

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)

MDM, LLC)
t/a Takoma Station Tavern)

Application for Substantial Change)
(Summer Garden))
to a Retailer's Class CT License)

at premises)
6914 4th Street, N.W.)
Washington, D.C. 20012)

Case No. 14-PRO-00050
License No. ABRA-079370
Order No. 2014-345

MDM, LLC, t/a Takoma Station Tavern (Applicant)

Susan Butler, on behalf of Takoma Triangle Community Association (TTCA)

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member
Hector Rodriguez, Member
James Short, Member

**ORDER AFFIRMING THE STANDING OF
TAKOMA TRIANGLE COMMUNITY ASSOCIATION**

INTRODUCTION

The Application for a Substantial Change to its Retailer's Class CT License was filed by MDM, LLC, t/a Takoma Station Tavern, (Applicant) to allow for a rooftop summer garden. The Application was protested by Advisory Neighborhood Commission (ANC) 4B and the Takoma Triangle Community Association (TTCA). The Roll Call Hearing in this matter occurred on July 21, 2014, in accordance with D.C. Official Code § 25-601 (2001).

At the Roll Call Hearing, the Board's Agent granted standing to the ANC and also to TTCA under § 25-601(3), as a recognized Citizen Association. D.C. Official Code § 25-601(3).

Subsequent to the Roll Call Hearing, the Applicant and ANC 4B entered into a Settlement Agreement (Agreement), dated July 29, 2014, that governs the operation of the Applicant's establishment. The Agreement was approved by the Board on September 10, 2014, and the ANC's protest was withdrawn. Case No. 14-PRO-00050, Board Order No. 2014-323.

On July 23, 2014, the Applicant filed a Challenge of Standing of Takoma Triangle Community Association (Challenge), J. Ron Austin, Chairman of ANC 4B, also filed a challenge to the standing of TTCA by letter on July 22, 2014, in his capacity as Chair of ANC 4B. However, there is no indication that this letter was discussed and voted upon at a publicly noticed meeting at which a quorum was present. Moreover, in light of the fact that the ANC entered into a settlement agreement with the Applicant on July 29, 2014, the Board concludes that Mr. Austin's views cannot be attributed to the ANC.

TTCA filed its Response to the Challenge on July 24, 2014. The Board set the Challenge and Response for oral argument at the Protest Status Hearing on September 10, 2014.

FINDINGS OF FACT

The Board makes the following findings:

1. The Applicant argues that the TTCA lacks standing under § 25-601(3) (A) because they did not communicate with all of the residents in the area regarding the TTCA meeting on July 5, 2014. Transcript (Tr.), 09/10/14 at 14; ABRA Protest File No. 14-PRO-00050. The meeting followed the incorporation of the TTCA on June 24, 2014. *Tr.* at 14. Because not much time lapsed between the date of incorporation and the date of the meeting, the TTCA could not have complied with the spirit of the statute to ensure that the TTCA was open to all residents. *Tr.* at 15, 18.
2. The Applicant further argues that the TTCA lacks standing under § 25-601(3) (B) because it did not approve a resolution in accordance with its bylaws or articles of incorporation at a duly called meeting. *Tr.* at 15-16. The TTCA references a letter in its protest, but not a resolution. *Tr.* at 15-16. Additionally, the Applicant was not provided a copy of the TTCA bylaws or articles of incorporation, and could not ascertain whether a quorum was present at the July 5, 2014 meeting. *Tr.* at 16. The applicant alleges that the meeting was not duly called and the notice to the community was inadequate. *Tr.* at 15.
3. The Applicant concedes that the TTCA is organized in the District of Columbia, but argues that it is operating as a Group of Five Or More Protestants for purposes of protesting the Applicant's Substantial Change Application. *Tr.* at 16-19. As a Citizens Association, the TTCA should be required to operate within the spirit of the statute and comply with the regulations to ensure that the community is properly noticed, and that the minutes, bylaws and agenda are available to the public. *Tr.* at 19-20.

4. Lastly, the Applicant argues that the July 5, 2014 meeting was closed to the public because it was held in a secured building that required an access code in order to pass through the door. *Tr.* at 63-71

5. The TTCA argued that its association is properly incorporated under the laws of the District of Columbia, with associated bylaws and articles of incorporation. *Tr.* at 22, 25. The bylaws were adopted on June 24, 2014. *Tr.* at 38. The TTCA also argues that because standing was not challenged at the Roll Call Hearing, it cannot be raised after standing is conferred. (*TTCA Letter to the Board, July 24, 2014*).

6. The TTCA serves a geographical footprint within the Takoma Park neighborhood that surrounds the Applicant's establishment. *Tr.* at 23. Any resident who resides within the TTCA footprint is eligible to be a member of the association. *Tr.* at 25. Residents must complete an application form but no dues are required. *Tr.* at 41, 84.

7. The TTCA Board of Directors voted to hold a meeting on July 5, 2014 in order to address the Application. *Tr.* at 26, 29. The TTCA notified the Applicant of the July 5 meeting by registered mail seven days in advance of the meeting. *Tr.* at 36. The Applicant acknowledged receipt of the notification and attended the meeting. *Tr.* at 36.

8. Area residents and members of the TTCA were notified by electronic mail, email networks, voter registration lists and direct personal notification by the TTCA president. *Tr.* at 26, 42-44, 75. Notice was also sent to the Board of Directors of the three condominium buildings located in the footprint. *Tr.* at 43. An access code to enter the building where the meeting was held was provided in the notice that was sent to the membership and neighborhood. *Tr.* at 71.

9. The TTCA approved a resolution at its July 5, 2014 meeting to protest the Application. *Tr.* at 28-31. The vote to protest was unanimous. *Tr.* at 32, 60-61. The TTCA bylaws provide that the Board of Directors constitutes a quorum. *Tr.* at 32-33.

10. At the time of the July 5 meeting, there were approximately 15 to 20 members, ten to 15 of whom were present. *Tr.* at 32-33, 40, 45. Today there are more than 60. *Tr.* at 26.

CONCLUSIONS OF LAW

11. The Board finds that TTCA has satisfied D.C. Official Code § 25-601(3) and affirms the standing to protest the Application conferred to it at the Roll Call Hearing on July 21, 2014.

12. The Board finds no credence in the Challenge filed by the Applicant in this matter. The Applicant's argument that the July 5, 2014 meeting was not open to the public is not relevant to the determination under D.C. Official Code § 25-601(3). There is no requirement under this statute that an association has a public meeting when it votes, only that membership is open to the public.

13. The Board further finds that the Applicant's argument that the meeting was not advertised to the public is without merit. There is no requirement in D.C. Official Code § 25-601(3) that the citizens association advertise its meeting to the entire public. The only requirement is that the organization provides notice to its voting body and the Applicant. The Board finds that the July 5, 2014 meeting was properly noticed to its Board and membership.

14. The Board also finds that the Applicant was properly noticed by the TTCA seven days in advance of the meeting. This is supported by the TTCA's initial protest letter stating the Applicant was served notice by certified mail and personal delivery. Thus the requirements for § 25-601(3)(B) are fulfilled.

15. The Board does not share the Applicant's concern that the TTCA's adoption of its bylaws was somehow invalid because the vote was not advertised to the public or that the TTCA had incorporated only a few days prior to the meeting. The only requirement under D.C. Official Code § 25-601(3) is that the organization be open to all residents. If the organization had just formed then understandably it would have had minimal members. Once it became a lawful entity, the TTCA could then hold a meeting to adopt its bylaws. There is no requirement in D.C. Official Code Title 25 that a citizens association advertise all votes to all members of the community, only its voting body. Furthermore, D.C. Official Code Title 25 only governs how the organization passed its protest authorization resolution, not how the organization passed its bylaws or acts as a lawful corporation in other matters.

16. Lastly, the Board finds that the TTCA's argument questioning the timeliness of the Applicant's challenge to its standing is without merit. Standing is a threshold issue and may not be waived. Moreover, it may be raised at any time during the protest process and must be maintained in order to continue the protest. *In re Watergate Hotel Lessee, LLC, t/a Watergate Hotel*, Case No. 13-PRO-00005, Board Order No. 2013-417, 16 (D.C.A.B.C.B. Oct. 2, 2013).

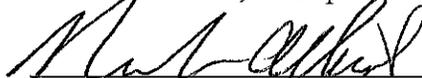
ORDER

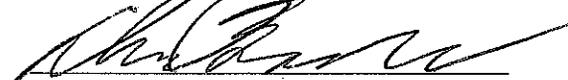
Accordingly, it is this 1st day of October 2014, **ORDERED** that:

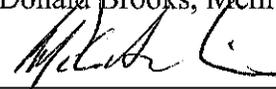
1. The standing conferred upon the TTCA on July 21, 2014 is affirmed;
2. The Protest Hearing is scheduled for October 29, 2014 at 1:30 p.m;
3. The parties are to submit their Protest Information Form (PIF) no later than close of business on October 22, 2014; and
4. Copies of this Order shall be sent to the Applicant and the TTCA.

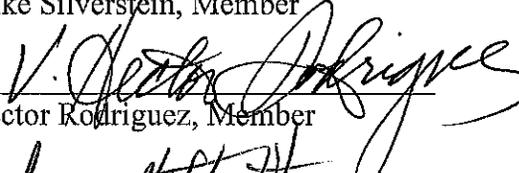
District of Columbia
Alcoholic Beverage Control Board

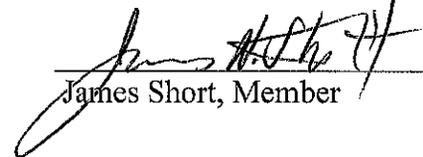

Ruthanne Miller, Chairperson


Nick Alberti, Member


Donald Brooks, Member


Mike Silverstein, Member


Hector Rodriguez, Member


James Short, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to D.C. Official Code § 25-433, stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b).