

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

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No. \_\_\_\_ E.M. 2007

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HSP GAMING, L.P.,  
Petitioner  
vs.

CITY COUNCIL FOR THE CITY OF PHILADELPHIA; THE CITY OF PHILADELPHIA;  
THE CITY PLANNING COMMISSION FOR THE CITY OF PHILADELPHIA

Respondents

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**PETITION FOR REVIEW OF HSP GAMING, LP**

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

HSP GAMING LP,	:	No. __ E.M. 2007
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	:	
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	:	
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**NOTICE TO PLEAD**

TO: Respondents Philadelphia City Council,  
The City of Philadelphia, and  
The Planning Commission for the City of Philadelphia.  
c/o

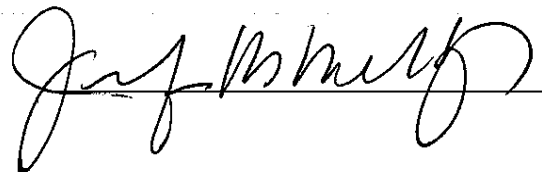
Romulo L. Diaz, Jr., Esquire  
City Solicitor  
City of Philadelphia  
Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
(215) 683-5036  
*Counsel for All Respondents*

Philadelphia City Council  
c/o Patricia Rafferty,  
Chief Clerk of City Council,  
City Hall, Room 402  
Philadelphia, PA 19107

Philadelphia City Planning Commission  
One Parkway, 13<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102

You are hereby notified to file a written response to the enclosed Petition For Review

within thirty days (30) days from service hereof or a judgment may be entered against you.

A handwritten signature in cursive script, appearing to read "Jeffrey M. Kelly", is written over a horizontal line.

## HSP GAMING, L.P.'S PETITION FOR REVIEW

NOW COMES Petitioner, HSP GAMING, L.P. ("HSP Gaming"), by and through its counsel, to file this Petition for Review.

### **I. INTRODUCTION**

1. In this action, HSP Gaming seeks an Order requiring Respondents, the City Council of the City of Philadelphia ("City Council"), the City of Philadelphia (the "City"), and the City Planning Commission for the City of Philadelphia ("Planning Commission") to comply with their statutorily and Pennsylvania Supreme Court mandated duties to implement the decision of the Pennsylvania Gaming Control Board ("Gaming Board") to locate a Category 2 casino at HSP Gaming's site in Philadelphia as approved and selected by the Gaming Board.

2. In enacting the Pennsylvania Race Horse Development and Gaming Act (the "Gaming Act" or "Act 71"), 4 Pa.C.S. § 1101 *et seq.*, the Pennsylvania General Assembly provided that the Gaming Board would have sole authority over selecting the locations of casinos for which it granted applications for licenses and required that the Gaming Board locate two Category 2 licensed facilities in the City of Philadelphia. See 4 Pa.C.S.A. 1103, 1202, 1304, 1307. Recognizing that under the Gaming Act only the Gaming Board could determine the location of the casinos, in anticipation of the award by the Gaming Board of casino licenses in the City of Philadelphia, City Council enacted Ordinance No. 051028-AA, sponsored by Council Member Frank DiCicco, among others,<sup>1</sup> and amendatory Ordinance No. 060631 sponsored solely by Council Member DiCicco (collectively the "CED Ordinance"), to create a new zoning classification called Commercial Entertainment Districts ("CEDs") to facilitate the "orderly

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<sup>1</sup> Ordinance No. 051028-AA was sponsored by Council Member Frank DiCicco, Council Member Joan Krajewski, Council President Anna Verna, Council Member Wilson Goode, Council Member Michael Nutter, Council Member Blondell Reynolds Brown, Council Member Donna Reed Miller, Council Member Juan Ramos, Council Member Jack Kelly, Council Member Brian O'Neill, and Council Member Frank Rizzo.

development” of licensed gaming without interfering with the Gaming Board approved locations of the 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]). In the absence of the CED Ordinance, the City’s zoning scheme does not permit the construction and operation of casinos such as that proposed by HSP Gaming.

3. However, since the Gaming Board issued its decision on December 20, 2006, and its Order and Adjudication on February 1, 2007 (“Adjudication”) attached hereto as Exhibit A, awarding Category 2 Licenses to HSP Gaming and Philadelphia Entertainment & Development Partners, L.P. (“Foxwoods”) and selecting their respective locations as set forth in their respective license applications, City Council has refused and continues to refuse to implement the Gaming Board’s decision. Instead, City Council has chosen to actively subvert and block the decision of the Gaming Board as to the location of casinos in Philadelphia, and to prevent HSP Gaming and Foxwoods from beginning construction and operations at their Gaming Board approved locations.

4. Shortly after the issuance of the Adjudication, in an effort to delay implementation of the Gaming Board’s decision and to actively subvert the Gaming Board’s decision, City Council enacted an Ordinance providing for an amendment to Philadelphia’s Home Rule Charter (“Charter”) by way of referendum to be placed on the May 15, 2007 primary ballot, which, if enacted, would have - in effect - barred casinos from being located at HSP Gaming’s Gaming Board approved location or elsewhere in Philadelphia. (See City of Philadelphia Bill No. 070112, attached hereto as Exhibit B) The Gaming Board and HSP Gaming filed Petitions for Review in this Court seeking to enjoin the May 15, 2007 referendum on the grounds that City Council had no authority to nullify or override the authority of the

Gaming Board as to the siting of casinos. Pennsylvania Gaming Control Board v. City Council, 928 A.2d 1255, 1258 (Pa. 2007) (“PGCB v. City Council”).

5. On April 13, 2007, this Court granted the requested preliminary injunction and enjoined the referendum. See Supreme Court Order, 55 E.M. 2007 and 56 E.M. 2007, attached hereto as Exhibit C) On August 3, 2007, this Court permanently enjoined City Council from placing the proposed referendum question on the ballot because it found that the Gaming Act clearly established that only the Gaming Board had the authority to determine the location of the casinos and City Council must enact the necessary zoning for such casinos at the locations designated by the Gaming Board. “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, 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.

6. Despite this Court’s holding, City Council has continued to refuse to implement the Gaming Board’s decision by failing to designate the approved zoning at 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 (collectively the “HSP Bills”),<sup>2</sup> to effectively designate and zone HSP Gaming’s site as a CED and instead has

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<sup>2</sup> 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

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. All of the prerequisites to Council approval have been met: the HSP Bills contemplated by the CED Ordinance have been introduced in City Council to designate HSP Gaming's site a Commercial Entertainment District, the Planning Commission has found that HSP Gaming's Plan of Development complies with the CED Ordinance, the Planning Commission has approved the Plan of Development, and the Planning Commission has recommended that City Council approve the Plan of Development. Moreover, the Gaming Board having made its decision as to the location of the site, City Council's role under the CED Ordinance to enact the HSP Bills is merely ministerial because all of the policy decisions regarding the location of the casinos were made and set forth in the Gaming Act and by the Gaming Board in its Adjudication, and all of the non-location zoning policy decisions are set forth in the CED Ordinance, with which the HSP Bills undisputedly comply. Nevertheless, City Council has refused to act and has refused to vote the HSP Bills out of Committee.<sup>3</sup>

7. Plainly stated, City Council cannot, and should not be allowed to, continue to methodically act to undermine and block the Gaming Act's implementation and to subvert this Court's pronouncement in PGCB v. City Council, 928 A.2d 1255, 1267 (Pa. 2007), by refusing to implement and otherwise resisting the Gaming Board's decision to locate a casino at HSP

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provisions. (See Bill No. 070456 attached hereto 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 hereto 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 hereto as Exhibit F)

<sup>3</sup> This is discussed in more detail in Paragraphs 19 through 22 below.

Gaming's site and by intentionally interfering with this decision. Upon analysis, this Court can and should find that no further action by City Council is necessary for the development of the SugarHouse Casino to proceed in Philadelphia. As set forth below, the Plan of Development Bill, Bill No. 070458, is deemed enacted under the CED Ordinance because City Council failed to act on it within 45 days or five (5) City Council meetings after its introduction, as required by the CED Ordinance. As such, no further City Council action is necessary. Therefore, HSP Gaming respectfully requests that this Court exercise its authority to issue a declaratory judgment declaring that the HSP Bills, 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. Finally, 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.



## II. STATEMENT OF JURISDICTION

8. This Court has jurisdiction over final orders of a local instrumentality involving zoning of state-authorized gaming facilities. See 4 Pa.C.S. § 1506.

9. This section provides:

In order to facilitate timely implementation of casino gaming as provided in this part, notwithstanding 42 Pa.C.S. § 933(a)(2) (relating to appeals from government agencies), the Supreme Court of Pennsylvania is vested with exclusive appellate jurisdiction to consider appeals of a final order, determination or decision of a political subdivision or local instrumentality involving zoning, usage, layout, construction or occupancy, including location, size, bulk and use of a licensed facility. The court, as appropriate, may appoint a master to hear an appeal under this section.

4 Pa.C.S. § 1506.

10. City Council's refusal to enact the HSP Bills represents the determination and decision of a political subdivision that involves the zoning, usage, and location of a licensed gaming facility, as approved by the Gaming Board, and is thus within the scope of § 1506. See PGCB, 928 A.2d at 1264.

11. The Pennsylvania Rules of Appellate Procedure define "determination" to include "[a]ction or inaction by a government unit." Pa.R.A.P. 102 (emphasis added); see also Marinari v. Department of Environmental Resources, 129 Pa. Cmwlth. 569, 571, 566 A.2d 385, 386 (1990) (permitting appeal of inaction by the Department of Environmental Resources where "Petitioners to their detriment have endured the artificially prolonged opportunity cost of not developing their land for a landfill or any other purpose, because of DER's inaction. Until it takes a final appealable action, Petitioners will continue to be harmed economically.").

12. In addition, where a government unit has a nondiscretionary duty to act, "mandamus is a remedy against any unreasonable delay." Dauphin Plaza Associates v. Dept. of Transp., 127 Pa. Cmwlth. 132, 139, 561 A.2d 61, 64 (1989).

13. Given City Council's expressed intent to refuse to cooperate with the Orders of this Court, this is an appropriate case for the Court to appoint a Master pursuant to its authority under Section 1506. 4 PA.C.S. § 1506 ("The court, as appropriate, may appoint a master to hear an appeal under this section.")

14. Furthermore, in addition to its direct appellate jurisdiction under Section 1506 of the Gaming Act, this Court has jurisdiction over this action pursuant to its plenary powers under 42 PA.C.S. § 726 as well as its King's Bench powers. Because the Gaming Act is a statute of widespread importance, because the timely implementation of gaming is a matter of statewide concern, and because the Gaming Board's "authority to make and implement its decision" is fundamental to the Gaming Act's legislative framework, HSP Gaming's Petition for Review merits invocation of this Court's King's Bench powers and the exercise of its plenary jurisdiction. See PGCB, 928 A.2d at 1264 n.6; 42 Pa.C.S. § 502.

### **III. PARTIES**

15. 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," was approved by the Gaming Board pursuant to its February 1, 2007 Order and Adjudication. HSP Gaming's service address is: c/o Charles J. Hardy, Esquire, Sprague & Sprague, The Wellington Bldg., Suite 400, 135 South 19<sup>th</sup> Street, Philadelphia, Pennsylvania 19103.

16. 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.

17. 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, 17<sup>th</sup> 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.

18. 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, 17<sup>th</sup> Floor, Philadelphia, Pennsylvania 19102-1595.

**IV. DETERMINATION SOUGHT TO BE REVIEWED PURSUANT TO THIS COURT’S APPELLATE JURISDICTION**

19. HSP Gaming seeks relief from City Council’s determination to engage in continued, deliberate efforts to obstruct and delay implementation of the Gaming Board’s approval of HSP Gaming’s Category 2 license application, and to nullify the Gaming Board’s siting decisions by failing to process the HSP Bills, in addition to its failure and refusal to honor the determination of this Court regarding such siting and to implement such decision as contemplated by the Gaming Act, Gaming Board, and this Court.

20. Although the three HSP Bills to implement the Gaming Board's decision, Bills No. 070456, 070457, and 070458, were properly introduced in City Council on May 24, 2007, City Council has refused to act on these Bills.

21. HSP Gaming seeks review of City Council's failure and refusal to enact any of the three HSP Bills in the five months since they were introduced. Through this obstructionist tactic, City Council and its Rules Committee are preventing the process outlined in the Philadelphia Code for creating Commercial Entertainment Districts from moving forward, contrary to their obligations and the Gaming Board's reasonable expectations. Indeed, City Council and its Rules Committee's refusal to move the CED designation process forward and to act on the HSP Bills evidences a patent attempt, freely acknowledged by Members of City Council, to nullify the Gaming Board's licensing decisions in Philadelphia, and to ignore the prior rulings of this Court.

22. Similarly, although the Omnibus Bill, Bill No. 070457, was introduced and referred to the Committee on Streets and Sanitation on May 24, 2007 to, among other things, provide a right of way for sewer maintenance, all as contemplated by the Plan of Development submitted by HSP Gaming and approved by the Planning Commission, City Council has refused to take any further action on that Bill since that time.

## V. STATEMENT OF MATERIAL FACTS

(a) **The General Assembly Required That The Gaming Board In Its Sole Discretion Locate Two Category Two Facilities In Philadelphia.**

23. The General Assembly enacted the Gaming Act because it concluded that licensed gaming would generate a diverse spectrum of benefits for the Commonwealth, including new jobs, enhanced tourism and entertainment, new sources of revenue for property tax relief

and wage tax reduction, economic development opportunities, and substantial direct financial benefits for local governments and public schools. See 4 Pa.C.S. § 1102.

24. The Gaming Act established a seven-member Gaming Board as the independent agency responsible for applying this statutory framework. 4 Pa.C.S. § 1201(b).

25. The Gaming Act provided the Gaming Board with the specific power, among others, to “issue, renew, condition or deny a slot machine license based upon the requirements of this part and whether the issuance of a license will enhance tourism, economic development or job creation[,] is in the best interests of the Commonwealth and advances the purposes of this part.” 4 Pa.C.S § 1325.

26. The Gaming Act also provided the Gaming Board with “sole regulatory authority over the conduct of gaming.” 4 Pa.C.S § 1202(a).

27. The Gaming Act defines the “[c]onduct of gaming” as “[t]he licensed placement and operation of games of chance under this part and approved by the [Board] at a licensed facility.” 4 Pa.C.S. § 1103.

28. The Gaming Act defines a “[l]icensed facility” as “[t]he physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines.” 4 Pa.C.S. §1103.

29. The Gaming Act instructs that the “location and quality of the proposed facility” is a factor the Gaming Board should take into account when considering an application for a slot machine license. 4 Pa.C.S. §1325(c)(1).

30. The Gaming Act provides for three types of slot machine licenses, designated by category. Each category permits an entity or person to apply to the Gaming Board for a license, and upon issuance, authorizes the placement and operation of slot machines at a licensed facility. 4 Pa.C.S. §1301. A “Category 1” license authorizes the placement and operation of slot

machines at existing horse racing tracks; a “Category 2” license authorizes the placement and operation of slot machines in stand-alone facilities in cities of the first or second class, or other tourism locations; and a “Category 3” license authorizes the placement and operation of slot machines in resort hotels. 4 Pa.C.S. §§ 1302-1305.

31. The Gaming Act required that the Gaming Board locate two Category 2 gaming facilities in Philadelphia. “Two Category 2 licensed facilities and no more shall be located by the board within a city of the first class.” 4 PA.C.S. § 1304(b)(1). Philadelphia is the only city of the first class within the Commonwealth.

**(b) Philadelphia Enacted The CED Ordinance To Implement The Gaming Board’s Decision As To The Location Of The Casinos In Philadelphia.**

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32. In order to implement the Gaming Board’s decision as to the location of casinos in the City of Philadelphia, City Council enacted the CED Ordinance on February 23, 2006, as amended on November 29, 2006, adding Chapter 14-400 to the provisions of the Philadelphia Code that govern zoning and planning. Council Member Frank DiCicco, among others, sponsored Ordinance No. 051028-AA to enact the CED Ordinance and individually sponsored Ordinance No. 060631 that amended the CED Ordinance to its current state. As expressed by its drafters, Chapter 14-400 is intended “to encourage the orderly development of major entertainment facilities,” and to provide a regulatory framework for the establishment of Commercial Entertainment Districts (or “CEDs”) in Philadelphia. PHILA. CODE § 14-401.

33. The CED Ordinance specifically states that licensed gaming is a permitted use in a CED. PHILA. CODE § 14-405(1)(c). It is the only zoning category authorized in Philadelphia where licensed gaming is a permitted use.

34. The CED Ordinance also specifically provides, as was added in the amendment solely sponsored by Council Member DiCicco:

(2) Nothing in this Chapter shall limit the right of the Pennsylvania Gaming Control Board under the [Gaming] Act to identify the property on which it will permit a Category 2 licensed gaming facility within the City.

(3) Nothing in this Chapter shall be construed to prohibit any use that is exclusively regulated and permitted by the Commonwealth under the [Gaming] Act.

PHILA. CODE § 14-405(2), (3); see also Bill No. 060631, attached hereto as Exhibit G.

35. Thus, the CED Ordinance provides a comprehensive zoning scheme for regulating the use of and necessary procedures for authorized gaming facilities without interfering with the Commonwealth's authority over the locations of facilities.

36. Indeed, although the CED Ordinance does not govern the location of casinos, it addresses various other zoning issues, such as, among other things, specific regulations regarding the gross floor area, facility height, parking, set-backs, and signs. PHILA. CODE §§ 14-406 – 14-410. For example, it provides “the total gross floor area of all buildings shall not exceed 400% of the Commercial Entertainment District.” PHILA. CODE § 14-406(2)(a). If located on a waterfront, “all lots shall provide and allow for an unencumbered set-back from the top of the bank of any river to allow for unrestricted access to the river's edge.” PHILA. CODE § 14-406(5)(b). For height restrictions, the CED Ordinance provides, “the maximum height of any building shall not exceed 300 feet or 30 stories.” PHILA. CODE § 14-407. The CED Ordinance provides requirements for parking facilities, among other restrictions, for the: a) number of spaces; b) parking layout; c) parking space size; d) ratio of compact to non-compact spaces; e) driveways, aisles, and walkways; and f) buffer areas between parking facilities and other buildings. PHILA. CODE § 14-408.

37. Under the CED Ordinance, City Council must take two separate actions to effectively designate a site for casino development: 1) approve a Plan of Development; and 2) designate the site as a Commercial Entertainment District by Ordinance. PHILA. CODE § 14-403(1). Once the CED designation becomes effective, all underlying zoning classifications are superseded with respect to such site. PHILA. CODE § 14-403(1).

38. The Plan of Development must initially be submitted to the Planning Commission for approval. PHILA. CODE § 14-403(3). The Plan of Development must provide comprehensive information on the CED District, including:

- (a) The extent, boundaries, and area of the district to include lot area and width dimensions;
- (b) The proposed maximum gross floor area;
- (c) The dimensions and heights of the proposed structures or existing structures to be retained as well as the use or uses intended for each structure;
- (d) The occupied area, gross floor area, and height of all buildings within the district;
- (e) The size and location of all parking areas; the size and location of all driveways leading thereto; and the size and location of all other private drives, ways or streets intended to be used by automobile traffic;
- (f) The size and location of all off-street loading facilities;
- (g) The size and location of any signs;
- (h) A landscaping plan;
- (i) A transportation management plan that details internal circulation systems, external access points, pedestrian flows, including to and from parking facilities, and estimates of levels of service on sidewalks and internal roads. The plan shall include a traffic and parking study. . . assessing the impacts of new traffic . . . .
- (j) A parking management plan describing the proposed policy on and resources for parking for patrons, employees, and managers, and anticipated traffic and parking management resources;
- (k) Any recommendations on intersection improvements, new roadway construction, or widening of existing roadways, if required, and any traffic buffers to protect residential areas, including the manner of funding such improvements by the developer;
- (l) Any other information which the Commission may deem necessary, to include sufficient guarantees in the form of restrictive covenants running with the land or letters of intent to be dedicated for public use.



PHILA. CODE § 14-403(3).

39. Approval of the Plan of Development is a two-step process. If the Planning Commission finds that the Plan of Development is consistent with the purpose of CEDs and complies with the requirements of the CED Chapter, it then approves and submits the Plan of Development to City Council for approval. See PHILA. CODE § 14-401 – 14-405.

40. If the Planning Commission fails to act on the Plan of Development within 45 days of its receipt of same, the Plan of Development is deemed approved by the Planning Commission. PHILA. CODE §§ 14-403(4). Here, the Planning Commission did, in fact, approve HSP Gaming's Plan of Development.

41. Once the Plan of Development is approved by the Planning Commission it is then submitted to City Council. City Council is deemed to have approved the Plan of Development if it fails to act on same by the later of 45 days or five City Council meetings after submission of the Plan of Development to Council. PHILA. CODE § 14-403(4).

42. Upon approval of the Plan of Development by City Council, and the designation of the site as a CED District, the City's Department of Licenses and Inspections is authorized to issue the building and zoning permits required to begin construction of the approved gaming facility. PHILA. CODE § 14-404.

(c) **The Gaming Board Selects HSP Gaming's Site For A Licensed Gaming Facility Based Upon Its Reliance On The CED Ordinance.**

43. On December 28, 2005, HSP Gaming submitted a detailed and comprehensive application to the Gaming Board seeking approval to operate one of the two stand-alone "Category 2" slot machine facilities to be licensed in Philadelphia. HSP Gaming proposed to build and operate the SugarHouse Casino on a 22-acre optimal riverfront site located on North Delaware Avenue, north of the Benjamin Franklin Bridge.

44. Four other applicants, including Philadelphia Entertainment and Development Partners (“Foxwoods”), Riverwalk Casino, LP (“Riverwalk”), Keystone Redevelopment Partners, LLC (“Trump”), and PNK (PA), LLC (“Pinnacle”), submitted competing applications to the Gaming Board for Philadelphia’s Category 2 licenses.

45. During the comprehensive application process, the Gaming Board conducted three days of public input hearings in April 2006, during which each of the five applicants, including HSP Gaming, made extensive presentations. Over one hundred witnesses testified at these hearings, including members of the communities in which the applicants sought to construct and operate their proposed facilities. During the public comment period that extended into June 2006, the Gaming Board received over three hundred written comments from the public, expressing both support for and opposition to specific applications, or support for or opposition to gaming in general.

46. In these April 2006 hearings, Council Member DiCicco testified in favor of the Category 2 license application of Pinnacle Entertainment, Inc., which proposed to operate a casino on the site of a former shipbuilding yard along the Delaware River north of the SugarHouse site.

47. In addition to receiving traffic studies from applicants and comprehensive local impact reports, the Gaming Board retained its own traffic expert, Edwards & Kelcey, to consider the impact casino development would have on traffic in the City. (See Gaming Board February 1, 2007 Adjudication (“Adj.”) at ¶ 30)

48. At public hearings conducted in November 2006, HSP Gaming and each of the other applicants presented the Gaming Board with witnesses, sworn testimony and documentary and demonstrative evidence in support of their respective proposals. At these hearings, HSP Gaming highlighted the benefits of its proposed riverfront location.

49. The CED Ordinance was originally enacted on February 23, 2006 and was amended on November 29, 2006.

50. Therefore, when the Gaming Board thereafter selected HSP Gaming's proposed location as part of its award of a Category 2 License to HSP Gaming, the Board had the benefit of public comments received at the April 2006 public input hearings, including the comments of Council Member DiCicco, the comments received during the public written comments period that extended until June 2, 2006, and the newly enacted CED Ordinance.

51. On December 20, 2006, following extensive review of the five competing applications, the Gaming Board voted to approve the Category 2 slot machine license applications of HSP Gaming and Foxwoods, specifically designating and approving the sites at which each was to construct its licensed gaming facility, and voted to deny those of the three remaining applicants.

52. On February 1, 2007, the Gaming Board issued a 113-page Order and Adjudication setting forth in detail the evidence and reasons in support of its licensing decisions.

53. The Gaming Board stated therein that "[s]imply stated, successful applicants were the applicants which possessed the projects which the Board evaluated, in its discretion, to be the best projects for licensure under the criteria of the Act." (Adj. at p. 7)

54. In granting the two (2) applications, the Gaming Board took into consideration, among other things, the proposed locations for the Philadelphia casinos, traffic concerns, and the City's zoning requirements for casinos as set forth in the very CED Ordinance sponsored by Council Member DiCicco and adopted by City Council in anticipation of the Gaming Board's actions. (Adj. at ¶¶ 78-83)

55. In granting HSP Gaming's application, the Gaming Board observed that HSP Gaming proposed to build an initial, Phase I, two-story podium facility with "a contemporary

design and a retro feel.” (Gaming Board Adjudication (“Adj.”) at ¶ 39) The facility will encompass 1.5 million square feet of new construction, with 84,600 feet of gaming space. (Adj. at ¶39) It will also include a ten-level self-park facility with 2,404 spaces. (Adj. at ¶ 38)

56. The Gaming Board noted that HSP Gaming’s site “is currently vacant, underutilized former industrial property. The majority of the site has been vacant since 1980 and was previously used by Jack Frost Sugar Company as a sugar refinery, packaging and distribution center. All buildings on the site have been demolished and removed.” (Adj. at ¶ 78)

57. The Gaming Board also conducted a review of the areas surrounding the proposed facility.

The area around the HSP project consists of a mixed land use of industrial, commercial and limited residential development. Properties north of the project site contain commercial/industrial businesses and warehouses. Properties south and west of the project include a mix of new residential condominium towers that are currently under construction, residential town homes, and bar/restaurant establishments.

(Adj. at ¶ 78)

58. The Gaming Board also considered the potential traffic issues with HSP Gaming’s proposed site. It reviewed a traffic study and observed that 85% of the patrons exiting and entering the site would do so via Interstate 95, and the Pennsylvania Department of Transportation is in the process of adding a Girard Avenue Interchange to improve access to Interstate 95 a short distance north of the site. (Adj. at ¶ 100.) The Gaming Board also found that HSP Gaming “is committed to the mitigation and financing of all traffic issues related to the project.” (Adj. at ¶ 101.) The Gaming Board determined that it has “no doubt, based upon the evidence presented, that this area can absorb the increased traffic.” (Adj. at p. 87)

59. The Gaming Board concluded that HSP Gaming's location has "significant advantages" because it is "separated from primary residential areas by Interstate 95 and therefore should not have significant impacts on larger residential areas." (Adj. at p. 83.)

60. In selecting HSP Gaming's location, the Gaming Board specifically relied on the CED Ordinance and expressed its expectation that the City would use the CED Ordinance to implement the Board's decision and noted that the City was not in the position to designate specific areas of the City as CEDs until the Gaming Board issued its decision.

A portion of the proposed site is located in a C-3 District, but the majority of the site is zoned G-2 Heavy Industrial. As a result, the site has multiple zoning classifications with the C-3 use reasonably analogous to the sought gaming use. The City of Philadelphia has adopted an ordinance that has created a "Commercial Entertainment District" which, among other things, permits licensed gaming facilities. To date, the City has not indicated which areas will be designated as Commercial Entertainment Districts as it is waiting to see which applicants are licensed by the PGCB.

(Adj. at ¶ 81) (emphasis added)

**(d) City Council Has Refused To Implement The Gaming Board Decision, Is Actively Subverting the Decision of the Commonwealth on the Location of Casinos in Philadelphia, And Is Attempting To Nullify And Override The Gaming Board's Authority.**

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61. Even before the Gaming Board issued its decision, City Council took its initial steps to attempt to undermine the Gaming Board's authority by adopting a resolution on September 14, 2006 to authorize a lawsuit to challenge the Gaming Act in the event that it preempted City Council's zoning authority. (See Resolution No. 060639 attached hereto as Exhibit H)

62. On the very day that the Gaming Board issued its decision to award Category 2 Licenses to HSP Gaming and Foxwoods -- December 20, 2006 -- Council Member DiCicco<sup>4</sup> issued a press release announcing his intent to appeal the Gaming Board's licensing decisions. Council Member DiCicco described the Gaming Board's siting selections of the SugarHouse and Foxwoods proposals as "horrible," and pledged to do "everything I can to delay construction of the facilities" until his concerns about siting had been addressed. (See December 20, 2006 Press Release from Office of Council Member Frank DiCicco, attached hereto as Exhibit I)

63. Council Member DiCicco's press release made clear that his appeal of the Gaming Board's licensing decisions was simply part of a broader strategy to employ any means at his disposal to delay and obstruct development of the SugarHouse and Foxwoods casinos. For example, although nothing in the Gaming Act requires casino operators to enter into community agreements (which SugarHouse has been negotiating with various community groups solely in the spirit of conciliation and cooperation), Council Member DiCicco made clear that he would block zoning of the Philadelphia casinos until the successful applicants had negotiated and signed community benefits agreements that met in form and substance with his unilateral approval.

64. Council Member DiCicco's opposition in this matter controls the actions of City Council because of his unique position as the Council Member for the district that includes both the SugarHouse and Foxwoods sites. Under a tradition known as "councilmanic prerogative," zoning legislation that affects property within any councilmanic district will not be passed by City Council unless the Council Member representing that district approves the legislation. Since other Members of City Council honor this tradition, Council Member DiCicco is uniquely

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<sup>4</sup> This is the very same Council Member DiCicco who sponsored the CED Ordinance as set forth above.

positioned to block the City-approved zoning legislation for the development of the SugarHouse Casino.

65. On January 23, 2007, Council Member DiCicco continued his efforts by introducing a series of Bills in City Council that, although inconsistent, redundant, and even conflicting, were drafted with a unified and plain intent -- to utilize the City's zoning powers to nullify and abrogate the Gaming Board's approval of the SugarHouse and Foxwoods license applications. These DiCicco-sponsored bills included:

- (1) Bill No. 070006, to require Philadelphia Zoning Board approval for casino locations;
- (2) Bill No. 070007, to amend the Home Rule Charter to prohibit the enactment of any zoning ordinance that allows gaming;
- (3) Bill No. 070008, to eliminate licensed gaming from the permitted uses in a CED;
- (4) Bill No. 070010, to add development restrictions to CEDs;
- (5) Bill No. 070011, to outlaw gaming as a permitted use in the City and to prohibit any variance to allow gaming;
- (6) Bill No. 070012, to require the creation of a Neighborhood Improvement District prior to any application for a CED; and
- (7) Bill No. 070013, to prohibit certain regulated uses within 1000 feet of a CED.

66. When questioned about the viability of his proposed legislation, Council Member DiCicco conceded that, while his legislative efforts to ban gaming in Philadelphia had little chance of success, his bills were part of his strategy to "try everything." Admitting that passage of any of his proposed bills was a "long-shot," Council Member DiCicco explained: "We're

trying to slow the process down.” (See *DiCicco Introduces Bills to Block Casinos*, Philadelphia Inquirer, Jan. 23, 2007, attached hereto as Exhibit J)

67. In furtherance of his promised legal challenge to the Gaming Board’s licensing decisions, Council Member DiCicco was responsible for City Council’s retention of attorney Maurice Mitts, Esquire -- at an announced cost of \$100,000 to Philadelphia’s taxpayers -- to bring an appeal on behalf of City Council seeking to overturn the Gaming Board’s licensing decisions and prevent or delay the introduction of gaming to Philadelphia.

68. On March 2, 2007, City Council filed a Petition for Review captioned City Council v. Pennsylvania Gaming Control Bd., 39 E.M. 2007, alleging various substantive grounds on which it challenged the Gaming Board’s licensing decisions. Although attorney Mitts purported to file this Petition for Review on behalf of both City Council and the City of Philadelphia, this Court struck the City from the appeal following the City Solicitor’s demand.

69. In further support of his efforts to block the Gaming Board’s licensing decisions, Council Member DiCicco found allies among a vocal group of political activists operating under an allegedly non-profit organization they identify as “Casino-Free Philadelphia.” Casino-Free Philadelphia is a community activist group zealously opposed to gaming in Philadelphia and, as its name suggests, seeks to totally prohibit casinos in the City. Indeed, leaders of Casino-Free have vowed to lie down in front of bulldozers to block construction of the SugarHouse Casino.

70. Shortly after the Gaming Board’s Adjudication in February 2007, certain individuals affiliated with Casino-Free Philadelphia circulated a petition (the “Petition”) pursuant to 53 P.S. § 13106 and collected signatures, including Council Member DiCicco’s, to amend Philadelphia’s City Charter. The Petition sought to amend the Philadelphia Home Rule Charter to prevent casinos from being located within 1,500 feet of residentially zoned districts, churches, monasteries, chapels, synagogues, convents, rectories, religious article stores, religious apparel



stores, residential homes, legally occupied dwellings or apartment buildings, the Convention/Civic Center, schools up to and including the twelfth (12th) grade and their adjunct play areas, public playgrounds, public swimming pools, public parks and public libraries. The effect of such an amendment would prohibit casinos at the locations designated by HSP Gaming and Foxwoods for their facilities and approved by the Gaming Board and therefore would have nullified the Gaming Board's decision. Moreover, the amendment would have -- for all intents and purposes -- prohibited casinos at any location in the City of Philadelphia.

71. On February 14, 2007, in a highly publicized "political action," Casino-Free's leadership delivered several cartons of petitions to the Clerk of City Council, purportedly including more than 25,000 valid signatures of City voters who supported placing the referendum question in the Petition on the May 15, 2007 primary ballot. Council Member DiCicco appeared at this event and gave extensive interviews to the press in support of Casino-Free's efforts.

72. Ultimately, the Honorable Judge Ward F. Clark of the Court of Common Pleas of Bucks County, sitting by appointment of the Pennsylvania Supreme Court, found that the Petition failed to include the requisite number of valid signatures and ruled that the Petition was invalid.

73. Despite this ruling, and in direct contravention of the advice and holdings of the City Solicitor and the Planning Commission, Council Member DiCicco led efforts in City Council to pass an identical referendum question by Ordinance ("Ordinance No. 070112"). (See Bill No. 070112, attached hereto as Exhibit B) This anti-gaming Bill was introduced on February 22, 2007, approved by the Committee on Law and Government on March 2, 2007, immediately referred to the full City Council, and placed on City Council's first available reading calendar. (See Legislative History for Bill No. 070112, attached hereto as Exhibit K)

As is evident, when motivated, City Council plainly has the ability to move legislation forward with alacrity.

74. In a public hearing on Ordinance No. 070112, Council Member DiCicco specifically stated that he intends to use whatever means he can to delay the implementation of gaming in Philadelphia. "As Councilman Kenney's pointed out numerous times, this was dumped on us, and we got to figure out a way in which we can slow this process down." (City Council Meeting, March 2 Transcript ("March 2 Tr.") attached hereto as Exhibit L, at 79-80)<sup>5</sup>

75. During this same hearing, Council Member James F. Kenney explained that Council Member DiCicco's efforts were tailored to delay and slow down the casino process. "I intend to vote for . . . the bills that Councilman DiCicco has put forth in an effort to slow this down or stop this process." (March 2 Tr. at 40)

76. Despite the City Solicitor's opinion that the proposed amendment to the City Charter was illegal, on March 15, 2007 City Council unanimously approved Ordinance No. 070112, to submit Casino-Free's proposed 1,500 foot barrier as a referendum question on the May 15, 2007 primary ballot.

77. On March 29, 2007 -- the very day that Mayor Street vetoed the patently illegal ordinance -- City Council voted unanimously to override the Mayor's veto.

78. As the Mayor and City Solicitor predicted, on April 13, 2007, this Court preliminarily enjoined the City and City Council from placing the referendum question on the May 15, 2007 primary ballot.

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<sup>5</sup> An incredible statement to be making when Council Member DiCicco sponsored the CED Ordinance and knew that two of the sites of the five applicants were located at the very sites that were proposed to and approved by the Gaming Board.

79. In response to this Court's preliminary injunction, Casino-Free proceeded with a highly-publicized "shadow-ballot" in which Philadelphia residents were urged to vote "yes" for the illegal referendum question. In an effort to create broad support to defeat the Gaming Board's siting decisions, Council Member DiCicco became a leading and vocal supporter of this so-called "shadow-ballot," proclaiming that Philadelphia residents "deserved to have their voices heard" on where casinos should be located and describing the riverfront locations selected by the Gaming Board as "flawed." (See Anti-Casino Effort Plans 'Shadow Ballot' on Election Day, Philadelphia Business Journal, April 27, 2007, attached hereto as Exhibit M)

80. Furthermore, despite the recent injunction, on April 19, 2007, under Council Member DiCicco's sponsorship, City Council adopted Resolution 070322 creating a "Special Committee on Gaming Alternate Site Selection of the City Council of Philadelphia." (See Resolution No. 070322, attached hereto as Exhibit N) The Special Committee's stated agenda is to hold public hearings to identify "alternative" sites for Philadelphia's casinos, again in the illegal attempt to nullify the Gaming Board's approval of the SugarHouse Casino.

81. This City Council initiative has spawned innumerable efforts to delay gaming through establishing commissions and "blue-ribbon" panels to spend months investigating alternative sites for Philadelphia's casinos. Indeed, certain neighborhood groups, including Fishtown Neighbors Association and Northern Liberties Neighbors Association, continue to refuse to meet with HSP Gaming and negotiate the terms of a Community Benefits Agreement unless the negotiations are limited to the question of finding a different location for the SugarHouse Casino. (See No Negotiations with Casinos, Say Neighbors, Fishtown Spirit, August 1, 2007, attached hereto as Exhibit O)

82. There are, however, many proponents of the development of the SugarHouse site in the community, including the largest community group in the immediate neighborhood of the

site, with over 560 members, the business community in Philadelphia, the Philadelphia hospitality industry, and organized labor, as evidenced by the testimony of City Council and elsewhere.

83. As a result, although the Gaming Act, the Gaming Board's Adjudication, and the CED Ordinance include no such requirements, HSP Gaming has engaged in discussions with community members, community groups, and the City with respect to HSP Gaming's relationship with the surrounding community and the City in the interests of conciliation and cooperation and as a good faith effort to take into consideration the community's interests in connection with HSP Gaming's development and operations, including negotiations regarding a Community Benefits Agreement.

84. On July 17, 2007 this Court affirmed the Gaming Board's decisions concerning Category 2 licenses in Philadelphia in all respects. See Riverwalk Casino, LP v. Pennsylvania Gaming Control Bd., 926 A.2d 926 (Pa. 2007).

85. Council Member DiCicco nonetheless pledged to continue his efforts in City Council to block casino development from moving forward:

When the Pennsylvania Gaming Control Board issued gaming licenses to SugarHouse and Foxwoods Casinos, I pledged to my constituents that I would fight their decision with every tool I had available. That's exactly what I've done but the bottom line is that we need the Governor's help. I introduced several pieces of legislation to block or delay casino construction. Despite two public hearings, those bills have not been voted out of committee.

I sponsored a ballot question that would have created a 1500 foot buffer between casinos and residents. With my leadership, the question was approved unanimously by Council. However, the Supreme Court blocked the question from appearing on May's ballot and the Court recently permanently blocked the question. In the Court's decision, they clearly argue that the City does not have the power to relocate the gaming facilities.

I convinced my Council colleagues to file an appeal to the Gaming Control Board's decision to award licenses to both SugarHouse and Foxwoods. Unfortunately, we've lost

that appeal and our attorneys have advised us that we do not have additional appeal options.

When Council Member Ramos introduced legislation permitting immediate construction of SugarHouse Casino, I successfully blocked its approval. However, in light of the recent court decisions, I don't know if I can maintain a Council majority to defeat the legislation.

See [www.fightforphilly.com](http://www.fightforphilly.com) (a printout of this website is attached hereto as Exhibit P).

86. On August 3, 2007, this Court again found against City Council and in favor of the Gaming Board and HSP Gaming and permanently enjoined City Council from giving effect to Ordinance No. 070112 and from placing a referendum question on the ballot that would nullify and overrule the decision of the Gaming Board. This Court concluded, among other things, that the Gaming Act provides that only the Gaming Board has the authority to determine the location of the casinos in Philadelphia, City Council may not interfere with this authority, and City Council in fact must implement the Gaming Board's decision. PGCB v. City Council, 928 A.2d 1255, 1258 (Pa. 2007).

87. Rather than concede that this Court had ruled that only the Gaming Board has the authority to determine the location of the Philadelphia casinos, on August 9, 2007, Council Member DiCicco wrote to Governor Rendell to obtain the Commonwealth's assistance in relocating the SugarHouse and Foxwoods casinos. Council Member DiCicco again confirmed his commitment to blocking pending legislation:

On behalf of the communities I represent, I want to welcome your leadership and to thank you for considering alternate sites for gaming facilities in Philadelphia. In order to provide the State ample time to review this issue, I pledge to you and my constituents that I will make my best effort to hold the necessary legislation that would permit casino construction until you complete a full review of the matter.

(See August 9, 2007 Letter from Council Member Frank DiCicco to Governor

Edward G. Rendell, attached hereto as Exhibit Q)

88. Shortly thereafter, Council Member DiCicco launched an online petition to attempt to influence Governor Rendell to force the casinos to move. "They have to look at it from their end," Council Member DiCicco explained in support of his new tactic. "Do they want to run the risk of further delays, or do they want to meet with us to discuss alternative sites."

(See *Casino Site Fight Keeps On Going*, Metro, August 28, 2007, attached hereto as Exhibit R)

89. In his September 11, 2007 testimony before the State Gaming Oversight Committee, Council Member DiCicco reaffirmed his promise to employ his councilmanic prerogative, discussed in further detail below, and local zoning laws to frustrate the Gaming Board's decision as to the location of the two casinos, notwithstanding the prior determinations of this Court:

Unfortunately, in choosing these two locations I do not believe the Gaming Board acted prudently or in the best interests of the city. For this reason I have taken several steps to delay or stop casino construction.

...

Concerns regarding SugarHouse [are not limited to] traffic problems, but also on its close proximity to residents. Because these concerns have not been alleviated and because there is no evidence that the [Gaming] Board has taken these concerns into account during their deliberations, I have refused and will continue to refuse to introduce legislation that would permit casino gaming construction.

I will note however that Council Member Ramos has introduced legislation to permit the construction of the SugarHouse casino. To date I have been successful in delaying the passage of that legislation ....

(See September 11, 2007 Gaming Oversight Committee Transcript at 6-7, attached hereto as Exhibit S)

90. On October 9, 2007, through a letter to a local anti-casino activist, Governor Rendell confirmed that any search for alternate casino sites in the City was “over,” and urged community groups to join in discussions about maximizing the benefit to local communities. Governor Rendell explained that “[t]he commonwealth has no authority to require [the casinos] to accept alternate sites ... Therefore, I must reluctantly inform you that the issue of re-siting is over.” (See October 9, 2007 Letter from Governor Edward G. Rendell, attached hereto as Exhibit T)

91. Unsatisfied with the Governor’s response, Council Member DiCicco announced that he “was digging in his heels.” Although appearing to recognize this Court’s authority to direct that the City cannot control where the two Philadelphia casino’s are built, Council Member DiCicco nonetheless warned that the City could hold up construction if the casinos did not offer real solutions to traffic and other problems. (See *Rendell Says Casinos Stay; Neighbors Vow To Fight On*, Philadelphia Inquirer, Oct. 10, 2007, attached hereto as Exhibit U)

92. On October 9, 2007, speaking with an HSP Gaming representative, Council Member DiCicco threatened that he would continue blocking SugarHouse as long as SugarHouse continues at its current site. According to Council Member DiCicco, relocating the SugarHouse Casino will never be a dead issue for him because, regardless of what the Governor says, the SugarHouse owners are businessmen and, if they know that Council Member DiCicco will never allow any City Council action to support the SugarHouse Casino, the SugarHouse Casino owners will realize that it makes sense to move to the Pinnacle site, the site previously proposed by

Pinnacle Entertainment, Inc., whose proposal Council Member DiCicco had supported before the Gaming Board, but whose application was not approved by the Gaming Board.

93. Council Member DiCicco further stated that if any other Member of City Council sought to introduce legislation in City Council in support of the SugarHouse Casino, Council Member DiCicco would loudly denounce such action as a violation of his (Council Member DiCicco's) councilmanic prerogative. Council Member DiCicco made clear that his position would never change, even if all community groups involved signed a Community Benefits Agreement, which is presently being negotiated.

94. On October 18, 2007, Mayor John F. Street wrote to City Council detailing the diverse economic benefits of gaming and strongly urging that City Council move forward with Bill Nos. 070456, 070457, and 070458, and reject Council Member DiCicco's anti-gaming bills. Emphasizing that nothing in the Gaming Act gives the City any authority to select gaming sites, Mayor Street made clear the likely consequences of City Council's further stonewalling:

As much as we may object to losing the right to select the location of gaming sites, we cannot jeopardize the opportunity the City does have to affect the nature of development along the City's riverfront by stonewalling the process. If we obstruct the process by which gaming is being introduced here, we run the risk that all local controls will be removed from our authority, and the Supreme Court may simply mandate that we issue zoning permits to both casino operators; those permits will allow whatever development the operators and the Court believe appropriate, regardless of our legitimate and substantial concerns about traffic, public safety, the environment, and the health and welfare of the surrounding communities.

My Administration has operated within the limitations imposed by state law while attempting to protect critical city, local, and community interests. To that end, we have worked with both proposed developers to secure agreements regarding, traffic disruptions in surrounding communities, public access to the



waterfront, job participation for City residents, PILOT payments to the City, high quality building design, a community benefits agreement with funding for its implementation. I have transmitted to this Council bills to enact these concessions into law, through the Commercial Entertainment District process. It is now Council's turn to act.

(See October 18, 2007 Letter from Mayor John F. Street to City Council, attached hereto as Exhibit V)

95. On October 19, 2007, Council Member DiCicco responded to the Mayor, repeating his objections to the Gaming Board's selections and concluding with an unabashed challenge to this Court's authority:

Until this body receives adequate answers from the City, the State and the operators I can not and will not support legislation that permits construction of these projects. I would note that this is my district and it is my constituents that will be most impacted. Like you, I have been elected to serve and protect them to the best of my ability. I will continue to do that.

I understand the risk the Supreme Court poses and the potential for the Court to mandate zoning. My job is to balance that risk with the needs of my constituents and the City of Philadelphia and I have developed a plan of action should the Court rule against the City and our Home Rule.

Further, I continue to believe that it is in the best interest of the City, the State and the operators to consider new locations. If they had agreed to relocate six months ago, imagine the millions of dollars the operators would have saved and the likelihood that the State would have received its tax dollars more quickly.

(See Frank DiCicco Letter to Mayor John F. Street, Oct. 19, 2007, attached hereto as Exhibit W)

96. Undeterred by this Court's clear pronouncements in the referendum case, PGCB v. City Council, Council Member DiCicco remains committed to the idea that City Council is empowered to delay the development of Philadelphia's casinos through the selective and

strategic application of local zoning laws, and the refusal to grant the necessary zoning to the sites designated by the Gaming Board. Indeed, while continuing his pledge to delay gaming, Council Member DiCicco misrepresents City's Council's powers under the CED legislation that Council Member DiCicco himself sponsored. According to Council Member DiCicco, the CED legislation authorizes:

[City] Council to delay the advent of gaming significantly. Whenever a casino wishes to pull a building permit, Council has 45 days to call for public input and has the ability to table or disapprove the casino's plan. In other words, no casino can pull a building permit without Council approval and public hearings. I pledge to all of you that I will use this power for the benefit of all of our neighborhoods.

See <http://www.frankdicicco.com/gaming.htm> (a printout is attached hereto as Exhibit X).

97. Contrary to this blatant misrepresentation, the CED legislation grants no such authority to City Council or to any other body.

98. In a recent response to an e-mail from residents of Philadelphia requesting that he allow the HSP Bills to proceed, Council Member DiCicco expressly stated that he would refuse to process the HSP Bills or allow them to proceed until a number of issues are addressed, even though neither the Gaming Act, the Gaming Board nor the CED Ordinance imposes resolution of these issues as a precondition to designating a site as a CED and it is undisputed that HSP Gaming has complied with all of the requirements in the CED Ordinance. (See October 16, 2007 e-mail exchange between Frank DiCicco and community residents, attached hereto as Exhibit Y) This e-mail, therefore, establishes and confirms that Council Member DiCicco and City Council seek to interfere with the Gaming Board's decision by, among other things, imposing additional requirements above and beyond those required by the Gaming Act, the Gaming Board's Adjudication, and the CED Ordinance -- and this Court. In essence, Council Member DiCicco

and City Council seek to impose requirements and conditions upon the exercise of their ministerial duty to implement the Gaming Board's decision that do not exist.

99. Incredibly, Council Member Kenney has further stated on the record that City Council should ignore this Court's decisions and refuse to take action to implement the Gaming Board's decision in an effort to prevent construction. "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 Committee on Law and Government Hearing Transcript ("June 13 Tr.") at 66-67, attached hereto as Exhibit Z)

100. In an effort to effectuate its objective to delay construction and interfere with the Gaming Board's decision, as discussed more fully below, City Council has refused to enact the HSP Bills to implement the Gaming Board's decision under the CED Ordinance. As this Court recognized on August 3, 2007, "To date, the process set forth in Chapter 14-400 of the Philadelphia Code has not moved forward, despite requests from HSP and Philadelphia Entertainment for its implementation." PGCB v. City Council, 928 A.2d at 1259 n.2.

101. Since that time, City Council has not taken any further action. Indeed, it has refused to vote the HSP Bills out of Committee.

102. Therefore, City Council has expressed and evidenced its continued intent to delay casino construction and their eventual operation, ignore the Gaming Act, and ignore the Orders of this Court, and has manifested this intent by intentionally refusing to act upon and pass the HSP Bills to implement the CED Ordinance.

(e) **Despite City Council's Efforts to Impede its Progress, the CED Ordinance And All Prerequisites To Allow City Council To Implement The Gaming Board's Location Decision As Required By the Gaming Act, Have Been Met.**

103. On March 26, 2007, as required by the CED Ordinance, HSP Gaming submitted a proposed Plan of Development to the Planning Commission. On May 22, 2007, the Planning Commission held a public hearing at which time it determined that the Plan of Development complied with the CED and it approved the Plan of Development. (See Planning Commission Minutes, May 22, 2007 at 12, attached hereto as Exhibit AA.)

104. To proceed with construction of the SugarHouse Casino under the zoning framework established under the existing CED Ordinance, the City administration sought the introduction in City Council of legislation designating the proposed site of the SugarHouse Casino as a CED zoning district. The City administration also urged City Council to introduce legislation approving HSP Gaming's Plan of Development, along with certain "omnibus legislation" to create certain easements and relocate utilities at the SugarHouse Casino site in order to perform the development work contemplated by the Plan of Development approved by the Planning Commission.

105. Because both the SugarHouse and Foxwoods sites are within Council Member DiCicco's district, as a result of City Council's unwritten or unlegislated practice of deferring to "councilmanic prerogative," Council Member DiCicco has, in effect, the power to block any Bills required by the SugarHouse Casino from ever reaching the full City Council. In addition, as the Chair of the Streets and Services Committee of City Council, he has the ability to block any easements required by the SugarHouse Casino from ever reaching the full City Council. Thus, because of the tradition of councilmanic prerogative and his position as Chair of the

Streets and Services Committee, Council Member DiCicco is uniquely positioned to improperly block the City-approved zoning legislation for the development of the SugarHouse Casino.

106. Indeed, true to his promises in December 2006 to use every available tool at his disposal to block the process from moving forward, Council Member DiCicco refused without equivocation to introduce the zoning legislation required to begin construction of the SugarHouse Casino, stuffing the bills in his shirt pocket.

107. The City administration spent weeks without success in attempting to convince other Members of City Council to introduce the SugarHouse legislation.

108. Recognizing the importance of gaming to Philadelphia and the impasse created by Council Member DiCicco, Council Member Juan Ramos broke with the tradition of councilmanic prerogative and introduced the three HSP Bills required to move the SugarHouse Casino forward.

109. Thus, the Plan of Development, having been approved by the Planning Commission on May 24, 2007, Council Member Ramos introduced Bill No. 070458 (“Plan of Development Bill”), which calls for the approval of HSP Gaming’s Plan of Development. This Bill provides:

**An Ordinance**

Approving the Plan of Development for a Commercial Entertainment District in the area generally bounded by Delaware Avenue, Shackamaxon Street (extended), the Delaware River and Ellen Street (extended).

*THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Pursuant to Section 14-403 of The Philadelphia Code, the Plan of Development for the Commercial Entertainment District in the area generally bounded by Delaware Avenue, Shackamaxon Street (extended), the Delaware River and Ellen Street (extended), as approved by the Philadelphia City Planning Commission on May 22, 2007, is hereby approved, allowing application to be made in such District for required permits. The complete Plan of Development is set forth in Exhibit “A”, on file with the Chief Clerk’s Office.

SECTION 2. This Ordinance shall take effect immediately.

(Exhibit F)

110. The Plan of Development Bill must either be approved through affirmative vote of City Council, or at minimum not voted down, if HSP Gaming's Plan of Development is to receive final approval. See PHILA. CODE § 14-403 (requiring plans of development to be approved by ordinance). As discussed below, since City Council failed to act upon the Bill in the 45 days or five (5) meetings following its introduction, due to inaction by City Council, it should be deemed enacted.

111. On the same day that he introduced the Plan of Development Bill, Council Member Ramos introduced two companion bills in City Council for development of the SugarHouse Casino. City Council Bill No. 070456 (Exhibit D) (the "CED Designation Bill") proposed an amendment of the Property's existing zoning and would mandate that the provisions of the CED Ordinance supersede any and all other zoning provisions. Bill No. 070457 (Exhibit E) (the "Omnibus Bill") would authorize revision of the "lines and grades" of the SugarHouse site, and would provide a right-of-way for utilities and sewer maintenance.

112. In response to Council Member Ramos' departure from councilmanic prerogative, Council Member DiCicco bluntly warned that Council Member Ramos' introduction of the SugarHouse legislation "will cause a firestorm that will last all summer." In a plain message to other council members, Council Member DiCicco threatened that other district council members "don't want anyone to do this because they say they don't want anyone to do that in their district." (See Council Poised To Vote On Casino, Evening Bulletin, May 31, 2007, attached hereto as Exhibit BB)

113. The City Solicitor worked closely with members of City Council to have these Bills introduced and acted upon as contemplated by the CED Ordinance. Bills 070456 and

070458 were referred to the City Council Committee on Rules, where HSP Gaming participated in a public Committee Hearing on June 13, 2007. (See Exhibit Z)

114. At this Hearing, Janice Woodcock, the Executive Director of the Planning Commission, testified concerning the validity of these Bills and presented the Plan of Development to City Council. (See June 13 Tr. at 14-26)

115. She explained, "In order for the SugarHouse Casino to proceed, the zoning of the site must be first reclassified. . . . The CED zoning is necessary for the construction of a casino." (June 13 Tr. at 15)

116. In addition, City Solicitor Romulo Diaz testified that the Plan of Development fully complied with the CED Ordinance and satisfied all CED requirements. "SugarHouse has submitted to the city a plan of development that is fully compliant with the CED requirements." (June 13 Tr. at 34)

117. Ms. Woodcock also testified as to the overall economic benefits of the construction and operation of the proposed casinos. She testified that construction will lead to "between 945 and 1,071 temporary construction jobs paying between 30 and 34 million in wages and another \$1,703 [sic] and \$1,922 [sic] in direct construction-related jobs, paying between 69 million and 78 million in wages." (June 13 Tr. at 23) In addition, the casinos will create "7,000 to 12,000 permanent jobs," which along with opportunities from the expansion of the convention center "are responsible for more than \$46 million in tax revenue to the city's five-year financial plan adopted by City Council." (June 13 Tr. at 23-24)

118. Moreover, Ms. Woodcock testified that the fees generated by the Gaming Act will provide a substantial benefit to the community. "The current five-year financial plan includes \$71 million in host fees attributable to gaming revenues that the city can use to support critical city services such as police and public safety, after-school programs, increased funding for parks

and recreation. In addition, the Philadelphia School District will receive \$5 million annually from the host fee payments casino operators must make under state law.” (June 13 Tr. at 25)

119. Although Council Member DiCicco is not a member of the Rules Committee, he participated in the June 13 Hearing, cross-examined witnesses, and once again raised objections as to the locations of the SugarHouse and Foxwoods casinos: “I am not anti-casino; I’m just against the locations, and I’ve said that repeatedly, and I’m not going to talk about it.” (June 13 Tr. at 42)

120. Despite the Planning Commission’s approval and the undisputed testimony that the Plan of Development meets the CED requirements, the Committee on Rules took no action on June 13 other than to amend the CED Designation Bill to include the specific requirement that a non-for-profit organization be created to provide benefits to the community. (See Amended Bill No. 070456, attached hereto as Exhibit CC; June 13 Tr. at 468-70) Neither the CED Ordinance nor the Gaming Act includes such a requirement. See PHILA. CODE §§ 14-401-412. In deference to Council Member DiCicco’s invocation of councilmanic prerogative, the Rules Committee held the SugarHouse legislation<sup>6</sup> without a vote and City Council went into a three-month summer recess.

121. As Council Member DiCicco explained to the media: “It’s always been about locations.” Continuing to voice his support for Casino-Free’s 1,500 foot barrier, Council Member DiCicco again confirmed his strategy of delay: “I need to continue to do that [push for the 1,500 barrier] because it will hopefully keep the pressure on for people to sit down and decide, one way or another, whether this casino site is acceptable or not.” (See *Casino Sound And Fury Floods City Hall*, PlanPhilly, June 13, 2007, attached hereto as Exhibit DD) Thus,

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<sup>6</sup> Where it remains to this date.



Council Member DiCicco succeeded in blocking the SugarHouse legislation, and City Council went into recess until September.

122. To date, neither the CED Designation Bill nor the Plan of Development Bill has been referred from Committee.

123. Councilmanic prerogative is Council Member DiCicco's most powerful weapon in blocking casino development and the HSP Bills. City Council President Anna Verna remains committed to the tradition, and refuses to move the HSP Bills out of Committee without Council Member DiCicco's approval. (See *City Council Stalls Opening of SugarHouse Casino*, FoxPhilly, attached hereto as Exhibit EE)

124. Indeed, before City Council's summer recess, the Rules Committee scheduled a Hearing for September 24, 2007 on two of the HSP Bills. At Council Member Darryl Clarke's request, Council President Anna Verna canceled the Hearing. Under City Council rules, a Bill may only be reported out of Committee at a Hearing. By canceling the Hearing, the Rules Committee determined that no action would be taken on the Bills. The Hearing has not been rescheduled to date.

125. Bill No. 070457 was referred to the City Council Committee on Streets and Services, which is chaired by Council Member DiCicco, and where six months later the Bill likewise remains stalled. Referring to this Bill, Council Member DiCicco appeared to acknowledge that construction could begin without the sewer permits. But Council Member DiCicco advised that, in the event that SugarHouse opened without the sewer permits: "I guess they could use port-a-potties." (See *Evening Bulletin*, May 31, 2007, attached hereto as Exhibit BB)

126. Thus, the HSP Bills remain stalled in the legislative morass of City Council, without any promise or expectation of moving forward.

127. Nevertheless, all prerequisites to approval of the HSP Bills have been fulfilled.

**(f) City Council's Deliberate Delay To Circumvent The Gaming Board's Decision Is Presently Harming HSP Gaming, The Commonwealth Of Pennsylvania, And The City Of Philadelphia.**

128. Allowing City Council to prevent implementation of the Gaming Board's decision as to the location of the HSP Gaming casino by delaying the adoption of the HSP Bills has caused and will continue to cause significant irreparable harm upon HSP Gaming, the Commonwealth of Pennsylvania, and Commonwealth taxpayers, as well as the City of Philadelphia and its taxpayers.

129. 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.

130. 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. (Affidavit of Greg Carlin ("Carlin Aff.") (a true and correct copy attached as Exhibit FF hereto).)

131. 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).)

132. 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).)

133. 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).)

134. 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 hereto).)

135. 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.

136. 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 attached hereto as Exhibit HH)

137. 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. (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)

138. 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 annually in host fee payments for the Philadelphia School District. (June 13 Tr. at 24-25) 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)

139. The General Assembly has dedicated \$100 million in revenue annually from the Commonwealth's assessment share of the gross terminal revenues to fund reductions in Philadelphia's wage tax and it is anticipated that an additional \$25 million will be available over the next five years to fund the Philadelphia school district. (See Exhibit V)

140. 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, attached hereto as Exhibit II) In addition, the Pennsylvania Race Horse Development Fund receives a gross terminal revenue assessment at 12% under Section 1405 of the Act 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)

141. *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 Amsler Aff. at 15)

142. To the extent that the lost funds are needed as a source of revenue 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.

**VI. GENERAL STATEMENT OF OBJECTIONS.**

**A. HSP Gaming's Plan Of Development Is Deemed Approved Under The CED Ordinance.**

143. Petitioner incorporates paragraphs 1-142 as though set forth fully herein.

144. 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.").

145. 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.

146. 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 hereto as Exhibit JJ).

147. On May 22, 2007, the City Planning Commission approved the Plan of Development. (See Planning Commission Minutes, May 22, 2007 at 12, attached hereto as Exhibit AA)<sup>7</sup>

148. On May 24, 2007, the Plan of Development Bill was introduced in City Council.

149. As to Council approval, the CED Ordinance provides:

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<sup>7</sup> 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 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.

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.

150. 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, since City Council has had more than five meetings and has been in session for more than 45 days since the introduction of the Plan of Development Bill, City Council is deemed to have approved HSP Gaming's Plan of Development.

**B. Under the Gaming Act and *PGCB v. City Council*, 928 A.2d 1255, 1258 (Pa. 2007) the City has a Duty to Implement the Gaming Board's Decision under the CED Ordinance and Deem the HSP Bills Enacted.**

151. Petitioner incorporates paragraphs 1-150 as though set forth fully herein.

152. The Gaming Act requires that only the Gaming Board has the authority to select the locations of casinos in the City of Philadelphia. *PGCB v. City Council*, 928 A.2d 1255, 1267 (Pa. 2007).

153. 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.

154. “[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).

155. 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.

156. 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.

157. The HSP Bills necessary to implement the Gaming Board's decision have been properly introduced in City Council. (See Bills No. 070456 (Exhibit D), 070457 (Exhibit E), 070458 (Exhibit F).)<sup>8</sup>

158. 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." (June 13 Tr. at 34)

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

160. 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 HSP Bills, Bills No. 070456, 070457, and 070458, are duly enacted.

161. 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 the 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

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<sup>8</sup> Moreover, as discussed below, the Plan of Development Bill, Bill No. 070458, should be deemed approved.



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 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.

162. Philadelphia adopted the CED Ordinance for the Gaming Board’s selection of the casino site as the zoning to apply where casinos are to be located. The Gaming Board then designated the locations. This Court should declare the CED designation applies to the SugarHouse site without more.

163. Accordingly, 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 approved 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.

164. 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.

165. 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).

166. 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 pass 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, 311-312, 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).

167. Therefore, HSP Gaming respectfully requests that this Court grant its requested relief.

## VII. RELIEF SOUGHT

WHEREFORE, Petitioner respectfully requests this Honorable Court to 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 approved for purposes of the CED Ordinance;

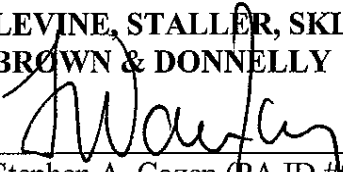
C. Declaring that the City of Philadelphia has mandatory duty to timely review all applications for permits submitted by HSP Gaming and to issue all building, zoning, and use permits for which HSP Gaming's applications satisfy the requirements and procedures of the CED Ordinance; and

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.

Respectfully submitted,

**COZEN O'CONNOR  
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Dated: October, 25, 2007

**VERIFICATION**

I, Robert Sheldon, hereby state that I am the President of Petitioner HSP Gaming, L.P. and verify that the statements made in the foregoing Petition for Review 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.

Robert D. Sheldon

Dated: 10/23/07

**PROOF OF SERVICE**

I hereby certify that I am this day serving a complete copy of the foregoing Petition for Review upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

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**Dated:** October 25, 2007

By: \_\_\_\_\_

