

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

Eagle N Exile, LLC	
t/a DC Eagle	Protest
3701 Benning Road NE	Hearing
Retailer CT	(Status)
License No. 93984	

Case No.

June 4, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member

JAMES SHORT, Member

ALSO PRESENT:

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(9:46 a.m.)

CHAIRPERSON MILLER: Good morning, everyone. I'd like to welcome you to the regularly scheduled meeting of the District of Columbia's Alcohol Beverage Control Board. Today is June 4th, 2014.

My name is Ruthanne Miller, I'm the Chairperson. To my far right is Mr. Donald Brooks, and next to Mr. Brooks is Mr. Nick Alberti. And next to Mr. Alberti and me is Mr. Hector Rodriguez, and to my left is Mr. James Short.

So we have two, three, four, five members in attendance right now, and three constitutes 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

1 in the hearing room.

2 If you have any electronic
3 devices, pagers, cell phones, et cetera,
4 please make certain they're turned off to
5 avoid any interruption of the proceedings.

6 When I call your case, please come
7 forward and take a seat at the table in front.
8 You'll notice there's a piece of paper on each
9 table for you to sign in. This is to ensure
10 the correct spelling of your name for the
11 record.

12 The Open Meetings Act requires
13 that the public hearing on each case be open
14 to the public.

15 The Board may, consistent with
16 Section 405(b) of the Open Meetings Act, enter
17 a closed meeting during or after the public
18 hearing on a case to consult with an attorney
19 to obtain legal advice, discuss settlement
20 agreements, or deliberate upon a decision and
21 an adjudication proceeding.

22 So that concludes my general

1 remarks and we can now turn to this morning's
2 calendar. We have kind of a mixture on the
3 calendar this morning.

4 Our first case is actually a fact
5 finding hearing which should be brief. That
6 is for the case of Slaviya located at 2424
7 18th Street Northwest, License Number 83910 in
8 ANC 1C. Is anyone here for that?

9 (No response.)

10 CHAIRPERSON MILLER: Okay, not
11 seeing anyone for that one, I'm going to pass
12 right now as we have several cases scheduled
13 for 9:30 and it's 9:48 right now.

14 The next case is Case Number 13-
15 AUD-00050, Breadsoda located at 2233 Wisconsin
16 Avenue Northwest, License Number 78085 in ANC
17 3B, and this case is actually dismissed.

18 Okay. That brings us to a motions
19 hearing that we have for the case of DC Eagle
20 located at 3701 Benning Road Northeast,
21 License number 93984 in ANC 7F.

22 (Pause.)

1 CHAIRPERSON MILLER: Okay. When
2 you're ready, starting from the Board's right,
3 from Mr. Pascal's side, why don't you
4 introduce yourselves for the record?

5 MS. HIRAO: To my left, I have Ted
6 Clemmons of Eagle and Exile, trading as DC
7 Eagle.

8 CHAIRPERSON MILLER: Ted Clemmons?
9 Hi, and what, are you the owner?

10 MR. CLEMENTS: I'm the owner, yes.

11 CHAIRPERSON MILLER: Okay, you're
12 the owner of DC Eagle?

13 MS. HIRAO: He's a managing member
14 for DC Eagle.

15 CHAIRPERSON MILLER: Okay.

16 MS. HIRAO: My name is Risa Hirao,
17 H-I-R-A-O. I'm with Pascal and Weiss
18 representing the Applicant.

19 CHAIRPERSON MILLER: Okay.

20 MR. PASCAL: Paul L. Pascal,
21 Pascal and Weiss for the Applicant. Good
22 morning.

1 CHAIRPERSON MILLER: Good morning.

2 MR. WOODSON: Good morning,
3 Chairman Miller and members of the Board. I'm
4 Roderick Woodson, a partner at Holland &
5 Knight for the Protestants. And to my far
6 right is my associate in the firm, Jessica
7 Farmer. And to my immediate right, why don't
8 you introduce yourself?

9 MR. BURKA: I'm David Burka,
10 manager for the property owners.

11 CHAIRPERSON MILLER: The property
12 owner's name?

13 MR. BURKA: Celia Properties.

14 CHAIRPERSON MILLER: Celia
15 Properties, okay. Okay, so --

16 MS. HIRAO: Madam Chair?

17 CHAIRPERSON MILLER: Yes?

18 MS. HIRAO: May I make a
19 clarification? I believe Mr. Woodson
20 mentioned that his client is a protestant.
21 That status hasn't been clarified yet. The
22 protest period was closed. So this motion

1 addresses that. So I would like the record to
2 reflect that they are not a protestant.

3 CHAIRPERSON MILLER: At this
4 point, okay. All right. And I want to state
5 for the record that we've received the
6 following papers with respect to this motion.

7 We've received a Motion to Re-Open
8 the Protest Period, and that was by Celia
9 Properties, and then an Opposition to the
10 Motion by DC Eagle. And then a Reply to DC
11 Eagle's Opposition. So those are the three
12 pleadings we have.

13 And we have asked you to come in
14 because we need a little more information than
15 we can glean from the papers with respect to
16 how visible this posting was and of the other
17 factors that you were arguing.

18 So I'm going to open this up now
19 for oral argument on the motions. So unless
20 there's anything else you want to bring to my
21 attention, I think we will start with the
22 moving party, and go from there.

1 As far as time goes, I'm not sure
2 how much you've prepared. But I think that
3 you have more than a half an hour all
4 together.

5 MR. WOODSON: I don't think it's
6 going to be that long.

7 CHAIRPERSON MILLER: Okay, okay.

8 MR. WOODSON: We would like to
9 provide this to the Board. Chairman Miller
10 and the Board, this is really pretty
11 straightforward. The question at hand is
12 whether the posted --

13 CHAIRPERSON MILLER: I'm sorry.
14 It's just when you stand up, you're further
15 away from the mic. So I just want to make
16 sure, can everybody hear him?

17 MR. WOODSON: Should I sit down?

18 MEMBER ALBERTI: Can you move the
19 mic closer to yourself? That will help.

20 MR. WOODSON: Sure.

21 CHAIRPERSON MILLER: You can sit
22 down, but if you really prefer to stand --

1 MR. WOODSON: It makes it easier
2 for me to think.

3 CHAIRPERSON MILLER: Okay. That's
4 fine.

5 MR. WOODSON: Thank you.

6 CHAIRPERSON MILLER: Okay.

7 MR. WOODSON: I'll speak loudly.

8 CHAIRPERSON MILLER: Okay, good.

9 MR. WOODSON: This matter really
10 is about whether the posting of the notice on
11 the side of the building through the
12 placarding was sufficient to provide the
13 public notice anticipated by the statutory
14 stated.

15 We make this presentation to you,
16 not with any cloud of aspersion on the conduct
17 of Mr. Pascal and his clients in posting the
18 notice of the side of the building. We admit
19 that the notice was there, that the placards
20 were there.

21 The real question at hand is
22 whether the placards actually provided the

1 notice that is contemplated. Notice being can
2 they be seen and observed and understood for
3 what they purport to be?

4 We have provided to you a series
5 of photographs which depict and represent the
6 positioning of the property. 3701 Benning
7 Road is a landlocked piece of property that
8 sits in the southwest corner of the
9 intersection of Benning Road and Minnesota
10 Avenue.

11 I would invite your attention to
12 Exhibit A, which actually provides a site
13 photograph of where it is. And at the top
14 corner, the top left corner of this photograph
15 is the intersection of Benning Road and
16 Minnesota Avenue.

17 The Benning Road at that juncture
18 is a bridge. Minnesota Avenue, as you will
19 see, traverses from the left to the right in
20 an angle. I invite you then to Exhibit B,
21 which is a photograph taken from the Benning
22 Road Bridge.

1 I point out that in order to take
2 this photograph, we had to stand in the street
3 to do it. And any of you have been across the
4 Minnesota Avenue Bridge know that that's not
5 an easy task to undertake.

6 You can note that the distance
7 between the bridge and the building is
8 significant. Indeed, you really can't discern
9 what is on the side of the building from that
10 distance.

11 I invite you to Exhibit C. This
12 exhibit is a photograph depicting the view of
13 the building from Minnesota Avenue. Again, I
14 invite the Board to note that the distance
15 from Minnesota Avenue to the building is
16 significant, and cannot be readily discerned
17 from that space.

18 Now, the other two photographs
19 represent the building itself and reveal the
20 posting of the placards. And they can be
21 seen, but you have to stand right up toward
22 the building to see that.

1 Now, I would add that to actually
2 get to the building requires anyone to walk
3 down, drive down, or traverse an access way
4 which parallels Benning Road from the
5 intersection of Benning and Minnesota Avenue.

6 That is not even a thoroughfare.
7 It's more of a driveway, if you will. But
8 it's a public space. That intersects the
9 easement at a right angle to the left. That
10 easement is the only public access to gain
11 proximity to the building.

12 Now, this is not evidentiary
13 remarks, but when I went over there myself
14 twice, I didn't know where the building was,
15 let alone being able to see the placards. I
16 actually thought the placards were on
17 something on Benning Road, that's why I was
18 looking for 3701.

19 Little did I realize that the
20 building itself sits far back from the
21 intersection and far away from Benning Road,
22 even though it has the address of Benning

1 Road.

2 We admit that the address is
3 correct, the government says it is. But where
4 it is, for purposes of being able to
5 understand and see the placarding is the issue
6 of fact.

7 Now, I said initially that there's
8 no dispute between us over whether the
9 Applicants posted the placards on the side of
10 the building as appropriate. That's true.
11 The question, though, is whether the intent of
12 the posting actually had the desired effect,
13 to give notice.

14 Mr. Burka represents the abutting
15 property owner. The abutting property owner
16 is not given notice in the normal course of
17 events like the ANC would, or otherwise.
18 There has to actually be a physical
19 investigation of the site in order to see
20 this.

21 Now because you can see from the
22 photograph in Exhibit A that the site is

1 primarily vacant, that is the site itself
2 where the building is and the immediate
3 surrounding area, it's surrounded with a
4 parking lot and a vacant area.

5 All of this land is owned by the
6 Protestant to be, if you will, if the Board so
7 sees it that way. By Mr. Burka and his
8 associates, they own and control all of this
9 land.

10 To the question why didn't you see
11 it before, the answer is quite simple, that
12 they don't have a reason to go back there
13 everyday.

14 Indeed, they visited periodically
15 during the course of time, and Mr. Burka, if
16 the Board decides, will be pleased to discuss
17 with you the individuals that they employ that
18 keep and watch the grounds.

19 But even then, the individuals
20 don't go every day, and don't go with
21 regularity. The only requirement is that they
22 see that the land, that the general space is

1 undisturbed and in good order.

2 And that's primarily a parking
3 lot. So it can be easily viewed by those who
4 come on their behalf to see that the parking
5 lot is fine. And that's really the issue, or
6 the question there.

7 So we posit to you that while the
8 Applicants actually complied with the rules
9 for posting, that the notice in fact that the
10 abutting property owners had was really
11 insufficient. And when we found out about it,
12 we promptly brought this matter to the Board.
13 So there was no delay on our part to do that.

14 I would also observe that when we
15 came to the Board with this, there are two
16 applications, one, Eagle N Exile which was
17 earlier, and the second one which was later.

18 The petition date, one petition
19 date is in February, the other petition date
20 is in March. When we found out about this in
21 early March, we filed immediately with the
22 Board to bring this matter forward for

1 resolution.

2 We believe that in the interest of
3 justice, and in consistent with the intent of
4 the statute to provide notice to the parties
5 in interest, and an abutting property owner is
6 a party in interest here, that it's consistent
7 with the interest of justice that the protest
8 period be re-opened and that the protest
9 before the Board be allowed to be perfected.

10 Thank you, Ms. Chair.

11 CHAIRPERSON MILLER: Thank you.
12 Okay, what I would suggest to the Board is
13 that we hear from the other side, and then we
14 ask questions. Okay. Mr. Pascal? Or Ms.
15 Hirao.

16 MS. HIRAO: Actually --

17 CHAIRPERSON MILLER: Sorry.

18 MS. HIRAO: I'm shorter than Mr.
19 I'm sorry, could you hear me?

20 CHAIRPERSON MILLER: Yes, we can
21 hear you.

22 MEMBER ALBERTI: Can you speak as

1 loud?

2 MS. HIRAO: Well, you know, I
3 think of alcohol beverage applications, and
4 for some reason, I thought about my mother.
5 And my mother says to me on occasion, Risa,
6 you can't have it both ways. It's a lecture
7 she often does when I try to argue something.

8 And I think this is a situation
9 where Celia Properties is trying to have it
10 both ways. Mr. Woodson did mention about
11 another applicant, Terminal Alley, that has
12 the same address, 1350, I think that is
13 Benning Road Northeast.

14 They occupy, or plan to occupy the
15 second floor rear of the building. DC Eagle
16 also occupies the same building. It's quite
17 strange when, you know, Celia says I had no
18 idea that this placard existed, but yet for
19 Terminal Alley's situation, they timely filed
20 the protest.

21 In fact, Terminal Alley, and DC
22 Eagle, they posted their placards the same

1 manner, there was no adulteration of the
2 placards. In fact, there was no notation by
3 ABRA Investigators that there was any improper
4 placarding.

5 And then I think the real issue
6 is, and you know, we listened to Mr. Woodson's
7 eloquent presentation to the Board, is it's
8 not the public. He's trying to stand to the
9 issues of the public.

10 If you read the moving papers,
11 they filed on behalf of an abutting owner. So
12 the real issue is did the abutting owner have
13 notice of these placards?

14 You know, they mentioned Celia
15 controls the property, Celia owns the
16 property. If you get right down to it, it's
17 because of Celia's own lack of diligence that
18 they were not aware of the property.

19 I have a video to show you to get
20 you full flavor of what the property is like.
21 It will show you how close you can get to the
22 placards. You can, in fact, see it from

1 various angles from the abutting property
2 owner's area.

3 Also, I would like to mention that
4 the fences that were mentioned in the moving
5 papers, they were installed by Celia
6 Properties. It was not us obstructing any
7 view. In fact, it's not even obstructed.

8 But if they make an argument that
9 the fence is somehow impeding, this is
10 something that Celia Property did unto
11 themselves. But if I may present a video for
12 the Board's view. And I can present a copy,
13 I can do so right now.

14 CHAIRPERSON MILLER: Okay, you're
15 going to show a video right now?

16 MS. HIRAO: Yes.

17 CHAIRPERSON MILLER: Have you
18 worked that out with --

19 MS. HIRAO: Yes, I have. The
20 laptop is ready.

21 CHAIRPERSON MILLER: Perfect.
22 Okay.

1 MS. HIRAO: Okay. Also, I wanted
2 to distribute photos. Maybe some of the Board
3 members' copies were black and white, and they
4 were not clear. I made color copies. It took
5 --

6 (Simultaneous speaking.)

7 MS. HIRAO: But let me do this.
8 Okay. I do have another set of photos also
9 that were taken the day when the placard was
10 posted. Sorry if you can hear the rustling of
11 papers.

12 CHAIRPERSON MILLER: I'm sorry,
13 what did you just say about the papers?

14 MS. HIRAO: The rustling of papers
15 --

16 CHAIRPERSON MILLER: No, I thought
17 you said something else about the day of the
18 hearing or the day of the posting?

19 MS. HIRAO: Oh, those photos were
20 not included in our motion, but they were
21 photos taken by Peter and Ted, the principals
22 of both Terminal Alley and also DC Eagle.

1 These are photos of DC Eagle's placards going
2 up.

3 CHAIRPERSON MILLER: So just to be
4 clear, A1 was taken when?

5 MS. HIRAO: A1 --

6 CHAIRPERSON MILLER: By whom, yes.

7 MS. HIRAO: They were taken by
8 Peter and Ted, the principals for DC Eagle.

9 CHAIRPERSON MILLER: Okay, and
10 when --

11 MS. HIRAO: They were photos of
12 both the DC Eagle and Terminal Alley placard
13 taken together.

14 CHAIRPERSON MILLER: And when were
15 they taken?

16 MS. HIRAO: I do not have a date.
17 I have an affidavit that was attached to --

18 CHAIRPERSON MILLER: Oh, the
19 affidavit's in your papers?

20 MS. HIRAO: Yes.

21 CHAIRPERSON MILLER: Okay.

22 MS. HIRAO: And when the Board

1 members are ready, I can have the video ready
2 for your viewing.

3 MEMBER ALBERTI: Yes, we're okay.
4 We're working on it. We got technical
5 problems.

6 MS. HIRAO: Is that all right?
7 I'm sorry, it's a lot of paper.

8 MEMBER ALBERTI: Yes, we're cool.
9 Go ahead.

10 MS. HIRAO: I'm more of a math
11 girl, but let's see if this will work. Now,
12 we're on the access road. In the motion, it's
13 described as an alley.

14 This access road is capable of two
15 car width access road. Actually, if I may
16 pause this, I was wondering if you would like
17 Mr. Clements to make a description of the
18 property or is it permissible for me to do a
19 narrative for the Board members?

20 CHAIRPERSON MILLER: Well, this is
21 just a fact finding hearing, it's not a
22 contested hearing.

1 MS. HIRAO: All right.

2 CHAIRPERSON MILLER: So you can
3 present the facts if you would like.

4 MS. HIRAO: Okay.

5 MEMBER ALBERTI: Can we ask
6 questions as we go through this video so that
7 we don't have to look at it again?

8 MS. HIRAO: Sure. If you would
9 like for me to pause --

10 CHAIRPERSON MILLER: Sure.

11 MEMBER ALBERTI: Just about what
12 we're seeing..

13 MS. HIRAO: Sure.

14 MEMBER ALBERTI: I'll be brief.

15 CHAIRPERSON MILLER: Okay.

16 MS. HIRAO: Okay, so would you
17 like for me to review, rewind?

18 MEMBER ALBERTI: Well. This lot
19 that we're looking at right now, who owns
20 that? This is on the right side as you're
21 facing DC Eagle, it's on the right side, who
22 owns that piece of land?

1 MS. HIRAO: That right side is
2 owned by Celia Properties.

3 MEMBER ALBERTI: Okay, thank you.
4 Continue.

5 MS. HIRAO: Then the fence is also
6 installed by Celia Properties. The white
7 building that you see, that is facing Benning
8 Road, and you do see the Benning Road overpass
9 to the right.

10 MEMBER SHORT: Excuse me.

11 MS. HIRAO: Yes?

12 MEMBER SHORT: Is the bridge after
13 --

14 MS. HIRAO: Yes, sir?

15 MEMBER SHORT: Is the bridge
16 actually Benning Road?

17 MS. HIRAO: The bridge is actually
18 Benning Road. But if you go to the lower side
19 of Benning Road, which this video will show
20 later, you will see another access road that
21 runs parallel to the Benning Road overpass,
22 and when it flattens out as it approaches

1 Minnesota Avenue.

2 MEMBER SHORT: I understand.

3 Thank you.

4 MS. HIRAO: Okay. Let me know
5 when everyone's ready? All right. Oh, my.
6 I guess --

7 MEMBER ALBERTI: Did you hit the
8 arrow, play arrow?

9 MS. HIRAO: So I'm going to stop.
10 I'm sorry. I'm going to have to do this
11 again. Okay. Here we go. You'll see the
12 placard for, this was taken after the protest
13 period. And the placard that you see there is
14 for Terminal Alley still remaining up.

15 CHAIRPERSON MILLER: Placard we
16 see where?

17 PARTICIPANT: On the window.

18 MS. HIRAO: You want me to stop it
19 right here?

20 MEMBER ALBERTI: Right there.

21 Right there.

22 (Simultaneous speaking.)

1 CHAIRPERSON MILLER: Okay. Okay.

2 MEMBER ALBERTI: Lower left hand
3 side of the screen.

4 CHAIRPERSON MILLER: Thank you.
5 Okay.

6 MEMBER ALBERTI: Okay. How long
7 is the access road?

8 MS. HIRAO: The access road is
9 actually an easement that is on Celia Property
10 according to the title search we conducted.

11 MEMBER ALBERTI: Thank you.

12 MS. HIRAO: And the easement, if
13 you go, I don't know how to reverse.

14 MEMBER ALBERTI: I think we have
15 someone coming up momentarily to help you --

16 MS. HIRAO: Sure.

17 MEMBER ALBERTI: -- navigate.

18 MEMBER SHORT: Your name, again?

19 MS. HIRAO: I'm sorry. My name is
20 Risa Hirao.

21 MEMBER SHORT: Ms. Hirao?

22 MS. HIRAO: Yes.

1 MEMBER SHORT: Ms. Hirao, can I as
2 you this?

3 MS. HIRAO: Sure.

4 MEMBER SHORT: Could I walk
5 directly from Benning Road to 3701 Benning
6 Road?

7 MS. HIRAO: Yes.

8 MEMBER SHORT: You can walk
9 directly to Benning Road?

10 MS. HIRAO: When you say directly,
11 when you go down the Benning Road bridge, you
12 will have to make a short U-turn to get on the
13 access road. If I may show you through this
14 video, it will show you how to access.

15 MEMBER SHORT: Oh, please show me.
16 Please show me.

17 MS. HIRAO: Yes.

18 MEMBER ALBERTI: We have someone
19 who can help you maybe navigate.

20 MS. HIRAO: Oh, thank you. Thank
21 you, thank you. Okay, go ahead. You're my --

22 MEMBER ALBERTI: You can drive, I

1 think. You may want to tell him what to do.

2 MS. HIRAO: Okay. Think we can
3 play? Okay, we're actually driving in Celia
4 Property's parking lot that's on the other
5 side of the fence.

6 MEMBER ALBERTI: Okay.

7 MS. HIRAO: And this is a view of
8 the building. You'll see the second placard
9 which is posted facing Minnesota Avenue. And
10 that placard is of Terminal Alley. We did a
11 measurement, they're about three feet apart.

12 MEMBER ALBERTI: Okay. So let's
13 stop right here. Can you go back just a
14 couple frames, just so that we know where we
15 are here. Go back just a couple frames. Just
16 click the back frame button just a couple
17 times.

18 Right here, right here. Okay. So
19 that access road that we just left, we were
20 looking down an access road, that's on the
21 other side of this fence, right?

22 MS. HIRAO: Yes.

1 MEMBER ALBERTI: That road that we
2 were looking at, so when I saw the placards on
3 the other side of this fence, I could actually
4 get to them by being on that road, right?

5 MS. HIRAO: Yes.

6 MEMBER ALBERTI: Okay. That's
7 what I'm trying to understand.

8 MEMBER SHORT: And Ms. Hirao, I
9 have to ask this.

10 MS. HIRAO: Yes?

11 MEMBER SHORT: Would I be on
12 Benning Road, actually on Benning Road when
13 I'm standing on the other side of the fence,
14 or would I be in the rear of Minnesota Avenue?

15 MS. HIRAO: I think that's a
16 zoning issue, however --

17 MEMBER SHORT: I'm asking the
18 question if I'm standing right there where
19 this picture's taken looking at that building,
20 would I be in the rear --

21 MS. HIRAO: That would be
22 Minnesota Avenue.

1 MEMBER SHORT: Excuse me. Would I
2 be in the rear of Minnesota Avenue address, or
3 would I be on Benning Road?

4 MS. HIRAO: When you say rear of
5 Minnesota Avenue, could you explain what that
6 means?

7 MEMBER SHORT: Well, you had an
8 aerial picture, or someone had an aerial
9 picture, I think that would explain it all.
10 Exhibit A from --

11 MR. PASCAL: Your back would be to
12 Minnesota Avenue. If you're standing looking
13 there, your back would be to Minnesota Avenue.

14 MEMBER SHORT: Okay. But would
15 you be facing Benning Road if the placard's
16 looking, when you're standing looking at that
17 fence?

18 MR. PASCAL: Benning would be to
19 your right.

20 MEMBER SHORT: So the address is
21 not actually on Benning Road?

22 MR. PASCAL: The building is

1 Benning Road. One set of placards face
2 Benning Road, one set of placards are a few
3 feet around on the Minnesota Avenue side.

4 MEMBER SHORT: Right. That would
5 answer the question. Is the placard on
6 Benning Road?

7 MR. PASCAL: There is a set of
8 placards facing Benning Road, yes, sir.

9 MEMBER SHORT: Again, I'll ask, is
10 the placard on Benning Road at the address?

11 MS. HIRAO: I think the --

12 MR. PASCAL: The only way it could
13 be on Benning Road is if you put it on the
14 bridge.

15 MEMBER SHORT: Oh, okay.

16 MR. PASCAL: You have to put it on
17 the building.

18 MEMBER SHORT: Thank you for that,
19 thank you.

20 MS. HIRAO: I think the way to
21 also answer that is that plot of land has a
22 Benning Road address. So if you're going to

1 say is it on Benning Road, it has a Benning
2 Road address. So that's the only way I can
3 answer it.

4 MEMBER SHORT: Well, Ms. Hirao,
5 here's what I would say to anyone. Would the
6 average citizen not knowing the difference
7 between Benning Road and Minnesota Avenue know
8 that address?

9 MS. HIRAO: What I will say is the
10 agency statute, it requires us to placard a
11 certain way, and it's supposed to be
12 conspicuous and it's supposed to be on the
13 building.

14 If we do anything otherwise, it
15 will be contrary to what the ABC law says. So
16 we need to stick to what the law says, which
17 is the placards must be on the building.

18 MEMBER SHORT: Okay, and I
19 understand --

20 MS. HIRAO: And this was the only
21 way to, actually we're damned if we do, we're
22 damned if we don't.

1 MEMBER SHORT: Okay, I understand.
2 But again, the placard isn't actually on the
3 Benning Road facing Benning Road proper?

4 MS. HIRAO: Yes, it is. It is our
5 position it is.

6 MEMBER SHORT: Okay.

7 MS. HIRAO: This property has a
8 Benning Road address. We are facing one of
9 the placards toward Benning Road. And in the
10 spirit of law to make sure that it's fully
11 conspicuous, our clients made the decision to
12 also place the placard on the Minnesota side.

13 MEMBER SHORT: Okay. I'm looking
14 now at Exhibit B. What's the --

15 MS. HIRAO: However, if --

16 MEMBER SHORT: Can I --

17 MS. HIRAO: -- we can go through
18 the video, maybe it can address some of the
19 questions that you might have cross referenced
20 to Mr. Woodson's exhibits?

21 MEMBER SHORT: I understand. And
22 this will be my last question to you.

1 MS. HIRAO: Yes, sir.

2 MEMBER SHORT: The picture in
3 Exhibit B is taken from the 3700 block of
4 Benning Road, which is actually the bridge.

5 MS. HIRAO: Correct.

6 MEMBER SHORT: Okay, thank you.

7 MS. HIRAO: And also, there's a
8 walkway on that bridge, too, which this
9 picture does not depict, and it's closer.

10 MEMBER SHORT: I understand.

11 MS. HIRAO: We are on the access
12 road, which hugs the Applicant's, DC Eagle's
13 property, or establishment. This is the next
14 door neighbor.

15 MEMBER SHORT: What's that
16 address?

17 MS. HIRAO: Pardon?

18 MEMBER SHORT: What is that
19 address, the next door neighbor?

20 MS. HIRAO: I do not have the
21 address.

22 MR. CLEMENTS: 3705.

1 MS. HIRAO: 3705?

2 MR. CLEMENTS: And 3707, I
3 believe.

4 MEMBER SHORT: Thank you.

5 CHAIRPERSON MILLER: Benning Road?

6 MEMBER ALBERTI: Can we stop right
7 here? Stop? Just stop. I want to see it.
8 I want to just pause.

9 MS. HIRAO: We're trying.

10 MEMBER ALBERTI: Oh, okay. I want
11 to make sure that you understood what I was
12 saying. Or are you going to show us the
13 location of the placards eventually? But just
14 let's go back there. Can we --

15 MS. HIRAO: This is, like --

16 MEMBER ALBERTI: -- go back to
17 that frame?

18 MS. HIRAO: -- overviewed for you
19 to understand the positioning of the --

20 MEMBER ALBERTI: No, I do. I just
21 want to make sure we all understand where it
22 was. So could we go, we're going back, and

1 just pause when we -- I'll tell you when to
2 pause. Okay. Now we're on this access road
3 here. Pause there.

4 We're on that access road. Can
5 you point to where those placards were placed
6 on that building with the little arrow? On
7 that ground floor window?

8 MS. HIRAO: Correct.

9 MEMBER ALBERTI: All right, thank
10 you.

11 MS. HIRAO: Okay. Okay, and we're
12 on the access road to your right. This is the
13 facade of the building facing Benning Road.
14 You see the address 3701 above the door.

15 Now showing three feet away is the
16 second placard. This facade of the building
17 is facing Minnesota Avenue. The DC Eagle
18 placard was affixed next to the Terminal Alley
19 placards. Let me know if you need for me to
20 stop.

21 Now this addresses the Board's
22 question how to access the access roads from

1 the Benning Road bridge.

2 MEMBER SHORT: What is that
3 distance, approximately?

4 MS. HIRAO: I'm not really good at
5 --

6 MEMBER ALBERTI: From where to
7 where?

8 MEMBER SHORT: From the address
9 3701 to the bridge.

10 MS. HIRAO: I have not measured
11 that.

12 MEMBER SHORT: And then from the
13 bridge down to Minnesota Avenue.

14 MS. HIRAO: If it will assist the
15 Board in their fact finding hearing, I can
16 make those measurements available.

17 MEMBER SHORT: Thank you. That
18 would help us greatly.

19 MS. HIRAO: Okay, we're making
20 that right onto the access road that parallels
21 the Benning Road bridge. And we are looking
22 at the intersection of Minnesota Avenue and

1 Benning Road.

2 MEMBER SHORT: Can you stop right
3 there for a moment, please? You said
4 something earlier about making a U-turn there
5 to go back to the address?

6 MS. HIRAO: Pardon?

7 MEMBER SHORT: You said something
8 about making a U-turn coming off of Benning
9 Road onto the access road?

10 MS. HIRAO: Yes, on the --

11 MEMBER SHORT: Can you actually
12 make a U-turn there?

13 MS. HIRAO: I actually made it on
14 my car.

15 MEMBER SHORT: God bless you. I
16 mean that. That turning radius is -- so if a
17 fire truck or a larger vehicle tried to make
18 that same U-turn you made, could they do it
19 very easily?

20 Well, I mean, that's not a
21 situation right now, but just say for the
22 average citizen to make that turn to go to

1 3701 Benning Road, it's not a very easy task
2 at this point in time. Okay, thank you.

3 MS. HIRAO: This is what we
4 believe to be Celia Property easement on the
5 vacant lot, the abutting property owner.

6 MEMBER SHORT: Hey, can we stop
7 and back up for a moment and go back to the
8 road? Yes, just back about five frames, or
9 two frames. Okay, right there. Now, no,
10 back. You had it just right. Just go back
11 just one more frame now.

12 MS. HIRAO: Are your fingers
13 hurting? Sorry.

14 MEMBER SHORT: Back that way, yes,
15 that direction.

16 MEMBER ALBERTI: There's a little
17 arrow that lets you go back just a frame at a
18 time. One of those little arrows will take
19 you back a frame at a time.

20 MEMBER SHORT: Well he's going
21 back now. That's good.

22 MEMBER ALBERTI: Right there.

1 MEMBER SHORT: Keep going. Stop
2 it there. What is that, that's the same
3 access road that comes off of Minnesota
4 Avenue, and that would take you to the rear of
5 3701 Benning, correct?

6 MS. HIRAO: Yes, it will take you
7 to an easement. I was told that this is an
8 easement that was made available for
9 individuals such as the cell phone company to
10 maintain their cell phone tower, which is on
11 my client's property.

12 MEMBER SHORT: Okay, and I
13 understand that. But if you kept straight,
14 you would go to about several hundred feet of
15 railroad track, correct?

16 MS. HIRAO: Correct.

17 MEMBER SHORT: Which is a very
18 active railroad now, correct?

19 MS. HIRAO: Correct.

20 MEMBER SHORT: All right, that's
21 good. Thank you.

22 MS. HIRAO: Of what I've seen.

1 MEMBER SHORT: What?

2 MS. HIRAO: Of what I've seen.

3 MEMBER SHORT: Yes, ma'am.

4 MS. HIRAO: Don't know how active
5 is active. We are right now on the walkway
6 over Benning Road. This is the Benning Road
7 bridge.

8 MEMBER SHORT: And wouldn't that
9 also be the 3700 block of Benning Road, where
10 you're standing?

11 MS. HIRAO: That would not be 3701
12 Benning.

13 MEMBER SHORT: No, no, no.

14 MS. HIRAO: Where we're standing.

15 MEMBER SHORT: On the bridge, that
16 would be also the 3700 block of Benning Road?

17 MEMBER ALBERTI: No, you can't get
18 to it from back here. You can't get to the
19 access road from coming through the shopping
20 center.

21 MS. HIRAO: And this will also
22 show you the easement in the back of the

1 property that leads to the cell phone tower.

2 MEMBER ALBERTI: Here's the access
3 road that goes over like this. Well, you can
4 come here --

5 MS. HIRAO: We're back on the
6 service road.

7 MEMBER ALBERTI: You can come in
8 here and go over, you can come in here. You
9 can come in this way. Here's what I'm saying.

10 MEMBER SHORT: Yes.

11 MEMBER ALBERTI: You can come in
12 this way and go over.

13 MEMBER SHORT: Yes.

14 MEMBER ALBERTI: You can come in
15 through here. All right? So there's more
16 than one way you can come in.

17 MEMBER SHORT: There were signs on
18 both sides, right?

19 MEMBER ALBERTI: Right.

20 MEMBER SHORT: Both sides. Here
21 and here.

22 MEMBER ALBERTI: Yes. On the side

1 of the building.

2 MEMBER SHORT: Both sides.

3 MEMBER ALBERTI: Right here and
4 right here.

5 MEMBER SHORT: Okay.

6 MS. HIRAO: This is another
7 easement. Access to this easement was gated
8 by Celia Property.

9 MEMBER ALBERTI: This is Benning
10 Road.

11 MEMBER SHORT: Right, this is the
12 Benning Road side.

13 MEMBER ALBERTI: This is, like,
14 looking up.

15 MS. HIRAO: Again walking toward
16 the Benning Road overpass from the service
17 road. At this point, I was wondering, we just
18 wanted to have a comprehensive view so the
19 Board would understand.

20 CHAIRPERSON MILLER: Okay.

21 MS. HIRAO: It's kind of hard to
22 determine looking at an overview map. But I

1 can cut this short right now if the Board has
2 a general flavor. Is that --

3 CHAIRPERSON MILLER: I think so.

4 MEMBER ALBERTI: I think we're
5 okay.

6 CHAIRPERSON MILLER: I think we
7 do. I think it's probably a good time to do
8 some questions. Thank you.

9 MS. HIRAO: Thank you very much.

10 MEMBER SHORT: Thank you.

11 CHAIRPERSON MILLER: Okay, so do
12 Board members have questions?

13 MEMBER ALBERTI: Yes, I do.

14 MS. HIRAO: Yes.

15 MEMBER ALBERTI: I guess I'll
16 start. You can sit down, Ms. Hirao.

17 MS. HIRAO: Okay, thank you.

18 MEMBER ALBERTI: My first question
19 is, I guess, for Mr. Woodson. So I'm trying
20 to understand what you're asking the remedy to
21 be here, Mr. Woodson. Is it that they re-
22 placard and have a 45 day placard period, or

1 that they grant standing to your client? What
2 is your remedy that you seek?

3 MR. WOODSON: The remedy, Mr.
4 Alberti, is that the placard period be
5 extended, at least move the date of the filing
6 of the protest. The filing of the protest --

7 MEMBER ALBERTI: What's that mean?

8 MR. WOODSON: I'm sorry?

9 MEMBER ALBERTI: What's that mean?

10 MR. WOODSON: That means the
11 protest that we filed was filed in, what was
12 the date?

13 MEMBER ALBERTI: So I think what
14 you're saying is what I was saying, that we
15 grant standing to your client?

16 MR. WOODSON: Yes.

17 MEMBER ALBERTI: So essentially
18 once we grant standing to your client, then
19 the protest period ends, and there's no longer
20 a placarding period, right?

21 MR. WOODSON: Yes.

22 MEMBER ALBERTI: Okay. So we're

1 on the same page, then.

2 MR. WOODSON: I think that's fair.

3 MEMBER ALBERTI: All right, so I
4 understand that. So you really aren't really,
5 I mean, in your opening statement you said,
6 well the community didn't get to see it.

7 This is really not about the
8 community, it's about the effect on your
9 client? Is that correct?

10 MR. WOODSON: Yes, Mr. Alberti. I
11 would say that while I may have been inartful
12 in my presentation of the proposition about
13 the community, the abutting property owners
14 are part of that community.

15 MEMBER ALBERTI: Yes. I
16 understand.

17 MR. WOODSON: And so I could have
18 said in place of that the abutting property
19 owner.

20 MEMBER ALBERTI: And I wasn't
21 saying that you mislead us. I was just trying
22 to make sure we understood --

1 MR. WOODSON: Forgive me for that.

2 MEMBER ALBERTI: -- what you're
3 here for.

4 MR. WOODSON: Yes.

5 MEMBER ALBERTI: Now you've said,
6 we've heard that your client owns all of that
7 land. All right, now if I'm on that access
8 road and I'm looking at DC Eagle, to the left
9 of that there's another building, is that
10 correct?

11 MR. WOODSON: Yes.

12 MEMBER ALBERTI: All right. And
13 what is that building used for currently?

14 MR. WOODSON: It's a moving
15 company.

16 MEMBER ALBERTI: And is that
17 leased to someone?

18 MR. WOODSON: It's under separate
19 ownership.

20 MEMBER ALBERTI: Ah, a moving
21 company. Does your client have an interest in
22 that moving company?

1 MR. WOODSON: No, we do not.

2 MEMBER ALBERTI: Okay. All right.
3 So your client maintains this property. What
4 does that mean? What functions do they
5 perform, how often are they there? I mean,
6 what is their interaction with the other
7 client, the other tenant, the moving company?
8 Describe that for me.

9 MR. WOODSON: I think I could be
10 clear about that. We don't maintain the
11 building at all. The building that has been
12 placarded is not controlled by --

13 MEMBER ALBERTI: Not that
14 building, the entire property. The vacant
15 lots, surrounding vacant lots, there's an
16 adjacent building.

17 MR. WOODSON: Yes.

18 MEMBER ALBERTI: There's an
19 easement road. I mean, all of this property
20 belongs to Celia is it?

21 MR. WOODSON: Yes.

22 MEMBER ALBERTI: Celia Properties?

1 MR. WOODSON: Yes.

2 MEMBER ALBERTI: So what is there,
3 I mean, how often are they there? I'm trying
4 to understand what they do. I mean, they were
5 there to observe the Terminal Alley.

6 So I want to know what is their
7 activities in and around, I don't know. I'm
8 being very inartful, as you said, about this.
9 But what are their routine activities in
10 managing this property?

11 MR. WOODSON: I think I may have
12 made reference to it obliquely earlier on.
13 Mr. Alberti, Celia has property maintenance
14 folks that periodically visit the open space.
15 Would you permit Mr. Burka to respond?

16 CHAIRPERSON MILLER: Yes.

17 MEMBER ALBERTI: Fine, sure.

18 MR. WOODSON: Mr. Burka?

19 MR. BURKA: Yes, thank you. We
20 have a cleaning crew that is out there on a
21 daily basis, at least six days a week I would
22 say, except on Sunday. The property is kept

1 clean every day.

2 And anything unusual that is
3 noticed by the cleaning people are brought to
4 my attention immediately. I go by there on a
5 semi-regular basis, but when I do so I don't
6 have a reason really to go back to the access
7 easement that you all saw on the video and is
8 shown here because we don't own those
9 properties, or my client doesn't own those
10 properties, so I don't have a reason to look
11 at them, and the yards are vacant.

12 So we really only go to the back
13 to look when we're doing some kind of
14 maintenance in the back, such as now that
15 we're getting into grass cutting season or if
16 something has been dumped in the back, then we
17 pick that up.

18 And when that happens, the main
19 person who controls the cleaning for us and
20 keeps an eye on that property on a daily basis
21 reported to me of the placards. And that was
22 immediately when we objected.

1 MEMBER ALBERTI: So what
2 properties do you actually own? I'm trying to
3 understand that.

4 MR. BURKA: Do I actually own?

5 MEMBER ALBERTI: Well, the
6 company, not you, Celia Properties.

7 MR. BURKA: Celia Properties only
8 owns that large tract there.

9 MEMBER ALBERTI: Okay, so you have
10 two buildings that now we're talking about.

11 MR. BURKA: There's more than two.

12 MEMBER ALBERTI: All right. Well,
13 we've just mentioned two. Who owns those two
14 buildings?

15 MR. BURKA: Are we talking the two
16 buildings in the rear?

17 MEMBER ALBERTI: We're talking
18 about DC Eagle and the moving company.

19 MR. BURKA: They're owned by other
20 owners. I don't know who owns DC Eagle.

21 MEMBER ALBERTI: So your property
22 doesn't own those tracts of land?

1 MR. BURKA: No, sir. Just Celia
2 owns the tract of land directly in front of DC
3 Eagle, and it owns the easement on the side
4 where you saw in the video.

5 And it actually has a U shaped
6 piece of building. So if you go beyond the
7 moving company, it owns again the piece on the
8 side. Beyond the moving company, it goes back
9 to the railroad tracks.

10 MEMBER ALBERTI: Okay.

11 MS. HIRAO: Mr. Alberti, I just
12 realized that I didn't show a complete video
13 of the property that was in front of the
14 neighbors. There's still a shopping center
15 which consists of a liquor store, and some
16 area --

17 MEMBER ALBERTI: Thank you, I was
18 going to mention that. So on this aerial
19 view, there's actually a shopping center sort
20 of in the foreground. And that's a tract of
21 land that Celia Property owns?

22 MR. BURKA: Yes.

1 MEMBER ALBERTI: Okay. And then I
2 see DC Eagle here. To the left of it, I see
3 a moving company. And then to the left of
4 that, do they own that tract of land?

5 MR. BURKA: Yes, the piece that,
6 the lower left hand side.

7 MEMBER ALBERTI: Okay.

8 MEMBER SHORT: Mr. Alberti --

9 MEMBER ALBERTI: Okay, can I just
10 --

11 CHAIRPERSON MILLER: Wait a
12 second.

13 MEMBER ALBERTI: All right, just
14 let me ask one more question. So how did you
15 find out about the Terminal Eagle? Who
16 reported that to you? How did you find out
17 about Terminal Eagle placard?

18 MR. BURKA: The gentleman who --

19 MEMBER ALBERTI: The Terminal
20 Alley, I'm sorry.

21 MR. BURKA: The gentleman who does
22 our daily cleaning reported it to me when he

1 had reason to go more to the back, to the rear
2 of the site. He was doing cleaning at that
3 point and saw the placards and reported it to
4 me.

5 MEMBER ALBERTI: Okay. So is it
6 your contention he had no reason to go back
7 there prior to that?

8 MR. BURKA: He didn't have any
9 reason on a daily basis to go back and look at
10 the vacant lot. No, sir.

11 MEMBER ALBERTI: Okay. I'll hold
12 my questions. Thank you.

13 CHAIRPERSON MILLER: Okay, Mr.
14 Short.

15 MEMBER SHORT: Mr. Woodson, they
16 just mentioned the shopping center that
17 actually faces Minnesota Avenue. What is the
18 address to that shopping center, do you know?

19 MR. WOODSON: It starts at 3924
20 Minnesota and goes through 3962.

21 MEMBER SHORT: Thank you. Now I
22 think, well I would like to ask this question,

1 Mr. Woodson. Do most people in the community
2 consider that whole area to be Minnesota
3 Avenue?

4 MR. WOODSON: Oh, I see what you
5 mean.

6 MEMBER SHORT: Shopping center and
7 the lots?

8 MR. WOODSON: You're asking me to
9 prognosticate about what the community thinks?
10 If I can claim to be part of the community as
11 a Washington resident, then I would say yes,
12 I didn't realize that there was a Benning Road
13 address associated with any of the properties
14 in view from Minnesota Avenue, even the ones
15 in the distance, which is the ones at issue
16 here.

17 MEMBER SHORT: And how long you
18 been in Washington DC?

19 MR. WOODSON: I've lived here 42
20 years.

21 MEMBER SHORT: Okay, thank you.
22 That's all I have.

1 MR. PASCAL: I was born and raised
2 here. I remember that neighborhood because I
3 used to sleep overnight in Riverside, which is
4 right on the other side.

5 MEMBER SHORT: You mean River
6 Terrace?

7 MR. PASCAL: River Terrace, yes.

8 MEMBER SHORT: Oh, okay.

9 MR. PASCAL: Okay, yes.

10 MEMBER SHORT: That's where I used
11 to live.

12 MR. PASCAL: Oh, okay.

13 MEMBER SHORT: I know that area
14 quite well, too.

15 MR. PASCAL: I may have bumped
16 into you at some point.

17 MEMBER SHORT: You might have.

18 CHAIRPERSON MILLER: A big guy
19 with a bassoon?

20 PARTICIPANT: You saw someone
21 playing a bassoon.

22 MEMBER SHORT: I would like to ask

1 this question. It's also been said that the
2 community was unaware of this or the community
3 never said anything about the placards.

4 And in light of all the evidence
5 that's been produced and the address confusion
6 and the roads and making U-turns to get to the
7 address, would the general public have a good
8 idea of going back there or walking back
9 there, since you know the area quite well, how
10 often would you say the general public goes in
11 that area, even walks?

12 MR. PASCAL: Well, they don't
13 because it was a commercial building. But the
14 ANC had meetings on this. The ANC wrote a
15 letter, which is in the file, approving this.
16 And Council Member Yvette Alexander herself
17 showed up at that meeting to approve it. So
18 there was plenty of community notice and
19 approval of this particular case.

20 MEMBER SHORT: Okay, thank you.

21 CHAIRPERSON MILLER: But, you
22 know, for the record, I think Mr. Woodson may

1 have said this, too, the ANC actually gets
2 written notice sent to them. And the abutting
3 property doesn't.

4 MS. HIRAO: But to piggyback on
5 Mr. Pascal's comment, should I stand?

6 CHAIRPERSON MILLER: No, you don't
7 need to stand.

8 MS. HIRAO: Is our client actively
9 reached out to Ward 7, the ANC early on in
10 their application. And also, as far as the
11 portion of the shopping center that you're
12 talking about, I cut my video a little
13 prematurely, but that is an active parking lot
14 with people walking in there, parking.

15 People can see the placard from
16 that side. It is active, and if you walk, you
17 can see the placard that is facing the
18 Minnesota Avenue side of the building.

19 MEMBER SHORT: The only comment I
20 would make is my eyes maybe not as good as
21 yours, but it would be hard for me from the
22 back of that shopping center to see those

1 placards 75 yards away.

2 MR. PASCAL: But the law says it
3 has to be on the building.

4 MEMBER SHORT: I understand. And
5 please let me say this, I consider this as a
6 community person. We welcome new business in
7 that area. If you look at the pictures,
8 you'll see those new buildings and newer
9 condos right on the other side of the Benning
10 Road bridge.

11 The community needs it, but the
12 bottom line is, I think, that the fairness is
13 if someone says they didn't see it in time and
14 council member and the ANC and all those
15 persons are for it. I'm for it also. I mean,
16 that's my opinion.

17 CHAIRPERSON MILLER: Okay. I have
18 some more questions about the placarding.
19 When was the Terminal Alley placard? I don't
20 recall.

21 MS. HIRAO: Terminal Alley was
22 placarded on February 14th. And the petition

1 date was March 31st. The protest was filed
2 March 28th. And I can also give you the --

3 CHAIRPERSON MILLER: That's okay,
4 that's okay. I just wanted to see how close
5 in time they were.

6 MS. HIRAO: Yes, also there's a 12
7 day overlap between the protest periods for DC
8 Eagle and Terminal Alley. It is from February
9 14th, here we go, February 24th. I'm sorry,
10 February 14th through February 24th, that
11 would be the overlap of the protest periods
12 between the two establishments.

13 CHAIRPERSON MILLER: But the
14 Terminal Alley was discovered after the time
15 had run for Eagle, DC Eagle, correct?

16 MR. WOODSON: Yes, yes.

17 CHAIRPERSON MILLER: Okay. Yes,
18 okay. So you're all in agreement, I think,
19 that the placard was posted in accordance with
20 the regulations. So the question is, I think,
21 that Celia is saying they didn't see it.

22 And I thought I heard DC Eagle say

1 they should have noticed it if they had
2 exercised due diligence.

3 MS. HIRAO: When a property --

4 CHAIRPERSON MILLER: Where is that
5 in the law?

6 MS. HIRAO: I think it's basically
7 common law when you think about it. If you
8 don't exercise due diligence over your
9 property, you run the risk of someone
10 squatting on it and then taking over through
11 adverse possession. If you're not diligent
12 about --

13 CHAIRPERSON MILLER: So let me ask
14 you, the regulations state that they be posted
15 conspicuously. So doesn't that imply that it
16 takes the burden off of the viewer to exercise
17 due diligence because it's supposed to be so
18 conspicuous?

19 MS. HIRAO: If they only rely on a
20 garbage person or a maintenance person to be
21 their eyes and ears, I think that's not
22 sufficient. You need something more than a

1 once every blue moon person to come over
2 there, clean the place up. I think there
3 needs to be something more.

4 I think for Celia to say that, you
5 know, we didn't see it, in actuality they were
6 never there. They just relied on their
7 garbage people, and I think that's not enough.

8 MR. PASCAL: You have to also
9 understand there is a public notice. And the
10 whole purpose of the public notice is to let
11 the public know, and as a whole means.

12 But there's nothing in the
13 regulation that puts the burden on the, other
14 than placing it conspicuously, to go next door
15 and say hey, I just put my placard out. I
16 mean, that's not in the regulations, and in a
17 sense, that's what Mr. Woodson is trying to
18 change.

19 CHAIRPERSON MILLER: No, I think
20 the question is, I think Mr. Woodson agrees
21 there's nothing in the regulation that, you
22 can correct me if I'm wrong, that required you

1 to do more. But I think the regulations also
2 allow the Board to waive any regulation in the
3 interest of justice. You know?

4 So I think that's really the
5 question, why is it in the interest of justice
6 to let an abutting property owner protest if
7 there was good reason shown as to, perhaps,
8 why they didn't see the notice?

9 MR. PASCAL: You know, it's sort
10 of a flexible argument. I saw it for Terminal
11 but I didn't see it for Eagle. You can't have
12 it both ways.

13 MR. WOODSON: Actually, that's not
14 the case. When we discovered the placarding,
15 both of them were there.

16 MR. PASCAL: Yes.

17 MR. WOODSON: And we filed
18 promptly thereafter. Now the video that you
19 just saw revealed that one of the placards had
20 been removed at the time the video was taken.
21 But at the time of the discovery of the event,
22 both of the placards were there.

1 We don't take issue with whether
2 the Applicant complied with the regulation
3 about posting the placard. That's not the
4 point. The point is that the presence of the
5 placard could not be readily discerned from
6 the intersecting roads.

7 We couldn't see it from Benning
8 Road, we couldn't see it from Minnesota
9 Avenue. That a cleaning person would then
10 become the pivotal agent for such an issue
11 seems to be rather far fetched.

12 The thirdly is that the space
13 behind the shopping center is open space. I
14 invite any of you Board members who know that
15 area, the shopping center doesn't go all the
16 way back to the easement.

17 The shopping center fronts on
18 Minnesota Avenue. And so the notion that
19 there had to be this deep land investigation,
20 if you will, of the space on even a daily
21 basis really is against the way people
22 actually do business and engage things.

1 If the space is open, the space is
2 open, and your attention is devoted to whether
3 the space is being injured, whether there's
4 been trash, whether there's other obstructions
5 or otherwise. That is the intent, that is the
6 focus of attention of the maintenance crew.

7 I would raise one other thing. To
8 your question, to the question about how far
9 it is, I think you asked this, Mr. Short, how
10 far is it from the Benning Road side of the
11 building to Benning Road? It exceeds 50
12 yards.

13 And I would add that even from the
14 video taken in the street by the Applicant,
15 you can't even see what's on the window. And
16 one of the placards remained at the time the
17 video was taken.

18 I submit again that the interest
19 of justice in this situation, we're not asking
20 the Board to revise its rules, we're not
21 asking the Board to do new rulemakings and new
22 requirements.

1 But in the interest of justice in
2 this circumstance, granting the abutting
3 property owner's standing to pursue this
4 matter is appropriate.

5 MS. HIRAO: In the interest of
6 justice, however, I'm sorry, Mr. Alberti.

7 MEMBER ALBERTI: That's all right.
8 Please, go ahead. Go ahead.

9 MS. HIRAO: In the interest of
10 justice, we're talking about justice, my
11 client has complied with what's in the
12 statute. He posted the placards on the
13 exterior of the building. There's nothing he
14 can do.

15 If he were to enlargen it and put
16 it on the side of the road of the overpass or
17 walk over onto the sidewalk on Minnesota
18 Avenue, that would be contrary to the
19 requirements of the statute.

20 That's not what the statute
21 required DC Eagle to do. The statute required
22 for DC Eagle to put it on the exterior of the

1 building.

2 Now, Mr. Woodson is saying that
3 he's not requesting a change in the law or
4 regulations, but I'm hearing something
5 different. If a different interpretation of
6 the statute is being made or expanded in a
7 situation for a landlocked property, I think
8 this needs to be reserved for rulemaking or
9 amending the statute.

10 But what we have here is it's
11 pretty clear. Placards on the building. It
12 provides no guidance. ABRA didn't provide any
13 guidance as far as what a landlocked property
14 should do.

15 And letter to the law, he put the
16 placards on it and he did it through 45 days
17 during the protest period. And I think it's
18 just trying to get a second bite of the apple
19 at this point.

20 Celia Property was aware of
21 Terminal Alley's protest. The DC Eagle's
22 placard was posted right next to it. Both of

1 them were placarded a similar way. You can't
2 say I saw it and then the next moment you
3 didn't.

4 CHAIRPERSON MILLER: Okay, thank
5 you. Mr. Alberti?

6 MR. PASCAL: I think, if I may
7 just add, you would be gaining quite a bit of
8 precedence.

9 MEMBER ALBERTI: Go ahead.

10 MR. PASCAL: If in some future
11 case someone says well I didn't see it because
12 the building was too far from the road, you
13 know, if you go around Washington, especially
14 in a lot of industrial areas, a lot of
15 buildings are far from the road.

16 You know, even the Florida Avenue
17 Market, some of the buildings are far from the
18 road. So you would be creating quite a
19 precedence if you moved away from the letter
20 of the law.

21 MEMBER ALBERTI: What I'm hearing
22 is there's no contention that they were

1 conspicuously placed on the building. And in
2 terms of that, any one --

3 CHAIRPERSON MILLER: I'm not sure
4 --

5 MEMBER ALBERTI: Wait, wait.
6 Look, let me finish. Anyone walking by the
7 building could see them. I'll have to find
8 that as conspicuous. There's no argument
9 about that, I don't think.

10 MR. WOODSON: There is none.

11 MEMBER ALBERTI: All right --

12 MR. WOODSON: If you walk by the
13 building, you could see it.

14 MEMBER ALBERTI: All right, all
15 right. So all right. Mr. Woodson, in
16 response to my questions, admitted that this
17 really isn't about giving visibility of these
18 placards to the community.

19 It's really about the rights of
20 his client, the abutting property owner,
21 because he says as soon as the Board gives
22 standing to his property owner, then the

1 protest period ends.

2 He's not asking that we extend the
3 protest period for 45 days so the public can
4 see placards posted in some other area. Mr.
5 Woodson's saying no, just give my client his
6 due and give him standing. All right?

7 So I'm now focused on what is the
8 onus, where does the onus fall on the property
9 owner to have seen these? And that's what I'm
10 struggling with. All right?

11 So let me finish, Mr. Woodson.

12 MR. WOODSON: Sure, please.

13 MEMBER ALBERTI: What comes to
14 mind is an example, and people will disagree
15 maybe that this isn't similar, but an example
16 is I own a house and I rent it. And I'm never
17 there because the renters are there.

18 Somebody next door puts up
19 placards. My renters don't say anything.
20 They don't care, they're moving out. They
21 don't care. I discover as the homeowner, as
22 the property owner that those placards are

1 there after the protest period.

2 Should the Board grant me the
3 privilege of protesting after the protest
4 period because as the owner of that property,
5 I was never there, the renter didn't tell me?
6 I mean, where does the owner's fault?

7 Do I get special dispensation as a
8 property owner in that case?

9 MR. WOODSON: I would respond this
10 way, Mr. Alberti. First, Celia doesn't own
11 the property at issue. The property at issue
12 was owned by a third party, that is this
13 building.

14 MEMBER ALBERTI: But they're the
15 abutting property owner. And in my example,
16 I was the abutting property owner to the --

17 MR. WOODSON: If I might?

18 MEMBER ALBERTI: -- to the
19 establishment.

20 MR. WOODSON: If I might? In a
21 circumstance of the nature you've described,
22 I move that to the Board's sound discretion.

1 In the circumstance for which we are here
2 today, I ask the Board to use its sound
3 discretion also.

4 I submit to you that the facts
5 associated with the two situations are not
6 really parallel. They may be parallel if you
7 look at the issue as a matter of ownership or
8 property.

9 But in this circumstance, the
10 property that's being owned is vacant land.
11 Vacant land, I submit to you, has a different
12 nature of supervision than an actual structure
13 on land. And you need to pay attention to it
14 more.

15 But for a vacant piece of
16 property, all that's required in normal course
17 of events is to see that the vacant property
18 hasn't been otherwise upset, destroyed, or
19 intruded upon.

20 I would ask the Board this, yes we
21 have come to you to ask that this abutting
22 property owner be permitted to pursue this

1 protest. The facts associated with their
2 discovery of it is directly related to the
3 visibility of the placarding.

4 The placarding is not visible from
5 any significant distance. And not only have
6 we shown it in our submission of photographs,
7 but it's visibly obvious in the video.

8 MEMBER ALBERTI: May I?

9 CHAIRPERSON MILLER: Okay.

10 MEMBER ALBERTI: May I ask a
11 follow up question?

12 MR. WOODSON: Please, Mr. Alberti.

13 MEMBER ALBERTI: So your argument,
14 so they took out a big billboard and placed it
15 up there above the building and said our
16 placards are here.

17 Nothing I've heard in how you
18 describe that your client discovered it tells
19 me that they would have seen the billboard, I
20 mean, because they weren't there. The cleaning
21 people weren't there.

22 That's what you're telling me. We

1 didn't see it because the cleaning people
2 weren't there. So even if you had a billboard
3 that was visible to everybody, your client
4 wouldn't have seen it. I mean, you can't have
5 it both ways, Mr. Woodson.

6 MR. WOODSON: That's not really
7 what we're saying, Mr. Alberti. We're not
8 saying that the property maintenance folks
9 didn't come. We're saying that the property
10 maintenance folks' presence was not -- Mr.
11 Burka stated that they came on a daily basis,
12 on a regular basis.

13 They came to view the property
14 itself, the vacant land to be certain that
15 there was nothing untoward taking place on
16 their vacant land. The discovery of the
17 placards was an incident to that.

18 It's unfortunate that it didn't
19 occur earlier in time. If he had discovered
20 the placards last week, we --

21 MEMBER ALBERTI: But they
22 discovered them because they were conspicuous.

1 They were there for them to see.

2 MR. WOODSON: But you had to go
3 all the way back to the back of the property
4 to see them, Mr. Alberti.

5 MS. HIRAO: Which was part of
6 Celia's property.

7 CHAIRPERSON MILLER: Wait a
8 minute.

9 MEMBER ALBERTI: Well, wait, wait.
10 Wait, wait. But you have property back there.
11 You have property all along that access road.

12 MR. WOODSON: Yes. That's true.
13 That is true. And we submitted to you, Mr.
14 Alberti, that in order to determine, to get a
15 sense that the vacant property was not being
16 used in an untoward way, you don't have to
17 walk on it to do that. We submit that to you.

18 MEMBER ALBERTI: Okay, I
19 understand. I understand.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: Thank you.

22 CHAIRPERSON MILLER: I think this

1 hearing's actually gone on longer than we've
2 anticipated.

3 MR. WOODSON: We thank you for
4 your indulgence, Ms. Chair.

5 CHAIRPERSON MILLER: And I don't
6 want to cut off any other Board member if you
7 have any questions. Okay, good. We
8 appreciate your bringing all those issues to
9 our attention.

10 So we're going to take the motion
11 under advisement.

12 MR. PASCAL: Thank you.

13 MR. WOODSON: Thank you.

14 CHAIRPERSON MILLER: All right,
15 thank you very much.

16 MR. WOODSON: Good day.

17 MEMBER ALBERTI: Take care.

18 CHAIRPERSON MILLER: Thank you.

19 All right, let's see. We passed a fact
20 finding case, the first case in the morning
21 was Slaviya. Anybody here for that? Okay, so
22 10:58. So it looks like that case is not

1 going to happen today. All right.

2 (Whereupon, the hearing in the
3 above-entitled matter was concluded at 10:58
4 a.m.)

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