

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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FACT FINDING HEARING

IN THE MATTER OF:
Cherches, LLC,
t/a Grace Bamboo
3206 Grace Street NW
License No. 75733
Retailer CR
ANC 2E
License in Extended Safekeeping

THURSDAY, MAY 15, 2014

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, Ruthanne Miller, Chairperson, presiding.

PRESENT:

RUTHANNE MILLER, CHAIRPERSON
NICK ALBERTI, MEMBER
DONALD BROOKS, MEMBER
HERMAN JONES, MEMBER
MIKE SILVERSTEIN, MEMBER
HECTOR RODRIGUEZ, MEMBER
JAMES SHORT, MEMBER

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P R O C E E D I N G S

10:27: a.m.

CHAIRPERSON MILLER: The next case on the calendar is Grace Bamboo located at 3206 Grace Street NW.

The license number is 75733 in ANC 2E. It's also concerning a license and extended safekeeping.

MR. O'BRIEN: Good madam, Madam Chair. Stephen O'Brien for the licensee. I've been getting texts and emails from the licensee's principal, Peter Demetriou, about traffic problems. And I know it's accurate. I've experienced the same thing myself this morning because of this National Police Memorial Week. There are motorcades all over the place. I was behind two of them trying to get here, including one with about 500 bicyclists. So Mr. Demetriou is on the way, but he's got a pretty good excuse.

I'd ask you to pass it. The next case is also mine. It's not quite 10:30.

1 CHAIRPERSON MILLER: Is everybody
2 here for it?

3 MR. O'BRIEN: We're awaiting the
4 other principal. One is here and one should
5 be here in a moment.

6 CHAIRPERSON MILLER: So let us
7 know when everybody is here. Do you have any
8 idea how far away they are?

9 MR. O'BRIEN: Last time I talked
10 to Mr. Demetriou on Grace Bamboo license, he
11 said he was 15 minutes away and that was 15
12 minutes ago.

13 CHAIRPERSON MILLER: Okay, great.

14 MR. O'BRIEN: So hopefully, he'll
15 be here momentarily. But if the other
16 principal of Berliner arrives first --

17 CHAIRPERSON MILLER: We'll do that
18 one.

19 MR. O'BRIEN: We could -- yes,
20 we'll do it. First come first served.

21 CHAIRPERSON MILLER: So we're
22 going to recess and you can let --

1 MR. O'BRIEN: I'll let staff know.

2 CHAIRPERSON MILLER: Thank you.

3 MR. ALBERTI: Thank you, Mr.

4 O'Brien.

5 (Off the record.)

6 CHAIRPERSON MILLER: Good morning,
7 so which case do we have before us?

8 MR. O'BRIEN: This is your 10
9 o'clock case.

10 CHAIRPERSON MILLER: Bamboo?

11 MR. O'BRIEN: Yes, the holder of
12 the license is Cherches, spelled C-H-E-R-C-H-
13 E-S, LLC. I'm still Stephen O'Brien. I'm
14 accompanied by Peter Demetriou, D-E-M-E-T-R-I-
15 O-U, who is the managing member of the license
16 holder.

17 CHAIRPERSON MILLER: Okay.

18 MR. O'BRIEN: The license, I
19 believe, is known still to the Board by the
20 trade name Grace Bamboo. But that was the
21 trade name of the restaurant that previously
22 operated at the subject address up until I

1 guess 2007.

2 CHAIRPERSON MILLER: Up until
3 August 2007?

4 MR. O'BRIEN: Up until
5 approximately 2007. I didn't mean to August.

6 CHAIRPERSON MILLER: Okay, up
7 until 2007. Okay. And that establishment is
8 located at 3206 Grace Street?

9 MR. O'BRIEN: That's correct.

10 CHAIRPERSON MILLER: Is that
11 establishment operating, but not with a liquor
12 license or is it not operating at all?

13 MR. O'BRIEN: It's not operating
14 at all and perhaps I could give the Board an
15 update.

16 CHAIRPERSON MILLER: That would be
17 good, once we have everybody's attention.

18 MR. O'BRIEN: The present license
19 holder, Cherches, acquired the property in
20 2006, acquired the real estate and the license
21 rights from the previous operator, Grace
22 Bamboo, and intended to open a Greek

1 restaurant at that time. And I don't have my
2 files with me because of the traffic, I've
3 already talked to you about. I just didn't
4 have time to stop by the office as I intended
5 to bring my files. I'm talking a little bit
6 from memory here.

7 CHAIRPERSON MILLER: Okay.

8 MR. O'BRIEN: The plans were
9 underway by Cherches to open a Greek
10 restaurant. The recession hit in 2008 and
11 they, meaning the license holder, concluded
12 they could not do this and decided to put the
13 property on the market for sale, the real
14 estate. They did that with no takers until
15 about six months ago when it was sold. They
16 envisioned that the prospective buyer, like
17 they were years before, would want to operate
18 a restaurant and thus there had to be a liquor
19 license available to a prospective buyer of
20 the real estate. And so Cherches has
21 faithfully made payments and done the renewals
22 over the intervening years. What's happened

1 now is that the property was sold
2 approximately six months ago to a non-alcohol
3 use.

4 Mr. Demetriou explains that he is
5 now searching aggressively in Georgetown for
6 a location to -- another location, not Grace
7 Street any more, to establish a Green
8 restaurant.

9 MR. DEMETRIOU: To lease.

10 MR. O'BRIEN: Yes, they're
11 searching for a property to lease in
12 Georgetown in order to open a Greek restaurant
13 at which point the license of application
14 would be made to transfer the license from
15 safekeeping to the same license holder,
16 Cherches, but at a different location. I
17 think that's -- did I get that right, Mr.
18 Demetriou?

19 MR. DEMETRIOU: Yes.

20 MR. O'BRIEN: Okay, and Mr.
21 Demetriou can answer any particular questions
22 you may have, but that's my understanding of

1 where we are and how we got there.

2 CHAIRPERSON MILLER: Okay, I'm
3 going to let other board members ask questions
4 first.

5 MR. BROOKS: I just want to ask
6 for a clarification. So he is not a property
7 owner in Georgetown any longer?

8 MR. O'BRIEN: Any longer, that is
9 correct.

10 MR. BROOKS: And he's searching
11 for a place to lease?

12 MR. O'BRIEN: Place to lease to
13 open a Greek restaurant.

14 MR. BROOKS: With an ABC license.

15 MR. O'BRIEN: Yes. And we would
16 have to file an application to transfer the
17 license out of safekeeping to that new
18 location.

19 MR. BROOKS: I got you. Thank
20 you.

21 CHAIRPERSON MILLER: Others?

22 MR. ALBERTI: Yes, there's a

1 disconnect here for me.

2 CHAIRPERSON MILLER: Mr. Alberti.

3 MR. ALBERTI: You have the
4 license, so why not a year ago decide to go
5 open a Greek restaurant? Why today decide to
6 go open a Greek restaurant? What changed
7 there other than the fact that you had a piece
8 of property you sold?

9 MR. O'BRIEN: What changed was the
10 license no longer had to be reserved for a
11 prospective purchaser of the property. They
12 envisioned that the purchase of the property
13 would be a restaurant use. And that in order
14 to sell the property, they would have to have
15 the license available.

16
17 MR. DEMETRIOU: And we were also
18 paying \$16,000 a month mortgage on that
19 property and we could not afford to keep that
20 property and then open a second property.
21 There's just no way we could have. We were
22 really struggling with this property and

1 finally got someone to purchase it.

2 MR. O'BRIEN: And that someone
3 turned out not to need an ABC license which is
4 what changes the circumstances.

5 MR. ALBERTI: Again, don't take
6 this the wrong way because I'm a trust and
7 verify kind of guy. But you know, we're here
8 because there's this suspicion or odor out
9 there that people are holding on to licenses
10 as a piece of property, to sell.

11 MR. O'BRIEN: For speculation.

12 MR. ALBERTI: For speculation.
13 And in some ways you did this here. You had
14 a piece of real estate and it became more
15 valuable in your mind and potentially more
16 valuable because you offered that real estate
17 with a license. That's the reality here, all
18 right?

19 I'm not hearing assurances. I
20 hear your desire to open a Greek restaurant,
21 but you had one desire and it didn't go
22 through. I'm not hearing, other than this

1 desire, I'm not hearing any assurances that we
2 really have plans to use this and that maybe
3 it's still valuable and could be sold if the
4 right person came around, you could sell it.
5 What can you give me to assure me that we're
6 really talking about using this thing in a
7 meaningful time frame.

8 MR. DEMETRIOU: I've had several
9 offers of people wanting to purchase it and
10 we're not looking to sell it. That is not our
11 intent whatsoever. We've had people wanting
12 to purchase it from us, several people, and
13 we're not interested. We're really -- we want
14 to open up a family Greek restaurant and
15 that's the truth, sir.

16 MR. ALBERTI: Okay. So you're
17 telling me that if you don't open a Greek
18 restaurant you have buyers for this? Is that
19 what I'm hearing?

20 MR. DEMETRIOU: There were buyers.
21 There were people interested in purchasing it.

22 MR. ALBERTI: If there were, what

1 has changed.

2 MR. DEMETRIOU: We've always said
3 no.

4 MR. ALBERTI: What has changed?

5 MR. DEMETRIOU: We've always said
6 no.

7 MR. ALBERTI: Why are you telling
8 me that? Why are you telling me that if
9 that's not significant to me?

10 MR. DEMETRIOU: I'm just trying to
11 be transparent.

12 MR. ALBERTI: I thought what you
13 were trying to convey to me is that you -- oh,
14 man, I could sell this license.

15 MR. DEMETRIOU: We don't want to.
16 We want to open a Greek restaurant with the
17 license.

18 MR. O'BRIEN: Mr. Alberti, if I
19 may?

20 MR. ALBERTI: Yes.

21 MR. O'BRIEN: I'll represent --
22 I'm not saying we make a market in it, but our

1 office, our firm is involved in Georgetown
2 purchases and sales of licenses, not
3 infrequently. And a lot of times I'll get a
4 call from a prospective buyer asking if
5 there's anything available. And I gave up
6 even trying to call Mr. Demetriou because I
7 knew his license was not available because
8 they needed to keep it with the property.

9 MR. ALBERTI: That's odd because I
10 think there are other licenses in safekeeping
11 in Georgetown, but that's an aside, that
12 there's no licenses available, I find that --

13 MR. O'BRIEN: There are points in
14 time, Mr. Alberti, when we have to tell
15 inquirers that nothing is presently available.

16 MR. ALBERTI: And I believe that.

17 MR. O'BRIEN: And licenses may be
18 in safekeeping, but if people aren't willing
19 to let them go --

20 MR. ALBERTI: I believe that, I
21 believe that. I wasn't questioning your
22 statement. I understand exactly what you're

1 saying.

2 MR. O'BRIEN: Which of course, why
3 the Board is concerned.

4 MR. ALBERTI: Yes, and I was just
5 making a point. That's why we're concerned,
6 because people don't want to get up off the
7 dime and use their licenses, either sell them
8 or use them. I'm not saying this owner, but
9 I'm saying we're finding that to be possible
10 case here. If we have licenses in safekeeping
11 and you can't find any to buy, that indicates
12 something.

13 MR. O'BRIEN: The licenses are in
14 safekeeping for various reasons. In this
15 case, it was in safekeeping because they had
16 to keep it with the property.

17 MR. ALBERTI: They didn't have to.
18 They wanted to.

19 MR. O'BRIEN: No, it was a
20 practical matter. To market the property as
21 a restaurant use, they had to be able to
22 demonstrate to prospective purchasers that a

1 license was available.

2 CHAIRPERSON MILLER: Mr.
3 Rodriguez?

4 MR. RODRIGUEZ: Yes, sir. Can you
5 enlighten me a little bit? I'm a new board
6 member, but I see a license here since 2006.
7 I'm shocked. Since 2006, and then can you
8 enlighten me, now you have a property and you
9 want to open up a Greek restaurant. So why
10 didn't you open up the Greek restaurant in
11 your own property?

12 MR. DEMETRIOU: It was too
13 expensive.

14 MR. RODRIGUEZ: It was too
15 expensive?

16 MR. DEMETRIOU: Yes, because it
17 was completely gutted out. It was basically
18 almost an abandoned property and that's why we
19 were looking to lease something that's pretty
20 much ready to go. That's why.

21 MR. RODRIGUEZ: Maybe other people
22 will have better use for that license then, if

1 it's too expensive for you to put it into your
2 establishment. Then what value does that
3 license have to you then?

4 MR. DEMETRIOU: We were paying
5 \$16,000 a month, just the mortgage, and then
6 on top of that to spend over half a million
7 dollars to renovate it, to get it ready for a
8 restaurant use. I promise, there's no way we
9 could have afforded that. But now, if we find
10 a property that's pretty much ready to go
11 where -- we don't have the mortgage any more,
12 so now we can afford the rent, but also afford
13 -- nothing crazy, maybe \$100,000 of
14 renovations. That's something that we can do
15 now at this point.

16 MR. ALBERTI: I'm still not
17 convinced that by your explanation that this
18 license could not have been put into use since
19 20006. That's all I have, Madam Chair.

20 CHAIRPERSON MILLER: Okay, Mr.
21 Short has joined us. Good morning.

22 MEMBER SHORT: Good morning.

1 CHAIRPERSON MILLER: Other
2 questions. I want to ask you, Mr. Demetriou,
3 how long do you think it will take you to find
4 a suitable place to use your license?

5 MR. DEMETRIOU: We're aggressively
6 looking. When the right opportunity comes,
7 and I know this is the million dollar question
8 and I'd love to tell you next month or six
9 months, I'd love to tell you what it is, but
10 we're doing the best to find the right
11 situation.

12 CHAIRPERSON MILLER: What are you
13 doing?

14 MR. DEMETRIOU: Well, we have an
15 agent looking for us and letting us know --
16 we're looking for somewhere around 2,000
17 square feet, a location in Georgetown, with a
18 good spot where there's a lot of high traffic
19 area to get that going.

20 CHAIRPERSON MILLER: And why are
21 you limiting it to Georgetown?

22 MR. DEMETRIOU: Well, we feel as

1 though that that's the best situation for a
2 new Greek establishment. There's not many in
3 the area so we feel as though it would have a
4 nice demand for it there.

5 CHAIRPERSON MILLER: Since 2006 or
6 so, have you been in the restaurant business?

7 MR. DEMETRIOU: My family has in
8 the past, yes, prior to 2006.

9 CHAIRPERSON MILLER: Prior to
10 2006.

11 MR. DEMETRIOU: Yes.

12 CHAIRPERSON MILLER: So you
13 haven't been working in the restaurant field,
14 but you're going to start a new restaurant?

15 MR. DEMETRIOU: Yes, we used to
16 have like four restaurants in Maryland and
17 Virginia. We don't have those any more, but
18 we're looking to open a new one.

19 CHAIRPERSON MILLER: So is there
20 anything concrete you can give to the Board to
21 be done within a certain time frame? I don't
22 know if you listened to the case before you,

1 but we have been instituting a policy where
2 we're not letting licenses just laying in
3 safekeeping for years and years and years
4 while there is a demand out there for them to
5 be used. And at most, we've been looking at
6 six month intervals, at most. So I don't know
7 if there's anything you can tell us any more
8 specifically.

9 MR. DEMETRIOU: If the court would
10 allow us to have another discussion in six
11 months to see where we're at, something like
12 that. I don't know.

13 MR. O'BRIEN: Madam Chair?

14 CHAIRPERSON MILLER: Yes.

15 MR. O'BRIEN: I'm presuming the
16 Board is aware of Section 704.3, the
17 regulations which says a license for premises
18 located in a moratorium area shall be
19 permitted to be kept in safekeeping for the
20 length of the moratorium. And it says subject
21 to the removal requirements set forth in code
22 section, but that code section doesn't have

1 any relevance to this conversation.

2 CHAIRPERSON MILLER: Okay, I just
3 want to get my regulations.

4 MR. O'BRIEN: It's 23 DCMR 704.3.
5 (Pause.)

6 CHAIRPERSON MILLER: Okay, I want
7 to look at subject to the removal requirements
8 set forth in 25-791, do you have anything to
9 say about that?

10 MR. O'BRIEN: I didn't copy that
11 section. I looked at it and concluded that it
12 didn't have anything to do with the
13 conversation we're having today.

14 CHAIRPERSON MILLER: Okay.

15 MR. O'BRIEN: If you want to take
16 a look at subsection F, that was my reading of
17 it.

18 MR. ALBERTI: So we're looking at
19 23 what?

20 MR. O'BRIEN: 23 DCMR 704.3.

21 MR. ALBERTI: I didn't hear the
22 argument, but let me read this first.

1 CHAIRPERSON MILLER: So anyway,
2 I'll read for the record 704.3, correct,
3 you're citing?

4 MR. O'BRIEN: 704.3.

5 CHAIRPERSON MILLER: Okay, it says
6 "notwithstanding Section 704.2, a license for
7 premises located in a moratorium area shall be
8 permitted to be kept in safekeeping with the
9 Board for the length of the moratorium subject
10 to the removal requirements set forth in DC
11 Official Code Section 25-791(f). That's too
12 long for me to read at this point.

13 MR. O'BRIEN: I'm sorry, what is
14 too long to read?

15 CHAIRPERSON MILLER: 791.

16 MR. O'BRIEN: Well, it's just
17 subsection f.

18 MR. O'BRIEN: Oh, f. Okay, thank
19 you. All right, thank you. "Licenses which
20 are restored after being held in safekeeping
21 for longer than two years shall be subject to
22 the license renewal process set forth in

1 Chapter 4." Okay.

2 So your position is?

3 MR. O'BRIEN: Well, 704.3 says
4 notwithstanding 704.2. And it is 704.2 which
5 empowers the Board to put six-month deadlines
6 on a licensee and I'm paraphrasing now to use
7 it or lose it. But 704.3 says, however, if
8 you're in a moratorium zone which I think we
9 all agree Georgetown is, the license shall --
10 mandatory -- be permitted to be kept in
11 safekeeping for the length of the moratorium.

12 MR. ALBERTI: May I comment?

13 CHAIRPERSON MILLER: Sure.

14 MR. ALBERTI: So excepting your
15 premise, this moratorium expires in February.
16 Every moratorium has an end date, so this
17 moratorium expires in February of 2016.

18 MR. O'BRIEN: Unless it's
19 extended, yes.

20 MR. ALBERTI: No, at that point,
21 at that point we could choose to cancel this
22 license because that's the length of the

1 moratorium.

2 MR. O'BRIEN: I would not agree
3 that each -- that this refers to the
4 moratorium that is in effect at a particular
5 point in time.

6 MR. ALBERTI: So then --

7 MR. O'BRIEN: I would not agree
8 with that analysis.

9 MR. ALBERTI: I understand. I
10 understand. So what you're saying is is that
11 anyone could do the review of the license
12 every six months is fruitless in a moratorium,
13 is that what you're saying? That the Board
14 cannot act, right?

15 MR. O'BRIEN: I never like to
16 phrase it that way, but the answer is yes.

17 (Laughter.)

18 MR. ALBERTI: That's what I
19 thought you'd say. I understand. I just
20 wanted to get it out there.

21 MR. O'BRIEN: This provision did
22 not just happen to float down to earth and

1 find its way into the regs. It was
2 recognized and I think the provision has been
3 in there for quite a few years. It was
4 recognized that moratorium zones are different
5 because of the inability to get new licenses.
6 So that's why this exception to the general
7 rule that you could put licensees on a six-
8 month leash, that's why this is here.

9 MR. ALBERTI: I would hesitate to
10 believe -- I cannot believe that the authors
11 of this legislation expected someone to hold
12 a license worth tens of thousands, \$50,000, as
13 if it were a piece of property to sell and not
14 use it in a moratorium -- a moratorium is
15 there because -- you know. I want to say
16 this, on the one hand, they wrote this to
17 protect the licenses, so you couldn't lose
18 licenses. In another way, they're allowing us
19 to lose licenses because the Board can't act
20 to get licenses active. I mean to me if a
21 license isn't active, you've lost it.

22 You know, I don't believe that

1 they had that intent when they wrote this,
2 that a license could just stay forever in
3 safekeeping and the Board would be powerless
4 to act on it. I just can't fathom that.

5 MR. O'BRIEN: The drafters of the
6 regulation, Mr. Alberti, could have said
7 provided that in no event may it be more than
8 three years, or in no event may it be more
9 than five years.

10 MR. ALBERTI: They could have said
11 anything. The drafters of these legislations
12 often do not make the best choice of words.
13 You and I know that. We see it all the time.

14 MR. O'BRIEN: Let me say this --

15 MR. ALBERTI: But it does not
16 necessarily signal their intent.

17 MR. O'BRIEN: There are licenses
18 in Georgetown and I believe you'll be dealing
19 with one or more of them today that have been
20 in safekeeping far longer.

21 MR. ALBERTI: Oh, absolutely.
22 That's why we're here today.

1 MR. O'BRIEN: Yes, and the
2 drafters of the regulation were aware at the
3 time they drafted it that there were some
4 licenses from decades.

5 MR. ALBERTI: Well, I will tell
6 you that we heard from business owners a few
7 weeks ago lamenting the fact that it's hard
8 for someone to open a new license because
9 these licenses in safekeeping are worth
10 \$50,000, \$60,000 and that is hampering new
11 businesses from opening because they can't
12 afford the license on top of what -- \$100,000
13 or whatever it is to open a restaurant. Small
14 business owners are prevented from opening
15 because of the cost of those licenses. That's
16 part of why we're here as to free up and make
17 sure they're used in the city, which is
18 important for businesses to help small
19 businesses.

20 MR. O'BRIEN: Mr. Alberti, I think
21 that is why we've seen relaxation of several
22 of the moratoria. I'm thinking of west Dupont

1 Circle. I'm thinking of Glover Park, to take
2 CR licenses out of the scope of the particular
3 moratorium because some of the same community
4 groups that originally thought the moratoria
5 were wonderful have come to realize that they
6 hamper economic development.

7 MR. ALBERTI: Absolutely, so my
8 point is is that I believe that allowing
9 people to have things indefinitely in
10 safekeeping hamper economic development. You
11 made my point.

12 MR. O'BRIEN: I agree. I'm
13 agreeing with you. I don't believe in
14 moratoria. I agree with you. But I know that
15 you can see the smile on my face as I say
16 this, but the audience can't, so I want you to
17 notice the smile on my face as I say if you
18 and I, Mr. Alberti, were at the Council
19 debating the wisdom of this regulation, this
20 would be a particularly germane conversation.
21 But the Board is forced to deal with the
22 regulations as they exist and 704.3 --

1 MR. ALBERTI: Well, you and I have
2 a different interpretation of the end date
3 here. So I will have to discuss that with our
4 general counsel. So that issue is not
5 settled, Mr. O'Brien.

6 MR. O'BRIEN: Can I respond to
7 that very particular thing?

8 MR. ALBERTI: Sure.

9 MR. O'BRIEN: I would suggest, if
10 in the highly unlikely event it's necessary,
11 we come back and discuss that in February
12 2016. I don't think the Board wants to issue
13 advisory opinions before an issue is ripe for
14 adjudication.

15 MR. ALBERTI: I'm not suggesting
16 we do that, but we'll see. We'll be
17 discussing it. Thank you.

18 CHAIRPERSON MILLER: Mr. O'Brien?

19 MR. O'BRIEN: Yes, ma'am.

20 CHAIRPERSON MILLER: I want to ask
21 you about 704.2 where they read that as being
22 applicable in the sense that the Board shall

1 hold safekeeping hearings for any license in
2 safekeeping longer than six months. Or
3 whether you read that as notwithstanding
4 704.2, that that's -- the Board doesn't have
5 authority under that regulation to even hold
6 the six-month holding. Not necessarily
7 authority, but --

8 MR. O'BRIEN: Yes, but the purpose
9 of the hearing 704.2, the purpose of the six-
10 month hearing if one continues to read 704.2
11 is to determine whether the licensee has made
12 sufficient progress toward reopening or
13 whether the license should be canceled. That
14 would be the purpose of the hearing. But then
15 704.3 says notwithstanding that, that the
16 license shall be permitted to remain in
17 safekeeping in a moratorium zone. So I don't
18 understand what the purpose of a six-month
19 hearing would be.

20 CHAIRPERSON MILLER: My question
21 is whether the Board would still inquire about
22 progress towards reopening.

1 MR. O'BRIEN: The Board certainly
2 could hold a hearing to inquire, but it could
3 not cancel for use it or lose it reasons in a
4 moratorium zone subject perhaps to the issue
5 Mr. Alberti and I were discussing as to
6 whether each moratorium is a separate
7 moratorium or whether it's one long
8 moratorium.

9 CHAIRPERSON MILLER: Right. Okay.
10 Any other questions, comments?

11 Mr. Rodriguez?

12 MR. RODRIGUEZ: Madam Chair, you
13 know, I'm really not smiling. You can smile,
14 Mr. O'Brien, but I'm not smiling to think that
15 we have licenses in perpetuity. I think that
16 I need to look into that legislation or the
17 rules or more, but I just don't see any
18 logical sense in keeping a license in
19 perpetuity, moratorium or no moratorium.

20 I think we have a responsibility
21 to ensure that the interests of the public are
22 kept and that we don't have licenses that are

1 kept there for speculation. Now I'm not
2 accusing you of that, but I certainly am not
3 smiling right now about all the licenses that
4 we see that have been kept for such a long
5 time and it does not help the economic
6 development as you were discussing with Mr.
7 Alberti. But I'm very curious about this and
8 we certainly are going to be looking into it
9 a little harder.

10 MR. O'BRIEN: Yes, sir. The
11 reference to smiling was to make it clear that
12 even though I frankly was challenging the
13 authority of the Board, I wasn't doing it in
14 a belligerent manner.

15 MR. RODRIGUEZ: No, I understand
16 that.

17 MR. O'BRIEN: And Mr. Alberti was
18 smiling at me also.

19 MR. RODRIGUEZ: Yes.

20 MR. O'BRIEN: Once we get past the
21 smiling, I agree with you. Should there be an
22 exception to the six-month rule when you're in

1 a moratorium zone as a matter of policy, I
2 would say probably not, but --

3 MR. RODRIGUEZ: I agree with you.

4 MR. O'BRIEN: But I don't think
5 there should be a moratorium provision anyway.

6 MR. RODRIGUEZ: Well, that's
7 beside the point. I think the first
8 fundamental point is the one you just made
9 now. And that is that we should have a grace
10 period by which we can review the licenses and
11 you know, I think that people should show good
12 faith in that they're making a good-faith
13 effort to use that license. But if I see a
14 license that has not been used since 2006, you
15 know, then I begin to question if there are
16 other motives for not using that license.
17 That's all I'll say at this point.

18 CHAIRPERSON MILLER: Okay, anybody
19 else want to make a comment or question?

20 MR. ALBERTI: I would just say
21 that

22 --

1 CHAIRPERSON MILLER: Mr. Alberti.

2 MR. ALBERTI: -- Mr. O'Brien and I
3 were both smiling, but I know we take this
4 seriously. I think it was -- we weren't
5 taking it lightly. I mean it was -- I think
6 the levity of the difficulty -- there's some
7 levity, instead of black humor, it's a very
8 serious subject that we have to discuss here
9 and the back and forth is what I think was the
10 smiles and the endurance of the exchange of
11 ideas. So there's no levity here at all.

12 MR. O'BRIEN: And my point was
13 this. I was maneuvered, or placed, boxed in
14 by one of Mr. Alberti's questions to say the
15 Board can't do it. I don't ever like to tell
16 a tribunal they can't do something. I was
17 trying to do that in the most respectful way
18 possible.

19 MR. ALBERTI: I was trying to put
20 it out on the table to see where we were.
21 That's accepted.

22 MR. RODRIGUEZ: I'm not a callous

1 old man. I can smile. But some of us are
2 taking this situation very seriously.

3 MR. O'BRIEN: Including my client.
4 I don't see him smiling.

5 CHAIRPERSON MILLER: All right. I
6 guess what I want to say is thank you, Mr.
7 O'Brien, for bringing that regulation up in
8 this hearing and it's a regulation that looks
9 to be on point and we'll take a closer look at
10 that obviously. But even if we have
11 differences in policy, whether we favor
12 moratoriums or not or we see the problems,
13 whether it's a bad regulation or a good
14 regulation, it's the law right now. We can
15 look at the reg in the context of other laws
16 or whatever it is, but I would think in light
17 of that regulation, 704.3 that we not take any
18 action on this case at this time.

19 MR. ALBERTI: I agree, but I think
20 that the Board would be remiss if it didn't
21 encourage people to use the licenses. So I
22 would like to bring this licensee back in six

1 months to find out where they are.

2 MR. DEMETRIOU: That's fair.

3 MR. ALBERTI: We're well within
4 our right to review these licenses every six
5 months and I think we have to at least go that
6 far to encourage people to use these licenses.

7 MEMBER SHORT: Is that a motion,
8 Mr. Alberti?

9 MR. ALBERTI: I'll let the chair
10 handle that for the moment.

11 CHAIRPERSON MILLER: I was just
12 going to say I don't see anything in the
13 regulations that preclude us from having
14 another fact-finding hearing with respect to
15 the establishment. So okay, it appears that
16 the consensus of the Board, unless I hear
17 otherwise that we just schedule a fact-finding
18 hearing within six months, regarding this
19 establishment just to get a report on the
20 progress of the representations that were made
21 today that the licensee is looking to lease
22 another space to use the license. Do I have

1 a second?

2 MR. RODRIGUEZ: Second.

3 CHAIRPERSON MILLER: Okay, all
4 those in favor say aye?

5 (Ayes.)

6 All those opposed? Those
7 abstaining? Okay, motion passes, 6-0-0.

8 Okay, any other comments now that
9 we've made our motion?

10 MR. O'BRIEN: No, ma'am.

11 CHAIRPERSON MILLER: Okay, well,
12 thank you very much and best of luck to you in
13 finding a space.

14 MR. ALBERTI: Thank you for
15 coming.

16 CHAIRPERSON MILLER: You may be
17 excused.

18 (Whereupon, at 11:16 a.m., the
19 fact finding hearing was concluded.)
20
21
22

A	26:5,20 27:7,18 28:1,8,15 30:5 31:7,17 32:20 33:1,2,19 34:19 35:3,8,9 36:14 Alberti's 33:14 Alcoholic 1:3,14,15 allow 19:10 allowing 24:18 27:8 analysis 23:8 ANC 1:10 2:6 answer 7:21 23:16 anybody 32:18 anyway 21:1 32:5 appears 35:15 applicable 28:22 application 7:13 8:16 approximately 5:5 7:2 area 17:19 18:3 19:18 21:7 argument 20:22 arrives 3:16 aside 13:11 asking 13:4 assurances 10:19 11:1 assure 11:5 attention 5:17 audience 27:16 August 5:3,5 authority 29:5,7 31:13 authors 24:10 available 6:19 9:15 13:5,7,12,15 15:1 awaiting 3:3 aware 19:16 26:2 aye 36:4 Ayes 36:5	Bamboo 1:8 2:4 3:10 4:10,20 5:22 basically 15:17 believe 4:19 13:16 13:20,21 24:10,10 24:22 25:18 27:8 27:13 belligerent 31:14 Berliner 3:16 best 17:10 18:1 25:12 36:12 better 15:22 Beverage 1:3,14,15 bicyclists 2:19 bit 6:5 15:5 black 33:7 board 1:3,15 4:19 5:14 8:3 14:3 15:5 18:20 19:16 21:9 22:5 23:13 24:19 25:3 27:21 28:12,22 29:4,21 30:1 31:13 33:15 34:20 35:16 boxed 33:13 bring 6:5 34:22 bringing 34:7 BROOKS 1:20 8:5 8:10,14,19 Building 1:15 business 18:6 26:6 26:14 businesses 26:11 26:18,19 buy 14:11 buyer 6:16,19 13:4 buyers 11:18,20	14:10,15 18:22 34:18 certain 18:21 certainly 30:1 31:2 31:8 chair 2:10 16:19 19:13 30:12 35:9 Chairperson 1:16 1:19 2:3 3:1,6,13 3:17,21 4:2,6,10 4:17 5:2,6,10,16 6:7 8:2,21 9:2 15:2 16:20 17:1 17:12,20 18:5,9 18:12,19 19:14 20:2,6,14 21:1,5 21:15 22:13 28:18 28:20 29:20 30:9 32:18 33:1 34:5 35:11 36:3,11,16 challenging 31:12 changed 9:6,9 12:1 12:4 changes 10:4 Chapter 22:1 Cherches 1:8 4:12 5:19 6:9,20 7:16 choice 25:12 choose 22:21 Circle 27:1 circumstances 10:4 citing 21:3 city 26:17 clarification 8:6 clear 31:11 client 34:3 closer 34:9 code 19:21,22 21:11 COLUMBIA 1:1 come 3:20 27:5 28:11 comes 17:6 coming 36:15 comment 22:12 32:19 comments 30:10	36:8 community 27:3 completely 15:17 concerned 14:3,5 concerning 2:7 concluded 6:11 20:11 36:19 concrete 18:20 consensus 35:16 context 34:15 continues 29:10 Control 1:3,14,15 conversation 20:1 20:13 27:20 convey 12:13 convinced 16:17 copy 20:10 correct 5:9 8:9 21:2 cost 26:15 Council 27:18 counsel 28:4 course 14:2 court 19:9 CR 1:10 27:2 crazy 16:13 curious 31:7
	B	C	D	
\$100,000 16:13 26:12 \$16,000 9:18 16:5 \$50,000 24:12 26:10 \$60,000 26:10 a.m 2:2 36:18 abandoned 15:18 ABC 8:14 10:3 able 14:21 absolutely 25:21 27:7 abstaining 36:7 accepted 33:21 accompanied 4:14 accurate 2:13 accusing 31:2 acquired 5:19,20 act 23:14 24:19 25:4 action 34:18 active 24:20,21 address 4:22 adjudication 28:14 advisory 28:13 afford 9:19 16:12 16:12 26:12 afforded 16:9 agent 17:15 aggressively 7:5 17:5 ago 3:12 6:15 7:2 9:4 26:7 agree 22:9 23:2,7 27:12,14 31:21 32:3 34:19 agreeing 27:13 Alberti 1:19 4:3 8:22 9:2,3 10:5,12 11:16,22 12:4,7 12:12,18,20 13:9 13:14,16,20 14:4 14:17 16:16 20:18 20:21 22:12,14,20 23:6,9,18 24:9 25:6,10,15,21	back 28:11 33:9 34:22 bad 34:13	C 2:1 C-H-E-R-C-H 4:12 calendar 2:4 call 13:4,6 callous 33:22 cancel 22:21 30:3 canceled 29:13 case 2:3,22 4:7,9	D 2:1 D-E-M-E-T-R-I 4:14 D.C 1:16 date 22:16 28:2 DC 21:10 DCMR 20:4,20 deadlines 22:5 deal 27:21 dealing 25:18 debating 27:19 decades 26:4 decide 9:4,5 decided 6:12 demand 18:4 19:4 Demetriou 2:12,19 3:10 4:14 7:4,9,18 7:19,21 9:17 11:8 11:20 12:2,5,10	

12:15 13:6 15:12 15:16 16:4 17:2,5 17:14,22 18:7,11 18:15 19:9 35:2 demonstrate 14:22 desire 10:20,21 11:1 determine 29:11 development 27:6 27:10 31:6 differences 34:11 different 7:16 24:4 28:2 difficulty 33:6 dime 14:7 disconnect 9:1 discuss 28:3,11 33:8 discussing 28:17 30:5 31:6 discussion 19:10 DISTRICT 1:1 doing 17:10,13 31:13 dollar 17:7 dollars 16:7 DONALD 1:20 drafted 26:3 drafters 25:5,11 26:2 Dupont 26:22	ensure 30:21 envisioned 6:16 9:12 establish 7:7 establishment 5:7 5:11 16:2 18:2 35:15,19 estate 5:20 6:14,20 10:14,16 event 25:7,8 28:10 everybody 3:1,7 everybody's 5:17 exactly 13:22 excepting 22:14 exception 24:6 31:22 exchange 33:10 excuse 2:20 excused 36:17 exist 27:22 expected 24:11 expensive 15:13,15 16:1 experienced 2:14 expires 22:15,17 explains 7:4 explanation 16:17 extended 1:11 2:8 22:19	feet 17:17 field 18:13 file 8:16 files 6:2,5 finally 10:1 find 13:12 14:11 16:9 17:3,10 24:1 35:1 finding 1:5 14:9 36:13,19 firm 13:1 first 3:16,20,20 8:4 20:22 32:7 five 25:9 float 23:22 forced 27:21 forever 25:2 forth 19:21 20:8 21:10,22 33:9 four 18:16 frame 11:7 18:21 frankly 31:12 free 26:16 fruitless 23:12 fundamental 32:8	grace 1:8,9 2:4,5 3:10 4:20 5:8,21 7:6 32:9 great 3:13 Greek 5:22 6:9 7:12 8:13 9:5,6 10:20 11:14,17 12:16 15:9,10 18:2 Green 7:7 groups 27:4 guess 5:1 34:6 gutted 15:17 guy 10:7	holding 10:9 29:6 hopefully 3:14 humor 33:7
E	F	G	H	I
E 2:1,1 E-S 4:13 earth 23:22 economic 27:6,10 31:5 effect 23:4 effort 32:13 either 14:7 emails 2:11 empowers 22:5 encourage 34:21 35:6 endurement 33:10 enlighten 15:5,8	f 20:16 21:17,18 face 27:15,17 fact 1:5 9:7 26:7 36:19 fact-finding 35:14 35:17 fair 35:2 faith 32:12 faithfully 6:21 family 11:14 18:7 far 3:8 25:20 35:6 fathom 25:4 favor 34:11 36:4 February 22:15,17 28:11 feel 17:22 18:3	G 2:1 general 24:6 28:4 Georgetown 7:5,12 8:7 13:1,11 17:17 17:21 22:9 25:18 germane 27:20 getting 2:11 give 5:14 11:5 18:20 Glover 27:1 go 9:4,6 10:21 13:19 15:20 16:10 35:5 going 3:22 8:3 17:19 18:14 31:8 35:12 good 2:9,20 4:6 5:17 16:21,22 17:18 32:11 34:13 good-faith 32:12	half 16:6 hamper 27:6,10 hampering 26:10 hand 24:16 handle 35:10 happen 23:22 happened 6:22 hard 26:7 harder 31:9 he'll 3:14 hear 10:20 20:21 35:16 heard 26:6 hearing 1:5,15 10:19,22 11:1,19 29:9,10,14,19 30:2 34:8 35:14 35:18 36:19 hearings 29:1 HECTOR 1:21 held 21:20 help 26:18 31:5 HERMAN 1:20 hesitate 24:9 high 17:18 highly 28:10 hit 6:10 hold 24:11 29:1,5 30:2 holder 4:11,16 5:19 6:11 7:15	idea 3:8 ideas 33:11 important 26:18 inability 24:5 including 2:18 34:3 indefinitely 27:9 indicates 14:11 infrequently 13:3 inquire 29:21 30:2 inquirers 13:15 instituting 19:1 intended 5:22 6:4 intent 11:11 25:1 25:16 interested 11:13,21 interests 30:21 interpretation 28:2 intervals 19:6 intervening 6:22 involved 13:1 issue 28:4,12,13 30:4
				J
				JAMES 1:22 joined 16:21 JONES 1:20
				K
				keep 9:19 13:8 14:16 keeping 30:18 kept 19:19 21:8 22:10 30:22 31:1 31:4 kind 10:7 knew 13:7 know 2:13 3:7 4:1 10:7 17:7,15 18:22 19:6,12 24:15,22 25:13 27:14 30:13 32:11

32:15 33:3	lightly 33:5	meaning 6:11	16:11	33:2,12 34:3,7
known 4:19	limiting 17:21	meaningful 11:7	motion 35:7 36:7,9	36:10
<hr/> L <hr/>	liquor 5:11 6:18	member 1:19,20,20	motives 32:16	o'clock 4:9
lamenting 26:7	listened 18:22	1:21,21,22 4:15	motorcades 2:16	O-U 4:15
Laughter 23:17	little 6:5 15:5 31:9	15:6 16:22 35:7	<hr/> N <hr/>	obviously 34:10
law 34:14	LLC 1:8 4:13	members 8:3	N 2:1	odd 13:9
laws 34:15	located 2:4 5:8	Memorial 2:16	N.W 1:16	odor 10:8
laying 19:2	19:18 21:7	memory 6:6	name 4:20,21	offered 10:16
lease 7:9,11 8:11,12	location 7:6,6,16	met 1:15	National 2:15	offers 11:9
15:19 35:21	8:18 17:17	MIKE 1:21	necessarily 25:16	office 6:4 13:1
leash 24:8	logical 30:18	Miller 1:16,19 2:3	29:6	Official 21:11
legislation 24:11	long 17:3 21:12,14	3:1,6,13,17,21 4:2	necessary 28:10	oh 12:13 21:18
30:16	30:7 31:4	4:6,10,17 5:2,6,10	need 10:3 30:16	25:21
legislations 25:11	longer 8:7,8 9:10	5:16 6:7 8:2,21	needed 13:8	okay 3:13 4:17 5:6
length 19:20 21:9	21:21 25:20 29:2	9:2 15:2 16:20	never 23:15	5:7 6:7 7:20 8:2
22:11,22	look 20:7,16 30:16	17:1,12,20 18:5,9	new 8:17 15:5 18:2	11:16 16:20 20:2
letting 17:15 19:2	34:9,15	18:12,19 19:14	18:14,18 24:5	20:6,14 21:5,18
levity 33:6,7,11	looked 20:11	20:2,6,14 21:1,5	26:8,10	22:1 30:9 32:18
license 1:9,11 2:6,7	looking 11:10	21:15 22:13 28:18	nice 18:4	35:15 36:3,7,8,11
3:10 4:12,15,18	15:19 17:6,15,16	28:20 29:20 30:9	NICK 1:19	old 34:1
5:12,18,20 6:11	18:18 19:5 20:18	32:18 33:1 34:5	non-alcohol 7:2	once 5:17 31:20
6:19 7:13,14,15	31:8 35:21	35:11 36:3,11,16	notice 27:17	open 5:22 6:9 7:12
8:14,17 9:4,10,15	looks 34:8	million 16:6 17:7	notwithstanding 22:4	8:13 9:5,6,20
10:3,17 12:14,17	lose 22:7 24:17,19	mind 10:15	21:6 29:3,15	10:20 11:14,17
13:7 15:1,6,22	30:3	mine 2:22	number 2:6	12:16 15:9,10
16:3,18 17:4	lost 24:21	minutes 3:11,12	NW 1:9 2:5	18:18 26:8,13
19:17 21:6,22	lot 13:3 17:18	moment 3:5 35:10	<hr/> O <hr/>	opening 26:11,14
22:9,22 23:11	love 17:8,9	momentarily 3:15	O 2:1	operate 6:17
24:12,21 25:2	luck 36:12	month 9:18 16:5	O'Brien 2:9,10 3:3	operated 4:22
26:8,12 29:1,13	<hr/> M <hr/>	17:8 19:6 24:8	3:9,14,19 4:1,4,8	operating 5:11,12
29:16 30:18 32:13	ma'am 28:19 36:10	29:10	4:11,13,18 5:4,9	5:13
32:14,16 35:22	madam 2:9,9 16:19	months 6:15 7:2	5:13,18 6:8 7:10	operator 5:21
licensee 2:10 22:6	19:13 30:12	17:9 19:11 23:12	7:20 8:8,12,15 9:9	opinions 28:13
29:11 34:22 35:21	making 14:5 32:12	29:2 35:1,5,18	10:2,11 12:18,21	opportunity 17:6
licensee's 2:12	man 12:14 34:1	moratoria 26:22	13:13,17 14:2,13	opposed 36:6
licensees 24:7	managing 4:15	27:4,14	14:19 19:13,15	order 7:12 9:13
licenses 10:9 13:2	mandatory 22:10	moratorium 19:18	20:4,10,15,20	originally 27:4
13:10,12,17 14:7	mandated 33:13	19:20 21:7,9 22:8	21:4,13,16,18	owner 8:7 14:8
14:10,13 19:2	manner 31:14	22:11,15,16,17	22:3,18 23:2,7,15	owners 26:6,14
21:19 24:5,17,18	market 6:13 12:22	23:1,4,12 24:4,14	23:21 25:5,14,17	<hr/> P <hr/>
24:19,20 25:17	14:20	24:14 27:3 29:17	26:1,20 27:12	P 2:1
26:4,9,15 27:2	Maryland 18:16	30:4,6,7,8,19,19	28:5,6,9,18,19	paraphrasing 22:6
30:15,22 31:3	matter 1:7 14:20	32:1,5	29:8 30:1,14	Park 27:1
32:10 34:21 35:4	32:1	moratoriums 34:12	31:10,17,20 32:4	part 26:16
35:6	mean 5:5 24:20	morning 2:15 4:6		particular 7:21
light 34:16	33:5	16:21,22		23:4 27:2 28:7
		mortgage 9:18 16:5		

<p>particularly 27:20 pass 2:21 passes 36:7 Pause 20:5 paying 9:18 16:4 payments 6:21 people 10:9 11:9,11 11:12,21 13:18 14:6 15:21 27:9 32:11 34:21 35:6 period 32:10 permitted 19:19 21:8 22:10 29:16 perpetuity 30:15 30:19 person 11:4 Peter 2:12 4:14 phrase 23:16 piece 9:7 10:10,14 24:13 place 2:17 8:11,12 17:4 placed 33:13 plans 6:8 11:2 point 7:13 14:5 16:15 21:12 22:20 22:21 23:5 27:8 27:11 32:7,8,17 33:12 34:9 points 13:13 Police 2:15 policy 19:1 32:1 34:11 position 22:2 possible 14:9 33:18 potentially 10:15 powerless 25:3 practical 14:20 preclude 35:13 premise 22:15 premises 19:17 21:7 present 1:18 5:18 presently 13:15 presiding 1:17 presuming 19:15 pretty 2:20 15:19</p>	<p>16:10 prevented 26:14 previous 5:21 previously 4:21 principal 2:12 3:4 3:16 prior 18:8,9 probably 32:2 problems 2:13 34:12 process 21:22 progress 29:12,22 35:20 promise 16:8 property 5:19 6:13 7:1,11 8:6 9:8,11 9:12,14,19,20,20 9:22 10:10 13:8 14:16,20 15:8,11 15:18 16:10 24:13 prospective 6:16 6:19 9:11 13:4 14:22 protect 24:17 provided 25:7 provision 23:21 24:2 32:5 public 30:21 purchase 9:12 10:1 11:9,12 purchaser 9:11 purchasers 14:22 purchases 13:2 purchasing 11:21 purpose 29:8,9,14 29:18 put 6:12 16:1,18 22:5 24:7 33:19</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 17:7 29:20 32:15,19 questioning 13:21 questions 7:21 8:3 17:2 30:10 33:14 quite 2:22 24:3</p>	<hr/> <p style="text-align: center;">R</p> <hr/> <p>R 2:1 read 20:22 21:2,12 21:14 28:21 29:3 29:10 reading 20:16 ready 15:20 16:7 16:10 real 5:20 6:13,20 10:14,16 reality 10:17 realize 27:5 really 9:22 11:2,6 11:13 30:13 reasons 14:14 30:3 recess 3:22 recession 6:10 recognized 24:2,4 record 4:5 21:2 Reeves 1:15 reference 31:11 refers 23:3 reg 34:15 regarding 35:18 regs 24:1 regulation 25:6 26:2 27:19 29:5 34:7,8,13,14,17 regulations 19:17 20:3 27:22 35:13 relaxation 26:21 relevance 20:1 remain 29:16 remiss 34:20 removal 19:21 20:7 21:10 renewal 21:22 renewals 6:21 renovate 16:7 renovations 16:14 rent 16:12 reopening 29:12,22 report 35:19 represent 12:21 representations 35:20 requirements</p>	<p>19:21 20:7 21:10 reserved 9:10 respect 35:14 respectful 33:17 respond 28:6 responsibility 30:20 restaurant 4:21 6:1 6:10,18 7:8,12 8:13 9:5,6,13 10:20 11:14,18 12:16 14:21 15:9 15:10 16:8 18:6 18:13,14 26:13 restaurants 18:16 restored 21:20 Retailer 1:10 review 23:11 32:10 35:4 right 7:17 10:18 11:4 17:6,10 21:19 23:14 30:9 31:3 34:5,14 35:4 rights 5:21 ripe 28:13 Rodriguez 1:21 15:3,4,14,21 30:11,12 31:15,19 32:3,6 33:22 36:2 Room 1:15 rule 24:7 31:22 rules 30:17 Ruthanne 1:16,19</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>S 2:1 safekeeping 1:11 2:8 7:15 8:17 13:10,18 14:10,14 14:15 19:3,19 21:8,20 22:11 25:3,20 26:9 27:10 29:1,2,17 sale 6:13 sales 13:2 saying 12:22 14:1,8 14:9 23:10,13</p>	<p>says 19:17,20 21:5 22:3,7 29:15 schedule 35:17 scope 27:2 searching 7:5,11 8:10 second 9:20 36:1,2 section 19:16,22,22 20:11 21:6,11 see 15:6 19:11 25:13 27:15 28:16 30:17 31:4 32:13 33:20 34:4,12 35:12 seen 26:21 sell 9:14 10:10 11:4 11:10 12:14 14:7 24:13 sense 28:22 30:18 separate 30:6 serious 33:8 seriously 33:4 34:2 served 3:20 set 19:21 20:8 21:10,22 settled 28:5 shocked 15:7 Short 1:22 16:21 16:22 35:7 show 32:11 signal 25:16 significant 12:9 SILVERSTEIN 1:21 sir 11:15 15:4 31:10 situation 17:11 18:1 34:2 six 6:15 7:2 17:8 19:6,10 23:12 24:7 29:2,9 34:22 35:4,18 six-month 22:5 29:6,18 31:22 small 26:13,18 smile 27:15,17 30:13 34:1</p>
--	---	---	--	--

smiles 33:10
smiling 30:13,14
 31:3,11,18,21
 33:3 34:4
sold 6:15 7:1 9:8
 11:3
sorry 21:13
space 35:22 36:13
specifically 19:8
speculation 10:11
 10:12 31:1
spelled 4:12
spend 16:6
spot 17:18
square 17:17
staff 4:1
start 18:14
statement 13:22
stay 25:2
Stephen 2:10 4:13
stop 6:4
Street 1:9,16 2:5
 5:8 7:7
struggling 9:22
subject 4:22 19:20
 20:7 21:9,21 30:4
 33:8
subsection 20:16
 21:17
sufficient 29:12
suggest 28:9
suggesting 28:15
suitable 17:4
Suite 1:16
sure 22:13 26:17
 28:8
suspicion 10:8

T

t/a 1:8
table 33:20
take 10:5 17:3
 20:15 27:1 33:3
 34:9,17
takers 6:14
talked 3:9 6:3
talking 6:5 11:6

tell 13:14 17:8,9
 19:7 26:5 33:15
telling 11:17 12:7,8
tens 24:12
texts 2:11
thank 4:2,3 8:19
 21:18,19 28:17
 34:6 36:12,14
thing 2:14 11:6
 28:7
things 27:9
think 7:17 13:10
 17:3 22:8 24:2
 26:20 28:12 30:14
 30:15,20 32:4,7
 32:11 33:4,5,9
 34:16,19 35:5
thinking 26:22
 27:1
thought 12:12
 23:19 27:4
thousands 24:12
three 25:8
THURSDAY 1:13
time 3:9 6:1,4 11:7
 13:14 18:21 23:5
 25:13 26:3 31:5
 34:18
times 13:3
today 9:5 20:13
 25:19,22 35:21
top 16:6 26:12
trade 4:20,21
traffic 2:13 6:2
 17:18
transfer 7:14 8:16
transparent 12:11
tribunal 33:16
trust 10:6
truth 11:15
trying 2:17 12:10
 12:13 13:6 33:17
 33:19
turned 10:3
two 2:17 21:21

U

understand 13:22
 23:9,10,19 29:18
 31:15
understanding
 7:22
underway 6:9
update 5:15
use 7:3 9:13 11:2
 14:7,8,21 15:22
 16:8,18 17:4 22:6
 24:14 30:3 32:13
 34:21 35:6,22

V

valuable 10:15,16
 11:3
value 16:2
various 14:14
verify 10:7
Virginia 18:17

W

want 6:17 8:5
 11:13 12:15,16
 14:6 15:9 17:2
 20:3,6,15 24:15
 27:16 28:20 32:19
 34:6
wanted 14:18 23:20
wanting 11:9,11
wants 28:12
Washington 1:16
wasn't 13:21 31:13
way 2:19 9:21 10:6
 16:8 23:16 24:1
 24:18 33:17
ways 10:13
we'll 3:17,20 28:16
 28:16 34:9
we're 3:3,21 10:7
 11:5,10,13,13
 14:5,9 17:5,10,16
 18:18 19:2,11
 20:13,18 25:22
 26:16 35:3
we've 11:11 12:2,5
 19:5 26:21 36:9

Week 2:16
weeks 26:7
weren't 33:4
west 26:22
whatsoever 11:11
willing 13:18
wisdom 27:19
wonderful 27:5
words 25:12
working 18:13
worth 24:12 26:9
wrong 10:6
wrote 24:16 25:1

X

Y

year 9:4
years 6:17,22 19:3
 19:3,3 21:21 24:3
 25:8,9

Z

zone 22:8 29:17
 30:4 32:1
zones 24:4

0

1

10 4:8
10:27 2:2
10:30 2:22
11:16 36:18
14th 1:15
15 1:13 3:11,11

2

2,000 17:16
2000 1:15
20006 16:19
20009 1:16
2006 5:20 15:6,7
 18:5,8,10 32:14
2007 5:1,3,5,7
2008 6:10
2014 1:13
2016 22:17 28:12

23 20:4,19,20
25-791 20:8
25-791(f) 21:11
2E 1:10 2:7

3

3206 1:9 2:5 5:8

4

4 22:1

400S 1:16

5

500 2:18

6

6-0-0 36:7

7

704.2 21:6 22:4,4

28:21 29:4,9,10

704.3 19:16 20:4,20

21:2,4 22:3,7

27:22 29:15 34:17

75733 1:9 2:6

791 21:15