

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

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IN THE MATTER OF:                   :  
  :  
Multi-Management, Inc.            :  
t/a Habana Village                : Protest  
1834 Columbia Road, NW          : Hearing  
Retailer CR - ANC-1C              :  
License No. 24197                 :  
Case #13-PRO-00094               :  
  :  
(Settlement Agreement            :  
Termination)                      :  
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October 16, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
MIKE SILVERSTEIN, Member  
ALSO PRESENT:

JASON PERU, ABRA Investigator

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

2 (5:32 p.m.)

3 CHAIRPERSON MILLER: All right.

4 We are back on the record with our second  
5 Protest Hearing. This is the case of Habana  
6 Village. It's Case No. 13-PRO-00094, located  
7 at 1834 Columbia Road, N.W., License No.  
8 24197, in ANC-1C. And this is regarding  
9 settlement agreement termination.

10 Okay. So let's start with  
11 introductions. On my right, okay.

12 MR. LUJAN, JR.: I'm Pedro Lujan,  
13 Jr., one of the owners of Habana Village.

14 CHAIRPERSON MILLER: Okay.

15 MS. LUJAN: My name is Claudia  
16 Lujan. I'm the sister.

17 CHAIRPERSON MILLER: Okay.

18 MR. LUJAN, SR.: My name is Pedro  
19 Lujan, one of the owners of Habana.

20 CHAIRPERSON MILLER: All right.

21 Thank you. And over here?

22 MR. GUTHRIE: Ted Guthrie, ANC-1C.

1 CHAIRPERSON MILLER: Okay.

2 MR. SIMPSON: And William Simpson,  
3 ANC-1C01.

4 MR. JAMES: Denis James, President  
5 of the Kalorama Citizens Association.

6 CHAIRPERSON MILLER: All right.  
7 And who is going to be the main representative  
8 for ANC-1C?

9 MR. GUTHRIE: I'm filling in for  
10 Chairman, Brian Hart, who had to leave,  
11 because he had an appointment that started at  
12 5:30.

13 CHAIRPERSON MILLER: Okay. You  
14 can sit down. It's actually better to hear  
15 you, because the mike is on the table.

16 MR. GUTHRIE: Okay. I'm Ted  
17 Guthrie and I'm going to be representing the  
18 ANC-1C.

19 CHAIRPERSON MILLER: Okay.

20 MR. GUTHRIE: The person who had  
21 been preparing for this had to go to another  
22 meeting because the last --

1 CHAIRPERSON MILLER: Okay. So Mr.  
2 Simpson --

3 MR. GUTHRIE: -- went over.

4 CHAIRPERSON MILLER: -- is just  
5 going to be assisting?

6 MR. SIMPSON: That's right. I'll  
7 be assisting and I'll give some testimony.

8 CHAIRPERSON MILLER: Oh,  
9 testimony. Okay. And over here, who is going  
10 to be the main representative? Oh.

11 MR. LUJAN, JR.: My sister. My  
12 sister, Claudia Lujan.

13 CHAIRPERSON MILLER: Okay. That's  
14 fine. Thank you. All right. Now, can you  
15 give me an idea of how many witnesses you are  
16 going to be presenting and are they on your  
17 PIF?

18 MS. LUJAN: We have one witness.

19 CHAIRPERSON MILLER: Okay.

20 MS. LUJAN: Can we have a second?

21 CHAIRPERSON MILLER: Yes.

22 MS. LUJAN: Great. So we would

1 like to add a second witness.

2 CHAIRPERSON MILLER: I mean, are  
3 one of you going to -- is one of you going to  
4 testify?

5 MR. LUJAN, JR.: I'm going to  
6 testify.

7 MS. LUJAN: Yes.

8 CHAIRPERSON MILLER: Okay.

9 MR. LUJAN, JR.: And so we wanted  
10 to have two more plus me.

11 CHAIRPERSON MILLER: Two more plus  
12 you.

13 MR. LUJAN, JR.: Right.

14 CHAIRPERSON MILLER: Well, let's  
15 see if they are -- are they identified on the  
16 PIF?

17 MR. LUJAN, JR.: No.

18 MS. LUJAN: No.

19 MR. LUJAN, JR.: That's a mistake  
20 that I made.

21 CHAIRPERSON MILLER: Okay. Well,  
22 then who are they and if you could tell me

1 what they would be testifying to, we can  
2 figure out whether there is going to be an  
3 objection and, you know, whether it is  
4 relevant.

5 MR. LUJAN, JR.: Well, the one  
6 that -- am I included?

7 CHAIRPERSON MILLER: You're fine.  
8 You are a party.

9 MR. LUJAN, JR.: I'm a party. So  
10 the --

11 CHAIRPERSON MILLER: Yes.

12 MR. LUJAN, JR.: -- first witness  
13 will be Jose Suerves, which is he already in  
14 the PIF. The second witness that we would  
15 like to have is Katie Davis, who also belongs  
16 -- has been -- lives in the neighborhood since  
17 1962.

18 CHAIRPERSON MILLER: Okay. Jose  
19 Suerves is in the PIF?

20 MS. LUJAN: Yes.

21 MR. LUJAN, JR.: Yes.

22 CHAIRPERSON MILLER: Okay. So

1 I'll hear if there is any objection, but I  
2 think that maybe we will see how late it is  
3 and whether that testimony is really needed or  
4 not.

5 MR. LUJAN, JR.: Okay.

6 CHAIRPERSON MILLER: Because you  
7 are actually, you know, maybe -- yes, we will  
8 see how it goes. Okay.

9 MR. GUTHRIE: And we have -- first  
10 of all, do we have any idea how long this  
11 hearing is going to be tonight?

12 CHAIRPERSON MILLER: Well, the  
13 rule is that we have been going on is that  
14 each side has an hour and a half. That has --  
15 that's a long time. That does not include  
16 when our witness is being testified, it goes  
17 to the other party's time. And it does not  
18 include opening and closing statements, which  
19 can have up to five minutes.

20 But you know, when you are  
21 crossing their witness, that takes up time,  
22 too. So we really want, you know, to -- also

1 what is relevant. We don't need redundant,  
2 you know, we want to hear your points. We  
3 don't need to hear -- a lot of people say the  
4 same thing though.

5 So okay. So --

6 MS. LUJAN: I have a question. We  
7 have exhibits, copies for everybody, would now  
8 be the right time to --

9 CHAIRPERSON MILLER: You can wait.

10 MS. LUJAN: Okay.

11 CHAIRPERSON MILLER: And our  
12 attorney is not here right now, but you would  
13 -- when you present your case, that's the time  
14 that you definitely need to give us the  
15 exhibits. Okay. So how many witnesses? The  
16 protestants, the time is shared. Yes, the  
17 time is shared. So how many witnesses do you  
18 all have?

19 MR. GUTHRIE: The ANC is on a --  
20 I'm going to be testifying for the ANC. And  
21 Mr. Simpson is also going to be testifying for  
22 the ANC.

1 CHAIRPERSON MILLER: Okay. All  
2 right. How about KCA?

3 MR. JAMES: I'll be making a  
4 statement on behalf of KCA. We have two  
5 witnesses. It's possible we might only use  
6 one of them, depending on the course of the  
7 hearing.

8 CHAIRPERSON MILLER: Right. Okay.  
9 And were they --

10 MR. JAMES: We are not presenting  
11 a video, which we had planned to.

12 CHAIRPERSON MILLER: Okay.

13 MR. JAMES: We had said, but we  
14 are not doing that, so subtract that.

15 CHAIRPERSON MILLER: Okay. We  
16 will subtract that from the time. All right.  
17 Were those witnesses identified on the PIF or  
18 no?

19 MR. JAMES: No, they weren't  
20 because it was not possible a week in advance  
21 to arrange, you know, their names. I'm glad  
22 to identify them now.

1 CHAIRPERSON MILLER: Okay.

2 MR. JAMES: You want to hear their  
3 names now?

4 CHAIRPERSON MILLER: Yeah, I want  
5 to see if there is going to be an objection if  
6 you both didn't have somebody on the PIF, if  
7 that's not an issue.

8 MR. JAMES: Oh, we don't object to  
9 -- the KCA doesn't object to the applicant not  
10 previously --

11 CHAIRPERSON MILLER: Okay.

12 MR. JAMES: -- naming. And our  
13 two witnesses are Hal Simmons and Michael  
14 Colonna.

15 CHAIRPERSON MILLER: And what are  
16 they going to testify to, in general? Just --

17 MR. JAMES: The effects on peace,  
18 order and quiet by removing the existing  
19 voluntary agreement.

20 CHAIRPERSON MILLER: Okay. Any  
21 objection? Okay. So there are no objections  
22 to witnesses.

1           Okay. And is anybody raising an  
2 objection to any witnesses being in the room  
3 to hear other people's testimony? That's the  
4 Rule on Witnesses. It's only invoked if you  
5 all have an objection.

6           MR. LUJAN, JR.: Sorry?

7           CHAIRPERSON MILLER: I was just  
8 checking to see if anybody had an objection  
9 about certain witnesses overhearing other  
10 people's testimony and, therefore, they would  
11 be -- have to leave the room. No objection?

12          MR. LUJAN, JR.: No, no.

13          CHAIRPERSON MILLER: Any  
14 objections? Good. All right. Then we are  
15 ready to go.

16                 Let me just tell you the order of  
17 procedure, so you know what is coming. We  
18 just did preliminary issues. Then there will  
19 be applicant can make an opening statement, if  
20 you want to, that is not evidence. That is  
21 saying okay, we are going to show that the  
22 agreement should be terminated for these

1 reasons or something like that. And you don't  
2 go into much detail somewhat and it's not  
3 required. It is not evidence.

4 And then the protestants will have  
5 an opening statement. And then our Board  
6 witness will come testify about the  
7 investigation report that they did. And  
8 parties will have a chance to cross-examine  
9 them and so the Board will have a chance to  
10 ask questions as well.

11 And then after that, the applicant  
12 presents their case. Then the protestants  
13 present their case and there will be this  
14 cross-examination here. An then closing.

15 So that's it. If there are any  
16 questions, feel free to ask me. I did that  
17 kind of fast, but you can always ask me as we  
18 go along, if you are not sure of something.  
19 Okay.

20 MS. LUJAN: I have one quick  
21 question.

22 CHAIRPERSON MILLER: Okay.

1 MS. LUJAN: Does it matter the  
2 order in which we call out witness?

3 CHAIRPERSON MILLER: No.

4 MS. LUJAN: Okay.

5 CHAIRPERSON MILLER: Okay. All  
6 right. Is our Investigator here? Okay. Come  
7 on forward. Oh, no, I'm sorry. I have  
8 skipped opening statements. The applicant?

9 MS. LUJAN: So I just have a brief  
10 statement on behalf of Habana Village.

11 We are a family-owned business, as  
12 you can tell. I'm sitting next to my father  
13 and my brother. And we strongly believe why--  
14 that we have a strong case for why ABRA should  
15 grant our petition and it's based on three  
16 things.

17 The first is we believe that  
18 Habana Village has operated responsibly and no  
19 longer needs the voluntary agreement in order  
20 to keep the peace, order and quiet, which are  
21 the goals of those agreements in the  
22 neighborhood.

1           The second reason is because given  
2           the economy, the state of business, it is  
3           important that Habana Village have as much  
4           flexibility as possible to increase revenue.  
5           And we feel that the voluntary agreement  
6           prohibits that.

7           And thirdly, we believe that we  
8           have made good faith efforts to try and work  
9           out an amended voluntary agreement of which  
10          there was no success. Thank you.

11          CHAIRPERSON MILLER: Great. Okay.  
12          Thank you. All right.

13          MR. GUTHRIE: Yes. On behalf of  
14          the ANC-1C, we really tried to get these  
15          things negotiated. Not that we have anything  
16          against the Board, but we don't like to go in  
17          front of you. We don't like bringing these  
18          things in front of the Board.

19          And this case has been  
20          particularly frustrating for the ANC. We  
21          started out with not getting any notice that  
22          they intended to request to amend or terminate

1 before they filed, which is contrary to my  
2 understanding of what the statute requires.

3 We did not have very successful  
4 interactions all along the way. We wound up  
5 having four members of the ANC actively  
6 involved in trying to resolve this case. And  
7 have gotten to the point where we understood  
8 that we had an agreement.

9 CHAIRPERSON MILLER: Okay. I'm  
10 going to step in, okay, because I don't know  
11 if you have done these hearings before, but I  
12 want to reiterate, this -- you are not under  
13 oath and nothing that you are telling us --

14 MR. GUTHRIE: I --

15 CHAIRPERSON MILLER: -- is --

16 MR. GUTHRIE: -- understand.

17 CHAIRPERSON MILLER: Oh, okay.

18 MR. GUTHRIE: But I'm trying to  
19 lay out what our position is.

20 CHAIRPERSON MILLER: What your  
21 case is going to be? Okay.

22 MR. GUTHRIE: That we don't

1 believe that the statutory requirements have  
2 been met in this case. And that particularly  
3 the statutory requirement for negotiations, we  
4 do not believe has been met.

5 And, therefore, we think that the  
6 Board should deny the petition to terminate.

7 CHAIRPERSON MILLER: Okay. Sorry  
8 I interrupted you.

9 MR. GUTHRIE: That's okay.

10 CHAIRPERSON MILLER: I thought you  
11 might have just been going on to give  
12 testimony. It sounded like. Okay. I  
13 understand that.

14 All right. Before we do get into  
15 the evidence, it sounds like you all are  
16 operating this way, but I just want to  
17 reiterate what is governing this proceeding.

18 As I see it, it's 25-446,  
19 Termination of Voluntary Agreement. And I  
20 just want to read in relevant part. "The  
21 Board may approve a request by fewer than all  
22 parties to amend or terminate a voluntary

1 agreement for good cause shown, if it makes  
2 each of the following findings based on sworn  
3 evidence:

4 (A) The applicant seeking the  
5 amendment has made a diligent effort to locate  
6 all other parties to the voluntary agreement;

7 (B) The need for an amendment is  
8 either caused by circumstances beyond the  
9 control of the applicant or is due to a change  
10 in the neighborhood where the applicant's  
11 establishment is located.

12 And (C) the amendment or  
13 termination will not have an adverse impact on  
14 the neighborhood where the establishment is  
15 located as determined under 25-313 or 25-314."

16 Okay. I just want to double check  
17 something. Okay. Yeah, I thought I said or  
18 at some point and that wasn't correct. I just  
19 wanted to double check the statement. So it's  
20 all these three things, diligent effort to  
21 contact the parties; amendment caused by  
22 circumstances beyond the control of the

1 applicant or it's due to the change of the  
2 neighborhood, that or is right; and then no  
3 adverse impact if it's terminated.

4 Okay. So that's what we will be  
5 focusing on.

6 MEMBER ALBERTI: Madam Chair?

7 CHAIRPERSON MILLER: Yes?

8 MEMBER ALBERTI: Just to be clear,  
9 I just want to make sure everybody  
10 understands.

11 CHAIRPERSON MILLER: Yes.

12 MEMBER ALBERTI: The applicant has  
13 to show each of those, each three of -- each  
14 of those three conditions. And that's what we  
15 are looking for the applicant to show. You  
16 have to show that you made contact. We want  
17 you to show that either it's circumstances  
18 beyond your control or there is a change in  
19 the neighborhood and that there is no adverse  
20 impact. You got that? All right.

21 CHAIRPERSON MILLER: It's 25-446.  
22 Okay. So we are all on the same page. Okay.

1 MR. JAMES: Madam Chair?

2 CHAIRPERSON MILLER: Yes?

3 MR. JAMES: Would you like to  
4 offer the KCA a chance to make our opening  
5 statement?

6 CHAIRPERSON MILLER: Let me double  
7 check this. Okay. So we thought that there  
8 was going to be one leader for the  
9 protestants. But if that did not cover your  
10 case, then --

11 MR. JAMES: Not to say that the  
12 grounds, you know, the concerns are not  
13 similar, but we have our own arguments to be  
14 made when -- you know, and our own questions  
15 to ask. So I don't know if the Board wants to  
16 view it as separated.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: But if we are  
19 definitely not, you know, the ANC.

20 CHAIRPERSON MILLER: That's right.  
21 You are not exactly --

22 MR. JAMES: We would still be here

1 and vice versa I believe.

2 CHAIRPERSON MILLER: Okay. If you  
3 want to make a short --

4 MR. JAMES: It's just the shortest  
5 thing in the world.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: We think that the  
8 evidence and the documentation that we will  
9 submit and we -- will convince the Board that  
10 the termination should not be granted, because  
11 the applicant did not comply with 25-446(d).

12 CHAIRPERSON MILLER: Okay.

13 MR. JAMES: And that granting such  
14 an application would result in the disturbing  
15 the peace, order and quiet of the immediate  
16 neighborhood.

17 CHAIRPERSON MILLER: Okay. So  
18 basically, the protestants time is all  
19 included together in that one and a half. And  
20 for the most part, the Board prefers that if  
21 one person can be the one doing the cross-  
22 examination and such, but if at any time you

1 feel that your interest hasn't been protected  
2 by, you know, the ANC's questions --

3 MR. JAMES: We will figure it out.

4 CHAIRPERSON MILLER: Okay. All  
5 right. All right. Now, we are ready for our  
6 Investigator. I want to swear you in as well.

7 INVESTIGATOR PERU: Sure.

8 Whereupon,

9 INVESTIGATOR JASON PERU  
10 was called as a witness by ABRA, and having  
11 been first duly sworn, assumed the witness  
12 stand and was examined and testified as  
13 follows:

14 CHAIRPERSON MILLER: Thank you.  
15 So if you could start by introducing yourself  
16 and then I guess you will give us the  
17 highlights of your investigation report.

18 INVESTIGATOR PERU: Sure, yes.

19 CHAIRPERSON MILLER: Okay.

20 DIRECT EXAMINATION

21 INVESTIGATOR PERU: My name is  
22 Jason Peru and I'm an Investigator with the

1 Alcoholic Beverage Regulation Administration.

2 So I was assigned the protest to  
3 terminate the settlement agreement of Habana  
4 Village, which is located at 1834 Columbia  
5 Road. It's under Multi-Management, Inc. t/a  
6 Habana Village.

7 The request to be -- to terminate  
8 the Habana Village settlement agreement is  
9 being protested by Advisory Neighborhood  
10 Commission, ANC-1, and Kalorama Citizens  
11 Association, KCA, represented by President  
12 Denis James.

13 ABRA received a letter from ANC-1C  
14 dated June 14, 2013, it's Exhibit 2, and the  
15 letter states "The objection to terminate  
16 Habana Village settlement agreement is based  
17 on the fact that the establishment did not  
18 satisfy the statutory obligations in DC  
19 Official Code 25-446(b)(4)(A) to make a  
20 diligent effort to locate the other parties to  
21 the agreement or make a good faith effort to  
22 negotiate a mutually accepted amendment to the

1 agreement."

2 The other letter was received from  
3 the KCA dated July 1st, Exhibit 3, and that  
4 letter states that they are protesting the  
5 termination of Habana Village settlement  
6 agreement because they feel that terminating  
7 the agreement will lead to the disturbance of  
8 the peace, order and quiet of the surrounding  
9 neighborhood.

10 I was able to speak to the - one  
11 of the owners of Habana Village on October 5,  
12 2013, a Mr. Pedro Lujan, Jr. Mr. Lujan stated  
13 that he submitted a request to terminate the  
14 settlement agreement because he felt that the  
15 establishment had proven that they are  
16 following all ABC Rules and Regulations.

17 Mr. Lujan also stated that he has  
18 been over -- in business for over 15 years and  
19 has a minimal history with ABRA.

20 Mr. Lujan also stated to me that  
21 his primary concerns about the settlement  
22 agreement were the restrictions on the dates

1 and times of the establishment's operations.  
2 He stated that he wanted to be able to have  
3 the option of extended hours for special  
4 events and holidays, specifically he mentioned  
5 New Year's Eve.

6 Mr. Lujan also stated that he  
7 wanted the occupancy level to be raised from  
8 130 to 190, which is the actual number on his  
9 C of O.

10 Mr. Lujan stated that he was  
11 currently in negotiations with the ANC  
12 regarding these changes to his settlement  
13 agreement. He stated that he presented the  
14 same terms to the KCA in July of 2013, but  
15 President Denis James refused to sit down and  
16 negotiate.

17 Mr. Lujan stated that he hoped to  
18 reach a settlement agreement with all involved  
19 parties before today's date.

20 Habana Village, when it comes to  
21 zoning, it's located in the C-2-B Zone.  
22 According to the regulations, it's described

1 as a medium-density development, including  
2 office, retail, housing and mixed-use.

3 Habana Village has some nearby  
4 establishments. According to the District of  
5 Columbia GIS System, there are 58 licensed ABC  
6 establishments operating within 1200 feet of  
7 Habana Village. Out of the 58 establishments,  
8 38 have settlement agreements.

9 There are also no schools, public  
10 libraries or daycare centers located within  
11 400 feet of the establishment.

12 Habana Village is located in the  
13 Adams Morgan District with once again 58  
14 licensed establishments, 39 are restaurants,  
15 13 are taverns, 4 are B stores and 2 are A  
16 stores.

17 Habana Village also has  
18 entertainment, which is culture-based. They  
19 offer art, music and dance that reflects the  
20 Cuban culture. The DJs play a mix of salsa,  
21 merengue, washita and timba music. They also  
22 have a five-piece band that plays Latin-style

1 music on Saturday nights.

2 Habana Village's cuisine is Cuban-  
3 influenced, appetizers, sandwiches, salads,  
4 meat entries, chicken entries, seafood entries  
5 and deserts.

6 In reference to the concern of the  
7 peace, order and quiet, ABRA Investigators  
8 monitored this location from September 18th  
9 through October 7th and at no point did ABRA  
10 Investigators observe loitering, hearing  
11 excessive noise or observe any other ABRA  
12 violations.

13 The only occasion when music was  
14 heard at minimal level from the establishment  
15 was when the front door was open to allow  
16 patrons to exit and enter.

17 I also received a report from the  
18 MPD Crime Analysis Unit and in regards to  
19 calls for service to 1834 Columbia Road, there  
20 were three calls for service between July 27,  
21 2012 and July 26, 2013. The calls consist of  
22 two lost property and one theft complaint.

1 I have also attached the -- well,  
2 there is a history attached to the bottom of  
3 that, of the Habana Village. The history, as  
4 you can see, from 2006 until 2012 that they  
5 have. That will be all.

6 CHAIRPERSON MILLER: Okay. Thank  
7 you. We are going to start with Board  
8 questions. Any Board questions? Mr. Alberti?

9 MEMBER ALBERTI: Investigator  
10 Peru, thank you for your report.

11 I'm not sure if I'm not sure if  
12 you're going to be able to answer this  
13 question. How long have you been employed by  
14 ABRA?

15 INVESTIGATOR PERU: Seven months.

16 MEMBER ALBERTI: Okay. That's --  
17 you all understand why I'm asking you that.  
18 I'm looking at this list of nearby  
19 establishments and it's pretty much all the  
20 establishments in Adams Morgan.

21 INVESTIGATOR PERU: Yes, sir.

22 MEMBER ALBERTI: So are you aware

1 of any of these establishments taking  
2 advantage of the holiday hours this year? If  
3 not, that's fine.

4 INVESTIGATOR PERU: I'm --

5 MEMBER ALBERTI: You weren't here  
6 from -- I don't know if you were here on New  
7 Year's, but the holiday hours, extended  
8 holiday hours?

9 INVESTIGATOR PERU: I can speak on  
10 personally I have been asked by establishments  
11 regarding holiday hours and if they could  
12 apply for those holiday hours. I don't know  
13 if any establishments specifically that has it  
14 currently.

15 MEMBER ALBERTI: In Adams Morgan?

16 INVESTIGATOR PERU: Yeah, in Adams  
17 Morgan.

18 MEMBER ALBERTI: Okay. Fine.  
19 That's fair enough. Okay. Do you know if any  
20 of the nearby establishments on Columbia Road  
21 are larger than say 130 people occupancy? I  
22 don't know if you have your list there or not.

1                   INVESTIGATOR PERU: Yeah. I don't  
2 have a list of the occupancies of those  
3 establishments.

4                   MEMBER ALBERTI: Do your best  
5 guess.

6                   INVESTIGATOR PERU: Yes. I'm  
7 pretty sure a couple of restaurants at the  
8 corner may exceed that --

9                   MEMBER ALBERTI: Do you know which  
10 ones they are?

11                   INVESTIGATOR PERU: -- number.

12                   MEMBER ALBERTI: Is Perry's? Do  
13 you know how large Perry's is?

14                   INVESTIGATOR PERU: Yeah, that is  
15 the first place that comes to mind is Perry's.  
16 And I'm not even sure what the occupancy level  
17 is of Cashion's Place, which has --

18                   MEMBER ALBERTI: Chief Ike's Mambo  
19 Room, are you familiar with that?

20                   INVESTIGATOR PERU: Which place?  
21 I'm sorry.

22                   MEMBER ALBERTI: Chief Ike's Mambo

1 Room.

2 INVESTIGATOR PERU: I have not  
3 been inside of that establishment, no.

4 MEMBER ALBERTI: Okay. Okay.  
5 Thank you very much. I have no further  
6 questions.

7 CHAIRPERSON MILLER: Mr.  
8 Silverstein?

9 MEMBER SILVERSTEIN: Investigator  
10 Peru, thank you for the report. It's more  
11 than thorough. The question may be unfair  
12 because of your amount of time here.

13 INVESTIGATOR PERU: Okay.

14 MEMBER SILVERSTEIN: Is there  
15 anything about this establishment that you  
16 have seen that is a red flag or that you would  
17 tell us that we should be very careful in  
18 proceeding here?

19 INVESTIGATOR PERU: Well, I can  
20 speak on the time that I have been here at the  
21 Board and I have not responded to or been sent  
22 on any complaints at Habana Village. Also, I

1 was assigned a previous protest of the renewal  
2 application. So during that time, I did spend  
3 more time doing observations at the  
4 establishment. So I have -- so prior to this,  
5 I have spent time doing observations and  
6 monitoring the establishment in the evenings  
7 and daytime hours. And at no time did I see  
8 any violations of ABRA Rules and Regulations.

9 MEMBER SILVERSTEIN: This is a  
10 three-prong test that we have to go through to  
11 determine whether or not this establishment  
12 should have its settlement agreement/voluntary  
13 agreement either terminated or amended.

14 And what the agreement is, it's a  
15 series of restrictions that are placed on the  
16 establishment. You say that it is working  
17 well right now. Is there anything that stands  
18 out as a red flag to you that hey, it's  
19 working well because of this restriction, that  
20 restriction, the other restriction, keeping in  
21 line with other establishments? Is there  
22 anything there that you can see?

1                   INVESTIGATOR PERU:  There -- well,  
2           I went over the settlement agreement several  
3           times and I think the establishment is  
4           operating the way it is not because of the  
5           agreement, but because that's the way they  
6           operate.  I believe they are following ABRA  
7           Rules and Regulations just because that's the  
8           way they operate.

9                   The agreement really --  
10          restrictions, we talked about hours and  
11          whatnot is what affects them directly.  When  
12          it comes to ABRA violations, I do not believe  
13          the agreement is holding them or stopping them  
14          from, you know, having any kind of violations.

15                   MEMBER SILVERSTEIN:  Thank you.  I  
16          have no further questions.

17                   CHAIRPERSON MILLER:  Others?  I  
18          just have a couple.

19                   INVESTIGATOR PERU:  Sure.

20                   CHAIRPERSON MILLER:  Are there  
21          residences nearby this establishment?

22                   INVESTIGATOR PERU:  Yes, yes,

1       there are.

2                   CHAIRPERSON MILLER:   Okay.   And  
3       how near are they?

4                   INVESTIGATOR PERU:   There is  
5       abutting.   There is a building right next door  
6       that is attached to the establishment.

7                   CHAIRPERSON MILLER:   Okay.   Did  
8       you talk to any abutting residents?

9                   INVESTIGATOR PERU:   No.   I had no  
10      information from any abutting residents at the  
11      time.

12                  CHAIRPERSON MILLER:   Okay.   So are  
13      you familiar with the restrictions that the  
14      applicant wants to remove from this settlement  
15      agreement?

16                  INVESTIGATOR PERU:   Yes.   He  
17      mentioned vaguely his -- the hours.

18                  CHAIRPERSON MILLER:   Um-hum.

19                  INVESTIGATOR PERU:   And being able  
20      to have the holiday permit and, of course,  
21      increasing his occupancy to the actual number  
22      listed on the C of O.

1 CHAIRPERSON MILLER: Okay. And do  
2 you have any opinion on those restrictions,  
3 whether it would be adverse to the  
4 neighborhood if they were removed?

5 INVESTIGATOR PERU: I think those  
6 restrictions are basically the same guidelines  
7 or should I say other establishments in Adams  
8 Morgan have those hours that he is requesting  
9 or have the ability to have other events. So  
10 I don't think those -- I don't think removing  
11 those are going to change.

12 CHAIRPERSON MILLER: Okay. So  
13 what they are asking for is what other  
14 establishments in Adams --

15 INVESTIGATOR PERU: Yes.

16 CHAIRPERSON MILLER: -- Morgan  
17 have. What some others have.

18 INVESTIGATOR PERU: Correct.  
19 That's what I believe, yes.

20 CHAIRPERSON MILLER: Okay. All  
21 right. Any other Board questions? All right.  
22 So any questions by the applicant? Any

1 questions by the protestants?

2 MR. GUTHRIE: Yeah, I have a  
3 couple.

4 CHAIRPERSON MILLER: Okay.

5 CROSS-EXAMINATION

6 MR. GUTHRIE: You indicated that  
7 the ANC had protested based on failure to  
8 comply with the regulations regarding filing  
9 of the petition to amend or terminate. You  
10 didn't mention that the ANC also issued a  
11 formal protest to the amend to terminate that  
12 included peace, order and quiet in the  
13 neighborhood. Were you not given that?

14 INVESTIGATOR PERU: No, sir. I  
15 have the letter here, Exhibit 2, from the ANC  
16 and that's all I have for information. And in  
17 that letter, nothing is mentioned in this  
18 letter that I have regarding --

19 MR. GUTHRIE: This is the letter  
20 from him?

21 INVESTIGATOR PERU: From ANC  
22 Commission 1C.

1 MR. GUTHRIE: No, no. Who is the  
2 signature?

3 INVESTIGATOR PERU: Oh, I'm sorry,  
4 Ted Guthrie.

5 MR. GUTHRIE: That would be me.

6 INVESTIGATOR PERU: Yes. And in  
7 this letter yeah, you -- do you have a copy  
8 over there? You would like to see the letter?

9 MR. GUTHRIE: I would like to see  
10 the letter if that's possible.

11 INVESTIGATOR PERU: Here you go,  
12 sir.

13 CHAIRPERSON MILLER: This is  
14 Exhibit 2 to the investigation report,  
15 correct?

16 INVESTIGATOR PERU: Yes, yes.

17 CHAIRPERSON MILLER: Okay. Both  
18 parties have a copy of the investigation  
19 report, correct? Okay.

20 MR. GUTHRIE: Sir, this refers to  
21 a resolution that is attached. You did not  
22 get that resolution?

1                   INVESTIGATOR PERU: Oh, no, I'm  
2                   sorry, sir, I don't have the attached.  
3                   Correct, yes. This was all I was given.

4                   MR. GUTHRIE: You mentioned that  
5                   you have been employed by ABRA for seven  
6                   months.

7                   INVESTIGATOR PERU: Yes, sir.

8                   MR. GUTHRIE: And you also stated  
9                   that others in the Adams Morgan area have the  
10                  extended hours that the applicant indicated to  
11                  you that he was interested in. How many of  
12                  those?

13                  INVESTIGATOR PERU: I cannot tell  
14                  you. I cannot tell you.

15                  MR. GUTHRIE: Some of them do, but  
16                  some of them don't?

17                  INVESTIGATOR PERU: Correct.

18                  MR. GUTHRIE: Is that true?

19                  INVESTIGATOR PERU: Correct. Yes,  
20                  that's true.

21                  MR. GUTHRIE: Can you name any in  
22                  particular that do have the later hours?

1                   INVESTIGATOR PERU: Off the top of  
2 my head, I could not. I'm not going to guess  
3 things. I work nights every other week, so  
4 I'm out there.

5                   MR. GUTHRIE: Okay. In the course  
6 of your investigation, did you contact anyone  
7 with the ANC or anyone with KCA to get their  
8 input on the Petition to Terminate?

9                   INVESTIGATOR PERU: No. I was not  
10 able to contact anybody from ANC. As you can  
11 see, the copy that I was given had no contact  
12 information on it. I did contact KCA. I left  
13 -- I called and I also sent an email to KCA  
14 and did not get a response back from them.

15                  MR. GUTHRIE: And the information  
16 that you included about the negotiations that  
17 have gone on was solely based upon information  
18 that you received from Mr. Lujan?

19                  INVESTIGATOR PERU: Yes, sir.

20                  MR. GUTHRIE: You have no personal  
21 knowledge of any of the issues that went on?

22                  INVESTIGATOR PERU: No, sir.

1 MR. GUTHRIE: No other questions.

2 CHAIRPERSON MILLER: Okay. Okay.

3 All right.

4 MR. JAMES: In your work as an  
5 Investigator, do you regularly enforce the  
6 voluntary agreements that are in place in  
7 Adams Morgan?

8 INVESTIGATOR PERU: Yes, sir.

9 MR. JAMES: The settlement  
10 agreements. So as you have done that over the  
11 seven months that you have been with ABRA,  
12 have you noticed any settlement agreements  
13 that allow the so-called holiday hours  
14 package, which would at least have the later  
15 hours?

16 INVESTIGATOR PERU: I haven't  
17 personally come across that, no.

18 MR. JAMES: Are you aware that all  
19 of the voluntary agreements, the settlement  
20 agreements that are in force now do have the  
21 recitation to allow that?

22 INVESTIGATOR PERU: Nope, I'm not

1 aware of it.

2 MR. JAMES: You mentioned that  
3 there is a residence building right next door  
4 to Habana Village.

5 INVESTIGATOR PERU: Yes, sir.

6 MR. JAMES: About what size would  
7 you say that is? How many stories? How many  
8 units do you think it might have?

9 INVESTIGATOR PERU: It's several  
10 stories. It's higher than Habana Village is,  
11 so four or five maybe is a guess.

12 MR. JAMES: And is it wider than  
13 Habana Village?

14 INVESTIGATOR PERU: It's a bigger  
15 building, yes, yes.

16 MR. JAMES: And to the right of  
17 that building, are there other resident  
18 buildings?

19 INVESTIGATOR PERU: Yes. There is  
20 a residential -- other residential dwellings  
21 in that neighborhood, yes.

22 MR. JAMES: And across the street

1 from Habana Village is there residential?

2 INVESTIGATOR PERU: A combination  
3 of both of restaurants and residents.

4 MR. JAMES: Are you familiar with  
5 1841 Columbia Road?

6 INVESTIGATOR PERU: What's the  
7 establishment?

8 MR. JAMES: There are some  
9 establishments within it, but are you aware  
10 that it's an eight-story apartment building?

11 INVESTIGATOR PERU: I know the  
12 area you are referring to, yes, yes.

13 CHAIRPERSON MILLER: What did you  
14 say it was? It's a what building?

15 MR. JAMES: An eight-story  
16 apartment building.

17 CHAIRPERSON MILLER: Oh, eight-  
18 story. Okay. Thank you.

19 MR. JAMES: I think that's all the  
20 questions I have.

21 CHAIRPERSON MILLER: Okay. Thank  
22 you very much.

1 (Whereupon, witness was excused.)

2 CHAIRPERSON MILLER: So now, we  
3 are ready for the applicant's case.

4 MS. LUJAN: Our first witness is  
5 the applicant.

6 CHAIRPERSON MILLER: Okay. I need  
7 to swear you in.

8 Whereupon,

9 PEDRO LUJAN, JR.  
10 was called as a witness by the licensee, and  
11 having been first duly sworn, assumed the  
12 witness stand and was examined and testified  
13 as follows:

14 CHAIRPERSON MILLER: Okay. Thank  
15 you.

16 DIRECT EXAMINATION

17 MS. LUJAN: Can you, please, tell  
18 the Board a little bit about Habana Village?

19 CHAIRPERSON MILLER: Okay. Let me  
20 stop you.

21 MS. LUJAN: Yes, sorry.

22 CHAIRPERSON MILLER: Just I know

1 he introduced himself over here, but for the  
2 court reporter, I think it is probably a good  
3 idea if he introduces himself again as the  
4 witness.

5 MS. LUJAN: Okay.

6 CHAIRPERSON MILLER: Okay.

7 Thanks.

8 MR. LUJAN, JR.: My name is Pedro  
9 Lujan, Jr., one of the owners of Habana  
10 Village.

11 CHAIRPERSON MILLER: Thank you.

12 MS. LUJAN: If you can, please,  
13 tell the Board a little bit about Habana  
14 Village?

15 MR. LUJAN, JR.: Sure. Habana  
16 Village's doors opened up in 1992 on 18th  
17 Street. And in 1996 they moved to their  
18 present location at 1834 Columbia Road. Our  
19 hours and dates of open are Wednesdays and  
20 Thursdays from 6:30 to around 1:00, Fridays  
21 and Saturdays from 6:30 to 3:00 and Sundays  
22 from like 5:00 to around 11:30.

1                   We serve Cuban cuisine. We have  
2 Latin music and we are probably the first  
3 venue to bring in salsa lessons and the  
4 mojito. Our venue also is used for nonprofits  
5 to have fundraisers.

6                   At the beginning of our -- back  
7 in, you know, when we first started there, we  
8 had, approximately, 25 employees. Today we  
9 only have 10, because of the drastic change in  
10 the economy.

11                   MS. LUJAN: Is this your family's  
12 first and only business in the District of  
13 Columbia?

14                   MR. LUJAN, JR.: No. First of  
15 all, my family moved to Adams Morgan in 1970.  
16 I grew up in Adams Morgan. I went to school  
17 in Adams Morgan. I learned to play ping pong  
18 at Kalorama Center. I played little league  
19 baseball for the Ontario Lakers for Mr. Walter  
20 Pierce. This is my village. This is my  
21 community.

22                   Our first family-owned business

1 started in 1978 on 18th Street. It was called  
2 the Scoop Ice Cream Parlor. We served  
3 Griffith Ice Cream, frozen yogurt and fresh  
4 lemonade.

5 And back in 1987, our family  
6 bought Heller's Bakery, which is in Mount  
7 Pleasant.

8 And in 1988, my family bought  
9 Avignon Freres on Columbia Road. We no longer  
10 own any of those businesses today.

11 But today in addition to Habana  
12 Village, my wife owns and operates a daycare  
13 center called Lanier Lullabies in Adams  
14 Morgan.

15 I still live in Adams Morgan with  
16 my wife and my four girls. My father, my two  
17 sisters, my brother-in-law and my niece also  
18 live in Adams Morgan. And between all of us,  
19 we own six properties in Adams Morgan. We are  
20 well-rooted and well-invested in Adams Morgan.

21 MS. LUJAN: Can you explain why  
22 you are requesting termination of the

1 voluntary agreement with ANC and KCA?

2 MR. LUJAN, JR.: We don't need a  
3 voluntary agreement. We have been in business  
4 for 21 years in Adams Morgan. Eight years  
5 without a voluntary agreement, 12 years with  
6 a voluntary agreement. The main reason for  
7 voluntary agreements is to protect neighbors  
8 from peace, order and quiet.

9 Habana Village does not interfere  
10 with our neighbors' peace, order and quiet.  
11 I would like to introduce Exhibit 1.

12 CHAIRPERSON MILLER: Okay.

13 MR. LUJAN, JR.: This is a work  
14 log.

15 (Whereupon, the document was  
16 marked as Applicant Exhibit 1 for  
17 identification.)

18 MR. LUJAN, JR.: Should I wait?

19 CHAIRPERSON MILLER: Wait. Well,  
20 the protestants need to have a copy. It looks  
21 like they are about to get one.

22 MR. LUJAN, JR.: Should we just

1 give them one by one or the whole package?

2 CHAIRPERSON MILLER: It's up to  
3 you, but it might be easier just to give them  
4 the whole packet. Yeah.

5 MR. LUJAN, JR.: Well, this is the  
6 work log that outlines all the noise abatement  
7 work that we have done over the years in our  
8 building, starting from 2003 to the present.

9 Around 25 percent of the work that  
10 has been done was required in my voluntary  
11 agreement. The other 75 percent of work we  
12 have done, we have done in good faith effort  
13 to keep the noise from disturbing the  
14 neighborhoods. And this log we will show you  
15 before and after pictures, the dates when we  
16 did it and it also will give you a summary of  
17 the expenses that we have used, that we have  
18 had to spend in doing.

19 Noise abatement is expensive.  
20 It's a very expensive process. We -- this is  
21 why we have only been able to do it part of  
22 the time over the course of these years. So

1 that's my Exhibit 1.

2 We have a good record. I would  
3 like to introduce Exhibit 2. Exhibit 2 is a  
4 report written by ABRA Investigator Mathieson  
5 in September of 2010.

6 (Whereupon, the document was  
7 marked as Applicant Exhibit 2 for  
8 identification.)

9 MR. LUJAN, JR.: I would just like  
10 to read you a caption of it, which is on page  
11 15 of that exhibit. "ABRA Investigators  
12 monitored Habana Village located at 1834  
13 Columbia Road on 21 separate occasions from  
14 August 13, 2010 through September 11, 2010.  
15 At no point in time did ABRA Investigators  
16 observe loitering, hear excessive noise or  
17 observe any other ABRA violations.

18 On most visits, parking was  
19 available in a very limited to no capacity.  
20 There were many instances where vehicular and  
21 pedestrian traffic in the Columbia Road and in  
22 18th Street areas. However, Investigators did

1 not observe any issues with peace, order or  
2 quiet in relation to Habana Village.

3 The only occasion music was heard  
4 emanating from the establishment was when the  
5 front door opened to allow patrons to exit and  
6 enter."

7 I would also like to introduce  
8 Exhibit 3. Exhibit 3 is a Board order from  
9 the ABC Board.

10 (Whereupon, the document was  
11 marked as Applicant Exhibit 3 for  
12 identification.)

13 MR. LUJAN, JR.: And I would like  
14 to read your caption from that order that the  
15 ABC Board gave in 2010. "The Board concluded  
16 that the applicant is appropriate and will not  
17 have adverse impact on peace, order or quiet.

18 The Board notes that the applicant  
19 at its own expense has taken many steps to  
20 soundproof its property. Moreover the  
21 evidence presented at the hearing did not show  
22 the applicant in any violation of the District

1 of Columbia's noise laws."

2 I would also like to introduce  
3 Exhibit 4, which was Mr. Peru, Jason Peru's,  
4 report.

5 (Whereupon, the document was  
6 marked as Applicant Exhibit 4 for  
7 identification.)

8 MR. LUJAN, JR.: And I just wanted  
9 to read the caption again. "On the effects of  
10 the establishment on peace, order and quiet,  
11 ABRA Investigators monitored Habana Village  
12 located at 1834 Columbia Road, N.W., on 12  
13 separate occasions from September 18, 2013  
14 through October 7, 2013.

15 At no point in time did ABRA  
16 Investigator observe loitering, hear excessive  
17 noise or observe any other ABRA violations.  
18 On most visits parking was available in the  
19 very limited to no capacity. There were many  
20 instances of vehicular and pedestrian traffic  
21 on Columbia Road and 18th Street area.

22 However, Investigators did not

1 observe any issues with peace, order or quiet  
2 in relationship to Habana Village."

3 MS. LUJAN: How does the voluntary  
4 agreement affect your business?

5 MR. LUJAN, JR.: My voluntary  
6 agreement is too restrictive and hurts my  
7 ability to grow.

8 Adams Morgan has been hit hard by  
9 recession. The streetscape work done in Adams  
10 Morgan has pushed customers away and two years  
11 later, they haven't returned. The  
12 competition, other Commercial Districts, have  
13 also hurt Adams Morgan at 14th and U, 11th  
14 Street in Columbia Heights, H Street in  
15 Northeast are just a few.

16 Habana Village has relied on the  
17 regional market on weekends, Maryland and  
18 Virginia. These customers are not coming back  
19 to Adams Morgan. 5 or 10 years ago, Habana  
20 Village was one of the few Latin venues. Now,  
21 we have competition in the suburbs as well.

22 I would like to also give you --

1 introduce Exhibit No. 5, which is the fiscal  
2 policy and a list of issues related to the  
3 Adams Morgan Liquor License Moratorium that  
4 shows the effect on the slow growth or the  
5 Commercial District in Adams Morgan. Exhibit  
6 5.

7 (Whereupon, the document was  
8 marked as Applicant Exhibit 5 for  
9 identification.)

10 MR. GUTHRIE: Ms. Miller?

11 CHAIRPERSON MILLER: Okay.

12 MR. GUTHRIE: I don't understand--

13 CHAIRPERSON MILLER: Wait a  
14 second.

15 MR. GUTHRIE: -- the relevance of  
16 this to the topic of hearing.

17 CHAIRPERSON MILLER: So --

18 MR. GUTHRIE: Perhaps I'm missing  
19 something here.

20 MS. LUJAN: So one, the Board  
21 listed three things that we had to prove. The  
22 second is the need for amendments warranted

1 due to a change in the neighborhood, factors  
2 outside of our control. His testimony today  
3 speaks to that, to the factors of the economy,  
4 the loss of business and how that ties back to  
5 his point of the economic hardship and the  
6 flexibility that Habana Village would like to  
7 grow. That is how we believe this testimony  
8 relates.

9 MR. GUTHRIE: And the --

10 MR. LUJAN, JR.: Also --

11 MR. GUTHRIE: -- test -- I'm not  
12 speaking to the testimony that he is giving,  
13 but I'm speaking to his Exhibit 5. I don't  
14 understand the relevancy of the Exhibit 5,  
15 which seems to be what he is going into at  
16 this point.

17 MS. LUJAN: So Exhibit 5 is a  
18 report by Ed Lazere, DC Fiscal Policy  
19 Institute that talks about the adverse effects  
20 of Adams Morgan and the liquor license and it  
21 speaks to the state of Adams Morgan right now  
22 and the businesses.

1 MR. GUTHRIE: It speaks to the --  
2 whether or not the moratorium for alcohol  
3 licenses in Adams Morgan should or should not  
4 continue. Is that not what it is about?

5 MR. LUJAN, JR.: Can I say  
6 something?

7 CHAIRPERSON MILLER: No, no.

8 MR. LUJAN, JR.: Okay.

9 CHAIRPERSON MILLER: Oh, I don't  
10 think so.

11 MR. JAMES: KCA also objects.

12 CHAIRPERSON MILLER: What?

13 MR. JAMES: This is a Protest  
14 Hearing, not a moratorium hearing.

15 CHAIRPERSON MILLER: Okay. All  
16 right. I think, you know, the threshold is  
17 relevant and as far as --

18 MR. LUJAN, JR.: Very relevant.

19 CHAIRPERSON MILLER: -- I can  
20 tell, it is on point with change in  
21 circumstances in the neighborhood that affect  
22 the need for lift -- for terminating the

1 agreement.

2 MR. JAMES: Well, the moratorium  
3 has been in place for a far longer period of  
4 time.

5 MR. GUTHRIE: Sure.

6 MR. JAMES: You know. So, you  
7 know, if you are going to argue moratorium  
8 issues, then we need to sit down and do that.

9 CHAIRPERSON MILLER: We really  
10 haven't -- they really haven't argued --

11 MS. LUJAN: No.

12 CHAIRPERSON MILLER: -- very much  
13 about the moratorium yet, so it would be  
14 limited to that point. So I think it is  
15 premature to ask me.

16 MR. JAMES: Plus the report was  
17 prepared by the Adams Morgan with partnership  
18 for the purpose of fighting against --

19 MEMBER SILVERSTEIN: Mr. James, we  
20 don't want to be here until midnight. We have  
21 been here since 9:00 a.m.

22 CHAIRPERSON MILLER: Okay.

1                   MEMBER SILVERSTEIN: The Chair has  
2 ruled on this issue.

3                   CHAIRPERSON MILLER: Okay. Let's  
4 move on.

5                   MR. JAMES: Thank you very much.

6                   CHAIRPERSON MILLER: Okay. Let's  
7 move on. So I haven't admitted it yet, but  
8 I'm letting them testify with respect to it.

9                   MR. LUJAN, JR.: I just wanted to  
10 show not the moratorium effects, but I wanted  
11 to show that -- the slow growth in Adams  
12 Morgan.

13                   CHAIRPERSON MILLER: Okay.

14                   MR. LUJAN, JR.: That is the  
15 purpose of this exhibit for me.

16                   CHAIRPERSON MILLER: Okay. Thank  
17 you.

18                   MR. LUJAN, JR.: That's what I was  
19 trying to show.

20                   CHAIRPERSON MILLER: Okay.

21                   MS. LUJAN: How is -- can you go  
22 into more detail about how your voluntary

1 agreement is too restrictive?

2 MR. LUJAN, JR.: My voluntary  
3 agreement limits my seating capacity to 130.  
4 My license allows 190 capacity, seating  
5 capacity. I want to be able to serve 190. My  
6 VA does not allow me to take advantage of the  
7 12 late nights authorized by ABRA. I want to  
8 take advantage of three of those 12 nights:  
9 New Year's Eve and the two days the time  
10 changes, that's what I'm really asking for.

11 Thirdly, parking has been a big  
12 issue in Adams Morgan and it deters our  
13 customers to come to Habana Village and to  
14 Adams Morgan. I have an idea to have  
15 satellite parking and bus my patrons from that  
16 satellite parking to my establishment. That  
17 will be a cost to them. It could be \$15 to  
18 \$20 cost to them.

19 In turn, I would probably have to  
20 make a marketing scheme to offer a free drink  
21 or free appetizer or some type of special. I  
22 don't know exactly what, but I didn't want

1 that language to be looked at like I was  
2 participating in a bar crawl or tour. So I  
3 just wanted that language to be added, because  
4 if -- when I bus people from a satellite  
5 parking to Habana Village, I didn't want that  
6 to be considered a tour or somehow -- so it's  
7 really just some language I wanted to add.

8 I do not want to participate in  
9 bar crawls. I do not. I'm repeating it. I  
10 do not want to participate in bar crawls.

11 Those are my big points.

12 MS. LUJAN: Your voluntary  
13 agreement has 12 other points or has 12  
14 points. What about the other points?

15 MR. LUJAN, JR.: Like I said, the  
16 other points are fine.

17 MS. LUJAN: Why do you want to  
18 terminate the agreement? Why not just amend  
19 it?

20 MR. LUJAN, JR.: I tried to get it  
21 amended, but I was unsuccessful.

22 MS. LUJAN: What do you mean?

1 Talk a little bit more about why you were  
2 unsuccessful.

3 MR. LUJAN, JR.: Denis James who  
4 speaks for KCA on the issues that has -- on  
5 the issues at ABC, on these issues, said he  
6 would not agree. ANC said they would not sign  
7 without KCA. And I know other neighborhood  
8 businesses have had difficulties in trying to  
9 get their VA changed.

10 MS. LUJAN: What efforts did you  
11 make to reach out to KCA in an effort to  
12 discuss an agreement?

13 MR. LUJAN, JR.: I filed a  
14 petition to terminate my VA this year. My  
15 interest is in revising my VA. My interest in  
16 revising my VA goes back several years.

17 In the past, I have talked to  
18 Denis James from KCA about it and former ANC  
19 Commissioners. In the interest of keeping  
20 this brief, I will limit my testimony to 2013,  
21 but this has been on the table from 2004/2006.

22 The renewal of my liquor license

1       came up in 2013 giving me the opportunity to  
2       seek a termination of my voluntary agreement.  
3       I contacted the ANC and the KCA to ask for  
4       their support. KCA protested the renewal of  
5       my liquor license and they also protested the  
6       termination of my voluntary agreement.

7                   ANC just protested the petition of  
8       my -- the termination of my voluntary  
9       agreement.

10                   MS. LUJAN: Can you tell us a  
11       little bit more about KCA's protest of your  
12       liquor license?

13                   MR. LUJAN, JR.: Hum. KCA filed  
14       the position of opposition to renew my liquor  
15       license stating the grounds "The granting of  
16       the request would likely lead to disturbance  
17       of the peace, order and quiet of the  
18       surrounding neighborhood."

19                   MS. LUJAN: What did you think  
20       about that statement?

21                   MR. LUJAN, JR.: I think it was a  
22       bad fake protest. They used a hypothetical to

1 protest a business that has been in good  
2 standing in the community for 21 years.

3 MS. LUJAN: What was involved with  
4 the protest?

5 MR. LUJAN, JR.: Well, the protest  
6 has four parts. It has a Roll Call Hearing,  
7 a mediation meeting, a Status Hearing and a  
8 Protest Hearing. I went to all except the  
9 Protest Hearing. On June 13th, the mediation  
10 meeting was set.

11 I showed up 15 minutes earlier and  
12 KCA never showed up. Mrs. Fletcher, ABRA's  
13 Mediation Specialist, told me I could leave.  
14 She also told me that I could submit a letter  
15 to the Board asking to dismiss this case,  
16 which I did.

17 On July 10th was the Status  
18 Hearing. KCA did attend this meeting or this  
19 hearing. The Board asked Denis why he missed  
20 the mediation meeting and he said he wrote it  
21 down on the wrong date.

22 The Board denied my request to

1 dismiss my case and asked to set up a new  
2 mediation meeting. We were unable to -- we  
3 were able to have a mediation meeting right  
4 after the Status Hearing.

5 At that meeting, Denis expressed  
6 that his protest of my liquor license was  
7 based on the termination of my voluntary  
8 agreement. Well, ABRA has a separate hearing  
9 for that type of protest.

10 I proceeded to offer Denis a new  
11 voluntary agreement. I used my existing  
12 voluntary agreement as my base agreement that  
13 has 12 points. I mentioned I would like to  
14 remove my hours and dates. I would like to  
15 use my legal seating capacity and I would like  
16 to bus customers in from a satellite parking  
17 lot. Those were my three terms.

18 After -- the meeting was adjourned  
19 and we decided that we will get in touch in a  
20 week or so.

21 CHAIRPERSON MILLER: Okay. I just  
22 want to say that we don't want to get into

1 settlement negotiations. I don't know if you  
2 are going there or not.

3 MR. LUJAN, JR.: Oh, okay. I was  
4 just expressing the communication process --

5 CHAIRPERSON MILLER: Okay.

6 MR. LUJAN, JR.: -- of what had  
7 happened. So yeah, so, you know --

8 MS. LUJAN: So what happened at  
9 the end? What happened a week before that  
10 hearing that was set?

11 MR. LUJAN, JR.: Well, okay. On  
12 September 3rd, which was a week before the  
13 Protest Hearing, I submitted my Protest  
14 Information Form, PIF, which is mandatory. So  
15 I delivered it to ABRA's desk. Approximately  
16 three hours later, I received an email from --  
17 that stated that KCA withdrew their protest.

18 MS. LUJAN: What did you think  
19 about his decision to withdraw?

20 MR. LUJAN, JR.: I'm sorry, what  
21 was your question?

22 MS. LUJAN: What did you think

1 about KCA's decision to withdraw?

2 MR. LUJAN, JR.: I think his  
3 action was a furious protest and was  
4 disrespectful. This had caused me many hours  
5 and if I hired an attorney, it would have cost  
6 me between \$6,000 to \$8,000.

7 MS. LUJAN: Why are you unwilling  
8 to sign a voluntary agreement with KCA now?

9 MR. LUJAN, JR.: I support civic  
10 organizations like KCA. I want their members  
11 to be my customers. My father is one of the  
12 founders of the old Adams Morgan organization  
13 called AMA, the precursor of the ANC.

14 I just think that KCA and it's  
15 leadership of the KCA have unnecessarily  
16 polarized the community. They have bullied  
17 and harassed responsible businesses like  
18 Habana Village. And I wanted to be a partner  
19 with KCA and they clearly demonstrated that  
20 they do not want to be my partner.

21 MS. LUJAN: What about the ANC?  
22 Were you willing to sign a voluntary agreement

1 with them?

2 MR. LUJAN, JR.: Yes, I was.

3 MS. LUJAN: Why?

4 MR. LUJAN, JR.: I believe ANC is  
5 more representative of the entire  
6 neighborhood, including the people in KCA. In  
7 addition, the ANC Commissioners are elected by  
8 the community.

9 MS. LUJAN: Did you reach out to  
10 the ANC?

11 MR. LUJAN, JR.: Yes, I did. On  
12 April 11th I sent emails to ANC and KCA asking  
13 for their support in my termination of my  
14 voluntary agreement.

15 MS. LUJAN: And did you hear back  
16 from them?

17 MR. LUJAN, JR.: Yes. A month or  
18 so later, I received a phone call from  
19 Commissioner Guthrie. He asked me what my  
20 terms were. I gave him my three points. And  
21 he said he couldn't talk on behalf of the ANC,  
22 but he believed that that wouldn't fly.

1 MS. LUJAN: Then what did you do?

2 MR. LUJAN, JR.: At the -- well,  
3 now it is towards the end of July. I end up  
4 calling my ANC rep, Gabriela Mossi. And in  
5 that phone -- she prevents -- she represents  
6 me because I live on Lanier Place.

7 I expressed my frustrations in  
8 dealing with KCA and the lack of  
9 communications with the ANC Commission. So we  
10 set a meeting on August 3rd at my house on  
11 Lanier Place. At this meeting, I told her  
12 that KCA rejected my proposal for a new  
13 voluntary agreement.

14 And I would like to extend that  
15 same proposal to ANC. She said the proposal  
16 seemed fair and that she will talk to her  
17 colleagues on the ANC ABC Committee. I also  
18 stressed the fact that this proposal was for  
19 ANC and ANC only. KCA rejected this proposal.  
20 I didn't want them in any meetings, because it  
21 would last four to six hours.

22 The following week, Commissioner

1 Mossi called me back and asked me for that in  
2 writing. So on August 16th I drew up a letter  
3 stating these same three points and stating  
4 that this proposal was only for ANC.

5 MS. LUJAN: This is Exhibit 6.

6 MR. LUJAN, JR.: Which is Exhibit  
7 6.

8 (Whereupon, the document was  
9 marked as Applicant Exhibit 6 for  
10 identification.)

11 CHAIRPERSON MILLER: Okay.

12 MR. LUJAN, JR.: So then that was  
13 on the 16th. On August 20th, I went to  
14 mediation with Mrs. Fletcher, ANC and KCA. I  
15 told Mrs. Fletcher I made the same proposal to  
16 KCA, that KCA rejected. And I told her that  
17 I gave it -- I sent the same proposal to ANC.  
18 I asked Ms. Fletcher, at that time, if there  
19 is any special procedure that I needed to do  
20 when I offered just one organization a  
21 voluntary agreement and not another.

22 Denis James jumped in by answering

1 my proposal was illegal. I told Denis James  
2 I was asking Mrs. Fletcher and I would like  
3 her to respond. Mrs. Fletcher said that my  
4 petition to terminate my VA was already  
5 eliminating ANC and KCA. So she continued to  
6 say that I could have an agreement with who --  
7 whatever organization I wanted to. It still  
8 needed to be approved by the Board.

9 So then on September 11th, I  
10 attended a Status Hearing with ANC and KCA.  
11 I told the Board, at that time, that I gave a  
12 proposal, a new proposal, to ANC and to ANC  
13 only. The Board asked Commissioner Hart, at  
14 that time, if there was any decision.  
15 Commissioner Hart said no, they hadn't had any  
16 decision on my agreement.

17 After the hearing, I approached  
18 Commissioner Hart outside the hearing room and  
19 I expressed my concern about time and the lack  
20 of communication from the ANC about my  
21 proposal. I also told him that I would be  
22 leaving town early next week and I won't be

1 back until September 28th.

2 He told me, at the time, that that  
3 would be fine, we had time, and just to shoot  
4 him an email so we could schedule a meeting.  
5 I thought this meeting needed to be a public  
6 meeting, so I was a little concerned. I said  
7 Commissioner Hart, does this have to be a  
8 public meeting and he said no. It could be a  
9 private meeting just with the commissioners  
10 and yourself.

11 So I said okay. So on October 3rd,  
12 we had that meeting at Habana Village.  
13 Commissioners Guthrie, Hart and Mossi were  
14 attending, so was my father and myself. The  
15 beginning of that meeting went well. We  
16 negotiated the three points and came with an  
17 agreement.

18 All the commissioners stated how  
19 fast and how painless it took. At this time,  
20 I stated that this proposal was for ANC and  
21 ANC only, not KCA. Commissioner Hart  
22 responded by saying that the ANC cannot

1 eliminate KCA from the agreement. I was taken  
2 back by this comment, but I responded to the  
3 ANC that ANC is not eliminating KCA from this  
4 agreement.

5 CHAIRPERSON MILLER: Okay. Can I  
6 -- I just want to interject --

7 MS. LUJAN: Okay.

8 CHAIRPERSON MILLER: -- again,  
9 because I am just not sure we are going down  
10 the right road. I don't know whether you are  
11 trying to show that they --

12 MS. LUJAN: So, yes.

13 CHAIRPERSON MILLER: -- negotiated  
14 in good faith or what, but we don't want to  
15 hear like the details of settlement --

16 MR. LUJAN, JR.: Okay.

17 MS. LUJAN: Okay.

18 MR. LUJAN, JR.: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MR. LUJAN, JR.: I was trying to  
21 negotiate in good faith.

22 CHAIRPERSON MILLER: Okay.

1 MR. LUJAN, JR.: And what happened  
2 was that we were just surprised that KCA  
3 wouldn't go forth with the terms that were  
4 already set without KCA.

5 CHAIRPERSON MILLER: Right.

6 MS. LUJAN: So, yes, I think this  
7 is to demonstrate the good faith effort and  
8 that the -- in the end the real buck was that  
9 ANC wasn't willing to move forward without  
10 KCA. But you have Exhibit 7 as well which  
11 also communicates sort of the back and forth  
12 and the efforts on behalf of Habana Village.

13 (Whereupon, the document was  
14 marked as Applicant Exhibit 7 for  
15 identification.)

16 MS. LUJAN: It also, going back to  
17 Exhibit 6 from August 16th, houses the very  
18 beginning. We have communicated the original  
19 terms of that agreement.

20 So I'm going to switch over to the  
21 questions and get back to sort of referring to  
22 the first couple points, the need for the

1 amendment.

2 So again, can you talk about why  
3 you believe this -- you need this termination  
4 and what plans you have for Habana Village?

5 MR. LUJAN, JR.: My priority is  
6 increased revenues. By ending my voluntary  
7 agreement, this will help me do so. There are  
8 other things I need to do. For example, I  
9 need to reach out to my neighbors and have  
10 them -- to more neighbors and have them as  
11 customers.

12 I also have plans to revise the  
13 menu. We also have decided to see if we can  
14 sell. No serious offers have occurred. It is  
15 hard to sell property in Adams Morgan. I  
16 cannot sit around and wait to sell nor can I  
17 sit around waiting for the economy to improve.  
18 So we are continuing to try to grow our  
19 business.

20 MS. LUJAN: Why do you believe  
21 ABRA should grant your petition?

22 MR. LUJAN, JR.: We do not need a

1 voluntary agreement to operate responsibly.  
2 We have demonstrated responsibility. We do  
3 not interfere with our neighbors' peace, order  
4 and quiet. And I say again that the economy  
5 is bad, business is down and I need to grow my  
6 business. And the VA limits the ability to do  
7 that.

8 Habana Village has made good faith  
9 effort to deal with KCA and ANC. And in my  
10 view, they have not reciprocated.

11 MS. LUJAN: Do you believe that  
12 terminating your agreement will have an  
13 adverse impact on the community?

14 MR. LUJAN, JR.: No. I do not  
15 believe so. We have kept our business model  
16 for 21 years pretty much the same. But the  
17 needed change is we need to reach out to our  
18 local community. We need to reach out to the  
19 community where KCA is. We need to adapt to  
20 them.

21 But our model is the same. We are  
22 a Latin venue. And we, you know, have tap

1 art, we have music, we have, you know, Cuban  
2 cuisine. Habana Village is not a trend. It's  
3 a cultural experience.

4 MS. LUJAN: And you don't believe  
5 any of the three items that you listed below  
6 would have an adverse impact?

7 MR. LUJAN, JR.: No. I do not  
8 believe they would have an adverse effect.

9 MS. LUJAN: And then there is one  
10 last question and it's actually I want to  
11 refer to Exhibit 8, which is the letter of  
12 community support for Habana Village.

13 (Whereupon, the document was  
14 marked as Applicant Exhibit 8 for  
15 identification.)

16 MS. LUJAN: And this is -- it just  
17 demonstrates again the support of the  
18 neighboring community for the record. We  
19 don't have any other questions.

20 CHAIRPERSON MILLER: I'm sorry,  
21 what? Exhibit 8 is the?

22 MS. LUJAN: Letter of Support for

1 Habana Village.

2 MR. LUJAN, JR.: Signed by --

3 MS. LUJAN: In the Adams Morgan  
4 community.

5 MR. LUJAN, JR.: -- neighbors,  
6 Adams Morgan neighbors.

7 CHAIRPERSON MILLER: So can you  
8 tell us did you get these signatures  
9 personally or how were these signatures  
10 obtained?

11 MR. LUJAN, JR.: By Katie Davis.

12 CHAIRPERSON MILLER: Katie Davis?

13 MR. LUJAN, JR.: Who has lived in  
14 the community, I believe, since 1962.

15 CHAIRPERSON MILLER: Um-hum.

16 MS. LUJAN: She is our --

17 MR. LUJAN, JR.: She is very  
18 active in the -- has been very, very active in  
19 the community.

20 MS. LUJAN: She is our -- one of  
21 our witnesses. She is the witness that we  
22 added.

1 CHAIRPERSON MILLER: Okay. Right.

2 MS. LUJAN: The other witness had  
3 to leave, so we weren't going to have him.

4 CHAIRPERSON MILLER: Okay. And is  
5 it -- it looks like -- was this taken October  
6 14th?

7 MS. LUJAN: Yes, this was just  
8 done.

9 MR. LUJAN, JR.: This weekend.

10 MS. LUJAN: Yes.

11 CHAIRPERSON MILLER: Okay.

12 MR. LUJAN, JR.: Just this  
13 weekend.

14 CHAIRPERSON MILLER: All right.

15 MS. LUJAN: We don't have any more  
16 questions.

17 CHAIRPERSON MILLER: Okay. Let's  
18 do cross. Any cross?

19 MR. GUTHRIE: Thank you.

20 MEMBER SILVERSTEIN: Madam Chair,  
21 just briefly --

22 CHAIRPERSON MILLER: Oh, thank

1 you.

2 MEMBER SILVERSTEIN: -- the  
3 applicant has used up 29 minutes and the  
4 protestants have used up three.

5 CHAIRPERSON MILLER: Okay.

6 CROSS-EXAMINATION

7 MR. GUTHRIE: Mr. Lujan, your  
8 premises are not located on 18th Street,  
9 correct?

10 MR. LUJAN, JR.: Excuse me?

11 MR. GUTHRIE: Your premises are on  
12 Columbia Road, not 18th Street, correct?

13 MR. LUJAN, JR.: 1834 Columbia  
14 Road.

15 MR. GUTHRIE: Right. How many  
16 seats do you currently have set up in the  
17 restaurant?

18 MR. LUJAN, JR.: 130.

19 MR. GUTHRIE: And in the course of  
20 your discussion about negotiations, I'm  
21 mindful that you don't want to talk about the  
22 specific -- the Board doesn't want us to talk

1 about specifics, but didn't there come a time  
2 during the negotiations that you represented  
3 to the ANC that we had an agreement?

4 MR. LUJAN, JR.: In my testimony,  
5 I wanted to talk more about that, but I cut  
6 it, I reduced that and that would -- covers  
7 his question. So I would really rather --

8 MS. LUJAN: Just answer the  
9 question.

10 MR. LUJAN, JR.: -- you know, I  
11 came -- I had an agreement with KCA on my  
12 three points. The fourth point --

13 MS. LUJAN: That was KCA.

14 MR. LUJAN, JR.: I'm sorry, ANC.  
15 But the fourth point, which was to not allow  
16 KCA in this agreement was, to me, brought up  
17 by ANC and I couldn't believe they used that  
18 as a deal breaker for this agreement.

19 MR. GUTHRIE: So you are saying  
20 that the ANC refused to go forward with the  
21 agreement because you would not also allow KCA  
22 to sign? That was your understanding of the

1 meeting?

2 MR. LUJAN, JR.: I understood that  
3 ANC -- actually, Mr. Guthrie, you -- or,  
4 Commissioner Guthrie, you said something to  
5 the fact that there were -- they needed to  
6 have a vote. And when you said that they  
7 needed to have a vote, that there wasn't  
8 enough time to have a vote because of ANC  
9 Bylaws.

10 I told you, at that time, that I  
11 have had the proposal on your table since  
12 August 16th. I don't know why you agree to  
13 deal or to negotiate with me and then use the  
14 fact that you didn't have enough time to vote.  
15 And when you said that we were coming to a  
16 vote, you know, at that -- that was -- at that  
17 point in time, the deal was open still. It  
18 was still open.

19 CHAIRPERSON MILLER: Okay. Let me  
20 just ask, could you enlighten me as to which  
21 prong this goes to because that's what we are  
22 going to be dealing with A, B or C.

1 MR. GUTHRIE: Well, I think it  
2 goes to the prong of whether or not there were  
3 good faith negotiations. We thought we had a  
4 deal. We had a deal that was --

5 CHAIRPERSON MILLER: Okay.

6 MR. GUTHRIE: -- consistent with  
7 what he has now testified is what he wants  
8 amended. And yet, when we advised ABRA that  
9 we would request to set over this hearing  
10 because we needed to have time for the ANC to  
11 vote, because the ANC -- I can't say something  
12 on behalf of the ANC. We have to have a vote  
13 at a duly scheduled noticed public meeting.

14 And that we requested a 30 day  
15 turnover for that, suddenly there is lots of  
16 silence from Mr. Lujan and then a day and a  
17 half later, he announces that no, he won't  
18 agree to a set-over.

19 CHAIRPERSON MILLER: Okay. So I  
20 don't know how other Board Members feel, but  
21 still let's say you say you were operating in  
22 good faith and they say they were operating in

1 good faith and you both made me believe that  
2 each of you weren't. I'm not sure why we need  
3 to get into all that in looking at these three  
4 prongs.

5 MR. GUTHRIE: I believe the  
6 statutory standard requires --

7 CHAIRPERSON MILLER: Which  
8 standard does that go to?

9 MR. GUTHRIE: Good faith. Good  
10 faith.

11 CHAIRPERSON MILLER: They made a  
12 diligent effort to locate all of the parties  
13 to the voluntary agreement.

14 MR. LUJAN, JR.: The second part  
15 of that.

16 MEMBER ALBERTI: The conditional.  
17 And basically the second part is and if they  
18 did locate them, "they need to make a good  
19 faith effort to negotiate." So what we are  
20 hearing testimony from both sides is relevant  
21 to whether we judge the parties made good --  
22 each made good faith efforts in negotiations.

1 CHAIRPERSON MILLER: Okay. Could  
2 you read that to me? I don't know where that  
3 is in the statute.

4 MEMBER ALBERTI: I just had it  
5 open.

6 CHAIRPERSON MILLER: It says --

7 MEMBER ALBERTI: Just one moment,  
8 please.

9 CHAIRPERSON MILLER: -- okay. To  
10 fulfill the good faith attempt, that's what  
11 you are saying, paragraph 4(a)? A sworn  
12 affidavit from the applicant to be validated.

13 MEMBER ALBERTI: No, no, no, no.  
14 It says --

15 CHAIRPERSON MILLER: Immediate --

16 MEMBER ALBERTI: No, no, no. Do  
17 you have the whole thing here?

18 CHAIRPERSON MILLER: I have the  
19 whole statute.

20 MEMBER ALBERTI: Here it is.  
21 Right there. It's right here.

22 CHAIRPERSON MILLER: Okay.

1 MEMBER ALBERTI: You want to see--

2 CHAIRPERSON MILLER: 4(a)(2)?

3 MEMBER ALBERTI: -- for yourself?

4 CHAIRPERSON MILLER: For all of

5 us.

6 MEMBER ALBERTI: 4 -- what's it,

7 4?

8 CHAIRPERSON MILLER: (a)(2)?

9 MEMBER ALBERTI: I'm sorry, I have  
10 lost it now. 4(a)?

11 CHAIRPERSON MILLER: (2).

12 MEMBER ALBERTI: 4(a)(2), okay.

13 It's actually 4(a). 4(a) says --

14 CHAIRPERSON MILLER: Okay.

15 MEMBER ALBERTI: -- (1) "The  
16 applicant seeking the amendment has made a  
17 diligent effort to locate all parties to the  
18 voluntary agreement" or (2) "If the applicant  
19 parties are located, the applicant has made a  
20 good faith attempt to negotiate a mutually  
21 acceptable amendment to the voluntary  
22 agreement."

1 CHAIRPERSON MILLER: Where is  
2 that?

3 MEMBER ALBERTI: That's the copy  
4 of --

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: If non-applicant  
7 parties.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: Which is --  
10 right. Non-applicant parties were located.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER ALBERTI: So now the  
13 parties have to -- Mr. Lujan -- we have to  
14 judge whether Mr. Lujan made a good faith  
15 effort to negotiate. So that's what we are  
16 hearing testimony to.

17 CHAIRPERSON MILLER: All right.

18 MEMBER ALBERTI: So in defense of  
19 both parties, talking about who would present  
20 that evidence, so I think we need to allow  
21 them some leeway to go into what was discussed  
22 in mediation.

1 MR. LUJAN, JR.: If that's the  
2 case --

3 MEMBER ALBERTI: That's just my  
4 opinion.

5 CHAIRPERSON MILLER: Okay.

6 MR. LUJAN, JR.: If that is the  
7 case then --

8 MEMBER ALBERTI: Mr. Lujan,  
9 please, please, we have to keep order here.

10 MR. LUJAN, JR.: I'm sorry.

11 MEMBER ALBERTI: The Chair will  
12 take over.

13 CHAIRPERSON MILLER: Okay. So  
14 this is the relevance. However, as a general  
15 course, we don't like to get too into  
16 settlement negotiations, because, you know,  
17 the Board is not really supposed to hear that.  
18 So that's kind of like one of our rules.

19 So okay, so what you were trying  
20 to say, okay, you want to show that there was  
21 good faith and there wasn't good faith. But  
22 I don't think we need to hear every

1 negotiation moment to make that decision.

2 MR. GUTHRIE: Okay.

3 CHAIRPERSON MILLER: Okay.

4 MR. GUTHRIE: Are you aware that  
5 when you sell a license that any voluntary  
6 agreement that is part of that license goes  
7 with the license and would bind any subsequent  
8 buyer, Mr. Lujan?

9 MR. LUJAN, JR.: Yes. Yes, I do.

10 MR. GUTHRIE: Well, if you are  
11 even considering selling, do you understand  
12 why the ANC would be somewhat concerned and  
13 not just about how you have operated under the  
14 agreement that has been in place, but how some  
15 hypothetical buyer down the line might operate  
16 without such an agreement.

17 MR. LUJAN, JR.: Yes, I do. That  
18 was the main reason why I reached out to  
19 Commissioner Mossi on August 3rd when she was  
20 in my house and we had an hour and a half  
21 meeting. I told her from the very beginning  
22 that Mrs. -- Commissioner Mossi, there is a

1 possibility that we might sell Habana Village  
2 and I want to safeguard this liquor license.

3 I would like to extend this  
4 voluntary -- this offer that I -- that KCA  
5 rejected and that's when those negotiation  
6 issues started. I presented ANC on August  
7 16th my proposal. It was exhibit -- it was  
8 one of my exhibits I gave you.

9 And that letter was what I  
10 offered. It wasn't my fault that ANC took  
11 until October 3rd to start negotiating that  
12 offer.

13 MR. GUTHRIE: No, it --

14 MR. LUJAN, JR.: I had that offer  
15 on your table on --

16 MR. GUTHRIE: It's true that you  
17 were --

18 MR. LUJAN, JR.: -- August 16th.

19 MR. GUTHRIE: -- going from --  
20 what time in September until the 28th of  
21 September?

22 MR. LUJAN, JR.: I was gone -- I

1 don't recall right this minute, but I was gone  
2 for two weeks.

3 MR. GUTHRIE: Right.

4 MR. LUJAN, JR.: A plan scheduled  
5 vacation with my mother.

6 MR. GUTHRIE: I have no problem  
7 with you taking --

8 MR. LUJAN, JR.: I'm just telling  
9 you.

10 MR. GUTHRIE: I have no problem  
11 with your taking a vacation, but I think you  
12 can understand that if you are gone for a  
13 period of time immediately before the  
14 meeting --

15 CHAIRPERSON MILLER: Okay. There  
16 needs to be a question. Are you asking a  
17 question?

18 MR. GUTHRIE: -- it becomes a  
19 problem. I --

20 CHAIRPERSON MILLER: Wait, not  
21 this second. Okay. Okay.

22 MR. GUTHRIE: At any rate, you are

1 aware that if you sell the license, if there  
2 is an agreement that is in place, the  
3 agreement goes with the license, correct?

4 MR. LUJAN, JR.: That's why I  
5 reached out to Commissioner Mossi on August  
6 3rd.

7 MR. GUTHRIE: Does your letter to  
8 the ANC say that you are only interested in  
9 three late nights?

10 MR. LUJAN, JR.: Those are open  
11 negotiations. That's what started  
12 negotiations.

13 MR. GUTHRIE: So --

14 MR. LUJAN, JR.: I went to  
15 business school and you start negotiations  
16 high and then you fall back.

17 MR. GUTHRIE: So it didn't include  
18 the fact that you were willing to have simply  
19 those three late nights?

20 MR. LUJAN, JR.: What? I'm sorry,  
21 what was your question?

22 MR. GUTHRIE: Your position that

1 you are saying the ANC should have accepted  
2 back in August, did not include the terms that  
3 were subsequently agreed to. Is that correct?

4 MR. LUJAN, JR.: No. Mrs. --  
5 Commissioner Mossi said that these terms were  
6 good and second felt like that this was a good  
7 place to start negotiations. She said --  
8 additionally, she said that the hours and  
9 dates, it's a very sensitive issue. I then  
10 relayed to her that, you know, I really don't  
11 want to operate those 12 additional days.

12 CHAIRPERSON MILLER: You need to -  
13 -

14 MR. LUJAN, JR.: I told her, at  
15 that time --

16 CHAIRPERSON MILLER: -- ask  
17 questions. Okay.

18 MR. LUJAN, JR.: -- that I just  
19 really wanted New Year's Eve and the two days  
20 that -- times that the days change.

21 MR. GUTHRIE: When we had the  
22 mediation session with Mrs. Fletcher, did you

1 say the same thing to me or not?

2 MR. LUJAN, JR.: You told me at  
3 that time that you couldn't talk on behalf of  
4 the ANC. I was a little confused when you  
5 said that.

6 MR. GUTHRIE: No. I said I could  
7 not make a decision.

8 CHAIRPERSON MILLER: Do we want to  
9 hear all this? You know --

10 MEMBER ALBERTI: I guess.

11 CHAIRPERSON MILLER: You do?

12 MEMBER ALBERTI: Yeah.

13 CHAIRPERSON MILLER: Okay.

14 Because --

15 MEMBER ALBERTI: Keep going. Pull  
16 it out.

17 CHAIRPERSON MILLER: I just --  
18 there is just a fine line here --

19 MEMBER ALBERTI: I know.

20 CHAIRPERSON MILLER: -- between  
21 who is -- who agreed to what.

22 MR. GUTHRIE: And it's --

1                   CHAIRPERSON MILLER: Is this good  
2 faith efforts.

3                   MR. GUTHRIE: It has been very  
4 challenging.

5                   MR. LUJAN, JR.: Yeah.

6                   MR. GUTHRIE: What was I saying?  
7 No other questions.

8                   CHAIRPERSON MILLER: Okay.

9                   MR. JAMES: Mr. Lujan, when the  
10 Kalorama Citizens Association protested the  
11 renewal of your license and we participated in  
12 mediation, is it correct that we learned that  
13 you would be willing to accept a continuing  
14 agreement going forward, but all the points of  
15 the agreement were not worked out, but a  
16 considerable number of them were stated that  
17 you would -- you would be willing to keep  
18 those?

19                   MR. LUJAN, JR.: I'm sorry, I  
20 didn't understand the question.

21                   MR. JAMES: Okay. Of your  
22 existing cooperative agreement -- well, sorry,

1 cooperative. Your existing settlement  
2 agreement from 2002 with an amendment in  
3 2009 --

4 MEMBER ALBERTI: Speak up, Mr.  
5 James.

6 MR. JAMES: -- in the mediation  
7 that occurred, based on the renewal protest  
8 from KCA, do you agree that there were some  
9 points of agreement, although not complete  
10 agreement, at that time?

11 MR. LUJAN, JR.: No.

12 MR. JAMES: Okay. The agreements  
13 that are in place currently, there is -- well,  
14 I say agreement. There are actually four  
15 different. There are three agreements plus an  
16 amendment to one of them. But the ones that  
17 talk about the occupancy, say there is an  
18 occupancy of 130, can you explain whether  
19 there was a substantial change approved by  
20 this Board to increase the occupancy to 190?

21 MR. LUJAN, JR.: The occupancy  
22 pertains to the Zoning Board. It's a whole

1 different entity. It's a whole different  
2 business -- I mean administration.

3 That was a variance that I sought  
4 in front of the Zoning Board. Once we bought  
5 the building, we sought a variance in front of  
6 the Zoning Board that took nearly a year and  
7 a half.

8 MR. JAMES: So I didn't hear an  
9 answer to the question. Was a substantial  
10 change from this Board approved to increase  
11 your occupancy from 130 to 190?

12 MR. LUJAN, JR.: There was a  
13 decision from the Board that I was able to use  
14 my liquor license to the third floor.

15 MR. JAMES: Is it -- do you recall  
16 a time between the renewal mediation that we  
17 attended and the mediation, the ABRA mediation  
18 for the termination, do you recall a time that  
19 I called you to discuss the possibility of  
20 meeting with myself and Commissioner Guthrie  
21 to discuss the agreement?

22 MR. LUJAN, JR.: Yes, I do

1 remember that conversation. That's when you  
2 told me that you would not accept my proposal  
3 and you said that you will see me at the  
4 Protest Hearing.

5 MR. JAMES: In all of your  
6 exhibits, I don't see a proposal that was  
7 offered to the Kalorama Citizens Association.  
8 Is there one that I am missing somehow?

9 MR. LUJAN, JR.: It was the  
10 points. There were points discussed in  
11 mediation, the one that you attended.

12 MR. JAMES: Well, I attended both  
13 of -- oh, I -- is it true that Kalorama  
14 Citizens Association attended both mediation  
15 for the renewal and a mediation for the  
16 termination request?

17 MR. LUJAN, JR.: I remember KCA  
18 did not attend the first mediation for the  
19 renewal of my license. They attended the  
20 second one when the -- after the Status  
21 Hearing that the Board requested for us to  
22 meet again. And we stepped outside the

1 hearing room, Mrs. Fletcher was present and we  
2 were trying to come up with a date. My father  
3 was going out of town and there was some  
4 conflicts of dates we couldn't reach, so I  
5 suggested that we do it now.

6 MR. JAMES: Right. But then did  
7 Kalorama Citizens also attend the ABRA  
8 mediation for the termination request?

9 MR. LUJAN, JR.: Yes.

10 MR. JAMES: Okay. Thank you.  
11 That's all. That's all.

12 CHAIRPERSON MILLER: Okay. We are  
13 going to -- wait. I know you have questions.  
14 I've just got to do it right. The procedure  
15 is Board questions and then we will turn to  
16 you for redirect and questions on Board  
17 questions.

18 Are there Board questions? Mr.  
19 Brooks?

20 MEMBER BROOKS: Yes. Thank you,  
21 Madam Chair. Mr. Lujan, your sister did such  
22 a good job of interrogating you, I don't have

1 much to ask you. But I just want to get clear  
2 on a couple of points.

3 The seating capacity. You want to  
4 go to 190 from 130? Is that --

5 MR. LUJAN, JR.: That's correct.

6 MEMBER BROOKS: Is that what you  
7 want to do?

8 MR. LUJAN, JR.: That's what --  
9 yes.

10 MEMBER BROOKS: Okay. And that is  
11 -- that includes the third floor now? Is  
12 that --

13 MR. LUJAN, JR.: Yes. Yes, sir.

14 MEMBER BROOKS: So you have space  
15 for 60 seats on the third floor?

16 MR. LUJAN, JR.: Yes, sir.

17 MEMBER BROOKS: And you would have  
18 to hire new staff and that sort of thing to  
19 staff it up?

20 MR. LUJAN, JR.: Yes, sir.

21 MEMBER BROOKS: Okay. And your  
22 busing proposal that you were considering or

1 would like to consider, how late would that  
2 go?

3 MR. LUJAN, JR.: You know, it's a  
4 really raw idea.

5 MEMBER BROOKS: Um-hum.

6 MR. LUJAN, JR.: The biggest  
7 challenge in that is the cost.

8 MEMBER BROOKS: Um-hum.

9 MR. LUJAN, JR.: The cost of the  
10 bus, the insurance on the bus and so I haven't  
11 really gone to the next level, the costs have  
12 really smarted me a little bit and I'm trying  
13 to figure out first if it's actually cost-  
14 effective for me to do it.

15 MEMBER BROOKS: I see.

16 MR. LUJAN, JR.: But it's  
17 something that is in the works. How late?  
18 You know, that hasn't really --

19 MEMBER BROOKS: Okay.

20 MR. LUJAN, JR.: -- come to that  
21 yet.

22 MEMBER BROOKS: I gotcha. And how

1 many days? Do you have any idea which days  
2 you would consider doing that?

3 MR. LUJAN, JR.: I would like to  
4 do it Friday. Definitely Friday and Saturday.  
5 And possibly Thursday.

6 MEMBER BROOKS: Okay. I think  
7 that's all I have now. I might come back  
8 later with some more. Thank you. Thank you,  
9 Madam Chair.

10 CHAIRPERSON MILLER: Okay. Other  
11 questions?

12 MEMBER ALBERTI: I do.

13 CHAIRPERSON MILLER: Okay. Mr.  
14 Alberti?

15 MEMBER ALBERTI: Mr. Lujan, Mr.  
16 Brooks mentioned two points. The increased  
17 occupancy and the busing. The third point  
18 that you talked about in your requested change  
19 is the ability to operate at later hours for  
20 three days, New Year's and the change from  
21 Daylight Savings Time and vice versa. Okay.

22 MR. LUJAN, JR.: Yes.

1                   MEMBER ALBERTI: Those are the  
2 only three days, right?

3                   MR. LUJAN, JR.: Those, yes.

4                   MEMBER ALBERTI: So my question to  
5 you a hypothetical, this is purely  
6 hypothetical. If KCA and the ANC said yes, we  
7 would sign onto a voluntary agreement that  
8 reflected those changes, but we maintain all  
9 other points of the voluntary agreement that  
10 currently exist, would you -- would that be  
11 acceptable to you?

12                   MR. LUJAN, JR.: That's a good  
13 question and I have thought about that. And  
14 with respect to KCA, you know, it's like  
15 asking my child to play with a bully and  
16 that's how I feel. He has bullied me. He has  
17 harassed me. And I wouldn't demand that from  
18 my child.

19                   MEMBER ALBERTI: So you would  
20 accept it with the ANC?

21                   MR. LUJAN, JR.: I tried to accept  
22 it with the ANC.

1 MEMBER ALBERTI: Is that correct?

2 MR. LUJAN, JR.: And I would be  
3 open, yes. Yes, I would.

4 MEMBER ALBERTI: Okay. So you're  
5 not sure?

6 MR. LUJAN, JR.: I'm not sure, but  
7 definitely not with KCA, but I would be --

8 MEMBER ALBERTI: What would  
9 prevent you from signing it with the ANC?

10 MR. LUJAN, JR.: No. I would  
11 consider signing it with the ANC. Yes, I  
12 would.

13 MEMBER ALBERTI: You're still  
14 uncertain. You would consider it. All right.  
15 The question was --

16 MR. LUJAN, JR.: Well, why was --

17 MEMBER ALBERTI: -- why wouldn't  
18 you?

19 MR. LUJAN, JR.: Because I didn't  
20 want them to open it up with KCA. And on my  
21 last negotiations with them --

22 MEMBER ALBERTI: I understand.

1 Hypothetically, if the ANC said we would be  
2 willing to sign a voluntary agreement under  
3 those conditions I just reviewed, would you  
4 sign it with them?

5 MR. LUJAN, JR.: Yes.

6 MEMBER ALBERTI: Just a little  
7 more specifics. The increase in occupancy,  
8 why do you feel that that would not have an  
9 adverse effect on the community?

10 MR. LUJAN, JR.: Well, you know,  
11 Adams Morgan is changing again. I have seen  
12 it change three or four times in the last 10  
13 or 15 years. And what I have seen, the  
14 biggest change right now on Columbia Road --  
15 you know, Columbia Road and 18th are really  
16 two different avenues, two different really  
17 districts.

18 They are right next to each other,  
19 but they are different. They are different.  
20 And what I see in Columbia Road is a change  
21 towards food. It's becoming a very foody-  
22 strip. And really what I have seen in my

1 business, my food sales has been helping my  
2 bottom line tremendously.

3 And seeing new high-end  
4 restaurants like Mintwood, Southern  
5 Hospitality and having The Grill From Ipanema,  
6 Mixtec, Pasta Mia, La Granja de Oro that I  
7 would lose food sales. I would be able to  
8 have more seats, have -- be able to use --  
9 have larger areas where I could have larger  
10 groups.

11 A lot of people that come to  
12 Habana Village come in groups, groups of 20,  
13 groups of 15. And I think that would help.

14 MEMBER ALBERTI: Thank you very  
15 much. I have no further questions.

16 CHAIRPERSON MILLER: Others? I  
17 just have a few. So how have you been using  
18 the third floor?

19 MR. LUJAN, JR.: Private parties  
20 occasionally. We have tried to try different  
21 things. You know, brunch. We focused on  
22 trying to set more tables for restaurants --

1 for food.

2 CHAIRPERSON MILLER: So am I  
3 correct that your preference would be to  
4 terminate? That's what you are seeking here  
5 as opposed to having an agreement with ANC or  
6 KCA? It's your first choice?

7 MR. LUJAN, JR.: Yeah. That would  
8 be my first choice. You know, an additional  
9 factor that weighed my father and I in not  
10 seeking a continuance is that we came to ABRA  
11 Tuesday afternoon around 3:00 and we asked to  
12 speak to Mrs. Jenkins. She was busy, so we  
13 spoke to Mr. Berman.

14 And I asked him if we went and  
15 proceeded on the October 16th scheduled  
16 hearing, if that would be an all or nothing  
17 ruling. And he said to me no, it would not be  
18 an all or nothing ruling. The Board could  
19 decide many different things. The Board could  
20 even decide to put things in your own license  
21 and that's what really swung my father and I's  
22 decision, because we felt that the Board would

1 do the right thing.

2 CHAIRPERSON MILLER: Okay. And  
3 you entered this agreement in 2002?

4 MR. LUJAN, JR.: Yes.

5 CHAIRPERSON MILLER: Okay. So why  
6 did you enter the agreement in 2002?

7 MR. LUJAN, JR.: I think we were  
8 seeking an entertainment license. I think  
9 that was, at the time, when ABRA was saying  
10 now even though you have had entertainment for  
11 these years, we are starting to have everyone  
12 on entertainment, so we had to officially seek  
13 that entertainment license.

14 And that's when I worked with  
15 Denis James on the agreement.

16 CHAIRPERSON MILLER: So before  
17 2002, were you operating without an agreement?

18 MR. LUJAN, JR.: No. I think  
19 there was an agreement actually.

20 CHAIRPERSON MILLER: Okay. So  
21 this was just a new agreement to replace the  
22 old one?

1 MR. LUJAN, JR.: Right. Because  
2 of the entertainment endorsement.

3 CHAIRPERSON MILLER: Okay.

4 MR. LUJAN, JR.: That was brought  
5 up.

6 CHAIRPERSON MILLER: Have you been  
7 operating the whole time on Columbia Road with  
8 an agreement?

9 MR. LUJAN, JR.: No.

10 CHAIRPERSON MILLER: No.

11 MR. LUJAN, JR.: No, we haven't.  
12 We started in Columbia Road in 1996. The  
13 first agreement came up in, I think, 2000.

14 CHAIRPERSON MILLER: Okay. So you  
15 operated a while without an agreement.

16 MR. LUJAN, JR.: Yes. I think --

17 CHAIRPERSON MILLER: And what?  
18 Okay. And then what prompted the agreement  
19 was you were seeking an entertainment  
20 endorsement and that's when you agreed to do  
21 that. Okay. And how is your record from 1996  
22 to 2002?

1 MR. LUJAN, JR.: From 1996? You  
2 know, we are not -- I'm not a perfect operator  
3 and I'm not a perfect business. We have had  
4 citations, but I have dealt with them. You  
5 know, like I said, you know, 75 percent of the  
6 work that we have done in noise abatement was  
7 on our own. We didn't need a voluntary  
8 agreement to do that.

9 KCA or ANC didn't have to come to  
10 me for that. There is some issues that we  
11 have had. My front bay windows, my side  
12 walls, my back windows, my DJ booth, we have--  
13 and we have, you know --

14 CHAIRPERSON MILLER: Okay. And  
15 finally, who prepared Exhibit 1, which is  
16 Habana Village Scope of Work Noises Action?

17 MR. LUJAN, JR.: I did.

18 CHAIRPERSON MILLER: You did?

19 MR. LUJAN, JR.: I did, um-hum.

20 CHAIRPERSON MILLER: It looks very  
21 nice.

22 MR. LUJAN, JR.: Thank you.

1 CHAIRPERSON MILLER: Okay. All  
2 right. Any other questions? So now, I'm  
3 going to turn to the applicant for redirect  
4 and questions on Board questions.

5 CHAIRPERSON MILLER: You're good?

6 MS. LUJAN: I actually think we  
7 are good.

8 CHAIRPERSON MILLER: Okay. Are  
9 there any questions from protestants just on  
10 the Board's questions?

11 MR. GUTHRIE: No.

12 CHAIRPERSON MILLER: No? I'm  
13 sorry, what did you say?

14 MR. GUTHRIE: No.

15 CHAIRPERSON MILLER: No, okay.  
16 Mr. James? No? Okay.

17 MR. JAMES: I do have one question  
18 based on Mr. Alberti's questions.

19 CHAIRPERSON MILLER: Okay.

20 MR. JAMES: Exactly why is it that  
21 you're not willing to sign an agreement with  
22 the Kalorama Citizens Association?

1 MEMBER SILVERSTEIN: I'm sorry,  
2 Mr. James, I didn't hear you.

3 MR. JAMES: I said exactly why is  
4 it that Habana Village is not willing to sign  
5 an agreement with the Kalorama Citizens  
6 Association.

7 MEMBER ALBERTI: Madam Chair, I  
8 believe that that was asked and answered.

9 MR. JAMES: Sorry?

10 MEMBER ALBERTI: I believe that  
11 was asked and answered. I asked that and I  
12 believe it was answered.

13 CHAIRPERSON MILLER: He said it's  
14 like signing with a bully.

15 MEMBER ALBERTI: Right.

16 CHAIRPERSON MILLER: That's what  
17 he said.

18 MEMBER ALBERTI: I mean, the  
19 question has been asked and answered, Mr.  
20 James.

21 MR. JAMES: Okay. Thank you.

22 CHAIRPERSON MILLER: All right.

1 So that completes your testimony. And I'm  
2 going to ask the applicant if they want to  
3 move the exhibits into evidence, at this time?

4 MS. LUJAN: Yes. We have one more  
5 witness.

6 CHAIRPERSON MILLER: Yeah, yeah,  
7 okay. Actually, I just thought they were  
8 related to this witness, so that's why I  
9 thought --

10 MS. LUJAN: Absolutely. Only --  
11 yes, we can admit into evidence.

12 CHAIRPERSON MILLER: I've --

13 MS. LUJAN: Sorry, sorry about  
14 that. Yes, we can move into evidence.

15 CHAIRPERSON MILLER: All right.  
16 Now, I heard an objection to --

17 MR. GUTHRIE: Exhibit 5.

18 CHAIRPERSON MILLER: -- Exhibit 5  
19 on the moratorium, but I have had even more  
20 time to look at it and I think it is relevant  
21 to the economic conditions and how they may  
22 have changed or be changing. So I'm going to

1       overrule that objection.

2                   Are there any other objections to  
3       the exhibits of applicant? That would be 1  
4       through 8, I believe. Yeah. Okay. Not  
5       hearing any, then those exhibits 1 through 8  
6       of the applicant are admitted into evidence.

7                   (Whereupon, the documents marked  
8                   as Applicant Exhibit 1 through 8  
9                   were received in evidence.)

10                  CHAIRPERSON MILLER: Okay. So  
11       thank you very much. And you can call your  
12       second witness.

13                  MS. LUJAN: Great.

14                  MR. LUJAN, JR.: Thank you.

15                  MS. LUJAN: Okay. We would like  
16       to call Katie Davis, who is a neighbor and  
17       resident of Adams Morgan.

18                  MEMBER SILVERSTEIN: Madam Chair,  
19       at this point, the applicant has used up 29  
20       minutes and the protestants 18.

21                  CHAIRPERSON MILLER: Okay. Thank  
22       you. All right.

1 Whereupon,

2 KATIE DAVIS

3 was called as a witness by the licensee, and  
4 having been first duly sworn, assumed the  
5 witness stand and was examined and testified  
6 as follows:

7 CHAIRPERSON MILLER: Okay. Thank  
8 you.

9 DIRECT EXAMINATION

10 MS. LUJAN: Can you state your  
11 name and how long you have lived in Adams  
12 Morgan?

13 MS. DAVIS: My name is Katie Davis  
14 and I have lived here since 1969.

15 MS. LUJAN: 1962.

16 MS. DAVIS: For the record, I have  
17 lived here, I have lived in Adams Morgan since  
18 1969.

19 CHAIRPERSON MILLER: Okay.

20 MS. DAVIS: He kept saying 1962.

21 MR. LUJAN, JR.: Oh, I'm sorry.

22 MEMBER ALBERTI: We won't go

1       there.

2                   MS. LUJAN:  And I just have one  
3       quick question for you.  Do you believe that  
4       the termination of this agreement would  
5       adversely affect the Adams Morgan community?

6                   MS. DAVIS:  No, I don't, because I  
7       have lived here for a long time and it seems  
8       that the whole time I have lived here, the  
9       Lujans have -- the larger extended family have  
10      always run businesses.  And they have always  
11      been terrific businesses kind of woven into  
12      the fabric of the community like Heller's  
13      Bakery, like Avignon Freres and The Scoop  
14      where I never got to work, but I ate a lot of  
15      ice cream.

16                   The family is not only woven into  
17      the business community, but they are deeply  
18      kind of passionately linked into the  
19      neighborhood.  So I would trust the family to  
20      be responsible, as they always have been,  
21      about running Habana.  I wouldn't worry about  
22      that at all.

1 MS. LUJAN: And just one last  
2 question. So you, on behalf of Habana  
3 Village, collected the signatures on the  
4 Letter of Community Support?

5 MS. DAVIS: Yes.

6 MS. LUJAN: Can you just talk a  
7 little bit about that process?

8 MS. DAVIS: Yes. I actually did  
9 it because I wanted to, because I was -- I  
10 wanted to make sure that the passion people  
11 feel about this family -- you know, I always  
12 hear people say oh, we need people who are  
13 from the neighborhood to have businesses. And  
14 it's very important to have Latinos to have  
15 businesses.

16 This is that family and they are  
17 doing it. So I wanted to make sure that  
18 people in the community knew. I didn't go  
19 into any of the details. I just said do you  
20 support the work and the way the Lujans are  
21 running Habana Village? And I got the  
22 signatures, which, by the way, many of them

1 are business people, including the man who is  
2 in the building right next door to La Habana,  
3 Maga, which is a design company.

4 MS. LUJAN: I don't have any  
5 further questions.

6 CHAIRPERSON MILLER: Okay. Great.  
7 Cross?

8 MR. GUTHRIE: Yeah.

9 CHAIRPERSON MILLER: Okay.

10 CROSS-EXAMINATION

11 MR. GUTHRIE: You have no idea  
12 whether you feel similarly towards whomever  
13 the Lujans might sell the business to, do you  
14 ?

15 MS. DAVIS: No, I don't.

16 MR. GUTHRIE: So do you understand  
17 that the settlement agreements go with a  
18 license --

19 MS. DAVIS: Yes.

20 MR. GUTHRIE: -- when they get  
21 sold?

22 MS. DAVIS: I do. It has happened

1 many, many, many times in the neighborhood.

2 MR. GUTHRIE: And so it's -- your  
3 testimony is that so long as the Lujans keep  
4 the license, it isn't a problem to have?

5 MS. DAVIS: No, that's not my  
6 testimony. My testimony is that they are  
7 really a terrific family who run their  
8 business in a responsible way.

9 In terms of it being sold, you  
10 know, I don't know what will happen, but  
11 that's part of living in our neighborhood.  
12 You know, it has always been very rich with  
13 businesses and there are problems and then the  
14 community does come in to try to address them,  
15 but I think that there are limits. I think  
16 that business people ought to be able to make  
17 some decisions for theirself.

18 MR. GUTHRIE: No further  
19 questions.

20 CHAIRPERSON MILLER: Board  
21 questions? Mr. Alberti?

22 MEMBER ALBERTI: Ma'am, thank you.

1 MS. DAVIS: Okay. Thank you.

2 MEMBER ALBERTI: Good evening and  
3 thank you for coming.

4 MS. DAVIS: Oh, I'm sorry.

5 MEMBER ALBERTI: I'm sorry. No,  
6 no, no, I'm just --

7 MS. DAVIS: Okay.

8 MEMBER ALBERTI: -- sorry, I  
9 didn't mean to give you the wrong impression  
10 there. How far away to you live from this  
11 establishment?

12 MS. DAVIS: About a block and a  
13 half.

14 MEMBER ALBERTI: About a block and  
15 a half?

16 MS. DAVIS: Yeah.

17 MEMBER ALBERTI: So it's pretty  
18 close. Okay.

19 MS. DAVIS: Yes, I live on Lanier  
20 Place where there is a fire station also.

21 MEMBER ALBERTI: Right.

22 MS. DAVIS: I don't --

1 MEMBER ALBERTI: Next door to the  
2 former Chair of the Board.

3 MS. DAVIS: Yes, exactly.

4 MEMBER ALBERTI: Yes, yes. I can  
5 read the petition.

6 MS. DAVIS: Yes, yes, yes. It's  
7 natural to ask.

8 MEMBER ALBERTI: So my question is  
9 if they were to increase this occupancy by 30  
10 percent it looks like, how do you think that  
11 would affect you and your neighbors? If  
12 someone else -- let's say it wasn't Mr. Lujan.

13 MS. DAVIS: Right, right.

14 MEMBER ALBERTI: Someone else  
15 opened the business there. Just in sort of  
16 hypothetically, not knowing anything about the  
17 owner, so that --

18 MS. DAVIS: Right, right.

19 MEMBER ALBERTI: -- how would you  
20 think adding a third -- increasing this  
21 building business by -- this occupancy by 30  
22 percent, how do you think that would affect

1 your neighborhood?

2 MS. DAVIS: You know, noise is a  
3 problem in Adams Morgan. And there has always  
4 been a lot of different types of problems. I  
5 remember 18th Street when there was one, you  
6 know, bar on it Millie & Als. So you know,  
7 things change.

8 I think that -- here is my  
9 philosophy. You trust to a certain degree and  
10 then if there is a problem, that's what the  
11 ABRA Investigator is for. That's what the  
12 cops are for. And you try to have -- create  
13 a good relationship with the owners, so that  
14 things are good. So that's my philosophy.

15 MEMBER ALBERTI: Okay. Thank you  
16 very much.

17 MS. DAVIS: Okay.

18 MEMBER ALBERTI: I have -- the  
19 police, I'm not sure. The Chair will dismiss  
20 you.

21 CHAIRPERSON MILLER: Are there  
22 other Board questions? So for the record,

1 where is the 1700 Block of Lanier Place in  
2 relation to Habana Village? Because all these  
3 addresses on this signature page are there.

4 MS. DAVIS: Yeah, okay. So you --  
5 I can't tell you south and this way, but you  
6 walk down to the end of Lanier Place. You  
7 take a left at the gas station that is no  
8 longer there. You make a right and you are  
9 there.

10 CHAIRPERSON MILLER: Okay. So did  
11 you go door-to-door to get these signatures or  
12 how did you get them?

13 MS. DAVIS: I did some door-to-  
14 door and I stood on my street just out. I  
15 walked around.

16 CHAIRPERSON MILLER: So why did  
17 you pick Lanier Place?

18 MS. DAVIS: Well, I was coming at  
19 it from I wanted people who have known the  
20 Lujans for a long time and trust them. And  
21 you know, know about Heller's. Although,  
22 that's a real mixture of "new people and older

1 people." Now, if I thought I had more time,  
2 I might have gone and stood on Columbia Road,  
3 but that wasn't really the point I was trying  
4 to make in the Letter of Support.

5 CHAIRPERSON MILLER: What did you  
6 want to say?

7 MS. DAVIS: I wasn't trying to  
8 address if there is any noise problems. I was  
9 trying to address the content of the character  
10 of the Lujans.

11 CHAIRPERSON MILLER: Okay. Mr.  
12 Silverstein?

13 MEMBER SILVERSTEIN: Perhaps I  
14 should have asked this of Mr. Lujan. But how  
15 far do they live from the establishment?

16 MS. DAVIS: They live four houses  
17 down further than me. They live right next to  
18 the fire house.

19 MEMBER SILVERSTEIN: So they are  
20 about two blocks --

21 MS. DAVIS: They are across from  
22 the Adams --

1 MEMBER SILVERSTEIN: -- two and a  
2 half blocks.

3 MS. DAVIS: -- Inn which is  
4 noisier than you would think it is.

5 MEMBER SILVERSTEIN: Okay. No  
6 further questions.

7 MS. DAVIS: There's no alcohol  
8 there.

9 MEMBER SILVERSTEIN: Thank you.

10 CHAIRPERSON MILLER: Okay. No,  
11 no, wait a second. Are there any questions on  
12 Board questions? Okay. Mr. James?

13 MR. JAMES: Yes, please.

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: I would like to hand  
16 Ms. Davis the Investigator's report that has  
17 two different maps of Adams Morgan.

18 CHAIRPERSON MILLER: Any  
19 objections? No. Okay. Go had.

20 MR. JAMES: Could you point out to  
21 the Board where Lanier Place and your home are  
22 on this map?

1 MS. DAVIS: Oh, I see it. Okay.

2 CHAIRPERSON MILLER: You are  
3 asking her to point where what is?

4 MS. DAVIS: My home.

5 CHAIRPERSON MILLER: Oh, her home.  
6 Thank you. Okay.

7 MS. DAVIS: Okay. I see it.

8 MR. JAMES: Can you draw a second  
9 arrow for me?

10 MS. DAVIS: Okay.

11 MR. JAMES: Sort of like draw an  
12 arrow.

13 CHAIRPERSON MILLER: Mr. James,  
14 where is this in the report?

15 MR. JAMES: It's Exhibit No. 4.  
16 It's a little bit backwards.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: I believe this is a,  
19 I'm guessing, the area, the affected area.

20 CHAIRPERSON MILLER: So at the  
21 edge of the circle? Is that what you are  
22 saying?

1 MR. JAMES: Yes.

2 MS. DAVIS: Well, it's not really  
3 at the edge.

4 CHAIRPERSON MILLER: Where is it?  
5 I can't --

6 MEMBER ALBERTI: The witness has  
7 marked it on that exhibit.

8 MS. DAVIS: Yes.

9 MEMBER ALBERTI: So, Mr. James  
10 will have to submit that as an exhibit if he  
11 wants the Board to see it.

12 MS. DAVIS: Okay.

13 MEMBER ALBERTI: I mean,  
14 otherwise, we won't have a record of where the  
15 X is. I'm sure the transcript is not going to  
16 tell us.

17 MR. JAMES: I have further  
18 questions then.

19 MEMBER ALBERTI: So are you going  
20 to submit that, Mr. James or not?

21 MR. JAMES: Submit everything to  
22 this point?

1 CHAIRPERSON MILLER: He usually  
2 does it in his own case.

3 MEMBER ALBERTI: All right. So he  
4 can do it later on, yeah, you're right.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: That's the best  
7 way.

8 CHAIRPERSON MILLER: Okay.

9 MR. JAMES: And for further  
10 questions. On this map which I'm holding up  
11 so the Board can see it --

12 CHAIRPERSON MILLER: Is this a map  
13 from the Investigator's --

14 MR. JAMES: Correct.

15 CHAIRPERSON MILLER: -- report?

16 MR. JAMES: It's Exhibit 5.

17 CHAIRPERSON MILLER: Exhibit 5,  
18 okay.

19 MEMBER ALBERTI: Yeah.

20 MR. JAMES: Okay. This map states  
21 that it shows a 400 foot buffer. Is Lanier  
22 Place shown on this map?

1 MS. DAVIS: I don't see no names.  
2 I can't tell.

3 CHAIRPERSON MILLER: So Mr. James  
4 is showing the witness Exhibit 5 from the  
5 Investigator's report.

6 MR. JAMES: Do you see where  
7 Habana Village is shown?

8 MS. DAVIS: Yes, yes, I do.

9 MR. JAMES: So that's Columbia  
10 Road, correct?

11 MS. DAVIS: You are saying Lanier  
12 Place is out of the circle? Is that what you  
13 are trying to say?

14 MR. JAMES: I'm asking you if it  
15 is.

16 MS. DAVIS: I can't tell.

17 MR. JAMES: Is this street here  
18 18th Street?

19 MS. DAVIS: 18th and Columbia  
20 really aren't parallel.

21 MR. JAMES: It's parallel to this.

22 MS. DAVIS: Yes, okay, that is 18th

1 Street. Okay. I can't tell where Lanier is.

2 MEMBER ALBERTI: Asked and  
3 answered.

4 MS. DAVIS: Honestly.

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: So you can't tell  
7 whether Lanier Place is even shown on this --

8 MS. DAVIS: Yes, I can't.

9 MR. JAMES: -- map?

10 MS. DAVIS: There are no names on  
11 the streets.

12 CHAIRPERSON MILLER: Okay. Any  
13 redirect? Okay. Thank you. Now, you can go.

14 MS. DAVIS: Okay. Can I say one  
15 more thing?

16 CHAIRPERSON MILLER: What? Did  
17 you need to -- you wanted to say one more  
18 thing?

19 MS. DAVIS: I just wanted to say  
20 that Jose Suerves was on the witness list and  
21 he lives across from Habana, but he had to  
22 leave, if that's the point you were trying to

1 make.

2 CHAIRPERSON MILLER: Thank you.

3 MEMBER ALBERTI: A question was  
4 not asked.

5 CHAIRPERSON MILLER: I know.  
6 We'll take that as a response without a  
7 question. But okay, all right.

8 (Whereupon, witness was excused.)

9 CHAIRPERSON MILLER: So does that  
10 complete the applicant's case? Good. All  
11 right. We are ready for the protestants'  
12 case. Okay. Let me swear you in.

13 Whereupon,

14 TED GUTHRIE

15 was called as a witness for the Defendant, and  
16 having been first duly sworn, assumed the  
17 witness stand and was examined and testified  
18 as follows:

19 CHAIRPERSON MILLER: Okay. So the  
20 ANC is going. Excuse me, both the ANC and KCA  
21 are one. Individually? Okay. I just wanted  
22 to clarify what was going on. Okay. So the

1 ANC is now presenting their case.

2 DIRECT EXAMINATION

3 MR. GUTHRIE: Yes, I'm just  
4 testifying, right?

5 CHAIRPERSON MILLER: And, Ted, you  
6 start by identifying yourself again, even  
7 though I know you did it before. Okay.

8 MR. GUTHRIE: My name is Ted  
9 Guthrie, G-U-T-H-R-I-E. I'm Commissioner for  
10 ANC-1C03 and I'm a member of the ABC Committee  
11 of the ANC-1C.

12 The first I heard about this --

13 CHAIRPERSON MILLER: Um-hum.

14 MR. GUTHRIE: -- motion to --  
15 Petition to Amend or Terminate was when we got  
16 notification from ABRA. I received no contact  
17 in any respect, whether it by email, phone,  
18 anything personally prior to receiving word  
19 from ABRA that this had been filed.

20 Frankly, I was a little surprised  
21 when I read the statute and saw that there was  
22 supposed to be some sort of certification by

1 the petitioner that there had been  
2 negotiations prior to the filing.

3 Before we considered whether to  
4 protest this at the ANC meeting, I called Mr.  
5 Lujan and had a fairly brief discussion with  
6 him, just basically asking, you know, what is  
7 this about? What is it you want? And my  
8 recollection of the conversation was that it  
9 was I don't want to have an agreement.

10 And I said well, you know, that's  
11 not something that the ANC is going to be  
12 particularly happy with as a solution to this  
13 problem. And we tried to have voluntary  
14 agreements with alcohol purveyors in the  
15 neighborhood, because we think it is helpful  
16 both with good and bad operators to have a  
17 voluntary agreement, particularly one that has  
18 some sort of consistency among the  
19 neighborhood and the other purveyors.

20 CHAIRPERSON MILLER: I'm sorry,  
21 especially one? What did you say especially  
22 one what?

1 MR. GUTHRIE: That is somewhat  
2 consistent with other agreements, so that we  
3 got --

4 CHAIRPERSON MILLER: Oh, thank  
5 you.

6 MR. GUTHRIE: -- as much as  
7 possible, people operating under similar  
8 rules.

9 Briefly after we had this  
10 conversation, Mr. Lujan said that he had been  
11 in a meeting and he had stepped out to take  
12 the call and he would call me back. I never  
13 heard back from him again.

14 Subsequently, we were scheduled  
15 for a Status Hearing and, unfortunately, I had  
16 to be out of town. So at that point, another  
17 commissioner, Brian Hart, was -- went to that  
18 event. And I have no first hand knowledge of  
19 what went on there.

20 When I went to the mediation  
21 meeting that was set for this, I was really  
22 quite concerned because I had had some

1 discussions with one of my colleagues who  
2 seemed to say that we could work something  
3 out. When I get to the mediation and Mr.  
4 Lujan's position is I will not have anything  
5 to do with KCA at all.

6 And no, I'm not interested in  
7 discussing the particulars of what I had set  
8 out as what I want. That's what I want,  
9 that's all I want and I don't see any need to  
10 discuss it, which left me in a position of  
11 feeling why in the world are we having this  
12 mediation and how in the world is this any  
13 sort of an attempt to negotiate? Very  
14 frustrating.

15 Subsequent to that, there was some  
16 discussion about how Mr. Lujan was going to be  
17 out of town, but he and his father would be  
18 back by the 28th, so there was a flurry of  
19 emails and we attempted to schedule a meeting  
20 that would be just with the ANC and Mr. Lujan  
21 to discuss them.

22 And we had negotiations that

1 probably went on for maybe half an hour or 45  
2 minutes that resolved what I understood to be  
3 all his issues to a position that seemed okay  
4 to the ANC Commissioners who were there,  
5 although we can't make the final decision  
6 until we have a vote on the matter, and seemed  
7 consistent with what Mr. -- was agreeable with  
8 Mr. Lujan.

9           Then we got to the issue of  
10 whether or not KCA should be a party. And he  
11 was adamant that they should not be a party.  
12 And I advised him that -- well, actually,  
13 Brian and I both said that we had a little  
14 problem with that because it seemed to us that  
15 KCA was a responsible member of the community,  
16 as a citizens organization that had done a lot  
17 of work in ABC area, had a whole lot of  
18 knowledge that wasn't available to the  
19 individual commissioners, most of whom had  
20 just come on Board and that there was a  
21 certain accountability that was important.

22           However, if he was adamant about

1       it and he did seem to be adamant, I said that  
2       we would take it to our next scheduled  
3       meeting. At which point, that seemed okay  
4       with him.

5                   And then two days later, we  
6       discovered that no, he has decided he wants to  
7       go to this hearing, which I'm at a little of  
8       a loss here, because it was my understanding  
9       that we had come to an agreement on the  
10      substance, which seems to be exactly the same  
11      agreement that he has outlined to the Board  
12      would be acceptable to him.

13                   And yet, we are in here and we  
14      have spent the amount of time that we have  
15      spent going through a hearing on whether or  
16      not this should be terminated.

17                   This seems to me something other  
18      than good faith negotiations. That's what it  
19      feels like to me. It feels like a lot of my  
20      time was wasted, a lot of my colleagues' time  
21      was wasted, a lot of your time was wasted.  
22      And, frankly, I find it very frustrating.

1           The only changes in the  
2 neighborhood of which I'm aware of that impact  
3 the licensee are the fact that there seem to  
4 be more and more people coming into the  
5 neighborhood creating disturbances and  
6 lessening the peace, order and quiet of the  
7 neighborhood, lessening the ability of the  
8 locals to find parking in the neighborhood,  
9 expanding businesses is not what is in the  
10 best interest of this neighborhood, when you  
11 consider the peace, order and quiet provision.

12           And to say that he should be  
13 allowed to terminate on the basis of his -- of  
14 the failed negotiations, seems to be such an  
15 awful precedent by this Board. I think that  
16 particularly where a licensee indicates that  
17 they are at least considering selling their  
18 facility and that if the Board terminated the  
19 settlement agreement that is in place, it  
20 would no longer be attached when it was sold,  
21 suggests that there would be substantial  
22 likelihood of problems in the neighborhood.

1                   We have had a number of bad  
2 operators come into the neighborhood. Some of  
3 them had had helpful agreements in place that  
4 allowed us to have some sort of leverage when  
5 there are problems, but it's just beyond me  
6 that it would be appropriate under the  
7 provisions of the statute to allow the  
8 termination that has been requested by this  
9 applicant. That's all.

10                   CHAIRPERSON MILLER: Okay. Thank  
11 you. Cross?

12                   MS. LUJAN: Yes.

13                   CROSS-EXAMINATION

14                   MS. LUJAN: Can you describe what  
15 your relationship with KCA is?

16                   MR. GUTHRIE: I was a -- I have  
17 been a member for maybe four or five years.  
18 I was a secretary for two years, I believe.  
19 Two and a half maybe.

20                   MS. LUJAN: You have made the  
21 statement a few times that you were not aware  
22 of the specific negotiation points that Habana

1 Village had -- were interested in negotiating.  
2 Is that correct?

3 MR. GUTHRIE: I received the email  
4 and I was present for the mediation that took  
5 place with Mrs. Fletcher and the meeting that  
6 was held October 3rd, I believe it was.

7 MS. LUJAN: Did you see, I'm  
8 referring to Exhibit 6, the letter dated  
9 August 16th to Commissioner Mossi from Peter  
10 outlining what specific issues he wanted to  
11 raise with the ANC?

12 MR. GUTHRIE: I believe that's the  
13 one that I was talking about with the email.

14 MS. LUJAN: Okay.

15 MR. GUTHRIE: I think that came in  
16 this email.

17 MS. LUJAN: Okay. So that letter  
18 was dated August 16th.

19 MR. GUTHRIE: Right.

20 MS. LUJAN: Is that correct? And  
21 in that letter, can you confirm that she was  
22 explicit about the hour changes that he was

1 requesting and the three points that --

2 CHAIRPERSON MILLER: Okay. Wait a  
3 second. Did the court reporter get that? Did  
4 you get that? No. See if you walk in the  
5 middle, you are not being picked up by a mike.

6 MS. LUJAN: I just wanted to show  
7 it --

8 CHAIRPERSON MILLER: Right. But  
9 you want to get your words on the record, I  
10 assume.

11 MS. LUJAN: So can you confirm,  
12 and we can show you the letter, that the  
13 letter included the specific three points that  
14 Habana Village was seeking to negotiate with  
15 ANC?

16 MR. GUTHRIE: You know, it's odd.  
17 I don't recall seeing under Point 1, and I  
18 don't have with me the one that came to me,  
19 but I don't recall seeing that it was limited  
20 to New Year's Eve, Daylight Savings Time and  
21 I'm not sure what other historical date it  
22 refers to.

1 MS. LUJAN: But you are saying  
2 that that is --

3 MR. GUTHRIE: I don't remember  
4 that being in. What I remember is that he  
5 requested all of the extra hours.

6 MS. LUJAN: And my question to you  
7 is is that in the letter, those three specific  
8 dates?

9 MR. GUTHRIE: That's not in this.  
10 I don't know if this is what actually I  
11 received, because it doesn't -- it's not  
12 consistent with my memory of it.

13 MS. LUJAN: So on the letter dated  
14 August 16th that you are looking at, towards  
15 the bottom of the letter it says No. 1 Hours.

16 MR. GUTHRIE: Yeah, yeah.

17 MS. LUJAN: Okay.

18 MR. GUTHRIE: But I -- I see what  
19 you are referring to.

20 MS. LUJAN: Okay.

21 MR. GUTHRIE: That is not  
22 consistent with the memory of what I received

1 as --

2 MS. LUJAN: Your recollection?

3 MR. GUTHRIE: -- an email, that I  
4 don't believe had a date at the beginning.

5 MS. LUJAN: Okay.

6 MR. GUTHRIE: And may not have  
7 been addressed to Commissioner Mossi, but it  
8 was generally consistent with what is in here.

9 MS. LUJAN: Okay. The October 3rd  
10 meeting that was held at Habana Village --

11 MR. GUTHRIE: Yes.

12 MS. LUJAN: -- you were in  
13 attendance at the meeting, correct?

14 MR. GUTHRIE: I was in attendance,  
15 yes.

16 MS. LUJAN: Who else was in  
17 attendance?

18 MR. GUTHRIE: Commissioner Mossi  
19 and Commissioner Hart.

20 MS. LUJAN: All right. And did  
21 you request that KCA attend that meeting?

22 MR. GUTHRIE: Yes.

1 MS. LUJAN: And what was the  
2 communication?

3 MR. GUTHRIE: Well, actually I  
4 didn't request. I believe Brian did.

5 MS. LUJAN: Okay.

6 MR. GUTHRIE: And he said he  
7 didn't want to have KCA there.

8 MS. LUJAN: And during the meeting  
9 you guys -- can you confirm that you discussed  
10 the three points and --

11 MR. GUTHRIE: Yes.

12 MS. LUJAN: -- do you believe that  
13 you came to a --

14 MR. GUTHRIE: I thought we had an  
15 agreement.

16 MS. LUJAN: Do you believe those  
17 three points were reasonable requests?

18 MR. GUTHRIE: I thought it was a  
19 reasonable agreement to avoid a Protest  
20 Hearing and yet, here I sit at a Protest  
21 Hearing.

22 MS. LUJAN: The fourth request was

1 to not have KCA as part of that agreement.

2 MR. GUTHRIE: Yes.

3 MS. LUJAN: What did you  
4 communicate to Peter was your position on  
5 that?

6 MR. GUTHRIE: Well, initially, we  
7 spent probably 45 minutes trying to talk him  
8 around where he would agree to include KCA.  
9 At the point that that was clear that that was  
10 not going to be successful, what I said was,  
11 you know, at this point we need to get -- I  
12 don't have the authority to bind the ANC. We  
13 have to have a meeting and at that meeting, I  
14 don't know what the ANC will do, whether they  
15 will be willing to sign on by themselves, you  
16 know, without KCA or not.

17 MS. LUJAN: Did you communicate  
18 what your position was regarding KCA?

19 MR. GUTHRIE: My position was and  
20 continues to be that I thought KCA should  
21 continue to be on the agreement.

22 MS. LUJAN: Okay. Did you

1 understand what his position was regarding  
2 KCA?

3 MR. GUTHRIE: Yes.

4 MS. LUJAN: So why is it a  
5 surprise that, I don't know if this is the  
6 right question, he would pursue this knowing  
7 that that was a -- there was no agreement on  
8 that?

9 MR. GUTHRIE: It wasn't that there  
10 was no agreement. It was that the ANC had not  
11 voted whether to agree. My best guess would  
12 be that the ANC would have agreed to go  
13 forward without having the Protest Hearing  
14 with an agreement that was simply the ANC.  
15 But the dynamics of the group are difficult to  
16 anticipate in advance. I certainly can't make  
17 a guess as to what would have happened, but my  
18 best guess would have been that we would have  
19 signed off.

20 MS. LUJAN: Okay. No further  
21 questions.

22 CHAIRPERSON MILLER: Okay. Board

1 questions? It looks like, Mr. Alberti, you  
2 have questions?

3 MEMBER ALBERTI: Yeah.

4 CHAIRPERSON MILLER: Yes.

5 MEMBER ALBERTI: I'm sorry.

6 Commissioner Guthrie, I'll ask a simple  
7 question. If the ANC was offered the  
8 opportunity to sign a voluntary agreement with  
9 the three changes that Mr. Lujan outlined and  
10 maintaining all the other points, would you  
11 advocate that the ANC would sign such an  
12 agreement?

13 MR. GUTHRIE: I'm not sure I have  
14 come to a decision on that. It's a  
15 challenging one and it has a lot of  
16 implications for the neighborhood in general.

17 MEMBER ALBERTI: Okay. So let's  
18 go on five point --

19 MR. GUTHRIE: However --

20 MEMBER ALBERTI: No, no, no.

21 MR. GUTHRIE: -- it's unfortunate  
22 that I know --

1 MEMBER ALBERTI: I got your  
2 answer.

3 MR. GUTHRIE: I am only one of  
4 eight, so I can't tell you.

5 MEMBER ALBERTI: That's fine. But  
6 you are here and I'm asking you.

7 MR. GUTHRIE: Yes.

8 MEMBER ALBERTI: And you are  
9 representing the ANC.

10 MR. GUTHRIE: Yes.

11 MEMBER ALBERTI: So I have to --

12 MR. GUTHRIE: I think that there  
13 are serious problems with doing that.

14 MEMBER ALBERTI: Okay. With  
15 respect to the hours, what are the issues that  
16 concern you with respect to the hours?

17 MR. GUTHRIE: (No audible answer.)

18 MEMBER ALBERTI: Well, one of the  
19 points that Mr. Lujan outlined was the fact  
20 that he would like extended hours on New  
21 Year's Eve and extended hours on the changes--

22 MR. GUTHRIE: We agreed with

1 those.

2 MEMBER ALBERTI: -- around  
3 Daylight Savings Time.

4 MR. GUTHRIE: We agreed with those  
5 three.

6 MEMBER ALBERTI: So you don't have  
7 concerns about that?

8 MR. GUTHRIE: No.

9 MEMBER ALBERTI: You would --

10 MR. GUTHRIE: My concern --

11 MEMBER ALBERTI: -- advocate that  
12 the ANC --

13 MR. GUTHRIE: -- is --

14 MEMBER ALBERTI: -- agreed to  
15 that?

16 MR. GUTHRIE: With those  
17 provisions? Yes.

18 MEMBER ALBERTI: Okay. Mr. Lujan  
19 outlined a request to increase his occupancy  
20 by 60 persons, from 130 to 190. What are your  
21 concerns with that?

22 MR. GUTHRIE: I had agreed in the

1 course of negotiations that that would be  
2 acceptable.

3 MEMBER ALBERTI: So you would  
4 advocate --

5 MR. GUTHRIE: My concerns --

6 MEMBER ALBERTI: -- to the ANC to  
7 accept that condition?

8 MR. GUTHRIE: My concern is not  
9 with any of those three provisions. Okay?

10 MEMBER ALBERTI: Okay. So what is  
11 your concern?

12 MR. GUTHRIE: These suggested  
13 changes.

14 MEMBER ALBERTI: What is your  
15 concern?

16 MR. GUTHRIE: My concern is with  
17 unilaterally allowing a licensee to declare  
18 that they will terminate their voluntary  
19 agreement with a citizens association and it  
20 has and that it has been on the agreement with  
21 unilaterally and without being willing to --

22 MEMBER ALBERTI: Okay.

1 MR. GUTHRIE: -- enter into  
2 discussion with them.

3 MEMBER ALBERTI: So hypothetically  
4 am I correct in assuming that if KCA  
5 hypothetically didn't exist, you would  
6 advocate, is it not correct that, to your ANC  
7 to accept those conditions?

8 MR. GUTHRIE: Hypothetically, if  
9 the KCA hadn't been part of this from the  
10 beginning and if they did not currently exist,  
11 I would have no problem in advocating that the  
12 ANC make this agreement.

13 MEMBER ALBERTI: Thank you very  
14 much. I have no further questions.

15 CHAIRPERSON MILLER: Others? Mr.  
16 Silverstein?

17 MEMBER SILVERSTEIN: Mr. Guthrie,  
18 you had a comment earlier about, you know,  
19 level playing field or about how abrogating or  
20 terminating this agreement would change things  
21 and set a bad precedent for the neighborhood.

22 That would seem to go into the

1 third prong of do no harm. How would  
2 terminating or modifying this unlevel the  
3 playing field and how would this create a bad  
4 precedent or do harm to the neighborhood?

5 MR. GUTHRIE: Well, it seems to me  
6 that if the Board were to go ahead and  
7 terminate this agreement, given the facts in  
8 this particular case, basically, it would be  
9 nearly impossible for any of the settlement  
10 agreements to survive any sort of challenge by  
11 any of the licensees.

12 Now, I don't claim that the  
13 settlement agreements are a panacea for the  
14 problems that we, as residents, in Adams  
15 Morgan face on a regular basis up there, but  
16 they help. And if it is okay for someone to  
17 come in and fail to follow the procedures that  
18 are in the statute for providing negotiation  
19 before petitioning, as I read the statute, it  
20 requires that before the petition is filed,  
21 not after.

22 If they are able to simply

1       unilaterally say I don't want to deal with a  
2       particular person in the community, I don't  
3       know how that is any different than saying  
4       someone doesn't like me personally and doesn't  
5       want to sign on to an ANC agreement because  
6       they don't like me personally.

7               I find that procedurally fairly  
8       offensive and destructive of the way the  
9       system is setup.

10               MEMBER SILVERSTEIN: So then you  
11       are saying this would set up, in your  
12       opinion --

13               MR. GUTHRIE: It would set a bad  
14       precedent.

15               MEMBER SILVERSTEIN: -- a horrific  
16       precedent?

17               MR. GUTHRIE: It would.

18               MEMBER SILVERSTEIN: But you do  
19       not -- but you are not pointing out any  
20       specifics of the termination itself. In other  
21       words, that these people would have this  
22       enormous competitive advantage or that there

1 are things that no one in the neighborhood is  
2 permitted. You see what I'm saying?

3 For example, if you had a block  
4 where everything closed at 12:00 at the  
5 sidewalk cafe and you would be allowing them  
6 to stay open until 3:00, that would be a  
7 serious unleveling of the playing field.

8 I get exactly what you are saying  
9 in terms of the setting a bad precedent. But  
10 are there any provisions in this agreement  
11 that everyone has that by allowing this to be  
12 terminated or changed would seriously unlevel  
13 the playing field?

14 MR. GUTHRIE: I haven't looked at  
15 the agreement from that perspective, so I'm  
16 not sure.

17 MEMBER SILVERSTEIN: Okay.

18 MR. GUTHRIE: I would say in  
19 general the settlement agreements are bandaids  
20 to the problems that exist in the neighborhood  
21 and not plaster casts. So I'm not sure that  
22 any of the settlement agreements that are in

1 place in Adams Morgan would substantially  
2 change the level of the playing field vis-a-  
3 vis one licensee or another.

4 MEMBER SILVERSTEIN: Okay.

5 MR. GUTHRIE: What I'm concerned  
6 about is that if the Board takes the position  
7 that this applicant has satisfied its  
8 requirements under the statute simply by  
9 saying we have been good operators or we might  
10 sell the license, but we have been good  
11 operators and we didn't come to an agreement,  
12 so you could terminate it.

13 MEMBER SILVERSTEIN: Okay.

14 MR. GUTHRIE: I just -- you might  
15 as well throw --

16 MEMBER SILVERSTEIN: I understand.

17 MR. GUTHRIE: -- out settlement  
18 agreements at that point, as far as I'm  
19 concerned.

20 MEMBER SILVERSTEIN: We're  
21 repeating ourselves. Thank you very much and  
22 thank you for your service as an ANC

1 Commissioner. No further questions.

2 CHAIRPERSON MILLER: Okay. I just  
3 have a few. Okay. So we are hearing  
4 different perspectives and let me ask you  
5 this, let's say that the applicant's  
6 perspective is right, just for this exercise,  
7 and that one of the signatories has been or is  
8 a bully to them. You think that it would set  
9 a bad precedent for the Board to allow them to  
10 no longer have a settlement agreement, if that  
11 were, indeed, the case?

12 MR. GUTHRIE: I think that the  
13 Board has before it organizations. If there  
14 are individuals within an organization with  
15 whom someone has personal problems dealing  
16 with them, then maybe you deal with someone  
17 else in the organization, but I don't think  
18 that you get to say I'm not going to have an  
19 agreement with an organization any more,  
20 because I don't like the individual who I had  
21 interacted with about this in some respect.

22 No, I don't think that would be

1 good.

2 CHAIRPERSON MILLER: Well, okay.  
3 It wouldn't be based on just that one factor.  
4 But that was a factor that you were speaking  
5 to. But how about you have different  
6 personalities and so you get to a point say  
7 where you have tried to have an agreement and  
8 then you don't see it any more agreement  
9 possible. You don't want to have anything  
10 more to do with the party you have been  
11 negotiating with, because it has come to an  
12 impasse.

13 Is that, in your view, bad faith  
14 to just, you know, say okay, I'm going to go  
15 to the Board and get relief from the Board?

16 MR. GUTHRIE: Yes. It seems to me  
17 that it is bad faith to purport to be willing  
18 to come to an agreement and then the other  
19 party feels that they have reached an  
20 agreement or close to an agreement, to step  
21 back and say no, no, wait, I changed my mind  
22 here.

1           On some level this process has  
2 felt a lot like what is going on with the  
3 shutdown where every time you get to the  
4 precedent, somebody moves back and yeah, I  
5 think that can be some initial bracket. I  
6 don't know personally whether or not there was  
7 bad faith going on.

8           I know that it felt to me like I  
9 was not being dealt with in a straightforward  
10 and honest manner.

11           CHAIRPERSON MILLER: Well, let me  
12 just be clear. What has changed? The first  
13 three terms were always there. The first  
14 three terms that have been --

15           MR. GUTHRIE: The first three  
16 terms were agreed to and I was hoping that --  
17 or whatever that was, yes.

18           CHAIRPERSON MILLER: So then the  
19 KCA term, was that a new term that was thrown  
20 in late? Is that what you are saying?

21           MR. GUTHRIE: Well, they were a  
22 signatory to the agreement that was being

1 amended. And no, there hadn't been discussion  
2 -- there hadn't been any discussion up to the  
3 October 3rd date of whether or not KCA would  
4 be in agreement.

5 CHAIRPERSON MILLER: Okay. I just  
6 wanted --

7 MR. GUTHRIE: They were first in  
8 negotiations. It was said I would be happy --  
9 they said I would be happy to sign with KCA,  
10 so long as Denis James resigns, you know. I  
11 mean, it seems pretty personal to me.

12 CHAIRPERSON MILLER: Okay. I just  
13 don't want to belabor this. I just want to  
14 know what was new at the end where you felt  
15 like things changed.

16 MR. GUTHRIE: Well, one thing that  
17 felt like it was less than good faith to me  
18 was that -- it was my understanding we had an  
19 agreement that we were going forward with just  
20 the ANC.

21 CHAIRPERSON MILLER: Okay. So --

22 MR. GUTHRIE: Because that was all

1 that he had agreed to.

2 CHAIRPERSON MILLER: What did  
3 happen to that? Is it that they didn't wait  
4 for --

5 MR. GUTHRIE: They wouldn't allow  
6 the 30 day set-over that was necessary for us  
7 to be able to decide it in a way that is legal  
8 to decide it. I can't decide it.

9 CHAIRPERSON MILLER: Okay. I  
10 don't know if you want to -- if you know where  
11 on the statute you are referring to that the  
12 notification has to take place before the  
13 filing.

14 MR. GUTHRIE: 25-446(d)(5). (d)  
15 as in dog, (5), "To fulfill the good faith  
16 attempt" --

17 CHAIRPERSON MILLER: Okay.

18 MR. GUTHRIE: -- "criteria of  
19 paragraph 4(a)(ii) of this subsection," which  
20 is the one that was previously referenced to  
21 the Board.

22 CHAIRPERSON MILLER: Okay. Thank

1 you. All right.

2 MR. GUTHRIE: "A sworn affidavit  
3 from the applicant shall be filed with the  
4 Board at the time that the application to  
5 amend a voluntary agreement by fewer than all  
6 parties is filed."

7 CHAIRPERSON MILLER: Okay. So I  
8 want to ask you -- you are not testifying are  
9 you? Are you?

10 MR. SIMPSON: I may consult with  
11 Commissioner Guthrie after this.

12 CHAIRPERSON MILLER: All right. I  
13 guess I'll ask this question and we'll see.  
14 But so you are alleging that the, that  
15 according to your PIF, reason that the  
16 termination should be denied is for failure to  
17 comply with the procedural requirements. Is  
18 that right?

19 MR. GUTHRIE: Well, it's -- we  
20 don't believe that they have established the  
21 statutory requirements under (4) and we don't  
22 believe if -- if an affidavit was filed

1 consistent with (5) --

2 CHAIRPERSON MILLER: Okay.

3 MR. GUTHRIE: -- it was not  
4 accurate, correct or identified.

5 CHAIRPERSON MILLER: Okay. Is  
6 there anything else you want to say to that,  
7 to why it should be terminated?

8 MR. GUTHRIE: And termination of  
9 the agreement --

10 CHAIRPERSON MILLER: Why  
11 termination should be denied, sorry.

12 MR. GUTHRIE: And termination of  
13 the agreement would have an adverse affect on  
14 the peace, order and quiet of the  
15 neighborhood.

16 CHAIRPERSON MILLER: Okay. So let  
17 me just ask you one more question.

18 MR. GUTHRIE: Sure.

19 CHAIRPERSON MILLER: There are,  
20 according to the Investigator, 20 other  
21 establishments operating in Adams Morgan  
22 without a settlement agreement.

1 MR. GUTHRIE: I'm --

2 CHAIRPERSON MILLER: I believe  
3 that was his testimony.

4 MR. GUTHRIE: -- not sure whether  
5 that is --

6 CHAIRPERSON MILLER: Well, so --

7 MR. GUTHRIE: Part of the problem  
8 is some of them are with the ANC. Some of  
9 them are with KCA. Some of them don't have  
10 any.

11 CHAIRPERSON MILLER: Okay.

12 MR. GUTHRIE: I'm aware of several  
13 that don't, yes.

14 CHAIRPERSON MILLER: Several that  
15 don't. Okay. So my question is just in  
16 general, why aren't the laws and regulations  
17 sufficient to prevent adverse impacts?

18 MR. GUTHRIE: My understanding is  
19 that ABRA Investigators actually use terms in  
20 the settlement agreement as separate criteria  
21 for violations and that that has some  
22 additional impact if something is a violation

1 of law as well as the settlement agreement.

2 CHAIRPERSON MILLER: I mean, would  
3 you say that some of it is case-specific?  
4 That, you know, an establishment might really  
5 need a certain restriction because of its  
6 circumstances?

7 MR. GUTHRIE: Well, one of the  
8 things in this particular case that I was  
9 struck by when I read the agreement was I had  
10 never seen anything so detailed about sound,  
11 about any licensee in the neighborhood. This  
12 looks like to me, and my assumption is, that  
13 there were substantial and significant sound  
14 issues at some point in the past that were  
15 attempted to be addressed by very specific  
16 language in this existing settlement  
17 agreement.

18 I don't know if that answers your  
19 question, but it seems to me that there are  
20 some cases in which there is a particular  
21 problem that is attempted to be resolved  
22 within the context of the settlement

1 agreement.

2 CHAIRPERSON MILLER: Exactly.

3 MR. GUTHRIE: And there are other  
4 things that are sort of uniform provisions  
5 that we like to have in all of them, because  
6 it helps articulate what the problems are in  
7 the neighborhood, so that people --

8 CHAIRPERSON MILLER: Right. Okay.  
9 So if there is something specific and that  
10 issue has been addressed, then would there be  
11 a need for that? For instance, we heard that  
12 there was a lot of expensive soundproofing  
13 done already in this instance.

14 So I guess my question is some of  
15 these provisions, I don't know if you have  
16 looked at them, but whether you have a feeling  
17 that any of them --

18 MR. GUTHRIE: When I looked at  
19 them, the reason that I wanted them to  
20 continue and I wanted an agreement to continue  
21 was --

22 CHAIRPERSON MILLER: All of them.

1 MR. GUTHRIE: -- particularly if  
2 there is someone who buys the license and  
3 decides that they want to tear all this stuff  
4 out.

5 CHAIRPERSON MILLER: Okay. So  
6 that's your concern it sounds like.

7 MR. GUTHRIE: Yes.

8 CHAIRPERSON MILLER: The unknown  
9 about if there is a sale. Okay. Okay.  
10 That's all my questions. Any other Board  
11 questions? Questions on Board questions? No,  
12 you can't ask. Oh, he is your own witness.  
13 I'm sorry. You can. Go ahead. Redirect?

14 MR. SIMPSON: Redirect just to --

15 CHAIRPERSON MILLER: All right.

16 MR. SIMPSON: -- follow-up on  
17 questions off of Chair Miller's questions.

18 REDIRECT EXAMINATION

19 MR. SIMPSON: You were asked about  
20 other establishments in Adams Morgan that may  
21 not have settlement agreements. Are you aware  
22 of any other 130-seat or 190-seat dancing

1 venues that don't have settlement agreements  
2 in Adams Morgan?

3 MR. GUTHRIE: I'm not aware  
4 whether -- if that's the case.

5 MR. SIMPSON: Thank you. Thank  
6 you. And Commissioner Miller asked -- or  
7 Chair Miller asked you about -- or asked you  
8 aren't the law, the ABC Law and Regulations  
9 sufficient? But my question to you would be  
10 isn't it the case that the creation and  
11 preservation of settlement agreements are an  
12 integral part of the ABC Law and Regulations?

13 MR. GUTHRIE: It certainly looks  
14 that way to me.

15 MR. SIMPSON: Thank you.

16 CHAIRPERSON MILLER: Okay. Thank  
17 you very much. You don't have any questions,  
18 do you? You do? Based on Board questions?

19 MS. LUJAN: Based on Board  
20 questions.

21 CHAIRPERSON MILLER: Okay.

22 RECROSS-EXAMINATION

1 MS. LUJAN: You, in response to  
2 one of the questions, stated that -- one of  
3 the questions was what was the surprising  
4 factor in the end? And you stated that you  
5 were not aware that -- you were aware of the  
6 three points, but that you were not aware that  
7 the KCA issue -- the KCA that was a new factor  
8 for you, that you were made aware on October  
9 3rd. Is that correct?

10 MR. GUTHRIE: I knew that it was  
11 an issue. I didn't know how much of an issue  
12 it was.

13 MS. LUJAN: Um-hum. When was the  
14 mediation date that took place with Mrs.  
15 Fletcher?

16 MR. GUTHRIE: Oh, I'm not --

17 MS. LUJAN: The ANC case?

18 MR. GUTHRIE: -- a date person.

19 MS. LUJAN: Okay.

20 MR. GUTHRIE: If you have it in  
21 front of you at the time, I'll agree to it.

22 MS. LUJAN: August 20th was that

1 mediation.

2 MR. GUTHRIE: Okay.

3 MS. LUJAN: Were you present for  
4 that?

5 MR. GUTHRIE: I was present there,  
6 yes.

7 MS. LUJAN: And was that issue  
8 discussed on August 20th?

9 MR. GUTHRIE: It was stated.  
10 There was no discussion.

11 MS. LUJAN: But you were made  
12 aware that that was --

13 MR. GUTHRIE: Yes.

14 MS. LUJAN: -- a critical issue?

15 MR. GUTHRIE: Yes.

16 MS. LUJAN: Okay. So if you were  
17 made aware on August 20th, then that should  
18 not have been a surprise on October 3rd. That  
19 issue should have -- would have been known to  
20 you on October 3rd. Is that correct?

21 MR. GUTHRIE: Yeah, I don't know  
22 what the surprise --

1 MS. LUJAN: Well, because you said  
2 your first discussion, your first sort of  
3 realization that this was a big issue was on  
4 October 3rd. And what I'm trying to --

5 MR. GUTHRIE: No, I don't think  
6 that was quite what I testified to.

7 MS. LUJAN: Okay.

8 MR. GUTHRIE: It's not that it was  
9 new information. It was for the first time,  
10 he refused to discuss anything about it at the  
11 mediation. So I wasn't clear what was behind  
12 it at all.

13 MS. LUJAN: Um-hum.

14 MR. GUTHRIE: Until October 3rd.

15 MS. LUJAN: And did you have the,  
16 at the August 20th mediation, letter that we  
17 referred to earlier, the August 16th letter?  
18 Do you remember having that letter at the  
19 mediation?

20 MR. GUTHRIE: I had something that  
21 is, at least, somewhat similar to that that I  
22 received as an email.

1 MS. LUJAN: Okay. There was  
2 another question that a Board Member asked you  
3 about -- related to involving KCA and you  
4 stated that you were concerned that cutting  
5 KCA out would have an impact on the community.

6 MR. GUTHRIE: Yes.

7 MS. LUJAN: Is it true that the  
8 ANC represents the same area that the KCA  
9 represents?

10 MR. GUTHRIE: Actually, that's not  
11 true.

12 MS. LUJAN: It's not?

13 MR. GUTHRIE: No. KCA is one of  
14 the neighborhood associations within the ANC.  
15 There is KCA, there is Reed-Cooke, there is  
16 Lanier Heights to be extended.

17 MS. LUJAN: Right. The ANC -- but  
18 the territory that the ANC covers, does that  
19 cover the same areas that --

20 MR. GUTHRIE: There are --

21 MS. LUJAN: -- Kalorama --

22 MR. GUTHRIE: Kalorama Citizens

1 Association takes up basically I think maybe  
2 four of the Single Member Districts out of  
3 eight.

4 MS. LUJAN: Of the ANC?

5 MR. GUTHRIE: Yeah.

6 MS. LUJAN: Okay. So by not  
7 having KCA as a signatory, we are not  
8 necessarily -- we are not cutting out any  
9 particular blocks or areas that would not be  
10 covered by an ANC, by the larger ANC District?

11 MR. GUTHRIE: Yeah, but it's a  
12 different voice. There is -- civic  
13 associations and ANCs are not functionally the  
14 same.

15 MS. LUJAN: Um-hum.

16 MR. GUTHRIE: And they certainly  
17 are not made up of the same individuals.

18 MS. LUJAN: Um-hum.

19 MR. GUTHRIE: And in Adams Morgan  
20 there has been a historic problem particularly  
21 with the rapid turnover of the ANC Members  
22 probably due to the excessive amount of time

1 that needs to be spent on ABC matters, that  
2 there have been a lot of times that the ANC  
3 has missed dates, failed to make its status,  
4 failed to get the protest in in time.

5 Many of those times, KCA, which  
6 has a more consistent history and more  
7 consistent usage of the same personnel, has  
8 basically saved our bacon as far as having  
9 someone in the neighborhood have the ability  
10 to raise issues with a licensee.

11 MS. LUJAN: Um-hum. I appreciate  
12 that. My question was does the ANC still  
13 cover? Is there an ANC representative that  
14 covers the same block area that KCA does?

15 MR. GUTHRIE: I believe I said  
16 that there --

17 MS. LUJAN: Yes?

18 MR. GUTHRIE: -- were -- KCA  
19 membership boundaries incorporate, I believe,  
20 four of the Single Member Districts.

21 MS. LUJAN: Okay. Thank you.

22 CHAIRPERSON MILLER: Okay. Any

1 redirect on that? Okay. Thank you very much.

2 MR. SIMPSON: If I may have just a  
3 moment to confer --

4 CHAIRPERSON MILLER: Okay.

5 MR. SIMPSON: -- with Commissioner  
6 Guthrie?

7 MR. JAMES: Madam Chair, would it  
8 be possible to take a break for the restroom,  
9 at this moment? Oh, sorry.

10 CHAIRPERSON MILLER: Okay. Shall  
11 we take how long a break?

12 MR. JAMES: I'm sorry --

13 CHAIRPERSON MILLER: Five?

14 MR. JAMES: -- to raise that.

15 MEMBER ALBERTI: Well, it's  
16 evening, take 10.

17 CHAIRPERSON MILLER: Yes, we're  
18 gong to take a break. That's fine. We are  
19 just discussing 5 or 10 minutes. Does anybody  
20 want 5 or 10 minutes? Okay. Why don't we  
21 do --

22 MR. SIMPSON: I just want five.

1 CHAIRPERSON MILLER: Okay. Fine.

2 MEMBER ALBERTI: It's up to you,  
3 you're the Chair.

4 CHAIRPERSON MILLER: All right.  
5 Five. Okay.

6 (Whereupon, at 8:03 p.m. a recess  
7 until 8:17 p.m.)

8 CHAIRPERSON MILLER: Okay. We  
9 have a quorum, so I don't want to keep you all  
10 until late.

11 Mr. Simpson, are you going to be  
12 testifying or is that --

13 MR. SIMPSON: I am not going to  
14 testify. I will make some conclusional  
15 remarks --

16 CHAIRPERSON MILLER: Okay.

17 MR. SIMPSON: -- for the ANC.

18 CHAIRPERSON MILLER: Okay. Great.  
19 Then, Mr. James?

20 MR. JAMES: Thank you. KCA would  
21 like to present a witness now, Mr. Hal  
22 Simmons.

1 CHAIRPERSON MILLER: Okay. Good  
2 evening. Would you raise your right hand?

3 MR. SIMMONS: Yes, I'm sorry.

4 CHAIRPERSON MILLER: That's okay.  
5 Whereupon,

6 HAL SIMMONS  
7 was called as a witness for the Defendant, and  
8 having been first duly sworn, assumed the  
9 witness stand and was examined and testified  
10 as follows:

11 CHAIRPERSON MILLER: Okay.

12 MR. SIMMONS: I'm sorry.

13 CHAIRPERSON MILLER: That's all  
14 right. Okay. Thank you. Have a seat.

15 MR. SIMMONS: Yes.

16 DIRECT EXAMINATION

17 MR. JAMES: Mr. Simmons, could you  
18 tell us your address, please?

19 MR. SIMMONS: Yes. My address is  
20 1851 Columbia Road. I am in the condo which  
21 is the Woodley.

22 CHAIRPERSON MILLER: Could I

1 interrupt for one minute? Just for the  
2 record, could you give your full name for the  
3 record? Your full name.

4 MR. SIMMONS: Hal, H-A-L, Simmons,  
5 S-I-M-M-O-N-S. Sorry.

6 CHAIRPERSON MILLER: That's okay.  
7 Thank you, Mr. James. Okay.

8 MR. JAMES: Are you familiar with  
9 the location of Habana Village?

10 MR. SIMMONS: I am.

11 MR. JAMES: Are you aware that  
12 Habana Village is seeking to terminate its  
13 settlement agreement with ANC-1C and the KCA?

14 MR. SIMMONS: I am.

15 MR. JAMES: Are you aware that the  
16 agreement in question has provisions governing  
17 noise, trash, hours of operation as well as  
18 operation in general?

19 MR. SIMMONS: Yes, I am aware.

20 MR. JAMES: Okay. And are you  
21 aware that Habana Village has an entertainment  
22 endorsement that allows it to present live

1 entertainment, such as bands and dancing until  
2 the legal closing hours of 2:00 a.m.?

3 Actually, I take that back, because it's 1:30  
4 a.m. --

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: -- certain nights of  
7 the week, but 3:00 a.m. on Friday and  
8 Saturday?

9 MR. SIMMONS: I am.

10 MR. JAMES: Okay. From your  
11 apartment in the Woodley, can you look out  
12 your window and see Habana Village?

13 MR. SIMMONS: I can.

14 MR. JAMES: And are there any  
15 impediments between you and the establishment?

16 MR. SIMMONS: None at all.

17 MR. JAMES: Okay. So could you,  
18 please, describe your concerns about peace,  
19 order and quiet in the community around Habana  
20 Village, if the protections in the existing  
21 settlement agreement were removed?

22 MR. SIMMONS: Yes. I'm not --

1                   MR. JAMES: Okay. So I'll try to  
2                   make it more straightforward.

3                   MR. SIMMONS: Yes.

4                   MR. JAMES: Would you be concerned  
5                   about peace, order and quiet if the  
6                   termination -- if the agreement were  
7                   terminated?

8                   MR. SIMMONS: Exactly, I would.

9                   MR. JAMES: Could you give some  
10                  details to the Board and the folks here?

11                  MR. SIMMONS: Well, let me just  
12                  say that I have been in the building for a  
13                  good 37 plus years and I am one of the owners.  
14                  I can't move. And there has been a noise  
15                  increase with a couple of restaurants and from  
16                  Habana Village. It is occasionally on the  
17                  weekends when people leave. I do not hear  
18                  noise there.

19                  But it is when people leave and I  
20                  hear noise and to verify that I will get up  
21                  and look and often see people leaving the  
22                  building. So I can detect where it is coming

1 from. So --

2 MR. JAMES: Thank you.

3 MR. SIMMONS: -- that's not  
4 constant.

5 MR. JAMES: That noise is from  
6 patrons exiting the establishment?

7 MR. SIMMONS: Yes.

8 MR. JAMES: Okay. And I think  
9 that's it. Yes, that's all the questions.

10 CHAIRPERSON MILLER: Okay. Any  
11 cross?

12 CROSS-EXAMINATION

13 MS. LUJAN: You mentioned that  
14 sometimes you hear noise from the  
15 establishments.

16 MR. SIMMONS: Yes, yes.

17 MS. LUJAN: And that you could see  
18 it. Is this occasionally, is this frequently?

19 MR. SIMMONS: No. Occasionally.

20 MS. LUJAN: Occasionally. Okay.

21 MR. SIMMONS: Yeah. And when you  
22 say from the establishment, it's not from the

1 building per se, but when people leave and  
2 walk down the street and the shouting and so  
3 forth. And I'm -- I get up and check. It  
4 triggers a reaction.

5 MS. LUJAN: Yes.

6 MR. SIMMONS: That's it.

7 MS. LUJAN: Got it. And so when  
8 you look and you see all of the people  
9 leaving, that could be from multiple  
10 establishments?

11 MR. SIMMONS: No. It could be,  
12 but remember I said a moment ago I get up and  
13 look.

14 MS. LUJAN: Um-hum.

15 MR. SIMMONS: And when I see them  
16 leaving there, that's -- I think there could  
17 be some others, but I detected that it is from  
18 the restaurant. So I have made sure that it  
19 is coming from the restaurant.

20 MS. LUJAN: Okay. And what  
21 intersection is near you? So if you are on  
22 Columbia Road, I think you said it was 1850.

1 MR. SIMMONS: Sure. I am at  
2 Columbia Road. I'm near the park, Kalorama  
3 Park. My building is on the park. And I am  
4 located at Columbia Road in Mintwood Place.  
5 I'm roughly six doors away, buildings away.

6 MS. LUJAN: Okay.

7 MR. SIMMONS: But I'm across the  
8 street from Grill From Ipanema and across the  
9 street from Napoleons.

10 MS. LUJAN: Okay.

11 MR. SIMMONS: And I'm on the  
12 second floor and I have double windows and I  
13 still hear. The noise seems to go up, so,  
14 yes, but it's an occasional thing.

15 MS. LUJAN: Occasional.

16 MR. SIMMONS: Weekends.

17 MS. LUJAN: Occasional on  
18 weekends. Okay. Thank you.

19 MR. SIMMONS: Okay.

20 CHAIRPERSON MILLER: Board  
21 questions? I just want to follow-up on the  
22 occasional on weekends. Is that -- what time?

1 Is that late in the evening?

2 MR. SIMMONS: Closing --

3 CHAIRPERSON MILLER: Closing.

4 MR. SIMMONS: -- time. Closing  
5 time.

6 CHAIRPERSON MILLER: Okay.

7 MR. SIMMONS: Everybody leaves and  
8 they still having a good time on the streets.

9 CHAIRPERSON MILLER: Does everyone  
10 leave at the same time, Grill From Ipanema and  
11 Napoleon and Habana Village?

12 MR. SIMMONS: I --

13 CHAIRPERSON MILLER: Do you know?

14 MR. SIMMONS: You know, it seems--  
15 I know when it is closing time. I don't have  
16 to get up, but I do and look and look at my  
17 clock. So I'm sure other people leave at  
18 other times and they are not as noisy. But it  
19 seems like that latter group -- and they are  
20 shouting. Again, it's an occasional thing.

21 I don't know how many times within  
22 the past month as an example. Maybe once,

1 twice, three times. I don't know.

2 CHAIRPERSON MILLER: Okay. And do  
3 you ever complain to the owner?

4 MR. SIMMONS: No. I have -- I  
5 didn't think it was -- anything would happen,  
6 so I have not complained and that has been --  
7 I have heard this for maybe four or five  
8 years.

9 CHAIRPERSON MILLER: Okay.

10 MR. SIMMONS: On and off.

11 CHAIRPERSON MILLER: All right.  
12 Any other questions? Any questions based on  
13 Board questions? Okay.

14 MR. SIMMONS: Okay.

15 CHAIRPERSON MILLER: Thank you  
16 very much.

17 MR. SIMMONS: Okay.

18 (Whereupon, witness was excused.)

19 MR. JAMES: I would like to  
20 present one more witness, please.

21 CHAIRPERSON MILLER: Okay.

22 MR. JAMES: Michael Colonna.

1 CHAIRPERSON MILLER: Good evening.

2 Whereupon,

3 MICHAEL COLONNA

4 was called as a witness for the Defendant, and

5 having been first duly sworn, assumed the

6 witness stand and was examined and testified

7 as follows:

8 CHAIRPERSON MILLER: Okay. Thank

9 you.

10 DIRECT EXAMINATION

11 MR. JAMES: Mr. Colonna, could you

12 tell the Board where you live, your address?

13 MR. COLONNA: 1841 Columbia Road,

14 N.W.

15 MR. JAMES: Yes. And is that

16 directly across the street from Habana

17 Village?

18 MR. COLONNA: It is. It's not

19 directly across the street, but it's just --

20 it's very close to being directly across the

21 street from Habana Village, yes.

22 MR. JAMES: Could you describe the

1 building that you live in? Whether it is a  
2 multi-unit or how many stories?

3 MR. COLONNA: It's an eight-story  
4 114-unit apartment building. There is  
5 commercial space along the ground floor and it  
6 is at the corner of Columbia Road and Mintwood  
7 Place.

8 MR. JAMES: Okay.

9 MR. COLONNA: On the west side of  
10 the street.

11 MR. JAMES: And is it true that  
12 the building is being renovated for the last  
13 few years?

14 MR. COLONNA: It is just -- they  
15 are just completing an 18 month renovation of  
16 the building following a sale in 2012, yes.

17 MR. JAMES: And is it accurate,  
18 approximately accurate, that about one-third  
19 of the units are occupied, at this time?

20 MR. COLONNA: At this time, that's  
21 correct. The lion's share of the building is  
22 empty.

1 MR. JAMES: Okay. And given the  
2 possibility that an agreement that has noise  
3 protection and it may be terminated, do you  
4 think that the residents of your building  
5 would be concerned about the effects of  
6 removing that agreement that helps control  
7 noise?

8 MR. COLONNA: Yes.

9 MR. JAMES: And is it true that  
10 some residents in your building are already  
11 concerned to the extent that they are  
12 expressing -- you know, they have filed  
13 protests to do with other establishments?

14 MR. COLONNA: Yes.

15 MR. JAMES: Okay.

16 CHAIRPERSON MILLER: Do you have  
17 an objection?

18 MS. LUJAN: Yes, as to hearsay.

19 CHAIRPERSON MILLER: I thought you  
20 were going to say leading questions. I think  
21 they are kind of leading questions.

22 MS. LUJAN: Oh.

1                   CHAIRPERSON MILLER: But we allow  
2                   hearsay in to a certain extent. And we give  
3                   it less credence, because the person isn't  
4                   here to cross-examine, but we have let it in.  
5                   But they sound a little leading. Okay.

6                   MR. COLONNA: Do you want to reask  
7                   it? I mean --

8                   MR. JAMES: No. I think I have  
9                   covered the points I wanted to make.

10                  CHAIRPERSON MILLER: Okay. Thank  
11                  you. Is there cross? Okay.

12                                   CROSS-EXAMINATION

13                  MS. LUJAN: Where do you live in  
14                  the building? Do you live on the front side  
15                  of the building?

16                  MR. COLONNA: I personally live on  
17                  the -- in the rear of the building.

18                  MS. LUJAN: So from your  
19                  apartment, you cannot see Columbia Road or  
20                  Habana Village or you are not facing --

21                  MR. COLONNA: That's right.

22                  MS. LUJAN: -- that way?

1 MR. COLONNA: That's right.

2 MS. LUJAN: Okay. And so from  
3 your apartment, do you hear the noise from  
4 Habana Village?

5 MR. COLONNA: I hear noise. I  
6 can't particularize it.

7 MS. LUJAN: Okay.

8 MR. COLONNA: Yes.

9 MS. LUJAN: Okay. No further  
10 questions.

11 CHAIRPERSON MILLER: Board  
12 questions? Mr. Alberti?

13 MEMBER ALBERTI: Hi, sir. Thank  
14 you for coming.

15 MR. COLONNA: Sure.

16 MEMBER ALBERTI: Mr. James asked  
17 you if you would be concerned -- basically, he  
18 asked you if an agreement that had a noise  
19 provision was vacated, if that would be a  
20 concern to you. All right?

21 MR. COLONNA: Uh-huh.

22 MEMBER ALBERTI: Do you know what

1 the noise provision that he is referring to  
2 is?

3 MR. COLONNA: I have -- I think I  
4 have a basic understanding.

5 MEMBER ALBERTI: And what is your  
6 understanding?

7 MR. COLONNA: That at certain --  
8 that after certain hours around --  
9 particularly around closing time, that noise  
10 should -- is supposed to be controlled at that  
11 time. And also noise emanating from an  
12 establishment is supposed to be controlled  
13 with respect to music.

14 I think -- but I'm fairly certain  
15 that nothing that comes from inside, that  
16 happens inside the building should be heard  
17 outside the building except when the door is  
18 opened.

19 MEMBER ALBERTI: Okay.

20 MR. COLONNA: That's the extent of  
21 my knowledge about that.

22 MEMBER ALBERTI: Thank you. Thank

1 you. I have no further questions.

2 CHAIRPERSON MILLER: Others? Did  
3 you say that residents in your building have  
4 protested other establishments?

5 MR. COLONNA: Yes.

6 CHAIRPERSON MILLER: Do you know  
7 which? Can you give me an example of which?

8 MR. COLONNA: Napoleon.

9 CHAIRPERSON MILLER: And why did  
10 they do that? Just general.

11 MR. COLONNA: I'm sorry?

12 CHAIRPERSON MILLER: Do you know  
13 why in general? What were they concerned  
14 about?

15 MR. COLONNA: Similar noise, noise  
16 at closing time and noise in an outdoor cafe  
17 and noise coming from loud speakers inside the  
18 building. Our -- the apartments sit -- there  
19 is a tier of apartments that sits directly  
20 above Napoleons.

21 CHAIRPERSON MILLER: Oh, okay.

22 MR. COLONNA: So --

1 CHAIRPERSON MILLER: Okay.

2 MR. COLONNA: -- but that's not  
3 the extent of the noise pollution.

4 CHAIRPERSON MILLER: Okay. So  
5 they didn't choose to protest this termination  
6 though? Is that correct?

7 MR. COLONNA: I --

8 CHAIRPERSON MILLER: They are not  
9 a party.

10 MR. COLONNA: -- as far as I know,  
11 no. Yes.

12 CHAIRPERSON MILLER: Okay.

13 MR. COLONNA: Right.

14 CHAIRPERSON MILLER: Okay. Any  
15 other questions? Any questions on Board  
16 questions? Okay. Thank you very much.

17 MR. COLONNA: You're welcome very  
18 much.

19 (Whereupon, witness was excused.)

20 CHAIRPERSON MILLER: So any other  
21 witnesses?

22 MR. JAMES: That's all the

1 witnesses. Now, I would like to present some  
2 documents in our case.

3 CHAIRPERSON MILLER: Okay.

4 MR. JAMES: Some exhibits and some  
5 -- just a verbal statement. It's not written,  
6 so --

7 CHAIRPERSON MILLER: Are you -- we  
8 haven't put you under oath.

9 MR. JAMES: That would be fine.  
10 Could we --

11 CHAIRPERSON MILLER: You want to  
12 stay there?

13 MR. JAMES: If you wouldn't mind  
14 it, because all of my documents are here --

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: -- in a pile, but if  
17 you want me --

18 CHAIRPERSON MILLER: No, that's --

19 MR. JAMES: -- to sit up there, I  
20 will be glad to.

21 CHAIRPERSON MILLER: -- fine with  
22 me. Okay.

1 Whereupon,

2 DENIS JAMES

3 was called as a witness for the Defendant, and  
4 having been first duly sworn, assumed the  
5 witness stand and was examined and testified  
6 as follows:

7 CHAIRPERSON MILLER: Okay.

8 DIRECT EXAMINATION

9 MR. JAMES: My name is Denis  
10 James, D-E-N-I-S J-A-M-E-S. So the KCA  
11 protested both the renewal and the termination  
12 in this case because we think that they are  
13 linked in the law, because it's something that  
14 happens, can only happen at the renewal time.  
15 And at the time of protesting the renewal, we  
16 hoped to be able to come to a new agreement  
17 with the licensee.

18 But we didn't know at that point  
19 whether the ANC would become a party or not.  
20 It depended on a vote and a public meeting.  
21 And then the whole question of achieving  
22 status in the protest and it was uncertain.

1           So the KCA, you know, had both a  
2 protest on the renewal and the termination  
3 moving forward. And we sought documentation  
4 from ABRA Records Manager, William Hager, as  
5 to the sufficiency of the protest. And we  
6 wrote a letter to the Board on April 10, 2013  
7 pointing out deficiencies in the document, in  
8 the application that had been received to that  
9 point.

10           I have -- I would like to make  
11 this letter KCA Exhibit No. 1. Is that right?

12           CHAIRPERSON MILLER: Okay.

13           (Whereupon, the document was  
14 marked as KCA Exhibit 1 for  
15 identification.)

16           CHAIRPERSON MILLER: Yes, okay.  
17 So you need to show, obviously, the applicant  
18 and then if you have copies for the Board?

19           MR. JAMES: Yes.

20           MS. LUJAN: Can we get a copy?

21           CHAIRPERSON MILLER: What?

22           MS. LUJAN: Can we get a copy?

1 CHAIRPERSON MILLER: Yes.

2 MR. JAMES: So I thought I had  
3 more copies. Oh, here we go. No, that's not  
4 it. Well, I do have four copies.

5 CHAIRPERSON MILLER: Okay. So one  
6 should go to the applicant and we will share  
7 up here.

8 MR. JAMES: In this letter, we  
9 detailed our concerns about the three prong  
10 test not being met and we explained fully, you  
11 know, the reasons that we thought the Board  
12 should dismiss this application to terminate.

13 And part of this -- the KCA never  
14 received an independent communication from  
15 Habana Village until we invited Habana Village  
16 to come to our meeting where we were going to  
17 take up their renewal.

18 We did protest their renewal and  
19 they did not attend our meeting. That's not  
20 a requirement under the law. I'm not trying  
21 to say that it is, but we did exchange -- I  
22 exchanged an email with Peter Lujan, at that

1 time. He said that he couldn't make it and  
2 suggested that we meet another day.

3 At that point, you know, we hadn't  
4 achieved the protest -- we hadn't achieved the  
5 status of protest, and so I knew that that  
6 would lead to Board-ordered mediation. So at  
7 that point, there was no further attempt to  
8 have a meeting.

9 CHAIRPERSON MILLER: Okay.

10 MR. JAMES: So I would like to now  
11 introduce another document. We will call it  
12 KCA Exhibit No. 2, if the Board will agree to  
13 that. And that is the Board's --

14 CHAIRPERSON MILLER: So Exhibit  
15 No. 1, KCA Exhibit No. 1 for the record is an  
16 April 10, 2013 letter to me, Chairperson of  
17 the Board, from Denis James, correct?

18 MR. JAMES: Yes.

19 CHAIRPERSON MILLER: Okay. So now  
20 you have another exhibit. Do you have --

21 MR. JAMES: Yes.

22 CHAIRPERSON MILLER: -- enough

1 copies?

2 MR. JAMES: Yes, I do.

3 CHAIRPERSON MILLER: Okay. Okay.

4 MR. JAMES: And this is the  
5 Board's Check Sheet, the applicant's Petition  
6 to Terminate and some email communication  
7 between the applicant and KCA.

8 CHAIRPERSON MILLER: Does the  
9 applicant have a copy?

10 MR. JAMES: There is one. There  
11 is enough there for them to get one.

12 CHAIRPERSON MILLER: Okay.  
13 (Whereupon, the document was  
14 marked as KCA Exhibit 2 for  
15 identification.)

16 MR. JAMES: And we maintain that  
17 very first page, once the Board receives it.

18 CHAIRPERSON MILLER: Oh, I'm  
19 sorry, can I just go back one minute --

20 MR. JAMES: Surely.

21 CHAIRPERSON MILLER: -- to Exhibit  
22 No. 1? Did you serve the applicant? It

1 doesn't look -- they are not cced on it, so  
2 that's why I wanted to check.

3 MR. JAMES: Well, at that point,  
4 the protest had not been filed, but we knew a  
5 termination was coming because there was an  
6 application into ABRA.

7 CHAIRPERSON MILLER: Okay. But  
8 you didn't, right? Just for the record. I  
9 just want to ask you.

10 MR. JAMES: No, I did not.

11 CHAIRPERSON MILLER: Okay. All  
12 right.

13 MR. JAMES: Because it was not a  
14 contested case, at that point.

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: So moving to Exhibit  
17 2, the very first page of that is the Board's  
18 Check Sheet, which was developed to help the  
19 Board and the applicant understand whether or  
20 not the application was in compliance with the  
21 code.

22 And this one was rejected as not

1 being in compliance, that the petitioner made  
2 a diligent effort to locate the other parties,  
3 that the petition contained a notarized  
4 affidavit stating that a meeting occurred that  
5 did not result in an agreement and that the  
6 petition generally described the reasons or  
7 circumstance is beyond the control of the  
8 applicant necessitating the change.

9 So this petition, just a second,  
10 yes, it contains -- it may be easier to count  
11 from the back. I think it is the third -- the  
12 fourth page from the back, because this is not  
13 a paged/numbered document, has a letter from  
14 the applicant to me, Denis James.

15 I never saw this letter  
16 independent of asking ABRA for it. So that's  
17 my testimony about that.

18 CHAIRPERSON MILLER: Your  
19 testimony is you never saw the April 11th  
20 letter that is attached to these --

21 MR. JAMES: Correct.

22 CHAIRPERSON MILLER: -- documents?

1 Okay.

2 MR. JAMES: So that's the purpose  
3 of that document.

4 CHAIRPERSON MILLER: That's the  
5 purpose of the April 11th letter. How about  
6 all these other --

7 MR. JAMES: Well, in the April 11th  
8 letter, the petition claims that here is the  
9 letter that I used to notify KCA to help  
10 comply with the requirements of 25-446(d), but  
11 I never -- my testimony to the Board is that  
12 I never received that letter independently of  
13 getting it from ABRA.

14 The applicant -- KCA has testified  
15 that the applicant did not communicate with  
16 KCA prior to filing the application, as  
17 required by the statute.

18 CHAIRPERSON MILLER: Okay. I'm  
19 just not clear what -- but you are submitting  
20 all of -- I don't know how many pages are  
21 here, because were they all attached to this  
22 check sheet? Is that why all these different

1 letters are here?

2 MR. JAMES: This is what was --  
3 this is the document that I received from  
4 William Hager.

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: And I asked him for  
7 everything relating to Habana Village's  
8 termination request on a certain date. You  
9 know, I don't remember what that date is.

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: You know, but it was  
12 later Habana Village --

13 CHAIRPERSON MILLER: Okay.

14 MR. JAMES: -- moved to, you know,  
15 "perfect" its application because the Board  
16 gave an additional amount of time to do that.

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: I'm putting that aside  
19 for the moment.

20 CHAIRPERSON MILLER: Okay.

21 MR. JAMES: All right. So if -- I  
22 have a few more documents. So KCA Exhibit No.

1 3.

2 CHAIRPERSON MILLER: So, so far,  
3 all the documents you have given us are in  
4 ABRA's public records, correct?

5 MR. JAMES: Yes.

6 CHAIRPERSON MILLER: Okay.

7 MR. JAMES: They have been -- they  
8 either are a part of applications or the KCA  
9 letter is -- you know, it's not an ABRA  
10 document, but it is -- was submitted --

11 CHAIRPERSON MILLER: I mean, it's  
12 in our files.

13 MR. JAMES: Yes.

14 CHAIRPERSON MILLER: These are all  
15 in the --

16 MR. JAMES: Yes.

17 CHAIRPERSON MILLER: -- files  
18 related to this case. Okay. Okay.

19 MR. JAMES: All right. So Exhibit  
20 No. 3 is a letter from Jonathan Berman  
21 informing -- I'm sorry. So Exhibit No. 3 is  
22 a letter from Jonathan Berman informing the

1 applicant that their application to terminate  
2 was deficient.

3 (Whereupon, the document was  
4 marked as KCA Exhibit 3 for  
5 identification.)

6 CHAIRPERSON MILLER: How many do  
7 you have, so Ms. Jenkins can pass them out?

8 MR. JAMES: We can do it all at  
9 once. We have a total of six.

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: All right.

12 CHAIRPERSON MILLER: All right.

13 Okay.

14 MR. JAMES: I'm glad to do it all  
15 at once.

16 CHAIRPERSON MILLER: All right.  
17 Okay. We will wait until all of them are in.

18 MR. JAMES: Pardon me? I didn't  
19 get direction from the Board.

20 CHAIRPERSON MILLER: Well, you  
21 want to give them all to her and then --

22 MR. JAMES: That would be fine

1 with me.

2 CHAIRPERSON MILLER: I was just  
3 saying --

4 MR. JAMES: That would be fine.

5 CHAIRPERSON MILLER: -- then she  
6 doesn't have to go back and forth.

7 MR. JAMES: Sorry.

8 CHAIRPERSON MILLER: Sorry.

9 MR. JAMES: Okay.

10 CHAIRPERSON MILLER: Okay.

11 Exhibit No. 3 was what?

12 MR. JAMES: It's an email from  
13 Jonathan Berman to Peter Lujan informing  
14 Habana Village that their application was  
15 insufficient.

16 CHAIRPERSON MILLER: Okay. So  
17 this is in our copies, because that's how you  
18 got it, right?

19 MR. JAMES: Yes.

20 CHAIRPERSON MILLER: So are all of  
21 these documents you are going to be asking us  
22 to admit are in our public records?

1 MR. JAMES: No.

2 CHAIRPERSON MILLER: No. Okay,  
3 okay. So --

4 MR. JAMES: So the --

5 CHAIRPERSON MILLER: -- Exhibit 3  
6 is an email dated Monday, April 8 from  
7 Jonathan Berman regarding Habana Village's  
8 Petition to Terminate settlement agreement.  
9 Okay.

10 MR. JAMES: I would note that the  
11 deadline for turning in -- for submitting --  
12 for an applicant to submit its renewal to ABRA  
13 was April 1st, but this gave applicants an  
14 additional two weeks, although it doesn't say.  
15 It's an email dated April 8th and it says two  
16 weeks, but it doesn't say what the deadline  
17 is.

18 So it doesn't -- it's unclear  
19 whether it is two weeks from the original  
20 deadline of April 1st or two weeks from this  
21 email. So it seems that it's possible that  
22 unequal periods of time were given to various

1 licensees who also had to -- you know, there  
2 is a question of whether everyone was treated  
3 equally as to when these were processed with  
4 the amount of time they were given, but that's  
5 sort of a side point.

6 I would be happy to give the rest  
7 of these, you know, all at one time.

8 CHAIRPERSON MILLER: Okay.

9 MR. JAMES: And we can --

10 CHAIRPERSON MILLER: Thank you.

11 MR. JAMES: -- always describe  
12 them as we get to them.

13 CHAIRPERSON MILLER: Yes.

14 MR. JAMES: So I have --

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: -- Exhibits 4, 5, 6.  
17 4, 5 and 6.

18 CHAIRPERSON MILLER: Okay. That  
19 would be good.

20 (Whereupon, the documents were  
21 marked as KCA Exhibit 4, 5 and 6  
22 for identification.)

1 MR. JAMES: And I'm pulling out  
2 one copy of each for the applicant. Sorry,  
3 there is a few things that are mixed in that  
4 shouldn't be. Oh brother. Okay. All right.  
5 Yes. So 4, 5 and 6 for the Board and 4, 5 and  
6 6 for the applicant. Do I got to give any  
7 more copies? I think I gave away my copy.  
8 All right.

9 CHAIRPERSON MILLER: Which one?  
10 All of your copies?

11 MR. JAMES: I think I gave away my  
12 -- no, wait. No, I have them. I have them.  
13 I'm sorry.

14 CHAIRPERSON MILLER: Okay. Good.  
15 Okay.

16 MR. JAMES: Sorry, there is a lot  
17 to cover here. If I might have the Board's  
18 indulgence? If I could have one of Exhibit  
19 No. 4 back? I did give that one away. It  
20 would be the C of O document.

21 MEMBER ALBERTI: What about it?

22 MR. JAMES: I apologize for --

1       than you very much. Okay. So moving to No.  
2       4, this is a -- when I requested -- during  
3       negotiations, we learned that there was a  
4       claim that Habana Village had the right to  
5       have 190 persons inside its establishment.  
6       And that was part of the reason for the  
7       termination request.

8                   But we had never over time seen a  
9       substantial change request by the Board for  
10      this with placarding. So I asked Mr. Hager  
11      for all of the C of Os from the time of the  
12      initial settlement agreement in 2002 going  
13      forward and this -- well, actually, I think I  
14      got all of them. Some that date back into the  
15      '90s.

16                   But it would appear that on the  
17      very last page, March 19, 2004, the  
18      Certificate of Occupancy was issued that  
19      allowed 190. And just this is more of a  
20      question for the Board that whether -- you  
21      know, did the Board ever approve a larger  
22      occupancy for Habana Village, that totaled

1 190?

2 Because at the time of the 2002  
3 settlement agreement approval, that was for a  
4 substantial change that allowed entertainment,  
5 but it also covered the expansion to the third  
6 floor and covered -- and described how  
7 windows, certain windows would be treated with  
8 soundproofing.

9 So, you know, it gets you to the  
10 third floor. Whether that's where the  
11 additional occupancy comes in, whether it was  
12 ever approved, we are just asking the Board to  
13 be aware of that. So that's the purpose of --

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: -- passing those in.

16 CHAIRPERSON MILLER: Okay.

17 MR. JAMES: Exhibit No. 5 is the  
18 Metropolitan Police Department Calls For  
19 Service for the whole period of time since  
20 this settlement agreement was approved. I  
21 asked them for 2002 through the present.

22 CHAIRPERSON MILLER: Okay.

1 MR. JAMES: And they didn't --  
2 their records didn't go back that far. They  
3 went, as you can see at the top of the page,  
4 2004 to present was what they were capable of  
5 bringing forward. And --

6 CHAIRPERSON MILLER: Where does it  
7 say that?

8 MR. JAMES: It's at the top of  
9 page 1 on the left hand corner of the bottom  
10 line.

11 CHAIRPERSON MILLER: Oh, I don't  
12 have the right one.

13 MR. JAMES: It's titled --

14 CHAIRPERSON MILLER: Oh, here it  
15 is. Thank you. I was looking at the wrong  
16 one.

17 MR. JAMES: Sure.

18 CHAIRPERSON MILLER: Okay. So  
19 this -- we are looking at Metropolitan Police  
20 Department of DC request from Denis James Call  
21 For Service, right?

22 MR. JAMES: Yes.

1 CHAIRPERSON MILLER: All right.

2 And that's KCA Exhibit 5. Okay.

3 MR. JAMES: And some of the --  
4 there is -- the case number at the right  
5 indicate that an MPD-251 incident report was  
6 taken. And some of those are in ABRA's files  
7 and were the subject of previous Board  
8 hearings and actions.

9 And we are not trying to pile-on  
10 in any way, we are just trying to present, you  
11 know, the full record of incidents that are  
12 reported at that address. And we are not  
13 saying also that they are all to do with the  
14 operations, but we are saying, you know, that  
15 there is a number of disorderlies, simple  
16 assaults, aggravated assault.

17 So we just present that for the  
18 Board's information. And also one 251 is KCA  
19 Exhibit No. 6, which I thought it was worth  
20 presenting to the Board. I don't believe this  
21 is anything that I could see in the Board's  
22 files from the investigative history.

1           The report on page 1 says inside  
2           of 1834 Columbia Road, simple assault. And on  
3           the second page there is a description of  
4           somebody threw a loudspeaker at somebody else  
5           to prevent, you know, some sort of a conflict  
6           between those two persons.

7           So again, it's just, you know, the  
8           testimony of the KCA is that the applicant has  
9           presented itself as a model establishment and  
10          we feel that these reports help give a more  
11          clear picture of incidents that have happened  
12          over the years at Habana Village or in front  
13          of Habana Village. And we just ask the Board  
14          to give it the weight that it deserves.

15                 CHAIRPERSON MILLER: Okay. So you  
16          would like to ask the Board, first, to admit  
17          them?

18                 MR. JAMES: Yes.

19                 CHAIRPERSON MILLER: Okay. Is  
20          there any objection and I'll pull the  
21          documents, which we could take judicial notice  
22          of anyway.

1 MS. LUJAN: Yes. So the objection  
2 is that I feel like there was not -- when KCA  
3 was able to ask the witness questions to  
4 respond to this, they were not given the  
5 opportunity to respond. So I don't know how  
6 that works, because he sort of talked and  
7 brought up specific incidents where there is  
8 no opportunity to have them explain that.

9 MR. JAMES: I'm a witness. I  
10 mean, they can ask me questions.

11 CHAIRPERSON MILLER: They can ask  
12 you questions. She said she would like to ask  
13 him, but, you know -- okay. What when Mr.  
14 James is finished --

15 MR. JAMES: I'm actually -- did  
16 you say if?

17 CHAIRPERSON MILLER: When you are  
18 finished, she can call a rebuttal witness if  
19 there is -- if you are introducing new  
20 information.

21 MR. JAMES: Okay. And this is --  
22 I only have one copy of the Board's

1       investigative report, one paper copy. But  
2       during the testimony of Habana Village's  
3       witness, Katie Davis, there was this question  
4       of how far away is Lanier Place and --

5                   CHAIRPERSON MILLER: Okay.

6                   MR. JAMES: -- the folks who live  
7       over there from the establishment. And then  
8       a mark was made on this page and I would be  
9       glad to turn that in to the Board as --

10                  CHAIRPERSON MILLER: That would  
11       be --

12                  MR. JAMES: -- their exhibit.  
13       That's -- Mr. Alberti --

14                  CHAIRPERSON MILLER: What's that  
15       number?

16                  MR. JAMES: -- actually asked --

17                  CHAIRPERSON MILLER: 8?

18                  MR. JAMES: -- or suggested that I  
19       do that.

20                  CHAIRPERSON MILLER: Okay.

21                  MEMBER ALBERTI: Well, we just  
22       need that one page.

1 MR. JAMES: Okay.

2 CHAIRPERSON MILLER: That would be  
3 Exhibit No. 8?

4 MR. JAMES: Yes. Exhibit No. 4 of  
5 the Board's --

6 CHAIRPERSON MILLER: Right.

7 MR. JAMES: -- investigative --

8 CHAIRPERSON MILLER: But your --

9 MR. JAMES: -- report.

10 CHAIRPERSON MILLER: Right. But  
11 it's your Exhibit No. 8? Is that where we are  
12 at?

13 MR. JAMES: I guess.

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: I don't have  
16 additional copies. I believe everybody here  
17 has --

18 CHAIRPERSON MILLER: Okay.

19 MR. JAMES: -- this.

20 MEMBER ALBERTI: Would you show it  
21 to them before we --

22 MR. JAMES: Gladly.

1 CHAIRPERSON MILLER: Yes.

2 MS. LUJAN: We know where she  
3 lives.

4 CHAIRPERSON MILLER: Do you have  
5 any objection?

6 MEMBER ALBERTI: Well, have you  
7 seen the mark?

8 MS. LUJAN: Oh, no, I don't have--  
9 we don't need that.

10 CHAIRPERSON MILLER: Okay. And do  
11 you have any objections to any of these  
12 exhibits, which are all in the public record?

13 MEMBER ALBERTI: So is it labeled  
14 as Exhibit 8?

15 MS. LUJAN: No.

16 MR. JAMES: I'll mark it --

17 MS. LUJAN: No, because he has not  
18 -- we have an opportunity to ask him  
19 questions.

20 CHAIRPERSON MILLER: You can.

21 MS. LUJAN: You said we have the  
22 rebuttal opportunity, so --

1 CHAIRPERSON MILLER: You can. I  
2 just want to know if you have --

3 MS. LUJAN: With that, we don't  
4 have any objections.

5 CHAIRPERSON MILLER: Okay. As  
6 long as you can --

7 MS. LUJAN: As long as we can --

8 CHAIRPERSON MILLER: -- call your  
9 witness?

10 MS. LUJAN: Yes.

11 CHAIRPERSON MILLER: All right.

12 MR. JAMES: My statement to this  
13 is that it's quite -- you know, the residents  
14 of Lanier Place are quite distant from the  
15 establishment. I don't know how many feet, in  
16 particular, but the circle drawn around --

17 CHAIRPERSON MILLER: Okay.

18 MR. JAMES: -- this is, I believe,  
19 600 feet because the other circle, if I have  
20 to enter this too, I will, this circle does  
21 say it is 400 feet and this one is larger.  
22 Usually the Board chooses --

1 MEMBER ALBERTI: It's 1,200 to  
2 help you out. It says it right on there.

3 CHAIRPERSON MILLER: Okay.

4 MR. JAMES: I appreciate that.  
5 Thank you.

6 MEMBER ALBERTI: Okay.

7 MR. JAMES: I didn't have a chance  
8 to notice that.

9 MEMBER ALBERTI: So that concludes  
10 that. Thank you.

11 MR. JAMES: So some of the  
12 residents of Lanier Place live 1,200 feet away  
13 from the establishment. Others somewhat  
14 closer, but I don't know how close.

15 CHAIRPERSON MILLER: Okay.

16 MR. JAMES: So this is Exhibit No.  
17 8.

18 CHAIRPERSON MILLER: All right.

19 MR. JAMES: If anybody would like  
20 to collect it.

21 CHAIRPERSON MILLER: He has got  
22 one more exhibit.

1 (Whereupon, the document was  
2 marked as KCA Exhibit 8 for  
3 identification.)

4 CHAIRPERSON MILLER: It probably  
5 needs to be copied. Okay. So you have one.  
6 Do you need a copy of that or can the Board  
7 just have that?

8 MR. JAMES: The Board can have it.

9 CHAIRPERSON MILLER: All right.  
10 We don't need to make copies of that, do we?  
11 Okay. We don't need copies. Thank you.  
12 Okay. All right.

13 MR. JAMES: So based upon these  
14 submittals, we, the KCA, contends that the  
15 applicant did not meet the necessary test in  
16 the law to have a valid termination request  
17 filed. And through our witnesses, we showed  
18 that there is --

19 CHAIRPERSON MILLER: This isn't  
20 closing time.

21 MR. JAMES: Oh, okay.

22 CHAIRPERSON MILLER: Do you want

1 to save that for closing? You want to say it  
2 now?

3 MR. JAMES: No. I'll wait. I'll  
4 wait.

5 CHAIRPERSON MILLER: Okay. All  
6 right. So I'm going to admit all of KCA's  
7 Exhibits 1 through 8.

8 (Whereupon, the documents marked  
9 as KCA Exhibit 1 through 8 were  
10 received in evidence.)

11 CHAIRPERSON MILLER: And the  
12 applicant wishes to put on one rebuttal  
13 witness, correct?

14 MS. LUJAN: Yeah. Well, I had  
15 some questions.

16 CHAIRPERSON MILLER: Oh, I'm  
17 sorry. Go ahead. I'm rushing us. Okay. Go  
18 ahead.

19 MS. LUJAN: And I'm sorry.

20 CHAIRPERSON MILLER: That's okay.

21 MS. LUJAN: I do want. Just a  
22 couple of quick questions for Mr. James.

CROSS-EXAMINATION

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MS. LUJAN: Do you think that Habana Village requests for -- the three point requests to amend the voluntary agreement was unreasonable? Specifically changing the seat capacity from 130 to 190 which is their legal capacity?

MR. JAMES: I don't really understand the question, but I'll just take a run at it. I think that it could be found appropriate or reasonable with some tempering provisions in a settlement agreement.

MS. LUJAN: Do you think that the request to extend the hours per current ABRA Regulations on New Year's Eve and the two Daylight Savings Times was an unreasonable request?

MR. JAMES: No, I don't, but I wasn't allowed to participate in the discussions around that issue.

MS. LUJAN: Do you think that the request to amend the language to allow for the

1 flexibility to provide satellite parking  
2 transportation with the understanding that  
3 there would not be an acceptance of a bar  
4 crawl or tours, was that an unreasonable  
5 request?

6 MR. JAMES: Again, I do think that  
7 that has -- this -- I'll give you a straight  
8 answer, yes. But because Adams Morgan has  
9 been troubled in the past by pub and bar  
10 crawls, I would be very careful about the  
11 language that any settlement agreement around  
12 that issue contained.

13 And if I were participating, I  
14 would have sought to add that such satellite  
15 parking and transportation would only apply to  
16 this establishment. It wouldn't be provided  
17 to any other establishments as part of that  
18 service.

19 MS. LUJAN: Okay. Do you -- you  
20 referenced that you invited Habana Village and  
21 Peter to attend a KCA meeting and that he was  
22 unable to attend. In that email exchange, did

1 he offer another date that would work? And  
2 did you respond?

3 MR. JAMES: Yes, I did. He  
4 suggested that -- it was -- you know, he  
5 suggested a date I think a day or two after  
6 our meeting or that I get back with him. And  
7 I agree that he did offer that. I'm not sure  
8 that he understood that we had a new legal  
9 requirement to notify an applicant that we are  
10 going to take up their request at our meeting,  
11 as a citizens association. There is a new  
12 change to the Code 25-601(3)(d), I believe.

13 So that's my answer.

14 MS. LUJAN: So he did make an  
15 attempt to meet with you?

16 MR. JAMES: He did, yes. He did,  
17 but the question of whether or not it was a  
18 diligent effort. You know, one email  
19 suggesting a day that we could meet, whether  
20 that satisfies 25-446(d)(4)(A)(i) I'm not  
21 sure.

22 MS. LUJAN: Did you have a call

1 about 10 days after the mediation hearing with  
2 him where you said that you were unwilling to  
3 accept the three changes I previously read?

4 MR. JAMES: We had a call, but we  
5 didn't get into the particulars. It was all--  
6 the main point of the call was won't you meet  
7 with Commissioner Guthrie and I to discuss  
8 this, because we are going to discuss it at  
9 ABRA mediation anyway. And Mr. Lujan wanted  
10 to have separate discussions with the KCA and  
11 separate discussions with the ANC.

12 MS. LUJAN: So if he wanted to  
13 have separate discussions, then one would  
14 assume he made an effort to discuss it. I  
15 mean, if your statement -- can I assume from  
16 that statement that he had made efforts to  
17 discuss it, whether it was separate from ANC,  
18 but he did make attempts to discuss it with  
19 KCA?

20 MR. JAMES: I don't think so. I  
21 think it was a discussion about if we would  
22 meet and under what circumstances, but it was

1 -- didn't go to the substance of the issues.  
2 I wouldn't attempt to have that kind of a  
3 conversation over the phone when it is on  
4 written matters. You know, an agreement on  
5 paper, what changes might be made, there  
6 existed notes from the ABRA mediation that I  
7 had made.

8 I don't remember referencing any  
9 of those during this discussion.

10 MS. LUJAN: So in the mediation  
11 meeting that you did attend with him, did you  
12 not discuss these points?

13 MR. JAMES: Are you referring to  
14 the renewal or the termination?

15 MS. LUJAN: The three points he  
16 wanted to amend the voluntary agreement with.

17 MR. JAMES: Are you referring to  
18 the renewal mediation or the termination  
19 mediation?

20 MS. LUJAN: The renewal. The June  
21 13th. No, that was the one you didn't show up  
22 for. The one that was after the July 10

1 Status Hearing that was sort of for the  
2 renewal.

3 MR. JAMES: Yes. During -- it was  
4 not presented as a package. It was something  
5 that evolved out of the mediation, which by  
6 process of elimination going through each  
7 provision, one-by-one and sort of discussing  
8 it in general, what might be able to stay and  
9 then kind of going back over them again. And,  
10 you know, it's the way mediation can work in  
11 that, you know, you look at it. You hear what  
12 the other side is saying.

13 If they took out these things, you  
14 know, from my point of view, would we have a  
15 valid meaningful agreement or not? So it was  
16 left that we learned that a large part of the  
17 agreement could stay in place, but certain  
18 parts could not. But without great  
19 specificity, I was never informed of which  
20 holidays Mr. Lujan would like to have had the  
21 extended hours on.

22 MS. LUJAN: Well, why after the

1 several hearings and mediations did you decide  
2 to withdraw the protest?

3 MR. JAMES: Because there seemed  
4 no point in having a double hearing, one on  
5 the renewal and one on the termination. Now,  
6 the ANC was clearly in place and a mediation  
7 was scheduled or I think it had already taken  
8 place, at that point, so KCA and ANC had  
9 mediated together on the termination.

10 And the way discussions were going  
11 and the atmosphere around the discussions, I  
12 didn't think there was any chance at all of a  
13 joint request to combine the two proceedings  
14 into one. I didn't think there was any chance  
15 that that would be approved. I just submit  
16 that I didn't ask Mr. Lujan if he would agree  
17 to that.

18 So I just didn't want -- wish the  
19 Board to go through hearing the same case  
20 really twice.

21 MS. LUJAN: Okay.

22 MR. JAMES: And withdrew the

1 request one week in advance in respect to the  
2 Board's calendar, so that they could plug  
3 something else into that slot and in respect  
4 for the applicant to give a full week's  
5 notice.

6 MS. LUJAN: It was one week prior  
7 to the hearing, but it was after several other  
8 hearings including mediations, including both  
9 times not only that Habana Village, but  
10 everybody including ABRA had spent into this  
11 process.

12 So why if you had reservations  
13 about that, did you go through the entire  
14 process until the very end? Nothing would  
15 have changed in between that time for you to  
16 all of a sudden --

17 CHAIRPERSON MILLER: Okay. You  
18 know what, it's late.

19 MEMBER ALBERTI: There is a  
20 question there.

21 CHAIRPERSON MILLER: Well, I--

22 MS. LUJAN: I'm sorry.

1 CHAIRPERSON MILLER: -- unless you  
2 feel it is imperative, we don't up here. We  
3 have heard a lot --

4 MS. LUJAN: Okay.

5 CHAIRPERSON MILLER: -- about the  
6 back and forth on the negotiations. So --

7 MR. JAMES: I would be willing to  
8 answer, but --

9 MS. LUJAN: Right. Fine.

10 CHAIRPERSON MILLER: Okay.

11 MR. JAMES: It didn't appear to be  
12 a question. I was waiting for a question  
13 anyway. We are always hopeful that agreements  
14 can be reached, so you wait until the last  
15 possible second before ultimate actions have  
16 to be taken in the chance that something will  
17 break.

18 CHAIRPERSON MILLER: Like the  
19 Congress. Okay.

20 MS. LUJAN: Okay. I think we -- I  
21 don't think we have any other questions. And  
22 we are -- we will --

1 CHAIRPERSON MILLER: Board  
2 questions?

3 MS. LUJAN: Oh, yes, and for the  
4 interest of time, we will not pursue the  
5 rebuttal.

6 CHAIRPERSON MILLER: Oh, okay.  
7 Okay. These are all public documents in our  
8 records. Any Board questions? Mr. Alberti?

9 MEMBER ALBERTI: Good evening, Mr.  
10 James. It's still today, isn't it? We  
11 haven't gone past midnight. It happens, trust  
12 me. Consider yourself lucky.

13 MR. JAMES: Appreciate the Board's  
14 patience.

15 MEMBER ALBERTI: Yeah. Okay.  
16 When did you first learn that Mr. Lujan had  
17 applied -- had petitioned to terminate his  
18 voluntary agreement?

19 MR. JAMES: I knew it before KCA  
20 voted to protest the renewal, because we  
21 normally wouldn't have done that. We were,  
22 you know, very anxious. It's a renewal year,

1 there is a lot of talk on this.

2 MEMBER ALBERTI: So what was the  
3 date that you protested --

4 MR. JAMES: I don't know the -

5 MEMBER ALBERTI: -- the --

6 MR. JAMES: -- precise date. I  
7 would say in mid-March roughly.

8 MEMBER ALBERTI: In mid-March.  
9 And how did you learn?

10 MR. JAMES: I believe through  
11 discussion with Mr. Moosally as to if he knew  
12 if any applications for termination were  
13 coming through from, you know, licensees  
14 because it would start in this shop more or  
15 less. An application would be filed.

16 MEMBER ALBERTI: Before it was  
17 placarded?

18 MR. JAMES: Well, I'm not sure if  
19 that would be before it was placarded. Before  
20 the renewal. The renewals were being  
21 placarded. And because of the linkage that  
22 this can only happen at renewal period, I was

1 very concerned that --

2 MEMBER ALBERTI: No.

3 MR. JAMES: Okay. Sorry.

4 MEMBER ALBERTI: You've answered  
5 my question. For the sake of time, just  
6 answer my questions.

7 MR. JAMES: Yes. Before it was  
8 placarded. You know, that I don't think --  
9 well, I think you are just looking for that  
10 answer.

11 MEMBER ALBERTI: That's what I'm  
12 looking for. All right. Okay. You wrote an  
13 email on April 11th to Mr. Lujan requesting a  
14 meeting. And it appears to me that you knew  
15 then, because you said on renewal or any other  
16 applications.

17 MR. JAMES: Yes.

18 MEMBER ALBERTI: So --

19 MR. JAMES: Well, that --

20 MEMBER ALBERTI: -- I'm guess that  
21 you were alluding to the termination, at that  
22 time.

1 MR. JAMES: Should that be  
2 placarded.

3 MEMBER ALBERTI: Right.

4 MR. JAMES: Prior to our meeting,  
5 in that short period of time.

6 MEMBER ALBERTI: Yes, right.  
7 Okay. And had you reached out to Mr. Lujan  
8 prior to this April 11th email?

9 MR. JAMES: No. I had not.

10 MEMBER ALBERTI: Had Mr. --

11 MR. JAMES: There is no  
12 requirement. I think the requirement is --

13 MEMBER ALBERTI: Just answer my  
14 questions.

15 MR. JAMES: -- refers -- surely.  
16 We -- no, I had not.

17 MEMBER ALBERTI: You had not.  
18 Okay. Did Mr. Lujan reach out to you prior to  
19 this?

20 MR. JAMES: Not to my knowledge,  
21 but the -- what I just gave back to the Board  
22 indicates that there is a letter, but I -- as

1 I testified, I had never saw it until I got  
2 the Board's --

3 MEMBER ALBERTI: And the date of  
4 that letter? What letter are we talking  
5 about?

6 MR. JAMES: A letter that is  
7 included in KCA Exhibit 2, the fourth page  
8 from the rear, I believe it was, dated April  
9 11th.

10 MEMBER ALBERTI: Oh, wait, wait,  
11 wait. KCA No. 2?

12 CHAIRPERSON MILLER: That's the  
13 Checklist, I think.

14 MEMBER ALBERTI: Okay. So the  
15 date of the letter to you?

16 CHAIRPERSON MILLER: April 11,  
17 2013.

18 MR. JAMES: It's the fourth page  
19 from the rear of that stapled --

20 MEMBER ALBERTI: Okay.

21 MR. JAMES: It would be No. 2.

22 MEMBER ALBERTI: And you claim

1 that you never saw that? Is that correct?

2 MR. JAMES: Not until I got this  
3 package of documents from --

4 MEMBER ALBERTI: Okay.

5 MR. JAMES: -- William Hager.

6 MEMBER ALBERTI: Okay. And so I  
7 think you answered earlier, is it not correct  
8 that you had not -- Mr. Lujan had not  
9 contacted you prior to that?

10 MR. JAMES: That's correct.

11 MEMBER ALBERTI: With regards to  
12 the termination?

13 MR. JAMES: Correct.

14 MEMBER ALBERTI: That's really all  
15 the questions I have for Mr. James. Thank  
16 you.

17 CHAIRPERSON MILLER: Others? I  
18 just want to ask you, did you say that during  
19 mediation you went through the voluntary or  
20 settlement agreement paragraph-by-paragraph to  
21 see which provisions were more important than  
22 others or which ones should --

1 MR. JAMES: Yes.

2 CHAIRPERSON MILLER: Yeah.

3 MR. JAMES: This was the renewal  
4 mediation and --

5 CHAIRPERSON MILLER: Oh, okay.

6 MR. JAMES: -- so the ANC was not  
7 present. And we did go through point-by-  
8 point, you know, and I was very interested of  
9 learning Mr. Lujan was content to allow most  
10 of the agreement to stay in place.

11 CHAIRPERSON MILLER: Can you tell  
12 me which are your most important provisions?  
13 I mean, I don't know if you have it there,  
14 but --

15 MR. JAMES: The existing  
16 agreement?

17 CHAIRPERSON MILLER: In the  
18 existing agreement, yeah. Are there any that  
19 is most important?

20 MR. JAMES: The noise provisions  
21 that are there are very important. Not so  
22 much -- there are some that pertain exactly to

1 the treatment that was given to certain  
2 windows, that it was done.

3 CHAIRPERSON MILLER: Right.

4 MR. JAMES: That as accomplished--

5 CHAIRPERSON MILLER: Right.

6 MR. JAMES: -- as some of their  
7 submissions shows. That -- those are not  
8 necessary to be remaining in there or if they  
9 were to just say treatment done to windows  
10 could remain instead of -- it doesn't need to  
11 be quite as detailed as it is. I mean, if we  
12 are looking to lighten up an agreement.

13 But basically, the other parts of  
14 the noise provisions are, of course, the most  
15 important because it's a place that has an  
16 entertainment endorsement. It has bands, has,  
17 you know, DJs playing music for people to take  
18 dancing lessons, too, and it has been  
19 presented, you know, right next door to a  
20 residential building, across the street from  
21 a residential building and other large  
22 residential buildings.

1 CHAIRPERSON MILLER: Okay.

2 MR. JAMES: So if you were asking  
3 me, you know, the complete list, I think it is  
4 -- you know, to state the hours is important,  
5 because if we didn't state the hours and then  
6 we could be surprised that Habana Village  
7 would all of a sudden have the entertainment--  
8 not the entertainment, the extended hours  
9 package which is actually at least 16 days per  
10 year and in such a close residential section,  
11 I think that that could potentially disturb  
12 lots of residents.

13 The capacity, we think is  
14 important because if you add approximately 50  
15 percent capacity to a place, that's a whole  
16 lot more people that can come out later and be  
17 noisy or as they come and go during the  
18 evening, you know. And the potential of a  
19 larger number of people inside can make it be  
20 a noisier establishment that emanates noise.

21 And I do think the trash and  
22 recycling provisions in the agreements are

1 very important, because again it's a densely  
2 populated area that -- you know, it's really  
3 quite reasonable to have those sorts of  
4 provisions --

5 CHAIRPERSON MILLER: Okay.

6 MR. JAMES: -- that protect public  
7 health and help keep our alleys and streets  
8 cleanly.

9 CHAIRPERSON MILLER: Okay. Thank  
10 you very much. All right. Any questions on  
11 Board questions? Okay. I think we are done  
12 with witnesses at least, are we not?

13 MR. GUTHRIE: Yes.

14 CHAIRPERSON MILLER: Okay. Good.  
15 Then we are at closings. Five minutes. No  
16 more than five minutes, yes, and protestants  
17 share the five minutes, too. Okay. When you  
18 are ready.

19 MR. GUTHRIE: Who goes first?

20 CHAIRPERSON MILLER: Applicant.

21 MS. LUJAN: First, we want to  
22 thank everybody for all of the time that you

1 spent tonight, both the Board as well as the  
2 ANC and KCA and all of the folks that are in  
3 the room.

4 We understand that the purpose  
5 around this is to prove three points.

6 One, that we made a diligent  
7 effort to locate parties and a good faith  
8 effort to negotiate a reasonable agreement.

9 The second, the need for the  
10 amendment is warranted for causes that are--  
11 or issues that are out of the control of the  
12 applicant.

13 And third and lastly, that the  
14 termination of this agreement would have no  
15 adverse impact on the neighborhood.

16 We tried through our testimonies,  
17 our exhibits that we submitted and the  
18 testimonies while I know probably a little too  
19 detailed for you all than you wanted, we tried  
20 to insure the we conveyed that we did make a  
21 good faith effort with the ANC and the KCA, as  
22 well as the need for this amendment that will

1 really help Habana Village do what it needs to  
2 do, given the economy, to figure out how to  
3 increase revenue.

4 We believe that the exhibits,  
5 including the testimony of the Investigator  
6 and other testimonies, indicate that we are  
7 not an establishment that has a long history  
8 of ABRA violations. And so we believe that we  
9 have solid information on the second point.

10 And on the last point, we believe  
11 that Habana Village is an establishment that  
12 feels very strongly about the way it runs its  
13 business. We don't believe that this  
14 voluntary agreement is -- it's because this  
15 voluntary agreement that we are not violating  
16 ABRA violations.

17 We firmly believe in the three  
18 tenets of peace and quiet in the neighborhood  
19 and we don't believe this will have an adverse  
20 impact should it be terminated.

21 So I hope that the Board is able  
22 to see through the information that we have

1       showed tonight, the exhibits we have presented  
2       and we will respect and follow the Board's  
3       decision. And we hope that we were able to  
4       present our case well and convincingly  
5       tonight.

6                   CHAIRPERSON MILLER: Great.

7                   MS. LUJAN: Thank you.

8                   CHAIRPERSON MILLER: Thank you.  
9       Okay.

10                  MR. GUTHRIE: Mr. Simpson, are you  
11       going to speak?

12                  MR. SIMPSON: I'll speak on behalf  
13       of the ANC.

14                  CHAIRPERSON MILLER: Okay.

15                  MR. SIMPSON: We would also like  
16       to thank you for staying late tonight and I'll  
17       try to be brief, so we can keep this short.

18                  The applicant is correct about the  
19       statutory requirements, but from our  
20       standpoint, they have failed all of them. The  
21       preliminary requirements are perhaps the most  
22       troubling. The statute is explicit that they

1 have to have made a diligent effort to contact  
2 the other parties to the agreement and they  
3 have to engage in good faith negotiations to  
4 try to come up with an amendment to the  
5 agreement.

6 It is important to keep in mind  
7 the context of this entire proceeding. This  
8 is not a regular situation where someone is  
9 applying for a new license or trying to get  
10 some new privilege.

11 This is a situation where one  
12 party to a contractual agreement is trying to  
13 break that contract with the other party. And  
14 the law allows for that, but it places a very  
15 high bar on that.

16 It just has to be reiterated that  
17 the applicant made virtually no effort to  
18 contact the other parties before filing this  
19 application. One, in fact, they had to be  
20 coached by ABRA staff after filing their  
21 application to be reminded that they had  
22 failed to make that effort.

1           Subsequent to that, they sent one  
2           email to the ANC. It was sent to two  
3           commissioners' addresses. One of those was  
4           incorrect, the other one was to an email  
5           address that did not work and that produced a  
6           response message saying this email address is  
7           bad.

8           They made no further effort to  
9           contact us and it was the ANC who reached out  
10          to them to try to begin a discussion about how  
11          this might proceed.

12          Commissioner Guthrie has testified  
13          about the efforts that we made. Frankly, from  
14          my perspective, the commissioners who engaged  
15          in these negotiations bent over backwards to  
16          try to accommodate the points that the  
17          applicant was requesting.

18          And we were astonished and,  
19          frankly, shocked and, frankly, angered and  
20          offended when after pledging in person that  
21          they would agree to a continuance, so that the  
22          ANC could take this up at our next public

1 meeting, they reneged on that promise and  
2 insisted on holding this hearing tonight.

3 So that goes to the preliminary  
4 requirements of the statute.

5 With respect to the circumstances  
6 in the neighborhood, you know, this  
7 establishment is on Columbia Road. It is not  
8 on 18th Street where the Streetscape Project  
9 took place. It did not suffer those  
10 disruptions in service and access.

11 As far as I have ever known it, it  
12 has been operating as a robust business. And  
13 the applicant has personally testified that  
14 the principal reason they want these changes  
15 to the agreement is so that they can expand  
16 their business. It's not about their existing  
17 business having been hurt.

18 And finally, that's really where  
19 the adverse effect prong of this comes in.  
20 You know, there are very few establishments in  
21 Adams Morgan that are fundamentally dance  
22 venues for very large crowds and that's what

1 this is.

2           They want to expand that  
3 significantly. And honestly, we are willing  
4 to try and work with them on that, if it can  
5 be done in a responsible way with an amendment  
6 to the settlement agreement that captures the  
7 right ongoing contractual agreement. I'm,  
8 frankly, baffled why we are not at that place  
9 when we thought we were.

10           So again, we think they have  
11 failed all of the prongs of the statute and we  
12 think it would be truly detrimental to Adams  
13 Morgan as a whole if the Board were to allow  
14 them to break their contract on this basis.

15           We have so few tools in Adams  
16 Morgan to try to make for a better  
17 environment. Settlement agreements are one  
18 tool. They are not a particularly robust  
19 tool, but we have so few other options.

20           I just have to highlight and I  
21 know I testify to this every time I see you,  
22 but this Board noted the problems with Adams

1 Morgan, endemic problems of peace, order and  
2 quiet, late night crime, late night noise that  
3 is in writing in a Board order on the existing  
4 moratorium.

5 And, you know, just in the past  
6 couple of months we had another stabbing and  
7 another violent assault that led to a  
8 resident's death. And you know, if this -- if  
9 our settlement agreements start to be yanked  
10 out from under us, you know, I don't know what  
11 we have left.

12 So that's my testimony. Thank you  
13 or my closing remarks. Thank you.

14 CHAIRPERSON MILLER: Okay.

15 MR. JAMES: KCA concurs with the  
16 ANC. Everything that was said plus we rest on  
17 the testimony that we have already put  
18 forward.

19 CHAIRPERSON MILLER: Okay. Well,  
20 thank you, everyone. Then I'm going to close  
21 the record, at this point, and ask you if you  
22 wish to file proposed findings of fact and

1 conclusions of law or waive your right to do  
2 so? And I will explain that, if someone wants  
3 me to. Okay.

4 It's a right the parties have that  
5 very few take advantage of, because what it  
6 involves is submitting like a legal brief  
7 setting forth what -- findings of facts you  
8 think that the Board should make, based on the  
9 evidence in the record, such as was presented  
10 today. There is going to be a transcript from  
11 today.

12 And then what conclusions of law  
13 we should draw. So it would be you would make  
14 an argument in your favor, a finding of facts  
15 in your favor, and conclusions of law.

16 It is not evidence. It's not  
17 required. It is another form of argument.  
18 The Board will be deliberating on the evidence  
19 in the case and then writing an order, which  
20 will set forth findings of fact and  
21 conclusions of law.

22 You would have 30 days to do it

1 after the transcript is available. Okay.

2 MR. SIMPSON: The ANC would like  
3 to submit --

4 CHAIRPERSON MILLER: You would  
5 like to?

6 MR. SIMPSON: -- findings of fact  
7 and conclusions of law.

8 CHAIRPERSON MILLER: Okay.

9 MR. JAMES: So would KCA.

10 CHAIRPERSON MILLER: Okay. So I'm  
11 just going to -- yeah, we don't have to waive  
12 it. Okay. So what happens is the transcript  
13 will be ready in about two weeks and then I  
14 understand that it will be emailed, I believe,  
15 to all the parties.

16 Then you will have 30 days from  
17 that date to submit your proposed findings of  
18 fact and conclusion of law and serve them on  
19 all the parties in the case. You are not  
20 required to do this. If you decide you do not  
21 want to do it, please, let us know, because we  
22 are going to wait to deliberate until we have

1 that, if they are, in fact, coming.

2 A lot of time parties say they are  
3 going to do it and then they decide they don't  
4 want to do it. But you have a right to do it,  
5 so okay. So what I understand is then the  
6 parties wish to do it or aren't waiving their  
7 right. Okay.

8 All right. Then after we get the  
9 proposed findings of fact and conclusions of  
10 law or an indication that you are not doing  
11 it, we will deliberate and issue a decision  
12 within 90 days.

13 And pursuant to the Open Meetings  
14 Act, deliberations of adjudications may be  
15 done in closed session and so that is the  
16 process that this Board will be taking. So  
17 I'm just going to have the Board take a vote  
18 on that and you all don't have to stay for  
19 this, if you don't want to.

20 Do you have any questions before  
21 we do that? Okay. If you do, you can ask  
22 Martha Jenkins, our general counsel, in the

1 future. Okay.

2 All right. As Chairperson of the  
3 Alcoholic Beverage Control Board for the  
4 District of Columbia and in accordance with  
5 Section 405 of the Open Meetings Amendment Act  
6 of 2010, I move that the ABC Board hold a  
7 closed meeting for the purpose of seeking  
8 legal advice from our counsel on Case No. 13-  
9 PRO-00094, Habana Village, per Section  
10 405(b)(4) of the Open Meetings Amendment Act  
11 of 2010, and deliberating upon this case for  
12 the reasons cited in Section 405(b)(13) of the  
13 Open Meetings Amendment Act of 2010.

14 Is there a second?

15 MEMBER BROOKS: Second.

16 CHAIRPERSON MILLER: Mr. Brooks  
17 has seconded the motion. I'll now take a roll  
18 call vote on the motion now that it has been  
19 seconded.

20 Mr. Brooks?

21 MEMBER BROOKS: I agree.

22 CHAIRPERSON MILLER: Mr. Alberti?

1 MEMBER ALBERTI: I agree.

2 CHAIRPERSON MILLER: Ms. Miller

3 agrees.

4 Mr. Silverstein?

5 MEMBER SILVERSTEIN: I agree.

6 CHAIRPERSON MILLER: Okay. As it  
7 appears that the motion has passed by a vote  
8 of 4-0-0, I hereby give notice that the ABC  
9 Board will hold a closed meeting in the ABC  
10 Board conference upon receipt of the proposed  
11 findings of fact and conclusions of law  
12 pursuant to the Open Meetings Amendment Act of  
13 2010 and issue an order within 90 days from  
14 that date.

15 So thank you all very much. You  
16 did an excellent job.

17 MR. LUJAN, JR.: Thank you.

18 CHAIRPERSON MILLER: Okay. So the  
19 Board will recess and we will be back shortly  
20 to do our agenda. Okay.

21 (Whereupon, the Protest Hearing in  
22 the above-entitled matter was concluded at

1 9:27 p.m.)

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<b>A</b>				
<b>\$15</b> 57:17	<b>Absolutely</b> 110:10	163:20 164:2	133:12	92:14,15,22 93:2
<b>\$20</b> 57:18	<b>abutting</b> 33:5,8,10	169:19 220:8	<b>Advisory</b> 22:9	93:9,10,14 94:21
<b>\$6,000</b> 64:6	<b>accept</b> 92:13 95:2	243:21 244:12,15	<b>advocate</b> 144:11	100:7,9 102:2
<b>\$8,000</b> 64:6	100:20,21 147:7	244:22	146:11 147:4	104:5 105:3,6,15
<b>a.m.</b> 55:21 175:2,4,7	148:7 222:3	<b>adapt</b> 73:19	148:6	105:17,19,21
<b>abatement</b> 47:6,19	<b>acceptable</b> 83:21	<b>add</b> 5:1 58:7	<b>advocating</b> 148:11	106:8,13,15,18
107:6	100:11 134:12	220:14 236:14	<b>affect</b> 51:4 54:21	107:8 108:21
<b>ABC</b> 23:16 25:5	147:2	<b>added</b> 58:3 75:22	113:5 118:11,22	109:5 113:4 130:9
49:9,15 59:5	<b>acceptance</b> 220:3	<b>adding</b> 118:20	159:13	130:17 134:9,11
66:17 129:10	<b>accepted</b> 22:22	<b>addition</b> 45:11 65:7	<b>affidavit</b> 82:12	135:19 141:15,19
133:17 164:8,12	90:1	<b>additional</b> 90:11	158:2,22 197:4	142:1,21 143:7,10
170:1 249:6 250:8	<b>access</b> 243:10	104:8 160:22	<b>afternoon</b> 104:11	143:14 144:8,12
250:9	<b>accommodate</b>	199:16 203:14	<b>agenda</b> 250:20	147:19,20 148:12
<b>ability</b> 34:9 51:7	242:16	207:11 213:16	<b>aggravated</b> 209:16	148:20 149:7
73:6 99:19 135:7	<b>accomplished</b>	<b>additionally</b> 90:8	<b>ago</b> 51:19 178:12	150:5 151:10,15
170:9	235:4	<b>address</b> 116:14	<b>agree</b> 59:6 79:12	152:11 153:10,19
<b>able</b> 23:10 24:2	<b>accountability</b>	121:8,9 173:18,19	80:18 93:8 142:8	154:7,8,18,20,20
27:12 33:19 38:10	133:21	182:12 209:12	143:11 165:21	155:22 156:4,19
47:21 57:5 62:3	<b>accurate</b> 159:4	242:5,6	194:12 221:7	158:5 159:9,13,22
94:13 103:7,8	183:17,18	<b>addressed</b> 140:7	225:16 242:21	160:20 161:1,9,17
116:16 149:22	<b>achieved</b> 194:4,4	161:15 162:10	249:21 250:1,5	162:1,20 174:13
157:7 191:16	<b>achieving</b> 191:21	<b>addresses</b> 120:3	<b>agreeable</b> 133:7	174:16 175:21
211:3 224:8	<b>Act</b> 248:14 249:5	242:3	<b>agreed</b> 90:3 91:21	176:6 184:2,6
239:21 240:3	249:10,13 250:12	<b>adjourned</b> 62:18	106:20 143:12	186:18 191:16
<b>above-entitled</b>	<b>action</b> 64:3 107:16	<b>adjudications</b>	145:22 146:4,14	197:5 203:8
250:22	<b>actions</b> 209:8	248:14	146:22 155:16	206:12 207:3,20
<b>ABRA</b> 1:24 13:14	227:15	<b>administration</b>	157:1	219:4,12 220:11
21:10 22:13 23:19	<b>active</b> 75:18,18	22:1 94:2	<b>agreement</b> 1:10 2:9	223:4,16 224:15
26:7,9,11 27:14	<b>actively</b> 15:5	<b>admit</b> 110:11	10:19 11:22 13:19	224:17 228:18
31:8 32:6,12 37:5	<b>actual</b> 24:8 33:21	202:22 210:16	14:5,9 15:8 16:19	233:20 234:10,16
39:11 48:4,11,15	<b>adamant</b> 133:11,22	218:6	17:1,6 22:3,8,16	234:18 235:12
48:17 50:11,15,17	134:1	<b>admitted</b> 56:7	22:21 23:1,6,7,14	238:8,14 239:14
57:7 62:8 72:21	<b>Adams</b> 25:13 27:20	111:6	23:22 24:13,18	239:15 241:2,5,12
80:8 94:17 96:7	28:15,16 34:7,14	<b>advance</b> 9:20	31:13,14 32:2,5,9	243:15 244:6,7
104:10 105:9	37:9 39:7 44:15	143:16 226:1	32:13 33:15 46:1	<b>agreement/volun...</b>
119:11 129:16,19	44:16,17 45:13,15	<b>advantage</b> 28:2	46:3,5,6 47:11	31:12
160:19 192:4	45:18,19,20 46:4	57:6,8 150:22	51:4,6 55:1 57:1,3	<b>agreements</b> 13:21
196:6 197:16	51:8,9,13,19 52:3	246:5	58:13,18 59:12	25:8 39:6,10,12
198:13 200:9	52:5 53:20,21	<b>adverse</b> 17:13 18:3	60:2,6,9 62:8,11	39:19,20 46:7
203:12 219:14	54:3 55:17 56:11	18:19 34:3 49:17	62:12,12 64:8,22	93:12,15 115:17
222:9 223:6	57:12,14 64:12	53:19 73:13 74:6	65:14 66:13 67:21	130:14 131:2
226:10 239:8,16	72:15 75:3,6	74:8 102:9 159:13	68:6,16 69:17	136:3 149:10,13
241:20	102:11 111:17	160:17 238:15	70:1,4 71:19 72:7	151:19,22 152:18
<b>ABRA's</b> 61:12	112:11,17 113:5	239:19 243:19	73:1,12 78:3,11	163:21 164:1,11
63:15 200:4 209:6	119:3 121:22	<b>adversely</b> 113:5	78:16,18,21 81:13	227:13 236:22
<b>abrogating</b> 148:19	122:17 149:14	<b>advice</b> 249:8	83:18,22 86:6,14	244:17 245:9
	152:1 159:21	<b>advised</b> 80:8	86:16 89:2,3	<b>agrees</b> 250:3

<b>ahead</b> 149:6 163:13 218:17,18	22:1 249:3	69:20,21,22 70:3 70:3 71:9 73:9 78:3,14,17,20 79:3,8 80:10,11 80:12 86:12 87:6 87:10 89:8 90:1 91:4 100:6,20,22 101:9,11 102:1 104:5 107:9 128:20,20 129:1 130:4,11 132:20 133:4 137:11 138:15 142:12,14 143:10,12,14 144:7,11 145:9 146:12 147:6 148:6,12 150:5 152:22 156:20 160:8 165:17 168:8,14,17,18 169:4,10,10,21 170:2,12,13 172:17 191:19 222:11,17 225:6,8 234:6 238:2,21 240:13 242:2,9,22 245:16 247:2	<b>answers</b> 161:18 <b>anticipate</b> 143:16 <b>anxious</b> 228:22 <b>anybody</b> 11:1,8 38:10 171:19 216:19 <b>anyway</b> 210:22 222:9 227:13 <b>apartment</b> 41:10 41:16 175:11 183:4 185:19 186:3 <b>apartments</b> 188:18 188:19 <b>apologize</b> 205:22 <b>appear</b> 206:16 227:11 <b>appears</b> 230:14 250:7 <b>appetizer</b> 57:21 <b>appetizers</b> 26:3 <b>applicant</b> 10:9 11:19 12:11 13:8 17:4,9 18:1,12,15 20:11 33:14 34:22 37:10 42:5 46:16 48:7 49:11,16,18 49:22 50:6 52:8 67:9 71:14 74:14 77:3 82:12 83:16 83:18,19 108:3 110:2 111:3,6,8 111:19 136:9 152:7 158:3 192:17 193:6 195:7,9,22 196:19 197:8,14 198:14 198:15 201:1 203:12 205:2,6 210:8 217:15 218:12 221:9 226:4 237:20 238:12 240:18 241:17 242:17 243:13 <b>applicant's</b> 17:10 42:3 128:10 153:5	195:5 <b>applicants</b> 203:13 <b>application</b> 20:14 31:2 158:4 192:8 193:12 196:6,20 198:16 199:15 201:1 202:14 229:15 241:19,21 <b>applications</b> 200:8 229:12 230:16 <b>applied</b> 228:17 <b>apply</b> 28:12 220:15 <b>applying</b> 241:9 <b>appointment</b> 3:11 <b>appreciate</b> 170:11 216:4 228:13 <b>approached</b> 68:17 <b>appropriate</b> 49:16 136:6 219:11 <b>approval</b> 207:3 <b>approve</b> 16:21 206:21 <b>approved</b> 68:8 93:19 94:10 207:12,20 225:15 <b>approximately</b> 44:8 63:15 183:18 236:14 <b>April</b> 65:12 192:6 194:16 197:19 198:5,7 203:6,13 203:15,20 230:13 231:8 232:8,16 <b>area</b> 37:9 41:12 50:21 123:19,19 133:17 168:8 170:14 237:2 <b>areas</b> 48:22 103:9 168:19 169:9 <b>argue</b> 55:7 <b>argued</b> 55:10 <b>argument</b> 246:14 246:17 <b>arguments</b> 19:13 <b>arrange</b> 9:21 <b>arrow</b> 123:9,12 <b>art</b> 25:19 74:1
<b>Alberti</b> 1:21 18:6,8 18:12 27:8,9,16 27:22 28:5,15,18 29:4,9,12,18,22 30:4 81:16 82:4,7 82:13,16,20 83:1 83:3,6,9,12,15 84:3,6,9,12,18 85:3,8,11 91:10 91:12,15,19 93:4 99:12,14,15 100:1 100:4,19 101:1,4 101:8,13,17,22 102:6 103:14 109:7,10,15,18 112:22 116:21,22 117:2,5,8,14,17 117:21 118:1,4,8 118:14,19 119:15 119:18 124:6,9,13 124:19 125:3,6,19 127:2 128:3 144:1 144:3,5,17,20 145:1,5,8,11,14 145:18 146:2,6,9 146:11,14,18 147:3,6,10,14,22 148:3,13 171:15 172:2 186:12,13 186:16,22 187:5 187:19,22 205:21 212:13,21 213:20 214:6,13 216:1,6 216:9 226:19 228:8,9,15 229:2 229:5,8,16 230:2 230:4,11,18,20 231:3,6,10,13,17 232:3,10,14,20,22 233:4,6,11,14 249:22 250:1	<b>alleging</b> 158:14 <b>alleys</b> 237:7 <b>allow</b> 26:15 39:13 39:21 49:5 57:6 78:15,21 84:20 136:7 153:9 157:5 185:1 219:22 234:9 244:13 <b>allowed</b> 135:13 136:4 206:19 207:4 219:19 <b>allowing</b> 147:17 151:5,11 <b>allows</b> 57:4 174:22 241:14 <b>alluding</b> 230:21 <b>Als</b> 119:6 <b>AMA</b> 64:13 <b>amend</b> 14:22 16:22 35:9,11 58:18 129:15 158:5 219:4,22 223:16 <b>amended</b> 14:9 31:13 58:21 80:8 156:1 <b>amendment</b> 17:5,7 17:12,21 22:22 72:1 83:16,21 93:2,16 238:10,22 241:4 244:5 249:5 249:10,13 250:12 <b>amendments</b> 52:22 <b>amount</b> 30:12 134:14 169:22 199:16 204:4 <b>Analysis</b> 26:18 <b>ANC</b> 8:19,20,22 14:20 15:5 19:19 24:11 35:7,10,15 35:21 38:7,10 46:1 59:6,18 60:3 60:7 64:13,21 65:4,7,10,12,21 66:4,9,15,17,19 66:19 67:4,14,17 68:5,10,12,12,20	<b>ANC's</b> 21:2 <b>ANC-1</b> 22:10 <b>ANC-1C</b> 1:8 2:8,22 3:8,18 14:14 22:13 129:11 174:13 <b>ANC-1C01</b> 3:3 <b>ANC-1C03</b> 129:10 <b>ANCs</b> 169:13 <b>angered</b> 242:19 <b>announces</b> 80:17 <b>answer</b> 27:12 78:8 94:9 145:2,17 220:8 221:13 227:8 230:6,10 231:13 <b>answered</b> 109:8,11 109:12,19 127:3 230:4 233:7 <b>answering</b> 67:22		
<b>Alberti's</b> 108:18 <b>alcohol</b> 54:2 122:7 130:14 <b>Alcoholic</b> 1:2,14,15				

<b>articulate</b> 162:6	<b>attempt</b> 82:10	<b>back</b> 2:4 38:14 44:6	<b>becoming</b> 102:21	114:7 123:16
<b>aside</b> 199:18	83:20 132:13	45:5 51:18 53:4	<b>beginning</b> 44:6	<b>block</b> 117:12,14
<b>asked</b> 28:10 61:19	157:16 194:7	59:16 65:15 67:1	69:15 71:18 86:21	120:1 151:3
62:1 65:19 67:1	221:15 223:2	69:1 70:2 71:11	140:4 148:10	170:14
67:18 68:13	<b>attempted</b> 132:19	71:16,21 89:16	<b>behalf</b> 9:4 13:10	<b>blocks</b> 121:20
104:11,14 109:8	161:15,21	90:2 99:7 107:12	14:13 65:21 71:12	122:2 169:9
109:11,11,19	<b>attempts</b> 222:18	131:12,13 132:18	80:12 91:3 114:2	<b>Board</b> 1:2,15 12:5
121:14 127:2	<b>attend</b> 61:18 95:18	154:21 155:4	240:12	12:9 14:16,18
128:4 163:19	96:7 140:21	175:3 195:19	<b>belabor</b> 156:13	16:6,21 19:15
164:6,7,7 168:2	193:19 220:21,22	197:11,12 202:6	<b>believe</b> 13:13,17	20:9,20 27:7,8
186:16,18 199:6	223:11	205:19 206:14	14:7 16:1,4 20:1	30:21 34:21 42:18
206:10 207:21	<b>attendance</b> 140:13	208:2 221:6 224:9	32:6,12 34:19	43:13 49:8,9,15
212:16	140:14,17	227:6 231:21	53:7 65:4 72:3,20	49:15,18 52:20
<b>asking</b> 27:17 34:13	<b>attended</b> 68:10	250:19	73:11,15 74:4,8	61:15,19,22 68:8
57:10 61:15 65:12	94:17 95:11,12,14	<b>backwards</b> 123:16	75:14 78:17 81:1	68:11,13 77:22
68:2 88:16 100:15	95:19	242:15	81:5 109:8,10,12	80:20 85:17 93:20
123:3 126:14	<b>attending</b> 69:14	<b>bacon</b> 170:8	111:4 113:3	93:22 94:4,6,10
130:6 145:6	<b>attorney</b> 8:12 64:5	<b>bad</b> 60:22 73:5	123:18 136:18	94:13 95:21 96:15
197:16 202:21	<b>audible</b> 145:17	130:16 136:1	137:6,12 140:4	96:16,18 104:18
207:12 236:2	<b>August</b> 48:14 66:10	148:21 149:3	141:4,12,16	104:19,22 108:4
<b>assault</b> 209:16	67:2,13 71:17	150:13 151:9	158:20,22 160:2	116:20 118:2
210:2 245:7	79:12 86:19 87:6	153:9 154:13,17	170:15,19 209:20	119:22 122:12,21
<b>assaults</b> 209:16	87:18 89:5 90:2	155:7 242:7	213:16 215:18	124:11 125:11
<b>assigned</b> 22:2 31:1	137:9,18 139:14	<b>baffled</b> 244:8	221:12 229:10	133:20 134:11
<b>assisting</b> 4:5,7	165:22 166:8,17	<b>Bakery</b> 45:6	232:8 239:4,8,10	135:15,18 143:22
<b>association</b> 3:5	167:16,17	113:13	239:13,17,19	149:6 152:6 153:9
22:11 92:10 95:7	<b>authority</b> 142:12	<b>band</b> 25:22	247:14	153:13 154:15,15
95:14 108:22	<b>authorized</b> 57:7	<b>bandaids</b> 151:19	<b>believed</b> 65:22	157:21 158:4
109:6 147:19	<b>available</b> 48:19	<b>bands</b> 175:1 235:16	<b>belongs</b> 6:15	163:10,11 164:18
169:1 221:11	50:18 133:18	<b>bar</b> 58:2,9,10 119:6	<b>bent</b> 242:15	164:19 168:2
<b>associations</b> 168:14	247:1	220:3,9 241:15	<b>Berman</b> 104:13	176:10 179:20
169:13	<b>avenues</b> 102:16	<b>base</b> 62:12	200:20,22 202:13	181:13 182:12
<b>assume</b> 138:10	<b>Avignon</b> 45:9	<b>baseball</b> 44:19	203:7	186:11 189:15
222:14,15	113:13	<b>based</b> 13:15 17:2	<b>best</b> 29:4 125:6	192:6,18 193:11
<b>assumed</b> 21:11	<b>avoid</b> 141:19	22:16 35:7 38:17	135:10 143:11,18	194:12,17 195:17
42:11 112:4	<b>aware</b> 27:22 39:18	62:7 93:7 108:18	<b>better</b> 3:14 244:16	196:19 198:11
128:16 173:8	40:1 41:9 86:4	154:3 164:18,19	<b>Beverage</b> 1:2,14,15	199:15 201:19
182:5 191:4	89:1 135:2 136:21	181:12 217:13	22:1 249:3	205:5 206:9,20,21
<b>assuming</b> 148:4	160:12 163:21	246:8	<b>beyond</b> 17:8,22	207:12 209:7,20
<b>assumption</b> 161:12	164:3 165:5,5,6,8	<b>basic</b> 187:4	18:18 136:5 197:7	210:13,16 212:9
<b>astonished</b> 242:18	166:12,17 174:11	<b>basically</b> 20:18	<b>big</b> 57:11 58:11	215:22 217:6,8
<b>ate</b> 113:14	174:15,19,21	34:6 81:17 130:6	167:3	225:19 228:1,8
<b>atmosphere</b> 225:11	207:13	149:8 169:1 170:8	<b>bigger</b> 40:14	231:21 237:11
<b>attached</b> 27:1,2	<b>awful</b> 135:15	186:17 235:13	<b>biggest</b> 98:6 102:14	238:1 239:21
33:6 36:21 37:2		<b>basis</b> 135:13	<b>bind</b> 86:7 142:12	244:13,22 245:3
135:20 197:20	<b>B</b>	149:15 244:14	<b>bit</b> 42:18 43:13	246:8,18 248:16
198:21	<b>B</b> 17:7 25:15 79:22	<b>bay</b> 107:11	59:1 60:11 98:12	248:17 249:3,6

250:9,10,19	94:5 115:2 118:21	208:20 211:18	<b>certain</b> 11:9 119:9	76:1,4,11,14,17
<b>Board's</b> 108:10	176:12,22 178:1	215:8 221:22	133:21 161:5	76:22 77:5 79:19
194:13 195:5	179:3 183:1,4,12	222:4,6 249:18	175:6 185:2 187:7	80:5,19 81:7,11
196:17 205:17	183:16,21 184:4	<b>called</b> 21:10 38:13	187:8,14 199:8	82:1,6,9,15,18,22
209:18,21 211:22	184:10 185:14,15	42:10 45:1,13	207:7 224:17	83:2,4,8,11,14
213:5 226:2	185:17 187:16,17	64:13 67:1 94:19	235:1	84:1,5,8,11,17
228:13 232:2	188:3,18 235:20	112:3 128:15	<b>certainly</b> 143:16	85:5,13 86:3
240:2	235:21	130:4 173:7 182:4	164:13 169:16	88:15,20 90:12,16
<b>Board-ordered</b>	<b>buildings</b> 40:18	191:3	<b>Certificate</b> 206:18	91:8,11,13,17,20
194:6	179:5 235:22	<b>calling</b> 66:4	<b>certification</b>	92:1,8 96:12
<b>booth</b> 107:12	<b>bullied</b> 64:16	<b>calls</b> 26:19,20,21	129:22	99:10,13 103:16
<b>bottom</b> 27:2 103:2	100:16	207:18	<b>Chair</b> 18:6 19:1	104:2 105:2,5,16
139:15 208:9	<b>bully</b> 100:15	<b>capable</b> 208:4	56:1 76:20 85:11	105:20 106:3,6,10
<b>bought</b> 45:6,8 94:4	109:14 153:8	<b>capacity</b> 48:19	96:21 99:9 109:7	106:14,17 107:14
<b>boundaries</b> 170:19	<b>bus</b> 57:15 58:4	50:19 57:3,4,5	111:18 118:2	107:18,20 108:1,5
<b>bracket</b> 155:5	62:16 98:10,10	62:15 97:3 219:6	119:19 163:17	108:8,12,15,19
<b>break</b> 171:8,11,18	<b>business</b> 13:11 14:2	219:7 236:13,15	164:7 171:7 172:3	109:13,16,22
227:17 241:13	23:18 44:12,22	<b>caption</b> 48:10	<b>Chairman</b> 3:10	110:6,12,15,18
244:14	46:3 51:4 53:4	49:14 50:9	<b>Chairperson</b> 1:17	111:10,21 112:7
<b>breaker</b> 78:18	61:1 72:19 73:5,6	<b>captures</b> 244:6	1:20 2:3,14,17,20	112:19 115:6,9
<b>Brian</b> 3:10 131:17	73:15 89:15 94:2	<b>careful</b> 30:17	3:1,6,13,19 4:1,4	116:20 119:21
133:13 141:4	103:1 107:3	220:10	4:8,13,19,21 5:2,8	120:10,16 121:5
<b>brief</b> 13:9 59:20	113:17 115:1,13	<b>case</b> 1:9 2:5,6 8:13	5:11,14,21 6:7,11	121:11 122:10,14
130:5 240:17	116:8,16 118:15	12:12,13 13:14	6:18,22 7:6,12 8:9	122:18 123:2,5,13
246:6	118:21 239:13	14:19 15:6,21	8:11 9:1,8,12,15	123:17,20 124:4
<b>briefly</b> 76:21 131:9	243:12,16,17	16:2 19:10 42:3	10:1,4,11,15,20	125:1,5,8,12,15
<b>bring</b> 44:3	<b>businesses</b> 45:10	61:15 62:1 85:2,7	11:7,13 12:22	125:17 126:3
<b>bringing</b> 14:17	53:22 59:8 64:17	125:2 128:10,12	13:3,5 14:11 15:9	127:5,12,16 128:2
208:5	113:10,11 114:13	129:1 149:8	15:15,17,20 16:7	128:5,9,19 129:5
<b>Brooks</b> 1:21 96:19	114:15 116:13	153:11 161:8	16:10 18:7,11,21	129:13 130:20
96:20 97:6,10,14	135:9	164:4,10 165:17	19:2,6,17,20 20:2	131:4 136:10
97:17,21 98:5,8	<b>busing</b> 97:22 99:17	190:2 191:12	20:6,12,17 21:4	138:2,8 143:22
98:15,19,22 99:6	<b>busy</b> 104:12	196:14 200:18	21:14,19 27:6	144:4 148:15
99:16 249:15,16	<b>buyer</b> 86:8,15	209:4 225:19	30:7 32:17,20	153:2 154:2
249:20,21	<b>buys</b> 163:2	240:4 246:19	33:2,7,12,18 34:1	155:11,18 156:5
<b>brother</b> 13:13	<b>Bylaws</b> 79:9	247:19 249:8,11	34:12,16,20 35:4	156:12,21 157:2,9
205:4		<b>case-specific</b> 161:3	36:13,17 39:2	157:17,22 158:7
<b>brother-in-law</b>	<b>C</b>	<b>cases</b> 161:20	41:13,17,21 42:2	158:12 159:2,5,10
45:17	<b>C</b> 17:12 24:9 33:22	<b>Cashion's</b> 29:17	42:6,14,19,22	159:16,19 160:2,6
<b>brought</b> 78:16	79:22 205:20	<b>casts</b> 151:21	43:6,11 46:12,19	160:11,14 161:2
106:4 211:7	206:11	<b>cause</b> 17:1	47:2 52:11,13,17	162:2,8,22 163:5
<b>brunch</b> 103:21	<b>C-2-B</b> 24:21	<b>caused</b> 17:8,21	54:7,9,12,15,19	163:8,15 164:16
<b>buck</b> 71:8	<b>cafe</b> 151:5 188:16	64:4	55:9,12,22 56:3,6	164:21 170:22
<b>buffer</b> 125:21	<b>calendar</b> 226:2	<b>causes</b> 238:10	56:13,16,20 62:21	171:4,10,13,17
<b>building</b> 1:15 33:5	<b>call</b> 13:2 61:6 65:18	<b>cced</b> 196:1	63:5 67:11 70:5,8	172:1,4,8,16,18
40:3,15,17 41:10	111:11,16 131:12	<b>center</b> 44:18 45:13	70:13,19,22 71:5	173:1,4,11,13,22
41:14,16 47:8	131:12 194:11	<b>centers</b> 25:10	74:20 75:7,12,15	174:6 175:5

177:10 179:20 180:3,6,9,13 181:2,9,11,15,21 182:1,8 184:16,19 185:1,10 186:11 188:2,6,9,12,21 189:1,4,8,12,14 189:20 190:3,7,11 190:15,18,21 191:7 192:12,16 192:21 193:1,5 194:9,14,16,19,22 195:3,8,12,18,21 196:7,11,15 197:18,22 198:4 198:18 199:5,10 199:13,17,20 200:2,6,11,14,17 201:6,10,12,16,20 202:2,5,8,10,16 202:20 203:2,5 204:8,10,13,15,18 205:9,14 207:14 207:16,22 208:6 208:11,14,18 209:1 210:15,19 211:11,17 212:5 212:10,14,17,20 213:2,6,8,10,14 213:18 214:1,4,10 214:20 215:1,5,8 215:11,17 216:3 216:15,18,21 217:4,9,19,22 218:5,11,16,20 226:17,21 227:1,5 227:10,18 228:1,6 232:12,16 233:17 234:2,5,11,17 235:3,5 236:1 237:5,9,14,20 240:6,8,14 245:14 245:19 247:4,8,10 249:2,16,22 250:2 250:6,18 <b>challenge</b> 98:7 149:10	<b>challenging</b> 92:4 144:15 <b>chance</b> 12:8,9 19:4 216:7 225:12,14 227:16 <b>change</b> 17:9 18:1 18:18 34:11 44:9 53:1 54:20 73:17 90:20 93:19 94:10 99:18,20 102:12 102:14,20 119:7 148:20 152:2 197:8 206:9 207:4 221:12 <b>changed</b> 59:9 110:22 151:12 154:21 155:12 156:15 226:15 <b>changes</b> 24:12 57:10 100:8 135:1 137:22 144:9 145:21 147:13 222:3 223:5 243:14 <b>changing</b> 102:11 110:22 219:5 <b>character</b> 121:9 <b>check</b> 17:16,19 19:7 178:3 195:5 196:2,18 198:22 <b>checking</b> 11:8 <b>Checklist</b> 232:13 <b>chicken</b> 26:4 <b>Chief</b> 29:18,22 <b>child</b> 100:15,18 <b>choice</b> 104:6,8 <b>choose</b> 189:5 <b>chooses</b> 215:22 <b>circle</b> 123:21 126:12 215:16,19 215:20 <b>circumstance</b> 197:7 <b>circumstances</b> 17:8 17:22 18:17 54:21 161:6 222:22 243:5	<b>citations</b> 107:4 <b>cited</b> 249:12 <b>citizens</b> 3:5 22:10 92:10 95:7,14 96:7 108:22 109:5 133:16 147:19 168:22 221:11 <b>civic</b> 64:9 169:12 <b>claim</b> 149:12 206:4 232:22 <b>claims</b> 198:8 <b>clarify</b> 128:22 <b>Claudia</b> 2:15 4:12 <b>cleanly</b> 237:8 <b>clear</b> 18:8 97:1 142:9 155:12 167:11 198:19 210:11 <b>clearly</b> 64:19 225:6 <b>clock</b> 180:17 <b>close</b> 117:18 154:20 182:20 216:14 236:10 245:20 <b>closed</b> 151:4 248:15 249:7 250:9 <b>closer</b> 216:14 <b>closing</b> 7:18 12:14 175:2 180:2,3,4 180:15 187:9 188:16 217:20 218:1 245:13 <b>closings</b> 237:15 <b>coached</b> 241:20 <b>code</b> 22:19 196:21 221:12 <b>colleagues</b> 66:17 132:1 134:20 <b>collect</b> 216:20 <b>collected</b> 114:3 <b>Colonna</b> 10:14 181:22 182:3,11 182:13,18 183:3,9 183:14,20 184:8 184:14 185:6,16 185:21 186:1,5,8 186:15,21 187:3,7	187:20 188:5,8,11 188:15,22 189:2,7 189:10,13,17 <b>Columbia</b> 1:1,7 2:7 22:4 25:5 26:19 28:20 41:5 43:18 44:13 45:9 48:13 48:21 50:12,21 51:14 77:12,13 102:14,15,20 106:7,12 121:2 126:9,19 173:20 178:22 179:2,4 182:13 183:6 185:19 210:2 243:7 249:4 <b>Columbia's</b> 50:1 <b>combination</b> 41:2 <b>combine</b> 225:13 <b>come</b> 12:6 13:6 39:17 57:13 78:1 96:2 98:20 99:7 103:11,12 107:9 116:14 133:20 134:9 136:2 144:14 149:17 152:11 154:11,18 191:16 193:16 236:16,17 241:4 <b>comes</b> 24:20 29:15 32:12 187:15 207:11 243:19 <b>coming</b> 11:17 51:18 79:15 117:3 120:18 135:4 176:22 178:19 186:14 188:17 196:5 229:13 248:1 <b>comment</b> 70:2 148:18 <b>commercial</b> 51:12 52:5 183:5 <b>Commission</b> 22:10 35:22 66:9 <b>commissioner</b> 65:19 66:22 68:13	68:15,18 69:7,21 79:4 86:19,22 89:5 90:5 94:20 129:9 131:17 137:9 140:7,18,19 144:6 153:1 158:11 164:6 171:5 222:7 242:12 <b>commissioners</b> 59:19 65:7 69:9 69:13,18 133:4,19 242:3,14 <b>Committee</b> 66:17 129:10 <b>communicate</b> 142:4,17 198:15 <b>communicated</b> 71:18 <b>communicates</b> 71:11 <b>communication</b> 63:4 68:20 141:2 193:14 195:6 <b>communications</b> 66:9 <b>community</b> 44:21 61:2 64:16 65:8 73:13,18,19 74:12 74:18 75:4,14,19 102:9 113:5,12,17 114:4,18 116:14 133:15 150:2 168:5 175:19 <b>company</b> 115:3 <b>competition</b> 51:12 51:21 <b>competitive</b> 150:22 <b>complain</b> 181:3 <b>complained</b> 181:6 <b>complaint</b> 26:22 <b>complaints</b> 30:22 <b>complete</b> 93:9 128:10 236:3 <b>completes</b> 110:1 <b>completing</b> 183:15 <b>compliance</b> 196:20
--	--	--	---	--

197:1 <b>comply</b> 20:11 35:8 158:17 198:10 <b>concern</b> 26:6 68:19 145:16 146:10 147:8,11,15,16 163:6 186:20 <b>concerned</b> 69:6 86:12 131:22 152:5,19 168:4 176:4 184:5,11 186:17 188:13 230:1 <b>concerns</b> 19:12 23:21 146:7,21 147:5 175:18 193:9 <b>concluded</b> 49:15 250:22 <b>concludes</b> 216:9 <b>conclusion</b> 247:18 <b>conclusional</b> 172:14 <b>conclusions</b> 246:1 246:12,15,21 247:7 248:9 250:11 <b>concur</b> 245:15 <b>condition</b> 147:7 <b>conditional</b> 81:16 <b>conditions</b> 18:14 102:3 110:21 148:7 <b>condo</b> 173:20 <b>confer</b> 171:3 <b>conference</b> 250:10 <b>confirm</b> 137:21 138:11 141:9 <b>conflict</b> 210:5 <b>conflicts</b> 96:4 <b>confused</b> 91:4 <b>Congress</b> 227:19 <b>consider</b> 98:1 99:2 101:11,14 135:11 228:12 <b>considerable</b> 92:16 <b>considered</b> 58:6	130:3 <b>considering</b> 86:11 97:22 135:17 <b>consist</b> 26:21 <b>consistency</b> 130:18 <b>consistent</b> 80:6 131:2 133:7 139:12,22 140:8 159:1 170:6,7 <b>constant</b> 177:4 <b>consult</b> 158:10 <b>contact</b> 17:21 18:16 38:6,10,11 38:12 129:16 241:1,18 242:9 <b>contacted</b> 60:3 233:9 <b>contained</b> 197:3 220:12 <b>contains</b> 197:10 <b>contends</b> 217:14 <b>content</b> 121:9 234:9 <b>contested</b> 196:14 <b>context</b> 161:22 241:7 <b>continuance</b> 104:10 242:21 <b>continue</b> 54:4 142:21 162:20,20 <b>continued</b> 68:5 <b>continues</b> 142:20 <b>continuing</b> 72:18 92:13 <b>contract</b> 241:13 244:14 <b>contractual</b> 241:12 244:7 <b>contrary</b> 15:1 <b>control</b> 1:2,14,15 17:9,22 18:18 53:2 184:6 197:7 238:11 249:3 <b>controlled</b> 187:10 187:12 <b>conversation</b> 95:1 130:8 131:10	223:3 <b>conveyed</b> 238:20 <b>convince</b> 20:9 <b>convincingly</b> 240:4 <b>cooperative</b> 92:22 93:1 <b>copied</b> 217:5 <b>copies</b> 8:7 192:18 193:3,4 195:1 202:17 205:7,10 213:16 217:10,11 <b>cops</b> 119:12 <b>copy</b> 36:7,18 38:11 46:20 84:3 192:20 192:22 195:9 205:2,7 211:22 212:1 217:6 <b>corner</b> 29:8 183:6 208:9 <b>correct</b> 17:18 34:18 36:15,19 37:3,17 37:19 77:9,12 89:3 90:3 92:12 97:5 101:1 104:3 125:14 126:10 137:2,20 140:13 148:4,6 159:4 165:9 166:20 183:21 189:6 194:17 197:21 200:4 218:13 233:1,7,10,13 240:18 <b>cost</b> 57:17,18 64:5 98:7,9,13 <b>costs</b> 98:11 <b>counsel</b> 248:22 249:8 <b>count</b> 197:10 <b>couple</b> 29:7 32:18 35:3 71:22 97:2 176:15 218:22 245:6 <b>course</b> 9:6 33:20 38:5 47:22 77:19 85:15 147:1 235:14	<b>court</b> 43:2 138:3 <b>cover</b> 19:9 168:19 170:13 205:17 <b>covered</b> 169:10 185:9 207:5,6 <b>covers</b> 78:6 168:18 170:14 <b>CR</b> 1:8 <b>crawl</b> 58:2 220:4 <b>crawls</b> 58:9,10 220:10 <b>cream</b> 45:2,3 113:15 <b>create</b> 119:12 149:3 <b>creating</b> 135:5 <b>creation</b> 164:10 <b>credence</b> 185:3 <b>crime</b> 26:18 245:2 <b>criteria</b> 157:18 160:20 <b>critical</b> 166:14 <b>cross</b> 20:21 76:18 76:18 115:7 136:11 177:11 185:11 <b>cross-examination</b> 12:14 35:5 77:6 115:10 136:13 177:12 185:12 219:1 <b>cross-examine</b> 12:8 185:4 <b>crossing</b> 7:21 <b>crowds</b> 243:22 <b>Cuban</b> 25:20 26:2 44:1 74:1 <b>cuisine</b> 26:2 44:1 74:2 <b>cultural</b> 74:3 <b>culture</b> 25:20 <b>culture-based</b> 25:18 <b>current</b> 219:14 <b>currently</b> 24:11 28:14 77:16 93:13 100:10 148:10	<b>customers</b> 51:10,18 57:13 62:16 64:11 72:11 <b>cut</b> 78:5 <b>cutting</b> 168:4 169:8 <hr/> <b>D</b> <hr/> <b>d</b> 157:14 <b>D-E-N-I-S</b> 191:10 <b>D.C</b> 1:16 <b>dance</b> 25:19 243:21 <b>dancing</b> 163:22 175:1 235:18 <b>date</b> 24:19 61:21 96:2 138:21 140:4 156:3 165:14,18 199:8,9 206:14 221:1,5 229:3,6 232:3,15 247:17 250:14 <b>dated</b> 22:14 23:3 137:8,18 139:13 203:6,15 232:8 <b>dates</b> 23:22 43:19 47:15 62:14 90:9 96:4 139:8 170:3 <b>Davis</b> 6:15 75:11 75:12 111:16 112:2,13,13,16,20 113:6 114:5,8 115:15,19,22 116:5 117:1,4,7 117:12,16,19,22 118:3,6,13,18 119:2,17 120:4,13 120:18 121:7,16 121:21 122:3,7,16 123:1,4,7,10 124:2,8,12 126:1 126:8,11,16,19,22 127:4,8,10,14,19 212:3 <b>day</b> 80:14,16 157:6 194:2 221:5,19 <b>daycare</b> 25:10 45:12 <b>Daylight</b> 99:21
--	---	--	--	---

138:20 146:3 219:16 <b>days</b> 57:9 90:11,19 90:20 99:1,1,20 100:2 134:5 222:1 236:9 246:22 247:16 248:12 250:13 <b>daytime</b> 31:7 <b>DC</b> 22:18 53:18 208:20 <b>de</b> 103:6 <b>deadline</b> 203:11,16 203:20 <b>deal</b> 73:9 78:18 79:13,17 80:4,4 150:1 153:16 <b>dealing</b> 66:8 79:22 153:15 <b>dealt</b> 107:4 155:9 <b>death</b> 245:8 <b>decide</b> 104:19,20 157:7,8,8 225:1 247:20 248:3 <b>decided</b> 62:19 72:13 134:6 <b>decides</b> 163:3 <b>decision</b> 63:19 64:1 68:14,16 86:1 91:7 94:13 104:22 133:5 144:14 240:3 248:11 <b>decisions</b> 116:17 <b>declare</b> 147:17 <b>deeply</b> 113:17 <b>Defendant</b> 128:15 173:7 182:4 191:3 <b>defense</b> 84:18 <b>deficiencies</b> 192:7 <b>deficient</b> 201:2 <b>definitely</b> 8:14 19:19 99:4 101:7 <b>degree</b> 119:9 <b>deliberate</b> 247:22 248:11 <b>deliberating</b> 246:18 249:11	<b>deliberations</b> 248:14 <b>delivered</b> 63:15 <b>demand</b> 100:17 <b>demonstrate</b> 71:7 <b>demonstrated</b> 64:19 73:2 <b>demonstrates</b> 74:17 <b>denied</b> 61:22 158:16 159:11 <b>Denis</b> 3:4 22:12 24:15 59:3,18 61:19 62:5,10 67:22 68:1 105:15 156:10 191:2,9 194:17 197:14 208:20 <b>densely</b> 237:1 <b>deny</b> 16:6 <b>Department</b> 207:18 208:20 <b>depended</b> 191:20 <b>depending</b> 9:6 <b>describe</b> 136:14 175:18 182:22 204:11 <b>described</b> 24:22 197:6 207:6 <b>description</b> 210:3 <b>deserts</b> 26:5 <b>deserves</b> 210:14 <b>design</b> 115:3 <b>desk</b> 63:15 <b>destructive</b> 150:8 <b>detail</b> 12:2 56:22 <b>detailed</b> 161:10 193:9 235:11 238:19 <b>details</b> 70:15 114:19 176:10 <b>detect</b> 176:22 <b>detected</b> 178:17 <b>determine</b> 31:11 <b>determined</b> 17:15 <b>deters</b> 57:12 <b>detrimental</b> 244:12	<b>developed</b> 196:18 <b>development</b> 25:1 <b>different</b> 93:15 94:1,1 102:16,16 102:19,19 103:20 104:19 119:4 122:17 150:3 153:4 154:5 169:12 198:22 <b>difficult</b> 143:15 <b>difficulties</b> 59:8 <b>diligent</b> 17:5,20 22:20 81:12 83:17 197:2 221:18 238:6 241:1 <b>DIRECT</b> 21:20 42:16 112:9 129:2 173:16 182:10 191:8 <b>direction</b> 201:19 <b>directly</b> 32:11 182:16,19,20 188:19 <b>discovered</b> 134:6 <b>discuss</b> 59:12 94:19 94:21 132:10,21 167:10 222:7,8,14 222:17,18 223:12 <b>discussed</b> 84:21 95:10 141:9 166:8 <b>discussing</b> 132:7 171:19 224:7 <b>discussion</b> 77:20 130:5 132:16 148:2 156:1,2 166:10 167:2 222:21 223:9 229:11 242:10 <b>discussions</b> 132:1 219:20 222:10,11 222:13 225:10,11 <b>dismiss</b> 61:15 62:1 119:19 193:12 <b>disorderlies</b> 209:15 <b>disrespectful</b> 64:4 <b>disruptions</b> 243:10 <b>distant</b> 215:14	<b>District</b> 1:1 25:4,13 44:12 49:22 52:5 169:10 249:4 <b>districts</b> 51:12 102:17 169:2 170:20 <b>disturb</b> 236:11 <b>disturbance</b> 23:7 60:16 <b>disturbances</b> 135:5 <b>disturbing</b> 20:14 47:13 <b>DJ</b> 107:12 <b>DJs</b> 25:20 235:17 <b>document</b> 46:15 48:6 49:10 50:5 52:7 67:8 71:13 74:13 192:7,13 194:11 195:13 197:13 198:3 199:3 200:10 201:3 205:20 217:1 <b>documentation</b> 20:8 192:3 <b>documents</b> 111:7 190:2,14 197:22 199:22 200:3 202:21 204:20 210:21 218:8 228:7 233:3 <b>dog</b> 157:15 <b>doing</b> 9:14 20:21 31:3,5 47:18 99:2 114:17 145:13 248:10 <b>DONALD</b> 1:21 <b>door</b> 26:15 33:5 40:3 49:5 115:2 118:1 120:14 187:17 235:19 <b>door-to</b> 120:13 <b>door-to-door</b> 120:11 <b>doors</b> 43:16 179:5 <b>double</b> 17:16,19 19:6 179:12 225:4	<b>drastic</b> 44:9 <b>draw</b> 123:8,11 246:13 <b>drawn</b> 215:16 <b>drew</b> 67:2 <b>drink</b> 57:20 <b>due</b> 17:9 18:1 53:1 169:22 <b>duly</b> 21:11 42:11 80:13 112:4 128:16 173:8 182:5 191:4 <b>dwellings</b> 40:20 <b>dynamics</b> 143:15
<b>E</b>				
<b>earlier</b> 61:11 148:18 167:17 233:7 <b>early</b> 68:22 <b>easier</b> 47:3 197:10 <b>economic</b> 53:5 110:21 <b>economy</b> 14:2 44:10 53:3 72:17 73:4 239:2 <b>Ed</b> 53:18 <b>edge</b> 123:21 124:3 <b>effect</b> 52:4 74:8 102:9 243:19 <b>effective</b> 98:14 <b>effects</b> 10:17 50:9 53:19 56:10 184:5 <b>effort</b> 17:5,20 22:20,21 47:12 59:11 71:7 73:9 81:12,19 83:17 84:15 197:2 221:18 222:14 238:7,8,21 241:1 241:17,22 242:8 <b>efforts</b> 14:8 59:10 71:12 81:22 92:2 222:16 242:13 <b>eight</b> 41:17 46:4 145:4 169:3 <b>eight-story</b> 41:10				

41:15 183:3 <b>either</b> 17:8 18:17 31:13 200:8 <b>elected</b> 65:7 <b>eliminate</b> 70:1 <b>eliminating</b> 68:5 70:3 <b>elimination</b> 224:6 <b>email</b> 38:13 63:16 69:4 129:17 137:3 137:13,16 140:3 167:22 193:22 195:6 202:12 203:6,15,21 220:22 221:18 230:13 231:8 242:2,4,6 <b>emailed</b> 247:14 <b>emails</b> 65:12 132:19 <b>emanates</b> 236:20 <b>emanating</b> 49:4 187:11 <b>employed</b> 27:13 37:5 <b>employees</b> 44:8 <b>empty</b> 183:22 <b>endemic</b> 245:1 <b>endorsement</b> 106:2 106:20 174:22 235:16 <b>enforce</b> 39:5 <b>engage</b> 241:3 <b>engaged</b> 242:14 <b>enlighten</b> 79:20 <b>enormous</b> 150:22 <b>enter</b> 26:16 49:6 105:6 148:1 215:20 <b>entered</b> 105:3 <b>entertainment</b> 25:18 105:8,10,12 105:13 106:2,19 174:21 175:1 207:4 235:16 236:7,8 <b>entire</b> 65:5 226:13	241:7 <b>entity</b> 94:1 <b>entries</b> 26:4,4,4 <b>environment</b> 244:17 <b>equally</b> 204:3 <b>especially</b> 130:21 130:21 <b>established</b> 158:20 <b>establishment</b> 17:11,14 22:17 23:15 25:11 26:14 30:3,15 31:4,6,11 31:16 32:3,21 33:6 41:7 49:4 50:10 57:16 117:11 121:15 161:4 175:15 177:6,22 187:12 206:5 210:9 212:7 215:15 216:13 220:16 236:20 239:7,11 243:7 <b>establishment's</b> 24:1 <b>establishments</b> 25:4,6,7,14 27:19 27:20 28:1,10,13 28:20 29:3 31:21 34:7,14 41:9 159:21 163:20 177:15 178:10 184:13 188:4 220:17 243:20 <b>Eve</b> 24:5 57:9 90:19 138:20 145:21 219:15 <b>evening</b> 117:2 171:16 173:2 180:1 182:1 228:9 236:18 <b>evenings</b> 31:6 <b>event</b> 131:18 <b>events</b> 24:4 34:9 <b>everybody</b> 8:7 18:9 180:7 213:16 226:10 237:22	<b>evidence</b> 11:20 12:3 16:15 17:3 20:8 49:21 84:20 110:3,11,14 111:6 111:9 218:10 246:9,16,18 <b>evolved</b> 224:5 <b>exactly</b> 19:21 57:22 108:20 109:3 118:3 134:10 151:8 162:2 176:8 234:22 <b>examination</b> 20:22 21:20 42:16 112:9 129:2 163:18 173:16 182:10 191:8 <b>examined</b> 21:12 42:12 112:5 128:17 173:9 182:6 191:5 <b>example</b> 72:8 151:3 180:22 188:7 <b>exceed</b> 29:8 <b>excellent</b> 250:16 <b>excessive</b> 26:11 48:16 50:16 169:22 <b>exchange</b> 193:21 220:22 <b>exchanged</b> 193:22 <b>Excuse</b> 77:10 128:20 <b>excused</b> 42:1 128:8 181:18 189:19 <b>exercise</b> 153:6 <b>exhibit</b> 22:14 23:3 35:15 36:14 46:11 46:16 48:1,3,3,7 48:11 49:8,8,11 50:3,6 52:1,5,8 53:13,14,17 56:15 67:5,6,9 71:10,14 71:17 74:11,14,21 87:7 107:15 110:17,18 111:8 123:15 124:7,10	125:16,17 126:4 137:8 192:11,14 194:12,14,15,20 195:14,21 196:16 199:22 200:19,21 201:4 202:11 203:5 204:21 205:18 207:17 209:2,19 212:12 213:3,4,11 214:14 216:16,22 217:2 218:9 232:7 <b>exhibits</b> 8:7,15 87:8 95:6 110:3 111:3 111:5 190:4 204:16 214:12 218:7 238:17 239:4 240:1 <b>exist</b> 100:10 148:5 148:10 151:20 <b>existed</b> 223:6 <b>existing</b> 10:18 62:11 92:22 93:1 161:16 175:20 234:15,18 243:16 245:3 <b>exit</b> 26:16 49:5 <b>exiting</b> 177:6 <b>expand</b> 243:15 244:2 <b>expanding</b> 135:9 <b>expansion</b> 207:5 <b>expense</b> 49:19 <b>expenses</b> 47:17 <b>expensive</b> 47:19,20 162:12 <b>experience</b> 74:3 <b>explain</b> 45:21 93:18 211:8 246:2 <b>explained</b> 193:10 <b>explicit</b> 137:22 240:22 <b>expressed</b> 62:5 66:7 68:19 <b>expressing</b> 63:4 184:12 <b>extend</b> 66:14 87:3	219:14 <b>extended</b> 24:3 28:7 37:10 113:9 145:20,21 168:16 224:21 236:8 <b>extent</b> 184:11 185:2 187:20 189:3 <b>extra</b> 139:5 <hr/> <b>F</b> <hr/> <b>fabric</b> 113:12 <b>face</b> 149:15 <b>facility</b> 135:18 <b>facing</b> 185:20 <b>fact</b> 22:17 66:18 79:5,14 89:18 135:3 145:19 241:19 245:22 246:20 247:6,18 248:1,9 250:11 <b>factor</b> 104:9 154:3 154:4 165:4,7 <b>factors</b> 53:1,3 <b>facts</b> 149:7 246:7 246:14 <b>fail</b> 149:17 <b>failed</b> 135:14 170:3 170:4 240:20 241:22 244:11 <b>failure</b> 35:7 158:16 <b>fair</b> 28:19 66:16 <b>fairly</b> 130:5 150:7 187:14 <b>faith</b> 14:8 22:21 47:12 70:14,21 71:7 73:8 80:3,22 81:1,9,10,19,22 82:10 83:20 84:14 85:21,21 92:2 134:18 154:13,17 155:7 156:17 157:15 238:7,21 241:3 <b>fake</b> 60:22 <b>fall</b> 89:16 <b>familiar</b> 29:19
---	---	---	---	--

33:13 41:4 174:8	<b>filing</b> 35:8 130:2	68:3 90:22 96:1	121:16 136:17	<b>gas</b> 120:7
<b>family</b> 44:15 45:5,8	157:13 198:16	137:5 165:15	169:2 170:20	<b>general</b> 10:16
113:9,16,19	241:18,20	<b>flexibility</b> 14:4 53:6	181:7 193:4	85:14 144:16
114:11,16 116:7	<b>filling</b> 3:9	220:1	<b>fourth</b> 78:12,15	151:19 160:16
<b>family's</b> 44:11	<b>final</b> 133:5	<b>flied</b> 229:15	141:22 197:12	174:18 188:10,13
<b>family-owned</b>	<b>finally</b> 107:15	<b>floor</b> 94:14 97:11	232:7,18	224:8 248:22
13:11 44:22	243:18	97:15 103:18	<b>frankly</b> 129:20	<b>generally</b> 140:8
<b>far</b> 54:17 55:3	<b>find</b> 134:22 135:8	179:12 183:5	134:22 242:13,19	197:6
117:10 121:15	150:7	207:6,10	242:19 244:8	<b>getting</b> 14:21
152:18 170:8	<b>finding</b> 246:14	<b>flurry</b> 132:18	<b>free</b> 12:16 57:20,21	198:13
189:10 200:2	<b>findings</b> 17:2	<b>fly</b> 65:22	<b>frequently</b> 177:18	<b>girls</b> 45:16
208:2 212:4	245:22 246:7,20	<b>focused</b> 103:21	<b>Freres</b> 45:9 113:13	<b>GIS</b> 25:5
243:11	247:6,17 248:9	<b>focusing</b> 18:5	<b>fresh</b> 45:3	<b>give</b> 4:7,15 8:14
<b>fast</b> 12:17 69:19	250:11	<b>folks</b> 176:10 212:6	<b>Friday</b> 99:4,4	16:11 21:16 47:1
<b>father</b> 13:12 45:16	<b>fine</b> 4:14 6:7 28:3	238:2	175:7	47:3,16 51:22
64:11 69:14 96:2	28:18 58:16 69:3	<b>follow</b> 149:17	<b>Fridays</b> 43:20	117:9 174:2 176:9
104:9,21 132:17	91:18 145:5	240:2	<b>front</b> 14:17,18	185:2 188:7
<b>fault</b> 87:10	171:18 172:1	<b>follow-up</b> 163:16	26:15 49:5 94:4,5	201:21 204:6
<b>favor</b> 246:14,15	190:9,21 201:22	179:21	107:11 165:21	205:6,19 210:10
<b>feel</b> 12:16 14:5 21:1	202:4 227:9	<b>following</b> 17:2	185:14 210:12	210:14 220:7
23:6 80:20 100:16	<b>finished</b> 211:14,18	23:16 32:6 66:22	<b>frozen</b> 45:3	226:4 250:8
102:8 114:11	<b>fire</b> 117:20 121:18	183:16	<b>frustrating</b> 14:20	<b>given</b> 14:1 35:13
115:12 210:10	<b>firmly</b> 239:17	<b>follows</b> 21:13 42:13	132:14 134:22	37:3 38:11 149:7
211:2 227:2	<b>first</b> 6:12 7:9 13:17	112:6 128:18	<b>frustrations</b> 66:7	184:1 200:3
<b>feeling</b> 132:11	21:11 29:15 42:4	173:10 182:7	<b>fulfill</b> 82:10 157:15	203:22 204:4
162:16	42:11 44:2,7,12	191:6	<b>full</b> 174:2,3 209:11	211:4 235:1 239:2
<b>feels</b> 134:19,19	44:14,22 71:22	<b>food</b> 102:21 103:1	226:4	<b>giving</b> 53:12 60:1
154:19 239:12	95:18 98:13 104:6	103:7 104:1	<b>fully</b> 193:10	<b>glad</b> 9:21 190:20
<b>feet</b> 25:6,11 215:15	104:8 106:13	<b>foody</b> 102:21	<b>functionally</b> 169:13	201:14 212:9
215:19,21 216:12	112:4 128:16	<b>foot</b> 125:21	<b>fundamentally</b>	<b>Gladly</b> 213:22
<b>felt</b> 23:14 90:6	129:12 131:18	<b>force</b> 39:20	243:21	<b>go</b> 3:21 11:15 12:2
104:22 155:2,8	155:12,13,15	<b>form</b> 63:14 246:17	<b>fundraisers</b> 44:5	12:18 14:16 31:10
156:14,17	156:7 167:2,2,9	<b>formal</b> 35:11	<b>furious</b> 64:3	36:11 56:21 71:3
<b>fewer</b> 16:21 158:5	173:8 182:5 191:4	<b>former</b> 59:18 118:2	<b>further</b> 30:5 32:16	78:20 81:8 84:21
<b>field</b> 148:19 149:3	195:17 196:17	<b>forth</b> 71:3,11 178:3	103:15 115:5	97:4 98:2 112:22
151:7,13 152:2	210:16 228:16	202:6 227:6 246:7	116:18 121:17	114:18 115:17
<b>fighting</b> 55:18	237:19,21	246:20	122:6 124:17	120:11 122:19
<b>figure</b> 6:2 21:3	<b>fiscal</b> 52:1 53:18	<b>forward</b> 13:7 71:9	125:9 143:20	127:13 134:7
98:13 239:2	<b>five</b> 7:19 40:11	78:20 92:14	148:14 153:1	143:12 144:18
<b>file</b> 245:22	136:17 144:18	143:13 156:19	186:9 188:1 194:7	148:22 149:6
<b>filed</b> 15:1 59:13	171:13,22 172:5	192:3 206:13	242:8	154:14 163:13
60:13 129:19	181:7 237:15,16	208:5 245:18	<b>future</b> 249:1	179:13 193:3,6
149:20 158:3,6,22	237:17	<b>found</b> 219:10		195:19 202:6
184:12 196:4	<b>five-piece</b> 25:22	<b>founders</b> 64:12	<b>G</b>	208:2 218:17,17
217:17	<b>flag</b> 30:16 31:18	<b>four</b> 15:5 40:11	<b>G-U-T-H-R-I-E</b>	223:1 225:19
<b>files</b> 200:12,17	<b>Fletcher</b> 61:12	45:16 61:6 66:21	129:9	226:13 234:7
209:6,22	67:14,15,18 68:2	93:14 102:12	<b>Gabriela</b> 66:4	236:17

<b>goals</b> 13:21	204:19 205:14	65:19 69:13 76:19	<b>H</b>	191:14 229:22
<b>goes</b> 7:8,16 59:16	228:9 237:14	77:7,11,15,19	<b>H</b> 51:14	<b>happened</b> 63:7,8,9
79:21 80:2 86:6	238:7,21 241:3	78:19 79:3,4 80:1	<b>H-A-L</b> 174:4	71:1 115:22
89:3 237:19 243:3	<b>gotcha</b> 98:22	80:6 81:5,9 86:2,4	<b>Habana</b> 1:6 2:5,13	143:17 210:11
<b>going</b> 3:7,17 4:5,9	<b>gotten</b> 15:7	86:10 87:13,16,19	2:19 13:10,18	<b>happens</b> 187:16
4:16 5:3,3,5 6:2	<b>governing</b> 16:17	88:3,6,10,18,22	14:3 22:3,6,8,16	191:14 228:11
7:11,13 8:20,21	174:16	89:7,13,17,22	23:5,11 24:20	247:12
10:5,16 11:21	<b>Granja</b> 103:6	90:21 91:6,22	25:3,7,12,17 26:2	<b>happy</b> 130:12
15:10,21 16:11	<b>grant</b> 13:15 72:21	92:3,6 94:20	27:3 30:22 40:4	156:8,9 204:6
19:8 27:7,12	<b>granted</b> 20:10	108:11,14 110:17	40:10,13 41:1	<b>harassed</b> 64:17
34:11 38:2 53:15	<b>granting</b> 20:13	115:8,11,16,20	42:18 43:9,13,15	100:17
55:7 63:2 70:9	60:15	116:2,18 128:14	45:11 46:9 48:12	<b>hard</b> 51:8 72:15
71:16,20 76:3	<b>great</b> 4:22 14:11	129:3,8,9,14	49:2 50:11 51:2	<b>hardship</b> 53:5
79:22 87:19 91:15	111:13 115:6	131:1,6 136:16	51:16,19 53:6	<b>harm</b> 149:1,4
92:14 96:3,13	172:18 224:18	137:3,12,15,19	57:13 58:5 64:18	<b>Hart</b> 3:10 68:13,15
108:3 110:2,22	240:6	138:16 139:3,9,16	69:12 71:12 72:4	68:18 69:7,13,21
124:15,19 128:20	<b>grew</b> 44:16	139:18,21 140:3,6	73:8 74:2,12 75:1	131:17 140:19
128:22 130:11	<b>Griffith</b> 45:3	140:11,14,18,22	87:1 103:12	<b>head</b> 38:2
132:16 134:15	<b>Grill</b> 103:5 179:8	141:3,6,11,14,18	107:16 109:4	<b>health</b> 237:7
142:10 153:18	180:10	142:2,6,19 143:3	113:21 114:2,21	<b>hear</b> 3:14 7:1 8:2,3
154:14 155:2,7	<b>ground</b> 183:5	143:9 144:6,13,19	115:2 120:2 126:7	10:2 11:3 48:16
156:19 172:11,13	<b>grounds</b> 19:12	144:21 145:3,7,10	127:21 136:22	50:16 65:15 70:15
184:20 193:16	60:15	145:12,17,22	138:14 140:10	85:17,22 91:9
202:21 206:12	<b>group</b> 143:15	146:4,8,10,13,16	174:9,12,21	94:8 109:2 114:12
218:6 221:10	180:19	146:22 147:5,8,12	175:12,19 176:16	176:17,20 177:14
222:8 224:6,9	<b>groups</b> 103:10,12	147:16 148:1,8,17	180:11 182:16,21	179:13 186:3,5
225:10 240:11	103:12,13	149:5 150:13,17	185:20 186:4	224:11
245:20 246:10	<b>grow</b> 51:7 53:7	151:14,18 152:5	193:15,15 199:7	<b>heard</b> 26:14 49:3
247:11,22 248:3	72:18 73:5	152:14,17 153:12	199:12 202:14	110:16 129:12
248:17	<b>growth</b> 52:4 56:11	154:16 155:15,21	203:7 206:4,22	131:13 162:11
<b>gong</b> 171:18	<b>guess</b> 21:16 29:5	156:7,16,22 157:5	210:12,13 212:2	181:7 187:16
<b>good</b> 11:14 14:8	38:2 40:11 91:10	157:14,18 158:2	219:3 220:20	227:3
17:1 22:21 43:2	143:11,17,18	158:11,19 159:3,8	226:9 236:6 239:1	<b>hearing</b> 1:7,15 2:5
47:12 48:2 61:1	158:13 162:14	159:12,18 160:1,4	239:11 249:9	7:11 9:7 26:10
70:14,21 71:7	213:13 230:20	160:7,12,18 161:7	<b>Hager</b> 192:4 199:4	49:21 52:16 54:14
73:8 80:3,22 81:1	<b>guessing</b> 123:19	162:3,18 163:1,7	206:10 233:5	54:14 61:6,7,8,9
81:9,9,18,21,22	<b>guidelines</b> 34:6	164:3,13 165:10	<b>Hal</b> 10:13 172:21	61:18,19 62:4,8
82:10 83:20 84:14	<b>Guthrie</b> 2:22,22	165:16,18,20	173:6 174:4	63:10,13 68:10,17
85:21,21 90:6,6	3:9,16,17,20 4:3	166:2,5,9,13,15	<b>half</b> 7:14 20:19	68:18 80:9 81:20
92:1 96:22 100:12	7:9 8:19 14:13	166:21 167:5,8,14	80:17 86:20 94:7	84:16 95:4,21
108:5,7 117:2	15:14,16,18,22	167:20 168:6,10	117:13,15 122:2	96:1 104:16 111:5
119:13,14 128:10	16:9 35:2,6,19	168:13,20,22	133:1 136:19	131:15 134:7,15
130:16 134:18	36:1,4,5,9,20 37:4	169:5,11,16,19	<b>hand</b> 122:15	141:20,21 143:13
152:9,10 154:1	37:8,15,18,21	170:15,18 171:6	131:18 173:2	153:3 222:1 224:1
156:17 157:15	38:5,15,20 39:1	222:7 237:13,19	208:9	225:4,19 226:7
173:1 176:13	52:10,12,15,18	240:10 242:12	<b>happen</b> 116:10	243:2 250:21
180:8 182:1	53:9,11 54:1 55:5	<b>guys</b> 141:9	157:3 181:5	<b>hearings</b> 15:11

209:8 225:1 226:8	<b>hoping</b> 155:16	<b>Ike's</b> 29:18,22	118:20	<b>interactions</b> 15:4
<b>hearsay</b> 184:18	<b>horrific</b> 150:15	<b>illegal</b> 68:1	<b>independent</b>	<b>interest</b> 21:1 59:15
185:2	<b>Hospitality</b> 103:5	<b>immediate</b> 20:15	193:14 197:16	59:15,19 135:10
<b>Heights</b> 51:14	<b>hour</b> 7:14 86:20	82:15	<b>independently</b>	228:4
168:16	133:1 137:22	<b>immediately</b> 88:13	198:12	<b>interested</b> 37:11
<b>held</b> 137:6 140:10	<b>hours</b> 24:3 28:2,7,8	<b>impact</b> 17:13 18:3	<b>indicate</b> 209:5	89:8 132:6 137:1
<b>Heller's</b> 45:6	28:11,12 31:7	18:20 49:17 73:13	239:6	234:8
113:12 120:21	32:10 33:17 34:8	74:6 135:2 160:22	<b>indicated</b> 35:6	<b>interfere</b> 46:9 73:3
<b>help</b> 72:7 103:13	37:10,22 39:13,15	168:5 238:15	37:10	<b>interject</b> 70:6
149:16 196:18	43:19 62:14 63:16	239:20	<b>indicates</b> 135:16	<b>interrogating</b>
198:9 210:10	64:4 66:21 90:8	<b>impacts</b> 160:17	231:22	96:22
216:2 237:7 239:1	99:19 139:5,15	<b>impasse</b> 154:12	<b>indication</b> 248:10	<b>interrupt</b> 174:1
<b>helpful</b> 130:15	145:15,16,20,21	<b>impediments</b>	<b>individual</b> 133:19	<b>interrupted</b> 16:8
136:3	174:17 175:2	175:15	153:20	<b>intersection</b> 178:21
<b>helping</b> 103:1	187:8 219:14	<b>imperative</b> 227:2	<b>Individually</b>	<b>introduce</b> 46:11
<b>helps</b> 162:6 184:6	224:21 236:4,5,8	<b>implications</b>	128:21	48:3 49:7 50:2
<b>hey</b> 31:18	<b>house</b> 66:10 86:20	144:16	<b>individuals</b> 153:14	52:1 194:11
<b>Hi</b> 186:13	121:18	<b>important</b> 14:3	169:17	<b>introduced</b> 43:1
<b>high</b> 89:16 241:15	<b>houses</b> 71:17	114:14 133:21	<b>indulgence</b> 205:18	<b>introduces</b> 43:3
<b>high-end</b> 103:3	121:16	233:21 234:12,19	<b>influenced</b> 26:3	<b>introducing</b> 21:15
<b>higher</b> 40:10	<b>housing</b> 25:2	234:21 235:15	<b>information</b> 33:10	211:19
<b>highlight</b> 244:20	<b>Hum</b> 60:13	236:4,14 237:1	35:16 38:12,15,17	<b>introductions</b> 2:11
<b>highlights</b> 21:17	<b>hurt</b> 51:13 243:17	241:6	63:14 167:9	<b>investigation</b> 12:7
<b>hire</b> 97:18	<b>hurts</b> 51:6	<b>impossible</b> 149:9	209:18 211:20	21:17 36:14,18
<b>hired</b> 64:5	<b>hypothetical</b> 60:22	<b>impression</b> 117:9	239:9,22	38:6
<b>historic</b> 169:20	86:15 100:5,6	<b>improve</b> 72:17	<b>informed</b> 224:19	<b>investigative</b>
<b>historical</b> 138:21	<b>hypothetically</b>	<b>incident</b> 209:5	<b>informing</b> 200:21	209:22 212:1
<b>history</b> 23:19 27:2	102:1 118:16	<b>incidents</b> 209:11	200:22 202:13	213:7
27:3 170:6 209:22	148:3,5,8	210:11 211:7	<b>initial</b> 155:5 206:12	<b>Investigator</b> 1:24
239:7	<b>I</b>	<b>include</b> 7:15,18	<b>initially</b> 142:6	13:6 21:6,7,9,18
<b>hit</b> 51:8	<b>I's</b> 104:21	89:17 90:2 142:8	<b>Inn</b> 122:3	21:21,22 27:9,15
<b>hold</b> 249:6 250:9	<b>ice</b> 45:2,3 113:15	<b>included</b> 6:6 20:19	<b>input</b> 38:8	27:21 28:4,9,16
<b>holding</b> 32:13	<b>idea</b> 4:15 7:10 43:3	35:12 38:16	<b>inside</b> 30:3 187:15	29:1,6,11,14,20
125:10 243:2	57:14 98:4 99:1	138:13 232:7	187:16 188:17	30:2,9,13,19 32:1
<b>holiday</b> 28:2,7,8,11	115:11	<b>includes</b> 97:11	206:5 210:1	32:19,22 33:4,9
28:12 33:20 39:13	<b>identification</b>	<b>including</b> 25:1 65:6	236:19	33:16,19 34:5,15
<b>holidays</b> 24:4	46:17 48:8 49:12	115:1 226:8,8,10	<b>insisted</b> 243:2	34:18 35:14,21
224:20	50:7 52:9 67:10	239:5	<b>instance</b> 162:11,13	36:3,6,11,16 37:1
<b>home</b> 122:21 123:4	71:15 74:15	<b>incorporate</b> 170:19	<b>instances</b> 48:20	37:7,13,17,19
123:5	192:15 195:15	<b>incorrect</b> 242:4	50:20	38:1,9,19,22 39:5
<b>honest</b> 155:10	201:5 204:22	<b>increase</b> 14:4 93:20	<b>Institute</b> 53:19	39:8,16,22 40:5,9
<b>honestly</b> 127:4	217:3	94:10 102:7 118:9	<b>insufficient</b> 202:15	40:14,19 41:2,6
244:3	<b>identified</b> 5:15 9:17	146:19 176:15	<b>insurance</b> 98:10	41:11 48:4 50:16
<b>hope</b> 239:21 240:3	159:4	239:3	<b>insure</b> 238:20	119:11 159:20
<b>hoped</b> 24:17	<b>identify</b> 9:22	<b>increased</b> 72:6	<b>integral</b> 164:12	239:5
191:16	<b>identifying</b> 129:6	99:16	<b>intended</b> 14:22	<b>Investigator's</b>
<b>hopeful</b> 227:13		<b>increasing</b> 33:21	<b>interacted</b> 153:21	122:16 125:13

126:5	105:15 108:16,17	222:4,20 223:13	89:10,14,20 90:4	100:6,14 101:7,20
<b>Investigators</b> 26:7	108:20 109:2,3,9	223:17 224:3	90:14,18 91:2	104:6 107:9
26:10 48:11,15,22	109:20,21 122:12	225:3,22 227:7,11	92:5,19 93:11,21	128:20 132:5
50:11,22 160:19	122:13,15,20	228:10,13,19	94:12,22 95:9,17	133:10,15 136:15
<b>invited</b> 193:15	123:8,11,13,15,18	229:4,6,10,18	96:9 97:5,8,13,16	140:21 141:7
220:20	124:1,9,17,20,21	230:3,7,17,19	97:20 98:3,6,9,16	142:1,8,16,18,20
<b>invoked</b> 11:4	125:9,14,16,20	231:1,4,9,11,15	98:20 99:3,22	143:2 148:4,9
<b>involved</b> 15:6	126:3,6,9,14,17	231:20 232:6,18	100:3,12,21 101:2	155:19 156:3,9
24:18 61:3	126:21 127:6,9	232:21 233:2,5,10	101:6,10,16,19	160:9 165:7,7
<b>involves</b> 246:6	156:10 171:7,12	233:13,15 234:1,3	102:5,10 103:19	168:3,5,8,13,15
<b>involving</b> 168:3	171:14 172:19,20	234:6,15,20 235:4	104:7 105:4,7,18	169:7 170:5,14,18
<b>Ipanema</b> 103:5	173:17 174:7,8,11	235:6 236:2 237:6	106:1,4,9,11,16	172:20 174:13
179:8 180:10	174:15,20 175:6	245:15 247:9	107:1,17,19,22	191:10 192:1,11
<b>issue</b> 10:7 56:2	175:10,14,17	<b>Jason</b> 1:24 21:9,22	111:14 112:21	192:14 193:13
57:12 90:9 133:9	176:1,4,9 177:2,5	50:3	250:17	194:12,15 195:7
162:10 165:7,11	177:8 181:19,22	<b>Jenkins</b> 104:12	<b>judge</b> 81:21 84:14	195:14 198:9,14
165:11 166:7,14	182:11,15,22	201:7 248:22	<b>judicial</b> 210:21	198:16 199:22
166:19 167:3	183:8,11,17 184:1	<b>job</b> 96:22 250:16	<b>July</b> 23:3 24:14	200:8 201:4
219:20 220:12	184:9,15 185:8	<b>joint</b> 225:13	26:20,21 61:17	204:21 209:2,18
248:11 250:13	186:16 189:22	<b>Jonathan</b> 200:20	66:3 223:22	210:8 211:2 217:2
<b>issued</b> 35:10	190:4,9,13,16,19	200:22 202:13	<b>jumped</b> 67:22	217:14 218:9
206:18	191:2,9,10 192:19	203:7	<b>June</b> 22:14 61:9	220:21 222:10,19
<b>issues</b> 11:18 38:21	193:2,8 194:10,17	<b>Jose</b> 6:13,18 127:20	223:20	225:8 228:19
49:1 51:1 52:2	194:18,21 195:2,4	<b>Jr</b> 2:12,13 4:11 5:5		232:7,11 238:2,21
55:8 59:4,5,5 87:6	195:10,16,20	5:9,13,17,19 6:5,9	<b>K</b>	245:15 247:9
107:10 133:3	196:3,10,13,16	6:12,21 7:5 11:6	<b>Kalorama</b> 3:5	<b>KCA's</b> 60:11 64:1
137:10 145:15	197:14,21 198:2,7	11:12 23:12 42:9	22:10 44:18 92:10	218:6
161:14 170:10	199:2,6,11,14,18	43:8,9,15 44:14	95:7,13 96:7	<b>keep</b> 13:20 47:13
223:1 238:11	199:21 200:5,7,13	46:2,13,18,22	108:22 109:5	85:9 91:15 92:17
<b>items</b> 74:5	200:16,19 201:8	47:5 48:9 49:13	168:21,22 179:2	116:3 172:9 237:7
<b>J</b>	201:11,14,18,22	50:8 51:5 53:10	<b>Katie</b> 6:15 75:11,12	240:17 241:6
<b>J-A-M-E-S</b> 191:10	202:4,7,9,12,19	54:5,8,18 56:9,14	111:16 112:2,13	<b>keeping</b> 31:20
<b>James</b> 3:4,4 9:3,10	203:1,4,10 204:9	56:18 57:2 58:15	212:3	59:19
9:13,19 10:2,8,12	204:11,14,16	58:20 59:3,13	<b>KCA</b> 9:2,4 10:9	<b>kept</b> 73:15 112:20
10:17 19:1,3,11	205:1,11,16,22	60:13,21 61:5	19:4 22:11 23:3	<b>kind</b> 12:17 32:14
19:18,22 20:4,7	207:15,17 208:1,8	63:3,6,11,20 64:2	24:14 38:7,12,13	85:18 113:11,18
20:13 21:3 22:12	208:13,17,20,22	64:9 65:2,4,11,17	46:1 54:11 59:4,7	184:21 223:2
24:15 39:4,9,18	209:3 210:18	66:2 67:6,12	59:11,18 60:3,4	224:9
40:2,6,12,16,22	211:9,14,15,21	70:16,18,20 71:1	60:13 61:12,18	<b>knew</b> 114:18
41:4,8,15,19	212:6,12,16,18	72:5,22 73:14	63:17 64:8,10,14	165:10 194:5
54:11,13 55:2,6	213:1,4,7,9,13,15	74:7 75:2,5,11,13	64:15,19 65:6,12	196:4 228:19
55:16,19 56:5	213:19,22 214:16	75:17 76:9,12	66:8,12,19 67:14	229:11 230:14
59:3,18 67:22	215:12,18 216:4,7	77:10,13,18 78:4	67:16,16 68:5,10	<b>know</b> 6:3 7:7,20,22
68:1 92:9,21 93:5	216:11,16,19	78:10,14 79:2	69:21 70:1,3 71:2	8:2 9:21 11:17
93:6,12 94:8,15	217:8,13,21 218:3	81:14 85:1,6,10	71:4,10 73:9,19	15:10 19:12,14,15
95:5,12 96:6,10	218:22 219:8,18	86:9,17 87:14,18	78:11,13,16,21	19:19 21:2 28:6
	220:6 221:3,16	87:22 88:4,8 89:4	87:4 93:8 95:17	28:12,19,22 29:9

29:13 32:14 41:11 42:22 44:7 54:16 55:6,7 57:22 59:7 63:1,7 70:10 73:22 74:1 78:10 79:12,16 80:20 82:2 85:16 90:10 91:9,19 96:13 98:3,18 100:14 102:10,15 103:21 104:8 107:2,5,5 107:13 114:11 116:10,10,12 119:2,6,6 120:21 120:21 128:5 129:7 130:6,10 138:16 139:10 142:11,14,16 143:5 144:22 148:18 150:3 154:14 155:6,8 156:10,14 157:10 157:10 161:4,18 162:15 165:11 166:21 180:13,14 180:15,21 181:1 184:12 186:22 188:6,12 189:10 191:18 192:1 193:11 194:3 198:20 199:9,11 199:14 200:9 204:1,7 206:21 207:9 209:11,14 210:5,7 211:5,13 214:2 215:2,13,15 216:14 221:4,18 223:4 224:10,11 224:14 226:18 228:22 229:4,13 230:8 234:8,13 235:17,19 236:3,4 236:18 237:2 238:18 243:6,20 244:21 245:5,8,10 245:10 247:21 <b>knowing</b> 118:16	143:6 <b>knowledge</b> 38:21 131:18 133:18 187:21 231:20 <b>known</b> 120:19 166:19 243:11 <hr/> <b>L</b> <hr/> <b>La</b> 103:6 115:2 <b>labeled</b> 214:13 <b>lack</b> 66:8 68:19 <b>Lakers</b> 44:19 <b>language</b> 58:1,3,7 161:16 219:22 220:11 <b>Lanier</b> 45:13 66:6 66:11 117:19 120:1,6,17 122:21 125:21 126:11 127:1,7 168:16 212:4 215:14 216:12 <b>large</b> 29:13 224:16 235:21 243:22 <b>larger</b> 28:21 103:9 103:9 113:9 169:10 206:21 215:21 236:19 <b>lastly</b> 238:13 <b>late</b> 7:2 57:7 89:9 89:19 98:1,17 155:20 172:10 180:1 226:18 240:16 245:2,2 <b>Latin</b> 44:2 51:20 73:22 <b>Latin-style</b> 25:22 <b>Latinos</b> 114:14 <b>law</b> 161:1 164:8,8 164:12 191:13 193:20 217:16 241:14 246:1,12 246:15,21 247:7 247:18 248:10 250:11 <b>laws</b> 50:1 160:16 <b>lay</b> 15:19	<b>Lazere</b> 53:18 <b>lead</b> 23:7 60:16 194:6 <b>leader</b> 19:8 <b>leadership</b> 64:15 <b>leading</b> 184:20,21 185:5 <b>league</b> 44:18 <b>learn</b> 228:16 229:9 <b>learned</b> 44:17 92:12 206:3 224:16 <b>learning</b> 234:9 <b>leave</b> 3:10 11:11 61:13 76:3 127:22 176:17,19 178:1 180:10,17 <b>leaves</b> 180:7 <b>leaving</b> 68:22 176:21 178:9,16 <b>led</b> 245:7 <b>leeway</b> 84:21 <b>left</b> 38:12 120:7 132:10 208:9 224:16 245:11 <b>legal</b> 62:15 157:7 175:2 219:6 221:8 246:6 249:8 <b>lemonade</b> 45:4 <b>lessening</b> 135:6,7 <b>lessons</b> 44:3 235:18 <b>let's</b> 2:10 5:14 56:3 56:6 76:17 80:21 118:12 144:17 153:5 <b>letter</b> 22:13,15 23:2 23:4 35:15,17,18 35:19 36:7,8,10 61:14 67:2 74:11 74:22 87:9 89:7 114:4 121:4 137:8 137:17,21 138:12 138:13 139:7,13 139:15 167:16,17 167:18 192:6,11 193:8 194:16 197:13,15,20	198:5,8,9,12 200:9,20,22 231:22 232:4,4,6 232:15 <b>letters</b> 199:1 <b>letting</b> 56:8 <b>level</b> 24:7 26:14 29:16 98:11 148:19 152:2 155:1 <b>leverage</b> 136:4 <b>libraries</b> 25:10 <b>license</b> 1:8 2:7 52:3 53:20 57:4 59:22 60:5,12,15 62:6 86:5,6,7 87:2 89:1 89:3 92:11 94:14 95:19 104:20 105:8,13 115:18 116:4 152:10 163:2 241:9 <b>licensed</b> 25:5,14 <b>licensee</b> 42:10 112:3 135:3,16 147:17 152:3 161:11 170:10 191:17 <b>licensees</b> 149:11 204:1 229:13 <b>licenses</b> 54:3 <b>lift</b> 54:22 <b>lighten</b> 235:12 <b>likelihood</b> 135:22 <b>limit</b> 59:20 <b>limited</b> 48:19 50:19 55:14 138:19 <b>limits</b> 57:3 73:6 116:15 <b>line</b> 31:21 86:15 91:18 103:2 208:10 <b>linkage</b> 229:21 <b>linked</b> 113:18 191:13 <b>lion's</b> 183:21 <b>liquor</b> 52:3 53:20 59:22 60:5,12,14	62:6 87:2 94:14 <b>list</b> 27:18 28:22 29:2 52:2 127:20 236:3 <b>listed</b> 33:22 52:21 74:5 <b>little</b> 42:18 43:13 44:18 59:1 60:11 69:6 91:4 98:12 102:6 114:7 123:16 129:20 133:13 134:7 185:5 238:18 <b>live</b> 45:15,18 66:6 117:10,19 121:15 121:16,17 174:22 182:12 183:1 185:13,14,16 212:6 216:12 <b>lived</b> 75:13 112:11 112:14,17,17 113:7,8 <b>lives</b> 6:16 127:21 214:3 <b>living</b> 116:11 <b>local</b> 73:18 <b>locals</b> 135:8 <b>locate</b> 17:5 22:20 81:12,18 83:17 197:2 238:7 <b>located</b> 2:6 17:11 17:15 22:4 24:21 25:10,12 48:12 50:12 77:8 83:19 84:10 179:4 <b>location</b> 26:8 43:18 174:9 <b>log</b> 46:14 47:6,14 <b>loitering</b> 26:10 48:16 50:16 <b>long</b> 7:10,15 27:13 112:11 113:7 116:3 120:20 156:10 171:11 215:6,7 239:7 <b>longer</b> 13:19 45:9 55:3 120:8 135:20
---	--	--	--	---

153:10	54:18 55:11 56:9	138:11 139:1,6,13	171:7	<b>mediation</b> 61:7,9
<b>look</b> 110:20 175:11	56:14,18,21 57:2	139:17,20 140:2,5	<b>Maga</b> 115:3	61:13,20 62:2,3
176:21 178:8,13	58:12,15,17,20,22	140:9,12,16,20	<b>main</b> 3:7 4:10 46:6	67:14 84:22 90:22
180:16,16 196:1	59:3,10,13 60:10	141:1,5,8,12,16	86:18 222:6	92:12 93:6 94:16
224:11	60:13,19,21 61:3	141:22 142:3,17	<b>maintain</b> 100:8	94:17,17 95:11,14
<b>looked</b> 58:1 151:14	61:5 63:3,6,8,11	142:22 143:4,20	195:16	95:15,18 96:8
162:16,18	63:18,20,22 64:2	144:9 145:19	<b>maintaining</b>	131:20 132:3,12
<b>looking</b> 18:15	64:7,9,21 65:2,3,4	146:18 164:19	144:10	137:4 165:14
27:18 81:3 139:14	65:9,11,15,17	165:1,13,17,19,22	<b>making</b> 9:3	166:1 167:11,16
208:15,19 230:9	66:1,2 67:5,6,12	166:3,7,11,14,16	<b>Mambo</b> 29:18,22	167:19 194:6
230:12 235:12	70:7,12,16,17,18	167:1,7,13,15	<b>man</b> 115:1	222:1,9 223:6,10
<b>looks</b> 46:20 76:5	70:20 71:1,6,16	168:1,7,12,17,21	<b>Manager</b> 192:4	223:18,19 224:5
107:20 118:10	72:5,20,22 73:11	169:4,6,15,18	<b>mandatory</b> 63:14	224:10 225:6
144:1 161:12	73:14 74:4,7,9,16	170:11,17,21	<b>manner</b> 155:10	233:19 234:4
164:13	74:22 75:2,3,5,11	177:13,17,20	<b>map</b> 122:22 125:10	<b>mediations</b> 225:1
<b>lose</b> 103:7	75:13,16,17,20	178:5,7,14,20	125:12,20,22	226:8
<b>loss</b> 53:4 134:8	76:2,7,9,10,12,15	179:6,10,15,17	127:9	<b>medium-density</b>
<b>lost</b> 26:22 83:10	77:7,10,13,18	184:18,22 185:13	<b>maps</b> 122:17	25:1
<b>lot</b> 8:3 62:17	78:4,8,10,13,14	185:18,22 186:2,7	<b>March</b> 206:17	<b>meet</b> 95:22 194:2
103:11 113:14	79:2 80:16 81:14	186:9 192:20,22	<b>mark</b> 212:8 214:7	217:15 221:15,19
119:4 133:16,17	84:13,14 85:1,6,8	193:22 202:13	214:16	222:6,22
134:19,20,21	85:10 86:8,9,17	211:1 214:2,8,15	<b>marked</b> 46:16 48:7	<b>meeting</b> 1:3 3:22
144:15 155:2	87:14,18,22 88:4	214:17,21 215:3,7	49:11 50:6 52:8	61:7,10,18,20
162:12 170:2	88:8 89:4,10,14	215:10 218:14,19	67:9 71:14 74:14	62:2,3,5,18 66:10
205:16 227:3	89:20 90:4,14,18	218:21 219:2,13	111:7 124:7	66:11 69:4,5,6,8,9
229:1 236:16	91:2 92:5,9,19	219:21 220:19	192:14 195:14	69:12,15 79:1
248:2	93:11,21 94:12,22	221:14,22 222:9	201:4 204:21	80:13 86:21 88:14
<b>lots</b> 80:15 236:12	95:9,17 96:9,21	222:12 223:10,15	217:2 218:8	94:20 130:4
<b>loud</b> 188:17	97:5,8,13,16,20	223:20 224:20,22	<b>market</b> 51:17	131:11,21 132:19
<b>loudspeaker</b> 210:4	98:3,6,9,16,20	225:16,21 226:6	<b>marketing</b> 57:20	134:3 137:5
<b>lucky</b> 228:12	99:3,15,22 100:3	226:22 227:4,9,20	<b>Martha</b> 248:22	140:10,13,21
<b>Lujan</b> 2:12,12,15	100:12,21 101:2,6	228:3,16 230:13	<b>Maryland</b> 51:17	141:8 142:13,13
2:16,18,19 4:11	101:10,16,19	231:7,18 233:8	<b>Mathieson</b> 48:4	191:20 193:16,19
4:12,18,20,22 5:5	102:5,10 103:19	234:9 237:21	<b>matter</b> 1:5 13:1	194:8 197:4
5:7,9,13,17,18,19	104:7 105:4,7,18	240:7 250:17	133:6 250:22	220:21 221:6,10
6:5,9,12,20,21 7:5	106:1,4,9,11,16	<b>Lujan's</b> 132:4	<b>matters</b> 170:1	223:11 230:14
8:6,10 11:6,12	107:1,17,19,22	<b>Lujans</b> 113:9	223:4	231:4 243:1 249:7
12:20 13:1,4,9	108:6 110:4,10,13	114:20 115:13	<b>mean</b> 5:2 58:22	250:9
23:12,12,17,20	111:13,14,15	116:3 120:20	94:2 109:18 117:9	<b>meetings</b> 66:20
24:6,10,17 38:18	112:10,15,21	121:10	124:13 156:11	248:13 249:5,10
42:4,9,17,21 43:5	113:2 114:1,6	<b>Lullabies</b> 45:13	161:2 185:7	249:13 250:12
43:8,9,12,15	115:4 118:12	<hr/>	200:11 211:10	<b>member</b> 1:21,21,22
44:11,14 45:21	121:14 130:5	<b>M</b>	222:15 234:13	18:6,8,12 27:9,16
46:2,13,18,22	131:10 132:16,20	<b>Ma'am</b> 116:22	235:11	27:22 28:5,15,18
47:5 48:9 49:13	133:8 136:12,14	<b>Madam</b> 18:6 19:1	<b>meaningful</b> 224:15	29:4,9,12,18,22
50:8 51:3,5 52:20	136:20 137:7,14	76:20 96:21 99:9	<b>meat</b> 26:4	30:4,9,14 31:9
53:10,17 54:5,8	137:17,20 138:6	109:7 111:18	<b>mediated</b> 225:9	32:15 55:19 56:1

76:20 77:2 81:16 82:4,7,13,16,20 83:1,3,6,9,12,15 84:3,6,9,12,18 85:3,8,11 91:10 91:12,15,19 93:4 96:20 97:6,10,14 97:17,21 98:5,8 98:15,19,22 99:6 99:12,15 100:1,4 100:19 101:1,4,8 101:13,17,22 102:6 103:14 109:1,7,10,15,18 111:18 112:22 116:22 117:2,5,8 117:14,17,21 118:1,4,8,14,19 119:15,18 121:13 121:19 122:1,5,9 124:6,9,13,19 125:3,6,19 127:2 128:3 129:10 133:15 136:17 144:3,5,17,20 145:1,5,8,11,14 145:18 146:2,6,9 146:11,14,18 147:3,6,10,14,22 148:3,13,17 150:10,15,18 151:17 152:4,13 152:16,20 168:2 169:2 170:20 171:15 172:2 186:13,16,22 187:5,19,22 205:21 212:21 213:20 214:6,13 216:1,6,9 226:19 228:9,15 229:2,5 229:8,16 230:2,4 230:11,18,20 231:3,6,10,13,17 232:3,10,14,20,22 233:4,6,11,14 249:15,21 250:1,5	<b>members</b> 15:5 64:10 80:20 169:21 <b>membership</b> 170:19 <b>memory</b> 139:12,22 <b>mention</b> 35:10 <b>mentioned</b> 24:4 33:17 35:17 37:4 40:2 62:13 99:16 177:13 <b>menu</b> 72:13 <b>merengue</b> 25:21 <b>message</b> 242:6 <b>met</b> 1:15 16:2,4 193:10 <b>Metropolitan</b> 207:18 208:19 <b>Mia</b> 103:6 <b>Michael</b> 10:13 181:22 182:3 <b>mid-March</b> 229:7 229:8 <b>middle</b> 138:5 <b>midnight</b> 55:20 228:11 <b>mike</b> 1:22 3:15 138:5 <b>Miller</b> 1:17,20 2:3 2:14,17,20 3:1,6 3:13,19 4:1,4,8,13 4:19,21 5:2,8,11 5:14,21 6:7,11,18 6:22 7:6,12 8:9,11 9:1,8,12,15 10:1,4 10:11,15,20 11:7 11:13 12:22 13:3 13:5 14:11 15:9 15:15,17,20 16:7 16:10 18:7,11,21 19:2,6,17,20 20:2 20:6,12,17 21:4 21:14,19 27:6 30:7 32:17,20 33:2,7,12,18 34:1 34:12,16,20 35:4 36:13,17 39:2	41:13,17,21 42:2 42:6,14,19,22 43:6,11 46:12,19 47:2 52:10,11,13 52:17 54:7,9,12 54:15,19 55:9,12 55:22 56:3,6,13 56:16,20 62:21 63:5 67:11 70:5,8 70:13,19,22 71:5 74:20 75:7,12,15 76:1,4,11,14,17 76:22 77:5 79:19 80:5,19 81:7,11 82:1,6,9,15,18,22 83:2,4,8,11,14 84:1,5,8,11,17 85:5,13 86:3 88:15,20 90:12,16 91:8,11,13,17,20 92:1,8 96:12 99:10,13 103:16 104:2 105:2,5,16 105:20 106:3,6,10 106:14,17 107:14 107:18,20 108:1,5 108:8,12,15,19 109:13,16,22 110:6,12,15,18 111:10,21 112:7 112:19 115:6,9 116:20 119:21 120:10,16 121:5 121:11 122:10,14 122:18 123:2,5,13 123:17,20 124:4 125:1,5,8,12,15 125:17 126:3 127:5,12,16 128:2 128:5,9,19 129:5 129:13 130:20 131:4 136:10 138:2,8 143:22 144:4 148:15 153:2 154:2 155:11,18 156:5 156:12,21 157:2,9	157:17,22 158:7 158:12 159:2,5,10 159:16,19 160:2,6 160:11,14 161:2 162:2,8,22 163:5 163:8,15 164:6,7 164:16,21 170:22 171:4,10,13,17 172:1,4,8,16,18 173:1,4,11,13,22 174:6 175:5 177:10 179:20 180:3,6,9,13 181:2,9,11,15,21 182:1,8 184:16,19 185:1,10 186:11 188:2,6,9,12,21 189:1,4,8,12,14 189:20 190:3,7,11 190:15,18,21 191:7 192:12,16 192:21 193:1,5 194:9,14,19,22 195:3,8,12,18,21 196:7,11,15 197:18,22 198:4 198:18 199:5,10 199:13,17,20 200:2,6,11,14,17 201:6,10,12,16,20 202:2,5,8,10,16 202:20 203:2,5 204:8,10,13,15,18 205:9,14 207:14 207:16,22 208:6 208:11,14,18 209:1 210:15,19 211:11,17 212:5 212:10,14,17,20 213:2,6,8,10,14 213:18 214:1,4,10 214:20 215:1,5,8 215:11,17 216:3 216:15,18,21 217:4,9,19,22 218:5,11,16,20 226:17,21 227:1,5	227:10,18 228:1,6 232:12,16 233:17 234:2,5,11,17 235:3,5 236:1 237:5,9,14,20 240:6,8,14 245:14 245:19 247:4,8,10 249:16,22 250:2,2 250:6,18 <b>Miller's</b> 163:17 <b>Millie</b> 119:6 <b>mind</b> 29:15 154:21 190:13 241:6 <b>mindful</b> 77:21 <b>minimal</b> 23:19 26:14 <b>Mintwood</b> 103:4 179:4 183:6 <b>minute</b> 88:1 174:1 195:19 <b>minutes</b> 7:19 61:11 77:3 111:20 133:2 142:7 171:19,20 237:15,16,17 <b>missed</b> 61:19 170:3 <b>missing</b> 52:18 95:8 <b>mistake</b> 5:19 <b>mix</b> 25:20 <b>mixed</b> 205:3 <b>mixed-use</b> 25:2 <b>Mixtec</b> 103:6 <b>mixture</b> 120:22 <b>model</b> 73:15,21 210:9 <b>modifying</b> 149:2 <b>mojito</b> 44:4 <b>moment</b> 82:7 86:1 171:3,9 178:12 199:19 <b>Monday</b> 203:6 <b>monitored</b> 26:8 48:12 50:11 <b>monitoring</b> 31:6 <b>month</b> 65:17 180:22 183:15 <b>months</b> 27:15 37:6 39:11 245:6
--	---	--	---	--

<b>Moosally</b> 229:11	26:1,13 44:2 49:3	170:1 217:5 239:1	<b>never</b> 61:12 113:14	<b>notarized</b> 197:3
<b>moratorium</b> 52:3	74:1 187:13	<b>negotiate</b> 22:22	131:12 161:10	<b>note</b> 203:10
54:2,14 55:2,7,13	235:17	24:16 70:21 79:13	193:13 197:15,19	<b>noted</b> 244:22
56:10 110:19	<b>mutually</b> 22:22	81:19 83:20 84:15	198:11,12 206:8	<b>notes</b> 49:18 223:6
245:4	83:20	132:13 138:14	224:19 232:1	<b>notice</b> 14:21 210:21
<b>Morgan</b> 25:13		238:8	233:1	216:8 226:5 250:8
27:20 28:15,17	<b>N</b>	<b>negotiated</b> 14:15	<b>new</b> 24:5 28:6 57:9	<b>noticed</b> 39:12
34:8,16 37:9 39:7	<b>N.W</b> 1:16 2:7 50:12	69:16 70:13	62:1,10 66:12	80:13
44:15,16,17 45:14	182:14	<b>negotiating</b> 87:11	68:12 90:19 97:18	<b>notification</b> 129:16
45:15,18,19,20	<b>name</b> 2:15,18 21:21	137:1 154:11	99:20 103:3	157:12
46:4 51:8,10,13	37:21 43:8 112:11	<b>negotiation</b> 86:1	105:21 120:22	<b>notify</b> 198:9 221:9
51:19 52:3,5	112:13 129:8	87:5 136:22	138:20 145:20	<b>number</b> 24:8 29:11
53:20,21 54:3	174:2,3 191:9	149:18	155:19 156:14	33:21 92:16 136:1
55:17 56:12 57:12	<b>names</b> 9:21 10:3	<b>negotiations</b> 16:3	165:7 167:9	209:4,15 212:15
57:14 64:12 72:15	126:1 127:10	24:11 38:16 63:1	191:16 211:19	236:19
75:3,6 102:11	<b>naming</b> 10:12	77:20 78:2 80:3	219:15 221:8,11	<b>NW</b> 1:7
111:17 112:12,17	<b>Napoleon</b> 180:11	81:22 85:16 89:11	241:9,10	<b>O</b>
113:5 119:3	188:8	89:12,15 90:7	<b>nice</b> 107:21	<b>O</b> 24:9 33:22
122:17 149:15	<b>Napoleons</b> 179:9	101:21 130:2	<b>NICK</b> 1:21	205:20
152:1 159:21	188:20	132:22 134:18	<b>niece</b> 45:17	<b>oath</b> 15:13 190:8
163:20 164:2	<b>natural</b> 118:7	135:14 147:1	<b>night</b> 245:2,2	<b>object</b> 10:8,9
169:19 220:8	<b>near</b> 33:3 178:21	156:8 206:3 227:6	<b>nights</b> 26:1 38:3	<b>objection</b> 6:3 7:1
243:21 244:13,16	179:2	241:3 242:15	57:7,8 89:9,19	10:5,21 11:2,5,8
245:1	<b>nearby</b> 25:3 27:18	<b>neighbor</b> 111:16	175:6	11:11 22:15
<b>Mossi</b> 66:4 67:1	28:20 32:21	<b>neighborhood</b> 6:16	<b>noise</b> 26:11 47:6,13	110:16 111:1
69:13 86:19,22	<b>nearly</b> 94:6 149:9	13:22 17:10,14	47:19 48:16 50:1	184:17 210:20
89:5 90:5 137:9	<b>necessarily</b> 169:8	18:2,19 20:16	50:17 107:6 119:2	211:1 214:5
140:7,18	<b>necessary</b> 157:6	22:9 23:9 34:4	121:8 174:17	<b>objections</b> 10:21
<b>mother</b> 88:5	217:15 235:8	35:13 40:21 53:1	176:14,18,20	11:14 111:2
<b>motion</b> 129:14	<b>necessitating</b> 197:8	54:21 59:7 60:18	177:5,14 179:13	122:19 214:11
249:17,18 250:7	<b>need</b> 8:1,3,14 17:7	65:6 113:19	184:2,7 186:3,5	215:4
<b>Mount</b> 45:6	42:6 46:2,20	114:13 116:1,11	186:18 187:1,9,11	<b>objects</b> 54:11
<b>move</b> 56:4,7 71:9	52:22 54:22 55:8	119:1 130:15,19	188:15,15,16,17	<b>obligations</b> 22:18
110:3,14 176:14	71:22 72:3,8,9,22	135:2,5,7,8,10,22	189:3 234:20	<b>observations</b> 31:3
249:6	73:5,17,18,19	136:2 144:16	235:14 236:20	31:5
<b>moved</b> 43:17 44:15	81:2,18 84:20	148:21 149:4	245:2	<b>observe</b> 26:10,11
199:14	85:22 90:12 107:7	151:1,20 159:15	<b>Noises</b> 107:16	48:16,17 49:1
<b>moves</b> 155:4	114:12 127:17	161:11 162:7	<b>noisier</b> 122:4	50:16,17 51:1
<b>moving</b> 192:3	132:9 142:11	168:14 170:9	236:20	<b>obtained</b> 75:10
196:16 206:1	161:5 162:11	238:15 239:18	<b>noisy</b> 180:18	<b>obviously</b> 192:17
<b>MPD</b> 26:18	192:17 212:22	243:6	236:17	<b>occasion</b> 26:13
<b>MPD-251</b> 209:5	214:9 217:6,10,11	<b>neighborhoods</b>	<b>non-applicant</b> 84:6	49:3
<b>Multi-Managem...</b>	235:10 238:9,22	47:14	84:10	<b>occasional</b> 179:14
1:6 22:5	<b>needed</b> 7:3 67:19	<b>neighboring</b> 74:18	<b>nonprofits</b> 44:4	179:15,17,22
<b>multi-unit</b> 183:2	68:8 69:5 73:17	<b>neighbors</b> 46:7,10	<b>Nope</b> 39:22	180:20
<b>multiple</b> 178:9	79:5,7 80:10	72:9,10 73:3 75:5	<b>normally</b> 228:21	<b>occasionally</b>
<b>music</b> 25:19,21	<b>needs</b> 13:19 88:16	75:6 118:11	<b>Northeast</b> 51:15	

103:20 176:16 177:18,19,20 <b>occasions</b> 48:13 50:13 <b>occupancies</b> 29:2 <b>occupancy</b> 24:7 28:21 29:16 33:21 93:17,18,20,21 94:11 99:17 102:7 118:9,21 146:19 206:18,22 207:11 <b>occupied</b> 183:19 <b>occurred</b> 72:14 93:7 197:4 <b>October</b> 1:13 23:11 26:9 50:14 69:11 76:5 87:11 104:15 137:6 140:9 156:3 165:8 166:18,20 167:4,14 <b>odd</b> 138:16 <b>offended</b> 242:20 <b>offensive</b> 150:8 <b>offer</b> 19:4 25:19 57:20 62:10 87:4 87:12,14 221:1,7 <b>offered</b> 67:20 87:10 95:7 144:7 <b>offers</b> 72:14 <b>office</b> 25:2 <b>Official</b> 22:19 <b>officially</b> 105:12 <b>oh</b> 4:8,10 10:8 13:7 15:17 36:3 37:1 41:17 54:9 63:3 76:22 95:13 112:21 114:12 117:4 123:1,5 131:4 163:12 165:16 171:9 184:22 188:21 193:3 195:18 205:4 208:11,14 214:8 217:21 218:16 228:3,6 232:10 234:5 <b>okay</b> 2:10,11,14,17	3:1,13,16,19 4:1,9 4:13,19 5:8,21 6:18,22 7:5,8 8:5 8:10,15 9:1,8,12 9:15 10:1,11,20 10:21 11:1,21 12:19,22 13:4,5,6 14:11 15:9,10,17 15:21 16:7,9,12 17:16,17 18:4,22 18:22 19:7,17 20:2,6,12,17 21:4 21:19 27:6,16 28:18,19 30:4,4 30:13 33:2,7,12 34:1,12,20 35:4 36:17,19 38:5 39:2,2 41:18,21 42:6,14,19 43:5,6 46:12 52:11 54:8 54:15 55:22 56:3 56:6,13,16,20 62:21 63:3,5,11 67:11 69:11 70:5 70:7,16,17,19,22 76:1,4,11,17 77:5 79:19 80:5,19 82:1,9,22 83:12 83:14 84:5,8,11 85:5,13,19,20 86:2,3 88:15,21 88:21 90:17 91:13 92:8,21 93:12 96:10,12 97:10,21 98:19 99:6,10,13 99:21 101:4 105:2 105:5,20 106:3,14 106:18,21 107:14 108:1,8,15,16,19 109:21 110:7 111:4,10,15,21 112:7,19 115:6,9 117:1,7,18 119:15 119:17 120:4,10 121:11 122:5,10 122:12,14,19 123:1,6,7,10,17	124:12 125:5,8,18 125:20 126:22 127:1,5,12,13,14 128:7,12,19,21,22 129:7 133:3 134:3 136:10 137:14,17 138:2 139:17,20 140:5,9 141:5 142:22 143:20,22 144:17 145:14 146:18 147:9,10 147:22 149:16 151:17 152:4,13 153:2,3 154:2,14 156:5,12,21 157:9 157:17,22 158:7 159:2,5,16 160:11 160:15 162:8 163:5,9,9 164:16 164:21 165:19 166:2,16 167:7 168:1 169:6 170:21,22 171:1,4 171:10,20 172:1,5 172:8,16,18 173:1 173:4,11,14 174:6 174:7,20 175:5,10 175:17 176:1 177:8,10,20 178:20 179:6,10 179:18,19 180:6 181:2,9,13,14,17 181:21 182:8 183:8 184:1,15 185:5,10,11 186:2 186:7,9 187:19 188:21 189:1,4,12 189:14,16 190:3 190:15,22 191:7 192:12,16 193:5 194:9,19 195:3,3 195:12 196:7,11 196:15 198:1,18 199:5,10,13,17,20 200:6,18,18 201:10,13,17 202:9,10,16 203:2	203:3,9 204:8,15 204:18 205:4,14 205:15 206:1 207:14,16,22 208:18 209:2 210:15,19 211:13 211:21 212:5,20 213:1,14,18 214:10 215:5,17 216:3,6,15 217:5 217:11,12,21 218:5,17,20 220:19 225:21 226:17 227:4,10 227:19,20 228:6,7 228:15 230:3,12 231:7,18 232:14 232:20 233:4,6 234:5 236:1 237:5 237:9,11,14,17 240:9,14 245:14 245:19 246:3 247:1,8,10,12 248:5,7,21 249:1 250:6,18,20 <b>old</b> 64:12 105:22 <b>older</b> 120:22 <b>once</b> 25:13 94:4 180:22 195:17 201:9,15 <b>one-by-one</b> 224:7 <b>one-third</b> 183:18 <b>ones</b> 29:10 93:16 233:22 <b>ongoing</b> 244:7 <b>Ontario</b> 44:19 <b>open</b> 26:15 43:19 79:17,18 82:5 89:10 101:3,20 151:6 248:13 249:5,10,13 250:12 <b>opened</b> 43:16 49:5 118:15 187:18 <b>opening</b> 7:18 11:19 12:5 13:8 19:4 <b>operate</b> 32:6,8 73:1	86:15 90:11 99:19 <b>operated</b> 13:18 86:13 106:15 <b>operates</b> 45:12 <b>operating</b> 16:16 25:6 32:4 80:21 80:22 105:17 106:7 131:7 159:21 243:12 <b>operation</b> 174:17 174:18 <b>operations</b> 24:1 209:14 <b>operator</b> 107:2 <b>operators</b> 130:16 136:2 152:9,11 <b>opinion</b> 34:2 85:4 150:12 <b>opportunity</b> 60:1 144:8 211:5,8 214:18,22 <b>opposed</b> 104:5 <b>opposition</b> 60:14 <b>option</b> 24:3 <b>options</b> 244:19 <b>order</b> 10:18 11:16 13:2,19,20 20:15 23:8 26:7 35:12 46:8,10 49:1,8,14 49:17 50:10 51:1 60:17 73:3 85:9 135:6,11 159:14 175:19 176:5 245:1,3 246:19 250:13 <b>organization</b> 64:12 67:20 68:7 133:16 153:14,17,19 <b>organizations</b> 64:10 153:13 <b>original</b> 71:18 203:19 <b>Oro</b> 103:6 <b>Os</b> 206:11 <b>ought</b> 116:16 <b>outdoor</b> 188:16 <b>outlined</b> 134:11
--	---	---	---	---

146:19  
**outlines** 47:6  
**outlining** 137:10  
**outside** 53:2 68:18  
 95:22 187:17  
**overhearing** 11:9  
**overrule** 111:1  
**owner** 118:17  
 181:3  
**owners** 2:13,19  
 23:11 43:9 119:13  
 176:13  
**owns** 45:12

---

**P**

---

**P-R-O-C-E-E-D-...**  
 2:1  
**p.m** 2:2 172:6,7  
 251:1  
**package** 39:14 47:1  
 224:4 233:3 236:9  
**packet** 47:4  
**page** 18:22 48:10  
 120:3 195:17  
 196:17 197:12  
 206:17 208:3,9  
 210:1,3 212:8,22  
 232:7,18  
**paged/numbered**  
 197:13  
**pages** 198:20  
**painless** 69:19  
**panacea** 149:13  
**paper** 212:1 223:5  
**paragraph** 82:11  
 157:19  
**paragraph-by-pa...**  
 233:20  
**parallel** 126:20,21  
**Pardon** 201:18  
**park** 179:2,3,3  
**parking** 48:18  
 50:18 57:11,15,16  
 58:5 62:16 135:8  
 220:1,15  
**Parlor** 45:2  
**part** 16:20 20:20

47:21 81:14,17  
 86:6 116:11 142:1  
 148:9 160:7  
 164:12 193:13  
 200:8 206:6  
 220:17 224:16  
**participate** 58:8,10  
 219:19  
**participated** 92:11  
**participating** 58:2  
 220:13  
**particular** 37:22  
 149:8 150:2 161:8  
 161:20 169:9  
 215:16  
**particularize** 186:6  
**particularly** 14:20  
 16:2 130:12,17  
 135:16 163:1  
 169:20 187:9  
 244:18  
**particulars** 132:7  
 222:5  
**parties** 12:8 16:22  
 17:6,21 22:20  
 24:19 36:18 81:12  
 81:21 83:17,19  
 84:7,10,13,19  
 103:19 158:6  
 197:2 238:7 241:2  
 241:18 246:4  
 247:15,19 248:2,6  
**partner** 64:18,20  
**partnership** 55:17  
**parts** 61:6 224:18  
 235:13  
**party** 6:8,9 133:10  
 133:11 154:10,19  
 189:9 191:19  
 241:12,13  
**party's** 7:17  
**pass** 201:7  
**passed** 250:7  
**passing** 207:15  
**passion** 114:10  
**passionately**  
 113:18

**Pasta** 103:6  
**patience** 228:14  
**patrons** 26:16 49:5  
 57:15 177:6  
**peace** 10:17 13:20  
 20:15 23:8 26:7  
 35:12 46:8,10  
 49:1,17 50:10  
 51:1 60:17 73:3  
 135:6,11 159:14  
 175:18 176:5  
 239:18 245:1  
**pedestrian** 48:21  
 50:20  
**Pedro** 2:12,18  
 23:12 42:9 43:8  
**people** 8:3 28:21  
 58:4 65:6 103:11  
 114:10,12,12,18  
 115:1 116:16  
 120:19,22 121:1  
 131:7 135:4  
 150:21 162:7  
 176:17,19,21  
 178:1,8 180:17  
 235:17 236:16,19  
**people's** 11:3,10  
**percent** 47:9,11  
 107:5 118:10,22  
 236:15  
**perfect** 107:2,3  
 199:15  
**period** 55:3 88:13  
 207:19 229:22  
 231:5  
**periods** 203:22  
**permit** 33:20  
**permitted** 151:2  
**Perry's** 29:12,13,15  
**person** 3:20 20:21  
 150:2 165:18  
 185:3 242:20  
**personal** 38:20  
 153:15 156:11  
**personalities** 154:6  
**personally** 28:10  
 39:17 75:9 129:18

150:4,6 155:6  
 185:16 243:13  
**personnel** 170:7  
**persons** 146:20  
 206:5 210:6  
**perspective** 151:15  
 153:6 242:14  
**perspectives** 153:4  
**pertain** 234:22  
**pertains** 93:22  
**Peru** 1:24 21:7,9,18  
 21:21,22 27:10,15  
 27:21 28:4,9,16  
 29:1,6,11,14,20  
 30:2,10,13,19  
 32:1,19,22 33:4,9  
 33:16,19 34:5,15  
 34:18 35:14,21  
 36:3,6,11,16 37:1  
 37:7,13,17,19  
 38:1,9,19,22 39:8  
 39:16,22 40:5,9  
 40:14,19 41:2,6  
 41:11 50:3  
**Peru's** 50:3  
**Peter** 137:9 142:4  
 193:22 202:13  
 220:21  
**petition** 13:15 16:6  
 35:9 38:8 59:14  
 60:7 68:4 72:21  
 118:5 129:15  
 149:20 195:5  
 197:3,6,9 198:8  
 203:8  
**petitioned** 228:17  
**petitioner** 130:1  
 197:1  
**petitioning** 149:19  
**philosophy** 119:9  
 119:14  
**phone** 65:18 66:5  
 129:17 223:3  
**pick** 120:17  
**picked** 138:5  
**picture** 210:11  
**pictures** 47:15

**Pierce** 44:20  
**PIF** 4:17 5:16 6:14  
 6:19 9:17 10:6  
 63:14 158:15  
**pile** 190:16  
**pile-on** 209:9  
**ping** 44:17  
**placarded** 229:17  
 229:19,21 230:8  
 231:2  
**placarding** 206:10  
**place** 29:15,17,20  
 39:6 55:3 66:6,11  
 86:14 89:2 90:7  
 93:13 117:20  
 120:1,6,17 122:21  
 125:22 126:12  
 127:7 135:19  
 136:3 137:5 152:1  
 157:12 165:14  
 179:4 183:7 212:4  
 215:14 216:12  
 224:17 225:6,8  
 234:10 235:15  
 236:15 243:9  
 244:8  
**placed** 31:15  
**places** 241:14  
**plan** 88:4  
**planned** 9:11  
**plans** 72:4,12  
**plaster** 151:21  
**play** 25:20 44:17  
 100:15  
**played** 44:18  
**playing** 148:19  
 149:3 151:7,13  
 152:2 235:17  
**plays** 25:22  
**Pleasant** 45:7  
**please** 42:17 43:12  
 82:8 85:9,9  
 122:13 173:18  
 175:18 181:20  
 247:21  
**pledging** 242:20  
**plug** 226:2

<p><b>plus</b> 5:10,11 55:16 93:15 176:13 245:16</p> <p><b>point</b> 15:7 17:18 26:9 48:15 50:15 53:5,16 54:20 55:14 78:12,15 79:17 99:17 111:19 121:3 122:20 123:3 124:22 127:22 131:16 134:3 138:17 142:9,11 144:18 152:18 154:6 161:14 191:18 192:9 194:3,7 196:3,14 204:5 219:3 222:6 224:14 225:4,8 234:8 239:9,10 245:21</p> <p><b>point-by</b> 234:7</p> <p><b>pointing</b> 150:19 192:7</p> <p><b>points</b> 8:2 58:11,13 58:14,14,16 62:13 65:20 67:3 69:16 71:22 78:12 92:14 93:9 95:10,10 97:2 99:16 100:9 136:22 138:1,13 141:10,17 144:10 145:19 165:6 185:9 223:12,15 238:5 242:16</p> <p><b>polarized</b> 64:16</p> <p><b>police</b> 119:19 207:18 208:19</p> <p><b>policy</b> 52:2 53:18</p> <p><b>pollution</b> 189:3</p> <p><b>pong</b> 44:17</p> <p><b>populated</b> 237:2</p> <p><b>position</b> 15:19 60:14 89:22 132:4 132:10 133:3 142:4,18,19 143:1 152:6</p>	<p><b>possibility</b> 87:1 94:19 184:2</p> <p><b>possible</b> 9:5,20 14:4 36:10 131:7 154:9 171:8 203:21 227:15</p> <p><b>possibly</b> 99:5</p> <p><b>potential</b> 236:18</p> <p><b>potentially</b> 236:11</p> <p><b>precedent</b> 135:15 148:21 149:4 150:14,16 151:9 153:9 155:4</p> <p><b>precise</b> 229:6</p> <p><b>precursor</b> 64:13</p> <p><b>preference</b> 104:3</p> <p><b>prefers</b> 20:20</p> <p><b>preliminary</b> 11:18 240:21 243:3</p> <p><b>premature</b> 55:15</p> <p><b>premises</b> 77:8,11</p> <p><b>prepared</b> 55:17 107:15</p> <p><b>preparing</b> 3:21</p> <p><b>present</b> 1:19,23 8:13 12:13 43:18 47:8 84:19 96:1 137:4 166:3,5 172:21 174:22 181:20 190:1 207:21 208:4 209:10,17 234:7 240:4</p> <p><b>presented</b> 24:13 49:21 87:6 210:9 224:4 235:19 240:1 246:9</p> <p><b>presenting</b> 4:16 9:10 129:1 209:20</p> <p><b>presents</b> 12:12</p> <p><b>preservation</b> 164:11</p> <p><b>President</b> 3:4 22:11 24:15</p> <p><b>presiding</b> 1:17</p> <p><b>pretty</b> 27:19 29:7 73:16 117:17</p>	<p>156:11</p> <p><b>prevent</b> 101:9 160:17 210:5</p> <p><b>prevents</b> 66:5</p> <p><b>previous</b> 31:1 209:7</p> <p><b>previously</b> 10:10 157:20 222:3</p> <p><b>primary</b> 23:21</p> <p><b>principal</b> 243:14</p> <p><b>prior</b> 31:4 129:18 130:2 198:16 226:6 231:4,8,18 233:9</p> <p><b>priority</b> 72:5</p> <p><b>private</b> 69:9 103:19</p> <p><b>privilege</b> 241:10</p> <p><b>PRO-00094</b> 249:9</p> <p><b>probably</b> 43:2 44:2 57:19 133:1 142:7 169:22 217:4 238:18</p> <p><b>problem</b> 88:6,10,19 116:4 119:3,10 130:13 133:14 148:11 160:7 161:21 169:20</p> <p><b>problems</b> 116:13 119:4 121:8 135:22 136:5 145:13 149:14 151:20 153:15 162:6 244:22 245:1</p> <p><b>procedural</b> 158:17</p> <p><b>procedurally</b> 150:7</p> <p><b>procedure</b> 11:17 67:19 96:14</p> <p><b>procedures</b> 149:17</p> <p><b>proceed</b> 242:11</p> <p><b>proceeded</b> 62:10 104:15</p> <p><b>proceeding</b> 16:17 30:18 241:7</p> <p><b>proceedings</b> 225:13</p> <p><b>process</b> 47:20 63:4 114:7 155:1 224:6</p>	<p>226:11,14 248:16</p> <p><b>processed</b> 204:3</p> <p><b>produced</b> 242:5</p> <p><b>prohibits</b> 14:6</p> <p><b>Project</b> 243:8</p> <p><b>promise</b> 243:1</p> <p><b>prompted</b> 106:18</p> <p><b>prong</b> 79:21 80:2 149:1 193:9 243:19</p> <p><b>prongs</b> 81:4 244:11</p> <p><b>properties</b> 45:19</p> <p><b>property</b> 26:22 49:20 72:15</p> <p><b>proposal</b> 66:12,15 66:15,18,19 67:4 67:15,17 68:1,12 68:12,21 69:20 79:11 87:7 95:2,6 97:22</p> <p><b>proposed</b> 245:22 247:17 248:9 250:10</p> <p><b>protect</b> 46:7 237:6</p> <p><b>protected</b> 21:1</p> <p><b>protection</b> 184:3</p> <p><b>protections</b> 175:20</p> <p><b>protest</b> 1:6 2:5 22:2 31:1 35:11 54:13 60:11,22 61:1,4,5 61:8,9 62:6,9 63:13,13,17 64:3 93:7 95:4 130:4 141:19,20 143:13 170:4 189:5 191:22 192:2,5 193:18 194:4,5 196:4 225:2 228:20 250:21</p> <p><b>protestants</b> 8:16 12:4,12 19:9 20:18 35:1 46:20 77:4 108:9 111:20 128:11 237:16</p> <p><b>protested</b> 22:9 35:7 60:4,5,7 92:10 188:4 191:11</p>	<p>229:3</p> <p><b>protesting</b> 23:4 191:15</p> <p><b>protests</b> 184:13</p> <p><b>prove</b> 52:21 238:5</p> <p><b>proven</b> 23:15</p> <p><b>provide</b> 220:1</p> <p><b>provided</b> 220:16</p> <p><b>providing</b> 149:18</p> <p><b>provision</b> 135:11 186:19 187:1 224:7</p> <p><b>provisions</b> 136:7 146:17 147:9 151:10 162:4,15 174:16 219:12 233:21 234:12,20 235:14 236:22 237:4</p> <p><b>pub</b> 220:9</p> <p><b>public</b> 25:9 69:5,8 80:13 191:20 200:4 202:22 214:12 228:7 237:6 242:22</p> <p><b>pull</b> 91:15 210:20</p> <p><b>pulling</b> 205:1</p> <p><b>purely</b> 100:5</p> <p><b>purport</b> 154:17</p> <p><b>purpose</b> 55:18 56:15 198:2,5 207:13 238:4 249:7</p> <p><b>pursuant</b> 248:13 250:12</p> <p><b>pursue</b> 143:6 228:4</p> <p><b>purveyors</b> 130:14 130:19</p> <p><b>pushed</b> 51:10</p> <p><b>put</b> 104:20 190:8 218:12 245:17</p> <p><b>putting</b> 199:18</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b> 8:6 12:21 27:13 30:11 63:21 74:10 78:7,9</p>
---	---	--	--	---

88:16,17 89:21	20:15 23:8 26:7	225:20 233:14	200:4 202:22	16:17
92:20 94:9 100:4	35:12 46:8,10	237:2 239:1	208:2 228:8	<b>reiterated</b> 241:16
100:13 101:15	49:2,17 50:10	243:18	<b>RECROSS-EXA...</b>	<b>rejected</b> 66:12,19
108:17 109:19	51:1 60:17 73:4	<b>rear</b> 185:17 232:8	164:22	67:16 87:5 196:22
113:3 114:2 118:8	135:6,11 159:14	232:19	<b>recycling</b> 236:22	<b>related</b> 52:2 110:8
128:3,7 139:6	175:19 176:5	<b>reask</b> 185:6	<b>red</b> 30:16 31:18	168:3 200:18
143:6 144:7	239:18 245:2	<b>reason</b> 14:1 46:6	<b>redirect</b> 96:16	<b>relates</b> 53:8
158:13 159:17	<b>quite</b> 131:22 167:6	86:18 158:15	108:3 127:13	<b>relating</b> 199:7
160:15 161:19	215:13,14 235:11	162:19 206:6	163:13,14,18	<b>relation</b> 49:2 120:2
162:14 164:9	237:3	243:14	171:1	<b>relationship</b> 51:2
168:2 170:12	<b>quorum</b> 172:9	<b>reasonable</b> 141:17	<b>reduced</b> 78:6	119:13 136:15
174:16 191:21		141:19 219:11	<b>redundant</b> 8:1	<b>relayed</b> 90:10
204:2 206:20	<b>R</b>	237:3 238:8	<b>Reed-Cooke</b>	<b>relevance</b> 52:15
212:3 219:9	<b>raise</b> 137:11 170:10	<b>reasons</b> 12:1	168:15	85:14
221:17 226:20	171:14 173:2	193:11 197:6	<b>Reeves</b> 1:15	<b>relevancy</b> 53:14
227:12,12 230:5	<b>raised</b> 24:7	249:12	<b>refer</b> 74:11	<b>relevant</b> 6:4 8:1
<b>questions</b> 12:10,16	<b>raising</b> 11:1	<b>rebuttal</b> 211:18	<b>reference</b> 26:6	16:20 54:17,18
19:14 21:2 27:8,8	<b>rapid</b> 169:21	214:22 218:12	<b>referenced</b> 157:20	81:20 110:20
30:6 32:16 34:21	<b>rate</b> 88:22	228:5	220:20	<b>relied</b> 51:16
34:22 35:1 39:1	<b>raw</b> 98:4	<b>recall</b> 88:1 94:15	<b>referencing</b> 223:8	<b>relief</b> 154:15
41:20 71:21 74:19	<b>reach</b> 24:18 59:11	94:18 138:17,19	<b>referred</b> 167:17	<b>remain</b> 235:10
76:16 90:17 92:7	65:9 72:9 73:17	<b>receipt</b> 250:10	<b>referring</b> 41:12	<b>remaining</b> 235:8
96:13,15,16,17,18	73:18 96:4 231:18	<b>received</b> 22:13 23:2	71:21 137:8	<b>remarks</b> 172:15
99:11 103:15	<b>reached</b> 86:18 89:5	26:17 38:18 63:16	139:19 157:11	245:13
108:2,4,4,9,10,18	154:19 227:14	65:18 111:9	187:1 223:13,17	<b>remember</b> 95:1,17
115:5 116:19,21	231:7 242:9	129:16 137:3	<b>refers</b> 36:20 138:22	119:5 139:3,4
119:22 122:6,11	<b>reaction</b> 178:4	139:11,22 167:22	231:15	167:18 178:12
122:12 124:18	<b>read</b> 16:20 48:10	192:8 193:14	<b>reflected</b> 100:8	199:9 223:8
125:10 143:21	49:14 50:9 82:2	198:12 199:3	<b>reflects</b> 25:19	<b>reminded</b> 241:21
144:1,2 148:14	118:5 129:21	218:10	<b>refused</b> 24:15	<b>remove</b> 33:14
153:1 163:10,11	149:19 161:9	<b>receives</b> 195:17	78:20 167:10	62:14
163:11,11,17,17	222:3	<b>receiving</b> 129:18	<b>regarding</b> 2:8	<b>removed</b> 34:4
164:17,18,20	<b>ready</b> 11:15 21:5	<b>recess</b> 172:6 250:19	24:12 28:11 35:8	175:21
165:2,3 177:9	42:3 128:11	<b>recession</b> 51:9	35:18 142:18	<b>removing</b> 10:18
179:21 181:12,12	237:18 247:13	<b>reciprocated</b> 73:10	143:1 203:7	34:10 184:6
181:13 184:20,21	<b>real</b> 71:8 120:22	<b>recitation</b> 39:21	<b>regards</b> 26:18	<b>reneged</b> 243:1
186:10,12 188:1	<b>realization</b> 167:3	<b>recollection</b> 130:8	233:11	<b>renew</b> 60:14
189:15,15,16	<b>really</b> 7:3,22 14:14	140:2	<b>regional</b> 51:17	<b>renewal</b> 31:1 59:22
211:3,10,12	32:9 55:9,10	<b>record</b> 2:4 48:2	<b>regular</b> 149:15	60:4 92:11 93:7
214:19 218:15,22	57:10 58:7 78:7	74:18 106:21	241:8	94:16 95:15,19
227:21 228:2,8	85:17 90:10,19	112:16 119:22	<b>regularly</b> 39:5	191:11,14,15
230:6 231:14	98:4,11,12,18	124:14 138:9	<b>Regulation</b> 22:1	192:2 193:17,18
233:15 237:10,11	102:15,16,22	174:2,3 194:15	<b>regulations</b> 23:16	203:12 223:14,18
248:20	104:21 116:7	196:8 209:11	24:22 31:8 32:7	223:20 224:2
<b>quick</b> 12:20 113:3	121:3 124:2	214:12 245:21	35:8 160:16 164:8	225:5 228:20,22
218:22	126:20 131:21	246:9	164:12 219:15	229:20,22 230:15
<b>quiet</b> 10:18 13:20	161:4 219:8	<b>records</b> 192:4	<b>reiterate</b> 15:12	234:3

<b>renewals</b> 229:20	246:17 247:20	<b>rest</b> 204:6 245:16	153:6 158:1,12,18	<b>runs</b> 239:12
<b>renovated</b> 183:12	<b>requirement</b> 16:3	<b>restaurant</b> 77:17	162:8 163:15	<b>rushing</b> 218:17
<b>renovation</b> 183:15	193:20 221:9	178:18,19	168:17 172:4	<b>Ruthanne</b> 1:17,20
<b>rep</b> 66:4	231:12,12	<b>restaurants</b> 25:14	173:2,14 181:11	
<b>repeating</b> 58:9	<b>requirements</b> 16:1	29:7 41:3 103:4	185:21 186:1,20	<b>S</b>
152:21	152:8 158:17,21	103:22 176:15	189:13 192:11	<b>S-I-M-M-O-N-S</b>
<b>replace</b> 105:21	198:10 240:19,21	<b>restriction</b> 31:19	196:8,12 199:21	174:5
<b>report</b> 12:7 21:17	243:4	31:20,20 161:5	200:19 201:11,12	<b>safeguard</b> 87:2
26:17 27:10 30:10	<b>requires</b> 15:2 81:6	<b>restrictions</b> 23:22	201:16 202:18	<b>sake</b> 230:5
36:14,19 48:4	149:20	31:15 32:10 33:13	205:4,8 206:4	<b>salads</b> 26:3
50:4 53:18 55:16	<b>reservations</b>	34:2,6	208:12,21 209:1,4	<b>sale</b> 163:9 183:16
122:16 123:14	226:12	<b>restrictive</b> 51:6	213:6,10 215:11	<b>sales</b> 103:1,7
125:15 126:5	<b>residence</b> 40:3	57:1	216:2,18 217:9,12	<b>salsa</b> 25:20 44:3
209:5 210:1 212:1	<b>residences</b> 32:21	<b>restroom</b> 171:8	218:6 227:9	<b>sandwiches</b> 26:3
213:9	<b>resident</b> 40:17	<b>result</b> 20:14 197:5	230:12 231:3,6	<b>satellite</b> 57:15,16
<b>reported</b> 209:12	111:17	<b>retail</b> 25:2	235:3,5,19 237:10	58:4 62:16 220:1
<b>reporter</b> 43:2	<b>resident's</b> 245:8	<b>Retailer</b> 1:8	244:7 246:1,4	220:14
138:3	<b>residential</b> 40:20	<b>returned</b> 51:11	248:4,7,8 249:2	<b>satisfied</b> 152:7
<b>reports</b> 210:10	40:20 41:1 235:20	<b>revenue</b> 14:4 239:3	<b>road</b> 1:7 2:7 22:5	<b>satisfies</b> 221:20
<b>representative</b> 3:7	235:21,22 236:10	<b>revenues</b> 72:6	26:19 28:20 41:5	<b>satisfy</b> 22:18
4:10 65:5 170:13	<b>residents</b> 33:8,10	<b>reviewed</b> 102:3	43:18 45:9 48:13	<b>Saturday</b> 26:1 99:4
<b>represented</b> 22:11	41:3 149:14 184:4	<b>revise</b> 72:12	48:21 50:12,21	175:8
78:2	184:10 188:3	<b>revising</b> 59:15,16	70:10 77:12,14	<b>Saturdays</b> 43:21
<b>representing</b> 3:17	215:13 216:12	<b>rich</b> 116:12	102:14,15,20	<b>save</b> 218:1
145:9	236:12	<b>right</b> 2:3,11,20 3:6	106:7,12 121:2	<b>saved</b> 170:8
<b>represents</b> 66:5	<b>resigns</b> 156:10	4:6,14 5:13 8:8,12	126:10 173:20	<b>Savings</b> 99:21
168:8,9	<b>resolution</b> 36:21,22	9:2,8,16 11:14	178:22 179:2,4	138:20 146:3
<b>request</b> 14:22	<b>resolve</b> 15:6	13:6 14:12 16:14	182:13 183:6	219:16
16:21 22:7 23:13	<b>resolved</b> 133:2	18:2,20 19:20	185:19 210:2	<b>saw</b> 129:21 197:15
60:16 61:22 80:9	161:21	21:5,5 31:17 33:5	243:7	197:19 232:1
95:16 96:8 140:21	<b>respect</b> 56:8 100:14	34:21,21 39:3	<b>robust</b> 243:12	233:1
141:4,22 146:19	129:17 145:15,16	40:3,16 53:21	244:18	<b>saying</b> 11:21 69:22
199:8 206:7,9	153:21 187:13	54:16 62:3 70:10	<b>roll</b> 61:6 249:17	78:19 82:11 90:1
208:20 217:16	226:1,3 240:2	71:5 76:1,14	<b>room</b> 1:15 11:2,11	92:6 105:9 112:20
219:14,17,22	243:5	77:15 82:21,21	29:19 30:1 68:18	123:22 126:11
220:5 221:10	<b>respond</b> 68:3 211:4	84:10,17 88:1,3	96:1 238:3	139:1 150:3,11
225:13 226:1	211:5 221:2	96:6,14 100:2	<b>roughly</b> 179:5	151:2,8 152:9
<b>requested</b> 80:14	<b>responded</b> 30:21	101:14 102:14,18	229:7	155:20 202:3
95:21 99:18 136:8	69:22 70:2	105:1 106:1 108:2	<b>rule</b> 7:13 11:4	209:13,14 224:12
139:5 206:2	<b>response</b> 38:14	109:15,22 110:15	<b>ruled</b> 56:2	242:6
<b>requesting</b> 34:8	128:6 165:1 242:6	111:22 115:2	<b>rules</b> 23:16 31:8	<b>says</b> 82:6,14 83:13
45:22 138:1	<b>responsibility</b> 73:2	117:21 118:13,13	32:7 85:18 131:8	139:15 203:15
230:13 242:17	<b>responsible</b> 64:17	118:18,18 120:8	<b>ruling</b> 104:17,18	210:1 216:2
<b>requests</b> 141:17	113:20 116:8	121:17 125:3,4	<b>run</b> 113:10 116:7	<b>schedule</b> 69:4
219:3,4	133:15 244:5	128:7,11 129:4	219:10	132:19
<b>required</b> 12:3	<b>responsibly</b> 13:18	137:19 138:8	<b>running</b> 113:21	<b>scheduled</b> 80:13
47:10 198:17	73:1	140:20 143:6	114:21	88:4 104:15

131:14 134:2 225:7 <b>scheme</b> 57:20 <b>school</b> 44:16 89:15 <b>schools</b> 25:9 <b>Scoop</b> 45:2 113:13 <b>Scope</b> 107:16 <b>se</b> 178:1 <b>seafood</b> 26:4 <b>seat</b> 173:14 219:5 <b>seating</b> 57:3,4 62:15 97:3 <b>seats</b> 77:16 97:15 103:8 <b>second</b> 2:4 4:20 5:1 6:14 14:1 52:14 52:22 81:14,17 88:21 90:6 95:20 111:12 122:11 123:8 138:3 179:12 197:9 210:3 227:15 238:9 239:9 249:14,15 <b>seconded</b> 249:17 249:19 <b>secretary</b> 136:18 <b>section</b> 236:10 249:5,9,12 <b>see</b> 5:15 7:2,8 10:5 11:8 16:18 27:4 31:7,22 36:8,9 38:11 72:13 83:1 95:3,6 98:15 102:20 123:1,7 124:11 125:11 126:1,6 132:9 137:7 138:4 139:18 151:2 154:8 158:13 175:12 176:21 177:17 178:8,15 185:19 208:3 209:21 233:21 239:22 244:21 <b>seeing</b> 103:3 138:17,19	<b>seek</b> 60:2 105:12 <b>sought</b> 94:3,5 <b>seeking</b> 17:4 83:16 104:4,10 105:8 106:19 138:14 174:12 249:7 <b>seen</b> 30:16 102:11 102:13,22 161:10 206:8 214:7 <b>sell</b> 72:14,15,16 86:5 87:1 89:1 115:13 152:10 <b>selling</b> 86:11 135:17 <b>sensitive</b> 90:9 <b>sent</b> 30:21 38:13 65:12 67:17 242:1 242:2 <b>separate</b> 48:13 50:13 62:8 160:20 222:10,11,13,17 <b>separated</b> 19:16 <b>September</b> 26:8 48:5,14 50:13 63:12 68:9 69:1 87:20,21 <b>series</b> 31:15 <b>serious</b> 72:14 145:13 151:7 <b>seriously</b> 151:12 <b>serve</b> 44:1 57:5 195:22 247:18 <b>served</b> 45:2 <b>service</b> 26:19,20 152:22 207:19 208:21 220:18 243:10 <b>session</b> 90:22 248:15 <b>set</b> 61:10 62:1 63:10 66:10 71:4 77:16 80:9 103:22 131:21 132:7 148:21 150:11,13 153:8 246:20 <b>set-over</b> 80:18 157:6	<b>setting</b> 151:9 246:7 <b>settlement</b> 1:10 2:9 22:3,8,16 23:5,14 23:21 24:12,18 25:8 31:12 32:2 33:14 39:9,12,19 63:1 70:15 85:16 93:1 115:17 135:19 149:9,13 151:19,22 152:17 153:10 159:22 160:20 161:1,16 161:22 163:21 164:1,11 174:13 175:21 203:8 206:12 207:3,20 219:12 220:11 233:20 244:6,17 245:9 <b>setup</b> 150:9 <b>seven</b> 27:15 37:5 39:11 <b>share</b> 183:21 193:6 237:17 <b>shared</b> 8:16,17 <b>sheet</b> 195:5 196:18 198:22 <b>shocked</b> 242:19 <b>shoot</b> 69:3 <b>shop</b> 229:14 <b>short</b> 20:3 231:5 240:17 <b>shortest</b> 20:4 <b>shortly</b> 250:19 <b>shouting</b> 178:2 180:20 <b>show</b> 11:21 18:13 18:15,16,17 47:14 49:21 56:10,11,19 70:11 85:20 138:6 138:12 192:17 213:20 223:21 <b>showed</b> 61:11,12 217:17 240:1 <b>showing</b> 126:4 <b>shown</b> 17:1 125:22 126:7 127:7	<b>shows</b> 52:4 125:21 235:7 <b>shutdown</b> 155:3 <b>side</b> 7:14 107:11 183:9 185:14 204:5 224:12 <b>sides</b> 81:20 <b>sidewalk</b> 151:5 <b>sign</b> 59:6 64:8,22 78:22 100:7 102:2 102:4 108:21 109:4 142:15 144:8,11 150:5 156:9 <b>signatories</b> 153:7 <b>signatory</b> 155:22 169:7 <b>signature</b> 36:2 120:3 <b>signatures</b> 75:8,9 114:3,22 120:11 <b>signed</b> 75:2 143:19 <b>significant</b> 161:13 <b>significantly</b> 244:3 <b>signing</b> 101:9,11 109:14 <b>silence</b> 80:16 <b>Silverstein</b> 1:22 30:8,9,14 31:9 32:15 55:19 56:1 76:20 77:2 109:1 111:18 121:12,13 121:19 122:1,5,9 148:16,17 150:10 150:15,18 151:17 152:4,13,16,20 250:4,5 <b>similar</b> 19:13 131:7 167:21 188:15 <b>similarly</b> 115:12 <b>Simmons</b> 10:13 172:22 173:3,6,12 173:15,17,19 174:4,4,10,14,19 175:9,13,16,22 176:3,8,11 177:3 177:7,16,19,21	178:6,11,15 179:1 179:7,11,16,19 180:2,4,7,12,14 181:4,10,14,17 <b>simple</b> 144:6 209:15 210:2 <b>simply</b> 89:18 143:14 149:22 152:8 <b>Simpson</b> 3:2,2 4:2 4:6 8:21 158:10 163:14,16,19 164:5,15 171:2,5 171:22 172:11,13 172:17 240:10,12 240:15 247:2,6 <b>Single</b> 169:2 170:20 <b>sir</b> 27:21 35:14 36:12,20 37:2,7 38:19,22 39:8 40:5 97:13,16,20 186:13 <b>sister</b> 2:16 4:11,12 96:21 <b>sisters</b> 45:17 <b>sit</b> 3:14 24:15 55:8 72:16,17 141:20 188:18 190:19 <b>sits</b> 188:19 <b>sitting</b> 13:12 <b>situation</b> 241:8,11 <b>six</b> 45:19 66:21 179:5 201:9 <b>size</b> 40:6 <b>skipped</b> 13:8 <b>slot</b> 226:3 <b>slow</b> 52:4 56:11 <b>smarted</b> 98:12 <b>so-called</b> 39:13 <b>sold</b> 115:21 116:9 135:20 <b>solely</b> 38:17 <b>solid</b> 239:9 <b>solution</b> 130:12 <b>somebody</b> 10:6 155:4 210:4,4
--	--	---	---	---

<b>somewhat</b> 12:2 86:12 131:1 167:21 216:13	<b>special</b> 24:3 57:21 67:19 <b>Specialist</b> 61:13 <b>specific</b> 77:22 136:22 137:10 138:13 139:7 161:15 162:9 211:7	<b>statement</b> 9:4 11:19 12:5 13:10 17:19 19:5 60:20 136:21 190:5 215:12 222:15,16	50:21 51:14,14 77:8,12 119:5 120:14 126:17,18 127:1 178:2 179:8 179:9 182:16,19 182:21 183:10 235:20 243:8	<b>sudden</b> 226:16 236:7 <b>suddenly</b> 80:15 <b>Suerves</b> 6:13,19 127:20 <b>suffer</b> 243:9 <b>sufficiency</b> 192:5 <b>sufficient</b> 160:17 164:9 <b>suggested</b> 96:5 147:12 194:2 212:18 221:4,5 <b>suggesting</b> 221:19 <b>suggests</b> 135:21 <b>Suite</b> 1:16 <b>summary</b> 47:16 <b>Sundays</b> 43:21 <b>support</b> 60:4 64:9 65:13 74:12,17,22 114:4,20 121:4 <b>supposed</b> 85:17 129:22 187:10,12
<b>sorry</b> 11:6 13:7 16:7 29:21 36:3 37:2 42:21 63:20 74:20 78:14 83:9 85:10 89:20 92:19 92:22 108:13 109:1,9 110:13,13 112:21 117:4,5,8 130:20 144:5 159:11 163:13 171:9,12 173:3,12 174:5 188:11 195:19 200:21 202:7,8 205:2,13 205:16 218:17,19 226:22 230:3	<b>specifically</b> 24:4 28:13 219:5 <b>specificity</b> 224:19 <b>specifics</b> 78:1 102:7 150:20 <b>spend</b> 31:2 47:18 <b>spent</b> 31:5 134:14 134:15 142:7 170:1 226:10 238:1 <b>spoke</b> 104:13 <b>SR</b> 2:18 <b>stabbing</b> 245:6 <b>staff</b> 97:18,19 241:20 <b>stand</b> 21:12 42:12 112:5 128:17 173:9 182:6 191:5 <b>standard</b> 81:6,8 <b>standing</b> 61:2 <b>standpoint</b> 240:20 <b>stands</b> 31:17 <b>stapled</b> 232:19 <b>start</b> 2:10 21:15 27:7 87:11 89:15 90:7 129:6 229:14 245:9 <b>started</b> 3:11 14:21 44:7 45:1 87:6 89:11 106:12 <b>starting</b> 47:8 105:11 <b>state</b> 14:2 53:21 112:10 236:4,5 <b>stated</b> 23:12,17,20 24:2,6,10,13,17 37:8 63:17 69:18 69:20 92:16 165:2 165:4 166:9 168:4	<b>statements</b> 7:18 13:8 <b>states</b> 22:15 23:4 125:20 <b>stating</b> 60:15 67:3 67:3 197:4 <b>station</b> 117:20 120:7 <b>status</b> 61:7,17 62:4 68:10 95:20 131:15 170:3 191:22 194:5 224:1 <b>statute</b> 15:2 82:3 82:19 129:21 136:7 149:18,19 152:8 157:11 198:17 240:22 243:4 244:11 <b>statutory</b> 16:1,3 22:18 81:6 158:21 240:19 <b>stay</b> 151:6 190:12 224:8,17 234:10 248:18 <b>staying</b> 240:16 <b>step</b> 15:10 154:20 <b>stepped</b> 95:22 131:11 <b>steps</b> 49:19 <b>stood</b> 120:14 121:2 <b>stop</b> 42:20 <b>stopping</b> 32:13 <b>stores</b> 25:15,16 <b>stories</b> 40:7,10 183:2 <b>story</b> 41:18 <b>straight</b> 220:7 <b>straightforward</b> 155:9 176:2 <b>street</b> 1:16 40:22 43:17 45:1 48:22	<b>streets</b> 127:11 180:8 237:7 <b>streetscape</b> 51:9 243:8 <b>stressed</b> 66:18 <b>strip</b> 102:22 <b>strong</b> 13:14 <b>strongly</b> 13:13 239:12 <b>struck</b> 161:9 <b>stuff</b> 163:3 <b>subject</b> 209:7 <b>submissions</b> 235:7 <b>submit</b> 20:9 61:14 124:10,20,21 203:12 225:15 247:3,17 <b>submittals</b> 217:14 <b>submitted</b> 23:13 63:13 200:10 238:17 <b>submitting</b> 198:19 203:11 246:6 <b>subsection</b> 157:19 <b>subsequent</b> 86:7 132:15 242:1 <b>subsequently</b> 90:3 131:14 <b>substance</b> 134:10 223:1 <b>substantial</b> 93:19 94:9 135:21 161:13 206:9 207:4 <b>substantially</b> 152:1 <b>subtract</b> 9:14,16 <b>suburbs</b> 51:21 <b>success</b> 14:10 <b>successful</b> 15:3 142:10	<b>surely</b> 195:20 231:15 <b>surprise</b> 143:5 166:18,22 <b>surprised</b> 71:2 129:20 236:6 <b>surprising</b> 165:3 <b>surrounding</b> 23:8 60:18 <b>survive</b> 149:10 <b>swear</b> 21:6 42:7 128:12
<b>sort</b> 71:11,21 97:18 118:15 123:11 129:22 130:18 132:13 136:4 149:10 162:4 167:2 204:5 210:5 211:6 224:1,7 <b>sorts</b> 237:3 <b>sought</b> 192:3 220:14 <b>sound</b> 161:10,13 185:5 <b>sounded</b> 16:12 <b>soundproof</b> 49:20 <b>soundproofing</b> 162:12 207:8 <b>sounds</b> 16:15 163:6 <b>south</b> 120:5 <b>Southern</b> 103:4 <b>space</b> 97:14 183:5 <b>speak</b> 23:10 28:9 30:20 93:4 104:12 240:11,12 <b>speakers</b> 188:17 <b>speaking</b> 53:12,13 154:4 <b>speaks</b> 53:3,21 54:1 59:4				

<b>switch</b> 71:20	120:5 124:16	116:7	174:7 177:2	205:7,11 206:13
<b>sworn</b> 17:2 21:11	126:2,16 127:1,6	<b>territory</b> 168:18	179:18 181:15	219:2,10,13,21
42:11 82:11 112:4	145:4 173:18	<b>test</b> 31:10 53:11	182:8 185:10	220:6 221:5
128:16 158:2	182:12 234:11	193:10 217:15	186:13 187:22,22	222:20,21 225:7
173:8 182:5 191:4	<b>telling</b> 15:13 88:8	<b>testified</b> 7:16 21:12	189:16 204:10	225:12,14 227:20
<b>swung</b> 104:21	<b>tempering</b> 219:11	42:12 80:7 112:5	208:15 216:5,10	227:21 230:8,9
<b>system</b> 25:5 150:9	<b>tenets</b> 239:18	128:17 167:6	217:11 233:15	231:12 232:13
	<b>term</b> 155:19,19	173:9 182:6 191:5	237:9,22 240:7,8	233:7 236:3,11,13
	<b>terminate</b> 14:22	198:14 232:1	240:16 245:12,13	236:21 237:11
	16:6,22 22:3,7,15	242:12 243:13	245:20 250:15,17	244:10,12 246:8
	23:13 35:9,11	<b>testify</b> 5:4,6 10:16	<b>Thanks</b> 43:7	<b>third</b> 94:14 97:11
<b>t/a</b> 1:6 22:5	38:8 58:18 59:14	12:6 56:8 172:14	<b>theft</b> 26:22	97:15 99:17
<b>table</b> 3:15 59:21	68:4 104:4 129:15	244:21	<b>themselves</b> 116:17	103:18 118:20
79:11 87:15	135:13 147:18	<b>testifying</b> 6:1 8:20	<b>thing</b> 8:4 20:5	149:1 197:11
<b>tables</b> 103:22	149:7 152:12	8:21 129:4 158:8	82:17 91:1 97:18	207:5,10 238:13
<b>take</b> 57:6,8 85:12	174:12 193:12	172:12	105:1 127:15,18	<b>thirdly</b> 14:7 57:11
120:7 128:6	195:6 201:1 203:8	<b>testimonies</b> 238:16	156:16 179:14	<b>thorough</b> 30:11
131:11 134:2	228:17	238:18 239:6	180:20	<b>thought</b> 16:10
157:12 171:8,11	<b>terminated</b> 11:22	<b>testimony</b> 4:7,9 7:3	<b>things</b> 13:16 14:15	17:17 19:7 69:5
171:16,18 175:3	18:3 31:13 134:16	11:3,10 16:12	14:18 17:20 38:3	80:3 100:13 110:7
193:17 210:21	135:18 151:12	53:2,7,12 59:20	52:21 72:8 103:21	110:9 121:1
219:9 221:10	159:7 176:7 184:3	78:4 81:20 84:16	104:19,20 119:7	141:14,18 142:20
235:17 242:22	239:20	110:1 116:3,6,6	119:14 148:20	184:19 193:2,11
246:5 248:17	<b>terminating</b> 23:6	160:3 197:17,19	151:1 156:15	209:19 244:9
249:17	54:22 73:12	198:11 210:8	161:8 162:4 205:3	<b>three</b> 13:15 17:20
<b>taken</b> 49:19 70:1	148:20 149:2	212:2 239:5	224:13	18:13,14 26:20
76:5 209:6 225:7	<b>termination</b> 1:10	245:12,17	<b>think</b> 7:2 16:5 20:7	52:21 57:8 62:17
227:16	2:9 16:19 17:13	<b>p</b> 1:4,11	32:3 34:5,10,10	63:16 65:20 67:3
<b>takes</b> 7:21 152:6	20:10 23:5 45:22	<b>thank</b> 2:21 4:14	40:8 41:19 43:2	69:16 74:5 77:4
169:1	60:2,6,8 62:7	14:10,12 21:14	54:10,16 55:14	78:12 81:3 89:9
<b>talk</b> 33:8 59:1	65:13 72:3 94:18	27:6,10 30:5,10	60:19,21 63:18,22	89:19 93:15 99:20
65:21 66:16 72:2	95:16 96:8 113:4	32:15 41:18,21	64:2,14 71:6 80:1	100:2 102:12
77:21,22 78:5	136:8 150:20	42:14 43:11 56:5	84:20 85:22 88:11	138:1,13 139:7
91:3 93:17 114:6	158:16 159:8,11	56:16 76:19,22	99:6 103:13 105:7	141:10,17 144:9
142:7 229:1	159:12 176:6	96:10,20 99:8,8	105:8,18 106:13	146:5 147:9
<b>talked</b> 32:10 59:17	189:5 191:11	103:14 107:22	106:16 108:6	155:13,14,15
99:18 211:6	192:2 196:5 199:8	109:21 111:11,14	110:20 116:15,15	165:6 181:1 193:9
<b>talking</b> 84:19	206:7 217:16	111:21 112:7	118:10,20,22	219:3 222:3
137:13 232:4	223:14,18 225:5,9	116:22 117:1,3	119:8 122:4	223:15 238:5
<b>talks</b> 53:19	229:12 230:21	119:15 122:9	130:15 135:15	239:17
<b>tap</b> 73:22	233:12 238:14	123:6 127:13	137:15 145:12	<b>three-prong</b> 31:10
<b>taverns</b> 25:15	<b>terms</b> 24:14 62:17	128:2 131:4	153:8,12,17,22	<b>threshold</b> 54:16
<b>tear</b> 163:3	65:20 71:3,19	136:10 148:13	155:5 167:5 169:1	<b>threw</b> 210:4
<b>Ted</b> 2:22 3:16 36:4	90:2,5 116:9	152:21,22 157:22	177:8 178:16,22	<b>throw</b> 152:15
128:14 129:5,8	151:9 155:13,14	164:5,5,15,16	181:5 184:4,20	<b>thrown</b> 155:19
<b>tell</b> 5:22 11:16	155:16 160:19	170:21 171:1	185:8 187:3,14	<b>Thursday</b> 99:5
13:12 30:17 37:13	<b>terrific</b> 113:11	172:20 173:14	191:12 197:11	<b>Thursdays</b> 43:20
37:14 42:17 43:13				
54:20 60:10 75:8				

<b>tier</b> 188:19	86:21 90:14 91:2	56:19 59:8 70:11	152:16 196:19	<b>validated</b> 82:12
<b>ties</b> 53:4	95:2	70:20 85:19 96:2	219:9 238:4	<b>variance</b> 94:3,5
<b>timba</b> 25:21	<b>tonight</b> 7:11 238:1	98:12 103:22	247:14 248:5	<b>various</b> 203:22
<b>time</b> 7:15,17,21 8:8	240:1,5,16 243:2	121:3,7,9 126:13	<b>understanding</b>	<b>vehicular</b> 48:20
8:13,16,17 9:16	<b>tool</b> 244:18,19	127:22 142:7	15:2 78:22 134:8	50:20
20:18,22 30:12,20	<b>tools</b> 244:15	167:4 193:20	156:18 160:18	<b>venue</b> 44:3,4 73:22
31:2,3,5,7 33:11	<b>top</b> 38:1 208:3,8	209:9,10 241:9,12	187:4,6 220:2	<b>venues</b> 51:20 164:1
47:22 48:15 50:15	<b>topic</b> 52:16	<b>Tuesday</b> 104:11	<b>understands</b> 18:10	243:22
55:4 57:9 67:18	<b>total</b> 201:9	<b>turn</b> 57:19 96:15	<b>understood</b> 15:7	<b>verbal</b> 190:5
68:11,14,19 69:2	<b>totaled</b> 206:22	108:3 212:9	79:2 133:2 221:8	<b>verify</b> 176:20
69:3,19 78:1 79:8	<b>touch</b> 62:19	<b>turning</b> 203:11	<b>unequal</b> 203:22	<b>versa</b> 20:1 99:21
79:10,14,17 80:10	<b>tour</b> 58:2,6	<b>turnover</b> 80:15	<b>unfair</b> 30:11	<b>vice</b> 20:1 99:21
87:20 88:13 90:15	<b>tours</b> 220:4	169:21	<b>unfortunate</b> 144:21	<b>video</b> 9:11
91:3 93:10 94:16	<b>town</b> 68:22 96:3	<b>twice</b> 181:1 225:20	<b>unfortunately</b>	<b>view</b> 19:16 73:10
94:18 99:21 105:9	131:16 132:17	<b>two</b> 5:10,11 9:4	131:15	154:13 224:14
106:7 110:3,20	<b>traffic</b> 48:21 50:20	10:13 26:22 45:16	<b>uniform</b> 162:4	<b>village</b> 1:6 2:6,13
113:7,8 120:20	<b>transcript</b> 124:15	51:10 57:9 88:2	<b>unilaterally</b> 147:17	13:10,18 14:3
121:1 134:14,20	246:10 247:1,12	90:19 99:16	147:21 150:1	22:4,6,8,16 23:5
134:20,21 138:20	<b>transportation</b>	102:16,16 121:20	<b>Unit</b> 26:18	23:11 24:20 25:3
146:3 155:3 158:4	220:2,15	122:1,17 134:5	<b>units</b> 40:8 183:19	25:7,12,17 27:3
165:21 167:9	<b>trash</b> 174:17	136:18,19 203:14	<b>unknown</b> 163:8	30:22 40:4,10,13
169:22 170:4	236:21	203:15,19,20	<b>unlevel</b> 149:2	41:1 42:18 43:10
179:22 180:4,5,8	<b>treated</b> 204:2 207:7	210:6 219:15	151:12	43:14 44:20 45:12
180:10,15 183:19	<b>treatment</b> 235:1,9	221:5 225:13	<b>unleveling</b> 151:7	46:9 48:12 49:2
183:20 187:9,11	<b>tremendously</b>	242:2 247:13	<b>unnecessarily</b>	50:11 51:2,16,20
188:16 191:14,15	103:2	<b>type</b> 57:21 62:9	64:15	53:6 57:13 58:5
194:1 199:16	<b>trend</b> 74:2	<b>types</b> 119:4	<b>unreasonable</b>	64:18 69:12 71:12
203:22 204:4,7	<b>tried</b> 14:14 58:20	<hr/>	219:5,16 220:4	72:4 73:8 74:2,12
206:8,11 207:2,19	100:21 103:20	<b>U</b>	<b>unsuccessful</b> 58:21	75:1 87:1 103:12
217:20 226:15	130:13 154:7	<b>U</b> 51:13	59:2	107:16 109:4
228:4 230:5,22	238:16,19	<b>Uh-huh</b> 186:21	<b>unwilling</b> 64:7	114:3,21 120:2
231:5 237:22	<b>triggers</b> 178:4	<b>ultimate</b> 227:15	222:2	126:7 137:1
244:21 248:2	<b>troubled</b> 220:9	<b>um-hum</b> 33:18	<b>usage</b> 170:7	138:14 140:10
<b>times</b> 24:1 32:3	<b>troubling</b> 240:22	75:15 98:5,8	<b>use</b> 9:5 62:15 79:13	174:9,12,21
90:20 102:12	<b>true</b> 37:18,20 87:16	107:19 129:13	94:13 103:8	175:12,20 176:16
116:1 136:21	95:13 168:7,11	165:13 167:13	160:19	180:11 182:17,21
170:2,5 180:18,21	183:11 184:9	169:15,18 170:11	<b>usually</b> 125:1	185:20 186:4
181:1 219:16	<b>truly</b> 244:12	178:14	215:22	193:15,15 199:12
226:9	<b>trust</b> 113:19 119:9	<b>unable</b> 62:2 220:22	<hr/>	202:14 206:4,22
<b>titled</b> 208:13	120:20 228:11	<b>uncertain</b> 101:14	<b>V</b>	210:12,13 219:3
<b>today</b> 44:8 45:10	<b>try</b> 14:8 72:18	191:22	<b>VA</b> 57:6 59:9,14,15	220:20 226:9
45:11 53:2 228:10	103:20 116:14	<b>unclear</b> 203:18	59:16 68:4 73:6	236:6 239:1,11
246:10,11	119:12 176:1	<b>understand</b> 15:16	<b>vacated</b> 186:19	249:9
<b>today's</b> 24:19	240:17 241:4	16:13 27:17 52:12	<b>vacation</b> 88:5,11	<b>Village's</b> 26:2
<b>told</b> 61:13,14 66:11	242:10,16 244:4	53:14 86:11 88:12	<b>vaguely</b> 33:17	43:16 199:7 203:7
67:15,16 68:1,11	244:16	92:20 101:22	<b>valid</b> 217:16	212:2
68:21 69:2 79:10	<b>trying</b> 15:6,18	115:16 143:1	224:15	<b>violating</b> 239:15

**violation** 49:22  
160:22  
**violations** 26:12  
31:8 32:12,14  
48:17 50:17  
160:21 239:8,16  
**violent** 245:7  
**Virginia** 51:18  
**virtually** 241:17  
**vis** 152:3  
**vis-a** 152:2  
**visits** 48:18 50:18  
**voice** 169:12  
**voluntary** 10:19  
13:19 14:5,9  
16:19,22 17:6  
39:6,19 46:1,3,5,6  
46:7 47:10 51:3,5  
56:22 57:2 58:12  
60:2,6,8 62:7,11  
62:12 64:8,22  
65:14 66:13 67:21  
72:6 73:1 81:13  
83:18,21 86:5  
87:4 100:7,9  
102:2 107:7  
130:13,17 144:8  
147:18 158:5  
219:4 223:16  
228:18 233:19  
239:14,15  
**vote** 79:6,7,8,14,16  
80:11,12 133:6  
191:20 248:17  
249:18 250:7  
**voted** 143:11  
228:20

---

**W**

---

**wait** 8:9 46:18,19  
52:13 72:16 88:20  
96:13 122:11  
138:2 154:21  
157:3 201:17  
205:12 218:3,4  
227:14 232:10,10  
232:11 247:22

**waiting** 72:17  
227:12  
**waive** 246:1 247:11  
**waiving** 248:6  
**walk** 120:6 138:4  
178:2  
**walked** 120:15  
**walls** 107:12  
**Walter** 44:19  
**want** 7:22 8:2 10:2  
10:4 11:20 15:12  
16:16,20 17:16  
18:9,16 20:3 21:6  
55:20 57:5,7,22  
58:5,8,10,17  
62:22,22 64:10,20  
66:20 70:6,14  
74:10 77:21,22  
83:1 85:20 87:2  
90:11 91:8 97:1,3  
97:7 101:20 110:2  
121:6 130:7,9  
132:8,8,9 138:9  
141:7 150:1,5  
154:9 156:13,13  
157:10 158:8  
159:6 163:3  
171:20,22 172:9  
179:21 185:6  
190:11,17 196:9  
201:21 215:2  
217:22 218:1,21  
225:18 233:18  
237:21 243:14  
244:2 247:21  
248:4,19  
**wanted** 5:9 17:19  
24:2,7 50:8 56:9  
56:10 58:3,7  
64:18 68:7 78:5  
90:19 114:9,10,17  
120:19 127:17,19  
128:21 137:10  
138:6 156:6  
162:19,20 185:9  
196:2 222:9,12  
223:16 238:19

**wants** 19:15 33:14  
80:7 124:11 134:6  
246:2  
**warranted** 52:22  
238:10  
**Washington** 1:16  
**washita** 25:21  
**wasn't** 17:18 71:9  
79:7 85:21 87:10  
118:12 121:3,7  
133:18 143:9  
167:11 219:19  
**wasted** 134:20,21  
134:21  
**way** 15:4 16:16  
32:4,5,8 114:20  
114:22 116:8  
120:5 125:7 150:8  
157:7 164:14  
185:22 209:10  
224:10 225:10  
239:12 244:5  
**we'll** 128:6 158:13  
**we're** 152:20  
171:17  
**Wednesdays** 43:19  
**week** 9:20 38:3  
62:20 63:9,12  
66:22 68:22 175:7  
226:1,6  
**week's** 226:4  
**weekend** 76:9,13  
**weekends** 51:17  
176:17 179:16,18  
179:22  
**weeks** 88:2 203:14  
203:16,19,20  
247:13  
**weighed** 104:9  
**weight** 210:14  
**welcome** 189:17  
**well-invested** 45:20  
**well-rooted** 45:20  
**went** 4:3 32:2 38:21  
44:16 61:8 67:13  
69:15 89:14  
104:14 131:17,19

131:20 133:1  
208:3 233:19  
**weren't** 9:19 28:5  
76:3 81:2  
**west** 183:9  
**whatnot** 32:11  
**wider** 40:12  
**wife** 45:12,16  
**William** 3:2 192:4  
199:4 233:5  
**willing** 64:22 71:9  
89:18 92:13,17  
102:2 108:21  
109:4 142:15  
147:21 154:17  
227:7 244:3  
**window** 175:12  
**windows** 107:11,12  
179:12 207:7,7  
235:2,9  
**wish** 225:18 245:22  
248:6  
**wishes** 218:12  
**withdraw** 63:19  
64:1 225:2  
**withdrew** 63:17  
225:22  
**witness** 4:18 5:1  
6:12,14 7:16,21  
12:6 13:2 21:10  
21:11 42:1,4,10  
42:12 43:4 75:21  
76:2 110:5,8  
111:12 112:3,5  
124:6 126:4  
127:20 128:8,15  
128:17 163:12  
172:21 173:7,9  
181:18,20 182:4,6  
189:19 191:3,5  
211:3,9,18 212:3  
215:9 218:13  
**witnesses** 4:15 8:15  
8:17 9:5,17 10:13  
10:22 11:2,4,9  
75:21 189:21  
190:1 217:17

237:12  
**Woodley** 173:21  
175:11  
**word** 129:18  
**words** 138:9 150:21  
**work** 14:8 38:3  
39:4 46:13 47:6,7  
47:9,11 51:9  
107:6,16 113:14  
114:20 132:2  
133:17 221:1  
224:10 242:5  
244:4  
**worked** 92:15  
105:14  
**working** 31:16,19  
**works** 98:17 211:6  
**world** 20:5 132:11  
132:12  
**worry** 113:21  
**worth** 209:19  
**wouldn't** 65:22  
71:3 100:17  
101:17 113:21  
154:3 157:5  
190:13 220:16  
223:2 228:21  
**wound** 15:4  
**woven** 113:11,16  
**writing** 67:2 245:3  
246:19  
**written** 48:4 190:5  
223:4  
**wrong** 61:21 117:9  
208:15  
**wrote** 61:20 192:6  
230:12

---

**X**

---

**X** 124:15

---

**Y**

---

**yanked** 245:9  
**yeah** 10:4 17:17  
28:16 29:1,14  
35:2 36:7 47:4  
63:7 91:12 92:5  
104:7 110:6,6

111:4 115:8 117:16 120:4 125:4,19 139:16 139:16 144:3 155:4 166:21 169:5,11 177:21 218:14 228:15 234:2,18 247:11 <b>year</b> 28:2 59:14 94:6 228:22 236:10 <b>Year's</b> 24:5 28:7 57:9 90:19 99:20 138:20 145:21 219:15 <b>years</b> 23:18 46:4,4 46:5 47:7,22 51:10,19 59:16 61:2 73:16 102:13 105:11 136:17,18 176:13 181:8 183:13 210:12 <b>yogurt</b> 45:3	<b>11</b> 48:14 232:16 <b>11:30</b> 43:22 <b>114-unit</b> 183:4 <b>11th</b> 51:13 65:12 68:9 197:19 198:5 198:7 230:13 231:8 232:9 <b>12</b> 46:5 50:12 57:7 57:8 58:13,13 62:13 90:11 <b>12:00</b> 151:4 <b>1200</b> 25:6 <b>13</b> 25:15 48:14 249:8 <b>13-PRO-00094</b> 1:9 2:6 <b>130</b> 24:8 28:21 57:3 77:18 93:18 94:11 97:4 146:20 219:6 <b>130-seat</b> 163:22 <b>13th</b> 61:9 223:21 <b>14</b> 22:14 <b>14th</b> 1:15 51:13 76:6 <b>15</b> 23:18 48:11 61:11 102:13 103:13 <b>16</b> 1:13 236:9 <b>16th</b> 67:2,13 71:17 79:12 87:7,18 104:15 137:9,18 139:14 167:17 <b>1700</b> 120:1 <b>18</b> 50:13 111:20 183:15 <b>1834</b> 1:7 2:7 22:4 26:19 43:18 48:12 50:12 77:13 210:2 <b>1841</b> 41:5 182:13 <b>1850</b> 178:22 <b>1851</b> 173:20 <b>18th</b> 26:8 43:16 45:1 48:22 50:21 77:8,12 102:15 119:5 126:18,19 126:22 243:8 <b>19</b> 206:17	<b>190</b> 24:8 57:4,5 93:20 94:11 97:4 146:20 206:5,19 207:1 219:6 <b>190-seat</b> 163:22 <b>1962</b> 6:17 75:14 112:15,20 <b>1969</b> 112:14,18 <b>1970</b> 44:15 <b>1978</b> 45:1 <b>1987</b> 45:5 <b>1988</b> 45:8 <b>1992</b> 43:16 <b>1996</b> 43:17 106:12 106:21 107:1 <b>1C</b> 35:22 <b>1st</b> 23:3 203:13,20	166:8,17 167:16 <b>21</b> 46:4 48:13 61:2 73:16 <b>24197</b> 1:8 2:8 <b>25</b> 44:8 47:9 <b>25-313</b> 17:15 <b>25-314</b> 17:15 <b>25-446</b> 16:18 18:21 <b>25-446(b)(4)(A)</b> 22:19 <b>25-446(d)</b> 20:11 198:10 <b>25-446(d)(4)(A)(i)</b> 221:20 <b>25-446(d)(5)</b> 157:14 <b>25-601(3)(d)</b> 221:12 <b>251</b> 209:18 <b>26</b> 26:21 <b>27</b> 26:20 <b>28th</b> 69:1 87:20 132:18 <b>29</b> 77:3 111:19	204:21 205:5,5,19 206:2 213:4 <b>4-0-0</b> 250:8 <b>4(a)</b> 82:11 83:10,13 83:13 <b>4(a)(2)</b> 83:2,12 <b>4(a)(ii)</b> 157:19 <b>400</b> 25:11 125:21 215:21 <b>400S</b> 1:16 <b>405</b> 249:5 <b>405(b)(13)</b> 249:12 <b>405(b)(4)</b> 249:10 <b>45</b> 133:1 142:7
<hr/> <b>Z</b> <hr/> <b>Zone</b> 24:21 <b>zoning</b> 24:21 93:22 94:4,6				<hr/> <b>5</b> <hr/> <b>5</b> 23:11 51:19 52:1 52:6,8 53:13,14 53:17 110:17,18 125:16,17 126:4 157:15 159:1 171:19,20 204:16 204:17,21 205:5,5 207:17 209:2 <b>5:00</b> 43:22 <b>5:30</b> 3:12 <b>5:32</b> 2:2 <b>50</b> 236:14 <b>58</b> 25:5,7,13
<hr/> <b>0</b> <hr/> <hr/> <b>1</b> <hr/> <b>1</b> 46:11,16 48:1 83:15 107:15 111:3,5,8 138:17 139:15 192:11,14 194:15,15 195:22 208:9 210:1 218:7 218:9 <b>1,200</b> 216:1,12 <b>1:00</b> 43:20 <b>1:30</b> 175:3 <b>10</b> 44:9 51:19 102:12 171:16,19 171:20 192:6 194:16 222:1 223:22 <b>10th</b> 61:17	<hr/> <b>2</b> <hr/> <b>2</b> 22:14 25:15 35:15 36:14 48:3,3,7 83:8,11,18 194:12 195:14 196:17 232:7,11,21 <b>2:00</b> 175:2 <b>20</b> 103:12 159:20 <b>2000</b> 1:15 106:13 <b>20009</b> 1:17 <b>2002</b> 93:2 105:3,6 105:17 106:22 206:12 207:2,21 <b>2003</b> 47:8 <b>2004</b> 206:17 208:4 <b>2004/2006</b> 59:21 <b>2006</b> 27:4 <b>2009</b> 93:3 <b>2010</b> 48:5,14,14 49:15 249:6,11,13 250:13 <b>2012</b> 26:21 27:4 183:16 <b>2013</b> 1:13 22:14 23:12 24:14 26:21 50:13,14 59:20 60:1 192:6 194:16 232:17 <b>20th</b> 67:13 165:22	<hr/> <b>3</b> <hr/> <b>3</b> 23:3 49:8,8,11 200:1,20,21 201:4 202:11 203:5 <b>3:00</b> 43:21 104:11 151:6 175:7 <b>30</b> 80:14 118:9,21 157:6 246:22 247:16 <b>37</b> 176:13 <b>38</b> 25:8 <b>39</b> 25:14 <b>3rd</b> 63:12 66:10 69:11 86:19 87:11 89:6 137:6 140:9 156:3 165:9 166:18,20 167:4 167:14	<hr/> <b>6</b> <hr/> <b>6</b> 67:5,7,9 71:17 137:8 204:16,17 204:21 205:5,6 209:19 <b>6:30</b> 43:20,21 <b>60</b> 97:15 146:20 <b>600</b> 215:19	
		<hr/> <b>4</b> <hr/> <b>4</b> 25:15 50:3,6 83:6 83:7 123:15 158:21 204:16,17	<hr/> <b>7</b> <hr/> <b>7</b> 50:14 71:10,14 <b>75</b> 47:11 107:5 <b>7th</b> 26:9	
			<hr/> <b>8</b> <hr/> <b>8</b> 74:11,14,21 111:4 111:5,8 203:6 212:17 213:3,11	

214:14 216:17  
217:2 218:7,9  
**8:03** 172:6  
**8:17** 172:7  
**8th** 203:15

---

**9**

---

**9:00** 55:21  
**9:27** 251:1  
**90** 248:12 250:13  
**90s** 206:15