



City of Philadelphia

City Council
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Title: Authorizing Council to retain counsel to appeal from the decision of the Director of Commerce on the Application of HSP Gaming, LP for a Submerged Lands License.

Sponsors: Councilmember DiCicco, Councilmember DiCicco

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Date	Ver.	Action By	Action	Result	Tally
11/15/2007	0	CITY COUNCIL	ADOPTED	Pass	14:1
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11/15/2007	0	CITY COUNCIL	Introduced	Pass	

Authorizing Council to retain counsel to appeal from the decision of the Director of Commerce on the Application of HSP Gaming, LP for a Submerged Lands License.

WHEREAS, HSP Gaming, LP ("HSP") seeks to develop the SugarHouse casino on the Philadelphia waterfront; and

WHEREAS, It is undisputed that HSP's proposed development involves construction of gaming facilities on portions of the river bed of the Delaware River, land that is owned by the Commonwealth of Pennsylvania, and land that HSP neither owns nor controls. *See, In re Application of HSP Gaming, LP, et al, for Category 2 Slot Machine Licenses in Philadelphia, Pa.*, PGCB Dkt. No. 1356 at 24 (Opinion, December 2006) (The Board noted that "HSP does not own the riparian rights along this portion of the river front"); and

WHEREAS, In an attempt to obtain rights to build on and over the river bed of the Delaware River, HSP has filed an "Application for a Submerged Lands License" with the City's Department of Commerce, which has scheduled a November 15, 2007 public hearing on the Application, and which may, at any time after such hearing, render a decision in the matter; and

WHEREAS, The Department of Commerce's authority to grant HSP rights over land owned and controlled by the Commonwealth is at the least unclear. The assertion of such authority rests on a 1907 statute which appears to have been repealed by a 1978 statute (the Pennsylvania Dam Safety and Encroachments Act), which states "No title, easement, right-of-way or other interest in submerged lands or other real estate of the Commonwealth may be granted except as expressly provided by this section or other specific authority from the General Assembly" and further provides that "All other acts or parts of acts inconsistent herewith are hereby repealed to the extent of such inconsistency"; and

WHEREAS, Moreover, the 1907 statute concerns only the granting of rights to build a "wharf, or other building in the nature of a wharf, or bridge, or other harbor structures," and not to build a casino on the waterfront; and

WHEREAS, The City Administration and HSP are relying on the uncertain authority of the 1907 statute in an attempt to negate the authority of the General Assembly, which to date has refused to take action to assist HSP in acquiring the necessary riparian rights. In particular, language had been included in Senate Bill 862 of 2006 that would have facilitated the timely conveyance of riparian rights to HSP by authorizing the state Department of General Services to begin the process for the conveyance of such rights upon HSP's licensing from the Gaming Board. *See*, SB 862, pn 2048. The House of Representatives voted to reject this language on two separate occasions, and the Senate subsequently voted in agreement with the House's action. 190 Legislative Journal of the House of Representatives (October 17 & 24, 2007); Legislative Journal of the Senate of Pennsylvania (October 27, 2006); and

WHEREAS, Just as the City would hope the General Assembly would respect the City's home rule powers, the City equally should respect the powers of the General Assembly with respect to the granting of rights to develop lands owned by the Commonwealth; and

WHEREAS, The 1907 statute permits any aggrieved party to appeal the decision of the Department of Commerce to the Court of Common Pleas within thirty days after the date of any decision; and,

WHEREAS, The Council has a sufficient interest in this matter to be considered an "aggrieved party" under the 1907 statute; and,

WHEREAS, The Council will not reconvene until November 29, 2007. Should a permit be issued without prior authorization to hire outside counsel, significant and vital preparatory time would be lost; now, therefore,

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA,

THAT The Council is hereby authorized to retain counsel to file an appeal from the decision of the Department of Commerce on the Application of HSP Gaming, LP for a Submerged Lands License.