

**YCS061921, LLC, Plaintiff v. BOARD OF SUPERVISORS OF PENN TOWNSHIP,
Defendant**

2016-SU-003129

Local Agency Law – Liquor Code

- 1. On appeal, the Court overturned Penn Township’s decision to deny a liquor license transfer.**

**IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION**

YCS061921, LLC, : **No. 2016-SU-003129**
Plaintiffs :
 :
v. :
 :
BOARD OF SUPERVISORS OF :
PENN TOWNSHIP, :
Defendant : **Civil Action- Law**

APPEARANCES:
For Plaintiff: L.C. Heim, Esquire
For Defendant: Walter A. Tilley, III, Esquire

MEMORANDUM OPINION

Before this Court is Petition for Appeal from Decision of Penn Township filed by YCS061921, LLC (hereinafter “Plaintiff”) on November 15, 2016. The Defendant in this matter is the Board of Supervisors of Penn Township (hereinafter “Defendant”). For the following reasons we do **REVERSE** the decision by Defendant to deny Plaintiff’s request for a transfer of a liquor license.

FACTS AND PROCEDURAL HISTORY

Plaintiff alleges in its petition that, in a letter dated August 19, 2016, they requested approval from the Penn Township Board of Commissioners of a transfer of a Pennsylvania liquor license pursuant to the requirement found in the Pennsylvania Liquor Code at 47 P.S. §4-461(b.3). A public hearing on the request was held by the Penn Township Board of Commissioners on September 19, 2016, at the conclusion of which the Board, after motion, voted to deny the Plaintiff's request. The minutes of that hearing were approved on October 17, 2016 and a letter dated October 24, 2016, reiterating the Board's denial and including a copy of the minutes, was sent to Plaintiff.

Plaintiff filed a Petition for Appeal from Decision of Penn Township on November 15, 2016, making multiple arguments. First, they argued that jurisdiction lies with the Court of Common Pleas pursuant to local agency law, regardless of the Liquor Code, which prohibits appeals of decisions made by the governing body of a municipality to deny requests.¹

Secondly, Plaintiff argued their request should be deemed approved by default due to Defendant's failure to conform to the Liquor Code, which requires a decision be rendered by ordinance or resolution within forty-five (45) days of the request. Defendant voted on a motion to deny the request at the meeting and approved the minutes of the meeting on October 17, 2016, mailing said minutes to Plaintiff on October 24, 2016. Plaintiff's

¹ On December 19, 2016, Defendant filed a Motion to Quash Plaintiff's appeal based upon this issue, arguing the Liquor Code controls and their decision, under the code, could not be appealed. Defendant's Motion to Quash was denied in an Order dated June 29, 2017. The court found the appeal to be allowed as the matter is controlled by local agency law.

allegations in support of its position is two-fold: first Defendant's actions amount to nonconformance for failure to render a decision by ordinance or resolution, as the decision was made by vote upon a motion at the meeting. Furthermore, because Defendant did not render a decision by resolution or ordinance, Plaintiff also argues that Defendant essentially did not render a decision at all and therefore, under the statute, their application is approved by default.

Finally, Plaintiff argues the decision of Defendant to deny the transfer was contrary to law as it is devoid of findings of fact and not supported by the evidence of record.

On January 5, 2017, Plaintiff filed a brief in support of their appeal. Defendant filed a brief opposing the appeal on February 3, 2017. Defendant argued that their denial of the transfer request, which was made by vote on a motion at the public meeting, was sufficient in form and substance to satisfy the requirement of the statute and, as a representative of Plaintiff was present at that time, the denial was timely conveyed to Plaintiff within the forty-five (45) days allotted by law. Furthermore, Defendant argues their decision was supported by substantial evidence and should be affirmed.

On July 12, 2017 Plaintiff filed a Praecipe to List for One-Judge Disposition along with a brief in support of their appeal. Defendant filed a brief in reply on July 18, 2017, this time arguing that Plaintiff's appeal was untimely. A supplementary brief was filed by Plaintiff on July 20, 2017, and a reply brief on July 21, 2017. Defendant filed a Reply Brief in Opposition to Plaintiff's Supplementary Brief in Support of its Petition of Appeal on July 25, 2017. The record was filed by Defendant on January 20, 2017, complete with the

minutes of the meeting held on September 19, 2016, during which the board denied Plaintiff's request, as well as a transcript of the proceedings, *inter alia*.

The matter was assigned to this Honorable Court on July 26, 2017 and is now ripe for decision.

DISCUSSION

We must first address the issue of the timeliness of Plaintiff's appeal and turn to the Pennsylvania Rules of Appellate Procedure for guidance. "A petition for review of . . . an order appealable. . . under any other provision of law, shall be filed with the prothonotary of the appellate court within 30 days after the entry of the order." Pa.R.A.P. 1512.

This Court previously determined that the decision to deny transfer of a liquor license made by Defendant is governed by local agency law, which provides that "[a]ny person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom." 2 Pa.C.S.A. §752.

With regard to the date of entry of an order, the rule states, "the day of entry shall be the day the clerk of the court or the office of the government unit mails or delivers copies of the order to the parties." Pa.R.A.P. 108.

In the instant matter, Defendant held a public meeting on September 19, 2016, at which time they entertained the request to transfer a liquor license made by Plaintiff. At the conclusion of the hearing on Plaintiff's request, a motion was made by Commissioner Klunk

to adopt a resolution approving the transfer of the liquor license. That motion was seconded and voted upon, the results being three (3) against and two (2) for. At that time there was some discussion on the method of formally denying Plaintiff's request. The commissioners, with advice from legal counsel, decided to make a motion to deny the request and put their reasoning for doing so on the record. That motion was carried with three (3) commissioners voting to deny the transfer and two (2) voting in favor of the transfer. On October 16, 2017, the minutes of the public meeting were approved and, in a letter dated October 24, 2016, Defendant sent a copy of the approved minutes to Plaintiff.

The date of entry of the order is October 24, 2016, the date upon which Defendant mailed the approved minutes, for several reasons. First, the minutes are the only writing evidencing the Defendant's decision and, as such, are the only copies of Defendant's decision that could be mailed or delivered to Plaintiff as required by law. Secondly, under local agency law, an aggrieved party may only file an appeal of an adjudication, and as all adjudications of a local agency must be in writing, and the only writing evidencing Defendant's decision is the approved minutes, it follows that the approved minutes are the adjudication which Plaintiff has appealed. 2 Pa.C.S.A. §752 and §555.

The letter reiterating Defendant's decision and to which the approved minutes were attached was dated October 24, 2016. Plaintiff filed their Petition for Appeal from Decision of Penn Township on November 15, 2016, twenty-two (22) days from the date of the letter. We do find that Plaintiff's appeal was timely made.

We now address the issue of whether Defendant, in conformance with the law, did render a decision within forty-five (45) days of the date of Plaintiff's request for the license transfer. The Pennsylvania administrative code establishes the criteria for decisions on requests for intermunicipal transfers of a liquor license. "The receiving municipality shall, within 45 days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an intermunicipal transfer." 40 Pa. Code § 7.61(b)(3). These criteria are echoed in the statute setting forth the provisions of the Pennsylvania Liquor Code found at 47 Pa.C.S.A. § 4-461(b.3) as well.

We find that Defendant did in fact render a decision within forty-five (45) days of the date of Plaintiff's request. The record shows that Plaintiff requested the approval of the transfer of a liquor license by letter dated August 19, 2016. Defendant held a public meeting on September 19, 2016, during which the commissioners voted to deny Plaintiff's request, stating various reasons. David Martineau was present at the meeting as counsel representing Plaintiff.

Black's Law Dictionary defines render to mean "[t]o transmit or deliver". *Black's Law Dictionary* (10th ed. 2014). Plaintiff's representative was present at the meeting, held thirty-one (31) days after Plaintiff made its request, when a motion to deny its request was made, a vote was taken, and the decision was rendered or delivered to the representative. As discussed above, the official order may have been entered at a later date, however, the decision was rendered at the public meeting on September 19, 2016, and was done so within the forty-five (45) limit established by law.

Additionally, we find no merit in Plaintiff's argument that the form of the decision did not comply with the statute. The Pennsylvania Commonwealth Court has previously discussed this very issue, stating "[a]lthough the motion did not carry the formal title of 'Resolution,' it was clearly no different, being an official act of the Board in its regular course of business." *In re Application for Liquor License of Thomas*, 829 A.2d 410, 413 (Pa. Commw. Ct. 2003).

Having now addressed both the timeliness of Plaintiff's appeal and the form and timeliness of Defendant's denial of their request, we turn to the underlying appeal. Subchapter B of Title 7 in the Pennsylvania consolidated statutes is titled "Judicial Review of Local Agency Action", applies to "all local agencies regardless of the fact that a statute expressly provides that there shall be no appeal from an adjudication of an agency", and creates a right of appeal by "[a]ny person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication".

Defendant is a local agency, it denied Plaintiff's request for approval of the transfer of a liquor license, and Plaintiff has a direct interest in that denial. Plaintiff has a right to appeal the decision to this Court and we are bound in our review by the local agency law, which requires, in cases where the record is full and complete, that we decide the appeal on the record. 2 Pa.C.S.A. §754(b).

On January 20, 2017, Defendant filed a return of the record in this matter, including Plaintiff's letter requesting the license transfer, the approved minutes of the public

meeting during which the request was entertained, a copy of Defendant's letter sent in October, and a full transcript of the public meeting.

The meeting itself was open to the public and attended by the members of the Board of Commissioners, the solicitor for Penn Township, legal counsel for Plaintiff, the Chief of Police, other members of the Penn Township government, and members of the public. Counsel for Plaintiff was given a full opportunity to speak and present evidence, the members of the Board and the public were able to ask questions and provide comments, and the entire meeting was recorded by a stenographer. We do find that the record is complete and our decision will be based upon said record.

In making said decision, we must affirm Defendant's decision unless we find the following:

[T]he adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter B of Chapter 5 (relating to practice and procedure of local agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.

Id.

“Substantial evidence is ‘more than a mere scintilla’ of evidence and that which a reasonable mind might accept as adequate to support a conclusion.” *SSEN, Inc. v. Borough Council of Borough of Eddystone*, 810 A.2d 200, 207 (Pa.Comm. Ct. 2002)(citing *Kish on Behalf of Kish v. Annville-Cleona Sch. Dist.*, 645 A.2d 361 (Pa.Comm. Ct. 1994)).

Plaintiff has made no constitutional claims in the instant matter nor have they made an argument that Defendant violated any provision of the local agency law with regard to the

proceeding held before it. Plaintiff's arguments go directly to whether Defendant made findings of fact necessary to support their decision and, if so, whether those findings of fact were supported by substantial evidence.

Although no standard is set forth in the Pennsylvania statutes, we do find the standard binding Penn Township in the Pennsylvania code. "The receiving municipality shall approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the municipality or its residents." 40 Pa. Code § 7.61(b)(4).

A licensed establishment is not per se adverse to the welfare of a municipality. "The legislature has established the principle that a licensed establishment is not ordinarily detrimental to the welfare, health and morals of the inhabitants of the neighborhood. A transfer will be detrimental only in cases where the nature of the establishment to be licensed is such that it will adversely affect the nature and character of its neighborhood." *In re 23rd St., Inc.*, 517 A.2d 581, 582 (Pa. Commw. Ct 1986)(citation omitted).

In the Penn Township Board of Commissioners' Return of the Record in Accordance with YCCIV.5200 (hereinafter "R.R."), we find the following reasons given for Defendant's denial of Plaintiff's request:

Lack of adequate security, lack of training for personnel, lack of segregated area for the sale and consumption of alcohol, lack of check-out discipline. . . 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. . . 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.
R.R., Item 2, 7 (Sept. 19, 2016).

Turning to the transcript of the public meeting, we find that Mr. Martineau, counsel for Plaintiff, gave a brief argument for why Defendant should grant Plaintiff's request, which was followed by a multitude of questions, to which he provided answers. With regard to questions posed relating to security, supervision, and training of staff at the store, Mr. Martineau stated, "[a]ll of the store employees will be trained on what is called RAMP certification. It is the Responsible Alcohol Management Program." R.R., Item 4, 5 (Sept. 19, 2016). He went on to say, "[the] [l]iquor code provides you cannot sell liquor sales and gas at the same register you sell beer. So, we have to essentially sell gas 24 hours a day and we have to have a separate register set up for the beer sales. . . The only people assigned to that register will be people who are over 18 and have already been RAMP certified." *Id.* at 9

In addition to the training of employees, Mr. Martineau discussed a multitude of other safety and security precautions intended to be utilized by Plaintiff. He discussed the placement of signs in the establishment which will provide notice that intoxicated patrons will not be allowed to purchase alcohol. *Id.* at 14. Additionally, Plaintiff has video cameras installed throughout the store and plans to install additional cameras to cover the area where alcohol will be sold. *Id.* at 17-18. Those cameras are monitored not only by the staff onsite, but by individuals located at the corporate headquarters. *Id.*

With regard to the portion of the store where alcohol will be displayed and sold, Mr. Martineau informed Defendant that, "[t]he way the store is set up, it is kind of a store in a

store. It will be a segregate area of the store beer and wine sales. It will be kind of sort of apart and some barrier in the rest of the store.” *Id.* at 5. Furthermore, he talked about locks that will be placed on the coolers during the hours when the alcohol will not be for sale. *Id.* at 18. Finally, in response to a question asked by the Chief of Police, he stated that the store will be subject to “sting operations” exacted by liquor control officers. *Id.* at 22.

As to the location of the store being near two major state roads, no questions were posed regarding this concern and no information or evidence was provided with regard to things such as any increase in traffic or traffic hazards or issues related to driving under the influence.

With regard to the proximity of a beer distributor as well as other establishments furnishing alcohol, Mr. Martineau did represent that his client’s store would benefit the community due to the fact patrons can purchase, at a minimum, a 12-pack of beer at a beer distributor while they can purchase singles or 6-packs at the store. *Id.* at 25.

Finally, as it relates to Rutter’s lack of experience in selling alcoholic beverages, we do note that the law allowing sales at such locations has only recently been enacted in Pennsylvania and so knowledge and experience will naturally be limited. Furthermore, Mr. Martineau did state that they have several other store locations further along in the process of procuring a liquor license and “by the time this one gets through that process, we will certainly have five other stores already open.” *Id.* at 29.

In addition, the record reflects that one member of the general public came forth to speak at the meeting. Mr. Klunk, whose son works at a different store location, spoke

regarding his concerns for safety. He was informed that people already come in to the stores intoxicated and was worried that providing alcohol will create more problem. Mr. Martineau, in response, ensured that anyone coming in intoxicated will not be served. *Id.* at 28-29

Besides the members of the Board and Mr. Klunk, the only other citizen who spoke during the meeting was the Chief of Police. He raised the idea of adding additional video cameras and a better quality system. Mr. Martineau reiterated Plaintiff's plan to do just that. *Id.* at 23-24. Chief Laughlin did also provide that the police department has not seen an increase in problems at a local Weis store that also recently began selling liquor. *Id.* at 29.

In consideration of the record, we find the rationale of the Commonwealth Court in *SSEN, supra*, to be appropriate here as well. In *SSEN*, the police chief testified regarding the dangers of drinking and driving and his concerns regarding any additional demands that would be placed on his department as a result of a liquor license being extended to another establishment. Additionally, eight (8) residents came forward to speak against the issuance of a liquor license. Their concerns related to topics such as any increased traffic and devaluation of existing licensed establishments. The Court, however, found that the "testimony intended to demonstrate increased traffic hazards, parking problems, drinking and driving under the influence which would result from the transfer was, at most, general and speculative." *SSEN, Inc.* at 208.

Similarly, the testimony provided by the commissioners, the police chief, and one (1) member of the public in the case at hand, as discussed above, was largely general and

speculative. Additionally, the indication from the chief of police was that there were no increased problems upon the opening of similar establishments. Therefore, the testimony does not amount to substantial evidence in favor of Defendant's decision to deny the license transfer request.

Furthermore, taking Mr. Martineau's testimony regarding safety, security, and employee training into consideration, we cannot find that a reasonable mind might accept the evidence of record as substantial or even sufficient to support the Defendant's decision to deny Plaintiff's request.

CONCLUSION

For the foregoing reasons, the decision of the Penn Township Board of Supervisors to deny Plaintiff's request for an intermunicipal transfer of a liquor license is **REVERSED**.

BY THE COURT,

Date

ANDREA MARCECA STRONG, JUDGE

