

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

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6 IN THE MATTER OF: :  
7 Bardo, LLC. :  
8 t/a Bardo :  
9 25 Potomac Avenue SE :  
10 License #103291 :  
11 Retailer Class B :  
12 ANC 6D :

13 - - - - -X

14 Wednesday, November 16, 2016

15  
16 Whereupon, the above-referenced matter  
17 came on for hearing at the Alcoholic Beverage  
18 Control Board, Reeves Center, 2000 14th Street,  
19 N.W., Suite 400S, Washington, D.C. 20009.

20  
21  
22

1 BOARD MEMBERS PRESENT  
2 DONOVAN ANDERSON, CHAIRMAN  
3 NICK ALBERTI, BOARD MEMBER  
4 JAMES SHORT, BOARD MEMBER  
5 MIKE SILVERSTEIN, BOARD MEMBER  
6 JAKE PERRY, BOARD MEMBER  
7 MAFARA HOBSON, BOARD MEMBER

8

9 ALSO PRESENT:

10 MATTHEW LEFANDE

11 WILLIAM STEWART

12

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

2 STATUS HEARING

3 CHAIRPERSON ANDERSON: We're back on the  
4 record. I call a fact finding hearing -- well,  
5 the schedule stated that we had a contested fact  
6 finding hearing for Bardo, license #103291. Will  
7 the parties please approach and identify  
8 themselves for the record, please?

9 MR. LEFANDE: Matthew LeFande, attorney at  
10 law, for and on behalf of Bardo, LLC, Limited  
11 Liability Company, organized under the laws of  
12 the District of Columbia and the applicant for a  
13 manufacturer's license at 25 Potomac Avenue  
14 Southeast. Present with me and seated to my  
15 left, is Bill Stewart, proprietor and owner of  
16 that LLC.

17 CHAIRPERSON ANDERSON: What's his name, sir?  
18 I didn't hear it.

19 MR. LEFANDE: William Stewart.

20 CHAIRPERSON ANDERSON: Okay, good afternoon,  
21 Mr. LeFande. Good afternoon, Mr. Stewart. This  
22 matter was scheduled for a contested fact finding

1 hearing for 4:00 today on November -- I don't  
2 have the date but Mr. LeFande had requested --  
3 had sent a letter to the board requesting that  
4 the contested fact finding hearing scheduled for  
5 today be changed to a non-contested hearing and  
6 revert that to a status hearing. The board voted  
7 today. We already did our agenda and the board  
8 reviewed the letter and we had a public vote  
9 earlier this afternoon and we agreed to grant the  
10 request -- approved the request to have a non-  
11 contested hearing and it is now a status.  
12 Therefore, pursuant to the request we have  
13 responded. So, the purpose of this hearing, then  
14 is a status hearing. So, Mr. LeFande can let us  
15 know what information -- the board does not  
16 necessarily have all the factual information, or  
17 what is it that has been submitted, so what is it  
18 that you have submitted and what is it that  
19 you're requesting that the board do at this  
20 juncture?

21 MR. LEFANDE: Thank you very much, Mr.  
22 Chair. To refresh the board's recollection and

1 for the benefit of the new members, we will point  
2 out that the board conducted a fact finding  
3 hearing as is permitted under this type of  
4 application on August 10, 2016. At that time  
5 Bardo LLC presented testimony and exhibits  
6 demonstrating the appropriate -- the  
7 establishment to be an appropriate business in  
8 the locality, section and portion of the district  
9 where the establishment was to be located under  
10 D.C. Code 25-104, and over our objections we  
11 heard from an ANC commissioner, who is present  
12 today, I believe, and we then subsequently all of  
13 the regulatory requirements for licensure with  
14 regards to obtaining the federal manufacturers'  
15 license reaching all of the regulatory hurdles  
16 with the health department and DCRA and it is our  
17 understanding that on October 6th of this year  
18 the applicant, a representative of the applicant,  
19 was present in this office to attest to the fact  
20 that all of the regulatory requirements had been  
21 satisfied and requested that that license be  
22 issued. At that time, the board ordered

1 applicant to appear for this -- what is not  
2 called a fact finding hearing -- but a  
3 qualifications hearing -- this is ABRA's order  
4 2016-543 - which we took exception to as no  
5 provision for such a -- any contested hearing in  
6 this type of applicant and no provision for any  
7 type of qualification hearing exists under the  
8 law and we subsequently made application to the  
9 superior court for a mandamus action to compel  
10 compliance with the law by this administrative  
11 agency and its board. We have also applied for  
12 temporary restraining order and for a preliminary  
13 junction, before Judge Brian Holeman, Associate  
14 Judge of the Superior Court who presently has  
15 that under advisement.

16 In the interests of attempting to reach an  
17 amenable resolution of what we believe to be a  
18 fairly clear-cut issue of law, I had suggested to  
19 the director of this administrative agency that  
20 perhaps we could revisit these issues together  
21 and try to find a manner that this license could  
22 be issued and that litigation could become moot.

1 It is our position at this time, once again, that  
2 the applicant is fully in compliance with all  
3 regulatory requirements and is entitled to the  
4 issuance of the law -- of the -- of the permit  
5 from this board. We have subsequently learned  
6 through a Freedom of Information Act of a  
7 plethora of ex parte communications between  
8 employees of this agency and employees of the  
9 office of the Assistant Attorney General and  
10 third parties who should not have been speaking  
11 as to the merits, and we further point out that  
12 the content of those ex parte communications had  
13 been reflected in the October 6th board order  
14 2016-543, and we believe that this process now  
15 has been so impermissibly tainted by undue and  
16 outside influence that this applicant has been  
17 deprived of the ordinary due process of law, even  
18 protection of the law, and that there are  
19 substantial damages which are going to occur if  
20 that is permitted to continue un-remediated. For  
21 this reason we assert to the board if this  
22 unlawful action with regards to this

1 qualification hearing were to cease at this point  
2 and the license to be issued that we would have  
3 little cause to continue to pursue this avenue of  
4 litigation which is likely to expand in scope  
5 greatly if our investigation continues and we  
6 implore the board to do that -- issue the license  
7 without further restrictions.

8 CHAIRPERSON ANDERSON: You mentioned the  
9 board order 2016-543, is that correct, sir?

10 MR. LEFANDE: That's the number it on.

11 CHAIRPERSON ANDERSON: Well, it was not, you  
12 stated it was a qualifications hearing. It was  
13 basically that the board was having a hearing and  
14 that the board would have made -- the board had  
15 certain -- the board was considering denying the  
16 request or imposing conditions on the license, it  
17 was not -- at least my reading of it, it was not  
18 necessarily a qualifications hearing, but be that  
19 as it may, so --

20 MR. LEFANDE: If I may, I am absolutely  
21 amenable to the idea that I now disregard the  
22 plain words printed on the page to the contrary,

1 and that we all put that behind us and get back  
2 into the business of issuing this license as a  
3 matter of right, and that if there was some error  
4 which I had to bring to the board's attention,  
5 I'm not here to belabor that point and I am  
6 certainly willing to accept the chairman's  
7 representations that this was not what the  
8 intention was when that order was issued. If  
9 that is in fact the case, we welcome the  
10 opportunity to get this application back on  
11 track, adding that the board has conducted its  
12 fact finding hearing as provided by the law of  
13 23-DCMR-16-14.2 and that has now occurred and  
14 that we have a complete evidentiary record  
15 sufficient for this board to satisfy its  
16 obligations to issue this license. We are very  
17 much willing to let bygones be bygones with  
18 regards to whatever happened to have transpired  
19 on October 6th and that license is issued we will  
20 have little cause to pursue this mandamus action  
21 in the superior court, and that particular issue  
22 be rendered moot.

1           CHAIRPERSON ANDERSON:  No, what you're  
2   saying, what license is it your saying that  
3   October 6th something happened, and so what  
4   license are you saying that would be issued on  
5   October 6th?

6           MR. LEFANDE:  On October 6th, a  
7   representative of the applicant appeared in  
8   person on or about October 6th.  That  
9   representative of the applicant appeared at this  
10  location and provided whatever the final  
11  administrative documentation that was required,  
12  that was recited at the original fact finding  
13  hearing on August 10th.  We had sort of a laundry  
14  list at the end of that hearing of things that  
15  needed to get done and one of those things was to  
16  get the federal permit that was required to  
17  actually, as sort of a parallel permit from the  
18  ATF to TTC and that, having been satisfied, all  
19  of the health department, all of the DCRA  
20  requirements had all been satisfied.  All of this  
21  information was presented to the employees of the  
22  agency of the board, and at that time we assert

1 that having given the record that was before the  
2 board we were entitled as a matter of right to  
3 that license. What we came to learn after -- in  
4 the course of the Freedom of Information Act  
5 proceedings -- was that there was an undue  
6 influence by outside parties in this process  
7 where folks who did not have standing in this  
8 process were interjecting their demands for more  
9 limited hours of the establishment and that those  
10 documents that we obtained in the course of the  
11 Freedom of Information Act request and those  
12 proceedings closely paralleled what was reflected  
13 in the October 6th order and we took great  
14 exception to this, first of all that no  
15 administrative agency should accept these sorts  
16 of outside influences outside of the context of a  
17 proper hearing, as such a hearing may be  
18 permitted under the law, and that the agency was  
19 now far afield from what was permitted under the  
20 application process to create from whole cloth  
21 this qualifications hearing and to turn what is  
22 plainly defined under the Administrative

1 Procedure Act of the District of Columbia, not to  
2 be a contested hearing, to call it as such, and  
3 then all of that brought us to the point that we  
4 are today. I hope that's responsive to what it  
5 was that took place on October 6th that brought  
6 us here today.

7 CHAIRPERSON ANDERSON: Excuse me one minute,  
8 please. One, I have not seen the e-mails, but  
9 one thing I'll say to you I've not seen the  
10 information that was provided to you as far as  
11 your Freedom of Information Act but I, as the  
12 board chair of this board, I can -- and I know  
13 that you should not have received any e-mail  
14 where I had any communication with anyone either  
15 way and in chairing the board I make sure that  
16 when we make decisions they are made on the facts  
17 as before us and not influenced by any outside  
18 sources, so as Chairman of the board I can speak  
19 I'm 100% positive that you have not seen any e-  
20 mails or communication that I've made.

21 MR. LEFANDE: I believe at the moment what  
22 your representation there is consistent with what

1 we've received. I actually, without belaboring  
2 the point, the folks who were involved in it, I  
3 was quite surprised to see their names in there.  
4 But that's neither here nor there, our point is  
5 that those communications took place, those  
6 communications spoke to the merits of this  
7 proceeding, and that the subsequent order that  
8 was produced reflected those undue outside  
9 influences. We now ask, we implore you, we beg  
10 of you to please eschew whatever this impropriety  
11 from whatever source within this organization  
12 that occurred to just put a stop to it.

13 CHAIRPERSON ANDERSON: Well, as far as the  
14 board is concerned, I need to clarify the record,  
15 I don't think that -- since I have not seen any  
16 of the communication because it was not shared  
17 with me as board chair, so I don't know what was  
18 turned over to you, but I will assure that as the  
19 board chair in conducting these hearings and  
20 whatever deliberations that we have on all these  
21 matters that there has been no impropriety based  
22 on my leading this board and making decisions

1 about what is it that we think is best.

2 MR. LEFANDE: And I've agreed with you. What  
3 we have, though, is at the time that the order.  
4 If you need to confer with your --

5 CHAIRPERSON ANDERSON: No sir, I don't need  
6 to confer. I just --

7 MR. LEFANDE: [inaudible 1:19:33].

8 CHAIRPERSON ANDERSON: No, I don't need to  
9 confer.

10 MR. LEFANDE: Okay, but --

11 MR. SILVERSTEIN: Please allow him to speak.

12 CHAIRPERSON ANDERSON: It's okay, Mr.  
13 Silverstein. Go ahead, sir.

14 MR. LEFANDE: At the time, on October 6th, at  
15 the time that the paper -- that the order is  
16 issued to us, the 543 order, an e-mail which I  
17 received had a folder attached to it which had a  
18 multitude of those sorts of communications. And  
19 once again, I do not say that a board member was  
20 involved in those communications, but  
21 administrative personnel within this agency were  
22 involved in those communications and what

1 appeared in the order reflected the content of  
2 those communications, and, again, I looked at  
3 these very carefully and I will agree with you,  
4 very much so, that nobody's name before me is in  
5 there, but --

6 MR. STEWART: Only because they haven't sent  
7 us their e-mails.

8 MR. LEFANDE: -- we're not finished with that  
9 investigation.

10 CHAIRPERSON ANDERSON: Well, all e-mails, the  
11 board was asked to turn e-mails over, the board  
12 was asked to turn e-mails over so you received  
13 all the information, but I will state, but I will  
14 state, sir, I conduct these hearings, when we  
15 deliberate all decisions are made by the board,  
16 but I'm not going to belabor this.

17 MR. LEFANDE: I appreciate that and I accept  
18 it.

19 CHAIRPERSON ANDERSON: So, this is a status  
20 hearing, a manufacturer's license the law states  
21 that you can operate to 12:00 and you are asking  
22 us for 12:00 and as you are aware there might

1 have been some issues, and I know the board  
2 cannot require -- the board is asking -- would  
3 you be willing to provide a security plan under  
4 this establishment? Is that something that --  
5 something that --

6 MR. LEFANDE: There's one in the file --

7 CHAIRPERSON ANDERSON: But I'm saying would  
8 you be willing to provide a security plan that  
9 comports with the statute that is a part of your  
10 license.

11 MR. LEFANDE: Yes, if what you have right now  
12 isn't that, we will have it in to you right away.

13 CHAIRPERSON ANDERSON: Okay. This is another  
14 question that I'm asking you. Again, this is a  
15 question, this is not a demand. Would you be  
16 willing to have cameras? Is it something that  
17 you're willing to have?

18 MR. STEWART: We already have cameras.

19 MR. LEFANDE: They have cameras.

20 CHAIRPERSON ANDERSON: I don't know, I'm  
21 asking, I don't know.

22 MR. LEFANDE: How many cameras do you have?

1 MR. STEWART: Four.

2 MR. LEFANDE: Okay, so that will be reflected  
3 in the security plan.

4 CHAIRPERSON ANDERSON: About how many cameras  
5 do you have?

6 MR. LEFANDE: There's four now. It's a very  
7 open space. It's not like Restaurant 12 where  
8 there's two floors and all these little breakout  
9 rooms and stuff. It's a very open space so those  
10 cameras cover a lot of stuff in just one or two  
11 views because it's a large floor. Our cameras are  
12 cheap.

13 CHAIRPERSON ANDERSON: I'm going to ask, what  
14 about within the space, within the layout that  
15 you have, is alcohol served throughout the entire  
16 space or are there defined spaces within --  
17 within the acreage that alcohol is served.

18 MR. LEFANDE: I'll let the representative of  
19 the establishment state to that directly.

20 MR. STEWART: We went over that. It's on the  
21 map.

22 MR. LEFANDE: Just answer the question.

1 CHAIRPERSON ANDERSON: Sir, sir --

2 MR. STEWART: Mr. Alberti made details --

3 CHAIRPERSON ANDERSON: Mr. Stewart, hold on  
4 one minute -- this is a status hearing. I'm just  
5 asking questions, I'm not going -- as you said,  
6 we're moving forward.

7 MR. LEFANDE: Yes.

8 MR. STEWART: Can we just have a minute?

9 MR. LEFANDE: I'm very sorry.

10 CHAIRPERSON ANDERSON: No, I'm perfectly, and  
11 I appreciate that, all right.

12 [Off the record discussion]

13 MR. LEFANDE: Thank you, Mr. Chairman, I just  
14 didn't want to [inaudible 1:25:20].

15 CHAIRPERSON ANDERSON: Go ahead.

16 MR. LEFANDE: I'm sorry, I think there was  
17 just some misunderstanding as to the question. I  
18 think he has a better understanding of what  
19 you're asking.

20 CHAIRPERSON ANDERSON: Thank you very much,  
21 sir.

22 MR. LEFANDE: So, if you just --

1           CHAIRPERSON ANDERSON: No, I'm just saying --  
2 and I'm not -- Mr. Stewart -- I'm not -- the  
3 questions I'm asking, it's irrespective of  
4 what's going on outside of these proceedings and  
5 this is a status hearing and I'm trying for this  
6 not to be like the other two hearings that we've  
7 had, and so, we're turning a new leaf, so in  
8 asking the questions it's like moving forward for  
9 you to tell us what it is so, therefore, if we're  
10 going to issue -- vote to issue a license, we  
11 know what it is and we're all in agreement.

12           MR. STEWART: Well, the south area near the  
13 river is where people drink. The north area is  
14 where the manufacturing takes place and people  
15 don't drink.

16           CHAIRPERSON ANDERSON: So, you'll have a map  
17 to define the area where alcohol is being served.

18           MR. STEWART: Yes, sir.

19           MR. LEFANDE: That's in the record already  
20 with Mr. Alberti.

21           MR. ALBERTI: To be

22           CHAIRPERSON ANDERSON: Go ahead, Mr. Alberti.

1 MR. ALBERTI: I think you do know this but we  
2 have --just over the top there -- we do have a  
3 map and I'm assuming --

4 MR. LEFANDE: That's all in the record --

5 MR. ALBERTI: -- I'm assuming that hasn't  
6 changed.

7 MR. LEFANDE: That hasn't changed.

8 MR. ALBERTI: Okay, thank you.

9 MR. LEFANDE: Thank you, Mr. Alberti.

10 CHAIRPERSON ANDERSON: And another question  
11 I'm asking, it's another question, would you be  
12 willing to not go 'til 12:00?

13 MR. LEFANDE: This is a difficult situation  
14 with regards to the economics of it.

15 CHAIRPERSON ANDERSON: Okay. And I've  
16 listened to you.

17 MR. LEFANDE: There's a great deal of revenue  
18 that is at stake with regards to sort of the  
19 prime time of operation. You think about a  
20 nightclub that goes to 2:00 or 3:00 -- those  
21 things are usually winding down in the late  
22 hours, but we're talking about an establishment

1 that presently, by statute, is limited to  
2 midnight. So 10:00 to 11:00, 11:00 to midnight  
3 is the meaty part of the revenue for them, and  
4 this is a very difficult -- this is a difficult  
5 issue to just gloss over because there's so much  
6 money at stake for the establishment. I do need  
7 to point out that when the council originally  
8 enacted this provision for the manufacturers to  
9 having this on-site service, we started off at  
10 6:00 p.m. and then it went to 9:00 p.m. and they  
11 subsequently amended the statute to go to  
12 midnight. So, we got a pretty strong statutory  
13 intent here that this time when the other folks -  
14 - you know, people are out on the town at night,  
15 that is what the city council wants with regards  
16 to these hours. They have made a big jump from  
17 this 9:00 to this 12:00, and to just simply  
18 barter that away because there's these what we  
19 assert are unwarranted regulatory impediments to  
20 getting the license, is very difficult for us to  
21 acquiesce to, and further given the changes in  
22 the hours that have been reflected in the

1 statutory enactments, we foresee that we're  
2 likely to see that go to 1:00 a.m. by the city  
3 council at some time in the future. So to give  
4 away that which the council has afforded this  
5 type of license absent any cause whatsoever for  
6 it in the proper evidentiary record that's  
7 already before the board, and the likelihood  
8 that, you know, we're already going to be behind  
9 the ball as this statute continues to evolve,  
10 it's going to be a really hard nut to crack right  
11 now.

12 CHAIRPERSON ANDERSON: Just another question  
13 to ask: I don't think that when the law was  
14 written that it was contemplated that you'd have  
15 sales and consumption on the premises, so I -- so  
16 and I don't know if you would be the only  
17 establishment that would have the sales and then  
18 consumption through midnight, so I know that the  
19 city council --

20 MR. LEFANDE: Sure, sure.

21 CHAIRPERSON ANDERSON: -- so I know that the  
22 city council might have --

1           MR. LEFANDE: We talked a lot about this at  
2 the last hearing and I talked a lot about the  
3 group enabling legislation and what the recitals  
4 at the beginning of that legislation, we spent a  
5 lot of time discussing what it was, in that you  
6 have a preamble that is at the front of the --  
7 the operative word is legislation -- and it says  
8 this is why we are doing what we're doing, and I  
9 think that speaks very closely to what the  
10 chairman's concern is right now in that the city  
11 council is saying 'we want these types of  
12 establishments to be in that marketplace segment.  
13 And this is what we' and everyone in this room is  
14 beholden to the primary legislative authority of  
15 the city council as approved by congress under  
16 the Organic Act and the Home Rule Act. Because  
17 of that, it's very hard for any of us to push  
18 back to try to second guess that and, given the  
19 record, the evidence that's already here from the  
20 last hearing in that this was a primitive  
21 industrial area for a century with -- it's an old  
22 concrete factory, concrete plant at this

1 location, nearly straddled under the South  
2 Capitol Street Bridge where the enormous stadium  
3 crossing this huge physical impediment to any  
4 residential area. It's just a completely  
5 isolated area. It's just really difficult to  
6 envision that a pushback on this strong  
7 legislative intent evinced in the brew pub  
8 enabling legislation is not well supported here,  
9 but for, unfortunately, bringing us back to these  
10 undue influences of people who are trying to  
11 create improper regulatory impediments to their  
12 competitors. And that's ultimately what is going  
13 on on the other side of Potomac Avenue. And  
14 absent the existence of that I would say we would  
15 not be here today and I again say that that's  
16 something I hope that we can move past.

17 CHAIRPERSON ANDERSON: All right, just --  
18 what about, would you agree not to have  
19 entertainment, an entertainment endorsement?

20 MR. LEFANDE: That's fine. I don't think  
21 that any of his establishments -- I remember him  
22 back in Arlington 20 years ago, I don't think

1 he's ever had -- he's never sought an  
2 entertainment endorsement and he's never had any  
3 entertainment.

4 CHAIRPERSON ANDERSON: All right, any  
5 questions by any other board members?

6 MR. SILVERSTEIN: I do.

7 CHAIRPERSON ANDERSON: Yes, Mr. Silverstein?

8 MR. SILVERSTEIN: I have several. Mr.  
9 LeFande, thank you. First, you say this area has  
10 -- let's start with the legislative intent here.  
11 Is there anything in the legislative history,  
12 anything in the recitals, that speaks to an  
13 outdoor venue where there's no noise baffling,  
14 where there's no containment of the crowd?

15 MR. LEFANDE: I would bring back your  
16 attention not to the enabling legislation with  
17 regards to brew pubs but we also talked about the  
18 Gateway District legislation which very much --

19 MR. SILVERSTEIN: You said the what district?

20 MR. LEFANDE: The Gateway District zoning  
21 legislation which we also talked about at length  
22 at the last hearing as to this particular segment

1 of the city and what the overall vision was for  
2 the development of this area and that it very  
3 much spoke to having the sorts of arts outlets  
4 for food and drink at these sorts of locations  
5 and having broad, open public spaces as a gateway  
6 to the Riverfront. And we talked a lot about  
7 that there. As to the brew pub enabling  
8 legislation it's silent, but I really think it  
9 has to be looked at in the context of what it is  
10 that the city council and the D.C. Zoning Board  
11 wanted as an overall vision for this particular  
12 location which is, yes, don't put another  
13 building there which impedes the access to the  
14 river, you have an open area, and you have picnic  
15 tables, you have bicycle paths, you have places  
16 where people can play volleyball and those sorts  
17 of things. And what was demonstrated at the last  
18 hearing was this amazing fit of the proposed use  
19 was here to the sort of homogenization of the two  
20 statutes looked at in concert.

21 MR. SILVERSTEIN: Okay, you have an argument  
22 there but we both agree that the legislation is

1 silent regarding outdoor venues vis a vis indoor,  
2 and the brew pub legislation is not the gateway -

3 MR. LEFANDE: I agree.

4 MR. SILVERSTEIN: -- gateway development.

5 Okay, and it is your representation that there  
6 are no residential buildings either there now or  
7 being built within easy earshot of the  
8 establishment.

9 MR. LEFANDE: Being built now there is a new  
10 development which is to the east of this  
11 establishment where there is a condo unit that's  
12 being built up against, essentially across the  
13 street from this venue, so it's a kind of an  
14 interesting idea that -- and we talked about this  
15 as well, that we're operating with stadium crowds  
16 of 38,000 people at concerts and amplified music  
17 and these enormous bright lights there, and them  
18 sort of then trampling down on these 750 people  
19 sitting in a parking lot playing volleyball and  
20 drinking beer. I assure you if there's going to  
21 be some noise complaints coming from this new  
22 condominium development that is not yet occupied,

1 it's got a lot more to do with the stadium, the  
2 concrete plant on the other side of South Capitol  
3 Street and the District of Columbia Municipal  
4 Police Department's Air Support Unit helicopter  
5 pad which is right there, in addition to these  
6 20-ton trucks running over this rickety South  
7 Capitol Street Bridge which is nearly deafening  
8 at all hours when they're going by.

9 MR. SILVERSTEIN: Thank you, sir.

10 MR. LEFANDE: Thank you.

11 CHAIRPERSON ANDERSON: Are there any other  
12 questions by any other board members? Yes, Mr.  
13 Alberti?

14 MR. ALBERTI: First, maybe you can clear this  
15 up for me, Mr. LeFande. Maybe I'm making too  
16 much of the words that were said but I thought  
17 this was a manufacturer's license not a brew pub,  
18 is that correct?

19 MR. LEFANDE: Manufacturer's license and brew  
20 pub legislation which we discussed speaks to the  
21 sort of hybrid of a brewery that has a retail  
22 component to it and that's exactly what this

1 establishment is, so the legislation we're  
2 talking about is exactly what this is.

3 MR. ALBERTI: Okay.

4 MR. LEFANDE: And there's no distinction.

5 MR. ALBERTI: Thank you, I just wanted to be  
6 clear to make sure I wasn't confused. You know  
7 how easily I can get confused. But I have other  
8 questions, but I just want to put out for the  
9 record that I know full well what the intent and  
10 the -- intent and the words of the statute are,  
11 but I do have a concern that it was not  
12 contemplated -- you don't have to respond to this  
13 -- but I have -- all my concerns come from the  
14 fact that I'm concerned that this legislation did  
15 not contemplate the fact that we would have an  
16 establishment that could accommodate 750 patrons  
17 being served from a function on site. I think I  
18 would -- I would venture to guess that the  
19 council was thinking of manufacturers, they were  
20 thinking of tasting rooms with rather limited  
21 numbers of people. I don't think anyone could  
22 have ever envisioned a proposal for 750. So,

1 just so you know where I'm coming from on this.

2 MR. LEFANDE: I appreciate that. We have an  
3 enormous 10-acre lot.

4 MR. ALBERTI: I get it. I know why you're  
5 doing it, Mr. LeFande, I get it but I just want  
6 you to understand --

7 MR. LEFANDE: I don't --

8 MR. ALBERTI: -- I want you to understand,  
9 I'm not just concerned because I don't like  
10 something about your -- your -- your client or I  
11 don't like the location or whatever. It's just,  
12 you know, it's 750 people.

13 MR. LEFANDE: But in comparison, I mean you  
14 know it's a big facility inside and out.

15 MR. ALBERTI: I get it, you got it, you want  
16 to use it, I got it. So --

17 MR. LEFANDE: It's not the first place in the  
18 district that's operating in this sort of format,  
19 with the inside and out.

20 MR. ALBERTI: It is not -- it is not, so I'll  
21 even clarify further where my concern is coming  
22 from. The manufacturer's license, the

1 manufacturers' licenses, the process for getting  
2 one has been streamlined to not include public  
3 input.

4 MR. LEFANDE: Yeah.

5 MR. ALBERTI: All right?

6 MR. LEFANDE: That's why we're here.

7 MR. ALBERTI: I suspect, and I'm willing to  
8 lay money on it, because no one envisioned that  
9 you would be serving 750 people, okay? And so,  
10 when you say other venues operate, yes they do  
11 but they go through a different process, so I  
12 don't want have a philosophical debate, I just  
13 want --

14 MR. LEFANDE: [inaudible 1:41:03]

15 MR. ALBERTI: -- Mr. Stewart, please, I don't  
16 want a philosophical debate. But I just think  
17 it's fair that you know where I'm coming from,  
18 all right?

19 MR. LEFANDE: Thank you, Mr. Alberti.

20 MR. ALBERTI: So, let me move on. I  
21 appreciate the fact that you've been willing to  
22 put in a security plan. I looked at your

1 security proposals, it's a good start, but I  
2 haven't looked at it in the light of what's in  
3 the statute. I don't believe that statute is all  
4 that difficult to fulfill. I suspect that you'll  
5 have a relatively -- you'll be able to do it  
6 effectively in a relatively short period of time,  
7 but please submit it and work with our general  
8 counsel in making sure that it comports with the  
9 statutes, so I appreciate that. Okay, as for the  
10 licenses, as for the cameras, I'm a bit still  
11 concerned. This is a large area and without  
12 having some input from another party who's less  
13 biased than the owner of the property, like our  
14 investigators, I can't be confident that it  
15 really does cover -- effectively cover the area  
16 so I would ask that maybe you -- if you would be  
17 willing to cooperate with our investigators to  
18 show them what's covered and maybe seek  
19 suggestions for additional cameras and placements  
20 if that's necessary. As you said, and we all  
21 know, I think that cameras are cheap, and you can  
22 probably accommodate lots of cameras on the DVD

1 or the hard drive that you have now I would  
2 suspect. So, that's part -- I would like a  
3 commitment from you all to do that.

4 MR. LEFANDE: Let me say this, Mr. Alberti,  
5 as somebody who I've known for 20 years --

6 MR. ALBERTI: More, but go ahead, that's not  
7 relevant here though.

8 MR. LEFANDE: I'm going to tell you I will  
9 personally buy him the cameras if [inaudible  
10 1:43:08].

11 MR. ALBERTI: I got you.

12 MR. LEFANDE: Okay?

13 MR. ALBERTI: I got you.

14 MR. LEFANDE: All right. I have 25 full  
15 blown lawsuits that I'm working on right now,  
16 federal courts and in the superior court. I am  
17 absolutely swamped with work to do. I would  
18 really, really like to not have him paying me to  
19 be here right now, okay? So I'm trying whatever  
20 I can do to get myself out of paying more court  
21 fees. I will give him the cameras, I will help  
22 him install them if that's what we need to do to

1 get this done.

2 CHAIRPERSON ANDERSON: That's not in the  
3 transcript, so [inaudible 1:43:57].

4 MR. LEFANDE: He knows that's true.

5 MR. ALBERTI: So, Mr. LeFande, I am pleased  
6 and it's to your credit and to your client's  
7 credit, I'm not surprised of your willingness to  
8 cooperate in that regard, but I'm extremely  
9 pleased that you are willing to do that and we  
10 will -- I think I can safely say that the  
11 director will make that as painless as possible.  
12 Yeah, we have people available. We can schedule  
13 times. They will come out. We have  
14 investigators who do this all the time, all  
15 right? And they always act reasonable in terms of  
16 showing you -- you can debate -- to make sure  
17 everything's covered.

18 MR. LEFANDE: We'll fully cooperate, no  
19 problem.

20 MR. ALBERTI: All right, great.

21 MR. LEFANDE: Thank you, Mr. Alberti.

22 MR. ALBERTI: And I don't know what to do

1 about my last concern but I've got to put it out  
2 there since it's been discussed over and over  
3 again. So, on game days, and you were here when  
4 the commander was telling us that there is a  
5 concern about crowds transgressing across Potomac  
6 Avenue to and from your place during -- when  
7 games play. I don't know what to do about it.  
8 There's this, like, I'm flummoxed. But I have  
9 this concern and I share this concern with them.  
10 I think you're probably -- probably counting on  
11 that. I mean, if I was you I can imagine you'd  
12 want a lot of business during the game but, you  
13 know, after the game you want -- that's why you  
14 want to be open until 12:00. You want places for  
15 people to go. I get it. That's a smart business  
16 model. But it still leaves me with this dilemma  
17 of crossings.

18 MR. STEWART: Potomac Avenue is closed during  
19 the games.

20 MR. ALBERTI: After the game, though, after  
21 the game traffic.

22 MR. STEWART: It's closed.

1 MR. ALBERTI: Completely? We don't have any  
2 vehicle traffic going across it?

3 MR. STEWART: Those are buses that go  
4 through.

5 MR. ALBERTI: Yeah, well that was a problem.

6 MR. STEWART: This is a whole lot of fear,  
7 uncertainty and doubt. You can't just --

8 MR. ALBERTI: Mr. Stewart, there is  
9 uncertainty and that's why I'm flummoxed. I am  
10 totally flummoxed, I don't know how much this --  
11 so --

12 MR. STEWART: I don't know what I can say.

13 MR. ALBERTI: I don't know what you can say  
14 either, I just need it on the record. I'm going  
15 to recommend that the director work with MPD on  
16 this issue if we give you the license.

17 MR. STEWART: [inaudible 1:46:35]

18 MR. ALBERTI: I can think of a lot of  
19 solutions, or several solutions to the problem,  
20 but I don't know if they're practical from MPD's  
21 standpoint, so I think maybe the director should  
22 -- will probably -- I'm going to recommend anyway

1 -- that's my personal recommendation to the  
2 director that he work with MPD.

3 MR. LEFANDE: From the last year -- thank  
4 you, Mr. Alberti -- from the last year we talked  
5 about a stadium that is running at least 10%  
6 below capacity every single event. They have  
7 been talking about a traffic plan, a crowd  
8 management plan and personnel in place at every  
9 event for 38,000 people and we're running 10%  
10 below that and now we're talking about a surplus  
11 capacity of some 4000 people and this 750 people  
12 going across one street that has got dozens of  
13 police officers regulating it in every one of  
14 these instances, is a pimple on the elephant's  
15 back compared to the volume of people that are  
16 going through there, and if people are going to  
17 buses, I mean let's think about one of these  
18 coaches. One of those coaches has a capacity of  
19 60 people. You've got 10 coaches, that's 600  
20 people. We've already reached nearly the full  
21 capacity of this establishment of people just  
22 going to the buses. To say that the police

1 department and traffic plan, it does not  
2 contemplate or cannot cope with people simply  
3 going across the street to go to this  
4 establishment is absolutely undermined by the  
5 evidence that's already in the record. I can  
6 absolutely understand your concern. I want to  
7 make sure this is a safe -- I do not want to have  
8 my name affiliated with something that's not safe  
9 and/or you know that's causing some nuisance to  
10 the public, but balance pretty well in hand given  
11 the amount of effort that is put into regulating  
12 these enormous events that are going on right  
13 there, and to say that 750 people making their  
14 way into the establishment next door when you've  
15 got 40 coaches out there that are getting loaded  
16 up is so insignificant in comparison that I hate  
17 to belittle your concern but I think it's fairly  
18 well addressed in what's already here.

19 MR. ALBERTI: Okay. I thank you for that. I  
20 will tell you, though, that you have not swayed  
21 me to not be concerned. I interpret the evidence  
22 in the record differently. But we'll leave it at

1 that -- we'll leave it at that.

2 MR. LEFANDE: Thank you.

3 MR. ALBERTI: I will tell you I'm still  
4 chewing on whether that's -- how critical that  
5 concern is.

6 Thank you.

7 CHAIRPERSON ANDERSON: All right. Are there  
8 any other questions by any other board members?  
9 Hearing none, any final?

10 MR. LEFANDE: I would ask that you now  
11 propose a vote that you approve this license  
12 subject to the approval of the security plan and  
13 the approval of the camera management plan as  
14 part of that. I ask that you do that vote right  
15 now.

16 CHAIRPERSON ANDERSON: Well, Mr. LeFande.  
17 Thank you for your advice but anyway.

18 MR. LEFANDE: I'm here as an advocate, so --

19 CHAIRPERSON ANDERSON: And --and -- and in  
20 this hearing you have effectively, and I think  
21 that you've done a great job in representing the  
22 interests of your client, sir.

1           As chairperson of the Alcoholic Beverage  
2 Control Board for the District of Columbia and in  
3 accordance with section 45 of the Open Meetings  
4 Amendment Act of 2010, I move that the ABC Board  
5 hold a closed meeting for the purpose of seeking  
6 legal advice from our counsel on the fact finding  
7 hearing for Bardo, license #103291 per section  
8 45B4 of the Open Meetings Amendment Act of 2010  
9 and deliberating upon the Bardo fact finding case  
10 for the reasons cited in section 45-B13 of the  
11 Open Meetings Amendment Act of 2010. Is there a  
12 second?

13           MR. SHORT: Second.

14           CHAIRPERSON ANDERSON: Mr. Short has seconded  
15 the motion. I will now take a roll call vote on  
16 the motion before us now that it has been  
17 seconded. Mr. Perry?

18           MR. PERRY: Aye.

19           CHAIRPERSON ANDERSON: Mr. Alberti?

20           MR. ALBERTI: I agree.

21           CHAIRPERSON ANDERSON: Mr. Short.

22           MR. SHORT: I agree.

1 CHAIRPERSON ANDERSON: Mr. Silverstein?

2 MR. SILVERSTEIN: I agree.

3 CHAIRPERSON ANDERSON: Ms. Hobson?

4 MS. HOBSON: I agree.

5 CHAIRPERSON ANDERSON: Mr. Anderson? I  
6 agree. As it appears that the motion has passed,  
7 I hereby give notice that the ABC Board will hold  
8 a closed meeting in the ABC board conference room  
9 today pursuant to the Open Meetings Amendment Act  
10 and issue an order. All right, so we will do  
11 that very shortly, okay? Thank you for your  
12 presentation. No, we're not -- thank you for  
13 your presentation.

14 MR. LEFANDE: Thank you, Mr. Chairman.

15 CHAIRPERSON ANDERSON: All right. As

16 CHAIRPERSON ANDERSON: As chairperson of the  
17 Alcoholic Beverage Control Board for the District  
18 of Columbia and in accordance D.C. Official code  
19 Section 2574 B, Closed Meetings and Section 2574  
20 Notice of Meetings of Open Meetings Amendment  
21 Act, I move that the ABC Board hold a closed  
22 meeting on November 30, 2016, for the purpose of

1 discussing and hearing reports concerning ongoing  
2 or planned investigations of alleged criminal or  
3 civil misconduct or violations of law or  
4 regulations and seeking legal advice from our  
5 counsel on the board's investigative, legal and  
6 licensing agenda for November 30, 2016 as  
7 published in the D.C. Register on November 25,  
8 2016. Is there a second?

9 MR. SHORT: Second.

10 CHAIRPERSON ANDERSON: I will now take a roll  
11 call vote on the motion before us now that it has  
12 been seconded. Mr. Perry?

13 MR. PERRY: Agree.

14 CHAIRPERSON ANDERSON: Mr. Alberti?

15 MR. ALBERTI: I agree.

16 CHAIRPERSON ANDERSON: Mr. Silverstein?

17 MR. SILVERSTEIN: I agree.

18 CHAIRPERSON ANDERSON: Ms. Hobson?

19 MS. HOBSON: I agree.

20 CHAIRPERSON ANDERSON: Mr. Short?

21 MR. SHORT: I agree.

22 CHAIRPERSON ANDERSON: Mr. Anderson? I

1 agree. As it appears that the motion has passed,  
2 I hereby give notice that the ABC Board will hold  
3 its aforementioned closed meeting pursuant to the  
4 Open Meetings Act. Notice will also be posted on  
5 the ABC board here on the room bulletin board,  
6 placed on the electronic calendar on ABRA's  
7 website and published in the D.C. Register in as  
8 timely a manner as is practical. It's 5:02 and  
9 we are adjourned for the day. Thank you very  
10 much.

11 (Whereupon, the above-entitled matter was  
12 concluded.)

13