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Volume XII
Pages 1-56

Brookline Zoning Board of Appeals Hearing
40 Centre Street Comprehensive Permit Application
Roth Family, LLC
December 19, 2016, at 7:00 p.m.
Brookline Town Hall
333 Washington Street, 6th Floor
Brookline, Massachusetts 02445

Reporter: Kristen C. Krakofsky

1 APPEARANCES

2 Board Members:

3 Jesse Geller, Chairman

4 Christopher Hussey

5 Kate Poverman

6 Steven Chiumenti

7

8 Town Staff:

9 Alison Steinfeld, Planning Director

10 Maria Morelli, Senior Planner

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12 Applicant:

13 Bob Roth, Roth Family, LLC

14 Bob Engler, President, SEB

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1 PROCEEDINGS:

2 7:02 p.m.

3 MR. GELLER: Good evening. It's 7:00 p.m.
4 We are reconvening 40 Centre Street. This is a
5 comprehensive permit application. Again, for the
6 record, my name is Jesse Geller. To my immediate
7 left is Chris Hussey, to Mr. Hussey's left is Steve
8 Chiumentti, and to my right is Kate Poverman.

9 As people will recall, in the last hearing
10 we reviewed a revised set of waivers and the board
11 discussed those. And we also reviewed a draft of
12 the -- of a proposed decision, and most importantly,
13 a draft of proposed conditions. We also took
14 testimony at the last hearing.

15 And I think what we are going to do in this
16 hearing -- or the lion's share of this hearing will
17 be to review those redline revisions both in terms
18 of the waivers as well as in terms of the draft of
19 the condition and decision.

20 Maria, I understand that we've received a
21 letter?

22 MS. MORELLI: Yes.

23 MR. GELLER: From Dr. Maloney?

24 MS. MORELLI: Yes. So this is to the

1 zoning board of appeals dated December 19, 2016, from
2 Patrick Maloney, the chief of environmental health
3 services. And this is regarding the 40 Centre Street
4 40B, the proposed plan. In particular, the rubbish
5 and recycling.

6 "In response to follow-up questions from
7 the ZBA regarding the above-noted project, I offer
8 the following:

9 "It was noted the proposed trash room is 15
10 by 15 feet in size. The health department
11 recommended trash be compacted and 2 two-yard
12 dumpsters be provided for the building's trash and
13 rubbish. In addition, it was noted that should
14 additional containment be needed, an additional
15 dumpster would be needed.

16 "To best address the concern of adequate
17 storage space, the applicant should demonstrate on
18 revised plans where the additional dumpster will be
19 located. The applicant should show on the plans the
20 dumpster being able to fit in the proposed room or an
21 alternative location for the additional dumpster.
22 The revised plans must also show the storage
23 environment for the two recycling toters and backup
24 locations should additional toters be needed.

1 "Last, should the applicant not be able to
2 provide space for additional dumpster storage, the
3 health department will not object to an additional
4 rubbish pickup date if needed.

5 "As noted in my 11/21/2016 memo to the ZBA,
6 this issue will be revisited when 90 percent
7 occupancy is achieved."

8 MR. GELLER: Thank you. Is there anything
9 else to report?

10 MS. MORELLI: No.

11 MR. GELLER: Okay. Thank you.

12 Does the applicant have anything new to
13 submit?

14 MR. ROTH: No.

15 MR. GELLER: Okay. Thank you.

16 So what I want to do is I want the board to
17 take their waivers and, as you received earlier, a
18 set of revised waivers, and let's just run through it
19 and make sure it's consistent with what our
20 instructions were.

21 MS. MORELLI: Excuse me, Mr. Chairman. Do
22 you mind if I just ask the members of the public if
23 they have the packet?

24 Did you receive the packet?

1 So I don't need to show this online. Okay.

2 MR. GELLER: You could leave it up there.

3 It may be helpful to people.

4 MS. MORELLI: Okay.

5 MR. GELLER: Any comment on A?

6 MS. POVERMAN: No.

7 MR. GELLER: B?

8 MS. POVERMAN: No.

9 MR. GELLER: C?

10 MS. POVERMAN: No.

11 MR. GELLER: D? If I don't hear from you,
12 I'm just going to continue.

13 E? F?

14 MS. POVERMAN: If something's not
15 applicable, do we keep it in there?

16 MR. GELLER: I would take it out, but I
17 think that they're simply posting it as -- they're
18 just notifying us. It's sort of like a redline
19 change, but I think in the final waivers list,
20 they'll just pull it.

21 MS. MORELLI: It will be.

22 MS. POVERMAN: Okay.

23 MR. GELLER: G?

24 MS. POVERMAN: Fine.

1 MR. GELLER: H?

2 MR. HUSSEY: Yup.

3 MR. GELLER: I?

4 MR. HUSSEY: Yup.

5 MR. GELLER: J?

6 MR. HUSSEY: Yup.

7 MR. GELLER: K?

8 MR. HUSSEY: Yup.

9 MR. GELLER: L?

10 MR. HUSSEY: Yup.

11 MR. GELLER: M?

12 MS. POVERMAN: Yup.

13 MR. GELLER: N? O?

14 MS. POVERMAN: Yeah.

15 MR. GELLER: P?

16 MS. POVERMAN: Yup.

17 MR. GELLER: And the applicant has

18 withdrawn, at our request, Q, R, S, T, U, V, W; and

19 X, there's a notation: "Denied by ZBA. No objection

20 from applicant."

21 Okay? Everybody in agreement?

22 (No audible response.)

23 MR. GELLER: Okay. The waivers are done.

24 Okay. Decision. So what we have is a

1 redline decision, or whatever color your printer may
2 print out. Maria circulated an actual redline with
3 some highlights.

4 What we also received was some requested
5 redline changes from the applicant, and it appeared
6 to me that all of the comments pertain to issues
7 related to affordability requirements in the
8 regulatory agreement and the transition over to the
9 town.

10 MS. MORELLI: I just want to clarify. I
11 haven't received comments from the applicant
12 regarding the redline, so you should ask the
13 applicant.

14 MR. GELLER: Okay. Did the applicant get
15 the redline?

16 MS. ROSENSTEIN: Can I ask what "redline"
17 means?

18 The redline is the draft -- the draft that
19 we discussed last week but with changes that have
20 been made, per the ZBA's discussion, indicated in,
21 literally, a redline format on the document.

22 And is the redline version available?

23 MS. MORELLI: Yes, it is posted on-line,
24 but it was later today. And what we have printed out

1 is just -- you'll see it, like track changes. So you
2 have a black-and-white set, so you'll either see it
3 crossed out, or if something's added, you'll see it
4 underlined. And that's the indication that there was
5 an edit made.

6 MR. GELLER: Okay. And over and above
7 that, we got some comments.

8 MS. MORELLI: Yes.

9 MR. GELLER: Let me, at the outset, say
10 this: My understanding --

11 Maria, you can confirm this.

12 My understanding is that this iteration,
13 this draft document, still must be -- the review by
14 town counsel and review by our 40B consultant, also a
15 lawyer, has not been completed. And I'm sure that
16 neither has reviewed these requested changes. Right?
17 These redline --

18 MS. MORELLI: Well, about Exhibit 2, I
19 should just back up and say that town counsel,
20 Jonathan Simpson, and our 40B consultant, Judi
21 Barrett, have reviewed the conditions -- the draft
22 decision when they were first drafted.

23 MR. GELLER: No. I understand that.

24 MS. MORELLI: But they need to review

1 everything that really follows your discussion. I
2 just wanted to make that clear.

3 MR. GELLER: Right. Okay.

4 MS. MORELLI: Regarding Exhibit 2, which
5 are terms to be included in a replacement regulatory
6 agreement -- and for people who don't understand,
7 this is -- the subsidizing agency, for 30 years,
8 oversees this regulatory agreement. And at the end
9 of 30 years, the town assumes that responsibility
10 and, for continuity, likes to put forth terms to be
11 included in a replacement regulatory agreement that
12 would kick in at the end of 30 years.

13 MR. GELLER: Because the goal here is that
14 these be affordable in perpetuity.

15 MS. MORELLI: In perpetuity, correct. So
16 this is just an outline. It is not a regulatory
17 agreement, per se.

18 MR. GELLER: But in your -- at least what
19 I've seen, you are -- your goal is to essentially
20 have negotiated the pro forma of the document going
21 in, and all that is required is signature at the
22 trigger point. That's your goal here, is it not?

23 MS. MORELLI: I'm sorry. What are you
24 speaking of in particular?

1 MR. GELLER: The town regulatory agreement.
2 You're attaching a final formal document.

3 MS. MORELLI: This is not a final -- this
4 is not a final plan.

5 MR. GELLER: I know this isn't, but your
6 goal is to get there.

7 MS. MORELLI: Not during this time.

8 MR. GELLER: Not during this time?

9 MS. MORELLI: No. Not for this decision.
10 All that we are going to accomplish at this stage is
11 to have terms identified that people agree with. We
12 do not prepare -- because that is going to take place
13 in 30 years, we don't want to -- who's going to be
14 here in 30 years? You'll have different staff
15 members. You might have a different owner. So we
16 don't want to tie the hands of anyone who would be
17 negotiating in 30 years. I just want to make that
18 clear. This is not --

19 MR. GELLER: Okay.

20 MS. POVERMAN: Is this something that's
21 usually negotiated at all, or is it just usually in
22 that particular form?

23 MS. MORELLI: This is something that the
24 Town of Brookline has chosen to do because of the

1 stipulation that the units be held in perpetuity.
2 This is something that we started to do with the
3 Hancock Village 40B. I can't speak to other 40Bs
4 prior to that.

5 MR. GELLER: I can't speak for 40Bs before
6 that, but we've done it on 40Bs that I've been
7 involved with in the sense that there has been a
8 format for a regulatory agreement to take control
9 once a subsidizing agency's term is over, so that is
10 consistent with what we've done on 40Bs in the past.
11 What the content is of that agreement, I haven't
12 really gotten involved with. But I just want to make
13 sure that town counsel is involved and is otherwise
14 satisfied.

15 MS. MORELLI: Yes. So town counsel has
16 reviewed Exhibit 2, again, which are the terms to be
17 included in a replacement regulatory agreement in 30
18 years.

19 MR. GELLER: Okay.

20 MS. MORELLI: And they've reviewed the
21 exhibit. They've also reviewed Mr. Roth's edits. In
22 general, they really just advise and say that it
23 would be best if you refer to the Exhibit 2 that was
24 submitted, the original draft, and that they really

1 just -- we've advised the applicant that those
2 changes are really something that can be negotiated
3 later, in 30 years.

4 MR. GELLER: And town counsel is
5 comfortable with that?

6 MS. MORELLI: Yes. Town counsel advised
7 that.

8 MR. GELLER: Okay. So backing up to my
9 starting point, the bottom line is that this document
10 still needs to be reviewed cohesively by both Judi
11 Barrett as well as by Jonathan Simpson. So I wanted
12 everybody to understand that. So notwithstanding our
13 continuing discussion, there is some further review
14 that goes on by our legal advisers and the
15 comprehensive permit adviser.

16 Okay. Let's just roll through the -- where
17 there are redline changes. Unless you have a new
18 comment, we're going to just review the redline
19 changes. Okay?

20 MS. POVERMAN: So page 2A, additional Judi
21 Barrett findings, we'll discuss those separately?

22 MR. GELLER: Yeah. Let's discuss those
23 separately.

24 MS. POVERMAN: Okay. I have something on

1 page 3, just a -- it's a typo, basically. Under
2 findings, paragraph 3 where it says, "MassHousing has
3 determined that the project submitted was eligible."
4 Because there was a later submission, I found it
5 confusing, so I think it's more appropriate to say,
6 "MassHousing determined that the project
7 submitted..." so it's clear that was not the current
8 project.

9 MS. MORELLI: Okay.

10 MR. GELLER: Did we confirm this building
11 was constructed in 1921?

12 MS. MORELLI: I found that it was designed
13 in 1921.

14 MR. GELLER: How do you know it was
15 designed in 1921?

16 MS. MORELLI: That was what was in the
17 report prepared by the preservation planner when it
18 was reviewing this case for demolition review.

19 MR. GELLER: Because the Town of Brookline,
20 in its infinite wisdom, burned all of the records
21 prior to 1971?

22 MS. MORELLI: Well, I only went as far as
23 the preservation commission's report.

24 MR. ROTH: There is a building permit.

1 MR. GELLER: For the original structure?
2 Still on hand?

3 MR. ROTH: Yes. I have it.

4 MR. GELLER: Okay.

5 MS. POVERMAN: I made comments on page 6.

6 MR. GELLER: Wait. Go ahead, Chris.

7 MR. HUSSEY: On page 4, Item 9, the number
8 of parking -- surface parking spaces existing. It
9 says six, but I think there are twelve, aren't there?

10 MR. GELLER: It says eight.

11 MS. MORELLI: The applicant has noted
12 twelve, but on the site plan I counted eight. So if
13 the applicant wants to...

14 MR. ROTH: There's ten.

15 UNIDENTIFIED AUDIENCE MEMBER: Could you
16 tell us where we are on these pages so we can follow
17 along, please.

18 MR. GELLER: So we're now past page 4.
19 We're on page 5.

20 UNIDENTIFIED AUDIENCE MEMBER: And
21 number? Item?

22 MR. GELLER: That's what we're going to
23 figure out.

24 UNIDENTIFIED AUDIENCE MEMBER: Okay.

1 MR. GELLER: I have a comment in 1 as it's
2 been reworded. I think it needs to be reworded.

3 MS. POVERMAN: Under conditions?

4 MR. GELLER: Conditions, correct.

5 MS. POVERMAN: So that's page 5. Okay.

6 MR. GELLER: So I just want to be clear
7 that the "no more than 25 percent maximum" is about
8 compact spaces.

9 MS. MORELLI: Yes. So I can qualify that
10 to say "No more than 25 percent of the total parking
11 spaces are compact."

12 MR. GELLER: Correct.

13 MS. POVERMAN: What happens if it's
14 determined that like 40 percent is compact? Is it
15 just kind of like oops?

16 MS. MORELLI: No. You cannot get a
17 building permit.

18 MR. GELLER: The building department has
19 enforcement.

20 MS. POVERMAN: Okay.

21 MR. GELLER: Page 6. So you see -- Kate, I
22 think this was your issue. I just want to point your
23 attention to it, paragraph 10.

24 MS. POVERMAN: I'm on 7.

1 MR. GELLER: Okay. So go to 7.

2 MS. POVERMAN: This is just wordsmithing.
3 "After the last certificate of occupancy is issued,
4 and at least once per year thereafter, the applicant
5 shall submit proof..." That just makes it read a
6 little easier.

7 MR. GELLER: I see he's in the room. Did
8 the building commissioner review all of these trigger
9 points: the earliest, last, middle CO?

10 MS. MORELLI: Yes. We reviewed these with
11 the building commissioner, all the milestones.

12 MR. GELLER: Great. Okay.

13 MS. POVERMAN: And paragraph 8 discusses
14 snow storage, but I don't think we ever discussed
15 snow storage and what was going to happen with it.
16 Maybe it will be smooshed against the building. But
17 I'd rather hear from the applicant what he plans to
18 do with snow.

19 MR. ROTH: It'll have to be located in an
20 area -- we haven't designated a spot. We'll try to
21 find a spot. But it could be either removed from the
22 site -- could be either removed from the site if it's
23 not appropriate -- if it's a small plow, you know,
24 depending on how much snow there is, but if it has to

1 be removed, it will be removed from the site.

2 MR. ENGLER: It'll show up in the final
3 drawings as to where the designated area will be to
4 push the snow on our site. If that's not
5 satisfactory to any given storm, then you have to
6 take it off.

7 MR. ROTH: The truth is that there
8 shouldn't be really a lot of -- there shouldn't be a
9 lot of snowplowing because the second -- the first
10 floor -- the second floor of the building cantilevers
11 over the driveway up to 15 feet, so you're really
12 only getting about 15 feet of driveway that will need
13 to be plowed. The other -- underneath the building
14 will be -- not a lot of snow coming in underneath the
15 building, so there really isn't -- you know, the path
16 to the building is just regular shoveling. It's only
17 a few feet from the -- it's really not a lot of
18 shoveling going on.

19 MS. POVERMAN: Okay.

20 And then 10, Jesse?

21 MR. GELLER: So in paragraph 10, if you
22 remember, it was mentioned by some of the neighbors,
23 concerns over existing trees, and you took that up
24 and you had a comment about existing trees. But as

1 you can see --

2 MS. MORELLI: It's actually another --
3 that's was preconstruction survey --

4 MR. GELLER: Oh, okay. Right.

5 MS. MORELLI: These are related, and if I
6 can speak to why there are edits to this, because
7 they did come from the town arborist, Tom Brady.

8 Okay. So I'll just say that in
9 Condition 10, the reason why "or plan to replace
10 existing street trees" was deleted is that there's a
11 very formal process with public hearings regarding
12 the removal of shade trees, and that's actually under
13 MGL Chapter 87. Therefore, the town administrator
14 did not want to make it appear that the applicant
15 could submit a plan for removing street trees, and he
16 would be the sole reviewer and arbiter of that plan.
17 So that's why he struck that out of the condition.
18 However --

19 MR. GELLER: And speak to the --

20 MS. MORELLI: So a plan for protecting
21 existing street trees is very much within his
22 purview, and it's something that he would be
23 reviewing and approving.

24 MR. GELLER: No. But it also filters into

1 Kate's thought process about the audit of --

2 MS. MORELLI: It might actually be easier
3 to go to that condition.

4 MR. GELLER: I just want to link them -- I
5 just want to tie them all together so that we deal
6 with the tree concern.

7 MS. MORELLI: That actually comes under the
8 building code rather than MGL because that concerns
9 trees on private property, so it's a different set of
10 regs.

11 MS. POVERMAN: So it's been eliminated. So
12 "any damage to structures and trees or other
13 property" has been eliminated.

14 MR. GELLER: Right. See the note?

15 MS. POVERMAN: Because it is -- goes beyond
16 the building code, and it's a civil matter, yeah. It
17 had been in previous 40Bs, so --

18 MS. MORELLI: No, it hasn't. We've not had
19 a condition regarding trees on abutters' -- on
20 private property.

21 MS. POVERMAN: I thought I'd seen it in
22 Crowninshield. That's the only reason. That's all
23 right. If it's not within our power --

24 MR. GELLER: Okay. So --

1 MS. POVERMAN: Back to 10.

2 MR. GELLER: I just wanted to point that
3 out to you.

4 MS. POVERMAN: Well, it has to be prior to
5 the issuance of the demolition permit that the
6 applicant will meet with the arborist because
7 otherwise it will not necessarily be relevant to
8 review the existence of the health of the trees.
9 Maybe before the building permit is issued?

10 MS. MORELLI: So I think it might -- so
11 regarding demolition, I think I just might ask the
12 building commissioner if we do have the right
13 milestone here, if this should be prior to the
14 commencement of construction, which would assume
15 demolition because the definition of "commencement of
16 construction" is much more inclusive and would
17 include alteration to existing structures.

18 MR. GELLER: Is it a global --

19 MS. MORELLI: No, this is not a global
20 change.

21 MR. GELLER: No, no. In the decision,
22 "commencement of construction" has been specifically
23 defined in a broad manner. The question is whether
24 that broad definition is applicable universally or

1 whether it's applicable to specific sections.

2 My memory is that it's specific sections.

3 So if the intent is that it's to be broadly
4 interpreted throughout the document, we just need to
5 be clear that when we say "commencement of
6 construction," we mean that first vehicle on-site
7 removing soil.

8 MS. POVERMAN: I mean, it does include
9 removing stumps and clearing soil, so trees would be
10 included there.

11 MS. MORELLI: I can read the building
12 commissioner's definition, which you would find under
13 Condition 20 on page 8, and I'm going to the middle
14 of that condition.

15 "For purposes of this decision,
16 'commencement of construction' shall mean the initial
17 disturbance of soils associated with clearing,
18 grading, or excavating activities or other
19 construction activity; the placement of or
20 mobilization for construction activities, including,
21 but not limited to, placing materials or construction
22 equipment on the site and removal or disconnection of
23 utilities or water or sewer lines; any alterations,
24 repair, or improvements to a building or structure."

1 And that, I believe -- and Commissioner
2 Bennett can correct me if I'm wrong -- but that
3 definition was written in mind regarding the
4 different places where that milestone is used.

5 MR. GELLER: So then wouldn't you say,
6 "prior to commencement of construction"?

7 MS. MORELLI: I would just differ to the
8 commissioner.

9 MR. GELLER: Kate?

10 MS. POVERMAN: That works for me.

11 MS. MORELLI: I mean, you can ask the
12 commissioner now if --

13 MS. POVERMAN: Why don't we do that.

14 MR. GELLER: Okay. Commissioner Bennett?

15 MR. BENNETT: Can you just clarify what it
16 is that you're requesting? Or I can kind of just go
17 through in general.

18 MR. GELLER: So I'll just read the section.
19 "Prior to issuance of" -- and it now says "the
20 building permit" -- "the applicant shall meet with
21 the town arborist to review the health of the
22 existing street trees and provide a plan for
23 protecting existing street trees during construction
24 and plant additional street trees for the review and

1 approval by the town arborist with all costs borne by
2 the applicant. Any proposed removal of street trees
3 is subject to MGL Chapter 87, "Shade Trees."

4 So the suggestion that Ms. Poverman has
5 made is that rather than using as the trigger point
6 pulling building permits or issuance of a building
7 permit, that it be commencement of construction as
8 we've defined it here because that's an earlier
9 point, and if you wait for issuance of a permit, the
10 trees may be gone.

11 MR. BENNETT: Yeah, I agree. That's fine.

12 MR. GELLER: Okay. Thank you.

13 MS. POVERMAN: Prior to the --

14 MS. MORELLI: Prior to commencement of
15 construction.

16 MS. POVERMAN: Thank you.

17 MR. GELLER: Paragraph 12. This is the
18 same issue that I had before, which is that it's
19 referring to "Prior to approval of the site plan by
20 the director of engineering and transportation in
21 accordance with Condition 18," but Condition 18
22 doesn't require approval of the director of
23 engineering and transportation. He's checking a
24 list.

1 MS. MORELLI: Not really.

2 MR. GELLER: So then you have to go back --

3 MS. MORELLI: The list consists of a review
4 that the applicant -- so in order to comply with that
5 list -- so one of the items on the list is that the
6 applicant provide calculations for preconstruction
7 runoff compared with postconstruction stormwater
8 runoff. And the building -- the director of
9 engineering actually has to review those
10 calculations. There's a lot of back and forth.

11 MR. GELLER: And approve it.

12 MS. MORELLI: Yes. So --

13 MR. GELLER: Okay. Then I think you have
14 to say that in 18.

15 MS. MORELLI: Right. So we can reword 18.

16 MR. GELLER: Okay. That's my only comment.

17 MS. MORELLI: Okay.

18 MS. POVERMAN: I'm wondering on page 7, top
19 paragraph where it says, "The applicant, in
20 consultation with the director of engineering, shall
21 install a 'no parking this side' sign in the public
22 way on Centre Street toward Beacon Street near the
23 site."

24 But actually, I realize that he's going to

1 do it in connection with the director of engineering
2 and transportation. They can figure out where it
3 make sense to put it, so I withdraw my comment.

4 MR. GELLER: Okay. Paragraph 16, page 7.
5 So this is a riff off of the discussion we had at
6 last week's hearing in which the building department,
7 at the point of issuance -- it refers to a first C of
8 O, just in case there are multiple C of Os issued in
9 this case. I think it's unlikely for this structure,
10 but who knows.

11 But the building department will ensure
12 compliance with the noise ordinance. And, again, the
13 concern that I had at the last hearing was, of
14 course, that I want whatever the appropriate form of
15 baffling is based on our -- whatever our prevailing
16 noise ordinance is, I want that to be enforced. I
17 don't want to be held to a standard that may be less
18 than the best.

19 MS. MORELLI: I think it would be
20 appropriate to ask Commissioner Bennett if it should
21 be prior to the issuance of the first or if it should
22 be the last. We just might want Commissioner Bennett
23 to speak to that milestone.

24 MR. GELLER: That's a good question,

1 because the goal here is, you know --

2 MS. POVERMAN: Once everything's up and
3 running.

4 MR. GELLER: Right.

5 MS. POVERMAN: Full blast.

6 MR. GELLER: Right.

7 MS. POVERMAN: Or 90 percent.

8 MR. GELLER: Yeah, usually -- you know,
9 frequently what you'll see is at a certain threshold
10 point of occupancy, because that's when you presume
11 it's noisiest.

12 MR. BENNETT: So on 16 you're saying,
13 "Prior to the issuance of the first certificate of
14 occupancy." Probably, at that point in time, we're
15 not going to have a noise violation.

16 Certainly, by the time the building is
17 fully occupied and before we turn the entire building
18 over for the final CO, we would want compliance. But
19 there may be an opportunity somewhere in between the
20 50 percent that we could at least visit it, or we
21 would have an idea, or neighbors, you know, may be
22 calling us if there was an issue, that we could open
23 up that conversation with the developer, if that is
24 more appropriate for the board.

1 MR. GELLER: So what would you suggest we
2 use as that point in time? It's sort of in between
3 the point at which you have an accurate test of
4 noise, so it's got to be functioning at some certain
5 level, but it's also got to be at the point at which
6 you have the ability to enforce with ultimate
7 leverage.

8 MR. BENNETT: I would say at 50 percent.
9 So between 50 and 100 percent is when we're going to
10 know if there are issues. Definitely at 100 percent.
11 But if we could start that conversation, or at least
12 begin the process of verifying compliance, that would
13 be a good opportunity.

14 MS. MORELLI: If I could add -- so,
15 Commissioner Bennett -- so you're not withholding
16 anything from the applicant at that point, like a
17 C of O or something else that's valuable. You're
18 just --

19 MR. BENNETT: No, because that would be
20 50 percent, so you're talking -- half of the units
21 would be -- a CO would be issued. That doesn't mean
22 they're all occupied.

23 MS. MORELLI: Right.

24 MR. BENNETT: So there's a difference at

1 that point in time as well. My trigger is CO.

2 MS. MORELLI: When you say "50 percent,"
3 you're not talking about 50 percent occupancy, you're
4 talking about when half of the C of Os are issued?

5 MR. BENNETT: Yes.

6 MS. MORELLI: Okay.

7 MS. POVERMAN: So what would be the
8 difference between just, right before the building is
9 finished, cranking everything up and letting it blast
10 for a while and -- versus waiting until it's
11 50 percent occupied?

12 MR. BENNETT: At that point, the developer
13 is typically looking to finish up the job and getting
14 it over with. And if there's a violation that we
15 know we could have corrected a week or two in
16 advance, you know, we'll work with any contractor to
17 try to rectify that so we're not holding up the end
18 of the project.

19 So if we wait until 100 percent, and
20 they're looking to turn it over or -- I don't know.
21 There's several reasons why they would want, you
22 know, 100 percent occupancy. We typically will work
23 with any applicant. We ask them, you know, call us a
24 week or two ahead of time. We'll walk through a

1 building, and if there are issues, that gives them
2 time to resolve any issues. Whether they're building
3 code issues, a zoning board decision conflict, or
4 some other department that raised an issue, it gives
5 them time to correct those issues, and then we can
6 turn the building over or issue the CO.

7 MS. POVERMAN: Why does anybody even have
8 to be living there -- I guess is what I'm asking --
9 before you test it?

10 MR. BENNETT: They wouldn't have to be, but
11 I don't control that. So once they issue a CO, that
12 building can be -- that unit could be occupied.

13 MS. POVERMAN: Right. So I guess what I'm
14 saying is: Do we even need to have to wait until
15 it's 50 percent, you know, occupied? Can't we just
16 say, you know, have everything up at full speed and
17 say, okay, it does, it does not meet the noise
18 qualifications?

19 MR. BENNETT: That's one -- that's a way to
20 do it.

21 What I'm saying is halfway through -- if
22 they're halfway through the building and they want to
23 get tenants in there, at that point, if they were to
24 crank up only half of the units, we're going to know

1 if there's an issue and we can correct it sooner
2 rather than later.

3 MR. HUSSEY: What kind of equipment -- is
4 this just for air conditioning, or is this heating
5 and air conditioning?

6 MR. ROTH: Air conditioning.

7 MR. HUSSEY: It's just air conditioning?
8 So you wouldn't be turning them on in the wintertime
9 anyway.

10 MR. ROTH: No. I hope not.

11 MS. MORELLI: We discussed this, and it
12 doesn't have to be -- if the building commissioner
13 wants to have them run in the winter to test --

14 MR. BENNETT: Yeah, to test it.

15 MS. MORELLI: -- that's appropriate.

16 MR. BENNETT: If the schedule -- if the
17 construction schedule is wintertime and it's, you
18 know, November, December, or January, we're not going
19 to wait for spring to turn them on. We're going to
20 test the building at that time before we sign it off
21 for a final CO.

22 MS. MORELLI: My follow-up would be -- I
23 think that you might want just a second testing as
24 well. So at 50 percent -- when 50 percent of the

1 C of Os are issued, you'd be doing the testing but
2 you'd be able to run everything at full capacity.
3 Everything would be -- you'd be running --

4 MR. BENNETT: At that point, even though
5 you have only 50 percent of the certificates of
6 occupancy, I'm going to guess all of the rooftop
7 units are going to be installed.

8 MS. MORELLI: Exactly. That's the point I
9 wanted to make. I just wanted to be -- to ensure
10 that all 43 condensers would be running so they could
11 hear what this would be so you could test the decibel
12 level.

13 MR. BENNETT: That's certainly a
14 possibility, yes. So if they're all installed at
15 50 percent, we would test it at that point and then
16 we'd know.

17 MS. MORELLI: Okay. And in case they're
18 not, we'd also have a Part B.

19 MR. BENNETT: We've then got the second
20 part. You know, when we're looking for the final --
21 the last CO, that's another opportunity for us to
22 revisit not just that, but any issue that might come
23 up.

24 MS. MORELLI: So we could also add that

1 language.

2 MR. GELLER: Yeah. I like that better.

3 MS. POVERMAN: So what is the language now?

4 MS. MORELLI: So we're going -- instead of
5 saying "Prior to the issuance of the first C of O,"
6 we're going to say, "When 50 percent of the C of Os
7 are issued," and then the rest of that. And then
8 we'll add a sentence. "Prior to the issuance of the
9 final C of O, the applicant shall demonstrate to the
10 building commissioner project compliance with the
11 town's noise bylaw."

12 MR. GELLER: Okay. My next is just a
13 reminder about 18. You can add "approval." That's
14 on page 8.

15 MS. MORELLI: Yes.

16 MS. POVERMAN: I have an important typo.

17 MR. GELLER: Typo in 27 or before that?

18 MS. POVERMAN: 26. "Contemporaneously with
19 sending or within (10" -- you need a close paren.

20 MS. MORELLI: Thank you.

21 MS. POVERMAN: That's it.

22 MR. GELLER: In 27, second line, "reducing
23 the."

24 MS. MORELLI: Yes.

1 MR. GELLER: And then two lines down,
2 "Subject to review of," and then delete the repeat
3 "the review."

4 MS. MORELLI: Okay.

5 MS. POVERMAN: I had something in here
6 next. I can't read what it was. Maybe a comma or
7 something. Oh, "mitigation measures"?

8 MS. MORELLI: Yes.

9 MS. POVERMAN: Okay.

10 MS. MORELLI: Can I just ask the applicant
11 to verify the number of bicycle racks?

12 MR. ROTH: I don't know.

13 MS. MORELLI: Okay.

14 MR. ROTH: I don't know if it's 22, 24, or
15 26. I thought there was a narrative written, so --
16 by the architect.

17 MS. MORELLI: Because I have stamped plans
18 that we're working with, we want as much information
19 on the plans, so if we could just have the plans
20 updated to reflect --

21 MR. ROTH: Yeah. I sent it over to Peter.

22 MS. MORELLI: Okay, great.

23 MS. POVERMAN: So in terms of the
24 dispersion of the housing units and how they'll be

1 built, etc., I have a question about whether or not
2 there was a certain number of affordable units that
3 had to be three-bedrooms. And if so, do those have
4 to be -- doesn't emptying a three-bedroom unit that's
5 affordable then have to be filled with another family
6 that's an affordable-qualified family? How do you
7 maintain the affordability qualifications?

8 MR. ENGLER: I can answer that because we
9 do that all at the state. You have a list, and then
10 you have first come, first served, and you have to be
11 household-appropriate size. So you can't be a
12 one-person or a two-person in a three-bedroom unit,
13 unless you advertise for 60 days or whatever and you
14 can't find anybody. That's highly unlikely. So it's
15 filled with another three-bedroom-qualified household
16 as it turns over.

17 MS. POVERMAN: There are wait lists; right?

18 MR. ENGLER: Yeah. If you run out of the
19 wait list, you readvertise them, so you always have
20 some on the wait list.

21 If somebody earns 48 percent, they're four
22 times over -- their number is four times their
23 initial income coming in, so they qualify as a market
24 tenant. They have to start paying market rent, and

1 the next available unit of that size becomes
2 affordable. So you're always keeping that same
3 percentage.

4 MS. POVERMAN: Thanks.

5 MR. GELLER: 32, your reference to
6 "certificate of occupancy," just for consistency's
7 sake, capital C, capital O.

8 My next comment is in 40. Do you have
9 something before? No.

10 I'm curious about -- and, Mr. Bennett, this
11 may be your issue. But I'm curious about the
12 decision of how many market-rate units can be
13 produced before affordable unit -- there's an
14 affordable unit. And right now it's no more than
15 four COs will be issued for the market-rate units
16 until one CO for an affordable unit.

17 Was there -- my ignorant thought process
18 would have been that it would have been every one of
19 five.

20 MS. MORELLI: Well, a four-to-one ratio is
21 five units.

22 MR. BENNETT: However the math worked out.
23 What we didn't want is the developer doing all of the
24 market-rate units and holding the affordable ones to

1 the end, so however that math works out. Maria and I
2 did try --

3 MR. GELLER: But that's the process?

4 MS. MORELLI: Yes, that is the thought.

5 Exactly.

6 MR. GELLER: I wanted to just double check.

7 Okay.

8 MS. POVERMAN: 42, just tense or whatever.

9 So prior to the building -- "Prior to the application
10 for a building permit, the applicant shall certify in
11 writing to the fire chief and the building
12 commissioner that, A, the building has enhanced
13 NFPA-13 -- or latest version of the code -- designed
14 sprinkler systems; and B, the building in the project
15 has direct alarm notification."

16 MS. MORELLI: I just have to say, it's not
17 prior to the application, but prior to the issuance.

18 MR. GELLER: Okay. We're on page 11,
19 paragraph --

20 MS. POVERMAN: Is it 46?

21 MR. GELLER: Right.

22 MS. MORELLI: If I could just say, this is
23 really just a summary of previous conditions, and
24 some of those conditions are prior to commencement of

1 construction or prior to the issuance of the building
2 permit. So if you look at the cross-references, it's
3 just really consistent with the language in those
4 previous conditions.

5 MS. POVERMAN: Okay. You lost me, but I
6 spaced out, so --

7 MS. MORELLI: The prebuilding permit
8 review, as you can see under 46, the subsections A,
9 B, C, and D, they really are cross-references to
10 conditions that are mentioned earlier. It's sort of
11 like a summary checklist because there's so much for
12 the building commissioner to ensure has taken place.
13 They're not, almost, like new conditions, but really
14 just a summary checklist for the building
15 commissioner.

16 MS. POVERMAN: Okay.

17 MR. GELLER: But, again, what you -- the
18 issue that I raise, which was my question about prior
19 to demo -- how do you prevent, right, the hole in the
20 ground? You know, because they are running to tear
21 this building down.

22 MS. MORELLI: So what happens here is that
23 the individual conditions that are referenced in the
24 summary should deal with that. And that's what I'm

1 saying, that in some cases you might be reviewing
2 something before the commencement of the
3 construction.

4 MR. GELLER: Well, then the phrase "prior
5 to issuance of the building permit" doesn't fit
6 because if you're saying there are different trigger
7 points --

8 MS. MORELLI: I don't want to be difficult,
9 but it's just a summary checklist.

10 MR. GELLER: I understand.

11 MS. MORELLI: That's all. So the
12 conditions -- you know, then we'll have another
13 summary checklist for the prebuilding -- it's a
14 prebuilding permit review. Prior to the issuance of
15 the building permit, you have just a summary of
16 things that will take place. That will also include
17 conditions that must take place prior to the
18 commencement of construction.

19 MR. GELLER: Okay. But as a part of -- is
20 this the right time for it? Has the commissioner
21 said this is the right time -- I guess that's my
22 question -- for his checking that all of these things
23 have happened?

24 MS. MORELLI: He doesn't have a problem

1 with this.

2 MR. HUSSEY: This is what normally happens.

3 MR. GELLER: I know. But I just --

4 MS. POVERMAN: He's going to tell us
5 himself.

6 MR. BENNETT: Typically, the conditions
7 that you're citing under 46, the prohibition or the
8 review, is for the relief that's granted. So in this
9 case, the relief to construct the building is what
10 they're coming here for. You can demolish a building
11 without coming to the board for a 40B. You have to
12 go through the preservation process. So typically,
13 the trigger is the type of relief that you requested.
14 So in any zoning board decision, or a majority of
15 them, the conditions that they have to comply with
16 are prior to the issuance of a building permit for
17 what the relief is granted for.

18 MR. GELLER: So you want to run this
19 checklist before issuance of the building permit as
20 opposed to that global phrase we've used in other
21 locations, "commencement of construction"; correct?

22 MR. BENNETT: Yes. I did mention to Maria
23 earlier today that with the exception of the
24 construction management plan, I'd indicated that I

1 would want that prior to the demolition. I don't
2 know if you got to that condition yet or not.

3 MR. GELLER: Okay.

4 MR. BENNETT: And then I did say that, you
5 know, if there's some other language, "with the
6 exception of the demolition permit, a building permit
7 can be" -- if that's satisfactory to the board. In
8 some instances, if they want to apply for a
9 foundation-only permit, we can go from there. So the
10 terminology we typically follow at this level, it
11 would be the application for the building permit.

12 MR. GELLER: Okay. Don't go too far. I'm
13 sure we'll have more.

14 In 16B, as in "boy" -- 46. Page 11, 46B.
15 In the first line you're referring to "site plans."
16 I think you should just refer to "plans" because some
17 are lighting plans, some are -- they're not all site
18 plans.

19 MS. MORELLI: Right. There is a lighting
20 plan. I will check that.

21 MR. GELLER: And then in -- where you're
22 referring to "the final stormwater management plans
23 in accordance with Condition 11," I think what you
24 want to say is -- I think you want to repeat the same

1 language of 11, which is, "the final stormwater and
2 drainage plans." Condition 11 doesn't refer to
3 "management."

4 Yes, this is what lawyers do.

5 MS. MORELLI: I think I will add
6 "management" to Condition 11.

7 MS. POVERMAN: How about "stormwater,
8 drainage, and management"?

9 MS. MORELLI: It's stormwater management.

10 MS. POVERMAN: Okay.

11 MR. GELLER: Okay. Well, then you have to
12 go back to that section and clean it up. It just
13 needs to flow from that section that you're referring
14 back to.

15 MS. MORELLI: Right.

16 MR. GELLER: And then where you're talking
17 about -- three lines up from the end, same section,
18 you refer to Condition 20, and I think you want to
19 say -- you want to provide something like, "satisfied
20 with the report and photographs," because that's what
21 you're really talking about, not a plan. You're
22 looking for a report and photographs in that
23 provision.

24 MS. MORELLI: Sure.

1 MS. POVERMAN: And what does that go after?

2 MR. GELLER: "Condition 20 and," and then
3 it goes in there.

4 And then lastly, in the next-to-last line,
5 "all other items requiring review, verification,
6 satisfaction, or approval by or of the director of
7 engineering." Because you get different things going
8 on in different paragraphs.

9 MS. MORELLI: So "requiring review" --

10 MR. GELLER: -- "verification,
11 satisfaction, or approval."

12 MS. POVERMAN: In paragraph C it says, "It
13 has paid all applicable fees and funded improvements
14 required pursuant to Condition 13 and, if applicable,
15 10." Condition 10 now applies to the neighbor's
16 trees, so I don't think that applies.

17 MR. GELLER: I checked that. I thought
18 there was a provision for --

19 MS. MORELLI: 10 has to do with existing
20 street trees.

21 MS. POVERMAN: Not the neighbor's trees?

22 MS. MORELLI: Not the neighbor's trees.

23 MS. POVERMAN: Oh, okay. Then never mind.

24 Under K on page 12, "The town arborist has

1 reviewed a plan to protect existing street trees and
2 add new street trees." I think you took out an
3 "and," and you didn't want to.

4 MS. MORELLI: I think I put "or." So "a
5 plan to protect existing street trees or add new
6 street trees."

7 MS. POVERMAN: Back in 10 it was "and."

8 MS. MORELLI: Okay. I will use "and."

9 MR. GELLER: That's all I have.

10 MS. POVERMAN: Okay. This again, 13,
11 paragraph 54, "Any reference to town staff shall be
12 read to include a designee, either other staff
13 members or a consultant of that person or the head of
14 the respective town department." And I can't even
15 remember why I -- remember why I thought that "or",
16 "of" should be taken out. So we are to include a
17 designee of that person or the head of the respective
18 town department. I thought "or", "of" should be
19 taken out. Is there a reason why it shouldn't?

20 MS. MORELLI: There are a couple of things
21 going on. One of the first things is that I think
22 Mr. Engler was concerned that we're using roles that
23 might be defined later. In that event -- and I don't
24 think it's likely, but in that event, we were just

1 going to say "of that person," so that could be the
2 director of engineering and transportation. That's
3 what "that person" -- when we're referring to
4 "director of engineering and transportation," that
5 person could appoint a designee to do the review, and
6 that's --

7 MS. POVERMAN: Okay.

8 MS. MORELLI: And if the role changes or
9 it's defunct, then it would be the head of that
10 town --

11 MR. GELLER: The successor agency. So it's
12 like in Boston where they did away with the planning
13 and ZBIC. It became BRA, which now has that nice
14 friendly euphemism name, whatever it is.

15 So the meaning is whatever successor --

16 MS. POVERMAN: Right. Got it.

17 MR. GELLER: -- governmental body overseas
18 that -- whatever.

19 MS. POVERMAN: I got it now.

20 MR. GELLER: Okay. We talked about the
21 regulatory agreements already.

22 So as I said before, this still needs to be
23 reviewed in a cohesive fashion both by Judi Barrett
24 as well as Jonathan Simpson. And obviously, once

1 they do review it, to the extent that they have any
2 changes, we'll want to see them. We'll need to see
3 them. So what does that do in terms of timing?

4 MS. STEINFELD: There's four additional
5 findings.

6 MR. GELLER: Oh, I'm sorry. Right.

7 Kate, you were supposed to remind me.

8 So Judi Barrett has recommended four
9 additional findings for the decision. Those were
10 circulated earlier today. Anybody have any
11 discussion on those?

12 MR. CHIUMENTI: Yeah, I have a discussion
13 on those.

14 MR. GELLER: Sure.

15 MR. CHIUMENTI: Let me just remind the
16 board's finding under Finding No. 15. "The board
17 heard the concerns of town staff, boards,
18 commissions, local residents and weighed them against
19 local needs. The board determined that the project,
20 as conditioned below, is consistent with local needs
21 as that term is defined." I think that is pretty
22 much all and only what the board needs to find and is
23 sufficient.

24 Looking at these four conditions, most of

1 it, I think, is superfluous and perhaps wrong. But
2 let me say, first of all, number 1, I think, is okay.
3 "The board finds that the conditions imposed in
4 Section 5 of this decision are necessary in order to
5 address local concerns. The board finds that such
6 conditions will not render the project uneconomic.
7 To the extent that such conditions may render the
8 project uneconomic, the board finds that the local
9 concerns outweigh the potential benefits of the
10 proposed affordable units."

11 I actually like this last sentence because
12 it suggests that basically the conditions we're
13 making are okay, but no more as far as -- I think
14 that's fine. Number 1 I agree with.

15 Number 2 says, "The board finds that
16 granting certain waivers from local bylaws and
17 regulations is acceptable even though granting" --
18 and it says, "any waives may have an adverse impact
19 on local concern."

20 I think all we need to say is, "though
21 granting waivers specified herein may have an adverse
22 impact on local concerns." We're not saying that any
23 waivers are okay. We're saying the ones we're
24 saying -- we're specifying are okay.

1 MS. POVERMAN: I don't see why we need to
2 say it at all.

3 MR. CHIUMENTI: Oh, no. And I think,
4 frankly, after that period, I would say the rest of
5 this is irrelevant and unnecessary. The rest of that
6 sentence, 3, and 4 I think are superfluous. Don't
7 forget, we said what have to say, that basically the
8 local need outweighs local concerns as defined in the
9 regulation.

10 Interesting -- after that -- after the
11 reference to local concerns specified herein, as I'm
12 suggesting, it says, "Nevertheless, the board finds
13 that the local concerns affected thereby do not
14 outweigh the regional need for affordable housing,"
15 which is a little bit too brief.

16 And it's actually stated more correctly in
17 3 where it says, "addresses local and regional
18 housing needs." Because, in fact, the regulation
19 says, "local requirements and regulations imposed on
20 a project are reasonable in view of the regional need
21 for low- and moderate-income housing considered with
22 the number of low-income persons in the affected
23 municipality."

24 So I think, actually, 3 is a little more

1 accurate. But the point is that that second sentence
2 in 2 is unnecessary anyway.

3 "3. The board acknowledges concerns raised
4 by abutters and other interested parties. The board
5 finds that despite these concerns" -- now, it says
6 "the project addresses local and regional housing
7 needs."

8 Well, it doesn't address them. It
9 outweighs them. We're not saying that this solves
10 the problem. What we're saying is, well, we see the
11 problems, and the need for housing outweighs it. So
12 I think 3 is incorrect.

13 MS. POVERMAN: I just think it's a totally
14 inappropriate thing to say.

15 MR. CHIUMENTI: Right. And number 4, "The
16 board finds that many of the concerns expressed by
17 abutters and other interested parties during the
18 public hearing process involve preexisting
19 conditions."

20 This is a six-story building with
21 inadequate -- I mean, it's got nothing to do with
22 what we're finding, nor is it in any way a
23 requirement of what we need to find in the
24 regulations.

1 So I think after the first sentence in
2 paragraph 2, the rest of this we shouldn't be
3 finding, frankly.

4 MR. GELLER: Will Judi Barrett be here
5 for -- will we have Judi Barrett in the future?

6 MS. MORELLI: I think so. We're trying to
7 pin down a date where everyone on the board can
8 attend.

9 MR. GELLER: Right. I saw that email.

10 MS. MORELLI: So I do believe you would
11 need her present.

12 MR. GELLER: Because it would helpful if
13 she could speak to this.

14 MS. POVERMAN: I agree with Steve
15 wholeheartedly, and probably even more in terms of
16 not wanting these in the decision.

17 MR. GELLER: I want to hear -- I don't want
18 to say anything. I want to hear from Judi Barrett.

19 MS. POVERMAN: I agree. That's why I'm not
20 opening my mouth anymore.

21 MR. GELLER: Okay. So can we -- if it
22 turns out that she cannot -- I would like her to be
23 here because then she can respond to our questions.
24 Steve's raised some questions, Kate's got questions.

1 MS. MORELLI: Yup. So we obviously would
2 want to have a public hearing. As you know, the
3 public hearing closes on December 21st.

4 MR. GELLER: Right.

5 MS. MORELLI: So if the applicant would be
6 willing to give us at least a two-week extension -- I
7 should say at most a two-week extension.

8 MR. GELLER: Traveling man, are you back?

9 MR. HUSSEY: Well, no. I leave on the 4th
10 of January. We've got to wrap this up before the 4th
11 of January.

12 MS. MORELLI: So there were some days I had
13 thrown out: December 27th, which is a Tuesday, and
14 January 3rd, which is a Tuesday.

15 MR. HUSSEY: Right. I'll be here then.

16 MR. CHIUMENTI: I'll be here on the 3rd.

17 MR. GELLER: But not on the 27th?

18 MR. CHIUMENTI: I don't know if you need
19 me, but I'm happy to --

20 MR. GELLER: We need you.

21 MR. CHIUMENTI: The 3rd I'm here. The 27th
22 I'm out of town.

23 MS. MORELLI: Okay. So the 3rd, everyone
24 will be -- all four?

1 MR. HUSSEY: So that's the next meeting?

2 MS. POVERMAN: We have to have an
3 agreement.

4 MS. MORELLI: And we also need an extension
5 letter.

6 MR. GELLER: Absolutely.

7 MR. ENGLER: Can I speak to that for a
8 second?

9 MR. GELLER: Sure.

10 MR. ENGLER: You don't technically need an
11 extension if you have comments on the decision. This
12 is not new information that's being presented. This
13 is part of your 40-day review, and you can ask for
14 comments on this condition, that condition, this
15 word, that word. You don't technically need it.

16 However, we're willing to give it to you
17 because we want to have enough time for you to make
18 the right decision. So we're not playing hardball,
19 but I'm saying that you could close the hearing as
20 allowed on the 21st. You have 40 days. Judi Barrett
21 can come in, town counsel can come in, we can come
22 in, anybody can come in and talk about these
23 conditions as long as we're not presenting any new
24 information. If you want to keep it going --

1 MR. GELLER: We do.

2 MR. ENGLER: Then we'll allow it.

3 MR. GELLER: Thank you. Okay. So we'll
4 need a letter evidencing it, and we'll make it
5 happen.

6 MR. ENGLER: What's the date?

7 MS. MORELLI: If you could just give us to
8 that Friday, January 6th.

9 MR. GELLER: So the translation of that is
10 our next hearing -- so the close of this hearing has
11 been extended, and our next hearing will be
12 January 3rd -- that's a Tuesday night -- 7:00 p.m.
13 We don't know the location yet. Okay? At that
14 point, we should have all reigning review comments to
15 the draft of the decision and conditions, and we'll
16 have Judi Barrett to speak to her suggested
17 additions.

18 Anything else? Alison?

19 MS. STEINFELD: It will not be in this
20 room.

21 MR. GELLER: I'm sure it won't be.
22 Harriet, you had a question.

23 MS. ROSENSTEIN: Will there be any further
24 possibility for public comments?

1 MR. GELLER: There may be at the --
2 whatever that day is.

3 MS. MORELLI: January 3rd.

4 MR. GELLER: But it would be specific to
5 whatever changes -- it's not opening up -- it's
6 specific to the topic of the hearing.

7 MS. POVERMAN: To play devil's advocate, if
8 any changes are going to be made, I guess we could do
9 that during deliberations, because you aren't going
10 to have it tonight.

11 MR. GELLER: No. I think -- let's see what
12 we get.

13 Let me also urge you -- because you see how
14 we sort of stumbled through these things. It is
15 really helpful, if you have comments on that
16 document, if you submit it in written fashion. And
17 please, please, please, in time early enough that we
18 really can review it. That's so helpful to us.
19 Okay? So that would be -- frankly, that's my
20 suggestion because then we get to look at what you're
21 proposing, sort of think it through in the context.
22 Thank you.

23 MS. STEINFELD: I just confirmed that Judi
24 Barrett is available for the 3rd.

1 MR. GELLER: Okay. Thank you, everyone,
2 and we will see you January 3rd, in the new year. I
3 wish everyone a happy and healthy new year and a
4 happy holiday.

5 (Proceedings adjourned at 8:06 p.m.)

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1 I, Kristen C. Krakofsky, court reporter and
2 notary public in and for the Commonwealth of
3 Massachusetts, certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth and
6 that the foregoing is a true and correct transcript
7 of my shorthand notes so taken.

8 I further certify that I am not a relative
9 or employee of any of the parties, nor am I
10 financially interested in the action.

11 I declare under permit of perjury that the
12 foregoing is true and correct.

13 Dated this 30th day of December, 2016.

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Kristen Krakofsky, Notary Public
17 My commission expires November 3, 2017.

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