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P R O C E E D I N G S

9:33 a.m.

MS. MILLER: Good morning, ladies and gentlemen. I'd like to welcome you to the regular scheduled meeting of the District of Columbia Alcoholic Beverage Control Board. Today is October 1st, 2014. My name is Ruthanne Miller. I'm the chairperson. And to my far right is Mr. Donald Brooks and next to Mr. Brooks is Mr. Nick Alberti. And next to Mr. Alberti is Mr. Hector Rodriguez.

MR. RODRIGUEZ: Good morning.

MS. MILLER: And to my left is Mr. Mike Silverstein. We have five members in attendance this morning for business and three constitutes a quorum. Copies of today's hearing calendar and agenda are available at the receptionist desk.

Please be aware that these proceedings are being recorded by a court reporter. Accordingly, we must ask you to

1 refrain from any disruptive noises or  
2 actions in the hearing room. If you have  
3 any electronic devices, pagers, cell phones  
4 or such, please make certain that they're  
5 turned off to avoid any interruption of the  
6 proceedings. When I call your case, please  
7 come forward and take a seat at the table.  
8 You'll notice that there's a piece of paper  
9 on each table, for you to sign in. This is  
10 to ensure the correct spelling of your name  
11 for the record.

12           The Open Meetings Act requires  
13 that the public hearings on each case be  
14 open to the public. The Board may,  
15 consistent with Section 405(b) of the Open  
16 Meetings Act, enter a closed meeting during  
17 or after the public hearing on a case to  
18 consult with an attorney to obtain legal  
19 advice, discuss settlement agreements, or  
20 deliberate upon a decision and an  
21 adjudication proceeding. Okay, so we'll now  
22 turn to the first matter on the morning's

1 calendar. And that is Case No. 14-PRO-  
2 00057. Club Timehri located at 2439 18th  
3 Street Northwest, License No. 77730, in ANC  
4 1C.

5 MR. WHELAN: Good morning,  
6 Stephen Whelan on behalf of the licensee.

7 MS. MILLER: Stephen Whelan,  
8 okay.

9 MR. JAMES: Good morning, Denis  
10 James, XXX-9:35:26 Kalorama Citizens  
11 Association and also, I believe the Board's  
12 attorney, Ms. Jenkins, received an email  
13 from Brian Hart of the ANC passing  
14 representation to us for this morning's  
15 hearing, he's ill.

16 MS. MILLER: Okay.

17 MR. JAMES: I received it on our  
18 way over, you know, so I'm not sure if Ms.  
19 Jenkins has seen it.

20 UNKNOWN FEMALE: Did you get an  
21 email from Chris Hunter, from, from who?

22 MR. JAMES: Brian Hart.

1 MS. MILLER: Brian Hart. Okay.

2 UNKNOWN FEMALE: When did he send  
3 it?

4 MS. MILLER: This morning. He's  
5 ill. Okay. All right. You saw that email,  
6 okay.

7 MR. WHELAN: We would like to  
8 share it on a portable device.

9 MS. MILLER: Okay. Ms. Jenkins  
10 was busy with us this morning, so she wasn't  
11 at her computer.

12 MS. AUBURN: Good morning. My  
13 name is Benedicte Auburn and I represent the  
14 Rick Cook(phonetic) Neighborhood  
15 Association.

16 MS. MILLER: Okay. All right. We  
17 trust that that email's there, so that's  
18 fine. Okay. So this is a Protest Hearing  
19 status. Is there some preliminary matters  
20 you want to bring to your attention?

21 MR. JAMES: Not from our side  
22 Your Honor. We've exchanged drafts and we

1 haven't yet come to a resolution. There's a  
2 chance that we might.

3 MS. MILLER: Okay. Let me just  
4 confirm with you what I see in my notes and  
5 that this a Termination of Settlement  
6 Agreement and that it's been asked that it  
7 be consolidated with the renewal. Is that  
8 correct?

9 MR. WHELAN: That's correct.

10 MS. MILLER: Okay. Is that your  
11 understanding as well, Mr. James?

12 MR. JAMES: Yes, I believe that  
13 was asked for. I'm not sure that the KCA  
14 engaged in that exchange with the Board?

15 MS. MILLER: I note --

16 MR. JAMES: Just from my own  
17 personal representation, I'm not quite sure  
18 of that. By the same token I don't think we  
19 objected, so. You know, it's sort of  
20 different if we, if we come to a resolution,  
21 then maybe that's the right course. But if  
22 we don't then, you know, it's separate

1 issues of renewal and termination of the old  
2 agreement, which I view as separate. And I  
3 believe the Board would view it as separate,  
4 also if a party objected.

5 MS. MILLER: Okay. I, we often  
6 find it much more efficient to consolidate  
7 these types of cases because the issues are  
8 the same. And my notes say that the parties,  
9 it was at the request of the parties. Mr.  
10 Whelan who --

11 MR. WHELAN: We requested it at  
12 the roll call. I believe Ms. Fletcher said  
13 that she would hold off on saying anything  
14 about it until we brought it before the  
15 Board, but --

16 MS. MILLER: Okay.

17 MR. WHELAN: -- it's been raised  
18 before.

19 MS. MILLER: Okay. And, and  
20 anything else to that? Okay, well, we saw  
21 that this was in our records, and I think  
22 it's a consensus of the Board that the cases

1 be consolidated. So if I'm not hearing any  
2 objection, you should take it from here that  
3 they are consolidated. Okay.

4 MR. ALBERTI: Wait, so we're  
5 doing this over the objections of the two  
6 parties? I mean I don't know --

7 MS. MILLER: Oh, then we don't  
8 have consensus. We're not doing it if we  
9 don't have consensus.

10 MR. ALBERTI: That's what I'm,  
11 that's what I'm wondering.

12 MS. MILLER: So, Mr. James kind  
13 of --

14 MR. ALBERTI: Rick Cook, what's  
15 your --

16 MS. AUBURN: No, we have no  
17 objections.

18 MR. ALBERTI: You have no  
19 objections.

20 MS. AUBURN: The speaker is here.  
21 We have no objections.

22 MR. ALBERTI: I just want to be

1 clear that we have no objections. All right.

2 So do we know from Mr. James?

3 MR. JAMES: I'm sorry, my  
4 difficulty is that it seemed that we were  
5 moving on a reasonable track towards --

6 MR. ALBERTI: We're at a juncture  
7 now where we just needed a decision.

8 MR. JAMES: Well, can I get it to  
9 you later in writing? Because this question  
10 would be, this is more complicated than just  
11 a simple what's going on. Because this case  
12 was allowed to go to termination plaquarding  
13 eight months after the renewal period ended.  
14 And we can't understand why that happened.  
15 But in an attempt to be agreeable and hope  
16 to come to some sort of Settlement Agreement  
17 Resolution, we went along. But now, you  
18 know, we seen some terms that we are very  
19 strongly objecting to in the proposals. So,  
20 you know that --

21 MS. MILLER: Okay.

22 MR. JAMES: That has ended yet.

1 Maybe it will come out sort of okay. But,  
2 you know, the case has attempted to brief  
3 the Board on why the termination shouldn't  
4 be allowed. So, I'm trying, I'm just being  
5 extremely upfront with the Board, you know.

6 MR. ALBERTI: Thank you for that.

7  
8 MR. JAMES: And it's, we're not  
9 always at a decision point at a convenient  
10 time, and I apologize for that.

11 MS. MILLER: Okay. And we can,  
12 we could postpone our decision. But just to  
13 understand us better, even if we consolidate  
14 it and at a hearing what would be left would  
15 be whatever issues you all don't agree on.  
16 So I'm not sure, it's the same topics. I'm  
17 not sure how you would be disadvantaged.

18 MR. JAMES: You see my point,  
19 though, that if the case of the termination  
20 was not allowed to even proceed, that it was  
21 ruled as improper, it's too late, untimely.

22 MS. MILLER: Right. Right.

1 MR. JAMES: Then all we'd be  
2 dealing with was the renewal.

3 MS. MILLER: Right.

4 MR. JAMES: And we have no  
5 objection to the renewal of the license.

6 MS. MILLER: Right. Okay. Okay.  
7 This is my understanding, but even if  
8 they're consolidated and you agree to part,  
9 the other part, you could still oppose the  
10 other part, so the hearing would be set for  
11 both. But if you filed a motion to say that  
12 only the termination should be going forward  
13 or one or the other.

14 MR. JAMES: I understand that,  
15 but I, you know, that's not a very practical  
16 position for us to prevail.

17 MS. MILLER: Okay.

18 MR. JAMES: When the other  
19 parties may not concur. But I'm sure the  
20 other parties on the protesting side would  
21 not object if determination requests were to  
22 go away.

1 MS. MILLER: Okay. This is my  
2 concern before we move off of this. And  
3 that is a Protest Hearing is scheduled for  
4 October 15th. So if it goes to hearing, you  
5 all would have to know what you're preparing  
6 for. You'd have to know within-- okay.  
7 Okay. So, okay, let me, let me just  
8 reference a letter where we're coming from,  
9 where we started, thinking that you all had  
10 agreed. There's a letter dated July 16th,  
11 2014, from Andrew Kline saying that "the  
12 parties have agreed it is appropriate to  
13 consolidate the pending protest of the  
14 renewal, with the protest expected to be  
15 filed, concerning the termination of the  
16 Settlement Agreement. The parties agree it  
17 is in the interest of administrative  
18 efficiency to consolidate these matters."  
19 Okay. That's part of this letter. I don't  
20 know if I'm going to have to read the whole  
21 thing. So did you not agree, Mr. James?

22 MR. JAMES: Well, until the

1 matter is in front of the Board, we have the  
2 ability to have a different point of view,  
3 as so many times, the other side is --

4 MS. MILLER: No, this is a  
5 representation that the parties agreed. And  
6 that's, did you --

7 MR. JAMES: I understand. But I  
8 can renege on that if, if the KCA chooses to  
9 do so. But nevertheless --

10 MR. SILVERSTEIN: No, no, the  
11 points that you are making are reasonable,  
12 but please answer the question. Because I  
13 think it's important that we determine  
14 whether or not the non-legal representative  
15 made a --

16 MS. MILLER: He's a legal  
17 representative.

18 MR. SILVERSTEIN: I'm sorry, the  
19 legal representative made an accurate  
20 description of what had occurred. We're  
21 not asking whether you had the right to  
22 renege. You do. But was this accurate?

1 MR. JAMES: Very honestly, I  
2 would really need to go and check my email  
3 record. I don't remember precisely what I  
4 did back then.

5 MS. MILLER: Okay. Well.

6 MR. JAMES: I might have been  
7 silent. I'm not sure.

8 MS. MILLER: Okay. I mean I  
9 think that we are two weeks away from  
10 hearing and you all probably need to know  
11 what you're preparing for. And based on the  
12 representation in this letter, and I'm not  
13 hearing a strong remark to the contrary,  
14 that, and it does make sense, and I think  
15 all rights are still protected to address  
16 the individual termination and renewal  
17 issues, that we do consolidate this.

18 MR. ALBERTI: Madam Chair, we are  
19 now at the 11th hour. I don't think that it  
20 is unreasonable for this Board to ask for a  
21 decision from the parties today, now, at  
22 this hearing. You know there have been

1 plenty of time for the parties to consider  
2 whether or not they want to consolidate the  
3 cases. Apparently there was some discussion  
4 in July. I don't know what those  
5 discussions were. Mr. James is not denying  
6 that there, or the, is not refuting the  
7 implication that there were discussions on  
8 that matter. I just think the parties need  
9 to, need to come to Jesus, and make a  
10 decision now. I mean let's, I mean we're  
11 just prolonging this.

12 MR. JAMES: Madam Chair --

13 MS. MILLER: I know I don't want  
14 to prolong it. I think we should make a  
15 decision right now.

16 MR. ALBERTI: Absolutely. And  
17 that's what I'm suggesting. You tell, tell  
18 the parties.

19 MR. WHELAN: My recollection, or  
20 my client's recollection is there are emails  
21 from back in July that indicate that Mr.  
22 James was on board with the consolidation.

1 And it has been raised between then and now.

2 MS. MILLER: And I think we have  
3 a letter, and Mr. James you haven't really  
4 denied that --

5 MR. JAMES: Oh, no.

6 MS. MILLER: Okay.

7 MR. JAMES: It's not a question  
8 of denying something.

9 MS. MILLER: Okay.

10 MR. JAMES: It's a long time ago.

11 MR. ALBERTI: It's a question of  
12 getting a decision from Mr. James now, here  
13 at this time.

14 MR. JAMES: I apologize for the  
15 delay.

16 MR. ALBERTI: Don't, I, my  
17 request to the Chair is that you ask Mr.  
18 James for a decision. If he doesn't give  
19 you a decision, we stick with the original  
20 email and we consolidate the cases.

21 MR. JAMES: Yeah, okay, we agree  
22 to the consolidation, because, you know the

1 other parties are going to go ahead anyway.

2 MS. MILLER: Okay. Well, I  
3 would, I think it's right to consolidate  
4 them anyway. So, okay, so we hear from  
5 consent from the parties and so it is the  
6 consensus of the Board as well to  
7 consolidate.

8 MR. JAMES: All right.

9 MS. MILLER: Okay. All right.  
10 Then that being said the cases are  
11 consolidated and will, if there is a  
12 hearing, it will be on both termination and  
13 renewal. Okay. Do you have any other  
14 issues?

15 MR. JAMES: Just to confirm the  
16 time of day for the hearing.

17 MS. MILLER: Oh, we'll do that.  
18 We'll do that. Okay. Okay. The protest  
19 hearing date is October 15th, 2014 at 4:30  
20 p.m. And I want to remind you all about the  
21 importance of submitting your protest  
22 information form and exhibit form and

1 exhibits, seven days before the date of the  
2 hearing. You should get these forms in the  
3 mail shortly.

4           On your protest information form,  
5 you'll need to identify your witnesses and  
6 your issues. If your issues have narrowed,  
7 just let us know that these are the  
8 remaining issues. And identify your  
9 witnesses, specifically by name, not by  
10 category, such as neighbors. And on your  
11 exhibit form, please list your exhibit and  
12 attach your exhibits. And if witnesses and  
13 exhibits aren't identified, they're subject  
14 to exclusion at the hearing. But based on  
15 whether there's been any prejudice or  
16 whether we find there was a knowing intent  
17 to withhold them. And if you don't file  
18 your protest information form, it's possible  
19 that your case could be dismissed. And we  
20 don't want that to happen.

21           So, these forms really are very,  
22 very important to the Board and they're very

1 important to the efficiency of the hearing  
2 and we don't think there should be surprises  
3 in these cases. And you all can be better  
4 prepared knowing what each side is going to  
5 present. So if you have any questions  
6 between now and then you can ask Mr., or you  
7 can ask Ms. Raines or you can ask Ms.  
8 Jenkins and our General Counsel's office.  
9 Okay, any other questions? All right.

10 MR. JAMES: I do, I do object to  
11 the Board demanding that exhibits be shared  
12 before. Because we're volunteer  
13 organizations. We don't have paid staff to  
14 work for us. You know, it's nothing in the  
15 Code that says that this is a requirement.  
16 This is your policy, so we object to that on  
17 the record.

18 MS. MILLER: Okay.

19 MR. JAMES: For this hearing --

20 MS. MILLER: I'll say that you,  
21 you know your objection is noted and at some  
22 point, maybe we're going to have a

1 discussion on our rules and we'd love your  
2 participation. At this point, just to say  
3 that we find that it makes for a much more  
4 efficient hearing, all parties have the  
5 exhibits ahead of time. Okay. Anything  
6 else?

7 MR. WHELAN: Not from our side.

8 MS. MILLER: All right. Thank  
9 you, very much.

10 (Whereupon, the hearing  
11 concluded at 9:49 a.m.)

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