COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD
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IN RE: MOUNTAINVIEW THOROUGHBRED RACING ASSOCIATION, LLC
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BEFORE: MEMBERS OF THE BOARD:
DAVID M. BARASCH, CHAIRMAN
Obra S. Kernodle, IV
Sean Logan
T. Mark Mustio
Merritt C. Reitzel (Via Telephone)
Dante Santoni, Jr.
Denise J. Smyler

EX-OFFICIO MEMBERS/DESIGNEES IN ATTENDANCE:

Jennifer Langan, Esquire, Designee, Department of Treasury
Christin Heidingsfelder, Designee, Department of Revenue

HEARING: Wednesday, February 12, 2020

Reporter: Amy Distefano

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LOCATION: Pennsylvania Gaming Control Board
Strawberry Square Complex
2nd Floor
Harrisburg, PA 17101
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ALSO PRESENT:
Alex M. Hvizda, Director of Compliance
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PROCEEDINGS

CHAIRMAN: Next is the consolidated hearing from Mountainview Thoroughbred Racing Association, LLC, requesting approval from Sports Wagering Certificates at two non-primary locations, Hollywood Casino York and Hollywood Casino Morgantown.

Welcome, gentlemen. Again, I would ask anybody who's going to speak today to please state and spell your name for the court reporter. And additionally, I'd ask that all nonattorneys, at this time, stand and be sworn.

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ALEX HVIZDA,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS FOLLOWS:

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CHAIRMAN: Thank you. You may begin.

ATTORNEY KING: Good morning, Mr. Chairman, members of the Board. Adrian King here from the Ballard Spahr Firm, on behalf of Mountainview Thoroughbred Racing Association. Joined by Mr. Alex Hvizda, the Director of
Compliance at the Hollywood Casino in Grantville. And also by my colleague Mike Fabius.

Let me just first state - with no offense to Alex - typically we would be joined by Dan Ihm or Chris Rogers, who have appeared before you frequently. We had a conflict. As you know, we have a new President and CEO, Jay Snowden, who's recently been in front of you. And there was a longstanding leadership meeting scheduled for all the senior leadership across the company, and they are attending that. And they send their greetings and you'll have to put up with us instead.

**CHAIRMAN:** We'll soldier on.

**ATTORNEY KING:** So, as the Chairman said, we're here today to consider two Petitions which are basically identical, have been consolidated for the sake of efficiency. And that - those two Petitions are for approval to conduct a sports wagering at non-primary locations. Those locations being co-located at Mountainview's two Category 4 Casino facilities, the one in York and the one in Morgantown.

As you know, Mountainview Thoroughbred Racing Association is a Category 1 Slot Licensee operating the Hollywood Casino at Penn National Race
Course in Grantville. And October 15 - oh, I'm sorry, October 5 of 2018, which really just seems like yesterday, the Board approved Mountainview's Sports Wagering Certificate. And as a result of that we were proud to open the first land-based Sportsbook in the Commonwealth on November 17th of 2018.

With that certificate in hand, we are now seeking authority to offer sports wagering at the non-primary locations. And as you surely know, under the Gaming Act, specifically Sections 13C11 and 13C21(c), with the Sports Wagering Certificate in hand, we may operate sports wagering at our licensed facility, as we're already doing up in Grantville. Temporary facility, which is non-applicable here.

And then at non-primary locations, if the Sports Wagering Certificate holder is a Category 1 Slot Machine Licensee and a licensed racing entity, which we are, and/or through an internet-based system. And we're already doing that as well.

So, we're basically seeking to now add to our offerings under that section of the Gaming Act. Similarly the Board's Regulations also confirm
that sports wagering can be offered at a non-primary location of a Category 1 Slot Machine Licensee which holds a Sports Wagering Certificate. And that's under Section 1401.5(b)(3) of the Regulations.

All right.

So, what is a non-primary location?

In this case, they are Off-Track Wagering Facilities that we are a - non-primary location is a term under the Horse Racing Act, and that relates to our Off-Track Wagering Facilities that we are relocating to Morgantown and York.

Last summer - well, actually, beginning around this time last year, we submitted a Petition to the Horse Racing Commission. And that was to move our York Off-Track Wagering Facility to York Cat 4, and also to move our Lancaster Off-Track Wagering Facility to our Morgantown Cat 4.

So, that was submitted in February of 2019, and then we had a full Public Hearing on August 27th of last year, 2019, to approve those relocations.

The Board - I'm sorry, in this case, the Commission - the Horse Racing Commission approved those relocations, and we have submitted copies of those Orders to the staff. And unless
there's any objection, I'll put it - take it out of
the way. I'd like to introduce those two Orders
into the record.

ATTORNEY PITRE: No objection.

CHAIRMAN: Fine. So moved.

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(Whereupon, Exhibit A, Horse Racing Commission
Order, was marked for identification and
admitted.)

(Whereupon, Exhibit B, Horse Racing Commission
Order, was marked for identification and
admitted.)

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ATTORNEY KING: Okay.

So, let's - let's talk about, what did
we - what did we argue to the Horse Racing
Commission and why did they approve?

We believe that co-locating OTWs
within the Category 4 - and it will be co-located
inside the Category 4, but with a specifically
delineated area that will be under the jurisdiction
of the Commission with respect to parimutuel
wagering. Sports wagering will be included within
that area, within the Cat 4.

And we believe this will be very
beneficial to racing. What we've already seen by having sports wagering up at the Hollywood Casino at Penn National Race Course is an uptick in activity with respect to the race book. And as you know, from our prior presentations, those are all integrated together on the racing side of the property.

I note that the live racing handle - and also with what we, you know, bring in through our television, through simulcast, was down 20 - I'm sorry, 10 percent in 2017 and it was down nine percent in 2018. And in the first full year of sports wagering up at Grantville, which is basically November 15th of 2018 through November 14th of 2019, the handle was only down a mere .4 - 0.4 percent.

And I know that nationally in calendar year 2019 the handle was down two percent. And that was also in a year in which handle was down somewhat depressed because of the lack of full - a Triple Crown.

So, at worst, what we were able to do by creating this integrated facility is to stabilize the racing handle at Grantville. And we anticipate a similar uptick for now these co-located non-primary locations within the Category 4.
And I note that - and I think this was very compelling to the Racing Commission. At best, we were getting about 50,000 annual visits into the OTWs at the two locations, and we'll now be exposing that clientele, obviously assuming they move over with us to the Category 4 Locations, to a million visits each - at each property. So, it's really a very promising model that we're attempting to put into place.

So, that is, basically, the presentation in terms of the legal argument on what we're requesting. Obviously we believe that this is clearly permitted and authorized under both the Statute and the Regulations.

And before I open it up for questions on that, it was suggested to me that you may appreciate just an update on where we are on both the Morgantown project and the -

CHAIRMAN: That would be very -.
ATTORNEY KING: - York project.
CHAIRMAN: That would be very helpful.
Thank you.

ATTORNEY KING: All right.
So, let's talk about - let me flip the slides here. Let's talk about Morgantown for a
moment. First of all, for those of you coming from the eastern part of the state to Harrisburg, you're driving past it constantly. It's right off the exit to Morgantown, and you can see the real progress that's going on.

As you'll recall, this is a bottom - you know, from the bottom up, Greenfield Development. This was an empty lot, semi-improved for a - at the time, a potential mall. As those of you driving by have seen, the shell of the building is completely up, that's the walls, the roof and the main structural steel has all been erected.

The underground piping and electrical conduits are placed and the concrete flooring has been poured. And as those of you familiar casino construction will know, you know, that's a lot of work, because obviously there's a lot of wiring that goes on underneath slot machines and the other equipment that is in the facility.

The work inside the shell is progressing and structural support steel for various internal components is being installed, as is all the HVAC ductwork, the supports for the same, and that is all going up.

The porte cochere structure, as you
can see in the one picture in the upper left-hand corner is installed. And the parking lot is 90 percent paved with binder, which is the sort of initial layer before we put the top coat of asphalt onto the parking lot.

And the top coat is anticipated will be installed in the spring. Our goal, and we need to - obviously, I want to preface this by saying we need to work closely with staff, is to open this facility in November of this year. And we know you've got other projects coming down the pipeline and so we need to get that sort of into the air traffic control pattern, but that is our - that is our hope.

The next slide, and you've seen this before in our prior presentation. This is just to show the Floor Plan with - on the right-hand side the detail of the race and Sportsbook. And that is showing both the areas for both the race Tellers and also the Sportsbook Tellers.

I do want to note that this plan, again, after consultation with staff and making sure they're fully advised all the way through, could adjust slightly. Obviously we're going to continue to be mindful of having this as a designated area of
a non-primary location within the Cat 4, but as you know, we recently announced an investment in Barstool Sports. Which then further allowed us to license their marks and brands for four years. And we may decide at this facility, and potentially York as well, to utilize the Barstool brands and marks as it relates to the Sportsbook. And we may actually do some other modifications of the Floor Plan to further bring the restaurant area into this part of the facility.

So, those are some of things that are under consideration. That transaction closed less than 30 days ago. And while everyone's rapidly trying to wrap their arms around it, you know, no conclusions have been made. We're just starting to get - get into it.

Let me flip over now to the York facility. As you know, this is a retrofit of a former Sears' location within the York Galleria Mall. And actually the retrofit is actually a little bit harder than doing the Greenfield development, because what we had to start doing first was ripping out a lot of the insides, including the floor. Because the floor was not designed, as I said, to carry all the wires and, you
know, the sort of wire chases that are necessary. So, there the demolition of the interior has been completed. The walls that we wanted to install to segregate the casino from the mall, from both security and underage problem gaming considerations, has been installed.

Old flooring, as I said, and the subbase were removed, new underground piping and electrical conduit would have been installed. New subbase has been installed. New flooring, including a slot for slot floor – what they cell deck has been installed. The HVAC ductwork is in the process of installation, and the structural portion of the porte cochere and the entry from the upper parking lot, including escalator and elevator support steel, is complete.

So, this is also rolling along at a nice clip. And again, with coordination with the staff, again, I want to make clear, our goal is to open this facility by the end of the year. Obviously that would be likely in December, and again, getting this project into the air traffic control process and making sure all the resources are lined up to get it opened.

Finally, again, this is the Floor
Plan, previously provided, again, with demarcation
or separation from the Gaming Floor to recognize the
Race Horsing - or the Horse Racing Commission
oversight of the non-primary location.

So, that is our presentation. And we
would be happy to entertain any questions.

CHAIRMAN: Questions from Enforcement
Counsel?

ATTORNEY PITRE: I just have one
question.

If you were required to pay the $10
million fee for a certificate to conduct land-based
sports wagering at your Category 4 Facilities, have
you made - or has Penn National made a business
decision as to whether or not they would move
forward?

ATTORNEY KING: Yes, I can
unequivocally state that the economics just simply
wouldn't work if we were put in a position to pay an
additional $10 million for each location.

We are a Category 1 Facility. The law
was specifically written to allow for the
non-primary location to have a sports wagering
without the additional fee, and that is why we've
taken the steps that we have taken.
ATTORNEY PITRE: And when you say it doesn't work for the economics, can you explain what - why it doesn't work?

ATTORNEY KING: Well, I think - I think it's simply a function of the tax rate, which is very high in this jurisdiction as compared to others. And I think at a high level, I think most operators will tell you - at least they've told me, as their counsel, sports wagering is - is much an amenity designed to bring traffic into the facility. You typically see an uptick in table game traffic, and we have seen that at Grantville. And obviously that inures the Commonwealth's benefit in terms of additional tax revenue.

And so you really - you're investing in something as an amenity to continue to bring traffic into the facility. And then, hopefully have those folks also, in addition to engaging in sports wagering and in this case, the benefits also, as I've mentioned, to horse racing, but also, hopefully, they're going to pay the slots, and they're also going to play the tables.

ATTORNEY PITRE: I have no further questions.

CHAIRMAN: Okay.
Questions or comments from the Board?  
Mark?  

MR. MUSTIO: Yes. I'd like - I'd like to follow up on that. So, the uptick in the slots and table games in the long term, if the $10 million had been required to be paid, would not have been offset? Is that what you're saying?  
ATTORNEY KING: Yeah.  
MR. MUSTIO: Could you give more detail on that?  
ATTORNEY KING: Well, let me be a little bit more precise. I mean, I think - I think it's really table games, you know, more than probably slots. It's skewing to a younger demographic, but as I have been advised by, you know, the financial folks, it's still not - the juice is not worth the squeeze, as they sometimes like to say.  

It is a matter of competing with our competitors. Again, you want to - we want to have a level playing field, so to speak. And others have signed up, and we feel that we need this amenity in these facilities as well, but really at the end of the day, the economics just don't - don't make it feasible.
MR. MUSTIO: I appreciate that. And do you have numbers showing what the increase in state tax revenue would be, or projected to be based on you having the Sportsbook – you don't need to provide that right now.

ATTORNEY KING: Yep.

MR. MUSTIO: But if you could provide it, –

ATTORNEY KING: Sure.

MR. MUSTIO: - I would be interested in that information. Thank you.

ATTORNEY KING: Yeah, we can do that.

CHAIRMAN: Other questions or comments at this time?

Is there a separate presentation you have to make this morning?

ATTORNEY CROHE: We don't have a formal presentation, but there's a statement I would like to make for the record.

CHAIRMAN: Please make.

ATTORNEY CROHE: John Crohe, C-R-O-H-E, for the Office of Enforcement Counsel (OEC).

Mountainview is seeking Board approval to conduct sports wagering at two separate Category
Facilities, York and Morgantown, pursuant to Section 13C21 of the Act, which does state that upon request made by sports certificate wager - Sports Wagering Certificate holder, the Board, in consultation with the Racing Commission, may determine the suitability of a Category 1 License gaming entity that is also a licensed racing entity authorized to conduct parimutuel wagering at a non-primary location under the Horse Racing chapter of the Agricultural Code to conduct sports wagering at non-primary locations.

The effect of granting this Petition would allow Mountainview to conduct retail sports wagering at York and Morgantown without being issued an additional Sports Wagering Certificate; therefore, not requiring them to pay the two separate $10 million fees.

Section 1103 of the Act, as well as Section 9301 of the Agricultural Code, which is specifically referenced by the Act, defines a non-primary location as any facility in which parimutuel wagering is conducted by a licensed racing entity other than the racetrack where live racing is conducted.

Mountainview does hold a Board-issued
Sports Wagering Certificate to conduct onsite sports wagering at Hollywood Penn National. And as of August 27th, 2019 Mountainview is permitted, by the Racing Commission, to conduct parimutuel wagering at the York - at what will be the York and Morgantown facilities, which are both currently in construction. Live racing will not be conducted at either of these facilities.

This matter is distinguishable from any similar Petition that may be filed by a Category 2 or 3 Licensee that owns a Category 4 Facility which is not authorized by the Racing Commission to conduct off-track wagering. In that if a Category 4 Facility is not authorized to conduct off-track wagering, then under the Act, it cannot be considered a non-primary location.

Here in this matter, the Act and the Regulations have clearly established that with Board approval a Category 1 Licensee holding a Sports Wagering Certificate may conduct sports wagering at a non-primary location.

It is the opinion of the OEC that the two Category 4 Facilities at issue here, based on the plain language of the definition prescribed in the Act, as well as the Agriculture Code, are both
non-primary locations. Therefore, it is within the Board's discretion to determine and find that the York and Morgantown facilities - the York and Morgantown Category 4 Facilities are non-primary locations, as defined by the Act. And therefore, it is within the Board's discretion to permit Mountainview to conduct onsite retail sports wagering at the York and Morgantown facilities without requiring any additional payments of the $10 million fees.

This case is more analogous to a Category 1 Licensee using an Off-Track Wagering Facility to conduct sports wagering. For example, the Board has permitted both Parx and Mohegan Sun to conduct onsite sports wagering at Off-Track Wagering Facilities without requiring Parx or Mohegan Sun to pay the additional $10 million fee.

CHAIRMAN: Thank you.
ATTORNEY KING: And Mr. Chairman, just one housekeeping matter, if I could also move into the record our PowerPoint presentation from today.

CHAIRMAN: Okay. Fine.
ATTORNEY KING: Thank you.
CHAIRMAN: So moved.
(Whereupon, Exhibit C, PowerPoint Presentation, was marked for identification and admitted.)

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CHAIRMAN: Any further questions or comments from the Board at this time?

Okay.

We will consider this under the Office of Chief Counsel's (OCC) portion of the Agenda.

Thank you for coming.

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HEARING CONCLUDED

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CERTIFICATE

I hereby certify that the foregoing proceedings, was reported by me on 2/12/2020 and that I, Amy N. Distefano, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 10th day of March, 2020.

Amy N. Distefano,
Court Reporter