

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

IN THE MATTER OF:

Good Essen-U Street	
t/a Tico	Protest
1926 14th Street, NW	Hearing
Retailer CR - ANC-2B	(Status)
License No. 93610	
Case #115-PRO-00082	

(Substantial Change - Request
a Change of Hours)

September 30, 2015

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

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

9:38 a.m.

CHAIRPERSON MILLER: Okay. All right.

We are ready. Good morning, everyone. I would like to welcome you to the regularly scheduled meeting of the District of Columbia's Alcoholic Beverage Control Board. Today is September 30, 2015.

My name is Ruthanne Miller. I'm the Chairperson. And joining me today to my far right is Mr. Donald Brooks. Next to Mr. Brooks is Mr. Nick Alberti and next to Mr. Alberti is Mr. Hector Rodriguez. To my left is Mr. Mike Silverstein. And we have five Members in attendance this morning for the conduct of business with three constituting a quorum.

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

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

5 When I call your case, please, come
6 forward and take a seat at the table. You will
7 note that there is a piece of paper on each table
8 for you to sign-in. This is to ensure the
9 correct spelling of your name for the record.

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

19 This morning we have one Protest
20 (Status) Hearing and we also have several Show
21 Cause (Status) Hearings. And I want to read just
22 a few instructions for the Show Cause (Status)

1 cases, so that we don't need to repeat them over
2 and over and over again.

3 The following instructions are
4 pertinent to all the cases.

5 The purpose of these status conference
6 is to entertain any preliminary matters of the
7 parties and to provide the parties with the date
8 and time of the hearing on the merits of the
9 case, if the case proceeds to hearing.

10 Preliminary matters include any
11 proposed agreement of the parties to settle the
12 case for the Board's consideration, known as
13 Offers in Compromise; and motions or questions
14 regarding procedural matters, including schedule
15 or dismissal of the case or a party for failure
16 to comply with legal requirements.

17 The Board will assume that the
18 applicant or the respondent had notice of this
19 hearing by his or her presence or the presence of
20 an authorized agent.

21 However, if you have any issue
22 relating to the adequacy of your notice, you may

1 raise that issue with the Board when your case is
2 called.

3 All right. So let's move to the
4 Protest (Status) Hearing case, which is Case No.
5 115-PRO-00082, Tico located at 1926 14th Street,
6 N.W., License No. 93610, in ANC-2B. And this is
7 for a substantial change.

8 Good morning. So if you all could
9 sign-in and then introduce yourselves for the
10 record?

11 MR. WHELAN: Good morning. Stephen
12 Whelan on behalf of the licensee.

13 CHAIRPERSON MILLER: Good morning.

14 MS. STERLING: Joan Sterling, Shaw
15 Dupont Citizens Alliance.

16 COURT REPORTER: I'm sorry, could you
17 use the microphone? There should be a little
18 button to push.

19 MEMBER ALBERTI: Is the green light
20 on?

21 MS. STERLING: Yes, there is a green
22 light on.

1 MEMBER ALBERTI: Okay.

2 COURT REPORTER: There you go.

3 MS. STERLING: Oh, now, it's lit. You
4 would think I wasn't an engineer and couldn't
5 figure that out.

6 Joan Sterling, Shaw Dupont Citizens
7 Alliance.

8 MR. FERRIS: Elwyn Ferris, Shaw Dupont
9 Citizens Alliance.

10 CHAIRPERSON MILLER: Okay. So at this
11 Status Hearing, you know, we entertain any issues
12 that you might have or want to bring to our
13 attention. Then I will give you certain
14 instructions that relate to the Protest Hearing
15 and then give you your date.

16 So is there anything you need to bring
17 to our attention?

18 MS. STERLING: Yes. We believe that
19 we have a procedural matter here.

20 CHAIRPERSON MILLER: Okay.

21 MS. STERLING: During our settlement
22 agreement negotiation, which was just 10 months

1 prior to this substantial change request, we were
2 assured by the general counsel that restatement
3 of a law within an SA does not allow changes to
4 the SA unless all signatories are in agreement.

5 So after reviewing the ABC Board
6 decision regarding substantial change request for
7 The Satellite Room in a similar case, based on
8 the decision in that case, we are requesting the
9 Board to deny the substantial change and cancel
10 the Protest Hearing.

11 CHAIRPERSON MILLER: Okay. Do you
12 want to comment on that?

13 MR. WHELAN: I'm not sure what the
14 specific issue is that she is referring to.

15 CHAIRPERSON MILLER: Okay.

16 MR. WHELAN: I don't know if that was
17 clear based on the remarks. Is there any way
18 that you can clarify the specifics?

19 MS. STERLING: Sure. We have
20 requested, but not been provided, the rationale
21 for the reversal of your original Board decision
22 initially denying the applicant's request on this

1 change.

2 CHAIRPERSON MILLER: Okay. What I
3 would say is you should put this in writing,
4 because it's hard for all of us to really
5 understand what you are seeking and in all
6 fairness, the applicant should be able to respond
7 to that in writing.

8 So whether you are seeking something
9 from the Board for clarification or you are
10 seeking a dismissal, you should put it -- if you
11 are seeking a dismissal, it certainly should be a
12 motion in writing.

13 MS. STERLING: Within the settlement
14 agreement are the hours of operation. And so it
15 was our understanding that unless the parties
16 agreed to changing the settlement agreement, that
17 it doesn't get changed. So we don't --

18 CHAIRPERSON MILLER: Okay. I
19 understand that.

20 MS. STERLING: -- understand why we
21 are here.

22 CHAIRPERSON MILLER: Okay. I

1 understand what you are talking about. Yes,
2 right. And the Board --

3 MS. STERLING: And you initially ruled
4 that and then changed the ruling and we are
5 asking why was that ruling changed?

6 CHAIRPERSON MILLER: Oh, all right.
7 And we will look into that, because I don't
8 recall. Oh, that you had different decisions in
9 writing, I don't recall that. So I think you
10 should put it in writing, your request, and the
11 Board will consider it.

12 MEMBER ALBERTI: All right. Ms.
13 Miller, just to be helpful --

14 CHAIRPERSON MILLER: Yes? Okay.

15 MEMBER ALBERTI: -- I think what you
16 are saying is that it should be in the form of a
17 motion before this Board. It's probably the best
18 way to handle this, because I think that they
19 ultimately are seeking dismissal of this case or
20 denial of the substantial change --

21 MS. STERLING: Correct.

22 MEMBER ALBERTI: -- application

1 really.

2 CHAIRPERSON MILLER: Yes, right.

3 MEMBER ALBERTI: And so --

4 CHAIRPERSON MILLER: Anything probably
5 should be in a motion --

6 MEMBER ALBERTI: Right. So I think --

7 CHAIRPERSON MILLER: -- or a
8 reconsideration or something.

9 MEMBER ALBERTI: -- it's best that
10 they put this in a motion explaining what you
11 would like us to do and the rationale for doing
12 that. Serve it also on what -- the applicant and
13 then the Board will address it. At the
14 appropriate time we will address it. And you may
15 have a chance to do an oral argument on it.

16 CHAIRPERSON MILLER: You may or may
17 not.

18 MEMBER ALBERTI: That is --

19 CHAIRPERSON MILLER: Yes.

20 MEMBER ALBERTI: May or may not.

21 CHAIRPERSON MILLER: Yes.

22 MEMBER ALBERTI: Right. So but that

1 is the most efficient and effective way for you
2 to make your points.

3 MS. STERLING: Okay.

4 MR. WHELAN: And obviously, we will
5 have the opportunity to respond to the written --

6 MEMBER ALBERTI: Oh, absolutely.

7 MR. WHELAN: -- motion.

8 CHAIRPERSON MILLER: Absolutely.

9 MEMBER ALBERTI: Like any motion.
10 That's why I think it's best that we go through--

11 MR. WHELAN: Absolutely.

12 MEMBER ALBERTI: -- the formal process
13 here.

14 MS. STERLING: Great.

15 CHAIRPERSON MILLER: Okay. So you
16 brought that to our attention as an issue. Okay.
17 Anything else?

18 MS. STERLING: Yes. I mean, the
19 underlying issue for us is and all associations
20 and ANCs is that you negotiate settlement
21 agreements in good faith. And shortly
22 thereafter, there is the bait and switch where

1 now the time --

2 CHAIRPERSON MILLER: Okay. Okay.

3 MS. STERLING: -- of substantial
4 change is --

5 CHAIRPERSON MILLER: You are really
6 arguing it, at this point. So you can put it in
7 writing. Okay? But we hear you, we know what
8 you are talking about.

9 MS. STERLING: Great.

10 CHAIRPERSON MILLER: Okay.

11 MR. FERRIS: Is there a time frame in
12 which -- we will do that as soon as we can, but
13 is there a time limit on when we can have a
14 motion?

15 CHAIRPERSON MILLER: Well, you know,
16 it's really hard to say exactly what you are
17 doing because if you are doing a Motion for
18 Reconsideration on the Board's decision, the time
19 may have already passed. I don't really know.
20 There are time limits for that. If you are doing
21 a Motion to Dismiss out of the blue, then that's
22 a different story. But you will have to assess

1 what you are doing. The sooner the better in any
2 event.

3 Okay. Anything else?

4 MS. STERLING: No.

5 CHAIRPERSON MILLER: Okay.

6 MR. WHELAN: Nothing from the
7 licensee.

8 CHAIRPERSON MILLER: All right. What
9 I just need to bring to your attention is if this
10 goes forward to a hearing, you will get a Protest
11 Information Form which will ask you to identify
12 your issues, which may have or may not have
13 narrowed by the time we get closer to the
14 hearing. And this form will be -- needs to be
15 submitted to the parties, the opposing parties
16 and the Board seven days before the hearing.

17 It will also ask you your witnesses
18 and then you will also get an Exhibit Form. Your
19 witnesses you need to identify specifically, not
20 just generally. Not like neighbors, but actually
21 specific people. And the exhibits will need to
22 be attached, you know, documents or things like

1 that.

2 And these are very important. The
3 hearings aren't meant to be surprises and, in
4 fact, if there are surprises that are as a result
5 of not identifying things in the PIFs and the
6 Exhibit Forms, sometimes the Board will not
7 accept them into evidence because of fairness to
8 the other side.

9 So that's basically what I want to
10 tell you about the PIFs and the Exhibit Forms.

11 If you have any questions leading up
12 to the hearing, you can always call our counsel,
13 Martha Jenkins.

14 And your Protest Hearing is set for
15 October 28, 2015 at 4:30 p.m. Okay. Anything
16 else?

17 MR. WHELAN: Thank you.

18 CHAIRPERSON MILLER: All right. Thank
19 you very much. Have a good day.

20 MR. FERRIS: Thank you.

21 MS. STERLING: Thank you.

22 CHAIRPERSON MILLER: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

(Whereupon, the Protest (Status)
Hearing in the above-entitled matter was
concluded at 9:48 a.m.)

A

a.m 2:2 15:3
ABC 7:5
able 8:6
above-entitled 15:2
absolutely 11:6,8,11
accept 14:7
Act 3:10,13
actions 2:22
address 10:13,14
adequacy 4:22
adjudication 3:17
advice 3:16
agenda 2:18
agent 4:20
agreed 8:16
agreement 4:11 6:22
 7:4 8:14,16
agreements 3:16 11:21
Alberti 1:17 2:12,12
 5:19 6:1 9:12,15,22
 10:3,6,9,18,20,22
 11:6,9,12
Alcoholic 1:2,12,13 2:6
Alliance 5:15 6:7,9
allow 7:3
ANC-2B 1:7 5:6
ANCs 11:20
applicant 4:18 8:6
 10:12
applicant's 7:22
application 9:22
appropriate 10:14
arguing 12:6
argument 10:15
asking 9:5
assess 12:22
associations 11:19
assume 4:17
assured 7:2
attached 13:22
attendance 2:15
attention 6:13,17 11:16
 13:9
attorney 3:15
authorized 4:20
available 2:18
avoid 3:3
aware 2:19

B

bait 11:22
based 7:7,17
basically 14:9
behalf 5:12
believe 6:18
best 9:17 10:9 11:10
better 13:1

Beverage 1:2,12,13 2:7
blue 12:21
Board 1:2,12 2:7 3:12
 4:17 5:1 7:5,9,21 8:9
 9:2,11,17 10:13 13:16
 14:6
Board's 4:12 12:18
bring 6:12,16 13:9
Brooks 1:17 2:11,11
brought 11:16
Building 1:13
business 2:16
button 5:18

C

calendar 2:17
call 3:5 14:12
called 5:2
cancel 7:9
case 1:8 3:5,11,15 4:9,9
 4:12,15 5:1,4,4 7:7,8
 9:19
cases 4:1,4
Cause 3:21,22
cell 3:2
certain 3:2 6:13
certainly 8:11
Chairperson 1:14,16
 2:3,10 5:13 6:10,20
 7:11,15 8:2,18,22 9:6
 9:14 10:2,4,7,16,19
 10:21 11:8,15 12:2,5
 12:10,15 13:5,8 14:18
 14:22
chance 10:15
change 1:9,10 5:7 7:1,6
 7:9 8:1 9:20 12:4
changed 8:17 9:4,5
changes 7:3
changing 8:16
Citizens 5:15 6:6,9
clarification 8:9
clarify 7:18
clear 7:17
closed 3:13
closer 13:13
COLUMBIA 1:1
Columbia's 2:6
come 3:5
comment 7:12
comply 4:16
Compromise 4:13
concluded 15:3
conduct 2:15
conference 4:5
consider 9:11
consideration 4:12
consistent 3:12

constituting 2:16
consult 3:15
Control 1:2,12,13 2:7
Copies 2:17
correct 3:9 9:21
counsel 7:2 14:12
court 2:20 5:16 6:2
CR 1:7

D

D.C 1:14
date 4:7 6:15
day 14:19
days 13:16
decision 3:17 7:6,8,21
 12:18
decisions 9:8
deliberate 3:17
denial 9:20
deny 7:9
denying 7:22
desk 2:18
devices 3:1
different 9:8 12:22
discuss 3:16
Dismiss 12:21
dismissal 4:15 8:10,11
 9:19
disruptive 2:21
District 1:1 2:6
documents 13:22
doing 10:11 12:17,17
 12:20 13:1
Donald 1:17 2:11
Dupont 5:15 6:6,8

E

effective 11:1
efficient 11:1
electronic 3:1
Elwyn 6:8
engineer 6:4
ensure 3:8
enter 3:13
entertain 4:6 6:11
Essen-U 1:6
event 13:2
evidence 14:7
exactly 12:16
Exhibit 13:18 14:6,10
exhibits 13:21
explaining 10:10

F

fact 14:4
failure 4:15
fairness 8:6 14:7
faith 11:21

far 2:10
Ferris 6:8,8 12:11 14:20
figure 6:5
five 2:14
following 4:3
form 9:16 13:11,14,18
formal 11:12
Forms 14:6,10
forward 3:6 13:10
frame 12:11

G

general 7:2
generally 13:20
give 6:13,15
go 6:2 11:10
goes 13:10
good 1:6 2:4 5:8,11,13
 11:21 14:19
Great 11:14 12:9
green 5:19,21

H

handle 9:18
hard 8:4 12:16
hear 12:7
hearing 1:7,13 2:17,22
 3:11,14,20 4:8,9,19
 5:4 6:11,14 7:10
 13:10,14,16 14:12,14
 15:2
hearings 3:21 14:3
Hector 1:18 2:13
helpful 9:13
hours 1:10 8:14

I

identify 13:11,19
identifying 14:5
important 14:2
include 4:10
including 4:14
Information 13:11
initially 7:22 9:3
instructions 3:22 4:3
 6:14
interruption 3:4
introduce 5:9
issue 4:21 5:1 7:14
 11:16,19
issues 6:11 13:12

J

Jenkins 14:13
Joan 5:14 6:6
joining 2:10

K

know 6:11 7:16 12:7,15
12:19 13:22
known 4:12

L

law 7:3
leading 14:11
left 2:13
legal 3:15 4:16
let's 5:3
License 1:8 5:6
licensee 5:12 13:7
light 5:19,22
limit 12:13
limits 12:20
lit 6:3
little 5:17
located 5:5
look 9:7

M

Martha 14:13
matter 1:5 6:19 15:2
matters 4:6,10,14
mean 11:18
meant 14:3
meeting 1:3 2:6 3:14
Meetings 3:10,13
Member 1:17,17,18,18
5:19 6:1 9:12,15,22
10:3,6,9,18,20,22
11:6,9,12
Members 2:14
merits 4:8
met 1:13
microphone 5:17
Mike 1:18 2:13
Miller 1:14,16 2:3,9
5:13 6:10,20 7:11,15
8:2,18,22 9:6,13,14
10:2,4,7,16,19,21
11:8,15 12:2,5,10,15
13:5,8 14:18,22
months 6:22
morning 2:4,15 3:19
5:8,11,13
motion 8:12 9:17 10:5
10:10 11:7,9 12:14,17
12:21
motions 4:13
move 5:3

N

N.W 1:13 5:6
name 2:9 3:9
narrowed 13:13
need 4:1 6:16 13:9,19
13:21

needs 13:14
negotiate 11:20
negotiation 6:22
neighbors 13:20
Nick 1:17 2:12
noises 2:22
note 3:7
notice 4:18,22
NW 1:7

O

obtain 3:15
obviously 11:4
October 14:15
Offers 4:13
Oh 6:3 9:6,8 11:6
Okay 2:3 6:1,10,20 7:11
7:15 8:2,18,22 9:14
11:3,15,16 12:2,2,7
12:10 13:3,5 14:15,22
open 3:10,11,13
operation 8:14
opportunity 11:5
opposing 13:15
oral 10:15
original 7:21

P

P-R-O-C-E-E-D-I-N-G-S
2:1
p.m 14:15
paggers 3:2
paper 3:7
parties 4:7,7,11 8:15
13:15,15
party 4:15
passed 12:19
people 13:21
pertinent 4:4
phones 3:2
piece 3:7
PIFs 14:5,10
please 2:19 3:2,5
point 12:6
points 11:2
preliminary 4:6,10
presence 4:19,19
PRESENT 1:15
presiding 1:14
prior 7:1
probably 9:17 10:4
procedural 4:14 6:19
proceeding 3:18
proceedings 2:19 3:4
proceeds 4:9
process 11:12
proposed 4:11
Protest 1:6 3:19 5:4

6:14 7:10 13:10 14:14
15:1
provide 4:7
provided 7:20
public 3:11,12,14
purpose 4:5
push 5:18
put 8:3,10 9:10 10:10
12:6

Q

questions 4:13 14:11
quorum 2:16

R

raise 5:1
rationale 7:20 10:11
read 3:21
ready 2:4
really 8:4 10:1 12:5,16
12:19
recall 9:8,9
receptionist 2:18
reconsideration 10:8
12:18
record 3:9 5:10
recorded 2:20
Reeves 1:13
referring 7:14
refrain 2:21
regarding 4:14 7:6
regularly 2:5
relate 6:14
relating 4:22
remarks 7:17
repeat 4:1
reporter 2:20 5:16 6:2
request 1:9 7:1,6,22
9:10
requested 7:20
requesting 7:8
requirements 4:16
requires 3:10
respond 8:6 11:5
respondent 4:18
restatement 7:2
result 14:4
Retailer 1:7
reversal 7:21
reviewing 7:5
right 2:3,11 5:3 9:2,6,12
10:2,6,22 13:8 14:18
Rodriguez 1:18 2:13
room 1:13 2:22 7:7
ruled 9:3
ruling 9:4,5
Ruthanne 1:14,16 2:9

S

SA 7:3,4
Satellite 7:7
saying 9:16
schedule 4:14
scheduled 2:5
seat 3:6
Section 3:12
seeking 8:5,8,10,11
9:19
September 1:11 2:7
Serve 10:12
set 14:14
settle 4:11
settlement 3:16 6:21
8:13,16 11:20
seven 13:16
Shaw 5:14 6:6,8
shortly 11:21
Show 3:20,22
side 14:8
sign-in 3:8 5:9
signatories 7:4
Silverstein 1:18 2:14
similar 7:7
soon 12:12
sooner 13:1
sorry 5:16
specific 7:14 13:21
specifically 13:19
specifics 7:18
spelling 3:9
status 1:7 3:20,21,22
4:5 5:4 6:11 15:1
Stephen 5:11
Sterling 5:14,14,21 6:3
6:6,18,21 7:19 8:13
8:20 9:3,21 11:3,14
11:18 12:3,9 13:4
14:21
story 12:22
Street 1:6,7,13 5:5
submitted 13:15
substantial 1:9 5:7 7:1
7:6,9 9:20 12:3
Suite 1:14
sure 7:13,19
surprises 14:3,4
switch 11:22

T

t/a 1:6
table 3:6,7
take 3:6
talking 9:1 12:8
tell 14:10
Thank 14:17,18,20,21
things 13:22 14:5

think 6:4 9:9,15,18 10:6 11:10	4:30 14:15		
three 2:16	400S 1:14		
Tico 1:6 5:5	405(b) 3:13		
time 4:8 10:14 12:1,11 12:13,18,20 13:13		5	
today 2:7,10		6	
today's 2:17		7	
turned 3:3		8	
U		9	
ultimately 9:19			
underlying 11:19			
understand 8:5,19,20 9:1			
understanding 8:15			
use 5:17			
V			
W			
want 3:21 6:12 7:12 14:9			
Washington 1:14			
wasn't 6:4			
way 7:17 9:18 11:1			
welcome 2:5			
Whelan 5:11,12 7:13,16 11:4,7,11 13:6 14:17			
witnesses 13:17,19			
writing 8:3,7,12 9:9,10 12:7			
written 11:5			
X			
Y			
Z			
0			
1			
10 6:22			
115-PRO-00082 1:8 5:5			
14th 1:7,13 5:5			
1926 1:7 5:5			
2			
2000 1:13			
20009 1:14			
2015 1:11 2:8 14:15			
28 14:15			
3			
30 1:11 2:7			
4			