

BEFORE THE PENNSYLVANIA SUPREME COURT
EASTERN DISTRICT

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|---|---|---------------|
| SENATOR VINCENT J. FUMO, | : | |
| REPRESENTATIVE MICHAEL H. O'BRIEN, | : | |
| REPRESENTATIVE WILLIAM F. KELLER, | : | |
| SENATOR MICHAEL J. STACK, | : | |
| REPRESENTATIVE JOHN J. TAYLOR, | : | _____ EM 2007 |
| REPRESENTATIVE MICHAEL P. McGEEHAN, AND | : | |
| REPRESENTATIVE ROBERT C. DONATUCCI, each | : | |
| in their official capacity as members of the Pennsylvania | : | |
| General Assembly, and individually as resident taxpayers, | : | |
| | : | |
| Petitioners, | : | |
| | : | |
| v. | : | |
| | : | |
| CITY OF PHILADELPHIA, | : | |
| | : | |
| Respondent. | : | |

**PETITION FOR REVIEW
IN THE NATURE OF AN APPEAL OF A FINAL DETERMINATION
OF A POLITICAL SUBDIVISION PURSUANT TO
4 Pa.C.S.A. § 1506 AND 53 P.S. § 14202**

I. Introduction.

Senator Vincent J. Fumo, Representative Michael H. O' Brien, Representative William F. Keller, Senator Michael J. Stack, Representative John J. Taylor, Representative Michael P. McGeehan, and Representative Robert C. Donatucci (hereinafter, the "Philadelphia waterfront state legislators") in their official capacities as members of the Pennsylvania General Assembly and individually as Commonwealth taxpayers, hereby file this Petition for Review in the Nature of an Appeal of a Final Determination of a Political Subdivision involving the construction,

occupancy and location of a licensed slots facility pursuant to 4 Pa.C.S.A. § 1506 and Pa.R.App.P. 1513.

Though involving the construction, occupation and location of a casino, this matter neither involves slots gaming nor implicates the provisions of the Pennsylvania Race Horse Development and Gaming Act. Rather, this appeal is fundamentally related to the authority of the City of Philadelphia to exercise powers that are otherwise exclusively within the sole province of the General Assembly. Each of the Philadelphia waterfront state legislators represents districts that are contiguous with the Delaware River, and pursuant to the Pennsylvania Constitution is charged with the responsibility of ensuring that Commonwealth lands are preserved in trust for the public – including the submerged lands of the Delaware. Pa. Const., art. I, § 27. Consequently, in their official capacity, the Philadelphia waterfront state legislators possess a substantial and direct interest in the manner in which the submerged lands of the Delaware may be conveyed for private development. The initiation and participation in this matter by the Philadelphia waterfront state legislative delegation is purposefully intended to express to this Court the bipartisan, bicameral and unified position of each member that the authorization to convey Commonwealth lands is solely the prerogative of the General Assembly.

The Philadelphia waterfront state legislators seek judicial review of the decision of the City of Philadelphia Commerce Department (hereinafter the “Commerce Department”) to authorize and approve the issuance of a “Submerged Lands License” to HSP Gaming, LP, (hereinafter “HSP”) for the explicit purpose of constructing a casino and entertainment complex upon the submerged lands of the Delaware River – an action that has appropriately been

criticized as an “end run” and “shortcut” around the normal state legislative process.¹ The City’s action is a direct and substantial usurpation of the legal authority and traditional prerogative of the members of the state legislature to exclusively determine – when, how or even if, Commonwealth lands may be conveyed. Accordingly, each of the Philadelphia waterfront state legislators is directly and substantially aggrieved by the Commerce Department’s action.

This matter, if left uncontested, would create a new precedent, permitting any developer, who was otherwise unsuccessful in obtaining legislative authorization to occupy submerged lands of the Commonwealth or who did not wish to comply with legislatively imposed terms or conditions, to simply apply to the City of Philadelphia Commerce Department for a more favorable deal. The consequence of such an outcome would be to invite developers along the Delaware River to occupy state lands in a manner not supported or otherwise authorized by the General Assembly, thus depriving (1) the legislators from exercising their legislative function to consider and specifically authorize the disposition of Commonwealth lands in trust for the public; and, (2) the residents and taxpayers of the Commonwealth of any revenue or other consideration in exchange for the encroachment, development and occupation of state lands.²

¹ See, Editorial, “Riverfront Casinos; Stop the Shortcuts,” *Philadelphia Inquirer* (November 21, 2007).

² It is worthwhile noting that opposition to the Commerce Department’s licensing decision is not confined to the Philadelphia waterfront state legislators – rather, the entire General Assembly has voiced its objection to this usurpation of its exclusive authority. For example, on December 12, 2007, the Senate passed two different bills, 49-0, that if enacted, would affirm the legislature’s “existing, sole and exclusive” authority to specifically authorize the conveyance of any interest in Commonwealth lands. See, 191 *Legislative Journal of the Senate of Pennsylvania* (December 12, 2007) (Senate voted to pass House Bills 1621 and 1627).

In a separate action the day before, the House of Representatives voted, 200-0, to adopt a resolution specifically declaring the chamber’s objection and determination that the City does not possess the legal authority to convey any interest in the submerged lands of the Commonwealth.

II. Basis for Jurisdiction.

1. This Honorable Court has jurisdiction over this matter pursuant to section 1506 of the Pennsylvania Race Horse Development and Gaming Act (Act of July 5, 2004, P.L. 572, No. 71, *as amended*, Act of November 1, 2006, P.L. 1243, No. 135; 4 Pa.C.S.A. § 1101, *et seq.*) as this is an appeal of a final decision of a political subdivision involving the construction, occupancy and location of a licensed facility. A final decision to issue a “Submerged Lands License” would ordinarily be filed with the Court of Common Pleas pursuant to 53 P.S. § 14202, however, section 1506 of the Pennsylvania Race Horse Development and Gaming Act directs, under these circumstances, that this appeal be filed with this Court.

III. Parties Seeking Review.

2. Petitioner, State Senator Vincent J. Fumo, is a duly elected member of the Senate of Pennsylvania, representing the residents of the 1st State Senatorial District. Senator Fumo’s legislative district encompasses the proposed location of HSP’s casino entertainment complex. Not only was Senator Fumo an active participant in the underlying proceedings before the City Commerce Department and presented record evidentiary testimony in opposition to the Submerged Lands License Application, but a substantial portion of Senator Fumo’s senatorial district is contiguous with the waterways of the Delaware River. Senator Fumo routinely introduces, considers, deliberates and votes upon legislation authorizing the conveyance of Commonwealth lands, including submerged lands. In his official capacity, Senator Fumo has

191 *Legislative Journal of the House of Representatives* (December 11, 2007) (House Resolution 523 calls upon the state Department of General Services to challenge the action of the City of Philadelphia Commerce Department).

voted against any attempt to shortcut or otherwise expedite the conveyance of riparian property interests to HSP. *See, e.g.* 190 *Legislative Journal of the Pennsylvania Senate* (October 27, 2006) (Senate of Pennsylvania voted, overwhelmingly, to concur with House amendments rejecting proposed statutory language that, if enacted, would have expedited the conveyance of riparian rights to HSP.) Senator Fumo is also a resident and taxpayer in the Commonwealth. Senator Fumo has a substantial, direct and immediate interest in this matter.

3. Petitioner, Michael H. O'Brien, is a duly elected member of the Pennsylvania House of Representative, representing the residents of the 175th State House District. Representative O'Brien's legislative district encompasses the proposed location of HSP's casino entertainment complex. Not only was Representative O'Brien an active participant in the underlying proceedings before the City Commerce Department and presented record evidentiary testimony in opposition to the Submerged Lands License Application, but a substantial portion of Representative O'Brien's House district is contiguous with the waterways of the Delaware River. Representative O'Brien routinely introduces, considers, deliberates and votes upon legislation authorizing the conveyance of Commonwealth lands, including submerged lands. In his official capacity, Representative O'Brien has sponsored legislation opposing the action of the City of Philadelphia and HSP's effort to circumvent the normal state legislative conveyance process. *See*, 191 *Legislative Journal of the House of Representatives* (December 11, 2007) (House Representatives voted, 200-0 to adopt a resolution calling upon the state Attorney General to pursue legal action enjoining the City's conveyance of any interest in the submerged lands of the Commonwealth). Representative O'Brien is also a resident and taxpayer in the Commonwealth. Representative O'Brien has a substantial, direct and immediate interest in this matter.

4. Petitioner, State Representative William F. Keller, is a duly elected member of the Pennsylvania House of Representatives, representing the residents of the 184th State House District. Representative Keller's legislative district is contiguous to the proposed location of HSP's casino entertainment complex. Not only was Representative Keller an active participant in the underlying proceedings before the City Commerce Department and presented record evidentiary testimony in opposition to the Submerged Lands License Application, but a substantial portion of Representative Keller's House district is contiguous with the waterways of the Delaware River. Representative Keller routinely introduces, considers, deliberates and votes upon legislation authorizing the conveyance of Commonwealth lands, including submerged lands. In his official capacity, Representative Keller has repeatedly voted against any attempt to shortcut or otherwise expedite the conveyance of riparian property interests to HSP. *See, e.g., 190 Legislative Journal of the House of Representatives* (October 17 & 24, 2006) (House of Representatives voted, overwhelmingly, to reject proposed statutory language that, if enacted, would have expedited the conveyance of riparian rights to HSP.) Representative Keller is also a resident and taxpayer in the Commonwealth. Representative Keller has a substantial, direct and immediate interest in this matter.

5. Petitioner, State Senator Michael J. Stack, is a duly elected member of the Senate of Pennsylvania, representing the residents of the 5th State Senatorial District. Senator Stack's legislative district encompasses significant planned waterfront development along the Delaware River, and as a consequence, Senator Stack has routinely introduced and voted for legislation that has conveyed Commonwealth interests in submerged lands to private developers within his legislative district. A substantial portion of Senator Stack's senatorial district is contiguous with

the waterways of the Delaware River. In his official capacity, Senator Stack has voted against any attempt to shortcut or otherwise expedite the conveyance of riparian property interests to HSP. *See, e.g.*, 190 *Legislative Journal of the Pennsylvania Senate* (October 27, 2006) (Senate of Pennsylvania voted, overwhelmingly, to concur with House amendments rejecting proposed statutory language that, if enacted, would have expedited the conveyance of riparian rights to HSP.) Senator Stack is also a resident and taxpayer in the Commonwealth. Senator Stack has a substantial, direct and immediate interest in this matter.

6. Petitioner, State Representative John J. Taylor, is a duly elected member of the Pennsylvania House of Representatives, representing the residents of the 177th State House District. Representative Taylor's legislative district encompasses significant planned waterfront development along the Delaware River, and as a consequence, Representative Taylor has routinely introduced and voted for legislation that has conveyed Commonwealth interests in submerged lands to private developers within his legislative district. A substantial portion of Representative Taylor's House district is contiguous with the waterways of the Delaware River. In his official capacity, Representative Taylor has repeatedly voted against any attempt to shortcut or otherwise expedite the conveyance of riparian property interests to HSP. *See, e.g.*, 190 *Legislative Journal of the House of Representatives* (October 17 & 24, 2006) (House of Representatives voted, overwhelmingly, to reject proposed statutory language that, if enacted, would have expedited the conveyance of riparian rights to HSP.) Representative Taylor is also a resident and taxpayer in the Commonwealth. Representative Taylor has a substantial, direct and immediate interest in this matter.

7. Petitioner, State Representative Michael P. McGeehan, is a duly elected member of the

Pennsylvania House of Representatives, representing the residents of the 173th State House District. Representative McGeehan's legislative district encompasses significant planned waterfront development along the Delaware River, and as a consequence, Representative McGeehan has routinely introduced and voted for legislation that has conveyed Commonwealth interests in submerged lands to private developers within his legislative district. A substantial portion of Representative McGeehan's House district is contiguous with the waterways of the Delaware River. In his official capacity, Representative McGeehan has repeatedly voted against any attempt to shortcut or otherwise expedite the conveyance of riparian property interests to HSP. *See, e.g., 190 Legislative Journal of the House of Representatives* (October 17 & 24, 2006) (House of Representatives voted, overwhelmingly, to reject proposed statutory language that, if enacted, would have expedited the conveyance of riparian rights to HSP.) Representative McGeehan is also a resident and taxpayer in the Commonwealth. Representative McGeehan has a substantial, direct and immediate interest in this matter.

8. Petitioner, State Representative Robert C. Donatucci, is a duly elected member of the Pennsylvania House of Representatives, representing the residents of the 185th State House District. Representative Donatucci's legislative district encompasses significant planned waterfront development along the Delaware River, and as a consequence, Representative Donatucci has routinely introduced and voted for legislation that has conveyed Commonwealth interests in submerged lands to private developers within his legislative district. A substantial portion of Representative Donatucci's House district is contiguous with the waterways of the Delaware River. In his official capacity, Representative Donatucci has repeatedly voted against any attempt to shortcut or otherwise expedite the conveyance of riparian property interests to

HSP. *See, e.g.*, 190 *Legislative Journal of the House of Representatives* (October 17 & 24, 2006) (House of Representatives voted, overwhelmingly, to reject proposed statutory language that, if enacted, would have expedited the conveyance of riparian rights to HSP.) Representative Donatucci is also a resident and taxpayer in the Commonwealth. Representative Donatucci has a substantial, direct and immediate interest in this matter.

IV. Government Unit.

9. Respondent, the City of Philadelphia 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 Department of Commerce and the Department of Licensing and Inspection are municipal departments within the City of Philadelphia created pursuant to Section 3-100(d) of the Philadelphia City Charter. Neither municipal department has a corporate existence separate from the City of Philadelphia and therefor may only be included in this matter in the name of the City of Philadelphia. 53 P.S. § 16257.

V. Party to the Underlying Proceeding.

10. HSP is a Delaware limited partnership whose application to build and operate a slots machine casino entertainment complex on a 22-acre site on North Delaware Avenue, to be known as “SugarHouse Casino,” was approved by the Gaming Board pursuant to its February 1, 2007 Order and Adjudication. HSP applied for and received a Submerged Lands License from the Commerce Department authorizing the occupation and development of submerged lands of the Delaware River for the purposes of constructing a slots machine casino entertainment

complex.

NOTICE TO PARTICIPATE

Pursuant to Pa.R.App.P. 1513 (d), HSP is directed to serve and file a notice of intervention pursuant to Pa.R.App.P. 1531 with this Court within 30 days if intending to participate in this matter.

VI. Determination Sought to be Reviewed / Action Sought to be Enjoined.

11. The Philadelphia waterfront state legislators seek review of the decision issued November 27, 2007 by which the Commerce Department approved the Application of HSP for a license permitting the occupation and development of submerged lands of the Delaware River. *In re Application of HSP Gaming, L.P., pursuant to Philadelphia Code § 18-103* (Commerce Department Determination, November 27, 2007); Attachment “A.”

12. Additionally, the Philadelphia waterfront state legislators seek review of the action by the Commerce Department approve the issuance a “Submerged Lands License” pursuant to its decision to approve the Application of HSP for the license by the Department of Licenses and Inspections. *See, Department of Commerce Submerged Lands License* (November 27, 2007); Attachment “B.”

VII. Brief Summary of Factual Background.

13. On October 29, 2007, HSP formally submitted an application to the Director of Commerce pursuant to the Act of June 8, 1907 (P.L. 433, No. 321), *as amended*, 53 P.S. § 14199, seeking what it described as a “Submerged Lands License” for the property located at 941-1025 North Delaware Avenue, Philadelphia, in order to occupy and construct a slots casino

complex upon the submerged lands of the Commonwealth. *See*, Application of HSP Gaming, LP for a Submerged Lands License, Section 1; Attachment “C” (Only application section 1 describing the development site has been included, other voluminous application exhibits have been omitted, but are incorporated by reference).

14. On November 13, 2007, the Solicitor of the City of Philadelphia, in response to an inquiry by a member of Philadelphia City Council, issued a legal opinion purportedly detailing the legal authority of the Director of the Philadelphia Commerce Department to issue a license authorizing the occupancy and construction of a casino entertainment complex upon the submerged lands of the Delaware River. *See*, Memorandum of Romulo L. Diaz, Philadelphia City Solicitor (November 13, 2007); Attachment “D”. The sole existing statutory authority cited by the City Solicitor for proposition that the Commerce Department may authorize the occupancy and development of the submerged lands of the Commonwealth is section 10 of Act 321 of 1907 (53 P.S. § 14199).

15. Pursuant to the Philadelphia Code, Chapter 18-100, a public hearing was conducted on November 15, 2007, at the Philadelphia Convention Center. The public record was held open for further submissions until the close of business on November 16, 2007.

16. During the Commerce Department Hearing, substantial evidence was placed upon the record disputing the public interest value of HSP Gaming’s Application. *See, e.g.*, Philadelphia Commerce Department Hearing Transcript at 45-51; Attachment “E”(Representative Michael O’Brien testified as to the opposition of most members of the Philadelphia state House delegation to the proposed license, and questioned the legal authority of the City to convey an interest in the submerged lands of the Commonwealth); *Id.* at 51-63

(Senator Vincent J. Fumo testified and formally sought and received consent to include in the evidentiary record a detailed legal memorandum outlining the General Assembly's exclusive authority to convey property interest in the submerged lands of navigable waterways); *Id.* at 63-68 (Philadelphia Councilman Frank DiCicco testified and outlined evidence questioning the public interest value, and pointing out the public harm, associated with the Submerged Lands Application); *Id.* at 63 (Representative William Keller submitted written testimony in opposition to the City's conveyance of the license, which was included in the evidentiary record).

17. On November 27, 2007, the Director of the Commerce Department, Stephanie W. Naidoff, issued a final "License Determination," which included Findings of Fact and Conclusions of Law. *In re Application of HSP Gaming, L.P., pursuant to Philadelphia Code § 18-103* (Commerce Department Determination, November 27, 2007); Attachment "A."

18. The License Determination issued by the Department of Commerce failed to acknowledge the participation of the state legislators, and dismissively noted in a footnote the substantial record evidence challenging the public interest value of the application and the legal authority of the City to grant an interest in the submerged lands of the Commonwealth. The Findings of Fact and Conclusions of Law characterized such evidence, including the testimony of both public officials and residents, as irrelevant. *See*, Commerce Department Determination at 2, footnote 1; Attachment "A".

19. In addition, the Commerce Department Director rejected the entire analysis of the detailed legal challenge to her authority by making the blanket statement "the City Solicitor has concluded that the City, and the Commerce Department Director specifically, are authorized by state and local law to act on the instant application." *Id.* Conspicuously, the Commerce

Department's decision did not include any legal analysis setting forth its authority to convey an interest in Commonwealth lands. The Commerce Department Director referenced the Solicitor's statement at the hearing for the support of the Department's legal authority. Hearing Transcript at 10-11; Attachment "E". No other record testimony, including any memorandum, brief or report, concerning the legal authority of the Commerce Department by the City Solicitor was acknowledged, entered into the evidentiary record, or otherwise made public during the hearing.

20. As part of the Commerce Department Director's Findings of Fact, it was noted that approximately 12 acres of submerged lands within the Delaware River were subject to the HSP's request for a submerged lands license. Commerce Department Determination, at 3, ¶ 5. The submerged lands constitute 52 percent of the total area of the premises to be used for the casino entertainment complex. *See*, Application of HSP Gaming, LP for a Submerged Lands License, Section 1a; Attachment "F" (HSP map depicting, in orange, the area of the development site consisting of the submerged lands of the Commonwealth upon which the casino entertainment project is to be constructed).

21. Within an hour immediately following the Commerce Department's Determination, the City of Philadelphia Department of Licenses and Inspections issued a "Submerged Lands License" authorizing HSP to "encroach upon the waterway of the Delaware River and to construct upon submerged lands" a "casino and entertainment complex with up to 5,000 slot machines and other lawful attractions and ancillary facilities. . .". *See*, Department of Commerce Submerged Lands License (November 27, 2007); Attachment "B."

22. To date, HSP has not made any payment or provided any consideration to the Commonwealth for the occupation and construction of a 5,000 slot machine casino entertainment

complex upon the submerged lands of the Commonwealth.

23. To date, no legislation has been introduced, considered, deliberated or voted, that if enacted, would specifically authorize the conveyance of a title, easement, right-of-way or other interest in the submerged lands of the Commonwealth abutting 941-1025 North Delaware Avenue in the City of Philadelphia, to either HSP or the City of Philadelphia.

VIII. Grounds for Appeal / Declaratory and Injunctive Relief Sought.

As a matter of state law, the Pennsylvania General Assembly, not the City of Philadelphia, possesses the sole and exclusive authority to authorize the conveyance or use of submerged lands belonging to the Commonwealth of Pennsylvania.

24. Article 1, Section 27 of the Pennsylvania Constitution provides that public natural resources, such as submerged lands, are “the common property of all of the people,” and that the Commonwealth, not the City of Philadelphia, “shall conserve and maintain them for the benefit of all the people.”

25. The Dam Safety and Encroachments Act (32 P.S. § 693.2, *et seq.*), enacted in 1978, explicitly provides, “no title, easement, right-of-way or other interest in submerged lands or other real estate of the Commonwealth may be granted except as expressly provided by . . . specific authority from the General Assembly.” (Emphasis added) 32 P.S. § 693.15(e).

26. Consistent with the Dam Safety and Encroachments Act, the Pennsylvania Administrative Code (71 P.S. § 51, *et seq.*), provides that a “department, board, or commission shall not sell or exchange any real estate belonging to the Commonwealth, or grant any easement, right-of-way, or other interest over or in such real estate, without specific authority from the

General Assembly to do so . . .”. (Emphasis added) 71 P.S. § 194(a).

27. The Dam Safety and Encroachments Act explicitly provides that “[a]ll other acts or parts of acts inconsistent herewith are hereby repealed to the extent of such inconsistency.” As a consequence, the Dam Safety and Encroachments Act implicitly repealed whatever authority the Commerce Department may have otherwise possessed to grant licenses permitting the occupation and development of Commonwealth submerged lands.

28. Accordingly, the Director of Commerce acted without legal authority in purporting to authorize HSP to “encroach upon the waterway of the Delaware River and to construct upon submerged lands” of the Commonwealth.

As a matter of state law, the City of Philadelphia’s licensing authority under Act 321 of 1907 is explicitly limited to the construction or repair of wharves, piers, bulkheads, docks, slips and basins, and does not permit the City to grant a license for the construction of a casino entertainment complex upon the submerged lands belonging to the Commonwealth of Pennsylvania.

29. Act 321 of 1907 authorizes the Director of the Commerce Department to issue licenses permitting the construction of wharves, piers, bulkheads, docks, slips and basins and to permit a person or persons to “construct, extend, alter, improve or repair any wharf, or other building in the nature of a wharf, or bridge or other harbor structures.” 53 P.S. § 14199.

30. HSP Gaming, LP, has applied and been approved for a license by the Pennsylvania Gaming Control Board for the placement and operation of up to 5,000 slot machines at a casino entertainment complex to be constructed and located at 941-1025 North Delaware Avenue in the City of Philadelphia. *See*, City Commerce Department License Determination at 1.

31. A casino entertainment complex is not a wharf, pier, bulkhead, dock, slip, basin,

building in the nature of a wharf or bridge or other harbor structure.

32. Accordingly, the Director of Commerce acted without legal authority in purporting to authorize HSP to “encroach upon the waterway of the Delaware River and to construct upon submerged lands” of the Commonwealth for the purposes of constructing “a casino and entertainment complex with up to 5,000 slot machines and other lawful attractions and ancillary facilities . . .”.

As a matter of state law, the City of Philadelphia’s licensing authority under Act 321 of 1907 does not convey a title, easement, right-of-way, or other legally enforceable interest in the submerged lands of the Commonwealth.

33. To date, the General Assembly has not considered, deliberated or enacted any legislation that specifically authorizes the conveyance of any title, easement, right-of-way or other legally enforceable interest in the submerged lands of the Commonwealth, abutting 941-1025 North Delaware Avenue in the City of Philadelphia, to either HSP or the City of Philadelphia.

34. The City of Philadelphia does not possess any title, easement, right-of-way or other transferable interest in the submerged lands of the Commonwealth. *City of Philadelphia v. Commonwealth*, 284 Pa. 225, 130 A. 491 (1925).

35. HSP does not possess any title, easement, right-of-way or other interest in the 12 acres of submerged lands abutting its development site – consisting of approximately 52 percent of the land necessary for HSP Gaming’s proposed casino entertainment complex. *See*, Commerce Department License Determination at 3, ¶ 5; Attachment “A”.

36. Accordingly, the Commerce Department’s Submerged Lands License cannot convey

to HSP any title, easement, right-of-way, or other legally enforceable interest in the submerged lands of the Commonwealth.

As a matter of state law, HSP did not comply with the mandatory requirement under Act 321 to provide a deed or other evidence of title to the premises on which the casino entertainment complex is to be constructed.

37. HSP does not possess any title or deed in the 12 acres of submerged lands abutting its development site at 941-1025 North Delaware Avenue in the City of Philadelphia— consisting of approximately 52 percent of the land necessary for HSP Gaming’s proposed casino entertainment complex. *See*, Commerce Department License Determination at 3, ¶ 5; Attachment “A”.

38. HSP does not possess any title or deed evidencing its ownership of the non-submerged lands portion of its development site at 941-1025 North Delaware Avenue in the City of Philadelphia. *See*, Commerce Department License Determination at 3, ¶ 6; Attachment “A”

39. Rather, as part of its application to the Commerce Department, HSP produced; a “Consent by Fee Owner” document indicating the consent of the actual property owner, LHTW Corporation and 1001 Christopher Columbus Boulevard LLC, to the application of HSP to apply for a Submerged Lands License from the Commerce Department; and, a “Memorandum of Agreement of December 27, 2005,” stating that HSP has an option to buy the property (terms and conditions of the option agreement have not been publically disclosed). *See*, Application of HSP for a Submerged Lands License, HSP Exhibit and Application section 7a; Attachment “G”.

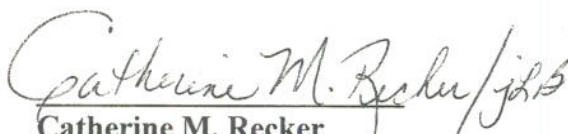
40. Act 321 of 1907 explicitly requires an applicant for a Submerged Lands License to “produce his or their deed or deeds, or other evidence of title, to the premises on which such proposed structure . . . is to be erected . . .”. (Emphasis added) 53 P.S. § 14199.

41. Accordingly, HSP failed to comply with Act 321's requirement to provide a deed or other evidence of its title to the premises on which the casino entertainment complex is to be constructed.

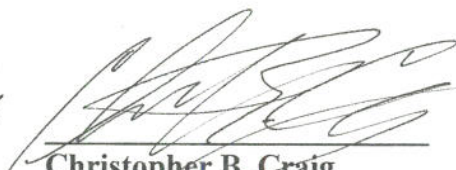
IX. Relief Sought.

WHEREFORE, Senator Vincent J. Fumo, Representative Michael O'Brien, Representative William F. Keller, Senator Michael J. Stack, Representative John J. Taylor, Representative Michael P. McGeehan, and Representative Robert C. Donatucci, constituting the entire delegation of state elected officials who represent legislative districts bordering the Delaware River within the City of Philadelphia, respectfully requests this Honorable Court to review the Department of Commerce's decision to approve HSP's Application for a Submerged Lands License, and declare, as a matter of state law, its deficiency as set forth in this Petition for Review, and enjoin HSP from trespassing upon the submerged riverbed lands of the Commonwealth without specific authorization from the General Assembly, enjoin the City of Philadelphia, the Commerce Department of the City of Philadelphia, and the Department of Licenses and Inspections of the City of Philadelphia from authorizing the use of such lands without specific authorization from the General Assembly, and grant such other relief as may be in the interest of justice.

Respectfully Submitted,



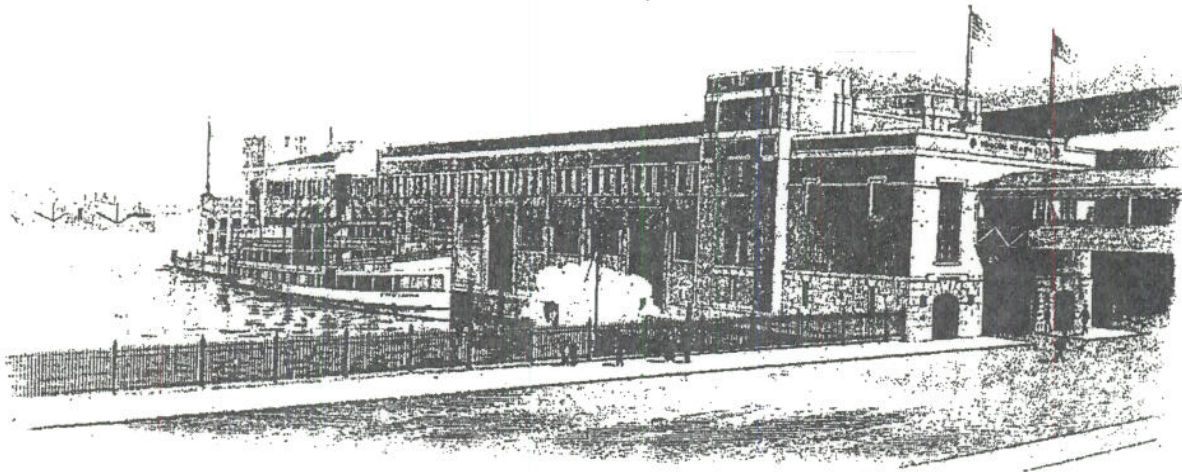
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Counsels for Philadelphia Waterfront State Legislators

DEPARTMENT OF
COMMERCE



Philadelphia, November 27, 2007

By Authority vested in me by the Commonwealth of Pennsylvania I hereby authorize HSP Gaming, L.P., its heirs, executors, administrators, successors, or assigns to encroach upon the waterway of the Delaware River and to construct upon submerged lands as described in Exhibit A subject to the Laws of the Commonwealth, Ordinances of City Council and rules and regulations of the Department of Commerce. Work under this license must be commenced within six (6) months.

The Working Plans, Materials and Construction to be approved by the Commissioner of Licenses and Inspections, and three (3) days notice to be given to the Commissioner of Licenses and Inspections prior to the commencement of the work.

Stephanie W. Naidoff
Stephanie W. Naidoff
Director of Commerce

Robert Solvibile
Robert Solvibile
Commissioner of Licenses & Inspections

EXHIBIT "A"

November 27, 2007

BY THE AUTHORITY vested in the Director of Commerce for the City of Philadelphia pursuant to delegation of such authority by the Commonwealth of Pennsylvania under Act 321 of June 8, 1907, P.L. 488, as implemented by Title 18 of the City Code and Chapter A-1, §A-101 of the Home Rule Charter, I hereby grant a Submerged Lands License authorized by 53 P.S. § 14199, *et seq.*, to HSP Gaming, L.P., and its successors and assigns, ("Licensee") for the property located at 941 - 1025 N. Delaware Avenue in the City of Philadelphia, Philadelphia County ("Premises") to enable Licensee to encroach upon the waterway of the Delaware River and to construct the SugarHouse Casino Project as described in the Application of October 29, 2007, (the "Application") upon the Licensee Submerged Lands, as such are set forth below, the improvements and structures identified below including a new pier structure to support a pedestrian promenade, and to fill in portions of the Delaware River and enclose the entire improved and filled area with a new bulkhead structure, to be located as indicated on the enclosed drawings. Included in the proposed improvements are provisions for future dockage and loading of passengers off and on river craft. The Premises include Piers 41 North through 48 North.

As described in detail within the Plan of Development, Licensee will construct a casino and entertainment complex in phases at the Premises. The project includes a casino and entertainment complex with up to 5,000 slot machines and other lawful attractions and ancillary facilities permitted under Philadelphia Code Chapter 14-400, with a total building floor area of approximately 3,318,500 square feet, including a parking garage. The project includes a riverfront promenade and associated greenway, dock, bulkheads, fill to create usable waterfront surfaces, dredging to facilitate boat access, and associated demolition and driving and loading of test pilings.

The "Licensee Submerged Lands" upon which development is licensed are as follows:

All of the property within the Premises constituting submerged lands and intended to be improved as described in the Application of the Licensee, east of the mean low water line, which for purposes of this legal description is deemed to be the bulkhead line:

BEGINNING at the point of intersection of said Bulkhead Line of the Delaware River with the southwesterly line of property described as Premises "I" as conveyed from Sugarhouse Realty, Inc., a Pennsylvania Corporation, to LHTW Corp., a Delaware Corporation on May 16, 1996 and recorded in the City of Philadelphia Department of Records on May 24, 1996 in Book J.T.D. 4 of Deeds, Pages 583 &c.; said point of beginning being the following three courses from the intersection of the southeasterly line of Delaware Avenue (140 feet wide) with the northeasterly line of Ellen Street (50 feet wide):

(1) Along the northeasterly line of Ellen Street, South 46 degrees 28 minutes 57 seconds East 230.073 feet to its point of intersection with the center line of Penn Street, said point of intersection being the westernmost corner of the reversion parcel to West Highland Holdings, L.L.C. as described in Deed, Document No. 51473923, said point being also the southernmost corner of the reversion parcel to LHTW Corp., and being also a point in the southwesterly end of the portion of Penn Street vacated and stricken from the City Plan by Ordinance Bill No. 040563, dated July 1, 2004; thence (2) along the center line of Penn Street as vacated and stricken, being the division line between the reversion parcel to LHTW Corp. and the reversion parcel to West Highland Holdings, L.L.C., North 43 degrees 31 minutes 03 seconds East 99.250 feet to an angle point in said division line, thence (3) still along said division line to the southeasterly line of Penn Street as vacated and stricken, and continuing along the same course along the division line between lands of LHTW Corp. and lands now or formerly of West Highland Holdings, L.L.C., South 46 degrees 28 minutes 57 seconds East 221.795 feet to its point of intersection with the aforesaid Bulkhead Line of the Delaware River, said point being the point of beginning; and running thence:

1. Along said Bulkhead Line, North 43 degrees 18 minutes 08 seconds East 839.937 feet to an angle point; thence
2. Still along said Bulkhead Line, North 58 degrees 21 minutes 15 seconds East 168.058 to its point of intersection with the northeasterly line of land of LHTW Corp., said line being also the former center line of Shackamaxon Street as vacated and stricken from the City Plan by ordinance dated June 20, 1946 and confirmed July 22, 1946; thence
3. Along said center line of the portion of Shackamaxon Street which was stricken from the City Plan, South 22 degrees 26 minutes 57 seconds East 440.102 feet to a point; thence
4. South 43 degrees 31 minutes 03 seconds West 244.331 feet to a point on a circular curve; thence
5. Along said circular curve in a southwesterly direction on a curve to the right and northwest with a radius of 222.136 feet, an arc distance of 397.691 feet to a point, said point being South 43 degrees 31 minutes 03 seconds West 346.667 feet from the beginning point of this course; thence
6. South 43 degrees 31 minutes 03 seconds West 67.642 feet to a point; thence
7. South 46 degrees 28 minutes 57 seconds East 103.366 feet to a point; thence
8. South 43 degrees 31 minutes 03 seconds West 49.323 feet to a point; thence
9. North 46 degrees 28 minutes 57 seconds West 42.663 feet to a point; thence
10. North 43 degrees 31 minutes 03 seconds East 35.994 feet to a point; thence

11. North 46 degrees 28 minutes 57 seconds West 50.601 feet to a point; thence
12. South 43 degrees 31 minutes 03 seconds West 75.286 feet to a point; thence
13. North 59 degrees 30 minutes 19 seconds West 67.001 feet to a point; thence
14. North 30 degrees 29 minutes 41 seconds East 9.976 feet to a point; thence
15. North 59 degrees 30 minutes 19 seconds West 150.215 feet to a point; thence
16. South 43 degrees 04 minutes 10 seconds West 36.664 feet to a point in the northeasterly line of property now or formerly owned by West Highland Holdings, L.L.C., as described in Deed, Document ID # 51473923; thence
17. Along the northeasterly line of said West Highland Holdings, L.L.C. property, North 46 degrees 28 minutes 57 seconds West 238.335 feet to the point and place of beginning.

The "Licensee Submerged Lands" upon which development is licensed are: (i) depicted as developed on Drawing C-02, dated March 29, 2007, of Section 3 of the Plan of Development, included in the Application as such is more fully described in the bound copy of the schematic design documents C-111, C-112, C-113, C-114, C-121, C-122, C-123, C-124, C-130, C-134, C-332, C-333 and C-334, and (ii) depicted in connection with foundation and pilings in the bound copy of the foundation permit set of drawings for the Phase I casino building and ten-story parking garage, anticipated to be submitted for a foundation permit to construct such foundations on the drawings GS-001, GS-002, GS-101, GS-102, GS-201, S-001, S-002, S-010, S-020, S-101, S-101A, S-101D, S-101E, S-101F, S-101G, S-101H, S-101J, S-200, S-201, S-202, S-210, S-300, S-301, S-410, S-411 and S-420.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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|---|---|---------------|
| SENATOR VINCENT J. FUMO, | : | |
| REPRESENTATIVE MICHAEL H. O'BRIEN, | : | |
| REPRESENTATIVE WILLIAM F. KELLER, | : | |
| SENATOR MICHAEL J. STACK, | : | |
| REPRESENTATIVE JOHN J. TAYLOR, | : | _____ EM 2007 |
| REPRESENTATIVE MICHAEL P. McGEEHAN, AND | : | |
| REPRESENTATIVE ROBERT C. DONATUCCI, each | : | |
| in their official capacity as members of the Pennsylvania | : | |
| General Assembly, and individually as resident taxpayers, | : | |
| | : | |
| Petitioners, | : | |
| | : | |
| v. | : | |
| | : | |
| CITY OF PHILADELPHIA, | : | |
| | : | |
| Respondent. | : | |

CERTIFICATION OF SERVICE

I, Christopher B. Craig, attorney for the Philadelphia waterfront state legislators, hereby certify that two copies of the attached document were served by overnight 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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