

CITY OF WALTHAM
ZONING BOARD OF APPEALS

October 11, 2018

The Zoning Board of Appeals held a Public Hearing at 7 P.M. in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.

In attendance were Acting Chair John Sergi, and members Glenna Gelineau, Mark Hickernell and Marc Rudnick.

The Petitioner, Alliance Realty Partners LLC applied pursuant to Massachusetts General Laws, Chapter 4B, Section 20 through 23, as amended, for the issuance of a Comprehensive Permit permitting the applicant to construct 195 apartment style rental units, with associated parking and relating utilities on the approximately 70,879 +/- square feet parcel of land located at 341 Second Avenue. Location and Zoning District: 341 Second Avenue Commercial Zoning District. Said property is shown on the City of Waltham Atlas - Atlas Page R039, Block 001, Lot 0016.

Michelle Learned, Assistant City Solicitor for the City of Waltham, was also present to assist the board with any questions that the board might have.

Michael Bourjoulian and members from Alliance Realty Partners also attended.

Mr. Sergi, Acting Chair called the meeting to order at 7:08 P.M.

Mr. Sergi: Tonight we are hearing the Alliance case, again, the 40B case. Before we get into it, Attorney Learned, would you like to come up and speak?

Attorney Learned: Sure.

Mr. Sergi: Just outline some of the edits that you have distributed.

Ms. Learned: Good evening. Attorney Michelle Learned for the City of Waltham.

I think it's easiest if we actually start at the waiver section of the decision because I think that's where we are more closely in line.

Mr. Sergi: Which copy would you like us to reference.

Ms. Learned: If you can go to the draft that I provided on Page 4. I'm looking from four to the end and we are actually not that far off at all. So there's much hope that this could be done tonight.

Mr. Hickernell: Are you just going to walk through everything you have in yellow?

Ms. Learned: Yes, I think that makes sense.

Mr. Hickernell: Let me actually see, it seemed to me that these are mostly as to form and don't change the substance of the waivers. Some of them are obviously changing zoning code to zoning ordinance.

I think I understand the rationale for every one of the things you've highlighted although I am pleased to hear about anything you think is particularly important, but and I agree with you, I think we are very close on the waivers section. Maybe it would save time to just ask the applicant if they have had time to review them.

Michael Bourjoulian, Alliance Realty LLP: We have not. We've only received this draft at the close of business. Unfortunately the draft did not appear to actually compare drafts, so - - -

Mr. Hickernell: So that's what the yellow is in the waiver section.

Mr. Bourjoulian: Unfortunately we were able to get a comparison draft as I mentioned, and it turned out that there's actually quite a bit more than those yellow pages were changed.

Mr. Hickernell: We are talking about the waiver section.

Mr. Hickernell: We know that. The other part starts - - -

Mr. Bourjoulian: We haven't had a chance to review, unfortunately.

Mr. Hickernell: Okay.

Mr. Bourjoulian: We need direction from the board on how to proceed, and how to prepare a draft and what time we did that. We received this when we were driving home today after the close of business. So we were able to get this comparisons draft. I've read the first few pages but I don't know if anybody has had a chance to review it.

Ms. Learned: If I could just briefly explain how the draft that I presented was prepared, that might assist in their review.

Mr. Bourjoulian: We are expected to review this tonight?

Ms. Learned: Unless you want to go forward and grant an extension.

Mr. Bourjoulian: We don't. We have direction from the board. I guess my concern about the waiver changes is, we discussed the waivers on Tuesday with the board and with Attorney Learned and none of these matters were raised.

Mr. Hickernell: Some of these have been raised in the past and they somehow weren't in your last draft. So I think that it's not unfair. I don't want these all simply as to form which I would feel comfortable changing.

Mr. Bourjoulian: I need to read it.

Mr. Hickernell: So you can certainly read it but the kind of thing I'm asking about, is I am asking you right now to look at the first section of the waivers.

Mr. Bourjoulian: You really need to print one draft so we would have one to look at so we will do our best.

Ms. Learned: And I do think it would be helpful if I just explained how the draft was prepared. So, from page four to the end - - -

Mr. Bourjoulian: If you could just do it by section because our draft - - -

Ms. Learned: If I could just do it by section because our draft has only - - -

Ms. Learned: If I could give an overview of how the draft was prepared, I think it will assist you and the board.

Mr. Bourjoulian: Okay. I'm just trying to keep track of where you are at.

Ms. Learned: Your counsel was provided a copy of this exact draft.

Mr. Bourjoulian: At what time, today at 5 o'clock?

Ms. Learned: Today. I received your draft this morning at nine.

In any case, for the board and to assist you in reviewing the edits, from page 4 to the end, I do not think there is much that is at odds. How I prepared the draft was I took and accepted all of their changes from page 4 to the end and where I added or changed anything, it is highlighted in yellow. So the only difference is are where it is highlighted in yellow.

Mr. Bourjoulian: This doesn't appear to the the case. On page 12, for example, there were paragraphs - - - I'm sorry, I'm sorry. I am just trying to keep track.

Ms. Learned: From the waiver section to the end of the document where it is highlighted in yellow is where the City of Waltham Law Department made a change. They are not giant changes as member Mark Hickernell has mentioned. They are mostly as to form which is making sure that the zoning code and the general ordinance are referenced by their official names, things like of that nature.

On page 11 of the draft, there is language that had once been in a previous draft to which their representatives, here in this room, agreed to include in the draft. So I put it back in. That's with respect to affordability.

On page 12, numbers 16 and 17 which had also previously been included in both their background section as well as a condition, it appears they removed it from the condition sections and only included it in the background section. Where the City of Waltham has eliminated the background section, that the law department has eliminated that in this draft, I reinserted these content of these provisions into the condition section. There still remains a question of the reference that they would like to add with respect to where those are identified on the specific plans.

Again, these are items that have been conditions in their previously proposed drafts. That's for 16 and 17.

On condition 18, there is a highlighted section at the end that coincides with their previous agreement and understanding of when it is a payment that is a direct result of something that their project is causing that it has to be stated in the decision and when it is not then we use the words operative facts.

So when reviewing this draft, their number 18 with respect to the installation of the pole mounted RRFB, did not have the necessary language. It is the exact language or similar language to what they agreed to put in in other sections.

Number 19, the Provision, I did add "and the State Building Code". They are required to adhere to the State Building Code with respect to it being the American, the ADA Compliance. Where they added the final sentence in their last draft, it was necessary to add "and the State Building Code". The final sentence that they added was about getting all the necessary department approvals. I needed to make sure that it was clear that it did not trump the State Building Code.

Item 20, I alerted the board to the fact that this is a substantive issue that the board has the ability to decide whatever it chooses to decide.

So the language that I highlighted in red is to let the board know that right now as drafted, it would be difficult to enforce and I provided legal counsel to my board, advice on how and what they would be able to do with respect to this condition. The blue language is

advice. It's the recommendation of the Law Department. It is not proposed to be included in the draft.

At Provision 22, it's not anything that is new to the applicants. It's just clarification that the reduction is going from two places, ah, that the requirement had been two spaces per dwelling unit.

In Items 26 and 27, again the blue commentary is the board's legal counsel's recommendation and advice with respect to as to form tightening up the decision.

27 is really parroting what the city engineer has related to me and, again, this is not new information. Both the content in both 26 and 27 were, in fact, included in the draft that has been sent to you by the law department and certainly was discussed in meetings with opposing counsel.

As you know, on page 15, in response to the city law department's request to put forward a procedure: What do you do if the test pits do not come out okay? They advanced this language at our last meeting and they advanced everything that is not highlighted in letters B, C and D and the only addition that I have made is to highlight who would be paying for any peer review.

Ms. Learned: Letter E there, is a result of correspondence between myself and the building inspector. Essentially after your last meeting, I forwarded the new test pit language to the city engineer as well as the building inspector to review. Initially their proposed draft, they made statements here from the podium to say that this is all how the State Building Code handles it. I just asked for the building inspector to confirm the accuracy of those statements. In response to that, he emailed me and requested that the language in Item E be included in this decision. I do believe he emailed that to Pam which was, I believe, forwarded to the board members.

As a side note, I did also send this to the city engineer in addition to all of the conditions that relate to stormwater drains and the waivers to have his final look given that they had agreed to many of the items. And I did get a response back today and I did this

the morning after your last meeting. He has not had time to review same. He did want me to officially request that in any event that he would get to that before whatever next meeting we had and I'm just relaying his request.

On Item #33, the word "contribute" was changed to "pay".

Again in Item number 40, on page 16, it's just to clarify the responsibility of who pays for. It's language that I actually lifted that they had proposed with respect to the trash.

On page 17, all I did and didn't play with, alter in any respects, the content of their paragraphs 41 through 46. I took their sections and put them in the section that was titled Water, Sewer, Stormwater Drains because they were about those issues.

Paragraph 53, again it is making sure that there is somebody to pay for these reviews and that they don't somehow come out of the Zoning Board's budget.

In number 54, I clarified that the information about the cold storage would be included in the welcome packet. It's not the largest request. In fact it had been in another section when it's identifying the shuttle services that are in that packet. They had already mentioned that the grocery services would be there. So it's just to make sure that it is re-identified here.

Provision 55, again, as your counsel, I am relaying to you and reminding you that there is \$160,260 available before the applicant asserted his project was uneconomic and should the board decide to increase the \$60,000 payment or discussed increasing that with the applicant that that could be something that you could do this evening.

And on page 19, in the final paragraph before the foregoing, I added the words: "or this decision".

Again, they are not edits that are hard to understand. If the board wants to provide them with a recess to discuss it among themselves and counsel, I think that from the waiver section on, we are essentially in agreement.

Mr. Hickernell: So, with respect to the additions or changes in yellow, I continue to believe that these are largely as to form. Again, I am specifying yellow and not everything we just read because there's also things in blue and things in red.

Directing your attention to the stuff in yellow, I don't find it all necessary but I also don't find very much of it to have a meaningful impact on your application. I would, I think, find it most efficient to see if there's anything you need to discuss about that, that the things in yellow, that Attorney Lerner just discussed. I suspect we will be able to sail through that stuff.

Mr. Bourjoulian: Again we haven't had a chance to reivew. I don't know that we can do it or if it's fair to ask us to do it in the middle of our last meeting. We'll most certainly try to review just the yellow one with one draft that we have here.

Mr. Sergi: We can recess for the amount of time that you need.

Mr. Bourjoulian: Yes. The yellow we will certainly have time to look. I just want to reiterate the draft actually had pages and pages of items apart from the ones that were highlighted.

Mr. Hickernell: We are well aware of that.

Mr. Bourjoulian: We weren't aware of that.

Mr. Sergi: We just want to find some common ground.

Mr. Bourjoulian: I guess the part that, we would like that recess, but before could I have a momenmt to speak?

Mr. Sergi: Sure.

Mr. Hickernell: As long as it's not as to what time of day you received this.

Mr. Bourjoulian: It will be brief. So it's going to be hard for us. It helps if we are going to narrow it down to certain items in certain pages. For example, it's just the yellow

matters. Maybe there are extra copies we can find a way and spend a few minutes to look at.

But it seems to me at least upon the preliminary look at this that there were a lot of changes made to this draft that could have been raised in weeks prior including at the meeting on Tuesday. These were matters that we had discussed and we spent quite a bit of time with the board trying to narrow down the remaining dozen or so. I forget how many changes that the board had requested that we again in good faith just said that we would incorporate and did so. So it strikes me as odd that these matters weren't raised at that meeting. That didn't require the draft that was issued yesterday afternoon. Those could have been made at that meeting certainly with the board or yesterday via email or call to our counsel or to the board or even all day today. Again, this draft hadn't been issued until yesterday.

So these are matters that when we had spent a lot of time with the board, I think, on Tuesday trying to list out what's left and get these last things incorporated and we worked hard to do that and actually worked all day on Wednesday and tabled everything else and did so. So it's just surprising that after the close of business, so many changes seem to have been made whether they were the ones identified in the draft or the ones that we had to discover on our own. We've been working again with you in good faith. This does not feel like good faith. This feels like changes of changes. These are things that again could have been raised over the past week not just since the draft had been issued.

So, again, we really left Tuesday night with very clear direction from the board on what needed to be changed in the draft, how to deliver it, what that redline would look like, a memorandum discussing them and we did that.

So in my opinion, we have issued a draft that the board had asked for on Tuesday. We did that, exactly as the board had requested and exactly as we promised and when we would deliver it. So I guess, this is a lot.

Mr. Sergi: I understand your level of frustration. However, even though you gave us a draft with most of the items that we discussed incorporated, we still needed that review

by our legal counsel. So, I think we are moving forward. We haven't moved backwards, I don't think, at this point. I would ask again and appeal to your patience since we are moving forward and seems like we are making forward steps. We are not going backwards. If you would recognize member Hickernell's request and at least review the portion we've asked you to at this point and we'll take the next step.

Mr. Bourjoulian: Sure. With regard to the highlighted points, we will certainly, if you grant us a moment to take a look?

Mr. Sergi: Sure.

Mr. Bourjoulian: Relative to just those, although I would just say that the number of these sections and pages that were removed that aren't those, do appear to be reinserting language that could have been discussed over the past many days with you.

So what do we have for a draft that we can all look at? We weren't able to print one of those.

Mr. Sergi: I have one that's marked as long as you return it to me.

Mr. Cosimi: Just to be clear, we are reviewing everything after the waiver table?

Mr. Sergi: Including the waiver table.

Mr. Bourjoulian: I think what we are asked is to review everything in yellow from the draft that Ms. Learned shared today.

Mr. Sergi: Correct.

Mr. Bourjoulian: And the waiver table on that?

Mr. Hickernell: Yes.

Ms. Lerner: I don't know if you want to also have me to speak about the first half.

Mr. Hickernell: No, I just want to deal with this.

Mr. Sergi: Not really. I agree.

Ms. Learned: Respectfully, I am equally frustrated in that the first draft that I gave the board came after a very lengthy two and a half hour meeting with counsel. When you say I could have said what occurred, was things were put back into the draft that had been eliminated and redlined and greened and it was presented to me in the eleventh hour after hours before a long weekend, the holiday weekend, where matters were totally eliminated. And so what I have presented in the first half of this document is a reversion back to language that existed since the day after counsel and I met. This is not new.

Mr. Hickernell: I think that we are all frustrated. Now that we all have expressed our frustration, without taking away from it and I think it's felt by everyone in the room. I think we are going to have a vote tonight if we are able to talk about what's before us.

Mr. Bourjoulian: We are going to go to find a place to sit if it pleases the board.

At 7:30 P.M., on motion of Mr. Hickernell, seconded

by Mr. Sergi, the board voted for a recess.

The board reconvened at 8:05 P.M.

Mr. Bourjoulian: So we have a little bit of a crisis between us in making sure we go in the right direction. So, if it's okay, I just want to set the table on how we reviewed this and make sure that we did this per your request. Is that okay?

Mr. Sergi: Okay.

Mr. Bourjoulian: So we reviewed the draft that was submitted today by Ms. Leaned, specifically just the highlighted sections.

Mr. Sergi: Pages four.

Mr. Bourjoulian: I guess the problem we kind of got stuck was is that we compared these to the draft we submitted because of the extent of the other changes. So, for example, some of these highlighted matters are a part of the broader change that happened in the draft. Am I making sense? So these changes relative to our draft we can speak to after that review as far as the extent of other changes beyond that. There were other changes that weren't highlighted in yellow. So we just compared those to the draft that we were familiar with and had reviewed and submitted yesterday. Is that what the board had asked for?

Mr. Sergi: I believe so.

Mr. Hickernell: We are looking for the yellow highlighted changes.

Mr. Bourjoulian: Just the yellow highlighted changes.

Mr. Hickernell: Just the highlighted changes.

Mr. Bourjoulian: So any other changes we didn't do. So is it okay if we go through these in page terms?

Mr. Hickernell: To me some of them don't require any comment. You don't even have to say this doesn't require comment. Just go to the ones that do require comments.

Mr. Bourjoulian: I agree. Most of them don't. Please don't take the first two being on the first two pages as an indication.

So starting on the waiver table, on page 4, on our yellow highlighted draft, I think the colored section in waiver number 1 that says: "As shown on the plans in Section 2, Paragraph 1". I think it should be: "As shown on the plans identified in Condition number 1".

Mr. Cosimi: It's innocuous. In our draft we didn't have that.

Mr. Bourjoulian: The sections changed. It's just Condition number 1.

The second highlighted there is fine. I'll just note we were trying to in our draft keep conditions in conditions and waivers in waivers.

So in number 4, we were going back and forth on this one. I think we can live with it but it's confusing. This is a lenders counsel matter where what's required under the zoning, it has multi family dwellings are required to provide two parking spaces per dwelling unit. But then the word "required" was added again. So it just seems really confusing because obviously what's required by zoning and then what's granted. So I think we can live with it.

Mr. Crimini: What is the intent of that? Is that that we are required to go to 293 spaces? Is that the intent?

Mr. Bourjoulian: This is waiver 4.

Mr. Cosimi: The word require was added in the granted section.

Ms. Learned: As outlined 250 standard, 23 compact, 10 affordable.

Mr. Hickernell: I think just in the column, it would be to amend the required spaces now under this waiver and decision, What's required is the 293.

Mr. Bourjoulian: I think we are okay until, starting on page 12, this is 16 and 17. So these were previously, I don't know what to call it, the background section.

So and the reason is because they aren't really conditions, We are required in multiple conditions to develop the project per the plans. So these are sort of past tense conditions. We didn't list out the plans but if the board were thinking about a motion that could be simple honestly we think it could be simplest to strike 16 and 17 because, again, we are required in multiple places to develop further plans but it might just make it a cumbersome motion.

Again in condition 1, we are required to do all these things and these aren't really conditions anyway. So, in our opinion, it might be easier on the board to not have these

changes but if it pleases the board we did go back and do the sheet marked pages. I don't understand how you would reference that.

Page 15, number 28E. Is this one okay?

Mr. Hickernell: Yes.

Mr. Bourjoulian: I'm sorry forget it.

So on 40, I mean we just want to reiterate there is another part of the permit that speaks to the draft decision speaks to but this runs with the land and obviously successors and assigns, so we were a little concerned.

Mr. Cosimi: That's fine.

Mr. Bourjoulian: So I think that's it. I think 16 and 17 just feels cumbersome to us and maybe unnecessary. It might be hard to verbalize. But relative to our draft, these highlighted sections that we mentioned, I think they are okay but for that condition number 1 and waiver number 1. So just those two pieces.

Mr. Sergi: Attorney Learned, would you like to respond to that.

Attorney Learned: Condition 1 says it all goes to how the decision will be structured. So should the board desire to structure the decision differently than the law department then it will be changed in that category. I do want to point out to the board that it is not necessary to have the applicant agree to the form of the decision.

Mr. Hickernell: I think we know that we are trying to make sure that we all know after a vote tonight what we're really done. I think that's my intention in reviewing what we just did.

Mr. Sergi: I agree.

Mr. Bourjoulian: Does the condition say it in both?

Mr. Cosimi: The content is the same.

Mr. Bourjoulian: So you're only asking about the yellow text. But if it's our condition 1, but for that.

Mr. Cosimi: Correct.

Mr. Sergi: Are there any other questions of the board members?

Mr. Rudnick: I'm a little bit confused at what I think I'm hearing is assertion that there are changes from the waiver page onward besides the ones that we are talking about.

Mr. Bourjoulian: Yes.

Mr. Rudnick: In my review of the documents from the waiver created onward, other than the blue items that were Michelle's notes to the board and one red item I find that you don't have to provide to stop or that you're not agreeing to specifically to provide this stop at the super market, only to attempt to. It read word for word to me a couple of items were moved to different positions but I located each one of them and found them to be exactly the same other than the yellow language.

Mr. Bourjoulian: I apologize. We just haven't had- - -

Mr. Rudnick: I'm not blaming you at all. I'm just trying to get us on to a track that, I'm looking at this and seeing that it's all exactly the same except the yellow items. We are now stipulating that most of the yellow items are fine and we're down to some finite things before we open up a larger discussion on what happened before the waiver section.

Ms. Learned: As counsel, I took your clean copy and then as I added language I highlighted it.

Mr. Bourjoulian: If I may? Mr. Bourjoulian went over this before the board in front of Mr. Rudnick.

This looks to me that the structure of the documents are changing so the references might be moving. I think this color is moved but this is struck, this is struck (referring to the document). So there were changes that were'nt in yellow.

Mr. Rudnick: I recognize that there are substantial changes before the waivers.

(Mr. Cosimi also went before the board.)

Ms. Learned: So the titles, are you referencing? The titles may have been, one of the titles may have been changed, Letter C, traffic, parking, transportation services, open space, density and safety issues.

They had just traffic impact, something like that. I reverted back to the original draft that I had supplied for the title.

Mr. Rudnick: Ms. Learned is pointing out Item F, so Title F actually in the city's version.

Ms. Learned: I added the word safety. I apologize. So the title may have been edited and not highlighted in yellow. I apologize. They more accurately address the substance of all of the provisions.

Mr. Rudnick: So the titles are just to be considered guidelines and not substantive elements. Is that true, please?

Mr. Bourjouliau: I think our concern is that to do this redline because I got copies paste over to get a redline between pages, so we really haven't had a chance to thoroughly review it.

Mr. Sergi: Do you want to see if you can tackle the other remaining pages?

Mr. Bourjouliau: We really haven't had a chance to review this.

Mr. Sergi: Would you like to extend?

Mr. Bourjoulian: We don't want to extend.

We think they're a very clear direction on what we really need to do for you guys tonight. I'm sorry. We really want to get this done with you. I agree with Mr. Hickernell. We want to find a way to join these as best we can.

Mr. Hickernell: Just deal with the substance. In the section that I asked you to review the yellow highlights and again leaving aside what looks like the biggest changes between our drafts that we got today. Even those aside, we had the red and the blue after page 4 and I think we have already heard on them but I guess I'd like to hear what the board has to say about the red at condition 20. The blue is all comment.

Mr. Sergi: Mark identified the stop location shall not be required. I'm okay with that.

Mr. Bourjoulian: I think that was our language. I think that was in the previous draft and it just a color change. Is that right Ms. Learned?

Ms. Learned: Yes.

Mr. Hickernell: That's exactly right. It was raised as an outstanding issue. I mean, I think that the language that is highlighted is what we as a board had discussed previously and had been comfortable with. I think that Attorney Learned is pointing out some possibilities with it. Is there any appetite to change it at this point, Mr. Rudnick?

Mr. Rudnick: I am in favor with the red as Attorney Learned drafted it.

Mr. Hickernell: Otherwise highlighted.

Mr. Rudnick: Highlighted.

Mr. Hickernell: And I think I am too.

Mr. Sergi: I am too.

Mr. Hickernell: With respect to the other comments, and I guess some of the suggestions from Attorney Learned, do you want to tackle any of those. Are you looking to make any changes based on this?

Ms. Gelineau: Do you want to talk about the affordable units on number 26? Wasn't that the agreement that they keep the spaces open?

Mr. Hickernell: I am not sure that they ever assented to that. It was definitely discussed.

Ms. Gelineau: I thought they had.

Mr. Bourjoulian: I think the issue is that if we leave those vacant we actually have to reduce the parking ratio committing because we have to leave them vacant. So we will have effectively spaces we will never use or could have spaces that could be pulled out of that mix.

Ms. Gelineau: So what happens if somebody leaves the apartment and you don't have any spaces and a new affordable person goes in and you don't have any parking spaces to give them?

Mr. Sergi: I think you have addressed that. These are going to be allocated for the affordable.

Ms. Gelineau: That's what I thought you agreed to, keep those forty nine or fifty three, however the number of spaces for the affordable units.

Mr. Bourjoulian: Is this the same as this.

Mr. Hickernell: Yes.

Ms. Learned: I am suggesting there be one more sentence that will say that those fifty three spaces will remain and set aside for affordable tenants. I did in the previous draft that I had supplied to you, my first draft that I had supplied to you, I had given you a mechanism for with affordable tenants who are not to use the extra space. It's taken

directly from the development on Cooper Street. So I'm just advising that there are other developments in the City of Waltham that have designated, in fact, twenty five percent of the parking and I know that member Rudnick had ironed out at least fifty three spaces. There does need to be one sentence here that will make sure that those fifty three will remain available to affordable tenants.

Mr. Bourjoulian: This is one that we had done back, if you remember correctly and checked with the subsidizing agency, the regulations, the statutes, etc. There were a number of claims that were comprehensive related matters there. And what it turns out is that from Fair Housing standpoint we have to treat all these units the same but for the conditions that we are committed to do extra things. So this is something we discussed at length and and subsequent number of numerous drafts have not been re-raised or discussed here. It's something that's not okay with us. We will treat the affordable units per the regulations, the statute and the subsidizing agency's rules. And there is no rule about that which we have clarified for you that spaces are available for everybody. We'll make them available free of charge. That was with the board and what we had discussed. Actually reserving spaces was something we said we did not want to do. So that's a problematic one for us.

Mr. Sergi: Indirectly, you are designating the spaces. You're saying that if an affordable unit requires an additional parking space, under your rules, you will provide it.

Mr. Bourjoulian: Provided free of charge.

Mr. Sergi: Not under the rules but under this condition.

Ms. Learned: It will have to be designated then.

Mr. Bourjoulian: This is a matter that we discussed at length and the board had asked that these be made available free of charge so we don't have to actually burden them. And again that is the requirement that is over and above any of the other rules of element. So we do not want to hold fifty three spaces vacant at all times. It's just not that affordable. The discussion was that we would make them available free of charge. The reserved piece

was never raised during the hearing and Ms. Learned raised concern about statute and regulations of which we disposed of.

Mr. Hickernell: It seems to me that condition #26 as written, as soon as an affordable unit tenant requires a space, you have to provide it free of charge. That should show up regardless of any other arrangement you have made for it. So you are going to have to have some flexibility in your spaces and whether or not we put it in this condition. If any of your affordable tenant suddenly gets another car, you're going to need to give them another space.

Mr. Bourjoulian: The discussion with the board during the hearing process was about making it available free of charge. It was not a reservation condition.

Mr. Rudnick: What Mr. Hickernell is saying is that your language, not Attorney Learned's language will require you to make the single parking space and for units with two bedrooms the double parking space available to a tenant in that space. It essentially means you have to keep them reserved in order to fulfill that.

Mr. Bourjoulian: This was about making them free, it isn't about reserved reservations.

Mr. Rudnick: I am only talking about twenty-six the way you have written it.

Mr. Bourjoulian: Could we request a recess?

On motion of Mr. Hickernell, seconded by Mr. Rudnick, the board voted to take a recess at 8:25 P.M.

The board reconvened at 8:30 P.M.

Mr. Bourjoulian: I understand the difference and I disagree on with the spirit it was raised for but I understand where you're coming from and I agree that I am not trying to rechange language and that how it's interpreted.

Mr. Sergi: You mean- - -

Mr. Bourjoulian: Leave it as it is.

Mr. Sergi: No changes to number 26, right?

Ms. Learned: Is it the board's desire to have a final sentence that says three spaces for fifty three and shall be available for affordable tenants.

Mr. Hickernell: They don't have to hold them open. They just have to figure out what to do when the affordable people show up.

Mr. Rudnick: I'm comfortable with that.

Mr. Sergi: Are there any other questions?

Mr. Rudnick: The only other question is what the applicant's attorney pointed out and this is in terms of a change that is not in yellow and that is also not a title and that refers to, again, in our attorney's draft, it's code 8, it's section 2, bold heading section 2, in the middle of the page and we will concur that the applicant's draft on page 11 so what we are talking about is the little piece of language in front of the first condition about Design. The development shall be constructed on the property in accordance, blah, blah, blah. So directly before that in Attorney Learned's draft is just bold Roman Numeral II: The board grants comprehensive permits subject to the etc., and that is substituting for a language that the applicant had, the prior language, that the comprehensive is subject to when the applicant shall comply with the following but then the applicant also added in per our discussion the last time, the board's approval of the comprehensive permit for the project is premised on the applicant and the project's compliance with the following conditions: All requirements imposed by these conditions on the permit shall be applicable to any and all successors in the interest that the applicant or other entity responsible through the administration of the project regardless of whether the conditions specifically identifies the applicant.

So that language is new to the draft per our discussion last time and maybe why the attorney didn't note it as read, as a removal.

Attorney Learned: And so where it's restructured to look exactly like it was before that language is no longer there but on Page 4. And as I sit here now, I do see there's a sentence on page 4 that follows that language you just cited that I understand you directed them to remove.

Mr. Bourjoulian: On this one, I think the biggest issue is included but not limited to the following. We need this to be a complete list of conditions. We can't have new conditions that aren't identified in the permit and have an operable permit. It has to be a complete list.

Mr. Rudnick: So in your introductory item, Roman Numeral 2, the board grants comprehensive permit subject to the applicant adhering to all the conditions and operative facts following this decision included but not limited to the following. So let's just strike that. We are limiting it specifically to the conditions in the contract and the decision. We are all on the same page there.

Ms. Learned: In that Roman Numeral 2, the language including but not limited to the following decision.

Mr. Hickernell: Yes.

Mr. Bourjoulian: After decision, strike comma, strike and add a period.

Mr. Rudnick: And then the language that is inserted in page 11 of your draft in blue, Attorney Learned just moved that to the section before waivers which is on page 4 and is it identical?

Ms. Learned: It is but I now amend that the last sentence you had requested to be removed and the Law Department is fine with that.

Mr. Hickernell: That sentence is gone. So now it's identical to what was on page 11.

Mr. Rudnick: On your page 11 you have a blue section at the top. That was moved on Attorney Learned's draft to page 4, it's right above the waiver chart except that she

included in hers one sentence that we all agreed should be eliminated and we are now going to eliminate it.

Mr. Rudnick: And what's your reason for removing that?

Ms. Learned: The waivers are granted to the assent of the conditions that are here in the document. So there are some things that are not open ended waivers. They are granted to the as shown on the plans so the introductory language that immediately follows your findings is the beginning of the condition section.

Mr. Bourjoulian: I agree with that phrase but the conditions of approval, there's one section that's talking about waivers and there's one that's conditions that both burdening us. We have no choice but to comply with both. This is just a proper way the permits structured even special permits.

Mr. Sergi: In the spirit of compromise, why don't we just be redundant. Leave it in both places if that's agreeable.

Mr. Bourjoulian: I just think again, we are trying to limit how many things here are nonstandard for us unless it is necessary. I don't understand what it accomplishes differently.

Ms. Learned: I have reviewed many municipality's decisions, recent decisions. This is not an abnormal way to set up the decision. It's a logical way to put forward this kind of language.

Mr. Bourjoulian: It says the approval of this permit in accordance with the plans with with the following conditions. This is an introductory paragraph for the conditions. And the section with the waivers is an introductory paragraph to the waiver. We are bound to both. It's just, we really want to try and keep this as structurally sound as possible.

Mr. Sergi: In the spirit of compromise, is it really an issue?

Mr. Bourjoulian: We are making that decision on most of these including issuing conditions and waivers. In the spirit of compromise, we are compromising a lot. We have

so far accepted everything but not limited to the following but we really have accepted everything for the past, I think, two weeks.

Mr. Rudnick: You understand that this is other than diminimus material here. All we are talking about is the location of this paragraph and either iteration one version it's before the conditions and the other it's before the conditions and the waivers. The attorney's position was that the waivers in essence are conditions. They are called waivers because of the structure of 40B but they are conditions that we are asserting and agreeing to and agreeing to here.

So, I guess my suggestion would be to leave it as Attorney Learned has because it's before both the waivers and the other conditions. To move it afterwards does seem to exempt the waivers from the strength of this paragraph.

Ms. Learned: Just to assist, the rationale is that this board can say no to the waivers. The board is granting the waivers not generally but to the specific limit as outlined in the design plan and to the specific language that says amenities can only be for tenants only. There are some restrictions outside limitations to the waiver grants which is why I structured it this way.

Mr. Rudnick: I am inclined to accept our attorney's location on this. You guys can provide a stronger argument for why it doesn't work there.

Mr. Bourjoulian: At the conclusion of going through all this, do you mind if we have another recess.

Mr. Hickernell: I think that makes sense.

Mr. Bourjoulian: I want to get them all in then we'll sort it all out.

Mr. Sergi: That's fine.

Mr. Hickernell: What's next?

Mr. Rudnick: So now my understanding is that we have looked at and addressed all of the items that are changes to the waiver table and beyond in the document including the paragraph pursuant to the labor table and we will revisit that one.

Mr. Hickernell: So in other words, except as we specifically stated everything on page 4, waivers section onward, where it's yellow, it stays unless we've changed it; where it's blue it comes out; the red stays but it's not going to be red anymore.

Mr. Bourjoulain: But relative to the applicant's draft.

Mr. Rudnick: We are going to be adopting the city's draft.

Mr. Hickernell: So I am just summarizing it. You still get your chance to look at it again.

Mr. Bourjoulain: I think everything is accepted but for one piece of verbiage.

Mr. Hickernell: Condition 1, we changed in the waiver one. It may not matter. That's fine. As long as it is clear to what it refers to I don't think it matters.

Mr. Bourjoulain: This is candidly much clearer but - - -

Mr. Cosimi: No, I'm saying if we go back to this then it's not clear what Condition 1 is.

Mr. Bourjoulain: On page 4, I think there's two issues we want to look at.

Mr. Hickernell: The preamble.

Mr. Cosimi: So if the preamble goes up above the waivers then all of a sudden we refer to condition 1 in the table.

Mr. Bourjoulain: It looks like it's in the table.

Mr. Cosimi: That's why we have the conditions labeled the conditions and the waivers labeled the waivers.

Mr. Rudnick: So the solution could be looking at the language that's now in front of the table that language could be the same as it is now but refer to the waivers, not the conditions and then be reiterated again referring to the conditions after the table and before the conditions. So there will be an introductory paragraph assuring the board of the permanence of these waivers and their exact adherence to them exactly as written and then reiterate that concept again relative to the conditions directly before the conditions. I'm hoping that satisfies.

Mr. Bourjoulian: Candidly, I think that's what we had in our draft. I think we had that these are the waivers from the permit.

Mr. Rudnick: I'm really trying not to look backwards. I'm suggesting that having those two paragraphs that are identical, that one refers to waivers and the other refers to conditions and one is before the waivers and the other is before the conditions, that might satisfy the board.

Mr. Bourjoulian: When we go back and talk we'll keep in mind that we are trying to give you guys the ability to make a clean motion in regard to these two documents.

Ms. Lerner: I did need in 16 and 17 references to the plan if they end up being conditions as opposed to in the background section and then I think the board has to address the substantive matters in 7. I'm not sure what they are actually talking about.

Mr. Rudnick: We are on number 27, "the applicant shall review and confirm the location of the existing water main". The attorney is pointing out that we don't have a detail that says which water main that is.

Mr. Bourjoulian: It is on the existing conditions plan.

Mr. Rudnick: So, can we just reference it to that then?

Mr. Bourjoulian: There's only one water main potentially being on the site.

Mr. Rudnick: I'm happy if it says all water mains, then we're done. If you want to reference it to your plan, then let's make a reference.

Mr. Bourjoulian: We actually don't believe it's there but there's one document that's not an authoritative document that says it's there. If there's a water main there then that's what's that's for.

Mr. Rudnick: I'd be happy to change the language to the applicant shall review and confirm the existing location of any water main located on the property and if necessary shall pay, blah, blah, blah. Frankly I like it better because all you're saying here is it's the water main presumed to be located and then if we find a different water main you're off the hook for that one.

Mr. Bourjoulian: I understand. I have an easy solution for you.

Mr. Rudnick: Easy would be to reference your plan.

Mr. Bourjoulian: There's only one water main that was presumed to be on the site. Again in order to make it an easier motion, I would like to say we accept everything after page 4 on this draft. There is only one presumed water main that was on the record that was cited by the engineering department.

Ms. Learned: Looking at the plans, it's very difficult to see where it is.

Mr. Rudnick: I appreciate everyone's desire to make this simple but simple for me is to choose. Either let's refer to all the water mains on the property or let's refer to where on your plan this water main is located. So you either give us the location in the reference to the plan location or just have all the water mains that are on the property.

Ms. Learned: As it was described to us, it might be going around the building and back.

(Mr. Bourjoulian went before the board to go over the plan with the board regarding the water main.)

Ms. Learned: I would be content with Mr. Rudnick's suggestion.

Mr. Sergi: Are you okay with using any instead of the?

Mr. Bourjouian: I mean the main can be a private line, right? It doesn't matter. We are going to pay the fee if its there or if its not there then we don't. I think the record is clear enough that we can go with whatever the board is comfortable with. We've made the commitment.

Mr. Sergi: So we'll strike the word "the" and replace it with "any" on that first sentence.

Mr. Rudnick: Am I suggesting that we strike the word "the" and replace it with "any" and strike the words "presumed to be".

Mr. Bourjouian: So Mr. Rudnick, my colleague just made a good point. So part of this is that we are going to confirm the existing location of the water main and again this was in the record as a specific one. If it's any water main, we'll effectively have to use ground radar across all the acreage of the entire site, you know what I mean. It's almost like an impossible task. I think it would be better to just reference the testimony that was specifically to that line rather than for us to go out, i don't even know what that would cost to do GPR across the entire site.

Mr. Rudnick: This was Cassaza that brought this?

Mr. Bourjouian: I mean his testimony was very specific. He was citing the plan.

Mr. Hickernell: I agree that was specific.

Mr. Bourjouian: I don't remember the date but I think he only testified twice.

Mr. Rudnick: The location of the water main cited by Cassaza. I think I would be satisfied by this in that sense. "The applicant shall review and confirm the location of the water main cited by Mr. Cassaza, and we can put the citation in there, as potentially located on the property'. So instead of referring to any water main which I can

understand is a burden to you and instead of accepting this language we'd put in that identify the water main as the one cited by City Engineer Cassaza in his letter dated blah, blah.

Ms. Learned: Substantively has the board handled number 55?

Mr. Rudnick: I was hoping to hang on to that one. I mean that's a negotiation, I recognize the work of the law department essentially was that the applicant overpaying for their I/I mitigation fee and we arranged that fee to be \$160,000 lower. And you know that the project was acceptable at the point that that \$160,000 has been spent so our attorney is just reminding us that that \$160,000 is available to continue to mitigate against concerns about this property. And she is suggesting that one possible use of that could be to increase the gift to the Affordable Housing Trust by something approximate in that much money.

Mr. Bourjoulian: Have mercy.

Mr. Rudnick: The choice of the \$60,000 gift was you know arbitrary. It's got some logical ideas but there was nothing that said that this is the right amount or this is the wrong amount. It's an assertion about not providing the sixty percent units on site but we all know that you can't even build a single unit of housing at \$60,000 so having an amount of money that would be more commensurate with what it actually takes to do some affordable housing, I think it would make it a more, well certainly more substantial but in more reasonably in line with costs donation to the affordable housing trust. You know I was trying to get a sense before recommending that that we are not spending any of the applicants other money on other changes. We're making the document.

Mr. Bourjoulian: Since that commitment, we have made a number of extra commitments that certainly were not accounted for that 160 change including the two extra units at the 60% which we made at the last hearing in August. There may be some additional funds for the relocation of utilities on Second Ave that have nothing to do with the project. Certainly the water main increased costs. We've been very forthcoming with making you know accepting all these additional changes after that but there were other additions particularly the very costly addition of two extra affordable units at a much

lower ratio. The subsidy of these units are very heavy weight on the project. Again, please have mercy. Please have mercy.

Mr. Rudnick: Michael we did that after the \$60,000?

Mr. Bourjouliau: We did the \$60,000 during the first discussion and then the 60% units were at the last public hearing and additionally someone made following the public hearing the additional engineering requests.

Ms. Gelineau: You made all these commitments prior to the reduction of the \$152,000.

Ms. Learned: Correct.

Mr. Rudnick: We will ask if we waive my ability to revisit this issue. I'd like to move along and see how much progress we make before I decide whether I ask you for that additional burden or not.

Mr. Sergi: So why don't we start with the more difficult or seemingly more difficult section which is, Ms. Learned if you could introduce those?

Mr. Bourjouliau: Mr. Chairman, may I make a suggestion. Obviously it's up to you. There were much more substantial changes, I think. Are you going back to the first four pages?

Mr. Sergi: Correct.

Mr. Bourjouliau: Would it be a good time to perhaps, we have not reviewed. There were pages and pages of changes there. Would it be okay with the board if we were to review the handful of items on the pages after page 4. Mainly the Operations and the Conditions Preamble, the Condition 1 piece, of course, and then the what was the other one? I think that was it.

Mr. Sergi: If it makes you feel more comfortable, we don't have a problem.

Mr. Rudnick: That sounds like a good suggestion especially if we give Attorney Learned a chance to briefly explain what the changes are before page four so you can brush off the yellow ones as quickly as you can and then have a little time to prepare for the ensuing discussion about that? That's if she has remarks that she thinks would clarify any confusion about these changes and then I would make a move to take a recess.

Ms. Learned: So, the easiest part to say is that all I did was revert back to my draft that had been presented to you the day after the meeting that we had here in the law department. So it looks exactly like that.

Mr. Cosimi: There were a couple of drafts submitted.

Ms. Learned: I submitted one draft after our meeting.

Mr. Bourjoulian: Then there was one almost immediately thereafter the next day, I believe, with more changes.

Ms. Learned: There was one draft afterward.

Mr. Hickernell: Can we just hear why the changes were made?

Ms. Learned: So we are talking about for me where it covers page two where the conflicts are through four.

So two to page four for me covers their two to page seven. Briefly, the overall restructuring of this document back to how the law department had initially presented it, it's required for several reasons. There is some language in here that is outside the scope of the board's power to determine. So there are language about determine, language that is similar to, this on pages two to three, determining that the project eligibility elements of the application. That the development qualifies as low moderate housing. Their use of the word applicant has complied with and the use of the word because and this is again pages two through three. Those determinations are not for the board to make under 760 CMR 56.054 which discusses the scope of the board's jurisdiction. 760 CMR56.04 tells us that these matters are solely within the purview of the subsidizing agency.

So to resolve that is a draft that I had presented. We acknowledge that the project eligibility letter from the subsidizing agency exists and it speaks for itself. So that takes care of some of the problems on pages two through three.

Mr. Sergi: Where is that specific statement in your draft?

Ms. Learned: In mine.

Mr. Sergi: Okay, I got it.

Ms. Learned. There's some of the intent that intent they had to sort of capture some of those concepts, we can't determine them but we can certainly say the project eligibility letter says what it says.

There is some reference to what the list submitted, this is on their page 3, with the provisions and the local rules and all of that. Again if that was to remain it doesn't cover everything that their chart now covers. The chart is much more comprehensive with the waivers. I don't think it's necessary to repeat that here. Again if that language in the bottom of the first paragraph on their three was to be incorporated here it's really just repetitive of a clearer reference to it in the waiver chart and this one does not include all of the waivers that they did indeed ask for.

I do note for the record that I do have cause for concern that there have been several waivers that have been asked for after the close of evidence in this case and after the public hearing closed.

There is a regulations that permits waivers to happen during the process but I do have cause for concern there are several that have been added when the particular boards that you're stepping in the shoes of or the department heads have not had the opportunity to come in and to comment to you on. For example the twenty five wider. There's certain things.

Mr. Hickernell: Actually I would like to just hear a broader stroke thing then get into that right now.

Ms. Learned: I just want to raise it for the record. I'm not saying that it is something that we have to address but I certainly wanted to put it on record so that you would be aware that that could be a ground on were anybody to appeal this.

Mr. Hickernell: Is that related to the changes you made on this?

Ms. Learned: No, it's related to my comments on page that section that's listing waivers doesn't include many of the waivers that have been requested post the close of the public hearing.

Mark, did you have a questin for me?

Mr. Hickernell: No. I was just trying to make sure that we're just talking about the first couple of pages here.

Ms. Learned: Sure. So on pages three through six, I am very worried about the characterization that has occurred with respect to the documents that in the record. It is one thing to mention that there are these experts who have submitted peer reviews and certain documents to you. It is another thing to have those documents then be characterized in the conclusion stated. Our professionals who also came to these hearings who also voiced their local concerns are not referenced in this background section. A lot of their testimony go directly to your findings that have to be made before we go into the ameliorating by the conditions. And so, to address that issue rather than going and putting all the evidence in and testimony in that is favorable to the city, I thought it best to remove it because it's not necessary. The recored speaks for itself. These documents are there. There is no need to include it in the decision.

I give some specific examples that give great cause for concern. On the bottom of page three there is a section that says the following is a summary of the issues discussed by the board throughout the extensive public hearing process, and then from four through six they identify all of the evidence that is favorable to the applicant. And again, not tailored to your findings and not tailored to some of the conditons that are being imposed.

Mr. Hickernell: Okay. I think we got that.

Ms. Learned: So, just as a quick example, the fire truck, the school bus access, the turnarounds.

Mr. Sergi: We understand that.

Ms. Learned: That goes along with, I'm sorry, just quickly touching the concern about the traffic and parking impacts, about their parking demand study and the other comparably situated developments, similar developments and that's the ending of the third paragraph. I think it's on the bottom of page four of the traffic parking section. That gives the law department great cause for concern. In order for that statement to be included here it implies that the board believed that those put forward examples were in fact comparables and it would be up to the board to decide that in the first instance that the examples that I understand were given are in fact, Merc and Cooper Street. They are downtown. They are near traffic busses and trains are there. In order to adopt that language, you would have to decide that you also believed that they were comparables. And, again, rather than go through all that, it just seems to be easier to eliminate those statements and structure the opinion the way I presented.

And then the final little piece of information is on the bottom of page five of their draft. That's a very good example of having it be through the prism of the applicant. We had to have a ground that the isolation of the residents in a commercial district is a local concern and yet there's a highlight here to the existence in a commercial area being a benefit. And that could be an argument that they will make at some point, but it doesn't necessarily belong in the decision of the board.

Mr. Sergi: Thank you, Attorney Learned.

Are there any questions for her before she leaves the podium?

(There were no questions.)

Mr. Rudnick: So have we had an opportunity to hear an outline from our attorney about what the changes were prior to the waiver. I would like to call for a recess to give the applicant a chance to review both the substantial discussion we've had about the yellow

items, waivers and onward and opportunity now to formulate some initial response about the language before that.

On motion of Mr. Rudnick, seconded by Mr. Hickernell, the board voted to have a five minute recess at 9:10 P.M.

The board reconvened at 9:40 P.M.

Mr. Bourjoulian: So we discussed a couple of things here and we are going to start with the pages in Ms. Learned's draft up and to the waivers.

Mr. Hickernell: The background section?

Mr. Bourjoulian: Yes. So I think there is a short story and a long story here. Her story is that there are just too many things in here that are either incorrect or we can't live with or are outside of standard norms per the 40B or even Comprehensive Permit that have been issued. And I can go through some of them to give you an idea but there are so many inconsistencies in pieces of language. There are actually things that are incorrect and again we have the 40B handbook here. These are things that are customary and expected in the comp permit and finally these are things that have been issued in comp permits in Waltham in the past.

So what we are struggling past the waivers list right now to be completely honest with you on how this is going to functionally occur which is another large matter that we haven't fully resolved yet. But there's no way we can piece meal the amount of problems that are in the piece up until this.

Particularly given that we on Tuesday, this was not something that was discussed or raised. We went through as many. We have a dozen items here that even with the dozen, I think there's more. We know up until the waiver list, that's just what the language used to be and it is fact as Ms. Learned said. These are things that actually did happen. And then some of the additional languages is very troublesome. Some of the things that we did not assert. Interact plan references, references to the wrong dates, things that were in the subsidizing agency's territory instead of ours. We didn't know what the subsidizing agency

did or or the board didn't. There's just too many. We couldn't find a way to get this into a manageable list.

Mr. Sergi: I mean there's only one, two, that's only two and a half pages.

Mr. Rudnick: Their's were seven pages.

Mr. Bourjoulian: We actually tracked all of the changes that was changed and what was - -

(Mr. Bourjoulian went before the board to go over the sheets.)

Mr. Bourjoulian: These are very substantial changes. We just can't do it. These are disfunctional. The product is not operable with this language.

Mr. Hickernell: So the language, to me, the background and how we got here, that's not substantive stuff for you to do a project for you to get the waivers and the conditons. It's for whoever reads this to understand, hey, how did we get here? So trying to make a complete record as Attorney Learned said this is a huge, huge document. I am not interested in doing that and nobody was. What you have done is given us your version of what happened up to this point. I get that. But I also don't see how it's necessary for the permit.

Mr. Bourjoulian: It's customary.

Mr. Hickernell: I don't care if its customary. It's our decision to write. You drafted something. We may or may not adopt it. I mean this has nothing to do with any money. It has nothing to do with the waivers, the conditions or anything else. So how is deleting, and my inclination is because I think it would be hard to fix and if we were judges they would have written this already andwere not that, and we don't have that. But what's the point of it. I mean customary or not I don't see what it adds to this decision.

Mr. Boujoulian: It wasn't the items that were struck,Mr. Hickernell.

Mr. Hickernell: Okay, but that's what I am asking about. Items struck, who cares. Like I want to deal with that. If we just strike from the bottom of your page three, "the following is a summary of issues".

Mr. Bourjoulian: This is the part I understand.

Mr. Hickernell: Yah, and we are all jumping around a lot here, so - - -

Mr. Bourjoulian: Do you have the redlined version?

I'll walk you through some of it.

Mr. Sergi: This is your version that I'm looking at.

Mr. Bourjoulian: It's my understanding we are trying to summarize which document you are going to go on in presumably with a list of changes or edits like including but not limited to.

So what I think from the waivers out, there's a list, I think that we had seven items that we needed to talk about. Basically we'd vote to accept from the waivers out subject to these six things we need to change and then now sort of that piece. And then there's now, the discussion leading up to the waivers.

So we are trying to say we would like to accept one draft or the other ideally. Presumably it's Ms. Learned's, again that had a series of changes.

So going through Ms. Learned's draft, things that changed, on the very first page of the comprehensive permit draft, watch city the word preliminary design is struck. This something we discussed at length at the last meeting. that that's something we needed to have. And where these are preliminary plans, this states that the applicant asserts that it is a limited dividend organization. That's not true. The subsidizing agency asserted that. In the following paragraph that applicant shall comply specifically identifying the plans and we gave you two sets of plans.

On page 4, it says the applicant's asserting. That's actually the MHP assertion. We did not assert that. It's in the product eligibility letter.

The materials submitted on traffic rules and regulations that was struck. That was something that needs to stay in there because that governed our parking metrics and waivers associated with that.

On page four, where the public hearings were held, that's something that again has appeared in other permits and is in the 40B handbook.

Yah, the assertion of what the board finds, we need to have the findings of fact.

There's a lot of things here that are either factually incorrect. Some of these things are just incorrect.

I submit they're findings of fact.

What was the one on page 8, AJ?

Oh DHC was referenced. That's another one. So that the provisions of 40B and the DH city regulations and guidelines. It's the regulations within the state guidelines, 760 CMR66 but it is not DHCD. This is under a Mass Housing Partnership. It's a different subsidizing agency.

Mr. Hickernell: I'm sorry, Page 8?

Mr. Bourjoulian: Page 4.

Ms. Learned: Why don't you look at my draft and then tell us exactly where you think there is an error. Don't be going back and forth with, this is a suggestion that I think will move us forward tonight. You have a draft that was provided by the law department and if you find a factual error tell us and we can change that factual error.

Mr. Bourjoulian: I understand the preference not to have the findings of fact. We copied this out of an existing Waltham permit. So we didn't just generate this. We used an

existing comp permit in the city. We just wanted to do that because we just wanted to give you something that was presumably familiar and acceptable that had been done before.

Mr. Sergi: In all due respect, if it's not as pertinent as many of the other components then why have it there?

Mr. Bourjoulian: I am being told that it is pertinent. These are customary parts of the permit that lenders expect and that the subsidizing agency is going to expect to see when they issue a regulatory agreement and final approval.

Mr. Sergi: It's a broad part of the record, though.

Mr. Bourjoulian: No. It's a part of the record but what difference does it make if they are in the customary format so that the banks and the subsidizing agency and everybody else understands.

Mr. Sergi: As Attorney Learned described, it's kind of slanted. It's not exactly as the record states, so, I mean she did- - -

Mr. Bourjoulian: For example?

Mr. Hickernell: Okay so you suggested that some other developments are comparable. I'm not making that finding. I never found that. I don't agree with it.

There are things in here that are findings that - - -

Mr. Sergi: It's on your page 4, third paragraph. It's probably four lines from the bottom of that third paragraph where you say the applicant submitted a parking demand study. I'd rather similar developments.

Mr. Bourjoulian: We did.

Mr. Hickernell: But you think they are similar. I don't think they're similar for us to make a finding that they are similar.

Mr. Bourjoulian: Your peer review consultant - - -

Mr. Hickernell: Yah, fine, but that's not their decision either.

Mr. Bourjoulian: So, can we strike that one?

Mr. Hickernell: Well, that was your example. So, you asked for an example.

Mr. Bourjoulian: We are trying to manage a dozen items here. We could go through it and do it that way. What other parts of these are not- - -

Mr. Sergi: Didn't we try that already?

Mr. Rudnick: Assuming you are down to very simple objections on the waiver and post waiver part of the document, I have to say that this part of the discussion, my sense is that the board is becoming more comfortable with Attorney Learned's draft as it's drafted. I pretty clearly understand what her objections are that drove her to make the changes in the pre-waiver section of the document which in summary are it appears that the board is agreeing to or affirmed findings that the board didn't and it appears that elements of the hearings were cherry picked so that ones that tend to support the applicant's position are included and ones that tended to object to the applicant's position just aren't mentioned. And that doesn't seem like a level playing field to me. So it does seem that on that matter either including all the testimony or not including any of it and because it's in the record had been just the record reference will seem like reasonable solutions to me. It seems that this part is complicated enough for you or it seems that this part has complications that are making you wary of accepting much of that language pre-waiver. And yet I get the sense that the board is relatively comfortable with the language.

So, just my logical sense of how this works out best is to extend this thing one more time and do what was just said here. Take Attorney Learned's final draft the one that came at 5:15 this afternoon.

Mr. Hickernell: But it's substantially similar to a previous draft that she has.

Mr. Rudnick: I's just trying to identify the actual draft we're working and give us a point by point letter that says this is what I object to in this paragraph and I would rewrite it this way and this is what's left out and we'd like it in the document.

We can hash that out tonight and I am willing to do it, but I think we are all better served by taking a more calm shot at taking Michelle's draft and criticizing it in the way that you would like us to change it specifically. So, I am willing to do that tonight, but I think, frankly, you would be better served by having the opportunity to be convincing to us in an organized way rather than trying a shot gun approach because that's what's already starting now, is we're jumping from paragraph to paragraph. I think you're the ones that need to be served by these changes because I'm getting pretty comfortable with the way it is now. And I do want it to work out for you guys as well. And the only thing in my view that's stopping that from happening is our need for this to conclude tonight, which believe me, I want that as much as you do.

Mr. Bourjoulian: I guess what my concern is without concluding this tonight Mr. Rudnick, we left on Tuesday night with a very specific of items that we needed to include and the board told us it was it. And suddenly the entire draft is completely different including pieces that we had a chance to raise at one part of that draft.

Mr. Rudnick: I am sorry. I am truly sorry about that but I can make up for it.

Mr. Bourjoulian: My concern is that we come back and make again and follow the orders and we capitulate again to the five or ten or fifteen and we issue a draft and at 5:15 night before the hearing we get a completely different draft that we can't live with. I don't know where this ends because we had a finite list of things we were going to provide to you at your request and we had an opportunity to cover things in these first five pages and didn't. It feels like the goal post keep moving on us so I'm very concerned about extending again and just ending up with another document that is completely different than this one.

Mr. Rudnick: I hear and I understand those concerns.

Mr. Bourjoulian: I don't know how I can mitigate that. I don't know how I can continue to keep offering extensions so that the document can dramatically change after very finite and specific direction from you and then changes that are being made by Ms. Learned that were not at your direction.

Mr. Rudnick: I recall also making specific and finite requests as Mr. Hickernell did at the last hearing that we had upstairs and that I did in the last two hearings, the one that you were absent from and the one that you were here two days ago that we have been working from the law department's draft. That was my request. That was Hickernell's request two months ago and we haven't done that at all. We're continuously working from your draft.

So my suggestion here is not that you redraft the document and give Ms. Learned a chance to again criticize it. My suggestion is that we are looking to adopt her document. I'd like to give you another chance to point out what's in that document that doesn't work for you and what is missing from the document that you need to be in there and let the board decide on those at the next hearing not go back to the attorney asking her advice again. I think we have been well advised by Attorney. I think we have a good overview of the issues here and I'd like to give you a chance to show us what works and what doesn't work in her draft and a letter to us that says paragraph one works, paragraph two doesn't work because of this. Here's how we suggest changing it and let us vote up and down on the changes that you'd like to her document assuming the other board members agree with me. It's not something that we have been going back to the law department and saying, okay, here's your shot to redraft their document again. I'm not looking for that. I'm looking for this to end. I'm willing to have it end tonight but I think you guys are better served by taking one more shot at giving us a well organized critique of the parts that you don't like in this. And if that doesn't work for you, I understand it. It's been a long frustrating process.

Mr. Bourjoulian: I feel like its the department of redundancy department. We keep ending up back in the same place. We do whatever we can do. We do exactly what you ask and candidly on Tuesday night you asked us to work off our draft. That was what we did.

Ms. Gelineau: I think he said you'd take a shot at it. He asked and you said to your counsel we'll take a shot at it.

Mr. Bourjoulian: We didn't take a shot at the twelve edits that we discussed. But I think what Mr. Rudnick was asking for was the changes on our draft. We discussed that a handful of times.

Mr. Cosimi: And just to be clear. I thought the draft that we were speaking of was the redlined draft of Michelle's, so it's semantics I guess. But it was not a redline against our draft. It was things that we reinserted in our draft.

Mr. Bourjoulian: We took Ms. Learned's from draft after that meeting and made changes to that.

Mr. Cosimi: It's water under the bridge.

Mr. Rudnick: I'm a big boy. I don't need it to be my way. But when you assert to me that we are not playing fairly because we asked you for your stuff you gave us the stuff and now we want more stuff then I can only be forced into the corner of pointing out where you didn't give me the stuff I asked for.

I don't want to play this game at all. I just want to give you guys a chance to make a good last pitch to change the document that we are now working from which is the one that Ms. Learned prepared, And we can slug that out tonight if you want or you can come back to us with what I'm sure will be a more well considered and more convincing set of concerns that the board will act on directly and we'll walk away with a decision at that meeting. If you want to do it tonight - - -

Mr. Bourjoulian: So we would redline Ms. Learned's draft and then the board will decide is - - -

Mr. Rudnick: I'd prefer if you just wrote us a letter, leave her draft in tact and point at the items in her draft and say, in this paragraph we think this is a factually incorrect item and this is what we would like to substitute. And then here are the series of

paragraphs that have been eliminated by Ms. Learned that we feel are essential to our application and we will, now that we have sat through several years of this, I think we know what we are doing. That's the way I am suggesting.

Mr. Sergi: I agree with Mr. Rudnick but I think we have done, we made a major step tonight. We agreed on a good portion of this, correct?

Mr. Bourjoulian: We agreed except to all of the changes that were not directed to be incorporated on Tuesday. Yes,.

Mr. Sergi: Except from the front part of the petition.

Mr. Hickernell: And some things we didn't change despite other advice.

Mr. Sergi: Right. So the point is we made some progress tonight and I think what Mr. Rudnick is asking for is reasonable. I think if you just make the changes as we agreed to on the waivers back. We all discussed those tonight. We all agreed to those. And then as you see with what's left, in Attorney Learned's petition draft go in as Mr. Rudnick has requested and put in your recommended language that you feel more comfortable with and I think we can find an end to this.

Mr. Hickernell: And by the way, you are right about the preliminary plans. That would be something that I would accept as an example.

Mr. Bourjoulian: I guess before we go, I would love, if it pleases the board before I speak with my team, I guess before that I'd like to understand, obviously there was an appeal process here that happened beforehand and there is a process that happens should we be so fortunate to get a permit we can execute on after that as that closes out and so I guess some of my concerns are a number of Executive Session Meetings that have happened. Certainly I am not asking to understand what you spoke about in those but I guess I would like to know what the position of the board is on how they will proceed with the appeal following the conclusion of the Zoning Board process where we have heard from the board and Ms. Learned that the idea of striking many of these pieces in the findings of fact is to preserve the ability for potentially for a one and a half percent land area objection

in the future. I guess another project. So my question is, should the permit be issued and be acceptable, is the board planning on withdrawing the balance of their appeal? What is the board's intention following this because that obviously has a big impact on how we proceed after tonight?

Mr. Hickernell: I prefer to say that we don't know the status of that litigation. We're just handling the 40B that's before us.

Mr. Bourjoulian: So at the conclusion of this process, however you may decide to vote, the board has an option to withdraw that appeal such that the record that the Department of Housing has issued their decision is expunged. Basically it's settled and there's no conclusion. So right now, there was a conclusion that the town adept that the burden of truth and then following this process with the board and the hearing is closed the board has an option to withdraw so that that does not become on the record. So my question is what is the board's plans for that. That does weigh on how we are going to proceed on this.

Mr. Sergi: We really haven't given much thought to that. I mean we can.

Mr. Bourjoulian: It's important for how much of this we can live with because right now we're going to take a big gamble on some pieces of this that are a part of our business that are not going to be in here and we're going to have to go off and hope that it works,. But if the board's intending to continue to appeal, - -

Ms. Learned: I can help with that.

Mr. Hickernell: I think that makes sense because I think you know better than any of us.

Ms. Learned: If the board was to deny the petition, we would have our 1.5 argument preserved. If the board is going to grant the petition with conditions, it's granted. There's no HAC further argument that is preserved or appealed or further. The grant with conditions is your grant with conditions. The city will not be advancing any

appeal on a 1.5. This is the grant with conditions. The 1.5 decision and the continuation of that appeal is only a ground should the board choose to deny your petition.

Mr. Bourjoulian: Okay.

Ms. Learned: It's not simple.

Mr. Rudnick: I move for a brief recess. Mr. Hickernell seconded the motion and at 10:03, the board voted to take a brief recess.

The board reconvened 10:10 P.M.

Mr. Bourjoulian: Okay. A couple of clarifying questions first because it seems that it's our best efforts to clarify on Tuesday we missed. You know, I'm going to try this again.

Will you tell me again exactly, Mr. Rudnick, what you will like to see and then if the board all agrees with you assuming we are going to extend it. Is it Tuesday?

Mr. Hickernell: We are here Tuesday. We've got a couple of other cases. It looks like it's all going to be continuations and extensions of time, so none of them will be - - -

Mr. Bourjoulian: So, please.

Mr. Rudnick: What I'm hoping for is that we all recognize that the current draft from the City Law Department is the draft that we are working from and that the applicant's team submit a brief or a letter, or whatever you want to call it, that refers to the items in that draft that you would like the board to change and suggested language you would like it to be changed to.

Mr. Bourjoulian: A letter.

Mr. Rudnick: Not in a redlined version of this. Ya, you can redline this but it's just got to be crystal clear. You know, not five different colors meaning five different things but just here are the things we want to add and here are the things we want to delete. I think it would serve me if it was accompanied by a narrative that explained to me why you want to

make those changes but if you want to do that orally I think it just lengthens the meeting but that's what I need. I don't mean to say you can't redline the document.

Mr. Bourjoulian: Well what we want to get you is a document, you could say, okay, we understand all the applicant's concern from this memo or letter whatever, but that you have something to vote on.

Mr. Hickernell: That makes complete sense.

Mr. Bourjoulian: Part of the reason why tonight, we really wanted to do this tonight and maybe we could have voted on the draft with those six changes, you know, after the waivers but there was so much before. It was going to be a motion that would take an hour to go through and then there would have to be another draft. And our concern is we want to hear you vote on any of that so there's a vote and then and someone will write a draft later.

We want to have the draft to be as close to as ideally you say the draft best. That's okay with us.

Mr. Sergi: So let's agree not to change the agreements that were made after the waiver section. You have agreed to make those changes. You've agreed to make those changes. We know what those changes are. All we want to see is those specific changes.

Mr. Bourjoulian: Everything after page four.

Mr. Sergi: Right.

Mr. Bourjoulian: In the interest of progress, would it be acceptable if we just tonight walk through, I think I have five items.

Mr. Rudnick: So you would like to discuss that now.

Mr. Bourjoulian: There's four things it seemed we agreed on and then there's a couple that we want to talk through.

Mr. Sergi: Okay.

Mr. Bourjoulian: So as I understand it, we will submit a clear cover letter explaining whatever changes are left on the early pages of the document up to the waivers. We'll presume that's subject to your checking an approval, of course, everything after that we discussed we'll vet out tonight and we'll redline that as well so you can see that we're honest about the changes, of course. So the letter and a redlined document, first of all we'll work from Michelle's draft. We will get as much as we can possible to remove here. We understand your concerns and then the things we actually have to live with. And at that point there will be a vote

Mr. Bourjoulian: So I'm not positive that these are in order. What document are we looking at?

Mr. Rudnick: I'm looking at Michelle's draft. So it is the one with the yellow highlights. It's noted as Version 23 but that was because it was generated simultaneously with your version 23. So in the first page, on the bottom corner there's the version 23 and if it's the one that has yellow highlighting all through it, that's the one we are working from. And again, I'd like to see this back with every word in tact that you also add your redlines and you also add your suggested additions to the document. So we're not in any situation where there are words missing from the document.

Mr. Bourjoulian: We are going to remove the yellow if that's okay.

Mr. Hickernell: Yes.

Mr. Rudnick: We are going to chop through the yellow items now.

Mr. Bourjoulian: I think we accepted everything changed in yellow. These are the but for. So everything from the waivers out, we're saying okay but for the following.

So there was the included but not limited to, language that was added - all right I'm going to back up. I'm sorry,

On page 4, on the waiver table, we'd like to reference Condition 1. We think in either version it's clear and condition 1 is clear. It's condition 1 not waiver 1.

So we're skipping ahead to page 8, under Roman Number II, we'd like to remove everything after Decision mainly "including but not limited to the following".

Mr. Rudnick: We already agreed.

Mr. Hickernell: He's just making sure.

Mr. Bourjoulian: We got the Condition 1. Well, come back to the questions ones because I'm going to hit the easy ones.

On 16 and 17, our opinion is these aren't conditions. We'd like to strike these just because I think it is not a condition. It just doesn't seem like a condition to us. Again, it's saying that something that already happened. Conditions should be things we are bound to do.

Mr. Hickernell: I tend to agree that it reads that way. Attorney Learned, what makes that a condition as opposed to just an explanation of what they have to on the plan?

Mr. Learned: My concern is that these two provisions were ironed out by member Rudnick and they were, in fact, conditions that ameliorated some of the local concern issues that you had made a finding in the decision. So that if you put it just in the background, it could change.

Mr. Bourjoulian: I don't think they need to be in the background, Ms. Learned. I just think in Condition #1 "the development shall be constructed on the property in accordance with all material respects, the following civil engineering plans etc, etc, etc., and then the plans are listed.

Mr. Hickernell: But let me just follow up on that. I'm sorry, I thought we were doing the easy ones first but were not. I mean, I agree that it does read more like a description of what happened and the change that was made on the plan but the change

was something that was specifically made to ameliorate substantial concerns of the board. I recall that quite specifically especially with the open space. So it's kind of an in between thing. If the decision is going to be defended and I'm hoping for a decision that's easy for anybody who is holding it in their hand to defend. It does need to tie the changes to the concerns that were being addressed, right?

Mr. Bourjoulian: I agree and I think that removing these two conditions doesn't remove that language which still exists in here which says - -

Mr. Cosimi: Most of the language has been relocated from what was before. The question is whether it's a condition or whether it's what you say what happened.

Mr. Hickernell: A change made to ameliorate concern.

Mr. Bourjoulian: Basically there's a whole detail here that in Ms. Learned's draft states that we made a truckload of changes and basically in the aspect of this to ameliorate your concern. This is just cherry picking we made probably a hundred and fifty changes. If we were to have a hundred and fifty changes we made throughout this whole process, this
- - -

Mr. Hickernell: We're not doing that. I think these are more at the top of the list cherry picked or not because they were so substantial and the open space concern was huge.

Mr. Bourjoulian: I understand. This is a condition I can really comply with because I can do this. I can pay the \$60,000; I can offer two extra units at 60% of AMI but I can't redesign the development.

I don't know how to comply with this condition. I need to be able to prove at the end of this process that I've complied with the conditions that you have issued as part of assuring the decision.

Mr. Rudnick: This is what occurs to me about this is we all know that there's significant flexibility in changing the plans going forward through a process with the

building department that's a bonified process but it's available. This item should not be subject to any change ever by the building inspector except to make it more restrictive.

Mr. Bourjoulian: I understand that but I'm already bound to that.

Mr. Rudnick: So I think calling it out as a condition satisfies that point of view to me.

Mr. Bourjoulian: Again, I can't tell the bank when I'm telling them I've complied with all these conditions. They are going to say how do you comply with Condition 16 and I'm going to say I have designed it and they are going to say that already happened. I need to be able to go through this in check. Yes, I did that property. I did what the board asked, I did what the board asked and I have a complete list of all the things I did in the conditions. The condition of the permit and I need to meet it. Legally, I need to actually have satisfied it and I can't satisfy that just sort of a statement of things that have happened.

Mr. Hickernell: That the applicant shall provide approximately forty-five hundred feet of open space.

Mr. Bourjoulian: Yes, which is on the plan. It should be constructed in accordance with all material respects, in accordance with the civil engineering plans, the landscaped plans and I am bound to that. That conditions exists. I can comply with that condition, Condition #1 because it says you have to do it with what the plan said. But I can't comply with the recitation of history. I need to be able to have an excel spread sheet that lists conditions one through fifty-five, whatever it is and say here is how I did it. I can go on site and see that and Condition #1 says they are going to hold up the plans and say the open space permit plans okay. You've got the driveway the way the fire department wanted, okay, good but they can't go out there and say check this box off. I have a box I can't check off.

Mr. Hickernell: Well the box could say the applicant shall provide no less than five thousand square feet of open space.

Mr. Bourjoulian: We'd like to do it per the plan that we all reviewed with you in detail.

Mr. Hickernell: I'm not saying not to.

Mr. Bourjoulian: We want to do what we showed you.

Mr. Rudnick: Again, I'll reiterate my concern perhaps I wasn't clear. My concern is that the building inspector has wide authority to make changes or to accept changes to the plan that you suggest in the process of seeking a building permit. Well, he has authority to make changes whether we consider them broad or not he has the authority. So when the building inspector says, no I'm okay with you guys reducing the open space from 4500 square feet to 4000 square feet because that doesn't violate any zoning or building code issue but it undermines the board's sense that we conditioned this to say we like this project when you have forty-five hundred feet of open space but we didn't like it so much when you had four thousand. That's the sense that it's a condition to me - - -

Mr. Bourjoulian: So what if we made this an affirmative condition that the driveway entrance to the development shall be developed in conformance with the plans.

Mr. Rudnick: That is what Mr. Hickernell has been suggesting for fifteen minutes now. So, I'm very happy with that. Change it to be something that you can say this is a condition and we can meet it that has the same meat that this thing and I'm happy with it.

Mr. Bourjoulian: Okay, I got it. We are going to make these affirmative conditions that we can check the box.

So I think all of the waivers, the water main condition per Mr. Cassaza.

Mr. Hickernell: What page?

Mr. Rudnick: Number 27, page 24. Again you were going to go out and talk about that one and we haven't hear what you talked about yet.

Mr. Cosimi: Cited by the City Engineer and whatever that citation was. It's a letter and the rest of the text stays the same.

Mr. Rudnick: Affirm that is actually what we are referring to. Find the letter. Make sure it's the letter from Cassaza that said this.

Ms. Learned: It it's possible to summarize what he said that would be better for the enforcing agent to be able to enforce. If the building inspector has to go through this record and find this letter. That's the difficult part about it.

Mr. Bourjoulian: Understood. We'll do our best. So the last one I had was the order, this is how they handle the legalese around the preamble to the conditions and the preamble to the waivers.

Mr. Bourjoulian: That's all I have in my list.

Mr. Sergi: Do you want to put to bed Mr. Rudnick's concern about the \$160,000?

Mr. Bourjoulian: Yes. I would just ask again for some mercy. We're busting our butts to make you guys happy. We really are. We're working hard. Please have mercy.

Mr. Rudnick: 16, 17 and 18, you were going to reformulate all three of those to be positive.

Mr. Sergi: Just 16 and 17.

Mr. Bourjoulian: 18 is okay.

Mr. Rudnick: Why don't we just round the Affordable Housing gift up to \$100,000 and you can keep the balance which is quite a bit more than you're rounding up. I'm taking back \$40,000 of the \$160,000.

I think what we are offering you is that we'll get this done without referring it back out. I am sure our attorney will be here at the hearing anyway to resolve any questions of

specifics but we are promising you in return for extending this for a reasonable amount of time is to get it done.

Mr. Bourjoulian: We really want your motion to be clear.

Mr. Rudnick: I'm really hoping that you keep the document as the final with any commentary outside of it.

Mr. Cosimi: All of that should be clean.

Ms. Learned: You need to execute the - - -

Mr. Hickernell: But it's not for filing a decision with the city clerk is it just voting on the application?

Ms. Learned: It could be both. So as you extend today's date to Tuesday — - -

Mr. Bourjoulian: Could I make a request? Given how far we've come, could we have the clerk file this thing not extending that.

Ms. Learned: We'll try.

Mr. Bourjoulian: It seems like we've made great progress and I'm trying to - - -

Mr. Sergi: We'll try. We'll try.

Mr. Rudnick: So we're moving to accept the applicant's request for an extension through the decision period through the end of Tuesday, October 16th with a hearing scheduled at 7PM on that evening and the filing period to be extended to fourteen days beyond October 16th.

Ms. Gelineau seconded the motion and the decision was unanimous.

Mr. Sergi: One more motion is in order.

**On motion of Mr. Hickernell, seconded by Ms. Gelineau the board voted to adjourn
at 10:40 P.M.**
