



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

June 13, 2024

Hon. Elizabeth J. Kazinskas, Council President
 And City Councilors
 Gardner City Hall, Rm 121
 95 Pleasant Street
 Gardner, MA 01440

RE: Letter of Support and Mayoral Approval – Request by Bay State Racing to Site a Track for the Purposes of Racing at 827 Green Street

Dear Madam President and Councilors,

On April 30th, 2024, my office received notification that GAAMHA, Inc. had entered into a letter of intent with Bay State Racing, LLC to sell the land located at 827 Green Street (commonly referred to as the Carl Dahl House, Andrews Park, LeBlanc Farm, Evergreen Grove, etc.). Included in this notification was a request to site a thoroughbred horse racing track at the site.

Under the General Laws of the Commonwealth, in order for this to occur, **both** the City Council and the Mayor must agree and approve of the measure. There are very few items within the General Laws that prohibit the City Council from overriding a mayoral veto of an item (“mayoral disapproval” as listed in Section 30 of the City Charter of the City of Gardner).

In order to determine whether mayoral approval was merited on this matter, I forwarded this item to the Law Department for review, for which Attorney Vincent Pusateri, Assistant City Solicitor, took charge of.

Based on a review of the legal analysis and research performed by Attorney Pusateri (which has been included in the packet of information for the City Council) and the following reasons, I am writing to inform you that I will **not** be issuing a Mayoral Veto/Mayoral Disapproval on this measure if passed by the City Council, and will sign the measure, pursuant to Section 30 of the City Charter of the City of Gardner.

Referral to the Law Department:

Attorney Pusateri conducted an extremely thorough analysis into the matter and concluded the following:

Under the General Laws of the Commonwealth the proposed use is exempt from Zoning requirements. As such, the only oversight that the City would have before any work is done at the site is this vote by the City Council- and site plan reviews by the Conservation Commission and the Planning Board. However, the work done by the Planning Board and the Conservation Commission are not items that can “stop” or prohibit the project from happening but only layout approvals based on their respective jurisdictions.

Letter Re: Item #11317

Page 1 of 4

Since the General Laws of the Commonwealth exempt this use from Zoning – negating any requirements for special permits, zoning relief, approval hearings before the Planning Board or Zoning Board of Appeals, etc. – the only real authority that the Executive Branch agencies, departments, or commissions can do is regulate the layout of the facility, but not its existence in the City.

Continued Oversight:

While our initial oversight jurisdiction is very limited due to these statutory exemptions, there are still many ways in which this business would be regulated and public input annually obtained to ensure that the business is operating to **best industry standards** in the City.

If this vote is approved by the City Council, following mayoral signature, the application then moves to the Commonwealth’s Gaming Commission. The Gaming Commission is then statutorily required to conduct their own public hearing within the City to determine whether or not to issue final approval for the **annual** gaming license for this business.

Since this is an **annual** license, the Gaming Commission would then be required, by law, to conduct a public hearing within the City each and every year that the track would be in continued operation within the City. This gives the City and its residents a yearly opportunity to address any concerns or questions regarding the track and its operations.

Additionally, while the General Laws prohibit the City from placing any conditions on the approval to race at the site, the Gaming Commission has full authority to issue any conditions, regulations, restrictions, etc. that they chose to, based on the input and evidence received at their public hearing.

As such, it is the opinion of the Administration that this annual public hearing best protects the City moving forward and allows the City to voice any concerns directly to the regulatory agency overseeing this operation.

Furthermore, per the Host Community Agreement (HCA) that would have to be entered into between Bay State Racing and the City, the mayor would also have one (1) appointee to the business’s oversight committee. This is similar to how the Mayor currently has an appointment to members of the Boards of Directors of the Gardner Community Action Committee (CAC), Golden Agers Club, and Gardner Square Two, Inc., based on the bylaws of these various organizations. This provides additional oversight by the City throughout the year, before and after the Gaming Commission hearings take place.

Lastly, the business would also be required to annually submit reports on their operations to the City Council and the Mayor to ensure that the City is fully aware of everything going on with this location.

Protection and Proper Treatment of Horses:

Similar to the way the General Laws remove local jurisdiction from the initial approvals for this application, Federal and State Laws also remove jurisdiction of the care of the animals housed on site from the City's Animal Control Officers to a larger series of regulations to protect the animals.

In 2020, President Biden signed the Horseracing Integrity and Safety Act (HISA) into law. This federal law severely regulates the keeping of thoroughbred horses and horse racing tracks under the United States Department of Agriculture and the Federal Trade Commission (FTC).

Additionally, the General Laws of the Commonwealth give the American Society for the Prevention of Cruelty to Animals (ASPCA) the authority to inspect the facility at any moment in order to ensure the proper treatment and care of the animals is being performed on a daily basis.

Lastly, the Gaming Commission has their own set of regulations regarding the treatment and care of the horses on site, that must be proven to be met as a condition of the annual license application that must be submitted by the business, in order to continue operations as a horse track.

Due to all of these reasons, it is the opinion of the Administration that the animals kept on site would be kept to a healthy and safe standard with several layers of severe regulations to ensure that this standard is maintained.

Financial Benefit:

The City also has a large financial benefit from this operation if approved as well.

When the City Council voted to adopt the local option meals and hotels taxes in May of 2024, I stated the following:

"The FY2025 Budget proposal had \$13,088,995.23 cut from what department heads had requested due to the City's financial constraints. While there is no way these proposals would cover that difference, it does help increase the City's revenue streams in a way that does not overly burden the taxpayers in the City of Gardner. We continue to increase property taxes every fiscal year, but there is only so much that can be done with this with the financial constraints our residents are already paying and dealing with."
(City Council Informal Meeting, May 6, 2024, Items #11232 & 11233)

This is the opinion of the Administration with this item as well. If we do not continue to find ways to grow the City's revenue streams, we simply will be left behind in a place where we just cannot afford to continue to provide the services that our residents require at the quality that they deserve.

This proposal would provide approximately **\$500,000** a year to the city in new revenue. This is an amount almost equivalent to the new meals tax revenue the City is projected to receive.

To further illustrate this, the FY2025 Budget that was adopted by the City Council as their meeting of June 3, 2024, included a full two and one half percent (2.5%) increase in property taxes as allowed under the provisions of Proposition 2 ½. This increase in property taxes to fund the FY2025 budget equated to \$820,677.88.

This proposal would almost bring in new revenue in an amount **almost equal to a full year of new taxes**, thus further alleviating the property tax burden we place on our residents and businesses in the City.

In addition to this anticipated annual revenue, the Host Community Agreement would also require that the business to reimburse the City for all costs associated with Police, Fire, and Emergency Medical Services associated with the site.

Economic Benefit:

This proposal also furthers the continued business growth and investment that the City has been seeing over the course of the last four (4) years.

The applicant has informed the City that this project, if approved, would create **twenty-five (25) full-time jobs** and **over one hundred (100+) seasonal** jobs when races are held.

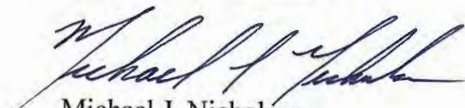
With Gardner's population growing by over ten percent (10%) in recent years, we need jobs that our residents can work and live in our community.

Notification of Approval:

As such, due to all of the above and the full legal analysis on the proposal that as done by the Law Department, it is the opinion of the Administration that this proposal is in the best interest of the City.

As such, it is my intention as Mayor to sign and approve the vote, if passed by the City Council, to allow this project to move forward.

Respectfully submitted,



Michael J. Nicholson
Mayor, City of Gardner