

# OFFICE OF THE COUNTY LEGISLATURE

County of Suffolk

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## Committees

Chairman – Government Operations,  
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Vice Chairman – Public Safety

Member – Ways & Means, Health

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April 9, 2015

Edward P. Romaine, Supervisor  
Town of Brookhaven  
One Independence Hill  
Farmingville, NY 11738

Dear Supervisor Romaine,

I am in receipt of your April 6 letter to Commissioner James Tomarken. In that letter you request the Suffolk County Department of Health Services enforce existing wastewater treatment codes, requiring the proposed Suffolk Regional Off-Track Betting facility in Medford to connect to the Woodside Sewer District. I wholeheartedly agree with you and fully believe that Suffolk County should enforce its codes. On March 24, I wrote to Dominick Feeney, Chairman of the Suffolk Regional OTB Board, requesting they submit an application to the SCDHS. (See enclosed.) On that same date, after confirming that no application had been made to the County, I requested both Commissioner Tomarken and County Attorney Dennis Brown take all necessary legal actions in this matter. I am pleased to see that you concur with my interpretation that we have the right and duty to uphold our local ordinances. It is my hope that the Town of Brookhaven acts accordingly and in like manner with Suffolk County.

Suffolk Regional OTB has stated publicly that they have no intention of submitting to the Town of Brookhaven local review and approval process that would be required by any other developer. Local review would ensure a public vetting process, as site plans would be submitted to the Planning and Building Departments, ensuring they conform to Town code. Additionally, the plan would be required to go before the Town Planning Board, similar to any other commercial project of this size. A submission would also allow the Suffolk County Planning Commission to review and comment on the project. Finally, any local review process would allow the Town an opportunity to declare a lead agency status for SEQRA, which would ensure all environmental, traffic and concerns of public safety be fully addressed on a local level.

Since the SROTB proposal is to construct an OTB Simulcast Branch Office, accompanied by state sanctioned Video Lottery Terminals, office space and restaurant space, it is clear that the Town of Brookhaven does have some regulatory control. In fact, §1003(2)(f) of the New York State Racing, Pari-Mutuel, Wagering and Breeding Law 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.*

According to an October 17, 2003 opinion from the NYS Attorney General (No. 2003-10) this section of law clearly shows that:

*the Legislature intended that simulcast facilities “be subject to at least some local regulation”; and*

*The Legislature did grant municipalities a role, albeit a limited one, in the process of authorizing a proposed simulcast facility.*

The Attorney General's opinion is clear on the matter, and as such the Town of Brookhaven has every right and responsibility to enforce its zoning codes. The first step of the Town of Brookhaven ensuring that its zoning codes are being complied with is to require the SROTB to submit its plans to the Town Planning and Building Departments and subsequent appropriate referrals to the Planning, Zoning or Town Board for necessary approvals.

As you are aware, §85-1 of the Town Code specifically defines an Off-Track Betting Parlor as:

*A commercial use at which persons can visit to wager upon and observe by remote television the outcomes of events that are taking place elsewhere.*

This is a definition and use that is permitted in a J-5 Zone as listed in §85-461, and is not included in the permitted uses of a Commercial Recreation District as listed in §85-514. Further, even if the OTB simulcast branch operation and subsequent VLT operation were permitted under a Commercial Recreation Zoning, SROTB seeks to establish a combined 11,851 square foot dining/restaurant space, which is only permitted in a Commercial Recreation Zone under a Special Use Permit granted by the Town Board. Given this, it appears that SROTB should be seeking at most a Change of Zone, and at minimum a Special Use Permit for the accessory restaurant use, both of which must be approved by the Town Board. This is just one example of many local ordinances that can and should be reviewed; others include parking, lighting and signage.

While I fully agree with you that Suffolk County has the authority to enforce our codes, I must ask in return the Town of Brookhaven do the same. If Suffolk County has the legal authority to "require that any building on this site be connected to the nearest sewage treatment facility" as you state in your letter, then you must also see that the Town of Brookhaven has the legal authority to require the SROTB to comply with the building process and submit a plan for review and obtain all necessary approvals; be they a change of zone, variances or special use permits. It is time for the Town of Brookhaven to actively work to enforce their codes and zoning as you ask the County of Suffolk to do, because as you state in your letter; "Failure to do so would be less then responsible."

Suffolk County and the Town of Brookhaven have historically worked together to ensure safe and successful development projects are built within our mutually represented communities. I do not see a reason why this cannot happen with this proposed development. I, and the Medford community, patiently await your response.

Sincerely,



Robert Calarco

CC: Dennis Brown, Suffolk County Attorney  
Dr. James Tomarken, Commissioner, Suffolk County Department of Health Services  
Phil Nolan, President, Suffolk Regional Off-Track Betting Corporation  
Dominick P. Feeney, Chairman, Suffolk Regional Off-Track Betting Corporation  
Members of the Suffolk County Legislature  
Members of the Brookhaven Town Council  
Medford Taxpayers and Civic Association  
Medford Chamber of Commerce  
Medford Fire Department