

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA  
2 ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
3 ALCOHOLIC BEVERAGE CONTROL BOARD

4 - - - - -X  
5 IN THE MATTER OF: :  
6 Good Essen-U t/a :  
7 Tico : Case  
8 1926 14th Street, NW : 15-PRO-00082  
9 License #93610 : Hearing  
10 Retailer CR : (Status)  
11 ANC 2B :  
12 Substantial Change (Request :  
13 a change of hours) :  
14 - - - - - X

15 Wednesday, October 28, 2015

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Whereupon, the above-referenced matter came on for hearing at the Alcoholic Beverage Control Board, Reeves Center, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

1 CHAIRPERSON:

2 RUTHANNE MILLER, Presiding

3

4 BOARD MEMBERS:

5 JAMES SHORT

6 HERMAN JONES

7 HECTOR RODRIGUEZ

8 NICK ALBERTI

9

10 ALSO PRESENT:

11 JOAN STERLING

12 ELWYN FERRIS

13 on behalf of Shaw Dupont's Citizens Alliance

14

15 ANDREW KLINE, ESQ.

16 STEVE UHR

17 on behalf of the Licensee

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19

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

2 CHAIRPERSON MILLER: Okay. I'm going to  
3 call the protest hearing case, which is Case  
4 Number 15-PRO-00082, Tico, located at 1926 14th  
5 Street, Northwest, License Number 93610 in ANC  
6 2B. Would the parties come forward, please?

7 [Pause.]

8 CHAIRPERSON MILLER: Okay. So when  
9 you're ready, if you could introduce yourselves  
10 for the record.

11 MR. KLINE: Good afternoon. Andrew Kline  
12 on behalf of the Licensee, Good Essen-U Street,  
13 LLC, trading as Tico. Seated to my left is Steve  
14 Uhr, who is the general manager of the facility.

15 CHAIRPERSON MILLER: Okay. Thank you.  
16 And Protestants?

17 MS. STERLING: Joan Sterling, President  
18 of Shaw Dupont's Citizens Alliance.

19 MR. FERRIS: Elwyn Ferris, the Shaw  
20 Dupont Citizens Alliance.

21 CHAIRPERSON MILLER: Okay, good. All  
22 right. So we're here to hear the protests of

1 substantial -- whether the change in hours  
2 constitutes a substantial change. I mean not  
3 that it constitutes it; it's whether it will have  
4 an adverse impact on the locality, section, or  
5 portion of the District where it's located.

6 So, and I know you all have done protests  
7 before, I believe.

8 MS. STERLING: Occasionally.

9 CHAIRPERSON MILLER: Okay. And so, if  
10 you want me to review any of the procedure, I  
11 will. Otherwise, we can roll into it. Would you  
12 like me to review it?

13 MS. STERLING: Yeah. We should probably  
14 do.

15 MR. FERRIS: Well --

16 MS. STERLING: Yeah. No, can you review  
17 the procedure? That would be great.

18 CHAIRPERSON MILLER: All right. So first  
19 off, I will start with preliminary issues, and  
20 this is whether there are any preliminary, you  
21 know, substantive issues. Also, just to get an  
22 idea of the number of witnesses you might have.

1 And then we'll do -- after we do Applicant's  
2 opening statement, Protestant's opening  
3 statement.

4 And then the board witness will testify  
5 on his report, which you all should have. And  
6 then the Applicant's case goes first, and the  
7 Protestant's case goes after the Applicant's  
8 case, and we move to your closings. Okay?

9 MS. STERLING: Great.

10 CHAIRPERSON MILLER: If you have any  
11 questions along the way, let me know. We  
12 allocate an hour-and-a-half to each side. And  
13 that Mr. Jones has been recording the time. And  
14 the time -- you get five minutes each for  
15 opening. That doesn't go to your hour-and-a-  
16 half.

17 What goes to your hour-and-a-half are  
18 your witnesses' testimony, your direct  
19 examination, questions and answers of your own  
20 witnesses, and then your cross of the opposing  
21 parties' witnesses. And then, do you ever want  
22 to know, you know, how far along you are, you can

1 ask Mr. Jones.

2 This is a fairly straightforward case, so  
3 I don't think you're going to be bumping into  
4 your time on this one.

5 MS. STERLING: Great.

6 CHAIRPERSON MILLER: I don't know how  
7 much you will have to say on this subject. Okay.  
8 All right. So, are there any preliminary issues?

9 MS. STERLING: Yes, there are. We have a  
10 procedural matter to address. We assert that the  
11 board's original decision on this application on  
12 May 6th, 2015, to deny the application was  
13 correct. And that the Applicant's request for  
14 reconsideration was based on a section of the law  
15 that does not apply to this dispute between the  
16 applicant and SDCA.

17 That section that was cited was Section  
18 25-446.02E, which refers to enforceable  
19 provisions in a settlement agreement --  
20 unenforceable, I'm sorry -- provisions in the  
21 settlement agreement. Instead, the issue in this  
22 case is enforceable language of the settlement

1 agreement with respect to ours.

2 And the governing code section in Section  
3 25-446D2, that section limits board acceptance of  
4 an application to amend a settlement agreement by  
5 fewer than all parties only during (a) the  
6 renewal period; and (b) after four years from the  
7 date of the board's initial decision, which in  
8 this case was May 1, 2014.

9 We put this procedural matter in the form  
10 of a motion, and we have a copy for counsel and  
11 the board.

12 MR. KLINE: Madam Chair, we would move to  
13 deny and strike the motion as being untimely. It  
14 is in fact a motion for reconsideration, which,  
15 according to the board's rules, must be filed  
16 within 10 days of the entry of the order.

17 We also object to the tactics of  
18 surprise. If they have a copy of a written  
19 motion, I don't know why it wasn't served on us.

20 The same way I do not understand, despite  
21 our requests, why their exhibits were never  
22 served on us. We made a request as late as

1 yesterday and said we haven't received them.  
2 You've given a list; we've never seen them. And  
3 certainly, we're going to object if we don't  
4 receive copies.

5 And at 4:52 here on Wednesday, the date  
6 of the protest hearing that was scheduled for  
7 3:30, we have not been provided copies.

8 So, to the merits, the motion must be  
9 denied as untimely.

10 CHAIRPERSON MILLER: Okay. I --

11 MS. STERLING: We were instructed at our  
12 status --

13 MR. FERRIS: At the status hearing.

14 MS. STERLING: Right.

15 MR. FERRIS: And then subsequent meetings  
16 with Ms. Jenkins that if we wanted to present our  
17 motion that was mentioned at the status, we could  
18 do it as a preliminary measure at the protest  
19 hearing.

20 CHAIRPERSON MILLER: Okay. Okay. So  
21 you've made it. And I would say this. I did  
22 advise you personally at the status when you

1 raised it at the status that you should put it in  
2 writing and file it with the board. And you  
3 chose not to.

4 And so, now you're at a point where,  
5 okay, you've raised it orally. We do hear oral  
6 motions. But as Mr. Kline said, they don't have  
7 a chance to really read it. And they are  
8 disadvantaged.

9 However, this is a very basic issue, and  
10 I would say that the board made a decision when  
11 it placarded, when it chose to placard, that this  
12 was not an amendment issue to terminate -- this  
13 was not an amendment issue to the settlement  
14 agreement. And that's why we chose to placard  
15 it. So --

16 MS. STERLING: They said there's nothing  
17 in the transcript with that justification for  
18 placard.

19 CHAIRPERSON MILLER: Well, no, it's not  
20 in the transcript. We chose to placard it. If  
21 we saw that it did raise an issue of an amendment  
22 to the settlement agreement, we would not have

1 placarded it. No. But you knew what the  
2 decision was. And as Mr. Kline said, the normal  
3 time to respond, to reconsider is 10 days.

4 But in any event, I would suggest that --  
5 I would move to deny it based on its merits in  
6 any event, that the board has come to the  
7 conclusion that this change in hours is not  
8 prohibited by the settlement agreement. So I  
9 would ask for a second to deny, and if there are  
10 any other comments, board members can feel free  
11 to make them.

12 [Pause.]

13 CHAIRPERSON MILLER: So I would move to  
14 deny the motion. Do I have a second?

15 MR. SILVERSTEIN: Second.

16 MR. ALBERTI: I'm just going to comment.

17 CHAIRPERSON MILLER: Okay.

18 MR. ALBERTI: I was actually in the  
19 minority on the original decision. I had opposed  
20 the board's decision. However, I'm going to deny  
21 this motion based on timeliness. The parties  
22 have had ample time to provide a written order

1 and supply copies to the opposing party, and they  
2 have chosen not to. There is no excuse for that.  
3 So I'm going to deny this based on timeliness.

4 CHAIRPERSON MILLER: Any other comments?

5 [No audible response.]

6 Okay. There's a motion that's been  
7 seconded. All those in favor, say Aye.

8 [Chorus of Ayes.]

9 CHAIRPERSON MILLER: All those opposed?

10 [No audible response.]

11 CHAIRPERSON MILLER: All those  
12 abstaining?

13 [No audible response.]

14 CHAIRPERSON MILLER: Okay. Then I think  
15 it's unanimous to deny, 6-0-0. That means we're  
16 going forward with this hearing on what your  
17 concern is.

18 MS. STERLING: Then we have to ask for a  
19 continuance on this ruling in order to hire  
20 counsel for purposes of litigating a hearing on  
21 the motion.

22 CHAIRPERSON MILLER: Wow. When did you

1 figure that out? You just assumed you were going  
2 to succeed?

3 MS. STERLING: It's in the regulation.

4 CHAIRPERSON MILLER: What is?

5 MS. STERLING: It's clear in the  
6 regulation that any amendment to a settlement  
7 agreement --

8 CHAIRPERSON MILLER: This is not an  
9 amendment to a settlement agreement. That's what  
10 we ruled.

11 MR. FERRIS: Could the Chair explain to  
12 us why a change in the hours of operation would  
13 not constitute an amendment to a settlement  
14 agreement?

15 MR. ALBERTI: Madam Chair, we're not here  
16 to argue the motion. I would suggest that we  
17 hear any objections that Mr. Kline has to a  
18 continuance and rule on the continuance.

19 MR. KLINE: Madam Chair, we would  
20 certainly object to a continuance. We're here  
21 ready to go forward. The parties have known that  
22 this case is scheduled for hearing for several

1 weeks, if not months. As has been indicated on  
2 the record, they were advised to put a motion in  
3 writing at least twice, apparently once by the  
4 Chair at the status, and during the mediation  
5 conference as well.

6 Why it is that this particular party  
7 insists on 11th hour surprises without notice to  
8 Applicants is beyond me. And it's happened time  
9 and time and time again. And I think they need  
10 to play by the rules. And they seem to be  
11 unwilling to.

12 And in this case, we're ready to go.  
13 This Applicant will be prejudiced if this is  
14 delayed. There are financial and fiscal reasons  
15 for the request that's been made to you to extend  
16 the hours. And a delay in hearing it will be a  
17 potential delay in approval.

18 And we don't believe good cause has been  
19 shown, other than, "We're showing up and, oh, our  
20 motion was denied, and now we've decided we're  
21 going to hire counsel."

22 CHAIRPERSON MILLER: Okay. I really --

1 other board members have comments. But really,  
2 this issue was on your minds weeks ago. And if  
3 you thought you needed to delay the hearing  
4 unless you get counsel, you should have requested  
5 that weeks ago.

6 I mean, it is just too unfair to an  
7 applicant to just walk in and say, "Oh, I lost on  
8 this motion. I want to postpone the hearing."  
9 So I think you have a choice. We can vote -- did  
10 you make a motion for us to vote on this?

11 [Pause.]

12 MR. ALBERTI: Well, they made a motion.

13 CHAIRPERSON MILLER: Is that what you  
14 did?

15 MS. STERLING: I guess we did.

16 CHAIRPERSON MILLER: Is that what you  
17 would like?

18 MS. STERLING: You're talking to non-  
19 lawyers, so. That's always the crux of the  
20 problems.

21 MR. ALBERTI: Treat it as a motion.

22 [Chorus of "It was a motion."]

1 CHAIRPERSON MILLER: Okay. Motion for a  
2 continuance. I would move that we deny the  
3 motion for a continuance. I think it's  
4 prejudicial to the Applicant, and I don't think  
5 that there is good cause for it.

6 MR. SILVERSTEIN: I second it.

7 CHAIRPERSON MILLER: Any other comments?  
8 [No audible response.]

9 CHAIRPERSON MILLER: All those in favor,  
10 say Aye.

11 [Chorus of Ayes.]

12 CHAIRPERSON MILLER: All those opposed?  
13 [No audible response.]

14 CHAIRPERSON MILLER: All those  
15 abstaining?

16 [No audible response.]

17 CHAIRPERSON MILLER: Motion passes.

18 I would say this. You have been to our  
19 hearings before. You don't necessarily have to  
20 be a lawyer to effectively participate. And I'm  
21 happy to let you know when you're supposed to do  
22 what if you have questions about that. But it's

1 your choice at this point whether to go forward  
2 or not.

3 [Pause.]

4 MS. STERLING: Great. We'll proceed.  
5 That's your rule, apparently.

6 CHAIRPERSON MILLER: All right. And the  
7 Applicant has the burden of proof to show that  
8 the change is appropriate. Okay. How many  
9 witnesses do you all have?

10 MR. KLINE: We will have at most two,  
11 likely one.

12 CHAIRPERSON MILLER: Okay. And  
13 Protestants?

14 MS. STERLING: One.

15 CHAIRPERSON MILLER: Okay. All right.  
16 Any other preliminary issues?

17 [No audible response.]

18 CHAIRPERSON MILLER: Okay. Mr. Kline,  
19 are you ready to make an opening statement?

20 MR. KLINE: Yes, I am. Thank you.

21 CHAIRPERSON MILLER: All right.

22 OPENING STATEMENT

1           MR. KLINE: Good late-afternoon, evening,  
2 members of the board. I'm Andrew Kline, and I'm  
3 here on behalf of Good Essen-U Street, trading as  
4 Tico. We believe this is a pretty  
5 straightforward case. This is a request by a  
6 restaurant licensee to extend its hours of  
7 operation on Sunday through Thursday nights from  
8 midnight to 2:00 a.m.

9           The evidence will show that this Licensee  
10 is a restaurant without an entertainment  
11 endorsement, without outside seating. It is  
12 operated by a renowned chef who owns a number of  
13 restaurant concepts, both in the Boston area and  
14 two, soon to be three, in the District of  
15 Columbia.

16           The evidence will show that the  
17 establishment is unquestionably centered around  
18 food and that the need for the later hours is  
19 triggered by a desire to accommodate diners  
20 living in and visiting the 14th and U Street  
21 area, which is, of course, the Arts Overlay, one  
22 of the purposes of which is to promote late-night

1 activity.

2 We believe the evidence will demonstrate  
3 very clearly that the Applicant has delivered in  
4 opening its restaurant exactly what was promised  
5 to these Protestants when they originally  
6 protested the license application, and that there  
7 will be no change in the way the establishment is  
8 operated.

9 And at the conclusion of the hearing, we  
10 will respectfully request that you grant the  
11 approval of the later hours. Thank you.

12 CHAIRPERSON MILLER: Okay. Thank you.

13 Do the Protestants have an opening  
14 statement?

15 OPENING STATEMENT

16 MS. STERLING: Unfortunately, we're not  
17 particularly happy to be here just 10 months  
18 after we signed a settlement agreement with the  
19 Applicant. Unfortunately, this is another bait-  
20 and-switch that we constantly see that the  
21 Protestants are put in the position of having to  
22 constantly be dragged back into ABRA to readdress

1 what we would have thought would have been an  
2 agreement between the parties.

3 The amount of time that we spend doing  
4 this is significant. Substantial changes have  
5 been on a regular basis, and we are always out-  
6 resourced by applicants.

7 So we had hoped that at least a statement  
8 agreement would stand for the duration until  
9 renewal, when it was again up for  
10 reconsideration. So, we're not happy about being  
11 here, but we will move forward on the merits.

12 CHAIRPERSON MILLER: Okay. Thank you.

13 So now, I think that we are ready for our  
14 board witness, Mr. Ghenene. No one is here from  
15 the ANC.

16 MR. KLINE: No, the ANC was actually --

17 CHAIRPERSON MILLER: They're not a party.

18 MR. KLINE: They're not a party.

19 CHAIRPERSON MILLER: Yeah. Okay.

20 Do you swear to tell the truth, the whole  
21 truth, and nothing but the truth?

22 MR. GHENENE: Yes, ma'am.

1 CHAIRPERSON MILLER: Okay.

2 Whereupon,

3 ABYIE GHENENE

4 was called as a witness and, having been first  
5 duty sworn, was examined and testified as  
6 follows:

7 CHAIRPERSON MILLER: So, I understand  
8 that you did a report on -- oh, would you spell  
9 your name for the court reporter?

10 THE WITNESS: Sure. It's A-b-y-i-e, last  
11 name G-h-e-n-e-n-e.

12 CHAIRPERSON MILLER: So, you did a  
13 report, a written report on this case.

14 THE WITNESS: Yes, ma'am.

15 CHAIRPERSON MILLER: Can you discuss the  
16 highlights of that report?

17 THE WITNESS: Sure. And as I've done in  
18 the past, I'm not going to just read through it  
19 because it's all there for you guys to read.

20 CHAIRPERSON MILLER: Right.

21 THE WITNESS: There's really not much to  
22 it this time around.

1 CHAIRPERSON MILLER: Okay.

2 THE WITNESS: I was assigned this case,  
3 this protest, on Friday, October 9th. And pretty  
4 much from that point to current, I've monitored  
5 the establishment, along with other ABRA  
6 investigators. And given its location, it's  
7 half-a-block from our office. So, in some  
8 respects, whether you realize it or not, you're  
9 constantly monitoring.

10 Substantial change, according to the roll  
11 call documents being protested by one group, as  
12 represented here, the Shaw Dupont Citizens  
13 Alliance. And on Wednesday, October 14th, I  
14 emailed Mr. Ferris using the only contact  
15 information included on the roll call documents  
16 results. And as of the drafting of this report,  
17 October 21st, I had not received any sort of  
18 response.

19 According to roll call documents, the  
20 protest issue is the adverse impact on peace,  
21 order, and quiet. I've listed zoning information  
22 for the board's reference there. There's

1 approximately -- the copy didn't come out all  
2 that well. But there's approximately, I think,  
3 61 ABC licensed establishments in a 1,200-foot  
4 radius of the Licensee.

5 There are, I believe it's just the one  
6 daycare or child care center actually inside the  
7 Reeves Center that's within -- I think it's --  
8 let me give you the exact -- it's about 94 feet  
9 away from the Licensee.

10 Tico is a restaurant that's located in  
11 the bottom portion of a residential mixed-use  
12 building. It's actually on 14th Street, with U  
13 Street to the north and T Street to the south.  
14 There's limited parking available on either side  
15 of 14th Street. From my observations, most  
16 people are walking to the establishment.

17 The setup inside of Tico, there's a main  
18 dining room, small bar area, and the kitchen. As  
19 was discussed earlier, their current hours are  
20 from 7:00 to 12:00, that's Sunday through  
21 Thursday, and 8:00 a.m. to 12:00 for the hours of  
22 consumption for the same time frame. And what

1 they're seeking to do is increase that to 2:00  
2 a.m. Sunday through Thursday.

3           So I visited the establishment for the  
4 purposes of this investigation -- or this report,  
5 I'm sorry -- on multiple occasions. And whether  
6 it was night or day, my results were pretty much  
7 the same.

8           It's heavy pedestrian activity, heavy  
9 vehicular activity, lots of noise, but not  
10 emanating from the establishment, just noise in  
11 general. I mean, it's very, very -- as you guys  
12 know, it's a very busy area.

13           I did have an opportunity to speak with  
14 Tico's General Manager, Adria, and I'll do the  
15 best I can pronouncing her last name, but I  
16 believe it's Ms. Marchegiano. Ms. Marchegiano  
17 stated that Tico is a neighborhood restaurant and  
18 that the proposed change of hours were  
19 specifically desired to remain competitive with  
20 the neighboring establishments that offered full  
21 hours.

22           She also stated that she wanted to make

1 sure -- or the company, the Licensee wanted to  
2 make sure that they could service their customers  
3 that were located in the building. A lot of the  
4 people, I guess residents of the building  
5 upstairs from them, frequent the establishment  
6 and wanted to perhaps drop past for a cocktail in  
7 the later hours of the evening.

8 Ms. Marchegiano stated that Tico already  
9 has some soundproofing installed in the  
10 establishment, and that music is always playing  
11 at a lower level. And as I believe I attached  
12 it, but Tico does not have an entertainment  
13 endorsement, nor from what I've seen from being  
14 inside do they have an area designated for  
15 dancing or anything like that.

16 And while I was there, I verified with  
17 Ms. Marchegiano, said, "Is this the level that  
18 the music -- will the music ever be at a higher  
19 level than it is right now?" And she said no.  
20 So we were able have a conversation standing  
21 about four or five feet from one another without  
22 having to raise our voices.

1           I asked Ms. Marchegiano -- and it's not  
2 in my report, but I remember asking her if at any  
3 point they'd want to offer a DJ, and she said,  
4 "No, that's not it. We're a restaurant. We're  
5 not a nightclub."

6           I reviewed the noise task force notes for  
7 the period October 9th, 2014, through October  
8 9th, 2015, and there were no noise complaints  
9 lodged. I was unable to get any of the MPD calls  
10 service. And that's about it.

11           CHAIRPERSON MILLER: All right. Thank  
12 you. Do you recall when the restaurant opened?

13           THE WITNESS: No, ma'am.

14           CHAIRPERSON MILLER: Okay. But it hasn't  
15 been open that long?

16           THE WITNESS: No, ma'am.

17           CHAIRPERSON MILLER: Did they have any  
18 violations that you're aware of? I haven't seen  
19 any.

20           THE WITNESS: I believe, according to the  
21 investigative history, there seem to be, in 2014,  
22 looked like there was an issue with their

1 placards not being posted.

2 CHAIRPERSON MILLER: Oh, okay.

3 THE WITNESS: And they had to be re-  
4 placarded. And then looks like they received a  
5 citation in August for no ABC manager.

6 CHAIRPERSON MILLER: Sorry, what?

7 THE WITNESS: No ABC manager on duty.

8 CHAIRPERSON MILLER: Oh, no ABC manager.

9 THE WITNESS: Yes, ma'am.

10 CHAIRPERSON MILLER: Okay. Okay.

11 Others?

12 [No audible response.]

13 CHAIRPERSON MILLER: Okay. Does  
14 Applicant have any questions?

15 MR. KLINE: Yes, just a few.

16 EXAMINATION BY THE APPLICANT

17 BY MR. KLINE:

18 Q Good evening, Investigator.

19 A Yes, sir.

20 Q So, in terms of this restaurant, how many  
21 times did you visit the interior?

22 A During the course of this investigation?

1 Q Yes.

2 A Probably two to three times.

3 Q Okay. And have you otherwise been in the  
4 establishment?

5 A Yes.

6 Q Can you describe for the board the  
7 character, the clientele, in terms of what types  
8 of activities they're engaged in? What's the  
9 function of the place? What's the feel of the  
10 place?

11 A I mean, it's a restaurant. It's probably  
12 in the later hours, people are still eating. But  
13 it's just a casual kind of -- casual feel, you  
14 know. The demographics probably early 20s all  
15 the way up. It's not loud on the inside, what I  
16 would consider loud, on the inside as far as  
17 people talking.

18 Like I said, I was able to have a  
19 conversation with the GM on one occasion with  
20 multiple servers and managers and bartenders  
21 without having to raise my voice or get close.  
22 We had conversations regularly.

1 Q And you mentioned that there's just a  
2 small bar in the establishment, correct?

3 A Yes, sir. I believe -- I'm taking a  
4 guess, but I believe there's probably 10 to 12  
5 seats at the bar.

6 Q Okay. And there's an open kitchen?

7 A Yes, sir.

8 Q So is the emphasis very much on food?

9 A Yes, sir.

10 Q All right. So, it's not your local  
11 watering hole, is it?

12 A I wouldn't -- I mean, they have a bar and  
13 they have, certainly, a clientele that they're  
14 consuming alcohol.

15 Q Right.

16 A But the majority of the space is  
17 dedicated to food and tables. Yes.

18 Q And you're not aware of any disturbances  
19 from patrons which would have violated peace,  
20 order, and quiet in any way, are you?

21 A No.

22 Q You're not aware of any other

1 circumstances that would fall under the rubric of  
2 peace, order, and quiet, or anything else  
3 relating to the appropriateness standards under  
4 the Statute?

5 A No.

6 MR. KLINE: Okay. That's all the  
7 questions I have for the Witness at this time.

8 CHAIRPERSON MILLER: Okay.

9 Protestant?

10 MS. STERLING: Thank you.

11 EXAMINATION BY THE PROTESTANT

12 BY MS. STERLING:

13 Q In your statement you said that the  
14 grounds for protest were peace, order, and quiet.  
15 You did not list the other grounds on the  
16 original protest letter. Was that just an  
17 oversight or --

18 A No. According to the ABRA roll call  
19 results, there's only one protest issue, a  
20 protest issue stated. And that's peace, order,  
21 and quiet.

22 MS. STERLING: Okay. I'd like to enter

1 into evidence the original letter of protest that  
2 should be in the ABRA records already. It lists  
3 additional issues of protest, adverse impact on  
4 residential parking needs, vehicular pedestrian  
5 safety, overconcentration of licensed  
6 establishments, will affect the locality portion  
7 of the section where the establishment is  
8 located.

9 CHAIRPERSON MILLER: That's part of your  
10 case report, is it not?

11 THE WITNESS: Yep. Yes, ma'am.

12 CHAIRPERSON MILLER: Yeah. Okay.

13 MS. STERLING: So the grounds for protest  
14 are all of those, correct?

15 MR. FERRIS: Actually, according to the  
16 copy of the report we have, it's limited to --

17 MR. JONES: Whoa, whoa, whoa. You're  
18 letting both of them talk?

19 CHAIRPERSON MILLER: What?

20 MR. JONES: We're letting everybody  
21 speak? Isn't there a designated individual who  
22 is supposed to be speaking?

1 [Cross-talk.]

2 MS. STERLING: Yeah. Sorry. That's our  
3 mistake.

4 MR. FERRIS: I apologize.

5 [Pause.]

6 MS. STERLING: Yeah. The report only  
7 lists peace, order, and quiet. But the original  
8 filing was for all the items. So, just I wanted  
9 to make sure that that's part of the record,  
10 because that's also part of the case.

11 MR. ALBERTI: I will point out that  
12 that's not the decision of the investigator.  
13 That is an issue that you should take up with  
14 this board. And it can be clarified by the  
15 Chair.

16 MS. STERLING: Great.

17 MR. ALBERTI: But that's not an issue for  
18 the investigator to settle. But you've made your  
19 point.

20 MS. STERLING: Okay. No, we were  
21 wondering why it was missing on the report. So.

22 MR. ALBERTI: Okay.

1           CHAIRPERSON MILLER: Okay. And I'm not  
2 sure, you know, how that is going to be resolved.  
3 But I'm going to give you leeway if you want to  
4 ask him a question.

5           MS. STERLING: Yes, so we've got a few  
6 questions.

7           BY MS. STERLING:

8           Q     You indicated that there are currently  
9 about 61 licensed establishments within 1,200  
10 feet of the location. Can you tell me  
11 approximately how many alcohol seats are in those  
12 61 establishment?

13           CHAIRPERSON MILLER: Okay. Let me -- I'm  
14 sorry. I want to backtrack a little bit, because  
15 I was hesitant because I don't have before me  
16 whatever roll call decision there was.

17                     But I hesitate because if you're going to  
18 overconcentration, I'm not really sure that that  
19 is a factor under this protest, under the  
20 Statute, for, you know, what you can protest  
21 about, because I'm not sure how overconcentration  
22 -- I'm not sure how an additional couple of hours

1 would go to overconcentration.

2 [Pause.]

3 CHAIRPERSON MILLER: Is it 25-313?

4 Three-fourteen. Okay. It's not in there, is it?

5 [Pause, parties located documents.]

6 MR. KLINE: For a new application only  
7 overconcentration.

8 CHAIRPERSON MILLER: Yeah, okay. So it's  
9 for a new application. So that's probably why it  
10 got struck out at roll call because it's not  
11 under the Statute for substantial change.

12 MS. STERLING: Great. And we believe it  
13 still goes to peace, order, and quiet, because  
14 again it's the volume of people. It's the peace,  
15 order, and quiet issue.

16 CHAIRPERSON MILLER: Okay.

17 BY MS. STERLING:

18 Q So do you have any approximation of the  
19 number of alcohol seats in the 61 establishments  
20 that you mentioned?

21 A No, ma'am.

22 Q And do you know the number of alcohol

1 seats in this establishment that you -- that's  
2 part of the investigative report?

3 A No, ma'am.

4 Q And reviewing your visits, the majority  
5 of them were during the middle of the day. The  
6 issue in question, of course, is increased hours  
7 in the evening. And so, can you tell me why most  
8 of the visits were not done at the time where  
9 concerns could have been observed, the concerns  
10 of the Protestants could have been observed?

11 A Sure. Well, there's two things. First  
12 is our rotating schedule doesn't allow me to  
13 choose when I work. So one week I work days; one  
14 week I work nights. So that's the first, that's  
15 the easiest explanation.

16 The next explanation or the next answer I  
17 can give you is that, you know, this Tico is half  
18 a block from where we work. So it's something  
19 that's constantly being observed. I entered, I  
20 believe, five or six specific dates and times for  
21 visiting the premises. But there were far more  
22 than that.

1           Q     Well, again, the concern is that  
2 additional hours, that was our question, is why  
3 there was so much investigation during the middle  
4 of the day. So then, in your report, there was  
5 no mention of a valet staging zone. Is there  
6 currently one there?

7           A     I'm unaware.

8           Q     Okay.

9           CHAIRPERSON MILLER: I'm sorry. What was  
10 the question?

11           MS. STERLING: The valet staging zone  
12 that's in the front of the restaurant is not in  
13 the report.

14           CHAIRPERSON MILLER: Oh. Thank you.

15           BY MS. STERLING:

16           Q     You also mentioned that the issue --  
17 let's see. You mentioned that they called  
18 themselves a neighborhood restaurant. But they  
19 do have a valet staging zone, which would  
20 indicate that there would be additional  
21 pedestrian and vehicle traffic in the area.

22                   So now, our question, second part of that

1 question is the justification that was presented  
2 to you, which is in your report, is that they  
3 need to be competitive with neighboring  
4 establishments.

5 A Okay.

6 Q Right? Can you tell us why that would be  
7 important to be in the report, since the ABRA  
8 does not have any interest in worrying about  
9 competitive issues for applicants?

10 A I'm not sure I understand what your  
11 question is.

12 Q You've included bunches -- a number of  
13 pieces of information that appear not to be  
14 relevant to the issue at hand. And that happens  
15 to be one of them. So, as we constantly hear  
16 about competitive issues, that's what we're  
17 hearing here now, that's really not an issue that  
18 the ABC Board addresses. So why would that be  
19 something included in your report?

20 A Sure. My role in this investigation and  
21 most investigations is not to involve my opinion.  
22 It's to record the opinion of other people. So

1 that's what I did. They offered information on  
2 what they are, represented themselves as a  
3 neighborhood restaurant, told me that this is  
4 what they wanted to do to remain competitive, and  
5 that's what I recorded.

6 Q Okay. Thank you.

7 A Sure.

8 Q Our only other question is regarding the  
9 heavy pedestrian traffic --

10 A Yes, ma'am.

11 Q -- which contributes to the peace, order,  
12 quiet issue. And you were there, I think you  
13 said, one evening 11 -- Friday between -- one  
14 evening-hour visit, late evening-hour visit, in  
15 your report? And the pedestrian traffic was --  
16 can you explain the level of pedestrian traffic  
17 then?

18 A Yes. It's like I wrote, just heavy, real  
19 heavy.

20 Q Heavy?

21 A Um-hm. Yes, ma'am.

22 Q So, real heavy. So people were on the

1 sidewalk, in the road?

2 A The sidewalk, yes, ma'am.

3 Q Okay. Thank you.

4 A Sure.

5 CHAIRPERSON MILLER: Thank you very much.

6 THE WITNESS: No problem.

7 [The Witness was excused.]

8 CHAIRPERSON MILLER: Is the Applicant  
9 ready?

10 MR. KLINE: Ready.

11 CHAIRPERSON MILLER: All right.

12 MR. KLINE: Call to the stand Steve Uhr.

13 MR. UHR: Steve Uhr.

14 MR. KLINE: Uhr, Uhr. I stand corrected;  
15 I apologize.

16 [Laughter.]

17 CHAIRPERSON MILLER: Do you swear to tell  
18 the truth, the whole truth, nothing but the  
19 truth?

20 MR. UHR: Yes.

21 CHAIRPERSON MILLER: Thank you. Okay.

22 DIRECT EXAMINATION

1 BY MR. KLINE:

2 Q Please state your name for the record.

3 A Steve Uhr.

4 Q Steve Uhr. Thank you, Mr. Uhr. And what  
5 is your title, because I think I had it wrong  
6 when I introduced you.

7 A Regional Director of Operations.

8 Q All right. And when you say "regional  
9 director of operations," that sounds like you  
10 have responsibility for more than one restaurant?

11 A Yes. We opened a second restaurant on  
12 July 12th in the Dupont area.

13 Q And what's that called?

14 A It's called The Riggsby. It's in the  
15 Carlyle Hotel.

16 Q All right. Now, tell the board -- give  
17 the board some background about this  
18 establishment. Who owns it? What's it all  
19 about?

20 A The chef and owner is Michael Sclow, a  
21 highly regarded, award-winning chef from New  
22 England. Michael was born and raised in

1 Brooklyn. His stepfather is from this area. His  
2 sister went to George Washington. Spent quite a  
3 bit of time here as a youth.

4           When leaving Brooklyn, he decided -- you  
5 know, had a decision to go north or south and  
6 ended up going to Boston and established many  
7 highly regarded restaurants in the Boston area.  
8 We still have three.

9           And there was always an interest in  
10 growing our company. D.C. was an area where  
11 there were ties from when he was younger and had  
12 a great opportunity to open a restaurant at this  
13 location with -- well, JBG was the original in  
14 another building, with a longstanding  
15 relationship with them, an opportunity to open  
16 here in Washington.

17       Q     Okay. Now, you are now the Regional  
18 Director of Operations, but did you have  
19 involvement in the initial opening of this  
20 business?

21       A     Yes, absolutely.

22       Q     What was your involvement?

1           A     Everything.  I came onboard a little more  
2     than two years ago.  Tico opened last June.  So  
3     when JBG delivered the space to us, it was  
4     nothing but gravel.  So, I mean, everything from  
5     hiring to training to a little bit in the  
6     licensing.  I was part of the negotiations with  
7     the SDCA and was the general manager until we got  
8     close to opening our second establishment.

9           Q     Okay.  So you were the opening general  
10    manager?

11          A     Yes.

12          Q     And you were the general manager until  
13    when?

14          A     July of '15, until we opened The Riggsby.

15          Q     July of '15, so just three or four months  
16    ago?

17          A     Um-hm.

18          Q     And you continue to have presence in that  
19    restaurant?

20          A     I do.  We promoted our current general  
21    manager, Adria -- been with us.  She started with  
22    us last July 14.  And I continue to work closely

1 with her on a daily basis.

2 Q Now, what's your background?

3 A I've been in the restaurant business for  
4 about 20 years. Started out as a dishwasher and  
5 a cook, bartended a little bit, got into  
6 management for Starr Restaurants -- was probably  
7 my first big management job. That was in 2001.

8 Q And they're out of Philadelphia?

9 A Yes. They own le Diplomate here.

10 Q On 14th Street?

11 A Um-hm.

12 Q Okay.

13 A I was with them for about five years, and  
14 I opened three restaurants. I went to --  
15 unfortunately, I lost my father about eight years  
16 ago -- ten years ago, actually now, and went to  
17 Atlantic City and worked with Wolfgang Puck and  
18 Susanna Foo, both Beard Award-winning chefs, at  
19 the Borgata.

20 And then came here to D.C. about eight  
21 years and was the General Manager at Zaytinya,  
22 which is a Jose Andres restaurant; J and G

1 Steakhouse; and Blue Duck Tavern before I -- and  
2 then actually, and then opened with Diplomate as  
3 the Beverage Manager and then started working  
4 with Michael a little more than two years ago.

5 Q So, all of the places that you've worked  
6 have in common that they are restaurants --

7 A Restaurants. Um-hm.

8 Q Not nightclubs, not bars --

9 A Correct.

10 Q -- not taverns, correct?

11 A They all do serve alcohol, but none of  
12 them are nightclubs or lounges or anything like  
13 that.

14 Q Okay. And most of them predominantly are  
15 driven by a chef, in some cases known, in some  
16 cases even more well known, correct?

17 A I've been very fortunate to work with  
18 some really talented culinarians. Wolfgang Puck,  
19 Morimoto, Jose Andres, Mike Isabella, Michael.  
20 It's been, you know -- I mean, I consider myself  
21 a decent cook, but obviously, compared to them  
22 it's not very good.

1 [Laughter.]

2 BY MR. KLINE:

3 Q And so, when you opened this restaurant,  
4 you worked with Michael in the opening of the  
5 restaurant?

6 A Um-hm.

7 Q And he was very much involved also,  
8 right?

9 A Very much involved, from everything from  
10 menu development to the beverage program. I  
11 mean, even the music. The physical space, he's  
12 very involved in. His wife did most of the art  
13 in the restaurant. We worked with a company  
14 called Decoustics to install sound absorption  
15 material to make sure that, while we have audible  
16 music, that people can have a normal conversation  
17 without having to elevate their voices.

18 It's very full -- I mean, every aspect  
19 from soup to nuts, absolutely.

20 Q And that's very important to Michael,  
21 isn't it, in terms of -- we read Tom Sietsema's  
22 column in the Sunday magazine section, and he

1 gives a decibel level. Is that something that's  
2 of particular concern to Michael Sclow?

3 A The audible? Well, audible music  
4 certainly is because it creates --

5 MS. STERLING: I think I should be  
6 objecting to that question.

7 CHAIRPERSON MILLER: Why is that? Why is  
8 that?

9 MS. STERLING: Because it's hearsay that  
10 somebody else is saying, correct? You're  
11 speculating as to what Michael --

12 MR. KLINE: I'll withdraw it and ask it  
13 another way.

14 CHAIRPERSON MILLER: Okay. All right.

15 [Cross-talk.]

16 MS. STERLING: Sorry. I'm not sure if I  
17 am supposed to be objecting or not.

18 CHAIRPERSON MILLER: That's okay. But I  
19 just want to tell you that, you know, these are  
20 administrative hearings. They're not as strict  
21 as court cases. And so we do admit hearsay. And  
22 it's just sometimes we question, you know, maybe

1 how reliable they are. And if they're really  
2 prejudicial, then we won't let it in. But if  
3 it's --

4 THE WITNESS: What I can tell you is --

5 MR. KLINE: Wait.

6 THE WITNESS: I'm sorry.

7 CHAIRPERSON MILLER: Just so you  
8 understand.

9 MS. STERLING: Okay. Thank you for  
10 clarifying.

11 CHAIRPERSON MILLER: Okay.

12 BY MR. KLINE:

13 Q All right. So, I mean, you were involved  
14 in the opening of this restaurant from concept to  
15 opening, correct?

16 A The concept was already established. But  
17 from, you know, everything else. We have a Tico  
18 in Boston, which has also been a successful  
19 restaurant.

20 Q Okay. But in terms of execution of that  
21 concept here --

22 A Um-hm. Absolutely.

1 Q -- from day one, you were involved,  
2 right?

3 A Yes.

4 Q And you worked closely with Michael?

5 A Um-hm.

6 Q And you understand what his vision is and  
7 what his concept is for a hospitality  
8 establishment?

9 A Yes.

10 Q All right. With that knowledge, you  
11 certainly know how he feels about acoustics in  
12 his restaurants, correct?

13 A Yes.

14 Q And that's something that's particularly  
15 important to him?

16 A It's very important. We have spent, I  
17 mean, upwards of six figures to put soundproofing  
18 into the restaurant, both with an acoustical  
19 ceiling and the tin ceiling that we have, all are  
20 perforated with about 1,000 perforations in each  
21 tile. And there's sound absorption material  
22 above them as well.

1 Q And the purpose of that, I think you said  
2 before, but just so we're clear. The purpose of  
3 that is what?

4 A So we can have audible music, but you and  
5 I can have a conversation as if it's silent.

6 Q And that tends to keep the noise level in  
7 the establishment down, doesn't it?

8 A Absolutely. In addition -- I mean, JBJ  
9 has built a lot of buildings here, and they also  
10 do some soundproofing. But we wanted to go above  
11 and beyond that.

12 Q Okay. Now, in terms of the style of the  
13 restaurant, what kind of food do you serve there?  
14 What do we have? We've got tacos? We've got  
15 chicken? What do we have?

16 A We do have tacos and chicken.

17 [Laughter.]

18 THE WITNESS: We have, it's an American  
19 restaurant with some Latin influence. So while  
20 nothing is really authentic, it's flavorful.  
21 It's fun. It's approachable. We have small  
22 plates, ceviches, tacos, entrees.

1 Q Let's talk for a minute about the small  
2 plates. That's pretty prevalent in the  
3 restaurant, isn't it?

4 A Um-hm.

5 Q And what is that --

6 A It's about 45 items on the menu. And  
7 probably 25 are small plates, or so.

8 Q Okay.

9 A Somewhere in that neighborhood.

10 MS. STERLING: We'd be glad to stipulate  
11 that it's a fabulous restaurant and everybody  
12 loves it.

13 MR. KLINE: Well, thank you. We  
14 appreciate that.

15 MS. STERLING: If it helps to move along  
16 some of these questions.

17 MR. KLINE: No, I mean, I appreciate  
18 that. But we want the board to get -- no pun  
19 intended -- a flavor of what this place is about,  
20 because we think it has bearing on the issues  
21 that are before the board.

22 CHAIRPERSON MILLER: Okay.

1 BY MR. KLINE:

2 Q Now, in terms of these small plates, does  
3 that influence how your diners behave in terms of  
4 how much time they spend in the restaurant and  
5 what it's like as a dining experience?

6 A Absolutely. Most people do opt for the  
7 small plates. And more times than not, people  
8 will just kind of sit and nosh and have a  
9 cocktail and nosh some more, and then nosh some  
10 more. It's not a traditional appetizer-entree-  
11 dessert, you know, going your way kind of.

12 Q So they're not in and out? Is that what  
13 I'm hearing?

14 A Yeah.

15 Q And in terms of --

16 A Sometimes it's detrimental that they're  
17 not in and out, because there's more people that  
18 we would like to take care of.

19 Q Okay. Detrimental to you?

20 A Yes, detrimental to us.

21 [Laughter.]

22 BY MR. KLINE:

1           Q     I got it.  Okay.  Now, in terms of your  
2 clientele, who -- do you have a sense as to who  
3 they are?

4           A     We have a good sense.  I think we get a  
5 lot of people from the neighborhood.  We have a  
6 lot of people that come down from the Louis,  
7 which is the building above us, the residential  
8 building, and the Harper as well, across the  
9 street.

10          Q     Do you see a lot of them on a regular  
11 basis?

12          A     We do.  Some of our best regulars are  
13 people that live upstairs.

14          Q     And have they expressed a desire that you  
15 be open later?

16          A     They do.  You know, it's a younger group  
17 that doesn't necessarily have to be at work first  
18 thing the next morning.  We pride ourselves on  
19 how we treat people.  And having to close at  
20 midnight during the week, we do sometimes have to  
21 ask people to leave.  And that's not the  
22 hospitality that we are accustomed to providing.

1           And we'd like to serve them food later  
2 because there seems to be, certainly, a demand  
3 for it.

4           Q    All right. Now, do some of these people  
5 have a special affinity in terms of how they view  
6 your restaurant? Do they come in several times a  
7 week, once a month? What do you see in terms of  
8 -- in the restaurant in terms of the clientele?

9           A    Quite a few regulars, both at brunch and  
10 at dinner in the evenings, later in the evenings.  
11 Sometimes it's -- people will come in on their  
12 way out, or they will stop in on their way home.

13          Q    Okay. And it was mentioned that -- it  
14 was questioning the investigator. Do you all  
15 have valet parking there?

16          A    We do.

17          Q    Okay. And do you where those vehicles  
18 park?

19          A    They park in the bank lot, which is next  
20 to the storage unit behind the Louis building.

21          Q    Okay. And you're pretty familiar with  
22 this neighborhood, right?

1 A Um-hm.

2 Q And you're also aware that there's  
3 parking available in this building after hours?

4 A Yes. We originally -- I think when we  
5 initially started it, we offered it every night  
6 but Sunday. And because of the few cars that we  
7 were parking, we rolled it all the way back to  
8 only be a few days a week. And that was --

9 Q You rolled what back?

10 A Well, we cut the number of days back that  
11 we offered valet because there were no cars to be  
12 parked.

13 Q Oh, okay. So what did you cut it back to  
14 now?

15 A Wednesday, Thursday, Friday. I'm sorry,  
16 Wednesday, Thursday, Friday, Saturday.

17 Q And just for the record, how far is your  
18 establishment from the nearest metro station?

19 A One block.

20 Q And do you see people that visit -- or if  
21 you know, that visit your establishment that take  
22 metro?

1           A     Certainly.  And we really don't park any  
2 cars during the week.  It's just on the weekends,  
3 I think, when people are maybe coming in from  
4 Montgomery or -- you know, outside of the  
5 immediate area.

6           Q     Okay.  Do you see people come on foot,  
7 obviously?

8           A     Um-hm.

9           Q     Bikeshare?

10          A     Not as much.  Probably Uber and Metro.

11          Q     A lot of Uber?

12          A     Yeah.

13          Q     Okay.

14          A     But mostly foot, though.

15          Q     Now, in terms of when you were opening  
16 the restaurant, you said something that you were  
17 involved in the negotiations with the SDCA in  
18 terms of getting the restaurant open.  Is that  
19 correct?

20          A     Yeah.  When we were -- when we decided on  
21 the language that was going to go into the  
22 agreement with Martha Jenkins, I was present,

1 yes.

2 Q Okay. And that was related to the hours?

3 A Yes.

4 Q Now, in the agreement, you agreed to  
5 limit the hours to midnight, correct?

6 A Um-hm.

7 Q And was that less than -- or did you  
8 know, was that ideal for you for the restaurant  
9 at that point? Was that less than you expected?  
10 Why was that decision made that you would close  
11 at midnight Sunday through Thursday?

12 A Well, there's a couple of different  
13 reasons. We're a new company to this city. We  
14 wanted to prove that we were what we said, that  
15 we were first and foremost a restaurant. I think  
16 that we created the good amount of track record  
17 to prove that with, you know, 60-something  
18 percent food sales.

19 And we didn't want to delay our opening.  
20 We said, let's just get open. Let's show who we  
21 are and what we are, and then revisit it.

22 Q Okay. And then were you also sure that

1 there would be demand for later?

2 A We didn't know. But just -- we didn't  
3 know when we opened. But there certainly is.

4 Q And in doing that agreement, was it  
5 important to preserve the right to be able to  
6 apply for later hours if it became important in a  
7 short period of time?

8 A Absolutely. It was imperative, once we  
9 understood what the market was and what the  
10 demand was, absolutely.

11 Q So you got open. And you made some  
12 reference to your food sales. Do you know what  
13 your food sales are as a percentage of food and  
14 alcohol?

15 A It's about 62 percent.

16 Q Sixty-two percent?

17 A Food.

18 Q And you don't feature any entertainment,  
19 correct?

20 A No entertainment.

21 Q You don't have any outside seating?

22 A Correct.

1 Q And you're primarily a restaurant?

2 A Yes.

3 Q That serves food. And a number of your  
4 neighbors have hours later than you have; is that  
5 right?

6 A I'm pretty sure every restaurant within  
7 a, you know, few-block proximity to us have full  
8 hours, not just 2:00 during the week, but 3:00 on  
9 the weekends, which we weren't interested in.  
10 But Lupo Verde, Matchbox, Eatonville, Provision  
11 14, Bin 1301, Busboys and Poets -- I mean,  
12 there's lots of --

13 Q Lots of 14?

14 A Lots of 14. El Centro, you know, just  
15 about everybody.

16 Q Okay. And they have hours, as far as you  
17 know, full hours?

18 A Two during the week and three on the  
19 weekends, yes.

20 Q And do you consider them -- I mean,  
21 obviously, there's a lot of I think what we said,  
22 61, 62 licensed establishments in the

1 neighborhood. They're not all your direct  
2 competitors, are they?

3 A No, not all of them. But I mean, Lupo  
4 Verde is also a restaurant. El Centro is also a  
5 restaurant that serves small plates. Masa 14 is  
6 a restaurant that serves small plates. Kapnos,  
7 they have full hours. They're a restaurant that  
8 serves small plates. So quite a few of them are  
9 competition.

10 Q All right. Now, when we did the  
11 agreement, the agreement was entered into, you  
12 were the GM. And did you do anything to assure  
13 the Protestants that any of their problems would  
14 be addressed in the event that they had any?

15 A Absolutely. My cell phone number and my  
16 email address is in the agreement as the point of  
17 contact if there are any issues.

18 Q Okay. And that's been the case since  
19 before the restaurant opened?

20 A Yes, since May.

21 Q And since the restaurant has opened, have  
22 you heard any complaints from anyone concerning

1 the operation of Tico?

2 A I have never received one phone call, nor  
3 one email regarding the least complaint.

4 Q Have you had occasion to speak with Ms.  
5 Sterling and Mr. Ferris about what their issues  
6 are with respect to this protest?

7 A Um-hm. Yes.

8 Q And do you know why it is that they are  
9 opposed and adamant to you opening later hours?

10 A A concern about noise and -- I don't  
11 remember the rest of the language.

12 Q But have they given you any specifics in  
13 terms of why it is that they think your  
14 establishment, restaurant, without any of the  
15 features of a nightclub, would be disturbing to  
16 them?

17 A Nothing specific.

18 Q Okay. And if there were things, has your  
19 cell phone number that's in the settlement  
20 agreement changed?

21 A It has not. I have a -- it's 4300 are  
22 the last four. I'll never give up that cell

1 phone.

2 Q Okay.

3 A 4300 are the last four numbers of my  
4 phone. So as long as I live in D.C., I'm still  
5 going to keep that number. It's a pretty special  
6 one.

7 [Laughter.]

8 BY MR. KLINE:

9 Q And if there are any complaints or there  
10 are any issues and they call you related to Tico,  
11 are you prepared to deal with those issues?

12 A Absolutely.

13 Q And if the board were to grant your  
14 request or the request of the Licensee for these  
15 later hours, are you prepared to deal with calls  
16 at 1:30 in the morning?

17 A Absolutely.

18 Q Okay. Now, you've described the  
19 restaurant, and you've described that it's a food  
20 establishment. Did it also win some sort of  
21 award after it opened?

22 A Unfortunately, we didn't win. But we

1 were nominated from the Restaurant Association  
2 for Best New Restaurant in Washington.

3 Q For Best New Restaurant?

4 A Yeah.

5 Q Okay.

6 A It was a tough group.

7 Q Yes.

8 All right. I'm going to show you a  
9 package of exhibits. We're going to walk through  
10 them pretty quickly.

11 [Counsel handed documents to Witness.]

12 BY MR. KLINE:

13 Q Why don't we just start from the  
14 beginning? And why don't you go through and  
15 identify -- look at those a minute.

16 CHAIRPERSON MILLER: Just so -- I just  
17 want to know, did you provide these documents to  
18 the Protestants ahead of time?

19 MR. KLINE: Yes. They were emailed to  
20 them last Friday.

21 CHAIRPERSON MILLER: Last Friday. Okay.

22 MS. STERLING: After the submission. But

1 we do have a question. Because you asked --  
2 somewhere there was a question about this. The  
3 instructions say to provide a list, not to  
4 provide the exhibits themselves. There's no  
5 place where it requests in the PIF's that the  
6 exhibits themselves be provided, correct?

7 CHAIRPERSON MILLER: I'm not sure about  
8 the instructions that you got in writing. I do  
9 know that when we have a status, I always say  
10 that you have to provide the exhibits as well as  
11 the exhibit form. That's my knowledge. That's  
12 my personal knowledge. I don't know what  
13 instructions you're referring to, so I can't  
14 comment on it.

15 MS. STERLING: Yeah, the instructions  
16 that we get mailed as to our responsibilities.  
17 Do you only request that you fill out and ID this  
18 list, that's it? It does not say, "Attach  
19 documents."

20 CHAIRPERSON MILLER: Okay. Do you --

21 MR. KLINE: Madam Chair, we'll get to my  
22 objections to their exhibits.

1 CHAIRPERSON MILLER: Okay.

2 MR. KLINE: Right now we're on our  
3 exhibits.

4 [Laughter.]

5 CHAIRPERSON MILLER: Okay. I just want  
6 to agree.

7 MS. STERLING: Then I guess we would need  
8 to object, because we received these after the  
9 PIF submission date.

10 CHAIRPERSON MILLER: Okay. You're not on  
11 good ground, though, to object. But okay.  
12 Because you didn't submit yours at all to him.  
13 But are you prejudiced by this?

14 MS. STERLING: Well, we don't really  
15 clearly understand the responsibilities.

16 CHAIRPERSON MILLER: Okay. All right.  
17 Well, I guess --

18 MS. STERLING: Because it's not detailed  
19 in the instructions.

20 CHAIRPERSON MILLER: It should be.

21 [Cross-talk.]

22 CHAIRPERSON MILLER: I mean, I know that

1 I articulated it.

2 MS. STERLING: That would be great.

3 Maybe a change is needed.

4 CHAIRPERSON MILLER: Maybe so, yeah. But  
5 anyway. Okay. But you submitted them last  
6 Friday?

7 MR. KLINE: I believe last Friday, yes.

8 CHAIRPERSON MILLER: Okay. I think that

9 --

10 MR. KLINE: But I was with you until nine  
11 o'clock last Wednesday. So, yes, I think they  
12 got them.

13 CHAIRPERSON MILLER: You're right.

14 [Laughter.]

15 MR. ALBERTI: That's no excuse.

16 CHAIRPERSON MILLER: Right.

17 [Laughter.]

18 CHAIRPERSON MILLER: They can be -- what  
19 I say, I know we're going to get to this later.  
20 What I say is they are not automatically  
21 excluded. They can be excluded if we find that  
22 they're prejudicial because the other side didn't

1 get notice. Okay?

2 So when you, when Mr. Kline moves to  
3 admit the exhibits, that's the time for you to  
4 object, if you have any objection. It shouldn't  
5 be just based on the fact that you got them  
6 Friday. It should be also that you're prejudiced  
7 because you didn't get it ahead of time, and why.  
8 You know, you're so surprised that you can't  
9 address them. Okay?

10 MR. KLINE: I don't think there are any  
11 big surprises here.

12 CHAIRPERSON MILLER: All right.

13 [Laughter.]

14 CHAIRPERSON MILLER: Moving on.

15 MR. KLINE: And, Mr. Jones, I hope that  
16 we've noted that that's not on my clock. Thank  
17 you, sir.

18 MR. JONES: Didn't even notice, sir.

19 MR. KLINE: Thank you.

20 BY MR. KLINE:

21 Q Mr. Uhr, if you could just go through the  
22 exhibits and quickly describe what they are.

1           A       Certainly.  The first picture is a  
2 picture of the interior of the dining room.  The  
3 art that you see was done by Michael's wife  
4 Adrian.  She also did the work on the back wall.  
5 But you see part of the dining room here.

6                   The second picture is a picture of a  
7 couple of cocktails.  We use all fresh syrups,  
8 you know, the highest quality ingredients that we  
9 can source to put into food and beverage.

10                   Picture three is one of my favorite  
11 dishes.  It unfortunately is out of season right  
12 now.  It's a peas dish with bacon and pea puree  
13 and a coddled egg with some lemon zest.  It's  
14 quite delicious.

15                   MS. STERLING:  Again, we'd be glad to  
16 stipulate it's a great restaurant and the food is  
17 fabulous.

18                   [Laughter.]

19                   THE WITNESS:  The fourth picture is our  
20 brunch menu.  We're open Saturdays and Sundays  
21 during the day for brunch.  And the brunch, we  
22 have some specific beverages for that period,

1 meal period.

2           As we continue, we do offer happy hour,  
3 which actually I know quite a few employees of  
4 the Reefs are sent here like to enjoy. That's  
5 4:00 to 7:00 Monday through Friday. And then we  
6 move into our dinner menu. We're open for dinner  
7 every evening beginning at 5:00 p.m.

8           We offer not only cocktails and spirits,  
9 but we do offer wine. Our wine list makes up,  
10 just like our food does, of American with  
11 influences from Mexico, South America, and Spain.

12           Continuing, we also do some local -- we  
13 have some local beers and some international  
14 beers on draft. We have some fun cocktails that  
15 we serve, in addition to wines by the glass.

16           And then we have a really talented pastry  
17 chef that oversees all of our restaurants. And  
18 he's put together this dessert menu.

19           And that's it.

20           MR. KLINE: All right. I would move the  
21 pictures and the menu.

22           CHAIRPERSON MILLER: Okay. That's

1 identified on your exhibit list as Exhibit Number  
2 1, pictures 1 through 4. I don't know why it's 1  
3 through 4, but it's all of this.

4 MR. KLINE: Right.

5 CHAIRPERSON MILLER: All of these menus  
6 and everything.

7 Okay. Now, is there an objection?

8 MS. STERLING: Well --

9 CHAIRPERSON MILLER: Wait, and menus 5  
10 through 16.

11 MR. KLINE: Right.

12 CHAIRPERSON MILLER: Got it. Okay.

13 MS. STERLING: The objection on time, if  
14 I think that that's relevant.

15 CHAIRPERSON MILLER: The timeliness?

16 MS. STERLING: The timeliness.

17 CHAIRPERSON MILLER: Okay. Okay. I'm  
18 going to overrule the objection because I don't  
19 see any prejudice to you in having this last  
20 Friday to review. It's just a menu and pictures.  
21 Okay.

22 So, applicant's Exhibit 1 is admitted.

1           [Applicant's Exhibit Nos. 1 and 2, having  
2 been previously marked for identification, were  
3 admitted into evidence.]

4           MR. KLINE: And that's all the questions  
5 I have of the Witness at this time.

6           CHAIRPERSON MILLER: Okay. And now, Ms.  
7 Sterling, do you have cross examination of the  
8 Witness?

9           MS. STERLING: Yes. We have some  
10 questions.

11          CHAIRPERSON MILLER: Okay.

12                           CROSS EXAMINATION

13          BY MS. STERLING:

14          Q     Can you tell us what the occupancy is?

15          A     A hundred-and-ninety-seven. I'm sorry,  
16 195.

17          Q     Great. And you mentioned that there's  
18 some -- it's a younger group of people that want  
19 additional hours that doesn't seem to have to  
20 work in the morning.

21          A     Well, we have a pretty diverse clientele,  
22 some of whom live above us. And it seems that

1 we're kind of like their living room. So they'll  
2 come down. They'll have some -- a drink or two  
3 and some small plates.

4 So I don't know -- I have to work in the  
5 morning, so I don't stay out that late. With the  
6 number of people that are in the restaurant on  
7 the later side eating, I'm assuming they don't  
8 have to be at work quite as early.

9 Q Okay. And I'd like to talk about the  
10 hours of the agreement. The hours that are in  
11 the agreement are the hours that you requested,  
12 correct, when we were negotiating the asset?

13 A No. The hours in the agreement are hours  
14 that we agreed to have to prove that we were,  
15 first and foremost, a restaurant. Because we  
16 wanted to get open. We didn't want to delay our  
17 opening anymore.

18 Q So are you saying that SDCA requested  
19 these hours from you?

20 A Yes. Actually, I think it was ANC 2B, if  
21 I'm correct, Andrew.

22 MR. KLINE: You're on your own up there.

1 [Laughter.]

2 THE WITNESS: Okay. I think from what I  
3 recall is we amended the original application so  
4 we could not have a protest, and get open in a  
5 timely manner.

6 BY MS. STERLING:

7 Q And so, are you referring to the February  
8 25th, 2014, document from ANC 2B on the grounds  
9 that the -- you will amend your application to  
10 change the hours of operation from Sunday to  
11 Thursday to midnight and then 2:00 a.m.?

12 A Yes.

13 Q So that's the -- at the request of the  
14 ANC. And at this point, there's been no change  
15 in that request from the ANC, correct?

16 MR. KLINE: Objection. I don't --

17 THE WITNESS: I don't think the ANC was  
18 involved.

19 MR. KLINE: I don't understand the  
20 question.

21 THE WITNESS: Yeah.

22 CHAIRPERSON MILLER: You don't understand

1 the question?

2 MR. KLINE: No.

3 CHAIRPERSON MILLER: Okay. You let them  
4 know. I understood him to say that he picked  
5 those hours of 12:00 at the request of the ANC;  
6 otherwise, he would have gone later. That's what  
7 I understand.

8 MR. KLINE: Right. I heard, I got that  
9 part.

10 CHAIRPERSON MILLER: Ms. Sterling said,  
11 well, there's been a new request from the ANC; is  
12 that correct?

13 MS. STERLING: Yes.

14 MR. KLINE: I withdraw the objection.

15 CHAIRPERSON MILLER: Okay. Did you  
16 answer that?

17 THE WITNESS: I didn't yet.

18 CHAIRPERSON MILLER: Okay.

19 THE WITNESS: I don't think the ANC would  
20 have objected to further hours, but they're not  
21 involved in this.

22 MR. FERRIS: Could we have a moment?

1     Could we have a moment?

2                   CHAIRPERSON MILLER:   You can have a  
3     moment.   Okay.

4                   [Pause, Ms. Sterling conferred with Mr.  
5     Ferris.]

6                   BY MS. STERLING:

7           Q     So you're not aware of any additional  
8     position from the ANC on this requested increase  
9     in hours?

10          A     I can tell you that conversations I had  
11     with the ANC chair, and they're not, obviously,  
12     official, but that they had no objection to us  
13     requesting a change in hours based on our track  
14     record.

15                  MS. STERLING:   Am I allowed to enter  
16     evidence?

17                  CHAIRPERSON MILLER:   Not at this time.  
18     Did you want to show him something, though?

19                  MS. STERLING:   Yeah.   Well, that's great.  
20     Can I do that?

21                  CHAIRPERSON MILLER:   Show Mr. Kline  
22     first, though.   And you can enter it later, in

1 your case.

2 [Pause.]

3 MR. KLINE: I'm going to object to this  
4 on the grounds that this is a surprise. And I  
5 emailed -- I emailed yesterday and said, "Hey, I  
6 haven't gotten your exhibits. If you don't  
7 produce them to me, I'm going to object." And I  
8 don't know why they weren't provided. I don't  
9 know why Ms. Sterling just didn't pick up her  
10 phone and call me and say, "What are you talking  
11 about? Do I have to do this?"

12 I know that the Chair says in every  
13 status that you need to provide copies of your  
14 exhibits. If there was any question about that  
15 when Ms. Sterling and Mr. Ferris received my  
16 email, I was available. I suspect that adverse  
17 counsel was available.

18 And this is a repeated pattern by this  
19 organization, where they wait in the bushes and  
20 they just don't want to cooperate or be  
21 transparent.

22 MS. STERLING: I object to that

1 characterization.

2 [Laughter.]

3 CHAIRPERSON MILLER: Okay. So this is  
4 something I would need to look at.

5 [Cross-talk.]

6 MR. KLINE: Do you have a copy of it for  
7 me, at least?

8 MS. STERLING: Sure.

9 MR. ALBERTI: Well, if Ms. Sterling could  
10 tell us what it is.

11 CHAIRPERSON MILLER: She should identify  
12 it also.

13 MR. KLINE: It purports to be a letter  
14 dated October 22nd, 2015, from ANC 2B.

15 CHAIRPERSON MILLER: So, okay. Usually,  
16 our attorney goes to get it, but I'll --

17 [Pause.]

18 MR. KLINE: I would also note that it  
19 appears to be a letter from the chair. I have no  
20 idea whether it was authorized by the full ANC.  
21 It apparently was not filed seven days in advance  
22 of the hearing if it purports to be a

1 communication on behalf of the ANC.

2 I don't have any idea how or why this  
3 letter -- where this letter came from or whether  
4 it's even authentic. I have no idea.

5 MS. STERLING: Commissioner Noah Smith,  
6 who was --

7 MR. FERRIS: He's out of town.

8 MS. STERLING: -- out of town, sent it to  
9 us.

10 MR. KLINE: Yeah. I would suspect that  
11 Commissioner or Chairman Smith knows what the  
12 rules are and knows about ex parte  
13 communications, knows how to provide copies to  
14 applicants. So I would -- based on, I guess it's  
15 possible.

16 But for all of those reasons, I object.  
17 I probably could think of a few more if I thought  
18 about it longer.

19 CHAIRPERSON MILLER: Well, it's addressed  
20 to me, and it's addressed to the -- me as Chair  
21 of the ABC Board. And it's addressed that way,  
22 addressed to the ABC Board. And we're not aware

1 of it being even in our records.

2 MR. SILVERSTEIN: Was a copy provided?

3 CHAIRPERSON MILLER: No. He didn't get a  
4 copy ahead of time. I think that is prejudicial.

5 MR. KLINE: For the record, it's 5:55,  
6 and I think I announced at the commencement of  
7 the hearing that at that point I had not received  
8 exhibits. And I'm seeing this about five minutes  
9 ago for the very first time.

10 MS. STERLING: Well, our understanding is  
11 it was sent to the ABC Board. You know, we were  
12 copied as a --

13 MR. KLINE: Well, that's nice that the  
14 ANC thinks it's courteous to copy some parties.  
15 But not the Applicant, the one that would be most  
16 affected.

17 CHAIRPERSON MILLER: Right. Okay. I  
18 just -- it's not even -- can't even tell that  
19 it's an official document. Because the board  
20 doesn't have it in its records at this point. It  
21 doesn't indicate that the ANC -- let me see.

22 MR. JONES: Just accept it and give it

1 the weight it deserves.

2 CHAIRPERSON MILLER: No. But I think --

3 [Pause.]

4 CHAIRPERSON MILLER: It wasn't -- I mean,  
5 did you identify even on the exhibit this  
6 particular letter, ANC 2B's letter, blah-blah-  
7 blah?

8 MS. STERLING: Yeah. It's listed in the  
9 list, the ANC letter.

10 CHAIRPERSON MILLER: I mean, that would  
11 have put Mr. Kline even on notice that there was  
12 a letter from the ANC.

13 MS. STERLING: Yep. It's on our PIF  
14 form, ANC letters.

15 CHAIRPERSON MILLER: ANC letters. I  
16 don't think that's --

17 MR. KLINE: That was precisely why I  
18 wrote yesterday and said, "What are your  
19 exhibits? Can I see them?"

20 CHAIRPERSON MILLER: You talked  
21 yesterday?

22 MR. KLINE: I wrote them yesterday and

1 said, "I still haven't received copies of your  
2 exhibits."

3 MR. ALBERTI: So, can we find out what  
4 the prejudice is before we rule on it? And then  
5 let them rule?

6 CHAIRPERSON MILLER: Do you want to  
7 articulate what the prejudice is?

8 MR. KLINE: Sure. This purports to be a  
9 letter on behalf of an ANC. To my knowledge,  
10 it's not been on their agenda. To my knowledge,  
11 there's been no vote. As we've discussed in  
12 other proceedings, ANC commissioners act to vote  
13 in full ANC's, and that's how ANC's act.

14 So, I don't know whether this letter is  
15 authorized by the ANC, and a letter on Dupont  
16 Circle Advisory Neighborhood Commission 2B  
17 stationery that purports to take a position on  
18 behalf of the ANC is highly prejudicial to the  
19 Applicant inasmuch as the board is, under law,  
20 required to give it great weight. And certainly,  
21 ANC commissioners are entitled to due respect as  
22 being elected representatives.

1           And for all of those reasons, it's  
2 prejudicial.

3           CHAIRPERSON MILLER: And I would ask if  
4 this -- the other thing I say, and you should  
5 listen to what the board chair says at the status  
6 conference, is that if you don't provide it, then  
7 elaborate why you could not have provided your  
8 exhibits to the other side in advance, as  
9 required.

10           MS. STERLING: Great. Again, the  
11 instructions do not specify --

12           CHAIRPERSON MILLER: Okay. But again,  
13 Mr. Kline asked you for any exhibits yesterday,  
14 apparently. If there was a case where you didn't  
15 have it, you couldn't provide it, it would be  
16 understandable.

17           MR. ALBERTI: Ms. Miller, at this point  
18 in time, she's not offering it into evidence.  
19 She's only offering an exhibit to show the  
20 Witness. When she gets to her case and it  
21 becomes -- she wants to enter it, then we can  
22 have this discussion. But right now, you have to

1 decide whether she can show it to the Witness.  
2 That is the decision to be made at this point in  
3 time.

4 CHAIRPERSON MILLER: That's not the  
5 decision at this point in time.

6 MR. ALBERTI: We haven't gotten to her  
7 entering it. So why don't we just deal with the  
8 matter at hand as to whether she can show this to  
9 the Witness?

10 MR. KLINE: But only for purposes of  
11 seeing whether he can identify it, which I  
12 suspect he can't, because he's never seen it  
13 before.

14 MR. ALBERTI: Yeah. Let's deal with it.

15 MR. KLINE: That's fine. I agree with  
16 you.

17 Do it.

18 CHAIRPERSON MILLER: Okay.

19 [Laughter.]

20 MR. ALBERTI: It would be more time-  
21 effective and efficient if we deal with one issue  
22 at a time.

1 MR. KLINE: I agree with you. Thank you.

2 MR. ALBERTI: And keep focused. All  
3 right?

4 MR. KLINE: Thank you.

5 [Laughter.]

6 CHAIRPERSON MILLER: That's a good point.  
7 Okay. So you don't object to her showing it?

8 MR. KLINE: No. And asking him if he can  
9 identify it, whether he's ever seen it before.

10 CHAIRPERSON MILLER: Okay.

11 MS. STERLING: Great.

12 CHAIRPERSON MILLER: Does he have a copy  
13 of the letter now?

14 MR. FERRIS: I'm about to give it to him  
15 now.

16 MS. STERLING: No, but we'll handle that.

17 CHAIRPERSON MILLER: Okay.

18 MR. FERRIS: It was the second page in  
19 question, correct?

20 CHAIRPERSON MILLER: It's dated on --

21 MS. STERLING: Well, give him the first  
22 page, too.

1 [Pause.]

2 BY MS. STERLING:

3 Q Great. Sorry. So I guess we're asking  
4 if you have seen that second letter?

5 A I have not ever seen this.

6 Q Great. And have you seen the first  
7 letter from 2014 on the ANC position?

8 A I didn't see this letter, but I knew of  
9 the request from the ANC.

10 Q Great.

11 MR. ALBERTI: Ms. Sterling, for the  
12 record, it's not clear what he's looking at. Can  
13 you walk us through what he's looking at?

14 MS. STERLING: Oh, I'm sorry. Thank you.

15 MR. ALBERTI: I mean, seriously.

16 CHAIRPERSON MILLER: Start with the date,  
17 the date of the letter.

18 MS. STERLING: February --

19 MR. ALBERTI: Is it two letters you've  
20 given him or one?

21 MS. STERLING: Two.

22 MR. ALBERTI: You gave him two. Okay.

1 Let's start with one and then go to the next one.

2 MS. STERLING: The first letter of  
3 February 25th, 2014, would be the letter of  
4 support from ANC 2B with stipulations as to the  
5 hours of operation.

6 THE WITNESS: I've never seen this. I  
7 knew of the initial agreement.

8 BY MS. STERLING:

9 Q It's part of the public record. So it's  
10 been filed. It's part of the original --

11 [Cross-talk.]

12 MR. ALBERTI: He's answered you. Move  
13 on, please.

14 MS. STERLING: Thank you.

15 [Laughter.]

16 BY MS. STERLING:

17 Q Thank you. And so the second letter of  
18 October 22nd, 2015, from Chairman of ANC 2B, Noah  
19 Smith, where he just --

20 MR. KLINE: Just ask him if he --

21 CHAIRPERSON MILLER: From-to? Where is  
22 the -- finish describing it. From Noah Smith to?

1 BY MS. STERLING:

2 Q Noah Smith to Chairman Miller regarding  
3 the record in the protest hearing of Tico. And  
4 in this letter, he -- to be voted to support the  
5 original application because of the relationship  
6 that had formed between the commissioner --

7 MR. KLINE: Objection to the reading of  
8 the letter. The question is, can he identify it?

9 CHAIRPERSON MILLER: True. You've  
10 identified it. So you ask him if he's seen the  
11 letter that's before him. Correct.

12 THE WITNESS: I have not seen this  
13 letter.

14 MS. STERLING: Okay.

15 CHAIRPERSON MILLER: Okay.

16 BY MS. STERLING:

17 Q And you have not seen any other letter?

18 A No.

19 Q Thank you.

20 [Pause, the parties conferred.]

21 MS. STERLING: So, can we get back to the

22 --

1           CHAIRPERSON MILLER: I'm sorry. Go  
2 ahead.

3           BY MS. STERLING:

4           Q     So can we get back to the discussion  
5 about the talks that you have had with SDCA when  
6 you initially considered requesting a substantial  
7 change? You were -- were you invited by SDCA to  
8 come to a meeting to discuss plans for a  
9 substantial change in request?

10          A     When -- I spoke both with Elwyn and you  
11 over the phone, and you didn't -- you know,  
12 although I never received an invitation. I said  
13 I'd be happy to come and speak our case, but I  
14 never received a written invitation or email or  
15 writing or anything like that. There was no  
16 notification.

17          Q     So you're saying there was no  
18 notification, no request to attend our board  
19 meeting?

20          A     You said would I like to come? I said,  
21 "I'd love to. Let me know when it is and I'll be  
22 there." And I was never informed to when it was.

1 Q And that was on March 25th?

2 MR. KLINE: What was on March 25th?

3 BY MS. STERLING:

4 Q The discussion that we had about the --

5 A When we spoke on the phone?

6 Q When we spoke on the phone.

7 A It could be. I don't remember the exact  
8 date.

9 CHAIRPERSON MILLER: I'm sorry. What did  
10 you say? It could be; you're not sure?

11 THE WITNESS: It could be. I don't  
12 remember the exact date.

13 CHAIRPERSON MILLER: Okay.

14 MS. STERLING: We actually filed some  
15 information on this with ABRA, so it should be in  
16 the record. I'm assuming --

17 CHAIRPERSON MILLER: You'll have your  
18 chance to testify.

19 MS. STERLING: Great.

20 BY MS. STERLING:

21 Q And can you tell me when the date that  
22 you filed your application for a substantial

1 change request?

2 A We were placarded for 45 -- it was after  
3 we were open for a year, I believe. I don't know  
4 exactly the date.

5 Q Okay.

6 [Pause.]

7 BY MS. STERLING:

8 Q Do you recall what your initial request  
9 for extended hours was?

10 A Initial pre-opening? Or initial for  
11 change?

12 Q Request at your change.

13 CHAIRPERSON MILLER: Sorry. I want to  
14 make sure I understand the question.

15 BY MS. STERLING:

16 Q During our conversation, do you remember  
17 the initial request that you made for a change in  
18 hours?

19 MR. KLINE: I'm going to object on the  
20 grounds of relevance.

21 CHAIRPERSON MILLER: Okay. I think I  
22 have been hanging back a little on this, trying

1 to see where you're going. But you can't get  
2 into settlement negotiations at all in these  
3 proceedings. So, you know, I just want to  
4 caution you about that. Okay?

5 MS. STERLING: Okay.

6 CHAIRPERSON MILLER: Now, if you invited  
7 somebody to a meeting, that's not a negotiation.  
8 If you get into who asked for what when and  
9 stuff, that's negotiation.

10 MS. STERLING: Right. This was prior to  
11 a request.

12 MR. KLINE: I object on the grounds of  
13 relevance. We're here with a request. The  
14 request has been made. The issue whether it's  
15 appropriate or not, who talked to who about what  
16 or what might have been discussed.

17 CHAIRPERSON MILLER: Yeah. Okay. I'll  
18 sustain that objection.

19 MS. STERLING: Thank you.

20 [Laughter.]

21 BY MS. STERLING:

22 Q You mentioned a number of -- that you

1 were concerned about competitors' closing times  
2 being longer than yours; is that correct?

3 A Yes.

4 Q Okay. Why is that an issue for the ABC  
5 Board?

6 A I never said it was. I just wanted to be  
7 able to serve food a little later than we  
8 currently do during the week. And for us to be  
9 able to do that, we'll need longer hours.

10 Q Right. And you mentioned a few of your  
11 competitors that you said had longer hours than  
12 yours. One was Busboys and Poets. Where did you  
13 get your information from on their longer hours?

14 A From their license. I did some  
15 canvassing of the neighborhood before we opened  
16 to see what everybody's hours were because I --  
17 candidly, I didn't know. Anyway, I mean, it's on  
18 their license behind the bar if you walk into  
19 their restaurant.

20 Q Right. And do any of them have -- do  
21 they have settlement agreements?

22 MR. KLINE: Objection.

1 THE WITNESS: I didn't ask. I just --

2 MR. KLINE: Objection as to relevance.

3 CHAIRPERSON MILLER: Okay. Ms. Sterling?

4 MS. STERLING: Well, yeah. And this is  
5 very difficult for us because the hours as stated  
6 on -- by these establishments are -- Busboys and  
7 Poets is open till midnight Sunday through  
8 Thursday, not longer than you.

9 THE WITNESS: Okay.

10 CHAIRPERSON MILLER: You'll have a chance  
11 to testify to that. So.

12 MS. STERLING: So we have to say this --  
13 on testify.

14 CHAIRPERSON MILLER: This is the time to  
15 ask questions that are relevant to --

16 MS. STERLING: His testimony.

17 CHAIRPERSON MILLER: -- peace, order and  
18 quiet as a result of the change in hours.

19 MR. ALBERTI: So have we ruled on the  
20 objection?

21 MS. STERLING: Thank you. So I think  
22 that's the end of our questions for you today.

1 THE WITNESS: Okay.

2 MR. ALBERTI: Mr. Kline objected to that  
3 last one.

4 THE WITNESS: May I sit down?

5 [Cross-talk.]

6 MR. ALBERTI: She sustained it.

7 MS. STERLING: No, I said thank you.  
8 That's all we have.

9 THE WITNESS: Okay. Thank you.

10 CHAIRPERSON MILLER: Okay. Board  
11 questions?

12 [No audible response.]

13 CHAIRPERSON MILLER: Okay. No board  
14 questions, no board questions.

15 Any redirect?

16 MR. KLINE: No. There's nothing to  
17 redirect.

18 [Laughter.]

19 MR. KLINE: They stepped out.

20 CHAIRPERSON MILLER: Okay. Thank you  
21 very much.

22 [The Witness was excused.]

1           CHAIRPERSON MILLER: Do you have another  
2 witness?

3           MR. KLINE: I do not. The only thing I  
4 would do at this point is ask the board to take  
5 administrative notice of the zoning regulations,  
6 which provide, relevant to this application, that  
7 this establishment is located in the Arts Overlay  
8 zone, which has several provisions, one of which  
9 is to encourage 18-hour activity within the Arts  
10 Overlay zone.

11           And the other is to encourage arts and  
12 entertainment uses, which includes eating and  
13 drinking establishments. And with that, we will  
14 rest.

15           CHAIRPERSON MILLER: Okay. Any objection  
16 to that?

17           [No audible response.]

18           CHAIRPERSON MILLER: Okay. So, the board  
19 will take administrative notice.

20           I do just want to ask you, since it's on  
21 your exhibit list -- oh, you've already rested --  
22 this aerial map of 14th Street, Northwest, which

1 is referenced here -- or not.

2 MR. KLINE: No.

3 CHAIRPERSON MILLER: Okay.

4 All right. Time for the Protestant's  
5 case.

6 MR. JONES: Time check.

7 CHAIRPERSON MILLER: Yeah? A time check?  
8 Oh, Mr. Jones, did you want to give a time for  
9 people?

10 MR. JONES: Not particularly. But if one  
11 is being requested, I have no problem with it.

12 [Laughter.]

13 CHAIRPERSON MILLER: Mr. Short requested  
14 it.

15 MR. JONES: Protestants have 61 minutes  
16 remaining. The Applicant has 69 minutes  
17 remaining.

18 MR. KLINE: Thank you.

19 [Pause, Ms. Sterling conferred with Mr.  
20 Ferris.]

21 MR. FERRIS: Oh, are you waiting on us?

22 CHAIRPERSON MILLER: Um-hm.

1 MR. FERRIS: To call our first witness?

2 CHAIRPERSON MILLER: Yes.

3 MR. FERRIS: Our only witness.

4 CHAIRPERSON MILLER: Okay.

5 MR. FERRIS: I call Joan Sterling to the  
6 stand.

7 CHAIRPERSON MILLER: All right. Ms.  
8 Sterling, do you swear to tell the truth, the  
9 whole truth, nothing but the truth?

10 MS. STERLING: I do.

11 CHAIRPERSON MILLER: Okay. Thank you.  
12 Have a seat.

13 [Pause.]

14 MR. FERRIS: I'm thinking that Ms.  
15 Sterling might have had some opening remarks she  
16 wanted to open with. Is that possible?

17 CHAIRPERSON MILLER: I don't know if Mr.  
18 Kline may object.

19 MR. KLINE: Yeah. I mean, if she's going  
20 to state facts, I understand they don't have a  
21 lawyer. And I understand all that. If it's  
22 going to be an argument, though, then of course

1 I'll object. We can do that at another time, at  
2 the conclusion of the testimony.

3 CHAIRPERSON MILLER: Okay.

4 MR. KLINE: If there are some facts that  
5 she wants to put out there and it's easier for  
6 them to do that by way of narrative, I'm fine  
7 with that, as long as it's relevant. And I'll  
8 reserve my right to object to statements that are  
9 made that are just not relevant to this  
10 proceeding.

11 CHAIRPERSON MILLER: Okay. You got that?

12 THE WITNESS: Yes, thank you.

13 CHAIRPERSON MILLER: Okay. Go ahead.

14 MR. FERRIS: I guess we're going to forgo  
15 that procedure, and I will just address some  
16 questions to Ms. Sterling.

17 CHAIRPERSON MILLER: Okay.

18 MR. FERRIS: Okay. I'll address her as  
19 "Joan."

20 CHAIRPERSON MILLER: Fine.

21 Whereupon,

22 JOAN STERLING

1 was called as a witness and, having been first  
2 duly sworn, was examined and testified as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. FERRIS:

6 Q What I wanted to do is I want to ask you  
7 if you can recall when the request for additional  
8 hours first was brought to the attention of SDCA?

9 A We received some phone calls in February,  
10 I think, and then a few going through February  
11 until -- characterizing the need for extra hours  
12 for Wednesday and Thursday night to be more  
13 competitive with other restaurants in the area.

14 Q And who did you speak to regarding that  
15 request?

16 A Mr. Uhr.

17 Q Okay. Can you recall what Mr. Uhr's  
18 reasoning was why he stipulated he was requesting  
19 these additional hours and what additional hours  
20 he was specifically asking for?

21 A Yes. They had some people who wanted to  
22 linger at the bar after eating. And it would be

1 primarily Wednesday and Thursday night that they  
2 would like an additional hour.

3 Q Okay. Okay.

4 A Subsequent to that, we discussed this in  
5 a board meeting and invited Mr. Uhr to attend our  
6 April board meeting. And we did that on March  
7 25th.

8 On March 26th, we received notice, as  
9 required under the SA, to be notified 10 days in  
10 advance of a filing for additional hours as a  
11 substantial change, which was quite surprising  
12 because the number -- the request letter stated  
13 Sunday through Thursday for an -- for the  
14 additional hours.

15 CHAIRPERSON MILLER: Can I just interrupt  
16 for a second? I know Mr. Kline is not objecting.  
17 But I just want to tell you that when the board  
18 goes back and deliberates, what we're going to be  
19 deliberating on is whether the additional hours  
20 will cause adverse impacts on peace, order, and  
21 quiet.

22 So, all this other stuff, you know, he's

1 not objecting, it's coming into the record. But  
2 I don't -- I want you to be sure to address --  
3 that's the point here -- is there going to be an  
4 adverse impact? What is it? And that's what we  
5 want to hear.

6 MR. FERRIS: Thank you.

7 CHAIRPERSON MILLER: Okay.

8 THE WITNESS: Yes. So.

9 BY MR. FERRIS:

10 Q Okay. Then I will move into a different  
11 direction, then. I understand that you are in  
12 possession of a film?

13 A Yes. You mean it's the film that was  
14 part of a Vincent Orange hearing on July 9th  
15 regarding noise at the time. But it's a film of  
16 the pedestrian traffic on the street and was --  
17 is part of the public record from the hearing.

18 And we have it here with us. I suspect  
19 that the Chairman saw it at the hearing, showing  
20 the level of foot traffic and pedestrians on the  
21 street during late-night hours on that particular  
22 block and in that particular corner.

1           It's overwhelming, and it was around  
2 12:30 p.m. The concern of the SDCA members was  
3 this will be another couple hundred people in  
4 that foot traffic. And that is just one more  
5 grouping, one more additional license with even  
6 more people on the street that will affect peace,  
7 order, and quiet in the neighborhood, which at  
8 this point is a difficult place to live.

9           Q     So the inference is that if  
10 establishments continue to increase their hours  
11 of operation, it's natural to assume that there  
12 will be more people on the street later, which  
13 extends that potential disturbance into the later  
14 hours of operation?

15          A     That's correct.

16          Q     Is that your contention? Okay. We do  
17 have the film --

18          A     If you need it.

19          Q     -- on this drive. Because I believe it's  
20 a matter of public record that has been shown at  
21 the hearings that Vincent Orange has held.

22          A     And it's on the council website.

1           MR. FERRIS: So on that, can that be  
2 entered as part of our evidence about the  
3 disruption to the peace, order, and quiet in the  
4 community?

5           MR. KLINE: I would object. The fact  
6 that it's in the public record, there are lots of  
7 things in the public record. There are lots of  
8 thing on the council website.

9           It seems that SDCA thinks that just  
10 because it's out there, the Applicant is somehow  
11 on notice that it's going to be part of their  
12 case. And therefore, they can withhold it. And  
13 at 6:17 the day of the hearing, scheduled at  
14 3:30, can say, "Gee, guess what we have? Another  
15 surprise."

16           So we strenuously object and don't even  
17 know the relevance as to how it relates to this  
18 establishment and hasn't even been identified  
19 what block we're talking about. I don't think  
20 I've seen this video. Fortunately, I was away  
21 during that hearing. So I've never seen it. So  
22 I'm not even sure what we're talking about.

1 All that could have been resolved had the  
2 SDCA -- forget about the rules -- just complied  
3 with common courtesy and responded to my email.

4 MR. FERRIS: Again, we're not lawyers.  
5 We're not familiar with the rules of evidence.

6 CHAIRPERSON MILLER: I know you're not  
7 lawyers.

8 MR. FERRIS: This is an extremely  
9 difficult process for us.

10 CHAIRPERSON MILLER: I understand that.

11 MR. KLINE: It's not hard to be  
12 courteous.

13 CHAIRPERSON MILLER: I just know that I  
14 told you that you needed to give the exhibit  
15 forms to the other side. You all were nodding  
16 seven days ahead of time. "And if you don't do  
17 it, they could be excluded" --

18 [Cross-talk.]

19 MR. FERRIS: Well, I do want to  
20 respectfully submit that we did give them the  
21 exhibit form. We just didn't have our physical  
22 exhibits. The form doesn't say -- but we got

1    them the physical exhibit form.

2                   CHAIRPERSON MILLER:   Your form doesn't  
3    say "video from Chairman Orange's hearing that  
4    day."   Then, to Mr. Kline, I would say, "You  
5    know, you could have looked that up.  If they  
6    said what it was, you could have looked it up."

7                   Your description says "photos-slash-  
8    film."  But, so I'm inclined to not allow --  
9    exclude the evidence.  However, I would say Ms.  
10   Sterling is testifying to this.  Her testimony is  
11   not excluded.  Her testimony about what you saw,  
12   what happened that night is in the record.  And I  
13   think that I personally, as a board member -- of  
14   course, I saw the video, but it was about  
15   different corners.

16                   But I know what you're saying.  Your main  
17   point is it's crowded.  You know, Mr. Ghenene  
18   says it's crowded.  So your point is you're  
19   concerned that the adverse impact is that 200  
20   more people will add to the crowd on the street,  
21   correct?

22                   THE WITNESS:  Correct.

1 CHAIRPERSON MILLER: Okay. I think we  
2 get that point.

3 THE WITNESS: This is a logarithmic  
4 equation. It's constantly increasing because the  
5 licenses are constantly increasing. And this is  
6 another one.

7 CHAIRPERSON MILLER: Okay. I think we  
8 all do get that point. And unless other board  
9 members feel strongly about seeing that evidence,  
10 I don't think -- you know, usually when we have a  
11 video, we play it, you know, and everybody can  
12 see it. And we don't have, you know, Mr. Hager  
13 here to do that either.

14 So we get the point. We get the point  
15 about the additional people on the street.

16 MR. FERRIS: Okay. We're done with that  
17 issue. We're done with the ANC issue, correct?

18 CHAIRPERSON MILLER: Um-hm.

19 MR. FERRIS: Okay. As the comparable  
20 hours of operation were touched upon by the  
21 Applicant, can we go down that road?

22 CHAIRPERSON MILLER: Um-hm.

1           MR. FERRIS: Okay. In reference to what  
2 was testified by the Applicant?

3           CHAIRPERSON MILLER: Yes. They testified  
4 to hours for all these different establishments.

5           MR. FERRIS: Okay. Then I have an  
6 exhibit. I have an exhibit I'd like to admit  
7 into evidence, which shows comparable hours of  
8 other establishments in the neighborhood. May I  
9 submit that into evidence?

10          CHAIRPERSON MILLER: What is the document  
11 you want to submit? Show Mr. Kline, and I will  
12 need to look at it to see what form it's in.

13           [Pause.]

14          CHAIRPERSON MILLER: Do you have more  
15 than one copy?

16          MR. FERRIS: Yes.

17          CHAIRPERSON MILLER: Great. Okay.

18          MR. FERRIS: There's actually one for  
19 everybody.

20           [Mr. Ferris distributed the documents.]

21          MR. FERRIS: Oh, may I have one of those  
22 back?

1 MR. KLINE: No.

2 [Laughter.]

3 MR. FERRIS: I need to give one to the  
4 Witness.

5 [Pause.]

6 MR. KLINE: Again, are we on the record?  
7 Yes?

8 CHAIRPERSON MILLER: Yes.

9 MR. KLINE: I'm seeing this for the first  
10 time. It's 6:21, and we would object to this  
11 document. It's not something -- I mean, if it  
12 was a list of what's from the board's official  
13 records, then I probably would have no objection.  
14 Instead, it purports to be information that's  
15 been gathered from various websites.

16 And we would object to the document both  
17 on the grounds that it wasn't provided timely.  
18 It's an unfair surprise. We haven't had any  
19 opportunity to go back and research what it is  
20 they purport to be true in this hearsay document.

21 And I don't object to it on the grounds  
22 of hearsay. But simply, had it been provided, we

1 would have had an opportunity to verify its  
2 accuracy or inaccuracy, as the case may be.

3 MR. FERRIS: If I may, in addition to  
4 information that was gathered from websites,  
5 there is information that relates to what is in  
6 the SA's of comparable documents, in the ABRA  
7 SA's comparable documents.

8 CHAIRPERSON MILLER: What I would propose  
9 that we do -- I'm not sure how I want to rule on  
10 this yet. But I think what you need to do is, a  
11 witness needs to identify what this is, who  
12 prepared it, what each -- you know, did one  
13 person -- it's like testimony, you know.

14 MR. FERRIS: Um-hm. Sure.

15 CHAIRPERSON MILLER: You know, he  
16 testified about different establishments' hours.  
17 Is this Ms. Sterling's, is this her document? Is  
18 this your document?

19 MR. FERRIS: This is an SDCA document.  
20 It's produced --

21 CHAIRPERSON MILLER: Well, who prepared  
22 it?

1 MR. FERRIS: I personally prepared it.

2 CHAIRPERSON MILLER: Well, I don't know  
3 who should be on the stand then with respect to  
4 this. Maybe you should switch places at some  
5 point.

6 MR. FERRIS: Well, I prepared it, and it  
7 was reviewed by SDCA.

8 CHAIRPERSON MILLER: Okay. So, but if  
9 you prepared it, I mean, you -- if you want to  
10 testify to what's in here, that would be  
11 allowable. But I think just moving it in as an  
12 exhibit at this point, it's not reliable enough.

13 MR. JONES: You haven't established any  
14 foundation for the veracity of this, the level of  
15 accuracy, how this was documented, drafted, who  
16 did it. You have to establish that. As part of  
17 the record, you have to be sworn in to help  
18 provide that level of credence associated with  
19 this document.

20 So I'm not telling you how to put on your  
21 case. But it sounds like you're the only person  
22 who could do that.

1 CHAIRPERSON MILLER: Yes.

2 MR. FERRIS: Yeah. And we have, you  
3 know, printed web pages from which the  
4 information --

5 MR. JONES: No. No. You're not --

6 MR. FERRIS: Is that what you mean by  
7 documented?

8 MR. JONES: No.

9 CHAIRPERSON MILLER: No.

10 MR. JONES: Not at all. That document --  
11 this document is a bunch of ink on some paper.  
12 Right?

13 MR. FERRIS: Yeah.

14 MR. JONES: It means nothing.

15 MR. FERRIS: Okay.

16 MR. JONES: Right? There is no  
17 foundation that's been set. There's no context  
18 about how you prepared it, how it was prepared.

19 [Cross-talk.]

20 MR. FERRIS: I'm happy to supply that to  
21 the board.

22 MR. JONES: Whether that was first-hand

1 information, that has to be established.

2 MR. FERRIS: I'm happy to furnish that to  
3 the board through the proper vehicle.

4 CHAIRPERSON MILLER: So, for instance,  
5 Mr. Uhr said -- he said all these establishments  
6 had full hours, and he said he knows that because  
7 -- and I will be corrected if I'm wrong, but  
8 because he went around and looked at the licenses  
9 in all the restaurants.

10 So, similarly, if you want to testify as  
11 to hours, this alone is not sufficient by itself,  
12 because as Mr. Jones said, we have no idea who  
13 prepared it, what the sources were. So that  
14 would all come out if you want to testify about  
15 these places.

16 MR. SHORT: Relevancy and foundation.

17 [Pause.]

18 MR. FERRIS: Okay. Understood.

19 CHAIRPERSON MILLER: You can talk  
20 generally about it, but this is the hours  
21 question.

22 MR. FERRIS: Yeah, I can --

1 CHAIRPERSON MILLER: But if you are, you  
2 will need to be sworn in. Has Ms. Sterling  
3 finished?

4 MR. FERRIS: I think we're determining  
5 whether we would want myself to testify.

6 [Pause, Mr. Ferris conferred with Ms.  
7 Sterling.]

8 MR. FERRIS: I think at this point then,  
9 that concludes what we have to offer.

10 CHAIRPERSON MILLER: Okay. So you're not  
11 going to testify on this? Or this concludes Ms.  
12 Sterling's testimony?

13 MS. STERLING: This concludes my  
14 testimony.

15 CHAIRPERSON MILLER: Okay. So then, is  
16 there cross examination?

17 MR. KLINE: A little bit.

18 CHAIRPERSON MILLER: Okay.

19 CROSS EXAMINATION

20 BY MR. KLINE:

21 Q Ms. Sterling, you're aware that this  
22 establishment is located within the Arts Overlay

1 District under the Zoning Regulations?

2 A Yes, the district stretches quite far,  
3 and this is part of it, certainly.

4 Q And are you familiar with the provisions  
5 of the Arts Overlay District?

6 A Absolutely.

7 Q And you're aware, are you not, that one  
8 of the provisions is that what's to be encouraged  
9 in the Arts Overlay District is 18-hour activity?

10 A Yes.

11 Q Okay. And are you also aware that what's  
12 to be encouraged in the zone is arts uses,  
13 including eating and drinking establishments?

14 A Yes, within the limits set within the  
15 Arts Overlay zoning, which specifies specific  
16 percentages for each block, which have not been  
17 adhered to. So the Arts Overlay zoning, while is  
18 nice for the residents to have, but unless it's  
19 enforced, it's quite a problem. And that's what  
20 we've experienced here.

21 Q Okay. So with respect to your concerns  
22 about too many people, there's already a

1 provision in the Arts Overlay language that  
2 limits the linear street frontage of eating and  
3 drinking establishments, isn't there?

4 A Yes, there is. And in many --

5 Q Okay. That's the answer to my question.

6 A -- blocks, it is quite over the accepted  
7 limit.

8 Q Okay. But --

9 A Even after it was raised from 25 to 50.

10 Q All right. And the Zoning Administrator  
11 doesn't think it's over the acceptable limits,  
12 does he?

13 A Yes. Many blocks. They have a list of  
14 it. Absolutely. Across the street from ABRA is  
15 at 90 percent on a block face. So, yes. They  
16 think it's a problem.

17 Q And they've allowed additional  
18 establishments to open in violation of the Arts  
19 Overlay; is that your testimony?

20 A Absolutely they have.

21 Q Well, you might want to take that up with  
22 Mr. LeGrant.

1           But in terms of the Arts Overlay language  
2 and the hours, this is consistent with that,  
3 isn't it, this request for later hours?

4           A     The Arts Overlay hours is not the  
5 governing document in this particular case.

6           MR. KLINE:   Okay.   Great.   Thank you.  
7 That's all I have.

8           CHAIRPERSON MILLER:   All right.   Okay.  
9 What do you think is the governing document?

10          THE WITNESS:   I would assume the ABRA  
11 regulations is the document -- are the documents  
12 that apply in this case, not --

13          CHAIRPERSON MILLER:   Oh, in this case?

14          THE WITNESS:   In this case.

15          CHAIRPERSON MILLER:   Okay.   So what's the  
16 issue with the governing ABRA document?

17          THE WITNESS:   Again, it was our motion,  
18 which you denied, but it's --

19          CHAIRPERSON MILLER:   Okay.

20          THE WITNESS:   Clearly.

21          CHAIRPERSON MILLER:   That's what was  
22 denied, so in this case now, are you referring to

1 some governing ABRA document with respect to  
2 impact on -- adverse impact?

3 THE WITNESS: Yes, correct.

4 CHAIRPERSON MILLER: What document?

5 THE WITNESS: And our feeling is that  
6 additional hours and additional licenses increase  
7 the peace, order, and quiet violations that we  
8 have all over.

9 CHAIRPERSON MILLER: Because it puts more  
10 people on the street?

11 THE WITNESS: Puts more people on the  
12 streets, more cars honking their horns, driving  
13 up and down looking for parking, more  
14 pedestrians, more general noise.

15 CHAIRPERSON MILLER: Okay. Thank you.

16 All right. Any other questions?

17 [No audible response.]

18 CHAIRPERSON MILLER: Okay. Thank you  
19 very much.

20 [Ms. Sterling was excused as a witness.]

21 [Pause.]

22 MS. STERLING: Thank you. We rest our

1 case.

2 CHAIRPERSON MILLER: You rest your case.  
3 Okay. All right. Then we can go to closing.

4 MR. KLINE: Great.

5 CHAIRPERSON MILLER: Okay.

6 CLOSING STATEMENT

7 MR. KLINE: Members of the board, as we  
8 said at the outset, we told you that our case  
9 would show that this establishment has operated  
10 as a restaurant without an entertainment  
11 endorsement, without outside seating. I think  
12 the evidence is clear that this has no impact on  
13 peace, order, and quiet.

14 This establishment is located within the  
15 Arts Overlay zone, which is a planning device.  
16 The board is -- we don't pretend that the board  
17 is bound in any way by the Arts Overlay. But  
18 certainly, it provides guidance in terms of what  
19 is appropriate in a particular neighborhood.

20 And in this case, where we have clear  
21 language and zoning regulations, which say that  
22 we are to encourage 18-hour activity and not a

1 shred of evidence that the expansion of hours for  
2 this particular establishment is going to affect  
3 anyone in the least, we would submit that it is  
4 appropriate to grant the request and allow this  
5 establishment to compete on a level playing field  
6 with many other operators in the neighborhood by  
7 being allowed to be open and serve until 2:00  
8 a.m. Sunday through Thursday.

9           The model that this establishment has is,  
10 as we've said throughout the hearing, it's  
11 clearly a restaurant. Their food revenues are  
12 well in excess of 60 percent when compared with  
13 food and alcohol.

14           And they go above and beyond in terms of  
15 managing noise, not only as an externality, but  
16 also within the premises. There was much  
17 testimony about, not only from Mr. Uhr on behalf  
18 of the Applicant, but also from the investigator,  
19 about the noise levels in the establishment, how  
20 they're controlled such that persons can have  
21 conversations within the establishment.

22           So it's highly unlikely, given those kind

1 of controls and that experience, that this  
2 establishment is going to have any adverse impact  
3 on peace, order, and quiet if it's allowed these  
4 few extra additional hours during the week.

5 In fact, it's quite likely that it will  
6 not have such an effect, and it's certainly more  
7 likely than not, which is what the standard is  
8 for this hearing.

9 So under the circumstances, we would  
10 respectfully request that you grant the request  
11 and allow Tico to remain open until 2:00 a.m.  
12 Sunday through Thursday, as is the law in the  
13 District of Columbia with respect to licensed  
14 establishments serving on premises. Thank you.

15 CHAIRPERSON MILLER: Thank you.

16 Okay.

17 CLOSING STATEMENT

18 MS. STERLING: Thank you. This is, from  
19 our perspective, about one more establishment  
20 agreeing to a contract, a settlement agreement,  
21 and then doing what we like to refer to as bait  
22 and switch. As soon as agreements are signed, we

1 continually get requests for substantial changes.  
2 CR's become CT's. Entertainment endorsements are  
3 added. Occupancy level changes.

4           And then many times, and I'm not  
5 speculating that that's the case here, that  
6 establishment becomes something else. And  
7 sometimes they stay in business, and sometimes  
8 they don't, and sometimes that license continues  
9 on in another venue.

10           And once that license exists with  
11 additional pieces of activity that was not part  
12 of the original discussion with the signatories  
13 to settlement agreements and their original  
14 things that happened initially in supporting a  
15 license, it makes the residents' lives in this  
16 neighborhood extremely difficult.

17           We are asking the board to honor their  
18 promise to us during our moratorium hearing a few  
19 years ago that they would enforce settlement  
20 agreements as a mechanism to try and control some  
21 of the problems that we've been experiencing in  
22 this neighborhood.

1           And this is one of those cases, and there  
2 will always be this, and there will always be  
3 another. Thank you.

4           CHAIRPERSON MILLER: Thank you.

5           Okay. I'm going to close the record then  
6 at this time and ask the parties if they wish to  
7 file proposed findings of facts and conclusions  
8 of law or waive their right to do so.

9           MR. KLINE: We'll waive.

10          MS. STERLING: We reserve our right to do  
11 so.

12          CHAIRPERSON MILLER: Okay. So are you  
13 aware of how that works?

14          MS. STERLING: Can you give us deadlines?

15          CHAIRPERSON MILLER: Yeah, I'm just about  
16 to. But the way it works is a transcript becomes  
17 available in two to three weeks. And then it  
18 will be emailed out to you. And you will have 30  
19 days from the date that it's emailed out to you  
20 to submit proposed findings of facts and  
21 conclusions of law, and serve them on the  
22 opposing party and the board.

1           And, I mean, if you look, they're for the  
2 purpose of -- you know, if you look at our board  
3 orders on my -- they end up being in that format,  
4 findings of fact and conclusions of law.

5           In this case, I would just comment that I  
6 don't believe there are any complex conclusions  
7 of law. But there are always some. I mean, it  
8 would go to -- basically, the issue is adverse  
9 impacts from a substantial change.

10           So if you -- and it's not that common  
11 that parties do this. It's a little bit  
12 burdensome. However, that is your right. And if  
13 you have any questions about it in the meantime,  
14 you can call Jonathan Berman or Martha Jenkins.

15           And if you change your mind, you should  
16 let the opposing counsel and the board know.  
17 Because we'll just be waiting for them,  
18 otherwise.

19           So, it will be emailed to you two to  
20 three weeks from now, and then you have 30 days  
21 to get it in to us. And then we will issue a  
22 decision in writing within 90 days. Is that

1 clear? Yeah?

2 MS. STERLING: Thank you.

3 CHAIRPERSON MILLER: Any questions?

4 MR. KLINE: No. Thank you.

5 CHAIRPERSON MILLER: I'm just going to  
6 then read the instructions for a closed meeting  
7 on this. And do I still have a quorum? Yep.  
8 Okay. Take a vote on deliberating in closed  
9 session.

10 [Pause.]

11 CHAIRPERSON MILLER: Okay. Great. Thank  
12 you. As Chairperson of the Alcoholic Beverage  
13 Control Board for the District of Columbia, and  
14 in accordance with Section 405 of the Open  
15 Meetings Amendment Act of 2010, I move that the  
16 ABC Board hold a closed meeting for the purpose  
17 of seeking legal advice from our counsel on Case  
18 Number 15-PRO-00082, Tico, located at 1926 14th  
19 Street, Northwest, License Number 93610 in ANC --  
20 I want to say 2B.

21 In deliberating upon this case and for  
22 the reasons cited in Section 405B13 of the Open

1 Meetings Amendment Act of 2010. Is there a  
2 second?

3 MR. RODRIGUEZ: Second.

4 CHAIRPERSON MILLER: Mr. Rodriguez  
5 seconded the motion. I'll now take a roll call  
6 vote on the motion before us, now that it's been  
7 seconded.

8 Mr. Alberti?

9 MR. ALBERTI: I agree.

10 CHAIRPERSON MILLER: Mr. Rodriguez?

11 MR. RODRIGUEZ: I agree.

12 CHAIRPERSON MILLER: Ms. Miller agrees.

13 Mr. Short?

14 MR. SHORT: I agree.

15 CHAIRPERSON MILLER: Mr. Jones?

16 MR. JONES: I agree.

17 CHAIRPERSON MILLER: Okay. Then it  
18 appears that the motion has passed by 5-0-0 vote.

19 I hereby give notice that the ABC Board  
20 will hold the aforementioned closed meeting in  
21 the ABC Board conference room, pursuant to the  
22 Open Meetings Amendment Act of 2010, and issue an

1 order within 90 days from the date of the  
2 proposed findings of fact and conclusions of law  
3 are filed with the board or that the parties  
4 indicate earlier that no such filings will be  
5 made.

6 All right. That concludes our hearing.

7 [Chorus of "Thank you."]

8 CHAIRPERSON MILLER: Thank you very much.

9 Have a good night.

10 [Whereupon, the above-entitled matter  
11 concluded.]

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