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Town of Brookline
Zoning Board of Appeals Public Hearing
re
445 Harvard Street

Town of Brookline Town Hall
333 Washington Street
Brookline, Massachusetts

Thursday, December 12, 2019
7:10 p.m. - 8:15 p.m.

A P P E A R A N C E S

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BOARD OF APPEALS

Johanna W. Schneider, Chairman

Jesse Geller, Board Member

Lark Jurev Palermo, Board Member

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1 P R O C E E D I N G S

2 MS. SCHNEIDER: Good evening. It
3 being after 7:00, we are going to proceed with
4 the continued hearing on the 445 Harvard Street
5 comprehensive permit application.

6 For those of you who need a
7 refresher, my name is Johanna Schneider. I am
8 sitting as chair of these proceedings. I am
9 joined by my fellow board members, Jesse
10 Geller, to my immediate right, and Lark
11 Palermo, to my far right.

12 I do want to just recap where we are
13 in terms of process and project and status. As
14 I think everybody here knows, the proposal is
15 to construct a five-story building at 445
16 Harvard Street, with 25 rental residential
17 units, commercial space on the ground floor,
18 and 20 parking spaces.

19 This is a permit application under
20 Chapter 40 of Massachusetts General Laws. The
21 scope of the board's review and the time in
22 which we have to issue a decision is dictated
23 by that statute, Chapter 40B. I want to first
24 address where we are in terms of time and what

1 40B says about the time we have in which to
2 render a decision.

3 By statute, we are required to
4 conclude a 40B process within 180 days of
5 opening a hearing. Mr. Engler, you can jump in
6 if I get any of these things wrong. The
7 developer may voluntarily grant us extensions,
8 but he is not required to grant us extensions.

9 If we reach a point in the process
10 where a developer is no longer willing to
11 extend the calendar, and we don't act, then the
12 original project that the developer has
13 proposed, without any of the project
14 modifications that we have negotiated along
15 the way or any of the conditions that we're
16 seeking to approve can be approved by operation
17 of law, and we lose all of the progress that we
18 have made towards influencing and shaping the
19 proposal.

20 The hearing on this project that we
21 are sitting on tonight was opened nearly one
22 year ago, on January 16, 2019. We are at this
23 point well over the 180 days prescribed by the
24 statute.

1 In terms of the scope of what this
2 board can do, for a town like Brookline, where
3 we are under the required percentage of
4 affordable housing required by 40B, the board
5 has very little discretion when it comes to 40B
6 projects. In essence, we can only push back on
7 those aspects of a 40B project that are
8 inconsistent with certain defined local
9 concerns. Under the law, those local concerns,
10 broadly speaking, relate to public safety,
11 public health, and the environment.

12 Additionally, when it comes to
13 conditioning of 40B project, we cannot require
14 from a 40B project anything that exceeds what
15 is generally imposed on other types of
16 residential development. We also cannot
17 require a 40B project to address a preexisting
18 condition that affects the municipality,
19 generally.

20 We also cannot impose conditions that
21 are or requirements that are disproportionate
22 to the impact of the project on the community.
23 If we overstep and modify or condition a
24 project beyond what is allowed under 40B, the

1 developer has broad appeal rights to the
2 housing appeals committee, which pretty much
3 never sides with the town and always sides with
4 the developer.

5 This can result in all of our
6 conditions being struck, and it can also result
7 in us losing many of the positive changes that
8 we've been able to effect in working with the
9 developer.

10 Over the last year, we have been
11 actively reviewing this project. Tonight will
12 be our ninth hearing on this project. At these
13 hearings, we have heard testimony from the
14 developer's team. We have also heard testimony
15 from peer reviewers retained by the town to
16 assist the board in evaluating this project.

17 We have had design peer review. We
18 have had environmental and geotech review. We
19 have had a parking peer review, and we have had
20 a traffic peer review. The proposal also has
21 been reviewed by all town departments, and we
22 have received feedback from all town staff as
23 well.

24 The reason that we are proceeding

1 towards discussing and voting on a decision is
2 now twofold. One is simply we're at the end of
3 the statutory time frame for getting this done,
4 and two, in all of the testimony that we have
5 received, including testimony and analysis and
6 guidance from our independent third-party peer
7 reviewers who are working for us in this, we
8 don't see anything from a public health and
9 safety perspective that cannot be conditioned
10 sufficiently. That's why we are at the
11 condition stage of this project.

12 We are going to be taking public
13 comment tonight, and we are going to be taking
14 public comment before we begin our review of
15 the draft decision and the draft conditions. A
16 few things that have come up at recent hearings
17 that we do want to make sure that we address.
18 One has to do with comments we've received
19 about notice of these proceedings.

20 The law requires that at the outset
21 of a 40B hearing, notice of the hearing be
22 mailed to all direct abutters of the proposal.
23 That's defined as abutting property owners and
24 abutters who have abutters within 300 feet. We

1 have confirmed with planning that this was, in
2 fact, done. After the initial notices go out,
3 no other notices go out, and it is, for good or
4 ill, incumbent on the people who receive the
5 notices to stay abreast of the continued
6 hearing dates.

7 That information has been posted on
8 the town website. I realize it may not be the
9 most accessible, but it has been there, and we
10 know that people are able to find those dates
11 and understand that they need to continue to
12 appear at the hearings, because there have been
13 several people over the last year who have
14 shown up and spoken at pretty much every single
15 hearing. So the information is available, and
16 it's out there.

17 At our very first hearing, we had a
18 neighbor stand up, look around and say, well,
19 you know, there are very few people from the
20 neighborhood here, because the neighbors are
21 feeling like it doesn't really matter between
22 the 420 project, the 455 project. People feel
23 like it's not worth their time to come out and
24 comment.

1 I think the town and the board is
2 sorry that neighbors feel discouraged by the
3 40B process. I can assure you that nobody
4 likes this process, least of all your volunteer
5 board, who's been working on a slew of these
6 projects over the last several years. But
7 notwithstanding everybody's frustration with
8 the process, we do take it very seriously.

9 We take public comments seriously, we
10 take public feedback seriously, and we do what
11 we can within the confines of 40B to shape
12 projects in accordance with that feedback. But
13 the reality is that feedback is the most useful
14 when we are in the early phases of a project
15 and not at the tail end of a year-long process.

16 I am saying this, in part, so that
17 people understand what the process has been in
18 this project, but I'm also saying it because
19 next week, we are opening another 40B case in
20 this neighborhood, and I urge everyone who is
21 here to come, to tell your neighbors about it,
22 to put it on your calendar, to follow it, and
23 to stay on top of it so that you're able to
24 offer us your thoughts and your perspective,

1 your comments from the get-go at a time where
2 we are able to -- when we have the time to
3 study the comments and the time to work with
4 the developer to incorporate those comments
5 into the ultimate project.

6 I do want to note that we have
7 received some specific comment letters. One we
8 received from David Danesh. He is the
9 developer of the competitor 40B project across
10 the street at 455 Harvard Street. He is also
11 the proponent of the project that we will be
12 opening next week.

13 He submitted to this board a letter
14 on November 21. We did have our peer reviewer
15 team take a look at the concerns that were
16 raised in his letter, and I do want to go very
17 quickly through the responses that we received
18 from our peer review team.

19 I want to first address the comments
20 -- the feedback to Mr. Danesh's comments that
21 we received from Jim Fitzgerald, who is our
22 independent peer reviewer. He has testified
23 before this board and these proceedings
24 several times about the relatively minimal

1 traffic impacts of the project before us and
2 has previously commented on some of the safety
3 concerns that were raised by Mr. Danesh at
4 prior hearings, but also in this letter, and
5 I'm going to read from his email. Polly, is
6 this in the record? Is this available on our
7 website as well?

8 MS. SELKOE: It is not yet, but I can
9 put it on the website.

10 MS. SCHNEIDER: So as far as the
11 driveway comments go, Mr. Fitzgerald, our peer
12 reviewer, says, "Neither the driveway at 445
13 Harvard Street, nor the driveway for 455
14 Harvard Street, are anticipated to experience
15 substantial trips entering and exiting.

16 "Although it is possible that turns
17 may take place at the two driveways
18 simultaneously, the frequency is not
19 anticipated to be regular and would likely take
20 place at slow travel speeds. Turning path
21 diagrams for driveways were provided. In urban
22 situations, such as this, closely spaced
23 driveways are not uncommon."

24 Mr. Fitzgerald continues, "As

1 discussed during our peer review of 445 Harvard
2 Street, as well as recommended by the
3 transportation board, parking was not
4 recommended along the southern side of
5 Thorndike Street in between the proposed site
6 driveway and Harvard Street and 30 feet east of
7 the driveway for site distance purposes.

8 "As a result, the existing on street
9 parking along the southern side of Thorndike
10 Street adjacent to the project site is proposed
11 to be eliminated. If required enforcement may
12 be needed to prevent illegal parking
13 activities, deliveries would be anticipated
14 within the loading zone proposed along Harvard
15 Street."

16 In response to the environmental
17 concerns, we did have Dan LaFrance, our
18 environmental and geotech peer reviewer,
19 discuss the following with respect to the
20 environmental condition of the existing
21 structure.

22 "The ground level will be largely
23 enclosed, and vapors, if present, could be
24 compact in the structure. At 455, the

1 applicant had the choice to either install a
2 vapor barrier preemptively or perform an
3 assessment to determine that it was not needed.

4 "The applicant here is required, and
5 has agreed to perform an assessment in regard
6 to the underground fuel tanks at closure and
7 will need to perform some testing, volatile
8 compounds included, as part of soil management
9 and disposal.

10 "I would recommend tying the extent
11 that vapor intrusion may occur to the presence
12 of VOCs over reporting triggers, at 310 CMR
13 40.0300, which requires cleanups if the tanks
14 leaked or other sources of VOCs are identified
15 in soil."

16 We did receive some conditions
17 relative to that, and those have been
18 incorporated into the draft decision. We also
19 received a number of comments from Mr. Danesh
20 regarding the design of the project. We have,
21 which will be submitted into the record, a
22 letter from Cliff Boehmer of Davis Square
23 Architects, our design peer reviewer, that
24 addressed this.

1 It's a relatively long letter. I'm
2 not going to get into all of the details, but
3 it will be available for folks to read. But he
4 says that overall, he believes that -- for
5 example, he believes -- here it highlights. In
6 terms of questions about the setbacks, he says,
7 "If the neighboring building on Thorndike and
8 its setback are accurately depicted on the
9 October 18 site plan, the reviewer is
10 comfortable with the new building's
11 placement."

12 And we will be asking that the
13 applicant submit plans that clearly show what
14 the setbacks are so that can be confirmed
15 before a building permit is issued.

16 There was also a comment from Mr.
17 Danesh that the two five-floor buildings will
18 create a canyon effect. According to Mr.
19 Boehmer, he believes that gateway is more
20 applicable than canyon in describing the space
21 between 445 and 455.

22 He notes that, with respect to
23 concerns about sound reverberating between the
24 buildings from cars, street noise, etcetera,

1 he notes that both structures are equipped with
2 HVAC systems that will likely result in closed
3 windows for significant parts of all seasons.
4 Both buildings are built to current code
5 related to wall construction, window design,
6 and air ceiling that will mitigate noise
7 intrusion.

8 As far as a concern regarding the
9 addition of balconies to the narrow area
10 between the buildings creating unnecessary
11 noises and disturbance to residents in the
12 area, Mr. Boehmer responds that, "To assess
13 this potential issue, it may be helpful to
14 compare current conditions of the 445 site with
15 the proposed. While generally limited to
16 business hours, gas station car repair use is
17 not without unnecessary noise."

18 As far as questions about the lobby
19 of this project relative to 455, Mr. Boehmer
20 believes that citing the resident entry on
21 Thorndike for that project is appropriate --
22 for this project is appropriate, as it
23 maximizes commercial space on Harvard,
24 activates the Thorndike frontage with

1 pedestrian activity.

2 He defers to the traffic consultants
3 with respect to comments about the two parking
4 garages, and he notes that it is his experience
5 that most traffic consultants believe that the
6 two entries virtually across from each other is
7 the safest configuration. He makes some notes
8 about management of no parking, trash pickup,
9 etcetera, and those are also captured in our
10 draft decision.

11 I also want to address a letter that
12 we received from the owner and residents of 77
13 Thorndike Street, which is a house that
14 directly abuts this proposal. I do understand
15 -- the board understands that there is some
16 level of dispute regarding the engagement of
17 the developer with the owner and the tenants of
18 that building.

19 I will note that, as is required by
20 law, the owner of that building did receive
21 notice. Whether that was passed on to the
22 tenants, I do not know, but that's up to the
23 owner to communicate that information to the
24 tenants, and unfortunately, the board is not

1 obligated, and the town is not obligated to
2 provide notice to all tenants of abutting
3 properties. I also note that while we strongly
4 encourage developers of all projects,
5 including 40Bs, to work with abutters, there is
6 no legal requirement that they do so.

7 As far as the various substantive
8 comments raised in the letter, all of the
9 substantive items that have been cited in this
10 letter are items that we have had extensive
11 peer review about during this process.

12 We can talk about this a little bit
13 more when we get into our review of the
14 potential draft conditions, but I do note that
15 there were questions raised and concerns
16 raised about construction disturbance. We do
17 have condition number 21 of the decision, which
18 addresses construction disturbance issues and
19 requires the submission of a construction
20 management plan for review by the town prior to
21 the issuance of a building permit.

22 There are concerns about physical
23 damage to the abutting building at 77 Thorndike
24 Street. When we get to condition number 28 of

1 the draft decision, there is a requirement for
2 preconstruction surveying, and it is the
3 obligation of the developer to remediate any
4 conditions that are caused that are
5 documented, you know, in the before and after
6 of that.

7 We did have extensive peer review on
8 items such as daylight and shadow studies.
9 These were not determined by our peer reviewer
10 to pose a significant risk to public health or
11 safety, as we are constrained under 40B. There
12 are questions in this letter relative to health
13 concerns relating to the environmental
14 abatement of the existing gas and service
15 station.

16 Again, we had significant peer review
17 of that issue. We have incorporated into the
18 draft decision a series of conditions
19 requiring monitor cleaning up, and ultimately,
20 the developer taking responsibility under the
21 Massachusetts contingency plan for any
22 conditions that are discovered during that
23 evaluation.

24 MR. GELLER: Which they're subject

1 to.

2 MS. SCHNEIDER: Which they are
3 absolutely subject to. This board does not
4 have the jurisdiction to waive or otherwise
5 amend any sort of obligations or requirements
6 under state law. It's only with respect to
7 local bylaws.

8 Similarly, we did receive in the
9 record a letter from a Mr. Watson, who resides
10 -- I'm sorry, Mr. Tuckman, who resides at 98
11 Thorndike Street. Some of the comments that he
12 raises in his letter are things that are
13 outside of this board's jurisdiction, but
14 really deal more with things that are within
15 the purview of the state.

16 Mass. Housing Partnership is the
17 subsidizing agency for this project, and they
18 have undertaken a review under their own
19 guidelines and regulations. They issued an
20 eligibility letter, which means that they felt
21 that it met the guidelines, and it's not up to
22 this board to second guess that.

23 I know that there are some concerns
24 with respect to the drawings of the site, in

1 particular, with depictions of trees and
2 concerns about the location of current trees
3 and future trees. We would note that there is
4 a condition number 13 in the decision, which we
5 will review, that requires additional
6 landscaping of the site. We also have a
7 condition in this decision that will require
8 the protection of street trees.

9 I've already covered the fact that we
10 will be previewing and reviewing a condition
11 relative to environmental cleanup and
12 conformance with DEP guidelines. Traffic
13 mitigation measures are covered in condition
14 19 of our decision -- or draft decision.

15 MR. GELLER: They have not asked for a
16 waiver of our noise ordinance.

17 MS. SCHNEIDER: Oh, waiver of the
18 noise ordinance has not been requested. I
19 think that that pretty much covers the most
20 recent comprehensive comments that we received
21 in writing.

22 So with that as sort of the backdrop,
23 and to give people an understanding, again, of
24 where we are in the process, where we have

1 been, what our review has looked like, I think
2 we can probably, unless the board has other
3 comments, move on to reviewing the draft
4 conditions.

5 MR. GELLER: Do you want to do that,
6 or do you want to see if anybody --

7 MS. SELKOE: Do you want public
8 comment?

9 MS. SCHNEIDER: Okay.

10 MS. SELKOE: Can I just add one thing?
11 We did also get a letter from Ms. Van Scoyer,
12 who wanted a condition about protecting the
13 mural, which we hadn't put in there, and in two
14 places it's been added under the construction
15 management plan, and also another condition
16 where the applicant will have to meet with the
17 building commissioner to discuss how that
18 mural will be protected during construction.

19 MS. SCHNEIDER: Are there any members
20 of the public here tonight who would like to
21 comment before we start reviewing the
22 conditions? Please come on up. Just as a
23 reminder, these proceedings are being
24 transcribed, so if you can speak slowly,

1 clearly, loudly into the microphone for
2 Arlene, who is our stenographer, and please
3 start by giving us your name and your address.

4 MS. KEENAN: Sure. My name is Jessica
5 Keenan, and I reside at 77 Thorndike Street.
6 I'm one of the abutters. So I just first
7 wanted to say thank you so much for addressing
8 a lot of the concerns that we already had, and
9 thank you for taking the time to -- I thought
10 it was going to be questions, so I actually
11 have two questions. I hope that's okay.

12 I first wanted to mention that in the
13 12/9 draft -- you had already addressed a lot
14 of the concerns that we have, so thank you very
15 much for that. So my two questions are this.
16 So first of all, you had added something about,
17 you know, guide -- I'm so sorry. I'm a little
18 nervous --

19 MS. SCHNEIDER: That's okay.

20 MS. KEENAN: -- about following all
21 of the required environmental guidelines, and
22 that's great. That's fantastic. I was just
23 wondering what the oversight for that process
24 looks like, and I'm sorry if this is a bit

1 naive, but is it sort of that like -- I read
2 the guidelines, but I'm just not clear on the
3 oversight.

4 So like construction begins, and then
5 he has a certain amount of time -- or whoever
6 the -- the developer has a certain amount of
7 time to, you know, do the proper surveys and
8 report them to people. So are there -- is
9 there an organization out there that's sort of
10 waiting to get this material? Like I just want
11 to understand how that process works, if
12 possible.

13 MS. SCHNEIDER: Right. So hazardous
14 waste -- oil and hazardous waste cleanup in
15 Massachusetts is regulated by the State
16 Department of Environmental Protection, and
17 it's a little bit of a self-auditing, self-
18 certification process where if you have an
19 environmental condition, you have to hire
20 somebody called a licensed site professional
21 who's licensed by the state. They're bound by
22 certain obligations.

23 When they start doing site surveys
24 and they detect compounds either in soil or in

1 ground water in excess of certain set
2 reportable concentrations, they then have a
3 notice requirement to make a filing. It
4 depends on the concentrations, it depends on
5 the materials, but there are certain
6 regulatory time frames in which those things
7 need to be reported to the state.

8 Once something is reported to the
9 state, if it's a reportable condition, the site
10 is assigned what's called a release tracking
11 number, RTN, and it kind of goes into the state
12 pipeline, and then that triggers a series of
13 different notice and reporting requirements
14 that they have to comply with on the state
15 level. I don't know even if we, as the town,
16 would receive notice of those things, but once
17 they're in the state pipeline, it's sort of a
18 state law matter.

19 MS. KEENAN: Well, that's very
20 helpful. Thank you so much. I appreciate
21 that. I had a question for Mr. Sheen, if
22 that's appropriate, or I could ask him off line
23 later, if that's more appropriate.

24 MS. SCHNEIDER: You can ask through

1 the board. That's fine.

2 MS. KEENAN: So I was just wondering
3 -- so I know that you spoke with David Jaffe,
4 the property owner, and one of the things that
5 he mentioned that you guys spoke about was that
6 you're planning for the gas station to remain
7 operating as a gas station for the next two or
8 two and a half years, and so I just wanted to
9 confirm that with you.

10 MR. SHEEN: That's correct.

11 MS. KEENAN: Great. Thank you very
12 much. That's it for me. Thank you very much.

13 MS. SCHNEIDER: Thank you.

14 MR. TARASOV: Hi. Vlad Tarasov. I'm
15 also a resident of 77 Thorndike, and also, I
16 wanted to thank you for all the work that
17 you've done in the oversight of this project.

18 So we've had a bit of a rough go of it
19 with the construction at 455. Originally,
20 there was pile driving that went on that caused
21 structural damage to our home. I understand
22 that there are provisions and conditions here
23 about, basically, you know, recuperating
24 damage and covering that. But, you know, is it

1 possible to put a condition that does not allow
2 pile driving without drilling first or some
3 other kind of, you know, seismic limitations on
4 the construction that takes place?

5 MS. SCHNEIDER: Victor, do you
6 anticipate any pile driving in connection with
7 the construction of this project?

8 MR. SHEEN: I think it's safe to
9 assume that since we don't have a basement
10 garage in this location, the structural
11 elements for the building, I think, will be
12 similar to that of 455. We elected to minimize
13 the vibrations through sort of other means for
14 420, because of concerns that has to do
15 primarily with the NWRA trunk that was very
16 close to our sign, but that's more of sort of
17 means and methods.

18 We don't know at this point until we
19 get there, but we do, however -- doing that
20 critical part of the construction, we were -- I
21 think we actually installed monitoring devices
22 along, you know, all the buildings. So if the
23 pile driving created a certain vibration that
24 exceeds certain thresholds, then the alarm

1 will sound, and they will stop.

2 So the work would stop until which
3 time we can address the issues. So I think it
4 can be properly mitigated and addressed during
5 the construction. And we didn't have any
6 issues at 420 in terms of vibration and
7 damaging other abutting properties.

8 MS. SCHNEIDER: Polly, I know that we
9 have -- we included in the 1299 Beacon decision
10 something similar to that, right, that if there
11 were certain exceedances in terms of
12 vibrations, all activity would cease until
13 they could bring it back within whatever the
14 prescribed guidelines are. Do you know if we
15 currently have something like that in this
16 decision?

17 MS. SELKOE: We do not. There is no
18 blasting allowed, and Mr. Geller had added a
19 condition last time about inspecting
20 properties, you know, surrounding the site,
21 photographing them, taking videos, so that if
22 there was any damage, that damage could be
23 repaired. But we do not have any specific
24 language about vibrations, as far as I know.

1 MR. GELLER: Having had the great
2 fortune of sitting on the Beacon Street case as
3 well. I think there were two factors that
4 actually drove us in that direction. One was
5 they were so close to the property line and
6 abutting structures that it became a
7 necessity.

8 And secondly, we sort of entered the
9 discussion because of the depth to which they
10 were going, and then, as they changed the
11 project, and they went to a shallower garage, I
12 think we said we retained that provision, but
13 I'm not sure, outside of the fact that they
14 were cutting all the way up to the property
15 line, whether we would have retained it
16 otherwise.

17 MS. SCHNEIDER: Okay. So is it your
18 opinion that that's not appropriate, given the
19 distance between these --

20 MR. GELLER: Well, my concern is that
21 I'm not sure they have the engineering yet to
22 know the answer to the question.

23 MS. SCHNEIDER: I'm not suggesting
24 that we put any kind of prohibition or

1 restriction on the means and methods of
2 construction. I'm trying to figure out if
3 there's a way of adding an additional layer of
4 monitoring, as Mr. Sheen indicated they had
5 done at 420, such that if, you know, they are
6 doing pile driving, for example, because
7 that's the only feasible way to do this, when
8 they start construction, can there be some sort
9 of alarm or monitor that tells them they need
10 to stop because they're having undue
11 vibrations on the --

12 MR. GELLER: I guess we would need to
13 know what the threshold is.

14 MS. SCHNEIDER: Does the development
15 team have -- I guess two questions. One, based
16 on the 420 experience, do you have any
17 parameters that you could suggest, and is that
18 a condition that you would be amenable to
19 working with the board to incorporate into this
20 decision?

21 MR. SHEEN: So I think we're already
22 required to submit and get approvals by the
23 building department construction management
24 plan. In the construction management plan, we

1 could address that specific issue as part of
2 that and work directly with the building
3 department.

4 MS. SCHNEIDER: Was that something
5 that was handled in your construction
6 management plan with building for 420?

7 MR. SHEEN: We believe so, yeah. I
8 mean, yeah, because we wouldn't have put in the
9 vibration monitors. It wasn't required.

10 MS. PALERMO: I sat on 420. I have
11 some vague memory.

12 MR. TARASOV: Will the construction
13 management plan be made available to the
14 public?

15 MR. SHEEN: Yes.

16 MR. GELLER: That's very interesting,
17 Lark, since I sat on it as well, and I have no
18 memory of it.

19 MS. SCHNEIDER: So did I. We were the
20 board. We were the board on that project, the
21 three of us.

22 MS. PALERMO: 420?

23 MS. SCHNEIDER: Yeah.

24 MR. GELLER: Yeah.

1 MS. PALERMO: I have some vague
2 memory, and maybe it was in the construction
3 management plan.

4 MS. SCHNEIDER: I mean, we do mention
5 there is language in here about conforming --

6 MS. PALERMO: In the construction in
7 21?

8 MS. SCHNEIDER: Yeah, in 21. Well,
9 let's come back to this. I don't mean to keep
10 you standing up there, sir, if you have more
11 comments.

12 MS. SELKOE: It does talk about
13 vibration. I haven't read the whole sentence.
14 "During construction" --

15 MR. GELLER: It just references
16 vibration.

17 MS. SELKOE: -- "the applicants are
18 to conform to all local, state, and federal
19 removal of contaminated soil, if any,
20 vibration" --

21 MS. PALERMO: Noise, vibration.

22 MS. SELKOE: -- "noise, dust, and
23 shall at all times use reasonable means to
24 minimize inconvenience to residents and

1 businesses in the general area." Not exactly
2 what we're talking about.

3 MS. SCHNEIDER: Let's put a pin in
4 this and come back and discuss it when we're
5 talking about conditions.

6 MR. TARASOV: And a question about
7 the construction management plan. You know,
8 the -- I'm not sure who the regulatory body is
9 that's responsible for this, but, you know,
10 we've kind of watched 455 sort of fatten and
11 swell its construction area at this point to
12 the point where it's eliminated, first, the
13 pedestrian walkway, then the bike lane, and
14 now, the jersey barriers are actually sneaking
15 into the driving lane, so the drivers are
16 having to actually go over the double yellow
17 line.

18 You know, that's creating a pretty
19 big public safety hazard. It's a really
20 difficult blind turn that everyone in our
21 community has to make every day to get onto
22 Harvard Street, and it's -- you know, I've been
23 a pedestrian there. I've been a driver there.
24 It's really unpleasant. You know, who do we

1 talk to about that, I guess, is the question?

2 MS. SCHNEIDER: It's the building
3 department. Unfortunately, that's not
4 something that we have direct control over.
5 All we can do is direct that the developer
6 enter into a construction management plan. But
7 it is absolutely the case with any project
8 that's ongoing. If you are having, you know,
9 significant concerns and issues, call the
10 building department.

11 MR. TARASOV: Okay, got it. Thank
12 you.

13 MS. SELKOE: And actually, sometimes
14 it's even better to put it in an email to the
15 building commissioner, and then it will be
16 followed up with town hall.

17 MR. TARASOV: Thank you. And one
18 final thing. I'm not sure what's in this
19 current draft decision, but I believe the one
20 that Ms. Selkoe shared with us did have a
21 commentary about contact with David Jaffe, the
22 property owner.

23 I would still -- I've spoken with
24 him. We strongly disagree with the way that

1 it's worded. He was contacted by a Remax agent
2 about purchasing the property, but at no time
3 did that agent mention anything about
4 construction. So perhaps he received a letter
5 from the board, but I think that just continues
6 to be inaccurate, and I think it is dishonest
7 on the part of the developer. So it calls into
8 question a lot of the other things we've heard
9 from Mr. Sheen.

10 MR. SHEEN: So just a point of
11 information. So I did speak to Mr. David Jaffe
12 today and addressed, point by point, his
13 concerns, and we reminded him of the past
14 conversations that was taking place. I think
15 there was some confusion in terms of the
16 outreach from our representatives.

17 We do have representatives that act
18 on our behalf a number of times that reach out
19 to abutting property owners to establish
20 contact. But I did make a concerted effort
21 today and spoke to him, in length, about the
22 construction management, as well as the
23 construction process and addressed a lot of his
24 concerns today.

1 MS. SCHNEIDER: We will get to it when
2 we're reviewing the decision, but thank you for
3 the clarification, and I hope that you will
4 continue to work with Mr. Jaffe and any of his
5 tenants who might take an interest in weighing
6 in on the construction management plan as you
7 are developing it.

8 MR. TARASOV: Thank you. I have no
9 more questions.

10 MS. SCHNEIDER: Thank you. Would
11 anyone else like to speak this evening before
12 we review the conditions? Come on up, please.

13 MS. ROSENBAUM: Hi. I'm Marilyn
14 Rosenbaum. I live at 73 Coolidge Street. I
15 just wanted to address a comment you made
16 earlier about talking to a resident that said
17 they really didn't care, and I think that's
18 very unfair.

19 I think that our neighborhood has
20 really been inundated with development.
21 People are feeling very frustrated. I do
22 appreciate that, you know, there's only so much
23 that the board can do under the Mass. laws, but
24 I don't think that's a fair representation of

1 the neighborhood, and I just want to correct
2 that.

3 MR. GELLER: Just to be clear, that
4 wasn't the board's assessment. That was
5 testimony that was offered at a hearing. So we
6 hear what you're saying, but it wasn't us.

7 MS. ROSENBAUM: There was one person
8 who -- and again, I don't know who it was. I
9 can't speak for them. But I'm just saying
10 that, you know, having lived in the
11 neighborhood for 41 years, that's not how
12 people are. And I know my neighbors who are
13 abutters that live behind there are, you know,
14 from a different -- I mean, they're immigrated
15 from a different country. They feel much --
16 very un-empowered by, you know, the whole
17 process and intimidated. I mean, there are
18 various reasons why people do not come, write
19 letters, whatever. But I just want to make
20 that comment.

21 MS. SCHNEIDER: And just by point of
22 clarification, it was not that people didn't
23 care. It's that people were so upset and sort
24 of worn down by the process --

1 MS. ROSENBAUM: Okay. That's not
2 what you said, though. That's different.

3 MS. SCHNEIDER: -- that they did not
4 feel like there was any point in participating.

5 MS. ROSENBAUM: No, I think that's a
6 more fair representation of how people are
7 feeling. All right. Thank you.

8 MR. GELLER: Thank you.

9 MS. SCHNEIDER: Thank you. Would
10 anyone else like to speak at this point in the
11 hearing? Anyone else? We do have the most
12 updated draft of the decision available on the
13 screen for us to review.

14 MS. SELKOE: Would you like me to go
15 up and scroll through it?

16 MS. SCHNEIDER: Do you want to
17 scroll? Does he want to scroll? Whatever is
18 easiest. Anything on procedural history?

19 MR. GELLER: Yes, Paragraph 10,
20 second line. No cheating. You've limited the
21 review and discussion to the project. It's
22 actually the original project and the project.
23 That's how we get to the revised --

24 MS. SELKOE: Where it says, "With

1 respect to the project"?

2 MR. GELLER: The original project and
3 the project. I'm done with procedural history
4 findings. Got it.

5 MS. SCHNEIDER: Got it. Findings, I
6 would suggest that we remove from the decision.

7 MR. GELLER: It doesn't serve a
8 purpose.

9 MS. SCHNEIDER: Well, it's not 10
10 anymore. Oh, these are changes that are being
11 made to the prior section. So we're now in
12 findings.

13 MR. GELLER: Findings, correct.

14 MS. SCHNEIDER: I would suggest that
15 we remove Paragraph 10 under Findings, which --
16 the subject of which is the applicant's
17 correspondence with neighbors.

18 MR. GELLER: There's no need for it.
19 The entirety?

20 MS. SCHNEIDER: The entirety of it,
21 please.

22 MR. GELLER: If it is easier to simply
23 mark it as "intentionally omitted" rather than
24 have to renumber.

1 MS. SELKOE: Well, I'm going to work
2 on this back in the office.

3 MR. GELLER: I don't have anything
4 else in findings. Conditions. Condition
5 number 3, Polly, at the end after "employees,"
6 add the phrase "as provided below." It will
7 make better sense later. The loading zone on
8 Harvard Street, who creates the loading zone?
9 The loading zone is on Harvard Street.

10 MS. SELKOE: You mean who constructs
11 it? Is that what you mean?

12 MR. GELLER: Yeah.

13 MS. SELKOE: Well, the applicant --

14 MR. GELLER: It's not the applicant's
15 loading zone, correct?

16 MS. SELKOE: Correct, but the
17 applicant is supposed to be contributing money
18 towards --

19 MR. GELLER: Right.

20 MS. SCHNEIDER: Is it a contribution
21 of money, or are they supposed to be performing
22 it in kind?

23 MS. SELKOE: Well, it can be either,
24 but let me just look at that condition, whether

1 we had the loading zone in there.

2 MR. GELLER: The only reason I've
3 raised it is because I find it confusing the
4 notion that -- the statement, "The loading zone
5 on Harvard Street shall not be for the
6 exclusive use of 445 Harvard Street tenants."
7 Unless they own that piece of land --

8 MS. SCHNEIDER: Of course, it's not.

9 MR. GELLER: -- then they wouldn't
10 have that right anyway.

11 MS. SELKOE: No, that was just
12 something the transportation board had
13 documented.

14 MR. GELLER: Okay. Then leave it in.
15 If it makes them happy, leave it in, but I
16 don't think it makes sense. Paragraph 8 is my
17 next one, at the end, "Commercial tenants and
18 customers of the commercial tenant."

19 Paragraph 12, I just had a question.
20 You've got "capitalized term plan of record."
21 Is that a defined term? Otherwise, what are we
22 taking about?

23 MS. SELKOE: What line is that on?

24 MS. SCHNEIDER: I think we're talking

1 about the site plans and architectural plans.

2 MR. GELLER: The fourth line.

3 MS. SCHNEIDER: I don't think we have
4 plan of record.

5 MR. GELLER: I don't either, but I
6 want to know --

7 MS. SELKOE: So maybe change it to the
8 "project."

9 MR. GELLER: Well, I think the intent
10 is that it will be consistent with the site
11 plans and architectural plans, correct?

12 MS. SELKOE: Yes.

13 MS. SCHNEIDER: So that's what it
14 should say.

15 MR. GELLER: Next, in 13. I would
16 parenthetically include in there, "Storage of
17 snow not being permitted on site."

18 MS. SELKOE: After what, "snow
19 removal plan"?

20 MR. GELLER: Yeah. Paragraph 16,
21 "The applicant shall use best efforts to
22 preserve and protect the street tree on," and I
23 think it was Thorndike Street; is that correct?

24 MS. SELKOE: I think there's also one

1 on --

2 MR. GELLER: Somebody on a particular
3 part of --

4 MR. DARTAGNAN: Harvard.

5 MR. GELLER: Was it Harvard?

6 MR. DARTAGNAN: Yeah.

7 MR. GELLER: So I would reference
8 that.

9 MR. DARTAGNAN: Existing street
10 trees, oh, and add here, "Along Harvard
11 Street"?

12 MR. GELLER: "The applicant shall use
13 best efforts to preserve and protect the street
14 tree on Harvard Street." If that's the tree
15 that we received testimony about, yes.

16 MR. DARTAGNAN: I say it's pretty
17 good.

18 MS. SELKOE: I'm sorry. It doesn't
19 say -- you're adding the language, "Best
20 effort"?

21 MR. GELLER: "Best effort."

22 MS. SCHNEIDER: It's a whole new
23 sentence.

24 MR. GELLER: A whole new sentence.

1 MS. SELKOE: So can you say it one
2 more time?

3 MR. GELLER: "The applicant shall use
4 best efforts to preserve and protect the street
5 tree on Harvard Street."

6 MR. DARTAGNAN: Oh, add that at the
7 end?

8 MR. GELLER: Yes.

9 MS. SELKOE: "To preserve and protect
10 the street tree on Harvard Street."

11 MS. SCHNEIDER: On 17, I know that we
12 talk about protecting the mural. I wonder if
13 we should specify that the mural is located --
14 I don't even know the address of the building.

15 MR. GELLER: Oh, that's a good point.
16 You know, I don't think there's likelihood of
17 confusion.

18 MS. SCHNEIDER: I don't think so
19 either, but one never knows.

20 MR. GELLER: Right. Do you know the
21 address?

22 MS. SCHNEIDER: Mr. Sheen, do you
23 know the address of the building that has the
24 mural?

1 MR. SHEEN: Yes. It's 435 Harvard
2 Street.

3 MS. SELKOE: "Protecting mural on 435
4 Harvard."

5 MR. DARTAGNAN: So protection of the
6 mural --

7 MS. SCHNEIDER: At 435 Harvard
8 Street.

9 MR. DARTAGNAN: 4 -- sorry, what was
10 it, again?

11 MR. SHEEN: 435 Harvard.

12 MS. SELKOE: And the "on" should be
13 "at."

14 MS. SCHNEIDER: Yes, it should be.

15 MR. SHEEN: So on this condition, we
16 don't actually own it. So I think it's --

17 MR. GELLER: Right. Understood.

18 MS. SCHNEIDER: Understood, but you
19 also have an obligation not to destroy abutting
20 property.

21 MR. SHEEN: Yes.

22 MR. GELLER: 19, "Traffic mitigation"
23 comma, "in addition to the provisions of
24 condition 32 below," which may be 33 at this

1 point. So we just need to check the
2 reference.

3 MR. DARTAGNAN: 32 below.

4 MR. GELLER: But just highlight 32 to
5 make sure it is still 32, because you've broken
6 up -- 32 actually also mitigation -- traffic
7 mitigation. 21.

8 MR. DARTAGNAN: You said 21?

9 MR. GELLER: 21 at the end, "From the
10 town" -- no --

11 MR. DARTAGNAN: Oh, go up?

12 MR. GELLER: Yeah, at the end of the
13 line before, yeah. Go to the end, to the
14 right, up one line.

15 MR. DARTAGNAN: Oh, here it is.

16 MR. GELLER: One down. There you go,
17 "From the town, building, public health, fire,
18 DPW, and planning departments." 33.

19 MS. SCHNEIDER: Can we go back to 21
20 for a moment? 21 was the details of the
21 construction management plan. We had, in our
22 public comment discussion, talked about
23 including, perhaps, some language regarding
24 vibration. I wonder if we should add in the

1 first sentence where it says -- I'm skipping
2 down -- "Applicant shall provide a
3 construction management plan that shall
4 include, but not be limited to," etcetera,
5 etcetera, etcetera, add in there "vibration
6 monitoring and mitigation."

7 MR. DARTAGNAN: After "pedestrian and
8 pathways."

9 MR. ENGLER: (Inaudible) locations.

10 MR. DARTAGNAN: After where?

11 MR. ENGLER: All those comments, you
12 can add in.

13 MR. DARTAGNAN: Yes, so after --

14 MR. ENGLER: (Inaudible)

15 MS. SCHNEIDER: It just needs to get
16 tucked somewhere into that sentence.

17 MS. SELKOE: "Vibration monitoring"
18 and what?

19 MS. SCHNEIDER: "Vibration monitoring
20 and mitigation."

21 MR. GELLER: 33, five lines down,
22 after the word "include" with the colon.

23 MR. DARTAGNAN: Up here?

24 MR. SHEEN: Providing.

1 MR. GELLER: Providing, yes. Go down
2 two more lines, and before the word
3 "providing." After the -- yeah, there you go.
4 "All leases and occupancy agreements to the
5 retail space" -- or not retail -- "commercial
6 space." I'm sorry.

7 MS. SELKOE: You said commercial
8 space?

9 MR. GELLER: -- "space shall" --
10 lower case C -- "shall require the tenant
11 thereunder to offer subsidized T passes to
12 employees."

13 MS. SCHNEIDER: Can we go back to 24
14 through 26. These are relatively recently
15 added conditions, per the fire department, and
16 I just wanted to make sure that the applicant
17 was aware that these have been added to the
18 decision.

19 MS. SELKOE: Yes, I did send them.

20 MR. GELLER: 35, the first line, do
21 you see the word "project"? Capitalize P.

22 MS. SCHNEIDER: Do we also need to
23 capitalize "units" after "affordable" in the
24 last line?

1 MR. GELLER: Yeah. 43. Isn't the
2 paradigm really that they will -- that there's
3 a 4-1 ratio throughout the project? It's not
4 that there are two affordable units for the
5 first eight market rate units.

6 MR. SHEEN: So this condition,
7 specifically, in practice actually doesn't
8 work, because the building --

9 MR. ENGLER: Construction doesn't tie
10 into that.

11 MR. SHEEN: But the building issue is
12 one --

13 MS. SCHNEIDER: One sort of
14 occupancy.

15 MR. SHEEN: -- multiple C of O.

16 MR. GELLER: There's no C of O for
17 individual units?

18 MS. SELKOE: No.

19 MR. DARTAGNAN: No, single building.

20 MR. SHEEN: So this condition really
21 in practice doesn't work.

22 MS. SELKOE: You can give temporary.

23 MR. DARTAGNAN: You can do a TC of O
24 if you try to bring units online, but not a C

1 of O.

2 MR. ENGLER: It was an old notion when
3 you're building single-family houses, you
4 couldn't do four in a row unless you had --

5 MR. DARTAGNAN: Like if you had a
6 townhouse style development?

7 MR. SHEEN: In practice, actually
8 this, I think is redundant. You would never --

9 MR. GELLER: They would never get a
10 certificate.

11 MS. SCHNEIDER: You can't get it for
12 the whole project anyway. We should just take
13 it out.

14 MS. PALERMO: I don't see any
15 problems taking it out. The concern is,
16 obviously, that the developer will be less
17 motivated to put the --

18 MR. GELLER: Right, of course. Is
19 there any chance --

20 MS. PALERMO: That they could occupy
21 the market rate units and not the affordable
22 ones --

23 MR. GELLER: Right.

24 MS. PALERMO: -- because of a C of O,

1 no.

2 MR. SHEEN: Also, what impacts us is
3 we're running into this as well. As we were
4 going through the post lottery for the
5 affordable units, even though we have over 500
6 eligible tenants on a waiting list, the actual
7 application and income certification process
8 is -- it's taking quite some time.

9 So there are -- you know, just
10 speaking from a 420 standpoint, for a market
11 rate unit, once we approve them for the lease,
12 that's it. And for the affordable units, even
13 though we've been working with the SEV housing,
14 with MHP, there's a separate audit that they
15 have to go through, and oftentimes that audit
16 takes much longer, even though they are in the
17 -- they are being accepted by us, but they
18 can't actually officially take residence or
19 sign a lease until they actually go through the
20 audit process, and that audit tends to take
21 longer.

22 MS. PALERMO: In other words, they
23 need to reestablish their income that they
24 followed in the income guidelines, and it's

1 incumbent upon the applicant to get copies of
2 their pay stubs, copies of their tax returns.
3 We do the whole thing all over again, so if
4 they're slow in delivering these documents,
5 the whole thing --

6 MR. SHEEN: It's been --

7 MS. PALERMO: -- it's valid.

8 MR. SHEEN: -- a big problem, because
9 it's taking them sometimes four months to get a
10 certification.

11 MS. SCHNEIDER: I have clients in
12 Boston who have the same problem.

13 MS. PALERMO: And it's often the
14 applicants. It's not up to the developer.
15 They just aren't, you know, good at getting all
16 those pieces of paper.

17 MR. GELLER: So there's no separate
18 CO?

19 MS. SCHNEIDER: There's no separate
20 CO, so it doesn't make sense --

21 MR. GELLER: -- for multiple --

22 MS. SCHNEIDER: For the different
23 units, right.

24 MR. GELLER: For the different -- no,

1 no, no. They've got two uses going on.
2 They've got a commercial space, and then
3 they've got residential.

4 MS. SCHNEIDER: So, I mean, we --

5 MR. GELLER: That would be separate.

6 MS. SCHNEIDER: Those will be
7 separate, but we can't break out --

8 MR. GELLER: No, I understand that.

9 MS. SCHNEIDER: -- the flavors of
10 residential units by C of O.

11 MR. GELLER: And the dynamic of a
12 single CO is presented because it's an
13 apartment structure. I don't care.

14 MS. SCHNEIDER: So I think we should
15 remove it.

16 MS. SELKOE: Delete it?

17 MS. SCHNEIDER: Yeah, strike all of
18 43.

19 MR. GELLER: That's all I actually
20 have.

21 MS. SCHNEIDER: Lark, do you have any
22 comments?

23 MS. PALERMO: No.

24 MS. SCHNEIDER: Are there any

1 clarifications or comments to the proposed
2 conditions from the developer?

3 MR. SHEEN: So I think we've gone back
4 and forth with Polly and staff on the
5 conditions that specifically had to do with the
6 pedestrian improvements. So our suggestion at
7 this point is leaving the option of either a
8 monetary contribution, or we'll be responsible
9 in the construction -- design and construction
10 of it, but it will be at our election upon the
11 building permit.

12 MS. SCHNEIDER: And you're fine with
13 the way it appears in the draft decision at
14 this moment?

15 MR. SHEEN: Yes.

16 MR. GELLER: Does transportation have
17 a comment about that?

18 MS. SELKOE: I did speak with Peter
19 Ditto, and I'm trying to determine whether they
20 -- when they're going to actually do the
21 installation, and he said they will.

22 MR. GELLER: So that's engineering.
23 Transportation wouldn't have an opinion on
24 that?

1 MS. SELKOE: I meant the director of
2 transportation engineering, Peter Ditto. I'm
3 sorry. That's who I spoke with. In fact, in
4 455, it did talk about the cost. It didn't
5 give an amount, but they were allowed to do the
6 construction themselves. So Peter Ditto said
7 that that was fine. So we can do this.

8 MR. GELLER: I assume by virtue of
9 their election, doing it themselves, they
10 think they can save money, but on the other
11 hand, they still have to comply with whatever
12 the requirements are that the town would
13 mandate.

14 MS. SELKOE: Right. The design has to
15 be approved by the town.

16 MR. SHEEN: So the only other thing
17 that, you know, I sort of call to as a point of
18 clarification is it will be done as part of our
19 normal course of construction, obviously. You
20 know, I understand that the two bump outs that
21 were required by 455 as part of their comp
22 permit conditions, you know, currently, only
23 one is built. So I don't know, you know, how
24 does the town address the construction of the

1 second bump out as part of their satisfying
2 your condition of approval.

3 MS. SELKOE: Well, it's my opinion
4 that I would not sign off on the C vote until
5 the second bump out is built, because that was
6 a condition of the decision.

7 MS. SCHNEIDER: I think that's right.

8 MS. SELKOE: So they couldn't get a
9 certificate of occupancy.

10 MR. GELLER: Building department
11 interpreted it that way?

12 MR. ENGLER: All the conditions have
13 to be met.

14 MS. SELKOE: Typically, that's what
15 they do, they have me sign off.

16 MR. GELLER: They're the ones who
17 make that decision.

18 MS. SELKOE: Absolutely, but I don't
19 see -- I mean, I can't tell you exactly, but
20 that's the way it's been working, is that I
21 have to sign off that all the conditions have
22 been met.

23 MR. GELLER: Okay. Anything else?

24 MR. SHEEN: That's it from our side.

1 MR. GELLER: Thank you.

2 MS. SCHNEIDER: Are there any further
3 -- now that we have reviewed the conditions and
4 made some modifications, are there any members
5 of the public who would like to comment on the
6 conditions as discussed or modified? Sir,
7 please come up.

8 MR. ?: Mordecai ? at 455 Harvard
9 Street. I just want to know last time I was in
10 the meeting, I had some sort of ambiguity about
11 the lobby being on Thorndike. Also, with the
12 volume -- traffic volume on Thorndike, you
13 know, it's two ways, and there's going to be a
14 lobby over there with the drop off and then
15 pickup with the Ubers. It's going to be hectic
16 over there. Have things changed there? Have
17 they changed the lobby, or have they changed
18 the design about the lobby?

19 And also, another thing was that I
20 would mention that the design I saw that night,
21 the garage is just right opposite our existing
22 garage. That's going to cause some problem in
23 the traffic on that street.

24 MS. SCHNEIDER: I know that you came

1 into the meeting a little bit on the later
2 side. Were you here when we were reading into
3 the record our peer review responses to the
4 letter your son wrote about these issues?

5 So those are issues that have been
6 amply peer reviewed. We do have, in several
7 different places, the analysis and
8 recommendations of our peer reviewers that the
9 location of the two driveways is not a safety
10 hazard, and I think that there's also --

11 MR. GELLER: And it's actually
12 preferred.

13 MS. SELKOE: It's preferred, right.

14 MS. SCHNEIDER: And it's, in fact,
15 the preferred alternative for the safety of
16 both the occupants and the residents of the
17 neighborhood. So I think at this point, we
18 would not have a basis to be asking the
19 developer to change that.

20 Similarly, we have, as I read into
21 the record before, comments from our design
22 peer reviewer about the appropriateness of the
23 residential lobby being located on Thorndike
24 Street.

1 MS. SELKOE: I just wanted to make a
2 comment that actually a second entrance to the
3 property was added, and so there is an entrance
4 on the property, to the property on Harvard
5 Street through the open space, and that was not
6 there originally.

7 MS. SCHNEIDER: That's right.

8 MS. SELKOE: So they could just as
9 easily be dropped off by an Uber on Harvard
10 Street and walk right into the lobby from
11 Harvard Street.

12 MS. SCHNEIDER: And I do know what I'm
13 seeing, and I don't know -- this is not
14 something I'm inclined to put into the decision
15 at this point, but I know that it is becoming a
16 trend in many municipalities in the area for
17 Uber points of pickup to be consolidated on,
18 you know, various locations on the street so
19 that, you know, if you are a resident, let's
20 say, of this project or 455 or 420, there might
21 be a designated Uber drop off or pickup point
22 on Harvard.

23 If you put in your property address
24 as your home destination or your pickup

1 destination, Uber or Lyft will immediately
2 default to that sort of common pickup space. I
3 don't know if that's something the developer
4 has experience with, would be thinking about
5 doing it. I'm sure you have seen it done on a
6 lot of projects now.

7 So that's something that I think I
8 would urge the developer to give some
9 consideration to. That's something that's a
10 conversation between the developer and Uber
11 and Lyft, and it might have the advantage of
12 alleviating some of the pressure that people
13 are concerned about from multiple pickups and
14 drop offs in and around the project site.

15 MR. ?: But, I mean, if the lobby is
16 on Thorndike, I mean, any Uber could come and
17 drop off --

18 MS. SCHNEIDER: But that's what I'm
19 saying, is that it's becoming --

20 MR. ?: (Inaudible) that you have to
21 drop off on Harvard Street.

22 MS. SCHNEIDER: Well, it's becoming
23 more and more of a trend for there to be a
24 designated point for one or more projects, you

1 know, within a very close proximity, close
2 radius where it's not necessarily lobby drop
3 off and pickup. If you put in that address, it
4 does not pick you up at your lobby. It picks
5 you up half a block away at some designated
6 location.

7 MR. ?: I remember when we asked for
8 the lobby to be on Thorndike, the town, you
9 know, refused. They say it have to be on
10 Harvard Street. I remember that.

11 MS. SCHNEIDER: Well, this is a
12 different -- you know, this is a different
13 project, and this project has, as I said at the
14 outset of this hearing, gone through a year of
15 peer review, and we have, you know, lots of
16 opinion from our town staff, and also from our
17 design reviewer, that that's an appropriate
18 and safe place for the lobby to be located.

19 MR. ?: So if they can change the
20 lobby, that would be really helpful to all the
21 neighbors.

22 MS. SCHNEIDER: Thank you for your
23 feedback.

24 MR. ?: Thank you.

1 MS. SCHNEIDER: So what is the
2 board's desire at this point? I think that we
3 have two options now that we have taken
4 additional public testimony. We have heard
5 from the developer. We have reviewed draft
6 conditions. Is the board feeling like we are
7 ready to take a vote on this as conditioned, or
8 would we like to put this over to another
9 hearing to let this marinate a bit more?

10 MS. PALERMO: I'm comfortable either
11 way.

12 MS. SCHNEIDER: As am I.

13 MR. GELLER: I think -- are any of the
14 changes that we've made substantive enough
15 that they require for the review and condition?
16 I'd say they are not.

17 MS. SELKOE: No, I don't think so.

18 MR. GELLER: Do you feel you need to
19 see them again?

20 MS. SCHNEIDER: I do not feel like I
21 need to see them again.

22 MR. GELLER: My feeling is that in
23 that case, frankly, we've had limited public
24 testimony this evening that would require me to

1 really think about further details that need to
2 go into a decision or a vote. My inclination
3 is to vote.

4 MS. SCHNEIDER: I would agree with
5 that.

6 MR. GELLER: We're not going to find
7 -- we're not going to glean more information.

8 MS. SCHNEIDER: Yeah, and, you know,
9 I will say that I went into this hearing on the
10 fence, given the renewed public interest in
11 this project that we've seen over the last few
12 weeks. I wanted to make sure that every
13 neighbor who wished to comment and have us
14 consider concerns and comments in the
15 conditions had an opportunity to be heard.

16 You know, I think we have taken,
17 comments from the public. I think, hopefully,
18 the public who's here tonight is satisfied with
19 the way that we have addressed their comments.
20 We thank you for coming out and paying close
21 attention to this. But I'm prepared to vote on
22 this project, subject to the conditions that we
23 have here tonight modified.

24 MR. GELLER: So let's take a vote.

1 MS. SELKOE: Do we need to read the
2 exhibits into the record before you vote, or is
3 that done after? There's three exhibits.
4 Exhibit 1 is a waiver list, which we approved
5 previously.

6 MS. SCHNEIDER: We did.

7 MS. SELKOE: Exhibit 2 is the
8 replacement regulatory agreement, which has
9 been included in all the previous decisions.
10 And Number 3 is just a copy of the notice of
11 hearing to show that it was actually advertised
12 and required by law prior to the first hearing.

13 MR. GELLER: Yeah.

14 MS. SCHNEIDER: Yeah.

15 MR. GELLER: Are you all right with
16 those?

17 MS. SELKOE: Yes.

18 MS. SCHNEIDER: Yes.

19 MR. GELLER: I would be in favor of
20 granting the comprehensive permit, subject to
21 the conditions that we reviewed, as we've
22 revised them. I think that we, in particular,
23 have significant peer review comment that
24 support an issuance of a comprehensive permit

1 and the conditions as we've written them. I
2 think we do not have peer review support for
3 the notion that there is a basis on which we
4 could deny the comprehensive permit. I think
5 it would likely not be supportable, should we
6 choose to do that, despite peer review comment.

7 I am, as always with these cases,
8 very mindful that this is a very large
9 structure, and it is a very big change from
10 what currently exists and what we've
11 experienced, but that's the nature of 40B. So
12 we sort of have to look at what the statute
13 enables us to look at and act accordingly. So
14 I'm in favor of granting it, subject to the
15 conditions that we've revised.

16 MS. SCHNEIDER: I agree.

17 MS. PALERMO: I agree.

18 MR. GELLER: Let me raise one other
19 topic, which is I would like the board to vote
20 to authorize the chair to have the authority to
21 review -- we know what it's going to look like,
22 but to review the final version and to execute
23 and deliver that for filing with town clerk.

24 MS. PALERMO: I agree.

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MR. GELLER: Are you in favor?

MS. SCHNEIDER: Yeah, I'm fine with that.

MR. GELLER: Great. Madame Chair, do you want to close this?

MS. SCHNEIDER: And with that, it is a unanimous grant of the comprehensive permit, subject to the conditions. A final decision reviewed and signed by me will issue in due course within the statutory time frames. With that, the hearing is now closed.

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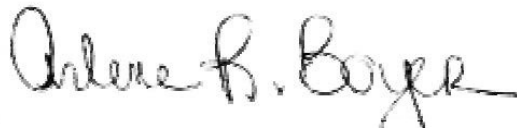
COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

I, ARLENE R. BOYER, a Certified Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:

That the proceedings herein was recorded by me and transcribed by me; and that such transcript is a true record of the proceedings, to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 23rd day of December, 2019.



Arlene R. Boyer, CVR
Notary Public

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