

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
: :
2408 Wisconsin Ave., LLC :
t/a Mason Inn : Protest
2408 Wisconsin Ave., NW : Hearing
Retailer CT - ANC-3B : (Status)
License No. 79644 :
Case #13-PRO-00002 :
: :
(Substantial Change - :
Summer Garden) :
b-----¼

March 20, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th

Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

- RUTHANNE MILLER, Chairperson
- NICK ALBERTI, Member
- DONALD BROOKS, Member
- MIKE SILVERSTEIN, Member

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

(9:42 a.m.)

CHAIRPERSON MILLER: Good morning.

I would like to welcome you to the regularly scheduled meeting of the District of Columbia Alcoholic Beverage Control Board.

Today is March 20, 2013. My name is Ruthanne Miller. I'm the Chairperson. Joining me today to my far right is Mr. Donald Brooks, to my immediate right is Mr. Nick Alberti and to my immediate left is Mr. Mike Silverstein.

The Board has four Members in attendance for the conduct of business today with three constituting a quorum.

Copies of today's hearing calendar and agenda are available at the receptionist desk. Please be aware that these proceedings are being recorded by a court reporter. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room.

1 If you have any electronic
2 devices, pagers, cell phones or such, please,
3 make certain they are turned off to avoid any
4 interruption of the proceeding.

5 Please note, when you come forward
6 to take a seat at the time, you will find a
7 piece of paper on the table, that is for you
8 to sign-in and that is to assure the correct
9 spelling of your name for the record.

10 The Open Meetings Act requires
11 that the public hearing on each case be open
12 to the public. The Board may, consistent with
13 Section 405(b) of the Open Meetings Act, enter
14 a closed meeting during or after the public
15 hearing on a case to consult with an attorney
16 to obtain legal advice, discuss settlement
17 agreements or deliberate upon a decision in an
18 adjudication proceeding.

19 Okay. I'll now turn to the first
20 case on our morning calendar and that is Case
21 No. 13-PRO-00002, Mason Inn located at 2408
22 Wisconsin Avenue, N.W., License No. 79644

1 located in ANC-3B.

2 So when you are ready, would you
3 introduce yourselves for the record?

4 MR. BROGAN: Francis Brogan, one
5 of owners of Mason Inn.

6 MS. BLUMENTHAL: I'm Jackie
7 Blumenthal representing ANC-3B.

8 MS. MAY: Catherine May
9 representing ANC-3C.

10 MS. MEEHAN: Sheila Meehan
11 representing Glover Park Citizens Association.

12 MR. GROSSMAN: Russell J. Grossman
13 representing the Group of 19 individual
14 protestants.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. According to my notes, I have a Mr. Sun
17 as the owner? Can you explain that?

18 MR. BROGAN: He is one of the
19 owners. I'm one of the other ABRA-approved
20 owners.

21 CHAIRPERSON MILLER: Oh, okay.
22 Are you on file with us as an owner?

1 MR. BROGAN: Yes.

2 CHAIRPERSON MILLER: Okay. And do
3 you have a percentage ownership?

4 MR. BROGAN: I do, yes, 25
5 percent.

6 CHAIRPERSON MILLER: Okay. And
7 then I just want to ask Ms. May how is ANC-3C
8 related to this protest as it is in 3B?

9 MS. MAY: By geographic proximity
10 and heavy use of the Glover Park commercial
11 area and Glover Park steady use of our
12 residential area.

13 CHAIRPERSON MILLER: Okay. And
14 the proximity, can you just say what that is?
15 I mean, how close is ANC-3C to the
16 establishment? Is it across the street or is
17 it --

18 MS. MAY: Right. Approximately,
19 maybe 125 yards, something like that.

20 CHAIRPERSON MILLER: Okay. All
21 right.

22 MS. MAY: Directly, with no

1 intervening.

2 CHAIRPERSON MILLER: Okay. All
3 right. And are there any issues, preliminary
4 issues you want to bring to our attention?
5 Otherwise I'm going to just schedule this for
6 a Protest Hearing.

7 Okay. Not hearing any, this is
8 scheduled for a hearing April 24, 2013.

9 MR. GROSSMAN: There is one with
10 ABRA.

11 CHAIRPERSON MILLER: Okay.

12 MR. GROSSMAN: My clients may wish
13 to arrange for an acoustical engineer to study
14 the sound issues relating to the -- I assume
15 that the licensees would be willing to make
16 the facility available for his inspection on
17 reasonable notice.

18 MR. BROGAN: Sure, of course.

19 CHAIRPERSON MILLER: Okay. Mr.
20 Silverstein?

21 MEMBER SILVERSTEIN: I would like
22 to ask if the parties have been engaged in

1 mediation and if there is -- if you have any
2 progress, if there is any hope on this that
3 you might come to a settlement agreement?

4 MR. BROGAN: We went through the
5 Board ordered mediation a few weeks back.
6 There is no agreement yet. We are very
7 willing to make a settlement agreement and
8 hope we can find some common ground.

9 MEMBER SILVERSTEIN: I'm sorry?

10 MR. BROGAN: We are very willing
11 to make a settlement agreement. We are hoping
12 we can find some common ground.

13 MEMBER SILVERSTEIN: And the
14 protestants?

15 MS. BLUMENTHAL: The ANC-3B is
16 following the lead of the 19 residents in
17 order to support their protest. And they do
18 not see any way that they can settle.

19 MEMBER SILVERSTEIN: Mr. Grossman,
20 the -- I hope here when you say that you asked
21 for an acoustical engineer, are you seeking to
22 find some structural way or something like

1 that? Is this moving forward hopefully in
2 good faith? We love to see neighbors working
3 together and settling these things, if
4 possible.

5 MR. GROSSMAN: Based on my
6 previous experience with noise issues, I am,
7 I have to say, rather skeptical that there is
8 an engineering solution, but certainly if it's
9 feasible with those, there's that possibility.
10 Right now, our concern is that this is just
11 not an appropriate type of establishment and
12 place where we think --

13 MEMBER SILVERSTEIN: That's fair
14 and reasonable. Thank you, sir.

15 MS. BLUMENTHAL: I'll just add
16 that at our mediation hearing, we did suggest
17 that Mason Inn withdraw its application and
18 come back to the neighborhood with the
19 application after it proved that it could
20 contain its noise inside before we would let
21 its noise outside.

22 MEMBER ALBERTI: Ms. Miller, it's

1 a little --

2 MEMBER SILVERSTEIN: I think we
3 are getting --

4 CHAIRPERSON MILLER: Okay.

5 MEMBER ALBERTI: It's just that we
6 are getting too far into the negotiations.

7 MEMBER SILVERSTEIN: Yes. I don't
8 want to -- right.

9 MEMBER ALBERTI: Which is not
10 proper for this Board.

11 MEMBER SILVERSTEIN: I agree, Mr.
12 Alberti. Move forward.

13 CHAIRPERSON MILLER: Okay. I
14 think you have given a sense of where you are
15 at to the Board. And you will be moving
16 forward between now and the hearing, either
17 settling or going to hearing.

18 So in the event that this is going
19 to hearing, I just need to say a few words.

20 You should have received in the
21 mail, from Adjudication Assistant Sarah
22 Fashbaugh, a letter explaining the protest

1 process and a copy of the Protest Information
2 Form.

3 If you don't have these documents,
4 please, see Ms. Fashbaugh at the conclusion of
5 the hearing. It is important that you review
6 the rules closely and adhere to them before
7 and during the Protest Hearing.

8 You are required to complete and
9 submit the Protest Information Form seven days
10 before the date of the hearing. This document
11 needs to be submitted to ABRA and to the
12 opposing parties in the matter.

13 If we do not receive a copy of
14 your Protest Information Form or PIF, your
15 application or your protest, whichever side
16 you are representing, may be subject to
17 dismissal. So this is very important, because
18 this has happened in a case or to. So you
19 don't want your case dismissed for failure to
20 submit a form.

21 This form is important. It
22 assists the Board in narrowing the protest

1 issues, facilitating the process and keeping
2 the parties on point during the hearing. So
3 that's basically what I have to say on this.
4 Thank you.

5 MR. GROSSMAN: Madam Chair?

6 CHAIRPERSON MILLER: Yes?

7 MR. GROSSMAN: Has the Board
8 determined, at this point, how much time will
9 be allotted for each side?

10 CHAIRPERSON MILLER: Normally, it
11 is an hour and a half is standard.

12 MR. GROSSMAN: An hour and a half?

13 CHAIRPERSON MILLER: If you have
14 any other questions specifically about the
15 hearing, if it goes to hearing, you can feel
16 free to contact our general counsel, Martha
17 Jenkins as well as Sarah Fashbaugh about any
18 questions that aren't, you know, answered for
19 you. Sarah Fashbaugh's telephone number is
20 (202) 397-3971.

21 So that completes this status.

22 Thank you very much.

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MR. BROGAN: Thank you.

(Whereupon, the Protest (Status)
Hearing in the above-entitled matter was
concluded at 9:51 a.m.)

<p style="text-align: center;">A</p> <p>above-entitled 12:3 ABRA 6:10 10:11 ABRA-approved 4:19 acoustical 6:13 7:21 Act 3:10,13 actions 2:21 add 8:15 adhere 10:6 adjudication 3:18 9:21 advice 3:16 agenda 2:17 agree 9:11 agreement 7:3,6,7 7:11 agreements 3:17 Alberti 1:21 2:11 8:22 9:5,9,12 Alcoholic 1:2,14,15 2:6 allotted 11:9 ANC-3B 1:8 4:1,7 7:15 ANC-3C 4:9 5:7,15 answered 11:18 application 8:17,19 10:15 appropriate 8:11 Approximately 5:18 April 6:8 area 5:11,12 arrange 6:13 asked 7:20 Assistant 9:21 assists 10:22 Association 4:11 assume 6:14 assure 3:8 attendance 2:14 attention 6:4 attorney 3:15 available 2:17 6:16 Ave 1:6,7</p>	<p>Avenue 3:22 avoid 3:3 aware 2:18 a.m 2:2 12:4</p> <hr/> <p style="text-align: center;">B</p> <p>back 7:5 8:18 Based 8:5 basically 11:3 Beverage 1:2,14,15 2:6 Blumenthal 4:6,7 7:15 8:15 Board 1:2,15 2:6 2:13 3:12 7:5 9:10,15 10:22 11:7 bring 6:4 Brogan 4:4,4,18 5:1,4 6:18 7:4,10 12:1 Brooks 1:21 2:10 Building 1:15 business 2:14</p> <hr/> <p style="text-align: center;">C</p> <p>calendar 2:16 3:20 case 1:9 3:11,15,20 3:20 10:18,19 Catherine 4:8 cell 3:2 certain 3:3 certainly 8:8 Chair 11:5 Chairperson 1:17 1:20 2:3,8 4:15,21 5:2,6,13,20 6:2,11 6:19 9:4,13 11:6 11:10,13 Change 1:10 Citizens 4:11 clients 6:12 close 5:15 closed 3:14 closely 10:6 Columbia 1:1 2:5 come 3:5 7:3 8:18 commercial 5:10</p>	<p>common 7:8,12 complete 10:8 completes 11:21 concern 8:10 concluded 12:4 conclusion 10:4 conduct 2:14 consistent 3:12 constituting 2:15 consult 3:15 contact 11:16 contain 8:20 Control 1:2,14,15 2:6 Copies 2:16 copy 10:1,13 correct 3:8 counsel 11:16 course 6:18 court 2:19 CT 1:8</p> <hr/> <p style="text-align: center;">D</p> <p>date 10:10 days 10:9 decision 3:17 deliberate 3:17 desk 2:18 determined 11:8 devices 3:2 Directly 5:22 discuss 3:16 dismissal 10:17 dismissed 10:19 disruptive 2:21 District 1:1 2:5 document 10:10 documents 10:3 Donald 1:21 2:9 D.C 1:16</p> <hr/> <p style="text-align: center;">E</p> <p>either 9:16 electronic 3:1 engaged 6:22 engineer 6:13 7:21 engineering 8:8 enter 3:13</p>	<p>establishment 5:16 8:11 event 9:18 experience 8:6 explain 4:17 explaining 9:22</p> <hr/> <p style="text-align: center;">F</p> <p>facilitating 11:1 facility 6:16 failure 10:19 fair 8:13 faith 8:2 far 2:9 9:6 Fashbaugh 9:22 10:4 11:17 Fashbaugh's 11:19 feasible 8:9 feel 11:15 file 4:22 find 3:6 7:8,12,22 first 3:19 following 7:16 form 10:2,9,14,20 10:21 forward 3:5 8:1 9:12,16 four 2:13 Francis 4:4 free 11:16</p> <hr/> <p style="text-align: center;">G</p> <p>Garden 1:10 general 11:16 geographic 5:9 getting 9:3,6 given 9:14 Glover 4:11 5:10 5:11 goes 11:15 going 6:5 9:17,18 good 2:3 8:2 Grossman 4:12,12 6:9,12 7:19 8:5 11:5,7,12 ground 7:8,12 Group 4:13</p>	<p style="text-align: center;">H</p> <p>half 11:11,12 happened 10:18 hearing 1:7,15 2:16 2:22 3:11,15 6:6,7 6:8 8:16 9:16,17 9:19 10:5,7,10 11:2,15,15 12:3 heavy 5:10 hope 7:2,8,20 hopefully 8:1 hoping 7:11 hour 11:11,12</p> <hr/> <p style="text-align: center;">I</p> <p>immediate 2:10,11 important 10:5,17 10:21 individual 4:13 Information 10:1,9 10:14 Inn 1:6 3:21 4:5 8:17 inside 8:20 inspection 6:16 interruption 3:4 intervening 6:1 introduce 4:3 issues 6:3,4,14 8:6 11:1</p> <hr/> <p style="text-align: center;">J</p> <p>J 4:12 Jackie 4:6 Jenkins 11:17 Joining 2:9</p> <hr/> <p style="text-align: center;">K</p> <p>keeping 11:1 know 11:18</p> <hr/> <p style="text-align: center;">L</p> <p>lead 7:16 left 2:11 legal 3:16 letter 9:22 License 1:8 3:22 licensees 6:15</p>
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