



TO: Mayor and Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Christopher J. Forsyth, Assistant City Attorney
DATE: August 1, 2006
SUBJECT: In Re: Hooters lawsuit

Enclosed please find a copy of the Order dismissing the lawsuit filed by Hooters Inc. of Troy against the City of Troy. Oakland County Circuit Court Judge John McDonald entered this order on July 28, 2006 after oral argument by the parties.

Hooters of Troy, Inc. filed its complaint seeking an Order of Superintending Control. This is an order of extraordinary relief, and if granted, it would have essentially overruled the City Council, and required a reversal of its decision to deny Hooter's request for a transfer of the Sign of the Beefcarver Class C liquor license and entertainment permit. Hooters also requested costs, attorney fees, and incidental damages caused by a delay in opening the restaurant at the Wagon Wheel location (Big Beaver and Rochester Road), since the new location was intended to be opened in September 2006. In support of its request, Hooters claimed that the Troy City Council acted arbitrarily and capriciously in denying the requested transfer of the Class C liquor license and entertainment permit. Hooters also alleged that the City violated its due process rights and/or equal protection rights that are guaranteed under the Michigan and United States Constitutions.

The Court rejected these arguments. Under the Michigan Liquor Control Act, there is no right to a new or a transfer of a liquor license request. Municipalities have the discretion to approve or deny liquor license requests, as long as the municipality does not act in an arbitrary or capricious fashion. An action is not arbitrary or capricious when there is a reasonable and legitimate basis for it.

Judge McDonald found that the City of Troy had a reasonable and legitimate basis for denying the requested transfer of the liquor license and entertainment permit, and therefore he denied Hooter's requested relief, and also dismissed the lawsuit. The Court's opinion does not break down the reasonable and legitimate basis for Troy's decision. However, we argued that the following are just some of the reasons that support the City Council denial of the transfer of the liquor license and entertainment permit: Hooter's three liquor code violations during the past ten years; the number of police calls to Hooter's current location, which is substantially more than police calls to other Class C licensed establishments; and the fact that a Hooters located at the intersection of Rochester and Big Beaver would be highly visible to motorists traveling on Big Beaver or existing I-75 freeway from Rochester Road. The presence of a Hooters (whose motto is "delightfully tacky yet unrefined") at this location would be aesthetically incompatible with the upscale shopping, fine dining restaurants, and corporate headquarters that exist in the Big Beaver Corridor or are proposed with the new Big Beaver Corridor study for a world class corridor.

If you have any questions, please let us know.

IT IS HEREBY ORDERED that, for the reasons stated on the record, Hooters' motion is denied. This order also disposes of the City of Troy's pending motion for summary disposition, as Hooters' complaint is dismissed as a result of this ruling.

This order resolves the last pending claim and closes this case.

CIRCUIT COURT JUDGE

Approved as to form only:



Edward G. Lennon (P42278)
Attorney for Plaintiff

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
BY:  Deputy

Christopher Forsyth (P63025)
Troy Assistant City Attorney

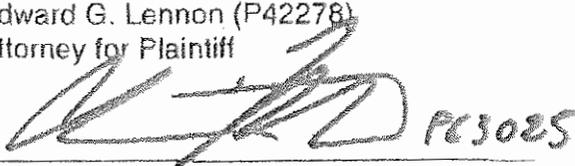
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