

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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CONTINUED PUBLIC HEARING

IN RE: WASHINGTON TROTTING ASSOCIATION, INC.

PETITION FOR WAIVER FOR FIXED SEATING

* * * * *

BEFORE: MARY DIGIACOMO COLINS, Chair
Raymond S. Angeli, Jeffrey W. Coy, James B.
Ginty, Kenneth T. McCabe, Sanford Rivers
and Gary A. Sojka, Members

HEARING: Thursday, August 28, 2008
1:00 p.m.

LOCATION: Hearing Room 1
North Office Building
North Street & Commonwealth Avenue
Harrisburg, PA

Reporter: Cynthia Piro-Simpson

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BARRY CREANY, ESQUIRE

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CHAIRMAN COLINS:

All right. Good afternoon, everyone.
I'm Mary Colins, Chairman of the Pennsylvania Gaming Control Board. Please turn off your cell phones and Blackberries and computers if you have them, or whatever. We have a matter before us today that we --- it's a continuation of a public --- of a hearing that we previously started, and that's the continuance of Washington Trotting Association's Petition for Waiver for Fixed Seating.

We're going to conduct the remainder of this hearing before we go into the public meeting. So would anyone who is going to testify in the Washington Trotting Association matter please rise, and we would ask the stenographer to administer an oath to you.

WITNESSES SWORN EN MASSE

CHAIRMAN COLINS:

Very good. Good afternoon. Would you state your name, please?

OFF RECORD DISCUSSION

ATTORNEY DOWNEY:

For the record, my name is Bill Downey with the firm of Fox Rothschild, here this afternoon

1 on behalf of Washington Trotting Association, Inc.
2 I'm actually pinch hitting for Marie Jones from my
3 office, who I understand starting this process with
4 you last meeting.

5 CHAIRMAN COLINS:

6 I think the stenographer would like
7 everyone who testifies to spell their name, please,
8 for the record.

9 ATTORNEY DOWNEY:

10 Okay. My last name is Downey,
11 D-O-W-N-E-Y. Madame Chair, I think that OEC, Office
12 of Enforcement Counsel, has an additional witness that
13 they'd like to put on before we wrap. I think the
14 only thing that I would add is just an acknowledgement
15 that on August 22nd, we filed with the Gaming Control
16 Board a letter brief supported by three affidavits.
17 The first affidavit was submitted by Mr. Grimm, from
18 whom you heard at the last hearing, with respect to
19 some specifics relating to the increased level of fire
20 suppression technologies available today, as opposed
21 to considerations that I understand were of concern
22 back at the time of the MGM fire out in Las Vegas,
23 Nevada.

24 Additionally, and somewhat more telling
25 from my perspective, are two affidavits submitted by

1 insurance-related professionals. The first was
2 submitted from Ms. Susan Classon (phonetic), who was
3 our broker. The second from Mr. Mark Stuckel
4 (phonetic), who is our underwriter at Zurich American.

5 The sum and substances of these two
6 affidavits suggests that in considering underwriting
7 decisions in the initial issuance of policies, and
8 then ultimately in the determination of premiums,
9 there is no consideration given by the insurance
10 industry to the nature of the seating, whether it be
11 fixed or movable seating, and while perhaps a bit
12 morbid if you will, ultimately these are the parties
13 that bear the burden of these types of decisions, if
14 in fact, they cause a problem. They have both
15 confirmed that these are not considerations given when
16 in the underwriting and pricing portions or
17 considerations for issuance of policy.

18 With that, I ask that we turn it over to
19 OEC. I would ask that OEC be offered an opportunity to
20 present their ---.

21 ATTORNEY CREANY:

22 Good afternoon, Madame Chair Colins,
23 members of the Board. My name is Barry Creany,
24 C-R-E-A-N-Y, appearing on behalf of the Office of
25 Enforcement Counsel, and we have no objections to the

1 affidavits and documentary materials submitted by the
2 Licensee. At this point I'd like to turn it over
3 temporarily to my colleague relative to some
4 additional documentary evidence we wanted to present.

5 CHAIRMAN COLINS:

6 Thank you. Go on. Your name, please?

7 MS. MATELEVICH-HOANG:

8 My name is Billy Jo Matelevich-Hoang.
9 That's M-A-T-E-L-E-V-I-C-H hyphen H-O-A-N-G. At the
10 last Board meeting on July 10th, 2008, the record
11 remained open for the Office of Enforcement Counsel to
12 obtain supplemental information regarding the
13 Washington Trotting Association's Petition for waiver
14 of the fixed seating regulations. After the meeting
15 the Office of Enforcement Counsel requested the
16 casinos and fire marshals from each casino in
17 Pennsylvania to provide their opinion regarding the
18 fixed seating issue.

19 As a result the Office of Enforcement
20 Counsel received three letters, two from casino
21 personnel and one from a fire marshal pertaining to
22 this issue. A summary of the letters are as follows.

23 A letter was submitted from Kenneth
24 Sheffler (phonetic), representing the Plains Township
25 Code Enforcement Office, providing the opinion that

1 fixed seating should remain as is. He stated that if
2 a patron could remove the seats themselves, it may
3 clutter the paths of travel and egress, and if there
4 was an emergency, it may make it difficult for fire
5 and life safety to perform their job.

6 A letter was submitted from Thomas Bonner
7 representing the Philadelphia Park Casino stating that
8 they support the efforts of the Meadows. Philadelphia
9 Park recommends that operators have the flexibility to
10 choose the type of seating that balances operational
11 requirements and casino customers' preferences, with
12 the interests of both the Licensees and the
13 Commonwealth.

14 Philadelphia Park also encourages the
15 Board to adopt an amendment to section 461(a).7(s) of
16 the regulations that would codify the waivers granted
17 for bar areas where tabletop slot machines are
18 installed and made an integral part of the bar top.

19 And John DeGrass (phonetic), representing
20 Hollywood Casino, submitted a letter stating that
21 fixed seating is the best approach to slot seating as
22 a whole. Unattached seating can create safety and
23 egress issues by having these seats end up in the
24 center of the aisles, pushed up against one another
25 and in many cases tipping over. Retaining the option

1 to install each type of stool would be the optimal
2 business solution. Any action that would prohibit the
3 Hollywood at Penn National from maintaining fixed
4 seating would not be in their best interests.

5 At this time, the Office of Enforcement
6 Counsel would like to enter the letters submitted to
7 the casinos and the fire marshals and the responses
8 from Hollywood Casino, Plains Township Code
9 Enforcement and Philadelphia Park into the record.

10 CHAIRMAN COLINS:

11 Thank you.

12 ATTORNEY CREANY:

13 Yes, Madame Chair, at this time I'd like
14 to call as a witness, Edward Mann.

15 -----

16 EDWARD MANN, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED
17 AS FOLLOWS:

18 -----

19 EXAMINATION

20 BY ATTORNEY CREANY:

21 Q. Mr. Mann, will you please spell your last name for
22 the record?

23 A. M-A-N-N.

24 Q. And what is your current position, Mr. Mann?

25 A. I'm currently the Pennsylvania State Fire

1 Commissioner, a position that I was originally
2 appointed to in 2000 by Governor Ridge, and then
3 reappointed by Governor Rendell during his first term.

4 Q. Can you explain to the Board what the Office of
5 the Fire Commissioner does?

6 A. Primarily we're responsible to administer a
7 volunteer loan assistance program to volunteer fire
8 companies. We also administer a grant program. I
9 have the responsibility for the Pennsylvania State
10 Fire Academy in providing training to fire departments
11 across the Commonwealth. I act as a liaison, if you
12 will, between the fire service, the Governor's Office
13 and the General Assembly on matters related to fire
14 prevention, fire safety, fire training for
15 firefighters, fire suppression.

16 Q. Now, in addition to the Office of the Fire
17 Commissioner position you've held for a while, what
18 other experience do you have relative to fire safety
19 and prevention?

20 A. I've been involved with the fire service starting
21 as a volunteer firefighter in Centre County 30-plus
22 years ago now, and made a career of the fire service
23 with the United States Air Force, where I retired in
24 1994. And during that period of time, while I was in
25 the military as a firefighter, performed building

1 inspections on a regular basis either as part of a
2 fire prevention program, or when I was assigned to
3 operations, we did walk-through inspections on clubs
4 and other public assembly buildings on the military
5 installations.

6 Q. Over your years of involvement in fire safety and
7 prevention, have you attained any types of
8 certification?

9 A. I have several certifications through the
10 International Fire Service Accreditation Congress, one
11 of which is I'm certified as a Fire Inspector Three.

12 Q. And are you generally or even more particularly
13 familiar with the fire codes in Pennsylvania?

14 A. My office has no responsibility for the
15 enforcement of fire codes in Pennsylvania. We do ---
16 at times, we'll receive telephone calls from citizens
17 and/or fire chiefs or local governments asking for an
18 interpretation. Many times we'll make a reference to,
19 or we'll call Labor and Industry and we'll ask them
20 for an interpretation on it.

21 In this particular case, we were asked for our
22 opinion about fixed seating, and I met with and had my
23 life safety public education specialist do some
24 research. We reached out to New Jersey to see if we
25 could find out why they required fixed seating. And

1 we weren't able to come up with any real reasons as to
2 why fixed seating was required in New Jersey.

3 We've looked at the National Fire
4 Protection Association codes and standards, and we
5 can't find anything in those codes that addressed one
6 way or the other whether it should be fixed seating or
7 removable seating. Ultimately, and it was just
8 testified to here earlier, I'm of the belief that
9 ultimately the individual and the local government, or
10 what is commonly referred to in the National Fire
11 Protection Association standards, the authority having
12 jurisdiction, should be able to make the decision as
13 to whether or not they want the fixed seatings or they
14 want removable or the mobile seating. And so on a
15 case-by-case basis, this is something that should be
16 decided.

17 Q. Mr. Mann, now, just to back up a little bit, with
18 respect to these issues of fire safety and prevention,
19 who is the authority in localities where these casinos
20 are located? Is it a state agency, or is this a
21 different agency?

22 A. It's my understanding, if a local government opts
23 out, in other words, they can use a third party to do
24 their code enforcement --- in some cases they can ask
25 Labor and Industry to do the code enforcement. In

1 many cases a lot of local governments, rather than go
2 to the expense of hiring their own inspectors, have
3 entered into agreements as councils of governments,
4 and they've contracted with third party companies that
5 are accredited or certified to do inspections to take
6 care of code enforcement.

7 Q. Now, as you're aware, the Board has before it a
8 request by one of its Licensees, the Meadows, to allow
9 them to have the option of going away from what's
10 mandated by regulation, a fixed pedestal-type seating
11 to movable seating. And my colleague had described
12 some of the documents we've received, some of the
13 opinions we've received from the facilities themselves
14 and the local fire officials. Are you familiar with
15 those documents?

16 A. Yes, I am. They were provided to me, and I've had
17 the opportunity to review them.

18 Q. Based upon your education, training, experience in
19 fire safety and prevention, do you feel comfortable to
20 be able to address some of these issues for the Board
21 as to whether you have any concerns?

22 A. Quite simply, if I were in a position as the local
23 fire marshal in this area and was asked for this
24 variance, I would approve it. And I'll base that on
25 the fact that the casinos have surveillance systems

1 throughout them. They have automatic detection
2 systems, there are sprinkler systems, there are
3 employees that are constantly on the floor, working
4 the floors. In all honesty, if you look at a
5 comparison, the likelihood of us having a fire in a
6 local bar and grill, where there are no sprinkler
7 systems, there are no surveillance systems, there
8 aren't detection systems, the chances of us having a
9 major catastrophe in a local bar with barstools is far
10 greater than we can ever anticipate in having a
11 catastrophe in one of the casinos.

12 Q. Mr. Mann, in your mind, in your opinion, do you
13 see either fixed seating or removable seating creating
14 a substantial hazard?

15 A. No, I don't.

16 Q. What kind of concerns would you have as to fire
17 safety and prevention in a casino?

18 A. Well, I would be more concerned with if the stools
19 could be moved and they're moved and now they're
20 blocking entire exits somewhere. But with the staff
21 and with the surveillance systems and the sprinkler
22 systems in these buildings, I don't see a major issue.
23 I don't have a major concern with it.

24 Q. In your opinion, what should be the guide as to
25 how one decides whether to use fixed or movable?

1 A. Ultimately I think common sense should be the
2 guide or the judge here, and if by chance, again, the
3 local authority having jurisdiction, a local fire
4 marshal --- for example, we have a letter from the
5 fire marshal in Plains Township, who has an objection
6 to it, ultimately, that opens the door for negotiation
7 between the casino operator or the owner and the local
8 fire marshal. Ultimately that's who has the authority
9 for those local codes.

10 ATTORNEY CREANY:

11 Chairman Colins, I have no further
12 questions, but would offer Mr. Mann to both counsel
13 for WTA and the Board for additional questions.

14 ATTORNEY DOWNEY:

15 I have nothing.

16 CHAIRMAN COLINS:

17 Okay. Any Board members have any
18 questions?

19 COMMISSIONER COY:

20 Madame Chair?

21 CHAIRMAN COLINS:

22 Yes.

23 COMMISSIONER COY:

24 Mr. Mann, good to see you again.

25 A. Nice to see you again.

1 COMMISSIONER COY:

2 Let me just make sure I understand. I
3 think what I heard you say is that you really believe
4 this needs to be a local decision?

5 A. I agree.

6 COMMISSIONER COY:

7 Do you believe that therefore, there is
8 any difference at all between a casino in Washington
9 County and a casino in Dauphin County or a casino in
10 Erie County?

11 A. I haven't been in any of the casinos, so it would
12 be difficult for me to say. I mean, the design of each
13 casino's going to be a little different. The floor
14 layout, like any other building, is going to be a
15 little different. Ultimately, we're a Commonwealth,
16 and if the local government officials who are
17 responsible for enforcement of codes want a fixed seat
18 versus a removable seat, then that opens the door for
19 negotiation between the casino operator and the local
20 code enforcement individual.

21 COMMISSIONER COY:

22 So in essence, it's your testimony that
23 the state or any state government agency has no role
24 in this?

25 A. As it relates to seating, absolutely.

1 COMMISSIONER COY:

2 Good. Thank you.

3 ATTORNEY DOWNEY:

4 Madame Chairman, we have no further
5 witnesses or evidences to be presented. We would like
6 to move that the documents submitted be put into the
7 record.

8 CHAIRMAN COLINS:

9 All right. Any objection?

10 ATTORNEY CREANY:

11 No objection.

12 CHAIRMAN COLINS:

13 All right. They're accepted. If there
14 are no other questions, do you want to make a closing?

15 ATTORNEY DOWNEY:

16 Just quickly by way of closing, we just
17 reiterate that as we submitted to you by letter brief,
18 this is, I think, in worst case a neutral proposition,
19 and as Commissioner Mann testified, our intent would
20 be that this is a case-by-case determination that in
21 this instance, unlike the Plains Township instance, we
22 have the support of both the local code officer and
23 the local fire officer. I know both of those letters
24 are before you in the record, and on that basis we'd
25 ask that you grant the motion.

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CHAIRMAN COLINS:

Okay. Thank you. Anything, Mr. Creany?

ATTORNEY CREANY:

Yes, Chairman. As we had in the last hearing, there was evidence from the local fire marshal that they were comfortable in North Strabane Township with a movable type of seating, and having studied this issue, the Office of Enforcement Counsel would recommend that the Board allow this type of an issue to be addressed on a case-by-case basis, and at this point I believe that it would be before you for the decision, then.

CHAIRMAN COLINS:

Okay. Thank you. What we will do is, not right now, but we'll go into a public meeting. Before we entertain the motion, we will be going into executive session pursuant to the Sunshine Act to deliberate on this matter before we entertain a motion on it. Thank you very much.

ATTORNEY DOWNEY:

Thank you.

* * * * *

HEARING CONCLUDED AT 1:23 P.M.

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