

## **VIRGINIA LOTTERY BOARD MEETING**

July 15, 2020 - 9:30 a.m.

Presiding - Ferhan Hamid, Chairman

A recording of the meeting is accessible using the following link: <https://youtu.be/1w60u9OJpO4>

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|-------|---|----------|--------------|
| I.    | <u>CALL TO ORDER</u>                          |          | Chairman     |
| II.   | <u>MINUTES OF LAST MEETING</u> (May 13, 2020) | (Motion) | Chairman     |
| III.  | <u>DIRECTOR'S REPORT</u>                      |          | Mr. Hall     |
| IV.   | <u>FINANCIAL REPORT</u>                       |          | Ms. Courtney |
| V.    | <u>BOARD ISSUES</u>                           |          |              |
|       | • Marketing Promotion                         | (Motion) | Ms. Rose     |
| VI.   | <u>OTHER BUSINESS</u> (Next meeting: TBD)     |          | Chairman     |
| VII.  | <u>BOARD MEMBERS' OPEN DISCUSSION</u>         |          | Chairman     |
| VIII. | <u>CLOSED MEETING</u>                         |          | Chairman     |
|       | • Motion                                      |          |              |
|       | • Lottery Games Prize Structures - Scratchers |          | Ms. Rose     |
|       | • Lottery Games Prize Structures - Instant    |          | Mr. Wesley   |
| IX.   | <u>RECONVENED MEETING</u>                     |          | Chairman     |
|       | • Certification                               |          |              |
|       | • Motion for Approval                         |          |              |
| X.    | <u>ADJOURNMENT</u>                            |          | Chairman     |

**Public comment will not be received during the meeting, but individuals can submit comments in writing via email to [director@valottery.com](mailto:director@valottery.com) by 4 p.m. on July 14. The comments will be publicly posted prior to the meeting as a part of the agenda document.**

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From: Alan Smith <[REDACTED]>  
Date: Fri, Jun 26, 2020, 3:27 PM  
Subject: Proposed Casino in Norfolk, VA  
To: <[REDACTED]>  
Cc: <[REDACTED]>

Dear Mr. Hall,

You have previously received the attached letter pointing out the serious obstacles, environmental and otherwise, inherent in the proposed casino site in Norfolk. The purpose of this email is to add my support to the many other concerned citizens that are counting on the Lottery Board to do its due diligence. The Lottery Board must verify the nature of the deal, request impact studies, and check with other state and federal agencies as to the serious environmental damage that would be caused by the building of the casino in the proposed location.

Sincerely,

Alan L. Smith  
23510

450 Boush St., Unit 522

Norfolk, VA

Mr. Kevin Hall  
Executive Director  
Virginia Lottery Board  
900 East Main Street  
Richmond, VA 23219

Dear Mr. Hall,

I am writing on behalf of Norfolk residents and businesses who have grave concerns about the proposed Pamunkey casino development at Harbor Park. With the casino application now in your hands, we would like to make you and the Board aware of concerns that should be carefully considered during your deliberations.

Major Environmental Remediation is Needed on the Site

The EPA recently completed a study to assess the viability of the proposed development area for the casino, which can be accessed here. According to the report, an enormous capital expenditure will be required before the site would be able to receive regulatory sign-off for environmental compliance, a fact which was completely ignored by the City Council in its rush

to get the casino approved. Major infrastructure improvements are necessary due to flooding and other environmental concerns, including a living shoreline and the construction of a seawall that extends for a considerable distance. The report further states that the seawall must be completed in its entirety, one gap in the system will cause flood mitigation to fail.

To compound the environmental hurdles associated with the Casino site, it is important to address the fact that the site is an officially designated Brownfield. The site was originally a rail yard before it was encapsulated and paved over to prevent contaminants from seeping into the delicate ecosystem of the Chesapeake Bay. The EPA stated that without soil remediation and groundwater management, the site is only developable for shopping and restaurants. Low structures such as these, usually rising no more than two floors, can be built using “slab-on-grade” construction and would not require digging a foundation and disturbing the contaminated soil underneath. The EPA specifically excluded residential, hotel, casino, or any other development that would require the construction of a foundation, which would break the encapsulation and release harmful contaminants from the soil into the Elizabeth River and Chesapeake Bay.

There is, in fact, no reasonable indication that this project could move forward in any way whatsoever given the environmental risks involved. We respectfully request that The Lottery Board consult with The Army Corps of Engineers, and both the State and Federal Environmental Protection Agencies as to the likelihood, timeline, and enormous economic hurdles in their granting approval for the proposed hotel/casino development. The Army Corps of Engineers will need to sign off on it, given its jurisdiction over the navigable waters that abut the site.

State environmental agencies will need to sign off. Local environmental groups have, and will continue to, speak out against it.

#### The Pamunkey Do Not Have Funding to Cover the Costs of Environmental Remediation, Much Less the Cost of Development

According to legislation passed by the Norfolk City Council in May, the Pamunkey would be required to pay for flood mitigation and other infrastructure improvements, such as soil remediation and groundwater management, that are directly necessary for the project. This will total hundreds of millions of dollars. The Pamunkey do not have that amount of money at their disposal, so are we to assume that their partner, Mr. Yarbrough, will donate to The Pamunkey the requisite approximate \$1B? Neither the State Legislature, nor the city of Norfolk, nor the public have seen the written agreement between The Tribe and Mr. Yarbrough, legally committing him personally, or his LLC Golden Eagle Consulting II, to contribute the requisite funds. The written agreement, if one exists between The Pamunkey's and their partner, must be made public and be examined by The Lottery Board. The State should have written evidence that Yarbrough is legally committed to put up the money and that he has the cash liquidity to do so.

The second question to be asked, is even if certain agreements exist, does The Pamunkey partner have the cash liquidity to fulfill its obligation?

Equally important, even if all the above were answered in the affirmative by The Lottery Board, the question then must be answered as to how and in what order does Mr. Yarbrough receive a return of his investment. The Tribe has represented to public officials that it owns the casino and hotel and it will receive the profits, if any, from the casino hotel. It seems unlikely that the approximate \$1B investment by Golden Eagle/Yarbrough is truly a gift to The Tribe, and more likely any return to The Tribe is buried beneath a return first to the investor with interest. Or put another way, we respectfully ask The Lottery Board to satisfy itself that The Pamunkey Tribe “owns” this development in more than name only.

### Nothing is Known About the Deal Between Yarbrough and the Pamunkey

In fact, nothing has been publicly released about Jon Yarbrough’s deal with the Pamunkey and Yarbrough was scarcely mentioned by policymakers throughout the entire legislative process. At public hearings on the casino, several citizens asked for more information about him and the deal, but nothing was provided. The casino has been trumpeted as something that is going to benefit a Native American Tribe, but we have absolutely no knowledge of what that benefit would be and when they would expect to share in any revenues, assuming the casino could actually be built.

Where are the written agreements? Are we to assume that Yarbrough is giving hundreds of millions of dollars to the Pamunkey as a gift? Are we to assume that they will benefit from the profits in an equitable way?

This is not a typical Indian casino that has been vetted by the Bureau of Indian Affairs. If it were, then all of the questions listed above would have been made part of the public record. The Bureau of Indian Affairs is responsible for ensuring that any deal entered into by The Pamunkey is actually beneficial to The Pamunkey. The City has not made any pledge to ensure The Pamunkey actually benefit from this deal, and has not run the deal through the Bureau of Indian Affairs. Therefore, it is incumbent on the State to examine the agreement between Golden Eagle Consulting II LLC (Yarbrough’s firm) and The Pamunkey. We believe the Lottery Board has an ethical duty to review that information before making any decisions on approval or rejection.

### Economic Impact Studies Must be Conducted

The Pamunkey claim that their casino will create hundreds of jobs and millions in revenue, but there has been absolutely no investigation into what the economic impact of a casino resort would be on existing Norfolk businesses. Hotels, restaurants, bars, and other forms of entertainment stand to lose foot traffic due to the casino, and there has been no consideration given to them whatsoever. Concerns have been raised by the Downtown Norfolk City League and the Downtown Norfolk Council, but no satisfactory answer has been provided. We believe the Lottery Board should consider these factors in its decision and ask to see an Economic Impact Study.

If, in fact, the purpose of legalized gaming is to bring positive economic benefits to our Commonwealth, how can you decide on granting a gaming license until you have an objective study on what the actual impact will be?

## No One is Listening to the Local Community

The redevelopment of the Harbor Park and adjoining St. Paul's area is being undertaken with little to no consideration given to the existing residents of that area, who are mostly minorities who qualify economically for Public Housing situated directly adjacent to the site. In fact, there is a federal lawsuit pending over the planned demolition of public housing units near the site and the displacement of their residents.

## The Plans Keep Changing

The Pamunkey have revised their estimates for the size of the casino and resort multiple times. Their proposals range from 4,500 slot machines and 500 rooms down to 750 slot machines and 150 rooms. The public sector and citizens have no firm understanding of what they are committed to building. If this license is to be approved, the Lottery Board must know exactly what is being proposed and hold the developer to the proposal.

We have additional information on the environmental, economic and social concerns regarding this development. As concerned citizens, we are troubled by the opaque way in which this process has been pushed through and we look to you, as independent policymakers whose only allegiance is to the citizens of the Commonwealth of Virginia, to ensure transparency and good government, for the good of the people.

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From: Justin Palanchi <[REDACTED]>  
Sent: Thursday, July 9, 2020 9:43 AM  
To: Director Virginia Lottery <[Director@VALOTTERY.COM](mailto:Director@VALOTTERY.COM)>  
Subject: Online Sports Betting

I have been waiting for years to use sports betting apps such as Draft King's (Sportsbook) and Fan Duel in Virginia. As it was legalized July 1, 2020, many people are hopeful that we can use this apps in Virginia as soon as possible, hopefully by the end of this year. Thank you.

Justin Palanchi

Sent from my iPhone

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From: Leiv Clegg <[REDACTED]>  
Sent: Friday, July 10, 2020 10:29 PM  
To: Director Virginia Lottery <[Director@VALOTTERY.COM](mailto:Director@VALOTTERY.COM)>  
Subject: Very upset

I am devastated that you took away the play from your phone mobile app feature. Why did u do that??? That was a big mistake. Why would I subject people to be in crowds while playing your

lottery. Playing from your phone was the best feature so what is wasn't popular. Where the va lottery is set up its only in bad poor neighborhoods where I can been beat up and robbed and now u want Me to go back on the store??? Who told u to touch the app. The app is pointless as shit with out the pay feature. Who is on the design team. Week of the engineer??? For all over them. You all know nothing. Who told to take away the best feature ever created. I am so upset. I will be at that meeting on the 19 cause y'all need to be fired, Reprimanded, sent home without pay. I am so upset. Bring back the feature!!! I am pissed u would do this. I'm livid.

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From: Steve Uphoff <[REDACTED]>  
Sent: Tuesday, July 14, 2020 12:42 PM  
To: Director Virginia Lottery <[Director@VALOTTERY.COM](mailto:Director@VALOTTERY.COM)>  
Subject: Town Hall Comments Wednesday - July 15th - VA Online Sports Betting

Dear Director Kevin Hall:

As a Chesterfield based business Owner, with multiple businesses and as a large Virginia employer for nearly 25 years along with a long established relationship with the Virginia Lottery in the retail sector, we'd like to respectfully plead to the Lottery to give more favorable consideration to local applicants based here in Virginia who have a record of proudly serving Virginias and not to exclude Virginia companies solely based on their size, or lack of experience in sports betting.

Selling retail is retail, but not everyone is good at doing it! Finding a high quality Virginia based company with conscientious and caring employees is not an easy task, especially to those businesses that are willing to execute and deliver at stellar levels in online gaming and have demonstrated their commitment in holding a higher standard of compliance and willingness to go above and beyond in responsible gaming and gambling controls.

Your consideration is much appreciated.

Steven M. Uphoff

CEO / Managing Member

Uppy' Convenience Stores

MACS Convenience Stores

Uptown Alley's of Virginia

Uphoff Ventures

Uphoff Properties

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**From:** Shan Gao <[REDACTED]>  
**Sent:** Tuesday, July 14, 2020 3:48 PM  
**To:** Director Virginia Lottery <Director@VALOTTERY.COM>  
**Subject:** Questions on Sports Betting Applications

Dear Mr. Director,

We have a few questions related to the Code of Virginia § 58.1-4032. Application for a sports betting permit; penalty, and we would much appreciate it if you could address them at this Town Hall meeting or in the future meetings.

1. What are the specific past experience requirements necessary for being approved for the online sports betting license?
2. What are the qualifications required by a Principal for obtaining and being approved for the online sports betting license?
3. Are there restrictions on the number of Principals that are involved in any application license?

Thank you very much for your time and considerations!

Best regards,

Shan Gao

Owner

ZMG Ventures, LLC

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**From:** Jacqueline Glass <[REDACTED]>  
**Sent:** Tuesday, July 14, 2020 4:13 PM  
**To:** Director Virginia Lottery <Director@VALOTTERY.COM>  
**Subject:** NORFOLK CASINO

Good day Virginia Lottery Board,

I am asking that you deny the license for the Norfolk casino. For the following reasons:

- About one-third of total casino revenue is projected to be generated by out-of-state visitors. We are now trying to determine what life will look like post-COVI-19 and supporting economic development that will rely on outside visitors is a "bad bet."
- According to JLARC, " Most of Virginia's peer states use a competitive bidding process to award casino licenses, which creates market competition. Market competition helps ensure that the few available casino licenses are awarded to the most qualified and financially stable owners/operators who submit the most realistic and responsible proposals. A competitive selection process is especially important in a limited casino market in which the limited number of casino licenses effectively creates a monopoly for casino owners/operators. A limited casino market is contemplated in SB 1126, but a competitive bidding process is not included in the legislation. Virginia could use a competitive process to maximize the financial and economic value of casino licenses and minimize risks to the state, localities, and the public."

When reviewing the City of Norfolk and the Pamunkey Tribes deal, it is important to acknowledge that the process was not competitive or transparent. If we are truly focused on the qualified and financially stable casino in the State of Virginia, then the City of Norfolk needs to go back to the drawing board. The Lottery Board would be telling the resident of Norfolk that financial and economic success of state and city are not a concern, but the art of the deal is. I ask that you not ignore the expertise of the JLARC for the sake of "getting this done." We deserve a competitive process. There is no acceptable reason to approve a license for a no-bid casino.

Here is a list of other red flags that should make the Lottery Board think twice before approving the license:

- The order for the referendum was entered by the circuit court on Friday didn't specify the location of the casino as required by law.
- The application for the casino has not been made public and FOIA requests have not been granted.
- The residents have yet to receive clarity on the Pamunkey Indian Tribe's plan that is being signed off on a reviewed by Virginia State Lottery Board.
- The no-bid process prohibits us from know if the casino proposal and award to the proposal was to the most qualified to successfully operate a casino as cautioned by the JLARC.

We should already have an understanding of the plan you all review for licensing, and we don't. Approval would be signing off on an unethical process and a disserve to Virginians. Please take this into consideration as you move forward. At a time like this, it is better to be a service of the people and economic growth by ensuring matters like this are done above board.

Make it a great day,

Jackie Glass

Resident Norfolk, VA

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From: Gary Byler <[REDACTED]>  
**Sent:** Tuesday, July 14, 2020 5:12 PM  
**To:** Director Virginia Lottery <Director@VALOTTERY.COM>  
**Subject:** Norfolk Casino Comment

Sincerely,

**Gary C. Byler**

*Attorney at Law*

[REDACTED]

**Law Office of Gary Byler**

**A Professional Corporation**

505 S. Independence Blvd., Suite 201

Virginia Beach, VA 23452

Telephone: (757) 490-8094

Facsimile: (757) 490-0414

*www.garybyler.com*

July 14th, 2020

Mr. Kevin Hall  
Executive Director  
Virginia Lottery Board  
900 East Main Street  
Richmond, VA 23219

Dear Mr. Hall,

I am writing on behalf of the membership of the Coastal Virginia Chamber of Commerce to share concerns regarding the proposed casino development at Harbor Park in Norfolk. As an organization dedicated to assisting small and medium sized business, we have many questions about both the process and merits behind this development.

## Superficial Process and Due Diligence

The Norfolk city council approved an initial intergovernmental agreement with the Pamunkey Indian Tribe without analysis by city staff, minimal debate among council members, and no input from the general public. This resulted in the petition drive under the city charter to overturn the agreement. As a result, the city abandoned its plans for a tribal casino and submitted a state authorized plan to your board for approval. Our concerns remain.

During a December 16th public hearing on the casino proposal, held as a result of a citizen led petition drive, the City Manager, himself a PhD economist formerly employed by Old Dominion University, released a preliminary economic analysis performed by city staff. During his presentation, he referenced that the previously released analysis of the project had been performed by the developers and not subject to independent review or audit. Both analyses gave a range of potential project sizes and resulting tax revenues. Left unsaid was the most critical factor in both project size and economic benefit: the magnitude of the environmental remediation costs due to the proposed site's status as an EPA brownfield, and economic displacement by construction and operation of the casino.

## Environmental Uncertainties

A building the size and scope defined in the minimum requirements section of the development agreement between the Pamunkey Tribe and the City of Norfolk would require soil remediation and groundwater management, costing untold millions. Construction pilings driven into the subsoil would come at a financial cost impossible to determine without significantly more complex environmental studies than have been performed to date.

## Unintended Economic Consequences

Even assuming this project is possible to complete per its stated minimum specifications, there has been no analysis of how the casino would affect the existing businesses and residences during both its construction or operation phases. Our members are concerned of the potential for economic displacement may represent a threat to local restaurants and hotels currently reeling from the coronavirus pandemic. The effects of the traffic and inevitable road closures that will result from a project of this magnitude compounding the as of yet economic cost, to be borne by established businesses. Local restaurants, with their unique culture and offerings, may be able to compete with the casino once it opens, but they will first need to survive its construction stage. During the building of Norfolk's light rail system, which was behind schedule and over budget, numerous businesses suffered from extended periods of restricted pedestrian and vehicle traffic. With extremely limited ingress and egress from the Harbor Park site, it remains unknown to what extent traffic will need to be diverted in and around Norfolk's downtown core and the residential neighborhoods surrounding it.

Our members do not oppose a casino in Norfolk but are skeptical of a proposal no one can review. We do not believe this project has been fully vetted and evaluated by the City of Norfolk or its citizens, nor do we believe a thorough examination of the risks and benefits of the development is possible to complete before the potential November referendum on its approval. We ask the board to set this application aside until basic information is available.