

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: WASHINGTON TROTTING ASSOCIATION (THE MEADOWS
RACETRACK & CASINO) - PETITION TO INTERVENE IN
WOODLANDS FAYETTE (NEMACOLIN) CATEGORY 3 LICENSE
APPLICATION

PUBLIC INPUT HEARING

BEFORE: Gregory C. Fajt, Chairman
Raymond S. Angeli, Jeffrey W. Coy,
James B. Ginty, Kenneth T. McCabe,
Gary A. Sojka, Kenneth Trujillo
Jorge Augusto, representing Russell
Redding, Secretary of Agriculture
Aviv Bliwas, representing State Treasurer's
Office

HEARING: Wednesday, October 27, 2010
2:30 p.m.

LOCATION: PUC Keystone Building
Hearing Room 1
400 North Street, Plaza Level
Harrisburg, PA 17120

Reporter: Cynthia Piro Simpson

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25CHAIRMAN:

The next matter pertains to Washington Trotting Association, request to intervene in a Category 3 License application of Woodlands Fayette. Because Woodlands Fayette has objected to this petition, the matter is now before the Board for the purpose of a hearing. As with our prior proceedings, I'd like to ask anyone speaking to state and spell their name for the record. I'd also like to ask that any fact witnesses for either WTA or Woodlands Fayette to stand to be sworn. And Counsel for WTA is Ms. Jones and I believe Counsel for Woodlands Fayette, Mr. King, are both here. And Ms. Jones, please start.

ATTORNEY JONES:

Thank you again. Washington Trotting Association has filed a Petition to Intervene in the Woodlands Fayette Category 3 application as WTA has a substantial, direct and immediate interest in the proceeding and its interests will not be adequately represented by another party in the licensing. And this is a standard set forth in the regulations for intervention.

WTA has multiple interests in Woodlands

1 Fayette, all of which are substantial, direct and
2 immediate. As set forth in the petition, if a license
3 is granted to Woodlands, it will significantly
4 decrease the number of trips to WTA and reduce the
5 amount of revenue, causing substantial harm to the
6 gaming operations of WTA. Woodlands would pull
7 patrons from WTA's core market. A patron ZIP Code
8 analysis indicates that if Woodlands is granted a
9 license, approximately 36 percent of their revenue
10 will come from patrons that currently visit WTA. This
11 is in a market where certain of the gaming facilities
12 have not met projections. The decrease in visitation
13 and revenue will cause a decrease in employment at the
14 Meadows and will negatively impact racing operations.
15 Further, the Act provides that its intent is to
16 generate significant sources of new revenue, provide
17 tax relief, create broad economic opportunities and
18 enhance live racing. Placing a license at Woodlands
19 does not enhance these stated intentions but has a
20 substantial, direct and immediate negative impact on
21 WTA.

22 The Board has granted Petitions to
23 Intervene when the potential reduction in revenue was
24 the focus. Specifically in the Greenwood Gaming
25 Petition to Intervene and Valley Forge Category 3

1 application, it was determined that Greenwood had an
2 interest in the proceeding based on the potential
3 reduction in revenue and value --- and potential
4 reduction of value of its operations. The same should
5 apply in this instance. Woodland states in its reply
6 that Greenwood is much closer in proximity to Valley
7 Forge than Nemaocolin is to Woodlands --- or to The
8 Meadows, I'm sorry, you must take into account the
9 area of the Commonwealth. Western Pennsylvania is not
10 as dense in population as the Philadelphia
11 metropolitan area. And WTA has calculated that
12 approximately 250,000 patrons come from the Fayette
13 County area. The regulation also requires that the
14 intervener establish that another party cannot
15 adequately represent their interests in the
16 proceeding. In this matter, the parties would be
17 Woodlands, who obviously would not represent WTA's
18 interest, and the OEC, whose primary responsibility is
19 statutory and regulatory. There are also no other
20 Category II applications that could adequately
21 represent WTA's interest in that there are no other
22 that are in that area.

23 In its reply to the petition, Woodlands
24 highlights the fact that when WTA applied for a
25 license, that it knew that other Category 3 licensees

1 had been applied for in the Western Pennsylvania area.
2 At that time the statute was different in that it
3 required a more substantial spend on the amenities to
4 be a patron of the Category 3 facility. And WTA did
5 not believe a Category 3 facility with that type of
6 spend and restrictions was viable in the area. This
7 thought process was substantiated by the fact that
8 Nemacolin and Seven Springs withdrew their
9 applications, and Nemacolin did not reapply until the
10 law was changed to reduce the spend and to include
11 table games. It is also substantiated by the fact
12 that in the note section to the report of the Board's
13 Financial Task Force on Category 1 applicants, it
14 indicates that a Category 3 License was not considered
15 in the projected revenue for WTA by the Financial Task
16 Force. All of these combined with the fact that WTA
17 projects that they would lose 250,000 visitors, have
18 to reduce their workforce and that these projections
19 are based on the public record and the result shown
20 when Rivers came online, shows that they will be ---
21 have substantial harm and direct, immediate harm to
22 them. I'd be happy to address any questions.

23 CHAIRMAN:

24 Thank you. Before we get into
25 Fayette's --- Woodlands Fayette, their petition and

1 argument, do you have any questions for Ms. Jones, Mr.
2 King?

3 ATTORNEY KING:

4 I do not.

5 CHAIRMAN:

6 Thank you. Does the Board have any
7 questions for WTA? Seeing none, Mr. King, you may
8 present your argument.

9 ATTORNEY KING:

10 Thank you, Chairman Fajt. Good
11 afternoon, members of the Board. Let me be very short
12 and succinct. The WTA petition is frivolous. It's
13 not properly based in law or fact. It should be
14 denied. WTA has no interest in Nemacolin's
15 application, let alone the required substantial,
16 direct and immediate interest that Ms. Jones and WTA
17 claim. Even if they could meet the interest test,
18 which they cannot, the interest is adequately
19 represented by the Board, acting through its staff,
20 Bureau of Licensing, BIE, Office of Enforcement
21 Counsel, which I know seeks to also minimize
22 cannibalization and also enforce eligibility
23 requirements. So there is a party that is in the
24 matter that can represent these interests. Moreover,
25 I think it's important to note that WTA already has

1 the ability to share with the Board its concerns about
2 a potential Nemaocolin Category 3 casino through the
3 Notice of Intent to Compare process that was set forth
4 by the Board, specifically in Linda Lloyd's letter to
5 all the Category 1 and 2 applicants. I believe it was
6 dated August 16th, 2010. So they do have that ability
7 already.

8 Let me break this down a little bit
9 further. First, I think it's important that we keep
10 in mind, what are we talking about here? Nemaocolin
11 proposes a 600 slot, 28 table, Category 3 License,
12 with all of the statutorily-required entry
13 requirements that we've all become very familiar with.
14 And most importantly, that is 57 miles, according to
15 their brief, away from Nemaocolin and is an hour and
16 11-minute drive time between Nemaocolin and WTA. And
17 irrespective of the fact that the fair market value of
18 the amenities has changed from \$10 to \$25, the fact is
19 they have also benefited from the addition of table
20 games through that same legislation. And again, WTA
21 knew very well that Nemaocolin was a potential Category
22 3 License holder.

23 WTA's use of doomsday hyperbole in their
24 petition, claiming, and I quote, that granting a
25 license to Nemaocolin will flood the market with

1 casinos, and that's in paragraph 20, does not cause
2 the significant cannibalization claim. In fact, WTA's
3 claimed harm, a \$22 million reduction of revenue, is
4 based on what I would describe as an unsophisticated
5 ZIP Code analysis. Now, we've not been provided with
6 that, but I will tell you I don't think it can be
7 believed. And let me explain why. From what I
8 understand, WTA has done nothing more than take its
9 player database, identified customers with a Fayette
10 County ZIP Code and without any further basis it's
11 jumped to the conclusion that every single one of
12 these patrons will abandon WTA in favor of Nemaquin
13 if Nemaquin is granted a Category 3 License. Now, I
14 submit that that assumption is ridiculous on its face
15 and it fails to take into account the unique nature
16 and legal requirements of a Category 3 casino, as well
17 as other geographic factors. For example, what basis
18 does WTA assume that all of its Fayette County patrons
19 will want to spend a night at Nemaquin, be a patron
20 of the amenities and pay the fee or hold a membership
21 so that they can enter the casino? There's no basis
22 provided for that. Also, what basis exists to
23 conclude that WTA's Fayette County patrons who live
24 closer to WTA than Nemaquin will choose Nemaquin
25 over WTA? For example, if you look at certain

1 population centers, like Belle Vernon, it's 18.7 miles
2 to WTA, it's 27.7 miles to Nemacolin. If you look at
3 Newell, again, 18.7 miles to WTA, 26 miles to
4 Nemacolin. Clearly, you know, we believe their
5 assumptions regarding cannibalization cannot be
6 believed and should not be accepted by the Board.

7 By comparison, Nemacolin has now
8 submitted to the Board, it's also served these
9 documents on opposing Counsel, a detailed gaming
10 market study prepared by a recognized national expert
11 and utilizing universally-accepted gravity model ---
12 quite frankly, it's the same model that the Innovation
13 Group used way back in, I guess, '03 or '04, when the
14 Democratic Senate Caucus commissioned the first study
15 on gaming in Pennsylvania, which indicates that the
16 negative impact on The Meadows arising from a
17 Nemacolin casino would be a mere .55 percent, or
18 approximately \$1.4 million. Now, this is a far cry
19 from the seven percent or \$18.5 million negative
20 impact claimed by WTA. The reason why my number 18.5
21 is slightly lower than the \$22 million is we're
22 applying against WTA's slots revenue for fiscal year
23 '09/'10, which was \$261 million. Again, we submit
24 that WTA has no interest in the application because
25 there's no substantial decrease in revenue created by

1 a Category 3 casino at Nemaquin.

2 And let me raise one other issue. I
3 noticed that Ms. Jones has not raised this in her
4 argument, but it's in her paper, so I feel that I ---
5 I feel compelled to address it, and that's on
6 eligibility. WTA makes, again, what I described as a
7 tortured, frivolous argument that Nemaquin is not
8 eligible for a Category 3 License because the casino
9 is not proposed to be located in a well-established
10 resort hotel. And essentially what they're arguing is
11 that in means exactly within the four walls of the
12 hotel as opposed to in the resort. We submit that
13 this is a tortured and absurd reading of the Act. The
14 Gaming Act intended that a Category 3 casino be a
15 tourism-generating amenity just like the other
16 substantial year-round recreational guest amenities
17 that are required under Section 1305(a)(1). So just
18 like there's no expectation that all the amenities be
19 under one roof --- or under any roof, think about golf
20 courses or skiing, which are both amenities at
21 Nemaquin, there's no expectation that the casino
22 entity be strictly within the four walls of a single
23 hotel with 275 guest rooms. The Act does not require
24 that. Now, the legislature could have required that
25 in the Gaming Act, and in fact, it did in Senate Bill

1 711 toy back and forth with certain definitions of
2 hotel, as your staff will tell you, but the reality is
3 it ended up not making that as a requirement. It
4 could have, but it didn't. And I'll reference you ---
5 I won't belabor this by reading you the definitions of
6 hotel, but you can go and check it.

7 And finally, I'd just point out that if
8 WTA's argument on this point is to be accepted by the
9 Board, then the entire Category 3 application process
10 should be halted now. We might as well just say we're
11 not going to have hearings next month because not a
12 single applicant, including Ms. Jones' other client,
13 Fernwood, satisfies that test. Mason-Dixon, I can
14 hold up a picture, it's in a separate building, just
15 as ours is in a separate building on our resort, on
16 our property. Fernwood, in an event center. It's
17 adjacent to, but it's not attached to the hotel, which
18 oh, by the way, doesn't have 275 rooms in the hotel,
19 because then you have to go look at their timeshares
20 and all the other things that they have. And
21 finally, look at Penn Harris. It may be in a hotel,
22 but it's certainly not in a hotel with 275 guest
23 rooms. And I'll leave that applicant at that.

24 Now, Ms. Jones did talk about the
25 Greenwood decision. And I acknowledge that in

1 Greenwood the Board did allow, ultimately allow,
2 intervention to Greenwood. But let's look at the
3 miles for a second. Parx --- linear distance between
4 Parx and Valley Forge is 24.2 miles. The driving
5 distance is 30, and the drive time is 34 minutes. If
6 you look at WTA, the linear distance is 44.6 miles,
7 the driving distance is 57 miles, and the travel time
8 is one hour and 11 minutes, a wholly different set of
9 distances and numbers.

10 The bottom line is, you know, I submit to
11 the Board that at some point this new sort of notion
12 of applicants filing Intervention Petitions in other
13 applicants' or licensees' matters, it needs to stop.
14 To some degree, the inmates are trying to run the
15 asylum and take away from the Board's powers, duties
16 and responsibilities to regulate gaming. Further, in
17 the Greenwood case there was not --- there was not as
18 formal of a process in terms of the ability to be
19 heard as you've created for this set of licenses.

20 So in conclusion, we respectfully request
21 that the petition be denied. WTA has an opportunity
22 to be heard, they can be heard, and this is simply ---
23 does not meet the test of substantial interest. Thank
24 you.

25 CHAIRMAN:

1 Thank you. Ms. Jones, do you have any
2 comments?

3 ATTORNEY JONES:

4 Yes, I do.

5 CHAIRMAN:

6 Please proceed.

7 ATTORNEY JONES:

8 First I want to start with the difference
9 between the Notice to Contest and the intervention.
10 As I'm sure the Board is aware, the Intervention
11 Petition would give WTA party status, in which case
12 that they could pursue it, where the Notice to Contest
13 gives us a limited status.

14 Second, with respect to his final
15 comments with the Petition to Intervening having to
16 stop, I'm actually looking at another petition here
17 filed by Mr. King's law firm where, in fact, they
18 request intervention in the application of Penn
19 Harris. And when you look at some of the facts relied
20 upon in that petition, they are substantially similar
21 to the facts in the WTA petition, in other words, the
22 reduction in revenue.

23 With respect to the county analysis and
24 pulling individuals from Fayette County, he relied
25 upon an economic impact report that was provided with

1 the notices --- the evidentiary memos. That was after
 2 his reply. It has not been provided in response to
 3 this reply, and it, in fact, hasn't been served on WTA
 4 in any capacity. This, again, shows that we should
 5 have the ability to come in, look at all this evidence
 6 and present to the Board what we believe our best case
 7 is in showing the substantial harm. This is an
 8 initial proceeding saying to you, we believe, and here
 9 are the numbers that we have calculated based on
 10 records that are publicly available, and we show that
 11 we will be substantially harmed. And based on that,
 12 we should be allowed to intervene in this petition.
 13 Thank you.

14 ATTORNEY KING:

15 If I may, may I make just two very quick
 16 statements.

17 CHAIRMAN:

18 Go ahead, Mr. King.

19 ATTORNEY KING:

20 I just want to note, obviously, our firm
 21 did file the Intervention Petition on Penn National.
 22 I think that what's important there is --- Greenwood
 23 sets the standard. Penn National is even under the
 24 Greenwood distances. Penn Harris --- Penn National,
 25 the distance is --- linear distance, 19.8. That's

1 almost five miles shorter than Parx and Greenwood.
2 And the drive distance is also five miles less. So it
3 is within the precedent that was already set. And I
4 just want to say, we have faithfully submitted to
5 opposing counsel every single expert report that I
6 have referenced here today, both our original drive
7 time analysis and there is another report being served
8 today, as is required by the procedures set forth. So
9 I just wanted to make that very clear. I have nothing
10 else.

11 CHAIRMAN:

12 Thank you.

13 ATTORNEY JONES:

14 I'm sorry. In that instance he's saying
15 opposing counsel, but it wasn't WTA. So I mean, if
16 he's relying on a report and reply to this, it should
17 be served with respect to them.

18 CHAIRMAN:

19 Questions from the Board? Yes,
20 Commissioner Trujillo.

21 MR. TRUJILLO:

22 I have a few. First, the --- Ms. Jones,
23 the comparative analysis available to the parties in
24 this Category 3 series, what was the status of that
25 analysis?

1 ATTORNEY JONES:

2 In the Greenwood situation, I believe it
3 was also available.

4 MR. TRUJILLO:

5 And is there anything --- is there
6 anything in the comparative analysis that is not going
7 to be available --- let me see if I can be a little
8 more articulate than I just was. Is there any
9 evidence that you will not be able to show in the
10 comparative analysis that you ---?

11 ATTORNEY JONES:

12 Yes. The comparative analysis will allow
13 us to provide testimony. The intervention will allow
14 us to become a party and submit briefs. And I think
15 the briefs will give us an opportunity --- I, at this
16 point, don't know how long we will be permitted under
17 the comparative analysis to present, but the briefs
18 would give us additional time and information to
19 submit to the Board, as well, again, as giving us
20 party status, which gives us the ability to appeal
21 decisions, if they so desire.

22 MR. TRUJILLO:

23 And the substantial --- what's the
24 approximate average room rate at Nemaocolin?

25 ATTORNEY KING:

1 It's in excess of \$300, I believe.

2 MR. TRUJILLO:

3 Per night?

4 ATTORNEY KING:

5 Yep.

6 MR. TRUJILLO:

7 And finally, Ms. Jones, one other
8 question. The 250,000 visitors that you mentioned,
9 what's the current projection for --- what is ---
10 what's the anticipated number of patrons on an
11 annualized basis for ---?

12 ATTORNEY KING:

13 I'm sorry. You trailed off,
14 Commissioner.

15 MR. TRUJILLO:

16 I'm sorry. What is the expected annual
17 number of patrons at the proposed casino, at
18 Nemacolin?

19 ATTORNEY KING:

20 We believe --- right now Nemacolin has
21 about 300,000 patrons a year. We believe the casino
22 will help us close to double that. So it would be an
23 additional \$300,000.

24 MR. TRUJILLO:

25 That's all I have.

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CHAIRMAN:

Commissioner Sojka?

MR. SOJKA:

I just had one question of clarification for Ms. Jones. You made reference to a business impact study that we have not seen.

ATTORNEY JONES:

When I say we have not seen, the business impact study was done --- mentioned in his argument and was not provided to WTA and was not included in response to this ---.

MR. SOJKA:

I see. That's fine. Thank you.

CHAIRMAN:

Other questions? Okay. Thank you. We're going to close the record on this matter. The Board will conduct quasi-judicial deliberations in executive session to be held immediately after our next hearing. Thank you.

ATTORNEY JONES:

Thank you.

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HEARING CONCLUDED

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CERTIFICATE

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I hereby certify that the foregoing proceedings, hearing held before Chairman Fajt, was reported by me on 10/27/2010 and that I Cynthia Piro Simpson read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.



Court Reporter