

**Red Lion Borough Council
Special Meeting
Thursday, July 30, 2009**

Members

**Christina Frutiger
Jeff Herrman
Cynthia Barley
Kelly Henshaw
John Clemons
Dennis Klinedinst**

Others

**Mayor Robert Frutiger
D. Michael Craley
Dan Shaw
Stacy Myers**

Visitors

**Vincent Caltagirone
Doug France, Attorney**

**Ryan Sanders
Jeff Fix**

Public hearing was convened @ 7:00p.m. Everyone present participated in the Pledge of Allegiance.

Mr. Craley opened by stating that Red Lion Borough Council, in a quasi-judicial capacity, will either approve or disapprove the transfer of a liquor license, from the city of York, to Red Lion Borough. Attorney France, representing Mr. Caltagirone will present their case, after which time, Council and the Mayor will have the opportunity to ask questions. At that time, Mr. Craley may ask relevant questions, and then he will ask for questions from any visitors. If Mr. France has further witnesses for his case, he will call them at this time. Council, Mayor Frutiger, Mr. Craley and any visitors may question these witness(es).

After all witnesses have given their testimony, Council may recess to Executive Session. They can either give their decision tonight, or choose to defer their decision until their August 10th Council meeting, because the August 10th meeting is within the 45 required days.

Attorney France offered his opening remarks. The request of Mr. Caltagirone is to move the liquor license from York city to Red Lion Borough. There are provisions under the liquor code which allow this, but the type of liquor license which Vince wants to acquire is a “non-club” license. A “club” license would pertain to a VFW, or an American Legion, and they’re subject to a different set of rules.

Primarily, there are two kinds of licenses in Pennsylvania, which are 1) an “R” license, or a retail liquor license, pertaining to bars, and 2) an “E” license, or a retail dispenser license for malt and brewed beverages. Vince wants to acquire an “E” license to serve beer at Golden Crust Pizza and Vincenzo’s Restaurant, and also to be available for take-out. There is a limit for carry-out purposes of 12-12oz beers (or 144 oz). Under this “E” license, there will be no sale of distilled spirits or wine. Other requirements for an “E” license are there must be seating for at least 30 patrons, and at least 350 sq. ft. devoted to the premises. Mr. France presented a sketch plan of the interior of the premises that would be licensed; Vincenzo’s Restaurant and Golden Crust Pizza (53 and 59 East Broadway respectively). The plans were marked Exhibit 1, and Council reviewed them.

Mr. France stated that, currently in Red Lion Borough, there are two licensed establishments. One “R” license is held by Guerreri, Inc, which trades under Red Lion Tavern. One “E” license is held by Steven Reichard, which trades under S & S Produce. Previously, two other “R” licenses were held in the Borough; one by Happy Hour Lounge, and one by Lion’s Den. Both establishments are no longer in business.

The LCB states that when the number of existing licenses (currently 2) is equal to or exceeds one license for every 3,000 residents based on the last census, municipal approval is required. The last census (from 2000) showed 6,190 residents in Red Lion Borough. Mr. France did not feel it necessary to hold a hearing for Mr. Caltagirone to obtain this “E” license based on the current number of licenses and the 2000 census. But in order to expedite the process, they decided to hold the hearing.

For liability reasons, entities are usually assigned to hold liquor licenses. Mr. Caltagirone has assigned VinMar of Red Lion, LLC to hold his license.

Next, Mr. Caltagirone was sworn in by Mr. Craley. Vince has been the proprietor of Golden Crust Pizza at 59 East Broadway for almost 25 years. In 1999, an additional 50 seats were added to include Vincenzo’s at 53 East Broadway. Earlier this year, Vince engaged Attorney France’s services to help him find an “E” liquor license. For the past 10+ years, patrons could bring their own wine or beer to Vincenzo’s or Golden Crust while enjoying their food, but Vince would like to have it available for his guests to purchase there, if desired. Vince stated he has gained some customers for adding the

BYOB feature, and he has lost some customers for not serving alcohol.

Vince never wanted, nor does he now want to make his establishment a bar. He does not want to bring any negative element to his establishment. He gets along well with his neighbors on East Broadway, and he doesn't want to see that change. There were several "R" licenses available that he could have purchased, but he did not want that for his business. Vince instructed his attorneys to undertake negotiations with the current owner of the "E" license even though he knew the license was in litigation with the LCB. He has basically put plans on hold so he could purchase the type of license he wanted.

In the 25 years that Vince has operated his business, there have been no altercations there, nor have police been called to break up any altercations. Vince said he runs a good clean restaurant, and he wants to keep it that way.

To obtain the "E" license, there are certain requirements that need to be met under the liquor code. Vince's establishment cannot be and is currently not:

- 1) within 300' of any religious or church operation**
- 2) within 300' of any school**
- 3) within 300' of any licensed operation from the LCB**

Aside from being over 300' away from Vince's restaurants, the American Legion holds an "R", or a club license, so the requirements are not applicable to them.

Currently, there are no other eating establishments with the capacity that Vince has that offer alcohol. Vince believes vehicular traffic may increase with this added feature at his establishment, but he is located on a state road, and people will travel it regardless. Vince stated that, should he obtain this license, he and his employees (those 18yrs & older) will participate in the RAMP program, which is offered by the Pennsylvania Liquor Control Board. RAMP stands for Responsible Alcohol Management Program. It is not mandatory in PA, but Vince will require his employees to participate in the program to help identify visibly intoxicated persons, underage persons trying to buy alcohol, identifying false ID's, etc.

Questions from Council members were addressed next

- 1) *Will alcohol be allowed at outside seating?* Borough has an Ordinance prohibiting open containers of alcohol, so it will only be consumed inside the premises.**
- 2) *Will you still allow wine or BYOB once serving beer?* That is controlled by the Liquor Control Board when concerning a licensed establishment.**
- 3) *If the “E” license is successful, would he be interested in expanding and obtaining an “R” license?* For his money to work in obtaining an “R” license, he would have to put in a bar, and he wants to maintain a “family” establishment.**
- 4) *Current seating is what?* Golden Crust accommodates 35 patrons; Vincenzo’s accommodates 50, with 12 off-street parking spaces. The LCB requires 30 seats for on-premises consumption of alcohol.**
- 5) *Are you looking for the main purpose of the license to be for inside consumption, rather than carry-out?* Yes**
- 6) *If alcohol is BYOB, it needs to be purchased in PA; this is currently checked by Vince and employees***
- 7) *Vince and employees currently card all customers bringing in alcohol***
- 8) *While Golden Crust delivers food, they will not be permitted to deliver beer***
- 9) *Do you feel there is adequate parking along East Broadway to accommodate any overflow this may cause?* Parking along Main Street is usually congested on both sides; East Broadway usually has parking available. Vince’s employees now park in the back of the restaurant to allow more on-street parking.**
- 10) *Do you feel there will be any negative effect on the Borough by adding a liquor license?* Vince believes it may be beneficial by bringing in more visiting patrons to the Borough.**
- 11) *Hours of operation?* Friday nights open until 11:00p.m; weekdays open until 10:00p.m.**

No questions from visitors.

No additional witnesses or exhibits by Mr. France were offered.

In closing, Mr. France stated that over the past five or six years, there have been a number of changes in LCB laws regarding inter-municipal transfers. It started out being very difficult. But there was always an indication that the municipality needed to make a determination. He quoted from the statute “The municipality must

approve the request unless it finds the doing so would adversely affect the welfare, health, peace and morals of the municipality of its residence”. Mr. France stated that in the latest revision of the laws, that quote was removed; he is not sure why. Currently, it states “at least one public hearing shall be held by the municipal governing body for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant’s intent to transfer the license into the municipality”. Mr. France stated that when you look at an establishment like Vince’s, which was in business for 25 years, the language in the statute before it was removed, becomes the touchstone of making the determination for approval. The determination is made for the benefit of your residents. Mr. France requests that Council would render a decision tonight, due to his office being short-staffed because of vacations.

Comments from guests

Jeff Fix from 601 South Pine Street believes Vince’s establishment is well-run, and he feels anything Red Lion residents and Council can do to enhance that business goes to enhance Red Lion. He would hope Council would grant Vince’s request.

Ryan Sanders, President of Red Lion Area Business Association, mirrored Mr. Fix’s comments by saying Vince runs one of the finest establishments in Red Lion, and the business community would welcome his business.

Comment from Mr. Craley

In 2006, Act 155 made a substantial change. Prior to the change, all case law followed “the determination that the municipality *had* to grant it unless there was a burden of proof presented to you by opponents of the applicant to say this will adversely affect the health, peace and morals of the community”.

You had to provide specific details that the establishment would really cause a problem. General fears and speculation were not sufficient.

Act 155 goes on to say, “the decision by the governing body to deny the request may not be appealed”. In this case, Mr. Craley states, there has been no evidence presented that this will adversely affect Red Lion Borough, and no reason *not* to approve the request. With his recommendation to Borough Council to approve the request, Mr.

**Craley had prepared two Resolutions; one denying the application, one to approve; both are Resolution 2009-9.
Mrs. Barley made a motion to *approve* the transfer of the liquor license.
Mr. Henshaw seconded. All were in favor; motion carried.**

Mrs. Barley made a motion to adjourn the meeting @ 7:48p.m. Mr. Clemons seconded.

Respectfully submitted by:

**Stacy Myers
Recording Secretary**