

Div	<b>FILED</b>
	Department of Business and Professional Regulation
	Deputy Agency Clerk
Tall	CLERK <b>Evette Lawson-Proctor</b>
Phone: 850.4	Date <b>8/9/2012</b>
	File #

**Ken Lawson, Secretary**

August 9, 2012

West Flagler Associates, Ltd.  
c/o Mr. John Lockwood  
200 West College Avenue, Suite 307  
Tallahassee, Florida 32301

Re: Application for Summer Jai Alai Permit – West Flagler Associates, LLC

Dear Mr. Lockwood:

On July 2, 2012, the Division of Pari-Mutuel Wagering received a permit application from West Flagler, under the provisions of Section 550.0745, Florida Statutes.

This letter is to inform you that your application for a Summer Jai Alai Permit is denied in accordance with the provisions of Chapter 550, Florida Statutes. Section 550.0745, Florida Statutes, states in pertinent part, "The owner or operator of a pari-mutuel permit who is authorized by the division to conduct pari-mutuel pools on exhibition sports in any county having five or more such pari-mutuel permits and whose mutuel play from the operation of such pari-mutuel pools for the 2 consecutive years next prior to filing an application under this section has had the smallest play or total pool within the county may apply to the division to convert its permit to a permit to conduct a summer jai alai fronton". Section 550.0745, Florida Statutes, creates an exception to the general requirements to obtaining a pari-mutuel permit found in Section 550.054, Florida Statutes. Specifically, the statute exempts the applicant from mileage restrictions and referendum requirements imposed by the general permitting statute. Thus, Section 550.0745, Florida Statutes, must be strictly construed in determining whether a permit is eligible for conversion to a summer jai alai permit, or whether such permit is available if the eligible permitholder declines to convert.

Applying a rule of strict construction to this application shows that a summer jai alai permit is not available in Miami-Dade County. Only one fiscal year, 2011/12, has passed since a summer jai alai permit application was considered and issued under this section which was based on wagering data from Fiscal Year 2009/10 and 2010/11. The statute clearly requires that the lowest mutuel play must come from the same permitholder for two consecutive years prior to filing an application under the section. Although Hialeah Park was again the lowest performing permitholder in Fiscal Year 2011/2012, it is not eligible for conversion because the bench mark of two consecutive years of the smallest play or total pool in the county prior to making an application has not occurred.

Additionally, Rule 61D-4.002, Florida Administrative Code, outlines certain guidelines for evaluating a permit application for a pari-mutuel facility which includes the "potential profitability" of the perspective permitholder. It is unclear how a second summer jai alai permit at the same property site will provide any additional revenue for the applicant or the state since the property identified in your application was issued a summer jai alai permit approximately 10 months ago on October 28, 2011. As you aware, summer jai alai permits are restricted to operating dates between May 1 and November 30 of each year. Therefore, a second summer jai permit at the same location would not increase the number of performances that could be conducted or extend operating time available during the year. As such, there is no value added benefit for the state or the applicant for a second summer jai alai permit at the same location and the application must be denied based upon the lack of potential profitability as referenced in Rule 61D-4.002, Florida Administrative Code.

Furthermore, Section 550.054(2), Florida Statutes, expressly prohibits the division from taking an application for a jai alai permit into consideration if the location for which the permit is requested is within 50 miles of an existing pari-mutuel wagering facility. There are existing pari-mutuel wagering facilities within 50 miles of the site of the proposed site in your application. Therefore, the division is statutorily prohibited from taking your application into consideration.

In order to obtain an administrative hearing with respect to this letter of permit denial, you must, within 21 days of your receipt of this letter of permit denial, file a petition for an administrative hearing with the Office of the Agency Clerk, Department of Business & Professional Regulation; 1940 North Monroe Street, Suite 33, Tallahassee, Florida 32399-2202, fax number 850.488.5761.

If you timely file a petition for administrative hearing and do not dispute the material facts of the permit denial, you will be granted a hearing not involving disputed issues of material fact (an informal administrative hearing) pursuant to Section 120.57(2), Florida Statutes, before the agency's designated hearing officer. However, if you do dispute the material facts in the letter of permit denial and desire a hearing involving disputed issues of material fact (formal administrative hearing) under Section 120.57(1), Florida Statutes, before the Division of Administrative Hearings (DOAH), you must file petition for administrative hearing in compliance with Rule 28-106.201(2), Florida Administrative Code, (F.A.C.), which requires, at a minimum, that any such a petition set forth:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) Your name, address, and telephone number, the name address, and telephone number of your representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the your substantial interests are affected by this agency determination;

- (c) A statement of when and how you received notice of this agency decision;
- (d) A statement of all disputed issues of material fact or a statement indicating that there are no disputed facts;
- (e) A concise statement of the ultimate facts alleged, including the specific facts you contend warrant reversal or modification of the agency action;
- (f) A statement of the specific rules or statutes you contend require reversal or modification of the agency action, including an explanation of how the alleged facts relate to those specific rules or statutes; and
- (g) A statement of the relief you seek, stating precisely the action that you want the agency to take with respect to its determination.

Pursuant to Section 120.573, Florida Statutes, mediation is not available for disputes of the division's permitting decision in this matter.

If you do not request a hearing within twenty-one (21) days of your receipt of this Denial, this Denial will become the Agency's Final Order. If this Denial becomes a Final Order, you will have thirty (30) days to file for an appeal pursuant to Section 120.68, Florida Statutes.

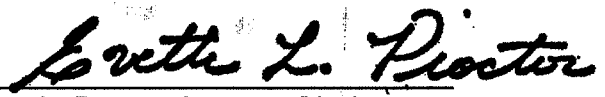
Dated this 9<sup>th</sup> day of August, 2012

Sincerely,



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Letter of Permit Application Denial has been served upon West Flagler Associates, Ltd., c/o Mr. John Lockwood, 200 West College Avenue, Suite 307, Tallahassee, Florida 32301, by U.S. Certified Mail, this 9 day of August, 2012.

for:   
Ronda Bryan, Agency Clerk  
Department of Business and  
Professional Regulation

Case No. 2012 03 3108