

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:
Aslin DC Beer, LLC,
t/a Aslin Beer Company
1740 14th Street NW
Retailer CT - ANC 2F
License #118555
(ANC Request for Review
of Establishment's
Compliance with its
Settlement Agreement.)
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Wednesday
November 8, 2023

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

PRESENT:

- DONOVAN W. ANDERSON, Chairperson
JAMES SHORT, JR., Member
SILAS GRANT, JR., Member

ALSO PRESENT:

- JOSE ORELLANA, DC ABCA Staff
DAVID CONKLIN, Protestant
JOYCE COWAN, Protestant
SARAH EDWARDS, Protestant
ANDREW KELLEY, Licensee
ANDREW KLINE, Licensee's Counsel
CAMERON MIXON, Protestant's Counsel
DAVID RUBENSTEIN, ANC 2F
INVESTIGATOR MARK RUIZ, DC ABCA

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

2 (11:18 a.m.)

3 CHAIRPERSON ANDERSON: The next case  
4 on our calendar, we have a Fact-Finding Hearing  
5 for Aslin Beer Company.

6 Mr. Orellana, can you please elevate  
7 the rights of the parties in this case?

8 MR. ORELLANA: Sure, Andrew Kline,  
9 your access has been elevated. David Rubenstein,  
10 your access has been elevated. Joyce Cowan, your  
11 access has been elevated. David Conklin, your  
12 access has been elevated. And Investigator Mark  
13 Ruiz, your access has been elevated. That is  
14 all, Chair.

15 CHAIRPERSON ANDERSON: Thank you. I  
16 think Mr. Mixon is asking to be elevated.

17 MR. ORELLANA: His access has been  
18 elevated.

19 CHAIRPERSON ANDERSON: Thank you.

20 MR. ORELLANA: Sarah Edwards, your  
21 access has been elevated.

22 CHAIRPERSON ANDERSON: Good morning,  
23 everyone. This is a Fact-Finding Hearing that  
24 was requested by the ANC. So, let me have all  
25 the parties identify themselves for the record,

1 starting with you, Mr. Kline.

2 MR. KLINE: Chairman Anderson, Members  
3 of the Board, Andrew Kline on behalf of the  
4 Licensee. I echo the statements we heard  
5 earlier. Welcome you, Mr. Grant, to the Board,  
6 congratulations on your confirmation. And to you  
7 as well, Mr. Chair, on your reconfirmation. And  
8 as always, welcome back, Mr. Short. Thank you  
9 all, happy to be here today.

10 CHAIRPERSON ANDERSON: Thank you, Mr.  
11 Kline, good morning.

12 MR. KLINE: Good morning.

13 CHAIRPERSON ANDERSON: Mr. Mison.

14 MR. MIXON: Hello, Cameron Mison, also  
15 with the Veritas Law Firm, C-A-M-E-R-O-N M-I-X-  
16 O-N.

17 CHAIRPERSON ANDERSON: Good morning,  
18 sir. Mr. Rubenstein. You're on mute, sir.

19 MR. RUBENSTEIN: My name is David  
20 Rubenstein, D-A-V-I-D R-U-B-E-N-S-T-E-I-N. I  
21 represent ANC 2F-01.

22 CHAIRPERSON ANDERSON: Good morning,  
23 sir. Ms. Edwards.

24 MS. EDWARDS: I am Sarah Edwards and  
25 I'm a neighbor directly behind Aslin.

1 CHAIRPERSON ANDERSON: Spell your  
2 name, ma'am.

3 MS. EDWARDS: Sorry, S-A-R-A-H E-D-  
4 W-A-R-D-S.

5 CHAIRPERSON ANDERSON: Good morning,  
6 ma'am. Mr. Conklin. Mr. Conklin.

7 MR. CONKLIN: David Conklin, D-A-V-I-D  
8 C-O-N-K-L-I-N, I apologize, a little noisy --  
9 (Simultaneous speaking.)

10 CHAIRPERSON ANDERSON: All right, good  
11 morning, Mr. Conklin. And I think Ms. -- we have  
12 one other party who will -- I'm sorry, Ms. Joyce,  
13 I did not catch your last name. Can you identify  
14 yourself for the record?

15 MR. ORELLANA: Joyce is unmuted, but  
16 not hearing audio.

17 CHAIRPERSON ANDERSON: I'm sorry, yes,  
18 sir.

19 MR. ORELLANA: Mr. Chairman, is it  
20 possible that Mr. Conklin could state which party  
21 he's with?

22 CHAIRPERSON ANDERSON: Mr. Conklin,  
23 Mr. Conklin, can you please identify your role in  
24 this matter, sir?

25 MR. CONKLIN: Yes, I live directly

1 behind the Aslin beer garden, one house in.

2 CHAIRPERSON ANDERSON: All right.

3 Thank you, sir.

4 Ms. Joyce, are you there, Ms. Cowan?

5 It appears, well, Joyce Cowan is the  
6 other party, J-O-Y-C-E, C-O-W-A-N. She's one of  
7 the neighbors and it appears that she's having  
8 some technical difficulties. So, she can join me  
9 when she can.

10 And then we'll have Mr. Ruiz, can you  
11 please spell and state your name for the record?

12 MR. RUIZ: Yes, first name is Mark, M-  
13 A-R-K, last name Ruiz, R-U-I-Z.

14 CHAIRPERSON ANDERSON: And what is  
15 your role, sir?

16 MR. RUIZ: ABCA Investigator.

17 CHAIRPERSON ANDERSON: All right,  
18 thank you.

19 MR. KLINE: Mr. Chair, Andrew Kelley,  
20 the principal of the Licensee is also here. We  
21 need his rights elevated.

22 CHAIRPERSON ANDERSON: All right. I  
23 don't see a Mr. Kelley. Mr. Orellana, did you  
24 elevate the rights of Mr. Kelley?

25 MR. ORELLANA: Give us one minute to

1 --

2 CHAIRPERSON ANDERSON: Ms. Cowan, I  
3 see -- can you please spell your name for the  
4 record? Ms. Cowan.

5 MS. COWAN: Can you hear me?

6 CHAIRPERSON ANDERSON: Yes, ma'am.

7 MS. COWAN: Okay, sound has been  
8 restored. For some reason, video has not, but  
9 it's Joyce, J-O-Y-C-E Cowan, C-O-W-A-N, and I  
10 will keep trying to figure out what's going on  
11 with my camera.

12 CHAIRPERSON ANDERSON: And what's your  
13 relationship to this case, ma'am?

14 MS. COWAN: I am in the block of this  
15 establishment, and involved in representing the  
16 ANC. 2F is taking the lead, Mr. Rubenstein. But  
17 I've been involved in this case representing one  
18 of the designated members for the Group of plus  
19 5.

20 CHAIRPERSON ANDERSON: All right,  
21 thank you.

22 And I think we're -- as soon as the  
23 Licensee has been elevated, our IT person?

24 MR. ORELLANA: Yes.

25 CHAIRPERSON ANDERSON: No, it's not

1 Joyce. Mr. Kline, who is it that we're trying  
2 to, we should elevate, sir?

3 MR. KLINE: Andrew Kelley.

4 CHAIRPERSON ANDERSON: Andrew Kelley,  
5 Mr. Orellana.

6 MR. ORELLANA: There we go.

7 CHAIRPERSON ANDERSON: Thank you. Mr.  
8 Kelley, can you spell and state your name for the  
9 record, sir?

10 MR. KELLEY: A-N-D-R-E-W K-E-L-L-E-Y.

11 CHAIRPERSON ANDERSON: Thank you.

12 All right, this is a Fact-Finding  
13 Hearing that was requested on the part of the  
14 ANC. So, I'll ask you, Mr. Rubenstein, maybe you  
15 can inform us why is it that you're, that the ANC  
16 requested a Fact-Finding Hearing of the Board?

17 MR. RUBENSTEIN: Um --

18 CHAIRPERSON ANDERSON: Hold on -- Ms.  
19 Cowan, I need you to mute your line, ma'am. Go  
20 ahead, Mr. Rubenstein.

21 MR. RUBENSTEIN: So, Aslin beer garden  
22 entered into a Settlement Agreement with the ANC  
23 and the Shaw Dupont Citizens Alliance, and the  
24 neighbors, back in, I believe, March 2022. Aslin  
25 is an outdoor beer garden with most of the

1 frontage on a residential street, S Street, and a  
2 smaller frontage on 14th Street. The beer garden  
3 has an occupancy of up to 250 people.

4 So, obviously, with a beer garden of  
5 that size and being outdoor, the neighbors were  
6 concerned with noise and trash. And the  
7 Settlement Agreement entered into in March 2022,  
8 dealt with those issues by calling for trash to  
9 be held inside until day of pickup. And  
10 requested that, which Aslin agreed to, to  
11 undertake a sound study, looking at ways to  
12 mitigate the noise impacts to the community.

13 Throughout, because of the cycle,  
14 there were up for another renewal of the license  
15 in 2023. But once, Aslin opened, we discovered  
16 that they were not holding trash inside. And  
17 that the sound study that Aslin agreed to  
18 undertake, was never undertaken.

19 We attempted to call in enforcement on  
20 the Settlement Agreement issues, but ABRA didn't  
21 seem enough, that didn't prove to be an effective  
22 way to get to the bottom of what was the issue in  
23 the Settlement Agreement. And at that point, as  
24 we move through the next license renewal, which  
25 the ANC, and the Group of 5, and Dupont, Shaw



1 Dupont Citizens Alliance were protesting, Aslin  
2 agreed to undertake the sound study that we  
3 originally wanted. And we gave up the clause in  
4 the Settlement Agreement, which called for  
5 holding trash inside in exchange for six day-a-  
6 week trash service.

7 So, we dropped the protest, amended  
8 the Settlement Agreement, and moved on. And  
9 shortly after -- the timing was that shortly  
10 after the Board approved the Settlement  
11 Agreement, Aslin would undertake the sound study,  
12 which they did. But we looked at the sound study  
13 and it did not meet the requirements of the  
14 Settlement Agreement, in our opinion.

15 It only dealt with sound from  
16 amplified music, through speakers. And the  
17 Settlement Agreement also called for  
18 consideration of options for absorptive and sound  
19 blocking materials and barriers in the summer  
20 garden. It also, looked to -- sorry, look at  
21 what other establishments in the District had  
22 done in terms of sound mitigation. And there are  
23 several other issues, which were in our breach  
24 notice to Aslin.

25 They were -- so, we sent them the

1 breach notice, and explained what we thought were  
2 the deficiencies in the sound study. Aslin sent  
3 a response back. And at that point, we were  
4 stalemated. And at the same time, we saw no  
5 evidence that Aslin had moved to six day-a-week  
6 trash pickup, as they'd agreed to.

7 And then went into consultation, with  
8 Counsel at ABCA. We decided the best way to  
9 resolve this, probably would not be to call in  
10 inspectors, but to go to a, directly to a Fact-  
11 Finding Hearing, which is where we are today.

12 CHAIRPERSON ANDERSON: So, Mr.  
13 Rubenstein, what specific, word specific, what  
14 specifically in the Settlement Agreement are you  
15 saying that they're not compliant with?

16 MR. RUBENSTEIN: Okay. I've got  
17 1,2,3,4,5 -- 7 bullet points. Shall I go ahead  
18 and read them to you?

19 CHAIRPERSON ANDERSON: Sure, sir.

20 MR. RUBENSTEIN: Okay. These were in  
21 our breach notice to Aslin. So, Number 1, the  
22 study that Aslin contracted for, limits the  
23 recommendations to observe the restrictions of  
24 DC's noise regulations, Chapter 27 of Title 20.  
25 However, the Settlement Agreement noise

1 mitigation provisions are broader than that,  
2 including requirements to recommend options to  
3 mitigate patron noise. And options to bring  
4 meaningful and measurable reductions in noise.

5 Number 2, there is no consideration of  
6 options for absorptive and sound blocking  
7 materials and barriers in the summer garden,  
8 which would mitigate noise from all sources,  
9 including patrons.

10 Number 3, baseline measurements of  
11 noise only took place on a Friday night. And did  
12 not consider Thursday and Saturday nights, when  
13 baseline noise levels might be different. The  
14 Settlement Agreement speaks to all nights, all  
15 those three busy nights.

16 Number 4, there was no documentation  
17 on management practices related to sound  
18 generation, and therefore, no consideration of  
19 options, which might be available to reduce noise  
20 by modifying those practices. The Settlement  
21 Agreement calls specifically to look at  
22 management practices as well.

23 Number 5, there was no consideration  
24 of measures adopted by other outdoor  
25 establishments in the District which would

1 mitigate noise. We had drawn Aslin's attention  
2 to Paragraph 8 and 10 from the Settlement  
3 Agreement for Dacha. It's dated November 25th,  
4 2015, for examples of options for sound  
5 absorptive materials and plantings, which should  
6 be considered.

7 Two, three, four, five, Number 6, the  
8 noise measurement location is limited to one  
9 location. It does not consider the impact on  
10 residents directly across the alley from Aslin.

11 And the last item, the recommendations  
12 in the report should include turning off the  
13 amplified music when the establishment is closed.

14 CHAIRPERSON ANDERSON: So, most of  
15 your concerns is on the sound study. Is that  
16 correct?

17 MR. RUBENSTEIN: That is, those were  
18 the items in the -- that the sound study was to  
19 look at, as per the Settlement Agreement.

20 CHAIRPERSON ANDERSON: But I'm just  
21 still getting some clarification so, but those  
22 are, there are no other aspects of the Settlement  
23 Agreement that you believe that they are not  
24 complying with?

25 MR. RUBENSTEIN: So, within the 30

1 days of the Board approval, they would undertake  
2 the sound study.

3 CHAIRPERSON ANDERSON: Right.

4 MR. RUBENSTEIN: I just went through.  
5 Within three months of the Board approval, they  
6 were supposed to actually start putting in place  
7 practices, or start construction on the  
8 improvements necessary.

9 CHAIRPERSON ANDERSON: Okay.

10 MR. RUBENSTEIN: In addition, they  
11 have not moved to six day-a-week trash pickup,  
12 which was agreed to in the Settlement Agreement.

13 CHAIRPERSON ANDERSON: Okay. Mr.  
14 Kline, what's your client's response to this, to  
15 where we are today, sir?

16 MR. KLINE: Those are facts that are  
17 simply misstated. The fact of the matter is that  
18 Mr. Ruben -- I'm sorry, Stein or Stine, I have  
19 that wrong.

20 MR. RUBENSTEIN: Stein.

21 MR. KLINE: Stein, sorry. Mr.  
22 Rubenstein complains about reported violations  
23 under an old Settlement Agreement, which has now  
24 been amended and restated. So, that's  
25 irrelevant. He points out that this property is

1 adjacent to residences, but he neglects to  
2 mention that it's in the ARTS overlay zone. And  
3 the Board has heard many, many times what that  
4 means in terms of, from a zoning standpoint, that  
5 there needs to be a balance between the purposes  
6 of the ARTS overlay zone and the residences in  
7 the community.

8 I mean I regret that we ever entered  
9 into this agreement. And coincidentally, I  
10 received an email in connection with another  
11 case, from the Board's Assistant General Counsel,  
12 Mr. Berman, this morning in which he says, and I  
13 think this is really appropriate here.

14 Quote, in negotiating agreements, the  
15 Agency generally advises that parties focus on  
16 achieving specific results, e.g., no noise in  
17 residences, and not specific procedures and  
18 actions that may or may not have the desired  
19 effect, which can lead to disappointment and not  
20 resolve the real issues of concern between the  
21 parties.

22 Now, that's very appropriate here, in  
23 that we don't have any complaint of noise, we  
24 have complaints, well, they didn't do the study  
25 right. Now, I can go through, if the Board

1 desires, point by point, and show how it is that  
2 what was required by the Settlement Agreement has  
3 been satisfied by the study.

4 My client has spent over \$12,000 on --  
5 between the two studies. The first study was  
6 done, contrary to what Mr. Rubenstein says. He  
7 saw the report, he knows it was done. So, for  
8 him to represent that, that wasn't done is simply  
9 untrue. He spent over \$12,000 in noise  
10 mitigation. I can go through it point by point  
11 and show how it meets the requirements of the  
12 Settlement Agreement, if the Board desires that I  
13 do that.

14 With respect to the trash issue, I'm  
15 stunned to hear that for, about that for the  
16 first time today. And the ANC is -- the parties  
17 to the Settlement Agreement, as far as I know,  
18 I'm not aware that they've given any notice to  
19 cure, they are in breach of the Settlement  
20 Agreement. By raising that issue today, and not  
21 giving a notice to cure. Maybe one was given,  
22 but I'm certainly not aware of it. And I've been  
23 Counsel throughout, and Mr. Rubenstein is aware  
24 of that.

25 So, if the Board wants me to go

1 through it point by point, I'm happy to do that.

2 CHAIRPERSON ANDERSON: All right. Mr.  
3 Ruiz, has --

4 MR. RUIZ: Yes, Mr. Chairman.

5 CHAIRPERSON ANDERSON: Are you  
6 familiar with this establishment, sir?

7 MR. RUIZ: Yes, I am.

8 CHAIRPERSON ANDERSON: And are there  
9 any enforcement actions that you are aware,  
10 regarding any settlement breach?

11 MR. RUIZ: No, I was asked back in May  
12 of 2023 to conduct a review of the SA of the  
13 establishment. But I didn't find any, any  
14 violation.

15 CHAIRPERSON ANDERSON: You're saying  
16 in May of 2023, sir?

17 MR. RUIZ: Yes.

18 CHAIRPERSON ANDERSON: You've not been  
19 -- are you aware if any ABCA Investigator has  
20 visited this establishment since May?

21 MR. RUIZ: I'm not particularly aware.  
22 I mean I've drove by a couple times, but not  
23 particularly of anyone else that specifically has  
24 been to that establishment.

25 CHAIRPERSON ANDERSON: Well. A



1 question for the Licensee. Does the Licensee  
2 have any documentation in his possession, that  
3 demonstrates that it has complied with the  
4 Settlement Agreement?

5 MR. KLINE: Yes, sir. We have the  
6 report. I mean the issue here is the report.  
7 And Mr. Rubenstein complains that the report does  
8 not meet what was required by the Settlement  
9 Agreement. And as I said, I'm happy to walk  
10 through how the report addresses that.

11 So, yes, we do have that. The  
12 acoustical engineering was hired. He's got a  
13 degree in acoustical engineering as well as  
14 substantial professional experience. So, yes, we  
15 have, certainly have documentation on that.

16 CHAIRPERSON ANDERSON: Then I would  
17 ask that -- we're here for a Fact-Finding  
18 Hearing, and why don't you tell us how is it that  
19 the Licensee is in compliance?

20 MR. KLINE: Sure. We are dealing with  
21 Section 8 of the Settlement Agreement, in Case  
22 Number 23-PRO-00008, approved by Board Order --  
23 David -- here we go, July 19th, 2023.

24 I'm going to walk through the  
25 provisions of Section 8, point-by-point. And

1 Number 1, the Applicant will hire a sound  
2 engineer to ensure that the construction of the  
3 establishment incorporates noise mitigation.

4 Well, Aslin --

5 CHAIRPERSON ANDERSON: Hold on, Mr.  
6 Kline. What Settlement Agreement that you're  
7 talking about, because I remember you spoke  
8 earlier that the ANC was speaking about an old  
9 Settlement Agreement. So, let us make sure that  
10 we are all dealing with the same document, sir.

11 MR. KLINE: Yes, that's why I gave the  
12 case number and the date, but okay. It's the  
13 amended and --

14 CHAIRPERSON ANDERSON: Mr. Kline, it's  
15 my first day back. I'm -- work with me please,  
16 okay. All right.

17 MR. KLINE: It's the amended and  
18 restated Settlement Agreement, which bears the  
19 signature date of June 28th, 2023, in Case Number  
20 23-PRO-00008, approved by the Board Order, dated  
21 July 19th, 2023. And that Board Order made three  
22 changes to the Settlement Agreement as submitted.

23 CHAIRPERSON ANDERSON: All right, sir.  
24 Go ahead.

25 MR. KLINE: Okay. All right, so we're

1 dealing with Paragraph 8 of that Settlement  
2 Agreement. Uh --

3 CHAIRPERSON ANDERSON: I think you're  
4 frozen, Mr. Kline.

5 MR. KLINE: -- the construction of the  
6 --

7 CHAIRPERSON ANDERSON: Mr. Kline.

8 MR. KLINE: -- noise mitigation.

9 CHAIRPERSON ANDERSON: Mr. Kline,  
10 you're having some technical difficulty, sir.

11 MR. KLINE: Everybody went away.

12 CHAIRPERSON ANDERSON: You went away,  
13 Mr. -- we can hear you, Mr. Kline. You're the  
14 one who went away. We're all here.

15 MR. KLINE: Okay, all right. Oh,  
16 everyone's video went out, so I wasn't sure. All  
17 right.

18 Applicant had previously hired a sound  
19 engineer in connection with the initial protest  
20 that was referenced by Mr. Rubenstein. That was  
21 referenced in the initial, it was a requirement  
22 in the initial agreement. It was done before the  
23 initial agreement was even entered into in  
24 February of 2022.

25 And then in connection with this

1 order, that I just recited, the amended restated  
2 Settlement Agreement, a sound engineer was hired,  
3 performed measures and tests between August 4th  
4 and 5th of 2023. And resulted in a report that  
5 was not required to be provided to Protestants,  
6 pursuant to the Board's Order, but as a courtesy,  
7 we did it. Because the Applicant does want to  
8 work with these Protestants. That's Number 1.

9 Second point in Section 8 says, the  
10 Applicant shall install and maintain sound  
11 absorptive and sound blocking materials and  
12 barriers including, but not limited to plexiglass  
13 on the property boundary fence, in the summer  
14 garden. Now, this is a carryover from the prior  
15 agreement. The plexiglass has been installed.  
16 And in addition, the survey that was done in  
17 August, recommended that Aslin relocate a couple  
18 of speakers, such that they were under the  
19 canopy. And the canopy certainly acts as a sound  
20 blocking material.

21 Number 3, the Applicant shall hire a  
22 qualified acoustical sound engineer to determine  
23 the measures, including sound absorptive and  
24 sound blocking materials and barriers, as well as  
25 management changes to operations and other

1 measures adopted by outdoor establishments in the  
2 District. The tests that were done resulted in  
3 several recommendations, including the addition  
4 of sound absorptive blocking materials and  
5 barriers, and management changes.

6 One of the most important, in terms of  
7 management changes was the purchase and  
8 installation of limiters, to limit the noise from  
9 the amplified music, as well as, repositioning  
10 the two speakers that I mentioned previously,  
11 under the canopy. These certainly, represent  
12 measures that are adopted by other establishments  
13 in the District. The limiters are pretty common.

14 Mr. Rubenstein mentions specifically  
15 things that were done at another business, Dacha.  
16 That's no requirement of the Settlement  
17 Agreement. And certainly, with the professional  
18 credentials of the acoustical engineer, who was  
19 employed, who did the survey -- presumably we  
20 didn't pay him yet more money to be here today --  
21 but presumably he knows how to do this. This is  
22 what he does for a living. He has the  
23 credentials.

24 And then it goes on to say, it would  
25 mitigate noise from amplified music, TV, speakers

1 and patrons. With respect to music, the survey  
2 recommended again, that the two speakers be  
3 repositioned. The survey did not recognize TVs  
4 as a significant source of noise.

5 And with respect to patron noise, the  
6 acoustical engineer cited the volume of noise  
7 from amplified sources, be it TVs or music or  
8 what have you, as an really important factor in  
9 managing the noise from patrons, as the Board has  
10 heard, and as the Board knows, the louder the  
11 music is, the louder the TV is, causes patrons to  
12 then speak over, or attempt to speak over the  
13 noise from the amplified sources, which generally  
14 tends to raise the level of noise from patrons.

15 And that was recognized in the report,  
16 and suggested that the management of the noise  
17 from amplified sources, would deal with that  
18 issue. Then it goes on to say, the goal of  
19 reducing current levels of noise experienced by  
20 residents generated on the busiest nights. Well,  
21 the measurements were done on Friday and Saturday  
22 night. Mr. Rubenstein apparently complains that  
23 Thursday wasn't included. But I think we all  
24 know that with a business of this type, Friday  
25 and Saturday are going to be the busiest nights.

1 That was looked at.

2 The report will be filed with ABCA as  
3 part of the application for license renewal.  
4 That will be done. What was struck was the  
5 requirement that we provide it to the  
6 Protestants. We did that anyway, as a show of  
7 good faith. Here it is. If you have -- in fact  
8 I even wrote to Mr. Rubenstein, here it is. If  
9 you have anything to discuss, let me know.

10 In terms of the work being done, that  
11 bears some comment. Mr. Kelley, who's on today,  
12 had a great deal of difficulty locating someone  
13 to do the study. Went through three or four  
14 different firms. In fact, we then wrote and  
15 said, we can't meet the 30-day requirement. We  
16 can't find anybody. We started looking and no  
17 one can do it that quickly. We asked for more  
18 time, and that was granted.

19 So, there's been compliance with that.  
20 That's been done. And then the section goes on,  
21 lastly to state, after full implementation the  
22 engineer will report on the effectiveness of the  
23 measures to confirm the measurable reduction from  
24 the current levels. And, you know, we just  
25 haven't gotten there yet. I mean it's, the

1 measures have been implemented, and that will  
2 certainly be done. And there will be a follow up  
3 to see that's done.

4 I mean what we have here, is I guess,  
5 my fault, in including on behalf of the  
6 Applicant, these requirements. And now, we have  
7 the ANC, not -- and the other Protestants -- not  
8 coming back and saying, "Oh, my God, this is  
9 horrible. This place is noisy". But nitpicking,  
10 and second guessing the report, that the Licensee  
11 paid over \$6,000 for. And as I said before, the  
12 Licensee has spent over \$12,000 just in studies,  
13 and over \$30,000 in noise mitigation.

14 And that would be frankly, and I said  
15 it earlier, why we don't have the expert here  
16 today. Is my client is just like, I can't spend  
17 any more money. If there's an issue, with  
18 respect to noise, tell us what it is. We haven't  
19 heard anything. What we heard was, we don't  
20 think the report did what it was supposed to do.

21 But with respect to any actual issue,  
22 we haven't heard anything. And that goes back to  
23 Mr. Berman's quote that I read earlier, that, you  
24 know, maybe we didn't do a good job here. We  
25 should have just put some standards in and left



1 to us, how to do it. Because to have the  
2 community now come in, and nitpick, what an  
3 expert did. It just doesn't seem reasonable.

4 And I should add that the order, Mr.  
5 Kelley tells me, containing the Settlement  
6 Agreement was provided to the acoustical engineer  
7 for his review. And his report was done to  
8 satisfy the requirements of that order. And we  
9 believe it does satisfy the requirements of the  
10 order. Thank you.

11 CHAIRPERSON ANDERSON: All right.  
12 Thank you. Mr. Rubenstein, any response that you  
13 wish to make at this time, sir?

14 MR. RUBENSTEIN: Sure. I think, let  
15 me correct the record on a couple things that Mr.  
16 Kline said. First, on August 2nd, 2023, Aslin  
17 was notified of the lack of compliance with the  
18 six day-a-week trash pickup. So, as per the  
19 Settlement Agreement, we sent the breach notice  
20 August 20 -- 2nd, 2023. And --

21 CHAIRPERSON ANDERSON: I'm sorry, Mr.  
22 Rubenstein, does the settlement specifically  
23 direct where the notice should be sent to? And  
24 where did you send the notice, sir?

25 MR. RUBENSTEIN: Yes, so, Andrew

1 Kelley, Andrew Kline, the other neighbors have  
2 all been copied on these.

3 CHAIRPERSON ANDERSON: Okay. Go  
4 ahead, sir.

5 MR. RUBENSTEIN: And Mr. Kline said  
6 something odd, because he said the study gave  
7 options for sound blocking materials. The sound  
8 study did not give options for sound blocking  
9 materials. I don't know how we could be any  
10 clearer that sound blocking materials should be  
11 part of the construction of Aslin, which dates  
12 back to the establishment of the beer garden.

13 It's on asphalt. It has a large brick  
14 wall on one side of it. It's a lot of hard  
15 surfaces. So, never have there been any options  
16 given for sound blocking materials, despite what  
17 Mr. Kline said.

18 Then, Mr. Kline said, the measurements  
19 took place on a Saturday night. Yes, Saturday  
20 night, I believe, after midnight, when the beer  
21 garden is closed. Not Saturday night, when  
22 they're, you know, open, you know, 8:00 to  
23 midnight, Saturday. Really, it's only, they were  
24 only tested on one night, Friday night.

25 And then he said that the measures had

1       been implemented. The sound study did suggest  
2       relocating two speakers. The speakers have not  
3       been relocated as of today. So, those are just a  
4       couple things I wanted to correct.

5               So, I don't know how we could be, you  
6       know, ANC's neighbors, we enter into these  
7       Settlement Agreements. You know, we're not the  
8       experts in it. That's why they have legal  
9       advice. That's why we have discussions with  
10      ABCA, the ABCA staff, and it goes to the Board  
11      for approval.

12             If Aslin has agreed to do certain  
13      things, you know, I know Mr. Kelley says, maybe  
14      they shouldn't have, you know, included these in  
15      the Settlement Agreement, but the reality is, the  
16      Settlement Agreement includes these. It  
17      envisions a sound study that looks at a wide  
18      number of options to mitigate sound. And then  
19      calls for reasonable efforts to implement those  
20      results.

21             It's, you know, if we're all going to  
22      enter into these as willing partners, which we  
23      did. Then, I think it's honoring all, you know,  
24      it's incumbent on the parties to do what they  
25      agreed to. Thank you.

1 CHAIRPERSON ANDERSON: All right.  
2 Anyone else from your party, wish to speak?

3 MR. RUBENSTEIN: Ms. Cowan.

4 CHAIRPERSON ANDERSON: Ms. Cowan,  
5 please identify yourself, and go ahead, ma'am.

6 MS. COWAN: This is Joyce Cowan, C-O-  
7 W-A-N. And speaking as one of the neighbors and  
8 very involved in both rounds of negotiations with  
9 the settlement orders. I would second every  
10 single thing David said about, nobody forced this  
11 Applicant to sign the Settlement Agreement. It  
12 was heavily negotiated. He didn't want specific  
13 standards. We mapped out what we were expecting  
14 to happen.

15 And the scope of the review, that was  
16 ignored. And while the Settlement Agreement may  
17 have been handed to the engineer, I can't speak  
18 to that, but Mr. Kline says it was, the scope is  
19 very clear that they were looking at the DCRA  
20 requirements, not the overlapping, but different  
21 ABCA requirements of noise impact on residents.

22 So, it is very clear in our opinion,  
23 which is why we wanted this to be a fact finding,  
24 it's not something an inspector can swing by and  
25 see, what the sound requirements were in this

1 study. So, the residents have been clear for a  
2 solid two years, on the things we care about.  
3 There is no doubt in Mr. Kelley's mind, what we  
4 care about.

5 They did not perform the sound study  
6 after the first Settlement Agreement, which is  
7 what --

8 MR. KLINE: That's not true.

9 MS. COWAN: If you check with --

10 CHAIRPERSON ANDERSON: I'm sorry, hold  
11 on, hold on. I don't need the parties to be  
12 talking at each other.

13 MS. COWAN: Right. Can I finish?

14 CHAIRPERSON ANDERSON: Right, that's  
15 what I'm saying. I'm trying to make sure that  
16 the parties should address the Board.

17 MS. COWAN: This has been, this has  
18 been highlighted in email exchanges. This was  
19 prior to Mr. Kline being involved. A previous  
20 colleague was involved in this part. The date  
21 that the study that was done, post the first  
22 Settlement Agreement was clearly done, before the  
23 Settlement Agreement was signed. Mr. Kline  
24 forwarded that to us. He's just acknowledged, it  
25 was done before the first Settlement Agreement.

1 The Settlement Agreement by the words on the  
2 page, was talking about a new one.

3           Again, water under the bridge, but  
4 it's just a track record of this client signing  
5 things and then doing something else. They sign  
6 at the eve of a Protest Hearing, and then decide  
7 after the fact, well, we didn't, we weren't  
8 really going to do that. Same thing with the  
9 trash pickup. Same thing with -- if Mr. Kline  
10 wanted us to nitpick, we could go into all the  
11 other items that were not done in the first  
12 Settlement Agreement.

13           But where we are today, is two main  
14 issues. Noise mitigation, this Applicant did not  
15 want standards imposed on it, so we've mapped out  
16 what the study should look at. We mapped out  
17 what the objectives of the study were. Noise  
18 mitigation for a residential block, including --  
19 it didn't say if you feel like it -- but  
20 including, an evaluation of sound barriers.

21           Just to highlight that we were not  
22 expecting something extraordinary, we made a  
23 direct mention of the most relevant other beer  
24 garden, which doesn't even have as much frontage  
25 as this one does. Again, if the Applicant did

1 not want to agree to this, they should have  
2 struck it. And we have gone to a Protest  
3 Hearing.

4 Six days-a-week trash mitigation is  
5 six days a week. If the Applicant is in  
6 compliance, they can provide a contract that  
7 shows they're in compliance. We have videotapes  
8 that shows it hasn't happened.

9 Finally, in the smallest of things  
10 that their limited sound study did, reposition  
11 your speakers, as Mr. Rubenstein highlighted,  
12 didn't do it. This is after months.

13 So, I think we have -- it's very  
14 frustrating when we spend hours and hours and  
15 hours. We had counsel on the earlier part. And  
16 we invest a lot of time to work out a Settlement  
17 Agreement. And then we get to these stages, and  
18 the Applicant, who's just seemingly, just  
19 resentful of having to deal with the neighbors at  
20 all, blows off the Settlement Agreement.

21 And it's, I'm on the Alcohol and  
22 Cannabis Policy Committee of the ANC now, and how  
23 do we get -- what do we say to all the other  
24 entities that sign Settlement Agreements and have  
25 a lot of expense and possible loss of revenue,

1 while they're compliant, if we let another  
2 Applicant totally, totally off the hook? It's a  
3 bad, bad precedent. And I think it really  
4 undercuts the whole concept of Settlement  
5 Agreements in the District. Thanks.

6 CHAIRPERSON ANDERSON: You want to  
7 provide a response, Mr. Kline?

8 MR. KLINE: I do. Mr. Chair, the  
9 history of this location reflects that this  
10 community, despite this law, as I mentioned  
11 earlier, being in the ARTS overlay district, does  
12 not want an outdoor business at this location.

13 They fought the previous Applicant,  
14 who never opened, tooth and nail. Then, this  
15 establishment applied. They fought this  
16 establishment twice, on the initial application  
17 and again, on the renewal. And here we are today  
18 in a fact finding. And guess what we have not  
19 heard a single word of, from the Protestants?  
20 Which is anyone being disturbed by noise.

21 What we have is nitpicking of a  
22 professional's survey and report. But no one is  
23 saying, "Oh, my God, this is as bad as we thought  
24 it was going to be. This is horrible." We have  
25 them coming in here, and as I said, nitpicking.



1 What's in agreement? When a professional had the  
2 agreement according to the Applicant, and did a  
3 survey based on what was required. And I have  
4 walked you through how it is, we believe in our  
5 minds, there's been compliance.

6 And I think we come back to a  
7 misunderstanding as to what is an appropriate use  
8 at this location, given its zoning, which is in  
9 the ARTS overlay. And a desire that there not be  
10 an outdoor business here. It's been reflected  
11 since day one. And that's why we're here today.  
12 Because this campaign will inevitably continue,  
13 whether anybody is bothered or not.

14 CHAIRPERSON ANDERSON: Yes, Mr.  
15 Rubenstein.

16 MR. RUBENSTEIN: Yes, I'd like to just  
17 speak on behalf of the ANC. And the ANC is not  
18 opposed to outdoor businesses in our  
19 neighborhood. We all moved here because Logan  
20 Circle is a special neighborhood, and the  
21 adjoining businesses. But of course, and outdoor  
22 business requires balancing. And the balancing  
23 is represented by the Settlement Agreement.

24 And balancing includes the number of  
25 patrons, how you handle trash, how you handle

1 pest control, how you work to contain the noise  
2 impacts on the community. It's all spelled out  
3 in the Settlement Agreement. So, I think it's  
4 very unfair for Mr. Kline to put a representation  
5 on the ANC, that we are not in favor of our  
6 businesses, and support all the outdoor activity,  
7 which we all love. So, thank you.

8 CHAIRPERSON ANDERSON: You can lower  
9 your hand, Ms. Edwards. Go ahead.

10 MS. EDWARDS: As a neighbor that is  
11 directly behind the beer garden, I just want to  
12 make it clear that, yes, I have in fact, heard  
13 the music, heard the crowds, seen the trash, seen  
14 the rats. And I'd be more than happy, every  
15 single instance, to email Kline and Andrew, that  
16 I'm aware of this. I have cameras. I can see it  
17 all. I have the recordings.

18 So, it is very much a thing. But  
19 instead of complaining every single time, which  
20 would probably, would be multiple times a day, I  
21 decided to go through our group to make it more  
22 appropriate to do that. So, I just want to put  
23 that out there. These things have been done. In  
24 fact, this morning I was listening to the music  
25 that was playing at the beer garden, which

1 unfortunately woke me up.

2 CHAIRPERSON ANDERSON: And I'm sorry,  
3 you said, what time, what was the hours of  
4 operation of the establishment? When you said,  
5 this morning, are you talking about after  
6 midnight, this morning, or --

7 MS. EDWARDS: No, not in the night.  
8 During the normal, during the normal hours. Just  
9 to be clear that I can in fact hear it from my  
10 house, with no windows, doors open. And on the  
11 further end of my house.

12 MR. RUBENSTEIN: Aslin is open, their  
13 hours are 6:00 to 11:00 on Sunday through  
14 Thursday. And 6:00 to 12:00 on Friday and  
15 Saturdays, 6:00 a.m.

16 CHAIRPERSON ANDERSON: Now when you  
17 said morning, Ms. Edwards, that's why I was  
18 somewhat -- you said it woke you up this morning.  
19 So, I guess you're saying, what do you consider  
20 when you said, this morning?

21 MS. EDWARDS: This morning was  
22 probably about, I don't know, 8 o'clock, 8:00 in  
23 the morning. Something like that, I would guess,  
24 7:00 to 8 o'clock.

25 CHAIRPERSON ANDERSON: But they're not

1 open?

2 MR. RUBENSTEIN: Yes, they are. They  
3 run a coffee bar in the morning.

4 CHAIRPERSON ANDERSON: Okay. All  
5 right, I apologize. But that's not -- you said  
6 their hours are 6:00 to -- 6, 6, 6:00 a.m.?

7 MR. RUBENSTEIN: Yes.

8 CHAIRPERSON ANDERSON: 6:00 a.m. to 8  
9 --

10 MR. RUBENSTEIN: I don't know, Mr.  
11 Kelley can tell us exactly what his hours. But  
12 they're in the Settlement Agreement. It allows  
13 6:00 a.m. to 11:00 p.m. from Sunday through  
14 Thursday. And Friday and Saturday 6:00 a.m. to  
15 12:00 a.m.

16 CHAIRPERSON ANDERSON: Okay.

17 MR. RUBENSTEIN: And this was worked  
18 out in the Settlement Agreement, and largely  
19 adhered to. So, we have no issues with the  
20 operating hours.

21 CHAIRPERSON ANDERSON: All right,  
22 fine. Any questions by any Board Members?

23 MEMBER SHORT: One question.

24 CHAIRPERSON ANDERSON: Go ahead, Mr.  
25 Short.

1                   MEMBER SHORT: Thank you. For the  
2 record, can someone please tell us, what was the  
3 name of the sound company, the mitigation  
4 company?

5                   MR. KLINE: AKRF is the name of the  
6 company.

7                   MEMBER SHORT: (Audio interference)  
8 Mr. Kline?

9                   MR. KLINE: Yes, as far as I can tell  
10 from their letterhead. AKRF Environmental  
11 Planning and Engineering Consultants.

12                   MEMBER SHORT: All right. Thank you  
13 very much.

14                   MR. KLINE: Yes.

15                   CHAIRPERSON ANDERSON: All right, go  
16 ahead, Mr. Grant.

17                   MEMBER GRANT: Silas Grant here. Two  
18 questions. Do we have photographs of the  
19 speakers and them being repositioned before and  
20 after?

21                   MR. KLINE: I don't at this point. I  
22 will submit the report, which shows what the  
23 recommendation was, with respect to the speakers.  
24 And has a photo of where they were.

25                   MEMBER GRANT: Okay. The second

1 question is, within the report, does it show the  
2 time that the report was started, the study was  
3 done and the duration of the execution of the  
4 study?

5 MR. KLINE: Yes. And as I said, I'll  
6 submit the report so you can all see for  
7 yourself.

8 CHAIRPERSON ANDERSON: I believe we  
9 have the report, Mr. Kline.

10 MR. KLINE: Okay. I thought you did,  
11 but given the questions, I wasn't sure.

12 CHAIRPERSON ANDERSON: Yes, well at  
13 least I have the report in front of me.

14 MR. KLINE: All right.

15 CHAIRPERSON ANDERSON: Does, are the  
16 parties requesting an interpretation from the  
17 Agency's Legal Division regarding the preferred  
18 interpretation of these provisions? Because it  
19 appears that there is some type of disagreement  
20 with the parties --

21 (Off the record comments.)

22 CHAIRPERSON ANDERSON: -- there is  
23 some disagreement regarding interpretation of the  
24 Settlement Agreement and what type of study.  
25 Because I think from what I'm hearing from Mr.

1 Rubenstein is that he believes that the study  
2 didn't appropriately comply with the Settlement  
3 Agreement. If I'm -- I hope I'm not incorrect.  
4 Yes, Mr. Rubenstein.

5 MR. RUBENSTEIN: We would say the  
6 study is too narrow. So, we're not saying what  
7 Mr. Kline undertook was not worthwhile, but it's  
8 very narrow. And that the Settlement Agreement  
9 envisioned a broader range of issues to be looked  
10 at. So, that's item one. Item two is compliance  
11 with the six day-a-week trash pickup, which Mr.  
12 Kline could easily demonstrate by showing a  
13 contract that it's happening.

14 MR. KLINE: Yes, we'll get back and  
15 look at that. I mean I looked at the email that  
16 you referenced. And there was another issue,  
17 which was the removal of the barrel, which you  
18 and I discussed many times. And I, in reading,  
19 and even in rereading that email, I thought that  
20 was the focus of the email. And if I  
21 misinterpreted what you said, I didn't  
22 understand. I thought you were just reminding  
23 that trash pickup needed to be six days a week.  
24 I didn't realize that you were claiming that,  
25 that wasn't being done.

1                   And Mr. Kelley apparently had the same  
2                   impression. But we'll be right on that and we'll  
3                   be back to you on that.

4                   MR. RUBENSTEIN: I'd be happy to send  
5                   another breach notice to make that clear, but  
6                   since --

7                   MR. KLINE: You don't need to do that.  
8                   We're going look into it and --

9                   CHAIRPERSON ANDERSON: Guys.

10                  MR. RUBENSTEIN: Then I just wanted to  
11                  respond to that, the speakers have not been moved  
12                  yet. That's my understanding, and my  
13                  observation. And I don't know if the sound  
14                  dampening, or whatever it was called was  
15                  implemented. I would have no idea.

16                  CHAIRPERSON ANDERSON: Well, I guess  
17                  the question I'm asking, is it -- are the parties  
18                  able to -- maybe they could negotiate the  
19                  provisions? Because it appears that there's  
20                  some, the parties are not in agreement what the  
21                  provision of the Settlement Agreement states  
22                  regarding the noise study. And so, I, is this  
23                  something that the parties wish to renegotiate?  
24                  Or is it, the parties are asking for the Board to  
25                  provide our legal interpretation of what it is



1 that's required by the study, as per the  
2 Settlement Agreement?

3 MR. RUBENSTEIN: The ANC feels that  
4 it's been very clear on the Settlement Agreement,  
5 about what the sound study should encompass. And  
6 so, we're asking the Board to enforce that  
7 provision of the Settlement Agreement.

8 CHAIRPERSON ANDERSON: I, if --

9 MR. RUBENSTEIN: Per Paragraph 8.

10 CHAIRPERSON ANDERSON: All right, so  
11 the party believes -- if the parties believe, or  
12 the ANC believes that the Licensee is not in  
13 compliance with the Settlement Agreement, of  
14 course they can file an action with enforcement.  
15 To say that they're -- because that's one of the  
16 reasons why I'm somewhat unclear.

17 It appears that, there's some  
18 disagreement over the terms itself. You're  
19 saying that the Licensee has not complied because  
20 the sound study was not comprehensive enough.  
21 I'm just -- and Mr. Kline is saying that he  
22 disagrees. You're just nitpicking. And that's  
23 why I'm just trying to get some clarification  
24 with that.

25 MR. RUBENSTEIN: So, I was informed,

1 by speaking to ABCA staff, Ms. Stark (phonetic)  
2 in particular, that the fact finding, would be  
3 the best -- given that we've already been through  
4 one round of inspections on this matter. And  
5 ABCA was not able to bring it to any resolution,  
6 the recommendation that this would be a more  
7 effective way to resolve the issue about the  
8 sound study.

9 CHAIRPERSON ANDERSON: Now, let me ask  
10 you, you said inspection. Inspection in what  
11 sense? Provide some clarification.

12 MR. RUBENSTEIN: Well, it's a little,  
13 water over the bridge, at this point. But I'd be  
14 happy to go back to it, if you'd like.

15 CHAIRPERSON ANDERSON: No, you said  
16 that, you've been through inspection, and that  
17 hasn't -- is that, I'm just asking for  
18 clarification.

19 MR. RUBENSTEIN: Although what  
20 happened in the past is not really an issue for  
21 today, the original, the first Settlement  
22 Agreement envisioned a sound study that would  
23 provide options for sound mitigation and barriers  
24 to be part of the construction of the  
25 establishment. The building, the establishment

1 had not yet been constructed. So, the Settlement  
2 Agreement envisioned a sound study looking at  
3 these issues and what could be incorporated.

4 So, the sound study that Mr. Kline  
5 refers to was a sound analysis of how loud the  
6 establishment would be. It was not a sound study  
7 that gave options for construction. So, this was  
8 never done, as required in the first Settlement  
9 Agreement. And so, we called the -- we made a  
10 complaint to ABCA, provided them with the sound  
11 study that was not compliant. And said, here,  
12 look, it's not in agreement with the sound study  
13 -- or with the Settlement Agreement.

14 So, despite multiple tries, I couldn't  
15 -- the inspectors weren't looking at what was the  
16 noise impact of the establishment, now that it  
17 was opening. It was not looking at, as far as I  
18 understand, the inspecting team did not look at  
19 whether the sound study had been properly done,  
20 or done at all.

21 CHAIRPERSON ANDERSON: And so, that's  
22 one of the reasons why --

23 MR. RUBENSTEIN: That's the issue on  
24 the table with the new Settlement Agreement, the  
25 recommendation and discussion with ABCA staff,

1 was this would be the right forum to resolve all  
2 this.

3 MR. KLINE: Mr. Chair, I think we  
4 could cut to legal. In terms of the first sound  
5 study, I mean my client acted in good faith. And  
6 he has been penalized because he did the sound  
7 study while they were negotiating. And he went  
8 ahead and did it. And then they entered into an  
9 agreement. And the agreement recites that a  
10 sound study will be done. And it was already  
11 done.

12 And it's kind of like, well, don't do  
13 that again. I mean, you know, don't be proactive  
14 because apparently if you don't do it until after  
15 the agreement is signed, you're going to have a  
16 problem with complaining, "Oh, we meant a  
17 different sound study. Not the one that you  
18 already paid \$6,000 for." So, let's put that to  
19 bed.

20 In terms of where we are now, what I  
21 think is that my office should be given a brief  
22 period of time to respond in writing to the  
23 September 29th letter from Mr. Rubenstein,  
24 rebutting as I did orally today, the points that  
25 are made, that there's no -- that there's a

1 violation in terms of what was done. And then  
2 have legal make a determination. If legal says,  
3 that no, didn't comply. Then, I guess my client  
4 will spend some more money and we'll bring the  
5 engineer back out.

6 CHAIRPERSON ANDERSON: All right.

7 MR. RUBENSTEIN: Question.

8 CHAIRPERSON ANDERSON: Yes, hold on  
9 for a minute, please.

10 MR. RUBENSTEIN: Um-huh.

11 CHAIRPERSON ANDERSON: Yes, sir. Go  
12 ahead. What was the question?

13 MR. RUBENSTEIN: So, just in terms of  
14 process, if it's a legal review. We provide a  
15 breach notice on this issue to Mr. Kline and Mr.  
16 Kelley. And they're going to provide a response.  
17 Do we, are we able to provide a response to their  
18 response?

19 CHAIRPERSON ANDERSON: Well, they're  
20 -- and then they're going to provide a response  
21 to the response. I mean, that's the reason,  
22 there has to be some reasonable -- Mr. Kline  
23 stated that he's going to provide a response to  
24 your letter of, I think August 29th.

25 MR. RUBENSTEIN: He already did. He

1 responded to us already.

2 CHAIRPERSON ANDERSON: All right. So  
3 what --

4 MR. KLINE: The letter to us, not --  
5 the letter from Mr. Rubenstein, that's what we  
6 responded to. But then there was a letter to the  
7 Board, which resulted in this Fact-Finding  
8 Hearing.

9 MR. RUBENSTEIN: Yes, yes, yes.

10 MR. KLINE: I was suggesting that we  
11 would respond to it.

12 MR. RUBENSTEIN: That's right.

13 CHAIRPERSON ANDERSON: All right. So,  
14 sorry. So, you, Mr. Kline will respond to the  
15 ANC's letters to the Board. And it appears that  
16 there's some misunderstanding, the parties, it's  
17 not apparent that the parties are on the same  
18 wavelength in the sense of what it is that's  
19 required. What the settlement requires regarding  
20 this sound study?

21 So, what I'm suggesting, and maybe is  
22 what the parties are asking this, is for legal to  
23 provide our interpretation of what it is that's  
24 required based on the Settlement Agreement. So,  
25 as you stated Mr. Kline, the study could have

1       been done prior to the Settlement Agreement. But  
2       if the study complies with what's required in the  
3       Settlement Agreement, whether or not it was done  
4       before, during, or after is irrelevant.

5               Because there's a Settlement Agreement  
6       regarding a sound study. And the Settlement  
7       Agreement states this is what needs to be a part  
8       of the study. We can look at the study, and  
9       legal can state whether or not, the agreement --  
10      I'm sorry, the study complies with the agreement.

11              MR. KLINE: Yes, I mean if I could  
12      just clarify the record, because it seems we're a  
13      little bit confused. That issue actually related  
14      to the first agreement. We're now under the  
15      amended and restated agreement that was approved  
16      by the Board in July. And the subsequent study  
17      was done, and that's what we're talking about  
18      now, is the subsequent study.

19              The fight over whether it was done  
20      before or after the Settlement Agreement related  
21      to the first Settlement Agreement. We're now  
22      talking about the amended and restated. I don't  
23      think there's any dispute that the study was done  
24      after the amended and restated was entered into.  
25      But the Protestants have issues with the scope of

1 the study as I understand it from the letter and  
2 from the discussion today. And as to whether it  
3 complied with the requirements of Section 8 of  
4 the amended and restated Settlement Agreement.

5 CHAIRPERSON ANDERSON: And so,  
6 therefore -- so, legal will look at that issue.  
7 And provide --

8 MR. KLINE: After we provide a  
9 response.

10 CHAIRPERSON ANDERSON: Yes, and  
11 provide clarification to the parties, if we  
12 believe that this study is in compliance with the  
13 Settlement Agreement.

14 MR. KLINE: Yes.

15 CHAIRPERSON ANDERSON: Mr. Rubenstein,  
16 you have a question you're asking?

17 MR. RUBENSTEIN: No, I'm just going to  
18 say for the first time today, I'm going to say, I  
19 agree with Mr. Kline and his summation of the  
20 issue.

21 CHAIRPERSON ANDERSON: Well, Mr.  
22 Rubenstein, I hope that you and Mr. Kline --  
23 because you live, you're in the ANC Mr. Kline  
24 represents, the Licensee, and the licensee is in  
25 the neighborhood, that you will always agree.



1 That's what I want. Because, you're going to  
2 coexist. So, you have to agree.

3 MR. KLINE: I will say for the record,  
4 despite that this may appear contentious, Mr.  
5 Rubenstein and I actually get along very well and  
6 work alike, so just for the record, I'll put that  
7 out there.

8 CHAIRPERSON ANDERSON: Yes, and I will  
9 state that I do, I remember --- well, I've been  
10 on this Board long enough that I do remember the  
11 protest that was filed by the community regarding  
12 the original licensee. Because this was, we were  
13 here and we were doing in-person hearings at that  
14 time.

15 And we were here until 2:00 a.m. in  
16 the morning, listening to the community. So,  
17 that was, at that juncture, that was the longest  
18 Protest Hearing that I'd ever had. Because we  
19 were here until 2:00 a.m. in the morning for that  
20 protest. And so, I was glad that once this other  
21 license came about, that the parties were able to  
22 sign a Settlement Agreement to come to some type  
23 of agreement.

24 So, I did, the Board supports, as I've  
25 always stated, we support Settlement Agreements

1 because at least it said that the community and  
2 the licensee, they're both working together to  
3 come to a mutual agreement. And so, I do support  
4 that.

5 MR. KLINE: I caution against scaring  
6 off Mr. Grant his very first hearing.

7 CHAIRPERSON ANDERSON: Mr. Grant is  
8 fortunate today, because on our calendar today,  
9 Mr. Kline, there was a Protest Hearing. And I'm  
10 not sure if Mr. Grant would have been happy to  
11 have a Protest Hearing his first day. A day  
12 after he was confirmed by the Council.

13 But apparently the parties, and I'll  
14 say it this way, that they are so afraid of Mr.  
15 Grant, that they quickly decided to sign a  
16 Settlement Agreement because they did not want to  
17 face the wrath of Mr. Grant.

18 All right, yes. So, that would have  
19 sent the parties for settling that matter.

20 (Laughter.)

21 CHAIRPERSON ANDERSON: Yes, Mr. Grant.

22 MEMBER GRANT: I had a question. I  
23 wanted to go back --

24 CHAIRPERSON ANDERSON: Yes, sir, go  
25 ahead.

1                   MEMBER GRANT:    -- when Sarah Edwards  
2 was talking about the hearing of music.  When  
3 that happens, Sarah, what is your typical  
4 response?  Or your prior communication to notify  
5 someone that that's taking place?

6                   CHAIRPERSON ANDERSON:  Let me ask if  
7 -- before, let me ask this.  Let me ask some  
8 clarification, Mr. Grant, because, before that  
9 question is answered.  Because Mr. Kline, and  
10 what was the hours of operation?  Because I'm  
11 looking at the -- and I'm looking at the  
12 placarded notice.  And this was from October 7th,  
13 2022.  And I thought that the hours of operation  
14 are from 11:00 to 11:00.

15                   So, where did this 8:00 a.m. come  
16 about?  Because -- so, hold the responses to your  
17 question Mr. --

18                   MR. KLINE:  I'd -- don' t know the  
19 answer --

20                   (Simultaneous speaking.)

21                   MEMBER GRANT:  It's Grant.

22                   MR. KLINE:  I'd have to look into  
23 that.  It's the first time I've heard about this  
24 issue.

25                   CHAIRPERSON ANDERSON:  All right.  All

1 right. But you can if, Ms. -- go ahead, go  
2 ahead.

3 MEMBER GRANT: The reason for asking  
4 that is because, Mr. Kline has stated that  
5 there's been no complaints about actual noise.  
6 There's been complaints about the way in which  
7 the study was executed. But now we're hearing  
8 that there was at least an informal complaint  
9 about the music they were having this morning.  
10 So, under normal circumstances, how would a  
11 neighbor notify that there's noise at an  
12 inappropriate time?

13 CHAIRPERSON ANDERSON: Go ahead,  
14 ma'am.

15 MS. EDWARDS: Yes, so, currently it's  
16 just one of those everyday things. I'll hear a  
17 crowd roar. Or I'll hear the music turned up.  
18 Or the garbage, you know, clinking and bottles,  
19 or, you know, that kind of thing.

20 So, right now, there's no formal  
21 process I've been putting through for complaints.  
22 It's just our group of neighbors, we know it's an  
23 everyday thing. If you would like a formal  
24 complaint every single time I hear something, I  
25 can certainly do that.

1           The problem is somebody comes out, and  
2           it's 3,4,5 days later, or a few hours later, and  
3           it's completely quiet. Or it's in the middle of  
4           the night, or there is no more, you know, noise  
5           or trash issues at that time.

6           So, like I said, I'm happy to text or  
7           email every single time I hear a noise or a trash  
8           violation, or concern of mine. But you're going  
9           to get a lot of messages unfortunately. So, it's  
10          kind of up to you.

11           CHAIRPERSON ANDERSON: Ms. Cowan.

12           MS. COWAN: Yes, and I think,  
13           especially to the new Member of the Commission, I  
14           think this highlights, Sarah's example  
15           highlights, why we're not in the land of  
16           nitpicking. We have an operation on our block  
17           that is open from very early in the morning,  
18           although not serving liquor, until later in the  
19           day, with music, that you can hear inside a house  
20           with doors and windows locked.

21           As Mr. Kline well knows, the  
22           difference between the DCRA noise mitigation,  
23           which the sound engineer focused on, that is a  
24           different decibel level issue. The ABCA's laws  
25           and regs go to a broader point, which is what can

1 residents hear inside? And that's why we had a  
2 fundamental problem with the sound study that was  
3 conducted. It did not look at that.

4 It did not ask for permission to go  
5 inside anybody's house and listen. To see if  
6 we're a bunch of paranoid weirdos, or if in fact,  
7 you can feel the vibrations and hear the noise.  
8 In fact, the sound engineer as David nicely was  
9 highlighting, and we can give legal counsel -- I  
10 think it's a great idea -- a little chart. It  
11 looks like they checked noise at a whole bunch of  
12 different times. But they measured it like, I  
13 think five different times, after the operation  
14 was closed.

15 How on earth would that get to a  
16 proper noise mitigation standard, when you're  
17 checking noise after patrons have been gone for  
18 an hour? I guess staff likes to listen to music  
19 when they're closing up, whatever. But the  
20 difference between DCRA decibel levels, which are  
21 very high threshold, we get it. We live in this  
22 neighborhood. And ABCA's focus on, should  
23 residents be able to hear an establishment,  
24 inside their house, night after night?

25 Yes, we're happy to make boatloads of

1 complaints. But until inspectors can come out --  
2 you know, I get it, they have to prioritize their  
3 time and serving underage people, and other  
4 things is certainly higher priority -- but until  
5 we can have inspectors that can actually see  
6 what's going on in somebody's house at the time  
7 it's going on, that's why we felt a fact finding,  
8 we were told a fact-finding approach was the way  
9 to go on this.

10 CHAIRPERSON ANDERSON: Yes, Mr. Short.

11 MEMBER SHORT: I have a suggestion to  
12 Mr. Kline and to the community. And Mr. Kline,  
13 you might remember, I think we've done this  
14 before, may I make a suggestion that the noise  
15 company, or engineers come out at a time when the  
16 ABRA Investigator is available, and the community  
17 is available, and the business owner is  
18 available. And that the sound engineer goes to  
19 the units and an ABRA Investigator goes to the  
20 units, while the test is being done.

21 And that way, that would answer I  
22 think a lot of the questions that seem to be, not  
23 being addressed appropriately, I would say. But  
24 at any rate, I will make that suggestion, Mr.  
25 Chair, that the sound engineering company, along

1 with our ABRA Investigators, and the community,  
2 and the business owner, arrange a date when the  
3 sound engineer can come out, and check inside the  
4 residences.

5 CHAIRPERSON ANDERSON: All right. So  
6 I'm also reminded that if they can revisit that  
7 provision, the provision of the Settlement  
8 Agreement where it appears that there is not  
9 agreement on the interpretation. So, that's also  
10 available to them.

11 I am confused about the hours of  
12 operation for this establishment. Because I'm  
13 not aware that this establishment is supposed to  
14 be open at 6:00 a.m. in the morning.

15 And even if alcohol is not being sold,  
16 your license should reflect the hours of  
17 operation. So, if your hours of operation is  
18 from 6:00 a.m. in the morning until 11:00 p.m. or  
19 12:00 that should be reflected on your license.  
20 And then your license will also reflect the hours  
21 of sale and service. So, I, Mr. Kline, if there  
22 is some confusion there, I'm asking that you look  
23 at the license to make sure that your client is  
24 in compliance with its obligations under its  
25 license.



1 MR. KLINE: Yes, we'll look at that,  
2 Mr. Chairman.

3 CHAIRPERSON ANDERSON: And if that's  
4 the case, then -- and I don't know what it is.  
5 But if that's the case, then your client needs to  
6 file for a substantial change, to change his  
7 hours of operation.

8 MR. KLINE: Well, I'll request for a  
9 change. We'll leave the rest of it to you in  
10 terms of like a --

11 CHAIRPERSON ANDERSON: Well, whoa.  
12 Well the Board can determine whether it's  
13 substantial or not. But, as you know, I'm just  
14 advising the party.

15 MR. KLINE: Okay.

16 CHAIRPERSON ANDERSON: And I'm also,  
17 since we are a Fact-Finding Hearing, also  
18 advising the parties that if the hours of  
19 operation is not in compliance with the license,  
20 please cease operation as of today. All right.

21 So, what is -- the next step is that  
22 Mr. Kline, you're going to respond to the  
23 Protestant's letter to us. And the Protestant  
24 will be given an opportunity to respond, to your  
25 response. And that's it.

1                   And then legal will make a  
2                   determination the next steps under the  
3                   interpretation. If the parties believe in the  
4                   interim, that they want to negotiate and make  
5                   changes, that they'll be on the same wavelength,  
6                   of course the parties are always available to  
7                   negotiate and come to the Board to say this is  
8                   our, we're going to amend our Settlement  
9                   Agreement, and this is the interpretation we both  
10                  are in agreement with.

11                  Yes, Mr. Rubenstein.

12                  MR. RUBENSTEIN: I just want to make,  
13                  point out to Mr. Kline, there were two letters to  
14                  the Board. One on trash, and one on the sound  
15                  study. Just so you have both.

16                  MR. KLINE: Okay. I don't believe  
17                  I've seen the one on trash, but I'll look at it.  
18                  And if I don't have it, I'll be in touch to get  
19                  it from you.

20                  MR. RUBENSTEIN: Or legal, ABCA legal  
21                  has it is as well, so they were sent both.

22                  MR. KLINE: All right.

23                  CHAIRPERSON ANDERSON: And I thought  
24                  I'd seen a trash contract, and so therefore there  
25                  should be clarification from the parties,

1 clearly. If the Settlement Agreement says the  
2 trash needs to be taken up six days a week, then  
3 that's what the Settlement Agreement states. So,  
4 there should be some contract that the parties  
5 can discuss whether or not is there a six-days-a-  
6 week trash pickup as per the Settlement  
7 Agreement, if that's what the Settlement  
8 Agreement states.

9 Any other questions by any party  
10 before I bring this matter, this hearing to  
11 closure?

12 MR. KLINE: None from the Licensee.

13 CHAIRPERSON ANDERSON: Mr. Rubenstein.

14 MR. RUBENSTEIN: None from the ANC.

15 CHAIRPERSON ANDERSON: All right,  
16 thank you very much. Thank the parties for their  
17 participation today. Of course, the Board will  
18 take this matter under advisement, and we'll  
19 issue a decision in due course. Thank you very  
20 much. Have a great day.

21 MR. KLINE: Thank you.

22 MR. RUBENSTEIN: Thank you.

23 CHAIRPERSON ANDERSON: All right.

24 (Whereupon, the above-entitled matter  
25 went off the record at 12:31 p.m.)

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This is to certify that the foregoing transcript

In the matter of: Aslin Beer Company

Before: DC ABCA

Date: 11-08-23

Place: videoconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.

*Neal R Gross*

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Court Reporter

**NEAL R. GROSS**

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