

OFFICE OF THE COUNTY LEGISLATURE
COUNTY OF SUFFOLK

Robert T. Calarco
Majority Leader
Legislator, 7th District
Committees

Chairman – Government Operations,
Personnel, Housing & Consumer Protection

Vice Chairman – Public Safety

Member – Ways & Means, Health



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Patchogue, NY 11772
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robert.calarco@suffolkcountyny.gov

September 11, 2015

Honorable Carle E. Craig
Chief Judge, United States Bankruptcy Court
Conrad B. Duberstein Courthouse
217 Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800

RE: Case No. 12-43503-CEC In re: Suffolk Regional Off-Track Betting Corporation

Dear Chief Judge Craig:

I am writing as an elected representative of the Medford community and residents of the 7th Legislative District who have expressed their opposition to the proposed Suffolk Regional Off-Track Betting (SROTb) Video Lottery. While I do not wish to take a position of the efficacy of their plan to use Video Lottery Terminals as a tool for their financial recovery, I do take issue with their current court approved Plan as it pertains to the likelihood of SROTb gaining necessary approvals to construct a Branch Facility at this specific location.

As noted in their recent petition to this Court for intervention, SROTb has sought to declare exemptions from local regulatory land use controls by claiming to be an agency of New York State. However, New York State Racing, Pari-Mutuel, Wagering and Breeding Law §1003(2f) clearly states

The location of the facility and a written confirmation from appropriate local officials that the location of such facility and the number of patrons expected to occupy such facility are in compliance with all applicable local ordinances.

In a letter dated July 10, 2015 from Robert Williams, Executive Director of the New York State Gaming Commission (see enclosed), Mr. Williams writes

Per Town of Brookhaven Law§ 85-113, this project is an action that requires a site plan review and approval. Site plan approval is a discretionary action that requires that the Town of Brookhaven be considered an Involved Agency under SEQRA.

Further, a memorandum from the Office of General Services states

In addition, a thorough reading of the VLT law found within Tax Law § 1617-a, clearly indicates that local oversight of a VLT facility may be preempted only when the VLTs are located at a racetrack. (See enclosed.)

Based upon the opinion of the NYS Gaming Commission and the NYS Office of General Services it is clear that SROTB must pursue approvals from Brookhaven Town before they can proceed to implement the agreed upon Plan. Should the Court require Brookhaven Town to accept a building permit application and submit it to a site plan review as petitioned by SROTB, it does not guarantee that such application would be approved. It is questionable if the current zoning of the property of Commercial Recreation is appropriate, as the Town of Brookhaven code currently regulates OTB Branch Facilities under the J5 Business District zoning and also requires a Planning Board Special Permit. A change of zone can only be approved by the Town Board, who passed a resolution at the January 29, 2015 Town Board meeting in opposition to the project. (See enclosed.)

Further, in a letter in response to SROTB declaring lead agency status under SEQRA, Brookhaven Planning Commissioner Tullio Bertoli outlines a number of instances where the proposed project is not in conformity with Town Codes as well as a host of other important issues, including, but not limited to, traffic, groundwater protection and emergency services. (See enclosed.)

This Court has a responsibility to see that the approved plan is reasonable and has a high probability of success. New York State has clearly stated that this proposed facility must be approved through the local regulatory process. The Town of Brookhaven has already cited numerous instances of how the project does not meet those standards, the zoning is in question, and the Town Board itself is in opposition to the project which brings into question the likely success of the current Plan. Therefore, in my opinion, it would not be responsible for the Court to let SROTB continue down this path. I respectfully request that the Court direct SROTB to develop a new plan that has a greater probability of success. This action has the added benefit of helping SROTB avoid further unnecessary legal and engineering costs, as they are already on an unstable financial footing.

Sincerely,



Robert Calarco
Suffolk County Legislator, 7th District

Enc.

CC: Robert Williams, Executive Director, NYS Gaming Commission
Phil Nolan, CEO and President, SROTB
Medford Taxpayer and Civic Association



Town of Brookhaven Long Island

Donna Lent

Town Clerk and Registrar

February 27, 2015

Honorable Andrew M. Cuomo
Governor of New York
The State Capitol, Executive Chamber
Albany, NY 12224

Re **SENSE RESOLUTION OF THE TOWN BOARD OF THE TOWN OF BROOKHAVEN
IN SUPPORT OF THE RESIDENTS OF THE TOWN OF BROOKHAVEN IN
OPPOSITION TO A CASINO IN THE TOWN OF BROOKHAVEN**

Dear Governor Cuomo:

Enclosed please find a copy of the above-mentioned resolution which was adopted by the Brookhaven Town at their January 29, 2015, Town Board Meeting.

Sincerely,

Donna Lent
Brookhaven Town Clerk

/dh

Enc.

cc: All Individuals Listed in Resolution

ADOPTED
BY THE BROOKHAVEN TOWN BOARD

RESOLUTION NO. 2015-0122
MEETING: JANUARY 29, 2015

SENSE RESOLUTION OF THE TOWN
BOARD OF THE TOWN OF
BROOKHAVEN IN SUPPORT OF THE
RESIDENTS OF THE TOWN OF
BROOKHAVEN IN OPPOSITION TO A
CASINO IN THE TOWN OF
BROOKHAVEN

WHEREAS, the New York State Legislature and the Governor approved legislation in 2013 for the establishment of three upstate casinos and video lottery terminal (VLT) casinos to be operated by Nassau and Suffolk County Off Track Betting (OTB); and

WHEREAS, this legislation, approved by the State Legislature and signed by the Governor, exempted these facilities from all local zoning requirements – removing all land use control and oversight of these facilities from the hands of towns and villages; and

WHEREAS, all environmental review, site plan approval and other land use decisions for any such casino is to be performed, under this law, by the New York State Gaming Commission; and

WHEREAS, the Town of Brookhaven Town Board, Planning Board, and Board of Zoning Appeals have no role in the site selection, approval or oversight of any other aspect of land use for such facilities because of this law, unlike Suffolk County; and

WHEREAS, Suffolk OTB is a quasi-governmental agency which has a board of directors that is appointed by the Suffolk County Legislature; and

WHEREAS, revenue from Suffolk OTB is distributed to the State of New York and the County of Suffolk, but is not shared with local towns, villages, fire districts, library districts or school districts; and

WHEREAS, the County has put revenues in their 2014 and 2015 budgets for a Video Lottery Terminal Casino that they plan to construct in Medford; and

WHEREAS, the Town of Brookhaven has not included revenues originating from any casinos in any Town Budget; and

WHEREAS, over the past year, several members of this Town Board have individually voiced their opposition to the siting of a casino anywhere in the Town of Brookhaven, in support of the residents in the areas they serve who have grave concerns about the impact of a casino on their community, neighborhoods and families; and

WHEREAS, because OTB board members are appointed by members of the County Legislature, elected officials in other areas have urged their county legislature to listen to the concerns of their residents, and use this power regarding the siting of these casinos.

NOW, THEREFORE, BE IT RESOLVED that the Town Board of the Town of Brookhaven hereby stands in support of our residents in opposing a casino in the Town of Brookhaven; and be it further

RESOLVED, that the Town Board urges the Suffolk County Legislature to listen to the concern of the residents and civic community of the Town of Brookhaven; and be it further

RESOLVED that the Town Clerk is hereby directed to forward certified

copies of this resolution to the following:

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, New York 12224

Senator Kenneth P. LaValle
Senate District 1
Legislative Office Building
188 State Street, Room 806
Albany, NY 12247

Senator John J. Flanagan
Senate District 2
Legislative Office Building
188 State Street, Room 805
Albany, NY 12247

Senator Thomas D. Croci
Senate District 3
Legislative Office Building
188 State Street, Room 802
Albany, NY 12247

Senator Phil Boyle
Senate District 4
Legislative Office Building
188 State Street, Room 814
Albany, NY 12247

Senator Carl L. Marcellino
Senate District 5
Legislative Office Building
188 State Street, Room 811
Albany, NY 12247

Senator Kemp Hannon
Senate District 6
The Capitol, Room 420
Albany, NY 12247

Assemblyman Fred W. Thiele
Assembly District 1
LOB 746
Albany, New York 12248

Anthony H. Palumbo
New York State Assembly
Assembly District 2
LOB 719
Albany, New York 12248

Assemblyman Dean Murray
Assembly District 3
LOB 534
Albany, New York 12248

Assemblyman Steven Englebright
Assembly District 4
LOB 621
Albany, New York 12248

Assemblyman Al Graf
Assembly District 5
LOB 433
Albany, New York 12248

Assemblyman Phil Ramos
Assembly District 6
LOB 648
Albany, New York 12248

Assemblyman Andrew R. Garbarino
Assembly District 7
LOB 529
Albany, New York 12248

Assemblyman Michael J. Fitzpatrick
Assembly District 8
LOB 458
Albany, New York 12248

Senator Jack M. Martins
Senate District 7
Legislative Office Building
188 State Street, Room 946
Albany, NY 12247

Assemblyman Joseph S. Saladino
Assembly District 9
LOB 720
Albany, New York 12248

Assemblyman Chad Lupinacci
Assembly District 10
LOB 937
Albany, New York 12248

Assemblywoman Kimberly Jean-Pierre
Assembly District 11
LOB 625
Albany, New York 12248

Assemblyman Andrew P. Raia
Assembly District 12
LOB 629
Albany, New York 12248

Suffolk County Executive Steven Bellone
H. Lee Dennison Building
100 Veterans memorial Highway
P.O. Box 6100
Hauppauge, NY 11788

Legislator Al Krupski
District Office 1
423 Griffing Avenue
Suite 2
Riverhead, NY 11901

Legislator Jay H. Schneiderman
District Office 2
75 Washington Street
P.O. Box 1827
Sag Harbor, NY 11963

Legislator Kate M. Browning
District Office 3
1120 Montauk Highway
Suite 7
Brentwood, NY 11717

Legislator Tom Muratore
District Office 4
325 Middle Country Road
Suite 3
Selden, NY 11784

Legislator Kara Hahn
District Office 5
306 Main Street
Port Jefferson, NY 11777

Legislator Sarah S. Anker
District Office 6
620 Route 25A, Suite B
Mt. Sinai, NY 11766

Legislator Robert Calarco
District Office 7
90 W. Main Street
Suite 2N
Patchogue, NY 11772

Legislator William J. Lindsay, III
District Office 8
1609 Grundy Avenue
Holbrook, NY 11741

Legislator Monica R. Martinez
District Office 9
55 2nd Avenue, Suite 7
Brentwood, NY 11717

Legislator Tom Cilmi
District Office 10
96 East Main Street
Suite 5
East Islip, NY 11730

District Office 12 (Vacant)
P.O. Box 6100
Building 17
Hauppauge, NY 11788

Legislator Kevin J. McCaffrey
District Office 14
125C South Wellwood Avenue
Lindenhurst, NY 11757

Legislator Steve Stern
District Office 16
1842 East Jericho Turnpike, Suite P
Huntington, NY 11743

Legislator William Spencer
District Office 18
15 Park Circle
Suite 209
Centerport, NY 11721

Legislator Thomas F. Barraga
District Office 11
187 Sunrise Highway
Suite C
West Islip, NY 11795

Legislator Robert Trotta
District Office 13
59 Landing Avenue
Smithtown, NY 11787

Legislator DuWayne Gregory
District Office 15
15 Albany Avenue
Amityville, NY 11701

Legislator Lou D'Amaro
District Office 17
130 West Jericho Turnpike
Huntington Station, NY 11746

THIS IS TO CERTIFY THAT THIS IS A TRUE
AND ACCURATE CERTIFIED COPY OF THE
OFFICIAL DOCUMENT ON FILE IN THE
TOWN CLERK'S OFFICE OF THE TOWN OF
BROOKHAVEN, SUFFOLK COUNTY, NY

Donna Lent

DONNA LENT, TOWN CLERK DATED: 02/27/2015
DO NOT ACCEPT UNLESS THE RAISED SEAL OF
THE TOWN OF BROOKHAVEN IS AFFIXED HEREON



Gaming Commission

One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500
www.gaming.ny.gov

Mark D. Gearan, Chair
John A. Crotty, Commissioner
Peter J. Moschetti, Jr.,
Commissioner
John J. Poldemba, Commissioner
Barry Sample, Commissioner
Todd R. Snyder, Commissioner

Robert Williams, Executive Director
Edmund C. Burns, General Counsel

July 10, 2015

By Electronic Mail

Mr. Anthony Pancella, III
Project Director
Suffolk Regional Off-Track Betting Corporation
425 Oser Avenue, Suite 2
Hauppauge, New York 11788

Re: State Environmental Quality Review Lead Agency Coordination
Simulcast Facility and Video Lottery Terminal Facility
440 Expressway Drive South
Hamlet of Medford, Town of Brookhaven, Suffolk County

Dear Mr. Pancella:

The New York State Gaming Commission has the Lead Agency coordination request letter dated June 15, 2015 for the above-referenced project. The Commission does not object to the Suffolk Regional Off-Track Betting Corporation acting as State Environmental Quality Review Act (SEQRA) Lead Agency. However, the Commission requests that the following issues be verified and addressed under SEQRA:

1. Per Town of Brookhaven Law § 85-113, this project is an action that requires a site plan review and approval. Site plan approval is a discretionary action that requires that the Town of Brookhaven be considered an Involved Agency under SEQRA. Therefore, the Town of Brookhaven should be included in the Lead Agency Coordination.
2. The Part 1 Environmental Assessment Form indicates production of 20 tons of solid waste per week during operations. Is this accurate, and can the transfer station properly accommodate this amount of waste?
3. The following areas of concern should be evaluated in order to avoid adverse impacts:

* N.Y.S. Department of Environmental Conservation regulations, 6 NYCRR § 617.6(a)(2), provide: "The project sponsor must complete Part 1 of the Full EAF, including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence."

Mr. Anthony Pancella, III
July 10, 2015
Page 2

- Impact of project-related traffic on local roadways;
- Adequacy of planned on-site parking in light of parking demand;
- Light pollution resulting from site lighting and signage;
- Aquifer protection as it relates to the sanitary system, on-site petroleum bulk storage and water withdrawal; and
- Adequacy of local emergency response resources to accommodate the project demand.

Should you have any questions in regard to the content of this letter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Williams', with a large, stylized flourish at the end.

Robert Williams
Executive Director

cc: Hon. Edward Romaine, Supervisor, Town of Brookhaven



Town of
Brookhaven
Long Island

Edward P. Romaine, Supervisor

July 14, 2015

SUFFOLK REGIONAL OFF TRACK BETTING CORP
425 Oser Ave, Suite 2
Hauppauge, NY 11788

RE: Site Plan: SUFFOLK REGIONAL OFF TRACK BETTING VIDEO LOTTERY
TERMINAL (VLT) TERMINAL 90,562 SF BUILDING
S Side of EXPRESSWAY DRIVE SOUTH, 1778' E of CALIFORNIA AVE, Medford
SCTM #: 0200-736.00-01.00-002.001, 30.09 acres

Dear Applicant:

Be advised that this Department has completed a review of your submission of June 19, 2015 (dated June 15, 2015) regarding the above referenced project and has the following comments regarding anticipated impacts from the proposed project that need to be addressed through the SEQRA review process.

Comments on the Part 1 Long Environmental Assessment Form (EAF) document are as follows:

Page 3 – C.4 Existing community services

The proposed action will create a greater demand for Policing, Fire Protection and Emergency Medical Services. Mitigation of these impacts should be proposed and incorporated into the project. The applicant is recommended to contact Police, Fire, and Ambulance providers and develop adequate mitigation plans with each agency prior to any approval. Payments in Lieu of Taxes (PILOT payments) should be negotiated with the Medford Fire District and the Medford Ambulance District to ensure that there are adequate mitigation plans for emergency services regarding the operation of the VLT parlor. Furthermore, OTB officials should coordinate their security plan with the Suffolk County Police Department.

Page 4 – g.ii States the largest proposed structure has a building height of 52'. Adverse visual impacts associated with a proposed building greater than permitted within the zoning district can be anticipated. Mitigation in the form of additional buffering or modification of the design including reduction in the overall height is recommended. The proposed height does not conform with the nature and character of the area.

Planning, Environment and Land Management

Tullio Bertoli, AICP, Commissioner

Brenda Prusinowski, AICP, Deputy Commissioner

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www.brookhaven.org

Page 5 – Liquid waste disposal – The proposed sanitary waste disposal method does not adequately protect the sole source aquifer. The calculated liquid waste generation of 9,027 gallons per day (gpd) is the maximum permitted under Article 6 on 30.09 acres located in SCDHS Groundwater Management Zone III. The proposed standard septic system may not adequately protect the environment in a deep recharge area of the sole source aquifer. A public project such as this should implement the best available technology including but not limited to connecting to a sewer district with tertiary treatment such as Sewer District #7. If connection to Sewer District #7 is not accomplished and onsite treatment is proposed then the system design and installation should meet a 12 month rolling average of 3 ppm of nitrogen after treatment with no month in excess of 5 ppm using best available control technology to protect groundwater and surface water resources.

Page 6 – Impervious surfaces – 15.32 acres of impervious surface will have negative impacts on storm water runoff and should be mitigated. OTB should follow the Town Code as it relates to impervious surfaces.

- a) The placement of pervious pavers and rain gardens within the parking lot would be appropriate mitigation.

Page 11 – The proposed project is located above a sole source aquifer. To reduce onsite storm water impacts it is recommended for site development to conform to Town Green Landscaping Standards.

- a) Increase the proposed Arterial Buffer & Setback from the South Service Road of the L.I.E. to 100' vegetated buffer as required by Town Code.
- b) Proposed parking greatly exceeds the anticipated generation for a facility of this size and exceeds the SEQRA Type 1 threshold of parking 1,000 vehicles for non-residential facilities.
- c) Consider reducing or eliminating proposed parking areas to reduce negative urban heat island impacts. Parking should be calculated and provided utilizing Institute of Transportation Engineers (ITE) data.
- d) Provide green drainage features and information to show compliance with Town Code §85-487 for green landscaping standards.
- e) Install green landscaping features including use of native plants and rain gardens and vegetated swales to reduce runoff. Add native shade trees and vegetated islands within parking area.

Impacts of Urbanization:

Due to the site location and size the proposal should incorporate green energy alternatives to reduce energy consumption and provide mitigations of urban heat island effects:

- a) LEED certification, solar pv/green buildings standards/net zero building may be appropriate mitigation for impacts of proposed urbanization.
- b) Installation of solar arrays for rooftop and carports.
- c) Installation of electric vehicle fueling stations could be provided as mitigation to encourage use of alternative energy sources.
- d) Reduction in urban heat island effects by utilizing green roof, shaded parking, and light colored parking lot pavement.
- e) PSEG LI should be contacted regarding inclusion in the Commercial Efficiency Program.

Visual Impacts of signs:

- a) Large signs within 660' of the highway right of way are restricted by FHWA and New York State Department of Transportation. Prior to installation of any sign within the regulated area application and approval would be required. Any video or moving animated or flashing sign would have potential negative impact on motorist's safety.

Planning, Environment and Land Management

Tullio Bertoli, AICP, Commissioner

Brenda Prusinowski, AICP, Deputy Commissioner

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- b) Proposed signage will have negative visual impacts- Proposed signs should conform to Town Code in height, size and location. Proposed signs do not conform to the Town sign code.
- c) Illumination of signs should comply with Town dark sky lighting ordinance to avoid adverse visual impacts to adjacent residents.
- d) The proposed signs do not conform to the nature and character of the area.

Anticipated Traffic Impacts:

- a) Any vehicle access to Town roads (Long Island Ave) will have a negative impact on adjacent residential areas. No vehicle ingress / egress will be permitted to Long Island Ave.
- b) Significant traffic impacts can be anticipated at the intersection of the LIE South service road and NYS Route 112. It is recommended that to mitigate this impact the exit ramp to LIE (I 495) be relocated westward 1800' +/- to allow for access to the Suffolk Off Track Betting Facility (VLT). Design, Engineering, and permitting to be coordinated with NYS Department of Transportation.
- c) Traffic impacts can be anticipated an LIE south service road and Horseblock Road (CR 16) and LIE north service road and Horseblock Road (CR 16). Traffic mitigation is needed at these intersections to prevent additional impacts to the local road system.

Anticipated Noise Impacts:

- a) Any proposed outdoor activities could have adverse noise impacts on adjacent residential uses.
Outdoor activities, music and loudspeakers should be prohibited.

In areas concerning the use of this site, the Town Board of the Town of Brookhaven, due to its specific expertise, concern, and expressed interest about the proposed action, would like to be informed of all actions taken pursuant to SEQR including determination of significance, designation of Lead Agency, submittals of the EAF, draft scoping documents, DEIS, and subsequent FEIS.

Thank you for your attention to this matter, and if you have any questions or need further information please contact this Division.

Very Truly Yours,



Tullio Bertoli, APA, AICP, LEED AP
Planning Commissioner
Planning, Environment and Land Management

TB/db

cc: SUFFOLK REGIONAL OFF TRACK BETTING CORP
GUY W GERMANO C/O GERMANO & CAHILL, PC

Mark Gearan, Chair, NYS Gaming Commission



Office of
General Services

Legal
Services

Memorandum

Suffolk Regional OTB-VLT FACILITY

Date: August 10, 2015

To: Christopher Graham, Esq.
From: Noreen VanDoren, Associate Attorney

The New York State Gaming Commission ("Commission") received a request from the Suffolk Regional Off-Track Betting Corporation ("Suffolk OTB") to preempt local authority regarding the siting and construction of an off-track betting simulcast facility that includes Video Lottery Terminal ("VLT") operations. We understand this request was based upon the Commission's similar actions for VLT facilities sited at various horse racing tracks throughout the State of New York.

OGS has thoroughly reviewed the applicable sections of the Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law"), the Tax Law as well as the April 9, 2015 Memorandum issued by Nixon Peabody relative to the issue of "Zoning for Suffolk Regional Off Track Betting Corporation" and we have determined that OGS, working with the Commission, is unable to provide the assistance Suffolk OTB is seeking.

Racing Law § 1003 requires Suffolk OTB, prior to seeking a license from the Commission, to seek approval from the local officials that the location of a proposed OTB facility and the number of patrons expected to occupy such facility be in compliance with all applicable local ordinances. We find nothing in the Racing Law specifically related to VLT facilities that overrides Racing Law § 1003 nor do we find any text within the Nixon Peabody memorandum specifically addressing the issue of construction permitting for an OTB Simulcast Branch Office or a Simulcast theater.

In addition, a thorough reading of the VLT law found within Tax Law § 1617-a, clearly indicates that local oversight of a VLT facility may be preempted only when the VLTs are located at a racetrack. The law states the following: "... as a condition of licensure, that **racetracks** to be licensed are certified to be in compliance with all state and local fire and safety codes... video lottery gaming **at a racetrack** pursuant to this section shall be deemed an approved activity for such racetrack under the relevant city, county, town, or village land use or zoning ordinances, rules, or regulations." (Emphasis added)

Moreover, while Tax Law § 1617-a(e) gives the Commission authority to issue construction permits for a VLT facility, such authority is limited to facilities on the grounds of a racetrack. OGS also has no legal authority to issue construction permits for Suffolk OTB as OGS is only authorized to issue permits to or on behalf of State Agencies as defined in 19 NYCRR 1204.3(h). The Suffolk OTB has no board of director member appointed by the Governor, therefore, it is not deemed a State Agency for which OGS could issue a construction permit.

Lastly, Tax Law § 1617-a(a)(4) states that OTB facilities such as the Suffolk OTB "shall be deemed vendors for all purposes under this article," which supports our position that OGS cannot broadly interpret the Tax Law to determine that an OTB VLT facility is the same as a racetrack VLT facility or that Suffolk OTB is a State Agency for construction permitting purposes.