



CITY OF PHILADELPHIA

STEPHANIE W. NAIDOFF
City Representative and
Director of Commerce

In re Application of HSP Gaming, L.P. pursuant to Philadelphia Code § 18-103

November 27, 2007

Stephanie W. Naidoff, Director of Commerce and City Representative

I. BACKGROUND

Application

On October 29, 2007, HSP Gaming, L.P. (the “Applicant”) submitted an application (the “Application”) to the Director of the Department of Commerce of the City of Philadelphia (“Commerce Director”) for a license permitting construction or improvements on submerged lands pursuant to 53 P.S. 14199 and Chapter 18-100 of the Philadelphia Code. *See* Application (“App.”) § 1.

Applicant seeks permission to erect and construct upon Commonwealth-owned lands in the Delaware River immediately adjacent to its property, but on the landside of where piers end along the river (the “Applicant Submerged Lands”). The construction will include certain

improvements and structures, and the filling in of portions of the Delaware River and enclosure of the entire improved and filled area with a new bulkhead structure, all of which shall be part of the Sugarhouse Casino Project (the “Project”). The Project will be located at 941-1025 N. Delaware Avenue in the City of Philadelphia (the “Premises” or the “Site”), a location selected by the Pennsylvania Gaming Control Board. *See* App. § 2.

Hearing

A hearing (the “Hearing”) on the Application was held at 2 p.m. on Thursday, November 15, 2007, at the Pennsylvania Convention Center, Room 114. The Hearing was conducted pursuant to the procedures established by Chapter 18-100 of the Philadelphia Code and 53 P.S. § 14199.¹

II. JURISDICTION

Jurisdiction is conferred by Act 321 of June 8, 1907, P.L. 488 . *See* 53 P.S. § 14199; Home Rule Charter, § A-101 (1951); Phila. Code § 18-101 *et seq.*²

¹ Public testimony at the Hearing largely focused on whether the Site is an appropriate location for a casino, rather than the narrow issue before me, which is whether to grant a license to develop over the Applicant Submerged Land. The location of the Philadelphia casinos has been decided by the Gaming Control Board, and it is beyond my authority to change such a decision. *See* 4 P.S. § 1101 *et seq.* (2007); Phila. Code. § 14-405(2) (“Nothing in this Chapter shall limit the right of the Pennsylvania Gaming Control Board under the [Pennsylvania Race Horse Development and Gaming] Act to identify the property on which it will permit a Category 2 licensed gaming facility.”).

² While certain witnesses questioned the legal authority of the City to consider the instant application (*see, e.g.*, H.T. at 45-51, 54-63, 65; Exhibit Keller-1), the City Solicitor has concluded that the City,

III. FINDINGS OF FACT

I have considered the Application and all information and opinions presented at the Hearing, and make the following findings of fact:

1. The Application was filed on October 29, 2007. *See* App. § 1; Hearing notes of testimony (“H.T.”) at p. 4, l. 10-11.
2. Advertisements noticing the Hearing were published in the *Philadelphia Daily News* on November 1 and November 2, November 8, November 9, November 12, and November 13, the *Philadelphia Inquirer* on November 8, November 9, November 12, and November 13, and the *Philadelphia Tribune* on November 2 and 4. *See* Applicant Exhs. 1-2, 10-11. All three are newspapers of general circulation in Philadelphia.
3. The Site was posted continuously from and including October 30, 2007, through and including November 15, 2007. *See* Applicant Exhs. 3-4.
4. The Premises, the former Jack Frost refinery site, are situated on 22 acres along the Delaware River, and include Piers 41 North to 48 North. *See* App. § 1; H.T. at p. 12, l. 18-21.
5. The Applicant Submerged Lands consist of approximately 12 acres immediately adjoining the Site, 52 percent of the total area of the Premises. *See* App. § 1.
6. Applicant submitted proof of title in the form of a Memorandum of Agreement, recorded January 10, 2006, in the Department of Records, which grants Applicant an existing option to buy the Premises. *See* App. § 7(a); H.T. at p. 17, l. 20-24.
7. The Applicant also submitted various deeds and related documents of the owners of the several parcels of land that make up the proposed casino and a consent to the filing of the

and the Commerce Director specifically, are authorized by state and local law to act on the instant Application. *See* H.T. at 10-11.

Application from the grantors of the option to buy the Premises. *See* App. § 7(b); Applicant Exh. 6.

8. The Premises currently are vacant and fenced, offering no public access to the waterfront or any other portion of the Premises. *See* H.T. at p. 12, l. 18-21, p. 24 l. 9-10; App. Exh. 3.
9. The Applicant Submerged Lands also are completely inaccessible to the public from fast land. *Id.*
10. The Applicant Submerged Lands are in a state of decay consisting of mud, rubble, and the remains of previously constructed piers. *See* Applicant Exh. 5 at 6-8, H.T. at p. 20, l. 16-21.
11. There are no above ground structures remaining on the Applicant Submerged Land, and the area has been fenced for reasons of public safety. *See* Applicant Exh. 5 at 3, 5; H.T. at p. 24, l. 7-10.
12. As the Premises are developed for the Project, Applicant plans, among other things, to widen and extend Pier 41; relocate, expand, and extend the Laurel Street combined sewer; demolish and remove the dilapidated structures at Piers 42, 43, and 46 North; remove the fill at the ends of Piers 42 and 43 North; place new fill between Piers 41 and 42 North and Piers 43 and 44 North; construct approximately 1,200 feet of bulkhead/high-deck structure and 2,100 feet of public greenway; construct a minimum of four new 36-inch diameter storm water outfalls, and design and construct the casino and the accessory buildings and facilities, including the driving and loading of test pilings, set forth in the Application. This will involve construction both east and west of the low water mark. *See* App. § 1.
13. Applicant will remove significant debris, such as abandoned loading and mooring features, from the Applicant Submerged Land such that, after completion of the improvements

proposed by Applicant, more of the Delaware River will be available for navigation and public use. *See* App. § 6; Applicant Exhs. 5, 8; H.T. at pp. 20-21; pp. 31-33.

14. Applicant's proposed Project ensures public access to the Delaware riverfront by including a public dock and a pier, a landscaped public right-of-way at least 50 feet wide across the eastern border of the Premises, and a fan-shaped waterfront public park. *See* App. § 1; Applicant Exh. 5; H.T., p. 21, l. 1-3, 14-16, p. 84, l. 18-20.
15. Applicant is developing the fan-shaped park in a manner that will expand the habitable area for blue crabs and other benthic organisms that are important resources for fisheries. *See* App. § 6; Applicant Exh. 8 at 3.
16. The Project also will include a ferry and water taxi dock that will promote transit to and from other destinations on both sides of the River. *See* Drawing C-02, dated March 29, 2007, of Section 3 of the Plan of Development; H.T. at p. 26, l. 16-19.
17. Applicant will construct the public greenway and waterfront promenade in a manner that protects the current open waters adjacent to the Premises and encourages the free flow of water, such that after the improvements proposed by Applicant the area of the Delaware River where water freely flows will be enlarged. *See* App. § 6; Applicant Exh. 8 at 3.
18. Applicant's projected cost of construction for the portion of the Applicant Submerged Lands between the Bulkhead Line and the Pierhead Line is \$349.76 million. *See* Applicant Exh. 8 at 1-3.
19. The improvements proposed in the Application are consistent with the Applicant's Plan of Development approved by the Philadelphia City Planning Commission ("Planning Commission") on May 22, 2007, pursuant to Chapter 14-400 of the Philadelphia Code. The development of the waterfront trail and access is entirely consistent with the objectives and

efforts of the Planning Commission to improve access to the Delaware Riverfront for all Philadelphians. *See* H.T. at p. 43, l. 7-10.

20. The Application meets the requirements of the Department of Licenses and Inspections (“L&I”) to have a foundation permit issued once all of the prerequisite approvals are obtained. *See* H.T. at p. 44, l. 17-21.

IV. STANDARD OF REVIEW

Pursuant to statute, the standard of review applied to the Application is that approval may not be “unreasonably withheld.” *See* 53 P.S. § 14199; Phila. Code § 18-103.

V. CONCLUSIONS OF LAW

I have considered the Application, all information and opinion presented at the Hearing, and the Findings of Fact and make the following conclusions:

1. The Application was duly submitted on October 29, 2007. *See* Finding of Fact (“F.F.”) 1.
2. Advertising was published as required by applicable law. *See* F.F. 2.
3. The Premises were posted properly in accordance with applicable law. *See* F.F. 3.
4. The Application contains a sufficient description of the Project and the Premises, including proposed plans and drawings and artist renderings, a detailed description of the nature of the Project and Premises, a detailed discussion and illustration of the extent of the proposed structures and improvements, the amount and type of work involved in creating the proposed

Project, as well as the impact on the Project and community, the proposed improvement work envisioned during each phase of the Project, and provides a cost estimate for the total work intended to be performed on the Applicant Submerged Lands. *See* App. § 1; Plan of Development attached to App.; Applicant Exh. 8.

5. The Application sufficiently details, in writing, the nature and extent of the proposed structures and improvements at the Premises insofar as Drawing C-02, dated March 29, 2007, of the Plan of Development, included in the Application, depicts development on the Premises. *See* App. § 1; Plan of Development § 3.
6. The Plan of Development, the foundation permit set of drawings for the Phase I casino building and ten-story parking garage, the schematic design documents for the south valet parking lot (during Phase I), the riverfront promenade and greenway, and the future phases of the Project; the plans, drawings and renderings of the Project and Site; the consolidated metes and bounds description of the Site, and the survey and consolidated plan show fully the proposed structure, extension, alteration, improvement or repair at the Premises. *See* F.F. 19-20; App. §§ 1, 4, 8; Plan of Development.
7. Applicant has demonstrated sufficient evidence of equitable title to the Premises. *See* F.F. 6-7; App. § 7(a); Applicant Exhs. 6-7.
8. The Project will result in the removal of debris currently impeding this dangerous and abandoned section of the waterfront. *See* F.F. 10-13.
9. The Project will create public recreational access to the Delaware River waterfront at the Premises that does not exist currently. *See* F.F. 8-11, 13-14, 19.
10. The flow of the Delaware River is likely to improve, and the area available for fishery is likely to increase. *See* F.F. 10, 13-15, 17.

11. The Project does not interfere with public access, fishery or navigation, and, in fact, it actually improves navigation, fishery, and the stream of the Delaware River at the Premises. *See* F.F. 10, 13-17, 19.
12. The new taxi and ferry dock will promote river traffic. *See* F.F. 16.
13. Licensing the use of the Applicant Submerged Lands for the Project, in the manner contemplated by the Plan of Development, will improve all aspects of the Project, and positively will enhance the impact of the development on the Delaware River and on all who use the river for recreation, navigation, fishery, and commerce. *See* F.F. 8-11, 13-17, 19.
14. Weighing all the factors, the Project is in the public interest. *See* F.F. 8-13, 15-17, 19.

VI. LICENSE DETERMINATION

Having determined that all necessary procedures have been followed and that the Application is both sufficient and in the public interest, insofar as the Application details the plans for the Project, all relevant standards are met and I hereby authorize the license.

I thus direct L&I to issue the license authorized by 53 P.S. §14199 to permit Applicant to use the portion of the Applicant Submerged Lands depicted as developed on Drawing C-02, dated March 29, 2007, of Section 3 of the Plan of Development included in the Application and the foundation drawings presented with the Application (the “Licensed Premises Drawings”).³ Such license shall extend from the low water mark, generally understood to be the Bulkhead Line approved by the Secretary of War on September 10, 1940, eastward to include all of the development as reflected on the Licensed Premises Drawings. Such license shall be subject to

³ Applicant should provide a revised metes and bounds that comply with this determination at the time it remits payment of the license fee to L&I.

the requirements of applicable law including, but not limited to, the obligation that construction commence within six months, payment of the applicable license fee and construction in accordance with the approved Plan of Development. *See* 53 P.S. § 14200; Phila. Code § 18-103.

Each of the provisions of the license shall be severable, and if any provision or portions thereof is held invalid, the remaining provisions or portions thereof shall not be affected, but shall remain in full force and effect.

VII. LICENSE FEE

The Philadelphia Code sets the license fee at \$1.50 per \$1,000 cost of construction up to \$100,000, and \$.75 for each additional \$1,000 cost of construction thereafter. Phila. Code § 18-103(4). The fee is appropriately calculated on the amount of money that Applicant expects to spend on the development of the Project over the Applicant Submerged Lands.⁴

Applicant has submitted evidence that its estimated construction costs on the Applicant Submerged Lands is \$349.76 million, comprising \$116.45 million for Phase I and \$233.30 million for Phase II. The projected cost for Phase II of construction is based on an increase in construction costs of 3.5 percent per year. I conclude that the projected increase is too low and take official notice that Applicant has suggested that the City use for this project an increase in the cost of money of five percent per year, which figure I will accept for this purpose. Thus, for the purpose of the fee calculation, I will treat estimated Phase II construction costs as increased

⁴ This license authorizes the use of submerged lands from the low water mark to the end of the permitted development at the easternmost point of the Plan of Development approved by the Planning Commission.

to \$258.01 million, bringing the total construction costs on the Submerged Lands to \$374.46 million.

Applying the formula in Section 18-103(4) to this cost yields a fee of \$282,270.⁵ As such, the fee for this license shall be \$282,270, and such fee must be paid before or at the time the license shall issue.

DEPARTMENT OF COMMERCE

By: 
Stephanie W. Naidoff
Director of Commerce

⁵ I note that the Secretary of the Department of General Services (“DGS”) has presented a proposal for calculation of state leasehold payments for riparian rights that has yet to be adopted by the General Assembly. Under that proposal, a fee of \$5 per square foot would be charged for a 99-year lease. However, the proposal also provides for offsets, such as improvements for public space and payments to communities under community benefit or similar agreements. Given the Applicant’s significant investment in public spaces and commitment to fund a special services district, under the DGS proposal Applicant would pay \$250,000 for a leasehold interest from the Commonwealth. *See* Witness Exh. 28-C.