

**STATE OF INDIANA  
BEFORE THE ALCOHOL AND TOBACCO COMMISSION**

<b>IN THE MATTER OF</b>	)	
<b>THE PERMIT OF</b>	)	
	)	<b>PERMIT NO. RR49-28421</b>
<b>PNC BANCORP, LLC</b>	)	
<b>CLUB SYLLOWETT</b>	)	
<b>6704 E. 38<sup>TH</sup> STREET</b>	)	
<b>INDIANAPOLIS, IN 46226</b>	)	
<b>Applicant.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Petitioner, PNC Bancorp, LLC d/b/a Club Syllowett located at 6704 E. 38<sup>th</sup> Street, Indianapolis, Indiana (“Applicant”) filed a renewal of a type 210 beer, wine and liquor permit with the Alcohol and Tobacco Commission (“ATC”), permit number RR49-28421 (“Permit”). Club Syllowett’s application for the renewal of the Permit was assigned to the Local Alcoholic Beverage Board of Marion County (“Local Board”). The Local Board held a hearing on May 15, 2017 and voted 4-0 to deny the Permit. On June 20, 2017, the Commission adopted the recommendation of the Local Board and denied the renewal for the Permit.

Applicant filed a timely Petitioner’s Objection and Request for Administrative Review and Hearing of the Commission’s Denial of Application. No remonstrators petitioned to intervene in the appeal of the Permit.

The matter was set for hearing on October 25, 2017 (“ATC Hearing”) before Hearing Judge David Rothenberg (“Hearing Judge”) and at that time, witnesses were sworn, evidence was heard, and the matter was taken under advisement. The Hearing Judge also took judicial notice of the entire contents of the files related to the Permit in this case (“ATC File”). Having

been duly advised of the facts and law at issue, the Hearing Judge now submits these Proposed Findings of Fact and Conclusions of Law to the Commission for its consideration.

## **II. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant in this cause:
1. Pearl Douglas, owner of Applicant.
- B. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:
1. None.
- C. The following individuals testified before the Local Board against the Applicant in this cause:
1. Sgt. William Carter, IMPD;
  2. Officer Mark Klonne, IMPD East District.
- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause (One exhibit, a folder, was submitted with several tabs. The below refers to the tab order and the color of tab in the ATC File) :
1. First tab, Red – Findings of Fact and Conclusions of Law dated August 16, 2016, with an accompanying list of changes Applicant proposed to make;
  2. Second tab, Green – IMPD Police Report dated March 11, 2017;
  3. Third Tab, White – IMPD Police Report dated March 11, 2017; and
  4. Fourth Tab, Pink – Copies of flyers concerning events taking place at Applicant's place of business.

## **III. EVIDENCE BEFORE THE COMMISSION**

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:
1. Pearl Douglas, owner of Applicant;
  2. George Douglas, owner of Applicant;
  3. Janice Boyd, employee (floor manager) of Applicant; and
  4. Davey Neal, Attorney for Applicant.

B. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause (Note that all exhibits are bound in a single folder with tabs marked from 1 through 16. Each tab is referred to below by its tab number)):

1. Exhibit 1 – Security Investments;
2. Exhibit 2 – Photos of Premises;
3. Exhibit 3 – Phone Records Illustrating Attempts to Contact IMPD;
4. Exhibit 4 – Photos of Security Team and Ads for Security Staff;
5. Exhibit 5 – Photos of Patrons and Posts by Patrons in Support of Applicant;
6. Exhibit 6 – Letters and Posts from Organizations Supporting Applicant;
7. Exhibit 7 – Examples of Contracts for Events Held at Applicant Premises;
8. Exhibit 8 – Examples of Attempts of Applicant to Promote Business;
9. Exhibit 9 – Example of Competitors’ Attempts to Promote Business;
10. Exhibit 10 – Example of DJ OG Slim’s Community Involvement;
11. Exhibit 11 – Sworn Testimony from Applicant Employee as to Events on March 11, 2017;
12. Exhibit 12 – News Reports of Recent Criminal Activity;
13. Exhibit 13 – News Reports of Criminal Activity Located Outside of Other Permitted Premises;
14. Exhibit 14 – Excerpt from *Alcoholic Beverage Commission v. River Road Lounge*, 509 N.E.2d 656 (Ind. Ct. App. 1992);
15. Exhibit 15 – Excerpt from *Hanley v. Eastern Indiana Investment Corp.*, 706 N.E.2d 576 (Ind. Ct. App. 1999)
16. Exhibit 16 – Filed Copy of *Goodwin v. Yeakle’s Sports Bar and Grill, Inc.* (No. 27S02-1510-CY-627)

C. The following individuals testified before the Commission against the Applicant in this cause:

1. Sgt. William Carter, IMPD.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. Exhibit 1 – IMPD Police Report dated August 19, 2017;
2. Exhibit 2 – IMPD Police Report dated October 15, 2017;
3. Exhibit 3 – IMPD Police Report dated October 23, 2017; and
4. Exhibit 4 – Flyers Advertising Events at Applicant’s Premises.

#### IV. FINDINGS OF FACT

1. PNC Bancorp, LLC d/b/a Club Syllowett, 6704 E. 38<sup>th</sup> Street, Indianapolis, Indiana, Permit number RR49-28421 is an applicant for a renewal of a type 210 beer, wine, and liquor permit with the Alcohol and Tobacco Commission. (ATC File).
2. The Applicant meets the qualifications to hold a permit pursuant to Ind. Code § 7.1-3-4-2(a)(1, 3-13). (Local Board Hearing; ATC Hearing).
3. Applicant has never been cited by the Indiana State Excise Police. (ATC File).
4. Applicant has never been cited by the IMPD as being a public nuisance (ATC Hearing).
5. Applicant was denied renewal in 2015, by both the Local Board and the Commission, but appealed that decision in 2016, and was awarded a one-year renewal. (ATC File, Local Board).
6. Within the 2016 recommendations, the ATC cited three factors that the Local Board could consider, among other things, in the 2017 Local Board Hearing for renewal. (Local Board Hearing, ATC Hearing, ATC File) They were:
  - i. Whether the Applicant has continued whatever actions they were taking that had resulted in a decrease of police runs to the premises;
  - ii. Whether the Applicant had provided additional security after 1:00 am in the parking to in order to curb any outside-the-club disturbances; and
  - iii. Whether the Applicant had met with IMPD regarding any proposed actions that could have been taken to decrease calls to the premises.
7. Upon approval for a one-year renewal in 2016, Applicant constructed a list of tasks she wanted to accomplish in order to be successful in her next renewal. (ATC Hearing).

These included:

- i. Hiring additional security;
- ii. Requiring security to scan all patrons using provided Garrett Metal Scanners;
- iii. Require security officers to wear identifying clothing;

- iv. Close club at 2:30 am;
- v. Discontinue in/out privileges for patrons;
- vi. Close patio at 2:30 am;
- vii. No loitering in parking lot, in or out of cars;
- viii. Dress code being enforced;
- ix. Promote in good taste for an overall positive patron attraction;
- x. Check IDs more closely to make sure all numbers match;
- xi. No carry-ins of bottles, cans, or weapons;
- xii. Notify IMPD if disturbances occur or may occur that the staff cannot handle;
- xiii. Add additional lights to the outside of the building;
- xiv. Applicant to acquaint themselves with new business owners in the area;
- xv. Remove disruptive patrons from club/contact police if situation escalates;
- xvi. Speak with city officials to increase street lighting and patrols.

- 8. Applicant has discontinued the use of “promoters” in a technical sense and is now engaged in a system whereby an organization or person desiring to hold an event at the club must fill out an application and submit a deposit. (ATC Hearing).
- 9. All events are reviewed and approved or denied by Pearl Douglas and all promotional materials are produced by Ms. Douglas. (ATC Hearing).
- 10. Ms. Douglas has made several attempts to contact IMPD and was told that either someone would return her call or that meeting with her concerning her club was not a priority at the moment. (ATC Hearing).
- 11. Applicant has completed or attempted to complete the above listed items under point Seven (7). (Local Board Hearing, ATC Hearing).
- 12. The Findings of Fact and Conclusions of Law from 2016 state, in part:
  - “the Applicant should be awarded a one-year renewal with the Applicant appearing, regardless of the presence of remonstrators or whether or not violations have been issued after that period, to evaluate changes in the number of police runs to the address.” (ATC File).

13. On March 11, 2017, IMP was called out to the premises to respond to a “shots fired” complaint where, upon arriving, the IMPD officer witnessed a male firing a gun in the Applicant’s parking lot. (Local Board, ATC Hearing).
14. There are disputed facts concerning what preceded the arrival of IMPD on March 11, 2017. (Local Board Hearing, ATC Hearing). There are as follows:
  - i. IMPD reports indicate that an incident occurred on the dancefloor of the premises wherein the person firing the gun was stabbed, left the club, and fired shots in the parking lot; and
  - ii. Applicant states that no incident on the dancefloor occurred and that the staff had refused to serve the person due to potential future overconsumption and asked escorted him out to the lot after he became belligerent. It was then that the person fired the gun.
15. On August 19, 2017, one of the security people at the bar was punched in the face by someone in the lot, causing the victim to fall to the ground and summon IMPD. (ATC Hearing).
16. On October 15, 2017, IMPD responded to a call of shots fired at the premises. (ATC Hearing). The police report states:
  - i. A caller phoned IMPD to inform them that there was a shooting taking place at the club and her car had gotten shot;
  - ii. IMPD arrived and observed the car which had been allegedly shot on the premises did have bullet holes; and
  - iii. IMPD later responded to a call from Methodist Hospital where a victim with a gunshot wound who stated he had been shot in the lot of the premises.
17. On October 21, 2017, IMPD responded to a call of shots fired at the premises. (ATC Hearing). The police report states:
  - i. Upon arriving, officers located two subjects who were shot on the ground, next to the back door of the premises on the parking lot;
  - ii. The victims stated that they were being carjacked and shot by the assailant whom they described; and
  - iii. Shell casing were collected from the area.

18. All Findings of Fact within the 2016 appeal result have been noted and taken into account in these Findings of Fact and Conclusions of Law.
19. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

## V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Ind. Code § 7.1-1-2-2 and Ind. Code § 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code § 7.1-3-1-4.
3. The Commission is authorized to act upon proper application. *Id.*
4. The Hearing Judge may take judicial notice of the Commission file relevant to a case, including the transcript of proceedings and exhibits before the local board. 905 IAC 1-36-7(a).
5. The Hearing Judge conducted a *de novo* review of the appeal on behalf of the Commission, including a public hearing and a review of the record and documents in the Commission file. Ind. Code § 7.1-3-19-11(a); 905 IAC 1-36-7(a), -37-11(e)(2); *see also* Ind. Code § 4-21.5-3-27(d).
6. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noticed in the proceeding. 905 IAC 1-37-11(e)(2); Ind. Code § 4-21.5-3-27(d).
7. In determining whether to renew a permit, the Commission may consider whether the applicant has allowed the premises to become a public nuisance, or the scene of acts prohibited by the Indiana Penal Code. 905 IAC 1-27-2.

8. In determining whether to renew a permit, the Commission may consider whether the applicant refuses to comply with the provisions and the rules and regulations of the Commission. Ind. Code §7.1-3-23-5.
9. The Commission may reverse a local board's action in denying an application for a permit *only* if it finds that the local board's decision was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; or (d) without observation of procedure required by law, or unsupported by substantial evidence. Ind. Code § 7.1-3-19-11.
10. Police runs to an establishment are insufficient to show bad character unless it can be established that there is a nexus between the criminal conduct and the permittee's moral character. *Hanley v. Eastern State Inv. Corp.*, 706 N.E.2d 576 at 578 (Ind. Ct. App. 1999).
11. In order to deny a permit there must be a nexus between the criminal conduct and the applicant's moral character. For example, "[i]f the record showed that the permit holder knew a certain drug dealer was utilizing its hotel to carry on drug trafficking, and took no steps to prevent it, this would allow an inference that the applicant was not of good moral character. The arrest of the same person for prostitution, in the permit premise, on numerous occasions would allow one to infer that the permittee was not of good moral character." *Id.*



12. In determining whether to renew a permit, the Commission may consider whether the licensed premises has become a public nuisance, or is the scene of acts or conduct which are prohibited by the Indiana Penal Code. *905 IAC 1-27-2*.
13. The elements for maintaining a public nuisance require that the permittee allows the licensed premises to become a public nuisance or be the scene of acts or conduct prohibited by the laws of the United States or Indiana. *Indiana Alcoholic Beverage Comm. v. River Road Lounge, 590 N.E. 2d 656, 658 (Ind. App. 1992)*. “Allow” has been construed by Indiana courts to mean “concede, consent to, and to grant.” *Id.* In light of such definition, the permittee must have direct or indirect knowledge of illegal activity on its premise. *Id.*
14. In this case, the Local Board based their decision upon the number and severity of police runs occurring at the Applicant’s location, the number of which has increased in the time between the Local Board hearing and the ATC hearing. (Local Board Hearing).
15. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

#### **IV. RECOMMENDATION**


The Applicant in this case operates Club Syllowett, a permittee with a three-way permit. Remonstrators have presented numerous police reports attributed to the Applicant’s address. In 2016, the Commission considered the Applicant’s appeal of the denial in 2015 and granted a one-year renewal, in which it recommended that the Local Board consider the number of police runs and incidents at the premises when evaluating whether or not to award the Applicant a renewal in 2017.

During the 2016 appeal hearing, all of the incidents that led to the Local Board's denial at that time took place outside of the premises. The Applicant claimed that they were unaware of these incidents and the Commission stated in the 2016 Findings put the Applicant on notice. The incidents occurring in 2017 appear to be under the same circumstances, though the March 11<sup>th</sup> 2017 incident originated in the bar, though the details between the police and the Applicant conflict. Incidents again took place in October of 2017 on the lot of the Applicant. However, as stated above, this time, the Applicants were on notice that these type of incidents occurred.

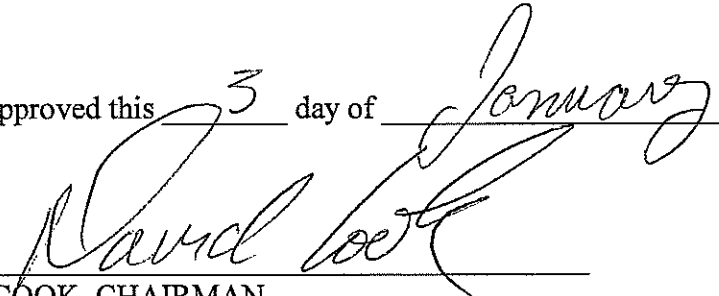
It appears that the Applicant has adopted many of the suggestions that the Commission made at the time. But it was clear in the 2016 findings that a renewal for the permit in 2017 was not totally contingent upon strict adherence to these recommendations. The incidents in March and October 2017 illustrate that the severity of incidents has not decreased and whatever business plan changes the Applicant has made have not been effective in curtailing the violence taking place outside of the premises. It is not enough for the Applicant to say they followed all of the Commission's recommendations – the criminal activities taking place outside (or inside) of the premises must cease, and they have not.

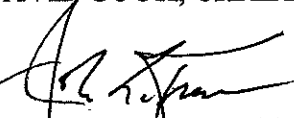
With these conditions, it is ORDERED AND DECREED that the application of PNC Bancorp, LLC d/b/a Club Syllowett located at 6704 E. 38<sup>th</sup> Street, Indianapolis, Indiana, permit number RR49-28421 for a beer, wine, and liquor retail permit is DENIED.

DATE: December 1, 2017

  
David Rothenberg, Hearing Officer

Approved this 3 day of January, 2018.

  
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DAVID COOK, CHAIRMAN

  
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JOHN KRAUSS, VICE CHAIRMAN

  
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DALE GRUBB, COMMISSIONER

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MARJORIE MAGINN, COMMISSIONER