

**TOWNSHIP OF DERRY  
BOARD OF SUPERVISORS**

**PUBLIC HEARING  
Tuesday, September 9, 2014**

600 Clearwater Road, Hershey, Pennsylvania 17033

**CALL TO ORDER**

The September 9, 2014 Public Hearing of the Township of Derry Board of Supervisors was called to order at 6:00 p.m. by John W. Foley, Chairman.

**ROLL CALL**

***Supervisors Present:***

Sandy A. Ballard  
Justin C. Engle, Secretary  
John W. Foley, Chairman  
Marc A. Moyer, Vice-Chairman  
Matthew A. Weir

**Also Present:**

Jill E. Henry, Assistant Township Manager  
James N. Negley, Township Manager/Township Treasurer  
Patrick O'Rourke, Chief of Police  
Jon Yost, Solicitor  
Brenda Van Deursen, Recorder

**Public Present:** Henry Federowicz, Charles Huth, Rich Gamble, Tom Mehaffie, George Haverstraw

**NEW BUSINESS:**

**Public Hearing regarding a request from Weis Markets, Inc. for an Intermunicipal Transfer of a Restaurant Liquor License into Derry Township.**

**James Negley, Township Manager/Treasurer** – On August 12, a public hearing was held to hear testimony from Weis Markets for a liquor transfer from Lower Paxton Township to the Township of Derry to sell beer at the Weis Market store. The Board decided they wanted to hear more public comment so the meeting was continued and readvertised for this evening.

**Public Comment:**

**Rich Gamble, Hockersville Road** – Mr. Gamble is concerned that if we do this for one, we will be doing this for every grocery store, drug store and gas station. The public can go to a local restaurant and buy a six pack of beer. Are we opening up the door for more problems?

**Henry Federowicz, 659 E. Main St., Hummelstown** – Mr. Federowicz is a licensed beverage distributor and has been operating his business, Hummelstown Beverage Distributors, for 15 years in Derry Township at the above address. He has a vested interest in this decision and it is not just a monetary interest. He always conducted his business in a manner where his record is impeccable with issues related to minors or vagrancy.

There are 59 licenses already in the Township. When the statute was originally constructed, the saturation rate was a license for every 3000 residents. It appears Derry Township has a license for every 360 residents which is 10 times what the original statute was constructed. Adding another license just for the sake of profit, which he feels is the motivating factor in this case, does not make sense to him. Speaking for the other licensees within this Township and within Dauphin County, the cost of their license is significantly higher than you will see in other parts of the state. With this intermunicipal transfer, you are looking at a corporation that wants to buy a license at a bargain basement price and move it in here. We all stand to lose on the initial investment that we have in our license, in our establishment, in our fixtures, in our employees, and in the inventory that we carry and the services that we provide to the community. He has 9 employees who will be negatively affected by this decision should it go in favor of Weis. They are all residents of Derry Township and surrounding communities, they all pay taxes into the community, they are homeowners and their wages will be directly affected by this oversaturation of the beer market.

If there is an issue with the archaic liquor laws then it needs to be addressed in Harrisburg with the legislators. Weis is doing an end run on what has been their failing proposal so far in Harrisburg to get changes made to the law. They are coming in at the local level and they are putting pressure on local boards to try and find the loop hole that allows them to get in to this market. Mr. Federowicz and others sponsor SADD, MADD, DARE, Cops and Shops program for the community. The losers will be the other licensees in this Township, the people who made the investment, the people who live in the community, the people who give back to the community. They are not going to send their profits up to a northern county to be split up among shareholders. That money turns right around and comes back and stays in the community. The Board took an oath and obligation to make decisions that benefit the community, not corporate operations like this.

Supervisor Weir asked how Mr. Federowicz got his license. Mr. Federowicz said he bought it from Hummelstown Beverage when it was on 310 East Main Street. With the way the law is constructed he can operate that license anywhere in Dauphin County.

Chairman Foley asked what the distinction is between the license Mr. Federowicz has and the one Weis has an equitable interest in.

**Mark Kozar, Flaherty & O'Hara, Attorney for Weis Markets** – The distinction is they are two separate parts of the market. For a beer distributor license the smallest container they can sell is a case of beer and they can sell as much as they want at one time. The

proposed license for Weis is they can sell up to 192 ounces of beer at one time, two 16 ounce six-packs and they have to buy their beer from a distributor.

Attorney Kozar referenced a Supreme Court decision in December of 2010 Malt Beverage Distributor Association vs. PLCB. This exact same argument was made to the State Supreme Court and they ruled that PLCB is not abusing their discretion in issuing liquor licenses for grocery store based restaurants. What they are doing is not an end run, they are following the liquor code to the letter.

Weis pays \$80,000 annually in property tax at this store location. They have been there for 22 years and they just recently donated \$250,000 to the HMC for a mammography wing to service underprivileged women. Mr. Federowicz talked about organizations losing money. Weis contributes seriously to this community not only in charitable contributions, but they employ 120 people and many of them live in this municipality and pay taxes. Regarding saturation, literally every liquor license in Dauphin County could be in this municipality. The law does not prohibit that. Mr. Kozar asked Mr. Federowicz if he was a resident of Derry Township. Mr. Federowicz said he was not. Attorney Kozar said he objects to Mr. Federowicz's testimony because under 461B3 it specifically states that "interested individuals residing in the municipality are the only ones permitted to speak at intermunicipal hearings." He asked that all of Mr. Federowicz's testimony be stricken from the record because he is not a resident of the municipality.

Supervisor Ballard wanted to clarify that the beer Weis would offer would have to be bought from a local distributor. Attorney Kozar said you have to buy from a beer distributor.

Vice-Chairman Moyer asked what distributor. Attorney Kozar answered that it depends on the brand of beer on what beer distributor they would use. Beer distributors in Pennsylvania have designated territories and they can't sell out of their territory so Weis would have to engage local beer distributors within their territory. Vice-Chairman Moyer asked who Weis anticipates using as a distributor. Attorney Kozar said he does not know.

Attorney Kozar referred to Mr. Federowicz's comments regarding the licenses and the quota. Back in 1934, the original quota was one license per every 1,000 people and as the state grew in the 1950's, they changed the law to one license per every 3,000 people. It pretty much made every municipality in every county to be over quota and that is why you have to buy a license on the market. You can't go to the state and request a new one. In 2001, when they changed the law to be intermunicipal transfer of licenses, the only time you actually look at the quota is to see if you are in fact at or over quota, which would require an intermunicipal hearing. Prices of licenses in the intermunicipal transfer now have a County price to it. There usually is a ballpark figure of a \$20,000-\$30,000 range so that a license here in Derry Township is worth exactly the same as another municipality in Dauphin County.

Vice-Chairman Moyer asked what the saturation rate is in Derry Township. Attorney Kozar said the quota in Derry Township is 8 and there are currently 25 restaurant licenses in the Township.

Supervisor Weir wondered if we are opening a flood gate for every convenience store and every grocery store to now sell beer. Attorney Kozar said he thinks what has transpired over the years has been a function of grocery stores wanting to be one stop place to shop and have an offering of beer to their customers.

Chairman Foley restated that this type of license is being allowed because Weis Markets is creating a cafe within their retail operation that will allow for the sale of bottles and/or six-packs and those products cannot by license be sold in a distributorship. Attorney Kozar said that is correct.

Mr. Engle asked where Pennsylvania stands with other states with underage statistics. Attorney Kozar said Pennsylvania is the second most restrictive state with the sale of alcohol, but he does not know the stats.

**Rich Gamble, Hockersville Road** – Mr. Gamble disagreed that Mr. Federowicz statement should be stricken. Weis pays taxes, but so does Mr. Federowicz, Mr. Gamble and other residents in the Township. Many people give money to the community and that should not be a deciding factor.

Henry Federowicz said he is a resident of Lancaster County and has conducted his business in Derry Township for 15 years. In that period of time, he has yet to have one tax check that he has written to any single entity in Dauphin County or Derry Township sent back to him because he was not a resident here.

Chairman Foley and the Board took a few minutes to confer with Attorney Yost.

Chairman Foley concluded the public hearing to retire to executive session. The executive session is not to deliberate on this topic, but the request will be the under new business on the agenda.

**ADJOURNMENT**

The public hearing adjourned at 6:35.

SUBMITTED BY:

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Justin C. Engle  
Township Secretary

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Brenda Van Deursen  
Recording Secretary