

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA  
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
3 ALCOHOLIC BEVERAGE CONTROL BOARD

4 - - - - - X  
5 IN THE MATTER OF: :  
6 Daci Enterprises, LLC t/a :  
7 Dacha Beer Garden : Case #  
8 1600 7th Street, NW : 15-CMP-00222  
9 License #92773 : Hearing  
10 Retailer DT : (Status)  
11 ANC 6E :  
12 Substantial change in operation :  
13 without board's approval, :  
14 violation of settlement agreement, :  
15 substantial change in operation :  
16 (no summer garden endorsement) :  
17 - - - - -X

18 Wednesday, October 28, 2015

19 Whereupon, the above-referenced matter  
20 came on for hearing at the Alcoholic Beverage  
21 Control Board, Reeves Center, 2000 14th Street,  
22 N.W., Suite 400S, Washington, D.C. 20009.

1 CHAIRPERSON:

2 RUTHANNE MILLER, Presiding

3

4 BOARD MEMBERS:

5 MICHAEL SILVERSTEIN

6 JAMES SHORT

7 HERMAN JONES

8 HECTOR RODRIGUEZ

9 NICK ALBERTI

10

11 ALSO PRESENT:

12 AMY SCHMIDT, ESQ.,

13 on behalf of District of Columbia

14 ANDREW KLINE, ESQ.

15 ILYA ALTER

16 on behalf of the Licensee

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

2 CHAIRPERSON MILLER: I think that we  
3 might as well vote on our closed meetings right  
4 now rather than wait till late afternoon, since  
5 we have time. Okay.

6 [Pause.]

7 CHAIRPERSON MILLER: The next one is  
8 November 3rd before -- the date of next --

9 MR. SILVERSTEIN: The 4th.

10 CHAIRPERSON MILLER: The 4th, next  
11 Wednesday?

12 MR. SILVERSTEIN: Yeah, the 4th.

13 CHAIRPERSON MILLER: Okay. As  
14 Chairperson of the Alcoholic Beverage Control  
15 Board for the District of Columbia, and in  
16 accordance with Section 405 of the Open Meetings  
17 Amendment Act of 2010, I move that the ABC Board  
18 hold a closed meeting on November 4th, 2015, for  
19 the purpose of seeking legal advice from our  
20 counsel on the matters identified on the board's  
21 agenda for November 4th, 2015, as published in  
22 the D.C. Register on October 30th, 2015.

1 Is there a second?

2 MR. SILVERSTEIN: Second.

3 CHAIRPERSON MILLER: Mr. Silverstein  
4 seconded the motion. I'll now take a roll call  
5 vote on the motion before us now that it has been  
6 seconded.

7 Mr. Alberti?

8 MR. ALBERTI: I agree.

9 CHAIRPERSON MILLER: Ms. Miller agrees.  
10 Mr. Silverstein?

11 MR. SILVERSTEIN: I agree.

12 CHAIRPERSON MILLER: And Mr. Short?

13 MR. SHORT: I agree.

14 CHAIRPERSON MILLER: It appears that the  
15 motion has passed by a 4-0-0 vote. I hereby give  
16 notice that the ABC Board will hold this  
17 aforementioned closed meeting pursuant to the  
18 Open Meetings Amendment Act of 2010.

19 Notice will also be posted on the ABC  
20 Board hearing room bulletin board, placed on the  
21 electronic calendar and ABRA's website, and  
22 published in the D.C. Register in as timely a

1 manner as practicable.

2           As Chairperson of the Alcoholic Beverage  
3 Control Board for the District of Columbia, and  
4 in accordance with Section 405 of the Open  
5 Meetings Amendment Act of 2010, I move that the  
6 ABC Board hold a closed meeting on November 4th,  
7 2015, for the purpose of discussing and hearing  
8 reports concerning ongoing or planned  
9 investigations of alleged criminal or civil  
10 misconduct or violations of law or regulations  
11 and seeking legal advice from our counsel on the  
12 board's investigative agenda for November 4th,  
13 2015, as published in the D.C. Register on  
14 October 30th, 2015. Is there a second?

15           MR. ALBERTI: Second.

16           CHAIRPERSON MILLER: I'll now take a roll  
17 call vote on the motion before us now that it has  
18 been seconded by Mr. Alberti.

19           Mr. Alberti?

20           MR. ALBERTI: I agree.

21           CHAIRPERSON MILLER: Ms. Miller agrees.

22           Mr. Silverstein?

1 MR. SILVERSTEIN: I agree.

2 CHAIRPERSON MILLER: And Mr. Short?

3 MR. SHORT: I agree.

4 CHAIRPERSON MILLER: It appears that the  
5 motion is passed by a 4-0-0 vote. I hereby give  
6 notice that the ABC Board will hold this  
7 aforementioned closed meeting.

8 Pursuant to the Open Meetings Amendment  
9 Act of 2010, notice will also be posted on the  
10 ABC Board hearing room bulletin board, placed on  
11 the electronic calendar and ABRA's website, and  
12 published in the D.C. Register in as timely a  
13 manner as practicable.

14 Okay. So, that concludes our morning  
15 session. And we will return for our hearings in  
16 the afternoon, which I believe will begin at 1:30  
17 p.m. with the Dacha Beer Garden case. Okay. So  
18 we are now recessed.

19 [Whereupon, a luncheon recess was taken.]

20 A F T E R N O O N S E S S I O N

21 CHAIRPERSON MILLER: Okay. I'm going to  
22 call the case. And hopefully, the other two

1 board members will be out here momentarily.

2 Case Number 15-CMP-00222, Dacha Beer  
3 Garden, located at 1600 7th Street, Northwest,  
4 License Number 92773, in ANC 6E.

5 [Board Member Herman Jones entered the  
6 room.]

7 CHAIRPERSON MILLER: Good afternoon. If  
8 you would identify yourselves for the record.

9 MS. SCHMIDT: Good afternoon. Amy  
10 Schmidt, Assistant Attorney General on behalf of  
11 the District of Columbia.

12 MR. KLINE: Good afternoon. Andrew Kline  
13 on behalf of the Licensee.

14 MR. ALTER: Ilya Alter, Licensee.

15 CHAIRPERSON MILLER: Okay. You're the  
16 owner?

17 MR. ALTER: Yes.

18 CHAIRPERSON MILLER: Okay. And could you  
19 repeat your name?

20 MR. ALTER: Ilya Alter.

21 CHAIRPERSON MILLER: Alter?

22 MR. ALTER: Yes.

1 CHAIRPERSON MILLER: Got it. Okay.

2 Thank you.

3 Ms. Schmidt?

4 MS. SCHMIDT: I identified myself.

5 CHAIRPERSON MILLER: You did?

6 MS. SCHMIDT: Yes.

7 CHAIRPERSON MILLER: I'm sorry I missed  
8 that. Okay. As long as you did for the record,  
9 good.

10 This is a show-cause hearing. Are there  
11 any preliminary matters?

12 MS. SCHMIDT: Yes, there is. There's  
13 one.

14 CHAIRPERSON MILLER: Okay.

15 MS. SCHMIDT: The Government would like  
16 to dismiss charge 3 of this document, of the  
17 charges today.

18 [Pause.]

19 MS. SCHMIDT: And we would like to  
20 proceed on the other two charges.

21 CHAIRPERSON MILLER: Okay. Are you  
22 moving to dismiss, or are you --

1 MS. SCHMIDT: Yes, I'm moving to dismiss.

2 CHAIRPERSON MILLER: Oh, okay. And the  
3 reason?

4 MS. SCHMIDT: The reason is that there  
5 are -- due to circumstances, the Government does  
6 not feel that it should go forward -- can go  
7 forward on that charge.

8 CHAIRPERSON MILLER: Due to  
9 circumstances?

10 MS. SCHMIDT: Yes. There are some --

11 CHAIRPERSON MILLER: Okay. So you're not  
12 prepared to move -- you're not prepared to go  
13 forward on them, I understand?

14 MS. SCHMIDT: No. We do not wish to go  
15 forward on this charge.

16 CHAIRPERSON MILLER: Okay. Then there's  
17 a motion --

18 MR. ALBERTI: Can we --

19 CHAIRPERSON MILLER: Yes.

20 MR. ALBERTI: Well, could we have a  
21 little bit more specifics? I mean, that's kind  
22 of vague. And I don't want you to kind of

1    overstep the bounds, but is it lack of evidence,  
2    question of unreliability of the evidence?

3            MS. SCHMIDT:  It's a lack -- it could be  
4    a lack of evidence, I would say.

5            MR. ALBERTI:  Could be?

6            MS. SCHMIDT:  It is a lack -- well, it's  
7    prosecutor discretion.  It's just a matter of the  
8    fact that it's over-charging, and the Government  
9    does not wish to go in that direction at this  
10   point.

11           MR. ALBERTI:  Over-charging?

12           MR. KLINE:  We were advised, actually,  
13   that the charge would be dismissed by the  
14   Government.  So.

15           MS. SCHMIDT:  And we're doing this rather  
16   than -- we were going to amend these notices.  
17   But rather than go through the whole process of  
18   amendment, we decided to do them at the hearing,  
19   as the hearings came up.

20           CHAIRPERSON MILLER:  Okay.

21           MR. KLINE:  I mean, if a proffer would  
22   help, I'll make one, if you don't mind.

1 MS. SCHMIDT: Not in the least.

2 MR. KLINE: And basically, the proffer  
3 would be that this Applicant came to ABRA,  
4 processed the application on their own. It was  
5 always clear that they would have an outside  
6 venue. It was always clear that there would be a  
7 summer garden.

8 And if there's any reason that there was  
9 a summer garden endorsement, it's because the  
10 Applicant simply wasn't advised by staff that  
11 that's what was required, but it was transparent  
12 in terms of what they were doing, if that helps.

13 CHAIRPERSON MILLER: Okay. All right.  
14 So, based on the representations of parties, I  
15 would move that charge 3 be dismissed. Do I have  
16 a second?

17 MR. SILVERSTEIN: Second.

18 CHAIRPERSON MILLER: Okay. Any other  
19 comments?

20 [No audible response.]

21 CHAIRPERSON MILLER: All those in favor,  
22 then, say Aye.

1 [Chorus of Ayes.]

2 CHAIRPERSON MILLER: All those opposed?

3 [Chorus of "Opposed."]

4 CHAIRPERSON MILLER: Well, okay. I don't  
5 see how we can make them go forward with the  
6 charge, though. So I think this is somewhat of a  
7 formality for the board to rule on it. But --

8 [Cross-talk.]

9 CHAIRPERSON MILLER: Well, our counsel is  
10 not here, but that's my understanding of what --  
11 that counsel for the Government is not here to go  
12 forward. And I heard counsel for the Applicant,  
13 I think, say that they were informed that the  
14 charges wouldn't be brought against them. So  
15 they may not be prepared to go forward.

16 MR. KLINE: That would be correct.

17 CHAIRPERSON MILLER: Is that correct?

18 MR. KLINE: That is correct.

19 MS. SCHMIDT: And it's better and  
20 protecting the Agency -- for matters to be on the  
21 record, I'd prefer not to put things on the  
22 record.

1 MR. ALBERTI: Okay. Can we just pause  
2 until we get a discussion from -- I have a  
3 question.

4 CHAIRPERSON MILLER: Did you just go seek  
5 our legal counsel to come out?

6 MR. ALBERTI: He's going to come out.

7 CHAIRPERSON MILLER: Okay. So he can  
8 hear the --

9 MR. ALBERTI: Well, he can hear it. I  
10 would like to be able to ask him a question  
11 before we move forward, just personally to ask --  
12 I mean, I have a question that I would like the  
13 answer to. I can share it with others when --  
14 but -- if you'd like.

15 CHAIRPERSON MILLER: Are there any other  
16 preliminary matters?

17 [No audible response.]

18 CHAIRPERSON MILLER: How many witnesses  
19 do each of you have?

20 MS. SCHMIDT: We have one.

21 CHAIRPERSON MILLER: One?

22 MR. KLINE: No more than one.

1 CHAIRPERSON MILLER: Okay.

2 [Pause.]

3 MR. ALBERTI: I will apologize for the --  
4 I don't know where our attorney is.

5 MS. SCHMIDT: I saw him walk -- he's -- I  
6 think he's walking back in.

7 MR. ALBERTI: I know. I mean, I  
8 apologize. We shouldn't have that kind of delay.  
9 But it is.

10 [Pause, in-house counsel conferred with  
11 the parties.]

12 MS. SCHMIDT: Okay. The Government moves  
13 to amend the notice to drop charge 3.

14 CHAIRPERSON MILLER: Okay.

15 [Pause, a discussion was held off the  
16 record.]

17 CHAIRPERSON MILLER: Okay. We don't vote  
18 on it, if I understand.

19 MR. ALBERTI: Well, I think we need to  
20 know, to hear from Mr. Kline if he accepts it  
21 because --

22 MR. KLINE: Yes, we do.

1 MR. ALBERTI: -- you haven't had proper  
2 notice.

3 MR. KLINE: We accept the amendment of  
4 the notice to drop charge 3 in CMP-00222.

5 MR. ALBERTI: Okay. Thank you.

6 MS. SCHMIDT: And as far as notice goes,  
7 we have discussed this, and he was advised that  
8 this will be happening. So he did have the  
9 notice that this would be amended.

10 MR. ALBERTI: Okay. Terrific.

11 MR. KLINE: Yes.

12 MR. SCHMIDT: For the record, he did have  
13 that notice.

14 MR. KLINE: And relied on it.

15 CHAIRPERSON MILLER: Okay. All right.  
16 So, the charging document is amended to reflect  
17 just charges 1 and 2, correct?

18 MS. SCHMIDT: Yes.

19 CHAIRPERSON MILLER: And that's what  
20 you'll be proceeding on today?

21 MS. SCHMIDT: Yes.

22 CHAIRPERSON MILLER: All right. I

1 understand that I asked you before if there were  
2 any other preliminary matters, and you all said  
3 no. So, are you ready to proceed?

4 MS. SCHMIDT: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MS. SCHMIDT: The Government calls  
7 Investigator Mark Brashears.

8 MR. KLINE: Just for the record, because  
9 I didn't catch it in the original announcement.  
10 We are now trying CMP -- 15-CMP-00222, correct?

11 CHAIRPERSON MILLER: Correct.

12 MS. SCHMIDT: You know what? I'm sorry.  
13 One second. I will make a quick opening  
14 statement. I apologize.

15 OPENING STATEMENT

16 MS. SCHMIDT: Today the Government is  
17 going to show that on April 17th, 2015, at  
18 approximately 9:10 p.m., Investigator Mark  
19 Brashears of ABRA, along with -- was accompanied  
20 by Investigator Jason Peru, went to the Dacha  
21 Beer Garden located at 1600 7th Street,  
22 Northwest, in the District of Columbia.

1           When they got there, they saw a line that  
2 went around the corner from the establishment.  
3 They saw many patrons outside. And when they --  
4 and they saw there were 413 patrons on the  
5 establishment's own clicker.

6           And the Government will introduce  
7 evidence showing the ABC License, which shows the  
8 capacity of only being 126 patrons, and a  
9 settlement agreement, which states that there  
10 only can be 100 seated patrons. And the  
11 Government will present evidence showing that the  
12 establishment exceeded both those limits.

13           And therefore, they made a substantial  
14 change since the time the final inspection -- the  
15 Government will also show that they made, through  
16 the photographs, that the establishment was  
17 different and had more seating capacity than the  
18 original -- than even they were when they were  
19 approved for -- during final inspection.

20           And therefore, the Government will show  
21 that they made substantial change and that they  
22 violated the settlement agreement.



1 was called as a witness and, having been first  
2 duly sworn, was examined and testified as  
3 follows:

4 DIRECT EXAMINATION

5 BY MS. SCHMIDT:

6 Q Investigator Brashears, could you please  
7 state your name for the record?

8 A Investigator Mark Brashears, B-r-a-s-h-e-  
9 a-r-s.

10 Q And by whom are you employed?

11 A The Alcoholic Beverage Regulation  
12 Administration.

13 Q And how long have you been employed by  
14 them?

15 A Approximately two years.

16 Q And in what capacity are you employed by  
17 them?

18 A I'm a ABRA Investigator.

19 Q And drawing your attention to April 17th,  
20 2015, at approximately 9:10 p.m., were you in the  
21 vicinity 1600 7th Street, Northwest?

22 A Yes, ma'am.

1 Q And what is located there?

2 A The Dacha Beer Garden.

3 Q And were you accompanied by anyone at  
4 that point?

5 A Investigator Jason Peru from ABRA.

6 Q Okay. So you went there, and what did  
7 you see?

8 A We received a hot phone complaint that  
9 neighbors stating there were noise. So we  
10 arrived at the establishment. As we approached,  
11 we could see basically like stanchions set up  
12 outside the fence of the summer garden there, the  
13 Beer Garden, and people going basically the  
14 length of the fence in the front and down the  
15 side.

16 Q And were these people inside the  
17 establishment or outside the establishment or  
18 both?

19 A These people were outside the fenced area  
20 of the establishment.

21 Q And so, what did you do next when you saw  
22 that situation?

1           A     As we got closer, we saw, you know, quite  
2 a few people inside the fenced area. So we  
3 approached the individual checking ID's at the  
4 gate. Identified ourselves as ABRA  
5 investigators, and asked to speak with an ABC  
6 manager or owner of the establishment.

7           Q     And did you do so?

8           A     Yes, we did. And while we were waiting  
9 to speak to the owner, we asked the individual at  
10 the gate what the -- if there was a head count.  
11 And he had a clicker, and he was originally  
12 reluctant to show us the clicker. But when he  
13 did, it shows 413.

14          Q     Okay. And so, did you go with the owner?

15          A     The owner basically came to us. And when  
16 we asked to see the relevant documents, such as  
17 the certificate of occupancy and the ABC license,  
18 the crowd was such inside the fenced area that we  
19 went through the building next door, around to  
20 the back of the bar where the documents were  
21 kept.

22          Q     And you say building next door. What is

1 that building next door?

2 A From my understanding, the owners of the  
3 establishment purchased the building next door  
4 and, I believe, using it as a kitchen and had  
5 some bathrooms put into the back.

6 Q Okay. So, what happened when you went  
7 with him through the building next door?

8 A Well, I called his attention to the ABC  
9 license and basically informed him that the ABC  
10 license showed an occupancy of 126. And there  
11 were approximately, you know, 413 people,  
12 according to the clicker.

13 Q Okay. All references to exhibits are  
14 part of the report. And so, when I -- so I'm not  
15 going to refer you to Exhibit Number 5.

16 CHAIRPERSON MILLER: Okay. Just for the  
17 record, do you want to identify what report?

18 MS. SCHMIDT: Yes. The report, the case  
19 report prepared by ABRA and Investigator  
20 Brashears for this case, which is 15-CMP-00222.

21 CHAIRPERSON MILLER: Thank you.

22 [Pause.]

1 MS. SCHMIDT: I'm sorry, I have the wrong  
2 -- I want to make sure it's the same number on  
3 this file. I apologize. I have the wrong file.

4 [Pause.]

5 MS. SCHMIDT: Yes, Exhibit 5.

6 BY MS. SCHMIDT:

7 Q Would you please tell the board what that  
8 is? I'm sorry; it's not Exhibit 5. I have the  
9 wrong one. It's Exhibit 6.

10 A Exhibit 6 is a copy of Dacha Beer  
11 Garden's ABC License.

12 Q And what was the issue date of that?

13 A The issue date was May 22nd, 2014.

14 Q And what's the capacity listed on that  
15 license?

16 A Capacity 126.

17 Q And that evening, was there more than 126  
18 people there?

19 A Yes, ma'am.

20 Q And Exhibit -- could you please go to  
21 Exhibit 8?

22 A Yes, ma'am.

1 Q And what does that say -- and what is  
2 that Exhibit?

3 A Exhibit 8 is a certificate of use for the  
4 sidewalk cafe and public space for the Dacha Beer  
5 Garden.

6 Q Okay. And what is the capacity on that?

7 A The capacity is 40.

8 Q And let's go to Exhibit Number 9.

9 A Yes, ma'am.

10 Q And what is that?

11 A This is a copy of a regulatory inspection

12 --

13 Q I'm sorry. Exhibit Number 10. I'm  
14 sorry.

15 A Exhibit Number 10. Exhibit Number 10 is  
16 a copy of the Dacha Beer Garden settlement  
17 agreement.

18 Q And what does it say about seating in  
19 that agreement?

20 A Excuse me one moment.

21 [Pause.]

22 THE WITNESS: That the establishment's

1 maximum seating capacity shall be 100 persons,  
2 including staff.

3 BY MS. SCHMIDT:

4 Q And now, going back to that evening, how  
5 many patrons were seated in the cafe that night,  
6 in the garden that night?

7 A Seated in the garden, approximately 130.

8 Q So, what did Mr. Chekaldin say about the  
9 fact that there were more people than on those  
10 documents?

11 A He basically informed me that the  
12 substantial change documents had been submitted  
13 to ABRA, and he was told by someone at ABRA that,  
14 since the documents were sent in and submitted,  
15 that the establishment could go ahead and operate  
16 under those guidelines.

17 Q And were they approved by ABRA?

18 A No, ma'am.

19 Q And do you know if this is the first time  
20 that ABRA investigators have been to that  
21 establishment for those charges?

22 A No. As of the night that I had went, my

1 understanding was there had been ABRA  
2 investigators to the establishment several other  
3 occasions.

4 Q And now, you were there when they  
5 performed the final inspection before ABRA gave  
6 them the license; is that correct?

7 A Yes, ma'am. I conducted the final  
8 inspection, along with my supervisor.

9 Q And how did the -- what were the  
10 differences between the setup of the  
11 establishment from the final inspection and the  
12 night you went there in April, on April 17th?

13 A Let's see. One moment, ma'am.

14 [Pause.]

15 THE WITNESS: If we can reference Exhibit

16 --

17 MS. SCHMIDT: Well, no -- yeah -- I'll --

18 THE WITNESS: Thirteen.

19 BY MS. SCHMIDT:

20 Q Thirteen. In this report, yes, that?

21 A Yes, ma'am.

22 Q Okay.

1           A     And this report, Exhibit 13, was the  
2     initial layout on September 13th, 2013.  So  
3     basically, you had nine picnic-style tables, two  
4     umbrellas, one bar, and some, I believe it was  
5     two trailers for beer and storage, and some  
6     porta-potties.

7           Q     And can you compare to the pictures taken  
8     on April 17th, 2015?

9           A     Well, let's see.  Exhibit 20 from my  
10    report was taken on the 21st of April.  You'll  
11    see that the bar is quite a bit larger.  There's  
12    an actual group structure in place.  Exhibit 19,  
13    Exhibit 18 show benches that were placed along  
14    the side of the perimeter of the garden.

15                   And Exhibit 17, where the porta-potties  
16    were originally, that area was cleared out when  
17    the bathrooms were added and more seating,  
18    picnic-style seating was placed in the rear.  So  
19    quite a bit of difference.

20          Q     And based on your experience, did these  
21    changes -- could these changes accommodate more  
22    patrons?

1           A     Oh, absolutely.

2           MS. SCHMIDT:  No further questions at  
3 this time.

4           MR. KLINE:  I don't have any questions  
5 for the Witness.

6           CHAIRPERSON MILLER:  Okay.  Board  
7 questions?

8           Mr. Alberti.

9           MR. ALBERTI:  So, Mr. Brashears, I'm  
10 probably going to go over some ground we've gone  
11 over.  So, on the date -- on September 9th --  
12 well, okay.  What was the date of this?  I'm  
13 trying to get the date correct.  I just want to  
14 get that date correct.

15          THE WITNESS:  It was in April.

16          MR. ALBERTI:  April --

17          THE WITNESS:  April 17th, yes, sir.

18          MR. ALBERTI:  All right.  So in April, do  
19 Exhibits 13 through 17 through 19 reflect what  
20 you saw in April of 2015?

21          THE WITNESS:  I'm sorry.  What were those  
22 numbers, sir?

1 MR. ALBERTI: Exhibits 13 through 20. Do  
2 they -- those were taken in September of 2013?

3 THE WITNESS: Oh. Yes, sir.

4 MR. ALBERTI: So, do they reflect what  
5 you saw in April of 2015?

6 THE WITNESS: No, sir.

7 MR. ALBERTI: When was -- okay. Your  
8 observations that led to this charge were made  
9 when?

10 THE WITNESS: I'm sorry, sir?

11 MR. ALBERTI: Your report -- now, let me  
12 see. Okay. So, you made your determination on  
13 April 17th, 2013?

14 THE WITNESS: Yes, sir.

15 MR. ALBERTI: Okay. And these pictures  
16 were taken in September 2013?

17 THE WITNESS: Yes, sir.

18 MR. ALBERTI: So what was the difference  
19 on 2015, in 2015, in what you observed in terms  
20 of the physical layout? I'm confused here.

21 THE WITNESS: They had added -- they had  
22 -- the original structure only had nine tables.

1 So in addition to the nine tables, there were the  
2 benches that I spoke of in the exhibits, multiple  
3 benches down the side. And then there were more  
4 picnic-style seating in the back of the  
5 establishment.

6 MR. ALBERTI: So, where is that reflected  
7 in your exhibits?

8 Oh, I see. So, that's reflected on  
9 Exhibits -- 17 is the additional picnic tables in  
10 the rear. What is Exhibit 17 showing you?

11 [Pause.]

12 THE WITNESS: Yes, sir.

13 MR. ALBERTI: Okay. So I'm going to step  
14 back here. So, Exhibit 13, 14, 15, and 16 --  
15 okay, and 15, they show tables in some area,  
16 looks like towards the front of that open area,  
17 right?

18 THE WITNESS: Yes, sir.

19 MR. ALBERTI: Were those tables, was that  
20 the configuration of the tables when you went in  
21 2015, in April of 2015?

22 THE WITNESS: Yes, sir. These tables are

1 the same as the original configuration.

2 MR. ALBERTI: Okay. And then, in 2015,  
3 you observed these additional tables in the rear,  
4 Exhibit 17?

5 THE WITNESS: Yes, sir.

6 MR. ALBERTI: Benches having been placed  
7 towards the rear?

8 THE WITNESS: Down the left side. The  
9 ones that are visible in Exhibit --

10 [Cross-talk.]

11 MR. ALBERTI: Is that the east or the  
12 west side?

13 THE WITNESS: Facing the -- facing the  
14 establishment from the front, they were down the  
15 left-hand side, sir.

16 MR. ALBERTI: Okay. And Exhibit 19, is  
17 that still the same?

18 THE WITNESS: That's -- Exhibit 18 and 19  
19 are those benches that were added.

20 MR. ALBERTI: Okay. Was this open area  
21 the only area that was in operation?

22 THE WITNESS: For patron use, yes, sir.

1           MR. ALBERTI: Okay. And to the best of  
2 your knowledge, is that the only area that was  
3 licensed on that date?

4           THE WITNESS: I believe the kitchen in  
5 the facility next door was licensed under the C  
6 of O that the establishment was operating under,  
7 the kitchen and the bathrooms.

8           MR. ALBERTI: Okay. Okay. So, when you  
9 arrived, how many of these tables were occupied?

10          THE WITNESS: All of the tables, sir.

11          MR. ALBERTI: What would your estimate,  
12 without the clicker, what would your estimate be  
13 of how many people were seated?

14          THE WITNESS: Seated?

15          MR. ALBERTI: Yeah.

16          THE WITNESS: We -- I went -- basically,  
17 I went down one side. Investigator Peru went  
18 down the other, all the way through the  
19 establishment. And when we got to the rear, we  
20 compared head counts, and we both got  
21 approximately, I want to say, 130 to 135,  
22 depending on, you know, people getting up and

1 sitting down.

2 MR. ALBERTI: Okay. Were there people  
3 standing?

4 THE WITNESS: There were a lot of people  
5 standing, yes, sir.

6 MR. ALBERTI: What's "a lot" mean? Give  
7 me some sort of figure or some description of --  
8 well, first of all, all right. A lot of people  
9 standing. So I see a lot of open area. How  
10 densely occupied was that open area between the  
11 tables?

12 Let's look at Exhibit 13, for example.  
13 There's a lot of area to the left and in -- to  
14 the left of those tables and in the aisle in  
15 between those tables. How densely was that  
16 occupied?

17 [Pause.]

18 THE WITNESS: Oh, Exhibit 13, sir?

19 MR. ALBERTI: Yeah.

20 THE WITNESS: Was from the original file  
21 on inspection.

22 MR. ALBERTI: I understand. But you said

1 the configuration was that -- that was the  
2 configuration of the tables on the day in April  
3 2015. I think that's what you said to me.

4 THE WITNESS: Yes, sir. Yes, sir.

5 MR. ALBERTI: All right. So that's what  
6 the area looked like without people?

7 THE WITNESS: Yes, sir.

8 MR. ALBERTI: How densely occupied was  
9 the area outside of those tables?

10 THE WITNESS: It was very full, sir.  
11 There's a good description in Exhibit 4, Exhibit  
12 2 and 4, yes, sir.

13 MR. ALBERTI: Okay. Can you describe  
14 that for me in your words?

15 THE WITNESS: Basically, a wall of  
16 people, sir. We -- instead of trying to push our  
17 way through the crowd, you know, the owner  
18 basically directed us to go through the building  
19 next door to go to the rear of the establishment.

20 MR. ALBERTI: So, could you have walked  
21 through that crowd without excusing yourself  
22 every step of the way?

1 THE WITNESS: No, sir.

2 MR. ALBERTI: Okay. I have no further  
3 questions. Thank you.

4 CHAIRPERSON MILLER: Yes. Mr. Short.

5 MR. SHORT: Good afternoon. I'm looking  
6 at the charge in -- in looking at our  
7 regulations, under 25-762, "Substantial changes  
8 in operation must be approved." Mr. Brashears,  
9 in your investigation of this incident, were  
10 there any approved documents there for  
11 substantial change?

12 THE WITNESS: There was none in ABRA  
13 records that I found. There was a certificate of  
14 occupancy that the establishment had recently  
15 gotten. From my understanding, some of those  
16 documents may have been submitted to ABRA, but at  
17 the time of my investigation, none of them were  
18 approved.

19 MR. SHORT: Okay. So, again, reading the  
20 code book, it says "must be approved." Did you  
21 explain that to this establishment?

22 THE WITNESS: Yes, sir.

1 MR. SHORT: And what was their reply?

2 THE WITNESS: The initial reply, I was  
3 explaining the occupancy. And the owner  
4 basically stated that he felt and was basically  
5 instructed that since he had turned in all of the  
6 documents, that the establishment could operate.

7 I advised him that it's a good idea to  
8 have a knowledgeable attorney when doing issues  
9 and things with ABRA. However, the Licensee is  
10 ultimately responsible for the license and what  
11 goes on, to which point I was told, "Well, if  
12 you've got to cite me, cite me."

13 And my response to that was, "No, you  
14 don't understand. It's not going to be a matter  
15 of a citation. It's going to be a matter of an  
16 investigation and a case against the  
17 establishment. And the situation we have would  
18 constitute a primary-tier violation."

19 At which point, he excused himself to  
20 call his lawyer.

21 MR. SHORT: Did you have any more  
22 conversation after he talked to his lawyer, or

1 was that it for that evening?

2 THE WITNESS: Well, I asked him what he  
3 intended to do to bring the occupancy level to  
4 the appropriate number. And he basically stated  
5 that they wouldn't allow anyone else in and that,  
6 as the patrons left, the number would come down.

7 And he stated, you know, "They're  
8 obviously paid for their drinks. I can't kick  
9 them out."

10 MR. SHORT: Although he knew and he was  
11 told by you he was in violation, he did nothing  
12 to abate the situation right then and there?

13 THE WITNESS: Not at the moment, no, sir.

14 MR. SHORT: That's all I have at this  
15 time, Madam Chair.

16 CHAIRPERSON MILLER: Okay. Others?

17 Mr. Jones.

18 MR. JONES: Thank you, Madam Chair.

19 Investigator, I just wanted to make sure  
20 I was clear in my understanding, because I think  
21 I got a little confused with some of the  
22 questions that were asked.

1           The exhibits that are starting at Exhibit  
2 13 and going through and including Exhibit 16 --  
3 yeah, 16. Were those part of the final walk-  
4 through? Again, Exhibit 13, 14, 15, and 16 dated  
5 9-13-2013.

6           THE WITNESS: Yes. Those were -- those  
7 were photographs from the original final  
8 inspection.

9           MR. JONES: Okay. And what does it mean  
10 to have a final inspection? What is that  
11 intended to codify? What is it intended to  
12 represent?

13           THE WITNESS: Basically, that's where,  
14 you know, myself as an ABRA investigator will  
15 meet with the ownership of the establishment and  
16 basically get them off, started off on the right  
17 foot. Make sure they know the placement of the  
18 ABC License, the warning signs. Make sure they  
19 have the appropriate window lettering, and  
20 basically document the layout.

21           And, you know, we explain to them why we  
22 document the layout, and the need to take any

1 changes and bring them before ABRA, and then  
2 answer any questions the establishment has.

3 MR. JONES: Okay. And let me just make  
4 sure I'm clear. Were you the investigator that  
5 performed or participated in the final  
6 inspection?

7 THE WITNESS: I was, sir.

8 MR. JONES: You were. So you can speak  
9 firsthand to the fact that you directly  
10 communicated that information, that being the  
11 intent of why you documented the floor plan and  
12 layout to the owner or Licensee?

13 THE WITNESS: Yes, sir. And my  
14 supervisor was there as well.

15 MR. JONES: Okay. So, just to make sure  
16 I'm clear, did you communicate to the owner or  
17 Licensee that the layout as it was seen or  
18 documented here in Exhibits 13, et cetera, that I  
19 just went through, was the expectation of you as  
20 the investigator as to the operational layout  
21 that you would expect to see, going forward?

22 THE WITNESS: Yes, sir.

1           MR. JONES: Okay. Did the owner or  
2 Licensee acknowledge understanding and  
3 comprehension of said guidance?

4           THE WITNESS: Yes, they did.

5           MR. JONES: Okay. So, looking further  
6 down the line at Exhibit 17 -- excuse me,  
7 Exhibits 17, 18, 19, and 20. Let's start with  
8 Exhibit 17.

9           THE WITNESS: Yes, sir.

10          MR. JONES: This is taken on, according  
11 to my notes here, April 21st, 2015.

12          THE WITNESS: That's correct, sir.

13          MR. JONES: Okay. What's the relevance  
14 of that date in concert with the reason why we're  
15 here today?

16          THE WITNESS: Well, basically, I could  
17 see -- well, it was very difficult to -- I wanted  
18 to capture a photo of the actual seating  
19 arrangement. The night in question, the 17th  
20 when I was there, it was very crowded and I  
21 wanted to get clear photos of the things that  
22 were added.

1           So, basically, I came back on my very  
2 next day shift and took the photographs that you  
3 see in Exhibit 17 when the establishment was  
4 closed.

5           MR. JONES: Okay. So, just to be clear  
6 from my optic, on the 21st you went back to the  
7 establishment to take pictures of the layout that  
8 you observed on the 17th?

9           THE WITNESS: Yes, sir.

10          MR. JONES: Was there any delta, any  
11 difference in the nature of the layout that you  
12 observed on the 17th --

13          THE WITNESS: No, sir.

14          MR. JONES: -- and the pictures here  
15 represented on the date of the 21st?

16          THE WITNESS: No, sir.

17          MR. JONES: Okay. So, based on your  
18 testimony here today, these pictures represent  
19 what you physically observed on the 17th, the  
20 night in question, correct?

21          THE WITNESS: That's correct, sir.

22          MR. JONES: All right. Exhibit 17, can

1 you confirm for me what is it that I am looking  
2 at and why is this relevant? I think you spoke  
3 to it earlier, but I want to make sure I'm clear  
4 in terms of how that's tied to any of the  
5 previous exhibits from September 13th, 2013.

6 THE WITNESS: Well, the exhibits 17 shows  
7 the picnic-style tables that were added since the  
8 final inspection.

9 MR. JONES: Okay.

10 THE WITNESS: And if you look at Exhibit  
11 16 --

12 MR. JONES: Yes, sir.

13 THE WITNESS: That is roughly the area  
14 that these tables were in.

15 MR. JONES: Got it.

16 THE WITNESS: It was previously occupied  
17 by some potted bushes and the porta-potties at  
18 the back of the establishment.

19 MR. JONES: Okay. And is it safe to say,  
20 it also looks like there was a wall or some type  
21 of fencing with some lights added, as well? Or  
22 is that just a optical illusion from my

1     standpoint?

2                   THE WITNESS:   My understanding is that  
3     the wall and the roof structure contain some  
4     noise abatement type of material that was put in  
5     to keep down some of the noise.

6                   MR. JONES:   Fair enough.   But from the  
7     Exhibit 16 versus Exhibit 17, this is the  
8     essentially the same area that we're looking at?

9                   THE WITNESS:   Yes, sir.

10                  MR. JONES:   Okay.   And if I'm looking at  
11     this -- correct my observations if they are  
12     incorrect -- it looks as if in Exhibit 16 there  
13     are several potted plants, as well as at least  
14     one porta-potty, as well as at least a walkway to  
15     the porta-potties that all appear to be not in  
16     the picture reflected on Exhibit 17.

17                  THE WITNESS:   That's correct, sir.

18                  MR. JONES:   Okay.   And in its stead, we  
19     have at least three additional picnic-style  
20     tables.

21                  THE WITNESS:   Yes, sir.

22                  MR. JONES:   Okay.   Do you have an

1 assessment or feel for approximately how many  
2 individuals could sit at each of these picnic-  
3 style tables?

4 THE WITNESS: You know --

5 MR. JONES: Sorry. Scratch that  
6 question.

7 When you observed the patrons in the  
8 establishment on the 17th, do you have a feel for  
9 the maximum number of people that you saw seated  
10 at these picnic-style benches?

11 THE WITNESS: Well, between these tables,  
12 the tables in the front during their original  
13 configuration, and the benches that were added, I  
14 saw roughly 130 people.

15 MR. JONES: I'm sorry. Let me clarify my  
16 question. At a single bench, at a single bench,  
17 what was the maximum number of individuals that  
18 you saw at any single bench?

19 THE WITNESS: Depending on the size of  
20 the individual, probably five.

21 MR. JONES: Five? Okay. Let's see. All  
22 right. Take me to Exhibit 18 really quickly.

1 THE WITNESS: Yes, sir.

2 MR. JONES: I just want to confirm that  
3 these are the benches that you're saying were  
4 added that were not present when you did your  
5 final walkthrough on the 13th.

6 THE WITNESS: That's correct, sir.

7 MR. JONES: Okay. And there's another  
8 set of benches in Exhibit 19.

9 THE WITNESS: Yes, sir.

10 MR. JONES: Are these the totality of the  
11 benches that were added on the outside perimeter  
12 of -- well, excuse me, on the inside perimeter of  
13 the area in question?

14 THE WITNESS: Yes, sir.

15 MR. JONES: Okay. So we're looking at --  
16 I'm counting the number of benches in 18. There  
17 look to be three. Does that comport with your  
18 assessment, as well?

19 [Pause.]

20 THE WITNESS: Yes, sir.

21 MR. JONES: Okay. And likewise in  
22 Exhibit 19, there's an additional three that were

1 added?

2 THE WITNESS: Yes, sir.

3 MR. JONES: Okay. Lastly, let's jump to  
4 Exhibit 20. So, I see that there is a roof  
5 structure there that's a bit more ornate and  
6 looks a little bit more structurally sound than  
7 the umbrellas. However, is there any change in  
8 the size of the bar area itself?

9 THE WITNESS: Yes, sir.

10 MR. JONES: Okay. Can you describe to me  
11 the nature of the changes you observed?

12 THE WITNESS: Yes, sir. Let me get the  
13 exhibit.

14 MR. JONES: And for comparative purposes,  
15 I am looking at Exhibit 15 as it is compared to  
16 Exhibit 20.

17 [Pause.]

18 THE WITNESS: Yes, sir. Exhibit 15 was  
19 the extent of the bar during the final  
20 inspection.

21 MR. JONES: Okay.

22 THE WITNESS: And as you can see in

1 Exhibit 20, the bar now goes across the front.  
2 And what you don't see in the photo, the bar goes  
3 down the side and makes like a large U. The bar  
4 is at least twice the size of the original.

5 MR. JONES: You said it makes like a  
6 large U?

7 THE WITNESS: Yes, sir.

8 MR. JONES: Okay. So, if I'm looking at  
9 Exhibit 15, if I could direct your attention to  
10 where there appear to be potted plants.

11 THE WITNESS: Yes, sir.

12 MR. JONES: So, based on earlier  
13 testimony, I'm going to make the extrapolation  
14 that those potted plants were removed?

15 THE WITNESS: Yes, sir.

16 MR. JONES: Okay. So, given that, are  
17 you saying that the bar area on the night of the  
18 17th extended to where, if you look at Exhibit  
19 15, you see that piece of the walkway in front of  
20 the potted plants that look like the walkway that  
21 led to the porta-potties?

22 THE WITNESS: Yes, sir.

1 MR. JONES: Does the bar area extend out  
2 to that area?

3 [No audible response.]

4 MR. JONES: Would it be touching or on  
5 top of the walkway?

6 THE WITNESS: The bar seems to have been  
7 extended toward the walkway.

8 MR. JONES: Okay.

9 THE WITNESS: And then, the picnic tables  
10 in Exhibit 17 --

11 MR. JONES: Yes, sir.

12 THE WITNESS: It extends into that area,  
13 not quite, obviously, to them.

14 MR. JONES: Got it. Okay. Understood.

15 THE WITNESS: And then basically goes  
16 across the back the way it is in the front.

17 MR. JONES: Okay. I got it. Thank you  
18 very much.

19 THE WITNESS: So it makes a large U.

20 MR. JONES: Got it. All right. And then  
21 one last thing, did you see, at the bar, were  
22 there patrons seated, or was it standing bar

1 only? On the night of the 17th, did you observe  
2 individuals seated at the bar?

3 THE WITNESS: I don't believe there were  
4 patrons seated at the bar, no, sir.

5 MR. JONES: Okay. All right. Thank you.  
6 I think that's all I have for now, Madam  
7 Chair.

8 CHAIRPERSON MILLER: Okay. Mr. Alberti?

9 MR. ALBERTI: Mr. Brashears, just a  
10 couple of quick questions. So, I don't think we  
11 ever got you to tell us exactly how many  
12 additional benches were added from when you took  
13 the pictures at the final walkthrough.

14 THE WITNESS: I believe it to be a total  
15 of six.

16 MR. ALBERTI: Six? Would those be the  
17 six that I see in Exhibit 20?

18 THE WITNESS: Yes, sir.

19 MR. ALBERTI: Okay. Great.

20 THE WITNESS: But -- I'm sorry, 18 and  
21 19. Sorry.

22 MR. ALBERTI: Right, right. Just a total

1 of six additional benches?

2 THE WITNESS: Yes, sir.

3 MR. ALBERTI: Okay. Now, when you  
4 answered Board Member Jones's question about  
5 number of people per bench, was that -- what did  
6 you mean by "bench"?

7 THE WITNESS: Basically what's depicted  
8 in Exhibit 18 and 19, sir.

9 MR. ALBERTI: All right. So I have an  
10 individual table.

11 THE WITNESS: Yes, sir.

12 MR. ALBERTI: I got the tabletop. What's  
13 the bench?

14 THE WITNESS: Well, there --

15 MR. ALBERTI: How many benches for each  
16 table?

17 THE WITNESS: Basically, each table has  
18 one bench on either side.

19 MR. ALBERTI: Two benches for each table?

20 THE WITNESS: Yes, sir.

21 MR. ALBERTI: Okay. So, your estimate  
22 was -- if I can extrapolate, you were saying

1 there were 10 people at a table?

2 THE WITNESS: Roughly, yes, sir.

3 MR. ALBERTI: Roughly. Okay. All right.

4 How long are these tables? Can you give us an  
5 estimate? I know that's a tough question.

6 THE WITNESS: It would be -- it would be  
7 a rough estimate. Possibly eight feet, ten feet  
8 long.

9 MR. ALBERTI: Okay. Eight to ten feet  
10 long? Thank you.

11 I have no further questions.

12 CHAIRPERSON MILLER: Others?

13 [No audible response.]

14 CHAIRPERSON MILLER: Mr. Brashears.

15 THE WITNESS: Ma'am.

16 CHAIRPERSON MILLER: I just have one  
17 question. So, your exhibits and your testimony  
18 indicate that the final inspection was September  
19 13th, 2013?

20 THE WITNESS: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay. And then,  
22 Exhibit 6, I think, is the issuance of a license,

1 and that states or represents that the license  
2 was issued May 22nd, 2014?

3 THE WITNESS: Yes, sir.

4 CHAIRPERSON MILLER: So that's a period  
5 of about eight months in between final inspection  
6 and issuance. And I'm wondering if that's  
7 common, to your knowledge, or not, to have that  
8 large a period of time between final inspection  
9 and issuance?

10 THE WITNESS: You know, I'm not sure if  
11 this is the -- this is basically the license that  
12 was -- oh, this was the license that was in ABRA  
13 records.

14 CHAIRPERSON MILLER: Okay.

15 THE WITNESS: I do recall at the final  
16 inspection annotating on the final inspection  
17 form that the occupancy at that time on the  
18 prescribed license was 126.

19 [Pause.]

20 CHAIRPERSON MILLER: Okay. So I just was  
21 wondering if you could explain that. Is that a  
22 normal period of time, or does this mean that

1 there were earlier licenses issued?

2 THE WITNESS: There may have been earlier  
3 license issues, ma'am.

4 CHAIRPERSON MILLER: Okay. Okay. Thank  
5 you. But this is consistent with what you saw at  
6 the final inspection as to the number?

7 THE WITNESS: Yes, ma'am.

8 CHAIRPERSON MILLER: Okay. All right.  
9 Any other questions?

10 MR. SHORT: May I ask one?

11 CHAIRPERSON MILLER: Yes, Mr. Short.

12 MR. SHORT: Inspector Brashears, Exhibit  
13 Number 1.

14 [Pause.]

15 THE WITNESS: Yes, sir.

16 MR. SHORT: In looking at this picture, I  
17 can see -- although it's not clear, I can see  
18 here -- I can see people on the corner, under the  
19 street light. I see people next to a white  
20 truck. Were these patrons from the  
21 establishment?

22 THE WITNESS: The individuals standing

1 right next to the fence, it's kind of -- kind of  
2 hard to make out in the photo.

3 MR. SHORT: Um-hm.

4 THE WITNESS: But there's a -- there are  
5 stanchions. There's a pole with basically a sign  
6 on it that's the white square in the middle of  
7 the photo. And there was a line of people in  
8 front of the establishment and some around the  
9 corner.

10 And I think a few of the people in front  
11 may have been waiting for transportation or  
12 coming out to smoke.

13 MR. SHORT: Okay. How many people were  
14 there? Did you take this picture?

15 THE WITNESS: Yes.

16 MR. SHORT: How many people, do you  
17 estimate, were there that -- was this the same  
18 night that you checked on the clicker?

19 THE WITNESS: Yes, sir.

20 MR. SHORT: When you were saying there  
21 were 400-and-odd people?

22 THE WITNESS: Yes, sir. We counted,

1 myself and ABRA Investigator Peru, when we did  
2 our walkthrough, counted approximately 400 people  
3 inside the fenced area of the establishment.

4 MR. SHORT: I know that you're not a  
5 public safety person, and I know you're not a  
6 person who gets paid to count crowds. But do you  
7 have things in regulations of an overcrowding,  
8 correct, in our regulations?

9 THE WITNESS: Yes, sir.

10 MR. SHORT: Would you -- how would you  
11 characterize this crowd? Was it manageable? Was  
12 it overcrowded? Was it --

13 MR. KLINE: Objection on the grounds of  
14 relevance.

15 MR. SHORT: Madam Chair, it's supposed to  
16 be 120 people, correct, according to the C of O.  
17 And then, even with the suggested C of O, a C of  
18 O they were waiting on to be approved, that  
19 number was way below 400. I'm just trying to  
20 establish --

21 CHAIRPERSON MILLER: You want him to  
22 characterize how crowded it was?

1           MR. KLINE: Well, Madam Chair, if I may,  
2 we're not talking about a C of O here. That's  
3 not what's at issue here at all.

4           MR. SHORT: I'm not talking about C of O.  
5 I'm talking about the number of people at Exhibit  
6 Number 1. Exhibit Number 1.

7           MR. KLINE: Well, with all due respect,  
8 Board Member Short, you had said that we have a C  
9 of O of 126. There's no C of O of 126.

10          MR. SHORT: Well, sir, what I guess I'm  
11 trying to say, Madam Chair, is basically this  
12 establishment was not legally -- there was  
13 overcrowding. And I'm trying to find out whether  
14 or not that's a public safety issue for this  
15 Licensee.

16          MR. KLINE: I think that's perhaps for  
17 another hearing or another agency and not for  
18 this show cause, which is whether they're in  
19 violation of what they've been charged with. But  
20 I'll leave that to the board.

21          CHAIRPERSON MILLER: Okay. I think I  
22 want to just step in and clarify, if I could,

1 what I hear a difference between Mr. Kline and  
2 Mr. Short. This number on that they were out of  
3 compliance with, the 126, is ABRA capacity  
4 number, not the certificate of occupancy. And  
5 that's where Mr. Kline was objecting to the  
6 characterization of the certificate of occupancy.

7 MR. SHORT: And I guess what I want to  
8 ask is, was that approved, that number that  
9 you're speaking of, the second number? Was that  
10 an approved number?

11 CHAIRPERSON MILLER: The 126.

12 MR. SHORT: No. The 126 was originally  
13 approved.

14 CHAIRPERSON MILLER: The 400?

15 MR. SHORT: The 400. So if they were  
16 approved for 100 -- and I read at the very  
17 beginning of my questioning, from -- it must be  
18 approved before they can do it. I could ask for  
19 500, but I can't do it until it's approved.

20 MR. ALBERTI: May I just? This might be  
21 helpful. Mr. Short.

22 MR. SHORT: Yes.

1           MR. ALBERTI: You can look to our records  
2 to see what was approved on that day. And that,  
3 you can look at any point in time at  
4 administrative records to see what was approved  
5 on that date.

6           MR. SHORT: Well, I think there's already  
7 been testimony that it was 126. And that's the  
8 point I'm trying to drive --

9           MR. ALBERTI: Right. So if you want to  
10 verify that, you can at any point. Yes.

11          MR. SHORT: Okay. Well, I guess the  
12 question would be -- and I'll rephrase my  
13 question.

14          CHAIRPERSON MILLER: Okay. Please.

15          MR. SHORT: My question would be, were  
16 there over 126 people on the night you took this  
17 picture, Exhibit Number 1?

18          THE WITNESS: Yes, sir. There were three  
19 times that number.

20          MR. SHORT: Thank you, Madam Chair.  
21 Thank you, sir.

22          CHAIRPERSON MILLER: Okay. Thank you.

1 Others?

2 [No audible response.]

3 CHAIRPERSON MILLER: Okay. Questions on  
4 board questions, Mr. Kline.

5 CROSS EXAMINATION

6 BY MR. KLINE:

7 Q Yes. And when you say there were three  
8 times that number, you based that upon the  
9 clicker that you testified to about earlier?

10 A The clicker and the head count that  
11 myself and Investigator Peru did at the  
12 establishment.

13 MR. KLINE: I have no further questions.

14 CHAIRPERSON MILLER: Ms. Schmidt, do you  
15 have any questions?

16 MS. SCHMIDT: No, I don't.

17 CHAIRPERSON MILLER: Okay. Thank you  
18 very much.

19 THE WITNESS: Thank you.

20 Mr. Kline, are you going to do an opening  
21 statement?

22 MR. KLINE: Is the Government resting?

1 MS. SCHMIDT: We're going to rest.

2 CHAIRPERSON MILLER: Okay. Thank you.

3 MR. KLINE: Madam Chair, I am not going  
4 to make an opening statement. I am not going to  
5 make a closing statement. The Applicant will be  
6 filing proposed findings of fact and conclusions  
7 of law. And with that, we would request that the  
8 record be closed.

9 CHAIRPERSON MILLER: Okay. Ms. Schmidt,  
10 would you like to make a closing statement?

11 CLOSING STATEMENT

12 MS. SCHMIDT: Just a very simple one,  
13 that the evidence clearly shows that more than  
14 126 people were at the establishment that  
15 evening, and that more than -- which is more than  
16 the amount on the ABRA certificate license and  
17 also more than the amount on the settlement  
18 agreement.

19 Therefore, the Government has proved that  
20 a substantial -- there was a substantial change  
21 without board approval and that there's a  
22 violation of the settlement agreement.

1           CHAIRPERSON MILLER: Okay. All right.  
2 Then I believe that concludes the case. And Mr.  
3 Kline has stated that the Licensee wishes to file  
4 a proposed findings of facts and conclusions of  
5 law. Does the Government wish to do that as  
6 well?

7           MS. SCHMIDT: I will reserve the right  
8 to.

9           CHAIRPERSON MILLER: Okay. So you don't  
10 waive your right?

11          MS. SCHMIDT: No, I don't waive my right,  
12 but I don't know if I will.

13          CHAIRPERSON MILLER: Okay. So then, the  
14 parties will have 30 days from when they received  
15 the transcript from these proceedings, and that  
16 should be, I believe, within two or three weeks'  
17 time.

18                 And then when the board receives those  
19 proposed findings of fact and conclusions of law,  
20 the board will deliberate in closed session and  
21 issue a decision within 90 days of that date, of  
22 the date of the proposed findings of facts and

1 conclusions of law.

2 And I am just going to have the board  
3 vote on deliberating in closed session.

4 As Chairperson of the Alcoholic Beverage  
5 Control Board for the District of Columbia and in  
6 accordance with Section 405 of the Open Meetings  
7 Amendment Act 2010, I move that the ABC Board  
8 hold a closed meeting for the purpose of seeking  
9 legal advice from our counsel on Case Number 15-  
10 CMP-0022, Dacha Beer Garden, per Section 405B4 of  
11 the Open Meetings Amendment Act of 2010.

12 And deliberating upon this case for the  
13 reasons cited in Section 405B13 of the Open  
14 Meetings Amendment Act of 2010.

15 Is there a second?

16 MR. SHORT: Second.

17 CHAIRPERSON MILLER: Mr. Short has  
18 seconded the motion. I'll now take a roll call  
19 vote on the motion before us now that it has been  
20 seconded.

21 Mr. Alberti?

22 MR. ALBERTI: I agree.

1 CHAIRPERSON MILLER: Mr. Rodriguez?

2 MR. RODRIGUEZ: I agree.

3 CHAIRPERSON MILLER: Mr. Silverstein?

4 MR. SILVERSTEIN: I agree.

5 CHAIRPERSON MILLER: Mr. Short?

6 MR. SHORT: I agree.

7 CHAIRPERSON MILLER: Mr. Jones?

8 MR. JONES: I agree.

9 CHAIRPERSON MILLER: It appears that the  
10 motion has passed by a 6-0-0 vote. I hereby give  
11 notice that the ABC Board will hold this  
12 aforementioned closed meeting in the ABC Board  
13 conference room pursuant to the Open Meetings  
14 Amendment Act of 2010, and will issue a decision  
15 within 90 days from the date that the proposed  
16 findings of facts and conclusions of law are  
17 submitted to the board or any indication, I  
18 guess, if they're not going to be submitted.

19 Okay. That concludes the first Dacha  
20 Beer Garden case.

21 [Whereupon, the above-entitled matter  
22 concluded.]