

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: CLOSING ARGUMENTS FOR CATEGORY 2 LICENSE
APPLICATIONS, CONGREGATION RODEPH SHALOM, ET AL.

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PUBLIC HEARING

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BEFORE: WILLIAM H. RYAN, JR., CHAIRMAN
Gregory C. Fajt; Annamarie Kaiser; Keith R.
McCall; John J. McNally, III; Anthony
Moscato; David W. Woods; Members
Jennifer Langan, representing Robert
McCord, State Treasurer
Robert Coyne, representing Daniel Meuser,
Secretary of Revenue

HEARING: Tuesday, February, 26, 2014
10:43 a.m.

LOCATION: Pennsylvania Gaming Control Board
Office of Hearings and Appeals
Strawberry Square Complex
2nd Floor
Harrisburg, Pennsylvania 17101

Reporter: Jennifer D. Crawford

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WITNESSES: None

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A P P E A R A N C E S (cont'd)

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CLOSING ARGUMENT

By Attorney Spector

9 - 19

E X H I B I T S

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NONE OFFERED

P R O C E E D I N G S

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CHAIRMAN:

Next, the Board will hear from Mr. Larry Spector, representing Congregation Rodeph Shalom and the Mathematics, Civics and Sciences Charter School and Friends Select School. These three of petitioners are --- Intervenors, excuse me, are located in the vicinity of the Tower Entertainment project. I note for the record that Mr. Spector's clients have only intervened relative to Tower Entertainment's application. Mr. Spector, you may begin.

ATTORNEY SPECTOR:

Thank you, Mr. Chairman. And thanks again to this Board, for granting us the opportunity to intervene. We greatly appreciate it. We're at the point in the proceedings, of course, where you can look back at the record and see where everything stands regarding traffic and the parking issues that we intervened on.

All the other sites in this application situation, to get to them, you've got a straight shot. You don't have to go through congested intersections. You park and you go in. Not so with The Provence.

With The Provence, all roads lead to

1 15th and Vine Street in Philadelphia. And it's
2 conceded by the Applicant, as well was recognized by
3 everyone else, that when you get to 15th and Vine,
4 there in face, even now without additional traffic, a
5 major traffic problem.

6 In the Community Development Agreement,
7 the community stakeholders who --- yes, they signed an
8 agreement; yes, they recited that they'd rather see
9 this property develop other than as a casino. But
10 they insisted on reciting that they still had a major
11 concern that Vine Street traffic issues remained
12 unresolved. And in the same agreement, the developer
13 himself, acknowledged the intersections along Vine
14 Street, 15th, 16th, Broad and so forth, quote, have
15 significant difficulties, which often cause stacking
16 and backups over a larger area. And they said, well,
17 we're addressing that.

18 Orth Rodgers, PennDOT's agent for
19 purposes of evaluating all of the traffic impact
20 studies said that all of the sites were fine, except
21 for The Provence Casino because, due to its location
22 and the critical lengths required to access the Vine
23 Street Expressway, some local streets will experience
24 degradation and level of service problems.

25 Now, the question is, can this be fixed?

1 The Applicant said first through its traffic
2 information study, that, well here are a list of
3 improvements that we will make, traffic amelioration
4 improvements. When PennDOT first looked at the ---
5 Orth Rodgers first looked at them, their reaction was,
6 well, this is very interesting. Some of these have
7 already been attempted. They haven't done anything to
8 solve the problem. Others are impractical and others
9 will be quite challenging from an engineering point of
10 view.

11 The Applicant, again going back to the
12 Community Development Agreement, which it signed in
13 language, which it adopted, said when it was talking
14 to the community, it said in the agreement, it cannot
15 be determined with certainty based on the information
16 currently in possession of the parties, if the traffic
17 amelioration commitments will completely or only
18 partially address the impact of an increased vehicle
19 traffic on the Vine Street issues and the other
20 related streets and intersections. That's the
21 Applicant again acknowledging we've got a serious
22 problem.

23 Mr. Tavani, the traffic engineer that we
24 presented, from his own experience and indeed from
25 anybody who just turns on Google maps knows that

1 there's a serious problem here. Now what did Tower
2 say it was going to do --- Mr. Tavani said, well, if
3 you go through these improvements that they're talking
4 about, all you're going to do is you're going to shift
5 the traffic congestion from one set of intersections
6 to another set of intersections. You've got a finite
7 amount of space and you've an increase in the cars.
8 It's, you know, third-grade arithmetic.

9 The Applicant confronted with this, when
10 we pointed it out, it goes --- we go into its June
11 28th suitability presentation. And we hear three
12 hours of the Applicant's testimony. And there is
13 nothing specific about what they're going to do to
14 solve this problem. All they say is we've discussed
15 it, we've addressed it. But there's really not a
16 single word as to what you can actually do.

17 Now I know that, in connection with one
18 of the other applications in South Philadelphia, one
19 of the Members of the Board was interested in finding
20 out some more details, something to back up this
21 concept that they could build an onramp to Seventh
22 Street, for example. So, an effort was made to dig
23 out a study which was a few years old, and actually
24 see what can be done. Is it feasible? Will it work?

25 In this situation, we don't have

1 anything at all comparable to that. All we've got is
2 it will be addressed. It will be discussed. And
3 that's what we had through the Applicant's suitability
4 presentation.

5 We come then to the rebuttal, the half-
6 hour rebuttal hearing that the Applicant was provided
7 on February 8th, I guess it was. We go through the
8 whole rebuttal presentation of the Applicant, still
9 nothing, no detail, nothing on how this will actually
10 work, nothing on how we're going to solve these
11 problems, other than it's been discussed and
12 addressed.

13 They rest their case. The Chairman asks
14 are there any questions. Chief Enforcement Counsel
15 then brings forward Mr. Hanney as a witness from
16 PennDOT. There we are, at the very end of over a
17 year's worth of Applicant presentation, four hours
18 worth of presentation at hearings. And suddenly, out
19 of left field, out of --- over the fence in left
20 field, we have Mr. Hanney saying, well I talked to the
21 engineer for Tower, and they say they're willing to
22 provide one to two percent of the total cost of the
23 project to address and to fix any traffic problems.

24 Whoa. Where does this come from, all of
25 a sudden? When we get to the Applicant's post-hearing

1 brief, filed February 10th, having had all the
2 opportunity to marshal all of evidence, and all the
3 compelling arguments as to why traffic should not be a
4 problem, do we see one mention of this supposed
5 commitment of the one to two percent? Not a word.
6 So, the Board has to ask itself, what do we really
7 have here? Even assuming we had the one to two
8 percent, the money to throw at The Provence, what will
9 that do? Will that solve the problems? We have no
10 answer.

11 And then we look at, well, what's the
12 track record of the Applicant, in terms of presenting
13 the Board with reliable, credible evidence on the
14 traffic issue? Well, first of all, we have an
15 Applicant who, in the application, when asked to list
16 all the schools and churches within a 1,500-foot
17 radius of the site said there were eight. In fact,
18 there are 30. And anybody who tried to do a credible
19 job would have known that.

20 Second, we have an Applicant, when it
21 comes to the traffic analysis, they take --- as Orth
22 Rodgers said this is a totally unique approach that
23 you folks have taken to this traffic analysis of how
24 many more cars. How much more vehicular volume you're
25 actually going to generate with this project. I

1 called it putting the rabbit in the hat. I called it
2 making something out of whole cloth and, indeed,
3 that's all it was.

4 The study got criticized by Orth
5 Rodgers. We criticized it, because it lacked the
6 essential information upon which it was based. The
7 raw data underlying the whole theory was that what we
8 actually observed at SugarHouse was different than
9 what the Task Force had projected at SugarHouse. And
10 therefore, we can take that differential and start to
11 apply to it to these different modes of transit that
12 make up our analysis.

13 Well, they finally produced that raw
14 data. And the raw data on its face had an error in
15 it. And they tried to trivialize the error by saying,
16 well, there's no difference between 37 percent of the
17 trips being made by the --- by car, as opposed to,
18 what you say is the corrected version, 43 percent.

19 Well, that's all fine, but that was all
20 still playing while the rabbit was in hat. That was
21 using the approach that they took, which is wrong. If
22 you're going to use a logical approach, you start with
23 a number that really is the ultimate number you're
24 trying to find. You don't treat it as a leftover.
25 And if you started with the number that you're really

1 trying to find, they would have started with the Task
2 Force projection that, for a Center City site, is
3 projected at 57 percent of the trips will come by car.
4 They end up with 37 percent, as I said, just for this
5 leftover approach.

6 It's really quite a dodge and weave, as
7 we said in our brief. Respectfully, that's what it
8 is. It's somebody who is forced to dodge and weave
9 when somebody is challenging what they said. Had we
10 not intervened, this Board would have been led to
11 believe that there are only eight schools and churches
12 in that area. And would have been led to believe that
13 this approach to traffic analysis was entirely
14 correct. Only when they're confronted do they start
15 to bounce around.

16 And the same thing was true with
17 parking. Parking --- they didn't do their homework.
18 They first came to you and said, well, we'll park cars
19 on the lot owned by the Mormon Church. We'll park
20 cars on lots that are going to be developed that they
21 just went to the Planning Commission. We'll park cars
22 on lots that are going to be developed by Parkway
23 Corporation down the street.

24 It's irrelevant what happens with this
25 new 59-story Comcast Technology Tower, because that

1 came in after we submitted our papers. Well, a year
2 from now, or whenever this decision is made and it's
3 opened up to whatever comment or criticism might be
4 given, is the Board willing to sit there and say,
5 well, we based on what they submitted at the time.
6 Just because something humungous came up eight days
7 later, you didn't have to consider that. It's not
8 right and the Applicant didn't come forward with that.

9 So, they go into another dodge and
10 weave. They say we'll build more spaces than we
11 initially showed. We'll turn a garage that was for
12 400 spaces into 715 spaces, if we need to. We'll
13 build another garage for 1,000 spaces. But we
14 shouldn't even have to do that, because, look, here's
15 another map. Forget the map that our architect, the
16 world's best casino architect put in the traffic
17 impact study. Here is a new map. And with the new
18 map, we shouldn't even have to build, because we've
19 got all these lots. We'll park in lots on the front
20 steps of the School Board. We'll park in lots right
21 next to the Charter School. We'll park cars in the
22 lots that are now restricted for monthly use by
23 Community College --- or used by Community College
24 people. It's all a dodge and weave. And then when
25 you point out that there's something wrong with that,

1 they say, well, look, on our map that we've got now,
2 here are some lots down here that if you look at their
3 map, it's MNLOP, whatever it is. And more than a half
4 a mile away.

5 And there are major Center City multi-
6 story lots that people are going to have to spiral up
7 to get to a parking space. It's going to take them
8 ten minutes just to park their car, not to mention the
9 fact that they're going to have to pay for it. And
10 then return to it with money in their pocket at night,
11 crossing Vine Street in Philadelphia. Members of the
12 Board, nobody walks across Vine Street in
13 Philadelphia. It's a major buffer highway. You just
14 don't do it.

15 And let's just --- to remember the
16 obvious. The Applicant had to show that what they
17 were presenting when it came to parking and that there
18 would be no problems that would interfere with their
19 ability to deliver on what they said they would make
20 with this casino. They had to present evidence that
21 was clear and had to present evidence that was
22 convincing. My goodness, nothing could be further
23 from the truth here.

24 The Board really, as a matter of law on
25 this record, I respectfully submit, can quite easily

1 conclude that it has to eliminate Tower as the choice
2 for licensure. Thank you.

3 CHAIRMAN:

4 Thank you, Mr. Spector.

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6 HEARING CONCLUDED AT 10:57 A.M.

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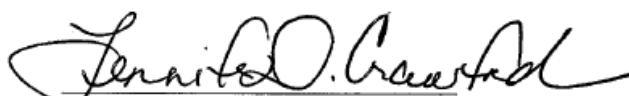
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CERTIFICATE

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I hereby certify that the foregoing proceedings, hearing held before Chairman Ryan was reported by me on 2/26/2014 and that I Jennifer Crawford read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.


Court Reporter