

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

CENTREAL EXECUTIVE COMMITTEE :
OF THE ORGANIZATION FOR THE :
REBIRTH OF THE UKRAINE, INC., :

Appellant :

vs. :

No. 24-CV-2586

PENNSYLVANIA LIQUOR CONTROL :
BOARD, :

Appellee :

Robert Yurchak, Esquire

Counsel for Appellant

Michael J. Plank, Esquire

Counsel for Appellee

MEMORANDUM OPINION

Matika, J. - June 30, 2025

"It's like de ja vu all over again" is a famous quotation attributed to Yankee Hall of Famer and baseball great, Yogi Berra. It's a phrase often used to describe a situation where something feels very similar to something seen or experienced before. This Appeal filed by the Central Executive Committee of the Organization for the Rebirth of the Ukraine, Inc. (hereinafter "ODWU") suggests that the Court, in 2025, rule "all over again" in its favor just as the late Honorable John P. Lavelle did in 1984 when he allowed the liquor license owned by ODWU to extend onto additional ODWU property across Beaver Run Road. While the salient facts pertaining to that liquor license extension approved in 1984 are similar,

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other considerations and a certain now enacted relevant section of the Pa. Liquor Code, specifically 47 P.S. §4-406.1, prevents us from sustaining ODWU's appeal all over again.¹

Initially, ODWU filed an application seeking to extend its Club Catering License CC-49944 from real estate it owns on one side of Beaver Run Drive, Lehighton to another parcel it owns across from and on the other side of Beaver Run Drive. The Board refused this request on October 30, 2024.

On November 19, 2024 ODWU filed a Petition for Review which the Board filed a reply to on December 3, 2024. A hearing was held on April 17, 2025 at which time the official record from the July 30, 2024 hearing was offered and admitted as Joint Exhibit 1. In addition to that record ODWU called Ulana Prociuk to provide additional testimony. Ms. Prociuk also had testified at the July 30, 2024 hearing.

As a result of the hearing which occurred on April 17, 2025, the Court makes the following:

FINDINGS OF FACT

1. On or about May 13, 2023, ODWU filed an application with the Board seeking to extend the ability to use its Catering Club

¹ Pursuant to 47 P.S. §4-464 of the Liquor Code, the trial court shall conduct a de novo proceeding of the appeal from the Pennsylvania Liquor Control Board's (hereinafter "Board") Decision. In doing so, this Court shall make its own findings of fact and conclusions of law, receive the record of the proceeding of the Board, if offered and any additional evidence presented. *Todd's by the Bridge, Inc. v. Pennsylvania Liquor Control Board*, 74 A.3d 287, 295-96. (Pa. Cmwlth 2013).

License No. CC-49944 from beyond its present location at 1230 Beaver Run Drive, Lehighton, Pennsylvania,

2. After receipt, the Board, through its Bureau of Licensing, informed ODWU on numerous occasions that as a result of its investigation, there appeared to be a number of unresolved issues or deficiencies, in its submission that needed to be addressed before the application would be considered, specifically, issued pertaining to what appears to be a public thoroughfare that bisects the property separating the currently licensed property and the property to where ODWU proposed the extension. ODWU was advised that generally this information needed to be provided within thirty (30) days of each correspondence sent to ODWU. Otherwise, the application would be considered for cancellation.

3. By letter of March 12, 2024, and due to a ten (10) month delay on ODWU's part to provide the information requested, the Board advised ODWU that its application was being cancelled. That same letter advised ODWU of its right to request a hearing which it did by letter dated March 19, 2024.

4. By letter dated May 15, 2024, the Board notified ODWU that a hearing would be conducted on July 30, 2024 "for the purpose

of taking legally admissible evidence on the specific objections which are attached to this letter."²

5. The testimony and evidence presented before a hearing officer included that of Frank Brewer, a licensing analyst with the Board and Ulana Prociuk, Secretary of ODWU.

6. A review of the deed pertaining to the real estate owned by ODWU evidences that both the existing license premises and the proposed licensed premises are situated upon the same tract of land but are separated by Beaver Run Drive, a public road "maintained, owned and operated" by the Township of Mahoning where the subject property is located.

7. ODWU's Exhibit, Appellant's #1, identifies Beaver Run Drive, and also shows various other roads intersecting with it at various locations above and below the ODWU properties. Additionally, other roadways, beyond those on ODWU Exhibit #1, are depicted as intersecting with Beaver Run Drive as noted on maps

² The attachment to the May 15, 2024 letter identifies these objections as:

1. Whether the Board should cancel or disapprove this application due to the applicant failing to provide the required information/documentation needed by the Board to process the application;
2. Whether the Board should permit an extension of license in accordance with Section 7.21(b)(2) of the Board's Regulations;
3. Whether the Board should permit a secondary service area in accordance with Section 406.1 of the Liquor Code; and
4. Whether the approval of this application will not adversely affect the health, welfare, peace and morals of the neighborhood within a radius of 500 feet of the proposed licensed premises.

These are the same issues framed by counsel in their post-trial briefs; thus, this Court will be mindful of their significance to our *de novo* review in addition to ODWU's argument pertaining to the 1984 ruling by Judge Lavelle.

contained in Joint Exhibit #1. (identified therein as L-3 and L-4).

8. Brewer testified that in his estimation there were two residences within a 500-foot radius of the proposed licensed premises, although the area in question is comprised of mostly woods, trees and grass.

9. Both Brewer and Prociuk testified that the distance between the existing licensed premises and the proposed licensed premises is at least six hundred and seventy (670) feet, but again are separated by Beaver Run Drive.

10. Prociuk noted that in 1984, by way of court approval, it previously was afforded the ability to extend its then license from premises on one side of the road to its premises on the other side of the road, similar to this request.

11. Prociuk also noted that due to actions committed by dissenting club members, the license was moved elsewhere. Eventually the license was returned but did not include coverage for the area where ODWU wishes to extend its license to with this application.

CONCLUSIONS OF LAW

A. Failure to Provide Information to Board

1. While it is suggested by counsel in their post-trial briefs that this was an issue before the Board prompting it to cancel the application, this Court concludes that any failure of

ODWU to do so then is moot in light of the fact that the proceeding before the Court is de novo and ODWU would have the opportunity to present additional testimony, which it did through Ulana Prociuk. If ODWU chose not to present other evidence which the Board may have initially sought, the fault would lie with ODWU. This Court concludes, therefore, that this is not an issue which bears upon its decision here.

B. Extension in Accordance with 40 Pa.Code §7.21 (b)(2) and 47

P.S. §4-406.1

1. 40 Pa. Code §7.21(b)(2) reads as follows: "the board may approve an extension of the licensed premises to include the following: . . . (2) the immediate, abutting and contiguous vacant land." 47 P.S. §4-406.1 in pertinent part reads,

"Upon application of any restaurant, hotel, club, municipal golf course liquor licensee or manufacturer of malt or brewed beverages, and payment of the appropriate fee, the board may approve a secondary service area by extending the licensed premises to include one additional permanent structure with dimensions of at least one hundred seventy-five square feet, enclosed on three sides and having adequate seating. Such secondary service area must be located on property having a minimum area of one (1) acre, and must be on land which is immediate, abutting, adjacent or contiguous to the licensed premises with no intervening public thoroughfare: however, the original licenses premises and the secondary service area must be located on the same tract of land" (emphasis ours).

2. While a public thoroughfare is not defined in the Liquor Code, the Commonwealth Court in *Gramland Properties, Inc. v. Pennsylvania Liquor Control Board*, 807 A.2d 339 (Pa. Cmwlth 2002)

identified that term using the definition found in Webster's Third New International Dictionary Unabridged 2380 (1993) Edition which defines thoroughfare as (1) "a street that goes through from one street to another: and (2) "an unobstructed way open to the public." *Id* at 342.

3. A public thoroughfare has also been described as "a street or highway affording an unobstructed exit at each end into another street or public passage." *Tobin v. Radnor Township Board of Commissioners*, 597 A.2d 1258, 1266 (1991).

4. Beaver Run Drive is, therefore, a "public thoroughfare" and as such bisects ODWU's existing licensed land and proposed licensed real estate area and prevents those tracts from being "immediate, abutting, adjacent and contiguous" and without an intervening public thoroughfare."

5. While the building which ODWU desires to license would be a "secondary service area", Beaver Run Drive as a public thoroughfare precludes such an extension.

6. The case of *In Re: Appeal of Ukrainian Homestead*, cited by ODWU in support of its Appeal is distinguishable from the case *sub judice*. In that case, the Court held that the roadway, Beaver Run Drive, while intervening between the then main bar and motel ODWU wished to also license, did not prevent the extension of the Liquor License to the motel at that time. However, the Liquor Code, also at that same time, (the filing of the appeal) did not contain

a provision prohibiting the licensing of secondary service areas that lie across a public thoroughfare.³

7. At the time of the filing of the instant application, the "intervening public thoroughfare" language was part of §406.1 and therefore prevents the extension of the license from Plaintiff's current location to the banquet hall across Beaver Run Drive.

8. While the facts of the instant action are substantially the same as they were in 1984, the statutory law has changed and case law created to signal a different outcome from that in 1984.

C. Adversely Affecting Public Health

1. 47 P.S. § 4-404(a) reads in pertinent part,

" . . . that the board shall refuse any application for a new license, the transfer of any license to a new location or the extension of an existing license to cover an additional area if, in the board's opinion, such new license, transfer or extension would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed [.]"

2. "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. Furthermore, a transfer of a liquor license will be detrimental to a community only in cases where the nature of the neighborhood and the nature of the place to be licensed are such that the issuance would be

³ As noted by the Court in that 1984 case, the application at issue there was "filed prior to the enactment of Act No. 1982-319, amending the Liquor Control Act to prohibit licensing of secondary service areas that lie across a public thoroughfare." The effective date of that amendment and inclusion of the intervening public thoroughfare language occurred in February, 1983.

detrimental." *K&K Enterprises Inc. v. Pennsylvania Liquor Control Board*, 602 A.2d 476, 481 (Cmwlth Ct. 1992) (internal citations omitted).

3. While the Board has argued that an "illegal act" would constitute a basis to refuse the application as such act would in and itself adversely affect the health, welfare, peace and morals of the surrounding areas, it points to no facts to suppose any such illegal act, nor can the Court find anything in the record to support the same. The Board seems to intimate that if the Court approved the appeal and granted the extension that would be an illegal act violative of both §406.1 of the Liquor Code and §7.21 of the PLCB regulations. This, we have not done.

Accordingly, this Court enters the following Order:

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ORDER OF COURT

AND NOW, this 30th day of June, 2025, upon consideration of the "Petition for Review" filed by the Appellant, Central Executive Committee of the Organization for the Rebirth of the Ukraine, Inc., the "Reply to Petition for Review" filed by the Appellee, Pennsylvania Liquor Control Board, and after hearing thereon together with a review of the Post-Trial Briefs lodged by both parties, it is hereby **ORDERED and DECREED** that the application to extend the Catering Club License CC-49944 from this current location to across Beaver Run Drive, Lehighton, Pennsylvania onto other lands owned by Appellant, is **REFUSED, DENIED and DISAPPROVED**.

BY THE COURT:


Joseph J. Matika, J.