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COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: ORAL ARGUMENT ON HSP GAMING, LP
(SUGARHOUSE) - PETITION TO AMEND TO ADD A PARTY

* * * * *

PUBLIC HEARING

BEFORE: WILLIAM H. RYAN, JR., Chairman.
Gregory C. Fajt; Anthony C. Moscato;
Annemarie Kaiser; Keith R. McCall; John
J. McNally; David W. Woods; Members
Jennifer Langan, representing Robert M.
McCord, State Treasurer, Robert P.
Coyne, representing Daniel P. Meuser,
Secretary of Revenue, Jorge Augusto,
Representing George Greig, Secretary of
Agriculture

HEARING: Wednesday, January 8, 2014

LOCATION: Pennsylvania Gaming Control Board
Strawberry Square Complex, 2nd Floor
Harrisburg, PA 17101

Reporter: Lacey C. Gray

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NONE OFFERED

P R O C E E D I N G S

CHAIRMAN:

:41:10 4 Good morning. Remaining two items
:41:13 5 pertain to Petitions to Intervene in the Category 2
:41:16 6 licensing proceedings in Philadelphia. Both are
:41:20 7 filed by HSP Gaming, LP, owner of the Sugarhouse
:41:26 8 Casino. First item is an oral argument on the
:41:28 9 Petition to Amend the original petition filed by HSP
:41:32 10 Gaming, LP to intervene. Specifically it seeks to
:41:35 11 add Chester Downs and Marina as a party to HSP's
:41:40 12 earlier petition.

:41:45 13 Now, because there are seven parties to
:41:48 14 both this and the next proceeding, specifically the
:41:54 15 Petitioner, the Office of Enforcement Counsel (OEC)
:41:58 16 and each of the five Category 2 Applicants, we're
:42:04 17 going to try to do what we can to keep it orderly or
:42:08 18 at least as orderly as possible. We will first hear
:42:11 19 from HSP and then each of the Applicants and then
:42:16 20 OEC. As each attorney addresses the Board I would
:42:19 21 ask that you first state and spell your name for the
:42:22 22 record. HSP Gaming, you can begin.

ATTORNEY DONNELLY:

:42:22 23
:42:27 24 Thank you. John Donnelly of Donnelly
:42:31 25 and Clark. That's John, J-O-H-N. Donnelly,

:42:34 1 D-O-N-N-E-L-L-Y. Thank you for hearing us today.
:42:39 2 I'll address first the application. It's been
:42:45 3 pointed out that that was not filed by December 16th.
:42:49 4 It was filed as an amendment after that date.
:42:52 5 Sugarhouse was contacted by discussing the matter
:42:57 6 with Chester, representatives of Chester. And
:43:00 7 Chester supports the written statement that was
:43:04 8 prepared and submitted to the Board on December 16th,
:43:08 9 and also the petition. And also seeks to, number
:43:13 10 one, demonstrate its support to this Board, but also
:43:18 11 to participate to the same extent that Sugarhouse is
:43:22 12 going to participate.

:43:23 13 Now, less that give anyone concern, I
:43:28 14 would be representing both entities. So, I would not
:43:32 15 anticipate duplicative, dueling arguments. And we
:43:36 16 would be following the same paths because in large
:43:40 17 part the interests are the same as we put forth in
:43:45 18 written statements. I know Chester supports that
:43:49 19 statement. I anticipate the arguments and I received
:43:53 20 some petitions. I think I received objections from
:43:56 21 all of the parties. Some of them I didn't see
:43:59 22 because they came in late last night, but I'm not
:44:02 23 faulting that. There's a short fuse on this.

:44:06 24 But the arguments are essentially that
:44:10 25 Chester's out of time. I don't think it makes any

:44:15 1 difference really. The real issue, I believe, should
:44:17 2 be whether there's any prejudice to the Applicants or
:44:19 3 not. Having Chester involved, I don't think we'll
:44:25 4 prejudice anyone. There has been no hearing.
:44:26 5 There's been no licensing hearings yet. No one is
:44:29 6 going down the road assuming that Chester would not
:44:32 7 object. So, there's no harm at this stage. And
:44:35 8 there is benefit by having Chester's thoughts brought
:44:40 9 before this Board as well. It can only help the
:44:43 10 Board. It can't hurt the OEC. It can't hurt the
:44:49 11 Applicants to have another entity thinking about this
:44:52 12 and looking at this. Those are basically arguments.
:44:55 13 They're not overly sophisticated arguments. It just
:44:59 14 comes down to why not.

:45:00 15 I don't know that, Mr. Chairman, you
:45:02 16 want to proceed on that issue first and then my
:45:06 17 response, or have me go into the substance of
:45:08 18 the ---.

:45:09 19 CHAIRMAN:

:45:09 20 Why don't you go into the substance?

:45:09 21 ATTORNEY DONNELLY:

:45:12 22 Okay. Again, on December 16th we filed
:45:15 23 a relatively lengthy written statement and the
:45:18 24 petition. Subsequently I filed the petition to
:45:24 25 amend. I sent a letter pointing out that there had

:45:29 1 been a couple errors. More errors than a couple in
:45:32 2 the written statement.

:45:32 3 CHAIRMAN:

:45:33 4 Keep your voice up so the court
:45:34 5 reporter can hear you, Counselor.

:45:34 6 ATTORNEY DONNELLY:

:45:36 7 Yes. Also yesterday we circulated
:45:42 8 among the interested parties a draft of a proposed
:45:46 9 expert report that if we're granted the right to
:45:50 10 intervene we would propose to --- or it would already
:45:54 11 be circulated, but would serve as an expert report
:45:56 12 that would put our adversaries on notice as to what
:46:00 13 our expert would intend to testify to at the hearing.

:46:05 14 So, I think we've hit all the stations
:46:07 15 of the cross, if you will, on that and our
:46:11 16 adversaries are on notice to remit the terms of the
:46:14 17 statute as far as the intervention and so on. The
:46:19 18 objections are --- I have five adversaries counting
:46:25 19 the Board, OEC, six. I'll kind of walk down them
:46:30 20 because they fall into some categories.

:46:32 21 A couple of the Applicants don't object
:46:34 22 to intervention at all. Market 8 and Stadium as I
:46:40 23 understand it, have no objection.

:46:41 24 CHAIRMAN:

:46:41 25 Counselor, perhaps we should divert

:46:43 1 here. At this point we want to deal with the
:46:49 2 petition of --- the first of the two petitions before
:46:54 3 us, and that is the Petition to Amend the original
:47:00 4 petition. So, perhaps I misunderstood what you were
:47:03 5 saying. Let's focus on that first and then we'll
:47:06 6 deal with that and then go on to the second petition.
:47:11 7 Does that make sense to everybody?

:47:11 8 ATTORNEY DONNELLY:

:47:14 9 That's fine. That's fine.

:47:14 10 CHAIRMAN:

:47:14 11 Okay.

:47:14 12 ATTORNEY DONNELLY:

:47:15 13 I have had my say on the Petition to
:47:17 14 Amend.

:47:17 15 CHAIRMAN:

:47:17 16 All right. Fine. I guess next would
:47:20 17 be Market East.

:47:20 18 ATTORNEY HAYES:

:47:22 19 Good afternoon, Mr. Chairman, members
:47:24 20 of the Board. Kevin Hayes, H-A-Y-E-S, on behalf of
:47:28 21 Market East Associates. With regard to Sugarhouse's
:47:30 22 recent Petition to Amend to add a party, we oppose
:47:35 23 it. It is procedurally defective and flawed from the
:47:39 24 simple standpoint that the Board regulations clearly
:47:42 25 set forth a deadline of 45 days. Prior to the first

:47:46 1 scheduled licensing hearing a party must file a
:47:51 2 Petition to Intervene. Anyway you want to cut it,
:47:54 3 Chester failed to do that and so it --- and they have
:47:58 4 not provided the Board or the Category 2 Applicants
:48:04 5 any grounds for the extraordinary circumstances that
:48:09 6 would warrant this late filing.

:48:10 7 So, essentially three weeks after the
:48:12 8 deadline, they filed. They attempt to intervene in
:48:16 9 this proceeding. It's fatally flawed from a
:48:19 10 procedural standpoint. From a substantive standpoint
:48:22 11 it fails because in Sugarhouse's own petition, I
:48:27 12 think in paragraph six, they themselves admit that
:48:31 13 Chester has the same interests as Sugarhouse in this
:48:36 14 proceeding. I think Mr. Donnelly made that same
:48:38 15 representation to the Board earlier.

:48:40 16 If that's the case then their interests
:48:42 17 are adequately being represented in this proceeding
:48:45 18 and there is no need for them to intervene. They
:48:47 19 don't meet the criteria. If it is Chester's position
:48:50 20 that their interests are not being adequately
:48:52 21 represented, the vehicle to do that was a Petition to
:48:58 22 Intervene where they put the Applicants on notice as
:48:59 23 to what is their specific grounds for having an
:49:02 24 interest in this proceeding. They failed to do that.

:49:05 25 So, from both a procedural standpoint

:49:07 1 and a substantive standpoint the Petition to Amend
:49:11 2 should be denied. Thank you, Mr. Chairman.

:49:14 3 CHAIRMAN:

:49:14 4 All right. Thank you very much. Next
:49:16 5 Pennsylvania Gaming Ventures.

:49:16 6 ATTORNEY FITZGERALD:

:49:20 7 Good afternoon, Chairman and members of
:49:22 8 the Board. My name is Robert Fitzgerald,
:49:24 9 F-I-T-Z-G-E-R-A-L-D. Really don't have anything to
:49:28 10 add to prior presentation. If the motion to --- or
:49:32 11 the Petition to Amend to add a party is, in fact, a
:49:34 12 substantive attempt to add a new party to the
:49:38 13 proceedings, it's out of time. If it's not a
:49:42 14 substantive attempt then it's because the interests
:49:45 15 that are proclaimed are adequately represented, and
:49:47 16 they don't need to be represented.

:49:49 17 We also have objections, of course, to
:49:51 18 the substantive suggestion that Chester Downs would
:49:55 19 add something to this as well, but we'll get into
:49:58 20 that when we get into the other petition.

:49:58 21 CHAIRMAN:

:50:00 22 Thank you, sir. Stadium Casino.

:50:00 23 ATTORNEY KOHLER:

:50:06 24 Good afternoon, Commissioners. Alan
:50:08 25 Kohler representing Eckert Seamans representing

:50:11 1 Stadium Casino. K-O-H-L-E-R. We have nothing to
:50:14 2 add. This is a straightforward issue. I think you
:50:16 3 all understand it. Either you're going to enforce
:50:18 4 the regulations or you're not. There is prejudice
:50:21 5 any time you add a party to the other side. It
:50:24 6 doubles the resources of the opposition. I don't
:50:28 7 think there's anything to add here.

:50:28 8 CHAIRMAN:

:50:30 9 Thank you, sir. Tower Entertainment?

:50:30 10 ATTORNEY FABIOUS:

:50:30 11 Michael Fabius, Ballard Spahr. Fabius
:50:37 12 is F-A-B-I-U-S. I won't repeat the points of my
:50:41 13 colleagues. One point I'll raise not mentioned so
:50:43 14 far is that a Petition to Amend is governed by the
:50:46 15 Board's regulations as well. That regulation refers
:50:48 16 to the general rules of administrative practice and
:50:51 17 procedure, which prohibits Petitions to Amend within
:50:54 18 five days of the hearing. Sugarhouse's petition was
:50:58 19 five days. It's therefore also prohibited under
:51:02 20 general rules administrative of practice and
:51:04 21 procedure.

:51:04 22 CHAIRMAN:

:51:05 23 Okay. And finally OEC.

:51:05 24 MR. MILLER:

:51:07 25 Good morning, Chairman and members of

:51:09 1 the Board. I'm Dale Miller. That's M-I-L-L-E-R,
:51:11 2 representing the OEC. I think our pleadings speak
:51:15 3 for themselves, which basically agree with what
:51:17 4 everybody has said. I think it's a procedural issue,
:51:20 5 but I'd like to add that we speak not as an
:51:23 6 adversary, as Mr. Donnelly would put it, but as a
:51:29 7 protector of the record and one who assists in the
:51:31 8 development of the record rather than in an
:51:34 9 adversarial role. Thank you.

:51:36 10 CHAIRMAN:

:51:37 11 Thank you very much. Any questions
:51:38 12 from the Board? Ex-Officio members? This matter is
:51:43 13 now being concluded. I would ask the Board for a
:51:47 14 motion.

:51:47 15 MR. MOSCATO:

:51:51 16 Mr. Chairman, I would move that the
:51:52 17 Board deny the Petition to Amend as untimely filed
:51:56 18 and because Chester Downs and Marina, LLC's interests
:51:59 19 are adequately represented by Sugarhouse HSP Gaming,
:52:03 20 LLC.

:52:03 21 CHAIRMAN:

:52:03 22 Second?

:52:03 23 MR. WOODS:

:52:06 24 Second.

:52:06 25 CHAIRMAN:

:52:06 1 All in favor?

:52:06 2 ALL SAY AYE

:52:06 3 CHAIRMAN:

:52:09 4 Opposed? The motion carries. Thank

:52:10 5 you all.

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HEARING CONCLUDED

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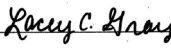
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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chairman Ryan was reported by me on 1/8/2014 and I Lacey C. Gray read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.



Court Reporter

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