

**RESOLUTION RENDERING A DECISION ON AN APPLICATION FOR LIQUOR
LICENSE TRANSFER FOR WEIS MARKETS, INC.**

Resolution #2017-22

FINDINGS OF FACT AND DECISION

The Board of Supervisors conducted a hearing at a special meeting of the Board on Thursday, August 10, 2017. During the hearing, the Board took testimony on the application of Weis Markets, Inc. ("Weis") to transfer a Restaurant Liquor License from the Borough of Strasburg, Lancaster County, to East Lampeter Township, Lancaster County, at a proposed location at the current Weis store at 1603 Lincoln Highway East, Lancaster, Pennsylvania, 17602, for the purpose of utilizing the license as part of its existing general grocery store. During the hearings, Weis submitted testimony through its attorneys and the Vice President of Weis in charge of real estate, Jack O'Hara. The Board of Supervisors determines that the following facts were established.

1. The license in question would be transferred from the Borough of Strasburg, Lancaster County, Pennsylvania.
2. Weis sought an existing license within East Lampeter Township over a two-year period.
3. The license in question is a restaurant liquor license.
4. The purpose of Weis obtaining the license is to enable Weis to sell beer and wine to go in generally the same manner as in other grocery stores, some owned by Weis and some by competitors.
5. The Weis representatives contend that the laws relating to the intermunicipal transfer of liquor licenses are designed to protect the health, safety and welfare of the community

and to encourage competition among retail providers of both alcoholic beverages and food and similar goods.

6. Weis currently has 54 stores in Pennsylvania which sell beer and wine.

7. In addition, Weis holds nine (9) liquor licenses in safekeeping.

8. The first Weis store to obtain a liquor license was located in Tannersville, Pennsylvania.

9. Mr. O'Hara was involved in the license acquisition for all the 54 Weis stores which obtained one.

10. None of the 54 stores sell distilled spirits.

11. In one of the 54 stores, that in Enola, Pennsylvania, there is a café bar at which consumption of beer and alcohol on the premises is encouraged.

12. The Enola location is, in the opinion of Mr. O'Hara, a different concept than the one proposed for the Township and is similar to an actual bar.

13. Other than the Enola site, Weis has no other facilities in which there is an actual bar.

14. All 54 of the Weis facilities which have liquor licenses offer beer and wine for take-out.

15. A patron may legally purchase beer or wine to consume on the licensed premises.

16. Each of the licensed Weis sites have specific licensed areas in which a patron may consume alcohol. Patrons are prohibited from consuming the alcoholic beverages outside the licensed area.

17. The typical Weis licensed area is approximately 5 percent of the retail area of the

whole store.

18. If approved, the East Lampeter Township licensed facility would similarly occupy about 5 percent of the area of the store.

19. In practice, approximately 1 percent of the sales of alcoholic beverages are consumed on the premises. The remaining approximate 99 percent of sales are for take-out purposes.

20. Weis arranges its licensed areas in a manner which does not encourage consumption on the premises. For example, there are no televisions, video games, table service or glassware available at the typical licensed Weis store.

21. In order to consume the beverage on the premises, the purchaser would have to drink the beverage out of a can or bottle.

22. In addition to Weis, other grocery and similar chains are commonly offering alcoholic beverages and obtaining licenses. Among those other chains are Giant, Wegmans, Shop Rite, Acme, Giant Eagle, Whole Foods and Price Chopper.

23. There currently are approximately 300 grocery and food service stores in Pennsylvania which have liquor licenses, of which 54 are held by Weis.

24. Weis maintains that its intent in obtaining a license is to remain competitive in the market place and offer services which its customers find helpful, much in the same way as grocery stores have relatively recently included pharmacies, fuel pumping facilities and banks.

25. Weis maintains that customer feedback for sites with liquor licenses has been positive, with customers sometimes asking why it took so long to obtain a license.

26. Weis representatives have found that the availability of alcoholic beverages not

only results in increased sales of the alcoholic beverages, but also in increased sales of ready-to-eat food.

27. Similar grocery stores having liquor licenses are located within three to five miles from the subject site.

28. The limits on sales to any one purchaser for a liquor license held by a retail food selling facility such as Weis is 192 fluid ounces of beer, which is approximately 2 six-packs of beer or 4 bottles of wine.

29. By Weis policy, there is a limit for consumption of beverages on the premises of 2 servings of beer or 2 servings of wine.

30. Weis maintains that it has a substantial and appropriate employee training program for addressing alcohol related policies and problems.

31. The hours of operation of the licensed facility would be 7:00 a.m. to 11:00 p.m. Monday through Saturday and 9:00 a.m. to 11:00 p.m. Sunday.

32. Among the Weis policies relating to sales of alcoholic beverages are the following:

A. Every purchaser would be required to produce evidence of age by means of an appropriate card.

B. The cards which would be accepted would include Pennsylvania driver's license, a passport or military identification card.

C. College identification cards and employer identification cards would not be accepted.

D. All identification cards would be reviewed by an appropriate scanner to

determine validity.

E. In addition, the cashier would input the date of birth of every prospective purchaser into the cash register device.

F. Only individuals who provide the proper identification would be sold alcoholic beverages.

G. All employees would be required to undergo responsible alcohol service training and responsible alcohol management.

H. Included in such training would be training in the detection of intoxication.

I. Included in the training would be training to detect potential third party sales – as an example, if an older person was in the presence of younger people in the group, other than obvious situations where minor children are accompanying their parents, the younger people in the group, in addition to the older person, would be required to show proper identification.

J. There would be video surveillance by at least 2 cameras in the transactional areas of the licensed premises.

33. The Weis representatives attempted to obtain a license within East Lampeter Township for several years – they did so by going through liquor brokers and making regular contacts with liquor license brokers in the area, but were unsuccessful.

34. Weis estimates that the capital cost of the café would be approximately \$350,000 and that there would be approximately \$1,000,000 in additional capital improvements made to the existing store facility.

35. In describing the likely impact of an inability to obtain a license, Weis

representatives indicated that the existing store would likely be less economically viable and less likely to receive capital improvements.

36. The Weis representatives maintained that among all the licensed premises which they operate, they have had only one citation in 10 years for a sale to a minor and that there have been 2 other technical violations for reporting or other posting requirements.

37. The proposed café would be located generally to the right of the existing entrance. Simultaneously, the existing pharmacy would be relocated within the facility.

38. Although there is a limit on the amount of items which may be purchased by any one customer at any one time, such customer could make his or her purchase, take his or her purchase to his vehicle or other storage area and then re-enter the facility to make another purchase.

39. Weis does not currently own the license in question; it has a contractual right to purchase the license.

40. Visually, the licensed café area would look like the store but would be visually separated by ballards and other cases or retail fixtures.

41. Wine and beer would be displayed on about 5 structures described as “gondolas.” In addition, cold cans and bottles of beer and wine would be located along the front wall.

42. In addition, seats for 30 customers would be located along the front wall.

43. The store area is approximately 55,800 square feet. The café would be approximately 3,190 square feet.

44. Although the license would permit Weis to sell distilled spirits, it would intend to sell only wine and beer.

45. The café facility would not have a separate entrance. The Weis representatives noted that most of the existing license facilities do have a separate entrance but that a separate entrance had, until recently, been required by the Pennsylvania Liquor Control Board and that the requirement of a separate entrance no longer applies.

46. Any patron of the store, including unaccompanied minors, would be physically able to enter the licensed café area.

47. Although Weis could install additional walls as a way to discourage other customers from entering the licensed area, they prefer not to do so.

48. The Weis representatives are unsure whether any additional parking spaces are needed.

49. The Weis representatives stated that if additional parking spaces were needed, Weis would go through the land development plan approval process with the township.

50. The Weis representatives do not anticipate substantial additional vehicle trips caused by obtaining a license. They maintain that by and large the increased sales result from more sales to those customers who would otherwise be customers of the food service facility rather than customers who would go to the store just to buy alcoholic beverages.

51. The Weis representatives maintain that any additional truck traffic would be de minimis and that deliveries would be made to the back door of the facility in the same manner as food and other supplies are delivered.

52. The kind of food which is typically purchased within the licensed café area includes sandwiches, pizza, salad bar, sushi and other prepared foods.

53. The Weis representatives indicated that there is not a specific time limit placed on

a customer within the licensed area.

54. When asked whether Weis would be willing to construct sidewalks along the Old Philadelphia Pike to connect the Harrisburg Area Community College facility with existing sidewalk, the applicant said that Weis would entertain the request but would make no commitment.

55. The Weis representative testified that there has been relatively little crime involved in the site and that he does not think that there is a full-time security guard.

56. The individual members of the Board of Supervisors, however, have personal knowledge that there have been substantial incidents of criminal conduct at the site, that there is a full-time security guard at the site currently and in the recent past and that there has been at least one criminal shooting at the site within the recent past.

57. The Township has, by resolution 2015-14, adopted a non-binding guideline for decisions on applications for intermunicipal transfers and economic development liquor licenses, which resolution sets forth a number of criteria which would be used to help evaluate proposed transfers. The resolution addresses both the total number of licensed establishments within the Township and the ratio of licenses per population, both within the Township and within neighboring municipalities.

58. Generally, the Pennsylvania Liquor Code establishes a quota of one license for the retail sale of liquor, wine and malt and brewed beverages for every 3,000 inhabitants. That quota is applied to counties but further reflects a general guideline.

59. Based upon the 2010 census, East Lampeter Township has 16,424 residents.

60. There are currently 18 active licenses, one pending license and one license being

held in safekeeping for a total of 20 licenses for premises within East Lampeter Township. Consequently, there is one active license for every 912 Township residents, one active or pending license for every 864 Township residents and one active, pending or license held in safekeeping for every 821 Township residents, all of which reflect a number of licenses which are greatly in excess of the general guideline of one for every 3,000 residents.

The Board of Supervisors recognizes that the Weis representatives have submitted an application reflective of a generally proper proposal for the conduct of a restaurant liquor license within what is generally a grocery store. The Board further recognizes that the purchase of beer and/or wine within a facility such as that of Weis and managed as described by Weis and similar to that of similar grocery store-type facilities, could and likely would be done in a manner which would not adversely affect the welfare, health, peace and morals of the community.

The Board is also aware that the law is not settled with respect to the authority of municipalities in approving or denying applications for transfer of liquor licenses and with respect to the standards for evaluating applications for the intermunicipal transfer of liquor licenses.

Weis maintains that the Pennsylvania Commonwealth Court decision of Giant Food Stores, LLC vs. Penn Township, No. 1310 CD 2016 (July 18, 2017), coupled with other appellate decisions, requires that the Board of Supervisors evaluate the application in a manner which assumes that licensed establishments are not ordinarily detrimental to the welfare, health and morals of the community and that an application could therefore be denied only if it could be established by credible evidence that the operation of the facility would likely adversely affect the welfare, health and morals of the community. In other words, the position of Weis is that

every request for the transfer of a license would have to be approved except in those instances where it could be demonstrated that the proposed facility would have adverse effects in excess of those caused by a typical licensed establishment. Evaluating an application in that context therefore would prohibit the Township or any municipality from evaluating an application based on the sheer number of licenses which are in existence within the particular municipality.

The Board does not accept the logic of such an approach. The Board believes that the general quota system has come into existence for good and valid purposes out of sheer recognition that the abuse of alcohol has a generally negative impact on the community. The Board of Supervisors, in adopting resolution 2015-14 recognized that the sheer number of licenses and the availability of alcohol has a demonstrated impact on excessive alcohol consumption.

The Board subscribes to the logic of the Lancaster County Court of Common Pleas as set forth in the case of Giant Food Stores, LLC vs. Lancaster Township, No. CI-16-05956 issued by the Honorable Leonard G. Brown, III on January 17, 2017 in which the court recognized that the governing body of a municipality has unfettered discretion in approving or denying a request for an intermunicipal transfer of a liquor license. The Board of Supervisors views such logic to be appropriate and wholly consistent with the general quota system for liquor licenses within Pennsylvania. Were such decisional authority not to be wholly unfettered, then the quota system in general makes no sense. If an applicant for the intermunicipal transfer of a license would be entitled to approval in every case in which there were no showing of unusual adverse impacts, the quota system would simply have no effect. To give meaning to the overall quota system of the Liquor Code, local governments have to be given the authority to deny applications which

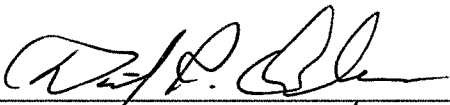
have the result of exceeding the quota. The Board views the authority to approve such transfers as one which ought to be wholly discretionary, recognizing that a local community may have valid reasons for encouraging the availability of liquor licenses, some of which would be among the reasons highlighted by Weis in its testimony, particularly those relating to convenience, availability and general competition.


The other side of the coin, however, if the Liquor Code quota system is to have any meaning, is to permit local government to refuse the intermunicipal transfer of additional licenses where the quota, as in the case here, has been greatly exceeded.

For the reasons set forth above, the Board of Supervisors hereby denies the requested intermunicipal transfer of the liquor license by Weis.

Decision made this 11th day of September, 2017, by a vote of four in favor and none opposed. Supervisors Glenn L. Eberly was not present and did not vote.

BOARD OF SUPERVISORS OF
EAST LAMPETER TOWNSHIP

By: 
David Buckwalter, Chairman

Attest: 
Ralph M. Hutchison, Secretary

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