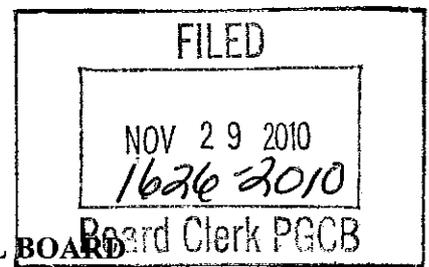


COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA GAMING CONTROL BOARD



In Re: Application Of Penn Harris Gaming, L.P. For A Category 3 Slot Machine License

Docket No. 46551

**MOUNTAINVIEW THOROUGHBRED RACING ASSOCIATION'S
POST HEARING BRIEF IN OPPOSITION TO THE APPLICATION FILED BY
PENN HARRIS GAMING, L.P. FOR A CATEGORY 3 SLOT MACHINE LICENSE**

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Dated: November 29, 2010

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I. SUMMARY OF THE ARGUMENT

“RV World”

If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn't. And contrary wise, what is, it wouldn't be. And what it wouldn't be, it would. You see?¹

Since its application for a Category 3 license application, Penn Harris has made every effort to create a fictional world in which its application would somehow fit within the four corners of the Pennsylvania Race Horse Development and Gaming Act (“Act”). However, despite Penn Harris’s efforts to present an appearance of eligibility for a Category 3 slot machine license, reality tells a different story, one of obvious and glaring deficiencies in the physical characteristics of the Holiday Inn Harrisburg West.

The record before the Pennsylvania Gaming Control Board (the “Board”) clearly establishes that Penn Harris did not have the statutorily required 275 guest rooms at the time of application or even after the time of application. This room count is an essential requirement under the Act and the Board’s regulations and one that cannot be overcome by semantic gamesmanship or by redirecting the Board’s attention from the plain language of the Act.

The record further establishes that in an attempt to overcome its room deficiency, Penn Harris trucked recreational vehicles onto or nearby its property after the initial date of application. Even setting aside the fact that these “rooms” were added after the date of application, recreational vehicles, by their very axled nature, cannot be guest rooms within a hotel as required by the Act. Indeed, the legislature defined the term “hotel” within the Act as a “building or buildings in which” members of the public may obtain sleeping accommodations. Furthermore, the Act requires that a Category 3 applicant must locate the gaming facility in a

¹ Alice in Wonderland (Walt Disney Productions 1951) (motion picture).

“hotel having no fewer than 275 guest rooms.” Therefore, under the clear guidelines of the Act and the Board Regulations, Penn Harris is ineligible to be awarded a Category 3 gaming license because it does not have 275 or more guest rooms.

Even if Penn Harris’s application were not somehow deficient, placing another gaming license in the backyard of the Hollywood Casino at Penn National Race Course (“Hollywood Casino”) would have a devastating effect on its casino and racing operations. In its presentation before the Board, Penn Harris places tremendous emphasis on the location of its property. While location is the quintessential factor for a successful real estate project, demographics are the quintessential factor for a successful convenience gaming operation. As the record reflects, unlike the larger markets in the Philadelphia, the Poconos, or the Pittsburgh area, all with access to large out of state markets, the primary gaming market surrounding Hollywood Casino is limited to approximately 3.1 million in state customers. Should the Board award a license to Penn Harris, the undisputed facts demonstrate that 46% of Hollywood Casino’s current patrons would be closer to Penn Harris’s proposed West Shore Resort than to Hollywood Casino, which would put Hollywood Casino at risk of losing a substantial portion of its market directly to Penn Harris. Furthermore, if Penn Harris were awarded a license, the Commonwealth would see no incremental jobs and no incremental tax revenues, due to corresponding losses at Hollywood Casino by the cannibalization of an existing market rather than creating a new market. Although awarding the Category 3 license to any one of the other applicants might have an impact on the other existing licensees, in all other instances the impact would be considerably less, and therefore would increase the overall pie in terms of jobs and revenues. An award to Penn Harris would also have a significant adverse impact on the

Hollywood Casino’s Horsemen’s Benevolent Protective Association (the “Horsemen”), the intended beneficiary of the Act.

Penn Harris’s creative efforts to present an appearance of eligibility are nothing more than an attempt to establish a small Category 2 standalone casino. Unfortunately for Penn Harris, sometimes reality is a difficult hand, and in this instance both the facts and the law compel a conclusion that Penn Harris is ineligible for a Category 3 license and is the wrong choice for Pennsylvania. Selecting Penn Harris puts additional jobs and revenues at risk, harms the Horsemen and compromises a world class racing and gaming facility in Grantville, Pennsylvania.

II. STATEMENT OF QUESTIONS INVOLVED

1. Whether the General Assembly required that the 275 minimum number of guest rooms be in the hotel building when the plain reading of the Act requires that the applicant must locate its gaming facility in a “hotel having no fewer than 275 guest rooms”² and defines hotel, in relevant part, as “a building or building in which members of the public may for a consideration, obtain sleeping accommodations.”³

Suggested Answer: Yes.

2. Whether Penn Harris has established, by clear and convincing evidence, that the Holiday Inn Harrisburg West is a “well-established resort hotel having no fewer than 275 guest rooms”⁴ when the record is clear that the Holiday Inn Harrisburg West (a) does not report 275 guest rooms for the purposes of remitting hotel taxes to Cumberland County, (b) does not

² 4 Pa. C.S. § 1305(a)(1) (emphasis added).

³ 4 Pa. C.S. § 1102.

⁴ 4 Pa. C.S. § 1305(a)(1).

have zoning approval for 275 guest rooms, (c) does not advertise 275 guest rooms, and (d) did not have 275 guest rooms on its property, at the time of application.

Suggested Answer: No.

3. Whether Penn Harris’s proposed gaming facility is in the best interests of the Commonwealth when (a) it does not serve the legislative intent for Category 3 licenses, (b) its dependence on the local market would cause substantial reductions to revenue and jobs at Hollywood Casino at Penn National Race Course, (c) it negligibly improves net gaming revenue, taxes and jobs in the Commonwealth, and (d) it reduces the amount that the Horsemen receive from Gross Terminal Revenues at Category 1s by diverting Category 1 Gross Terminal Revenue to a Category 3, rather than creating more Gross Terminal Revenue.

Suggested Answer: No.

III. PENN HARRIS IS INELIGIBLE FOR A CATEGORY 3 GAMING LICENSE BECAUSE, SEMANTIC GAMESMANSHIP ASIDE, THE ACT IS CLEAR: AN APPLICANT FOR A CATEGORY 3 LICENSE MUST SEEK TO LOCATE THEIR GAMING FACILITY IN A “HOTEL HAVING NO FEWER THAN 275 GUEST ROOMS.”

Despite Penn Harris’s bold assurances that it would not present any “lawyer mumbo jumbo,”⁵ Penn Harris’s sole basis for asserting its eligibility is comprised solely of “lawyer mumbo jumbo” that obfuscates the actual language in Section 1305 of the Act: that a Category 3 gaming facility must be located in a “hotel having no fewer than 275 guest rooms.”⁶

In the opening of Penn Harris’s licensing presentation, John Donnelly testified that:

⁵ In Re: Penn Harris, Board Hearing Transcript, Testimony of John Donnelly on behalf of Penn Harris, November 17, 2010, p. 22.

⁶ 4 Pa. C.S. § 1305(a)(1) (emphasis added).

Let's talk about the rooms, because we're not going to try anything under a basket or give you a convoluted legal argument. The argument is very, very, very simple. The statute says that you must have 275 guest rooms. It does not say hotel rooms.⁷

He then repeated "It did not say hotel rooms. It said guest rooms"⁸ and "the law, again, is simple. I don't have to take 20 minutes to argue some convoluted legal argument. The law says guest rooms."⁹ Finally, Michael Sklar reiterated that:

[W]hat is critical to focus on is the specific words that the legislature chose to use here, guestroom. They certainly could have said hotel rooms or they could have said that the guestrooms must be contained in a hotel room, but they didn't.¹⁰

To paraphrase William Shakespeare, "methink they doth protest too much." In fact, the specific words that the legislature chose to use here are "hotel having... 275 guest rooms."¹¹ Even without reference to any other provision in the law, it is abundantly clear that Penn Harris's hotel does not have 275 guest rooms. Hotel is further defined in the Act, for the purposes of Section 1305, as "a building or buildings in which members of the public may, for a consideration, obtain sleeping accommodations."¹² Read together, the 275 "guest rooms," also referred to as "sleeping accommodations," must be "in" the "building or buildings."¹³ Recognizing this relationship between the "well-established resort hotel" eligibility criteria and the definition section of the Act, Commissioner Trujillo fittingly asked Penn Harris:

⁷ In Re: Penn Harris, Board Hearing Transcript, Testimony of John Donnelly on behalf of Penn Harris, November 17, 2010, p. 13-14 (emphasis added).

⁸ *Id.* at 14.

⁹ *Id.* at 20 (emphasis added).

¹⁰ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 88 (emphasis added).

¹¹ 4 Pa. C.S. § 1305(a)(1).

¹² 4 Pa. C.S. § 1102 (emphasis added).

¹³ 4 Pa. C.S. §§ 1102, and 1305(a)(1).

So, what I'd like to do is go to the definition section of the statute which defines not guest room, but hotel. And hotel is defined... when the term is used in Section 1305... [as] a building or buildings in which members of the public may, for a consideration, obtain sleeping accommodations.

So, obviously then, that's relating us back to 1305, and then 1305(a) speaks to a well-established resort hotel having no fewer than 275 rooms under common ownership, dot dot dot. Does that relationship to the definition section, where hotel is defined, not put us then squarely back in the legislature anticipating that a guest room is, in fact, a guest room at a hotel?¹⁴

The simple answer to Commissioner Trujillo's question is: yes; the definition of "hotel" does put us squarely back to where guest rooms must be in the hotel building or buildings. As a result, Penn Harris's recreational vehicles, which by their very axeled nature must be titled as motor vehicles, are not in any building or buildings. They are therefore, also not "guest rooms."¹⁵

Any other reading of the statute would lead to an absurd result, which undoubtedly the legislature did not intend.¹⁶ Using Penn Harris's logic, where does one draw the line? For example, using the semantic and singular reliance on the term "guest rooms" and not the entire definition of a "hotel having" in conjunction with the eligibility criteria in section 1305 of the Act, a small hotel having 10 rooms and an additional 265 separate "tents" in an adjacent campsite serving as guest rooms could qualify as a resort hotel having 275 guest rooms.

¹⁴ In Re: Penn Harris, Board Hearing Transcript, Questioning by Commissioner Trujillo, November 17, 2010, p. 126-27.

¹⁵ The recreational vehicles, whether permanently affixed or transient, would not be "in" a "building or buildings." However, Mountainview is particularly perplexed by Penn Harris's legal argument after Mr. Donnelly's testified at Penn Harris's public input hearing that the recreational vehicles on property would be available for people to rent and drive off the property. The notion that a hotel's "rooms" can drive off the property for any length of time is irreconcilable with the Act's definition of "hotel." In Re: Penn Harris, Board Hearing Transcript, Testimony of John Donnelly on behalf of Penn Harris, August 30, 2010, p.22 ("We also ultimately hope to have --- rent RVs out at that gaming facility so that people can come, stay there and tour around the area, go to Gettysburg, go elsewhere in the area in an RV.").

¹⁶ 1 Pa. C.S. § 1922(1) ("In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used: That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.").

Penn Harris's argument to the contrary places a misleading prominence on the term "guest room." Penn Harris's contention that "the specific word[] that the legislature chose to use here [is] guestroom,"¹⁷ is disingenuous when, in fact, the specific words that the legislature chose are "hotel having no fewer than 275 guest rooms."¹⁸ When pressed on this point during questioning from the Board,¹⁹ Michael Sklar maintained that:

[I]f [the General Assembly's] intent was to say that the guest rooms have to be hotel rooms, they would have just changed --- it's a simple striking of the word in 1305, striking guest and replacing it with hotel.²⁰

In other words, Penn Harris insists that the definition of hotel in the Act is irrelevant because if the General Assembly intended that the sleeping accommodations be in the hotel building, the General Assembly would have phrased the eligibility criteria as "hotel having 275 hotel rooms." Of course, such phrasing would be redundant. All rooms in a hotel are hotel rooms. The phrase "guest rooms" simply distinguishes "sleeping accommodations" from other types of hotel rooms, such as ballrooms or meeting rooms or dining rooms, that would not satisfy the 275 minimum requirement.

¹⁷ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 88 (emphasis added).

¹⁸ In the interest of being completely forthright, the full sentence quoted above, in part, is:

"A person may be eligible to apply for a Category 3 slot machine license if the applicant, its affiliate, intermediary, subsidiary or holding company has not applied for or been approved or issued a Category 1 or Category 2 slot machine license and the person is seeking to locate a Category 3 licensed gaming facility in a well-established resort hotel having no fewer than 275 guest rooms under common ownership and having substantial year-round recreational guest amenities."

4 Pa. C.S. § 1305(a)(1) (emphasis added to show the relevant part).

¹⁹ In Re: Penn Harris, Board Hearing Transcript, Questioning by Commissioner Trujillo and testimony by Michael Sklar, November 17, 2010, p. 126-27.

²⁰ *Id.*

IV. PENN HARRIS IS INELIGIBLE FOR A CATEGORY 3 GAMING LICENSE BECAUSE, THE BOARD’S OWN REGULATIONS MAKE CLEAR THAT AN INSUFFICIENT NUMBER OF GUEST ROOMS CANNOT BE RECTIFIED AFTER THE TIME OF APPLICATION, WHICH IN THIS CASE WAS APRIL 8, 2010.

On March 27, 2007, the Board held a public hearing to consider the time at which an applicant would be required to have the 275 guest rooms in order for a hotel to qualify as a “well-established resort hotel.”²¹ At this hearing, the question of Commissioner McCabe and the testimony of the primary witnesses to the Board aptly summarized the three possible interpretations of the 275 guest room element of the “well-established resort hotel” eligibility criteria:²²

COMMISSIONER MCCABE: We’ll go back to the hotel rooms, 275. I’m confused, and I would like to hear your opinion on the 275. The date the law was passed --- three things. The date the law was passed, date of application or date of licensing. Those are three different specifics that we would have to take into consideration. What is your opinion?

ATTORNEY BEDWICK: There’s a difference of opinion between Audrey and I. I think we’re both in agreement that you did not have to have 275 rooms on the date the statute passed. Audrey’s opinion is 275 rooms on the date of application. My view is 275 on the date of issuance of the license. And that issue probably highlights the confusion within the section.

CHAIRMAN DECKER: Right.

MS. POWELL: And primarily because if you didn’t have the 275 guestrooms on the date of application, you would not be eligible for a license.²³

²¹ In Re: Public Meeting, Board Hearing Transcript, March 27, 2007.

²² The primary witnesses to the Board were George Bedwick, who was the legislative counsel to the house Majority Whip, and Audrey Powell, who was the policy director to the House Majority Leader.

²³ In Re: Public Meeting, Board Hearing Transcript, Questioning by Commissioner McCabe and Chairman Decker and testimony by George Bedwick and Audrey Powell, March 27, 2007, p. 18-19 (emphasis added).

When Ms. Powell recommended that the 275 rooms should be required “on the date of application,” she was clear to the Board that she believed “there should be a requirement on the date they apply.”²⁴

At its first opportunity after conducting this public hearing,²⁵ the Board resolved the matter in favor of Ms. Powell’s interpretation that the 275 will be required on the date of application, and not on the date the application was deemed complete.²⁶ Accordingly, the definition of “well-established resort hotel” in the Board’s regulations states that the 275 guest rooms are required “at the time of application,” meaning on the date that one applies.²⁷

Contrary to this regulatory history, Penn Harris somehow believes that it can continue to add guest rooms after the date it submitted its application. However, this position disregards the Board’s decision to require the 275 guests specifically on the date the application is submitted. In fact, at the conclusion of the March 27, 2007 public hearing, Chairman Decker illustrated a perfect scenario directly applicable to the Penn Harris application where a hypothetical hotel property with 50 rooms decided to expand to 275 guest rooms after the date of application:

²⁴ In Re: Public Meeting, Board Hearing Transcript, Questioning by Chairman Decker and testimony by Audrey Powell, March 27, 2007, p. 15.

²⁵ The first meeting of the Board after the March 27, 2007 public hearings was on April 9, 2009. At its April 9, 2009 meeting, the Board adopted Rulemakings 125-70 and 125-64 which included the same definition of “well-established resort” effective immediately through the Board’s temporary rulemaking authority and effective upon completion of the independent regulatory review process.

²⁶ Rulemaking 125-70, *Slot Machine Licenses, Amendments to Temporary Regulations (Chapter 441)*, April 9, 2007 (adopted), May 19, 2007 (published at 37 Pa. B. 2296) (emphasis added); Rulemaking 125-64, *Manufacturer Designees; Principal Licenses; Employees; Vendor Certification and Registration; Slot Machine Licenses, Proposed Rulemaking (Chapters 441a et al.)*, April 9, 2007 (adopted), June 16, 2007 (published at 37 Pa. B. 2695) (emphasis added).

²⁷ 58 Pa. Code § 441a.1; *accord* In Re: Public Meeting, Board Hearing Transcript, Questioning by Chairman Decker and testimony by Audrey Powell, March 27, 2007, p. 15.

CHAIRMAN DECKER: [W]e wouldn't be talking about somebody who had a 50-room hotel/motel who decided to expand, you know, 225 rooms over some period of time...

* * *

CHAIRMAN DECKER: Do you see what I'm getting at? ... A small motel, pick a city right in the area, or near somewhere outside anywhere, and that entity decided to apply for a license and it started to build a --- I'm not sure there's anything like this, but it started to build 225 rooms to get to the 275, that wouldn't be, in your mind, a well-established resort; is it?

* * *

MS. POWELL: They're on their way of becoming [a well-established resort hotel], but they won't be eligible for a license.²⁸

Here, Douglas Sherman, Chief Counsel to the Pennsylvania Gaming Control Board, was clear: "[t]he Application of Penn Harris Gaming was filed with the Pennsylvania Gaming Control Board on April 8th, 2010."²⁹ There is no dispute that, as of April 8, 2010, the Holiday Inn Harrisburg West was a 239 guest room hotel. There were zero (0) recreational vehicles at that time.³⁰ Penn Harris's decision to add recreational vehicles to the Holiday Inn Harrisburg after the date of application is functionally indistinguishable from Chairman Decker's illustration. If the hypothetical 50-room hotel, as described above by Chairman Decker, that

²⁸ In Re: Public Meeting, Board Hearing Transcript, Questioning by Chairman Decker and Commissioner McCabe and testimony by Audrey Powell, March 27, 2007, p. 29-31. The discussion of Chairman Decker's illustration is redacted solely for the sake of clarity. An unredacted copy discussion is attached hereto as Attachment 4.

²⁹ In Re: Penn Harris, Board Hearing Transcript, Testimony of Douglas Sherman, Esquire, Chief Counsel to the Board, November 17, 2010, p. 6-7. Of note, The Pennsylvania Gaming Control Board website shows that Penn Harris's application was filed on April 8, 2010 even though the deadline for filing was April 7, 2010. Pennsylvania Gaming Control Board Application Status Report, http://www.pgcb.state.pa.us/files/licensure/reports/Application_Status_Facilities.pdf (last visited Nov. 24, 2010).

³⁰ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 92 ("As of August 2nd, Penn Harris had 275 guestrooms under common ownership available for rental"); accord Penn Harris Application for a Category 3 license, Appendix 41, p. 4 and Appendix 29, p. 1 (Penn Harris "will offer patrons the ability to rent one of 36 themed recreational vehicles or to drive and park their own RV at the site.") (emphasis added); see also Mountainview's Petition to Intervene, ¶ 24-26.

expands by building 225 rooms is not a “well-established resort hotel,” then neither is the 239-room Holiday Inn Harrisburg West regardless of the addition of 36 recreational vehicles. As a result, the Holiday Inn Harrisburg West is not a “well-established resort hotel” and Penn Harris is ineligible for Category 3 licensure.

V. PENN HARRIS IS INELIGIBLE FOR A CATEGORY 3 GAMING LICENSE BECAUSE IT FAILED TO DEMONSTRATE, BY CLEAR AND CONVINCING EVIDENCE, THAT THE HOLIDAY INN HARRISBURG WEST IS A WELL-ESTABLISHED RESORT HOTEL HAVING 275 GUEST ROOMS.³¹

Penn Harris purports to satisfy the “well-established resort hotel having no fewer than 275 guest rooms” eligibility requirement by parking 36 recreational vehicles on the Holiday Inn Harrisburg West property to serve as additional guest rooms for the purposes of the Category 3 license application,³² purportedly as of August 2, 2010.³³ However, direct observation of the Holiday Inn Harrisburg West property and several of Penn Harris’s own factual admissions in its application and during its presentations to the Board, controvert Penn Harris’s testimony that the recreational vehicles were on the property. Thus, the factual record from the Board’s hearings on Penn Harris’s application, and the pleadings and exhibits submitted into the record, affirmatively demonstrate that the Holiday Inn Harrisburg West does not have 275 guest rooms in or outside the hotel building even after August 2, 2010.

³¹ 58 Pa. Code § 441a.7(d) (“At a licensing hearing, an applicant shall appear before the Board and at all times have the burden to establish and demonstrate, by clear and convincing evidence, its eligibility and suitability for licensure and to address the criteria identified in section 1325(c) (relating to license or permit issuance) of the Act.”).

³² In Re: Penn Harris, Board Hearing Transcript, Testimony of Richard Aljian on behalf of Penn Harris, August 30, 2010, p.17 (“The hotel currently consists of 239 hotel rooms. With the addition of the 36 RVs, we’ve gone to 275 rooms, which meets the [Board’s] minimum number of hotels needed”).

³³ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 92; see also p. 195 and 201-02 (“[a]s of August 2nd, Penn Harris had 275 guestrooms under common ownership available for rental.”).

A. Three sworn affidavits and 18 photographs submitted into the record by Mountainview directly controvert the testimony by Penn Harris that the recreational vehicles were on the property since August 2, 2010.

The direct observations of two individuals, Robert J. Clark and Joseph Lombardi (the “Affiants”), of the Holiday Inn Harrisburg West property and the neighboring property for a separately owned office building, controvert the testimony by Penn Harris during its licensing presentation that the recreational vehicles were on the property since August 2, 2010. On the days of observation, there were typically seven (but no more than nine) recreational vehicles on the Holiday Inn Harrisburg West property. All additional recreational vehicles – no more than 28 during any of the Affiants’ site visits – were parked and double-parked tightly in the corner of the parking lot and on a pad adjacent to the parking lot for the neighboring NRA Group office building.³⁴

The Affiants documented their direct observation of the Holiday Inn Harrisburg West and the neighboring office building in the form of three sworn affidavits and 18 photographs. Mountainview submitted these affidavits and photographs into the record as Exhibit D to its *Petition to Intervene in the Application of Penn Harris for a Category 3 License*.³⁵ Penn Harris notably declined to provide any specific response to Mountainview’s *Petition to Intervene*. In its licensing hearing, Penn Harris’s only response was the accusatory

³⁴ See photographs filed as part of Exhibit D to the *Petition to Intervene* and included herein as part of Attachment 2; see also photographs filed as part of Exhibit I of Mountainview’s Notice of Intent to Contest the Eligibility/Suitability of Penn Harris (“Notice of Intent to Contest”) and included herein as part of Attachment 3.

³⁵ Licensing Docket No. 46551, OHA Docket No. 1626-2010 (filed August 27, 2010) (granted by the Board on October 27, 2010) (“*Petition to Intervene*”). A copy of Exhibit D to Mountainview’s *Petition to Intervene* is reproduced as Attachment 2 hereto.

statement by Mr. Sklar: “I hope that was not submitted under oath because the fact is all 36 recreational vehicles were on site, as of August 2nd, 2010.”³⁶

Nonetheless, the sworn affidavits and supporting photographic evidence are clear and convincing. The number of recreational vehicles that the Affiants found on the Holiday Inn Harrisburg West property are shown in Table 1 below.

Table 1

<u>Date of Site Visit</u>	<u>Approximate Time</u>	<u>Number of Recreational Vehicles</u>
August 12, 2010	4:30 PM	Seven
August 14, 2010	9:30 AM	Seven
August 15, 2010	2:00 PM	Eight
August 16, 2010	8:00 AM	Nine
August 18, 2010	1:30 PM	Seven
August 20, 2010	7:00 PM	Eight
August 21, 2010	8:00 PM	Seven
August 22, 2010	4:00 PM	Seven
August 25, 2010	9:00 AM	Four

Notwithstanding Mr. Sklar’s testimony, the majority of the recreational vehicles were actually stored off of the Holiday Inn Harrisburg West property on all the occasions when the Affiants visited. They were parked and double-parked tightly in a pad adjacent to the parking lot for the neighboring office building. The close quarters, remote, off-site location and absence of any hook ups for electricity or other utilities, demonstrate that the recreational vehicles were not maintained in a condition to be rented as “hotel” rooms on any given night.³⁷ The Holiday Inn Harrisburg West did not have zoning approval for the recreational vehicles, did not advertise the recreational vehicles as guest rooms available for rental, and only rented the recreational vehicles on 0.7% of the nights they were purportedly available.

³⁶ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 195.

³⁷ See photographs filed as part of Exhibit D to the Petition to Intervene and included herein as part of Attachment 2; see also photographs filed as part of Exhibit I of Mountainview’s Notice of Intent to Contest the Eligibility/Suitability of Penn Harris and included herein as part of Attachment 3.

In light of the factual dispute and in the interest of being very clear, Attachment 3 hereto compiles a series of materials submitted to the Board under oath and for the record that visually demonstrate the precise location of no more than 9 recreational vehicles on the Holiday Inn Harrisburg West property and no more than 28 recreational vehicles on the separate property for the neighboring office building.

In addition, Mountainview hereby submits Exhibit J to supplement the record with photographs of the rear lot of the Holiday Inn Harrisburg West property where Penn Harris allegedly had placed their recreational vehicles. One photograph, taken on August 30, 2010, shows that there are no recreational vehicles in the back lot. In fact, at the time of the photograph, there was a construction vehicle (shown through the trees) actively working on the property. The second and third photographs, taken on November 26, 2010, show that at some point after August 30, 2010, recreational vehicles were moved on to the back lot.

B. By Penn Harris's own testimony, the Holiday Inn Harrisburg West has not and does not operate as a 275 guest room gaming facility and therefore is not a "well-established hotel having no fewer than 275 guest rooms."

Penn Harris's exclusive focus on the term "guest room" conveniently ignores the "well-established" eligibility criteria in section 1305 of the Act; an applicant for a Category 3 license must be seeking to locate its gaming facility in a "well-established resort hotel having no fewer than 275 guest rooms." For the following reasons - regardless of the presence (or absence) of the recreational vehicles - Penn Harris's own testimony establishes that for several practical and operational purposes, the Holiday Inn Harrisburg West has not and does not operate as a 275 guest room facility. Since the Holiday Inn Harrisburg West has not and does not operate as a 275 guest room facility, there should be no basis to conclude that the Holiday Inn Harrisburg West is a "well-established resort hotel having no fewer than 275 guest rooms."

1. *In the absence of the Category 3 License opportunity, the Holiday Inn Harrisburg West would not have any recreational vehicles.*

There is no dispute that prior to Penn Harris's application, the Holiday Inn Harrisburg West had no recreational vehicles and significantly fewer than 275 guest rooms.³⁸ There is no dispute that Penn Harris acquired the recreational vehicles as an eleventh hour attempt to satisfy the specific eligibility criteria in a Category 3 license application.³⁹ Furthermore, when pressed by Commissioner Sojka regarding the future of the Holiday Inn Harrisburg West in the event that Penn Harris does not receive the license, Richard Aljian testified that the recreational vehicles probably would not be a part of that future.⁴⁰

2. *The Holiday Inn Harrisburg West failed to report having any recreational vehicles for hotel tax purposes despite its continuing duty to update Cumberland County and its Hotel Tax Registration Form.*

At Penn Harris's licensing hearing, Chairman Fajt pointedly asked, "are you under an affirmative obligation when you increase hotel rooms to file a new certification?"⁴¹ Although Penn Harris was "not sure,"⁴² Mountainview addresses the Chairman's question in two respects. First, the express provision on Cumberland County's Hotel Tax Registration Form states "If any changes are made to the above information, it is the responsibility of the registrant

³⁸ In Re: Penn Harris, Board Hearing Transcript, Testimony of Richard Aljian on behalf of Penn Harris, August 30, 2010, p. 17 ("The hotel currently consists of 239 hotel rooms. With the addition of the 36 RVs, we've gone to 275 rooms, which meets the [Board's] minimum number of hotels needed").

³⁹ *Id.*

⁴⁰ In Re: Penn Harris, Board Hearing Transcript, Questioning by Commissioner Sojka and testimony of Richard Aljian on behalf of Penn Harris, November 17, 2010, p. 163-64 (Commissioner Sojka asked "[t]he RVs would probably come out?" and Mr. Aljian confirmed "[t]he RVs would probably come out.>").

⁴¹ In Re: Penn Harris, Board Hearing Transcript, Questioning by Chairman Fajt and testimony of Daniel Richardson and Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 202.

⁴² *Id.*

to notify the county of these changes in writing.”⁴³ Secondly, Mountainview hereby submits a supplemental affidavit from John Gross, Cumberland County Treasurer, whereby Mr. Gross confirms that (a) a registrant “is under a continuing duty to update [Cumberland] County of any changes made to the information in [the Hotel Tax Registration Form]” and (b) “Cumberland County has not received any updates to the information in [the Holiday Inn Harrisburg West’s Hotel Tax Registration Form].”⁴⁴

3. *The Holiday Inn Harrisburg West’s present zoning approval does not authorize any recreational vehicles.*

Chairman Fajt also asked at the licensing hearing:

[T]here is no additional zoning variances or local commission support that you need to do this facility? In other words, your plot there, the 22 acres, is currently zoned with the RVs, and everything that you need, you have already; is that correct?⁴⁵

Michael Sklar, on behalf of Penn Harris, conceded that is not correct. The Holiday Inn Harrisburg West is not zoned for the recreational vehicles. In fact, Penn Harris is seeking a conditional use permit from Hampden Township in order to authorize the addition of the 36 recreational vehicles.⁴⁶ Effectively, Penn Harris’s position is that, *even though Penn Harris is still seeking permission to add the recreational vehicles*, the Board should credit them as already having the recreational vehicles for the purposes of satisfying the “well-established

⁴³ See Hotel Tax Registration Form for the Holiday Inn Harrisburg West submitted into the record as Exhibit C to Mountainview’s Petition to Intervene and Exhibit 2 to Mountainview’s presentation to the Board, November 17, 2010.

⁴⁴ Second Affidavit of John Gross, Cumberland County Treasurer, November 23, 2010, attached hereto and submitted into the record as Exhibit K.

⁴⁵ In Re: Penn Harris, Board Hearing Transcript, Questioning by Chairman Fajt and testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 161-62.

⁴⁶ *Id.*

resort hotel” criteria.⁴⁷ In light of the very significant local opposition to the Penn Harris project, zoning could be at least a very controversial and time consuming effort, and could be denied.⁴⁸

4. *Having rented the recreational vehicles for 27 room nights in the history of the Holiday Inn Harrisburg West, Penn Harris conceded that the vehicles are merely in an “infancy stage,” which is certainly not “well-established.”*

With recreational vehicles rented for only 27 room nights as of the date of hearing, it is not clear that the recreational vehicles are even at an “infancy stage,” let alone at “well-established” stage.⁴⁹ Assuming arguendo that all of the recreational vehicles were on the property and available for rental (with sufficient utility hook ups for all of them), the recreational vehicles would have been available for 3,852 room nights but were only rented on 27 room nights. That equates to an occupancy rate of less than one percent (0.7%). Upon questioning from Commissioner McCabe and Chairman Fajt, Ken Kochenour characterized this occupancy rate as an “infancy stage.”⁵⁰ If the recreational vehicles and the entire concept are, at most, in an “infancy stage,” then the vehicles and consequently the Holiday Inn Harrisburg West should clearly not qualify as “well-established” under Section 1305 of the Act.

5. *The Holiday Inn Harrisburg West cannot advertise any of the recreational vehicles as being available for rental.*

Richard Aljian, on behalf of Penn Harris, testified that at present time, the Holiday Inn Harrisburg West cannot advertise or market any of the recreational vehicles under

⁴⁷ With the overwhelming opposition to the Penn Harris proposed resort and casino, Penn Harris may have significant trouble with obtaining the requisite zoning approvals. *See* Roger Quigley, “Mechanicsburg Borough Council votes to oppose proposal of casino in Hampden Township”, THE PATRIOT NEWS, Sept. 22, 2010, at A4.

⁴⁸ *Id.*

⁴⁹ *Compare* 4 Pa. C.S. § 1305(a)(1) to In Re: Penn Harris, Board Hearing Transcript, Questioning by Commissioner McCabe and Chairman Fajt and testimony of Ken Kochenour and Richard Aljian on behalf of Penn Harris, November 17, 2010, p. 103-104.

⁵⁰ *Id.*

the Holiday Inn brand.⁵¹ Mr. Aljian explained that “There’s been a couple of car shows; he’s [Dan Richardson’s] then offered, and some [recreational vehicles] were filled.”⁵² For the purposes of satisfying the “well-established resort hotel” eligibility criteria, Penn Harris should not be credited with guest rooms that they may not market or advertise.

6. *The site plan for the proposed West Shore Resort does not show 275 guest rooms on the property.*

Lastly, as further evidence that the proposed recreational vehicles are merely aspirational, when Penn Harris presented its proposed West Shore Resort at its public input hearing on August 30, 2010, their site plan illustrated that there would be only 34 recreational vehicles on the site, which adds up to no more than 273 guest rooms.⁵³

VI. AWARDING THE CATEGORY 3 LICENSE TO PENN HARRIS IS NOT IN THE BEST INTERESTS OF THE COMMONWEALTH BECAUSE IT WILL SIGNIFICANTLY HARM THE HOLLYWOOD CASINO AT PENN NATIONAL RACE COURSE AND WILL ONLY NEGLIGIBLY IMPROVE NET GAMING REVENUE, TAXES AND JOBS IN THE COMMONWEALTH.

A. Granting Penn Harris a gaming license directly within the backyard of Hollywood Casino would materially and adversely impact Hollywood Casino’s gaming and racing operations.

During its licensing hearing, Penn Harris placed significant emphasis on the location of its property. While location may be a quintessential factor for a successful real estate project, demographics are the quintessential factor for a successful convenience gaming operation. The record clearly reflects that unlike the larger Philadelphia or Pittsburgh markets, the primary gaming market surrounding Hollywood Casino is limited in size. Due to the demographics within this limited market, granting Penn Harris a gaming license in the backyard

⁵¹ In Re: Penn Harris, Board Hearing Transcript, Testimony of Richard Aljian on behalf of Penn Harris, November 17, 2010, p. 105.

⁵² *Id.*

of the Hollywood Casino would have devastating effect on Hollywood's casino and racing operations.

Specifically, Penn National's Vice President for Financial Analysis, Walter Bogumil, testified that approximately 3.1 million adults 25 years or older live within a 90 mile drive time of Hollywood Casino.⁵⁴ Of those 3.1 million adults who reside in Hollywood Casino's primary market, approximately 1.4 million live closer to the Mechanicsburg gaming facility than to the Hollywood Casino. According to Mr. Bogumil:

"All of those 1.4 million adults are now going to be closer the Mechanicsburg facility than the Penn National facility. What that represents today in real customers that are going to Penn National today that we generate our tax dollar from, that our jobs are created by, is 46 percent of Penn National's revenue, will now be generated from customers that are going to be closer to the Mechanicsburg site."⁵⁵

Importantly, these numbers are real numbers based upon the actual data from Hollywood Casino's player tracking systems and not based upon speculative gravity models. This scenario puts more than 45% of Hollywood's revenues at risk, particularly where proximity is a "huge" driver of gaming revenues for Pennsylvania's convenience gaming market.⁵⁶

Furthermore, according to testimony presented by Laura Palazzo, the Chief Financial Officer for Hollywood Casino, Hollywood's loss of revenues could result in the

(...continued)

⁵³ In Re: Penn Harris, Board Hearing Presentation by Penn Harris, August 30, 2010, see accompanying slide; see also Attachment 1 hereto.

⁵⁴ In Re: Penn Harris, Board Hearing Transcript, Testimony of Walter Bogumil on behalf of Penn National Gaming, Inc., Nov. 17, 2010, p. 174.

⁵⁵ *Id.*

⁵⁶ *Id.*

reduction of up to 300 full and part time jobs at the property.⁵⁷ In addition, the award of a license to Penn Harris is very likely to result in the cancelation of casino expansion plans at Hollywood Casino resulting in the additional loss of 90 full and part time jobs associated with the expansion plans.⁵⁸ According to Ms. Palazzo, the potential revenue reductions for Hollywood could result in losses of up to \$50 million of incremental taxes to Pennsylvania.⁵⁹ In short, we believe the Commonwealth would see no incremental tax revenues and no incremental jobs if the Category 3 license were awarded to Penn Harris.⁶⁰

With regard to Penn Harris's own market projections, its own experts testified that a large portion of Penn Harris's gaming revenues will be derived from its local market. According to Mr. Klebanow, 93.5% or \$71M million in gaming revenues will come from the inner market surrounding Penn Harris.⁶¹ The resort market or what Mr. Klebanow terms the "Non-Casino Hotel Demand" will produce only \$3 Million or 3.9% of Penn Harris's revenue. By Penn Harris's own admission, the local market is the most significant driver of revenues by far, making Penn Harris's proposed casino more consistent with a mini-Category 2 convenience casino than a resort hotel.

While admitting that almost all of Penn Harris' gaming revenues will be generated from the local market, Penn Harris inexplicitly opines that their own cannibalization

⁵⁷ In Re: Penn Harris, Board Hearing Transcript, Testimony of Laura Palazzo on behalf of Penn National Gaming, Inc., November 17, 2010, p. 178.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* See also 4 Pa. C.S. § 1102 (In fact, the General Assembly recognized both job enhancement and new revenues to the Commonwealth, as an important objective of the Act.).

⁶¹ According to Mr. Klebanow, this figure does not include Gaming Demand from an "Outer-Market capture rate" of \$1.8 million. In Re: Penn Harris, Board Hearing Transcript, Testimony of Andrew Klebavow on behalf of Penn Harris, November 17, 2010, p. 82.

models suggest that they will cut into Hollywood Casino' market by only 15%.⁶² This "opinion" however, is based upon hypothetical models rather than actual tracking data. Furthermore, the opinion seems to be inconsistent with testimony from Penn Harris's experts that an overwhelming majority of the West Shore Casino's gaming demand will come from the local or inner market. This is the same market in which approximately 45% of Hollywood Casino's customers currently reside.

B. Penn Harris's proposed gaming facility would not serve the legislative intent of the Gaming Act well-recognized by the members of the Board during the licensing hearing proceedings, namely to promote tourism in the Commonwealth.

Penn Harris's proposal that they should be awarded a Category 3 license based upon location, location, location as well as expert testimony that more than 93% of its gaming revenues will come from the local market is akin to the tail wagging the dog. The legislative intent behind the Category 3 resort license was to promote tourism in the Commonwealth through a well established resort hotel, and not to award the license based upon a smaller scale casino's ability to drive revenues particularly at the expense of other proximate casinos.⁶³

Recognizing the importance of implementing the legislative intent behind Category 3 licenses, Commissioner Sojka fittingly asked about Penn Harris's focus on location as the main factor in Penn Harris's presentation;

⁶² In Re: Penn Harris, Board Hearing Transcript, Testimony of Jim Perry on behalf of Penn Harris, November 17, 2010, p. 197.

⁶³ See 4 Pa. C.S. § 1102(6) ("The authorization of limited gaming is intended to enhance the further development of the tourism market throughout this Commonwealth, including, but not limited to, year-round recreational and tourism locations in this Commonwealth.").

Your theme today has been location, location, location. That's a very legitimate thing to do in the real estate world, and when you do that, that means you look for a location as people who want to put in a gaming facility. And then you look around and you find something that either does or could be made to fit the description of a resort. There's another approach which says, we have a resort and we'd like another amenity. Would you agree that if you're doing location, location, location, it really means that the gaming is leading; you're looking for a place to put the gaming, and you found something that you can make into a resort; is that not right?⁶⁴

Penn Harris's proposal, which is based upon location, is for a casino hotel which has the propensity to draw significantly from the local community and not from the tourism market. Further, the record supports that after selecting its location, Penn Harris then attempted to meet the definition of a well established resort hotel by trucking recreational vehicles onto the property to fit the room requirements for a Category 3 license. The Penn Harris application does not support the underlying purpose of the General Assembly to promote tourism. This was made readily abundant by its own expert when he testified that their tourism market would only lead to 3.9 % of their gaming revenues. This conclusion is bolstered by Penn Harris's own admission that if they do not receive a Category 3 license, the recreational vehicles probably would not be part of the property's future.⁶⁵

VII. THE HOLIDAY INN HARRISBURG WEST DOES NOT HAVE THE SUBSTANTIAL AMENITIES OR CONVENTION BUSINESS THAT ARE NECESSARY TO QUALIFY AS A "WELL-ESTABLISHED RESORT HOTEL HAVING ... SUBSTANTIAL YEAR-ROUND AMENITIES."

The second baseline requirement for a "well-established resort hotel" is that the hotel must have "substantial year-round" amenities.⁶⁶ For the reasons fully set forth in Mountainview's Petition to Intervene, a comparison to Valley Forge Convention Center

⁶⁴ In Re: Penn Harris, Board Hearing Transcript, Questions by Commissioner Gary A. Sojka, November 17, 2010, p 162-63.

⁶⁵ In Re: Penn Harris, Board Hearing Transcript, Testimony of Richard Aljian on behalf of Penn Harris, November 17, 2010, p. 164.

illustrates that the Holiday Inn Harrisburg West falls significantly short of the necessary amenities and convention business to qualify as a “well-established resort hotel.” As a result, Penn Harris is ineligible for failure to meet this criteria as well.

VIII. LOCAL OPPOSITION TO PENN HARRIS’S PROPOSED GAMING FACILITY

NoHampdenCasino, a coalition of residents from Hamden Township and Cumberland County Pennsylvania, spearheaded efforts to collect signatures opposing the Penn Harris application. The record reflects substantial local opposition to the Penn Harris application as evidenced by the more than 900 signatures that were submitted to the Board on October 29, 2010 and which are available for review at the Board’s website.⁶⁷

IX. SURREBUTTAL TO THE PENN HARRIS PRESENTATION

A series of Penn Harris’s statements and arguments during its licensing presentation distorted the law (as described above in Sections III and IV), the facts (as described above in Section V.A), and prior statements by other individuals (as described in this section). Individually, they might suggest a degree of zealotry or confusion. Collectively, however, they represent a disturbing trend that in the most generous fashion can be described as remarkable carelessness.

The best example of distorting the statements from other individuals is the inappropriate reference to a statement made by Penn National Gaming Inc.’s counsel at the suitability hearing, at which his firm represented Valley Forge Convention Center Partners, L.P.,

(...continued)

⁶⁶ 4 Pa. C.S. § 1305(a)(1).

⁶⁷ See also Stephanie Weaver, “Residents Oppose Hampden Casino,” THE SENTINEL, Nov. 13, 2010 and Editorial, “Sentinel View: We don’t need a casino,” THE SENTINEL, Nov. 13, 2010 (attached hereto as Exhibit L).

(“Valley Forge”) October 22, 2008.⁶⁸ In its licensing presentation on November 17, 2010, Penn Harris quoted from the October 22 suitability hearing transcript, but conveniently omitted the preceding sentence and thus ignored the context of the statement.⁶⁹ Counsel’s preceding sentence in the October 22, 2008 hearing was “500 machines on 20,000 doesn’t change anything”⁷⁰ meaning that Valley Forge’s 500 slot machines are merely a drop in the bucket in the Philadelphia market that already had four other licensees with a potential total of 20,000 slot machines.⁷¹

In addition, Penn Harris misconstrued the whole statement which makes the point that a Category 3 resort casino and a Category 1 gaming facility should not be competing in the same market. The resort casino should draw from an independent overnight guest market attracted to the resort first and foremost because of the amenities. In the case of Valley Forge, that applicant sought to locate a Category 3 resort casino in the Valley Forge Convention Center, which had 363,000 square feet of convention business, 500,000 conventioners and 130,000 other guests each year. Valley Forge, therefore, could generate gaming revenue out of its own existing convention and other business. On the other hand, Penn Harris will rely almost

⁶⁸ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 199-200, and accompanying slide from Board Hearing Presentation by Penn Harris.

⁶⁹ In re: Valley Forge, Board Hearing Transcript, Response to questioning by Robert P. Krauss as counsel to Valley Forge, p. 81.

⁷⁰ In fact, the omission appears intentional because Penn Harris quoted the preceding sentence and the following sentence but omitted this sentence. Cherry picking counsel’s statements in this fashion questions the candor that Penn Harris held toward the Board.

⁷¹ It is also worth noting that Counsel’s statement was made prior to the enactment of Act 1 of 2010, which permits a Category 3 licensee holding a table games certificate, to operate up to 600 slot machines and 50 table games.

exclusively (93.5%) on generating revenue from the local market, a market already well served by Hollywood Casino at Penn National Race Course.⁷²

Another example of Penn Harris's overly aggressive testimony is their reference to Penn National Gaming, Inc's recent 10-Q. Specifically, Michael Sklar testified:

You heard a lot of testimony about how devastating the licensure of Penn Harris would be on Penn National. Forty-five (45) percent of their revenues, I would certainly expect for that kind of dramatic impact that Penn National would mention that in their SEC filing.⁷³

This testimony blurs the distinction between Penn National Gaming, Inc. and the Hollywood Casino at Penn National Race Course. The proposed West Shore Resort would have a devastating impact on Hollywood Casino at Penn National Race Course. On the other hand, Penn National Gaming, Inc. operates 25 facilities in 16 states and the Province of Ontario, and has additional facilities in development.⁷⁴ With the second largest footprint of any gaming company in the United States,⁷⁵ a 46% drop in revenue at Hollywood Casino should not be equated to a material drop in revenue or profit to Penn National Gaming, Inc.

Michael Sklar's testimony continued by asserting:

They just filed their third quarter 10-Q. There's absolutely no mention whatsoever, of a potential risk of losing almost half of their revenue at Penn National Hollywood. I think that speaks volumes.⁷⁶

⁷² See Mountainview's Map identifying the shared market and the number of customers more convenient to the proposed West Shore Resort than the Hollywood Casino. In Re: Penn Harris, Board Hearing Presentation by Mountainview, November 17, 2010, see accompanying slides.

⁷³ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 195-96.

⁷⁴ In re: Bushkill Group, Inc., Testimony of Steven Snyder on behalf of Penn National Gaming, Inc., as the proposed operator, November 16, 2010, p. 195-96.

⁷⁵ In re: Bushkill Group, Inc., Testimony of Steven Snyder on behalf of Penn National Gaming, Inc., as the proposed operator, November 16, 2010, p. 196.

⁷⁶ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 196.

To the contrary, Penn National Gaming, Inc.'s third quarter 10-Q explicitly addresses the impact of increased competition on established properties:

[I]ncreasing competition for our established properties which generally will have a negative effect on those locations' profitability once competitors become established as a certain level of cannibalization occurs absent an overall increase in customer visitations.⁷⁷

Lastly, Michael Sklar attempts to compare apples and oranges in order to stretch a point that Mason-Dixon Resorts, L.P. ("Mason-Dixon") is somehow going to cannibalize more revenue from Hollywood Casino than Penn Harris, an absurd conclusion based on the proximity of Penn Harris to Hollywood Casino's primary market.⁷⁸ Specifically, Michael Sklar testified that "[Hollywood Casino is] going to lose 25 percent of their gaming revenues versus 15 percent from our market consultants."⁷⁹ However, Michael Sklar mischaracterizes Steve Snyder's testimony in Mason-Dixon's licensing hearing. Mr. Snyder explained:

We have looked at those customers that would be in overlapping areas between the Mason-Dixon Resort and the Penn National facility and we've identified approximately 25 percent of Mr. Tyson's un-inflated stable year revenue that would come at the expense of Penn National --- of the Hollywood Casino at Penn National Racecourse.⁸⁰

In other words, Mr. Snyder testified to the percentage of Mason-Dixon's revenue (25%) that would be cannibalized from Hollywood Casino – not the percentage of Hollywood Casino's gaming revenue that would be lost to Mason-Dixon. On the other hand, Penn Harris's

⁷⁷ Penn National Gaming, Inc., Form 10-Q: Quarterly report pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934, Filed on 11/5/2010 for the period ending 9/30/2010, p. 32.

⁷⁸ In Re: Penn Harris, Board Hearing Transcript, Testimony of Michael Sklar on behalf of Penn Harris, November 17, 2010, p. 199.

⁷⁹ *Id.*

⁸⁰ In Re: Mason-Dixon, Board Hearing Transcript, Testimony of Steve Snyder on behalf of Penn National Gaming, Inc., as the proposed operator, November 16, 2010, p. 199.

market consultants concluded that “Hollywood Casino will lose approximately 15 percent of gross gaming revenue as a result of the construction of the Penn Harris Casino.”⁸¹

X. IMPACT ON THE TAX REVENUE SUPPORTING THE HORSEMEN FROM PENN HARRIS’S PROPOSED GAMING FACILITY

Pursuant to Commissioner Sojka’s request, attached as Exhibit M, is a summary of the application of the distribution of gaming funds to the Horsemen.

XI. CONCLUSION

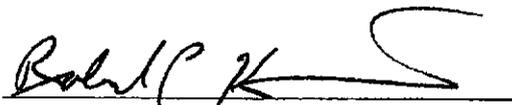
For all of the foregoing reasons and the reasons set forth in Mountainview’s prior Petition to Intervene and Notice of Intent to Contest, both incorporated herein by reference, the Board should DENY the Application.

Respectfully submitted,

Dated: November 29, 2010

Of counsel:

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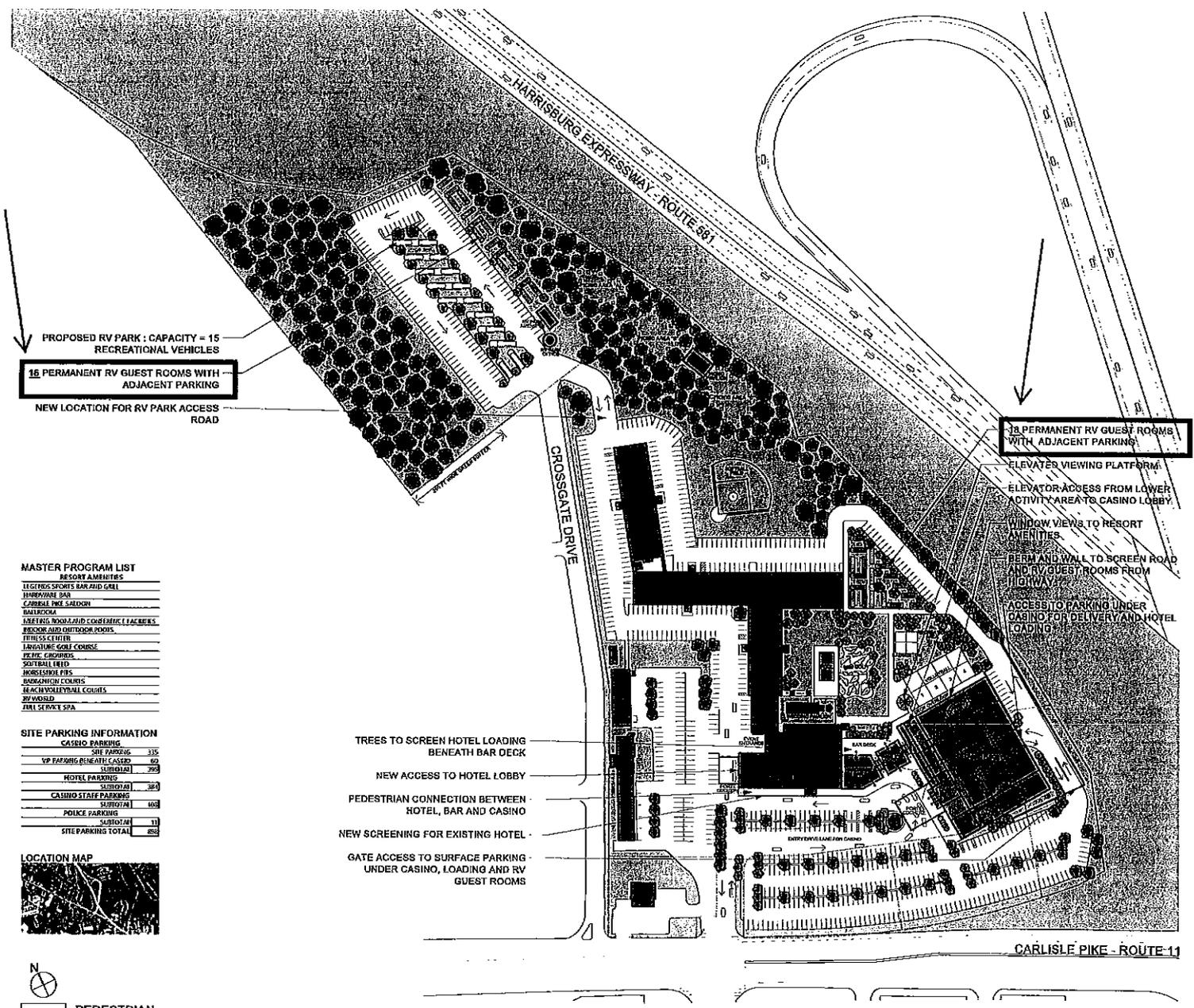

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(215) 665-8500

Counsel for Intervenor/Contester

⁸¹ In Re: Penn Harris, Board Hearing Transcript, Testimony of Jim Perry on behalf of Penn Harris, November 17, 2010, p. 197.

Attachment 1

Attachment 1 is the site plan for the proposed West Shore Resort presented by Penn Harris Gaming, L.P. during its public input hearing on August 30, 2010 and admitted into the record of the public input hearing by Penn Harris Gaming, L.P. It is available for download from the Pennsylvania Gaming Control Board's website at <http://pgcb.state.pa.us/?p=192> (visited on November 17, 2010). For emphasis, Mountainview Thoroughbred Racing Association has highlighted the text on the site plan that indicates the number of recreational vehicles on the proposed West Shore Resort.



MASTER PROGRAM LIST
RESORT AMENITIES

LEGENDS SPORTS BAR AND GRILL
HARBORVIEW BAR
CARIBBEAN WINE SALOON
BAR/BOOM
MEETING ROOMS AND CONFERENCE FACILITIES
INDOOR AND OUTDOOR POOLS
FITNESS CENTER
LANDSCAPE GOLF COURSE
PUTTING GREENS
SOFTBALL FIELD
PROFESIONAL PINS
PROFESIONAL COLUMNS
SEARCH PROFESSIONAL COURTS
RV WORLD
TRAIL SERVICE SPA

SITE PARKING INFORMATION

CASINO PARKING	SITE PARKING	335
VP PARKING BENEATH CASINO	SUBTOTAL	60
HOTEL PARKING	SUBTOTAL	299
CASINO STATE PARKING	SUBTOTAL	363
POLICE PARKING	SUBTOTAL	100
POLICE PARKING	SUBTOTAL	11
SITE PARKING TOTAL		809



- Legend:
- PEDESTRIAN
 - NEW CONSTRUCTION
 - EXISTING STRUCTURES
 - GREEN SPACE
 - PAVED ROAD
 - PROPERTY LINE

(Emphasis Added; Location and Number of RVs shown in Red)

PROPOSED CASINO : HAMPDEN TOWNSHIP, PA

SVA
STEPHEN VALENTI ARCHITECTS
230 NORTH 21ST STREET
PHILADELPHIA, PA 19103
Tel. 215.246.2155
Fax 215.940.0837

SCALE: 1/8" = 1'-0"

Attachment 2

Attachment 2 includes the sworn affidavits of Joe Lombardi and Robert J. Clark documenting the number of recreational vehicles on the Proposed Site on nine occasions from August 12 – 25, 2010. The affidavits were submitted into the record by Mountainview Thoroughbred Racing Association as Exhibit D to its Petition to Intervene, filed with the Pennsylvania Gaming Control Board on August 27, 2010. Penn Harris Gaming, L.P. was served a copy of the Petition to Intervene but declined to answer any of the factual evidence provided therein.

The dates, times and number of recreational vehicles are summarized in the table below. The precise locations and a description of the recreational vehicles are provided in the affidavit.

<u>Date of Site Visit</u>	<u>Approximate Time</u>	<u>Number of Recreational Vehicles</u>
August 12, 2010	4:30 PM	Seven
August 14, 2010	9:30 AM	Seven
August 15, 2010	2:00 PM	Eight
August 16, 2010	8:00 AM	Nine
August 18, 2010	1:30 PM	Seven
August 20, 2010	7:00 PM	Eight
August 21, 2010	8:00 PM	Seven
August 22, 2010	4:00 PM	Seven
August 25, 2010	9:00 AM	Four

Attachment 2 also includes a copy of Exhibit I to Mountainview's *Notice of Intent to Contest Eligibility/Suitability of Penn Harris* showing the condition of recreational vehicles on and off the Holiday Inn Harrisburg West property.

EXHIBIT D
SITE VISIT AFFIDAVITS

Attached

AFFIDAVIT FROM AUGUST 12, 2010 SITE VISIT

The undersigned, being duly sworn according to law, deposes and says:

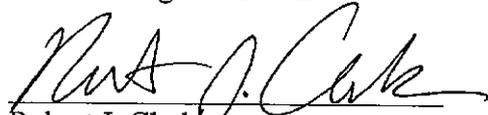
On August 12, 2010 at approximately 4:30 p.m., I visited the site of the Holiday Inn at 5401 Carlisle Pike, Mechanicsburg, Pennsylvania. The purpose of my visit was to view the recreational vehicles and trailers located on the Holiday Inn property to provide additional "rooms" to meet the 275-room minimum for a Category 3 Slot Machine License. A total of one Freedom Elite, one Ford Chateau, two Ford Four Winds and three Dutchman Spirit Trailers were located on the Holiday Inn property. Specifically, the one Ford Chateau and the one Freedom Elite were located to the right of the main entrance when facing the front of the property along Carlisle Pike. The two Ford Four Winds trailers and the three Dutchman Spirit Trailers were located in an unpaved area on the right side of the property near the "volley ball sand court". There was no evidence of hook-ups for electric, sanitation, or water for any of the seven trailers. I drove the entire property (front to back, side to side) and did not observe any other recreational vehicles or trailers.

I then parked on the left hand side of the parking lot adjacent to Crossgate Drive. I walked up a short grass embankment and crossed over Crossgate Drive. There was no indication that the property to the left of Crossgate Drive had any relationship to the Holiday Inn. On the property is a 2 (or 3) story office building with the sign at the top "NRA Group" with a large parking lot behind it. In the left corner of the parking lot, farthest from the building were another three Ford Four Winds trailers, two Coleman trailers, two Dutchman Spirit Trailers and two Zinger trailers. There was no indication that electric, sanitation or water were hooked up to or available to be hooked up to these recreational vehicles. They also did not appear to be attached to the ground in any manner. To the left of this area is a paved area with a small opening and trees surrounding it in which were parked nineteen additional trailers. These included five Ford Chateauxs, one Ford Four Winds, two Ford Freedom Elites, four Dutchman Spirits, six Zingers and one Coleman trailer. There was no indication that electric, sanitation or water were hooked up to or available to be hooked up to these recreational vehicles. The vehicles were also packed very closely together.

I then walked back to my car and drove out of the Holiday Inn parking lot to Carlisle Pike and took a right onto Crossgate Drive. I drove the entire parking lot for the "NRA Group" office building and walked back into the paved area with a small opening and trees around it to take photographs of the trailers. Attached hereto are true and correct copies of the photographs that I took on August 12, 2010.

In total, I observed seven recreational vehicles and trailers on the Holiday Inn property and twenty eight recreational vehicles and trailers across Crossgate Drive in the locations marked on Exhibit A.

Executed this 24th day of August, 2010


Robert J. Clark

Sworn to and Subscribed
before me this 24th day of August
August, 2010



Notary Public

COMMONWEALTH OF PENNSYLVANIA

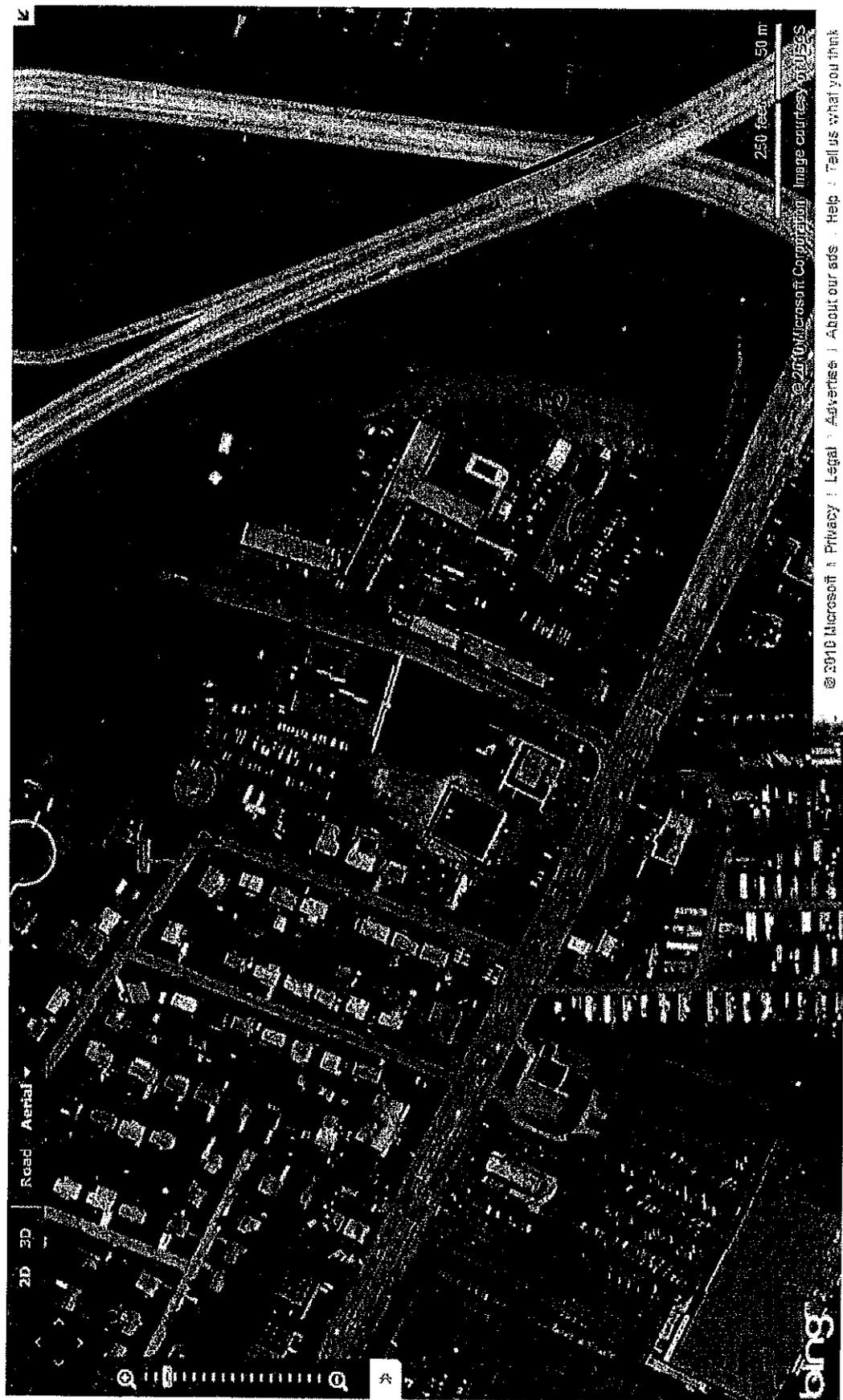
NOTARIAL SEAL
MERRI B. LEVIN, Notary Public
City of Philadelphia, Phila. County
My Commission Expires April 30, 2011

August 12, 2010

bing

5401 Carlisle Pike, Mechanicsburg PA

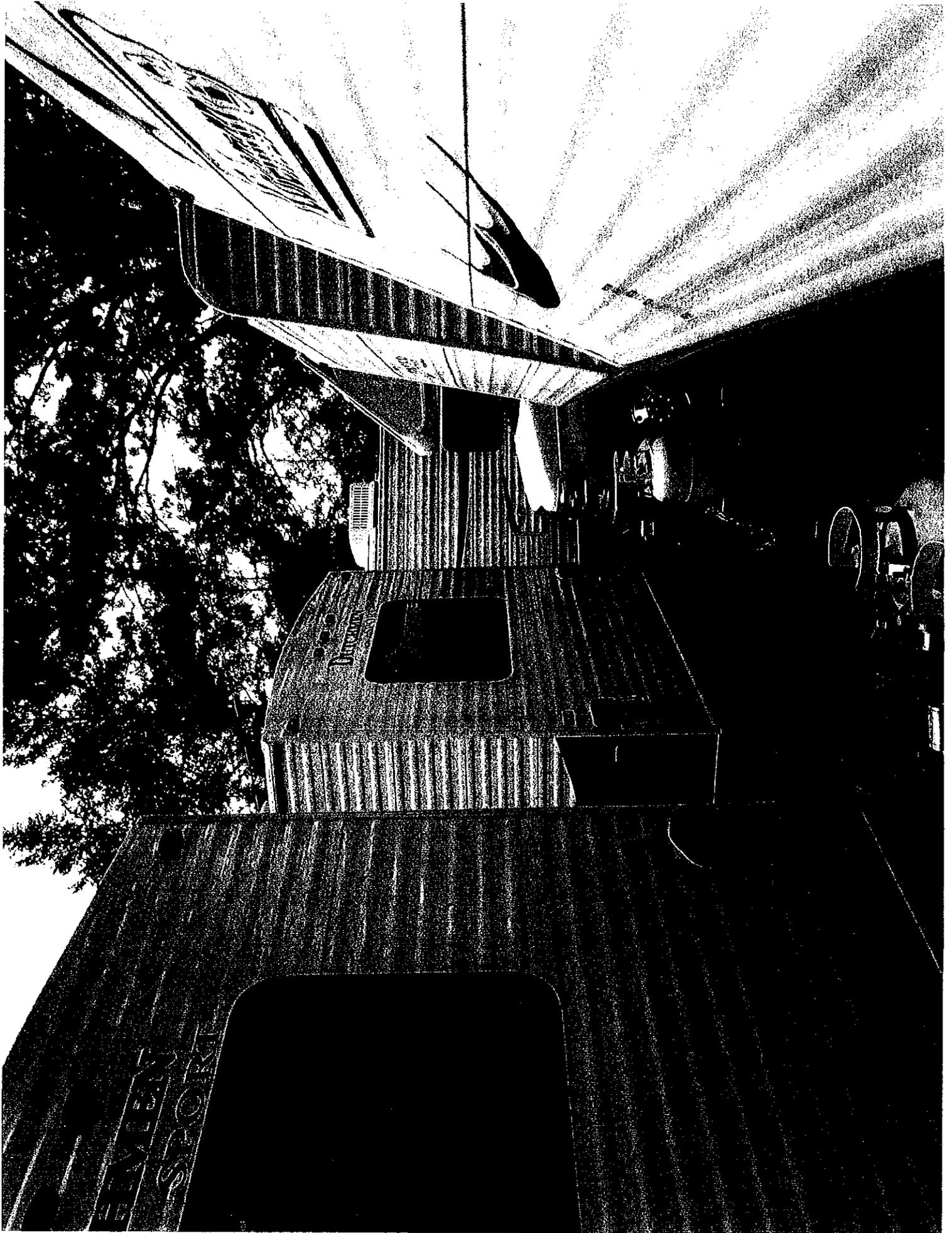
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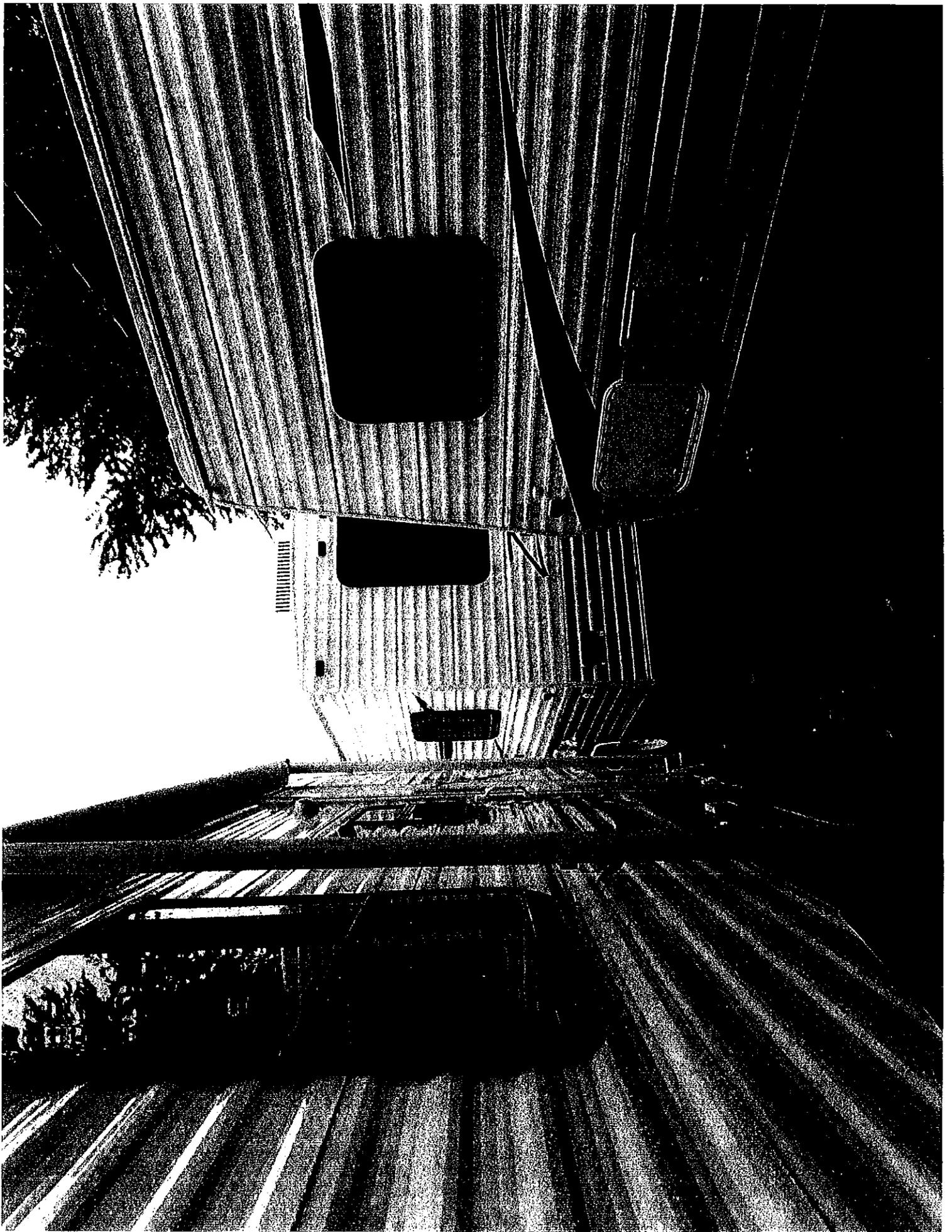
© 2010 Microsoft Corporation. Image courtesy of USGS

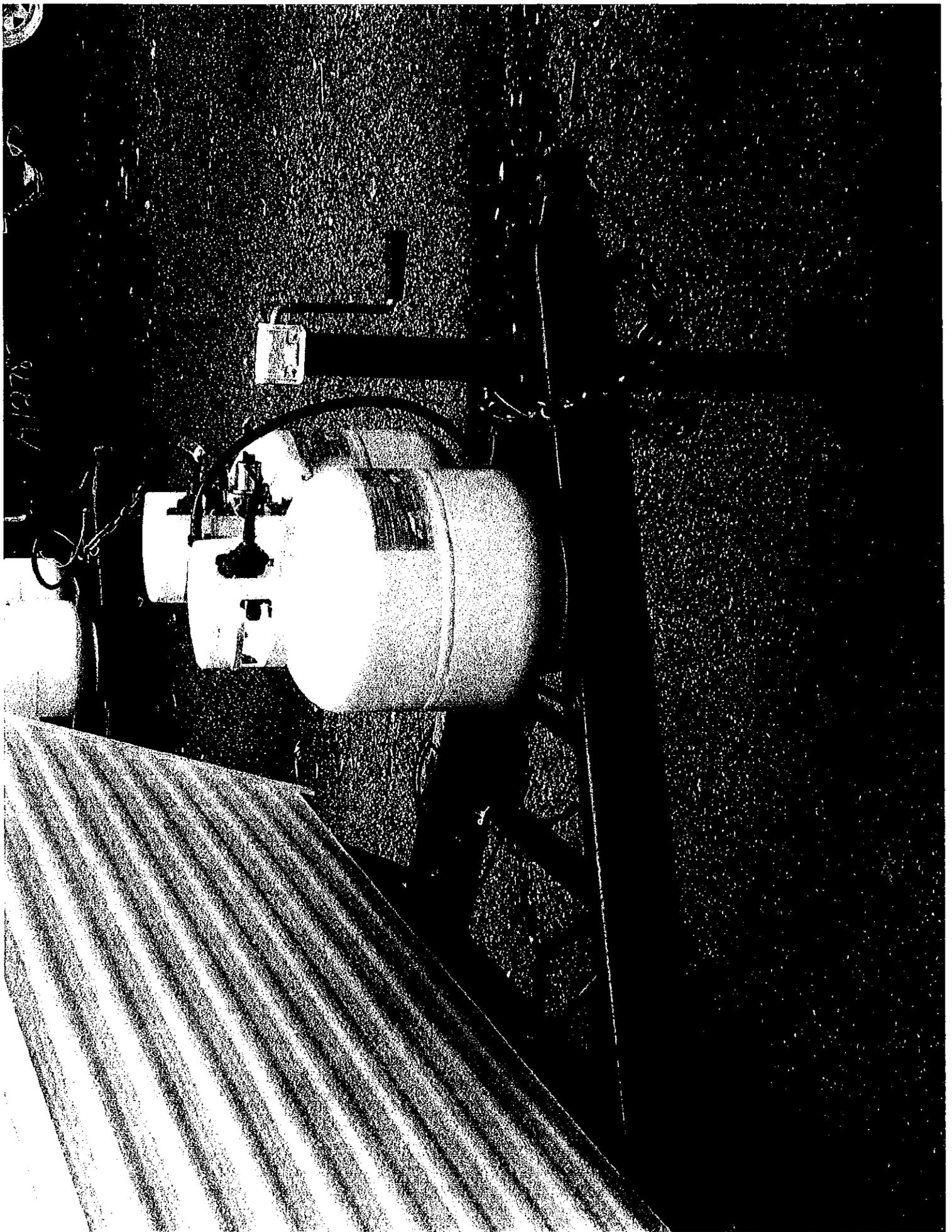
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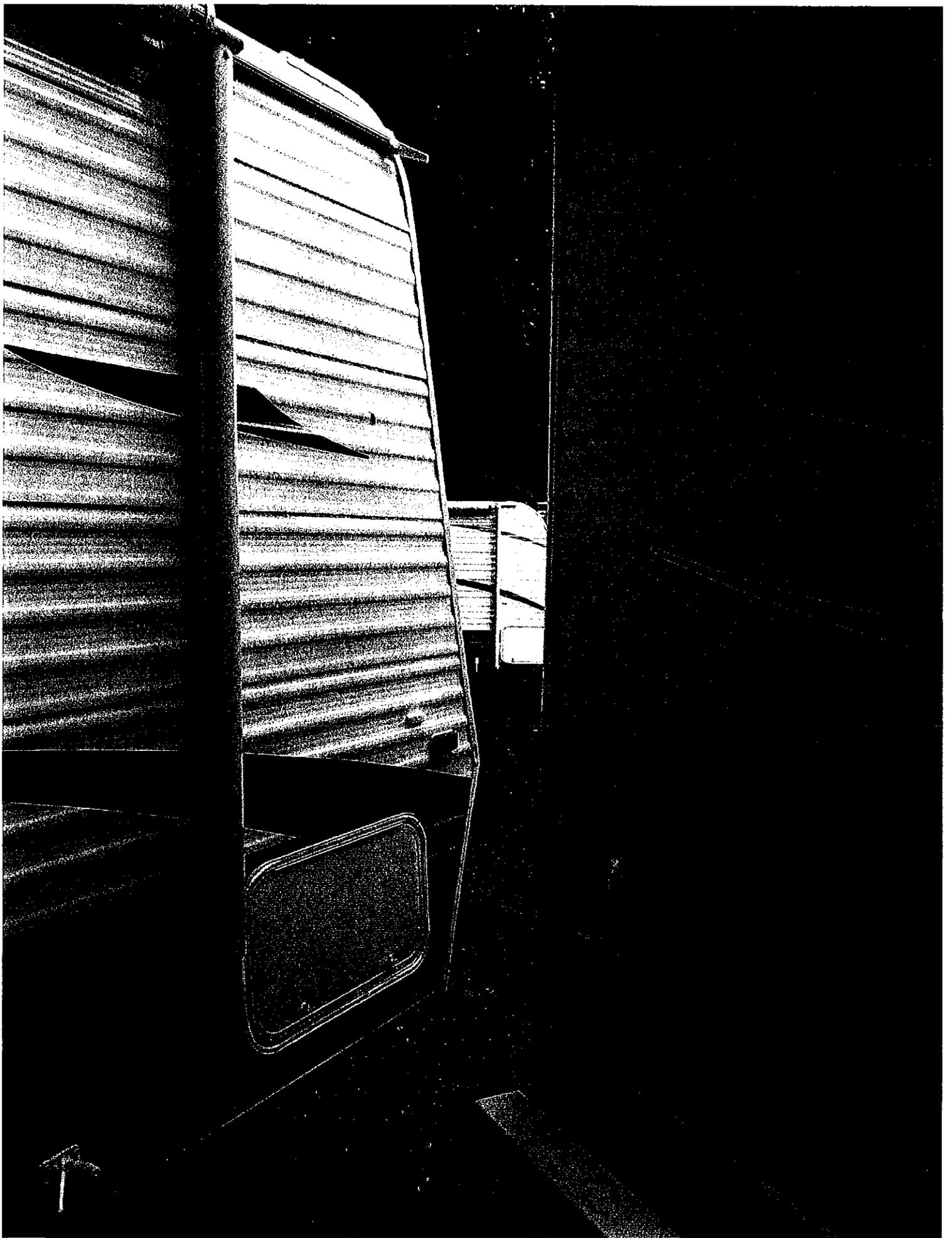
A = 2 vehicles; B = 5 vehicles; C = 9 vehicles; D = 19 vehicles

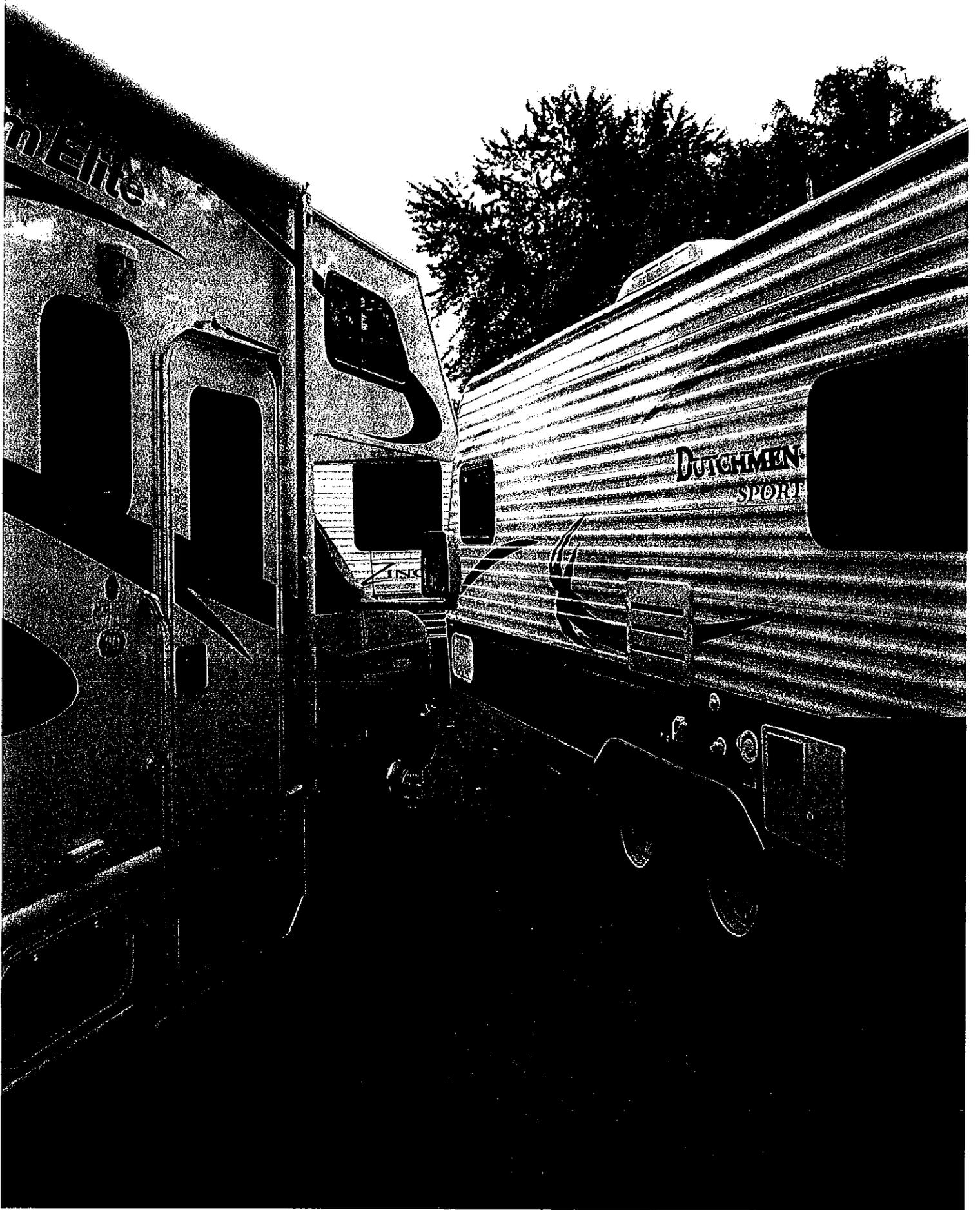




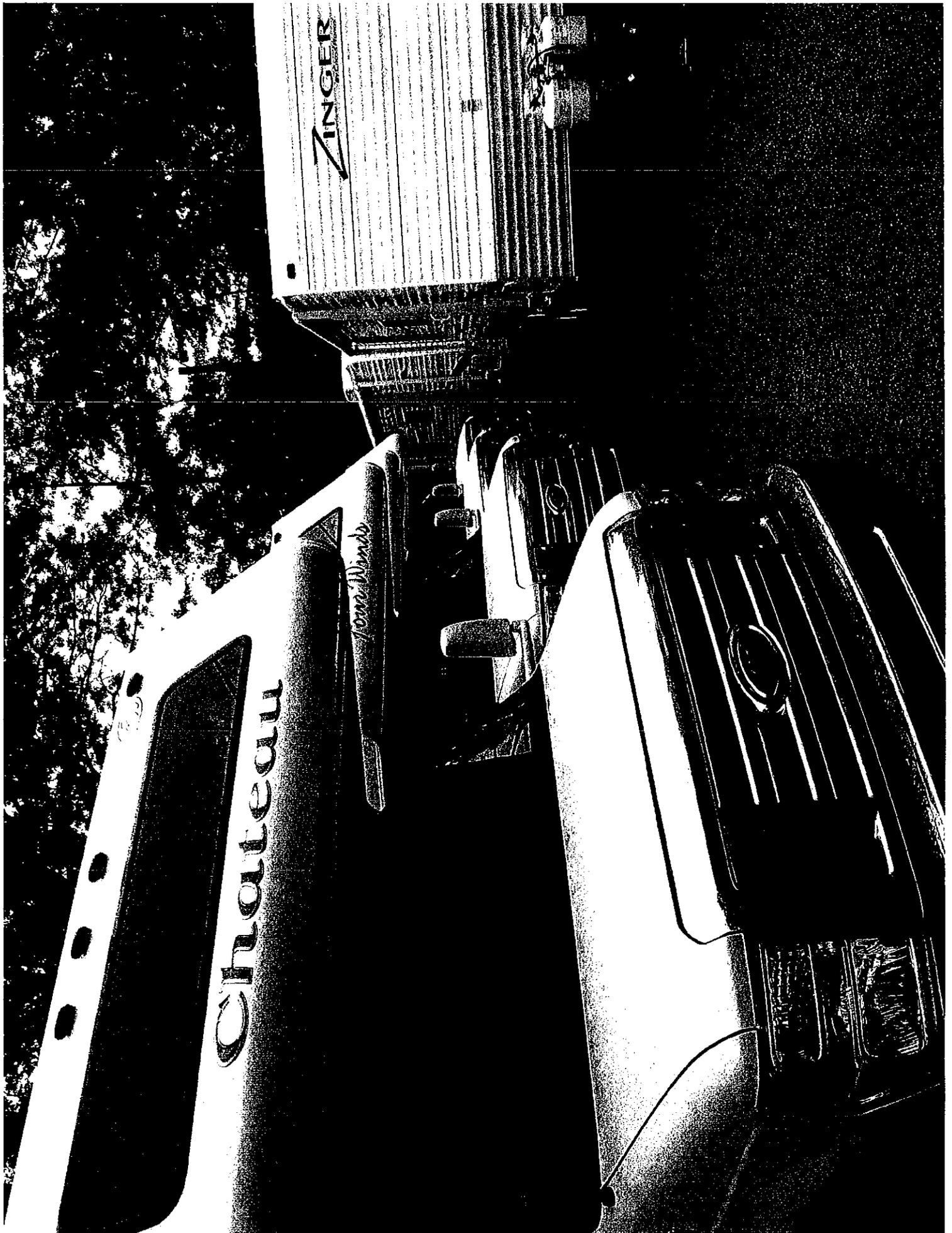


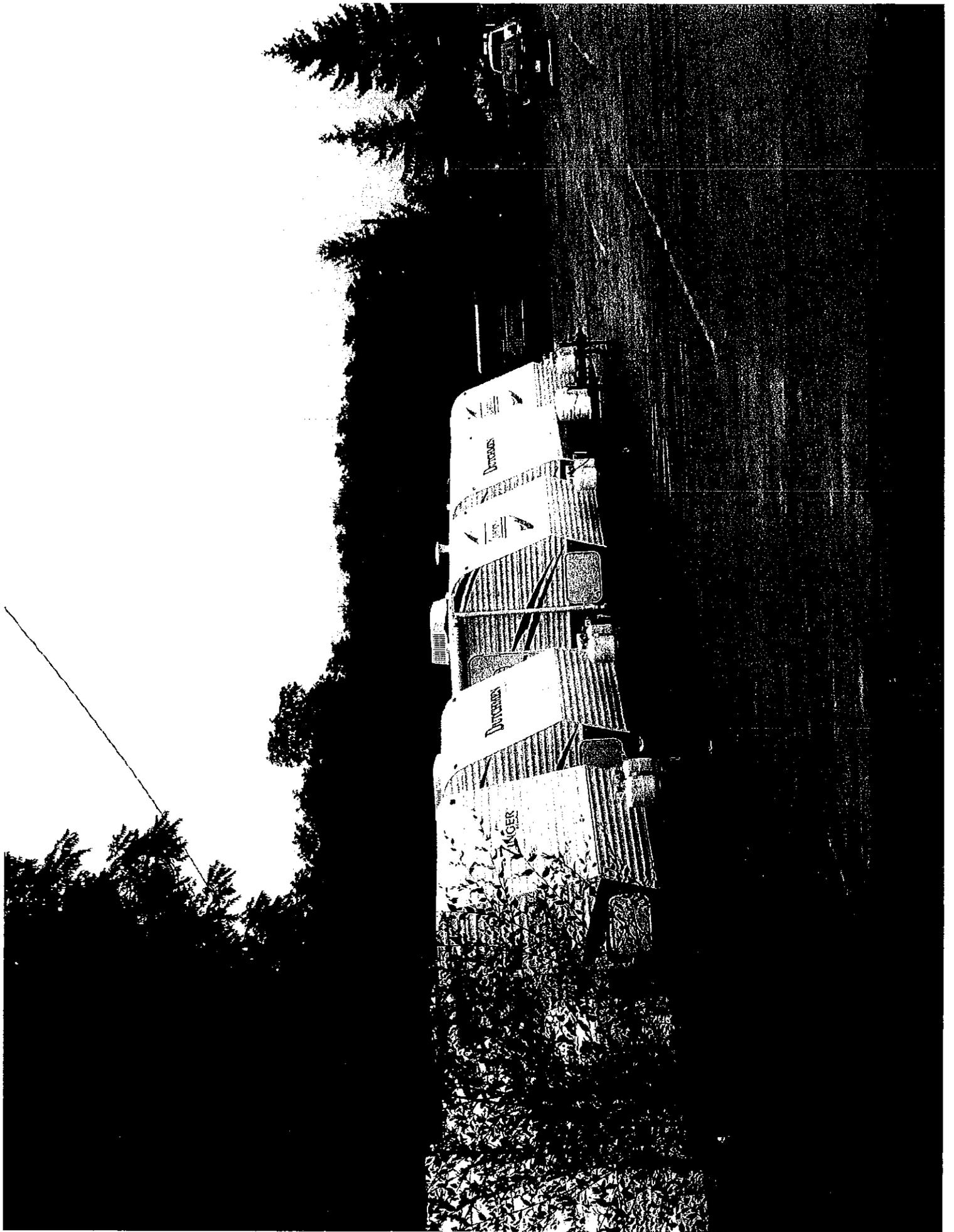












AFFIDAVIT FROM AUGUST 18, 2010 SITE VISIT

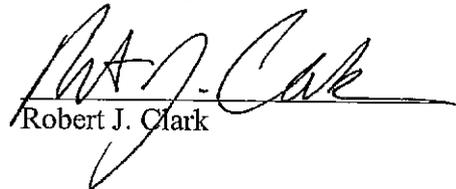
The undersigned, being duly sworn according to law, deposes and says:

On August 18, 2010 at approximately 1:30 p.m., I visited the site of the Holiday Inn at 5401 Carlisle Pike, Mechanicsburg, Pennsylvania. The purpose of my visit was to view the recreational vehicles and trailers located on the Holiday Inn property to provide additional "rooms" to meet the 275-room minimum for a Category 3 Slot Machine License. A total of one Freedom Elite, one Ford Chateau, two Ford Four Winds and three Dutchman Spirit Trailers were located on the Holiday Inn property. All of these vehicles were located on the right side of the property (when facing the main entrance) in an unpaved area near the "volley ball sand court". There was no evidence of hook-ups for electric, sanitation, or water for any of the seven trailers. I drove the entire property (front to back, side to side) and did not observe any other recreational vehicles or trailers.

I drove out of the Holiday Inn parking lot to Carlisle Pike and took a right onto Crossgate Drive. I drove the entire parking lot for the "NRA Group" office building and walked back into the paved area with a small opening and trees around it. In the left corner of the parking lot, farthest from the building were another two Ford Four Winds trailers, two Coleman trailers, two Dutchman Spirit Trailers and two Zinger trailers. There was no indication that electric, sanitation or water were hooked up to or available to be hooked up to these recreational vehicles. They also did not appear to be attached to the ground in any manner. To the left of this area is a paved area with a small opening and trees surrounding it in which were parked nineteen additional trailers. These included five Ford Chateauxs, one Ford Four Winds, two Ford Freedom Elites, four Dutchman Spirits, six Zingers and one Coleman trailer. There was no indication that electric, sanitation or water were hooked up to or available to be hooked up to these recreational vehicles. The vehicles were also packed very closely together.

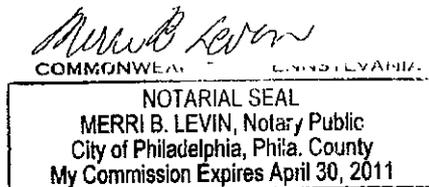
In total, I observed seven recreational vehicles and trailers on the Holiday Inn property and twenty seven recreational vehicles and trailers across Crossgate Drive in the locations marked on Exhibit A.

Executed this 24th day of August, 2010


Robert J. Clark

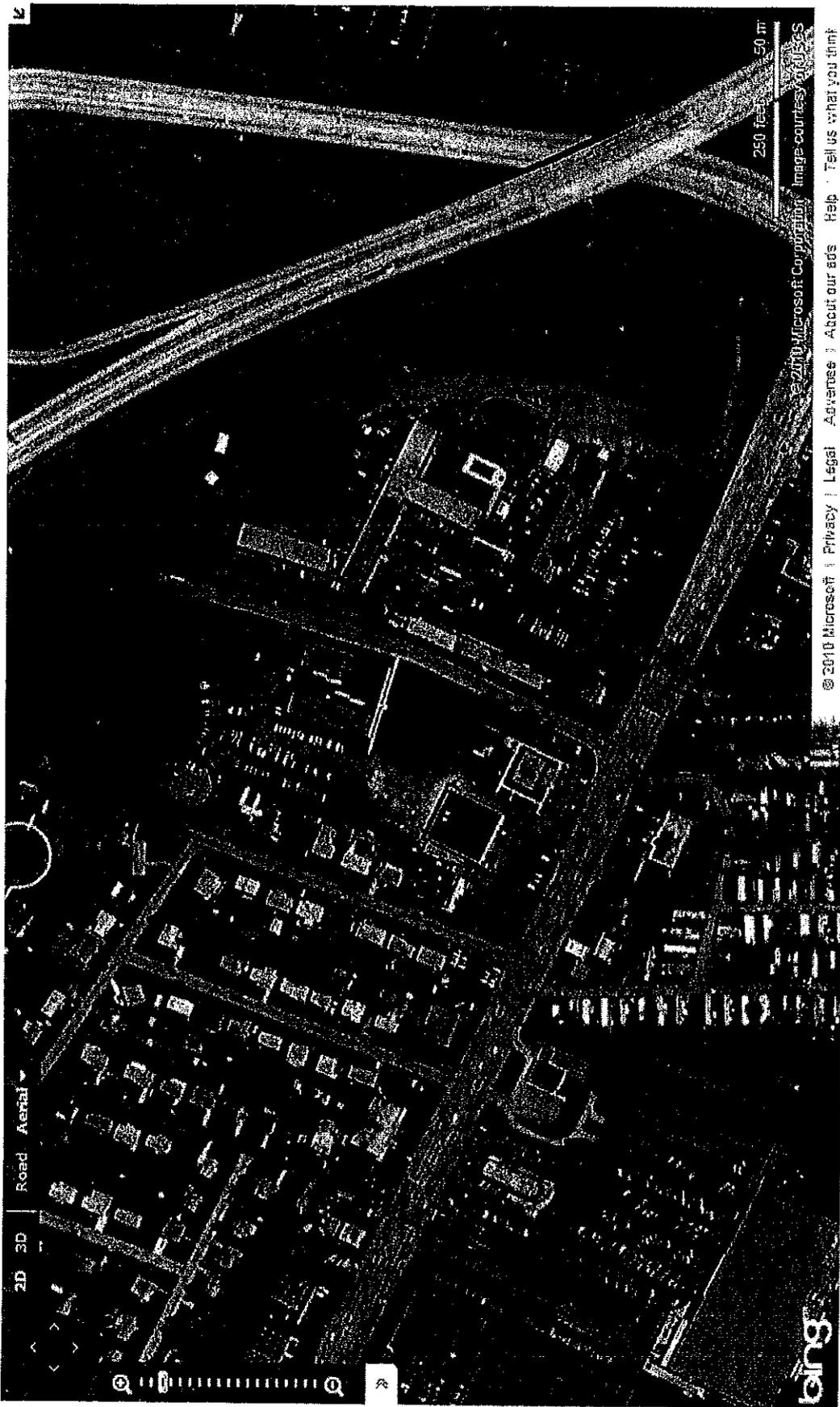
Sworn to and Subscribed
before me this 24th day of August
August, 2010

Notary Public



August 18, 2010

Maps Web Maps Images



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A = 7 vehicles; B = 8 vehicles; C = 19 vehicles

AFFIDAVIT OF JOSEPH D. LOMBARDI

The undersigned, being duly sworn according to law, deposes and says:

My name is Joseph Daniel Lombardi. I am thirty-three years old, and work as a Director of Information Technology at Hollywood Casino at Penn National Race Course in Grantville, PA. My home at 4310 Park St. Camp Hill, PA 17011 in Cumberland County, Hamden Township is approximately 1.6 miles from The Holiday Inn Harrisburg West located at 5401 Carlisle Pike, Mechanicsburg, PA 17050.

On several days between August 14-25, 2010, I visited the Holiday Inn to gather information and survey the number of RVs and trailers that were present. One the days of my visits, I approached the Holiday Inn driving westbound on Carlisle Pike, turning right into the Holiday Inn parking lot. I would continue driving through the parking lot as I advanced toward an unpaved gravel road near the rear-right side of the Hotel. In this area I observed a number of RVs and trailers parked alongside the gravel road. Behind the trailers was a wooded picnic area with outdoor charcoal grills and outdoor volleyball courts. There was also a few tractor trailers parked toward the end of the unpaved road between the end of the property and Route 581.

The majority of the Drivable RV's I observed were the Freedom models. The Hitched attached RV's were the Dutchmen Sport models. None of these had any type of cabling or any connections to electricity, water or sanitation.

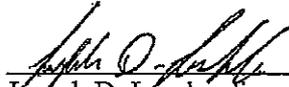
I also drove around to the left side of the property to see if any additional RVs or trailers were parked, but there were none. I took photographs of the trailers that I observed on August 14, 2010 and August 25, 2010. Attached hereto are true and correct copies of the photographs that I took on these dates.

The following will outline the dates and approximate times of visits and my specific observations on those dates:

- 8/14/10 @ 9:30am
 - 4-Drivable RV's
 - 3- Hitched attached RV's
- 8/15/10 @ 2PM
 - 5-Drivable RV's
 - 3- Hitched attached RV's
- 8/16/10 @ 8:00AM
 - 5-Drivable RV's
 - 4- Hitched attached RV's
- 8/20/10 @ 7:00PM
 - 4-Drivable RV's
 - 4- Hitched attached RV's
- 8/21/10 @ 8:00PM
 - 4-Drivable RV's
 - 3- Hitched attached RV's

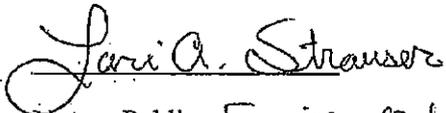
- 8/22/10 @ 4:00PM
 - 4-Drivable RV's
 - 3- Hitched attached RV's
- 8/25/10 @ 9:00AM
 - 1-Drivable RV's
 - 3- Hitched attached RV's

Executed this 26 day of August, 2010

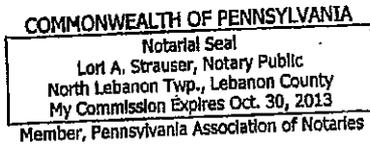


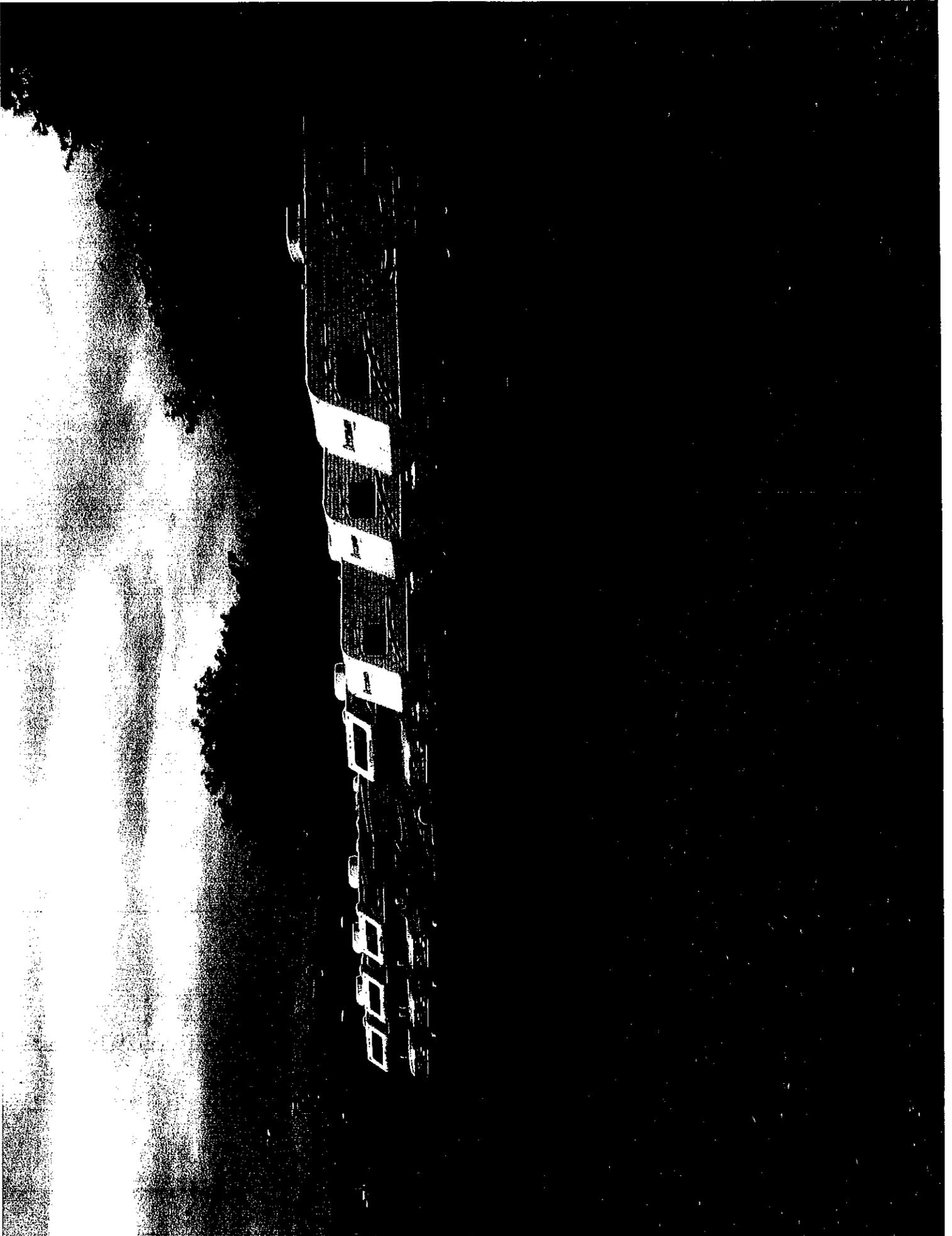
Joseph D. Lombardi

Sworn to and Subscribed
before me this 26 day of
August, 2010



Notary Public Expires: Oct 30, 2013





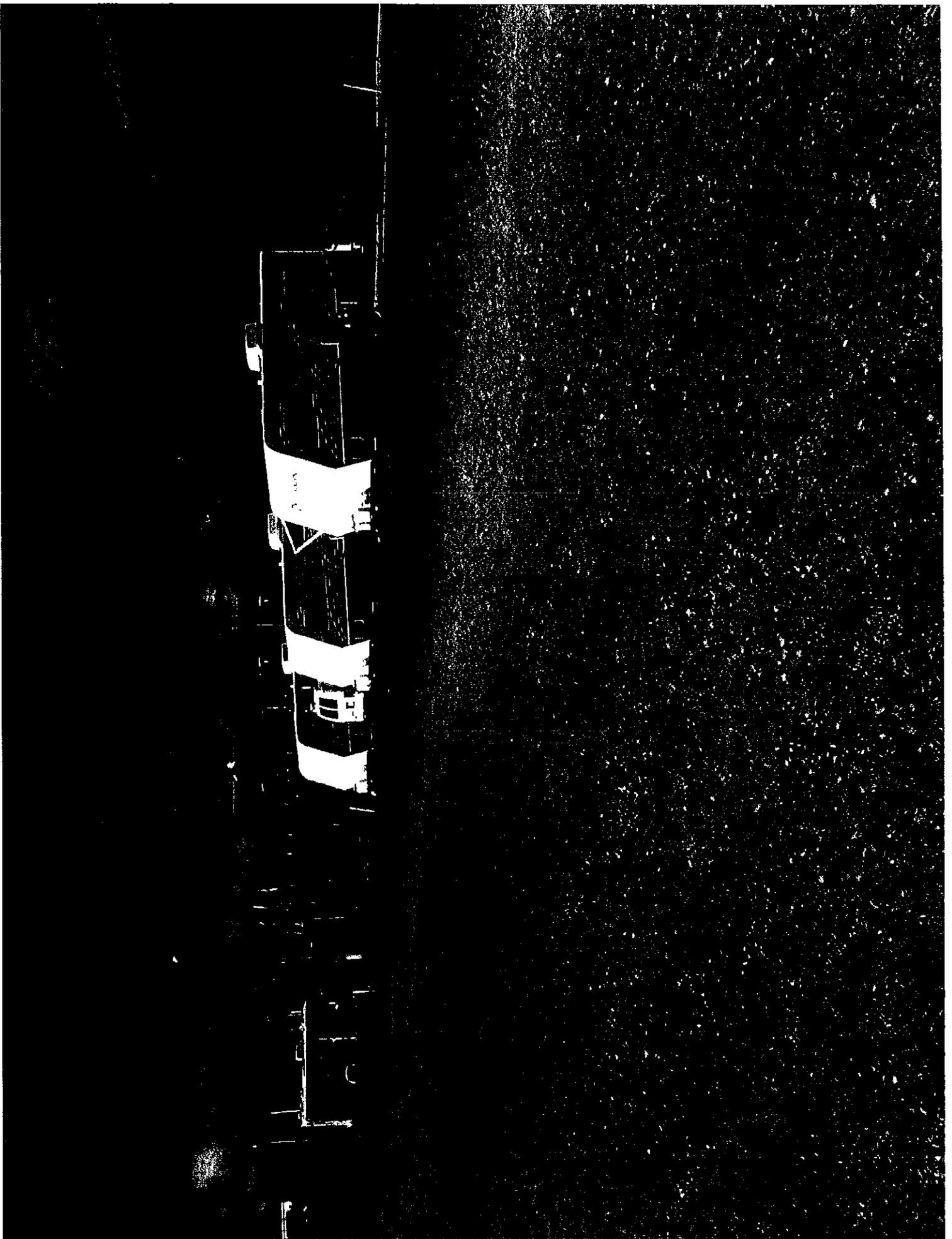
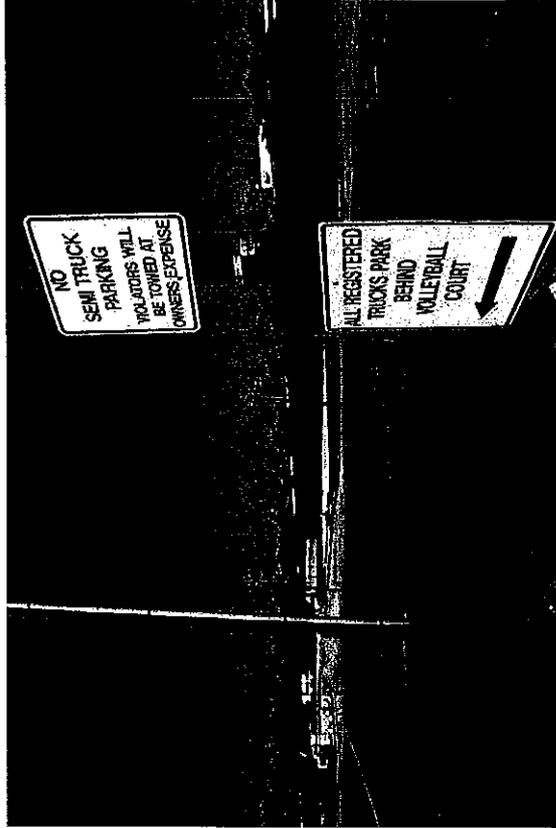


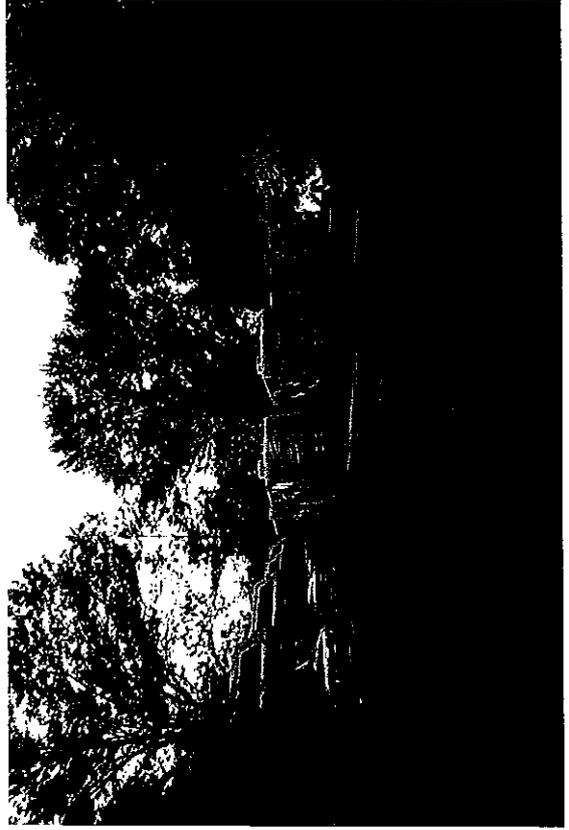
EXHIBIT I

Photographs Dated August 30, 2010

Photographs of seven recreational vehicles observed next to the hotel facility



Photographs of recreational vehicles observed off the Proposed Site



Attachment 3

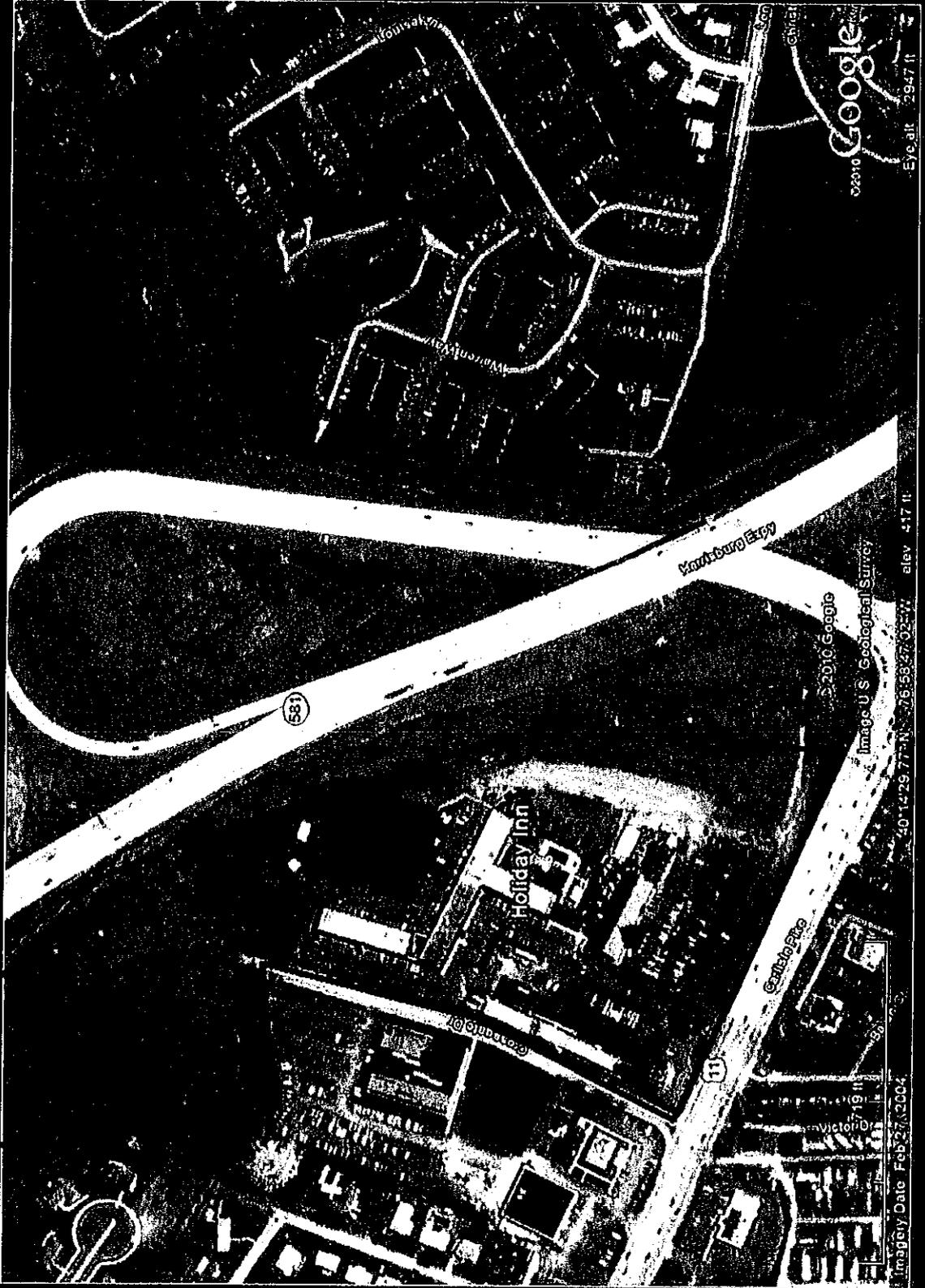
Attachment 3 is a series of materials, all submitted under oath for the record, that explicitly demonstrate that Mr. Clark directly observed seven recreational vehicles on the Holiday Inn Harrisburg West property and the remainder of recreational vehicles on the neighboring NRA Group property. The attachment includes eight pages consisting of:

- The Aerial View of Holiday Inn Harrisburg West from Penn Harris's Licensing Hearing Presentation *showing vacant, undeveloped land on a significant portion of the proposed resort property.*
- Holiday Inn Harrisburg West Site Plan from Penn Harris Application, Appendix 41, Local Impact Report *showing that the vacant, undeveloped land from the aerial view is not a part of the Holiday Inn Harrisburg West property.*
- Excerpt from Robert J. Clark Sworn Affidavit Documenting August 12, 2010 Site Visit from Exhibit D to Mountainview Petition to Intervene *showing the actual location of the seven recreational vehicles on Holiday Inn Harrisburg West site plan.*
- Excerpt from Robert J. Clark Sworn Affidavit Documenting August 18, 2010 Site Visit from Exhibit D to Mountainview Petition to Intervene *showing the actual location of the seven recreational vehicles on Holiday Inn Harrisburg West site plan.*
- Rendering of the Proposed West Shore Resort from Penn Harris's Licensing Hearing Presentation *showing the actual location of the recreational vehicles on and off the expanded Holiday Inn Harrisburg West property.*
- Excerpt from Robert J. Clark Sworn Affidavit Documenting August 12, 2010 Site Visit from Exhibit D to Mountainview Petition to Intervene *showing the actual location of the recreational vehicles on and off the expanded Holiday Inn Harrisburg West property.*
- Excerpt from Robert J. Clark Sworn Affidavit Documenting August 18, 2010 Site Visit from Exhibit D to Mountainview Petition to Intervene *showing the actual location of the recreational vehicles on and off the expanded Holiday Inn Harrisburg West property.*
- Excerpt from Exhibit I to Mountainview's Notice of Intent to Contest the Eligibility/Suitability of Penn Harris *showing the actual condition of the Recreational Vehicles off the Property.*

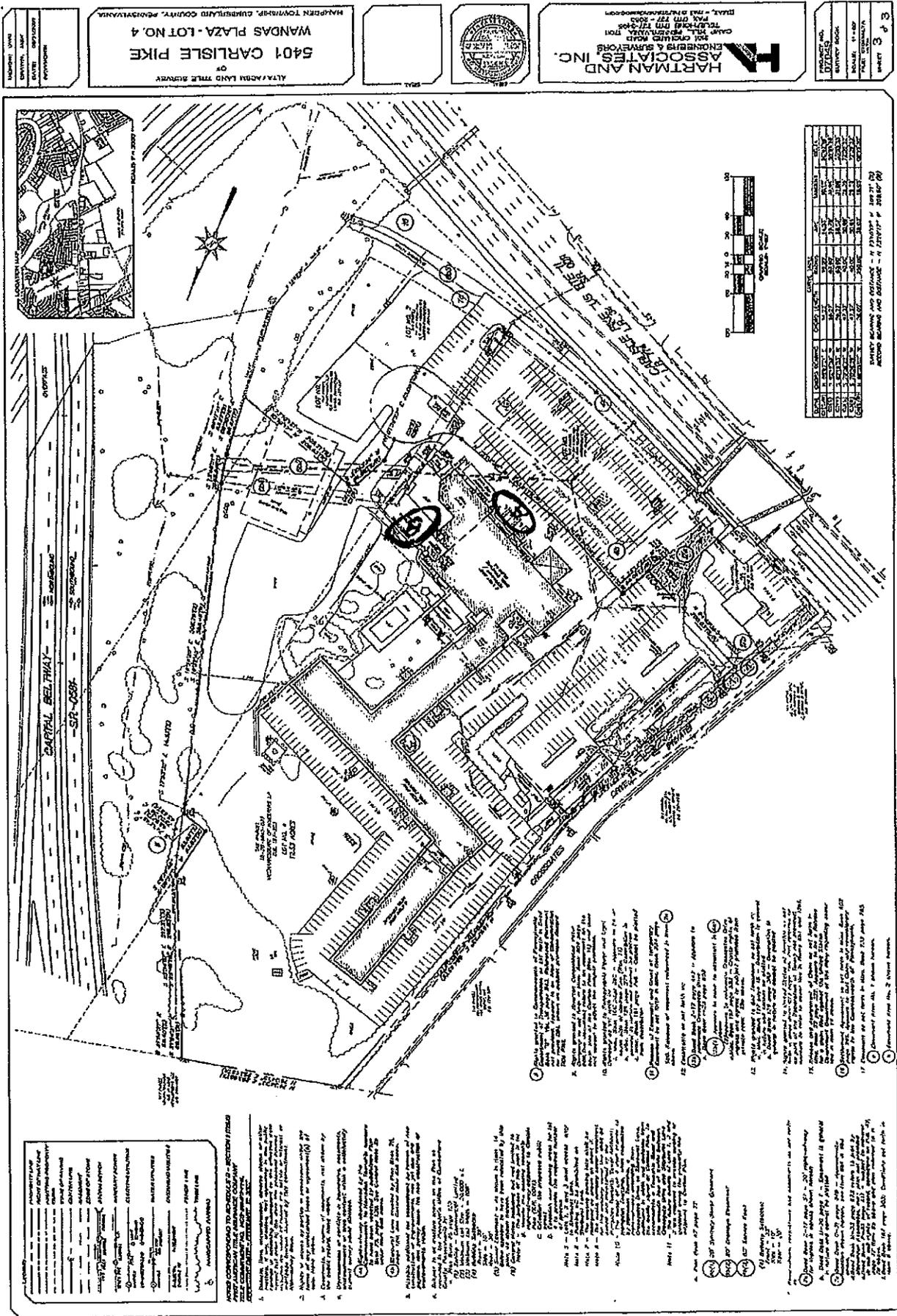


Project Overview

Location, Location, Location



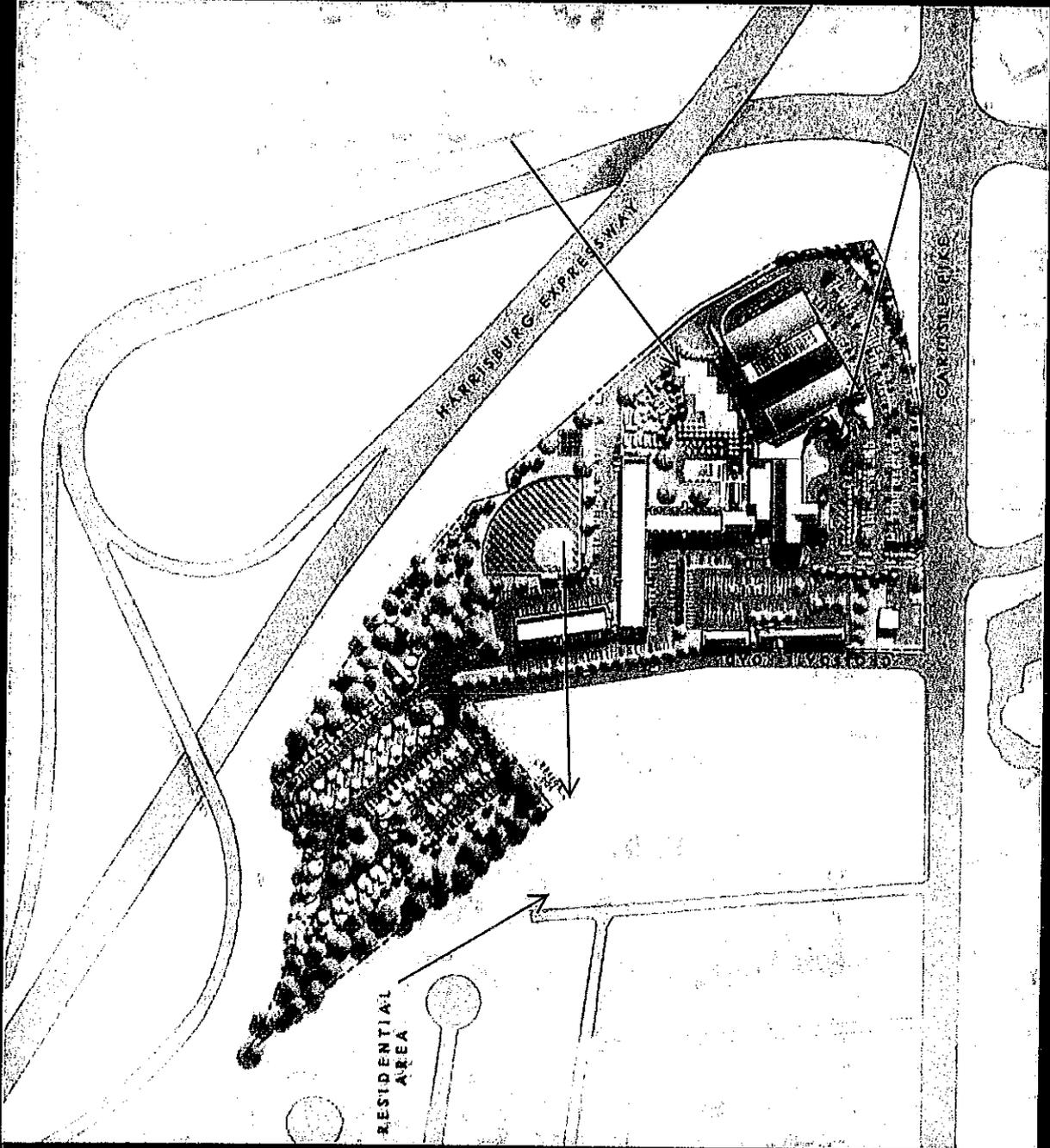
August 12, 2010



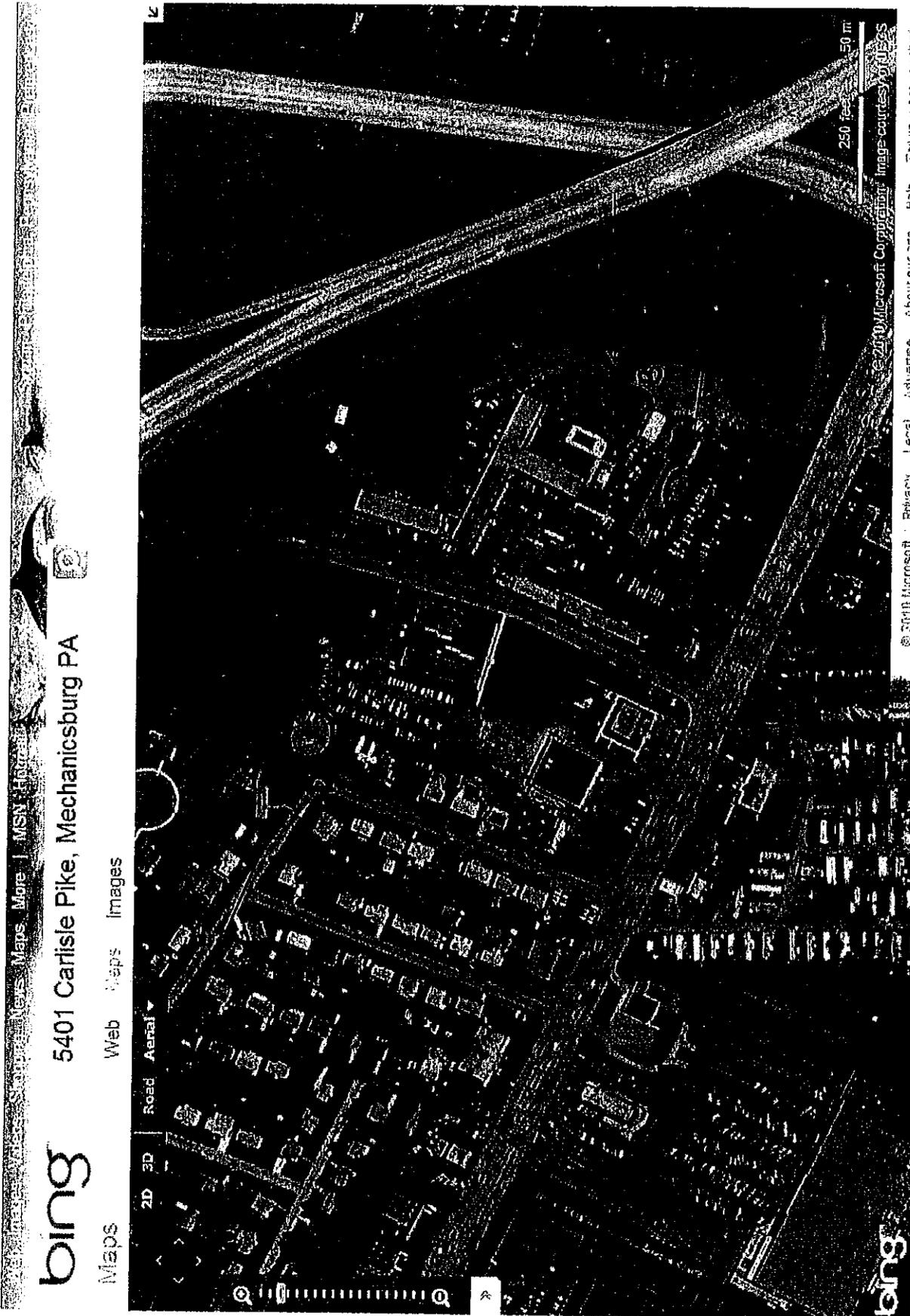
A = 2 vehicles; B = 5 vehicles



Project Description



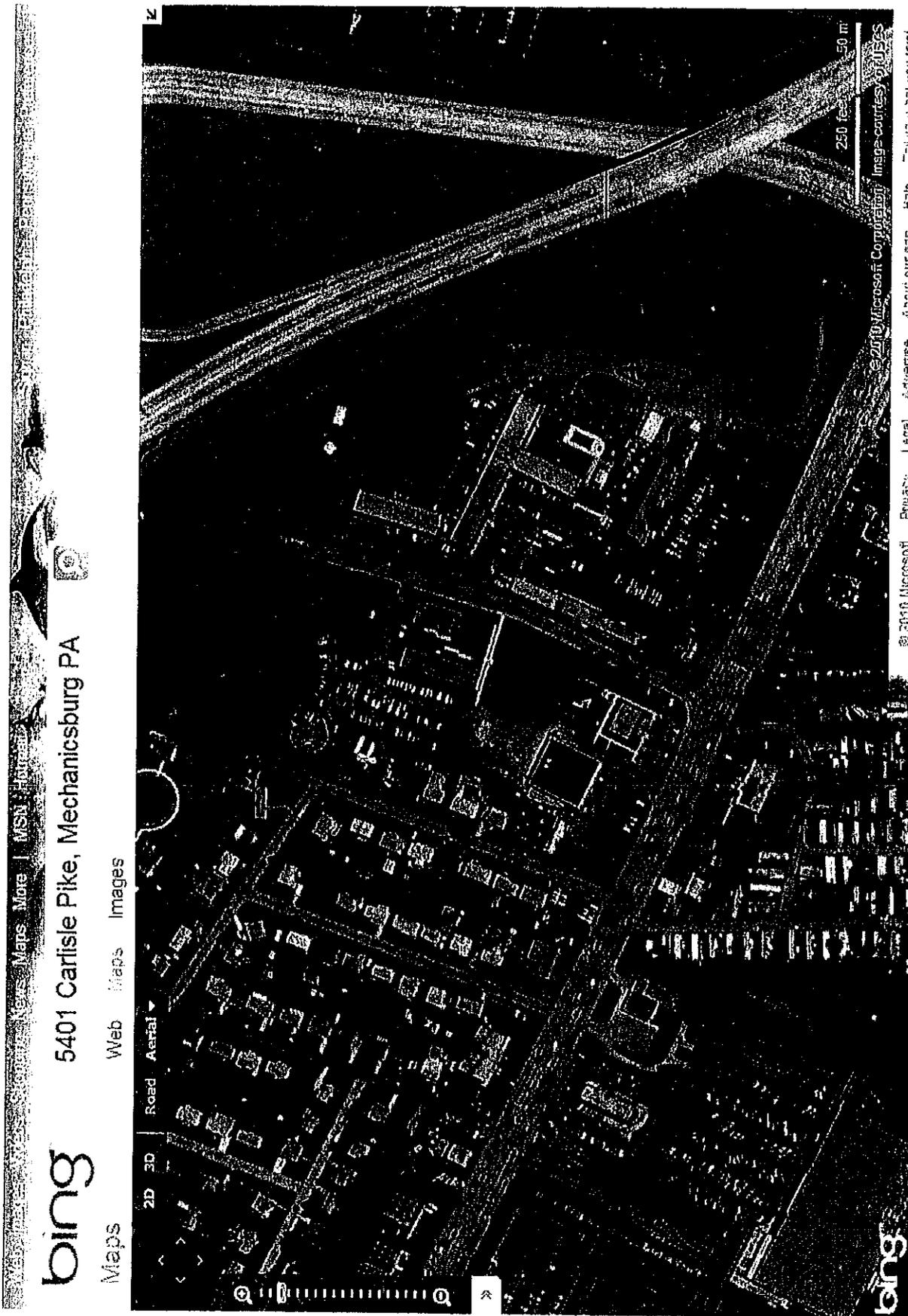
August 12, 2010



A = 2 vehicles; B = 5 vehicles; C = 9 vehicles; D = 19 vehicles

(Emphasis Added; Actual Location of RVs shown with Red Arrows)

August 18, 2010



bing
5401 Carlisle Pike, Mechanicsburg PA

Maps Web Maps Images

2D 3D Road Aerial

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Internet

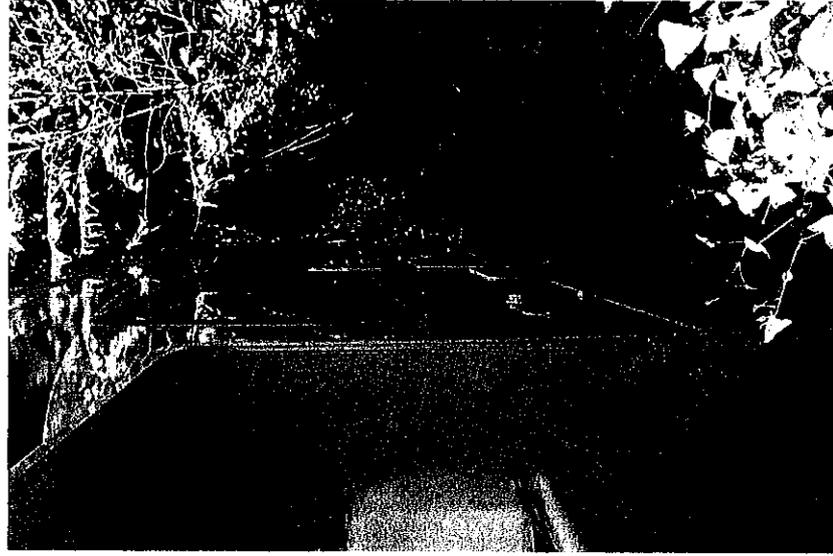
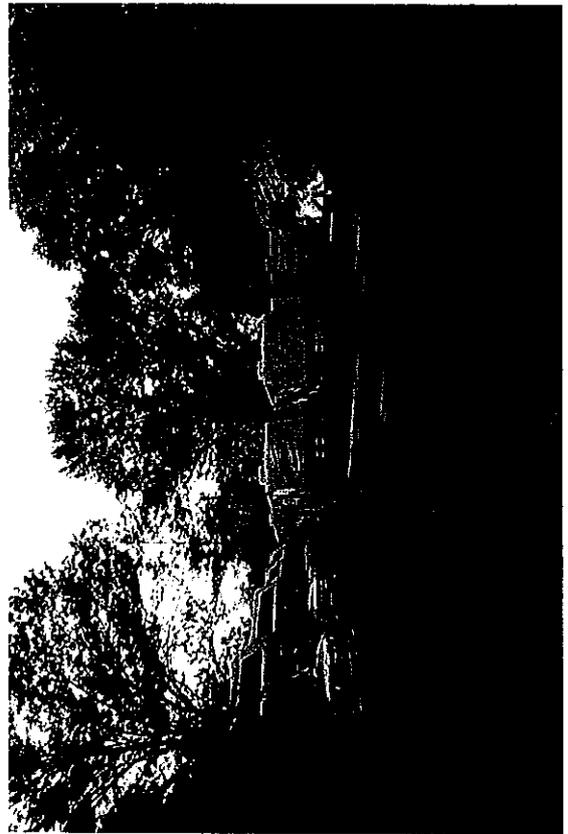
100%

A = 7 vehicles; B = 8 vehicles; C = 19 vehicles

(Emphasis Added; Actual Location of RVs shown with Red Arrows)

Condition of the Recreational Vehicles off the Property
Excerpt from Mountainview's Notice of Intent to Contest

Photographs of recreational vehicles observed off the Proposed Site



Attachment 4

Attachment 4 is an excerpt from the Pennsylvania Gaming Control Board's public hearing to consider when the time at which an applicant would be required to have the 275 guest rooms in order for a hotel to qualify as a "well-established resort hotel." In this excerpt, Chairman Decker describes a hypothetical hotel property that would not qualify as a well-established resort hotel because it added guest rooms during the application process.

A copy of the full transcript is available from the Pennsylvania Gaming Control Board's at http://www.pgcb.state.pa.us/files/meetings/Meeting_Transcript_20070327.pdf (visited on November 22, 2010).



**SARGENT'S
COURT
REPORTING**

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In Re: Public Meeting

Date: March 27, 2007

Before: Thomas Decker

Printed On: May 9, 2007

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PENNSYLVANIA GAMING CONTROL BOARD

* * * * *

IN RE: PUBLIC MEETING

* * * * *

PENNSYLVANIA STATE MUSEUM AUDITORIUM

THIRD AND NORTH STREETS

HARRISBURG, PENNSYLVANIA

MARCH 27, 2007, 9:00 A.M.

* * * * *

BEFORE:

THOMAS DECKER, CHAIRMAN

RAY ANGELI

MARY DiGIACOMO COLINS (via teleconference)

JEFFREY W. COY

KENNETH McCABE

SANFORD RIVERS

GARY A. SOJKA

KEITH WELKS

REPORTER: KENNETH D. O'HEARN

REPORTER NOTARY PUBLIC

LIST OF WITNESSES

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WITNESS

PAGE

Anne Neeb

5

George Bedwick

7

Audrey Powell

16

Charles Dickinson

39

Judith Eschberger

48

Marie Jones

56

Steve Cook

65

Michael Walsh

68

Frank Donaghue

71

Richard Sandusky

71

Kevin Hayes

81

Denyse Frushon Miskin

83

1 Y, you know, down the street and they can use the
2 pool. That's usually an amenity. I think that's what
3 you're addressing.

4 ATTORNEY BEDWICK:

5 No.

6 MR. RIVERS:

7 For dinner?

8 CHAIRMAN DECKER:

9 Well, that's right. That's probably not
10 a perfect example, but I think that would be probably
11 a stretch to say they can use the Y and then come
12 and ---.

13 ATTORNEY BEDWICK:

14 I think ---.

15 CHAIRMAN DECKER:

16 I understand. Getting back to the
17 well-established resort 275, we wouldn't be talking
18 about somebody who had a 50-room hotel/motel who
19 decided to expand, you know, 225 rooms over some
20 period of time, assuming you took the date of
21 licensure. And that would qualify as a well-
22 established resort at the time of the accident.

23 Do you see what I'm getting at? Maybe I
24 didn't explain that example very well. A small motel,
25 pick a city right in the area, or near somewhere

1 outside anywhere, and that entity decided to apply for
2 a license and it started to build a --- I'm not sure
3 there's anything like this, but it started to build
4 225 rooms to get to the 275, that wouldn't be, in your
5 mind, a well-established resort; is it?

6 MS. POWELL:

7 You're saying a motel.

8 CHAIRMAN DECKER:

9 I'm saying a motel in room one. This is
10 in the distance in Philadelphia Park, though. A small
11 motel or a series of motels or right here out of
12 Harrisburg.

13 MS. POWELL:

14 It had 50 rooms and ---.

15 CHAIRMAN DECKER:

16 Fifty (50) rooms and decide, I think
17 we'll make this a resort and apply for this thing.

18 MR. MCCABE:

19 And they already have a swimming pool and
20 a tennis court.

21 CHAIRMAN DECKER:

22 They already have a swimming pool and one
23 hardtop tennis court.

24 MS. POWELL:

25 On the date of application, it's my

1 understanding that they would not qualify.

2 CHAIRMAN DECKER:

3 Okay. But they would not have never been
4 a well-established resort, they would become a
5 well-established resort.

6 MS. POWELL:

7 They're on their way of becoming one, but
8 they won't be eligible for a license.

9 CHAIRMAN DECKER:

10 Okay.

11 MR. MCCABE:

12 So then do we have to look at the
13 definition of a resort? What is a resort?

14 CHAIRMAN DECKER:

15 We've debated the idea of being flexible
16 on the number of rooms. All right. But our view was
17 --- I think a lot of us had the view it had to be sort
18 of a resort at the time the Act was passed, and not
19 just a Motel 6.

20 MS. POWELL:

21 Correct.

22 CHAIRMAN DECKER:

23 I'm not knocking Motel 6, but that's not
24 a well-established resort. Maybe it's for some, but I
25 don't want to say anything about any person on our

Exhibit J

In further response to Michael Sklar's testimony that the recreational vehicles were continuously on the property since August 2, 2010 and that the majority of the recreational vehicles were in the rear lot, Mountainview hereby submits the following exhibit containing three photographs of the rear lot from August 30, 2010 and November 26, 2010.

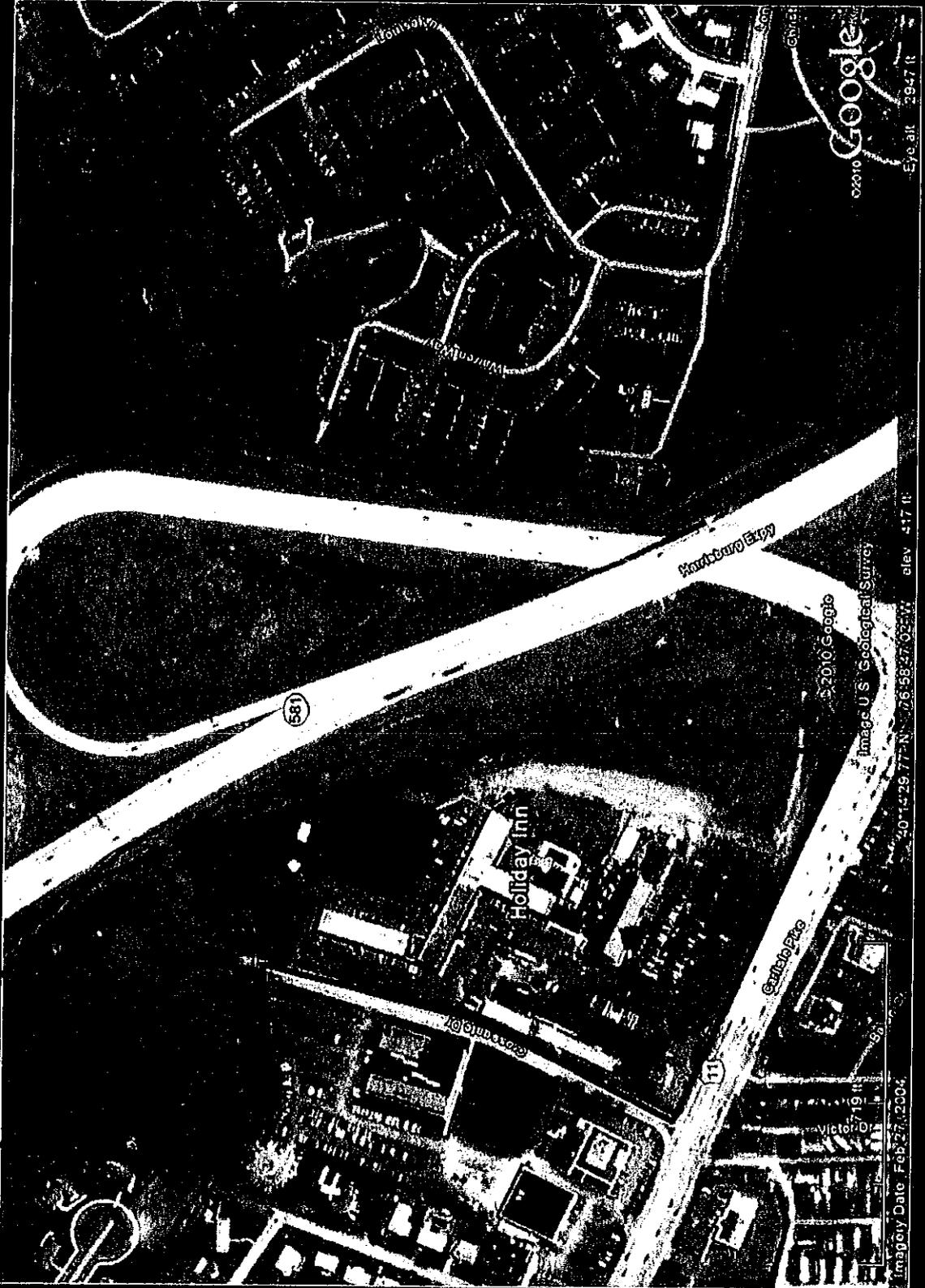
- One photograph, taken on August 30, 2010 shows that there are no recreational vehicles in the back lot. In fact, at the time of the photograph, there was a construction vehicle (shown through the trees) actively working on the property.
- The second and third photographs, taken on November 26, 2010 show that at some point after August 30, 2010, recreational vehicles were moved on to the back lot.

For the avoidance of doubt, the photographs are preceded by a copy of the aerial view of Holiday Inn Harrisburg West from Penn Harris's licensing hearing presentation showing subject area documented in the photographs.



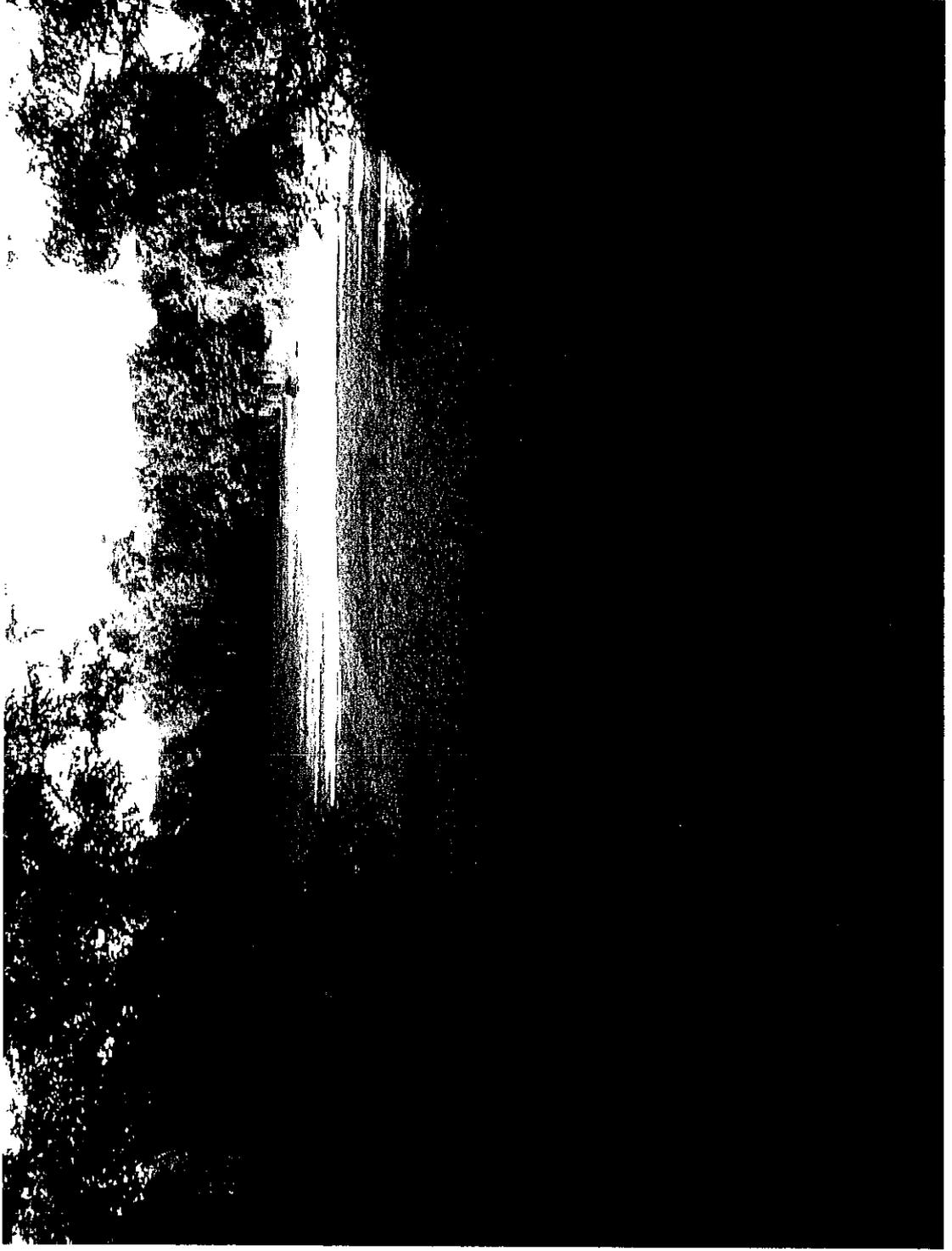
Project Overview

Location, Location, Location



**Direct Observation of the Rear Lot
Allegedly Part of the Holiday Inn Harrisburg West**

On August 30, 2010



**Direct Observation of the Rear Lot
Allegedly Part of the Holiday Inn Harrisburg West**

On November 26, 2010



**Direct Observation of the Rear Lot
Allegedly Part of the Holiday Inn Harrisburg West**

On November 26, 2010



Exhibit K

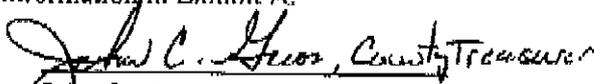
In response to the Board's inquiry regarding whether a hotel tax registrant has a continuing duty to update the information in its Hotel Tax Registration Form, Mountainview hereby submits this supplemental affidavit from John Gross, Cumberland County Treasurer. As stated herein, the registrant does have a continuing duty to update the information in its Hotel Tax Registration Form.

**Second Affidavit of John C. Gross
Treasurer of Cumberland County, Pennsylvania**

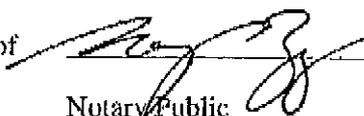
I, John C. Gross, hereby swear and affirm as follows:

1. I am the Treasurer of Cumberland County, Pennsylvania (the "County").
2. As Treasurer, I am responsible for the collection and receipt of all County monies. This responsibility includes the administration of the County's hotel tax.
3. Attached hereto as Exhibit A is a true and correct copy of the Cumberland County Hotel Tax Registration Form filed by and/or for the Holiday Inn Harrisburg West at 5401 Carlisle Pike, Mechanicsburg, PA 17050, dated May 4, 2010.
4. As set forth in Exhibit A and subject to the penalties of 18 Pa. C.S. § 4903 relating to unsworn falsification to authorities, the owner of the Holiday Inn Harrisburg West certified that, as of May 4, 2010, there were 239 rooms at the Holiday Inn Harrisburg West.
5. The registrant is under a continuing duty to update the County of any changes made to the information in Exhibit A. To ensure that each registrant is aware of its continuing duty, the County's Hotel Tax Registration Form, immediately above the signature block, states that "If any changes are made to the above information, it is the responsibility of the registrant to notify the county of these changes in writing."
6. Based on my review of the Cumberland County Hotel Tax records, there are no other hotel tax registrants at 5401 Carlisle Pike, Mechanicsburg, PA 17050 and Cumberland County has not received any updates to the information in Exhibit A.

Executed this 23 day of November, 2010


John C. Gross, County Treasurer
John C. Gross

Sworn to and Subscribed
before me this 23 day of
November, 2010


Notary Public

**Recorder of Deeds, Cumberland County, Carlisle, PA
My Commission Expires the First Meeting of Jan. 2014**

COPY

RECEIVED
JUN 15 2010
JOHNSON, DUFFIE

REGISTRATION FORM
CUMBERLAND COUNTY HOTEL TAX

OFFICE OF THE COUNTY TREASURER
JOHN C. GROSS, TREASURER
1 COURTHOUSE SQUARE
CARLISLE, PA 17013
(717) 240-6380

- LEGAL NAME OF OWNER OF ESTABLISHMENT: Central Pa Hospitality, Inc
TRADE NAME: Holiday Inn
- LOCATION OF PRINCIPAL PLACE OF BUSINESS OPERATION (P. O. BOXES ARE NOT ACCEPTABLE):
5401 Carlisle Pike
Mechanicsburg PA 17050
TELEPHONE # 717 6970321
- BUSINESS ADDRESS (IF DIFFERENT THAN LISTING #2). ALL RECORDS INVOLVING THE COLLECTION OF CUMBERLAND COUNTY HOTEL TAX MUST BE KEPT AT THE BUSINESS LOCATION:

Telephone Number: _____
- FEDERAL TAX IDENTIFICATION NUMBER (BIN): 23-2887650
- REGISTRANT IS OPERATING AS: INDIVIDUAL PARTNERSHIP CORPORATION
 ASSOCIATION OTHER (DESCRIBE: _____)
- PLEASE LIST THE NAME (S), TITLE (S), AND PHONE NUMBER OF RESPONSIBLE PARTY FOR REMITTING THE COUNTY HOTEL TAX:
NAME: Dawn Heckart TITLE: Controller PHONE # 7176970321
NAME: _____ TITLE: _____ PHONE # _____
- TYPE OF BUSINESS: HOTEL/MOTEL BED & BREAKFAST OTHER
- DO YOU PROVIDE MEALS: YES NO
IF SO, WHICH MEALS?: All
- DOES THE OCCUPANCY OF ROOM INCLUDE MEAL? YES NO
IF SO, WHICH MEAL?: _____
- NUMBER OF LODGING ROOMS: 239

I CERTIFY THAT THE ABOVE INFORMATION HAS BEEN EXAMINED BY, AND IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT AND IN COMPLIANCE WITH THE CUMBERLAND COUNTY HOTEL TAX RENTAL LAW. IF ANY CHANGES ARE MADE TO THE ABOVE INFORMATION, IT IS THE RESPONSIBILITY OF THE REGISTRANT TO NOTIFY THE COUNTY OF THESE CHANGES IN WRITING. I UNDERSTAND THAT FALSE STATEMENTS MADE HEREIN ARE SUBJECT TO THE PENALTIES OF 18 PA.C.S. 4904 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

PRINT NAME: Jody Leggere-Soft TITLE: AD PHONE # 7176990321
SIGNATURE: Jody Leggere-Soft DATE: 5/4/10

Exhibit L

Mountainview Thoroughbred Racing Association attaches two news articles that are evidence of the local opposition to Penn Harris's proposed gaming facility.

Home / News / Local

Reporter's Notebook: Residents oppose Hampden casino

- Story
- Discussion

Reporter's Notebook: Residents oppose Hampden casino

By Stephanie Weaver, Sentinel Reporter The Sentinel - cumberland.com | Posted: Saturday, November 13, 2010 11:09 pm | (0) Comments

Font Size:

Default font size

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Recommend

Be the first of your friends to recommend this.

FYI

Stephanie Weaver covers the Borough of Mechanicsburg, Silver Spring Township, Hampden Township, Monroe Township, and Upper and Lower Allen Townships for the Sentinel. You can read her Reporter's Notebook covering news and events on her beats every Sunday. She can be contacted at sweaver@cumberland.com.

With the hearings for the four casino applications for the last state license taking place this week, residents against the Hampden Township application certainly voiced their objections to the plan.

NoHampdenCasino, a coalition of Hampden Township and Cumberland County residents, announced Friday that more than 900 signatures were submitted to the Pennsylvania Gaming Control Board on Oct. 29, all against the proposed casino. The public comments opposing the plan were also recently posted on the Gaming Control Board's website, www.pgcb.state.pa.us.

Dan Hooven, a spokesperson for NoHampdenCasino, said in a press release that in addition to the nearly 1000 signatures, volunteers also distributed about 250 signs in an effort to educate citizens about the proposal.

Many of the public comments released about the casino plan note concerns about how the overall image of the community will be affected by a "glorified trailer park casino" being constructed at the Holiday Inn Harrisburg West along the Carlisle Pike.

Residents still feel the proposal does not meet the requirements for the licence since the hotel only reached the necessary number of rooms by adding a fleet of rentable RVs to the facility.

To learn more about the community coalition or to view updates on the application process for the final state casino license, visit www.nohampdencasino.org.

Back home in Upper Allen Township

After moving between several locations during the past two months, all meetings in Upper Allen Township will now be held at the township municipal building, 100 Gettysburg Pike.

The meeting room at the township building had been inaccessible since the beginning of September while the campus expansion construction project continued to move forward.

Many meetings, including heavily attended board of commissioners meetings and public hearings, were held at Elmwood Elementary, during the construction.

The entire project is expected to be finished this spring.

Free Thanksgiving meal

It's the best of both worlds - a traditional turkey day feast at no cost.

Trinity Church, 4 W. Main St., in New Kingstown is hosting a free community Thanksgiving meal this Saturday.

The menu will include the holiday classics: turkey, stuffing, gravy, corn, fruit cocktail, cranberry sauce and pumpkin pie.

For more information about the dinner, contact Mandy Noss at 440-0330 or mandy.noss@hotmail.com

Breakfast with the Big Guy

Even though Thanksgiving is still on its way, it is never too early to start getting in the Christmas spirit.

Or at least planning out your holiday schedule.

One event that is always a big hit come December is Breakfast with Santa in Hampden Township.

This year's family affair will be held on Dec. 4 at the Armitage Meeting Room in the Parks and Recreation Department building, 5001 Park St. Ext.

In addition to a warm breakfast to start off the day at 10 a.m., each child in attendance will have the opportunity to sit on Santa's lap for a photo and receive a surprise gift.

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Sentinel View: We don't need a casino

The Sentinel The Sentinel - cumberlink.com | Posted: Saturday, November 13, 2010 11:54 pm |
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While we like and support slogans like "Buy Local" and "Support the Home Team," when it comes to gambling we can't do it.

For reasons both practical and moral.

On the former point, the Penn Harris Gaming proposal at the Holiday Inn Harrisburg West in Hampden Township simply cannot compete with the other proposals.

Whether it be hotel rooms or parking or related entertainment amenities, the Holiday Inn site just doesn't pass the eyeball test. There may be a place for casinos, but a pedestrian Holiday Inn on a busy thoroughfare 25 miles from an already thriving casino isn't it.

All of the other three applicants have at least one alluring characteristic to dangle before the Gaming Control Board.

Fernwood Hotel and Resort in the Poconos has 906 hotel rooms. The Lady Luck Casino would be part of the Nemaquin Woodlands Resort, a sprawling facility of more than 2,000 acres in southwestern Pennsylvania. The Gettysburg site is an established tourist draw within 90 minutes of the Baltimore/D.C. market.

Then you have the Holiday Inn site, where Penn Harris has parked 36 RVs just to tally up the 275-room requirement for a Category 3 gaming license.

It just doesn't measure up.

And that brings us to the moral dilemma posed by a government that traffics in gambling proceeds. We have never been comfortable with the idea.

Simply put, gambling is a vice. Regardless of how high the revenues are, those who benefit from it are far outnumbered by those who have gained nothing or have lost everything.

It's a waste of time and a waste of resources. It's a cop out by our so-called "leaders," who are either unwilling or unable to make the hard decisions concerning the needed reforms to our antiquated property tax/public education system.

But we recognize that the fight over gambling is over. It's here to stay.

The new fight is over location and we don't need it here.

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Posted in Editorial on *Saturday, November 13, 2010 11:54 pm* Updated: 9:42 am.

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Exhibit M

Pursuant to Commissioner Sojka's request, Mountainview Thoroughbred Racing Association attaches an explanation of the distribution of gaming revenue to the Horsemen.

THE DISTRIBUTION OF GAMING FUNDS TO THE HORSEMEN

At the hearing on November 17, 2010, we offered to brief the distribution of gross terminal revenue to the Horsemen pursuant to the original Gaming Act. One of the most important purposes of the Gaming Act was to safeguard the racing industry in Pennsylvania (which has now grown to annual revenue per year in excess of \$1.5 billion) by enhancing purses to attract more and a higher quality of horses in Pennsylvania. In addition, the legislature determined to support breeding activities in Pennsylvania (both an economic and a “green” activity) and to assure that health and pension benefits were provided to members of the Horsemen’s organizations, including payments to jockeys, standardbred drivers and families of horsemen, jockeys and standardbred drivers. To fund these benefits solely from the gross terminal revenue from Category 1 slot machine licensees would have put them at a disadvantage with Category 2 and Category 3 licensees. The result was a bifurcated system pursuant to which the amount of the fund would be distributed with respect to the relative Gross Terminal Revenue (“GTR”) of all Category 1 slot machine licensees but paid out of the GTR of all slot machine licensees (Category 1, Category 2 and Category 3). This calculation is done on a daily basis.

Section 1405 of the Gaming Act provides for the creation of the fund. With the understanding that not all casinos would be up and running at the same time, and with the expectation that the Category 1’s would be up and running before the Category 2’s (since all but one of the Category 1’s existed at the time of the legislation or was scheduled for opening well before the Category 2’s could be identified and built). Accordingly, a daily cap of 12% was established with a formula that, assuming all 14 licenses were up and running and all 61,000 potential slot machines were in operation, the 12% maximum would, in reality, be slightly less than 9%.

Of the amount paid to the Horsemen, 80% is paid for the benefit of purses on live races, 16% is deposited in the Breeding Fund for thoroughbred racetracks and, for harness racetracks, 8% is deposited in Pennsylvania Sire Stakes Fund and 8% is deposited in the Pennsylvania Standard Breeders Development Fund. The remaining 4% is paid to fund health and pension benefits for horsemen, jockeys and their respective

families. Note, the January, 2010 amendments to the Gaming Act changed the protocol from daily calculations to weekly calculations and reduced payments to Horsemen by more than 17% and enacted a minimum health and pension benefit provision.

The formula for determining the amount that is **paid on** each week by **every** slot machine licensee is as follows:

Total Weekly Assessment of Casino P = Casino P Weekly GTR ÷ Weekly GTR of all operating Casinos times 18% of Weekly GTR of all Category 1 Casinos

$$\text{TWA} = \frac{A}{B} \text{ times } (.18 \text{ times } C)$$

(Subject to a 12% per casino cap)

Section 1406 of the Gaming Act then addresses the distribution of the Total Weekly Assessment. The amount of Total Weekly Assessment paid to the Horsemen of each Category 1 licensee is determined by the following formula:

$$\text{Payment to Track A Horsemen} = \text{Total Weekly Assessment times Track A Weekly GTR} \div \text{Weekly GTR of all Category 1 Casinos}$$
$$\text{Payment} = \text{TWA times } \frac{A}{C}$$

Accordingly, the lower the Weekly GTR of any one track, the lower its split for the week.

The following is an example of the application of Sections 1405 and 1406 of the Gaming Act. The numbers are the Weekly GTR as published by the Pennsylvania Gaming Control Board for the period November 8 to November 14, 2010.

CALCULATION OF ASSESSMENTS TO PA RACE HORSE DEVELOPMENT FUND/DISTRIBUTION TO HORSEMEN

Line #	Calculation	Week of 11/8/10 - 11/14/10	
		Actual	Penn Harris impact ⁽²⁾
5	HCPN revenues	4,685,257	2,811,154
6	Total Category 1 Revenues	28,838,164	26,964,061
7	Total Statewide Revenues	43,637,731	43,637,731
11	Assessment Calculation		26,964,061
12	Category 1 revenues	28,838,164	4,853,531
	18% of Cat 1 revenues	5,190,870	
14	Assessment Subject to 12% cap on Statewide revenues	5,236,528	5,236,528
16	<i>Total Paid in to PRHDF ⁽¹⁾</i>	5,190,870	4,853,531
18	HCPN Assessment	557,329	312,666
19	Total Category 1 Paid in to PRHDF	3,430,406	2,999,031
23	Distributions to HCPN Horsemen:		4,853,531
24	Total Paid in to PRHDF	5,190,870	(825,100)
25	17% to General State Fund	(882,448)	4,028,431
	Available for Distribution to Horsemen	4,308,422	
27	HCPN Distribution Calculation:		312,666
28	HCPN Assessment	557,329	10.43%
29	HCPN Assessment % of Total Cat 1 Assessments	16.25%	
31	<i>Total Distributed to HCPN Horsemen</i>	699,977	419,986

⁽¹⁾ Pennsylvania Race Horse Development Fund

⁽²⁾ Penn Harris impact assumes HCPN revenue reduced by 40%, impacted total Category 1 revenues by same amount, but total Statewide revenues remain consistent

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2010, I caused copies of the foregoing Post-Hearing Brief to be served via e-mail upon the following:

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