

## **The Oregonian**

# **Judge throws out Fontaine Bleau's discrimination suit against city of Portland, state liquor control commission**

*By Maxine Bernstein  
September 6, 2019*

The owner of Northeast Portland's Fontaine Bleau nightclub failed to establish that the city of Portland or Oregon Liquor Control Commission acted with racial bias when it pursued an emergency suspension of the bar's alcohol license in 2013, a federal judge has ruled.

U.S. Magistrate Judge John V. Acosta's 167-page opinion dismissed allegations of discrimination and violation of due process and First Amendment rights against the city and state. The dismissal was with prejudice, which means the club's owner can't file a new complaint.

Rodney DeWalt, former owner of the Fontaine Bleau, and his lawyers had argued that the city, working with the state, discriminated against him and his club based on his race and the club's musical preference through "inordinate" police attention and regulatory action based on unsubstantiated complaints.

The state liquor control commission, at the city's request, ordered an emergency suspension of Fontaine Bleau's liquor license on Nov. 9, 2013, after one man was killed and two wounded in a shooting outside the club. The club shut down shortly after.

Attorneys for the city and the state commission's executive director, Steven Marks, vigorously disputed the characterization. The violence, coupled with the owner's failure to take steps to protect his club patrons or neighbors, demanded an immediate public safety response and justified the emergency suspension, they said.

Attorney Jesse Merrithew, DeWalt's attorney, said Friday he's still reviewing Acosta's opinion but does plan to appeal.

Merrithew said the judge's findings run "contrary to the conclusion of every black business owner in Portland we've talked to."

The statistical evidence that DeWalt's lawyers offered – that the city in the last decade had pressed the state to immediately suspend the liquor license of half of the nightclubs owned by African Americans while taking action against only a fraction of all other nightclubs in town – wasn't sufficient for the discrimination claim, the judge said.

DeWalt's lawyers had pointed to the emergency liquor license suspensions for five Portland nightclubs in 10 years, including Fontaine Bleau and another one owned by a black businessman, and noted that the city hadn't sought the same emergency sanction when 25 other shootings occurred inside, outside or near other nightclubs from 2009 through 2017.

Acosta said five instances wasn't a sufficient sample size and the claim wasn't supported by other evidence.

"The statistical information does not constitute the requisite 'stark evidence leading to the inescapable conclusion' that the City Defendants acted with the intent to discriminate against Plaintiffs based on their race," Acosta wrote.

Acosta also said DeWalt's lawyers provided "no direct evidence of discriminatory animus" by Marks or city officials, including then-Mayor Charlie Hales.

Marks didn't know DeWalt was African American at the time he issued the first order for an emergency license suspension and the club owner offered no evidence to the contrary, the judge said.

Hales, in depositions, said he considered alcohol licenses a privilege, not a right, and had "expressed his frustrations with the state commission's apparent lack of interest in the City's concerns about noise" and other public safety impacts regarding liquor license holders "in general," the judge noted. Therefore, Hales' "concerns" aren't direct evidence of racial discrimination by Hales, Acosta wrote.

DeWalt's lawyers also alleged that the city and state intentionally targeted Fontaine Bleau based on its choice of hip-hop music in violation of First Amendment free expression rights. They argued that the city and state attempted to force the club to change the hip-hop music played there and then eventually forced the Fontaine out of business.

Acosta, again, wasn't convinced.

Hales never reached an agreement or understanding with Marks or any liquor control commission officials that regulatory actions should be initiated against Fontaine Bleau because it played hip-hop music, the judge found. Hales said in depositions he had no issues with hip-hop played in Portland clubs, noting that the city sponsored two hip-hop festivals during his time as mayor.

The city argued it "took discrete enforcement actions against the Fontaine Bleau that were supported by legitimate public safety concerns rather than an unspoken agreement to shut down Mr. DeWalt's business."

On Friday, attorney Marc Abrams, representing the Oregon Liquor Control Commission and its executive director, submitted a bill of costs to the court, seeking reimbursement from plaintiff's lawyers for just over \$9,168, largely the cost of deposition transcripts used in the case.

DeWalt's suit was one of several lawsuits that attorney Merrithew and his colleagues have brought on behalf of black-owned businesses.

Another federal suit brought by Donna Thames, owner of the closed Portland strip club Exotica, is on hold, as Thames passed away earlier this year. Thames also had alleged the city and state engaged in racist enforcement of liquor license laws. The suit will likely be on hold until a representative from her estate is identified, Merrithew said.

Sam Thompson, the owner of Seeznin's Bar & Lounge, the other black club sanctioned with a suspended liquor license after a shooting across the street in June 2011, earlier this year settled his discrimination suit filed against another club in Multnomah County court for an undisclosed amount. He alleged he was denied access to the club Dirty because he was wearing matching red sneakers and a red sweatshirt.

[Read Acosta's ruling here.](#)

## The Portland Tribune

### Pot taxes help fix SW Portland's 'most dangerous street'

By KOIN 6 News  
September 08, 2019

**The total cost is \$275,000, with \$150,000 of that coming from Oregon's cannabis tax.**

A project on Southwest Capitol Highway will impact traffic between Huber Street and Kerr Parkway for about two weeks, but will make it easier for pedestrians and bicyclists — and is paid for largely through pot revenue.

There currently isn't any room for bikes and pedestrians on the very busy street, but the Portland Bureau of Transportation said the project will make it easier and safer for people to cross the street and get to bus stops.

It will also improve bike lanes along with reducing the speed cars travel in the area.

A center median, turn lane and left-turn pockets will be installed, PBOT said. There's also a request in to reduce the speed limit from 35 to 30 mph when it's completed.

PBOT said Southwest Capitol Highway is identified as a high-crash street. From 2012 through 2016, there were 55 crashes along that corridor, including two serious injuries of a bicyclist and pedestrians.

"We are narrowing the roadway to make it safer for people to travel along the street," said PBOT's Hannah Schafer. "Capitol Highway is one of the most dangerous streets in Southwest Portland, in particular for people biking. It's our Number 1 most dangerous street."

Nearby resident Cari Carr supports these changes.

"I've seen cars blow by really near children," Carr told KOIN 6 News. "We have an elementary school, a private school and Markum Elementary and we have a lot of kids coming through here up from Jackson and over from Wilson."

She also thinks with so many kids on the move, making room for bikers and walkers is a step in the right direction.

"It's dangerous. We needed this."

"We have a ton of families and kids who try to use the street everyday to get to school to cross the street to the park, the library and we want to make it safer for everyone to be able to do that," Schafer said.

Wilson 9th-grader Aishah Mokrani said she's also excited about the changes. She's seen other kids almost get hit.

"I walk down from the school, then I get dropped off right down here and I have to walk from there to get back to my house," she said.

If PBOT's projections are accurate, there will be an 11% to 46% reduction in pedestrian and bike accidents.

The total cost is \$275,000, with \$150,000 of that coming from Oregon's cannabis tax.

You can learn more about the project [here](#).

## **Willamette Week**

### **Former Candidate for City Council, Andrea Valderrama, Left Mayor's Office for Racial Justice Nonprofit**

*By Rachel Monahan  
September 8, 2019*

**Andrea Valderrama is now advocacy director for Coalition of Communities of Color.**

Former City Council candidate Andrea Valderrama left her policy job in Mayor Ted Wheeler's office last month. She is now advocacy director at the racial justice nonprofit Coalition of Communities of Color.

At least half a dozen staffers, including Valderrama, have left the mayor's office in recent months. The turnover comes after Wheeler appointed his third chief of staff in as many years, Kristin Dennis, in February.

"My work has always been guided through a people first philosophy," Valderrama said in a statement from Coalition of Communities of Color last month. "People should come before policy, and policy should not come before the people. I look forward to joining the team at CCC and to improving outcomes for communities of color with communities of color."

Valderrama worked for former City Commissioner Steve Novick before joining Wheeler's staff. She is also board chair of the David Douglas School Board.

She ran unsuccessfully for Portland City Council last year in a packed field. The seat was won by Commissioner Jo Ann Hardesty.

## **The Daily Journal of Commerce**

### **Pepsi Blocks project team will have to wait**

*By Alex Visser  
September 6, 2019*

The Portland Design Commission on Thursday declined to hold a vote on a land-use permit for the Pepsi Blocks development's first phase because of unresolved issues with the Portland Bureau of Transportation. From a design perspective, commissioners favored plans; however, staff advised them to push back a vote until PBOT approves a loading zone and woonerf – a shared street designed primarily for pedestrians.

Located at 2505 N.E. Pacific St., near the Sandy Boulevard corridor, the development would arise on land that previously was long occupied by a Pepsi bottling plant. While most of the existing facilities will be destroyed, an iconic bow-truss structure at the entrance will be preserved; it is to become one or two restaurants.

A Seattle-based team has been working on the Pepsi Blocks for some time now, with owner Security Properties bringing in Mithun to design the 230,000-square-foot expanse of mixed-use buildings and KPFF Consulting Engineers handling the civil engineering duties. The project received its first design advice hearing in May, when it was met with mostly positive reception from the commission.

The first phase of the project involves construction of an eight-story, 87-foot-tall building with 219 residential units and 15,000 square feet of retail space. The first phase also includes two levels of below-grade parking, a landscaped public plaza with art and the woonerf.

Two problems are primarily keeping the project from moving forward. First, the applicants requested an adjustment to loading zone requirements. A main loading zone is required on-site, but the owners requested to place it off-site on an adjacent right-of-way.

Another issue is the woonerf. The city of Portland has only a few examples of precedent for the feature, which is a somewhat new trend adopted from Europe. Since many of the city's codes predate the woonerf's use in Portland, the designation is currently for a public street, which makes it liable for several other strict codes.

The applicants are trying to change its designation to an "on-site vehicle area." That more accurately represents the woonerf's purpose because it is designed primarily for pedestrians, but there must be vehicle access in case of an emergency.

PBOT has not yet approved these adjustments, and because of that, the Design Commission cannot vote unless it issues a denial, which would greatly delay construction. For this reason, commissioners opted not to vote, and instead rescheduled a future land use review. Then they used the time allotted to talk more about the actual design guidelines.

The Pepsi Blocks' design was universally lauded. Special praise was given to the project's integration within the neighborhood, as commissioners said it would create a lively and pedestrian-friendly environment that Sandy Boulevard hasn't seen in a long time – perhaps ever.

"Public realm is where this thing is quite exceptional," Commissioner Don Vallaster said. "It gives more back to the city than any project we've seen in a really long time."

Commissioner Brian McCarter said the project sets a very high bar for the potential future of Sandy Boulevard, and Commissioner Jessica Molinar said she wished the project was built already. A few minor criticisms were directed at project aspects such as window tint and certain colors, but commissioners said they would not hesitate to approve the project following resolution of its more pressing issues.

"This is a great thing for the city of Portland," Design Commission Chairwoman Julie Livingston said. "This is going to be a really great addition to the neighborhood."

Pepsi Blocks plans will return before the Portland Design Commission for a land-use review on Sept. 19.