



BOARD MEMBERS PRESENT

NICK ALBERTI, BOARD MEMBER

JAMES SHORT, BOARD MEMBER

MIKE SILVERSTEIN, BOARD MEMBER

RUTHANNE MILLER, BOARD MEMBER

ALSO PRESENT:

ANITA NOORMAN

BRIAN FOOTER

GWENDOLYN RAIFORD

LEONARD POLK

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

## PROTEST HEARING (STATUS)

CHAIRPERSON ANDERSON: Our next case is #16-PRO-00078, Columbia Lodge 85, I.B.P.E.O. of Without, license 237, will the parties please approach and identify themselves for the record, please? Can the parties please identify themselves for the record?

MS. NORMAN: Anita Norman, with Grover Park Civic Association.

MR. FOOTER: Brian Footer, ANC commissioner.

MS. RAIFORD: Gwendolyn Raiford, house chair of Columbia Lodge 85.

MR. POLK: Leonard Polk, Columbia Lodge 85, captain.

CHAIRPERSON ANDERSON: All right. One of the reasons why we had to schedule this matter for a second status is for the lodge to provide us the records as noted that provide the board with the proof on the record of the notice that was provided to the lodge regarding this case. I

have not seen that, so is there -- that notice with us today?

MS. NORMAN: No.

CHAIRPERSON ANDERSON: The notice doesn't exist?

MS. NORMAN: No, we do not send out an official notice.

CHAIRPERSON ANDERSON: And the regulation requires that you have to provide the official notice and so, therefore, since the official notice was not sent, then the association can ask -- as it has standing as a party.

MS. NORMAN: Yeah.

MR. FOOTER: May we ask other questions to get clarification?

CHAIRPERSON ANDERSON: Go ahead.

MR. FOOTER: Is there a reason why the Civic Association in the regulations is held to a different standard than the ANC and party of five in giving the proper notice directly to the party that they are potentially going to protest?

CHAIRPERSON ANDERSON: I -- the rules were

written prior to my tenure on the board and the only thing I can do, but if there is -- yes, Mr. Silverstein.

MR. SILVERSTEIN: The rules were adopted by City Council and the -- organization and they've done so because Civic Associations are different than ANCs in that they are not elected, the parties are non-city government, a private organization, that this was put in there by the city council by the DCMR and we abide by that.

MR. FOOTER: I understand that. I guess -- yeah, I mean it shows how it got there but I guess we're trying to understand the intent. Because if the intent is that the public was notified in a proper way that this particular issue was coming to the forefront in the community, and we have done that in an exemplary manner. Because we didn't send one specific e-mail to one particular person it still doesn't mean that they were not notified in the proper manner in accordance with all of the rules, and so we just want to know the intent of why, and

what it means to actually send a proper notice directly to one individual? I mean how is that - - what are the rules around that?

CHAIRPERSON ANDERSON: Well, all I can say is that you know who the licensee is and you send a letter to the licensee at their address within the statutory guidelines to state that you're having this meeting and one of the purposes of having this meeting is to discuss your petition, the renewal of your -- we're going to discuss your liquor license.

So, basically you're sending a letter to the licensee to put them on notice that you're having this meeting and one of the agenda items, and you could also send them a copy of the agenda saying that's one of the agenda items is discussion of your liquor license. And that's the intent, to make sure that they are on notice that that's your intent. You have some concerns regarding their operation. Yes ma'am?

MS. NORMAN: To that point, instructing???

Notification was given that showed we had

information -- to show that they did come, they participate with more than one member who showed up.

CHAIRPERSON ANDERSON: Yes, Mr. Alberti?

MR. ALBERTI: So, when you say notification was given, can you --

MS. NORMAN: Given to the community on several platforms: Letters, the agenda items were posted in the community, they were listed on our website, the listserv, so their -- which they monitor -- so there were notifications.

MR. ALBERTI: So, you guys say they showed up and I get that, I understand -- I'm not sure it satisfies the law but I understand your point. I don't think that you have any assurance that they were there. I think prior to the meeting you had no assurance, you couldn't be confident that they were aware of the topic of that meeting.

MS. NORMAN: They show up every time they're being protested.

MR. FOOTER: May I?

CHAIRPERSON ANDERSON: All right, go ahead.

MR. FOOTER: If I may. I see your point and you're absolutely right that there's no confirmation that they were knowledgeable about the information. By the same token there were a number of times that they came to every meeting, they're a pivotal member of our community and they are constantly in touch, so it's kind of hard to talk out of two sides of one's mouth and say you're not notified and not aware and all of that, but yet to come to all of our meetings and keeping in regular correspondence.

CHAIRPERSON ANDERSON: Well, it is different because I might go to all my ANC meetings, but I don't know, if you don't provide me an agenda, and if you don't tell me, I'm not going to know that I need to be prepared to address certain concerns that you are having. So, yes, they come to every meeting, yes they have been present at the meetings, but as a citizen as you have a lot of your citizens who come to your ANC meeting every month, they don't know what it is that is going to be on the agenda when they are there,

and if they don't know that their going to address a specific issue, how are they going to know to prepare? I'm there, and like, 'oh, I didn't realize this was an issue, I could have brought someone who could provide a particular response to the concern.'

MR. FOOTER: And I'm glad you brought that up because we did have the information of what was going to be on that agenda and we gave proper linkages and direction where to go to get more information and put everything out in the public setting so that you could review it in an appropriate amount of time. Now, if the public takes it upon themselves not to use that direction in order to inform themselves prior to the meeting, that's their prerogative. You can only take, you know, to the water but you can't necessarily make them drink.

CHAIRPERSON ANDERSON: In this particular case, though, you're saying that the public does not take the extra step, you -- they're not the public, you have to tell them that 'you need to

do the extra steps' because say, for example, I'm going to discuss how much money you made last year, and you basically told me that you made ten dollars last year and they'll come and tell me five, so then you get this is the area -- they can maybe bring their receipts to say 'here's the proof' that this is what I did last year and I can verify. Because -- since you are -- if the issue is specifically addressed to them, you are to inform them that they are on specific notice that you're going to talk -- then when they came, they can't say, 'well, I didn't know.' 'I told you. I told you that I was going to discuss this specific issue at my meeting and it's your problem that you're not prepared for this meeting, but at least I told you.' Okay? So, that's the difference I see there.

So, therefore, because the notice had not been properly given -- because the association has not been properly -- properly -- did not provide proper notice to the applicant and I think that's the issue.

MS. MILLER: Can I ask a question?

CHAIRPERSON ANDERSON: Yes, Ms. Miller.

MS. MILLER: For clarification. Is this -- I remember from the Civic Association that the notice was given to applicant as a member of the public and that notice in the past was always given to the applicant --

CHAIRPERSON ANDERSON: Hold on. We had a status hearing last week and the specific purpose of the status hearing was for them to bring us the requisite notice. We had the arguments last week, so another reason why we put it off today is for them to provide the board with the specific notice, so we shouldn't be discussing -- we're not going to revisit the issue of whether or not they had -- notice. The purpose of the hearing is 'provide us a copy of the specific notice' and the Civic Association informed us that they did not -- that it doesn't exist. So, we don't have to --

MS. MILLER: I -- that's not -- I just wanted to clarify that that isn't the agenda, that the

notice was the agenda.

CHAIRPERSON ANDERSON: We discussed it last week.

MS. MILLER: Okay, I didn't know that we had a ruling on -- we were just looking for a specific notice.

CHAIRPERSON ANDERSON: That's the purpose, right. The purpose -- the main reason why we had another status hearing this week is for them to provide us the specific notice. That's the purpose of this status hearing. That's one of the reasons why we moved it to this week, for them to provide us a copy of the notice. If the notice doesn't exist because at the last hearing, standing was an issue, since standing was an issue, we asked -- the board asked -- to provide us with a copy of the specific notice. I asked the question, they stated that the notice did not exist. And so, therefore, we were just having a conversation, so we need documents provided and that's not here. Do you need to do a rebuttal?

MS. MILLER: I think that clarifies it, this

wasn't just the agenda, I thought it was enough for them today just to bring the agenda, so that's not what you're saying.

CHAIRPERSON ANDERSON: Because, they were asked to give us a copy of the notice to say 'here's the notice' at the status hearing, but that doesn't exist, that's what they're saying.

MS. MILLER: I would have been interested in seeing the agenda, but I don't think it's relevant now. But you're saying that's not enough.

CHAIRPERSON ANDERSON: No, because that's not -- that's not -- that's not what they were asked to do. They were asked to provide us with the notice and that's not there, so, Are there any other questions by any other board members? With that, then I make a motion that -- not that I need to make a motion -- but I make a motion that the Civic Association then does not have standing in this process. Is there a second?

MR. SHORT: Second.

CHAIRPERSON ANDERSON: Mr. Short has

seconded. All in favor say aye. (Chorus of ayes.) Those opposed? (No audible response.) The matter passed 5-zero-zero and that is because the reason why the Civic Association is not going to have standing in these proceedings is because they did not comply with the law -- the requisite law that provides the licensee with a specific, timely notice. Now, the ANC is still a party in this matter, so the Civic Association can -- moving forward -- the ANC can call them as witnesses, but, again, they have to be identified on the PIP if they are going to give whatever testimony or documents that they provide.

MR. FOOTER: Can I ask a question?

CHAIRPERSON ANDERSON: Yes.

MR. FOOTER: Can the ANC representative from the community -- I'm sorry -- can the Civic Association representative from the community participate in the mediation?

CHAIRPERSON ANDERSON: No, only parties can participate in the mediation.

MR. FOOTER: Is there a limitation on how

many people are associated with the parties?

Sorry, from [inaudible 32:25.7]?

CHAIRPERSON ANDERSON: Well, I'm not going to tell you -- I guess the bottom line is that only the parties can participate in a mediation and the bottom line is that if they are participating in the mediation as a member of the ANC, but I don't think -- since the other party is the Civic Association itself, it can't represent itself as the Civic Association at the meetings. They can come as a party of the ANC. But, as I said, they can't show up and say, 'okay, I'm with the Civic Association, so therefore this is my position as the Association.' The only party to this matter is the ANC, but if they're a member of the ANC then they can participate in the mediation.

MR. FOOTER: Thank you.

CHAIRPERSON ANDERSON: All right. Are there any questions that the licensee wants to bring to the board's attention or any preliminary matters?

MR. POLK: Not at this time.

CHAIRPERSON ANDERSON: Then this matter is

scheduled for a protest hearing on November 9 at 1:30 p.m. Do I need to review the instructions for a protest hearing or are the parties familiar with the process?

MR. POLK: I would go forward and review the specifics of the process.

CHAIRPERSON ANDERSON: All right. Now, at a protest hearing we want to make sure that the hearing is focused and references only those issues being protested. The board does not intend to hear testimony in matters that are not relevant to this case. You should have received by electronic or regular mail a letter explaining the protest process, a copy of the protest information form, and a copy of an exhibit form.

If you do not have these documents, please contact our assistant general counsel, Ms. April Randall, following the hearing. It is imperative that you review the rules closely and adhere to them before and during the protest hearing. You are also required to complete and submit the protest information form, PIP, and the exhibit

form seven days before the date of the hearing. These two forms and accompanying documents need to be submitted to ABRA's legal division and to all opposing parties in this matter. If we do not receive a copy of your PIP, your application or your protest, whichever side you're representing, may be subject to dismissal.

Likewise, if we do not receive a copy of the exhibit form and the exhibits themselves, your exhibits may be excluded from the record upon a finding that the opposing party has been prejudiced or no good cause for failure to submit has been shown. Likewise, witnesses other than the party may also be subject to exclusion if not identified in the PIP.

Accordingly, these forms are very important, they greatly assist the Board in narrowing the protest issues, facilitating the process and keeping the parties on point during the hearing. They likewise provide notice to opposing parties enabling them to better prepare for the hearing.

We thank you for your cooperation. If you

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have any questions today or at any time leading up to the hearing, please do not hesitate to contact Ms. Randall at 202-442-4353. Good luck at the mediation and if you are not successful in mediation then I guess I will see you guys here on November 9th at 1:30, okay? Do you have any other questions?

MS. RAIFORD: Yes, you mentioned mediation. Is that here or --

CHAIRPERSON ANDERSON: It would be here. It's going to be here in this room once it's scheduled.

MS. RAIFORD: Okay, we see Ms. Fletcher?

CHAIRPERSON ANDERSON: Yes.

MS. RAIFORD: Okay. Thank you.

MR. POLK: Thank you.

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