

## MEMORANDUM

**To:** College Township Council  
**From:** Adam Brumbaugh, Township Manager  
**Re:** Casino – Solicitor Opinion  
**Date:** 09/30/2022

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At both the regular meeting of September 1, 2022 and September 15, 2022 College Township Council reviewed and discussed staff modifications to the Township's Frequently Asked Questions (FAQ's) resident on the casino information page of the Township website.

In addition, at the September 1, 2022 meeting Council reviewed a legal opinion from the Township Solicitor, dated August 26, 2022, concerning hypothetical communication to the Pennsylvania Gaming Control Board (PAGCB) that the Township now wishes to opt-out of accepting a Category 4 gaming license in the Township. Township staff initiated this request to the Solicitor in light of the myriad of correspondence received in opposition to the proposed casino and requesting such an action by Council.

In the August 26, 2022 reply to staff's inquiry (attached), the Solicitor provided a definitive opinion, noting:

- *"...the Township's right to opt out expired 60 days after the effective day of the Act which was July 2, 2019.";*

and summarizing:

- *"...the Township cannot opt out of gaming under the Act and cannot, based on other government delays, rescind the conditional approval of the Macy's gaming site."*

During Council discussion at the September 1, 2022 regular meeting, Council again directed staff to request a legal opinion from the Township Solicitor to further explore the possible ramifications of a hypothetical communication to PAGCB indicating a Township desire to opt out of accepting a Category 4 gaming license in the Township. Staff wrote to the Solicitor on September 7, 2022 asking the Solicitor to opine on legal and financial implications of a hypothetical opt out letter and to speak to unintended consequences of such a letter.

The Township Solicitor provided this second legal opinion on September 21, 2022 and Council met in Executive Session on September 22, 2022 with the Solicitor to discuss. Based on questions raised by Council during the Executive Session, the Solicitor provided supplemental information in a letter dated September 26, 2022 (attached). This letter contains information from the original September 21, 2022 opinion letter along with the additional information requested at the Executive Session.

The September 26, 2022 Solicitor opinion builds on the August 26, 2022 legal opinion and further contemplates hypothetical actions Council might take in reference to the conditionally approved land development plan for the proposed project. The Solicitor states that a hypothetical letter to PAGCB could be viewed as an intent to interfere with a validly approved plan. Specific to this issue, the Solicitor states:

- *“The ramifications of such interference by the municipality could, and likely would, result in a civil suit versus the Township.”*

The Solicitor also considered whether the Township would have immunity for a hypothetical action to deny accepting a gaming license – to interfere – in the PAGCB approval. Referencing case law, the Solicitor conveyed:

- *...the court held there is no immunity if the municipality knew its actions would violate the defendant’s due process right. There is also little chance that the Township insurance carrier would provide coverage.”*

In summary, the Solicitor stated:

- *“It is my opinion the Township should not take any action which could be construed as interference or hampering with the developer’s Gaming Control Board approval.”*

During the regular meeting on October 6, 2022 Council should review the legal opinions and advice provided by the Township Solicitor and discuss what actions, if any, should be taken.

*End of Memo*



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MUNICIPAL OFFICES

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September 7, 2022

Louis Glantz, Esq.  
Glantz, Johnson & Associates  
1901 E. College Avenue  
State College, PA 16801

**RE: Request for Opinion; Council Correspondence to Pennsylvania Gaming Control Board**

Solicitor Glantz,

At its meeting on September 1, 2022 College Township Council (Council) discussed the proposed Category 4 casino license now pending before the Pennsylvania Gaming Control Board (PAGCB). Specifically, Council reviewed your opinion letter dated August 26, 2022 pertaining to Council's ability at this stage of the PAGCB process to "opt-out" of receiving – allowing – the location of a Category 4 licensed gaming facility in College Township. Council was appreciative of your definitive opinion on that matter.

During public input on the topic of the casino, Council was repeatedly asked to write to PAGCB stating that College Township would not welcome a casino in the Township. Council members discussed this request and indicated that there could be no consideration of such a letter without a thorough and complete examination of potential legal and/or financial consequences to the Township; thus, the purpose of this letter.

On behalf of Council, I am asking you to provide a formal, written legal opinion that addresses the following:

- If Council were to write PAGCB stating that a Category 4 casino would be unwelcome in the Township, are there any likely or potential legal or financial implications for the Township? If so, what might those be and what might be the magnitude of said legal or financial implications?
- If such a letter was to be written, would that decision by Council have the potential for any unintended consequences to the Township? If so, what might be those unintended consequences?

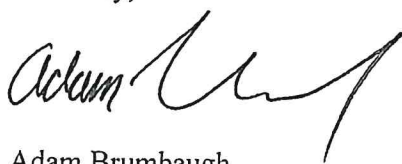
Separately, Council would also like to understand the PAGCB process from this point forward. What happens next as a result of a potential approval of the Category 4 license by PAGCB? Conversely, what happens next if PAGCB were to deny the Category 4 license?

Glantz, 9/7/22  
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Finally, Council seeks your opinion concerning the impact or effect the current PA Commonwealth Court case brought by the Cordish Group on the Category 4 license determination by PAGCB. Specifically, if Cordish is successful in its Commonwealth Court case, what does that mean for the PAGCB consideration of the Category 4 license? Likewise, Council is interested in a legal opinion on the impact of PAGCB decisions related to Cordish's Petition to Intervene, said Petition to be heard by PAGCB at its October 19, 2022 meeting.

I respectfully request your urgent attention to this matter. Please contact me should you need any further clarification of these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Brumbaugh". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Adam Brumbaugh  
Township Manager

c: College Township Council

LAW OFFICES  
**GLANTZ, JOHNSON & ASSOCIATES**

1901 EAST COLLEGE AVENUE  
STATE COLLEGE, PA 16801

LOUIS T. GLANTZ  
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MARK F. LINGOUSKY  
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(814) 238-2491  
FAX (814) 238-8016

WRITER'S DIRECT DIAL NO.:  
(814) 238-0221



September 26, 2022

College Township  
1481 E. College Ave.  
State College, PA 16801

OPINION LETTER

Dear Adam and College Township Council:

This letter is an expansion of my letter dated September 21, 2022. I am also aware Council has decided to be as transparent as possible and release both of my opinion letters. This opinion letter includes all the same information as my second opinion letter dated September 21, 2022 with some additions. My first opinion issued on August 26, 2022 is attached as Tab 1. I believe that opinion clearly states your legal status regarding opting in or out of allowing a casino and you have granted conditional land development approval for the casino.

It is my understanding you now are requesting an opinion as to whether you, as the College Township Council, may write to the Gaming Control Board expressing your desire to have the casino license for College Township denied.

Tab 2 is the letter from the Township with the terms of the conditional approval granted by the Township on September 20, 2021

Tab 3 is an email from your Director of Planning itemizing the history of the land development approval. You will note on that list a 90 day extension approval was granted in August 2022 and the extension payment in the amount of \$1250 was received by the Township on September 2, 2022.

I believe everyone is aware the reason the developer has not been able to finalize the development is the delay at the State Gaming Control Board resulting from an appeal by another bidder.

What perhaps is not common knowledge is the amount of funds the developer has already advanced in reliance upon the conditional approval from the Township. The total amount is about \$20 million. The developer has paid the \$11 million+ licensing fee to the State, \$3.5 million for the building, over \$1 million in design work plus other miscellaneous costs. All of these funds were advanced based on two factors:

1. The Township had opted in for gaming under the 2019 Law; and,
2. The conditional approval granted by the Township.

College Township Council  
Adam Brumbaugh, Manager  
September 26, 2022  
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Now, based upon a significant number of letters from County residents (I believe I received about 200), the Township Council is considering writing a letter to the Gaming Control Board whose purpose would be to request the Gaming Control Board deny approval for the casino in College Township.

#### OPINION

At this point, the Township has approved the land development plan for the casino at the Nittany Mall. In addition, the only obstacle is the approval by the Gaming Control Board which is obviously a State agency and not under the control of the developer. Any adverse communication to the Gaming Control Board based on the same information that was available to the Township at the time of its approval of the plan would, at best, be viewed as a change of heart by the municipality and, at worst, intent to interfere with a validly approved plan.

As stated in my previous opinion, because the Township opted in for gaming and approved the land development plan has been approved by the Township, the Township has no basis to deny or to withdraw approval. Attempting to persuade a State agency to circumvent the developers approval would be an intentional attempt to interfere with the land development approval. The ramifications of such interference by the municipality could, and likely would, result in a civil suit versus the Township. There have been suits brought in Federal court vs. municipalities claiming a denial of due process and denial of substantive due process. These actions are brought under 42 USCS Section 1983. 1983 actions could give the developer not only the right to collect actual damages (in this case ten of millions of dollars) and a potential for triple damages and attorney's fees. In a Third Circuit case, *Blance Rd v. Bensalem*, 57 F.3d 253; *Eichenlaub v. Twp of Indiana*, 385 F.3d 274 (3<sup>rd</sup> Circuit 2004), the court rejected a summary judgment in favor of the township and sent the due process claims back for a trial. While there was no subsequent reported activity, it would appear the case was likely settled for financial damages in favor of the developer.

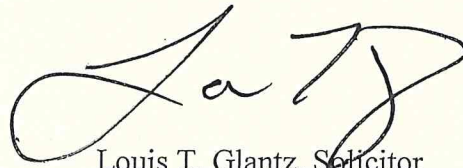
I also considered whether the Township would have immunity for its actions should it choose to interfere in the Gaming Control Board approval. In the same case cited above, the court held there is no immunity if the municipality knew its actions would violate the defendant's due process rights. There is also little chance the Township insurance carrier would provide coverage.

While studying this issue, I also learned even if the casino were not permitted in College Township, the developer could proceed within the regional area in an adjoining township. Further, in reaching this opinion, I not only conducted independent legal research but also consulted with at least six attorney's familiar with municipal law. Each of them concurred with my opinion.

College Township Council  
Adam Brumbaugh, Manager  
September 26, 2022  
Page 3

It is my opinion the Township should not take any Council action which could be construed as interference or hampering with the developer's Gaming Control Board approval.

Sincerely,

A handwritten signature in black ink, appearing to read "L. T. Glantz". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Louis T. Glantz, Solicitor

LTG/ldn

LAW OFFICES  
**GLANTZ, JOHNSON & ASSOCIATES**

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814-238-0221

August 26, 2022

Mike Bloom  
Management Analyst  
[mbloom@collegetownship.org](mailto:mbloom@collegetownship.org)  
1481 East College Avenue  
State College, PA 16801

Re: Gaming

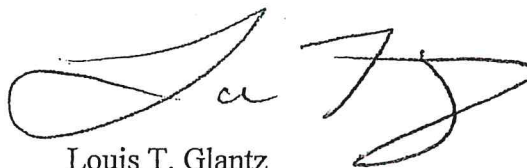
Dear Mike:

I have attached the Municipal option for gaming. Section (a) (1) is very clear the Township's right to opt out expired 60 days after the effective date of the Act which was July 2, 2019. Section (b) permits rescission of the prohibition of gaming but does not permit the subsequent prohibition of gaming.

In addition, the Township approved the preliminary/final land development for the proposed casino in September of 2021. The failure of the applicant to proceed or obtain all of the required approvals is a delay caused by the government, not the applicant, and cannot be used to deny an already conditionally approved plan. Further the applicant has acted in reliance of the Township approval spending a considerable amount of money, which further solidifies the applicant's position.

It is my opinion, as College Township Solicitor, the Township cannot opt out of gaming under the Act and cannot, based on other government delays, rescind the conditional approval of the Macy's gaming site.

Sincerely,

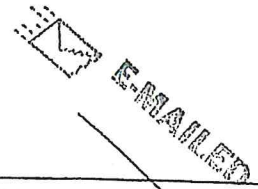


Louis T. Glantz

LTG:ksr  
Attachment



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**VIA EMAIL**

September 20, 2021

Chad Stafford, P.E.  
Penn Terra Engineering  
3075 Enterprise Drive  
State College PA 16801

**Re: Nittany Casino Preliminary/Final LDP**

Dear Chad:

At their regularly scheduled meeting on Thursday, September 16, 2021, College Township Council voted to approve the Nittany Casino Preliminary/Final Land Development Plan dated July 19, 2021 and last revised September 3, 2021, subject to the following conditions:

1. Obtain all required signatures.
2. Pay all outstanding review fees.
3. Fully comply with College Township Code Section 180-12 of the Township Ordinance.
4. Address, to the satisfaction of the Township Engineer, any outstanding comments, including comments regarding traffic flow, signage, lighting, planting variety, and the bollard in the loading dock.
5. Post surety in an amount approved by the Township Engineer.
6. Satisfy any outstanding comments from the College Township Water Authority.
7. Provide proof of NPDES permitting.
8. Sign and record a DSAME.
9. Obtain PennDOT HOP.
10. Add a note to the plan indicated sidewalk waiver to include linear feet totals for concrete sidewalks and striped pedestrian areas.

Please be advised that within ninety (90) days from the date of approval by Council, or **December 15, 2021**, all conditions must be satisfied, final signatures must be obtained, and the plan must be recorded with the Centre County Recorder of Deeds Office. Please record all plan sheets. Failure to meet the ninety (90) day recordation time requirement will render the plan null and void. **AT THE TIME YOU PRESENT THE FINAL PLAN FOR**



Louis Glantz &lt;louis.glantz@gmail.com&gt;

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**Nittany Casino Land Development Plan**

1 message

**Lindsay Schoch** <lschoch@collegetownship.org>

Wed, Sep 14, 2022 at 11:27 AM

To: "Louis Glantz Esq. (louis.glantz@gmail.com)" &lt;louis.glantz@gmail.com&gt;, Adam Brumbaugh &lt;abrumbaugh@collegetownship.org&gt;

Cc: Mike Bloom &lt;mbloom@collegetownship.org&gt;, "Sharon E. Meyers" &lt;smeyers@collegetownship.org&gt;

Louis.

Attached with this email, please find the following:

- \* Conditional Approval Letter dated September 20, 2021;
- \* Memo to Council requesting conditional approval dated September 13, 2021;
- \* First Time extension request from Penn Terra Engineering (PTE), dated November 24, 2021;
- \* Notice to PTE of 90-day extension approval, dated December 3, 2021;
- \* Receipt for \$400 to extend the Plan;
- \* Second Time extension request from Penn Terra Engineering (PTE), dated February 15, 2022;
- \* Notice to PTE of 90-day extension approval, dated March 4, 2022;
- \* Receipt for \$600 to extend the Plan;
- \* Third Time extension request from Penn Terra Engineering (PTE), dated May 26, 2022;
- \* Notice to PTE of 90-day extension approval, dated June 15, 2022;
- \* Receipt for \$900 to extend the Plan;
- \* Forth Time extension request from Penn Terra Engineering (PTE), dated August 23, 2022;
- \* Copy of check in the amount of \$1,350.00
- \* Notice to PTE of 90-day extension approval, dated September 2, 2022;
- \* Receipt for \$1,350 to extend the Plan;
- \* Nittany Casino Land Development Plan dated September 3, 2021. (Coming under separate cover because of size of file)

If you require anything further, please do not hesitate to ask.

Respectfully,

Lindsay K. Schoch, AICP

Principal Planner | College Township | lschoch@collegetownship.org&lt;mailto:lschoch@collegetownship.org&gt;

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<http://www.collegetownship.org/205/Planning-Zoning-Department>

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9\_14\_2022 Nittany Casino Time Extensions and Conditional Approval.pdf