



ERIE COUNTY COMPTROLLER

KEVIN R. HARDWICK

July 15, 2022

Henry Wojtaszek, Chief Executive Officer and President
Western Regional Off-Track Betting Corporation
8315 Park Road
Batavia, New York 14020

Re: Hotel at Batavia Downs

Dear Mr. Wojtaszek:

I am writing concerning the Western Regional Off-Track Betting Corporation's ("WROTB") 2015 sale of land for the construction of a hotel and your 2021 repurchase of the land and hotel.

As you know, on March 26, 2015 (after apparently granting development rights in 2013), WROTB's board authorized the sale of 35,000 square feet of your property at Batavia Downs to a group of investors for \$605,000. These investors, referred to as ADK Hospitality, LLC, included Anthony J. Baynes (former Chairman of the Erie County Fiscal Stability Authority - ECFSA), Kent Frey (Frey Electric Construction), David McNamara (Hodgson Russ law firm and former counsel for ECFSA), Laszlo Mechtler (Dent Neurologic Institute), and James and John Basil (Basil Family Dealerships). They stated their intention to construct a hotel at the Downs. According to your board meeting minutes, the first time that this project and intention to sell the land was publicly mentioned by WROTB was at your February 26, 2015 board meeting when a voice vote was taken by one of your committees authorizing the sale.

Ground breaking and construction on the 84-room, 50,000 square foot hotel apparently began in October 2015 after WROTB received approval to sell the land from the New York State Gaming Commission. The hotel opened in late October 2016. Various reports stated that ADK spent \$5.0-\$5.5 million constructing the hotel. ADK sought and received sales and property tax exemptions from the Genesee County Economic Development Corporation and entered into a ten-year payment in lieu of taxes agreement in exchange for pledging to create some number of new positions. The hotel was managed by Hart Hotels Inc.

On October 24, 2019, your board minutes indicate that a WROTB director "asked if there was an update regarding the sale of the hotel" and you "stated that an appraisal has been received." That was the first public reference of a possible sale of the hotel to WROTB. On December 3, 2020, board minutes indicate that you asked for board approval "to continue to engage with Harris Beach [law firm] to represent Western regarding the purchase of a hotel in the *additional* amount of \$50,000" (emphasis added).

On February 25, 2021, you presented a resolution to the WROTB board seeking permission to purchase the hotel at Batavia Downs from ADK Hospitality. On February 25, 2021, the WROTB board approved (in a 10-1 vote, with one abstention and two directors absent) the purchase of the hotel from

ADK Hospitality at a cost of up to \$8 million. On March 25, 2021, your board “waived the rules” and approved a “late resolution” serving as a “Declaration of Official Intent in respect to the use of bond proceeds to reimburse WROTB Corporation for the purchase of the Hotel and BDG warehouse project.” The board authorized the issuance of \$10 million in bonds for the project. The corporation stated its intention to sell 20-year bonds to pay for the acquisition.

On June 24, 2021, you presented a resolution to the board seeking approval “to continue to engage the law firm Harris Beach to represent Western in various matters, including the acquisition of a hotel and bond refinancing in the amount of \$200,000.” The board approved that request. At the same meeting, the WROTB board approved a resolution entering into a host agreement with the Batavia City School District for 2021 in the amount \$27,000 and an agreement with Genesee County, Town of Batavia and Batavia City School District for 2022-2025 in a total amount of \$46,377. The board also authorized you to sell the new 2021 bonds and to “pay off all existing debt the Corporation currently has outstanding.” The board resolution indicated that WROTB’s 2021 new bond sale and refinancing of existing debt would total \$27 million in new, tax-exempt bonds, among which the corporation would refinance “a note held by ADK Hospitality, LLC, the proceeds of which were used by the Issuer [WROTB] to purchase and acquire the “Hotel at Batavia Down” (land, hotel, furniture, fixtures and equipment and related improvements).”

In July 2021, media outlets reported that WROTB had just purchased the hotel from ADK Hospitality for \$7.5 million. A *Business First* article noted that “negotiations (for WROTB to purchase the hotel) began in 2019 but talks were delayed by the (COVID) pandemic.” Mr. Baynes stated that the hotel “turned a profit” in every year until the pandemic.

Given this situation – in which WROTB sold property to certain individuals and then repurchased the developed property just a few years later at a considerable mark-up – I have serious questions about these transactions which I am posing to you.

Questions:

- Why would WROTB sell the land to a group of investors who have never before developed a hotel property?
- Who approached WROTB about the transaction? Did ADK approach WROTB? Did you approach them?
- How was the land sale price (of \$605,000) to ADK determined? What appraiser/appraisal was done and set that value?
- What property tax and sales tax breaks did ADK receive from the Town of Batavia/City of Batavia/Genesee County or the Genesee County Economic Development Center?
- Why did you decide to buy the hotel after it had only been open for three years? Who approached WROTB about selling the hotel? Did ADK approach you, or did you approach ADK?
- What was the hotel purchase price WROTB agreed to? Who set the price?
- Why did WROTB Board Member Paul Lattimore, Jr. vote against the deal?
- Why did you seemingly pay \$2.5 million more for the hotel than it cost its owners to build new and furnish?
- Did the NYS Gaming Commission approve of your re-purchase of the hotel? Your board minutes do not reflect any mention of that issue. Please provide any documentation concerning their approval of the original sale of land and the re-purchase of the land and hotel.

- Does Hart Hotels continue to operate the hotel? If so, how much are they paid and how? Please provide a copy of their contract/management agreement.
- How much did WROTB pay Harris Beach for services related to the hotel negotiation and bond sale?
- What are the terms and interest rate on WROTB's bonds for the hotel? How much debt service has been paid and how much are you paying annually for the hotel's debt service?
- How much of the 2021 bond sale and refinancing principal cost was for the hotel?
- What are the 2021 and 2022 occupancy rates of the hotel? Is the hotel profitable and operating in the black? Please provide specific profit and loss statements for the hotel and cash flows.
- Why is your revenue sharing agreement with the Town of Batavia, the Batavia City School District and Genesee County only for four years?
- Who at WROTB functionally oversees Hart Hotels' operation of the hotel? Do they have any prior experience running a hotel establishment?
- Various WROTB board meeting minutes indicate that WROTB was purchasing hotel rooms from Hart Hotels or ADK. The earliest board minutes reflect "additional hotel rooms to be purchased by Marketing" for \$20,000 on September 28, 2017 and reference was made to a "supplemental resolution"; on September 27, 2018 authorization was provided to purchase "additional hotel rooms from Hart Hotel for marketing and events purposes in the amount not to exceed \$25,000"; on September 26, 2019, WROTB's board authorized the purchase of hotel rooms totaling \$50,000; on December 3, 2020 you purchased "comped rooms from Hart Hotel for the remainder of 2020 in the amount not to exceed \$45,000" and at the same meeting via a separate resolution, authorized the purchase of "comped rooms from Hart Hotel for the 2021 year in an amount not to exceed \$50,000". How much did WROTB pay Hart Hotels or ADK for hotel rooms during the period ADK owned the hotel?
- Starting in December 2021, your board minutes reflect board approvals of payments to various online hotel room booking services for "online reservation services for the Batavia Downs Hotel" in 2022. On December 2, 2021, the board approved paying Booking.com \$35,000; the board also approved \$35,000 for Expedia.com, and \$60,000 for Travel Click. On January 20, 2022, the board approved new, retroactive 2021 payments to Expedia for \$15,108.14 and Booking.com for \$15,793.51. How were these numbers arrived at?
- Please provide information on the Paycheck Protection Program loan that Hart Hotels/ADK Hospitality received during the COVID pandemic. Your April 28, 2022 board minutes state that Hart Hotels received a \$177,082 PPP loan on March 15, 2021 and used those proceeds in 2021 and that loan was "formally forgiven on March 12, 2022."

As the chief auditor for Erie County government, which is a co-owner of WROTB, I believe it is appropriate for me to make these inquiries, to pose these questions, and to expect thorough answers. Thank you in advance for your anticipated cooperation.

Sincerely,



Kevin R. Hardwick, Ph.D.
Erie County Comptroller

cc: Erie County Legislature
Erie County Executive Mark C. Poloncarz, Esq.
Erie County Fiscal Stability Authority
Francis Warthling, Erie County Director, WROTB
New York State Comptroller's Office
Richard D. Bianchi, Chair, WROTB Board of Directors