

Office of Outdoor Advertising
Public Meeting

March 14, 2018

1:30 PM

State Transportation Building

10 Park Plaza

2nd Floor

Boston, MA 02116

Present:

John Romano, Executive Director

Office of Outdoor Advertising March 14, 2018

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

2

3 JOHN ROMANO: Good afternoon, everyone.

4 We're here for the rescheduled March OOA Outdoor

5 Advertising hearing originally scheduled for March 8th.

6 And I can tell you, by luck of the draw and no other

7 reason, this is at 1:30 today. It could have easily

8 been at 9:00 or 10:00 and been postponed again. But,

9 we're at the mercy of the conference room people. And

10 this one was available. So, if it was available at

11 10:00, we'd be postponing again. So, I guess we're

12 fortunate. But I'm glad to see everybody could make

13 it.

14 This meeting is accessible to people

15 with disabilities and individuals with limited English

16 proficiency. If you had filed a request with us for

17 assistive technology, sign language, alternate format

18 documents, an interpreter, translated documents, or

19 other such services to be available here today, please

20 see Lydia, which I believe no one has requested those.

21 We also have amplification devices for anyone who

22 needs them. If you need any other similar assistance

23 to participate today, please let Lydia know and we

24 will do our best to help you. Obviously, if we get

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1 the request in advance, we can accommodate those
2 better.

3 For those of you, if you haven't signed
4 in, there's a sign-in sheet on the table in the back
5 to my right. There are also copies of the agenda and
6 copies of all of last month's meeting minutes.

7 Are there any questions, comments, or
8 changes to the February 8th public hearing meeting
9 minutes?

10 (No response.)

11 JOHN ROMANO: Seeing none, I will mark
12 those approved.

13 Okay. The first item on the agenda is
14 an application for a permit transfer between
15 Independent Outdoor LLC and Lamar Central Outdoor,
16 LLC. They are Permit Numbers 2010017 and 018, 60
17 Haynes Circle in Chicopee.

18 Is someone here from either Independent
19 or Lamar?

20 (No response.)

21 JOHN ROMANO: Okay. Neither are here.
22 All the required paperwork and fee is in place.

23 Are there any questions, comments, or
24 concerns on these?

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1 (No response.)

2 JOHN ROMANO: Seeing none, we will take
3 these under advisement and we will let them know.

4 The second item on the agenda is Eagle
5 Advertising, LLC, 321 Manley Street, West Bridgewater,
6 Application 2018019. It's an existing structure,
7 permit 2014D014, facing south. They are applying to
8 take an existing digital and changing it to a static.
9 Notice was sent to the town administrator and the town
10 clerk by my office.

11 Is the applicant present?

12 (No response.)

13 JOHN ROMANO: There is no one here from
14 Eagle Advertising.

15 I have been in contact with both Eagle
16 and their lawyer, Mr. Malone, who has had severe
17 issues with power loss, etc. over the last two storms.
18 And he said that there was a good chance that they
19 would not be here today.

20 Is there anybody here representing the
21 municipality where the sign is proposed?

22 (No response.)

23 JOHN ROMANO: Are there any abutters
24 here today?

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1 (No response.)

2 JOHN ROMANO: Is there anyone present
3 from the district office?

4 (No response.)

5 JOHN ROMANO: I did get an email from
6 the district office stating that they had no issues
7 with this change. And, traffic operations is not
8 required as this is static.

9 Certified notice was sent out to the
10 abutters. I do have copies of that, and also a copy
11 of the letter. We have not received any comments in
12 support of or in opposition to this change. And we do
13 have the required special permit.

14 Are there any comments, questions, or
15 concerns from anybody in the audience, the general
16 public, on this one?

17 (No response.)

18 JOHN ROMANO: Okay. Marc, would you
19 like to give your report.

20 MARC PLANTE: Thank you. Sure. This
21 is an existing monopole on Route 24 in West
22 Bridgewater. And they're both digital applications
23 right now and facing to the north, facing to the
24 south. The southern digital face is to be replaced by

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1 a static sign. The existing sign as it is is
2 conforming to the regulations. So, it would be
3 allowable.

4 JOHN ROMANO: Okay. So no issues
5 related to the CMR, Marc?

6 MARC PLANTE: None whatsoever.

7 JOHN ROMANO: Great. Thank you very
8 much.

9 MARC PLANTE: Thank you.

10 JOHN ROMANO: Any other comments or
11 feedback on this?

12 (No response.)

13 JOHN ROMANO: Seeing none, we will take
14 this one under advisement and we will get back to the
15 proponent.

16 Okay. Next up on the agenda, Media
17 Vision, Inc., 51-59 Stuart Street, Boston, Application
18 2018020. It's a new structure facing west. Notice
19 was sent by my office to the mayor and to the city
20 clerk.

21 Is the applicant present?

22 RICHARD LYND: Yes. Good afternoon,
23 Mr. Director. Richard Lynds on behalf of Media
24 Vision. With me is Jonathan and Dominic Serra.

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1 JOHN ROMANO: Is there anyone here
2 representing the municipality where the sign is
3 proposed?

4 (No response.)

5 JOHN ROMANO: None. I did have a
6 conversation with the city. And they indicated to me
7 that there are no issues with this from their
8 standpoint.

9 Are there any abutters present today?

10 (No response.)

11 JOHN ROMANO: Is there anyone from the
12 district office?

13 (No response.)

14 JOHN ROMANO: This is a static board,
15 so there is no traffic operations issue.

16 Mr. Lynds, was certified mail notice
17 sent to abutters by you at least 30 days prior to
18 submittal?

19 RICHARD LYNDS: Yes, it was, Mr.
20 Director.

21 JOHN ROMANO: And I do believe you did
22 send me a copy of those post office receipts. Also,
23 the letter, you did send me a copy. I appreciate
24 that.

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1 Has the applicant received any written
2 comments in support or opposition of this board?

3 RICHARD LYNDS: None.

4 JOHN ROMANO: We have not received any
5 either.

6 Special permit or variance, you did
7 provide me a copy of that.

8 RICHARD LYNDS: Yes, authorized by
9 variance by the zoning board.

10 JOHN ROMANO: Yes. Do you have
11 anything you'd like to add to your application at this
12 time?

13 RICHARD LYNDS: I have nothing pending
14 comments from your inspector.

15 JOHN ROMANO: Okay. Chris, please
16 state your name so that he can get it.

17 CHRISTOPHER CHAVES: Sure. Chris
18 Chaves, inspector. The last name is C-h-a-v-e-s.

19 As you mentioned, John, this is a one-
20 sided static proposed board on the roof of 51-59
21 Stuart Street. There are no other static signs on the
22 same side of the roadway within 500 feet of this
23 location. Also, there are no critical areas to speak
24 of within 300 feet. Critical area is spelled out in

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1 the CMR. So, with that, there are no issues on my
2 field inspection, and multiple businesses within 500
3 feet as well.

4 JOHN ROMANO: So, it meets all the
5 requirements of the CMR?

6 CHRISTOPHER CHAVES: It meets all the
7 criteria.

8 JOHN ROMANO: Okay. Any comments,
9 questions, or concerns from the audience?

10 (No response.)

11 JOHN ROMANO: Seeing none.

12 Mr. Lynds, anything else to add?

13 RICHARD LYNDS: Nothing further, Mr.
14 Director.

15 JOHN ROMANO: Thank you.

16 RICHARD LYNDS: Thank you.

17 JOHN ROMANO: Okay. We will take this
18 under advisement and we will get back to you.

19 RICHARD LYNDS: Thank you very much.

20 JOHN ROMANO: Okay. The next item on
21 the agenda is Item C. These are applications for
22 permits for existing MBTA-owned structures on MBTA-
23 owned property. We have approximately 125 locations -
24 - 126. The list is on the back of the agenda. I am

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1 not going to read through each one of these. I am
2 going to take them as a group as these are all current
3 in-place existing signs with no physical changes to
4 these signs. There are approximately 25 to 28
5 different municipalities. All were notified. We did
6 not require notification to abutters in this case
7 because they are existing signs and they are not new
8 proposed signs.

9 Is the applicant present? Please state
10 your name for the record.

11 EVAN ROWE: Evan Rowe.

12 JOHN ROMANO: From?

13 EVAN ROWE: Massachusetts Bay
14 Transportation Authority.

15 JOHN ROMANO: No special permit is
16 required because the MBTA is exempt from local zoning.

17 EVAN ROWE: That's correct.

18 TUCKER DEVOE: Also present is Tucker
19 DeVoe of Goodwin Proctor, an attorney for the MBTA.

20 JOHN ROMANO: Sorry. Could you say
21 your name?

22 TUCKER DEVOE: Yeah. Tucker DeVoe, D-
23 e-V-o-e.

24 JOHN ROMANO: Are there any abutters

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1 present?

2 (No response.)

3 JOHN ROMANO: Anybody from any of the
4 municipalities?

5 (No response.)

6 JOHN ROMANO: I can tell you that I did
7 speak with a couple of the different towns that did
8 call us. There was no opposition. I would say that a
9 few of them are looking for some paint jobs to make
10 these look a little -- to make the structures look a
11 little better. That's something that can be talked
12 about at a later time. I did not receive any other
13 comments. I don't know if you received any.

14 EVAN ROWE: I did not.

15 JOHN ROMANO: My field inspectors had
16 done an inspection on all these signs previous in the
17 last very short period of time, the last couple of
18 months. So, I am not going to ask them to go through
19 each one of them as, again, these are all existing
20 signs. They all have -- they're either conforming or
21 nonconforming as they previously were.

22 Do you have anything that you'd like to
23 add to these applications at this time?

24 EVAN ROWE: I do not.

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1 JOHN ROMANO: Is there anybody in the
2 general public that would like to speak or have
3 comments on these at this time?

4 Please state your name for the record.

5 JACK PIROZZOLO: I'm Jack Pirozzolo.
6 I'm an attorney for Clear Channel.

7 JOHN ROMANO: Will you spell that,
8 please?

9 JACK PIROZZOLO: P-i-r-o-z-z-o-l-o.
10 The first name is Jack. I'm with the law firm of
11 Sidley Austin. Also with me are Rick Waechter and
12 Mike Morell from Clear Channel, and Christopher Quinn,
13 who is also an attorney for Clear Channel.

14 JOHN ROMANO: Okay.

15 JACK PIROZZOLO: Are you getting that?
16 Should I go to the microphone or you're good?

17 JOHN ROMANO: You're good.

18 JACK PIROZZOLO: Great. So, first off,
19 I have a submission that I'd like to make part of the
20 public record.

21 JOHN ROMANO: Sure. Absolutely. Thank
22 you, sir.

23 JACK PIROZZOLO: Thank you. And, I
24 should note, if you haven't already received it,

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1 within the next few minutes or short while there
2 should be an email copy that will be sent to you in
3 PDF form of what I've just submitted to the Chair.

4 JOHN ROMANO: We'll make sure that that
5 goes to the stenographer and that will be part of the
6 official record.

7 JACK PIROZZOLO: Great. Thank you.
8 So, if I may be heard briefly?

9 JOHN ROMANO: Go right ahead.

10 JACK PIROZZOLO: Thank you. So, Clear
11 Channel, as it set forth in its submission, objects to
12 the application for the new permits to operate the 125
13 sign structures. We have a series of objections set
14 forth in the letter. I am not going to read the
15 entire letter since it is part of the record, but I am
16 going to address some of the main points in the
17 letter.

18 JOHN ROMANO: Sure.

19 JACK PIROZZOLO: First off, there is an
20 ongoing active dispute -- there is litigation ongoing
21 -- between the MBTA and Clear Channel regarding, among
22 other things, the ownership of the structures. To be
23 sure, there was preliminary proceedings before the
24 court. And there was a request -- cross motions for

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1 preliminary injunction. The MBTA was successful in
2 obtaining a preliminary injunction and Clear Channel
3 was not successful in obtaining its requested relief.
4 But this is preliminary relief only. It is Clear
5 Channel's position, it remains its position, that
6 Clear Channel, in fact, owns the structures, that the
7 structures ultimately will be determined to be owned
8 by Clear Channel and not the MBTA.

9 The preliminary ruling does not quiet
10 title to the sign structures nor, as far as we can
11 see, excuse the MBTA from complying fully with the
12 requirements to obtain sign permits.

13 It's Clear Channel's position, as again
14 set forth in the letter, that this body cannot issue
15 new sign permits for the structures for a separate and
16 independent reason that Clear Channel already holds
17 the permits for these signs. There is no provision
18 that we see in the relevant regulations or the
19 applicable regulations for issuance of duplicative
20 permits, and to do so would conflict with applicable
21 law.

22 The OOA regulations expressly provide
23 for the transfer of permits and the revocation of
24 permits. Transfer of permits can only be made with

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1 the consent of the incumbent and the prior written
2 approval of the director. That's set forth in 700 CMR
3 3.12(i), and only may be revoked after a notice and
4 hearing, and that's 700 CMR 3.09(ii). The permits
5 have neither been transferred not revoked and,
6 therefore, remain valid. For the OOA to issue new
7 duplicative permits would be contrary to and
8 inconsistent with the OOA's own rules and past
9 practice and, in Clear Channel's view, contrary to the
10 law.

11 Earlier this month, you sent a letter
12 to Clear Channel on March 1, 2018, purporting to renew
13 Clear Channel's permits, but only through March 4,
14 2018. It appears that that was based, in part, on the
15 court's preliminary ruling in the matter. But, the
16 OOA regulations make no provision for the partial
17 renewal of a sign permit or the partial refusal to
18 renew based on non-final judicial rulings. It's quite
19 clear under the regulations that a renewed sign permit
20 "shall be valid from the date it is issued until the
21 end of the calendar year." Clear Channel submitted
22 applications for permit renewals, included all
23 required information for each sign, and submitted the
24 required payment. Indeed, OOA cashed Clear Channel's

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1 check for over \$300,000 in January 2018. There's no
2 evidence that Clear Channel's applications were
3 anything other than in good order.

4 The purported partial renewal is an end
5 run around the permit transfer and permit revocation
6 rules. Existing permits may be transferred only with
7 the consent of the permit holder. But, as I will
8 note, Clear Channel has not given such consent.

9 The partial renewal serves no purpose
10 other than to avoid that transfer requirement and to
11 deprive Clear Channel of its interests in the permits
12 for the balance of the year and its ability to
13 transfer those for value.

14 Clear Channel properly renewed the
15 permits. But, in order to revoke the permits, OOA
16 must give Clear Channel 30 days' notice along with a
17 hearing at which Clear Channel must be afforded an
18 opportunity to put on its evidence as to why the
19 permits should not be revoked.

20 The attempt to revoke, effectively
21 revoke Clear Channel's permits through the fiction of
22 a partial renewal is, again, an end run around the
23 procedural protections surrounding revocation and it
24 deprives Clear Channel of its rights of notice and a

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1 hearing and is contrary to the law.

2 I have two other additional points to
3 make. First, with regard to new permits for otherwise
4 conforming signs, federal and state law establish an
5 extensive list of requirements for a new sign permit.
6 A new permit must be the subject of a proper
7 application accompanied by the applicable fee,
8 required plans, schematics, maps, and photographs. A
9 new permit requires certification of consent from
10 property owners, certification of notice, and notice
11 to the municipality. The sign also must not be
12 proximate to a park, another sign, and so forth. We
13 have not had an opportunity -- Clear Channel has not
14 had an opportunity review whatever submission the MBTA
15 has made here, but we have grave doubts that all of
16 those requirements were met in this case.

17 With regard to the nonconforming signs,
18 separate and apart from the question of ownership and
19 whether Clear Channel's permits remain valid, OOA is
20 not permitted to issue new permits for the 77 sign
21 structures at issue that are nonconforming. You'll
22 see that in our letter we had the number 65. I was
23 just informed that the number is closer to 77. A new
24 permit can issue only on a showing by the applicant

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1 that the sign meets all the applicable requirements
2 set out in 700 CMR 3 and the Federal-State Agreement
3 of 1971, local zoning, and any other applicable law.

4 Although MBTA may well be exempt from
5 local zoning requirements, it is not exempt from the
6 OOA regulations or the FSA as required by the Highway
7 Beautification Act. Here, well over half the sign
8 structures on which MBTA seeks permits are
9 nonconforming under federal and/or state law for
10 reasons including being too close to other signs, to
11 parks, to certain road interchanges. We've attached a
12 full list of nonconforming signs and the basis for the
13 nonconforming in our submission that we've given you
14 at the hearing today.

15 So, a nonconforming sign can be
16 transferred from one operator to another, but Clear
17 Channel has not consented to it, and such consent is
18 required.

19 Separately, the OOA says for the
20 process for issuing new permits for signs that do not
21 strictly comply with all applicable requirements, "A
22 nonconforming permit must be specifically applied
23 for," and it requires the express consent of the
24 Secretary of the DOT, the municipality where the sign

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1 is located, and proper consultation with the Federal
2 Highway Administration. New permits that do not
3 follow the exemption requirements are otherwise not
4 provided for under the relevant regulations.

5 To issue new permits for nonconforming
6 signs without satisfying these requirements is
7 contrary to the OOA regulations and ignores procedural
8 safeguards intended to protect the important
9 stakeholders.

10 Massachusetts law is clear that
11 grandfathered signs may persist but only so long as
12 they are "continuously permitted" by the Department
13 and utilized since their erection. Here, the OOA is
14 purporting to terminate Clear Channel's sign permits
15 as of March 4, 2018. Now, it appears that the OOA has
16 taken up the MBTA's application for new permits as of
17 March 8, 2018. Assuming the MBTA is correct that it
18 owns the signs and that the OOA has properly declined
19 to renew Clear Channel's permits, then the
20 nonconforming signs have not been "continuously
21 permitted." They appear to be elapsed January 1, 2018
22 or March 4, 2018. And unless Clear Channel's permits
23 are restored, these signs will not have been
24 "continuously permitted" and will have lost their

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1 grandfathered status and, therefore, will be illegal
2 as a matter of state or federal law.

3 Third, even if there was no gap between
4 the purported termination of Clear Channel's permit
5 and the anticipated issuance of MBTA's requested
6 permits, the OOA regulations do not permit new permit
7 applications to piggyback onto previously granted
8 permits for nonconforming signs. Where a permit is
9 denied renewal, revoked, or otherwise, relinquished
10 under relevant regulations, the sign formerly
11 authorized by the permit shall be removed.

12 So, in the case of nonconforming signs,
13 there's just no such thing as a new permit for an old
14 grandfathered sign unless it fits within the
15 designated exemption process. And so if Clear
16 Channel's permits are not renewed, or revoked, or
17 otherwise relinquished, the once grandfathered signs
18 must be treated like new signs, which require "new
19 permits" and are "required to be in compliance with
20 the requirement of 700 CMR 3."

21 So, for these reasons, including others
22 that are set forth in the letter in more detail before
23 you, a decision to cancel Clear Channel's permits and
24 to issue new or duplicative permits would be made upon

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1 an unlawful procedure, would be arbitrary, capricious,
2 and contrary to the law.

3 As we set forth, there are clear
4 requirements set forth for either transfer or
5 revocation, neither of which have followed here. And
6 there is no other provision in the regulations that
7 permits the partial renewal that the OOA purported to
8 effectuate early in March.

9 With that, I'm going to turn this over
10 to Mr. Quinn if permitted.

11 JOHN ROMANO: Sure. State your name.

12 CHRISTOPHER QUINN: Good morning, Mr.
13 Romano. Nice to see you. My name is Chris Quinn, for
14 the record. I'm appearing for Clear Channel as well.

15 And I have to start off with an inquiry
16 because I noticed there were copy on some of these
17 signs, in particular Westwood and Needham on Route
18 128. So, I guess my question to you is are permits
19 already issued for these signs or has some kind of
20 permission already been granted? I mean there may be
21 other locations as well, but I know for a fact those
22 two are up and running.

23 JOHN ROMANO: There have been no
24 permits issued at this time.

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1 CHRISTOPHER QUINN: All right. So,
2 we're clear that until a permit does issue, it's not
3 effective until actual issuance sometime in the
4 future.

5 JOHN ROMANO: Yes.

6 CHRISTOPHER QUINN: I don't want to
7 duplicate anything that my colleague said, but you've
8 indicated a number of the procedural requirements --
9 customary procedural requirements have not been
10 followed in this case because you are of the opinion
11 that where there are the existing signs such
12 provisions such as 500-foot notification and so forth
13 don't apply. Our position is contrary. As far as
14 we're concerned, I think it's clear what you are
15 contemplating is the issuance of new permits. And I
16 would suggest to you the issuance of new permits
17 mandates new inspections and compliance with all the
18 procedural requirements of 3.05, 3.06, 3.07, etc. I
19 note that no inspection has occurred, although it was
20 indicated some inspections may have occurred on these
21 signs at some point in the past, and perhaps we'll
22 follow up with you at a later date to get the
23 specifics on that. But I would submit you can't rely
24 on an old inspection for a new permit application.

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1 And I would submit every new permit application
2 requires a new inspection to make a determination if,
3 in fact, the sign currently complies with spacing,
4 size, park proximity, interchange proximity, etc.,
5 etc. And there's no way you could know if, in fact,
6 these things have been complied with if the inspection
7 was done six months ago, a year ago, or whatever.

8 So, I would submit to you as well, all
9 of the procedural requirements, the plans, the specs,
10 the notifications, have to be complied with as well
11 for any new applications. And you can't rely on, you
12 know, prior submissions. I'd particularly notice the
13 people within 500 feet because in these signs, you
14 know, that never occurred because they're all old
15 signs. They've all been up there for many years.
16 There never was a 500-foot notification. So, I would
17 suggest to you you have to go through all of the
18 standard and usual requirements that any new permit
19 holder seeks, and you can't bypass those because the
20 signs happen to be in existence.

21 So, in conclusion, I want to say to
22 issue -- you know, these very same permits are, which
23 you have used the term expired, as you know, Clear
24 Channel has indicated it is challenging and appealing

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1 that expiration. The regulations clearly provide for
2 an appeal process from a revocation or an expiration.
3 That's being exercised by Clear Channel. And to go
4 and reissue those same permits to someone else before
5 there's been a judicial adjudication of the appeal is
6 premature and it really -- it defeats the very purpose
7 of having an appeal process in the regulations.
8 What's the point of having an appeal if the OOA can
9 take the permits and give them to someone else before
10 the appeal has been decided?

11 So, I would ask you respectfully to
12 consider these suggestions and I would ask you not to
13 issue these permits.

14 Thank you.

15 JOHN ROMANO: Thank you.

16 Is there anybody else who would like to
17 comment on these applications?

18 (No response.)

19 JOHN ROMANO: Seeing none. We will
20 take these all under advisement. And thank you all
21 for your feedback.

22 Okay. The last couple of items are
23 just applications for renewals and also items for the
24 record that were taken since the last public hearing.

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1 Any questions or comments on those?

2 (No response.)

3 JOHN ROMANO: Seeing none.

4 Any further public comment?

5 (No response.)

6 JOHN ROMANO: Seeing none, we are
7 adjourned. Thank you all very much.

8 Whereupon, the proceedings were concluded on
9 March 14, 2018 at 2:01 p.m.)

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C E R T I F I C A T E

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

Judith Luciano

****All names not provided were spelled phonetically to the best of my ability.**