

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

HSP GAMING, L.P.	:	No. ____ E.M. 2007
	:	
Petitioner	:	Chapter 15 Petition for Review Filed by HSP Gaming, L.P.
	:	
	:	
v.	:	
	:	
CITY COUNCIL FOR THE CITY OF PHILADELPHIA; THE CITY OF PHILADELPHIA; THE CITY PLANNING COMMISSION FOR THE CITY OF PHILADELPHIA	:	
	:	
Respondents	:	
	:	
	:	

**PETITIONER HSP GAMING’S APPLICATION FOR SUMMARY RELIEF AND
EXPEDITED BRIEFING SCHEDULE**

Petitioner in the above-captioned Petition for Review, HSP Gaming, L.P. (“HSP Gaming”), hereby applies for summary relief pursuant to Pa.R.A.P. 123 and 1532(b) and for an expedited briefing schedule on its Petition for Review pursuant to Pa.R.A.P. 123, and respectfully requests that this Court appoint a Master, establish an expedited briefing schedule, and enter judgment in favor of HSP Gaming on its Petition for Review because HSP Gaming’s right to relief in its Petition for Review, incorporated herein by reference and attached hereto as Exhibit A, is clear.

The Pennsylvania Race Horse Development and Gaming Act (the “Gaming Act” or “Act 71”), 4 Pa.C.S. § 1101 *et seq.*, clearly establishes that: 1) only the Pennsylvania Gaming Control Board (“Gaming Board”) has the authority to select the locations of the casinos; 2) the Gaming

Board was required to choose two locations in the City of Philadelphia; and 3) the City of Philadelphia must implement this decision under its existing zoning laws.

This Court's decision on August 3, 2007 removed any doubt about these requirements. See Pennsylvania Gaming Control Bd. v. City Council of Philadelphia, 928 A.2d 1255, 1267 (Pa. 2007) ("PGCB v. City Council"). "We conclude that the words of these statutory provisions are clear and explicit and reveal that the General Assembly intended for the Board to have the sole authority to locate Category 2 licensed facilities in cities of the first class. That is to say, only the Board makes the decision to locate a licensed facility." PGCB v. City Council, 928 A.2d at 1267. This Court further explained that, once the Gaming Board made its decision as to location, "the General Assembly intends for it to be implemented under and according to the zoning and land use provisions a city has enacted." Id. at 1269.

Therefore, Respondents, City Council for the City of Philadelphia ("City Council"), the City of Philadelphia (the "City"), and the City Planning Commission for the City of Philadelphia ("Planning Commission") have no discretion over the location of the casinos in Philadelphia. By enacting Ordinance No. 051028-AA and amendatory Ordinance No. 060631 (collectively the "CED Ordinance") to create a new zoning classification called Commercial Entertainment Districts ("CEDs") to facilitate the "orderly development" of licensed gaming, the City and City Council acknowledged that they have no authority over the location of casinos. See PHILA. CODE §§ 14-401-412, 14-405(2) ("Nothing in this Chapter shall limit the right of the Pennsylvania Gaming Control Board under the Act to identify the property on which it will permit a Category 2 licensed gaming facility within the City."[emphasis added]).

Moreover, under the CED Ordinance, the City set forth its zoning requirements other than location. The CED Ordinance was available for the Gaming Board's review at the time it selected the casinos' locations, and this Court expressly noted that the Gaming Board relied on

the CED Ordinance in issuing its decision. “As we observed, when the Board announced its decision on the applications for licenses in the City, it noted that the location of HSP Gaming’s proposed site is in an area of the City zoned for uses compatible with or analogous to gaming, and that the location of Philadelphia Entertainment’s proposed site is fully compliant with the requirements of a CED district.” PGCB, 928 A.2d at 1269 n.10.

Therefore, now that it has set forth the non-location zoning requirements for casinos in the CED Ordinance, and the Gaming Board has selected HSP Gaming’s site as a location for licensed gaming within the City of Philadelphia, City Council has no discretion concerning the designation of HSP Gaming site as a CED. Nevertheless, City Council has continued to refuse to implement the Gaming Board’s decision by failing to designate the approved zoning at the sites selected by the Gaming Board for the casinos, and has defied the decision of the Gaming Board, as upheld by this Court. Primarily, among other things, City Council has refused to process the Bills contemplated by the CED Ordinance, Bills No. 070456, 070457, and 070458 (“HSP Bills”),¹ to effectively designate and zone HSP Gaming’s site as a CED and instead has intentionally delayed the consideration of the HSP Bills and otherwise thrown roadblocks in the orderly development of the Philadelphia gaming venues to prevent the implementation of the Gaming Board’s decision to locate a casino at HSP Gaming’s site. As discussed herein, City Council’s intentional delay and its active subversion of the Gaming Act, the Gaming Board, and

¹ On May 24, 2007, the three HSP Bills necessary for Council to implement the Gaming Board’s location decision were introduced into City Council. Bill No. 070456 (“CED Designation Bill”), if adopted, would amend the current zoning for HSP Gaming’s site, designate it as a CED, and require that the provisions of the CED Ordinance control over other zoning provisions. (See Bill No. 070456 attached to the Petition for Review as Exhibit D) Bill No. 070457 (“Omnibus Bill”), if adopted, would among other things authorize the revision of the lines and grades on HSP Gaming’s site and provide a right of way for sewer maintenance for the site. (See Bill No. 070457 attached to the Petition for Review as Exhibit E) Bill No. 070458 (“Plan of Development Bill”), if adopted, would approve HSP Gaming’s Plan of Development that had previously been approved by the Commission. (See Bill No. 070458 attached to the Petition for Review as Exhibit F)

this Court's decision, has harmed and will continue to harm HSP Gaming, the Commonwealth of Pennsylvania, and the citizens of the City of Philadelphia.

Accordingly, since the Gaming Board, in its sole discretion, has selected HSP Gaming's site as a location for a casino, and HSP Gaming has satisfied the non-location zoning requirements of the CED Ordinance, no further City Council action is necessary to designate HSP Gaming's site as a CED. As such, HSP Gaming's right to relief is clear and HSP Gaming respectfully requests that this Court exercise its authority to issue a declaratory judgment declaring that Bills No. 070456, 070457, and 070458 are duly enacted and to issue a writ of mandamus to the City and the Planning Commission directing that they deem these Bills duly enacted or, in the alternative, assuming *arguendo* that the Court determines that the Bills must technically be enacted by City Council to be effective, issue a writ of mandamus and/or injunction requiring that City Council and the City of Philadelphia implement the decision of the Gaming Board by fulfilling their administrative duties and enacting the HSP Bills, Bills No. 070456, 070457, and 070458. Furthermore, HSP Gaming seeks a declaratory judgment that the City of Philadelphia has a mandatory duty to timely review, approve, and issue all applications for permits submitted by HSP Gaming that satisfy the requirements and procedures of the CED Ordinance. In order to fully implement and give effect to the above requested relief, HSP Gaming requests that the Court issue a writ of mandamus directing the Planning Commission for the City of Philadelphia to immediately mark the City maps to designate HSP Gaming's site as a CED and direct all City agencies to recognize the Commercial Entertainment District as the zoning classification for the HSP Gaming site. Moreover, due to City Council's steadfast refusal to cooperate and, as discussed herein, its expressed intent to ignore the Orders of this Court, HSP Gaming requests the appointment of a Master pursuant to Section 1506 of the Gaming Act.

Finally, as City Council has already delayed HSP Gaming's construction and operations by six months by refusing to implement and otherwise resisting the Gaming Board's decision to locate a casino at HSP Gaming's site and by using whatever means it can to slow down the process envisioned by the Gaming Act, HSP Gaming respectfully requests that this Court issue an expedited briefing schedule on HSP Gaming's Petition for Review.

I. PARTIES

1. Petitioner HSP Gaming is a Delaware limited partnership whose application to build and operate a Category 2 slot machine facility on a 22-acre site on North Delaware Avenue, to be known as the "SugarHouse Casino," has been approved by the Gaming Board pursuant to a February 1, 2007 Order and Adjudication of the Gaming Board. HSP Gaming's service address is: c/o Charles J. Hardy, Esquire, Sprague & Sprague, The Wellington Bldg., Suite 400, 135 South 19th Street, Philadelphia, Pennsylvania 19103.

2. Respondent, Council of the City of Philadelphia ("City Council") is the City's legislative body as established by Philadelphia's Home Rule Charter. City Council's service address is: c/o Patricia Rafferty, Chief Clerk of City Council, City Hall, Room 402, Philadelphia, PA 19107.

3. Respondent, the City of Philadelphia (the "City") is a home-rule municipality authorized by the First Class City Home Rule Act, 53 P.S. §§ 13101-13157, and is the sole City of the First Class within the Commonwealth of Pennsylvania. The City's service address is: c/o Romulo L. Diaz, Jr., Esquire, City Solicitor, City of Philadelphia Law Department, One Parkway, 1515 Arch Street, 17th Floor, Philadelphia, Pennsylvania 19102-1595. The City is a necessary and indispensable party to implement the CED Ordinance and to comply with the requested declaratory relief.

4. Respondent, the Planning Commission for the City of Philadelphia (the "Planning Commission") is an independent commission of the City of Philadelphia created pursuant to Section 3-100(e) of the Philadelphia City Charter. The Planning Commission is a necessary party because it is required to mark the maps for the City of Philadelphia to indicate that HSP Gaming's property is zoned as a CED. The Planning Commission's service address is: c/o Romulo L. Diaz, Jr., Esquire, City Solicitor, City of Philadelphia Law Department, One Parkway, 1515 Arch Street, 17th Floor, Philadelphia, Pennsylvania 19102-1595.

II. BACKGROUND

5. On November 1, 2006, the Pennsylvania General Assembly amended the Gaming Act, and in doing so established that the Gaming Board would have sole authority over selecting the location of casinos and required that the Gaming Board select the location of two casinos in Philadelphia. See 4 Pa.C.S.A. §§ 1103, 1202, 1304, 1307.

6. In order to implement the Gaming Board's decision as to the location of casinos, City Council enacted the CED Ordinance on February 23, 2006, amended on November 29, 2006, that added Chapter 14-400 to the provisions of the Philadelphia Code that govern zoning and planning. The November 29, 2006 amendment specifically added the requirement that "Nothing under this Chapter shall limit the right of the Pennsylvania Gaming Control Board under the Act to identify the property on which it will permit a Category 2 licensed gaming facility within the City." See Ordinance No. 060631, at § 14-405(2). As expressed by its drafters, Chapter 14-400 is intended "to encourage the orderly development of major entertainment facilities," and provide a regulatory framework for the establishment of Commercial Entertainment Districts (or "CEDs") in Philadelphia. PHILA. CODE § 14-401. Thus, the CED Ordinance sets forth all of the non-location requirements for casinos established by City Council. See Phila. Code §§ 14-401-412.

7. On December 20, 2006, the Gaming Board entered an Order (“Order”), and on February 1, 2007, the Gaming Board entered an Opinion and Order (“Adjudication”) approving and granting HSP Gaming, L.P.’s and Philadelphia Entertainment & Development Partners, L.P.’s (“Foxwoods”) Category 2 Slot Machine Applications to each operate a casino in Philadelphia, Pennsylvania pursuant to the Gaming Act, 4 PA.C.S. §§ 1101-1904. This Court has recognized that the Gaming Board relied upon the CED Ordinance in selected HSP Gaming and Foxwoods’ locations. “As we observed, when the Board announced its decision on the applications for licenses in the City, it noted that the location of HSP Gaming’s proposed site is in an area of the City zoned for uses compatible with or analogous to gaming, and that the location of Philadelphia Entertainment’s proposed site is fully compliant with the requirements of a CED district.” PGCB, 928 A.2d at 1269 n.10.

8. Following the Gaming Board’s decision, City Council has intentionally thrown roadblocks in the orderly development of the Philadelphia gaming venues, has publicly stated its intention to slow down and delay the construction of casinos, and has put this intent into effect by refusing to process, consider, or vote out of Committee the HSP Bills, Bills No. 070456, 070457, and 070458, necessary to implement the Gaming Board’s decision. (See Petition for Review at ¶¶ 61-128)

9. The HSP Bills, Bills No. 070456, 070457, and 070458 were properly introduced before Council on May 24, 2007 and it is undisputed that they satisfy all requirements of the CED Ordinance. (See Petition for Review at ¶¶ 102-128) Nevertheless, City Council has actively blocked the decision of the Gaming Board, as approved by this Court, by refusing to consider, process, or enact the HSP Bills. Id.

III. STANDARD

10. Any time after the filing of a Petition for Review, the Court on application pursuant to Pa. R.A.P. 1532(b), “may enter judgment if the right of the applicant thereto is clear.”

11. “The Court may grant summary relief pursuant to Rule 1532(b) where the moving party establishes that the case is clear and free from doubt, that there exist no genuine issues of material fact to be tried and that the moving party is entitled to judgment as a matter of law.” Pappert v. Coy, 860 A.2d 1201, 1204-05 (Pa. Cmwlth. 2004).

IV. HSP GAMING’S RIGHT TO RELIEF IN ITS PETITION FOR REVIEW IS CLEAR AND HSP IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

12. Petitioner incorporates paragraphs 1-11 as though set forth fully herein.

13. HSP Gaming’s Plan of Development Bill should be deemed approved under the terms of the CED Ordinance. See Philomeno & Salamone v. Board of Supervisors of Upper Merion Tp., 882 A.2d 1044, 1047 (Pa. Cmwlth. 2005) (“An action in mandamus is the appropriate means to obtain recognition of a deemed approval of a proposed land development plan.”).

14. Under the CED Ordinance, initially the Planning Commission must approve the Plan of Development, and then City Council must approve same. PHILA. CODE § 14-401-404.

15. HSP Gaming submitted its Plan of Development to the Planning Commission on March 30, 2007. (See March 30, 2007 Letter to City Solicitor Romulo Diaz, attached to the Petition for Review as Exhibit JJ)

16. On May 22, 2007, the City Planning Commission approved the Plan of Development. (See Planning Commission Minutes, May 22, 2007 at 12, attached to the Petition for Review as Exhibit AA)²

² Moreover, assuming *arguendo* that the Planning Commission had somehow failed to approve the Plan of Development on May 22, 2007, because the Planning Commission was deemed to

17. On May 24, 2007, the Plan of Development Bill was introduced in City Council.
18. As to Council approval, the CED Ordinance provides:

Council approval of a Plan of Development shall be presumed if Council fails to approve by ordinance, disapprove by ordinance, or table consideration of a proposed Plan by the later of (i) 45 days after submission by the Commission of a proposed Plan to the Council or (ii) the fifth Council meeting after submission by the Commission of a proposed Plan to the Council. In the event the owner of a lot within a District submits a proposed Plan to the Commission and the Commission fails to approve, disapprove or table consideration of it within 45 days after submission, the proponent may submit the application directly to the Council and it will be deemed submitted to the Council by the Commission.

19. Since the HSP Bills were introduced on May 24, 2007, City Council has been in session for more than 45 days as of October 25, 2007. Moreover, Council held meetings on May 31, June 7, June 14, September 20, September 27, and October 4. Therefore, as of October 25, 2007, because City Council failed to act on the Plan of Development Bill within 45 days or five (5) meetings of its introduction, City Council was deemed to have approved HSP Gaming's Plan of Development.

20. Moreover, the Gaming Act requires that only the Gaming Board has the authority to select the locations of casinos in the City of Philadelphia. PGCB, 928 A.2d at 1267.

21. The General Assembly intended that the City of Philadelphia would merely implement the Gaming Board's decision regarding the location of the casinos. Once the Gaming Board's "decision on location is made, the General Assembly intends for it to be implemented under and according to the zoning and land use provisions a city has enacted." PGCB, 928 A.2d at 1269.

have approved the Plan of Development if it failed to act "within 45 days after submission of complete plans to the Commission," PHILA. CODE § 14-404(3), it was nevertheless deemed approved on May 14, 2007.

22. “[T]he General Assembly does not intend for the electorate of a first class city to be given the opportunity to consider, approve, disapprove, nullify or otherwise affect the Board’s decision once it is made or to prevent its implementation.” PGCB, 928 A.2d at 1269 (citing 4 Pa.C.S. §§ 1304, 1307, 1506).

23. The Gaming Act, therefore, imposes a mandatory duty upon the City to implement the Gaming Board’s decision now that HSP Gaming has satisfied the CED Ordinance requirements, and deprives local government of the power to prevent or impede the implementation of the Gaming Board’s decision concerning the location of the casino.

The Act does not allow the Philadelphia electorate the right through any means whatsoever to consider or nullify the decision the Board made to locate two Category 2 licensed facilities in the City, as does the Ordinance. The Act does not give the Philadelphia electorate the right to direct City Council and the City’s Department of Licenses and Inspections to disregard those portions of the Philadelphia Code or any other local law by which the Board’s decision is to be implemented.

PGCB, 928 A.2d at 1270.

24. At the time of the Gaming Board decision, the CED Ordinance had been enacted and this Court recognized that the Gaming Board specifically relied upon the CED Ordinance in selecting the locations of the casinos. “As we observed, when the Board announced its decision on the applications for licenses in the City, it noted that the location of HSP Gaming’s proposed site is in an area of the City zoned for uses compatible with or analogous to gaming, and that the location of Philadelphia Entertainment’s proposed site is fully compliant with the requirements of a CED district.” PGCB, 928 A.2d at 1269 n.10.

25. The HSP Bills necessary to implement the Gaming Board’s decision have been properly introduced in City Council. (See Bills No. 070456, 070457, 070458.)

26. In addition, it is undisputed that the HSP Bills satisfy the CED requirements and, to the extent necessary, have been approved or recommended by the Planning Commission.

“SugarHouse has submitted to the city a plan of development that is fully compliant with the CED requirements.” (See June 13 Committee on Law and Government Hearing Transcript at 34 (“June 13 Tr.”), attached as Exhibit Z to the Petition for Review)

27. It is also undisputed that HSP Gaming has paid its licensing fee as directed by the Gaming Board and required under the Gaming Act.

28. As discussed above, the Plan of Development is deemed approved because City Council has failed to act on the Plan of Development Bill, Bill No. 070458, within the time period required by the CED Ordinance. Therefore, since the Plan of Development is deemed approved, and the Gaming Board has the sole authority to determine the location of the casinos and duly selected HSP Gaming’s site, no further City Council action is necessary and this Court has the authority to declare that Bills No. 070456, 070457, and 070458 are duly enacted.

29. Moreover, even if further City Council action were necessary, because the HSP Bills affect HSP Gaming’s property only and merely implement the policy decisions in Gaming Act, the Gaming Board’s Adjudication, and the CED Ordinance, any further City Council Action would be purely administrative and ministerial in nature, at most. See North Point Breeze Coalition v. City of Pittsburgh, 60 Cmwlth. 298, 303, 431 A.2d 398, 400 (1981) (city council action was not legislative in nature because “it established no rule of general application.”) “Where the decision affects a small number or a single individual, the legislative power is not implicated, and the act takes on the nature of administration.” Firetree v. Fairchild, 920 A.2d 913, 920 (Pa. Cmwlth. 2007) (quoting Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 774 (3d Cir. 2000)). Here, any required City Council approval of the HSP Bills would merely be administrative because the CED Ordinance that is already in place, the Gaming Act, and the Gaming Board Adjudication constitute the broad-based policy and line drawing determinations.

30. Philadelphia adopted the CED Ordinance to supply the CED zoning classification as the zoning to apply where casinos are to be located by the Gaming Board. The Gaming Board then designated the locations. This Court should declare that the CED zoning designation applies to the SugarHouse site without more.

31. Furthermore, even though HSP Gaming takes the position that no further City Council action is necessary, in the alternative, assuming *arguendo* that the Court determines that the Bills must be enacted by City Council to be effective, City Council has the mandatory duty to enact the HSP Bills because the Gaming Act, the Gaming Board decision, and this Court's decision in PGCB v. City Council require that City Council use and properly discharge its duties under the CED Ordinance to implement the Gaming Board's decision and approve zoning for the site approved by the Gaming Board and because HSP Gaming has satisfied the requirements of the CED Ordinance.

32. Rather than using the CED Ordinance to implement the Gaming Board's decision, City Council has instead used it to impede, nullify, and impair the Gaming Board's decision and to intentionally delay the construction of HSP Gaming's facility to the detriment of HSP Gaming, the City, and the Commonwealth.

33. A Member of City Council has specifically expressed his intent to ignore the mandates of this Court by refusing to comply with its Orders and suggested that City Council do so as well. "If the Supreme Court rules against us on Foxwoods, just do what the state legislature has done on the other court ruling that required full funding of our court system; just ignore them. . . . The Supreme Court – the Pennsylvania legislature has ignored it for 20 years. We just don't issue the permits." (See June 13 Tr. at 66-67) However, in that very case referenced by the Member of City Council, this Court found that the General Assembly could not ignore the rulings of the Court and granted an order mandating that the General Assembly

comply with its duties and approve legislation to fund the court system. See Pennsylvania State Association of County Commissioners v. Schweiker, 681 A.2d 699, 701-02 (Pa. 1996).

34. Accordingly, this Court has the authority to declare that the HSP Bills are duly enacted and that the City of Philadelphia may now receive and act upon applications for permits for the improvement of the site or, alternatively, to require that City Council satisfy its administrative duties by declaring that City Council has the duty to enact the HSP Bills because they satisfy the CED requirements and by issuing an Order requiring that City Council comply with this duty. Linda Development Corp. v. Plymouth Township, 3 Pa. Cmwlth. 334, 338-39, 281 A.2d 784, 787 (1971); Commercial Properties v. Peternel, 418 Pa. 304, 311-12, 211 A.2d 514, 518-19 (1965). Courts will not permit government entities to thwart the intent of the legislature to allow gaming at specific locations by abusing available procedures to delay and render meaningless the implementation of gaming. Emerald Casino v. Illinois Gaming Board, 803 N.E.2d 914, 917 (Ill. Ct. App. 2003); Emerald v. Illinois Gaming Board, 851 N.E.2d 843, 845 (Ill. Ct. App. 2006).

35. Therefore, HSP Gaming respectfully requests that this Court find that it is entitled to judgment as a matter of law and grant its requested summary relief.

V. EXPEDITED REVIEW IS NECESSARY DUE TO THE EXISTING UNWARRANTED INTENTIONAL DELAY IN HSP GAMING'S CONSTRUCTION AND OPERATIONS.

36. Petitioner incorporates paragraphs 1-35 as though set forth fully herein.

37. City Council's delay in the enactment of the HSP Bills has caused and will continue to cause significant irreparable harm to HSP Gaming, the Commonwealth of Pennsylvania, and Commonwealth taxpayers, as well as the City of Philadelphia and its taxpayers.

38. City Council's efforts to impede HSP Gaming's ability to begin operations have harmed and continue to harm HSP Gaming and the citizens of the Commonwealth by delaying casino operations and curtailing the implementation of state and city wide tax relief to the citizens of the City of Philadelphia and the Commonwealth of Pennsylvania.

39. For each month that the SugarHouse Casino is delayed in opening, HSP Gaming will lose millions of dollars in projected net profits, and will spend hundreds of thousands of dollars in out-of-pocket operating expenses. (See Affidavit of Greg Carlin, attached as Exhibit FF to the Petition for Review)

40. For each month delay in beginning HSP Gaming' operations, HSP Gaming will incur a projected loss of \$3.6 million in cash that otherwise would have been available for distribution. (Carlin Aff. at ¶3(a).)

41. For each month delay, HSP Gaming will also incur operating costs of \$300,000, which represents an out-of-pocket loss that cannot be recovered. (Carlin Aff. at ¶3(b).)

42. Furthermore, changing economic conditions during the delay will cause additional losses. For example, every 1% increase in interest rates during the delay will cause HSP Gaming to incur additional costs of approximately \$31 million, and any change in financing markets may require HSP Gaming to increase its equity contribution to the casino project at a significant loss. (Carlin Aff. at ¶3(c)-(d).)

43. Further delay will increase HSP Gaming's construction costs by more than \$1 million a month. HSP Gaming has already purchased construction materials costing \$9.5 million, and the loss of these funds results in an expense of \$50,000 per month. (Affidavit of Terrence J. McKenna, P.E. at ¶3(a)-(c) (a true and correct copy attached as Exhibit GG to the Petition for Review).)

44. Moreover, on October 17, 2007, pursuant to the Gaming Board's Order of October 2, 2007 directing such payment, HSP Gaming has paid the Commonwealth of Pennsylvania its \$50 million licensing fee required under the Gaming Act. See 4 Pa.C.S.A. § 1209. As a result, HSP Gaming loses \$400,000 for every month that it loses the benefit of its fee as a result of the delays in construction, and in turn, operations.

45. More significant is the substantial irreparable harm to the Commonwealth of Pennsylvania, to taxpayers, and to other public interests because of the lost revenues the gaming facilities will generate. As stated by Governor Edward G. Rendell in his 2007-2008 Budget Address, tax revenue generated by the gaming facilities is estimated to be nearly \$1 billion dollars and has been dedicated to provide local property, and wage, tax relief and to increase tourism throughout the Commonwealth. (Governor's 2007-2008 Budget Message, a true and correct copy is attached as Exhibit HH to the Petition for Review)

46. Delaying construction will delay the creation of between 945 and 1,071 temporary construction jobs paying between \$30 and \$34 million in wages and another 1,703 and 1,922 in direct construction-related jobs, paying between \$69 million and \$78 million in wages. (See June 13 Tr. at 23) In addition, delaying casino operations delays the creation of 7,000 to 12,000 permanent jobs. (June 13 Tr. at 23-24)

47. Furthermore, any delays will adversely affect the City's five-year financial plan, which includes \$71 million in host fees attributable to the casinos under the Gaming Act as well as \$5 million in host fee payments for the Philadelphia School District. (June 13 Tr. at 25) Moreover, delaying operations will delay the anticipated receipt of between \$58.2 million and \$77.8 million in tax-related revenues. (June 13 Tr. at 30)

48. *Based on HSP Gaming's projected revenues of \$310 million, the Commonwealth will lose \$255,750 for every day that HSP Gaming's operations are delayed ("lost funds").* (See Stacey Amsler Affidavit at 15, attached as Exhibit II to the Petition for Review)

49. Section 1403(b) of the Gaming Act imposes a 34% slot machine tax, along with a 4% local share assessment imposed upon each licensee's daily gross terminal revenue. (See Amsler Aff. at ¶ 10) In addition, the Pennsylvania Race Horse Development Fund receives a gross terminal revenue assessment at 12% under Section 1205 and the Pennsylvania Gaming and Economic Development and Tourism Fund receives a 5% assessment of gross terminal revenue. (See Amsler Aff. at 11) This revenue will be lost for every day operations are delayed, will never be recovered, and will impact the availability of tax relief to the citizens of the Commonwealth of Pennsylvania and the City of Philadelphia. (See Amsler Aff. at ¶ 12)

50. To the extent that the lost funds are needed to fund ongoing operations of the Gaming Board, the lost funds will need to be borrowed from other Commonwealth funds, for which taxpayers will be ultimately responsible either in the form of increased taxes or in the form of reduced or limited tax reductions generated by the Gaming Act.

51. Therefore, City Council has already delayed HSP Gaming's construction and operations by six months, causing HSP Gaming substantial operating and construction losses, causing the City of Philadelphia and the Commonwealth of Pennsylvania significant revenue losses, and causing the taxpayers of the Commonwealth and the City of Philadelphia to lose the tax relief that would have been provided by gaming revenues.

52. Further delay will only continue to exacerbate these losses and, therefore, HSP Gaming respectfully requests that this Court enter an Order establishing an expedited briefing schedule on its Petition for Review.

VI. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests this Honorable Court to grant its Application for Summary Relief and an Expedited Briefing Schedule and enter an Order:

A. Declaring that: 1) Bills No. 070456, 070457, and 070458 are duly enacted and that the City of Philadelphia may now therefore accept, review and act upon applications from HSP Gaming for the improvement of the site or, alternatively; 2) that City Council has a mandatory duty to enact Bills No. 070456, 070457, and 070458 to implement the decision of the Gaming Board to locate a licensed facility at HSP Gaming's site;

B. Issuing a writ of mandamus and/or injunction: 1) directing the City and the City Planning Commission to deem Bills No. 070456, 070457, and 070458 enacted or, alternatively; 2) directing City Council to suspend any Council Rule that could cause further delay and to immediately enact Bills No. 070456, 070457, and 070458 within 10 business days of the date of the date of the Order granting the requested mandamus relief and ordering that unless City Council enacts these Bills within such 10 day period, these Bills will be deemed finally enacted for purposes of the CED Ordinance;

C. Declaring that the City of Philadelphia has a mandatory duty to timely review all applications for permits submitted by HSP Gaming and to issue all building, zoning and use permits for which HSP Gaming's applications satisfy the requirements and procedures of the CED Ordinance;

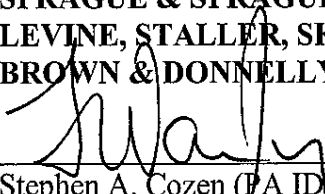
D. Issuing a writ of mandamus and/or injunction directing the City Planning Commission to mark the Philadelphia City maps to reflect that HSP Gaming's property is zoned as a Commercial Entertainment District;

E. Appointing a Master with continuing jurisdiction of these matters pursuant to Section 1506 of the Gaming Act, 4 Pa.C.S.A. § 1506; and

F. Establishing an expedited briefing schedule for Petitioner HSP Gaming's Petition for Review.

Respectfully submitted,

**COZEN O'CONNOR
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SPRAGUE & SPRAGUE
LEVINE, STALLER, SKLAR, CHAN
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Dated: October 25, 2007

VERIFICATION

I, F. Warren Jacoby, hereby state that I am counsel for the Petitioner within and verify that the statements made in the foregoing Application for Summary Relief and an Expedited Briefing Schedule 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. § 4904 relating to unsworn falsification to authorities.

Dated: October 25, 2007

F. Warren Jacoby

PROOF OF SERVICE

I hereby certify that I am this day serving a complete copy of the foregoing Application for Summary Relief and an Expedited Briefing Schedule upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Personal Service upon:

Romulo L. Diaz, Jr., Esquire
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Dated: October 25, 2007

By:  _____