

# **Allentown**

*435 Hamilton Street  
Allentown, Pa. 18101*



## **Minutes - Final**

**Tuesday, August 29, 2017**

**1:00 PM**

**Council Chambers**

## **Nuisance Abatement Board of Appeals**

**Roll Call: Assistant Chief Reinik, Candida Affa, Bill Harvey, Mario (Rigo) Peralta**

**Discussion on 1101 Hamilton Street, The View, and points assessed.**

Assistant Chief Reinik, Chairman of the Nuisance Abatement Board of Appeals called the meeting to Order and introduce the fellow Board Members.

Chairman of the Board discussed the purpose of the hearing, which was the Appeal of The View, an after-hours nightclub, and the assessment of twelve (12) points against them. Chairman asked fellow Board Members if they had any conflicts with hearing the testimony. All Board Members stated no conflicts.

Ground rules for the hearing were discussed. It was determined that the testimony from the City Officers who responded to the three incidents in question and who assessed the points would speak first. Following the Testimony of the Officers, the Board was permitted to ask questions and then Counsel for the View was permitted to cross-examine the Officers testimony. The Board was permitted to ask any further questions of the witnesses after the cross-examination of the witnesses.

After hearing all testimony and cross-examination of the Police Officers, Counsel for The View was permitted to present their testimony, witnesses and persons from the Public with The Board being able to ask questions. There was no sworn testimony to be presented.

Attorney John P. Karoly, III, Counsel for The View and Attorney Glennis L. Clark, Counsel for 1101 HBC, LLC, the property owner, introduced themselves and questioned The Board on why only four of the five members were present. It was discussed that the fifth member had a conflict and recused themselves from the hearing. It was discussed that a Court Stenographer was present to take a record of all testimony.

Captain Stephen Vangelo of the Allentown Police Department presented his opening statement with Counsel for the View and 1101 HBC, LLC objecting to various statements made and it was determined that the testimony from the three officers who were at the incidents in question should be presented.

The testimony of Officer Andrew Holvek was presented for his response to a call on June 17, 2017 at 04:01 hours for a disturbance at 1101 Hamilton Street. The Officer testified that a phone call had come from one of the security guards within the night club that a fight had broken out and had continued out on the streets in front of 1101 Hamilton. According to the call

received, pepper spray had been used by the security guards on some of the patrons. Upon his arrival at the scene the Officer testified that he could see multiple people fighting in the streets in front of 1101 Hamilton, as he arrived he testified that many of the people who had been fighting fled in multiple directions. He advised fellow officers responding to the scene the direction of some of the people who had fled and spoke with security. No witnesses or patrons stayed to speak with officers.

Attorney Karoly reviewed the incident report that Officer Holvek had used to testify and cross-examined him on what he saw when he arrived at the scene and whether or not any individuals had been charged at the scene if any individuals had been interviewed at the scene. It was asked if Officer Holvek's arrival was a call out or a routine patrol and it was determined that it had been a call out.

Attorney Glennis Clark cross-examined the Officer as to whether security for the club had identified any of the individuals who had been inside of the club and if he had seen any individuals exiting the club.

Board Member, Candida Affa, further questioned Officer Holvek on who had notified the police of the disturbance, and where it had originated.

Attorney Karoly questioned Officer Holvek if he had advised anyone at the Club if they should have done anything different when they dispersed people out of the club. Officer Holvek's response was that he was unaware of the policies and procedures of the night club and that he did not believe it was his job to tell a security officer how to do their job.

Attorney Clark questioned if anyone at the club had requested assistance from the Police because they had been pepper sprayed. Officer Holvek advised no one had requested help.

Board Member, Bill Harvey, asked if the complainant who called the Police had identified himself. Officer Holvek advised that a person who identified himself as Sam Giovanni called in the complaint.

Chairman of the Board requested clarification on how many people the Officer saw when he arrived at the scene of the incident. For clarification purposes he confirmed that the people Officer Holvek saw were isolated to the front of 1101 Hamilton and not other blocks of Hamilton Street.

Board Member, Candida Affa, questioned if there are any other bars or clubs in that immediate area, Officer Holvek confirmed that there are not.

Officer Michael Torres, the second City witness, presented his testimony

for the second incident that occurred on June 25, 2017 at 4:50 a.m. He responded to a disturbance that was called in by one of the dispatchers for an incident that was viewed on the 11th and Hamilton camera. Upon his arrival on Hamilton Street he saw two groups outside of the nightclub that appeared to be arguing and could be heard arguing. Along with the help of additional officers, Officer Torres dispersed the two groups.

Board Member, Mario Peralta, asked if the Officer had witnessed any physical altercations between the two groups of people. Officer Torres testified that he had not seen any actual fighting but that there was a lot of back and forth posturing between the two groups.

The video footage from the 11th and Hamilton Camera was shown.

Board Member, Mario Peralta, questioned if the area directly across from the view is both commercial and residential. It was confirmed by the other Board Members that there are homes located directly across from 1101 Hamilton Street.

Board Member, Candida Affa, asked if all of the video footage that was viewed was prior to Officer Torres arriving upon the scene. He confirmed that it was prior to his arrival. Ms. Affa also questioned that at any point after his arrival on the scene did Officer Torres see any of the security from the club. He replied he did not see any of the security guards from the club.

Attorney Karoly cross-examined Officer Torres and asked him what time the club closes. Officer Torres replied 5:00 a.m. Mr. Karoly further questioned if the Officer was aware of the hours of this specific club. Mr. Karoly asked if Officer Torres had seen any of the patrons leaving the club. Officer Torres responded that was where they had been filtering out. Further questions were asked if any noise was heard by a nearby police sub-station on 10th Street and if any of the people at the scene had been interviewed. Further discussion was had on whether Officer Torres had actually seen the patrons leave the club or if the people in the street were standing outside upon his arrival.

Chairman of the Board requested Officer Torres to show on the television screen where the exact location of the club and the building at 1101 Hamilton were. Officer Torres responded by pointing out on the television screen where the club was, where the building was located.

The video footage was replayed in part upon the request of the Chairman clarify his questions concerning the location of the club, the exits to the club and the building.

Attorney Karoly asked if Officer Torres had been inside the building on the night of June 25, 2017, Officer Torres replied that he had not entered the building.

Attorney Clark further questioned what Officer Torres on what he witnessed and if the footage occurred prior to his arrival.

Attorney Karoly asked if any arrest were made at this incident. Officer Torres confirmed that no arrest had been made.

Chairman of the Board questioned Attorney Clark if all people who enter 1101 Hamilton Street must have a keycard to enter the building. He also questioned if The View is a private club that requires a keycard to enter. Mr. Clark responded he was unsure who the people were and what business they were conducting or even if they were inside 1101 Hamilton Street. He also stated that there are many businesses located inside the building at 1101 Hamilton Street.

The third witness for the City presented his testimony. Officer Stephen Madison responded to a noise complaint from a refused party. Officer Madison responded at 3:04 a.m on July 2, 2017 to the building located at 1101 Hamilton Street. Officer Madison parked his patrol car eastbound in front of the business he approached the business to which at that time heard loud Spanish music being played from the fifth floor of the building. He made contact with security and requested to speak to a business owner or a manager. The music was turned down and Officer Madison spoke to a woman named Pacheco at which time informed her that the loud music was a quality of life issue and that he would be issuing her a Sweep ticket for the violation.

Board Member, Candida Affa, asked how loud the music was in proximity to where the officer parked his car. He replied he was parked about a street width and a half from the building.

Attorney Karoly cross-examined Officer Madison. He asked if Officer Madison spoke Spanish, he asked if there had been prior warnings given to the club for loud music and he asked if the Officer had any equipment to measure the decibels of the music heard coming from the location. It was determined that the distance to which the music could be heard was about 20 feet from the building. The officer did not have any equipment to measure the noise level and while there had been previous warnings, the only one of concern regarding the immediate hearing was the one that occurred on July 2, 2017 for which the Sweep ticket was issued.

Attorney Karoly requested two minutes to confer with Attorney Clark and

then presented his testimony before The Board. He called upon his first witness, Eddy Pacheco, owner of The View Lounge. Mr. Pacheco testified that his establishment turns on the lights at 4:00 a.m. and that all of the patrons are out between 4:15 to 4:20 a.m. He stated that on the night of June 25, 2017, the View closed by 4:20 a.m. He said stated that he could tell establishment was closed because there were no cars on the street and the lights were out. He also confirmed that patrons are dispersed by security and that the doors are locked once all of the patrons have left.

The Chairman of the Board questioned what time the club closed and if the people in the video shown earlier were patrons who had been at The View that evening. Mr. Pacheco was unsure if the people in the video had been in the club.

Board Member, Mario Peralta, cross-examined Mr. Pacheco on how quickly patrons are escorted from the club. Mr. Peralta testified that many of the patrons leave prior to the lights being turned on.

Board Member, Cadida Affa, questioned on a typical Friday or Saturday night how many people are in the club. Mr. Pacheco replied that on a Friday night there can be 100 to 120 and on a Saturday night 150 to 160. Further questions were asked about how many security guards the club has. Mr. Pecheco replied that the club has a total of eight securities guards. Two are stationed downstairs with the remaining six upstairs. When it is closing time all of the security guards go downstairs to assist with patrons exiting the building.

Board Member, Bill Harvey, questioned Eddy Pacheco on whether or not he was aware of who Sam Giovanni was and whether he was employed at The View as one of the security guards. Mr. Pacheco said he did not know who Sam Giovanni was and he was not an employee at The View.

Board Member, Candida Affa, questioned Mr. Pacheco if he owned the building or the club. He confirmed he owned the club.

Mr. Karoly presented his arguement to The Board and entered as Exhibit 1 the three letters sent to Mr. Pacheco advising him that The View had assessed points on three separate incidents and that they were in violation of the Nuisance Abatement Ordinance. Exhibit 2 was entered which was the Appeal to The Board of the assessment of points. Mr. Karoly further argued that the Ordinance itself is violative of the Pennsylvania Constitution and that his client's rights were violated because improper notice and hearing were given to his clients. Mr. Karoly further went on to discuss how the Ordinance was broad and that the sections cited were not properly linked to the incidents and how the elements of public drunkenness and

disorderly conduct were not met by his clients. Mr. Karoly presented his closing argument on why he believes the the points should be removed, the incidents abated and the appeal should be granted.

Mr. Clark presented his closing arguments on why his client, the property owner, should not have been assessed points and that the statute is overbroad and burdensome to his client and creates an undue fairness to his client. He his final statement was that it would be fair and just to grant Mr. Sigmund, the property, his Appeal.

**Adjourned: 2:25 pm**