

FOR THE
CITY OF WALTHAM
ZONING BOARD OF APPEALS

GENERAL HEARING

February 2, 2016

7:00 P.M.

at

Public Meeting Room, First Floor
Arthur Clark Government Center
119 School Street
Waltham, Massachusetts 02451

Barbara Rando, Chair
Mark Hickernell, Clerk
Glenna Gelineau
Sarah Hankins
John Sergi

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Waltham Zoning Board of Appeals/2-2-16/2

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P R O C E E D I N G S

BARBARA RANDO, CHAIR: Good evening.
The Zoning Board of Appeals for Tuesday, February 2,
2016 is called to order at 7:00 p.m.

Tonight we have one continued case
before us.

The continued case is Case 2015-27,
Sadie M. Cardillo, Trustee of 105-107 River Street
Irrevocable Realty Trust; Anthony G. Cardillo, Jr.
and Anthony G. Cardillo, III, Trustees of AAM Realty
Trust and Anthony G. Cardillo, Jr. The address is
105-107 River Street, but it doesn't say the aft
here, does it? It's something aft Willow Street.

JOHN SERGI: 194.

BARBARA RANDO, CHAIR: Is it 194?

JOHN SERGI: Yeah.

BARBARA RANDO, CHAIR: Yeah, there it
is, 194 aft. Willow Street.

The members sitting this evening are
Mr. Sergi, Mr. Hickernell, Ms. Gelineau, and Ms.
Hankins, and I am Barbara Rando.

The first action this evening would be
-- well, actually, we don't have any minute yet.

//

1 Case Number 2015-27: Sadie M. Cardillo, Trustee of
2 105-107 River Street Irrevocable Realty Trust;
3 Anthony G. Cardillo, Jr. and Anthony G. Cardillo,
4 III, Trustees of AAM Realty Trust and Anthony G.
5 Cardillo, Jr., 194 aft Willow Street, 105R River
6 Street, and 105-107 River Street.

7

8 BARBARA RANDO, CHAIR: I would like
9 the Clerk to read the petition in Case 2015-27.

10 MARK HICKERNELL: (The Clerk reads the
11 above-mentioned petition into the record. See
12 Attached.)

13 BARBARA RANDO, CHAIR: Thank you.

14 May we hear from the Petitioner or the
15 Petitioner's representative please?

16 ATTORNEY JOSEPH CONNORS: Good
17 evening, Madam Chair, members of the Board. My name
18 is Joseph M. Connors, Jr. I'm an attorney and I
19 represent the Petitioners, the three Petitioners. My
20 office is at 404 Main Street here in Waltham.

21 I had prepared a brief and submitted
22 it electronically. I will submit another copy to the
23 Board.

24 BARBARA RANDO, CHAIR: Thank you.

1 GLENNA GELINEAU: Thank you.

2 JOHN SERGI: No changes, counselor?
3 Same one?

4 ATTORNEY JOSEPH CONNORS: Same one,
5 yeah. Yeah, we were here a couple of weeks ago. It
6 was continued to today.

7 So, as was stated -- oh, let me back
8 up. Tonight here with me is Anthony Cardillo, and
9 we'll call him Anthony and Tony so we don't get
10 confused as to who is junior and who is the third.
11 But, there's Tony right here, Michael, Anthony, and
12 Joseph. And so they're the members of the Cardillo
13 family.

14 So, the site and the locus, there's
15 three different lots. So, hence, the reading of the
16 notice is 105-107 River Street. So, if you're on
17 River Street here across the street -- can you see?
18 Across the street, this large building here in blue,
19 that's the River Street plaza there. You have Shaw's
20 down at this end, the pharmacy over here, and the
21 Subway on the corner. So, this is at the
22 intersection of Willow Street and River Street. So,
23 105-107, there's a two-family on the front of the
24 lot. There's a garage at the rear of the lot.

1 Dion's Liquors is next door, but it's non-locus. And
2 then the Cardillos also own two other lots. One is
3 here in the middle, which is referred to legally as
4 105 R River Street, and this lot here, this long
5 skinny one, which is referred to as 194 aft Willow
6 Street because it has frontage on Willow Street. So,
7 that was kind of the locus plan to put you in the
8 neighborhood.

9 And this is a little bit more of
10 detailed plan that we had prepared by Mr. Bibbo,
11 which shows, again, 105-107, which is this lot here,
12 194 aft, which is this lot here, and 105 R River
13 Street, which is the middle lot.

14 And just, you know, before I get into
15 the brief, I'll state that this lot here, 105-107,
16 was purchased by the Cardillos in the 1960s. All
17 right? And these two buildings have been there for -
18 - this was constructed in I think it predated zoning
19 and the garage was back in the '70s. This lot here
20 was purchased by the Cardillos in the I think it was
21 1990. And then the middle lot, the center lot, which
22 is actually a former railroad easement -- the
23 purchased that from the Boston and Maine Railroad in
24 I think it was 2001. So, those three pieces of the

1 puzzle make up the Cardillo's locus, although they're
2 separate lots. And I think we have to treat them as
3 separate lots because they are separate lots and they
4 were acquired at different times which is critical, I
5 think, to the issues before the Board.

6 So, that's kind of where we're at in
7 the City of Waltham. I will say that, you know, the
8 Cardillos, we did hear from the Inspector, Mr. Forte,
9 in the summer, August of this past summer 2015. He
10 asked to go onto the property and do an inspection,
11 which we met him there and he did an inspection. He
12 was concerned about some activities there and we
13 reviewed them. And we were intending to go to the
14 City Council for a special permit and then we got the
15 notice of violations on October 28. So that was a
16 couple of months after he had done the site
17 inspection.

18 So, there are six articulated
19 violations in this notice of violation in the letter
20 from the Inspector dated October 28th. We, in our
21 appeal, have generally and specifically denied them
22 all. And I state in my appeal, which is a
23 restatement of what was in the appeal application, is
24 that all six allegations fail to state with

1 particularity the location, structure, lots, and/or
2 materials which allegedly create zoning violations.
3 The Petitioners cannot properly defend any
4 allegations as they are so general and nonspecific
5 that we are unsure as to which structure and/or use
6 is allegedly in violation.

7 Number two, any alleged dimensional or
8 use violation are protected under Mass. General Laws,
9 Chapter 40A, Section 6 and 7 as the Building
10 Inspector -- the Building Inspector has known of said
11 violations since at least 1995 or earlier. And I say
12 that because in his note in the violation he brings
13 up past issues with the property, which he asks, or
14 therefore infers, that there must have been an issue.

15 And our inference would be there was an issue, but
16 it was resolved and no prosecution followed the
17 allegation.

18 And then I cite specific denials on
19 page three of my brief. So, I'll go through those.

20 As to allegation number one, the
21 October 28th violation states "Open Storage." The
22 Inspector alleges that the Petitioner maintained open
23 storage illegally in violation of 3.248. They deny
24 the allegation and further state that the allegation

1 is vague and nonspecific as to where the violation is
2 occurring because he's made it against all three
3 properties and he hasn't articulated whether it
4 relates to all three of them or one specific one.
5 But the Petitioners further allege that any storage
6 of materials conforms to the conditions of 3.248,
7 screened from public view, more than 10 feet from the
8 street line and/or enclosed after business hours.

9 Number two, the alleged violation, the
10 second alleged violation of Section 3.628, "Truck
11 storage, contracting equipment" without a special
12 permit. The Petitioners allege that any storage of
13 trucks or contracting equipment is legal as it is a
14 pre-existing nonconforming use conducted by the
15 Petitioners.

16 Specific denial number three, the
17 alleged violation of 3.245, "Truck or private bus
18 terminal." This use is a by right use in an
19 Industrial Zoning District provided that the area is
20 graded, paved, and drained. The Petitioners contend
21 that the area is graded, paved, and has drainage.
22 You'll see on the locus plan we have here, we have
23 cited the same, which is on this lot, on this lot.
24 So, there's drainage. There's paving. You'll see in

1 the pictures that have been submitted by the Building
2 Inspector that it's paved over, it's graded. There
3 doesn't appear to be any issues with the grade or the
4 grade changes.

5 Number four, we specifically state
6 that allegation number four, violation of 3.861,
7 "Dumping or storage of soil, sand, or gravel," the
8 allegation fails to articulate when and where the
9 violation took place. The allegation also fails to
10 state when and where the three feet was measured by
11 the Inspector because it's increasing by three feet
12 the average existing elevation of the lot. So, we
13 need to take the average existing elevation of the
14 lot. He hasn't articulated which lot he's referring
15 to, when the measurements were taken, or how he's
16 determined that it's in violation.

17 Number five, I specifically deny the
18 allegation, but I would admit that I don't think it's
19 in the purview of the Zoning Board of Appeals as
20 number five states that "unpermitted structures in
21 violation of the state building code." So, I believe
22 that, you know, there may be zoning issues, but the
23 allegation is violation of the state building code
24 and that would be in the purview of the State

1 Building Board, who actually I appealed and they
2 refused the appeal until all zoning issues were
3 resolved. So, we deny it. We specifically deny it.
4 And, again, we state that the notice fails to
5 articulate which structure because he does note that
6 there are many items on the property which he
7 considers to be structures -- storage containers,
8 tents, large concrete blocks -- but he's failed to
9 allege which one is allegedly a structure, which one
10 is in violation and which one -- and whether or not
11 the retaining wall -- because a retaining wall under
12 the Waltham code is not subject to any setbacks. So,
13 we deny it, and we'd call upon the Building Inspector
14 to provide more particulars as to which item is
15 deemed to be a structure or a retaining wall, and
16 which violation of the state building code are we
17 specifically violating.

18 And, number six, again, I deny it
19 specifically because the allegation alleges the
20 onsite inspection confirmed that there are several
21 structures which violate the setback requirements of
22 the Industrial Zoning District. We deny this
23 generally. No specific structure is cited or which
24 setback, front, side, or rear is violated. Further,

1 any allegation of a violation of FAR is denied as the
2 property is exempt from FAR.

3 So, the dimensional requirements of
4 this particular -- these particular lots in an
5 Industrial Zoning District are that because the lots
6 are under 25,000 square feet and because we have less
7 than 100 feet of frontage, there's a front yard
8 requirement but there's only one side yard of 15 feet
9 and zero on the other side, and there's no rear yard
10 setback requirement at all. So, I am uncertain as to
11 which structure he's referring to and whether it's
12 allegedly in violation or not because he hasn't
13 articulated in the violation.

14 I cite in my brief on pages four and
15 five the jurisdiction of the Board. As you know, the
16 Board is authorized under the Zoning Code under
17 Section 7.31 and 7.2 to hear an appeal of the
18 decision of the Building Inspector.

19 I also cite, and I know Inspector
20 Forte mentioned it in his submittal yesterday, about
21 who has the burden. And I would say that the
22 jurisdiction of the Board is to -- you know, they
23 have the jurisdiction to hear any appeal of a
24 decision of the Building Inspector, but I also think

1 it's important for the Board to know that if there's
2 an allegation of a violation then the burden of proof
3 is on the Building Inspector. It's not on my brief,
4 but I'll cite to you *Brotherhood of Alpha Upsilon v.*
5 *the Zoning Board of Appeals of Bridgewater*. I'll
6 submit a copy of that case to you. It's a short
7 case. For one, it states that the burden of proof on
8 an allegation of a zoning violation is on the
9 Building Inspector, number one.

10 Number two, it does also state, and I
11 don't disagree with the Building Inspector, that if
12 we're going to raise a nonconforming -- pre-existing
13 nonconforming use as a defense, then the burden is on
14 us to prove that. So, I think there's two different
15 burdens that are related to this case. Violations
16 would be on the Inspector to prove, but we have a
17 burden to prove that if we believe we have a pre-
18 existing nonconforming use that's our burden, which I
19 believe we do.

20 BARBARA RANDO, CHAIR: May I interrupt
21 and say you think you do? How did you prove it? How
22 do you feel that you've proven it's pre-existing
23 nonconforming?

24 ATTORNEY JOSEPH CONNORS: Well,

1 there's three different properties. Okay? I have
2 submitted an affidavit from Anthony Cardillo. And he
3 has been in the A. Cardillo & Sons business since the
4 19 -- did I submit that affidavit? Yeah, I did.
5 Okay. So, his affidavit, he's a principal of A.
6 Cardillo & Sons, an excavation and contracting. His
7 father started the company in 1948. He purchased the
8 property at 105-107 River Street in 1966 for the
9 purpose of using and maintain the excavation
10 equipment and company there.

11 BARBARA RANDO, CHAIR: I'm sorry. I
12 didn't hear the dates. I'm sorry. Say that again.

13 ATTORNEY JOSEPH CONNORS: Yeah, number
14 four of the affidavit, which is attached to --

15 BARBARA RANDO, CHAIR: Mm hum.

16 ATTORNEY JOSEPH CONNORS: States that
17 "My father Anthony G. Cardillo, Sr. purchased the
18 property at 105-107 River Street in 1966 for the
19 purpose of using and maintaining the excavation
20 equipment and company."

21 Number five, I state that "The company
22 has stored and maintained heavy trucks and heavy
23 equipment on the locus at 105-107 River Street since
24 1966." And, Anthony, Jr. has signed this affidavit.

1 I have pictures --

2 MARK HICKERNELL: Let me ask you about
3 that. It says he started working in 1971, and he's
4 testifying under oath to something that happened
5 before that. What's the basis of his knowledge?

6 ATTORNEY JOSEPH CONNORS: Well, his
7 father was running the business and he was a child
8 that would go down to the business with his father on
9 a daily basis, a weekly basis. So, although he
10 wasn't working there, he made the observation because
11 it was a family business and he would go with his
12 father and he would make the observations at the
13 business. I also have pictures.

14 BARBARA RANDO, CHAIR: Do you have any
15 bank statements or billing from companies that used
16 you as a contracting company or whatever you were at
17 that time?

18 TONY CARDILLO: I could get files from
19 my father, my father's files.

20 BARBARA RANDO, CHAIR: So it would go
21 back to what year do you think?

22 TONY CARDILLO: The '40s. He kept
23 mostly everything. But, yeah, he -- I worked with my
24 father all my life since five years old. I never got

1 paid, but I was working -- I was working for a long
2 time.

3 BARBARA RANDO, CHAIR: Do you want to
4 speak into the microphone so the people at home can
5 hear, too, because that's interesting what you're
6 saying.

7 TONY CARDILLO: Yes.

8 ATTORNEY JOSEPH CONNORS: And, Madam
9 Chair, I do have pictures that Anthony has provided
10 me which show that there are trucks, heavy trucks at
11 the site. And, before he states it, there's three
12 different locuses involved. 105-107 River Street was
13 the first property that was purchased by the Cardillo
14 family, and that was in the '60s, so the number one
15 property. And I think clearly what the pictures and
16 the affidavit of Tony, there's no question that heavy
17 trucks have been stored there since the 1960s. But
18 I'll let you add onto that.

19 TONY CARDILLO: We had a garage down
20 on River Street -- I mean down on Pleasant Street in
21 Watertown. This property came up for sale, and we
22 were looking for something. I just remember as a kid
23 that it was always tough. Nobody wants construction
24 equipment. So, when the property came up for sale,

1 if you remember Joe Collura. Joe Collura was a
2 Waltham real estate guy for a long time. So, they
3 got my father in there and they says industrial
4 property. We go down and we research it. Billy
5 Krientes (phonetic) -- who was that, your Uncle Tony
6 -- he was the building inspector at the time, went
7 down there and told him what was going on. Yeah,
8 it's an industrial area. That's where you belong.
9 He bought it in '66. We were using it. We were
10 using it to park equipment at the time. At the time,
11 it was a parking lot because, if you remember, when
12 Raytheon was big, the place was mobbed. Everybody
13 had their own little parking lot. As Raytheon
14 started to diminish that's when all these pieces of
15 property started to be used for something else.

16 My father bought it. We stored
17 equipment there. When we moved out of Watertown, we
18 decided we wanted to build a garage. Moved out of
19 Watertown. We built a garage. I was probably a
20 senior in high school at the time, and we built the
21 garage. The old Italian method, okay, let's go,
22 let's get together everybody we know. Built the
23 garage there, moved in, and we've been there ever
24 since.

1 SARAH HANKINS: You bought -- but you
2 bought part of the location in the '90s?

3 TONY CARDILLO: We bought -- this is
4 the original piece of property that we bought. We
5 built that garage in the early '70s we built it. I'm
6 going to say '70, in the beginning of the '70s. This
7 piece of property here was owned by Harold Blenkhorn.
8 Harold Blenkhorn owned the barroom on Willow Street.
9 I think it was called the Willow Café or something at
10 the time. As Raytheon started to -- this was a
11 parking lot. If you remember, the gas station over
12 here, Johnny Paone owned the gas station. And he
13 used to rent the gas station out to Pat Conte and a
14 few of the local contractors. As Raytheon started to
15 diminish, Harold, he started renting this out to
16 contractors. We were there. It was a good place for
17 us to park. It was local. So, we started parking
18 there.

19 One day, either him or his son came to
20 my father and he says, "The property's for sale."
21 And we ended up buying that and we just used it for
22 storage of equipment. And it was more of a -- we put
23 equipment there and then we would short dump. In
24 other words, if we were doing a job in Waltham, we

1 might store some stone there. We might store gravel.
2 We'd have loam there. So, if you were doing a job,
3 you wouldn't have to send the trucks, "Okay, go to
4 Leominster and get me a load of stone." We had stone
5 on site. And that's what we did. We used that place
6 and we kept waiting for the railroad to go out of
7 business.

8 The problem with the railroad was at
9 the time they were serving Quincy Cold Storage down
10 the street. And B&M Railroad has this rule that the
11 track has to be unused either for three years or five
12 years. I forget what it was. When that time came
13 up, if you remember, B&M went crazy. They sold
14 everything. They sold all the property. They were
15 changing hands at the time. So, everything was for
16 sale. We bought that, what would you say, in the
17 2000s? Like I said, we were waiting for it to come
18 up. And then we started -- that was more of a
19 driveway to get to -- we wouldn't hold the place. We
20 were using that for some parking. We were -- this
21 was a maintenance garage. The only time that stuff
22 would show up was when it was broken or when it had
23 to be serviced. Most of our equipment is left on
24 site. Too costly to move stuff around, juggle the

1 stuff around.

2 SARAH HANKINS: But if you're saying
3 the pre-existing nonconforming is based on the fact
4 that you bought the lot in the '60s, then how would
5 that be applicable to the lot you bought more
6 recently?

7 ATTORNEY JOSEPH CONNORS: It's not.

8 SARAH HANKINS: Okay.

9 ATTORNEY JOSEPH CONNORS: And we never
10 --

11 SARAH HANKINS: All right. So are
12 there trucks stored on that particular lot?

13 ATTORNEY JOSEPH CONNORS: No.

14 TONY CARDILLO: No.

15 ATTORNEY JOSEPH CONNORS: No, the
16 trucks -- to the extent that they have trucks and
17 heavy equipment, they store it at 105-107, and
18 they're storing materials and some trucks at 194 aft.
19 But there's nothing that can be stored here. They
20 don't intend to store it there. Now, there are
21 pictures that the Inspector has that will show trucks
22 and equipment in that area.

23 SARAH HANKINS: There's a truck. One
24 of his pictures has a truck sitting right on -- I

1 mean sort of the corner of Willow and River, which my
2 understanding would be is the newer lot.

3 ATTORNEY JOSEPH CONNORS: I'm not
4 denying that. So, the thing is that during the day,
5 during the work day, they're not unutilized or
6 stationary. They're being utilized for the purposes
7 of their excavation and general contracting business
8 or distributing materials. So, the pictures we have
9 show some trucks there but that's during the daytime.
10 So, the problem for them is the heavy storage of
11 trucks between 10:00 p.m. and 6:00 a.m. So that's
12 the time that's critical to the storage of heavy
13 trucks because that's the time that you need a
14 special permit to do it. And so at night they store
15 their excavation and heavy trucks at 105-107 and I
16 think maybe one or two over here, but they don't
17 maintain anything in here because this is the -- it
18 acts as the driveway. It acts as the driveway to
19 come into the --

20 SARAH HANKINS: So then what were you
21 asking the City Council for a special permit, for
22 which particular lot?

23 ATTORNEY JOSEPH CONNORS: Well, our
24 thinking was that rather than, you know, have a big

1 fight with the City, try to simplify things and maybe
2 expand it. If we went to the City Council and asked
3 for all three properties, put them together and asked
4 for a special permit to store our heavy trucks, then
5 that would have solved it or at least it would have
6 attempted a resolution of it. But we have a notice
7 of violation. So, I believe that we needed to file
8 an appeal because if we simply accepted it as a
9 violation, we'd waive our right to claim anything was
10 pre-existing and grandfathered.

11 SARAH HANKINS: But then, all things
12 being equal, if you went in front of the City Council
13 you would ask for a special permit for truck storage
14 on all three properties or all of the locus. But if
15 you're saying it's only stored on one, I'm wondering
16 why you'd get a special permit for the whole thing if
17 you don't intend on doing that.

18 ATTORNEY JOSEPH CONNORS: Because he
19 asked me to, first of all.

20 SARAH HANKINS: Okay.

21 ATTORNEY JOSEPH CONNORS: So, rather
22 than get a notice of violation we said, "Okay. We'll
23 think about it. We'll do it." But then we got a
24 notice of violation, so now we have to defend our

1 rights. And we felt that even at the time, in the
2 initial discussions with the Building Inspector in
3 August of 2015, that we had grandfathered rights.
4 But we admit that it doesn't apply to 105 R. It
5 doesn't, you know. We admit that.

6 SARAH HANKINS: Because if you're
7 going to come here and say that there's no heavy
8 equipment stored on where it's not grandfathered in,
9 but if you're getting the special permit for all of
10 the properties, it would make me think that you were
11 either storing it now or intend on it.

12 ATTORNEY JOSEPH CONNORS: Well, we're
13 not getting a special permit because we were hit with
14 the violation.

15 SARAH HANKINS: Okay.

16 ATTORNEY JOSEPH CONNORS: So, our
17 opportunity to get there -- maybe we'll still do it -
18 -

19 SARAH HANKINS: Sure.

20 ATTORNEY JOSEPH CONNORS: But, at the
21 time, we were spending more effort trying to defend
22 our pre-existing nonconforming rights.

23 And I wanted to submit to you there
24 are more pictures because they go through the years.

1 But the trucks have been stored down there. And
2 there's another kind of a -- I don't think they have
3 dates on them, but, as Tony has testified, they've
4 been storing heavy equipment down there since the
5 '60s.

6 There is attached to the brief a copy
7 of the state card for the property, which states that
8 in 10/6 of 1971, Anthony G. Cardillo was given a
9 permit for a two-car garage. In Exhibit B, there's a
10 copy of the proposed garage. It shows the garage
11 right here. It shows the two-family in the front.
12 And then it also, in Exhibit C, they added a little
13 addition onto the side of the garage. They added a
14 little area here.

15 So, we feel that the -- and I've also
16 enclosed a copy of the letter from Mr. Blenkhorn,
17 which was dated August 1, 1995. When this issue came
18 up in 1995, Mr. Cardillo went out and got a letter
19 from Mr. Blenkhorn where he states that in 1987 they
20 had leased 194 aft Willow Street to the Cardillo
21 Family to store their vehicles there.

22 So, at the time, the railroad was a
23 railroad. They couldn't use that, so they used over
24 here and they used over here.

1 So, I think there's evidence that
2 these uses were on those two lots, or heavy trucking
3 was on those two lots in the 1960s, in the 1970s, and
4 in 1987 for 194 Willow Street. As I say, you know,
5 the middle lot is a different story. And we admit
6 that there's no pre-existing nonconforming protection
7 there, but the pictures you're seeing are of trucks
8 during the daytime and that's the drive area.

9 But I'm going to go back to my brief.

10 BARBARA RANDO, CHAIR: Can I mention -
11 - can I go back to my nonconforming?

12 ATTORNEY JOSEPH CONNORS: Sure.

13 BARBARA RANDO, CHAIR: We kind of got
14 off of it. I think it would help the Petitioner if
15 you could prove that it was used in the same manner
16 and to the same extent that it is being used today,
17 if he can prove that it was used in the same manner
18 and the same extent continuously from when he started
19 until today.

20 ATTORNEY JOSEPH CONNORS: Well, I mean
21 I think I -- I think we provided you with some
22 testimony.

23 BARBARA RANDO, CHAIR: Well, the
24 pictures don't have dates. And his testimony, I

1 would need some billing, some ledger work saying that
2 it was indeed used.

3 ATTORNEY JOSEPH CONNORS: We could do
4 that. And the other thing is that I mean this lot --

5 BARBARA RANDO, CHAIR: Consistently.

6 ATTORNEY JOSEPH CONNORS: Yeah. This
7 lot is --

8 BARBARA RANDO, CHAIR: Without a
9 break.

10 ATTORNEY JOSEPH CONNORS: I just want
11 to back up and say the lot, the dimension of the lot
12 is collectively about 10,000 square feet. It's a
13 small lot. He can only fit so many trucks on there,
14 you know.

15 BARBARA RANDO, CHAIR: I was down
16 there. I made a site view.

17 ATTORNEY JOSEPH CONNORS: Yeah, it's a
18 small lot. So, during the night you'll go down there
19 and you'll see that there's some Mack trucks parked
20 over here, there's some equipment over here, and
21 there's equipment parked in the garage. So, I don't
22 think it's a problem for Tony to come up with billing
23 records to show that he's been consistently engaged
24 in the excavation and general contracting business.

1 BARBARA RANDO, CHAIR: And selling of
2 whatever he sells.

3 ATTORNEY JOSEPH CONNORS: Well, I'm
4 just talking about the heavy equipment and the
5 trucks. Okay?

6 BARBARA RANDO, CHAIR: Okay. All
7 right.

8 ATTORNEY JOSEPH CONNORS: So then I'll
9 go back to violation number one, which is the illegal
10 storage of the following items: soil, stone, gravel,
11 sand, asphalt debris, granite blocks, concrete
12 blocks, cinder blocks, wooden pallets, planking,
13 wood, tires, bricks, PVC piping, metal piping, plows,
14 and plow blades. The October 28th letter from the
15 Inspector cites the definition of open storage. We
16 don't disagree with the definition. The definition
17 is the definition. But it doesn't prohibit open
18 storage, it simply states that if you're going to
19 store anything outside it needs to meet certain
20 parameters or conditions. And so it has to be 10
21 feet from the street line. The materials we're
22 talking about here, and I'm going to assume there are
23 materials here, there's plows, and there's little
24 blocks, and little pieces of wood. And you'll show

1 in the pictures from the Inspector he has I think old
2 cobblestones lined up in the back of the building
3 here.

4 So, I would say that, one, a lot of
5 the items are not materials and goods, which is
6 specifically what it talks about under the definition
7 of open storage. Open storage means the storage of
8 merchandise and goods. So, anything that's related
9 to the business, the plows, the plows are stored
10 outside.

11 SARAH HANKINS: Are you saying they
12 don't sell materials to --

13 ATTORNEY JOSEPH CONNORS: No, I'm not
14 saying that. I'm saying there's a lot of things on
15 the laundry list that have been cited by the
16 Inspector. And I'm saying several of the items --

17 SARAH HANKINS: Well, specific to
18 that, if you're saying it's not goods, why would you
19 say it's not goods if they are being sold to the --

20 ATTORNEY JOSEPH CONNORS: They're not.
21 I'm saying the plows aren't being sold to anyone.

22 SARAH HANKINS: No, I'm talking the
23 materials, the, you know, sand, gravel, you know, the
24 things in those bins that you can see kind of near

1 Dion's Liquors.

2 ATTORNEY JOSEPH CONNORS: It is. I'm
3 just trying to separate. We have materials and goods
4 -- materials and goods, which is for resale. There
5 is some of that. But there's also several items in
6 here that are not even applicable. So, just because
7 I keep a plow in my yard doesn't mean I'm violating
8 the open storage law because if you read the
9 definition of open storage it talks about merchandise
10 or goods. So, I would say that that section applies
11 to the sand, gravel, that's right here. That
12 applies. I agree with you. But the citation for
13 plows, citation for pallets, citation for
14 cobblestones that are kept in the back of the
15 property, they're merchandise that -- not even
16 merchandise -- they're articles of their industry
17 that are stored on-site. So, I would say --

18 MARK HICKERNELL: What are the
19 cobblestones used for, for example, then? Is it just
20 a pile of junk or what is it?

21 TONY CARDILLO: Patio, sidewalks.

22 ATTORNEY JOSEPH CONNORS: But they're
23 stuff that's retrieved from a jobsite and it just
24 sits there, you know, for years. But it's not

1 necessarily up for sale. This is what the
2 merchandise -- and I agree with you, this is open
3 storage. Okay? So the only way he can keep that
4 material there is if he screens it and encloses it
5 under the terms of the definition. So, I just want
6 to pull out that definition because I think this is
7 like the most important page of the case here in the
8 Zoning Book.

9 You've got Article 3.247, Article
10 3.248, and Article 3.249, and these are the ones that
11 are -- these are the ones that -- the first one talks
12 about down to open storage. So, it says that open
13 storage, you can't do it unless you -- items are
14 screened from public and private ways and adjacent
15 residentially zoned properties whenever stored out of
16 doors. And, after normal business hours, they need
17 to be stored in an enclosed area.

18 So, we admit that they're not
19 enclosed. We would like to put up a fence and
20 enclose it at night. But we've got quotes from fence
21 companies that are telling us it's going to cost us
22 \$15,000 to do that, approximately. Now, they'd be
23 willing to do it, but they don't want to spend
24 \$15,000 if we're still going to be fighting with the

1 Building Inspector as to whether or not that's going
2 to satisfy the definition of open storage.

3 BARBARA RANDO, CHAIR: So, the fence
4 would go right near the driveway?

5 ATTORNEY JOSEPH CONNORS: It's going
6 to have to go right here. It's going to go through.
7 And so what we're contemplating is a sliding fence
8 that would go behind the Dion building up against the
9 wall, and when they close for the evening they slide
10 it to enclose from here to there.

11 BARBARA RANDO, CHAIR: And that's the
12 driveway for the trucks to back in and out, correct?

13 ATTORNEY JOSEPH CONNORS: Right. And
14 then they'd have to have another fence here that
15 would swing, and that would swing closed. So they'd
16 have to enclose it and screen it, you know, after
17 normal business hours. So, we admit that, yeah,
18 there's materials here that is materials and goods
19 for resale. That meets the definition under open
20 storage. It's not prohibited provided that you meet
21 the conditions set out under the definitions section.
22 We'd like to be able to enclose it at night and
23 screen it so, therefore, it meets the definition so
24 we're not in violation. We haven't done that

1 because, you know, it's a lot of money. They're
2 businessmen. They don't want to spend a lot of money
3 unless they're going to come up with a solution.

4 And so the definition of open storage
5 says that if you're going to store it out of doors,
6 after normal business hours, you must store it in an
7 enclosed area. So, it doesn't mean indoors. It
8 means out of doors with an enclosure, which is a
9 fence. So, I think that's a solution to that problem
10 there if, in fact, the Board was to agree. That's
11 what it states in the ordinance and that's how we
12 feel we can remedy that alleged violation, which,
13 again, this merchandise has been outside and they've
14 been doing this for years. You know, until this
15 summer they didn't realize they had an alleged
16 violation.

17 So, that's number one. So, I think
18 there's some issues that are materials and goods or
19 merchandise that needs to be screened, but there's
20 other things that are simply not relevant to the
21 allegation.

22 As to violation number two, the
23 Building Inspector cites storage of -- truck storage,
24 contracting equipment. I think we've already

1 addressed that. But, again, it's the keeping of
2 heavy trucks and heavy equipment as defined under the
3 Code, meaning a truck over five tons or heavy
4 equipment over three tons, out of doors or unenclosed
5 areas from 10:00 p.m. to 6:00 a.m. We believe that
6 we have a pre-existing grandfathered right to stay
7 out here at 105-107 and 194 aft. That's where the
8 vehicles are kept from 10 to 6 p.m. (sic), so they're
9 not even kept on site. I mean a lot of their
10 excavation and heavy equipment is kept other places,
11 at the worksite or at other facilities they have.

12 BARBARA RANDO, CHAIR: Attorney
13 Connors, what's the weight of their trucks more or
14 less?

15 ATTORNEY JOSEPH CONNORS: Well, some
16 of them are going to definitely be over five tons.

17 BARBARA RANDO, CHAIR: Well, isn't it
18 over five tons you need a special permit?

19 ATTORNEY JOSEPH CONNORS: Yes, if
20 you're going to -- unless it's pre-existing
21 nonconforming, unless it's a grandfathered protected
22 right.

23 BARBARA RANDO, CHAIR: So it goes back
24 to the nonconforming again.

1 ATTORNEY JOSEPH CONNORS: Yes. Yes.
2 You know, and if you look at that definition, that's
3 definition two in the list of definitions that I gave
4 you I believe.

5 BARBARA RANDO, CHAIR: Yeah.

6 ATTORNEY JOSEPH CONNORS: And, again,
7 that gets into -- actually, that's definition number
8 3.247. And that's between the hours of 10 and 6 p.m.
9 (sic), so -- I mean 10 p.m. and 6 a.m. So, their
10 materials are either stored on the sites which they
11 have the grandfathered right or they're indoors at
12 that time of the evening.

13 And then I'll go to -- and I cited the
14 affidavit of Anthony. And then I did enclose a copy
15 of the 1964 Zoning Ordinance. And the '64 Zoning
16 Ordinance, which is attached to the petition, which
17 is Section 29 -- excuse me -- Section 21-31, which
18 states specifically that it's a permitted use. Any
19 permitted uses is any -- any purpose not expressly
20 prohibited, and then they list prohibited uses.
21 That's not listed.

22 Now, I know the Building Inspector,
23 you know, took a look at that and cited Section 21-
24 29, where truck terminals and storage yards for heavy

1 trucking equipment is a prohibited use. But that's
2 prohibited because it's in the Commercial Zoning
3 District. So that's not applicable. We're in an
4 Industrial Zoning District. So that's why I've
5 attached a copy of 21-31 on the next page. So,
6 there's a difference between a Commercial Zone and an
7 Industrial Zone. So, in 1964 when they started at
8 105-107 in the Industrial Zone, storage of heavy
9 equipment was permitted by right. It wasn't required
10 to have a special permit in an Industrial Zoning
11 District until I believe it was 1988. So, again,
12 this property is protected as well.

13 And then going on to violation number
14 three, which is the third one in the definitions
15 section that I provided to the Board, that is the
16 violation of the truck or private bus terminal. And
17 I would state that, again, it's a by right use in an
18 Industrial Zoning District provided that it's graded,
19 paved, and you have drainage. And you'll see from
20 the pictures from the Inspector it's paved and it's
21 graded. We have drainage. And, again, they've been
22 doing this since the '60s at least for over here.
23 And it wasn't a prohibited use then. So, we believe
24 that we haven't violated the terms of the definition.

1 Really, this is the first time they ever heard that
2 they were operating a truck terminal. But if it's
3 deemed that it's a truck terminal, they contend that
4 it's graded, paved, and they have drainage, and
5 there's the drainage shown on the plan. The pictures
6 you'll see that it's paved.

7 Violation number four is the dumping
8 or the storage of soil, sand, and gravel. And he
9 states that the mounds of gravel have exceeded three
10 feet, which is a violation of Section 3.681. We deny
11 the allegation. And, again, it talks about when
12 you're displacing the average existing elevation of a
13 lot by more than a foot. We would say that the
14 average existing elevation hasn't been determined,
15 but the soil that we keep there is fungible
16 materials. It is there for the purposes of the
17 building and the business. When they do an
18 excavation job or when they sell some loam to someone
19 that's doing an excavation job, the materials come
20 and they go. So, it is not stored there for purposes
21 of long-term. It's simply a fungible material that
22 is coming and going as a material, as a goods for
23 resale, or a good that is related to their business
24 as excavators and contractors.

1 Violation number five, again, I say
2 that it's --

3 BARBARA RANDO, CHAIR: Let's stay on
4 four for one second.

5 ATTORNEY JOSEPH CONNORS: Sure.

6 BARBARA RANDO, CHAIR: "The allegation
7 also fails to state how and when the three feet were
8 measured by the Inspector." What does that mean?

9 ATTORNEY JOSEPH CONNORS: Well, you
10 look at the Zoning Book, it says that the average
11 existing elevation is how you determine elevation
12 changes. And so --

13 BARBARA RANDO, CHAIR: Oh, that's what
14 you're saying.

15 ATTORNEY JOSEPH CONNORS: Yeah.

16 BARBARA RANDO, CHAIR: That you don't
17 know how he --

18 ATTORNEY JOSEPH CONNORS: We don't
19 know what the elevation is, so how do we determine
20 the change?

21 BARBARA RANDO, CHAIR: Okay.

22 MARK HICKERNELL: Does this small lot
23 have a substantial change in elevation?

24 ATTORNEY JOSEPH CONNORS: Here? I

1 don't believe so. We have fungible materials that
2 come and go daily. We're not altering the exterior
3 or the perimeter elevation of the lot.

4 SARAH HANKINS: The Code doesn't
5 really specify whether it's storage in sort of a
6 long-term fashion or a short-term fashion. So, how
7 did you determine that because it's, you know, kind
8 of not being stored in a long-term fashion it
9 wouldn't count as storage?

10 ATTORNEY JOSEPH CONNORS: Well, I'm
11 not saying it's not being -- it is stored, but it's
12 fungible materials that comes and goes daily, so the
13 elevation changes daily.

14 SARAH HANKINS: Oh, I see. Okay.

15 ATTORNEY JOSEPH CONNORS: It comes and
16 it goes.

17 My brief, I again cite violation
18 number five, which is a violation of the State
19 Building Code.

20 JOHN SERGI: Counsel, excuse me. Are
21 you saying the elevations of the piles of sand, the
22 piles of loam, change?

23 ATTORNEY JOSEPH CONNORS: Yeah.

24 JOHN SERGI: And that determines the

1 elevation of the lot?

2 ATTORNEY JOSEPH CONNORS: No, no. I'm
3 saying the elevation of the loam comes and goes on a
4 daily basis.

5 JOHN SERGI: Right.

6 ATTORNEY JOSEPH CONNORS: But the
7 elevation of the lot is determined by the perimeter
8 of the lot.

9 JOHN SERGI: Right.

10 ATTORNEY JOSEPH CONNORS: So, first,
11 you have to determine what the average existing
12 elevation of the lot is because that's how you define
13 elevation under the Waltham Zoning Code. You have to
14 take a measurement of the perimeter and then
15 determine what the elevation is. And then you have
16 to determine whether or not we're changing that by
17 three feet.

18 I would say that, one, they're simply
19 piles of materials that are moving and so they're not
20 affecting the perimeter of the lot for the average
21 existing elevation. But, also, they're fungible
22 materials that come and go. So it's not like they're
23 just stored here for a long period of time and we
24 affect the average elevation. They don't because

1 they come and go with the business of the
2 contractors.

3 JOHN SERGI: Okay.

4 ATTORNEY JOSEPH CONNORS: And, number
5 five is the violation of State Building Code, which I
6 think is not the jurisdiction of the Board.

7 Number six, I think it's really just a
8 general allegation. I've cited in my brief why I
9 believe that the structures that we do have on the
10 locus, the existing two-family here, which was built
11 pre-1925, is not even on the --

12 BARBARA RANDO, CHAIR: Are you on
13 number six?

14 ATTORNEY JOSEPH CONNORS: Yeah.

15 BARBARA RANDO, CHAIR: Number five.

16 ATTORNEY JOSEPH CONNORS: Right.

17 BARBARA RANDO, CHAIR: I think that
18 the Building Inspector said that the retaining walls
19 were straddling the lot line. That would be under
20 our jurisdiction.

21 ATTORNEY JOSEPH CONNORS: Well, if
22 they're retaining walls. So, I mean I think he's
23 making a general allegation. So, let's say they're
24 retaining walls. The setback requirements don't

1 apply to retaining walls. Right in the Code. But I
2 think he -- I mean he entitles it "unpermitted
3 structures in violation of the State Building Code."

4 BARBARA RANDO, CHAIR: Under 4.11?
5 Did he state 4.11?

6 ATTORNEY JOSEPH CONNORS: No, CMR 105,
7 780 CMR 108.

8 BARBARA RANDO, CHAIR: Okay.

9 ATTORNEY JOSEPH CONNORS: But the
10 retaining wall, if they're retaining walls, if you
11 did deem them to be, they're not subject to the
12 setback violation -- setback code. The code exempts
13 retaining walls from setbacks. So, I can build a
14 retaining wall up to the side of the lot line, hence,
15 the retaining wall. You see them all around town.
16 People will build a retaining wall on the edge of
17 their property to retain loam or someone's yard.

18 You know, I'm not sure if he's deeming
19 these blocks of cement structures, or retaining
20 walls, or both. I don't know.

21 BARBARA RANDO, CHAIR: I'm sure he'll
22 explain it in a few minutes.

23 ATTORNEY JOSEPH CONNORS: I'm sure he
24 will. But, if they're retaining walls, the setbacks

1 don't apply. But I think that that violation is a
2 violation of the State Building Code, which is -- I
3 mean if the Board wants to hear it. I don't know if
4 they can address the State Building Code.

5 And violation number six is for 4.11.
6 And, again, it's a general allegation. I think there
7 are some structures on here that maybe do violate.
8 And we have containers. Okay? Containers are --
9 when they put them in, they thought they were
10 temporary containers that they would store materials
11 incidental to their business. You know, and I think
12 some of these, you know, may have to be moved. But,
13 we haven't really called out which structure is a
14 violation. So, I would say that the actual
15 buildings, as opposed to containers, this building
16 and this building here, this one predates zoning,
17 predates 1925. This one, the existing garage was
18 permitted in the 1970s with an addition soon
19 thereafter.

20 So, the only thing else we have on the
21 property that could arguably be a structure would be
22 the containers. And so I mean I think we'd like to
23 move these to the satisfaction of the Building
24 Inspector, but we need to know if he's talking about

1 that. If the container -- he listed retaining walls.
2 I don't think --

3 MARK HICKERNELL: Did you ask him?

4 ATTORNEY JOSEPH CONNORS: No, I filed
5 this appeal. And I did ask him the other day, but
6 I'm not going to hold that to him. He said, "Let's
7 see what the Board does and we'll deal with it from
8 there." But I mean I think the containers
9 themselves, we could relocate those, you know. But,
10 as I said in the beginning, or earlier, because the
11 lot is under 25,000 square feet, because the lot is
12 in an Industrial Zone, there's a zero rear yard
13 setback and zero one side yard setback, so I think
14 there's a place we can find for these containers to
15 be situated on the locus that won't be in violation
16 of the building code.

17 But, number six, I believe we need
18 some more details as to which structure he believes
19 is in violation. If he does that, then we can move
20 it I believe. But I think that the buildings
21 themselves are -- if there's any violations, it's
22 either pre-existing, or nonconforming, or it is
23 protected under 40A, Section 7.

24 I know I've been talking a long time,

1 but I wanted to submit some copies of letters that
2 were received by the Cardillos. There's letters from
3 the owners of the Shaw's on River Street in support
4 of the development, and they've been a long-term
5 neighbor of the Cardillos.

6 Mr. Dion is here. He's the owner of
7 the Dion's Liquor Store. There he is back there. He
8 submitted a letter in support of his neighbor, the
9 Cardillos. You know, his building is right on the
10 property line of the Cardillo's building. This is
11 his building right here. But, you know, they've been
12 long -- he's been a longtime neighbor. He's had no
13 problem with the activities of the Cardillos and
14 their business there.

15 And I think the Board already has
16 copies of my exhibits A, B, C, and D, and the
17 affidavit of Tony Cardillo.

18 I do have some more pictures. Again,
19 they're undated, but I do think they certainly give
20 the Board an idea of what the property looks like.
21 And some of these pictures go back to prior to when
22 they purchased the railroad track from Boston and
23 Maine because you'll see that the tracks are still
24 there.

1 MARK HICKERNELL: Some of them do have
2 dates on them?

3 ATTORNEY JOSEPH CONNORS: Do they?

4 MARK HICKERNELL: Yeah.

5 SARAH HANKINS: On the back some of
6 them do, on the back.

7 MARK HICKERNELL: '83, '85, and '88.

8 SARAH HANKINS: Attorney Connors, when
9 they were issued this 2010 cease and desist for, you
10 know, the open storage violation that we're talking
11 about, they're talking about resolving with the
12 fence, what action was taken in 2010 to resolve that
13 violation?

14 ATTORNEY JOSEPH CONNORS: You know, I
15 wasn't involved in 2010, but I mean I think Anthony
16 could talk to that.

17 BARBARA RANDO, CHAIR: You'd have to
18 go to the microphone, sir, so the people at home
19 could hear. Give your name and address for the
20 record, please.

21 ANTHONY CARDILLO: Anthony Cardillo,
22 203 Grove Street.

23 When we received that violation, the
24 landscaping that you see out there now on the corner,

1 and part of the landscape bed that there's now, we
2 planted a bunch of landscaping bushes and stuff like
3 that. We thought that sufficed everything. And that
4 was the last time we -- once we did that, we didn't
5 hear from him, hear back from him. I think at that
6 point it was --

7 SARAH HANKINS: So, after 2010 you
8 didn't -- you haven't heard anything before the
9 current Inspector?

10 ANTHONY CARDILLO: Right. We thought
11 we were all set. We had basically showed -- at the
12 time, it was Mr. Powell. We had basically showed
13 him, you know, told him about our existing
14 nonconforming use there. And then that's, you know,
15 they asked, you know, they said we needed screening.
16 So, we planted that. And, you know, that was it till
17 recently.

18 BARBARA RANDO, CHAIR: Thank you.

19 ATTORNEY JOSEPH CONNORS: So, I'm
20 available for questions, but I would conclude my
21 presentation --

22 BARBARA RANDO, CHAIR: Mr. Sergi, do
23 you have any questions at this time?

24 JOHN SERGI: No, not at this time,

1 Madam Chair.

2 BARBARA RANDO, CHAIR: Mr. Hickernell?

3 MARK HICKERNELL: Just briefly, the
4 open storage. I think in your initial remarks this
5 evening you said one of the issues you had was that
6 it was -- the allegation on the part of the Building
7 Inspector was vague. But I mean then you went and
8 identified some very specific things. Is it fair to
9 say we pretty much know what we're talking about
10 here?

11 ATTORNEY JOSEPH CONNORS: Well, I'm
12 going to assume he's talking about this, but I think
13 he wants to apply it to everything. He's got
14 pictures of plows and things. I don't think it
15 applies to plows. I mean if they're in the business
16 of plowing streets for the City of Waltham, then they
17 have a right to park their plow. But I will concede
18 that these materials that you see the pictures of
19 that's probably the primary focus of his allegation.

20 MARK HICKERNELL: Okay.

21 ATTORNEY JOSEPH CONNORS: But I think
22 it's because of that.

23 MARK HICKERNELL: Thank you.

24 BARBARA RANDO, CHAIR: Attorney

1 Connors, did you have a chance to look at this small
2 brief that the Building Inspector presented?

3 ATTORNEY JOSEPH CONNORS: I did. I
4 did.

5 BARBARA RANDO, CHAIR: Okay.

6 ATTORNEY JOSEPH CONNORS: Again, so,
7 well, I think the only point I wanted to make was I
8 think that I did look at that. I had an opportunity.
9 I looked at the pictures. There's some from August
10 when he came for the site inspection. I think there
11 was one from September 1st, too. And, again, there's
12 pictures of trucks. And there's pictures of trucks
13 all over the place. But, I mean they're in the
14 process of working. They're being utilized. They're
15 not stationary. They're not sitting there. So, I
16 mean I think that we have protected rights to keep
17 them overnight and these pictures reflect the
18 workday, number one.

19 And, number two, he does cite the
20 section from the 1964 Code, which I have given this
21 Board a copy of the Code that applies to the
22 commercial section and to the industrial section. I
23 don't know why I did that. I just confused
24 everybody. But what applies to this case in 1964 was

1 what's permitted in the Industrial Zone. And, under
2 21-31, storage of heavy trucks is a by right use. So
3 that was the purpose of that.

4 BARBARA RANDO, CHAIR: Let me ask you
5 one other question before you leave. As far as the
6 safety with the trucks driving in and backing up,
7 getting filled and driving out when there are cars
8 coming from the liquor store trying to go out that
9 first exit, do you find a problem with that?

10 ATTORNEY JOSEPH CONNORS: Well, it's a
11 tight intersection.

12 BARBARA RANDO, CHAIR: It's close to
13 the -- it's close to the intersection.

14 ATTORNEY JOSEPH CONNORS: But I mean
15 they're coming out where the railroad came out and
16 crossed River Street for I don't know over 100 years.
17 So, yes, it's a tight situation. But I mean Mr. Dion
18 does business right next to him. I don't think he's
19 encountered any problems with the safety. But I mean
20 they control that. Anthony's out there. Michael's
21 out there every day. They're watching what's going
22 on. So, I haven't heard of any incidents. I see a
23 picture of a couple of kids going by on a bike, but -
24 - and we can control that. I mean if the Building

1 Inspector wants us to, you know, close one area of
2 that during the daytime, we'd be willing to work that
3 out.

4 BARBARA RANDO, CHAIR: Because I was
5 caught today between two trucks, one truck coming out
6 and one truck trying to go in. And I came out that
7 way.

8 ATTORNEY JOSEPH CONNORS: Which way?
9 This way?

10 BARBARA RANDO, CHAIR: I came out the
11 -- I don't know. It must have been the second exit.

12 ATTORNEY JOSEPH CONNORS: Yeah, you
13 come in here and you go out there. But I think they
14 don't usually, you know, come in here and then go out
15 there.

16 BARBARA RANDO, CHAIR: They did. They
17 drove in and backed in.

18 ATTORNEY JOSEPH CONNORS: Right.

19 BARBARA RANDO, CHAIR: And then came
20 back out again. One went straight. I think the
21 other one took the first exit, if I'm correct. Same
22 company trucks. And I thought how close it is to the
23 intersection. And I parked there for maybe ten
24 minutes and watched the activity.

1 All right. Thank you.

2 Is there anyone, before we call on the
3 Building Inspector, that is in opposition to this?

4 (No response.)

5 BARBARA RANDO, CHAIR: Is there anyone
6 in favor to this? One, two, three, four, five, six,
7 seven, eight. Right. Eight people in favor.

8 Is there anyone seeking information
9 just to ask questions?

10 BARBARA RANDO, CHAIR: Would anyone
11 like to stand and be in favor and speak in the
12 microphone? Go right ahead. Name and address?

13 WALTER OHNEMUS: My name is Walter
14 Ohnemus. I live at 32 Cowasset Lane in Waltham.

15 STENOGRAPHER: What's your last name?

16 WALTER OHNEMUS: What's that?

17 STENOGRAPHER: Spell your last name,
18 please.

19 WALTER OHNEMUS: O-h-n-e-m-u-s. I
20 just came to support the Cardillos today. I've known
21 them probably close to 40 years. I'm very familiar
22 with their property. I'm familiar with their
23 acquisition of additional property over the years.
24 And I know that they try and run a good operation. I

1 don't think that they've in any way tried to deceive
2 anybody by the type of operation that they run or
3 that they've knowingly, in my opinion, knowingly, you
4 know, done anything to violate any zoning ordinances.

5 The point that I'd like to make about
6 it is how did we get here because I just don't know
7 where the complaint came from. If everybody that
8 neighbors the property is in favor of it, where is
9 the complaint from? Is it just a unilateral
10 arbitrary complaint by the Building Inspector? Well,
11 you know, I don't think that there's a street in this
12 city that I can't drive down that I can't find a
13 zoning violation. I can bring the Building
14 Department five zoning violations a day for the rest
15 of their life because they're just out there. But my
16 point is if there's no complaint perhaps we could
17 find an easier way to resolve this problem at a lower
18 level perhaps next time, or in the next case, where
19 we don't have to cause somebody the expense, in a way
20 the humiliation might be a harsh word, but it's still
21 bringing somebody out in the public forum that maybe
22 this could have been done at a much lower level. So,
23 that's all I'd like to say.

24 Thank you.

1 BARBARA RANDO, CHAIR: Thank you. I
2 think the public has the right though to know the
3 Zoning Ordinances that are blatantly not enforced.
4 I'm not talking about this particular case. But, as
5 the Building Inspector, it's his job for the City to
6 stand up against something like that.

7 All right. Anyone else that would
8 like to speak?

9 Mr. Forte?

10 WILLIAM FORTE: Good evening, Madam
11 Chair. For the record, my name is William Forte.
12 I'm the Inspector of Buildings for the City of
13 Waltham. I drafted a Notice of Violation here dated
14 October 28th, 2015.

15 I will tell you that the complaint,
16 there was no complaint on the property. I noticed
17 this while I was driving by.

18 Madam Chair, you had referred to the
19 same type of situation that I was in. I was pretty
20 much blocked in at an intersection. I noticed a
21 great deal of heavy commercial traffic, and it
22 brought my attention to the property.

23 I did speak with Attorney Connors back
24 prior to the issuance of this notice. And, under the

1 Zoning Ordinance, I am not allowed to defer a Notice
2 of Violation action in accordance with the Ordinance.
3 I would make every effort to try to handle this
4 without a Violation Notice. However, it was pointed
5 out to me by counsel that I am not allowed to defer
6 enforcement action. What I am allowed to defer is
7 legal action based on any kind of legal equitable
8 proceedings that may follow if compliance is not met.

9 So, I will just tell you that we did
10 have a discussion about a special permit and a Notice
11 of Violation had to be issued under the Ordinance. I
12 had no choice in the matter.

13 So, I believe that you have all
14 received a copy of the -- basically the summation and
15 the draft in response to the Petitioner's --
16 basically the Petitioner's denial of the violations.
17 And I'll just systematically go over them, if we
18 would just maybe kindly refer to the picture gallery.
19 And I'll just kind of go right down the list and try
20 to systematically just kind of identify them.

21 So, in violation number one, in
22 photographs numbers five, six, 19, 20, 21, 29, 34,
23 35, 37, 40, and 41, basically this violation covers a
24 number of different products between the front line

1 of the building and the street. Okay? There's no
2 building here. Okay? There's really no building to
3 depict where a product might be stored. Therefore,
4 any open storage I would consider a violation. It's
5 pretty obvious by looking at the pictures that the
6 open storage is pretty much self-explanatory here.
7 Obviously, this loose aggregate material, I don't
8 know that it's the intent of the ordinance to cover
9 such material. I don't know that they're -- you
10 know, I would -- I would agree with Attorney Connors
11 that, you know, that the ordinance and the section of
12 the ordinance is a little bit vague when it comes to
13 open storage. So, I wouldn't totally disagree with
14 Attorney Connor's interpretation of that. But I
15 would say pretty clearly here that it does appear
16 that there is open storage.

17 Attorney Connors also referred to some
18 of the open storage of certain materials. It does
19 say in the ordinance that whether goods are for sale
20 or not -- and I'll just kind of defer to that a
21 little bit here in my Notice of Violation, if you
22 would refer to violation number one. It says,
23 "Storage or display of merchandise or goods, new or
24 used, whether for sale, retail, or wholesale, whether

1 crated, uncrated, or in cartons within 10 feet of a
2 street line." So, they're not necessarily talking
3 about items for display or for sale. They're talking
4 about any items at all, whether they're a collection
5 -- it could be a collection of anything. I don't see
6 where the items that are located in the back of the
7 building would be excluded from this. And I do
8 believe that they meet the definition of open loose
9 storage given the fact that they're not contained.
10 And I would simply say that.

11 So, I would say that my charge of
12 number one does carry some weight. I would say that,
13 you know, this product doesn't necessarily have to be
14 for sale in order for it to be legal or not. So, I
15 would say it meets the definition of open storage.

16 In violation number two, and I'll just
17 -- I'll just -- violation number two, I know that the
18 claim here by the Petitioner is a pre-existing legal
19 nonconforming use. Let me just defer to picture
20 number four here of violation number two. I have it
21 sectioned off. Obviously, this equipment is needed
22 to move this material in and out. I would just tell
23 you that my concern here is the amount of volume
24 that's going on here in any given day. I happened to

1 visit the site two different times. One set of
2 photos was taken from the street. That would have
3 been in the early August time. You know, the amount
4 of activity on this site is alarming. And I would
5 say that one of the reasons why a special permit is
6 required for this type of activity is because it
7 needs to be set into a certain area where it's not
8 going to be, you know, dangerous to the public.

9 You know, most of the earth-moving
10 equipment is back here where the Petitioners claim
11 they have a pre-existing legal nonconforming use.
12 I'll get into that. But I would just say that for
13 now that this heavy earth-moving equipment is just
14 about everywhere on the locus. And I don't see that
15 there is any pre-existing legal nonconforming rights
16 to be able to operate this equipment regardless of
17 what type of product they're selling. So, I don't
18 see how that fits into the criterion.

19 So, I would ask you to support
20 violation number two as depicted in here that earth-
21 moving equipment operations are allowed in an
22 Industrial District by special permit only. Again, I
23 will reflect back that even in 1964 that those types
24 of uses were allowed by special permit only. They

1 were not allowed as of right. And I will defer to
2 that at the end of my summation here. But I will
3 show you where it's not allowed as of right, and I
4 will reflect on that. So, obviously all the
5 vehicles depicted in those pictures do exceed the
6 five-ton weight limit that's allowed that, you know,
7 that is not allowed without a special permit.

8 Violation number three, this is the
9 one I want to bring your attention to mostly. Again,
10 Attorney Connors very eloquently referred to this
11 picture here, number 18. Here is my concern. Okay?
12 I'm an experienced construction manager. I've been
13 around these trucks. In fact, I've had delivered t
14 me hundreds and hundreds of yards of material. Given
15 that a flat even surface would probably be the most
16 stable surface for a truck this size to be able to
17 dump its load into an area, there's two things that
18 concern me. First of all, the amount of force that
19 comes off of this bed when it's shifted fully in the
20 air, there's quite a bit of lateral force that's
21 involved with this. The fact that there was two
22 children in front of a fully extended 18-wheel dump
23 truck is to me is an egregious safety problem. It is
24 a huge safety problem. Okay? Children should be

1 nowhere near an operation like this. And I don't
2 know how many times a day this 18-wheeler might dump,
3 but I would just tell you at the time, and this is
4 just in any random moment during the day, I was able
5 to find this. It brings great alarm to, you know, to
6 the fact that this operation has existed without a
7 special permit. There are no safeguards in place for
8 this. And I would want to bring special attention to
9 that.

10 Also in picture number 22, you'll see
11 that trucks are usually there in idle waiting to
12 load. Again, this would bring about some of the
13 terminal -- the truck terminal effect. Whereas,
14 trucks are in and out delivering goods, it would meet
15 that definition.

16 Obviously, this is a tractor-trailer
17 here that's parked in picture number 30. And, in 36,
18 there's also a truck here that's basically dumping
19 some kind of fill and some kind of material there at
20 the locus.

21 Violation number four, this is going
22 to show piles of soil, sand, gravel, earth. And the
23 increase in elevation, I'll just give you an example.
24 I want you to maybe if you would kindly go to

1 specifically to picture number 31. This elevations
2 here, just judging by the height of an average jersey
3 barrier I would say is probably two-and-a-half to
4 three feet. It appears as though just by judgment of
5 the photo that that elevation is built up more than
6 three feet in that corner of that particular corner
7 of the lot.

8 I would agree with Attorney Connors
9 that the piles of loose sand and gravel do fluctuate
10 up and down, but I don't think that they ever come
11 below the three-foot mark. I would say that their
12 materials usually meet or exceed the three-foot
13 that's allowed, you know, as of right. And, again,
14 that elevation is only allowed with a building
15 permit. It says it right in there that elevation of
16 a lot is related specifically to the construction of
17 a building. It doesn't allow you to dump loose soil
18 or raise elevations of lots without a required
19 building permit. So, you have to have a reason to
20 raise a lot. You can't just do it because you want
21 to do it.

22 MARK HICKERNELL: Can I -- just to
23 follow up on that?

24 WILLIAM FORTE: Yeah, sure.

1 MARK HICKERNELL: So, is your reading
2 of the statute that -- or the ordinance that it
3 prohibits the raising of the entire average of the
4 lot or just --

5 WILLIAM FORTE: No, it says the -- it
6 says --

7 MARK HICKERNELL: -- if there's a heap
8 that's about three feet is that a violation?

9 WILLIAM FORTE: It says in any one
10 area of the lot, or the average elevation more than a
11 foot I believe. So, I would just say that at any one
12 point in the lot you can't raise the elevation three
13 feet or more without a building permit. And, again,
14 I'll just remind the Board that I have absolutely no
15 factual finding that any of this operation was ever
16 done with a building permit or sanctioned by an
17 occupancy permit, which is what are required to do as
18 a matter of enforcement under 7.341, I believe. So,
19 I must issue a certificate of occupancy for every and
20 all business in the city that operates, building,
21 land, or structures. Okay? I just want to point
22 that out.

23 JOHN SERGI: So, Mr. Forte, I have a
24 question.

1 WILLIAM FORTE: Yes?

2 JOHN SERGI: So, this picture 31, in
3 your opinion this material does not move in and out?
4 The material looks like it's been there for a while?

5 WILLIAM FORTE: It may have been,
6 yeah. I don't know that it's gone now. I would say
7 at the time I was out there it was there and it was
8 contained. And it looked to me like it was elevated
9 for the purposes of being able to reach into a truck.
10 Again, so I don't know that it would stay there
11 permanently or not. It might have just been a
12 temporary thing. It could be gone right now. I have
13 no idea. But, at the time -- and, again, no matter
14 what changes have taken place on the lot, at the time
15 the violation was cited these were the findings.
16 Okay? So, it could change, it could change, you
17 know, dynamically. And, again, Attorney Connors and
18 I haven't discussed any kind of resolving this matter
19 until the Board has heard it.

20 And, again, I would just remind the
21 Board that the only thing that I'm asking here today
22 is that you uphold my Notice of Violation and that
23 you agree with my citings under the ordinance. I'm
24 not asking you to make any concessions for the

1 Petitioner, nor am I asking you to make any
2 exceptions or any kind of adjustments to the site
3 that may be more advantageous to the operation. That
4 -- I believe that that authority should be given only
5 to the City Council by special permit. So, I would
6 ask that you either uphold or overturn my decisions
7 systematically, whichever you decide.

8 So, violation number five, if I could
9 just move on here, this is something that Attorney
10 Connors was in question about. So, basically,
11 there's two types of violations here. You have a
12 State Building Code violation and you have a zoning
13 violation. I don't know that I would call the
14 support structures that hold the material retaining
15 walls. I would say that they are defined as
16 structures because it's an assemblage of materials
17 designed to support or shelter. Okay? It does meet
18 that definition. I don't know that the ordinance
19 regarding retaining walls would apply here. I don't
20 know that they're retaining walls. I would say that
21 they definitely support materials, so they do meet
22 the definition of structure under the ordinance.

23 I would tell you also that under the
24 State Building Code, if it were a retaining wall,

1 anything greater than four feet would require a
2 state-issued building code permit for construction of
3 such walls. Given the fact that these here are --
4 and you'll see that outlined here in violation number
5 five, pictures one, two, three, 11, 33, 43, 47, and
6 48. Not only is there -- not only is there blocks
7 that hold this material together, in addition to that
8 there's a tent structure here that's used to cover
9 certain types of material, and that these things are
10 considered structures along with storage containers.
11 Whether the storage containers are moveable or not,
12 they are -- again, they meet the definition of
13 structure. Even if you were to call it an accessory
14 use structure or accessory building, it would still
15 meet the definition under the Zoning Ordinance and
16 under the State Building Code as well. The State
17 Building Code's definition of structure is that which
18 is constructed. So, two blocks put together is
19 constructed.

20 So, what makes these things especially
21 dangerous is that, first of all, they're not
22 engineered. Okay? These are basically concrete
23 blocks that are melded together with basic runoff
24 from concrete plants that basically when they have an

1 overburden of a certain amount of material it's
2 poured into a mold. Basically, they make these
3 blocks out of concrete that's not used and comes
4 back. So it has no engineering value. They're
5 heavy. They're big. They're great to use. They
6 certainly do their job. I don't have any proof that
7 these were connected properly and that they will
8 retain, you know, retain the material that's in there
9 safely.

10 I would just tell you this is that I
11 seen these things with, of course, a bad operator.
12 Not that you guys are. But I've seen bad operators
13 push these things back and actually cause property
14 damage. So, you know, given the fact that these
15 things weren't engineered and they weren't properly
16 permitted by a state-issued building permit, I would
17 tell you that they are not safe. And I also think
18 that they do meet the definition of structure under
19 the Zoning Ordinance. They don't meet the definition
20 of retaining wall, but they do meet the definition of
21 structure. And the fact that they're straddled not
22 only on the lot lines, but they don't meet the
23 setback requirements, again, this could require a
24 variance under the Zoning Board of Appeals under the

1 table of dimensions. That would be my feeling about
2 it.

3 The fact that they're landscaped or
4 screened by landscape would really not be within
5 something -- that would not be something that would
6 take care of the violation, you know.

7 SARAH HANKINS: But if that's what
8 they agreed upon with the last City Inspector, isn't
9 it unfair to them to then have to rectify it again
10 based on your interpretation?

11 WILLIAM FORTE: Sure. So, I have no
12 factual record of any kind of agreement that was
13 made. I have an open Zoning violation. I have an
14 open Notice of Violation that was never complied
15 with. I have no resolution on record. I don't know
16 what might have been agreed with either Ralph Gaudet
17 or Patrick Powell as the Acting Inspector of
18 Buildings. I don't know any agreements that were
19 made or perhaps any understandings, you know, not --
20 by no wrongdoing of the Petitioners, and I certainly
21 would not accuse them, if they had an agreement, you
22 know, made with the other former Inspector of
23 Buildings, I would be more than happy to listen to
24 it. But, again, I don't think that it would take

1 care of the amount of violations here or the actual
2 operation or use. There's no landscape screening
3 that would possibly take care of this, you know. If
4 it disappeared and it was cloaked, it would still be
5 a violation because I don't think it's protected
6 under the fact that just because this operation is
7 screened that it's safe and that it's allowed to
8 exist, you know, without a special permit.

9 SARAH HANKINS: Well, I guess my
10 concern is that they -- this is at least three times
11 that the City has investigated them. And in one
12 circumstance with the heavy equipment, this is the
13 third time that they're being ordered to cease and
14 desist for the same violations. So, it doesn't seem
15 to make sense to me that over the course of three
16 decades the same issue keeps coming up and it doesn't
17 resolve, and isn't it on the City to resolve that
18 instead of keep ordering cease and desist?

19 WILLIAM FORTE: Again, I can't speak
20 to that, Ms. -- I'm sorry?

21 SARAH HANKINS: Ms. Hankins.

22 WILLIAM FORTE: Ms. Hankins. I'm
23 sorry. I would just say this is that nothing will
24 stop a Building Official from being able to enforce

1 the Zoning Ordinance. I don't -- I can't speak to
2 what happened in 1995 when there was a Notice of
3 Violation nor in 2010 when the Notice of Violation
4 was issued. I would just tell you that today it
5 exists as a violation. It could have been that the
6 operation was less active back then, and maybe it
7 wasn't a glaring problem, and maybe there were no
8 complaints. But that's not how I see it. And,
9 unfortunately, I had the misfortune of driving by and
10 taking a look at this thing and realizing that, you
11 know, this thing needs to be permitted properly. And
12 that's really all my end game is really just to make
13 sure that it's permitted properly. And that's all
14 that I'm looking for is compliance with the Zoning
15 Ordinance as it's written, not as I see it, or as
16 some people might interpret it, or some people might
17 feel about it. I really don't have an issue with
18 that.

19 So, I hope that answers your question.

20 SARAH HANKINS: Yes. Thank you.

21 WILLIAM FORTE: Sure. And then in
22 violation number six, just the site plan that depicts
23 certain structures here -- and I'll just, if I --
24 Attorney Connors, may I use your --

1 ATTORNEY JOSEPH CONNORS: Sure.

2 WILLIAM FORTE: Thank you very much.
3 So, this will be a little bit easier here to show
4 you. Obviously, there are certain structures that
5 are located up and along here, and here are certain
6 basically outlines showing, you know, these
7 particular barriers right here. They're not
8 identified here as structures, but I just want to
9 point out that these, again, are probably five to six
10 feet in height and, again, they are offending
11 structures. They are on a lot line. And just
12 because there's no complaint from here does not mean
13 that they're not a violation.

14 I would just say this is that I've
15 determined that any of this stuff would be a zoning
16 violation on any given day, even if the -- even if
17 these were allowed to be -- let's just say that the
18 setback line is zero. It would still need a building
19 permit regardless. So, that's how I would see that
20 there.

21 I'd like to speak a little bit about
22 the nonconforming use. I know that Attorney Connors
23 had basically reflected on, you know, that there was
24 some evidence of pre-existing use and I know you've

1 seen some pictures here. You know, there's --
2 photographs don't necessarily make it legal. You
3 know, this could have been something that was going
4 on for years and it was never detected by the
5 Building Department as a violation. It might have
6 even been ignored, again, you know, to substantiate
7 your question. You know, it's quite possible that it
8 was, you know, it was just not enforced, simply not
9 enforced.

10 But I would just tell you that Chapter
11 40, Section 6 and 7 do not -- they don't allow you to
12 expand a nonconforming use. Now, I have -- if I
13 could just maybe give these -- I'm going to give this
14 -- I have one copy for Attorney Connors, with one for
15 myself here, and one for the Board here. I apologize
16 that I don't have a copy for everyone, but I was
17 trying to save some trees.

18 This is the record of the property as
19 the official record of the Building Department, the
20 official business record of the Building Department.
21 I'll just bring your attention to the building
22 permit. And I think we can find it here if we just
23 have a look. First, we could look at the application
24 for the garage. Here it is. No, we have a plan for

1 -- we have a plan for the garage. These are the
2 building plans for the garage. And I would just --
3 there are some engineered drawings here. There is a
4 site plan that Attorney Connors pointed out to you.
5 There's an elevation here in the front. It looks
6 like this is from Ralph Gaudet, 1980. That would be
7 the addition that Attorney Connors was referring to.
8 But I would want to bring your attention to the
9 original building permit for the two-car garage.
10 That would be this document right here. Okay?

11 So, on 10/6/1971, that's October 6,
12 1971, it says, "Purpose of building." And if you
13 look right there on the top line it says, "Two-car
14 garage." Okay? At no time was it ever claimed that
15 this garage was built for purposes of industrial
16 trucking or heavy equipment storage, at no time. So,
17 I would just say that, you know, and, again, down
18 here remarks, it says, "Erect a two-car garage as per
19 plans filed." So, I don't see that the Petitioner
20 has proven anything that's got to do with the legal
21 pre-existing nonconforming use as a heavy equipment
22 truck storage or otherwise. I just don't see it. I
23 don't have that evidence here.

24 Now, it may be conceivable that some

1 of these affidavits and pictures might prove to some
2 degree that this type of activity existed, but it
3 does not prove that it was legal. So, I would say
4 that --

5 MARK HICKERNELL: Doesn't the size
6 that's in this application -- it looks like it's
7 1,600 square feet. It might be 1,000 depending on
8 the 0. Doesn't that suggest that it's more than just
9 two passenger cars?

10 ANTHONY CARDILLO: Look at the doors
11 on the building.

12 BARBARA RANDO, CHAIR: Sir, please.

13 ANTHONY CARDILLO: Sorry.

14 WILLIAM FORTE: Sure. So, you know, I
15 mean, again, I'm only going by what the record says.
16 The record says it's a two-car garage.

17 MARK HICKERNELL: Right.

18 WILLIAM FORTE: You know, so I
19 honestly -- I couldn't make any, you know, any
20 speculation about that. I will just tell you that,
21 yeah, even if it were a repair garage, that would be
22 conceivable. But I don't see in anywhere here that
23 it's an industrial truck storage garage. I don't see
24 that in here.

1 And, again, even having this as a
2 permitted garage, even if the building was legal, the
3 existence or the nonconforming use as a heavy truck
4 storage, or trucking terminal, or any of the
5 violations that I've brought forth don't -- they
6 certainly don't justify or defend the fact that the
7 operation exists today as it does.

8 I'd like to -- if you don't have any
9 questions about this particular --

10 BARBARA RANDO, CHAIR: Does anyone
11 have any questions at this time?

12 WILLIAM FORTE: So, if I might, I'd
13 like to defer back to Attorney Connors. Let's see.
14 Where am I? My apologies, Madam Chair.

15 So, in a draft, basically this is the
16 appeal that Attorney Connors submitted back on
17 November 27th. I'd just like to point out the table
18 of use regulations right here. The zoning setbacks
19 for industrial are 10 feet front, 15 side, and 25
20 rear. I don't see that any one of those -- any one
21 of those structures there are within conformance at
22 that line. So, that's one thing I wanted to point
23 out to you.

24 MARK HICKERNELL: Sir.

1 WILLIAM FORTE: Yes?

2 MARK HICKERNELL: Counsel for the
3 Petitioner suggested that there's some uncertainty as
4 to which structures you're actually referring to in
5 point number six. Could you clarify that for us now?

6 WILLIAM FORTE: Sure. So, I would --
7 I would contend that everything in here that's
8 depicted on this plan is a structure. So, there are
9 containers, several containers right here that I
10 would depict as structures. Under the Zoning
11 Ordinance, they need to be separated by 10 feet from
12 buildings. So, the way that they are situated now,
13 that's why Attorney Connors made reference to them
14 that they may have to be moved. Again, if they're
15 dynamic, it's not the worst thing. You know, it's
16 not the most offensive thing. But the fact that they
17 are structures really is what I'm asking the Board to
18 uphold today. All right? So I've defined them as
19 structures.

20 These specifically are the structures
21 that I'm gravely concerned about that they were never
22 done with building permits. So, I'm referring to the
23 concrete blocks and the tent structure that I would
24 consider mostly the substance of any structure, along

1 with any legal structures that were constructed with
2 a building permit.

3 MARK HICKERNELL: Thank you.

4 WILLIAM FORTE: I would make reference
5 to enforcement here, that the 7.431, "If the
6 Inspector of Buildings shall be informed or have
7 reason to believe that any provisions of this chapter
8 have been, are being, or may be violated, I will
9 inspect the property where such violation may exist."
10 I just want to point out that the Petitioners were
11 accommodating and cooperative, allowing me to come on
12 the property to be able to cite these violations. I
13 just want to note it for public record that they've
14 been cooperative and I appreciate their cooperation.

15 And, again, this is where I --
16 basically, I go over the fact that although I would
17 have liked to have given them time to apply for a
18 special permit, it says, you know, it says to the
19 owner, the last sentence, "He shall order that any
20 use of the building or land contrary to the
21 provisions of this chapter shall immediately cease."
22 So, I did not have any choice in deferring the
23 enforcement of the violation notice.

24 BARBARA RANDO, CHAIR: So, you're

1 saying you couldn't have given them time to go --

2 WILLIAM FORTE: Well, I mean if it was
3 able to get cleaned up in a couple of weeks, you
4 know. There was a couple of months from the time I
5 actually did the inspection until the time that I
6 issued the Notice of Violation. I did not see any
7 movement toward compliance at that time. So, again,
8 I could not defer having issued the notice.

9 BARBARA RANDO, CHAIR: So, when
10 Attorney Connors said that he was going to go for a
11 special permit, he just didn't have the time to --

12 WILLIAM FORTE: I don't think it would
13 have been enough time, honestly. I really don't
14 think that that amount of time -- and, again, I was
15 not able, under the ordinance, to allow any more
16 time, you know. If compliance is being met and it's
17 progressively moving forward, then I could provided
18 that I keep an inspection record and we move toward
19 compliance. But, at that point, I hadn't had any.

20 BARBARA RANDO, CHAIR: Tell me, how
21 long after the cease and desist letter that you
22 issued did Attorney Connors file his case?

23 WILLIAM FORTE: The Notice of
24 Violation was issued on October -- let's see --

1 ATTORNEY JOSEPH CONNORS: October
2 28th.

3 WILLIAM FORTE: Yeah, October 28th.
4 And he filed the petition on November 27th, is that
5 right? November 27th. So, he was within the
6 allotted time. What is it, 45 days?

7 ATTORNEY JOSEPH CONNORS: Thirty under
8 the zoning; 45 days on the building code.

9 WILLIAM FORTE: Forty-five under the
10 building code. Thank you for correcting me.

11 Again, I want to point out, this is,
12 again, in the notice of appeal that I received from
13 Attorney Connors, "Private truck or bus terminals. An
14 area of land with or without structures," okay, "with
15 three or more buses, trucks, trailers, or tractor-
16 trailers, or any combination thereof apart or
17 otherwise used in connection with the mass
18 transportation of persons or with receiving,
19 shipping, transferring, or other handling of items,
20 objects, or materials of any kind." Okay? So, hence
21 the reason why this has been deemed a private
22 terminal.

23 Again, this is not allowed without a
24 special permit. I don't see that this is a by right

1 activity. So, you know, it does say, you know, if
2 it's been graded, paved, and drained on-site
3 premises. I don't see this was ever permitted as
4 such, so I don't know that it's legal. Again, they
5 never applied for a certificate of occupancy to have
6 this type of activity, therefore, that's the reason
7 why I'm calling this illegal. Whether it's a by
8 right activity in an Industrial Zone or not, I don't
9 have any evidence that it was ever sanctioned with a
10 permit.

11 On Section 3.628, Truck storage,
12 contracting equipment. The storage of heavy trucks,
13 heavy contracting equipment, and earth moving
14 equipment as defined in Section 3.247 shall be
15 allowed when a special permit thereof has been
16 granted by the City Council provided that no such
17 yard is placed within 150 feet of an area zoned for
18 residential use. The burden of proof with the
19 Applicant or the Petitioner lies on the fact that
20 this is not within 150 feet of a residential zone.
21 I'm not sure about that. I did not -- was not able
22 to confirm that. So, again, I don't see that the
23 activity was ever permitted.

24 In Section 3.861, Dumping or storage

1 of soil, sand, gravel, or loam. The storage or
2 dumping of soil, sand, gravel, or loam on any parcel
3 or lot in the City is permitted without a building
4 permit if such activity does not alter the average
5 existing elevation of the entire parcel or lot by
6 more than one foot and decrease by more than three
7 feet if the activity is being performed as part of an
8 approved roadway. So, there's not an approved
9 roadway there, so it doesn't meet that criterion.

10 Any alteration of the existing average
11 elevation beyond the extent permitted by this section
12 shall only be allowed as part of an approved building
13 permit. And, here again, no building permits for any
14 of the activity that's gone on over there. Hence the
15 reason why I cited it as such. Okay?

16 And, for the construction or
17 alteration of a building or structure. So, again,
18 structures, no building permits.

19 I would cite this, except this is
20 really not relevant. This is a required State
21 Building Code permit. Work exempt from permit:
22 retaining walls which retain less than four feet of
23 unbalanced fill. So, just to prove that a building
24 permit is required for structures greater than four

1 feet whether it's a retaining wall or not. I don't
2 really know what to call it. But I would just say
3 that a building permit would be required for any
4 structure that retains earth.

5 I would point out Exhibit C in Mr.
6 Connors' draft that a Notice of Zoning Violation was
7 issued on May 27, 2010. A cease and desist order was
8 given. And I do not have any factual finding of any
9 resolution to that violation notice given.

10 Additionally, back in the record in
11 1995, there was also a Notice of Violation given by I
12 believe it was Ralph Gaudet who, again, cited the
13 violation. Again, I don't know that there was any
14 resolutions that came about, but I don't have records
15 that the violation was resolved.

16 And I would just say in closing that
17 even if -- even if there was a nonconforming use
18 here, it does not extend -- the expansion of a
19 nonconformity is not allowed or it is not protected
20 under --

21 BARBARA RANDO, CHAIR: Grandfathered?

22 WILLIAM FORTE: Yeah, there's no
23 grandfathering rights. Once that pre-existing
24 nonconforming use is expanded it becomes illegal.

1 So, even if the Petitioner could prove beyond a
2 reasonable doubt that there was a pre-existing
3 nonconforming use, it does not extend to the property
4 that was purchased after 1990.

5 MARK HICKERNELL: I don't think we're
6 going to hold him to beyond a reasonable doubt.

7 WILLIAM FORTE: Yeah.

8 MARK HICKERNELL: I think we're going
9 to -- he just has to convince us. He doesn't have to
10 do it beyond a reasonable doubt.

11 WILLIAM FORTE: The burden of proof I
12 don't think is -- I don't think it's substantial.

13 MARK HICKERNELL: Okay. Can I just --
14 just to clarify.

15 WILLIAM FORTE: Sure.

16 MARK HICKERNELL: Your order finds
17 that the locus is being used improperly both as a
18 private truck terminal and heavy trucking and
19 equipment storage?

20 WILLIAM FORTE: That's correct.

21 MARK HICKERNELL: Okay.

22 WILLIAM FORTE: Yeah.

23 MARK HICKERNELL: So, I'll wait till
24 you're back up. Okay. Thank you.

1 WILLIAM FORTE: Attorney Connors, I'm
2 sure, wants to get up and make a few more comments
3 about the statements that I've made, and I will
4 certainly hang around for that.

5 BARBARA RANDO, CHAIR: Mr. Hickernell,
6 are you finished now?

7 MARK HICKERNELL: I am. Thank you.

8 BARBARA RANDO, CHAIR: Mr. Sergi, any
9 questions of the Building Inspector at this time?

10 JOHN SERGI: Not at this time.

11 BARBARA RANDO, CHAIR: Ms. Gelineau?

12 GLENNA GELINEAU: No.

13 BARBARA RANDO, CHAIR: Ms. Hankins?

14 SARAH HANKINS: No.

15 BARBARA RANDO, CHAIR: No other
16 questions? Okay. Thank you very much.

17 Attorney Connors?

18 ATTORNEY JOSEPH CONNORS: Madam Chair,
19 I would like to say, first of all, I mean I do have a
20 response. Truck terminal is stated right in the
21 table of uses, Section 3.4, truck or private bus
22 terminal, there's Ns all across the board until you
23 get to I, which is the Industrial Zone, Y1, it's a by
24 right use. So, that's today's --

1 MARK HICKERNELL: It says, right, by
2 right and additional intensity of use permitted by
3 special permit from the City Council.

4 ATTORNEY JOSEPH CONNORS: Right.

5 MARK HICKERNELL: So, does that affect
6 --

7 ATTORNEY JOSEPH CONNORS: Intensity of
8 use has to do with the floor area ratio. So, if you
9 go to the book under 3.5, if I'm going to increase
10 the floor area ratio above my by right, I need to get
11 a special permit. We have no building on the lot.
12 So, the intensity of use doesn't even apply. The
13 intensity of use in that context has to do with floor
14 area ratio, FAR. So, if you go to 3.5, it talks
15 about intensity of use. And if I'm going to go to
16 the City Council for a special permit to exceed my by
17 right intensity of use, meaning a special permit to
18 build a 10-story building on a small lot, I need to
19 go to the City Council. But, I don't even have a
20 building on the lot, on this portion of the lot. The
21 only buildings I have are over here. So, I'm not
22 affecting the intensity of use at all by the number
23 of trucks I use. It has no relationship whatsoever
24 to that definition. That has to do with floor area

1 ratio, FAR. That's under 3.5 of the Zoning Code.

2 So, I'd say it's a by right use in the
3 Zoning District. If I want to build extra buildings
4 above the by right floor area ratio for the
5 Industrial Zoning District, it's .4, and by special
6 permit I can increase the intensity of use up to 2.0.

7 So, I'm not building a building.
8 There is no building. There's no ratio between the
9 gross floor area of the buildings and the lot area.
10 I simply have a use on a paved area. So, it's a
11 permitted use provided it's paved, graded, and it has
12 drainage. And it does. So, I would say that, one,
13 that's a by right use. It's the only Zoning District
14 in the City that it is permitted.

15 I would also talk about, you know --

16 JOHN SERGI: Counsel, before you leave
17 that topic --

18 ATTORNEY JOSEPH CONNORS: Yes.

19 JOHN SERGI: -- please comment on his
20 comment related to the structures. He views the
21 walls as being structures with the tents. Wouldn't
22 that play toward your comment, I mean the intensity
23 of use if you've actually created these additional
24 structures on --

1 ATTORNEY JOSEPH CONNORS: If we
2 consider these structures --

3 JOHN SERGI: Structures.

4 ATTORNEY JOSEPH CONNORS: Okay.
5 What's the gross floor area? So, it's the
6 relationship between the gross floor area, which is
7 defined under the Zoning Code as the floor area
8 ratio. So, I would say that if he's going to call
9 these a structure, there is no gross floor area
10 because they're not enclosed. There's only three
11 sides. And there's no roof. So, there's no -- FAR,
12 let's see.

13 BARBARA RANDO, CHAIR: You said they
14 had to be separated by 10 feet from a building?

15 ATTORNEY JOSEPH CONNORS: Ratio
16 between the gross floor area. The gross floor area
17 is the total area of all floors of a building. It's
18 not a building. It may be a structure, but it's not
19 a building. So, I would say that, you know, again,
20 there's no floor area here.

21 JOHN SERGI: Okay. Thank you.

22 ATTORNEY JOSEPH CONNORS: It's three
23 sides.

24 JOHN SERGI: Thank you for that

1 clarification.

2 ATTORNEY JOSEPH CONNORS: And the
3 intensity of use, I mean I can understand his point
4 if he's going to say the intensity of use not related
5 to floor area ratio, but just increasing the use.
6 So, if I have a nonconforming use, if I had 10 trucks
7 here and then all of a sudden I want to put 50
8 trucks, you know, maybe I'm increasing the intensity
9 of the nonconforming nature. But there's no evidence
10 of that. We have a 10,000-square-foot lot. We're
11 keeping six to eight trucks there, and that's it.
12 You know, so -- and we can't expand it. You can only
13 have a grandfathered right on one lot. You can't
14 expand it to another lot. I can't do that. It's not
15 legal. There's no legal support for that. So, I
16 can't expand my pre-existing nonconforming at 105-107
17 in this lot here into the railroad because it just
18 doesn't apply. You know, it's not permissible.

19 Another point is in 1974 the state
20 created the State Building Code. It didn't exist
21 before that. They had a local Waltham, City of
22 Waltham Building Code. I don't think they required
23 certificate of occupancies. So, did we close the
24 circle and say, "We're going to give you a

1 certificate of occupancy to keep heavy storage of
2 trucks?" No, we didn't. But we have testimony from
3 Tony, you know, who grew up there. He's been working
4 and living there for 50 years. There's a letter from
5 Mr. Dion. He's been there since -- when did you move
6 in there? What was that letter?

7 PETER DION: 1980.

8 ATTORNEY JOSEPH CONNORS: 1980. He's
9 seen it since 19880. So, the activity is clearly in
10 the affidavit of Tony. It's in the letters of the
11 neighbors to the property. It's in the pictures.
12 So, maybe, you know, the State Building Code didn't
13 exist until 1974. It was permitted prior to that.
14 It started in the 1960s. They didn't close the loop
15 and say, "Hey, give me a permit for storage of heavy
16 trucks and equipment," because it wasn't necessary.
17 It wasn't required. So now we're going to back to
18 records from 50 years ago trying to find a problem.
19 I'd say that maybe there's an omission in the
20 documents. But what we do have is we have the
21 testimony of Tony. We have the pictures that show
22 that there are trucks there. We have the letters
23 from the neighbors. We have letters from someone in
24 1995 who said he leased this property in 1987. So, I

1 think clearly this is -- and we've established, and
2 we can go back and get, you know, business records to
3 show that, you know, they did business, and they kept
4 trucks there. You know, there's pictures that go
5 back.

6 So, you know, I would say that the
7 State Building Code wasn't created until 1974. Now
8 they require certificates of occupancy when you have
9 a new building permit. They didn't used to do that.

10 You know, the plan that's submitted,
11 and you've got a copy from the Inspector, it said
12 subject to post-inspection by Mr. Ohnemus, the
13 Building Inspector. He went out and inspected it.
14 That's what he said. It's right on the stamp. He
15 went out there when they built the garage. They kept
16 the trucks there. He had no problem. So, I would
17 say that there's facts that you have that show that
18 that business has been there. They've been keeping
19 the trucks and the equipment there since the 1960s.
20 They built the garage in the '70s. They made an
21 addition subsequent to that, and there was no issue.

22 The Inspector has said about retaining
23 walls, he cited it in his Notice of Violations, but
24 then he says he doesn't know if they're retaining

1 walls or not. Well, if he doesn't know, I don't know
2 who else to ask because he's the zoning enforcement
3 officer. And if he can't tell me it's a retaining
4 wall, whether it is or it isn't, I've got nowhere
5 else to go.

6 JOHN SERGI: Counsel, I think he
7 clearly said they were not retaining walls.

8 ATTORNEY JOSEPH CONNORS: Well, in the
9 letter he says they are. So that's my problem. In
10 the letter he says they are. So, I look up retaining
11 walls. It says, well, they're not subject to
12 setbacks. So then he says, "Well, they're not
13 retaining walls." He's got me coming and going.
14 But, I think if he's going to call it a structure,
15 then it's because he's saying in his letter that
16 because they're holding back dirt. So, they're a
17 retaining wall. But I would say that he said both
18 things. In his letter he's called them retaining
19 walls. Tonight he's says he doesn't know if they are
20 or they aren't. Well, I think he has to be
21 definitive, either it is or it isn't, so we can act
22 accordingly.

23 And prior violations, again, I think
24 they demonstrate under Chapter 40A, if there was a

1 violation in 1995, the City didn't do anything. They
2 didn't do anything to prosecute it. But I would say
3 that there wasn't a violation and they took no action
4 and that's their failure. There's protection under
5 Chapter 40A, Section 7, that they failed to prosecute
6 any allegation of a violation.

7 BARBARA RANDO, CHAIR: But I thought
8 there was no look back if there's something done
9 illegally, that that statute did not apply.

10 ATTORNEY JOSEPH CONNORS: I agree. It
11 doesn't. But --

12 BARBARA RANDO, CHAIR: It sounded
13 good.

14 ATTORNEY JOSEPH CONNORS: No, I'm
15 thinking that there was another -- there was another
16 allegation in his letter. Let me see this letter.
17 There's one that even pre-dates 1995. I think I have
18 it. So, I would say that I mean I agree. Yeah, if
19 the use is illegal when it starts, it's always
20 illegal. But I'm saying that, you know, it was pre-
21 existing even 1995, and so, therefore, there was
22 evidence that it was resolved to the satisfaction of
23 the Building Inspector because they proved that it
24 was a legal violation going back to the '60s, or the

1 '70s, or at least 1987.

2 JOHN SERGI: Counsel, he stated that
3 it was -- there's no evidence to that. Do you have
4 evidence that it was resolved?

5 ATTORNEY JOSEPH CONNORS: All I have -
6 - all I have is the testimony of these gentlemen.

7 JOHN SERGI: Okay.

8 ATTORNEY JOSEPH CONNORS: That's it.
9 You know, we don't have any documentary evidence of
10 that. I agree. You know, and I think that, you
11 know, that's a problem for everybody that these guys
12 have been trying to run a business for 50 years and
13 then they're cited with a violation, and they think
14 they resolve it.

15 ANTHONY CARDILLO: We have -- one
16 second -- one thing that the Building Department did
17 have is they have the letter --

18 BARBARA RANDO, CHAIR: If you're going
19 to speak you have to go to the microphone.

20 ANTHONY CARDILLO: I'm sorry.

21 BARBARA RANDO, CHAIR: Because the
22 people at home are really interested in this.

23 ATTORNEY JOSEPH CONNORS: I have this
24 note. I think -- I don't even know where it comes

1 from. But it said, "Reported previously, Paul
2 Poirier said Industrial Zone, parking okay. Mandile
3 says otherwise." So, this is a -- do you know where
4 it came from?

5 ANTHONY CARDILLO: That was in our
6 folder down at the Building Department. That's what
7 we're assuming Ralph Gaudet put in our folder. And
8 the letter from Mr. Blenkhorn, you know, stating that
9 we were renting 194 was in our file at the Building
10 Department, too.

11 ATTORNEY JOSEPH CONNORS: Yeah, so
12 Paul Poirier -- do you remember Paul Poirier?

13 BARBARA RANDO, CHAIR: Of course.

14 ATTORNEY JOSEPH CONNORS: Yeah, so he
15 was one of the -- he was the Assistant Building
16 Inspector in 1995 and before and after. So, we found
17 those. So, Paul didn't believe that there was a
18 violation in 1995. I think he was in conflict with a
19 City Councilor Tony Mandile. But there was no action
20 taken after 1995.

21 MARK HICKERNELL: This is hard to
22 decipher.

23 ATTORNEY JOSEPH CONNORS: On the left
24 side.

1 MARK HICKERNELL: No, it's not hard to
2 read. It's just hard to know what it means.

3 ATTORNEY JOSEPH CONNORS: Well, I
4 think it says Poirier says no violation, Industrial
5 Zone, parking okay.

6 BARBARA RANDO, CHAIR: Mandile says
7 special permit.

8 ATTORNEY JOSEPH CONNORS: Right. And
9 the Building Inspector disagreed with him. That's
10 all I've got other than the testimony of these
11 gentlemen who say not only that, but, you know, that
12 it was a pre-existing nonconforming use going back to
13 the '60s and '70s.

14 TONY CARDILLO: That's what happened.
15 That's what satisfied -- that's what satisfied the
16 Building Department. The Building Department came
17 down. They gave us a cease and desist. He says, "We
18 want you to show us how come you should be here." We
19 said, "We're here since 1966 parking in the back
20 yard." I got Blenkhorn to give us a letter showing
21 when we were there. So, every question that he asked
22 we answered. And he says, "You guys are okay. See
23 you later." Unfortunately, it isn't anywhere
24 because, like you said, maybe at the time --

1 ANTHONY CARDILLO: No, the letter is
2 in our file, and that document was in our file.

3 TONY CARDILLO: Right. We've got the
4 letter from Blenkhorn. We've got that.

5 ANTHONY CARDILLO: The scribble and
6 the letter.

7 TONY CARDILLO: Right. So, my first
8 reaction was I'm going to call up Ralph Gaudet. And
9 they says, you know, "What is he going to be able to
10 say?" We wish we had more in the file because I have
11 nothing. But that's why they walked away. The asked
12 me for certain things, to produce certain things.
13 And that's what I did. I went out and I showed them
14 where we were, like I said. "How long have you been
15 here?" We gave them the water bills from A. Cardillo
16 and Son. We'd been paying water bills all along that
17 whole time showing that we were there, we were an
18 active part of the community.

19 And, like I say, people knew. People
20 that were in Waltham, they said, "Yeah, people know
21 he's been there." But, like I said, they wanted
22 specific things. We gave it to them. And, at that
23 point, they -- at that point they said, "Yeah, you're
24 fine," and they walked away from us.

1 ATTORNEY JOSEPH CONNORS: Madam Chair,
2 I'd just like to add some testimony that Mr. Creonte
3 wants to -- he can testify that his knowledge of this
4 particular -- the Cardillo family --

5 BARBARA RANDO, CHAIR: Could you give
6 your name and your address for the record, please?

7 BILL CREONTE: Hi. Thank you for
8 hearing me. Bill Creonte, 75 Wildwood Lane.

9 STENOGRAPHER: Spell your last name?

10 BILL CREONTE: C-r-e-o-n-t-e, and I'm
11 the owner of Creonte Tire.

12 My dad is 87 years old. He was the
13 founder of Creonte Tire. Prior to that, he had a
14 construction business and the Cardillos have been our
15 customers since, well, since he started the tire
16 business in the mid-'60s. Prior to that, as I said,
17 he had a trucking business and he did work for Mr.
18 Cardillo, Tony's father. And I, as a kid, remember
19 going down there as well. So, I could get an
20 affidavit from my dad, if that helps, just to tell
21 you that that business has been there for as long as,
22 you know, he's been doing business with him. I'm
23 sure there's a few other contractors in the City that
24 also remember because it was a very small amount of

1 contractors at the time and they were at various
2 places and that's what they did. My dad was at 5
3 Fern Street. That's where his first place of
4 business was.

5 So, I just want to say that I do have
6 evidence that they have been -- and we may have some
7 billing as well, unless the billing goes to your
8 office, right?

9 TONY CARDILLO: It goes to -- yeah, it
10 went to my grandmother's house and then my parent's
11 house.

12 BILL CREONTE: It always has? Always
13 has? Never been --

14 TONY CARDILLO: Yeah. Yeah.

15 BILL CREONTE: Thank you very much.

16 BARBARA RANDO, CHAIR: Thank you.

17 ATTORNEY JOSEPH CONNORS: That's all I
18 have, Madam Chair.

19 BARBARA RANDO, CHAIR: Mr. Forte,
20 could you go to the microphone again if you wouldn't
21 mind?

22 WILLIAM FORTE: Yeah.

23 BARBARA RANDO, CHAIR: You made a
24 statement that I asked if they could prove it was a

1 nonconforming and that it was used consistently in
2 the same manner unbroken all this time. You said
3 that even if they were able to prove that it was used
4 in the same manner that it still -- it would not be
5 considered a nonconforming. Why did you say that
6 again because I'm confused now.

7 WILLIAM FORTE: Okay. Madam Chair, so
8 Chapter 40, Section 6 does not afford use
9 protections.

10 BARBARA RANDO, CHAIR: 40A, Section 6.

11 WILLIAM FORTE: Yes.

12 BARBARA RANDO, CHAIR: Okay.

13 WILLIAM FORTE: The area that the
14 Petitioners are referring to would be the garage,
15 okay, the lot that was the garage at one point, okay,
16 constructed lawfully. Let's just say that they had
17 equipment and trucking in there. If they have burden
18 of proof and they meet that requirement that's okay.
19 The Chapter 40, Section 6 does not afford protections
20 for an expansion of a nonconforming use onto any
21 property nor does it give liberties to straddle lot
22 lines. Just because you own the property
23 contiguously, that does not give you the right to
24 expand a nonconforming use. And uses are not

1 sanctioned by those types of grandfathered
2 protections.

3 And, I'm sorry, if you didn't have any
4 more questions, I'd just like to just rebut --

5 BARBARA RANDO, CHAIR: Go right ahead.
6 No, I don't at this time.

7 WILLIAM FORTE: -- on Attorney
8 Connors' comments regarding truck and bus terminals.

9 Again, I would just reiterate that
10 because the activity, the operation in and of itself,
11 was never okayed by the Building Department as a
12 permitted use, trucking and bus terminals are allowed
13 as of right in the Industrial Zone. I would agree
14 with Attorney Connors. However, again, we have no
15 factual finding that the drainage over there was
16 proper, that there was any kind of -- that there was
17 any kind of engineering done with the drainage, and
18 that just because a parking lot is paved doesn't mean
19 that it complies with those types of requirements.
20 Again, the operation, if it's by right, it should
21 still have a building permit for its use. And I
22 believe that the Office of the Inspector of Buildings
23 does regulate use in the City. And, again, without a
24 building permit it's not legal. So, I would just say

1 that.

2 Also, too, I would want to just defer
3 a little bit to the ordinance. In 1981, this would
4 be prior to -- prior to the purchase of both of these
5 lots here. In 1981, I did find a copy of the
6 ordinance and it does specifically say that any use
7 that's allowed -- I'm referring to Article -- it
8 looks like Article 10 -- with any commercial
9 district, no building or structure or land shall be
10 used except for the following uses. Okay? So, it
11 would be if we're looking at tin knocking, auto body
12 work -- I'm sorry. My apology. This shouldn't be
13 underlined.

14 If you go to Section E, it says
15 "Storage of Heavy Trucks. Heavy contracting
16 equipment or earth moving equipment as defined in
17 Article 10 when a special permit thereof is issued."

18 TONY CARDILLO: What zone are we
19 talking about?

20 WILLIAM FORTE: This would be in the
21 Commercial District.

22 TONY CARDILLO: What zone are we?

23 WILLIAM FORTE: You're in the
24 Industrial.

1 TONY CARDILLO: Okay. I was just
2 wondering.

3 WILLIAM FORTE: That's okay. Let me
4 clarify that. I'll get to that in a second.

5 If you go to the next page it says,
6 "Uses in an Industrial Zone." Hold on one second,
7 Madam Chair. Excuse me.

8 BARBARA RANDO, CHAIR: Take your time.

9 WILLIAM FORTE: Madam Chair, I'm going
10 to retract that statement for now. I did have a
11 summation here because I did follow the zoning
12 history back to its time. There was a time when
13 industrial uses were also what was permitted in
14 commercial uses. I don't have my act together on
15 this, so I'm just going to defer that argument. But,
16 again, I think at this point, I think I've made clear
17 any argument that I have on the Notice of Violation.

18 BARBARA RANDO, CHAIR: Okay. I have
19 one other question. I was going through the
20 nonconforming, again, and when people prove that
21 there was a business and it was continuous. But I
22 think that Attorney Connors said in 1974 no State
23 Code or ordinance that they didn't need a permit.

24 WILLIAM FORTE: That would be -- okay,

1 so there was a Uniform State Building Code that was
2 enacted in 1975. Okay? Prior to that, Waltham did
3 have its own building code and the zoning ordinance
4 still required permits for these types of uses. So,
5 that would be -- it's not that before 1975 it was a
6 lawless town. You would still need a permit under
7 the ordinance and under the Waltham Building Code.
8 Waltham had its own building code.

9 BARBARA RANDO, CHAIR: So, more so
10 than the nonconforming, it's not having the building
11 -- the permit or the occupancy?

12 WILLIAM FORTE: Correct.

13 BARBARA RANDO, CHAIR: They didn't
14 have that? That is the biggie?

15 WILLIAM FORTE: Yeah. Yeah, the whole
16 thing -- the whole dynamic of the operation requires
17 a special permit.

18 BARBARA RANDO, CHAIR: All right.

19 WILLIAM FORTE: It's not specifically
20 written in the zoning ordinance. Therefore, you
21 know, it's not allowed. That's how I see it.

22 SARAH HANKINS: Wouldn't it be if it's
23 not in it's not allowed, period? Why would you
24 assume that if it's not in that it's allowed by

1 special permit? That's usually specifically stated.

2 WILLIAM FORTE: Well, let me just say
3 this, okay. If it doesn't say that you can't park a
4 helicopter on your front lawn, do you really have to
5 say it? You know what I mean?

6 SARAH HANKINS: But I wouldn't think
7 I'd be able to do it with a special permit.

8 WILLIAM FORTE: I would say that none
9 of these activities are allowed without a special
10 permit. That's -- under the table of uses, that's
11 how I interpret it.

12 GLENNA GELINEAU: Is there any way to
13 allow them to go get a special permit? Do we have
14 that --

15 WILLIAM FORTE: Absolutely.

16 GLENNA GELINEAU: Can we just say, "Go
17 get a special permit?"

18 WILLIAM FORTE: That wouldn't be
19 within your purview. You would have to decide as a
20 Board do you uphold my Notice of Violation or do you
21 overturn it. That would be the question.

22 MARK HICKERNELL: But I mean are they
23 conceding anything by asking the City Council for the
24 special permit in the meantime while we're

1 considering this?

2 WILLIAM FORTE: It would certainly be
3 your right as a Board to table this.

4 GLENNA GELINEAU: That's what I'm
5 asking. Is that viable or not? Can we table it and
6 let them try to get a special permit?

7 WILLIAM FORTE: You would have to
8 check with legal counsel on that. That's not
9 something that I could answer. I mean it is within
10 your authority to overturn, to deny, to, you know, to
11 uphold, and to --

12 MARK HICKERNELL: I mean -- I mean
13 speaking for myself, I'm not ready to vote tonight
14 anyway. I'm not sure what's keeping them from going
15 to the City Council. I know Mr. Connors considered
16 it and in view of these proceedings decided not to.
17 Perhaps, in his opinion, he'd be conceding the
18 violation if he asked for the special permit. I
19 don't know.

20 SARAH HANKINS: But I guess if we --
21 if they wait for our decision they may not even need
22 the special permit if we overturn the Building
23 Inspector. So, I don't know. He likes going in
24 front of the City Council though so maybe he'd want

1 to do it anyways.

2 ATTORNEY JOSEPH CONNORS: That is my
3 job.

4 MARK HICKERNELL: Can I ask a few more
5 questions of Mr. Forte?

6 BARBARA RANDO, CHAIR: Go right ahead.

7 MARK HICKERNELL: So, with regard to
8 the heavy trucking and equipment storage, so that
9 violation that you found applies only to the one
10 parcel, the one lot of the three that has the garage
11 on it, is that right? Nothing else is being stored
12 overnight anywhere else, right?

13 WILLIAM FORTE: So, Mr. Hickernell, so
14 anything beyond this garage and this lot right here,
15 even if the Petitioners were able to claim pre-
16 existing legal nonconforming use, would only be
17 limited to this.

18 MARK HICKERNELL: Right. Right. But
19 what violation --

20 WILLIAM FORTE: It would have to be
21 stored -- it would have to be stored inside. So,
22 anything outside of that would be, yes, would be what
23 I've cited a violation for.

24 MARK HICKERNELL: So, did you find

1 that there was equipment storage on the other two
2 lots overnight?

3 WILLIAM FORTE: I did not check.

4 MARK HICKERNELL: Okay. And as far as
5 the truck terminal, which of the three lots did you
6 find that was taking place improperly, if not --
7 either all or some?

8 WILLIAM FORTE: It would only be
9 physically possible on these two lots right here.

10 MARK HICKERNELL: Right.

11 WILLIAM FORTE: I would say the
12 trucking terminal is really not here, and this is
13 really not the -- although this is the subject parcel
14 and part of the violation, it is not the essence of
15 the activity that's going on there that's not --

16 MARK HICKERNELL: Okay. So it's the
17 other two that don't have the garage on them is where
18 the truck terminal is?

19 WILLIAM FORTE: Particularly, yeah.

20 MARK HICKERNELL: Yeah, okay. And the
21 -- okay, and I'm sorry to belabor the point, but the
22 ordinance refers to an area of land, yada, yada,
23 yada, used in connection with the mass transportation
24 of persons. No, that's for the buses. Receiving,

1 shipping, transferring, or other handling of items,
2 objects, or materials of any kind, packaged or
3 unpackaged. So, the gravel, the sand, the loam, all
4 of that is the materials of any kind that, in your
5 citation, or in your cease and desist, brings this
6 into the definition of a truck terminal?

7 WILLIAM FORTE: No, no, that's the
8 definition of open storage. Truck terminal is the
9 traffic of the trucks going in and out.

10 MARK HICKERNELL: Well --

11 WILLIAM FORTE: It's a separate
12 violation.

13 MARK HICKERNELL: Well, it has to be
14 used in connection with the receiving, shipping, or
15 transferring of some items. Is anything being
16 received, or transferred, or shipped other than those
17 building materials on that property?

18 WILLIAM FORTE: Well, I would say
19 probably not. And, again, to reiterate on the open
20 storage, there is some loose material storage back
21 here that is probably not for sale merchandise.

22 MARK HICKERNELL: Yeah, yeah, I'm not
23 worried about the open storage right now. I'm just
24 worried about the -- I'm trying to nail down the

1 truck terminal issue.

2 WILLIAM FORTE: Okay. Sure.

3 MARK HICKERNELL: And you've -- and
4 this also requires that the area be graded, paved,
5 and drained appropriately. The Petitioner alleges it
6 is graded, and paved, and drained, or has drainage.
7 I think your position is that they should have come
8 and gotten a building permit to make sure it was up
9 to some standard. Is that true?

10 WILLIAM FORTE: Sure.

11 MARK HICKERNELL: What standard would
12 you apply?

13 WILLIAM FORTE: Sure. So, engineer
14 and stormwater standards would require that an
15 engineer look at the site to make sure that the
16 drainage is proper. I have no record of that.

17 MARK HICKERNELL: Okay. Thank you. I
18 think that's all I've got at this time.

19 BARBARA RANDO, CHAIR: Thank you. Mr.
20 Sergi, any other questions?

21 JOHN SERGI: Not a question, but just
22 an observation. I mean I think, you know, there was
23 a comment made that Mr. Connors hasn't spoken with
24 you directly about any of these violations. You

1 interpret them one way. He interprets them another
2 way. May I suggest maybe you two get together and
3 just discuss these, at least clarify your positions
4 so that it's not as confusing to a third-party like
5 myself trying to decipher some of this. That's my
6 only comment, Madam Chair.

7 WILLIAM FORTE: Madam Chair, if I may
8 comment?

9 BARBARA RANDO, CHAIR: Go right ahead.

10 WILLIAM FORTE: The reason why we are
11 here is because we disagree.

12 JOHN SERGI: Okay. But, specifically,
13 where --

14 GLENNA GELINEAU: But on every issue?
15 There aren't some that you could sort of figure out?

16 WILLIAM FORTE: There are some terms
17 that could be agreed upon. I'm sorry. I didn't mean
18 to interrupt you. There are some terms that could be
19 agreed upon, but that would be based on your decision
20 whether to uphold them or not. You know, we're not
21 here to negotiate terms. We are here to decide
22 whether or not --

23 GLENNA GELINEAU: Not us. Not us.
24 You guys.

1 WILLIAM FORTE: Right. Right. Yeah,
2 exactly. Right.

3 JOHN SERGI: Maybe I misunderstood,
4 but I thought I heard that there was no dialogue
5 between you two other than the exchange of letters.

6 WILLIAM FORTE: We would specifically
7 ask the Board to define whether or not I have cited
8 the violations properly and that they are to be
9 upheld. Regardless of, you know, what you believe, I
10 mean this is why you're the Board and you can decide.
11 If I've given evidence that proves that the
12 violations were cited properly, then uphold my
13 decision. If you feel as though I have not met that
14 burden of proof and that the Applicant has proved,
15 you know, beyond my, you know, my evidence that I'm
16 in the wrong, then again, those are really the only
17 two questions here I think that you need to decipher.

18 Myself and Attorney Connors, we can,
19 on the aftermath of your decision, we can agree or
20 disagree on whatever we want. You don't necessarily
21 have to uphold the entire violation notice. You may
22 find that if you're in question about the truck
23 terminal, that's fine. It's still not going to
24 exclude the fact that they need a building permit for

1 that type of operation. That means that they can
2 have it by right, but it doesn't necessarily mean
3 that they can do it without a building permit.

4 JOHN SERGI: I mean don't
5 misunderstand what I'm saying here.

6 WILLIAM FORTE: Sure.

7 JOHN SERGI: I mean I think you did a
8 very good job identifying the issues and presenting
9 the case. But a lot of this is interpretation. And
10 I was hoping that maybe there could be a discussion.
11 But I guess what I'm hearing, there's no need for
12 that discussion. That's what I'm hearing from you.

13 WILLIAM FORTE: Yeah. I think at this
14 point, the only --

15 JOHN SERGI: So, a discussion between
16 the Petitioner and yourself --

17 WILLIAM FORTE: Yeah.

18 JOHN SERGI: -- would go nowhere?

19 MARK HICKERNELL: The discussion comes
20 after our decision is what I'm hearing.

21 WILLIAM FORTE: Yeah, it would pretty
22 much come after. Yeah.

23 BARBARA RANDO, CHAIR: Yeah.

24 WILLIAM FORTE: I don't think it's

1 within our -- you know, and myself and Attorney
2 Connors, the only thing that we may discuss after
3 this meeting is perhaps if we bring more evidence to
4 the next hearing, if there is a next hearing, you
5 know, what we might talk about then. Or, I might try
6 to clarify the zoning history that I tried to clarify
7 but I didn't quite have my act together. So, I may
8 do that on the next -- on the next point.

9 Again, Attorney Connors may show up
10 the next time with more evidence, you know,
11 purporting, you know, basically supporting his, you
12 know, claim that he has a pre-existing nonconforming
13 use. That would be about the only discussion that we
14 would have. At this point, there's really no
15 negotiation about compliance because they don't think
16 that they're in violation. So, that really is the
17 question for you.

18 BARBARA RANDO, CHAIR: Ms. Hankins,
19 any questions?

20 Did I cut you off, John?

21 JOHN SERGI: No, no. I just tried,
22 that's all. It didn't work.

23 BARBARA RANDO, CHAIR: Ms. Hankins?

24 SARAH HANKINS: I guess similarly I

1 guess my concern is for a business in the community
2 to have to continually face the same -- depending on
3 who the Building Inspector is, have to relook at --
4 so, I take them at their word that the last time you
5 guys, or your department before you, asked them to do
6 something to screen off that being open that they
7 went and did the landscaping things. So, it concerns
8 me that -- and I guess my backing for that is you
9 guys would have continued to pursue it if there --

10 BARBARA RANDO, CHAIR: We've had other
11 cases --

12 SARAH HANKINS: But twice. I mean
13 this is like '95. This is now the third time at it.
14 So, it just seems unlikely to me that it would come
15 three times before there was any --

16 BARBARA RANDO, CHAIR: But it wasn't
17 him. He's a new Building Inspector. He had nothing
18 to do with it.

19 SARAH HANKINS: No, I know. But I
20 mean I guess what I'm asking is even just sort of
21 anecdotal if you have any history as to why, you
22 know, we are the third time facing violations for a
23 company that, you know, I've never heard anything bad
24 about, you know.

1 WILLIAM FORTE: You know, given that
2 fact, I mean obviously I'm the new kid on the block.
3 You know, I'm not going to make everybody happy. I
4 completely understand. I don't think that my, you
5 know, my stand here is at all personal. Basically,
6 my violation discoveries are factual findings. I
7 have no facts to support a nonconforming use. And I
8 think that there has been other cases in and around
9 the City where I have looked at pre-existing
10 nonconforming uses and they have actually been
11 compliant. And I'll just say that in this case there
12 really is no factual finding that not only was the
13 violation never taken care of, but I would just say
14 that if I had something to go by then I would
15 certainly consider it. You know, I don't think that
16 I've been unfair. In fact, in the Notice of
17 Violation it does say that, you know, if you want to
18 submit any facts supporting your finding, then please
19 do.

20 But I'll just end with this. And this
21 is a comment that the public has a right to have the
22 zoning ordinances properly enforced, and an Inspector
23 of Building is not stopped from enforcing the local
24 zoning bylaws by the acts or inaction of a prior

1 Building Inspector. Okay? That's Mass. General Law.
2 And I just want to make that clear is that I'm not --
3 again, this is not personal. This is just finding of
4 fact. You know what I mean? The fact is it was
5 never permitted properly. At the end of the day, the
6 objectivity, this is the only -- it's not
7 subjectivity. It is objectivity. The only
8 objection, the only object here, is to get
9 compliance. That's it. You know, it doesn't matter
10 to me whether the Cardillos operate in any area
11 provided that they have the proper permits and that
12 it's safe for the public. And I felt as though this
13 is something that was a problem with public safety.
14 Again, zoning does cross over into safety and uses.
15 The reason why you have these types of uses in areas
16 where you don't have retail stores is because, you
17 know, just the pictures that I showed, I thought it
18 was very clear that, you know, that the public, you
19 know, that basically this is a concern, you know.

20 And it doesn't mean the Cardillos
21 don't run a great operation. They serve the public.
22 They have a lot of public good. But it doesn't give
23 them the right to have this type of operation without
24 a permit. So, that will be my objective view of the

1 whole thing.

2 BARBARA RANDO, CHAIR: Any other
3 questions?

4 (No response.)

5 BARBARA RANDO, CHAIR: Okay. As I see
6 it -- and correct me -- we can uphold the decision of
7 the Building Inspector tonight. They would have to
8 cease and desist their business until they got a
9 special permit, or we could overturn your decision
10 and then they could continue their business as of
11 right as they're doing now, or we can continue the
12 case and try to digest all the facts that we've had
13 this evening. What is the wish of the Board? Does
14 anyone want to make a motion to continue it, or to
15 have a discussion, or to uphold, or overturn the --

16 MARK HICKERNELL: Well, I would like
17 to point out, as Mr. Forte also pointed out, that,
18 you know, there's six violations alleged. It's not
19 an up or down vote for all six. We may uphold some
20 and not others. But I think the Chair previously
21 suggested that some more business records might be
22 helpful for our consideration here. And, Mr. Creonte
23 also appears to have made an offer of proof and may
24 submit an affidavit from his father as well.

1 I mean I would personally find those,
2 any additional information, especially as to the, you
3 know, I call it the main violation, the pre-existing
4 noncom -- you know, whether it can even operate as a
5 business, the pre-existing nonconforming use, to be
6 helpful in my decision. So, I would -- if the
7 Petitioner feels that or the Petitioners feel that
8 they can offer such additional information, I would
9 make a motion to continue the case. But I wouldn't
10 want to continue it for no reason.

11 ATTORNEY JOSEPH CONNORS: No,
12 absolutely. I'll speak with Mr. Creonte, and I'll
13 talk with my client, and we'll come up with some
14 records that will further establish the use of 105-
15 107 River Street.

16 BARBARA RANDO, CHAIR: And you'd have
17 to also prove that he is wrong in saying that you
18 can't expand a nonconforming use.

19 ATTORNEY JOSEPH CONNORS: I don't
20 disagree with him. I agree. He can't expand a
21 nonconforming use. And I'm saying it's nonconforming
22 here and here. That's it. We can't go anywhere
23 else. We can't put trucks here. And the special
24 permit requirement states that storage of heavy

1 trucks or heavy equipment outside, unenclosed, from
2 10 p.m. to 6 a.m. He did testify that he's never
3 been there from 10 p.m. to 6 a.m., ever. So, I would
4 say that the trucks he saw were during the daytime.
5 So, the overnight storage only occurs here and here.
6 And we can get records to document the business
7 activity here.

8 MARK HICKERNELL: Yeah, and whatever
9 information you could provide that's as specific as
10 possible to the various lots would be helpful.

11 ATTORNEY JOSEPH CONNORS: Yeah.

12 JOHN SERGI: And specifically --

13 BARBARA RANDO, CHAIR: Are you making
14 that into a motion to continue the case, Mr.
15 Hickernell?

16 JOHN SERGI: I mean can I -- Madam
17 Chair, just one other question.

18 BARBARA RANDO, CHAIR: Go right ahead.

19 JOHN SERGI: His alleging that the
20 structures are not retaining walls may require a
21 variance, I think maybe we should have some
22 information related to that, to that fact or non-
23 fact.

24 ATTORNEY JOSEPH CONNORS: I think,

1 yeah, I mean it turns on if it's -- I think he deems
2 it a structure. Is it a retaining wall?

3 JOHN SERGI: For me, I can't say it's
4 a retaining wall. I've been raised around masons.
5 And a retaining wall has footings. It has a lot of
6 different things. So, I --

7 MARK HICKERNELL: It's got a different
8 purpose.

9 JOHN SERGI: A different purpose,
10 right. And so I think just some clarification in
11 that area.

12 ATTORNEY JOSEPH CONNORS: Okay.

13 JOHN SERGI: You know, because if you
14 need variances, I think you want to address it all.

15 ATTORNEY JOSEPH CONNORS: Thank you.

16 MARK HICKERNELL: So, I will make a
17 motion to continue the case to permit the Petitioners
18 to submit additional evidence in support of their
19 application or their appeal.

20 JOHN SERGI: Second the motion.

21 BARBARA RANDO, CHAIR: All right. A
22 motion by Mr. Hickernell, second by Mr. Sergi.

23 How do you vote Mr. Sergi?

24 JOHN SERGI: Yes.

1 BARBARA RANDO, CHAIR: Mr. Hickernell?

2 MARK HICKERNELL: Yes.

3 BARBARA RANDO, CHAIR: Ms. Gelineau?

4 GLENNA GELINEAU: Yes.

5 BARBARA RANDO, CHAIR: Ms. Hankins?

6 SARAH HANKINS: Yes.

7 BARBARA RANDO, CHAIR: And the Chair
8 votes yes. So, we will continue the case.

9 How is March 29th?

10 MARK HICKERNELL: I'll be here.

11 BARBARA RANDO, CHAIR: Mr. Hickernell
12 will be here.

13 MARK HICKERNELL: That gives him two
14 months.

15 ATTORNEY JOSEPH CONNORS: A month-and-
16 a-half, I think so, yes. You guys will be in town?
17 You're not going on vacation? No? No vacation?

18 TONY CARDILLO: I don't have anything,
19 no.

20 ATTORNEY JOSEPH CONNORS: That's
21 agreeable.

22 ANTHONY CARDILLO: You know what I
23 want to do, Mr. Forte? Let's meet. We want to show
24 you that we want to cooperate. Let's meet. We'll

1 come up. We'll show you what we're going to do with
2 the storage containers. You show us what we have to
3 do to get a permit for that.

4 BARBARA RANDO, CHAIR: All right. You
5 can talk in a few minutes.

6 We're not available. The 29th is not
7 working for some members. April 5th?

8 ATTORNEY JOSEPH CONNORS: Yes, I'm
9 available.

10 BARBARA RANDO, CHAIR: Mr. Sergi,
11 April 5th?

12 JOHN SERGI: Yes, April 5th is fine.

13 BARBARA RANDO, CHAIR: Mr. Hickernell?

14 MARK HICKERNELL: Yes.

15 BARBARA RANDO, CHAIR: Ms. Gelineau?

16 GLENNA GELINEAU: Yes.

17 SARAH HANKINS: Yes.

18 BARBARA RANDO, CHAIR: All right. We
19 will continue Case 2015-27 to April 5th.

20 ATTORNEY JOSEPH CONNORS: Thank you.

21 BARBARA RANDO, CHAIR: Let me check
22 100 days. Do we have enough time?

23 MARK HICKERNELL: Does this kind of
24 appeal have 100 days. They wrote it on the -- they

1 wrote it on here, so I guess --

2 ATTORNEY JOSEPH CONNORS: Yeah,
3 there's a time limit, yeah.

4 MARK HICKERNELL: Yeah, so we need to
5 extend the 100 days.

6 BARBARA RANDO, CHAIR: March, yeah.
7 All right. Do I have a motion to extend the 100 days
8 --

9 MARK HICKERNELL: So moved.

10 BARBARA RANDO, CHAIR: -- to April,
11 May, let's say June 14th?

12 MARK HICKERNELL: So moved.

13 BARBARA RANDO, CHAIR: Do I have a
14 second? Mr. Sergi, do I have a second?

15 JOHN SERGI: Yes.

16 BARBARA RANDO, CHAIR: How do you vote
17 Mr. Sergi?

18 JOHN SERGI: Yes.

19 BARBARA RANDO, CHAIR: Mr. Hickernell?

20 MARK HICKERNELL: Yes.

21 BARBARA RANDO, CHAIR: Ms. Gelineau?

22 GLENN GELINEAU: Yes.

23 BARBARA RANDO, CHAIR: Ms. Hankins?

24 SARAH HANKINS: Yes.

1 BARBARA RANDO, CHAIR: And the Chair
2 votes yes, so the 100 days has been extended to --
3 what did I say -- May 14th? May 14th.

4 ATTORNEY JOSEPH CONNORS: Do I need to
5 sign anything?

6 MARK HICKERNELL: Yeah, you do. Yes.

7 BARBARA RANDO, CHAIR: A hundred days,
8 I need you to sign.

9 TONY CARDILLO: That's me.

10 SARAH HANKINS: I was trying to figure
11 out who it was.

12 TONY CARDILLO: I'm not being wise.
13 Is that evidence if I can -- I'm 37, 38, I'll be 38,
14 and I'm probably 12 in that picture. Does that --

15 SARAH HANKINS: It might be evidence
16 of child labor law violations.

17 TONY CARDILLO: I got paid in Nintendo
18 games.

19 MARK HICKERNELL: Was it May 14th, did
20 you say?

21 BARBARA RANDO, CHAIR: May 14th.

22 SARAH HANKINS: Is it May 14th?

23 BARBARA RANDO, CHAIR: Is that all
24 right with you, Sarah?

1 SARAH HANKINS: Is that when we're
2 having the meeting?

3 BARBARA RANDO, CHAIR: No, no, no.
4 That's the 100 days.

5 SARAH HANKINS: Oh, that's when it's
6 extended. I'm sorry. Okay. Yeah, that's fine.

7 BARBARA RANDO, CHAIR: April 5th.

8 SARAH HANKINS: Okay.

9 BARBARA RANDO, CHAIR: Thank you. All
10 right. One more motion is in order.

11 JOHN SERGI: Motion to adjourn, Madam
12 Chair.

13 BARBARA RANDO, CHAIR: Motion to
14 adjourn. Do I have a second?

15 SARAH HANKINS: Second.

16 BARBARA RANDO, CHAIR: All in favor?

17 ALL BOARD MEMBERS: Aye.

18 BARBARA RANDO, CHAIR: Opposed?

19 (No Board Members opposed.)

20 BARBARA RANDO, CHAIR: We're adjourned
21 at 9:20. Thank you very much.

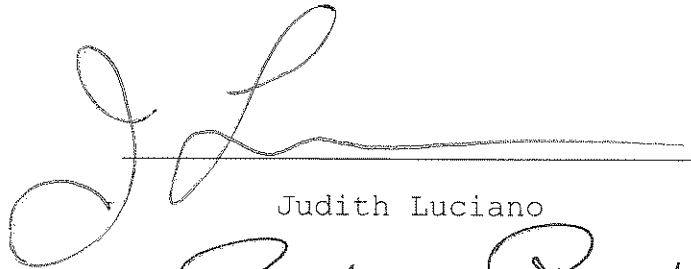
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C E R T I F I C A T E

I, Judith Luciano, do hereby certify that the foregoing record is a true and accurate transcription of the proceedings in the above-captioned matter to the best of my skill and ability.

A large, stylized handwritten signature in cursive script, consisting of the initials 'JL' followed by a long horizontal line.

Judith Luciano

Barbara Dando, Clerk
2/23/16

