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May 27, 2008

Paul Resch, Secretary
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Attention: Public Comment on Regulation #125-85

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2008 JUN -9 AM 9:57
INDEPENDENT REGULATORY
REVIEW COMMISSION

RE: Pennsylvania Gaming Control Board Proposed Rulemaking; Regulation #125-85;
COMMENTS OF EAST HANOVER TOWNSHIP, LEBANON COUNTY

Dear Secretary Resch:

Enclosed for filing with the Pennsylvania Gaming Control Board are an original and three copies of East Hanover Township's Comments, as regards in the above-captioned proceeding. Please return one copy, time-stamped, to me in the self-addressed, postage-prepaid envelope I have included for that purpose. Please also advise whether there will be an opportunity for oral comment or argument.

Very truly yours,



SAMUEL G. WEISS, JR., ESQUIRE

SGW,JR/pl
Enclosure

- cc: Independent Regulatory Review Commission (w/enclosure)
Harold James, Majority Chairperson, House Gaming Oversight Committee (w/enclosure)
Jane M. Earll, Majority Chairperson, Senate Community, Economic and Recreational
Development Committee (w/enclosure)
Thomas Donmoyer, Secretary, East Hanover Township (w/enclosure)
Adrienne C. Snelling, Esquire, Lebanon County Solicitor (w/enclosure)
PA Senator Mike Folmer (w/enclosure)
PA Representative Rose Marie Swanger (w/enclosure)

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

Re: Pennsylvania Gaming Control Board :
Proposed Rulemaking Amending : Regulation #125-86
Chapter 401a :

**COMMENTS OF EAST HANOVER TOWNSHIP,
LEBANON COUNTY**

TO THE HONORABLE PENNSYLVANIA GAMING CONTROL BOARD:

Pursuant to the Pennsylvania Gaming Control Board's ("Board") proposed rulemaking, Regulation #125-86, published in the Pennsylvania Bulletin on May 3, 2008, East Hanover Township, Lebanon County ("East Hanover Township") hereby submits its comments on the proposed rulemaking, which seeks to change the definition of "licensed facility."

I. STATUTORY BACKGROUND

Pursuant to the Pennsylvania Race Horse Development and Gaming Act¹ ("Gaming Act"), slot machine licensees pay from their daily gross terminal revenue, *inter alia*, a local share assessment. 4 Pa.C.S. § 1403(b). From this local share assessment, the Department of Revenue makes quarterly distributions to the counties and municipalities hosting a licensed facility. 4 Pa.C.S. § 1403(c)(2),(3).

In drafting the Gaming Act, the Legislature recognized that in some instances a licensed facility would be located in two municipalities and therefore enacted Section 1403(c)(3)(x), which provides: "If the licensed facility is located in more than one municipality, the amount available shall be distributed on a pro-rata basis determined by the percentage of acreage located

¹ 4 Pa.C.S. §§ 1101-1904.

in each municipality to the total acreage of all municipalities occupied by the licensed facility.” 4 Pa.C.S. § 1403(c)(3)(x). Similarly, the Legislature recognized the potential for licensed facilities to be located in two counties and therefore promulgated similar provisions for those instances.² The Legislature chose a broad definition of “licensed facility,” defining it 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.

II. COMMENTS

East Hanover Township respectfully disagrees with the proposed amendment to the Board’s regulations. At present, the Board’s definition of “licensed facility” uses the Gaming Act’s definition. The Board’s proposed revision to the definition of “licensed facility” will negatively affect certain municipalities including East Hanover Township and will alter the disbursement scheme provided by the Legislature in the Gaming Act. Instead, the Board should structure the proposed regulatory definition so as to provide the necessary clarification, for distance purposes, while protecting the rights of co-hosting municipalities and counties to their local share disbursements.

A. The New Definition Will Harm Other Municipalities And Counties.

While the Board’s proposed amendment will add clarity to the on-going issue of distance between licensed facilities, the definition will also, unnecessarily, alter the statutory distribution design by eliminating local share disbursements that otherwise would go to East Hanover Township and Lebanon County. The impact of slot machine facilities is felt beyond a mere county or township line, a fact that was recognized by the Legislature when it provided for sharing of funds by co-hosting municipalities and counties.

² See 4 Pa.C.S. § 1403(c)(2)(vi) (“If the licensed facility is located in more than one county, the amount available shall be distributed on a pro-rata basis determined by the percentage of acreage located in each county to the total acreage of all counties occupied by the licensed facility.”).

The Board's proposed definition is reasonable for the purpose of measuring the distance between licensed facilities, particularly as the Gaming Board is considering applications on the remaining available slot machine licenses. When measuring linear distance between established facilities and potential facilities, questions arise as to how to draw the points of measurement; that is, whether the Board measures entryway to entryway, slot machine floor to slot machine floor, or so on. The need for clarification is understandable, particularly as potential facilities are apparently sited closely within the statutory location limitations.³

The proposed definition's profound effect on local share distributions, however, is unreasonable and appears to undermine entirely the Legislature's intent to allocate local share funds based on the "acreage" of the gaming site. The Legislature's use of the site's acreage (rather than square footage) is a strong indicator that local share allocation should be based on the total land area of the gaming site and not merely on the square footage of the gaming building.

Local share disbursements are intended for the host counties and municipalities to use to address the associated local effects of casino operations. While an actual slot machine may not be located in East Hanover Township or Lebanon County, the township and the county certainly have been (and will continue to be) impacted by Hollywood Casino. Simply put, the impact of Hollywood Casino does not stop at the municipal boundary. For East Hanover Township and Lebanon County, elimination of their local share disbursement will have a significant adverse financial impact. East Hanover Township will not receive approximately \$350,000.00 that it otherwise would have received under the Gaming Act. Lebanon County will also not receive a similar amount. These figures are substantial, particularly considering the current and future

³ See, e.g., 4 Pa.C.S. § 1305(b)(1) ("No Category 3 license shall be located by the board within 15 linear miles of another licensed facility.").

impact of slot machine activity on East Hanover Township and Lebanon County. These impacts include, but are not limited to, increased traffic on Township roads, increased growth, both residential and commercial, increased need for public sanitary sewer service, increased demands on public recreation in the Township, increased demands on fire and emergency services (e.g. Ono Fire Company), possible increased need for police services over and above those presently provided by the Pennsylvania State Police, and increased Township administrative services associated with these impacts.

B. A Compromise Alternative which will Strike a Reasonable Balance.

The regulatory definition can be more narrowly drawn to provide the desired clarification on linear distance measurement while preserving East Hanover Township's and Lebanon County's statutory entitlement to receive funds. East Hanover Township respectfully suggests that the Board insert the clause "for purposes of measuring distance between facilities only" in the amended definition of "licensed facility," so that the proposed amended regulation would read:⁴

§ 401a.3. Definitions.

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

* * *

Licensed facility –

- (i) **For purposes of measuring linear distance between facilities only:**

(A) The physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines **including the gaming floor and all restricted areas servicing slot operations together with all adjacent and proximate amenities, including, but not limited to, food, beverage and**

⁴ For purposes of recitation here, the language in **bold font** is the Board's proposed amendment. The language in **bold and underscore font** is East Hanover Township's suggested revision.

retail outlets and other areas directly accessible from the gaming floor or the restricted areas servicing slot operations.

(ii)(B) The term does not encompass areas or amenities exclusive to pari-mutuel activities, hotel activities and other amenities and activities not related to slot machine gaming operations.

(ii) For all other purposes, the physical land-based location at which a licensed gaming entity is authorized to place and operate slot machines.

* * *

III. CONCLUSION

East Hanover Township appreciates the opportunity to submit its comments on the Board's proposed amended regulation. East Hanover Township respectfully requests that the Board consider these comments in promulgating a regulation that balances the need for clarification in measuring distance, while not disturbing the Legislature's statutory scheme of distributing funds to municipalities and counties burdened by the impact of gaming operations.

Respectfully submitted,



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Solicitor, East Hanover Township, Lebanon County

Dated: May 27, 2008