

**MINUTES
BOARD OF COMMISSIONERS PUBLIC MEETING
SEPTEMBER 19, 2016**

CALL TO ORDER – ROLL CALL- DECLARATION OF QUORUM:

The Penn Township Board of Commissioners met in a regular session on Monday, September 19, 2016 at the Penn Township Municipal Building. President Heilman called the meeting to order at 7:00 P.M. with a roll call of members. Present were Commissioners Brown, Heilman, Felix, Klunk, and Van de Castle. Also present were Solicitor Tilley, Township Manager Rodgers, Police Chief Laughlin, Fire Chief Cromer, Township Engineer Bortner, Zoning Officer Swanner, and Township Secretary Hallett.

PLEDGE OF ALLEGIANCE TO THE FLAG FOLLOWED BY A PERIOD OF SILENT MEDITATION:

All in attendance stood for the Pledge of Allegiance to the flag, which was followed by a period of silent meditation.

ANNOUNCEMENTS:

Commissioner Heilman announced that after the public meeting this evening the Board of Commissioners would convene in an executive session with the Solicitor for the purpose of discussing legal, personnel and other matters involving attorney/client privilege.

APPROVAL OF THE MINUTES:

The minutes of the August 15, 2016 Board of Commissioners meeting were approved as submitted.

PERSONS TO BE HEARD – CITIZEN’S COMMENTS: None.

PUBLIC HEARING FOR LIQUOR LICENSE TRANSFER:

Commissioner Heilman convened a public hearing to solicit input regarding the transfer of a Restaurant Liquor License owned by Burrod Incorporated, trade name Atlands Ranch, from Paradise Township to YCS061921, LLC, trade name Rutter’s, in the Township of Penn.

Manager Rodgers stated The Township received a request dated August 19, 2016 from L.C. Heim, attorney for YCS061921, LLC, a wholly owned subsidiary of Rutter’s Holdings, Inc. They are requesting to transfer a liquor license from Paradise Township to the Rutter’s store located at 1009 York Street. This store was opened in

December 2008. The property is located in the H/B zone and the retail business is a use by right in that zone.

YCS061921, LLC is seeking to secure a restaurant liquor license. There are no licenses available at this time within Penn Township.

Licenses are provided to municipalities by the PLCB according to a quota system based upon population. If no licenses are currently available, then a license could be transferred from another municipality within York County. The license being requested for transfer in this case is in the name of Burrod Incorporated d/b/a Altlands Ranch in Paradise Township. Penn Township currently has a total of 18 liquor licenses: Restaurants (9); Clubs (2); Distributors (2); Special Occasion (1); Brewery (2); Limited Winery (1) and Limited Distillery (1).

Before a license can be transferred from one municipality to another, the PA Liquor Code requires that the receiving municipality seek public input by conducting a hearing and adopting a Resolution approving the transfer. This evening's hearing has been publicly advertised in the Hanover Evening Sun in accordance with the parameters of the PA Liquor Code.

Act 141 requires that the receiving municipality render a decision within forty-five days of the request. Upon completion of the public hearing, should the Board of Commissioners decide favorably on the request, we have prepared a Resolution, No. 879, authorizing the transfer.

David Martineau, General Counsel for Rutter's Farm Stores, was present representing YCS061921, LLC. He said YCS06 stands for York County Store number six and 1921 is the year that Rutter's first started the retail business. It's a way to keep track of the stores. It is a wholly owned subsidiary of CHR Corp which is a subsidiary of Rutter's Holdings. They are proposing to use a restaurant liquor license but are not suggesting any kind of bar. This will only be for retail take-out. The recent change to the Liquor Code provides that there is a possibility to attach a wine extension on the permit to sell take-out wine. They will not promote in-store drinking; however, according to the Supreme Court they have to allow people to drink in the store if they are buying alcohol. They will not be advertising that drinking in the store is allowed and they will limit each person to a single twelve ounce beverage per visit. There will be less drinking than any typical restaurant or bar. They will be primarily selling take-out.

All the store employees will be certified in Responsible Alcohol Management Program (RAMP). This teaches the right way to conduct the sale of alcohol; making sure people are twenty-one, not selling to people who are already visibly intoxicated and other safety standards for selling beer. The way the store is set up, this will be a store within a store for the beer and wine sales. The area with beer and wine will be segregated from the rest of the store by some sort of barrier. The maximum amount of beer for take-out is one hundred ninety-two ounces, the equivalent of two six-packs, but it can be sold in any combination. Should they decide to apply for the wine permit the

limit is three liters, the equivalent of four - seven hundred fifty ounce bottles, which is the typical size of a wine bottle. Rutter's believes this will bring customer convenience into the Township. People won't have to go to a bar to purchase a six-pack or to a distributor to buy an entire case. There is also a possibility of additional employees because a separate register has to be opened for beer sales and another for fuel sales. Fuel and beer cannot be sold at the same register. This will likely bring a little more income to the Township in tax revenue.

Commissioner Brown asked what the business hours will be for beer sales. Mr. Martineau said the Liquor Control Board sets the hours for beer sales; Monday – Friday between 7:00 A.M. and 2:00 A.M. the following day and Sundays between 9:00 A.M. and 2:00 A.M. the following day. Commissioner Brown asked if the beer will be in a fenced in area. Mr. Martineau said it will not be a fenced area. It will be inside the store and somewhat segregated from the rest of the store. The Liquor Code requires any opening be not more than ten feet, but you will be able to walk from one part of the store to the other. Typically, in Rutter's Stores, seating area is segregated with a half wall and the Liquor Control Board requires the barrier be four feet high. Commissioner Brown asked if all cashiers will be permitted to sell alcohol. Mr. Martineau said minors cannot sell alcohol but everyone else will be trained to sell. A minor would not be assigned to work the beer register. Commissioner Brown asked Police Chief Laughlin how many calls they have had to this Rutter's location in the past year. Chief Laughlin said very few and they are mostly domestic disputes outside the store, retail thefts inside the store and gas drive-offs. Commissioner Brown asked if there are three registers up front, would one of them be for beer sales only. Mr. Martineau said one or two of the registers will be designated for beer sales. Other items can be purchased at the beer register, but not liquid fuels. Beer cannot be sold from an undesignated register. The Liquor Control Board prohibits the sale of beer and liquid fuels from the same register.

Commissioner Klunk asked for a proposed layout for the store. Mr. Martineau said they have not gone through the process yet and do not have a set plan. He handed out a floor plan (Exhibit A) and said it is only a general idea but does not represent what the final product will look like. Commissioner Klunk expressed that he thought the register for beer sales would be located in the segregated area where the beer is stored, but it will not. The beer register will be at the front of the store with the other registers. The counter will be segregated for beer sales.

Commissioner Van de Castle asked how they will keep up on RAMP training with the amount of turnover. Mr. Martineau said RAMP certification will be a required part of training for all new employees. They will be trained prior to going to the store to work. If someone transfers from another store, they will not be assigned to the beer register until their training is complete. Commissioner Van de Castle said he frequents the store in the evening and often sees only one cashier working and they are often under eighteen. Mr. Martineau said if there's only one cashier working they won't be under eighteen. Commissioner Brown said it will fall on the minors to walk around and pick up garbage if they aren't old enough to run the register. Commissioner Van de Castle asked who will

supervise the beer sales other than the Store Manager. Mr. Martineau said the Store Manager will be the approved manager through the Liquor Control Board. The Manager will receive additional RAMP training and is required to take new hires through an orientation process. The Manager is also responsible for making sure everyone is certified and following the rules. Commissioner Van de Castle asked if there are other supervisors above the Store Manager who visit the store on a regular basis. Mr. Martineau said the Regional Manager travels between stores. Commissioner Van de Castle asked how frequently and Mr. Martineau did not know. Commissioner Van de Castle asked if beer will be delivered by distributors. Mr. Martineau said they will receive shipments from distributors and there is a system set up that they have to follow.

Commissioner Van de Castle asked why this location was selected. Mr. Martineau said geographically they'd like locations spread throughout York County. A liquor license can't be transferred outside the County and one was available in York County, so they started looking for locations in the area. Hanover has a larger population and made sense. They found a few liquor licenses in Lancaster County and Franklin County and a couple in York itself. Commissioner Van de Castle said the store on Baltimore Street is a much larger store and has the empty bank space that could be used. Mr. Martineau said the empty bank space isn't something they'd like for this purpose because it would be hard to keep visual control over the beer and wine. It would create safety issues and possibly be easier to sneak in and steal the product. Commissioner Van de Castle asked if they will use a similar identification verification system to Weis or Giant. Mr. Martineau said he's not aware of what Weis or Giant use. The store policy will be to card 100% and they will use a device to read drivers licenses.

Commissioner Felix asked if the Liquor Control Board requires a place inside to sit down and drink. Mr. Martineau said it's not the Liquor Control Board mandating that, it's the Pennsylvania Supreme Court. When licenses were first being put in stores, Sheetz was one of the first to try it. The Beverage Distributors Association was appealing every license on the grounds that it's not a restaurant because people can't drink inside the store. The Pennsylvania Supreme Court determined that a restaurant liquor license must allow people to drink on the premises. As much as Rutter's would like to avoid it, they're not able to at this time. Commissioner Felix asked who will control the customers and make sure they aren't drinking too much. Mr. Martineau asked what he meant by "control". Mr. Felix said keeping an eye on people who may be a little intoxicated. Mr. Martineau said they will not sell to anyone who is visibly intoxicated. RAMP training will help the employees identify customers who are intoxicated. Commissioner Felix asked who will control drinking in the parking lot. Mr. Martineau asked if Penn Township has an open container law and Chief Laughlin said there is none. Mr. Martineau said if there's no open container law he's not sure it can be controlled, but Rutter's doesn't allow anyone to loiter in their parking lots whether they're drinking or not. Commissioner Felix said the Township was told that there'd be no truck parking overnight at the Baltimore Street Rutter's, but it continues to happen. Over Labor Day weekend he saw three trucks parked there all weekend and last weekend he saw two parked there the whole weekend. There were promises this

wouldn't happen yet it does. Mr. Martineau said this is the first he's heard of it and wasn't aware of the problem. Commissioner Felix said there were signs prohibiting overnight parking but they are gone now. They were knocked down and laying on the grass for a while but now they have completely disappeared. Mr. Martineau asked if there was a concrete barrier at the edge of the parking lot. He recalls a problem with a retaining wall and thinks it may have been that location. He said he will look into the problem. Rutter's does not typically allow overnight parking at any of their locations.

Commissioner Van de Castle asked if the store has video cameras that the staff can see or if they are only visible by management. Mr. Martineau said all of the stores have video cameras that the staff can see and can be monitored at the corporate headquarters. Commissioner Van de Castle asked if they are behind the counters or in the manager's office. Mr. Martineau said some are visible behind the counter but all are visible in the manager's office. They will install cameras to view the segregated beer area. Additionally, the walk-in beer cave will have physical locks on it, so it will be locked during hours that beer can't be sold.

Commissioner Klunk asked if there is a minimum number of employees working at any given time and Mr. Martineau didn't know. Commissioner Van de Castle said, in his experience, there's usually one cashier from 10:00 P.M. until 6:00 A.M., with three total employees in the store. Mr. Martineau said alcohol won't be sold between 2:00 A.M. and 6:00 A.M. He can't say how many people will be there during the smaller shifts.

Commissioner Brown asked how many Rutter's stores are currently selling alcohol. Mr. Martineau said currently there are none. Rutter's has one approved license but hasn't begun selling yet. The approved license is in Mercersburg and they are fully legally allowed to sell alcohol but haven't worked out the logistics yet. Commissioner Van de Castle stated that Rutter's is new to this and Mr. Martineau said everyone is because the law was just changed over the summer. Commissioner Brown asked if Weis Markets has a sit down area. Manager Rodgers said they do. Mr. Martineau said the license requires seating for at least thirty people. Commissioner Klunk asked if this is the same seating area as people ordering food and it is. Commissioner Brown asked if someone can buy a sub and a six-pack. Mr. Martineau said they can but only one twelve ounce drink can be consumed in the store. You cannot buy a six-pack and sit down to drink it. Commissioner Brown said this is basically a bar. Mr. Martineau said it's the same permit a bar uses but that is not Rutter's business model. They will not be serving drinks or encouraging anyone to drink in the store. They are only allowing it because the Supreme Court says they have to.

Commissioner Heilman asked if the drinking will be relegated to the seating area and Mr. Martineau said it will. Customers cannot walk around the store drinking a beer.

Police Chief Laughlin asked if the PLCB has everything set in stone as far as how to operate. Mr. Martineau said they are working on new regulations regarding Act 39. Chief Laughlin asked if PLCB will be checking on Rutter's to make sure they are

following the laws. Mr. Martineau said PLCB doesn't actually do that type of work. The Liquor Enforcement Office will be doing that. For example, they may send people in who look like they're twenty-one but aren't to see if they are sold alcohol. Chief Laughlin asked for confirmation that they will not be posting or encouraging drinking in the building and they will not. Chief Laughlin suggested they increase their employees to monitor sales and consumption. Mr. Martineau said they may very well do that. Chief Laughlin said the cameras in place at this location have been great and they've been helpful. He suggests enhancing the cameras and adding more lights, especially in the back of the store. He said the current registers are located in between two doors and it would be easy to bolt out the door with a six-pack. He suggested they enhance their security. Mr. Martineau said they will be adding additional cameras. He asked what else they should do to enhance security. Chief Laughlin said to make sure the cameras aren't grainy. They need to use a decent video system so images can be used in court. The Police Department will need evidence if they're called out. He said he's not against the license but he wanted to make some suggestions for safety.

Commissioner Felix said there is a beer distributor three blocks York Street from the Rutter's location. He said there is also a club close by. There are other places in the immediate area to purchase beer. Mr. Martineau said distributors can't sell less than a twelve-pack and clubs can't sell six-packs for take-out. Rutter's will be able to sell in different increments and they will sell singles. A person could buy a couple of different craft beers to try instead of getting a whole twelve pack. Commissioner Felix asked if they will sell mix and match six-packs. Mr. Martineau said they will sell singles. They're not allowed to sell any beer for less than it was purchased for which makes a mix and match six-pack a challenge to price. They are looking to see if it will be feasible to sell mix and match six-packs.

Commissioner Brown asked where overstock will be stored. Mr. Martineau said there won't be overstock. Anything not broken down into smaller units or individuals will be sold as-is in the beer cave.

Joseph Klunk, 7 Stuart Avenue, was present. Mr. Klunk said his son works for another Rutter's store in York County. He's been there for eight years and his store will be subject to the same changes in the next few months. His son is concerned about public safety. This will increase traffic into his store and they already have problems with customers coming in drunk, high on marijuana, being violent, or using fake ID's. Mr. Klunk asked if this store had considered using inside security guards. Mr. Martineau said they have not. They will not be selling to anyone who is drunk or high, per RAMP training. Commissioner Van de Castle asked how they will enforce this with employees who are trying to sell as much as possible. Mr. Martineau said there is no incentive for employees to sell as much alcohol as they can. Selling more than the allotted amount will get them in trouble and put their jobs in jeopardy. There is no bonus based on alcohol sales. Mr. Van de Castle said he has asked staff members at the store what they think about the possible liquor license and they've told him that there are already a lot of people who come into the store drunk. Mr. Martineau said he has not been made aware of any problems with drunkenness. If they come to the store intoxicated they will

not be sold any additional beer or wine. Commissioner Van de Castle said he doesn't know if Penn Township should be the guinea pig for this program. Mr. Martineau said the Penn Township store certainly won't be the first. If the Board grants approval tonight Rutter's will have to begin the process for PLCB approval. There is a store in Mercersburg that will be the first one to open. Rutter's has licenses approved but not finally issued in Leola, Lancaster County and Newberry Town, York County. There are several other stores with licenses that are further along in the process such as East Berlin in Adams County and Spring Garden Township. By the time this license gets through the process there will be other stores open.

Commissioner Van de Castle asked Chief Laughlin if there has been an increase in problems at Weis Markets since they began selling beer. Chief Laughlin said there has not. Mr. Martineau said this is not a place for people to stop and drink. It's just a convenient place for people to stop in and get a six pack to take home.

Commissioners Klunk/Heilman moved to adopt Resolution No. 879, approving a transfer of Restaurant Liquor License into the Township of Penn from Paradise Township. The motion did not carry on a 2-3 vote with Commissioners Brown, Felix and Van de Castle casting the dissenting votes.

On the advice of Legal Counsel the following motion was made:

Commissioner Brown moved to deny the application for transfer of Restaurant Liquor License into Penn Township by YCS061921, LLC for the following reasons:

- lack of adequate security;
- lack of training for personnel;
- lack of segregated area for the sale and consumption of alcohol; and
- lack of check-out discipline.

Commissioner Felix seconded the motion and moved to amend the motion to add the following reasons to deny the transfer of the liquor license:

- safety concerns due to the store being adjacent to two major State roads, Routes 116 and 216;
- ability of people under the age of eighteen to access the portions of the store where alcohol is being sold and consumed.

Commissioner Brown accepted the proposed amendments.

Commissioner Van de Castle moved to amend the motion to add the following reasons to deny the transfer of the liquor license:

- there is no need for this license due to proximity to an existing beer distributor; and
- lack of experience and working knowledge of the sale of alcoholic beverages on the part of Rutter's.

Commissioners Brown and Felix accepted the proposed amendments.

The motion as amended carried on a 3-2 vote with Commissioners Brown, Felix, and Van De Castle voting in favor and Commissioners Heilman and Klunk casting the dissenting votes.

TOWNSHIP REPORTS – STANDING COMMITTEES:

Health & Sanitation – Commissioner Van de Castle:

Commissioner Van de Castle had nothing to report.

Finance – Commissioner Brown:

Commissioners Brown/Klunk moved to approve Township warrants in the amount of \$2,328,332.90. Motion carried unanimously.

Commissioners Brown/Klunk moved to approve a request dated August 11, 2016 from Grace United Methodist Church for a waiver of permit fees to advertise their annual Christmas Bazaar to be held November 19, 2016. Motion carried unanimously.

Commissioners Brown/Klunk moved to adopt the 2017 Minimum Municipal Obligations for the Penn Township Non-Uniform Pension Plan in the amount of \$185,918.15, the Penn Township Firefighter's Pension Plan in the amount of \$186,622.17 and the Penn Township Police Pension Plan in the amount of \$611,863.61. Motion carried unanimously.

Commissioners Brown/Klunk moved to adopt Resolution No. 878, appointing RLH CPA's and Business Advisor's as Township auditor for the audit year ending 2016. Motion carried unanimously.

Personnel – Commissioner Brown:

Commissioners Brown/Klunk moved to accept Drew Lawrence into the Penn Township Non-Uniform Pension Plan effective August 22, 2016. Motion carried unanimously.

Public Safety – Commissioner Felix:

Commissioners Felix/Van de Castle moved to approve a request dated August 2, 2016 from the Hanover Area Jaycees requesting permission to hold their annual Halloween Parade on Thursday, October 27, 2016 with a rain date of Monday, October 31, 2016. After discussion, motion carried unanimously.

Commissioners Felix/Van de Castle moved to set Trick or Treat night for Tuesday, October 25, 2016 from 6:00 P.M. to 8:00 P.M. Motion carried unanimously.

Public Works – Commissioner Klunk:

There were no additions or changes to the Engineer's Report

Commissioners Klunk/Van de Castle moved to adopt Resolution No. 877, Municipal election to "opt-in" to the development and implementation of the York County Regional Pollutant Reduction Plan. Motion carried unanimously.

Planning & Recreation – Commissioner Klunk:

Commissioners Klunk/Van de Castle moved to approve a request dated August 16, 2016 from Hanover Land Services for a waiver of landscaping and bufferyard requirements for the South Hanover Automotive land development plan. Motion carried unanimously.

Commissioners Klunk/Van de Castle moved to set the bond amount for Mustang Heights at \$137,697.23 and South Hanover Automotive at \$7,584.50. Motion carried unanimously.

Commissioners Klunk/Van de Castle moved approve a bond reduction for D&R Bean LLC from \$82,840.45 to \$12,960.75 and Pinebrook Phase II from \$243,323.30 to \$97,019.34. Motion carried unanimously.

There were no additions or changes to the Zoning Officer's Report.

There were no plans for formal filing.

Commissioners Klunk/Van de Castle moved to approve the following subdivisions and land development plan:

P16-11 – Mustang Heights
Motion carried unanimously.

Commissioners Klunk/Van de Castle moved to approve the following extension requests:

P15-14 – Hanover Storage LLC, to expire December 19, 2016
P16-07 – Proposed Medical Office Facility - WellSpan, to expire January 16, 2017.
Motion carried unanimously.

MANAGER'S REPORT:

There were no additions or changes to the Manager's Report.

OLD BUSINESS: None.

NEW BUSINESS:

On the advice of Legal Counsel the following motion was made:

Commissioners Klunk/Brown moved to authorize the Township Manager to transcribe the proceedings of the public hearing for the liquor license. Motion carried unanimously.

PERSONS TO BE HEARD/CITIZEN'S COMMENTS: None.

ADJOURNMENT:

There being no further business to come before the Board, Commissioners Felix/Brown moved for adjournment at approximately 8:12 P.M. Motion carried unanimously.

Respectfully submitted,

Angela M. Hallett
Township Secretary

