IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 179 E.M. 2007

HSP GAMING, L.P.
Petitioner
v.

CITY COUNCIL FOR THE CITY OF PHILADELPHIA; THE CITY OF PHILADELPHIA; THE CITY PLANNING COMMISSION FOR THE CITY OF PHILADELPHIA
Respondents

In Opposition of the Petition for Review of HSP Gaming, LP
No. 179 E.M. 2007

BRIEF OF *AMICUS CURIAE*, STATE SENATOR VINCENT J. FUMO IN OPPOSITION TO THE PETITION FOR REVIEW OF HSP GAMING, LP

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Pennsylvania State Senator Vincent J. Fumo, in his official capacity as a duly elected member of the state Senate and in the interest of comity between co-equal branches of government, respectfully files this brief of *amicus curiae* pursuant to Pa.R.A.P. 531. Senator Fumo seeks to participate in this proceeding in order to oppose the request for relief sought by the Petitioner, HSP Gaming, LP (hereinafter "HSP"). The decision of Senator Fumo to involve himself in a dispute between a municipal governing authority and a private developer stems from a sincere desire to ensure this Court is not only provided with the insight of one of the primary legislative authors of the statutory language contained in the Pennsylvania Race Horse Development and Gaming Act (hereinafter "gaming Act"), and the amendments thereto, but is also provided with the perspective of an elected representative of the district in which HSP's proposed development site is located.

It is a matter of public record that Senator Fumo was one of the principal drafters of the provisions of the Act and its subsequent amendments. *See, e.g.,* 188 *Legislative Journal of the Pennsylvania Senate* at 69 and 74. (July 1, 2004); 190 *Legislative Journal of the Pennsylvania Senate* at 2205 and 2207 (October 27, 2006). In fact, Senator Fumo's leadership on this issue has been repeatedly acknowledged in statewide media accounts, as well as Pennsylvania Bar Institute educational programs.[1] Senator Fumo's intimate involvement with the development of

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[1] *See, e.g.,* "Editorial: Who owns slots casinos must be clear," *The Allentown Morning Call* (August 18, 2006); "Lawmakers Want Slots Rule Change," *Bucks County Courier Times* (September 9, 2004); "Plan Would Curtail Slots Ownership by Lawmakers," *Philadelphia Inquirer* (September 9, 2004); "Playing Politics on Slots Bill May Haunt Pennsylvania Racetrack Owner," *The Patriot-News* (July 1, 2004); "Some In Senate Want To Reform," *Pittsburgh Post-Gazette* (September 11, 2006); Pennsylvania Bar Institute, *The Gaming Law: The PA Race Horse Development & Gaming Act 2004* (October 2004); Pennsylvania Bar Institute, *Gaming Law*

the statutory foundation for licensed gaming in the Commonwealth did not end in 2004 with the enactment of Act 71. In 2006 Senator Fumo again assumed a prominent role in the development of many of the public policy revisions to the Act, including the preservation of the rights of local governing authorities to exercise zoning and land use control over the development of licensed gaming facilities. *See,* 190 *Legislative Journal of the Senate of Pennsylvania* at 2205 (October 27, 2006) (Sens. Orie and Brightbill acknowledging Senator Fumo's leadership role). This experience is particularly pertinent to this matter because most, if not all of the particular statutory provisions that are implicated in this Petition, were originally conceived and written by Senator Fumo – including sections 1202 (General and specific powers); 1505 (No eminent domain authority); 1506 (Licensed facility zoning and land use appeals); and, 1329 (Nonportability of slot machine license). Though Senator Fumo does not profess to speak for the entire General Assembly, his unique role as the scribe of much of the statutory language contained in the Act, provides beneficial insight to this Court of the public policy objectives that guided the General Assembly's consideration and eventual adoption of the Act, and the amendments thereto.

In addition to his leadership role in the development of the gaming Act, Senator Fumo also represents the voters of the First State Senatorial District, in which Petitioner HSP seeks to develop its gaming facility. As a consequence, Senator Fumo's interest in this proceeding is greater than most other members of the General Assembly. It was his sensitivity to the concerns of the residents neighboring the proposed gaming facility, that influenced his decision in 2006 to end his previous advocacy for the Pennsylvania Gaming Control Board (hereinafter "Gaming

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Update (October 2006).

Board") to exercise local zoning authority over licensed gaming facilities. Senator Fumo announced his decision not to offer an amendment to preempt local government zoning authority, instead substituting the language that is now in section 1506 of the Act. In submitting this brief of *amicus curiae,* Senator Fumo seeks to fulfill his commitment to residents near the proposed gaming facility that he would endeavor to ensure that the provisions of the Act are applied in a manner that permits the City of Philadelphia to exercise its zoning authority in order to satisfy the quality of life concerns of neighboring residential communities.

Senator Fumo comes to this Court committed to ensuring that the provisions of the Pennsylvania Race Horse Development and Gaming Act are applied and interpreted in a manner consistent with the objectives and original intent of the legislature. Unfortunately, HSP's Petition represents a dramatic and unprecedented attempt to construe the provisions of the Act in a manner that subverts the clear public interest goals of legalized gaming. This is unacceptable. The participation in gaming authorized under the Act is a "privilege" – not an inherent right that otherwise entitles a licensed gaming company to compel municipal bodies to prostrate their governing authority for the financial benefit of a few company investors.

SUMMARY OF ARGUMENT

HSP Gaming, LP is impatient. This Petition for Review and the accompanying Application for Emergency Summary Relief has not been submitted in reaction to any adverse action or final decision by the City of Philadelphia. Rather, as conceded by the Petitioner, this matter is a result of the company's perception that the City has not acted quickly enough. Despite its acknowledgment that every necessary City zoning authorization has been introduced as an ordinance in Philadelphia City Council, HSP has claimed unsubstantiated and highly speculative financial costs and burdens as a result of the City's deliberative process. The Petitioner seeks this Court to do the extraordinary – to either deem proposed City Council ordinances to be "enacted" or, in the alternative, insert this Court into the local zoning process to ensure HSP receives immediate zoning approval for their development plans as proposed.

This request is contradictory to both the plain and unambiguous provisions of the Pennsylvania Race Horse Development and Gaming Act, as well as the extensive legislative history of the development of the pertinent statutory language. The gaming Act does not preempt or otherwise usurp local land use oversight of gaming facilities. Though granting the Gaming Board sole authority to locate gaming venues, these operations must adhere to local zoning and land use requirements and conditions.

The gaming Act explicitly limits direct appeals involving land use matters to this Court from "final" orders or decisions. It does not permit the appeal or challenge of a "non action." Though the process in which casino development may be slow, controversial and risky, the legislature repeatedly rejected amendments to the gaming Act that would have expedited the implementation of HSP's development. Additionally, the Pennsylvania Gaming Control Board

as already informed HSP that claims of unanticipated delay and opposition are not persuasive in seeking to avoid statutory requirements under the gaming Act. There exists adequate administrative remedies available to HSP if it determines that its existing development site is no longer viable. The gaming Act permits a developer to seek Gaming Board approval to relocate its venue to a more favorable location. The Petitioner has choose not to pursue this option.

HSP does not control the entire land site of which it is seeking zoning approval for development. Accordingly, any claim of delay and harm is purely speculative. To date, the Petitioner has been unsuccessful in its attempts to resolve its land control obstacles. Until such time as the company is able to obtain legal control over the property it seeks to develop, it cannot have a legal expectation to receive necessary zoning approval.

The General Assembly enacted the Pennsylvania Race Horse Development and Gaming Act as a means of achieving several important public benefits. However, the legislature succinctly stated that the public interest and the protection of the public should be elevated above all other considerations when implementing the provisions of the Act. Any attempt to circumvent or short-circuit the right of local governments to use zoning and land use controls to protect the public and communities in which gaming facilities are to be located is contrary to the General Assembly's statutory pronouncements in the Act.

ARGUMENT

I. COUNTER STATEMENT OF JURISDICTION.

The Petitioner's attempt to invoke this Court's jurisdiction is premised upon a legally flawed foundation. Instead of seeking judicial intervention following a final issued order, decision or determination by a local governing instrumentality involving a zoning or land use matter implicating the development plans of HSP, this Petition for Review impatiently seeks this Court's intervention based only upon a claim of "delay." Petition for Review at ¶ 19-22. There is no final order, decision or determination upon which this Court's review is sought. Rather, the Petition is seeking the intervention of the Pennsylvania Supreme Court in the City of Philadelphia's deliberate and careful consideration of the land use implications of HSP's development plans simply because HSP is displeased with the pace of the City's review and exercise of its zoning authority.[2] The Pennsylvania Race Horse Development and Gaming Act neither provides this Court with the jurisdictional authority to review the pace or delays associated with the City of Philadelphia's zoning approval process, nor does it contain any language that would otherwise provide a gaming developer with an expectation that the zoning review and approval of gaming facilities should occur within an expedited time period.

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[2] There exists substantial issues of fact concerning the Petitioner's claims. In support of its claim of City opposition, HSP has devoted considerable space in its pleadings to lob ad hominem attacks on two individual members of Philadelphia City Council, going so far as to attach an email exchange between a council member and a constituent. Petition for Review at 98. Personal attacks on elected officials have been an unfortunate characteristic of HSP's development efforts. *See, e.g.,* Brennan, "Casinos, activists dispute signatures," *Philadelphia Daily News* (March 7, 2007) (Counsel for HSP charged "these Council people, they don't stand up . . . they see 27,000 names and what do they do? They run for the hill."). However, HSP's criticisms against two outspoken members of Philadelphia City Council are irrelevant when considering the official actions of a 17 member legislative body.

As an alternative, HSP seeks to invoke the extraordinary jurisdiction of this Court pursuant to the Judicial Code (42 Pa.C.S.A. § 726) as well as its King's Bench powers. Senator Fumo respectfully suggests that the circumstances presented in this Petition do not rise to a level that would ordinarily justify the exercise of this Court's plenary authority under either the Judicial Code or its King's Bench power. *Pennsylvania State Ass'n of County Commissioners v. Commonwealth*, 545 Pa. 324, 681 A.2d 699 (1996) (this Court hesitantly determined that a writ of mandamus was only warranted because the matter involving state funding of the unified judicial system).[3]

A. The Pennsylvania Race Horse Development and Gaming Act does not confer jurisdiction to this Court to consider matters that are not direct appeals from final orders, determinations or decisions of political subdivisions involving casino land use matters.

The request for this Court to involve itself in the City of Philadelphia's lawful exercise of its zoning and land use authority over gaming facilities, rests upon an aggressively broad

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[3] Though it is the intention of *amicus curiae,* Senator Fumo, to confine his remarks to the various statutory provisions of the gaming Act, the Petitioner's alternative jurisdictional argument merits a brief response. Though citing both this Court's extraordinary jurisdictional and King's Bench powers, these jurisdictional concepts are not identical. The Judicial Code permits the Supreme Court to assume plenary jurisdiction of any matter "pending before any court". 42 Pa.C.S.A. § 726. There is no related pending matter before any inferior Court involving HSP, therefore plenary jurisdiction is not appropriate.

King's Bench authority is not limited to a pending matter before an inferior court. Rather, King's Bench jurisdiction stems from this Court's superintendency over the administration of the courts of the Commonwealth. *Pennsylvania Gaming Control Board v. City of Philadelphia,* 928 A.2d 1255, 1265 (Pa. 2007); Darlington, McKeon, *Pennsylvania Appellate Practice 2nd Ed.* § 10:23 . It cannot be claimed that this matter involves any supervisory issue concerning judicial affairs or the administration of justice within the state court system. Accordingly, HSP's jurisdictional arguments should be rejected.

interpretation of section 1506 of the Pennsylvania Race Horse Development and Gaming Act.[4] HSP's argument is contrary to both the legislative history of the development of this section, as well as the clear intent of the General Assembly. It is well established that this Court may only exercise such jurisdictional authority as may be provided by law, or as may be necessary for the administration of the Court. Pa.Const., art V, § 2; *Commonwealth v. Sanders,* 483 Pa. 29, 394 A.2d 522 (1978) (the Supreme Court cannot obtain jurisdiction to consider an appeal unless provided by statute). This Court's limited authority to consider direct appeals of zoning matters that implicate licensed facilities is set forth in section 1506 of the Act, as follows;

> "In order to facilitate timely implementation of casino gaming as provided in this part, notwithstanding 42 Pa.C.S. § 933(a)(2) (relating to appeals from government agencies), the Supreme Court of Pennsylvania is vested with exclusive appellate jurisdiction to consider appeals of a final order, determination or decision of a political subdivision or local instrumentality involving zoning, usage, layout, construction or occupancy, including location, size, bulk and use of a licensed facility. The court, as appropriate, may appoint a master to hear an appeal under this section." (Emphasis added).

The intended purpose of this provision was to facilitate the timely implementation of casino gaming by shortcutting the normal jurisdictional appeal process by which persons may challenge a final decision from a local governing instrumentality, such as a zoning board. In other words, it is a direct appellate provision, bypassing the routine requirement that an appeal from final order, determination or decision of the local governing body originate in a Court of Common Pleas. This section mirrors section 1204 of the Act, which also conveys "exclusive appellate jurisdiction to consider appeals of a final order, determination or decision of the

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[4] Act of July 5, 2004, P.L. 572, No. 71, *as amended by,* Act of November 1, 2006, P.L. 1243, No. 135; 4 Pa.C.S.A. § 1101, *et seq.*

[Gaming Control] Board," concerning the approval or denial of a slots license. Recognizing the potential for deleterious litigation, the legislature attempted to streamline the appeals process under these two limited circumstances.

The Act's statutory grant of jurisdiction to this Court is explicitly limited to appeals from "a final order, determination or decision." (Emphasis added) 4 Pa.C.S.A. § 1506. Petitioner HSP attempts to contort the plain and unambiguous language in section 1506 to permit appeals of perceived "delays" in the consideration of local zoning matters by asserting that the term "determination" should include "inaction by a government unit," as otherwise defined by the Pennsylvania Rules of Appellate Procedure. Petition for Review at ¶ 11. Unmentioned by the Petitioner is the fact that appeals from such "inaction" are explicitly limited to matters that are "subject to judicial review by a court under section 9 of Article V of the Constitution of Pennsylvania". 42 Pa.C.S.A. § 102. Article V, section 9 of the Pennsylvania Constitution does not provide a right to appeal from a legislative body during the pendency of proposed legislation. Pa. Const. art V, § 9. Furthermore, t is noteworthy that the term "inaction" or "delay" is conspicuously missing from the provisions of section 1506. Had the legislature intended to permit casino developers to appeal delays in the legislative or zoning process, it could have used the term "inaction" or "delay" to describe the type of "determination" from which an appeal may be made. Within the context of the gaming Act, the legislature chose not to include such relief.[5]

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[5] In fact, the General Assembly has demonstrated its ability to attach a liability or right resulting from "inaction" if it so intends. *See, e.g.,* 13 Pa.C.S.A. § 9618 (no liability for "inaction" of a secured party in default enforcement); 15 Pa.C.S.A. § 2501 (no director or shareholder liability for "inaction"); 15 Pa.C.S.A. § 8517 (liability of a limited partner created by his "inaction" under law of estoppel); 15 P.S. § 20107 (no liability for qualified shareholder for "inaction"); 20 Pa.C.S.A. § 7777 (delegated trustee not liable for "inaction"); 43 P.S. § 682.13 (person applying for vocational rehabilitation entitled to hearing if aggrieved by "inaction"); 52

The Pennsylvania Rules of Statutory Construction provide the exclusive means by which terms and phrases contained in acts of the General Assembly are to be interpreted by the Courts. 1 Pa.C.S.A. § 1901[6]; *Commonwealth v. Lewis*, 885 A.2d 51 (Super. Ct. 2005), *appeal denied,* 588 Pa. 777, 906 A.2d 540 (Courts may disregard the statutory construction rules only when the application would be inconsistent with the manifest intent of the legislature.). In particular, the Rules of Statutory Construction provides that "[w]ords and phrases shall be construed according to the rules of grammar and according to their common and approved usage." (Emphasis added) 1 Pa.C.S.A. § 1903(a).

This Court has recently interpreted the word "determination" within the context of section 1506. In *Pennsylvania Gaming Control Board v. City Council of Philadelphia*, this Court reasoned that, "[t]he dictionary defines a 'determination' as 'the act of coming to a decision or of fixing or settling a purpose[,]' and a 'decision' as 'the act or process of deciding; determination, as of a question or doubt, by making a judgement[;] the act or need for making up one's mind[;] something that is decided; resolution.'" (Emphasis added) 928 A.2d 1255, 1264 (Pa. 2007),

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P.S. § 3212.1 (mine owners "inaction" responsible for failure to reinspect); 63 P.S. § 456.511 ("inaction" by obligor may adversely affect lender's security); 63 P.S. § 456.522 (no liability for "inaction" by persons holding certain covered loans).

[6] Section 1901 provides;

> "In the construction of the statutes of this Commonwealth, the rules set forth in this chapter shall be observed, unless the application of such rules would result in a construction inconsistent with the manifest intent of the General Assembly." (Emphasis added).

citing, The Random House Dictionary of the English Language 517, 541 (2nd Ed. 1987).[7] This Court did not construe the term "determination" to included "inaction" or "delay" by a legislative body.

HSP's jurisdictional interpretation of Section 1506 also ignores the General Assembly's purposeful use of the term "final" to describe the type of "order, determination or decision" that may be appealed directly to this Court. Under commonly applied rules of grammar, "final" is an adjective, modifying the nouns that immediately follow – in this case, "order, determination or decision." This common sense reading of this clause is consistent with the doctrine of *ejusdem generis*, which provides that where general words follow a word of particular and specific meaning, such general words are not to be construed broadly, but are to be held as applying only to persons or things of the same general kind or class as specifically mentioned. *See, e.g., Butler Fair and Agricultural Ass'n v. School District of City of Butler,* 389 Pa. 169, 132 A.2d 214 (1957). HSP's assertion that the term "determination" should be read to include matters that are not otherwise "final" is contrary to the Statutory Rules of Construction and ignores commonly accepted rules of grammar. 1 Pa.C.S.A. § 1203.

Uncontested by HSP is the fact that there has been no final order, decision, determination, ruling or resolution from the City of Philadelphia that would have otherwise permitted an appeal under 42 Pa.C.S.A. § 933(a)(2). The Petitioner does not suggest that there has been a local governmental rejection or final determination of its zoning requests. Rather, the fundamental premise of HSP's complaint is that the City of Philadelphia has either delayed or otherwise not

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[7] *Black's Law Dictionary* similarly defines "determination" as "[t]he decision of a court", as the "ending or finality, the ending of a controversy or suit" or as "the coming to an end in any way whatever." *Black's Law Dictionary, Deluxe Edition* 536 (4th Ed. 1957).

acted quickly enough for the satisfaction of HSP.[8] Petition for Review at ¶ 19, 21 and 22. This is insufficient justification for such extraordinary releif. Significantly, the Petitioner is unable to cite any language within the gaming Act that provides a particular period within which a licensed gaming facility is to receive local zoning approval, the facility is to be constructed or gaming operations are to commence.[9]

HSP should not be surprised that City officials intend to carefully and deliberately consider the various implications of development along the Delaware River – particularly development that involves a matter as new and controversial as casino gaming. In fact, this notion was recently reinforced by the Pennsylvania Gaming Control Board when it voted

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[8] The Petitioner misleadingly references *Marinari v. Department of Environmental Resources*, 129 Pa.Cmwlth. 569, 566 A.2d 385 (1990) for the supposition that this Court may dictate a timetable to a municipal legislative body for the consideration of ordinances. Petition for Review at ¶ 11. *Marinari* involved a claim against the state Department of Environmental Resources seeking the department to process a landfill application permit. The landowner, seeking the landfill permit, complained that the department failed to act on the permit application for over 3 years. 129 Pa.Cmwlth. at 571, 566 A.2d at 386. In this case, the department had actually informed the landowner that it would issue the permit, but that it needed additional time to draft permit conditions. *Id.* In rejecting the preliminary objections of the department, Commonwealth Court determined that the landowner had no other administrative remedy in order to compel action on a matter that had been pending for over 3 years. Significantly, the Commonwealth Court took note that the landowner was "not requesting this Court to grant or deny the permit on substantive grounds." (Emphasis added) *Id* 129 Pa.Cmwlth. at 574, 566 A.2d at 388. The only claim by the landowner was to compel the issuance of the conditions by the Department.

By comparison to the 3 year delay cited in *Marinari*, the Philadelphia City Council's consideration of pertinent zoning ordinances began May 24, 2007 – less than 6 months ago.

[9] To the contrary, several provisions of the gaming Act recognize that circumstances may arise delaying timely development of the gaming facility, thereby justifying postponement of certain statutory requirements. *See, e,g.,* 4 Pa.C.S.A. § 1210(a) (an operator may seek extension of time within which it is required to place into operation a minimal number of slot machines); § 1207(17) (a licensee may seek extension of time to operate a temporary facility prior to completion of the permanent gaming facility).

unanimously to reject HSP's request to delay posting its statutorily required $50 million licensing payment. *In re Petitions for Extension of Time by HSP Gaming, LP, SugarHouse Casino, et al.*, PGCB Dkt. Nos. 1367, 1356 (Opinion October 3, 2007); ATTACHMENT "A".

In July, HSP and Philadelphia Entertainment and Development Partners, LP, (the development group approved for the second gaming license within the City of Philadelphia) filed a petition with the Gaming Board seeking to postpone payment of the $50 million license fee required under section 1209(a) of the Act. *Id* at 1. As it has done in this matter, HSP asserted that Philadelphia City Council has been slow in acting on its zoning ordinances and that being forced to pay the $50 million licencing fee, prior to a final resolution of its zoning and land use issues, would impose a undue financial hardship. *Id* at 4. The Gaming Board rejected HSP's argument. In so doing, the Board stated;

> "The delay in Philadelphia, while not attributed to the licensees' actions, falls within the purview of reasonable expectations. The Philadelphia casino projects had been subject of intense public scrutiny long before the Board issued the award of the licenses and have endured numerous legal challenges since. Accordingly, HSP . . . should have anticipated that they would encounter delays in their constructions schedules due to adverse actions in the City of Philadelphia." (Emphasis added) *Id* at 6.

Recognizing that casino development delays are reasonable and expected, the Board noted that HSP should have anticipated such delays in their development plans. In fact, the Board continued to observe;

> "It is not uncommon for the gaming industry in general in a new jurisdiction to be a source of controversy and to incur opposition. In other words, both entities went into the process with their eyes wide open to the possibilities of encountering delays in their projects. The Board disagrees that a delay in a new jurisdiction

> such as this is unexpected and thus finds that the petitioners have not established good cause for granting an extension." (Emphasis added) *Id* at 7.

Unfortunately, HSP now attempts to recycle the same arguments that were found unpersuasive by the Gaming Board earlier to support its request for this Court's intervention into the City's exercise of its zoning authority. Circumstances have not changed since the Gaming Board's decision this earlier month to suddenly make HSP's arguments more compelling.

B. The provisions of the Pennsylvania Race Horse Development and Gaming Act provide an adequate administrative remedy to HSP Gaming, LP.

In its enactment of the Pennsylvania Race Horse Development and Gaming Act, the legislature provided an adequate statutory remedy to casino developers who encounter circumstances beyond their control which may forestall or prevent the timely completion of their development plans. Consistent with the gaming Board's authority to determine the location of licensed gaming facilities in the Commonwealth, section 1329 of the Act permits the Board, upon good cause shown, to approve a licensee's request to move or relocate the physical location of the gaming facility.[10] Foreseeing the possibility that circumstances may arise that could hinder or prevent the construction of a gaming facility as originally proposed and approved by the Board, the General Assembly included a provision that would provide the statutory flexibility to

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[10] 4 Pa.C.S.A. § 1329 provides;

> "Each slot machine license shall only be valid for the specific physical location within the municipality and county for which it was originally granted. No slot machine license shall be permitted to move or relocate the physical location of the licensed facility without board approval for good cause shown."

the Gaming Board to consider the nature of the particular circumstance and approve a relocation.

There is nothing in the gaming Act that prevents HSP from seeking approval from the Board to relocate to another area within the City of Philadelphia that would present fewer zoning and land management challenges. If in HSP's judgement, local opposition, zoning conditions or escalating development costs alter the financial viability of the intended development site, HSP can seek Board approval to move elsewhere. Though the gaming Act provides the Board with the "sole regulatory authority over the conduct of gaming" (4 Pa.C.S.A. § 1202(a)(1)), there is nothing in the Act that imposes a zoning approval time period for a particular development site. In addition, the Board's approval of a development site based on evidence presented in 2006, does not ensure the development site will remain viable years later. The Board's decision to approve HSP for a gaming license "does not give . . . HSP/SugarHouse . . . a property right", rather the license may be revoked, suspended or otherwise modified if the Board deems that it would be "in the best interest of the public." *In re Application of HSP Gaming, LP, et al, for Category 2 Slot Machine Licenses in Philadelphia, Pa.*, PGCB Dkt. No. 1356 at 112-113 (Opinion, December 2006); *see, also,* 4 Pa.C.S.A. § 1102(7) (participation in gaming under the Act "shall be deemed a privilege"). If HSP deems the existing zoning and regulatory approval process for its construction plans too burdensome, then it is likely to be in the public interest for the company to seek an alternative location within the City.

HSP is aware of the statutory opportunity to relocate its development project, but has refused to take advantage of this remedy. In August, Governor Rendell wrote to the Chairman of the SugarHouse Board, inquiring as to whether or not SugarHouse would consider relocation from their present site. In response, Neil Bluhm, the board's Chairman, stated that it was his

conviction that any process to relocate their planned development would "present unacceptable delays and costs." *See,* Letter of September 11, 2007, ATTACHMENT "B". The letter clearly demonstrates HSP's deliberative and informed decision to assume the costs and risks associated with its existing site location and forego the option of seeking Board approval to relocate to an alternative location under the Act that may otherwise enable HSP to develop its gaming facility in a more expeditious manner. Accordingly, HSP is not justified petitioning for this Court's intervention without first exhausting all available remedies under the gaming Act. *County of Berks v. Pennsylvania Liquor Control Board,* 544 Pa. 541, 678 A.2d 355 (1996); *Shenango Valley Osteopathic Hospital v. Department of Health*, 499 Pa. 39, 451 A.2d 434 (1982).

It is also worthwhile noting that despite HSP apocalyptic description of the delay and challenges it has encountered, HSP's experience is neither unique in Pennsylvania nor the gaming industry in general. *See,* Cabot, *Casino Gaming / Policy, Economics and Regulation* 193 (UNLV International Gaming Institute, 1996). In Pennsylvania, construction has not begun on gaming facilities approved by the Board for either Bethlehem or Pittsburgh.[11] In fact, due to significant delays associated with underlying administrative proceedings and appeals, the application for the final remaining Category 2 gaming license anticipated for western Pennsylvania has yet to be considered by the Gaming Board.[12] In fact, the Gaming Board made

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[11] Far from being unusual, the gaming facility approved for Pittsburgh has also encountered circumstances that are also frustrating original development plans and schedules. *See, e.g.,* Boren, "North Shore casino design review in limbo," *Pittsburgh Tribune-Review* (October 3, 2007); Belko, "Barden's Casino unlikely to open until '09," *Pittsburgh Post-Gazette* (October 10, 2007); Boren, "Teams, casino to next tackle road changes," *Pittsburgh Tribune-Review* (October 13, 2007).

[12] In addition, it should be also noted that the Gaming Board has not issued the two available Category 3 licenses.

particular note that HSP's claim of financial burden, resulting from its recent payment of the $50 million licensing fee, is significantly less than other gaming operators. *In re Petitions for Extension of Time by HSP Gaming, LP, SugarHouse Casino, et al.*, PGCB Dkt. Nos. 1367, 1356 at 7 (Opinion October 3, 2007); ATTACHMENT "A". In Pittsburgh, Majestic Star Casino paid the license fee on July 27, 2007, even though it has also not received necessary local approval for construction of its gaming facility. By comparison, HSP did not pay its license fee until October 17, 2007 – only 2 weeks ago.

II. THE PROVISIONS OF THE PENNSYLVANIA RACE HORSE DEVELOPMENT AND GAMING ACT DO NOT PREEMPT LOCAL ZONING AND LAND USE CONTROL.

The legislative evolution of Section 1506 of the gaming Act underscores the General Assembly's clear intention to permit local municipal governments to retain and exercise their traditional zoning and land use authority over gaming facilities, without Commonwealth interference. Section 1506 did not always reflect this objective. When the legislature first authorized slot machine gaming in 2004, through its enactment of Act 71, section 1506 was originally written to preempt local zoning authority. *See,* Act of July 5, 2004, P.L. 572, Act 71. Section 1506 of Act 71 provided that the conduct of gaming and a licensed facility;

> ". . . shall not be prohibited, or otherwise regulated by any ordinance, home rule charter provision, resolution, rule or regulation of any political subdivision or any local or State instrumentality or authority that relates to zoning or land use . . .".

This broad preemption language did not survive legal challenge. In its consideration of the first legal assault upon Act 71, this Court determined that the legislature's conveyance of zoning

control to the Board in section 1506 was an unconstitutional delegation of legislative authority without "adequate standards upon which the Board may rely in considering the local zoning and land use provision." *Pennsylvanians Against Gaming Expansion Fund, Inc. v. Commonwealth,* 583 Pa. 275, 335, 877 A.2d 383, 419 (2005). This decision removed any statutory authority that would support circumvention of local zoning control over gaming facilities.

In 2006, the General Assembly amended Act 71 in order to make several public policy revisions. *See,* Act of November 1, 2006, P.L. 1243, No. 135. Prominent among these changes was the legislature's focus on the issue of local zoning control, in particular, the ability of the City of Philadelphia to maintain zoning authority over planned casino development along the waterfront. Senate Bill 862, which was to eventually become Act 135, endured an extraordinary number of amendments, as members of the House of Representative and the Senate attempted to reconcile differences concerning the public policy issue of local zoning control.[13] Central to this process was the legislature's goal of balancing the interests of local governing authorities to manage and control land development, with the need of the Commonwealth to strategically locate gaming facilities in a manner that maximizes revenue, and the desire of casino developers to avoid unreasonable delay in constructing their facilities.

Reacting to this Court's decision in *Pennsylvanians Against Gaming Expansion Fund*, Senator Fumo drafted language, which the Senate voted to adopt 50-0, that would have again delegated the Gaming Board sole local zoning control over the licensed facilities. Senate Bill

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[13] In fact, Senate Bill 862 was assigned 11 different printer's numbers reflecting the various bill drafts. *See,* SB 862, printer's numbers' 1105, 1241, 1302, 1319, 1553, 2048, 2101, 2182, 2186, 2208 and 2218. In so doing, the House and Senate exchanged different versions of the bill a total of 4 times, between its original introduction on September 14, 2005 and its eventual enactment on October 30, 2006.

862, printer's number 2048 (pages 90-96); ATTACHMENT "C" [14]; 190 *Legislative Journal of the Senate of Pennsylvania* at 2060 (September 27, 2006). The language adopted by the Senate applied detailed land use standards, for the Gaming Board to administer, that mirrored those already adopted by the City of Philadelphia. *Id.* However, upon consideration of Senate amendments, the House of Representatives voted 161-30 to remove these standards, instead adopted a blanket preemption provision that simply delegated to the Gaming Board the authority to "determine issues involving zoning in accordance with local zoning ordinances in effect . . .". Senate Bill 862, printer's number 2182 (pages 96-97); 190 *Legislative Journal of the House of Representatives* at 2149 (October 17, 2006). Though differing in the manner in which zoning authority was delegated to the Gaming Board, both the House and Senate voted to preempt local zoning control. The concord would not remain.

At this point in the legislative process, section 1506 of Senate Bill 862 underwent a significant change, demonstrating a clear policy shift by the legislature. Responding to concerns raised by the Mayor of the City of Philadelphia, members of Philadelphia City Council, and residents neighboring the planned casino development, Senator Fumo announced his decision to end his support for any statutory language that would preempt or otherwise limit local zoning authority over gaming development. *See,* Shields, "Local victory on slots issue," *Philadelphia Inquirer* (October 19, 2006); Brennan, "Casino zoning battle," *Philadelphia Daily News* (October 23, 2006); www.fumo.com/Press_Releases/GamingZoning10-17-06 . Consequently, on October 23, 2006, Senator Fumo offered an amendment to substantially rewrite section 1506

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[14] In an effort to avoid the "everything and the kitchen sink" approach to attachments, only the pertinent pages have been including for this Court's consideration.

of Senate Bill 862 – removing language that would have preempted the City's zoning authority and replacing it with the provisions reflected in section 1506's present statutory form. *See,* Senate Bill 862, printer's number 2208 (page 214). The newly redrafted section no longer preempted or limited the City's land use authority. Instead, it included an expedited appeals process to permit the timely resolution of appeals from final orders and decisions involving land use matters. *Id.* At the same time, Senate Bill 862 preserved the sole authority of the Gaming Board to determine the location of gaming facilities. *Id* at 148. Upon consideration of these proposed changes, the Senate voted 50-0 to adopt Senator Fumo's compromise language and returned the bill to the House for concurrence. 190 *Legislative Journal of the Senate of Pennsylvania* at 2178 (October 24, 2006). The next day, the House voted 195-0 to concur with the compromise language. 190 *Legislative Journal of the House of Representatives* at 2330 (October 24, 2006). On November 1, 2006, Senate Bill 862 was signed into law by the Governor, thereby becoming Act 135 of 2006.

The history of the legislative development of section 1506 evidences the clear intention of the General Assembly to permit local governments, including the City of Philadelphia, to exercise their local zoning authority without the interference of the Commonwealth.[15] The legislature did not simply enact a bill that failed to include the preemption of local zoning control, but it explicitly considered such language and voted overwhelmingly to reject it. 190 *Legislative Journal of the Senate of Pennsylvania* at 2206 (October 27, 2006) (Sen. Fumo

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[15] In ascertaining the intent of the General Assembly, within the context of statutory interpretation, Pennsylvania courts routinely take judicial notice of legislative journals. *Pennsylvania School Boards Ass'n, Inc. v. Commonwealth Ass'n of School Administrators,* 569 Pa. 436, 805 A.2d 476 (200).

remarked ". . . because of zoning preemption for Philadelphia. In order to put to rest all concerns related to preemption the Senate removed all references . . ."). The fact that Section 1202 of Act 135 designated the Gaming Board as the sole authority to determine the location of gaming facilities, does not nullify the City's zoning rights. These two provisions are not mutually exclusive – rather they represent an effective balance between conflicting public policy objectives – the need to have a statewide plan of gaming to maximize revenue potential and minimize competition, and the need to preserve the legal authority of political subdivisions to ensure that casino development is completed in a manner that is consistent with the public interest and local community concerns. Unfortunately, HSP seeks to subvert this balance by elevating the Board's decision to locate a license above the public interest of preserving local zoning authority.

By seeking this mandamus relief and the intervention of this Court, HSP ignores both the clear and unambiguous language contained in section 1506, as well as the extensively documented legislative history of the section's development. HSP's only response is to claim the Act's delegation to the Gaming Board the authority to locate licensed gaming facilities statewide, somehow reduces the City's exercise of its zoning authority to a simple ministerial act. Petition for Review at ¶ 6. There is absolutely no evidence in the legislative record to support such a claim. To the contrary, the legislative record underscores the fact that the legislature took great pains to preserve the deliberative process through which zoning and land use authority is exercised.[16] Far from being a ministerial exercise, City Council presently is considering the

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[16]Underscoring the absolute intent of the General Assembly to subject gaming facilities the oversight of local governments, the House voted 152-42 to remove language in Senate Bill 862 that would have exempted gaming facilities from local ordinances imposing indoor smoking

adoption and revision of specific requirements that casino developers would be compelled to follow – including; outdoor advertisement restrictions, light wattage limitations, noise mitigation, parking space requirements, setbacks, green space and landscaping criteria, water runoff management, fire and safety protections, roadway egress and ingress requirements, environmental mandates and water and sewer standards. Though City Council has initially considered these matters and enacted a Commercial Entertainment District Ordinance in February of 2006, it has not defined the geographical boundaries of the entertainment district. Philadelphia Code § 14-408. The deliberative process through which Council will set the boundaries of the Entertainment District is not a simple ministerial act, but is the means through which a legislative body will carefully consider the imposition of additional land use requirements. In fact, City Council began this process with the introduction of three legislative proposals on May 24, 2007. *See,* City Council Bill Nos. 070456, 070457 and 070458. HSP's Petition seeks to avoid City Council's legislative process, describing it as an "administrative duty" and asserting that the 6 months the company has awaited site plan approval (during which HSP's payment of the $50 million fee was made only 2 weeks ago) should compel this Court to declare the proposed City ordinances "duly enacted". Petition at ¶ 166. The Petitioner cannot cite any statutory authority or comparable precedent that would permit such extraordinary relief against a legislative body.

HSP cites no state judicial precedent involving a court order issued against an independent legislative body that "deems" a proposed bill or ordinance to be enacted. Instead,

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bans. *See,* 190 *Legislative Journal of the House of Representatives* at 2342-2343 (October 24, 2006).

the Petitioner cites *Linda Development Corp. v. Plymouth Township, et al.* 3 Pa.Cmwlth. 334, 281 A.2d 784 (1971) and *Commercial Properties Inc. v. Peternel,* 418 Pa. 304, 211 A.2d 514 (1965) for the proposition that this Court can compel Philadelphia City Council to pass zoning approval legislation. HSP's interpretation is wrong. *Commercial Properties* involved a claim against township officials who introduced a re-zoning ordinance which, if enacted, would frustrate the developer's plans. This Court determined that the sole purpose of the proposed ordinance was to prevent specific lawful development plans. 418 Pa. at 309-310, 211 A.2d at 518. By comparison, City Council has introduced proposed ordinances, which if enacted, would permit HSP's development plans. It is uncontested that City Council has taken no official action that would prevent or prohibit gaming development. Accordingly, *Commercial Properties* is simply not applicable to this matter.

The Petitioner's reliance on *Linda Development* is equally misplaced. Commonwealth Court's decision in *Linda Development* is limited to a circumstance in which a zoning ordinance was declared unconstitutional, thereby permitting the developer to receive applied for permits as a right. 3 Pa.Cmwlth. at 342, 281 A.2d at 788. Again, despite HSP's dire hyperbole, Philadelphia City Council has not taken any adverse action against the proposed development plans.[17]

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[17] HSP also references *Emerald Casino v. Illinois Casino Gaming Board,* 803 N.E.2d 914 (Ill. Ct. App. 2003) to suggest that a state Court will enforce clear legislative directives concerning the placement of gaming facilities. Ironically, HSP is correct. Far from involving a matter of local zoning control, *Emerald Casino* involved an application by a gaming applicant to relocate their gaming facility pursuant to statutory language in the Illinois gaming law that permitted such a move. The Illinois Court determined that the Illinois Gaming Board was without authority to thwart the company's effort to relocate in derogation of a clear legislative directive. 803 N.E.2d at 927-928. In this matter, there is no legislative directive, clear or otherwise, that would permit a gaming company to circumvent local zoning control.

Instead, HSP's Petition directs its focus upon the financial development costs associated with delay. Petition for Review at ¶¶ 128-142. Though a thorough rebuttal of these claims would require an evidentiary hearing, it is sufficient to note that these claims of financial cost are speculative at best. The provisions of the gaming Act are devoid of any statutory expectation of a constriction / development process that will not encounter delays, setbacks or cost overruns. Such is the nature of any speculative development project. *See, In re Petitions for Extension of Time by HSP Gaming, LP, SugarHouse Casino, et al.*, PGCB Dkt. Nos. 1367, 1356 at 7 (Opinion October 3, 2007) ("HSP . . . should have anticipated that they would encounter delays in their constructions schedules due to adverse actions in the City of Philadelphia.").

III. THE GENERAL ASSEMBLY EXPLICITLY REJECTED LANGUAGE THAT WOULD HAVE EXPEDITED HSP'S DEVELOPMENT PLANS IN ITS ENACTMENT OF AMENDMENTS TO THE PENNSYLVANIA RACE HORSE DEVELOPMENT AND GAMING ACT.

Conspicuously absent from HSP's pleading before this Court is any mention of the fact that its site development plans call for the construction of a gaming facility on property it does not control. In order to comply with the City's Zoning Code C-3 floor area ratio requirements (Philadelphia Code § 14-304(4)), the company will need to extend its originally approved development plans upon riparian lands, of which it neither controls nor owns. *See, In re Application of HSP Gaming, LP, et al, for Category 2 Slot Machine Licenses in Philadelphia, Pa.*, PGCB Dkt. No. 1356 at 24 (Opinion, December 2006) (The Board noted that "HSP does not own the riparian rights along this portion of the river front. However, [SugarHouse] is confident that it will secure those rights and if it is not successful the design of the project could be

changed to accommodate the lack of riparian rights.")[18] HSP cannot obtain control or a property interest over the river bed of the Delaware River without state legislative authorization to the Pennsylvania Department of General Services for the conveyance of river bed lease right. Not only has HSP failed in acquiring such authorization from the General Assembly, but the legislature has specifically rejected any effort to expedite HSP's development plans by authorizing the conveyance of riparian rights.

The property ownership problems associated with HSP's gaming development plans for the waterfront have been known to the General Assembly for several years. As part of the legislature's consideration of Act 135's revisions to the gaming Act and foreseeing it as a potential issue, Senator Fumo drafted language that, if enacted, would have expedited the conveyance of riparian lease rights to HSP. As clearly expressed in the preamble to the proposed amendatory section, it was intended to "facilitate the timely conveyance of riparian rights" in order to maximize the policy mandates of the gaming Act.[19] On September 19, 2006, the Senate adopted Senator Fumo's language that would have authorized the Department of General Services to begin negotiations with HSP, under defined terms and conditions, immediately following the Gaming Board's approval of the company's gaming license application. *See,*

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[18] SugarHouse's confidence in its ability to secure riparian rights was misplaced. To date, it has not obtained those rights.

[19] Section 1506.2 of SB 862, printer's number 2101 read, in part:

> ". . . in is the intention of the General Assembly to facilitate the timely conveyance of riparian rights that the Commonwealth may own to any person approved for a slot machine license by the Board for a facility to be located on land contiguous to navigable waterways."

Senate Bill 862, printer's number 2048 (pages 96-99); ATTACHMENT "D". On September 27, the Senate voted 50-0 to pass Senate Bill 862, including the riparian right conveyance language, and send it to the House of Representatives for their concurrence. 190 *Legislative Journal of the Senate of Pennsylvania* at 2060 (September 27, 2006). The House did not concur. Rather, the House rejected the timely conveyance of riparian rights to HSP and voted to strip the language from the bill,161-30. *See,* Senate Bill 862, printer's number 2186 (strikeouts appear on pages 103-106); 190 *Legislative Journal of the House of Representatives* at 2149 (October 17, 2006).

The General Assembly's deliberations over the issue of assisting HSP's gaming development continued. On October 23, 2006, the Senate again voted 50-0 to re-insist slightly revised language that would have expedited the conveyance of riparian rights to Board approved gaming operators along the Delaware River, and referred the bill to the House for concurrence. Senate Bill 862, printer's number 2208 (pages 214-216); 190 *Legislative Journal of the Senate of Pennsylvania* at 2178 (October 23, 2006). Once again, the House voted overwhelming (195-0) to reject this language, striking it in its entirety. Senate Bill 862, printer's number 2218; 190 *Legislative Journal of the House of Representatives* at 2335- 2336 (October 24, 2006).[20] The

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[20] Rep. Keller stated;

> "We have always done the riparian rights bill through the legislature. We put it in committee, had public hearings; sent it over to the Senate, had in their committees' public hearings; to the Governor's desk. It has worked for as long as this is the legislature. . . . Why would we want to give that up? I do not think we want to do that."

Rep. Clymer also noted:

> ". . . these riparian rights are part and parcel of our discussions on land transfers that we are involved in almost on a routine basis

following week the Senate voted 48-2 in concurrence with the House's amendment, agreeing to remove the proposed statutory provision expediting the conveyance of riparian lease rights. 190 *Legislative Journal of the Senate of Pennsylvania* at 2205 (October 27, 2006).

As a result of the legislature's rejection to expedite the conveyance of property rights necessary to commence its development project, HSP has not acquired any riparian interest from the Commonwealth. This is despite being approved for a gaming license from the Board over 9 months ago. In fact, HSP has been unable to obtain even the introduction of a riparian right bill.[21] HSP's remarkably unsuccessful effort in persuading any member of the legislature to assist its efforts to acquire and develop the portion of its gaming site that rest upon riparian lands, is particularly illustrative of the legislature's reluctance to grant any special rights or privileges to gaming companies, including circumvention of the routine local zoning process. Accordingly, without legal possession of its development property, HSP's claims of delay are both premature and highly speculative. Without clear ownership interest in the entire property to be developed, HSP has no legal expectation for immediate zoning approval. *Peach Bottom Township v. Peach Bottom Zoning Hearing Board,* 106 Pa.Cmwlth. 340, 526 A.2d 837 (1987) (zoning appeal is dismissed when landowner pursuing the appeal no longer had an ownership interest in the land).

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now. . . . [It] is an important part of the legislative process."

[21] Rather, the only legislation related to HSP's proposed gaming facility that has been introduced would actually require its relocation, if enacted. *See,* House Bill 1477, printer's number 1844 (Rep. Josephs) (presently in the House Gaming Oversight Committee); Senate Bill 1032, printer's number 1310 (Sen. Fumo) (presently in the Senate Community, Economic and Recreational Development Committee).

IV. THE PROVISIONS OF THE PENNSYLVANIA RACE HORSE DEVELOPMENT AND GAMING ACT WERE NOT INTENDED BY THE GENERAL ASSEMBLY TO ELEVATE GAMING COMPANY DEVELOPMENT PLANS OVER THE PUBLIC INTEREST.

The General Assembly has recognized the public importance and value in permitting municipal governments the authority to manage, plan and oversee land use development. *See, e.g.,* 53 P.S. § 10101, *et seq.* (Section 10105 of the Pennsylvania Municipalities Planning Code states that the purpose of the Act is to permit municipalities to "minimize problems", "promote health, safety health and morals", "coordinate development", and "protect social and cultural facilities, development and growth"). In fact, the legislature explicitly elevated consideration of the public interest, above all others, in its enactment of the gaming Act by stating that "[t]he primary objective of this part to which all other objectives and purposes are secondary is to protect the public . . .". (Emphasis added) 4 Pa.C.S.A. § 1102. This notion is reinforced by the General Assembly's declaration that "the integrity of the regulatory control" of gaming operations was the primary objective and that any action that could "erode public confidence" should be avoided. 4 Pa.C.S.A. § 1101(11). These stated objectives are inconsistent with the argument that the gaming Act provides legal authority to preempt City Council's zoning process as a mean of ensuring the development of gaming facilities is completed in a manner that mitigates any potential negative impact upon the quality of life in the residential communities that host gaming facilities. Local governments have a reasonable and legitimate interest in using zoning and land use controls to guard against the effects of poorly conceived construction projects. *See,* Philadelphia Code § 14-101 (stated purpose of the City's Zoning and Planning provisions is to "promote the public health, safety and welfare", "lessen congestion in the

streets", and "conserve property value," among other articulated objectives.)

The General Assembly went to great lengths to protect local neighborhoods that may host a gaming facility, in particular explicitly prohibiting the exercise of eminent domain authority by either the Commonwealth or a political subdivision. 4 Pa.C.S.A. § 1505.[22] This provision, originally written by Senator Fumo in order to protect residential neighborhoods, underscores the legislature's unwillingness to permit the exercise of extraordinary legal authority to rush gaming development. In other words, though the maximization of tax revenue was important to the Commonwealth, it was not more important than its primary goal of protecting the public interest. The consequence of this provisions is that though the Gaming Board possesses the sole authority to locate gaming facilities pursuant to section 1202, section 1505 precludes the taking private of property for the purpose of siting a casino by the Gaming Board.

The lack of eminent domain authority is particularly relevant to HSP's development plans. HSP's proposed gaming facility sits on top of a municipal road (Shackamaxon Street) and a right of way (bed of Penn Street). In order to complete construction of the gaming facility, HSP needs consent from the City of Philadelphia to vacate the street from the City plan, and conveyance of the City's right of way. Again, HSP does not control the entire parcel of land upon which it seeks zoning approval. Though City Council has introduced an ordinance that would authorize these conveyances (City Council Bill No. 070457), it has not yet been passed.

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[22] Section 1505 of the gaming Act provides;

> "Neither the Commonwealth nor any political subdivision thereof shall have the right to acquire, with or without compensation, through the power of eminent domain any property, easement or land use right for the siting or construction of a facility for the operation of slot machines by a slot machine licensee."

As a result, because section 1505 prohibits the taking of property for the siting or construction of a gaming facility, HSP is compelled to negotiate with the City for the conveyance of these property interests. Accordingly, it is disingenuous for the company to claim harm as a result of its wait to obtain zoning approve – even if zoning approval were immediately provided, HSP would still be unable to complete its development plans until such time as it obtains legal control over the property

HSP's petition for review is built upon a foundation of speculative harm – an estimated financial cost premised upon an undisclosed projected opening date. The provisions and legislative history of the gaming Act are devoid of any authority (clear or speculative) that could be construed as to permit judicial intrusion into the local municipal zoning process. HSP's hypothetical claims of dire financial harm do not represent anything that was not otherwise predictable or avoidable, and certainly do not justify undermining the General Assembly's public policy objectives within the gaming Act.

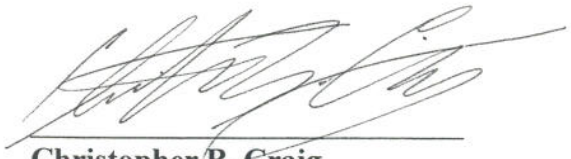
V. CONCLUSION.

In conclusion, the Petitioner's complaint should be recognized for what it is – a bold and aggressive attempt to circumvent the local zoning process so that HSP's investors may financially benefits of an accelerated construction time period. The Petitioner's gain would come at the expense of the public interest. The Petitioner's impatience and unwillingness to permit the City to complete its deliberative process places this Court in the untenable position of being requested to ignore both the plain and unambiguous language of the gaming Act and the clear legislative history of its development. The Act intended for local governments to exercise zoning

control over gaming facilities and does not permit gaming companies to avoid this process, no matter how inconvenient.

For the reasons set forth herein, Senator Vincent J. Fumo respectfully requests this Honorable Court to uphold the expressed legislative purpose and clear language of the provisions of the Pennsylvania Race Horse Development and Gaming Act and dismiss HSP's Petition for Review and Emergency Application for Summary Releif.

Respectfully Submitted,



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November 2, 2007

SugarHouse
PURE FUN

September 11, 2007

The Honorable Edward G. Rendell
Governor
The Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120
SENT VIA FAX AND US MAIL

Dear Governor Rendell:

Thank you for your letter of August 30, 2007, inquiring about whether the SugarHouse Casino would consider moving from our current location on Delaware Avenue between Ellen and Shackamaxon Streets.

We have carefully considered your request, just as we carefully considered where to originally locate, and we do not believe that any other site in the City of Philadelphia is as good as the one we selected.

We are extremely proud that the SugarHouse proposal was rated as the best of five city proposals by the state Gaming Control Board. We believe we were rated as such because of the totality of our proposal – our location, our facility, our team and the tax revenues we will generate. We believe that resiting would harm the quality of our project, diminish our ability to be a successful business and therefore decrease revenues to the City and Commonwealth.

There is a second, and equally important reason we are opposed to relocation. We are convinced that the process of acquiring an alternative site, re-designing the project and obtaining all the regulatory and other approvals necessary, would result in a further delay of several years beyond our currently planned opening date. Given the many benefits SugarHouse will bring to the community and the hundreds of millions of dollars it will generate in new taxes for Philadelphia and Pennsylvania, further delay is not in any of our best interests.

We hope that this will close discussion of resiting SugarHouse Casino once and for all so that we can soon begin construction. We are geared up to put more than 1,000 people to work building our facility in the very near future. We are ready to pay tens of millions of dollars in taxable wages on an annual basis.

We are ready to open our facility which will create thousands of new jobs and generate hundreds of millions of dollars of new tax revenues for the Commonwealth.

Sincerely,

Neil Bluhm
Chairman of the Board

SUGARHOUSE CASINO
P.O. Box 8598 • Philadelphia, PA 19104
WWW.SUGARHOUSECASINO.COM

THE PENNSYLVANIA GAMING CONTROL BOARD

PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P., FOXWOODS CASINO	:	**Docket No. 1367 Hearings/Appeals Docket No. 34676**
And		
HSP GAMING, L.P., SUGARHOUSE CASINO	:	**Docket No. 1356 Hearings/Appeals Docket No. 34686**

OPINION

On July 24, 2007, and July 25, 2007, Philadelphia Entertainment and Development Partners L.P. / Foxwoods Casino and HSP Gaming / Sugarhouse Casino, respectively, each filed a petition for an extension of time to pay the $50,000,000 license fee required under 4 Pa.C.S. §1209(a). By way of background, the Gaming Control Board approved HSP Gaming / Sugarhouse Casino and Philadelphia Entertainment and Development Partners/Foxwoods for a Category 2 slot machine license during its December 20, 2006 public meeting. An Order and Adjudication which approved HSP Gaming and Foxwoods for licensure and denied licensure to three other applicants was issued February 1, 2007.

The Board's Order of February 1, 2007 provided:

> **IT IS ORDERED THAT**, the applications for licensure as Category 2 licensees in the City of Philadelphia of **HSP Gaming, LP** and **Philadelphia Entertainment & Development Partners, LP**, are **GRANTED** and the licenses are approved for the reasons set forth in the Gaming Control Board's Adjudication of the Applications for Category 2 Slot Machine Licenses in Philadelphia, PA, a City of the First Class, issued this date, and subject to satisfaction of the following conditions prior to the issuance of the Category 2 licenses:
>
> 1. The expiration of the thirty (30) day appeal period permitted by the Pennsylvania Rules of Appellate Procedure;
>
> 2. The payment of any outstanding fees, other than the $50 million licensing fee, as determined by the PGCB pursuant to 4 Pa.C.S. § 1208;

3. The agreement to the Statement of Conditions of licensure to be imposed and issued by the Gaming Control Board, as evidenced by the signing of the agreements by HSP Gaming, LP's and Philadelphia Entertainment & Developments Partners, LP's executive officers or designees within five business days of the receipt of the Statement of Conditions from the PGCB; and

4. The payment of the one time $50,000,000 slot machine license fee required pursuant to 4 Pa.C.S. § 1209, made by the latter of four months from the date of this Order or ten (10) calendar days following the conclusions of any appeals to the grant of this license pursuant to 4 Pa.C.S. §1204 (if any), and no less than ten (10) business days prior to the beginning of the test period necessary to commence slot machine operations under 58 Pa. Code § 467.2(a)(9).

Thereafter, on or about March 2, 2007, a competitor applicant, Riverwalk Casino, along with four civic or local government groups in the City of Philadelphia appealed the Board's decisions granting the licenses to the Pennsylvania Supreme Court.[1] The Supreme Court rejected those appeals and affirmed the decisions of the Gaming Control Board. The resolution of the last of these appeals occurred on July 17, 2007 when the Supreme Court affirmed the Board's decision in the *Riverwalk* appeal.[2]

Thus, under the terms of the Board's Order dated February 1, 2007, the licensees were to pay the $50,000,000 license fee to the Commonwealth within ten days of the Supreme Court's dismissal of the last of the appeals which would made the payment due on or before July 27, 2007.

On July 23, 2007, Foxwoods filed a motion for an extension of time to pay the license fee based primarily upon an inability to gain the zoning and construction permits necessary to begin construction from the City of Philadelphia as well as other litigation and city ordinances which

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[1] Those appeals included *Riverwalk Casino v. PGCB*, 27 MM 2007; *Neighbors Allied for the Best Riverfront v. PGCB*, 38 EM 2007; *City Council for the City of Philadelphia v. PGCB*, 39 EM 2007; *Society Hill Civic Assoc v. PGCB*, 40 EM 2007; and *Heiko v. PGCB*, 41 EM 2007.

[2] The decision is a final nonappealable decision because any appeal to the U.S. Supreme Court is discretionary and not an appeal as of right. *Kuriakose V. W.C.A.B.*, 681 A.2d 1389 (Pa. Cmwlth Ct. 1996)(when a court enters an order deciding an appeal it is final and remains final until it is reversed by the Supreme Court).

had been enacted causing the delay. On July 25th, 2007, HSP filed a similar motion for an extension based upon the delays caused by the City's actions or inactions. As represented by both licensees, HSP and Foxwoods have encountered a number of obstacles within the City of Philadelphia which has prevented the licensees from starting construction of their facilities.

A special meeting of the Board was convened on July 26, 2007 for the purpose of considering the two motions. Based upon the assertions contained in the petitions and following a presentation of Board counsel, the Board voted to grant a temporary continuance to both licensees of their obligation to pay the license fee until such time as the Board could conduct a full evidentiary hearing as to the facts and reasons underlying the petitions. The Board established a date of August 27, 2007 for the parties to file supporting briefs and documentation and September 6, 2007 as the date for the Board to conduct a hearing on the merits of the requests for extensions.

Briefs and supporting exhibits had been filed by both licensees and are included in the evidentiary record in this matter. Further, the transcript of the September 6, 2007 hearing along with any documents submitted during that hearing are included in the record.

Having considered the petitions for extensions and the evidence of record, the Board has voted during a public meeting in accordance with the Sunshine Act, 65 Pa.C.S. Chapter 7, on October 2, 2007 to deny the extensions of time to pay the license fee.

The factual basis for the petitions for extension are set forth by HSP and Foxwoods in their petitions and supporting documents and reiterated in their presentations on September 6, 2007. There does not appear to be a material dispute about the cause of the delays encountered by the licensees in starting construction of their respective projects. Because there is no significant dispute, we summarize the contentions of the parties below.

A. HSP/Sugarhouse

The factual basis for the requested extension is set forth in HSP's attached brief as follows:

- The Supreme Court resolved the last of the five appeals of the Board's grant of the license on July 17, 2007, thus establishing the obligation to pay the license fee by July 27, 2007.

- HSP's Plan of Development has been approved by the Philadelphia Planning Commission. HSP's Plan of Development must now be approved by the Philadelphia City Council before construction of the licensed facility can begin. In a best case scenario, City Council will vote on and approve HSP's Plan of Development no earlier than October 11, 2007.

- The Pa. General Assembly has recently introduced three bills (H.B. 1477, S.B. 1031 and S.B. 1032) which would amend the Gaming Act to impose the 1500 foot buffer zone for casinos.

- HSP has made extensive efforts to address community concerns including traffic plan revisions.

- Since the PGCB's approval of the license, the Philadelphia City Council has undertaken a series of actions designed to undermine the Board's grant of the license to HSP including the passage of an ordinance to create a 1500 foot buffer around residential areas, churches, schools and playgrounds; introduction of a bill mandating the creation of a Neighborhood Improvement District prior to the application for a Commercial Entertainment District zoning; introduction of a bill amending the City's Home Rule Charter to prohibit the enactment of any zoning ordinance that would permit gaming; and the introduction of a bill that would prohibit gaming as a permanent use and further prohibit any variance to permit gaming.

- HSP asserts that "good cause" for the requested extension is demonstrated by the following reasons: payment of the license fee at this time constitutes an undue hardship in that it would cost HSP $417,000 per month to service the debt; HSP has acted expeditiously and in good faith in pursuing the approvals; HSP is unable to satisfy the conditions for the issuance of its license because of the impediments set forth by City Council and the anti- casino activists, thus prohibiting it from "moving forward;" and there remains outstanding legal obstacles to the construction of HSP's licensed facility.

- Philadelphia City Council has not granted the request for CDEC designation and has not enabled HSP to obtain the building permits necessary to commence construction.

B. PEDP/Foxwoods

The factual basis for the requested extension is set forth in the attached Foxwoods' brief as follows:

- The Supreme Court resolved the last of the five appeals of the Board's grant of the license on July 17, 2007, thus establishing the obligation to pay the license fee by July 27, 2007.

- Foxwoods submitted permit applications to the City of Philadelphia on January 23, 2007.

- Since the PGCB's approval of the license, the Philadelphia City Council has undertaken a series of actions designed to undermine the Board's grant of the license to Foxwoods including the passage of an ordinance to create a 1500 foot buffer around residential areas, churches, schools and playgrounds; introduced eight ordinances intended to obstruct gaming at the PGCB's chosen locales; rezoning the Foxwoods' site from commercial to residential; and has failed to issue a zoning and use registration permit and has refused to apply CED Zoning to Foxwoods site.

- The Pa General Assembly has recently introduced three bills (H.B. 1477, S.B. 1031 and S.B. 1032) which would amend the Gaming Act to impose the 1500 foot buffer zone for casinos.

- The City Planning Commission, on August 21st recommended CED zoning for Foxwoods. In a best case scenario, the City Council could act on the designation and approve no earlier than October 11, 2007.

- Foxwoods has made extensive efforts to address community concerns including traffic plan revisions.

- Foxwoods asserts that "good cause" for the requested extension is demonstrated by the following reasons: payment of the license fee at this time constitutes an undue hardship in that it would cost Foxwoods $400,000 per month to service the debt; Foxwoods has acted expeditiously and in good faith in pursuing the approvals; the Gaming Act does not require payment until the license is issued; Foxwoods is being deprived of the opportunity to use the license until the permits are issued; and there are no provisions in the Gaming Act for refund of the license if Foxwoods is unable to get the permits and use the license.

- Philadelphia City Council has not granted the request for CDEC designation and has not enabled PEDP/Foxwoods to obtain the building permits necessary to commence construction.

The Race Horse Development and Gaming Act provides at Section 1209 that at the time of issuance of the licenses, the Board shall impose a one-time slot machine license fee to be paid by each licensee in the amount of $50,000,000 to be deposited into the State Gaming Fund. Under Section 1301 of the Act, a license can be issued as soon as 1) the licensee fulfills all required conditions of the license and 2) the board's decision approving the application is a final, binding, non-appealable determination not subject to legal challenge. While the Gaming Act does not specify a precise time period for payment after those events occur, the Board's order granting the licenses provided for the payment to be made ten days after any appeals become final, which in this case was July 27, 2007.

The Pennsylvania Administrative Code provides:

> Extensions of time shall be governed by the following:
>
> (1) Except as otherwise provided by law, whenever by these rules or by a regulation or order of an agency, or a notice given thereunder, an act is required or allowed to be done at or within a specified time, *the time fixed or the period of time prescribed may, by the agency head or the presiding officer, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended;* ...

1 Pa.Code Section 31.15(a)(1).[3]

The Board acknowledges that delays have been experienced by the licensees in Philadelphia due in part to the failure of City officials to move promptly on the licensees' requests for zoning and construction permits. The delay in Philadelphia, while not attributed to the licensees' actions, falls within the purview of reasonable expectations. The Philadelphia casino projects had been the subject of intense public scrutiny long before the Board issued the

[3] Temporary Board regulation 497.5(a) also provided "extensions of time shall be governed by the following: (1) except as otherwise provided by statute, whenever under this part or by order of the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Board, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended." 58 Pa.Code §487.5(a). That temporary regulation expired on July 5, 2007 and has not yet completed the promulgation process to become a final regulation.

award of the licenses and have endured numerous legal challenges since. Accordingly, HSP and Foxwoods should have anticipated that they would encounter delays in their constructions schedules due to adverse actions in the City of Philadelphia. It is not uncommon for the gaming industry in general in a new jurisdiction to be a source of controversy and to incur opposition. In other words, both entities went into the process with their eyes wide open to the possibilities of encountering delays in their projects. The Board disagrees that a delay in a new jurisdiction such as this is unexpected and thus finds that the petitioners have not established good cause for granting an extension.

Each licensee has been required to pay the $50,000,000 license fee within the ten day period following the conclusion of any appeals. In Pittsburgh, Majestic Star paid the license fee as ordered by the Board even though it has not received all permits necessary to begin construction. In the at-large Category 2 casino locations, both Sands-Bethworks and Mt Airy have paid the fee. While both have obtained building permits, Sands-Bethworks has encountered delay due to unanticipated site preparation work. The Board finds that an even-handed treatment of all licensees and requirement that all licensees pay the license fee within the time-period directed promotes the public confidence in the Board's regulation of the gaming industry and avoids an appearance of favoritism or bias toward any particular applicants.

Foxwoods and HSP have already received a significant reprieve in time from the payment of their original licensing fee as a result of the temporary stay previously granted by the Board. This delay has already provided both applicants with a significant advantage over the other licensees who submitted their respective licensing fees within the Board's established time-frames, including Sands Bethworks and PITG, both of which will not open, at best, until the first

quarter of 2009. The Board finds that granting any further extension of time to HSP and Foxwoods to pay the license fee would neither be fair nor equitable.

Furthermore, the $50,000,000 license fee is paid to the State Gaming Fund under Section 1209 of the Gaming Act. The State Gaming Fund, in turn, distributes its proceeds to municipal and county governments, §1403; compulsive problem gaming treatment programs, §1408(a); volunteer fire company grants, §1408(b); local law enforcement grants §1408(c); and the Property Tax Relief Fund, §§1408(e),1409. Deferring the receipt of those moneys due the Commonwealth until a later date, while beneficial to the licensee, is contrary to the expressed interests of the Commonwealth and the many beneficiaries of those monies.

The Board finds that the delay in receiving the zoning and building permits under the circumstances presented here is not good cause for the extension sought in this case. The Board finds that in the absence of a showing of good cause by the Petitioners, it is required under Act 71 to deny their requests for an extension and to require the Petitioners to pay the license fee in accordance with the Board's Order of October 2, 2007.[4]

For the Board

Mary D. Collins
Chairman
Pa. Gaming Control Board

[4] Commissioner James Ginty, who was sworn in as a member of the Board on September 12, 2007, did not participate in this matter.

THE PENNSYLVANIA GAMING CONTROL BOARD

IN RE:	:	
	:	
HSP GAMING SUGARHOUSE CASINO	:	**DOCKET NO. 1356**
	:	
	:	

ORDER

AND NOW, this 2nd day of October, 2007, upon consideration of HSP Gaming Sugarhouse Casino Petition for an extension of time to pay the $50,000,000 license fee for a Category 2 slot machine license pursuant to 4 Pa.C.S. §1209, it is hereby **ORDERED** that the request for an extension is **DENIED**. HSP Gaming Sugarhouse Casino shall remit the license fee to the Commonwealth of Pennsylvania within ten (10) business days from the date of this Order. [1]

For the Board:

Mary D. Colins
Chairman
Pa Gaming Control Board

FILED
OCT - 3 2007
Board Clerk PGCB

[1] Commissioner James Ginty, who was sworn in as a member of the Board on September 12, 2007, did not participate in this matter.

PRIOR PRINTER'S NOS. 1105, 1241, 1302, 1319, 1553

PRINTER'S NO. 2048

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 862 Session of 2005

INTRODUCED BY PIPPY, BRIGHTBILL, RHOADES, LAVALLE, CORMAN, RAFFERTY, EARLL, GORDNER, WONDERLING, KASUNIC, MADIGAN, PUNT, C. WILLIAMS, WENGER, PILEGGI, ORIE, THOMPSON, O'PAKE, ERICKSON, BOSCOLA, SCARNATI, D. WHITE, M. WHITE, WAUGH, REGOLA, ROBBINS, LEMMOND AND JUBELIRER, SEPTEMBER 14, 2005

SENATE AMENDMENTS TO HOUSE AMENDMENTS, SEPTEMBER 19, 2006

AN ACT

Amending Titles 4 (Amusements) and 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for definitions and for the Pennsylvania Gaming Control Board; providing for applicability of other statutes; further providing for powers and duties of board; providing for code of conduct; further providing for temporary regulations, for licensed entity application appeals from board, for license or permit application hearing process, for board minutes and records, for collection of fees and fines, FOR SLOT MACHINE LICENSE FEE, for Category 2 slot machine licenses, for Category 3 slot machine licenses, for order of initial license issuance, for slot machine license application and for slot machine license application business entity requirements; providing for licensing of ~~principals, for licensing of key employees and for recusal and disqualification of members; further providing for supplier and manufacturer licenses; providing for manufacturer licenses; further providing for occupation permit application, for nontransferability of licenses, for gross terminal revenue deductions, for establishment of State Gaming Fund and net slot machine revenue distribution, for the Pennsylvania Gaming Economic Development and Tourism Fund, for transfers from the State Gaming Fund, for the compulsive and problem gambling program, for public official financial interest, for political influence and for enforcement; providing for procedures, for hearing officers~~ PRINCIPALS AND FOR LICENSING OF KEY EMPLOYEES; FURTHER PROVIDING FOR SLOT MACHINE LICENSE APPLICATION FINANCIAL FITNESS REQUIREMENTS AND FOR SUPPLIER AND MANUFACTURER LICENSES; PROVIDING FOR MANUFACTURER LICENSES; FURTHER

AND BRED AWARD.

(III) FOUR PERCENT [TO] SHALL BE USED TO FUND HEALTH AND PENSION BENEFITS FOR THE MEMBERS OF THE HORSEMEN'S ORGANIZATIONS REPRESENTING THE OWNERS AND TRAINERS AT THE RACETRACK AT WHICH THE LICENSED RACING ENTITY OPERATES FOR THE BENEFIT OF THE ORGANIZATION'S MEMBERS, THEIR FAMILIES, EMPLOYEES AND OTHERS IN ACCORDANCE WITH THE RULES AND ELIGIBILITY REQUIREMENTS OF THE ORGANIZATION, AS APPROVED BY THE STATE HORSE RACING COMMISSION OR THE STATE HARNESS RACING COMMISSION. THIS AMOUNT SHALL BE DEPOSITED WITHIN FIVE BUSINESS DAYS OF THE END OF EACH MONTH INTO A SEPARATE ACCOUNT TO BE ESTABLISHED BY EACH RESPECTIVE HORSEMEN'S ORGANIZATION AT A BANKING INSTITUTION OF ITS CHOICE. OF THIS AMOUNT, $250,000 SHALL BE PAID ANNUALLY BY THE HORSEMEN'S ORGANIZATION TO THE THOROUGHBRED JOCKEYS OR STANDARDBRED DRIVERS ORGANIZATION AT THE RACETRACK AT WHICH THE LICENSED RACING ENTITY OPERATES FOR HEALTH INSURANCE, LIFE INSURANCE OR OTHER BENEFITS TO ACTIVE AND DISABLED THOROUGHBRED JOCKEYS OR STANDARDBRED DRIVERS IN ACCORDANCE WITH THE RULES AND ELIGIBILITY REQUIREMENTS OF THAT ORGANIZATION.

(2) (RESERVED).

* * *

[§ 1506. LOCAL LAND USE PREEMPTION.

THE CONDUCT OF GAMING AS PERMITTED UNDER THIS PART, INCLUDING THE PHYSICAL LOCATION OF ANY LICENSED FACILITY, SHALL NOT BE PROHIBITED OR OTHERWISE REGULATED BY ANY ORDINANCE, HOME RULE CHARTER PROVISION, RESOLUTION, RULE OR REGULATION OF ANY POLITICAL SUBDIVISION OR ANY LOCAL OR STATE INSTRUMENTALITY OR AUTHORITY THAT RELATES TO ZONING OR LAND USE TO THE EXTENT THAT

THE LICENSED FACILITY HAS BEEN APPROVED BY THE BOARD. THE BOARD MAY IN ITS DISCRETION CONSIDER SUCH LOCAL ZONING ORDINANCES WHEN CONSIDERING AN APPLICATION FOR A SLOT MACHINE LICENSE. THE BOARD SHALL PROVIDE THE POLITICAL SUBDIVISION, WITHIN WHICH AN APPLICANT FOR A SLOT MACHINE LICENSE HAS PROPOSED TO LOCATE A LICENSED GAMING FACILITY, A 60-DAY COMMENT PERIOD PRIOR TO THE BOARD'S FINAL APPROVAL, CONDITION OR DENIAL OF APPROVAL OF ITS APPLICATION FOR A SLOT MACHINE LICENSE. THE POLITICAL SUBDIVISION MAY MAKE RECOMMENDATIONS TO THE BOARD FOR IMPROVEMENTS TO THE APPLICANT'S PROPOSED SITE PLANS THAT TAKE INTO ACCOUNT THE IMPACT ON THE LOCAL COMMUNITY, INCLUDING, BUT NOT LIMITED TO, LAND USE AND TRANSPORTATION IMPACT. THIS SECTION SHALL ALSO APPLY TO ANY PROPOSED RACETRACK OR LICENSED RACETRACK.]

SECTION 9.2. TITLE 4 IS AMENDED BY ADDING SECTIONS TO READ:

§ 1506.1. LAND USE PREEMPTION WITHIN CITIES OF THE FIRST CLASS.

(A) GENERAL RULE.--REGULATION OF THE ZONING, USAGE, LAYOUT, CONSTRUCTION AND OCCUPANCY, INCLUDING THE LOCATION, SIZE, BULK AND USE OF BUILDINGS OF A LICENSED FACILITY AND ANY ACCESSORY GAMING USES WITHIN A CITY OF THE FIRST CLASS IS RESERVED EXCLUSIVELY TO THE COMMONWEALTH AND SHALL NOT BE PROHIBITED, INSPECTED, LICENSED OR REGULATED BY ANY ORDINANCE, HOME RULE CHARTER PROVISION, RESOLUTION, REGULATION, ENFORCEMENT ACTION OR OTHER EXERCISE OF THE POLICE POWER OR OTHER POWER OF A POLITICAL SUBDIVISION OR A STATE OR LOCAL INSTRUMENTALITY OTHER THAN THE BOARD. LOCAL POLITICAL SUBDIVISIONS SHALL PROVIDE ON A NONDISCRIMINATORY BASIS CUSTOMARY MUNICIPAL SERVICES, INCLUDING POLICE, FIRE AND SANITATION, TO LICENSED FACILITIES AS ARE PROVIDED TO OTHER COMMERCIAL ENTERPRISES.

(B) USAGE AND LAYOUT.--THE FOLLOWING USE AND DIMENSIONAL

STANDARDS SHALL APPLY TO THE PHYSICAL SITING AND LAYOUT OF LICENSED FACILITIES:

(1) SPECIFIC USES PERMITTED AT LICENSED FACILITIES SHALL BE THE ERECTION, OCCUPANCY, CONSTRUCTION, ALTERATION AND USE OF BUILDINGS OR LAND FOR ACCESSORY GAMING USES.

(2) THE FOLLOWING SHALL APPLY TO AREA REGULATIONS:

(I) STRUCTURES LOCATED AT A LICENSED FACILITY AND ASSOCIATED AREAS, INCLUDING THOSE WHICH HOUSE ACCESSORY GAMING USES MAY OCCUPY UP TO 100% OF THE TOTAL LOT AREA.

(II) CONTROLS SHALL BE ESTABLISHED TO ENHANCE THE UTILITY OF PUBLIC SPACE AND ADJACENT BODIES OF WATER AS WELL AS THE PUBLIC WALKWAYS AND RIGHTS-OF-WAY FOR BOTH PUBLIC AND PRIVATE ACCESS TO NAVIGABLE WATERS. THE FOLLOWING ACCESS RULES SHALL APPLY:

(A) A RIGHT-OF-WAY AT LEAST 20 FEET WIDE, INCLUDING PUBLIC WALKWAYS, SHALL BE PROVIDED AT EACH LICENSED FACILITY FOR USE BY THE GENERAL PUBLIC AS WELL AS PATRONS OF THE LICENSED FACILITY FOR WALKWAY ACCESS TO AND ALONG THE BORDERING BODY OF WATER, IF THE ACCESS DOES NOT REQUIRE PASSAGE THROUGH ANY AREA RESTRICTED TO PERSONS UNDER 21 YEARS OF AGE.

(B) THE UPKEEP AND COST OF MAINTENANCE OF RIGHTS-OF-WAY SHALL BE BORNE SOLELY BY THE LICENSED FACILITY WITHOUT CHARGE TO THE PUBLIC.

(III) EACH LICENSED FACILITY, EXCLUDING PARKING AREAS AND GARAGES, SHALL BE ALLOWED A TOTAL GROSS FLOOR AREA UP TO 12 TIMES THE TOTAL AREA OF THE LICENSED FACILITY, MEASURED IN SQUARE FEET. TOTAL FLOOR AREA SHALL INCLUDE ALL LAND AND WATER AREAS OF THE LICENSED FACILITY UP TO THE PIERHEAD LINE, AS WELL AS ANY RAILROAD RIGHT-

OF-WAY AREA WITHIN THE CONFINES OF THE LICENSED FACILITY. PARKING AND GARAGE AREAS SHALL NOT BE SUBJECT TO ANY GROSS FLOOR AREA LIMITATION.

(IV) NO FRONT, SIDE OR REAR SETBACKS SHALL BE REQUIRED. WHEN SETBACKS ARE PROVIDED, THEY SHALL HAVE A MINIMUM WIDTH AND DEPTH OF 20 FEET.

(3) THE FOLLOWING SHALL APPLY TO PARKING AND LOADING:

(I) THE NUMBER OF OFF-STREET PARKING SPACES, MEASURING A MINIMUM OF 8.5 FEET BY 18 FEET EACH, REQUIRED SHALL BE AS FOLLOWS:

(A) ONE SPACE FOR EVERY TWO RESIDENTIAL OR HOTEL UNITS.

(B) ONE SPACE FOR EVERY 1,000 SQUARE FEET OF BUILDING OR FOR EVERY 10 SEATS, WHICHEVER TOTAL NUMBER OF SPACES IS GREATER.

(II) THE NUMBER OF OFF-STREET LOADING SPACES, MEASURING A MINIMUM OF 11 FEET WIDE BY 60 FEET LONG BY 14 FEET CLEAR HEIGHT, REQUIRED SHALL BE ONE SPACE FOR EVERY 200,000 SQUARE FEET OF BUILDING OR PORTION THEREOF.

(III) THE NUMBER OF OFF-STREET PARKING DISABLED ACCESSIBLE SPACES, MEASURING 12 FEET BY 20 FEET EACH, FOR PERSONS WITH DISABILITIES SHALL BE 2% OF THE NUMBER OF THE GENERAL PUBLIC, 8.5 FEET BY 18 FEET OFF-STREET PARKING SPACES PROVIDED.

(4) THE FOLLOWING SHALL APPLY TO SIGNAGE:

(I) EACH LICENSED FACILITY SHALL BE PERMITTED A TOTAL SIGN AREA OF FIVE SQUARE FEET FOR EACH LINEAL FOOT OF STREET LINE OF THE LICENSED FACILITY, INCLUDING ASSOCIATED AREAS, AND EACH LINEAL FOOT OF WATERFRONT LINE ALONG A NAVIGABLE WATERWAY OF THE LICENSED FACILITY.

(II) SIGNS MAY BE REVOLVING, ANIMATED OR ILLUMINATED AND MAY CONTAIN FLASHING OR INTERMITTENT ILLUMINATION. ACCESSORY AND NONACCESSORY SIGNS SHALL BE PERMITTED.

(5) ARCHITECTURAL SITE PLANS MUST BE SUBMITTED TO THE BOARD FOR REVIEW AND APPROVAL AND DETERMINATION OF COMPLIANCE WITH THE USE, DIMENSIONAL PHYSICAL SITING AND LAYOUT STANDARDS CONTAINED IN THIS SUBSECTION. THE FOLLOWING SHALL APPLY:

(I) THE BOARD SHALL APPOINT HEARING OFFICERS TO REVIEW, APPROVE OR REJECT THE SUBMITTED ARCHITECTURAL SITE PLANS BASED ON THE STANDARDS SET FORTH IN PARAGRAPHS (1), (2), (3) AND (4) AND COMMENTS SUBMITTED BY A CITY OF THE FIRST CLASS UNDER SUBPARAGRAPH (II).

(II) A CITY OF THE FIRST CLASS MAY SUBMIT WRITTEN COMMENTS ON AN ARCHITECTURAL SITE PLAN FOR CONSIDERATION BY THE HEARING OFFICER AND THE BOARD WITHIN THREE WEEKS OF THE FILING OF AN ARCHITECTURAL SITE PLAN UNDER THIS SUBSECTION.

(III) DECISIONS OF HEARING OFFICERS MAY BE APPEALED TO THE BOARD WITHIN 30 DAYS OF DATE OF DECISION. WITH RESPECT TO ANY DECISION MADE UNDER SUBPARAGRAPH (I), A CITY OF THE FIRST CLASS THAT HAS SUBMITTED WRITTEN COMMENTS MAY BE GRANTED PARTY STATUS IN THE PROCEEDING. THE BOARD MAY GRANT A VARIANCE IN ACCORDANCE WITH THE STANDARDS FOR GRANTING A VARIANCE AS PROVIDED IN SUBSECTION (B.1).

(B.1) VARIANCES.--THE BOARD SHALL HEAR REQUESTS FOR VARIANCES WHERE IT IS ALLEGED THAT THE PROVISIONS OF THE ZONING STANDARDS OF THIS PART INFLICT UNNECESSARY HARDSHIP UPON THE APPLICANT. THE BOARD MAY GRANT A VARIANCE IF ALL OF THE

FOLLOWING FINDINGS ARE MADE, AS RELEVANT IN A PARTICULAR CASE:

(1) THAT THERE ARE UNIQUE PHYSICAL CIRCUMSTANCES OR CONDITIONS, INCLUDING IRREGULARITY, NARROWNESS, OR SHALLOWNESS OF LOT SIZE OR SHAPE, OR EXCEPTIONAL TOPOGRAPHICAL OR OTHER PHYSICAL CONDITIONS PECULIAR TO THE PARTICULAR PROPERTY AND THAT THE UNNECESSARY HARDSHIP IS DUE TO SUCH CONDITIONS.

(2) THAT BECAUSE OF SUCH PHYSICAL CIRCUMSTANCES OR CONDITIONS, THERE IS NO POSSIBILITY THAT THE PROPERTY CAN BE DEVELOPED IN STRICT CONFORMITY WITH THE PROVISIONS OF THE ZONING STANDARDS OF THIS PART AND THAT THE AUTHORIZATION OF A VARIANCE IS THEREFORE NECESSARY TO ENABLE THE REASONABLE USE OF THE PROPERTY.

(3) THAT SUCH UNNECESSARY HARDSHIP HAS NOT BEEN CREATED BY THE APPELLANT.

(4) THAT THE VARIANCE, IF AUTHORIZED, WILL REPRESENT THE MINIMUM VARIANCE THAT WILL AFFORD RELIEF AND WILL REPRESENT THE LEAST MODIFICATION POSSIBLE OF THE REGULATION IN ISSUE.

IN GRANTING ANY VARIANCE, THE BOARD MAY ATTACH SUCH REASONABLE CONDITIONS AND SAFEGUARDS AS IT MAY DEEM NECESSARY TO IMPLEMENT THE PURPOSES OF THIS PART. AN APPEAL OF A FINAL BOARD DECISION UNDER THIS SECTION SHALL BE TAKEN IN ACCORDANCE WITH SECTION 1204 (RELATING TO LICENSED ENTITY APPLICATION APPEALS FROM BOARD).

(C) CONNECTIONS TO PUBLIC WATER, SEWER AND UTILITIES.-- ALL OCCUPANTS AT EACH LICENSED FACILITY LOCATED WITHIN A CITY OF THE FIRST CLASS SHALL BE ALLOWED TO CONNECT TO AND USE UTILITIES WITH NO CONNECTION OR RESERVATION CHARGE, SUBJECT TO NONDISCRIMINATORY CHARGES FOR ACTUAL COSTS OF EXTENDING SERVICE TO THE SITE AND TO ACTUAL USAGE CHARGES IMPOSED UNDER

NONDISCRIMINATORY TARIFFS.

(D) CONSTRUCTION AND OCCUPANCY STANDARDS.--THE DEPARTMENT OF LABOR AND INDUSTRY SHALL REGULATE AND ENFORCE THE CONSTRUCTION AND OCCUPANCY OF LICENSED FACILITIES WITHIN A CITY OF THE FIRST CLASS. ALL LICENSED FACILITIES SHALL BE SUBJECT TO THE ACT OF NOVEMBER 10, 1999 (P.L.491, NO.45), KNOWN AS THE PENNSYLVANIA CONSTRUCTION CODE ACT. IN ADDITION TO THE POWERS CONVEYED TO THE DEPARTMENT OF LABOR AND INDUSTRY UNDER SECTION 2202 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929, THE DEPARTMENT OF LABOR AND INDUSTRY SHALL HAVE ALL OF THE FOLLOWING POWERS AND DUTIES:

(1) TO RECEIVE AND EXAMINE PLANS FOR ALL BUILDINGS AND PLACES OF ASSEMBLY COMPRISING LICENSED FACILITIES WITHIN A CITY OF THE FIRST CLASS AND TO CONSIDER, REVIEW AND APPROVE THE PLANS CONSISTENT WITH THE PROVISIONS OF THE PENNSYLVANIA CONSTRUCTION CODE ACT.

(2) TO RECEIVE AND CHECK PLANS FOR ELEVATOR INSTALLATIONS FOR ALL BUILDINGS AND PLACES OF ASSEMBLY COMPRISING LICENSED FACILITIES WITHIN A CITY OF THE FIRST CLASS AND TO ISSUE PERMITS FOR THE ERECTION AND REPAIR OF ELEVATOR INSTALLATIONS CONSISTENT WITH THE PROVISIONS OF THE PENNSYLVANIA CONSTRUCTION CODE ACT.

(3) TO ANNUALLY INSPECT EMERGENCY LIGHTING SYSTEMS, SPRINKLER SYSTEMS AND FIRE ALARMS IN ALL BUILDINGS AND PLACES OF ASSEMBLY COMPRISING LICENSED FACILITIES WITHIN A CITY OF THE FIRST CLASS AND TO ENFORCE ALL STATE LAWS.

(4) TO MAINTAIN PLAN AND SPECIFICATION REVIEW AND INSPECTION AUTHORITY OF ALL BUILDINGS AND PLACES OF ASSEMBLY COMPRISING LICENSED FACILITIES WITHIN A CITY OF THE FIRST CLASS. THE DEPARTMENT OF LABOR AND INDUSTRY SHALL NOTIFY THE

APPROPRIATE DEPARTMENT OF THE CITY OF THE FIRST CLASS OF ALL INSPECTIONS OF THE BUILDINGS AND PROVIDE THE CITY WITH THE OPPORTUNITY TO OBSERVE THE INSPECTION OF THE LICENSED FACILITIES.

(5) TO MAKE AVAILABLE TO THE APPROPRIATE DEPARTMENT OF THE CITY OF THE FIRST CLASS, UPON REQUEST, COPIES OF ALL BUILDING PLANS AND PLAN REVIEW DOCUMENTS IN THE CUSTODY OF THE DEPARTMENT OF LABOR AND INDUSTRY.

§ 1506.2. CONVEYANCES IN CITIES OF THE FIRST CLASS.

(A) INTENTION.--IN ORDER TO MAXIMIZE THE POLICY MANDATES OF THIS PART AND TO OPTIMIZE DEVELOPMENT OPPORTUNITIES WITHIN A CITY OF THE FIRST CLASS, IT IS THE INTENTION OF THE GENERAL ASSEMBLY TO FACILITATE THE TIMELY CONVEYANCE OF RIPARIAN RIGHTS THAT THE COMMONWEALTH MAY OWN TO ANY PERSON APPROVED FOR A SLOT MACHINE LICENSE BY THE BOARD FOR A FACILITY TO BE LOCATED ON LAND CONTIGUOUS TO NAVIGABLE WATERWAYS.

(B) AUTHORIZATION AND DIRECTION.--THE DEPARTMENT OF GENERAL SERVICES, WITH THE APPROVAL OF THE GOVERNOR, IS HEREBY AUTHORIZED AND DIRECTED ON BEHALF OF THE COMMONWEALTH OF PENNSYLVANIA TO GRANT AND CONVEY BY QUITCLAIM DEED FOR CONSIDERATION UNDER SUBSECTION (E) TO EACH PERSON APPROVED FOR A SLOT MACHINE LICENSE BY THE BOARD FOR A LICENSED FACILITY THAT IS TO BE LOCATED WITHIN A CITY OF THE FIRST CLASS AND IS CONTIGUOUS TO NAVIGABLE WATERS, THE LAND FURTHER DESCRIBED IN SUBSECTION (C).

(C) DESCRIPTION.--THE LAND TO BE TRANSFERRED UNDER SUBSECTION (A) SHALL BE ALL OF THE COMMONWEALTH'S LANDS BETWEEN THE LOW-WATER LINE, OR IN CITIES OF THE FIRST CLASS, THE BULKHEAD LINE, AND THE ESTABLISHED PIERHEAD LINE, IN A CITY OF THE FIRST CLASS, CONSISTING OF ALL THE MUDS AND LAND CURRENTLY

PRIOR PRINTER'S NOS. 1105, 1241, 1302, 1319, 1553

PRINTER'S NO. 2048

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 862 Session of 2005

INTRODUCED BY PIPPY, BRIGHTBILL, RHOADES, LAVALLE, CORMAN, RAFFERTY, EARLL, GORDNER, WONDERLING, KASUNIC, MADIGAN, PUNT, C. WILLIAMS, WENGER, PILEGGI, ORIE, THOMPSON, O'PAKE, ERICKSON, BOSCOLA, SCARNATI, D. WHITE, M. WHITE, WAUGH, REGOLA, ROBBINS, LEMMOND AND JUBELIRER, SEPTEMBER 14, 2005

SENATE AMENDMENTS TO HOUSE AMENDMENTS, SEPTEMBER 19, 2006

AN ACT

Amending Titles 4 (Amusements) and 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for definitions and for the Pennsylvania Gaming Control Board; providing for applicability of other statutes; further providing for powers and duties of board; providing for code of conduct; further providing for temporary regulations, for licensed entity application appeals from board, for license or permit application hearing process, for board minutes and records, for collection of fees and fines, FOR SLOT MACHINE LICENSE FEE, for Category 2 slot machine licenses, for Category 3 slot machine licenses, for order of initial license issuance, for slot machine license application and for slot machine license application business entity requirements; providing for licensing of ~~principals, for licensing of key employees and for recusal and disqualification of members; further providing for supplier and manufacturer licenses; providing for manufacturer licenses; further providing for occupation permit application, for nontransferability of licenses, for gross terminal revenue deductions, for establishment of State Gaming Fund and net slot machine revenue distribution, for the Pennsylvania Gaming Economic Development and Tourism Fund, for transfers from the State Gaming Fund, for the compulsive and problem gambling program, for public official financial interest, for political influence and for enforcement; providing for procedures, for hearing officers~~ PRINCIPALS AND FOR LICENSING OF KEY EMPLOYEES; FURTHER PROVIDING FOR SLOT MACHINE LICENSE APPLICATION FINANCIAL FITNESS REQUIREMENTS AND FOR SUPPLIER AND MANUFACTURER LICENSES; PROVIDING FOR MANUFACTURER LICENSES; FURTHER

APPROPRIATE DEPARTMENT OF THE CITY OF THE FIRST CLASS OF ALL INSPECTIONS OF THE BUILDINGS AND PROVIDE THE CITY WITH THE OPPORTUNITY TO OBSERVE THE INSPECTION OF THE LICENSED FACILITIES.

(5) TO MAKE AVAILABLE TO THE APPROPRIATE DEPARTMENT OF THE CITY OF THE FIRST CLASS, UPON REQUEST, COPIES OF ALL BUILDING PLANS AND PLAN REVIEW DOCUMENTS IN THE CUSTODY OF THE DEPARTMENT OF LABOR AND INDUSTRY.

§ 1506.2. CONVEYANCES IN CITIES OF THE FIRST CLASS.

(A) INTENTION.--IN ORDER TO MAXIMIZE THE POLICY MANDATES OF THIS PART AND TO OPTIMIZE DEVELOPMENT OPPORTUNITIES WITHIN A CITY OF THE FIRST CLASS, IT IS THE INTENTION OF THE GENERAL ASSEMBLY TO FACILITATE THE TIMELY CONVEYANCE OF RIPARIAN RIGHTS THAT THE COMMONWEALTH MAY OWN TO ANY PERSON APPROVED FOR A SLOT MACHINE LICENSE BY THE BOARD FOR A FACILITY TO BE LOCATED ON LAND CONTIGUOUS TO NAVIGABLE WATERWAYS.

(B) AUTHORIZATION AND DIRECTION.--THE DEPARTMENT OF GENERAL SERVICES, WITH THE APPROVAL OF THE GOVERNOR, IS HEREBY AUTHORIZED AND DIRECTED ON BEHALF OF THE COMMONWEALTH OF PENNSYLVANIA TO GRANT AND CONVEY BY QUITCLAIM DEED FOR CONSIDERATION UNDER SUBSECTION (E) TO EACH PERSON APPROVED FOR A SLOT MACHINE LICENSE BY THE BOARD FOR A LICENSED FACILITY THAT IS TO BE LOCATED WITHIN A CITY OF THE FIRST CLASS AND IS CONTIGUOUS TO NAVIGABLE WATERS, THE LAND FURTHER DESCRIBED IN SUBSECTION (C).

(C) DESCRIPTION.--THE LAND TO BE TRANSFERRED UNDER SUBSECTION (A) SHALL BE ALL OF THE COMMONWEALTH'S LANDS BETWEEN THE LOW-WATER LINE, OR IN CITIES OF THE FIRST CLASS, THE BULKHEAD LINE, AND THE ESTABLISHED PIERHEAD LINE, IN A CITY OF THE FIRST CLASS, CONSISTING OF ALL THE MUDS AND LAND CURRENTLY

OR PREVIOUSLY UNDER THE NAVIGABLE WATERS AND LYING ADJACENT TO THE PROPERTY OWNED BY A LICENSEE TO THE WEST OF THE BULKHEAD LAND, AND ALL RIPARIAN RIGHTS APPERTAINING THERETO.

(D) LICENSEE ELECTION OF GRANTED AREA.--UPON APPROVAL OF A SLOT MACHINE LICENSE TO A GRANTEE, THE GRANTEE SHALL DELIVER TO THE DEPARTMENT OF GENERAL SERVICES A COPY OF THE DEED OR OTHER DOCUMENTATION EVIDENCING ITS TITLE TO THE LICENSED FACILITY AND A SURVEY AND METES AND BOUNDS LEGAL DESCRIPTION OF THE LAND DESCRIBED UNDER SUBSECTION (C) TO BE INCLUDED IN ITS LICENSED FACILITY.

(E) CONSIDERATION.--THE FOLLOWING SHALL APPLY:

(1) THE CONSIDERATION TO BE PAID TO THE COMMONWEALTH BY THE GRANTEE FOR THE GRANTED AREA SHALL BE DETERMINED BY THE DEPARTMENT OF GENERAL SERVICES WITH THE APPROVAL OF THE GOVERNOR BASED ON AN APPRAISAL OF FAIR MARKET VALUE OBTAINED FROM AN INDEPENDENT APPRAISER WHO IS EXPERIENCED IN APPRAISING RIPARIAN INTERESTS AND COMMERCIAL REAL ESTATE IN CITIES OF THE FIRST CLASS AND WHO IS A MEMBER OF THE APPRAISAL INSTITUTE OR SIMILAR PROFESSIONAL ORGANIZATION. THE LAND DESCRIBED IN SUBSECTION (C) SHALL BE APPRAISED ON AN "AS-IS" BASIS, TAKING INTO ACCOUNT IN THE APPRAISAL ALL OF THE FOLLOWING:

(I) THE ABSENCE OF THE VALUE OF THE LAND DESCRIBED IN SUBSECTION (C) TO PERSONS OTHER THAN THE ADJACENT UPLAND OWNER.

(II) A CREDIT TO BE TAKEN AGAINST VALUE BECAUSE OF THE LICENSED GAMING ENTITY PROVIDING FOR PUBLIC ACCESS TO THE WATER AS MANDATED BY CHAPTER 19.

(III) THE LIMITED UTILITY OF THE LAND DESCRIBED UNDER SUBSECTION (C) WHICH IS, IN FACT, NOT BUILDABLE

LAND DUE TO ITS BEING UNDERWATER.

(IV) THE LIMITATION ON VALUE IMPOSED BY THE NEED AND UNCERTAINTY IN OBTAINING GOVERNMENTAL APPROVALS AND PERMITS TO CONSTRUCT ANY IMPROVEMENTS ON THE LAND DESCRIBED UNDER SUBSECTION (C).

(V) A CREDIT TO BE TAKEN AGAINST VALUE FOR THE COST OF DEMOLITION AND REMOVAL OF EXTANT RIPARIAN STRUCTURES SUCH AS DECREPIT PIERS, PLATFORMS AND PILINGS AND ANY RELATED ENVIRONMENTAL OR OTHER REMEDIATION.

(VI) A CREDIT TO BE TAKEN AGAINST VALUE FOR THE COST OF INFILLING AND OTHER STRUCTURAL SUPPORT FOR IMPROVEMENTS TO THE LAND DESCRIBED IN SUBSECTION (C), INCLUDING THE EXTENSION OF UTILITIES.

(VII) SALES PRICES OF FAST LAND BEHIND THE BULKHEAD LINE MAY NOT BE USED AS COMPARABLES.

(VIII) NO INCREASE IN THE VALUE OF THE LAND DESCRIBED IN SUBSECTION (C) SHALL BE MADE BECAUSE OF THE APPROVAL OF THE LICENSE.

(2) THE CONSIDERATION ESTABLISHED UNDER PARAGRAPH (1) SHALL BE PAID BY THE GRANTEE, DELIVERING TO THE COMMONWEALTH A NOTE BEARING INTEREST OF 6% PER ANNUM AT THE TIME OF TRANSFER TO IT BY THE COMMONWEALTH OF THE LAND DESCRIBED IN SUBSECTION (C). THE NOTE SHALL BE PAYABLE IN EQUAL ANNUAL INSTALLMENTS OF PRINCIPAL PLUS ACCRUED INTEREST ON THE FIRST THROUGH FIFTH ANNUAL ANNIVERSARIES OF THE CONVEYANCE OF THE LAND DESCRIBED UNDER SUBSECTION (C).

(F) DEED.--THE DEEDS OF CONVEYANCE SHALL BE BY QUITCLAIM DEED AND SHALL BE EXECUTED BY THE SECRETARY OF GENERAL SERVICES IN THE NAME OF THE COMMONWEALTH.

(G) COSTS AND FEES.--COSTS AND FEES INCIDENTAL TO EACH

CONVEYANCE SHALL BE BORNE BY THE GRANTEE.

SECTION 1506.3. RIPARIAN RIGHTS.

UPON THE ISSUANCE OF A SLOT MACHINE LICENSE UNDER THIS PART FOR A LICENSED FACILITY THAT IS TO BE LOCATED WITHIN A CITY OF THE FIRST CLASS CONTIGUOUS TO NAVIGABLE WATERS OF THE DELAWARE RIVER, IT SHALL BE DEEMED THAT THE SLOT MACHINE LICENSEE HAS COMPLETELY SATISFIED ALL STATE REQUIREMENTS SET FORTH IN THE ACT OF NOVEMBER 26, 1978 (P.L.1375, NO.325), KNOWN AS THE DAM SAFETY AND ENCROACHMENTS ACT, AND ALL REGULATIONS APPLICABLE TO ENCROACHMENT OF THE NAVIGABLE WATERS BY ANY MEANS IN AND ALONG SUBMERGED LANDS OF THE COMMONWEALTH THAT HAVE BEEN GRANTED FOR PURPOSES OF CONSTRUCTION, DEMOLITION AND ERECTION OF STRUCTURES AND FOUNDATIONS ASSOCIATED WITH A LICENSED FACILITY. THE SLOT MACHINE LICENSEE SHALL NOT BE OBLIGATED TO OBTAIN OR MAINTAIN A WATER OBSTRUCTION AND ENCROACHMENT PERMIT REQUIRED BY STATE LAW. THE LICENSED FACILITY, USE OF THE LICENSED FACILITY AND ANY LAND AND FILL ON WHICH ANY PORTION OF THE LICENSED FACILITY IS SITUATED AND OPERATED SHALL BE DEEMED:

(1) NOT TO BE DEROGATORY, INIMICAL OR INJURIOUS TO THE PUBLIC INTERESTS IN THE LAND AND WATERS;

(2) NOT TO ADVERSELY AFFECT NAVIGATION; AND

(3) NOT TO SIGNIFICANTLY IMPAIR THE PUBLIC RIGHT IN LANDS HELD IN TRUST BY THE COMMONWEALTH.

§ 1506.4. CLEAN INDOOR AIR.

LICENSED FACILITIES SHALL ONLY BE SUBJECT TO PUBLIC SMOKING RULES OR REGULATIONS AS MAY BE IMPOSED BY THE COMMONWEALTH AND APPLIED IN A COMPREHENSIVE STATEWIDE MANNER.

Section 10. Sections 1509(a), (b) and (d) and 1512 of Title 4 are amended to read:

§ 1509. Compulsive and problem gambling program.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

HSP GAMING LP,	+	
	+	
Petitioner	+	
	+	
	+	
v.	+	**No. 179 E.M. 2007**
	+	
	+	
CITY COUNCIL FOR THE CITY OF PHILADELPHIA; THE CITY OF PHILADELPHIA; THE CITY OF PLANNING COMMISSION FOR THE CITY OF PHILADELPHIA	+	
	+	
Respondents	+	

CERTIFICATION OF SERVICE

I, Christopher B. Craig, Attorney for *Amicus Curiae*, Senator Vincent J. Fumo, hereby certify that three copies of the attached document were served by electronic transmission and first class mail to the addresses indicated below. I further certify that the manner of service satisfies the requirements of Pa. R.A.P. 121, and 2187(a).

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