

TOWNSHIP OF EAST LAMPETER

Lancaster County, Pennsylvania

RESOLUTION NO. 2024-22

**RESOLUTION RENDERING A DECISION ON AN APPLICATION
FOR LIQUOR LICENSE TRANSFER FOR RACETRACK 2453, INC.**

The Board of Supervisors conducted a hearing at a special meeting of the Board on Monday, October 21, 2024. During the hearing, the Board took testimony on the application of Racetrack 2453, Inc. ("Racetrack" or "Applicant") to transfer a Restaurant Liquor License from Ephrata Township, Lancaster County, to 2453 Old Philadelphia Pike, East Lampeter Township, Lancaster County ("Property"), for the purpose of utilizing the license as part of a convenience store.

During the hearing, Racetrack submitted testimony through its counsel, Jessica L. Pleskach, Esquire, and its principals, Sukhjinder Singh and Vishal Patel. The Township submitted testimony through its manager, Ralph Hutchison, concerning the number of liquor licenses within the Township and neighboring municipalities, as well as concerns regarding the Applicant's ability to meet the various requirements of the Pennsylvania Liquor Control Board ("PLCB").

The Board of Supervisors determines that the following facts were established at the hearing:

1. The license in question would be transferred from Ephrata Township, Lancaster County, Pennsylvania.
2. Racetrack 2453, Inc. is the owner of the license and has been unsuccessful in using it as part of a business in Ephrata Township.
3. The license in question is a restaurant liquor license.

4. Racetrack desires to sell beer and other alcoholic beverages to-go and/or for consumption on the Property.

5. Racetrack recently acquired the property at 2453 Old Philadelphia Pike and opened the building as a convenience store.

6. All employees will obtain certification through the Pennsylvania Liquor Control Board's Responsible Alcohol Management Program (RAMP). Additionally, employees will be bound by the Racetrack's "Employee Policy and Procedures" pertaining to the sale and consumption of alcohol on the Property which were presented as Applicant's Exhibit 1.

7. Racetrack proposes to primarily sell 6-packs and 12-packs of beer to go. It is possible in the future that other small bottles of liquor, as well as wine, will be sold.

8. There are currently ten empty coolers in the Property which are proposed for beer sales.

9. The building on the Property contains approximately 2,600 square feet of space in total.

10. No interior or exterior layout plans for the Property were presented to the Board. The Applicant intends to work on the layout plans for the Property once the PLCB approves the transfer.

11. Although the Applicant will be required to have seating for up to 30 people and to serve hot food, no layout plan for the seating or food service areas was offered to the Board. No proposed menu of food to be served was presented to the Board. Food items such as hot dogs and sandwiches will be premade by vendors off-site and served in a "grab and go" style. There will be no cooking of food products at the Property. The Applicant testified that no dishes or silverware will be needed for the quick-serve food items.

12. The Applicant believes there is sufficient parking on the Property, but does not know how many parking spaces exist at the Property, the size of the parking spaces, or whether there is a sufficient number of spaces to accommodate a convenience store, the sale of alcoholic beverages, and the required seating for up to 30 people.

13. Applicant's principals testified that patrons would be able to consume no more than one alcoholic beverage. However, the Policy and Procedures set forth in Applicant's Exhibit 1 states that "It is Employer's policy to permit the consumption of a maximum of two (2) twenty ounce (20oz) containers of alcohol on the premises."

14. The hours of operation for the convenience store will be 5:00 a.m. to 11:00 p.m. Monday through Friday and 6:00 a.m. to 10:00 p.m. on Saturdays and Sundays.

15. The Applicant has not had any conversations with the East Lampeter Township Police Department regarding security issues that may arise from the sale or consumption of alcohol on the Property.

16. There will be only one restroom for both employees and customers.

17. The Application submitted on behalf of Racetrack indicates the nearest school is the "Lampeter-Strasburg School District" approximately 4.5 miles away. However, Leola Elementary School is directly across the street from the Property. Applicant's witnesses were not aware of this fact.

18. The Applicant's license that is being proposed to be transferred has been owned for less than one year and been held in safekeeping. The Applicant's principals could not recall from whom the license was acquired.

19. The Applicant did not present any photographs of the Property for the Board's consideration.

20. The Township has adopted non-binding guidelines in Resolution 2015-14 (Township Exhibit 1) 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.

21. 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.

22. Based upon the 2020 census, East Lampeter Township has 17,776 residents.

23. According to the Township's Exhibit 4, there are currently 22 active liquor licenses within East Lampeter Township. Consequently, there is one active license for approximately every 808 Township residents, which reflects a number of licenses which is greatly in excess of the general guideline of one for every 3,000 residents.

24. The Township Exhibits 2 and 3 set forth liquor licensee food guidelines and liquor license requirements by license type. In particular, according to the Township's Exhibit 2, the Pennsylvania Liquor Code and Regulations specify "that a restaurant must be habitually and principally used for the purpose of providing food to the public." Food-related requirements for restaurant licensees include maintaining "dishes and silverware sufficient to serve 30 or more patrons at one time" and having "available for consumption on the licensed premises food sufficient for 30 people." The food "must be stored on the licenses or unlicensed portion of the licensed business or, if the licensee has an interior connection to another business it operates, within the premises that houses the businesses." The licensee "must have, immediately and

publicly accessible, a menu or similar indication of food available for on premises consumption.” According to Township Exhibit 3, the minimum size of the licensed premises for a restaurant license is 400 square feet. The licensee “must have at least 30 seats and sufficient food for at least 30 patrons.” The 30 plus “seats must be immediately available and accessible by the public and may not be concealed or locked behind doors, walls, etc.”

Based upon the testimony offered at the hearing, the Board of Supervisors concludes as a matter of law as follows:

1. The Board of Supervisors recognizes that it has broad, although not unfettered, discretion to deny intermunicipal license transfers. *Weis Mkts., Inc. v. Lancaster Twp.*, 248 A.3d 622, 631 (Pa. Commw. Ct. 2021). The Pennsylvania Commonwealth Court has held that a municipality must support a determination denying an intermunicipal license transfer with some supporting evidence that an intermunicipal transfer would have an adverse effect on the Township and its residents. *Id.* at 632.

2. The Board concludes that insufficient evidence was offered by Applicant to support the approval of the intermunicipal transfer of the liquor license by Racetrack. In particular, the Board concludes that the inexperience of Racetrack personnel in management of a store with a liquor license would have an adverse effect on the Township and its residents. Racetrack’s principals testified that they have no experience with running businesses involving liquor licenses. No plans have been undertaken to design the interior of the Property to accommodate the requirements of the Liquor Code and its regulations. The testimony by the Applicant was inconsistent as to the number of alcoholic beverages that will be permitted to be consumed on the Property. No credible evidence has been submitted by the Applicant to demonstrate even a

working knowledge of the requirements of the Liquor Code and its regulations or that the Property can properly accommodate those requirements.

3. Racetrack's principals testified that they have not consulted with the East Lampeter Township Police Department regarding security issues that may arise from the sale or consumption of alcohol on the Property. Moreover, Racetrack's principals offered vague and inexperienced testimony as to what limitations and controls would be placed on patrons' on-site consumption of alcoholic beverages.

4. Testimony was vague and unclear regarding the Applicant's policies to control the distribution and security of alcohol. Other than stating there were ten empty coolers available to hold the beer, there was no testimony offered with regard to plans for separation between the alcohol and other products. As such, any patron of the store, including unaccompanied minors, would be physically able to enter the portion of the Property containing the alcohol.

5. The Board also concludes that the Applicant has not offered sufficient evidence to support a finding that there is adequate space within the building to accommodate the amount of seating required and the food preparation area required for a restaurant liquor license. Applicant has also not offered any evidence to support a finding that adequate parking exists at the Parking to accommodate both the convenience store use and the amount of seating required in connection with the liquor license.

6. The Applicant's lack of preparedness to operate and maintain a safe environment for the sale of alcohol will have an adverse effect on the Township and its residents.


7. The per capita number of existing liquor licenses in the Township per Township Exhibit 4 is similar to the per capita number of licenses available in neighboring municipalities. Exhibit 4 demonstrates existing adequate availability of alcohol to Township residents.

NOW THEREFORE, for the reasons set forth above, be and it is hereby resolved that the application to transfer Restaurant Liquor License R19030 from Ephrata Township, Lancaster County, to East Lampeter Township, Lancaster County, as requested is hereby denied.

Resolution made following a hearing conducted on the 21st day of October 2024, by a vote of 5-0.

BOARD OF SUPERVISORS OF
EAST LAMPETER TOWNSHIP

By: 
Ethan Demme, Vice Chairman

Attest: 
Ralph M. Hutchison, Secretary

[TOWNSHIP SEAL]

The undersigned certifies that a copy of this Resolution Rendering a Decision on an Application for Liquor License Transfer for Racetrack 2453, Inc. has been served, personally or by First Class Mail, postage prepaid, upon the Applicant, Racetrack 2453, Inc., c/o John P. Rodgers, Esquire, 1170 Highway 315, Suite 1, Plains, Pennsylvania 18702.

Date: _____

11/4/24



Ralph M. Hutchison, Secretary