess they have to rebuild them or buy them, it could solve the problem but I guess that's the issue. Maybe it's a monetary issue or a timing issue at this point.

MR. HAAS: Do you want to continue until the March 23 meeting?

MR. SCALI: Will we have an answer by then, do you think, by March 23? That's a real light agenda anyway; right?

MS. LINT: Yes.

MR. SCALI: Motion then to continue until the March 23 hearing. That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Let's see if we can get an answer by then from Ms. Chavez and report back to the neighbors at that point as well.

MR. SCALI: Master Auto Sales, any update on that?

MS. LINT: Andrea went up there yesterday. I called her this morning and I have not spoken to her.

MR. SCALI: So we're still waiting for verification?

MS. LINT: I think they're gone.

MR. SCALI: We just need a final verification on this.

MS. LINT: Right.

MR. SCALI: So why don't we continue this matter.

MS. LINT: I'll have that later today.

MR. SCALI: Motion to continue to March 23.

MR. HAAS: Motion to continue.

MR. TURNER: Seconded.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We're trying to do some small items before we go into Executive Session, Ms. Glower.

Do you want to go onto the next item?

MR. HAAS: You want to just finish this first page?

MR. SCALI: Let's finish this first page.

MR. SCALI: The next item has to do with Basha Cafe. Anybody here on that matter? No.

MS. LINT: No.

MR. SCALI: We placed the Disciplinary matter on file. The secondary issue is that request for the 2:00 a.m. license extension. Discussion, Commissioners?

I guess personally I have an issue with the timing on this particular application because of the incident with Senator Galluccio. I know that may or may not be related but I think we probably need some more time to give them some history here as to their being able to comply with closing hour. I'm not quite sure whether they're ready for that right now. I'm not opposed to it in the future but I guess maybe at this point it's not the best time.

Discussion?

MR. TURNER: How long has the cafe been open?

MR. SCALI: I think it's been about a year or something like that.

MS. LINT: 11/26/08.

MR. SCALI: So it's been more than a year.

MR. TURNER: And this is the only incident that we are aware of?

MR. SCALI: I'm not even sure it's an incident.

MR. TURNER: That's true.

MR. SCALI: The issue has to do with supposedly the Senator was admitted after 2:00 a.m., and then at some point after 4:00 a.m. he tried to get home. What happened between 2:00 and 4:00, we don't really know. It just seems rather odd that there was somebody still in the restaurant at that point in time, although there was no evidence to that point to find a violation. I just think we need some more time to think about the history of how that might work with that licensee.

MR. HAAS: Mr. Chair, I feel comfortable with making a motion to continue the matter for further review if they choose to reapply for a 2:00 opening at some future date.

MR. SCALI: So is your motion to deny it with the ability to come back and apply, or to continue it to a certain date?

MR. HAAS: Probably I would be inclined to do a six-month review, continue it for six months to review.

MR. SCALI: Continue it for six months and put it back on the agenda in six months.

MR. HAAS: Right.

MR. SCALI: The motion is to continue for six months, place it back on the agenda at that time for review and discussion at that time.

That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

So that's the first page that the Commissioner wanted to get to. Everyone else is here for Idenix.

MS. LINT: Fire & Ice, and Cafe of

India.

MR. SCALI: Do you want to go to Fire & Ice since Mr. Schall is here?

MR. HAAS: Sure.

MR. SCALI: Because we're going to be about a half-hour after that in Executive Session. So maybe if Ms. Glower and Ms. Swift don't mind just waiting two more minutes. Thank you very much.

MR. SCALI: Let's go to the bottom of Page 3, Fire & Ice request for an alternate floor plan, change of premises description, increase in capacity.

MS. LINT: Also an increase in hours.

MR. SCALI: Right.

So Mr. Schall, I'm trying to understand what the neighbors concern is. I realize there's a history there in Harvard Square with the past establishments and people having trouble. You have been there 13 years without an incident, which is almost miraculous these days in licensee history, without any incidents at all. So you've got a very good history with the City. You're a very responsible licensee and you've got other establishments in other cities and towns.

I guess my only question for you is in terms of the kind of entertainment you're going to be having and who's going to be in charge of it. You had mentioned that it will be you screening people. The concern of the neighbors was that perhaps you might rent out the room to a Harvard

group or a group of people that might invite a rowdy group of kids that may come in.

So I guess the parameters of how that might happen is up to you. I think you realize there's going to be functions, and weddings, and meetings and that kind of thing; and then on weekends it will be the entertainment for the public.

I have no doubt you can handle it because I know you've done a good job in the past. I guess I just want to make sure we're giving enough conditions to make sure that anything bad doesn't happen.

Your request is actually for -- the new floor plan would be 201, 25 standing, 100 seats. Then when there's dancing it would be 201, 61 seats, 75 standing -- and 25 standing for a total of 362. And the other would be 326. So 326 and 362, two different floor plans.

And the entertainment would be Thursday, Friday, Saturday until 2:00 a.m., changing your floor plan and menu at about 9:30,

10:00; is that right?

MR. SCHALL: Yes.

MS. LINT: Say that again.

MR. SCALI: Thursday, Friday, and Saturday until 2:00 a.m., and the night before a legal holiday; changing your floor plan sometime between 9:30 and 10:00 to the entertainment mode. Then on Mondays and Tuesdays you'll have -- and Wednesdays I think too?

MR. SCHALL: Monday and Tuesday.

MR. SCALI: Just Mondays and Tuesdays you'll have some kind of trivia or karaoke on those nights. Discussion?

MR. HAAS: I had an opportunity to go over and look at the setup. I really believe that the operation is pretty much contained within the restaurant. I don't see how it's going to be an interference or bother to the neighborhood.

I think the only concern, and I think it's somewhat removed, is just closing time and just making sure that folk are kind of moving along when it's time to leave and that they're not

staying in Church Street; that they're not going to cause a disturbance.

It's different than the rest of the Square where you have almost a confluence of restaurants all coming out. So I think you've got an opportunity where that's not going to be a major issue with respect to people kind of coming out of the restaurant and going on their way.

Having seen it I had an opportunity to watch your operation and stuff like that, I do feel comfortable with the proposal. I do feel comfortable with the idea that you're going to control the type of entertainment. So I think you've got a vested stake in terms of who goes in there and they're not going to have situations where you bring a venue in that's really going to cause a disruption to the business. It is not in your interest, it's not in the neighborhood's interest. So I feel comfortable with what you have proposed so far.

MR. TURNER: Mr. Chair, I also had an opportunity to visit the establishment, and in

trying to address the concerns of the neighbors or neighborhood I guess, I just don't see any direct evidence that the opening of this room is going to be the downfall of Harvard Square.

The neighborhood did make reference to the parking lot. I guess if there's anything that I would want to request in the granting of this license is perhaps the owner could post a sign as you see in some establishments. If you use this parking lot, Church Street parking lot, please be respectful of our neighbors. I know that's probably an effort in futility, but maybe it's a small step that we can take.

Again, they mentioned the parking lot but there's no mention of patrons from a particular establishment causing disruption to the entire neighborhood because they parked in a certain parking lot. Again, I have no objection to approval of this.

MR. SCALI: And it does meet up with our analysis in 2006/2007, with our entertainment plan for the City. You are adhering to that plan

that was done by the task force. I hope it really works and brings business to the Square at that time.

Pleasure of the Commissioners?

MR. HAAS: I make a motion to approve the application with a six-month review.

MR. TURNER: Second that.

MR. SCALI: Motion to approve, six-month review. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Good luck. I hope it works.

MR. SCALI: We have Idenix left and we have Cafe of India. Do we want to talk about Cafe of India now?

MR. HAAS: Yes.

MS. LINT: It's at the top of Page 2.

MR. SCALI: Cafe of India, investigative matter with regard to the fire issues. We had some information that we wanted to clarify. I think the fire department was going to look into past incidents, whether there was anything that was problematic.

MR. TURNER: Mr. Chair, the past incidents were of a similar nature. It was just what I guess would be a lack of frequent cleaning of the ductwork. Hopefully we're addressing that issue. We'll keep an eye on it. We are now looking at I believe the discussion was three times a year. I think I want to see that happen four times a year. I think the other outstanding issues were some ISD questions we had.

MS. LINT: I spoke with ISD yesterday and they're very satisfied with the work that's been done. There's no outstanding issues at all.

MR. SCALI: So there is no plumbing, no wiring?

MS. LINT: No. In fact they said they went above and beyond what was necessary for them

to do.

MR. SCALI: Okay.

The other issue was reporting to the fire department in terms of who they were going to report to. I would prefer that we not put the burden on the cleaning company to report to the fire department, but that it be on the Cafe of India to report to you, or to us, the fire department, as to that the cleaning was done, that there are no problems. I guess I don't want to wait around for the company to report to us that there's a problem.

MS. LINT: But that's the new law. The company has to report.

MR. TURNER: Right. We receive reports of the cleaning inspections under the new regulations.

MR. SCALI: You receive them whether there's a problem or not.

MR. TURNER: Correct. No, if there's a problem, we get notified where as in the past, we would not have gotten notified.

MR. SCALI: So you're satisfied with that?

MR. TURNER: Yes. I guess the only other suggestion I could tie to that would be if we could perhaps make that more of a frequent inspection under the task force inspections, if that's a possibility.

MR. SCALI: We can certainly add it to our list. It's not really problem every six months or so.

MR. TURNER: So that would be another tool that we could use to keep an eye on it.

MR. SCALI: But it kind of puts the burden on our department to make sure that we do that, but all right. Any other issues?

MR. HAAS: So I guess my question, Deputy Chief Turner, did the Captain get the final signoffs he was looking for or is that still pending? I know he said he wasn't going to sign anything until everything was formalized and I'm kind of curious as to where that is right now.

MR. TURNER: To date, he has not. We

are still working on it. He went on vacation last week so I did not have a chance to follow up on it.

MR. SCALI: That's a signoff on what?

MR. HAAS: He indicated that he wanted everything formalized. He wanted to see the contracts; he wanted to make sure everything was in place before he actually did his signoff. And at the last hearing as I recall it, he wasn't prepared to signoff at that point. SO I just wondered if anything had changed between then and now with respect to formalizing that.

And I know we had an outstanding issue by the fact that we've asked for quarterly inspections as opposed to three times a year. It seemed that the owners of the cafe were willing to increase the amount of inspections to that four times a year. So again, I think that also needs to be formalized.

And I guess the issue as you indicated, Mr. Chair, making sure that there's some direct communication back to the fire department that one, the inspection is being done, and two,

Cafe of India is fully in compliance with those inspections when they do do the inspections. Or, if not, that they are in fact complying with and cooperating with the cleaning of those vents so we don't see any future incidents emanating from those vents.

MR. SCALI: I would agree that the burden should be on the Cafe of India to provide that report to the fire department on a quarterly basis. I don't see how that's difficult. I know it's not the law but it can be a condition that we place on the license to just provide the report to the fire department when it's done each time, four times a year.

Further discussion? So this is investigative but we can entertain a motion then to add conditions to this particular license. So it looks as if we're looking at two conditions: one is that there be cleaning of the -- what's the terminology for this system?

MR. TURNER: It would be the hood and duct system.

MR. SCALI: The hood and duct system four times a year, and that the report four times a year be provided to the fire department. Anything else?

MR. TURNER: If we can go back to the first item, I would also like to add in parentheses just "more frequently, if deemed necessary."

MR. SCALI: More frequently, if necessary, and task force to add visits at this location. That's moved.

MR. TURNER: Seconded.

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

MR. TURNER: Aye.

MR. HAAS: I just have a --

MR. SCALI: A clarification.

MR. HAAS: I just want to make sure that the Captain is comfortable and everything is formalized. So I don't know how that effects this vote but that's the only thing I'm concerned about at this point.

MR. TURNER: Can we get a license

signoff on that so that all departments give a clean bill of health on it?

MS. LINT: Sure.

MR. SCALI: On what?

MR. TURNER: So we close that loop. You know, the license premise inspection approval form.

MR. SCALI: But on what issue though; on the cleaning issue?

MR. TURNER: I guess it would be inspectional, sanitary.

MR. HAAS: My only concern is that I'd like to make sure that since the Captain is the inspecting official that he's comfortable with everything and that he's willing to signoff that everything is in order, which he isn't at this point in time. I'm confident things will get approved or signed off but I just want to make sure we're not premature.

MR. TURNER: We can just add this as a bullet item, Captain Brogan's final approval or the fire department's final approval.

MR. SCALI: So adding that further condition of final approval on these conditions be signed off by the fire department.

MR. HAAS: I guess the recourse would be that if there's some kind of glitch along the way then we'd bring Cafe of India back in here for noncompliance.

MR. SCALI: If not compliant, be placed back on the agenda. Further discussion?

MR. GOLDBERG: May I just ask one question, Mr. Scali?

MR. SCALI: Yes.

MR. GOLDBERG: Chief Turner has mentioned "more frequently if necessary." Who is going to make a determination as to whether further is necessary.

MR. TURNER: If the fire department does an inspection or the task force does an inspection and they feel that a cleaning in between the four times a year is warranted, then we have the right to order that cleaning.

MR. GOLDBERG: It just appears to be

arbitrary. Who makes that determination as to how many times is the task force going to come down and take a look at it?

MR. SCALI: Technically we only go once a year at this point, so that means we may be there twice a year or more frequently. If a problem occurs, then we'll be there more frequently. Further discussion?

MR. LEVIN: I'd like one clarification that I didn't quite understand. There is a mention that the issue of plumbing and wiring from Inspectional Services said it was okay. I'd just would like a clarification. Was that based on some recent revisit or just something else?

MR. SCALI: Did they go out and look at it?

MS. LINT: All I was told was that they were satisfied with all the work that had been done.

MR. SCALI: I'm sure reports are available upstairs to clarify that.

MR. LEVIN: I'm sorry?

MR. SCALI: I'm sure that reports are available through Inspectional Services. If they had a problem with it, they would have reported it to us.

Motion on the five conditions. Do you wish me to mention them again, or are we clear on the conditions?

MR. HAAS: I'm clear.

MS. LINT: I have four. Was it combined?

MR. SCALI: Hood/duct system to be cleaned four times a year or more.

MR. HAAS: Inspected.

MR. SCALI: Inspected four times a year or more frequently if necessary; report to the fire department with those reports, quarterly; task force to add inspections to the location; final approval by the fire department to be signed off on these conditions; and then if not compliant to be placed back on the agenda. That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

Deputy Chief, can I just ask that at our next hearing you just kind of report back whether that's been resolved?

MR. TURNER: I will.

MR. SCALI: Thank you very much, Mr. Goldberg.

MR. GOLDBERG: Can you repeat the last comment that was made?

MR. SCALI: Commissioner Haas asked that Deputy Chief Turner to report back at our next meeting as to whether all this is finalized by the fire department just to make sure everyone agrees, meaning the Chief and Prevention and all that agrees on these conditions. Thank you.

MR. SCALI: I think the only other item on our agenda is Idenix; am I correct?

MS. LINT: Yes.

MR. SCALI: Except that there's an issue with The Field, but we'll take that up later.

MS. LINT: It's not really an issue.

MR. SCALI: At this time if we could, our legal department is here for discussion. So I'll make a motion to go into Executive Session because there's a legal issue involved. So if we could have you all step out. Motion to go into Executive Session.

MR. HAAS: You need to take a formal vote, don't you?

MS. LINT: Yes.

MR. SCALI: Motion to go into Executive Session.

MR. HAAS: Moved.

MR. SCALI: Moved and seconded.

MR. LINDQUIST: How long do you think?

MR. SCALI: I would venture to guess 15 minutes.

Moved and seconded. All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

(Adjourned to Executive Session.)

MR. SCALI: Motion to go back into regular session.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Next on our agenda is Idenix from our February 23 hearing, which was continued from our November hearing.

As we understand it, Idenix has presented information from Cavanaugh-Tocci on your readings in January. You consolidated five units into one. You're going to change the RTU8 unit to a new unit and move it to the other side of the building. You're going to continue with the skirts through this season pending the snow and that kind of issue, and you've extended the curtain down past where you had it before.

So we do understand that according to your readings at five feet and sixteen feet above

the ground, Cavanaugh-Tocci is saying it's 49 decibels. But I think the issue for us really is readings from where the discomfort is, and we do have history in terms of the readings being taken from Mr. Lindquist's window. I think we had kind of hoped that it was going to happen before today but I guess it didn't happen with Ms. Boyer taking the readings.

You've requested a continuance until June, is it?

MR. GILMAN: Yes.

MR. SCALI: Until June, to make sure that the summer mode is fully in place and that everything is running and up in gear.

MR. GILMAN: The main reason is to be able to give you a real number. Doing that simulation in January, they end up giving us ranges. So if you ask for a specific number from Tocci's readings in January, all I can give you is a range. So to give you a definitive number we have to be able to show you in full summertime mode what that reading is.

MR. SCALI: There's always a range in readings you take, a hundred readings or whatever it is and it can go up and down or whatever. So on an average you're saying it was about 49, but that's not in full mode.

MR. LINDQUIST: I have some readings if you're interested in them. I know that they're inadmissible but they're quite different than the readings which were presented the other day.

MR. SCALI: I think we need to really find out what that reading is from your window. I know we have this issue of where the reading should be taken from and the standard and all that, but we do have history that readings were taken from Mr. Lindquist's window. So at least I'd like to see what they are now, and in June, to determine what we're dealing with.

I personally think you've come a long way because you've consolidated units. You're about to change that big unit; you've extended the curtains and the skirts. You've done everything we've asked you to do even pending the Special

Variance not even being decided. So you've put money into it and you've put time into it, which is a really good thing.

I guess I'm a little confused about the fact that it's worse than ever from what you said. That's not computing with me how that could be but maybe --

MR. LINDQUIST: It may have something to do with the relocation of those units and the combination of those units.

MR. SCALI: That could very well be. That may be the issue.

Comments or discussion? I can make some suggestions but I don't know if anybody wants to speak about this.

MR. HAAS: I heard the concerns from the residents that they feel it's worse than ever. And again, I'm having a difficult time with that but I'm not disputing that. I mean Mr. Lindquist, you might be perfectly right that it's because of the positioning of the units and things like that. I think we've got to get that resolved.

I do believe since we've taken readings from your window that that's got to be something that we have to continue to do because it's not fair to say we're going to dismiss all your readings now and just go someplace else. So I think it's appropriate for Andrea to go out and do those readings. That's going to mean that you're going to be up at 2:00 in the morning at some point in time.

MR. LINDQUIST: That's quite all right.

MR. HAAS: I think at the present time the matter before us is whether we're going to entertain the request for a continuance until June to get from Idenix a realistic, or at least an operable number we can use and rely on in making any other decisions. You're right, I think we've got a series of projected numbers, computer generated numbers, but I think what we really want is a realistic number there, as opposed to something that a computer may think it is, as opposed to what it really is. In my view that's

kind of what's before us at this point in time.

MR. SCALI: Comments? Questions?

MR. LINDQUIST: Can I just make a suggestion that maybe you postpone that decision until Andrea has an opportunity to come and take a series of readings just because this thing is dragging on and dragging on. This neighborhood lives with this noise and we know it's going to get worse in the summertime, no question about it. So that three weeks from now after Andrea, then you'd have an opportunity to say this isn't working or. . .

MR. SCALI: I guess my question to you is -- and I don't want to step outside the bounds of the lawsuit and that kind of thing -- what is your vision of what would happen then? We already know the readings were a certain number, which were not 50 or under. So I guess what would you envision that we do at that point? That's what I'm trying to --

MR. LINDQUIST: Give them a deadline to bring the readings to an acceptable level, a

finite deadline. It can't just keep dragging on. We've been living with this for five years now.

MR. SCALI: The only issue before us right now is whether we grant or deny the Special Variance.

MS. LINT: No, it's not.

MR. HAAS: No, it's not. The matter before us is the request to continue the matter until June so they can get some readings.

MR. SCALI: I do understand that part but the request is for a Special Variance. So we have the power to continue and get readings and that kind of thing, but ultimately the decision is yes or no on the Special Variance. So according to our -- if we say no, you don't get a Special Variance that's the end of the matter before us, and we go back to -- I'm not saying this is good or bad -- they go back to their lawsuit and they continue as what was happening before.

MR. HAAS: If I could speculate, I would suspect that Mr. Lindquist's additional frustration would be that when June comes, is it

now going to be another six months before we make a decision on this thing.

MR. SCALI: Oh, I've got you.

MR. HAAS: So I think at some point we have an obligation to say at some point we're going to make a decision about this thing one way or another, so we're not here a year from now having this conversation again. I would like to get to a point where we can bring this to some kind of finality. So I share to some degree the frustration over this continuing to go on and on and on.

I think it's a matter of -- I guess in my view -- of the Commission's degree of reasonableness, and I think that's a standard we have to satisfy. We can't appear to be arbitrary and capricious but in the same respect I think at some point we have to make it clear that at some point we're going to make a decision about this and then let the cards fall where they may.

MR. SCALI: We can set a deadline on it now if you wish.

MR. HAAS: I guess my question to you Mr. Chair is can we with a degree of confidence say that when we come back in June and we make a decision that we're also going to make a decision relative to the variance in June? I guess that's the fundamental question so that at least we can give some representation to the residents that we understand you've been through this for a long period of time but there is a finality to this in terms of what the final decision is going to be, as opposed to saying, come back in June and then in December we'll try to make a decision, or whatever. I think in all fairness, we have to -- if the Commission feels it can do that. I think we just have to be prepared to do that.

MR. SCALI: We could do it today if we want.

MR. HAAS: I think we owe a commitment to the community to say at some point we're going to make a decision about this issue, and Idenix, too. I think Idenix wants to know what the answer is going to be. It's not just the residents but I

think everybody involved wants to know at some point what's the outcome.

MR. SCALI: Yes, what's the direction. The goal was really to make it quieter. That's the goal obviously.

MR. TURNER: The only question I have is does anybody know if the technology exists for automatic monitoring. In other words, without humans people taking these readings. Can we mount a box that would record say on a six-month basis or a monthly basis?

MR. GILMAN: We've done that two years ago with Cavanaugh-Tocci. They mounted some and left them for 10 or 12 days and then we had the 10 or 12 day aggregate readings, so it can be done.

MR. TURNER: Would that be a viable option at this point?

MR. SCALI: In addition to the readings taken by a person, I'm sure that's not a problem.

I guess as we said, the standard is reasonableness in terms of what's fair to both

parties and the reasonableness to the neighborhood. And I do understand what you're saying now, Mr. Lindquist. I guess I was missing your point is as to you want some finality to it. You don't want it to be continued over and over again. So now I get what you're saying.

I can make a motion if the Commissioners wish to discuss further. Further discussion?

MR. HAAS: No.

MR. SCALI: I think what we're saying is what's reasonable right now is to verify what the readings are now and that we do it from Mr. Lindquist's window to make sure that those standards are in line with what Ms. Boyer had done in the past. Comparing them to what Cavanaugh-Tocci is doing, I guess we can do it. That's reasonable to find out what the comparison is. And if we can do those as soon as possible that would be the best scenario for us.

I do feel though --

MR. GILMAN: Can I make a request that

Cavanaugh does readings at the same time?

MR. SCALI: That's not a problem at all. Unless Mr. Lindquist is not going to let them up in his window.

MR. TURNER: Mr. Chair, that's where I was headed with the automatic. Would Mr. Lindquist oppose, or can somehow I guess on the public sidewalk erect a pole 22 feet high and then mount an automatic monitoring box at that point.

MS. LINT: On the sidewalk?

MR. TURNER: Or somehow.

MR. LINDQUIST: I hung one off the house for Cavanaugh-Tocci. They ran wires through the window and all of that.

MR. SCALI: So it can be done.

MR. LINDQUIST: But I would prefer that on a schedule that is known to Ms. Boyer and myself, and that she come and take the initial readings and then if we want to proceed beyond that. But based on those it would provide you with some additional information.

MR. SCALI: So you're saying continue

it to a sooner than June date with Ms. Boyer's readings.

MR. LINDQUIST: Based on Ms. Boyer's readings.

MR. SCALI: Pleasure of the Commissioners?

MR. TURNER: What is the date on replacing this RTU8?

MR. GILMAN: April 15 is the drop dead date I gave our contractors to make sure it's done. It's supposed to be on site about April 2.

MR. HAAS: So when will it be functional, Chris?

MR. GILMAN: I told them April 15 because I didn't know when your April hearing was. I said I can't let this drag so there's your drop dead. I think Commissioner Haas, it would be the Saturday after April 2, which would be our intent to install it. So by the 10th or 12th of April we should have that switched over.

MR. LINDQUIST: This unit is what, Chris?

MR. GILMAN: RTU8. It's the one that Cavanaugh has always pointed out is the noisiest.

MR. LINDQUIST: An AC unit?

MR. GILMAN: Yes, the noisiest one up there.

MR. LINDQUIST: But that probably won't start up until May sometime.

MR. GILMAN: That's the problem. One of the projections that Tocci was doing with computers in January when we really started scratching our head, we had had the discussion -- we wanted a variance of 60. At one of the hearing, I think it was November, you had said, well, if you ask for 55 we might sit here and discuss that. One thing it was showing is that it looks like it's 55 by the computer.

MR. SCALI: With that unit changed?

MR. GILMAN: Yes.

MR. SCALI: And everything else as changed?

MR. GILMAN: Yes.

MR. SCALI: You're hoping.

MR. GILMAN: I don't want to sit here and tell you that on a July night it's going to be 55.2.

MR. LINDQUIST: But that unit isn't operating now.

MR. SCALI: Right. He's just saying a projection.

MR. LINDQUIST: What I'm saying is that Ms. Boyer will find that the readings are considerably above 55 at my third-story window, right now, without that unit running or any of the other AC units running.

MR. SCALI: That wouldn't be surprising I guess.

MR. LINDQUIST: It's only going to be milder when this new redefined AC unit is put in. It's going to be louder than it is right now.

MR. HAAS: My fundamental question again, and it took both the Chair and myself by surprise was that looking at the modification made thus far, we're still generating more noise than we did before that. So that's what's got me perplexed

to tell you the truth.

MR. GILMAN: One thing that concerns me a little bit is that we have continued to work with Cavanaugh-Tocci based on the fact that like Andrea had told us, I've worked with them for years. They're one of the best around. We can consistently show through our reports that it's getting quieter. They've been doing this for 30 years and they're licensed to do it.

MR. SCALI: That's why we're confused. If something is changed over where they are that we don't know. That's what we don't understand.

So it's probably reasonable for us to take readings as soon as possible with Ms. Boyer there. I guess the question for the Commissioners is do we want to continue this to a sooner date? Personally I would rather see that RTU8 unit changed, operational, and once that's up and it's warm that the readings are taken at that point in time. Readings now with Ms. Boyer and then readings in May when everything is up and running and changed.

I'm certainly comfortable with giving a deadline with making a decision. If you want to pick a date to make the decision and whatever it is at that point in time is what it is, I'm fine with that, too.

My suggestion, my motion is going to be that we ask Ms. Boyer to take readings now at Mr. Lindquist's window; that those be presented to us; and that we ask you to go forward with the changing of the RTU8 unit; that it be up and operational as soon as you can do that in April; and that readings are then taken in May with Ms. Boyer and with Cavanaugh-Tocci when everything is working; and that we come to a date in June with a final decision. That would solve our dragging on and on issue.

MR. GILMAN: Okay.

MR. SCALI: That's my motion. No one has voted yet. Discussion?

MR. HAAS: I guess there are three things you've kind of proposed, Mr. Chair. One, that we will in fact have Andrea go back and do

some comparison measurements just to kind of sense where are we with respect to the improvements that have been done thus far. Then have her report back to the Commission with respect to her findings. I think you're going to want to know too. If we're getting higher reading, you've got to figure out what you're going to do to offset that, or there's something wrong here.

Then barring any unforeseen circumstances this body is willing to make a decision with respect to the variance in the June timeframe; right?

MR. SCALI: But with readings being taken in full swing.

MR. HAAS: I'm assuming what will happen now is -- well, a couple of things will happen. One, we'll figure out if it's noisier or not. Secondly, we do want to establish a firm baseline with what the number is going to be that we're going to be able to hold you to, and then make a determination whether or not we think it's reasonable to grant Idenix a variance or not.

So those are the three things that need to happen. I just want to make sure we understand what the timeframe of those is going to be. And again, barring something else happening that we just don't foresee. But right now in the present day, this is what we think is a realistic time line, and make some assurances back to the neighborhood, and make some assurances back to Idenix that this is when the Board will make its decision relative to their application for a variance.

I guess if that's what we're saying then at some point in time we're agreeing to continue the matter, we're going to have that interim step where Andrea is going to come back with readings after she works it out with Mr. Lindquist what's a reasonable time to go and take those measurements. And I would ask that we do it over a couple of nights if that's possible. They don't have to be consecutive nights but just -- you know, because things change during the course of the week with respect to ambient noise and

everything else like that. So let's just get a couple of different readings and get a sense of what's actually happening up there.

MR. SCALI: So is it your vision, Commissioners, that if we have Andrea take the readings as soon as possible in the next few weeks or so that she come back at the hearing to us, or just report to Mrs. Lint?

MR. HAAS: I'm comfortable either way. At some point she's got to get her report back to the Commission.

MR. SCALI: Right, report back to us.

MS. LINT: Report to me and I can report to you.

MR. HAAS: Yes, give us an update. But then she'd file a report with you though; right, Mrs. Lint?

MS. LINT: Yes.

MR. SCALI: Further discussion?

MR. HAAS: No more discussion.

MR. SCALI: So the motion then is for Ms. Boyer to take readings over a couple of

different time periods in the next few weeks at the 23-foot level, Mr. Lindquist's window. I guess if Cavanaugh-Tocci wants to do his readings at the same time, you can work that out. I don't have a problem with that in terms of working that out.

MR. HAAS: And I would ask that Andrea share her readings with Idenix so that you know what the story is. If it is getting noisier, you're going to start scratching your heads and figure out what's going on. If you think the noise has progressively gotten less, which it would seem to me just looking at the modifications made so far it would suggest that that's what should be happening, and if it's not, figure out why not.

MR. SCALI: So report back to the Commission and share those readings with all parties; that there be a comparison between Cavanaugh-Tocci's five foot, sixteen foot, and then the twenty-three foot readings; that once the RTU8 unit is in place and you're in full swing that readings be taken again with Cavanaugh-Tocci and with Ms. Boyer. That may be May or whenever it

gets warmer. It may be June. And then that we put this back on the agenda for a decision at our second hearing in June.

MR. HAAS: Will your readings be done before then?

MR. GILMAN: I would hope, Commission, as soon as I can -- I've told you before, "trick" is a bad word, but trick all those things into running. I'm sure we can do that at the end of May without having the controls kick off and things like that.

MR. SCALI: So it will be our second hearing in June. I think it's June 21, I think it is. Whatever the second hearing is in June.

MR. HAAS: So barring a major cold snap at the end of May.

MR. SCALI: And just to make Mr. Lindquist feel better we will decide at that point whatever it is, it is. Then we're at a final destination point. That's moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Just so I'm clear, The Field actually called me yesterday, which I didn't talk to them.

MS. LINT: Chris talked to him.

MR. SCALI: Asking a question because I guess they decided not to do their --

MS. LINT: They're thinking.

MR. HAAS: I looked at the sidewalk again. I know they widened it but I'm just really having a hard time imagining how you're going to put tables and that fence in there and not having people sitting virtually on the edge of the curb.

MS. LINT: What they said to Chris yesterday was they're considering not doing the sidewalk patio and exploring doing it in the back parking lot.

MR. HAAS: I can't imagine why I'd even want to sit on Prospect Street and eat something.

MS. LINT: Absolutely not.

MR. TURNER: I agree. I went down to look at it, and yeah, I can see where they -- and

perhaps it was because there were no clear markings.

MR. HAAS: At least on Mass. Avenue the sidewalks are wide enough that you get a sense of space. There you're just going to be crunched up against cars and a building.

MR. SCALI: Cars just go whizzing by. So they're going to get back to you with a decision?

MS. LINT: They're going to get back to us.

MR. HAAS: So if they've taken measurements and stuff like that, how did they come up with that configuration and think it's okay?

MR. SCALI: Public Works worked with them.

MR. HAAS: But if you physically look at it --

MS. LINT: I agree.

MR. SCALI: It meets the standards.

MS. LINT: I agree completely.

MR. HAAS: Okay.

MR. SCALI: Is everything all set,
Mrs. Lint?

MS. LINT: Yes.

MR. SCALI: Motion to adjourn.

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

(Whereupon, the proceeding was
concluded at 11:22 a.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

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

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

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

In Witness Whereof, I have hereunto set my hand this 8th day of March, 2010.





ANNE OUELLETTE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 16, 2012

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