

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

IN THE MATTER OF:

Park Place, Inc.  
t/a The Park at 14th  
920 14th Street, NW  
Retailer CN - ANC-2F  
License No. 75548  
Case #13-PRO-00153 and  
Case #14-PRO-00005

Protest  
Hearing

(Renewal Application,  
Termination of Settlement  
Agreement)

March 26, 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  
HERMAN JONES, 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 (2:46 p.m.)

3 CHAIRPERSON MILLER: Okay. I'm  
4 going to call Case No. 13-PRO-00153 and 14-  
5 PRO-00005 for The Park at 14th located at 920  
6 14th Street, N.W., License No. 75548, in ANC-  
7 2F. And this is a combined hearing for a  
8 renewal application and termination of a  
9 settlement agreement.

10 Let's start with identifying the  
11 parties for the record.

12 MR. SHIRAFKAN: Makan Shirafkan on  
13 behalf of the applicant.

14 MR. BARNES: Marc Barnes on behalf  
15 of Park at 14th.

16 MR. BROWN: Patrick Brown,  
17 Greenstein, DeLorme and Luchs on behalf of the  
18 protestant 1400 K Company, LLC.

19 MR. DUKE: I'm Jackie Duke with  
20 Brookfield Properties, the owner.

21 CHAIRPERSON MILLER: I'm sorry, I  
22 can't hear you.

1 MR. DUKE: Jackie Duke.

2 CHAIRPERSON MILLER: Okay.

3 MR. DUKE: From Brookfield  
4 Properties.

5 MR. CARNEY: Simon Carney with  
6 Brookfield Properties, a parent company to  
7 1400 K, LLC.

8 CHAIRPERSON MILLER: Okay. All  
9 right. And then I want to ask you all just to  
10 give us an idea of the witnesses you will be  
11 presenting today.

12 MR. SHIRAFKAN: I believe on our  
13 side, Mrs. Anne Barnes will not be testifying,  
14 so I'm planning on only having Mr. Barnes  
15 maybe, for maybe one or two minutes just to  
16 clarify if needed, Ms. Renee Stevens. Other  
17 than our's is going to be one witness, Mr.  
18 Barnes.

19 CHAIRPERSON MILLER: Okay.

20 MR. BROWN: We plan to have three  
21 witnesses: Mr. Carney, Ms. Duke and another  
22 witness, Mr. Beresford, who hasn't arrived

1 yet, but he is due here shortly. But again,  
2 I think as we kind of evolve, we have narrowed  
3 our focus and we can keep it certainly brief  
4 and to the point, well within your  
5 expectations of us.

6 CHAIRPERSON MILLER: Okay. You  
7 know what, one thing I just want to bring up  
8 to you that I haven't exactly clearly thought  
9 through is on the protest side, the applicant  
10 -- oh, you have the applicant, you have the  
11 burden on both sides. Never mind. The burden  
12 to show the appropriateness of the  
13 establishment and no adverse impact on peace,  
14 order and quiet.

15 Okay. And then in the termination  
16 case, I'm not sure if I saw this in papers,  
17 but 25-446 has certain requirements for the  
18 Board finding for termination. And a few to  
19 just bring up is one that says that "The need  
20 for an amendment is either caused by  
21 circumstances beyond the control of the  
22 applicant or is due to a change in the

1 neighborhood where the applicant's  
2 establishment is located."

3 And (d) it says "The amendment or  
4 termination will not have an adverse impact on  
5 the neighborhood where the establishment is  
6 located."

7 Anyway, I'm not sure whether you  
8 have focused on or not, but we do have to find  
9 in accordance with 25-446 on that one. If you  
10 want to take a look at that. Okay.

11 As far as procedure goes then, the  
12 applicant and the protestant will each have to  
13 make an opening statement and then our  
14 Government witness will go first. I don't  
15 know if you all are new to the process or not.  
16 I don't think all of you are, but we will ask  
17 questions and you can ask questions. And then  
18 go forward with each of your cases, with the  
19 licensee first. Okay.

20 So do you have an opening? Do you  
21 have any questions before we start?

22 MR. SHIRAFKAN: I just wanted to

1 actually amend and submit the PIF that we have  
2 prepared.

3 CHAIRPERSON MILLER: Okay.

4 MR. SHIRAFKAN: If I could, I have  
5 copies for --

6 MR. DUKE: He wants to what?

7 CHAIRPERSON MILLER: He wants to  
8 submit an amended PIF. And are you showing  
9 that to Mr. Brown?

10 MR. BROWN: I have not seen that.

11 MR. SHIRAFKAN: No, I'm actually  
12 submitting this.

13 CHAIRPERSON MILLER: All right.

14 MR. SHIRAFKAN: These pretty much  
15 deal with the things, for the most part except  
16 one or two of them, that were on our list that  
17 we already submitted.

18 CHAIRPERSON MILLER: Okay.

19 MR. SHIRAFKAN: We were to bring  
20 the actual copies for everyone.

21 MEMBER ALBERTI: Ms. Miller?

22 CHAIRPERSON MILLER: Yes?

1 MEMBER ALBERTI: Have you --

2 CHAIRPERSON MILLER: Oh, the time?

3 MEMBER ALBERTI: -- alerted the --  
4 yes, of the time.

5 CHAIRPERSON MILLER: I was just  
6 about to do that.

7 MEMBER ALBERTI: Of the time  
8 allotted and what that includes.

9 CHAIRPERSON MILLER: Yeah, I was  
10 about to do that actually. I know Mr. Brown  
11 indicated that most likely you all are going  
12 to be well within your time. And the way the  
13 time is measured is you each get five minutes  
14 for opening statement and five minutes for  
15 closing statement.

16 And then you have an hour and a  
17 half total in between, not including those.  
18 And it is measured by your witness goes for  
19 your time and when you cross-examine the other  
20 side's witness, that's your time. Okay.

21 MR. BROWN: Madam Chairman, two  
22 things. I can submit additional copies of our

1 exhibits now just for convenience sake.

2 CHAIRPERSON MILLER: Okay.

3 MR. BROWN: And also, I'm looking  
4 at and would like some clarity about --  
5 because there are documents in here that  
6 weren't part of the original PIF and I think  
7 we should discuss that, because, obviously, it  
8 puts me at a disadvantage.

9 CHAIRPERSON MILLER: Okay. Could  
10 you hold a second? I'm sorry. I left my file  
11 with the PIFs in in the room. I'll be right  
12 back.

13 MEMBER ALBERTI: But this is an  
14 amended PIF?

15 MR. BROWN: That's how they're  
16 characterizing it. And I see documents in  
17 here that weren't in before. There is --

18 MEMBER ALBERTI: So I don't know  
19 why she is going to get that, because we are  
20 going to get a new copy.

21 MR. BROWN: Yeah. Well, for  
22 comparison purposes I expect.

1 MEMBER ALBERTI: Okay. Okay.

2 CHAIRPERSON MILLER: Okay. So the  
3 purpose of these PIFs is, basically, to put  
4 everyone on notice as to what you are going to  
5 be presenting at trial or at hearing. So, you  
6 know, are these just small additions and more  
7 clarification?

8 MR. SHIRAFKAN: Well, I can  
9 explain actually.

10 CHAIRPERSON MILLER: Okay.

11 MR. SHIRAFKAN: When we submitted  
12 our list, there was a financial exhibit,  
13 Exhibit 5. Exhibit 1, 2, 3, 4 pretty much are  
14 things that I had already submitted on the  
15 initial PIF.

16 CHAIRPERSON MILLER: Okay.

17 MR. SHIRAFKAN: I have stated on  
18 my initial document that I was going to bring  
19 the financials and that's the financial. And  
20 Exhibit 6 and -- actually, 6 is the copy-paste  
21 of what the protestant has themselves actually  
22 put characterization of their expert witness

1 from the website.

2 So it is nothing new. This is  
3 actually copying what they have already  
4 submitted into as their exhibits. It's just  
5 if we are going to have this expert witness,  
6 I want to be able to question, obviously, as  
7 to some of these matters and -- with my  
8 initial PIF.

9 And now I'll state further that I  
10 would like to reserve the right of -- as trial  
11 goes on and, for example, on the expert  
12 witness, there are things that I don't know  
13 what he is going to say.

14 So for example, if I ask him, I'm  
15 just putting an example out there, have you  
16 ever been convicted and he says no, and I have  
17 documentation that shows he has been  
18 convicted, then at that point, is it necessary  
19 for me to bring that up? But if he says yes,  
20 then there is no need for me to bring that.

21 CHAIRPERSON MILLER: Um-hum, okay.

22 MR. SHIRAFKAN: But there is no

1 surprises here. I just wanted to make sure --

2 CHAIRPERSON MILLER: Okay.

3 MR. SHIRAFKAN: -- you were clear  
4 on that.

5 CHAIRPERSON MILLER: It's really  
6 also whether any surprise would be  
7 prejudicial, you know, and you couldn't have  
8 put it in your PIF.

9 MR. SHIRAFKAN: Right.

10 CHAIRPERSON MILLER: Right. Okay.  
11 Do you have any issues with that, Mr. Brown?

12 MR. BROWN: The only thing it  
13 would be, I think it is, No. 6. I guess --  
14 no, it's 5, which is the financials. And I  
15 don't see any identifying source to this.  
16 It's just a table with not even titled the  
17 documents. I'm not so sure that's very  
18 helpful and offers any kind of evidence that  
19 should be submitted in the record, at least,  
20 as it stands now.

21 I would also -- and it was in the  
22 PIF, but it has also reappeared in the amended

1 PIF. There is an article citing Brookfield  
2 Properties for a code violation in Canada.  
3 One document is prejudicial, too. It's  
4 irrelevant given the status of this hearing.  
5 Brookfield Properties is not on trial here.  
6 Not the subject and certainly we are not  
7 talking about what goes on in the property in  
8 a foreign country. We should be focused in on  
9 14th and K Street, N.W.

10 So I think having that struck as  
11 irrelevant at this point --

12 CHAIRPERSON MILLER: Okay.

13 MR. BROWN: -- would be  
14 appropriate.

15 CHAIRPERSON MILLER: Well, I don't  
16 know how it is going to be used and I think  
17 that at the point where the licensee wants to  
18 use it, we can assess that, whether it should  
19 be stricken, whether it is relevant or not.

20 MR. BROWN: Okay. And I  
21 understand that, Madam Chair, but it has  
22 already prejudicial having been submitted. I

1 mean, it's totally irrelevant to anything. I  
2 can't imagine any Member of the Board is at  
3 all concerned about Brookfield Properties in  
4 Canada, in the context of their duties here.

5 CHAIRPERSON MILLER: Okay. It's  
6 not going to be any less prejudicial if we  
7 deal with it at a later time in the hearing  
8 though.

9 MR. SHIRAFKAN: And that's what I  
10 wanted to clarify, because certainly obviously  
11 I have an objection, but I -- my understanding  
12 is when we get to each exhibit --

13 CHAIRPERSON MILLER: Right.

14 MR. SHIRAFKAN: -- if there is an  
15 objection, then at that point --

16 CHAIRPERSON MILLER: Exactly.

17 That's --

18 MR. SHIRAFKAN: -- address that.

19 CHAIRPERSON MILLER: Exactly.

20 Okay. Anything else?

21 MR. BROWN: No further.

22 CHAIRPERSON MILLER: Okay. So

1 we're going to start with opening statements.

2 And the licensee goes first.

3 MR. SHIRAFKAN: Good afternoon,  
4 Madam Chair and Members of the Board. My name  
5 is Makan Shirafkan and I have the pleasure of  
6 representing the licensee, Mr. Barnes. I  
7 won't take much time introducing Mr. Barnes.  
8 I believe most people in the District know him  
9 and they see him as a licensee and an operator  
10 for many years in the District and he is known  
11 all over the United States for the standard  
12 that he sets as he operates his places.  
13 Actually, he is involved with every show that  
14 he is involved with.

15 I think today's real objection, I  
16 believe, and you will hear from our neighbors  
17 -- a long time ago I promised I wasn't going  
18 to call the protestants protestants, but  
19 neighbors. Okay, our neighbors. You will  
20 hear that I don't think the issue is  
21 necessarily just the renewal piece of the  
22 license. More so, it's the termination of the

1 settlement agreement that is there.

2 And we have met and unfortunately  
3 both side at the point where there is a  
4 settlement agreement there and each side has  
5 its reasons and that's why we are here before  
6 you today.

7 On the renewal issue, I will  
8 address that, obviously, as the ANC has  
9 supported it, it never protested the renewal  
10 and even with the termination, they withdrew  
11 that and they supported the termination. MPD  
12 has not objected to this, neither has anyone  
13 from Mayor's Office or anyone else except our  
14 neighbor. And there is indication, obviously,  
15 that there is no issue with violence or peace,  
16 order or quiet, enjoyment.

17 You will hear from the  
18 Investigator who also will further state what  
19 he has observed monitoring Park. The value of  
20 property at 920 14th Street where Park is  
21 located, obviously, over the past years has  
22 tremendously gone up actually, because before

1 Mr. Barnes it was just a building there versus  
2 now, it's a landmark where thousands of people  
3 come to D.C. to see this place.

4 And as to enjoyment, again, this  
5 is not a residential area and you will see by  
6 what the Investigator will tell you it's not  
7 residential, and I think it is undisputed it  
8 is not residentially zoned and there has never  
9 been an issue.

10 So the bottom line comes back to  
11 this issue of this settlement agreement and  
12 what effect it has on the licensee at this  
13 point. When he entered this agreement, he was  
14 understanding that this was going to be for a  
15 certain period of time. He will pay his dues.  
16 He will do good and not violate it and then  
17 over time this will be withdrawn. That  
18 doesn't seem to be the case.

19 And you will hear today why this  
20 settlement agreement financially affects him.  
21 On principle, it affects him because no other  
22 establishment around the Park at 14th has a

1 voluntary agreement and on the fact that Mr.  
2 Barnes takes pride in what he does, in the  
3 standard that he puts in his work and he  
4 almost is hurt in the sense that he feels like  
5 our neighbors believe his standard is because  
6 of the settlement agreement, which is  
7 absolutely far from true, and he wants to  
8 prove that settlement agreement is not why I  
9 operate the way I do.

10 The protestant or the neighbors  
11 will state that there are a lot of incidents  
12 that happens at The Park and the investigative  
13 report does indicate that there has been a lot  
14 of reports. But I will bring it to your  
15 attention that we want to promote applicants  
16 or licensees to report everything and not hide  
17 it.

18 The question is not how many  
19 incidents has taken place in a place that has  
20 so many patrons going to it, but rather how  
21 did you deal with it when the incident  
22 happened? Did you hide it or did you act in

1 a correct way? And you will see that he has  
2 got no violation of any of these incidents and  
3 he has been fine.

4 I will remind you that the protest  
5 here is not the Mayor's. It's not the MPD.  
6 It's not the ANC. It's another business who  
7 is our neighbor. There are two businesses and  
8 we have business versus business. On our  
9 neighbor's side is a business who is mostly  
10 offices, who works during daytime. Our  
11 business is mainly during nighttime.

12 There is a FedEx that is  
13 downstairs that runs very close to when the  
14 nightlife is about to begin, but even FedEx  
15 has had no objection whatsoever. If anything,  
16 they actually like the plan.

17 You have heard me before say that  
18 someone with no record is to be presumed that  
19 they will do well, unless they do otherwise.  
20 Well, I think better than no record is  
21 actually a good record. And I'm here today to  
22 tell you that Mr. Barnes has had an impeccable

1 record and he has been a great operator and he  
2 asks that he renew his license and you  
3 terminate the settlement agreement. Thank  
4 you.

5 CHAIRPERSON MILLER: Thank you.

6 MR. BROWN: Madam Chairman, again,  
7 Patrick Brown from Greenstein, DeLorme and  
8 Luchs. You can't look at the two protests  
9 that my clients have filed separately. They  
10 protested, first, the renewal and they have  
11 also protested the termination of the  
12 agreement. The two are directly related and  
13 it makes sense we are proceeding here in a  
14 consolidated fashion.

15 It goes back to the origin of this  
16 license where my client, the MPD and the ANC  
17 protested the license and the end result of  
18 the withdrawal back in 2007 of those protests  
19 and the initial issuance of the license was,  
20 in fact, the voluntary agreement, as it was  
21 called then. I guess it's a settlement  
22 agreement now. And Park Place has operated

1 subject to that since then.

2 Nothing that has occurred warrants  
3 or justifies the termination of the agreement.  
4 And, in fact, the reasons why the voluntary  
5 agreement was created and why it should  
6 continue are in the record.

7 Park Place is a lot of things, but  
8 it's a large high-capacity late-hour  
9 nightclub. This is not a restaurant. This is  
10 a nightclub and I'm not saying that in a  
11 negative connotation other than we have to  
12 look at it for what it is and how it has been  
13 dealt with through the voluntary agreement.

14 And if you look at the  
15 investigative history and -- which you all  
16 have, I have prepared a summary of that  
17 investigative history, got 31 incidents of  
18 violence and that's a fact associated with  
19 this operation.

20 Most distressing would be on top  
21 of the list are four assaults against police  
22 officers, who were there specifically to

1 maintain the quiet, peace and order and Mr.  
2 Barnes spends quite a bit of money on that and  
3 it's part of his obligation under the  
4 voluntary agreement.

5           So we have to look at it in the  
6 context that this is an inherently dangerous  
7 place for which Park Place, under the terms of  
8 this voluntary agreement, has operated for an  
9 extended period of time satisfying the minimum  
10 standards of the license as well as the  
11 voluntary agreement which goes beyond that  
12 important aspect.

13           And to remove the voluntary  
14 agreement and the minimum standards that have  
15 been established for this operation, is really  
16 not justified and, in fact, will take us back  
17 to the original basis for the voluntary  
18 agreement, which is an imminent threat to the  
19 peace, order and quiet of the neighborhood and  
20 the property, particularly my clients, but the  
21 whole area. It goes beyond just my client's  
22 property.

1                   With that, I'll leave it to any  
2 Board questions and we can proceed.

3                   One thing, if I could, I gave my  
4 copy of the exhibits to your staff, so --

5                   CHAIRPERSON MILLER: Oh.

6                   MR. BROWN: -- if I can get one  
7 set back. My apologies.

8                   CHAIRPERSON MILLER: Sure.

9                   MR. BROWN: I'm too efficient.

10                  CHAIRPERSON MILLER: Okay. And  
11 now, it's time to call up the ABRA  
12 Investigator on this case, Mr. Jones. Good  
13 afternoon.

14                  INVESTIGATOR JONES: Good  
15 afternoon.

16 Whereupon,

17                  INVESTIGATOR EARL JONES  
18 was called as a witness by the ABRA Board, and  
19 having been first duly sworn, assumed the  
20 witness stand and was examined and testified  
21 as follows:

22                  CHAIRPERSON MILLER: Okay. Thank

1 you. So whenever you are ready.

2 DIRECT EXAMINATION

3 INVESTIGATOR JONES: Okay. I  
4 conducted a protest investigation at Park  
5 Place, Inc. which is located at 920 14th  
6 Street, N.W., 20005. The establishment at 920  
7 14th Street, N.W., is bounded by K Street,  
8 N.W., to the north, I Street, N.W., to the  
9 south, 13th Street, N.W., to the east and 15th  
10 Street, N.W., to the west.

11 The renewal CN License application  
12 as well as the termination of the settlement  
13 agreement for 920 14th Street, N.W., is being  
14 protested by 1400 K, LLC, which is led by  
15 designated representative Mr. John Brown.

16 Park Place, Inc. is the only ABC  
17 establishment within the 900 Block of 14th  
18 Street, N.W. However, there are 30 ABC  
19 establishments within a 1,200 foot radius of  
20 the building. Of the 30 ABC establishments  
21 within the 1,200 foot radius of the building,  
22 12 are nightclubs that also have a sidewalk

1 and/or summer garden patios.

2 The protest issues of 1400 K  
3 Company, LLC, for both renewal and termination  
4 of the settlement agreement, are adverse  
5 impact on peace, order and quiet of residents  
6 in the surrounding area, as well as real  
7 property values.

8 On March 4, 2014, I spoke with  
9 Makan Shirafkan, representation for Park  
10 Place, Inc., who stated the primary issues  
11 with the renewal license application and the  
12 termination of the settlement agreement were  
13 again the adverse impact on peace, order and  
14 quiet and real estate, real property values.

15 Mr. Shirafkan stated the owner of  
16 the nightclub has consistently worked within  
17 the parameters of his settlement agreement and  
18 has often exceeded what is asked of him to  
19 maintain a great working relationship with the  
20 surrounding tenants and businesses in the  
21 area.

22 Mr. Shirafkan stated the owner is

1 also very aware the property values of his  
2 building as well as the surrounding dwellings  
3 and continuously makes improvements to  
4 maintain and exceed these values in an effort  
5 to be consistent prior to him moving to that  
6 area.

7 Mr. Shirafkan stated that 1400 K  
8 Company, LLC stated that FedEx, who is a  
9 tenant next door, has issues with the clubs  
10 existence and regularly complains of violent  
11 activity and patrons being nuisances.

12 On March 4, 2014, I also spoke  
13 with the manager of the FedEx who stated that  
14 the business has never had issues with the  
15 club and has never complained to 1400 K  
16 Company, LLC. The manager stated that Park  
17 Place, Inc. has, in fact, brought a lot of  
18 revenue to their business by way of not only  
19 the owner, but patrons as well.

20 On March 4, 2014 -- excuse me. On  
21 March 5, 2014, I met with Mr. Marc Barnes,  
22 owner of Park Place, Inc., who similarly

1 recalled what was reported by Mr. Shirafkan,  
2 but added that within his first year of  
3 opening, the ANC promised that if he had no  
4 issues within the first renewal period, they  
5 would dismiss the settlement agreement.

6 Mr. Barnes stated that he had no  
7 issues within the settlement -- within the  
8 renewal period. However, the settlement  
9 agreement remained. Mr. Barnes also stated  
10 that 1400 K, LLC is protesting the renewal, at  
11 this point, because he would not sign-off on  
12 maintaining the settlement agreement.

13 CHAIRPERSON MILLER: Could you  
14 speak a little bit louder, please?

15 INVESTIGATOR JONES: Yes, ma'am.

16 CHAIRPERSON MILLER: I'm sorry, I  
17 missed that last line that you said.

18 INVESTIGATOR JONES: Mr. Barnes  
19 also stated that 1400 K Company, LLC is  
20 protesting the renewal, at this point --

21 CHAIRPERSON MILLER: Okay.

22 INVESTIGATOR JONES: -- because he

1 would not sign-off on maintaining the  
2 settlement agreement.

3 CHAIRPERSON MILLER: Thank you.

4 INVESTIGATOR JONES: Park Place,  
5 LLC was monitored a total of 11 times with no  
6 ABRA violations found. I monitored the area  
7 on six occasions and observed no ABRA  
8 violations. However, there was traffic  
9 specifically on the weekends, Fridays and  
10 Saturdays, during let-out times around 2:00 or  
11 3:00 in the morning, but that was during the  
12 times where valet was assisting customers to  
13 their vehicles, patrons to their vehicles and  
14 those types of things.

15 I also monitored the alleyway  
16 behind Park Place, Inc. and observed multiple  
17 patrons who were coming from other ABC  
18 establishments in the surrounding areas that  
19 were making noise to some degree, but were not  
20 committing ABRA violations.

21 As far as real property values, we  
22 do not -- as far as ABRA Investigators are

1 concerned or ABRA is concerned, we are not  
2 qualified to address the real property issues.

3 Finally, MPD Crime Analysis was  
4 not able to be provided for the calls for  
5 service for this area.

6 CHAIRPERSON MILLER: Okay. Does  
7 that conclude your testimony?

8 INVESTIGATOR JONES: Yes, ma'am.  
9 Yes, ma'am.

10 CHAIRPERSON MILLER: Okay. Are  
11 there Board questions? Mr. Short?

12 MEMBER SHORT: Good afternoon,  
13 Investigator.

14 INVESTIGATOR JONES: Yes, sir,  
15 good afternoon.

16 MEMBER SHORT: Can I infer from  
17 your testimony that the peace, order and quiet  
18 from The Park is not a detriment to the  
19 community?

20 INVESTIGATOR JONES: On the times  
21 that I observed, sir, I haven't noticed that,  
22 sir.

1                   MEMBER SHORT: Thank you. I have  
2 no further questions.

3                   CHAIRPERSON MILLER: Others? Mr.  
4 Brooks?

5                   MEMBER BROOKS: Thank you, Madam  
6 Chair. Investigator, did you have occasion to  
7 talk with the management at the FedEx at 1400  
8 K Street --

9                   INVESTIGATOR JONES: Yes, sir.

10                  MEMBER BROOKS: -- concerning Park  
11 Place?

12                  INVESTIGATOR JONES: Yes, sir.

13                  MEMBER BROOKS: And what did you  
14 learn from that?

15                  INVESTIGATOR JONES: Well, as I  
16 did state, I spoke with the manager there and  
17 the manager stated they have never had any  
18 issues with Park Place, Inc. They said matter  
19 of fact that Mr. Barnes does a lot of his  
20 business there. He brings a lot of revenue in  
21 to the establishment. She also mentioned that  
22 patrons who either are there for happy hour or

1 dinners or those types of things also use  
2 their establishment for their own purposes.  
3 So she says that it has been a win-win for  
4 them.

5 MEMBER BROOKS: Okay. Now, in  
6 talking to the protestants, did you get any  
7 indication that they felt that 1400 K or the  
8 FedEx Office had a problem with Park Place?

9 INVESTIGATOR JONES: Now, Mr.  
10 Brown was the designated -- is the designated  
11 representative for this protest. And we were  
12 kind of playing either phone tag or it was --  
13 we were both busy, but he was able to give me  
14 a statement with reference to what they are  
15 experiencing. So I didn't verbally speak with  
16 him.

17 MEMBER BROOKS: Okay.

18 INVESTIGATOR JONES: So I can't  
19 really tell you that. But I did not -- within  
20 that statement, there was nothing that stated  
21 anything about FedEx.

22 MEMBER BROOKS: Okay. Thank you,

1 Madam Chair.

2 CHAIRPERSON MILLER: Okay.

3 Others? Mr. Silverstein?

4 MEMBER SILVERSTEIN: Thank you for  
5 your report, Investigator Jones.

6 INVESTIGATOR JONES: Yes, sir.

7 MEMBER SILVERSTEIN: Did you have  
8 a chance to speak with any of the groups that  
9 had protested originally? Starting with MPD,  
10 did anybody from MPD say anything to you on  
11 any occasion about the peace, order, quiet and  
12 operations? Any particular concerns they had  
13 with this licensed establishment?

14 INVESTIGATOR JONES: I haven't --  
15 as far as this protest is concerned, no, I did  
16 not speak with MPD with reference to this  
17 protest. However, I have had cases where I  
18 was called to Park Place and spoke with MPD  
19 for -- there were efforts -- there were times  
20 where I was monitoring the establishment and  
21 MPD has always been as far as my account, MPD  
22 has never bad-mouthed them.

1                   It has always been they have a  
2                   good working relationship with Mr. Barnes.  
3                   Any time that anything happens inside, he  
4                   calls them immediately no matter how big or  
5                   how small.

6                   MEMBER SILVERSTEIN: Let me stop  
7                   you there.

8                   INVESTIGATOR JONES: Yes, sir.

9                   MEMBER SILVERSTEIN: Before you  
10                  move on to the ANC and other matters. Do --  
11                  the 31 calls, does that concern you or does  
12                  that reassure you? In other words, do you  
13                  know what I'm saying?

14                  INVESTIGATOR JONES: Yes, I know.

15                  MEMBER SILVERSTEIN: A lot of  
16                  places try to bury these things.

17                  INVESTIGATOR JONES: Yes, yes. I  
18                  think that it could go both ways. However,  
19                  from reviewing the history and kind of knowing  
20                  some of the history, if you look at the  
21                  entries, there may only be one or two that  
22                  have no action. So all of the rest, all of

1 the other ones are -- all of the 31 or 35,  
2 whatever it may be, are no further action.

3 MEMBER SILVERSTEIN: NFA?

4 INVESTIGATOR JONES: Yes, sir.

5 MEMBER SILVERSTEIN: Have you --  
6 did you have a chance to talk to the Advisory  
7 Neighborhood Commission?

8 INVESTIGATOR JONES: No, sir,  
9 because they weren't protesting.

10 MEMBER SILVERSTEIN: They were  
11 initially.

12 INVESTIGATOR JONES: Well,  
13 initially, but --

14 MEMBER SILVERSTEIN: And dropped  
15 off.

16 INVESTIGATOR JONES: -- with this  
17 one, they dropped and so it wasn't -- as far  
18 as we were concerned, they weren't someone  
19 that we would, I guess, talk to.

20 MEMBER SILVERSTEIN: How long have  
21 you known this neighborhood, seen this  
22 neighborhood?

1 INVESTIGATOR JONES: Probably --

2 MEMBER SILVERSTEIN: Actually in  
3 person.

4 INVESTIGATOR JONES: -- about --  
5 well, five years.

6 MEMBER SILVERSTEIN: Have you seen  
7 -- you are aware we have to look at 25-446 in  
8 terms of termination.

9 INVESTIGATOR JONES: Um-hum.

10 MEMBER SILVERSTEIN: And it speaks  
11 of changes in the neighborhood. Has this  
12 neighborhood changed during the period of the  
13 settlement agreement, based -- have you  
14 noticed any changes in the neighborhood,  
15 specifically additional establishments or  
16 anything of that sort that might impact on our  
17 decision?

18 INVESTIGATOR JONES: Well, and I  
19 think that is why I mentioned and that's why  
20 I made an effort to monitor behind the  
21 establishment, because there are several  
22 establishments on either side. Not on the

1 block, but on either side on K Street and on  
2 I Street and they also share an alleyway.

3 And that alleyway is kind of a  
4 thoroughfare for the three, four or five other  
5 establishments that are right in that area.  
6 And they also share parking garages on that  
7 strip. And so a lot of the activity that I  
8 have noticed, these patrons are coming from  
9 the other establishments.

10 So that's the difference that I  
11 have noticed.

12 MEMBER SILVERSTEIN: That there is  
13 more establishments. Is that what you are  
14 saying?

15 INVESTIGATOR JONES: Yes. There  
16 have been a couple more that have popped up  
17 over the time.

18 MEMBER SILVERSTEIN: It's a  
19 growing concentration?

20 INVESTIGATOR JONES: Yes, sir.  
21 Yes, sir.

22 MEMBER SILVERSTEIN: Does that

1 create any issues with peace, order and quiet?

2 INVESTIGATOR JONES: I think it  
3 would.

4 MEMBER SILVERSTEIN: So then the  
5 next question I would have is 25-446(c) "The  
6 amendment or termination will not have an  
7 adverse impact on the neighborhood where the  
8 establishment is located."

9 Is there anything regarding this  
10 termination or, you know, should we consider  
11 that type of thing that could or would have an  
12 adverse impact?

13 INVESTIGATOR JONES: I think you  
14 have to take each establishment at its own  
15 merit. That's just my opinion. I can't  
16 really go further into that. I think that if  
17 you try to penalize one establishment because  
18 of others, I think that that's an issue. But  
19 again, I can't make that call.

20 MEMBER SILVERSTEIN: Based on the  
21 merits of this licensed establishment,  
22 considering your dealings with the

1 establishment, its people, its customers and  
2 the police, where do you rank it? Is this a  
3 troubled establishment?

4 INVESTIGATOR JONES: I haven't had  
5 any issues with the establishment. I know  
6 that a couple of the entries on the history  
7 are my cases and I know that when I have gone  
8 and it has been a while since that took place,  
9 but when I have gone and I have spoken with  
10 Mr. Barnes, Mr. Barnes has always been  
11 forthcoming. He has always been very helpful.  
12 He always had video right there on the spot as  
13 soon as I got there. Anything that I needed,  
14 he was right there for me.

15 There were managers. If he wasn't  
16 there, he would have a manager talk to me and  
17 assist me in anything that I needed. So I  
18 didn't have any issues with anything that I  
19 had to get with reference to the  
20 establishment.

21 MEMBER SILVERSTEIN: So then based  
22 on the behavior and the record of the

1 licensee, you would have no hesitation? You  
2 would have no problem, I guess is the best way  
3 to put it, with it?

4 INVESTIGATOR JONES: No, sir.

5 MEMBER SILVERSTEIN: No further  
6 questions. Thank you, Investigator.

7 INVESTIGATOR JONES: Yes, sir.

8 CHAIRPERSON MILLER: Others? I  
9 just have a couple, since most of my questions  
10 have been asked. But basically, it sounds  
11 like you are pretty familiar with this  
12 establishment and I just wanted to follow-up  
13 as to, you know, how familiar are you with it?  
14 How many years have you been monitoring it?

15 INVESTIGATOR JONES: I have been  
16 employed here since 2009, so I would say  
17 shortly thereafter. And again, it is, you  
18 know, we are out at all of these places, so we  
19 become familiar with a lot of these  
20 establishments. So that's the extent of my  
21 involvement.

22 CHAIRPERSON MILLER: Okay. And

1 would it be fair to say that -- would you  
2 characterize this establishment as a good  
3 establishment having a good record?

4 INVESTIGATOR JONES: I would say  
5 as far as the -- as far as his reputation, as  
6 far as from what I understand and as far as  
7 the way that things have been handled as far  
8 as the history is concerned. Like I said, the  
9 cases that I have had, I didn't have to ask  
10 for anything. I mean, he was forthcoming with  
11 everything and always seemed to try to follow  
12 to do the right thing.

13 CHAIRPERSON MILLER: And if we  
14 assume that he has -- the establishment has a  
15 pretty good record, would you attribute any of  
16 that to the settlement agreement or could you?

17 INVESTIGATOR JONES: I think that  
18 all business owners in the District who are  
19 ABC establishments, I think that if they know  
20 they have a settlement agreement in place,  
21 that they have to be bound to it. But I also  
22 know that there are business owners that are

1 ABC establishments that they do more or go  
2 beyond what is required of them, because  
3 that's just who they are.

4 So I can't say yes or no on --  
5 that's not -- I can't make that assumption,  
6 ma'am.

7 CHAIRPERSON MILLER: Okay. Fair  
8 enough. Mr. Brooks?

9 MEMBER BROOKS: Investigator, but  
10 you also know that there are licensees with  
11 settlement agreements or voluntary agreements  
12 also continuing to have problems?

13 INVESTIGATOR JONES: Yes, sir.  
14 Yes, sir, very much so.

15 MEMBER BROOKS: Thank you, Madam  
16 Chair.

17 CHAIRPERSON MILLER: Okay. Any  
18 other Board questions? Okay. So applicant?

19 CROSS-EXAMINATION

20 MR. SHIRAFKAN: Thank you, Mr.  
21 Jones, for your time and investigative report.  
22 Just a few questions to follow-up.

1                   FedEx, do you know what their  
2 hours of operation is?

3                   INVESTIGATOR JONES: I would have  
4 to look that up, sir. Give me a second,  
5 please.

6                   MR. SHIRAFKAN: Sure.

7                   INVESTIGATOR JONES: I know that  
8 their closing hours during the week are at  
9 9:00 and I think the weekend is at 11:00, I  
10 believe. Yeah, during the week they close at  
11 9:00 and on the weekends they close at 11:00.

12                  MR. SHIRAFKAN: Is it 11:00 or  
13 6:00 p.m.?

14                  INVESTIGATOR JONES: Oh, it's  
15 11:00 p.m.

16                  MR. SHIRAFKAN: It's 11:00, okay.  
17 You mentioned that you spoke to the FedEx and  
18 they said they had no problems. In the  
19 protest, I noticed a second where it says  
20 FedEx was -- had bloodied windows. Did you  
21 ever get a chance to ask them about this  
22 comment of bloodied windows?

1                   INVESTIGATOR JONES: I did ask.  
2                   Well, I didn't specifically ask about bloodied  
3                   windows, but I asked if they have any issues  
4                   with violent activity stemming from the  
5                   establishment. The manager stated that she  
6                   was never aware of any -- the violent activity  
7                   that presented a problem for them.

8                   MR. SHIRAFKAN: You stated that  
9                   for five years you have been an Investigator  
10                  and I'm assuming during those five years,  
11                  besides Park at 14th, you have seen many other  
12                  clubs.

13                  INVESTIGATOR JONES: Um-hum.

14                  MR. SHIRAFKAN: All right. Now,  
15                  if you were to give a 1 to 10 as to the  
16                  operation of Park compared to the other clubs  
17                  that are within certain vicinity, a few  
18                  blocks, have you dealt with the other clubs?  
19                  Let me first ask that question. Have you  
20                  dealt with the other clubs in the vicinity?

21                  INVESTIGATOR JONES: Yes.

22                  MR. SHIRAFKAN: Okay.

1                   MR. BROWN: Madam Chair, I object  
2 to this question. I think it is asking for  
3 something that goes beyond the scope of his  
4 report. I mean, it's asking him to speculate  
5 about unknown clubs that none of us can deal  
6 with. And I think it's a hypothetical that  
7 doesn't lead us to anything that is  
8 productive.

9                   CHAIRPERSON MILLER: Would you  
10 like to respond to that?

11                   MR. SHIRAFKAN: Yes, absolutely.  
12 Madam Chair, we are here. The Investigator is  
13 a third-party, unbiased Investigator who  
14 stated, as a professional he has been doing  
15 this, in his opinion as to how the licensee  
16 operates or not is a complete relevant issue  
17 here.

18                   As a matter of fact, when we are  
19 judging whether a licensee is in an area where  
20 there are other clubs, too, whether this  
21 licensee is the cause of a problem or not or  
22 is he part of a solution, then it must be

1 compared with the other location  
2 establishments in the vicinity compared to  
3 what he has experienced.

4 And I'm asking him --

5 CHAIRPERSON MILLER: All right. I  
6 agree.

7 MR. BROWN: Madam Chair, I think  
8 the applicant for the license or in the  
9 termination has to stand on their own record,  
10 not in comparison, so that a determination  
11 that this establishment is better than other  
12 nightclubs is irrelevant for the applicant's  
13 burden of proof.

14 CHAIRPERSON MILLER: I'm going to  
15 overrule that. I think it is relevant as far  
16 as the Investigator's assessing whether they  
17 are a good operator. Mr. Jones?

18 MEMBER ALBERTI: Madam Chair?

19 CHAIRPERSON MILLER: Yes?

20 MEMBER ALBERTI: And this is for  
21 my clarification, Mr. Shirafkan.

22 CHAIRPERSON MILLER: Yes.

1                   MEMBER ALBERTI:  And for  
2                   clarification of the question.  What is the  
3                   vicinity that you are speaking of?

4                   MR. SHIRAFKAN:  Within --

5                   MEMBER ALBERTI:  Because you want  
6                   me --

7                   MR. SHIRAFKAN:  -- two block  
8                   radius.

9                   MEMBER ALBERTI:  -- to give this  
10                  some relevance, but I have knowledge of  
11                  establishments, but what is the vicinity we  
12                  are talking about?

13                  MR. SHIRAFKAN:  Within two or  
14                  three block radius of where Park is located.

15                  MEMBER ALBERTI:  Can we use --  
16                  could I ask that you use this 1,200 foot  
17                  radius, so that we have the list?  At least  
18                  it's fair to everybody if we have the list of  
19                  establishments --

20                  MR. SHIRAFKAN:  Absolutely.

21                  MEMBER ALBERTI:  -- that is listed  
22                  here --

1 MR. SHIRAFKAN: Absolutely.

2 MEMBER ALBERTI: -- in the protest  
3 report. Would that be fair?

4 MR. SHIRAFKAN: Yes, yes.

5 MEMBER ALBERTI: Okay. Thank you.

6 MR. SHIRAFKAN: Would you say in  
7 comparison to those clubs within the 1,200  
8 feet vicinity, would you say that -- how would  
9 you characterize Park in comparison? 1 to 10,  
10 how would you characterize Park in its  
11 operation and how it handles that?

12 INVESTIGATOR JONES: Compared to  
13 other nightclubs --

14 MR. SHIRAFKAN: Yes.

15 INVESTIGATOR JONES: -- within a  
16 1,200 foot radius?

17 MR. SHIRAFKAN: Yes.

18 INVESTIGATOR JONES: I believe  
19 that --

20 MR. SHIRAFKAN: 10 being the best,  
21 1 being the worst.

22 INVESTIGATOR JONES: -- I think

1 that I would, personally, put Park in probably  
2 one of the best categories. Only because I  
3 have dealt with several of the establishments  
4 in the surrounding area and a lot of them are  
5 violent in nature and a lot of them give us  
6 issues when we are trying to obtain  
7 information, whether it is hiding information,  
8 those types of things. And then we have to  
9 dig further to try to uncover stuff that we  
10 shouldn't have to go through in the first  
11 place. So that's the reason why I would do  
12 that.

13 MR. SHIRAFKAN: And I don't know  
14 if I missed it or not, but Park is located in  
15 what zoning? It's not in a Residential Zone.

16 INVESTIGATOR JONES: It's a  
17 Commercial Zone.

18 MR. SHIRAFKAN: Okay. You stated  
19 in your investigation that you also, note,  
20 went outside Park and listened for the noise.  
21 Was there any problem with the noise level?

22 INVESTIGATOR JONES: No. The only

1 -- again, the only noise that I experienced  
2 was vehicular traffic, specifically on the  
3 weekends, again, during the let-out times.  
4 And that was due to, you know, valet assisting  
5 patrons getting to their vehicles, those types  
6 of things. So that was primarily the noise  
7 that I experienced.

8 MR. SHIRAFKAN: And during the  
9 let-out time when you saw the valet getting  
10 patrons cars, was the valet doing what they  
11 were supposed to do? Were they getting the  
12 cars out or was there a big pile-up? Were  
13 they getting people out of the way?

14 INVESTIGATOR JONES: From what I  
15 observed, they were doing what they were  
16 supposed to do. I know that there were times  
17 were there was a pile-up, but I just assumed,  
18 you know, that that kind of comes with the  
19 territory. But for the most part, valet was  
20 doing what they were supposed to do.

21 MR. SHIRAFKAN: And when you went  
22 to the back or the front of Park, did you see

1 any problems with cleanliness, rodents or rats  
2 or anything like that?

3 INVESTIGATOR JONES: I didn't  
4 observe any trash in the area that I can  
5 recall. No, sir.

6 MR. SHIRAFKAN: All right. Let me  
7 ask you a question in regards to the  
8 investigative report for part. Now, looking  
9 at No. 5 of what you have submitted as the  
10 investigator's report, it says "sick person to  
11 hospital." Am I correct?

12 INVESTIGATOR JONES: Oh, you are  
13 talking about the history?

14 MR. SHIRAFKAN: Yes, the history.

15 INVESTIGATOR JONES: Okay. Okay.  
16 You said entry No. 5?

17 MR. SHIRAFKAN: Entry No. 5.

18 INVESTIGATOR JONES: Okay. I'm  
19 there.

20 MR. SHIRAFKAN: "Sick person to  
21 hospital."

22 INVESTIGATOR JONES: Yes, sir.

1 MR. SHIRAFKAN: All right. And in  
2 that -- let's look at 2013, for example. From  
3 2 to 7, those are entries for 2013, correct?

4 INVESTIGATOR JONES: Yes, sir.

5 MR. SHIRAFKAN: And would it be  
6 right to say that there was four disorderlies  
7 and one sick person to hospital?

8 INVESTIGATOR JONES: Yes, sir.

9 MR. SHIRAFKAN: Further, in 2012,  
10 again, we have two sick persons to hospital.

11 INVESTIGATOR JONES: Yes, sir.

12 MR. SHIRAFKAN: Now, in your  
13 investigation and in your experience, I should  
14 say, when you have dealt with investigative  
15 reports and investigative histories for  
16 various clubs, is sick person to hospital a  
17 usual thing that people call the police for?

18 INVESTIGATOR JONES: It depends on  
19 severity of the patron. But 9 times out of  
20 10, what happens is they try to quickly usher  
21 that sick person out and just put them out on  
22 the street or if they have a friend with them,

1 they quickly try to gather up the friend and  
2 try to get them out of the establishment.

3 MR. SHIRAFKAN: During -- since  
4 2007 until now, looking at your investigative  
5 history, do you see any violation of the  
6 voluntary agreement or the settlement  
7 agreement?

8 INVESTIGATOR JONES: Not that I  
9 Can recall. I think that for the most part,  
10 I mean, in 2007 there was -- it appears that  
11 they were saying that it was an after hour  
12 situation, but that was dismissed by the OAG.  
13 And the rest of them are either sick person to  
14 the hospital, disorderlies or assaults, simple  
15 assaults.

16 MR. SHIRAFKAN: Are you aware if  
17 the nightclubs within 1,200 feet vicinity that  
18 we are talking about, how many of them have a  
19 settlement agreement?

20 INVESTIGATOR JONES: I'm not aware  
21 right off-hand how many have them, so I  
22 couldn't give you that number.

1 MR. SHIRAFKAN: No further  
2 questions.

3 MEMBER SILVERSTEIN: Mr. Brown.

4 CHAIRPERSON MILLER: Oh, ready?  
5 Okay. Mr. Brown? Thank you.

6 MR. BROWN: Investigator Jones,  
7 thank you .

8 INVESTIGATOR JONES: Yes, sir.

9 MR. BROWN: You have observed this  
10 establishment for five years, correct?

11 INVESTIGATOR JONES: Yes, sir.  
12 Yes, sir.

13 MR. BROWN: And during that five  
14 year period, at all times the voluntary  
15 agreement or settlement agreement has been in  
16 place and operative?

17 INVESTIGATOR JONES: Yes, sir.

18 MR. BROWN: So based on that, you  
19 have no basis for judging the -- what would be  
20 the impactful result of Park Place's  
21 operations without the voluntary agreement?

22 INVESTIGATOR JONES: That's

1 correct.

2 MR. BROWN: I think that's all the  
3 questions I have. Thank you.

4 INVESTIGATOR JONES: Um-hum.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: May I ask  
7 quickly?

8 CHAIRPERSON MILLER: Do you have a  
9 follow-up? Board questions?

10 MEMBER ALBERTI: Just a follow-up  
11 question. Investigator Jones, thank you for  
12 your report.

13 INVESTIGATOR JONES: Yes, sir.

14 MEMBER ALBERTI: How familiar  
15 would you say you are with the vehicular  
16 traffic and parking in and around the  
17 surrounding area of this establishment?

18 INVESTIGATOR JONES: I am pretty  
19 familiar.

20 MEMBER ALBERTI: All right. From  
21 your duties as an Investigator?

22 INVESTIGATOR JONES: Yes, yes,

1 sir.

2 MEMBER ALBERTI: Okay. So I want  
3 to ask you, there is a condition in the  
4 voluntary agreement which requires the  
5 establishment to contract for parking.

6 INVESTIGATOR JONES: Yes, sir.

7 MEMBER ALBERTI: So my question is  
8 here today, with such a requirement, and I'm  
9 not ask you to judge how effective it is  
10 really, but just would such a requirement be  
11 irrelevant today or is there at least some  
12 need?

13 INVESTIGATOR JONES: With  
14 reference to parking?

15 MEMBER ALBERTI: Yes.

16 INVESTIGATOR JONES: I think it  
17 is, just because of the vicinity of where the  
18 establishment is. You are looking at an area  
19 that is primarily office space. You have some  
20 residential in the area, but it's primarily  
21 office space. And a lot of the office space  
22 is being utilized by nightclubs and

1 restaurants in that area on the lower levels,  
2 on the first levels and with that, you need  
3 parking.

4 There is, you know, nowhere to  
5 park because 14th Street is a very busy  
6 street, as well as K and I Streets, N.W. So  
7 I think that you do need to have that parking  
8 in place.

9 MEMBER ALBERTI: Okay. Thank you.

10 INVESTIGATOR JONES: Yes, sir.

11 MEMBER ALBERTI: I have no other  
12 questions.

13 INVESTIGATOR JONES: Yes, sir.

14 MEMBER ALBERTI: Thank you very  
15 much, Investigator.

16 CHAIRPERSON MILLER: Mr.  
17 Silverstein?

18 MEMBER SILVERSTEIN: One follow-  
19 up, Mr. Jones. Again, thank you for your  
20 responses. You said that you would put the  
21 licensee among the best clubs in the area.  
22 But you also said that it was an easy choice,

1 because a lot of the other clubs are somewhat  
2 violent in nature. Is that -- am I  
3 characterizing what you said?

4 INVESTIGATOR JONES: That's --

5 MEMBER SILVERSTEIN: Or that there  
6 is some violence.

7 INVESTIGATOR JONES: -- a fair  
8 assessment, yes. There are other reasons, but  
9 because he asked me compared to and what the  
10 other establishments do, that was the reason  
11 that I gave because of the surrounding  
12 establishments and the activity that has  
13 happened there.

14 MEMBER SILVERSTEIN: They are a  
15 good establishment, but the best of a bad lot  
16 as well at times?

17 INVESTIGATOR JONES: Yes, yes.

18 MEMBER SILVERSTEIN: The other  
19 places the bad lot, they close later?

20 INVESTIGATOR JONES: Close about  
21 the same time, sir.

22 MEMBER SILVERSTEIN: There is not

1 a difference in closing time?

2 INVESTIGATOR JONES: If so, it's  
3 an hour.

4 MEMBER SILVERSTEIN: Pardon?

5 INVESTIGATOR JONES: If so, it's  
6 an hour difference.

7 MEMBER SILVERSTEIN: Would that --  
8 might that, or is this just pure speculation,  
9 have something to do with the difference in  
10 behavior of the crowds?

11 INVESTIGATOR JONES: No, I don't  
12 think so.

13 MEMBER SILVERSTEIN: Okay. Okay.  
14 Thank you very much.

15 INVESTIGATOR JONES: Yes, sir.

16 MEMBER SILVERSTEIN: No further  
17 questions.

18 CHAIRPERSON MILLER: Yes, Mr.  
19 Short?

20 MEMBER SHORT: Yes. And again, I  
21 would be remiss if I didn't thank you also for  
22 your service and your testimony today.

1 Investigator Jones, you testified that FedEx,  
2 which is a neighbor --

3 INVESTIGATOR JONES: Yes, sir.

4 MEMBER SHORT: -- and another  
5 business in the general vicinity or close by,  
6 are you familiar with the ANC, the Advisory  
7 Neighborhood Commissioners in that area?

8 INVESTIGATOR JONES: No, sir.

9 MEMBER SHORT: Are you familiar  
10 with any of the community groups or business  
11 groups in the area, other than the FedEx?

12 INVESTIGATOR JONES: No, sir.

13 MEMBER SHORT: Just nightclubs or  
14 the ABC establishments?

15 INVESTIGATOR JONES: Yes, sir.

16 MEMBER SHORT: Okay. Thank you.

17 That's all I have.

18 CHAIRPERSON MILLER: Okay. Any  
19 other Board questions? Any follow-up on Board  
20 questions?

21 MR. BROWN: Can I --

22 CHAIRPERSON MILLER: Yes, Mr.

1 Brown?

2 MR. BROWN: -- follow-up? In  
3 comparing in the 1,200 foot radius that other  
4 -- just the other nightclubs, Park Place is  
5 the largest as far as capacity. Isn't that  
6 correct within the 1,200 foot radius?

7 INVESTIGATOR JONES: I would  
8 probably say so, yes, sir.

9 MR. BROWN: And then looking at  
10 the investigative history, and if you go  
11 through it, I don't want to belabor it, but I  
12 put together a summary and there have been  
13 quite a few, there have been four assaults  
14 against police officers. From your  
15 perspective as an Investigator, do you  
16 consider those serious incidents?

17 INVESTIGATOR JONES: I find that  
18 to be a very serious problem.

19 MR. BROWN: And assault with an  
20 intent to kill --

21 CHAIRPERSON MILLER: Mr. Brown? I  
22 just want to say that it's supposed to be a

1 follow-up on the Board questions. Was there  
2 a Board question that was --

3 MR. BROWN: Well, okay. I think  
4 I'm following up on his earlier testimony and  
5 comments that were made in his testimony where  
6 in response to Mr. Shirafkan who was trying to  
7 go through and quantify or qualify the  
8 investigation.

9 CHAIRPERSON MILLER: It's a  
10 follow-up on the Board's question though? So  
11 if you want to finish one question, otherwise,  
12 it's -- that's what this is limited to.

13 MR. BROWN: I think I have made my  
14 point --

15 CHAIRPERSON MILLER: Okay. You're  
16 finished?

17 MR. BROWN: -- sufficiently.

18 CHAIRPERSON MILLER: All right.  
19 All right. Thank you.

20 MR. SHIRAFKAN: If I may ask a  
21 follow-up. The question was asked in regards  
22 to whether you think the voluntary agreement

1 or settlement agreement has any bearing on the  
2 good behavior or not. My question to you is  
3 are you familiar with this voluntary  
4 agreement? Have you looked at it?

5 INVESTIGATOR JONES: I have looked  
6 at it, yes.

7 MR. SHIRAFKAN: Okay. Does this  
8 voluntary agreement say that Park has to have  
9 camera surveillance?

10 INVESTIGATOR JONES: No.

11 MR. SHIRAFKAN: This voluntary  
12 agreement does not give any number of security  
13 that Park needs to have, correct?

14 INVESTIGATOR JONES: Not required,  
15 no.

16 MR. SHIRAFKAN: As a matter of  
17 fact, this voluntary agreement has nothing  
18 that requires Park to have MPD detail on every  
19 night that they are open.

20 INVESTIGATOR JONES: No.

21 MR. SHIRAFKAN: This voluntary  
22 agreement doesn't give any duties to clean the

1 sidewalk in front of the building?

2 INVESTIGATOR JONES: No. There is  
3 provision with reference to, I believe, trash  
4 and those types of things, but no. What you  
5 are saying specifically, no.

6 MR. SHIRAFKAN: No further  
7 questions.

8 CHAIRPERSON MILLER: Okay. All  
9 right. Thank you very much.

10 INVESTIGATOR JONES: Thank you.

11 CHAIRPERSON MILLER: It's an  
12 excellent report. Okay.

13 (Whereupon, witness was excused.)

14 CHAIRPERSON MILLER: So we now  
15 turn to the applicant.

16 MR. SHIRAFKAN: Yes.

17 CHAIRPERSON MILLER: Okay.

18 MR. SHIRAFKAN: If we could have  
19 Mr. Barnes, please?

20 Whereupon,

21 MARC STEVEN BARNES

22 was called as a witness by Counsel for the

1 Licensee, and having been first duly sworn,  
2 assumed the witness stand and was examined and  
3 testified as follows:

4 CHAIRPERSON MILLER: Okay. Thank  
5 you.

6 DIRECT EXAMINATION

7 MR. SHIRAFKAN: Mr. Barnes, would  
8 you, please, again identify yourself for the  
9 record?

10 MR. BARNES: Marc Steven Barnes,  
11 owner of Park, The Park at 14th Nightclub.

12 MR. SHIRAFKAN: Mr. Barnes, how  
13 long have you been in the night life business?

14 MR. BARNES: 23 years.

15 MR. SHIRAFKAN: Have you ever been  
16 asked to testify as an expert witness, because  
17 of your role in experience?

18 MR. BARNES: I have.

19 MR. SHIRAFKAN: Have you ever been  
20 asked to be a consultant on how to operate and  
21 do certain operations for other people?

22 MR. BARNES: I have.

1 MR. SHIRAFKAN: Has it been within  
2 the District of Columbia?

3 MR. BARNES: It has.

4 MR. SHIRAFKAN: Outside the  
5 District?

6 MR. BARNES: All over the world.

7 MR. SHIRAFKAN: Okay. You opened  
8 Park in 2007, correct?

9 MR. BARNES: I did.

10 MR. SHIRAFKAN: And as of today  
11 that you operate -- first, let me ask you what  
12 time do you close at nighttime or early  
13 morning, I should say?

14 MR. BARNES: Well, our license  
15 says that we can close on weekdays at 3:00 in  
16 the morning and on weekends at 4:00. And we  
17 set it up like that so that, in fact, we could  
18 -- if the crowds were too heavy sometimes, we  
19 would stagger them out to let them out, you  
20 know, moderately, so in fact that the valet  
21 wouldn't get overrun and so forth like that.  
22 So I mean, we usually shut the music down at

1 about 1:50 on weekdays and then Friday and  
2 Saturday 2:50. And, you know, we get the  
3 people out of there according to, you know,  
4 how they get out. I guess you can say, you  
5 know, as smoothly as possible. And we monitor  
6 that.

7 MR. SHIRAFKAN: What kind of  
8 events and crowds do you have at Park?

9 MR. BARNES: There is basically  
10 nothing we don't -- we have done Inaugural  
11 Balls. We do catering events for everybody  
12 that works for the Convention Center, that  
13 works for -- I mean, you know, people that do  
14 conventions or all types of law firms, for  
15 Mayoral campaigns, for Black Caucus. We have  
16 got Microsoft events planned for this summer  
17 when they come in town. And we do night life.

18 Anything that we can do, we do do.

19 MR. SHIRAFKAN: Okay. Would you  
20 describe your operation as inherently  
21 dangerous or disruptive to your community?

22 MR. BARNES: In no way, shape or

1 form. I'm sorry, if you want to live in a  
2 neighborhood where there is no noise and no  
3 quiet, but there is no one living there, there  
4 is -- this isn't a place where I have  
5 neighbors.

6 MR. SHIRAFKAN: You mean  
7 residential?

8 MR. BARNES: Residential  
9 neighbors. I have business neighbors who not  
10 once have we ever gotten a complaint that you  
11 are interrupting our business. Not even from  
12 1400 K.

13 MR. SHIRAFKAN: In 2007 when you  
14 came to 14th Street and you started Park, what  
15 other -- how many other clubs were there?

16 MR. BARNES: I believe, at that  
17 time, there was Lima and Lotus. Lotus was  
18 there before us also.

19 MR. SHIRAFKAN: Would you say  
20 since 2007 to today, the dynamic of 1400 and  
21 I, that corridor has substantially changed?

22 MR. BARNES: Not just that. The

1 dynamic of the city was changed. But, yes,  
2 definitely right there.

3 MR. SHIRAFKAN: How would you  
4 describe to me from 2007 until now, how has  
5 the dynamic of that area changed?

6 MR. BARNES: It's very vibrant.  
7 First of all, before I came there, when I came  
8 to my building, there were a minimum of 300  
9 rats in that building and the whole back alley  
10 was filled with rats and rodents. I mean, it  
11 was -- my wife wouldn't come in the building.  
12 She was like I can't come in. And the whole  
13 back alley and so forth. I'll never --  
14 remember the restaurant Siroc moving in behind  
15 us probably about four years ago and they said  
16 how come there are no rats in this alley? I  
17 said because I clean it every day.

18 I buy the rat poison. I do not  
19 only my alley, but the four alleys around and  
20 both parks. We got in trouble for doing the  
21 park over at McPherson Square. They said we  
22 couldn't take over rat control there.

1                   MR. SHIRAFKAN: Do you -- well,  
2 while we are on the subject of cleaning, what  
3 is your policy on cleanliness and cleaning?

4                   MR. BARNES: How about this? The  
5 District of Columbia and USDA uses my kitchen  
6 for their studies and so forth and their films  
7 that are on Channel 13. And that's because of  
8 what we do. We are the only place -- every  
9 vendor that I have says that I'm the only  
10 account after going in the kitchen that they  
11 will eat at.

12                  MR. SHIRAFKAN: And your  
13 cleanliness, is it to inside and outside your  
14 building?

15                  MR. BARNES: It's everything. We  
16 shampoo our carpets every single night.

17                  MR. SHIRAFKAN: Do you still have  
18 valet parking agreement with the valet  
19 company?

20                  MR. BARNES: I do and there is no  
21 reason that you would never not have a valet  
22 company, because it's the type of cliental

1 that we do. Plus, I make money. I generate  
2 money off of the valet parking company. So  
3 why would I ever want to get rid of valet?

4 MR. SHIRAFKAN: MPD, let me ask  
5 you. You hired -- you have MPD Detail?

6 MR. BARNES: Yes.

7 MR. SHIRAFKAN: Is that correct?  
8 Why? Why do you hire MPD Detail?

9 MR. BARNES: Intoxicated people  
10 listen to the badge. They do. And even then  
11 you sometimes have a problem getting them. We  
12 beg people to drink. It's our job to take  
13 care of them and to control every situation  
14 out there. Everybody can say oh, well, you  
15 can't control them and this, that and the  
16 other. It's not our fault people drink. You  
17 can't tell how much they are going to drink.  
18 It doesn't matter. Still our job -- because  
19 we lose patrons if things happen to them.

20 Again, if you lost a patron and  
21 doubled that every month for 30 months, you  
22 would lose a billion patrons. So people don't

1 realize that that's how you keep people and  
2 that's how you keep businesses existing.

3 MR. SHIRAFKAN: Okay. What's your  
4 policy on reporting events to MPD?

5 MR. BARNES: Well, first of all,  
6 we have a customer care assist situation that  
7 we put out back. So there are some people who  
8 get reactions to alcohol, because of medicine.  
9 Some people who pregame before they come to  
10 your place. There is all types of reasons  
11 that they could end up in customer care.

12 So first of all, we take everybody  
13 to customer care that we realize that -- you  
14 know, we see somebody stumbling and it  
15 sometimes becomes a bit of a hassle, because  
16 people don't want to go there. We got it. We  
17 got it. We got her. We're going to watch her  
18 instead of that we want to take them there.  
19 We want to reevaluate who we keep and we  
20 overspend. We spend \$250 a night, every night  
21 that we are open on an EMT.

22 So the person can look at --

1                   MEMBER SILVERSTEIN: How much do  
2 you spend?

3                   MR. BARNES: -- an EMT, you know,  
4 the --

5                   MEMBER SILVERSTEIN: How much do  
6 you spend?

7                   MR. BARNES: We spend \$250 a night  
8 on that.

9                   MEMBER SILVERSTEIN: You have one  
10 there every night?

11                   MR. BARNES: Every single night.  
12 Every single night. And nobody has required  
13 us to do this. This isn't in any voluntary  
14 agreement or anything like that. I created  
15 that. We care about our patrons. Again, and  
16 a lot of times we want the right kind, type of  
17 patron in there.

18                   Now, I own probably one of the  
19 only venues out here that under no  
20 circumstances do I want a party bus, because  
21 a party bus is people drinking before they get  
22 to your place. That's the worst -- that is

1 what is destroying night life, party buses.

2 So we don't allow them for any  
3 reason. We try to deter them. Now, of  
4 course, everybody says well, it's us trying to  
5 be responsible, because everybody wants to say  
6 well, we are not drinking when we leave the  
7 venue -- I mean, driving when we leave the  
8 venue.

9 But the fact of the matter is is  
10 that what you are doing is inviting a gang.  
11 There are already so many gangs that we have  
12 to -- and I'm sorry, that's what I call people  
13 that come to the clubs. The first thing that  
14 happens is I don't allow my security to be a  
15 gang. And that's what happens at 90 percent  
16 of places out there. Their security becomes  
17 a gang.

18 Their people. I got your back.  
19 You got me covered. Da, da, da, da, this and  
20 the other. Every situation that I deal with,  
21 I separate the people. I'm talking about my  
22 people. I don't want to hear from two people

1 and they can give their story and that. I  
2 want to know what truly happened.

3 There have been instances where  
4 some of the people that I have had have been  
5 somewhat of the problem, because they don't  
6 recognize something and you have to recognize  
7 those type of people. So you have to make it  
8 a constant situation where you are  
9 reevaluating who works for you. Constantly,  
10 because they get comfortable and so forth.  
11 And I constantly do that.

12 They don't run me like in most  
13 nightclubs and most places. I run my  
14 security.

15 The second gang is when the bus or  
16 the groups of people -- well, if 40 people  
17 come to your place, they have got as many  
18 people as you do security. So you have got to  
19 say if I allow this bus in here, and everybody  
20 knows it, we all got them, you've got a  
21 cousin, a brother, somebody who has never been  
22 out drinking, who doesn't know how to handle

1 the alcohol and the first thing the brother or  
2 sister or someone says, that's my brother.  
3 And they are out of control.

4           These people, I don't want to deal  
5 with them. I don't want it to be more of a  
6 gang in there, so we try. It's already Sweet  
7 Sixteen. I mean, it's the NCAA Championship  
8 now. So last week we had UVA, so, of course,  
9 the thing we've got to watch out, don't let  
10 UVA end up being against someone else.

11           And we controlled that perfect  
12 event. We loved it. It worked well. But  
13 again, if you -- you have seen it in the  
14 movies. When the sailors, they all went to  
15 one place together, it was the Air Force or  
16 these guys, it was a gang.

17           And so there's so many different  
18 gangs. Now, I'm glad that D.C. doesn't seem  
19 to be a gang city, but in actuality we do. I  
20 have even seen the police become their own  
21 gang. It doesn't matter if one of them is  
22 wrong, that's my man, don't do it. It gets

1 out of control.

2 And what I try to explain to  
3 people is that you have got to pay attention  
4 to all of these things, so that people don't  
5 become he is right because he works for me.  
6 That's not right and you have to constantly go  
7 at your people. I teach a class every day an  
8 hour before my people go to work and I promise  
9 you, they learn more in that class than they  
10 have anywhere else.

11 MR. SHIRAFKAN: Let me pause you  
12 here --

13 MR. BARNES: Yes, I'm sorry.

14 MR. SHIRAFKAN: -- this is very  
15 passionate, as the Board and we all know, but  
16 I just want to get through some of these.

17 Do you know -- actually, let me --  
18 if I can show you, and this is where if you  
19 have an objection, application Exhibit 5. I  
20 have the numbers for what has been spent last  
21 year. Mr. Barnes' accountant is actually  
22 here, too, but he can attest to these numbers.

1 And I think if I can just show it to him of  
2 whether these numbers reflect what he spent  
3 last year or if --

4 MR. BARNES: And I'm under oath  
5 and anything -- I promise you I am not going  
6 to --

7 MR. BROWN: But, Madam Chair, I  
8 object to -- and it is No. 5 as being  
9 inherently misleading. It is titled -- one,  
10 it's not titled anything having to do with the  
11 name of the organization, but it's a title up  
12 at the top "Expenses January/December 2013."  
13 And it is trying to give you a rundown of  
14 costs. And then in the security down below,  
15 if you are not paying close attention, his  
16 largest single entry is for cameras \$145,000,  
17 which then he discretely references as since  
18 2007 and then that number appears in the total  
19 security costs.

20 So he is not giving -- he is  
21 basically doubling his -- the real numbers and  
22 it's misleading. If you -- let me finish. If

1 you factor out 2007 numbers, let's say you  
2 come into some less figure, \$10,000 a year or  
3 \$20,000 a year rather than the \$145 there, it  
4 dramatically changes his costs and it's  
5 misleading. So --

6 CHAIRPERSON MILLER: I think --

7 MR. BROWN: -- I think if he is  
8 going to present something meaningful and we  
9 can't -- you know, whereas security camera  
10 costs --

11 CHAIRPERSON MILLER: Okay.

12 MR. BROWN: -- \$150,000 in the  
13 first year to install them.

14 CHAIRPERSON MILLER: I think what  
15 he was going to do, Mr. Brown, is have his  
16 witness address the costs and explain them and  
17 then you can have a chance to cross-examine on  
18 those.

19 MR. BROWN: But I don't think we  
20 ought to start with a document that is  
21 inherently misleading.

22 CHAIRPERSON MILLER: I --

1 MR. BROWN: But I made my point --

2 MR. SHIRAFKAN: Madam Chair?

3 MR. BROWN: -- for the record.

4 CHAIRPERSON MILLER: Okay.

5 MR. SHIRAFKAN: If I may also,  
6 actually, the Board can give it the weight  
7 that it deserves.

8 CHAIRPERSON MILLER: True.

9 MR. SHIRAFKAN: And since 2007,  
10 you can allocate out of that \$140 -- \$10,000  
11 last year, but it's just an idea. I mean, we  
12 are not hiding anything. I just want to  
13 introduce these numbers into exhibit and the  
14 Board is more than -- more than likely you can  
15 ask questions or you can give it the weight  
16 that it has, based on these numbers.

17 These numbers are just to give you  
18 an idea of what he has spent. That's all.

19 CHAIRPERSON MILLER: Are you going  
20 to have Mr. Barnes attest to that?

21 MR. SHIRAFKAN: Yes, I was going  
22 to ask him in regards to -- how these numbers

1 reflect.

2 CHAIRPERSON MILLER: Okay.

3 MR. SHIRAFKAN: Mr. Barnes, I'm  
4 showing you what I have premarked as  
5 Applicant's No. 5 and we reviewed this prior  
6 to coming here. I just want you to look at  
7 this document again and tell me whether these  
8 are the numbers that reflect what your  
9 business has spent on cleaning and security  
10 for 2013, except for cameras, since 2007 until  
11 now or 2013.

12 MR. BARNES: And I must say no,  
13 they are not. And they are not because I  
14 spend a minimum of \$9,000 a week, a week, on  
15 security of people that work. Now, these are  
16 outside expenses, but this doesn't include the  
17 \$9,000 a week that my security payroll does  
18 have. So that's another \$450,000 a year and  
19 that isn't in here.

20 MR. SHIRAFKAN: All right. So --

21 MR. BROWN: Madam Chairman, I  
22 renew my objections to -- then the document

1 here is even more misleading.

2 CHAIRPERSON MILLER: And we don't  
3 know yet, because I don't think he is  
4 finished.

5 MR. BROWN: Well, he just said --

6 MR. BARNES: This is -- I think he  
7 was saying this is outside of --

8 MEMBER ALBERTI: Wait, wait, wait,  
9 just a moment. Just a moment. There is an  
10 objection. The witness is not --

11 MR. BARNES: Okay.

12 MEMBER ALBERTI: -- allowed to  
13 speak during the objection. I'm sorry.

14 CHAIRPERSON MILLER: Okay. I'm  
15 going to overrule the objection for now and  
16 see where this goes.

17 MR. SHIRAFKAN: Mr. Barnes, the  
18 number that you just mentioned is in addition  
19 to these numbers?

20 MR. BARNES: Yes. That is the  
21 payroll number of security.

22 MR. SHIRAFKAN: So is this your

1 understanding that this document is at least  
2 minus the \$9,500 -- \$9,000 a week that you  
3 spend at the minimum, this is what, to your,  
4 knowledge, you have spent on these?

5 MR. BARNES: Yes, sir.

6 MR. SHIRAFKAN: Cleaning and  
7 security?

8 MR. BARNES: Yes, sir. And that--

9 MR. SHIRAFKAN: Thank you. And  
10 you would like to add that in addition to  
11 this, you spend \$9,000 a week on security?

12 MR. BARNES: Yes. And I just want  
13 to clarify that the camera system at least  
14 \$15,000 of that at a minimum was last year in  
15 upgrading. We have added a minimum of 10  
16 cameras every year for every year that we have  
17 been open. And we still want to add more  
18 even. And we go to the end of the blocks now,  
19 so that we can see everything on the street  
20 with the cameras.

21 MR. SHIRAFKAN: And why do you  
22 have so many cameras?

1                   MR. BARNES: Well, first of all,  
2 anybody that works for me or in the place that  
3 comes in the place, like when people are  
4 looking for their purse or their coat gets  
5 stolen or something like that, you know, we  
6 always find a nook and cranny that we didn't.  
7 But when I tell you it saves me so much money  
8 and the word spreads so quick, don't do it in  
9 there, there is a camera there, there is a  
10 camera there.

11                   I have been in the office and  
12 actually what we do, I can pull my cameras up  
13 on my phone. We show people and we can show  
14 the police right out front what happened,  
15 because now we can rewind on the phone, on the  
16 cameras and that's why we spend so much more  
17 on the cameras. And that's what -- it just --  
18 when I tell you money, time and everything, it  
19 just saves everything.

20                   MR. SHIRAFKAN: Madam Chair, I  
21 move to enter App 5 into the exhibits. As was  
22 stated, these are funds that have been spent

1 for cleaning and security.

2 CHAIRPERSON MILLER: Okay. I just  
3 have a question based on -- I think I missed  
4 what he said. And so that's why I'm going to  
5 ask it.

6 MR. BARNES: Okay.

7 CHAIRPERSON MILLER: What is this?  
8 Where did these expenses come from? Did you  
9 say something about payroll? I didn't --

10 MR. BARNES: Well, the only thing  
11 I don't have on here is -- the only thing that  
12 isn't in here -- well, one of the things that  
13 isn't in here is the security payroll, because  
14 it does have security on here.

15 CHAIRPERSON MILLER: Okay. But  
16 what was the purpose of this? Where did it  
17 come from? Who prepared it?

18 MR. BARNES: Renee Stevens. She  
19 is my CFO.

20 CHAIRPERSON MILLER: Your CFO  
21 prepared this?

22 MR. BARNES: And these are --

1       pardon me?

2                   CHAIRPERSON MILLER:   And why did  
3       he prepare it?

4                   MR. BARNES:   She repaired it.

5                   CHAIRPERSON MILLER:   She?

6                   MR. BARNES:   Prepared it.   She  
7       prepared it because it shows that I go over  
8       and beyond --

9                   CHAIRPERSON MILLER:   For purposes  
10      of this hearing.   Okay.

11                  MR. BARNES:   For purposes of this  
12      hearing, yes.   Well, I mean, she has all of  
13      these already, but she prepared this document  
14      for this hearing, yes.

15                  CHAIRPERSON MILLER:   Okay.   Based  
16      on records that she had from you?

17                  MR. BARNES:   Yes.

18                  MR. SHIRAFKAN:   This is records  
19      that she has?

20                  MR. BARNES:   Yes.

21                  CHAIRPERSON MILLER:   Okay.   Mr.  
22      Brown, any other final?

1                   MR. BARNES: Well, I renew my  
2 objection to it being entered. It is mixing  
3 apples and oranges and he is kind of making  
4 numbers up outside the document. The document  
5 should either be accurate and something the  
6 Board can assess or it should be -- should not  
7 be admitted into the record.

8                   And Mr. Barnes has testified to  
9 what he argues is the real situation, not what  
10 is presented on the document.

11                   CHAIRPERSON MILLER: Okay.

12                   MR. SHIRAFKAN: Mrs. Chairman, if  
13 you would like, I can have Mr. Barnes read  
14 these numbers and we don't have to submit this  
15 document into evidence.

16                   CHAIRPERSON MILLER: No. Let's --

17                   MR. SHIRAFKAN: And he can just  
18 say what -

19                   CHAIRPERSON MILLER: No, that's  
20 okay. I understood him to say that they were  
21 accurate and then there were additional  
22 expenses that he elaborated on. So I don't

1 find that it's prejudicial and I find it is  
2 relevant. So I'm going to accept it. Is this  
3 going to be called Applicant's Exhibit 1 or 5?

4 MR. SHIRAFKAN: It's No. 5  
5 actually.

6 CHAIRPERSON MILLER: 5.

7 MR. SHIRAFKAN: Yes.

8 CHAIRPERSON MILLER: Okay.

9 (Whereupon, the document marked as  
10 Applicant Exhibit 5 was received  
11 in evidence.)

12 CHAIRPERSON MILLER: Okay.

13 MR. SHIRAFKAN: Mr. Barnes, you  
14 talked about security and you talked about  
15 cleaning. So let me go on to this issue that  
16 has been brought up in regards to your  
17 investigative history.

18 And on this assault on police  
19 officers, do you know what these are about or  
20 what happened?

21 MR. BARNES: I can address most  
22 things, but an assault on a police officer can

1 be anything from someone being too  
2 intoxicated, which is one or two of those, and  
3 them saying I don't want to, you know, be  
4 arrested and everything and they push the  
5 officer.

6 I remember another one was people  
7 that we wouldn't let into the venue and the  
8 people were out of hand. Are we going to get  
9 that in my place, that's because we are going  
10 to deny entry to at least 200 people a night.  
11 That's part of the problem of being popular,  
12 being good at what you do. Everyone doesn't  
13 fit.

14 And again, like I tell people, our  
15 dress code isn't based on a particular item,  
16 because there are people that don't look good  
17 or shouldn't be in our place that come in in  
18 suits and there are people that do look good  
19 and should be in our place that come in in T-  
20 shirts.

21 So our dress code says it's not  
22 based on a particular item, but actually

1 execution of style, which there are some  
2 people that can go I've got a friend who can  
3 wear jeans and tennis shoes anywhere he wants  
4 and he looks great. And they want him in  
5 there and they love him.

6 And then I've got other people who  
7 I wouldn't -- I've got people who I grew up  
8 with that just don't belong in a nightclub.

9 MR. SHIRAFKAN: Okay. Let me ask  
10 you in regards to tax on the building. Do you  
11 know has your tax and the value of that  
12 property, has it gone up or down since 2007?

13 MR. BARNES: It has gone up. As a  
14 matter of fact, I think the correct number is  
15 the assessment was \$.3 million. No, \$5.7  
16 million last year and the new assessment is  
17 \$8.3 million. So there has been no decline in  
18 property value.

19 MR. SHIRAFKAN: The settlement  
20 agreement that you have asked to terminate,  
21 why do you want the settlement agreement  
22 terminated?

1                   MR. BARNES: I have got a number  
2 of reasons. First of all, the only reason  
3 that I actually did a settlement agreement was  
4 the first time, because we had spent a year  
5 and a half building the place. And it came up  
6 last minute. The ANC, everybody was fine with  
7 it. And then there was a police officer in  
8 the ANC meeting that said well, I don't know.

9                   And he said -- and the Board  
10 recognized him and brought him up and  
11 everything. And he said I have seen drugs in  
12 your place. Well, the first thing, anybody  
13 who knows me I would be doing twice as good as  
14 I am doing right now and I don't know that  
15 that is always good, if I didn't -- if I  
16 weren't Mr. Anti-drug.

17                   And saying that is that I turn --  
18 I don't turn my head to people doing drugs.  
19 We had a problem. Actually, in this business,  
20 it's a big drug business. I'm sorry. It just  
21 is. And it's very prevalent in the night  
22 life. I don't allow it.

1                   And because I don't allow it, a  
2 lot of people don't come, because they can't  
3 get drugs. They want alcohol. They want  
4 drugs. I don't even like shots. If I were on  
5 the Board, there wouldn't be shots. I don't  
6 understand why the next morning you want to  
7 not remember what you did last night. I have  
8 never understood that.

9                   And that's all a shot does to you.  
10 Let's take shots. 21 shots, it's your  
11 birthday. To me, I think it's crazy.

12                   MR. SHIRAFKAN: Let me keep you  
13 focused on -- we've got to watch our time. On  
14 the settlement agreement --

15                   MR. BARNES: Okay.

16                   MR. SHIRAFKAN: -- are there  
17 elements of the settlement agreement that you  
18 feel that are burdensome financially to you or  
19 as a burden to your business, the way you do  
20 business?

21                   MR. BARNES: Well, I would never  
22 let my daughter sign a prenuptial.

1                   MEMBER ALBERTI: Pardon? What was  
2 that?

3                   MR. BARNES: I would never let my  
4 daughter sign a prenuptial. I'm good at  
5 heart. And this is where they are keeping me  
6 under kind of like a leash for some reason  
7 when no one else around there even -- first of  
8 all, I feel like, and I apologize to anyone  
9 who takes offense to this, it was only because  
10 I was a black guy coming in there.

11                   No one else in the neighborhood  
12 had ever been protested. No one else has a  
13 voluntary agreement. Marc Barnes comes, he is  
14 black, all of a sudden he has got a voluntary  
15 agreement. I didn't understand that.

16                   When, in fact, the other  
17 nightclubs -- if you go to a night life,  
18 meaning, if you go to any of these places,  
19 they look up to me, because they know I am the  
20 standard. I am what everyone wants to be.  
21 Everybody -- anybody who leaves my place can  
22 get a job the next day, because they worked

1 for the hardest guy.

2 P. Diddy, he said anybody he fires  
3 you take them, because after someone works for  
4 me, you worked for the best. And I don't mean  
5 to sound cocky, but I care. I care more than  
6 anyone out there. And that is just me. And  
7 no voluntary agreement is going to make me do  
8 anything more. It could never compare to what  
9 I want to do, how I want to do things.

10 When I put planters out front,  
11 those planters cost me \$17,000, that's not  
12 free, the awning out front. What it did for  
13 14th Street, it's a landmark. That thing cost  
14 \$80,000 for an awning.

15 MR. SHIRAFKAN: Let me ask you, on  
16 the way here you were telling me that with the  
17 security guards, am I correct that you -- if  
18 you have patrons who are not sober, you  
19 provide cab service for them?

20 MR. BARNES: Yes, I do.

21 MR. SHIRAFKAN: Is that something  
22 that is in your voluntary agreement?

1 MR. BARNES: No, it's not.

2 MR. SHIRAFKAN: All right. I have  
3 asked this from the Investigator, but I'll ask  
4 from you, too. The police detail that you  
5 provide, is that part of the voluntary  
6 agreement?

7 MR. BARNES: No, it's not.

8 MR. SHIRAFKAN: The cameras you  
9 put up, are those part of it?

10 MR. BARNES: No.

11 MR. SHIRAFKAN: What you do for  
12 cleaning and security, is that the standard  
13 that this settlement agreement requires you to  
14 do?

15 MR. BARNES: No.

16 MR. SHIRAFKAN: If the settlement  
17 agreement is terminated, will you drop the  
18 standard that you have?

19 MR. BARNES: I not only -- I am  
20 really hurt because we are neighbors. And I  
21 have tried to be a good neighbor, that's what  
22 I am, I'm a good neighbor. I don't want to --

1 I've got a neighbor that lives next to me that  
2 is terrible.

3 We were getting some work done on  
4 our house and he was on a stopwatch. They  
5 need to stop. They need to start. I was  
6 trying to make it less days, but I conformed.  
7 The fact of the matter is I always want -- I  
8 clean up my neighborhood by my house. I  
9 follow people in my neighborhood that  
10 shouldn't be in my neighborhood, that's my  
11 standard.

12 I clean their area, not because I  
13 have to. I can take pictures, oh, they are  
14 dirty, this, that and the other. That's a  
15 cleaning thing. People pee on all of the  
16 buildings around there. I pay the guy every  
17 night to take buckets of soap and water and  
18 pour it on every building everywhere somebody  
19 is peeing. Who does that?

20 MR. SHIRAFKAN: Bringing your  
21 attention to the voluntary agreement, there is  
22 a few items that I just want to mention to you

1 and see whether these items, you think, are  
2 hindrances on your business.

3 One of the requirements says that  
4 you can't allow patrons after certain times.  
5 Is that something that hinders your business?

6 MR. BARNES: Well, the fact of the  
7 matter is we usually don't allow patrons after  
8 1:30 or 2:30. But I can -- I have the legal  
9 right to go until 4:00.

10 Now, if they wanted to, they could  
11 put somebody out front and say hey, there is  
12 two people and they said they -- you broke  
13 your voluntary agreement. Why? My cousin may  
14 come in. Someone may come in from out of  
15 town. Artists come in all the time.  
16 Sometimes they want to stop by. I have had  
17 all kinds of people in there from Congress  
18 people -- I remember we were too full one  
19 night and I didn't want to let this  
20 Congresswoman in and she -- when -- I tell you  
21 she fought me.

22 I ask people that were coming out,

1 I said is it too full? She said it is. I  
2 mean, the people said they are. She was like  
3 I want to go in. I said I can't let you in.  
4 We are letting people in as they come out to  
5 keep the number correct.

6 The fact of the matter is it's  
7 that I don't just let people in late or  
8 whenever or anything. I care about my  
9 business myself. You don't have to tell me  
10 don't let people in late, because they start  
11 drinking at 2:30, they don't want to leave  
12 until 4:00. My people want to go home. They  
13 have been there all night.

14 I don't want to -- I don't go  
15 outside the rules. My rules are much more  
16 stringent, like I said, than any voluntary  
17 agreement than most of the rules in here.

18 MR. SHIRAFKAN: The voluntary  
19 agreement or settlement agreement also asks  
20 that you be the sole owner and that you cannot  
21 sell this property without going through  
22 consent of 1400 K. Is that something that is

1       burdensome?

2                   MR. BARNES:  That -- everybody I--  
3       can you imagine somebody telling you you can't  
4       sell your house unless you come ask us as your  
5       neighbor first?  That is ridiculous.  That's  
6       absurd.  I've got to go get permission.  I may  
7       have somebody that want to close next week,  
8       not that I'm in the business of selling, but  
9       what I'm saying is whatever I choose to do, I  
10      should be able to do.  It's my business.

11                   Again, I had a friend who had sons  
12      who were disturbing to their neighborhood.  I  
13      broke those sons down more than she did  
14      because I -- her neighbor had complained to  
15      me, because he knew what type of person I am.  
16      I'm not just going to sell it to some idiot on  
17      the street or I'm not in that bad of a  
18      financial situation that I need to sell.

19                   MR. SHIRAFKAN:  In regard to the  
20      valet there was a question asked.  Now, do you  
21      have valet because of the settlement  
22      agreement?  I know you said you have one now,

1 but -- and you had a financial gain, too. But  
2 does this settlement agreement have anything  
3 to do with you keeping the valet?

4 MR. BARNES: No. I -- as a matter  
5 of fact, the valet company that is there, I  
6 helped them get started and I have helped them  
7 get into a number of places. It is  
8 beneficial, too, all night life places want  
9 valet parking. They do.

10 MR. SHIRAFKAN: And do you know  
11 off the top of your hand -- your head, I'm  
12 sorry, how many employees you have total?

13 MR. BARNES: 100. We are  
14 somewhere between 113 and 130. It fluctuates.

15 MR. SHIRAFKAN: I don't have any  
16 further questions.

17 CHAIRPERSON MILLER: Okay. Mr.  
18 Brown?

19 CROSS-EXAMINATION

20 MR. BROWN: Mr. Barnes, have you  
21 attempted to enter into negotiations with my  
22 client to amend the voluntary agreement?

1                   MR. SHIRAFKAN:  Objection.  If we  
2                   can restrict it, because my understanding is  
3                   anything that has got to do with any  
4                   settlement discussions or thereof are not  
5                   discussable.  And I just want to ge straight  
6                   on what are we exactly asking here.

7                   CHAIRPERSON MILLER:  Okay.  Let me  
8                   explain.  Certainly the substance, but for  
9                   termination, the statute provides that the  
10                  applicant seeking the amendment has made a  
11                  diligent effort to locate all other parties to  
12                  the settlement agreement and it says if non-  
13                  applicant parties are located, the applicant  
14                  has made a good faith attempt to negotiate a  
15                  mutually acceptable amendment to the  
16                  settlement agreement.

17                  MR. SHIRAFKAN:  I'm fine as long  
18                  as it's within that.

19                  CHAIRPERSON MILLER:  That's right.  
20                  So don't -- no substance of what was  
21                  negotiated.

22                  MR. BROWN:  No.  And I'm just

1 asking --

2 MR. SHIRAFKAN: Yes.

3 CHAIRPERSON MILLER: Okay.

4 MR. BARNES: I actually have. I  
5 think no agreement would be better for you all  
6 than anything that you have got presently.

7 MR. BROWN: So again, your concept  
8 of --

9 MR. BARNES: Is no agreement.

10 MR. BROWN: -- negotiating is no  
11 agreement?

12 MR. BARNES: No agreement.

13 MR. BROWN: And so you are  
14 unwilling to discuss the specific terms of an  
15 amended agreement?

16 MR. BARNES: Under no  
17 circumstances do I think there should be an  
18 agreement. I asked you all to give -- to have  
19 a settlement agreement with me and you said  
20 for what reason? And I say the same thing.

21 MR. BROWN: Could I pick up on a  
22 point you said. You are opposed to, you know,

1 the serving of -- or consumption of shots is  
2 not a good idea?

3 MR. BARNES: Yes, I do.

4 MR. BROWN: Okay. You still sell  
5 shots?

6 MR. BARNES: I sell shots, because  
7 I can't put myself out of business.

8 MR. BROWN: All right. And just  
9 put in terms I can understand. I want a shot  
10 of Jack Daniels.

11 MR. BARNES: Yes, sir.

12 MR. BROWN: How much would you  
13 charge for that?

14 MR. SHIRAFKAN: Objection.

15 MR. BARNES: I honestly don't know  
16 the actual --

17 CHAIRPERSON MILLER: What's the  
18 relevance?

19 MR. BROWN: Well, because he has  
20 indicated, one, that he doesn't have an  
21 inherently dangerous business. Two, but he  
22 has also indicated that he spends all this

1 money in security and then he gave us a  
2 description of the danger of serving large  
3 quantities of shots to people.

4 So there is a direct link between  
5 his willing to engage in conduct that he  
6 considers dangerous and his profit. And I  
7 think it is -- you know, he is saying I spend  
8 all this money on security. Well, he is also  
9 making all this money, which, quite frankly,  
10 his security is there as a result of allowing  
11 this inherently dangerous activity by his own  
12 admission, selling large numbers of shots to  
13 people. So I'm trying to quantify it.

14 MR. BARNES: I used the same  
15 concept --

16 CHAIRPERSON MILLER: Wait. So the  
17 question is how much does he charge for a  
18 shot?

19 MR. BROWN: Well, what I'm trying  
20 to do is I'm going to ask him what his profit  
21 is on a single shot, because --

22 CHAIRPERSON MILLER: Okay. That's

1 the --

2 MR. BROWN: -- he has made a point  
3 of saying that he thinks that's a dangerous  
4 unsafe activity that -- and as a result of  
5 that dangerous unsafe activity, he has also  
6 testified about his level of security, the  
7 fact that he has to have an EMT on duty  
8 whenever he is open.

9 So the Board needs to make a  
10 balancing in judging what he is doing and  
11 again he is in the nightclub business, which  
12 again --

13 CHAIRPERSON MILLER: Okay.

14 MR. BROWN: -- we understand that.  
15 But at the same time, he is claiming that he  
16 is doing all these security things. Where, in  
17 fact, he is protecting himself and being a  
18 good businessman at great profit. So I'm  
19 trying to quantify that, because --

20 CHAIRPERSON MILLER: So the  
21 question is now what profit does he make from  
22 selling shots? Per shot?

1 MR. BROWN: I'm trying to quantify  
2 it.

3 CHAIRPERSON MILLER: I know.

4 MR. SHIRAFKAN: Madam Chair?

5 CHAIRPERSON MILLER: Is that the  
6 question?

7 MR. BROWN: Yes.

8 CHAIRPERSON MILLER: Then is there  
9 an objection?

10 MR. SHIRAFKAN: I would still  
11 object, because, one, in regards to the  
12 numbers, we never said it's the percentage of  
13 whether he spends 1 percent of his profit on  
14 security or he spends 99 percent of it. So we  
15 never quantify what that number is in  
16 comparison to what he makes per year, first of  
17 all.

18 Secondly, if the counsel is trying  
19 to say that Mr. Barnes said he is not -- he  
20 doesn't like shots or he thinks it's bad, but  
21 yet he sells it, we can admit to that. But  
22 how much profit he makes, whether it is \$1 or

1       \$100 doesn't go to Mr. Barnes selling it or  
2       not selling it.

3                   He will admit that he sells shots,  
4       that's -- I don't see the point of this number  
5       having any relevance to --

6                   MR. BROWN:   Madam Chair, Mr.  
7       Barnes was quite boastful about --

8                   CHAIRPERSON MILLER:   I --

9                   MR. BROWN:   -- the number of shots  
10      he sells.

11                  CHAIRPERSON MILLER:   Right.

12                  MR. BROWN:   And he does it --

13                  CHAIRPERSON MILLER:   Okay.  If I  
14      allow that question though, are you going to  
15      go into what's this profit on --

16                  MR. BROWN:   No, no, no.

17                  CHAIRPERSON MILLER:   -- all these  
18      other things?

19                  MR. BROWN:   No.  I'm just --

20                  CHAIRPERSON MILLER:   You just want  
21      to know his profit on the shots?

22                  MR. BROWN:   Yeah.

1 MR. BARNES: But I didn't say I  
2 didn't sell shots because they weren't  
3 dangerous.

4 MR. SHIRAFKAN: I know. Do we  
5 have the rule? My objection, obviously, still  
6 remains.

7 MEMBER ALBERTI: Well, Madam  
8 Chair, even if we have the question, I'm  
9 having difficulty with the clarity of the  
10 question, because what do you mean by profit?  
11 I mean, profit can be composed of a lot of  
12 different things. So I don't think -- first  
13 of all, I don't think the question is very  
14 clear.

15 CHAIRPERSON MILLER: Yes, right.

16 MEMBER ALBERTI: I happen to  
17 disagree with you. I don't think we should  
18 allow it, because I don't think it's relevant.

19 CHAIRPERSON MILLER: Okay. Right.

20 MEMBER ALBERTI: But I also don't  
21 think it's a very clear question. I don't  
22 know what you go into -- I don't know what

1 this question is factoring into the cost --

2 CHAIRPERSON MILLER: I know, but  
3 he --

4 MEMBER ALBERTI: -- and so it  
5 would be irrelevant. Even the answer would be  
6 irrelevant, if we had it.

7 CHAIRPERSON MILLER: Right.

8 MEMBER ALBERTI: So I don't think  
9 we should allow it.

10 CHAIRPERSON MILLER: Wait. Mr.  
11 Jones has his hand up.

12 MEMBER JONES: I think it's a bit  
13 early to speculate into what relevance or not  
14 relevance in terms of the answer to the  
15 question, because we didn't get one. And two,  
16 the question itself was very clear. It was  
17 how much do you charge for a shot? I don't  
18 think there is any ambiguity or lack of  
19 clarity in that question. There was just no  
20 response to that.

21 We don't know where he was going  
22 with this line of questioning.

1                   MEMBER ALBERTI: I thought the  
2 question was what's the profit?

3                   MEMBER JONES: He could only  
4 object to the question. The question that was  
5 asked --

6                   CHAIRPERSON MILLER: I thought  
7 that --

8                   MEMBER JONES: -- specifically was  
9 what do you charge for a shot?

10                  MEMBER ALBERTI: You are right.  
11 We are still on how much do you charge.

12                  MEMBER JONES: Exactly.

13                  MEMBER ALBERTI: That's the  
14 question at hand.

15                  MEMBER JONES: All right. So  
16 let's just -- if we can --

17                  MEMBER ALBERTI: Let's do that  
18 question first.

19                  MEMBER JONES: -- focus on that.

20                  MEMBER JONES: But we still  
21 haven't had a ruling on the --

22                  CHAIRPERSON MILLER: Because I

1 didn't --

2 MEMBER JONES: -- objection.

3 CHAIRPERSON MILLER: -- understand  
4 that to be the question. Is that the  
5 question? What --

6 MR. BROWN: Well, that was my  
7 initial question.

8 MEMBER ALBERTI: That was your --  
9 yeah.

10 MEMBER JONES: Sir, was that your  
11 initial question?

12 MR. BROWN: Yes.

13 MEMBER JONES: Thank you very  
14 much.

15 MR. BROWN: And then I specified  
16 just for clarify purposes a shot of Jack  
17 Daniels.

18 MR. BARNES: I do not --

19 CHAIRPERSON MILLER: Wait a  
20 second. I didn't rule on it yet. But I think  
21 we are spending a lot of time on a question  
22 that probably is not --

1 MR. SHIRAFKAN: I'll withdraw --

2 CHAIRPERSON MILLER: -- very  
3 relevant.

4 MR. SHIRAFKAN: -- my objection in  
5 regards to how much the shot costs, as long as  
6 it is not going to go further, then that's  
7 fine.

8 CHAIRPERSON MILLER: So you are  
9 not objecting to that question?

10 MR. SHIRAFKAN: No, that's fine.

11 CHAIRPERSON MILLER: All right.  
12 What is -- what does a shot cost?

13 MR. BARNES: I can honestly tell  
14 you I don't drink and I haven't had a drink in  
15 31 years. I don't know what a shot of Jack  
16 Daniels costs. I don't -- I don't. And I  
17 would imagine that it was somewhere between  
18 \$11 and \$15 a shot.

19 CHAIRPERSON MILLER: Okay.

20 MR. BROWN: And are you able to  
21 quantify the cost to your establishment for  
22 serving that shot of Jack Daniels?

1 MR. BARNES: I --

2 MR. BROWN: If you go into  
3 Starbucks and you buy a tall latte and  
4 Starbucks is as good a businessman as you are,  
5 they can tell you exactly what the cost to put  
6 that cup of coffee in front of you is. Can  
7 you -- well, can you do that?

8 MR. BARNES: When you factor in  
9 everything that you have or do you want to  
10 know just the shot versus the buying of  
11 alcohol?

12 CHAIRPERSON MILLER: This is going  
13 to be the last answer. Go ahead.

14 MR. BROWN: Okay. No, your total  
15 cost.

16 MR. BARNES: Am I putting  
17 everything else into it? Am I putting the  
18 food that I sell into it also, because  
19 everything that I sell, I don't sell because  
20 it is one shot. I sell it based on the fact  
21 sometimes if you buy dinner, your shots are  
22 \$5. If you do what -- do something else, if

1 you buy -- I don't know. I mean, I don't know  
2 how to quantify it.

3 MR. BROWN: Well, keep it simple.

4 CHAIRPERSON MILLER: Now, Mr.

5 Brown, this really is not --

6 MR. BARNES: I would say --

7 CHAIRPERSON MILLER: -- helpful, I  
8 don't believe, to the Board's evaluation.

9 MR. BROWN: Well --

10 CHAIRPERSON MILLER: We understand  
11 that --

12 MR. BARNES: And it depends on the  
13 -- who is --

14 CHAIRPERSON MILLER: Right. We  
15 understand that --

16 MR. BARNES: I'm sorry.

17 CHAIRPERSON MILLER: -- he is  
18 making a profit. We understand that, you  
19 know, and that he is selling shots.

20 MR. BROWN: I'm trying to quantify  
21 that, because he has quantified the profit and  
22 the costs that he has incurred and there is an

1 upside to it. He is not incurring those costs  
2 to lose money.

3 CHAIRPERSON MILLER: Okay. But he  
4 doesn't have a detailed expense statement with  
5 respect to what he is paying for each shot.

6 MR. BROWN: I'll move on.

7 CHAIRPERSON MILLER: Okay. Go  
8 ahead. Thank you.

9 MR. BROWN: And I'm done with my  
10 questioning of Mr. Barnes.

11 CHAIRPERSON MILLER: Okay.

12 MR. BROWN: I'm done.

13 CHAIRPERSON MILLER: Oh, you're  
14 done?

15 MR. BROWN: Yes.

16 CHAIRPERSON MILLER: Okay. Board  
17 questions?

18 MEMBER ALBERTI: I guess I'll  
19 start.

20 CHAIRPERSON MILLER: Okay.

21 MEMBER ALBERTI: Good afternoon,  
22 Mr. Barnes.

1 MR. BARNES: Good afternoon.

2 MEMBER ALBERTI: All right. You  
3 are not going to like what I have to tell you  
4 right now.

5 MR. BARNES: All right.

6 MEMBER ALBERTI: You have a  
7 voluntary agreement.

8 MR. BARNES: Yes, sir.

9 MEMBER ALBERTI: And I am here --  
10 whether you like it or not, you've got it.  
11 You agreed to it. And I'm here looking at the  
12 law, so I have to evaluate whether things have  
13 changed to a degree that would make this  
14 irrelevant or make certain conditions in it  
15 irrelevant. All right?

16 How you feel about having it, is  
17 something I can't really take into account  
18 legally. I mean, that's just the way it is.  
19 All right?

20 What I am concerned about is the  
21 relevance of some of the things in here. All  
22 right? And you spoke to -- I'll go right to

1 the first thing you spoke to is about the  
2 times you let people in.

3 And you told us that, well, yeah,  
4 I don't let people in because that's -- I  
5 mean, there are reasons you would want to let  
6 people in, but since this agreement was  
7 signed, what changes have occurred that would  
8 make you want to be able to have the leeway to  
9 let someone in at 2:00? I mean, you can stay  
10 open until 3:00, so what would -- what has  
11 changed that would warrant you to have that  
12 leeway?

13 MR. BARNES: Everything from there  
14 are nights that we go on holiday seasons until  
15 4:00. What has changed is that I don't feel  
16 like I have proven that I'm just as good as  
17 everyone else out there and no one else in  
18 that neighborhood -- there isn't a  
19 neighborhood there. There is no one that I'm  
20 ever disturbing. I'm not disturbing them  
21 ever.

22 Voluntary agreements, to my

1 understanding, are made so -- because --

2 MEMBER ALBERTI: Okay.

3 MR. BARNES: Oh, I'm sorry.

4 MEMBER ALBERTI: Let me help you  
5 out.

6 MR. BARNES: I'm sorry.

7 MEMBER ALBERTI: Has the law  
8 changed since then? Since you signed this  
9 voluntary agreement, have we had new laws that  
10 allow establishments to stay open later on  
11 certain days?

12 MR. BARNES: Yes.

13 MEMBER ALBERTI: All right. Do  
14 you have new competition?

15 MR. BARNES: Yes.

16 MEMBER ALBERTI: There is since  
17 then.

18 MR. BARNES: Yes, I do.

19 MEMBER ALBERTI: Do you know if  
20 your competition lets people in until 1:45  
21 sometimes?

22 MR. BARNES: And I may be hurting

1 myself, I'm not even going to look at my  
2 lawyer, but it doesn't matter whether they are  
3 letting in people at 1:45, I'm still not going  
4 to let the people in that they let in at 1:45.

5 MEMBER ALBERTI: I understand  
6 that. But do you have knowledge --

7 MR. BARNES: I am going to  
8 regulate --

9 MEMBER ALBERTI: -- of their  
10 operations?

11 MR. BARNES: I have -- I'm there.

12 MEMBER ALBERTI: No. Of the other  
13 establishments.

14 MR. BARNES: Oh, yes, I have.

15 MEMBER ALBERTI: Still letting?  
16 Is that new competition letting people in?

17 MR. BARNES: Yeah, they do.

18 MEMBER ALBERTI: Okay.

19 MR. BARNES: They let people in  
20 after 3:00.

21 MEMBER ALBERTI: I'll ignore that  
22 comment.

1 MR. BARNES: Okay.

2 MEMBER ALBERTI: But we are not  
3 getting names. All right.

4 MR. BARNES: Right. We're not  
5 giving any names.

6 MEMBER ALBERTI: All right. Is  
7 there a higher volume of nightclub and tavern  
8 traffic in this neighborhood since you moved  
9 in?

10 MR. BARNES: Oh, in the whole  
11 city. Yes, sir.

12 MEMBER ALBERTI: Okay.

13 MR. BARNES: Yes.

14 MEMBER ALBERTI: Okay. So  
15 notifying your neighbors of -- 24 hours in  
16 advance of when you are going to have a large  
17 event might be superfluous, because there is  
18 going to be lots of people there anyway. Am  
19 I correct?

20 MR. BARNES: Yes.

21 MEMBER ALBERTI: Your voluntary  
22 agreement says you have to notify them if you

1 are going to have a large event, 24 hours  
2 ahead of time.

3 MR. BARNES: Right.

4 MEMBER ALBERTI: And I wonder how  
5 necessary that is given the current atmosphere  
6 of the number of clubs we have there.

7 MR. BARNES: Right.

8 MEMBER ALBERTI: So you would say  
9 -- so would you consider it to be superfluous  
10 just because there is going to be a large  
11 crowd on the street anyway?

12 MR. BARNES: I apologize about my  
13 ignorance, but I don't understand --

14 MEMBER ALBERTI: Do you think it  
15 would be --

16 MR. BARNES: -- the term  
17 superfluous.

18 MEMBER ALBERTI: -- not necessary  
19 just because --

20 MR. BARNES: Oh, okay.

21 MEMBER ALBERTI: -- there is going  
22 to be a large crowd on the street anyway. So

1 whether you told them or not, it wouldn't give  
2 them any help.

3 MR. BARNES: Right.

4 MEMBER ALBERTI: All right. Thank  
5 you. I know these are leading questions. All  
6 right. So we already -- I asked the  
7 Investigator about parking. I got the sense  
8 from you, but I'll let you address this, that  
9 there is a need for -- well, can you explain  
10 to me why there would no longer be a need for  
11 parking or would there always be a need for  
12 you to provide parking?

13 MR. BARNES: There is always a  
14 need. I need the parking. I need the valet  
15 parking.

16 MEMBER ALBERTI: Okay. There is a  
17 limit on your sidewalk cafe.

18 MR. BARNES: We don't even -- we  
19 have the ability to put tables out there. We  
20 have never been over more than six people out  
21 front.

22 MEMBER ALBERTI: It really doesn't

1 matter to you then whether it is here or not?

2 MR. BARNES: What, the --

3 MEMBER ALBERTI: The limit on the  
4 12 patrons outside?

5 MR. BARNES: That out front, no,  
6 it doesn't.

7 MEMBER ALBERTI: Okay.

8 MR. BARNES: But it may. It may.  
9 I may -- if I decide to put in this -- this  
10 year, as a matter of fact, we are doing more  
11 food now. And it may take -- you know, when  
12 the summer comes, we may put more people out  
13 there or we may come to ask the Board. Again,  
14 it's just --

15 MEMBER ALBERTI: So let me ask you  
16 about that. Do you have a Public Space permit  
17 for a sidewalk cafe?

18 MR. BARNES: Yes.

19 MEMBER ALBERTI: And it is how  
20 large?

21 MR. BARNES: It's the front area  
22 that we have covered up out front.

1                   MEMBER ALBERTI: I mean, do you  
2 know whether the --

3                   MR. BARNES: The Public Space  
4 permit is 12 people.

5                   MEMBER ALBERTI: It's 12 people.

6                   MR. BARNES: Right.

7                   MEMBER ALBERTI: Okay. All right.  
8 Is there room for more or you just requested  
9 12?

10                  MR. BARNES: It really isn't. It  
11 really isn't.

12                  MEMBER ALBERTI: All right. Good.

13                  MR. BARNES: But who knows, you  
14 may -- we may get something like Pearl Dive.  
15 Is that what it's called on 14th Street, where  
16 they have the bar out front? And we may want  
17 to do something like them eventually. But  
18 then I've got to go ask my neighbors for  
19 permission.

20                  MEMBER ALBERTI: Is that kind of  
21 competition coming to your neighborhood? Is  
22 it there now?

1 MR. BARNES: It's there.

2 Everything is there and I mean it is changing  
3 the city's culture. Everything about the city  
4 is changing so quickly.

5 MEMBER ALBERTI: I know that, but  
6 you need to articulate it for me.

7 MR. BARNES: I mean, like you  
8 said, there were three of us when I went in  
9 there. Now, there are, what did he say, 31.  
10 I don't know. 30.

11 MEMBER ALBERTI: All right. So --

12 MR. BARNES: Toro Toro opens this  
13 week.

14 MEMBER ALBERTI: All right. So  
15 there are going to be some questions, I'm  
16 going to have for the protestants about some  
17 of these issues, but I don't need to ask you  
18 about. But just in general, is there anything  
19 else that I haven't asked you about that you  
20 think is not necessary in this voluntary  
21 agreement, because of the current atmosphere  
22 of the competition, the neighborhood,

1       whatever?

2                       MR. BARNES: I just don't feel  
3       like any of it is necessary. If I'm a -- my  
4       daughter got a restricted license when she was  
5       16. She was good for six months. She did  
6       what she was supposed to do. They gave her a  
7       regular license. Now, if she gets a ticket or  
8       an amount of points, then they will take it  
9       away. But they don't have to watch her every  
10      day. They have got the point system.

11                      We have got the point system here.  
12      I don't need a restricted license to say, hey,  
13      you can only drive to 12:00. I have proven I  
14      have done good.

15                      MEMBER ALBERTI: Okay. I  
16      understand. I hear you. Okay. Thank you very  
17      much. I have no further questions.

18                      CHAIRPERSON MILLER: Mr.  
19      Silverstein?

20                      MEMBER SILVERSTEIN: Okay. Thank  
21      you. Mr. Barnes, thank you for being here.  
22      Let's go through the 25-446. Tell us in your

1 own words what has changed in the neighborhood  
2 since you signed this? What, beyond your  
3 control, that should persuade us that the  
4 voluntary agreement is unfair to you or  
5 imposes an undue burden upon you? What  
6 changes have done that?

7 MR. BARNES: Well, just so you  
8 know, I lost \$100,000 just one time when I had  
9 to go ask for permission and I didn't have --  
10 not that they wouldn't have given it to me,  
11 but I didn't realize that I had to ask for  
12 permission to stay open until 4:00 and the  
13 Board denied. They said well, you have to go  
14 through -- I thought, you know, voluntary  
15 agreement said as long as everybody else was  
16 open. So I lost two or three events.

17 MEMBER SILVERSTEIN: So you are  
18 saying that changed in the law that allowed  
19 the 4:00 a.m. --

20 MR. BARNES: Yes.

21 MEMBER SILVERSTEIN: -- closure --

22 MR. BARNES: Yes.

1                   MEMBER SILVERSTEIN:  -- has  
2                   changed since that and has created an undue  
3                   burden upon you  --

4                   MR. BARNES:  Well, it  --

5                   MEMBER SILVERSTEIN:  -- in terms  
6                   of the competition?

7                   MR. BARNES:  We send in a thing  
8                   and they send in a thing saying we would like  
9                   that to be changed to whatever time it is.  
10                  But how many of those have to come up and what  
11                  will change in the future that will say oh,  
12                  you have to do this or you have to do that or  
13                  if you have a voluntary agreement, and that's  
14                  what the Board says.

15                  The first thing they say, if you  
16                  have a voluntary agreement  --

17                  CHAIRPERSON MILLER:  Right.

18                  MR. BARNES:  -- you have to go and  
19                  make sure that that doesn't work.  Well, I  
20                  don't  --

21                  MEMBER SILVERSTEIN:  Okay.

22                  MR. BARNES:  -- want  -- yes, sir.

1                   MEMBER SILVERSTEIN: Thank you.  
2                   Tell us why this determination will not have  
3                   an adverse impact on the neighborhood. If we  
4                   were to eliminate these protections to the  
5                   neighborhood, which is how they are viewed or  
6                   were viewed when they were brought in, why  
7                   would this not have an adverse impact if they  
8                   were eliminated?

9                   MR. BARNES: Because of the type  
10                  of operator and person that I am.

11                  MEMBER SILVERSTEIN: Talk about  
12                  your actions rather than your --

13                  MR. BARNES: I'm the cleanest  
14                  person. I go over and beyond. I don't clean  
15                  their neighborhood, their area. Again, I have  
16                  explained it. I don't go throw water on the  
17                  buildings where people from all the clubs pee  
18                  on all the buildings. I don't go clean the  
19                  alleys two blocks over because it's in my  
20                  voluntary agreement. I don't care about other  
21                  clubs.

22                  I don't -- when I walk through

1 other clubs and I'm in them all the time, I  
2 don't pick up trash in their club because I  
3 have got a voluntary agreement. They are my  
4 competition.

5 MEMBER SILVERSTEIN: Okay.

6 MR. BARNES: I still don't want a  
7 battle. That's they type of person I am. I  
8 wanted to be better. I am really upset  
9 because I think that this hurts us as  
10 neighbors. Like I don't want it to be like  
11 oh, we will get him on something. Now, he  
12 beat us. I'm not that type of person. I want  
13 to be friends. I want to be best friends with  
14 my neighbors. I want to do bigger things and  
15 better things.

16 MEMBER SILVERSTEIN: Did you  
17 contact the people who were on the voluntary  
18 agreement and inform them of your intention to  
19 terminate the voluntary agreement?

20 MR. BARNES: Yes, I did. The ANC  
21 and the ANC said they thought it wasn't fair.  
22 They said they thought, if you read their

1 letter and I'm sure you have, that he go over  
2 and beyond. If I'm already going over and  
3 beyond, what more is it that you want? I'm  
4 going over and beyond not because I have a  
5 voluntary agreement, but because I care.

6 MEMBER SILVERSTEIN: So you  
7 offered to meet with the ANC and they felt it  
8 was an undue burden and --

9 MR. BARNES: Yes.

10 MEMBER SILVERSTEIN: Did you offer  
11 to meet with the protestants?

12 MR. BARNES: Well, I did meet with  
13 them.

14 MEMBER SILVERSTEIN: Did they --  
15 they asked to meet with you and you did, in  
16 fact, meet with them?

17 MR. BARNES: We met right here.  
18 We met with them before and we met in here.

19 MEMBER SILVERSTEIN: Did you  
20 negotiate any terms to the agreement? Were  
21 there any things that they said that they had  
22 to live with -- that they had to have?

1                   MR. BARNES: No, because I didn't  
2 feel like I should have any type of agreement  
3 period. There is no reason for me to have a  
4 restriction.

5                   MEMBER SILVERSTEIN: So did you  
6 then not negotiate with them?

7                   MR. BARNES: I didn't. I didn't  
8 negotiate to say that it would be okay if I  
9 had this. I didn't feel -- I was 100 percent  
10 feeling I don't need any type of agreement.  
11 If they are in my neighborhood and they say  
12 hey, Marc, we want you to paint the front of  
13 your building it looks ugly, I'm going to  
14 paint it. I'm going to make it -- if there is  
15 anything wrong.

16                   MEMBER SILVERSTEIN: Okay.

17                   MR. BARNES: They don't need an  
18 agreement. I'm a good neighbor. I painted  
19 their fence when I went there, because it was  
20 -- it is ugly now. I want to repaint it. I  
21 just didn't want to get in a fight about all  
22 this stuff.

1                   MEMBER SILVERSTEIN: So again, to  
2                   make it clear, you did not negotiate with them  
3                   on these matters?

4                   MR. BARNES: I didn't.

5                   MEMBER SILVERSTEIN: Okay. I have  
6                   no further questions.

7                   CHAIRPERSON MILLER: Okay. Mr.  
8                   Short?

9                   MEMBER SHORT: Good afternoon, Mr.  
10                  Barnes.

11                  MR. BARNES: Hello.

12                  MEMBER SHORT: Mr. Barnes, you  
13                  apparently are a good community person. You  
14                  are cleaning the alleys. You are cleaning the  
15                  front. You are keeping the rats down. Do you  
16                  pay your taxes on time?

17                  MR. BARNES: Ah, not always.  
18                  There has been times I've been in trouble, but  
19                  I think I pay -- let's put it this way. Since  
20                  I have been in business at Park, they have  
21                  paid over \$10 million towards the city's  
22                  taxes. Now, and have been times when we have

1       been up and down? Yes. And it happens to the  
2       biggest businesses.

3                   MEMBER SHORT: Okay. Now --

4                   MR. BARNES: If somebody lent me a  
5       billion, I would be out of trouble and well on  
6       my way right now, too.

7                   MEMBER SHORT: Okay.

8                   MR. BARNES: You know, but a lot  
9       of that that I owe is penalty.

10                  MEMBER SHORT: Okay. Well, let me  
11       ask you this question. The ANCs who are  
12       elected Government officials --

13                  MR. BARNES: Um-hum.

14                  MEMBER SHORT: -- they have no  
15       problems with your business?

16                  MR. BARNES: No, sir.

17                  MEMBER SHORT: They were a part of  
18       the original agreement, voluntary agreement?

19                  MR. BARNES: Yes, yes, sir.

20                  MEMBER SHORT: They now see no  
21       need for it?

22                  MR. BARNES: No need.

1                   MEMBER SHORT: Okay. I was  
2 reading under 25-446. Look at Section 2 and  
3 B. It says "After four years from the date of  
4 the Board's decision initially approving the  
5 settlement agreement," but that goes to the  
6 point that that's -- those are the reasons  
7 when the Board can't help in situations like  
8 this one way or the other.

9                   So it has been four years since  
10 you signed the original agreement?

11                  MR. BARNES: Yes, sir.

12                  MEMBER SHORT: And every year  
13 since that time, you have had to renew it  
14 every time you renew your license? Is that  
15 correct?

16                  MR. BARNES: I didn't know that.  
17 I didn't know that. This was the first time  
18 we have -- that we have come up that we  
19 could --

20                  MEMBER SHORT: This is your first  
21 renewal?

22                  MR. BARNES: No, this is the first

1 time that we knew that we could get rid of the  
2 settlement agreement.

3 MEMBER SHORT: Okay. This is the  
4 first time the ANC and everybody agreed to  
5 kind of let you off the hook with the --

6 MR. BARNES: Oh, they --

7 MEMBER SHORT: -- agreement?

8 MR. BARNES: -- didn't -- we had  
9 never tried to get rid of it before, like four  
10 years -- I mean, three years ago, we didn't  
11 try to get rid of it. You know, we kind of  
12 forget about it and everything. And honestly  
13 it really came up when everyone was -- the  
14 Chair and everybody were at the Nightlife  
15 Association meeting and we were all talking  
16 about ANC and I told them to make sure that we  
17 look at ours and see when we can get rid of  
18 ours.

19 MEMBER SHORT: So as soon as you  
20 were notified --

21 MR. BARNES: Yes.

22 MEMBER SHORT: -- and you knew

1 about it, then you wanted to try to get rid of  
2 it?

3 MR. BARNES: Yes.

4 MEMBER SHORT: Okay. Now, I think  
5 a question was already asked of you about  
6 negotiating, because I think negotiating is  
7 the part of this. You have to talk with the  
8 people about it before you can say no. In  
9 other words, there has to be some dialogue  
10 between you and all the persons who were in  
11 the agreement.

12 But had there been any dialogue at  
13 all?

14 MR. BARNES: Yes, yes, sir. We  
15 came in here and we met and we went with the  
16 mediator and we talked to her and we didn't  
17 come to any --

18 MEMBER SHORT: But the mediation  
19 did not help the situation?

20 MR. BARNES: It didn't.

21 MEMBER SHORT: That's all I have,  
22 Ms. Chair.

1                   CHAIRPERSON MILLER: Okay. I just  
2 want to make a statement before going to Mr.  
3 Jones, because there was a reference to the  
4 chair, the Nightlife meeting or whatever and  
5 so just for the record, the Nightlife  
6 Association has an annual meeting and they  
7 invite certain people to come --

8                   MR. BARNES: Everyone. It's open  
9 to everyone.

10                  CHAIRPERSON MILLER: -- see and  
11 hear questions.

12                  MR. BARNES: Right.

13                  CHAIRPERSON MILLER: And so I was  
14 at that with Mr. Moosally and our General  
15 Counsel, Martha Jenkins.

16                  MR. BARNES: Right.

17                  CHAIRPERSON MILLER: And it was an  
18 open public meeting.

19                  MR. BARNES: Right.

20                  CHAIRPERSON MILLER: And there  
21 weren't any ex-parte contacts. Okay. Just  
22 for full disclosure. Okay. Mr. Jones?

1                   MEMBER JONES: Thank you, Madam  
2                   Chair. Can you quantify how much money you  
3                   have lost as a result of having to be  
4                   restricted to the terms of your SA? Either by  
5                   year or by gross, as you have been in  
6                   business. However you want to quantify it, if  
7                   you can.

8                   MR. BARNES: With the  
9                   restrictions, I would say I have lost between  
10                  \$300,000 and \$400,000.

11                  MEMBER JONES: \$300,000 and  
12                  \$400,000 in a year or over the entire time  
13                  since last year?

14                  MR. BARNES: That was that year.  
15                  It -- I really can't quantify everything, but  
16                  I know that one period I lost between \$300,000  
17                  and \$400,000.

18                  MEMBER JONES: In one period?

19                  MR. BARNES: Yes.

20                  MEMBER JONES: Okay. Is that a  
21                  high end number or a low end number?

22                  MR. BARNES: Well, \$300,000 I

1 would be even on my taxes and everything else,  
2 all the penalty and interest.

3 MEMBER JONES: Okay. I'm sorry,  
4 when I say high end number, I mean was that  
5 relatively -- so if I'm looking at it by year,  
6 on an annual basis, so since 2007 -- hold on,  
7 let me finish.

8 MR. BARNES: Okay.

9 MEMBER JONES: Since 2007, right,  
10 there is 2008, 2009, is that \$300,000 of  
11 losses as a result of the SA a higher end of  
12 what you lost on an annual basis or is that  
13 representative of the average or the middle or  
14 is it just a rough feel?

15 MR. BARNES: It's a rough feel.

16 MEMBER JONES: Okay.

17 MR. BARNES: That's it.

18 MEMBER JONES: But it is an annual  
19 number? So \$300,000 --

20 MR. BARNES: It is not an annual  
21 number, because that one year it was higher  
22 than it would have been on other years. But

1 if I went back and looked at all the things  
2 that it probably cost me, it's probably  
3 \$200,000 a year.

4 MEMBER JONES: Okay.

5 MR. BARNES: And that one year was  
6 \$300,000 or \$400,000.

7 MEMBER JONES: Okay. Thanks. I  
8 was looking for that. The other aspect of  
9 that is do you feel as though if you continue  
10 to have to operate under the restrictions of  
11 the SA that it will drive you out of business?

12 MR. BARNES: No, because I'm a  
13 good operator.

14 MEMBER JONES: Okay.

15 MR. BARNES: That doesn't make me  
16 do more work. In essence, I'm not spending  
17 more money because of that. There were things  
18 such as not being able to open late and that  
19 type of thing and having that restriction on  
20 me. I'm working better than it works. I'm  
21 spending more money. I'm going -- again, if  
22 we were greater, I would have spent more money

1 last week on painting that fence or two weeks  
2 ago, you know what I'm saying, sir?

3 MEMBER JONES: Understood. And  
4 not to cut you off, but just trying to channel  
5 in a little, just to make sure I understand,  
6 for me I'm just trying to have a good feel for  
7 what -- the other Board Members get upset with  
8 me, but I'm a numbers guy. So I just want to  
9 try and understand the financial impact of  
10 having this SA as you understand it right now.  
11 Thank you.

12 MR. BARNES: Yes, sir.

13 MEMBER JONES: Thank you, Madam  
14 Chair.

15 CHAIRPERSON MILLER: Okay. Yes,  
16 Mr. Rodriguez?

17 MEMBER RODRIGUEZ: Yes, sir, Mr.  
18 Barnes, I like your good neighbor attitude.  
19 It's positive. And I want to keep it that way  
20 in our discussion here in terms of looking at  
21 the positive relationships here.

22 From listening to you, I get the

1 idea that you like things to go smoothly with  
2 your operation, with our Board, with your  
3 neighbors and that's a win-win situation.

4 You indicated earlier that you  
5 were singled out. And that kind of bothered  
6 me that you feel that way, whether it is true  
7 or not. It's just, you know, knowing what you  
8 know about the other businesses, you said that  
9 you know what's going on with the other  
10 businesses.

11 What's going on with the other  
12 businesses as far as settlement agreements?  
13 Do they have SAs as far as you know?

14 MR. BARNES: SAs?

15 MEMBER RODRIGUEZ: Settlement  
16 agreements.

17 CHAIRPERSON MILLER: Settlement  
18 agreements.

19 MEMBER RODRIGUEZ: I'm sorry.

20 MR. BARNES: No, they don't. I  
21 know they don't.

22 MEMBER RODRIGUEZ: I don't know --

1       okay.  You are under oath and you only know so  
2       much about the other businesses.  I'm just  
3       curious to know and I would like to know  
4       before this hearing is over if there are any  
5       settlement agreements with the other entities  
6       or if Mr. Barnes has been singled out.  That's  
7       the end of my questioning.  Thank you.

8                       MEMBER SILVERSTEIN:  Would my  
9       colleague be willing to give a radius,  
10      because, obviously, we are not talking about  
11      within the whole city.

12                      MEMBER RODRIGUEZ:  Yes.  I would  
13      like a radius of the clubs that are contiguous  
14      to yours within a radius of, let's say --

15                      MEMBER SILVERSTEIN:  1,200?

16                      MEMBER RODRIGUEZ:  -- 800 to 1,200  
17      feet.

18                      MR. BARNES:  Just so you know and  
19      the reason I know that they don't is because  
20      the ANC checked into it and they were the ones  
21      that said this is clearly unfair and said  
22      there is no one else around there who has a

1 settlement agreement.

2 MEMBER RODRIGUEZ: Thank you, sir.

3 MR. BARNES: Why -- and they said  
4 it was unfair four years ago when they did it.  
5 I mean, seven years ago when they did it then.

6 MEMBER RODRIGUEZ: Thank you, Mr.  
7 Barnes.

8 CHAIRPERSON MILLER: Okay.  
9 Others? Mr. Barnes?

10 MR. BARNES: Yes, ma'am.

11 CHAIRPERSON MILLER: Okay. Seven  
12 years ago is when this voluntary agreement was  
13 then entered?

14 MR. BARNES: Yes.

15 CHAIRPERSON MILLER: Okay. So  
16 what circumstances, if any, did the ANC or  
17 1400 K state for the reason that they needed  
18 to have a voluntary agreement with you?

19 MR. BARNES: Well, they said then  
20 -- that's what the funny thing was is that  
21 they said well, we don't know whether you are  
22 going to have trash all in the alley or

1       whether you are going to have the pick-ups and  
2       whether you are going to do this and whether  
3       you are going to do that. That was what their  
4       worries were.

5                   CHAIRPERSON MILLER: Okay.

6                   MR. BARNES: That's what they  
7       said. I've got the cleanest alley --

8                   CHAIRPERSON MILLER: Okay. We got  
9       that.

10                  MR. BARNES: -- in the city.

11                  CHAIRPERSON MILLER: We got that.  
12       We got that. Believe me, we got that. So,  
13       okay, are you saying -- you just mentioned  
14       trash, but are you saying that, in general,  
15       they were just worried about what you might  
16       do, because you were new?

17                  MR. BARNES: Yes.

18                  CHAIRPERSON MILLER: Okay.

19                  MR. BARNES: Yes, ma'am. And that  
20       was what they said. They said we don't know  
21       you.

22                  CHAIRPERSON MILLER: Right.

1                   MR. BARNES: And the ANC said, at  
2 that point, take it for four years. It's four  
3 years. If you keep it clean, if you do it  
4 right, if you do these things, then it's over.

5                   CHAIRPERSON MILLER: Okay. I hear  
6 you say that. Did they write that anywhere?

7                   MR. BARNES: I don't know, but I'm  
8 sure -- I don't know.

9                   CHAIRPERSON MILLER: Okay.

10                  MR. BARNES: Don't they have to  
11 keep logs of that?

12                  CHAIRPERSON MILLER: Minutes, yes.

13                  MR. BARNES: Yes, ma'am.

14                  CHAIRPERSON MILLER: So how about  
15 MPD? I thought that -- seven years ago, would  
16 MPD have concerns?

17                  MR. BARNES: You know --

18                  CHAIRPERSON MILLER: The point of  
19 my question is whether their concerns -- they  
20 don't have those concerns now, because they  
21 have seen you --

22                  MR. BARNES: I -- can I confer

1 with my lawyer right quick?

2 CHAIRPERSON MILLER: Yes.

3 MR. BARNES: For one second?

4 CHAIRPERSON MILLER: Okay.

5 MEMBER ALBERTI: We're off the  
6 record for a moment, I believe.

7 CHAIRPERSON MILLER: Okay. We are  
8 off the record.

9 (Whereupon, off the record for a  
10 recess.)

11 MR. BARNES: My operation was  
12 coming from Love which seven years ago -- to  
13 The Park. And Love was amazing, Dream, Love  
14 and everything. You know, there were nights  
15 we did 13,000 people and we didn't have the  
16 support of the -- what the Verizon Center has.

17 You know, and there were -- you  
18 know, people came from everywhere. Verizon  
19 Center gets 100 cops and, you know. Again, it  
20 was comparing apples to oranges. You know, it  
21 was different neighborhoods. It was different  
22 things that were happening over there and

1 different times.

2 And I think that they wanted to  
3 see how I operated. And they love me. I  
4 mean, I hear from the officers all the time,  
5 this is -- they fight over working at The  
6 Park, because it's such an easy place to work.

7 CHAIRPERSON MILLER: So would you  
8 say that MPD does not have any concerns about  
9 your operation?

10 MR. BARNES: I would say they have  
11 no concerns.

12 MR. BROWN: Madam Chair, I --

13 CHAIRPERSON MILLER: It's his  
14 opinion.

15 MR. BROWN: -- think it's a  
16 relevant question you are asking, but I'm not  
17 so sure he is in a position to answer the  
18 question.

19 CHAIRPERSON MILLER: I understand  
20 that. It's not the same as asking MPD. I  
21 understand that. Would you characterize your  
22 efforts to talk to the other parties on the

1 voluntary agreement with respect to  
2 terminating this in good faith? Your efforts  
3 to talk to --

4 MR. BARNES: Well, I did. I  
5 talked to the ANC. And I think if -- I think  
6 it was sent out to everybody who was -- who  
7 protested it before and if they had any type  
8 of denial, they would have jumped into it  
9 immediately. I think, as a matter of fact,  
10 the Board is obligated to send it to  
11 everybody.

12 CHAIRPERSON MILLER: Right. No, I  
13 mean, did you -- would you characterize your  
14 efforts, your own personal efforts, for  
15 instance with 1400 K, in seeking termination.

16 MR. BARNES: Well --

17 CHAIRPERSON MILLER: It's in good  
18 faith.

19 MR. BARNES: -- just so you know,  
20 there are two neighbors next to me. The  
21 building -- the other building is actually  
22 connected to my building, the building to my

1 left. 1400 K is to my right. The building to  
2 my left, they have no problem.

3 CHAIRPERSON MILLER: Right.

4 MR. BARNES: They -- and they were  
5 actually in the other -- represented by, I  
6 think, the same firm at the same time.

7 CHAIRPERSON MILLER: Are --

8 MR. BARNES: They have no problem.

9 CHAIRPERSON MILLER: -- they  
10 signatory to the --

11 MR. BARNES: They are not  
12 signatories --

13 CHAIRPERSON MILLER: No.

14 MR. BARNES: -- for some reason,  
15 but they were represented by that building at  
16 the same time by both -- I mean, by the same  
17 firm.

18 CHAIRPERSON MILLER: Okay. All  
19 right. Thank you. I think most of my other--  
20 my questions regarding have been asked  
21 otherwise. Yes, Mr. Alberti?

22 MEMBER ALBERTI: One quick follow-

1 up to Mr. Jones' question.

2 CHAIRPERSON MILLER: Okay.

3 MEMBER ALBERTI: So he asked you  
4 if you are quantifying because, you know, you  
5 lost money because of the restrictions on the  
6 settlement agreement, but the next natural  
7 question is what conditions in the settlement  
8 agreement cause you to lose money?

9 MR. BARNES: The one was the one  
10 where we couldn't operate until 4:00 a.m. and  
11 we had to close at 2:00 and the place is --

12 MEMBER ALBERTI: So not letting  
13 people in after 1:30 and 2:30? Is that what  
14 you're saying?

15 MR. BARNES: Well, not even 1:30  
16 to 2:30, people -- the younger crowds come out  
17 a little bit later sometimes and, you know,  
18 people who do events, they want to --  
19 promoters want to go --

20 MEMBER ALBERTI: I understand.  
21 But it's really that restriction that we are  
22 talking about?

1 MR. BARNES: It --

2 MEMBER ALBERTI: However it  
3 translates into your business, that -- it's  
4 that line.

5 MR. BARNES: It is. That is, I  
6 would say, at least 80 percent of the  
7 restriction.

8 MEMBER ALBERTI: And you and I  
9 talked about that a little bit, so I  
10 understand.

11 MR. BARNES: Yes.

12 MEMBER ALBERTI: Okay. And just  
13 in terms of negotiating. You showed up at the  
14 mediation, right?

15 MR. BARNES: Yes, sir.

16 MEMBER ALBERTI: And you told them  
17 your desires, right?

18 MR. BARNES: Yes.

19 MEMBER ALBERTI: They may not have  
20 liked them, but you told them your desires.

21 MR. BARNES: Right.

22 MEMBER ALBERTI: So did you view

1 that as negotiation?

2 MR. BARNES: I view it as  
3 negotiation.

4 MEMBER ALBERTI: Great. Thank  
5 you. No further questions.

6 CHAIRPERSON MILLER: As a follow-  
7 up, did you listen to their desires?

8 MR. BARNES: They didn't have any.  
9 They said -- they will do anything to keep the  
10 noose around my neck and that's the way I look  
11 at it.

12 CHAIRPERSON MILLER: Okay. Yes,  
13 Mr. Silverstein?

14 MEMBER SILVERSTEIN: Mr. Barnes,  
15 were those the exact words?

16 MR. BARNES: No, that wasn't the  
17 exact words, but I explained it like that.

18 MEMBER SILVERSTEIN: Just  
19 checking.

20 MR. BARNES: I said why should I  
21 have a choke chain on where you can pull it  
22 any time you feel like it, when there is no

1 need. I'm a dog that walks within the lines.

2 MEMBER SILVERSTEIN: Well, what  
3 were their --

4 MR. BARNES: They didn't have --

5 MEMBER SILVERSTEIN: -- requests?

6 MR. BARNES: -- they didn't --

7 MEMBER SILVERSTEIN: Without  
8 getting into the weeds, did they say we would  
9 like to talk to you about certain --

10 MR. BARNES: Oh, we talked for an  
11 hour. We were here for an hour.

12 MEMBER ALBERTI: Mr. Silverstein,  
13 I --

14 MEMBER SILVERSTEIN: Okay.

15 MEMBER ALBERTI: -- think I --

16 MEMBER SILVERSTEIN: No, no. I'm  
17 asking did he refuse to negotiate or did he  
18 listen?

19 MR. BARNES: I listened.

20 MEMBER SILVERSTEIN: Did he ask  
21 what -- this is critical to Section C here.

22 MEMBER ALBERTI: Well, I got my

1 answer. I'm satisfied.

2 MEMBER SILVERSTEIN: Okay.

3 CHAIRPERSON MILLER: But if it is  
4 to you.

5 MEMBER SILVERSTEIN: Did --

6 CHAIRPERSON MILLER: Yeah.

7 MEMBER SILVERSTEIN: -- they say  
8 there were things they wanted to talk about  
9 that you didn't want to talk about or --

10 MR. BARNES: No, they did not.  
11 They -- I talked about -- I was there to  
12 listen. We talked for an hour. That's not  
13 like me coming in and not doing anything. I  
14 told them -- they asked me what is it that you  
15 want out? Did they say there are things that  
16 we want in there? They said -- and I know  
17 they said there are things that we want in  
18 there and I said well, what is it that you  
19 want in there? And they didn't go into depth  
20 like that. And I told them there is nothing  
21 I want in there. I don't want a settlement  
22 agreement.

1 MEMBER SILVERSTEIN: Okay.

2 MR. BARNES: It's the -- there is  
3 no reason for me to have one.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER SILVERSTEIN: Thank you.

6 CHAIRPERSON MILLER: Okay. Any  
7 other questions? Follow-up on Board  
8 questions?

9 MR. SHIRAFKAN: I have some  
10 follow-up.

11 CHAIRPERSON MILLER: Okay.

12 REDIRECT EXAMINATION

13 MR. SHIRAFKAN: Mr. Barnes, I'm  
14 going to ask you a series of questions and I  
15 please ask you to just answer the question.

16 MR. BARNES: Okay.

17 MR. SHIRAFKAN: There has been a  
18 change in law since 2007. Is that correct?

19 MR. BARNES: Yes.

20 MR. SHIRAFKAN: Okay. Your  
21 competitors who don't have a settlement  
22 agreement, they don't have to comply with the

1 restrictions of your settlement agreement,  
2 correct?

3 MR. BARNES: No, sir.

4 MR. SHIRAFKAN: And the effect  
5 that the law has had on people who have a  
6 settlement agreement, does not affect  
7 competitors. Am I correct?

8 MR. BARNES: This is true.

9 MR. SHIRAFKAN: All right. Could  
10 you name some of your local competitors, so  
11 that the Board could look into, because one of  
12 the Board Members wanted to see, whether they  
13 have a voluntary agreement? Can you just name  
14 some within close area who are your  
15 competitors?

16 MR. BARNES: Okay. Well, my close  
17 competitors are: Lima, Opera, Lotus, Capital,  
18 Josephine's, Tattoo.

19 MR. SHIRAFKAN: Okay. Now,  
20 because you have a settlement agreement and  
21 your competitors don't have a settlement  
22 agreement, does this put you at a disadvantage

1 now that you are all in that area and  
2 competing for the same thing?

3 MR. BARNES: It does.

4 MR. SHIRAFKAN: Okay. In regards  
5 to negotiations, isn't it true that at the  
6 beginning prior to mediation, you had your  
7 wife contact 1400 K and start communication in  
8 negotiations?

9 MR. BARNES: Yes. And just so you  
10 know, we have tried to, a number of times,  
11 talk to 1400 K about a lot of things. A lot  
12 of things. 1400 K, we tried to enter an  
13 agreement with, I guess, four or five years  
14 ago. We wanted to lease the space. We were  
15 good enough for them to lease us the space and  
16 the complication was is that they had to --  
17 once they leased us the space, they could  
18 never take it back and they had to sign  
19 something like that.

20 And so that was -- it was -- we  
21 were like okay and this is when the whole  
22 settling of the law and all that stuff was

1 going on, so we pulled back down. We were  
2 like let's not forfeit. They then had a new  
3 building manager come in there who was nice,  
4 amazingly wonderful and everything, came over  
5 to the place the first couple of days.

6 She said why don't you call lease  
7 this space? I said we have negotiations. She  
8 said well, we want to start negotiations again  
9 about leasing the space. She said it's  
10 sitting there, it's doing nothing. It's a  
11 space that is in between the two buildings.  
12 So we said okay.

13 She got in touch with Brookfield  
14 and everything got cut off. They don't answer  
15 our call. We had one event that we asked to  
16 use the alley, it was for a LivingSocial Cinco  
17 de Mayo event. We almost didn't get it again,  
18 because we had to go to them to get permission  
19 for this event.

20 And it took us forever and they  
21 were -- actually, the only thing that really  
22 saved us is that so many other neighborhood

1 neighbors said okay that we got the  
2 permission, I think, without them, but they  
3 did end up signing like the last day.

4 MR. SHIRAFKAN: Let me ask a  
5 question in regards to this incident you  
6 talked about. So you had -- you almost lost  
7 another contract because you had to go to 1400  
8 K?

9 MR. BARNES: And that was a big  
10 day and a big night.

11 MR. SHIRAFKAN: Okay. Was the  
12 management changed from 2007 since you had to  
13 go back for this LivingSocial event to ask for  
14 permission? Was there a different group you  
15 had to deal with from 2007?

16 MR. BARNES: Well, it was the same  
17 young lady that I told you about and the same  
18 firm, so when she first came in, she loved us.

19 MR. SHIRAFKAN: I asked --

20 MR. BARNES: I don't know the --

21 MR. SHIRAFKAN: Was --

22 MR. BARNES: They don't keep --

1 the management doesn't talk to us. It's  
2 almost like they have told their management  
3 and their people don't talk to them. Don't be  
4 friends with them.

5 MR. SHIRAFKAN: Let me ask you a  
6 question though. The "nice lady" that you  
7 talked about --

8 MR. BARNES: Uh-huh.

9 MR. SHIRAFKAN: -- LivingSocial,  
10 was this the same nice lady you dealt with  
11 back in 2007?

12 MR. BARNES: No.

13 MR. SHIRAFKAN: Okay. Now, so you  
14 said you had your wife send emails back and  
15 forth. Isn't it true that you hired your  
16 counsel to talk to 1400 K to see whether there  
17 was a negotiation to be done or not?

18 MR. BARNES: Yes, I did.

19 MR. SHIRAFKAN: All right. And  
20 then the protest was filed. And did you  
21 attend the ANC meeting?

22 MR. BARNES: Yes.

1 MR. SHIRAFKAN: Did you attend the  
2 mediation meeting?

3 MR. BARNES: Yes.

4 MR. SHIRAFKAN: And isn't it true  
5 that when we were in mediation, we left with  
6 possibility of being able to sign certain  
7 documents, possibility of signing certain  
8 documents to work this out?

9 MR. BARNES: Yes.

10 MR. SHIRAFKAN: And isn't it true  
11 that when we met, then we decided it wasn't --  
12 we couldn't meet those obligations?

13 MR. BARNES: That -- we agreed.

14 MR. SHIRAFKAN: You can't go  
15 there.

16 MR. BARNES: Okay.

17 MR. SHIRAFKAN: All right. So  
18 would you say that in your time line from the  
19 time your placard went up until today, there  
20 were negotiations, we tried to negotiate, but  
21 we could not come to an agreement?

22 MR. BARNES: Yes.

1 MR. SHIRAFKAN: All right. Did  
2 MPD file a protest in 2007?

3 MR. BARNES: Yes.

4 MR. SHIRAFKAN: Did MPD file a  
5 protest this year?

6 MR. BARNES: No.

7 MR. SHIRAFKAN: Did ANC file a  
8 protest in 2007?

9 MR. BARNES: Yes.

10 MR. SHIRAFKAN: Did ANC file a  
11 protest for your renewal this year?

12 MR. BARNES: No.

13 MR. SHIRAFKAN: Did they withdraw  
14 the protest for the termination this year?

15 MR. BARNES: Yes, they did.

16 MR. SHIRAFKAN: Did they write a  
17 support letter to the Board for termination?

18 MR. BARNES: Yes, they did.

19 MR. SHIRAFKAN: No further  
20 questions. And, Madam Chair, I'm sorry, but  
21 in regards to the letter that's sent from the  
22 ANC to the Board, I believe a copy is -- would

1 you like me to submit that into evidence or is  
2 that already part of evidence because ANC has  
3 submitted that to you?

4 CHAIRPERSON MILLER: That  
5 sometimes is the case where it is overlapping,  
6 but if you would like us to look at it as part  
7 of your case, I would suggest just --

8 MR. SHIRAFKAN: I would only move  
9 to submit --

10 MEMBER JONES: It's judicial  
11 notice.

12 MEMBER ALBERTI: It's in our  
13 record. We can take judicial notice of it.

14 MEMBER JONES: We can take  
15 judicial notice of it.

16 MR. SHIRAFKAN: Judicial notice,  
17 yes.

18 CHAIRPERSON MILLER: Oh, that  
19 seems to be the consensus here. All right.

20 MR. SHIRAFKAN: It's easier. Yes,  
21 yes, please. Thank you. If we could just  
22 take judicial notice of App No. 1.

1 CHAIRPERSON MILLER: Okay. I  
2 thought it might be easier if we referred to  
3 it in the record as Exhibit 1 or something.

4 MEMBER ALBERTI: It's there. It's  
5 in our file.

6 CHAIRPERSON MILLER: Either way,  
7 we are paying attention to it. Okay.

8 MR. SHIRAFKAN: No further  
9 questions. Thank you.

10 CHAIRPERSON MILLER: Mr. Brown?

11 MR. BROWN: Yes.

12 RE-CROSS-EXAMINATION

13 MR. BROWN: Mr. Barnes, in --  
14 after you filed the Notice to Terminate the  
15 voluntary settlement agreement, your position  
16 prior to mediation and after the mediation  
17 remained the same, that you would not  
18 negotiate an amendment to the agreement. Your  
19 position was that it was -- that the agreement  
20 needed to be terminated in its entirety. Is  
21 that correct?

22 MR. BARNES: That we wanted the

1 what's-the-name terminated, but we would set  
2 up another agreement with you for your  
3 concerns and that's what our position was at  
4 that time.

5 MR. BROWN: At what time?

6 MR. BARNES: When we had the  
7 mediation.

8 MR. BROWN: Both before the  
9 mediation and after the mediation,  
10 notwithstanding what was discussed, your final  
11 position was all or nothing? The only thing  
12 you were interested in is not amending the  
13 agreement, but terminating it. You were not  
14 willing to discuss change to specific terms.

15 MR. BARNES: Because you told me  
16 that your concern was me selling the business  
17 and I said I would set up something that --  
18 with you to say if I sold the business, I  
19 would --

20 MR. BROWN: And then subsequently  
21 your counsel informed me that you weren't even  
22 willing to discuss that.

1 MR. BARNES: Well, everyone --

2 CHAIRPERSON MILLER: I think we  
3 don't want to get into the substance, so if  
4 the --

5 MR. BROWN: No, I know, but the  
6 record -- I'm trying to make it clear for the  
7 record and I think almost every one of the  
8 Board Members has focused in on this issue  
9 that negotiations were not in good faith. And  
10 Mr. Barnes' position is that he was only  
11 interested in terminating the agreement. He  
12 said that on numerous occasions. He said --

13 CHAIRPERSON MILLER: Well, he has  
14 testified to that --

15 MR. BROWN: He has.

16 MR. BARNES: -- to have occurred.  
17 So I don't think we ought to hear about what  
18 the substance was.

19 MR. BROWN: And I wasn't  
20 attempting to, but I think --

21 CHAIRPERSON MILLER: It sounded  
22 that way.

1 MR. BROWN: -- the position he has  
2 made clear and he even answered the question  
3 directly to Mr. Alberti, that there weren't  
4 good faith negotiations.

5 CHAIRPERSON MILLER: But you --  
6 that sounds like closing. Mr. Brown, that  
7 sounds like closing.

8 MR. BROWN: All right. You have  
9 indicated that you lost money as a result of  
10 the restrictions on the hours of operation,  
11 based on other licensees' hours being extended  
12 for special events. That's correct?

13 MR. BARNES: Not just -- just my  
14 own. Just my own, also.

15 MR. BROWN: Okay. And when you  
16 desire to extend the hours beyond -- and this  
17 is back prior to asking to terminate the  
18 agreement. When you wanted to extend your  
19 hours beyond the time frame in the voluntary  
20 agreement, did you request 1400 K to amend the  
21 agreement to allow that?

22 MR. BARNES: I did.

1 MR. BROWN: Okay. And did 1400 K  
2 produce a document that would allow you to do  
3 that both on Inauguration Day and other  
4 extended hour days?

5 MR. BARNES: Not in a timely  
6 fashion.

7 MR. BROWN: It was requested and  
8 I'll show you Exhibit 5, Protestant's Exhibit  
9 5. It was requested in the context initially  
10 of the Inauguration Day, the -- correct?

11 MR. BARNES: Right. But I  
12 shouldn't have to ask for that. I shouldn't  
13 have to ask for your permission to run my  
14 business.

15 MR. BROWN: But you had a  
16 voluntary agreement that said you had to.

17 MR. BARNES: And that's why I want  
18 it terminated.

19 MR. BROWN: And you asked for an  
20 amendment to extend it not only for  
21 Inauguration Day, but for other extended hour  
22 events, correct?

1 MR. BARNES: Yes.

2 MR. BROWN: All right. And did  
3 1400 K produce a document that would allow you  
4 to do that?

5 MR. BARNES: They did.

6 MR. BROWN: And so -- but that  
7 document was never executed by you, correct.

8 MR. BARNES: What do you mean  
9 never executed?

10 MR. BROWN: You were offered an  
11 amendment to --

12 MR. BARNES: We did execute it.

13 MR. BROWN: Then you said you lost  
14 money as a result of --

15 MR. BARNES: It wasn't -- it was  
16 before then that we had the problem. It was  
17 before then and then it was after then.

18 MR. BROWN: But you --

19 MR. BARNES: Because the laws  
20 changed.

21 MR. BROWN: But this agreement  
22 was --

1 MR. BARNES: And they change the  
2 laws every year --

3 MR. BROWN: -- in the context --

4 MR. BARNES: -- in ABC.

5 MR. BROWN: This agreement that  
6 was offered and that you didn't agree.

7 MR. BARNES: It wasn't that one  
8 time. It was another time. There were plenty  
9 of other times.

10 MR. BROWN: But you were offered  
11 an amendment and I'm saying Protestant's  
12 Exhibit 5, which I can show you, okay, you  
13 were offered this.

14 MR. BARNES: And we used it.

15 MR. BROWN: You used this  
16 agreement?

17 MR. BARNES: Yes.

18 MR. BROWN: But then you have  
19 indicated that you lost money as a result--

20 MR. BARNES: I have. There have  
21 been plenty of times I needed to -- I asked  
22 for the same thing.

1 MR. BROWN: So but if you wanted  
2 extended hours, you knew you could get them?

3 MR. BARNES: I should come to you,  
4 right? That's what you are saying, come to  
5 me. I'm your daddy. That's what you're  
6 saying.

7 MR. BROWN: No.

8 MR. BARNES: That's what you just  
9 said. Come to me, because I want to control  
10 what you do.

11 MR. BROWN: 1400 K --

12 MR. BARNES: Did you ask me could  
13 Pizza Pizza go in there? I have to ask you if  
14 I -- if somebody else goes in my building.

15 MR. BROWN: That's fine. I have  
16 no further questions.

17 CHAIRPERSON MILLER: Okay. Mr.  
18 Jones?

19 MEMBER JONES: Just a quick  
20 follow-up, please. Mr. Barnes, I understand  
21 you are very passionate about this. I just  
22 want to --

1 MR. BARNES: I'm sorry.

2 MEMBER JONES: It's no problem.

3 Were there any circumstances under which as  
4 part of the process of reviewing the SA, the  
5 settlement agreement, or the voluntary  
6 agreement as you originally knew it when you  
7 went in -- well, when you entered into that  
8 agreement originally, it was known as a VA,  
9 voluntary agreement, the SA, were there any  
10 circumstances under which you could have  
11 envisioned walking out of the negotiations  
12 with an SA still attached to your license?

13 MR. BARNES: I'm sorry, I didn't  
14 get that.

15 MEMBER JONES: All right. So you  
16 indicated earlier that you participated in  
17 negotiations regarding you current SA.

18 MR. BARNES: Oh, uh-huh.

19 MEMBER JONES: And your position  
20 was you didn't want an SA. You didn't feel  
21 like you should have one?

22 MR. BARNES: Oh, I get you now.

1                   MEMBER JONES: Do you understand  
2 what I'm saying? So were there any situations  
3 or was there any situation or any conditions  
4 under which you could envision walking out of  
5 those negotiations with an SA still attached  
6 to your license?

7                   MR. BARNES: There was a  
8 condition, not the voluntary agreement, but I  
9 was going to set up a separate agreement for  
10 other things.

11                  MEMBER JONES: Understood. Okay.

12                  MR. BARNES: That I was willing to  
13 do with them privately, not through the Board.  
14 Not through -- my problem with this whole  
15 voluntary agreement is that if you change a  
16 law or something happens, if you change it  
17 this weekend -- we missed something one time.  
18 You know what I'm saying? People miss  
19 something and that's what happened with this  
20 one time. If we miss anything, we can lose  
21 hundreds of thousands of dollars.

22                  MEMBER JONES: Understood. And

1 I'm not trying to -- I agree and understand  
2 and appreciate that. I just want to make sure  
3 I understood your mindset in the sense of you  
4 were not interested in having a SA continuing  
5 to be attached to your license.

6 MR. BARNES: Yes.

7 MEMBER JONES: But you were  
8 willing to address their concerns --

9 MR. BARNES: Yes.

10 MEMBER JONES: -- via other means  
11 or mechanisms?

12 MR. BARNES: Yes.

13 MEMBER JONES: Okay.

14 MR. BARNES: And I am still --

15 MEMBER JONES: Amenable to it?

16 MR. BARNES: -- again, I'm a good  
17 neighbor. I'm always worried about -- I'm not  
18 going to walk out of here no matter what  
19 happens and say nah, nah, nah, nah, nah, I  
20 beat you. I want a good neighbor. I want to  
21 -- I still want to paint their fence. I still  
22 want to -- that's my neighborhood.

1                   MEMBER JONES: Gotcha. Thank you,  
2 Mr. Barnes. I appreciate it. Thank you,  
3 Madam Chair.

4                   CHAIRPERSON MILLER: Okay. I  
5 think that -- yes?

6                   MR. BARNES: Is there something I  
7 can speak about that's in the -- no? Okay.

8                   CHAIRPERSON MILLER: No, it's up  
9 to your attorney.

10                  MR. SHIRAFKAN: I would rather  
11 not.

12                  MEMBER ALBERTI: He is on a  
13 limited amount of time.

14                  MR. SHIRAFKAN: Madam Chair, just  
15 to save my license, may I have a little chat  
16 with him just to see what he wants to --

17                  MR. BROWN: Can we take a five  
18 minute break?

19                  CHAIRPERSON MILLER: Yes, all  
20 right.

21                  MR. BROWN: And stretch our legs.

22                  CHAIRPERSON MILLER: Okay. Let's

1 do it.

2 MR. SHIRAFKAN: Thank you.

3 MR. BROWN: Thank you.

4 CHAIRPERSON MILLER: Okay. We are  
5 adjourned, recessed.

6 (Whereupon, at 5:11 p.m. a recess  
7 until 5:23 p.m.)

8 CHAIRPERSON MILLER: We are back  
9 on the record. I think we were finished and  
10 it was just --

11 MR. SHIRAFKAN: We're finished.

12 CHAIRPERSON MILLER: Okay. You  
13 are finished. All right. And did you move in  
14 the documents you wanted to move in?

15 MR. SHIRAFKAN: If I may, if we  
16 can just have the Board take judicial notice  
17 of App 3A, B, C and D and E, those are by MPD.  
18 They are available on-line. Those are just  
19 the crime stats and specification of where  
20 they occurred. Again, just judicial knowledge  
21 and public record and available.

22 CHAIRPERSON MILLER: Okay.

1 MR. SHIRAFKAN: App 4, I don't  
2 need to submit. Actually, I'll withdraw that.

3 CHAIRPERSON MILLER: What do you  
4 withdraw?

5 MR. SHIRAFKAN: App 4.

6 MR. BROWN: Which is?

7 MR. SHIRAFKAN: App 4 which is the  
8 FedEx hours. Actually, the Investigator has  
9 already testified to it and I realize that on  
10 the website -- it's wrong anyway. It's 11:00  
11 p.m. on weekends.

12 CHAIRPERSON MILLER: Okay. So you  
13 are not moving that one.

14 MR. SHIRAFKAN: Yes.

15 CHAIRPERSON MILLER: Okay.

16 MR. SHIRAFKAN: And App 5 was  
17 already moved in, that's all.

18 CHAIRPERSON MILLER: 3 is  
19 judicial. Okay. 1 is judicial notice. 3 is  
20 judicial notice. 5 was admitted. Is that it?

21 MR. SHIRAFKAN: Yes.

22 CHAIRPERSON MILLER: So other ones

1 that you have submitted, you're not --

2 MR. SHIRAFKAN: Yes.

3 CHAIRPERSON MILLER: -- moving  
4 into evidence?

5 MR. SHIRAFKAN: Yes, yes. Well,  
6 No. 2 I'm --

7 CHAIRPERSON MILLER: 6?

8 MR. SHIRAFKAN: -- reserving, I'm  
9 holding.

10 CHAIRPERSON MILLER: Okay.

11 MR. SHIRAFKAN: At this time, I'm  
12 not moving into evidence.

13 CHAIRPERSON MILLER: At this time  
14 you are not. Okay. I thought there was a  
15 reference to 6 earlier, but I don't know.  
16 Okay.

17 MR. SHIRAFKAN: Let me -- I'll let  
18 the Board --

19 CHAIRPERSON MILLER: Okay.

20 MR. SHIRAFKAN: I don't think  
21 we're going to need that.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Brown? Do you rest your case, right.

2 MR. SHIRAFKAN: Yes.

3 CHAIRPERSON MILLER: Yes, okay.

4 MR. SHIRAFKAN: Yes, I'm sorry,  
5 yes..

6 CHAIRPERSON MILLER: Okay.

7 MR. BROWN: All right. Madam  
8 Chair, is everybody back?

9 MEMBER ALBERTI: Um-hum, we have a  
10 quorum, Mr. Brown.

11 CHAIRPERSON MILLER: We have a  
12 quorum. They have a screen in the back where  
13 they can hear.

14 MR. BROWN: Okay.

15 CHAIRPERSON MILLER: They can hear  
16 and watch, so we will see if --

17 MR. BROWN: Okay. What I would  
18 like to do is, at least at this point, no  
19 further opening remarks from me, but I would  
20 like to introduce our first witness, Mr. Simon  
21 Carney.

22 MR. CARNEY: Shall I go to the

1 box?

2 CHAIRPERSON MILLER: If you are  
3 going to testify, sure.

4 MR. CARNEY: Okay.

5 CHAIRPERSON MILLER: Yes. And  
6 I'll swear you in.

7 Whereupon,

8 SIMON CARNEY  
9 was called as a witness by Counsel for the  
10 Protestant, and having been first duly sworn,  
11 assumed the witness stand and was examined and  
12 testified as follows:

13 CHAIRPERSON MILLER: Okay.

14 DIRECT EXAMINATION

15 MR. CARNEY: First of all, let me  
16 say good afternoon or good evening, it's past  
17 5:00, the cocktail hour, so I'll try and be  
18 brief. My name is Simon Carney. I'm the  
19 regional counsel.

20 MEMBER SILVERSTEIN: I'm sorry,  
21 your name is?

22 MR. CARNEY: Simon Carney. I'm

1 the regional counsel with Brookfield Office  
2 Properties for the Washington, D.C. region.

3 CHAIRPERSON MILLER: I'm sorry,  
4 you are the what?

5 MR. CARNEY: The regional counsel.

6 CHAIRPERSON MILLER: Okay.  
7 Sometimes it's hard to hear from that mike,  
8 but that's why --

9 MR. CARNEY: Okay.

10 CHAIRPERSON MILLER: Okay.  
11 Regional counsel.

12 MR. CARNEY: And Vice President  
13 for Brookfield Office Properties in  
14 Washington, D.C. We are the owners of the  
15 building at 1400 K Street. We also manage the  
16 building. It is a multi-tenanted building, as  
17 you know probably, with retail tenants on the  
18 first floor.

19 Can I give you a little  
20 background, a perspective from our side, on  
21 how this voluntary agreement developed?

22 CHAIRPERSON MILLER: That's

1 relevant. Yes, okay.

2 MR. CARNEY: Okay. So we learned  
3 of the club coming to the building in 2006 and  
4 we did know about Mr. Barnes' other operations  
5 in the context of them coming to the building.  
6 We were aware that he had owned or at that  
7 time was the owner/operator of a club called  
8 Love, formerly known as Dream, and that it was  
9 a large capacity nightclub.

10 So we had concerns, obviously, in  
11 the neighborhood with having a large nightclub  
12 similar to that next to our building. So we  
13 expressed our concerns. We actually met Mr.  
14 Barnes in his club one time and he was nice  
15 enough to show us through the space. And  
16 because of our concerns, we filed a complaint  
17 with the ANC and the MPD about it and that  
18 started the negotiation process with the  
19 voluntary agreement.

20 And that voluntary agreement was  
21 negotiated over a several month period. It  
22 was an arm's-length process. It was an even-

1 handed process. We both walked to the table  
2 with our eyes wide open as to what we were  
3 entering into.

4 After that, and that process  
5 included features which we think were  
6 important for the operations of their club  
7 being where they are in the Central Business  
8 District. My associate, Jackie Duke, will  
9 talk about some of those operational concerns  
10 after me.

11 I won't go into too much detail on  
12 them, but there is three things I want you to  
13 walk away from this with you.

14 Number one, we have always been  
15 willing to have a discussion with Mr. Barnes  
16 about the context and subject matter of the  
17 voluntary agreement. And we have not met with  
18 success on that about amending it and  
19 everything is on the table and I'm willing to  
20 have that conversation with him.

21 Number two, somebody characterized  
22 before that this was a contract of adhesion,

1 that it would be forcing Mr. Barnes to ask for  
2 permission to sell his business and that's not  
3 the context of the agreement. The agreement  
4 says that it runs to the successors and  
5 assigns of either party. So asking for  
6 permission to sell his business is not part of  
7 this.

8 And number three, Mr. Barnes  
9 himself has said he operates at a higher level  
10 than what is required by the voluntary  
11 agreement and I appreciate that. I appreciate  
12 that he does a great job as a neighbor and I  
13 want to be as neighborly as he wants to be,  
14 trust me.

15 Our concern is that though Mr.  
16 Barnes has previously done this and business  
17 operators do this, they sell their businesses.  
18 So our protections are in this agreement are  
19 not necessarily related specifically to Mr.  
20 Barnes, it's to whoever takes over that club.

21 Am I speaking too loudly? I just  
22 want to make sure.

1 CHAIRPERSON MILLER: No, no.

2 MEMBER SILVERSTEIN: No.

3 CHAIRPERSON MILLER: No, that's  
4 good. Thank you.

5 MR. CARNEY: So at the end of the  
6 day, I just want to express to you or take on  
7 this. We like having a vibrant, busy,  
8 interesting cultural mix in Washington, D.C.,  
9 especially in the Central Business District.  
10 That's our bread and butter. We are a  
11 landlord. We like to have that in our  
12 presence. It attracts a certain kind of  
13 tenant-base. It attracts people to our  
14 buildings, because they think it's fun to be  
15 in that atmosphere and that's great.

16 There has been a conversation  
17 about, you know, we have sort of a fixed  
18 retail component in our building, FedEx and so  
19 forth, but that's not to say that we might be  
20 doing the same thing two years from now,  
21 having other retail establishments there.  
22 They might be a different kind of caliber as

1 to what The Park is operating at. It might be  
2 a more formal say restaurant, which is typical  
3 for what buildings do in the CBD.

4 But to say that just because we  
5 might have FedEx that has never made a  
6 complaint, which I'm not sure that is the  
7 case, is to look at this in a very static  
8 view. And there is -- we operate our  
9 buildings in a manner to bring out the best in  
10 them, so we are always repositioning them.

11 So there is a good chance one day  
12 we could have a very different tenant mix in  
13 our buildings, which makes this voluntary  
14 agreement all the more important.

15 CHAIRPERSON MILLER: Okay. Is  
16 that it?

17 MR. BROWN: That's it.

18 CHAIRPERSON MILLER: Well, then  
19 it's cross. I didn't know if you had any  
20 further questions.

21 MR. BROWN: Not at this point. I  
22 may redirect based on --

1 CHAIRPERSON MILLER: Okay.

2 MR. BROWN: -- anything the Board  
3 or --

4 CHAIRPERSON MILLER: Okay.

5 CROSS-EXAMINATION

6 MR. SHIRAFKAN: Thank you, Mr.  
7 Carney. Just a few questions. Did you ever  
8 in 2007 attend Love as a patron, besides the  
9 time that you went with Mr. Barnes to see the  
10 place? Did you ever go there just as a patron  
11 to --

12 MR. CARNEY: No, I have never been  
13 to Love. I -- just to make it clear, I went  
14 to The Park as it was being constructed.

15 MR. SHIRAFKAN: Okay. Did you  
16 ever go to Love as a patron since he was  
17 coming from Love?

18 MR. CARNEY: No.

19 MR. SHIRAFKAN: No. So what you  
20 knew of it was based on media. Is that  
21 correct?

22 MR. CARNEY: And word of mouth,

1       yes.

2                   MR. SHIRAFKAN:   In 2007 when you  
3       made your protest, the ANC agreed with you and  
4       they protested to, correct?

5                   MR. CARNEY:   I don't -- I think  
6       so, yes, yes.

7                   MEMBER SILVERSTEIN:  What's the  
8       answer?

9                   MR. CARNEY:   Did the ANC agree  
10      with us in our protest and agree as part of  
11      our protest with what we are asking for and I  
12      believe so.  My recollection is that it is,  
13      but I'm not 100 percent.

14                  MR. SHIRAFKAN:  Did the MPD also  
15      agree with your view of the situation and they  
16      also joined the protest?

17                  MR. CARNEY:   I think they did,  
18      yes.

19                  MR. SHIRAFKAN:  Okay.  But today,  
20      neither ANC nor MPD share the same views as  
21      you?

22                  MR. CARNEY:   I wouldn't say that's

1 100 percent true. I know there is an  
2 individual on the ANC who has voted to not  
3 undo the voluntary agreement, so generally you  
4 might be right, but I don't know everybody in  
5 the ANC.

6 MR. SHIRAFKAN: But the majority  
7 of the vote has been to not.

8 MR. CARNEY: The vote that I see  
9 from the ANC is to not, yes. The MPD, I don't  
10 know.

11 MR. SHIRAFKAN: You stated you are  
12 happy. And I guess today you are happy with  
13 Mr. Barnes as he is over there, right?

14 MR. CARNEY: Well, happiness is a  
15 relative thing.

16 MEMBER SILVERSTEIN: Say again,  
17 please.

18 MR. CARNEY: I said happiness is a  
19 relative thing. We are good neighbors, I  
20 think. We respect each other and we do what  
21 we do in an appropriate manner in the Central  
22 Business District. Happiness, I'm not sure I

1 would say happy.

2 MR. SHIRAFKAN: Mr. Carney, this  
3 may be called cross-exam, but I'm really just  
4 trying to understand .

5 MR. CARNEY: Right, yeah.

6 MR. SHIRAFKAN: As good neighbors,  
7 if Mr. Barnes had the settlement agreement  
8 that is in place today, wouldn't you want him  
9 to continue on operating right next door to  
10 you?

11 MR. CARNEY: Yes.

12 MR. SHIRAFKAN: Okay. And as a  
13 matter of fact, your main concern, right, is  
14 well what if he sells this to the next person?

15 MR. CARNEY: That is a large  
16 concern of ours, yes.

17 MR. SHIRAFKAN: Are you aware that  
18 three years from now, Mr. Barnes has to apply  
19 again for renewal of his license?

20 MR. CARNEY: I don't know that.

21 MR. SHIRAFKAN: That's right. And  
22 in that time, you would be given the option

1 again, if need be, to protest at that point.

2 MR. CARNEY: This isn't -- but you  
3 are missing my point.

4 MR. SHIRAFKAN: Um-hum.

5 MR. CARNEY: My point is that he  
6 is operating at a relatively good level today  
7 with the voluntary agreement in place. Why  
8 would I want to jeopardize the operations of  
9 our building by just taking that away? It's  
10 sort of like saying the D.C. Code has been  
11 working great. There is not a whole lot of  
12 crimes out there, so let's just repeal the  
13 D.C. Code.

14 MR. SHIRAFKAN: Well, it's  
15 actually not the same on the Criminal Code of  
16 D.C., but -- because the Criminal Code of D.C.  
17 doesn't require a voluntary agreement. It  
18 goes through legislation, but we'll leave that  
19 alone, at this point.

20 MR. CARNEY: I disagree.

21 MR. SHIRAFKAN: My question though  
22 to you is three years from now he gets to

1 renew his license, right? And you have a  
2 chance to protest it at that point again. Did  
3 you know that? I'm asking.

4 MR. BROWN: Objection. It has  
5 been asked and answered.

6 MR. CARNEY: Yes, you just asked  
7 me.

8 MR. SHIRAFKAN: No, he --

9 MR. BROWN: He said he didn't  
10 know. He didn't know two minutes ago and he  
11 still doesn't know.

12 MR. SHIRAFKAN: Well, that's not  
13 what -- I asked the question and --

14 CHAIRPERSON MILLER: Would you  
15 repeat the question, please?

16 MR. SHIRAFKAN: My question was  
17 does he know that in three years from now he  
18 could -- they get a chance to protest this  
19 license again, if need be. I just wanted to  
20 know whether he knew that or not.

21 MR. CARNEY: And I explained that  
22 he was missing my point.

1 MR. SHIRAFKAN: Well, that's not  
2 what --

3 CHAIRPERSON MILLER: No. Did you  
4 answer it as Mr. Brown said?

5 MR. CARNEY: I said --

6 CHAIRPERSON MILLER: Which I  
7 thought you did say --

8 MR. CARNEY: -- no.

9 CHAIRPERSON MILLER: No.

10 MR. CARNEY: I said no, you're  
11 missing my point.

12 CHAIRPERSON MILLER: No. Okay.

13 MR. SHIRAFKAN: Would it make a  
14 difference to you if you knew that three years  
15 from now you had a chance to protest if there  
16 wasn't a settlement agreement?

17 MR. CARNEY: No.

18 MR. SHIRAFKAN: Are you aware that  
19 if he were to -- if Mr. Barnes were to sell  
20 his business to someone else, and the Board  
21 found it to be a substantial change, then  
22 again you would have a chance to protest that

1 buyer? Are you aware of that? I just want to  
2 know whether you know this fact or not?

3 MR. CARNEY: No. But again, you  
4 are missing my point.

5 MR. SHIRAFKAN: Okay. Well, thank  
6 you for the answer. Six years he has been on  
7 this settlement agreement.

8 MR. CARNEY: Signed in 2007, so I  
9 guess that would six to seven years.

10 MR. SHIRAFKAN: Six to seven  
11 years. Wouldn't you think, as a good  
12 neighbor, it would be fair to give him a trial  
13 for three years without it and see?

14 MR. CARNEY: No, there is no end  
15 date to the voluntary agreement. It's a  
16 contract that we signed that said basically it  
17 ran to successors and assigns, so I don't  
18 understand why I would agree to unwind  
19 something that Mr. Barnes walked into with his  
20 eyes wide open to say it lasts for as long as  
21 it lasts.

22 MR. SHIRAFKAN: Good. You

1 mentioned walking into this with his eyes  
2 open. Is there any way on the settlement  
3 agreement that says once you enter into the  
4 settlement agreement, it is stuck with you  
5 forever?

6 MR. CARNEY: It says it runs with  
7 the successors and assigns of the business.

8 MR. SHIRAFKAN: As a condition of  
9 that settlement agreement.

10 MR. CARNEY: Um-hum.

11 MR. SHIRAFKAN: If he sells it.

12 MR. CARNEY: Um-hum.

13 MR. SHIRAFKAN: But does it say  
14 anywhere that he can never come out of it?

15 MR. CARNEY: It doesn't, but it  
16 also doesn't have a term.

17 MR. SHIRAFKAN: But my question to  
18 you, sir, though is does it say that --

19 MR. CARNEY: My position would be  
20 that in the absence of a term, that it runs  
21 forever.

22 MR. SHIRAFKAN: So is that a no?

1 MR. CARNEY: Because there is no  
2 term in it --

3 MR. SHIRAFKAN: Okay.

4 MR. CARNEY: -- it says -- I'm  
5 telling you it runs forever.

6 MR. SHIRAFKAN: Were you in the  
7 meetings in 2007 with the ANC while the  
8 protest was going on?

9 MR. CARNEY: I probably attended  
10 one or two of them.

11 MR. SHIRAFKAN: Were you aware  
12 that Mr. Barnes was actually under the  
13 impression that he could come back after four  
14 years and withdraw from this settlement  
15 agreement?

16 MR. CARNEY: No, I looked at the  
17 four corners of the contract that I signed and  
18 it said, basically, it had no term. I can't  
19 read his mind.

20 MR. SHIRAFKAN: So you can't tell  
21 me actually he walked in with open eyes or not  
22 as stated earlier?

1 MR. CARNEY: Well, he is an adult.  
2 He had the opportunity to have counsel. He  
3 probably did, I think, and so I think that's  
4 a pretty fair bargaining position.

5 MR. SHIRAFKAN: And the standard  
6 that you spoke of, you said we want to have  
7 this settlement agreement because besides this  
8 ownership transfer, are you concerned that the  
9 standard of what he owes is going to go  
10 diminish in some way if he doesn't have a  
11 settlement agreement?

12 MR. CARNEY: Yes.

13 MR. SHIRAFKAN: Is there any basis  
14 on this comment of his?

15 MR. CARNEY: No. You are asking  
16 me to prove like a negative sort of, like if  
17 something doesn't exist what is going to  
18 happen? All I know is that we have this  
19 agreement and things are going pretty well  
20 right now, so I would like to keep this  
21 agreement in place.

22 MR. SHIRAFKAN: So if you were to

1 reduce the standard he has and go strictly by  
2 these agreements, you would be okay with that?

3 MR. CARNEY: I don't know the ins  
4 and outs of Mr. Barnes' standards outside of  
5 the settlement agreement, so I cannot answer  
6 that question.

7 MR. SHIRAFKAN: Well, the  
8 settlement agreement doesn't ask for MPD  
9 detail. Would you be okay if he doesn't have  
10 any MPD detail? Do you think that would  
11 negatively affect you or not?

12 MR. CARNEY: I think he would have  
13 to -- he needs to have adequate security in  
14 the space.

15 MR. SHIRAFKAN: But it doesn't  
16 have anything with MPD. Am I correct? And  
17 adequate security doesn't say, in the four  
18 corners of the contract, anything about MPD.

19 MR. CARNEY: I could have a very  
20 long conversation with you about what is not  
21 in the agreement.

22 MR. SHIRAFKAN: That's fine.

1 MR. CARNEY: But I don't see the  
2 point of this.

3 MR. SHIRAFKAN: No worries. No  
4 further questions.

5 CHAIRPERSON MILLER: Board  
6 questions. Mr. Silverstein?

7 MEMBER SILVERSTEIN: Mr. Carney,  
8 you are agreeing with the voluntary agreement?

9 MR. CARNEY: I -- generally. I  
10 don't have it front of me, but, generally.

11 MEMBER SILVERSTEIN: Can somebody  
12 give you a copy? Let's get to work. You say  
13 that you're good neighbors. You respect each  
14 other, happy, this is a relative thing. We  
15 have disagreement and things are going pretty  
16 well right now?

17 MR. CARNEY: Correct.

18 MEMBER SILVERSTEIN: We would like  
19 to keep the settlement agreement in place.

20 MR. CARNEY: That's correct.

21 MEMBER SILVERSTEIN: Okay. Let's  
22 walk through this and see what is really

1 important to you. Do you care about the --  
2 well, let's start just with -- let's forget  
3 the recital.

4 Nature of business, nightclub.  
5 Emphasis on food, disc jockey, providing live  
6 entertainment. Is that important to you?

7 MR. CARNEY: I think it's  
8 important for us to know who -- what our  
9 neighbors are doing in their space. So, yes,  
10 I think so.

11 MEMBER SILVERSTEIN: How about  
12 hours of operation? What is critical there to  
13 you?

14 MR. CARNEY: I think we have shown  
15 -- let me just answer that in two parts. We  
16 are not overly concerned about his hour of  
17 operations and I think we have shown that by  
18 providing him with a suggested agreement to  
19 amend that provision of the document. So as  
20 long as it's within a reasonable time frame,  
21 I think -- and I think at 3:00 in the morning,  
22 even though we have a 24/7 building, so to

1 speak, there is not a whole lot of difference  
2 of one hour.

3 So again, we were willing to work  
4 with him on that provision.

5 MEMBER SILVERSTEIN: Good. Thank  
6 you very much.

7 Square footage and occupancy, No.  
8 4, maximum occupancy, 14,000 square foot  
9 total. Is that --

10 MR. CARNEY: I think we care that  
11 he doesn't -- that a nightclub twice as large  
12 would not be built there, so I think it is  
13 important to have square footage in there.

14 MEMBER SILVERSTEIN: Yes, you  
15 think it's important that we -- that his super  
16 club not be a mega club?

17 MR. CARNEY: Correct.

18 MEMBER SILVERSTEIN: Okay.  
19 Parking arrangements. Given what he has said,  
20 given what is here, how vital is that to you?

21 MR. CARNEY: If Mr. Barnes is  
22 willing to voluntarily, excuse the phrase, but

1 outside of this agreement, just keep his valet  
2 agreement in place, then -- and he told us  
3 that that's important to him, it makes sense,  
4 that's good.

5 MEMBER SILVERSTEIN: Okay. No. 6,  
6 sidewalk cafe seating for 12 patrons.

7 MR. CARNEY: Yes, so we think it  
8 is important to know how many people you can  
9 have in your cafe, but as has been mentioned  
10 before, we have been willing to expand that  
11 are to the area between our buildings, but  
12 that conversation didn't get traction. And it  
13 wasn't for lack of our trying. It was just  
14 that issue and also a couple of other issues  
15 that sort of died on the vine without  
16 explanation in their court.

17 MEMBER SILVERSTEIN: So you are  
18 saying that 12 is not critical to you, but  
19 that there should be some limit?

20 MR. CARNEY: Yes.

21 MEMBER SILVERSTEIN: Noise and  
22 privacy, No. 7. Especially given that there

1 is apparently a new crack down on particularly  
2 bad offenders.

3 MR. CARNEY: Yes. I don't know  
4 what the -- you know, at the top of my head,  
5 I don't know what the D.C. Code requirements  
6 are on this, but I would like to look at that  
7 and say if that's a burden, that's -- if this  
8 is a burden that is way beyond what the Code  
9 requires, I would be willing to revisit it.

10 MEMBER SILVERSTEIN: Okay. No. 8,  
11 public space and trash. I want you to do two  
12 things on this one. First, have they been  
13 really good on this? Second, suppose they  
14 would go, what would you need?

15 MR. CARNEY: I can't speak  
16 personally about litter, but I think,  
17 generally, and Jackie Duke, my associate, will  
18 speak to this, for his operation and the size  
19 of it next door, it has been relatively good.

20 MEMBER SILVERSTEIN: Okay. And  
21 let's assume the worst of all worlds that Mr.  
22 Barnes were to sell this to Joe Q. Bad Owner.

1 What will you need in protection for this  
2 public space and trash? And also let's move  
3 this to rats and vermin control as well.

4 MR. CARNEY: If it was a typical  
5 owner, I would be looking for them to bus  
6 their -- bus the sidewalks in and around their  
7 property at end of each night and to ensure  
8 that even maybe before opening hours of our  
9 building that there is no trash or debris in  
10 those public spaces, including the alleyway,  
11 areas around our building and things like  
12 that.

13 MEMBER SILVERSTEIN: Security  
14 cooperation in stemming illegal drugs and  
15 public drinking. Is there any of that?  
16 What's --

17 MR. CARNEY: I don't think this is  
18 -- I mean, I wouldn't want to necessarily  
19 throw this away, because I think it's  
20 something anybody should do.

21 MEMBER SILVERSTEIN: Correct. Has  
22 this worked exceedingly well or have you ever

1 had to use it?

2 MR. CARNEY: I don't have any  
3 firsthand knowledge of --

4 MEMBER SILVERSTEIN: Okay.

5 MR. CARNEY: -- you know, illegal  
6 drugs or public drinking.

7 MEMBER SILVERSTEIN: Now, the next  
8 one seems to be really a major issue of  
9 contention. Walk me through this in terms of  
10 not just what your thoughts are but the  
11 language here.

12 MR. CARNEY: So in terms of the  
13 ABC Regulation obligations and so forth, you  
14 know, I think some of that goes without  
15 saying. You don't need to stick that in the  
16 contract, right? It sort of is what it is and  
17 you have to comply.

18 What we like about this agreement  
19 is that it sort of gives us standing with  
20 respect to you all and Mr. Barnes and that's  
21 part of the beauty of this is that if an issue  
22 does come up, we can go with them and say, you

1 know, can we work this out? Let's have a  
2 conversation about it. Otherwise, we are  
3 pulling the fire alarm every time and go to  
4 court, in front of you and making a formal  
5 protest. And that's what I -- that's what is  
6 good about this agreement.

7 MEMBER SILVERSTEIN: How does this  
8 protect you or give you standing in the case  
9 of a sale or transfer? What is --

10 MR. CARNEY: If -- well, it  
11 doesn't give us the ability to stop it, but  
12 this agreement runs to the assignee or  
13 transferee of the business.

14 MEMBER SILVERSTEIN: I'm sorry?

15 MR. CARNEY: This agreement runs  
16 to the assignee or transferee of the business,  
17 so if that third-party that bought the  
18 business wasn't complying with this, we would  
19 have an argument to say that he should be.

20 MEMBER SILVERSTEIN: Okay. I'm  
21 going to skip participation in the community  
22 for the obvious reasons. We don't have

1 subpoena power to require them to attend  
2 meetings, things of that sort, it is binding  
3 and notice of opportunity, has that been  
4 helpful to you? The opportunity to take care  
5 of --

6 MR. CARNEY: I think it's helpful  
7 for the club that they get, you know, due  
8 process if we do have an issue and that we  
9 would have to give them notice and they would  
10 have to know about it and then have the time  
11 to fix it before we took additional steps.  
12 That was a courtesy, I think, as part of the  
13 agreement.

14 MEMBER SILVERSTEIN: Okay. So  
15 having walked through this very quickly, give  
16 me three things in here that you really need.

17 MR. CARNEY: You know, I want to  
18 make sure that, number one, his operations do  
19 not disturb our tenancy today or in the  
20 future.

21 MEMBER SILVERSTEIN: All right.  
22 Not to disturb?

1 MR. CARNEY: Our tenancy.

2 MEMBER SILVERSTEIN: That the  
3 nighttime does not disturb the daytime.

4 MR. CARNEY: No, that's not  
5 correct. It shouldn't be disturbing our  
6 tenancy any of the time.

7 MEMBER SILVERSTEIN: 24/7, right.

8 MR. CARNEY: Right.

9 MEMBER SILVERSTEIN: Okay.

10 MR. CARNEY: Right.

11 MEMBER SILVERSTEIN: Good.

12 MR. CARNEY: Okay.

13 MEMBER SILVERSTEIN: Second.

14 MR. CARNEY: Number two, this his  
15 operations and the area around his club are  
16 maintained and cleaned and kept clean in a  
17 condition -- in a first-class condition that  
18 is appropriate for the neighborhood.

19 And number three, that there are  
20 not pedestrians or traffic backups in and  
21 around our building as part of his nightclub.  
22 Now, again, that is sort of leading to number

1 one, but those are the three bigger ones for  
2 me. And I'll probably get remonstrated when  
3 I go back to the table for like not covering  
4 everything, but those are the big ones for me.

5 MEMBER SILVERSTEIN: Thank you.  
6 Thank you very much, Mr. Carney. You have  
7 been very helpful to me.

8 MR. CARNEY: Okay.

9 MEMBER SILVERSTEIN: No further  
10 questions, Madam Chair.

11 CHAIRPERSON MILLER: Mr. Short?

12 MEMBER SHORT: Good afternoon, Mr.  
13 Carney.

14 MR. CARNEY: Good afternoon.

15 MEMBER SHORT: Mr. Carney, you are  
16 a property manager just here in Washington,  
17 D.C. or other major cities also?

18 MR. CARNEY: The company we own  
19 operates properties in other cities, yes,  
20 yeah, um-hum.

21 MEMBER SHORT: You personally do  
22 you manage any other buildings outside of

1 Washington, D.C.?

2 MR. CARNEY: Brookfield does, yes.

3 MEMBER SHORT: Do you personally?

4 MR. CARNEY: No, I am regional  
5 counsel, so I just do all the legal stuff. So  
6 I'm not the operations person, that's the lady  
7 who is going to come after me.

8 MEMBER SHORT: Okay. All right.  
9 Okay. Do you have the -- your company's name,  
10 what is the name of the company again?

11 MR. CARNEY: The company is called  
12 Brookfield Office Properties. We own the 1400  
13 K Co., LLC company.

14 MEMBER SHORT: Okay. Does that  
15 company or any companies you have been  
16 employed with voluntary or SAs with any other  
17 businesses?

18 MR. CARNEY: In Washington, D.C.?

19 MEMBER SHORT: Yeah.

20 MR. CARNEY: I don't believe so.

21 MEMBER SHORT: This is the only  
22 one?

1 MR. CARNEY: I don't think so.

2 Pardon?

3 MEMBER SHORT: You answer the  
4 question. This is the only one?

5 MR. CARNEY: Yeah.

6 MEMBER SHORT: Okay. And the  
7 question came up when you went over your  
8 agreement with Mike about noise. Have you  
9 ever had any noise problems with The Park?

10 MR. CARNEY: You are asking me and  
11 I sit usually in an office building far, far  
12 away from Mr. Barnes' club, so I can't speak  
13 firsthand about noise issues there. We  
14 definitely -- we would have to talk to people  
15 that are on the ground there. I know there  
16 have been reports or complaints from some of  
17 the people that were using FedEx, at some  
18 point in time, about people that were lining  
19 up or coming out of the club irritating them  
20 by banging on the windows of the FedEx space.

21 MEMBER SHORT: This is the first  
22 we're hearing it. The first I'm hearing this

1 today. This is --

2 MR. CARNEY: Yes, that's what I  
3 have been told.

4 MEMBER SHORT: How often have you  
5 got those complaints and when were they?

6 MR. CARNEY: I don't have a --  
7 again, I don't have firsthand knowledge of  
8 this. I could do some research on how often  
9 and how old they are, but that's what I -- I  
10 can just tell you that that complaint has been  
11 made. I don't know how frequently.

12 MEMBER SHORT: Are there any other  
13 neighbors in the community besides FedEx that  
14 have complained about The Park?

15 MR. CARNEY: About The Park?

16 MEMBER SHORT: Yeah, about the  
17 business?

18 MR. CARNEY: Not to my knowledge.

19 MEMBER SHORT: Not to your  
20 knowledge. And you have been there -- he has  
21 been there for seven years and you have been  
22 there for seven years?

1 MR. CARNEY: Yes, but -- right,  
2 that is correct. But my point is that's part  
3 of the success of the voluntary agreement.

4 MEMBER SHORT: So you think if  
5 there wasn't an agreement, you don't think it  
6 would be that nice?

7 MR. CARNEY: Correct. Good  
8 agreements make good neighbors.

9 MEMBER SHORT: Okay. So now, I'm  
10 hearing that this voluntary agreement has The  
11 Park kind of where you want them, correct?

12 MR. CARNEY: No, it's not where I  
13 want them. I want to make it clear that if  
14 they had come to us and asked us to amend this  
15 agreement in the past, we would have been a  
16 receptive party to sit down. We understand  
17 the value of having a successful business next  
18 door and what makes a dynamic community. But  
19 we haven't had that opportunity.

20 They have never come to us and  
21 said well, we are not kind of comfortable with  
22 these provisions, can we talk about this or

1 change this. We have never had that  
2 conversation.

3 MEMBER SHORT: Well, I'm glad you  
4 made that observation. Now, here is the  
5 question I would like to ask you. If it was  
6 in reverse and The Park had the agreement with  
7 you, that you couldn't sell your property or  
8 you could not do certain things with your  
9 property unless you got his or that business'  
10 okay or say so, do you think that would be  
11 good business? Would you like that position?

12 MR. CARNEY: I would not like that  
13 position, but --

14 MEMBER SHORT: You would not like  
15 that position.

16 MR. CARNEY: No. But the fact is  
17 that's what the agreement is.

18 MEMBER SHORT: Okay. Well, I have  
19 no further questions. Thank you.

20 CHAIRPERSON MILLER: Mr.  
21 Rodriguez?

22 MEMBER RODRIGUEZ: Mr. Carney, you

1 mentioned that you are not a property manager  
2 for the place, but you do know about -- would  
3 you know what a good property manager is if  
4 you saw him?

5 MR. CARNEY: Perhaps.

6 MEMBER RODRIGUEZ: You have been  
7 around property managers, right?

8 MR. CARNEY: Yes, um-hum.

9 MEMBER RODRIGUEZ: Would you say  
10 that Mr. Barnes -- how would you rate Mr.  
11 Barnes as a property manager?

12 MR. CARNEY: I don't know. I have  
13 never seen Mr. Barnes in operation of like --  
14 are you talking about the way his club is run?

15 MEMBER RODRIGUEZ: Yes.

16 MR. CARNEY: I don't have  
17 firsthand knowledge of the way his club is  
18 run. I just don't.

19 MEMBER RODRIGUEZ: What about how  
20 the vicinity as far as cleaning and keeping  
21 the area clean and the surroundings? Is that  
22 part of a responsibility of a property

1 manager?

2 MR. CARNEY: Sure, yes.

3 MEMBER RODRIGUEZ: And would you  
4 think that that has been positive in the area,  
5 in his area, in your contiguous area?

6 MR. CARNEY: I don't make a point  
7 of looking at Mr. Barnes' club when I'm in the  
8 neighborhood. I'm usually focused on my  
9 building and I'm looking at my building, but  
10 my building seems to be kept in a standard  
11 that is appropriate for a Brookfield Building,  
12 which is a good standard.

13 MEMBER RODRIGUEZ: And how long  
14 have you had visual sight of Mr. Barnes'  
15 property?

16 MR. CARNEY: How long have I had  
17 visual sight of it?

18 MEMBER RODRIGUEZ: Yes. You have  
19 been in your property. How often do you see  
20 Mr. Barnes' property surroundings?

21 MR. CARNEY: I have probably seen  
22 it over 20 times or so.

1                   MEMBER RODRIGUEZ:  So would you  
2 say that he keeps it up?

3                   MR. CARNEY:  Again, I don't make  
4 an inspection of his property when I'm there.  
5 I just know if there is a club there and there  
6 is my building, I'm looking at my building.  
7 Not the club, my building, so --

8                   MEMBER RODRIGUEZ:  Okay.  Let's  
9 talk about your tenants.  You say that you  
10 have tenants that are 24/7.

11                  MR. CARNEY:  It's a 24/7 building,  
12 yes.

13                  MEMBER RODRIGUEZ:  It's a 24/7  
14 building.  So what tenants are there 24/7?

15                  MR. CARNEY:  Any office tenant in  
16 our building has the right to go into our  
17 building at any time of the day.

18                  MEMBER RODRIGUEZ:  I didn't ask  
19 you about the rights.  I asked you which  
20 tenants that you have are there 24/7?

21                  MR. CARNEY:  I don't know if -- I  
22 don't know what tenants are there 24/7.  We

1 could find out. I don't know. Firsthand  
2 knowledge. But all of our buildings are 24/7  
3 buildings. We have a security guard on-staff  
4 24/7 for that reason.

5 MEMBER RODRIGUEZ: So you're  
6 telling me that you are knowledgeable about  
7 your building, not Mr. Barnes' building, but  
8 you don't know which tenants are 24/7?

9 MR. CARNEY: It's a multi-tenanted  
10 building with people coming and going all of--  
11 I don't work at that building, by the way,  
12 so --

13 MEMBER RODRIGUEZ: Oh, you don't?

14 MR. CARNEY: No, no. I work at a  
15 different building somewhere else. So I'm in  
16 the regional office. This is up the street  
17 from our office, so --

18 MR. BROWN: Mr. Rodriguez, can I  
19 clarify just to get --

20 MEMBER RODRIGUEZ: Yes, sir.

21 MR. BROWN: Mr. Carney who was  
22 involved in the agreement and negotiation, he

1 is a lawyer. Ms. Duke who will testify  
2 shortly, she is operations. So while Mr.  
3 Carney wants to be helpful, you are asking him  
4 things beyond the scope of --

5 MEMBER RODRIGUEZ: I thank you for  
6 that clarification, counselor. I appreciate  
7 it. Okay. No more questions.

8 CHAIRPERSON MILLER: Okay.  
9 Others? I have a few. So you are a lawyer.  
10 Are you aware of the provision regarding  
11 settlement agreements that says that "You can  
12 only amend or terminate a settlement agreement  
13 by fewer than all parties under the following  
14 circumstances: (A) During the license's  
15 renewal period, which we are in right now and  
16 (B) after four years from the date of the  
17 Board's decision initially approving the  
18 settlement agreement."

19 MR. CARNEY: Okay.

20 CHAIRPERSON MILLER: Okay. So I  
21 read that to you because you have made remarks  
22 about how you have offered to amend the

1 settlement agreement and they haven't done it.  
2 Was there another period when they could have  
3 done it that they didn't do it, based on what  
4 I just read you?

5 MR. CARNEY: Let me be clear that  
6 when I say amend, really it's with respect to  
7 the hours and the separate agreement that we  
8 have. That was the time I'm talking about and  
9 it was for the last Inauguration, so that was  
10 four years out from when they first -- more  
11 than four years out from when they first got  
12 the agreement in place.

13 CHAIRPERSON MILLER: So you have a  
14 separate agreement that is not before the  
15 Board?

16 MR. CARNEY: We -- it's part -- it  
17 was outside the document, but they never  
18 signed it.

19 CHAIRPERSON MILLER: Oh, you don't  
20 have a separate agreement.

21 MR. CARNEY: No.

22 CHAIRPERSON MILLER: Okay. I just

1 wanted to bring that to your attention and it  
2 is also one of the constraints on a business  
3 that has a settlement agreement.

4 So in response to Mr. Silverstein,  
5 you said that you wanted the settlement  
6 agreement to have a provision, at least, so  
7 the tenants aren't disturbed. Do you have  
8 knowledge that the tenants have been  
9 disturbed?

10 MR. CARNEY: Again, I'm not at the  
11 building all the time, but I do know the  
12 instance that I explained to Board Member  
13 Short that FedEx had been -- had mentioned  
14 that they had been disturbed on occasion.

15 CHAIRPERSON MILLER: So are you  
16 basing that just on like a general protection,  
17 so that if it gets sold or something, that  
18 tenants are protected from being disturbed as  
19 opposed to this business' behavior or  
20 practice?

21 MR. CARNEY: That's right. And  
22 the third part of that is to -- again, sort of

1 everything is a little dynamic in real estate  
2 and the retail might change dramatically, so  
3 it might be fine to have -- you know, things  
4 happen for FedEx, but if there is an upscale  
5 retail restaurant with outdoor seating right  
6 next to them, then we have, you know, other  
7 concerns.

8 CHAIRPERSON MILLER: Well, I think  
9 that, from what I have heard, that concern  
10 about the unknown or what might happen was one  
11 of the driving factors in the settlement  
12 agreement originally, so -- which is  
13 understandable. And I guess your position is  
14 it's not hurting you, correct?

15 MR. CARNEY: Well, no, but that's  
16 sort of taking a flip attitude about it and  
17 that's not what I want to try and come across  
18 as, because I appreciate that this gentleman  
19 has a business and again, we want to make sure  
20 that he is successful so we are all  
21 successful.

22 What I'm trying to say is that

1 it's hard for us to negotiate with the  
2 position that it's either you have it or you  
3 don't. There is no middle ground and we just  
4 don't think that is a reasonable position.

5 CHAIRPERSON MILLER: Have  
6 complaints been brought to your attention with  
7 respect to the operation of The Park?

8 MR. CARNEY: Yes, ma'am.

9 CHAIRPERSON MILLER: As the lawyer  
10 or whatever, has anyone brought complaints to  
11 you that you have then brought to ABRA or  
12 whatever?

13 MR. CARNEY: Nothing has risen to  
14 that level. Again, this is probably a more  
15 appropriate question for the operations side--

16 CHAIRPERSON MILLER: Operations.

17 MR. CARNEY: -- of things.

18 CHAIRPERSON MILLER: Okay. I just  
19 wanted to know though whether they had to call  
20 on you for anything legal. Okay. I don't  
21 have any other questions. Follow-up?

22 MEMBER ALBERTI: I do.

1 CHAIRPERSON MILLER: Oh, yes, Mr.  
2 Alberti?

3 MEMBER ALBERTI: Mr. Carney, I  
4 still want to focus in on Item 11 in this  
5 settlement agreement. And I know Mr. Short,  
6 I think his questioning implied that there was  
7 something on this that was a rather onerous  
8 requirement that Mr. Barnes be the sole owner  
9 and all transfer -- any transfer of the  
10 license or sale of the license would have to  
11 sort of pass through the protestants.

12 I know I'm exaggerating there. It  
13 doesn't -- but you would have to be notified.

14 MR. CARNEY: Sure.

15 MEMBER ALBERTI: All right. Your  
16 lease agreement with Mr. Barnes, is it with  
17 Mr. Barnes or is it with some company?

18 MR. CARNEY: I'm sorry? We don't  
19 lease space to Mr. Barnes.

20 MEMBER ALBERTI: Oh, he owns that  
21 space?

22 MR. CARNEY: I don't know if he

1 leases his space or --

2 MR. BROWN: We lease.

3 MEMBER ALBERTI: Well, you manage  
4 the company next door, not the company that  
5 Mr. Barnes is in?

6 MR. CARNEY: Right.

7 MEMBER ALBERTI: Oh, okay. All  
8 right. All right. I gotcha. Well, what's  
9 your interpretation of sole owner?

10 MR. CARNEY: In what context?

11 MEMBER ALBERTI: Well, you know,  
12 Mr. Barnes' license is the Park Place  
13 Incorporated. I don't know who the officers  
14 are. I don't know if Mr. Barnes is the sole  
15 officer or not. I could look at our records.  
16 DO you know that?

17 MR. CARNEY: I'm sorry, what is  
18 your question?

19 MEMBER ALBERTI: What is your  
20 interpretation of what sole owner is?

21 MR. CARNEY: It's the entity that  
22 is named on the agreement is the sole owner.

1                   MEMBER ALBERTI:   So Park Place  
2   Incorporated?

3                   MR. CARNEY:   Right.

4                   MEMBER ALBERTI:   Okay.  So if the  
5   officers change, that wouldn't bother you?

6                   MR. CARNEY:   No.

7                   MEMBER SHORT:   Why not?

8                   MR. CARNEY:   Why wouldn't it  
9   bother me?

10                  MEMBER ALBERTI:   Yes, why wouldn't  
11   it bother you?

12                  MR. CARNEY:   Well --

13                  MEMBER ALBERTI:   If Mr. Barnes  
14   sold his controlling share to somebody and now  
15   he owns 15 percent, which this happens, trust  
16   me.

17                  MR. CARNEY:   Sure.

18                  MEMBER ALBERTI:   And now some  
19   other owner comes in, some other partner comes  
20   in and controls 85 percent of it.  What would  
21   that mean to you?

22                  MR. CARNEY:   I think the point of

1 the language is that we want to know who owns  
2 the license and who operates the club, right?

3 MEMBER ALBERTI: It restricts. It  
4 says he can -- it says Park Incorporated has  
5 to be the sole owner.

6 MR. CARNEY: Right.

7 MEMBER ALBERTI: I'm wondering  
8 why? Why? What's the import of that to you?  
9 I mean, why?

10 MR. CARNEY: Well --

11 MEMBER ALBERTI: What's the  
12 importance of that to you?

13 MR. CARNEY: So that Mr. Barnes  
14 would not bring in third-parties as partners  
15 that we weren't aware of and run the club with  
16 a partnership, maybe losing control.

17 MEMBER ALBERTI: You wouldn't have  
18 to be aware of that. Under the terms of this  
19 settlement agreement, he could sell 99 percent  
20 share of that company and you would not have  
21 to be made aware of it, under -- the way I  
22 read this agreement. He is not transferring

1 it. It's still remaining with Park  
2 Incorporated.

3 MR. CARNEY: All right. Mr.  
4 Alberti, my peace of mind would be that I have  
5 a voluntary settlement agreement in place, so  
6 if that did happen and they each wanted to do  
7 an end-around and get new owners in there, I  
8 would be more comfortable knowing that this  
9 was --

10 MEMBER ALBERTI: Right.

11 MR. CARNEY: -- in place.

12 MEMBER ALBERTI: So your guarantee  
13 for your peace of mind is the settlement  
14 agreement?

15 MR. CARNEY: Sure, absolutely.

16 MEMBER ALBERTI: All right. So  
17 why isn't that good enough if this was  
18 transferred to a new owner? A new owner  
19 would, by law, I don't know if you understand  
20 this, whether it is in the settlement  
21 agreement or not, but by D.C. Statute,  
22 voluntary agreements convey with the license.

1                   So if this license was sold to  
2 another entity, it would transfer. Why  
3 wouldn't that be enough of a guarantee for  
4 you, so that you wouldn't have to weigh in on  
5 who that new owner is?

6                   MR. CARNEY: Again, I'm willing to  
7 talk about that provision. If it is  
8 unpalatable to you or to Mr. Barnes, I'm happy  
9 to talk about it.

10                  MEMBER ALBERTI: Okay.

11                  MR. CARNEY: And if it transfers  
12 with the license, that's probably a good thing  
13 and it might be good enough for us. But I  
14 will appreciate that.

15                  MEMBER ALBERTI: Just for your  
16 information, it does. Okay. Thank you.

17                  CHAIRPERSON MILLER: Any other  
18 Board questions? Okay.

19                  MR. BROWN: Can I follow-up,  
20 please?

21                  CHAIRPERSON MILLER: Redirect?

22                  MR. BROWN: Please.

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CHAIRPERSON MILLER: Okay.

REDIRECT EXAMINATION

MR. BROWN: If -- and your concern is that the termination of the voluntary agreement, correct?

MR. CARNEY: Correct.

MR. BROWN: And if, in fact, the voluntary agreement was terminated, then it would not be subject to following a transfer?

MR. CARNEY: Correct.

MR. BROWN: Right. It was also raised earlier, and I believe from one of the Board Members, that if the voluntary agreement was terminated and three years down the road the license was up for renewal and problems had occurred, you would be free to protest then.

MR. CARNEY: Yes, correct.

MR. BROWN: Why would it make sense for Brookfield or this property to, basically, go to the sidelines and lose their standing for three years?

1 MR. CARNEY: It wouldn't. It  
2 would be a bad business decision for the  
3 ownership. We operate and own buildings based  
4 on reliance on contracts that are enforceable,  
5 so why would we give it up? I don't know why  
6 we would.

7 MR. BROWN: Okay. And potentially  
8 you protesting three years from now, you  
9 potentially could not replicate the voluntary  
10 agreement?

11 MR. CARNEY: That's correct.

12 MR. BROWN: And be left with no  
13 protections in the three year interim period  
14 or in the future?

15 MR. CARNEY: Correct.

16 MR. BROWN: And that's  
17 unacceptable?

18 MR. CARNEY: It is. I would like  
19 some form of agreement to understand that we  
20 have an arrangement with the club next door  
21 and I'm willing to talk about it.

22 MR. BROWN: All right. And in the

1 transfer provisions of the voluntary  
2 agreement, it doesn't give 1400 K the right to  
3 have a decision making role in whether Mr.  
4 Barnes transfers his business or not?

5 MR. CARNEY: No.

6 MR. BROWN: It simply asked that  
7 you --

8 MR. CARNEY: We are advised of it.

9 MR. BROWN: Yes.

10 MR. CARNEY: Yeah.

11 MR. BROWN: So he is free to do  
12 whatever he wants as far as ownership,  
13 provided you are simply given notice?

14 MR. CARNEY: Correct.

15 MR. BROWN: As well as the Board.  
16 And one thing, Mr. Silverstein did a great job  
17 going through the voluntary agreement, but I  
18 would draw your attention to, buried in,  
19 paragraph 10. There is a provision there  
20 "Applicant also ensures that any lines of  
21 patrons that form in front of the nightclub  
22 are maintained properly and in a manner that

1 does not interfere with the tenants of the  
2 abutting property, which is 1400 K,  
3 particularly its retail tenants."

4 That provision is also important  
5 to the building in maintaining the clear  
6 passage of the sidewalks?

7 MR. CARNEY: I think that was one  
8 of my top three that we talked about.

9 MEMBER SILVERSTEIN: Say again?

10 CHAIRPERSON MILLER: That was?  
11 Okay.

12 MR. CARNEY: That was one of my  
13 top three that we talked about.

14 CHAIRPERSON MILLER: Okay.

15 MR. BROWN: And just finally to  
16 reiterate, you have always have remained  
17 amenable to good faith discussions with Mr.  
18 Barnes about --

19 MR. CARNEY: Yeah.

20 MR. BROWN: -- amendment to the  
21 agreement?

22 MR. CARNEY: That's correct. When

1 -- before the mediation, I won't go into the  
2 subject of mediation, but, I met with both Ms.  
3 Duke and Ms. Clinton, who is sitting down  
4 behind us, and we went through the agreement  
5 and we said what is important to us, what can  
6 we talk about and we were prepared to do that,  
7 but it never got that far.

8 MR. BROWN: One last thing. You  
9 heard today for the first time, and none of us  
10 were aware of it, that the club apparently is  
11 substantially in arrears for its tax  
12 obligations. Does that situation, in the  
13 context of disagreement, give you concerns?

14 MR. CARNEY: Well, the financial  
15 wherewithal of any business gives me concern,  
16 whether they can live up to what he has told  
17 us is his high operating standard or the  
18 voluntary agreement. So, yes, that's a big  
19 issue, yeah.

20 MR. SHIRAFKAN: Just for  
21 clarification with the Board, the statement  
22 wasn't that he was in -- behind in taxes with

1 Park. It was with Love that we were talking  
2 about.

3 CHAIRPERSON MILLER: Oh, thank  
4 you.

5 MR. SHIRAFKAN: So Park is not  
6 actually behind.

7 MR. BARNES: That one is in  
8 bankruptcy and I'm still paying on it.

9 MR. BROWN: Following up, does the  
10 bankruptcy involving Mr. Barnes and his wife  
11 personally as well as Park Place and Love that  
12 occurred as a next door neighbor and reliant  
13 upon --

14 MR. SHIRAFKAN: Objection.

15 MR. BROWN: -- was that a source  
16 of concern?

17 MR. SHIRAFKAN: Objection.

18 CHAIRPERSON MILLER: Okay.  
19 Leading? Relevance?

20 MR. SHIRAFKAN: For one, it's  
21 leading. Secondly, what does Mr. Barnes'  
22 bankruptcy or anything he has done to Love,

1       which is another establishment have anything  
2       to do with this?  That's like me bringing  
3       somebody -- something from Canada with  
4       Brookfield and saying you burned a building  
5       next door, so it's going to affect -- no, it's  
6       not relevant.

7                   CHAIRPERSON MILLER:  What's the  
8       relevance quickly?

9                   MR. BROWN:  Well, Mr. Barnes is  
10      the sole owner of Park Place.  Park Place and  
11      Mr. Barnes were -- are -- entered bankruptcy  
12      protection and I'm asking my -- Mr. Carney  
13      whether the bankruptcy status of the club and  
14      its financial wherewithal are of concern.

15                   CHAIRPERSON MILLER:  For what?  
16      How does that relate to the --

17                   MR. BROWN:  Compliance with the  
18      voluntary agreement and compliance with the  
19      terms of his license.

20                   CHAIRPERSON MILLER:  Whether his  
21      financial condition is a concern with respect  
22      to the settlement agreement?  Is that the

1 question?

2 MR. BROWN: Madam Chair, I mean--

3 CHAIRPERSON MILLER: I don't --  
4 that's what is at issue. Is there an issue  
5 with that?

6 MR. BROWN: Let Mr. Carney answer.

7 MR. CARNEY: Yes. I think any  
8 party who I'm dealing with on a contract level  
9 and they are having trouble managing their own  
10 funds, gives me pause to be concerned, because  
11 can they live up to what is in this contract  
12 or can they live up to what their own  
13 operating standards might be?

14 CHAIRPERSON MILLER: Okay. Any  
15 other questions? All right.

16 MR. SHIRAFKAN: I do.

17 CHAIRPERSON MILLER: You do?

18 MR. SHIRAFKAN: Yes.

19 CHAIRPERSON MILLER: Okay. You  
20 didn't have a chance to do it beforehand.

21 MEMBER SILVERSTEIN: I hope we  
22 didn't waken you.

1 CHAIRPERSON MILLER: It is  
2 evening.

3 RE CROSS-EXAMINATION

4 MR. SHIRAFKAN: I have a question.  
5 Mr. Carney, in regards to this comment that  
6 was made and it has the protest, in regards to  
7 the letter that was sent by your counsel about  
8 FedEx and you mentioned it again in your  
9 testimony. Who told you or how were you made  
10 aware that there was an incident involving  
11 Park or because of Park with FedEx

12 MR. CARNEY: I was advised by  
13 Jackie Duke, our head of operations, who is  
14 sitting to my left.

15 MR. SHIRAFKAN: And you did  
16 receive a copy of that letter that was sent to  
17 you as well by your counsel, right?

18 MR. CARNEY: I believe so.

19 MR. BROWN: Which letter are you  
20 referring to?

21 MR. SHIRAFKAN: Well, there was a  
22 letter that was sent to the Board and it was

1 the protest letter, the initial protest letter  
2 that was sent to the Board, cced on ANC, MPD  
3 and even the Mayor about this, where it  
4 describes bloodied and defaced storefront  
5 windows of FedEx. And we are of concerned  
6 where did this comment, that was published to  
7 everybody, come from? And we are trying to  
8 figure that out since you were told.

9 MR. CARNEY: It would have come  
10 from the property manager managing the  
11 building. If she had reported something like  
12 that that happened to our building, that would  
13 be the person.

14 MR. SHIRAFKAN: Fair enough. And  
15 in regards to the question that was asked by  
16 Member Alberti with sole ownership, I just  
17 want to get it clear on the record here,  
18 regardless of how this goes. So are you  
19 defining owner as Park Place, Inc. or are you  
20 defining owner as Marc Barnes, Officer, of  
21 Park Place, Inc.?

22 MR. CARNEY: I'm going to

1 respectfully refuse to answer that question,  
2 because that takes a legal interpretation and  
3 I would like to get advice from counsel before  
4 I actually answer that question.

5 MR. SHIRAFKAN: You can get  
6 advisement if you would like, because the idea  
7 -- the question was --

8 CHAIRPERSON MILLER: Do you not  
9 know the answer? Do you not know the answer?

10 MR. CARNEY: Do I not know the  
11 answer?

12 CHAIRPERSON MILLER: Yeah.

13 MR. CARNEY: I'm trying to figure  
14 out, yes, the answer to the question. I don't  
15 know the answer.

16 CHAIRPERSON MILLER: Okay. Do you  
17 want to go consult with your attorney?

18 MR. CARNEY: No, I would rather  
19 have different counsel to talk about that  
20 question, so I think it is inappropriate in  
21 this context.

22 CHAIRPERSON MILLER: Oh, I see.

1 Okay.

2 MR. SHIRAFKAN: Madam Chair, my  
3 question goes to what was earlier mentioned in  
4 regards to the control of transfer of  
5 relationship, because if the definition is  
6 Park Place, Inc., then, yes, then Mr. Barnes  
7 could potentially sell 90 percent of his  
8 shares without ever discussing this with our  
9 neighbors.

10 But if the owner is defined as Mr.  
11 Barnes, then it is holding him down, because  
12 the minute he wants to bring a partner, then  
13 he has to go and inform them. So that's why.  
14 If he doesn't have an answer, that's fine.

15 CHAIRPERSON MILLER: He --

16 MR. CARNEY: But --

17 CHAIRPERSON MILLER: Right.

18 MR. CARNEY: -- even if I don't  
19 have the answer, his characterization of it  
20 isn't correct, because I'm not holding him  
21 down. He just has to notify us.

22 CHAIRPERSON MILLER: Okay. Well,

1 you don't know the answer, so let's go.

2 MR. SHIRAFKAN: All right. Last  
3 piece. Mr. Carney, you made a statement and  
4 you said "good agreements make good  
5 neighbors."

6 MR. CARNEY: Yes.

7 MR. SHIRAFKAN: We consider you a  
8 good neighbor and we didn't have any  
9 reciprocal agreement with you that bounds you  
10 by us. Am I correct?

11 MR. CARNEY: This is an agreement  
12 signed by both parties.

13 MR. SHIRAFKAN: Is there any  
14 obligations on your part in that agreement?

15 MR. CARNEY: Yes, I think we have  
16 notice obligations and things like that in  
17 here, so, yes.

18 MR. SHIRAFKAN: What else? You  
19 have notice and what else, please?

20 MR. CARNEY: You can read.

21 MR. SHIRAFKAN: Okay. Is that  
22 because you don't know the answer?

1 MR. CARNEY: No, I just don't want  
2 to do your work.

3 CHAIRPERSON MILLER: All right.  
4 We are getting testy here. Okay.

5 MR. CARNEY: All right.

6 MR. SHIRAFKAN: Thank you. No  
7 further questions.

8 CHAIRPERSON MILLER: I have a  
9 question.

10 MR. CARNEY: Yes.

11 CHAIRPERSON MILLER: I'm sorry.  
12 And I don't want to get too much into  
13 substance of negotiations, but I just want to  
14 ask you when you entered into negotiations,  
15 would you consider or did you consider  
16 termination or anything but termination?

17 MR. CARNEY: We would not like to  
18 see termination, but we would want a meeting  
19 of the minds in the middle.

20 CHAIRPERSON MILLER: Okay. And I  
21 was really asking about the past negotiations  
22 though.

1 MR. CARNEY: Let me take -- let me  
2 change my answer --

3 CHAIRPERSON MILLER: Without  
4 getting into much substance.

5 MR. CARNEY: -- to that one. It's  
6 to deal with the mediation, so I'm not really  
7 sure I should be talking about it, but it has  
8 been brought up already.

9 CHAIRPERSON MILLER: Yes, don't go  
10 into substance really.

11 MR. CARNEY: Okay.

12 CHAIRPERSON MILLER: This is kind  
13 of like all --

14 MR. CARNEY: There was a term in  
15 the mediation --

16 CHAIRPERSON MILLER: -- worth --

17 MR. CARNEY: -- which would unwind  
18 the agreement and we were willing to talk  
19 about that, so I just want to make that clear.

20 CHAIRPERSON MILLER: Unwind?

21 MR. CARNEY: It would terminate  
22 the voluntary agreement in lieu of another

1 agreement.

2 CHAIRPERSON MILLER: Oh, okay.

3 MR. CARNEY: And we were willing  
4 to consider that.

5 CHAIRPERSON MILLER: Okay. But to  
6 have some agreement?

7 MR. CARNEY: Yep.

8 CHAIRPERSON MILLER: Yeah, that's  
9 what I thought. Okay. All right. Any other  
10 questions based on my questions? All right.  
11 Thank you very much.

12 MR. CARNEY: Thanks.

13 MR. BROWN: Thank you.

14 (Whereupon, witness was excused.)

15 MR. BROWN: Madam Chair, our last  
16 witness, mercifully, I would like to call  
17 Jackie Duke.

18 CHAIRPERSON MILLER: Good evening.

19 MS. DUKE: Hi.

20 Whereupon,

21 JACKIE DUKE

22 was called as a witness by Counsel for the

1 Protestant, and having been first duly sworn,  
2 assumed the witness stand and was examined and  
3 testified as follows:

4 CHAIRPERSON MILLER: All right.  
5 Thank you. Have a seat.

6 DIRECT EXAMINATION

7 MR. BROWN: Ms. Duke, please,  
8 identify yourself and your title and role with  
9 respect to 1400 K, please.

10 MS. DUKE: My name is Jackie Duke.  
11 I oversee operations for the D.C. region for  
12 Brookfield Office Properties, which includes  
13 1400 K Street.

14 MEMBER SILVERSTEIN: State your  
15 name again, please.

16 MS. DUKE: Jackie Duke.

17 MEMBER SILVERSTEIN: Jackie?

18 MS. DUKE: Duke, D-U-K-E.

19 MEMBER SILVERSTEIN: All right.

20 MR. BROWN: As in Duke University.

21 MS. DUKE: Exactly. No S.

22 CHAIRPERSON MILLER: And Duke

1 Ellington. Okay. Thank you.

2 MR. BROWN: All right. Ms. Duke,  
3 so -- and there have been a number of  
4 questions asked about operational issues and  
5 those reports from the building itself would  
6 come to your attention?

7 MS. DUKE: Well, generally, things  
8 will come to my attention if they can't get  
9 resolved. So I would say I have been aware of  
10 some reports. There may be things if the  
11 property is able to resolve them with their  
12 neighbor, then I wouldn't be involved in it.  
13 But generally, yes, I would be aware of it.

14 MR. BROWN: In your duties, this  
15 is a 24/7 building, correct?

16 MS. DUKE: Yes. Our tenants have  
17 24 access -- 24/7 access to the building.

18 MR. BROWN: And you provide  
19 services including security and other things  
20 24/7?

21 MS. DUKE: That's correct.

22 MR. BROWN: And your obligation

1 from an operations standpoint is to ensure  
2 unimpeded access to the entire building 24/7  
3 for tenants?

4 MS. DUKE: That's correct.

5 MR. BROWN: As it relates to  
6 Federal Express, which is a ground floor  
7 retail tenant, over time they have actually  
8 reduced their hours of operation. Is that  
9 correct?

10 MS. DUKE: Since -- I believe so.  
11 I'm not really that familiar with it.

12 MR. BROWN: But over the course of  
13 time, you had had complaints from them about  
14 the nightclub activities --

15 MR. SHIRAFKAN: Objection.  
16 Leading.

17 CHAIRPERSON MILLER: Okay.

18 MR. BROWN: -- at some point --

19 CHAIRPERSON MILLER: These are  
20 very leading.

21 MR. SHIRAFKAN: At some point,  
22 I've got to make that objection.

1 MR. BROWN: I'm trying to as  
2 quickly as possible --

3 CHAIRPERSON MILLER: To speed  
4 things up and just give her the testimony.

5 MR. BROWN: What?

6 CHAIRPERSON MILLER: You're trying  
7 to speed things up.

8 MR. BROWN: I know.

9 CHAIRPERSON MILLER: I understand  
10 that. But there has got to be a happy-medium  
11 here.

12 MR. BROWN: Ms. Duke, could you  
13 describe any complaints you have had with  
14 respect to the operations at the Federal  
15 Express?

16 MS. DUKE: I'm aware of a  
17 complaint that we got from them that they had  
18 customers in their space and that the line  
19 going into The Park, the patrons were tapping  
20 on the window and --

21 MEMBER SILVERSTEIN: Did they have  
22 customers?

1 MS. DUKE: Pardon me?

2 MEMBER SILVERSTEIN: Please speak  
3 louder.

4 MS. DUKE: Yes. I'm sorry. They  
5 had customers in their space at the time.  
6 They had computers set up, so people could  
7 come in and use them and there were people  
8 sitting there and the patrons in the line  
9 going into The Park were taunting them, kind  
10 of teasing them, tapping on the windows and  
11 that complaint came to our manager.

12 MR. BROWN: And beyond the  
13 building in general, you had situations of  
14 litter, trash, other debris, please, describe  
15 those, defaced parts of the -- your building.

16 MS. DUKE: Well, at -- for this  
17 building in particular?

18 MR. BROWN: Yes.

19 MS. DUKE: We have -- we did get a  
20 report and I don't -- I think the record said  
21 it was FedEx and I'm not sure that it was  
22 FedEx. But one of the retail tenants did

1 complain on a Monday morning that they came in  
2 and that there was blood on their windows.

3 MR. BROWN: And the operations  
4 your people and the operations in general are  
5 responsible for maintaining the physical  
6 condition of the property, including litter?

7 MS. DUKE: Correct.

8 MR. BROWN: And has the nightclub  
9 operations at times created problems?

10 MS. DUKE: I would say that this  
11 operation in general has been -- had a pretty  
12 good operation and we have not had to deal  
13 with a lot of trash and cleaning. We have had  
14 that situation at other operations.

15 MR. BROWN: Okay. And does the --  
16 has the agreement played a role in what you  
17 consider to be a fairly stable situation?

18 MS. DUKE: I believe so. I mean,  
19 it's hard to say either way, but, yes, I  
20 believe it has done that.

21 MR. BROWN: The question was asked  
22 or a comment made that Mr. -- this Park Place

1 was singled out for treatment under this  
2 voluntary agreement. Is the voluntary  
3 agreement something that, from an operations  
4 standpoint, you would like to have at other  
5 locations?

6 MS. DUKE: I would like to have a  
7 voluntary agreement with every club within two  
8 blocks of every building that I have, if I had  
9 that opportunity.

10 MR. BROWN: And the reason why you  
11 don't is because you don't have legal  
12 standing?

13 MS. DUKE: Correct.

14 MR. BROWN: At some point in the  
15 fairly recent -- Park Place had asked to rent,  
16 potentially rent, the space between the two  
17 buildings to expand their outdoor seating. Is  
18 that correct?

19 MS. DUKE: Right. And we -- well,  
20 it hasn't been recent actually. It was at --  
21 very early on we talked about that with them.  
22 We own -- there is what looks like an alleyway

1       between and that's our property where Mr.  
2       Barnes talked about painting our fence. And  
3       I hope you got permission to paint the fence  
4       before you did that.

5                   MR. BARNES: The first time I did.

6                   MS. DUKE: But anyhow, we own that  
7       property and it previously was used for  
8       outdoor seating. They had requested that they  
9       be able to use that for outdoor events. We  
10      actually negotiated agreement. At the time,  
11      something was coming up that they were in a  
12      rush to do. We negotiated the agreement and  
13      I don't know if the manager at the time had  
14      left, but when we responded back to them, got  
15      back to them with it, we got no response. So  
16      we had an agreement ready to be signed, but it  
17      just never happened.

18                   MR. BROWN: Would you remain  
19      amenable to discussing that?

20                   MS. DUKE: Yeah, we would discuss  
21      it.

22                   MR. BROWN: As part of your

1 operations, maintaining not just your  
2 building, but does your interest in operations  
3 extend beyond just the four corners of your  
4 building?

5 MS. DUKE: It does. I mean, our  
6 concerns when we knew the club was coming in  
7 was the exterior of the building, the parking.  
8 We have -- our trash area is right besides of  
9 theirs and we have a little parking area and  
10 they have to enter the garage to get into our  
11 parking garage, so we share that alley.

12 So our concerns were those areas,  
13 keeping them clean, keeping -- making sure  
14 that the cars were not blocking our entrance  
15 way to the garage. We had had another  
16 experience in another building where we didn't  
17 have a voluntary agreement, the club next door  
18 would line up, we would get -- come in, you  
19 know, Monday morning and it would be filthy  
20 and there would be urine, there would be vomit  
21 and that's the kind of thing we wanted to  
22 avoid, because that affects our tenants in the

1 building and the value of our building and the  
2 ability for us to lease to tenants and keep  
3 them.

4 MR. BROWN: And since Mr. Barnes  
5 or Park Place has been there, in the period  
6 2007 forward, how would you describe the  
7 neighborhood changes?

8 MS. DUKE: Well, the club being  
9 there itself and then, I mean, I would agree  
10 that it has gotten more vibrant, more lively.  
11 There is a lot more going on. There is a lot  
12 more going on at night. And there is a lot  
13 more people on the street and just which  
14 creates -- in my mind, in operations I deal  
15 with issues.

16 So I deal with -- what I come into  
17 potentially Monday morning, I deal with, you  
18 know, damage and dirt and things like that.  
19 And all those things, while they are good for  
20 the neighborhood, in my mind, also create that  
21 opportunity.

22 MR. BROWN: So this vibrancy is

1 not without its --

2 MS. DUKE: Right.

3 MR. BROWN: -- expenses.

4 MS. DUKE: Yes.

5 MR. BROWN: And in your view, does  
6 the voluntary agreement recognize that and  
7 address that appropriately?

8 MS. DUKE: Yes. To me, the  
9 voluntary agreement is a bare-bones keep it  
10 safe, neat and clean, good-neighbor agreement.  
11 And that's really what I want from it.

12 MR. BROWN: That's all for now.

13 CHAIRPERSON MILLER: Okay. Cross?

14 MR. SHIRAFKAN: Yes, a few  
15 questions.

16 CROSS-EXAMINATION

17 MR. SHIRAFKAN: Thank you, Ms.  
18 Duke. You mentioned that the building is  
19 24/7. I just want to get an understanding.  
20 I understand the 24/7 access. Now, is it  
21 mostly offices that are -- above the retail  
22 level, is it all offices?

1 MS. DUKE: It is offices.

2 MR. SHIRAFKAN: Okay. So when you  
3 say 24/7, it is meaning that the staff and  
4 workers have access to come into their -- the  
5 facility 24/7. Is that right?

6 MS. DUKE: That's correct.

7 MR. SHIRAFKAN: Okay.

8 MS. DUKE: Yes.

9 MR. SHIRAFKAN: But the majority  
10 or do you know of businesses, offices, law  
11 firms, whatever you guys have up there, that  
12 actually operate 24/7 up there?

13 MS. DUKE: I don't have current  
14 tenants that operate 24/7, but leases roll all  
15 the time, so it's very possible that I could  
16 at any time get a 24/7 tenant.

17 MR. SHIRAFKAN: Okay.

18 MS. DUKE: Right now, it's just  
19 employees, individuals, maybe a few people  
20 that have the opportunity to come in.

21 MR. SHIRAFKAN: Okay. This -- you  
22 mentioned that there was a complaint and we

1 heard a couple of times today and we are  
2 trying to figure out where this came from.  
3 When was this complaint made about FedEx?

4 MS. DUKE: I do not have the exact  
5 date.

6 MR. SHIRAFKAN: Okay.

7 MS. DUKE: I -- my understanding,  
8 it was about 2010.

9 MR. SHIRAFKAN: 2010. And then  
10 you mentioned that this was in regards to  
11 bloodied or defaced structure, you said it was  
12 another retail spot. Do you know where that  
13 was?

14 MS. DUKE: I'm not real sure which  
15 one.

16 MR. SHIRAFKAN: You don't recall?

17 MS. DUKE: -- the complaint --

18 MR. SHIRAFKAN: But it wasn't  
19 FedEx?

20 MS. DUKE: I don't know that. I'm  
21 not sure which one it was.

22 MR. SHIRAFKAN: All right. Now,

1 you mentioned also this report was made on a  
2 Monday. Am I correct?

3 MS. DUKE: No. You mean the FedEx  
4 complaining about --

5 MR. SHIRAFKAN: Well, yes. Was  
6 this -- did the deface -- when did you get  
7 the --

8 MS. DUKE: The report on the blood  
9 on the window was with a retailer that came in  
10 on a Monday and complained --

11 MR. SHIRAFKAN: Okay.

12 MS. DUKE: -- that there was blood  
13 on their window.

14 MR. SHIRAFKAN: Okay. Is FedEx  
15 open on Sunday?

16 MS. DUKE: I don't believe so.  
17 But that's not to say they are not in on  
18 Sunday.

19 MR. SHIRAFKAN: Okay.

20 MS. DUKE: And again, I don't know  
21 that it was FedEx. I just know that it was  
22 one of the retail tenants.

1 MR. SHIRAFKAN: Right. Now, you  
2 said you don't think FedEx is open on Sundays?

3 MS. DUKE: I don't. I don't  
4 recall. You had the hours. They stated the  
5 hours.

6 MR. SHIRAFKAN: Right. And I  
7 believe earlier it was mentioned from 12:00  
8 p.m. to 11:00 p.m. on Sundays they are open.

9 MS. DUKE: Okay.

10 MR. SHIRAFKAN: Would that refresh  
11 your --

12 MS. DUKE: That sounds right.

13 MR. SHIRAFKAN: -- recollection?

14 MS. DUKE: Yeah. I'm not aware of  
15 all the hours of my tenants.

16 MR. SHIRAFKAN: Fair enough. So  
17 wouldn't it have been that if this defacement  
18 was -- had happened on Saturday, then on  
19 Sunday they would have found out and not  
20 Monday?

21 MS. DUKE: Well, my manager wasn't  
22 in until Monday.

1 MR. SHIRAFKAN: Okay. So Monday  
2 is when they contacted you, yes?

3 MS. DUKE: Probably, yes.

4 MR. SHIRAFKAN: Okay. Have you  
5 ever attended any of Mr. Barnes'  
6 establishments? Did you ever attend Public  
7 Garden?

8 MS. DUKE: No.

9 MR. SHIRAFKAN: Did you ever  
10 attend Dream?

11 MS. DUKE: No.

12 MR. SHIRAFKAN: Love?

13 MS. DUKE: No.

14 MR. SHIRAFKAN: Have you attended  
15 Park?

16 MS. DUKE: No. I have been in it.  
17 I haven't attended anything there.

18 MR. SHIRAFKAN: Okay. Then how  
19 could you know that the settlement agreement  
20 is what makes him do what he does and the  
21 standard that he holds?

22 MS. DUKE: I don't know. It makes

1 me feel better about it. I think having it in  
2 place gives us some more secure feeling that  
3 it is going to continue.

4 MR. SHIRAFKAN: I understand.  
5 Would you say there are homeless that travel  
6 on 14th Street and around your property and  
7 Mr. Barnes' property?

8 MS. DUKE: Yes.

9 MR. SHIRAFKAN: In that area? And  
10 you mentioned that in the past few years, that  
11 14th and K has drastically increased in  
12 patrons for all the different establishments,  
13 correct?

14 MS. DUKE: I think the increase in  
15 clubs and that type of business has increased  
16 night traffic, yes.

17 MR. SHIRAFKAN: Okay. And on  
18 Sunday, your management as the record reports,  
19 it's Monday that you guys get reports, right?

20 MS. DUKE: Well, I have security  
21 guards. It depends on what the reports are.  
22 I have security guards that are there 24/7 and

1 they take reports 24/7.

2 MR. SHIRAFKAN: So okay.

3 MS. DUKE: So my manager might not  
4 get a report until Monday, unless it was an  
5 emergency report.

6 MR. SHIRAFKAN: I see. And so if  
7 there is litter, if there is dirt, if there  
8 is, I think you mentioned, peeing on the wall,  
9 if there are things such as that nature, is  
10 that something that you would be told on  
11 Sunday or you would be told on Monday?

12 MS. DUKE: Well --

13 MR. SHIRAFKAN: Usually these  
14 reports, do they come to you on Monday?

15 MS. DUKE: I would usually find  
16 that out on Monday.

17 MR. SHIRAFKAN: Okay. But we  
18 don't have any way of knowing who did deliver  
19 or who did this among all the homeless and all  
20 the patrons that come there until Monday  
21 morning when you get the report. Am I right?

22 MS. DUKE: That's -- yes.

1 MR. SHIRAFKAN: But we are --

2 MS. DUKE: Okay.

3 MR. SHIRAFKAN: So would it be  
4 right that, in fact, all these other clubs who  
5 don't have voluntary agreements, but they have  
6 patrons, on Monday morning the only person  
7 that is on the hook for everybody else's  
8 cleanup is the only party, your neighbor, who  
9 has a voluntary agreement?

10 MS. DUKE: I don't think he was on  
11 the hook for cleanup. I don't think we asked  
12 him to clean anything up.

13 MR. SHIRAFKAN: Okay.

14 MS. DUKE: I was just asked if we  
15 had gotten any reports of any type of -- on  
16 the exterior of the building. I don't recall  
17 that I said that I -- we held him responsible  
18 for cleaning it. I think we probably cleaned  
19 it.

20 MR. SHIRAFKAN: No further  
21 questions.

22 CHAIRPERSON MILLER: Board

1 questions? Mr. Short?

2 MEMBER SHORT: Hello, Ms. Duke.

3 How are you this evening?

4 MS. DUKE: I'm good. How are you?

5 MEMBER SHORT: Fine. Ms. Duke,

6 now how long have you been the property

7 manager for 1400?

8 MS. DUKE: I am not the property

9 manager. I oversee operations, so the

10 property managers report up to me.

11 MEMBER SHORT: Okay.

12 MS. DUKE: I was a property

13 manager in my previous life and was a property

14 manager at 1400 and K, but that was before The

15 Park came in.

16 MEMBER SHORT: I'm glad to see you

17 have been elevated.

18 MS. DUKE: Thank you.

19 MEMBER SHORT: Now, how long have

20 you been associated with 1400 K Street?

21 MS. DUKE: Oh, my goodness. I

22 would say 15 years.

1                   MEMBER SHORT: So you have seen  
2 some drastic changes there with Franklin  
3 Square and --

4                   MS. DUKE: Um-hum.

5                   MEMBER SHORT: -- 14th Street and I  
6 Street and K Street.

7                   MS. DUKE: Yep.

8                   MEMBER SHORT: Some very positive  
9 things have been going on down there.

10                  MS. DUKE: Yes.

11                  MEMBER SHORT: And you know most  
12 of the neighborhood then if you have been  
13 associated with 1400?

14                  MS. DUKE: Yes.

15                  MEMBER SHORT: And how would you  
16 grade The Park as a neighbor?

17                  MS. DUKE: See when I -- I think  
18 the tendency has been to grade The park  
19 relative to other clubs. I'm used to office  
20 buildings as a neighbor.

21                  MEMBER SHORT: I understand.

22                  MS. DUKE: So if I'm -- am I

1 grading them against another office building  
2 or against another club?

3 MEMBER SHORT: Well, as has been  
4 testified today, there are several clubs in  
5 the neighborhood.

6 MS. DUKE: Yes.

7 MEMBER SHORT: And probably Park  
8 was the first one down there from that --  
9 right? I mean, the first major one down  
10 there.

11 MS. DUKE: Yes, I believe so.

12 MEMBER SHORT: Okay. Now, since  
13 he has come, others have come, correct?

14 MS. DUKE: Yes.

15 MEMBER SHORT: Now, so you have  
16 had a chance to notice The Park when they  
17 first started in 2007?

18 MS. DUKE: Um-hum.

19 MEMBER SHORT: The other ones  
20 migrated in since that time?

21 MS. DUKE: Um-hum.

22 MEMBER SHORT: Have you had any

1       negativeness or anything that depleted the  
2       quality of life for businesses at 1400 or the  
3       1400 Block of R Street -- or K Street since  
4       you have been there with The Park?

5                   MS. DUKE: With Park? No, I think  
6       generally he has been a good neighbor.

7                   MEMBER SHORT: Okay. And I guess  
8       the last thing I want to ask you is you  
9       mentioned something about legal standing and  
10      the SA.

11                   MS. DUKE: I don't think I  
12      probably mentioned that. That probably was--

13                   MR. CARNEY: I opened my mouth.  
14      I'm sorry.

15                   MEMBER SHORT: Okay. It was -- no  
16      further questions.

17                   CHAIRPERSON MILLER: Okay.

18                   MEMBER SHORT: Thank you.

19                   CHAIRPERSON MILLER: Mr.

20      Silverstein?

21                   MEMBER SHORT: Thank you, Ms.  
22      Duke.

1 MEMBER ALBERTI: Go ahead.

2 MEMBER SILVERSTEIN: Ms. Duke,  
3 first, you mentioned that there have been  
4 problems, I believe you said, maybe on K  
5 Street or whatever with lines blocking  
6 building entrances at times, filth and urine  
7 and vomit on Monday mornings?

8 MS. DUKE: This was -- that was  
9 our -- that was not at The Park. Well, we did  
10 have the situation with the line in front of  
11 FedEx, but the experience I was referring to  
12 was an experience we had prior to coming to  
13 agreement with The Park at another building.

14 MEMBER SILVERSTEIN: This was  
15 another place?

16 MS. DUKE: Yes.

17 MEMBER SILVERSTEIN: And what was  
18 that place?

19 MS. DUKE: The address of the  
20 building?

21 MEMBER SILVERSTEIN: Or the  
22 establishment, the name of it, if you recall.

1 MS. DUKE: You know, I don't know  
2 the name. It's by 1225 Connecticut and it is  
3 -- I don't think it is there any more. It has  
4 got --

5 MEMBER SILVERSTEIN: Wait. This  
6 was -- 1225 Connecticut is a pretty good  
7 distance away.

8 MS. DUKE: Yes. I'm just talking  
9 about our experience with clubs in general.

10 MEMBER SILVERSTEIN: Oh.

11 MS. DUKE: That's how we came to  
12 the table. These are the things that we had  
13 been exposed to before by nature of having a  
14 club next door and so these were the things we  
15 were concerned about and wanted to make sure  
16 did not happen at 14 and K.

17 MEMBER SILVERSTEIN: So this has  
18 never been a specific problem at this  
19 particular venue?

20 MS. DUKE: No.

21 MEMBER SILVERSTEIN: Okay. The  
22 statute under which we are operating here, 25-

1 446, has an instruction to us that "The  
2 amendment or termination will not have an  
3 adverse impact on the neighborhood where the  
4 establishment is located."

5 Now, if we were to modify or  
6 terminate this agreement as the licensee is  
7 asking, this is a question we always ask in  
8 these cases, arguendo, what are the things  
9 that are most important for you, so that your  
10 -- you do not see the quality of life in your  
11 neighborhood degrade?

12 MS. DUKE: I would agree that --

13 MEMBER SILVERSTEIN: Give me the  
14 three.

15 MS. DUKE: -- with the same points  
16 that Mr. Carney brought up. I mean,  
17 basically, we are looking for a clean, safe,  
18 non-interrupted environment for our tenants.

19 MEMBER SILVERSTEIN: Okay. And  
20 when you say 24/7, I just want to get this  
21 clear. I assume we are talking about law  
22 firms where the partners aren't there, but the

1 people who are doing the real work might be  
2 there at 3:00 in the morning doing a brief,  
3 where there is stuff going on where people  
4 might be working late, but the places aren't  
5 open. Is that the type of situation when you  
6 call it a 24/7 building?

7 MS. DUKE: Well, that would be  
8 one. But, I mean, definitely lawyers are one  
9 that have long hours and that are there on  
10 weekends and would be exposed to that. But we  
11 also have other tenants that, you know, do  
12 data work and things like that that operate  
13 24/7. Not currently at 14 or K, but we do  
14 have that in other buildings.

15 MEMBER SILVERSTEIN: So have any  
16 of those people complained about the noise  
17 being such that it is difficult for them to do  
18 their work?

19 MS. DUKE: Well, they are not in a  
20 building where they are exposed to that.

21 MEMBER SILVERSTEIN: Okay. Thank  
22 you. No further questions.

1 MEMBER RODRIGUEZ: Yes.

2 CHAIRPERSON MILLER: Mr.

3 Rodriguez?

4 MEMBER RODRIGUEZ: Hi, Ms. Duke.

5 MS. DUKE: Hello.

6 MEMBER RODRIGUEZ: Counsel advised  
7 me to address questions to you about property  
8 management. Isn't that right, counsel?

9 MR. BROWN: I thought that was --  
10 you would get a better answer from Ms. Duke.

11 MEMBER RODRIGUEZ: But you are not  
12 the property manager?

13 MS. DUKE: I'm not the property  
14 manager. The -- I oversee operations. So the  
15 property managers report up to me.

16 MEMBER RODRIGUEZ: There is a  
17 property manager?

18 MS. DUKE: There is a property  
19 manager.

20 MEMBER RODRIGUEZ: Okay. Can you  
21 answer some questions about the property?

22 MS. DUKE: I can try.

1                   MEMBER RODRIGUEZ: Okay. Would  
2 you tell me as far as the adjacent property  
3 that we are talking about, what your  
4 observations are?

5                   MS. DUKE: You are talking about  
6 the adjacent property being The Park?

7                   MEMBER RODRIGUEZ: I'm sorry?

8                   MS. DUKE: The Park?

9                   MEMBER RODRIGUEZ: Yes.

10                  MS. DUKE: My observations of  
11 Park? Since they have been there, I think --  
12 again, my tendency is to compare to an office  
13 building. As a club, I think they run a  
14 professional operation. They have abided by  
15 the terms of the agreement and, you know, they  
16 have done a good job.

17                  MEMBER RODRIGUEZ: Would you say  
18 that your tenants might have that same  
19 opinion?

20                  MS. DUKE: I can -- I haven't  
21 heard otherwise from my tenants, so that's all  
22 I -- and I suppose you could take from that

1 that they might.

2 MEMBER RODRIGUEZ: Okay. So I'm  
3 trying to get in my mind where those 24/7  
4 tenants are that would be disturbed by  
5 whatever, music or whatever from the club.

6 MS. DUKE: Okay. So a couple of  
7 things. We are talking about 24/7 access.

8 MEMBER RODRIGUEZ: All right.

9 MS. DUKE: That we have to require  
10 to give to our tenants. I have no tenants  
11 currently that you could call 24/7 tenants.  
12 Okay? That doesn't mean just because they are  
13 not there during operations of the clubs, does  
14 not mean they are not affected by it.

15 Again, when I go back to the  
16 situation I talked to at my other building  
17 where we had the club next door, we would have  
18 -- you know, we definitely would be affected  
19 by the dirt that we were faced with on Monday  
20 morning.

21 The appearance of the sidewalk  
22 from the lines lining up. We had instances

1 where the patrons were able to get into our  
2 garage, pull the fire alarm and we even had an  
3 instance next door where there was a -- and  
4 this is part of our parking fear where they  
5 were running a scam valet parking for the  
6 clubs.

7 Again, this isn't The Park, but  
8 these are some of the --

9 MEMBER RODRIGUEZ: Well, my  
10 questions are related -- excuse me.

11 MS. DUKE: Um-hum.

12 MEMBER RODRIGUEZ: My questions  
13 are related to The Park right now.

14 MS. DUKE: Okay.

15 MEMBER RODRIGUEZ: And I want to  
16 stick to that.

17 MS. DUKE: So --

18 MEMBER RODRIGUEZ: Thank you.

19 MS. DUKE: Okay. So again, sorry  
20 I get off track, but just because they may or  
21 may not be there when The Park is open, that  
22 does not mean they are not affected if they

1 are coming in Monday morning and faced with  
2 things like urine and vomit and things like  
3 that on the sidewalk.

4 But my other point is we have  
5 employees who have access 24/7 and I have to--  
6 I am supposed to provide as a landlord  
7 assurances to them that they can come into an  
8 environment that's safe and clean at all  
9 times.

10 Then secondly, tenants changes all  
11 the time. So just because today I don't have  
12 a 24/7, I don't want to be prohibited in the  
13 future not to have a 24/7 tenant that  
14 potentially could be affected by things that  
15 are happening during the operations at night.

16 MEMBER RODRIGUEZ: Okay. Thank  
17 you.

18 CHAIRPERSON MILLER: Okay.  
19 Others? I have a few.

20 MS. DUKE: Okay.

21 CHAIRPERSON MILLER: First of all,  
22 I just want to be clear on your role and

1 location. Do you work at 1400 K? Is your  
2 office there or --

3 MS. DUKE: My office is not there.

4 CHAIRPERSON MILLER: Okay.

5 MS. DUKE: I'm in a corporate  
6 office.

7 CHAIRPERSON MILLER: Okay. So if  
8 you get complaints, it's through the property  
9 manager at 1400 K or whatever, then it comes  
10 to you?

11 MS. DUKE: Yes. Generally, if  
12 something -- if there is something that they  
13 can't take care of on-site --

14 CHAIRPERSON MILLER: Right.

15 MS. DUKE: -- then it comes to me.

16 CHAIRPERSON MILLER: Okay. And  
17 you haven't had too many of those?

18 MS. DUKE: I -- in this particular  
19 situation, no.

20 CHAIRPERSON MILLER: Have you had  
21 any?

22 MS. DUKE: We have -- what has

1       come to my attention is the negotiation of the  
2       agreement of the sort of open area next door  
3       to us. I have been involved in this  
4       agreement. I don't -- can't think of any  
5       problems that have come to me that we haven't  
6       been able to resolve.

7                   CHAIRPERSON MILLER: Okay. Is  
8       that what you base your opinion then that this  
9       has been a pretty good operator?

10                   MS. DUKE: Yes.

11                   CHAIRPERSON MILLER: Okay. Were  
12       you involved with signing or negotiating the  
13       settlement agreement?

14                   MS. DUKE: I -- yes, I was. I did  
15       not sign it, but I worked with Mr. Carney on  
16       coming up with the terms to it.

17                   CHAIRPERSON MILLER: Okay. And  
18       were your concerns based on your experiences  
19       with other clubs?

20                   MS. DUKE: Yes.

21                   CHAIRPERSON MILLER: Okay. This  
22       is a question I have asked ANCs, and we don't

1 have one today here, but if you had a choice,  
2 which would you prefer a good operator or a  
3 good voluntary agreement?

4 MS. DUKE: I don't think they are  
5 mutually exclusive.

6 CHAIRPERSON MILLER: Well, they  
7 don't always coincide.

8 MS. DUKE: No, they don't.

9 CHAIRPERSON MILLER: So you don't  
10 want to answer the question?

11 MS. DUKE: I guess I don't like  
12 the question. I would like a good operator  
13 with a voluntary agreement, is what I want, to  
14 make sure he is being a good operator.

15 CHAIRPERSON MILLER: What? Wait a  
16 minute. I couldn't hear.

17 MS. DUKE: I said I would like a  
18 good operator with a voluntary agreement, so  
19 that he continues to be a good operator and  
20 all his successors do as well.

21 CHAIRPERSON MILLER: All right.  
22 Any other Board questions? Okay. Any

1 questions based on Board questions? Okay.

2 MR. SHIRAFKAN: I just have one  
3 question, because my client has asked me, so  
4 I will ask it.

5 RE CROSS-EXAMINATION

6 MR. SHIRAFKAN: Are you aware that  
7 on Saturdays and Sundays, the homeless across  
8 at The Park, they are fed by a church?

9 MS. DUKE: No.

10 MR. SHIRAFKAN: Okay. Then I  
11 guess the next question will also be no,  
12 because are you aware that when they eat,  
13 apparently, they go in the alley behind and  
14 that's where they pee, but yet, you haven't  
15 been having problems with the pee on Monday  
16 when you return.

17 MS. DUKE: No, I didn't say that.

18 MR. SHIRAFKAN: Has it gotten  
19 better since The Path?

20 MS. DUKE: Again, I -- that would  
21 not be brought to my attention unless it got  
22 so bad. I mean, that's a common problem to

1 have homeless people and to have issues with  
2 homeless people, so that's not necessarily  
3 something anyone would bring to my attention.  
4 They would just clean it up, if that was part  
5 of their normal duty.

6 MR. SHIRAFKAN: One last question  
7 in regards to when you would be notified.  
8 Going back to the FedEx issue and what -- if  
9 FedEx had been bloodied and defaced, is that  
10 something that you would have been notified of  
11 on Sunday or was something you would have been  
12 notified on Monday? Is that something that is  
13 important?

14 MS. DUKE: It would not happen on  
15 Sunday. What would -- if there was, for  
16 example, a fight that happened, I would be  
17 notified on the weekend. If there was just  
18 blood found or something later, I would not be  
19 notified until after. It would not be  
20 considered an emergency.

21 MR. SHIRAFKAN: And do you know  
22 what that defaced storefront was, that was

1 defaced? I'm just trying to understand what  
2 that store was.

3 MS. DUKE: I just understand that  
4 there was blood splattered on the window.

5 MR. SHIRAFKAN: Okay. And this  
6 was a FedEx or somewhere else?

7 MS. DUKE: I don't know where it  
8 was.

9 MR. SHIRAFKAN: Okay. Thank you.

10 CHAIRPERSON MILLER: Okay.

11 MR. BROWN: I have no more  
12 questions.

13 CHAIRPERSON MILLER: Okay. Thank  
14 you very much.

15 MS. DUKE: Thank you.

16 (Whereupon, witness was excused.)

17 CHAIRPERSON MILLER: No more  
18 witnesses, right?

19 MR. BROWN: No more witnesses.

20 CHAIRPERSON MILLER: Okay. Now,  
21 do you want to move any documents into  
22 evidence?

1 MR. BROWN: And these are all  
2 included in our original PIF.

3 CHAIRPERSON MILLER: Okay.

4 MR. BROWN: Number 1 was the  
5 voluntary agreement order and --

6 CHAIRPERSON MILLER: That's in the  
7 record.

8 MR. BROWN: Yeah.

9 CHAIRPERSON MILLER: Yeah.

10 MR. BROWN: Again, the documents  
11 that were in my PIF. 2 was the investigative  
12 history. 3 was MPD correspondence from 2007.

13 CHAIRPERSON MILLER: Okay. Let's  
14 do it one at a time though, because I think  
15 the investigative history, I think that is one  
16 that the Board can just take judicial notice  
17 of. We have the investigative history.

18 MR. BROWN: The only thing I would  
19 add is on mine, I have a summary which breaks  
20 down the -- I'm sorry, the one I submitted, it  
21 provides a summary cover page for the  
22 investigative history of breaking it down.

1 The first line is assault against a police  
2 officer and various categories.

3 CHAIRPERSON MILLER: Oh.

4 MR. BROWN: So that might be  
5 worthy if the summary is helpful to the Board.

6 MEMBER ALBERTI: Can I --

7 CHAIRPERSON MILLER: I'm not sure  
8 I have that.

9 MR. BROWN: What?

10 CHAIRPERSON MILLER: Exhibit 2?

11 MR. BROWN: It's --

12 MEMBER ALBERTI: I think Mr. -- do  
13 we have an objection from Mr. Shirafkan on  
14 that?

15 CHAIRPERSON MILLER: I don't even  
16 know that I have one.

17 MR. BROWN: I submitted to staff.

18 MR. SHIRAFKAN: I have a copy, but  
19 I --

20 MR. BROWN: I submitted to staff  
21 today.

22 CHAIRPERSON MILLER: Today?

1 MR. BROWN: Yes.

2 CHAIRPERSON MILLER: Okay.

3 MEMBER ALBERTI: Well, but if it's  
4 going to be admitted into evidence, this comes  
5 in a different standard than in the PIF.

6 MR. SHIRAFKAN: Well, my question  
7 is if we have the investigative history, why  
8 do we need this piece? I mean, it's there.  
9 It's part of the record, obviously, with ABRA  
10 and the Board can -- looked at it. The  
11 investigative history is already there. I  
12 don't see what this does.

13 MEMBER ALBERTI: Ms. Miller, my  
14 question, and I'll get right to the point, is  
15 I haven't seen it, but if there is some  
16 categorization somewhere, it's probably all  
17 tied together, but you understand what I'm  
18 saying, of the events and putting them into  
19 groups, the labels you put on are important.  
20 And so, you know, I don't know whether they --  
21 those labels correspond to what is in our  
22 reports and the terms we use or --

1 MR. BROWN: They coincide verbatim  
2 to the investigative history.

3 MEMBER ALBERTI: Well, I'll let  
4 Mr. Shirafkan take a look at it and he can  
5 decide whether he wants to object or not --

6 MR. SHIRAFKAN: Well --

7 MEMBER ALBERTI: -- because I  
8 haven't seen it.

9 MR. SHIRAFKAN: -- it doesn't.  
10 Because, I mean, "sick person to hospital" has  
11 been translated into injured or sick person,  
12 which is a definition that counsel has given  
13 himself. I've got "sick person to hospital,"  
14 but then yet it has been defined as injured or  
15 sick. Where does injured come from? It says  
16 sick person, a sick person. I rather would  
17 just keep what the Board has, what has been  
18 done by ABRA and then I move to not admit No.  
19 2.

20 CHAIRPERSON MILLER: Okay.

21 MR. BROWN: All right. That's  
22 fine.

1 CHAIRPERSON MILLER: Okay.

2 MR. BROWN: With the understanding  
3 that the investigative history --

4 CHAIRPERSON MILLER: That's  
5 definitely part of the record. That's a key  
6 part of the record, yeah. Okay.

7 MR. BROWN: My Exhibit 3, which  
8 was also part of the PIF is correspondence  
9 from 2007 from the Metropolitan Police  
10 Department to this Board.

11 CHAIRPERSON MILLER: Okay.

12 MR. SHIRAFKAN: I'll object to  
13 that, obviously, because Metropolitan  
14 Department, whatever is in the file from prior  
15 perhaps is there, but they have not filed  
16 anything now, so I don't see the relevance of  
17 in 2007 MPD filed --

18 CHAIRPERSON MILLER: Okay.

19 MR. SHIRAFKAN: -- an objection.  
20 To date, they no longer have that view, so why  
21 is this being brought -- unless it's being  
22 brought for only relevance of what MPD's view

1 was back in 2007 and only that.

2 MR. BROWN: That's fine. It's  
3 only being offered for purposes of what  
4 occurred in 2007.

5 CHAIRPERSON MILLER: What their  
6 view was in '07 and that was discussed that  
7 they had concerns in 2007.

8 MR. SHIRAFKAN: And that's fine.

9 MR. BROWN: And also, their --  
10 very specifically, their guidance which made  
11 its way into the terms of the agreement, you  
12 know.

13 CHAIRPERSON MILLER: Well, okay.

14 MR. BROWN: You know, we didn't  
15 make up the agreement out of whole cloth.

16 CHAIRPERSON MILLER: Okay.

17 MR. BROWN: MPD was enacting --

18 CHAIRPERSON MILLER: Okay. You  
19 are kind of testifying about --

20 MR. BROWN: Well, no, I'm just --

21 CHAIRPERSON MILLER: -- this,  
22 but --

1 MR. BROWN: -- pointing everybody  
2 in the right direction. But we have no need  
3 to --

4 MEMBER ALBERTI: So it is not  
5 being admitted?

6 CHAIRPERSON MILLER: No, it is  
7 being admitted.

8 MEMBER ALBERTI: Okay.

9 CHAIRPERSON MILLER: But I'm just  
10 trying to -- are there a few letters in here  
11 under Exhibit 3?

12 MR. BROWN: There are two letters.

13 CHAIRPERSON MILLER: Two letters,  
14 okay. So are these your first ones being  
15 admitted, Exhibits 1 and 2 then?

16 MR. BROWN: Well, 1 was the  
17 voluntary agreement. 2, we haven't --

18 CHAIRPERSON MILLER: Voluntary --  
19 the voluntary agreement was part of the  
20 investigative history.

21 MR. BROWN: Yeah. 2 we passed on.

22 CHAIRPERSON MILLER: Right. So

1 this is --

2 MR. BROWN: 3 is the letters.

3 CHAIRPERSON MILLER: All right.

4 So I'm going to call it Exhibit 1 then, not 3.

5 Okay?

6 MR. BROWN: All right.

7 CHAIRPERSON MILLER: Even though

8 it is at 3 in your PIF.

9 MR. BROWN: Okay.

10 CHAIRPERSON MILLER: Okay. Unless

11 that's more confusing. I don't know.

12 (Whereupon, the document was

13 marked for identification as

14 Protestant Exhibit 1 and was

15 received in evidence.)

16 MR. BROWN: What I have offered as

17 4, the article about the Washington Journal,

18 we have no need to admit that.

19 CHAIRPERSON MILLER: You are not

20 doing 4, okay. So it's the two letters then,

21 correct?

22 MR. BROWN: So far.

1                   CHAIRPERSON MILLER:  And we  
2 obviously are taking judicial notice of the  
3 investigative history.

4                   MR. BROWN:  Yes.

5                   CHAIRPERSON MILLER:  And we have  
6 the voluntary agreement as part of the case  
7 report --

8                   MR. BROWN:  And then --

9                   CHAIRPERSON MILLER:  -- in our  
10 records.

11                  MR. BROWN:  -- my Exhibit 5, which  
12 is the amendment to voluntary agreement, which  
13 we discussed with several of the witnesses, it  
14 was the agreement drafted, but never, I  
15 believe, finalized having -- where the parties  
16 were attempting to agree to extending the  
17 hours to reflect the change in the law.  I  
18 would like to have that admitted.

19                  MR. SHIRAFKAN:  I want to object  
20 to that.  Obviously, this agreement has not  
21 been signed by either side.  There is no  
22 authentication as to what is this document and

1 then like I said, there is no party to this  
2 document, so I would object that we can agree  
3 that maybe there was some discussions.

4 CHAIRPERSON MILLER: Yes.

5 MR. SHIRAFKAN: However, to submit  
6 a document that is neither signed by any party  
7 nor authenticated, we cannot.

8 MR. BROWN: Well, it is being  
9 offered based on testimony that amendments  
10 were attempted in the past. The fact that it  
11 was -- it's not signed is a factor of the --  
12 a result of the inability of Park Place to  
13 follow through. But it is being offered to  
14 show that the parties, at least my client, was  
15 amenable to accommodating the change that is  
16 being offered.

17 CHAIRPERSON MILLER: Mr. Brown,  
18 I'm sorry. I have some concerns about this.  
19 I don't know how the other Board Members feel,  
20 but it seems to me that you should have had  
21 some -- a witness talk about this. You are  
22 just --

1 MR. BROWN: I thought Mr. Carney  
2 did.

3 CHAIRPERSON MILLER: -- giving us  
4 a blank -- you didn't show him this exhibit  
5 and say could you, please, identify it, so  
6 that we would know with testimony under oath  
7 what --

8 MR. BROWN: I believe he --

9 CHAIRPERSON MILLER: -- it was.

10 MR. BROWN: -- was handed.

11 Weren't you handed this, sir?

12 MR. SHIRAFKAN: No.

13 MR. BROWN: I was sure it was  
14 handed up.

15 MR. SHIRAFKAN: He talked about  
16 it, but he never identified any document and  
17 never authenticated any document as being the  
18 document that he is talking about.

19 CHAIRPERSON MILLER: So I would  
20 tend not to let this one. Do other Board  
21 Members feel otherwise?

22 MEMBER SHORT: I feel the same

1 way.

2 CHAIRPERSON MILLER: Okay.

3 MR. BROWN: Very well. My Exhibit  
4 6 is part of my PIF, but doesn't -- and I  
5 think it's also part of the investigative  
6 history of the property, so it doesn't need to  
7 be admitted.

8 CHAIRPERSON MILLER: Okay.

9 MR. BROWN: Let's see, my Exhibit  
10 7 is just a plaque showing the relationship of  
11 the properties. Again, that's already in the  
12 record, so it doesn't need to be separately  
13 admitted.

14 CHAIRPERSON MILLER: So no?

15 MR. BROWN: No, no.

16 CHAIRPERSON MILLER: Okay.

17 MR. BROWN: And then No. 8 was our  
18 expert witness' CV and since we didn't  
19 introduce him, he generally sat in the front.

20 CHAIRPERSON MILLER: Right. Okay.

21 So I have admitted the two letters from MPD,  
22 which we're calling your Exhibit 1 and they

1 were in the PIF as Exhibit 3, I think. Okay.

2 MR. BROWN: That's correct.

3 MR. SHIRAFKAN: And, Madam Chair,  
4 I believe, on my list I had told the Board  
5 that I was holding onto No. 6 and No. 2,  
6 depending on what needs to be. At this point,  
7 I'll withdraw App No. 2 and App No. 6. I  
8 don't need to submit those into evidence.

9 CHAIRPERSON MILLER: Okay. So  
10 they are not really withdrawn. I mean, they  
11 are just not moved into evidence.

12 MR. SHIRAFKAN: Okay.

13 CHAIRPERSON MILLER: Okay.

14 MR. BROWN: And what was the final  
15 result on 5, which was the financial sheet?

16 CHAIRPERSON MILLER: That was  
17 admitted. Any other questions?

18 MR. SHIRAFKAN: No further  
19 questions.

20 CHAIRPERSON MILLER: Okay. Okay.

21 MR. SHIRAFKAN: I would only ask  
22 if we are going to closing, we would have two

1 minutes, just so I can grab some water.

2 CHAIRPERSON MILLER: Sure, sure.

3 MEMBER ALBERTI: I think that was  
4 a yes. I think --

5 CHAIRPERSON MILLER: Oh, I'm  
6 sorry, yes, it was a yes.

7 MEMBER ALBERTI: -- there was a  
8 yes. I think we are adjourned here for two  
9 minutes.

10 CHAIRPERSON MILLER: Go ahead.

11 MR. SHIRAFKAN: Okay. I'll be  
12 right back.

13 (Whereupon, at 6:52 p.m. a recess  
14 until 6:54 p.m.)

15 CHAIRPERSON MILLER: Okay. Are we  
16 ready? Are you ready?

17 MR. SHIRAFKAN: Yes.

18 CHAIRPERSON MILLER: Okay. Oh,  
19 whenever you are ready.

20 MR. SHIRAFKAN: I'm ready.

21 CHAIRPERSON MILLER: Okay.

22 MR. SHIRAFKAN: Madam Chair,

1 Members of the Board, again, my name is Makan  
2 Shirafkan. I represent the applicant, Mr.  
3 Marc Barnes. Thank you for your time today  
4 and thanks for staying with us until late  
5 hours.

6 If you don't mind, I will actually  
7 use my notes and I had a professor in law  
8 school who told me for closings you never use  
9 your notes, Makan, you never use your notes.  
10 But I realize that there are 300 people in  
11 that building that are employed through this  
12 and I realize, Mr. Barnes, who I have known  
13 for probably 15 years, has taken this very  
14 seriously, so I don't want to leave a point.  
15 And my professor will be very mad to find out  
16 that I'm looking at my notes and I apologize,  
17 but I want to make sure that I get every point  
18 that I have.

19 When we started this session this  
20 afternoon, I referred to the protestants as  
21 good neighbors and I still believe they are  
22 good neighbors. However, I am upset and this

1 is not my client, this is not the applicant.

2 He was just telling me that after this he  
3 wants to still shake hands and be friends no  
4 matter what and have a great relationship.

5 But I, as the attorney, am upset  
6 about some of the things that I have seen.

7 And to me, it looks like a bully situation.

8 A letter is sent out to ABRA, Mayor's Office,  
9 MPD and everyone else that says that FedEx was  
10 bloodied and defaced by Park.

11 Yet, there is nothing to indicate  
12 that that's what Park had to do with this and  
13 people who read that took it very serious.  
14 The neighbors believe that there is a sense of  
15 entitlement that if Mr. Barnes has financial  
16 problems, if Mr. Barnes has filed bankruptcy  
17 with another venue that he had, they are  
18 entitled to know about it and it affects them  
19 in some way, shape or form.

20 And these are the things that  
21 concern me throughout the hearings that we  
22 have today. The neighbor believes that the

1 fact that their duty is to notify or notice,  
2 give notice, that is the same amount of duty  
3 as all the things that Mr. Barnes has to do  
4 per this voluntary agreement and it's an equal  
5 relationship here.

6 But that's just my personal  
7 frustration on this and I don't want to go  
8 further on that. I hope that both parties can  
9 live happily after on this.

10 I will tell you that in regards to  
11 the matters today, Mr. Barnes is an operator  
12 who has been around for a long time, 23 years  
13 he stated. He is a very honest operator and  
14 sometimes for actually attorneys, it's very  
15 frustrating because he is sometimes too  
16 honest. You heard him today and he will  
17 answer every question no matter what. That's  
18 how he operates, too.

19 And prior to -- like I said, I  
20 have known him for 15 years and 10 years I was  
21 in the club or the nightlife business with him  
22 and our biggest concern always with Marc was

1 that the numbers don't match, because he  
2 always spends so much back in the business,  
3 because he spends so much on security, because  
4 he spends so much on cleaning and that was  
5 arguments that I used to have with this man on  
6 how much you spend back on this thing.

7 But he is honest. He is clean.  
8 He takes pride in what he does and he wants to  
9 be friends with everybody and holds himself  
10 very high.

11 The voluntary agreement here is  
12 something that he entered back in 2007 when a  
13 lot of things were different. And he entered  
14 into this voluntary agreement with thoughts  
15 that I have to pay my dues, that I'm new to  
16 this area and in four years, I'll be able to  
17 come out and walk out of this and they will  
18 see me for who I am, not for a piece of paper.

19 There are things that have  
20 changed, so in regards to termination and the  
21 446 statute that we are talking about, you  
22 heard today, obviously, the law has changed.

1 And when the law changed its extended hours,  
2 it has a direct affect for those with  
3 voluntary agreements.

4 This law, he did not change. The  
5 Council changed it. He had no hands in that  
6 and it has changed.

7 Now, his neighbors and his  
8 competitors who have dramatically changed  
9 since 2007, that area has changed, those are  
10 direct competitors with Mr. Barnes. And when  
11 they don't have a voluntary agreement, this  
12 law doesn't affect them. So if somebody comes  
13 last minute and wants to do something at their  
14 place, let's go, we can do it.

15 Mr. Barnes can't do that, even if  
16 our neighbors within 24 hours get back to us,  
17 we still need a few days to go through the  
18 process of getting this done. It is a  
19 disadvantage that he has versus his  
20 competitors.

21 You heard the neighborhood has  
22 changed. And some of these issues that are on

1 the voluntary agreement are basically moot.

2 At this point, that area, the 14th and K, has  
3 become a nightlife location.

4 Now, our neighbors, 1400 K, may  
5 not like that fact, may not like that their  
6 building is in the middle of all of this, but  
7 you cannot penalize one person and say well,  
8 we got you in 2007, now you are on the hook.  
9 And forever you are going to be on this  
10 voluntary agreement.

11 And if anything happens around  
12 here, because we don't have a voluntary  
13 agreement with anybody else around, well, Park  
14 there you are we have a voluntary agreement.  
15 We have a standing with you.

16 We didn't hear anybody here today  
17 say that there is a direct link of Mr. Barnes'  
18 good operation with -- because of the  
19 voluntary agreement. Now, we did hear the  
20 neighbors state that they believe it's because  
21 of the voluntary agreement, but I believe that  
22 is the wrong notion, that they are under the

1 representation that Mr. Barnes' standard, what  
2 he does, is simply based on those piece of  
3 papers which he does a lot more than that  
4 piece of paper says for him.

5 In regards to getting permission  
6 when the ownership changes and we talked about  
7 some in regards to that and there are various  
8 elements in the voluntary agreement that is  
9 burdensome on Mr. Barnes and his business and  
10 everyone that obviously works in that place.

11 With negotiations there were  
12 questions asked and I can tell you there has  
13 been good faith trying to work out this  
14 negotiation. Obviously, at the beginning  
15 there were emails sent. I got involved  
16 personally into this matter. We can't do  
17 mediation. We try to do it, but if  
18 negotiation means did we come to an agreement,  
19 no we couldn't.

20 And one of the biggest problems  
21 ever since this change in law is that if you  
22 have a voluntary agreement, you've got to go

1 through this process. So that hinged -- no  
2 matter what negotiations you do and no matter  
3 what you do, if you have a voluntary  
4 agreement, you're stuck with this procedure.

5 But in good faith effort of well,  
6 can we do something outside the realm of  
7 voluntary agreement or settlement agreement as  
8 it is called now, so that we can operate, but  
9 not be bound by this specific issue, but we  
10 could not come to that. And there was efforts  
11 made in that. I met with them him personally  
12 after mediation, but we just couldn't legally  
13 come to a grip of something outside and how to  
14 draft and how to go forward with it.

15 With peace, order and quiet and  
16 enjoyment, I believe, as to the issue of  
17 renewal, I think that it has been stated by  
18 the protestants that that doesn't seem to be  
19 an issue, especially -- it wasn't an issue as  
20 much in 2007 and especially it's not now.

21 The Investigator spoke of that and  
22 the fact that MPD and the ANC have not

1 protested this matter, obviously, it states a  
2 lot for the safety and for the neighborhood.

3 I will tell you then that I want  
4 to remind you this is a business next door.  
5 It's not only the landlord. It's the landlord  
6 next door and they have a concern that, well,  
7 we have a 24/7 building. We may have future  
8 tenants who may be affected by this.  
9 Meanwhile we have a business owner right now  
10 with 300 employees, with 23 years of  
11 experience, with six or seven years doing the  
12 right thing in this neighborhood, he is  
13 sitting right now here, and the idea that  
14 well, we are going to hold you on this  
15 settlement agreement, because we feel  
16 comfortable or we may in future need it, is a  
17 bit too harsh.

18 And so, therefore, I ask that you  
19 renew Mr. Barnes' license and I ask you to  
20 terminate the voluntary agreement given the  
21 fact -- the changes that have happened and  
22 good faith negotiation that has been in place.

1 That's all. Thank you very much.

2 CHAIRPERSON MILLER: Thank you.

3 MR. BROWN: Madam Chair, Members  
4 of the Board, thank you. I will be very  
5 brief. The applicant bears the burden here  
6 and most particularly and again, it's very  
7 hard to separate the renewal from the  
8 termination of the voluntary agreement, but  
9 the burden is the same. But if you focus in  
10 on Section 5446, and you go down the criteria,  
11 it is pretty clear that the applicant has not  
12 met that standard and, in fact, not even come  
13 close.

14 There has been repeated testimony  
15 from my clients about their willingness to  
16 amend the agreement, both before the  
17 termination became an issue and in the context  
18 of the termination, willingness to amend the  
19 voluntary agreement or, in fact, scrap the  
20 voluntary agreement in favor of a separate  
21 agreement, not subject to the license, again  
22 to accomplish the same type of arrangement.

1                   The end of the discussions always  
2                   were my client was willing to talk, different  
3                   forms, different methods. At the end of the  
4                   day, the applicant was simply told to  
5                   terminate the agreement or not and we are here  
6                   in the absence of any meaningful negotiations  
7                   by the applicant.

8                   The neighborhood has changed. It  
9                   has improved, that's a great thing. No -- I  
10                  mean, both the applicant and my client should  
11                  take credit for that, but the improvement in  
12                  the neighborhood should -- in fact, makes the  
13                  agreement all the more important, because  
14                  there is more there, there is more activity,  
15                  there are more people to be protected. And  
16                  now is not the time to relax the agreement or  
17                  to allow the investment that has been made by  
18                  everybody to be lost or backtracked. So the  
19                  agreement remains very much necessary.

20                  Also, and I put the question to  
21                  the Investigator, the absence of the voluntary  
22                  agreement and the provisions there, which are

1 important for the ongoing maintenance of the  
2 standards in the neighborhood, can't be  
3 guaranteed in the absence of the voluntary  
4 agreement and the concept of allowing the  
5 voluntary agreement to be terminated and let's  
6 see what happens and then we will start the  
7 protest process over again the next renewal,  
8 that doesn't make any sense and that's an  
9 adverse impact for everybody involved, because  
10 we have gone from a certain situation to  
11 uncertainty, both in outcome and in  
12 responsibility.

13           So I think the statute is pretty  
14 clear and the Board, at various times, I  
15 think, has focused in on all of those issues  
16 adequately, that there is no basis for  
17 terminating the existing agreement.

18           And at the same time, my clients  
19 remain open to some sort of discussion, but it  
20 has to be led by the applicant. We can't  
21 negotiate against ourselves if the only  
22 position is terminate the agreement.

1                   If the applicant will tell us what  
2                   he wants to change, I think there is probably  
3                   a good likelihood that we will reach an  
4                   agreement. But in the absence of that, we are  
5                   leaving this in your hands and I don't think  
6                   they have met their burden of proof. So thank  
7                   you.

8                   CHAIRPERSON MILLER: Thank you.  
9                   Mr. Brown, I just want to ask you, I don't  
10                  know if I missed something, but did you take  
11                  a position at the hearing on the renewal?

12                  MR. BROWN: Well, I said the two  
13                  were related. I mean, the -- we don't think  
14                  the termination of the agreement is warranted  
15                  by the statute. We think that going back to  
16                  the basis of the current license, which is  
17                  incorporated in the agreement, we don't think  
18                  renewal of the license without the voluntary  
19                  agreement is appropriate for the reasons we  
20                  have outlined.

21                  I mean, the two again are linked  
22                  and I think the basis for the original

1 voluntary agreement as well as what we have  
2 presented here prove the importance of the  
3 agreement in the renewal context.

4 CHAIRPERSON MILLER: Okay. All  
5 right. I'm going to close the record then, at  
6 this point. I'll ask the parties if you wish  
7 to file proposed findings of fact and  
8 conclusions of law or waive your right to do  
9 so?

10 MR. SHIRAFKAN: We will waive.

11 MR. BROWN: We will waive.

12 CHAIRPERSON MILLER: Okay. All  
13 right. I'm going to now just take a vote on  
14 deliberating this case in closed session.

15 As Chairperson of the Alcoholic  
16 Beverage Control Board for the District of  
17 Columbia and in accordance with DC Official  
18 Code Section 2-574(b) of the Open Meetings  
19 Act, I move that the ABC Board hold a closed  
20 meeting for the purpose of seeking legal  
21 advice from our counsel on Case No. 13-PRO-  
22 00153 and 14-PRO-00005, The Park at 14th,

1 pursuant to D.C. Official Code Section 2-  
2 574(b)(4) of the Open Meetings Act and  
3 deliberating upon these cases for the reasons  
4 cited in D.C. Official Code Section 2-  
5 574(b)(13) of the Open Meetings Act.

6 Is there a second?

7 MEMBER ALBERTI: Second.

8 CHAIRPERSON MILLER: Mr. Alberti  
9 seconded the motion. I'll now take a roll  
10 call vote on the motion now that it has been  
11 seconded.

12 Mr. Brooks?

13 MEMBER BROOKS: I agree.

14 CHAIRPERSON MILLER: Mr. Alberti?

15 MEMBER ALBERTI: I agree.

16 CHAIRPERSON MILLER: Mr.

17 Rodriguez?

18 MEMBER RODRIGUEZ: I agree.

19 CHAIRPERSON MILLER: Ms. Miller  
20 agrees.

21 Mr. Silverstein?

22 MEMBER SILVERSTEIN: I agree.

1 CHAIRPERSON MILLER: Mr. Short?

2 MEMBER SHORT: I agree.

3 CHAIRPERSON MILLER: Mr. Jones?

4 MEMBER JONES: I agree.

5 CHAIRPERSON MILLER: Okay. It  
6 appears that the motion has passed by a vote  
7 of 7-0-0.

8 I hereby give notice that the ABC  
9 Board will hold a closed meeting to deliberate  
10 on this case and confer with counsel and we  
11 will issue a decision within 90 days.

12 Thank you.

13 MR. SHIRAFKAN: Thank you.

14 MR. BROWN: Thank you. Good  
15 evening.

16 CHAIRPERSON MILLER: Have a good  
17 evening. You all may go home. Okay. The  
18 Board is going to take a recess and come back  
19 to do the agenda in a little bit.

20 (Whereupon, the Protest Hearing in  
21 the above-entitled matter was concluded at  
22 7:11 p.m.)

<b>A</b>				
<b>\$1</b> 104:22	<b>above-entitled</b> 313:21	<b>additions</b> 9:6	194:18 255:9	169:21 170:5,16
<b>\$10</b> 131:21	<b>ABRA</b> 1:22 22:11	<b>address</b> 13:18 15:8	271:12 292:16	172:5,6,8,9 173:8
<b>\$10,000</b> 77:2 78:10	22:18 27:6,7,20	28:2 77:16 86:21	293:2 312:13,15	173:9,15 181:21
<b>\$100</b> 105:1	27:22 28:1 223:11	120:8 174:8 256:7	312:18,22 313:2,4	182:19,20 183:17
<b>\$100,000</b> 125:8	286:9 287:18	269:19 273:7	<b>agreed</b> 114:11	184:3,3,11,18
<b>\$11</b> 110:18	299:8	<b>adequate</b> 198:13,17	134:4 161:13	186:14 189:3
<b>\$140</b> 78:10	<b>absence</b> 195:20	<b>adequately</b> 309:16	188:3	190:7 191:7,17
<b>\$145</b> 77:3	308:6,21 309:3	<b>adhesion</b> 183:22	<b>agreeing</b> 199:8	193:16 194:7,15
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