

**MONROE TOWNSHIP**  
**CUMBERLAND COUNTY, PENNSYLVANIA**

**RESOLUTION 2019-20**

**A RESOLUTION OF THE TOWNSHIP OF MONROE, COUNTY OF CUMBERLAND, PENNSYLVANIA, DENYING THE APPLICATION OF CHR CORP. d/b/a RUTTER'S, FOR AN INTERMUNICIPAL TRANSFER OF LIQUOR LICENSE NUMBER R-15750 FROM ITS PRIOR LOCATION AT 626 S. ENOLA ROAD., EAST PENNSBORO TOWNSHIP, TO 1455 YORK ROAD, MONROE TOWNSHIP; PROVIDING FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

WHEREAS, by letter dated September 27, 2019, CHR Corp. d/b/a Rutters ("Applicant") through its counsel, Christopher J. Reed, Esquire, applied to the Township of Monroe (hereinafter sometimes "Township") for approval of an Intermunicipal Transfer of Liquor License R-15750 ("License") from its prior location in East Pennsboro Township to a Rutter's store located at 1455 York Road, Carlisle, Monroe Township, Pennsylvania; and

WHEREAS, 47 P.S. § 461(b.3) provides that an Intermunicipal Transfer of a Liquor License "must first be approved by the governing body of the receiving municipality when the total number of existing restaurant liquor licenses and eating place retail dispenser licenses in the receiving municipality equal or exceed one license per three thousand inhabitants;" and

WHEREAS, it is understood that the current number of restaurant liquor licenses and eating place retail dispenser licenses equal or exceed one license per 3,000 inhabitants of the Township of Monroe; and

WHEREAS, 47 P.S. § 461(b.3) provides that at least one hearing be held by the Township of Monroe for the purpose of permitting interested parties residing within the

Township to voice comments and recommendations regarding Applicant's intent to transfer the License; and

WHEREAS, October 29, 2019, a duly advertised hearing pursuant to Section 4-461(b.3) was held in order to solicit comments and recommendations from Township residents; and

WHEREAS, Attorney Reed was present at this hearing, offering information to the Board of Supervisors of the Township of Monroe and attendees of the hearing regarding the proposed transfer of the License; and

WHEREAS, at the October 29, 2019 hearing, the Board of Supervisors of the Township of Monroe passed a Motion wherein the Township, by a vote of 2-1, denied Applicant's transfer of the License; and

WHEREAS, 47 P.S. § 461(b.3) requires the decision of the Township to "render a decision by ordinance or resolution to approve or disapprove the applicant's request for an intermunicipal transfer of a license;" and

WHEREAS, such ordinance or resolution must be enacted or passed within forty-five (45) days from the date of the Applicant's request for transfer of the License "unless the governing body has notified the applicant in writing of their election for an extension of time not to exceed sixty days," as set forth in Section 461(b.3); and

WHEREAS, The Township of Monroe issued a letter to counsel for Applicant on October 31, 2019; advising Applicant of Township's election of an extension of time in order to pass the resolution as required under Section 461(b.3); and

WHEREAS, the resolution herein is intended to be passed by the Board of Supervisors of the Township of Monroe at its regular meeting on November 14, 2019.

NOW, THEREFORE, BE IT RESOLVED, by the Monroe Township Board of Supervisors, Cumberland County, Pennsylvania, as follows:

1. The recitals set forth above are incorporated as if set forth more fully herein.

#### FINDINGS OF FACT

2. The License in question would be transferred to 1455 York Road, Carlisle, Monroe Township, Pennsylvania, which currently operates as a Rutter's gas station and convenience store ("Premises").
3. License Number R-15750 ("License") is a restaurant license.
4. Pursuant to the Liquor Code, licensees possessing and utilizing restaurant liquor licenses must provide seating for thirty (30) patrons at the licensed location.
5. The Premises would need modification in order to provide the required seating and to allow the installation of coolers to house the sale of licensed products, such as beer.
6. The Premises would sell beer and wine, but not liquor, to patrons of the Premises.
7. If the approval for the License were to be granted, it would allow Applicant to sell beer at the Premises. However, Applicant would also apply for a wine expanding permit in order to sell wine at the Premises.
8. Applicant indicates that "98%" of sales of beer and wine at other Rutter's locations are purchased and consumed off-premises.
9. Patrons of the licensed location must be allowed to consume at least some beer and wine, subject to house rules imposed by the licensed location.
10. All Rutter's stores provide that no more than twenty-five (25) ounces of beer and wine may be consumed in the store at any one time.

11. Applicant indicates that it does not believe that the sale of beer and wine at the Premises would largely be to the benefit of current and existing customers of the Premises, who would purchase beer and wine while they stop for gas on the way home from work.
12. Applicant maintains that it has a substantial and appropriate employee training program for addressing alcohol related policies and issues.
13. Applicant indicates that only properly trained employees would be allowed to handle transactions involving beer and wine, which would take place on a register separate from the regular registers within the Premises.
14. An employee with a Responsible Alcohol Management Program (“RAMP”) certification would be onsite at the Premises at all times.
15. The Premises operates twenty-four (24) hours per day.
16. Sales of beer and wine would be allowed at the Premises from 7:00 a.m. to 2:00 a.m. Monday through Saturday, and from 9:00 a.m. to 2:00 a.m. on Sunday.
17. Applicant indicates that no Rutter’s locations have been cited by the Liquor Control Board for violations of the Liquor Code.
18. Residents of Monroe Township offered statements and input during the October 29, 2019 hearing.
19. Concern was expressed that the sale of beer and wine at the Premises could potentially be detrimental to the adjoining land-owners due to increased littering or underage drinking.
20. One resident, a member of the Board of Directors for the cemetery across the street from Premises testified that the cemetery already has a litter problem stemming from Premises, and that the situation would be exacerbated should the Township permit the sale of beer and wine.

21. The resident also discussed the potential for vandalism in the cemetery should beer and wine be sold at the Premises.
22. Additionally, the resident stated that there is already evidence that fireworks have been set off at the cemetery, leaving marks on the concrete pad for the new columbarium at the cemetery.
23. It is believed that Applicant did not notify the police while these fireworks were being set off.
24. The Township of Monroe relies on state police coverage and does not have its own local police force.
25. Concerns over the lack of local police presence were raised during the hearing.
26. Testimony was provided that the response time for state police in the Township can be over thirty minutes.
27. In the event that a police response would be required, the slow response time of the state police may be detrimental to the health, safety, and welfare of the residents of the Township of Monroe.
28. Applicant indicated that if it failed to abide by the Liquor Code, it could have the License revoked.
29. One member of the Board of Supervisors stated that he has observed persons at other licensed facilities purchase beer and immediately open and consume it in a vehicle.
30. Another member of the Board of Supervisors indicated that he has also observed persons at other licensed facilities purchase and consume beer prior to exiting the parking lot of the facility.

31. Statements were made by members of the Board of Supervisors that the introduction of beer and wine sales upon the Premises would be detrimental to the health, safety, and welfare of the Township of Monroe.
32. The Premises would attract a more transient clientele should it sell beer and wine, which would have a deleterious effect on a community such as the Township.

## DECISION

The Board of Supervisors recognizes that Applicant has submitted an application for the intermunicipal transfer of the License in order to sell beer and wine at its facility located 1455 York Road, Carlisle, Monroe Township, Pennsylvania. Such application has received review from the Township of Monroe as required by the Liquor Code.

At the hearing on October 29, 2019, two of three members of the Board of Supervisors of the Township of Monroe voted via motion to deny the application for an Intermunicipal Transfer of Liquor License R-15750, citing the reasoning as set forth herein. Pursuant to the Liquor Code, a receiving municipality is not required to approve of a liquor license transfer. "The municipality *may* approve the request." 47 P.S. § 461(b.3) (emphasis added). Prior to 2006, a municipality was effectively required to approve an application for transfer *unless* it found an adverse effect to welfare, health, peace and morals. However, the legislature amended Pennsylvania's Liquor Code to remove the obligation that the municipality must accept the transfer absent such adverse effects. This amended language provides the Township of Monroe with broader discretion in analyzing factors to weigh when approving or denying an intermunicipal liquor license transfer.

Utilizing this broad discretion, the Board of Supervisors for the Township of Monroe determined that allowing the transfer of the License would be detrimental to the health, welfare, safety, and morals of the Township. Two members of the Board of Supervisors stated that they

have personally witnessed patrons of other licensed facilities purchase beer and consume, or begin to consume, the purchased beers in their vehicles prior to exiting the parking lot of the licensed facility. It is believed that such behavior would occur at Premises were the License to be approved, resulting in increased potential for persons driving under the influence within the Township of Monroe. Testimony was offered that the cemetery across the street from Premises is already dealing with littering and trash stemming from Premises, and that allowing the sale of beer and wine would exacerbate the situation. There existed additional testimony that vandalism would become a concern, and that damage to portions of the cemetery had already occurred due to the setting off of fireworks. Additionally, the transient clientele that would patronize the Premises at 2:00 a.m. for the purchase of beer and wine is antithetical to the community fostered by the Township of Monroe.

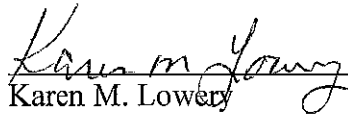
As indicated, the Liquor Code has provided a specific mechanism requiring municipal approval when there exists more than one liquor license per 3,000 residents within the subject municipality. Such language was not promulgated by the legislature baselessly. The legislature, in adopting this process, recognized that liquor and the sale of liquor can have a deleterious effect on communities due to increased alcohol consumption, and thus established the general quota system as set forth in 47 P.S. § 461(b.3). While the receiving municipality may not have unfettered discretion by which to deny a transfer, it still does have discretion – so long as its reasoning is not unlawful. As suggested by the Commonwealth Court in *Giant Food Stores, LLC v. Penn Twp.*, 167 A.3d 252, 261 (Pa. Commw. 2017), unlawful reasoning subject to review may consist of denials of “such license applications to women on the basis of their sex, or to applicants based on their race, national origin, religion or other protected classification.”

As set forth in the Second Class Township Code, the supervisors of a township are “charged with the general governance of the township and the execution of legislative, executive and administrative powers in order to ensure sound fiscal management and to secure the health, safety and welfare of the citizens of the township.” 53 P.S. § 65607. The Board of Supervisors have rendered their decision according to these principles.

For the reasons herein, coupled with the lack of local police force and potentially slow response time of the state police, the Board of Supervisors, by a vote of two to one, hereby denies the requested intermunicipal transfer of PA Liquor License R-15750.


RESOLVED AND ADOPTED, this 14th day of November, 2019.

ATTEST:

  
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Karen M. Lowery

MONROE TOWNSHIP  
BOARD OF SUPERVISORS

  
\_\_\_\_\_  
A.W. Castle, III, Chairman

  
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Philip F. Kehoe, Vice-Chairman

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Carl W. Kuhl, Supervisor