

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

IN THE MATTER OF:

Stephen Davis	Protest
t/a Saloon 45	Hearing
1821 18th Street, NW	(Status)
Retailer CT - ANC-2B	
License No. 94842	
Case #14-PRO-00040	

(Application for a New  
License)

July 9, 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, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

MIKE SILVERSTEIN, Member

HECTOR RODRIGUEZ, Member

JAMES SHORT, Member

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

2 (9:44 a.m.)

3 CHAIRPERSON MILLER: The next case on the Board's  
4 calendar is another Protest (Status) Hearing case, Case No.  
5 14-PRO-00040, Saloon 45 located at 1821 18th Street, N.W.,  
6 License No. 94842, in ANC-2B.

7 Okay. We have a big group here. So why don't we  
8 start on the Board's right?

9 MR. PASCAL: Good morning, Paul Pascal of Pascal &  
10 Weiss, the attorney for the applicant.

11 MR. STEPHENS: David Stephens, sole proprietor,  
12 Saloon 45.

13 CHAIRPERSON MILLER: Okay. Wait could we go in order  
14 this way?

15 MR. LOPEZ: Allan Lopez, 1723 Swann Street, N.W.

16 CHAIRPERSON MILLER: And Allan Lopez, is what you  
17 said?

18 MR. LOPEZ: L-O-P-E-Z.

19 CHAIRPERSON MILLER: And you are with?

20 MS. SIMPSON: A group of -- representing Dupont  
21 Circle Village.

22 MR. LOPEZ: Dupont Circle Village.

1 CHAIRPERSON MILLER: Dupont Circle Village. Okay.  
2 Got it. Okay.

3 MR. PASCAL: The record should be clear that the  
4 Dupont Circle Village is not a party to this. It was  
5 classified as a group of five or more.

6 CHAIRPERSON MILLER: Yes, I see just in my notes that  
7 there are two groups.

8 MR. PASCAL: There are three. There is three groups.

9 MS. SIMPSON: Four, if you count the ANC.

10 CHAIRPERSON MILLER: Okay. Let's not count the ANC,  
11 at this point. Oh, okay, right. So --

12 MEMBER SILVERSTEIN: A group of seven.

13 CHAIRPERSON MILLER: -- it helps at least informally  
14 to know that the group it's talking about, to me anyway,  
15 Dupont --

16 MR. PASCAL: Okay.

17 CHAIRPERSON MILLER: What?

18 MR. PASCAL: Dupont Circle Village.

19 CHAIRPERSON MILLER: Dupont Circle Village. Okay.

20

21 MEMBER SILVERSTEIN: It's the first group of seven,  
22 Madam Chair.

1           CHAIRPERSON MILLER: Yes. Okay. That first group  
2 of seven then. Okay. So, right, okay. Let's see, who is  
3 here with the Dupont Circle Village? And I want to take one  
4 group at a time. Okay. Can you identify your name for the  
5 record?

6           MR. HAMMER: John Hammer.

7           CHAIRPERSON MILLER: John Hammer, okay. Who else?

8           MR. EDWARDS: Brad Edwards.

9           CHAIRPERSON MILLER: Brad Edwards, okay.

10          MS. HABER: Maria Haber.

11          CHAIRPERSON MILLER: Maria Haber, got it. Okay.

12          MS. SIMPSON: Peggy Simpson.

13          CHAIRPERSON MILLER: Peggy Simpson. Okay. Anybody  
14 else?

15          MR. LOPEZ: You got me, right, Allan Lopez?

16          CHAIRPERSON MILLER: Allan Lopez, right. Okay.

17 There are five of you here today. Okay. All right. Next?  
18 Going to my left. Okay.

19          MS. MENDEL: Caroline Mendel.

20          CHAIRPERSON MILLER: Can you put your name -- come  
21 closer. Can you pick that up, the Court Reporter?

22          MS. MENDEL: Caroline Mendel, 1760 Swann Street,

1 N.W., and I represent the group of seven.

2 CHAIRPERSON MILLER: Okay. Does the group of seven  
3 have any other name?

4 MS. MENDEL: No, but we have already been vetted.

5 CHAIRPERSON MILLER: I know you have been at Roll  
6 Call and stuff. I know.

7 MS. MENDEL: Yes.

8 CHAIRPERSON MILLER: I just was wondering if there  
9 was like you represented a certain group that --

10 MS. MENDEL: I am, yes.

11 CHAIRPERSON MILLER: You are just a group of seven?

12 MS. MENDEL: Yes.

13 CHAIRPERSON MILLER: Okay. Who else is here in your  
14 group?

15 MS. MENDEL: That's it.

16 CHAIRPERSON MILLER: Anybody else? Okay. Are you  
17 the representative?

18 MS. MENDEL: Yes.

19 CHAIRPERSON MILLER: Okay. ANC or who else?

20 MR. MICHAUD: Fred Michaud.

21 CHAIRPERSON MILLER: Oh, yes.

22 MR. MICHAUD: 1710 Swann Street. I represent a group

1 of 11. I'm not sure if any of them are here.

2 CHAIRPERSON MILLER: Okay.

3 MR. MICHAUD: So I'm the sole.

4 CHAIRPERSON MILLER: But there are 11?

5 MR. MICHAUD: There are 11 and we have already  
6 checked in.

7 CHAIRPERSON MILLER: Right. At Roll Call you were  
8 standing with -- okay, recognized. Okay. All right. Yes?

9 MEMBER SILVERSTEIN: ANC?

10 CHAIRPERSON MILLER: Right. ANC. Let me do the ANC  
11 first. Is the ANC here?

12 MS. NICHOLS: I'm Commissioner Abigail Nichols.

13 CHAIRPERSON MILLER: Okay.

14 MS. NICHOLS: Representing ANC-2B.

15 CHAIRPERSON MILLER: Okay. Okay. Yes?

16 MS. DIENER: And I'm Robin Diener with the Dupont  
17 Circle Citizens Association. And I learned this morning that  
18 our request for appeal got denied standing got denied again,  
19 so I didn't know that and I came here. And I guess I beg a  
20 moment's indulgence for you to explain to us why. We do  
21 realize we were a few days late, but we have participated in  
22 proceedings like this for decades.

1           And we are a known entity. I think we are highly  
2 responsible. And again, although I am a volunteer, our group  
3 is all volunteers, and we represent the entire Dupont Circle  
4 area, not just the interests of a few people who live around  
5 the corner and across the street who are the most impacted and  
6 should be represented and heard from, but we also represent  
7 the support of a larger community in this that voted to  
8 support this. Thank you.

9           CHAIRPERSON MILLER: You're welcome. Okay. And I  
10 do want to let you know that the Board is issuing a written  
11 order with respect to its decision to deny your Motion for  
12 Reconsideration of our decision with respect to your not  
13 having standing. So you can get that today.

14           MS. DIENER: Okay.

15           CHAIRPERSON MILLER: I don't want to go into too much  
16 --

17           MS. DIENER: At this time --

18           CHAIRPERSON MILLER: I will just say a couple of  
19 things. I don't want to go too much into detail. I don't  
20 have the order in front of me and, you know, I hear what you  
21 are saying, but, you know, it was found that it is governed by  
22 a statute.

1           And we hope, we know that the rules will at least  
2 allow you to work with the other groups and be involved that  
3 way, but not have individual standing.

4           MR. PASCAL: Ms. Miller, may I?

5           CHAIRPERSON MILLER: Oh, yes.

6           MR. PASCAL: Yes. I do want to point out as to the  
7 ANC, the ANC appointed Will Stephens and Mike Feldstein or  
8 Noah Smith to represent not Ms. Nichols before the Board.

9           And I want to point out also just for the record that  
10 Mr. Feldstein or no one from the ANC appeared at the  
11 mediation, so I would object that the ANC is not properly  
12 before the Board.

13           CHAIRPERSON MILLER: I would --

14           MEMBER SILVERSTEIN: Take it under advisement.

15           CHAIRPERSON MILLER: Okay. Okay. I will take that  
16 under advisement.

17           MEMBER SILVERSTEIN: Yes.

18           CHAIRPERSON MILLER: I wouldn't be inclined to  
19 dismiss ANC, at this point, personally, because they have a  
20 representative here, but I will take that under advisement.

21           But, Ms. Nichols, do you have anything to say with  
22 respect to not appearing at mediation, the ANC not appearing?

1 MS. NICHOLS: No. I --

2 CHAIRPERSON MILLER: You have no knowledge?

3 MS. NICHOLS: -- was just asked last night to come  
4 today because others were not able to come.

5 CHAIRPERSON MILLER: Right.

6 MS. NICHOLS: So I was not involved with planning for  
7 mediation.

8 CHAIRPERSON MILLER: Okay. So you don't have any  
9 knowledge on that to speak to it?

10 MS. NICHOLS: Although I was briefed on some aspects  
11 of the mediation.

12 MR. PASCAL: But I have requested that -- I assumed  
13 that Mr. Feldstein would be here today and I asked actually to  
14 meet with him as part of the mediation today while we were  
15 here, so, obviously, it's disappointing. And the fact that  
16 they don't have an authorized representative here today, I do,  
17 at least for the record, want to have the ANC dismissed.

18 CHAIRPERSON MILLER: Well, I  
19 think --

20 MS. NICHOLS: And I'm sorry, because I didn't know  
21 that this would be an issue. I do not recall anything about  
22 why Mr. Feldstein couldn't be here today. I couldn't help --

1 emergency? I really don't know, because I was more focused on  
2 yes, I can come.

3 CHAIRPERSON MILLER: Right, okay. Okay.

4 MEMBER ALBERTI: Ms. Miller?

5 CHAIRPERSON MILLER: Yes? Okay.

6 MEMBER ALBERTI: Just my own personal opinion --

7 CHAIRPERSON MILLER: Yes.

8 MEMBER ALBERTI: -- as one of the Board Members, I  
9 would give a little leniency to the ANC with respect to this  
10 hearing. I understand the ANC has representative here, but  
11 it's not the designated representative, but I would give a  
12 little leniency.

13 But I would caution, I personally would like the  
14 Board to caution, the ANC that going forward, if we go forward  
15 to Protest and if we have another mediation, that a properly  
16 designated representative from the ANC be present.

17 And if we do go to protest, that we will require a  
18 properly designated ANC representative, so that's caution to  
19 the ANC going forward. That's my own personal opinion.

20 CHAIRPERSON MILLER: Yes?

21 MS. SIMPSON: I'm Peggy Simpson. The woman who was  
22 presiding over the mediation hearing had talked to Mr.

1 Feldstein afterwards as she said she was going to and he said  
2 that what he wanted to do was to be kept informed. He did not  
3 want a separate meeting with the attorney.

4 CHAIRPERSON MILLER: Okay. So we don't -- I don't  
5 think we want to get into the weeds on the negotiations.

6 MS. SIMPSON: He was talked to by someone other --

7 CHAIRPERSON MILLER: Okay.

8 MEMBER ALBERTI: Well, except the ANC has to show --  
9 Ms. Miller, the ANC has to show at least a reasonable effort  
10 to come to mediation. I mean, they just can't say well, you  
11 know, I'll let everybody else deal with it and I'm not going  
12 to be there. They are party to this and they have signed-on,  
13 so they have to show some reasonable effort to attend.

14 MS. SIMPSON: They had been here.

15 MEMBER ALBERTI: No. To attend the mediation and  
16 have discussions with the licensee. They just can't be --

17 MR. PASCAL: They were here.

18 MEMBER ALBERTI: They can't -- sir, please. They  
19 can't just sign-on and then be a bystander is what I'm saying.  
20 It's either they play an active role or they bow out, that's  
21 my opinion.

22 MS. SIMPSON: Okay.

1           MR. PASCAL: Well, candidly, I expected Mr. Feldstein  
2 to be here and I was going to, in a sense, excuse their non-  
3 appearance at the mediation, but from what I'm hearing today,  
4 I will file a Motion to Dismiss the ANC and the Board can make  
5 a decision based on the record you have heard today about  
6 their attitude.

7           CHAIRPERSON MILLER: Okay. So, Mr. Pascal, that's  
8 absolutely your right to do so and then the ANC will have an  
9 opportunity to respond and we will have the information before  
10 us to take any action or not.

11           So, okay. That being said, if there aren't any other  
12 specific issues that we need to hear, I'm going to give you  
13 your date and information about preparing for the hearing.  
14 All right.

15           MEMBER ALBERTI: Can I just ask a question?

16           CHAIRPERSON MILLER: Yes, sure.

17           MEMBER ALBERTI: Mr. Pascal raised an issue about the  
18 group of seven being a citizens association and that can be  
19 important. Well, I don't know where we stand on that.

20           MR. PASCAL: At the Roll Call, the citizens  
21 association, Dupont Circle Village, identified themselves as  
22 a citizen association as a protestant. And they are not a

1 citizens association and I objected, but Ms. Fletcher seated  
2 them as a group of five or more as individuals. And I -- you  
3 know, we already have a couple groups of five, so one more or  
4 one less didn't make any difference. So I didn't object to  
5 that.

6 They are not here as the Dupont Circle. It's just  
7 five or more members of that loosely defined group, which are  
8 as a group of five or more.

9 CHAIRPERSON MILLER: Yes?

10 MS. SIMPSON: Peggy Simpson. I was on the founding  
11 board of the Dupont Circle Village. I was president of it for  
12 four and a half years. The letter makes plain that this is --  
13 while we are a group of seven, that we also are speaking for  
14 the Dupont Circle Village, which is one of the aging-in-place  
15 nonprofit groups that is in Washington, D.C. and Washington  
16 Metro area.

17 And that we are a nonprofit group. We have 160  
18 members and we are all over the Dupont Circle and part of  
19 Adams Morgan.

20 CHAIRPERSON MILLER: Do --

21 MEMBER ALBERTI: Ms. Miller, can I ask a couple of  
22 questions? Because it's an important matter as to whether

1 these groups are citizen associations or not. I just think  
2 that that goes -- I think the law goes to whether people  
3 retain their rights to protest depending on whether the ANC  
4 files.

5 CHAIRPERSON MILLER: Right.

6 MEMBER ALBERTI: Has a settlement agreement.

7 CHAIRPERSON MILLER: Yes.

8 MEMBER ALBERTI: So let me ask, are you a certified,  
9 are you a registered nonprofit --

10 MS. SIMPSON: Yes.

11 MEMBER ALBERTI: -- citizens association?

12 MS. SIMPSON: Have been since 2008.

13 MEMBER ALBERTI: Okay. And registered with the city  
14 and everything?

15 MS. SIMPSON: Yes and the IRS.

16 MEMBER ALBERTI: And the IRS. Okay. Do you have  
17 minutes --

18 MS. SIMPSON: Yes.

19 MEMBER ALBERTI: -- from a meeting that -- did you  
20 have a noticed meeting about this protest and do you have  
21 minutes from a meeting where you decided to protest?

22 MS. SIMPSON: The president of the board was checked

1 with the board of -- the Dupont Circle Village approved this  
2 letter and approved Iris Molotsky writing this letter and  
3 becoming a party to this, applying for status as a party to  
4 this.

5 MR. PASCAL: That's not set forth though in their  
6 letter. And had they attempted to seat themselves at the Roll  
7 Call, as an association, I would have objected, but they  
8 identified themselves more or less as they all reside in the  
9 area and they identified themselves as a group of seven or  
10 five or more.

11 MEMBER ALBERTI: I don't know if this is going to  
12 become important, but I think it's potentially important, so  
13 I think the Board has to decide how they are going to treat  
14 this group. I mean, I don't think -- I don't want it just  
15 kind of lying out there and not knowing where we are headed.

16 MR. PASCAL: I think the record in the Roll Call will  
17 show that they were seated as a group of five or more and not  
18 as the citizens association.

19 MEMBER ALBERTI: Well, I'm not saying how I view  
20 that, but I'm just saying we need to settle -- I think we need  
21 to decide that issue.

22 MR. PASCAL: Well, I appreciate your concern. And

1 I understand the nuances of it.

2 MEMBER ALBERTI: Yes.

3 CHAIRPERSON MILLER: Ms. Simpson, did you have a  
4 change in how you were representing your group?

5 MS. SIMPSON: No.

6 CHAIRPERSON MILLER: Because Mr. Pascal is saying you  
7 represented your group, unless I'm --

8 MS. SIMPSON: He said that we were. I did not fully  
9 understand what he was saying at the first meeting. He said  
10 that he wanted to make sure that we were not a civic  
11 association and so I said at the time, that would be reflected  
12 in the minutes, is that we are a -- that the letter makes  
13 clear --

14 CHAIRPERSON MILLER: The letter to whom?

15 MS. SIMPSON: Iris Molotsky seeking status.

16 CHAIRPERSON MILLER: Okay.

17 MS. SIMPSON: Our president and it makes clear that  
18 she is speaking on behalf of Dupont Circle Village.

19 MR. PASCAL: Well, if she is, then I would --

20 CHAIRPERSON MILLER: Okay.

21 MR. PASCAL: -- object to their being cast as that,  
22 because there was nothing in the record about a vote and a

1 meeting. It's not set forth in their letter, all of the  
2 requirements to be seated as a citizens association.

3 CHAIRPERSON MILLER: Okay. You know, I think you are  
4 free to file a motion on that, too, but I'm looking at the  
5 letter. I was given the file and it does identify you as  
6 president of the Dupont Circle Village.

7 MS. SIMPSON: Iris.

8 CHAIRPERSON MILLER: On the first sentence, so I  
9 think that's up front that -- but we can look at this more  
10 carefully. And you are talking about the concerns of the  
11 village and stuff. And do you have bylaws?

12 MS. SIMPSON: Yes.

13 CHAIRPERSON MILLER: And your bylaws allow the board  
14 to make decisions like this?

15 MS. SIMPSON: Yes.

16 CHAIRPERSON MILLER: Okay. So and your testimony --  
17 not your testimony -- your representation today is that you  
18 made this decision in accordance with your bylaws?

19 MS. SIMPSON: Absolutely.

20 CHAIRPERSON MILLER: Okay. All right. Any other  
21 questions on this topic right now? Okay. We are not making  
22 any decisions on this. I wanted to -- you are here now. I

1 wanted to be able to ask you any questions. And if Mr. Pascal  
2 files a motion, at least we will have had the opportunity to  
3 ask you questions.

4 But there are different rights, you know, if you are  
5 a citizens association versus a group. And so if the ANC were  
6 to enter into a settlement agreement under the new  
7 regulations, you, as a citizens group, would not lose your  
8 standing in the protest, but the groups would. Okay.

9 All right. Anything else? Okay. Your Protest  
10 Hearing date is August 6, 2014 at 1:30 p.m.

11 And I just want to say some of the same things I have  
12 said before to the other groups. You will be receiving in the  
13 mail two very important documents, Protest Information Form  
14 and an Exhibit Form. You should get those a few weeks before  
15 the hearing. If you don't get them, contact Tesha Anderson at  
16 442-6492.

17 Keep in mind the purpose of a Protest Hearing is to  
18 determine if the establishment is appropriate in the section  
19 of the District where it is located, that's in our regulations  
20 at 23-1607.

21 You need to fill out this Protest Information Form  
22 and serve it on all the parties and the Board seven days ahead

1 of the hearing. If you don't, your application or protest is  
2 subject to dismissal, so, please, don't, you know, miss that  
3 deadline.

4 In that form, you will be identifying your witnesses  
5 by full name and I'll give a little summary as to what they  
6 are going to talk to. Okay. So this witness is going to  
7 speak to this issue or with respect to whatever, so that we  
8 know and the other parties know what to expect at the hearing,  
9 so everybody can be prepared.

10 You will identify your issues and if your issues have  
11 shrunk since the beginning, then maybe, you know, it's only  
12 noise now and not everything under the appropriateness  
13 standard, let everyone know that, so that's what we will  
14 address at the hearing.

15 The Exhibit Form, you need to identify all your  
16 exhibits that you may want to submit at the hearing. It  
17 doesn't mean that you have to submit them, but if you think  
18 you are going to submit them, everybody has to be on notice as  
19 to what they are.

20 If you don't submit your exhibit form and your  
21 exhibits, it's possible that they could be excluded from the  
22 record if we find that you could have done it and there is a

1 prejudice to the other side.

2           Witnesses likewise can be excluded if they are not  
3 identified, except not a party. If you are a party, you get  
4 to testify no matter what.

5           Okay. I think that that is basically it. If you  
6 have any other questions between now and your hearing, you can  
7 also contact Martha Jenkins, our General Counsel. Okay.

8           MR. PASCAL: Thank you.

9           CHAIRPERSON MILLER: Thank you.

10          MS. DIENER: I mean, you have done a wonderful job  
11 of establishment a high level bureaucracy where people can't  
12 be heard. And you can enforce rules --

13          CHAIRPERSON MILLER: Are you --

14          MS. DIENER: -- but not --

15          CHAIRPERSON MILLER: You can't just --

16          MS. DIENER: -- you can't enforce noise --

17          CHAIRPERSON MILLER: -- speak out.

18          MS. DIENER: -- to keep noise from occurring. I know  
19 I'm out of order. We think that you are, too.

20          CHAIRPERSON MILLER: Ms. Diener, we gave you the  
21 opportunity to speak during the case.

22          MS. DIENER: No, you didn't. You told me we couldn't

1 discuss it.

2 CHAIRPERSON MILLER: That's not true. We called on  
3 you during the case.

4 MS. DIENER: Maybe a chance to raise my question,  
5 yes. Thank you.

6 CHAIRPERSON MILLER: Okay.

7 MS. DIENER: Thank you for allowing it to be heard  
8 briefly.

9 CHAIRPERSON MILLER: All right.

10 (Whereupon, the Protest (Status) Hearing in the  
11 above-entitled matter was concluded at 10:05 a.m.)

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