

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

IN THE MATTER OF:

Aki & Muller Corporation
t/a Wheeler Market
4135 Wheeler Road, SE
Retailer B - ANC-8E
License No. 88835
Case #14-PRO-00075

Protest
Hearing

(Application to Renew
the License)

May 6, 2015

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
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

DORSHAE DEMBY, ABRA Investigator

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Opening Statement by Applicant 8
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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Dorshae Demby	11		29	
Karlene Armstead	40		43	
Schyla Pondexter	80			
Anthony Muhammad	87			

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

2 2:39 p.m.

3 CHAIRPERSON MILLER: Okay. We are
4 ready. Good afternoon. I'm calling Case No. 14-
5 PRO-00075, Wheeler Market located at 4133 Wheeler
6 Road, S.E., License No. 88835, in ANC-8E. And
7 this is a Protest Hearing for the renewal of
8 Wheeler Market's license.

9 Okay. You can come forward, all the
10 parties at least or the representatives of the
11 parties. So when you are ready, sign-in on that
12 piece of paper on each desk, each table and then
13 you can identify yourselves for the record.

14 MR. MUHAMMAD: I'm Anthony Muhammad,
15 Chair of ANC-8E.

16 CHAIRPERSON MILLER: Did you say you
17 are chair? Are you Chair of ANC-8E?

18 MR. MUHAMMAD: Yes.

19 CHAIRPERSON MILLER: Okay.

20 MR. DIETZ: Good afternoon. I'm
21 Bernard C. Dietz. I represent the licensee. I
22 have with me Mr. Mulugeta Woldeabzghi, who is the

1 president of the corporation.

2 CHAIRPERSON MILLER: Mr. Woldeabzghi?

3 Okay.

4 MR. WOLDEABZGHI: Hi.

5 CHAIRPERSON MILLER: Hi. All right.

6 Let me just start, I know, Mr. Dietz, you
7 participated in Protest Hearings before. Have
8 you, Mr. Muhammad?

9 MR. MUHAMMAD: Yes.

10 CHAIRPERSON MILLER: Okay. So you are
11 familiar with how it goes.

12 MR. MUHAMMAD: Yes.

13 CHAIRPERSON MILLER: All right. So
14 I'm not going to necessarily review the procedure
15 then.

16 In general though, you each have five
17 minutes for opening and closing and an hour and a
18 half for in between, which would be your direct
19 and your cross-examination.

20 Okay. I want to ask if there are some
21 preliminary matters you want to raise? I would
22 like to raise a preliminary matter then.

1 Mr. Muhammad, I wanted to ask you, I
2 think this is your PIF, did you say that what you
3 are seeking is to get the establishment to sign a
4 settlement agreement?

5 MR. MUHAMMAD: Yes.

6 CHAIRPERSON MILLER: Okay. So this
7 Board doesn't have jurisdiction to impose a
8 settlement agreement upon the parties.

9 MR. MUHAMMAD: Okay.

10 CHAIRPERSON MILLER: What we do have
11 jurisdiction is, at this point in a hearing, to
12 impose some conditions, any conditions that might
13 go to peace, order and quiet. Do you have issues
14 separate from whether or not there is a
15 settlement agreement?

16 MR. MUHAMMAD: (No audible answer.)

17 CHAIRPERSON MILLER: Do you know what
18 I'm saying? You can voluntarily join in and do a
19 settlement agreement. The parties do that
20 voluntarily. The Board does not impose that.

21 MR. MUHAMMAD: Okay. They had agreed
22 then they disagreed.

1 CHAIRPERSON MILLER: So you don't
2 have --

3 MR. MUHAMMAD: Right in front of this
4 Board. So to go back on their word, them wanting
5 to go to a full Protest Hearing, --

6 CHAIRPERSON MILLER: Okay.

7 MR. MUHAMMAD: -- to me, didn't make
8 sense.

9 CHAIRPERSON MILLER: I can understand
10 that that might not, but you are here now and I
11 just want to tell you what we can do and what we
12 can't do.

13 MR. MUHAMMAD: Okay.

14 CHAIRPERSON MILLER: So if we are
15 going forward with the Protest Hearing, my
16 question is do you have issues under the statute?

17 MR. MUHAMMAD: I have 158 people that
18 has been killed in Ward 8 in this bar.

19 CHAIRPERSON MILLER: Okay. Related to
20 this establishment, do you have related to peace,
21 order and quiet that you are going to be
22 representing in this hearing?

1 MR. MUHAMMAD: Yes.

2 CHAIRPERSON MILLER: Okay. So we will
3 see how that goes. And I just want you to know
4 up front that we won't impose a settlement
5 agreement. Okay. All right. Any --

6 MR. MUHAMMAD: You say you don't want
7 them to sign a settlement agreement?

8 CHAIRPERSON MILLER: No, we don't
9 impose. We can't -- we don't -- when it gets to
10 a protest, you had that opportunity before --

11 MR. MUHAMMAD: Right.

12 CHAIRPERSON MILLER: -- the hearing.

13 MR. MUHAMMAD: Right.

14 CHAIRPERSON MILLER: When it gets to
15 the hearing stage, we can only -- we can deny the
16 renewal. We could approve the renewal or we
17 could approve the renewal with some conditions
18 that alleviate any adverse impacts related to the
19 establishment.

20 MR. MUHAMMAD: Okay.

21 CHAIRPERSON MILLER: And so I see on
22 the PIFs there are no exhibits. Nobody had

1 exhibits. And, Mr. Dietz, do you have three
2 witnesses?

3 MR. DIETZ: I have two witnesses.

4 CHAIRPERSON MILLER: Okay. And, Mr.
5 Muhammad, do you have any witnesses?

6 MR. MUHAMMAD: They didn't show.

7 CHAIRPERSON MILLER: They didn't show.
8 Okay. All right. So let's start with opening
9 statements then.

10 MR. DIETZ: This is a Retailer Class
11 B grocery/deli store that has necessary food
12 services for the community.

13 CHAIRPERSON MILLER: Is your mike on?
14 I'm having trouble hearing.

15 MEMBER ALBERTI: If you could speak
16 up, Mr. Dietz, and pull the mike closer?

17 MR. DIETZ: Okay. Can you hear me
18 now?

19 CHAIRPERSON MILLER: Yes, that's
20 better.

21 MEMBER ALBERTI: Yes.

22 CHAIRPERSON MILLER: Thank you.

1 MEMBER ALBERTI: Thank you.

2 MR. DIETZ: That provides a full-
3 service food service to the community. It has a
4 Retailer Class B ABC License, which has been in
5 place in the establishment quite a number of
6 years. Over those years, there have been no
7 issues regarding removal of that license, one
8 where any issues regarding the license currently.

9 Mr. Muhammad is correct, we did agree
10 to negotiate a settlement agreement back in
11 October of this year. The Board reviewed the
12 draft and requested amendments to the draft back
13 in December. Mr. Muhammad had been completely
14 silent regarding the amendments until the Status
15 Hearing we just had last month. We heard nothing
16 from him. The Board heard nothing from him.

17 My witness, Mrs. Karlene Armstead is
18 the Single Member District ANC Commissioner. She
19 will testify that there are virtually no issues
20 regarding this store.

21 That being the case, as far as we're
22 concerned, it's too late to negotiate. We were

1 glad too, but we are prepared to go forward with
2 the hearing.

3 Furthermore, we rely completely on the
4 investigative report.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Muhammad, do you have an opening statement?

7 MR. MUHAMMAD: Yes. I'm Chair of ANC-
8 8E and I receive complaints from High Point
9 Homeowners Association, which is directly across
10 the street from this establishment. They
11 complain about people standing, blocking the
12 walkway of the establishment when they attempt to
13 go in.

14 And they do not clean, even though
15 they have in the report that they clean every --
16 twice a week, there is trash at the end of the
17 day after it's closed. So whenever that report--
18 when this Investigator gave his report, it must--
19 was in the morning. Never at night. Never after
20 business hours. And he may need to go back
21 through some training.

22 CHAIRPERSON MILLER: Okay.

1 MR. MUHAMMAD: Because as I said,
2 things may not directly come from that
3 establishment, but with them hanging out shooting
4 dice and things that incur problems, then the
5 peace, the quiet and the order is disturbed. And
6 these are the things that I have gotten from the
7 High Point Homeowners Association.

8 CHAIRPERSON MILLER: Okay. Thank you.
9 All right. Is our Investigator here?
10 Whereupon,

11 INVESTIGATOR DORSHAE DEMBY
12 was called as a witness by the ABRA Board, and
13 having been first duly sworn, assumed the witness
14 stand and was examined and testified as follows:

15 INVESTIGATOR DEMBY: I do.

16 CHAIRPERSON MILLER: Thank you.

17 DIRECT EXAMINATION

18 CHAIRPERSON MILLER: So you prepared
19 an investigation report for this case, correct?

20 INVESTIGATOR DEMBY: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay. Do you
22 want to discuss the highlights of that?

1 INVESTIGATOR DEMBY: Yes, ma'am.

2 CHAIRPERSON MILLER: Thank you.

3 INVESTIGATOR DEMBY: Should I
4 introduce myself for the record?

5 CHAIRPERSON MILLER: Yes.

6 INVESTIGATOR DEMBY: Okay.

7 CHAIRPERSON MILLER: Thank you.

8 INVESTIGATOR DEMBY: My name is
9 Investigator Dorshae Demby with the Alcoholic
10 Beverage Regulation Administration.

11 As an ABRA Investigator I conduct
12 inspections and investigations of licensed ABC
13 establishments throughout the District of
14 Columbia. I was assigned to investigate the
15 protest of Aki & Muller Corporation t/a Wheeler
16 Market, a Class B Retailer, located at 4133
17 Wheeler Road, S.E., Washington, D.C., located in
18 Ward 8 under ANC-8E.

19 The establishment's alcohol license
20 renewal is being protested by the Advisory
21 Neighborhood Commission, which is represented by
22 ANC-8E Chairman, Mr. Anthony Muhammad.

1 The protest issues for Wheeler Market
2 are adverse impact on peace, order and quiet.

3 On Tuesday, April 21, 2015,
4 Investigator Demby interviewed the licensee of
5 Wheeler Market. The licensee stated that an
6 agreement had been reached between himself and
7 Mr. Muhammad, but an amended version was needed,
8 which he never received. The licensee stated
9 that the deadline was established by ABRA
10 concerning when the amended settlement agreement
11 was to be submitted and that Mr. Muhammad failed
12 to adhere to that deadline.

13 The licensee stated that he now wished
14 to proceed with the Protest Hearing, because he
15 did not understand why a settlement agreement was
16 needed since he abided by all District Laws and
17 ABRA Regulations.

18 The licensee stated that he felt that
19 Mr. Muhammad was using the protest as a tool to
20 direct how he ran his business. The licensee
21 stated that Mr. Muhammad wanted him to limit the
22 selection of tobacco products that he sold within

1 his store.

2 The licensee stated that he spoke with
3 a member of the ANC by the name of Ms. Marshall
4 and that Ms. Marshall indicated to him that she
5 did not agree with the issues that Mr. Muhammad
6 was mentioning concerning the store.

7 The licensee concluded his statement
8 by adding that he does not wish to have a
9 settlement agreement because he runs a lawful
10 establishment and will continue to do so in the
11 future.

12 ABRA Investigators attempted on
13 multiple occasions to reach Mr. Anthony Muhammad,
14 the ANC-8E Chairman and designated representative
15 for the protest for an interview. ABRA
16 Investigators were unsuccessful in reaching Mr.
17 Muhammad after several emails, Exhibits 2, 3 and
18 4, and telephone calls.

19 ABRA Investigators were unable to
20 leave voice messages for Mr. Muhammad because the
21 phone number provided did not have an established
22 voicemail system.

1 In addition, ABRA Investigators
2 received no response from multiple emails sent to
3 Mr. Muhammad from the date ranges of April 6,
4 2015 through April 24, 2015.

5 The summary of my findings resulting
6 from the investigation beginning March 25, 2015
7 until April 28, 2015 are the following:

8 Wheeler Market occupies a unit within
9 a small commercial shopping center located at
10 4133 Wheeler Road, S.E., Washington, D.C.
11 Wheeler Market is bounded by Wheeler Place, S.E.,
12 and Barnaby Street, S.E. Wheeler Market is
13 located primarily in a Residential District with
14 residences surrounding the establishment.

15 The commercial area includes a total
16 of one licensed ABC establishment within 1,200
17 feet of the establishment, which is Wheeler
18 Liquors, the only other ABRA establishment within
19 1,200 feet and they also have a Class B License.

20 Wheeler Market is primarily a
21 neighborhood store offering groceries and
22 convenience items in addition to alcohol. In

1 addition to the few commercial establishments
2 neighboring Wheeler Market, there is one church,
3 True Gospel Tabernacle Baptist Church,
4 approximately, 207 feet from Wheeler Market.

5 The establishment was monitored by
6 ABRA Investigators on six separate occasions
7 between March 25, 2015 and April 28, 2015. The
8 times of the monitoring are as follows:

9 Wednesday, March 25, 2015 at 10:45 a.m. to 11:00
10 a.m.; Thursday, April 2, 2015 at 11:20 p.m. to
11 11:30 p.m.; Monday, April 6, 2015 at 10:20 a.m.
12 to 10:45 a.m.; Tuesday, April 21, 2015 at 1:00
13 p.m. to 1:10 p.m.; Friday, April 24, 2015 at 9:35
14 p.m. to 10:32 p.m.; Tuesday, April 28, 2015 at
15 10:10 p.m. to 10:40 p.m. On all of the separate
16 visits, no ABRA violations were observed.

17 A check of ABRA records revealed that
18 the establishment has never been the subject of a
19 noise complaint nor has the establishment been
20 visited by the Noise Task Force. Information
21 received from the Office of Unified
22 Communications shows that the establishment had

1 14 calls for service between May 2014 and March
2 2015 with no calls requiring ABRA enforcement.

3 A check of the establishment's
4 investigative history showed the following:

5 Case No. 12-CMP-00608, supposed to be
6 carrying the licenses, legible lettering. A \$250
7 fine was imposed. Signs warning -- referring to
8 pregnancy, a \$100 fine was imposed. Signs
9 referring legal drinking age and valid ID a \$250
10 fine was imposed. A and B Licenses providing go-
11 cups a \$250 fine was imposed. Citation No. 6969
12 for a total of \$850 in fines.

13 On March 29, 2013, with reference to
14 the aforementioned case, the OAG declined to
15 prosecute.

16 That is the conclusion of my report.

17 CHAIRPERSON MILLER: Thank you. Are
18 there Board questions? Yes, Mr. Short?

19 MEMBER SHORT: Good afternoon,
20 Investigator.

21 INVESTIGATOR DEMBY: Good afternoon,
22 sir.

1 MEMBER SHORT: On your dates that you
2 visited this establishment --

3 INVESTIGATOR DEMBY: Yes, sir.

4 MEMBER SHORT: -- what time of day
5 were they and what day of the week were they?

6 INVESTIGATOR DEMBY: On page 5 of the
7 report, of my report, you have the times outlined
8 there. As previously mentioned, the days that
9 were visited were Wednesdays, Thursdays, Mondays,
10 Tuesdays and Fridays. The times range from as
11 early as 10:45 a.m. to as late as 11:30 p.m.

12 MEMBER SHORT: Okay. On the 11:30
13 visits --

14 INVESTIGATOR DEMBY: On April 2nd, that
15 was April 2, 2015, which was a Thursday, 11:20
16 p.m. to 11:30 p.m.

17 MEMBER SHORT: Did you observe
18 anything that would have caused concern with
19 peace, order, quiet?

20 INVESTIGATOR DEMBY: This case was
21 originally assigned to Investigator Vick and the
22 monitoring is not done by solely one ABRA

1 Investigator. It's assigned across shifts. As
2 you know, we work split shifts.

3 MEMBER SHORT: Okay.

4 INVESTIGATOR DEMBY: This was done by
5 another ABRA Investigator. I personally did not
6 make that visit, but according to the
7 observations received by me from that
8 Investigator, no ABRA violations were observed.

9 MEMBER SHORT: No ABRA violations?

10 INVESTIGATOR DEMBY: Yes, sir.

11 MEMBER SHORT: Okay. All right. And
12 where did you observe? In your report you are
13 saying it's mostly residential the area?

14 INVESTIGATOR DEMBY: Yes, sir.

15 MEMBER SHORT: And you are saying that
16 -- and I happen to know the area.

17 INVESTIGATOR DEMBY: Yes.

18 MEMBER SHORT: There is a little strip
19 mall there, correct?

20 INVESTIGATOR DEMBY: Yes, sir.

21 MEMBER SHORT: How many other stores
22 in that mall?

1 INVESTIGATOR DEMBY: I believe this is
2 an estimate, I would say five.

3 MEMBER SHORT: Five others?

4 INVESTIGATOR DEMBY: Yes, sir.

5 MEMBER SHORT: And any time you have
6 been by there, have you noticed any loitering or
7 anything like that when you -- in that shopping
8 mall?

9 INVESTIGATOR DEMBY: In that shopping
10 center, yes, sir. Not in front of Wheeler
11 Market, sir.

12 MEMBER SHORT: But in the shopping
13 center period?

14 INVESTIGATOR DEMBY: Yes, sir.

15 MEMBER SHORT: That's all I have.
16 Thank you, Madam Chair.

17 CHAIRPERSON MILLER: Okay. Thank you.
18 Others? I'll follow-up. The loitering is in the
19 shopping area?

20 INVESTIGATOR DEMBY: Yes.

21 CHAIRPERSON MILLER: Do you know why
22 they are in the shopping areas?

1 INVESTIGATOR DEMBY: I believe is a
2 barbershop located in the shopping center. A lot
3 of the traffic was, in my observation, related to
4 the barbershop. There is also Wheeler Liquors,
5 they seemed to have a number of people in front
6 of their establishment.

7 As for Wheeler Market, it's on the
8 extreme opposite corner with an empty lot next to
9 it. There were no loitering individuals in front
10 of their establishment.

11 CHAIRPERSON MILLER: Okay.

12 INVESTIGATOR DEMBY: At the times that
13 I visited the establishment.

14 CHAIRPERSON MILLER: Do you know how
15 long this market has been in existence?

16 INVESTIGATOR DEMBY: No, ma'am.

17 CHAIRPERSON MILLER: Okay. Do you
18 know what the zoning is for where the market is?

19 INVESTIGATOR DEMBY: Yes, ma'am.

20 CHAIRPERSON MILLER: What is that?

21 INVESTIGATOR DEMBY: One second. C-1.

22 CHAIRPERSON MILLER: Okay. Thank you.

1 Did you ever visit this establishment at night?

2 INVESTIGATOR DEMBY: Myself

3 personally? No, ma'am.

4 CHAIRPERSON MILLER: But other

5 Investigators did?

6 INVESTIGATOR DEMBY: Yes, ma'am. No,

7 I take that back, ma'am.

8 CHAIRPERSON MILLER: Okay.

9 INVESTIGATOR DEMBY: The April 28,

10 2015 visit was my visit at 10:10 p.m.

11 CHAIRPERSON MILLER: All right. Did

12 you notice trash at that hour?

13 INVESTIGATOR DEMBY: Did I notice

14 trash?

15 CHAIRPERSON MILLER: Yes.

16 INVESTIGATOR DEMBY: No, ma'am.

17 CHAIRPERSON MILLER: Okay. And I

18 assume you didn't notice loitering, because you

19 didn't see loitering ever, right?

20 INVESTIGATOR DEMBY: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay. Are you

22 familiar with High Point?

1 INVESTIGATOR DEMBY: I'm familiar with
2 the residences around the area. I don't know the
3 particular names of those residences.

4 CHAIRPERSON MILLER: Okay. Did anyone
5 ever complain to you about the market?

6 INVESTIGATOR DEMBY: No, ma'am. As
7 stated in the report, I was unable to reach the
8 representative. I haven't received any
9 complaints other than what was given to me in the
10 file for the protest that was assigned.

11 CHAIRPERSON MILLER: Okay. And how
12 close is the market to a residence?

13 INVESTIGATOR DEMBY: Approximately,
14 500 feet across the street. When I say
15 surrounded, I literally mean surrounded. So
16 there is a shopping strip mall there. Across the
17 street there are residences.

18 CHAIRPERSON MILLER: Oh, okay.

19 INVESTIGATOR DEMBY: To the right of
20 it less than a tenth of a mile there are
21 residences. Behind the establishment through the
22 parking lot there are residences or through the

1 lot.

2 CHAIRPERSON MILLER: Okay.

3 INVESTIGATOR DEMBY: So it's literally
4 like in the center of a bullseye and all around
5 it you can find a house.

6 CHAIRPERSON MILLER: Okay. Good.
7 Okay. That's all. Yes, Mr. Brooks?

8 MEMBER BROOKS: Thank you, Madam
9 Chair. Mr. Demby, do you have a copy of your
10 protest report?

11 INVESTIGATOR DEMBY: I do, sir.

12 MEMBER BROOKS: You do?

13 INVESTIGATOR DEMBY: Yes, sir.

14 MEMBER BROOKS: Could you turn to the
15 very last email that you sent to Mr. Muhammad
16 just before the map? It is dated April 24th,
17 Friday, April 24th.

18 INVESTIGATOR DEMBY: Sir, yes, sir.

19 MEMBER BROOKS: You got it?

20 INVESTIGATOR DEMBY: Yes, sir.

21 MEMBER BROOKS: Okay. I'm just
22 curious. This was sent Friday, April 24th, and

1 but in the last sentence of this email, please,
2 be advised -- and again this email is to Mr.
3 Muhammad --

4 INVESTIGATOR DEMBY: Right.

5 MEMBER BROOKS: -- from you. Please
6 be advised that this interview must be conducted
7 by the close of business 4/23.

8 INVESTIGATOR DEMBY: That's correct.

9 There was an issue with my email, so when the
10 issue resolved itself, it was on April 24th at,
11 approximately, 8:41 a.m. It was sitting in the
12 outbox, so once that issue resolved itself, it
13 pushed the email through. I noticed that had
14 occurred. I called Mr. Muhammad on April 24th and
15 received no response.

16 MEMBER BROOKS: Okay. Okay. Great.

17 All right. So it was sent the day after.

18 INVESTIGATOR DEMBY: The
19 correspondence officially went to Mr. Muhammad on
20 Friday, April 24th.

21 MEMBER BROOKS: The 24th.

22 INVESTIGATOR DEMBY: Right, and that--

1 MEMBER BROOKS: For the interview to
2 be conducted by the 23rd?

3 INVESTIGATOR DEMBY: For it be
4 completed by the 23rd.

5 MEMBER BROOKS: Okay. All right.
6 Thank you.

7 INVESTIGATOR DEMBY: Yes.

8 MEMBER BROOKS: Thank you, Madam
9 Chair.

10 CHAIRPERSON MILLER: Okay. Anybody
11 else? Mr. Rodriguez?

12 MEMBER RODRIGUEZ: Yes, sir. I want
13 to ask you about parking in the area.

14 INVESTIGATOR DEMBY: Okay.

15 MEMBER RODRIGUEZ: Have you noticed
16 any congestion or parking when you were there?

17 INVESTIGATOR DEMBY: Congestion with
18 the parking?

19 MEMBER RODRIGUEZ: Yes.

20 INVESTIGATOR DEMBY: No, sir.

21 MEMBER RODRIGUEZ: With respect to
22 traffic and all that?

1 INVESTIGATOR DEMBY: No, sir.

2 MEMBER RODRIGUEZ: Okay.

3 INVESTIGATOR DEMBY: The parking --
4 the shopping center has a parking lot. It seemed
5 to accommodate its patrons adequately the times
6 that I was there.

7 MEMBER RODRIGUEZ: All right. Okay.
8 I have no more questions.

9 CHAIRPERSON MILLER: Okay. Any other
10 Board questions?

11 MEMBER SHORT: I just wanted --

12 CHAIRPERSON MILLER: Okay. Mr. Short?

13 MEMBER SHORT: -- to pick up where
14 with Mr. Rodriguez.

15 CHAIRPERSON MILLER: All right.

16 MEMBER SHORT: You say this shopping
17 strip sits in the middle of a residential area?

18 INVESTIGATOR DEMBY: That's correct.

19 MEMBER SHORT: So would it be fair to
20 say that most people who come to the shopping
21 center are probably walking?

22 INVESTIGATOR DEMBY: That's correct.

1 MEMBER SHORT: The community. So
2 parking has never been an issue there, I don't
3 think.

4 INVESTIGATOR DEMBY: I don't know if
5 it has ever been an issue. The times that I have
6 visited the establishment, it wasn't an issue.

7 MEMBER SHORT: Okay. All right.
8 Thank you very much, Madam Chair.

9 CHAIRPERSON MILLER: All right. Okay.
10 I think that concludes the Board's questions.
11 Mr. Dietz, does the applicant have any questions
12 for our Investigator?

13 MR. DIETZ: I have no questions.

14 CHAIRPERSON MILLER: Okay. Mr.
15 Muhammad, do you have any questions for our
16 Investigator?

17 MR. MUHAMMAD: Yes.

18 CROSS-EXAMINATION

19 MR. MUHAMMAD: Do you have any
20 pictures that you took at night? I see there are
21 some day pictures. Do you have any at night?

22 INVESTIGATOR DEMBY: The pictures that

1 I took were for the exhibit purposes of
2 illustrating the establishment. It wouldn't be
3 conclusive to my investigation to take pictures
4 at night of the establishment.

5 MR. MUHAMMAD: So if any peace, order
6 or quiet was going on, you would not think you
7 would need any pictures? You wouldn't need
8 pictures for it, just verbal?

9 INVESTIGATOR DEMBY: Are you asking
10 what I did or what I think?

11 MR. MUHAMMAD: Both.

12 INVESTIGATOR DEMBY: Can you repeat
13 the question, sir?

14 MR. MUHAMMAD: Would you need picture
15 if trash was thrown in front to establish that
16 took place as opposed to you saying it out of
17 your mouth?

18 INVESTIGATOR DEMBY: Would I need
19 picture in front to establish that trash was
20 present or was not present?

21 MR. MUHAMMAD: Correct.

22 INVESTIGATOR DEMBY: One would assume

1 that one may need pictures, but my protest was
2 based on peace, order, quiet, so I don't need
3 pictures to establish peace, order, quiet.

4 MR. MUHAMMAD: So if trash was there,
5 that wouldn't affect neither one of those issues,
6 peace, order or quiet?

7 INVESTIGATOR DEMBY: No, sir.

8 MR. MUHAMMAD: So it could be dirty
9 and that would not be an ABRA issue?

10 INVESTIGATOR DEMBY: It would be an
11 ABRA issue had litter been cited as --

12 MR. MUHAMMAD: I didn't say litter.
13 I said trash.

14 INVESTIGATOR DEMBY: -- a protest--
15 had trash been cited as an ABRA issue? You said
16 would trash be an ABRA issue?

17 MR. MUHAMMAD: Correct.

18 INVESTIGATOR DEMBY: If it was dirty.
19 Peace, order, quiet was the protest issues.

20 MR. MUHAMMAD: Okay. So trash is not
21 part of peace, order and quiet?

22 INVESTIGATOR DEMBY: Peace, order,

1 quiet, as I understand it, trash did not play a
2 part. Excessive trash did not play a part in
3 this protest.

4 MR. MUHAMMAD: No, would it be an
5 issue? I didn't say did it play. Would it be an
6 issue if it was there?

7 (Simultaneous speaking.)

8 INVESTIGATOR DEMBY: As an
9 Investigator, sir, I don't speak to the ifs of if
10 something was there. My investigation was to
11 conduct and report factual --

12 MR. MUHAMMAD: So you're stating that
13 peace --

14 INVESTIGATOR DEMBY: -- things that
15 were --

16 MR. MUHAMMAD: -- order and trash --

17 CHAIRPERSON MILLER: Excuse me, Mr.
18 Muhammad?

19 MR. MUHAMMAD: -- is not --

20 CHAIRPERSON MILLER: Mr. Muhammad, you
21 have to let him finish his answer before you --

22 MR. MUHAMMAD: Okay.

1 CHAIRPERSON MILLER: -- jump in.

2 Okay. Thank you.

3 INVESTIGATOR DEMBY: It's to report on
4 the things that were present and the things that
5 were made an issue in the protest and that's what
6 I did, sir.

7 MR. MUHAMMAD: What is peace, order
8 and quiet in your investigative intelligence?

9 INVESTIGATOR DEMBY: What is peace,
10 order and quiet? Peace, order, quiet would be
11 issues -- one, it would be relative to the
12 community. One community may consider peace,
13 order, quiet to be people speaking in a low tone.
14 Another area of the neighborhood may consider
15 peace, order, quiet there being no music played
16 at all.

17 But peace, order, quiet as I have been
18 trained on it is there -- people loitering in
19 front of that establishment would go to peace,
20 order, quiet. Crime happening inside of that
21 establishment would go to peace, order, quiet.
22 That establishment violating ABRA Regulations

1 will go to peace, order, quiet.

2 They haven't violated any ABRA
3 Regulations during my monitoring visits there,
4 so, by that term, they did not violate peace,
5 order, quiet.

6 MR. MUHAMMAD: But you say this
7 according to the community?

8 INVESTIGATOR DEMBY: I said one
9 community may see peace, order, quiet as people
10 screaming at the top of their lungs.

11 MR. MUHAMMAD: But that is how the
12 community sees it.

13 INVESTIGATOR DEMBY: So then I further
14 answered your question when I --

15 CHAIRPERSON MILLER: Mr. Muhammad?

16 INVESTIGATOR DEMBY: -- told you that
17 -- I'll give you a short answer, sir. Abiding by
18 ABRA Regulations, if they don't violate ABRA
19 Regulations, then, in my professional definition,
20 they have abided by peace, order, quiet.

21 MR. MUHAMMAD: Were these pictures
22 taken all in one day?

1 INVESTIGATOR DEMBY: That's correct.

2 MR. MUHAMMAD: What phone number do
3 you have for myself?

4 INVESTIGATOR DEMBY: I would have to
5 review the record, sir. I don't have that in
6 front of me.

7 MR. MUHAMMAD: You put the emails
8 there. You didn't put my phone number that you
9 said you couldn't reach me on.

10 INVESTIGATOR DEMBY: I was not told to
11 make your number as a part of the record. I was
12 told to make the emails as a part of the record
13 to document the times that we tried to contact
14 you.

15 MR. MUHAMMAD: You made an issue that
16 you called and you couldn't leave a message.

17 INVESTIGATOR DEMBY: That's correct.

18 MR. MUHAMMAD: But the phone number
19 wouldn't be a part of the record?

20 INVESTIGATOR DEMBY: I was, again, not
21 told to make your phone number a part of the
22 investigative report, which would go to record.

1 I was told to make the email as a part of the
2 report.

3 MR. MUHAMMAD: What's the distance
4 that you stated that the church is from that?

5 INVESTIGATOR DEMBY: Approximately,
6 207 feet.

7 MR. MUHAMMAD: And High Point is how
8 far away?

9 INVESTIGATOR DEMBY: I wouldn't be
10 able to tell you that, because I don't know what
11 High Point is designated as, as I told the Chair.

12 MR. MUHAMMAD: The neighbor across the
13 street, how far is that?

14 INVESTIGATOR DEMBY: Approximately,
15 500 feet.

16 MR. MUHAMMAD: The church is further.
17 And High Point is directly across. It's directly
18 across the street from it.

19 CHAIRPERSON MILLER: Okay. Let me say
20 that it's the time for questions. It's not a
21 time for argument or statements.

22 MR. MUHAMMAD: I'm not making an

1 argument.

2 CHAIRPERSON MILLER: You are making a
3 statement of where the church is. You can ask
4 him where the church is, but you can't tell him
5 where the church is. That's the rules of the
6 hearing. You can just ask questions of him.

7 MR. MUHAMMAD: The housing across the
8 street, you said is how far?

9 INVESTIGATOR DEMBY: Approximately,
10 500 feet.

11 MR. MUHAMMAD: That's the front door
12 or the back?

13 INVESTIGATOR DEMBY: I'm sorry?

14 MR. MUHAMMAD: The front or the back
15 door?

16 INVESTIGATOR DEMBY: This is an
17 estimation of where --

18 MR. MUHAMMAD: Okay.

19 INVESTIGATOR DEMBY: -- the front of
20 Wheeler Market is to where the houses are.

21 MR. MUHAMMAD: Thank you.

22 CHAIRPERSON MILLER: Okay. Mr.

1 Alberti, you have another question?

2 MEMBER ALBERTI: Real quick. I just
3 want to clear things up and, Mr. Demby, this is
4 in no way a criticism, but at least for myself
5 trash in the neighborhood does go to peace, order
6 and quiet. It goes to order. So I just want to
7 put that out.

8 So it's more of an educational
9 statement than anything and it's not meant as a
10 criticism. But I do want to -- so I do want to
11 ask, one, during these visits that you made,
12 which ones had you made? How many did you make?

13 INVESTIGATOR DEMBY: Two, sir.

14 MEMBER ALBERTI: Two. Okay. Which
15 ones?

16 INVESTIGATOR DEMBY: April 24th, April
17 28th.

18 MEMBER ALBERTI: Okay. 24 and 28.
19 When did you take -- which day did you take the
20 pictures?

21 INVESTIGATOR DEMBY: The day that I
22 conducted the interview with the licensee.

1 MEMBER ALBERTI: Was that on the 24th?

2 INVESTIGATOR DEMBY: Tuesday, April
3 21st.

4 MEMBER ALBERTI: Okay. So you have
5 actually been there three times at least, right?

6 INVESTIGATOR DEMBY: Yes, sir, one
7 time to conduct the interview and the other two
8 times to do monitoring.

9 MEMBER ALBERTI: Did you notice, in
10 your opinion, an unacceptable amount of trash?

11 INVESTIGATOR DEMBY: No, sir.

12 MEMBER ALBERTI: Okay. Trash that
13 would concern, that in your opinion, someone?

14 INVESTIGATOR DEMBY: There was no
15 trash in front of Wheeler Market that caused me
16 to believe that the trash was caused by Wheeler
17 Market or that Wheeler Market contributed to the
18 trash. And I would say that in front of Wheeler
19 Market it was exceptionally clean.

20 MEMBER ALBERTI: Okay. Very good.
21 Thank you very much for that.

22 INVESTIGATOR DEMBY: Thank you, sir.

1 CHAIRPERSON MILLER: Any other Board
2 questions? All right. You have an opportunity
3 to ask a Board question just based on -- I mean,
4 a follow-up question based on Mr. Alberti's line
5 of questioning. Does anybody else have a
6 question based on that? All right. Then thank
7 you very much.

8 INVESTIGATOR DEMBY: Okay. Thank you.

9 (Whereupon, the witness was excused.)

10 CHAIRPERSON MILLER: Okay.

11 MR. MUHAMMAD: I have a question for
12 the Board. I can't ask you --

13 CHAIRPERSON MILLER: You can ask. You
14 have a procedural question? You can ask me a
15 procedural question. Okay. Mr. Dietz, are you
16 waiting to present your case?

17 MR. DIETZ: Yes.

18 CHAIRPERSON MILLER: Okay.

19 MR. DIETZ: Okay. Take the stand.

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

22 Whereupon,

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KARLENE ARMSTEAD

was called as a witness by Counsel for the Applicant, and having been first duly sworn, assumed the witness stand and was examined and testified as follows:

MS. ARMSTEAD: I do.

CHAIRPERSON MILLER: All right. Thank you. Have a seat.

DIRECT EXAMINATION

MR. DIETZ: Could you state your name and your address?

MS. ARMSTEAD: My name is Karlene Armstead. My address is 559 Foxhall Place, S.E., Washington, D.C. 20032.

MR. DIETZ: Okay. And do you hold an office with the ANC?

MS. ARMSTEAD: Yes. I am an ANC and 8E06 is my commission. The Single Member District is where the market is in my commission.

MR. DIETZ: Okay. Are you aware of any community complaints regarding this business?

MS. ARMSTEAD: No, I'm not.

1 MR. DIETZ: Okay. Were you aware that
2 the ANC was going to protest this application?

3 MS. ARMSTEAD: No, I was not.

4 MR. DIETZ: Were you consulted in any
5 way?

6 MS. ARMSTEAD: Not at all.

7 MR. DIETZ: Okay. Do you patronize
8 the store?

9 MS. ARMSTEAD: I do, yes.

10 MR. DIETZ: And could you describe the
11 type of activity that takes place in the store?

12 MS. ARMSTEAD: Well, when I took
13 office in 2009, there were some issues, some
14 concerns with safety and -- concerning safety
15 from the store and the community. I asked that
16 MPD come in place and to kind of monitor the
17 store and the neighborhood and the surrounding
18 area to make sure that the community as well as
19 the store was safe.

20 The MPD does that on an hourly basis.
21 They would come in, make rounds and then they
22 would leave. So it has never been an issue with

1 the safety or the fact that the loitering would
2 prevail, because MPD would have them move along.

3 The area is generally clean at the end
4 of the night. I walk the area because I do like
5 to see what is going on in my community, so I am
6 out on the street at 12:30, 1:00 at night. I
7 catch the subway because I work 4:00 to 12:00 and
8 sometimes 12:00 to 8:00, so I generally would be
9 going past the store on the Metro, on the bus.

10 The store has been very clean. The
11 owner is very cooperative. He is very
12 supportive. He supports the community. The
13 community supports him. And everybody patronizes
14 his store. So there has never been an issue.

15 There is an empty store at the end
16 that used to be a carryout that now is being
17 boarded up because the owner of the parking lot
18 is getting ready to do some renovation. So it is
19 the ending of the parking lot where the loitering
20 pretty much takes place, because that is an empty
21 establishment. It's not in front of the store.

22 MR. DIETZ: Are you familiar with the

1 High Point Residents Association?

2 MS. ARMSTEAD: I am kind of, but not
3 really. No, I'm not. I know the tenants are
4 there. I know that they do patronize the store,
5 but to know them, to see them coming and who
6 lives there, no, I don't.

7 MR. DIETZ: So you have never received
8 a complaint from them?

9 MS. ARMSTEAD: No, I have not.

10 MR. DIETZ: Okay. I have no further
11 questions.

12 CHAIRPERSON MILLER: Okay. Thank you.
13 Mr. Muhammad, do you have cross-exam?

14 MR. MUHAMMAD: Yes.

15 CHAIRPERSON MILLER: Okay.

16 CROSS-EXAMINATION

17 MR. MUHAMMAD: Were you at the ANC
18 meeting October 6, 2014?

19 MS. ARMSTEAD: Yes, I was.

20 MR. MUHAMMAD: At a duly constituted
21 ANC meeting October 6, 2014, we voted with a
22 majority to oppose Retail Class B ABC License No.

1 08835, 4133 Wheeler Road, S.E. This is what we
2 voted for at our ANC meeting and you say you were
3 not aware of this protest.

4 MS. ARMSTEAD: No, not --

5 MR. MUHAMMAD: You're under oath.

6 MS. ARMSTEAD: Not of this protest,
7 no. I know that when we first initially or you
8 made aware that you were going to -- and that was
9 in November. November, the November meeting 2014
10 is when the licensing for renewal was brought to
11 our ANC Commission.

12 MR. MUHAMMAD: But you were at the
13 October meeting?

14 MS. ARMSTEAD: It was November that
15 the ANC voted. I did not take a part in the
16 vote. I have the minutes.

17 MR. MUHAMMAD: But you were at the
18 October meeting?

19 MS. ARMSTEAD: Yes.

20 MR. MUHAMMAD: Okay.

21 MS. ARMSTEAD: And I did not hear that
22 you were voting, because when you had established

1 that you were going to remove -- the renewal for
2 this license was to take place, then when you
3 voted, I did not vote, because I was in objection
4 to the whole way that it was conducted.

5 First of all, we did not inform or
6 invite --

7 MR. MUHAMMAD: You answered the
8 question. You were at the meeting.

9 MS. ARMSTEAD: You did not inform or
10 invite the owner to the store to discuss what was
11 going on and how the commission was being or how
12 they felt about the store.

13 MR. MUHAMMAD: You finished?

14 MS. ARMSTEAD: Yes.

15 MR. MUHAMMAD: Do you want to say
16 something else? But you were aware in November
17 then, if you wasn't aware in October after we
18 voted in 2014?

19 MS. ARMSTEAD: In November is when you
20 brought the fact that you were going to mandate
21 and make it mandatory that this person, that this
22 store owner would have to come to some agreement

1 that you were putting in place and this is when
2 we came for the hearing on November 18th at 1:00
3 and we had that hearing. And that's when that
4 agreement was supposed to have been structured.
5 You submitted your own documents of how you
6 wanted it to be rendered and then it was
7 submitted to the commission.

8 They came back with the document and
9 said that we, as the ANC, cannot enforce, because
10 that is not a part of what our commission is
11 about.

12 MR. MUHAMMAD: Do you know what a
13 settlement agreement is?

14 MS. ARMSTEAD: Yes, I do. And that is
15 what we were not in agreement with. At the time
16 that we had the meeting in the winter, I was
17 against the settlement agreement. He has not
18 done anything wrong.

19 MR. MUHAMMAD: It doesn't stop you
20 from doing any type of business or it's called a
21 good neighbor policy and agreement.

22 MS. ARMSTEAD: No. If I'm not doing

1 anything wrong, why do I have to admit to a good
2 neighbor policy? If I'm wrong, then you subject
3 me to those punishments or that direction. But
4 if I am not wrong, then why should I be adhered
5 to or have to adhere to a good neighbor benefit?
6 He has been supportive. He is not selling -- you
7 said paraphernalia. You said he was selling
8 drugs. He does none of that.

9 And you said when you went to see his
10 store that there was a woman working there. In
11 the -- from 2009 when I met him, there has not
12 been a woman in the establishment at all. No
13 woman works there. You told me that on the
14 pictures that you showed, the young lady that was
15 the new leader, you showed her pictures that were
16 taken in 2007 and '08.

17 MR. MUHAMMAD: How long have you been
18 an ANC Commissioner?

19 MS. ARMSTEAD: 2009.

20 MR. MUHAMMAD: And you know that a
21 settlement agreement doesn't interfere with no
22 part of his doing business?

1 MS. ARMSTEAD: Then why are we
2 requiring it of him?

3 MR. MUHAMMAD: It doesn't --

4 MS. ARMSTEAD: Then why are -- then
5 why is that being required of him?

6 MEMBER ALBERTI: Please use question
7 and answer and not a discussion.

8 MR. MUHAMMAD: Okay. Thank you.

9 CHAIRPERSON MILLER: That's --

10 MR. MUHAMMAD: Thank you.

11 CHAIRPERSON MILLER: Okay. Thank you.

12 Board questions?

13 MEMBER SHORT: I have one, Madam
14 Chair.

15 CHAIRPERSON MILLER: Okay. Yes, Mr.
16 Short.

17 MEMBER SHORT: Again, your name is?

18 MS. ARMSTEAD: Karlene Armstead.

19 MEMBER SHORT: Ms. Armstead.

20 MS. ARMSTEAD: Yes.

21 MEMBER SHORT: Welcome.

22 MS. ARMSTEAD: Thank you.

1 MEMBER SHORT: And good afternoon.

2 MS. ARMSTEAD: Good afternoon.

3 MEMBER SHORT: You have been ANC since
4 2009?

5 MS. ARMSTEAD: Yes.

6 MEMBER SHORT: Is it your testimony
7 that you at an ANC meeting knew of this or did
8 not know of this settlement agreement discussion?

9 MS. ARMSTEAD: I knew of the
10 settlement discussion when we came to this
11 meeting here at the ABRA was the first time I had
12 heard about it. And that was in November. That
13 was at the one meeting.

14 MEMBER SHORT: Okay.

15 MS. ARMSTEAD: We did vote in
16 November.

17 MEMBER SHORT: And what was that vote?

18 MS. ARMSTEAD: Could you excuse me?

19 MEMBER SHORT: Yes.

20 MS. ARMSTEAD: I also sent you an
21 email in my support. Okay. It says "Wheeler
22 Market liquor license is up for renewal. Chair

1 Muhammad expresses a concern regarding drugs,
2 drug paraphernalia being sold."

3 MEMBER SHORT: Can I ask you what you
4 are reading from?

5 MS. ARMSTEAD: These are the minutes
6 from our --

7 MEMBER SHORT: Okay. Thank you.

8 MS. ARMSTEAD: -- ANC meeting.

9 MEMBER SHORT: I wanted it for the
10 record.

11 MS. ARMSTEAD: Sure. "Was being sold
12 in various stores and ask that the ANC not
13 support the renewal until a proper signed
14 agreement that they would not sell drugs or
15 paraphernalia. Armstead opposes. Commissioner
16 Armstead objects to former Commissioner Seegars
17 for asking clarification of the motion and said
18 she was leaving to break the quorum. However,
19 the motion was completed before she departed.

20 The motion. Mr. Muhammad moves that
21 before ANC-8E supports their liquor license for
22 Wheeler Market must sign an agreement agreeing

1 that no selling of drugs or paraphernalia will be
2 sold in the store.

3 This motion was seconded by Ms.
4 Whelans. The motion passed 3-1 no vote."

5 MEMBER SHORT: So it was never
6 approved by your ANC?

7 MS. ARMSTEAD: No.

8 MEMBER SHORT: Is that your testimony?

9 MS. ARMSTEAD: It was passed. It says
10 "motion passed 3-1 not voting," which I did not
11 vote, so it did pass.

12 MEMBER SHORT: Okay. And are you
13 aware that settlement agreements are a part of a
14 lot of ABC establishments citywide?

15 MS. ARMSTEAD: I have heard that, yes.
16 But then I also heard that those that they are
17 making citywide were the stores that had had some
18 issues or that they had had some problems with
19 prior to them making the agreement.

20 MEMBER SHORT: Would you be surprised
21 if I said that new licenses and renewal licenses
22 are part of that process?

1 MS. ARMSTEAD: Is that a requirement
2 or is that something that the ANCs are --

3 MEMBER SHORT: It's part of the
4 process.

5 MS. ARMSTEAD: -- formulating? Oh,
6 that's a form, okay.

7 MEMBER SHORT: That's all I have,
8 Madam Chair.

9 CHAIRPERSON MILLER: I just want to
10 clarify though it's not a requirement.

11 MS. ARMSTEAD: Yes.

12 CHAIRPERSON MILLER: Right? That some
13 communities do it with establishments
14 voluntarily. They work things out and they have
15 their settlement agreement. But you are right
16 that not everybody does, not everybody needs one
17 or thinks they need one.

18 MS. ARMSTEAD: Right.

19 CHAIRPERSON MILLER: It varies. But
20 it is, it's part of the process to see if they
21 come to an agreement.

22 MEMBER SHORT: That's all I wanted to

1 get on the record.

2 CHAIRPERSON MILLER: Yes, it's part of
3 the process, but it's not a requirement. Okay.
4 Let me ask you this. I was just trying to follow
5 a couple of things that you said.

6 Before this motion about they had to
7 do a settlement agreement, was there a resolution
8 by the ANC to protest the renewal?

9 MS. ARMSTEAD: I don't recall a
10 resolution for the protest.

11 CHAIRPERSON MILLER: Okay. And you
12 were talking about the MPD in 2009 --

13 MS. ARMSTEAD: Yes.

14 CHAIRPERSON MILLER: -- so you started
15 in 2009. Had this market been in existence prior
16 to that time?

17 MS. ARMSTEAD: Yes, it has.

18 CHAIRPERSON MILLER: So did something
19 happen that prompted you or someone else to have
20 MPD come and make the rounds?

21 MS. ARMSTEAD: Well, at the time there
22 was a lot of traffic, but not -- some were just

1 people congregating pretty much. And because I
2 was new as a Commissioner, I just thought that
3 there were some things that I just wanted to make
4 different in the community and safety was one of
5 those things that I thought that would help and
6 impact on the whole community. Safety for the
7 stores as well as the community.

8 CHAIRPERSON MILLER: So does MPD still
9 do that?

10 MS. ARMSTEAD: Yes, they do.

11 CHAIRPERSON MILLER: Oh, so that part
12 of their routine?

13 MS. ARMSTEAD: That's -- yes.

14 CHAIRPERSON MILLER: How often do they
15 make the rounds or come by the shopping center?

16 MS. ARMSTEAD: They were at one time
17 every hour, but I think they are doing it like
18 every two hours, if I'm not mistaken. Somewhere
19 around that time.

20 CHAIRPERSON MILLER: Oh, okay. But
21 it's not related to any problems caused --

22 MS. ARMSTEAD: No, nothing related to

1 the problems, no. They are part of the PSA and
2 because of them being a part of the Public
3 Service Area, then you ask them that you just
4 kind of check and look over for areas. And at
5 one time on the other side of 8E, there were car
6 break-ins that were going on and every since then
7 they are patrolling one area, they might as well
8 patrol the whole area.

9 CHAIRPERSON MILLER: Okay. Any other
10 Board questions? Mr. Alberti?

11 MEMBER ALBERTI: So, Ms. Armstead, I
12 want to go back to the October meeting, because
13 this October letter has been referenced and I
14 assume that that -- it says at a duly constituted
15 ANC meeting on October 6th, the ANC -- I'm
16 paraphrasing, but the ANC voted with a majority
17 to oppose the liquor license.

18 To your recollection was a motion made
19 to oppose at that meeting?

20 MS. ARMSTEAD: Not to my recollection,
21 no. Because if they made a motion, then why are
22 we then bringing it at the November meeting?

1 (Simultaneous speaking.)

2 MEMBER ALBERTI: Well, --

3 MS. ARMSTEAD: I know --

4 MEMBER ALBERTI: -- again, I --

5 MS. ARMSTEAD: I understand that. But

6 I mean, I really don't remember.

7 MEMBER ALBERTI: Just answer my

8 questions.

9 MS. ARMSTEAD: Okay. Yes, I can't.

10 MEMBER ALBERTI: I can --

11 MS. ARMSTEAD: I can't recall that.

12 MEMBER ALBERTI: Okay.

13 MS. ARMSTEAD: That's my recollection.

14 MEMBER ALBERTI: All right. So that

15 motion -- so you don't remember that -- a motion

16 there. All right. So you don't remember that

17 there was a vote on -- was there any vote with

18 regards to this establishment at that meeting?

19 MS. ARMSTEAD: Not to my recall. Not

20 for the October. The only one that I recall is

21 the November meeting.

22 MEMBER ALBERTI: Okay. And refresh --

1 could you read again what the motion was there at
2 that meeting?

3 MS. ARMSTEAD: Mr. Muhammad moved that
4 before 8E supports their license, their liquor
5 license for Wheeler Road Market -- for Wheeler
6 Market, must sign an agreement agreeing not to
7 sell drug paraphernalia or drugs at the store.

8 MEMBER ALBERTI: So was the motion to
9 protest a part of that? I'm getting very
10 technical here, but --

11 MS. ARMSTEAD: No, I don't know.

12 MEMBER ALBERTI: Okay. And were those
13 minutes approved at the subsequent meeting, that
14 would have been December? Do you know if those
15 minutes have been approved by the ANC?

16 MS. ARMSTEAD: I don't recall that.
17 I didn't go back that far to bring the minutes.

18 MEMBER ALBERTI: You didn't -- you
19 don't want? You didn't what?

20 MS. ARMSTEAD: I said I don't recall.
21 I don't remember.

22 MEMBER ALBERTI: Do you generally

1 approve the previous meeting's minutes?

2 MS. ARMSTEAD: We usually do, yes.

3 MEMBER ALBERTI: Okay. But you don't
4 remember if those were approved in December or
5 not?

6 MS. ARMSTEAD: No. We had so many
7 things going on at our ANC meeting.

8 MEMBER ALBERTI: That's fine. That's
9 fine. And was -- you said that the licensee was
10 not present at the October meeting.

11 MS. ARMSTEAD: No.

12 MEMBER ALBERTI: Was the licensee or
13 representative of the licensee present at the
14 November meeting?

15 MS. ARMSTEAD: No.

16 MEMBER ALBERTI: Do you know any
17 official ANC meetings, like a committee meeting
18 or a meeting of the executive staff or something
19 like that where the licensee would have been
20 present? Do you know of any such meeting?

21 MS. ARMSTEAD: Other than the ANC, no.

22 MEMBER ALBERTI: No. Do you generally

1 have committee meetings?

2 MS. ARMSTEAD: Excuse me?

3 MEMBER ALBERTI: Do you generally have
4 committee meetings to discuss alcohol beverage
5 licenses?

6 MS. ARMSTEAD: (No audible answer.)

7 MEMBER ALBERTI: Do you have a
8 committee that deals with alcoholic beverage
9 licenses?

10 MS. ARMSTEAD: No.

11 MEMBER ALBERTI: You do not?

12 MS. ARMSTEAD: No.

13 MEMBER ALBERTI: Okay. I have no
14 further questions. Thank you.

15 CHAIRPERSON MILLER: Mr. Rodriguez, do
16 you have a question?

17 MEMBER RODRIGUEZ: Yes. Ms. Armstead,
18 I see your name on the ANC Commission list here,
19 right?

20 MS. ARMSTEAD: Yes.

21 MEMBER RODRIGUEZ: You're a member of
22 that commission.

1 MS. ARMSTEAD: Yes, I am.

2 MEMBER RODRIGUEZ: Right. And as I
3 see what, you know, the commission has agreed to
4 oppose the license, right?

5 MS. ARMSTEAD: Um-hum, yes.

6 MEMBER RODRIGUEZ: Right. And just I
7 want to understand here that you were part of
8 that vote, were you not?

9 MS. ARMSTEAD: Not that I can recall,
10 no.

11 MEMBER RODRIGUEZ: You don't remember
12 you were a part of that vote at all?

13 MS. ARMSTEAD: Precisely for the
14 petition? I mean, for this protest? No, I was
15 not.

16 MEMBER RODRIGUEZ: Were you present?

17 MS. ARMSTEAD: Yes.

18 MEMBER RODRIGUEZ: But you don't
19 remember what you voted?

20 MS. ARMSTEAD: I don't remember it
21 being -- coming to our attention.

22 MEMBER RODRIGUEZ: And so the

1 commission, in fact, did vote, right, against it?

2 MS. ARMSTEAD: They voted in November,
3 yes.

4 MEMBER RODRIGUEZ: Yes. So did you
5 oppose it?

6 MS. ARMSTEAD: Yes, I did. I did not
7 vote at all.

8 MEMBER RODRIGUEZ: You did not vote at
9 all?

10 MS. ARMSTEAD: Right.

11 MEMBER RODRIGUEZ: You abstained or
12 what?

13 MS. ARMSTEAD: No, I left the area
14 because I had to go to the restroom.

15 MEMBER RODRIGUEZ: Oh, you left the
16 meeting?

17 MS. ARMSTEAD: Yes.

18 MEMBER RODRIGUEZ: But were you aware
19 that the commission did vote against it at some
20 point?

21 MS. ARMSTEAD: Yes, I found that out
22 at the -- when I received the notice that said

1 they had voted against it.

2 MEMBER RODRIGUEZ: Yes.

3 MS. ARMSTEAD: Yes.

4 MEMBER RODRIGUEZ: And did you
5 understand or speak to other members as to why
6 they opposed it?

7 MS. ARMSTEAD: No, I did not.

8 MEMBER RODRIGUEZ: You did not. So
9 you don't remember anything at all about that
10 situation?

11 MS. ARMSTEAD: Yes, I just remember
12 that Mr. Muhammad put this in place and I was not
13 happy with the letter in which that he wanted to
14 make it a must or a requirement that this
15 establishment had to have this agreement when he
16 has not been a problem at all. The establishment
17 has been very helpful in the community. They
18 have supported it. And I'm not understanding why
19 Mr. Muhammad felt that he had to go after them in
20 the manner in which he did.

21 MEMBER RODRIGUEZ: I see.

22 MS. ARMSTEAD: And plus they were not

1 even present at the meetings and nor were they
2 invited.

3 MEMBER RODRIGUEZ: So you do remember
4 some of the issues that were discussed before you
5 left?

6 MS. ARMSTEAD: Yes.

7 MEMBER RODRIGUEZ: And what were some
8 of those issues that were discussed before you
9 left? Can you remember those?

10 MS. ARMSTEAD: In regards to the?

11 MEMBER RODRIGUEZ: In regards to the
12 opposition. Why were they opposing it?

13 MS. ARMSTEAD: Only because Mr.
14 Muhammad said that he had heard that there were
15 concerns or that the High Point had made mention
16 that they were selling various drugs at the
17 store. He had no proof. It was just a statement
18 he made and that the commission then went along
19 with it.

20 MEMBER RODRIGUEZ: You mentioned Mr.
21 Muhammad, were there other members of the board
22 that had some opinions besides Mr. Muhammad?

1 MS. ARMSTEAD: No.

2 MEMBER RODRIGUEZ: No more questions,
3 Madam Chair.

4 CHAIRPERSON MILLER: Okay. Others?
5 I just want to follow-up on this, but I don't
6 want to, you know, beat a dead horse or whatever.
7 But there is a letter in our file, it's Exhibit 1
8 to the protest report done by the Investigator
9 that is dated Friday, October 9, 2014, addressed
10 to Sarah Fashbaugh at ABC Board.

11 And it says there "At a duly
12 constituted ANC meeting, October 6, 2014, we
13 voted with a majority to oppose a Retailer's
14 Class B ABC License No. 088835, 4135 Wheeler
15 Road, S.E." and then it goes on to why.

16 But if this is dated October 9th, then
17 do you know what ANC meeting this would have
18 occurred at? Would it have occurred in
19 September?

20 MS. ARMSTEAD: You will see it's the
21 first Monday of the month, yes.

22 CHAIRPERSON MILLER: The first of the

1 month, you mean October 1st?

2 MS. ARMSTEAD: Well, it meets the
3 first Monday of the month.

4 MEMBER RODRIGUEZ: We need to see a
5 copy of this.

6 CHAIRPERSON MILLER: Oh.

7 MEMBER ALBERTI: Well, Ms. Miller?

8 CHAIRPERSON MILLER: Yes?

9 MEMBER ALBERTI: I will direct you to
10 the first sentence of that letter.

11 CHAIRPERSON MILLER: Oh, October 6th,
12 right. Thank you.

13 MEMBER ALBERTI: Yes, you're welcome.

14 CHAIRPERSON MILLER: So I thought you
15 were talking a lot about November minutes and
16 stuff and that's why I bring it up. This letter
17 says October 6th was the meeting.

18 MS. ARMSTEAD: Yes.

19 MEMBER SHORT: Madam Chair?

20 MS. ARMSTEAD: But we only had four
21 people that made the quorum.

22 CHAIRPERSON MILLER: What?

1 MS. ARMSTEAD: We only had four people
2 that made a quorum, so when he said that the
3 majority ruled, it was three to make it pass, so
4 that was the majority that was ruled.

5 CHAIRPERSON MILLER: That was the
6 majority. How many commissions are there?

7 MS. ARMSTEAD: It's seven.

8 CHAIRPERSON MILLER: Seven. So there
9 were four there? And you left?

10 MS. ARMSTEAD: Right.

11 CHAIRPERSON MILLER: Okay. Is it
12 uncommon or common in your ANC that the
13 Commission would vote against the recommendation
14 of the Single Member District ANC Commissioner,
15 you know, in whose area the establishment
16 presides?

17 MS. ARMSTEAD: In which? I have had
18 a lot of that going on here lately, yes.

19 CHAIRPERSON MILLER: It's common?

20 MS. ARMSTEAD: Yes.

21 CHAIRPERSON MILLER: Okay. Any other
22 questions?

1 MEMBER SHORT: I have a question.

2 CHAIRPERSON MILLER: Okay. Mr. Short.

3 MEMBER SHORT: I would like to ask you
4 if you saw a copy of this letter that we are
5 looking at here? Exhibit 1, would that help your
6 memory a little if we were to show you a copy of
7 this letter from the ANC?

8 MS. ARMSTEAD: Yes.

9 MEMBER ALBERTI: Maybe perhaps Mr.
10 Dietz can supply it to her? Mr. Dietz, do you
11 have a copy of our investigative report?

12 MR. DIETZ: I have the Investigator's
13 report.

14 MEMBER ALBERTI: And it's Exhibit 1.
15 Can you provide that to your witness, please?

16 MR. DIETZ: I don't recall seeing
17 that.

18 MEMBER ALBERTI: Well, I'll make sure
19 -- I would rather have it come from Mr. Dietz.

20 MR. DIETZ: Oh, I have it, yes.

21 MEMBER ALBERTI: All right. So would
22 you provide that to your witness, please? Yes,

1 we will let Mr. Dietz provide it to the witness.
2 It's his witness.

3 MEMBER SHORT: He has got a copy.

4 MEMBER RODRIGUEZ: Okay.

5 MEMBER ALBERTI: So we know what we
6 have and Mr. Dietz knows what we have.

7 MEMBER SHORT: Thank you, Mr. Dietz.

8 CHAIRPERSON MILLER: I'm sorry?

9 MEMBER ALBERTI: Well --

10 CHAIRPERSON MILLER: Did you have a
11 question?

12 MEMBER SHORT: Yes. I was going to
13 ask her to look at it.

14 CHAIRPERSON MILLER: Yes, okay.

15 MEMBER SHORT: Does that refreshen
16 your memory any of how the vote went or what took
17 place?

18 MS. ARMSTEAD: No, it does not.

19 MEMBER SHORT: Do you know who the
20 person is who wrote the letter, Sarah R.
21 Fashbaugh?

22 MEMBER ALBERTI: No, she didn't write

1 it. She received it.

2 MEMBER SHORT: Okay. It was two days
3 after. Okay. I'm sorry.

4 MEMBER ALBERTI: It was written by Mr.
5 Muhammad.

6 MS. ARMSTEAD: Right.

7 MEMBER ALBERTI: Okay.

8 MEMBER SHORT: Okay. Is -- that first
9 sentence, is it true? "A duly constituted ANC
10 meeting on October 6th, we voted with a majority
11 to oppose a Retailer Class B ABC License 088835."
12 Is that factual?

13 MS. ARMSTEAD: This is not. Not to my
14 recall, no.

15 CHAIRPERSON MILLER: What?

16 MS. ARMSTEAD: This -- I do not recall
17 any of this, no.

18 MEMBER SHORT: I have no other
19 questions.

20 CHAIRPERSON MILLER: Okay. I want to
21 follow-up then. Do you -- are there minutes that
22 would support or --

1 MS. ARMSTEAD: You would have -- yes,
2 we have minutes, so you would have to ask Mr.
3 Muhammad if he has them with him.

4 CHAIRPERSON MILLER: Right.

5 MS. ARMSTEAD: I didn't bring them.

6 CHAIRPERSON MILLER: Okay. And --

7 MR. MUHAMMAD: So what minutes are you
8 -- she reading from?

9 CHAIRPERSON MILLER: Wait. She --

10 MR. MUHAMMAD: She made those up? So
11 those are our minutes right there then.

12 MS. ARMSTEAD: No.

13 CHAIRPERSON MILLER: Well, we will --
14 the question was you were reading from some
15 minutes earlier. What were they?

16 MS. ARMSTEAD: These are the minutes
17 that I have here.

18 CHAIRPERSON MILLER: What? What were
19 they?

20 MEMBER ALBERTI: Just to be helpful,
21 Ms. Armstead testified earlier, and she can
22 correct me, that she was reading from the

1 November minutes of the ANC. November what, Ms.
2 Armstead?

3 MS. ARMSTEAD: The minutes were
4 November 3rd.

5 CHAIRPERSON MILLER: Okay.

6 MEMBER ALBERTI: Okay. So that's the
7 minutes she was reading from. Just so everybody
8 is on the same page.

9 CHAIRPERSON MILLER: So you don't have
10 the October minutes with you, correct?

11 MS. ARMSTEAD: No.

12 CHAIRPERSON MILLER: Okay. And let me
13 just ask you one other thing about procedure. In
14 your ANC, do they do resolutions?

15 MS. ARMSTEAD: Excuse me?

16 CHAIRPERSON MILLER: Does your ANC do
17 resolutions or just vote?

18 MS. ARMSTEAD: They just vote.

19 CHAIRPERSON MILLER: They just vote.
20 Okay. And do they, last question, identify by
21 what the vote is, like the majority like 4-0 or
22 do they usually give --

1 MS. ARMSTEAD: Yes, they will say how
2 many that made it pass or approved, yes.

3 CHAIRPERSON MILLER: Okay. That's
4 usually in the minutes?

5 MS. ARMSTEAD: Yes.

6 CHAIRPERSON MILLER: Okay. All right.
7 Any other questions? Mr. Rodriguez?

8 MEMBER RODRIGUEZ: Ms. Armstead, so
9 this vote took place what about seven or eight
10 months ago, right?

11 MS. ARMSTEAD: Correct.

12 MEMBER RODRIGUEZ: Yes, so and you
13 still can't recall at all what happened, you
14 know? I have a hard time understanding that, but
15 is the business establishment in your Single
16 Member District?

17 MS. ARMSTEAD: Yes, it is.

18 MEMBER RODRIGUEZ: It is. And how
19 long have you known the parties that own this?

20 MS. ARMSTEAD: Since 2009, I have
21 known the store has been there, but I have been
22 pretty much frequenting the store since about

1 2011.

2 MEMBER RODRIGUEZ: Right. And so you
3 have a good relationship with the owners?

4 MS. ARMSTEAD: Yes, I do.

5 MEMBER RODRIGUEZ: And you know the
6 community very well?

7 MS. ARMSTEAD: Yes.

8 MEMBER RODRIGUEZ: In your Single
9 Member District. I just am trying to figure out
10 what caused you to forget all of these things,
11 but that's all I'll say.

12 MS. ARMSTEAD: You will have to come
13 to one of our ANC meetings.

14 MEMBER RODRIGUEZ: I can't recall --

15 MS. ARMSTEAD: You really would have
16 to come of my ANC meetings.

17 MEMBER ALBERTI: You can go.

18 MS. ARMSTEAD: And at the same time--

19 MEMBER RODRIGUEZ: I'll try to
20 remember that.

21 MS. ARMSTEAD: But at the same time
22 that a lot of this was going on, there was also

1 some controversy about the development that is
2 getting ready to go on at that same location,
3 that was also another issue that was going at the
4 same time. So there was a lot of conflict and
5 confusion.

6 MEMBER RODRIGUEZ: Yes, ma'am.

7 MS. ARMSTEAD: So sometimes you don't
8 know what agenda is up in that place.

9 MEMBER RODRIGUEZ: Okay. Thank you,
10 ma'am.

11 MS. ARMSTEAD: Yes.

12 MEMBER RODRIGUEZ: Appreciate it.

13 CHAIRPERSON MILLER: Any other Board
14 questions? Any questions based on Board
15 questions?

16 MR. MUHAMMAD: No. Oh, I do.

17 CHAIRPERSON MILLER: Okay.

18 MR. MUHAMMAD: The minutes, are those
19 signed minutes that she is reading from the
20 secretary, who is not the secretary now, because
21 we have a whole new commission in place right
22 now.

1 CHAIRPERSON MILLER: Okay.

2 MS. ARMSTEAD: Barbara Brown.

3 CHAIRPERSON MILLER: Does that answer
4 your question?

5 MS. ARMSTEAD: Barbara Brown.

6 CHAIRPERSON MILLER: You're asking
7 her, not me. I don't know the answer.

8 MS. ARMSTEAD: Barbara Brown.

9 MR. MUHAMMAD: The minutes for -- if
10 I have a meeting right now, the minutes goes into
11 the next month, not in October. So those minutes
12 right there are from the October meeting that she
13 has.

14 CHAIRPERSON MILLER: Okay. So, yes,
15 well, you can testify if you're going to testify,
16 I don't know.

17 MR. MUHAMMAD: The question you asked
18 did she have October minutes. You wouldn't have
19 a vote for October minutes.

20 CHAIRPERSON MILLER: Right.

21 MR. MUHAMMAD: You would have them in
22 the November minutes.

1 MEMBER SHORT: November.

2 CHAIRPERSON MILLER: Right.

3 MS. ARMSTEAD: But seeing that I had--

4 MR. MUHAMMAD: And she read them.

5 CHAIRPERSON MILLER: Well, I haven't
6 seen the minutes. I don't even -- it's not even
7 for us to answer. I don't know --

8 MR. MUHAMMAD: There was a question
9 from -- you said do I have any questions from
10 what the Board said and I --

11 CHAIRPERSON MILLER: But you are
12 making a statement or asking us the question.

13 MR. MUHAMMAD: No, I was making
14 something --

15 CHAIRPERSON MILLER: You have to --

16 MR. MUHAMMAD: -- clear.

17 CHAIRPERSON MILLER: If you have any
18 questions for her as a follow-up to our
19 questions.

20 MR. MUHAMMAD: Yes. Are those minutes
21 from October? Not the date that is on it. Are
22 those from the October ANC meeting?

1 MS. ARMSTEAD: You know what, yes,
2 they are.

3 MR. MUHAMMAD: I can't hear you.

4 MS. ARMSTEAD: Yes, they are.

5 CHAIRPERSON MILLER: Okay.

6 MS. ARMSTEAD: I'm sorry about that.

7 MR. MUHAMMAD: Now, does it talk about
8 the vote for the Protest Hearing in the November
9 dated October minutes?

10 MS. ARMSTEAD: In the November?

11 MR. MUHAMMAD: In the November dated
12 October minutes?

13 MS. ARMSTEAD: No, it does not. We
14 were talking about the resolution for the zoning
15 that you were in opposition for the project for
16 Washington Business --

17 MR. MUHAMMAD: Well, I had those
18 minutes, too, so if you are lying sitting there--

19 MR. DIETZ: Objection.

20 MS. ARMSTEAD: Yes.

21 (Simultaneous speaking.)

22 CHAIRPERSON MILLER: Okay. That's a--

1 MR. MUHAMMAD: She is --

2 MR. DIETZ: I object because the issue
3 here is peace, order and quiet. It's not the
4 conduct of the ANC meeting.

5 MS. ARMSTEAD: Yes, it is.

6 MR. DIETZ: And we are off on a
7 tangent now. So I'm asking this Board to focus
8 on what are the issues in this hearing.

9 MS. ARMSTEAD: That's how I recall --

10 MR. DIETZ: Peace, order and quiet.

11 CHAIRPERSON MILLER: Wait a second.
12 There is not a question pending for you. Okay.

13 MS. ARMSTEAD: Okay.

14 CHAIRPERSON MILLER: Any other
15 questions then?

16 MR. MUHAMMAD: No.

17 CHAIRPERSON MILLER: Okay. Then I
18 think we are finished.

19 MR. MUHAMMAD: Yes, we are.

20 CHAIRPERSON MILLER: Thank you very
21 much.

22 MS. ARMSTEAD: Yes.

1 (Whereupon, the witness was excused.)

2 MR. DIETZ: Yes, I'm calling Ms.
3 Schyla Pondexter.

4 MS. PONDEXTER-MOORE: Yes, sir.

5 CHAIRPERSON MILLER: I'm going to
6 swear you in.

7 Whereupon,

8 SCHYLA PONDEXTER-MOORE
9 was called as a witness by Counsel for the
10 Applicant, and having been first duly sworn,
11 assumed the witness stand and was examined and
12 testified as follows:

13 MS. PONDEXTER-MOORE: Yes.

14 CHAIRPERSON MILLER: Okay. Thank you.

15 MS. ARMSTEAD: Here is the --

16 CHAIRPERSON MILLER: No, you can sit
17 down actually.

18 MS. ARMSTEAD: Okay.

19 MEMBER RODRIGUEZ: That belongs to the
20 Court.

21 MS. ARMSTEAD: Oh.

22 MEMBER RODRIGUEZ: That belongs to the

1 Court.

2 DIRECT EXAMINATION

3 MR. DIETZ: Please, state your name
4 and address.

5 MS. PONDEXTER-MOORE: My name is
6 Schyla Pondexter-Moore and I live at 4017 Wheeler
7 Road, S.E.

8 MR. DIETZ: Okay. And you shop at
9 that store?

10 MS. PONDEXTER-MOORE: Oh, I'm sorry.
11 Yes, I shop there a lot, very frequently, me and
12 my children.

13 MR. DIETZ: How long have you been a
14 resident?

15 MS. PONDEXTER-MOORE: I have been at
16 that 4017 since 2011, but I have been in that
17 neighborhood for eight years now.

18 MR. DIETZ: Okay. And what type of
19 business do you do in the store?

20 MS. PONDEXTER-MOORE: We buy stuff.
21 I mean, it's living in that type of community, we
22 have nowhere to buy food. We don't have a

1 grocery store. The nearest grocery store is far
2 and it's all we have in walking distance, so we
3 rely heavily on that corner store to buy every
4 day needs. And they even have fresh fruits and
5 vegetables, which is extremely hard to find where
6 we live, where I live.

7 MR. DIETZ: About how often do you
8 patronize the store?

9 MS. PONDEXTER-MOORE: Every single
10 day, multiple times a day.

11 MR. DIETZ: Okay. And when you
12 patronize the store, do you encounter dangerous
13 people loitering around the front of the store --

14 MS. PONDEXTER-MOORE: Well, here is --

15 MR. DIETZ: -- you access to the
16 store?

17 MS. PONDEXTER-MOORE: -- the thing
18 about the loitering thing. It's a communal
19 space. It's where people come and they talk,
20 because I'm offended because I'm one of the
21 people who stand out there. So people call it
22 loitering, but, you know, people over there, they

1 are shopping, they are consuming, but they are
2 talking. People are talking about the game last
3 night, talking about how is your mother doing,
4 how is your father doing, you know, what's going
5 on. It's where people talk and commune with each
6 other.

7 So I wouldn't call it loitering.
8 Maybe somebody who drives by who doesn't know the
9 people, who maybe thinks the people are not
10 dressed too nice, I don't know, but to me it's
11 not loitering because everybody there knows each
12 other, nobody is hurting anybody and it's a place
13 of community.

14 MR. DIETZ: So in other words you are
15 saying you don't feel intimidated?

16 MS. PONDEXTER-MOORE: Not at all.
17 Everybody speaks to me. Everybody is nice to me.
18 And I don't -- no, no, no.

19 MR. DIETZ: And how about the
20 employees in the store? How do they treat you?

21 MS. PONDEXTER-MOORE: I like Muller.
22 I like Aki. They are very nice. They are very

1 nice to my children. They know my children by
2 first name. They know people by first name. The
3 kids know them. And they are very respectable,
4 very nice.

5 MR. DIETZ: I have no further
6 questions.

7 CHAIRPERSON MILLER: Mr. Muhammad, do
8 you have any questions?

9 MR. MUHAMMAD: None.

10 CHAIRPERSON MILLER: Board Members,
11 any questions?

12 MEMBER SHORT: Ms. --

13 CHAIRPERSON MILLER: Yes, Mr. Short?

14 MEMBER SHORT: First of all, let me
15 thank you for coming and testifying today.

16 MS. PONDEXTER-MOORE: Thank you for
17 allowing me to do this.

18 MEMBER SHORT: The first home I ever
19 had in my life was 800 7th Avenue, so I'm a Ward
20 8 person also and I still live in Ward 7 now.

21 But the bottom line is I don't think
22 anybody wants to see this business not do

1 business.

2 MS. PONDEXTER-MOORE: Exactly.

3 MEMBER SHORT: And I don't think
4 that's why this hearing is going on. But
5 obviously, I would just like to say thank you
6 again for coming and testifying today. That's
7 all I have, Madam Chair.

8 MS. PONDEXTER-MOORE: And if I could
9 just say one thing, they never -- I mean, I'm the
10 type of person -- I'm a community person. I
11 don't like trash. They -- Keno, they employ
12 people that live in the community to clean up.
13 And Keno cleans up out there. He is first thing
14 in the morning, last thing at night. There is no
15 trash out there. There is none of that.

16 I wouldn't sit up here and lie to you
17 all like that, because I hate trash in the
18 neighborhood. It's none of that. They don't
19 sell K2 or none of that stuff, because that's
20 what Muhammad said. I was at the October ANC
21 meeting and it was so much commotion. A lady
22 assaulted a man. The police was called. It was

1 a lot going on.

2 So but I know he was like they sell
3 K2. They have never -- I wouldn't even let out
4 kid do that, because I've got a 20 year-old son,
5 so I know none of that. They are upstanding
6 people. They donate to the bookbag giveaway. No
7 problems whatsoever ever and I would be the first
8 one to say if they did.

9 So that's all I've got to say.

10 MEMBER SHORT: I thank you very much
11 for your testimony.

12 MS. PONDEXTER-MOORE: Thank you.

13 CHAIRPERSON MILLER: Any -- wait,
14 wait, you're not excused.

15 MS. PONDEXTER-MOORE: Oh, I'm sorry.

16 CHAIRPERSON MILLER: Almost. That was
17 a great ending, but -- okay.

18 MS. PONDEXTER-MOORE: Somebody drops
19 the mike.

20 CHAIRPERSON MILLER: Procedurally, I
21 have to give the other parties a chance to ask
22 you questions --

1 MS. PONDEXTER-MOORE: All right.

2 CHAIRPERSON MILLER: -- based on the
3 last question of the Board Member.

4 Not hearing any, thank you very much.
5 Now, you can go. Okay.

6 MS. PONDEXTER-MOORE: All right.

7 CHAIRPERSON MILLER: Good job.

8 (Whereupon, the witness was excused.)

9 CHAIRPERSON MILLER: Okay. All right.
10 Do you have another witness? One more?

11 MR. DIETZ: The applicant rests.

12 CHAIRPERSON MILLER: Mr. Dietz?

13 MR. DIETZ: I said we rest our case.

14 CHAIRPERSON MILLER: Oh, you rest your
15 case. That was a good note to rest on. Okay.

16 All right. Mr. Muhammad?

17 MR. MUHAMMAD: No questions.

18 CHAIRPERSON MILLER: Now, do you have
19 any witnesses?

20 MR. MUHAMMAD: None.

21 CHAIRPERSON MILLER: Do you want to
22 testify yourself as a witness?

1 MR. MUHAMMAD: Yes.

2 CHAIRPERSON MILLER: Okay. So then
3 you should take the stand. I'll put you under
4 oath. Okay.

5 MR. MUHAMMAD: My name is Anthony.

6 Whereupon,

7 ANTHONY MUHAMMAD
8 was called as a witness by the Protestant, and
9 having been first duly sworn, assumed the witness
10 stand and was examined and testified as follows:

11 MR. MUHAMMAD: I affirm.

12 CHAIRPERSON MILLER: Okay.

13 DIRECT EXAMINATION

14 MR. MUHAMMAD: My name is Anthony
15 Muhammad, Chair of ANC-8E. I have been a
16 resident of this ward most of my life. I lived
17 on Brandywine Street 705. I lived in Randle
18 Circle, Randle Hill Apartments. I went to
19 Ballou.

20 And, yes, I know people that hang up
21 at that store. So for them to say -- well, for
22 me, I see and I had never mentioned loitering,

1 because loitering is not against the law, but
2 blocking the street or the passageway or the
3 forward movement of an individual is and that
4 takes place.

5 Right now, the pictures that were
6 taken of the inside, that one of the parking lot
7 it's fenced in. The building at the end is
8 boarded up. It's an A License liquor store three
9 doors down from this B License liquor store.

10 So those who don't see trash, they not
11 there every day nor are they there every night
12 nor are they there every hour.

13 I didn't submit any exhibits, but I
14 have pictures of it and I sent them to Ms.
15 Raines. So a good neighbor would not argue
16 against something that would not affect their
17 bottom line.

18 The settlement agreement would not
19 affect the selling of anything that is going on
20 inside of the store. Ward 8 is called "The
21 Least, The Last, The Left Out." Other wards that
22 are considered much better than Ward 8 have

1 settlement agreements.

2 When I presented to the late Marion
3 Barry to not -- to stop the sale of singles in
4 Ward 8, all I did was copy what was done in Ward
5 4, which was considered a better ward. Ward 4,
6 which is considered a better ward, the Mayor
7 signed it not to sell singles, because trash and
8 single cans were being thrown in people's yards
9 as they drunk going down the street drinking
10 their beer, throwing them in people's yards. So
11 it was done.

12 And if you think there's not trash
13 there, we are in another world. We are living in
14 another world. And because someone does me
15 favors and gives me things and lets me get away
16 with paying less for things that I get from the
17 store, that's not a good neighbor policy when
18 people are in violation.

19 And yes, K2 is not a drug, but its
20 sold in stores in our neighborhood. In our
21 neighborhood, not in other neighborhoods, but in
22 Ward 8 it's sold. And if they don't want to go

1 along with the good neighbor policy, there are
2 other regulations that they have to follow that
3 still can be addressed, but they need to sign a
4 good neighbor policy.

5 Thank you.

6 CHAIRPERSON MILLER: Okay. Mr. Dietz,
7 any cross?

8 MR. DIETZ: I have no questions.

9 CHAIRPERSON MILLER: Okay. All right.
10 Any Board Members? Mr. Alberti?

11 MEMBER ALBERTI: So, Mr. Muhammad,
12 Commissioner Muhammad, excuse me, you heard the
13 Chair tell you earlier that, you know, we, at
14 this point in the process, can't --

15 MR. MUHAMMAD: Yes.

16 MEMBER ALBERTI: -- implement a
17 settlement agreement. All right. But what is
18 possible, and I'm not suggesting we would do
19 this, but what is possible is the Board can set
20 conditions on the license through an order, all
21 right, or we could deny the renewal or we could
22 approve it with conditions or we could approve it

1 with no conditions. I mean, that's basically the
2 three options available to us.

3 So that's -- I'm saying my question is
4 what are the top three issues that you would like
5 this Board to address? Now, don't give me an
6 explanation of why or --

7 MR. MUHAMMAD: Right.

8 MEMBER ALBERTI: -- we will get back
9 to that. I just want you to list them and then
10 I'll come back ask questions about them. So what
11 are the top three issues that you would like this
12 Board to potentially address in an order?

13 MR. MUHAMMAD: A working camera on the
14 outside.

15 MEMBER RODRIGUEZ: Yes.

16 MEMBER ALBERTI: Okay.

17 MR. MUHAMMAD: A working camera
18 inside.

19 MEMBER ALBERTI: Okay.

20 MS. PONDEXTER-MOORE: I thought they
21 already did that?

22 CHAIRPERSON MILLER: Okay. You can't

1 yell out from --

2 MS. PONDEXTER-MOORE: Sorry, sorry.

3 CHAIRPERSON MILLER: Thank you.

4 MS. PONDEXTER-MOORE: That's a little
5 ridiculous, but I'm sorry.

6 MEMBER ALBERTI: Okay. You've got
7 three.

8 MR. MUHAMMAD: Three. And --

9 MEMBER ALBERTI: You've only given me
10 two so far.

11 MR. MUHAMMAD: -- the postage, the
12 signs that are in their window, make it 50
13 percent, because that's against ABRA, that wasn't
14 noticed by the Investigator.

15 MEMBER ALBERTI: So okay. Okay. So
16 well, let's deal with the signage first. So the
17 signage in the windows, are we talking about
18 signage for cigarettes, signage for chips? Are
19 we talking about signage for alcoholic beverages?

20 MR. MUHAMMAD: Alcoholic beverage.

21 MEMBER ALBERTI: Okay.

22 MR. MUHAMMAD: See the pictures they

1 took it's more than 50 percent.

2 MEMBER ALBERTI: Okay. And so I just
3 want to take a look at picture that we have.
4 Okay.

5 MEMBER RODRIGUEZ: Exhibit 7.

6 MEMBER ALBERTI: Yes, all right. All
7 right. Okay. All right. I agree on that. All
8 right.

9 CHAIRPERSON MILLER: Let me see.

10 MEMBER ALBERTI: And as you have
11 pointed out, there is ABRA Law that addresses
12 that.

13 So why the camera on the inside?

14 MR. MUHAMMAD: To check them, too.
15 For their own safety.

16 MEMBER ALBERTI: Well --

17 MR. MUHAMMAD: For their safety.

18 MEMBER ALBERTI: Okay. So that's sort
19 of an altruistic motive to protect them. You
20 have no other reason?

21 MR. MUHAMMAD: Well, and to protect
22 the patrons also. I make a statement someone

1 stole something, I look on the camera, they
2 didn't.

3 MEMBER ALBERTI: Yes. All right. How
4 does that --

5 MR. MUHAMMAD: It works for both of
6 them.

7 MEMBER ALBERTI: No, I understand, but
8 I'm trying to understand if the licensee isn't
9 having any problems with theft, how does this go
10 to peace, order and quiet?

11 MR. MUHAMMAD: If it's not having --

12 MEMBER ALBERTI: If the licensee feels
13 -- doesn't feel like they are having issues --

14 MR. MUHAMMAD: Right, but --

15 MEMBER ALBERTI: -- related --

16 MR. MUHAMMAD: -- one --

17 MEMBER ALBERTI: -- to theft -- I'm
18 assuming -- here is the -- let me back up.

19 I'm assuming that if the licensee had
20 issues with theft, that they would have done this
21 proactively. They would have done it themselves.
22 So I'm kind of under the assumption or under the

1 premise that they are not, they don't feel like
2 they have problems with theft, why would you be
3 concerned? I mean, how does this affect -- how
4 does this mitigate any concerns about peace,
5 order and quiet? And what are those concerns?

6 MR. MUHAMMAD: Well, we have the
7 police, as was stated, stationed there every day.
8 Why?

9 MEMBER ALBERTI: Outside or inside?

10 MR. MUHAMMAD: Outside.

11 MEMBER ALBERTI: Okay, outside. Okay.

12 So --

13 MR. MUHAMMAD: Why?

14 MEMBER ALBERTI: Why?

15 MR. MUHAMMAD: Because there are
16 problems?

17 MEMBER ALBERTI: Wait, wait. I'm
18 asking questions. I'll ask the questions. Why
19 the camera outside?

20 MR. MUHAMMAD: 158 reasons in here.

21 MEMBER ALBERTI: Did they all happen
22 in front of the store?

1 MR. MUHAMMAD: Not in front of the
2 store, in the block.

3 MEMBER ALBERTI: In that block? From
4 what time to what time? From what year to what
5 year?

6 MR. MUHAMMAD: This is for five years,
7 2015 to -- from 2010.

8 MEMBER ALBERTI: I'm trying to help
9 you out here. So --

10 MR. MUHAMMAD: This happened --

11 MEMBER ALBERTI: Well, wait. Let --
12 I gotcha. So I'm just going to try to help you
13 out here, because I think I know where you are
14 going, but you're not really --

15 MR. MUHAMMAD: Well, we --

16 MEMBER ALBERTI: No, no, let me
17 finish. So is it not true you want cameras
18 outside to help the police solve crimes that may
19 occur in that general area?

20 MR. MUHAMMAD: Correct.

21 MEMBER ALBERTI: And you believe there
22 is a high crime rate in that general area?

1 MR. MUHAMMAD: It's documented.

2 MEMBER ALBERTI: All right. Do any of
3 the other stores there have cameras outside?

4 MR. MUHAMMAD: I'm not sure. I'm
5 going to find out.

6 MEMBER ALBERTI: All right. I'm going
7 to pause. I have no further questions. I may
8 come back. I'm going to let my other Board
9 Members.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER SHORT: He only gave you two.

12 MEMBER ALBERTI: He gave me three.
13 The camera outside, camera inside and signage.

14 CHAIRPERSON MILLER: I just want to
15 welcome, Mr. Jones, who has joined us on the
16 dias.

17 MEMBER JONES: Thank you, Madam Chair.

18 CHAIRPERSON MILLER: Okay. All right.

19 MEMBER ALBERTI: Actually, I do have
20 other questions.

21 Mr. Muhammad, so I want to go back to
22 this October meeting. So was there a motion that

1 day to oppose the license at the October meeting?

2 MR. MUHAMMAD: Yes.

3 MEMBER ALBERTI: Pardon?

4 MR. MUHAMMAD: Yes, it was.

5 MEMBER ALBERTI: How many
6 commissioners were present?

7 MR. MUHAMMAD: Four.

8 MEMBER ALBERTI: Four. Were they the
9 same four that were present in November or
10 different, a different mix of commissioners?

11 MR. MUHAMMAD: Same four.

12 MEMBER ALBERTI: Same four. All
13 right. Very good. Do you remember what the vote
14 was?

15 MR. MUHAMMAD: 3-1.

16 MEMBER ALBERTI: 3-1?

17 MR. MUHAMMAD: Right.

18 MEMBER ALBERTI: 3 in favor, 1
19 opposed?

20 MR. MUHAMMAD: Yes.

21 MEMBER ALBERTI: Okay. Was the
22 licensee invited? Was the licensee present?

1 MR. MUHAMMAD: He was there in
2 November.

3 MEMBER ALBERTI: Pardon?

4 MR. MUHAMMAD: The licensee was there
5 in November.

6 MEMBER ALBERTI: Okay. Thank you for
7 that. So in October, the licensee wasn't there.
8 Is that correct?

9 MR. MUHAMMAD: Yes.

10 MEMBER ALBERTI: All right.

11 MS. ARMSTEAD: The --

12 CHAIRPERSON MILLER: No.

13 MEMBER ALBERTI: So your statement
14 today is the licensee was --

15 MR. MUHAMMAD: I'm saying the licensee
16 was there in 2014.

17 MEMBER ALBERTI: In October?

18 MR. MUHAMMAD: In -- I don't have my
19 records, but they were there in 2014.

20 MEMBER ALBERTI: That's not what I'm
21 asking. The votes were taken. Mr. Muhammad,
22 votes were taken October. Votes were taken in

1 November.

2 MR. MUHAMMAD: No. Well, I don't know
3 if he was there.

4 MEMBER ALBERTI: All right.

5 MR. MUHAMMAD: I don't know if he was
6 there --

7 MEMBER ALBERTI: So --

8 MR. MUHAMMAD: -- in October.

9 MEMBER ALBERTI: You don't know if it
10 was October. Do you know if he was there in
11 November?

12 MR. MUHAMMAD: He was there in
13 December.

14 MEMBER ALBERTI: Do you remember when
15 prior to December the licensee met with the whole
16 ANC? Well, by the whole ANC, I mean, by an ANC
17 at which a quorum was present.

18 MR. MUHAMMAD: State the question
19 again.

20 MEMBER ALBERTI: Do you remember when
21 prior to December of 2014, when the ANC -- when
22 the licensee met with the ANC?

1 MR. MUHAMMAD: No.

2 MEMBER ALBERTI: At a meeting in which
3 a quorum was present.

4 MR. MUHAMMAD: No, I don't remember.

5 MEMBER ALBERTI: You don't remember.

6 All right. Do you generally have committee
7 meetings for --

8 MR. MUHAMMAD: We have an executive
9 meeting every month.

10 MEMBER ALBERTI: Every month. Was the
11 licensee invited to or present --

12 MR. MUHAMMAD: Yes.

13 MEMBER ALBERTI: -- at an executive
14 meeting?

15 MR. MUHAMMAD: Yes.

16 MEMBER ALBERTI: When?

17 MR. MUHAMMAD: In -- no. No, he
18 wasn't present at an executive meeting.

19 MEMBER ALBERTI: Okay. Very good.

20 And you don't remember when he was present in
21 2014, except that --

22 MR. MUHAMMAD: December.

1 MEMBER ALBERTI: -- you believe he was
2 present in December.

3 MR. MUHAMMAD: Yes.

4 MEMBER ALBERTI: Is that correct?
5 Okay. Thank you very much.

6 CHAIRPERSON MILLER: Mr. Rodriguez?

7 MEMBER RODRIGUEZ: Mr. Muhammad, thank
8 you for joining us today. A couple of questions.
9 One deals with the decision that was made by the
10 board on October 6, 2014. And some of those
11 included peace, quiet, order, litter, underage
12 drinking and overall it ruined the quality of
13 life in the community.

14 Have things changed from that point to
15 today? Is it better? Is it worse?

16 MR. MUHAMMAD: The same.

17 MEMBER RODRIGUEZ: It's the same. Can
18 you give us a small picture of some of those
19 conditions and how they impact the community
20 quality of life from your vantage point?

21 MR. MUHAMMAD: It was stated --

22 MEMBER RODRIGUEZ: Let's start with --

1 let's say, for example, No. 1, let's say peace,
2 quiet and order.

3 MR. MUHAMMAD: Okay. As one stated,
4 just to be idle and just hanging around as stated
5 affects what people look at and see, making a
6 determination if I want to live or not live in
7 this community.

8 MS. PONDEXTER-MOORE: I submitted --

9 CHAIRPERSON MILLER: Can I again ask
10 you not to call out?

11 MEMBER RODRIGUEZ: Can you explain a
12 little further? Don't worry about that.

13 MR. MUHAMMAD: Yes.

14 MEMBER RODRIGUEZ: As best as you can.

15 MR. MUHAMMAD: In Ward 8 there is a
16 lot of shelters. So any given day of the week if
17 you ride up and down Martin Luther King Avenue,
18 you will see people just "chilling," hanging out,
19 standing around.

20 MEMBER RODRIGUEZ: Okay.

21 MR. MUHAMMAD: Nothing to do. No work
22 to work.

1 MEMBER RODRIGUEZ: And so how is this
2 -- what is the relationship then with this --

3 MR. MUHAMMAD: It's the same condition
4 state there at that location.

5 MEMBER RODRIGUEZ: Okay. You also
6 spoke about litter. You indicated that people do
7 throw cans and other litter --

8 MR. MUHAMMAD: Yes.

9 MEMBER RODRIGUEZ: -- in people's
10 yards and that that possibly can't be seen
11 mounting up in front of the place.

12 MR. MUHAMMAD: Right.

13 MEMBER RODRIGUEZ: That people are
14 impacted in yards and in the community. You made
15 that point, so I won't go into that.

16 Now, this -- I'm interested in this
17 underage drinking. Can you expand on that?

18 MR. MUHAMMAD: It was stated by one of
19 the members of the High Point Homeowners
20 Association that they sell to underage people
21 without asking for ID. And I was attempting to
22 get them to come here, but they didn't show up.

1 MEMBER RODRIGUEZ: Can written
2 statements be made?

3 MR. MUHAMMAD: Yes.

4 MEMBER RODRIGUEZ: I don't know if the
5 Board can accept those. Not today.

6 CHAIRPERSON MILLER: What?

7 MEMBER RODRIGUEZ: Any -- no. Okay.
8 And then I think that's -- you know, the underage
9 drinking is something that is -- of course, all
10 of the issues are important, but especially the
11 underage drinking and the parking is the last
12 point. How does it impact parking? The board --
13 your ANC board was concerned about parking when
14 they passed that resolution, at that point.

15 MR. MUHAMMAD: Right. The parking lot
16 actually needs to be repaved, so when it's
17 blocked, they park anywhere they want. So you
18 can get blocked in because someone either backs
19 in --

20 MEMBER RODRIGUEZ: Yes, sir.

21 MR. MUHAMMAD: -- backed you in and
22 you can't get out. I mean, this is a small

1 parking lot.

2 MEMBER RODRIGUEZ: Okay. Okay. All
3 right. So you indicated to us in your testimony
4 that parking is going to be or continues to be a
5 problem there.

6 MR. MUHAMMAD: Yes.

7 MEMBER RODRIGUEZ: Okay. Okay.
8 That's all I have, Madam Chair.

9 CHAIRPERSON MILLER: Okay.

10 MEMBER RODRIGUEZ: I just --

11 CHAIRPERSON MILLER: Anything else?
12 Mr. Dietz, any questions based on Board
13 questions?

14 MR. DIETZ: Nothing.

15 CHAIRPERSON MILLER: Oh, Mr. Jones?

16 MEMBER JONES: Thank you, Madam Chair.
17 Commissioner, I just had a quick follow-up
18 question. So you responded to Board Member
19 Alberti with your top three. You said camera
20 outside, camera inside and --

21 MEMBER ALBERTI: Signage.

22 MR. MUHAMMAD: Signage.

1 MEMBER JONES: Thank you, signage. I
2 noticed that in that list you didn't include
3 litter or anything related to litter. You seemed
4 to be very passionate about the litter, but you
5 didn't include that in your top three. I was
6 wondering was that an intentional omission? And
7 if so, why?

8 MR. MUHAMMAD: Intentional. And it
9 was because those were more detrimental and for
10 more than one person. Not just the owner.

11 MEMBER JONES: Including signage?

12 MR. MUHAMMAD: Yes, because if someone
13 is waiting for me when they come out the door and
14 they hide behind a sign that I don't see, yes.

15 MEMBER JONES: Okay. So you -- based
16 on the feeling that I'm getting from you in your
17 testimony, you feel like there is a nexus of
18 crime, that this location is a nexus for criminal
19 activity?

20 MR. MUHAMMAD: Yes.

21 MEMBER JONES: Okay. Thank you.

22 Thank you, Madam Chair.

1 CHAIRPERSON MILLER: Okay. Anybody
2 else? Mr. Dietz, any follow-up on Board
3 questions?

4 MR. DIETZ: None.

5 CHAIRPERSON MILLER: Okay. Thank you,
6 Mr. Muhammad.

7 MR. MUHAMMAD: Thank you.

8 CHAIRPERSON MILLER: You can take a
9 seat. Any --

10 MR. DIETZ: No rebuttal.

11 CHAIRPERSON MILLER: No, you're done,
12 right? You're done?

13 MR. DIETZ: Yes.

14 CHAIRPERSON MILLER: Okay. You don't
15 have any exhibits, correct?

16 MR. DIETZ: Pardon?

17 CHAIRPERSON MILLER: You don't have
18 any exhibits that you wanted to put in, correct?

19 MR. DIETZ: No.

20 CHAIRPERSON MILLER: Mr. Muhammad, did
21 you?

22 MR. MUHAMMAD: No.

1 CHAIRPERSON MILLER: Okay. So those
2 minutes that were just referred to?

3 MR. MUHAMMAD: I can send them to you.

4 CHAIRPERSON MILLER: Oh, you don't
5 have them with you?

6 MR. MUHAMMAD: I only have them
7 electronically.

8 MR. DIETZ: I will object to that.

9 CHAIRPERSON MILLER: Yes.

10 MR. DIETZ: Because I have reason to,
11 you know, be able to rely on the exhibit.

12 CHAIRPERSON MILLER: Right. And you
13 don't have them to even show you right now, Mr.
14 Dietz right now. So okay.

15 MR. MUHAMMAD: I could email it to
16 him.

17 CHAIRPERSON MILLER: No, it's too late
18 though.

19 MR. DIETZ: I would have liked to have
20 seen them before the hearing, not after the
21 hearing.

22 CHAIRPERSON MILLER: Okay.

1 MR. DIETZ: In other words, I'm not
2 going to be blindsided.

3 MR. MUHAMMAD: Well, your witness has
4 them, so you won't be blindsided. You can get
5 them from your witness.

6 MEMBER ALBERTI: Mr. Muhammad?

7 CHAIRPERSON MILLER: Mr. Muhammad, are
8 you arguing that they should be admitted if Mr.
9 Dietz looks at them?

10 MR. MUHAMMAD: Yes.

11 CHAIRPERSON MILLER: So, Mr. Dietz,
12 your objection is based on the fact that he
13 didn't identify it?

14 MR. DIETZ: Pardon?

15 CHAIRPERSON MILLER: Your objection is
16 based on the fact that he didn't identify it in
17 the exhibits?

18 MR. DIETZ: Right.

19 CHAIRPERSON MILLER: So you have no --
20 do you want to look at them before to see if they
21 are prejudicial?

22 MR. DIETZ: We were required to

1 provide a pretrial form. On that form is a list
2 of exhibits. In the instructions it says --

3 CHAIRPERSON MILLER: You're right.

4 MR. DIETZ: -- specifically that
5 exhibits proffered not on the list will not be
6 accepted. Now, the Board can follow its own
7 rules.

8 CHAIRPERSON MILLER: Okay. That's
9 correct. I just wanted to -- right.

10 MR. MUHAMMAD: It would introduce more
11 testimony.

12 MEMBER ALBERTI: Ms. Miller, I think
13 the bigger issue here is that this is stuff
14 entered into the record after the hearing and
15 there is no chance for the licensee's
16 representative to cross-examine anyone on those
17 exhibits.

18 CHAIRPERSON MILLER: I don't think --

19 MEMBER ALBERTI: So I think that that
20 is a bigger issue here.

21 CHAIRPERSON MILLER: Okay. I don't
22 really agree with you with respect to the

1 minutes, because they were read and referenced by
2 a witness, at least one witness on the stand.

3 MEMBER ALBERTI: They were not read.

4 CHAIRPERSON MILLER: So --

5 MEMBER ALBERTI: Is November written--
6 the November ones were not read.

7 MR. MUHAMMAD: Yes, they were.

8 CHAIRPERSON MILLER: So --

9 MEMBER ALBERTI: Wait, the October
10 ones were not read.

11 MEMBER RODRIGUEZ: Right.

12 MEMBER ALBERTI: So it's the November
13 ones that -- oh, you want those to be part of the
14 record? Is that what you are asking, the
15 November ones to be part of the record?

16 CHAIRPERSON MILLER: The November
17 minutes that reflect the actual meeting. Is that
18 correct?

19 MR. MUHAMMAD: Correct.

20 CHAIRPERSON MILLER: Okay. That's
21 what we are talking about and --

22 MEMBER ALBERTI: That's what we are

1 talking about?

2 CHAIRPERSON MILLER: Yes.

3 MEMBER ALBERTI: Okay.

4 MEMBER RODRIGUEZ: Okay.

5 MR. DIETZ: Then the protestant could
6 have provided that exhibit before the hearing?

7 CHAIRPERSON MILLER: Well, that's
8 usually true.

9 MR. DIETZ: The issue came up -- the
10 issue did not come up on direct examination of
11 that witness, but on cross-examination of the
12 witness. She responded to a question on cross-
13 examination.

14 Okay. We did not offer that as an
15 exhibit.

16 CHAIRPERSON MILLER: She actually
17 relied on it. She is the one that read from it,
18 correct?

19 MR. DIETZ: No. If it was an exhibit,
20 then Mr. Muhammad should have entered it as an
21 exhibit.

22 CHAIRPERSON MILLER: Okay. So the

1 exceptions that we make are, you know, that you
2 don't have to -- if you are going to use it or
3 get it in rebuttal or whatever, you don't have
4 disclose it. So in this case, it looks like your
5 witness read from that transcript.

6 MR. DIETZ: Because she was asked a
7 specific question --

8 CHAIRPERSON MILLER: The minutes.

9 MR. DIETZ: -- on cross-examination
10 and she was asked to refer to the minutes.

11 CHAIRPERSON MILLER: Okay.

12 MR. MUHAMMAD: No, she wasn't asked to
13 refer to them. She said she would go get those
14 minutes.

15 MEMBER RODRIGUEZ: Um-hum.

16 CHAIRPERSON MILLER: Right. She went
17 and got the minutes. Right. I guess I would
18 need to take a look at them, but --

19 MR. DIETZ: I will reserve that point
20 for --

21 CHAIRPERSON MILLER: Let us know. Let
22 me know because we also say, you know, also they

1 won't be admitted if you didn't see them before
2 and they would be prejudicial to you. So how
3 would it be prejudicial to you?

4 MR. DIETZ: Because it has no bearing
5 whatsoever on the protest issues, which are
6 peace, order and quiet.

7 CHAIRPERSON MILLER: So it's
8 irrelevant, is what you are saying?

9 MR. DIETZ: The word -- the issue is
10 not procedural ANC minutes.

11 CHAIRPERSON MILLER: True.

12 MR. DIETZ: It's peace, order and
13 quiet. Okay? Absolutely no corroborated
14 testimony has been provided in support of the
15 protest issues.

16 CHAIRPERSON MILLER: Okay.

17 MR. DIETZ: Okay. This is a tangent.

18 CHAIRPERSON MILLER: I concur with
19 that, unless you have anything else to say.

20 MR. MUHAMMAD: Well --

21 CHAIRPERSON MILLER: It actually was--

22 MR. MUHAMMAD: -- it wasn't a tangent

1 because his witness that he should have
2 interviewed to know what she was going to say
3 before she got on that stand, that he did not go
4 over with her and now it was presented.

5 CHAIRPERSON MILLER: Okay. I am not
6 going to let them in, because I agreed with Mr.
7 Dietz that we need to stay focused on what is
8 relevant to peace, order and quiet. So a lot of
9 that discussion about the ANC was not relevant
10 to, you know, this establishment's situation, you
11 know, related to peace, order and quiet.

12 Okay. So I think that concludes that.
13 So there are no exhibits in this case at all.

14 Closing?

15 MR. DIETZ: When will the transcript
16 be available?

17 CHAIRPERSON MILLER: Just it's usually
18 two or three weeks. It could be three weeks, but
19 the first thing is I want to finish here. Are
20 you doing a closing?

21 MR. DIETZ: Pardon?

22 CHAIRPERSON MILLER: Are you doing a

1 closing statement? Closing? Okay. We have
2 heard all the evidence. The record is closed on
3 the evidence. Are you doing a closing statement?

4 MR. DIETZ: Yes.

5 CHAIRPERSON MILLER: Okay. So then we
6 will get to the stuff after that. Okay.

7 MR. DIETZ: Okay. Our closing
8 statement is that the protest issues here were
9 peace, order and quiet. Mr. Muhammad showed up
10 without a single witness or any element of
11 corroboration in support of the protest.

12 Okay. The Investigator and the
13 applicant's witnesses have all testified that
14 this is a good professionally run operated
15 business in which there are no -- have been no
16 issues over the years. Okay.

17 Although some businesses enter into a
18 voluntary agreement, that voluntary agreement is
19 not a requirement for an ABC License. It is not
20 a requirement for the continued use of the ABC
21 License. It's an option that is available to the
22 business and the community.

1 Okay. The business is under no
2 obligation to be strongarmed into -- to enter
3 into an agreement when there is no need for an
4 agreement. We rest.

5 CHAIRPERSON MILLER: Thank you. Mr.
6 Muhammad?

7 MR. MUHAMMAD: In no way, form or
8 fashion will a settlement agreement stop the
9 business from being operated. The bottom line
10 will still be met even in signing an agreement.
11 The only strongarm that went on was to continue
12 to pay an attorney for his representation all the
13 way from October to right now. That's the only
14 strongarm that is going on as we speak.

15 He is being paid and he wants to pay
16 to continue, so it's not nothing about being
17 strongarmed. Every other community has it. We
18 had an election with only 6,500 people voted out
19 of 70,000, so if others are not concerned about
20 their community and I am taking a stand to be
21 concerned and others don't have the information,
22 I'm going to continue to take the stand and going

1 to continue to fight the fight whether he who
2 don't, who lives in Virginia, care and I do and
3 the owners who live in Virginia who don't care
4 and I do. They live in Virginia.

5 And I'm going to continue to fight it
6 if it's from ABRA, if it's from coal violation,
7 if it's from Department of Health, I'm going to
8 continue to fight that establishment since they
9 don't want to go along with a settlement
10 agreement. There are other forms of them to be
11 fought on, because they are in violation.

12 Closing, drop the mike.

13 CHAIRPERSON MILLER: Okay. Now, I
14 want to ask the parties if they wish to file
15 proposed findings of fact and conclusions of law
16 or waive your right to do so?

17 MR. MUHAMMAD: No.

18 CHAIRPERSON MILLER: No what?

19 MR. MUHAMMAD: What was the question?

20 CHAIRPERSON MILLER: Okay. Okay.

21 So --

22 MR. MUHAMMAD: What was the statement?

1 CHAIRPERSON MILLER: -- the question
2 is do you want to file proposed findings of facts
3 and conclusions of law or waive your right to do
4 so? And this is a right parties have, but don't
5 frequently invoke. You can't offer any new
6 evidence or anything.

7 What it means is you go over the
8 transcript and then you submit what you think the
9 Board should find in facts and what conclusions
10 the Board should draw.

11 MR. MUHAMMAD: No.

12 CHAIRPERSON MILLER: Okay. Mr. Dietz?

13 MR. DIETZ: Yes, I'm requesting a
14 transcript and then to file.

15 CHAIRPERSON MILLER: Okay. Okay.

16 MR. MUHAMMAD: Do I get the chance to
17 respond to that?

18 CHAIRPERSON MILLER: Yes. Oh, no.
19 Not to his. Okay. So the fact is usually when
20 one party requests it, then that means the Board
21 is going to hold off on its deliberations. But
22 you -- Mr. Dietz -- so you could file one, too,

1 but if you change your mind, would you let Mr.
2 Muhammad know and let the Board know, so that we
3 don't wait?

4 In any event, you have 30 days --

5 MEMBER ALBERTI: So that's fine.

6 CHAIRPERSON MILLER: -- to file this
7 document after the transcript is sent to you.

8 MR. DIETZ: Okay.

9 CHAIRPERSON MILLER: It would be. I
10 would say that the Board doesn't need it. Some
11 parties like to do it and you can. You know, it
12 just phrases it these are the facts we think you
13 should find that, you know, support our side,
14 basically, and conclusions of law. But the
15 Board, in any event, is going to decide based on
16 the evidence that was presented today.

17 Okay. Any questions about that?

18 MR. DIETZ: Nothing else.

19 CHAIRPERSON MILLER: Okay. So, Mr.
20 Alberti, did you want to say something?

21 MEMBER ALBERTI: No. I think it has
22 all been covered. Thank you.

1 CHAIRPERSON MILLER: Okay. So what
2 the Board has left to do is vote on deliberating
3 this in closed session. And you can wait or not
4 wait. Okay.

5 Did you have any questions though
6 before we do this?

7 MEMBER ALBERTI: May I just add does
8 Mr. Muhammad understand that he needs to serve
9 Mr. Dietz with a copy of the proposed facts?

10 MR. MUHAMMAD: Okay.

11 MEMBER ALBERTI: And conclusions of
12 law.

13 CHAIRPERSON MILLER: Well, whoever,
14 yes, submits them --

15 MEMBER ALBERTI: Well, Mr. Dietz is a
16 lawyer, so I'm assuming he knows the procedures,
17 but Mr. Muhammad may not know --

18 CHAIRPERSON MILLER: Right.

19 MEMBER ALBERTI: -- that besides
20 providing a copy to the Board, you need to
21 provide a copy to Mr. Dietz.

22 MR. MUHAMMAD: I know someone who used

1 to be down here and they probably can help me.

2 MEMBER ALBERTI: That's fine.

3 CHAIRPERSON MILLER: It's optional
4 though. It's optional. Okay.

5 MR. MUHAMMAD: The Board gets --

6 CHAIRPERSON MILLER: And Mr. Dietz may
7 change his mind, he may not change his mind. I
8 don't know. Sometimes parties do. They read the
9 transcript and then they figure that the Board
10 can decide based on the transcript. Okay.

11 MR. MUHAMMAD: Also as you already
12 know being a commissioner, I'm elected official
13 with representing 2,000 and I'm representing the
14 commission that is 14,000 people, so for me not
15 to have a witness, I represent them, that's why
16 we are voted to represent them.

17 CHAIRPERSON MILLER: Okay. All right.
18 I'm going to read this into the record and I do
19 want to note that at least two of us on this
20 Board have been ANC Commissioners, so we are
21 familiar.

22 MR. MUHAMMAD: So you have --

1 CHAIRPERSON MILLER: Yes. Mr. Alberti
2 has.

3 MEMBER ALBERTI: I have.

4 CHAIRPERSON MILLER: Yes. Okay.

5 As Chairperson of the Alcoholic
6 Beverage Control Board for the District of
7 Columbia and in accordance with Section 405 of
8 the Open Meetings Amendment Act of 2010, I move
9 that the ABC Board hold a closed meeting for the
10 purpose of seeking legal advice from our counsel
11 on Case No. 14-PRO-00075, Wheeler Market, per
12 Section 405(b)(4) of the Open Meetings Amendment
13 Act of 2010, and deliberating upon this case for
14 the reasons cited in Section 405(b)(13) of the
15 Open Meetings Amendment Act of 2010.

16 Is there a second?

17 MEMBER ALBERTI: Second.

18 CHAIRPERSON MILLER: Mr. Alberti
19 seconded the motion. I'll now take a roll call
20 vote on the motion before us now that it has been
21 seconded.

22 Mr. Brooks?

1 MEMBER BROOKS: I agree.

2 CHAIRPERSON MILLER: Mr. Alberti?

3 MEMBER ALBERTI: I agree.

4 CHAIRPERSON MILLER: Mr. Rodriguez?

5 MEMBER RODRIGUEZ: I agree.

6 CHAIRPERSON MILLER: Ms. Miller

7 agrees.

8 Mr. Short?

9 MEMBER SHORT: I agree.

10 CHAIRPERSON MILLER: Mr. Jones?

11 MEMBER JONES: I agree.

12 CHAIRPERSON MILLER: It appears that

13 the motion has passed by a 6-0-0 vote.

14 I hereby give notice that the ABC
15 Board will hold this aforementioned closed
16 meeting in the ABC Board conference room pursuant
17 to the Open Meetings Amendment Act of 2010 and we
18 will issue a decision within 90 days of receipt
19 of the proposed findings of fact and conclusions
20 of law or notice that no such filings will be
21 made.

22 Okay. Thank you very much.

1 MR. MUHAMMAD: Thank you.

2 MR. DIETZ: Thank you.

3 CHAIRPERSON MILLER: Have a good night
4 or good afternoon.

5 Okay. So we will recess and return
6 shortly to do our agendas.

7 (Whereupon, the Protest Hearing in the
8 above-entitled matter was concluded at 4:19 p.m.)

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