

BOARD MEMBERS PRESENT

NICK ALBERTI, BOARD MEMBER

JAMES SHORT, BOARD MEMBER

MIKE SILVERSTEIN, BOARD MEMBER

RUTHANNE MILLER, BOARD MEMBER

ALSO PRESENT:

BARBARA KAHLOW

MATTHEW MINORA

P R O C E E D I N G S

CHAIRPERSON ANDERSON: Good morning, everyone. I would like to welcome you to the regularly scheduled meeting of the District of Columbia Alcoholic Beverage Control Board. Please note that today's hearings will be conducted in accordance with D.C. Official Code section 2574 of the Open Meetings Act. Today is September 28, 2016.

I would first like to introduce members of the board with us today. To my far right is Ms. Ruthanne Miller, to my immediate right is Mr. Nick Alberti, to my far left is Mr. Mike Silverstein and to my immediate left is Mr. James Short. My name is Donovan Anderson and I am the Chairman of the Board. The Board has five members in attendance for the conduct of business today and that constitutes a quorum.

I would like to mention two things before we get started. First of all, if you have any electronic devices, pagers, cells phones or such, please make certain that they are turned off to

avoid any interruption of the proceedings. Secondly, there is a piece of paper on each table. When you come forward as your case is called, please take a seat at the table and please sign in. This is to ensure the correct spelling of your name for the record. Additionally, when you introduce yourself for the record, please spell your name aloud for the court reporter. I would like to note that the approximate time is 10:03 and I would like to apologize to the audience for my tardiness at the start of this hearing today.

The first case on our calendar is a protest hearing (status) Case #16-PRO-00085, Watergate Hotel, license #91162. Will the parties please approach and identify themselves for the record, please?

MS. KAHLOW: Thank you. I'm Barbara Kahlow. I am representing the West End Citizens Association for which I am secretary/treasurer and I am the designated representative today. To my right is the president of the Civic

Association, Sara Maddux.

CHAIRPERSON ANDERSON: Good morning.

MR. MINORA: Good morning, Matthew Minora from the firm of Mallios and O'Brien for the licensee.

CHAIRPERSON ANDERSON: Good morning.

MR. MINORA: Good morning.

CHAIRPERSON ANDERSON: Are there any preliminary matters in this case?

MS. KAHLOW: No, but I'd like to say a few words --

CHAIRPERSON ANDERSON: Go ahead.

MS. KAHLOW: -- if I may. Thank you. I want to tell the board how frustrated we are with this case.

CHAIRPERSON ANDERSON: Hold on, hold on. We don't, in these types of proceedings it's just preliminary, like you have, like any motions. It's a status but we don't listen to testimony or we don't make a decision so is there anything, for example, preliminary issue that you want to bring up, to say, is that, okay, do you want an

extension of time, or things like that, but if it's just to make a statement you can do that at a show cause hearing, at a show -- I'm sorry, at a protest hearing not status hearing.

MS. KAHLOW: Yes, well, I understand. I wanted to explain why we submitted the letter to you on September 25th before this status hearing.

CHAIRPERSON ANDERSON: Hold on one minute, please. Go ahead.

MS. KAHLOW: Yes. You have the letter in your docket?

CHAIRPERSON ANDERSON: Go ahead.

MS. KAHLOW: Yes, thank you. We submitted a letter because we don't have the basic information which we showed in our protest is still missing and we think that it will be difficult for you to make the decision.

MR. SILVERSTEIN: Could you speak a little louder, I'm having trouble hearing you. I apologize.

MS. KAHLOW: I'm sorry. Is this better?

MR. SILVERSTEIN: Yes it is, thank you.

MS. KAHLOW: Thank you, I'm sorry. The basic information that you normally have with the hearing on an alcohol case is missing and it would be difficult for you and difficult for us and we tried to obtain it and without that information I'm not sure how you can proceed and we can proceed. We asked for it in mediation and we still can't get it. I use the example that there will be occasional hours for live music. We don't know what those are. And, since some of the venues, of the six venues some of them are not yet operational and we don't have experience with those. We can't even figure out what it is that we are -- what they will do.

CHAIRPERSON ANDERSON: So, what is it that you're asking the board to do?

MS. KAHLOW: We're asking the board to try to help us, or maybe direct the applicant to try to provide us basic information. We don't have the capacities for three of the six venues. Basic information so that we can have an intelligent conversation about what makes sense. We don't

know what -- what the request is.

CHAIRPERSON ANDERSON: Okay. Mr. Minora?

MR. MINORA: I believe all the information that you're requesting was in the ABC license application. I can't speak to that particular facet of each outdoor venue at this time. I'm not really sure what information she needs. If she'd like to she can send us an e-mail, we'd be happy to provide as much as possible, but I do believe that those matters have already been discussed and brought up.

MS. KAHLOW: That is incorrect.

MR. MINORA: Okay.

CHAIRPERSON ANDERSON: Well, as counsel stated, that there -- whatever information is available there and will be provided to you. I'm not sure what the board can do because as counsel stated he's not sure what information it is that is not available.

MS. KAHLOW: In our protest we had a chart showing all of the missing information and he had that since we filed on July 25th. We asked for

it in the mediation on September 13th. Nothing.

CHAIRPERSON ANDERSON: The only thing that the board can do is to advise the parties to continue working together. If -- if -- if the parties are unable to come to some agreement, then when we have our protest hearing it will be up to the board to determine in that the board is going to make a determination and if the board believes that information is missing in making its determination then so will the board rule. But, at this juncture I'm not really sure what I can do if they're saying they're providing you with whatever information is necessary -- I can't tell them to give the information if they've provided it.

MS. KAHLOW: Well, in our letter, the second letter, because information is missing and they've been unwilling to provide it to the board or to the protestant, us, we suggested that the board only consider a one-year renewal so that we would all have experience and we would be able to get the information. I don't know if that's

proper to raise today but we did write you to make that suggestion for --

CHAIRPERSON ANDERSON: -- pursuant to the regulation 23(b)(c) DCMR 207.1, it basically states that a license shall be granted for three years unless the license is suspended, revoked, or if a temporary license or license takes effect in between the dates established by the board. So that's not something the board can do. If it's a three year license we cannot breach that law, that is not the issue. That's not really something the board can do.

MS. KAHLOW: Thank you, I was unaware of that, we were unaware of it, but nonetheless if the board could ask the applicant to provide the very basic missing information in chart 1 that would be helpful. Then we can have another conversation.

CHAIRPERSON ANDERSON: The only thing I can ask is the protestant is saying that there is some missing information. I would direct you to maybe, again, sit down with the protestant to see

if you can provide them with this information that they are stating they need to have.

MR. MINORA: I have not seen that chart personally, but I'm open to discuss this with the applicant by phone and we'll see what we can do if anything to assist.

CHAIRPERSON ANDERSON: Okay. Thank you very much.

MS. KAHLOW: Thank you very much.

CHAIRPERSON ANDERSON: All right, this matter is then set for a protest hearing on November 9th at 1:30 p.m.

Now, I would like to instruct the applicants and protestors -- you can have a seat -- about the basic procedures to make sure that if and when we have a protest hearing that the issues raised are appropriate. The board does not intend to hear testimony in this matter that is not relevant to this case. You should have received by electronic or regular mail a letter explaining the protest process, a copy of the protest information form, and a copy of an

exhibit form. If you do not have these documents, please contact the assistant general counsel, Ms. April Randall, following this hearing. It is imperative that you review the rules closely and adhere to them before and during the protest hearing. You are also required to complete and submit the protest information form and the exhibit form seven days before the date of the hearing. These two forms and accompanying documents need to be submitted to ABRA's legal division and to all opposing parties in this matter. If we do not receive a copy of your PIP, your application or your protest, whichever side you're representing may be subject to dismissal. Likewise, if we do not receive a copy of the exhibit form and the exhibits themselves, your exhibits may be excluded from the record upon a finding that the opposing party has been prejudiced or no good cause for failure to submit has been shown. Likewise, witnesses other than the party may also be subject to exclusion if not identified in your

PIP. Accordingly, these forms are very important, they greatly assist the Board in narrowing the protest issues, facilitating the process and keeping the parties on point during the hearing. They likewise provide notice to opposing parties enabling them to better prepare for the hearing. If you have any questions, please do not hesitate to contact Ms. Randall at 202-442-4353. As I stated before, if you have problems, if you don't understand the process, please contact Ms. Randall and she will explain it to you because the instructions I just read, when we have a hearing, if we don't follow these instructions unfortunately the board might be placed in a position that we might make a decision that is unfair to you, just on [inaudible 0:13:25] because you haven't complied with the process. And I know Mr. Minora, as an attorney he knows this, that's why I'm more so particularly talking to the protestant to make sure that if you have any questions, you contact your lawyers and they will help you, okay?

MS. KAHLOW: Thank you so much.

CHAIRPERSON ANDERSON: All right, thank you very much.

MR. MINORA: Thank you.

(Whereupon, the above-entitled matter was concluded.)