

**Mercersburg Borough Council & Liquor License Transfer Hearing**  
**Borough Hall, Mercersburg, PA**  
**May 16, 2016**  
**MINUTES**

**Attending:** Council President Tom Suddeth, Vice-President Jeff Main, Jonathan Kittredge, Donald Stoner, Lisa McCoy, Amy Burkot, Borough Manager Dawn Scheller, Assistant Borough Manager Derek Stoy, Solicitor Steve Coccorese

**Absent:** Member Catalin Bonciu, Mayor, Engineer

**Guests/Press:** See sign-in sheet

Meeting was called to order by Vice-President Main, as Council President Suddeth was still performing the duties of Mayor until newly appointed Mayor Roger Defibaugh completed his Oath of Office. Council President Suddeth led the Pledge of Allegiance and did not vote during the meeting. Vice-President Main opened the floor for Public Comments.

Larry Heim Esq. an attorney for Rutter's presented the request of the Liquor License Transfer. He provided the Council Members with the floor plan for the inside of the store. Mr. Heim explained that the Liquor Licenses are issued based off of the population of the county and the license value is a county based value and would not decrease due to the transfer. Larry added that receiving the approval from Mercersburg Council was only the first step in the transfer process as they would then approach the PLCB for final approval. Larry Heim stated that Rutter's has no intention (at this time) to sell anything but beer at the Mercersburg location and provided a design of the location. Rutter's would follow all the regulations and requirements by the PLCB. Mr. Heim noted that any place of business with a R License is required to have a restaurant area where the customers can stay have a beer and order food, it has been his experience that most customers who come to purchase beer do not stay, eat, and drink at the location. He added that most customers just come in, purchase the beer, and leave. Larry Heim was of the opinion that allowing Rutter's to sell beer would not affect the local restaurant and bar locations. Mr. Heim reviewed that the employees of Rutter's would participate in the RAMP Program.

Council Member Burkot noted a concern with the Rutter's employees being required to turn into bouncers with the sale of alcohol and onsite consumption. Mr. Heim explained the training process for employees and also reviewed that it is in Rutter's best interest to operate a safely and would evaluate security if the need arises, but he did not feel that it would be a problem.

Jeff Main, Council Vice-President, noted that he was not aware that there would be tables in Rutter's where people could sit and order drinks, he stated that he was under the impression that they would only sell to-go beverages. Larry Heim answered that they have to operate with the same requirements as a restaurant and Rutter's has to meet those requirements.

Mr. Heim asked if the Borough had an open container law. Donald Stoner answered that yes the Borough does have an open container Ordinance.

Christina Hostler, 5364 Charlestown Road, Mercersburg asked what research Larry Heim is using to base his opinion on whether Borough Residents won't sit and eat and have a beer. Larry reviewed that no one will know until they experience it. Larry is only basing it on his experiences, and it is his opinion that Rutter's is not a pub setting that it is a farm store. He added that the Sheetz experience was the first and that is not what is happening in their store.

Sue Bender, 10613 Long Drive, Fannetsburg, PA and owner of RUE's asked how he can say that it won't affect her business as she feels that it will affect her. Sue pointed out that the license transfer request was an E License and not the R that he was referring to. Mr. Heim noted that if it is an E License in the letter, that it was an 'E License Transfer' request. Steve Coccorese, Borough Solicitor, asked Mr. Heim to clarify that the requirements for E or R are the same

when it comes to the sale of food and seating requirements. Mr. Larry Heim confirmed that the food sale and seating requirements were the same, the only difference between an E License and an R License was the sale of beer only vs. the sale of beer and liquor.

Tom Burke, Mercersburg Resident, welcomed Rutter's to the community, however he asked Borough Council Members to vote against the ability for them to serve beer.

Lisa McCoy, Borough Council Member, spoke about safety concerns that she has regarding commercial vehicle drivers having the ability to purchase alcohol, drink it, and continue to drive. Mr. Larry Heim commented that "C Licenses", commercial drivers have a zero tolerance for driving under the influence and if they were to do that they would be jeopardizing their livelihood and career.

Donald Stoner, Council Member, asked Mr. Larry Heim how many municipalities have you been denied? Larry Heim answered just one. He added that he has five pending.

Jeff Main, Council Vice-President, that Rutter's approached the Borough one year ago and there was no mention of a liquor license, and now Borough Council received the request. Jeff asked why hadn't this information been brought forward before now. Larry Heim answered that this wasn't on the table in the beginning and this is relatively new during the past couple of months. Jeff Main asked if Rutter's still built the location where they had been denied the transfer. Mr. Heim answered that it was an existing location.

Mr. Larry Heim read the PLCB regulations stating that the receiving municipality shall approve the request unless it finds in doing so adversely affects the welfare, health, peace and morals of its residents.

Sally Straley, 5588 Oakwood Drive, Mercersburg, brought concerns regarding the amount of traffic and added problems that it would create. She asked if Council would have a police car there to monitor the traffic to keep it slow? Jeff Main, Council Vice-President that they have performed the necessary Penn DOT traffic study along with the direction of truck traffic will travel using West Harbaugh Drive. Jeff Main reviewed that all the intersections in the area of the Rutter's was looked at. Derek Stoy, Assistant Borough Manager, reviewed that the Borough has received all the Penn DOT approvals.

Kevin Schoenberger, 6934 Tippetts Drive, Mercersburg, spoke of concerns regarding the value of the license. He reviewed that the liquor license transfer being changed to a county level transfer was to allow for economic growth in areas that are growing, like Chambersburg. He noted that this really isn't the situation in Mercersburg and it is a small community. Kevin spoke about the existing on premise liquor licenses that were allocated by population were significant investments to the existing businesses. Kevin added that allowing the liquor license transfer, Borough Council sets the precedence and in-turn begins to devalue the investments that local business owners made.

Teresa Downin, 105 North Main Street, Mercersburg, commented that Mercersburg has three taverns, a liquor store, and two clubs which she feels is enough.

Steve Coccoresse added the following information to the discussion. The restaurant licenses unlike the hotel licenses are subject to the population quota of 1: 3,000 residents in the county. Since the number of liquor licenses within the Borough limits are already above the 1: 3,000 residents, it has to come before Borough Council for the initial approval and then moves to the liquor control board for final determination. The standard is that it would have to be detrimental to the health and welfare of the inhabitants of the Borough and is supported by case-law that sets the bar pretty high where hard evidence or studies would show that the sale of six-packs would increase the amount of crime. Steve reviewed that the information presented tonight was personal concerns regarding the sale, but there wasn't any studies or hard evidence for Council to hear.

Mr. Larry Heim reviewed that Mercersburg has 11 Liquor Licenses.

Tom Suddeth, Council President, relayed information that he received from Mercersburg Police Chief. Tom noted that the Police Chief contacted the Shippensburg Sheetz and inquired about the police activity. Tom Suddeth relayed that the police call have gone down, partly due to Sheetz having their own security on Friday, Saturday, and Sunday. Tom Suddeth asked if it became an issue would Rutter's think about adding security. Mr. Heim responded that Rutter's would absolutely consider it. Rutter's is a responsible business that has been around since 1921 and take their civic responsibilities very seriously.

No other public comments were made, Jeff Main, Council Vice-President moved on to other items listed on the agenda.

**MOTION: to approve the Treasurer's Report and the Bills Payable/Invoice List for the month ending April 30, 2016 was made by Jonathan Kittredge, second by Donald Stoner, all ayes, motion carried.**

Steve Coccoresse reported that Council has 45 days to render a decision from the date of the letter requesting the liquor license transfer.

Amy Burkot read the petition received from Sue Bender asking Borough Council Members to vote no to the liquor license transfer.

Josh Meyers, HARB Board Chair, provided a review of HARB Application COA: 16-5-01. After the review, Borough Council made the following motion.

**MOTION: to approve HARB Application COA: 16-5-01 was made by Donald Stoner, second by Amy Burkot, Jonathan Kittredge abstained, remaining ayes, motion carried.**

Lisa McCoy, Council Member, presented the information from the Personnel Committee Meeting. Lisa McCoy was permitted to review the previous hours worked and provided the Committee with a comparison of the 6-week timeframe from [January 26, 2015 thru March 8, 2015] & [January 24, 2016 thru March 6, 2016]. After the review, she concluded that the Borough has paid for 3.5% less number of hours, but due to a decrease in overlapping time it has gained the Borough a 10.8% increase in hours covered. She added that during the time frame reviewed the Police Department had a 36.19% overlap in coverage during 2015 as opposed to a 17.46% in coverage in 2016.

**MOTION: to ask that the Mayor work with the Police Department to create an unpredictable schedule that limits the overlap time to less than seven hours per week, while rotating later starts to accommodate for later evenings whenever possible was made by Jonathan Kittredge, second by Amy Burkot, all ayes, motion carried.**

Lisa McCoy presented an update on vaccinations for the Non-Uniformed Borough Employees. Lisa McCoy noted that the Police Department has not provided the Personnel Committee with an update. After discussion Borough Council made the following motion.

**MOTION: to ask the Mayor to work with the Police Department (complying with the CBA) and check the status of the vaccinations, Council also request that the Police Department consider cost when scheduling the vaccinations, motion was made by Jonathan Kittredge, second by Lisa McCoy, all ayes, motion carried.**

Vice-President Main moved on to the other items listed on the agenda.

**MOTION: to approve the transfer request for PA Liquor License # E-3461, LID37647 was made by Jonathan Kittredge, second by Amy Burkot, a vote was taken, Jeff Main and Lisa McCoy voted against, and Donald Stoner, Amy Burkot, and Jonathan Kittredge voted for, motion passed.**

**MOTION: to enter into executive session at 7:45 pm for possible litigation with possible action to be taken was made by Jonathan Kittredge, second by Donald Stoner, all ayes, motion carried.**

Regular session resumed at 7:56 pm with no action taken.

Donald Stoner asked for a coin meter deposit update. Tom Suddeth reviewed that the Police Department had not made a coin deposit as they did not have a way to get the coin to the bank. APX was looking into possibly building a coin box for the Police Department.

**MOTION:** to ask the Mayor to instruct the Police Department to deposit the meter coin was made by Donald Stoner, second by Jonathan Kittredge, all ayes, motion carried.

**MOTION:** to adjourn at 8:00 pm was made by Lisa McCoy, second by Amy Burkot, all ayes, motion carried.

*These meeting notes were transcribed and respectfully submitted for approval by Dawn Scheller, Borough Manager, with the use of her meeting notes and audio recording.*

Date approved: \_\_\_\_\_ Motion made by: \_\_\_\_\_ Second by: \_\_\_\_\_



