

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE AND CANNABIS BOARD
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MEETING

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IN THE MATTER OF: :
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DC Fine Wine & :
Spirits, LLC :
t/a Total Wine & More :
5401 44th Street NW :
License No. 130474 :
 :
(Substantial Change) :
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Thursday
February 13, 2025

The Alcoholic Beverage and Cannabis Board met via WebEx videoconference, Chairperson Donovan W. Anderson presiding.

PRESENT:

DONOVAN W. ANDERSON, Chairperson
SILAS GRANT, JR., Member
RYAN JONES, Member
DAVID MEADOWS, Member

ALSO PRESENT:

OLIVETTE LOMAX, Witness
MANALLE MAHMOUD, Licensee Counsel
STEPHEN O'BRIEN, Licensee Counsel
JOSE ORELLANA, DC ABCA Staff
TOM QUINN, ANC 3E
SHELLY REPP, Protestant
ROBERT SHAFFER, Licensee

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

2 (5:39 p.m.)

3 CHAIRPERSON ANDERSON: All right,
4 we're back on the record. We're back on the
5 record. I would like to call our final case.
6 It's a fact-finding hearing. This is Total Wine
7 and More, License No. 130474.

8 Mr. Orellana, can you please elevate
9 the rights of all the parties in this case?

10 MR. ORELLANA: Sure thing. Tom Quinn,
11 your access has been elevated. Stephen O'Brien,
12 access has been elevated. Shelly Repp, access
13 has been elevated. Robert Shaffer, access has
14 been elevated. And that appears to be all,
15 Chairman.

16 CHAIRPERSON ANDERSON: Okay. All
17 right. Can everyone please turn their camera on
18 please? Hold on. First of all, I want to
19 apologize to everyone, although your case is not
20 as late as I thought it is. Initially, I was
21 asking for us to push this case up to 2:30
22 because I thought our day would have been very
23 short. We were we having a 3:30 hearing.
24 However, our 10:00 hearing went through almost
25 4:00, so I apologize and I appreciate it.

1 All right, so I'm going to have all
2 the parties introduce themselves and then I will
3 -- I will just talk first. So Mr. O'Brien, can
4 you introduce yourself for the record please? I
5 cannot hear you, Mr. O'Brien.

6 PARTICIPANT: Can you hear him?

7 CHAIRPERSON ANDERSON: I can hear, but
8 I think you need to turn up the volume. Well,
9 while you guys are waiting, the Board calls this
10 fact-finding hearing in DC Fine Wine and Spirits,
11 trade name Total Wine and More. This fact-
12 finding hearing was called so the Board can
13 investigate whether the public placards posted at
14 the establishment were properly posted in
15 accordance with D.C. Official Code Section 25-
16 423E. It is my understanding that a request came
17 in from a group of five or more regarding the
18 placard. They want to be a party in this case.

19 But let me call the case and then I'll
20 state what the Board's position is. So go ahead,
21 Mr. O'Brien, please introduce yourself for the
22 record.

23 MR. O'BRIEN: Sorry for the technical
24 glitch there. Stephen O'Brien, S-T-E-P-H-E-N
25 O'-B-R-I-E-N with Manalle Mahmoud, M-A-N-A-L-L-E,

1 last name M-A-H-M-O-U-D, counsel for Total Wine.

2 CHAIRPERSON ANDERSON: Who's the
3 client? Do you have a representative?

4 MR. O'BRIEN: Mr. Shaffer was
5 introduced, but Mr. Shaffer had to log out for a
6 previous commitment.

7 MR. SHAFFER: Yeah, I'm here now. I
8 apologize.

9 CHAIRPERSON ANDERSON: Okay. So Mr.
10 Shaffer, please spell and state your name for the
11 record.

12 MR. SHAFFER: Of course. My name is
13 Robert Shaffer, last name S-H-A-F-F-E-R and I
14 work at Total Wine and More.

15 CHAIRPERSON ANDERSON: Okay. And I
16 think we have a Mr. Repp. Can you please spell
17 and state your name for the record and you
18 relationship to this matter?

19 MR. REPP: Yes. Good afternoon,
20 almost good evening here. Yeah, my name is
21 Sheldon Repp, R-E-P-P. I am the representative
22 of the group of five that's protesting this
23 application.

24 CHAIRPERSON ANDERSON: All right,
25 thank you. Mr. Quinn, please spell and state

1 your name for the record.

2 MR. QUINN: My name is Tom Quinn, T-
3 O-M Q-U-I-N-N. I am here on behalf of ANC 3E.
4 We are the second party in protest. And I
5 apologize for my appearance. I did not realize I
6 was actually going to be a party to this call, so
7 thank you.

8 CHAIRPERSON ANDERSON: All right.
9 This is the process that we're going to take, Mr.
10 O'Brien. I know there have been motions and
11 filed. The Board already on our calendar
12 yesterday, we made some determinations of the
13 process that it's going to take. The group of
14 five or more and ANC are not parties to this
15 matter. However, this is a public hearing. So I
16 will allow the group of five or more to express -
17 - to make a comment regarding their concerns and
18 the ANC if they so desire to make a comment
19 regarding their concerns, but they're not parties
20 to this matter. We will proceed with the
21 Applicant, but we're allowing the -- We can start
22 with the group of five or more that they can
23 express what, if any concerns that they currently
24 have.

25 MR. REPP: Regarding placarding?

1 CHAIRPERSON ANDERSON: Yes. The
2 purpose of this hearing is the placarding. If
3 there are some concerns regarding the placarding
4 and whether or not the establishment was properly
5 placarded for the 45 days. And so therefore, the
6 decision is whether or not the Applicant has
7 complied with the statute. And if the Applicant
8 has not complied with the statute, what is it
9 that the Board should do? Should we state that
10 the matter has to be re-placarded and just start
11 the process back for the roll call.

12 Okay? That is the only issue that
13 this is about. It's about the placarding and the
14 concerns because as I said before, this was
15 brought to our attention by, I think by the group
16 of five or more and maybe the ANC, so therefore
17 that's why as this is a fact-finding hearing and
18 so they can comment, but they're not a party to
19 this matter. Okay? So go ahead.

20 MR. REPP: Yes, thank you. Shelly
21 Repp here. You know, based on your decision
22 yesterday, I prepared like three minutes of
23 remarks. Is that okay with you?

24 CHAIRPERSON ANDERSON: Go ahead, sir.
25 I'll give you five minutes.

1 MR. REPP: Okay, thank you. Thank
2 you. Okay. Good afternoon. Thank you for
3 giving our group a few minutes to speak. If
4 possible, we ask for a brief period after Total
5 Wine's presentation to respond.

6 CHAIRPERSON ANDERSON: No, sir. No,
7 sir. This is your one and only opportunity.

8 MR. REPP: Okay. I understand.

9 CHAIRPERSON ANDERSON: So you need to
10 put everything here now. Okay?

11 MR. REPP: Okay. This is a fact-
12 finding hearing as you say on the issue of
13 whether Total Wine and More's public notice of
14 its licensed applicant can comply with the
15 applicant requirements. The facts clearly show
16 that they did not. Under D.C. law, a licensing
17 applicant is required to post two notices for 45
18 days. Total Wine's posting of each of these two
19 placards was deficient. Applicant now admits
20 that a member of its staff visited the subject
21 site on December 23rd and found that one of the
22 two placards had disappeared and the other was
23 folded over and as shown in their photo,
24 unreadable.

25 Community members visited the site

1 before then, including on December 13th, ten days
2 before the 23rd and failed to find one of the
3 placards at all and as they said, it's missing,
4 and took a photo of the folded over placard. The
5 folded over placard was located in a construction
6 zone inaccessible to the public. As Total Wine
7 states, the premises are in a construction zone
8 surrounded by a chain link fence. However, the
9 public can get close to the building on the
10 building's Wisconsin Avenue side as one lane of
11 traffic on Wisconsin Avenue is closed off so
12 pedestrians can transverse the block. One or
13 more of the placards could have been posted
14 there, but they were not.

15 We know that it is Applicant's
16 responsibility to maintain the postings. Clearly
17 Total Wine failed in this regard. These facts
18 should settle the matter before this fact-finding
19 hearing. Since the placards were not posted and
20 readable throughout the 45 day notice period, the
21 placards should be posted anew. That's the
22 appropriate remedy in our view.

23 We suspect that Total Wine will state
24 that our group had actual notice of the
25 application. In our case, we only learned of the

1 application on December 12th and were only able
2 to file a protest with a couple of hours to spare
3 on December 23rd, the closing date of the protest
4 period. Most members of the public were not
5 aware of the application. Only a handful
6 attended the ANC's December 12th meeting, which
7 is where we learned of it. And we believe that
8 might have been the only public forum where the
9 application was presented. Community input has
10 been severely curtailed. We thought placarding
11 would provide time for more residents to learn
12 about Total Wine's plans and their impact on the
13 neighborhood. That's the main purpose of
14 requiring public notice in the first place.

15 Those are my comments. We do have
16 photos, which we were told we might be able to
17 share. If you want to, I can show you a couple
18 of those.

19 CHAIRPERSON ANDERSON: This is a
20 public comment period, so I'll allow you -- Mr.
21 Orellana, can you please allow Mr. Repp to share
22 his screen if he's able to do so?

23 MR. REPP : Just a minute here. Okay,
24 here we have the photos that were taken on
25 December 13th within the notice period. It shows

1 the -- this is a construction site. This is 44th
2 Street here. It's totally closed off to traffic.
3 There's no sidewalk nearby. So that's just a
4 picture of the site.

5 If you move down, this is the specific
6 placard that was folded over and unreadable.
7 Once again, there's no sidewalk nearby here.
8 This was taken on December 13th.

9 Moving on, this is the -- I mentioned
10 that they could placard on Wisconsin Avenue. I
11 know this is sort of a small picture, but this is
12 looking from Jennifer Street up Wisconsin in the
13 direction of Bethesda. You can see this is the
14 area that has been -- the road that has been
15 blocked off so that pedestrians can walk along
16 here. This is the only side of the building
17 where there is a sidewalk or walkable -- where
18 the placards could be posted and they were not
19 posted here.

20 This is Jennifer Street and 44th
21 Street, which is the other side from the one
22 where the folded over placard was. We believe
23 this may have been where the missing placard is,
24 but you know, we didn't see it there. We didn't
25 see it there on the 13th. It's not there now.

1 Moving on, this is the construction --
2 this is where the placard is. It's right there.
3 Once again, you can't -- the street over here on
4 the right, 44th Street, it's blocked off. Road
5 closed as you can. There's no way that any
6 pedestrian could get up there to look at it.

7 I just have two more photos here.
8 Once again, this is the unreadable folded over
9 placard. Totally deficient notice in our view.
10 There it is once again, the totally deficient
11 notice.

12 And once again, this is 44th and
13 Jennifer showing that, that's blocked off also
14 for construction. We presume that this may have
15 been where the placard was before. So that's all
16 I have to share, Mr. Anderson.

17 CHAIRPERSON ANDERSON: I guess just a
18 question. You can close your screen. The
19 question that I'm curious about. The purpose of
20 -- you can close your screen please, sir.

21 MR. REPP: What do I do here?

22 CHAIRPERSON ANDERSON: Yes, you're
23 fine now. The purpose of the placard is to
24 advise the community. To put the community on
25 notice to say that this established has applied

1 for a license and that you have the 45-day period
2 that you can protest if you so desire. But you
3 filed a protest -- Mr. O'Brien, mute your line
4 please, sir. So Mr. Repp --

5 MR. REPP: Yes.

6 CHAIRPERSON ANDERSON: -- your group
7 filed a protest.

8 MR. REPP: We were unable to get it in
9 before the closing period, yes.

10 CHAIRPERSON ANDERSON: But you got it
11 in, so you were granted standing. And it's my
12 understanding you went to the roll call and maybe
13 you participated in mediation. I'm just trying
14 to find for argument's sake that everything you
15 said is correct. What is the harm?

16 MR. REPP: The harm is to the public
17 here. You know, while we were able to see this,
18 you know, most residents were totally caught
19 unaware and they've only been learning about it
20 since. We did attend the roll call hearing and
21 all we did there was raise the notice of the
22 placarding issue. We did not engage in mediation
23 because we thought it was improper at that time
24 to do that.

25 CHAIRPERSON ANDERSON: But the issue

1 is that you represent a group of five or more, so
2 for all intensive purpose, you represent the
3 community. The ANC was given standing, so the
4 ANC represents the community from the ANC's
5 perspective and you from the group of five or
6 more, you also represent the community. Now if
7 the ANC had signed a settlement agreement with
8 this establishment, you would have been out of
9 luck because you couldn't have even protested
10 this. You'd have lost standing. So I guess what
11 I'm saying is that you were granted standing.
12 You represent the community. This is the
13 opportunity that you can participate. You can
14 have conversations with the Applicant to find out
15 more information. And if the parties are able to
16 sign a settlement agreement, you're able to do
17 that at this juncture.

18 So I'm just curious since I could
19 understand at least from my perspective currently
20 and I've not made up my mind, is that if you were
21 not granted -- if you did not know about the --
22 you didn't see the notice and if you met -- I'm
23 sorry -- if you failed to protest this matter
24 within the 45 days and if your argument is that
25 okay, we never saw the placarding because it was

1 not there for the 45 days. And if it was there,
2 I would have protested. But the purpose of the
3 placard is to put the community on notice that
4 they can protest this and you have done that. So
5 I'm just curious what harm that you suffered
6 because as a group of five or more, you can
7 represent the rest of the community.

8 MR. REPP: Well, we do not pretend to
9 represent the rest of the community.

10 CHAIRPERSON ANDERSON: But I'm saying
11 as a group of five or more because all that would
12 occur is that maybe another group of five or more
13 or maybe another community group could possibly,
14 but the ANC has, you are a group of five or more,
15 so if this matter goes to a hearing through your
16 protest, you can call 100 witnesses in the
17 community. All the folks who could have
18 protested, you can call them as witnesses as a
19 part of your group.

20 MR. REPP: I understand what you're
21 saying, Mr. Anderson, but once again, we do not
22 represent the community. We only represent the
23 people that signed our protest letter. We
24 understand to get to your point about the ANC, we
25 understand that the ANC is talking to Total Wine

1 about a possible settlement. As you point out,
2 they under, what is it, you know, 609. whatever
3 it is, that, that would cut off the ability of
4 anybody to protest --

5 CHAIRPERSON ANDERSON: No, just the
6 group of five or more. The abutting property
7 could still protest and a community group could
8 still protest. But that would block off any --

9 MR. REPP: But only if there's
10 replacarding -- another notice period, and that
11 certainly would be sufficient there. So you
12 understand -- any more questions on -- can I help
13 you further on that? I'll put it that way.

14 CHAIRPERSON ANDERSON: Okay, that's
15 fine. All right. Thank you, sir. Mr. Quinn, do
16 you -- this is the portion of the public portion
17 of the hearing, if you want to say something,
18 I'll give you an opportunity. You don't have to,
19 sir.

20 MR. QUINN: So ANC 3E has not taken a
21 position on the notice, so I therefore don't have
22 any testimony. I'm happy to answer any questions
23 if it helps, but I don't have a statement. Thank
24 you.

25 CHAIRPERSON ANDERSON: All right.

1 Thank you, sir. So we're going to start the
2 hearing. As I stated before, as a public
3 hearing, I gave the group of five or more an
4 opportunity to speak and so now we're going to
5 formally start the hearing and the Board is the
6 only parties who will be asking questions.

7 Mr. O'Brien, what is your client's
8 position, sir?

9 MR. O'BRIEN: Excuse me. Our position
10 is that the Administrative Procedure Act, which
11 governs the Board's conduct of business doesn't
12 require perfect notice. It requires reasonable
13 notice. Now I think Mr. Repp's position boils
14 down to if the placards are not up for the full
15 45 days, that we have to start over, ipso facto,
16 open and shut. But that's not the law. First of
17 all, the placard's public notice have to be
18 published in the D.C. Register. That was done in
19 this case.

20 Second, ABCA has to provide the
21 affected ANC with notice. That was done in this
22 case. Third, the Applicant has to post placards
23 45 days in advance of expiration of the protest
24 period. And I have a witness here who will
25 describe that this was exactly what was done. So

1 maybe if I can ask Mr. Lomax to come up.

2 CHAIRPERSON ANDERSON: All right. And
3 this is a fact-finding hearing, so we do not
4 swear witnesses in, so she's not under oath. But
5 Ma'am, can you please spell and state your name
6 for the record and you can ask her questions.

7 MS. LOMAX: Good evening. My name is
8 Olivette Lomax spelled O-L-I-V-E-T-T-E L-O-M-A-
9 X, like x-ray.

10 CHAIRPERSON ANDERSON: All right, go
11 ahead.

12 MR. O'BRIEN: Ms. Lomax, how are you
13 employed?

14 MS. LOMAX: Mallios O'Brien &
15 Sandground.

16 MR. O'BRIEN: In what position?

17 MS. LOMAX: Legal assistant.

18 MR. O'BRIEN: How long have you been
19 employed with us?

20 MS. LOMAX: I've been employed here
21 for approximately 16 and a half years.

22 MR. O'BRIEN: Okay. What is the
23 nature of our legal practice?

24 MS. LOMAX: We're almost exclusively
25 assisting our clients obtain their ABC licenses

1 and representing them before the ABC Board.

2 MR. O'BRIEN: Okay. And what do you
3 do at our law firm?

4 MS. LOMAX: I prepare ABC applications
5 and renew applications. I renew and obtain
6 business licenses and I renew municipal permits.

7 MR. O'BRIEN: Okay. Do you have any
8 involvement -- I'm talking now about in general,
9 do you have any involvement in placard posting?

10 MS. LOMAX: Yes.

11 MR. O'BRIEN: What does that involve?

12 MS. LOMAX: I visit ABRA and pick up
13 placards and I take them to post them at the
14 different establishments around D.C.

15 MR. O'BRIEN: Over the 16 years you've
16 been with us, can you estimate how many times you
17 have posted placards?

18 MS. LOMAX: Hundreds of placards --
19 hundreds. I wouldn't be surprised if it were
20 thousands. I'm not -- maybe hundreds I would
21 say.

22 MR. O'BRIEN: Okay. All right.
23 What's the preferred placement of placards in
24 general?

25 MS. LOMAX: The preferred placement is

1 normally right where the establishment is going
2 to be situated.

3 MR. O'BRIEN: Okay. On the outside of
4 a building?

5 MS. LOMAX: Well, we try to post
6 interiorly on the inside on windows facing
7 outward.

8 MR. O'BRIEN: And why is that?

9 MS. LOMAX: To protect it from the
10 weather and from people being able to pull the
11 placards down.

12 MR. O'BRIEN: Okay. Do you ever allow
13 clients to post the placards for their own
14 applications?

15 MS. LOMAX: No, we never allow clients
16 to post their own.

17 MR. O'BRIEN: Why not?

18 MS. LOMAX: Some clients tend to be a
19 little cute where they try to post the placards
20 in a way where the public wouldn't be able to see
21 it. So we just do not allow our clients to post
22 placards. I post them.

23 MR. O'BRIEN: Okay. If you were
24 advised that a particular site that you're
25 posting placards at is a construction area, what

1 do you do normally?

2 MS. LOMAX: Normally I would visit a
3 location such as FedEx or Staples. I would get
4 the placards laminated and hole-punched where
5 they would insert grommets or eyelets -- level
6 eyelets to keep the placards from being destroyed
7 or being able to tear.

8 MR. O'BRIEN: And then what would you
9 do with the placards or where would you post them
10 normally?

11 MS. LOMAX: I would normally post them
12 as close to the establishment as possible.

13 MR. O'BRIEN: On what?

14 MS. LOMAX: On a fence secured by zip
15 ties.

16 MR. O'BRIEN: Okay. How many times
17 over the years do you think you've posted
18 placards on construction fencing?

19 MS. LOMAX: A lot. Do you want me to
20 give you a number? I would say hundreds.

21 MR. O'BRIEN: Okay. Now I'm going to
22 invite your attention now to Total Wine.

23 MS. LOMAX: Yes.

24 MR. O'BRIEN: All right. What were
25 you told to do with respect to posting placards

1 at Total Wine? What instructions were you given?

2 MS. LOMAX: I was just told that Total
3 Wine was a construction site and to post them on
4 the fence.

5 MR. O'BRIEN: Okay. So what did you
6 do? Where did you get the placards?

7 MS. LOMAX: I went to ABRA, picked up
8 the placards and I took them to FedEx -- well, in
9 this case it was Staples and I got the placards
10 laminated with grommets and I secured it to the
11 fence with zip ties.

12 MR. O'BRIEN: Okay. And when did you
13 do that?

14 MS. LOMAX: This was done on November
15 8th, 2024.

16 MR. O'BRIEN: All right.

17 MS. LOMAX: Yeah, 2024.

18 MR. O'BRIEN: Okay. Sitting here now,
19 how do you know it was November 8th?

20 MS. LOMAX: I was able to review our
21 client's November invoice and I also had it
22 notated on my following picture with date and
23 time.

24 MR. O'BRIEN: All right. I'm going to
25 ask if we can elevate a photograph.

1 CHAIRPERSON ANDERSON: Please allow
2 Ms. -- who is trying to -- whose computer should
3 I allow to share?

4 MR. O'BRIEN: It's the one that I'm
5 speaking to you through.

6 CHAIRPERSON ANDERSON: All right. Mr.
7 -- I need to tell our IT specialist who to give
8 the rights to do that. That's why I'm asking,
9 sir. You have access. Go ahead.

10 PARTICIPANT: Thank you.

11 MR. O'BRIEN: Ms. Lomax, can you
12 identify this photo?

13 MS. LOMAX: Yes. These are the photos
14 that I posted the placards at Total Wine.

15 MR. O'BRIEN: Okay. When did you take
16 this photo?

17 MS. LOMAX: This photo was taken
18 November 8th.

19 MR. O'BRIEN: All right. Does it
20 fairly and accurately depict the conditions that
21 are shown as of November 8th?

22 MS. LOMAX: It does.

23 MR. O'BRIEN: Okay. Where in relation
24 to the placards, and we see two placards --

25 MS. LOMAX: Yes.

1 MR. O'BRIEN: -- ABRA placards posted.
2 Where in relation to Total Wine site are those
3 placards?

4 MS. LOMAX: I would say -- I'm sorry,
5 can you repeat that question?

6 MR. O'BRIEN: Okay. There's a
7 building behind.

8 MS. LOMAX: Right.

9 MR. O'BRIEN: Okay. Where in that
10 building is Total Wine?

11 MS. LOMAX: It's right behind that
12 construction and this placard --

13 MR. O'BRIEN: The blue placard --

14 MS. LOMAX: Yes.

15 MR. O'BRIEN: -- the blue sign?

16 MS. LOMAX: Yes.

17 MR. O'BRIEN: Okay. It's behind it?

18 MS. LOMAX: Mm-hmm.

19 MR. O'BRIEN: Okay. All right. You
20 posted those placards on November 8th.

21 MS. LOMAX: Yes.

22 MR. O'BRIEN: Okay. I think there's
23 a second photograph here. All right. That
24 appears to be one of the two placards in the
25 previous photo.

1 MS. LOMAX: Yes.

2 MR. O'BRIEN: Okay. Why did you take
3 this photo of that one placard?

4 MS. LOMAX: I wanted to show context
5 between where the placards were posted and the
6 street.

7 MR. O'BRIEN: Okay. All right.
8 Subsequently did you learn that there was an
9 issue with the placards?

10 MS. LOMAX: Yes.

11 MR. O'BRIEN: How did you learn that?

12 MS. LOMAX: You contacted me by phone
13 on my way to work and I learned that the placards
14 were not posted. So you asked me to drive by the
15 site and see if the placards were still posted on
16 the fence.

17 MR. O'BRIEN: Okay. And when did you
18 do that?

19 MS. LOMAX: That was on December 23rd.

20 MR. O'BRIEN: Okay. Was that the last
21 day of the placard posting period?

22 MS. LOMAX: Yes.

23 MR. O'BRIEN: Okay. Could we have the
24 next exhibit please? Okay. And this is a photo.
25 Ms. Lomax, did you take the photo?

1 MS. LOMAX: I did.

2 MR. O'BRIEN: When did you take it?

3 MS. LOMAX: December 23rd.

4 MR. O'BRIEN: Okay. And what does it
5 show?

6 MS. LOMAX: It shows that the placard
7 is hanging by one zip tie.

8 MR. O'BRIEN: Okay. When you say --
9 you describe that you laminate the placards. You
10 have grommets at each corner.

11 MS. LOMAX: Yes.

12 MR. O'BRIEN: How do you fasten them
13 to the fence?

14 MS. LOMAX: With a heavy duty zip tie.

15 MR. O'BRIEN: Okay. Can they be
16 easily ripped after you fasten them to the fence?

17 MS. LOMAX: No, not at all. What I do
18 take down placards and zip ties, I would normally
19 have to cut them with scissors. It's not easily
20 done.

21 MR. O'BRIEN: Okay. All right.
22 That's all I have for Ms. Lomax. So we'll take
23 questions the Board may have.

24 CHAIRPERSON ANDERSON: Yeah. I have
25 a question for Ms. Lomax. So Ms. Lomax, you know

1 that the placards are supposed to be up for 45
2 days. Do you typically go back within the 45
3 days to check to see if the ones that you have
4 posted, if they're still there?

5 MS. LOMAX: I do not.

6 CHAIRPERSON ANDERSON: Okay. So you
7 went back. I mean the picture that was shown, I
8 only saw one. Maybe I missed it. The first
9 picture you showed two placards. This picture
10 you only show one. So you went back there the
11 23rd, was there just only one placard there or
12 was the other one there?

13 MS. LOMAX: There was only one placard
14 posted.

15 CHAIRPERSON ANDERSON: So do you have
16 an idea what happened to the second placard that
17 you posted?

18 MS. LOMAX: I do not.

19 CHAIRPERSON ANDERSON: Now you took a
20 picture, did you go there to look to see if the
21 placard was still in good shape or was it
22 damaged? I know you said that it was laminated
23 but did you physically go up to the placard to
24 look to see what condition it was in?

25 MS. LOMAX: Yes. I could tell that it

1 was a little damp, but it still was protected by
2 the lamination.

3 CHAIRPERSON ANDERSON: So it was still
4 affixed to the wall, although one of the posts
5 was down, but you're saying that you could still
6 read it?

7 MS. LOMAX: I didn't try to read it.
8 But if you look at the placard from the photo,
9 you can still see some words from Mr. Repp's photo.
10 You can make up some words.

11 CHAIRPERSON ANDERSON: But I'm asking
12 you about your picture. I'm sorry. You went on
13 December 23rd and you took a picture, so I was
14 asking you, the time you went to take the picture
15 on December 23rd, did you have a bird's eye view
16 or did you just take it from a -- were you just
17 driving by and took it or did you actually go up
18 there and take a picture and look at the placard
19 and maybe fix it back to the wall?

20 MS. LOMAX: I went up, took the
21 picture -- I walked up, took the picture. I did
22 not try to read the placard.

23 CHAIRPERSON ANDERSON: And you didn't
24 try to affix the other side back up?

25 MS. LOMAX: I'm sorry?

1 CHAIRPERSON ANDERSON: You didn't try
2 to attach -- the side that was down, you didn't
3 try to attach it back to the fence?

4 MS. LOMAX: No.

5 CHAIRPERSON ANDERSON: Okay. Any
6 questions by any other board members? Go ahead,
7 Mr. Grant.

8 MEMBER GRANT: Ms. Lomax, thank you
9 for your testimony. Just to verify, you stated
10 that you've put up, if not thousands of these
11 placards. Correct?

12 MS. LOMAX: Yes.

13 MEMBER GRANT: In your experience, I
14 know you stated you did not know what happened in
15 this instance, but given your vast experience of
16 posting these across the city, can you provide us
17 with maybe a handful of examples of situations
18 where placards have been compromised, where it's
19 out of your -- I want to word this correctly.
20 Could you share with us experiences having put up
21 placards of the placards being compromised maybe
22 by other people or by other elements? Are there
23 any examples you could give us? I know you're
24 not aware of what happened with this one, but can
25 you give us a range of like what's to be expected

1 in the line of duty that you do?

2 MS. LOMAX: I'm not quite sure I
3 understand.

4 MEMBER GRANT: Okay. Let me try and
5 give you an example from my end. So in a
6 previous life, I've done work on political
7 campaigns, right? Competitive campaigns, right,
8 where there may be competitors that have torn
9 down signs as a result of my team and I putting
10 up signs. Right? There could be a weather-
11 induced situation that causes the placards to be
12 damaged. It could be someone who just for no
13 reason, maybe a kid just playing a role and
14 trying to be destructive, right? Those are a
15 couple of examples of situations I've incurred in
16 a previous life putting up signs throughout D.C.
17 And I was just curious from your experience
18 putting up placard, if there were any like
19 standard potential situations that you could name
20 where a placard could be compromised or in a
21 situation where it's not viewable?

22 MS. LOMAX: There were times where I
23 posted placards, it was on Massachusetts Avenue,
24 I want to say 2nd or 4th Street, and there were
25 homeless people standing around and the owners,

1 they were afraid that the homeless people would
2 actually tear down the placards. I even had
3 owners to tell me that they were afraid to have
4 their placards posted outside because their
5 competitor would tear down their placards. Did
6 that answer your question?

7 MEMBER GRANT: Yeah, it did. I
8 appreciate that. Thank you so much. No further
9 questions from Mr. Chair.

10 CHAIRPERSON ANDERSON: Thank you. Any
11 other questions by any other board members?

12 MR. O'BRIEN: Mr. Chair, following up.
13 Ms. Lomax --

14 CHAIRPERSON ANDERSON: Hold on. Hold
15 on. Hold on, Mr. O'Brien. I'm asking the board
16 members if the board members have questions. I'm
17 trying to get some more light here for myself.
18 So I'm trying to find if other board members have
19 questions before I give you a question to ask
20 questions, sir. Any other questions by any other
21 board members? Hearing none, I guess I'll give
22 you an opportunity, Mr. O'Brien, if you need to
23 ask a follow-up question.

24 MR. O'BRIEN: Yes. Just following up
25 on the question Ms. Lomax was asked. You told

1 the Chair that you do not routinely go out and
2 conduct a placards check during the 45 days.
3 Okay. But from time to time, if you become aware
4 that placards are down --

5 MS. LOMAX: Yes, I have become aware.

6 MR. O'BRIEN: All right. And what do
7 you do when you're advised that the placards are
8 down during the 45-day period? What do you
9 usually do?

10 MS. LOMAX: I would contact the
11 licensing specialist, let them know that the
12 placards -- the client notified me that the
13 placards were down and I would go by and pick up
14 the extra placards and repost them.

15 MR. O'BRIEN: Replacement placards.

16 MS. LOMAX: Replacement placards. Mm-
17 hmm.

18 MR. O'BRIEN: Okay. And does ABCA
19 staff routinely accommodate the request for
20 replacement placards?

21 MS. LOMAX: Yes. Yes. Maybe until
22 the last day of the placards, I'll replace them.

23 MR. O'BRIEN: Okay. Why did you not
24 do that in this case?

25 MS. LOMAX: Why did I not go by --

1 MR. O'BRIEN: Yes. Why?

2 MS. LOMAX: Going by -- I mean Total
3 Wine is a ways from my home and from our office,
4 so it can tend to be kind of expensive for --

5 MR. O'BRIEN: Did it have anything to
6 do with -- we were talking about the 45th day of
7 the posting period?

8 MS. LOMAX: Yes.

9 MR. O'BRIEN: Okay, thank you. Mr.
10 Chair, we can let Ms. Lomax go if there's no
11 other questions for her.

12 CHAIRPERSON ANDERSON: There are no
13 other questions for Ms. Lomax.

14 MR. O'BRIEN: I had arranged for Mr.
15 Gordy to participate today --

16 CHAIRPERSON ANDERSON: Do you still
17 need Mr. Gordy to -- I don't know where Mr. Gordy
18 is, but do you still -- can you provide us a
19 proffer with what testimony you expected to
20 receive from Mr. Gordy?

21 MR. O'BRIEN: I will give you a
22 proffer and I talked to him several times,
23 including I think yesterday or the day before
24 yesterday. In his experience, it is not uncommon
25 for placards to go down, disappear during the 45-

1 day period. And he would attribute it sometimes
2 to weather, sometimes to sabotage. That's my
3 word, but that's what he said. He mentioned the
4 word competitors. He said when ABCA becomes
5 aware of it, they will replace the placards as
6 soon as they become aware of it. Notify the
7 Applicant. And that's what Ms. Lomax stated that
8 she usually would go down and get the replacement
9 placards and put it up. But Mr. Gordy would
10 represent that he did not do that in this case
11 because it was the 45th day of the protest
12 period. He learned about this either late on the
13 20th or early on the 23rd of December being the
14 expiration. He went out or he sit somebody out
15 who reported they couldn't see anything. He
16 reported that to me. I sent Ms. Lomax out to see
17 what she could see. And she reported back, but
18 it was the 45th day. What would be the point of
19 issuing replacement placards to be taken down a
20 couple hours later? That's what Mr. Gordy would
21 say.

22 CHAIRPERSON ANDERSON: I mean I don't
23 think that's necessary for us to have testimony
24 from Mr. Gordy. I mean if you believe that you
25 need to have him, we'll try to find him, but I

1 don't --

2 MR. O'BRIEN: I represent in good faith
3 that's what Mr. Gordy would say.

4 CHAIRPERSON ANDERSON: All right.
5 Then that's fine. Then we'll take that. We'll
6 take notice of that. I don't think it's
7 necessary for the board to have any testimony
8 from Mr. Gordy. Go ahead, sir.

9 MR. O'BRIEN: I would also represent
10 and I know that Commission Quinn is with us, but
11 if the Chair, Mr. Bender was with us, he would
12 confirm that I telephoned him on October 28th,
13 which is ten days before the commencement of the
14 placard period. And it was a courtesy call to
15 Chairman Bender to tell him that the Total Wine
16 application was coming his way. I'm not sure
17 that Mr. Bender would confirm the date, October
18 28th, but I'm very confident that he would agree
19 that he got a phone call from me as a courtesy,
20 telling him it was coming and that this phone
21 call was the first he had known about it, meaning
22 it was before the ANC was notified by ABCA.

23 CHAIRPERSON ANDERSON: I think, Mr.
24 O'Brien, the ANC has stated you have, you have
25 Mr. Quinn here from the ANC -- Mr. Quinn has

1 stated that he does not take a position. So the
2 ANC has not taken a position. And from what the
3 record reflects was that the ANC had a meeting on
4 December 12th where they voted -- a notice
5 meeting where they voted to protest the
6 application, so therefore if the ANC had a
7 meeting on December 12th, therefore the ANC had
8 to have sufficient notice for them to inform the
9 public prior to December 12th that they will be
10 considering taking a position of the Total Wine.
11 So I think that the ANC's position is not --
12 well, we know what the ANC's position is because
13 as stated before, they have protested this matter
14 and I don't think that they are contesting the
15 notice requirement.

16 MR. O'BRIEN: I brought the
17 conversation that I initiated with Chairman
18 Bender up only on the subject of reasonable
19 notice. It was in the D.C. register. The ANC
20 received notice from ABCA. The placards were
21 posted correctly as you've seen. And we went the
22 extra mile to initiate contact before the
23 placards went up -- initiated contact with the
24 ANC. And that takes me back to what the
25 Administrative Procedure Act requires. Not

1 perfect notice, just reasonable notice.

2 Mr. Repp represented several times in
3 his statement that he was not representing any
4 other than his 29 signatories to his protest.
5 But what he is intending to do today is represent
6 them and he's saying that there's other people
7 out there who didn't have notice and they need
8 notice. Well, not a single person in the almost
9 two months since the placard period ended has
10 come forward and said I didn't get notice, but I
11 would have protested. Not a single person.

12 Now I don't doubt that maybe later,
13 somebody tomorrow morning will come as a result
14 of what I'm saying now. But they'd have to say
15 that they were out of the country most of
16 November and December, but they usually walk by
17 this site every day and if they had walked by
18 this site and they were only back in the country
19 for the last X days, even ten days of the protest
20 period, if only the placards had still been up,
21 they would have seen it and they would have
22 protested. But there's no such person. Anybody
23 coming up with that, would not be deemed credible
24 by anybody.

25 As noted in the Office of People's

1 Council case that is cited in our memorandum,
2 there are statutory grounds for protest for an
3 ABC license. Each of those grounds has been
4 alleged in the ANC filing. It's a boiler plate,
5 but it's adequate that it says real property
6 values, peace, order and quiet to pedestrians,
7 safety, residential parking. Each of those
8 issues is now before the Board. So even this
9 mythical late coming protestant could not
10 introduce more issues. Every issue is here.

11 As you stated, Mr. Chair, Mr. Repp can
12 call anybody he wants as a witness. So the
13 community here through the ANC and through Mr.
14 Repp's group has placed every single issue that
15 the Board can act upon, on the table already. So
16 reopening this, a great prejudice to the
17 Applicant. Reopening with new placarding,
18 pushing this back four-plus months would not
19 result in any issue being presented that isn't
20 already on the table.

21 With regard to where placards could
22 have been placed, Ms. Lomax testified that she
23 put them as close as she could get to the
24 entrance of Total Wine. I don't know how many
25 board members are familiar with Mazza Gallerie.

1 It is a shopping center that occupied the entire
2 city block for 30ish years. It's now being
3 renovated to become residents. But it is an
4 enormous building and it's founded by Western
5 Avenue on the north, Wisconsin Avenue on the
6 east, Jennifer Street on the South, and 44th
7 Street on the west. This site is at the corner
8 of the building, the northwest corner, 5401 44th
9 Street. It was suggested that while the placards
10 could have been placed at the corner of Wisconsin
11 and Western, a full city block away. Or it was
12 suggested that the placards might have been
13 placed at 44th and Jennifer Street, a full city
14 block south. It we has posted placards a block
15 away from the licensed premises, we would be
16 subject to criticism from the Board, rightly so.

17 We don't know what happened to the
18 placards. Notwithstanding our best efforts,
19 weather could have gotten them, best efforts,
20 laminating, grommets, tied to the fence. The
21 weather could have gotten them. They could have
22 been a casualty of construction activity or it
23 could have been sabotage. We don't know and I
24 don't suggest or argue sabotage in this case. I
25 don't have the factual grounds for that. But I

1 would suggest to the Board that a ruling that
2 hey, 45 days is 45 days and if it's not up for 45
3 days, that's the end of the conversation. Such a
4 ruling by the Board would no. 1, encourage future
5 cases of sabotage. If an opponent, competitor
6 knows that they could just rip it down and it
7 starts all over again. But that's not what the
8 law requires.

9 Section 25.423A of the code says the
10 placards shall be up for 45 days. But that has
11 to be read in conjunction with Subsection 80,
12 which will excuse 45-day posting -- I'm quoting
13 here -- unless the Applicant has fully performed
14 all other notice requirements and the Board
15 determines that's it's in the best interest of
16 the parties to proceed at an earlier date.

17 Once again, we've gone the extra mile
18 in this case with a phone call to the ANC to make
19 sure that the community knew about this
20 application. And there are -- the cases that are
21 cited in our memorandum and I'm looking at the
22 Office of People's Council. I'm looking at
23 Monaco. Say that notice while imperfect may be
24 overcome by substantial public participation and
25 the Chairman noted there's substantial public

1 participation here. Or in the Monaco case, there
2 were no prejudice from technical notice mishaps
3 where vigorous participation in opposition to the
4 matter was noted. And that's the case we have
5 here. Everyone who needs to be heard is at the
6 table. We've reasonably complied with the notice
7 requirements and it would be very prejudicial to
8 us to have to start this all over again. So I
9 urge the Board to take the position that the
10 notice was reasonable and adequate in context.
11 Thank you.

12 CHAIRPERSON ANDERSON: All right.
13 Thank you, Mr. O'Brien. I'm going to bring this
14 matter to closure. The Board will take this
15 matter under advisement and we will issue a
16 decision accordingly. Thank you very much.
17 Again, I apologize for the late start, but thank
18 you very much. Have a great day. All right.

19 (Off-microphone comments.)

20 CHAIRPERSON ANDERSON: All right. All
21 right, so we are -- let me make sure -- I believe
22 that I have called all the cases on our calendar
23 for today. Let me make sure that was the last
24 case in our calendar. Yes, that was the last
25 case on our calendar and I did do the legal

1 agenda. So let me close the record for the day.

2 As Chairperson of the Alcoholic
3 Beverage and Cannabis Board for the District of
4 Columbia in accordance with Title 3 Chapter 405
5 Office of Open Government, I move that ABC Board
6 hold a closed meeting on February 26th for the
7 purpose of discussing and hearing reports
8 concerns ongoing or planned investigations of
9 alleged criminal or civil misconduct or
10 violations of law or regulations and seeking to
11 get advice from our legal counsel on the Board's
12 investigative agenda, legal agenda, and licensing
13 agenda for February 26th as published in the D.C.
14 Register on February 21st. Is there a second?

15 MEMBER MEADOWS: David Meadows, I
16 second.

17 CHAIRPERSON ANDERSON: I will now take
18 a roll call vote on the motion before us now that
19 there has been a second. Mr. Grant.

20 MEMBER GRANT: Mr. Grant, I agree.

21 CHAIRPERSON ANDERSON: Mr. Meadows.

22 MEMBER MEADOWS: Mr. Meadows, I agree.

23 CHAIRPERSON ANDERSON: Mr. Jones.

24 MEMBER JONES: Mr. Jones, I agree.

25 CHAIRPERSON ANDERSON: Mr. Anderson,

1 I agree. As it appears that the motion has
2 passed 4-0, I hereby give notice that ABC Board
3 will hold this closed meeting. Pursuant to the
4 Open Meetings Act, notice will also be posted on
5 ABC Board Hearing Room bulletin board, placed on
6 electronic calendar and ABCA's website, and
7 published in the D.C. Register in as timely a
8 manner as practical. We are now adjourned for
9 the day. Thank you, board members, thank the
10 public for participating in our hearings today.
11 I now ask all board members to now return to
12 executive session for further action. Good
13 night. Thank you.

14 (Whereupon, the above-entitled matter
15 went off the record at 6:36 p.m.)
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In the matter of: Total Wine

Before: DC ABCA

Date: 02-13-25

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Court Reporter

NEAL R. GROSS

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