DISTRICT OF COLUMBIA + + + + + ALCOHOLIC BEVERAGE CONTROL BOARD + + + + + MEETING -----= IN THE MATTER OF: : : BMU 14, LLC • t/a Butter Me Up:1409 T Street NW: Protest ILicense #118304: (Status)Retailer CR - ANC 2B: t/a Butter Me Up : : Protest Hearing Case #21-PR0-00065 : : (Application for New : License) : -----= Wednesday October 6, 2021 The Alcoholic Beverage Control Board met via WebEx videoconference, Chairperson Donovan W. Anderson presiding. **PRESENT:** DONOVAN W. ANDERSON, Chairperson BOBBY CATO, JR., Member RAFI ALIYA CROCKETT, Member EDWARD S. GRANDIS, Member

JENI HANSEN, Member JAMES SHORT, JR., Member ALSO PRESENT: SIMONE ANDREWS, DC ABRA Staff DWIGHT BARBOUR, Protestant ELIZABETH BEZILLA, Protestant RICHARD BIANCO, Applicant Counsel ELWYN FERRIS, Protestant, Shaw Dupont Citizens Alliance KYLE MULHALL, ANC 2B KENLEE RAY, Protestant, Dupont Circle Citizens Association JULIAN SANNES, Protestant

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1	P-R-O-C-E-E-D-I-N-G-S	
2	11:00 a.m.	
3	CHAIRPERSON ANDERSON: All right.	
4	(Pause.) The next case on our calendar is case	
5	number 21-PRO-00065, license number 118304. Ms.	
6	Andrews, can you elevate the rights of the	
7	parties in this case and it's a significant	
8	amount of individuals I was told.	
9	MS. ANDREWS: Mr. Anderson, can you	
10	say the establishment name for me?	
11	CHAIRPERSON ANDERSON: Butter Me Up.	
12	MS. ANDREWS: Thank you.	
13	CHAIRPERSON ANDERSON: Butter Me Up is	
14	this case. If there's anyone who is on the call	
15	for Butter Me Up, please identify yourselves	
16	through the chat so your rights can be elevated.	
17	MS. ANDREWS: Okay, Mr. Chair, I need	
18	to take away the rights for the parties in the	
19	previous case.	
20	CHAIRPERSON ANDERSON: Sure.	
21	MS. ANDREWS: Please stand by.	
22	CHAIRPERSON ANDERSON: Yes.	
23	MS. ANDREWS: (Pause.) Mr. Bianco,	
24	your rights have been elevated. (Pause.) Mr.	
25	Dwight Barbour, your rights have been elevated.	

1	(Pause.) Ms. Elizabeth Bezilla, your rights have
2	been elevated. (Pause.) Oh, Mr. Ferris, your
3	rights have been elevated. (Pause.) Mr. or Ms.
4	Ray, your rights have been elevated. (Pause.)
5	Mr. Kyle Mulhall, your rights have been elevated.
6	(Pause.) That's all I have, Mr. Chair.
7	CHAIRPERSON ANDERSON: Thank you.
8	(Pause.) All right, are there any other parties
9	for this case? If so, please identify yourself
10	through the chat so your rights will be elevated.
11	All right. Good morning, everyone.
12	Let's start with the attorney
13	representing the establishment. Mr. Bianco, can
14	you please spell and state your name for the
15	record, please?
16	MR. BIANCO: Sure, my name is Richard
17	Bianco. Last name is spelled B-I-A-N-C-O.
18	CHAIRPERSON ANDERSON: Who is the
19	licensee for this case, Mr. Bianco, is that
20	person on the line?
21	MR. BIANCO: He is not. He won't be
22	appearing today.
23	CHAIRPERSON ANDERSON: Okay, thank
24	you. All right, let's start then with theI'm
25	sorry, hold on one minute.

MS. ANDREWS: Mr. Chair? We do have 1 2 a call in that was notified through the chat. Ι 3 think it's Ms. Julian Sannes. I'm going to 4 unmute your line, Mr. Lee. 5 CHAIRPERSON ANDERSON: All right. MS. ANDREWS: Mr. Julian, can you 6 7 announce yourself, please. 8 MR. SANNES: Yes. 9 MS. ANDREWS: Can you hear me? 10 MR. SANNES: Yes, hi, my name is Mr. 11 Julian Sannes. 12 MS. ANDREWS: Okay. 13 MR. SANNES: S-A-N-N-E-S. 14 MS. ANDREWS: Thank you. 15 CHAIRPERSON ANDERSON: And who are 16 you, sir? 17 I'm an abutting property MR. SANNES: 18 owner protestant. I'm the co-owner of apartment 19 104 at 1413 G Street, Northwest with Joanne Kent 20 (Phonetic.), who is in transit from overseas from 21 Berlin right now, so she won't be able to attend. 22 CHAIRPERSON ANDERSON: And I'm sorry, 23 sir. So you're saying that you are--24 MR. SANNES: I'm an abutting property 25 owner at 1413 G Street.

CHAIRPERSON ANDERSON: All right, hold 1 2 on just one minute. (Pause.) Mr. Sannes, were 3 you provided standing at the roll call? Oh, yes, 4 I'm sorry. I apologize, sir. I see your name on 5 this list. It's an extensive list. I just want to make sure that I have all the parties. 6 All 7 right, so we have Mr. Julian Sannes, he's an 8 abutting property owner. Who represent the ANC? 9 MR. MULHALL: This is Kyle Mulhall and I am the commissioner for ANC 2B. (Simultaneous 10 11 speaking.) 12 CHAIRPERSON ANDERSON: Can you spell 13 your name, sir? 14 MR. MULHALL: First name is Kyle K-Y-The last name is Mulhall M-U-L-H-A-L-L. 15 L-E. 16 CHAIRPERSON ANDERSON: And you're from 17 ANC where, sir? 18 MR. MULHALL: 2B. 19 CHAIRPERSON ANDERSON: Okay, thank 20 (Pause.) Mr. Ferris, can you please spell you. 21 and state your name for the record, please? 22 MR. FERRIS: Yes, on behalf of SDCA, 23 Elwyn Ferris E-L-W-Y-N F-E-R-R-I-S. 24 CHAIRPERSON ANDERSON: Thank you, Mr. 25 Ferris. (Pause.) Do we have someone from the

1 DCCA? (Pause.) 2 MS. RAY: Yes, good morning. I'm 3 Kenley Ray. My name is spelled K-E-N as in 4 Nancy-L-E-E last name is Ray R-A-Y. 5 CHAIRPERSON ANDERSON: Thank you, Ms. (Pause.) All right. Do we have someone 6 Ray. 7 who is representing the Group of 43 individuals? 8 Who is representing the Group of 43 individuals? 9 Actually, Chair Anderson, MR. FERRIS: 10 there are two of us. This is, once again, Elwyn 11 Should I spell it again? Ferris. 12 CHAIRPERSON ANDERSON: No, that's 13 fine, sir. And so Mr. Ferris, is there another 14 representative from the Group of 43 or more? 15 Yes, Mr. Barbour is the MR. FERRIS: 16 other designated representative. 17 CHAIRPERSON ANDERSON: So, Mr. 18 Barbour, can you please spell and state your name 19 for the record, please? 20 MR. BARBOUR: This is Dwight Barbour. 21 It is spelled D-W-I-G-H-T, last name is Barbour 22 B-A-R-B-O-U-R. 23 CHAIRPERSON ANDERSON: So, Mr. 24 Barbour, so you're also a designated 25 representative for the Group of 43 and are you

1 also an abutting property owner, sir? 2 MR. BARBOUR: Yes, I am. Thank you. 3 CHAIRPERSON ANDERSON: And so can you 4 also state your again for the record and state 5 that you are also an abutting property owner, please? 6 7 MR. BARBOUR: Absolutely. I'm an 8 abutting property owner at 1413 G Street. My 9 name is Dwight Barbour, spelled D-W-I-G-H-T last name is Barbour B-A-R-B-O-U-R. 10 11 CHAIRPERSON ANDERSON: Fine. Now do 12 we have Ms. Bezilla? 13 MS. BEZILLA: Bezilla. 14 CHAIRPERSON ANDERSON: Can you please 15 spell and state your name for the record, please? 16 MS. BEZILLA: My name is Elizabeth 17 Bezilla. E-L-I-Z-A-B-E-T-H B-E-Z-I-L-L-A and I 18 am an abutting property owner. 19 CHAIRPERSON ANDERSON: All right, Mr. 20 Barbour, do you also represent another group, 21 sir? 22 MR. BARBOUR: I do. I have 23 represented Mr. Sannes in the past as well as 24 Joanne Kent. 25 CHAIRPERSON ANDERSON: Okay, all

1	right, fine. Thank you. All right, and let me	
2	see, I believe, hold on. (Pause.) Those are all	
3	the parties in the case. Have I missed anyone?	
4	(Pause.) I believe that's all the parties that	
5	are on the case.	
6	All right, are there any preliminary	
7	matters that need to be brought to the attention	
8	of the Board? We'll start with you, Mr. Bianco.	
9	MR. BIANCO: No.	
10	CHAIRPERSON ANDERSON: Okay, and going	
11	through, let me see, as far as the ANC is	
12	concerned, are there any preliminary matters that	
13	need to be brought to the attention of the Board?	
14	MR. MULHALL: Mr. Chair, I understand	
15	that the Shaw Dupont Citizens Association might	
16	be asking if the parties would all agree to	
17	request that the Board give us more time to	
18	negotiate. I'm very optimistic that we'll reach	
19	an agreement.	
20	I'm a little disappointed we haven't	
21	made more progress to date and we're a little	
22	concerned that we may not have enough time if	
23	we're coming to a protest hearing in four weeks,	
24	but I'll defer to Mr. Ferris to explain more	
25	about that. It's his proposal, but the ANC would	

agree to that if the other parties were going to agree.

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CHAIRPERSON ANDERSON: Well, I think the only thing I'll say, this is a new license and by statute, we have to issue a decision by date certain. If the Applicant is certain that there's going to be a settlement agreement and if the Applicant agrees to a postponement, the Board would not stand in the way of a postponement.

10 However, if the Applicant does not 11 agree, because, again, this is a new license, the 12 Board would be disinclined to provide an extension. The hearing is scheduled for November 13 14 3rd at 1:30 p.m. But if all parties, including 15 the licensee, feel strongly that they're going to 16 sign a settlement agreement and if all parties 17 come with a joint motion and request that the Board extend the time line, the Board would look 18 19 at that favorably.

I'll just say that the Board would not look at an extension favorably because if the licensee is not in favor, because it's an application for a new license. The reason why I'm stating that is we have a specific time line for us to issue the decision and since this is a

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new business, there are not in business. So we would be preventing them from operating. If this was a renewal of a license, then the Board would be inclined even if all parties are not in agreement, with good cause the Board would be inclined to consider that. So I just want to put that out on the record.

8 MR. MULHALL: Thank you, Mr. Chair. 9 I understand that. I'll defer to Mr. Ferris, if 10 he would like to explain a little bit more about 11 the thought behind that and we did understand 12 that we'd have to have an agreement among all the 13 parties so thank you for that, Mr. Chairman.

14 CHAIRPERSON ANDERSON: As I said 15 before, all of the abutting property owners have their individual standing so if there is an 16 17 agreement between the ANC and the licensee, then 18 the groups will fall. The Group of 43 19 Individuals that would fall, but we would still 20 move forward with a hearing because all of the 21 other groups they have individual standing and 22 all the abutting property owners have individual 23 standing.

That's one of the reasons why I asked all the parties to state what their specific

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positions are because depending on what happens, 1 2 if, say for example, the abutting property owner 3 doesn't agree with a joint settlement, we're moving forward. If the SDCA doesn't agree or DCA 4 5 doesn't agree, so all the parties hopefully could agree to come to an agreement and, of course, the 6 7 Board will look favorably on that as I said before to Mr. Bianco on behalf to the licensee. 8 9 If he agrees to adjoin continuance, the Board 10 would consider that favorably. 11 MR. FERRIS: Chairman Anderson? 12 CHAIRPERSON ANDERSON: Who is speaking 13 please? 14 This is Elwyn Ferris MR. FERRIS: 15 speaking. 16 CHAIRPERSON ANDERSON: Yes, sir, go 17 ahead. 18 MR. FERRIS: Yes, thank you. I quess 19 given what you have said, I mean we did have, we 20 thought, substantive reasons for requesting the 21 continuance, one of them being that we haven't 22 had a single meeting with the Applicants. We 23 have had no meetings and no response from the 24 Applicant to request a meeting. We have several 25 other reasons why we have wanted to request a

continuance, but given what you have said, wouldn't the first order of business then be to simply find out from Mr. Bianco if he's open to a continuance to give us more time to negotiate, to see if he would be amenable to that and then we can go from there?

7 CHAIRPERSON ANDERSON: Well one of the 8 things that I'll say, Mr. Ferris, I mean I'm not 9 going to discuss that here. So offline, the 10 parties can contact Mr. Bianco and make a 11 determination if this is what's going to occur. 12 I'm not going to put Mr. Bianco on the spot here 13 to say do you want to issue--are you going to 14 request a continuance.

15 Once this case is over, the parties 16 can continue, they can talk and if the parties agree, the parties can jointly file a motion to 17 18 the Board requesting a continuance. Again, as I 19 stated, the other side can also, even if Mr. 20 Bianco does not agree to it, the other sides can 21 request a continuance, but all I'm stating is the 22 Board, because it's a new license, the Board has 23 a specific deadline when we have issue a 24 decision. If we're going to grant a continuance, 25 we have to make sure that we comply with our time

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1	lines. I'm not saying that we're not going to	
2	grant it, it's just that factually we have a	
3	specific time line that a decision must be issued	
4	and so we cannot violate our own time line,	
5	unless the Applicant agrees to us extending that	
6	time line. That's all I'm stating, okay.	
7	MR. FERRIS: If you would indulge me	
8	for one more minute, Chairman Anderson, in	
9	regards to the time line. The admin time line	
10	that you're speaking about, SDCA has received	
11	multiple placard notices over the recent months	
12	and we have noticed a vast difference in the	
13	amount of time that's given to negotiate with	
14	each of these Applicants.	
15	We have time lines that have provided	
16	more than 10 months between the roll call and the	
17	protest hearing, some nine months and we find	
18	that Butter Me Up was only allotted seven months	
19	between the roll call hearing and the protest	
20	hearing. That's a substantially condensed amount	
21	of time relative to a number of other	
22	applications we've received, as I mentioned, that	
23	had as much as 10 months. I'm sorry, 10 weeks,	
24	I'm sorry, 10 weeks. I meant weeks not months.	
25	So that's what the problem has been we just	

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haven't had anywhere near the amount of time that we've had like for Elements and Alchemist and the other applications we voted not to take any action on, but yet there was a nine week time frame, but we Butter Me Up, we've only had seven weeks.

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7 CHAIRPERSON ANDERSON: And that's why 8 I stated because this is an application for a new 9 license, it is a shorter time line, that's why. 10 The previous establishments that I know you at 11 the previous two hearings that we just had this 12 morning that you were a party to, these were 13 renewal applications. Therefore, giving you more 14 time to negotiate, continuing the case, the 15 licensee is not impacted because they are 16 operating. While this case is continuing they 17 are operating, but in this particular case 18 remember the licensee is not operating and so, 19 therefore, the licensee would have to agree to a 20 continuance because, as I stated, we have a 21 specific time line when we have to issue a 22 decision. We can only extend that time line if 23 the licensee agrees to extend that time line. We 24 have to by law move forward with the time line 25 once established for a new license. So that's

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why, that's the difference. The other
 establishments, as I stated before (Simultaneous
 speaking.)

MR. FERRIS: Yes.

CHAIRPERSON ANDERSON: Were renewals.

MR. FERRIS: Yeah, I do appreciate 6 7 that, Chairman Anderson, but the Alchemist and 8 the Elements are new applications just as Butter 9 They weren't renewals. The other two Me Up. 10 that we received were District Alley and for 11 Salazar, those are brand new applications as 12 well, for which they have 10 weeks, more than 10 13 weeks.

14 CHAIRPERSON ANDERSON: I stand 15 The two cases were for a new license. corrected. 16 Off the top of my head, I don't know the dead lines, I don't know the time lines you just 17 18 stated, but as stated we have to issue a decision 19 within a specific time line. The reason why you 20 had a longer period of time is because those two 21 establishments they were posted much earlier than 22 this other establishment.

If people see me looking at my phone,
I'll explain this to you, normally when we
operate in person we have the legal staff is

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sitting behind me and I would look to them and 1 whatever information I don't have, someone from 2 3 the legal office is providing me that information, but because these hearings are now 4 5 virtual, when questions are posed, I have to be looking at my phone so I can get an answer from 6 7 I just wanted people to know that's the Agency. 8 why you always see me looking down, because I 9 don't know all the answers. I'm here at home as 10 we all are at home, I don't know all the answers. 11 I have some limited information in front of me, 12 so I always have to look around to make sure that 13 the questions that are being asked that the 14 Agency is providing me with the answers so I can 15 provide you with an answer that is appropriate to 16 your question, if I don't know that. Okay? But 17 I just wanted to state that to all of the 18 parties.

19 In your response, sir, I stand 20 corrected. Yes, the other establishments were 21 also new licenses; however, they were posted 22 prior to this establishment and so that's one of 23 the reasons they have more time. But, as I 24 stated before, I know Mr. Bianco is an attorney 25 who has been practicing this area of law for

several years. I know he's not a potted plant and so although he has not said much here today, but as I stated before, I'm not going to ask him on the record whether or not he is going to agree to a continuance. That's something that the parties off line can discuss and agree to.

7 I just want to state that because it 8 is a new license, there is a specific time line 9 that the Board has to reach a decision. Anything 10 that you want to say, Mr. Ferris, then I'm going 11 to give Mr. Bianco an opportunity to speak if he 12 so desires. (Pause.) Nothing? All right. 13 Anything else, any other procedural matters that 14 the other sides want to bring to the attention 15 and then I'll have Mr. Bianco, he'll have the last word on this discussion. 16 (Pause.)

17 Thank you, Mr. Chair. MR. BIANCO: 18 This is the first I'm hearing of anything about a 19 continuance so I will say this in response to 20 that being raised for the first time, we did have 21 a mediation in this case just last. I like the 22 progress that we made. We're not there yet. 23 I've had a written proposal to the protestants 24 for a number of weeks. They're looking at it. Ι 25 understand there's a lot of them. They will

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respond in due course I am sure. Based on where we are at the time they respond, if we're close I very well may agree to a continuance. I'm just not in a position at this point to be able to say yes, no, so I'm going to go with maybe for right now.

7 CHAIRPERSON ANDERSON: At least we're 8 now on the same page. The licensee has spoken so 9 at least now the protestants they are aware that 10 the licensee is open to the possibility depending 11 where they are in their negotiations.

12 As stated, this Board supports 13 settlement agreements, so if the parties make a 14 joint motion to the Board to state we are going 15 to settle this matter, so continue this case, the 16 Board will look favorably on that. We will do 17 whatever we need to do to support parties 18 reaching settlement agreements, not that we don't 19 want to make this decision, but at the end of the 20 day, especially since we have abutting property 21 owners, they have to live with this establishment 22 next to them, so we're hoping that if this matter 23 can be settled, that the parties can agree to 24 terms that at the end of the day everyone is 25 happy. That's why we support settlement

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agreements.

2	MR. FERRIS: Thank you. Chairman
3	Anderson, I would like to just say something.
4	CHAIRPERSON ANDERSON: Yes, but hold
5	on, Mr. Ferris and to all the parties because
6	this has beenwe have a court reporter. Each
7	time you speak, please identify yourself. Okay,
8	go ahead, Mr. Ferris.
9	MR. FERRIS: Thank you very much.
10	This is Elwyn Ferris on behalf of SDCA. I do
11	want to just say for the record, I misunderstood.
12	I may have misunderstood what Mr. Bianco said,
13	but I just wanted to say for the record, SDCA has
14	not been in receipt of any draft agreement to
15	this date. So that has been a little problematic
16	for us to try to negotiate when we don't have a
17	draft agreement. I just wanted to put that on
18	the record. Thank you.
19	CHAIRPERSON ANDERSON: All right.
20	(Simultaneous speaking.)
21	MS. BEZILLA: This is
22	CHAIRPERSON ANDERSON: I'm sorry, who
23	is speaking, please?
24	MS. BEZILLA: Elizabeth Bezilla. I
25	have not seen a proposal yet either and I abut

1 the property.

2	CHAIRPERSON ANDERSON: All right. Mr.	
3	Bianco, he's aware of all the parties. Mr.	
4	Barbour, you want to make a statement?	
5	MR. BARBOUR: I have not received	
6	anything either.	
7	CHAIRPERSON ANDERSON: All right.	
8	MR. BARBOUR: I'm an abutting property	
9	owner. This is Dwight Barbour.	
10	CHAIRPERSON ANDERSON: Okay, thank	
11	you. Well, Mr. Bianco, based on his	
12	presentation, he will ensure that if there is	
13	some agreement or some proposal out there that	
14	all parties will have access to it because he	
15	knows who the parties are. I have confidence	
16	that Mr. Bianco will provide, if there is a draft	
17	proposal, and Mr. Bianco is aware that in order	
18	for this matter to be settled that all the	
19	abutting property owners have to agree.	
20	He is aware that if this matter is not	
21	going to a hearing, he has to satisfy each and	
22	every abutting property owner. He has to satisfy	
23	the SDCA. He has to satisfy the DCCA and he has	
24	to satisfy the ANC because all of those parties	
25	have individual standing. If all of those	

parties are not satisfied, we are going to a
 protest hearing, so he's aware.

3 If there's any inkling that there's a settlement agreement or any type of proposal, I 4 5 have confidence that he will make sure that all parties have it and for us to move forward all 6 7 parties will have to agree. Okay? Any other 8 questions, concerns? As I stated before, this 9 matter is scheduled for a protest hearing on 10 November 3rd at 1:30 p.m. Is everyone is aware 11 of that, is that correct? (Pause.)

12 And the instructions, let me read the instructions. So now that we have scheduled this 13 14 case, let me read the instructions of this case. 15 For a protest hearing now that we have scheduled 16 this matter for a protest hearing, there are a 17 few things that I would like to instruct you 18 about because the Board's practice under the 19 Public Emergency has changed.

As you know, the Board's hearing are conducted virtually so it's more important that ever that protest hearings are focused and address only those issues that are being protested.

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Following this hearing, you will

receive an e-mail from the general counsel's 1 office that will include a copy of the protest 2 3 information form, a copy of the exhibit form as well as specific instructions for the hearing. 4 5 You are required to complete and submit the protest information form kit and exhibit form at 6 7 least seven days before the date of the hearing. 8 If we do not receive a copy of your form seven days before the hearing, your application or your 9 10 protest may be subject to dismissal. These 11 documents not only need to be submitted to ABRA 12 Legal, but to the opposing parties as well. 13 Please know that these documents greatly assist 14 the Board in narrowing the protest issues 15 facilitating the process and keeping the parties 16 on point during the hearing.

17 Each side is limited to no more than 18 five witnesses and you will only have 60 minutes 19 to present your case. I know that there a lot of 20 protestants in this case so each side will have, 21 if each side wanted to move forward to present 22 their cases, each side will have an hour and each 23 side will have five witnesses, but I would hope 24 that they are issues that are general to each 25 side so I'm hoping that if we were to go to a

protest hearing that the parties would maybe find 1 someway where we can limit so we do not have 2 3 seven different cases going. That means that each side would have seven hours for 4 5 presentation. So I'm hoping that if this matter goes to a protest hearing that the folks--I can't 6 7 force you to do that, but I would hope that maybe 8 there can be a designated representative that 9 represents, if there are common issues, that represents the side rather than have seven 10 11 different cases being presented, but I can only 12 suggest that. I can't tell you that you must do 13 that because as an abutting property owner, each 14 side has its individual standing to move forward 15 to the hearing.

As I said before, if we're moving forward with the hearing, I'll hope that the parties will be able to come to some agreement how they wish to present the case. Any questions? (Pause.) All right, hearing none we thank you greatly for your cooperation.

If you have any questions at any time leading up to the hearing, please do not hesitate to contact our legal office and they will provide you whatever assistance that can be provided. I

1	wish you success in your negotiations and I have	
2	every confidence in mind that if there is a draft	
3	settlement agreement that Mr. Bianco will share	
4	it with everyone. I'll leave it at that. Have a	
5	great day and thank you very much for your	
6	participation today. All right? Thank you.	
7	MR. BIANCO: Thank you.	
8	(Whereupon, the above-entitled matter	
9	went off the record at 11:32 a.m.)	
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Before: DCABRA

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