

IN THE SUPREME COURT OF PENNSYLVANIA

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No. \_\_\_\_ EM 2007

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**PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT PARTNERS, L.P. d/b/a  
FOXWOODS CASINO PHILADELPHIA,**

*Petitioner,*

v.

**CITY COUNCIL FOR THE CITY OF PHILADELPHIA AND THE CITY OF  
PHILADELPHIA,**

*Respondents.*

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**VERIFIED OBJECTION TO THE APPLICATION FOR EXPEDITED BRIEFING  
SCHEDULE OF PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT  
PARTNERS, L.P., d/b/a FOXWOODS CASINO PHILADELPHIA**

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*A Professional Corporation*

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**215-587-1600**

**Attorneys for Respondent City Council for the City  
of Philadelphia**

**Dated: January 3, 2008**

**CITY COUNCIL OF THE CITY OF PHILADELPHIA'S  
VERIFIED OBJECTION TO THE APPLICATION FOR EXPEDITED BRIEFING  
SCHEDULE OF PHILADELPHIA ENTERTAINMENT AND DEVELOPMENT  
PARTNERS, L.P., d/b/a FOXWOODS CASINO PHILADELPHIA**

Respondent City Council of the City of Philadelphia ("City Council") objects to Philadelphia Entertainment and Development Partners, LLP's ("PEDP") Application for Expedited Briefing Schedule.<sup>1</sup> This Application makes clear that PEDP refuses to accept this Court's decision of November 20, 2007 to transfer its purported claims against City Council to the Philadelphia Court of Common Pleas.

**A. The Issues Raised in the Application Should Be Litigated in the Court of Common Pleas As Directed by This Court**

1. A copy of PEDP's Application was not provided to City Council until the end of business hours on Friday, December 28, 2007. City Council is compelled to file this response to refute PEDP's unfounded allegations that an application for expedited review is warranted in this matter.

2. As an initial matter, this Court is not the proper forum for addressing the issues and factual record raised in the Application for Summary Relief. Rather, the appropriate forum for the litigation of PEDP's new claim against City Council, and a new factual record, is the Court of Common Pleas of Philadelphia County where Count II of PEDP's original Petition for Review and Application for Summary Relief was transferred by order of this Court dated November 20, 2007.<sup>2</sup>

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<sup>1</sup> City Council expressly denies the allegations concerning the merits of the Petition for Review and the Application for Summary Relief and intends to respond in accordance with the Rules of Appellate Procedure.

<sup>2</sup> This Court dismissed without prejudice Count I of PEDP's Petition. *See PEDP v. City of Philadelphia, et al.*, No. 88 EM 2007, slip op. (Pa. Nov. 20, 2007).

3. PEDP submitted an application for reargument on December 4, 2007, raising altogether new arguments based on the decision in *HSP Gaming* that was issued on December 3, 2007.

4. City Council opposed reargument on the grounds that, among other things, PEDP was prohibited from bringing a new argument and a new record on appeal that it did not address in its original papers.

5. Pursuant to this Court's November 20, 2007 decision, PEDP's petition for review was transferred to Hon. Esther Sylvester of the Philadelphia Court of Common Pleas for disposition. On Monday, December 17, 2007, Judge Sylvester met with counsel for City Council, the City of Philadelphia, and PEDP. At that conference, counsel for PEDP proposed, and City Council agreed to, an expedited briefing schedule, which would go into effect in the event that the Supreme Court denied PEDP's Application for Reargument.

6. The Supreme Court denied PEDP's application for reargument on December 21, 2007.

7. The majority of this Court denied PEDP's request for reargument with no invitation to renew the same arguments in another petition for review. The issues now raised, yet again, by PEDP in this new Application have already been reviewed, addressed and rejected by this Court in its decision to deny reargument.

8. PEDP's filing of this Application simply repackages the same issues that were already disposed of by this Court on December 21, 2007.

9. On December 27, 2007, the Supreme Court also quashed PEDP's appeal of the City of Philadelphia's Department of Licenses and Inspections' Notice of Refusal because PEDP failed to its exhaust administrative remedies.

10. PEDP seeks to circumvent this Court's November 20, 2007; December 21, 2007 and December 27, 2007 decisions by asking this Court to exercise its appellate jurisdiction on a new matter with an undeveloped record. Unable to accept its fate, PEDP wants to play by its own procedural rules.

**B. No Expedited Briefing Necessary**

11. PEDP's Application fails to allege any proper basis for expedited relief. There are no issues associated with PEDPs' Petition for Review that would necessitate an expedited schedule, especially since City Council has already agreed to an expedited schedule in the Court of Common Pleas as advocated by PEDP.

12. First, though PEDP attempts to attribute the loss of projected revenue and the passage of time to delays caused by an "unending barrage of litigation and active legislative hostility" from City Council, it fails to mention that PEDP, not City Council has compounded, if not created, the harm by starting these actions and refusing to abide by the directives of this Court. PEDP's meritless and seemingly endless litigation has been an unwanted and unyielding distraction to City Council.

13. Moreover, PEDP has stonewalled City Council by refusing to respond to its basic inquiries made about the impact the construction of this facility will have on transportation and quality of life of the residents of the citizens of Philadelphia. Under the Gaming Act, local government retains a substantial role to play in the construction and development of gaming facilities. 4 Pa. C. S. §1505. An elected legislative body, such as City Council, has not only the right, but an obligation to Philadelphia residents to make such inquiries and informed decisions.

14. Moreover, even PEDP acknowledges that, as of the filing of the Petition for Review, there remains much unfinished business regarding key issues pertinent to the development of PEDP's proposed casino. As stated in paragraphs 80-81, in an agreement "in principle on a term sheet" on November 23, 2007, PEDP has made only "commitments" with respect to a "transportation plan," and has evidenced a "willingness to provide funding for a Community Benefits Agreement and to provide waterfront access" to the public.

15. As stated in paragraph 83, it was not until November 28, 2007, that the City Solicitor "certified" in a letter to Janice Woodcock, Director of the Planning Commission, that "the Planning Commission's proviso to its August 21, 2007 approval of Foxwoods' plan of development 'adequately and appropriately' addressing the issues raised by the Philadelphia Gaming Authority Task Force had been satisfied through the execution of the November 23, 2007 term sheet."

16. City Council had only two regularly scheduled sessions on its December 2007 calendar scheduled after the City Solicitor certified that PEDP satisfied the proviso to the Plan of Development at the end of November 2007.<sup>3</sup> City Council had no time left in 2007 to take up the Commercial Entertainment District Ordinance. (the "PEDP Bill"). Even if the PEDP Bill, a zoning matter, had been introduced on November 29, 2007, 15 days' notice would have been required before the hearing. Accordingly, the earliest possible hearing date for the PEDP Bill would have been after the date of the last regularly scheduled session for 2007.

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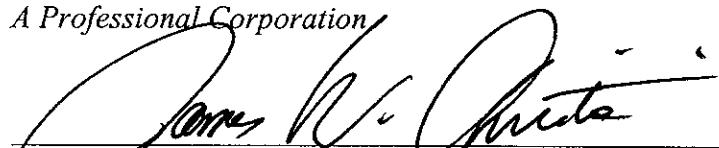
<sup>3</sup> A special session was held on December 19, 2007.

17. City Council submits that this Application can be properly addressed within the time limits prescribed by the Appellate Rules of Procedure and that PEDP will suffer no injustice or harm if the parties follow those time lines.

WHEREFORE, City Council respectfully requests that this Honorable Court deny PEDP's Application for Expedited Briefing Schedule.

Respectfully submitted,  
CHRISTIE, PABARUE, MORTENSEN AND YOUNG,  
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BY:

  
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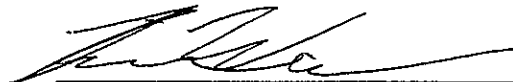
Attorneys for Respondent  
City Council for the City of Philadelphia

Dated: January 3, 2008

**VERIFICATION**

I, Brian C. Vance, pursuant to Pa.R.C.P. 1024, hereby state that I am a shareholder with the Law Firm of Christie, Pabarue, Mortensen and Young, A Professional Corporation, attorneys for the City Council of the City of Philadelphia, in this action and that the statements made in the foregoing Verified Objection to the Application for Expedited Briefing Schedule of Philadelphia Entertainment and Development Partners, L.P. d/b/a Foxwoods Casino Philadelphia are true and correct to the best of my knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Dated: January 3, 2008



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Brian C. Vance

**CERTIFICATE OF SERVICE**

I, BRIAN C. VANCE, hereby certify that on this 3<sup>rd</sup> day of January, 2008, I am serving the foregoing Verified Objection to the Application for Expedited Briefing Schedule of Philadelphia Entertainment and Development Partners, L.P., d/b/a/ Foxwoods Casino Philadelphia upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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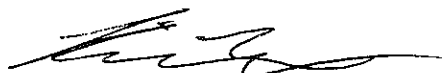
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