



The City of Seattle

Pike Place Market Historical Commission

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MINUTES

MHC 135/21

Wednesday December 8, 2021

4:30 p.m.

Virtual meeting via WebEx

COMMISSIONERS

Michael Hammond

Grace Leong

Golnaz Mohammadi

Lisa Martin, Chair

Lauren Rudeck, Vice Chair

Christine Vaughan

Staff

Minh Chau Le

Melinda Bloom

Absent

Chris Bown

Sam Farrazaino

Stephanie Young

Chair Lisa Martin determined that a quorum was present and called the meeting to order at 4:30 pm.

She reminded Commission members to disclose any conflict of interest or ex parte communication prior to review of applications.

LM: I know previously we were sent out earlier today a pamphlet, the attorney client privileged communication that Minh Chau e-mailed out. We got that earlier this afternoon and obviously it is super helpful and I'm really glad we got that in order to help back up our decision-making and make sure that whatever the Commissioners vote on that it can be backed up. So I think it is good timing and things that I've been looking for, at least. specifically. Shall I go to public comment first?

MCL: You would talk about ex parte and recusals first because if those apply to anybody then they should step out to not be receiving any of the information related to what they were recusing from.

LM: And so with that and after reading our pamphlet I am going to have to recuse myself this evening. And the reason why I wanted to bring that forward with all of you is that although I didn't participate specifically in anything I received emails and my email was put on a string of emails that went to other people. I was disclosed information that none of you had received yet. It was on the agenda for this evening and so I felt that because of those reasons, the communication, that I needed to at least bring it to your attention in order

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to be discussed this evening before we go forward. But I just didn't know in fairness if I needed to disclose that to you so we can discuss it. According to our rules if there is the possibility of a conflict.

CV: According to our rules I believe the Chair decides here unless there is an immediate financial responsibility. If there is a perceived conflict the Commission decides whether the person has to recuse and I'm wandering through the rules even as we speak to try to find the pertinent information.

MCL: It does include what Christine stated. So again we are talking about reasons someone would disclose and/or recuse themselves. As Christine stated, financial interest for yourself or family members. Also in addition to it being a fair process we have to maintain the appearance of a fair process. So think about how it would be looking to a reasonable third party. Has anything occurred that would reasonably interfere with one's ability to be impartial. Even if it didn't involve money or business interests.

CV: The rule that I'm looking at is the meeting procedures number two. Before considering an application the Chair is authorized to ask if any member has or may have a conflict of interest. The Chair is authorized to decide if such conflict of interest exists. If so, the member with such conflict of interest will be asked to abstain from participation as a member in the discussion and from voting. That being said those of use that work in and live in the Market have an interesting situation. Because the Market is a small village and communication goes back and forth, part of the issue to me is did any of this conversation take place before it was an application? If we had to recuse ourselves from anything that we knew about before it was an application then anybody who lives in or works in the Market would probably have to recuse from most issues. I understand that the legal implication is to make challenge-proof decisions which is also very important but it's a question of if somebody knew that there was a business and having received an email that there was a business operating in the Market without prior approval. I will ask the chair if I need to recuse myself as well. Because I had an email as early as October 1 that indicated do you know that this business operating hasn't received approval.

MCL: So I think that brings up a great clarifying point here: the ex parte rules, when do they kick in? They kick in when an application has been submitted. It was in November of 2021. So I guess that would be a question. Can you speak to whether you received the email before or after November 2021.

CV: I have an email in my stream that is dated November 22.

MCL: OK and how about yourself Lisa?

LM: They go back to December. I've had some since then. I have December, November 22, December 1st.

GL: Minh Chau my understanding is that ex parte communication needs to be disclosed but that is not necessarily a reason for disqualification or participation in the Commission meeting.

MCL: Yes, you're absolutely correct on that so at this point we are looking at dates to see if any of this was ex parte discussion, did it take place within the ex parte rules time frame. And that clock starts the day the application was submitted. I'm looking for that exact date right now but yes you're absolutely right. And we're just going methodically through the steps here.

CV: The questions that I would have while you are looking for that Minh Chau is in that case I think it's essential to let Commissioners know on the date on which an application is received at such time as it became clear that an application was going to be received. I did not have discussion with anyone after that time either with

the applicants or anyone else about what the Commission might decide or how they might decide. But previous to the announcement that the application had been received conversation is conversation. The Market is a small village. The ordinance is very clear that the that some of the Commissioners are to be business owners, so yes.

MC: That's correct, that's the part that everyone agrees upon so whatever happened or was spoken about before the application was submitted is fair game and that is unambiguous. The application was submitted on November 10, 2021.

LM: So the email I received was 12 days later on the 22nd.

MC: So you're disclosing ex parte communication. Was there anyone else who wanted to disclose?

CV: I will disclose that I have received some emails. Some after that date.

MCL: Any other disclosures from the other members? Lisa sounds like there is none so the next step would be to discuss whether these constitute someone to recuse.

LM: Do we just discuss that among ourselves as Commissioners?

MCL: Yes.

LM: And so as Commissioners do you feel that myself or Christine need to be recused from this? That we cannot use fair judgement after receiving these emails? I was just trying to be really clean because I want to make sure that our votes are upheld and so I didn't want any questions.

GL: Lisa and Christine, was there anything else that you wanted to share or you felt was important to share?

LM: It was just a one-way communication. We did receive a lot of information. I didn't particularly go through it and I didn't comment on anything. I never responded to any of the emails.

GL: I don't feel there is a need for you to recuse. Or for Christine to recuse.

LM: OK and do we feel like that's going to be a question?

CV: But if we do not repeat there is the possibility that that would leave it open for them.

LM: Are the only other board members Lauren and Michael right now?

LR: I think if you didn't respond to it then it would be fine for you to stay on. Had you responded I think then you should recuse.

MCL: I guess we could go one at a time Lisa, then Christine do either of you feel like the result of the communication interferes with your ability to be neutral?

LM: No.

CV: No.

CV: OK so the argument will be based on the guidelines and we have not heard the argument. I'm checking my sent file to be sure that I did not respond. I have one response on a separate issue.

GL: Do Golnaz or Michael have comments?

MH: Given Lisa's position and Christine's prior position these would be two people that people logically would seek out and because they didn't respond I think they are well within the guidelines. So I don't have a problem with either one of them. I think we're OK. I think we're on safe ground.

CV: I'm making sure that

LM: you didn't respond

CV: The response that I had was in response to meeting links, not to an issue.

MCL: The Commission has the opportunity to discuss this and then ultimately it's the Chair's role to decide what to do with each of the disclosures, whether to recuse or not.

CV: And since the Chair is involved we also could ask the Vice Chair as well to confirm the opinion.

GL: Lauren would you like to make the decision to be sure that this seems to be the safest and the most transparent?

LR: I think Lisa you should not have to be recused. You didn't respond. Christine you responded to a different issue. As long as both of you don't feel like it would impact your decision tonight then you should not have to recused.

CV: I'm looking at my email from 11/21 and it is about meeting links for today.

LR: If your only response is the meeting link and not discussing the applicant then I feel like you shouldn't have to recuse yourself.

LM: We've made clear any kind of conflict of interest and we have all agreed to continue forward because the conflict of interest is not at hand. Correct?

MCL: Ex parte communication was disclosed. From what I heard there was no concern of conflict of interest. And the Vice Chair recommends that recusals are not necessary.

LM: And so with that we call for public comment, do we have any?

120821.1 PUBLIC COMMENT

MCL: Yes, now is the public comment portion of the agenda and we have three public comments that were received. They were provided and distributed in writing and I will also read them out loud here. For the public and for the record I will just go straight down with those.

MCL: December 7, 2021, To: Pike Place Market Historical Commission Regarding: The Chapel Lounge – Retroactive Use Approval Application Dear Commissioners: We own the Smith Block Building, 1923 First Avenue, immediately north of the Butterworth Building. The two buildings share a common wall. Our building includes an approved hotel use, which for 30 years operated as Pensione Nichols and sadly is no longer in business. We currently are in discussions with a potential successor operator or may choose to open a small hotel ourselves. The Chapel Lounge has operated for a long time without seeking the required use approval which it now seeks and most of that time it served alcohol without its own liquor license. Throughout its existence the Chapel consistently has played extremely loud music until 2AM heard clearly not only in our building but across Post Alley. At closing, the Chapel's customers congregate on the First Avenue sidewalk outside the club and engage in loud conversation. Many appear intoxicated. Such loud noise late into the night interferes with sleeping and is incompatible not only with our hotel use, but with the nearby residential use of the Stewart House and Livingston-Baker buildings. The loud noise also interferes with the ability of customers to enjoy outdoor dining at nearby establishments such as the Pink Door. This interference is exacerbated during the summer, when the Chapel uses the Butterworth's roof, directly above and across Post Alley, as an outdoor bar/party venue. Summer season outdoor dining business is particularly important for restaurants and critical to their financial survival during Covid. Noise is specifically recognized in the Commission's Guidelines to be considered in reviewing an application. First, as here, noise can damage pre-existing businesses whom the Commission has a responsibility to protect as part of the existing character and nature of the Market. Second, noise can disrupt and disturb the residents of the Market's housing, especially those living in subsidized housing such as Stewart House and Livingston-Baker, whom the Commission also has a responsibility to protect. Hotel guests in our building would not be able to sleep with the noise blasting through our shared wall with the Butterworth and the cacophony of the crowd that gathers outside when the Chapel closes at 2:00AM. Guideline 2.7.1 provides, "The Commission has the discretion not to approve applications for a permitted use in which: (a) The operation of the new business causes adverse physical impact (such as noise, odors or congestion) to an existing business or otherwise unduly interferes with other activities [e.g., residential] in the Market; (Emphasis added.) The Guidelines also recognize the negative effects of loud music and that the impact on others must be considered. Guideline 2.6.9 provides, "Noise as Part of Normal Business. The babble of sounds which characterize the Market is an important part of the Market. Performance of nonamplified live music may be an acceptable use provided it does not interfere with other uses. Applications for electronic amplification of sound in public areas will be denied except in special circumstances. (Emphasis added.) Simply put, a nightclub playing very loud music until 2 AM and then discharging a loud gathering of its customers at closing is "adverse" to and "interferes with" our pre-existing hotel use and other nearby business and residential uses. The application for a nightclub use should be denied. If it is not denied, we ask that use approval be conditioned upon design approval, which specifically requires meeting the construction standards for nightclubs in the City's building and land use codes, and upon meeting specific mitigation measures to protect the rights and interests of the neighboring businesses and residents as described in the Commission guidelines. These conditions should be developed in consultation with affected neighbors and should include sound proofing engineered to nightclub industry standards, staffing exits at closing for security and to help control crowd noise, and prohibiting nightclub/party use of the Butterworth roof.

If a conditional approval is granted, it must be enforceable. The Chapel knowingly operated for many months without Commission approval, without other required City permits and without a liquor license. It only seeks approval now under the threat of enforcement action. This was with the knowledge of the landlord, who has a long history of ignoring Market regulations and is unlikely to hold his tenant to account for failure to comply with any conditions. The consequences for violating conditions must be clear and effective. Thank you for considering our views. Respectfully submitted, Anais Winant, Mark Sidran, Owners, The Smith Block Building 1923 First Avenue Seattle WA 98101.

MCL: To Whom it may Concern, I am one of four managers at The Pink Door and have been asked if anything untoward has happened recently due to the nightclub in the Butterworth Building. I don't know what exact date it was in early summer, but I called the police right away as it seemed very dangerous. A person who was at this club threw a beer bottle out the window/or fire escape stoop and it hit the front door. I was very happy that a guest didn't exit our place at that moment. About ten minutes later, someone came rushing over to sweep. After that a man called from the 'club' and introduced himself as the 'owner' of the club and apologized. It was not a McAleese family member (he had a French/latin-ish name). Also, this club plays music quite loud. We have been instructed by the PDA not to take glass out to the recycling past 10pm as this is a neighborhood. The base booming sure is louder than a minute of pouring glass into the recycling. Our late night guests dining on the patio, looking out at the lights across the Puget Sound have complained about the club music. For instance a guest asked if we could change the music to something more 'soothing' (this happened on several occasions). A club such as this seems very out of place in a small residential block. We were the first business to come into upper Post Alley as it was a residential part of The Market until we opened in 1981. Should you need to contact the owner of The Pink Door, Jacqueline Roberts for more information or regarding the history of this business, she can be reached at 206.443 3242. Sincerely, Jeanne Kinney

MCL: December 7th 2021. To Pike Place Market Historical Commission regarding the Chapel lounge retroactive Use approval application. Dear Commissioners, I am a retail real estate broker and involved in the community around the Pike Place Market as the Chair of Belltown United and member of Allied Arts of Seattle. I have placed retail in and around the Pike Place Market for the last 33 years and work, live in Belltown. I know the importance of the right retail in the right location and the wrong retail in the wrong location. The smoke shop at First Avenue was a wrong choice and I wish the PDA had not approved that use. It has detracted from the family atmosphere of the Pike Place Market. The Chapel Lounge has operated in a detrimental fashion for the Pike Place Market. It has proven the type of business it is since it opened its doors. Loud music, over service, and degrading advertising towards women. I strongly recommend you deny the Chapel Lounge its use permit based upon its current operation. If you decide to grant approval it should be conditioned upon the tenant to provide all valid building permits and liquor license permits. Thank you, Tom Graff, 206-295-1445.

MCL: I see in the audience an unidentified person who might be a commenter. Attendee who is calling on the telephone I can't see your name and I don't know if you're here for public comment but that is what we're on right now. I will give you 15 seconds if you want to make public comment,

please say so and we will provide you two minutes. If not, we will move on. The phone caller hung up.

LM: Please introduce the application and give the staff report.

MCL: For the benefit of our project team who may have never been in this meeting before what is going to happen is I'm going to deliver a staff report summarizing some facts about the project. I'm going to bring you all on again and then you can provide more information and walk them through your application materials that you've provided. And then it will be question and answer time.

OV: Please repeat last few sentences

MCL: Please get yourselves settled in and I'll spend one or two minutes going over a staff report, a summary of some facts. Then we will go from there with your presentation and discussion.

120821.2 APPLICATIONS FOR CERTIFICATE OF APPROVAL - USE

120821.21 The Chapel Lounge
1921 1st Ave, 3rd Floor, Butterworth Building
Juan-Rene Morales, Business Owner
Olivia Vermaak, Applicant

Proposal for retroactive approval of bar, nightclub, and restaurant business operated by Chapelsea LLC owned by Juan-Rene Morales (100%).

MCL: Explained the proposal for retroactive approval of bar, nightclub, and restaurant business operated by Chapelsea LLC owned by Juan-Rene Morales (100%). The business is currently operating without MHC Use or Design approval. The space is in Zone 3, street level, all used permitted. Previous use: vacant. Proposed use: food (e), other (c). Space is 2,398 square feet. Ownership structure: Chapelsea LLC owned by Juan-Rene Morales (100%). Owner financial affiliations: None. Owner operator: Juan-Rene Morales to be onsite for day to day operations. Business hours: Wednesday – Sunday: 8 pm – 2 am. Exhibits reviewed included site plan, LLC documentation, sample information of goods and services provided. MCL said guidelines that applied to this application include 1.6, 2.1, 2.4, 2.6, 2.6.9, 2.6.10, 2.7, 2.7.1 a.

OV: If at any stage you can't hear us please let us know and we'll speak a bit louder because the three of us are using a microphone. I think by way of introduction my role here has been to operationally support McAleese properties who are in the Butterworth building. Patrick, I'm sure all of you know, is part of the McAleese family over here and officially took over as president of McAleese properties in October 2019. And he has worked the many years as you all know but in an official capacity he took over in 2019 as president of McAleese properties and, Rene do you want to introduce yourself?

JM: Yes, hi there, my name is Juan Morales and I'm the owner of The Chapel Lounge.

I've been working many years in the Market. Then I got this opportunity to get my own business, my family business. Actually my wife she works here too. So I'm here to try to learn more about all issues or complaints and try to do better. Absolutely better.

OV: I think of us as a team. Would it be possible to correct some factually inaccurate items first if that's OK? In the back ground it says the space which the Chapel occupies is 2398 square feet. That is not true. The space on the 3rd floor of the chapel is actually 1,800 square feet. I'd like to go back to some of the public commentary and maybe also correct the factually incorrect items there. It says The Chapel was operating without a liquor license which is untrue. The Chapel originally operated under the Kell's liquor license before Rene decided to take over the business. The liquor board had been working in partnership with Rene and with calls to ensure that this was done within law and complied with all the nightclub activity guidelines. And ensuring that within the Market business is operated successfully and completely within the law. So that is incorrect in terms of people appearing intoxicated outside. You can lose your liquor license for that kind of offense. Moreover since The Chapel launch the liquor board has been visiting every week as a part of their due diligence to ensure that there isn't public intoxication and to ensure that any license given was given in good faith with the fact that the business will act in good faith to enforce that license. Or if there were people intoxicated outside of the business. The liquor board would have come in, fined the business or taken the license away from the business. We have also received accusations of public intoxication. Where actually people outside The Chapel have come from neighboring businesses and stood there and chatted so that is also factually inaccurate. In terms of The Chapel using the Butterworth rooftop that is also factually inaccurate. The Chapel, the top on the Butterworth Building is not open to public use at all. The Chapel has certainly not used it. It was used once for private use by the owner who used it for a 50th birthday party. It is not an open for all venue. And there was no amplified music. In terms of other things, as a language thing, that you know it's the wrong type of business and we don't want that type of business and accusation of over service. Again when it comes to over service you lose your liquor license. I would like to go against that because the liquor board has to be overly cautious with providing licenses to nightclubs. Specifically they have visited the premises almost every week to ensure that, and they control the whole of Pike Place Market, including Kell's, including El Callejon which is the other nighttime club down in alley. To ensure that there is no over service. So those are huge legal issues that are being bandied about pretty regularly in those notes. And also just untrue, I would like to refer to some of the language used as well in terms of type of business, wrong business. Going through this process with Rene and we'll start having some people come in to Patrick about the potential of the business. There's been huge concern around a profiling of this type of business. You know individual neighbors from the Market saying Oh we're going to have some Mexican nightclub and now we're going to have gun shots and bad people coming around here. That is not the case. You know we've had a heart to heart with Rene about persevering in his business because he has come to us many times and said you know I'm not getting support. People are saying what are you doing. Why do you if it's been difficult in addition to other comments made about the business. Have been accusations of police being there and accusations of shootouts. There have been not shoot outs outside The Chapel. We were accosted by a member or a resident saying, there's been a shootout outside the business you need to take more care. There wasn't

a shootout, that would have happened at Ohana in Belltown and it is pretty evident in the language that has been used in the emails provided to you that there is some kind of profiling going on. It was raised by the liquor board as well. You know they said, we have to be overly cautious because you know it's a Latin nightclub. So it's very disappointing that that has happened and pointing to that language being used in these emails but you know we are what we are and I just kind of wanted to address those factual inaccuracies before we go on.

PM: Discussion about today is the noise. Just one thing about Anais when she was concerned about the wall that divides our two buildings. Well for you to understand that she does, I call it a legal drinking club in the bottom of her building and her mezzanine floor and I think kids come in there and they bring their own liquor and food and I guess it is a catering room. Which they do karaoke and things not unlike what they do in The Chapel use she actually is similar so I'm confused. It's not every time but there are times she uses it for that purpose and I'm trying to figure out how that's going to work when she actually has people stay overnight in her same building. That is a concern of mine too. Another concern, and that's how she uses the fire escape. I don't know if you guys know this but she turns all the fire escapes that face units into patios. My understanding is when we did retrofitting our fire escape which was very expensive, so when we were looking at it I was going by her building. All her fire escape landing go into units. The fire department, it's completely illegal, the place burns down people die. Another big one here is with the Smith Building. It's an apartment next door. A man in August he said when that Mexican place opens up it's going to be a lot of noise. It opened in April.

OV: Yes I mean we don't want to get into a tit for tat situation yet to be fair I think it is just important to recognize what is actually inaccurate and kind of where we are so that we can move forward and try and find some middle ground and to do what we need to do. I think one of the things to know is that the entire Butterworth Building underwent extensive refurbishment to restore at the cost to McAleese properties to ensure that it is a building of sound infrastructural integrity and part of that was also ensuring that the noise levels within Kell's which is two floors below The Chapel was contained. So the entire building has already been done to Code in terms of noise and like activity. Hence the additional factors taken into consideration and the early change that Rene has made is to actually put additional insulation within The Chapel between the two. If there is more that is needed to be done there and we get the City of Seattle to come in and do a sound test then we are absolutely and Rene is willing to have that conversation. But in terms of conjecture of the sound and things like that I think we just need to be careful about what is factually correct. And the alcove between the entrance and The Chapel is a natural point anyway in terms of our crowds being outside etc. because of that two-way entrance the crowd management actually happens within the first set of doors and there are always security guards there. There have to be according to the laws of the liquor license and there has to be that crowd control so that you don't have large angry groups. A lot of what has been raised has to actually be controlled or has to be controlled under Rene's compliance with the liquor board. There is a sound meter on again with nightclub activity within the City of Seattle guidelines. There has to be a monitoring of sound to ensure that you are not going above and beyond, that you are not being a bad neighbor which is something that I don't think anyone really wants.

So that's the sound limits. I think size limits we've already addressed because it is an 1800 square foot space so that's 1800 square foot space so that is a nonissue right.

OV: In terms of what the business does I think the outline is pretty self-explanatory in terms of the business we're bringing in something new in the Market in terms of a cultural mix. It is open steadily Wednesday through Sunday which is more than the bulk of nightlife that has recently opened in Pike Place Market can say it is actually open those days. Some of the places are not. And in addition to that it has a way to ensure that it is entirely inclusive moreover Rene has a very strong connection to the LGBTQ community. And every two weeks there are LGBTQ friendly events and part of this was also to ensure, some of it has been fundraising driven. Some of it has been more profitable for the promoter input. But you know the reason why Rene has created that is because there is a stigma within the Latinx community and that is something personally that he and his wife are trying to break down. In addition to the alcohol served and I've provided pricing for you there. It is open to the public, see the prices are really reasonable. It is not priced out in any way to anyone who wants to can come and enjoy any of the events. Currently The Chapel does utilize Kell's food service so can order through us to make sure that the customers can get burgers. I'm not sure if you know a basic treatment to ensure that there is no over service per liquor board guidelines and to ensure that you know their customers have that available again as per the guidelines. Rene has actually had conversation with Maiz which is recently opened to the Market because when he does like the Columbian nights, the Brazilian nights he really wants to be able to bring authenticity into the food. So he is hoping to collaborate with the owner of Maiz.

OV: I know that he's actually also had conversations with Sonia's.

RM: Yeah I just had a conversation, we're talking together about food because we make some event these guys, it's a Mexican guy. So sometimes we're looking for Mexican food and yes I can just put in touch with him. Actually tonight we had a meeting thinking about this because we have so many events coming. I would like to put money in the Market. Because I could bring somebody else but I definitely want this money in the Market and also we're neighbors.

OV: I'm sorry just on that point as well I'd like to make a point about the language used in the Pink Door email about some type of accents. I do find that kind of language unacceptable as well. So when it comes to food and things like that I think you know Rene already runs every Wednesday Market specials. Bartenders or actual residential people within the Market are able to participate in the services of The Chapel at a discounted rate. So I think that covers services and one other thing I would like to in that in terms of relevant background, the third, one point yes the Butterworth Building has been predominantly vacant since the refurbishment of the building but prior to that it was used as a restaurant. It was a nightclub in there as well so the legacy of that space is nighttime orientated. There shouldn't really be a huge uproar by the fact that another venue is looking to occupy a space that was previously occupied in the same manner.

PM: I'm really stuck on the noise thing. My wife and I have our child here we hope to in the next year live in the building actually so I've done a lot of research and a lot of finance been a lot of money to make it right. As far as they're going to allow a business to be in our building. That is just ridiculous. We're actually going to live in this building. We're going to go out of our way to make sure that it'll be good for next door as well.

OV: And I think this probably brings us on to the landlord responsibilities and obligation and where we are. May I ask a question in terms of public record? Is it possible to provide the commission with a few facts that are not necessarily put on public record.

MCL: I'm sorry I don't understand your question.

OV: So for example are these minutes available to the public? There are a few things that we would like to share in terms of background and in terms of why this has been done retroactively. That we don't necessarily want to have privy to the general public because of financial and legal reasons.

MCL: That won't be possible. We are under the Open Public Meetings Act that is about transparency. So everything in this meeting is subject. It is part of the public record is subject to disclosure, being recorded and captured in minutes that are kept on the website and other places as well, fully available to the public.

OV: OK in that case I might just be slightly more selective in the verbiage used. As I said Patrick McAleese took over in 2019 as president. There were legal and financial reasons for him taking over was because of legal and financial issues which were incurred by previous management. There was a lot of debt associated with revitalizing the Butterworth building and that could not be met. It was very difficult to pick up obviously then Covid hit. There was a lot of pressure from the lenders. McAleese properties were responsible too to get businesses in and get funds in. So this is definitely not the optimal way to make things work. I think there seems to be a legacy perception which should actually be struck because if not part of the guidelines of what we're discussing today but it's important to note that we accept that there are legacy issues associated with Kell's and some of the family members justifiability or not. Patrick has taken a number of steps to try and not only address that but to mend fences with the Market.

OV: Our participation in Sunset Supper for example and trying to be more and supportive. In the way we build the Market in terms of the building that's an iconic building and as a business it's been proactive since 2019 and through Covid. So I would ask that we are not judged on those legacy issues. However I do appreciate that we are very much on the back foot in terms of this but please understand that in terms of financially nearly going into foreclosure and having to provide a tenant or a source of income for McAleese properties. It saved us and the business from going into foreclosure. So that is where we were. It was a perfect storm in terms of Rene working with Patrick previously at San Patricio. We had to close it and because of Covid businesses had to close during part of it and unfortunately some of them didn't survive and unfortunately that was one of them and Rene kind of took a step back working in the Market for as many years as he did and said well, how about we do something

together and that is when the notion of The Chapel came about in very quick succession. Because the space was already fully built out it was an easily moving situation which created a win which would save the businesses from foreclosure and enable to Rene to in time apply for his own liquor license and start his own business that could operate there.

PM: That was done completely within relationship because he understood they understood that these things certainly take time. Maybe I was naïve to think it was complete. They had already been previously approved. You're right. It was a perfect storm of problems we had and we took I mean we had an opportunity to have a tenant and have a business in our building during the worst period in 100 years and the risk of losing our building. That'd be you know 40 years of legacy. My mom and dad started this you know 40 odd years ago so it's something I wanted to keep going. Olivia does not want to go into the nitty gritty details of this but that is where we were at. It was real.

OV: Appreciate that it is not the ideal situation to start with but we are where we are hopeful that every other step taken it has been in compliance by Rene and The Chapel and in terms of some of the items raised. You know in terms of sound and insulation is something that we can do there but in terms of everything else within the guidelines. Taking away the conjecture and the untrue or the non-factual items leveled at The Chapel we do think that this is a special business that can and does add value to the Market and can actually do a step further in terms of the local businesses.

MCL: Chapel team, I want to make sure that we have time to fully go over all of your exhibits. So the Commission does need to have the opportunity to hear about and discuss certain items that are their responsibility to have a full understanding of and make a decision about. On page 1 you talked about the nature of the business that included types of food, hours of operation and events. And do you feel that that's a summary of the nature of your business?

OV: Yes that is correct. You've actually got the wrong floor updated; the chapel only occupies the third floor which is the bottom. So I sent you the floor plan as it was for the 3rd and 4th but the chapel only occupies the 3rd level space.

MCL: Yes can we scroll down a little bit Melinda to the 3rd floor? Well, then I think the 3rd floor is on the lower half of the plans.

OV: And I'm sorry about that I should have made that clear in the application and when attaching the attachment.

MCL: I believe it is clear. So the bottom half has a clearly marked level 3 floor plan but it's different than that Level 4 floor plan, it does have a note on there about the square footage being 2300 or so.

OV: Yes that's the 3rd and the 4th floor. I'm sorry I took these plans from our architect because we are looking at the building as a whole McAleese properties is or I just took

that page. So the 3rd and 4th floor combined are that it's 1,800 feet for the bottom floor only.

MCL: Okay. Otherwise I think the plans are very clear about what is the 3rd floor and the agenda and the application are also clear that the business is on the 3rd floor not on other floors. So after the meeting I'll just go ahead and make a note about the square footage. So the Commission looks at site plans for use approvals just to make sure again of the size limitations and there's some guidelines that talk about the proportions of the front of the house versus the back of the house and keeping those in mind.

OV: One more point as well so you'll actually see in the floor plan I don't know if you can scroll down a bit more because I can't see it from here but you'll see that the front half is actually that common. That's the building common space so that when I was mentioning earlier, the kind of double layer of insulation or street noise that the front top of the building is the foyer. So anyway that is the elevator in that front portion is the foyer or any kind of the second half of that. So again when I was talking about sound levels and noise that creates an additional buffer to the street. That's where the security stand and where the crowd control happens.

MCL: In that comment when you say the front the drawing says north. What is the front in terms of the north, south, east and west. It is the elevator?

OV: Yes, the area in front of the elevator is building common space. It is not The Chapel, everything from the side of the elevator to the back is The Chapel space.

MC: Okay so I see that in the plans and it's shaded and gray on the 3rd floor portion. So I guess that's pretty clear. And then moving on through the exhibits here's the verification of the LLC documentation. And then moving on from there the breakdown of who owns this LLC. Juan Rene Morales. So that is it for the exhibits and did you have anything to add to the exhibits? The commission looks closely at ownership structure, who owns the business at the use phase.

OV: I think you have everything that you need and just one thing. I know that during our conversation you mentioned that it appeared that Rene's license was expired. It was in fact the date it was granted so it was granted in September when his business became active because remember beforehand it was the Kell's liquor license was being utilized which is very legal. The liquor board knew about it and they participated in the process with us to ensure that The Chapel could get its own liquor license in accordance with standards and accordance with nightclub standards which does include some physical building aspect as well in terms of noise.

MCL: Yes and the liquor license actually isn't within the purview of the Commission so you'll notice the we're not discussing liquor licenses.

OV: Yes, I think I already mentioned it because I did provide it as an additional item and also because it was mentioned in untrue terms by some of the comments.

CV: I have a question of the presenter. You say that the only the part of the drawing which is not on our screen but I have it on my phone at the moment. The foyer is not part of the business.

OV: No it's common space so at night during the day that space can be utilized by Kell's or disabled people needing a different access point through the elevator at night. It can be used by The Chapel for their security. So it is not technically a chapel space. It is a McAleese properties Butterworth Building space.

CV: So if as a member of the public I wanted to go in and take a look at what the building renovation looks like I would be able to go in there.

OV: Yes absolutely and in fact we often do get people because we were such a big tourist attraction we often have members from the public wanting to come in and take a look at The Chapel because that's where all the you know, there was a big part of the mortuary. So we often take members of the public up ourselves to go and see The Chapel, give them tours of the building. So it is accessible.

CV: That was my question. Thank you. I walked by the building this morning just to take a look out where the entrance was. The tile work.

OV: It's still in terms of what properties I'm planning we're still planning to do even more to improve the integrity of the building and the façade. I think there's work to be done on the pavement. There is work to be done on the sidewalk and we're already starting that process at the moment in terms of waterproofing and things like that. So hopefully even more attractive in the future

CV: And of course the design review will come to the Commission before you begin work on violations.

PM: So our architect right now is working with the City. That'll come across to you. So right now in its current state is in violation it needs to be like the pavement. Just north of us because it can't be blacktop in front of the Market guidelines. It has be that concrete.

OV: But that was something that was there before the building was purchased from that property. So that's the legacy issues. So absolutely in fact we've already looked just to make sure this doesn't happen again because McAleese property is planning to renovate the whole building because it has been losing the businesses a lot of money by being vacant especially during Covid which is why we nearly ended up in a foreclosure situation where Kell's nearly went out of business as well. But we actually walked through the building today. Planning this do we need approval? What kind of approval? Check those boxes because we certainly do not want to be in the situation again.

CV: The interest that I have in the liquor licenses the Commission doesn't deal with liquor license but if there two businesses operating off the same license it certainly has the appearance that there is one person that has two business in the Market which is

prohibited. Specifically by the guidelines we've verified that as well and that it's definitely not.

LM: Can I ask how long you have been operating without historical approval?

OV: Since April 3rd give or take all of the shutdowns that happened in between.

LM: April 3rd, you have not had Historical Commission approval but have been operating?

OV: Yes that is correct.

LM: And you knew full well that you needed to have approval beforehand?

OV: To be honest with you it was something where we didn't even know if we had a business or a building at the time because of the issues that I mentioned. In terms of not being high on the priority list, I don't mean that to be sound disrespectful but when you're faced with losing everything and the business and the building. And you have lenders putting pretty strict demands on you it's it was something that should have been paid attention to that fell by the wayside.

MCL: Olivia could you clarify April 3rd of what year?

OV: 2021.

PM: Yes and as we all know we've watched this pretty closely. It was shut down but the rules changed a little bit. Like we briefly opened April 3 and then Covid restrictions became a new rule every week like one week we could dance next week you couldn't dance.

OV: So they weren't. So The Chapel wasn't necessary because obviously with not dancing they were not able to open. So we say April 3rd but at that time I would really only say it's been since we've been allowed 100% capacity that The Chapel has been open five days a week.

LM: And I'm sorry was Rene associated with San Patricio before this?

PM: We worked together.

OV: Rene was a bar manager and I think it was his dream to have a place of his own but he didn't have the means or support to do so and obviously when this opportunity came up there was the support to do that and to kind of be able to live his dream in that space.

LM: And when did San Patricio close?

PM: Sorry November 1st 2020. That was when the state shut everything down but yeah it was definitely a terrible time. I didn't want to waste the time of the landlord and I said we're going to be shut down in two weeks we may as well just tell you now.

OV: I think also it was very clear that with Patrick's new focus on trying to make Kell's and save the Butterworth Building as well in terms of where it's at these properties. His focus was needed 100% on those two entities. It was serious, there nearly wasn't a Kell's.

LM: Is there any other questions from Commissioners for the presenters? I'm sure I heard you guys say you put soundproofing in is that correct?

OV: Yes

LM: It's not on all floors and all sides of each wall or how is that?

PM: We hope to put a living area on the 5th level. Talking to some other sound specialists that we know of, budgeting, taking that very seriously. But we want to put up there right now in the existing wall at the 3rd level. That's pretty serious insulation in there like the highest grade you can use. Did you see the other floors which are just shells still right now?

OV: But just to answer your question in terms of where the insulation is we've obviously got that natural buffer from the street to the front in terms of the brick wall. One of the most galvanized elevators in the whole northwest. If there is more that we need to do and if the sound you know like I said you think as a nightclub you have to regularly take stock of your sound levels and have that sound meter and it has never gone anywhere close to maximum level. But if there is for example our neighbors who wrote the email if there is a proven sound level that it's being broken and obviously we can put additional insulation along the side of the wall. And you know those are 2' thick brick walls.

PM: There is where you put your subwoofer and where you direct your speakers because a lot of the conversation we had with Rene yesterday it's like this meeting we have with you today. It's where do we go from here. You learn from this and we want to do better. I would love to live in the building with our daughter. We would want to do everything we can to make it you know a reasonable place.

OV: More than that it has to meet certain guidelines which it has you know it's opening any place especially within liquor board and nightclub guidelines is very tricky. There are a lot of standards in the same vein as far the Market which are even more stringent.

LM: Who is on the other side of you on one side or is that the hotel?

PM: Kell's Bar which would be the Alaska Trade Building which is to the south and the San Patricio building that's the same building as Kell's Bar. That's the last question yeah. So the Alaska Trade building is our neighbor to the other side.

OV: I think Sonia's is in front of that and I'm not too sure pretty wide. That whole thing is a lot wider than the back building which is pretty good. That's amazing. But it's just important to note that in terms of the sub woofers and the sound we did actually consult an architect and good friend of ours who is able to tell as to where these items should be placed to minimize the impact of any sound unwanted sound for neighbors. So again if we need to adjust that very happy to do.

PM: At San Patricio I had this conversation. That is where we got the sound meter idea, a guy came in and I got a 250 dollar fine. It's just too much and I accept that we need to make some adjustments and from what I can see it worked. No one has contacted.

OV: Yeah I missed that. I mean as with everything, you know as I said there were and this goes back to the first issues. I mean even before he officially opened the police would come. We believe we've got some Latino nightclub here and he's like well, we're not open yet. Sorry, it's been an interesting process. I think as I've mentioned before.

LM: Are there any other questions from Commissioners?

OV: I'm sorry you're breaking up.

LM: I think it's Christine is going to ask a question.

CV: Our guidelines don't deal with sound meters so much as sound that impacts other neighbors or other residents so that's where our focus would be.

OV: Right. That is obviously understood. I can guarantee the City of Seattle will be more stringent in terms of sound because the Market is more than some other places in the City of Seattle because it is in the Market and part nostalgia. The beauty of the Market is that so I would say that the Market even has these stringent criteria than Seattle does and we've kind of kicked it ourselves to the maximum. In terms of what is allowable what's out. But it we need to do more, we will.

LR: What was the space used for before the renovations. I know you had mentioned the nightclub previously but most recently wasn't it office space.

PM: So Starlight Lounge was the last time it was used. We're talking about this particular space that allows us to start our launch before it was modernized. There was a Thai restaurant before that was Avenue 1 and then as far back as café Sophie.

OV: So it has always been Lauren what you might be thinking of it. It was I think Patrick's brother tried talking over represented properties in front of the Market to talk about potential use of a building and office space was discussed as being something on the 4th floor. And yes that is something we are still looking to do as part of our future plans but that space has historically always been restaurant.

CV: There was a restaurant application that became before the commission during my term and approved as a restaurant and it was never built. I can't quote you dates.

LM: Any other questions from Commissioners? OK should I call for Commission discussion on this then? And are we done with the presenters? And we can go through the guidelines?

MCL: So presenters you'll go back to the audience and off stage and then the Commission will discuss among themselves.

OV: OK it's hard to mute and stop video.

MCL: Well once you are in the audience you will just be muted, no video and no capability to turn it back on like at the beginning.

OV: OK.

LM: Well as I look at this we look at relevant guidelines obviously. The application for Certificate of Approval is typically before ownership can take place in the space can be occupied or modified to a space and application must be approved. Right? And you must get a Certificate of Approval which is part of 1.5. And obviously 1.6 Landlord Responsibilities and Obligations. When we look back they've obviously been operating since April 3rd. The property owner landlord allows the tenant to open without a Certificate of Approval and did so knowingly. So that's the first timeline that I look at that obviously doesn't stand up as far as the guidelines if you can get past that the general principles for use in the market in market zones this is a different area. It has been used and it's open to things and it has been a restaurant. Nightclub sort of before and the noise obviously is an issue from 2.6.9 to the neighbors. And I don't know how we can address that in design or how we feel about that. But I'd like to open it up to what you guys think of the guidelines in tonight's presentation.

MH: Yeah I'd like to add something on the issue of sound. My apartment is right on top of Jar Bar. My bedroom is right on top of them. And over time I worked out a system with Jar Bar and it's called the sound check. I simply have a certain hour we've worked out 10:00 pm they turn the music down and if they haven't turned it down far enough they get the message from me. During the sound checking they turned it down a little bit more and I sent a message back to him. That's good. Now these people that are complaining about the sound that's coming to them. I would be willing to bet you if they went and got the bartender or the owners phone number or they have a phone directly associated with that location they can do the same thing. And I think that we quiet down all kinds of problems. People living in apartments or the people in the bars don't really have any idea about how the sound carries through these buildings. From my experience it's mostly about the bass. You can't hear treble through the wall but you can sure get the thumping of the bass and that's the place where you know I've had this discussion with Jar Bar before and they have separate control for their bass and usually just turning down the bass solves problems. So there is that issue.

LM: To open communication and be a good neighbor.

MH: Communications and there's three floors above me that are occupied. They pretty much looked to me and I just simply give that number out to other people and occasionally one will call this woman on the 4th floor, I'm on the second floor and I don't know she's got she must have ear like a bat or something. She hears things that I can't hear. But anyway on occasions she does contact him but I think that's probably the best way to address that issue. You know communications is worth a lot. I've developed good relationships with everybody and I don't know if this falls into the category of ex parte but I never drink in that bar, I've never eaten in that bar. Because I don't want that to ever become an issue as far as my involvement with them and anything that might come up before the board. I swear I got all that.

LM: Thank you Michael for your input.

CV: I don't think it's the Commission's job to negotiate between neighbors.

GM: I agree with Christine. I also believe that noise and also the safety in that street is a big deal especially since most of the buildings on that side of Post Alley are not owned by the PDA so that means there are no security officers there during that time of the night and I know how dangerous that street can be as soon as it gets dark. As well as the noise, it's a huge deal for all the neighbors all the residents that are important part of the Market. I believe they have to protect them.

CV: Do we have the assurance of the building owner we didn't hear from the business owner. But any noise complaints would be addressed. There is enforcement but we've seen how effective enforcement is with other issues that are contrary to the applications.

GM: I honestly don't trust that because this particular building owner hasn't even acknowledged the existence of Historical Commission and they have been open since April. So how can we trust that they enforce anything once you know even without the approval they even opened that business? And then I don't even know even if they'd get approve anything would change.

LM: Lauren do you have any comments?

LR: I agreed with Golnaz. It's hard to say that they'll uphold these guidelines if they've blatantly ignored them in the past few months and I think the only reason it's coming before us is because someone probably reported that it was a business operating without approval. I don't think they would have willingly come to us for approval. So it's hard to say if they'll uphold these guidelines that we're asking them to uphold if it's approved. As far as noise and affecting other businesses

LM: And do we feel like we can give an exception for their troubles with possibly foreclosure? Are we just upholding the guidelines and that they had never gotten approval and knowingly operated without coming before us? I mean that's the question, right? I would assume you were saying you are upholding the guideline period regardless of situations.

LR: Well they've had 8 months to figure that out.

LM: Right.

LR: And to come before us that's a long time to operate a business in the Market without approval. And without potentially having the correct licenses in place and whatever else. I'm torn on this one.

MCL: I do want to remind people that any discussion whether it's approved or denied has to be linked directly to guidelines and so we do have the 1.6 so it's clear and everyone acknowledges that the landlord didn't meet their responsibility. However it doesn't say what you must do in that case. So it doesn't necessarily say that's grounds for dismissal. And there have been other situations where retroactive approvals have been made so again its absolutely not meant to be a for or against but just if you plan to hang your hat on that one, it's potentially a little ambiguous.

LM: What about 1.5.4 The application must be approved in the Certificate issued by the Commission before ownership transaction takes place, the space is occupied or modifications to the space can begin?

MCL: I think that's very clear but it's not clear what you have to do then.

LR: I think 2.7.1 a is clear. The operation of a new business causes adverse physical impact such as noise, odors or congestion for an existing business. That could be reason to not approve an application.

CV: One of the things about the business having operated since April is that there is evidence of impact of neighbors. If we had known sooner than it was coming before us we should have gone down and stood outside and had some firsthand experiences as to whether it has a significant impact on neighbors.

MCL: 2.7.1 a like Lauren says does talk about adverse impacts including noise as being a basis for denial potentially. And we also have public comments where businesses have made statements and everything is relative to an extent. We do have no choice but to take people at their word on certain things.

CV: Well in this particular instance we have that situation both from the presenter and from the public comment.

LM: But you could argue that the landlord is going to put in more soundproofing if needed. I mean you could argue that they will resolve that issue right? But that's believing that that's what they're going to do. I understand that.

CV: And then the problem becomes if the application goes with that condition and it isn't met.

LM: What are the consequences and what's the enforcement of the consequences?

CV: The enforcement in practical matters is pretty dismal. We have we have people that are out of compliance and there is no enforcement which makes it doubly difficult in this case because if we do a condition and it isn't met seems there's written record that there doesn't seem to be practical application.

MH: I'd like to point out that this is really ambiguous. This wording, the last line in 1.7, failure to comply with the conditions of Certificate of Approval will result in a referral to the Department of Planning and Development. Do they have teeth?

LM: They do actually, if anybody has teeth it's them. We don't have the authority to issue fines.

MH: Or can take a step back from that. It appears that the only way we can call the DPD into this whole thing is if we give them a Certificate of Approval and they fail to comply that's pretty much what the wording is saying, if we're going to have any control over the situation.

LM: Well my understanding once they get approval then you don't.

MH: We can go in and take if to DPD though.

LM: I mean you can't take it to the Planning and Development because they already have approval. That's correct, they receive approval if we give them approval? Then what I'm saying have they already has there already been in enforcement action taken?

MCL: Not sure if there's one that's part of the public record. I did check.

LR: I just looked up their address before the meeting it says there's been a citation.

CV: For what?

MCL: So just if you could let me finish, so it looks like it was published recently. So by nature of where they are located they're responsible for not just getting a permit from the Commission but from SDCI too, the building and permits people so to speak. So they needed to get that and they don't have it. However, they can't get that until they have Commission approval. That is the order of operations. So it has been that they don't have their permit. But the first step to doing that is getting a Commission approval. An SDCI permit won't be allowed unless there is Commission approval

LM: Is that just like over the counter construction? Is that what those are for? What are they and what is that for?

MC: Well the second thing for them would be to establish the use so they have their own rubric for establishing use. And I imagine if its flagged as a night club that would open up those issues.

LM: I see I was just trying to understand.

MCL: I guess what I want to say is they're required to get an SDCI permit and they don't have one but they can't get one until they get Commission approval. And that's what they're seeking now. So it's context.

LM: OK and I do see that it just says that the property owner landlord and or managing agent should require all tenants to adhere to the terms of the Certificate of Approval.

CV: Should probably be changed to shall

LM: And Minh Chau are you saying there have been several other businesses that have operated without Certificate of Approval?

MCL: There have been changes made that would require a Certificate of Approval but none has been issued and sometimes none have been stopped. So I think in our meetings we refer to them as retroactive approval. Everybody knows, it's already there and they're seeking permission after the fact and there's some of that going on now actually. So it is not a for or against, but it's to say that this Commission has considered things like that and has chosen to approve them.

LM: Right and were those on businesses that started up that hadn't existed and had been operating for nine month or are these just like changes of use or does that not really not matter I guess.

MC: I don't know off the top of my head I would say I don't really recall business opening I feel like it's been mostly retroactive design stuff, from my memory. But again it's all the same in terms of it was supposed to have a Certificate of Approval but then didn't.

CV: ROJO's comes to mind. The juice stand. That operated for while without approval. A long period of time without.

MC: That's right.

CV: It was a change of use. It wasn't technically a brand new business but it was a brand new business.

LM: Sub tenant.

CV: To me the two most conclusive are 1.6, the landlord responsibilities and 1.4 makes it clear that changes are considered in light of these guidelines and historical precedent. But Commission has discretionary powers to interpret the guidelines as they may apply to individual applications. So if we see this one is a particularly egregious violation of 1.6. it could impact the judgment in terms of the permitted business. I don't see and the guidelines don't make a specification. The other one that is most problematic is 2.7.1 ,the causes of adverse physical impact. And the other is for me is 2.7.1 B. the undesirable mixture country concentration of similar uses because I have a great deal of concern about the number of restaurants and eating places that are opening in the

Market. I find them problematic. On the other hand, this particular space has been approved for restaurants in the past.

LM: From here do we take a straw poll on where we are and how we are backing up our decision with the guidelines? And how we would go this is just a straw poll? I want to see where everybody is. Michael where are you on this and how are you backing up your argument.

MH: I'd just like to kind of clarify something on Christine's concern. Are you saying you're concerned about concentration of similar businesses?

CV: I'm concerned with the proliferation of restaurants in the Market.

LM: So the mix is basically what you're saying.

CV: The number of times within the Historical District when a new space opens up and what goes in is it might have some kind of retail component but it also has a restaurant component. And I am concerned with the density of that.

LM: But my argument would it be is its always been that space right? I mean its big.

CV: It also isn't right down on the street although the entrance is on the street so it doesn't lend itself for other retail uses.

LM: That is correct.

CV: That is a concern of mine which I have voiced before that when there's an open space restaurant is where often what gets looked to which makes sense because it can be financially viable. On the other hand, you don't want it to become a total food mart with this particular place that's a restaurant because it was a restaurant in the past.

It was been approved as a restaurant and because of its location other uses are not as practical. I mean office space would be but that's right.

LM: So I guess my point would be then that argument really doesn't hold up very well then right?

CV: I would say it is not strong and it's not defensible. So I think it is the impact on neighbors given the public comment that we've had.

LM: It's probably defensible although one could argue that they are going to or they could make that better but whether we could enforce that would be another issue. And I don't know how you defend that argument. But when someone could say I'm willing to go in and change it. It's not as if they're saying they won't. So how would you, you can't defend that.

CV: Right the backup argument to that is that the landlord has operated knowingly for nine months without approval and so there is evidence that there is not consistency with following the guidelines.

LM: Correct.

CV: There's promise but there's the evidence is a disregard for rules.

LM: I don't know if hardship a good enough reason? Is that defensible for them? In court? I don't know.

MH: Well I think probably what we should do is to approve this on a conditioned basis. What is written into the agreement is that they do what they're going to promise to do. And whatever time it takes for them to do it. You know create follow up on that. And then if they don't then we can take another step if we got the DPD enforcement side. Well then that's our enforcement on it.

CV: All right who does the enforcement?

MCL: The acronym SDCI, Seattle Department of Construction and Inspections. The building permit people. That's where they have the newly published infraction that Lauren had found.

CV: And are there infractions against this business at this point Lauren that you found?

LR: Yeah just the one they decided on the 6th.

CV: Because of not getting the Historical Commission approval?

LR: I can try to pull it up again. It said operating as a nightclub without approval.

MCL: Yeah so they have to establish use and on top of the Commission approval. So they didn't do that.

LM: And so when the Historical Commission puts an exception on something like this to do they take that in consideration or they just see the approval and that's it. I don't know how that works.

MCL: They just go by the approval so a Certificate of Approval is pretty much like a permit. They'll look at the one sentence long description and any accompanying stamped plans. And they go out into the field with just that they don't talk to anyone else or seek interpretation and it either does or doesn't pass.

LM: OK Lauren do you have any comments on how we would defend this or how you would want it.

LR: I think I would just fall back again on 2.7.1 and probably the 2.6.9 Where it discusses the babble sounds of the market which are important. Performance of non-amplified

live music may be acceptable. But it cannot interfere with other uses. I feel like from the public comment we've heard that it does interfere with other businesses and other uses. And to say that they're going to include soundproofing I mean again it's been 8 months. And that hasn't happened.

LM: Golnaz do you have any other comments or how you defend this?

GM: On how I would vote honestly I don't know. All I know is that I feel bad for the residents and the neighboring businesses. And I feel like it's not fair to them. Also I feel like it's not only the matter of noise also I guess the neighbors are talking about intoxication.

LM: But what are you referring to in a guideline I guess because that's the thing we have to back it up so that we can defend ourselves in court. So that's the problem. So you're talking about 2.7.1. I guess operations of a new business causing adverse impact.

GM: Yes, and it's not only the noise it's also the other problems that come with this type of business.

LM: So an undesirable mix.

LR: One other thing under guidelines 2.1.3, when we're making our decisions we just need to make sure it's a place where persons with low and modest incomes can find affordable goods and services. One thing I noticed while researching this was all or most of their Facebook posts say that there's a dress code to be enforced. But I feel like that would exclude people that have low and moderate incomes potentially.

LM: So Christine what would your struggle be based on the based on the facts?

CV: The 2.7.1 and relying on the fact that it has been eight months operating without coming forward and coming forward only under duress. My struggle would be now I had not heard about the dress code they enforce. The Market is intended to be inclusive. I don't know of any other establishment in the Market that requires a dress code.

LM: And Lauren you're leaning towards no as well is that correct?

LR: Correct.

LM: Michael where are you?

MH: I have to say I'm sitting on the fence on this because I see the point and I'm annoyed that they've taken this long to come forward. But what I'm saying is we've got them talking to us now. If we shut them out what's next for them?

You know how are they going to move forward? Are we going to move forward with correcting their behavior or correcting anything we see as problems with their establishment? Where is dress codes or pricing or anything else? I get it you know, some kind of penalty for failing that let us know especially since they've been there's

been an association with the Historical Commission down through the years. They know of our existence. They know what the rules are. But you know we've got Covid 19 entering into this whole mix so. Maybe give the benefit of the doubt and say under normal circumstances they wouldn't have functioned like this. Maybe.

CV: Can we write a condition that if it isn't met that it gets closed down or are we at the mercy of SDCI?

MCL: Well you could write conditions into it. I would encourage that they be very specific. So I've heard some ideas that kind of speak to the noise issue. The more specific it is the more enforceable it is.

CV: It would be an easier decision if there weren't a pattern.

LM: Well and if I recall correctly I believe the McAleeses came before us right when Covid was starting to get approval for housing converting over above to housing. So it's not like they haven't come before us that long ago. Is that right Minh Chau?

MCL: Yes that's correct shortly before Covid. They came before and were approved to implement market rate housing on the upper floors.

LM: Yeah I just mean to show that as an example that I know they know to come before us.

MCL: I guess with all due respect I wouldn't spend too much time discussing whether or not they know or what they should have done as a basis of a final decision because the guidelines don't have that as a basis.

LM: So you can't deny it on that.

MCL: Yeah they don't. There's precedent that the Commission hasn't denied things in the past. So this is definitely a violation. And I don't think anyone today disagreed with that however it does not say that this is the time to issue a penalty about that.

LM: So if I'm correct in what I'm hearing from you then really the only possible guidelines that has been that could be in violation is the 2.7.1 or the noise. But still if they're willing to fix it and then you can't really defend that correct?

MC: I mean you make your decision based on the information that's presented today.

LM: Correct.

MCL: So not on what may or may not happen in the future.

LM: What has happened in the past. So theoretically it is arguable. That complaints by neighbors of the noise. That would be a defensible argument at this point in time.

MCL: Well it's definitely not my call by any means to make. I do see there's a guideline that talks about how the Commission may deny something if its operation causes adverse physical impact to existing businesses and other activities. And we've heard from three people who have knowledge of existing businesses and other activities that do reference adverse physical impact to them. That is my take away from those comments, it would definitely be for you all to decide if you feel that that is true.

LM: So our discretion on whether we think that those people that have complained have a valid argument?

MCL: An argument that fits within the guidelines that addresses and speaks to points made.

LM: Yeah that's a good question.

CV: And disruption interference, adverse physical impact such as noise.

GM: To be a nightclub I believe it's not only the noise but all the drunk people late at night that can interrupt the life of the residents.

LM: But I mean the only problem that I have with that, I understand what you're saying, but then what so you say about Kell's and the White Horses and the Pink Door? I mean all of them have people that are drinking and how can you blame all of that on one tenant? You know what I'm saying?

GM: Like not nightclub crowd. They're not dancing clubs and then the Pink Door is more like a high class one with shows and everything. It's different types of business models. The night club is the place for dancing and I also believe because with Covid it hasn't been as crowded because they couldn't. When all the restrictions are gone based on all the complaints that the neighbors have it's going to be even much more than what we see.

LR: Right now right? If you look at their post they're packed. And no masks. I don't think they are running any less because of Covid. I mean everything that they've posted they're pretty full. So I think maybe it could get crazier after restrictions are lifted.

CV: Are there any other 21 and over establishments in the Historical District that do not serve food and serve the whole population, that is families? There are places in the Market that have a restaurant component and 21 and over. Is there any other establishment in the Historical District that is adult only?

LM: And White Horse is there. What about the Can Can?

CV: Well they do lunch. They have people, what about Radiator Whiskey?

LM: Maybe not, the Virginia Inn used to be all 21 and over didn't it? It hasn't been because they might have largely gotten it changed. Oh isn't that The Rabbit Box or

whatever that's opening? That's 21 isn't it? Or they were going to have some under age shows?

CV: I think they're planning a pro program wise they're planning a mix.

MH: Well there's the operation that took over the location from Old Stove and I think that is adults only. Taproom.

CV: Yeah the Taproom also didn't they use to be adults? I couldn't speak to the Taproom I went by there today but they weren't open so I couldn't see.

MH: As far as drunken behavior on the streets it's pretty hard to attribute that to one location simply because the number of street people we have wandering around on the streets. So I'm pretty sure that's not coming out of any club here. It's downtown.

LM: This is the tough one.

MH: And also you know to just push a little bit further we don't really have any control over drunken behavior, that is strictly a police matter anyway. So alcohol enforcement, whatever you know the liquor board, so those are the guys that handle that. And I don't like to see drunks staggering down the streets any more than anybody else but there is more than just that there's the other bad behavior that we see out there all the time so welcome to the big city.

CV: It is partly on the business owner to monitor that the client not get out of control but my understanding is you're not allowed to serve folks who are already impaired.

LM: Right, you lose your license. This is so hard. Well from here the only thing that I see is that I guess that 2.7.1 is the only possibly defensible one but that is still hard I think. Any other thoughts? Or does anyone want to try to make a motion or how do we feel about this?

GM: 2.6 Landlord Responsibilities and Obligations, property owners landlords or managing agents must submit consent to the application and require compliance of Certification of Approval granted by the Commission and they haven't done that since April.

CV: For me that is one of the mitigating guidelines.

LM: Right.

CV: It doesn't say what we have to do in the face of that. It doesn't say we have to deny but it also doesn't say we have to approve. It leaves it up to the Commission discretion.

LM: But we've had other ones that we've let through.

CV: But it also says that we consider precedent, that each application is seen as its own. That's in the guidelines above 1.4. Changes will be considered in light of both

guidelines and historical precedent. The commission has discretionary power to interpret these guidelines as they may apply to individual applications. So we have 1.4 and we have 1.6 and we have 2.7.1

LR: And 2.1.3. Serving low and moderate incomes.

MCL: Does anybody want to take the attempt at making a motion and also keep in mind the guidelines? You don't necessarily need a quantity of them. And this talk of defending yourselves and everything, as long as you can clearly state what you're thinking is, what considerations you're making on the guidelines, it's fine. I don't want anyone to feel like they will be tried in court or something.

Grace Leong left the meeting at 5:50 pm.

LM: And I also was looking at 1.4 and it just in general the guidelines should stimulate harmonious and orderly development while allowing gradual adjustment to varying and changing Market activities. They are intended to be a value to the historic property owners merchants tenants residents governmental agencies and the general public regarding the use of space physical appearance within the District so I mean you know we really are here to uphold and make sure this is a harmonious place. Anyone want to take a stab at making a motion? Christine are you still a negative then?

CV: It's a conundrum. A real conundrum.

LM: That's my problem. We lost Grace.

CV: And we're going to lose me in about ten minutes.

LM: Lauren, still no?

LR: Yes I'm leaning toward no.

LM: And Michael?

MH: I would say yes because I want to we don't have any means of controlling them at all if we don't approve give them approval that's conditioned on very specific things. So of course we're still stuck with the same problem we've always had is follow up and checking up on. If we say no, where does that leave them? Where does that leave us?

CV: Where are you Lisa?

LM: I don't know this is really hard. I'm just frustrated because I mean, I feel the same about it's tough. I mean, 9 months, not coming before us when they know about the Historical Commission. I know they've known about it. They've just come before us not that long ago. So I understand having financial issues and all of those things, it just still doesn't justify business practices not being followed, right? I get it though. I mean, how hard is it to make an application to the Market?

CV: And to me it would not be problematic except we have the three public comments, right?

LM: And so if you put that OK they didn't apply and they've done business in the Market before. But then the complaints by fellow neighbors. Granted, I know we don't have all the neighbors but we have a couple of them, I don't know.

LR: All of my years on the board I don't think I've ever seen three complaints come before us before. Maybe we got one. The park, we had a few people speak up but that's a pretty big applicant. This is by far the most number of complaints for public comment. To ignore those would be, you know.

LM: OK.

CV: So we either need a motion to deny based on based on 1.4 and 1.6, 2.3.1 and 2.7.1 or else we need a motion to approve conditioned on well we almost have to be conditioned on some kind of an investigation. But I don't know that it can be as general as sound issues will be addressed.

LM: That's right. That's true too open.

CV: If it came before us and the sound issues had already been addressed it would be, then we wouldn't have the 2.7.1.

LM: But theoretically could that not be addressed in design? If you gave approval, but I don't know what your approval would be conditioned upon.

MH: The City does have standards on sound levels, noise levels, and we can defer to them in terms of establishing what is an acceptable noise level. And rely on them to go by and check it out at those hours that these complaints are all about. So good communications, the bar itself they need to get in touch. Maybe put out a public notice inviting all of the neighbors to come over and tell them to give phone numbers. They can call when they have a problem with noise. Address it from that side and then also city engineering. I'm sure there's a department that would have some idea what the noise level should be. I mean we were doing that with amplified music over here at Steinbrueck Park a while back. So there is equipment around that we can use to decide on noise levels and everything. I think we should definitely put these folks on a very strict time schedule. They've got to prove themselves now.

CV: Once the approval is in it's kind of out of our hands.

MCL: The City does in fact have regulatory guidance and things about sound and a nightlife division and all of these other things. But whether or not meeting those requirements would address what the Commission has heard today we don't know.

CV: Whether the City's requirements, will they take care of 2.7.1 and the thrumming in walls and the bass.

LR: But at Lisa brought up a good point that it could the noise could be addressed in the design review. So the approval could be contingent on how they handle sound in their design application.

MH: Yep.

LR: If it's not addressed in the design application then that one could then be denied.

LM: That's it right? Can you just deny it until it's made by the neighbors could we make that contingent?

LM: There's neighbors on one said and there's the neighbors across the alley. There's neighbors on two points isn't there?

CV: Yes there are neighbors where we are that we heard from.

LM: Only one and then we heard from across the alley which is the Pink Door. I haven't heard from them. I don't even know who is in there right now maybe nobody, I don't know. So would that be a way of solving this issue? I don't know?

LR: I think it's fair to give them the benefit of the doubt that they'll address these issues. Granted they've had however many months to do it. But if their approval is contingent with the design approval addressing sound levels I think that's fair to give them some amount of time to officially address that.

LM: I know I have one question Minh Chau. I'm guessing the construction that they've applied for permitting. So they were already applying for a permit for design, is that correct? Basically because they were already going to do construction.

MCL: No, they've not applied for anything. So the citation they have is they need this permit from SDCI and then they can't get that until they get Historical Commission approval among other things.

LM: But the Historical Commission approval they're getting tonight is only for use it is not for design

MCL: That's correct. It's only for use.

LM: So they will not be able to get permitting until that. Correct?

MC: Until they have a Pike Place Market approval, that comes first before other people's permits such as SDCI.

LR: Right but I'm saying they have to get the design approval from us next in order to go forward with construction. Can they still operate, with over the counter?

MCL: I'm not sure actually. I'm not sure about the thresholds of SDCI with what would trigger a construction permit and how that lines up with what they want to do there.

LR: I guess what's important is if the City won't issue their nightclub permit until both use and design have been approved and reviewed.

MCL: No just use. So nightclub is a use and then design is the physical elements that come later. So they're not going to consider use until we have Commission use approval.

LM: And so Minh Chau are we correct in saying that if we kind of pass the buck to wait till design was approved do we have any pull at that time or none?

MCL: Wait till design, well I think if the issue hinges on sound, use is the realm of sound. So yeah if the main misgivings have to do with the issue of noise and sound that's addressed in use.

LM: But if you can correct in design I don't understand.

MCL: Well, what design guidelines do we point to that talks about sound mitigation?

CV: Is this nightclub a reaction to a stimulation of harmonious and orderly development while allowing gradual adjustments to varying and changing market activities? An activity that's been in the Market before. That's from 1.4

LM: has there been a dance club before?

MCL: There's been a lounge.

LM: OK I'm not a dance but a club is not a club

CV: I mean I don't know not that I know of What is what is the definition of a club. Is this. In any of your research Lauren did your find out if this is a private club

LR: It didn't look like it looked like it's opened the public but you know sometimes there's a cover charge sometimes there's not. I don't think there are any other dance clubs like nightclubs per se in the Market anywhere else correct Like not just in this location but just in the Market in general. Can Can has shows but it is not exclusively a dance club

LR: I don't see anything about sound mitigation in the design I don't know I don't think it would work. No I guess it doesn't work.

LM: Yeah I was just trying Yeah And there's no roof about dance clubs. Correct there's no one rule about dance clubs in the Market.

CV: Yeah that's about local clientele but that's both local and tourist.

LM: You could argue 2.7.1 C it's a significant change in historic use.

CV: And undesirable alteration to the character of the Market.

LR: Potentially.

MCL: Does the Commission feel like it has enough information to make a decision today?

LM: I'm just really torn in all honesty. I wish I knew from all of the neighbors.

CV: I mean if we deny the application based on 1.4 and 1.6, 2.7.1 a, b, and c what is the recourse of the business owner and the property owner? How long before they can mitigate 2.7.1 in advance? How do they do that if they're not operating? At this point I don't think it's a matter of more information I think it's a matter of making a decision.

LM: Well I just meant if I really knew that the neighbors all really didn't want it. I don't like that it's negative impact on them because those buildings are not owned by the PDA. So I know there's not a lot you know I haven't heard anything so I don't know. It would it make it very clear to me, you know what I'm saying?

GM: I'm not sure if there's any other business that I believe that are open. And you know there is a tea shop which is not open at night right.

LM: But I'm talking about what would frame that dance club. It used to be the nature conservatory had their offices in there but I think they're gone. I don't know who's in there now if I recall correctly, unless I'm totally wrong.

MCL: Well the agenda is always issued seven days in advance of a meeting and everything was publicly noticed where people are invited to speak one way or another. I mean in theory anyone who has an opinion has had an opportunity to weigh in.

LM: Correct

MCL: If you feel like there was enough information to make a decision tonight than one would need to be made and the options are to approve and state reasons why that are based in guidelines. Disapprove and again, based on guidelines or approve with conditions that you all formulate.

GM: Not for approval with conditions because usually there is who is going to enforce? The rest of the buildings the PDA owns them and does enforce but with this particular situation I'm not sure who's who is going to enforce if we approve it based on conditions.

LM: So you're moving to disapprove is that correct

GM: Yes

CV: Put that in a form of a motion

GM: So based on let's get all the numbers that's

CV: Let's see 1.4, 1.6

LR: 1.3

CV: 2.1.3, 2.7.1 a, b and c

GM: So Christine since I don't remember all of those numbers and I don't have them in front of me would you mind to go ahead with this motion.

CV: Based on guidelines 1.4, 1.6, 2.1.3, 2.7.1 a, b, c I move that we deny the application as presented.

LM: Is there a second

LR: I second it

LM: OK so we are going to vote on denying the approval based on 2.4 right?

CV: Go all the way back to 1.4 or sorry that's right and then 1.6, 2.1.3, 2.7.1 a, b, c.

LR: 2.1.3 and then a 2.7.1 a b and c.

LM: Michael how do you vote?

MH: I vote against, no.

GM: No is for, so yes.

LM: Christine?

CV: For.

LR: Yes.

LM: And I am for as well so application is denied as written correct based on 1.4, 1.6, 2.1.3 and 2.7.1 a b and c

MCL: You would say the motion that was made carries.

LM: Yes motion carries.

CV: I have to bid you adieu at this point I'll leave you to the minutes and you have my comments.

MCL: Yes you had already sent those corrections.

LM: Thank you Christine. So with that Minh Chau I'm guessing we need to push to approve the minutes until another meeting because there are really very few of us present.

MC: There are enough of you to approve the minutes but if you feel for any reason it's best to push you certainly can.

LM: Lauren how do you feel as vice chair? Do you think we should do ahead and approve them now or wait?

LR: I have to excuse myself from one of the meeting minutes because I was absent so I feel like we should probably wait because there's not very many of us.

LM: OK so I'm going to move to push minutes to look at next time when we have a bigger quorum. And so with that the report of the chair which is myself and I was just going to comment I'm really happy to have those new guidelines from the law department so I'm going to take a really good look at them and hopefully that will help us have better meetings and have things to back up our arguments. And otherwise I don't have anything else really to report even though it's been a long time since we've seen each other. So after that Minh Chau do you have a staff report?

MCL: There's two quick things. We're setting the MHC meeting calendar for next year. I don't know the dates but I do know it'll follow the same format which is the second and fourth Wednesday of the month. And that drops down to one meeting in November and December. Our next meeting is January 13th and according to Rules and Procedures that is the meeting in which we're supposed to vote on a Chair and Vice Chair so keep that in mind. I'll send out an email where people can send me their nominees or ask questions or anything

LM: Is there anyone else? Christine is she being replaced by a new candidate is that correct?

MCL: Yes that would be happening.

LM: No body else at this time correct

MCL: People's terms are ending but as far as how soon that they will be replaced with active members that could be a while.

LM: Right OK I was just checking

LR: The positions have been posted, like the available positions?

MCL: They've not yet been posted the ones that will be posted are for residents, an architect, two allied arts positions which isn't quite a posting process but same concept, incoming people.

Meeting adjourned at 7:05 pm.

MinhChau Le
Commission Coordinator