

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

IN THE MATTER OF:

Cham Restaurant Group t/a
New Town Kitchen and Lounge Protest
1336 U Street, NW Hearing
Retailer CT - ANC-1B
License No. 93095
Case #14-PRO-00055

(Renewal Replacard)

November 12, 2014

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

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

EARL JONES, ABRA Investigator

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

2 (1:44 p.m.)

3 CHAIRPERSON MILLER: Okay. Good
4 afternoon, everyone. I'm going to call Case
5 No. 14-PRO-00055, New Town Kitchen and Lounge
6 located at 1336 U Street, N.W., License No.
7 93095. And this is in ANC-1B and it is a
8 protest with respect to renewal of New Town
9 Kitchen and Lounge's license.

10 Why don't we start with
11 introductions, starting from the Board's
12 right, if you are ready, sir.

13 MR. CHAM: Good afternoon.

14 CHAIRPERSON MILLER: Good
15 afternoon.

16 MR. CHAM: I'm Howsoon Cham, owner
17 of New Town Kitchen and Lounge.

18 CHAIRPERSON MILLER: Okay.

19 MS. JILANI: And I'm Zahra Jilani,
20 Commissioner for ANC-1B12.

21 CHAIRPERSON MILLER: Okay. I'm
22 just looking for your name. I don't -- you

1 are Zahra?

2 MS. JILANI: Jilani.

3 CHAIRPERSON MILLER: Jilani.

4 Okay. Commissioner for ANC-1B12?

5 MS. JILANI: 1B12.

6 CHAIRPERSON MILLER: Okay.

7 MR. RACILLA: Hi, Brian Racilla.

8 I'm one of the protestants and I'll be the

9 spokesperson today for the hearing.

10 MEMBER SILVERSTEIN: Brian, your

11 last name again?

12 MR. RACILLA: Racilla, R-A-C-I-L-

13 L-A.

14 CHAIRPERSON MILLER: You will be

15 the spokesperson for the Group of Five or

16 more?

17 MR. RACILLA: That's correct.

18 CHAIRPERSON MILLER: Not the --

19 and the ANC or just the Group of Five or more?

20 MR. RACILLA: Just for the Group

21 of Five or more.

22 CHAIRPERSON MILLER: Okay.

1 MR. ISASI: I'm William Isasi.
2 I'm also one of the protestants and I was the
3 designated representative during the protest
4 process by the Group of Five.

5 MEMBER SILVERSTEIN: Please speak
6 up.

7 MR. ISASI: Sure. William Isasi.
8 The last name is spelled I-S-A-S-I. I'm also
9 one of the protestants and I was the
10 designated representative during the protest
11 process of the Group of Five or more.

12 CHAIRPERSON MILLER: Okay. But
13 Mr. Racilla will be the spokesperson for the
14 most part. Okay. And?

15 MS. JOHNSON: Good afternoon.
16 Aileen Johnson, A-I-L-E-E-N. I'm one of the
17 protestants and I'm also here as a
18 representative for the SDCA.

19 CHAIRPERSON MILLER: Okay. Yes,
20 sir?

21 MR. NETTER: My name is Brian
22 Netter. I'm also one of the protestants.

1 CHAIRPERSON MILLER: Brian Netter?

2 MR. NETTER: Yes.

3 CHAIRPERSON MILLER: Okay. Got
4 it. Okay. That's it for everybody here
5 participating? Oh, yes?

6 MS. WEED: And Diana Weed, one of
7 the protestants.

8 CHAIRPERSON MILLER: Diana Weed?

9 MS. WEED: Weed.

10 MEMBER RODRIGUEZ: Group of Five.

11 MS. WEED: W-E-E-D.

12 CHAIRPERSON MILLER: Okay. Just
13 for curiosity, how many residents are in the
14 Group of Five or more?

15 MR. RACILLA: There were eight.

16 CHAIRPERSON MILLER: Okay. Okay.
17 All right. Good. All right. I just want to
18 cover some preliminary issues I have. Based
19 on your PIFs, is it correct that the basic
20 issue here is noise and possibly litter?

21 MR. RACILLA: That's correct.

22 CHAIRPERSON MILLER: That's it.

1 Okay. So that is what you will be focused on,
2 correct? Okay. And with respect to
3 witnesses, can we just get an idea how many
4 witnesses each of you may have?

5 MR. CHAM: Probably just one.

6 CHAIRPERSON MILLER: One. Okay.

7 MR. RACILLA: And we will have the
8 ANC representative and two main witnesses and
9 three witnesses will be testifying to some
10 very limited material --

11 CHAIRPERSON MILLER: Okay. Okay.

12 MR. RACILLA: -- and SDCA.

13 CHAIRPERSON MILLER: And finally,
14 I assume some of you are new to this hearing
15 process, so I'll just go through the logistics
16 and if you have any questions, you can ask me.

17 All right. So we have just gone
18 through the preliminary issues, that's what we
19 do first. And then what next happens to start
20 the case going, the applicant can make an
21 opening statement about the case. It's not
22 evidence. It's just an overview of, you know,

1 their case.

2 And the protestants -- that's five
3 minutes. And the protestants after that can
4 do the same thing. And those are optional,
5 but you have a right to do that.

6 And then our Board witness, who is
7 an ABRA Investigator will be the first witness
8 and he will take the stand and he will give
9 testimony based on the investigative report
10 that you all should have. And then the Board
11 will cross-examine or ask questions on the
12 report and then the applicant and the
13 protestants can do the same.

14 And then we go into the
15 applicant's case. They put on a witness. You
16 can cross-examine after they testify. We can
17 then ask questions as well. And when the
18 applicant is done, then the protestant puts on
19 a case. And then after that you do your
20 closings. That's basically how it goes.

21 If there are documents that you
22 want to put into evidence in the record, you

1 will ask that -- say you want to move them
2 into evidence and we will see if there are
3 objections or not and then take them in or
4 not.

5 And all witnesses are under oath.
6 Okay. Any questions on that? All right. If
7 you have any -- oh, there is one more
8 important point.

9 Five minutes for opening and
10 closing each. Then, and this is a generous
11 amount of time, we hope you don't take it all,
12 but each party has an hour and a half for its
13 witnesses and its crossing of the other
14 party's witnesses. Is that clear? Mr. Jones
15 is keeping track of that, will keep track of
16 that. And if you are concerned about your
17 time as it goes along, because you can't see
18 it, you just say can I have my time, please.

19 Okay. All right. If there aren't
20 any questions, we will start with the
21 applicant's opening statement.

22 MS. JOHNSON: Excuse me, Madam

1 Chair?

2 CHAIRPERSON MILLER: Yes?

3 MS. JOHNSON: May I just raise one
4 preliminary matter?

5 CHAIRPERSON MILLER: Yes.

6 MS. JOHNSON: Thank you very much.

7 Aileen Johnson for the SDCA. I just wanted to
8 raise as a preliminary matter that the Board
9 informed both the protestants and the
10 applicant of the procedures for submitting its
11 PIF. And the protestants complied with the
12 direction of the Board, which was to have the
13 PIF submitted by close of business one week
14 prior.

15 However, the applicant did not and
16 what the Board personnel did was to contact
17 the applicant and extend the time without
18 request to midnight. And you might wonder
19 what prejudice, if any, could adhere to the
20 protestants, but protestants worked very
21 diligently to get the form completed.

22 We may have, in fact, been able to

1 secure the commitment from additional
2 witnesses who could have come to testify,
3 particularly representing SDCA and complaints
4 that SDCA has received, but being unable to
5 actually do that and get it done on time, that
6 was not done.

7 And so we raised with Board
8 personnel the fact that this extension had
9 been given and that we thought it was
10 inappropriate for the Board to not hold both
11 parties to the standard of when to submit a
12 PIF.

13 CHAIRPERSON MILLER: Okay. So it
14 was between close of business and midnight?

15 MS. JOHNSON: Yes. Yes, ma'am.

16 CHAIRPERSON MILLER: And you were
17 prejudiced because if you could have until
18 midnight, you would have secured more
19 witnesses between close of business and
20 midnight?

21 MS. JOHNSON: Yes.

22 CHAIRPERSON MILLER: Okay. Do you

1 have a response?

2 MR. CHAM: Yes. Do you want me to
3 stand up or can I just sit?

4 CHAIRPERSON MILLER: You can sit
5 down. It's actually better because the mike
6 is on the --

7 MR. CHAM: Okay.

8 CHAIRPERSON MILLER: -- table.

9 MR. CHAM: First, I just want to
10 respond to what she just said. I had called
11 Ms. Raines and I have an email that she send
12 not just to me, to everybody, that we have
13 until -- the email says 11:59 p.m. to submit
14 all applications.

15 CHAIRPERSON MILLER: Okay.

16 MR. CHAM: And that's what I was
17 going by.

18 CHAIRPERSON MILLER: Okay. So she
19 was interpreting the rule to mean midnight
20 that day?

21 MR. CHAM: Yes, right here.

22 CHAIRPERSON MILLER: Okay.

1 MR. CHAM: I got email from her.
2 And it was not just sent to me, it was sent to
3 everybody.

4 CHAIRPERSON MILLER: Okay.

5 MR. CHAM: And I call her the next
6 day and she told me as long as you submitted
7 before the end of the day, that's fine. We
8 are not going to sit here and count you to it,
9 just because you submitted two hours late.

10 CHAIRPERSON MILLER: Okay. Okay.
11 I hear you. All right.

12 MR. CHAM: Thank you.

13 CHAIRPERSON MILLER: So were you
14 asking for some relief? No, were you? What's
15 your name again, I'm sorry, ma'am.

16 MEMBER SILVERSTEIN: Aileen
17 Johnson.

18 CHAIRPERSON MILLER: Aileen
19 Johnson. I hear what you said, but are you
20 asking for some relief?

21 MS. JOHNSON: Well, our SDCA
22 representative asks that the PIF be rejected,

1 that was the relief that was requested.

2 CHAIRPERSON MILLER: Okay.

3 MS. JOHNSON: That was --

4 CHAIRPERSON MILLER: Okay.

5 MS. JOHNSON: -- not provided.

6 CHAIRPERSON MILLER: All right.

7 I'm not inclined to do that, unless other
8 Board Members say that they are, because the
9 PIF is useful to everybody and it identifies
10 the witnesses and the issues. And I think
11 that, per our staff, the day meant the end of
12 the day until midnight, I think that's a
13 reasonable interpretation. And I don't see
14 any big prejudice.

15 Okay. So next? Did you have
16 another issue?

17 MR. CHAM: No, that's about it.

18 CHAIRPERSON MILLER: Okay. So you
19 are representing yourself. Is that right?

20 MR. CHAM: Right.

21 CHAIRPERSON MILLER: Okay. So I
22 just want to tell you that the opening

1 statement is not evidence. So whatever you
2 say now is not going to be evidence, but it's
3 argument. Okay. So then I guess you will
4 take the stand later and give your evidence.
5 Okay?

6 MR. CHAM: Okay.

7 CHAIRPERSON MILLER: Just so you
8 understand that.

9 MR. CHAM: Yes, ma'am.

10 CHAIRPERSON MILLER: Okay. Yes?

11 MEMBER SILVERSTEIN: Very briefly,
12 the rules of the game. You each have 90
13 minutes to present your case. That includes
14 the time that you spend questioning other
15 people or the other side or other witnesses.

16 So marshal your time, shepherd
17 your time carefully at the beginning, that you
18 do not run out at the end. The opening
19 statement is basically tell us what you are
20 going to tell us. Don't present evidence, but
21 we are going to show you that so and so is
22 wonderful and so and so is that. And A, B and

1 C are Y and that's what we are going to show
2 you. That's all we need in the opening
3 statement. Thank you very much.

4 CHAIRPERSON MILLER: Okay. Thank
5 you. All right. Sir, we are ready.

6 MR. CHAM: Yes, ma'am. Well, I
7 think we are here because of one issue, which
8 is on the voluntary agreement that was signed
9 by not me, but by the previous owners of the
10 establishment that I am in right now.

11 When I took over the establishment
12 back in July of 2013, I didn't even know what
13 a voluntary agreement was. They just handed
14 it to me. I read it over. And there was some
15 things in there that I figured maybe it wasn't
16 that serious. Some things that I looked at,
17 I'm like okay, maybe it's something we can
18 work out.

19 So I came -- I took over the place
20 in July. I didn't open the business until
21 December.

22 CHAIRPERSON MILLER: Can I

1 interrupt you for a second?

2 MR. CHAM: Sure.

3 CHAIRPERSON MILLER: It sounds
4 like you are -- this is like testimony. You
5 are telling us your case. All this is is you
6 would say I'm going to show you that I didn't
7 know what was in the voluntary agreement or
8 I'm going to show you that -- don't tell us
9 the meat of it right now, because you are
10 going to get your chance to testify under
11 oath.

12 MR. CHAM: Okay.

13 CHAIRPERSON MILLER: Do you
14 understand that?

15 MR. CHAM: Yes, ma'am.

16 CHAIRPERSON MILLER: Okay.

17 MR. CHAM: Well, like I said
18 earlier, I didn't know what was in the
19 voluntary agreement. There is only one issue
20 in the whole voluntary agreement which is the
21 noise issue. And the way the noise -- that I
22 define noise and voluntary agreement is not

1 the same definition that the protestant have
2 as noise definition --

3 CHAIRPERSON MILLER: Okay.

4 MR. CHAM: -- in the voluntary
5 agreement. I met with some of the residents.
6 Some of them I never met, but they said a lot
7 of stuff that I never knew or never heard of.
8 Some of them came to the establishment, maybe
9 just two. We sat down. We talked. We worked
10 things out. We talked on what we were going
11 to do.

12 And I did some things that they
13 wanted me to do or some things I did on my own
14 without anybody telling me, but just because
15 from past experience in other places I have
16 been. For example, I came from Georgetown.
17 I was in Georgetown for nine years. I never
18 had a problem in Georgetown. I have never
19 been in the building or any ABRA place
20 complaining about any issue about my liquor
21 license. And I was in Georgetown for nine
22 years. Never, not even one issue.

1 When I came here, it was like a
2 totally different thing. Everything was
3 wrong. Every issue was wrong. Everything was
4 wrong. Every move I made was wrong.

5 So I got confused and I took a
6 step back for a second, but then it keep
7 coming, but then I couldn't take it any more.
8 I said it was time for me to take my own
9 stand.

10 We started going back and forth, a
11 lot of issues, a lot of problems. Some were
12 resolved, some were not. And at the end of
13 the day, we still in the same position with
14 definition of one word in the voluntary
15 agreement as noise.

16 CHAIRPERSON MILLER: Okay.

17 MR. CHAM: That's it.

18 CHAIRPERSON MILLER: Thank you.

19 MR. CHAM: Thank you.

20 CHAIRPERSON MILLER: Whenever you
21 are ready.

22 MR. RACILLA: Thank you. Our

1 protest against New Town is a straightforward
2 case of the licensee adversely impacting the
3 peace, order and quiet of the residential
4 neighborhood located directly behind it.

5 The record will show that New
6 Town's use of live entertainment, such as DJs
7 and dancing in the glass atrium on its rooftop
8 has led to at least seven different noise
9 violations. At least six from ABRA and one
10 from DCRA over the last eight months spanning
11 from March until just a few weeks ago.

12 This is an extraordinary number of
13 violations. In fact, the record will show
14 that the ABRA Enforcement Division has
15 confirmed that no other establishment along
16 the nine block stretch of U Street between 9th
17 and 17th Streets has confirmed noise
18 violations, yet New Town has at least six of
19 them.

20 Why is this the case? Mr. Cham
21 asserts in his PIF that he is being unfairly
22 targeted because of personal animosity from

1 the protestants and others, going so far as to
2 accuse us of racial harassment and defamation
3 of character.

4 However, Mr. Cham is absolutely
5 mistaken. We have no personal agenda against
6 Mr. Cham and we do not want to see his
7 business fail. We simply don't want to be
8 disturbed in our homes every time New Town has
9 a DJ and dance parties on the roof of his
10 establishment. That's it, nothing more.

11 The Board should ask itself why is
12 New Town the only establishment along a nine
13 block stretch of U Street with ABRA noise
14 violations. The answer is simple. The record
15 will show that the unique architecture of the
16 building does not permit DJs and dance parties
17 on the top or roof space without disturbing
18 the peace, order and quiet of our
19 neighborhood.

20 The property at 1336 U Street is a
21 multi-level townhouse that has an all glass
22 atrium built on top of it with a retractable

1 roof and windows and doors that open on all
2 sides. This glass atrium was originally used
3 as a dining room by Tabaq, the restaurant that
4 occupied the building before New Town moved
5 in.

6 The record will show that this
7 glass atrium cannot be used for dance parties
8 and live entertainment like DJs without
9 disturbing the peace, order and quiet of the
10 Residential Zone located directly behind it.

11 The record will also show that the
12 noise problems are made worse because the
13 glass atrium is the tallest structure on the
14 block. Therefore, there is nothing to block
15 the loud music and bass coming from the roof.

16 In addition to our protestant
17 Group of Five or more residents, we have the
18 full support of the ANC, the Shaw-Dupont
19 Citizens Alliance and we have also received
20 three letters of support from other residents
21 on Wallach Place.

22 The residents have tried to work

1 with Mr. Cham, but he has been uncooperative
2 and combative. He has refused to engage with
3 the residents and refuses to accept that the
4 noise from New Town is a problem, despite a
5 clear history of noise violations.

6 He has not followed the terms of
7 the voluntary agreement already in place for
8 his property and he has openly admitted that
9 he is ignoring parts of the agreement.

10 This record of repeated noise
11 violations and Mr. Cham's refusal to cooperate
12 with the voluntary agreement support all three
13 of the actions requested in the protestants'
14 PIF.

15 First, the record of the noise
16 violations and inability to comply with the
17 current voluntary agreement support a full
18 denial of New Town's liquor license.

19 Second, and in the alternative,
20 the Board should restrict the liquor license
21 for 1336 U Street to prohibit all music and
22 dancing in the glass atrium space on the roof

1 of the building.

2 We feel strongly that this would
3 provide a clear line that will protect the
4 peace, order and quiet of the neighborhood.
5 Clear and ubiquitous lines are needed because
6 of New Town's history of failing to comply
7 with the terms of the existing voluntary
8 agreement.

9 This prohibition is not unduly
10 restrictive because there are other floors in
11 the building where New Town can host DJs and
12 dance parties that are completely enclosed
13 within the building.

14 Third, and at a minimum, the Board
15 must prohibit all music and dancing in the
16 glass atrium after 10:00 p.m. as well as any
17 time a window, door or the ceiling is open in
18 the rooftop glass atrium space.

19 This minimal restriction would
20 also have to make clear that regardless of the
21 hour, music, noise and vibration from 1336 U
22 Street must not be heard in the residential

1 homes in proximity to New Town.

2 However, we respectfully submit
3 that this minimal remedy has much less of a
4 chance of success given New Town's repeated
5 ability -- inability to control the noise
6 emanating from the establishment. The much
7 more preferred remedies with a greater
8 likelihood of protecting the peace, order and
9 quiet of the neighborhood are either a denial
10 of New Town's application or a prohibition of
11 all music and dancing in the glass atrium
12 space at any time. Thank you.

13 CHAIRPERSON MILLER: Thank you.

14 Okay. I just want to clarify that the hour
15 and a half, I mean, you would probably figure
16 this anyway, but it is to be shared among the
17 protestants. It's not each protestant gets an
18 hour and a half. Okay.

19 MR. RACILLA: So the time with the
20 ANC and SDCA all count together?

21 CHAIRPERSON MILLER: Right.

22 MR. RACILLA: Okay.

1 CHAIRPERSON MILLER: Right, right.

2 Okay. So there aren't any other opening
3 remarks, are there? Just to be clear, the
4 remedies that you are seeking, are they the
5 remedies being sought by all the protestants?

6 Okay. You are all in agreement of that.

7 Good. Okay.

8 Okay. Thank you. So Mr. Ghenene,
9 would you like to come up? Are you
10 testifying? No? Oh, who is the --

11 INVESTIGATOR GHENENE:

12 Investigator Jones.

13 CHAIRPERSON MILLER: Mr. Jones.

14 MEMBER ALBERTI: Yes, the guy with
15 the hat.

16 INVESTIGATOR JONES: The cat with
17 the hat.

18 MEMBER JONES: The guy whose name
19 is on the report.

20 CHAIRPERSON MILLER: Oh, right.

21 MEMBER ALBERTI: Oh, him.

22 CHAIRPERSON MILLER: Oh.

1 MEMBER JONES: That guy.

2 CHAIRPERSON MILLER: Where is
3 that? Oh, yes. Good afternoon.

4 INVESTIGATOR JONES: Good
5 afternoon.

6 Whereupon

7 INVESTIGATOR EARL JONES
8 was called as a witness by the ABRA Board, and
9 having been first duly sworn, assumed the
10 witness stand and was examined and testified
11 as follows:

12 INVESTIGATOR JONES: I do.

13 CHAIRPERSON MILLER: Okay. Thank
14 you. So this is your report, Mr. Jones.
15 Would you like to give us the highlights of
16 the report?

17 INVESTIGATOR JONES: Yes, ma'am.

18 CHAIRPERSON MILLER: Okay. Thank
19 you.

20 DIRECT EXAMINATION

21 INVESTIGATOR JONES: I conducted a
22 protest investigation of Cham Restaurant

1 Group, which is located at 1336 U Street,
2 N.W., Washington, D.C. 20009. The
3 establishment at 1336 U Street, N.W., is
4 located towards the west end of the 1300 Block
5 of U Street, N.W., and is bounded by 14th
6 Street, N.W., to the west and 13th Street,
7 N.W., to the east.

8 The renewal application for 1336 U
9 Street was protested by a Group of Five or
10 more in which William Isasi is the designated
11 representative. The Shaw-Dupont Citizens
12 Alliance, led by Elwyn Ferris, and ANC-1B, led
13 by designated representative Commissioner Nick
14 Baumann.

15 There are 60 ABC establishments
16 within a 1,200 foot radius of 1336 U Street,
17 N.W. Out of the 60 establishments, 25 have
18 restaurant licenses with 13 having summer
19 gardens and 13 having sidewalk cafes. 26
20 establishments that operate either -- excuse
21 me.

22 The 26 establishments that have

1 either summer gardens or sidewalk cafes all
2 operate close to or have the exact same
3 operational hours as the establishment located
4 at 1336 U Street.

5 The protest issues are adverse
6 impact on peace, order and quiet of the
7 residents in the area, residential parking and
8 vehicular and pedestrian safety as well as
9 over-concentration.

10 On Tuesday, October 27, 2014, I
11 visited the establishment and spoke to Howsoon
12 Cham, owner of Cham Restaurant Group. Mr.
13 Cham indicated he was aware of the
14 establishment being protested by the area
15 citizens association, his neighbors and ANC-
16 1B.

17 Mr. Cham stated since the grand
18 opening, he has experienced harassment from
19 his neighbors and weekly visits by MPD and
20 ABRA personnel. Mr. Cham stated the constant
21 visits from MPD and ABRA have affected his
22 business and feels that he is being

1 discriminated against.

2 Mr. Cham stated he feels that he
3 is being singled out because of his ethnicity
4 and has tried to abide by the laws and
5 regulations that D.C. and ABRA has set forth.

6 Mr. Cham stated that every time he
7 has attempted to rectify the issues of the
8 residents, he is again being confronted by MPD
9 and ABRA due to his neighbors constantly
10 calling and complaining.

11 Mr. Cham stated he feels that this
12 is an ongoing issue which will not be resolved
13 until they ruin his business and force a
14 closure.

15 On Thursday, October 30, 2014, I
16 met with Mr. William Isasi at the ABRA offices
17 who is a designated representative of the
18 Group of Five or more who is also a resident
19 that lives directly behind the establishment.

20 Mr. Isasi stated he and his
21 neighbors have endured in their homes loud and
22 heavy bass-driven music as well as individuals

1 loudly yelling into a microphone since the
2 establishment opened. Mr. Isasi stated the
3 neighbors have all attempted to work with Mr.
4 Cham on several occasions about the noise
5 issues prior to introducing any Government
6 Agency into the situation.

7 Mr. Isasi stated the majority of
8 the encounters with Mr. Cham had been
9 unproductive and sometimes rude. Mr. Isasi
10 stated a mediation session was held between
11 residents and an ABRA official to attempt to
12 deal with the ongoing noise issues with very
13 little movement towards a positive resolution.

14 Mr. Isasi stated that Mr. Cham had
15 been given two notices to cure, one during a
16 mediation, which he refused to take, and one
17 sent to him by certified mail in which he
18 stated he never received.

19 Mr. Isasi stated none of the
20 neighbors wish to have the establishment
21 close. However, they would like to come to an
22 agreement with reference to the

1 establishment's entertainment options and
2 performance locations.

3 After attempting to make contact
4 with the Commissioners of ANC-1B and Mr.
5 Ferris, designated representative of the Shaw-
6 Dupont Citizens Alliance, Inc., I received no
7 response from either group. The establishment
8 at 1336 U Street, N.W., was monitored by ABRA
9 personnel a total of nine times from October
10 5th to November 2, 2014 with no violations
11 found.

12 I monitored 1336 U Street, N.W.,
13 on three occasions and observed little issue
14 with loud noise or residential parking and
15 vehicular and pedestrian safety. There was no
16 excessive over-concentration during these
17 three monitoring periods.

18 And finally, I obtained the calls
19 for service from MPD for this location from
20 October 1, 2013 through October 1, 2014 in
21 which 39 calls for service were attributed to
22 1336 U Street, with two being ABRA-related and

1 no violations found.

2 ABRA's noise complaint log
3 recorded 57 complaints from January 1, 2014
4 through October 3, 2014, which one complaint
5 was logged within the protest period, but was
6 not substantiated. Thank you.

7 CHAIRPERSON MILLER: Okay. Thank
8 you. Board questions? Yes, Mr. Short?

9 MEMBER SHORT: Investigator, good
10 afternoon.

11 INVESTIGATOR JONES: Good
12 afternoon, sir.

13 MEMBER SHORT: Again, you are
14 saying you never observed any noise complaints
15 or any noise when you were there?

16 INVESTIGATOR JONES: During the
17 monitoring period, during the protest period,
18 no, sir.

19 MEMBER SHORT: And that would have
20 been from?

21 INVESTIGATOR JONES: The beginning
22 of October and I was, I mean, myself, gone for

1 two week throughout that period.

2 MEMBER SHORT: Okay.

3 INVESTIGATOR JONES: Doing a
4 medical situation. So the establishment
5 should have been monitored during that period
6 as well and there were no observations during
7 that period.

8 MEMBER SHORT: Okay. Did the
9 Noise Task Force --

10 INVESTIGATOR JONES: Yes, sir.

11 MEMBER SHORT: -- visit?

12 INVESTIGATOR JONES: Yes, sir.

13 MEMBER SHORT: What did they find?

14 INVESTIGATOR JONES: Again, there
15 were no violations.

16 MEMBER SHORT: No violations?

17 INVESTIGATOR JONES: No, sir.

18 MEMBER SHORT: Thank you. That's
19 all I have, Madam Chair.

20 CHAIRPERSON MILLER: Others? Mr.
21 Jones?

22 INVESTIGATOR JONES: Yes, ma'am?

1 MEMBER JONES: Thank you, Madam
2 Chair. Investigator Jones?

3 INVESTIGATOR JONES: Yes, sir.

4 MEMBER JONES: Just out of
5 curiosity, related to the noise being heard
6 inside of a residential establishment, was
7 there ever requests made by any of the
8 protestants for an Investigator to come into
9 their establishment to see if they could
10 substantiate a noise violation as per those
11 requirements?

12 INVESTIGATOR JONES: As far as I
13 am aware of, not during the protest period,
14 but prior to, yes.

15 MEMBER JONES: Prior to?

16 INVESTIGATOR JONES: Yes.

17 MEMBER JONES: Prior to that time,
18 was that ever substantiated that there was a
19 noise violation as per those requirements?

20 INVESTIGATOR JONES: Yes, sir.

21 MEMBER JONES: Okay. And how many
22 times was that? I apologize if you iterated

1 that, but I just want to make sure I'm clear
2 on it.

3 INVESTIGATOR JONES: I want to say
4 somewhere in the ballpark of 4 to 5.

5 MEMBER JONES: 4 to 5 times?

6 INVESTIGATOR JONES: Yes, sir.
7 Yes, sir.

8 MEMBER JONES: And do you have any
9 idea over what period? Is this from the time
10 that the establishment opened to the time of
11 the Protest Hearing?

12 INVESTIGATOR JONES: Yes, sir.

13 MEMBER JONES: Okay. Thank you.

14 INVESTIGATOR JONES: Yes.

15 MEMBER JONES: Thank you, Madam
16 Chair.

17 CHAIRPERSON MILLER: Others?

18 MEMBER ALBERTI: Yes.

19 CHAIRPERSON MILLER: Okay. Mr.
20 Alberti?

21 MEMBER ALBERTI: Hi, Investigator
22 Jones. Thank you for your report.

1 COURT REPORTER: Mr. Alberti,
2 could you turn your mike on?

3 MEMBER ALBERTI: Sure.

4 Investigator Jones, thank you for your report.

5 INVESTIGATOR JONES: Yes, sir.

6 MEMBER ALBERTI: So have you been
7 to the rooftop?

8 INVESTIGATOR JONES: Yes, sir.

9 MEMBER ALBERTI: Okay. So you
10 have examined it?

11 INVESTIGATOR JONES: Yes, sir.

12 MEMBER ALBERTI: And it is as
13 depicted in one of these pictures, a
14 completely glass-enclosed structure?

15 INVESTIGATOR JONES: Yes, sir.

16 MEMBER ALBERTI: Now, when it says
17 retractable, what's that? Do you know what
18 that means?

19 INVESTIGATOR JONES: That means --

20 MEMBER ALBERTI: Go ahead.

21 INVESTIGATOR JONES: -- that the
22 rooftop to the glass atrium slides open. So

1 the total roof portion of it opens up.

2 MEMBER ALBERTI: Okay. So how
3 much of this building does that rooftop
4 occupy?

5 INVESTIGATOR JONES: The entire
6 top of the building.

7 MEMBER ALBERTI: So the entire top
8 of the building --

9 INVESTIGATOR JONES: Yes, sir.

10 MEMBER ALBERTI: -- from front to
11 back. And -- okay. I'm trying to find the
12 picture, because it's hard for me to get a
13 sense of how that opens. Where is that
14 picture? You did have a picture here of the
15 rooftop.

16 INVESTIGATOR JONES: Yes. I had a
17 couple of pictures, sir.

18 MEMBER ALBERTI: Yes. Exhibit 32
19 is what I'm looking at.

20 CHAIRPERSON MILLER: Exhibit 32.

21 MEMBER ALBERTI: So does it slide?

22 INVESTIGATOR JONES: Yes, sir.

1 MEMBER ALBERTI: Front to back?

2 INVESTIGATOR JONES: Yes, sir.

3 MEMBER ALBERTI: So when it's
4 exposed, how much of the rooftop is exposed?
5 The entire section, the entire portion?

6 INVESTIGATOR JONES: I can't
7 answer that. I have seen it open maybe twice.
8 And to me I didn't see the entire roof open.
9 It was like the middle section of it that was
10 fully open.

11 MEMBER ALBERTI: Okay. So the
12 middle section?

13 INVESTIGATOR JONES: Yes, sir.

14 MEMBER ALBERTI: Okay.

15 INVESTIGATOR JONES: I don't know
16 if it opens up any further than that, but
17 that's what I observed when I was there.

18 MEMBER ALBERTI: Do you know if
19 the sides open at all?

20 INVESTIGATOR JONES: There are
21 side windows that do open.

22 MEMBER ALBERTI: Okay. Okay. And

1 how far would you say this is from the rear of
2 that property itself? The property -- from
3 the rear of the property of -- on which this
4 building exists.

5 INVESTIGATOR JONES: To what, sir?

6 MEMBER ALBERTI: To the rear of
7 that property. To the alley.

8 INVESTIGATOR JONES: To the
9 alleyway?

10 MEMBER ALBERTI: Yes.

11 INVESTIGATOR JONES: Oh, maybe 2
12 feet.

13 MEMBER ALBERTI: There is only 2
14 feet of sort of --

15 INVESTIGATOR JONES: Yes, the
16 alleyway is directly behind the establishment.

17 MEMBER ALBERTI: Right. And the
18 building extends to within 2 feet of the
19 alley?

20 INVESTIGATOR JONES: Yes. It --
21 well, the property line of it. So where you
22 have where they have the dumpsters, it goes to

1 the alleyway. To the actual cobblestone of
2 the alleyway.

3 MEMBER ALBERTI: So from the
4 alleyway to the building itself is just how
5 many feet?

6 INVESTIGATOR JONES: Okay. From
7 that portion, it's probably 10 to 12 feet.

8 MEMBER ALBERTI: Okay. Very good.
9 And is this the tallest structure there on
10 that block?

11 INVESTIGATOR JONES: I'm sorry?

12 MEMBER ALBERTI: Is this the
13 tallest structure on that block?

14 INVESTIGATOR JONES: Yes. Not by
15 much, but yes.

16 MEMBER ALBERTI: Okay. Thank you.
17 No further questions.

18 INVESTIGATOR JONES: Yes, sir.

19 CHAIRPERSON MILLER: Okay.
20 Others? Mr. Jones?

21 INVESTIGATOR JONES: Yes, ma'am.

22 CHAIRPERSON MILLER: Do you have

1 Exhibit 32?

2 INVESTIGATOR JONES: I don't have
3 any of the exhibits, ma'am.

4 CHAIRPERSON MILLER: Oh.

5 MEMBER RODRIGUEZ: You can use
6 mine.

7 CHAIRPERSON MILLER: Can we use
8 it? Yes.

9 MEMBER ALBERTI: I'll make sure
10 Mr. Jones has a copy.

11 CHAIRPERSON MILLER: Actually, Mr.
12 Alberti --

13 INVESTIGATOR JONES: Thank you,
14 sir.

15 MEMBER ALBERTI: Thank you.

16 INVESTIGATOR JONES: Thank you.
17 Yes, ma'am.

18 CHAIRPERSON MILLER: Okay. I
19 think this is a really good picture for these
20 purposes. Is this the area where the noise is
21 causing the most problems?

22 INVESTIGATOR JONES: Yes, ma'am.

1 This is the area that faces directly over top
2 of the Group of Five or more.

3 CHAIRPERSON MILLER: Okay. So if
4 we are looking at this photograph and there is
5 a striped couch in the picture --

6 INVESTIGATOR JONES: Yes, ma'am.

7 CHAIRPERSON MILLER: -- are the
8 Group of Five's homes behind that side?

9 INVESTIGATOR JONES: Directly
10 behind that window, yes, ma'am.

11 CHAIRPERSON MILLER: Okay. And
12 then how far behind are they?

13 INVESTIGATOR JONES: From that, I
14 would say from that window, to their garage
15 line would probably be about probably no more
16 than 20 feet. 20 or 25 feet.

17 CHAIRPERSON MILLER: Okay. And on
18 the right hand side of this picture there is
19 a, it looks like, red brick building, red and
20 black or something. Do you see that?

21 INVESTIGATOR JONES: Yes, ma'am.

22 CHAIRPERSON MILLER: Is that a

1 residence or offices? Do you know?

2 INVESTIGATOR JONES: I could not--
3 oh, that's a residential building.

4 CHAIRPERSON MILLER: That is.

5 INVESTIGATOR JONES: As well as
6 there is retail space in that building as
7 well.

8 CHAIRPERSON MILLER: Okay.

9 INVESTIGATOR JONES: So it's a
10 mixed-use.

11 CHAIRPERSON MILLER: Do you know
12 if noise was causing any problems to those
13 residents?

14 INVESTIGATOR JONES: I haven't
15 been called to that area, so I couldn't tell
16 you, ma'am.

17 CHAIRPERSON MILLER: Okay. And
18 did I understand you to say that the four to
19 five times refer to the Noise Task Force
20 finding violations or what was the four to
21 five times violations you were referring to?

22 INVESTIGATOR JONES: I want to say

1 it was probably a mixture. There have been a
2 few times where we have gone out and we have
3 actually found violations and then on my off-
4 shift I'll hear that the other team may have
5 caught a violation on our off-week.

6 CHAIRPERSON MILLER: Okay.

7 INVESTIGATOR JONES: Not Task
8 Force-related.

9 CHAIRPERSON MILLER: So you
10 actually -- did you actually go into some
11 residences and hear the --

12 INVESTIGATOR JONES: Yes, ma'am.

13 CHAIRPERSON MILLER: -- music?

14 INVESTIGATOR JONES: Yes, ma'am.

15 CHAIRPERSON MILLER: Okay. And do
16 you remember what time of the evening that
17 might have been?

18 INVESTIGATOR JONES: I want to say
19 between probably 11:30 and 1:00.

20 CHAIRPERSON MILLER: Okay. How
21 many times was that?

22 INVESTIGATOR JONES: I have done

1 it twice.

2 CHAIRPERSON MILLER: Twice, okay.

3 INVESTIGATOR JONES: In the
4 residents' home.

5 CHAIRPERSON MILLER: And do you
6 remember whether it was a weekend night or a
7 weekday night?

8 INVESTIGATOR JONES: I think it
9 was both.

10 CHAIRPERSON MILLER: Okay.

11 INVESTIGATOR JONES: It was one
12 week and one weekend.

13 CHAIRPERSON MILLER: And do you
14 remember what kind of music or noise you
15 heard?

16 INVESTIGATOR JONES: It was bass
17 line from the music as well as listening to a
18 DJ on the microphone.

19 CHAIRPERSON MILLER: Okay. And
20 was the roof open or closed when you heard the
21 music?

22 INVESTIGATOR JONES: One time the

1 roof line was closed. The other time the rear
2 window on this Exhibit 32 --

3 CHAIRPERSON MILLER: Yes.

4 INVESTIGATOR JONES: -- right
5 behind the couch, that window was open.

6 CHAIRPERSON MILLER: When the roof
7 was closed, the window was open?

8 INVESTIGATOR JONES: Yes, ma'am.

9 CHAIRPERSON MILLER: Okay. Do you
10 know if everything is closed whether the sound
11 can be heard in those residences?

12 INVESTIGATOR JONES: I know that
13 when everything is closed and it's monitored
14 from the alleyway directly behind this window
15 on Exhibit 32 --

16 CHAIRPERSON MILLER: Right.

17 INVESTIGATOR JONES: -- you can --
18 depending on what the level of the music is --

19 CHAIRPERSON MILLER: Right.

20 INVESTIGATOR JONES: -- it does
21 catch most of the noise. However, if there
22 may be a different DJ that night, whatever the

1 case may be and they don't set it at the
2 proper level, you can hear.

3 CHAIRPERSON MILLER: Okay. Do you
4 happen to know what that proper level is?

5 INVESTIGATOR JONES: One night we
6 had gone in and when I say we, I'm talking
7 about the Noise Task Force and I initiated
8 with Mr. Cham to set a noise level at 3.

9 CHAIRPERSON MILLER: Yes, okay.
10 And what happened?

11 INVESTIGATOR JONES: He
12 immediately complied.

13 CHAIRPERSON MILLER: Okay. Do you
14 have any knowledge whether he stayed in
15 compliance with that?

16 INVESTIGATOR JONES: From what I'm
17 understanding, he did, but again, depending
18 on, you know, if there is a different DJ that
19 night, again, I'm not there every night, so I
20 couldn't tell you. But from what I
21 understood, he stayed within that realm.

22 CHAIRPERSON MILLER: Okay. Great.

1 All right. Are there any other Board
2 questions? Mr. Silverstein?

3 MEMBER SILVERSTEIN: On the nights
4 that you went in and found violations, could
5 you describe to me what you heard? Was it
6 beyond the sound, for example, of a normal
7 conversation would disturb? How bad was it
8 when you went into the residents' homes?

9 INVESTIGATOR JONES: Oh, into the
10 residents' homes? No, you can hear yourself
11 speak clearly, but per the agreement that the
12 establishment has, it indicates that if you
13 hear any music or any noise outside of the
14 establishment within the resident's home, then
15 it's deemed a violation.

16 So even if I hear a pitter patter
17 of a bass beat or not, it's a violation.
18 That's the way that is articulated.

19 MEMBER SILVERSTEIN: So what --

20 INVESTIGATOR JONES: So I don't --
21 again, when you asked, I don't -- to me it
22 wasn't egregious, but again, I'm not living

1 there.

2 MEMBER SILVERSTEIN: Sure. Thank
3 you very much.

4 INVESTIGATOR JONES: Yes, sir.
5 Yes, sir.

6 CHAIRPERSON MILLER: Mr. Jones?

7 MEMBER JONES: Just as a follow-up
8 to that just to make sure I'm following. So
9 you're saying it wasn't egregious from a
10 quantifiable standpoint. Did you have an
11 opportunity to have a conversation with an
12 individual when you were in that residence of
13 any type?

14 INVESTIGATOR JONES: Yes, sir.

15 MEMBER JONES: Okay. Did you have
16 to amplify your tone beyond your normal
17 speaking voice in order to either be heard or
18 to hear?

19 INVESTIGATOR JONES: No, sir.

20 MEMBER JONES: No. Okay. Thank
21 you for that. While we are on the exhibits,
22 I had -- this wasn't addressed, so I just want

1 to quickly touch base with it.

2 Do you have the exhibits in front
3 of you, sir?

4 INVESTIGATOR JONES: Yes, sir.

5 MEMBER JONES: There is Exhibit 32
6 and Exhibit 41.

7 INVESTIGATOR JONES: Yes, sir.

8 MEMBER JONES: Are these different
9 ends of the same structure?

10 INVESTIGATOR JONES: 32 is the
11 rooftop atrium that faces the alleyway --

12 MEMBER JONES: Yes.

13 INVESTIGATOR JONES: -- going
14 southbound.

15 MEMBER JONES: Okay.

16 INVESTIGATOR JONES: Let's see,
17 41. Yes, 41 is the top of the -- the atrium
18 area that is facing northbound. So this is
19 the --

20 MEMBER JONES: Towards the street?

21 INVESTIGATOR JONES: -- opposite
22 side. Towards U Street.

1 MEMBER JONES: U Street.

2 INVESTIGATOR JONES: Yes, sir.

3 MEMBER JONES: Okay. All right.

4 And in Exhibit 41 there appears to be a couple
5 of speakers that are set up --

6 INVESTIGATOR JONES: Yes, sir.

7 MEMBER JONES: -- for -- is that
8 typically where the DJ booth would be or DJ
9 area would be?

10 INVESTIGATOR JONES: The DJ booth
11 where you see the furry white structure?

12 MEMBER JONES: Yes, sir.

13 INVESTIGATOR JONES: That's the DJ
14 booth.

15 MEMBER JONES: Okay. But this is
16 typically --

17 INVESTIGATOR JONES: That's
18 where --

19 MEMBER JONES: How many times have
20 you been to the establishment where there was
21 live entertainment?

22 INVESTIGATOR JONES: Every time I

1 have gone.

2 MEMBER JONES: Every time you have
3 gone?

4 INVESTIGATOR JONES: Yes, sir.

5 MEMBER JONES: Okay. And that --
6 is this typically where the DJ is set up when
7 there is live entertainment?

8 INVESTIGATOR JONES: Yes, sir.

9 MEMBER JONES: Okay. So there is
10 no other area that you are aware of that the
11 establishment uses for DJ setup, i.e., a
12 different floor, basement? This is the spot?

13 INVESTIGATOR JONES: No, there are
14 several floors.

15 MEMBER JONES: There are several
16 floors?

17 INVESTIGATOR JONES: Yes, sir.

18 MEMBER JONES: Okay.

19 INVESTIGATOR JONES: Yes, sir.

20 MEMBER JONES: Is there a DJ that
21 is operational -- so is this an establishment
22 that has like a different DJ on each level?

1 INVESTIGATOR JONES: Yes, sir.

2 MEMBER JONES: Like a la Lux or is
3 it a different type of setup?

4 INVESTIGATOR JONES: It's
5 something similar to what you just mentioned.

6 MEMBER JONES: Okay.

7 INVESTIGATOR JONES: Yes, sir.

8 MEMBER JONES: All right. So
9 conceivably, they could not have a DJ on this
10 atrium area and still have live entertainment
11 on the other floors?

12 INVESTIGATOR JONES: Yes, sir.

13 MEMBER JONES: Okay. Thank you.

14 INVESTIGATOR JONES: Yes.

15 MEMBER JONES: Thank you, Madam
16 Chair.

17 CHAIRPERSON MILLER: Okay.

18 Others? I just want to follow-up on Mr.
19 Jones. Exhibit 41.

20 INVESTIGATOR JONES: Yes, ma'am.

21 CHAIRPERSON MILLER: What is that
22 facing?

1 INVESTIGATOR JONES: Okay. This
2 is the front of the atrium area and it is
3 facing U Street.

4 CHAIRPERSON MILLER: Facing U
5 Street.

6 INVESTIGATOR JONES: Yes, ma'am.

7 CHAIRPERSON MILLER: Okay. So the
8 buildings that we see behind it are they --
9 where are they located? To the right there is
10 a building that looks --

11 INVESTIGATOR JONES: That's a
12 residential building that is being currently--
13 they have residents as well as they have units
14 that are up for lease at this point in time,
15 but it is directly across the street, across
16 U Street --

17 CHAIRPERSON MILLER: Okay.

18 INVESTIGATOR JONES: -- from the
19 establishment.

20 CHAIRPERSON MILLER: Okay.

21 INVESTIGATOR JONES: Going
22 northbound.

1 CHAIRPERSON MILLER: The same with
2 the ones to the left? They are across the
3 street as well?

4 INVESTIGATOR JONES: To the left,
5 those are actually up towards V and W Street.
6 So it's -- that shot is actually a block or
7 two up. So that's not -- what you are looking
8 at to the left --

9 CHAIRPERSON MILLER: Right, yes.

10 INVESTIGATOR JONES: -- the brown
11 buildings.

12 CHAIRPERSON MILLER: Right.

13 INVESTIGATOR JONES: That's
14 actually V Street. That's actually 14th and
15 V.

16 CHAIRPERSON MILLER: Okay. So to
17 your knowledge, you haven't gotten complaints
18 from those residences?

19 INVESTIGATOR JONES: No, ma'am.

20 CHAIRPERSON MILLER: All right.

21 And the townhouses that you -- how many
22 townhouses did you go into?

1 INVESTIGATOR JONES: Two.

2 CHAIRPERSON MILLER: How many?

3 INVESTIGATOR JONES: Two.

4 CHAIRPERSON MILLER: Two. Were
5 their bedrooms close to the establishment or
6 do you remember were they on another side?

7 INVESTIGATOR JONES: We actually
8 met in the kitchen area. The kitchen areas
9 face the rear of the establishment.

10 CHAIRPERSON MILLER: Okay. That's
11 true for both?

12 INVESTIGATOR JONES: Yes, ma'am.
13 I want to say yes.

14 CHAIRPERSON MILLER: Okay. All
15 right. Thank you.

16 INVESTIGATOR JONES: You enter the
17 garage. There is an open garage facility for
18 both of them, so there is like a roll-away
19 door or either a wooden door that goes up.

20 CHAIRPERSON MILLER: Okay.

21 INVESTIGATOR JONES: Or that opens
22 up. You enter into like a grassy area where

1 they park their vehicles and you enter into
2 the home.

3 CHAIRPERSON MILLER: Oh, okay.

4 INVESTIGATOR JONES: So that's --
5 it's an open structure.

6 CHAIRPERSON MILLER: Okay.

7 INVESTIGATOR JONES: So you are
8 not walking directly into their home from the
9 alleyway.

10 CHAIRPERSON MILLER: Right.

11 INVESTIGATOR JONES: That's what
12 I'm trying to explain to you.

13 CHAIRPERSON MILLER: Okay. Got
14 it. Okay.

15 INVESTIGATOR JONES: Yes.

16 CHAIRPERSON MILLER: Okay.

17 Anything else? Okay. Thank you.

18 MEMBER ALBERTI: Mr. Jones.

19 CHAIRPERSON MILLER: Mr. Jones?

20 MEMBER JONES: Just really
21 quickly. On Exhibit 42 --

22 INVESTIGATOR JONES: Yes, sir.

1 MEMBER JONES: -- from where would
2 -- did you take this photograph?

3 INVESTIGATOR JONES: Oh, yes, sir.

4 MEMBER JONES: You did?

5 INVESTIGATOR JONES: Yes, sir.

6 MEMBER JONES: All right. From
7 where was this taken?

8 INVESTIGATOR JONES: This was
9 taken actually from the couch area of 39 --
10 was it 39? 32. So Exhibit 32, I was standing
11 directly in front of the couch looking down.

12 MEMBER JONES: Okay. So I see it
13 looks like an orange or maybe a reddish
14 striped couch?

15 INVESTIGATOR JONES: Yes, sir.

16 MEMBER JONES: A coffee table that
17 is beige in front of it?

18 INVESTIGATOR JONES: Yes, sir.

19 MEMBER JONES: Is that the couch
20 to which you are referring?

21 INVESTIGATOR JONES: Yes, sir.

22 MEMBER JONES: Okay. So this is

1 looking down from -- through the glass of the
2 atrium down into the alley and the vantage
3 point is what we are looking at when we are
4 looking at Exhibit 42, correct?

5 INVESTIGATOR JONES: That is
6 correct.

7 MEMBER JONES: All right. These
8 residences, do these residents -- these look
9 like residential homes. Are they?

10 INVESTIGATOR JONES: Yes, sir.

11 MEMBER JONES: Okay. And do these
12 residences -- are you familiar with the
13 individuals that live in these residences?

14 INVESTIGATOR JONES: A couple of
15 them, yes, sir.

16 MEMBER JONES: Okay. Are they
17 part of the protest group by any chance?

18 INVESTIGATOR JONES: Yes, sir.

19 MEMBER JONES: They are?

20 INVESTIGATOR JONES: Yes, sir.

21 MEMBER JONES: All right. Were
22 any of these the homes that you happened to go

1 into when you established and verified the
2 noise violation?

3 INVESTIGATOR JONES: Yes, sir.

4 MEMBER JONES: Okay. Can you
5 specifically point out which house or is that
6 being too specific, at this time?

7 INVESTIGATOR JONES: It was a
8 while ago.

9 MEMBER JONES: Okay.

10 INVESTIGATOR JONES: But it was, I
11 believe, 1341 which is the yellow home.

12 MEMBER JONES: Okay.

13 INVESTIGATOR JONES: And I want to
14 say it was the one next to it, I believe.

15 MEMBER JONES: All right.

16 INVESTIGATOR JONES: Which is 43,
17 I believe.

18 MEMBER JONES: All right. And
19 there is a vehicle that is parked in the back
20 of one of these homes. Is that one of the
21 homes to which you are referring?

22 INVESTIGATOR JONES: I believe so.

1 Yes, sir.

2 MEMBER JONES: Okay. All right.
3 Thank you. I think that's all I have. Thank
4 you, Madam Chair.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. Anybody else? All right. Then we will
7 turn to the applicant. Do you have any
8 questions for our Investigator, based on his
9 testimony and his investigative report.

10 MR. CHAM: Yes.

11 CROSS-EXAMINATION

12 MR. CHAM: What should I start
13 with? I just want to clarify how far is the
14 building away from the protestants' residence
15 in the way of the establishment?

16 INVESTIGATOR JONES: Are you
17 referring to their --

18 MR. CHAM: I think you said
19 something like 20 feet from the building. Is
20 that right?

21 INVESTIGATOR JONES: Yes. And I
22 was referring to the line of where their

1 garage doors are. So are you referring to the
2 garage door area or are you referring to the
3 actual back door?

4 MR. CHAM: To the actual back
5 door.

6 INVESTIGATOR JONES: Oh, to the
7 actual back door, that's I would say probably
8 around 50 feet.

9 MR. CHAM: About 50 feet --

10 INVESTIGATOR JONES: Something
11 like that.

12 MR. CHAM: -- from my
13 establishment?

14 INVESTIGATOR JONES: Yes, sir.

15 MR. CHAM: Thank you.

16 INVESTIGATOR JONES: Yes, sir.

17 MR. CHAM: Now, you mentioned
18 earlier that some times we do open the atrium,
19 which is, of course, just like Mr. Alberti --

20 MEMBER ALBERTI: Mr. Alberti.

21 MR. CHAM: Just like Mr. Alberti
22 asked you earlier, it's the enclosed rooftop,

1 right? That means when it's closed,
2 everything is closed, right?

3 INVESTIGATOR JONES: Yes, sir.

4 MR. CHAM: It's not like Lost
5 Society or Brixton or Nellie's Way. It's
6 never closed, it's always open, right?

7 INVESTIGATOR JONES: Yes, sir.

8 MR. CHAM: Right. Okay. And when
9 it's closed from the rear, from your visits,
10 normally when it's closed and you come anyway,
11 what is it that you hear most of the time in
12 the way of the building? Is it the music or
13 is it the HVAC system in the back of the
14 building, most of the time?

15 INVESTIGATOR JONES: On most of
16 the visits it has been the HVAC systems.

17 MR. CHAM: Okay. So HVAC system
18 is that loud that it could upset maybe if
19 there is a sound as is defined in this
20 voluntary agreement. Is that correct?

21 INVESTIGATOR JONES: That could
22 attribute to the sound, yes, sir.

1 MR. CHAM: Thank you. Thank you.

2 INVESTIGATOR JONES: Yes, it
3 could.

4 MR. CHAM: And you mentioned
5 earlier, I don't know which exhibit is it,
6 sorry, I think there is an exhibit that had
7 the window in the back. Instead there is a
8 back door window that one time during your
9 visit you said it was -- it probably was open.

10 INVESTIGATOR JONES: Yes.

11 MR. CHAM: Okay. Now, that could
12 have been probably -- and that was probably it
13 was hot inside and probably one of the patrons
14 that were in the building might have cracked
15 it open, which could have transferred the
16 noise, couldn't that be true?

17 INVESTIGATOR JONES: Well, yes. I
18 remember when I visited the establishment that
19 night after speaking with one of the
20 protestants. I spoke with you and you did
21 verify that it was a patron and you went and
22 closed the window.

1 MR. CHAM: Thank you. But it's
2 always closed, right, during your visit?

3 INVESTIGATOR JONES: The times
4 that I have visited, the windows have been
5 closed.

6 MR. CHAM: Thank you.

7 INVESTIGATOR JONES: Outside of
8 that time.

9 MR. CHAM: Now, I had the Noise
10 Task Force maybe been here 59 times. I could
11 count maybe even 80 times the Noise Task Force
12 been there. How many violations have the
13 Noise Task Force issued to this establishment,
14 to your knowledge?

15 INVESTIGATOR JONES: Again, from
16 what I reported earlier, I think it is
17 probably four or five times.

18 MR. CHAM: Okay.

19 INVESTIGATOR JONES: It could be
20 more than that. I'm not sure what the Task
21 Force has done.

22 MR. CHAM: All right. Now, sorry,

1 I don't know his name.

2 CHAIRPERSON MILLER: His name?

3 MR. CHAM: Your last name, the
4 gentleman on the end.

5 MEMBER ALBERTI: Jones.

6 CHAIRPERSON MILLER: Mr. Jones.

7 MR. CHAM: Jones, sorry. Mr.
8 Jones asked you earlier about the DJ. What
9 side of the atrium is the DJ booth located?
10 Is it close to the residential area or is it
11 close to the other side of the -- like let's
12 say on the street side of U Street, not on the
13 right hand end close to -- 20 feet away from
14 the protestant's home? To your knowledge,
15 where -- how far would the DJ booth be far
16 away from the residents?

17 INVESTIGATOR JONES: Well, the DJ
18 booth in the atrium up on the rooftop area is
19 located on the U Street side.

20 MR. CHAM: Right. So the DJ is
21 not by -- on the side window of the residents,
22 right?

1 INVESTIGATOR JONES: On the -- no,
2 sir.

3 MR. CHAM: Okay.

4 INVESTIGATOR JONES: No, sir.

5 MR. CHAM: Is there any speakers
6 on the side of the residents?

7 INVESTIGATOR JONES: No, sir.

8 MR. CHAM: Thank you. Now, there
9 are locations where I think maybe it might
10 have been you or ABRA or Noise Task Force
11 where the atrium was closed and I think it was
12 two weekends that we didn't open the atrium.
13 I think it was you or I don't recall, but I
14 know there is two weekends that the atrium was
15 closed and we still had calls. I think that
16 night we had five calls from -- five visits
17 from MPD and about three visits from ABRA and
18 two Noise Task Force came, even though the
19 rooftop was closed.

20 The question is when the rooftop
21 is closed, is it possible to hear sound from
22 the -- when it's closed?

1 INVESTIGATOR JONES: I can't tell
2 you that. I know that the times that I have
3 actually heard noises and the rooftop was
4 closed, it appeared to be from the rooftop.

5 MR. CHAM: Okay.

6 INVESTIGATOR JONES: So I can't
7 tell you if the rooftop was closed.

8 MR. CHAM: So in other words, if
9 the rooftop is closed, there is no possibility
10 that they could hear sound. When we got -- on
11 record, we have calls on those occasions from
12 ABRA Noise.

13 INVESTIGATOR JONES: No, I'm not
14 saying that. I'm saying that the times that
15 I have observed where the rooftop was closed,
16 I have heard noise from the rooftop.

17 MR. CHAM: Yes, okay. Thank you,
18 Madam Chair. That's all I have.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Okay. Protestants?

21 MR. RACILLA: Thank you.

22 CHAIRPERSON MILLER: Okay.

1 MR. RACILLA: I just have a few
2 questions.

3 CHAIRPERSON MILLER: Okay.

4 MEMBER SILVERSTEIN: Make sure
5 your microphone is on.

6 MR. RACILLA: I just wanted to
7 confirm something you had said earlier. I
8 think you said during the protest period
9 starting in October, no Investigator went into
10 the homes of the protestants to listen for
11 noise?

12 INVESTIGATOR JONES: I didn't say
13 that.

14 MEMBER SILVERSTEIN: Mr. Cham, you
15 are on the --

16 MR. CHAM: I'm sorry.

17 MR. RACILLA: Are you aware of any
18 Investigators going into the homes of the
19 protestants to listen for noise during the
20 protest period starting in October?

21 INVESTIGATOR JONES: I have no
22 idea.

1 MR. RACILLA: You testified that
2 you went into New Town to set the noise level
3 at Level 3?

4 INVESTIGATOR JONES: Yes, sir.

5 MR. RACILLA: When did that occur?

6 INVESTIGATOR JONES: I want to say
7 it was either -- I want to say it was in
8 August at some time.

9 MR. RACILLA: Okay. August. But
10 since that time, there has been a noise
11 violation found against New Town. Isn't that
12 correct?

13 INVESTIGATOR JONES: Yes, sir.
14 Yes, sir.

15 MR. RACILLA: Everyone in the
16 protest group uses the room above the kitchen
17 in their home as a bedroom. Isn't that
18 correct?

19 INVESTIGATOR JONES: I don't know,
20 because I didn't visit the bedrooms.

21 CHAIRPERSON MILLER: Excuse me.
22 You need to give one to the applicant for

1 sure.

2 MR. RACILLA: These are copies of
3 some of the investigation reports that are in
4 the record, but we weren't sure about.

5 CHAIRPERSON MILLER: Okay.

6 MR. RACILLA: If anyone wants a
7 copy.

8 CHAIRPERSON MILLER: Okay.

9 COURT REPORTER: Please, use your
10 microphone.

11 MR. RACILLA: Sure.

12 CHAIRPERSON MILLER: I certainly
13 do. Do you want it now? They are
14 investigative reports.

15 MR. ISASI: He said they were
16 copies of the investigative reports from ABRA.

17 INVESTIGATOR JONES: Thank you.

18 MR. RACILLA: So if I can direct
19 your attention to the final report that is in
20 this exhibit, that's Investigation No. 14-CMP-
21 00491, and that's on page 61 of the exhibit?

22 INVESTIGATOR JONES: Okay. Yes,

1 okay. 61.

2 MR. RACILLA: Yes.

3 INVESTIGATOR JONES: Okay, okay.

4 MR. RACILLA: And is this a report
5 that you wrote about the noise violation that
6 you personally found?

7 INVESTIGATOR JONES: Yes, sir.

8 MR. RACILLA: And directing your
9 attention to the final sentence on that first
10 page on page 61, Investigator -- starting with
11 "Investigator Jones exited."

12 CHAIRPERSON MILLER: 00491?

13 INVESTIGATOR JONES: And what are
14 you asking me?

15 MR. RACILLA: So in there you
16 never mentioned that you heard the HVAC noise
17 coming from New Town.

18 INVESTIGATOR JONES: Okay.

19 MR. RACILLA: You only mentioned
20 that you heard the music and the disc jockey.

21 INVESTIGATOR JONES: Okay.

22 MR. RACILLA: So is that correct?

1 INVESTIGATOR JONES: Yes.

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

4 INVESTIGATOR JONES: Okay.

5 CHAIRPERSON MILLER: Oh, did you
6 rest? Did you say you rested?

7 MR. RACILLA: Yes, I said no
8 further questions. Sorry.

9 CHAIRPERSON MILLER: Okay. Okay.
10 Good. Thank you. Okay. I just want to
11 follow-up on one line of questioning. It was
12 about I believe you testified that you heard
13 noise from the rooftop even when it was
14 closed?

15 INVESTIGATOR JONES: Yes, ma'am.

16 CHAIRPERSON MILLER: Okay. Was
17 that on one incident, one instance or more
18 than one?

19 INVESTIGATOR JONES: I want to say
20 that I mean definitely the time that Mr.
21 Racilla is talking about is one of them.

22 CHAIRPERSON MILLER: This report

1 that he just made reference to?

2 INVESTIGATOR JONES: I want to say
3 yes.

4 CHAIRPERSON MILLER: Okay.

5 INVESTIGATOR JONES: And I went
6 and spoke to Mr. Cham about it and he
7 acknowledged it because they immediately told
8 the DJ to get off the microphone. So they
9 knew what was going on at that point.

10 CHAIRPERSON MILLER: So I think
11 this was dated, that this incident in the
12 report happened, in June, right?

13 INVESTIGATOR JONES: I no longer
14 have it, ma'am.

15 CHAIRPERSON MILLER: Oh, all
16 right.

17 INVESTIGATOR JONES: I'm going off
18 of what you are telling me.

19 CHAIRPERSON MILLER: Okay. So I
20 think that's the case. I can double check.
21 And I think you also said though that the
22 noise level was turned to 3 in August or so?

1 INVESTIGATOR JONES: Again, I
2 can't --

3 CHAIRPERSON MILLER: I guess my
4 question is if the noise level is at 3, do you
5 know whether sound can be heard in their
6 residences when the rooftop is closed?

7 INVESTIGATOR JONES: Well, 3 was
8 supposed to be the benchmark. There was a
9 time and forgive me, I don't know the exact
10 date, but there was a time where we had set up
11 a meeting and it was with Mr. Isasi as well as
12 Mr. Racilla. And we entered the establishment
13 and it was in an effort to set that noise
14 level.

15 CHAIRPERSON MILLER: Okay.

16 INVESTIGATOR JONES: And so during
17 that period of time, some things had taken
18 place, but the level was set, at that point,
19 because that's what was deemed as acceptable.

20 CHAIRPERSON MILLER: Okay.

21 INVESTIGATOR JONES: So the 3 was
22 supposed to be good for everybody.

1 CHAIRPERSON MILLER: Okay. But
2 when you say acceptable, I also have heard
3 testimony about how the settlement agreement
4 says, and I don't have it in front of me at
5 all, any noise or something. So did the
6 protestants accept some level of noise or was
7 it just they didn't hear any noise?

8 INVESTIGATOR JONES: Well, that's
9 what that was about.

10 CHAIRPERSON MILLER: Yes.

11 INVESTIGATOR JONES: I mean, it
12 was not that they are try -- not that it was
13 an issue to supersede the settlement
14 agreement.

15 CHAIRPERSON MILLER: Right.

16 INVESTIGATOR JONES: But it was
17 not that it was an issue to supersede the
18 settlement agreement.

19 CHAIRPERSON MILLER: Right.

20 INVESTIGATOR JONES: But it was a
21 situation where, okay, let's try to meet in
22 the middle.

1 CHAIRPERSON MILLER: Okay.

2 INVESTIGATOR JONES: And so that's
3 what that was about.

4 CHAIRPERSON MILLER: Okay.

5 INVESTIGATOR JONES: That was an
6 effort thing on both parts.

7 CHAIRPERSON MILLER: So tell me am
8 I correct to interpret that as meaning that
9 they might hear some things still, but it was
10 acceptable?

11 INVESTIGATOR JONES: Yes.

12 CHAIRPERSON MILLER: Okay. All
13 right. Thank you. Any other Board questions?
14 You can ask a question based on my Board
15 question. Okay, yes.

16 MR. RACILLA: Thank you.

17 Investigator Jones, I think you may be
18 confused about what happened the evening of
19 the volume setting. Do you remember, do you
20 recall everyone being thrown out?

21 INVESTIGATOR JONES: I do recall.

22 MR. RACILLA: And that was before

1 any volume -- by New Town. That was before
2 any volume setting was able to occur.

3 INVESTIGATOR JONES: That is
4 correct. That's correct.

5 MR. RACILLA: Okay. So there was
6 no volume setting happening that --

7 INVESTIGATOR JONES: That didn't--

8 MR. RACILLA: -- night.

9 INVESTIGATOR JONES: It all didn't
10 happen that night, but it did happen. I think
11 I had gone the following night and I spoke
12 with him and se set the volume.

13 MR. RACILLA: The following night?

14 INVESTIGATOR JONES: I think, I
15 believe it was the following night. It was
16 after that situation, because I do recall
17 about what happened that night.

18 MR. RACILLA: And do you recall
19 finding a noise violation that evening after
20 you were --

21 INVESTIGATOR JONES: Coming back.

22 MR. RACILLA: Yes.

1 INVESTIGATOR JONES: Yes, sir.

2 MR. RACILLA: And then there have
3 been several noise violations that have been
4 found since the day after?

5 INVESTIGATOR JONES: I can't
6 comment that there has been several. I can't
7 comment on that. I don't have the numbers in
8 front of me with reference to say there has
9 been several and who has done it.

10 MR. RACILLA: But you are aware of
11 at least one?

12 INVESTIGATOR JONES: Yes, sir.

13 MR. RACILLA: The report of 491?

14 INVESTIGATOR JONES: Yes, sir.

15 MR. RACILLA: Okay.

16 INVESTIGATOR JONES: Yes, sir.

17 MR. RACILLA: Thank you. No more
18 questions.

19 CHAIRPERSON MILLER: Okay. Other
20 questions?

21 MEMBER JONES: Yes.

22 CHAIRPERSON MILLER: Yes, go

1 ahead, Mr. Jones.

2 MEMBER JONES: I apologize,
3 Investigator Jones, but I just want to make
4 sure I'm clear on the level setting aspect of
5 it. When it was all said and done, did all
6 parties agree that if something was set at a
7 Level 3, that all parties could live with that
8 or would be willing to live with that as a
9 going forward concern, to your knowledge?

10 INVESTIGATOR JONES: To my
11 knowledge, yes.

12 MEMBER JONES: Okay. And how was
13 that -- was that codified in some way? Was it
14 written down? Was it just a verbal discussion
15 that was had with certain people? How was
16 that established, in your mind, that all
17 parties were okay with that level?

18 INVESTIGATOR JONES: It was I had
19 gone in, we set the level and prior to even
20 that, it was that the music that was playing
21 at that point in time --

22 MEMBER JONES: Yes, sir.

1 INVESTIGATOR JONES: -- I had
2 discussed with the residents and they said
3 that what they were experiencing, at that
4 time, was fine. I immediately had gone over
5 to say put it at this level, leave it there
6 and everything should be okay.

7 The only issue is that if you have
8 a certain type of music or you have a
9 different DJ in there, things could change
10 immediately.

11 MEMBER JONES: Correct.

12 INVESTIGATOR JONES: And that's
13 the problem.

14 MEMBER JONES: Okay. Understood.
15 So when the level setting at 3, do you know
16 what the licensee was specifically setting at
17 that level? Was it an amp on -- because based
18 on my understanding of the pictures --

19 INVESTIGATOR JONES: Yes.

20 MEMBER JONES: -- it seems as
21 though there are multiple areas where DJs
22 could be located. So there could be multiple

1 systems. So which specific system are we
2 referring to when we are saying set it at
3 Level 3 and everyone is okay with that Level
4 3? Is it the one specifically tied to the
5 atrium level?

6 INVESTIGATOR JONES: I apologize
7 for not articulating that part.

8 MEMBER JONES: Okay.

9 INVESTIGATOR JONES: All of the
10 issues that the protestants are having are
11 dedicated strictly to the atrium level.

12 MEMBER JONES: Got it. Okay.

13 INVESTIGATOR JONES: So that was--
14 that level was supposed to be set on that DJ
15 board.

16 MEMBER JONES: Got it.

17 INVESTIGATOR JONES: On that
18 level.

19 MEMBER JONES: Got it. Thank you.
20 That's all I need. Thank you very much, sir.
21 Thank you, Madam Chair.

22 CHAIRPERSON MILLER: Mr. Alberti?

1 MEMBER ALBERTI: I'm sorry to
2 prolong this, but I just have some follow-up
3 questions. So do you know what the piece of
4 equipment is that is set at Level 3?

5 INVESTIGATOR JONES: Yes, it's --
6 I mean, I don't know the exact name of the
7 board, but it's the board that a DJ uses to
8 produce music.

9 MEMBER ALBERTI: Okay. Right,
10 right. And when you say produce music, does
11 that board produce music or does something
12 plug into that board to produce music?

13 INVESTIGATOR JONES: I mean, you
14 have -- it's all electrical equipment. So you
15 have your amplifiers. You've got your
16 speakers. Everything is dictated from what
17 that board does and it goes into the
18 amplifier. It goes through and it amplifies
19 through the speakers.

20 MEMBER ALBERTI: So what is really
21 producing the sound? Is it a computer that a
22 DJ has?

1 INVESTIGATOR JONES: Yes, it's a
2 computer that -- well, it's a computer that
3 I'm assuming that is on the board or that the
4 DJ has that plugs into the sound board.

5 MEMBER ALBERTI: Okay. So it's a
6 sound board?

7 INVESTIGATOR JONES: Yes, sir.

8 MEMBER ALBERTI: All right. So
9 it's something that a Dj could plug in a
10 computer or iPad or whatever they want into
11 that?

12 INVESTIGATOR JONES: Yes, sir.

13 MEMBER ALBERTI: Right?

14 INVESTIGATOR JONES: Yes, sir.

15 MEMBER ALBERTI: Okay. Good.

16 That's all I need to know.

17 INVESTIGATOR JONES: Yes, sir.

18 MEMBER ALBERTI: Thank you.

19 CHAIRPERSON MILLER: Others? Have
20 there been noise violations since that Level
21 3 was agreed to?

22 INVESTIGATOR JONES: I believe so,

1 ma'am, yes.

2 CHAIRPERSON MILLER: Yes, okay.

3 And can the Level 3 be -- can the board be
4 locked into that level or is that something
5 that is easily changed?

6 INVESTIGATOR JONES: No, that's
7 the -- no.

8 CHAIRPERSON MILLER: No?

9 INVESTIGATOR JONES: It can't be.

10 CHAIRPERSON MILLER: Okay. All
11 right. Thank you. Are there questions on the
12 Board questions? Yes?

13 MR. CHAM: I mean, to answer Mr.
14 Alberti's question --

15 CHAIRPERSON MILLER: No. It's not
16 your time to answer questions. It's only if
17 you have a question for Mr. Jones.

18 MR. CHAM: No, it's a question he
19 asked.

20 CHAIRPERSON MILLER: No, you can--
21 when you testify, you can answer, just make a
22 note of that, but it's not --

1 MR. CHAM: Okay.

2 CHAIRPERSON MILLER: -- your time
3 to testify.

4 MR. CHAM: Okay. Well, we had --
5 I met with the protestants before in atrium
6 and we sat down and --

7 CHAIRPERSON MILLER: Okay. That
8 is --

9 MS. JOHNSON: Objection.

10 MEMBER JONES: You can't give
11 testimony. You can only ask questions of the
12 witness.

13 MR. CHAM: No, I am asking. I'm
14 just --

15 MEMBER JONES: Okay. So there is
16 a lot of extra context that you are -- I'm not
17 trying to cut you off or be rude. I'm just
18 trying to streamline this. We don't need a
19 lot of the extra context. Just try and get
20 directly to your question and ask him that.
21 Okay?

22 MR. CHAM: Investigator Jones, the

1 evening that you guys came to do the -- for us
2 to get an agreement on the noise level and you
3 said some things happened. To my knowledge,
4 we were in there to set the noise level and we
5 all agreed to set it at a certain level, but
6 the reason why --

7 MR. RACILLA: Objection.

8 CHAIRPERSON MILLER: Be careful
9 because you are testifying. Are you leading
10 pretty quickly to a question?

11 MR. CHAM: Yes, because I'm just
12 starting with what --

13 CHAIRPERSON MILLER: Okay. You
14 just can't --

15 MR. CHAM: -- my question.

16 CHAIRPERSON MILLER: Okay. You
17 can't be too much testifying, but if you need
18 to refresh his memory a little bit --

19 MR. CHAM: That's what I was
20 doing.

21 CHAIRPERSON MILLER: -- we'll give
22 a little leeway. All right.

1 MR. CHAM: That's it.

2 CHAIRPERSON MILLER: All right.

3 MR. CHAM: I have nothing more.

4 CHAIRPERSON MILLER: Okay.

5 MR. RACILLA: I just have one --

6 CHAIRPERSON MILLER: Okay.

7 MR. RACILLA: -- follow-up

8 question.

9 CHAIRPERSON MILLER: Okay.

10 MR. RACILLA: Investigator Jones,

11 you said that some residents agreed to a

12 volume level. Which residents agreed to it?

13 INVESTIGATOR JONES: I know that

14 we -- well, I shouldn't say we. I know that

15 we were contacted and as far as ABRA was

16 concerned, and we were to meet up with you as

17 well as Mr. Isasi. We also attempted to do

18 something with Ms. Johnson and Mrs. Goldfrank,

19 I believe.

20 The night that we were trying to

21 do it, we were trying to get everybody in

22 unison and it just didn't work out. But from

1 what I understood what we heard, at that point
2 in time, it was kind of it was suitable and it
3 wasn't anything that was too egregious. And
4 that's what we thought, at that point.

5 MR. RACILLA: So you are saying it
6 was all of the --

7 INVESTIGATOR JONES: I'm not
8 saying, because we couldn't get in contact
9 with everybody, that was kind of the whole
10 thing of doing this whole process. We weren't
11 able to get everybody involved.

12 MR. RACILLA: Okay. So who --
13 which -- I'm sorry. I might have
14 misunderstood. So which residents agreed that
15 the volume that you set the night after we
16 were all thrown out of New Town for the volume
17 setting exercise, was acceptable to them?

18 INVESTIGATOR JONES: I believe it
19 was -- I want to say it was Ms. Goldfrank and
20 Ms. Johnson.

21 MR. RACILLA: Thank you.

22 CHAIRPERSON MILLER: Okay. Any

1 other Board questions? Not hearing any, thank
2 you very much, Mr. Jones.

3 INVESTIGATOR JONES: Thank you,
4 ma'am.

5 (Whereupon, witness was excused.)

6 CHAIRPERSON MILLER: Okay. It is
7 time for the applicant's case. If you would
8 like to testify, I'm going to ask you to go to
9 the witness stand and take whatever you need.

10 So I'm going to swear you in, Mr.
11 Cham.

12 Whereupon,

13 HOWSOON CHAM

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

18 MR. CHAM: Yes, ma'am.

19 CHAIRPERSON MILLER: Okay. So if
20 you want to start and just identify yourself
21 again as the witness and then proceed however
22 you like with giving your testimony.

1 MR. CHAM: Okay.

2 DIRECT EXAMINATION

3 MR. CHAM: My name is Howsoon
4 Cham. I am the owner of New Town Kitchen and
5 Lounge.

6 CHAIRPERSON MILLER: Okay. So it
7 is your -- you can give your testimony however
8 you would like.

9 MR. CHAM: Okay. Thank you.

10 CHAIRPERSON MILLER: Okay.

11 MR. CHAM: Just like I started
12 saying earlier, when I came here in July of
13 last -- July 2013, there was an establishment
14 just like what I'm doing right now called
15 Tabaq. And in the atrium, yes, they had
16 music. Yes, they had DJ. Yes, they had
17 speakers.

18 When I came I changed the atrium
19 from a dining room, per se, lounge to just a
20 plain simple straight up lounge with
21 opportunity for patrons to throw in private
22 events, parties, birthday parties, whatever.

1 And they had -- before I came,
2 when I came there, actually there were six to
3 eight speakers, four on this end and four on
4 that end. And when I looked at it, I knew
5 this was going to be a problem. So what I did
6 was I eliminated six of those and then only
7 had two on this side.

8 Actually, when Brian and his
9 partner came to the property, they saw that
10 oh, there was no speakers on that side of the
11 building and the DJ booth, too, was not on
12 that side. There was only two speakers on the
13 other end.

14 And those are one of the things
15 that I told him. Actually, we had sat down.
16 We had a great conversation. I took him
17 around. I showed him the stuff that I was
18 doing, these things that I was changing, so
19 that we don't have the problem with the sound
20 and stuff.

21 So I eliminated six speakers, only
22 had two speakers on one end and they came and

1 they saw it. They like oh, this is great. So
2 and then downstairs the other floors were
3 strictly lounges and the bottom floor was a
4 restaurant. It's strictly a restaurant.

5 I didn't open until December 22nd
6 rushing towards the New Year's Eve, but even
7 before I opened, I started having problems
8 with Ms. Johnson, who never met me in my life.
9 I went to the Shaw residents and the first
10 thing she said was oh, this had started with
11 Tabaq. I hope you are not like that.

12 And then the other -- and then she
13 claim, at that time, that she had filed a
14 complaint for trash because of the restaurant.
15 I said -- right there I said we are not even
16 open yet. So how can there be so much trash
17 for me to get a violation when the restaurant
18 is not even open yet?

19 Even though we were in July, we
20 were doing renovation and cleaning up. Just
21 cosmetically, we just paint. There was no
22 construction. There was no busting up walls

1 and all that stuff. It was just painting.

2 Right there I receive a violation
3 before the door even open. Right there, I
4 knew that there was a red flag. There was
5 something coming towards me right there.

6 And then to continue where I
7 started off, when Brian and his partner came
8 to the property, I showed him around, took him
9 around and showed him everything that I'm
10 doing. They were fine with everything.
11 Everything was fine for some reason, at that
12 point.

13 And that was the time that I had
14 changed everything and took everything apart
15 and probably just did everything I could just
16 to minimize the noise and troubles, based on
17 this voluntary agreement that defines noise in
18 a different context.

19 So right after that, I started
20 getting more complaints, more complaints, more
21 complaints, more complaints and I couldn't
22 understand what the problem could be. I'm not

1 the only so-called club or restaurant or
2 lounge in the block. Some times the pizza
3 restaurant, which is right two doors from me,
4 opens at 6:00 in the morning and they playing
5 loud music. I have never seen any ABRA or any
6 Noise Task Force over there.

7 Across the street on the other end
8 is Lost Society. They have a rooftop and this
9 was during the summer months. They have a
10 rooftop that is open all summer long with a DJ
11 and a music playing, loud music. You can hear
12 it even from 13th Street. You can hear it
13 that -- you can hear the Lost Society sound.
14 And I have never seen ABRA or Noise Task Force
15 over there.

16 My atrium is closed. On the
17 voluntary agreement it states that. On page
18 1 of the voluntary agreement it states at 6:00
19 p.m. to 2:00 a.m. and 6:00 p.m. to 3:00 a.m.
20 Sometimes during the summer months, we used to
21 have something called a day party. At day
22 party they have brunch from 11:00 to 3:00 and

1 then they go up in the atrium and then the DJ
2 is playing. And then we would open the
3 atrium.

4 Of course, it's closed anyway, but
5 it's hot in summertime. We open it for
6 probably two or three hours. By 8:00, the
7 manager who is there, Sinbad Onus, make sure
8 we close it by 8:00 just because even the
9 voluntary agreement doesn't state what time,
10 but we always make sure we shut it when the
11 sun goes down.

12 By 8:00 we shut and turn the AC
13 on. Because in the atrium there is AC and
14 there is heat. So in the summertime we turn
15 the AC on. But at 4:00, there is no need to
16 turn the AC on when it's 90 degrees outside,
17 so we open it up.

18 So people are in there having
19 drinks after brunch.

20 So at 8:00 we normally close the
21 atrium. Some times, like Investigator Jones
22 stated earlier, the windows or the back window

1 is opened by a patron because it's hot
2 outside, but what we do is constantly we tell
3 people to keep it closed, because we don't
4 want to have problems with neighbors or we
5 will have a security designated just to stand
6 there to make sure all the windows and doors
7 are closed.

8 If I close it and walk away for
9 five minutes and come back and it's open, it's
10 like a constant war that I have with the
11 people that come in there. So now what we did
12 was we finally took a security guard and say
13 you know what, this is your post. Just make
14 sure nobody opens the doors. Sorry, nobody
15 opens these windows, just so we don't have the
16 issue with the residents.

17 So we have been doing that and but
18 then that kind of changed. Then at nighttime
19 when we turn the AC on, the HVAC is going.
20 The HVAC -- I'm not the only one with HVAC in
21 the back. I have two of my residents that
22 have their AC blowing.

1 But then at the same time, you
2 have Lost Society going. You have the pizza
3 place going. You have Pure Lounge going. You
4 have the street full of people. According to
5 this voluntary agreement, any noise that they
6 can hear from there, any noise that they can
7 hear from their residence is coming from New
8 Town.

9 It tells you on the record where--
10 how they can call Noise Task Force 37 times.
11 According to Investigator Jones, investigative
12 report 37 times and 59 times from MPD. And
13 out of that, I only remember having two noise
14 violations. And actually, even the one I just
15 got it last week. And even the Investigator
16 told me, I don't even know who it was, you
17 know, we are just tired of coming here. We
18 are just tired of this.

19 I even have MPD telling me we are
20 going to start ignoring this, because every
21 time we come here, there is nothing. With the
22 Noise Task Force, they come to do all this,

1 they supposed to measure everything and not
2 once have -- maybe twice, I would say. Like
3 I said, I have two violations.

4 Every time they come, they just
5 leave. And they do this to my patrons and my
6 guests when every Saturday, every Friday that
7 we are open, we see a group of police, group
8 of MPD, group of everything walking the
9 building like we just shooting and killing
10 people. It just looks bad on the image of the
11 establishment when you constantly calling just
12 to build a case and the end result it's always
13 a zero. It shows.

14 Earlier Brian said I had six
15 violations. I don't remember having six
16 violations. I remember having two violations
17 and one is just recent. And that happened
18 because somebody opened the door -- sorry,
19 somebody opened the window. The Investigator
20 even told me I'm going to have to write you up
21 because it's your fault somebody opened the
22 window and they heard noise.

1 What did I do? I agreed. I
2 accepted. I signed it. I said fine. I will
3 take responsibility. From there, we started
4 paying the security guard \$100 just to stand
5 there to make sure nobody opens the doors.

6 So if there was anything else, I
7 think by now if this was a serious issue that
8 we don't look up to or we don't care about, I
9 think me sitting here, I should have maybe 59
10 violations because they called 59 times or 37
11 violations, because they called 37 times.

12 But out of all those calls and all
13 those visits from MPD, from Noise Task Force,
14 from the ABRA, only twice I recall getting a
15 violation. Only twice. And this happens
16 every weekend. Now, it comes to the point
17 where when MPD and ABRA come in, people start
18 walking away thinking there is a fight, there
19 is a stabbing, there is a shooting.

20 I remember one time when I invited
21 Brian and his partner and some of the
22 residents to come in the building so we can

1 set the -- go back to -- to go back to this
2 No. 3 that we were talking about. We agreed
3 to come in there and set the Noise Task Force,
4 but what Brian was doing was actually instead
5 of coming in there and let's talk and figure
6 out our problems, he came with a phone and
7 taking pictures of cameras.

8 My attorney was there, kick him
9 out, because you cannot take pictures of
10 people in there without their consent. That
11 was the reason why we kicked them out, because
12 you can't come in the establishment and taking
13 videos of people dancing and stuff, we can't
14 do that. We don't want to be liable for who--
15 I don't know where he is taking these
16 pictures. I don't know what he is going to
17 use it for. So my attorney said this is over,
18 everybody get out. That's how that happened.

19 So we never came into conclusion,
20 because every time we start to set up
21 something, it's always something else.

22 And then we had changed, like I

1 said earlier, the speakers. We had changed
2 the DJ location on the roof. We normally
3 close everything by 8:00, you know what I
4 mean? And sometimes we don't even open the
5 atrium. We only use the other floors.

6 Even sometimes when we close the
7 atrium, we still get calls. For what reason?
8 I don't know. That is why ABRA always come
9 over, Noise Task Force will come and say I
10 don't know why we are here. I don't know why
11 we are here again. Every Friday and Saturday
12 night I will see these guys walk in the
13 building.

14 Police with guns and badges, it
15 just doesn't look good on the establishment.
16 It just looks totally bad on us. It's like we
17 are losing people. We are losing customers
18 just because of that. Because if I was in the
19 establishment and every weekend I go there, I
20 see police and guns and everything walking in,
21 something -- this place is not safe to come
22 for some reason.

1 Even though every time they come,
2 nothing happens. No violation. None of this
3 stuff. I mean, like I said the last one
4 somebody opened the window. Fine. I agreed.
5 I consent. I signed it. I didn't even -- I
6 give it to the guy. I said you are 100
7 percent right. I'll take full responsibility.

8 And that's why earlier I said this
9 has to be something that has to do with --
10 either it's me or this is personal or it's
11 something else, but this is not what we are
12 here for. This has got to be something
13 totally different, because the noise it's not
14 like Investigator Jones said.

15 It's not like when he went to
16 their house, he had to scream and tell and
17 talk to them. U Street on a Friday and
18 Saturday night is like all days Georgetown or
19 all days Adams Morgan. Everybody is
20 everywhere.

21 So when you hear -- the minute --
22 the thing is this voluntary agreement give the

1 residents so much power that all they have to
2 hear is a pin drop and claim it's New Town and
3 ABRA will come, Task Force will come and take
4 a decibel or whatever and like sorry, Mr.
5 Cham, everything is fine. Your records are
6 fine. Your invoices are fine. Have a good
7 day.

8 So if we do that, if they do those
9 calls and record issues 57 times and only two
10 violations and one violation, of course, is
11 stated because somebody opened the window,
12 that tells me this is personal. That's why I
13 look at it and I'm like are they personally
14 coming after me or are they personally coming
15 after the voluntary agreement?

16 Because I don't understand how --
17 I don't want to speak for the people, previous
18 owners of this establishment, how can they
19 sign something that give so much power that
20 every -- the minute you hear a pin drop, blame
21 it on New Town, call ABRA, you've got a
22 violation.

1 So on my case, this is not
2 something that could be solved from just that
3 voluntary agreement, because at the end of the
4 day, there is nothing, there is nothing
5 against me, but that word noise on the
6 voluntary agreement. Thank you.

7 CHAIRPERSON MILLER: Okay. So now
8 we start cross by the protestants. You go
9 first.

10 MR. RACILLA: Okay.

11 CHAIRPERSON MILLER: Actually and
12 then the Board.

13 CROSS-EXAMINATION

14 MR. RACILLA: Mr. Cham, you
15 testified that you eliminated a number of
16 speakers up in the atrium. When did you do
17 that?

18 MR. CHAM: When? I did that --
19 again, I took over the place in July. I
20 didn't open, like I said earlier, until
21 December. And then in December, everything
22 was there, but while I was there, I was doing

1 renovation. When you guys came there, when we
2 first met, I think I met you guys -- I didn't
3 meet nobody. You were the first two guys that
4 I met, you and Brian -- you and William.

5 When you guys came, you saw
6 everything I did. It was -- I don't recall
7 when I did it, but I know I did it probably
8 some time in January.

9 MR. RACILLA: And you testified
10 that since then you have had two speakers?

11 MR. CHAM: Until right now it's
12 two speakers sitting there. What you guys saw
13 that day is what is still there right now.

14 MR. RACILLA: So all of the noise
15 violations that New Town has had is --

16 MR. CHAM: All?

17 MR. RACILLA: -- you have had two
18 speakers operating?

19 MR. CHAM: All of the noise
20 violations? How many?

21 CHAIRPERSON MILLER: No. Sorry.
22 I was going to say you don't ask him the

1 questions. If you are asking --

2 MR. CHAM: I want to know how many
3 violations he is talking about.

4 CHAIRPERSON MILLER: -- for a
5 clarification? Do you need clarification of
6 his question?

7 MR. CHAM: Clarification, please.

8 MR. RACILLA: How many noise
9 violations are you aware of?

10 MR. CHAM: That I know of, two.

11 MR. RACILLA: Okay. Of -- during
12 -- with those two noise violations, during
13 that time, was New Town operating with just
14 the two --

15 MR. CHAM: Yes.

16 MR. RACILLA: -- speakers?

17 MR. CHAM: Like I said, until
18 today, that's what is there.

19 MR. RACILLA: And what percentage
20 of time would you estimate that the windows
21 and rooftop are closed on the glass atrium
22 when you have got a DJ playing?

1 MR. CHAM: I think I testified
2 earlier that the windows and doors are closed
3 at 8:00 every day. I think I said that
4 earlier clearly.

5 MR. RACILLA: But what percentage
6 of time throughout the night do you think that
7 they are closed?

8 MR. CHAM: Again, I said they are
9 closed at 8:00.

10 MR. RACILLA: So are they closed
11 the whole time from 8:00 until when New Town
12 closes?

13 MR. CHAM: I just said it. They
14 close at 8:00.

15 MR. RACILLA: Until when?

16 MR. CHAM: They close at 8:00
17 until the next day if we open.

18 MR. RACILLA: So from 8:00 on your
19 testimony is that those windows are always
20 closed?

21 MR. CHAM: I just said it. They
22 close at 8:00.

1 MR. RACILLA: Regardless of the
2 voluntary agreement that is in place, are you
3 aware that under D.C. Code Section 25-725 that
4 New Town can't produce music that can be heard
5 in the homes?

6 MR. CHAM: Not that I know of. I
7 know of the voluntary agreement, yes. The
8 word noise as it's defined in the voluntary
9 agreement, which is the noise in the voluntary
10 agreement could come from any of the three
11 establishments around me that have open
12 rooftops and the pizza place, but it's always
13 from New Town.

14 MR. RACILLA: Okay. I don't have
15 any further questions.

16 CHAIRPERSON MILLER: Okay. Board
17 questions? Yes, Mr. Brooks?

18 MEMBER BROOKS: Yes, thank you,
19 Madam Chair. Approximately what time --

20 COURT REPORTER: Microphone.

21 MEMBER BROOKS: Approximately what
22 time does the ABRA staff and MPD and the Noise

1 Task Force, what time of night or day, do they
2 come?

3 MR. CHAM: Sometimes they come
4 three times during the night. They come
5 between 12:00 and 1:00, between 1:00 and 2:00.
6 Sometimes they even come at 2:30. So let's
7 say between 12:30 and 2:30.

8 MEMBER BROOKS: And you are saying
9 that during those times, they have found only
10 two violations?

11 MR. CHAM: That I know of.

12 MEMBER BROOKS: Okay. Thank you,
13 Madam Chair.

14 CHAIRPERSON MILLER: Okay.

15 Others? Mr. Short?

16 MEMBER SHORT: Good afternoon,
17 sir.

18 MR. CHAM: Yes, sir.

19 MEMBER SHORT: You said you've
20 been attempting to work out the situation with
21 your neighbors?

22 MR. CHAM: Yes, sir. I invited

1 them to the establishment. We sat down. We
2 sat down cordially. We speak cordially to two
3 of the gentlemen. They saw every changes that
4 I did. They saw everything that I eliminated.
5 The speakers that were there. The DJ booth,
6 they even said oh, we used to see the DJ
7 standing on this side, so you moved it on this
8 side. I said I did all that, so if there is
9 any noise, it will -- just like Investigator
10 stated earlier --

11 MEMBER SHORT: That's fine. You
12 answered my question.

13 MR. CHAM: Thank you.

14 MEMBER SHORT: Now, I would like
15 to also ask you, you said you admit that you
16 have two violations.

17 MR. CHAM: That I know of, yes.

18 MEMBER SHORT: And would you think
19 that one is too many?

20 MR. CHAM: I mean, the one -- the
21 last one what happened was the window was
22 opened by a patron.

1 MEMBER SHORT: I asked the
2 question would you say that one is too many?

3 MR. CHAM: Respectfully, yes.

4 MEMBER SHORT: Okay.

5 MR. CHAM: Because coming from
6 Georgetown, I never had an issue.

7 MEMBER SHORT: We're not talking
8 about Georgetown. I just want to keep you
9 focused here.

10 I guess what I'm trying to say is
11 if you can reverse shoes, if you were the
12 resident --

13 MR. CHAM: Yes.

14 MEMBER SHORT: -- and they owned
15 the business --

16 MR. CHAM: Yes.

17 MEMBER SHORT: -- would you say
18 two violations were being neighborly?

19 MR. CHAM: Respectfully again,
20 I'll say too many, but I will definitely do
21 something and sit down and see how we can work
22 it out. Because at the end of the day, the

1 noise is not coming from the music. The noise
2 is not coming from the music by itself. I
3 have a pizza place playing music next door to
4 me. I have a rooftop across from me, but
5 according to the voluntary agreement, any
6 noise coming into them could be referred to me
7 and that is what is happening right here.

8 MEMBER SHORT: Okay. Were the two
9 violations you received coming from the pizza
10 place or from your place?

11 MR. CHAM: One I know is coming
12 from me. The one I don't know and I can't
13 even agree to it, but I just agree to it.

14 MEMBER SHORT: Now, I wish, if I
15 could say it as this Board Member, that you
16 work a little harder to get along with your
17 neighbors and understand business on U Street.

18 MR. CHAM: I definitely do.

19 MEMBER SHORT: Thank you, Madam
20 Chair. That's all I have.

21 CHAIRPERSON MILLER: Okay.
22 Others? Mr. Silverstein?

1 MEMBER ALBERTI: Go ahead, Mike.

2 MEMBER SILVERSTEIN: Mr. Cham,
3 your application for renewal was, correct me
4 if I'm wrong, dismissed once or twice for
5 failure to attend mediation hearings or
6 something to that effect? Correct me if I'm
7 wrong.

8 MR. CHAM: It was this thing
9 because Fletcher, I think, might of had my
10 wrong email and the address was construed, so
11 I missed that day.

12 MEMBER SILVERSTEIN: Say again?

13 MR. CHAM: I said I think what
14 happened was my email address was wrong when
15 she sent me the dates, so I did not show up
16 that day. I show up a different date.

17 MEMBER SILVERSTEIN: And you were
18 required by that to -- and you also said that
19 you had no knowledge of a settlement agreement
20 or voluntary agreement when you took over the
21 property?

22 MR. CHAM: Yes. When I bought the

1 property, I was not given that until after.
2 So like I said, I didn't open until late
3 December. So within July and August, I was
4 more concerned about changing the place,
5 fixing the place, painting and cleaning up.
6 I didn't look into that until --

7 MEMBER SILVERSTEIN: You are not a
8 new operator in town. You owned a number of
9 places or ran a number of places.

10 MR. CHAM: Right.

11 MEMBER SILVERSTEIN: Have you --
12 you had one down by Dupont. You had one in
13 Georgetown for a number of years.

14 MR. CHAM: Yes.

15 MEMBER SILVERSTEIN: Have you ever
16 had voluntary agreements?

17 MR. CHAM: Only in Georgetown.

18 MEMBER SILVERSTEIN: Have you ever
19 inherited voluntary agreements?

20 MR. CHAM: Georgetown I did.

21 MEMBER SILVERSTEIN: Did it come
22 with the license or was it something that you

1 personally negotiated?

2 MR. CHAM: No, it came with the
3 license, but afterwards I think it was
4 amended.

5 MEMBER SILVERSTEIN: So you knew
6 that it was entirely possible for you to have
7 a voluntary agreement or settlement agreement
8 when -- that came with your license? You knew
9 that that was a possibility?

10 MR. CHAM: A possibility, yes.

11 MEMBER SILVERSTEIN: And you just
12 simply -- it's your testimony that you did not
13 know that you had one?

14 MR. CHAM: No, no, I said I -- not
15 that I didn't know I had one, I just didn't
16 look at it.

17 MEMBER SILVERSTEIN: Oh. No
18 further questions.

19 MR. CHAM: Like I said, I said
20 when I came in July, I wasn't looking at it
21 until late in December when I was about to
22 open, that's when I started really looking at

1 the voluntary agreement.

2 MEMBER SILVERSTEIN: So in other
3 words, it could have said you have to close at
4 6:00 at night and you wouldn't have known?

5 MR. CHAM: Exactly. You could say
6 that.

7 MEMBER SILVERSTEIN: Thank you.

8 MR. CHAM: Honestly.

9 CHAIRPERSON MILLER: Mr. Alberti?

10 MEMBER ALBERTI: Mr. Cham, there
11 has been a lot of discussion about setting
12 some piece of equipment at a Level 3. What is
13 that piece of equipment?

14 MR. CHAM: It's called a mixer.

15 MEMBER ALBERTI: Called a mixer?

16 MR. CHAM: Yes, sir.

17 MEMBER ALBERTI: So is the mixer--
18 does the mixer in itself produce sound? When
19 a DJ is playing music, is it the mixer that is
20 playing sound?

21 MR. CHAM: No.

22 MEMBER ALBERTI: Producing sound?

1 MR. CHAM: The computer play
2 sound.

3 MEMBER ALBERTI: The computer,
4 right.

5 MR. CHAM: The mixer adjust the
6 volume.

7 MEMBER ALBERTI: Right. The
8 computer plugs into the mixer, right?

9 MR. CHAM: Yes, sir.

10 MEMBER ALBERTI: All right.

11 MR. CHAM: Exactly.

12 MEMBER ALBERTI: So to your
13 knowledge, is it possible to have two
14 different computers or two different settings
15 that could alter the sound, even though the
16 level on the mixer is not changed?

17 MR. CHAM: Can you rephrase that?

18 MEMBER ALBERTI: Okay. I set the
19 dial at 4 on the mixer and I plug in my
20 computer, which has sound controls. Then I
21 plug in my friend's computer which has sound
22 controls. Is it possible that the two

1 computers would produce different levels of
2 sound?

3 MR. CHAM: Yes.

4 MEMBER ALBERTI: All right. So
5 wouldn't you agree that this Level of 3 really
6 doesn't completely govern the level of sound
7 that is coming from those speakers?

8 MR. CHAM: It depends where you
9 control it from, because let's say A laptop
10 and B laptop. A laptop can have its volume
11 down and B laptop can have its volume up, all
12 being controlled by the mixer.

13 But if the A laptop increases the
14 volume, of course, it's going to be higher,
15 because the B laptop is down.

16 MEMBER ALBERTI: Okay. So in
17 essence, you are agreeing with me, right?

18 MR. CHAM: Yes.

19 MEMBER ALBERTI: Okay. Great. I
20 have no further questions.

21 CHAIRPERSON MILLER: Okay.

22 Others? Mr. Cham, I don't have a copy of the

1 settlement agreement in front of me, but I
2 have a copy of the Notice and Opportunity to
3 Cure, which makes references to the settlement
4 agreement, because it's attached to the
5 Investigator's report.

6 Okay. So I'm wondering if this is
7 the provision that you may have issue with?
8 Is this "Paragraph 3 of the voluntary
9 agreement further provides that applicant will
10 regulate the volume of performance so as to
11 ensure that music, noise and vibration for the
12 establishment are not audible to neighboring
13 protestants." Is that the provision?

14 MR. CHAM: Sorry?

15 CHAIRPERSON MILLER: I mean, I've
16 been hearing things about oh, you could drop
17 a pin or something and that would violate the
18 settlement agreement.

19 MR. CHAM: Well, it would. Which
20 page are you looking at?

21 CHAIRPERSON MILLER: So I don't
22 have the settlement agreement. What I have is

1 the Notice and Opportunity to Cure, which is--

2 MR. RACILLA: I have copies of it.

3 CHAIRPERSON MILLER: Could you
4 show? Thank you.

5 MR. RACILLA: That's the
6 investigative reports that were handed out.
7 They include a copy of the voluntary
8 agreement.

9 CHAIRPERSON MILLER: Oh, okay.
10 Thank you.

11 MEMBER JONES: Exhibit 10 are you
12 referring to?

13 MR. RACILLA: Yes.

14 MEMBER JONES: Exhibit 10, Madam
15 Chair.

16 CHAIRPERSON MILLER: Thank you.

17 MEMBER JONES: That's not Exhibit
18 10?

19 CHAIRPERSON MILLER: No. I was
20 actually reading from an attachment to the
21 Investigator's report.

22 MR. ISASI: If you look at like

1 page 70.

2 CHAIRPERSON MILLER: Maybe I
3 should look at the settlement agreement if we
4 have it.

5 MR. ISASI: Look at Exhibit 10,
6 page 70.

7 CHAIRPERSON MILLER: Exhibit 10,
8 page 70?

9 MR. ISASI: Yes.

10 MEMBER JONES: Exhibit 10, page 70
11 starts off "Voluntary Agreement License No.
12 70707?"

13 MR. ISASI: Yes, sir.

14 MEMBER JONES: Okay.

15 MR. ISASI: That's it. That's
16 just one example. We produced many of the
17 Investigator reports.

18 CHAIRPERSON MILLER: Oh.

19 MEMBER JONES: Got it.

20 MR. ISASI: Mr. Cham, do you have
21 Exhibit 10 in front of you?

22 MR. CHAM: Do I have what?

1 MR. ISASI: Do you have Exhibit 10
2 or do you want --

3 MR. CHAM: No, I don't.

4 MR. ISASI: Okay.

5 CHAIRPERSON MILLER: Could you?
6 Thank you.

7 MR. ISASI: Page 70.

8 CHAIRPERSON MILLER: Okay. So
9 actually the protestants have directed our
10 attention to the settlement agreement, which
11 is attached to their Exhibit 10, proposed
12 Exhibit 10 at page 71. So that paragraph 3 is
13 a lot bigger than I was familiar with.

14 But I guess my question is were
15 you testifying that some part of this
16 voluntary agreement is just so unfair that you
17 couldn't -- it makes it difficult to comply
18 with the noise provisions?

19 MR. CHAM: Yes, yes. Actually,
20 yes. I think it is against me a lot, because
21 any noise, anything -- what is -- how is noise
22 defined over here? You know what I mean?

1 Because earlier we said the HVAC in the back
2 we had three other establishments. So even if
3 they hear the HVAC in their homes, plus any
4 sound coming from the street, that could
5 trigger that this is a noise violation from
6 New Town.

7 CHAIRPERSON MILLER: So well,
8 okay. I'm not seeing that. Maybe you can
9 point it to our attention? And I'm looking at
10 the top of page 71, which is in noise and
11 music. It says "which are generated by
12 employees or patrons" oh, is that it, "or
13 generated by any musical instrument or
14 amplification device or source of sound or
15 noise." Is that what you are talking about,
16 that provision?

17 MR. CHAM: Okay. For example, let
18 me tell you the paragraph.

19 CHAIRPERSON MILLER: All right.

20 MR. CHAM: Just a plain example to
21 what I just said. For example, on paragraph--
22 on line one, two, three, four, five, six,

1 seven, eight, on line eight where it says
2 "like has been determined also shall not be
3 played or amplified in any space where windows
4 or doors are open."

5 CHAIRPERSON MILLER: Okay.

6 MR. CHAM: Okay?

7 CHAIRPERSON MILLER: Yes.

8 MR. CHAM: The atrium is always
9 closed at 8:00.

10 CHAIRPERSON MILLER: Okay. But
11 you have had complaints after 8:00, correct?

12 MR. CHAM: I had complaints with
13 no violations, but one, which is the window
14 was open in the back, which I agreed on. But
15 then even though it says on page 70 on the
16 bottom, you can see the hours, it's 6:00 p.m.
17 to 2:00 a.m. And on Friday and Saturday, 6:00
18 p.m. to 3:00 a.m.

19 But we don't open the doors and
20 windows at 6:00. We don't open -- we don't
21 even open the atrium at 6:00. We open the
22 atrium at 10:00, at 11:00 at night.

1 CHAIRPERSON MILLER: So I guess my
2 question is --

3 MR. CHAM: It contradicts both
4 sides.

5 CHAIRPERSON MILLER: -- what can't
6 you comply with? What are you having a --
7 what is the problem?

8 MR. CHAM: Okay. The problem is,
9 the problem that we are all having is, because
10 of this noise definition. Now, I try my best
11 to do what I can do. What I cannot do, I
12 can't do.

13 For example, I change the
14 speakers. I reduce the speakers. I moved the
15 DJ booth. Sometimes I don't -- and I don't
16 open the windows or doors on the atrium. I
17 close at 8:00. If a window is opened and they
18 can hear in their homes and I -- before we
19 used to close it. Now, we have a designated
20 security guard sitting there.

21 CHAIRPERSON MILLER: Right.

22 MR. CHAM: You know what I mean?

1 Those are the best I can do. But if it's not
2 relating to this voluntary agreement, and it's
3 something more towards personal issue, then I
4 don't know how we can come into grounds,
5 because I cannot just shut down the atrium.
6 People request that. That's why it was built.

7 And Tabaq used to be there and
8 they used to use it and I used to go there.
9 I had friends who DJed there. And they never
10 had this issue. But the minute I came, even
11 though I don't have but two speakers in there,
12 compared to Tabaq, they had eight speakers and
13 they saw it, they knew it, they never had that
14 problem.

15 So why are we having this problem?

16 CHAIRPERSON MILLER: That's what
17 I'm trying to ask you. You think it's
18 personal. Are you saying that you are not
19 creating noise?

20 MR. CHAM: I don't think I am
21 creating noise, because if I was creating
22 noise, like I said 57 calls from the Noise

1 Task Force and I don't even have violation,
2 that tells me something.

3 CHAIRPERSON MILLER: Okay.

4 Anybody else? Mr. Alberti? Yes.

5 MEMBER ALBERTI: Okay. Mr. Cham?

6 MR. CHAM: Yes, sir.

7 MEMBER ALBERTI: So what I'm
8 hearing from you is that you are telling us
9 that you normally -- okay, you always operate,
10 whenever there is live entertainment, with the
11 atrium closed and the doors and windows
12 closed. That's your intent. And that's the
13 way you operate.

14 MR. CHAM: Yes, sir.

15 MEMBER ALBERTI: Okay. All right.
16 So is it correct then to assume that you can
17 run a successful business with the atrium
18 closed and the doors and windows closed when
19 there is live entertainment?

20 MR. CHAM: Yes, sir.

21 MEMBER ALBERTI: Okay. Great.
22 Now, I think what I'm hearing from you is that

1 you don't believe that -- okay. When you have
2 live entertainment and the doors and windows
3 are closed, do you believe that noise from
4 your establishment can be heard in any of
5 these residents from these protestants?

6 MR. CHAM: I don't believe that.

7 MEMBER ALBERTI: You don't believe
8 that.

9 MR. CHAM: No, sir.

10 MEMBER ALBERTI: And why don't you
11 believe that?

12 MR. CHAM: Because what I do is
13 normally I go in the back myself. I regularly
14 walk around the block.

15 MEMBER ALBERTI: Okay.

16 MR. CHAM: I can tell you this
17 Saturday, I had Brian that was standing in the
18 window. I was in the back talking to the
19 homeless guy for 5 to 10 minutes. He saw
20 Brian over there. They had a camera videoing
21 me. I just standing there.

22 MEMBER ALBERTI: I don't care what

1 Brian was doing. Tell me why you believe you
2 can't -- that doesn't tell me why you believe
3 you can't hear noise. His filming has nothing
4 to do with it.

5 MR. CHAM: Right. I was --

6 MEMBER ALBERTI: It doesn't make
7 any noise, right?

8 MR. CHAM: Right.

9 MEMBER ALBERTI: So tell me why.
10 Just answer my question.

11 MR. CHAM: Yes, sir. I normally
12 go around the block to listen to the sound.
13 Then I will call the manager and say hey, the
14 sound is low or the sound is high or turn it
15 down or turn it off or tell the guy get off
16 your mike. Sometimes --

17 MEMBER ALBERTI: Well, why would
18 you tell the guy to get off the mike?

19 MR. CHAM: Say it again?

20 MEMBER ALBERTI: Why would you
21 tell somebody to get off the mike?

22 MR. CHAM: Because if I can hear

1 anything out of the establishment, to me it's
2 a violation.

3 MEMBER ALBERTI: Oh. So you are
4 telling me that sometimes you can hear music
5 at least in the alley from the establishment.
6 Is that correct?

7 MR. CHAM: No. I said I go around
8 and if I hear it, I will tell them to turn it
9 down.

10 MEMBER ALBERTI: I understand.

11 MR. CHAM: Yes.

12 MEMBER ALBERTI: So you tell them
13 to turn it -- is it correct that you tell them
14 to turn it down when you hear them in the
15 alley?

16 MR. CHAM: Yes. But, but it's not
17 -- for example, sometimes if I don't do it,
18 Noise Task Force come, they say oh, yes, but
19 it's not -- I think they have this measuring
20 something --

21 MEMBER ALBERTI: That's not
22 answering my question. My question is why do

1 you believe they can't hear it?

2 MR. CHAM: Because I can't hear it
3 sometimes.

4 MEMBER ALBERTI: Because what?

5 MR. CHAM: I cannot hear it.

6 MEMBER ALBERTI: Sometimes?

7 MR. CHAM: Yes.

8 MEMBER ALBERTI: Okay. Thank you.
9 You have answered my questions.

10 CHAIRPERSON MILLER: Mr. Short?

11 MEMBER SHORT: Mr. Cham, I'm
12 hearing from your testimony you had several
13 businesses in the District of Columbia,
14 correct?

15 MR. CHAM: Two.

16 MEMBER SHORT: You had two. And
17 I'm also hearing that you had an agreement
18 when you were in Georgetown.

19 MR. CHAM: Yes.

20 MEMBER SHORT: When you bought
21 that business in Georgetown, did you read the
22 agreement that came with it?

1 MR. CHAM: Yes.

2 MEMBER SHORT: Can I ask you why
3 not then you -- why did not you read the
4 voluntary agreement on this establishment?

5 MR. CHAM: Like I said, when I
6 came in I just wasn't focusing on that part of
7 the business yet. I was more --

8 MEMBER SHORT: You want to be a
9 successful businessman?

10 MR. CHAM: Yes, sir.

11 MEMBER SHORT: You want a license
12 again to do your business in the city,
13 correct?

14 MR. CHAM: Yes, sir.

15 MEMBER SHORT: You have to read
16 everything that comes with that license, even
17 the Laws of the District of Columbia
18 pertaining to alcoholic beverage controls that
19 this Board has control over. So a reasonable
20 person, just reasonable, if you didn't read
21 that agreement, what's to make me think you
22 are going to abide by the District Laws that

1 you don't like or you choose not to read?

2 Just explain that to me.

3 MR. CHAM: I mean, I read
4 everything. Don't get me wrong.

5 MEMBER SHORT: Okay. I understand
6 that. But you didn't read the voluntary
7 agreement.

8 MR. CHAM: I didn't read it at the
9 time. When I -- actually, I didn't even get
10 it until later on. I could say that, because
11 we were more focused on the real estate. So
12 when the restaurant bought, because we were
13 not -- open seven months later, so it was not
14 something that was immediately that we -- do
15 you know what I mean?

16 Because I was like --

17 MEMBER SHORT: Okay. You have
18 answered the question. When you did your
19 business plan and you moved to U Street from
20 Georgetown --

21 MR. CHAM: Yes, sir.

22 MEMBER SHORT: -- when you did

1 your business plan, that wasn't a part of the
2 equation, what the community was? There was
3 residential places behind you. So that -- was
4 that a part of your business plan?

5 MR. CHAM: Of course, because we
6 were in Georgetown. We had the same -- it was
7 just the same thing. We had residents and
8 everything around us.

9 MEMBER SHORT: But you read the
10 agreement in Georgetown, but you didn't read
11 the agreement on U Street?

12 MR. CHAM: I didn't read it right
13 away, but I read it later.

14 MEMBER SHORT: I'm trying to
15 understand, but I don't. That's all I have,
16 Madam Chair.

17 CHAIRPERSON MILLER: Okay. Mr.
18 Jones?

19 MEMBER JONES: Thank you, Madam
20 Chair. Honestly, sir, I really don't care
21 when you found it, when you got it, how you
22 received it, to be perfectly candid with you.

1 The point of the matter is it's tied to your
2 license right now.

3 Do you understand that?

4 MR. CHAM: yes, sir.

5 MEMBER JONES: Okay. Do you
6 understand that you are by law required to
7 adhere to the stipulations associated with
8 that settlement agreement, as far as ABRA is
9 concerned?

10 MR. CHAM: Yes, sir.

11 MEMBER JONES: Okay. So what are
12 you doing to ensure that you are fully
13 compliant with the settlement agreement that
14 is tied to your license? Fully compliant --

15 MR. CHAM: Right.

16 MEMBER JONES: -- to every term
17 stipulated in your settlement agreement. What
18 are you doing to ensure that?

19 MR. CHAM: Everything on the
20 settlement agreement, I'm fully doing. The
21 only issue that I'm having is the Noise Task
22 Force.

1 MEMBER JONES: Okay. So that
2 means you are not fully compliant with
3 everything, correct?

4 MR. CHAM: I'm -- the noise which
5 is what I'm changing -- I change the speakers.
6 I change the DJ.

7 MEMBER JONES: Understood.

8 MR. CHAM: I did all that stuff.

9 MEMBER JONES: You're telling me
10 what you tried to do to help mitigate being in
11 violation of your settlement agreement, but
12 you haven't told me what you successfully have
13 done to ensure that you are fully compliant
14 with the SA. And it's a very important
15 distinction. People can try and do a lot of
16 things, but it doesn't mean that they are
17 successful.

18 It doesn't sound like you have
19 been successful in being fully compliant with
20 the SA. Best effort isn't good enough in this
21 instance and I want to under -- I want you to
22 understand that trying hard doesn't -- is not

1 the bar that we are looking for.

2 We are looking for you to succeed.

3 So help me understand. And maybe I'm missing

4 it, but I am not getting from your testimony

5 that you have found a way to be fully

6 compliant with the SA that is tied to your

7 license. Is that a true statement?

8 MR. CHAM: I wouldn't say that.

9 MEMBER JONES: Okay. Why not?

10 MR. CHAM: Because I'm constantly

11 changing stuff. Like for example --

12 MEMBER JONES: So stop right

13 there. If you are fully compliant with the

14 SA, why is there a need for you to change

15 anything? If you are fully compliant with the

16 SA, why is there a need for you to change

17 anything?

18 MR. CHAM: For all use because,

19 for example, we are not using the atrium a lot

20 now.

21 MEMBER JONES: Why not?

22 MR. CHAM: Just so I don't have

1 any issues with the neighbors. That's one of
2 the reasons why.

3 MEMBER JONES: Okay.

4 MR. CHAM: I decide to start doing
5 parties on the lower level.

6 CHAIRPERSON MILLER: Okay.

7 MR. CHAM: We never had parties in
8 the lower level. Now, we have parties in the
9 lower level. And ABRA will tell you, we are
10 constantly having parties on the lower level.
11 And they always come and say hey, close this
12 door, so you don't have any issues. But they
13 even ask us why are you guys not using the
14 atrium any more? We haven't had a lot of
15 complaints. We haven't been here for the past
16 month or so.

17 MEMBER JONES: What date did you
18 stop using the atrium?

19 MR. CHAM: Right after the summer.

20 MEMBER JONES: So August 31st?

21 MR. CHAM: I'm not saying we are
22 not using it. I didn't say we totally shut it

1 down. I said we are not using it for parties.

2 CHAIRPERSON MILLER: Yes.

3 MR. CHAM: Which of course --

4 MEMBER JONES: Do you have live --
5 do you have a DJ in the atrium any more after
6 August 31, 2014?

7 MR. CHAM: When there is a private
8 event, yes.

9 MEMBER JONES: So yes, you do have
10 DJs --

11 MR. CHAM: Private event, yes.

12 MEMBER JONES: -- in the atrium?

13 MR. CHAM: And it's controlled.

14 MEMBER JONES: What does that mean
15 when it's controlled --

16 MR. CHAM: Meaning --

17 MEMBER JONES: -- when you say
18 that?

19 MR. CHAM: -- the noise is -- the
20 sound is lowered.

21 MEMBER JONES: Lowered to what
22 level?

1 MR. CHAM: So that you don't even
2 hear it outside. When I go around, I don't
3 want to hear it, that's what I tell them. I
4 don't want to hear any sound. So the only
5 thing you hear would be HVAC.

6 MEMBER JONES: So you are saying
7 the sound of the HVAC is higher than the sound
8 of the noise emanating from the DJ?

9 MR. CHAM: If we don't turn it up,
10 you will not even hear the sound. You will
11 just hear -- you will just see people.

12 MEMBER JONES: I understand there
13 is a lot of ifs and speculation that you could
14 possibly do. I want to know specifically what
15 you are doing and/or have done to ensure. For
16 example, have you put a limiter on your sound
17 system?

18 MR. CHAM: We have --

19 MEMBER JONES: In the atrium
20 specifically.

21 MR. CHAM: -- I bought a mixer
22 that I have that everybody uses that is locked

1 in on a lower space.

2 MEMBER JONES: It is locked in?

3 MR. CHAM: Yes. I mean, you
4 cannot put it up or down.

5 MEMBER JONES: So if you give me
6 the name and model number of that device, I
7 could go on-line and pull up the specs and
8 find exactly how to lock that mechanism?

9 MR. CHAM: You can.

10 MEMBER JONES: Okay. So what is
11 that device?

12 MR. CHAM: I don't have it in
13 front of me.

14 MEMBER JONES: You don't know what
15 it is?

16 MR. CHAM: Because I have my tech
17 guy who bought five mixers for me just for
18 that.

19 MEMBER JONES: Is your tech guy
20 here?

21 MR. CHAM: No, he is not.

22 MEMBER JONES: Not, okay. If you

1 are getting complaints about noise emanating
2 from your establishment as a result of you
3 having live entertainment in the atrium --

4 MR. CHAM: Yes.

5 MEMBER JONES: -- area, it doesn't
6 seem like it comports with what it is you are
7 telling us that you are doing and/or have
8 done. And I am trying to have a better
9 understanding of how you objectively can
10 demonstrate or prove that you know for sure
11 you are not violating your SA.

12 And it sounds like what you have
13 is a lot of subjective I don't think I am, I
14 don't feel like I am, but you don't have
15 definitive measures. So a definitive measure
16 to me would be I have taken the time to go
17 into this individual's residence and confirmed
18 that I am not able to hear noise emanating
19 from my establishment in their residence.

20 Have you done that?

21 MR. CHAM: I didn't go in, but
22 like I said, I walk around the block and make

1 sure I -- making sure I don't hear the sound
2 coming from the establishment.

3 MEMBER JONES: And you recorded
4 that?

5 MR. CHAM: No, I did not. I
6 didn't record that.

7 MEMBER JONES: Okay. So it's just
8 what you are saying, that's just your
9 testimony?

10 MR. CHAM: Yes. I mean, I go --

11 MEMBER JONES: That you know that
12 you haven't heard sound coming from your
13 atrium?

14 MR. CHAM: I never go and take a
15 video camera and record it, but I make sure
16 that the sound is not being heard.

17 MEMBER JONES: All right.

18 MR. CHAM: I just walk around the
19 block.

20 MEMBER JONES: All right. To your
21 knowledge, have you had any sound violations
22 that were confirmed as violations after August

1 31, 2014?

2 MR. CHAM: The one that I just
3 had, which I said earlier, I just had that
4 one, I think, three, four weeks ago.

5 MEMBER JONES: Okay. And how did
6 that come about?

7 MR. CHAM: I don't know the exact
8 date, but it's right there.

9 MEMBER JONES: Understood. How
10 did that come about if you have done all the
11 things that you said you have done? Is it
12 because someone opened the window?

13 MR. CHAM: Thank you.

14 MEMBER JONES: Yes?

15 MR. CHAM: Yes, sir.

16 MEMBER JONES: Okay. All right.
17 Thank you. Thank you, Madam Chair.

18 CHAIRPERSON MILLER: Okay.
19 Anybody else? I just have a clarifying
20 question. You said at 8:00 you close the
21 atrium or you --

22 MR. CHAM: Close the windows.

1 CHAIRPERSON MILLER: What do you
2 do? You close the windows.

3 MR. CHAM: Yes.

4 CHAIRPERSON MILLER: Okay. So
5 they are closed for the rest of the evening,
6 right?

7 MR. CHAM: Yes.

8 CHAIRPERSON MILLER: Okay. And
9 what time do you -- can people go up to the
10 atrium?

11 MR. CHAM: Between 11:00 and
12 midnight.

13 CHAIRPERSON MILLER: They can go
14 up. Okay. How about what time are the
15 windows open earlier? Are they open -- do you
16 serve lunch?

17 MR. CHAM: No.

18 CHAIRPERSON MILLER: No.

19 MR. CHAM: We open at 5:30 every
20 day.

21 CHAIRPERSON MILLER: 5:30, okay.

22 MR. CHAM: We open -- we closed in

1 the daytime. We open at 5:30.

2 CHAIRPERSON MILLER: So the
3 windows and the roof would only be open
4 between 5:30 and 8:00 max? Is that right?

5 MR. CHAM: No. Not -- we only
6 open it at nighttime. The rooftop only opens
7 at night. The restaurant is open. And it's
8 three levels, so we don't open none of those
9 levels until nighttime and then the atrium
10 opens up.

11 CHAIRPERSON MILLER: Okay.

12 MR. CHAM: But when we open at
13 11:00, we don't open the windows, no. That is
14 why we have a -- when we had a day party,
15 that's when we used to open the windows during
16 the summer months.

17 CHAIRPERSON MILLER: Right. You
18 had some day parties?

19 MR. CHAM: Exactly. But not any
20 more.

21 CHAIRPERSON MILLER: So when you
22 are not having a day party, what time does the

1 atrium open?

2 MR. CHAM: 11:00 or 12:00 at
3 night. We don't use it at all, only on Friday
4 and Saturday night.

5 CHAIRPERSON MILLER: No. I'm
6 sorry. I thought you said it closed at 8:00.

7 MR. CHAM: No, I said when we had
8 day party, we close the windows at 8:00. So
9 if there is no day party, atrium doesn't open.

10 CHAIRPERSON MILLER: It doesn't
11 open at all?

12 MR. CHAM: It doesn't open at all.

13 CHAIRPERSON MILLER: I see. Okay.

14 MR. CHAM: But on Friday and
15 Saturday, it opens like between 10:00 and
16 midnight. Only on Friday and Saturday.

17 CHAIRPERSON MILLER: Friday and
18 Saturday 10:00 to 12:00. Okay.

19 MR. CHAM: That's when we open. I
20 mean, we can open it any time, but we don't
21 open it until between 10:00 and midnight.

22 CHAIRPERSON MILLER: I'm sorry.

1 On Friday and Saturday nights, is it open
2 between 10:00 and midnight?

3 MR. CHAM: That's when we open it,
4 yes, ma'am.

5 CHAIRPERSON MILLER: The windows?

6 MR. CHAM: No.

7 CHAIRPERSON MILLER: The atrium?

8 MR. CHAM: Yes.

9 CHAIRPERSON MILLER: The atrium.

10 Not the windows.

11 MR. CHAM: Right.

12 CHAIRPERSON MILLER: Okay. Okay.

13 That Level 3 that we heard about, have you
14 kept the board or whatever it was at Level 3
15 since it was set at Level 3?

16 MR. CHAM: Yes, ma'am. Those are
17 the, like I telling the gentlemen, mixers that
18 we had.

19 CHAIRPERSON MILLER: Okay.

20 MR. CHAM: We had five mixers came
21 in where the tech guy already set it up, so
22 they can't put up the mixer.

1 CHAIRPERSON MILLER: Okay.

2 MR. CHAM: If not -- if they do
3 it, they are going to break the mixer.

4 CHAIRPERSON MILLER: Okay. And so
5 the noise violation that you had since the
6 Level 3 was put in place was this recent one
7 because somebody opened the window?

8 MR. CHAM: Opened the window.
9 Yes, ma'am.

10 CHAIRPERSON MILLER: What was the
11 other violation that --

12 MR. CHAM: That's --

13 CHAIRPERSON MILLER: Was that
14 before the Level 3 was done?

15 MR. CHAM: I think that was right
16 after we opened.

17 CHAIRPERSON MILLER: Right after
18 you opened. Okay.

19 MR. CHAM: I think. I don't have
20 it in front of me.

21 CHAIRPERSON MILLER: Okay. But
22 that was before then?

1 MR. CHAM: That was before, yes.

2 CHAIRPERSON MILLER: Okay. Great.

3 MEMBER SHORT: Just one.

4 CHAIRPERSON MILLER: Mr. Short,
5 yes.

6 MEMBER SHORT: Please make me
7 understand --

8 MR. CHAM: Yes, sir.

9 MEMBER SHORT: -- that you
10 understand --

11 MR. CHAM: Yes, sir.

12 MEMBER SHORT: -- that this
13 agreement is tied to you having an ABC License
14 to do business in the District of Columbia.

15 MR. CHAM: Yes, sir.

16 MEMBER SHORT: Do you understand
17 that?

18 MR. CHAM: Yes, sir.

19 MEMBER SHORT: So when you sit
20 here and give answers that don't add up, you
21 are not helping your business. You are not
22 helping yourself here. And you need to know

1 that I, as a Board Member, take what you are
2 saying about your neighbors very seriously.

3 That agreement is there for a
4 reason. If you don't adhere to that
5 agreement, then if it's left up to me, I would
6 not vote for you to have a license.

7 Do you understand that?

8 MR. CHAM: Yes, sir.

9 MEMBER SHORT: Thank you.

10 MR. CHAM: I'm trying to work --

11 MEMBER SHORT: Thank you very
12 much. That's all I have, Madam Chair.

13 MEMBER RODRIGUEZ: Madam Chair?

14 CHAIRPERSON MILLER: Mr.
15 Rodriguez?

16 MEMBER RODRIGUEZ: I have a
17 follow-up on Mr. Short.

18 CHAIRPERSON MILLER: Yes.

19 MEMBER RODRIGUEZ: So are you
20 prepared to work with this group to ensure
21 that the violations are not continuing?

22 MR. CHAM: Yes, sir.

1 MEMBER RODRIGUEZ: You are
2 prepared to do that?

3 MR. CHAM: Yes, sir.

4 MEMBER RODRIGUEZ: You're prepared
5 to keep your license?

6 MR. CHAM: Yes.

7 MEMBER RODRIGUEZ: That's all I'm
8 asking. Thank you.

9 CHAIRPERSON MILLER: Okay. Any
10 other questions? Okay. Thank you very much.
11 Okay. You can step down now.

12 Mr. Cham, you don't have any other
13 witnesses, right?

14 MR. CHAM: No.

15 CHAIRPERSON MILLER: And do you
16 have any documents that you want to put into
17 evidence?

18 MR. CHAM: No.

19 CHAIRPERSON MILLER: Okay. All
20 right. Then you have completed your case. Is
21 that right?

22 MR. CHAM: Yes, ma'am.

1 CHAIRPERSON MILLER: Okay. Fine.
2 And so that brings us to the protestants. And
3 I just want to ask whether you are prepared to
4 go forward now or whether you need a five
5 minute break or anybody needs a five minute
6 break or anything?

7 MR. RACILLA: We are fine with a
8 five minute break.

9 CHAIRPERSON MILLER: Okay. Why
10 don't we do that? All right.

11 (Whereupon, the above-entitled
12 matter went off the record for a recess.)

13 CHAIRPERSON MILLER: It's time for
14 the protestants' case. And I just want to say
15 that it is also acceptable, I know you said
16 you had something like five witnesses and, you
17 know, you are free to put on whatever
18 witnesses you want within your time
19 constraints, but you are also free to have
20 your witness say I agree with everything that
21 the previous witness said and I'll just add
22 this little bit to it or something. That's

1 perfectly acceptable, because sometimes
2 residents have similar experiences.

3 Okay. Yes, you can go ahead.

4 MR. RACILLA: Okay. Thank you.

5 CHAIRPERSON MILLER: I guess we
6 are missing two, but they will be joining us
7 momentarily, so you can start.

8 MR. RACILLA: Okay. Thank you.

9 Briefly, just before we present our evidence,
10 I just want to state that the protestants do
11 not believe that Mr. Cham has presented
12 sufficient evidence and argument to establish
13 that New Town does not and will not continue
14 to interfere with the peace, order and quiet
15 of the surrounding neighborhood, pursuant to
16 Title 23, Section 400.1.

17 Thus, we respectfully posit that
18 the Board must deny the license, because Mr.
19 Cham has failed to meet his regulatory burden.
20 However, without conceding this point, the
21 protestants are prepared now to present their
22 case.

1 CHAIRPERSON MILLER: Okay.

2 MR. RACILLA: And I guess I must
3 also ask can I move into evidence Exhibit No.
4 10?

5 CHAIRPERSON MILLER: Okay.

6 MR. RACILLA: The one that I
7 handed out to you earlier.

8 CHAIRPERSON MILLER: Yes. And
9 Exhibit No. 10, could you describe it?

10 MR. RACILLA: Yes. That is the
11 collection of investigative -- investigation
12 reports from ABRA.

13 (Whereupon, the above-referred to
14 document was marked as Protestant
15 Exhibit No. 10 for
16 identification.)

17 CHAIRPERSON MILLER: Okay. The
18 settlement agreement that was in there, was
19 that attached to an investigative report?

20 MR. RACILLA: Yes, it was.

21 CHAIRPERSON MILLER: Okay. So all
22 of these are public record, but I will ask Mr.

1 Cham, in any event, do you have an objection
2 to them going into evidence? They are public
3 record. They are already -- we could take
4 judicial notice if we wanted to anyway.

5 MR. CHAM: No.

6 CHAIRPERSON MILLER: Okay. So no
7 objection. So I'm going to admit Protestants
8 Exhibit No. 10.

9 (Whereupon, the above-referred to
10 document was received into
11 evidence as Protestant Exhibit No.
12 10.)

13 MR. RACILLA: Thank you.

14 CHAIRPERSON MILLER: Okay.

15 MR. RACILLA: For our first
16 witness, we call Commissioner Jilani to the
17 stand.

18 MS. JILANI: You can call me
19 Zahra.

20 CHAIRPERSON MILLER: I'm going to
21 swear you in.
22 Whereupon,

1 ZAHRA JILANI

2 was called as a witness for the Protestants,
3 and having been first duly sworn, assumed the
4 witness stand and was examined and testified
5 as follows:

6 MS. JILANI: Yes.

7 CHAIRPERSON MILLER: Okay. Thank
8 you.

9 DIRECT EXAMINATION

10 MR. RACILLA: And can you, please,
11 state your name for the record?

12 MS. JILANI: Yes. My name is
13 Zahra Jilani.

14 MR. RACILLA: And what is your
15 position at the ANC?

16 MS. JILANI: I am Advisory
17 Neighborhood Commissioner for ANC-1B12.

18 MR. RACILLA: And how long have
19 you been Commissioner for ANC-1B12?

20 MS. JILANI: Almost two years now.

21 MR. RACILLA: Now, what are the
22 boundaries of ANC-1B12?

1 MS. JILANI: Sure. We are S
2 Street to V Street from 12th to 14th and then
3 we have the little block of U to V Street from
4 14th to 16th.

5 MR. RACILLA: Okay. So is it
6 correct to say that New Town and Wallach Place
7 fall within the boundaries of your ANC?

8 MS. JILANI: Yes, both do.

9 MR. RACILLA: During your time as
10 Commissioner, how active has the ANC been in
11 issuance and renewal of liquor licenses in the
12 neighborhood?

13 MS. JILANI: Sure. Well, as you
14 know in these past two years, last year was a
15 renewal period, so we have dealt with this
16 countless times. Most of them come in my
17 District because I have that U Street
18 Corridor, so I'm very, very familiar with the
19 settlement agreement process as we have had to
20 deal with many other licenses.

21 MR. RACILLA: Why did the ANC
22 decide to protest the liquor license of New

1 Town?

2 MS. JILANI: Sure. We protested
3 New Town on peace, order and quiet. I really
4 believe that the protest period, especially
5 during a renewal time, allows the residents to
6 have a voice in perhaps changing the
7 settlement agreement and every single time
8 that we have done it, at least when I have
9 been involved, the reason why I have never
10 been to a final Protest Hearing is because we
11 have come up with an agreement.

12 Sometimes it takes two mediations
13 to do that, but we have always come up with an
14 agreement that may not be 100 percent what the
15 residents want or what the business wants, but
16 it's a compromise. And I think that's the
17 point.

18 Unfortunately, in these
19 proceedings, you know, Mr. Cham hasn't been
20 willing to work with the residents and I
21 haven't seen anything like it before this.

22 MR. RACILLA: And did you submit a

1 letter in support of the protestants in this
2 case?

3 MS. JILANI: Yes.

4 MR. RACILLA: May I approach?

5 CHAIRPERSON MILLER: Sure, but
6 show Mr. Cham what you are going to show her.
7 Thank you.

8 MS. JILANI: And I sent that to --
9 Mr. Cham was cced on that as well.

10 CHAIRPERSON MILLER: Thank you.

11 MR. RACILLA: So have you seen
12 this exhibit before or have you seen this? Is
13 this your letter that you --

14 MS. JILANI: The email that I
15 wrote? Yes.

16 MR. RACILLA: Yes.

17 MS. JILANI: I have seen it.

18 MR. RACILLA: And directing your
19 attention to page 2, sorry --

20 MS. JILANI: Yes.

21 MR. RACILLA: -- of the exhibit.
22 Is this the letter that you submitted?

1 MS. JILANI: Yes.

2 MR. RACILLA: So do you believe
3 that New Town, as it is currently being
4 operated with a DJ and dancing on the glass
5 atrium, has an adverse affect on the peace,
6 order and quiet of the community?

7 MS. JILANI: Yes. As we have
8 discussed in mediation, I think it is having
9 an adverse affect, but the point is we have a
10 very simple solution here. I really think
11 that if by cutting out -- if we could put in
12 the license to restrict dancing and live music
13 only in the atrium, I think we will solve all
14 our problems.

15 As Mr. Howsoon mentioned already,
16 he is using the lower levels. If we can just
17 restrict that in the license, I believe it is
18 technically their summer garden, then we can--
19 which I have seen before, then I think that
20 will solve all of our problems.

21 I think it is a pretty simple
22 solution, but, unfortunately, Mr. Cham wasn't

1 willing to put this in the settlement
2 agreement during mediation.

3 CHAIRPERSON MILLER: I'm sorry. I
4 should -- I want to make sure we got that.
5 Did you say restrict dancing and music?

6 MS. JILANI: Restrict dancing and
7 live entertainment.

8 CHAIRPERSON MILLER: Live
9 entertainment.

10 MS. JILANI: Yep.

11 CHAIRPERSON MILLER: Thank you.

12 MS. JILANI: I think ambient music
13 would be fine.

14 CHAIRPERSON MILLER: Okay. I'm
15 sorry. Go ahead.

16 MR. RACILLA: Are you aware of the
17 number of violations that have been found
18 against -- noise violations that have been
19 found against New Town?

20 MS. JILANI: Yes. Of course, ABRA
21 would know best, but I know Mr. Howsoon said
22 two, but according to my records, and please

1 correct me if I'm wrong, according to the
2 investigative history and do you have that in
3 front of you as well?

4 MR. RACILLA: Sure.

5 CHAIRPERSON MILLER: Not right
6 this minute. I believe that the

7 MEMBER SILVERSTEIN: We don't
8 answer questions.

9 CHAIRPERSON MILLER: I thought she
10 asked for one.

11 MS. JILANI: I have one. If we
12 can --

13 CHAIRPERSON MILLER: Did you --

14 MS. JILANI: Oh, perfect.

15 CHAIRPERSON MILLER: I'm sorry. I
16 think she wanted to bring the Board's
17 attention to the investigative history.

18 MS. JILANI: Yes.

19 CHAIRPERSON MILLER: Okay, thank
20 you.

21 MR. RACILLA: We would also --

22 CHAIRPERSON MILLER: Okay.

1 MS. JILANI: So according to the
2 investigative history, one on 9/19, there was
3 a settlement agreement noise. Then 8/23 we
4 have another one, settlement agreement noise
5 posting and carrying of licenses. 6/5 and
6 this is all in 2014 settlement agreement noise
7 from licenses on the premises. Then 3/22,
8 there was another case. And then 3/7 there
9 was another settlement agreement noise.

10 And then according to the, what is
11 this document called, Noise Task Force Table,
12 is that what this is called?

13 MR. RACILLA: Yes.

14 MS. JILANI: So when I received
15 this as well, I believe I see two more. One
16 on 4/25/2014, one violation of D.C. Official
17 Code Title 25 and then a second one, one
18 violation of D.C. Official Code Title 25 on
19 5/9.

20 So according to my math, I believe
21 that is seven and that's only since March.
22 And I haven't seen -- I mean, it's just

1 worrying. I haven't seen that many violations
2 coming from one establishment, even on U
3 Street.

4 MR. RACILLA: And so then does the
5 ANC believe that the Board should add any
6 restrictions to the liquor license for the
7 property located at 1336 U Street?

8 MS. JILANI: Yes. As I mentioned
9 before, I think this is a very simple
10 solution. If we can just restrict the license
11 in terms of the atrium to restrict live
12 entertainment and dancing, all of the problems
13 will be solved.

14 Unfortunately, we have seen right
15 now in the settlement agreement it says that
16 they can have live entertainment as long as
17 the windows are closed. But as we have found
18 out, both through Mr. Jones' testimony and
19 through the testimony you will hear from the
20 residents, you can still hear the music even
21 if the windows are closed.

22 MR. RACILLA: So it's the ANC's

1 position that the Board should forbid live
2 entertainment and dancing in the atrium space?

3 MS. JILANI: Yes. And I think
4 that should be part of the license, not part
5 of the settlement agreement, so that it's more
6 enforceable.

7 MR. RACILLA: Well, as you just
8 suggested, are there any benefits to providing
9 such a bright line restriction in the license?

10 MS. JILANI: Yes. I really think
11 this will solve all our problems. And as we
12 have tried to figure this out in mediation,
13 unfortunately, Mr. Cham wasn't willing to
14 concede this, although during his testimony he
15 already said that he is having most of his
16 live entertainment nights on the bottom floor.

17 So if we could just keep that.
18 You know, we don't want to ruin your business.
19 We want you to stay on U Street, Mr. Cham, but
20 if we can just keep the live entertainment and
21 the dancing to the bottom floors and restrict
22 that in the atrium, I think that will solve

1 all of our problems.

2 CHAIRPERSON MILLER: I just want
3 to interject something and that is we don't
4 want to hear too much about who said what
5 during mediation because we want to protect
6 that process somewhat.

7 MS. JILANI: Sure.

8 CHAIRPERSON MILLER: You know, so
9 people can feel free to mediate.

10 MS. JILANI: Sure. Sorry about
11 that.

12 CHAIRPERSON MILLER: That's okay.
13 That's all right.

14 MR. RACILLA: Are you aware of any
15 other violations other than the noise problems
16 with the settlement agreement?

17 MS. JILANI: Well, noise is the
18 biggest. I think that's why we are here. I
19 think that is what we need to solve. It was
20 brought to my attention that although in the
21 settlement agreement it states that "Applicant
22 agrees to restrict all events to those run by

1 the restaurant and will not contract the
2 restaurant for any special events to be
3 operated by outside promoters."

4 I did see this from Facebook,
5 there was an outside promoter promoting
6 something. Do you have that to give them?
7 Yes? So that outside promoter was promoting
8 a night at New Town.

9 MR. RACILLA: And you are looking
10 at the last page?

11 MS. JILANI: Yep, last page.

12 MR. RACILLA: Okay. Of exhibit --
13 that's Exhibit 13?

14 MS. JILANI: Exhibit -- well, like
15 I said, that's -- we are here about noise, but
16 I did -- that did come to my attention.

17 (Whereupon, the above-referred to
18 document was marked as Protestant
19 Exhibit No. 13 for
20 identification.)

21 MEMBER ALBERTI: Ms. Miller?

22 CHAIRPERSON MILLER: Yes?

1 MEMBER ALBERTI: We are getting
2 all of these documents.

3 CHAIRPERSON MILLER: Yes. You
4 don't have to look at it.

5 MEMBER ALBERTI: What has been
6 entered into evidence and what hasn't been
7 entered into evidence? Has any of it?

8 CHAIRPERSON MILLER: Yes. Exhibit
9 10. I don't know if you were in the room or
10 not.

11 MEMBER ALBERTI: Exhibit 10 has
12 been entered. Okay.

13 CHAIRPERSON MILLER: Yes. So --

14 MEMBER ALBERTI: That's the stuff
15 that is in our record, correct?

16 CHAIRPERSON MILLER: Right. These
17 have not.

18 MEMBER ALBERTI: Okay. All right.

19 MR. RACILLA: So then we would
20 like to move in Protestant Exhibit No. 9,
21 which is the investigative history of -- for
22 New Town. The Protestant Exhibit No. 11,

1 which is a printout of the Noise Task Force
2 investigation results.

3 (Whereupon, the above-referred to
4 documents were marked as
5 Protestant Exhibit No. 9 and 11
6 for identification.)

7 CHAIRPERSON MILLER: Exhibit 11,
8 right. Okay. So both of these are public
9 documents, correct?

10 MR. RACILLA: Yes.

11 CHAIRPERSON MILLER: Okay. Do you
12 have a problem with those?

13 MR. CHAM: I mean, I have never
14 seen these myself.

15 CHAIRPERSON MILLER: Okay. So 9
16 and 11, I'm saying, are public documents.

17 MR. CHAM: Say that again?

18 CHAIRPERSON MILLER: They are
19 public documents. Exhibit 9 is the
20 investigative history of the establishment.

21 MR. CHAM: Yes, I mean, this
22 investigative doesn't state that these are --

1 the noise violation which is what we are
2 talking about is only two that I see here.

3 The rest is totally irrelevant.

4 CHAIRPERSON MILLER: The rest are
5 irrelevant, you're saying?

6 MR. CHAM: Yes.

7 CHAIRPERSON MILLER: You are
8 object -- okay. So you can argue that, but
9 the document itself is an official Government
10 document, so I'm going to admit Exhibit 9.

11 (Whereupon, the above-referred to
12 document was received into
13 evidence as Protestant Exhibit No.
14 9.)

15 CHAIRPERSON MILLER: And the same
16 with Exhibit 11 for the same reason. You will
17 get to argue against these documents, but not
18 -- but I'm saying they are going to be in the
19 record and then you can argue against them.
20 But they are official Government records.
21 Okay. That's 9 and 11 are admitted then.

22 (Whereupon, the above-referred to

1 document was received into
2 evidence as Protestant Exhibit No.
3 11.)

4 MR. RACILLA: Okay. And then we
5 are going to wait. We will have a sponsoring
6 witness for Exhibit 13.

7 CHAIRPERSON MILLER: Okay.

8 MR. RACILLA: We will move it in
9 at that time.

10 CHAIRPERSON MILLER: Yes. Okay.

11 MR. RACILLA: So I apologize, I
12 think I caused a little bit of chaos out there
13 by handing out these exhibits, so could you --
14 I'm sorry, could you state again what
15 restrictions that you believe should be in
16 place with New Town and the license?

17 MS. JILANI: Yes. If we can put
18 in their license that we restrict dancing and
19 live entertainment in the atrium, which I
20 believe is considered their summer garden in
21 the license. I think that would solve --

22 MR. RACILLA: That would forbid --

1 MS. JILANI: That would forbid
2 dancing and live entertainment --

3 MR. RACILLA: -- dancing and live
4 entertainment.

5 MS. JILANI: -- in the atrium.

6 MR. RACILLA: Okay.

7 MS. JILANI: That is -- I believe
8 that is the solution. And we will still keep
9 Mr. Cham's business alive and thriving.

10 MR. RACILLA: Thank you. I have
11 no further questions.

12 CHAIRPERSON MILLER: Okay. Any
13 cross-examination questions for the witness?

14 CROSS-EXAMINATION

15 MR. CHAM: Ms. Jilani, what is
16 your role in reference to supporting the
17 businesses on U Street or in your District?

18 MS. JILANI: I believe as
19 Commissioner, my role is to support the
20 residents and the businesses and make them
21 work together, which is why I think I have
22 even been chided for being too pro-business.

1 Generally, I am on the side of the businesses,
2 in the protest case, if you look at my
3 history.

4 MR. CHAM: Okay.

5 MS. JILANI: But in this case, I
6 was on the side of the residents.

7 MR. CHAM: All right. For
8 business. Have you ever come to New Town and
9 sat down with me and introduced yourself?

10 MS. JILANI: Yes. Remember I came
11 in when we originally -- when the trash
12 complaint originally came in when the original
13 protest came in from the ANC, I came in to let
14 you know that you were being protested.

15 MR. CHAM: Oh, you just came to
16 let me know.

17 MS. JILANI: Yes.

18 MR. CHAM: Okay. Not to introduce
19 yourself and tell me who you are, right?

20 MS. JILANI: I also did that.

21 MR. CHAM: I don't recall that,
22 because I remember you just dropping the

1 document.

2 But have you ever sat down with me
3 other than that time you just said you came to
4 New Town, sat down with me and talk about the
5 voluntary agreement, the settlement agreement
6 and how this could be solved? Have you ever
7 done that with me? Sit down with me one-on-
8 one?

9 MS. JILANI: That one time that
10 you referenced was the only time, because when
11 we tried to --

12 MR. CHAM: When you drop off the
13 trash document?

14 MS. JILANI: -- a second time,
15 unfortunately, you weren't able to come.
16 Remember we waited outside your door, but you
17 said that you were busy and you couldn't make
18 the meeting.

19 MR. CHAM: No. It was a Monday
20 and we closed on Mondays.

21 CHAIRPERSON MILLER: Okay.

22 MS. JILANI: We had planned to

1 meet at that time.

2 CHAIRPERSON MILLER: Try to limit
3 this to question/answer.

4 MR. CHAM: I mean, it was just
5 simple question. Have you ever sat down with
6 me to figure this out, talk about the
7 settlement agreement? Yes or no?

8 MS. JILANI: No.

9 MR. CHAM: Okay.

10 MS. JILANI: But we did try to
11 meet with you.

12 MR. CHAM: So you also testified
13 that New Town disturb the peace, order and
14 quiet of the community. Have you ever been to
15 New Town at night to see firsthand what
16 everybody is talking about? What the
17 residents are protesting about? Have you ever
18 came to New Town at night? Yes or no?

19 MS. JILANI: Came to New Town at
20 night?

21 MR. CHAM: Yes.

22 MS. JILANI: No.

1 MR. CHAM: Okay. Have you ever
2 been there with the Task Force or Noise Task
3 Force or ABRA to see firsthand what the
4 protest is about? Yes or no?

5 MS. JILANI: Nope. I have relied
6 on resident feedback.

7 MR. CHAM: So you just listened to
8 whatever they say and that's what you go by?
9 That's basically what you say?

10 MS. JILANI: Yes, I don't have
11 time to visit every establishment in our
12 neighborhood.

13 MR. CHAM: But you have never been
14 to New Town to see first hand what is going
15 on, right?

16 MS. JILANI: I have been to New
17 Town before.

18 MR. CHAM: No, no. Have you been
19 to New Town at night with the Task Force or
20 ABRA --

21 MS. JILANI: Not with the Task
22 Force.

1 MR. CHAM: -- to see firsthand?

2 No?

3 MS. JILANI: No.

4 MR. CHAM: Thank you. That's all
5 I have, Your Honor.

6 CHAIRPERSON MILLER: Okay. Board
7 questions? Could you explain your reasoning
8 for asking for a restriction on dancing in the
9 atrium?

10 MS. JILANI: Sure.

11 CHAIRPERSON MILLER: Okay.

12 MS. JILANI: I believe the live
13 entertainment, obviously, is the most
14 important, but I believe if dancing -- if
15 there was only ambient music and there was
16 also dancing, I think that would lead people
17 to increase the volume. That's the reason
18 for --

19 CHAIRPERSON MILLER: What?

20 MS. JILANI: To increase the
21 volume. You know, it wouldn't -- if people
22 were dancing, if dancing was allowed, I think

1 that would -- it would encourage the DJ or
2 whoever, sorry, encourage the ambient music to
3 be raised. I think it's better to just put
4 them both in the restriction, so we can ensure
5 that the music won't emanate from the
6 establishment into the residents' homes.

7 CHAIRPERSON MILLER: Okay. And is
8 that based on your experience in seeing other
9 establishments having dancing and it is never
10 soft, it's always loud or what?

11 MS. JILANI: Yes.

12 CHAIRPERSON MILLER: Okay. And
13 live entertainment, is it your understanding
14 that that includes a DJ?

15 MS. JILANI: Yes.

16 CHAIRPERSON MILLER: Okay. Okay.
17 No other questions. Mr. Alberti?

18 MEMBER ALBERTI: Hi. So just step
19 back for a second. I think what I heard you
20 say is that you reached your conclusions based
21 on conversations with constituents, neighbors.

22 MS. JILANI: Yes.

1 MEMBER ALBERTI: Is that correct?

2 MS. JILANI: Yep, that's generally
3 how I base my conclusions.

4 MEMBER ALBERTI: Okay. Generally,
5 where are these -- the constituents, who you
6 have discussed this with? Generally, where do
7 they live?

8 MS. JILANI: On Wallach. So right
9 behind the neighborhood.

10 MEMBER ALBERTI: Oh, right behind
11 it?

12 MS. JILANI: I'm sorry, right
13 behind the establishment, yes.

14 MEMBER ALBERTI: How many
15 representatives from how many properties have
16 you spoken to, do you think?

17 MS. JILANI: I have spoken to
18 everyone in this room and I think that's it.

19 MEMBER ALBERTI: Okay.

20 MS. JILANI: Yes.

21 MEMBER ALBERTI: Is it your sense
22 from those conversations that it is a problem

1 that they would object to noises being heard--
2 well, okay. Is it your impression that they
3 have been able to hear noises in their
4 residence?

5 MS. JILANI: Yes. And I have seen
6 video evidence of that as well.

7 MEMBER ALBERTI: Shooting a
8 video --

9 MS. JILANI: They showed me a
10 video.

11 MEMBER ALBERTI: -- is a visual.

12 MS. JILANI: Oh, see that is
13 visual or --

14 MEMBER ALBERTI: Well, I mean --

15 MS. JILANI: Sir?

16 MEMBER ALBERTI: How do you know
17 that they heard it in their --

18 MS. JILANI: I heard on the video
19 that they showed me.

20 MEMBER ALBERTI: Okay.

21 MS. JILANI: So there was --

22 MEMBER ALBERTI: They took a video

1 inside to record --

2 MS. JILANI: Yes.

3 MEMBER ALBERTI: -- the sound that
4 they heard? Okay. All right.

5 MS. JILANI: And that's what they
6 showed me.

7 MEMBER ALBERTI: I just wanted to
8 make sure. I wasn't trying to give you a hard
9 time.

10 MS. JILANI: Yes, no problem.

11 MEMBER ALBERTI: I just wanted to
12 make sure for the record we heard clear --

13 MS. JILANI: There was sound on
14 the video.

15 MEMBER ALBERTI: -- on that.

16 MS. JILANI: Yes.

17 MEMBER ALBERTI: All right.

18 Great. All right. Is it your -- do you know
19 whether they object to sound, that kind of
20 atmosphere, the sounds in their establishment
21 like all the time or just after like
22 particular hours in the evening?

1 MS. JILANI: Well, I believe it is
2 in the evenings. I'm sure when they, you
3 know, give their testimony you can hear more
4 about that.

5 MEMBER ALBERTI: Okay. All right.

6 MS. JILANI: But the fact is they
7 can hear it in their homes and it is
8 preventing them from sleeping, that's what
9 alerted me to it.

10 MEMBER ALBERTI: So really am I
11 correct in concluding that the real problem is
12 whether or not they can hear it in their
13 residence, right?

14 MS. JILANI: Yes.

15 MEMBER ALBERTI: They don't really
16 care a lot what activities -- do they care
17 about what activities go on in the atrium?

18 MS. JILANI: No. If they couldn't
19 hear the noise, I don't think that would be an
20 issue.

21 MEMBER ALBERTI: Great. Have you
22 walked around the establishment when it has

1 been open on weekends?

2 MS. JILANI: Yes, I have walked on
3 the U Street side. I haven't walked on the
4 back side.

5 MEMBER ALBERTI: Okay. So well,
6 do you have any comments about what you heard
7 on the U Street side? And I'll have to -- I
8 mean, I know it is very busy and loud on the
9 U Street side, so but tell me what you heard.

10 MS. JILANI: Sure. Well, on the U
11 Street side, yes, unfortunately, it's just so
12 loud anyway that you can't pinpoint where it
13 is coming from. It would -- I think it would
14 have been different if I had gone in the back,
15 but unfortunately I haven't been in the back.

16 MEMBER ALBERTI: But you haven't.

17 MS. JILANI: Yes.

18 MEMBER ALBERTI: Okay. Very good.
19 Okay. Thank you. That's all the questions
20 that I have.

21 CHAIRPERSON MILLER: Others?

22 Okay. Thank you very much.

1 MS. JILANI: Yes, thank you.

2 (Whereupon, witness was excused.)

3 MR. RACILLA: We would like to
4 call William Isasi to the stand.

5 CHAIRPERSON MILLER: Okay.

6 Whereupon,

7 WILLIAM ISASI

8 was called as a witness for the Protestants,
9 and having been first duly sworn, assumed the
10 witness stand and was examined and testified
11 as follows:

12 MR. ISASI: I do.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 DIRECT EXAMINATION

16 MR. RACILLA: Can you state your
17 name, please?

18 MR. ISASI: William Isasi.

19 MR. RACILLA: And can you state
20 your relationship to the protest group?

21 MR. ISASI: I am the designated --
22 I was the designated representative for the

1 protest Group of Five or more residents during
2 the protest. I was the designated
3 representative of the protest group during the
4 -- of the designated group of five or more
5 protestants.

6 MEMBER ALBERTI: Can you make sure
7 you speak into the microphone, so that --

8 MR. ISASI: Sorry.

9 MEMBER ALBERTI: -- we can hear?
10 Yes, you can adjust it if you need to.
11 Thanks.

12 MR. ISASI: And as that
13 representative, I had regular contact with Mr.
14 Cham trying to explain to him the problems
15 that we were having on Wallach Place until he
16 cut out the communications with us in April.

17 So starting in January, when we
18 first met with him, through April I had
19 regular email communications and we also met
20 with Mr. Cham to talk about the noise
21 problems. And then in April he cut off the
22 communications with us.

1 MR. RACILLA: And do you have any
2 evidence that Mr. Cham cut off communications
3 with you?

4 MR. ISASI: Yes. He cut off the
5 communications with us in an email
6 communication.

7 CHAIRPERSON MILLER: I'm sorry,
8 could you repeat that, please?

9 MR. ISASI: Sure. He cut off
10 communications with us in an email.

11 CHAIRPERSON MILLER: In an email.
12 Okay. Thank you.

13 MR. RACILLA: Okay. You have been
14 handed two exhibits. The first one,
15 Protestant Exhibit No. 3A and the second one
16 Protestant Exhibit No. 3B. Do you recognize
17 these documents?

18 MR. ISASI: I do.

19 MR. RACILLA: And what is document
20 3A?

21 MR. ISASI: 3A is an email. It's
22 an email I sent to Mr. Cham explaining to him

1 our notice. This was in January. And then
2 his response.

3 MR. RACILLA: And then what is
4 Exhibit 3B?

5 MR. ISASI: Exhibit 3B was a
6 series of emails where I was -- this was sort
7 of -- what I was doing on a regular basis was
8 whenever I heard from residents on Wallach
9 Place that there were noise problems, I would
10 email him and say, you know, Mr. Cham it's
11 Monday and I heard from three different people
12 and there was noise problems on this day or
13 that day.

14 (Whereupon, the above-referred to
15 documents were marked as
16 Protestant Exhibit No. 3A and 3B
17 for identification.)

18 MR. ISASI: So this is an example
19 of one of those emails. The bottom part is
20 from me. And then the April 28th is his
21 response. And this is where he ends up saying
22 I'm not going to email with you any more. I'm

1 done with this kind of communication.

2 MR. RACILLA: I would like to move
3 Exhibits 3A and 3B into evidence.

4 CHAIRPERSON MILLER: What is 3A,
5 to the point?

6 MR. ISASI: 3A is establishing
7 when we started communicating. We started --
8 we described the problems to him. If you look
9 at the email that I sent him which is dated
10 January 9th, we lay out the problems very
11 clearly that we are having with New Town.
12 This was in January of this year and his
13 response.

14 And it shows that we were, from
15 the very beginning, trying to work with him
16 and clearly identify him what the problems
17 were and try to come to a solution.

18 CHAIRPERSON MILLER: Okay. 3A,
19 are you on this email?

20 MR. ISASI: Yes. My name is
21 William Isasi, so my email address is
22 wisasi@hotmail.com.

1 CHAIRPERSON MILLER: Right. Okay.
2 Okay. Okay. Do you have an objection to this
3 exhibit? No? Okay. All right. Then
4 Protestant's Exhibit 3A is admitted.

5 (Whereupon, the above-referred to
6 document was received into
7 evidence as Protestant Exhibit No.
8 3A.)

9 CHAIRPERSON MILLER: Okay. And 3B
10 goes to?

11 MR. ISASI: 3B is an example of
12 the communication that we tried to regularly
13 have with Mr. Cham explaining that we were
14 having noise problems. And also if you look
15 at his response on April 28th, it's where he
16 cut off communication with us saying he no
17 longer wanted to email. He wasn't going to
18 respond to any of our emails.

19 CHAIRPERSON MILLER: Oh, I see.
20 Do you have an objection to this, Mr. Cham?

21 MR. CHAM: Yes, I do.

22 CHAIRPERSON MILLER: Okay. Do you

1 want to state it?

2 MR. CHAM: (No audible answer).

3 CHAIRPERSON MILLER: Do you want
4 to explain your objection?

5 MR. CHAM: This is an email that I
6 had sent, because I keep getting the same
7 calls every day from him and the same emails.
8 So I just told him that I can't just continue
9 doing this. I have work to do. And it's
10 basically the same thing over and over and
11 over again. This email was same subject was
12 coming again maybe more than 10 dozen times.

13 MEMBER JONES: We're not clear on
14 the objection.

15 MR. CHAM: I just can't have this.

16 MEMBER JONES: Are you saying the
17 email is false? Are you saying the email
18 isn't true? Are you saying that you didn't do
19 it? Like what's your objection to the
20 evidence?

21 MR. CHAM: It's not like it's
22 false or it's not true.

1 MEMBER JONES: Okay.

2 MR. CHAM: The email came from me.

3 MEMBER JONES: All right.

4 MR. CHAM: Obviously. It's how he
5 said that I used this as my tool to cut off
6 the communication. I object to that.

7 CHAIRPERSON MILLER: Okay. You
8 can have rebuttal, but the document itself,
9 you are not objecting to its admission into
10 the record on the basis that it is false or
11 irrelevant or something like that?

12 MR. CHAM: It is relevant.

13 CHAIRPERSON MILLER: You think
14 it's relevant?

15 MR. CHAM: It is relevant, that's
16 what I'm trying to say. Okay. Because I was
17 getting the same harassing emails over and
18 over again. I told him I'm not going to
19 listen to you any more. Let's meet in front
20 of Board mediation or something and we talk
21 about it, but I'm not going to keep doing it
22 by email, that's what this email was.

1 CHAIRPERSON MILLER: Okay. Why is
2 it relevant to this case?

3 MR. RACILLA: Your Honor, it's
4 relevant because it shows the deterioration of
5 the relationship between the protestants and
6 Mr. Cham. And that deterioration is part of
7 the reason that we are here today because we
8 have no been able to come to any kind of
9 resolution with him.

10 CHAIRPERSON MILLER: Okay. Are
11 you saying that -- okay. So that's part of
12 the reason it's part of your --

13 MR. ISASI: It's also --

14 CHAIRPERSON MILLER: -- seeking a
15 condition from the Board, because you can't or
16 couldn't work it out.

17 MR. ISASI: -- a fair example of--

18 MEMBER JONES: Whoa, whoa, whoa.

19 CHAIRPERSON MILLER: No?

20 MEMBER JONES: Not from him.

21 MR. ISASI: I'm trying to --

22 CHAIRPERSON MILLER: I'm sorry,

1 what do you --

2 MEMBER JONES: He can't tell you
3 or define or defend this. It's him.

4 MR. ISASI: Okay. Sorry about
5 that.

6 CHAIRPERSON MILLER: Oh, okay.

7 MR. ISASI: I'm sorry about that.

8 CHAIRPERSON MILLER: Right. All
9 right.

10 MEMBER ALBERTI: Thank you, Mr.
11 Jones.

12 MEMBER JONES: I try to do what I
13 can.

14 CHAIRPERSON MILLER: This is
15 from --

16 MEMBER JONES: I'm sorry. I'm not
17 trying to be rude. I'm trying to establish
18 some protocol.

19 CHAIRPERSON MILLER: Well, wait.
20 Who is William on this email?

21 MR. ISASI: So I'm William.

22 CHAIRPERSON MILLER: You are

1 William. So you can speak to this email
2 because you are -- it was a communication
3 between you and Mr. Cham. Okay.

4 MEMBER JONES: There was an
5 objection raised.

6 MEMBER ALBERTI: Right.

7 CHAIRPERSON MILLER: As to
8 relevance.

9 MEMBER JONES: Right. He needs to
10 speak. He being the protestant's
11 representative.

12 CHAIRPERSON MILLER: He did speak.

13 MEMBER ALBERTI: Right, right.

14 MEMBER JONES: So why are you
15 asking him questions?

16 CHAIRPERSON MILLER: I didn't.

17 MEMBER JONES: The witness. He --

18 MR. ISASI: And I apologize. I
19 didn't understand.

20 CHAIRPERSON MILLER: Okay. He
21 interjected that he had something to add.

22 MEMBER JONES: Thank you. So you

1 should be talking to the protestant, right?

2 MEMBER ALBERTI: The
3 representative.

4 MEMBER JONES: The representative,
5 correct?

6 MR. RACILLA: Yes.

7 CHAIRPERSON MILLER: Okay. We
8 will admit it and give it the weight that it
9 deserves. Okay.

10 (Whereupon, the above-referred to
11 document was received into
12 evidence as Protestant Exhibit No.
13 3B.)

14 CHAIRPERSON MILLER: And you have
15 a chance -- where are we on this? You will
16 have a chance to cross-examine him after he is
17 finished testifying and on this as well. He
18 is the signatory on it. Okay. All right.
19 Where are we? We have just admitted your --

20 MR. RACILLA: You have just
21 admitted --

22 CHAIRPERSON MILLER: -- exhibit.

1 MR. RACILLA: -- Exhibits 3A and
2 3B.

3 CHAIRPERSON MILLER: Okay. Right.

4 MEMBER ALBERTI: 3A and 3B?
5 You're holding out on me.

6 MR. RACILLA: Before Mr. Cham cut
7 off or before he cut off communications with
8 you, could you describe why and when you
9 emailed him?

10 MR. ISASI: Sure. So I felt as
11 the --

12 CHAIRPERSON MILLER: I'm sorry, do
13 you have a question on the relevance of the
14 testimony? Okay. So maybe you can articulate
15 again because this is kind of borderline. Mr.
16 Silverstein wants to know what does this have
17 to do with peace, order and quiet, which is
18 the subject of this hearing? Okay. Can you
19 address that, this line of questioning on the
20 emailing?

21 MR. RACILLA: Sure.

22 CHAIRPERSON MILLER: What does

1 that have to do with peace, order and quiet?

2 MR. RACILLA: Sure. It shows that
3 the protestant group gave notice to Mr. Cham
4 of problems that we were having with the
5 noise, so it goes to show evidence of that and
6 it also shows the deterioration of the
7 relationship between Mr. Cham and the
8 protestants.

9 MEMBER SILVERSTEIN: Very good.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER ALBERTI: I will interject
12 here.

13 CHAIRPERSON MILLER: Yes.

14 MEMBER ALBERTI: We are interested
15 -- I think it's relevant to show that there
16 was communication and there was an attempt at
17 communication. I don't think it's relevant
18 whether or not the relationship deteriorated
19 or not. We just are -- I personally am only
20 interested in did you make attempts. Okay?

21 CHAIRPERSON MILLER: Okay. I'll
22 just add from my perspective also, we don't

1 need a lot of detail, but I think what your
2 point is is that if you could work it out, you
3 wouldn't need us to put a condition in the
4 license that you are seeking. You are trying
5 to show that you couldn't fix this
6 voluntarily.

7 MR. RACILLA: That's correct.

8 CHAIRPERSON MILLER: Okay. We
9 don't need a lot of detail, that's all. Okay.
10 Because we want to get to what is the
11 solution? What do you really need and why,
12 you know.

13 MR. RACILLA: Okay.

14 MR. ISASI: So to answer your
15 question, I would email Mr. Cham -- until this
16 April email, I would email him on a regular
17 basis informing him of the noise problems that
18 residents had told me about.

19 CHAIRPERSON MILLER: Okay. Do you
20 have two sets?

21 MR. RACILLA: Yes, that's 3C and
22 3D.

1 CHAIRPERSON MILLER: Okay.

2 MR. RACILLA: And is 3C an email
3 that you wrote to Mr. Cham?

4 MR. ISASI: Yes.

5 MR. RACILLA: And what does that
6 email express?

7 MR. ISASI: So this is an example
8 of an email where I laid out for him the
9 problems that we were having with noise with
10 New Town.

11 MR. RACILLA: And then Exhibit 3D,
12 the April 14th email, is that also an email
13 that you wrote to Mr. Cham laying out -- an
14 email that you wrote to Mr. Cham?

15 MR. ISASI: Yes.

16 (Whereupon, the above-referred to
17 documents were marked as
18 Protestant Exhibit No. 3C and 3D
19 for identification.)

20 MR. RACILLA: And what does that
21 email express?

22 MR. ISASI: It's another email

1 with additional problems we were having on
2 different nights with him because of noise.

3 MR. RACILLA: So you attempted to
4 repeated -- you repeatedly attempted to
5 communicate with Mr. Cham the problems that
6 the protestants were having?

7 MR. ISASI: Yes.

8 MR. RACILLA: And I would like to
9 move into evidence Exhibits 3C and 3D.

10 CHAIRPERSON MILLER: Just a
11 minute, let me see. Does Mr. Cham have one?

12 MR. CHAM: Yes, ma'am.

13 CHAIRPERSON MILLER: Yes?

14 MR. CHAM: And I do object to it,
15 too.

16 CHAIRPERSON MILLER: Okay. And
17 what's your objection?

18 MR. CHAM: It's just the same
19 subject on all three emails about email me, I
20 email you, turn it down, I turn it down. So
21 it's totally irrelevant to what we are here
22 for. You look at the subject, it's all the

1 same thing. And on one of the emails he just
2 said it's not low enough. I mean, who decides
3 what is low enough?

4 CHAIRPERSON MILLER: Right.

5 MR. CHAM: Is it the Noise Task
6 Force or is it them?

7 CHAIRPERSON MILLER: Does somebody
8 not have one? Okay. I understand that. And
9 I think that we should admit them. They
10 capture at least times that there were
11 problems or whatever was going on, but so I
12 think that they are relevant. But I say this
13 to you again, that when he is finished
14 testifying, you can cross-examine and make,
15 you know, whatever points you want to make
16 about them.

17 Okay. So 3C and D are admitted.

18 (Whereupon, the above-referred to
19 documents were received into
20 evidence as Protestant Exhibit No.
21 3C and 3D.)

22 MR. RACILLA: And how would you

1 characterize your communications with Mr.
2 Cham?

3 MR. ISASI: Well, I think from the
4 very beginning we tried to explain to him that
5 we really had -- this was not a question of us
6 having any bias against him or his business.
7 We really wanted him to succeed.

8 The real issue here was that
9 Wallach Place, which abuts the back of his
10 business, there is a series of rowhouses with
11 windows in the back and all the residents use
12 those or as far as I know all the residents
13 use those and we certainly use the back room
14 as a bedroom.

15 So he has got a dance floor in a
16 glass atrium with windows and ceilings and
17 everything open 50 feet from a bunch of
18 bedrooms and that's the only issue we have.
19 People are just trying to sleep, that's it.

20 MR. RACILLA: And did you take any
21 photographs to show?

22 MR. ISASI: Yes, I took a

1 photograph to show what -- the windows that we
2 are talking about here. These are -- this is
3 a photograph of the row of rowhouses and these
4 are the windows we are talking about. These
5 upstairs windows are the back bedrooms.

6 The next picture is just a picture
7 of Wallach Place, so you can get a sense for
8 it. It's a Residential Zone to the houses
9 that are on Wallach Place.

10 The next picture is just a picture
11 of New Town, so you get an idea of what it
12 looks like. The levels -- all the levels that
13 exist and then the glass atrium on top.

14 The next picture was taken right
15 here at 14th and U just to give you a sense of
16 where the glass atrium sits in the
17 neighborhood.

18 The next picture was taken from
19 behind our house and it shows the glass atrium
20 sitting on the very top of the building, so
21 you get a sense of the architecture. So the
22 noise problems, you know, the other levels are

1 all these kind of concrete levels. It's just
2 this glass atrium on the roof at the very top
3 that has got all the windows and doors that
4 open. This is the problem we are having the
5 noise from these problems.

6 And the last two pictures are
7 additional picture of the glass atrium.

8 MR. RACILLA: Do these pictures
9 show the relative height of the atrium versus
10 the other buildings on the block?

11 MR. ISASI: Yes, I think the
12 pictures capture well how the atrium sits at
13 the top of the building above everything else
14 in the neighborhood.

15 MR. RACILLA: And is there any
16 building or any structure between the back of
17 New Town and the back windows of Wallach
18 Place?

19 MR. ISASI: No, it's about 50 feet
20 and there is nothing in between.

21 MR. RACILLA: Now, do we wait for
22 a second?

1 CHAIRPERSON MILLER: Sure. Okay.
2 Are you ready?

3 MR. RACILLA: Thank you. Yes.
4 Thank you.

5 CHAIRPERSON MILLER: Okay.

6 MR. RACILLA: I just wanted to
7 give a heads up to the Board. You know, we
8 will definitely take into consideration the
9 things you said about emails. We just have
10 two more that we wanted to enter in to explain
11 some of the interaction between the -- Mr.
12 Cham and the protestants, especially with
13 respect to claims of being bias.

14 And I also wanted to move into
15 evidence Exhibit No. 6.

16 MEMBER ALBERTI: What's the
17 relevance?

18 CHAIRPERSON MILLER: All right.
19 Some Board Members are saying they are
20 wondering about the relevance. Would you like
21 to address the relevance?

22 MR. RACILLA: Sure. In the PIF

1 Mr. Cham has accused the protestants of being
2 racially motivated and not actually really
3 hearing noise and so he has challenged the
4 veracity of our complaint. So we wanted to
5 address that.

6 CHAIRPERSON MILLER: Well, he
7 didn't do it in the hearing.

8 MEMBER ALBERTI: Yes, I mean, Mr.
9 Cham did not make those claims during the
10 hearing.

11 CHAIRPERSON MILLER: What?

12 MEMBER ALBERTI: All right? And--

13 CHAIRPERSON MILLER: Oh, he did?
14 Mr. Cham did?

15 MEMBER ALBERTI: I mean, if you
16 have emails that talk about --

17 CHAIRPERSON MILLER: Okay.

18 MR. RACILLA: -- what Mr. Cham did
19 or refused to do, I mean, that would be
20 relevant. But I mean, if he actually in his
21 email says I'm not going to do something, that
22 might be relevant. But if he is making claims

1 of racial bias in an email, that's irrelevant
2 to this case, because he hasn't make those
3 claims here.

4 MR. RACILLA: Okay.

5 CHAIRPERSON MILLER: Has he? I
6 mean, I heard one --

7 MR. RACILLA: He did make the
8 claim in the PIF.

9 CHAIRPERSON MILLER: That's right.
10 Just in the PIF? Did he make it today, this
11 morning? I mean, this afternoon?

12 MR. RACILLA: Oh, that is true.
13 He didn't.

14 CHAIRPERSON MILLER: He did not.

15 MR. RACILLA: So I don't know if
16 we --

17 CHAIRPERSON MILLER: All right.

18 MEMBER ALBERTI: You know, I mean,
19 I still think that that whole subject is
20 irrelevant.

21 CHAIRPERSON MILLER: Okay. So you
22 think it's prejudicial. All I want to say is

1 basically, you know, we want to know, you
2 know, what's the problem. What's the relief
3 you want and why. I mean, that is what really
4 we are going to be looking at.

5 We are not questioning people's
6 motives ourselves. We are not questioning
7 that at all. Did you want?

8 MR. CHAM: Yes. I mean, just
9 based on the questions you just asked, they
10 throw in all these emails and all these
11 accusations and all these false accusations
12 and then all these papers and all these pages.

13 CHAIRPERSON MILLER: Yes. Okay.

14 MR. CHAM: Just like I'm here to
15 figure out what can we do moving -- what needs
16 to be done.

17 MEMBER ALBERTI: Yes.

18 MR. CHAM: What needs to be
19 changed in the voluntary agreement.

20 CHAIRPERSON MILLER: Okay.

21 MR. CHAM: What needs to -- I
22 meant that what needs to be closed? What

1 needs to be opened? That's what I'm here for.
2 I'm not here to cat fight. And I look at this
3 as a cat fight.

4 CHAIRPERSON MILLER: Okay.

5 MR. CHAM: Which I'm just not here
6 for.

7 CHAIRPERSON MILLER: Do you want
8 to let that go? All right. We are going to
9 let the protestants go on with their case.

10 Okay.

11 MR. RACILLA: Thank you. Yes, can
12 we move into evidence, I think I asked before
13 to move in evidence, Protestant's No. 6?
14 These are the photographs that Mr. Isasi took.

15 CHAIRPERSON MILLER: You took
16 these photographs?

17 MR. ISASI: Yes.

18 CHAIRPERSON MILLER: Okay.

19 MEMBER ALBERTI: May I ask when
20 they were taken?

21 CHAIRPERSON MILLER: Sure. Go
22 ahead.

1 MEMBER ALBERTI: When were they
2 taken?

3 MR. ISASI: They were taken this
4 past weekend.

5 MEMBER ALBERTI: Okay. Great.

6 CHAIRPERSON MILLER: Past what?

7 MR. ISASI: Weekend.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: All right.

10 CHAIRPERSON MILLER: Any
11 objection?

12 MR. CHAM: No.

13 CHAIRPERSON MILLER: Okay. I
14 think they are a visual aid and I'll accept
15 them. They are admitted as Protestant's
16 Exhibit No. 6.

17 (Whereupon, the above-entitled
18 document was marked as Protestant
19 Exhibit No. 6 and was received
20 into evidence.)

21 CHAIRPERSON MILLER: Okay. Good.

22 MR. RACILLA: Mr. Isasi, were you

1 had -- did you ever have an occasion to go to
2 Tabaq while it was open?

3 MR. ISASI: Yes, I did. I went to
4 Tabaq for dinner on multiple occasions.

5 MR. RACILLA: And when you were at
6 Tabaq did you go to the atrium?

7 MR. ISASI: I did. The atrium was
8 as -- whenever I was at Tabaq, the atrium was
9 being used as a dining room and it was not set
10 up for a dance floor or DJ space.

11 CHAIRPERSON MILLER: Could you
12 speak up a little bit?

13 MR. ISASI: When I went to Tabaq--

14 CHAIRPERSON MILLER: Yes.

15 MR. ISASI: -- it was never used
16 as a dance floor or DJ space. It was used as
17 a dining room. And it seemed like a dedicated
18 dining room space.

19 CHAIRPERSON MILLER: Okay.

20 MR. RACILLA: And you have been
21 handed what has been marked as Protestant
22 Exhibit No. 14, which shows some pictures of

1 the Tabaq space from the Tabaq website on the
2 web. Are those pictures representative of how
3 the dining room was set up when you were at
4 Tabaq?

5 MR. ISASI: Yes. I think
6 particularly the pictures towards the end.
7 There were a lot of tables set up.

8 MR. RACILLA: And in your
9 experience is New Town using Tabaq the same
10 way that Tabaq did?

11 MR. ISASI: No. New Town hosts
12 dance parties with DJs and music in that
13 space. And over the past year it has been, I
14 think every Friday and Saturday night,
15 Wednesday nights, it has been Tuesday nights,
16 it has been Thursday nights that dance -- it
17 has been used as a dance floor consistently
18 throughout the year both weekdays and
19 weekends. And he has also hosted a number of
20 daytime parties.

21 CHAIRPERSON MILLER: Okay. Try to
22 talk into the mike there, because otherwise we

1 miss some of what you said.

2 MR. ISASI: I'm sorry. So --

3 CHAIRPERSON MILLER: I did.

4 MR. ISASI: No. I think Tabaq
5 used the space primarily as a dining room.

6 CHAIRPERSON MILLER: Okay.

7 MR. ISASI: New Town has used the
8 space as a dance space. He has had dance
9 parties there every weekend, every Friday,
10 every Saturday. He has also had dance parties
11 on Sunday during the day, Sunday night, Monday
12 night -- sorry, Tuesday nights, Wednesday
13 nights and Thursday nights. And that has been
14 consistently throughout the year. Dance
15 parties almost the majority of nights of the
16 week.

17 MR. RACILLA: And I would like to
18 move into evidence Exhibit No. 14.

19 CHAIRPERSON MILLER: Which is?

20 MR. RACILLA: Oh, I'm sorry, which
21 is the photographs of Tabaq.

22 CHAIRPERSON MILLER: Okay.

1 (Whereupon, the above-referred to
2 document was marked as Protestant
3 Exhibit No. 14 for
4 identification.)

5 CHAIRPERSON MILLER: Any
6 objection?

7 MR. CHAM: No, ma'am.

8 CHAIRPERSON MILLER: And when --
9 well, who took these pictures?

10 MR. ISASI: These pictures are
11 consistent with what I experienced when I went
12 to dinner at Tabaq. They are a good
13 representation of what I saw when I was there.
14 Particularly the pictures towards the back
15 with all the tables set up.

16 CHAIRPERSON MILLER: Okay. I hear
17 you, but where are they from? Are they from
18 the web? Are they from the Internet or
19 something?

20 MR. ISASI: Yes, they are from the
21 Internet. There is a website that --

22 CHAIRPERSON MILLER: From their

1 website?

2 MR. ISASI: There is a website at
3 the bottom of each page indicating where they
4 came from.

5 CHAIRPERSON MILLER: Yes, okay.
6 All right. Did I ask if you had an objection?
7 Do you?

8 MR. CHAM: That's Tabaq's website.
9 They've been out of business for a year and a
10 half. That's their website is still up, so
11 anybody can go in and just take any pictures
12 that you want.

13 CHAIRPERSON MILLER: Are you
14 challenging that they are an inaccurate
15 picture of the Tabaq?

16 MR. CHAM: Yes, because when I was
17 doing my due diligence checking the place out,
18 I used to go there on Friday and Saturday
19 nights and on numerous occasions I stood in
20 line and paid \$20 to get in and go to rooftop
21 for a party.

22 So for him to say that it was

1 strictly a restaurant, I object to that.

2 MR. RACILLA: I don't think he is
3 objecting to the veracity of the pictures
4 being taken from the web. He is arguing. He
5 is making argument.

6 CHAIRPERSON MILLER: It sounds
7 like he might have been, but you are
8 testifying that it reflects your recollection
9 of how Tabaq looked when you visited it?

10 MR. ISASI: That's right. I went
11 to Tabaq on multiple occasions and these
12 pictures are a good representation of what the
13 atrium space looked like when I was inside.

14 CHAIRPERSON MILLER: All right.
15 I'm going to admit that then.

16 (Whereupon, the above-referred to
17 document was received into
18 evidence as Protestant Exhibit No.
19 14.)

20 CHAIRPERSON MILLER: And again,
21 you will have an opportunity to cross-examine
22 or rebut or it. Okay.

1 COURT REPORTER: I'm sorry, what
2 number is that?

3 CHAIRPERSON MILLER: Oh, that is
4 Protestant's Exhibit No. 14.

5 MR. RACILLA: Can we get a time
6 check? Sorry.

7 CHAIRPERSON MILLER: Time check.

8 MEMBER JONES: One second. The
9 licensee has 69 minutes remaining. The
10 protestants have 42 minutes remaining.

11 MR. RACILLA: Thank you.

12 Did you ever witness violations of
13 the voluntary agreement?

14 MR. ISASI: Yes. On several
15 occasions I noticed -- I saw parties in the
16 rooftop atrium space with the roof open or the
17 doors open, the doors and windows on the sides
18 open or both open, which were clear violations
19 of the voluntary agreement, which stipulates
20 that there can be no live entertainment, which
21 is defined in the voluntary agreement to
22 include DJs. It cannot occur with the roof

1 open or the doors or windows open. So they
2 were clear violations.

3 Also, he is not supposed to rent
4 out the space to outside promoters and the
5 cars parked on Wallach Place had flyers all
6 about Skybox Sundays, being a dance party that
7 was hosting on Sunday nights in the space and
8 it was an outside promoter that was running
9 the party.

10 MR. RACILLA: Did -- as a
11 representative of the --

12 MR. ISASI: Oh, I'm sorry. And of
13 course, I mean, I can't believe I forgot this.
14 On a regular basis, we hear noise in our house
15 from New Town, which is a clear violation of
16 the voluntary agreement.

17 MR. RACILLA: As a representative
18 of the protest group, did Mr. Cham ever
19 explain to you why he was not complying with
20 the voluntary agreement's requirement to keep
21 the windows and roof shut?

22 MR. ISASI: Yes. On repeated

1 occasions I kept pointing out to him the
2 language in the voluntary agreement that said
3 no live entertainment with the windows and
4 doors and ceiling open and he would say things
5 like my -- the people who come to New Town are
6 going to get hot because the windows and doors
7 have to remain closed. I'm not going to let
8 them get uncomfortable when they come visit
9 me. I'm going to open the windows and doors
10 when I want to.

11 CHAIRPERSON MILLER: Okay.

12 MR. RACILLA: And when did you
13 move to Wallach Place?

14 MR. ISASI: I moved -- we moved in
15 January -- we bought our house in February of
16 2010 and we have been there since then.

17 MR. RACILLA: And did you have any
18 noise problems before New Town?

19 MR. ISASI: No. We had -- one
20 night we had a problem with Tabaq. We went
21 over there and talked to them and they turned
22 the music down and that was it. Never had any

1 other problem. As soon as New Town started
2 operations in January, the noise problems were
3 on almost every single weekend.

4 MR. RACILLA: Are there any other
5 businesses on U Street causing problems that
6 you know about or have noise violations?

7 MR. ISASI: I have not had any
8 problems with any other business on U Street.
9 And I checked with ABRA, with Bill Hager the
10 Communications Officer for ABRA and he
11 confirmed with Enforcement with me that there
12 is no other businesses between, I believe,
13 17th Street and 9th Street on U Street with any
14 noise violations in the past year. The only
15 one for which they found noise violations is
16 New Town.

17 MR. RACILLA: And how did he
18 confirm that for you?

19 MR. ISASI: He sent me an email.

20 CHAIRPERSON MILLER: Thank you.

21 MR. RACILLA: You have been handed
22 what has been marked as Protestant's Exhibit

1 No. 3H. Is this the email that you received
2 from Mr. Hager?

3 MR. ISASI: It is.

4 MR. RACILLA: And I would like to
5 move Exhibit 3H into evidence.

6 CHAIRPERSON MILLER: Okay. Any
7 objection?

8 MR. CHAM: No, ma'am.

9 CHAIRPERSON MILLER: All right.
10 Protestant's Exhibit 3H is admitted.

11 (Whereupon, the above-referred to
12 document was marked as Protestant
13 Exhibit No. 3H for identification
14 and was received into evidence.)

15 MR. RACILLA: I think you had
16 testified a little bit before about how often
17 you heard noise or had problems with New Town.
18 So how often after New Town opened did you
19 hear noise and have problems with noise?

20 MR. ISASI: So we bought the --
21 the noise tension with New Town -- we brought
22 the noise problems with New Town in January

1 and we have consistently had problems almost
2 every single weekend since January with New
3 Town.

4 MR. RACILLA: And what time of day
5 do you usually hear the noise in your home?

6 MR. ISASI: So the parties usually
7 start about 10:00 p.m. and they go until 3:00
8 a.m. every Friday and Saturday. He has had
9 weekday parties on Tuesdays, Wednesdays and
10 Thursdays and he has had daytime parties on
11 Sunday and Saturday.

12 MR. RACILLA: And have you ever
13 been woken up from -- by noise from New Town?

14 MR. ISASI: Yes. I have been
15 woken up and the way our house is -- I
16 typically sleep on the front side. There is
17 a bedroom on Wallach Place. The noise has
18 woken me up even in the front bedroom. We
19 have had house guests who stayed in the back
20 bedroom and they have continually been woken
21 up with noise from New Town.

22 We have gone so far as to put

1 earplugs in the guest rooms so people have --
2 can have earplugs when they sleep.

3 And in the middle bedroom upstairs
4 as well, people hear -- routinely hear noise
5 coming from New Town.

6 MR. RACILLA: And have you heard
7 from any other residents on Wallach Place
8 about problems that they are having?

9 MR. ISASI: Yes. Along with
10 everyone in the protestant group who has had
11 problems hearing noise in their house, we have
12 also heard from other residents both on the
13 north side and the south side of the street,
14 the side of the street that is the furthest
15 away from New Town. And they have told us
16 that they have used earplugs because of the
17 noise coming from New Town as well.

18 MR. RACILLA: How can you be sure
19 that the noise is coming from New Town?

20 MR. ISASI: So from a very early
21 stage, Mr. Cham kept expressing concern that
22 we were hearing noise from other businesses

1 and not from New Town. And we took those
2 concerns very seriously.

3 And I on several occasions walked
4 outside my house, walked down the alleyway,
5 walked around New Town, walked up and down U
6 Street and it was verified the noise was
7 coming from New Town. And I know other
8 present -- other protestants in the groups
9 also did they same thing.

10 We were very concerned that we
11 were unfairly maligning his business and so we
12 wanted to make sure the noise was coming from
13 New Town and it was.

14 MR. RACILLA: Have you ever raised
15 your concerns about noise from New Town to the
16 Board before today?

17 MR. ISASI: Yes. So earlier we
18 were talking about the dismissal of his
19 application. What happened was at the first
20 Status Hearing for the -- his renewal
21 application, Mr. Cham failed to show. And so
22 the Board ended up dismissing this application

1 as a result of his failure to show.

2 At that time, I addressed the
3 Board and explained to them that we -- I think
4 that was in April or May, but we have been
5 living with these noise problems every weekend
6 since January. And what could we do? And I
7 believe it was Madam Chair who said, you know,
8 we take this very seriously. You should talk
9 to Enforcement. Make sure to follow-up with
10 Enforcement and let them know what is going
11 on.

12 So as a result of that, I went
13 back to the protestants and shared what you
14 had told us with them and said please, call
15 the hotline. Email -- do the email
16 complaints. Let them -- let ABRA know that we
17 are having these noise problems.

18 And so this is one of the reasons
19 why we have generated so many complaints,
20 because we took the Board's suggestion to
21 follow-up with Enforcement very seriously.

22 CHAIRPERSON MILLER: Okay.

1 MR. ISASI: And in fact in June, I
2 sent Mr. -- Director Moosally a letter on
3 behalf of everyone saying we really are having
4 problems, not just at night, but also daytime
5 and there is no one to call during the day,
6 because the Noise Task Force isn't running, so
7 what can we do? We are sending this letter
8 letting you know that we are having very
9 serious problems during the day as well.

10 And as far as we know, we never
11 got any follow-up from ABRA. The only times
12 we heard from ABRA were when we called the
13 hotline and we spoke with someone and they
14 would send Investigators out who would find
15 the noise violations in our homes. But we
16 didn't -- I never got a response from Director
17 Moosally to my letter. And I never -- we
18 never got a response to any of our complaints
19 filed with them either.

20 MR. RACILLA: And you have been
21 handed what has been marked as Protestant's
22 Exhibit No. 3J. Is that the June 12th letter

1 that you sent to Director Moosally?

2 MR. ISASI: Yes.

3 MR. RACILLA: We would like to
4 enter that letter into evidence.

5 CHAIRPERSON MILLER: Any
6 objection?

7 MR. CHAM: No.

8 CHAIRPERSON MILLER: Okay. This
9 is in the public record anyway. Okay. So
10 Protestant's Exhibit 3J is admitted.

11 (Whereupon, the above-referred to
12 document was marked as Protestant
13 Exhibit No. 3J and was received
14 into evidence.)

15 CHAIRPERSON MILLER: And sorry you
16 didn't get a response. We will look into
17 that. Mr. Moosally is usually very good about
18 these things, so, okay.

19 MR. RACILLA: And can I confirm,
20 I'm sorry, that 3H was also entered into
21 evidence?

22 CHAIRPERSON MILLER: 3H?

1 MR. RACILLA: That was the email
2 from Mr. Hager.

3 CHAIRPERSON MILLER: Let me see.
4 Yes, that was admitted.

5 MR. RACILLA: Thank you.

6 CHAIRPERSON MILLER: And 3J has
7 now just been admitted. Okay.

8 MR. RACILLA: Have you ever called
9 the hotline and had Investigators come to your
10 home?

11 MR. ISASI: I have. And I would
12 say that, you know, sometimes Investigators
13 have been very good and very understanding
14 about the problems and other times we have
15 just had a lot of confusion.

16 Early on, I believe it was
17 Inspector Peru came to our house and first he
18 told us well, if there was a voluntary
19 agreement in place, he would find a violation,
20 but there is no voluntary agreement here, so
21 there is no violation.

22 And he also wanted us to turn on

1 our television. It was like 2:00 in the
2 morning to see if the noise could be heard
3 over our television. And we said we are
4 trying to sleep. Like I don't -- we don't
5 understand the relevance of our television
6 right now.

7 And in the end, I'm not sure
8 whether it was because he -- well, he said
9 there was no voluntary agreement. And also
10 because of the TV thing, I don't know which
11 one it was, but he didn't find a violation.

12 CHAIRPERSON MILLER: Who was this?

13 MR. ISASI: Inspector Peru.

14 CHAIRPERSON MILLER: Oh, okay.

15 MR. ISASI: And I followed up with
16 an email to Director Moosally where I
17 specifically asked him to confirm that there
18 was a voluntary agreement in place, which he
19 did, and he also said that he would then
20 correct -- let the -- make sure the
21 Investigators were aware that there was a
22 voluntary agreement in place.

1 So from my perspective, that -- we
2 really should have had a violation at that
3 point, but we didn't get one because the
4 Investigators weren't aware of what was going
5 on.

6 MR. RACILLA: And you have been
7 handed an exhibit that has been marked as 3K.
8 Is that the email that you received from
9 Director Moosally?

10 MR. ISASI: It is.

11 (Whereupon, the above-referred to
12 document was marked as Protestant
13 Exhibit No. 3K for
14 identification.)

15 MR. ISASI: And on the back of it
16 is the initial email I sent to him, so it sort
17 of lays out the problem we had and then his
18 response.

19 MR. RACILLA: I would like to move
20 Exhibit 3K into evidence.

21 CHAIRPERSON MILLER: Okay. Any
22 objection?

1 MR. ISASI: There was also --
2 there were also times when we called the
3 hotline and they were just too busy and they
4 just couldn't come out, so we didn't get
5 violations on that night either, because there
6 was no one available.

7 MR. RACILLA: Okay.

8 MR. ISASI: And then there was
9 other nights when it was very close to 3:00
10 a.m. and they would say well, it's so close to
11 3:00 a.m. and the music is going to shut off
12 at 3:00 a.m., so like what's the point of
13 sending anyone out to find a noise violation?
14 So there are many nights that we would have
15 had, I think, additional violations if ABRA
16 had the resources or if they were willing to
17 come out so late in the morning hours.

18 MR. RACILLA: Did you notice any
19 problems if the Investigators came up the
20 alleyway?

21 MR. ISASI: Yes. I mean, that was
22 -- another reason we don't have a lot more

1 violations is because you notice that the
2 Investigators would come -- instead of coming
3 to the front of our house, they come down the
4 back alleyway and as soon as they parked their
5 cars between our house and New Town, the
6 volume in New Town would go down.

7 And so starting in like August, I
8 think, we said when we called the hotline we
9 would say please make sure the Investigators
10 come to the front of the house, so that New
11 Town isn't aware that they have arrived. And
12 then that's when we got the violation in
13 August and then another violation in
14 September.

15 And I don't know that the reports
16 have become finalized yet, because I asked Mr.
17 Hager for those, but he sent me an email
18 confirming that noise violations have been
19 found in both August and in September and that
20 those reports -- I think there is some process
21 where you guys end up like approving
22 everything before it goes into public record,

1 so that those reports are now in that process
2 as well.

3 But he confirmed for me that there
4 were violations on both of those days.

5 CHAIRPERSON MILLER: I think --

6 MR. RACILLA: To your knowledge--

7 CHAIRPERSON MILLER: I'm sorry,
8 but if I'm not mistaken, I think you -- did
9 you ask the Protestant's Exhibit 3K be moved
10 into evidence? And I didn't have a chance to
11 respond because I think the witness started--

12 MR. RACILLA: Oh, I'm sorry.

13 CHAIRPERSON MILLER: -- talking.
14 Right?

15 MR. RACILLA: Yes.

16 CHAIRPERSON MILLER: So you did
17 ask, right? And there was no objection. So
18 I just want to admit that into evidence. That
19 is Protestant's Exhibit 3K.

20 (Whereupon, the above-referred to
21 document was received into
22 evidence as Protestant Exhibit No.

1 3K.)

2 CHAIRPERSON MILLER: Okay.

3 MR. RACILLA: And you were just
4 testifying as to receiving two emails from Mr.
5 Hager confirming the violations found in
6 August and September. Is Exhibit 3L the
7 August 22nd email that you received confirming
8 the first violation?

9 MR. ISASI: The --

10 MR. RACILLA: The August
11 violation?

12 MR. ISASI: So the -- let's see,
13 the -- 3M relates to August 28th, that's the
14 August one and 3L is the September violation.

15 (Whereupon, the above-referred to
16 documents were marked as
17 Protestant Exhibit No. 3L and 3M
18 for identification.)

19 MR. RACILLA: Okay.

20 MR. ISASI: And these were -- so
21 you know, we knew the Protest Hearing was
22 going to happen and we wanted to make sure we

1 had a good handle for you guys on exactly how
2 many violations we had. And so I wanted to
3 confirm with Mr. Hager that they had found
4 noise violations on these two dates.

5 MR. RACILLA: And so how many
6 noise violations have been found, to your
7 knowledge?

8 MR. ISASI: It has been hard to
9 keep track. I think for sure we have seven
10 noise violations against New Town in the last
11 year. And then Mr. Cham testified today that
12 there was one last month, so that would make
13 eight.

14 MR. RACILLA: I would like to move
15 into evidence Exhibits 3L and 3M.

16 CHAIRPERSON MILLER: Any
17 objection?

18 MR. CHAM: No.

19 CHAIRPERSON MILLER: Okay. Let me
20 just see what -- why don't you just describe
21 what 3L is.

22 MR. RACILLA: 3L is the email from

1 Mr. Hager to Mr. Isasi confirming the
2 September 19th noise violation. And 3M is the
3 August 23rd email from Mr. Hager to Mr. Isasi
4 confirming the August 23rd.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. All right. Then 3L and 3M are admitted.

7 (Whereupon, the above-referred to
8 documents were received into
9 evidence as Protestant Exhibit No.
10 3L and 3M.)

11 MR. RACILLA: And are you aware of
12 any video evidence of noise complaints or
13 noise problems?

14 MR. ISASI: Yes. So I mean, it's
15 very hard to take video of the noise
16 violations during the night, because it's --
17 you know, you can't really see anything. But
18 we do have one particular example of a daytime
19 violation where he had all the windows, the
20 doors, everything open. It's clear how much
21 noise is coming out of New Town and into our
22 home.

1 MR. RACILLA: And with the Board's
2 indulgence, can we play that video?

3 CHAIRPERSON MILLER: Well, is
4 there an objection?

5 MR. CHAM: Yes, ma'am. Because my
6 voluntary agreement states I can open the
7 doors and windows from -- all the way until
8 2:00 a.m. And if they complain sound during
9 the daytime that you can hear from the street
10 from anywhere, and once again, pointing out at
11 New Town, it's totally irrelevant.

12 CHAIRPERSON MILLER: Well --

13 MR. RACILLA: That's -- I mean,
14 that's argument. That's incorrect. It's
15 actually incorrect. He is misquoting what the
16 voluntary agreement states. And I -- but I
17 don't think that that is any proper objection
18 to the evidence.

19 MR. ISASI: And it's my -- my
20 testimony is --

21 MEMBER ALBERTI: Well, please,
22 please.

1 CHAIRPERSON MILLER: Wait.

2 MR. ISASI: Okay.

3 MEMBER ALBERTI: Until the
4 objection is ruled on, you have to be quiet.

5 CHAIRPERSON MILLER: Yes, my
6 concern is whenever I see these videos coming
7 in, did you disclose that on your PIF? Did
8 you give him a copy of it?

9 MR. RACILLA: We did disclose it
10 on the PIF.

11 CHAIRPERSON MILLER: Okay.

12 MR. RACILLA: It's No. 7. We did
13 not give him a copy of it in advance, but we
14 did give it to ABRA in advance, so that they
15 could load it up and he did not object or
16 request a copy from us.

17 MR. ISASI: And --

18 CHAIRPERSON MILLER: Okay. So--

19 MR. ISASI: -- with the Board's
20 indulgence --

21 CHAIRPERSON MILLER: -- we --

22 MR. ISASI: -- we specifically--

1 MEMBER SILVERSTEIN: Sir, no.

2 MEMBER ALBERTI: Sir, please.

3 CHAIRPERSON MILLER: You are out
4 of order right now. You are out of order.

5 MR. ISASI: Ask the --

6 CHAIRPERSON MILLER: So you know,
7 when we have these Exhibit Forms and we say at
8 the status that you provide a copy of all your
9 exhibits to each other, it doesn't always
10 happen, but that's what we request, so that
11 the other party is prepared.

12 MR. RACILLA: But we also
13 confirmed with Attorney Raines that it was
14 okay to just submit the PIF form, that you did
15 not have to send the exhibits beforehand.

16 MR. ISASI: And I was the one who
17 had the conversation with --

18 MR. RACILLA: And --

19 MEMBER ALBERTI: He can attest to
20 it. He took it.

21 MR. ISASI: I had the conversation
22 with --

1 CHAIRPERSON MILLER: What?

2 MR. ISASI: -- Attorney Raines, so
3 I can tell you exactly what she told me and
4 what I asked for.

5 CHAIRPERSON MILLER: Who told you?

6 MR. ISASI: The Attorney Raines.

7 CHAIRPERSON MILLER: Attorney
8 Raines told you you didn't have to provide a
9 copy to the other side?

10 MR. ISASI: We asked if I have --
11 I have an email from her and I said do we have
12 to provide a copy of all exhibits? She said
13 no. We said do we provide the video ahead of
14 time? She said no.

15 MEMBER ALBERTI: Well, you know,
16 Ms. Miller --

17 CHAIRPERSON MILLER: Yes?

18 MEMBER ALBERTI: -- I will point
19 out that Mr. Cham has not objected on the
20 basis of the fact that he hasn't seen it. So
21 I'm not sure why we are arguing this point.
22 I mean, Mr. Cham isn't arguing prejudice here.

1 MR. CHAM: I'm just not -- I just
2 don't want to entertain a cat fight. I
3 haven't seen this video.

4 CHAIRPERSON MILLER: You what?

5 MR. CHAM: I object to the video.

6 CHAIRPERSON MILLER: He did
7 object. What is your --

8 MR. CHAM: I did object to the
9 video.

10 MEMBER ALBERTI: Well, he didn't
11 say -- but his objection was not on point to--
12 it wasn't a valid objection.

13 CHAIRPERSON MILLER: What was your
14 objection?

15 MR. CHAM: To the fact that I
16 haven't seen this video, one. Number two--

17 CHAIRPERSON MILLER: Yes.

18 MR. CHAM: -- number two, this
19 video was taken probably during the daytime
20 hours and we are talking about here a noise
21 violation, according to the voluntary
22 agreement, look at the times. It's totally

1 irrelevant.

2 CHAIRPERSON MILLER: So when was
3 the video -- was the video taken in the
4 daytime?

5 MR. RACILLA: It was taken in the
6 late afternoon on a Sunday.

7 MR. CHAM: It's the daytime.

8 CHAIRPERSON MILLER: Why is that
9 relevant?

10 MR. RACILLA: Because according to
11 the voluntary agreement, he is not allowed to
12 have live music and DJs in the space when the
13 doors and windows are open in the atrium. And
14 the doors and windows --

15 MR. CHAM: Ms. --

16 CHAIRPERSON MILLER: Wait. I want
17 to hear what -- go ahead.

18 MR. RACILLA: The doors and the
19 windows in the atrium were --

20 CHAIRPERSON MILLER: It was taken
21 on a Sunday afternoon when the window or the
22 roof was open?

1 MR. ISASI: Yes.

2 MR. RACILLA: And the windows and
3 the roof was open.

4 CHAIRPERSON MILLER: And what will
5 it show?

6 MR. RACILLA: It will show how
7 loud the noise is that we can hear it in our--
8 on our properties.

9 MR. ISASI: And the voluntary
10 agreement --

11 CHAIRPERSON MILLER: So well, no,
12 I have a question about that, because how do
13 we know how loud? You turn the volume up or
14 down. How do we know?

15 MR. CHAM: Right. Anybody could
16 play a boom box in the back building and--

17 MEMBER ALBERTI: Well, Ms. Miller,
18 you can evaluate that after you see it. It's
19 relevant because we are talking about peace,
20 order and quiet and not just peace, order and
21 quiet at night. We are talking about peace,
22 order and quiet in general.

1 CHAIRPERSON MILLER: Yes, okay.

2 MEMBER ALBERTI: I believe that it
3 is relevant. I think we should just see the
4 video.

5 CHAIRPERSON MILLER: Probably see.

6 MEMBER ALBERTI: You know, I don't
7 know how I'm going to judge it until I see it.
8 I may actually -- it's possible that I will
9 completely discount it, but I don't know that
10 until I see it. I would like to see it.

11 CHAIRPERSON MILLER: Okay. All
12 right. So we have heard from a Board Member.
13 They would like to see it. You have addressed
14 the relevance and we will see the weight given
15 on concerns and you can cross examine on this
16 as well.

17 MR. ISASI: So if I could just
18 describe the voluntary agreement specifically
19 stipulates that there can be no live
20 entertainment, which is defined to include
21 DJs, with the windows or ceiling open at any
22 time.

1 MEMBER SILVERSTEIN: Please speak
2 up.

3 CHAIRPERSON MILLER: Okay. So the
4 problem, I understand. Really the problem
5 with that box is that the mike is down low and
6 you want to look at us.

7 MR. ISASI: Okay, sorry.

8 CHAIRPERSON MILLER: But we --

9 MR. ISASI: The voluntary
10 agreement --

11 CHAIRPERSON MILLER: -- want your
12 voice to be carried by the mike.

13 MEMBER ALBERTI: We are past
14 arguing the relevance of this. We are now --

15 MR. ISASI: Right. I'm trying --

16 MEMBER ALBERTI: -- on to seeing
17 it.

18 MR. ISASI: Okay.

19 MEMBER ALBERTI: What I would ask
20 that you do is --

21 CHAIRPERSON MILLER: He said in
22 the --

1 MEMBER ALBERTI: -- if you have
2 any explanation as to what is in the video,
3 you provide that for us. All right? We have
4 the voluntary agreement. We know what is in
5 it. All right. I'm just trying to move
6 things along here, because we will be here
7 until the wee hours of the morning if we
8 don't. All right.

9 CHAIRPERSON MILLER: I won't.

10 MEMBER SILVERSTEIN: I won't. I
11 would point out to Mr. Racilla that Mr. Jones
12 has told me you have less than 30 minutes left
13 for the rest of your case.

14 MR. RACILLA: All right.

15 MEMBER ALBERTI: So I would
16 suggest that we just go ahead and if you want
17 to comment on what we are seeing in the video,
18 please, do that. And I'm trying to be helpful
19 to you.

20 MR. RACILLA: Okay. Thank you.

21 CHAIRPERSON MILLER: Okay. Can
22 you see it? Oh.

1 (Video Played)

2 MR. ISASI: It's April 13th at 5:00
3 p.m. in the back yard of Wallach Place. The
4 decibel level is somewhere between 75 and 80
5 decibels.

6 (Video Stopped)

7 CHAIRPERSON MILLER: Okay. Could
8 you repeat the date and time, please?

9 MR. ISASI: I'm sorry, I don't
10 have the date and time. I don't know it.

11 CHAIRPERSON MILLER: Oh, okay. I
12 thought it was on the video.

13 MR. ISASI: It's on the video.

14 MR. RACILLA: It's on the video.

15 CHAIRPERSON MILLER: April 13th or
16 something, 5:00 p.m., but I'm not positive.

17 MR. RACILLA: It is April 13th at
18 4:55 p.m.

19 CHAIRPERSON MILLER: I was close.
20 Okay. Okay.

21 MR. RACILLA: I have no more
22 questions.

1 CHAIRPERSON MILLER: All right.
2 Now, it's your opportunity to cross-examine
3 the witness, the witness with respect to those
4 emails, whatever, the video.

5 MR. CHAM: Okay.

6 CROSS-EXAMINATION

7 MR. CHAM: Okay. I'll first say
8 the voluntary agreement states that for hours
9 of live entertainment is between 6:00 and
10 2:00. Sorry, on Friday and Saturday between
11 6:00 and 3:00. And on that day it was a day
12 party.

13 CHAIRPERSON MILLER: Okay. Wait,
14 wait.

15 MR. CHAM: I'll start with the
16 video.

17 CHAIRPERSON MILLER: It's not your
18 -- you are going to get another chance to
19 rebut, if you want. This is your chance to
20 ask questions, based on --

21 MR. CHAM: Okay.

22 CHAIRPERSON MILLER: -- the --

1 MR. CHAM: Okay.

2 CHAIRPERSON MILLER: Okay.

3 MR. CHAM: You stated that on U
4 Street when you called the Task Force all the
5 businesses on U Street have no noise violation
6 except New Town. Is that -- that was correct
7 testimony from you, right?

8 MR. ISASI: I spoke in person to
9 Mr. Hager.

10 MR. CHAM: No, what you said on
11 your email to, on email, on Exhibit, I think
12 it is, 3K. You stated that -- yes, it's 3K.
13 That none of the establishments on U Street
14 have noise violations except New Town. It's
15 clearly stated here.

16 MR. ISASI: Mr. Hager sent me an
17 email and I got -- I believe it's -- what he
18 said was that in the last year there have been
19 no noise violations for any businesses --

20 MR. CHAM: For any business except
21 New Town.

22 MR. ISASI: -- other than New

1 Town --

2 MR. CHAM: That's what I said.

3 MR. ISASI: -- between 17th Street
4 and 9th Street on U Street.

5 MR. CHAM: Okay.

6 MR. ISASI: Other than New Town.

7 MR. CHAM: On Exhibit 11 I
8 counted, maybe I could name it: Nellie's,
9 Patty Boom Boom, Policy, Lincoln Theater,
10 MOVA, Pure, Red Lounge, like 15 of them that
11 has noise violations on this document that you
12 gave me. But you stated that he told you New
13 Town was the only establishment with noise
14 violations. Is that correct?

15 MR. ISASI: The email he sent me
16 indicates that New Town is the only --

17 MR. CHAM: So you believe --

18 MR. ISASI: -- establishment.

19 MR. CHAM: -- that, too, even
20 though this noise -- even though Exhibit 11
21 states something different?

22 MR. ISASI: I asked Mr. Hager --

1 MR. CHAM: No, no. Do you believe
2 that?

3 MR. ISASI: I believe Mr. Hager's
4 email.

5 MR. CHAM: Okay.

6 CHAIRPERSON MILLER: Okay.

7 MR. CHAM: What are the time/hours
8 according to your -- according to the
9 voluntary agreement that we -- that the live--
10 the hours of live entertainment provided by
11 the DJ are allowed?

12 MR. ISASI: I don't have a copy of
13 that in front of me.

14 MR. CHAM: It's on page 1 of the
15 voluntary agreement. To speed up the process.

16 MR. ISASI: Paragraph 2 of the
17 voluntary agreement stipulates when live
18 entertainment by DJs can be allowed. And it
19 says "Sunday through Thursday, 6:00 to 2:00
20 and Friday and Saturday, 6:00 to 3:00." But
21 it does -- that paragraph doesn't address the
22 atrium space.

1 MR. CHAM: Okay. But it says that
2 from 6:00 to 2:00 and 6:00 to 3:00 Friday and
3 Saturday and Monday through Thursday, right,
4 according to the voluntary agreement --

5 MR. ISASI: Without addressing
6 it --

7 MR. CHAM: -- that you just read,
8 right?

9 MR. ISASI: -- to the atrium
10 space.

11 MR. CHAM: Okay. Now, on line 9
12 on the voluntary agreement on page 2 it says
13 that "the ambient or background noise that is
14 not live will not be played in the greenhouse
15 beyond 1:00 a.m. when the atrium roof is
16 open." But I think earlier I had stated that
17 we close the windows at 8:00 a.m., right?

18 MR. ISASI: You are asking me to
19 confirm what you testified?

20 MR. CHAM: No. What I'm telling
21 you is on the voluntary agreement it says "By
22 1:00 a.m. we should close the windows." I

1 just gave you the line number where it says
2 that. I'm asking you a question on the
3 voluntary agreement.

4 MR. ISASI: Okay.

5 MR. CHAM: Is that yes or no? By
6 1:00 a.m., right?

7 MR. ISASI: I don't know what your
8 question is.

9 MR. CHAM: Okay. Again, line 9 on
10 the voluntary agreement it states "By 1:00
11 a.m. the atrium rooftop should be closed."

12 MR. ISASI: It states that ambient
13 or background noise that is not live
14 entertainment, so like not DJs, can be played
15 in greenhouse space, but not beyond 1:00 a.m.
16 when the retractable roof is open.

17 MR. CHAM: Is open, right? So by
18 1:00 a.m. it's closed.

19 MR. ISASI: What's your question?

20 MR. CHAM: No more for you.

21 CHAIRPERSON MILLER: The
22 settlement agreement probably speaks for

1 itself, so I would move on.

2 MEMBER ALBERTI: So what are we
3 doing now? What are we doing?

4 CHAIRPERSON MILLER: He is --

5 MR. CHAM: You testified that New
6 Town had eight noise violations, right? You
7 testified about five minutes ago --

8 MR. ISASI: Yes.

9 MR. CHAM: -- that we have eight
10 noise violations.

11 MR. ISASI: Yes.

12 MR. CHAM: Is that correct?

13 COURT REPORTER: Keep your voice
14 up.

15 MR. ISASI: Yes.

16 MR. CHAM: Yes? Eight noise
17 violations?

18 MR. ISASI: Yes.

19 MR. CHAM: Okay.

20 MR. ISASI: We have seven noise
21 violations documented on the record and then
22 you testified as to one in the last 30 days.

1 MR. CHAM: I testified I have two.
2 You testified I have eight.

3 CHAIRPERSON MILLER: Okay. No.
4 We are not having a discussion.

5 MEMBER ALBERTI: No arguments.

6 CHAIRPERSON MILLER: Okay. Just a
7 quick question, direct question and answer.

8 MR. CHAM: On Exhibit 3B you sent
9 an email and Exhibit 3A, why I cut off the
10 communication with you. I think on Exhibit 3A
11 it states that --

12 CHAIRPERSON MILLER: Okay.

13 MR. CHAM: -- "I tried to meet
14 with you and I also tried to" -- I also -- it
15 says on front page of Exhibit 3A, from me to
16 you it says "I understand your concern. I
17 would love to have the opportunity to meet
18 everyone on that day at New Town." But after
19 maybe two months, you keep sending me all
20 these emails with all these Exhibits 3A, 3C,
21 and there is one more, and 3 -- only 3A and
22 3C.

1 That was the reason for me to cut
2 off the communication with you because of --
3 you testified because of what, according to
4 your emails?

5 MR. ISASI: I'm sorry, can you
6 repeat the question?

7 COURT REPORTER: Sir, can you,
8 please, use your microphone?

9 MR. ISASI: Can you repeat the
10 question?

11 MEMBER ALBERTI: Mr. Cham, I
12 didn't understand the question, so, please,
13 repeat it.

14 MR. CHAM: Okay. The question was
15 -- I'm going to be blunt. What was the main
16 reason why I did cut off the communication
17 with you via your emails?

18 MR. ISASI: Why do I think that
19 you cut off communication?

20 MR. CHAM: No, no. What was the
21 reason why I cut off the communication with
22 you via your emails? Exhibit 3, your emails

1 Exhibit 3D and 3B?

2 MR. ISASI: In my opinion, even
3 though we had noise violations found from the
4 Task Force, we had well-documented problems
5 with noise in our house. You were unwilling
6 to accept that there was noise problems in our
7 house. And you would no longer want to talk
8 about it. You just don't believe that there
9 is noise problems in our house, even though we
10 keep telling you there are noise problems.

11 MR. CHAM: Okay. You can tell me,
12 but you had the Noise Task Force, ABRA and
13 everything been coming ever since I was open,
14 right?

15 MR. ISASI: We have called --

16 MR. CHAM: Because you called 59
17 times.

18 MR. ISASI: I have not called 59
19 times.

20 MR. CHAM: The protestants called
21 59 times.

22 MR. ISASI: It wasn't just the

1 protestants. It was residents all over
2 Wallach Place that called.

3 MR. CHAM: Well, protestants, I
4 mean. Fine. Residents of Wallach called 59
5 times. Out of the 59 times, I'm getting all
6 emails from you every day. Out of the 59
7 times, I only got two violations from ABRA.
8 And we already stated how and when and why.

9 But according to your testimony
10 that I cut you off because I wasn't willing to
11 work with you.

12 CHAIRPERSON MILLER: Okay. This
13 isn't a time for argument really. It's just
14 a time for questions. You are going to have
15 a chance to have rebuttal and you can argue,
16 but and that doesn't mean argue with him.
17 Okay. This is the only time. If there is
18 something you want to poke in his testimony or
19 clarify, ask it. Otherwise, just you can hold
20 your argument until you testify one more time.

21 MR. CHAM: Yes. I was just trying
22 to clarify the reason why he said I cut off

1 the communication with them.

2 CHAIRPERSON MILLER: Again, we
3 really -- we don't want to dwell on this too
4 much anyway, because we really want to look at
5 what's the problem? What's the solution? You
6 know, not the whole history of who said what,
7 when.

8 MR. CHAM: Okay. Thank you, Your
9 Honor.

10 CHAIRPERSON MILLER: Okay.

11 MR. CHAM: Sorry about that.

12 CHAIRPERSON MILLER: That's okay.

13 Any Board questions?

14 MEMBER ALBERTI: Yes.

15 CHAIRPERSON MILLER: Okay. Yes,
16 Mr. Alberti?

17 MEMBER ALBERTI: Mr. Isasi, okay,
18 so you have testified that you heard -- you
19 can hear noise from the establishment from New
20 Town Kitchen in your house. Okay.

21 MR. ISASI: That's correct.

22 MEMBER ALBERTI: Would you

1 describe that noise for me? Is it music? Is
2 it people? What is it?

3 MR. ISASI: Nine times out of ten
4 it's music, DJs, bass.

5 MEMBER ALBERTI: Okay. Okay. So
6 it's music. All right. DJs, is that the
7 voice of the DJ?

8 MR. ISASI: Yes.

9 MEMBER ALBERTI: Okay. All right.
10 Music, is it mostly the bass from the music or
11 can you hear lyrics?

12 MR. ISASI: Both.

13 MEMBER ALBERTI: Both. Okay.

14 MR. ISASI: And often times we
15 know what song is playing because we recognize
16 the song.

17 MEMBER ALBERTI: Okay.

18 MR. ISASI: Standing in our house.

19 MEMBER ALBERTI: Great, great. Do
20 you dance to it? No, I'm just kidding. No,
21 that was --

22 MR. ISASI: If I had a few drinks

1 maybe.

2 MEMBER ALBERTI: Let's strike that
3 from the record. I just needed to add some
4 levity here. I'm sorry, folks. Forgive me.

5 All right. So can you -- and this
6 is a tougher question. Can you kind of tell
7 me contrasting into something how loud it is?
8 I mean, when you have a -- do you ever hear it
9 when you have the TV on?

10 MR. ISASI: Yes.

11 MEMBER ALBERTI: Can you hear it
12 over the level of what you normally listen to
13 it as the TV sound?

14 MR. ISASI: I mean, I don't often
15 listen to the TV at 2:00 in the morning, but--

16 MEMBER ALBERTI: No, I'm not
17 talking about 2:00 in the morning. I asked do
18 you ever have it on when you have the TV --

19 MR. ISASI: Yes, yes.

20 MEMBER ALBERTI: Do you ever hear
21 it when you have the TV on?

22 MR. ISASI: Yes.

1 MEMBER ALBERTI: That's all I'm
2 asking.

3 MR. ISASI: Definitely.

4 MEMBER ALBERTI: Okay. Relative
5 to the sound of the TV, is it louder? Is it
6 softer? Just barely audible over the TV?

7 MR. ISASI: It's definitely louder
8 because we can hear it over the TV. And it
9 depends on which day we are talking about.
10 Sundays it is -- actually, it really
11 interferes with our -- like our ability to
12 have a conversation during a meal. Other days
13 it's just this kind of constant kind of
14 throbbing bass. It just depends on the day
15 what song is being played.

16 MEMBER ALBERTI: Sure. All right.
17 Now, have you ever investigated the doors and
18 windows and the roof when hear the sound?

19 MR. ISASI: Yes.

20 MEMBER ALBERTI: And you are
21 annoyed by it?

22 MR. ISASI: Yes.

1 MEMBER ALBERTI: Okay. I think
2 you have testified that you have seen the
3 windows and doors open when you have heard the
4 sound --

5 MR. ISASI: Yes.

6 MEMBER ALBERTI: -- in your
7 apartment. Have you ever seen the rooftop
8 open?

9 MR. ISASI: Yes.

10 MEMBER ALBERTI: Okay.

11 MR. ISASI: If you stand on the
12 corner of 13th of U, you get a very clear shot
13 of the roof line and you can see when it is
14 open.

15 MEMBER ALBERTI: Okay. Do you
16 remember when you saw it open what time of day
17 it was?

18 MR. ISASI: It has been open
19 daytime and nighttime. Throughout the normal
20 business operation.

21 MEMBER ALBERTI: So you have seen
22 it at nighttime --

1 MR. ISASI: Yes.

2 MEMBER ALBERTI: -- when you have
3 heard the noise?

4 MR. ISASI: Yes.

5 MEMBER ALBERTI: Okay.

6 MR. ISASI: To be clear, the noise
7 violation -- the noise problems -- as Mr. Cham
8 testified, he doesn't have them open all the
9 time. He has it open very late at night.

10 MEMBER ALBERTI: Well, I'm getting
11 there. So it's your experience that you have
12 heard these noises to the point where it is
13 unacceptable to you when the roof is closed?

14 MR. ISASI: Yes, without
15 hesitation I can say that.

16 MEMBER ALBERTI: When the roof and
17 doors and windows are closed?

18 MR. ISASI: Everything is closed.
19 We have had problems with the noise in our
20 house. Absolutely.

21 MEMBER ALBERTI: When everything
22 is closed?

1 MR. ISASI: Yes.

2 MEMBER SILVERSTEIN: Can you
3 repeat that again, please? I didn't hear you.

4 MR. ISASI: Sure. We have --
5 without hesitation I can say that we have had
6 noise problems in our house with the roof, the
7 ceiling, everything closed and the windows and
8 everything, right.

9 MEMBER ALBERTI: Okay.

10 MR. ISASI: With the atrium
11 completely closed, we can still hear the music
12 and noise in our house.

13 MEMBER ALBERTI: Okay. So going
14 back to when -- so when everything is closed
15 up again, describe to me the level of sound
16 that you are hearing.

17 MR. ISASI: I think maybe even the
18 majority of the ABRA noise violations they
19 found were when everything was closed. And
20 the -- it depends on the night. I mean, it's
21 exactly what I described before. Some times
22 it is you can clearly hear the song, you can

1 clearly hear the DJ. Other nights it's the
2 throbbing of the base.

3 MEMBER ALBERTI: Okay. Have you
4 ever had the Investigator in your house
5 listening to -- to see whether there is a
6 noise violation and have had the Investigator
7 sort of acknowledge to you that they believe
8 there is a violation?

9 MR. ISASI: Yes.

10 MEMBER ALBERTI: How many times?

11 MR. ISASI: I think four or five
12 times.

13 MEMBER ALBERTI: In your house?

14 MR. ISASI: Yes.

15 MEMBER ALBERTI: Okay.

16 MR. ISASI: And I think in the
17 investigative reports our address is listed,
18 so, I mean, it's pretty clear --

19 MEMBER ALBERTI: All right.

20 MR. ISASI: -- which ones are --

21 MEMBER ALBERTI: All right. All
22 right. All right. My pause is not to allow

1 you to speak. My pauses are to --

2 MR. ISASI: Okay.

3 MEMBER ALBERTI: -- for my next
4 question. All right. Are you aware of other
5 people complaining about this?

6 MR. ISASI: Yes. As the
7 representative of the protestant group, I
8 think people generally would let me know and
9 then I was letting Mr. Cham know, so I --

10 MEMBER ALBERTI: How many people?

11 MR. ISASI: I would say that I
12 talked to about at least maybe 10 people.

13 MEMBER ALBERTI: Okay. So do you
14 have the -- our report, our protest report?
15 Can we give him a copy of the protest report?
16 Because I would like to have him take a look
17 at Exhibit 42, which is the picture of the
18 back of the houses.

19 MR. RACILLA: I don't -- we don't
20 have the --

21 MS. JOHNSON: Our exhibits --
22 report doesn't contain all of the additional

1 pictures and everything. It's just --

2 MEMBER ALBERTI: Can I just lend
3 him? Okay. Exhibit 42. Please give it back
4 to Mr. Silverstein once you have finished.

5 MR. ISASI: Okay.

6 MEMBER ALBERTI: Exhibit 42?

7 MR. ISASI: Yes.

8 MEMBER ALBERTI: Which one is your
9 house? Are any of these your houses?

10 MR. ISASI: Yes. My house is the
11 house with the car parked in the back.

12 MEMBER ALBERTI: Okay. All right.
13 Where in relation to the back of New Town
14 Kitchen is that?

15 MR. ISASI: Directly behind it.

16 MEMBER ALBERTI: Directly behind
17 it. Okay. How far is the -- what's the
18 furthest person from this that has complained
19 to you?

20 CHAIRPERSON MILLER: Wait a
21 second. Mr. Cham, do you have a copy of this
22 picture --

1 MR. CHAM: No, ma'am.

2 CHAIRPERSON MILLER: -- that we
3 are discussing?

4 MR. ISASI: He can have --

5 MEMBER ALBERTI: You don't have a
6 copy? Okay. You can give it to -- let Mr.
7 Cham take a look at it.

8 CHAIRPERSON MILLER: Okay.

9 MEMBER ALBERTI: So the witness
10 has testified that it's the house with the car
11 parked behind it. So what is my question?
12 Oh, right, what's the farthest residence from
13 your house that has complained to you?

14 MR. ISASI: I think we have a
15 letter that was sent to ABRA from somebody on
16 the south side of Wallach Place as part of
17 this protest that indicates that --

18 MEMBER ALBERTI: Across the
19 street?

20 MR. ISASI: Across the street.
21 That indicates that they have had noise
22 problems with New Town, so that's probably the

1 furthest.

2 MEMBER ALBERTI: Okay. All right.

3 So is there any time of day that you think it

4 would -- that it's reasonable for you to -- I

5 mean, given where you live, you live in the

6 city. You live in a very busy part of the

7 city. Is there any time for you personally?

8 This is a personal question. Is there any

9 time of the day where it would be acceptable

10 before which it would be acceptable to have

11 the noise that you are hearing in your

12 residence?

13 MR. ISASI: I think that under the

14 D.C. Code and the voluntary agreement, we are

15 entitled to live in a Residential Zone without

16 this kind of music and noise in our house.

17 So I think that our rights under

18 District Law is that we should be able to live

19 in a Residential Zone without this. So I

20 think that's really where we should go with

21 this.

22 MEMBER ALBERTI: So it's no time?

1 There is no time that you find it acceptable?

2 MR. ISASI: I mean, one of the --

3 MEMBER ALBERTI: Look, just --

4 MR. ISASI: One of the --

5 MEMBER ALBERTI: It's not a trick
6 question.

7 MR. ISASI: I know.

8 MEMBER ALBERTI: I need to --

9 MR. ISASI: But I feel like you
10 are asking me to give up something --

11 MEMBER ALBERTI: I just need to --

12 MR. ISASI: -- I'm supposed to get
13 under District Law, which is I'm supposed to
14 live in a Residential Zone and not have this.

15 MEMBER ALBERTI: Listen. Look, I
16 know the law. Please, just answer my
17 question. There is no time that is acceptable
18 to you?

19 MR. ISASI: I mean, in our -- one
20 of the remedies that we have requested was I
21 think has a 10:00 p.m. date -- time on it.
22 You know, so I think the protestant group

1 thinks that 10:00 p.m. is sort of okay.

2 But our problem is that any -- I
3 mean, as you have seen here today, any line
4 that we try to draw, he either doesn't pay
5 attention to it or he completely ignores it.
6 And so, you know, we are trying to create
7 anything that has ambiguity in it. It's just
8 going to put us right back here again.

9 And we have been living with this
10 now every weekend since January.

11 MEMBER ALBERTI: Look, all right.
12 Gotcha. I have heard all -- I mean, I'm
13 hearing all of that from you. All right.
14 Okay. Thank you very much. Stay there. I'm
15 done with my questions.

16 MR. ISASI: Oh, I'm sorry.

17 MEMBER ALBERTI: Others aren't.

18 CHAIRPERSON MILLER: Okay. Other
19 Board questions?

20 MEMBER RODRIGUEZ: Yes.

21 CHAIRPERSON MILLER: Yes, Mr.
22 Rodriguez?

1 MEMBER RODRIGUEZ: Mr. Isasi, how
2 do you know that the sounds you are getting
3 are from this establishment?

4 MR. ISASI: I -- you know, we were
5 very concerned when Mr. Cham raised this with
6 us and said that he was very worried that we
7 were really complaining about noise from other
8 establishments and it wasn't New Town.

9 So when we started walking around,
10 we walked down the alleyway. We walked down
11 towards U Street. We walked all the way
12 around the building and it was very clear to
13 us the noise was coming from New Town. And
14 other protestants did the same thing. Before
15 they called the hotline, they went outside and
16 they walked all around to make sure it was
17 coming from New Town.

18 MEMBER RODRIGUEZ: How many other
19 establishments near you to the left and right
20 have music?

21 MR. ISASI: I mean, there is a
22 lot. I -- none of them that I have ever

1 heard. So I -- but I mean, I think there is
2 like Pure is right there and Lost Society is
3 right there and I mean, there is more. You
4 know, it's a very --

5 MEMBER RODRIGUEZ: And you have
6 distinguished other places that make noise?

7 MR. ISASI: So when you walk
8 around, you know, you can kind of triangulate
9 where the noise is coming from. You can sort
10 of -- you know, when you are getting further
11 away from it, closer to it. You can see like
12 the people dancing and see like what song they
13 are dancing to. You can hear the lyrics.

14 So it's very -- I mean, there is
15 no question in my mind that the noise is
16 coming from New Town and the other protestants
17 told me the same thing. They walked all the
18 way around the neighborhood and it was
19 definitely coming from New Town.

20 And I think if you look at the
21 architecture, it's pretty clear why it's
22 coming from New Town. It's a glass atrium

1 sitting on the highest point in the
2 neighborhood.

3 MEMBER RODRIGUEZ: Okay. I have
4 no more questions, Madam Chair.

5 CHAIRPERSON MILLER: Okay.
6 Others?

7 MEMBER ALBERTI: Mr. Jones.

8 CHAIRPERSON MILLER: Mr. Jones?

9 MEMBER JONES: Yes, thank you,
10 Madam Chair.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER JONES: So in your
13 assessment of verifying that the sound was
14 coming from New Town Kitchen, so has there
15 ever been a time where you heard anything when
16 New Town was not in operation?

17 MR. ISASI: I mean, sure, you
18 know. People drive down the street and they
19 have got their car radios on.

20 MEMBER JONES: All right. Have
21 you heard music from an established licensed
22 establishment?

1 MR. ISASI: We had the problem
2 with Tabaq that one time before New Town
3 opened. And we called the -- we called the
4 police. They came out. The owner came down
5 and apologized profusely and turned down the
6 music right away.

7 MEMBER JONES: Okay. So you have
8 never heard any music or any sound emanating
9 from Pure, Lost Society's rooftop?

10 MR. ISASI: I --

11 MEMBER JONES: No place other than
12 New Town ever?

13 MR. ISASI: -- mean, I have never
14 heard noise such that I'm like where is that
15 coming from? What is going on? Like I --
16 it's probably I have heard something from
17 somewhere, but the times when it has really
18 bothered me and I have really heard it and I
19 have gone investigating to figure out where it
20 is coming from, it is clearly coming from New
21 Town.

22 MEMBER JONES: And you have

1 determined that how exactly? So for example,
2 did you know exactly what music was being
3 played? For example, was it a Biggies Smalls
4 hit song that was on and, you know, I know
5 that hit song and you walked to the front door
6 of New Town and --

7 MR. ISASI: It was more --

8 MEMBER JONES: -- yep, that's
9 Biggies Smalls.

10 MR. ISASI: No.

11 MEMBER JONES: What did you do?

12 MR. ISASI: It was more. Yes, no.
13 It was more like that triangulation thing
14 where sort of I was walking the back alley and
15 walking around and when I got close to New
16 Town, it got much louder. When I got further
17 away, it got much more quiet. So I could sort
18 of figure out where the noise was emanating
19 from because of the way that you hear things.
20 Like you can kind of figure out where the
21 music -- the direction and distance and that
22 kind of stuff.

1 So I would walk all around the
2 outside.

3 MEMBER JONES: Okay. So you
4 cannot definitively say that you know that
5 music was coming from New Town based on the
6 source and the actual nature of the actual
7 music or sound that was coming from there?

8 MR. ISASI: Okay.

9 MEMBER JONES: My concern is
10 related to reflection and you are talking
11 about triangulation, but it's an informal
12 process that you are doing by your very
13 definition, right?

14 So typically, if you go through a
15 process of trying to identify a point source,
16 you have an individual at one location who
17 knows, yes, this is Song A. Yes, I'm hearing
18 Song A or the DJ is saying this. Yes, I heard
19 him say that.

20 MR. ISASI: Certainly in the
21 investigative --

22 MEMBER JONES: Did you perform

1 that?

2 MR. ISASI: -- reports the
3 Investigators -- there are -- they know
4 exactly when that happened. I didn't have any
5 way of like talking to the DJ or, you know,
6 figuring that out.

7 MEMBER JONES: Okay.

8 MR. ISASI: So I did the best
9 thing I could which was walk all the way
10 around to make sure. You know, we have
11 nothing against Mr. Cham. We want nothing but
12 his business to succeed. And the last thing
13 we would want to do is blame New Town for
14 stuff that has nothing to do with New Town.

15 So we all took it very seriously
16 to make sure that the noise was coming from
17 New Town.

18 MEMBER JONES: Okay. Is it -- do
19 you feel like you are the most impacted by the
20 operations of this establishment in this
21 current form due to your proximity?

22 MR. ISASI: I think probably our--

1 the protest group. All of us in the protest
2 group, because we are the houses that are --
3 I think everyone -- no, there is a couple of
4 people who are a little further away, but most
5 of the people in the protest group are all the
6 houses that are right there in the closest
7 proximity to New Town.

8 MEMBER JONES: Got it. So this is
9 a question directed to you specifically. Do
10 you feel like your house is most impacted by
11 the operations of the establishment due to its
12 proximity?

13 MR. ISASI: I don't know that -- I
14 don't -- from talking to other protestants, it
15 sounds like they are having the exact same
16 problems that I'm having, so I think we are
17 three houses, four houses right next to each
18 other, so I don't know that any of us are
19 having like a much bigger or less noise
20 problem.

21 MEMBER JONES: Has there ever been
22 a time where you have worked in conjunction

1 with an ABRA representative to establish an
2 appropriate sound level?

3 MR. ISASI: So --

4 MEMBER JONES: A level that you
5 could live with, I should say.

6 MR. ISASI: -- we worked with
7 DCRA, ABRA, MPD to set up a date to go to New
8 Town and set the noise, the volume level. And
9 it was Ms. Johnson on one side, me and Ms.
10 Weed on the other side. We were all there.
11 And Brian -- it had been agreed to ahead of
12 time that Brian would go in with everyone just
13 to make sure that he could see what was going
14 on, so that if we had problems in the future,
15 we could say, you know, you promised that the
16 noise level is going to be this, that the
17 speakers are here, here and here. We just
18 wanted to make sure that it was very clear
19 exactly what he was promising to.

20 When they went in -- they went in
21 and a few minutes later they came out and they
22 reported that Mr. Cham -- that someone at New

1 Town had thrown them all out. DCRA, MPD and
2 ABRA as well as Brian and refused to let the
3 noise setting exercise go forward.

4 Then DCRA and ABRA said to us
5 look, we know you guys want to be there to see
6 what is going on, but just trust us. You
7 know, we will report back to you and let you
8 know exactly where the speakers are. You
9 know, we will get this set.

10 And I have to say we really
11 debated because we felt like now we are at the
12 whim of like other people telling us what is--
13 but we said okay, fine. If you guys think you
14 can do this, do it. So they went back into
15 New Town and New Town threw them out and said
16 absolutely not. Everyone out. They would not
17 let ABRA back in. Wouldn't let MPD back in.
18 Wouldn't let DCRA back in.

19 So that night, there was no noise
20 setting exercise. It was not successful.
21 There was no noise set. And then honestly, I
22 think, maybe Inspector Jones is getting a

1 little confused about the establishment or
2 something. I don't know who he talked to. I
3 mean, which resident. I think he said he
4 talked to maybe Ms. Johnson, so maybe she can
5 testify to this, but as far as I know, no one
6 has ever agreed to a noise level with New
7 Town.

8 We wanted to do that. We wanted--
9 we had everyone in their houses with -- like
10 on their phones and they were going to like
11 talk to the DJ and have him play with the
12 volume levels and so we could all agree and
13 that was when we got thrown out.

14 MEMBER JONES: Do you have any
15 idea what date that was roughly?

16 MR. ISASI: There is an email
17 attached to Inspector Jones' report that lays
18 this out. And the date should be in that. It
19 was after mediation the first time, so I think
20 maybe April or May, some time in there.

21 MEMBER JONES: Okay. Was this, is
22 it fair to say, after the date of the Exhibit

1 3B email dated April 28, 2014?

2 MR. ISASI: I think it probably
3 was.

4 MEMBER JONES: Okay.

5 MR. ISASI: But it is definitely
6 in Inspector -- I gave him an email when we
7 met that sort of laid out -- reminding him of
8 the problems that we had when we tried to do
9 noise setting exercise. And that email has
10 the dates on it and sort of lays out what had
11 happened.

12 MEMBER JONES: Okay. That's all I
13 have for now. Thank you, Madam Chair.

14 CHAIRPERSON MILLER: Others? I
15 just have a quick couple of questions.

16 Did you say you are in a
17 Residential Zone?

18 MR. ISASI: We are, yes.

19 CHAIRPERSON MILLER: You are?

20 MR. ISASI: Yes.

21 CHAIRPERSON MILLER: So you are a
22 Residential Zone next to a Commercial Zone.

1 You are not in a Commercial Zone.

2 MR. ISASI: We are in a
3 Residential Zone.

4 CHAIRPERSON MILLER: Okay.

5 MR. ISASI: I believe it --

6 CHAIRPERSON MILLER: What is it?

7 An R what?

8 MS. JOHNSON: R-4.

9 CHAIRPERSON MILLER: Do you know?

10 MR. RACILLA: R-4.

11 CHAIRPERSON MILLER: You're an R-
12 4?

13 MR. ISASI: Oh, wait a minute, I'm
14 sorry. I'm sorry, I'm trying to remember.
15 It's a -- I think we are CR-4 is the name of
16 the --

17 CHAIRPERSON MILLER: CR-4?

18 MS. JOHNSON: No, just R-4.

19 CHAIRPERSON MILLER: Okay.

20 MEMBER JONES: Just to be clear,
21 just to be clear, please, if you don't know,
22 you don't know.

1 MR. ISASI: I know for sure we--

2 MEMBER JONES: No, no, no, no,
3 just hear me out. Hear me out. It's not
4 appropriate for individuals that are not on
5 the witness stand to feed information to the
6 witness and then the witness speak on that in
7 terms of that. If you don't know, you can say
8 you don't know from that standpoint.

9 MR. ISASI: Okay. I'm sorry. I
10 can confirm for sure that we are in a
11 residential.

12 CHAIRPERSON MILLER: Okay. All
13 right. That's fine. And then my other
14 question is do you agree with Commissioner
15 Jilani? Is that your name?

16 MS. JILANI: Jilani.

17 CHAIRPERSON MILLER: Jilani.
18 Okay. That the solution to all the problems
19 would be if no dancing and live entertainment
20 were allowed in the atrium?

21 MR. ISASI: Yes. I think that
22 other establishments like Pure and other

1 nightclubs around us that are, you know, in a
2 contained concrete structure and we haven't
3 had any problems with them. So I really do
4 believe this is a problem of architecture and
5 having a dance floor in a glass atrium.

6 CHAIRPERSON MILLER: Okay. So let
7 me ask you this. And Tabaq was there before,
8 which looked like a big restaurant. Is there
9 a problem if the windows in the roof are open
10 when it is a restaurant?

11 MR. ISASI: We never had any
12 problems with Tabaq when it was a restaurant.

13 CHAIRPERSON MILLER: So you didn't
14 have problems with voices carrying? That
15 wasn't an issue?

16 MR. ISASI: (No audible answer.)

17 CHAIRPERSON MILLER: Okay. And is
18 it your view that there shouldn't be any
19 dancing then or live entertainment in the
20 atrium period, no matter what kind of -- what
21 hour of the day? Just period or no?

22 MR. ISASI: I think that that is

1 the best remedy. Either denial of his
2 application, because he has not established
3 that he is not going to disturb the peace,
4 order and quiet of the neighborhood, absent
5 that, I think an absolute ban is required,
6 because the -- it is -- it has become very
7 apparent to us between the daytime parties and
8 the nighttime parties that when you have got
9 dancing --

10 COURT REPORTER: Move the mike
11 over.

12 MR. ISASI: When you have dancing
13 and DJs playing in the glass atrium, it is
14 clearly audible in our homes.

15 CHAIRPERSON MILLER: Okay. Thank
16 you. All right. Others?

17 MEMBER RODRIGUEZ: Jones.

18 CHAIRPERSON MILLER: Mr. Jones?

19 MEMBER JONES: So I just want to
20 make sure I'm clear. So your issue is that
21 you can hear and/or feel amplified sound
22 emanating, what you perceive to be emanating,

1 from Mid Town in your home?

2 MR. ISASI: From New Town, yes.

3 MEMBER JONES: I mean, excuse me,
4 I said Mid Town. I apologize. From New Town.

5 MR. ISASI: Yes.

6 MEMBER JONES: In your home,
7 correct?

8 MR. ISASI: Yes.

9 MEMBER JONES: If you did not
10 experience that, you would have no issue with
11 them operating in the atrium, correct?

12 MR. ISASI: If I --

13 MEMBER JONES: If you did not
14 experience those problems --

15 MR. ISASI: Yes.

16 MEMBER JONES: -- you would not
17 have any -- so your hard and fast line, at
18 this point, is really more driven by the
19 contentions of the lack of a relationship
20 between you and the licensee, at this point,
21 because you don't trust that the licensee will
22 comport with whatever guidelines would ensure

1 that you wouldn't hear or be disturbed by
2 sound emanating from his operations. Is that
3 a fair characterization?

4 MR. ISASI: No. I think --

5 MEMBER JONES: Okay.

6 MR. ISASI: -- that the breakdown
7 in communication is certainly a part of it,
8 but the real problem is the architecture. I
9 don't think a glass atrium sitting at the
10 highest point in the neighborhood can keep
11 sound in enough that you can have a DJ and
12 amplified music and dancing and not disturb
13 the peace, quiet and order of the
14 neighborhood.

15 MEMBER JONES: So that's a matter
16 of science. So if he turned down the volume
17 to 2 let's say and 2 was only heard at 60
18 decibels in the alley, it wouldn't disturb you
19 in your house.

20 MR. ISASI: I guess if DJs play at
21 2, I don't know what 2 is. And if it's low
22 enough --

1 MEMBER JONES: I'm just -- it's an
2 arbitrary number. I'm just trying to figure
3 out --

4 MR. ISASI: I don't think --

5 MEMBER JONES: It's not beyond
6 physics. It's not beyond reality for you to
7 be able to turn your volume down low enough
8 that it can't be heard.

9 MR. ISASI: I think that's -- I
10 don't know exactly what level you are talking
11 about, but if that's a level at which people
12 have a dance party and that will -- and it's
13 actually reasonable, then maybe that's the
14 case.

15 But it seems to me like what we
16 have learned over the last year is when you
17 have a dance party, you have loud music and
18 you have a DJ and that is too much. It goes
19 into our houses and disturbs everyone in the
20 neighborhood.

21 MEMBER JONES: But if restrictions
22 were put on the licensee in such a way that

1 you were not disturbed by whatever nature of
2 the operations he had taking place up in that
3 atrium, you would have no issue with him
4 operating in there from any time to any time
5 with whatever operations he wants to perform
6 in that atrium?

7 MR. ISASI: If we didn't hear any
8 noise in our houses --

9 MEMBER JONES: Right.

10 MR. ISASI: -- we would be fine.

11 MEMBER JONES: Okay. So for
12 example, if -- I'm not saying that he is even
13 thinking about doing this, but let's say for
14 example he changed the nature of the
15 architecture so that you wouldn't have to deal
16 with that, i.e., instead of it being glass he
17 put up a big brick wall. I don't know what he
18 could do, what closed would allow, but just
19 trying to understand what options really are
20 kind of on the table from that standpoint.

21 It is really whatever option will
22 mitigate you having to deal with noise in your

1 house, you are okay with that? Because you
2 don't care, you are not trying to put him out
3 of business. You are not trying to cripple
4 him. You are just trying to not be disturbed
5 in your home. Is that fair?

6 MR. ISASI: I think we absolutely
7 don't want him out of business. We absolutely
8 want him to succeed. But you know, I'm a
9 little bit worried that if we say oh, well,
10 you can have a dance party and DJs, but you
11 just can't hear it in the houses and that's
12 just not realistic.

13 Like you just don't have a dance
14 party and DJs without it being loud enough.
15 Then you are sort of setting up a standard
16 that is never -- it's just not a solution.
17 It's just going to create more problems
18 because he is going to say the Board said I
19 could have dancing. And they said I could
20 have DJs and that's what I'm having.

21 And of course, you can't have it
22 down at some ambient level, because DJs don't

1 play at that level. People don't dance at
2 that level.

3 MEMBER JONES: Okay. I think I
4 got my answer. Thank you, Madam Chair.

5 CHAIRPERSON MILLER: Okay.
6 Others? All right. Questions on the Board
7 questions?

8 MR. RACILLA: I just have one on
9 redirect.

10 MEMBER SILVERSTEIN: How much time
11 does --

12 CHAIRPERSON MILLER: Yes.

13 MEMBER ALBERTI: How many trees
14 were killed?

15 MEMBER SILVERSTEIN: Mr. Jones,
16 how much time does each side have?

17 MEMBER JONES: One second, Mr.
18 Silverstein.

19 MEMBER ALBERTI: Only one second
20 left?

21 MEMBER JONES: No. One second.

22 MEMBER ALBERTI: We've got to have

1 some humor.

2 CHAIRPERSON MILLER: Okay. So --

3 MEMBER JONES: Okay. So the
4 protestants have 19 minutes remaining. The
5 licensee has 60 minutes remaining, 6-0.

6 MR. CHAM: Okay.

7 MR. RACILLA: Oh, my gosh.

8 CHAIRPERSON MILLER: Only if you
9 need it.

10 REDIRECT EXAMINATION

11 MR. RACILLA: I'm handing you what
12 has been shown -- what has been marked as
13 Protestant Exhibit No. 8, Mr. Isasi.

14 MR. ISASI: Yes.

15 MR. RACILLA: Do you see Wallach
16 Place on there?

17 MR. ISASI: I do.

18 MR. RACILLA: Do you see what zone
19 Wallach Place is in?

20 MR. ISASI: Yes.

21 MR. RACILLA: And what zone is
22 that?

1 MR. ISASI: C -- sorry, R-4.

2 MR. RACILLA: Okay. Thank you.

3 No further questions. I would like to move
4 Exhibit 8 into evidence.

5 CHAIRPERSON MILLER: Any
6 objections? This is an official record from
7 the Zoning Office. Okay. So I'm going to
8 admit Exhibit 8.

9 (Whereupon, the above-referred to
10 document was marked as Protestant
11 Exhibit No. 8 and was received
12 into evidence.)

13 CHAIRPERSON MILLER: Okay.

14 MR. RACILLA: No further
15 questions.

16 CHAIRPERSON MILLER: All right.
17 So where I left off was are there any
18 questions based on Board questions?
19 Otherwise, the witness can be excused.

20 MEMBER ALBERTI: Well, I think--

21 CHAIRPERSON MILLER: Where are we?

22 MEMBER ALBERTI: -- it was Mr.

1 Cham. The protestants said they had no more
2 questions. I think Mr. Cham has an
3 opportunity.

4 CHAIRPERSON MILLER: Oh, he does.
5 Yes, that's what I'm asking if anybody has --

6 MEMBER ALBERTI: Yes, I'm just
7 telling you where we are.

8 CHAIRPERSON MILLER: Okay. Okay.
9 The Board asked some questions. You have an
10 opportunity after the Board asks questions to
11 follow-up on any that relate to the Board's
12 questions. It's not -- and with respect to
13 this witness. Not just ask him any questions
14 you want, but if there are any questions
15 related to what the Board asked.

16 MR. CHAM: No, Madam Chair.

17 CHAIRPERSON MILLER: Okay. And
18 you don't as well, right?

19 MR. RACILLA: Thank you. No.

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

22 (Whereupon, witness was excused.)

1 MR. RACILLA: Could you just tell
2 us how much time we have left again?

3 MEMBER JONES: 19 minutes for the
4 protestants. Licensee has 60 minutes, 6-0.

5 MR. RACILLA: Can we have a short
6 break, so we can figure out --

7 CHAIRPERSON MILLER: Okay.

8 MEMBER SILVERSTEIN: No.

9 MR. RACILLA: -- testifying order.
10 The order of testimony.

11 CHAIRPERSON MILLER: A few
12 minutes, three minutes, five minutes?

13 MR. RACILLA: Five minutes would
14 be great.

15 CHAIRPERSON MILLER: Okay. Okay.
16 I could use a walk.

17 (Whereupon, the above-entitled
18 matter went off the record at 5:32 p.m. and
19 resumed at 5:38 p.m.)

20 CHAIRPERSON MILLER: Okay. We are
21 back on the record. Are you ready to proceed?

22 MR. RACILLA: Yes. We would like

1 to call Ms. Johnson to the stand.

2 CHAIRPERSON MILLER: Okay. Good
3 evening, Ms. Johnson.

4 Whereupon,

5 AILEEN JOHNSON
6 was called as a witness for the Protestants,
7 and having been first duly sworn, assumed the
8 witness stand and was examined and testified
9 as follows:

10 MS. JOHNSON: Yes, I do.

11 CHAIRPERSON MILLER: Okay. Thank
12 you.

13 DIRECT EXAMINATION

14 MR. RACILLA: Earlier today
15 Inspector Jones testified that you agreed to
16 set a volume level with New Town. Is that
17 correct?

18 MS. JOHNSON: No, it is not.

19 MR. RACILLA: You have never
20 agreed to set a defining level with New Town?

21 MS. JOHNSON: No. I have never
22 agreed and whenever I have talked to Inspector

1 Jones, I was also with Ms. Goldfrank who is my
2 spouse, who lives together with me at the
3 residence, and I don't know what led to that
4 testimony, but we have never agreed to a Level
5 3 or any level.

6 MR. RACILLA: Have you ever called
7 the ABRA Hotline and had Inspectors come to
8 your house and fine noise violations?

9 MS. JOHNSON: Yes, we have.

10 MR. RACILLA: And how many times?

11 MS. JOHNSON: Inspectors have come
12 to our house twice and found violations from
13 calling the hotline. Once was on March 7th,
14 that Investigator was Investigator John Suero.
15 I'm not sure how to pronounce his name, S-U-E-
16 R-O.

17 MR. RACILLA: Yes.

18 MS. JOHNSON: And his report
19 details the loud thumping bass sound clearly
20 audible in our house. He was in our kitchen
21 and in our living room and in our dining room
22 and he sustained a violation.

1 And the other time that we called
2 where a violation was sustained was April 25th
3 and that was Inspector Earl Jones. And he
4 sustained a violation on that day.

5 MR. RACILLA: Thank you. I have
6 no further questions.

7 CHAIRPERSON MILLER: That's it?
8 Okay. Mr. Cham, do you have any cross-
9 examination?

10 MR. CHAM: No, ma'am.

11 CHAIRPERSON MILLER: Any Board
12 questions?

13 MEMBER ALBERTI: So I'm going to
14 ask some of the same questions about your
15 description of how loud the sounds heard on
16 these two occasions where the Inspector said
17 that they believe there was a noise violation.

18 Can you describe the level of
19 sound?

20 MS. JOHNSON: Yes, sir. The level
21 of sound was extremely loud, thumping bass.
22 Our back glass in the door and windows

1 vibrating. Music lyrics audible and loud
2 enough so that the -- it woke up our kid and
3 whose bedroom is in the middle of the house
4 who complained about not being able to sleep.

5 And we declined to take an
6 Investigator up to our child's bedroom because
7 the -- we wanted him to get back to sleep, but
8 you could hear it from his bedroom on the
9 second floor, which is in the middle of the
10 house.

11 And so typically, when the noise
12 has been a problem, it has been a very loud
13 thumpety, thump, thump, thump, thump, thump,
14 thump, thump the bass repeatedly. And
15 sometimes with the DJ doing a call and
16 response where the DJ shouts out something and
17 the people dancing shout back to the DJ, the
18 music is very, very loud.

19 I have never called for a pitter
20 patter. I have never called just because I
21 hear a sound. And I have only called when it
22 has been really disturbing my sleep, our son's

1 sleep and that self-help was not working. And
2 because it seemed to be a pattern that just
3 was not going to stop.

4 MEMBER ALBERTI: Thank you. So
5 just I'm assuming that your house is typical
6 of many of the rowhouses in the District. And
7 you said, I'm hearing, is your kitchen on the
8 back?

9 MS. JOHNSON: Our kitchen is on
10 the back on the first floor.

11 MEMBER ALBERTI: Okay.

12 MS. JOHNSON: Yes, it is.

13 MEMBER ALBERTI: Is it three rooms
14 on the first floor?

15 MS. JOHNSON: Yes, that's right.

16 MEMBER ALBERTI: Okay. So it's
17 the living room --

18 MS. JOHNSON: Well, actually, no.
19 There are four. There is a kitchen. Adjacent
20 to the kitchen is a bathroom which separates
21 the kitchen from the dining room. And then a
22 living room. So four floors.

1 MEMBER ALBERTI: Dining room and
2 then living room.

3 MS. JOHNSON: A dining room and
4 then a living room.

5 MEMBER ALBERTI: Kitchen and
6 bathroom, dining room, living room.

7 MS. JOHNSON: Yes, that's right.

8 MEMBER ALBERTI: And on the second
9 floor, you said your child's bedroom is in the
10 middle. Is that with the window that faces
11 the --

12 MS. JOHNSON: Yes.

13 MEMBER ALBERTI: -- in that
14 dogleg?

15 MS. JOHNSON: Yes, it is.

16 MEMBER ALBERTI: In the
17 establishment, okay.

18 MS. JOHNSON: Right. It faces in
19 that exactly, yes.

20 MEMBER ALBERTI: Typical of my
21 house.

22 MS. JOHNSON: Yes.

1 MEMBER ALBERTI: All right. So
2 that's how I know, they all look the same way.

3 MS. JOHNSON: They all have that
4 little gully right there.

5 MEMBER ALBERTI: Yes, right,
6 right.

7 MS. JOHNSON: Exactly.

8 MEMBER ALBERTI: Could you hear it
9 in your dining room?

10 MS. JOHNSON: Yes.

11 MEMBER ALBERTI: On that evening?

12 MS. JOHNSON: Yes. I heard it.

13 MEMBER ALBERTI: On both evenings?

14 MS. JOHNSON: Yes.

15 MEMBER ALBERTI: In your living
16 room?

17 MS. JOHNSON: Yes.

18 MEMBER ALBERTI: All right. Thank
19 you. No further questions.

20 CHAIRPERSON MILLER: Okay.
21 Others? Are you -- oh, yes, go ahead, Mr.
22 Silverstein.

1 MEMBER SILVERSTEIN: So what do
2 you see as the liveable solution here? Let's
3 assume, just arguendo, that the license is
4 renewed, but what, and if that were the case,
5 would be the conditions that would make your
6 life liveable?

7 MS. JOHNSON: Well, let me just
8 say for the record, you know, I'm not like the
9 preacher in Footloose who is against music and
10 dancing altogether. I have heard an excessive
11 amount of sound on some occasions, but decided
12 given the occasion, it's not really
13 appropriate to complain about it.

14 Inauguration night, am I going to
15 call and complain about the party that is
16 going on and the music that is really loud?
17 No. I understand what is happening.

18 What I think would really satisfy,
19 what would really stop myself and my family
20 from being disturbed would be if the Board
21 adopted what Commissioner Jilani has
22 recommended. And I agree with everything that

1 she said. I don't know if that helps make my
2 examination more efficient, but I do agree
3 with everything that she said.

4 Does that answer your question,
5 Mr. Silverstein?

6 MEMBER SILVERSTEIN: Yes, it does.
7 Thank you very much. And I want to thank all
8 of you for your patience. This is dragging on
9 and I hope we can move it quickly, but I just
10 do want to take this opportunity to thank you
11 all and thank you, Commissioner, for your
12 service. Your term is coming to an end. No
13 further questions.

14 CHAIRPERSON MILLER: Mr. Jones?

15 MEMBER JONES: Thank you, Madam
16 Chair. You know that you agreed with what was
17 previously stated, why? Why do you agree with
18 those terms?

19 MS. JOHNSON: Because, you know, I
20 was one of the initial negotiators to the
21 agreement with Tabaq and during that time,
22 even when dancing was amended to their

1 entertainment license, I never really had to
2 call the Board, call on the Board or an
3 Investigator for any kind of relief, because
4 I was able to pick up the phone, go over there
5 and just let them know when there was a
6 problem.

7 And so I believe there was -- they
8 recognized on my part a good faith effort to
9 be a good neighbor and I believe they were
10 making good faith steps to be a good neighbor.
11 And I don't think that the current allowance
12 of dancing in the atrium is sustainable,
13 because I agree with what Mr. Isasi said that
14 when people are dancing, the music goes up.

15 There is no dancing at an ambient
16 level where the music is in low tones just in
17 the background, because the point then is for
18 it to be low enough so the people can have
19 conversations and listen to one another. When
20 people are dancing, the point is to dance and
21 to sing along and to answer the DJ.

22 And so I think that having dancing

1 there will continue the problem. And I think
2 that given that we have dealt with this for
3 more than a year, that if the owner has not
4 been able to develop measures which prevent
5 sound from being heard in our house, I don't
6 know how he is going to develop sound from
7 being heard in our house.

8 And the proximate cause of all the
9 sound that we hear in our house is not ambient
10 music low. It's the dance music. And so for
11 that reason, I believe that the live
12 entertainment is what is the problem.

13 I have also been a party to the
14 voluntary agreements for Pure, for Bistro la
15 Bonne, for Fainting Goat. Fainting Goat is
16 not a music establishment, but Bistro la Bonne
17 has music. Pure definitely has music. I have
18 never had -- I have never heard any music
19 coming from Pure. They are in a concrete box.

20 They are not on a glass atrium.
21 Sound travels from that atrium right into our
22 homes. And it wakes us up and I also think

1 that if given that the owner has a track
2 record of turning down the music when the
3 Investigator comes, saying yes, Mr.
4 Investigator and then turning the music back
5 up when the Investigator leaves, that that
6 demonstrates a lack of willingness to follow
7 anything but a bright line.

8 MEMBER JONES: Okay. So just to
9 make sure I'm clear. Do you remember the
10 terms that were noted earlier specifically?

11 MS. JOHNSON: I'm not --

12 MEMBER JONES: From the
13 Commissioner?

14 MS. JOHNSON: I'm not -- the
15 terms? I'm not sure that I do remember what
16 you are referring to specifically.

17 MEMBER JONES: Okay. So there
18 were some specific terms that were outlined in
19 terms of what would be acceptable on the -- in
20 terms of the operation of the atrium earlier
21 that were testified to.

22 MS. JOHNSON: Okay.

1 MEMBER JONES: And you said you
2 agreed with those terms.

3 MS. JOHNSON: Okay.

4 CHAIRPERSON MILLER: Okay. I --

5 MS. JOHNSON: But there were
6 several different --

7 CHAIRPERSON MILLER: -- just want
8 to interject just for efficiency, if I could.

9 MEMBER JONES: Yes.

10 CHAIRPERSON MILLER: Because I
11 think you basically covered the areas that the
12 Commissioner talked about. I think
13 specifically, as I understood it, it was no
14 dancing and no live entertainment in the
15 atrium.

16 MS. JOHNSON: In the atrium.

17 CHAIRPERSON MILLER: Is that what
18 you agreed to or also think is the right
19 solution?

20 MS. JOHNSON: I do think that is
21 the right solution. I agree with the
22 testimony of Mr. Isasi on that point, yes.

1 CHAIRPERSON MILLER: Okay. I'm
2 sorry, Mr. Jones, is there more?

3 MEMBER JONES: So what did the
4 Chairman just tell you was the right answer?

5 CHAIRPERSON MILLER: No.

6 MEMBER JONES: Thanks, Madam
7 Chair.

8 CHAIRPERSON MILLER: No, that was
9 the right question, because you were trying to
10 -- she was trying to figure out what was it
11 that she said, but I could tell that that's
12 what you were testifying to with your
13 testimony.

14 MEMBER JONES: Thanks, Madam
15 Chair.

16 CHAIRPERSON MILLER: Okay.

17 MEMBER JONES: So can you tell me
18 what those terms were again?

19 MS. JOHNSON: The atrium not being
20 used for live entertainment and dancing.

21 MEMBER JONES: Okay. Was there
22 anything more specific that is relevant to you

1 in terms of how it is impacting your life as
2 based on where you live, i.e., is that period,
3 never to have dancing, never to have live
4 entertainment in the atrium area?

5 MS. JOHNSON: Let me answer you
6 this way. If I knew that the one time
7 occurrence of the dancing in the middle of the
8 day where it was really loud for a couple of
9 hours was only going to happen then and
10 probably not again for another six months, I
11 would have one view.

12 If I believe that I would have to
13 leave my house on Sunday afternoon sometimes
14 because the music is just so loud that it just
15 disturbs the quiet of the Sunday afternoon
16 because of the private party going on and that
17 that was going to happen every weekend, then
18 I would say no music daytime or nighttime.

19 I really can't stress to you how
20 disturbing it is, how it is headache-inducing,
21 that's one way. I don't know if other people
22 can get a headache from it. It's headache-

1 inducing. It is I need to get my sleep. I
2 don't think it's too much to ask at 2:30 or
3 3:00 to be able to sleep.

4 And I don't think that I should
5 have to try to just use earplugs or ignore it
6 on a consistent basis.

7 MEMBER JONES: Okay. Fair enough.
8 So is part of your issue related to the
9 operator himself? You have no faith or trust
10 in the operator to comply with the rules? Is
11 that a fair statement? I'm just trying to cut
12 to the quick.

13 MS. JOHNSON: The operator has
14 demonstrated an unwillingness to comply with
15 the terms of the agreement thus far. And
16 looking at the past, there is no basis for me
17 to say that that is going to change.

18 MEMBER JONES: Okay. And the --
19 if you were not disturbed by the operations of
20 the establishment, would you have an issue
21 with whatever they did in that location?

22 MS. JOHNSON: I would not --

1 MEMBER JONES: In other words if--

2 MS. JOHNSON: -- like nude

3 dancing.

4 MEMBER JONES: I'm sorry. Okay.

5 Under the conditions of their existing

6 license, under the conditions of their

7 existing license, if you heard no sound in

8 your residence, would you have any concerns

9 related to what they did in the atrium or any

10 other part of the building under the

11 conditions of their existing license?

12 MS. JOHNSON: If I heard no

13 sounds, they would be in full compliance with

14 the D.C. Law.

15 MEMBER JONES: So is that a yes?

16 MS. JOHNSON: I only complained

17 about the violation of the law and the

18 voluntary agreement.

19 MEMBER JONES: Understood. So if

20 you heard -- I'm not trying -- it's not a

21 trick question. If you heard no issue or had

22 no sound that bothered you or disturbed you in

1 your residence, then you would not have an
2 issue with the operations of this
3 establishment. Is that a fair statement?

4 MS. JOHNSON: It's unfair in that
5 you are asking me to try to imagine an unknown
6 hypothetical of an operation that I would not
7 have a problem with, even if I didn't hear it.
8 And I'm just enough of a stickler for dealing
9 with facts and reality to say well, I don't
10 know that I can say that.

11 MEMBER JONES: Back to reality.
12 That's a very interesting choice of words.
13 I'll just put it this way, I am trying to get
14 a better sense and understanding of really
15 what the problem is, because you are trying to
16 dictate how an individual runs his business in
17 order to remedy a problem.

18 But if the problem is able to be
19 remedied by another means, would that really
20 be what you are trying to remedy? And it
21 seems like you are really here because you
22 want to remedy a problem, not to put handcuffs

1 on a business operator.

2 MS. JOHNSON: With all due
3 respect, I'm not trying to dictate anything,
4 except not hearing the sound in my house.

5 MEMBER JONES: Perfect. That's
6 exactly it. So if he was able to comport
7 himself in a fashion so that you didn't hear
8 the sound in your house, you would have no
9 issue with how he operated. Is that a fair
10 statement?

11 MS. JOHNSON: Again, I have no
12 problem with dancing. I have no problem with
13 music. He can turn it into -- turn it back
14 into a full restaurant the way it was with
15 Tabaq. He can exercise it as a place where he
16 holds dance parties, but if he decided he was
17 going to change the nature of the license, so
18 that it became a nightclub, I would have a
19 problem there.

20 MEMBER JONES: Okay. You didn't
21 have any issue with the operation of Tabaq,
22 right?

1 MS. JOHNSON: I -- my testimony
2 was that when I had issues with Tabaq, I took
3 the issues to Tabaq and we worked it out.
4 Sometimes there were issues with noise or with
5 trash or with -- yes, noise and trash and I
6 took it to them and worked it out.

7 So if you are saying am I claiming
8 to have never had a problem with Tabaq, I
9 can't say that. But I never filed a formal
10 complaint with them after the execution of the
11 voluntary agreement.

12 MEMBER JONES: Okay. So you were
13 able to work out whatever your issues were
14 with Tabaq under the auspice of the same
15 voluntary agreement and the same license?

16 MS. JOHNSON: That's right.

17 MEMBER JONES: Is that a fair
18 statement? Okay. Thank you. Thank you,
19 Madam Chair.

20 CHAIRPERSON MILLER: Okay.
21 Others? Okay. Any questions on Board
22 questions?

1 MR. RACILLA: No questions.

2 CHAIRPERSON MILLER: Mr. Cham?

3 CROSS-EXAMINATION

4 MR. CHAM: Ms. Johnson, you stated
5 earlier that you had no issues with Tabaq. Is
6 that correct?

7 MEMBER RODRIGUEZ: She didn't say
8 that.

9 MS. JOHNSON: No, that is not
10 correct.

11 MR. CHAM: Okay. You stated you
12 had no noise issues with Tabaq. Is that
13 correct?

14 MS. JOHNSON: No, that is not
15 correct.

16 MR. CHAM: That's all I got.

17 CHAIRPERSON MILLER: Okay. Do you
18 have any questions?

19 MR. RACILLA: (No audible answer.)

20 CHAIRPERSON MILLER: Okay. Thank
21 you very much for your testimony.

22 MS. JOHNSON: Thank you.

1 (Whereupon, witness was excused.)

2 CHAIRPERSON MILLER: Okay. Do
3 they have any time left?

4 MEMBER JONES: 17 minutes for the
5 protestants.

6 CHAIRPERSON MILLER: I thought
7 they had five. They have 17?

8 MEMBER JONES: You said you
9 thought they had five?

10 CHAIRPERSON MILLER: Yes. Okay.
11 I misheard.

12 MEMBER JONES: You did the math?

13 CHAIRPERSON MILLER: No, no, I
14 misheard. Okay. 17. Okay.

15 MR. RACILLA: We would like to
16 call Mr. Netter.

17 CHAIRPERSON MILLER: Okay.
18 Whereupon,

19 BRIAN NETTER
20 was called as a witness for the Protestants,
21 and having been first duly sworn, assumed the
22 witness stand and was examined and testified

1 as follows:

2 MR. NETTER: I do.

3 CHAIRPERSON MILLER: All right.

4 Thank you.

5 DIRECT EXAMINATION

6 MR. RACILLA: Mr. Netter, where do
7 you live?

8 MR. NETTER: I live on the 1300
9 Block of Wallach Place.

10 MR. RACILLA: And how long have
11 you lived there?

12 MR. NETTER: I have lived there
13 since 2010.

14 MR. RACILLA: And with whom do you
15 live?

16 CHAIRPERSON MILLER: Wait. Could
17 you pause for a second? Mr. Silverstein
18 didn't hear his name.

19 MEMBER SILVERSTEIN: Identify
20 yourself.

21 CHAIRPERSON MILLER: Mr. Netter,
22 your full name?

1 MR. NETTER: My name is Brian
2 Netter.

3 CHAIRPERSON MILLER: Okay.

4 MR. RACILLA: And you live on 1300
5 Block of Wallach Place?

6 MR. NETTER: That's correct.

7 MR. RACILLA: And how long have
8 you lived there?

9 MR. NETTER: I have lived there
10 since 2010 with my wife and we now have two
11 children who are 3 and 1 year-old.

12 MR. RACILLA: And do you find the
13 area to be hospitable to raising a family?

14 MR. NETTER: Yes. There are lots
15 of kids on the block. It's a very family-
16 friendly neighborhood, largely because there
17 are so many businesses nearby and a
18 Residential Zone.

19 MR. RACILLA: Did you have any
20 interactions with New Town when they moved to
21 the neighborhood?

22 MR. NETTER: Yes. When I read

1 their promotional materials, it said that they
2 were planning to rent out their space, but
3 before they had opened, I sent Mr. Cham a
4 letter in November of last year attaching a
5 copy of the voluntary agreement to ensure that
6 he was aware of the conditions of his liquor
7 license.

8 CHAIRPERSON MILLER: I'm sorry, to
9 ensure what?

10 MR. NETTER: That he was aware of
11 the conditions of his liquor license.

12 CHAIRPERSON MILLER: Oh, okay.
13 Thank you.

14 MR. RACILLA: Mr. Netter, you have
15 been handed an exhibit that has been marked as
16 Protestant's Exhibit No. 3P. Is this the
17 letter that you sent to -- a copy of the
18 letter that you sent to Mr. Cham?

19 MR. NETTER: It is. This is the
20 full email chain between us.

21 CHAIRPERSON MILLER: Okay.

22 (Whereupon, the above-referred to

1 document was marked as Protestant
2 Exhibit No. 3P for
3 identification.)

4 MR. RACILLA: And in your
5 experience have you ever experienced New Town
6 not living up to the requirements of the
7 voluntary agreement?

8 MR. NETTER: I have. We have had
9 repeated problems with music being played in
10 the greenhouse atrium space that is, you know,
11 loud enough to be heard in my house and loud
12 enough to keep my children up at night.

13 It has been so problematic that my
14 3 year-old daughter who sleeps in the back of
15 the house with the window facing the alley
16 complains regularly and now has to have a
17 white noise machine playing, so that the bass
18 from New Town won't keep her up at night.

19 MR. RACILLA: Did you ever express
20 these problems to New Town?

21 MR. NETTER: I did. My wife and I
22 made calls to New Town. Sometimes they were

1 answered, sometimes they weren't. We tried to
2 develop a relationship with a manager, a late
3 night manager, I think his name is Sinbad. We
4 have his phone number and will sometimes
5 exchange text messages about our problems.

6 MR. RACILLA: And what happened
7 when you exchanged text messages with Sinbad?

8 MR. NETTER: Sometimes he would be
9 very receptive. You know, my view was that I
10 shouldn't have to be calling him at all, but
11 sometimes he would say oh, yes, I see that all
12 of our windows are open. Perhaps that's why
13 it is loud and he would close the windows,
14 which made it clear that the noise was coming
15 from New Town, because when he closed the
16 windows, it would get quieter.

17 Sometimes he wasn't available and
18 if he wasn't available and we asked him to
19 close the windows, he would sometimes get very
20 angry at us.

21 MR. RACILLA: Do you have any
22 evidence of one of those types of

1 communications?

2 MR. NETTER: Yes. There is a text
3 message exchange which you are handing me
4 right now. It is marked as Exhibit 3N. In
5 which we asked him -- I think it says 3:45
6 p.m. to -- we told him that the music was
7 extremely loud. Told him that our kids would
8 be going to sleep at 7:30. He had previously
9 promised us that the windows and noise would
10 be low by 7:30 p.m.

11 When they weren't, we sent them
12 another message saying that he had promised us
13 and wasn't being a good neighbor. And then we
14 got an angry report that he would not tolerate
15 our attitude or rudeness any more and that he
16 would never respond to our request and doesn't
17 care who we call.

18 MR. RACILLA: We would like to
19 move into evidence the Exhibit No. 3P and 3N.

20 CHAIRPERSON MILLER: Okay. Wait,
21 3P and 3N.

22 MR. RACILLA: Yes.

1 CHAIRPERSON MILLER: Mr. Cham,
2 let's deal with 3P first. Do you have an
3 objection?

4 MR. CHAM: Yes, ma'am.

5 CHAIRPERSON MILLER: Okay. Would
6 you please describe what 3P is again and why
7 it is being offered? And then Mr. Cham can
8 raise his objection.

9 MR. RACILLA: Sure.

10 CHAIRPERSON MILLER: Okay.

11 MR. RACILLA: 3P is an exhibit,
12 it's an email from Mr. Netter himself to Mr.
13 Cham evidencing that the protestants provided
14 Mr. Cham with a voluntary agreement. Earlier
15 today Mr. Cham had indicated that he had not
16 gotten a copy or seen a copy of the voluntary
17 agreement when he moved into the space.

18 CHAIRPERSON MILLER: Okay. And
19 your objection, Mr. Cham?

20 MR. CHAM: Yes, this email has
21 nothing to do with the voluntary agreement.
22 This email basically was addressed to me. I

1 looked at it. He was introducing himself and
2 telling me that I have a voluntary agreement
3 attached to -- basically, what he said in the
4 email is not what I was doing.

5 He was -- in this email, he is
6 telling me I'm renting the space out for
7 whatever definition he had for parties. And
8 you can see what my response was. I told him,
9 I clearly told him the rooftop space on the
10 second level of the main floor would be used
11 for private dining only and private rental
12 parties.

13 CHAIRPERSON MILLER: So I know,
14 but what is the basis for your objection? I
15 see what it says.

16 MR. CHAM: Yes, it's irrelevant to
17 what --

18 CHAIRPERSON MILLER: All right.
19 You don't think it's relevant.

20 MR. CHAM: -- we are talking
21 about. Yes.

22 CHAIRPERSON MILLER: Why is it

1 relevant?

2 MR. RACILLA: Because Mr. Cham
3 testified earlier that he did not have access
4 to the voluntary agreement when he moved into
5 the space.

6 MR. CHAM: I didn't say that.

7 MR. RACILLA: This is evidence
8 that --

9 MR. CHAM: I said --

10 MR. RACILLA: -- it was provided
11 to him.

12 MEMBER SILVERSTEIN: Mr. Cham said
13 he did not read it.

14 CHAIRPERSON MILLER: Okay. All
15 right. I'm going to admit it. I think it's
16 relevant.

17 (Whereupon, the above-referred to
18 document was received into
19 evidence as Protestant Exhibit No.
20 3P.)

21 CHAIRPERSON MILLER: Okay. Let's
22 do the next one. Are they text messages? And

1 he is here for you to cross-examine with
2 respect to this, if you so need to. Okay.
3 The next one, 3N? Do you object to 3N? They
4 look like text messages.

5 MR. CHAM: Yes, it's basically
6 from the manager, so at the same point it's
7 irrelevant, because I don't know where was the
8 manager when he communicated with him.
9 Because if you look at the text messages, most
10 -- I would say 80 percent of the them the
11 manager told them I totally agree, yes. The
12 second page said I'm closing now. Sorry, I
13 was out.

14 CHAIRPERSON MILLER: Oh.

15 MR. CHAM: And then if you look at
16 that, I can't read it clearly, but if you look
17 at that text message, it's like they been very
18 aggressive with him. And at the same time, he
19 turn around and just acted the same way they
20 were acting towards turning the windows down.
21 Especially it was 3:45 again. We're referring
22 to the same video that we saw which is a day

1 party.

2 CHAIRPERSON MILLER: Okay. But my
3 question is your basis for objecting, is it
4 relevance? Is it prejudice? Is the --

5 MR. CHAM: It is prejudice because
6 this guy probably was not even in the
7 restaurant at that point. It's all about
8 hearsay. Like where were you? I'm out, he
9 says on page 2.

10 CHAIRPERSON MILLER: Okay. Would
11 you like to justify its relevance?

12 MR. RACILLA: We believe it is
13 relevant because it demonstrates that the
14 protestants have communicated problems with
15 New Town and that those communications have
16 been unsuccessful and it again goes to why we
17 are seeing remedies in this case.

18 CHAIRPERSON MILLER: Okay. And
19 they are from -- who are they from? Are they
20 from --

21 MR. RACILLA: They are from Mr.
22 Netter himself.

1 CHAIRPERSON MILLER: Mr. Netter
2 who is here who could be cross-examined on
3 them. So, okay, I'm going to admit that
4 Exhibit 3N in.

5 (Whereupon, the above-referred to
6 document was marked as Protestant
7 Exhibit No. 3N for identification
8 and was received into evidence.)

9 CHAIRPERSON MILLER: Okay.

10 MR. RACILLA: Mr. Netter, have you
11 discussed the noise problems that you have had
12 with New Town with any other residents?

13 MR. NETTER: I have. I put
14 together a Notice to Cure under the provision
15 within the voluntary agreement. I spoke with
16 the neighbors and confirmed that they had been
17 having the same problems that I had been
18 having.

19 So I went through the voluntary
20 agreement and identified a number of
21 violations of that voluntary agreement. I
22 asked some neighbors in nearby houses if they

1 agreed and would sign the letter. Then
2 following the process in the voluntary
3 agreement, I sent a copy to Mr. Cham by
4 certified mail with return receipt requested.

5 MR. RACILLA: And is this a copy
6 of the Notice and Opportunity to Cure letter
7 that you sent?

8 MR. NETTER: It is.

9 MR. RACILLA: I would move to
10 admit Protestant Exhibit No. 16 into the
11 record.

12 CHAIRPERSON MILLER: Okay. Any
13 objection? Well, I have a question though.
14 I understand -- well, is this the same Notice
15 to Cure letter that, if you know, was attached
16 to the Investigator's report?

17 MR. RACILLA: No, this is
18 different.

19 CHAIRPERSON MILLER: This is
20 different. And this involves? What is the
21 violation? This Notice to Cure that we are
22 being asked to -- or no, is this an exhibit?

1 MR. RACILLA: Yes.

2 CHAIRPERSON MILLER: Okay.

3 Because I don't see an exhibit number on it.

4 MR. NETTER: The front page has an
5 exhibit number.

6 CHAIRPERSON MILLER: 16, 16.

7 Okay. Got it. So okay. So I haven't had a
8 chance to read this whole piece.

9 MR. RACILLA: That's correct.

10 CHAIRPERSON MILLER: Okay. So
11 what does this relate to so we can determine
12 whether it is relevant?

13 MR. RACILLA: This relates to our
14 attempts to use the Notice to Cure provisions
15 of the voluntary agreement to solve the
16 problems with New Town. We have attempted to
17 do so and have been unable to come to any
18 resolution.

19 CHAIRPERSON MILLER: So this is a
20 second Notice to Cure?

21 MR. RACILLA: That's correct.

22 This is a second Notice to Cure.

1 CHAIRPERSON MILLER: Does this
2 involve a noise violation?

3 MR. RACILLA: All the noise, yes.
4 And it also involves the third-party, using
5 outside promoters in violation of the
6 voluntary agreement.

7 CHAIRPERSON MILLER: And is that
8 relevant to the protest?

9 MR. RACILLA: Again, it shows that
10 Mr. Cham is unwilling and unable to adhere to
11 the rules and the restrictions in the
12 voluntary agreement.

13 CHAIRPERSON MILLER: Okay. Mr.
14 Cham, do you have any objection to this?

15 MR. CHAM: No, Your Honor.

16 CHAIRPERSON MILLER: No. Did he
17 say no?

18 MR. CHAM: Yes, ma'am.

19 CHAIRPERSON MILLER: Okay. All
20 right. Then I'll admit it as Exhibit No. 16
21 protestants.

22 (Whereupon, the above-referred to

1 document was marked as Protestant
2 Exhibit No. 16 for identification
3 and was received into evidence.)

4 MR. RACILLA: And --

5 CHAIRPERSON MILLER: Okay. What?

6 MR. RACILLA: And, Chair Miller,
7 just to reference another Notice to Cure
8 letter, are you aware of any other Notice to
9 Cure letters that have been sent by
10 protestants to Mr. Cham?

11 MR. NETTER: Yes, I am aware there
12 was one earlier letter. My recollection was
13 that it had been sent by Ms. Johnson. That
14 had been at an earlier date. My recollection
15 also was that they had attempted to hand-
16 deliver that to Mr. Cham and he had refused to
17 accept it.

18 MR. RACILLA: And did Mr. Cham
19 accept the Notice to Cure letter that you
20 sent?

21 MR. NETTER: No, he did not
22 because the earlier letter had been refused in

1 hand-delivery, the voluntary agreement says
2 either you can hand-deliver it or send it
3 certified mail. So I sent this one certified
4 mail, return receipt requested. A month later
5 it came back to me unclaimed.

6 They had left a notice for him to
7 go pick up at the post office and nobody ever
8 came, so he never claimed that notice.

9 MR. RACILLA: Thank you. I have
10 no further questions.

11 CHAIRPERSON MILLER: Okay. Cross-
12 exam?

13 CROSS-EXAMINATION

14 MR. CHAM: On this email that you
15 sent me, on the second paragraph, you
16 mentioned --

17 MR. NETTER: I'm sorry, which
18 email are you referring to?

19 MR. CHAM: Exhibit 3P.

20 MR. NETTER: Thank you.

21 MR. CHAM: P as in Peter.

22 CHAIRPERSON MILLER: Yes.

1 MR. CHAM: You mention, you talk
2 about how Tabaq had a problem with the noise,
3 how Tabaq had a problem with the private
4 parties, how Tabaq failure to honor its
5 obligation to its neighbors with significant
6 sort of tension.

7 So basically what you are saying
8 here, Tabaq had some serious issues while they
9 were there as well, right?

10 MR. NETTER: Yes.

11 MR. CHAM: According to your
12 email.

13 MR. NETTER: The problems with
14 Tabaq pale in comparison to the problems with
15 your restaurant. There were a handful of
16 occasions, maybe two or three occasions, in
17 which Tabaq rented its rooftop out to a
18 private party and then the DJ running the
19 private party had the music blaring and we had
20 to complain to Tabaq. That's how I learned
21 about the voluntary agreement.

22 And that was why I was concerned

1 about renting out the private -- the top space
2 or using outside DJs because, you know, it
3 doesn't matter to the residents whether or not
4 there is an outside promoter. But the
5 response that we got from Tabag on those
6 occasions was well, this isn't our employee
7 doing this.

8 If it were our employee, we could
9 control the sound, but it's another DJ. And
10 we, you know, have limited powers to control
11 what other DJs do. So when I saw that New
12 Town was intending to rent out the rooftop
13 spot and use it for outside DJs, I was
14 concerned that the problem we had seen two or
15 three times with Tabag would occur again.

16 It never would have occurred to me
17 that it would be a two or three time a week
18 situation as it has proven to be.

19 MR. CHAM: Okay. So you live on
20 the same block as the other protestants,
21 right?

22 MR. NETTER: I do. That's

1 correct.

2 MR. CHAM: Okay. So some of them
3 have testified that Tabaq didn't have noise
4 problems. But on your email, it clearly
5 states you had some issues with Tabaq.

6 MR. NETTER: I think that my
7 testimony is entirely consistent with what Ms.
8 Johnson just said.

9 MR. CHAM: That you had some
10 issues with Tabaq with noise, right?

11 MR. NETTER: There were --

12 MR. CHAM: According to --

13 MR. NETTER: -- isolated occasions
14 where there were serious problems. We talked
15 to Tabaq and it was always an instance of an
16 outside DJ using the rooftop space. Hence our
17 concern for the use of outside DJs on -- in
18 the atrium.

19 MR. CHAM: Okay. On your emails
20 with this manager, Sinbad, looking at it,
21 three pages, the second and third is the same
22 thing. Well, I'll say three pages. Would you

1 say your communication with him was fair?
2 Every time you send him an email and he would
3 -- or text message, sorry, he would -- he
4 responded to you.

5 For example, he said I am closing
6 it now. I am sorry. On the second one he
7 told you I told you you already send me an
8 email. I told you I would close it at 8:00.
9 And it's now 7:30, according to your text
10 message with him. How would you say your
11 relationship with him was every time you
12 called for him to close the windows before
13 8:00?

14 MR. NETTER: All right. I said it
15 was -- well, first of all, as I understand the
16 voluntary agreement, 8:00 is not some magic
17 number. You -- New Town is not permitted to
18 play music in the atrium with the windows open
19 at 7:30 or 7:00 or at 6:30. And I mean,
20 that's the time when my kids are getting ready
21 to bed -- ready to go to bed. It's a
22 significant time.

1 This was a message -- if you see,
2 it's blurry, but it looks like the first
3 message was sent 3:45 p.m. Your manager
4 suggested that he was going to deal with the
5 music problem, that you must have been having
6 one of your daytime parties.

7 It wasn't for another four and a
8 half hours when we said oh, my goodness, he
9 hasn't done this. Like we don't know what to
10 do any more.

11 MR. CHAM: Okay.

12 MR. NETTER: We didn't have
13 anybody else we could call at the restaurant.
14 Our only other recourse was dialing 911, which
15 is not something, frankly, we were inclined to
16 do. So I think in our frustration after four
17 and a half hours after the manager had said he
18 was going to address the problem was entirely
19 reasonable.

20 MR. CHAM: But you just said at
21 3:45 in the afternoon on a Saturday afternoon.
22 But at the same time, you said that's the time

1 your kids go to bed to go to school in the
2 morning.

3 MR. NETTER: No, no, I said --

4 MR. CHAM: On a Saturday
5 afternoon.

6 MR. NETTER: I said that my kids
7 go to bed between 7:00 and 8:00 p.m.

8 MR. CHAM: So this was 3:00 in the
9 afternoon.

10 MR. NETTER: Well, the first
11 message was at 3:45. The later message was at
12 7:52.

13 MR. CHAM: On a Saturday?

14 MR. NETTER: I think it might have
15 been a Sunday. I can't recall if it was a
16 Saturday or Sunday. We could look it up and
17 see when June 8th was on the calendar. June
18 8, 2014.

19 MR. CHAM: And then on your next
20 email, you just told him your bar is a very
21 bad something to the neighborhood. Your bar
22 needs to change its policies. And I promise

1 every time I will call 911 and something like
2 that. What policies were you referring to?

3 MR. NETTER: We were told that
4 your policy was that you would leave the
5 windows open and would close them at 8:00.

6 The problem then became that okay, sometimes
7 they got closed at 8:00, sometimes they didn't
8 get closed at 8:00. And when our daughter had
9 to go to bed, we would be in a panic situation
10 where she couldn't go to bed because there was
11 a thump, thump, thump in her bedroom.

12 So some times we would call the
13 manager and he would say okay, okay, we are a
14 little bit late I'll close the windows. I'll
15 get it. And on other occasions, he either
16 wouldn't be available or, you know, wouldn't
17 address the problem. And our solution was
18 okay, if we can't address this by having a
19 line of communication, our only other recourse
20 is to call the police, which is a horrible,
21 horrible thing.

22 But if we give you, you know, four

1 hours notice and you continue to be in
2 violation of the law four hours later, we have
3 no recourse but to involve the police every
4 time.

5 MR. CHAM: That's all I have.

6 CHAIRPERSON MILLER: Okay. Any
7 Board questions? Mr. Jones?

8 MEMBER JONES: Yes, I do have a
9 few questions and I'm sure this will just be
10 some introductory questions, but I'm just
11 trying to follow the text message --

12 MR. NETTER: Yes.

13 MEMBER JONES: -- exchange there.
14 In part of the text messages you are saying,
15 you indicate, I believe this is you in the
16 green.

17 MR. NETTER: Yes.

18 MEMBER JONES: And the respondent,
19 the manager of the licensed establishment, I
20 believe you referred to him as Sinbad. Is
21 that correct?

22 MR. NETTER: That's correct.

1 MEMBER JONES: Okay. And his is
2 in the, I'll just call it, black font for the
3 return?

4 MR. NETTER: That's correct.

5 MEMBER JONES: Okay. So you are
6 green and he is black font?

7 MR. NETTER: Yes.

8 MEMBER JONES: Okay. Got it. So
9 your text message to him at roughly, it looks
10 like, 7:50 p.m., I can't really make it out.
11 It's very blurry. But there is a note in
12 there that says you promised me the window
13 would be closed by 7:30 p.m. Do you see that?

14 MR. NETTER: I do see that.

15 MEMBER JONES: Where was that
16 promise made in black? Where does it say in
17 black font here that he would close the window
18 at 7:30?

19 MR. NETTER: That was in a
20 telephone call. We had spoke with him over
21 the phone and he had told us okay, I'll make
22 sure the windows are closed by 7:30, if that's

1 when your kids to go bed. And if there is a
2 problem, send me a text message, that was a
3 previous phone call.

4 MEMBER JONES: Okay. So it's not
5 part of this?

6 MR. NETTER: Not part of this text
7 message.

8 MEMBER JONES: Okay. All right.
9 In reading the text messages, it's hard to get
10 tone from text messages or what have you. But
11 it definitely seemed clear that in one of the
12 responses from the manager of the
13 establishment he is saying I'm closing it now,
14 sorry, I was out. What did you take from that
15 text message response?

16 MR. NETTER: Well, I found it to
17 be inconsistent with his message from four
18 hours earlier saying I'm on this. I'm taking
19 care of it.

20 MEMBER JONES: Where did he say
21 that? I'm sorry.

22 MR. NETTER: And also -- the first

1 message in the black font.

2 MEMBER JONES: So his first
3 message response to you regarding your inquiry
4 about the noise and the windows being open,
5 all I see is I'm going to. I don't hear a --
6 there is nothing in here that I'm reading
7 about exactly when, exactly how or what have
8 you.

9 So where did you infer? I'm not
10 sure, where did the inference come from that
11 you felt like something was taking too long?

12 MR. NETTER: Well, we said your
13 music is extremely loud and your window is
14 open. Will you address this? And he says I'm
15 going to. The natural inference from that was
16 not I'm going to address that five hours
17 later, maybe, maybe not, maybe you will have
18 to call me again.

19 The natural inference from my
20 perspective was okay, we are going to try to
21 be good neighbors and if we are playing music
22 through an open window into your house, and we

1 say that we are going to address it, we are
2 going to address it now.

3 I don't think that it is incumbent
4 on residents to act as police to confirm on a
5 daily basis that an establishment is honoring
6 its obligation. I mean this was a violation
7 of the voluntary agreement at 3:45 p.m. on
8 numerous levels.

9 The fact that we had, you know,
10 been trying to compromise and said okay, you
11 know, play your music and just make sure you
12 get the windows closed, so that my kids can
13 sleep. That in itself is a compromise that we
14 are not required to make.

15 So if we can't enforce that, and
16 the person who we are told to contact is not
17 reliable, is not available, is not actually
18 doing what he is saying he is doing, well,
19 that just shows that it's not a workable
20 solution to the problem.

21 MEMBER JONES: Did he close the
22 windows at 8:00?

1 MR. NETTER: But I think that he
2 did close the windows at -- whenever this text
3 communication was complete. I suspect that he
4 did close the windows on that occasion, yes.

5 MEMBER JONES: It's not a clear
6 time stamp, but if your initial inquiry was at
7 7:50 and he said I'm closing it now, sorry, I
8 was out roughly -- I mean, if it was in a
9 reasonable time period of exchange, it was
10 closed by 8:00.

11 MR. NETTER: That's correct, which
12 would mean that my son was up for, you know,
13 half an hour past his bedtime, which if any of
14 you have had 1 year-olds, you might know it's
15 not a trivial matter.

16 MEMBER JONES: I have, do have two
17 kids that were once 1, so I understand and
18 appreciate that. But really not really my
19 point. I'm just trying to understand was he--
20 did he comply at 8:00? Did he close the
21 windows?

22 MR. NETTER: Well, he --

1 MEMBER JONES: Did you notice a
2 difference?

3 MR. NETTER: Oh, yes. When he --
4 he closed the windows at 8:00 and turned down
5 the music and the situation was, you know,
6 sufficient such that with the white noise
7 machine my daughter was able to go to sleep,
8 yes.

9 MEMBER JONES: Okay. So was the
10 intent of this text message exchange just to
11 demonstrate how onerous and challenging and
12 difficult it was to work with this licensee or
13 what am I to glean from this?

14 MR. NETTER: Well, I think that
15 there are three things to glean from this.

16 MEMBER JONES: All right.

17 MR. NETTER: One is how difficult
18 it is.

19 MEMBER JONES: Well, what's the
20 it?

21 MR. NETTER: To glean from this
22 text message.

1 MEMBER JONES: No, no, no. How
2 difficult "it" is. What is the it?

3 MR. NETTER: Oh, how difficult it
4 is for us to resolve problems when they arise.
5 To resolve noise issues. It's not a matter of
6 their being a fail-proof method. We had
7 previously -- I previously had a discussion
8 with the manager. He had said 7:30,
9 absolutely your kids are going to sleep. It
10 didn't happen.

11 Okay. Number 2, this is evidence
12 that back in June he was playing music through
13 open windows, which is clearly in violation.
14 Also, he was playing music at 3:45 p.m.,
15 which, you know, as Mr. Cham has discussed the
16 period for live entertainment doesn't begin
17 until 6:00 p.m., so that in itself is a
18 violation.

19 So I had previously sent him a
20 copy of the voluntary agreement. You know,
21 every requirement there is movement as to how
22 far he is willing to go to comply with it.

1 And I have been very disappointed in our
2 ability to enforce our rights and to have the
3 neighborly relationship that we have with all
4 the other businesses on U Street.

5 MEMBER JONES: All right. How
6 many exchanges had you had with Sinbad prior
7 to this exchange on June 8th?

8 MR. NETTER: Oh, five to 10.

9 MEMBER JONES: Five to 10. Is
10 this the most egregious of those?

11 MR. NETTER: This is -- well, it's
12 not the most egregious in terms of time.
13 There have been circumstances where the
14 windows have still been open at, you know,
15 8:30, 8:45, 9:00.

16 MEMBER JONES: Do you have any of
17 those other text message exchanges?

18 MR. NETTER: I don't have them
19 with me, no.

20 MEMBER JONES: Okay. Thank you,
21 Madam Chair.

22 CHAIRPERSON MILLER: Okay.

1 Others? What's your solution to these
2 problems?

3 MR. NETTER: I concur with the
4 solutions that have been proposed with others,
5 that the rooftop space is not an appropriate
6 venue for DJ played music. And, you know, I
7 think that there are ample spaces elsewhere in
8 the building. And the problems that others
9 have been alluding to are real, that it is
10 very easy to come up with excuses for why on
11 individual occasions the music is too loud.

12 Somebody else turned up the amp.
13 Somebody else opened up the window. And, you
14 know, it's not my fault as a resident that
15 these situations are not controlled. But
16 there is one way to control them and that is
17 to play the loud music elsewhere where it
18 doesn't infect the neighborhood.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Mr. Alberti?

21 MEMBER ALBERTI: Hi, Mr. Netter.
22 Just for the record, where is your house in

1 relationship to Mr. Isasi?

2 MR. NETTER: So my house is two
3 doors down from theirs.

4 MEMBER ALBERTI: To the left or to
5 the right?

6 MR. NETTER: To --

7 MEMBER ALBERTI: Facing the back?

8 MR. NETTER: In the picture when
9 you are facing from the alley, it's to the
10 left. In the picture that you have, it's
11 painted yellow in the back.

12 CHAIRPERSON MILLER: Oh, okay.

13 MEMBER ALBERTI: Okay. Great.

14 Thank you. Have you ever heard or been
15 disturbed by sounds when you believe the
16 windows and rooftop to be closed?

17 MR. NETTER: Yes.

18 MEMBER ALBERTI: How often?

19 MR. NETTER: I notice it most when
20 there are evenings when I am working, when I
21 am trying to do work in my kitchen after my
22 kids have gone to bed. We are talking 11:00,

1 12:00 sometimes. I'll realize that I can't
2 pay attention to my work because I'm listening
3 to the music in my kitchen.

4 MEMBER ALBERTI: Okay.

5 MR. NETTER: And it is when I am
6 up late working, it's a fairly significant
7 percentage of the time. Maybe 30, 40 percent
8 of the time. And the first thing I'll do is
9 confirm whether or not the windows are open.
10 When the windows are open, then it is
11 obviously far worse, but it's still -- the
12 music is still being played too loud.

13 MEMBER ALBERTI: So I imagine you
14 can see the rooftop from your house?

15 MR. NETTER: That's correct.

16 MEMBER ALBERTI: And you can see
17 whether the roof is open and whether the
18 windows are open from your house?

19 MR. NETTER: Oh, from my point of
20 view, I can see whether the windows, where the
21 side windows and whether the windows on the
22 alley are open, I can't tell whether the roof

1 itself is open.

2 MEMBER ALBERTI: This Notice to
3 Cure.

4 MR. NETTER: Yes.

5 MEMBER ALBERTI: And there is an
6 attachment to it. When did you get this
7 attachment?

8 MR. NETTER: I got that
9 attachment. Let's see, I sent the Notice to
10 Cure in August, so I just have gotten it in
11 July. So that's an example. Periodically my
12 car is parked on Wallach Place. I'll get
13 these flyers advertising big events that are
14 taking place usually on Sundays at New Town.

15 I had had the exchange about, you
16 know, are you going to rent out the top space?
17 Are you going to use -- are you going to have
18 outside promoters come in and load people up
19 and play loud music?

20 MEMBER ALBERTI: So was this a
21 physical flyer that was left at your house?

22 MR. NETTER: It's the --

1 MEMBER ALBERTI: Was it on the
2 Internet?

3 MR. NETTER: So let me take a look
4 at the particular one here. I think that this
5 particular flyer might have been -- this might
6 have -- I might have found this on the
7 Internet. I think that what happened, if I'm
8 recalling correctly, was I had gotten some
9 flyers on my car. And when I was putting
10 together the Notice to Cure, I thought well
11 the easiest thing to do is to see if there is
12 an electronic version of this already, so I
13 don't have to scan it in.

14 So I searched the Internet and
15 this was an event that was being advertised.
16 I mean, they are advertising it's a
17 retractable rooftop from 10:00 p.m. to 2:00
18 a.m.

19 MEMBER ALBERTI: I can read it.

20 MR. NETTER: Which suggests they
21 are going to -- yes.

22 MEMBER ALBERTI: Thank you. So do

1 you remember noting any events on Sundays
2 during that period?

3 MR. NETTER: Oh, absolutely. Yes,
4 Sunday night was one of the more egregious
5 periods of time.

6 MEMBER ALBERTI: What Sunday
7 night?

8 MR. NETTER: Huh?

9 MEMBER ALBERTI: What Sunday
10 night? What Sunday night? I mean, when you
11 say Sunday night, what does that mean?

12 MR. NETTER: Oh, there was --
13 there were a sequence of events. I can't give
14 you particular dates, but during the
15 summertime on Sundays starting at, you know,
16 10:00 or 11:00 at night there would be very
17 loud music.

18 MEMBER ALBERTI: Okay. So during
19 what months?

20 MR. NETTER: Well, certainly July.
21 And my memory isn't good enough to give you
22 particular other months, but it was a series

1 of months when there were big events. On
2 Sundays there are also Sunday afternoon
3 events.

4 MEMBER ALBERTI: How often on
5 Sundays? Once a month? Twice a month?

6 MR. NETTER: More than once a
7 month.

8 MEMBER ALBERTI: More than once a
9 month?

10 MR. NETTER: Yes.

11 MEMBER ALBERTI: Thank you. No
12 further questions.

13 CHAIRPERSON MILLER: Mr.
14 Rodriguez?

15 MEMBER RODRIGUEZ: Mr. Netter, I
16 mean, everyone has testified about the noise
17 and I don't want to open up a hornet's nest at
18 6:30. But I saw where Ms. Johnson had, I
19 think, in some previous testimony complained
20 about trash and all that. Are there any other
21 concerns? I don't want to, you know, take too
22 much time because we know the noise one.

1 Are there other concerns that we
2 should know about?

3 MR. NETTER: No. The noise has
4 always been the primary concern.

5 MEMBER RODRIGUEZ: Okay. Thank
6 you, sir.

7 CHAIRPERSON MILLER: Okay.
8 Questions on Board questions? Okay. Thank
9 you very much.

10 (Whereupon, witness was excused.)

11 MR. RACILLA: Yes, can I confirm
12 that we moved in Exhibit 16 into evidence?

13 CHAIRPERSON MILLER: I'm pretty
14 sure you did.

15 MR. RACILLA: Yes, I think I did.

16 CHAIRPERSON MILLER: Yes, that was
17 admitted.

18 MR. RACILLA: Thank you.

19 CHAIRPERSON MILLER: Okay.

20 MR. RACILLA: Can we have a time
21 check, please?

22 MEMBER JONES: Protestants have

1 six minutes remaining. Licensee has 58.

2 MR. RACILLA: Okay. We are going
3 to call Ms. Diana Weed to the stand.

4 CHAIRPERSON MILLER: I'll swear
5 you in.

6 Whereupon,

7 DIANA WEED

8 was called as a witness for the Protestants,
9 and having been first duly sworn, assumed the
10 witness stand and was examined and testified
11 as follows:

12 MS. WEED: I do.

13 CHAIRPERSON MILLER: Okay. Thank
14 you.

15 DIRECT EXAMINATION

16 MR. RACILLA: Hi. Can you state
17 your name for the record?

18 MS. WEED: Diana Weed.

19 MR. RACILLA: Okay.

20 MS. WEED: And I live at 1339
21 Wallach Place.

22 MR. RACILLA: Have you had

1 problems with noise with New Town?

2 MS. WEED: Yes, I have. I hear
3 the music in my bedroom, which is in the front
4 of the house. Sometimes the bass is throbbing
5 so loudly that I can't sleep. And I have even
6 tried to put a white noise machine, but the
7 bass -- the white noise machine does not
8 affect the bass. So there are times where I'm
9 not able to sleep until the music stops at
10 3:00 a.m.

11 MR. RACILLA: And did you ever try
12 to confirm that the music was coming from New
13 Town?

14 MS. WEED: I did. As my co-
15 protestants have said, I only call when it is
16 particularly bad. And every time that I have
17 done that, I have been concerned and that, you
18 know, as Mr. Cham said, to be certain that the
19 noise is coming from New Town, so I also have
20 walked all around the alleys to make sure that
21 it is coming from New Town.

22 And I'm certain that it is because

1 I can hear the music in my house. I can hear
2 it from New Town and then as I'm walking down
3 the alley when you get really close to Pure,
4 you can hear music coming out from them and it
5 is not the same music that I'm hearing in my
6 house.

7 And when I walk down the other
8 way, there is a pizza place that plays music
9 loudly, but I can hear that that's the music
10 when you get very close to the pizza place
11 that that's what is happening, but it's not
12 the same music that I'm hearing in my house,
13 so I'm certain that it's coming from New Town.

14 MR. RACILLA: Thank you. I have
15 no further questions.

16 CHAIRPERSON MILLER: Okay. Cross?

17 MR. CHAM: Yes.

18 CROSS-EXAMINATION

19 MR. CHAM: You just testified that
20 you hear the loud noise from New Town. You
21 hear the loud noise from Pure. You heard loud
22 noise from the pizza place.

1 MS. WEED: No, that's not what I
2 said. I only heard the music from Pure when
3 I got directly next to the building. I could
4 hear that there was music coming out. It was
5 not loud. It was audible standing directly--

6 MR. CHAM: What you hear music --

7 MS. WEED: -- next to them.

8 MR. CHAM: -- from here?

9 MS. WEED: Audible standing
10 directly next to them in the alley and as I
11 walked away and I was behind the house next to
12 them, I could no longer hear it.

13 MR. CHAM: But do you hear music
14 from Pure? Yes or no?

15 MS. WEED: Not in my house. Only
16 standing directly outside the wall.

17 MR. CHAM: You don't hear music
18 from the pizza restaurant late night?

19 MS. WEED: Only standing directly
20 outside the pizza restaurant. Not in my
21 house.

22 MR. CHAM: Thank you, Your Honor.

1 CHAIRPERSON MILLER: Okay. Board
2 questions? Mr. Alberti?

3 MEMBER ALBERTI: Just
4 clarification, Ms. Weed. When you say the
5 front of your house, is that the Wallach side?

6 MS. WEED: Exactly, yes.

7 MEMBER ALBERTI: The room closest
8 to Wallach?

9 MS. WEED: That's right.

10 MEMBER ALBERTI: Okay. Great.
11 Thank you.

12 MS. WEED: Okay.

13 CHAIRPERSON MILLER: What's your
14 solution to the problems with the noise?

15 MS. WEED: So I agree with what my
16 co-protestants have said that there should be
17 no live entertainment in the atrium building.
18 In the atrium portion of the building.

19 CHAIRPERSON MILLER: And dancing
20 as well?

21 MS. WEED: And no dancing as well.

22 CHAIRPERSON MILLER: Okay. Okay.

1 Any questions on my question?

2 MR. RACILLA: No further
3 questions.

4 CHAIRPERSON MILLER: Okay. All
5 right. Thought there was another one. Thank
6 you very much.

7 (Whereupon, witness was excused.)

8 CHAIRPERSON MILLER: Okay.

9 MR. RACILLA: That is all the
10 testimony that we have to offer.

11 CHAIRPERSON MILLER: Okay. Great.
12 Mr. Cham, do you have any rebuttal testimony?

13 REBUTTAL TESTIMONY

14 MR. CHAM: The way I saw it was --

15 CHAIRPERSON MILLER: So just to
16 keep the lines a little bit not blurred, if
17 you are going to testify, you probably should
18 go to the witness stand, because then you are
19 going to come back and do closing as your --

20 MR. CHAM: Thank you.

21 CHAIRPERSON MILLER: --
22 representative. Okay. Thank you. Okay. So

1 you can testify now.

2 MR. CHAM: Yes. I went -- I read
3 thoroughly the protest report from
4 Investigator Jones who testified earlier. And
5 a 20 page report totally contradicts what they
6 saying.

7 So at this point, I don't know
8 Investigator Jones. I didn't even know he was
9 out there doing all these investigations. But
10 according to what they are saying and
11 according to what he is saying, it totally
12 contradicts it that I don't even know where
13 they got that information from.

14 I heard testimony where they hear
15 noises, they hear sounds, but it's clearly
16 from New Town. But I have Investigator who
17 comes there. Like I said, I didn't even know
18 they were doing all this.

19 And it's not like they come to me
20 and say hey, we are here or they knock on my
21 door. It's like what Mr. William said
22 earlier, they come through the front. So that

1 means we don't even know they are there.

2 He will say -- only protestant
3 testify that they normally hear the sound and
4 it's for sure from New Town, but reading this
5 report line-by-line, it totally contradicts
6 everything. So now, not like New Town is not
7 willing or is not doing anything to change the
8 sound, working with ABRA or the protestants if
9 -- prior.

10 At this point, I hear a lot of
11 different stories coming from everybody. And
12 even though everybody is saying, everybody
13 stated, everyone testified that no music and
14 no sound, no DJ or no dancing would solve the
15 problem.

16 There is events where the atrium
17 was not open and we still got calls from ABRA.
18 We still got calls from the Noise Task Force.
19 So are we just trying to get -- are they just
20 looking for a lot of pass and say okay, no DJ
21 on the atrium. No DJ on the -- no dancing on
22 the rooftop. But if we hear noise, the word

1 noise as is defined on the voluntary
2 agreements stands.

3 So that's my only -- I can shut
4 the rooftop down and turn it into a dining
5 room and use the dining room, which we are
6 doing it right now. Using the dining room to
7 throw parties, which is what we have been
8 doing since after the summer.

9 Someone testified we have parties
10 on Monday, Tuesday, Wednesday, which is
11 totally false. The DJs normally come there on
12 Friday and Saturday. And when we have these
13 parties, lately we have been having it on
14 lower level. And the atrium we only use it
15 for Friday and Saturday.

16 And like I said, it opens at
17 between 10:00 and midnight. Not like -- not
18 that I am not willing to work with them, but
19 they had drafted a voluntary agreement that
20 clearly states what time I am supposed to
21 open, what time I'm supposed to close, what
22 time I'm supposed to be there, what time I'm

1 not supposed to be there.

2 That was the problem that I had
3 with them, because it was a voluntary
4 agreement that wasn't a mutual agreement. It
5 was just something that they said we want you
6 to paint this white, we want you to paint this
7 black, we want you to paint this blue and take
8 it or leave it. That's the problem we had.
9 That's why we never got anywhere.

10 And when I was handed the
11 voluntary agreement, all I was told was here
12 you go, sign this and we're good. I said I'm
13 not signing it and I'm not going to accept it.
14 I'm not going to take it. But if we can sit
15 down and mutually agree on something, I think
16 that we can get somewhere.

17 But not when you clearly just
18 state, tell me the one we have right now, we
19 are just going to throw away. We drafted a
20 new one and just abide to it or else you're
21 not getting your license.

22 So when we start working together

1 like that, of course, we are not going to get
2 anywhere, because they have to respect me just
3 like I have to respect them at the same time.

4 Thank you.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. Cross?

7 MR. RACILLA: We have no
8 questions.

9 CHAIRPERSON MILLER: Any
10 questions? Okay. So I mean, I think it is
11 better to be able to work things out with your
12 neighbors than to have to come to a hearing
13 and have the Board decide, but that's where
14 you are, at this point.

15 And I would just say this, even
16 after the Board decides though, that doesn't
17 mean that you can't talk to your neighbors
18 about issues afterwards.

19 My question is zeroing in on the
20 solution that the protestants are saying that
21 if you prohibit dancing and live entertainment
22 in the atrium, then we are not going to have

1 any more problems. That's what I have been
2 hearing.

3 MR. CHAM: Right.

4 CHAIRPERSON MILLER: And what is
5 your reaction to that? Are you willing to not
6 have live entertainment and dancing in the
7 atrium? I mean, what's your view on that?
8 And have it in another part of your building
9 that is less exposed?

10 MR. CHAM: It all comes down, it
11 all boils down to what is the definition of
12 noise on the voluntary agreement.

13 CHAIRPERSON MILLER: No, no. No,
14 it doesn't. Not my question. My question is
15 what is the impact on your business or what is
16 your reaction to their solution, which doesn't
17 call for defining noise at all. It just says
18 no dancing or live entertainment in that area.
19 So whatever you do, you have dining in that
20 area like Tabaq did apparently.

21 They are not questioning the noise
22 from that, which is one of my areas of

1 questioning. It's over. I mean, they think
2 that it is going to be solved. So what is
3 your reaction to that?

4 MR. CHAM: It's possible. I'm not
5 saying it's not possible. I'm not saying I'm
6 not willing to work with that, but like I
7 said, it's not everything that ha been said on
8 that atrium is correct.

9 For example, let me say this.
10 Let's say I agree to just what you just said
11 or what they said. And then does that mean
12 that nobody can sit there after 10:00?
13 Because on their voluntary agreement, they
14 said I should shut it down at 10:00.

15 If we have four, five rooftops on
16 U Street that are open until 3:00 without --
17 that is not enclosed. And they have DJs that
18 is playing until 3:00 in the morning.

19 Mine mind you is enclosed. I can
20 totally eliminate the DJ situation on the
21 rooftop, but does that mean if there is 30
22 people in there talking, that's a noise

1 violation? Those are the little things that
2 needs to be talked about before we can get to
3 that. That's all that I'm saying.

4 CHAIRPERSON MILLER: Okay. So you
5 are kind of beyond that, because where we are
6 is the Board is going to decide what a
7 solution is to this protest. Okay? And they
8 are offering that solution.

9 I mean, what I heard in the
10 hearing, you know, you may have to work that
11 out. I mean, what I heard was that wasn't
12 going to be an issue if there is dining up
13 there. And even if it's open, that the only
14 issue that I heard was --

15 MR. CHAM: Is the Dj.

16 CHAIRPERSON MILLER: -- DJ and
17 live entertainment. Dancing and live
18 entertainment. So you are not saying that is
19 going to cripple your business if you --

20 MR. CHAM: No. I mean, all I'm
21 saying is just like I told you earlier. I'm
22 fine with that.

1 CHAIRPERSON MILLER: Okay.

2 MR. CHAM: I'm not disputing what
3 you just asked me, too. I'm fine with that.
4 But is there something else, because like I
5 said earlier, I don't think it is just that.

6 CHAIRPERSON MILLER: Okay.

7 MR. CHAM: I'm just protecting
8 myself now.

9 CHAIRPERSON MILLER: So what is
10 your solution?

11 MR. CHAM: My solution is what you
12 just said, I'm willing to do that, number one.
13 But at the same time, just like he said
14 earlier, does that mean at 10:00 if they hear
15 people talking, that's a violation? That's
16 all I'm saying.

17 CHAIRPERSON MILLER: Okay.

18 MR. CHAM: Because I can't just
19 give -- I can't just agree to everything just
20 like the way they said it. We have to have
21 some discussions on it with which -- like I
22 said, I'm fine to what you just suggested. I

1 have no problem with that.

2 CHAIRPERSON MILLER: Okay.

3 MR. CHAM: But what is on top of
4 that? Can I have somebody there at 12:00
5 talking? And they hear them speaking and they
6 are like oh, that's noise, that's a violation.
7 I have -- those are the things that I'm
8 talking about.

9 CHAIRPERSON MILLER: Okay.

10 MR. CHAM: It's the rooftop. It's
11 open.

12 CHAIRPERSON MILLER: Right.

13 MR. CHAM: People want to sit
14 there and have a drink and talk.

15 CHAIRPERSON MILLER: Right.

16 MR. CHAM: Can they do that after
17 10:00?

18 CHAIRPERSON MILLER: Right.

19 MR. CHAM: Maybe to them, no, and
20 to them it's a violation.

21 CHAIRPERSON MILLER: So that's
22 something you think that the Board should look

1 at and that should be clarified? Is that
2 right?

3 MR. CHAM: Well, what you said,
4 I'm fine with that.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER RODRIGUEZ: Okay.

7 CHAIRPERSON MILLER: All right.

8 Others? Mr. Alberti?

9 MEMBER ALBERTI: Mr. Cham?

10 MR. CHAM: Yes, sir.

11 MEMBER ALBERTI: You keep using
12 the word you had parties. What's a party?
13 What constitutes a party?

14 MR. CHAM: People have -- like
15 they have -- they celebrate their birthdays in
16 the restaurant, which is on the lower level,
17 and have dinner and all that stuff.
18 Afterwards, they just want to go up and listen
19 to DJ and party and dance the night off.
20 That's what a party is.

21 MEMBER ALBERTI: Do you throw
22 parties? What's that mean that you throw

1 parties?

2 MR. CHAM: I don't throw parties.

3 MEMBER ALBERTI: It's more than
4 just a bunch of people coming and celebrating
5 their birthday and having dinner and then
6 going up and dancing. You said you throw
7 parties. You have parties. What does it mean
8 that you -- that implies that you are somehow
9 responsible for the party. What does that
10 mean? I mean, that's what you said. I'm
11 trying to understand when you said we have
12 parties, what does that mean?

13 MR. CHAM: Parties could mean a
14 lot. You could come in and say hey, I'm
15 celebrating my 50 year-old birthday, that's
16 considered a party in the hospitality
17 business. Meaning you are up there, there is
18 a DJ playing, you are eating, that's a party.
19 That's what we consider a party.

20 MEMBER ALBERTI: 5:00 on Sunday,
21 is that a party?

22 MR. CHAM: Okay. So that was

1 Sunday. I have never seen this flyer. This
2 is done by a promoter, not by New Town. So
3 when a promoter can write anything and say
4 Obama is going to be at New Town tomorrow,
5 rooftop is open 24/7, come in. That's not
6 something that I wrote. That's not something
7 that I put up there.

8 And when you go to the Internet
9 and just print anything a promoter says or --

10 MEMBER ALBERTI: So you deny ever
11 having selling tables for \$250 at your
12 establishment?

13 MR. CHAM: We don't sell tables.
14 We sell drinks. We sell bottles. There is a
15 difference.

16 MEMBER ALBERTI: Okay.

17 MR. CHAM: So the promoter puts it
18 that way to market his event or his party.

19 MEMBER ALBERTI: Well, I mean, if
20 I got there and I wanted a table, I would be
21 pretty damn disappointed, so --

22 MR. CHAM: Well, that's not from

1 me though. I'm just telling you it's not from
2 me. I didn't put that out there. And you can
3 see clearly, you can just go to the Internet
4 and print any establishment promoter whatever
5 they do.

6 MEMBER ALBERTI: Okay.

7 MR. CHAM: That has nothing to do
8 with me.

9 MEMBER ALBERTI: All right.

10 MR. CHAM: It's not like I
11 personally put that up there.

12 MEMBER ALBERTI: I got you. All
13 right. So you said you signed the settlement
14 agreement?

15 MR. CHAM: No. I said they wrote
16 some --

17 MEMBER ALBERTI: No, no, your
18 testimony earlier, I heard it clearly, you
19 said they put it in front of me and I signed
20 it.

21 MR. CHAM: No, I didn't say that.
22 I said they put it and said sign this. That's

1 what I said.

2 MEMBER ALBERTI: Okay.

3 MR. CHAM: That's what I said.

4 MEMBER ALBERTI: Sign what?

5 MR. CHAM: I said they give it to
6 me and said sign this. A voluntary agreement,
7 a new one.

8 MEMBER ALBERTI: Oh, a new one.

9 MR. CHAM: Yes.

10 MEMBER ALBERTI: And you didn't
11 sign it?

12 MR. CHAM: That's what I said.

13 MEMBER ALBERTI: You didn't sign
14 it?

15 MR. CHAM: I didn't even look at
16 it for me to sign it. I said why would I sign
17 something that I haven't read? Even the
18 mediator lady --

19 MEMBER ALBERTI: So you -- so the
20 only settlement agreement you have is the one
21 that you inherited?

22 MR. CHAM: Yes.

1 MEMBER ALBERTI: Okay. Great.

2 MR. CHAM: Even the mediator lady
3 told me in the mediation said --

4 MEMBER ALBERTI: All right. I do
5 have your --

6 MR. CHAM: -- you haven't seen it,
7 don't sign something you haven't read.

8 MEMBER ALBERTI: All right. Okay.
9 I thought you also said that it restricts you
10 that you have to close the rooftop at 10:00?

11 MR. CHAM: No, I didn't say that.

12 MEMBER ALBERTI: All right. I'm
13 misunderstanding it.

14 MR. CHAM: I didn't say that. I
15 said on the voluntary agreement it says you
16 can open from 6:00 p.m. to 3:00 a.m. on
17 weekends.

18 MEMBER ALBERTI: Okay. On your
19 rooftop, okay. I just want to make sure we
20 under -- I understand what you understand of
21 the settlement agreement. Okay. Very good.
22 I have no further questions.

1 CHAIRPERSON MILLER: Okay. Any
2 other Board questions?

3 MEMBER JONES: Yes.

4 CHAIRPERSON MILLER: Mr. Jones?

5 MEMBER JONES: Thank you, Madam
6 Chair. Just to make sure I'm clear, you have
7 no issue with, one, having no live
8 entertainment on the -- in your atrium space?
9 Yes or no?

10 MR. CHAM: No issues as -- as low
11 as possible, just like we said earlier.

12 MEMBER JONES: No, no, no. I
13 don't want -- the qualifier has confused me.
14 So I just want to make it a yes or no, because
15 this is very important to me and I want to
16 make sure I'm clearly understanding what it is
17 that you are saying and that you are clearly
18 understanding what you think you may be
19 signing up for.

20 MR. CHAM: Yes.

21 MEMBER JONES: So you will not be
22 allowed to have live entertainment in your

1 atrium space at all. Are you okay with that
2 from the standpoint of the operations of your
3 business> Yes or no?

4 MR. CHAM: Yes, with --

5 MEMBER JONES: Yes?

6 MR. CHAM: Yes. Like I said, if
7 you have two people in there --

8 MEMBER JONES: No, no, no. Live
9 entertainment, that's a DJ.

10 MR. CHAM: Right.

11 MEMBER JONES: That's a live band.

12 MR. CHAM: A DJ -- no, it's only
13 DJ. We don't have bands up there.

14 MEMBER JONES: Live entertainment,
15 right? DJs.

16 MR. CHAM: DJ, yes.

17 MEMBER JONES: You will not be
18 allowed to have a DJ in your atrium space.
19 You are okay with that in terms of how it
20 impacts your ongoing business operations? You
21 can accept that?

22 MR. CHAM: I can accept that.

1 MEMBER JONES: Okay. You can also
2 accept having no dancing in your atrium space
3 at all going forward with your ongoing
4 business operations? You can accept that?
5 Yes or no?

6 MR. CHAM: It is only a yes or no
7 answer? Can I say something on top of the
8 yes?

9 MEMBER JONES: If you give me a
10 yes or a no first, then, yes, you can expand.

11 MR. CHAM: Okay. Yes.

12 MEMBER JONES: Okay.

13 MR. CHAM: And then like I said, I
14 can have Joe Johnson come in to throw a 30 or
15 50 year-old party. They just want to play
16 music, background music. Does that constitute
17 what you said?

18 MEMBER JONES: So no dancing at
19 all.

20 MR. CHAM: But they can hear
21 music? That's all I'm saying.

22 MEMBER JONES: No dancing will be

1 allowed at all under any circumstances in your
2 atrium space. If that was a condition that
3 was levied on you, could you live with that?

4 MR. CHAM: No, I can't, because --

5 MEMBER JONES: Okay.

6 MR. CHAM: -- they have to hear at
7 least some sort of music. I could put up my
8 phone and they having dinner and hear
9 background music.

10 MEMBER JONES: So --

11 MR. CHAM: If I say yes to your
12 question, that means they can't even listen to
13 any music period.

14 CHAIRPERSON MILLER: No.

15 MEMBER JONES: Hearing music and
16 dancing to the music are two different things.
17 I just want to make -- are you hearing me?

18 MR. CHAM: Yes.

19 MEMBER JONES: Dancing, I'm not
20 talking about whether or not I can hear. Like
21 I can sit in a chair and not move my behind
22 and hear the music.

1 MR. CHAM: Yes.

2 MEMBER JONES: That's fine.

3 MR. CHAM: Yes.

4 MEMBER JONES: But if I get up and
5 start wiggling, that's dancing. That will not
6 be permitted. I can hear the music, but you
7 will not be allowed, I will not be allowed, I
8 don't care if it's a private party, I'm coming
9 to Skybox Sundays or whatever it is, I will
10 not be allowed in your atrium space to stand
11 up and move in a rhythmic fashion or a non-
12 rhythmic fashion. Okay?

13 MR. CHAM: So --

14 MEMBER JONES: I can't do that.

15 MR. CHAM: -- but --

16 MEMBER JONES: Are you
17 understanding that?

18 MR. CHAM: I'm understanding that,
19 but what am I supposed to do if somebody hears
20 the background music like you said and gets --
21 starts shaking? What am I supposed to tell
22 them, get out?

1 MEMBER JONES: Well, I'm not going
2 to tell you how to -- I just want you to
3 understand that that would not be allowed
4 under any circumstances. And you are saying
5 that you are okay with that by responding yes
6 to the Chairman's question.

7 So I want to make sure that I'm
8 understanding that you are clear in what the
9 implication is.

10 MR. CHAM: I agree to not have the
11 DJ, but I can't agree to say if somebody gets
12 up and dances --

13 MEMBER JONES: Okay. So you are--

14 MR. CHAM: -- under normal music
15 and then I say hey, you've got to leave,
16 that's background music.

17 MEMBER JONES: -- clear on and you
18 are comfortable with no live music, no
19 entertainment?

20 MR. CHAM: That's fine.

21 MEMBER JONES: No DJ? You are
22 okay with that?

1 MR. CHAM: Yes, but for you -- I
2 have a problem with your second question.

3 MEMBER JONES: Pause, pause,
4 pause, pause, pause. You are demonstrating
5 some reluctance to agreeing completely with
6 having absolutely no dancing on your atrium
7 space. Is that correct?

8 MR. CHAM: I don't know how to
9 answer that. I agree to the first part, but
10 the second part, you said if somebody even
11 gets up and wiggles, that's a violation. So
12 I can't agree to that.

13 MEMBER JONES: So let me expand on
14 that. Would you be okay with not allowing or
15 having no designated dance floor space in your
16 atrium location? So there is no dance floor
17 space. It's sofas, couches, lounges, but
18 there is no designated dance floor space. Do
19 you know what I mean by when I say a dance
20 floor space? Like a designated dance floor
21 area?

22 MR. CHAM: Yes.

1 MEMBER JONES: Okay. Are you okay
2 with signing up to not having any designated
3 dance floor space in your atrium area?

4 MR. CHAM: Yes.

5 MEMBER JONES: Okay.

6 MR. CHAM: If there is a couch,
7 they stand up to move, I can't use that
8 against me.

9 MEMBER JONES: Okay.

10 MR. CHAM: It has nothing to do
11 with me.

12 MEMBER JONES: So you --

13 MR. CHAM: The background music is
14 just moving -- what you said, even if they
15 move, that's dancing, that's violation.

16 MEMBER JONES: These are
17 questions, that's why I'm asking them. I want
18 to make sure I understand what you are
19 comfortable with. So you are comfortable with
20 no DJ. You are comfortable with no designated
21 dance floor space. But you are not
22 comfortable with having absolutely positively

1 no dancing whatsoever in your atrium space?

2 MR. CHAM: Yes.

3 MEMBER JONES: That's what I'm
4 hearing from you.

5 MR. CHAM: Yes.

6 MEMBER JONES: Okay. Thank you.

7 MR. CHAM: I am. But your second
8 question was my -- was what I had an issue
9 with. You said if anybody get up and wiggle,
10 that's a problem.

11 MEMBER JONES: And I am clear on--
12 thank you for responding. I'm clear on your
13 response now.

14 MR. CHAM: Yes.

15 MEMBER JONES: Thank you.

16 MR. CHAM: Thank you.

17 MEMBER JONES: Thank you, Madam
18 Chair.

19 CHAIRPERSON MILLER: Okay. Good.
20 Any other questions?

21 MEMBER ALBERTI: No.

22 CHAIRPERSON MILLER: Any questions

1 on Board questions? Okay. All right. Thank
2 you very much. Now, you can go back to that
3 table for closing, if you have one.

4 Do we have all the documents
5 offered into evidence that you want to offer
6 into evidence?

7 MR. RACILLA: Yes.

8 CHAIRPERSON MILLER: Okay. Good.
9 All right. Then we are at closing. So you
10 can just sum up why we should or shouldn't do
11 whatever you want us to do with respect to
12 this protest. You have just been talking up
13 there, so you may not have a lot to say any
14 more.

15 MR. CHAM: Actually, I don't.

16 CHAIRPERSON MILLER: That's fine.
17 That's fine. Okay. It's not required. Okay.
18 You know what, you will also get a little
19 rebuttal, too, so if they have a closing and
20 then you think you want to say one thing after
21 them, you can have that opportunity.

22 So protestants, are you ready for

1 closing?

2 MR. RACILLA: Sure.

3 CHAIRPERSON MILLER: Okay.

4 MR. RACILLA: Also, I'm not sure
5 if this is the proper time to do it or do it
6 after the closing, but we wanted to reserve
7 the right to file --

8 CHAIRPERSON MILLER: Afterwards.

9 MR. RACILLA: -- facts and
10 conclusions of law.

11 CHAIRPERSON MILLER: Yes, I'll ask
12 that after.

13 MR. RACILLA: I'm sorry.

14 CHAIRPERSON MILLER: Okay. That's
15 okay. Fine. Okay.

16 MR. RACILLA: The protestant group
17 has shown that New Town has been adversely
18 impacting the peace, order and quiet of the
19 residential neighborhood located directly
20 behind it.

21 New Town's use of live
22 entertainment, such as DJs and dancing in the

1 glass atrium on its rooftop has led to at
2 least seven different noise violations. At
3 least six from ABRA and one from DCRA over the
4 last eight months.

5 This is an extraordinary number of
6 violations, especially because the ABRA
7 Enforcement Division has confirmed that no
8 other establishment has, on U Street between
9 9th and 17th Street, confirmed noise violations
10 as confirmed by Mr. Hager in his emails to Mr.
11 Isasi.

12 ABRA Investigation Report 14-CMP-
13 00105 and 00491 who violations in March and
14 June of this year. The Noise Task Force Table
15 shows two additional ABRA noise violations on
16 April and May of this year. And ABRA's
17 Investigative History emails from Mr. Hager of
18 ABRA confirm that two additional reports, Nos.
19 538 and 555, will show noise violations in
20 August and September of this year.

21 The DCRA noise violation is found
22 in Investigation Report 14-CMP-00119 from

1 March of this year.

2 The record of noise violations and
3 inability to comply with the current voluntary
4 agreement support a full denial of New Town's
5 liquor license.

6 In the alternative, the Board
7 should restrict the liquor license for 1336 U
8 Street to prohibit music and dancing in the
9 glass atrium space of the roof building.

10 We feel strongly that this will
11 provide a clear line that will protect the
12 peace, order and quiet of the neighborhood.
13 Clear and unambiguous lines are needed because
14 of New Town's history of failing to comply
15 with the terms of the existing voluntary
16 agreement.

17 Prohibition on music and dancing
18 in the rooftop atrium is not unduly restricted
19 because there are other floors in the building
20 where New Town can and has been hosting DJs
21 and dance parties that are completely enclosed
22 in the buildings.

1 CHAIRPERSON MILLER: Thank you.

2 All right. Oh, I'm sorry.

3 MR. RACILLA: The protestants ask
4 that the Board step in and help us with the
5 peace, order and quiet of our neighborhood.
6 Thank you.

7 CHAIRPERSON MILLER: Okay.
8 Anything else you would like to add? Okay.
9 So then the record in this case now is closed.
10 And --

11 MS. JOHNSON: Madam Chair?

12 CHAIRPERSON MILLER: Yes?

13 MS. JOHNSON: I just want to make
14 one quick statement on behalf of SDCA.

15 CHAIRPERSON MILLER: Oh, I'm so
16 sorry. Okay.

17 MS. JOHNSON: That's okay.

18 CHAIRPERSON MILLER: Okay. Go
19 ahead.

20 MS. JOHNSON: It's very quick.

21 CHAIRPERSON MILLER: Okay.

22 MS. JOHNSON: Aileen Johnson for

1 SDCA is concurring in the closing provided by
2 the --

3 CHAIRPERSON MILLER: Are you -- is
4 she being picked up on a mike? You can move
5 in a little bit.

6 MS. JOHNSON: Sorry.

7 CHAIRPERSON MILLER: All right.

8 MS. JOHNSON: Okay. SDCA concurs
9 in the closing recited by the protestant
10 representative, Mr. Brian Racilla. Thank you.

11 CHAIRPERSON MILLER: Okay. Good.

12 MEMBER ALBERTI: Thank you.

13 CHAIRPERSON MILLER: So now we are
14 getting to that matter of proposed findings of
15 fact and conclusions of law. The parties have
16 a right to file those. They are not new
17 evidence. All it is it's like a legal brief
18 based on the evidence in the case that was
19 presented today.

20 You would set forth the facts as
21 they might appear in the Board's order and
22 then conclusions of law to be drawn from those

1 facts. Not many people do this, but some do.
2 And it's nothing new. It's only based on, you
3 know, what has been presented in the case.

4 So, Mr. Racilla, is that your last
5 name?

6 MR. RACILLA: Racilla, yes.

7 CHAIRPERSON MILLER: You have
8 started to express that you don't want to
9 waive your right to do so?

10 MR. RACILLA: That's correct.

11 CHAIRPERSON MILLER: Okay. Are
12 you going to be thinking about whether you are
13 going to want to do it or you think you really
14 are going to want to do it?

15 MR. RACILLA: (No audible answer.)

16 CHAIRPERSON MILLER: My only
17 question is, that's okay, if you decide --
18 okay. You will get the transcript in about
19 three weeks or so, I believe. And then you
20 will have 30 days to prepare that document and
21 file it on Mr. Cham and the Board.

22 If you decide ahead of time that

1 you really don't want to do that exercise,
2 that it's, you know, a lot of work and the
3 Board in most cases decides based on the
4 record anyway, you should let us know, because
5 we are going to wait to deliberate and write
6 an order until we receive those, you know, if
7 you were going to be sending it in.

8 Do you know what we are talking
9 about, Mr. Cham?

10 MR. CHAM: No. What?

11 CHAIRPERSON MILLER: Okay.

12 Because a lot of people don't. This is truly,
13 truly optional. You had your case here. We
14 have gotten all the evidence that the Board
15 will consider. The record is closed.

16 The law allows a party to give to
17 the Board proposed findings of facts, based on
18 the evidence that was presented, and that will
19 show up in the transcript and the exhibits,
20 you know. The things that might demonstrate
21 adverse impacts or efforts you made or
22 whatever we heard testimony on. And then

1 conclusions as to why or why not your, you
2 know, license should be renewed or shouldn't
3 have conditions or should have conditions.

4 You have already argued that
5 today. We have heard the arguments. That is
6 optional, but some parties do like to do that,
7 because they feel, you know, they will
8 organize and present it that way to the Board.

9 MR. CHAM: Okay.

10 CHAIRPERSON MILLER: It's a pretty
11 lawyerly thing usually and not many do it. So
12 do you want to -- but, however, since they
13 haven't waived their rights, do you want to
14 not waive your right and decide later,
15 depending on what they do?

16 MR. CHAM: I'll decide later.

17 CHAIRPERSON MILLER: Yes. Okay.
18 So we will do that. If you decide not to,
19 please, you know, alert Mr. Cham as well so we
20 will know. Okay. Yes?

21 MS. JOHNSON: Does SDCA also have
22 the right to file that?

1 CHAIRPERSON MILLER: Yes, you are
2 a party. Yes.

3 MS. JOHNSON: Yes, okay.

4 CHAIRPERSON MILLER: Okay. So you
5 don't waive either.

6 MS. JOHNSON: Okay.

7 CHAIRPERSON MILLER: Right?

8 MS. JOHNSON: From today?

9 CHAIRPERSON MILLER: No. From
10 when you get the transcript. And you will get
11 the transcript in, approximately, three weeks,
12 I believe.

13 MS. JOHNSON: And if that process
14 doesn't happen, how soon after transcripts are
15 received will you constitute a decision?

16 CHAIRPERSON MILLER: Well, we are
17 required -- a decision?

18 MS. JOHNSON: Yes.

19 CHAIRPERSON MILLER: Within 90
20 days.

21 MS. JOHNSON: 90 days from today?

22 CHAIRPERSON MILLER: Well, if we

1 weren't waiting for your proposed findings, it
2 would be within 90 days of today. But since
3 we are awaiting, we would be waiting for that
4 before we decide. It would be 90 days from
5 then. It doesn't mean 90, but it's within 90.

6 MR. RACILLA: And if the
7 protestants or the parties decide to waive,
8 how soon?

9 CHAIRPERSON MILLER: Oh, it would
10 -- if you decide to waive, you should alert
11 Martha Jenkins, our General Counsel, and also
12 Mr. Cham.

13 MR. RACILLA: Okay.

14 CHAIRPERSON MILLER: So ANC, same
15 position?

16 MS. JILANI: Yes.

17 CHAIRPERSON MILLER: Yes.

18 MS. JILANI: We will do the same.

19 CHAIRPERSON MILLER: You won't
20 waive it right now, right. Okay. All right.

21 So I think that concludes our
22 hearing for today. We are just going to do a

1 vote on the Board to deliberate in closed
2 session and then we are finished.

3 As Chairperson of the Alcoholic
4 Beverage Control Board for the District of
5 Columbia and in accordance with Section 405 of
6 the Open Meetings Amendment Act of 2010, I
7 move that the ABC Board hold a closed meeting
8 for the purpose of seeking legal advice from
9 our counsel on Case No. 14-PRO-00055, New Town
10 Kitchen and Lounge, per Section 405(b)(4) of
11 the Open Meetings Amendment Act of 2010, and
12 deliberating upon this case for the reasons
13 cited in Section 405(b)(13) of the Open
14 Meetings Amendment Act of 2010.

15 Is there a second?

16 MEMBER BROOKS: Second.

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

21 Mr. Brooks?

22 MEMBER BROOKS: I agree.

1 CHAIRPERSON MILLER: Mr. Alberti?

2 MEMBER ALBERTI: I agree.

3 CHAIRPERSON MILLER: Mr.

4 Rodriguez?

5 MEMBER RODRIGUEZ: I agree.

6 CHAIRPERSON MILLER: Ms. Miller

7 agrees.

8 Mr. Jones?

9 MEMBER JONES: I agree.

10 CHAIRPERSON MILLER: Mr. Jones

11 agrees. It appears the motion has passed by

12 a 5-0-0 vote.

13 I hereby give notice that the ABC
14 Board will hold this aforementioned closed
15 meeting in the ABC Board conference room and
16 issue an order within 90 days of receiving the
17 proposed findings of fact and conclusions of
18 law or indication that the parties are waiving
19 their rights to submit those.

20 Okay. Thank you. Have a good
21 night.

22 MR. RACILLA: Thank you.

1 CHAIRPERSON MILLER: And we have
2 finished all other business.

3 (Whereupon, the Protest Hearing in
4 the above-entitled matter was concluded at
5 7:01 p.m.)

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