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March 26, 2008

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VIA COURIER/HAND DELIVERY

Pennsylvania Supreme Court
Office of the Prothonotary
Room 468, City Hall
Philadelphia, PA 19107

Re: Senator Vincent J. Fumo, et al. v. City of Philadelphia, No. 207 EM 2007
City Council of the City of Philadelphia, et al. v. City of Philadelphia, No. 208 EM 2007

Dear Sir or Madam:

Enclosed for filing please find original and 12 copies of HSP Gaming, L. P.'S, Consolidated Application for Special Argument Session Pursuant to Pa.R.A.P. 123 or, in the alternative, for Advancement of Oral Argument Pursuant to Pa.R.A.P. 2313(a). Kindly time-stamp the extra copies of this document and return them to our courier for delivery to our office. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

COZEN O'CONNOR

By: F. WARREN JACOBY

FWJ:wf

Enclosures

cc: Shelley R. Smith, Esquire (w/enc) (Via First Class Mail and Email)
Catherine M. Recker, Esquire (w/enc) (Via First Class Mail and Email)
Christopher B. Craig, Esquire (w/enc) (Via First Class Mail and Email)
James W. Christie, Esquire (w/enc) (Via First Class Mail and Email)
Amy Ginensky, Esquire (w/enc) (Via First Class Mail and Email)

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Consolidated Filing in 207 E.M. 2007 and 208 E.M. 2007

SENATOR VINCENT J. FUMO, : No. 207 E.M. 2007
REPRESENTATIVE MICHAEL H. :
O'BRIEN, SENATOR MICHAEL J. :
STACK, REPRESENTATIVE JOHN J. : Petition for Review filed by Vincent J.
TAYLOR, REPRESENTATIVE MICHAEL : Fumo, *et al.* in the Nature of an Appeal
P. McGEEHAN, and REPRESENTATIVE : From a Final Determination of a Political
ROBERT C. DONATUCCI, : Subdivision Pursuant to 4 Pa. C.S.A. §
Petitioners, : 1506 and 53 P.S. § 14202
v. :
THE CITY OF PHILADELPHIA, :
Respondent, :
and :
HSP GAMING, L.P., :
Respondent-Intervenor. :

CITY COUNCIL OF THE CITY : No. 208 E.M. 2007
OF PHILADELPHIA, AND :
COUNCILMEMBER FRANK DICICCO, :
Petitioners, : Petition for Review and Request for
v. : Injunctive Relief Filed by
CITY OF PHILADELPHIA, AND : Councilmember Frank DiCicco *et al.* in
STEPHANIE NAIDOFF, : the Nature of an Appeal From a Final
Respondents, : Determination of a Political Subdivision
and : Pursuant to 4 Pa.C.S. § 1506 and 53 P.S. §
HSP GAMING, L.P., : 14202.
Respondent-Intervenor. :

**HSP GAMING, L.P.'S CONSOLIDATED APPLICATION FOR SPECIAL ARGUMENT
SESSION PURSUANT TO PA.R.A.P. 123 OR, IN THE ALTERNATIVE, FOR
ADVANCEMENT OF ORAL ARGUMENT PURSUANT TO PA.R.A.P. 2313(a)**

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SUPREME COURT
EASTERN DISTRICT

Respondent-Intervenor HSP Gaming, L.P. (“HSP Gaming”), by and through its counsel, files this Consolidated Application for Special Argument Session Pursuant to Pa.R.A.P. 123 or, in the alternative, for Advancement of Oral Argument Pursuant to Pa.R.A.P. 2313(a). In light of the compelling and exigent circumstances with regard to HSP Gaming’s property and construction, HSP Gaming respectfully requests that the Court hold a special argument session in Harrisburg, before April 14 – 17, 2008, or, in the alternative, advance the oral argument in these appeals to the Philadelphia Session for April, 2008. In support of this Application, HSP Gaming states:

1. On March 19, 2008, this Court entered an Order in each of these appeals scheduling oral argument for the Harrisburg Session in May, 2008. On March 20, 2008, this Court entered an Order scheduling this argument for May 12, 2008.

2. The Court instructed that argument would proceed on two issues: (1) whether the authority to authorize construction on the submerged lands under the Delaware River is vested in the City of Philadelphia or the Commonwealth of Pennsylvania; and (2) whether the City of Philadelphia may revoke a validly issued license while the appeal of the issuance is before the Supreme Court of Pennsylvania.

3. The Court further directed that “the matter is to be considered on the existing pleadings. No further briefing will be required. The ancillary matters are taken under advisement.”

4. The Harrisburg Session in May, 2008 is scheduled to be held on May 12-16. (*See* Pennsylvania Supreme Court Schedule, 2008, available at www.courts.state.pa.us/Index/Supreme/sessions08.asp).

5. This Court's Session in April, 2008 is scheduled for April 14-17 in Philadelphia. (See Pennsylvania Supreme Court Schedule, 2008, available at www.courts.state.pa.us/Index/Supreme/sessions08.asp).

6. As this Court has recognized, the implementation of licensed gaming in Pennsylvania is a matter of extreme public importance. *Pennsylvania Gaming Control Bd. v. City Council of Philadelphia*, 593 Pa. 241, 257 n.6, 928 A.2d 1255, 1264 n.6 (2007) ("Petition I concerns the Gaming Act, a statute that has widespread importance, and one that has generated and continues to generate substantial public attention. The issues raised are foundational.").

7. Because of the exigent circumstances of the pending acquisition by SugarHouse HSP Gaming, LLC (the "Affiliate"), a subsidiary of HSP Gaming, of the real property on which the SugarHouse Casino is to be constructed, along with the substantial public harm that would result from further delays in HSP Gaming's construction and operations, HSP Gaming requests that this Court hold a special argument session in Harrisburg before April 14 -17, 2008, or, in the alternative, schedule argument for this Court's April, 2008 session in Philadelphia.

8. This Court has inherent authority to order a special argument session to expedite resolution of a matter. "In the interest of expediting decision, or for other good cause shown, an appellate court may . . . order proceedings in accordance with its direction." Pa.R.A.P. 105; see also *Luckett v. Blaine*, 850 A.2d 811, 819 (Pa. Cmwlth. 2004) ("Every court has the inherent power to schedule disposition of the cases on its docket to advance a fair and efficient adjudication.").

9. In addition, Pennsylvania Rule of Appellate Procedure 2313(a) provides:

Advancement of the argument of a case, or change from the normal place of argument, shall be allowed only on application. Ordinarily advancement will be granted to the earliest open date convenient to the

court, allowing about the usual time contemplated by these rules for the service and filing of the briefs and any reproduced record, unless the objection shall set forth good cause why the case should not be advanced.

Pa.R.A.P. 2313(a).

10. Circumstances that warrant advancement of argument include, among others: (1) “that the issues involved in the case have important public policy implications;” and (2) “that, as a result of the pending appeal, parties are incurring unusual expenses (*e.g.*, construction financing costs during the pendency of a zoning appeal).” DARLINGTON, PENNSYLVANIA APPELLATE PRACTICE § 2313:2 (West 2007).

11. Both of these circumstances are present here. Further delays in construction of the SugarHouse Casino will impede and frustrate: (1) economic growth; (2) the creation of new job opportunities; (3) tax relief; (4) school funding; (5) the expansion of the tourism industry; and (6) the expansion of the Pennsylvania Convention Center. Further, a central issue on appeal is the validity of HSP Gaming’s submerged lands license. If that license is upheld, HSP Gaming can proceed with its project that will: (1) permit access to the river that does not currently exist; (2) improve river navigation; (3) improve the flow of the Delaware River; (4) improve commerce on the waterfront; and (5) create recreational opportunities on the Delaware River. (*See* November 15, 2007 Hearing Transcript at R. 278-82).¹

12. Significant public policy concerns are at stake here, involving the respective interests of the Commonwealth and the City of Philadelphia to convey rights to the “submerged lands” along the Delaware River. Also at issue here is the City’s attempt to interfere with this Court’s appellate jurisdiction through its purported revocation of the riparian license during the pendency of these appeals, in plain violation of Pennsylvania Rule of Appellate Procedure 1701(a).

¹ As used in this Application, the page-number references preceded by “R.” refer to the sequentially numbered pages of the five-volume Exhibits in Support of HSP Gaming’s Petition for Review.

13. Moreover, HSP Gaming is incurring and will continue to incur unusual and otherwise unnecessary costs as a result of these appeals. Until these appeals are decided, HSP Gaming is incurring carrying costs, which cannot be recovered, in excess of \$1,000,000 a month.

14. This Court has previously found that delay in HSP Gaming's construction causes irreparable harm. *See Pennsylvania Gaming Control Bd. v. City Council of Philadelphia*, 932 A.2d 869 (Pa. 2007); *Pennsylvania Gaming Control Bd. v. City Council of Philadelphia*, 928 A.2d 1255 (Pa. 2007). While the questions before this Court remain undecided, HSP Gaming's ability to proceed with the development and construction of the SugarHouse Casino, as approved by the Pennsylvania Gaming Control Board, is impaired.

15. Under a Real Property Purchase Agreement, the Affiliate has the right to acquire the real property on which HSP Gaming will construct the SugarHouse Casino. Subject to various conditions as set forth in the Real Property Purchase Agreement, the Affiliate may have certain obligations with respect to the land acquisition that may arise on May 12, 2008. To complete its acquisition of the land in accordance with the Real Property Purchase Agreement, the Affiliate must expend in excess of \$70,000,000. Accordingly, May 12, 2008 is a very significant date regarding the acquisition of the real property. Further delay of the resolution of the issues on appeal here, beyond May 12, 2008, will be detrimental to HSP Gaming and will materially and adversely affect HSP Gaming's ability to proceed promptly with the work required for the construction of the SugarHouse Casino.

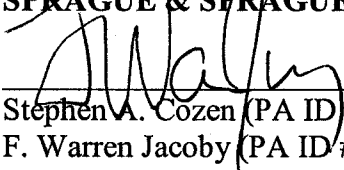
16. As the Court has closed the pleadings in this case and taken all matters under advisement other than the two issues identified in the March 19th Order, no party will be prejudiced or inconvenienced by conducting a special argument session in Harrisburg, before April 14 -17, 2008, or, in the alternative, by advancing argument to this Court's April, 2008

session in Philadelphia. Scheduling such a special session or advancing the argument as requested will allow the Court to expedite the resolution of important public policy issues and conclude the appeals that are causing economic harm to HSP Gaming, and adversely affecting Pennsylvania taxpayers, governmental entities, and the businesses that will benefit from the construction and development of the SugarHouse Casino. Advancement of argument in these appeals is also consistent with the reasons underlying this Court's exclusive jurisdiction – "to facilitate the timely implementation of casino gaming." 4 Pa.C.S. § 1506.

WHEREFORE, Respondent-Intervenor, HSP Gaming, L.P. respectfully requests that this Court grant its Application and hold a special argument session in Harrisburg before April 14 – 17, 2008, or, in the alternative, schedule argument for the April, 2008 Session in Philadelphia, and thus facilitate this Court's resolution of these appeals before May 12, 2008.

Respectfully submitted,

**COZEN O'CONNOR
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SPRAGUE & SPRAGUE**



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Dated: March 25, 2008

VERIFICATION

I, Robert Sheldon, hereby state that I am President of HSP Gaming, L.P. and verify that the statements made in the foregoing Application for Special Argument Session Pursuant to Pa.R.A.P. 123 or, in the alternative, for Advancement of Oral Argument Pursuant to Pa.R.A.P. 2313(a) 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 Sheldon

Dated:

3/25/08


PROOF OF SERVICE

I hereby certify that I am this day serving two complete copies of HSP Gaming, L.P.'S Consolidated Application for Special Argument Session Pursuant to Pa.R.A.P. 123 or for Advancement of Oral Argument Pursuant to Pa.R.A.P. 2313(a) upon the persons and in the manner indicated below which service satisfies the requirements of Pa.R.A.P. 121:

Service by email and hand-delivery, addressed as follows:

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Dated: March 26, 2008

By: 
Jennifer M. McHugh