

**City of Detroit
Office of Inspector General**

Abuse of Authority
OIG File No. 23-0018-INV



February 27, 2024

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Inspector General

I. Summary

On August 18, 2023, the City of Detroit Office of Inspector General (OIG) received a complaint from Jayda Philson, Manager I of Zoning in the City of Detroit Buildings, Safety Engineering, and Environmental Department (BSEED), which alleged that BSEED Director Dave Bell instructed her to remove the language pertaining to parking deficiencies and sign a site plan review approval letter for a local restaurant. Ms. Philson stated that she informed Director Bell that she disagreed with him and expressed her discomfort in signing the letter because it violated the City of Detroit Zoning Ordinance. However, Director Bell insisted that she sign the letter approving the site plan application.

Based on the OIG's investigation, the OIG finds that Director Bell should have followed the City's Zoning Ordinance and directed the Good Times restaurant to petition the Board of Zoning Appeals (BZA) for a waiver of the deficient parking space, rather than approving the site plan review application for the restaurant. Based on our investigation and for the reasons stated below, we find Director Bell abused his authority in this instance.

On February 12, 2024, the OIG provided a copy of its draft findings to Director Bell and provided him the opportunity to dispute our findings via a written response and/or by requesting an administrative hearing pursuant to Chapter 3 of Article 7.5 of the City of Detroit Charter and the OIG Administrative Hearing Rules. On February 15, 2024, Director Bell acknowledged that he received the OIG's draft. His written response and/or request for an administrative hearing was due on Monday, February 26, 2024. Not having received a written response or a request for an administrative hearing to dispute our findings in the draft, this report is now made final.

II. Background

The scope of the OIG's investigation is to determine whether Director Bell abused his authority by failing to adhere to the Zoning Ordinance when he waived the parking deficiencies for the restaurant. The OIG requested and reviewed documentation from BSEED and interviewed BSEED and BZA personnel to gather the following information:

1. Buildings, Safety Engineering, and Environmental Department

BSEED is a City of Detroit department that provides for the safety, health and welfare of the general public as it maintains buildings and their environments.¹ BSEED enforces construction, property maintenance, environmental compliance and zoning codes in the City.² BSEED divisions include the Development Resource Center, Zoning/ Special Land Use, Plan Review, Construction Inspection, Licensing and Permits, Environmental Affairs and Property Maintenance.³

The zoning division conducts site plan reviews, public hearings for conditional land uses, per the City's Zoning Ordinance, and conducts historical research for the purpose of zoning

¹ <https://detroitmi.gov/departments/buildings-safety-engineering-and-environmental-department>.

² *Id.*

³ *Id.*

verification.⁴ The plan review division is responsible for ensuring that developments or building projects comply with the City’s adopted ordinances and codes.⁵ BSEED staff performs review of permit applications and plans for the proposed projects. Special land use hearings are required for uses that are conditional in the specific zoning district, including applications for site plan reviews.⁶ Applicants apply for site plan reviews through the City’s Electronic Licensing and Permitting System (ELAPS).⁷

Jayda Philson is the BSEED Zoning Manager, who has held this position since 2016.⁸ Prior to that, she was a Zoning Inspector and City Planner.⁹ As the Zoning Manager, she reviews and ensures compliance in special land use and conditional land use hearings, resolves various zoning issues, and handles marijuana special land use hearings.¹⁰ Hearings are required to be held for all applications for conditional land uses.¹¹ After the hearing, the zoning team, including Ms. Philson, BSEED Building Inspector and Plan Reviewer Sherita Elliott, Chris Rodriguez and others draft the site plan review letter for Director Bell’s review and approval before the decision is sent to the applicants.¹²

2. City of Detroit Zoning Ordinance

The City of Detroit Zoning Ordinance is in Chapter 50 of the Detroit City Code. The ordinance was enacted pursuant to the powers granted in the Michigan Zoning Enabling Act, MCL 125.3101 et seq., and the Michigan Planning Enabling Act, MCL 125.3801 et seq.,¹³ and was adopted to “guide and regulate the appropriate use or development of all land in a manner which will promote and protect the public health, safety, and general welfare”.¹⁴

Section 50-2-21 of the Zoning Ordinance authorizes BSEED to oversee and enforce its provisions.¹⁵ Section 50-4-122 states that: Administrative adjustments are (1) Modifications of ten percent or less of any numeric standard that is set forth in Article XIII of this chapter or any numeric development standard that is set forth in Article XIV of this chapter; or (2) A reduction of off-street parking requirements for any use by up to ten spaces, as provided for in Section 50-14-153 of this Code. Section 50-4-122 (1) limits BSEED’s authority to approve up to ten percent administrative adjustments and variances for applicants that meet certain criteria.¹⁶ Section 50-4-122 (2) does not apply to this case because the restaurant needed other variances as a result of

⁴ <https://detroitmi.gov/departments/buildings-safety-engineering-and-environmental-department/bseed-divisions>.

⁵ *Id.*

⁶ <https://detroitmi.gov/departments/buildings-safety-engineering-and-environmental-department/bseed-divisions/zoning-special-land-use>.

⁷ <https://detroitmi.gov/departments/buildings-safety-engineering-and-environmental-department/bseed-divisions>.

⁸ OIG Interview of Jayda Philson dated October 23, 2023.

⁹ *Id.*

¹⁰ *Id.*

¹¹ OIG Interview of Dave Bell dated December 7, 2023.

¹² *Id.*

¹³ https://library.municode.com/mi/detroit/codes/code_of_ordinances?nodeId=COCH50_CH50ZO_ARTIINPR_S50-1-1TI.

¹⁴ *Id.*

¹⁵ Zoning Ordinance Sec. 50-2-21.

¹⁶ OIG Interview of Jayda Philson dated October 23, 2023. See also, Zoning Ordinance Section 50-4-122 (1) and (2).

failing to meet Traditional Main Street Overlay (TMSO) standards.¹⁷ For matters that are beyond the scope of BSEED’s ten percent administrative adjustments, Section 50-4-131 of the Zoning Ordinance authorizes the BZA to hear dimensional variance requests either to approve or deny the variance.¹⁸

3. Board of Zoning Appeals

The BZA hears and decides appeals from any order, requirement, decision, or determination made by any administrative official charged with the enforcement of the Zoning Ordinance.¹⁹ The BZA is also charged with accepting appeals from decisions made by the BSEED after a hearing is held before the BSEED’s Hearing Officer.²⁰ The BZA meets weekly with representatives of the BSEED, the Law department, and the Planning and Development department to review cases where the BSEED has provided a decision letter to the applicant requiring a variance from the BZA.²¹ The BZA consists of seven members appointed by the City Council for a term of three years.²² The BZA hearing fees are \$1200.²³

4. BSEED/BZA Decision Letters Issued to Good Times Restaurant

Good Times restaurant is a full-service bar, restaurant, and event space located at 19416 and 19422 Livernois Avenue in Detroit.²⁴ In 2009, the restaurant submitted an application to BSEED to “establish a standard restaurant with the sale of beer, wine, and intoxicating liquor for consumption on premise via a service bar only in an existing approximately 2,962 SF building”.²⁵ On September 8, 2009, BSEED approved the request subject to certain conditions.²⁶ In the decision letter, BSEED identified several issues that would need to be resolved by the restaurant seeking a variance from the BZA.²⁷ One of the issues was required off-street parking. BSEED stated that “because the restaurant will occupy an existing building of less than 3,000 square feet, the existing parking is sufficient and no additional off-street parking is required beyond what is already provided.²⁸ However, if the rooftop outdoor eating area is established, the total area of the establishment will be greater than 3,000 square feet and additional off-street parking is required beyond what is already provided.”²⁹ Therefore, in 2009, the restaurant was given the option to either build a wall at the alley or obtain a variance from the BZA.³⁰ At the time of the 2009 BSEED decision, the restaurant

¹⁷ Email correspondence from Jayda Philson to the OIG dated February 8, 2024.

¹⁸ Zoning Ordinance Section 50-4-131.

¹⁹ *Id.* See also, Zoning Ordinance Section 50-3-302.

²⁰ *Id.*

²¹ OIG Interview of James Ribbron dated November 17, 2023.

²² <https://detroitmi.gov/government/boards/board-zoning-appeals>.

²³ OIG Interview of Jayda Philson dated October 23, 2023.

²⁴ <https://goodtimesontheave.com/>.

²⁵ BSEED Case No. 06-09 19416-22 Livernois.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* See also, Section 50-14-7 of the Zoning Ordinance which states that any structure that is under 3,000 square feet does not need to provide parking.

²⁹ *Id.*

³⁰ *Id.*

was only using the 1st floor and not the rooftop patio area, so parking was not an issue.³¹

On October 4, 2019, the restaurant applied to the BZA requesting a variance for Traditional Main Street Overlay standards for adding a shipping container to expand the kitchen area.³² On December 17, 2019, the BZA granted the requested variance.³³ The space needed to store the shipping containers took away some of the parking spaces for the restaurant, but parking was still not an issue because they were not using the patio area.³⁴

In 2020, the restaurant submitted another application to BSEED requesting to add a Cabaret Group A license (live music and dancing) to the establishment, which would include a sidewalk patio area and a 2nd floor rooftop patio area for outdoor eating.³⁵ BSEED held a hearing on October 14, 2020, where several residents spoke in support and opposition to the additional use.³⁶ Those who spoke in opposition, including board members of the Sherwood Forest Association did so in response to complaints of loud music and unruly crowds.³⁷ On January 13, 2021, BSEED denied the additional use of a Cabaret because “the addition of the Cabaret would be detrimental to the neighborhood or endanger the well-being of surrounding neighborhoods due to the loud music, excessive noise, fighting, etc.”³⁸ In addition, BSEED explained that “the public health safety and welfare of the residents are at risk after the Health Department had investigated and cited the restaurant on several occasions for not following COVID protocol and operating without a permit for the outdoor serving and tent.”³⁹ BSEED had the authority to waive some of the parking in accordance with the Zoning Ordinance, if the restaurant had met all the TMSO standards.⁴⁰ As detailed in Director Bell’s interview, the restaurant did not have the required permits and licenses to operate as a Cabaret.

On April 25, 2023, the restaurant applied to BSEED requesting to add a retail use (cigar bar) to the existing restaurant use on the rooftop patio area. The use of the patio area would increase the square footage of the restaurant to 3,295.⁴¹ At this time, parking became an issue because of the increased square footage of the restaurant.⁴² Ms. Philson reviewed the restaurant’s application to add a cigar bar.⁴³ Based on Ms. Philson’s calculations, the restaurant was required to have a total of 18 parking spaces, 13 for the restaurant and 5 for the cigar bar.⁴⁴ As per the Zoning Ordinance, BSEED can administratively waive 10% of the required spaces, which would reduce the number of required spaces to 16.⁴⁵ However, the restaurant only has 7 spaces, which makes

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³² BZA Case No. 85-19.

³³ *Id.*

³⁴ Email correspondence from Jayda Philson to Dave Bell and Raymond Scott dated June 1, 2023.

³⁵ BSEED Case No. SLU2020-00070.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Email correspondence from Jayda Philson to Dave Bell and Raymond Scott dated June 1, 2023.

⁴¹ *Id.*

⁴² Email correspondence from Jayda Philson to the OIG dated February 8, 2024.

⁴³ OIG Interview of Jayda Philson dated October 23, 2023.

⁴⁴ *Id.* See also, Zoning Ordinance Sections 50-14-51 and 50-14-58.

⁴⁵ 18 parking spaces x 10%=1.8, reducing the parking by 2 parking spaces to 16.

the restaurant still deficient 9 spaces even after BSEED's allowable administrative waiver is applied.⁴⁶ A reduction from the 16 spaces required to 7 spaces is a variance of 56%⁴⁷, which exceeds the 10% allowed by ordinance. As such, Ms. Philson concluded that the Zoning Ordinance required the restaurant to submit a request to the BZA to obtain a waiver of the parking deficiency before BSEED can approve the restaurant's site plans.⁴⁸

Based on this assessment, Ms. Philson drafted the site plan review letter with her findings and submitted it to Director Bell on May 15, 2023 for his review and approval.⁴⁹ Upon reviewing the draft letter, Director Bell instructed Ms. Philson to remove the portion of the letter requiring the restaurant to go before the BZA.⁵⁰ He explained to Ms. Philson that based on his understanding, the restaurant did not have to go to the BZA because they already had a certificate of compliance from the Property Maintenance division.⁵¹ According to Ms. Philson, she informed Director Bell that she disagreed with his assessment and insisted that the restaurant needed to go before the BZA in order to waive the deficient parking spaces.⁵² In addition, Ms. Philson documented her position via email to Director Bell and BSEED Deputy Director Raymond Scott explaining why she believed a BZA hearing was required in this instance.⁵³ On June 1, 2023, Director Bell acknowledged receipt of Ms. Philson's email, but still insisted that she sign the letter approving the restaurant's request for site plan without going before the BZA.⁵⁴ Ms. Philson signed the letter on June 1, 2023.⁵⁵

III. Analysis and Findings

In addition to Ms. Philson's interview, the OIG interviewed BSEED Building Inspector and Plan Reviewer Sherita Elliott, BZA Director James Ribbron and BSEED Director Dave Bell regarding their knowledge and understanding of the City's Zoning Ordinance requirements and how it applies to addressing the restaurant's parking deficiencies. The OIG notes that the statements made by Ms. Elliott and Mr. Ribbron were consistent and confirmed Ms. Philson's statements.

Sherita Elliott

Ms. Elliott works with Ms. Philson in the BSEED Zoning Section, where she attends special land use hearings and drafts decision letters to applicants.⁵⁶ Ms. Elliott stated that interpretations of the Zoning Ordinance must come from the BSEED Zoning Section while

⁴⁶ OIG Interview of Jayda Philson dated October 23, 2023. See also, email correspondence from Jayda Philson to Dave Bell and Raymond Scott dated June 1, 2023.

⁴⁷ 9 divided by 16=56%

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Email correspondence from Jayda Philson to Dave Bell and Raymond Scott dated June 1, 2023.

⁵⁴ Email correspondence from Dave Bell to Jayda Philson and Raymond Scott dated June 1, 2023.

⁵⁵ OIG Interview of Jayda Philson dated October 23, 2023.

⁵⁶ OIG Interview of Sherita Elliott dated October 31, 2023.

interpretations of the Building Codes come from Director Bell.⁵⁷ According to Ms. Elliott, she became familiar with the restaurant sometime in 2020, when she was assigned to inspect the complaints about loud noise coming from a party in the restaurant.⁵⁸ During her inspection, Ms. Elliott observed that the restaurant had a lot of traffic and the music was loud.⁵⁹ She took pictures and documented her findings, which determined that the restaurant was operating illegally without the appropriate permit.⁶⁰ As such, BSEED issued correction violations to the restaurant based on this finding. Ms. Elliott also noted at the time that there was no room for parking.⁶¹ Ms. Elliott further stated that she understood the restaurant had been going through the process of applying for a special land use hearing to establish the appropriate use and there was a lot of opposition from homeowners because of the loitering and loud music in 2020.⁶²

According to Ms. Elliott, she is familiar with the City's Zoning Ordinance. The OIG presented the issue of the restaurant's parking deficiencies to Ms. Elliott and she confirmed Ms. Philson's assessment that she believed the restaurant had to appeal to the BZA to obtain a waiver for deficient parking spaces.⁶³ Ms. Elliott noted that a lot of businesses on Livernois had to go through the BZA to obtain waivers for their parking deficiencies, and questioned why the Good Times restaurant should be treated any differently.⁶⁴ She stated that Director Bell cannot pick and choose who goes before the BZA to obtain a waiver or a variance.⁶⁵

James Ribbron

James Ribbron is the current Director for the BZA and has held the same position for over 10 years. As such, Mr. Ribbron is very familiar with the details of the City's Zoning Ordinance.⁶⁶ Mr. Ribbron confirmed that all applicants for variances must first go through BSEED before they can appeal BSEED's decision and obtain a variance from the BZA.⁶⁷ According to Mr. Ribbron, BSEED interprets the Zoning Ordinance and enforces compliance of the ordinance, while the BZA handles the appeals.⁶⁸

According to Mr. Ribbron, the Zoning Ordinance has specific rules about what matters can be waived by the BSEED and BSEED cannot supersede the requirements of the Zoning Ordinance or deviate from it.⁶⁹ Once BSEED makes the determination of what variance is needed based on the Zoning Ordinance, they can only make a 10% administrative adjustment.⁷⁰ Anything further than

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ OIG Interview of James Ribbron dated November 17, 2023.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

that is the point where the BZA is triggered.⁷¹ We note Mr. Ribbron’s statement pertaining to 10% administrative adjustment is consistent with Ms. Philson and Elliott’s statements.

According to Mr. Ribbron, 99% of the time, the BZA makes the determination to waive the deficiencies and generally grants the appeal.⁷² However, there is an exception, where the community makes complaints to the BZA that parking is an issue and has become detrimental to the community.⁷³ In such instances, the BZA will take the complaints from the community into consideration in making its final determination.⁷⁴

The OIG presented a hypothetical scenario with the same parking deficiency issue that Good Times had in this instance without identifying the restaurant to Mr. Ribbron.⁷⁵ He responded with the same conclusion that Ms. Philson and Ms. Elliott drew in that the restaurant had to go to the BZA to receive a waiver for the deficient parking spaces.⁷⁶ This is consistent with the language in the ordinance.

Dave Bell

In his role as the Director of BSEED, Director Bell administers and enforces the processes relating to the City’s building code, electrical code, and mechanical code.⁷⁷ He also oversees the plan reviews and inspection hearings.⁷⁸ Director Bell acknowledged that he understands that the Zoning Ordinance allows for BSEED to make certain decisions to approve applicants’ variances and the BZA reviews requests for variances and decides whether or not to grant them.

Director Bell admitted that Ms. Philson did advise him that the restaurant’s parking deficiencies should be addressed before the BZA. However, he claims that as the director, he made a judgment call to waive the parking deficiencies without going before the BZA because the restaurant had already been using the outdoor patio for food, alcohol and cigars for over a decade.⁷⁹ Director Bell further noted that BSEED had issued several certificates of compliance and certificates of occupancy⁸⁰ to the restaurant during that time so they would not need an additional variance for parking.⁸¹ According to Director Bell, sending the restaurant to the BZA would have caused the restaurant more harm than good because the restaurant would have to pay additional BZA fees for something they have already been doing.⁸² In addition, there would have been a good chance that the variance would have been denied by the BZA, so he did not want to put the City at risk of a lawsuit.⁸³ Director Bell recalled that, in the past, the restaurant had threatened to sue the

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ OIG Interview of Dave Bell dated December 7, 2023.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ The OIG is not clear whether BSEED checks for zoning issues and deficiencies like parking when they issue these certificates.

⁸¹ OIG Interview of Dave Bell dated December 7, 2023.

⁸² *Id.*

⁸³ *Id.*

City because they felt that they were being harassed by BSEED’s inspectors for multiple noise complaints.⁸⁴

According to Director Bell “they were going to use the patio no matter what”, whether it was for alcohol, food or smoking.⁸⁵ He explained that the parking spaces had not been an issue for the many years the restaurant had been using the patio, so their request to add the cigar bar should not have an impact on the parking situation.⁸⁶ Director Bell further acknowledged that he does not know whether the Zoning Ordinance allowed for the decision he made, but he made a judgment call based on the restaurant’s existing use.⁸⁷ However, Ms. Philson, whose job requires her to be familiar with the ordinance, informed him the site plan required more than the 10% variance. This would exceed BSEED’s discretionary administrative authority for adjustments. She further noted that the variance issue must be addressed at BZA pursuant to the ordinance. This was done both verbally and in writing.

Director Bell claimed that when there is a disagreement between him and BSEED managers over decisions in the letters, he generally listens to them and sometimes changes his mind, but in this case, Ms. Philson did not change his mind.⁸⁸ Director Bell further stated that he understood Ms. Philson’s position in black and white, but he had to make a judgment call based on the history of the restaurant’s dealings with BSEED. However, the parking assessment of the site plan review that Ms. Philson provided to Director Bell clearly states that the matter had to go before the BZA.

Lastly, Director Bell stated that he had met the owners of the restaurant on several occasions, and they used to call him a lot.⁸⁹ In addition, he stated that he has no personal connection with the owners of the restaurant. Director Bell stated that none of the owners are his relatives, and he is not friends with the owners.⁹⁰

IV. Conclusion

The OIG concludes that based on our understanding of Sections 50-4-122 and 50-4-131 of the City’s Zoning Ordinance and on the evidence reviewed as referenced above, Director Bell did not have the authority to waive the parking deficiencies for the restaurant. As part of the process of approving site plans for applicants, Director Bell routinely relies on the zoning managers and the zoning team to review and apply the Zoning Ordinance to the circumstances of the application. In this instance, Ms. Philson and her team applied their expert knowledge of the Zoning Ordinance to the facts of this case and determined that the restaurant would have to appeal to the BZA to obtain a waiver of the deficiency in parking before BSEED could approve the application.

The Zoning Ordinance in this instance does not provide Director Bell with express or

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ The OIG confirmed this information to be accurate through independent research.

implied authority to make a discretionary judgment call that may contradict the plain language of the ordinance. In fact, the Zoning Ordinance provides such discretionary authority to the BZA to address parking deficiencies. Moreover, Ms. Philson, Mr. Ribbron and Ms. Elliott all agreed that BSEED does not have the authority to supersede the Zoning Ordinance.

The OIG found that Director Bell did not have any personal interest in the restaurant or receive any financial benefit from waiving the parking deficiencies, however, by overreaching his authority, he created an appearance of preferential treatment. Although Director Bell's concern for potential lawsuits is understandable, it is not a reason to overreach his authority in violation of an ordinance. Moreover, by approving the restaurant's application without requiring the restaurant to go through the BZA process, he effectively usurped BZA's authority. This is problematic, as anyone who wishes to bypass BZA can go directly to the BSEED Director to have their site plans approved. Such an exception would create a dangerous precedent. Therefore, the OIG concludes Director Bell abused his authority in this instance.

V. Recommendation

The OIG makes the following recommendations:

1. Director Bell should consult the City of Detroit Law Department to correct BSEED's approval of the restaurant's application to add a cigar bar which was made in error and allow the restaurant to go through the BZA process.
2. BSEED should consult the Law Department and the Planning and Development Department when there is an internal dispute to ensure their decisions on variances are in line with the City's Zoning Ordinance.
3. The Mayor's Office should issue appropriate discipline to Director Bell.

These recommendations are being made to prevent similar situations from occurring in the future that could potentially expose the City to further liability.

VI. Evidence Reviewed

1. Interviews

1. Dave Bell, Director BSEED
2. Sherita Elliott, Building Inspector/Plan Reviewer BSEED
3. Jayda Philson, Zoning Manager 1 BSEED
4. James Ribbron, Director BZA

2. Documents

1. May 15, 2023 Site Review Plan Letter.
2. June 1, 2023 Site Review Plan Letter.

3. Zoning Ordinance Sections 50-2-21, 50-3-302, 50-4-122(1)(2), 50-4-131, 50-14-7.
4. Decision Letter for BSEED Case No. 06-09.
5. Decision Letter for BSEED Case No. SLU2020-00070.
6. Decision Letter for BZA Case No. 85-19.
7. Emails from Jayda Philson to Dave Bell and Raymond Scott dated June 1, 2023.
8. Emails from Jayda Philson to the OIG.
9. CLEAR Data on Good Times restaurant, Dave Bell, Ken Moody, KM Consulting, and Darla Holdings, Inc.