

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: CHR CORP. d/b/a RUTTER'S (Store 92) - MOTION
TO LIST NEW VIDEO GAMING TERMINAL
ESTABLISHMENT LOCATION
DOCKET NUMBER 10168-2021

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HEARING

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BEFORE: MEMBERS OF THE BOARD:

DENISE J. SMYLER, CHAIRMAN

Frank Dermody

Sean Logan

Sara Manzano-Diaz

T. Mark Mustio

Frances J. Regan

DATE: March 23, 2022

Reporter: Hannah Bartowski

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EX-OFFICIO MEMBERS/DESIGNEES IN ATTENDANCE:

Fred Strathmeyer, Jr., Designee

Department of Agriculture

Christin Heidingsfelder, Designee,

Department of Revenue

Jennifer Langan, Designee

Department of Revenue

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A P P E A R A N C E S (cont.)

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P R O C E E D I N G S

CHAIR: This morning, we will reopen the record and have a second public hearing regarding a matter brought before the Board at the last public meeting. Specifically, a request by an Applicant to bring before the Board, an Application for a New Video Gaming Terminal Establishment License prior to the Office of Enforcement Counsel (OEC) indicating to the Board that the Application is ready for consideration.

The Requestors, CHR, Corp, doing business as, Rutter's, makes this request relative to a new store under construction, Store Number 92, located in Kutztown, Pennsylvania. Now, the underlying issue here is a dispute between Rutter's and the OEC about whether a brand new facility can be found to be a truck stop establishment eligible for licensure as a video gaming terminal establishment before it is operational.

Rutter's believes that it can be and would like to be a position to open new stores including Store Number 92 with video gaming terminals. OEC, on the other hand, believes that in order for a facility to show that it meets the

1 definition of a truck stop establishment, it must be
2 operational and show it meets the statutory
3 requirements, including, but not limited to, having
4 an operating convenience store and three months of
5 real sales data to support that the store is
6 projected to sell an average minimum of 50,000
7 gallons of diesel fuel per month, as required by the
8 Act.

9 At our last hearing, Rutter's
10 provided the Board with expert testimony regarding
11 diesel sales projections and subsequent to the Board
12 Meeting, placed into the record, it's methodology
13 for reaching those projections. Thereafter,
14 Rutter's updated the record with more current truck
15 traffic counts, which it received from the
16 Pennsylvania Department of Transportation. And
17 we've asked them to come back and present this
18 information to the Board as well as to answer any
19 questions the OEC or the Board may have.

20 With that said, I would first ask if
21 there are any non-attorneys who will be presenting
22 evidence today in this proceeding, that they please
23 stand and be sworn in by the Court Reporter.

24 Seeing none, Rutter's, you may begin.

1 ATTORNEY DOTZEL: Good morning.
2 Again, my name is Sarah Dotzel. I'm Assistant
3 General Counsel and Director of Gaming at Rutter's.
4 This morning we'd like to make a few brief comments
5 and then answer any questions that the Board may
6 have.

7 After last month's hearing, the Board
8 followed up with both Rutter's and OEC to ask a few
9 additional questions. Rutter's has submitted a
10 written report in response to those questions. As
11 part of that written response, we identified the
12 truck traffic counts at Rutter's 92 have increased
13 since we originally submitted projections to the
14 Board. We provided an updated calculation to the
15 Board utilizing those updated traffic counts and it
16 showed higher diesel volumes than we originally
17 presented to the Board.

18 Even using one of the lowest capture
19 rates that we see across all locations, Rutter's 92
20 will still meet or exceed the \$50,000 (sic)
21 threshold.

22 I'm going to turn it over to my Co-
23 Counsel for additional comments.

24 ATTORNEY REED: My name's Christopher
25 Reed, General Counsel for Rutter's Companies. I

1 just want to reiterate to the Board that Rutter's is
2 not seeking special treatment. We are not seeking
3 expedited treatment in any way. We're looking for
4 clarification and direction from the Board in what
5 Rutter's believes is a permissible application
6 process. Permissible both by the Act and the
7 Regulations that a unopened location under
8 construction can submit documentation sufficient to
9 allow for preliminary investigation to grant
10 conditional licensure. And then subsequent to
11 conditional licensure, during the construction
12 process, an establishment can work with these Gaming
13 Control Board Staff, BIE and OEC in order to
14 hopefully obtain full licensure and authority to
15 operate on the day of opening. Again, we're happy
16 to take any questions that the Board may have
17 relative to our submission.

18 CHAIR: I would first turn to OEC and
19 see if they have any questions?

20 ATTORNEY KOLESAR: Sarah Kolesar,
21 K-O-L-E-S-A-R, Assistant Enforcement Counsel with
22 the OEC. Good morning. I just have a brief
23 question.

1 So you did reference in your response
2 that there is more recent relevant data from
3 PennDOT.

4 Correct?

5 ATTORNEY DOTZEL: Correct.

6 ATTORNEY KOLESAR: Okay.

7 And at this time, you've not
8 completed a full study, as you reference a 2019
9 study.

10 Is that correct?

11 ATTORNEY DOTZEL: That is correct.

12 ATTORNEY KOLESAR: Do you intend - in
13 completing a new study?

14 ATTORNEY DOTZEL: At this time, we
15 don't really think that it would be necessary to re-
16 do the projections for Rutter's 92, both because
17 traffic counts have increased and because when we
18 roughly ran calculations, we had about the same
19 number of diesel gallons -. We came to the
20 conclusion that about the same number of diesel
21 gallons will be sold, regardless of the increase.
22 So we just don't feel that it is necessary at this
23 time.

24 ATTORNEY KOLESAR: Okay.

1 At the prior hearing, and I believe
2 in some of the filings, you mentioned that since
3 2019, there's just some changes to the industry as a
4 result of COVID and prior COVID closures.

5 Did you make any changes to your
6 formula in order to account for that?

7 ATTORNEY DOTZEL: While COVID had an
8 effect on the fuel industry and all industries for
9 that matter, it doesn't really affect how we
10 calculate what we believe to be the projected
11 gallons at any individual store.

12 ATTORNEY KOLESAR: Okay.

13 Do you have anything?

14 Okay.

15 We have no further questions at this
16 time.

17 CHAIR: Thank you.

18 Any questions from the Board at this
19 time?

20 I would just, for the record, ask
21 that you put on the record exactly how much the
22 truck traffic had increased according to PennDOT's
23 latest numbers -

24 ATTORNEY DOTZEL: Sure.

25 CHAIR: - of February 2022?

1 ATTORNEY DOTZEL: Sure.

2 When the projections were made in
3 2019, approximately 4,312 trucks passed Rutter's
4 92's location each day. When we checked the PennDOT
5 traffic database in February of 2022, it stated that
6 approximately 6,375 trucks now pass that location
7 each day.

8 CHAIR: Okay.

9 Thank you. Any other questions from
10 the Board? Ex-Officios? No?

11 Okay.

12 OEC, do you have a presentation?

13 ATTORNEY KOLESAR: We have no
14 presentation. We are just available for any
15 questions that you may have.

16 CHAIR: Any questions for Enforcement
17 Counsel, Rutter's?

18 Any questions for Enforcement
19 Counsel, Board?

20 Okay.

21 Would you like to have a brief
22 closing argument on either side?

23 ATTORNEY REED: No.

24 ATTORNEY KOLESAR: No.

25 CHAIR: Okay.

1 So thank you. OEC, I just want to
2 clarify for the record, there is no issue here as to
3 suitability of Rutter's principals for licensure.

4 Is that correct?

5 ATTORNEY TEPPER: That is correct.

6 ATTORNEY KOLESAR: That is correct.

7 CHAIR: Okay.

8 ATTORNEY KOLESAR: Just the entity,
9 the truck stop establishment.

10 CHAIR: So the entire dispute is
11 about whether the facility is ready to be licensed
12 or not?

13 ATTORNEY KOLESAR: Yes.

14 CHAIR: Okay.

15 Well, then that concludes this
16 proceeding. We will now - I don't think we need a
17 brief recess, do we? No, we're not going to take a
18 brief recess. Thank you, this will be taken up
19 under the Officer of Chief Counsel's Agenda later
20 today.

21 * * * * *

22 HEARING CONCLUDED

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing was held before Chairman Smyler, was reported by me on March 23, 2022 and that I, Hannah Bartkowski, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Date the 2 day of May, 2022



Hannah Bartkowski,

Court Reporter

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