

**ELIZABETHTOWN BOROUGH COUNCIL**  
**APPEAL HEARING**  
**February 16, 2017**  
**Minutes**

An appeal hearing for a second Notice of Violation of the Residential Rental Unit Licensing Program filed by Keith and Diana Myer for property at 59 East Park Street was held before Elizabethtown Borough Council on Thursday, February 16, 2017 at 7:15 p.m. at the Borough Office. The property is used as a residential rental unit and is within the residential rental program pursuant to Chapter 5, *Code Enforcement*, Part 3, *Residential Rental Units Regulations*.

Present were Councilmembers Phil Clark, Jeff McCloud, Tom Shaud and J. Neil Ketchum, Jr. Dr. C. Dale Treese and J. Marc Hershey were absent. Also present were Manager Roni Ryan, Assistant Manager Cindy Foster, Community Development Director Rodney Horton, Public Works Director Wayne Devan, Police Chief Jack Mentzer, Mayor Chuck Mummert, and Borough Solicitor Josele Cleary.

**Call to Order**

Council Vice President Ketchum opened the hearing and, as a court reporter was unable to be present, asked the Myers if they wished to proceed or if they preferred to continue the appeal to next month. The Myers agreed to waive the stenographer requirement and proceed with the appeal hearing at this time.

**Introduction of Appeal**

Community Development Director Horton provided a brief overview of the appeal of issuance of the second Notice of Violation for disruptive conduct at 50 East Park Street on December 9, 2016.

**Presentation of Appeal**

Diana Myer addressed Council asking that the citation be overturned. She submitted supporting documentation into the record that included a copy of the citation, photographs, definitions from the ordinance, and a summary of events of the evening in question. Myer then made the following statements:

1. The only complaint was the one filed by the complainant, the mother of a toddler who was awakened by the noise.
2. This complainant has made repeated calls to the police concerning noise at the property.
3. There were no actual witnesses to verify that the toddler was awake.
4. The tenants provided text information to the complainant to use to contact them if she felt they were being too loud.
5. The homes on East Park Street are in very close proximity to each other allowing sound to easily travel across property lines.
6. There is no documentation from the police department indicating that noise could be heard 50' or more from the property.
7. The responding police officer stated he did not hear any sounds until the occupants were leaving the property.
8. There was no party at the property that night; there were less than 8 people present who were leaving to go to another party.

9. The tenants were provided misinformation and felt they had to plead guilty.
10. Tenants also have rights to live peaceably without harassment by neighbors.

Myer responded to a question about occupancy indicating that tenants at this property include Brandon Wissler, Daniel Bednarik, and Cody Larkin. Myer then called the following witnesses:

1. **Brandon Wissler, 59 East Park Street**, reviewed the timeline of events noting there were less than eight people present in addition to two tenants, all of whom were leaving around 10:15 p.m. to visit friends. On his way out, Wissler met Officer Riehl coming around the corner and discussed the situation and options with him at that time. Wissler asked who the complainant was so he could apologize but Riehl informed him that the name would only be released if the complaint was pursued, which it was. Wissler also asked if they could fight the citation to which he was informed the fine could be appealed but not the ordinance. They received the summons and a \$50.00 fine just before break. When they went to the office they were told the fine would be more than \$50.00 but less than \$200.00. Wissler stated that he was also told they had to sign a guilty plea to get the exact figure for the fine. After calling the office on December 19<sup>th</sup> they discovered the fine was \$205.50. They received a subsequent letter indicating the fine was \$134.50, the fourth figure they were given. At that time they were told they could fight the ordinance but they had to pay the fine that day or face a warrant for arrest. They paid the fine on December 19<sup>th</sup> and signed the guilty plea before leaving for break.

Horton asked for clarification of the timeline. Wissler stated they signed the guilty plea on December 16<sup>th</sup>.

Cleary asked if they appealed to the Lancaster County Court of Common Pleas for the fine issued or if they consulted an attorney. Wissler indicated no to both questions. Cleary outlined the timeline from a document she downloaded from the Administrative Offices of Pennsylvania which indicated the summary was issued December 12<sup>th</sup>, guilty plea December 19<sup>th</sup>, order/sentence December 19<sup>th</sup>. She explained that the fine totaled \$134.50, \$50.00 of which was for violation of the ordinance with the remaining \$84.50 for state and county court costs.

Ketchum clarified that this appeal is only for the disruptive conduct report—Council has no jurisdiction over fees. Cleary reiterated that this hearing is on the residential rental unit ordinance violation and disruptive conduct only—Council cannot consider the noise ordinance or fees. Myer concurred with this clarification.

2. **Jamison MacMain, 57½ East Park Street**, stated he lives upstairs and shares a common wall with Wissler and his roommates. MacMain was home at the time of the incident and did not think his neighbors were home until he ran into Wissler and Riehl in the yard.

Myer presented concluding remarks noting they are disputing the violation as it does not meet the 50' requirement of the noise ordinance. Further there was no party that evening; the tenants were meeting at the property to move on to other friends. She requested Council please reconsider the second Notice of Violation for disruptive conduct.

### **Presentation of Arguments**

Horton spoke on behalf of the Borough noting the purpose of the ordinance is to protect the positive quality of life for all residents. He read the definition of disruptive conduct into the record as follows:

#### **§302. Definitions**

**DISRUPTIVE CONDUCT**—Any act by an occupant of a residential rental unit or by a person present at a residential rental unit involving public drunkenness, consumption of an alcoholic beverage in public, public urination or defecation, the unlawful deposit of trash or litter on public or private property, damage to or destruction of public or private property, the obstruction of public roads, streets, highways or sidewalks, interference with emergency or police services, unreasonable noise as defined by the Borough Noise Nuisance Ordinance, codified as Part 2, Noise Nuisance, of Chapter 10, of the Code of Ordinances, use of profane or obscene language or gestures, indecent exposure, fighting or quarreling, or any other act defined as disorderly conduct in the Pennsylvania Crimes Code or any act prohibited in Chapter 10, Part 2 of the Borough's Code of Ordinances or which otherwise injures or endangers the health, safety or welfare of the residents of the Borough residing in the neighborhood or vicinity of the gathering. It is not necessary that such conduct, action, incident or behavior constitute a criminal offense, nor that criminal charges be filed against any person in order for said person to have perpetrated, caused or permitted the commission of disruptive conduct, as defined herein. Provided, however, that no disruptive conduct shall be deemed to have occurred unless a codes compliance official or a police officer shall investigate and make a determination that such did occur, and keep written records, including a disruptive conduct report, of such occurrences. The occupant and the owner and, if applicable, the manager shall be notified of any such occurrences, in writing.

Horton went on to explain the penalties and their relation to Chapter 10, *Health and Safety*, Part 2, *Noise Nuisance*. He then reviewed the procedure when infractions occur noting that after the third time the owner, barring successful appeal, must evict tenants in question within ten days. The Borough's position in this case is that the code official did not err in issuing the second Notice of Violation and, further, the Borough believes the violation should not be overturned but should stand. Horton then called the following witnesses:

1. **Jack F. Mentzer, Elizabethtown Borough Police Chief**, outlined the standard procedure when an officer responds to a noise complaint noting the officer goes out and talks to witnesses, addresses quality of life issues, and attempts to abate the noise. The first call results in warning letters to all tenants of the property, regardless of whether all were present during the incident. The second call may result in a citation at the officer's discretion. If there is no evidence when the officer arrives, issuance of a citation depends on the circumstances observed on site such as whether the tenants appear to have been drinking or could have been sleeping. The police try to act as neutral observers to determine if a violation exists. The department handles the criminal side of the investigation and a redacted report is sent to the codes office in the case of rental ordinance violations. Fact-finding is the responsibility of the responding officer and also relies on the complainant. The December 10<sup>th</sup> letter sent to all four tenants of 59 East

Park Street was added to evidence. The warning letter of October 2016 was also entered into the record.

Mentzer reviewed the residential rental ordinance regulations as they relate to the noise ordinance and explained the definition of prohibited acts and the importance of *or* versus *and* when outlining the restrictions. The citations issued to the four tenants were then entered into the record along with the printout from the appellant court with the guilty pleas.

Myer raised the following questions:

1. Whether or not letters were sent to the property owners as well as to the tenants, to which Mentzer responded that the only time property owners would receive a copy would be if there was a criminal action.
2. What the relevancy of sleep when noting circumstances on site was, which Mentzer explained is an example of observations the officer would make to help determine if the complaint is legitimate.
3. Whether any other neighbors had called to complain which, to the best of Mentzer's knowledge, none had.
4. If it is standard operating procedure to verify that sound can be heard 50' from the property line. Mentzer stated he felt there is no need for this verification as the ordinance does not require it and it is therefore irrelevant. Myer and Mentzer disagreed on the definition in the ordinance.

McCloud asked if there is discretion on whether to follow the criminal path or whether to send the matter to the code official for rental ordinance violations. Mentzer stated if it is criminal in nature it goes to codes with the exception of domestic violence situations.

Horton requested clarification on the number of tenants. Mentzer reported there were four people living at 59 East Park Street on both occasions. Myer reported it was three plus her son who commutes but stays there often.

2. **Officer Gregory Riehl, Elizabethtown Patrol Officer**, reported he was called out at 10:17 p.m. on December 9<sup>th</sup> and arrived at 10:25 p.m. parking two houses back. He noted that the resident at 61 East Park Street had filed the complaint. Riehl made his way up to the residences and heard someone state very loudly, "get out of my house." Bednarik admitted to Riehl that there was a party but they were in the process of shutting it down.

Myer asked what Riehl heard when he got there. He responded that dispatch reported based on the complaint, but he did not hear music when he arrived. He noted that Bednarik admitted there was a party, and he saw people leaving. Riehl reported that two months earlier he had responded to the same complaint at this property. The people exiting were not loud, but Riehl heard yelling from the back of the house on approach.

Myer wondered why all this information was not on the summary to which Riehl reported that space on the form is limited. She asked if he was 50' away when he heard the yelling, which he indicated he was.

Myer asked Mentzer for clarification on whether the 50' rule applied. Mentzer explained that it is an *or* versus *and* issue. If any of the conditions are met, the citation stands.

Clark asked if Riehl heard noise when he first got out of the car to which he responded that he heard the front door slam and yelling as he was walking down the sidewalk toward the property.

McCloud asked if discretion is allowed on code violations or disruptive conduct. Riehl explained officers read the report and then use discretion to determine if it merits notice.

Ketchum questioned the timing of the notice and the guilty pleas.

Myer asked why this rose to the level of a second Notice of Violation. Riehl stated that disruptive conduct was the primary factor. Myer asked how many of these calls are received in the Borough to which Riehl reported he did not know the exact number but it varies. Myer stated she realizes that if the tenants are loud they would get a citation and have to pay the fine. This is what happened with the first call in October, but they've been quiet since that time.

Horton's closing comments centered on the fact that the central question is whether the code official acted appropriately. He summarized the testimony to include review of protocols outlined by Chief Mentzer, the complaint, the dispatch, and letters issued. Horton expressed his belief that the police department and code official acted appropriately and recommended the second Notice of Violation be sustained and the appeal denied.

Cleary reported that she will prepare a draft decision for Council's review. Myer questioned her further appeal rights. Cleary responded that she cannot provide legal advice, but in general the matter could be appealed to the Lancaster County Court of Common Pleas.

Ketchum closed the appeal hearing at 8:19 p.m. and entered executive session, at Clark's request, to consult with the solicitor.