

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: MOUNTAINVIEW THOROUGHBRED RACING ASSOCIATION,
LLC

* * * * *

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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Association

ALSO PRESENT:

Alex M. Hvizda, Director of Compliance

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P R O C E E D I N G S

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.

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

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

1 Compliance at the Hollywood Casino in Grantville.
2 And also by my colleague Mike Fabius.

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

13 CHAIRMAN: We'll soldier on.

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

23 As you know, Mountainview Thoroughbred
24 Racing Association is a Category 1 Slot Licensee
25 operating the Hollywood Casino at Penn National Race

1 Course in Grantville. And October 15 - oh, I'm
2 sorry, October 5 of 2018, which really just seems
3 like yesterday, the Board approved Mountainview's
4 Sports Wagering Certificate. And as a result of
5 that we were proud to open the first land-based
6 Sportsbook in the Commonwealth on November 17th of
7 2018.

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

17 And then at non-primary locations, if
18 the Sports Wagering Certificate holder is a Category
19 1 Slot Machine Licensee and a licensed racing
20 entity, which we are, and/or through an
21 internet-based system. And we're already doing that
22 as well.

23 So, we're basically seeking to now add
24 to our offerings under that section of the Gaming
25 Act. Similarly the Board's Regulations also confirm

1 that sports wagering can be offered at a non-primary
2 location of a Category 1 Slot Machine Licensee which
3 holds a Sports Wagering Certificate. And that's
4 under Section 1401.5(b)(3) of the Regulations.

5 All right.

6 So, what is a non-primary location?
7 In this case, they are Off-Track Wagering Facilities
8 that we are a - non-primary location is a term under
9 the Horse Racing Act, and that relates to our
10 Off-Track Wagering Facilities that we are relocating
11 to Morgantown and York.

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

18 So, that was submitted in February of
19 2019, and then we had a full Public Hearing on
20 August 27th of last year, 2019, to approve those
21 relocations.

22 The Board - I'm sorry, in this case,
23 the Commission - the Horse Racing Commission
24 approved those relocations, and we have submitted
25 copies of those Orders to the staff. And unless

1 there's any objection, I'll put it - take it out of
2 the way. I'd like to introduce those two Orders
3 into the record.

4 ATTORNEY PITRE: No objection.

5 CHAIRMAN: Fine. So moved.

6 ---

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

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

13 ---

14 ATTORNEY KING: Okay.

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

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

25 And we believe this will be very

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

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

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

21 So, at worst, what we were able to do
22 by creating this integrated facility is to stabilize
23 the racing handle at Grantville. And we anticipate
24 a similar uptick for now these co-located
25 non-primary locations within the Category 4.

1 And I note that - and I think this was
2 very compelling to the Racing Commission. At best,
3 we were getting about 50,000 annual visits into the
4 OTWs at the two locations, and we'll now be exposing
5 that clientele, obviously assuming they move over
6 with us to the Category 4 Locations, to a million
7 visits each - at each property. So, it's really a
8 very promising model that we're attempting to put
9 into place.

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

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

19 CHAIRMAN: That would be very -.

20 ATTORNEY KING: - York project.

21 CHAIRMAN: That would be very helpful.

22 Thank you.

23 ATTORNEY KING: All right.

24 So, let's talk about - let me flip the
25 slides here. Let's talk about Morgantown for a

1 moment. First of all, for those of you coming from
2 the eastern part of the state to Harrisburg, you're
3 driving past it constantly. It's right off the exit
4 to Morgantown, and you can see the real progress
5 that's going on.

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

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

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

25 The porte cochere structure, as you

1 can see in the one picture in the upper left-hand
2 corner is installed. And the parking lot is 90
3 percent paved with binder, which is the sort of
4 initial layer before we put the top coat of asphalt
5 onto the parking lot.

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

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

21 I do want to note that this plan, again,
22 after consultation with staff and making sure
23 they're fully advised all the way through, could
24 adjust slightly. Obviously we're going to continue
25 to be mindful of having this as a designated area of

1 a non-primary location within the Cat 4, but as you
2 know, we recently announced an investment in
3 Barstool Sports. Which then further allowed us to
4 license their marks and brands for four years. And
5 we may decide at this facility, and potentially York
6 as well, to utilize the Barstool brands and marks as
7 it relates to the Sportsbook. And we may actually
8 do some other modifications of the Floor Plan to
9 further bring the restaurant area into this part of
10 the facility.

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

17 Let me flip over now to the York
18 facility. As you know, this is a retrofit of a
19 former Sears' location within the York Galleria
20 Mall. And actually the retrofit is actually a
21 little bit harder than doing the Greenfield
22 development, because what we had to start doing
23 first was ripping out a lot of the insides,
24 including the floor. Because the floor was not
25 designed, as I said, to carry all the wires and, you

1 know, the sort of wire chases that are necessary.

2 So, there the demolition of the
3 interior has been completed. The walls that we
4 wanted to install to segregate the casino from the
5 mall, from both security and underage problem gaming
6 considerations, has been installed.

7 Old flooring, as I said, and the
8 subbase were removed, new underground piping and
9 electrical conduit would have been installed. New
10 subbase has been installed. New flooring, including
11 a slot for slot floor - what they call deck has been
12 installed. The HVAC ductwork is in the process of
13 installation, and the structural portion of the
14 porte cochere and the entry from the upper parking
15 lot, including escalator and elevator support steel,
16 is complete.

17 So, this is also rolling along at a
18 nice clip. And again, with coordination with the
19 staff, again, I want to make clear, our goal is to
20 open this facility by the end of the year.

21 Obviously that would be likely in December, and
22 again, getting this project into the air traffic
23 control process and making sure all the resources
24 are lined up to get it opened.

25 Finally, again, this is the Floor

1 Plan, previously provided, again, with demarcation
2 or separation from the Gaming Floor to recognize the
3 Race Horsing - or the Horse Racing Commission
4 oversight of the non-primary location.

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

7 CHAIRMAN: Questions from Enforcement
8 Counsel?

9 ATTORNEY PITRE: I just have one
10 question.

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

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

21 We are a Category 1 Facility. The law
22 was specifically written to allow for the
23 non-primary location to have a sports wagering
24 without the additional fee, and that is why we've
25 taken the steps that we have taken.

1 ATTORNEY PITRE: And when you say it
2 doesn't work for the economics, can you explain what
3 - why it doesn't work?

4 ATTORNEY KING: Well, I think - I
5 think it's simply a function of the tax rate, which
6 is very high in this jurisdiction as compared to
7 others. And I think at a high level, I think most
8 operators will tell you - at least they've told me,
9 as their counsel, sports wagering is - is much an
10 amenity designed to bring traffic into the facility.

11 You typically see an uptick in table
12 game traffic, and we have seen that at Grantville.
13 And obviously that inures the Commonwealth's benefit
14 in terms of additional tax revenue.

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

23 ATTORNEY PITRE: I have no further
24 questions.

25 CHAIRMAN: Okay.

1 Questions or comments from the Board?
2 Mark?

3 MR. MUSTIO: Yes. I'd like - I'd like
4 to follow up on that. So, the uptick in the slots
5 and table games in the long term, if the \$10 million
6 had been required to be paid, would not have been
7 offset? Is that what you're saying?

8 ATTORNEY KING: Yeah.

9 MR. MUSTIO: Could you give more
10 detail on that?

11 ATTORNEY KING: Well, let me be a
12 little bit more precise. I mean, I think - I think
13 it's really table games, you know, more than
14 probably slots. It's skewing to a younger
15 demographic, but as I have been advised by, you
16 know, the financial folks, it's still not - the
17 juice is not worth the squeeze, as they sometimes
18 like to say.

19 It is a matter of competing with our
20 competitors. Again, you want to - we want to have a
21 level playing field, so to speak. And others have
22 signed up, and we feel that we need this amenity in
23 these facilities as well, but really at the end of
24 the day, the economics just don't - don't make it
25 feasible.

1 MR. MUSTIO: I appreciate that. And
2 do you have numbers showing what the increase in
3 state tax revenue would be, or projected to be based
4 on you having the Sportsbook - you don't need to
5 provide that right now.

6 ATTORNEY KING: Yep.

7 MR. MUSTIO: But if you could provide
8 it, -

9 ATTORNEY KING: Sure.

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

12 ATTORNEY KING: Yeah, we can do that.

13 CHAIRMAN: Other questions or comments
14 at this time?

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

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

20 CHAIRMAN: Please make.

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

24 Mountainview is seeking Board approval
25 to conduct sports wagering at two separate Category

1 4 Facilities, York and Morgantown, pursuant to
2 Section 13C21 of the Act, which does state that upon
3 request made by sports certificate wager - Sports
4 Wagering Certificate holder, the Board, in
5 consultation with the Racing Commission, may
6 determine the suitability of a Category 1 License
7 gaming entity that is also a licensed racing entity
8 authorized to conduct parimutuel wagering at a
9 non-primary location under the Horse Racing chapter
10 of the Agricultural Code to conduct sports wagering
11 at non-primary locations.

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

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

25 Mountainview does hold a Board-issued

1 Sports Wagering Certificate to conduct onsite sports
2 wagering at Hollywood Penn National. And as of
3 August 27th, 2019 Mountainview is permitted, by the
4 Racing Commission, to conduct parimutuel wagering at
5 the York - at what will be the York and Morgantown
6 facilities, which are both currently in
7 construction. Live racing will not be conducted at
8 either of these facilities.

9 This matter is distinguishable from
10 any similar Petition that may be filed by a Category
11 2 or 3 Licensee that owns a Category 4 Facility
12 which is not authorized by the Racing Commission to
13 conduct off-track wagering. In that if a Category 4
14 Facility is not authorized to conduct off-track
15 wagering, then under the Act, it cannot be
16 considered a non-primary location.

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

22 It is the opinion of the OEC that the
23 two Category 4 Facilities at issue here, based on
24 the plain language of the definition prescribed in
25 the Act, as well as the Agriculture Code, are both

1 non-primary locations. Therefore, it is within the
2 Board's discretion to determine and find that the
3 York and Morgantown facilities - the York and
4 Morgantown Category 4 Facilities are non-primary
5 locations, as defined by the Act. And therefore, it
6 is within the Board's discretion to permit
7 Mountainview to conduct onsite retail sports
8 wagering at the York and Morgantown facilities
9 without requiring any additional payments of the \$10
10 million fees.

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

18 CHAIRMAN: Thank you.

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

22 CHAIRMAN: Okay. Fine.

23 ATTORNEY KING: Thank you.

24 CHAIRMAN: So moved.

25 ---

1 (Whereupon, Exhibit C, PowerPoint Presentation,
2 was marked for identification and admitted.)

3 ---

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

6 Okay.

7 We will consider this under the Office
8 of Chief Counsel's (OCC) portion of the Agenda.
9 Thank you for coming.

10 * * * * *

11 HEARING CONCLUDED

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CERTIFICATE

1
2 I hereby certify that the foregoing proceedings,
3 was reported by me on 2/12/2020 and that I, Amy N.
4 Distefano, read this transcript, and that I attest
5 that this transcript is a true and accurate record of
6 the proceeding.

7 Dated the 10th day of March, 2020.

8



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10 Amy N. Distefano,

11 Court Reporter

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