

ALSO PRESENT:

RANDY DOWNS, ANC 2B

LAURA DUNN, COUNSEL FOR PROTESTANTS

**GLENN ENGELMANN, DUPONT CIRCLE CITIZENS
ASSOCIATION**

SIDON YOHANNES, LICENSEE COUNSEL

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

2 9:44 a.m.

3 CHAIRPERSON ANDERSON: Good morning,
4 everyone. I would like to welcome you to the
5 regularly scheduled meeting of the District of
6 Columbia Alcoholic Beverage Control Board.
7 Please know that today's hearings will be
8 conducted in accordance with D.C. Official Code
9 Section 2-574 of the Open Meetings Act.

10 Today is April 3, 2019. I would like
11 to introduce Members of the Board with us today.

12 To my far right is Mr. Bobby Cato. To
13 my immediate right is Mr. Nick Alberti. To my
14 far left is Ms. Rema Wahabzadah. To her right is
15 Mr. Mike Silverstein and to my immediate left is
16 Mr. James Short. My name is Donovan Anderson.
17 I'm the Chairman of the Board. We do have six
18 Members in attendance today and we do have a
19 quorum to conduct business.

20 I would like to mention two things
21 before we get started. First of all, if you have
22 any electronic devices, pagers, cell phones or

1 such, please, make certain that they are turned
2 off to avoid any interruption of the proceedings.

3 Secondly, when your case is called,
4 there is a piece of paper on the table, please,
5 sign-in. This is to ensure the correct spelling
6 of your name for the record.

7 Additionally, when you introduce
8 yourself for the record, please, spell your name
9 aloud for the court reporter.

10 I would note that the approximate time
11 is 9:47 a.m.

12 Our first order of business today is
13 a Protest Hearing (Status) Case No. 19-PRO-00011,
14 To Be Determined, License No. 112472.

15 Would the parties, please, approach
16 and identify themselves for the record, please?

17 MS. YOHANNES: Sidon Yohannes on
18 behalf of the applicant.

19 CHAIRPERSON ANDERSON: Good morning,
20 Ms. Yohannes.

21 MS. YOHANNES: Good morning.

22 MR. DOWNS: Good morning. Randy Downs

1 on behalf of ANC-2B.

2 CHAIRPERSON ANDERSON: Good morning,
3 Mr. Downs.

4 MS. DUNN: Laura Dunn, the legal
5 representative for the group of 12 residents and
6 property owners from the Presidential Cooperative
7 along with the property owner of 1001 16th Street,
8 N.W., Washington, D.C., represented by the
9 general manager of the Capital Hilton, Brian
10 Kelleher, K-E-L-L-E-H-E-R.

11 MEMBER SILVERSTEIN: Please speak a
12 little louder.

13 MS. DUNN: Sure. Would you like me to
14 repeat who all I'm representing?

15 CHAIRPERSON ANDERSON: No, no, you are
16 representing --

17 MS. DUNN: Okay.

18 CHAIRPERSON ANDERSON: -- no, no. So
19 you are, Ms. Dunn, you said, representing the
20 Group of 5 or More. Is that correct?

21 MS. DUNN: Yes.

22 CHAIRPERSON ANDERSON: Okay. Good

1 morning. Yes, sir?

2 MR. ENGELMANN: Good morning. I'm
3 Glenn Engelmann. I'm representing the Dupont
4 Circle Citizens Association.

5 CHAIRPERSON ANDERSON: Good morning,
6 Mr. Engelmann.

7 MR. ENGELMANN: Engelmann.

8 CHAIRPERSON ANDERSON: All right. Are
9 there any preliminary matters in this case?

10 MS. DUNN: I do believe there is
11 conditional standing that has been granted to the
12 Capital Hilton that I would like to address and I
13 do have some materials for the Board to consider
14 as part of its consideration for standing.

15 CHAIRPERSON ANDERSON: Hold on. Hold
16 on one minute, please. Okay. Ms. Yohannes,
17 prior to accepting, do you have a position on the
18 hotel's standing to be granted standing?

19 MS. YOHANNES: Just to clarify, is
20 this the hotel that is requesting to have
21 standing or is the property owner?

22 MS. DUNN: I think it is clear from

1 the February 22, 2019 addendum that the general
2 manager is signing as an agent of the property
3 owner, which is CHH Capital Hotel Partners, LP
4 and that agency is confirmed by the first letter,
5 so the Capital Hilton's general manager is merely
6 an agent representing the property owner for the
7 premises at which it occupies.

8 MS. YOHANNES: And the Hilton Hotel is
9 not a protestant in this matter, right?

10 MS. DUNN: (No audible answer.)

11 MS. YOHANNES: So as a -- the only
12 objection that I have or the objection that I
13 have is that as a property owner, this is a
14 commercial property. The residents, the Group of
15 5 or More the rest of the residents --

16 CHAIRPERSON ANDERSON: I'm sorry,
17 start -- I'm sorry, I was distracted. Go ahead.

18 MS. YOHANNES: The Group of 5 or More
19 that is protesting this matter, they are all
20 residents and they are not commercial property
21 owners and they -- and as a commercial property
22 owner, this specific, and this is what 1001 16th

1 Street, the property owner of the Capital Hilton
2 does not share common grounds with the other
3 protestants or the other members of the Group of
4 5.

5 CHAIRPERSON ANDERSON: Okay. So you
6 will be -- you are objecting to standing for the
7 hotel? Is that what you are saying?

8 MS. YOHANNES: The property owner.

9 CHAIRPERSON ANDERSON: The property?

10 MS. YOHANNES: Yes.

11 CHAIRPERSON ANDERSON: What property
12 owner?

13 MS. YOHANNES: Of the --

14 CHAIRPERSON ANDERSON: I'm not trying
15 to be --

16 MS. YOHANNES: If it's the Hilton
17 that's protesting, I am objecting based off of
18 the fact that they are an ABC-licensed
19 establishment. They are not -- they don't have
20 standing. But if it's the property owner, which
21 I believe is the case here in which the -- that's
22 the protestant here, I'm objecting because they

1 don't share a common ground with the remaining
2 members of the Group of 5.

3 CHAIRPERSON ANDERSON: Okay. Go
4 ahead, ma'am.

5 MS. DUNN: So again, just referencing
6 the February 22, 2019 addendum, it does specify
7 that it is the property owner. And yes, the
8 Capital Hilton occupies that premises; hence, I
9 have provided the information of that agency to
10 confirm that the property owner is authorizing
11 the general manager of the Capital Hilton to
12 serve as its representative.

13 And it even provides courtesy copies
14 of the relevant statutes and regulations on point
15 that very clearly allow a property owner to be an
16 entity and there is no dispute under DC Code that
17 that is very possible. And I'm happy to walk
18 through those regulations and statutes if that's
19 helpful, but I know the Board is very familiar
20 with it.

21 CHAIRPERSON ANDERSON: You --

22 MS. DUNN: Regarding --

1 CHAIRPERSON ANDERSON: -- can go
2 ahead.

3 MS. DUNN: Okay. Sure. So I'm just
4 going to go through the packet in the order that
5 it is in, so that everyone can follow along.

6 So just reiterating that first page is
7 confirmation from CHH Capital Hotel Partners, LP,
8 that it has, in fact, authorized the general
9 manager of the Capital Hilton to serve as a
10 representative joining with the Group of 12
11 residents.

12 Also at the end of the second
13 paragraph, it reiterates their common grounds for
14 protest, which is: Peace, order and quiet;
15 residential parking and vehicular and pedestrian
16 safety.

17 The second page is just confirmation
18 that CHH Capital Hotel Partners, LP is, in fact,
19 the property owner. You can see on the first
20 page I have cited a DC Code that defines owner to
21 mean "persons or entities with an interest in
22 real property that are listed on the real

1 property tax records." And that is the second
2 page, the real property tax record confirming the
3 ownership.

4 Moving on to the first statutory
5 section, which has to do with standing in a
6 protest, I'm sure you all are very familiar, but
7 if you look at the very first paragraph it says
8 "The following persons may protest." The
9 definition of persons, which is included two
10 statutes down says "Persons includes not just
11 individuals but partnerships, corporations,
12 limited liability companies and unincorporated
13 associations."

14 So at no point has this contemplated
15 only individuals. It very clearly contemplates
16 entities, which is even confirmed by the Board's
17 Regulation 23-1602 follows the statute on
18 standing that says "Only those individuals or
19 entities listed may file a protest."

20 So it's very -- very clearly, entities
21 are persons for purposes of standing.

22 In looking at the specific sub-

1 provision about the Group of 5, the Group of 5 is
2 not merely residents. It is also property
3 owners. So the very last, second to last statute
4 has a definition of a property owner in DC Code
5 14-313.04 and again the owner is "one or more
6 persons or entities with an interest in real
7 property in the District of Columbia that appears
8 in the real property tax records." And it goes
9 on to include others, but that's the provision
10 relevant for us.

11 So under the statute and the
12 regulations, an entity can be a property owner.
13 A property owner can join a Group of 5, as long
14 as they share common grounds. And the grounds
15 are common. They are concerned about peace,
16 order and quiet in the neighborhood; the
17 residential parking and vehicular and pedestrian
18 safety.

19 So they have properly joined in on
20 this protest with that Group of 12 and share the
21 same concerns, because as you all know, the
22 property is occupied by a hotel. The owner of

1 that space can only really use that space for a
2 hotel. There is overnight residents that have
3 the same concerns about whether they can go to
4 bed at night, whether there is noise pollution in
5 the air, what is going to happen to their
6 neighborhood and such and the property values
7 thereof.

8 CHAIRPERSON ANDERSON: I'm sorry, what
9 type of property is this that the license is
10 being -- what type of property is being
11 presented?

12 MS. DUNN: For the applicant?

13 CHAIRPERSON ANDERSON: The applicant,
14 yeah, what type of license are you applying for
15 and what type of property is this?

16 MS. YOHANNES: Restaurant, commercial.

17 CHAIRPERSON ANDERSON: Commercial
18 restaurant.

19 MS. DUNN: I believe it is a
20 restaurant and bar.

21 CHAIRPERSON ANDERSON: The restaurant,
22 a restaurant and bar.

1 MS. YOHANNES: It's a CR License.

2 CHAIRPERSON ANDERSON: All right.

3 MS. YOHANNES: And if I may respond?

4 CHAIRPERSON ANDERSON: Yes.

5 MS. YOHANNES: Even though, and so
6 what is being stated right now is that the
7 protestant or the property owner is an LLC and an
8 LLC is identified under the regulations or the
9 code as an individual.

10 My main objection here is that they
11 don't share common ground. So the Group of 5
12 under the code is to share -- residential
13 property owners who share common ground being
14 protested.

15 So all of the members of this group,
16 whether they are residents or property owners,
17 all live at the property in which they are
18 stating in this protest.

19 This specific property owner does not
20 live at this location, is a commercial property
21 owner and is concerned about business, rather
22 than peace, order and quiet as a resident. So

1 that differentiates that property owner from the
2 other members of the group.

3 MS. DUNN: And I'm happy to respond to
4 that if I could?

5 CHAIRPERSON ANDERSON: Sure. Go
6 ahead.

7 MS. DUNN: But I believe the statute
8 itself has been misquoted. It's not common
9 ground, singular. It's common grounds, plural,
10 because it is not talking about geographical
11 space. It is talking about protest grounds,
12 including peace, order and quiet; vehicular
13 safety; pedestrian safety.

14 It's not talking about a geographical
15 space being shared. It is talking about the
16 reasons for the protest being shared as common
17 grounds.

18 MEMBER ALBERTI: May I ask a question?

19 CHAIRPERSON ANDERSON: Go ahead, Mr.
20 Alberti.

21 MEMBER ALBERTI: So, Ms. Yohannes, you
22 made the point that the property owner does not

1 live here.

2 MS. YOHANNES: That's correct.

3 MEMBER ALBERTI: So is not really a
4 resident.

5 MS. YOHANNES: Yes, that's right.

6 MEMBER ALBERTI: I'm going to draw an
7 analogy. It's not perfect, but I would like you
8 to respond. So if I was a property owner of a
9 single unit building, even a two unit building
10 and it was rental property, that was my intent
11 was to always rent it out, would you agree or
12 disagree that I had, as a property owner whose
13 livelihood is affected by whether I can rent this
14 or not, am I -- do I share common ground with
15 people who may own their house and live in the
16 neighborhood or not? And why?

17 MS. YOHANNES: I think that you share
18 common ground if you are protesting, based on
19 peace, order and quiet for the residents, not so
20 that you can make your livelihood and rent out
21 the property. Like I think that there are
22 specific issues that have arisen for those

1 residents and maybe you may share common ground,
2 but I would say no if you don't live there and
3 everybody else, every other member of that class
4 lives there, you can't say you share common
5 ground.

6 MEMBER ALBERTI: So renters do not
7 have -- obviously, according to our regs, renters
8 can't protest, right?

9 MS. YOHANNES: Right.

10 MEMBER ALBERTI: So there is no
11 vehicle for someone who -- there is no protection
12 for properties that are rented, that are rental
13 properties is what you are saying.

14 MS. YOHANNES: Under the code and the
15 regulations, no.

16 MEMBER ALBERTI: Okay. Thank you.

17 CHAIRPERSON ANDERSON: Go ahead. Go
18 ahead, Mr. Short.

19 MEMBER SHORT: Yes, Ms. Yohannes, the
20 zoning area for the Hilton Hotel and the
21 residents that live close by is what,
22 residential?

1 MS. YOHANNES: No, I believe it is
2 mixed-use.

3 MEMBER SHORT: But the hotel is
4 residential? Is the hotel -- according to the DC
5 Code, how are hotels -- are they listed as
6 residential?

7 MS. YOHANNES: No.

8 MEMBER SHORT: What are they listed
9 as?

10 MS. YOHANNES: Some variation of it.
11 I don't know specifically where -- what -- in
12 terms of -- I would assume it's the same zoning
13 area, but it's a mixed area, a mixed-use sort of.

14 MEMBER SHORT: Okay. For the record--

15 MS. YOHANNES: It's not residential.

16 MEMBER SHORT: -- just for the record,
17 I would just like to say to you that hotels are
18 considered to be residential. And residential
19 means people live there. Um-hum.

20 MS. YOHANNES: Just to clarify, do you
21 mean in a Residential Zone? It's in a
22 Residential Zone?

1 MEMBER SHORT: Well, residential is
2 use of that property. Residential is use of that
3 property. So if I rented a room in that hotel
4 and I hear noise from the street and I said to
5 the hotel I don't want to stay in this room, then
6 the hotel owner has to move me to another room.
7 Is that correct? I mean, we are getting down to
8 the nitty-gritty of the case. And so we are
9 saying Residential Zoning and can the Hilton
10 Hotel or any hotel be a part of a case? I would
11 think that the zoning issues would have to be
12 coming to some consideration --

13 MS. YOHANNES: Well --

14 MEMBER SHORT: -- in our deliberation.

15 MS. YOHANNES: -- possibly, but I
16 don't believe, with all due respect, that all
17 hotels are in Residential Zones. I don't believe
18 this hotel --

19 MEMBER SHORT: Excuse me. The
20 District of Columbia Law says you cannot have a
21 hotel unless it's in a Residential Zone. That's
22 the law. That's all I have, Mr. Chair.

1 CHAIRPERSON ANDERSON: Any other
2 questions? Yes, Mr. Silverstein?

3 MEMBER SILVERSTEIN: Ms. Yohannes, I
4 think we all agree that by definition, if not by
5 zoning, a hotel is a residential property.
6 People stay there, sleep there. And I would
7 posit that those who reside therein are entitled
8 to the same peace, order and quiet as all D.C.
9 residents in that the only reason they are there
10 is to get a good night's sleep, so that they can
11 enjoy the hospitality of our city.

12 I do want to point out to you that
13 your law firm, the Veritas Law Firm, claimed a
14 hotel, I believe it's called The Boardroom, was a
15 residential property in a case where you
16 represented ANC-2A in successfully halting the
17 licensing process for an applicant who had
18 applied for a nude dancing endorsement. Is that
19 not correct?

20 MS. YOHANNES: I don't have the
21 details of that case in front of me, so I can't
22 speak to that and for speaking on a separate and

1 different matter at this moment, so I can't
2 answer that.

3 MEMBER SILVERSTEIN: Yes, well, it's
4 a separate matter, but it involved a hotel, which
5 supposedly had standing, which supposedly was
6 considered a residential property and with those
7 who through their residency were entitled to the
8 same protections that you will seek to deny
9 those. No further questions.

10 MEMBER ALBERTI: Mr. --

11 CHAIRPERSON ANDERSON: Go ahead, Mr.
12 Alberti wants to ask some questions.

13 MEMBER ALBERTI: -- Silverstein, just
14 understanding your point, how did the Board rule
15 in that case?

16 MEMBER SILVERSTEIN: The case, I
17 believe that the rule was that the license was
18 denied.

19 MEMBER ALBERTI: No, no, how did it
20 rule with respect to the Boardroom being
21 protested?

22 MEMBER SILVERSTEIN: I believe the

1 case was then dropped. I'm not sure if we even
2 had the -- by the applicant.

3 MEMBER ALBERTI: So we never did rule?

4 MEMBER SILVERSTEIN: Right.

5 MEMBER ALBERTI: Okay. So there is no
6 precedent there. All right.

7 MEMBER SILVERSTEIN: Right.

8 MEMBER ALBERTI: Thank you.

9 CHAIRPERSON ANDERSON: Yes, but the
10 case, I think, was dropped by the applicant
11 because --

12 MEMBER ALBERTI: Okay.

13 CHAIRPERSON ANDERSON: -- there were
14 residents --

15 MEMBER ALBERTI: I just wanted to
16 understand whether there was precedent or not.

17 CHAIRPERSON ANDERSON: No.

18 MEMBER ALBERTI: Okay.

19 CHAIRPERSON ANDERSON: No, we didn't
20 rule on whether or not the hotel --

21 MEMBER ALBERTI: If that's the issue,
22 I guess -- the issue is not how the firm argued.

1 The issue is whether there was precedence.

2 CHAIRPERSON ANDERSON: Yeah.

3 MEMBER SILVERSTEIN: I guess it's the
4 old argument where you stand, depends on where
5 you sit.

6 MEMBER ALBERTI: Sure.

7 CHAIRPERSON ANDERSON: Well, I think
8 in that case it's not, at least for the issue
9 that is in this case, there is no -- the Board
10 hasn't ruled whether or not the licensee in that
11 case had standing. It was -- I think the issue
12 was that whether or not residents lived in the
13 area, because if there is -- there is a law that
14 you cannot have a nudist -- which is not
15 applicable to this case, but it's my
16 understanding that this was an application for a
17 nude license and there is a law in D.C. you can't
18 be 500 feet of residents.

19 And there were no residents in the
20 area. We found this hotel that had residents, so
21 therefore, the applicant dropped its license. So
22 we made no ruling whether or not the

1 establishment itself could protest the liquor
2 license.

3 But that's neither here nor there.
4 Basically what I'm going to do, I'm going to
5 allow arguments. The Board is not going to make
6 a decision today, so we will still have some --
7 you can make whatever other argument that you
8 want to make and we will -- we still have some
9 time and so if, Ms. Yohannes, you want to
10 formally respond, I know that we got a bunch of
11 documents this morning and I'm sure you weren't
12 prepared.

13 So you will have time if you want to
14 respond formally, but that's not -- I'm not going
15 to make a ruling today.

16 MS. YOHANNES: I would like to
17 formally respond in writing if --

18 CHAIRPERSON ANDERSON: Right. That's
19 what I'm saying.

20 MS. YOHANNES: Yes.

21 CHAIRPERSON ANDERSON: You have that--
22 no, I was clarifying that you will have that

1 opportunity.

2 MS. YOHANNES: Thank you.

3 CHAIRPERSON ANDERSON: Because I,
4 myself, was not prepared to get all these
5 documents, so therefore even if I wanted to make
6 a ruling, I don't have enough information to make
7 a ruling on this. So all we are doing is just
8 listening to arguments and if a decision needs to
9 be made, a decision will be made at some point.
10 And even if it is -- even if it goes to a
11 hearing, we can make the decision at that
12 hearing.

13 All right. Any other arguments from
14 either side on any other issue?

15 MS. DUNN: I would just like to add
16 two very small points.

17 CHAIRPERSON ANDERSON: Yes, ma'am.

18 MS. DUNN: For standing, that Group of
19 5 it says residents or property owners. It does
20 not have to be both. They don't both have to own
21 and reside, it's an or.

22 And then for the definition of, what

1 I'll call, 44(a) it again refers to grounds for
2 objections. So ground again is not a
3 geographical thing, it is a topical subject
4 matter for protest. But those are just the small
5 additions and I'll look forward to seeing a
6 response and then getting --

7 CHAIRPERSON ANDERSON: All right. Let
8 me ask you a question. So outside of the hotel,
9 who else is in the Group of 5?

10 MS. DUNN: It is 12 other residents
11 and property owners of the Presidential, which is
12 a cooperative condominium located at 1026 16th
13 Street, N.W., at the corner of L Street.

14 CHAIRPERSON ANDERSON: Okay.

15 MS. DUNN: In Ward 2.

16 CHAIRPERSON ANDERSON: Okay. All
17 right. All right. Any other arguments on any
18 other issue or any other preliminary matters that
19 needs to be raised today?

20 All right. Do I need to do the -- all
21 right. This hearing then will be -- this matter
22 then will be scheduled for a Protest Hearing on

1 May 8th at 1:30 p.m.

2 Do I need to make the ruling -- the
3 reading on the process for a Protest Hearing,
4 with the exception of the hearing is scheduled
5 for May 8th, that both sides are -- all parties
6 need to exchange documents and witnesses five
7 days before -- seven days before the hearing. If
8 it's not exchanged between, amongst each other
9 and to the Board, if it's not exchanged, then
10 unless good cause is shown, the Board will
11 prevent the side from providing documents and
12 witnesses that were not disclosed for reasons on
13 good cause.

14 And if either side has any questions
15 about the process following this hearing, please,
16 contact Assistant General Counsel April Randall
17 and her number is (202) 442-4353.

18 I hope you guys can -- the parties can
19 work this matter out. If not, I will see you
20 here for hearing on May 8th at 1:30 p.m.

21 All right. Have a good day. Thank
22 you.

1 MS. YOHANNES: Thank you.

2 MR. DOWNS: Thank you.

3 MR. ENGELMANN: Thank you.

4 CHAIRPERSON ANDERSON: Did everyone
5 sign-in on the sign-in sheet there?

6 MS. DUNN: Yes.

7 CHAIRPERSON ANDERSON: Okay. Thanks.

8 (Whereupon, the Protest (Status)

9 Hearing was concluded at 10:08 a.m.)

10

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This is to certify that the foregoing transcript

In the matter of: Officina

Before: DCABRA

Date: 04-03-19

Place: Washington, DC

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