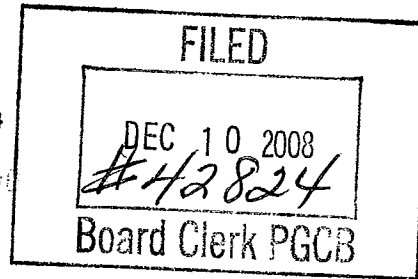


LEVINE, STALLER, SKLAR, CHAN
BROWN & DONNELLY, P.A.
3030 Atlantic Avenue
Atlantic City, NJ 08401
(609)348-1300 Telephone
(609)345-2473 Facsimile
Attorneys for HSP Gaming, L.P.

RECEIVED

2008 DEC -9 AM 10: 34

PA GAMING CONTROL BOARD
OFFICE OF THE CLERK



IN RE:
THE APPLICATION OF
HSP GAMING, L.P. FOR AN
EXTENSION OF TIME

:
: COMMONWEALTH OF PENNSYLVANIA
: BEFORE THE PENNSYLVANIA GAMING
: CONTROL BOARD

:
: Docket No. 1356
:

**APPLICATION OF HSP GAMING, L.P. FOR ADDITIONAL TIME
TO MAKE SLOT MACHINES AVAILABLE TO PLAY**

Petitioner, HSP Gaming, L.P. ("HSP"), by way of this Application, hereby applies under Section 1210 of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa. C.S. §1101 et. seq. ("Gaming Act") for additional time to make slot machines available to play.

BACKGROUND

1. On January 10, 2008, the Pennsylvania Gaming Control Board ("Gaming Board") issued Category 2 Slot Machine License No. F-1356 ("License") to HSP.
2. Pursuant to Section 1210 of the Gaming Act, a slot machine license is "required to operate and make available to play a minimum of 1,500 machines. . . . within one year of the issuance by the Board of a slot machine license unless otherwise

extended by the Board upon application and for good cause shown, for an additional period not to exceed 24 months.”

3. As the Gaming Board is aware, since its selection to receive a Category 2 Slot Machine License in December 2006, HSP has worked diligently to successfully defeat challenges to the license award and to obtain the necessary approvals and permits to commence and proceed with the development of the SugarHouse Casino (“Project”).

4. Such action has included the prosecution or defense of more than ten separate lawsuits or appeals in the Court of Common Pleas, the Supreme Court of Pennsylvania and the United States District Court.

5. To date, HSP has spent over well in excess of \$100 million on its development efforts, in addition to the License fee payment.

DEVELOPMENT EFFORTS

6. HSP has and continues to work diligently to secure the city, state and federal approvals, permits and licenses necessary to construct the Project.

7. In the Spring of 2007, HSP sought from the City of Philadelphia re-zoning of the casino site and approval of its Plan of Development. The Philadelphia City Council, however, failed to formally act on those matters which required Council action under applicable ordinances. As a result, HSP was forced to file a suit in the Supreme Court of Pennsylvania challenging the inaction of the City Council. Ultimately, on December 3, 2007, the Supreme Court of Pennsylvania ruled that the re-zoning and Plan of Development were deemed approved. See HSP Gaming v. City Council for the City of

Philadelphia, 595 Pa. 508, 939 A.2d 273 (2007), Appl. for Reargument Den., 2007 Pa. LEXIS 2945 (Dec. 31, 2007).

8. On November 27, 2007, the Philadelphia Commerce Department issued a submerged lands license to HSP granting certain rights to a portion of the land proposed for use in the Project as approved by the Gaming Board.

9. On January 24, 2008, following a change in the administration of the City of Philadelphia, the City Commerce Department Director issued a notice purporting to revoke the submerged lands license. HSP timely appealed the purported revocation with the Supreme Court of Pennsylvania.¹ See *HSP Gaming, L.P. v. City of Philadelphia*, 954 A.2d 1156 (Pa. 2008).

10. By Opinion and Order dated August 22, 2008, the Supreme Court ruled that: (1) the Commerce Director had statutory authority to issue HSP's submerged lands license and (2) the City and the Commerce Department lacked the authority to revoke the license issuance. Id.

11. On October 7, 2008, the Supreme Court issued an Order denying the City's Application for Reargument, fully and finally resolving the validity of HSP's submerged lands license.

12. Following these Supreme Court of Pennsylvania matters, HSP has continued to diligently pursue its development efforts.

13. To date, HSP has received the following approvals:

¹ A group of legislators and Philadelphia City Council filed appeals with the Supreme Court of Pennsylvania seeking, among other things, nullification of the submerged lands license. *City Council of Philadelphia v. City of Philadelphia*, Supreme Ct. Pa. 208 EM 2007. HSP defended both appeals, which remain open on the Supreme Court dockets. However, based on the Court's August 22, 2008 decision (see paragraph 10 above), the validity of HSP's riparian license is no longer subject to legal challenge.

- (a) Re-zoning of the casino site to the Commercial Entertainment District classification, which is the only classification under which licensed gaming is a permitted use in Philadelphia;
- (b) Approval by the City Planning Commission of the SugarHouse Casino's detailed Plan of Development for the SugarHouse site;
- (c) Approval by the Pennsylvania Department of Environmental Protection of an Act 537 sanitary sewer module amendment to enable the SugarHouse Casino to connect to the municipal water and sewer system.²

14. To date, HSP has received the following permits/licenses:

- (a) National Pollution Discharge Elimination Permit System
(Pennsylvania Department of Environmental Protection);
- (b) Zoning/Use Permit
(City of Philadelphia Department of Licenses and Inspections);
- (c) Rough Grading Permit
(City of Philadelphia Department of Licenses and Inspections);
- (d) Submerged Lands License
(City of Philadelphia Commerce Department)
- (e) Water Obstruction and Encroachment Permit
(Pennsylvania Department of Environmental Protection).

15. To date, HSP has entered into the following agreements with the City of Philadelphia and local community groups:

² The approval was granted on September 11, 2008. On November 3, 2008, an appeal of that approval was filed by a community group, an environmental group, and an individual. That appeal is pending before the Pennsylvania Environmental Hearing Board. EHB Docket No. 2008-312-L.

(a) Development and Tax Settlement Agreement with the City of Philadelphia dated December 17, 2007 (a copy of which was previously submitted to the Gaming Board) which memorializes certain agreements between the parties to ensure the timely and expeditious development, construction, completion and operation of the SugarHouse Casino for the mutual benefit of the City and HSP and provides for the settlement of certain disputes between the parties.

(b) On November 20, 2008, HSP and the Fishtown Action and New Kensington Community Development Corporation (the "Community Groups") signed a "Community Benefits Agreement," (a copy of which was previously submitted to the Gaming Board) pursuant to which HSP committed to coordinate various activities with the Community Groups and to provide funding for a Special Services District to be created to address community issues and needs. This agreement was the result of over a year of detailed and complex negotiations between HSP and the Community Groups.

16. HSP has made significant physical progress on the site since the resolution of the Supreme Court of Pennsylvania matters, including:

- (a) Beginning in the spring of this year, HSP cleared the surface of the site and created drainage and sediment erosion controls;
- (b) HSP has excavated and removed much of the surface and subsurface rubble and foundation materials remaining from the preexisting sugar refinery;

(c) On November 12, 2008, HSP's contractors drove the first of seven permanent indicator piles, reaching bedrock. These permanent piles will ultimately serve as the supports for elements of the new foundation;

(d) HSP currently maintains an on-site work force which varies in size from approximately 12 to 24 construction personnel and supervisors.

17. HSP has been working diligently with the United States Army Corp of Engineers in obtaining its Section 10/Section 404 permit approval, which, once granted, will enable HSP Gaming to conduct the dredging, filling, bulkheading and drainage relocation activities incident to its project. In connection with that approval, HSP and its archaeological consultant, A.D. Marble, have worked with the U.S. Army Corps of Engineers, Pennsylvania Historical and Museum Commission and the Advisory Council on Historic Preservation to ensure the proper identification and disposition of historic resources which have been or may be found in the course of construction, and to ascertain whether the site includes any artifacts of such historic value that discovery would materially interfere with construction of the SugarHouse Casino. Research, excavation, and analysis have been extensive and intensive, and HSP believes that archeological and historic concerns will not cause any delay or disruption of its development program.

18. HSP has the necessary approvals to complete excavation, obstruction removal and dynamic compaction, the next steps in site development, and expects to obtain the remaining approvals and permits from the City and other governmental

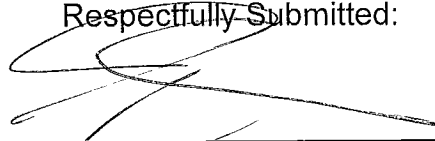
entities as required in due course to proceed further with the development of the Project.

19. Despite its continuous diligent efforts, and for reasons beyond its control as set forth in part above, HSP is unable to make 1,500 slot machines available for play within the one year of its License issuance (January 10, 2008).

20. Based on the foregoing, HSP respectfully submits that good cause exists for the Gaming Board to extend the time under Section 1210 for one additional year.

WHEREFORE, for the foregoing reasons, HSP respectfully requests that the Gaming Board issue an Order granting this Application pursuant to Section 1210 of the Gaming Act and extending the time for HSP to make slot machines available for play until January 10, 2010.

Respectfully Submitted:



John M. Donnelly
Michael D. Sklar
LEVINE, STALLER, SKLAR, CHAN,
BROWN & DONNELLY, P.A.
3030 Atlantic Avenue
Atlantic City, NJ 08401
(609)348-1300 Telephone
(609)345-2473 Facsimile

Counsel for HSP Gaming, L.P.

Dated: December 8, 2008