

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

IN THE MATTER OF:

Top Shelf, LLC, t/a  
Penn Quarter Sports Tavern                      Protest  
639 Indiana Street, NW                              Hearing  
Retailer CT    (Status)  
License No. 76039  
Petition to Terminate the  
Settlement Agreement  
Case No. 14-PRO-00011

June 4, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
HECTOR RODRIGUEZ, Member  
JAMES SHORT, Member

ALSO PRESENT:

Abyie Ghenene, Investigator

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Abyie Ghenene	21	--	--	--
Michael Brand	43	--	--	--
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P-R-O-C-E-E-D-I-N-G-S

(1:41 p.m.)

CHAIRPERSON MILLER: Okay, let's go back on the record for our afternoon hearings, and the first case, and probably the only case that we're going to be hearing this afternoon, is Case Number 14-PRO-00011, Penn Quarter Sports Tavern located at 639 Indiana Avenue, N.W., License Number 76039 and ANC 2C, and this concerns a Petition to Terminate a Settlement Agreement. Good afternoon.

MR. BRAND: Good afternoon.

CHAIRPERSON MILLER: If you would sign in. And when you're ready, starting from the right side of the Board introduce yourself for the record, please.

MR. BRAND: Michael Brand, owner of Penn Quarter Sports Tavern.

CHAIRPERSON MILLER: Okay.

MR. QUINLAN: David Quinlan --

CHAIRPERSON MILLER: I'm sorry, I can't --

1 MR. QUINLAN: David Quinlan.

2 CHAIRPERSON MILLER: Okay.

3 MR. QUINLAN: From the  
4 Pennsylvania Condominium, I'm a resident.

5 CHAIRPERSON MILLER: Okay. Okay,  
6 one second.

7 (Pause.)

8 CHAIRPERSON MILLER: Okay, sorry  
9 about that. Could you tell me again your  
10 name? I just want to --

11 MR. BRAND: Michael Brand.

12 CHAIRPERSON MILLER: Michael  
13 Grant?

14 MR. BRAND: Brand.

15 CHAIRPERSON MILLER: Brand.

16 MR. BRAND: B-R-A-N-D.

17 CHAIRPERSON MILLER: Brand, got  
18 it.

19 MR. BRAND: Yes.

20 CHAIRPERSON MILLER: And you're  
21 the owner?

22 MR. BRAND: Yes.

1 CHAIRPERSON MILLER: Okay, got it.

2 Okay. And over here?

3 MR. QUINLAN: David Quinlan, 601

4 Pennsylvania Avenue resident.

5 CHAIRPERSON MILLER: You're a

6 resident. Are you a party to this case?

7 MR. QUINLAN: I'm sorry?

8 CHAIRPERSON MILLER: Well you can

9 introduce yourself and we'll get back to you.

10 MR. CARDELLA: I'm Dominic

11 Cardella, I'm the abutting neighbor.

12 CHAIRPERSON MILLER: Okay, great.

13 You're an individual resident in this case?

14 MR. QUINLAN: Yes.

15 CHAIRPERSON MILLER: How are you -

16 - Did you get party status?

17 MR. QUINLAN: I'm sorry?

18 CHAIRPERSON MILLER: Mr. Quinlan,

19 I don't have him down in my notes as being a

20 party.

21 MR. CARDELLA: Well, he wasn't

22 sure if he could make it because he has

1 physical difficulties, so, you know, he  
2 decided that he would be able to make it.

3 CHAIRPERSON MILLER: Is he going  
4 to be a witness for you?

5 MR. CARDELLA: He's a witness,  
6 yes.

7 CHAIRPERSON MILLER: Okay, so  
8 you're not up here as a party?

9 MR. QUINLAN: No.

10 CHAIRPERSON MILLER: You're here  
11 as a witness for Mr. Cardella?

12 MR. CARDELLA: Yes.

13 MR. QUINLAN: Yes.

14 CHAIRPERSON MILLER: Okay, that's  
15 fine. That's all right. That's not a  
16 problem. Okay and this involves termination,  
17 this involves not exactly as I understand a  
18 termination of a settlement agreement, but  
19 actually just an amendment to part of it,  
20 right?

21 MR. BRAND: Yes, that's correct.

22 CHAIRPERSON MILLER: And that part

1 deals with the hours that the television can  
2 be played outside or --

3 MR. BRAND: Well, yes. I believe  
4 the last time we were here in this room --

5 CHAIRPERSON MILLER: Okay.

6 MR. BRAND: -- we met with the ANC  
7 and Mr. Cardella and the three parties  
8 couldn't come to terms. We have come to terms  
9 with the ANC.

10 CHAIRPERSON MILLER: Yes. Okay.

11 MR. BRAND: So I guess whatever  
12 solution we've kind of made right between  
13 those two parties is there but at this point  
14 I think the original application, or form or  
15 whatever we had between us that that's what in  
16 question between Dominic and I.

17 So I don't know, like we've got  
18 back and forth information on the other  
19 agreement but I don't really know where that  
20 leaves us with this current agreement.

21 CHAIRPERSON MILLER: Okay.

22 MR. BRAND: We submitted a new

1 voluntary agreement is what I'm trying to say.

2 CHAIRPERSON MILLER: Yes, we have  
3 that.

4 MR. BRAND: Yes.

5 CHAIRPERSON MILLER: With the ANC?

6 MR. BRAND: Yes.

7 CHAIRPERSON MILLER: Right.

8 MR. BRAND: Yes. But I don't know  
9 where that leaves this current agreement.

10 CHAIRPERSON MILLER: You still  
11 have this agreement?

12 MR. BRAND: Yes, right. I guess  
13 that's what this is.

14 CHAIRPERSON MILLER: But the way I  
15 read, and I just want to clarify the issues up  
16 front so that everybody's on agreement as to  
17 what the parameter of the hearing is.

18 And so, correct me if I'm wrong,  
19 when I looked at the PIFs and then I looked at  
20 the agreement it looked like you were just  
21 challenging Paragraph 6(d) and (c), because  
22 (b) says, second paragraph, "The establishment

1 will have all exterior amplified sound  
2 equipment and speakers turned off prior to  
3 11:00 p.m. daily and exterior televisions  
4 turned off prior to 10:00 p.m."

5 So actually you want to change  
6 that, correct?

7 MR. BRAND: Yes. The biggest  
8 problem that we have is we have large outside  
9 seating, there are a lot of people sitting out  
10 there.

11 If the game goes over 10:00, I  
12 mean 15 minutes over, it's really difficult  
13 for us to establish ourselves as a good  
14 neighborhood sports bar going around to each  
15 table explaining that we have this agreement.

16 CHAIRPERSON MILLER: Okay, but, I  
17 understand that's going to be your case.

18 MR. BRAND: So that's the whole  
19 reason for this. So with the current  
20 agreement the T.V.'s would go with the time  
21 that's allowed for the outside seating areas,  
22 so that would be 11:00 during the week and

1 12:00 on the weekend.

2 So we're asking just for those  
3 things to match up.

4 CHAIRPERSON MILLER: Okay. So  
5 then it's just this --

6 MR. BRAND: Just it would make it  
7 more seamless with --

8 CHAIRPERSON MILLER: Okay. So the  
9 hours outside would still be the same?

10 MR. BRAND: Everything would be  
11 the same.

12 CHAIRPERSON MILLER: Except the --

13 MR. BRAND: It would simply be the  
14 fact that we --

15 CHAIRPERSON MILLER: How long the  
16 T.V. can play?

17 MR. BRAND: Yes. Yes.

18 CHAIRPERSON MILLER: Right?

19 MR. BRAND: Yes.

20 CHAIRPERSON MILLER: And as of now  
21 that has to be turned off prior to 10:00 and  
22 you want it to go till --

1 MR. BRAND: It's -- Yes. This  
2 time of year, I mean if we have, you know, 50  
3 people out there --

4 CHAIRPERSON MILLER: Yes.

5 MR. BRAND: -- it looks, in  
6 effect, like we're closing the business when  
7 anything is altered. The lighting out there  
8 is dim other than the T.V.'s.

9 So when the T.V.'s go off it kind  
10 of just appears like the whole place is  
11 shutting down, so it's kind of a natural  
12 response for people to pull out their credit  
13 cards and --

14 CHAIRPERSON MILLER: Okay. So I  
15 don't want to you argue your case right this  
16 second.

17 MR. BRAND: Okay.

18 CHAIRPERSON MILLER: But I just  
19 want to make sure that everybody agrees that  
20 that's the issue we're, that's the only issue  
21 we're talking about. Mr. Cardella, is that  
22 your understanding?

1 MR. CARDELLA: That's the issue,  
2 yes.

3 CHAIRPERSON MILLER: That's the  
4 issue, okay.

5 MR. CARDELLA: It's really, and  
6 it's really a noise issue. It's a little bit  
7 broader than that. It's a general noise  
8 issue.

9 CHAIRPERSON MILLER: So noise on  
10 the patio?

11 MR. CARDELLA: Which is in  
12 violation of D.C. law.

13 CHAIRPERSON MILLER: Is it the  
14 hours though, that's all we're talking about,  
15 what that noise can be on that patio?

16 MR. CARDELLA: It goes beyond the  
17 hours. It's an outright violation of D.C.  
18 law.

19 CHAIRPERSON MILLER: Does it go  
20 beyond the T.V.?

21 MR. CARDELLA: The T.V's are a  
22 cause for the violation of the D.C. law.

1                   CHAIRPERSON MILLER: Okay. So I  
2 just want to make sure that we understand what  
3 we're going to hear today about is the T.V.'s,  
4 okay. So we're not going to hear about trash  
5 and litter or any other parts of the  
6 agreement, okay.

7                   All right. So, I don't know if  
8 you've been here before for a protest hearing  
9 any of you, but -- It doesn't sound that way.  
10 Is this the only witness that's going to be  
11 here today?

12                  MR. CARDELLA: This is the only  
13 witness, yes. The reason that there's only  
14 one witness is because in your Agency's letter  
15 it said that the Board will not permit any  
16 repetitive testimony. If I had brought other  
17 witnesses it would have been strictly  
18 repetitive.

19                  CHAIRPERSON MILLER: Okay. All  
20 right, so the way we're going to proceed here  
21 if this is a contested hearing. So, you know,  
22 we do have a Court Reporter and witnesses are

1 going to be put under oath and the first  
2 witness that the Board hears from is our  
3 Government, is our Investigator who did the  
4 Investigation Report and you'll have a chance  
5 to cross examine him on his testimony, as will  
6 the Board.

7 And then the Applicant in this  
8 case, I guess it's the Applicant, let's see,  
9 who's the Movant? Well you each will get a  
10 chance to present your cases and do cross  
11 examination on the witnesses presented by each  
12 side.

13 Let me swear you in for a second  
14 so you can sit down.

15 WHEREUPON,

16 ABYIE GHENENE

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

21 CHAIRPERSON MILLER: Okay, have a  
22 seat for one second. I just have to think of

1 something. You're the Movant, you're moving  
2 to terminate. You're moving to terminate that  
3 division, so you're the moving party in this  
4 case.

5 MR. BRAND: All right.

6 CHAIRPERSON MILLER: Okay. So  
7 you'll go after the Investigator to present  
8 your case. If you don't have a witness you  
9 can be the witness and I'll swear you in.

10 MR. BRAND: Okay, all right.

11 CHAIRPERSON MILLER: Okay. And  
12 then we'll hear from the other side.

13 MR. BRAND: Sure.

14 CHAIRPERSON MILLER: And,  
15 actually, I'm sorry, I'm kind of stepping  
16 around here, before we hear from our  
17 Investigator now you each can do what's called  
18 an opening statement where you can -- You each  
19 started to explain your case, so now is the  
20 time that, you have up to like five minutes to  
21 say what you're going to show, you know, what  
22 your case is, what you're going to show, what

1 the evidence is going to show.

2 MR. BRAND: Who would you like --

3 CHAIRPERSON MILLER: It's not  
4 required, but you're welcome to do that.

5 MR. BRAND: Who would you like to  
6 hear from first?

7 CHAIRPERSON MILLER: You go first,  
8 you're the moving party.

9 MR. BRAND: Like I said I guess I  
10 got a little ahead of the cart to kind of  
11 explain the situation, but this has really  
12 been a sticking point for a long time for us.

13 And we're, Dominic would agree, he  
14 has agreed that, you know, in terms of trying  
15 to work a good relationship, neighborly  
16 relationship, we've tried pretty much  
17 everything and we're continuing to try  
18 everything.

19 And even after this meeting we're  
20 going to try everything. I live across the  
21 street. I actually live also in the 601  
22 building.

1                   I spend probably 80 percent, 90  
2 percent of my time on that block, whether it  
3 be at home or at work I'm always in that  
4 block, much like Dominic is. I'm very well  
5 invested in that block so I'm not going to do  
6 anything to deter anything down there.

7                   We, you know, there are a lot of  
8 residential buildings down there, the  
9 Pennsylvania included, but a lot of residents  
10 are looking for activity, things to do, and  
11 this time of year, for instance, on Fridays  
12 one of the D.C. events that they do down  
13 there, sponsored events is Jazz in the  
14 Sculpture Garden and 2000 people come out, I  
15 mean it's body to body, just people in there  
16 having a good time listening to jazz.

17                   When that lets go when the sun  
18 sets all those people are set loose on that  
19 immediate part of the City and they're looking  
20 to continue to have a good time, eat  
21 something, drink something, hang out, whatever  
22 that is. We're providing a space like that.

1                   But, again, when the sun sets and  
2                   it's dark out the T.V.'s are on with an  
3                   ambient light coming over the tables,  
4                   everybody's in a certain mood, as soon as we  
5                   kill those T.V.'s, just people walking by,  
6                   they're so used to seeing things a certain way  
7                   when it changes it's just like an automatic  
8                   response they think we're closed.

9                   So we're simply losing money  
10                  because people, we can't keep people in there.  
11                  We're trying to explain to them we're open  
12                  inside, we're just turning the T.V.'s off  
13                  outside. They don't understand this whole  
14                  thing.

15                  So all we want to do is keep the  
16                  T.V.'s on to the hours that were given to us  
17                  by the outside seating, which is 11:00 during  
18                  the week and 12:00 on the weekend. You know,  
19                  I don't think that's too too late in terms of  
20                  other ABC licenses that go till 2:00 in the  
21                  morning, 3:00 in the morning every night of  
22                  the week or whatever they do.

1                   Typically we're closed by midnight  
2 almost, you know, weekends included, we don't  
3 really go late. So we're not running like,  
4 you know, a night club or anything like that  
5 down there. That's pretty much it from our  
6 side.

7                   CHAIRPERSON MILLER: Okay, thank  
8 you. Okay?

9                   MR. CARDELLA: Okay, I'll give an  
10 opening statement.

11                  CHAIRPERSON MILLER: Okay.

12                  MR. CARDELLA: My mixed use  
13 building shares a common wall with Penn  
14 Quarter Sports Tavern. In 2008 the bar  
15 petitioned to have outdoor T.V's installed in  
16 their outdoor café.

17                  The establishment also has an  
18 unenclosed café also in a public space in the  
19 middle of a pedestrian crosswalk. Until now  
20 my settlement agreement with the establishment  
21 required that the outdoor T.V's be turned off  
22 by 10:00 p.m. in an attempt to maintain the

1 peace and quiet in the very late hours.

2 When there is a sports event as  
3 many as 60 to 80 patrons will gather in the  
4 outdoor public spaces to cheer on their teams.  
5 The yelling, ruckus, and rowdy behavior will  
6 continue until the T.V's are turned off.

7 The establishment is now  
8 petitioning to extend the use of the outdoor  
9 T.V's until midnight. This will have a  
10 detrimental effect on my health and destroy  
11 the peace and quiet of my home that I have  
12 enjoyed well before there was a Penn Quarter  
13 Sports Tavern.

14 Please also note that the  
15 establishment also has approximately 40 other  
16 indoor large screen T.V.'s that patrons are  
17 welcome to view until the closing hours and it  
18 is packed. Those rooms are packed with  
19 patrons, overpacked.

20 I also have a number of signed  
21 letters from residents that live on the same  
22 street who are also in opposition, not only to

1 the extended hours, but to the outdoor T.V.'s  
2 in general. Of those with signed petitions  
3 Mr. Quinlan is present to give a testimony.

4 CHAIRPERSON MILLER: Okay, that  
5 will be later. Okay, thank you very much.  
6 Okay, so now we'll hear from our Investigator.  
7 I swore you in, right?

8 INVESTIGATOR GHENENE: Yes, ma'am.

9 CHAIRPERSON MILLER: Okay, thank  
10 you. Whenever you're ready if you want to  
11 give us some salient points from your report.

12 DIRECT EXAMINATION

13 THE WITNESS: Yes, ma'am, I'll try  
14 and be brief. I was assigned this protest on  
15 Tuesday, May 13th, and on Wednesday, May 28th  
16 I interviewed Mr. Cardella and Mr. Cardella  
17 said he's an abutting resident.

18 He stated that, initially, Penn  
19 Quarter when they opened would play rap music  
20 very loudly into the late hours of the  
21 evening. He said that that subsided, but  
22 recently he's more bothered with the

1 establishment and they are showing sporting  
2 events on their televisions outside, like you  
3 heard.

4 Mr. Cardella said that he and the  
5 owner and various managers have worked out a  
6 system where if he's bothered by the noise  
7 generated by the televisions he'll call Penn,  
8 he'll call the establishment and they will  
9 turn down the volumes or they'll turn the  
10 televisions off.

11 And he stated that that's been  
12 working for him and that the establishment's  
13 been very cooperative. Mr. Cardella went on  
14 to say that they routinely violate, that the  
15 establishment routinely violates the D.C.  
16 Noise Control Act and that if ABRA allows them  
17 to extend the hours of their exterior  
18 television usage he'll take legal action  
19 against ABRA and the District of Columbia.

20 As far as zoning is concerned the  
21 establishment is zoned in a downtown  
22 development, the C4 Zone, and there's a lot of

1 technical terms in there and I'm sure that you  
2 guys can review it, but pretty much what it  
3 means is that there is mixed usage down there,  
4 it's not strictly residential or strictly  
5 commercial. So there's a mixed usage of the  
6 property down there, so what Mr. Brand is  
7 doing is acceptable.

8 As far as the nearby  
9 establishments there is approximately 28 ABC  
10 licensed establishments within 1200 feet of  
11 Penn Quarter Sports Tavern. There's one  
12 daycare, which I believe is part of a Federal  
13 Building within, that's approximately 149 feet  
14 from the establishment.

15 As both of the people in front of  
16 you had stated there's two outdoor seating  
17 areas, I won't discuss what's going on inside  
18 because I think that it's not really relevant.

19 CHAIRPERSON MILLER: Yes, okay.

20 THE WITNESS: But there are two  
21 outdoor seating areas, and like both of them  
22 stated they can probably seat or stand, you

1 know, approximately 40 to 80 people, although  
2 during my monitoring I never saw that many  
3 people out there.

4 The proposed hours are the same,  
5 and I don't think we need to get into that  
6 because you said this is strictly about the  
7 televisions, but it's in my report. So I  
8 monitored the establishment --

9 CHAIRPERSON MILLER: Now let me  
10 ask, the proposed hours, the way the owner  
11 represented it, is there something different?

12 THE WITNESS: No, ma'am.

13 CHAIRPERSON MILLER: No, okay.

14 THE WITNESS: I, myself, or other  
15 ABRA Investigators, monitored the  
16 establishment on five different dates and it  
17 pretty much was consistent.

18 During the daytime hours when we  
19 monitored it it looked like every other  
20 establishment that's in the City that caters  
21 to a lunch crowd. It was just, it was normal.

22 At night there were, and I don't

1 know if it's a function of, you know, an off  
2 season for a particular sport or whatever it  
3 is, but it again, it just looked like any  
4 other place in the City.

5           There was noise coming out of it,  
6 but it wasn't what I would consider to be  
7 excessive. There was people milling around  
8 and, you know, but it wasn't what I would view  
9 to be a nuisance, just based off of my  
10 experience.

11           I spoke with Mr. Sher who, as far  
12 as our forms were concerned, he was the  
13 applicant, and I believe he's a manager or  
14 maybe a partner in the business.

15           MR. BRAND: Yes, partner.

16           THE WITNESS: And Mr. Sher said  
17 that it's his primary goal to mend the  
18 relationship between the establishment and Mr.  
19 Cardella.

20           He stated that at one point they  
21 did have a pretty good relationship, but, you  
22 know, over the years I guess something has

1 happened that where it's not as good as it  
2 once was.

3 Mr. Sher said that for the most  
4 part the establishment operates at a loss  
5 during the Winter season and that the Spring  
6 and the Summer is when they try and catch back  
7 up.

8 Mr. Sher stated that they're not  
9 trying to operate as a night club or a late  
10 night bar, they just don't want to have turn  
11 games off in the fourth quarter when people  
12 are most invested, they've spent all sorts of  
13 money eating and drinking and now they have a  
14 waitress or an owner or whoever it is saying  
15 you know what, sorry our voluntary agreement  
16 says we have to cut the television off so  
17 frequently, these people don't know what that  
18 means.

19 All that they know is that they're  
20 not allowed to watch the game anymore outside.  
21 So he said that it really kind of kills them  
22 as far as their reputation and their business.

1 Excuse me.

2 Mr. Sher stated that showing  
3 sporting events is the lifeblood of their  
4 business, so the inability to show them in  
5 their entirety, where there's, approximately  
6 30 percent of their patrons can stay is really  
7 a detriment to them, they can't compete with  
8 other sports bars in the City.

9 Mr. Sher stated that they're not  
10 attempting to cater to a late night crowd and  
11 that they'll leave that for other people.  
12 They truly only want to deal with their  
13 daytime lunch crowd and then the guys, well  
14 the guys and the females that come in for  
15 sporting events.

16 And once the sporting events are  
17 done, you know, that's pretty much when they  
18 close. Similar to what Mr. Brand said, Mr.  
19 Sher said that regardless of what happens  
20 today or regardless of what the Board decides  
21 he will continue to try and work something out  
22 with Mr. Cardella.

1                   And that's pretty the extent of my  
2                   report.

3                   CHAIRPERSON MILLER: Thank you.

4                   THE WITNESS: There's other stuff  
5                   in there, but --

6                   CHAIRPERSON MILLER: Right, but,  
7                   yes, and it was a great report and we've read  
8                   it, so I think it was appropriate to focus on  
9                   the T.V. issue because that seems to be, that  
10                  is what's at issue. I have a quick question  
11                  right off.

12                  THE WITNESS: Sure.

13                  CHAIRPERSON MILLER: Did you visit  
14                  the establishment when the T.V.'s were playing?

15                  THE WITNESS: Yes.

16                  CHAIRPERSON MILLER: Oh, okay.

17                  THE WITNESS: Yes.

18                  CHAIRPERSON MILLER: So did the  
19                  T.V.'s seem loud?

20                  THE WITNESS: In my opinion, no,  
21                  but, you know, I'm comparing it to other  
22                  places in the City where I would, where I feel

1 that there might be excessive noise coming  
2 from those places, if that makes sense.

3 CHAIRPERSON MILLER: So is the  
4 T.V., does the sound of the T.V. kind of mix  
5 in with the sound of the customers or is it  
6 distinct?

7 THE WITNESS: You know, the  
8 T.V.'s, I don't know. I don't know how to  
9 answer that.

10 CHAIRPERSON MILLER: Yes, right.

11 THE WITNESS: It's the sound of a  
12 game that's on and people watching it.

13 CHAIRPERSON MILLER: Okay.

14 THE WITNESS: That, you know, it's

15 --

16 CHAIRPERSON MILLER: And so for  
17 the C4 Zone I think you were saying that  
18 that's appropriate?

19 THE WITNESS: Yes, ma'am.

20 CHAIRPERSON MILLER: Yes, okay.

21 Okay, other Board Members? Yes?

22 MEMBER ALBERTI: Investigator,

1 were you ever there when there was a large  
2 crowd in the outdoor café?

3 THE WITNESS: No, sir.

4 MEMBER ALBERTI: Thank you.

5 CHAIRPERSON MILLER: Is that it?

6 MEMBER ALBERTI: That's it.

7 CHAIRPERSON MILLER: Mr. Brooks,  
8 did you have a question?

9 MEMBER BROOKS: Yes, I did.

10 CHAIRPERSON MILLER: Okay.

11 MEMBER BROOKS: Thank you, Madam  
12 Chair.

13 CHAIRPERSON MILLER: Yes.

14 MEMBER BROOKS: How many T.V's are  
15 out there?

16 THE WITNESS: I couldn't tell you  
17 in an honest answer, I don't know.

18 MEMBER BROOKS: Okay. Two, three,  
19 four?

20 THE WITNESS: Oh, on the outside?

21 MEMBER BROOKS: Outside, yes. I'm  
22 sorry, yes.

1                   THE WITNESS: I'm not sure. Mr.  
2 Brand might be the --

3                   MEMBER BROOKS: Okay, I'll ask  
4 him. Okay. And let me understand what you  
5 mean about the "mixed use zoning." What does  
6 that mean?

7                   THE WITNESS: There's a, in my  
8 report I wrote exactly, I took exactly what  
9 DCRA said regarding those zones, but in  
10 essence it says that there's two  
11 classifications of the zones where this  
12 establishment is.

13                   There's the DD, which is Downtown  
14 Development, and the C4 portion. So as far as  
15 the Downtown Development is concerned it says  
16 "It is designed to create a balanced mix of  
17 uses to guide office development, which is  
18 favored by market forces so as to further the  
19 land use objectives for retail, hotel,  
20 residential, entertainment, arts, and cultural  
21 usage."

22                   So the way I am interpreting that

1 is is that it's just wide open, there's not  
2 too many restrictions as far as what they can  
3 and cannot do in that area.

4 MEMBER BROOKS: Okay. So then the  
5 Noise Task Force that we have in the City,  
6 would it have any bearing on what he's able to  
7 do as far as noise?

8 THE WITNESS: I'm not qualified to  
9 make that distinction. That's something I can  
10 get back to the Board with.

11 MEMBER BROOKS: Yes. I'm just  
12 curious to see what is prohibited as far as  
13 noise of his establishment, you know.

14 THE WITNESS: Yes, sir.

15 MEMBER BROOKS: And what times?

16 THE WITNESS: Yes, sir.

17 MEMBER BROOKS: Okay. And you did  
18 say that you observed a sporting event being  
19 televised?

20 THE WITNESS: Yes, sir.

21 MEMBER BROOKS: What was it a  
22 baseball game?

1 THE WITNESS: I believe it was an  
2 NBA game.

3 MEMBER BROOKS: Oh, NBA game,  
4 okay.

5 THE WITNESS: Yes, sir.

6 MEMBER BROOKS: And approximately  
7 what time was that?

8 THE WITNESS: I believe, it was in  
9 the evening time, I think it was about, it was  
10 in the evening time. I don't want to tell you  
11 exactly what time it was, but it was the  
12 evening time.

13 MEMBER BROOKS: Okay.

14 THE WITNESS: There wasn't a  
15 ruckus, what I would deem a ruckus crowd  
16 outside.

17 MEMBER BROOKS: Yes.

18 THE WITNESS: And it could've,  
19 again, you know, I don't want to, you know,  
20 qualify or disqualify, so it could be a  
21 function of, you know, it's an NBA team versus  
22 a collegiate game or something like that, I'm

1 not sure.

2 MEMBER BROOKS: Okay.

3 THE WITNESS: But it wasn't what I  
4 would deem as a ruckus crowd.

5 MEMBER BROOKS: Okay, all right.  
6 Thank you, Madam Chair.

7 CHAIRPERSON MILLER: Okay, Mr.  
8 Short?

9 MEMBER SHORT: Investigator, good  
10 afternoon.

11 THE WITNESS: Good afternoon, sir.

12 MEMBER SHORT: You mentioned  
13 something about a lawsuit?

14 THE WITNESS: Yes, sir.

15 MEMBER SHORT: Can you elaborate  
16 on that?

17 THE WITNESS: Mr. Cardella  
18 mentioned when I interviewed him that he was  
19 extremely concerned about how Penn Quarter  
20 Sports Tavern routinely violated D.C.'s Noise  
21 Control Act and assured me that if ABRA  
22 extended the hours, which would be a direct

1 violation, in his opinion, a direct violation  
2 of the Noise Control Act, he would seek legal  
3 action against ABRA and the D.C. Government.

4 MEMBER SHORT: Okay, thank you.

5 CHAIRPERSON MILLER: Yes, Mr.

6 Alberti?

7 MEMBER ALBERTI: Investigator  
8 Ghenene, one of the things that the Board has  
9 to consider in a Request for Termination of a  
10 Settlement Agreement is whether there has been  
11 a change in the neighborhood since the time  
12 the settlement agreement was implemented.

13 Did the owner discuss with you or  
14 mention to you or elaborate on what he thought  
15 the changes were?

16 THE WITNESS: No, sir.

17 MEMBER ALBERTI: Okay.

18 MEMBER RODRIGUEZ: Oh, I have a  
19 question.

20 CHAIRPERSON MILLER: Are you --  
21 Okay, Mr. Rodriguez?

22 MEMBER RODRIGUEZ: Are you done

1 Mr. Alberti?

2 MEMBER ALBERTI: Yes.

3 MEMBER RODRIGUEZ: Mr.

4 Investigator, I want to ask you if there is  
5 any previous reports or complaints about this  
6 establishment prior to all of this?

7 THE WITNESS: I believe there was  
8 a semi-minor case in 2010 where they received  
9 a warning letter and there were two voluntary  
10 agreement violations that were within six days  
11 of one another in the same month in 2010, but  
12 nothing since 2010.

13 MEMBER RODRIGUEZ: Okay, thank you  
14 very much, sir.

15 THE WITNESS: Yes, sir.

16 CHAIRPERSON MILLER: Okay.

17 Others? Investigator Ghenene, the fact that  
18 the establishment's located in a C4 Zone means  
19 it's in a commercial zone as opposed to a  
20 residential zone, right?

21 THE WITNESS: Yes, ma'am.

22 CHAIRPERSON MILLER: And Mr.

1 Cardella's residence is that also then in a  
2 commercial zone?

3 THE WITNESS: Yes, ma'am.

4 CHAIRPERSON MILLER: All right.

5 Now my understanding is then commercial zones  
6 are subject to the noise laws that are  
7 governed, that are enforced by DCRA. Do you  
8 have any knowledge about that?

9 THE WITNESS: Yes, ma'am.

10 CHAIRPERSON MILLER: Okay. And  
11 now those kind of noise laws deal with decibel  
12 levels?

13 THE WITNESS: I believe so, yes,  
14 ma'am.

15 CHAIRPERSON MILLER: Okay. All  
16 right, just to say that my understanding is  
17 that we do have a new Noise Task Force that  
18 goes into commercial areas and measures  
19 decibel levels, is that correct?

20 THE WITNESS: Yes, ma'am.

21 CHAIRPERSON MILLER: Okay.

22 THE WITNESS: Excuse me.

1                   CHAIRPERSON MILLER: Do you have  
2                   an opinion if you can, if you feel comfortable  
3                   giving it as to whether or not amending the  
4                   settlement agreement to allow the televisions  
5                   to play until the hours allowed on the  
6                   license, which I think are 11:00 at night  
7                   Monday through Friday and midnight Saturday  
8                   and Sunday, would have an adverse impact on  
9                   just about anyone in the surrounding  
10                  community?

11                  THE WITNESS: Well generally I  
12                  don't like to give an opinion because I --

13                  CHAIRPERSON MILLER: That's why I  
14                  qualified it that way.

15                  THE WITNESS: -- absolutely value  
16                  Mr. Cardella's position.

17                  CHAIRPERSON MILLER: Yes.

18                  THE WITNESS: But I will say that  
19                  that area is, I mean there's a lot of  
20                  businesses around there and I can say since  
21                  I've been working at ABRA I've never responded  
22                  to any kind of disorderly or sick person to

1 the hospital or a shooting or a stabbing or  
2 anything down there.

3 And through monitoring I've never  
4 saw the place open beyond midnight. It's on  
5 a relatively quiet street, it's a block from  
6 Judiciary Square, two blocks.

7 It's just not a, it would appear  
8 that it's not a problem location and the  
9 extension doesn't seem to be unreasonable.

10 CHAIRPERSON MILLER: Okay, thank  
11 you. Other questions? Okay, there aren't any  
12 other Board questions so now we'll move to the  
13 Applicant, which is you, do you have any  
14 questions for our Investigator based on his  
15 testimony from the Board?

16 CROSS EXAMINATION

17 MR. BRAND: No. I just want to  
18 thank you for being fair and I feel like John,  
19 my partner, did a pretty good job kind of  
20 giving a proper statement and letting the  
21 Board now our standpoint as far as everything.

22 Most importantly, our outreach to

1 Dominic that's going to continue and we're not  
2 trying to have anyone in the neighborhood, you  
3 know, uncomfortable with the way we're running  
4 the business or anything like that.

5 And, I mean, and I've said this to  
6 Dominic --

7 CHAIRPERSON MILLER: No. It's not  
8 the time to testify, though, it's just a time  
9 to ask him any questions.

10 MR. BRAND: All right. All right.

11 CHAIRPERSON MILLER: Okay.

12 MR. BRAND: Very good.

13 CHAIRPERSON MILLER: You'll get  
14 there. All right. Mr. Cardella, do you have  
15 any questions?

16 MR. CARDELLA: Yes. Can you tell  
17 me when the investigation was made?

18 THE WITNESS: I was assigned the  
19 investigation on Tuesday, May 13th.

20 MR. CARDELLA: May 13th. Well I  
21 can tell you this that since --

22 CHAIRPERSON MILLER: Wait.

1 MR. CARDELLA: All right.

2 CHAIRPERSON MILLER: Is this going  
3 lead to a question? Because the way this  
4 hearing is structured it's time you ask him  
5 questions.

6 MR. CARDELLA: Well I'm going to  
7 make a statement.

8 CHAIRPERSON MILLER: No, you can't  
9 make a statement until you testify --

10 MR. CARDELLA: Oh, okay.

11 CHAIRPERSON MILLER: -- or your  
12 witness testifies, or you do closing argument.

13 MR. CARDELLA: Oh, all right.  
14 Okay.

15 CHAIRPERSON MILLER: Okay, so this  
16 is the time to ask questions of Mr. Ghenene.

17 MR. CARDELLA: All right.

18 CHAIRPERSON MILLER: Do you have  
19 any other questions?

20 MR. CARDELLA: No, not at this  
21 time.

22 CHAIRPERSON MILLER: Okay, thank

1       you very much.

2                   THE WITNESS:   Thank you.   No  
3       problem, thank you.

4                   CHAIRPERSON MILLER:   Okay, so now  
5       we move to the Applicant's case.   So if you,  
6       it's just you right, Mr. Brand?

7                   MR. BRAND:   Yes.

8                   CHAIRPERSON MILLER:   So you're  
9       both counsel and a party?

10                  MR. BRAND:   Right.

11                  CHAIRPERSON MILLER:   And witness,  
12       maybe, yes.   Okay, so if you, you're going to  
13       say something that's, you know, like evidence  
14       that you want us to consider, which you  
15       probably will.

16                  I'm going to swear you in, but you  
17       don't necessarily I don't think have to go  
18       over there because you're playing all these  
19       different roles.

20                  MR. BRAND:   Sure.

21                  CHAIRPERSON MILLER:   But I'm going  
22       to swear you in so that anything you say will

1 be considered evidence because that's what the  
2 Board has to rely on, evidence and argument,  
3 okay.

4 WHEREUPON,

5 MICHAEL BRAND

6 was called as a witness by the Board and,  
7 having been first duly sworn, assumed the  
8 witness stand, was examined and testified as  
9 follows:

10 CHAIRPERSON MILLER: So you can  
11 proceed now to present what your case is.

12 Just --

13 DIRECT EXAMINATION

14 THE WITNESS: Not to regurgitate  
15 everything all over again, but we've worked  
16 the last eight or nine months a lot. We've  
17 had a couple public forums with the  
18 Neighborhood Advisory Council, we've brought  
19 like members of the neighborhood in, you know,  
20 supporting kind of what we're doing.

21 We started this business ten years  
22 ago, the date just passed two months ago and

1 so happy that we're still in business after  
2 ten long years. But that location ten years  
3 ago was very difficult.

4 There weren't, the restaurants  
5 that now surround us weren't there. In the  
6 last ten years Jose Andreas, a famous chef,  
7 he's opened for locations right there by us.  
8 Wolfgang Puck has a restaurant right by us.  
9 Michel Richard has a restaurant right by us.

10 Like there are all these like  
11 competing restaurants of like huge caliber  
12 that have very nice outside seating and they  
13 do what they do. We're a new thing. All we  
14 had to go on is being a sports bar, that's it.

15 That's the only reason people come  
16 to see us. They don't come for our steak and  
17 cheese or this or that, they do, at lunchtime,  
18 but in the evening that's not why they're down  
19 there. They're coming for sports.

20 We're three blocks away from the  
21 Verizon Center. So much money has been pumped  
22 into that immediate part of the City because

1 of the arrival of the Verizon Center in '96.

2 In '96 all this stuff started  
3 happening, it really, changing that area,  
4 we're catering to the crowd that goes in and  
5 out of that Arena.

6 Again, we're not changing with  
7 this, by changing this we're not changing  
8 anything else in the form of our business as  
9 far as hours. Typically we're closed by  
10 midnight, 1:00 at the latest on the weekend.

11 At that hour we might have a table  
12 or two that's dwindling and that's why we're  
13 open because we actually don't have packed  
14 crowds. They're simply there for these  
15 sporting events.

16 But most of these games are  
17 scheduled for the Nation to view, meaning that  
18 like, you know, a 7:00 start, 5:00, excuse me,  
19 when people are off on the West Coast people  
20 are watching whatever game it is.

21 If that game is starting at 7:00  
22 and typically it's over by 9:30 to 10:00,

1 often these games go to overtime. It's really  
2 hard to run a sports bar and explain to people  
3 the reasons why we're shutting it off.

4 To them, they come home and  
5 they're like let's not go back there, we had  
6 a bad experience, whatever it may be. Modern  
7 day Yelp critics, people they get online, they  
8 will berate like any given thing if given the  
9 opportunity.

10 If their feathers are ruffled  
11 they'll get online and Yelp you about this  
12 that or everything else. We've got plenty of  
13 those because of these reasons, having to  
14 close a little bit early.

15 And so this time we're simply  
16 asking to keep the T.V.'s on until the areas  
17 in the outside close. People at that time,  
18 people are asked to go inside if the games go  
19 later than that, but those times, again, it's  
20 11:00 during the week which I don't think is  
21 too late, on the weekends, 12:00.

22 That's pretty much it from our

1 side.

2 CHAIRPERSON MILLER: Okay, thank  
3 you.

4 THE WITNESS: Yes.

5 CHAIRPERSON MILLER: So now the  
6 procedure is you can cross before the Board,  
7 Mr. Cardella. If you have questions you want  
8 to ask Mr. Brand.

9 MR. CARDELLA: I will say this,  
10 that when the investigation was made on May  
11 13th --

12 CHAIRPERSON MILLER: No. It's not  
13 a time to make statements.

14 MR. CARDELLA: Oh, I'm sorry.

15 CHAIRPERSON MILLER: That's okay,  
16 you'll get there. If you have questions based  
17 on --

18 MR. CARDELLA: Oh, a question, I'm  
19 sorry.

20 CHAIRPERSON MILLER: -- his  
21 testimony you can ask.

22 MR. CARDELLA: No, not at this

1 time.

2 CHAIRPERSON MILLER: Okay. I have  
3 a couple questions and one is, you mentioned  
4 that you had all these meetings with the ANC,  
5 which is the Advisory Neighborhood Commission.

6 THE WITNESS: Yes.

7 CHAIRPERSON MILLER: Can you tell  
8 us what efforts you made to negotiate amending  
9 the settlement agreement with Mr. Cardella?

10 THE WITNESS: Originally I --

11 CHAIRPERSON MILLER: No, not what  
12 the negotiations were, what efforts, did you  
13 make some efforts to --

14 THE WITNESS: Yes.

15 CHAIRPERSON MILLER: Just don't  
16 tell us, don't give us the substance.

17 THE WITNESS: Right.

18 CHAIRPERSON MILLER: Just say yes,  
19 I contacted him a year ago or I --

20 THE WITNESS: I contacted him --

21 CHAIRPERSON MILLER: That's fine.

22 THE WITNESS: Okay. Yes, I did.

1 I contacted him verbally asking and then with  
2 an email, I think it was in August, asking to,  
3 he's in the process of leasing his building to  
4 a space that's opening a restaurant that's  
5 opening 24-7, 365, they're not going to close,  
6 and they're right next door to us.

7 When I realized those hours,  
8 that's competing directly with our patio.  
9 That's the reason for this initial start, I  
10 mean the place right next door is going to be  
11 open 24 hours a day.

12 I don't feel like our T.V.'s need  
13 to be off at 10:00. Things have changed with  
14 him and his leasing of his building.

15 CHAIRPERSON MILLER: You'll have a  
16 chance to testify, go ahead.

17 THE WITNESS: So, anyway, that's  
18 where it started.

19 CHAIRPERSON MILLER: When was  
20 that? Because the reason I'm asking, let me  
21 just say that it's because the statute does  
22 speak to that you're supposed to negotiate, to

1 try to negotiate --

2 THE WITNESS: I did.

3 CHAIRPERSON MILLER: Okay.

4 THE WITNESS: I did.

5 CHAIRPERSON MILLER: So when was

6 this?

7 THE WITNESS: Roughly ten months

8 ago.

9 CHAIRPERSON MILLER: Okay.

10 THE WITNESS: I reached out with a

11 verbal communication and an email, which I

12 have documented, just asking for the

13 possibility of talking about changing the

14 hours.

15 CHAIRPERSON MILLER: Okay.

16 MR. BRAND: That email was

17 returned the following day saying that, you

18 know, we'd talk about this if and when the

19 place next door opens, like putting it on that

20 place opening for our place to change our

21 hours. So he was open to, you know, to

22 possibility changing these hours but --

1                   CHAIRPERSON MILLER: Okay don't get  
2                   too much into discussions.

3                   THE WITNESS:    - nothing --

4                   CHAIRPERSON MILLER:  Yes.

5                   THE WITNESS:  Nothing was done so  
6                   at that point it was renewal time and because  
7                   of the renewal that was my only opportunity --

8                   CHAIRPERSON MILLER:  Right, okay.

9                   THE WITNESS:  -- to try to nullify  
10                  this whole thing and just get rid of it.

11                  Because to be honest I'm just tired of this.

12                  This is the most stressful part of the  
13                  business, and there's so many stresses inside  
14                  that business, this is my biggest stress.

15                  CHAIRPERSON MILLER:  Right.

16                  THE WITNESS:  So the email was  
17                  sent then and shortly thereafter the placards  
18                  came, seeing that we put those up, it was  
19                  wintertime, our place is enclosed, for  
20                  whatever reason those are up, I believe it's  
21                  60 days or 90 days, we got about halfway  
22                  through that and Dominic realized they had

1       been up and we didn't aware him of the fact  
2       that they were going up.

3                   I think that started a little bit  
4       of a fire and maybe that is my fault that I  
5       didn't tell him when I was placing them up, I  
6       didn't know if that was my responsibility or  
7       if you were sending him an email, or whatever,  
8       but from there things kind of broke down.

9                   So the meetings that we have had,  
10       I believe there have been three with the  
11       Neighborhood Advisory, one was a general  
12       forum, the next was a little more fine-tuned,  
13       there were residents and people in the  
14       neighborhood that showed, that were asked to  
15       participate or put their two cents in for the  
16       Neighborhood Council.

17                   Finally we came here and met in  
18       this room and at that meeting we tried to come  
19       to terms between the three parties. We really  
20       couldn't get anywhere so thereafter there was  
21       another agreement that was talked about  
22       between us and ABRA going, or excuse me, us,

1 ABRA, and the Neighborhood Advisory Council  
2 that were, you know.

3 CHAIRPERSON MILLER: Okay. Okay.  
4 Just briefly can you just elaborate, is there  
5 going to be a new restaurant next to you  
6 that's going to open?

7 THE WITNESS: Yes, they have  
8 submitted license and I'm not sure if in the  
9 future they're looking for an alcohol  
10 endorsement, but that's neither here nor there  
11 with me.

12 The fact that the place is going  
13 to be open 24-7, 365 worries me a little bit  
14 just because the element that it's going to  
15 bringing at the late night hours.

16 CHAIRPERSON MILLER: Okay.

17 THE WITNESS: That block, there  
18 are two people that are really important to me  
19 on that block. Again, I live across the  
20 street, I work there, I kind of, I make it a  
21 priority to kind of patrol the street,  
22 especially in the evening, kind of just to get

1 an idea of what's what.

2 We're the only place on the block  
3 that has an outdoor video camera monitoring  
4 people at that end of Indiana Avenue.

5 Recently there were a couple of reasons why  
6 the police have had to come in and view our  
7 tapes to see what happened on the street.

8 With this place opening next door  
9 and the possibilities of the types of  
10 individuals that will be down there around the  
11 place, not necessarily a customer,  
12 panhandlers, when it's cold somebody that  
13 might have \$5.00 to buy a soda and small  
14 sandwich or whatever, just sit inside for two  
15 hours, those are the kinds of people I'm kind  
16 of worried about with the effects to what it's  
17 going to have to that area down there.

18 CHAIRPERSON MILLER: Okay.

19 THE WITNESS: With that, I don't  
20 really understand why we have to shut the  
21 T.V.'s off at 10:00 if they're going to have  
22 a place that's open till forever.

1 CHAIRPERSON MILLER: Okay.

2 THE WITNESS: That's what kind of

3 --

4 (Simultaneous speaking.)

5 CHAIRPERSON MILLER: Are they  
6 going to have outdoor seating?

7 THE WITNESS: Yes.

8 CHAIRPERSON MILLER: Okay.

9 THE WITNESS: They've already  
10 applied for that.

11 CHAIRPERSON MILLER: What?

12 THE WITNESS: They've applied for  
13 that.

14 CHAIRPERSON MILLER: Applied,  
15 okay. So it hasn't been approved yet?

16 THE WITNESS: I don't know where  
17 they're at with it.

18 CHAIRPERSON MILLER: Okay. All  
19 right, and then my last question for now and  
20 I will then turn to other Board Members is,  
21 how often did these T.V's actually play during  
22 the Summer? I mean this is the outdoor

1 seating only.

2 THE WITNESS: I'll be very honest  
3 with you and I think Dominic will agree, it's  
4 the time, we've done, again, very many things  
5 to try to make this right with him and the  
6 last thing we want to do is ruffle any kind of  
7 feathers with him.

8 So even when we know we're going  
9 to have a big crowd, if we can fit them  
10 inside, we'll put them inside and we'll leave  
11 the T.V.'s until legal hours outside with  
12 something else on, explain to people that  
13 whatever it is, this basketball it's on the  
14 second floor, we're putting people up there.

15 Sometimes that noise bothers him.  
16 Just general noises, the rowdiness of a crowd  
17 is what's bothersome. The outside T.V.'s,  
18 it's football season primarily, and I think  
19 Dominic would agree, where you really get  
20 crowds on the weekends, Saturday and Sunday,  
21 not so much during the week.

22 We don't really get a crowd on a

1 Sunday night, Monday night, it's pretty much  
2 Saturday and Sunday, but to go past 12:00 it's  
3 not going to --

4 CHAIRPERSON MILLER: Okay. So  
5 it's not seven days a week?

6 THE WITNESS: No, no, no, not at  
7 all.

8 CHAIRPERSON MILLER: And it's not  
9 every week is it? Is it every week?

10 THE WITNESS: It's per game, so  
11 it's like the majority --

12 CHAIRPERSON MILLER: Yes.

13 THE WITNESS: Again, most games  
14 start rather early. NBA finals are a little  
15 bit different, they kickoff at 9:00 at night,  
16 so, you know, even if we were granted later  
17 hours we'd turn the game off in the middle of  
18 the game at 11:00 during the week, but the  
19 majority of the games they start at 7:00 or  
20 7:30, so we're wrapping things up on those  
21 games normally by 10:00, but often, again,  
22 it's overtime or it's just the way the game is

1 played with extra timeouts or this or that  
2 they go a little bit past 10:00.

3 CHAIRPERSON MILLER: All right.  
4 This is my last question for now, and I know  
5 Mr. Ghenene put it in the report and he said  
6 it today, so I don't have it exactly, but he  
7 said something like when there's been a  
8 problem Mr. Cardella has called you and you've  
9 turned the volume and that's basically  
10 resolved it?

11 THE WITNESS: Yes, it has, and  
12 what I tried to explain to Dominic the last  
13 time we communicated when we left here was  
14 often a phone call would happen from him to  
15 the bar asking for us to quiet everything  
16 down.

17 Typically the person that answers  
18 that phone is the bartender and when they're  
19 busy they could very well take the call and be  
20 on their way with that message to us or to the  
21 remote to turn the T.V. off or whatever they  
22 can get stopped by somebody and so many

1 different things can happen.

2 So I take responsibility for the  
3 times when he has called where it has been I'm  
4 saying to him that it didn't happen  
5 instantaneously, but to be honest, like if it  
6 were a direct phone call to myself or John,  
7 like that would happen immediately and I think  
8 he would say the same.

9 I mean we've been pretty, the  
10 relationship over the years has been good,  
11 it's just been over these last however many  
12 months it's been strenuous. So it's been  
13 working, but, you know.

14 CHAIRPERSON MILLER: Okay. I'm  
15 sorry, I've got a couple more and then I'll  
16 let it go. So that's not in the settlement  
17 agreement that if he calls you have to turn it  
18 down?

19 THE WITNESS: No. We've just been  
20 doing that.

21 CHAIRPERSON MILLER: You just do  
22 that.

1                   THE WITNESS: I mean we're, again,  
2 I don't want any, I live down there and I work  
3 down there, I don't want any enemies or --

4                   CHAIRPERSON MILLER: Has our Noise  
5 Task Force visited you?

6                   THE WITNESS: Yes. Yes.

7                   CHAIRPERSON MILLER: When the  
8 T.V.'s were on?

9                   THE WITNESS: I'm not aware. I  
10 know the Task Force was down last summer, I  
11 believe, and I think the way it was done it's  
12 like everyone showed at the exact same time.  
13 It was like the public space, the ABRA, the  
14 Fire Department, and it was a circus.

15                   We thought we were in big trouble  
16 when everybody came walking in at the same  
17 time.

18                   CHAIRPERSON MILLER: Did they find  
19 any violations?

20                   THE WITNESS: No, nothing.

21                   CHAIRPERSON MILLER: All right.

22                   Okay, now I'm done. All right, Mr. Rodriguez?

1                   MEMBER RODRIGUEZ: I'm a little  
2                   torn here because I love basketball. I play  
3                   basketball. I'm a 72-year-old who loves, I  
4                   even put together a basketball association for  
5                   the kids so that they could let me play.

6                   But I'm also a 72-year-old that  
7                   likes peace and quiet once and awhile, likes  
8                   a little relaxation, so I'm torn here in this  
9                   situation.

10                  But here comes Thursday, LeBron  
11                  and Duncan are going at it, the Spurs, right,  
12                  and the Miami Heat, this Thursday, which I'm  
13                  looking forward to seeing.

14                  THE WITNESS: Rematch.

15                  MEMBER RODRIGUEZ: Yes. The only  
16                  thing is I'm a very excitable kind of guy and,  
17                  you know, my team is really going at it and  
18                  now all of a sudden we have to go into  
19                  overtime. I'm really very excited about it,  
20                  heated up, right.

21                  You might be able to tune down the  
22                  sound, but how you going to tune me down? And

1 so my question is, you know, what is it that  
2 can be done here to deal with an overtime game  
3 and by, if a game's going into overtime we  
4 know people are going to very excited, I know  
5 I would be.

6 So the challenge that we have here  
7 is how do we get this done. I'm not saying,  
8 you know -- I'm looking for solutions here,  
9 okay.

10 THE WITNESS: Sure.

11 MEMBER RODRIGUEZ: Because I  
12 think, you know, business is, we need  
13 business, we need employment, but the fact is  
14 that we need to first protect the citizens'  
15 rights, and so that is a challenging question  
16 here.

17 THE WITNESS: Okay, if I can  
18 respond. What I'd like to say is this,  
19 speaking specifically about Thursday's game or  
20 a game at that hour, that that game is going  
21 to be explained to everyone that's sitting  
22 outside whether the T.V's are off at 10:00 or

1 11:00, it's going to be one or the other,  
2 everyone outside knows that at that time the  
3 T.V.'s are going to be turned off so people are  
4 going to be escorted in.

5 It's the earlier games, the games  
6 that start at 7:00 that are going to wrap up  
7 between that 10:00 and 11:00 hour that we're  
8 going to try to, you know, allow people to sit  
9 outside and gather and watch the games.

10 At 9:00 tipoff we're going to be  
11 showing the game inside. If people are  
12 outside that's fine, but come 11:00 those  
13 T.V.'s are going off and everyone is going to  
14 be, you know, coming in.

15 Rowdy behavior outside has  
16 happened, you know, for the last ten years.  
17 It's difficult to run a bar and know who every  
18 individual is. Once they have some alcohol in  
19 them they can turn into a different person.

20 They could start nice and become  
21 mean. They could start mean, they could  
22 become nice, like just things happen. We've

1 got an excellent staff and we've been very  
2 good and we work hard at making sure that not  
3 only is that person not defending our  
4 neighbor, Dominic, that happens to be up  
5 there, or our neighbors at 601, it's the  
6 neighbor that's sitting right next to him.

7 We want everyone to have a good  
8 time and it's okay to cheer, but if it's  
9 obnoxious, if it's too much, I mean going to  
10 a table and saying, sir, you know, we're  
11 trying to run a restaurant, you have to keep  
12 it down a little bit.

13 I realize your team is playing but  
14 this is not an appropriate place for you to  
15 get on top of your chair and scream or cheer,  
16 you know, take it over the top. I mean we're  
17 not running a circus down there by any means.

18 MEMBER RODRIGUEZ: So you want to  
19 extend the agreement a bit beyond the 10:00,  
20 right?

21 THE WITNESS: All we would like to  
22 do at this point is we would like the outside

1 televisions to run with the outside seating  
2 areas.

3 MEMBER RODRIGUEZ: Yes.

4 THE WITNESS: The outside seating  
5 area closes at 11:00 on the weekdays and 12:00  
6 on the weekends.

7 MEMBER RODRIGUEZ: Yes.

8 THE WITNESS: So when those areas  
9 are closed we want to be able to let people  
10 know that this area closes at 11:00, if the  
11 game goes past 11:00 you're invited inside,  
12 but, you know, you can sit out here until  
13 11:00 but the game is going off at 11:00.

14 MEMBER RODRIGUEZ: Yes.

15 THE WITNESS: There's a hard line  
16 on, you know, what time the game is going to  
17 end.

18 MEMBER RODRIGUEZ: First I'm a  
19 dreamer and then sometimes I say well, maybe  
20 we can give them earplugs, you know, that they  
21 can hear the game, but that's not a realistic  
22 solution.

1 THE WITNESS: It's not.

2 MEMBER RODRIGUEZ: So throughout  
3 this hearing I'll be listening to my other  
4 fellow Board Members and their questions and  
5 your responses to see if somehow we can solve  
6 this --

7 THE WITNESS: Or what I suggest,  
8 that maybe a more --

9 MEMBER RODRIGUEZ: And save a good  
10 friendship is what I'm --

11 THE WITNESS: Maybe a more direct  
12 answer or response from me to you is this, is  
13 what I expressed to Dominic the last time we  
14 spoke, was if we had a better -- The way this  
15 is going to work and we both agreed to this is  
16 him and I having a little more open  
17 communication where we can talk.

18 MEMBER RODRIGUEZ: Okay.

19 THE WITNESS: And there's a large  
20 percentage of the time where Dominic is no  
21 longer living there, he's elsewhere.

22 If there is a game, if it's

1 Thursday's game that we're talking about and  
2 I can reach out to him through an email or  
3 whatever it is and say are you going to be  
4 home?

5                   And if he is going to be home then  
6 I know he's home and I can be more  
7 conscientious at 9:00 if there is that loud  
8 person, maybe yourself or someone else  
9 outside, if I know he's home I can go straight  
10 to the table and say I would really love to  
11 have you inside today instead of outside  
12 because you're being extra loud and we kind of  
13 need to be quiet in these late night hours  
14 because we have residents.

15                   That's easier for me to do than  
16 turn the T.V.'s off and let everyone know that  
17 because of this agreement everyone's invited  
18 inside, but we can't watch it out here  
19 anymore.

20                   MEMBER RODRIGUEZ: Right.

21                   THE WITNESS: Then it's like, it's  
22 an uproar from the customers to us like --

1 (Simultaneous speaking.)

2 MEMBER RODRIGUEZ: I appreciate  
3 your enthusiasm and I'll just hold any more  
4 questions right now and let the rest of the  
5 Board, you know, my colleagues ask their  
6 questions.

7 THE WITNESS: Okay. Yes.

8 CHAIRPERSON MILLER: Okay, others?  
9 Mr. Brooks?

10 MEMBER BROOKS: Yes, okay. Well  
11 thank you, I won't be long. Now there are  
12 other residents in the building with the  
13 gentleman isn't it?

14 THE WITNESS: No. With Dominic?

15 MEMBER BROOKS: Yes.

16 THE WITNESS: No, he owns that  
17 building outright. He leases the first two  
18 floors and he resides on the third floor.

19 MEMBER BROOKS: Okay. So he's  
20 alone then, okay, great. And how many T.V.'s  
21 are we talking about outside?

22 THE WITNESS: There are three.

1                   MEMBER BROOKS: Three T.V.'s.

2                   THE WITNESS: But there's just one  
3 primary game that, like there's one T.V. that  
4 obviously has volume, there's not multiple  
5 volumes, it's a very small area with three  
6 T.V.'s.

7                   So if there is a game of interest  
8 and that volume is on and there's any kind of  
9 noise typically it's coming from that one  
10 whether it's, you know, a Nats game or a  
11 Wizards game, or Redskins, whatever.

12                  MEMBER BROOKS: Okay. Yes,  
13 because as you know, and I'm a sports fan  
14 also, I mean now they have sports seven days  
15 a week.

16                  THE WITNESS: Yes.

17                  MEMBER BROOKS: I mean every night  
18 there's something.

19                  THE WITNESS: Yes.

20                  MEMBER BROOKS: You know, be it  
21 hockey, be it baseball, be it football.

22                  THE WITNESS: I wish we could tap

1 into all of that.

2 MEMBER BROOKS: Yes, yes.

3 THE WITNESS: But unfortunately  
4 it's really hard.

5 MEMBER BROOKS: Especially on a  
6 Sunday or a Monday, or Thursday now with  
7 football.

8 THE WITNESS: I cannot people out.

9 MEMBER BROOKS: Really?

10 THE WITNESS: Believe it or not  
11 people come out on Sundays for afternoon  
12 football and they are prepared to go for a  
13 week's worth of work or whatever it is Sunday  
14 night.

15 It has to be a Redskins/Dallas or  
16 something like that for this town to get ready  
17 for Sunday Night Football.

18 MEMBER BROOKS: Okay.

19 THE WITNESS: And Monday is even  
20 harder.

21 MEMBER BROOKS: Yes. I guess  
22 they're tired I guess, huh?

1 THE WITNESS: I don't know what it  
2 is.

3 MEMBER BROOKS: I know I am.

4 THE WITNESS: If the game starts,  
5 by halftime we're like, we're ghosting out.

6 MEMBER BROOKS: Okay, all right.

7 Now you say you've been there ten  
8 years?

9 THE WITNESS: Yes, sir.

10 MEMBER BROOKS: At the present  
11 location?

12 THE WITNESS: Yes.

13 MEMBER BROOKS: Has the  
14 neighborhood changed since you've been there?

15 THE WITNESS: Yes, very much so.

16 The block, the stretch between the Verizon  
17 Center and where Dominic and I have the  
18 business and building there wasn't much  
19 activity through that stretch.

20 The majority of the storefronts  
21 were boarded up for the most part with  
22 homeless, you know, residing in front.

1       Everyday, I used to live up the street, and I  
2       would walk home and there were probably four  
3       or five different storefronts that you'd have  
4       to walk through and you don't really know what  
5       you're walking by, if somebody's going to grab  
6       your purse or this or that, so it's really,  
7       really been awesome to get in at that time and  
8       then watch everything come with it.

9                About five years ago I believe is  
10       when they brought the lighting down Indiana  
11       Avenue. When that area of the City was  
12       developed the architecture was done in a way  
13       where it allowed, the promenade there is much,  
14       much wider on that street.

15               And what was intended were, you  
16       know, restaurants and shops and different  
17       types of outdoor things. It didn't end up  
18       being that.

19               And the place next door, when they  
20       do open whether it be 24 hours a day or, you  
21       know, regular hours, I'm looking forward to it  
22       because we need more company down there to

1 bring more people our direction.

2 But when the City came down they  
3 invested the money in the lighting down there  
4 and everything it really changed just the vibe  
5 down there. Now residents that live there  
6 have bought into the place are more  
7 comfortable on their walks back and forth.

8 There aren't so many dark areas  
9 where you have to walk to past somebody  
10 wondering who's this and who's that because  
11 there's not room for them down there.

12 The storefronts are now  
13 restaurants, and they're vibrant restaurants,  
14 and people are milling about and coming and  
15 going and it's a fun place to live.

16 Since then, I used to live in  
17 Virginia and I owned the bar downtown and I  
18 was commuting and then I moved in and was  
19 renting a place and recently was able to  
20 afford to buy a place so now I'm like really  
21 invested in that area.

22 And that's, you know, it's another

1 reason why I fight so hard for the business  
2 and, you know, just everything about it.  
3 Dominic will tell you we, there are five  
4 planters in front of his business, our  
5 business, and that portion of the block.

6 We change those planters out with  
7 different trees and plants every single  
8 season. Each business is supposed to take  
9 care of the planter in front of their business  
10 according to the City, no one does it and  
11 they're just left vacant.

12 We've taken half the block and  
13 we've redone that. The tree boxes in front of  
14 the businesses, they'll harbor rats. Rats  
15 will burrow in there because it's loose soil  
16 and then they'll get under the sidewalks and  
17 they'll get into the buildings.

18 We invested in steel that goes  
19 around each box and we put wire in there so  
20 the rats no longer are an issue on our side of  
21 the block.

22 Ten years ago you could walk

1 outside, you could have a BB gun and kill 15  
2 rats in an hour just watching these things run  
3 around. You don't see them down there.  
4 They're just not down there.

5 I'm not saying because we put this  
6 in, but I think it's a combination of  
7 everything that's happening down there. The  
8 place, it's just changing, and residents I  
9 think would agree, you know, it's a much more  
10 comfortable place to live and be able to walk  
11 outside and enjoy all the different things  
12 that downtown living has to offer.

13 MEMBER BROOKS: Okay. And I'm  
14 trying to picture where you are. Are you near  
15 Fiola, is that the name of the restaurant?

16 THE WITNESS: Yes, right directly  
17 across the street.

18 MEMBER BROOKS: You're across the  
19 street?

20 THE WITNESS: Yes.

21 MEMBER BROOKS: Okay. So you're  
22 near what, 6th Street?

1 THE WITNESS: We're right on the  
2 corner of 7th and Indiana Avenue.

3 MEMBER BROOKS: 7th.

4 THE WITNESS: So the opposite end.

5 MEMBER BROOKS: Yes, opposite end.

6 THE WITNESS: Yes.

7 MEMBER BROOKS: Okay.

8 THE WITNESS: There's a Starbucks  
9 on the corner.

10 MEMBER BROOKS: Yes.

11 THE WITNESS: There are four  
12 historic buildings. There's the Starbucks,  
13 there's the Artifactory, Dominic's building,  
14 there's our building, and then there is the  
15 building with Potbelly and the street level,  
16 those four buildings are right there.

17 MEMBER BROOKS: Okay. But the  
18 bottom line, as far as your concerned, the  
19 neighborhood has changed?

20 THE WITNESS: Very much so.

21 MEMBER BROOKS: Okay, all right.  
22 Thank you, Madam Chair.

1 CHAIRPERSON MILLER: Thank you.

2 Mr. Alberti?

3 MEMBER ALBERTI: Mr. Short, okay.

4 CHAIRPERSON MILLER: Oh, Mr.

5 Short, okay.

6 MEMBER SHORT: Yes, thank you.

7 Good afternoon, sir. Yes, I'm very happy like  
8 yourself to see the City has changed in that  
9 area. I've done a lot of work down there and,  
10 haven't never lived down there, but I've done  
11 a lot of work in that area and it has changed  
12 a lot. Like you said the Verizon Center  
13 really was a big change.

14 THE WITNESS: Yes.

15 MEMBER SHORT: But, again, as my  
16 former, I mean my Board Member has stated, we  
17 have to find a way to make this work. Now  
18 have you done everything in your power to get  
19 your neighbors to kind of work with you a  
20 little bit?

21 THE WITNESS: Yes.

22 MEMBER SHORT: You're going to

1 continue to do that I hope?

2 THE WITNESS: Absolutely.

3 MEMBER SHORT: Okay. I have no  
4 more questions.

5 CHAIRPERSON MILLER: Mr. Alberti?

6 MEMBER ALBERTI: Hi.

7 THE WITNESS: Hello.

8 MEMBER ALBERTI: I'm sorry, Brand,  
9 excuse me. Okay. Well first of all Mr.  
10 Brooks asked you about I guess who else was --

11 MEMBER BROOKS: Nearby.

12 MEMBER ALBERTI: -- was nearby,  
13 and you talked about Dominic, Mr. Cardella.

14 THE WITNESS: Yes, sir.

15 MEMBER ALBERTI: Is there no one  
16 else? And have you had discussions or  
17 complaints from anyone else?

18 THE WITNESS: No, absolutely not.

19 MEMBER ALBERTI: Or concerns  
20 expressed, have you?

21 THE WITNESS: Absolutely not. I  
22 mean, yes, no.

1                   MEMBER ALBERTI: Not that you've  
2 heard of? I mean I'm just, you know,  
3 someone's sitting right next to you, but I'm  
4 asking you --

5                   THE WITNESS: Yes, but I didn't --  
6 I guess we live in the same building.

7                   MR. QUINLAN: We do.

8                   THE WITNESS: I didn't realize  
9 that.

10                  CHAIRPERSON MILLER: Oh.

11                  THE WITNESS: Dominic at one point  
12 went, he has an apartment in our building  
13 condo. He went into our building and went to  
14 every floor and put under every door that, you  
15 know, explaining that this is going to  
16 jeopardize your living and the impacts and  
17 everything like that.

18                  And it really got to me personally  
19 because I have to walk in and out of there  
20 every day and it's difficult for me to be able  
21 to go there and feel comfortable if I think  
22 that I don't know who I'm looking in the eye.

1 I want to comfortable with my  
2 neighbors. We've done a tremendous amount of  
3 outreach with the different condos that are  
4 down there.

5 Over ten years' time you could  
6 imagine if you're a condo resident, liver,  
7 you're primary means is like what's around  
8 you. You're going to the local farmers  
9 market, you might buy vegetables.

10 You're going here for a fine  
11 dining and you're going here, but when it  
12 comes to watching a sporting event you want to  
13 walk out of your condo, if you like to be with  
14 people and not watching it at home --

15 MEMBER ALBERTI: But you're still  
16 -- And you've gone far afield of what my  
17 question is, so let's keep, because I don't  
18 want to be here all afternoon so let's keep  
19 this focused.

20 THE WITNESS: At the last ABRA  
21 meeting --

22 MEMBER ALBERTI: Hey, no, no, no.

1 All right, let me ask the next question. So  
2 I'm trying to understand your building, all  
3 right. You're on the ground floor?

4 THE WITNESS: Our building, we're  
5 all three floors. We own, we're in the whole  
6 building.

7 MEMBER ALBERTI: You're in the  
8 whole --

9 THE WITNESS: Yes. It's three,  
10 I'm sorry, the buildings that we're in, these  
11 deemed historic buildings, our building is  
12 three floors. Two of them are of use, the  
13 third is, in effect, an office and storage  
14 room.

15 MEMBER ALBERTI: For your  
16 establishment?

17 THE WITNESS: Yes.

18 MEMBER ALBERTI: Okay. So now  
19 where do your neighbors, residential neighbors  
20 live?

21 THE WITNESS: The building that  
22 I'm in, the 601 building that we're in, is

1 kind of catercorner at the opposite end of the  
2 block. So we're on the corner of the 7th and  
3 Indiana.

4 MEMBER ALBERTI: Right.

5 THE WITNESS: The 601 building,  
6 the residence, are on the corner of 6th and  
7 Indiana, so it's on the same block, one block  
8 separation.

9 MEMBER ALBERTI: So where does Mr.  
10 Cardella live?

11 THE WITNESS: Directly next door.  
12 We're abutting neighbors, we're sharing a  
13 wall.

14 MEMBER ALBERTI: Okay. So he  
15 lives directly door?

16 THE WITNESS: Yes, sir.

17 MEMBER ALBERTI: Are there other  
18 neighbors, I mean other residents next door?

19 THE WITNESS: No.

20 MEMBER ALBERTI: Okay. So where  
21 is the --

22 THE WITNESS: He owns --

1                   MEMBER ALBERTI: Other than Mr.  
2 Cardella where is the next closest residence  
3 of you?

4                   THE WITNESS: Most likely our  
5 residence, I believe.

6                   MEMBER ALBERTI: Which are how  
7 far?

8                   THE WITNESS: At 601 Pennsylvania.

9                   MEMBER ALBERTI: How far apart?

10                  THE WITNESS: It's at the end of  
11 the block, but --

12                  MR. CARDELLA: It's about 300  
13 feet.

14                  MR. QUINLAN: Well let him answer,  
15 please.

16                  CHAIRPERSON MILLER: Wait.

17                  MR. QUINLAN: I'm sorry.

18                  THE WITNESS: The block, excuse  
19 me, the building takes up roughly a half city  
20 square block.

21                  MEMBER ALBERTI: Okay, so --

22                  THE WITNESS: The first half of

1 that is commercial and they're all offices and  
2 then the second half of it is residential, so,  
3 I mean it's half of that building.

4 MEMBER ALBERTI: So how far away  
5 are they from your --

6 THE WITNESS: They're a half a  
7 block away?

8 MEMBER ALBERTI: Do you know how  
9 many feet?

10 THE WITNESS: I don't. Yes, 300  
11 feet.

12 MEMBER ALBERTI: Okay. All right.  
13 You originally signed the petition, the  
14 settlement agreement with Mr. Cardella when,  
15 in 2010, is that correct?

16 THE WITNESS: '08.

17 MR. CARDELLA: '08.

18 MEMBER ALBERTI: Ten? When?

19 THE WITNESS: 2008.

20 MEMBER ALBERTI: 2008?

21 THE WITNESS: Yes, sir.

22 MEMBER ALBERTI: Okay, six years

1 ago. And I think you talked about some  
2 increased competition as a change in that  
3 neighborhood.

4 THE WITNESS: Oh, yes.

5 MEMBER ALBERTI: Can you elaborate  
6 on that?

7 THE WITNESS: Yes. Since --

8 MEMBER ALBERTI: Not in the last  
9 ten years, but since 2008?

10 THE WITNESS: Since 2008 I could  
11 give you a couple of different places that  
12 have opened that are doing similar things to  
13 us.

14 One is Redline. They also have  
15 outside T.V.'s, they're next to the Verizon  
16 Center. I don't believe the residents are all  
17 that close. They definitely don't share an  
18 abutting wall with a resident.

19 But, you know, I don't know what  
20 their rules are for them for their outside  
21 seating area.

22 MEMBER ALBERTI: Okay.

1                   THE WITNESS:  -- but they have  
2                   outside seating, they have outdoor T.V., but,  
3                   you know, that's an equal type business.  
4                   They're a sports bar trying to do the same  
5                   thing that we're trying to do, so that's dry  
6                   competition.

7                   There's another place that opened,  
8                   Penn Social, this place is large.  I don't  
9                   know how many people they hold, it's a couple  
10                  thousand.

11                  It's a huge revenue source and it  
12                  looks like it's being run the right way,  
13                  constantly busy, and our ANC has kind of  
14                  brought that to our attention that that place  
15                  has been a little more problematic with  
16                  different things that have happened at later  
17                  hours because they're going later into the  
18                  evening.  They're going till last call.

19                  MEMBER ALBERTI:  Oh, okay.

20                  THE WITNESS:  That's another  
21                  competing, they're E Street.

22                  MEMBER ALBERTI:  I know it's

1 close.

2 THE WITNESS: 8th and E are  
3 roughly three blocks away from us, walking  
4 distance, easy walking distance.

5 MEMBER ALBERTI: Okay, great.  
6 Close to the home and your block what changes  
7 have you seen? I think you talked about at  
8 least one of them?

9 THE WITNESS: The changes that  
10 I've seen?

11 MEMBER ALBERTI: Yes, or just --

12 THE WITNESS: A lot. So much has  
13 changed. Again, I think it was about five  
14 years ago where D.C. invested in the street  
15 lights that weren't, that there were street  
16 lights there, they weren't ambient light, it  
17 wasn't brightening things up.

18 Now it is gorgeous down there.  
19 Right up 7th Street, right down Indiana Avenue  
20 everything is illuminated. It's just, it  
21 looks great. That has kind of driven away a  
22 lot of the element, the homeless, the rough

1 crowds that we get.

2 Up 7th Street by the Verizon  
3 Center there's a McDonalds I think that's 24  
4 hours --

5 MEMBER ALBERTI: Yes.

6 THE WITNESS: -- and there is just  
7 an element there that because that place is 24  
8 hours that people are kind of scared of.  
9 People don't necessarily walk on that side of  
10 the street.

11 My friends that live in the  
12 neighborhood, they'll walk on the other side  
13 of the street because they don't know what  
14 they're going to encounter when you get near,  
15 if you're familiar with the Verizon Center,  
16 there's a metro right there.

17 As soon as you turn that corner  
18 it's like a dark little stretch and you got to  
19 make a 20-yard dash to get through it because  
20 you don't know what you're going to get to in  
21 between.

22 Again, the area is changing. It's

1 getting to be a change.

2 MEMBER ALBERTI: Have you seen an  
3 increase in, I'll call them restaurant and  
4 alcohol licensed establishments?

5 THE WITNESS: Yes. Yes,  
6 definitely. Again, Jose Andreas has kind of  
7 laid claim to that immediate Penn Quarter  
8 neighborhood and he's doing a fantastic job  
9 opening restaurant after restaurant.

10 There's a new place opening right  
11 on 7th Street that looks like it's going to be  
12 his largest restaurant. So there's a lot of  
13 competition down there and a lot of money  
14 coming in that we can't compete with.

15 We're a mom and pop shop. We  
16 don't have the resources that, you know, the  
17 larger companies with, you know, major  
18 investors and backers have.

19 You know, if somebody like that  
20 were to come in with that large place and say  
21 you know what we could maybe do a sports bar  
22 here, I mean that could be a death blow to us.

1 We're trying to do what we do as best as we  
2 possibly can.

3 At the same time we truly are  
4 trying to be good neighbors to everybody on  
5 the block and do everything we can to kind of  
6 mend any wounds that we have with Dominic and  
7 the other residents --

8 MEMBER ALBERTI: All right, let's  
9 stay on focus here. Again, I'm trying to, I'm  
10 not trying to cut you off.

11 THE WITNESS: Okay.

12 MEMBER ALBERTI: But I really want  
13 to stay on focus on my questions, okay. So,  
14 sorry if I'm old business like. All right, so  
15 have you seen an increase, and I'm sort of  
16 leaning here because I'm sort of like, I have  
17 a hypothesis about what the neighborhood looks  
18 like now, but have you seen an increase in  
19 late night foot traffic in that area?

20 THE WITNESS: Yes. Yes, we have,  
21 and that's all because of the restaurants that  
22 have come. Fiola, across the street, they

1 have an amazing outdoor area surrounded by  
2 just great flowers and the ambiance of it,  
3 it's a great feel.

4 It's a high end restaurant, so  
5 with that you have valets out front that were  
6 no, you know, that years ago we didn't have  
7 valets on Indiana Avenue, now you got \$200,000  
8 cars there pulling up, the valets are taking,  
9 and the people are being ushered inside.

10 That is a major change to what I'm  
11 used to on that block, and Dominic as well.  
12 Yes, so, you know, the restaurants and the  
13 impact that, you know, the surrounding areas  
14 have had because of that.

15 Everybody has prospered. Every  
16 business down there is doing better than what  
17 it was once was because of the foot traffic  
18 because the people circulating around.

19 MEMBER ALBERTI: Great. I mean  
20 hopefully this is my last question. When  
21 you're talking about the lighting, was there,  
22 I know they put in the lighting, you described

1 the lighting, was there any streetscape,  
2 improvements to the streetscape that was done  
3 at that time also?

4 THE WITNESS: You know, there's  
5 been constant improvement, more than what it  
6 was. Dominic has taken it upon himself to fix  
7 the sidewalk in front of his place which is  
8 awesome. He did a great --

9 MEMBER ALBERTI: But I mean by the  
10 City, was there any like new curbs or was it  
11 just limited to the lighting?

12 THE WITNESS: Dominic, I don't --  
13 I don't think any --

14 MEMBER ALBERTI: Please, I need to  
15 get your --

16 THE WITNESS: I don't think  
17 anything has changed, like streetscapes, I  
18 don't think.

19 MEMBER ALBERTI: Okay. So not new  
20 curbs?

21 THE WITNESS: I take that back. I  
22 take that back. Directly in front of us there

1 is a City Park that's like fenced in, metal  
2 railing, that was not looking so good. They  
3 took that away, they're putting in a new one.

4 They are investing money down  
5 there. Yes, they are.

6 MEMBER ALBERTI: Okay. Okay,  
7 thank you. I have no further questions.  
8 Thanks.

9 CHAIRPERSON MILLER: Okay, any  
10 other Board questions? Okay. So now we're  
11 turning to the Protestant's case. Mr.  
12 Cardella, I don't know how you want to  
13 proceed. Are each of you going to give  
14 testimony or are you going to ask him  
15 questions?

16 MR. CARDELLA: Well there's so  
17 many things that I need to add to what Mr.  
18 Brand --

19 CHAIRPERSON MILLER: But this is  
20 your time.

21 MR. CARDELLA: Okay.

22 CHAIRPERSON MILLER: But I just

1 want to ask you, I'm going to have to put you  
2 under oath if you want what you say to be in  
3 evidence. Okay, so let me swear you in.

4 WHEREUPON,

5 DOMINIC CARDELLA

6 was called as a witness by the Board and,  
7 having been first duly sworn, assumed the  
8 witness stand, was examined and testified as  
9 follows:

10 CHAIRPERSON MILLER: So you're  
11 going to go first before we hear from Mr.  
12 Quinlan, correct?

13 MR. QUINLAN: Well we can do --  
14 I'm --

15 CHAIRPERSON MILLER: Or not?

16 MR. QUINLAN: I'm going to have to  
17 leave, so --

18 CHAIRPERSON MILLER: You have to  
19 leave. Let me swear you in.

20 WHEREUPON,

21 DAVID QUINLAN

22 was called as a witness by the Board and,

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

4                   CHAIRPERSON MILLER:   Okay, so Mr.  
5       Cardella, you're the Party, do you want Mr.  
6       Quinlan to make a statement?

7                   MR. CARDELLA:   Yes, because he has  
8       some health issues and --

9                   CHAIRPERSON MILLER:   Okay.  I'm  
10      sorry.

11                   DIRECT EXAMINATION

12                   THE WITNESS:   Yes.  My name is  
13      David Quinlan and I live at 601 Pennsylvania  
14      Avenue in the Pennsylvania Condominium.  Now  
15      it's 601 Pennsylvania Avenue, but it's not 601  
16      Pennsylvania Avenue.

17                   It's the Southwest corner of 6th  
18      and Indiana Avenue and we have about 150  
19      apartments in that building and I don't know  
20      what side you're on as far as living in the  
21      building, but I'm on the sixth floor directly  
22      above the lobby and my bedroom and living room

1 windows face Indiana Avenue.

2 And, you know, it's the craziest  
3 thing, I don't complain about anything, I  
4 don't. I never complain about noise. I have  
5 complained about the skateboarders at 12:00 at  
6 night and whatever else, we all do that. I  
7 have done that.

8 But, you know, I was wondering to  
9 myself it sounded like the Christians and the  
10 lions. I mean honestly, there was a lot of  
11 noise and it sounded like there was a sporting  
12 event.

13 Now it wasn't, you know, I don't  
14 know about the televisions, but I would say on  
15 average at least three or four times a week it  
16 sounds like a wave, you know, it sounds like  
17 when you would hear it in a stadium, it's  
18 very, very loud.

19 And, you know, I could not figure  
20 out where it was coming from and then I  
21 actually did realize that, one day I came home  
22 late and it was basically coming from there.

1                   Now we live in the same building.  
2           I am not trying to cause you any hassles  
3           whatsoever, except it is very noisy sometimes  
4           and, you know, like I said I'm there a lot.  
5           I retired three years ago and I'm in my  
6           apartment a lot and it is noisy at night.

7                   MR. BRAND:   How often, like what  
8           time --

9                   CHAIRPERSON MILLER:   No, I'm  
10          sorry, wait a second.   There's a little  
11          structure to this.   No, Mr. Brand, you can't  
12          ask him questions now.   You can afterwards  
13          when I say it's your time to cross.   Go ahead,  
14          Mr. Quinlan.

15                  THE WITNESS:   Okay.   I couldn't  
16          figure out, you know, I knew it wasn't coming  
17          from the Verizon Center because, too far away,  
18          absolutely.

19                  But I did find out finally that it  
20          was on my, on E street and it wasn't so much  
21          the sound of a television, it would just be  
22          this roaring noise with people and that, you

1 know, and I'm not saying that you have five  
2 billion people there or anything else, but  
3 it's kind of like the same feeling that you  
4 get when you're in a swimming pool and it  
5 projects the noise and, you know.

6 So that was something that has  
7 been bothering me and, you know, it's  
8 difficult, like I said, because Mr. Brand is  
9 a neighbor, but it is noisy and I would say  
10 it's noisy, I would say about, at least three  
11 times a week. That's basically it.

12 CHAIRPERSON MILLER: Okay, thank  
13 you. All right so now --

14 THE WITNESS: And I've been there  
15 20 years by the way.

16 CHAIRPERSON MILLER: Okay. Well  
17 now it's time for -- Mr. Brand, you don't want  
18 to ask any questions?

19 MR. BRAND: I don't have any  
20 questions.

21 CHAIRPERSON MILLER: Okay. Board  
22 questions?

1 MEMBER SHORT: I have a question.

2 CHAIRPERSON MILLER: Go ahead, Mr.  
3 Short.

4 MEMBER SHORT: Mr. Quinlan, how  
5 are you doing?

6 THE WITNESS: Fine.

7 MEMBER SHORT: Great. What time  
8 of night or evening do you hear this roaring  
9 noise?

10 THE WITNESS: Well it could be on  
11 a Sunday afternoon, it could be at 11:00 at  
12 night, you know, I can't pinpoint, I haven't  
13 kept, because honestly I did not know where it  
14 was coming from and I'm glad now that I do  
15 know where it's coming from.

16 MEMBER SHORT: Yes. Okay, and  
17 you've been living there how long?

18 THE WITNESS: Since December 1994  
19 and I've seen all the evolution of the  
20 neighborhood.

21 MEMBER SHORT: Your directly  
22 across the street from the Courthouse,

1 correct?

2 THE WITNESS: Yes, sir.

3 MEMBER SHORT: I'm very familiar  
4 with your building. It's a very lovely  
5 building.

6 THE WITNESS: Thank you.

7 MEMBER SHORT: I'll just say this,  
8 again, as I said to the owner, Mr. Brand, I  
9 wish there some kind of way you guys could  
10 find a way to work it out, but this is the  
11 City, this is Washington, D.C. and the urban  
12 thicketts really get the City by the neck now.

13 It's not a bad thing because  
14 economically we're a lot better off than we've  
15 been, just I've been watching all my life.  
16 But, again, we've got to find a way to make it  
17 work for the businesses and for the citizens.

18 And you've been talking I  
19 understand. You've been talking to everybody  
20 involved with the talks?

21 THE WITNESS: No. I have not, no.

22 MEMBER SHORT: Well has the Civic

1 Association in the building have they been, or  
2 the tenants of the building have they been?

3 (Simultaneous speaking.)

4 MEMBER SHORT: He can't help you.

5 CHAIRPERSON MILLER: No, wait a  
6 second.

7 THE WITNESS: All right.

8 CHAIRPERSON MILLER: It's just --

9 MEMBER SHORT: Okay. You don't  
10 the answer actually?

11 THE WITNESS: No, I don't. I  
12 don't know that.

13 MEMBER SHORT: But anyway, the  
14 Board's going to read everything that you have  
15 to say today, both sides, and we'll try to do  
16 the very best that we can to deal with it and  
17 with our authority with ABRA.

18 It's the authority to help you  
19 guys out, but it often normally works better,  
20 you having a settlement agreement now and  
21 sometimes they get tweaked sometimes they  
22 don't, we understand that, too, but I'm

1 hearing both sides and, again, having been a  
2 person that lived in Washington all of my  
3 live, everyday of my life, I understand, I  
4 feel your pain. Thank you.

5 CHAIRPERSON MILLER: Mr.  
6 Rodriguez?

7 MEMBER RODRIGUEZ: Mr. Quinlan,  
8 right?

9 THE WITNESS: Yes, sir.

10 MEMBER RODRIGUEZ: Yes, sir. Yes,  
11 that area has, a lot of things are going on in  
12 that area. I hear the changes that are going  
13 and I've lived there since 19 -- A long time  
14 ago, myself, 1968, so I've seen the changes to  
15 that area.

16 But from your apartment, right, or  
17 your condo, do you hear any other noises  
18 besides the noise, you know, from this  
19 establishment? Is that the only noise that  
20 you hear?

21 THE WITNESS: No.

22 MEMBER RODRIGUEZ: And what noises

1 do you hear and from where?

2 THE WITNESS: The other noise that  
3 I hear, which I have to work on personally, is  
4 at about 1:30 to 2:00 three times a week, four  
5 times a week, Cosi, which is a building, is a  
6 restaurant on the corner, next, in part of our  
7 building, that's when their dumptruck comes  
8 and you do hear it then, too.

9 MEMBER RODRIGUEZ: The trash  
10 truck?

11 THE WITNESS: Yes.

12 MEMBER RODRIGUEZ: Okay. But you  
13 don't hear any other noises except the trash  
14 truck, in the evenings, at night, from the  
15 other establishments?

16 THE WITNESS: No, but you do hear  
17 people walking along inebriated, yes.

18 MEMBER RODRIGUEZ: Okay.

19 THE WITNESS: But not too much.

20 MEMBER RODRIGUEZ: Okay, sir,  
21 thank you.

22 CHAIRPERSON MILLER: Okay, thank

1       you very much. Mr. Cardella?

2                   MR. CARDELLA: Mr. Quinlan really  
3       has to leave.

4                   CHAIRPERSON MILLER: He could.  
5       You're welcome to leave.

6                   MR. BRAND: Can I just say one  
7       thing before he leaves? David, we did have a  
8       meeting, a voluntary meeting with our  
9       building, okay.

10                   CHAIRPERSON MILLER: Do you want  
11       to say something to him?

12                   MR. BRAND: Yes, I mean on the  
13       record. We had a --

14                   MEMBER ALBERTI: No, no, no, no.  
15       No, no, if you're going to have a side  
16       conversation with him it's off the record.

17                   MR. BRAND: I didn't --

18                   CHAIRPERSON MILLER: He doesn't  
19       want -- He wants to say something on the  
20       record.

21                   MR. BRAND: I didn't mean to have  
22       a side conversation.

1                   MEMBER ALBERTI: All right, then  
2                   you are not -- It's not your turn to talk. So  
3                   let's --

4                   CHAIRPERSON MILLER: Is it, what,  
5                   okay. Is it that you want to clarify  
6                   something? Does he need to be here for that?

7                   MR. BRAND: I just wanted to  
8                   clarify if he was leaving. One thing, we had  
9                   a meeting, Penn Quarter Sports Tavern had a  
10                  meeting with the Pennsylvania --

11                  CHAIRPERSON MILLER: Okay, but let  
12                  me just say this, okay. You guys don't really  
13                  know what the structure is, but this kind of  
14                  hearing has a structure.

15                  So it's like right now you're not  
16                  supposed to say something and you get to say  
17                  your closing after Mr. Cardella where you can  
18                  say anything you want.

19                  MR. BRAND: Okay. All right.

20                  CHAIRPERSON MILLER: I'm just now,  
21                  because of his health, though, I'm just asking  
22                  you if this is so important that he hear what

1       you're going to say.

2                   MR. BRAND:  No.

3                   CHAIRPERSON MILLER:  No, okay.

4                   MR. BRAND:  We actually had a  
5 meeting with the building, that's it.

6                   CHAIRPERSON MILLER:  Okay.  You  
7 can say, you'll talk, you'll have a chance for  
8 your closing argument, okay.  We don't need to  
9 retain you.  Thank you very much for coming  
10 down.

11                   (Pause.)

12                   MR. QUINLAN:  Thank you.

13                   MEMBER ALBERTI:  Thank you for  
14 coming by.  We appreciate your effort.  Thank  
15 you.

16                   CHAIRPERSON MILLER:  So, Mr.  
17 Cardella, whenever you're ready.

18                   DIRECT EXAMINATION

19                   THE WITNESS:  All right.  Now as I  
20 mentioned before I have at least half a dozen  
21 other testimonies from people that live in Mr.  
22 Quinlan's building basically saying the same

1 thing that the noise is absolutely, it is  
2 excessive.

3 And the reason that, of course, I  
4 had to put these notations under people's  
5 doors, I only did it on those apartments that  
6 face Indiana Avenue.

7 Mr. Brand lives in the opposite  
8 side where that you wouldn't hear the noise,  
9 is because I needed to inform them of this  
10 petition for doing away with the settlement  
11 agreement and I had to let them know what was  
12 involved.

13 As far as the placarding goes, Mr.  
14 Brand has an outdoor, sort of like a service  
15 area, and those placards were placed behind  
16 the service area. I couldn't even see them.  
17 And until, you know, I nearly, I think I came  
18 pretty close to missing the protest date  
19 because of that.

20 I mean there's so many  
21 inconsistencies about my tenant. I have a new  
22 tenant that's moving in. I used to have an

1 art gallery on the first floor, now it's being  
2 converted into a restaurant.

3 I live in that building. I've  
4 lived there for 42 years and Mr. Brand is  
5 comparing apples to oranges. Yes, the  
6 establishment is, they've told me that they're  
7 going to be open 24 hours a day.

8 However, in the lease, number one,  
9 they will not be, there will be no outdoor  
10 T.V.'s. Number two, no alcohol will be  
11 served.

12 MR. BRAND: It's in the lease?

13 CHAIRPERSON MILLER: No, you  
14 can't, excuse me. You can't interrupt. Go  
15 ahead.

16 THE WITNESS: So you really can't  
17 compare --

18 CHAIRPERSON MILLER: You ask  
19 questions -- Excuse me. You can ask those  
20 questions afterwards, that he's done, so save  
21 your questions. Okay.

22 THE WITNESS: You really can't

1 compare one with the other because when people  
2 are drinking they get a little drunk, some of  
3 them get more than a little drunk, and they're  
4 watching a sports game, and it is very, very,  
5 very rowdy.

6 Now I, as of recently,  
7 investigated this D.C. Noise Control Act and  
8 it says that the maximum noise levels in  
9 commercial areas, daytime, 65 decibels, 9:00  
10 p.m. to 7:00 a.m., 60 decibels.

11 To put decibel ratings into  
12 perspective, at a distance of ten feet normal  
13 conversation is from 50 to 65 decibels.  
14 Yelling has a range of 80 to 125 decibels.  
15 These numbers are taken from noise level  
16 studies.

17 Average decibel rating for yelling  
18 is 95 decibels. At 70 decibels the pressure  
19 in the eardrum is ten times greater than 60,  
20 which is the allowable, at 80 decibels the  
21 pressure on the eardrum is 100 times greater,  
22 at 90 decibels the pressure in the eardrum is

1 1000 times greater than at 60 decibels and I  
2 live right next door.

3 On May 15th, just a few weeks ago,  
4 I purchased this lovely little machine. This  
5 is a digital sound level meter. It has an  
6 accuracy of plus or minus two decibels.

7 That same evening there was a  
8 relatively small crowd of patrons in the  
9 outdoor café. About a third as many as I've  
10 seen on good days.

11 It was 10:20 p.m. when I took the  
12 reading. This is 20 minutes later than when  
13 the T.V.'s are supposed to be turned off. The  
14 meter recorded a reading of 89.6 decibels.  
15 This was taken from the entrance to my  
16 building.

17 This number represents a pressure  
18 in the eardrum that is 1000 times greater than  
19 permitted by D.C. law. From a variety of  
20 studies noise levels above 85 decibels can  
21 damage one's hearing.

22 Studies have also shown that

1 exposure to excessive noise causes a variety  
2 of health issues stemming from sleep  
3 deprivation, hypertension, and various  
4 psychological difficulties.

5 Not only does ABRA have the  
6 responsibility of not allowing the  
7 establishment to extend its outdoor T.V. hours  
8 until midnight, ABRA has the responsibility of  
9 enforcing the elimination of outdoor T.V.'s.

10 By not doing so ABRA will be  
11 encouraging rowdy and ruckus behavior, which  
12 is in violation to the D.C. Noise Control Act.  
13 This will lead to constant complaints to the  
14 police department and possible legal actions  
15 as mentioned earlier against ABRA and the  
16 establishment.

17 At the very least, if rowdy  
18 behavior continues, especially into the late  
19 hours, I will file a temporary restraining  
20 order to immediately halt the violation of  
21 this law.

22 In the PFI the establishment

1 argues that as a sports bar their patrons  
2 should be allowed to view the sports event in  
3 their entirety. I would like to ask where is  
4 it stated that because you're a sports bar you  
5 are entitled to cause rowdy behavior into the  
6 midnight hours in the public spaces in  
7 violation of D.C. Noise Control Act.

8 Now this is not only about T.V.'s,  
9 that's the main issue, because the ANC also  
10 stated that there are other requirements that  
11 are essential that were in the original  
12 voluntary agreement.

13 So in addition and with regard to  
14 the binding voluntary agreement that we have  
15 that was entered into in 2008, the  
16 establishment has been in continuous violation  
17 of the requirements of the agreement in the  
18 following ways.

19 One, the establishment will not  
20 sell alcohol to intoxicated persons. Some  
21 customers leave the establishment intoxicated  
22 and are very rowdy in the late hours.

1                   Two, the establishment shall post  
2 a notice stating that proper identification is  
3 required for service of alcohol. There is no  
4 sign posted on the entrance of the  
5 establishment.

6                   Three, the establishment shall  
7 have on the premises a minimum of one security  
8 host for every 60 patrons whose sole  
9 responsibility is the monitoring of the peace,  
10 order, and the quiet of the establishment and  
11 its immediate environs. There is overcrowding  
12 during all sporting events and there is no one  
13 monitoring the peace and quiet, no one.

14                   Number four, the establishment  
15 shall take all necessary steps to prevent  
16 patron rowdiness including refusing admission  
17 and service to or ejecting rowdy or unruly  
18 patrons. This is not done.

19                   Five, the establishment agrees to  
20 fully encourage its patrons with noticeable  
21 signage to enter and leave the premise in a  
22 peaceful, quiet, and orderly manner that is

1 respectful of the neighborhood. There is no  
2 sign.

3 The establishment will control  
4 amplified volume levels and maintain an  
5 environment quiet enough to allow residents  
6 enjoyment of the neighborhood. The  
7 establishment obviously does not maintain an  
8 environment quiet enough to allow residents  
9 enjoyment of the neighborhood.

10 Number seven, the establishment  
11 will have all exterior amplified sound  
12 equipment and speakers turned off prior to  
13 11:00 p.m. and exterior televisions turned off  
14 prior to 10:00 p.m. This is never done  
15 without telephone calls, my telephone calls to  
16 the establishment.

17 Number eight, Sunday through  
18 Thursday the establishment will not operate  
19 either its enclosed sidewalk café or  
20 unenclosed café after 10:30 p.m. This is not  
21 being obeyed.

22 The establishment will post

1 conspicuous signage to advise patrons of its  
2 sidewalk cafe's closing time. There is no  
3 sign posted.

4 I might also add that with a  
5 simple sign patrons could have been informed  
6 in advance when the T.V.'s were required to be  
7 turned off. Again, there are approximately 40  
8 other large screen indoor T.V.'s that patrons  
9 are welcome to view.

10 Number 10, the establishment shall  
11 at all times post a legible sign in the  
12 enclosed sidewalk café stating "Please be  
13 respectful of the peace and quiet that is  
14 required by our residential neighbors." For  
15 the past four years and up until two weeks ago  
16 there has not been a sign.

17 The establishment will not extend  
18 its hours of operation without the support of  
19 the protestors, Number 11.

20 Number 12, when the unenclosed  
21 outside café is, well I won't continue, I mean  
22 there are a list of items that are listed in

1 the voluntary agreement that were not obeyed  
2 and completely ignored.

3 What else can we say? Now may I  
4 ask a question?

5 CHAIRPERSON MILLER: To yourself?

6 THE WITNESS: Am I permitted to  
7 ask a question?

8 CHAIRPERSON MILLER: No.

9 THE WITNESS: Okay.

10 MEMBER ALBERTI: Well, if it's,  
11 maybe it's a procedural question.

12 CHAIRPERSON MILLER: Oh, a  
13 procedural question, yes.

14 THE WITNESS: All right. Well  
15 then I'll stop at this point.

16 CHAIRPERSON MILLER: You can ask a  
17 procedural -- I'm sorry. Do you have a  
18 procedural question about how?

19 THE WITNESS: Yes. I just want to  
20 know what kind of weight --

21 CHAIRPERSON MILLER: Sorry. I  
22 thought you wanted to ask the Board a question

1 about the substance.

2 THE WITNESS: The question I have  
3 is the ANC supporting the establishment's  
4 petition to have the T.V.'s on until midnight?

5 CHAIRPERSON MILLER: What's the  
6 question?

7 THE WITNESS: That's the question.

8 CHAIRPERSON MILLER: What?

9 MEMBER ALBERTI: What is it,  
10 repeat it again?

11 CHAIRPERSON MILLER: What's the  
12 impact of it?

13 THE WITNESS: What is the position  
14 of the ANC --

15 CHAIRPERSON MILLER: They have  
16 submitted --

17 THE WITNESS: -- as far as  
18 allowing the establishment to keep the T.V.'s  
19 open until midnight.

20 CHAIRPERSON MILLER: That's what I  
21 meant. I want to say that they have submitted  
22 a voluntary, a settlement agreement that's

1       been signed.  Have you not seen it, with Mr.  
2       Brand?

3                       THE WITNESS:  Allowing?

4                       CHAIRPERSON MILLER:  Have you not  
5       seen the settlement agreement?  Just recently.

6                       MEMBER ALBERTI:  I think we should  
7       just direct him to go investigate it.

8                       CHAIRPERSON MILLER:  But the  
9       settlement agreement.

10                      MEMBER ALBERTI:  Yes, but I think  
11       he should investigate himself.  I don't think  
12       we should speak to it.

13                      THE WITNESS:  So is the ANC in  
14       support of --

15                      CHAIRPERSON MILLER:  See that's  
16       what I'm saying.  It's not really up to us to  
17       answer substantive questions.

18                      MEMBER ALBERTI:  I think what the  
19       Chair is telling you is that they have  
20       submitted an updated settlement agreement.  It  
21       really is best if you go out and get a copy of  
22       it and read it for your --

1                   THE WITNESS: Well it's actually  
2 not in --

3                   MEMBER ALBERTI: Wait, let me  
4 finish. I think it is best, and I think the  
5 Chair would agree, that you would go out and  
6 examine it and read it for yourself.

7                   But we can tell you that they have  
8 submitted one and it has been approved to be  
9 accepted by the Board.

10                  THE WITNESS: Well the fact of the  
11 matter is that this is a very biased ANC, a  
12 very biased Chair. Now I happen to know that  
13 there is a personal relationship between Mr.  
14 Brand and Kevin Wilsey, the Chair of the ANC,  
15 and under no circumstances should Mr. Wilsey  
16 have not excused himself from this particular  
17 --

18                  PARTICIPANT: That's not the  
19 subject of this hearing, so --

20                  THE WITNESS: There is a very  
21 obvious conflict of interest.

22                  CHAIRPERSON MILLER: Well I think,

1 I'm just concerned a little bit if he doesn't,  
2 their settlement agreement is not the subject  
3 of this hearing. On the other hand it is  
4 germane to the issue.

5 MEMBER ALBERTI: Well I understand  
6 your concern, Ms. Miller, so what I would  
7 suggest if we could --

8 CHAIRPERSON MILLER: Give him a  
9 copy.

10 MEMBER ALBERTI: -- maybe have  
11 staff provide him with a copy.

12 CHAIRPERSON MILLER: Yes. They  
13 would just --

14 MEMBER ALBERTI: That would be  
15 best.

16 CHAIRPERSON MILLER: Yes.

17 MEMBER ALBERTI: I mean we can,  
18 I'm willing to go that far. Can we get staff,  
19 can we get a copy of the ANC's settlement  
20 agreement that we can provide a copy to Mr.  
21 Cardella. Can we print it and provide it to  
22 him?

1 CHAIRPERSON MILLER: Yes, yes,  
2 yes.

3 THE WITNESS: So in fact we're not  
4 talking about the termination, we're talking  
5 about altering it, because his petition was  
6 for terminating the voluntary agreement.

7 CHAIRPERSON MILLER: That's  
8 correct, we're talking about altering it.

9 MEMBER ALBERTI: Well I --

10 CHAIRPERSON MILLER: Here.

11 THE WITNESS: So it's been changed  
12 then?

13 MEMBER ALBERTI: Well I --

14 CHAIRPERSON MILLER: What's  
15 presented to this Board, it's called a  
16 Petition to Terminate, but what's been  
17 requested, as I started the hearing, was just  
18 the paragraph dealing with the T.V.'s. That's  
19 the subject of this.

20 MEMBER ALBERTI: Well I, yes, I  
21 generally agree with you, but just to be clear  
22 for the record and so that we don't, that we

1 keep this thing within the bounds of the law,  
2 the request was to terminate, all right.

3 We as a Board have an option of  
4 either terminating, well, we have an  
5 opportunity -- we are a Board of either  
6 denying the termination, amending it, or  
7 terminating it. Those are the three options  
8 before us.

9 I think what the Chair is saying,  
10 and I agree, is my understanding is that the  
11 request that we're hearing today from the  
12 licensee is that his concern is about the  
13 conditions that affect the timing of when the  
14 T.V. has to go off.

15 That is my understanding from what  
16 I've heard from the licensee. Am I correct,  
17 Ms. Miller? Is that correct?

18 CHAIRPERSON MILLER: That's what I  
19 tried to clarify at the beginning. So, Mr.  
20 Brand, it's your petition, is that what you're  
21 seeking, just to amend it with respect to the  
22 T.V.'s being allowed to play.

1 MR. BRAND: Yes, the current  
2 voluntary agreement to amend to the one that  
3 is --

4 (Simultaneous speaking.)

5 MEMBER ALBERTI: Okay, good. So  
6 we're all on the same page.

7 CHAIRPERSON MILLER: Yes, you're  
8 not seeking unless it's terminated, the whole  
9 agreement?

10 MR. BRAND: But the agreement with  
11 Dominic as a part of it, that's what I'm  
12 trying to get rid of.

13 MEMBER ALBERTI: All right.

14 CHAIRPERSON MILLER: Right.

15 MR. BRAND: But it's been very  
16 difficult, just to amend it.

17 CHAIRPERSON MILLER: Okay. All  
18 right, does that complete your testimony?

19 THE WITNESS: Pardon?

20 CHAIRPERSON MILLER: They're going  
21 to give you a copy of the agreement with the  
22 ANC, they're making it now so that you have a

1 chance to look at it before this hearing's  
2 over in case that has some impact on you.

3 THE WITNESS: All right.

4 CHAIRPERSON MILLER: But,  
5 secondly, your testimony with respect -- And  
6 then we'll go to questions. Mr. Cardella,  
7 does that complete your testimony?

8 THE WITNESS: Yes. I'll answer  
9 your questions.

10 CHAIRPERSON MILLER: Okay. Well  
11 first Mr. Brand has an opportunity if you so  
12 choose.

13 MR. BRAND: No.

14 CHAIRPERSON MILLER: You don't.  
15 Okay, Board questions?

16 MEMBER ALBERTI: I guess I'll  
17 start.

18 CHAIRPERSON MILLER: Okay, Mr.  
19 Alberti.

20 MEMBER ALBERTI: So, Mr. Cardella,  
21 where is your building in relationship to this  
22 establishment.

1 THE WITNESS: We share a common  
2 wall.

3 MEMBER ALBERTI: You share a  
4 common wall, I mean to the left or to the  
5 right?

6 THE WITNESS: I am immediately to  
7 his West.

8 MEMBER ALBERTI: To his West,  
9 okay. How many stories is your building?

10 THE WITNESS: Three.

11 MEMBER ALBERTI: About how wide is  
12 it?

13 THE WITNESS: Twenty-five feet.

14 MEMBER ALBERTI: Okay, it's one of  
15 those building, I got you.

16 THE WITNESS: And incidentally the  
17 T.V.'s that are outside, the three T.V.'s,  
18 they cover pretty much the, I guess the entire  
19 width of the building.

20 MEMBER ALBERTI: Okay. Not your  
21 building, his building?

22 THE WITNESS: His building, yes.

1                   MEMBER ALBERTI: All right, okay,  
2 got you. What's on the ground floor of your  
3 building?

4                   THE WITNESS: There's a restaurant  
5 that's being built up.

6                   MEMBER ALBERTI: Okay. On the  
7 upper two floors what's there?

8                   THE WITNESS: There's a law office  
9 on the second floor and I live on the third.

10                  MEMBER ALBERTI: Okay. You have  
11 residence on the third floor, okay.

12                  THE WITNESS: For the past 42  
13 years.

14                  MEMBER ALBERTI: Okay. So I'm  
15 going to, tell me if my conclusion is right  
16 here in that you oppose the termination of,  
17 well you believe that setting aside the  
18 condition about the T.V., all right, you  
19 believe that all of the other conditions in  
20 that settlement agreement are necessary, the  
21 one that you currently have?

22                  THE WITNESS: Oh, yes. Yes.

1 MEMBER ALBERTI: Okay, great.

2 Okay.

3 CHAIRPERSON MILLER: I have it.

4 MEMBER ALBERTI: I'm going to ask  
5 sort of a pointed question, please forgive me.  
6 Have you made complaints to this Agency about  
7 violations of that SA, that settlement  
8 agreement?

9 THE WITNESS: I'll tell you why I  
10 haven't made complaints. I was --

11 MR. BRAND: He has --

12 MEMBER ALBERTI: No, go ahead.

13 CHAIRPERSON MILLER: No.

14 THE WITNESS: No, no, no, I  
15 haven't --

16 MEMBER ALBERTI: Go ahead. Go  
17 ahead, please finish. I'm sorry.

18 THE WITNESS: I haven't made any  
19 complaints because the truth of the matter is  
20 that I have been making an effort to try and  
21 get along with Mr. Brand, believe it or not,  
22 regardless of how this sounds right now.

1 MEMBER ALBERTI: Okay.

2 THE WITNESS: I'm just a little  
3 bit upset that he wants to extend until  
4 midnight, this is what upsets me. But I have  
5 been making an all out effort to try and get  
6 along with him, to the point where I know that  
7 he was operating those outdoor T.V.'s in  
8 violation every single night.

9 Never turned off at 10:00 p.m.  
10 like they were supposed to, never, unless he  
11 received a phone call from me. So I would  
12 call, sometimes it would be 11:00 and say, you  
13 know, turn the T.V.'s off and he would comply  
14 with that.

15 It would take a little while  
16 sometimes, but eventually they would get  
17 turned off. Otherwise, those T.V.'s would be  
18 turned off when the bar closes, every single  
19 day.

20 MEMBER ALBERTI: Okay. I mean I  
21 partly asked, quite honestly, Mr. Cardella, I  
22 currently asked that because of your posturing

1 of wanting to sue the Agency if you don't get  
2 relief or, you know, it really --

3 THE WITNESS: It's because it's  
4 your --

5 (Simultaneous speaking.)

6 MEMBER ALBERTI: Wait, let me  
7 finish. Let me finish. Let me finish. But  
8 your previous actions haven't, and that's a  
9 pretty harsh step. I mean that's a pretty  
10 extreme step.

11 But you're previous actions  
12 haven't displayed that level of concern. I  
13 mean you haven't really exercised your rights  
14 within the law.

15 THE WITNESS: Yes --

16 MEMBER ALBERTI: Now wait. You  
17 haven't taken advantage of the laws that exist  
18 to then just jump to that last extreme. You  
19 can respond to that --

20 THE WITNESS: Yes.

21 MEMBER ALBERTI: -- but I just  
22 wanted to say that and I won't prolong that.

1                   THE WITNESS: The reason that it  
2 is this quantum leap is because of wanting to  
3 extend these T.V. hours from 10:00 until  
4 midnight and that is a hardship.

5                   Now I was willing to tolerate it  
6 until 10:00, but now that he wants it all, he  
7 wants until midnight, now I'm going to fight.  
8 You're right, now I'm going to fight for the  
9 elimination of these outdoor T.V.'s because  
10 the consequences of these T.V.'s cause rowdy  
11 and ruckus behavior which is in violation of  
12 D.C. Code and this is what is going to -- So  
13 there are going to be a lot of telephone calls  
14 to the police department.

15                  MEMBER ALBERTI: I appreciate that  
16 and I understand your position, I really do.

17                  THE WITNESS: I live right next  
18 door. You have no idea what it sounds like.

19                  MEMBER ALBERTI: Well --

20                  THE WITNESS: When you're sleeping  
21 and then all of a sudden 80 people, you know,  
22 give this outrageous roar at 11:30 at night

1 when you're sound asleep.

2 MEMBER ALBERTI: I appreciate  
3 that, thank you. Thank you.

4 THE WITNESS: And because, again,  
5 because he has a sports bar does not give him  
6 permission to do this. Just because he has a  
7 sports bar, he can't say well I'm a sports bar  
8 so we can do this.

9 MEMBER ALBERTI: Thank you. I  
10 have no further questions, thank you.

11 CHAIRPERSON MILLER: Mr. Cardella,  
12 let me ask you this, are you aware of what  
13 your rights are with respect to noise?

14 THE WITNESS: Yes, I am. Yes, I  
15 have it written right here and I'll read it to  
16 you.

17 CHAIRPERSON MILLER: You don't  
18 have to read me the whole thing, but do you --

19 THE WITNESS: No, but I will.

20 CHAIRPERSON MILLER: Have you not  
21 found it in the D.C. noise laws?

22 THE WITNESS: I would like to read

1 this to you though since I have an option to  
2 speak out.

3 With regard to the possibility of  
4 civil action Paragraph 27 14.1 of the Noise  
5 Control Act states, "Any person may commence  
6 a civil action in a Court of competent  
7 jurisdiction on his or her own behalf for  
8 injunctive relief to enforce a requirement or  
9 to order the Mayor to perform a non-  
10 discretionary act against any person,  
11 including the District Government, to the  
12 extent permitted by the 11th Amendment of the  
13 U.S. Constitution."

14 CHAIRPERSON MILLER: Okay, my  
15 question is, if we think that that relates to  
16 Mr. Brand's violation of the noise law, is  
17 that right?

18 THE WITNESS: What's that?

19 CHAIRPERSON MILLER: If Mr. Brand  
20 violates the noise law?

21 THE WITNESS: If he violates the  
22 noise law.

1                   CHAIRPERSON MILLER: Okay. So if  
2 we have these, this Task Force going out now  
3 to make measurements with official decibel  
4 measures and that, your measures, I just want  
5 to tell you is it may not be recognized in the  
6 same way as an official measurement.

7                   And, therefore, I would just say  
8 that you, if the noise is, if you think the  
9 noise is violating the law you need to call  
10 the Task Force to make a measurement, okay.

11                  THE WITNESS: Oh, I would --

12                  CHAIRPERSON MILLER: So you have  
13 not done that yet. Despite all these roars  
14 you have not asked any, DCRA or ABRA to come  
15 measure?

16                  THE WITNESS: Again, to repeat  
17 myself, I haven't done it because it was a  
18 simple matter of making a phone call at 10:30  
19 and saying turn the T.V.'s off.

20                  CHAIRPERSON MILLER: Okay.

21                  THE WITNESS: Now I have to be  
22 subjected until midnight.

1                   CHAIRPERSON MILLER:  Have you been  
2                   -- When you're up or when you're woken up, or  
3                   what?

4                   THE WITNESS:  Oh, I'm jolted out  
5                   of my sleep with a roar.

6                   CHAIRPERSON MILLER:  How many  
7                   times is that?

8                   THE WITNESS:  Whenever there's a  
9                   sporting event.

10                  CHAIRPERSON MILLER:  Really?

11                  THE WITNESS:  Whenever there's a  
12                  sporting event and there's a crowd out there.

13                  CHAIRPERSON MILLER:  But you've  
14                  never called our Agency to complain despite  
15                  all that, being woken up in the middle of the  
16                  night?

17                  THE WITNESS:  Well, but then I  
18                  would call and say turn the T.V.'s off.  I  
19                  have, I'm telling you I've tried to make an  
20                  earnest effort to get along with my neighbor,  
21                  more than I should have.

22                  CHAIRPERSON MILLER:  What do you

1 think about Mr. Brand's proposal that he  
2 checks with you with respect to whether you're  
3 in town?

4 THE WITNESS: No. Now that he  
5 wants midnight I'm going to go all the way.  
6 I'm going to go for the enforcement of the  
7 elimination of the outdoor T.V.'s because they  
8 are a direct cause of ruckus behavior.

9 CHAIRPERSON MILLER: Okay. All  
10 right, any other questions? All right, we are  
11 now done --

12 MEMBER ALBERTI: I think Mr.  
13 Rodriguez has a question.

14 MEMBER RODRIGUEZ: Yes.

15 CHAIRPERSON MILLER: Oh, go ahead,  
16 Mr. Rodriguez.

17 MEMBER RODRIGUEZ: I guess it's a  
18 question.

19 CHAIRPERSON MILLER: Yes.

20 MEMBER RODRIGUEZ: Begin looking  
21 for solutions. So he has speakers up to what  
22 11:00?

1 THE WITNESS: Right now the  
2 speakers, you mean the T.V.'s?

3 MEMBER RODRIGUEZ: Authorized  
4 under the agreement, 10:00, right?

5 THE WITNESS: 10:00.

6 MEMBER RODRIGUEZ: 10:00, okay.  
7 Now if he were to then move inside, that is  
8 the ultimate solution, right? Would that  
9 solve the problem?

10 THE WITNESS: Yes. You wouldn't  
11 have all this yelling outside.

12 MEMBER RODRIGUEZ: All right.

13 CHAIRPERSON MILLER: That's the  
14 point?

15 THE WITNESS: Yes.

16 MEMBER RODRIGUEZ: So I'll stop  
17 there right now.

18 THE WITNESS: Absolutely.

19 MEMBER RODRIGUEZ: I'll stop there  
20 right now.

21 THE WITNESS: Absolutely it would  
22 make a difference.

1                   MEMBER RODRIGUEZ: And then I'll  
2 get to him after we're done with you. Okay.

3                   CHAIRPERSON MILLER: So are there  
4 other Board questions? Okay, so, Mr.  
5 Cardella, and both of you basically, I just  
6 want to make sure you understand the procedure  
7 from here.

8                   You've finished your testimony  
9 and, Mr. Cardella, you seem to be referring to  
10 some documents and I don't know whether you  
11 want to put them evidence, ask if they can be  
12 admitted into evidence, or not?

13                  MR. CARDELLA: No, but I would  
14 like to make another statement while I'm here.

15                  CHAIRPERSON MILLER: Wait. So you  
16 don't?

17                  MR. CARDELLA: I mean I, just to -  
18 -

19                  CHAIRPERSON MILLER: You'll get to  
20 make a closing statement, okay? That's where  
21 we're going to next, but I wanted to make sure  
22 if you had any evidence that you wanted to

1 submit now is the time because --

2 MR. CARDELLA: No.

3 (Pause.)

4 MR. CARDELLA: Well, I can read to  
5 you what's in the Noise Control Act just to --

6 CHAIRPERSON MILLER: No. We don't  
7 need you to read to us.

8 MR. CARDELLA: You don't need me  
9 to do that?

10 CHAIRPERSON MILLER: No, we're  
11 very familiar with the Noise Control Act.

12 MR. CARDELLA: Well I can assure  
13 you that --

14 CHAIRPERSON MILLER: You can argue  
15 the Noise Control, whatever, in your closing  
16 statement, but I just wanted to make sure you  
17 didn't have documents you wanted to submit.

18 MR. CARDELLA: No documents.

19 CHAIRPERSON MILLER: Okay. And --

20 MR. CARDELLA: Well I have  
21 studies, a number of studies that have been  
22 made, I have copies of them, which tell what

1 the noise levels are for various activities.

2 These are studies that have been made.

3 CHAIRPERSON MILLER: Did you  
4 identify them on here?

5 MR. CARDELLA: Pardon me?

6 CHAIRPERSON MILLER: Did you  
7 identify them as exhibits on your PIF?

8 MR. CARDELLA: No, I did not.

9 CHAIRPERSON MILLER: Okay. I  
10 don't think they're necessary either.

11 MR. CARDELLA: All right.

12 CHAIRPERSON MILLER: Okay.

13 Because what happens, if you didn't identify  
14 I could ask Mr. Brand, but basically if he  
15 didn't get a chance to look at those then he  
16 wouldn't be able to address them.

17 MR. CARDELLA: That's fine.

18 CHAIRPERSON MILLER: Okay. All  
19 right, so I'm going to then move on to your  
20 closing arguments. This is where you get to  
21 wrap up your case.

22 MR. BRAND: Honestly, I think

1 we've taken so much of your time. I think  
2 I've spoke at times where I wasn't supposed to  
3 not knowing the order of all this.

4 I think you kind of know what I've  
5 expressed as far as our position. The most  
6 important thing I want you to remember is  
7 regardless of the outcome of any of this we're  
8 going to continue to do everything we can to  
9 bridge a gap between us and Dominic and try to  
10 mend fences and we don't want any enemies.

11 It's just too small of a block to  
12 be walking around uncomfortable with  
13 neighbors, and especially with him being right  
14 next door. So we're going to do everything,  
15 starting like this afternoon. Hopefully we  
16 can get some coffee or something like we did  
17 last time.

18 CHAIRPERSON MILLER: Okay, thank  
19 you.

20 MR. BRAND: Thank you.

21 CHAIRPERSON MILLER: All right,  
22 Mr. Cardella?

1 MR. CARDELLA: No, I think I've  
2 said it all.

3 CHAIRPERSON MILLER: Okay. Okay,  
4 here's one more formality. I just want to ask  
5 you if you, oh, and I'm closing the record in  
6 this case so there's no more evidence or  
7 testimony we're going to hear.

8 You could, if you want to, file a  
9 written statement of Post Findings of Facts  
10 and Conclusions of Law or waive your right to  
11 do so. It's a right, I'm not encouraging it  
12 in this case, it's not a complicated case.

13 Most people don't do this, but  
14 once in a while they do. So you would wait  
15 for the transcript, then get the transcript,  
16 and then you'd write like a legal brief, so  
17 I'm asking you if you all think you want to do  
18 that or not?

19 MR. BRAND: No, not us.

20 CHAIRPERSON MILLER: Okay. Mr.  
21 Cardella? It's no new evidence. It's only --

22 MR. BRAND: No, no, no new

1 evidence.

2 CHAIRPERSON MILLER: No, right.  
3 It's not new evidence. I'm saying what it is  
4 arguing to the Board of all the findings based  
5 on this record.

6 MEMBER ALBERTI: It's a formal,  
7 legal brief.

8 CHAIRPERSON MILLER: Yes, most  
9 people don't do it. Are you thinking about it  
10 or are you --

11 MR. CARDELLA: No, I'm not sure  
12 what your question was, I'm sorry.

13 CHAIRPERSON MILLER: Okay. So I  
14 said, and this is kind of, this is a  
15 formality, it's a right, but most parties that  
16 come before us in this kind of case don't do  
17 it because it's a lot of work and it's  
18 supposed to help the Board decide the case.

19 But the facts aren't very  
20 complicated in this case, so I don't think  
21 it's something that I would say, not that I am  
22 advising you, but, that it's, that you, that

1 it's not really necessary.

2 But if you would like to you could  
3 wait for the transcript and you could file a  
4 written document to the Board which would be  
5 in the nature of a legal brief which would set  
6 forth the findings of facts that the Board  
7 should rely on to make legal conclusions.

8 MR. CARDELLA: Yes, I would like  
9 to take advantage of that.

10 CHAIRPERSON MILLER: You would  
11 like to do that?

12 MR. CARDELLA: Yes.

13 CHAIRPERSON MILLER: Okay. So  
14 what we do then if one party would like to do  
15 that we leave the -- You would still have the  
16 option if you wanted to.

17 Okay. So that means that the  
18 transcript should be available within two to  
19 three weeks. It'll be emailed out to the  
20 parties and then you would have 30 days to  
21 submit Proposed Findings of Facts and  
22 Conclusions of Law based on the record in this

1 case, which is the transcript of the hearing  
2 plus, you know, everything in the record, your  
3 filings.

4 There are no exhibits so it's  
5 basically, you know the transcript. If you  
6 change your mind let us know because we will  
7 start, we won't deliberate until we get that  
8 and we then have 90 days to issue our written  
9 decision.

10 If you tell us earlier, no, you're  
11 not going to do it, then we'll get to our work  
12 on your case that much earlier that's all.  
13 And if you, I will just say, you could go to  
14 our website and look at our Orders and you'll  
15 see that many of them, if not most of them,  
16 are set up with Proposed Findings of Facts and  
17 Conclusions of Law, so you could see what that  
18 looks like.

19 MR. BRAND: May I just speak to  
20 Dominic?

21 CHAIRPERSON MILLER: Yes.

22 MR. BRAND: Let's just get this

1 over with. Like we've been communicating  
2 well, let's just --

3 MEMBER ALBERTI: Whoa, whoa, whoa,  
4 whoa.

5 CHAIRPERSON MILLER: Is this off  
6 the record? You can talk off the record.

7 MR. BRAND: That's fine. Off the  
8 record.

9 CHAIRPERSON MILLER: Off the  
10 record.

11 (Whereupon, the above-entitled  
12 matter went off the record at 3:34 p.m. and  
13 resumed at 3:35 p.m.)

14 CHAIRPERSON MILLER: Let me just  
15 say this, that, you know, at any time if you  
16 decide to change your mind just let us know  
17 that they won't be coming. That's all totally  
18 up to you all to do.

19 And I'll just reiterate it's not  
20 anything new that we're going to consider.  
21 We're only going to consider what's in the  
22 record. So it's an option, but it's not a

1 complicated case so --

2 MR. BRAND: It's just this has  
3 been going on so long.

4 CHAIRPERSON MILLER: Okay. This  
5 hearing is basically concluded then and I'm  
6 only going to read, and then we're going to  
7 take a vote about the Board deliberating the  
8 case in closed session and then we are done.  
9 Just a second.

10 Okay. As Chairperson of the  
11 Alcoholic Beverage Control Board for the  
12 District of Columbia in accordance with  
13 Section 405 of the Open Meetings Amendment Act  
14 of 2010, I move that the ABC Board hold a  
15 closed meeting to deliberate on Case No. 14-  
16 PRO-00011 pursuant to the Section 405 of the  
17 Open Meetings Amendment Act of 2010 and for  
18 the purpose of seeking legal advice from our  
19 counsel on this case per Section 405(b)(4) of  
20 the Open Meetings Amendment Act of 2010, is  
21 there a second?

22 MEMBER SHORT: Second.

1                   CHAIRPERSON MILLER: Mr. Short has  
2 seconded motion. I'll now take a roll call  
3 vote on the Motion now that it's been  
4 seconded. Mr. Brooks?

5                   MEMBER BROOKS: I agree.

6                   CHAIRPERSON MILLER: Mr. Alberti?

7                   MEMBER ALBERTI: I agree.

8                   CHAIRPERSON MILLER: Mr.

9 Rodriguez?

10                  MEMBER RODRIGUEZ: I agree.

11                  CHAIRPERSON MILLER: Ms. Miller

12 agrees. Mr. Short?

13                  MEMBER SHORT: I agree.

14                  CHAIRPERSON MILLER: Okay. The  
15 Motion passes 5-0-0 and we will therefore hold  
16 a closed meeting on this case as soon as we  
17 get the Proposed Findings of Facts and  
18 Conclusions of Law or hear that they will not  
19 be submitted.

20                  Okay, that concludes the case.

21                  Good luck to you all and you may be excused.

22                  MR. CARDELLA: Thank you.

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MR. BRAND: Thank you.

CHAIRPERSON MILLER: Thank you.

(Whereupon, the above-entitled  
matter was concluded at 3:37 p.m.)

A				
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