

Ken Lawson, Secretary

February 4, 2013

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 December 5, 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 benchmark of two consecutive

Mr. John Lockwood
February 4, 2013
Page Two

years of the smallest play or total pool in the county prior to making an application has not occurred.

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.

On February 1, 2013, the division issued a Final Order Closing File and Denying Petitions to Intervene in a permit application proceeding in which you first sought to obtain a summer jai alai permit at the same location as the summer jai alai permit issued to West Flagler last fiscal year. While the application filed on December 5, 2012, is for a new location, the availability of a summer jai alai permit as stated above remains unchanged as a matter of law. A copy of that order, including the previous denial is attached to this letter as Exhibit 1.

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 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 4th day of February, 2013

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 4 day of February, 2013.



Ronda Bryan, Agency Clerk
Department of Business and
Professional Regulation

Case No. 2013004452

FILED	
Department of Business and Professional Regulation AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	2/1/2013
File #	2013-00551

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

WEST FLAGLER ASSOCIATES, LTD.,

Petitioner,

vs.

DBPR Case No. 2012033108

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING,

Respondent.

FINAL ORDER CLOSING FILE AND DENYING PETITIONS TO INTERVENE

The above styled matter has come before the Department of Business and Professional Regulation, Division of Pari-mutuel Wagering, ("division") for entry of a Final Order as follows:

1. On July 2, 2012, an application for a summer jai alai permit was filed by West Flagler Associates, Ltd. ("West Flagler").
2. On August 9, 2012, the division issued a letter to West Flagler denying its application for a summer jai alai permit and informing it of its rights to request an administrative hearing. A copy of that letter is attached as Exhibit 1.
3. On August 30, 2012, West Flagler filed a petition requesting an administrative hearing pursuant to §120.57(2), Fla. Stat. A copy of the petition for hearing is attached as Exhibit 2.

4. Petitions to Intervene have been filed by Calder Race Course, Inc., ("Calder"), Hartman and Tyner, Inc., H&T Gaming, Inc., Gulfstream Park Thoroughbred After Racing Program, Inc., and South Florida Racing Association, Ltd. ("South Florida"). The petitions to intervene filed by Calder, Hartman and Tyner, Inc., H&T Gaming, Inc., Gulfstream Park Thoroughbred After Racing Program, Inc., were denied by earlier orders. Calder filed a subsequent petition to intervene. Thus, the petitions of Calder and South Florida remain pending.

5. On January 24, 2013, West Flagler filed a letter with the division withdrawing the application for a summer jai alai permit that is the subject of this proceeding. A true copy of the letter is attached to this Final Order as Exhibit 3.

Base upon the forgoing it is hereby ORDERED:

1. The division's file regarding the application for a summer jai alai permit that was filed by West Flagler dated July 2, 2012 is hereby closed and the denial of the application is final based upon the withdrawal of the application.

2. The Petitions to Intervene filed by Calder and South Florida are hereby DENIED as moot.

DONE AND ORDERED this 1st day of February, 2013, in Tallahassee, Florida.



LEON M. BIEGALSKI, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business & Professional
Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1035

CERTIFICATE OF SERVICE

I hereby certify this _____ day of February, 2013, that true copies of the foregoing "Order" have been served by Electronic Mail (email) upon:


JOHN M. LOCKWOOD, ESQ.
<john@lockwoodlawfirm.com>
John M. Lockwood, P.A.
200 West College Avenue, Suite 307
Tallahassee, Florida 32301-7710

ANDREW T. LAVIN, ESQ.
<alavin@navonlavin.com>
Navon & Lavin, P.A.
2699 Stirling Road, Suite B-100
Ft. Lauderdale, Florida 33312-6543

MARC W. DUNBAR, ESQ.
<marc@penningtonlaw.com>
DANIEL R. RUSSELL, ESQ.
<drussell@penningtonlaw.com>
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

J. STEPHEN MENTON, ESQ.
<smenton@reuphlaw.com>
MICHAEL J. BARRY, ESQ.
<mbarry@reuphlaw.com>
Rutledge, Ecenia & Purnell, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

WILBUR E. BREWTON, ESQ.
<wbrewton@bplawfirm.net>
KELLY BREWTON PLANTE, ESQ.
<kbplante@bplawfirm.net>
Brewton Plante, P.A.
225 South Adams Street, Suite 250
Tallahassee, Florida 32301-1709



AGENCY CLERK'S OFFICE
Department of Business & Professional
Regulation

Counsel Email Copies Furnished to:

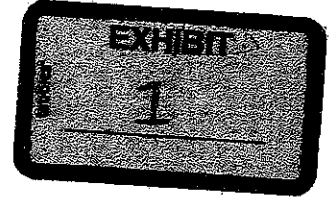
John Lockwood <john@lockwoodlawfirm.com>
Andrew Lavin <alavin@navonlavin.com>
Marc Dunbar <marc@penningtonlaw.com>
Dan Russell <drussell@penningtonlaw.com>
Steve Menton <smenton@reuphlaw.com>
Mike Barry <mbarry@reuphlaw.com>
Wilbur Brewton <wbrewton@bplawfirm.net>
Kelly Plante <kbplante@bplawfirm.net>

Division	FILED
	Department of Business and Professional Regulation
	Deputy Agency Clerk
Tallahassee	CLERK Evette Lawson-Proctor
Phone: 850.4	Date 8/9/2012
	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 jail 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;

West Flagler Associates, Ltd.
August 9, 2012
Page Three

- (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.

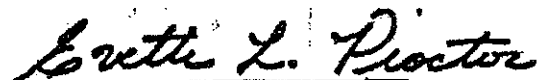
Dated this 9th day of August, 2012

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

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/30/2012
File #	

In re: Permit Application

Case No. 2012-033108

WEST FLAGLER ASSOCIATES, LTD.

Applicant.

DBPR Agency Clerk

AUG 30 2012

RECEIVED

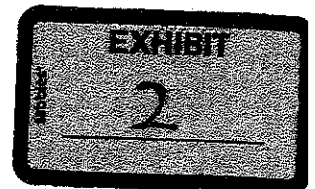
PETITION FOR ADMINISTRATIVE HEARING

COMES NOW, West Flagler Associates, Ltd. (the "Petitioner"), and hereby files this Petition for Administrative Hearing contesting the Division of Pari-Mutuel Wagering's denial of the Petitioner's application for a summer jai alai pari-mutuel permit. The Petitioner submits this petition in conformance with Section 120.57(2), Florida Statutes (2012),¹ and Rule 28-106.201, Florida Administrative Code. In support, the Petitioner states the following:

Introduction

The Petitioner's application for a summer jai alai permit must be granted pursuant to the clear and unambiguous language of Section 550.0745, Florida Statutes. The plain language of Section 550.0745, Florida Statutes, authorizes the issuance of a new summer jai alai permit each and every state fiscal year, assuming that the permit holder eligible to convert declines to exercise its statutory conversion rights. In addition, Rule 61D-4.002, Florida Administrative Code, is not applicable to summer jai alai permit applications and, even if it were applicable, the Division is estopped from relying upon Rule 61D-4.002, Florida Administrative Code, because the Division never requested any information concerning the new permit's "potential profitability." Finally, Section 550.0745, Florida Statutes, clearly and unequivocally exempts summer jai alai permits

¹ All references herein to "Chapter" or "Section" are to the application chapter or section of the official 2012 version of the Florida Statutes.



from the mileage restrictions that are otherwise generally applicable to pari-mutuel permit applications.

Parties

1. The affected state agency is the State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), 1940 North Monroe Street, Tallahassee, Florida 32399. The Division is the state agency authorized to administer Chapter 550, Florida Statutes, and regulate the pari-mutuel wagering industry, including the issuance of pari-mutuel wagering permits. See §§ 550.0251, 550.054, and 550.0745, Fla. Stat. (2012).

2. The Petitioner is a Florida limited partnership authorized to conduct business in Florida. The Petitioner owns and operates the Magic City Casino in Miami-Dade County, Florida. For purposes of this proceeding, the Petitioner's address is that of its undersigned counsel.

3. The Petitioner is represented by John M. Lockwood, Esq., whose address is 200 West College Avenue, Suite 307, Tallahassee, Florida 32301. Counsel's telephone number is (850) 727-5009 and facsimile number is (850) 270-2610.

Statement of Facts and the Petitioner's Substantial Interests

4. On July 2, 2012, the Petitioner filed an application (the "Application") for a summer jai alai permit pursuant to Section 550.0745, Florida Statutes. A true and correct copy of the application is attached hereto as Exhibit A.

5. The summer jai alai permitting statute provides, in relevant part, the following:

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 in such county during the summer season commencing on May 1 and ending on November 30 of each year on such dates as may be selected by such permittee for the same number of days and performances as are allowed and granted to winter jai alai frontons within such county. *If a permittee who is eligible under this section to convert a permit declines to convert, a new permit is hereby made available in that permittee's county to conduct summer jai alai games as provided by this section, notwithstanding mileage and permit ratification requirements.*

§ 550.0745(1), Fla. Stat. (2012) (emphasis supplied).

6. The Petitioner seeks a new summer jai alai permit in Miami-Dade County created by Section 550.0745, Florida Statutes, because the permitholder eligible to convert under the statute has failed to exercise its statutory conversion rights.

7. On August 9, 2012, the Division denied the Application after failing to issue a deficiency letter pursuant to Section 120.60(1), Florida Statutes. A true and correct copy of the Denial Letter is attached hereto as Exhibit B.

8. The Division denied the Application for the following reasons: (1) the permitting statute does not authorize a new summer jai alai permit in Miami-Dade County; (2) there is no value added benefit for the state or applicant if multiple summer jai alai permits are issued for the same location; and (3) mileage limitations prohibit the issuance of a jai alai permit within 50 miles of an existing location.² See Ex. B.

9. The Petitioner has standing to participate in this proceeding because the Denial Letter substantially and adversely affects the Petitioner's interests. See *Ft. Myers Real Estate Holdings, LLC v. Div. of Pari-Mutuel Wagering*, 53 So. 3d 1158, 1162 (Fla. 1st DCA 2011) ("It

² The mileage limitation argument is only applicable if a new summer jai alai permit is not made available and the Application was for a regular jai alai permit pursuant to Section 550.054, Florida Statutes. Section 550.0745, Florida Statutes, clearly exempts the issuance of summer jai alai permits from the mileage limitations.

is self-evident that a permit applicant has standing to challenge the denial of its own application.”).

Statement of How Petitioner Received Notice of the Agency Decision

10. The Petitioner received notice of the Division’s intended action on August 13, 2012, via certified mail. This petition is timely filed.

Disputed Issues of Material Fact

11. There are no disputed issues of material fact.

Concise Statement of Ultimate Facts and Law, Including the Specific Facts and Law Warranting Reversal of the Denial Letter

12. Hialeah Park was the permitholder with the lowest pari-mutuel wagering handle in Miami-Dade County for the 2010-2011 and 2011-2012 state fiscal years. *See Ex. B.*

13. Hialeah Park declined to file an application to convert its quarter horse permit to a summer jai alai permit.

14. The Division did not issue the Petitioner a deficiency letter pursuant to Section 120.60(1), Florida Statutes.

15. The Application did not contain any errors or omissions, nor did it require the submission of any additional information.

16. The Petitioner filed the only application for a summer jai alai permit for the 2012-2013 state fiscal year.

17. The Petitioner is an existing owner of a pari-mutuel permit.

18. The Petitioner is currently approved by the Division to hold a pari-mutuel permit in conformance with Chapter 550, Florida Statutes.

19. DBPR Form 3010 (Permit Application) does not require submission of information to determine the “potential profitability” of a summer jai alai permit.

20. The Division did not request information concerning the "potential profitability" of the Petitioner receiving a second summer jai alai permit.

Specific Statutes and Rules Requiring Reversal of the Agency's Proposed Action

21. The specific statutes and rules requiring reversal of the Denial Letter are Sections 120.569, 120.57, 120.60, 550.054 and 550.0745, Florida Statutes.

Statement of Relief Sought by Petitioner

22. The Petitioner requests that the following relief:

A. That the Division appoint a Hearing Officer to conduct an informal administrative hearing pursuant to Section 120.57(2), Florida Statutes, and that the Hearing Officer establish a briefing schedule for submission of legal arguments;

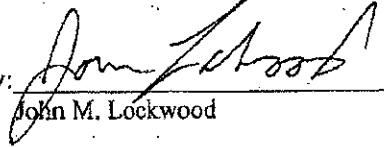
B. That recommended and final orders are entered deeming that that the Application be granted pursuant to Section 550.0745, Florida Statutes; and

C. That the Division issue the Petitioner a summer jai alai pari-mutuel permit; and

D. That such further relief be granted as appropriate.

Respectfully submitted this 30th day of August 2012.

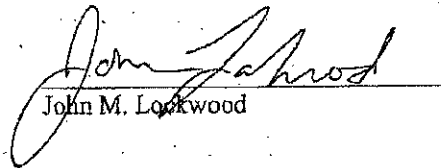
JOHN M. LOCKWOOD, P.A.
200 West College Avenue, Suite 307
Tallahassee, Florida 32301
Telephone: (850) 727-5009
Facsimile: (850) 270-2610
Email: john@lockwoodlawfirm.com

By: 
John M. Lockwood

Counsel for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Petition for Hearing was served on this 30th day of August 2012, by hand delivery to the Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32399-2202; by electronic mail to J. Stephen Menton (smenton@reuphlaw.com) and Michael J. Barry (mbarry@reuphlaw.com), Rutledge, Ecenia & Purnell, P.A., Post Office Box 551, Tallahassee, Florida 32302-0551; by electronic mail to Wilbur E. Brewton (wbrewton@bplawfirm.net), Brewton Plante, P.A., 225 South Adams Street, Suite 250, Tallahassee, Florida 32301; and by electronic mail to Marc W. Dunbar (marc@penningtonlaw.com) and Daniel Russell (drussell@penningtonlaw.com), Pennington Moore, Wilkinson, Bell & Dunbar, P.A., Post Office Box 10095, Tallahassee, Florida 32302.


John M. Lockwood



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING
1040 North Monroe Street
Tallahassee, Florida 32399-1035
www.MyFlorida.com/dbpr

RECEIVED
2012 JUL 22 AM 9:03
DIVISION OF PARI-MUTUEL WAGERING

NOTE - This Form must be submitted as part of an entire application packet

If you have any questions or need assistance in completing this application, please contact the Department of Business and Professional Regulation, Customer Contact Center, at 850.487.1393.

This form and its attachments are to be completed by individuals or businesses desiring to obtain a Permit to Conduct Pari-Mutuel Wagering. Upon completion, the original notarized application and all attachments, with a Cashier's Check for \$15,000, made payable to the Department of Business and Professional Regulation, should be returned to the Division.

The attachments include:

Request for Release of Information (DBPR PMW-3185)
Personal History Record (DBPR PMW-3030)
Individual Occupational License Application (DBPR PMW-3120)

Permit Investigation Deposit _____ \$15,000

SPECIAL NOTES

- The following Florida Statutes and Rules are referenced for additional information required for completing this application package.
Section 550.064, Section 550.0555, Section 550.0651, Section 550.0745, Section 550.1815, and Section 550.384, Florida Statutes
Rule 61D-4.001 and Rule 61D-4.002, Florida Administrative Code
- Application for a Quarter Horse or non-wagering permit does not require \$15,000 deposit.

RECEIVED
2012 JUL -2 AM 9:15
DIVISION OF PARI-MUTUEL WAGERING

"A"



STATE OF FLORIDA
 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
 DIVISION OF PARI-MUTUEL WAGERING
 1540 North Monroe Street
 Tallahassee, Florida 32399-0783
 www.MyFlorida.com/dbpr

RECEIVED
 June 2
 2012 JUN 02 AM 9:03
 DIVISION OF
 PARI-MUTUEL WAGERING

If you have any questions or need assistance in completing this application, please contact the Department of Business and Professional Regulation, Customer Contact Center, at 850.467.4395.

This application shall only be used when applying for a new pari-mutuel wagering permit. Please be certain that all attachment numbers correspond with the numbers in the appropriate boxes throughout the application.

Permit Type

Greyhound Racing Harness Racing
 Thoroughbred Racing Jai-Alai
 Quarter Horse Racing Non-Wagering Meet

Florida county in which racing will be conducted Miami-Dade County

Federal Employer ID Number/Social Security Number

Applicant Name West Flagler Associates, Ltd.

Doing Business As (D/B/A) Name Magic City Jai Alai

Ownership: Proprietorship Corporation Partnership Joint Ventures Agreement
 Trust Estate Other

Street Address or P.O. Box
401 NW 38th Court

City Miami State FL Zip Code (+4 optional) 33128

County (if Florida address) Miami-Dade Country United States

Contact Name John M. Lockwood, Esq.

Primary Phone Number (850) 727-5909 Primary E-Mail Address john@lockwoodlawfirm.com

Street Address
450 NW 37th Avenue

City Miami State FL Zip Code (+4 optional) 33128

County Miami-Dade Country United States

RECEIVED

Alternate Phone Number	Fax Number
Alternate E-Mail Address	

1. If the applicant is a Corporation, complete the following:

- (a) Where incorporated: n/a
When incorporated: n/a
- (b) Attach a copy of the Articles of Incorporation.
Attachment # n/a
- (c) If incorporated outside of the State of Florida, attach a copy of license to do business in Florida.
Attachment # n/a
- (d) Attach a copy of the last five corporate annual reports filed with the Department of State.
Attachment # n/a
- (e) If the applicant corporation is a subsidiary of any other entity, attach an organizational chart reflecting the complete holdings of the parent entity.
Attachment # n/a
- (f) Attach a listing of all present or past civil suits involving the applicant as a defendant for the past twenty years. Include style of case, case number, court of jurisdiction, and final outcome of case.
Attachment # n/a
- (g) Attach a listing of all present or past criminal actions involving the applicant. Include investigating agency, case number, and final outcome of case.
Attachment # n/a
- (h) Attach a schedule disclosing all owners of 5 percent or more of any interest in this corporation.
Attachment # n/a
- (i) Attach a schedule disclosing defective equity ownership where corporate debt exceeds 10 percent of assets owed to any one party.
Attachment # n/a
- (j) Attach a schedule disclosing any ownership of 5 percent or more in any business or other entity holding interest in any gambling or wagering activity in the State of Florida, the United States, or internationally.
Attachment # n/a
- (k) Attach a schedule disclosing the structure of ownership and all individuals involved (refer to question 1(f) above).
Attachment # n/a

- (f) Attach a schedule disclosing the names and addresses of the officers and directors.
Attachment # na
2. If the applicant is a Partnership, Joint Venture Agreement, Trust Agreement, or other business entity:
- (a) Attach a copy of all agreements which established the entity.
Attachment # na
- (b) Attach a listing of all present or past civil suits involving the applicant as a defendant for the past twenty years. Include style of case, case number, court of jurisdiction, and final outcome of case.
Attachment # na
- (c) Attach a listing of all present or past criminal actions involving the applicant. Include investigating agency, case number, and final outcome of case.
Attachment # na
- (d) Attach a schedule disclosing the names and addresses of the principals, partners, or shareholders owning 5 percent or more of the business entity.
Attachment # na
- (e) If the applicant is a subsidiary of any other entity, attach an organization chart reflecting the complete holdings of the parent entity.
Attachment # na
- (f) Attach a schedule disclosing any ownership of 5 percent or more in any business or other entity holding interest in any gambling or wagering activity in the State of Florida, the United States, or internationally.
Attachment # na
- (g) Attach a schedule disclosing the structure of ownership and all individuals involved (refer to question 2 (f) above).
Attachment # na
3. The following financial information is required for applicants which are Corporations, Partnerships, Joint Venture Agreements, Trust Agreements, or other business entities:
- (a) Attach a copy of the applicant's financial statements for the last five years. If no financial statements were prepared, so state, and attach necessary documents which reflect the financial condition of the applicant for the past five years.
Attachment # na
- (b) If the applicant is a subsidiary of any other entity, the applicant must attach a copy of the parent corporation's financial statements for the past five years. If no financial statements were prepared for the parent corporation, so state, and attach necessary documents which reflect the financial condition of the parent corporation for the past five years.
Attachment # na

- (c) Please attach the names and addresses of the ultimate equitable owners for a corporation or other business entity, if different from those provided in 1(h), 1(i), and 4(a), unless the securities of the corporation or entity are registered pursuant to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a-78k; and if such corporation or entity files with the United States Securities and Exchange Commission the reports required by s. 13 of that act or if the securities of the corporation or entity are regularly traded on an established securities market in the United States.

Attachment # n/a

4. Ownership Interests

- (a) Provide the full name, legal residence, business address, and percentage of ownership and total number of shares held, of all parties holding an interest in the applicant.

Attachment # n/a

- (b) All ownership interests must complete a Personal History Record, as included in the permit application package; a Request for Release of Information and Authorization to Release Information, as included in the permit application package; and a Division of Pari-Mutuel Wagering fingerprint card, as included in the permit application package.

Attachment # n/a

- (c) Attach a listing of all past or present criminal charges involving the above-listed ownership interests and their spouses; if none, so state. Include arrest charge, arresting agency, date of arrest, court of jurisdiction, and final outcome.

Attachment # n/a

- (d) Attach a listing of all past or present civil suits involving the above-listed ownership interests and their spouses; if none, so state. Include style of case, case number, court of jurisdiction, and final outcome of case.

Attachment # n/a

- (e) All ownership interests shall make available for division inspection a copy of all income tax returns filed for the past five years, including spouses. Said inspection shall be conducted at a time and place designated by the division.

- (f) All ownership interests shall provide an audited financial statement, with an independent CPA opinion, of their personal financial condition as of the date of the application.

Attachment # n/a

- (g) All ownership interests shall attach a listing of all occupational and/or professional licenses held by them, their spouses, or any associated business entity under the jurisdiction of any federal, state, county, or municipal authority and a statement indicating whether administrative proceedings were ever initiated against any of the listed licenses. Include type of proceeding, agency initiating the proceedings, date, and final outcome of case.

Attachment # n/a

- (h) All ownership interests shall attach a statement indicating if they, their spouses, or any associated business entities have ever filed for bankruptcy.

Attachment # n/a

- (i) All ownership interests shall attach a listing of the full name, legal address, business address, and date of birth of any divorced spouse or divorce proceedings involving the current spouse.

Attachment # n/a

5. All applicants shall provide:

- (a) A detailed statement (with supporting evidence) of the method of financing the purchase/construction of the facility, and first year's operating expenses. Said statement shall include a complete disclosure of the sources of funds.

Attachment # See Permit Addendum A

- (b) A statement detailing all preliminary plans with respect to the operation of the facility, including the names of management personnel and racing officials, and any arrangements to obtain contractual services such as totalisator equipment, video equipment, food service, security service, housekeeping, and maintenance services.

Attachment # See Permit Addendum A

- (c) A complete listing of any loans obtained by the applicant within the past two years, including the name of lender, amount of loan, terms of loan, collateral, reason for loan, and a copy of loan agreements.

Attachment # See Permit Addendum A

- (d) A legal description of the property where the proposed pari-mutuel facility is or will be located.

Attachment # See Permit Addendum B

- (e) Applicant's control over the above-described property is by:

- Ownership
 Lessee
 Other Authority

Copies of all deeds, titles, contracts or agreements concerning the acquisition of land where the facility is or will be located. Said documents shall reflect applicant's control of property, method of financing the acquisition of the property, and sources of funds.

Attachment # See Permit Addendum A

- (f) An aerial view or detailed area map depicting the location of the facility, adjacent barn or kernel areas, and access roads.

Attachment # See Permit Addendum C

- (g) Preliminary plans and drawings detailing the construction of the proposed pari-mutuel facility, including backside areas. The dimensions of the facility, type of construction, seating capacity, barn size and design, and facilities for handling the public.

Attachment # See Permit Addendum A

- (h) A listing of all contractors used in the construction of the facility. A copy of contracts between the applicant and the contractors shall be provided to the division no less than ten working days after finalization of the contracts.

Attachment # See Permit Addendum A

- (i) If a facility previously existed, a copy of all contracts or agreements concerning the acquisition of existing assets (sales agreement).

Attachment # n/a

5(a):

The Applicant is in the process of renovating its auditorium and creating a live entertainment venue. The auditorium will be capable of hosting different types of entertainment events, including live jai alai performances. The renovation process will be completed prior to the conclusion of the 2012-2013 state fiscal year. The Applicant intends to seek a license pursuant to this Permit to conduct live performances prior to the conclusion of the 2012-2013 state fiscal year.

5(b):

The proposed jai alai fronton will be operated by existing, licensed personnel employed by the Applicant. The Applicant currently has existing contracts for the provision of required pari-mutuel services.

5(c):

The Applicant is an existing permit holder that has previously been approved to hold a pari-mutuel permit pursuant to Section 550.1815, Florida Statutes.

5(e):

The Applicant is an existing permit holder that has previously been approved to hold a pari-mutuel permit pursuant to Section 550.1815, Florida Statutes.

5(g):

The jai alai fronton will be located within the Applicant's existing licensed facility. The Applicant's auditorium will require minor interior construction and remodeling in order to seat approximately 900 patrons. This construction and remodeling is presently ongoing.

5(h):

The Applicant has engaged the Weinstein/Ruiz firm as general contractors. The contract is available upon request.

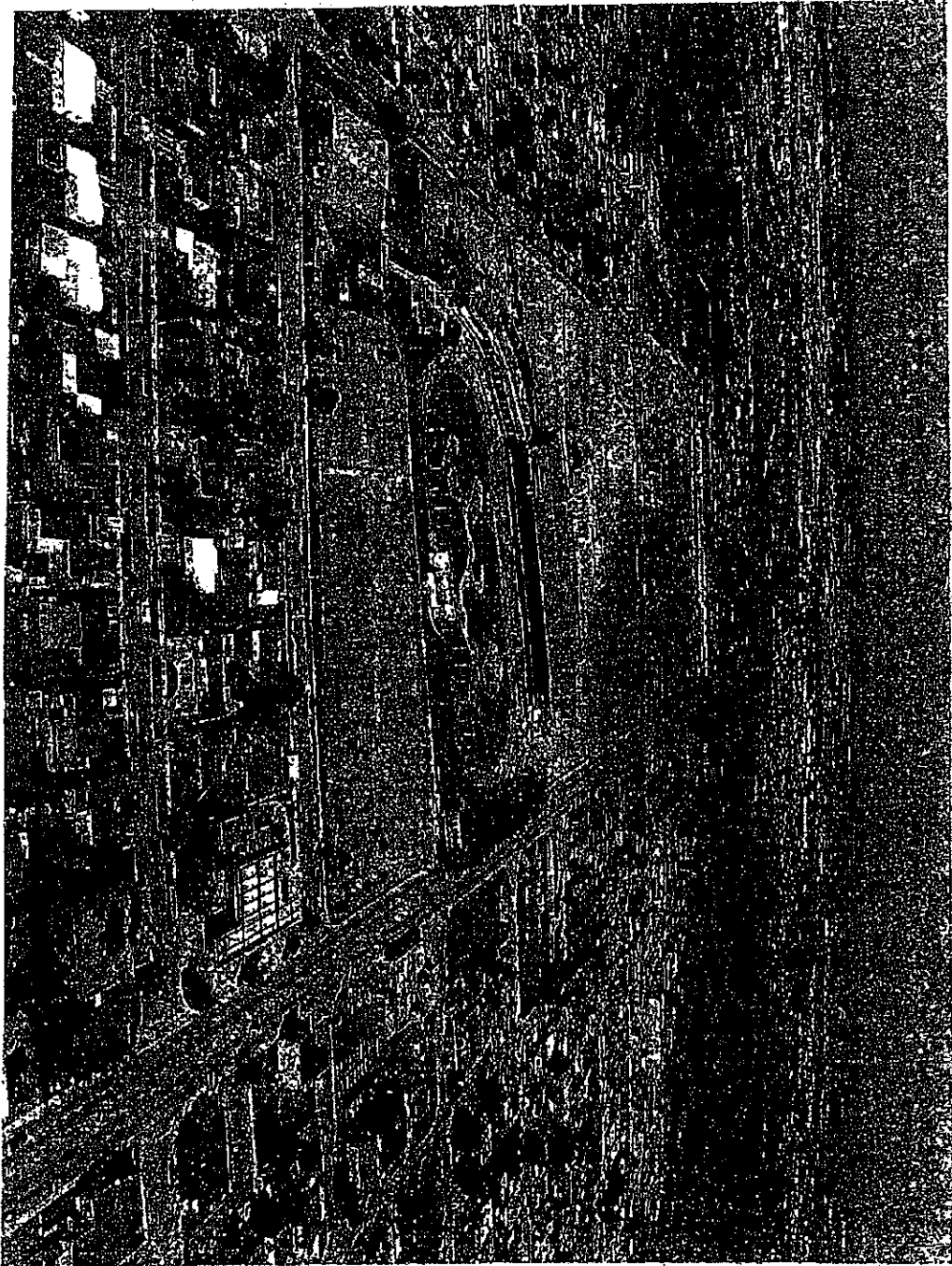
A

Tract "A," Amended Plat of Airline Center, according to the Plat thereof, as recorded in Plat Book 33, Page 77, Public Records of Miami-Dade County, Florida.

AND

The North 289.91 feet of the East $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, less the East 35 feet and less the South 25 feet thereof; And the East 225.00 feet of the North 289.91 feet of the West $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, less the South 25 feet and less the West 25 feet thereof; And the East 225.00 feet of the West $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ less the West 25 feet and less the North 35 feet thereof in Section 5, Township 54 South, Range 41 East, in the City of Miami, Miami-Dade County, Florida. Less the external area formed by a 25 feet radius curve at the Southeast corner of the parcel herein described, said curve being tangent to the East and South lines of said parcel.

B



C

Div	FILED
Tel	Department of Business and Professional Regulation
Phone: 850 4	Deputy Agency Clerk
	CLERK Eve McLawson-Proctor
	Date 8/9/2012
	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.

LICENSE EFFICIENTLY. REGULATE FAIRLY.
WWW.MYFLORIDALICENSE.COM

"B"

West Flagler Associates, Ltd.
August 9, 2012
Page Two

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 permit holder. 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;

West Flagler Associates, Ltd.
August 9, 2012
Page Three

- (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.

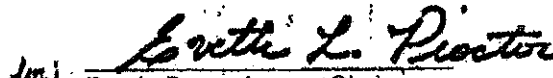
Dated this 9th day of August, 2012

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

JOHN M. LOCKWOOD, P.A.

200 WEST COLLEGE AVENUE, SUITE 307
TALLAHASSEE, FL 32301

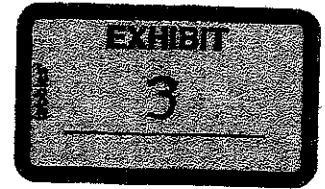
CELL: 850.694.2978
OFFICE: 850.727.5009

EMAIL: JOHN@LOCKWOODLAWFIRM.COM

January 24, 2013

BY HAND ELECTRONIC MAIL

Leon Biegalski, Director
Division of Pari-Mutuel Wagering
1940 North Monroe Street, Suite 50
Tallahassee, Florida 32399



Re: Withdrawal of Summer Jai Alai Permit Application

Dear Mr. Biegalski:

Please accept this notice of withdrawal of the summer jai alai permit application filed with your office on July 2, 2012, by West Flagler Associates, Ltd. ("West Flagler"). West Flagler intends to pursue the application it filed on or about November 30, 2012, for a location in southern Miami-Dade County.

Please feel free to contact me should you have any questions or require clarification.

Sincerely,

A handwritten signature in cursive script that reads "John M. Lockwood".

John M. Lockwood