

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

<u>In the Matter of:</u>)	
)	
1610 Restaurant, LLC)	
t/a Stetson's Famous Bar & Restaurant)	
)	
Application for a Retailer's Class CR)	License no.: 60455
License – Substantial Change)	Case no.: 467-05/037P
at premises)	Order no.: 2006-129
1610 U Street, N.W.)	
Washington, D.C.)	
)	

1610 Restaurant, LLC, Applicant

Darren A. Bowie, Chairman, on behalf of Advisory Neighborhood Commission 2B, and Allen Smith, on behalf of a group of five (5) or more individuals, Protestants

BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member
Albert G. Lauber, Member
Eartha Isaac, Member

**ORDER ON AMENDMENT TO VOLUNTARY AGREEMENT
AND WITHDRAWN PROTEST**

The substantial change application for summer garden, having been protested, came before the Board on June 8, 2005, in accordance with D.C. Official Code § 25-601 (2001). Darren A. Bowie, Chairman, on behalf of Advisory Neighborhood Commission ("ANC") 2B, and Allen Smith, on behalf of a group of five (5) or more individuals, filed timely oppositions by letter on May 20, 2005 and May 24, 2005, respectively.

The official records of the Board reflect that the Protestants and the Applicant have reached an amendment to their existing voluntary agreement, dated April 23, 2001, that has been reduced to writing and has been properly executed and filed with the Board. The terms of the amendment will be incorporated into the April 23, 2001 agreement. Pursuant to the amendment, dated April 20, 2006, the Protestants have agreed to withdraw their protests, provided, however, the Board's approval of the pending application is conditioned upon the licensee's continuing compliance with the terms of the April 23, 2001 agreement as amended.

1610 Restaurant, LLC
t/a Stetson's Famous Bar & Restaurant
License no. 60455
Case no. 467-05/037P
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Accordingly, it is this 14th day of June 2006, **ORDERED** that:

1. The protests of Darren A. Bowie, Chairman, on behalf of ANC 2B, and Allen Smith, on behalf of a group of five (5) or more individuals, are **WITHDRAWN**;

2. The substantial change application of 1610 Restaurant, LLC, t/a Stetson's Famous Bar & Restaurant, for a summer garden at 1610 U Street, N.W., Washington, D.C., is **GRANTED**;

3. The above-referenced amendment and agreement are **INCORPORATED** as part of this Order; and

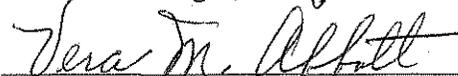
4. Copies of this Order shall be sent to the Protestants and the Applicant.

1610 Restaurant, LLC
t/a Stetson's Famous Bar & Restaurant
License no. 60455
Case no. 467-05/037P
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District of Columbia
Alcoholic Beverage Control Board



Charles A. Burger, Chairperson



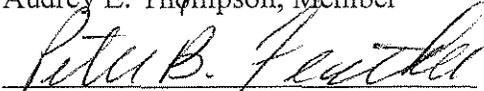
Vera M. Abbott, Member



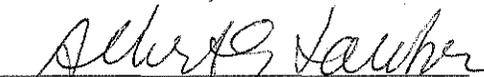
Judy A. Moy, Member



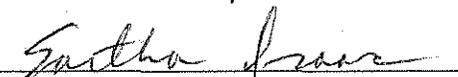
Audrey E. Thompson, Member



Peter B. Feather, Member



Albert G. Lauber, Member



Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

AMENDMENT TO VOLUNTARY AGREEMENT

THIS AMENDMENT TO VOLUNTARY AGREEMENT (the "Amendment") MADE and entered into this 20th day of April, 2006, by and among **1610 Restaurant, LLC t/a Stetsons** (the "Applicant") and **Advisory Neighborhood Commission 2B** ("ANC 2B") (ANC 2B is sometimes hereinafter referred to collectively as the "Protestants")

WITNESSETH

WHEREAS, Applicant is the owner and operator as the business known as Stetsons located at 1610 U Street, NW, Washington, DC (the "Business) and is the holder of a Class "CR" alcoholic beverage license (the "License");

WHEREAS, Applicant has requested the Alcoholic Beverage Control Board (the "Board") approve a substantial change in the nature of its business to include a rooftop seating area (the "Rooftop Terrace");

WHEREAS, Protestants have filed with the Board a protest opposing the substantial change;

WHEREAS, Applicant entered into a Voluntary Agreement with Advisory Neighborhood Commission 1C ("ANC 1C") dated April 23, 2001 (the "2001 Voluntary Agreement");

WHEREAS, because of redistricting, the Business is no longer located within the boundaries of ANC 1C, but is now within the boundaries of ANC 2B.

WHEREAS, the parties desire to amend the 2001 Voluntary Agreement by incorporating the provisions hereinafter set forth (the 2001 Voluntary Agreement as amended hereinafter, is referred to hereinafter as the "Amended Agreement").

WHEREAS, in recognition of the Board's policy of encouraging parties of a protested proceeding to settle their differences by reaching voluntary agreements, the parties hereto desire

to amend the 2001 Voluntary Agreement whereby the Applicant will agree to adopt certain measures to address the Protestants' concerns and to include the Amended Agreement as a formal condition of its license and the Protestants will agree to the requested substantial change and shall withdraw the protest, provided the Amended Agreement is incorporated into the Board's order approving the substantial change.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.

2. Rooftop Enclosure.

Applicant shall construct a permanent enclosure, of hard material, over the Rooftop Terrace area. Such enclosure shall be constructed in accordance with all applicable statutes, ordinances, rules and regulations.

3. Sound Control. Applicant will take the following measure in an effort to minimize disturbances arising from noise from the Rooftop Terrace:

3.1 Applicant shall ensure, through the installation and maintenance of soundproofing and sound barriers, or the consistently enforced limitation of sound system levels, or a combination as necessary, that all audio coming from the Rooftop Terrace, including music volume and bass, remains at all time within applicable noise-level limitations and is at no time

detectable to neighboring residents in their homes. Applicant shall, if requested by any of the Protestants, send a representative to the Protestant's home to determine acceptable audio levels on the Rooftop Terrace.

3.2 Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations, including preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other device or source of sound or noise (including televisions) , in accordance with DCMR 905. The doors, retractable roof and windows of the premises will be kept closed at all times during business hours when music is being played or a sound amplification device (including televisions) is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises.

3.3 Windows, doors, the retractable roof, and other openings on the Rooftop Terrace shall be closed at 11:00 p.m. Sunday through Thursday and 12:00 midnight Friday and Saturday nights.

4. Trash/garbage/rodents. Applicant shall maintain regular trash garbage removal service, regularly remove trash from the trash area, and see that the trash area remains clean. Applicant shall deposit trash and garbage only in dumpsters, or other appropriate trash receptacle, and shall see that dumpster or receptacle covers fit properly and remain fully closed except when trash or garbage is being added or removed.

5. Exterior and public space usage provisions.

5.1 Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free

of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. Applicant shall make reasonable efforts to prevent or disperse loitering or any other source of noise or disturbance in the areas in front of the premises during business hours and at closing, and to cause patrons to leave those areas at closing.

5.2 Applicant will comply with all applicable signage regulations, including those for historic districts and will remove those that are in violation.

6. Rooftop Terrace Capacity. The capacity of the Rooftop Terrace shall not exceed fifty seven (57) or the number of patrons authorized by the certificate of occupancy, whichever is less.

7. Outside Patio Hours. Once construction on the Rooftop Terrace is completed and the Rooftop Terrace is open for business, Applicant shall cease service on its outside rear patio at 11:00 P.M. Sunday through Thursday and 12:00 midnight, Friday and Saturday, and shall be cleared of all patrons by 11:30 P.M. Sunday through Thursday and 12:30 A.M. Friday and Saturday.

8. Conditions Beyond Applicant's Control, Reasonable Efforts. If Applicant is in any way delayed or prevented from performing any of its obligations under this Agreement due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond Applicant's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention. No provision of this agreement shall be considered breached if Applicant has made reasonable and customary efforts to comply.

9. Conflict in Language, Effective Date Except as expressly provided herein, the 2001 Voluntary Agreement remains in full force and effect. In the event of a conflict between the language of this Amendment and the 2001 Voluntary Agreement, the language of this Amendment shall control. The Effective Date of this Amended Agreement shall be such date on which the Rooftop Terrace is first open for business.

10 Notices. In the event of a violation of the provisions of the Amended Agreement, Applicant shall be notified in writing of such violation. Any notices required to be made under the Amended Agreement shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, or hand delivered, to the other parties to the Amended Agreement. Notice is deemed to be received upon mailing. Notice is to be given as follows:

If to Applicant:

1610 Restaurant, LLC
1610 U Street, NW
Washington, DC 20010

With a copy to:

Andrew J. Kline, Esquire
1225 Nineteenth Street, NW
Suite 320
Washington, DC 20036

If to Protestants:

ANC 2B
9 Dupont Circle, NW

Washington, DC 20036
ATTN: Rob Halligan

If to Smith Protestants
c/o Allen Smith
2000 16th Street, NW
#006
Washington, DC 20009

Applicant may change the notice addresses listed above by written notice to the signatories hereto at the addresses listed below their signatures. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the Alcoholic Beverage Control Board.

11. Withdrawal of Protest. Protestants agree to the approval of the substantial change requested by the Applicant and withdrawal of their protests as of the Execution Date of this Amended Agreement, provided that the Amended Agreement is incorporated.

12. Entire Agreement. The Amended Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter herein and it shall not be changed or terminated orally. There are no other warranties or representations made or relied upon by any of the parties to this matter other than those expressly set forth in said Amended Agreement. The Amended Agreement shall be construed in accordance with the laws of the District of Columbia.

13. Counterparts. This Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Successors and Partial Invalidity. The Amended Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In the event any part of the Amended Agreement should be determined by a court or agency of competent jurisdiction to be invalid or unenforceable, the validity of the rest of the Amended Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Amended Agreement did not contain the particular part held to be invalid or unenforceable.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year (Execution Date) stated below:

APPLICANT:

1610 Restaurant, LLC

By: 
Joerg-Uwe Szpil

Date Signed: 5/31/2006

PROTESTANTS

ANC 2B:

By: Darren A. Bowie

Title: Darren A. Bowie, Chairman

Date Signed: 5/5/06

Allen Smith

Date Signed: _____

Karen Williamson

Date Signed: _____

Dan Huizenga

Date Signed: _____

Daniel M. Berler

Date Signed: _____

Elizabeth MacDonald

Date Signed: _____

Lyndon Armstrong

Date Signed: _____

Iga Semeiks

Date Signed: _____

Lawrence I. Wilderman

Date Signed: _____

David Terwillger

Date Signed: _____

Richard Price

Date Signed: _____

Jeannette Catsoulis

Date Signed: _____

Jes Julius

From: Allen Smith [ASmith@bctd.org]
Sent: Tuesday, April 18, 2006 2:04 PM
To: Moosally, Fred (ABRA)
Cc: Jes Julius
Subject: RE: Revised VA Stetsons

Fred,

I as the representative of the Balfour protestants in the matter of the application by Stetson's for permission to a rooftop deck [case number 467-05/037P and License number 60455) do withdraw the protest contingent on the submission of the draft agreement to the Board by ANC 2B.

Allen Smith
2000 16th Street NW
Balfour Condo

From: Moosally, Fred (ABRA) [mailto:Fred.Moosally@dc.gov]
Sent: Tuesday, April 18, 2006 2:01 PM
To: Allen Smith; 'Rob Halligan'; 'Jes Julius'; szipl@szipl.com
Cc: Moosally, Fred (ABRA); burke@szipl.com; 'Andrew J. Kline'; Darren.Bowie@DupontCircleANC.net; Peter.Klempay@dupontcircleanc.net
Subject: RE: Revised VA Stetsons

Congratulations, under the Board's new procedures this case will be taken off of Wednesday's docket so that the parties do not need to appear tomorrow. ABRA will hold off on scheduling another status date for this case for three weeks to provide the parties with sufficient time to gather signatures. If ABRA does not receive a signed voluntary agreement within the next three weeks, ABRA will schedule another status hearing. Alan, if you would like to withdraw your protest contingent upon submission of this agreement to the Board by ANC 2B and the Applicant you may do so by e-mail.

Fred Moosally
General Counsel
ABRA

-----Original Message-----

From: Allen Smith [mailto:ASmith@bctd.org]
Sent: Tuesday, April 18, 2006 1:31 PM
To: Rob Halligan; Jes Julius; szipl@szipl.com
Cc: fred.moosally@dc.gov; burke@szipl.com; Andrew J. Kline; Darren.Bowie@DupontCircleANC.net; Peter.Klempay@dupontcircleanc.net
Subject: RE: Revised VA Stetsons

To hurry along the signing, and since I am out on vacation very soon, I can move to withdraw my protest and let the ANC alone sign the document.
That would hurry up things a lot.

Fred, do you have a form for this or will an e-mail do

Allen

6/1/2006

From: Rob Halligan [mailto:RobHalligan@bigfoot.com]
Sent: Tuesday, April 18, 2006 1:28 PM
To: Jes Julius; Allen Smith; szipl@szipl.com
Cc: fred.moosally@dc.gov; burke@szipl.com; Andrew J. Kline; Darren.Bowie@DupontCircleANC.net; Peter.Klempay@dupontcircleanc.net
Subject: RE: Revised VA Stetsons

The ANC will agree to and sign this agreement. Fred, what is necessary to accomplish for us to avoid coming in tomorrow - not that I'd WANT to miss the Be Bar Status Hearing. We wouldn't have to get all the signatures would we?

Rob Halligan

From: Jes Julius [mailto:jes@klinelawdc.com]
Sent: Tuesday, April 18, 2006 1:19 PM
To: Allen Smith; Rob Halligan; szipl@szipl.com
Cc: fred.moosally@dc.gov; burke@szipl.com; Andrew J. Kline
Subject: RE: Revised VA Stetsons

small revision to section 3.2 has been made--"(including televisions)" was added. see attached.
Best,
Jes

From: Allen Smith [mailto:ASmith@bctd.org]
Sent: Tue 4/18/2006 1:10 PM
To: Jes Julius; robHalligan@bigfoot.com; szipl@szipl.com
Cc: fred.moosally@dc.gov; burke@szipl.com; Andrew J. Kline
Subject: RE: Revised VA Stetsons

Andrew,

As per our phone call-there is one point on this draft, which I had thought I had raised in an earlier e-mail but perhaps I was not clear.

- Regarding section 3.2, the agreement we made in the last meeting I attended was to forbid roof top openings if any sound device was on, and televisions would count as this. The draft agreement mentions televisions in reference to DCMR 905, but it does not mention televisions in the subsequent sentence that relates to opening of the roof top. The phrase "(including televisions)" should be included in that last sentence after the phrase amplification device.

Again, this is only what we already agreed to and in the drafting did not make it into all of the correct clauses.

Thanks

Allen

From: Jes Julius [mailto:jes@klinelawdc.com]
Sent: Tuesday, April 18, 2006 12:48 PM
To: robHalligan@bigfoot.com; szipl@szipl.com; Allen Smith
Cc: fred.moosally@dc.gov; burke@szipl.com; Andrew J. Kline
Subject: Revised VA Stetsons

6/1/2006

LAW OFFICES
ANDREW J. KLINE

1225 NINETEENTH STREET, N.W.
SUITE 320
WASHINGTON, D.C. 20036

(202) 686-7600
FAX (202) 293-3130

Andrew J. Kline (DC & MD)
akline@klinelawdc.com
Scott H. Rome (DC & MD)
srome@klinelawdc.com
Bryan K. Short (VA)
bshort@klinelawdc.com
LaQuan S. Partee, Legal Assistant
Lpartee@klinelawdc.com

June 5, 2006

VIA HAND DELIVERY

Alcoholic Beverage Control Board
c/o Tiwana Clarke, Esq.
941 North Capitol Street, NE
7th Floor
Washington, DC 20002

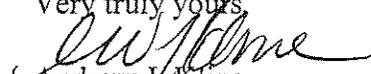
**RE: 1610 Restaurant, LLC t/a Stetsons
Retailer's License Class CT
License No. 60455
Amendment to Voluntary Agreement (the "Amendment")
Substantial Change: Rooftop Seating**

RECEIVED
2006 JUN - 5 AM 10:30
OFFICE OF THE ATTORNEY GENERAL
ALBANY, NEW YORK

Dear Members of the Board:

Please be advised that the parties have reached a resolution in the above-captioned matter. As the enclosed e-mail correspondence between Fred Moosally, and Allen Smith, representative of the group of protestants from the Balfour Condominium ("Balfour protestants") suggests, the Balfour protestants agreed to withdraw their protest contingent upon submission of the enclosed Amendment to Voluntary Agreement signed by the Applicant and ANC 2B. Therefore, signature blocks for these individuals remain blank, their names have been removed from the introductory paragraph of the Amendment, and the enclosed Amendment should be considered fully executed. Please dismiss the protests and direct the staff to process the substantial change on the liquor license.

If you or the Board have further questions regarding the enclosed Amendment, please do not hesitate to contact me, otherwise we look forward to Board's final order and approval of the requested substantial change.

Very truly yours,

Andrew J. Kline

AJK/jrj
Enclosure

cc: Fred Moosally, General Counsel, ABRA
Darren Bowie, Chairman, ANC 2B
Mr. Allen Smith
Joerg-Uwe Szipl
(all via e-mail)

**VOLUNTARY AGREEMENT CONCERNING ISSUANCE OF LICENSE
FOR SALE OF ALCOHOLIC BEVERAGES**

THIS AGREEMENT, made and entered into this 23rd day of April 2001, by and between T.S. KEEEL Trading as STELSON'S INC. hereinafter the "Applicant", and Advisory Neighborhood Commission IC. 12ES hereinafter the "Protestant"), witnesses

Whereas Applicant has filed an application (# 467-210170) with the District of Columbia Alcoholic Beverage Control Board (hereinafter the "Board") for the renewal of a class CB license for the premises known as _____ located at 1610 14 ST, Washington, D.C.

Whereas Protestant has filed before the Board a protest opposing the granting of this renewal,

Whereas in recognition of the Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching voluntary agreements, the Parties hereto desire to enter into a voluntary agreement whereby (1) Applicant will agree to adopt certain measures to address the Protestant's concerns and to include this agreement as a formal condition of its application, and (2) Protestant will agree to the issuance of the renewal of the license and withdrawal of the Protest *provided* that such agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such agreement;

Whereas Applicant has recently taken or intends to take certain measures designed to ameliorate Protestant's concerns,

Now agree therefore, in consideration of the mutual covenants and undertakings memorialized herein the Parties hereby agree as follows.

Hours The hours of operation shall be

Monday	Tues	Wed	Thurs	Fri	Sat	Sun
Till 2 AM	Till 2 AM	2 AM	2 AM	3 AM	3 AM	2 AM

8:00 AM N/A

If hours are different on different floors please indicate

If different from above, hours when alcohol will be served

Inside

Roof

Patio(s)

2 Seating: Seating capacity will not exceed

AS PER FIRE CODE

Interior tables

Interior bar

Patio(s)

Roof

(Please indicate by floor, if more than one floor will have seating)

~~Noise/Music/Dancing~~ Applicant acknowledges familiarity with and will comply with noise-control provisions of District of Columbia law and regulations, including preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with DCMR 905. The doors and windows of the premises will be kept closed at all times during business hours when music is being played or a sound amplification device is being employed in the premises, except when persons are in the act of using the door for ingress to or egress from the premises. There shall be no music played on the roof

~~4 Trash/garbage/rodents~~ Applicant shall maintain regular trash/garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed. Applicant will make every reasonable effort to eliminate food sources for rodents and eliminate the rat population.

~~5 Exterior including public space~~ (a) Applicant shall assist in the maintenance of the alleyway and the space in front of the establishment to at least 18 inches outward from the curb as needed to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulations in these respects. Applicant shall make every reasonable effort to prevent or disperse loitering or any other source of noise or disturbance in the areas in front or to the rear of the premises during business hours and at closing, and to cause patrons to leave those areas at closing.

(b) Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster

o Items specific to establishment

~~IF DO NOT LIKE PAIS CRAWLS AS PER LINDY PROUD'S~~

~~AND DO NOT INTEND TO PARTICIPATE IN SUCH!~~

~~COMPLETED AS PER INSTRUCTED~~

By DAN BRODY

[Signature] bms.

X³ 7. Bar/Pub Crawls. Applicant agrees not to promote or participate in bar or pub "crawls". X ³AK

8. Consideration. Applicant will encourage employees and patrons to be considerate of neighboring residents at all times. Applicant will encourage employees leaving the establishment to keep conversations and noise down from 11:00 PM to 7:00 AM

9. Modification. This agreement can be modified only by mutual agreement of all the parties with the approval of the ABC Board. In the case of ANC 1C, if Applicant desires to modify the terms of this agreement, prior to implementing the changes Applicant shall receive written agreement from ANC-1C after a majority of the commissioners shall have voted in favor of the changes at a full public meeting

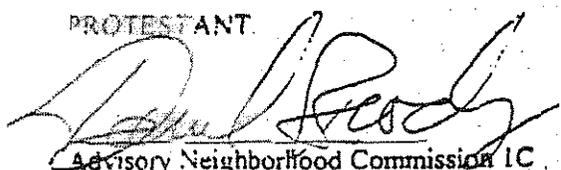
X 10. Regulations. ~~In addition to the foregoing~~. Applicant will operate in compliance with all applicable laws and regulations.

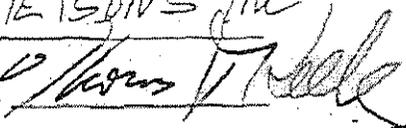
11. Withdrawal of protest. Protestant agree to the issuance of the renewal of the license and withdrawal of their Protests, *provided* that the present Voluntary Agreement is incorporated into the Board's order renewing the license, which order is thereby conditioned upon compliance with such Voluntary Agreement.

APPLICANT:

PROTESTANT:

STETSON'S INC



By: 

Advisory Neighborhood Commission 1C
By DANIEL R. BRODY

THOMAS J. KEELER
PRES!