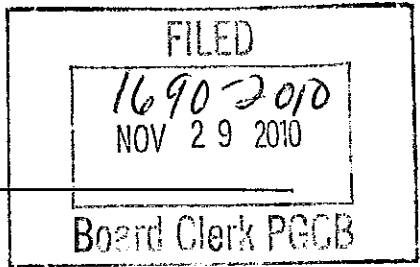


BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD



In Re: Application of : Docket No.: 46551-1
PENN HARRIS GAMING, L.P. :
:
:
Licensing Hearing Date: Nov. 17, 2010
Filed By: Applicant for :
Category 3 Slot Machine License : Counsel of Record:
: Michael D. Sklar, Esq.
Date Filed: November 29, 2010 : John M. Donnelly, Esq.

POST-LICENSING HEARING BRIEF

Penn Harris Gaming, L.P. ("Penn Harris"), by and through its attorneys, Levine, Staller, Sklar, Chan, Brown & Donnelly, P.A., respectfully submits this Post-Licensing Hearing Brief to the Pennsylvania Gaming Control Board (the "Board").

PRELIMINARY STATEMENT

As demonstrated during the November 17, 2010 licensing hearing (the "Licensing Hearing"), Penn Harris best fulfills the goals of the Gaming Act – namely, adding an amenity to enhance an existing resort, generating tax revenues for the Commonwealth and local municipality, creating jobs and promoting tourism and other economic benefits.

Penn Harris has shown by clear and convincing evidence that it meets each of the eligibility criteria under Section 1305 of the Gaming Act: (a) the resort contains 275 guest rooms, comprised of 239 hotel guest rooms and 36 recreational vehicle guest rooms; (b) Penn Harris is the equitable owner of all 275 guest rooms; (c) the 275 guest rooms were available for rental by August 2, 2010, the Board's deemed application complete date; and (d) the resort contains substantial year-round recreational guest amenities. Moreover, the resort has positioned itself as a regional destination resort for the past 20 years, as is

demonstrated by its guest mix and the types of events and activities that are hosted at the property.

Penn Harris has assembled a highly experienced team that knows how to get a casino facility designed, built, opened and operated in a manner that the Board, Commonwealth and local community will be proud of.

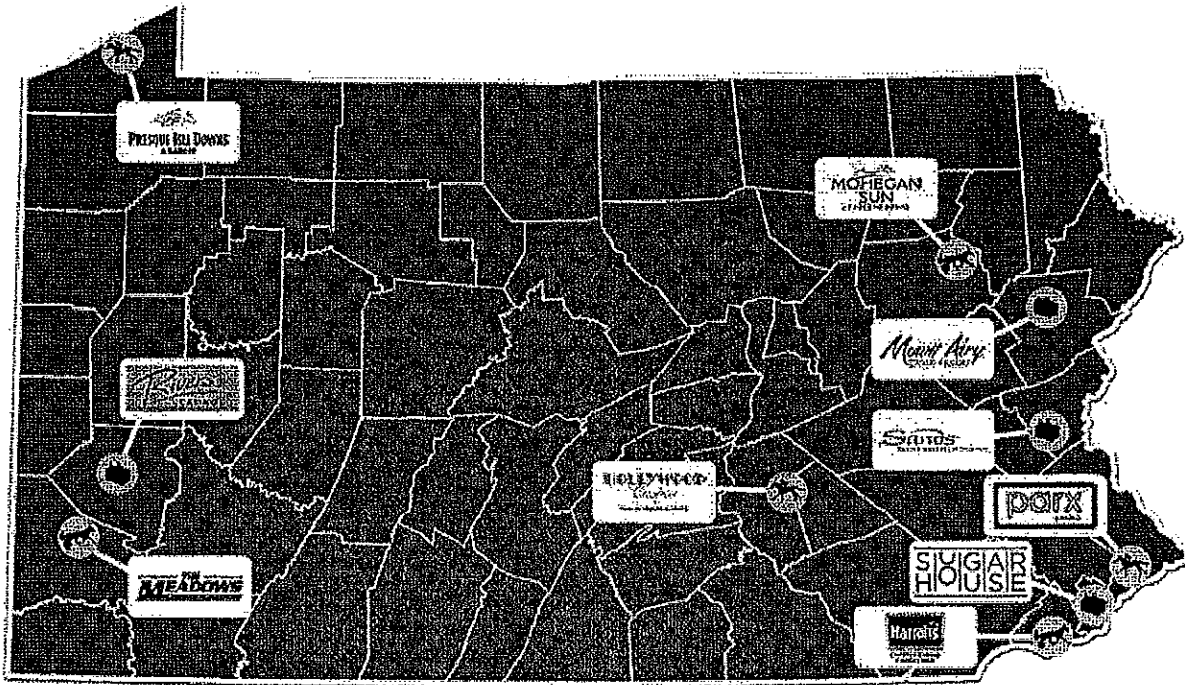
Rather than simply reiterate what was presented at the Licensing Hearing, the focus of this Brief will be to highlight those areas that differentiate Penn Harris from the other applicants and establish Penn Harris as the most desirable of the last Category 3 License.

ANALYSIS

I. Best Location

The success of any casino turns on two critical questions: (1) are there individuals to patronize the property and (2) can these individuals easily access the property? At the proposed West Shore Resort Casino, the answer to each of these questions is a resounding, "Yes." The proposed West Shore Casino Resort is a prime location situated at the convergence of five major highways that criss-cross the state. Route 581 is practically a driveway into the resort property. The region is a destination of choice for approximately 7.9 million leisure travelers each year. In addition, a total of 4.3 million people come to Greater Harrisburg region on business trips annually and there are over 1.6 million regional residents.

If one looks at the map of the Commonwealth and location of the existing casinos, it becomes apparent that the Harrisburg region is the most underserved market:



Penn National testified at the Licensing Hearing that this market is so robust that it plans to construct a new building to house an additional 500 slot machines and another 20 table games to its existing facility.

In contrast, the other applicants are situated in less than desirable locations.

First, Bushkill is located within close proximity to three existing licensed facilities, including Mount Airy Casino Resort, which is just 15 miles away. The northeastern Pennsylvania gaming market is more than well-served by the existing casinos.

The proposed Gettysburg casino is located in a sparsely populated area, within one-half mile of the historic Gettysburg Battlefield. In fact, the Board has previously concluded that Gettysburg is located in "primarily a rural area without large population centers nearby to sustain the casino." *In Re: Matters of the Application for Category 2 Slot Machine Licenses in a Revenue or Tourism, PGCB Adjudication at 95-96.* As such, Gettysburg has promoted to the Board its proximity to the Maryland gaming market and its ability to capture

gaming patrons from Maryland. However, when the audience is the Maryland Gaming Commission, it touts its ability to capture the Pennsylvania gaming customer and staunch the flow of Maryland gaming patrons to Pennsylvania. See Penn National Presentation to the Maryland Gaming Commission.

Putting aside the double talk, Penn National, the proposed operator of Gettysburg, has a greater economic incentive to drive Maryland gaming patrons to its wholly-owned CharlesTown, WV and Hollywood Perryville, MD gaming facilities and customers in the Greater Harrisburg region to its wholly-owned Grantville property¹ rather than to Gettysburg where it will only receive a management fee.

Lastly, Nemaocolin is situated in an extremely isolated, remote and difficult to reach portion of Southwestern Pennsylvania. The nearest major highway is 20 miles away. The site is only accessed by a two-lane road. Due to its remote location, the local population is extremely small. Nemaocolin is by far the largest employer in the region; yet, it intends to prohibit employees at the entire property, including non-gaming employees, from gambling. As discussed in more detail below, this isolation means that it is highly unlikely that Nemaocolin will be able to generate the consistent daily traffic necessary to make a casino facility a viable operation. In short, there is no viable market.

II. Best Site/Plans

As shown during the Licensing Hearing, the proposed West Shore Casino Resort is immediately adjacent to a major State Highway (Route 581). Guests can leave the highway, remain in a dedicated turn lane for less than 1,000 feet and prior to entering the property. The 22.5 acre site is large enough to accommodate the new casino building and RV World with ample parking, while still providing room to allow for future development. As

¹ Penn National estimates that its Hollywood Grantville property would lose 25% of its gaming revenues if a Gettysburg casino were licensed.

discussed above, Nemaocolin and Gettysburg are both in varying degrees isolated and not convenient from the major interstate and state highways.

Penn Harris, unlike the other applicants, plans to incorporate the casino floor directly into the existing resort. In contrast, Nemaocolin proposes to locate its casino 1.2 miles from the hotel. This will require patrons to be bussed to the casino – walking simply will not be an option for the majority of their patrons. As John Glassey, Penn Harris' marketing consultant testified, gaming patrons do not like being bussed to a casino. It is not convenient and will cause less time to be spent in the casino.

Similarly, Gettysburg proposes to locate its casino floor one-quarter of mile from the hotel. Again, experience tells us that gaming patrons do not like having to trek to the casino. In Atlantic City, in the mid-1990's, Trump built an enclosed and heated/air-conditioned walkway between Trump Plaza and adjacent World's Fair casinos, which was approximately 300 feet long. The connection was a complete failure as customers did not want to make the trip even though it was fully enclosed.

In addition, Gettysburg proposes to locate its casino in a building that is adjacent to a Brownfield site, where residential development is prohibited. By any measure, this is simply not an ideal location for a casino facility.

III. Generate Most Gaming Revenue

Because the proposed West Shore Resort Casino is located in a prime central location, easily accessible from five major highways, it will generate significant gaming tax revenue for the Commonwealth, Cumberland County and Hampden Township. Penn Harris submitted a market study prepared by Gaming Market Advisers ("GMA"). As Andrew Klebanow, a GMA Principal, testified at the Licensing Hearing, his firm prepares conservative, well-documented and supported studies identical to what GMA would prepare

on behalf of a lender considering making a loan to a casino. Its studies are not manufactured for a particular audience.

GMA's market study concluded that the West Shore Casino Resort would generate in excess of \$76 million annually in gross gaming revenue. The table below shows its gaming revenue breakdown:

West Shore Casino Resort
Gaming Revenue Projections

| | <u>2012</u> | <u>2013</u> | <u>2014</u> | <u>2015</u> | <u>2016</u> |
|---|-------------------|-------------------|-------------------|-------------------|-------------------|
| Day Trip Market | 61,885,579 | 72,806,563 | 74,990,760 | 76,865,529 | 79,940,150 |
| Property Overnight Guest Revenue ² | <u>2,541,044</u> | <u>2,989,463</u> | <u>3,079,147</u> | <u>3,156,126</u> | <u>3,282,371</u> |
| Subtotal | 64,426,622 | 75,796,026 | 78,069,907 | 80,021,654 | 83,222,521 |
| Incremental Guest Gaming Revenue replicating <u>Gettysburg</u> methodology ³ | <u>34,984,286</u> | <u>41,157,984</u> | <u>42,392,724</u> | <u>43,452,542</u> | <u>45,190,643</u> |
| Total Gross Gaming Revenue | 99,410,909 | 116,954,010 | 120,462,630 | 123,474,196 | 128,413,164 |
| Incremental Guest Gaming Revenue replicating <u>Nemacolin</u> methodology ³ | <u>35,986,706</u> | <u>42,337,301</u> | <u>43,607,420</u> | <u>44,697,606</u> | <u>46,485,510</u> |
| Total Gross Gaming Revenue | 100,413,328 | 118,133,327 | 121,677,327 | 124,719,260 | 129,708,031 |

In contrast to the conservative revenue projections generated by GMA, the other three applicants have presented projections that are simply not credible.

Bushkill presents revenue projections that are 226% higher than its own projections of two years ago. If these estimates were to be believed, it would place Bushkill among the top couple gaming facilities in the entire country in terms of win per unit.

² Reflects revenue projections from overnight guests staying at the West Shore Resort Casino only.

³ Per Commissioner Ginty's request, we have projected incremental gaming revenues from overnight guests and tourists staying in the regional area, utilizing the assumptions and analyses set forth in the Gettysburg and Nemacolin market study reports.

Bushkill Revenue Projections

| | <u>Innovation Group October 2008</u> | <u>David West October 2010</u> | <u>% Change</u> | <u>Current Mt Airy Figures</u> |
|------------|--|------------------------------------|-----------------|------------------------------------|
| Patronage | 407,553 | 1,345,755 | 230% | |
| Slot W/P/U | \$157 | \$513 | 226% | \$167 |
| GTR | \$28,726,197 | \$93,622,500 | 226% | |

In contrast to Penn Harris, whose sole focus will be on the West Shore Casino Resort, Gettysburg's proposed gaming operator, Penn National, owns and operates three gaming properties all within approximately 60 miles of the proposed Gettysburg casino. Penn National has invested approximately \$1 Billion in these facilities. Simple logic dictates where Penn National will drive gaming patrons – just follow the money.

The Nemaocolin market study flies in the face of universally accepted gravity model theory, which is based on Newton's Universal Law of Gravitation. This universal law states that every particle in the universe attracts every other particle in the universe with a force that is directly proportional to the product of their masses and inversely proportional to the square of the distance between them. For example, assuming two commercial businesses are of equal size, if an individual resides half the distance to one business versus the other, then that individual will be four times (two squared) as likely to be attracted to the closer business.

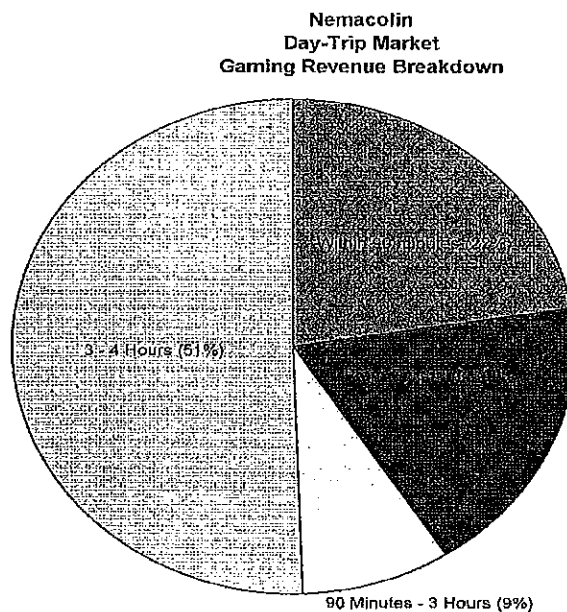
Nemaocolin's market study stands Newton's law on its head. It also defies simple common sense. It presumes that a day-trip gaming patron will disregard a gaming facility that is both larger and significantly closer and choose instead to travel up to four hours each way to gamble at Nemaocolin. This premise is unsupportable. The table below shows

the assumptions made in the market studies prepared for Nemaocolin, Penn Harris and Gettysburg.

Day-Trip Market⁴

| <u>Drive Time</u> | <u>Nemaocolin</u> | <u>Penn Harris</u> | <u>Gettysburg</u> |
|------------------------|-------------------|--------------------|-------------------|
| % within 90 minutes | 22% | 97.5% | 100% |
| % more than 90 minutes | 78% | 2.5% | 0% |

The following pie chart breaks down where Nemaocolin assumes its day-trip patrons will be coming from:



The following table shows Nemaocolin's assumptions regarding day-trip patrons who live within 30 minutes of an existing casino and would according to Nemaocolin bypass the neighborhood casino to travel to Nemaocolin for a day-trip visit.

⁴ These figures do not include overnight guests.

Nemacolin Day-Trip Market Patrons Traveling from Existing Gaming Markets

| <u>Facility/Location</u> | <u>Drive Time to Nemacolin (hrs)</u> | <u>Number of Visits Per Year Per Patron</u> | <u>Revenue Generated</u> |
|--|--------------------------------------|---|--------------------------|
| Presque Isle/Erie, PA | 4.0 | 12.5 | \$407,380 |
| Rivers/Pittsburgh, PA | 1.5 | 11.2 | 8,201,968 |
| Penn National/Grantville, PA | 3.5 | 13.0 | 1,973,043 |
| Mountaineer/Chester, WV | 2.5 | 15.0 | 171,463 |
| Wheeling/Wheeling, WV | 2.0 | 15.5 | 423,037 |
| CharlesTown/CharlesTown, WV | 2.5 | 13.0 | 1,049,832 |
| TBD/Columbus, OH ⁵ | 4.0 | 11.0 | 1,970,832 |
| Mardi Gras/Charleston, WV | 4.0 | 11.0 | 538,563 |
| Greenbrier/White Sulpher Springs, WV | 4.0 | 10.0 | 112,022 |
| TBD/Cleveland, OH ² | 3.5 | 12.0 | 4,350,416 |
| Arundel/DC, Baltimore, MD ² | 4.0 | 13.0 | <u>7,665,495</u> |
| Total | | | \$28,864,051 |

For example, Nemacolin assumes that gaming patrons who live within 30 minutes of the casino to be opened in Cleveland, Ohio, which will offer 3,500 slot machines, will choose to forego the convenience of that casino a short distance away – and bypass Rivers Casino, Meadows Casino and Mountaineer Casino – and instead drive *four hours* to Nemacolin to gamble at its proposed 600 slot machine facility and then drive four hours back to Cleveland.

⁵ Nemacolin assumes that the Columbus, OH casino will be open and contain 3,000 slot machines; Cleveland casino will be operating 3,500 slot machines; and the Baltimore/Arundel MD gaming market will be operating 8,500 slot machines.

The assumptions in the Nemaocolin market study simply defy logic and commonly accepted gaming market tenets.

Nemaocolin further contends that it will be able to generate almost \$15 million in gross gaming revenue annually from overnight guests staying at the property. Nemaocolin contends that it will increase its current 70,000 room nights sold by 57% to 110,000 room nights, thereby achieving a whopping and industry leading high 83% occupancy rate. The fact is that an occupancy rate that high at an ultra-luxury property, charging \$400++ room rate, is only achievable, if at all, in a major metropolitan city, such as Manhattan.

In fact, casino hotels in Atlantic City, charging on average \$95 per night, are able to achieve an 80%+ occupancy rate only because they "comp", i.e., give away, over 60% of the rooms.

Not only does Nemaocolin contend that it will achieve an 83% occupancy rate, but it also concludes that each guest will lose \$300 per stay from gaming. Again, these types of statistics might be achievable at a small percentage of the rooms at the Wynn Casino in Las Vegas, but certainly not an average for every person who may stay at the Nemaocolin property.

To get a more realistic and real-world picture of how a Nemaocolin casino would perform, it is illustrative to look at the performance of the Greenbrier in West Virginia.⁶ The two properties are remarkably similar, as demonstrated in the table below:

⁶ It is important to note that Greenbrier was able to achieve the gaming revenues set forth below with a casino located inside of the main property as opposed to a casino located over one mile away as Nemaocolin proposes.

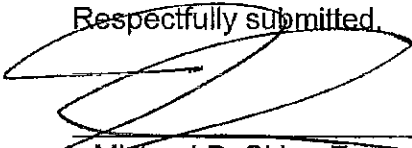
| | <u>Greenbrier</u> | <u>Nemacolin</u> |
|---------------------------------|--------------------------------------|--|
| Location | Extremely isolated, rural | Extremely isolated, rural |
| Hotel Style | Ultra high-end, luxury | Ultra high-end, luxury |
| # of Rooms | 781 | 335 (claimed) |
| Avg Room Rate | \$350++ | \$400++ |
| Casino | 102,000sf (320 slots / 37 tables) | Proposed 71,000sf (600 slots / 28 tables) |
| <u>July – October 2010</u> | | |
| Gross Table Rev | \$1,747,365 | |
| Gross Slot Rev | \$1,457,389 | |
| | \$3,204,754 | |
| Annualized Total Gaming Revenue | \$12, 819,016 ⁷ | \$68,000,000 (projected) |

CONCLUSION

Based on the record before the Board and for the foregoing reasons, Penn Harris respectfully submits that it is most deserving of the final Category 3 License.

Respectfully submitted,

Dated: November 29, 2010


Michael D. Sklar, Esq.
Pennsylvania Bar No. 76843
John M. Donnelly, Esq.
Pennsylvania Bar No. 207085
Levine, Staller, Sklar, Chan, Brown &
Donnelly, P.A.
3030 Atlantic Avenue
Atlantic City, NJ 08401
(609) 348-1300

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⁷ Assumes that revenues will remain constant even though revenues in July-October quarter are generally the best during the year and revenues generally decline significantly during the winter months.

CERTIFICATE OF SERVICE

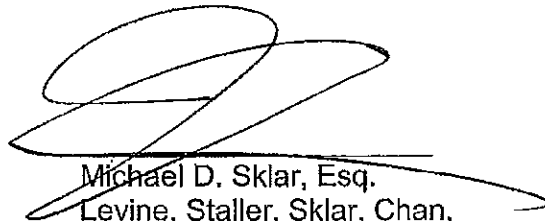
I certify that on November 29, 2010, one copy of the foregoing Post-Licensing Hearing Brief was sent via e-mail to:

Board Clerk
Office of the Clerk
Pennsylvania Gaming Control Board
One Penn Center, Suite 502
2601 N. 3rd Street
Harrisburg, PA 17110

On same date, copies of the Post-Licensing Hearing Brief were sent via e-mail to the following individuals:

Cyrus Pitre
R. Douglas Sherman
Stephen Cook
Susan Hensel
Linda Lloyd
Adrian R. King, Jr., Esq.
Stephen D. Schrier, Esq.
Marie Jiapello Jones, Esq.
Robert P. Krauss, Esq.

Date: November 29, 2010



Michael D. Sklar, Esq.
Levine, Staller, Sklar, Chan,
Brown & Donnelly, P.A.
3030 Atlantic Avenue
Atlantic City, NJ 08401
Pa. Attorney I.D. No. 76843
Tel: (609) 348-1300
Fax: (609) 345-2473