

COLLEGE TOWNSHIP PLANNING COMMISSION REGULAR MEETING AGENDA

**COLLEGE TOWNSHIP
PLANNING COMMISSION
REGULAR MEETING MINUTES
In Person and Via Zoom**



February 21, 2023 7:00 p.m.
1481 East College Avenue, State College, PA 16801
www.collegetownship.org

PRESENT: Ray Forziat, Chair
Ed Darrah, Vice Chair
Matthew Fenton
Robert Hoffman
Noreen Khoury
Bill Sharp

EXCUSED: Peggy Ekdahl, Secretary

STAFF PRESENT: Don Franson, P.E., P.L.S., Township Engineer
Lindsay Schoch, AICP, Principal Planner

GUESTS: Multiple Penn State Students via Zoom

CALL TO ORDER: Mr. Forziat called the meeting to order at 7:00 p.m.

ZOOM MEETING PROTOCOL: Mr. Forziat verified there were people present via Zoom and Ms. Schoch reviewed Zoom protocol.

ROLL CALL: Mr. Forziat verified Ms. Ekdahl was excused from the meeting.

OPEN DISCUSSION: None presented.

CONSENT AGENDA:

Mr. Hoffman moved to approve the February 7, 2022 meeting minutes as written. Mr. Darrah seconded. Motion carried unanimously.

PLANS:

P-1 Rhodes Lane Land Development Plan

Mr. Forziat stated that prior to the meeting the developer requested the plan be tabled.
Mr. Darrah moved to table the Rhodes Lane Land Development Plan until future plans are to be presented by the developer. Mr. Fenton seconded. Motion carried unanimously.

OLD BUSINESS:

OB-1 Official Map

Ms. Schoch introduced the topic and asked the commissioners to list two or three of their recommendations to add to a master draft official map. She anticipated this portion of the meeting to be more interactive than usual.

Mr. Sharp asked for clarification on the investment corridors, particularly the municipal and state primary and secondary corridors. Ms. Schoch and Mr. Franson explained the Official Map and how projects such as sidewalks, shared-use paths, roads, etc., would be developed and who would pay for these projects. Mr. Sharp suggested all investment corridors, state and municipal, include bike and pedestrian paths, especially the East College Avenue Corridor to Dale Summit and on to the Gateway. He explained the continued effort to electrify pedestrian and bicycle transportation and that he believes shared-use paths should be added to the Official Map along all primary and secondary corridors.

The width of pedestrian and shared-use paths was discussed. It was concluded that the typical eight foot width is not the standard anymore and there could be a notation made on the map to propose a wider path than regulation allows or note a minimum width. One notation to be considered for the map is as follows: ten foot minimum is accordance with American Association of State Highway and Transportation Officials(AASHTO) bicycle facility standards.

Ms. Schoch stated what staff is asking of the Parks and Recreation Committee pertaining to the Official Map. Mr. Darrah stated the Township needs to look at liability, maintenance costs, and ongoing expenses, and it may not be beneficial to the Township to have a bunch of little areas dedicated that the Township will be liable for and need to maintain.

Mr. Fenton suggested connecting existing paths in Dalevue area. Mr. Darrah suggested adding connector roads in the Premier Drive/ Ellis Place/ Drive-In area. He explained this area is currently zoned as commercial and suggested the area could be put to better use if rezoned. Mr. Franson stated this area may also be changed with the proposed form-based code.

The following are suggestion made by the members of the Planning Commission during the meeting:

- Extend down Gerald Street, from College Avenue to Dreibelbis Street (pedestrian and bike paths)
- Extend Summit Road to College Avenue (road)
- Extend Greenway from Dreibelbis Street to Gerald Street (greenway)
- Connect Gerald Street to Trout Road through Township Non-Recreation Property (shared-use)
- Extend Stewart Drive to Transfer Road (road)
- Connect Mayberry Lane to Dalevue Park and through the park to the Bike Path (sidewalk)
- Connect Charles Street and Edward Street (path/greenway)
- Connect Ivy Hill Drive and Farmhill Drive (road)
- Innovation Park Connections
- East Branch Road (pedestrian improvement)
- South Atherton from Panorama to East Branch Road should be added as state investment road (pedestrian improvement)
- Boalsburg Road Bike Path must be widened
- Brush Valley Road Bike Path
- Connect trail head at Lions Paw Alumni Association to Struble Road and continue to Carolean Industrial Drive (shared-use)
- Connect Lions Paw Alumni through Municipal Authority Land to Struble Road by water authority (shared-use)
- Connect from East College Avenue up Squirrel Drive over to Slab Cabin Park (bike path, greenway, shared-use)
- Connect Cottonwood Avenue to Train Lane by going over Slab Cabin Run (road)
- Connect Rolling Ridge Drive to Atherton (bike path/ shared-use path)
- Locate fly/no-fly zones nearing the airport

- Connect Spring Lea Drive and Wild Rose Way (shared-use, road)
- Add quadrants to the map for ease of finding particular areas when discussing, i.e. this road in A4
- Connect various streets in Winfield Heights area, according to land development or subdivision plans and add pedestrian uses (shared-use, road)

NEW BUSINESS: None presented

REPORTS:

R-1 February 16th Council Meeting

Mr. Hoffman gave an update of the Council meeting from February 16th, and added that Ms. Khoury will be attending the March Council meetings. The Planning Commission discussed the future of the Township based on some topics from the Council meeting.

STAFF INFORMATIVES:

SI-1 Council Meeting Minutes

Not discussed further.

OTHER MATTERS: None presented.

ANNOUNCEMENTS:

Mr. Forziat announced the next meeting will be Tuesday, March 7, 2023 at 7:00 p.m.

ADJOURNMENT: *Mr. Hoffman moved to adjourn. Mr. Darrah seconded. Motion carried.*

Meeting adjourned at 8:55 p.m.

*** Draft ***

Sharon E. Meyers
Senior Support Specialist – Engineering/Planning



MEMORANDUM

To: College Township Planning Commission

From: Adam Brumbaugh, Township Manager

Re: **Council Remand: Burkentine Rezoning**

Date: February 27, 2023

On February 1, 2023, College Township received a letter from Penn Terra Engineering on behalf of their client, Burkentine Real Estate, who is proposing a mixed-use development on Tax Parcel 19-2-59 located on Shiloh Road in Dale Summit. As proposed, this development would fit well under the Township's existing Planned Residential Development (PRD) ordinance.

The PRD Ordinance allows for an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, the development plan for which may not correspond, in lot size, bulk or type of dwelling, density, lot coverage and required open space, to the regulations established in any one residential district created, from time to time, under the provisions of [Chapter 200](#), Zoning.

However, the parcel in question has a base zoning designation of Planned Research and Business District (PRBD), which does not allow for a PRD type development. On behalf of their client, Penn Terra Engineering is requesting that the Township consider amending [Chapter 145-17.A](#) to permit the PRBD district as a base zone for a PRD. Further, the developer is seeking the same density as allowed under the Multifamily District (R-3), which permits twenty-two (22) dwelling units per acre.

As the College Township Planning Commission is aware, Burkentine Real Estate's proposed development arrives on the heels of College Township entering a contract with DPZ CoDesign, Incorporated. DPZ is tasked with developing a Form-Based Code as a more flexible alternative to the existing zoning districts in Dale Summit. As an objective outlined in the Draft Dale Summit Area Plan, the Form-Based Code is expected to enable more mixed-use development in this area to further the goal of making Dale Summit a vibrant and readily recognizable place with the Centre Region.

At their meeting on February 16th, College Township Council reviewed the proposed request and a number of potential options as prepared by staff. These options will be further explained in the staff memorandum that accompanies the upcoming Planning Commission agenda item.

Council has remanded the developer's request pertaining to a potential rezoning of Tax Parcel 19-2-59 to the College Township Planning Commission with the following comments and guidance:

1. College Township should never consider a rezoning based strictly upon an individual development proposal, without also considering the larger ramifications of such a decision. That said, there is recognition that the proposed Burkentine development represents a unique and time critical opportunity that aligns well with the goals outlined in the Draft Dale Summit Area Plan and could also serve as a demonstration/catalyst project for what is envisioned in the area under the soon-to-be-developed Form-Based Code.
2. The scope of work outlined in the contract between College Township and DPZ contains a task to evaluate and recommend revisions to the existing zoning ordinance that will build momentum toward the implementation of the Form-Based Code. This proposed development provides an opportunity to leverage the expertise of DPZ in crafting revisions the PRD that would accommodate this real-world catalyst project.

3. Precedent for rezoning sections of this area of the Township to accommodate residential uses, which are consistent with those on adjacent parcels, was set on February 18, 2021, with the change of R-2 to R-3 to accommodate the Evergreen Heights development. Additionally, adding higher density residential to the area was another objective included in the Draft Dale Summit Area Plan.
4. As a component of this rezoning request, Planning Commission is asked to also consider revisions to the PRD ordinance that will accommodate the Burkentine proposed development and that also provide the broadening of ordinance flexibility that is consistent with the Township's move toward Form-Based Code implementation.
5. The staff memorandum will outline a number of options to accommodate the proposed development, such as incorporating R-3 or Gateway Commercial uses. While these options achieve the intent for this specific rezoning, Planning Commission is asked to consider the unintended consequences for each potential zoning change.

As outlined herein, Council is remanding this rezoning request to the Planning Commission with the expectation that you'll consider the unique nature and timing of this proposed land development within the context of the broader vision for the future of the Dale Summit Area. Council further encourages Planning Commission to fully leverage the added capacity and expertise of the DPZ team to your deliberations on a recommendation.

In order to be responsive to the developer, Council is asking that Planning Commission provide their recommendations within forty-five (45) days from the date of this remand letter.

Council appreciates Planning Commission lending its experience and expertise to this matter and looks forward to reviewing your recommendations in the near future.

End memo



COLLEGE TOWNSHIP

MEMORANDUM

To: College Township Planning Commission

Thru: Adam Brumbaugh, Township Manager

From: Lindsay K. Schoch, AICP | Principal Planner

Re: Request for Rezoning – Tax Parcel 19-2-59

Date: March 2, 2023

In regards to the “Request to amend the College Township Planned Residential Development (PRD) Ordinance, Chapter 145-17A” letter, dated February 1, 2023, from Penn Terra Engineering Staff offers the following initial analysis and proposed action:

Applicant: Burkentine Real Estate Group

Landowner(s): Rogers, Terry L.

Agent: Penn Terra Engineering, Inc.

Submission Date: February 1, 2023

Property address: Shiloh Road

Parcel ID: 19-002-059

Total Acres: 49.28

Existing Zoning Designation: Planned Research Business Park District (PRBD)

Requested Zoning Designation: Planned Residential Development (PRD)

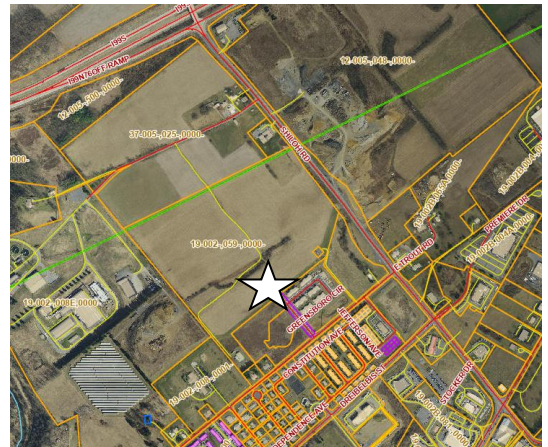
Proposed Use: Mixed-use development

Requested Action: The request is to include the PRBD zoning district to the list of zoning districts that allow for PRDs.

The Regional Growth Boundary (RGB) and Sewer Service Area (SSA): This property is within the Regional Growth Boundary

Planning Commission Response: PC to review proposal on March 7, 2023.

College Township Official Map: Two (2) proposed facilities are located on the Township’s Official Map



Adjacent Land Use: The area north of the property, to the Benner Township line consists of active agriculture, to the west is the regional sewage facility plant, to the east exists an open fill site and to the south, two-family and multi-family housing developments.

Parcel History: A Columbia Gas line easement exists along the frontage of the property.

Wetlands, floodplains, and soils: None exist on site, but note, a portion of the property is in the wellhead protection overlay.

Public Services: Public Water and Sewer will be served by the UAJA and CTWA

2013 Regional Comprehensive Plan – Future Land Use: Mixed-Use

Other Plan Recommendations: Although the Dale Summit Area Plan is not adopted by the municipality, this parcel has the opportunity to apply form-based zoning.

Adjacent Parcels:

19-002-,008E – University Area Joint Authority – 98.33 acres

37-005-,025 – Moerschbacher, Bonnie – 44.01 acres

19-002B-,0001C – Evergreen Heights LP – 4.48 acres

19-002B-, 104 – Pleasant Pointe LP – 6.38 acres

19-002B-,103 – College Township Water Authority – 6.45 acres

12-005-,048 – Clair, Gerald F. and Susan W. – 110.42 acres

Options:

Staff has taken into consideration the request to rezone this approximately 50-acre parcel. The PRBD may not be the best option, as the underlying zoning district requires a business park development, which is not the intent of the proposed development and the proposed development does not meet the intent and standards of the PRBD.

In consideration of the other options, staff would like to note that Planned Residential Developments (PRDs) are only permitted/can be applied to the following residential zoning districts: Single-Family Residential (R-1); Two-Family Residential (R-2); Multi-Family Residential (R-3); and Residential Office (RO) zoning districts.

As this topic moves forward through the process, Staff will be considering other options not requested in the letter. The original request may work, but knowing the Township is moving forward with form-based zoning, another option may be better when considering rezoning Dale Summit.

1. Permit a PRD in the PRBD with the R3 density (request)

This option is the original request. The PRBD does not permit residential uses.

2. Change the PRBD to Gateway Commercial (GC) permitting PRD

Gateway Commercial is the mixed-use zoning district in the Township and although it does have a residential element (residential dwellings of all types are permitted), it is not called out specifically in the PRD Ordinance. This mixed-use option may better serve the area. This action would require rezoning all of the PRBD area around Shiloh to Gateway Commercial.

3. PRBD to Residential Office (RO)

This action would again take a full rezoning of the PRBD properties to Residential Office, PRDs are permitted in the RO Zoning District.

4. PRBD to Multi-family (R3)

Another option is to rezone the PRBD to R-3 (Multi-family residential). This would allow for the requested density (22 dwelling units per acre).

5. Consider the “do nothing” option / wait for DPZ CoDesign, LLC to prepare an interim option for this area of Dale Summit.

Staff Recommendation:

Staff requests the Planning Commission review the provided materials, discuss the options and the contents of the Remand letter, and provide direction to staff.



Corporate Office:
3075 Enterprise Drive
State College, PA 16801
814-231-8285
www.pennterra.com

February 1, 2023

College Township
1481 East College Avenue
State College, PA 16801

Attn: Mr. Adam Brumbaugh, Township Manager

Re: Request to amend the College Township Planned Residential Development (PRD)
Ordinance, Chapter 145-17.A

Dear Adam,

Thank you for meeting with me and my clients from Burkentine Real Estate last week. As we discussed, Burkentine has an option on Shiloh Road Tax Parcel 19-2-59 and desires to develop that property as a mixed use development. The proposed project would fit well under the guidelines of the township Planned Residential Development (PRD) ordinance, however, the PRD is not permitted over property with a Planned Research and Business District (PRBD) base zoning. On behalf of my client, I am requesting that the Council consider amending Chapter 145-17.A to permit the PRBD district as a base zone for a Planned Residential Development with the same density allowed under the Multifamily District of 22 units per acre.

I would appreciate Council considering this issue in the near future. Please let me know if you have any questions or need additional information. Thank you for discussing this issue with me.

Sincerely,
PennTerra Engineering, Inc.

A handwritten signature in black ink, appearing to read "John C. Sepp".

John C. Sepp, P.E.
President

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

Chapter 145

Planned Residential Development

[HISTORY: Adopted by the Township Council of the Township of College 10-9-1986 by Ord. No. 41-D. Amendments noted where applicable.]

GENERAL REFERENCES

Planning Commission — See Ch. 52.

Building and construction code — See Ch. 82.

Sewers — See Ch. 166.

Signs — See Ch. 170.

Stormwater management — See Ch. 175.

Street and sidewalk construction and occupancy — See Ch. 177, Part 1.

Subdivision of land — See Ch. 180.

University Planned District — See Ch. 188.

Vehicles and traffic — See Ch. 190.

Zoning — See Ch. 200.

Fees — See Ch. A203.

Article I

General Provisions

§ 145-1 **Title.**

This chapter shall be known and may be cited as the "College Township PRD Ordinance."

§ 145-2 **Statutory authority.**

This chapter is enacted and ordained under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania in the Pennsylvania Municipalities Planning Code, Act of 1968, July 31, P.L. 805, as amended (53 P.S. § 10101 et seq.).

§ 145-3 **Purpose.**

This chapter is enacted for the purposes set forth in Article VII of the Municipalities Planning Code and for the following purposes:

- A. To increase the availability of a greater variety and mixture of housing types.
- B. To encourage innovative design in residential development.
- C. To encourage a more efficient use of land and public services.
- D. To preserve existing topography, trees, amenities, landmarks and natural features.
- E. To relate the type, design and layout of development to the particular site.
- F. To provide sufficient, usable and convenient open space and recreation facilities.
- G. To combine and coordinate landscaping and building styles within the development.

- H. To provide an environment of stable character in harmony with surrounding development and in accordance with the Comprehensive Plan.

§ 145-4 Establishment of controls.

In their interpretation and application, the regulations set by this chapter shall be held to be the minimum requirements adopted for the promotion of the purposes of this chapter.

- A. Types of control. This chapter contains regulations governing the following: procedures for establishing a planned residential development; graphic and written information to be submitted under such procedures; and regulations governing allowed uses and densities, layout of streets and structures, the reservation of land for common or public open space, the provision of recreational facilities and pedestrian access, protection of the natural environment and the avoidance of impacts on surrounding areas.
- B. New planned residential developments. Upon application by a landowner, the Township Council may, according to the provisions of this chapter, establish a planned residential development on contiguous parcels of land under common ownership of the applicant within the zoning districts set forth in Article V, Residential Districts, of Chapter **200**, Zoning.
- C. Existing planned residential developments. All PRD plans approved under the terms of Ordinance No. 41-C but not yet constructed at the date of enactment of this chapter shall comply with the following:
- (1) Any tentative planned residential development plan approved within 12 months prior to the date of enactment of this chapter shall be entitled to final approval, within 12 months of the date of approval of said tentative plan, according to the terms of said approved plan.
 - (2) Any tentative planned residential development plan approved to be submitted for final approval in sections according to an updated schedule within 12 months prior to the enactment of this chapter shall be entitled to final approval within 12 months of the tentative approval or according to the terms of the approved schedule and tentative plan.
 - (3) The provisions of this chapter shall apply to any unbuilt portion of a planned residential development which received final approval more than 36 months prior to the date of the enactment of this chapter.
- D. Relationship with other restrictions. The provisions of this chapter are not intended to interfere with, abrogate or annul other rules, regulations or ordinances, provided that, where this chapter imposes a greater restriction than that imposed by such other rules, easements, covenants, restrictions, regulations or ordinances, the provisions of this chapter shall control, except that, for any development governed by this chapter where a provision of this chapter conflicts with Chapter **200**, Zoning, or Chapter **180**, Subdivision of Land, the provisions of this chapter shall control.

Article II Definitions

§ 145-5 Word usage.

For the purposes of this chapter, certain terms and words used herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender, and words of feminine gender include masculine gender.
- B. The word "includes" or "including" shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.

- C. The word "person" includes an individual, firm, association, organization, partnership, trust, company, corporation or any other similar entity.
- D. The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.
- E. The words "used" or "occupied" include the words "intended, designed, maintained or arranged to be used or occupied."

§ 145-6 Definitions.

Unless a contrary intention clearly appears, the following words and phrases shall have the meanings given in this section. All words and terms not defined herein shall be used with a meaning of standard usage.

AMENDMENT

Any duly enacted change or revision of this chapter.

ARCHITECT

A professional licensed by the Commonwealth of Pennsylvania to practice architecture.

BOULEVARD-TYPE ENTRANCE

Any entrance with two distinct travel lanes, which are separated by a median that is a minimum of 10 feet wide.

[Added 9-4-2003 by Ord. No. O-03-16]

BOUNDARY

A line marking the limit or border of a lot or district.

BUILDING

A structure, including any part thereof, having a roof and used for the shelter or enclosure of persons or property.

COMMUNITY CENTER

The nonprofit use of land and structures for social and community service activities, including recreational programs, professional counseling services and/or human service agencies and programs, provided that the sale of intoxicating beverages on the premises is prohibited.

COMMUNITY WATER SYSTEM

Any public or private water system that serves more than 15 homes or 25 residents.

[Added 9-4-2003 by Ord. No. O-03-16]

COMPREHENSIVE PLAN

The Township Comprehensive Plan, adopted October 12, 1976, by Resolution No. 32.

CUL-DE-SAC

Any roadway with a single means of entry and exit. The cul-de-sac has two parts: the stem and turnaround. The cul-de-sac is measured from the end of the turnaround to the point where the stem intersects with a roadway that has two means of entry and exit.

[Added 9-4-2003 by Ord. No. O-03-16]

DEDICATION

The conveyance of land or objects to some public use, made by the owner and accepted for such use by

or on behalf of the public by a municipality, school district, public authority or other government agency.

DEVELOPMENT

Any subdivision or land development activity as defined by the Pennsylvania Municipalities Planning Code.

[Added 9-4-2003 by Ord. No. O-03-16]

DEVELOPMENT PLAN

The provisions for development of a planned residential development, including a plat of subdivision, all covenants relating to use, location and bulk of buildings and other structures, intensity of use or density of development, streets, ways and parking facilities, common open space and public facilities. The phrase "provisions of the development plan," when used in this chapter, shall mean all the written and graphic materials referred to in this definition.

DRIVEWAY

A corridor which provides motor vehicle access from a street into a lot.

DWELLING

A building designed for human living quarters, but not including hotels, boardinghouses, tourist homes, motels or other accommodations used for transient occupancy.

ENGINEER

A professional licensed by the Commonwealth of Pennsylvania to practice engineering. An engineer is only expected to practice in those disciplines in which he is trained and experienced.

ENGINEER, TOWNSHIP

A professional engineer licensed as such in the Commonwealth of Pennsylvania, duly appointed as the Engineer for the Borough/Township.

EROSION AND SEDIMENTATION

- A. **EROSION**The removal of soil, stone and other surface materials by the action of natural elements.
- B. **SEDIMENTATION**The process by which mineral or organic matter is accumulated or deposited by the movement of wind and water or by gravity.

FARM USE

The use of land and structures for one or more of the following: the tilling of the land, the raising of crops, fruits and vegetables and the raising and keeping of livestock and poultry; horticultural uses related to the raising, propagating and selling of trees, shrubs, flowers and other plant materials; and forestry uses related to the harvesting of lumber products.

FIRE APPARATUS ACCESS ROAD

A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane and access roadway.

[Added 9-4-2003 by Ord. No. O-03-16]

FIRE CHIEF

The Chief of the Alpha Fire Company, Boalsburg Fire Company or a duly authorized representative in the Alpha or Boalsburg Fire Company Service Area.

[Added 9-4-2003 by Ord. No. O-03-16]

FIRE DEPARTMENT CONNECTION

Any hose connection utilized by the Fire Department to supply water to a built-in fire protection system.

[Added 9-4-2003 by Ord. No. O-03-16]

FIRE FLOW

The flow rate of a water supply, measured at 20 pounds per square inch (psi) residual pressure that is available for fire fighting.

[Added 9-4-2003 by Ord. No. O-03-16]

FLOODPLAIN

Areas as defined by Chapter **200**, Zoning.

GOVERNING BODY

The Council of the Township of College, County of Centre, Commonwealth of Pennsylvania.

GRADE

The slope of ground, street or other public way, specified in percentage of change in elevation per horizontal distance.

GRADING

The act of excavating and/or filling land for the purpose of changing natural slope.

GROSS FLOOR AREA (GFA) or FLOOR AREA

The sum of the gross horizontal areas of all floors of a building measured from the exterior face of exterior walls, or from the center line of a wall separating two buildings, but not including interior parking spaces, loading space for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.

[Amended 8-16-2018 by Ord. No. O-18-05]

HEIGHT

The vertical distance of a structure, measured from the average elevation of existing grade at the proposed building perimeter prior to construction, to the finished ceiling of the highest habitable space. See figure below. Also see § **200-14** for exceptions.

[Amended 8-8-1997 by Ord. No. O-97-04]

[\[Image\]](#)

IMPERVIOUS SURFACE

A surface which prevents the penetration of water into the ground.

IMPROVEMENT

Those physical additions, installations and changes required to render land suitable for the use intended, and including but not limited to streets, curbs and gutters, sidewalks, street signs and lights, walkways, sewer and water facilities, monuments and markers, shade trees, grading and stormwater drainage facilities.

LANDOWNER

The legal or beneficial owner or owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee, if he is authorized under the lease to exercise the rights of the landowner, or other persons having a proprietary interest in land.

LANDSCAPE ARCHITECT

A professional licensed by the Commonwealth of Pennsylvania to practice landscape architecture.

LAND SURVEYOR

A professional, licensed by the Commonwealth of Pennsylvania, who makes measurements of dimensional relationships, as of horizontal distances, elevations, directions and angles on the earth's surface, especially for use in locating property boundaries, construction layout and mapping.

LOT

An area of land, including watercourses, held in a single and separate ownership; includes "tract" and "parcel."

LOT LINE

A boundary line of a lot; includes "property line."

MAXIMUM LOT COVERAGE

The percentage of lot area which may be occupied by the ground floor area of all primary and accessory buildings.

MOTOR-VEHICLE-ORIENTED BUSINESS

Any commercial business or any portion thereof which, by design, type of operation or nature of business, provides service to motor vehicles in a short period of time, including but not limited to an automatic car wash, self-service car wash or self-service gasoline station, or provides a service to occupants of the motor vehicle while they remain in the vehicle, including but not limited to a drive-in bank, drive-in restaurant, drive-in beverage sales, pickup window or gasoline service station.

MUNICIPAL

Of or for the Township of College, unless specifically in reference to another municipality.

NFPA

National Fire Protection Association. This organization is a national association established for the purpose of proposing standards that reduce the opportunity for injury or death from fire.

[Added 9-4-2003 by Ord. No. O-03-16]

NORTH POINT

An arrow on a plan depicting true North.

OFF-STREET PARKING SPACE

A space not located within any street right-of-way used for the temporary storage of one motor vehicle.

OPEN SPACE

That area within the perimeter boundaries of a plan that is intended to provide light and air and is designed for preservation of natural features, buffering or scenic or recreational purpose. Open space may include but need not be limited to lawns, decorative planting, walkways, active and passive recreation structures and areas, children's playgrounds, fountains, pools or ponds, undisturbed natural

areas, agriculture, wooded areas, and/or water bodies. Open space must also be open and accessible to all tenants or users of the proposed development. Open space for the purposes of required open space requirements pursuant to § **145-18** shall not include areas within required setbacks and/or buffer yard areas and/or areas set aside for public facilities (e.g., schools, utilities or municipal facilities).

[Added 2-20-2014 by Ord. No. O-14-01]

OWNER

Landowner.

PENNSYLVANIA MUNICIPALITIES PLANNING CODE

Act of 1968, July 31, P.L. 805, as amended (53 P.S. § 10101 et seq.).

PERIMETER BOUNDARY

The line marking the outside limit of the planned residential development.

PHASE

A component or definable part of a whole; a stage of development. A phase of a development plan is that part of the entire plan which, if implemented, is capable of standing on its own. A phase of a PRD shall be able to function independently of the undeveloped phases, while being compatible with adjacent or neighboring land uses, even if the remainder of the PRD were to be discontinued and its land revert to its original zoning.

PLANNED RECREATIONAL AREA

Area(s) laid out, devoted to and designed for the active and/or passive recreational pursuits of the residents of the planned community. Such areas may include but shall not be limited to ballfields, play apparatuses, nature trails, picnic areas, bike paths and like uses. However, all common open space within the planned residential area shall not be deemed to be "planned recreational area."

PLANNED RESIDENTIAL DEVELOPMENT (PRD)

An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, the development plan for which may not correspond, in lot size, bulk or type of dwelling, density, lot coverage and required open space, to the regulations established in any one residential district created, from time to time, under the provisions of Chapter **200**, Zoning.

PLANNING COMMISSION

The College Township Planning Commission, Township of College, County of Centre, Pennsylvania.

SCHEDULE

A schedule of development is the projected time frame in which the several phases of a development are to be implemented.

STREET

A public or private corridor used as a means of vehicular and pedestrian access to two or more lots; a highway, road or alley.

[Amended 3-19-2009 by Ord. No. O-09-02]

- A. **ARTERIAL STREET** A major street with fast or heavy traffic of considerable continuity used primarily as a traffic artery connecting two or more neighborhoods or areas. Primary arterial streets extend through the entire urban area, while secondary arterial streets extend through only a portion of the area. For the purposes of this chapter, existing primary and secondary arterial streets are listed in

Article **VI** of Chapter **177**, Classification of Streets. [**Amended 9-16-2021 by Ord. No. O-21-05**]

- B. **COLLECTOR STREET**A major street which carries traffic from local streets to arterial streets. For the purposes of this chapter, existing collector streets are listed in Article **VI** of Chapter **177**, Classification of Streets. [**Amended 9-16-2021 by Ord. No. O-21-05**]
- C. **LOCAL STREET**Any street not herein defined as an alley, arterial, collector or marginal access street.
- D. **NEIGHBORHOOD STREET**A minor street serving only residential uses. For the purposes of this chapter, existing neighborhood streets are listed in Article **VI** of Chapter **177**, Classification of Streets. [**Amended 9-16-2021 by Ord. No. O-21-05**]
- E. **MARGINAL ACCESS STREET**A minor street parallel and adjacent to a major street which provides direct access to abutting properties and control of intersections with the major street.

STRUCTURE

Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land. All buildings are structures.

SUBDIVISION

The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer of ownership or building or lot development.

USE

Any purpose for which a lot or structure may be designed, arranged, intended, maintained or occupied or any activity, occupation, business or operation carried on in a structure on a lot.

WALKWAY

A right-of-way intended to provide pedestrian access.

WATER AUTHORITY

The company or agency responsible for providing water and related services to its service area. College Township is served by the State College Borough Water Authority and College Township Water Authority.

[**Added 9-4-2003 by Ord. No. O-03-16**]

YARD

An unoccupied space, open to the sky, extending from the lot line to a structure. The size of a required yard shall be measured as the shortest distance between the structure and lot line.

Article III

Plan Review Procedures

§ 145-7 General.

Tentative plans for planned residential developments, all or part of which are situated in the Township, shall be reviewed by the Township Planning Commission and the Centre Regional Planning Commission and shall be approved or not approved by the Township Council in accordance with the procedures specified in this article. All plans shall be reviewed in two stages, tentative and final.

§ 145-8 Preapplication conference.

A potential applicant for planned residential development may request a conference with the Planning

Commission for the purpose of discussing or reviewing such proposed development and for obtaining advice on the preparation of the tentative plan.

- A. The preapplication conference shall not be mandatory and shall not be regarded as a formal application for planned residential development. The filing of any report, sketch plan, plat or map prior to or at such conference shall not constitute submission of a plan or application for planned residential development, nor shall such materials be binding on subsequent submissions by the applicant.
- B. Any report, sketch plan, plat or map to be considered by the Planning Commission at such conference shall be provided by the potential applicant in three copies, and the Township Secretary shall distribute a copy of the same to the Township Planning Commission and the Centre Regional Planning Commission for informational purposes only.
- C. The Planning Commission may, at its sole discretion, make or refuse to make recommendations as the result of the preapplication conference. Any recommendations made by the Planning Commission at or in response to the preapplication conference shall not be binding upon the applicant or upon the Planning Commission in its review of the plan after formal application.

§ 145-9 Review of tentative plan.

All applications for Township approval of planned residential development plans shall commence with the official submission of a plan and all required supplementary data to the Township Secretary. The application for tentative approval of the development plan shall be filed by or on behalf of the landowner. At any time during the review process, the applicant may amend the originally submitted plan solely for the purpose of correcting minor deficiencies in the original plan to the extent necessary to meet the requirements of this chapter.

- A. A tentative plan shall be deemed to have been submitted for review when the applicant has furnished to the Township Secretary the following documents:
 - (1) One copy of a completed application for planned residential development, plus payment of all application fees.
 - (2) Nine prints of the plan, which shall fully comply with § **145-12** and Article **V** of this chapter. **[Amended 9-4-2003 by Ord. No. O-03-16]**
 - (3) Twenty-one of a narrative, which shall fully comply with § **145-12** and Article **V** of this chapter. **[Amended 9-4-2003 by Ord. No. O-03-16]**
 - (4) Twenty-one prints of the proposed tentative master plan, which shall include but shall not be limited to the following items: all proposed land uses within the PRD, including phasing of development and lot numbers, acreage of each phase, common open space within each phase, number and type of dwelling units within each phase and the total floor area of all dwelling units, floor area of all nonresidential uses by phase and overall density of each phase; location of all proposed street rights-of-way, walkways, common open spaces and stormwater facilities; location of all roads and/or motor vehicle access points within 500 feet of the perimeter boundaries of the property; and North point, location map, date of initial submission and all revision dates, legend and graphic scale. The scale of said master plan shall be one inch equals 100 feet or greater. **[Amended 9-4-2003 by Ord. No. O-03-16]**
- B. Upon receipt of the above, the Township Secretary shall immediately forward one copy of the plan and the narrative to the Township Council; the College Township, Centre Regional and Centre County Planning Commissions; the Fire Chief; the Township Engineer; the College Township Parks and Recreation Committee, and if the proposed subdivision or land development is to have direct access to a state or federal highway, the district office of the Pennsylvania Department of Transportation in Clearfield, Pennsylvania. The Township Engineer, the County Planning Commission and its designated

agent and the Centre Regional Planning Commission may review the plan to determine its conformance with the provisions contained in these regulations. **[Amended 9-4-2003 by Ord. No. O-03-16]**

C. Review by the Township Planning Commission.

- (1) At its next regular meeting following the receipt of the application for tentative approval, provided that such application was made at least 14 days prior to the meeting, or at a special meeting called for that purpose after receipt of the tentative plan, the Planning Commission shall review the plan to determine its conformance with the provisions contained in these regulations.
- (2) The Planning Commission shall notify the Township Council, in writing, of any recommended action, changes or modifications to the plan after such decision is made, provided that the Planning Commission shall make such recommendations within 45 days after the date the application for tentative approval was filed. The Planning Commission shall make no recommendations on such application until reports from the County or Centre Regional Planning Commission and the Township Engineer are received or until expiration of 30 days from the date the plan was forwarded to the county, whichever comes first.
- (3) If review by the Township Planning Commission results in an unfavorable recommendation because the requirements of this chapter have not been met, notification to the Township Council should specify the defects found in the plan and describe the requirements which have not been met and should cite the provisions of this chapter from which such defects or requirements originate.

D. Review by the Township Council. Upon receipt of the recommendations from the Planning Commission or upon failure to receive said recommendations 45 days after submittal, and in no event later than 60 days from the date of application for tentative approval of the planned residential development, the Township Council shall hold a public hearing for the purposes of public comment and review of the plan. Owners of abutting properties should individually receive written notice of the public hearing. The hearing shall be held in the manner provided by the Pennsylvania Municipalities Planning Code, as amended. The governing body may continue the hearing from time to time and may refer the matter back to the Township Planning Commission for a report; provided, however, that all public hearings shall be concluded within 60 days after the date of the first public hearing.

- (1) The Council shall review the plan and the written reports thereon of the Township Planning Commission, the Centre County Planning Commission, the Centre Regional Planning Commission, the Fire Chief and the Township Engineer to determine if the plan meets the provisions contained in these regulations. Prior to approval of a tentative plan for which off-site sewer or water service is proposed, the Council shall require, as a condition of approval, that the applicant furnish written confirmation from the appropriate bodies that such service is and will be made available to the planned residential development. **[Amended 9-4-2003 by Ord. No. O-03-16]**

(2) Approval or denial.

- (a) The Council, within 60 days following the conclusion of the public hearing, shall, by official written communication to the applicant, either:

- [1] Grant tentative approval of the development plan as submitted;
- [2] Grant tentative approval subject to the applicant meeting specified modifications to the development plan as submitted; or
- [3] Deny tentative approval to the development plan.

- (b) The official written communication shall be certified by the Secretary of the Township Council and

shall be filed in his office, and a certified copy shall be mailed to the landowner.

- (3) In accordance with the Pennsylvania Municipalities Planning Code, Article VII, Planned Residential Development, Section 709(b), the grant or denial of tentative approval by official written communication shall include, with the conclusions, findings of fact related to the reasons for the approval, with or without conditions, or for the denial. The findings shall specify in what respects the development plan would or would not be in the public interest, which may include but shall not be limited to the following:
 - (a) Those respects in which the development plan is or is not consistent with the adopted Township Comprehensive Plan.
 - (b) The extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.
 - (c) The purpose, location and amount of the common open space in the planned residential development, the reliability of the proposals for maintenance and conservation of the common open space and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential community.
 - (d) The physical design of the development plan and the adequacy of provisions for public services, controls over vehicular traffic and amenities of light, air, recreation and visual enjoyment.
 - (e) The relationship, beneficial or adverse, of the proposed planned residential development to the neighborhood in which it is proposed to be established.
 - (f) In the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the planned residential development in the integrity of the development plan.
- (4) In the case where a planned residential development is projected over a period of years, the Council may authorize final review of the plan by sections, stages or phases of development, subject to such requirements or guaranties as to improvements in future sections, stages or phases of development as it finds essential for the protection of any tentative approved section, stage or phase of development. In such case, a schedule showing the proposed times within which applications for final approval of all sections, stages or phases of the development are intended to be filed shall be included with the tentative plan. The schedule may be revised annually by the Council if requested to do so by the landowner or developer. A landowner or developer who requests a change in scheduling shall submit a letter to the Council requesting said change along with the reasons for the change. The Council may, at its discretion, require the landowner or developer to follow the procedures required herein for tentative plan approval. The phasing of a tentatively approved PRD may be revised annually by the Council upon application of the landowner or developer following the procedures required herein for tentative plan approval.
- (5) The Council may set forth in the official written communication a period of time, not less than three months, within which an application for final approval of the development plan shall be filed or, in the case of a development plan which provides for development over a period of years, within which an application for final approval of the development plan for the first phase shall be filed. In no case shall the time between the grant of tentative approval and the submission of application for final approval be more than 12 months, or, in the case of a plan which provides for development over a period of years, the time between tentative approval and submission of application for final approval of the first phase shall not be more than 12 months; provided, however, that the Council may extend for a single twelve-month period the filing of the final plan if requested in writing, by the applicant. If the final plans are

not submitted within the time limits set above, the tentative plan will be deemed to be abandoned unless reestablished by full tentative approval procedures, as set forth in this section.

- (6) Failure of the Council to render a decision and communicate it to the applicant within the time and in the manner required herein shall be deemed an approval of the tentative plan in terms as presented, unless the applicant has agreed, in writing, to an extension of time or change in the prescribed manner of presentation or communication of the decision, in which case, failure to meet the extended time or change in manner of presentation of communication shall have like effect.
- (7) In the event that tentative approval is granted subject to conditions, the owner may, within 30 days after receiving a copy of the official written communication of the governing body, notify the Council of his refusal to accept all of said conditions, in which case, the Council shall be deemed to have denied tentative approval of the development plan. In the event that the landowner does not, within said period, notify the Council of his acceptance of all of said conditions, tentative approval of the development plan shall be deemed to have been denied.
- (8) The location and boundaries of planned residential developments which have received tentative approval shall be shown on the College Township Official Zoning Map.
- (9) Tentative approval of a development plan shall not qualify a plat of the planned residential development for recording nor authorize development or the issuance of any building permit.
- (10) In the event that a development plan is given tentative approval and, prior to final approval, the landowner shall elect to abandon said development plan by so notifying the Township, in writing, or in the event that the owner shall fail to file application or applications for final approval within the required period of time, the tentative approval shall be deemed to be revoked, and all that portion of the area included in the development plan for which final approval has not been given shall be subject to those local ordinances otherwise applicable thereto, and the same shall be noted in the records of the Township Secretary, and the planned residential development designation for that portion shall be removed from the College Township Official Zoning Map.
- (11) A development plan which has been given tentative approval as submitted or which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted nor violated any of the conditions of the tentative approval) shall not be modified or revoked nor otherwise impaired by action of the municipality pending an application or applications for final approval, without the consent of the landowner, provided that an application for final approval is filed or, in the case of development over a period of years, provided that applications are filed within the periods of time specified in the official written communication granting tentative approval.

§ 145-10 Review of final plan.

A plan, including all the land in an approved tentative plan or a section thereof according to an approved schedule for development over a period of years, shall be officially submitted to the Township Secretary for final approval. All plans which have received tentative approval shall be entitled to final approval, in accordance with the terms of the approved tentative plan, for a period of 12 months from the date of preliminary approval. The Township Council may extend for 12 months the period for filing the final plan. No construction or installation of structures or improvements shall occur in any phase of the development and no zoning or building permits shall be issued before final approval is given. No occupancy permits shall be issued for any phase of the development until required improvements are installed and all conditions of final approval have been met.

- A. All applications for final approval shall be acted upon by the Township Council within 45 days following the date the application is filed.

- B. Final official submission of the plan to the Township Council shall consist of eight black- or blue-on-white prints of the plan, which shall comply with § **145-13** of this chapter and the conditions for which the plan received tentative approval, plus financial security specified in Subsection **G** below, all offers of dedication and deeds of easements to the Township and all other required documents. [**Amended 9-4-2003 by Ord. No. O-03-16**]
- C. Upon receipt of all required materials, the Township Secretary shall forward one copy of the plan to the Township Council, the Centre Regional and Centre County Planning Commissions, the Fire Chief, the Township Engineer and, if the proposed development is to have direct access to a state or federal highway, the district office of the Pennsylvania Department of Transportation in Clearfield, Pennsylvania. The County Planning Commission and its designated agent, the Centre Regional Planning Commission and the Township Engineer may review the final plan to determine its conformance to the provisions contained in these regulations. The Township Council shall take no official action on such application until reports from the above are received or expiration of 30 days from the date the application is filed, whichever comes first. [**Amended 9-4-2003 by Ord. No. O-03-16**]
- D. The final review of the plan shall be conducted by the Township Council and shall be limited to determining if the plan conforms to the plan which received tentative approval, including all conditions and modifications required by the Township Council, and if the requirements for final plan approval as listed under § **145-13** of this chapter have been met. If the plan submitted for final approval varies from the plan granted tentative approval, it shall be the responsibility of the applicant or his representative to bring such changes to the attention of the Council. Failure of the applicant to bring said changes to the attention of the Council shall constitute an abandonment of the tentatively approved plan.
- E. Plans containing variations.
- (1) In the event that the development plan as submitted contains variations from the development plan given tentative approval, the Council may refuse to grant approval and shall, within 45 days from the filing of the application for final approval, so advise the landowner, in writing, of said refusal, setting forth in said notice the reasons why the plan is at variance with that which received tentative approval. In the event of such refusal, the landowner may either:
- (a) Refile his application for final approval without the variations objected; or
- (b) File a written request with the Council that it hold a public hearing on his application for final approval.
- (2) If the landowner wishes to take either such alternate action, he may do so at any time within which he shall be entitled to apply for final approval, or within 30 additional days if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event that the owner shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the development plan. Any such public hearing shall be held pursuant to public notice within 30 days after request for the hearing is made by the owner, and the hearing shall be conducted in the manner prescribed for public hearings on applications for tentative approval. Within 30 days after the conclusion of the hearing, the Council shall, by official written communication, either grant final approval to the development plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this section, be in the form and contain the findings required for an application for tentative approval set forth in this chapter.
- F. As a condition of approval, the applicant shall permit the Township Engineer to make periodic site inspections of such nature and extent as is necessary to ensure that the required improvements are being installed and constructed in conformity with the design standards contained herein or otherwise specified in the tentative approval of the plan. The Township Engineer shall make inspections and report on required improvements as specified in Chapter **180**, Subdivision of Land, and the Council shall

notify the landowner of the results as specified therein.

- G. In order to guarantee the completion of any improvements required as a condition for final approval of the plan, the Council shall require deposit of a corporate bond or other form of financial security, prior to approval of the plan, in an amount sufficient to cover the costs of any improvements which may be required, regardless of whether or not such are intended to be dedicated to the municipality. Such bond or security shall take the form and shall be enforceable as specified in Chapter **180**, Subdivision of Land. The Council may require maintenance guaranties as specified in Chapter **180**, Subdivision of Land.
- H. In the event that a development plan or section thereof is given final approval and thereafter the landowner abandons the plan or section and the landowner notifies the Council, in writing, or if the landowner falls to commence and carry out the plan within 12 months from the date of final approval, no development or further development shall take place on the property included in the development plan until after said property is resubdivided and is reclassified by enactment of an amendment to the College Township Zoning Ordinance or until a tentative development plan and final plan are resubmitted and approved under the procedures set forth in this chapter.

§ 145-11 Record plan.

After completion of the procedures required by these regulations and after final approval by the Council, all endorsements shall be so indicated on the approved plan and on as many other copies of the plan as may be desired by the governing body. Upon approval and signing of the plan by the Council, a record plan shall be recorded in the office of the Recorder of Deeds of Centre County by the applicant within 90 days of such approval and signing. Such recording shall be otherwise in conformity with the Pennsylvania Municipalities Planning Code. Within 10 days after the Recorder of Deeds has properly recorded the planned residential development plan, a copy of such shall be forwarded to the Township Secretary by the applicant, including the endorsement of the Recorder of Deeds. Upon filing of the record development plan, zoning and subdivision regulations otherwise applicable to the land included in the plan shall cease to apply thereto. All record plans shall be exact replicas of the final plan approved by the College Township Council. Pending completion within a reasonable time of said planned residential development or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said development plan or part thereof, as finally approved, shall be made, except with the consent of the Council in accordance with provisions specified herein.

Article IV Plan Requirements

§ 145-12 Contents of plans submitted for tentative review.

All plans submitted for tentative review shall be drawn to a scale of one inch equals 50 feet or larger (e.g., one inch equals 30 feet) and shall contain the following information:

- A. General data.
 - (1) Name of proposed planned residential development.
 - (2) North point.
 - (3) Graphic scale and legend describing all symbols shown on the plan.
 - (4) Day, month and year the plan was prepared and/or revised.
 - (5) Name and address of the owner and deed book and page numbers of the deeds conveying the property to the owner.

- (6) Name and address of the individual or firm preparing the plan.
- (7) Names of abutting property owners and their deed book and page numbers.
- (8) Key map showing the location of proposed planned residential development and all roads within 1,000 feet therefrom.
- (9) Centre County tax parcel numbers of all parcels included in the planned residential development.

B. Existing features.

- (1) Perimeter boundaries of the total property, showing bearings to the nearest minute and distances to the nearest hundredth of a foot.
- (2) Total acreage of the property and total square feet within each lot of the development.
- (3) Current zoning district, as stipulated in the Chapter **200**, Zoning.
- (4) Natural features.
 - (a) Sinkholes, watercourses, tree masses and unique vegetation or natural features.
 - (b) Floodplain and steep slopes, as defined by Chapter **200**, Zoning.
 - (c) Topographic contour lines at vertical intervals of two feet for land with average undisturbed slope of 4% or less and at intervals of five feet for land with average natural slopes exceeding 4%, including source of topographic data.
- (5) Approximate location of man-made features in or within 50 feet of the property, including:
 - (a) Sewer lines.
 - (b) Water mains and fire hydrants.
 - (c) Electrical lines and poles.
 - (d) Culverts and bridges.
 - (e) Railroads.
 - (f) Buildings.
 - (g) Streets, including right-of-way and cartway widths and approximate grades.

C. Proposed development.

- (1) The approximate location, total ground floor area, total floor area, height and use of buildings and other structures (all area dimensions shall be indicated in square feet).
- (2) The approximate location and area of driveways and parking and loading areas.
- (3) The property lines of lots to be subdivided, measured to the nearest foot.
- (4) The approximate locations of sidewalks and walkways, including widths, surfacing materials and ramps for the handicapped.

- (5) The approximate location of utility and drainage easements.
- (6) The approximate location and pipe diameter of sewer and water mains.
- (7) The following regional fire protection requirements: **[Amended 9-4-2003 by Ord. No. O-03-16]**
 - (a) The applicant shall contact the Water Authority to obtain fire flow rates for the water system serving the proposed subdivision or land development. These flow rates shall be provided as a note on the plan submitted to College Township.
 - (b) All plans shall provide the size of all existing and proposed water lines and fire hydrants in, and adjacent to, the proposed subdivision or land development.
 - (c) The location, construction detail(s) and ownership information of any water storage system shall be provided in the plan detail sheets. (Approved design specifications for underground storage tanks may be obtained from the Centre Region Fire Administrator.)
 - (d) Setbacks and/or building separations shall be graphically noted on all plans.
 - (e) Details for all existing and proposed fire apparatus access routes.
 - (f) Details for all existing and proposed Fire Department connections and hydrants.
 - (g) The plan shall provide a note indicating if any structure within the proposed development will have a built-in fire suppression system, including but not limited to automatic fire sprinkler systems.
 - (8) Perimeter setbacks and required buffer yards.
 - (9) Street information, including:
 - (a) Location and width of rights-of-way and cartways.
 - (b) Proposed street names.
 - (c) Approximate road profiles along the center line of each proposed street, showing finished grade at a scale of one inch equals 50 feet horizontal and one inch equals five feet vertical.
 - (d) Vegetation to be planted between the curb or shoulder and the right-of-way line.
 - (10) A conceptual landscaping plan indicating the treatment of materials and landscaping concepts used for private and common open space.
 - (11) A general grading plan showing any major alterations to the topography of the site.
 - (12) A plan showing the general location and type of all stormwater conveyance and detention and/or retention facilities designed to serve more than one lot or to collect stormwater from streets and common areas.
 - (13) Property owners' association requirements as set forth in § **180-9A(17)** of the College Township Code. **[Added 7-21-2005 by Ord. No. O-05-11]**
 - (14) A transportation impact report pursuant to § **180-9B(18)**. **[Added 2-20-2014 by Ord. No. O-14-01]**
- D. Common open space.
 - (1) The location and area of the proposed common open space.

- (2) The proposed use and improvements of common open space.
- (3) The location and use of common recreational facilities.
- (4) The location and area of land to be dedicated for public purposes.

E. Density calculation.

- (1) A table shall be included on the plan describing each phase or section with quantitative data, including the following:
 - (a) The total area of the development and of each phase or section.
 - (b) The total area devoted to residential uses, the total number of dwelling units, the number of each type of unit and the total residential floor area in the development and in each phase or section. Residential uses include all dwelling units, parking areas for said units and those lands surrounding the dwelling units not designated as common open space.
 - (c) The number of dwelling units per acre in the development and each phase or section.
 - (d) The area of streets, parking, sidewalks and walkways and the total area paved and percent of area paved or covered by structures in the development and each phase or section.
 - (e) The total acreage and percent of acreage in common open space in the development and each phase.
 - (f) The total area devoted to planned recreational use throughout the entire development and in each phase.
 - (g) The total area devoted to nonresidential uses and total floor area of nonresidential buildings in the development and in each phase.

F. Narrative statement. A written statement, including the following:

- (1) A statement of the ownership of all of the land included within the planned residential development.
- (2) An explanation of the character and intent of the planned residential development and the reasons why the development would be in the public interest and consistent with the objectives in the Township Comprehensive Plan.
- (3) A statement describing any proposed innovative design concepts included in the plan.
- (4) The substance of covenants, grants of easements or other restrictions proposed to be imposed on the use of land, buildings and structures, including proposed easements or grants for public use or utilities.
- (5) A description of the form of organization proposed to own and maintain the common open space, recreational facilities or other common facilities.
- (6) A statement of the proposed use and improvement of common open space and recreational facilities.
- (7) A description of proposals to preserve natural features and existing amenities and a statement of conceptual landscaping designs.
- (8) A statement describing the stormwater management methods to be employed.

G. Development schedule. When a planned residential development is proposed to be submitted for final approval in sections or phases over a period of years, the following shall be included with the application for tentative approval:

- (1) The stages in which the development will be submitted for final approval and the approximate date when each phase will be submitted for final approval.
- (2) The approximate date when the development and each phase will be completed.

H. Signature.

- (1) Signature(s) and seal(s) of a licensed engineer and/or architect or landscape architect who prepared or supervised the preparation of the plan.
- (2) Signed, notarized statement by the owner certifying ownership of the property.
- (3) Space for approval signatures by the Chairman and Secretary of the Council, including date of such approval.

I. Fire protection plan procedures. [**Added 9-4-2003 by Ord. No. O-03-16**]

- (1) College Township will provide all subdivision and land development plans, whether preliminary or final, to the Fire Chief at the time they are provided to the Centre Regional Planning Agency (CRPA) for review. The deadline for the review and comment by the Fire Chief shall be the same as the deadline for review and comment by the College Township Zoning Administrator and the CRPA. The Fire Chief shall review the plans for the following fire protection features:
 - (a) Fire flow and/or water supply available for fire fighting.
 - (b) The location and available flow of fire hydrants.
 - (c) The location, design and capacity of water storage facilities.
 - (d) Fire apparatus access.
 - (e) The location of fire lanes, if needed.
 - (f) The location of any Fire Department connections provided.
 - (g) The presence of any built-in fire suppression systems.
 - (2) The Fire Chief shall provide written comments on the plan to the applicant and College Township within 10 business days.
 - (3) If any revisions are made to the plan following the Fire Chiefs initial review, the plan will be provided to the Fire Chief three business days prior to the meeting where the plan will be considered for approval by the College Township Council.
 - (4) The Fire Chief shall provide written comments on any revised plans to the applicant and College Township.
 - (5) If the plan is not recommended by the Fire Chief, the Council may:
 - (a) Deny or conditionally approve the plan based on the conditions listed in the Fire Chiefs comments; or
 - (b) Determine that the applicant has adequately addressed water supply and/or fire apparatus access and approve the plans.
- J. Workforce housing. If any dwellings are voluntarily or required to be designated as workforce housing within a planned residential development, the requirements of § **180-9C** shall be met at time of

submittal of the tentative plan. [Added 6-20-2013 by Ord. No. O-13-01]

§ 145-13 Contents of plans submitted for final review.

- A. Plans submitted for final review shall include all information required in § **145-12** above. Where applicable, the final plan for the development shall meet the plan requirements contained in the following Township ordinance sections, as amended: [Amended 2-20-2014 by Ord. No. O-14-01]
- (1) Article **II**, Plan Review Procedures, § **180-11**, Contents of final plan, of Chapter **180**, Subdivision of Land.
 - (2) Article **IV**, Stormwater Management Plan Requirements, of Chapter **175**, Stormwater Management.
- B. Should a developer desire to incorporate a sign(s) at a main entrance to a planned residential development which does not conform to the criteria outlined in Chapter **170**, Signs, said sign(s) shall be submitted as part of the application for the planned residential development. This section is intended to encourage innovativeness, creativity and aesthetic consideration in the development of signs at the main entrances to planned residential developments only. Should the Council find that the proposed sign(s) does not lend itself to the intents of this section and that said sign should not be included in the planned residential development, then the location and design of the sign(s) will be governed by the criteria stipulated in Chapter **170**, Signs.

§ 145-14 Record plans.

All record plans shall meet the requirements of Chapter **180**, Subdivision of Land, as amended, and shall be exact replicas of the final plan approved by the Township Council.

Article V Design and Improvement Standards

§ 145-15 General requirements.

- A. Design and improvements. The design and physical improvements to the property being developed shall be provided by the developer as shown on the approved plan in accordance with the requirements of this chapter. Unless specifically waived by this chapter, all planned residential developments must comply with all requirements of Chapter **200**, Zoning, Chapter **180**, Subdivision of Land, Chapter **175**, Stormwater Management, and other regulations of College Township.
- B. Location. A planned residential development may be established in the following districts as designated by Chapter **200**, Zoning, on the Official Zoning Map: Single-Family, Two-Family, Multifamily and Residential-Office. [Amended 3-26-1987 by Ord. No. O-87-05; 2-20-2014 by Ord. No. O-14-01]
- C. Size. A proposed planned residential development must contain no fewer than 15 dwelling units and no less than five acres of total land area.
- D. Ownership. All land contained in a proposed planned residential development must be controlled by a landowner and be developed as a single entity.

§ 145-16 Permitted uses.

Land and structures in a planned residential development may only be used for the following:

- A. All uses allowed in residential districts described and defined in Chapter **200**, Zoning.
- B. Nonresidential uses. The following nonresidential uses, as defined in Chapter **200**, Zoning, may be permitted by the Council only if motor vehicle access is not provided to such uses through a residential area and if such uses are integrated within the PRD:

- (1) Offices. **[Amended 2-18-2016 by Ord. No. O-16-02]**
 - (2) Medical and dental offices and clinics, excluding animal hospitals and veterinary offices.
 - (3) Places of assembly. **[Amended 2-18-2016 by Ord. No. O-16-02]**
 - (4) Libraries, museums, art galleries and reading rooms.
 - (5) Retail establishments for the sale and service of goods.
 - (6) Eating and drinking establishments, excluding fast-food establishments.
 - (7) Research, engineering or testing offices and laboratories.
 - (8) Health clubs and athletic and recreational facilities.
 - (9) Child and adult day-care centers. **[Added 2-18-2016 by Ord. No. O-16-02]**
- C. Motor-vehicle-oriented business, as herein defined, shall not be allowed in planned residential developments.
- D. Existing farm uses. If an approved PRD contains farm uses which were in existence prior to tentative approval of the PRD, said farm uses may continue, provided that when development of the PRD encroaches upon the farm use, the farm use will not be permitted to continue within 150 feet of any residential use or lot.

§ 145-17 Density and intensity.

- A. In a planned residential development, there shall be no minimum area requirements for individual lots or building sites. However, the following are the maximum number of dwelling units allowed per gross acre of the planned residential development for each zoning district. **[Amended 3-26-1987 by Ord. No. O-87-05; 2-20-2014 by Ord. No. O-14-01]**

Former Zoning District	Maximum Dwelling Units per Acre
Single-Family	5
Two-Family	15
Multifamily	22
Residential-Office	15

- B. Land devoted to nonresidential uses shall not be included in the gross planned residential development acreage used to calculate gross residential density in Subsection A above. A maximum of 20% of the land in the development may be designated by a plan for nonresidential uses. Land devoted to nonresidential uses shall be deemed to include driveways, parking areas and yards which primarily service nonresidential uses but shall not, for purpose of calculation, including common open space. The total floor area of all nonresidential uses shall not comprise more than 20% of the total floor area of all buildings in a planned residential development.
- C. The Council may refuse to allow the maximum density permitted within each zoning district or may refuse to allow certain permitted nonresidential uses if the development would:

- (1) Create inconvenient or unsafe vehicle access to the planned residential development.
 - (2) Create traffic which exceeds the level of service of public streets which adjoin the planned residential development.
 - (3) Place an excessive burden on utilities, parks, schools or other public facilities which serve or are proposed to serve the planned residential development.
 - (4) Adversely affect existing uses on adjacent lands which are different from the nearby uses in the planned residential development.
 - (5) Permit commercial uses spread along arterial streets.
- D. Spacing. The Council may allow the reduction in lot size, lot width, spacing and side and rear yard setback requirements previously required in the zoning district to promote innovative design, provided that:
- (1) Front yard setback distances shall be required as follows. [See Article IV, § 145-12C(8), of this chapter.]

Setback Distances

(feet)

Type of Building	Local and Collector Streets	Arterial Streets
Single-family dwellings	20	100
Two-family and multifamily dwellings	30	100
Nonresidential	50	100

- (2) Nonresidential buildings shall not be located closer than 100 feet to residential buildings.
 - (3) Spacing shall be provided between buildings to ensure privacy and sufficient light and air. Each development shall provide reasonable visual and acoustical privacy for dwelling units. Fences, insulation, walks, barriers and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property, the privacy of its occupants, the screening of objectionable views or uses and the reduction of noise.
- E. Maximum lot coverage. The total ground floor area of all buildings and structures shall not exceed 30% of the total area of the planned residential development. Maximum impervious surfaces shall not exceed 50% of the total area of the planned residential development.
- F. Height. The height of all buildings within 200 feet of the boundary of the planned residential development shall not exceed the maximum height permitted in the adjoining residential district. When

the building is located within 200 feet of more than one adjoining zoning district, the height shall not exceed the lowest maximum height allowed in either district. The Council may allow higher buildings beyond 200 feet from the perimeter in such a manner so as not to create any adverse impact on adjoining lands.

- G. Perimeter requirements. The planned residential development shall be designed to avoid adverse influences and impacts on surrounding properties.
- (1) Residential structures located adjacent to the perimeter boundary of the planned residential development may be required to conform to the setback and yard regulations of the adjoining district as described in Chapter **200**, Zoning, when necessary to ensure compatibility of land uses.
- (2) Nonresidential structures adjacent to the perimeter boundary of the planned residential development shall conform to the buffer setback and buffer yard requirements contained in Chapter **200**, Zoning.
- (3) Additional buffer yards, which conform to the specifications contained in Chapter **200**, Zoning, may be required where the planned residential development is adjacent to existing dwellings or neighborhoods.

§ 145-18 Open space requirements.

- A. A minimum of 30% of the gross area of the planned residential development shall be devoted to public or common open space.
- B. At least 50% of the required public or common open space shall include contiguous land.
- C. The Township Council may accept all or part of the common open space in dedication, provided that:
 - (1) The land so dedicated is contiguous; and
 - (2) The Council may require that no less than 50% of the land so dedicated shall be located outside of a floodplain, shall not be subject to seasonal flooding and shall have a finished grade not exceeding 5%.
- D. For purposes of calculating required acreages specified herein, common open space shall not include land occupied by streets, driveways, parking spaces and buildings or structures, other than recreational structures for the use by all residents of the development or by the public.
- E. All common open space shall be improved for its intended use. Up to half of the common open space may be left in its natural state to preserve unique natural features and amenities or to avoid excessive grading or removal of trees. At least 50% of the common open space shall be devoted to recreational or leisure-time activities, freely accessible to residents, property owners and tenants of the planned residential development.
- F. All residents, property owners and tenants of the planned residential development shall have access to the common open space. The common open space shall be on land owned by a property owners' association or on privately owned land when an open space easement and access easement has been granted to the property owners' association.

§ 145-19 Environmental design.

The environmental design scheme of the planned residential development shall be laid out in such a fashion so that all of the elements listed below are incorporated into a harmonious and aesthetically pleasing design. Consideration should be given to the overall character of the community and its visual effect on the residents of the planned development as well as the residents of the Township and Centre Region at large.

- A. Existing trees should be preserved whenever possible. Existing stands of mature healthy trees, waterways, historic sites, scenic points, views and vistas and other community assets and landmarks

should be preserved.

- B. The planned residential development should be designed to minimize grading and other changes to the natural terrain. All graded slopes should blend with the surrounding terrain and development.
- C. All landscaping shall be in conformance with an overall landscaping plan and unifying concept for the development.
- D. All planned residential developments shall conform to the regulations contained in Chapter **200**, Zoning, concerning floodplain conservation, slope controls, nuisance standards, outdoor storage, waste and sewage disposal, illumination, landscaping, historic properties and temporary uses.
- E. All planned residential developments shall conform to the regulations on erosion and grading control contained in Chapter **180**, Subdivision of Land.
- F. All planned residential developments shall conform to the requirements of Chapter **175**, Stormwater Management.

§ 145-20 Traffic and pedestrian access.

- A. A proposed planned residential development shall have direct access to a public collector or arterial street. Planned residential developments which propose multiple lots shall provide direct access from each lot by either a public street or private street designed and constructed in conformance with the appropriate regulations of Chapter **177**, Streets and Sidewalks, and Chapter **180**, Subdivision of Land. **[Amended 5-17-2012 by Ord. No. O-12-03]**
- B. All public streets in the development shall be dedicated to the Township and shall conform to all standards contained in Chapter **180**, Subdivision of Land, concerning the design of streets. **[Amended 5-17-2012 by Ord. No. O-12-03]**
- C. A system of pedestrian access, in the form of paved sidewalks or interior walkways, shall be provided to allow walking between every use, structure or recreational facility and shall be connected with existing sidewalks and walkways adjacent to the planned residential development. Sidewalks shall be designed in conformance with the construction standards in Chapter **180**, Subdivision of Land. At the discretion of the Council, interior walkways may be constructed from materials other than those outlined in Chapter **180**, Subdivision of Land.
- D. Parking shall be provided as required in Off-street parking. All development within a planned residential development shall provide off-street parking as required in § **200-38**, Off-street parking, with the following exceptions: **[Amended 5-17-2012 by Ord. No. O-12-03]**
 - (1) If the number of residents residing in a dwelling unit exceeds three unrelated individuals pursuant to § **200-11Z**, one off-street parking space shall be required for each bedroom within the dwelling unit. In addition, spillover parking shall also be supplied pursuant to § **200-38C(2)(b)**.
- E. Motor vehicle access. Every lot within a planned residential development shall have motor vehicle access to a public street directly or via a private street in accordance with § **200-37**, Motor vehicle access, with the following exceptions: **[Added 5-17-2012 by Ord. No. O-12-03]**
 - (1) Setbacks from property lines. Motor vehicle access via a driveway shall be set back from side and rear property lines as follows:
 - (a) Single-family houses: five feet.
 - (b) All other uses: 10 feet.

- (c) Two adjoining property owners may locate their driveways closer to the lot line, or joined to each other, if the following condition is met: The two adjoining property owners shall mutually agree to a driveway setback-encroachment and/or common driveway in such form and manner acceptable for recording in the office of the Recorder of Deeds of Centre County, Pennsylvania, binding their heirs and assigns to the easement so created.
- (2) Setbacks from street intersections. Motor vehicle access via a driveway shall be set back a distance from intersecting public streets as follows:
 - (a) Driveways providing motor vehicle access for uses other than single-family houses and duplexes shall enter a public street right-of-way at least 100 feet from its intersection with another public street, except for intersections of two or more arterial streets in which case the minimum distance shall be at least 200 feet.
 - (b) Driveways providing motor vehicle access for single-family homes and duplexes shall enter a public street right-of-way at least 50 feet from its intersection with another public street of any classification.
 - (c) In all cases cited above, the distance in which access is prohibited shall be measured from the tangent of the curb return of the intersecting street cartway to the tangent of the curb return of the driveway, but shall not include, in measurement, any portion of either curb return as illustrated below:

[\[Image\]](#)

- (3) If two or more driveways on the same lot enter a public street right-of-way, the distance between the entrances of the driveways shall be at least 50 feet. Distance between driveways shall be measured in the same manner as described above in § **145-20E(2)(c)**. The distance between two driveways may be reduced to 10 feet if the following conditions are met:
 - (a) The driveways are located on a public street classified as either a local or neighborhood street pursuant to Chapter **177**, Streets and Sidewalks,
 - (b) Each individual driveway provides vehicle access to no more than one dwelling unit and its associated off-street parking spaces,
 - (c) The total number of driveways permitted on a particular street frontage regardless of setbacks shall not exceed a number equal to the length of said street frontage divided by 50.

§ 145-21 **Utilities, easements and markers.**

- A. Sanitary sewage disposal. All buildings in a planned residential development located in the designated service area of the Centre County Comprehensive Water and Sewer Plan, 1970, as revised, or in any residential zoning district, as designated by Chapter **200**, Zoning, shall connect to the public sewer system.
- B. Water supply.
 - (1) All planned residential developments shall connect to public water authority/company mains. All water mains and laterals shall meet the design and installation specifications of said water authority/company.
 - (2) Fire hydrants shall be installed with the extension of water mains in locations approved by the Council which assure adequate accessibility of fire equipment and personnel. Fire hydrants shall be placed in such a manner that no building so served shall be further than 600 feet from the hydrant. The Council may, at its discretion, submit copies of the proposed development plan to the local Fire Chief for review. The Fire Chief, during the course of his review, shall consider the location of all fire hydrants and fire

lanes as well as any other factors that may impede adequate fire protection to the residents of the development and the Township. **[Amended 9-4-2003 by Ord. No. O-03-16]**

- C. Easements. Utility and drainage easements shall be provided in conformance with the requirements of Chapter **180**, Subdivision of Land.
- D. Monuments and markers. Monuments and markers shall be installed for all land subdivisions in the planned residential development and for the perimeter boundary in conformance with Chapter **180**, Subdivision of Land.

§ 145-22 Phasing and scheduling.

If a planned residential development is to be developed in phases, over a period of years and according to an approved schedule, the following requirements shall be met:

- A. The gross residential density of any phase, or in combination with previously developed phases, shall not exceed the maximum allowed density of the total planned residential development.
- B. Common open space intended to be devoted to recreational or leisure-time activities as designated on the approved tentative plan shall be improved as part of the first phase of development, including all planned means of access thereto.
- C. No nonresidential development other than that permitted in common open space shall be constructed until after 30% of the housing units have been constructed.
- D. All through streets designed to ensure adequate access to and within the PRD may be required to be provided concurrent with final approval of the first phase of the tentative plan.

§ 145-22.1 Workforce housing.

[Added 6-20-2013 by Ord. No. O-13-01]

Upon the provision of workforce housing as defined by Chapter **200**, Zoning, the requirements of this chapter may be modified pursuant to § **200-38.4**.

Article VI **Administration and Enforcement**

§ 145-23 Permits and fees.

The College Township Council or its duly appointed representatives shall have the duty and authority for the administration and general enforcement of the provisions of this chapter, as specified herein. Permits required by the Township for the erection or alteration of buildings, the installation of sewage disposal systems or for other appurtenant improvements to or use of the land shall not be issued by any Township official unless in accordance with the procedures specified herein.

- A. Fees. The Council may establish, by resolution, a schedule of fees and a collection procedure for review and inspection of all applications for approval of a planned residential development plan.
 - (1) All such fees shall be payable to College Township.
 - (2) No plan shall be considered as having been filed or accepted for review, inspection or approval unless and until all fees are first paid in full.
- B. Zoning permit. In a planned residential development, a zoning permit shall be required prior to the erection, extension or alteration of any structure and prior to the use or change in use of a structure or land, as required by Chapter **200**, Zoning, including § **200-50**, Residential site plan review. **[Amended**

- C. Occupancy permit. Upon completion of the erection, extension or alteration of a structure in a planned residential development for which a zoning permit was issued, the applicant shall apply for an occupancy permit, as required by Chapter **200**, Zoning.

§ 145-24 Violations and penalties.

No changes, including changes in use, bulk and location of structures, quantity and location of open space and density of residential uses, shall be made in the approved final plan, except upon application to the Township under the procedures set forth in this chapter. Any person, partnership or corporation who or which, being the owner or agent of any lot, tract or parcel of land, shall lay out, construct, open or dedicate any street, sanitary sewer, stormwater sewer, water main or other improvements for public use, travel or other purposes or for the common use of occupants of buildings abutting thereon or who sells, transfers or agrees or enters into an agreement to sell any land in a planned residential development, whether by reference to or by other use of a plan of such development, or erect any building thereon, unless and until a plan has been prepared and approved in full compliance with the provisions of this chapter, shall be subject to those penalties prescribed by Sections 515 and 616 of the Pennsylvania Municipalities Planning Code, as amended, which penalties provide for the imposition of fines and other penalties.

A. The Township may initiate and maintain civil action:

- (1) To obtain injunctive relief against the owner or agency who attempts the improper sale or conveyance of land;
 - (2) To set aside and invalidate any conveyances of land made prior to plan approval of any planned residential development; or
 - (3) To enforce, at law or in equity, any of the provisions of this chapter.
- B. Nothing herein shall prevent the Township from taking such other action necessary to prevent or remedy any violation.

§ 145-25 Property owners' association.

- A. A property owners' association shall be established for the ownership and maintenance of common open space, recreation facilities and other common facilities not dedicated to the municipality.
- B. The requirements and functions of the property owners' association shall be set forth in covenants, restrictions and grants of easements and shall comply with the following:
- (1) The property owners' association shall be legally established before any properties are sold.
 - (2) Membership shall be mandatory for each property owner and any successive buyer.
 - (3) The common open space shall be guaranteed by restrictive covenants or easements describing the open space and its maintenance by the residents of the development.
 - (4) The association shall be responsible for all costs of the common elements, including liability insurance, local taxes and the maintenance of facilities.
 - (5) Property owners shall pay their pro rata share of the costs in the form levied by the association, which can become liens on properties.
 - (6) The association shall be able to adjust the financial responsibility of its membership to meet changing needs.

- C. In the event that the organization established to own and maintain common open space, or any successor organization, shall at any time after establishment of the planned residential development fail to maintain the common open space in reasonable order and condition in accordance with the development plan, the Township may serve written notice upon such organization or upon the residents of the planned residential development, setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be corrected within 30 days thereof and shall state the date and place of a hearing thereon, which shall be held within 14 days of the notice. At such hearing, the Township may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected. If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said 30 days or any extension thereof, the Township, in order to preserve the taxable values of the properties within the planned residential development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said maintenance by the Township shall not constitute a taking of said common open space nor vest in the public any rights to use the same. Before the expiration of said year, the Township shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the planned residential development, to be held by the Council or its designated agency, at which hearing such organization or the residents of the planned residential development shall show cause why such maintenance by the Township shall not, at the option of the Township, continue for a succeeding year. If the Council or its designated agency shall determine that such organization is ready and able to maintain said common open space in reasonable condition, the Township shall cease to maintain said common open space at the end of said year. If the Council or its designated agency shall determine that such organization is not ready and able to maintain said common open space in a reasonable condition, the Township may, at its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The decision of the Council or its designated agency shall be subject to appeal to court in the same manner and within the same time limitation as is provided for zoning appeals by the Pennsylvania Municipalities Planning Code, as amended.
- D. The cost of such maintenance by the Township shall be assessed ratably against the properties within the planned residential development that have a right of enjoyment of the common open space and shall become a lien on said properties. The Township, at the time of entering upon said common open space for the purpose of maintenance, shall file a notice of lien in the office of the prothonotary of Centre County upon the properties affected by the lien within the planned residential development.

§ 145-26 Amendments.

Provisions of this chapter may, from time to time, be amended through action of the Council in the manner provided by the Pennsylvania Municipalities Planning Code, as amended.

Attachments:

[145a Plan Res Dev](#)

PLANNED RESIDENTIAL DEVELOPMENT

145 Attachment 1

Township of College

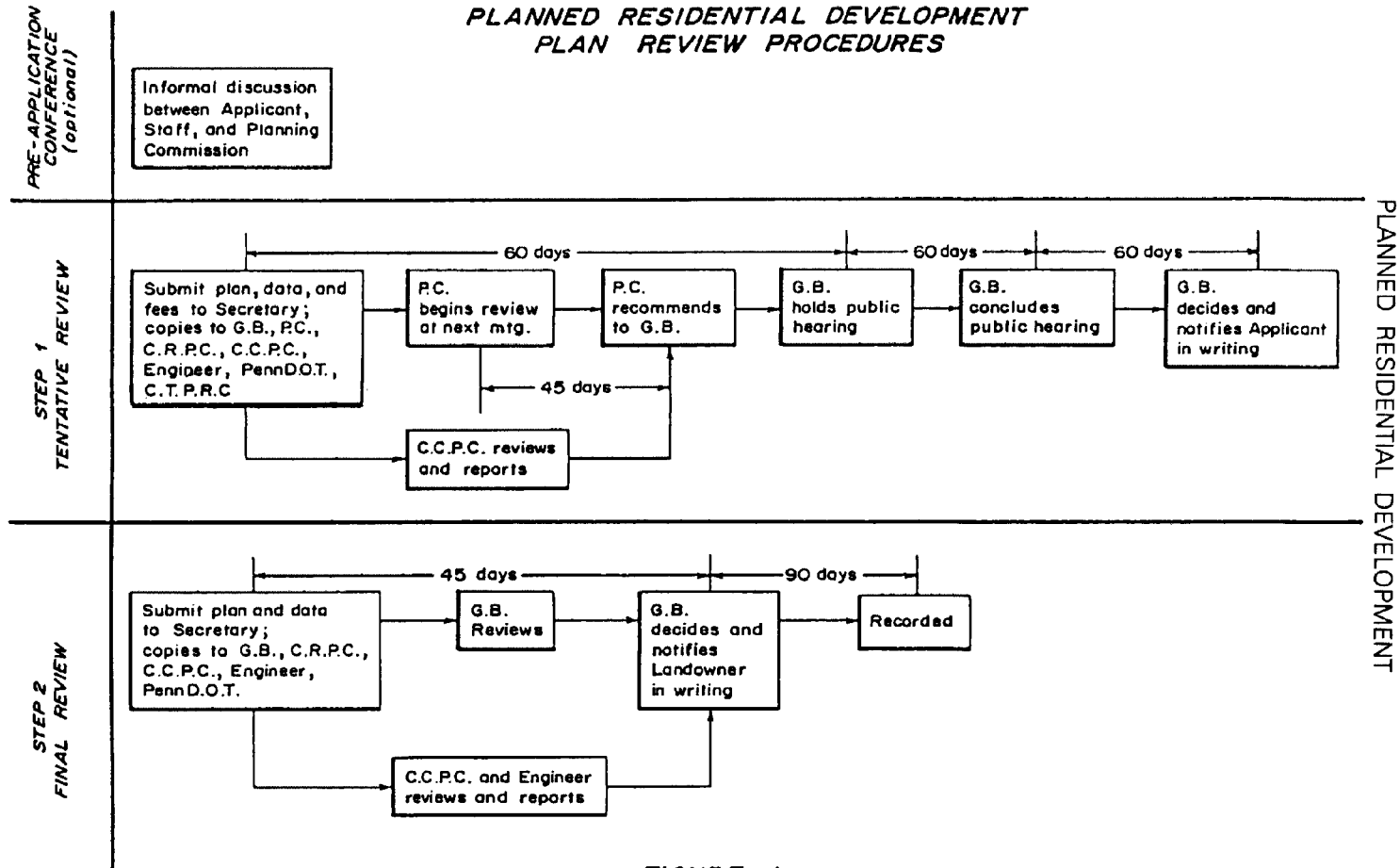


FIGURE 1.



**COLLEGE TOWNSHIP COUNCIL
REGULAR MEETING MINUTES
Thursday, February 16, 2023
1481 E. College Avenue, State College PA 16801
Hybrid Meeting (In-Person or via Zoom)**

**ATTENDED BY –
COUNCIL:**

Carla Stilson, Chair
Dustin Best, Vice Chair
L. Eric Bernier
D. Richard Francke
Susan Trainor

STAFF:

Adam T. Brumbaugh, Township Manager/Secretary
Mike Bloom, Assistant Township Manager
Don Franson, P.E., P.L.S., Township Engineer
Amy Kerner, P.E., Public Works Director
Lindsay Schoch, AICP, Principal Planner
Mark Gabrovsek, Zoning Officer
Jennifer Snyder, Assistant Township Secretary

CALL TO ORDER: Ms. Carla Stilson, Chair, called to order the February 16, 2023, Regular Meeting of the College Township (CT) Council at 7:03 PM and led in the Pledge of Allegiance.

ANNOUNCEMENT: Chair Stilson announced that Council met in Executive Session prior to the start of this meeting to discuss a personnel matter.

PUBLIC OPEN DISCUSSION:

No Public Open Discussion brought forward.

NEW AGENDA ITEMS:

No New Agenda Items added.

PLANS:

P-1 Arize Federal Credit Union Final Land Development Plan

Ms. Lindsay Schoch, AIPC, Principal Planner, offered that the Arize Federal Credit Union is proposing a two-story, 11,280 square foot building located 145 Benner Pike, State College, Tax Parcel 19-02B-013. A solar array is proposed to provide electrical services to the building. The solar array, on the LDP, is located in a different location from the sketch plan because the



proposed location did not meet the Township's ordinance. It had to be relocated to ensure it is out of the setback area. A fence was added per the ordinance to shield the array. The plan includes sidewalks along Ellis Place and a sidewalk deferral is being requested for the remainder of the underdeveloped portion of the lot until possible future development or two years, whichever comes first. The LDP shows full access to the site from Ellis Place. There is full ingress from Benner Pike to the Arize driveway and egress right out only to Benner Pike.

Mr. Mark Torretti, Project Manager, Penn Terra Engineering, addressed Council regarding the sidewalk deferral. They are seeking a deferral from construction of the portion of sidewalk west of the proposed full access in/right-out access entrance on Benner Pike until a land development plan for the remaining portion of the property is submitted. They are asking for a deferral for up to two (2) years. If the property is not developed at that time, sidewalk installation will be required.

Mr. Best made a motion to approve the preliminary/final land development plan of Arize Federal Credit Union dated December 19, 2022, and last revised February 2, 2023, subject to the following conditions:

- 1. Within ninety days from the date of approval by Council, all conditions must be satisfied, final signatures must be obtained and the plan must be recorded with the Centre County Recorder of Deeds Office. Failure to meet the ninety day recordation time requirement will render the plan null and void.**
- 2. Pay all outstanding review fees.**
- 3. Address, to the satisfaction of the Township Engineer, any outstanding plan review comments from Staff.**
- 4. Fully comply with College Township Code Section 108-12.**
- 5. Post surety as approved by the Township Engineer prior to recordation.**
- 6. Provide an intent to serve letter from College Township Water Authority.**
- 7. Provide proof of NPDES approval.**
- 8. Approve the request for sidewalk deferral for the portion of the lot not currently being developed for a period of two (2) years or less.**
- 9. Stocker Auto Body Shop Preliminary/Final Land Development Plan must be recorded prior to recordation of the Arize Federal Credit Union Preliminary/Final Land Development Plan.**
- 10. Provide approved PennDOT Highway Occupancy Permit prior to occupancy.**
- 11. All conditions must be accepted in writing within seven (7) days from the date of the conditional approval letter from the Township Engineer.**

Mr. Francke seconded the motion.

Motion carried unanimously.



REPORTS:

a. Manager's Update

In the Manager's Update, Mr. Brumbaugh, Township Manager, reported the CT discussions on the Solar Power Purchase Agreement will be delayed until the March 2, 2023, CT Council meeting, pending information from Working Group. The LTAC met to review traffic-calming vote. LTAC Chair Hartzell to present voting tally and final LTAC recommendation to Council later in the meeting. Centre Region Parks and Recreation Authority to appoint its delegate to the Thompson Woods Preserve Governance Committee at its meeting on February 16, 2023. CT received DRAFT of a Franchise Agreement with Shentel and Cohen Law Group. Cohen is representing Centre Region municipalities in cable franchise negotiations with Shentel. Harris, Patton, and CT Managers participated in a conference call with Cohen to answer questions derived from DRAFT Agreement. DPZ, Form Based Code Consultants, will be in town on February 27th to March 1st to meet with Staff and tour the area.

Ms. Amy Kerner, P.E., Public Works Director, offered an update on the Spongey Moth infestation.

b. COG Regional, County, Liaisons Reports

COG Public Safety Committee: Ms. Trainor reported the COG Public Safety Committee met on February 14, 2023, and reappointed the Code Board of Appeals, and heard a presentation on the Centre Region Fire Protection 2022 Year in Review.

Local Traffic Advisory Committee (LTAC): Ms. Trainor reported the LTAC met on February 8, 2023, and heard the results of the neighborhood vote and approved a recommendation to Council to move forward with the Traffic Calming plan.

COG Finance Committee: Mr. Francke offered the COG Finance Committee met on February 9, 2023, and discussed the resignation of COG Finance Director, reviewed recommendation for Solar Power Purchase Agreement RFP, received the initial draft of 2024 Budget and discussed budget prioritization.

COG Facilities Committee: Mr. Bernier reported Facilities Committee met on February 7, 2023, and discussed the Solar Power Purchase Agreement and the long-range capital plan.

Spring Creek Watershed Committee (SCWC): Mr. Best reported the SCWC met on February 15, 2023, in a special meeting to review solicitor comments received from Harris Township and SCWC solicitor. After review of comments, the revised bylaws were unanimously approved. Office of Treasurer was filled by Kevin Abbey and the "at large" vacancy filled by Jasmine Fields.

College Township Industrial Development Authority (CTIDA): Mr. Best reported the CTIDA met on February 15, 2023, and reviewed its financial report, and committee reports. They are approved the new investment policy and approved seeking extension of the Interim Executive Director to June 2023.



COG Climate Action and Sustainability Committee (CAS): Ms. Stilson reported the CAS met on February 13, 2023, but was adjourned due to lack of quorum. They did hear an informal presentation on the Solar Power Purchase Agreement and discussed how municipalities can address the Climate Action Adaptation Plan.

c. Staff/P.C./Other Committees

Planning Commission (PC): Mr. Robert Hoffman, PC liaison to Council, offered the PC met on February 7, 2023, and heard a sketch plan on the State College Food Bank and held a discussion of the Official Map.

d. Diversity, Equity & Inclusion (DEI) Reports (Public Invited to Report)

February is Black History Month.

CONSENT AGENDA:

CA-1 Minutes, Approval of

- a. January 30, 2023, Special Meeting
- b. February 2, 2023, Regular Meeting

CA-2 Correspondence, Receipt/Approval of

- a. Email from Sue Smith, dated January 31, 2023, regarding Solar Power
- b. Letter from PA DEP, dated February 4, 2023, regarding Slab Cabin Run Evaluation Report
- c. Email from Daniel Materna, dated February 16, 2023, regarding Casino
- d. Email from Donna Spicher, dated February 15, 2023, regarding Centre Hills Village Traffic Calming project

Mr. Bernier made a motion to approve the February 16, 2023, Consent Agenda.

Ms. Trainor seconded the motion.

Chair Stilson thanked Mr. Frank Scott, CT Senior Enforcement Officer, for the pictures he provides for the Consent Agenda.

Motion carried unanimously.

OLD BUSINESS:

OB-1 Local Traffic Advisory Committee – Centre Hills Traffic Calming

Mr. Brumbaugh, Township Manager, offered an overview of the recent neighborhood traffic-calming proposal for the Centre Hills Village neighborhood. The proposal includes traffic-calming measures, seven (7) speed humps on Oak Ridge Avenue and seven (7) speed humps on Shamrock Avenue, as recommended by the Neighborhood Traffic Calming Committee (NTCC).



Mr. Don Hartzell, Local Traffic Calming Committee (LTAC) Chair, offered the results of the voting.

- 145 properties surveyed
- Ballots received: 112 out of 145, 77.2% (60% required per CT Traffic Calming Guidelines)
- Percent of ballots in favor: 80.4% (66% votes in favor required per CT Traffic Calming Guidelines)
- Only 33% of the ballots in favor were from residents on Oak Ridge Avenue

Mr. Hartzell offered at the February 8, 2023, meeting, LTAC voted to forward to Council a recommendation in favor of constructing the traffic control measures as proposed by the NTCC.

Mr. Franson, Township Engineer, estimated that if Council moves forward with the proposed recommendation, the project could be completed by mid-summer.

Ms. Trainor made a motion to acknowledge the neighborhood vote results and receive the final LTAC recommendation to proceed with construction of the Centre Hills Village Traffic Calming plan.

Mr. Francke seconded the motion.

Motion carried unanimously.

Mr. Brumbaugh offered that all of the authority to enact all traffic-calming measures lies with Council. The survey results indicate that the neighborhood is interested and supports the proposal outlined by the NTCC and approved by LTAC. Mr. Brumbaugh opined that Council is not necessarily bound by the vote. The proposed project costs were inserted into the 2023 budget in the amount of \$77,000.00.

Council discussed the LTAC process and the traffic-calming proposal. They thanked the LTAC and the NTCC for their efforts in the project. Council recognized the letter received from Ms. Spicher on the Consent Agenda CA-2.d.

Council discussed the budget in 2023 for the proposed traffic-calming measures and discussed getting alternate bids for a lesser amount of speed humps on each street.

Council agreed the traffic-calming project is needed and is committed to doing something to fix the problem. The LTAC process guidelines were followed. Council endorsed the proposed plan before it went to a neighborhood vote. The neighborhood overwhelmingly supported the proposal.

Chair Stilson opined that Emergency Services and the School District did not fully endorse the project or weigh in with their concerns.

Council has the final decision, in regards to the traffic-calming measures, with the approval of any construction contracts.



After discussion, a majority of Council would like to see the bid packet include two (2) alternate bids with reduced amounts of speed humps on each street. Staff will ask the Township's Traffic Engineers for two (2) alternate bids with reduced number of speed humps and bring these specs back to Council before moving forward.

OB-2 Maxwell Development of Regional Impact Report (DRI) and Rezoning

Ms. Lindsay Schoch, AICP, offered that on December 22, 2022, the Township received the Development of Regional Impact (DRI) Completeness Review and Recommendation for the Maxwell Rezoning in College Township prepared by Mr. Mark Boeckel, AICP, Principal Planner, Centre Region Planning Agency (CRPA). The request is to rezone the three (3) acre portion of tax parcel 19-004078 from Forest to Industrial. As per the letter accompanying the DRI Report, the DRI application is deemed complete. Ms. Schoch reported that as part of the DRI multi-step process, the Planning Commission had the opportunity to respond and comment to the request.

Ms. Schoch offered a timeline of the DRI process.

Council discussed the improvements at the intersection/tracks at Struble Road and Benner Pike. Council discussed the existing buffer between the parcel and the residential district on the northwest corner of the parcel. Council suggested it be recorded on the plan that the buffer of trees not be removed.

Mr. Bernier made a motion to set a public hearing for the rezoning of a portion of Tax Parcel 19-004-78, 501 Struble Road on April 20, 2023.
Mr. Best seconded the motion.
Motion carried unanimously.

NEW BUSINESS:

NB-1 Planned Residential Development (PRD) Ordinance – Modification

Ms. Lindsay Schoch, AICP, Principal Planner, offered that the Township received a letter, dated February 1, 2023, from Penn Terra Engineering, requesting to amend the College Township Planned Residential Development (PRD) Ordinance, Chapter 145-17.A. to permit Planned Research and Business District (PRBD) as a base zone for PRD. Specifically, they are proposing a mixed-use development on this 50-acre parcel Tax Parcel 19-2-59, Shiloh Road in Dale Summit.

Ms. Schoch offered that the parcel in question is zoned PRBD, which does not allow for PRD type development. Further, the developer is seeking the same density as allowed under the Multifamily District (D-3), which permits twenty-two dwelling units per acres.

Recently, the Township entered into an agreement with DPZ CoDesign, Inc. to develop a Form-Based Code as a more flexible alternative to the existing zoning districts in Dale Summit. Form-Based Code is expected to enable more mixed-use development in the Dale Summit area.



In discussion, Council offered that CT should never consider a rezoning based strictly upon an individual development proposal without also considering the larger ramifications of such a decision. This proposed development provides an opportunity to leverage the expertise of DPZ in crafting revisions to the PRD that would accommodate a real-world catalyst project.

Council added that precedent for rezoning sections of this area of the Township to accommodate residential uses, which are consistent with those on adjacent parcels, was set in 2021 with the change of R-2 to R-3 to accommodate the Evergreen Heights development.

Council discussed the timing component of this request and the opportunity to fully leveraging the added capacity and expertise of the DPZ team. Council discussed this as an opportunity to look over the entire PRD ordinance for additional changes that have merit.

Ms. Trainor made a motion to remand the modifications to the Planned Residential Development Ordinance to the PC for further consideration and recommendations.

Mr. Best seconded the motion.

Motion carried unanimously.

NB-2 Post Office Easement

In a memorandum, dated February 2, 2023, Ms. Amy Kerner, P.E., Public Works Director, reported that property owner, Judith A. Larkin (previously Hoch) who lives at 122 Mt. Nittany Road, has contacted Staff several times. She is requesting that Staff remove invasive vegetation at the rear of her property in accordance with the easement agreement that exists between her and the Township. After several exchanges of emails and a site visit, Staff has determined there are two issues, which need to be addressed. First, should Staff remove the invasive species on Ms. Larkin's property, as has been repeatedly requested. Second, what is Council's vision for use of the existing 25' x 25' Walkway Easement between the lands of the Post Office building and Harris Alley.

Ms. Kerner explained that the Mutual Easement Agreement allows Ms. Larkin to use a 12' x 50' strip of land adjacent to the western property line as a Driveway Easement and allows an extension of the above-mentioned Driveway Easement to the edge of the parking lot as a Landscape Easement. Additionally, Ms. Larkin allowed the use of a 25' x 25' easement at the rear of their property for direct access from the lands of the Post Office to Harris Alley. An additional area is described as a planting area that may be used by Ms. Larkin, as their option, with the same stipulations as the Landscape Easement previously mentioned.

After discussion, Council asked Staff to clear a portion of the 25' x 25' easement and establish a walkway to the Post Office. Staff will determine the limits of the easement before proceeding. Additionally, Staff should establish a method to cutoff cut-through traffic on private property and monitor to see if this path is being used by residents.



STAFF INFORMATIVES:

No *Staff Informatives* were pulled for discussion.

OTHER MATTERS:

Staff offered information regarding the National Civics Bee, which has been posted to the Township's website.

ADJOURNMENT:

**Mr. Francke moved to adjourn the February 16, 2023, Regular College Township Council Meeting.
Chair seconded the motion.**

The February 16, 2023, Regular College Township Council Meeting was adjourned at 10:03 PM.

Respectfully Submitted By,

Adam T. Brumbaugh
Township Secretary

Zoning Bulletin

in this issue:

Affordable Housing	1
Dimensional Variances	2
Zoning Permits	4
Non-conforming Use	4
Takings	6
Zoning News Around The Nation	6

Affordable Housing

Town seeks to block developer from converting affordable housing units to market-rate dwellings

Citation: *Town of Westborough by and through Select Board v. Northland TPLP LCC*, 2022 WL 16578825 (D. Mass. 2022)

The town of Westborough, Massachusetts filed suit in a local land court against Northland TPLP LCC (Northland) seeking declaratory judgment and injunctive relief under state law to enjoin it from violating state law. Northland had the case transferred to a federal court, and the town asked the court to send the case back to state court.

DECISION: Request to remand granted.

The federal court didn't have subject matter jurisdiction pursuant to hear the case.

To consider a request for remand, the court assessed "whether it 'would have had original jurisdiction of the case had it been filed in [this] court.'" It was the defendant's burden to establish that removal to the district court was proper and a defendant had to "make a 'colorable' showing that a basis for federal jurisdiction exist[ed]."

This case concerned The Residences at Westborough Station, (Westborough Station), a 120-unit housing complex constructed in a single-family zoning district under a state law (Chapter 40B) enacted to "provide relief from exclusionary zoning practices which prevented the construction of badly needed low and moderate income housing."

"Developers building under Chapter 40B submit[ed] applications to the local zoning board, and, if an application [wa]s denied, the developer [could] appeal to the Housing Appeals Committee (HAC)," the court explained. The HAC would then conduct its own review of the zoning board's decision to determine if it was "reasonable and consistent with local needs." And if the HAC found that the decision of the local board wasn't justified it could direct the local board to issue a comprehensive permit.

Here, a developer (CMA Inc. (CMA)) had submitted an application to the Westborough Zoning Board of Appeals (ZBA) to construct housing under the comprehensive permit statute in 1988. The ZBA denied CMA's application, so it appealed to the HAC, which ordered the issuance of a comprehensive permit for no more than 120 housing units in 1992.

Following the HAC's decision but before the ZBA issued a comprehensive permit, Avalon Properties Inc. (Avalon) sought to purchase the property from CMA and it proposed a modified design for the 120-unit structure.

In a Joint Status Report and Recommendation submitted to the HAC, Westbor-



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ough and Avalon —agreed that Avalon’s proposal complied with the HAC’s 1992 decision and requested that the HAC issue a final comprehensive permit.

In 1994, the HAC issued a comprehensive permit and an order approving the transfer of the permit from CMA to Avalon. And then, CMA conveyed title of the property to Avalon.

Under M.G.L. chapter 40B, Avalon executed a regulatory agreement with the Massachusetts Housing Financing Agency (MHFA), which provided that “ ‘not less than [20] [percent] of the units shall be rented to low-income persons.’ ”

In 2007, Avalon conveyed the property to Northland, which executed an amendment to the regulatory agreement with MHFA and providing that its obligation to 20% of the units to low-income residents would expire on September 25, 2022.

In September 2021, Northland provided notice to the 24 affordable units that it would be converting them to market-rate units in September 2022.

The town then filed suit.

BACK TO THE COURT’S RULING

Here, there wasn’t a requisite “mix of ‘federal ingredients.’ ” “Northland [had] applied for a comprehensive permit under a state statute [Massachusetts General Law chapter 40B section 20-23], not a federal program and any reference to federal subsidy programs there was for the purpose of determining ‘the threshold eligibility for the developer of a housing project to seek a comprehensive permit,’ . . . , a matter not at issue here.”

Thus, “Northland fail[ed] to meet its burden that a federal issue [wa]s ‘necessarily raised’ or that a federal question [wa]s ‘actually disputed.’ ” . . . At best, any connection to federal law [wa]s attenuated.”

CASE NOTE

Under the state law at issue—Chapter 40B—“low or moderate income housing [wa]s defined as ‘any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization.’ ” The court explained that Chapter 40B was “a comprehensive permit statute, which permitted] developers to construct affordable multi-family housing in single-family housing zoning districts where there [wa]s a local shortage of affordable housing” as defined under state law.

Dimensional Variances

After ZBA approves variance request, neighborhood group appeals

Citation: *Polish Hill Civic Association v. City of Pittsburgh Zoning Board of Adjustment and Laurel Communities*, 2022 WL 16752902 (Pa. Commw. Ct. 2022)

The Polish Hill Civic Association (Polish Hill) appealed a court ruling affirming the City of Pittsburgh Zoning Board of Adjustment’s (ZBA) grant of zoning relief concerning a property located at 1226 Herron Avenue in the city.

DECISION: Vacated; case sent back for further proceedings.

The ZBA was directed to consider additional evidence before reaching its conclusion.

MORE ON THE FACTS

The property is in the Polish Hill neighborhood of Pittsburgh’s Hillside zoning district (H District). It consisted of 34 parcels, some of which had been originally platted and recorded in a March 1869 subdivision plan, with the remainder platted and recorded in a November 1870 subdivision plan.

Contributors

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The city's zoning code became effective in 1999, and only eight of the parcels met the requisite minimum lot size of 3,200 square feet. Six of the parcels contained structures and some were vacant or used for parking. Combined, the 34 parcels measured out to about 99,698 square feet.

Laurel Communities (Laurel) proposed consolidating and re-subdividing 33 of the parcels into 27 lots and constructing an attached single-family house on each new lot. The new lots would range in size from 1,320 to 7,179 square feet, and eight of these lots would not meet the zoning code's minimum lot size requirement of 3,200 square feet while one parcel would retain its present lot boundaries and remain undeveloped.

Laurel asked the ZBA to recognize the protected status of the legal nonconforming lots or, in the alternative, a dimensional variance from the 3,200-square-foot minimum lot size requirement set forth in city code.

Laurel also requested dimensional variances from the 50% maximum area of disturbance limitation contained in the code for 17 of the proposed 27 lots and from the restriction against cutting or filling slopes within five feet of property lines. Additionally, it sought a special exception to construct single-family attached dwellings on the property.

After conducting a hearing, the ZBA granted Laurel's requests, approving the proposed dimensions of the eight noncompliant lots, and "[t]o the extent . . . required," granting a dimensional variance from the Code's minimum lot size requirement. It also granted the requested dimensional variance from the code's maximum disturbance area limitation to permit the disturbance of up to 51,959 square feet, or 57.9%, of the 89,679-square-foot development area, subject to the condition that no disturbance was to occur on the steep slope areas or on one of the parcels. And it determined that a variance from the code's restriction against cutting or filling slopes within five feet of property lines was appropriate to permit reasonable development, subject to the condition that no grading would occur on steep slope areas.

The ZBA ultimately concluded that constructing single-family attached residences on the property was permissible as a special exception in H Districts under the zoning code subject to specific enumerated criteria. It also found that Laurel had presented substantial and credible evidence demonstrating that the proposed single-family attached residential use of H District property complied with the code.

Polish Hill objected to Laurel's proposal from the get-go and the ZBA acknowledged its concerns. But it found such concerns to be too generalized concerns to meet the burden of demonstrating there was a "high degree of probability" of specific detrimental impacts upon the public interest.

BACK TO THE COURT'S RULING

Nonconforming lots—The lower court erred in affirming the ZBA's approval of Laurel's re-subdivision plan. The 34 parcels had been platted in the 1800s. Subsequently, the code's 3,200-square-foot minimum lot size requirement rendered 26 of these parcels undersized; thus, they were dimensionally nonconforming, the court explained.

Laurel proposed to re-divide 33 parcels into 27 larger

lots, of which only eight would remain nonconforming. As previous case law indicated, "the proposed undersized lot resulted from the merger of two lawfully nonconforming parcels." And the ZBA had "failed to determine whether the eight nonconforming lots proposed by Laurel's re-subdivision plan would be located within any of the 26 preexisting lawful nonconforming lots."

In addition, the ZBA hadn't addressed "whether the lots were in common ownership prior to the adoption of the [c]ode's minimum lot size requirement, or whether they came into common ownership after that time."

Dimensional variance requests—The lower court erred in affirming the ZBA's grant of the requested dimensional variances. The city code stated no variance could be granted unless a number of conditions were met:

- "there [we]re unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to the conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property [wa]s located";
- because of such physical circumstances or conditions, there [wa]s no possibility that the property c[ould] be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance [wa]s therefore necessary to enable the reasonable use of the property";
- "such unnecessary hardship ha[d] not been created by the [applicant]";
- "the variance, if authorized, w[ould] not alter the essential character of the neighborhood or district in which the property [wa]s located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare"; and
- "the variance, if authorized, w[ould] represent the minimum variance that w[ould] afford relief and . . . represent the least modification possible of the regulation in issue."

A ZBA could "attach such reasonable conditions and safeguards as it . . . deem[ed] necessary to implement to purposes of this act and the zoning ordinance," the court added. And it was Laurel's burden of showing that the proposal satisfied the applicable review criteria.

Here, the ZBA found that Laurel was entitled to the requested dimensional variance on the basis that "any reasonable development of the site would require disturbance of more than 50% of the site or 50% of each existing parcel." It also concluded that considering the unique conditions of the site and Laurel's assertion that the steep slopes on the site and parcel wouldn't be disturbed a dimensional variance to allow a "maximum disturbance of 57.9% of the 89,697[-square-foot] development area [wa]s appropriate."

But, the ZBA had failed to consider the relevant criteria, which all had to be met for the variance to be issued. "The

failure of a zoning board to consider each requirement of a zoning ordinance prior to granting a variance is an error of law,' ” the court wrote.

Practically Speaking:

The ZBA was bound to evaluate whether the request for a dimensional variance met all (not some) of the relevant criteria outlined in the zoning ordinance.

Zoning Permits

Did town err in granting zoning permit for proposed garage?

Citation: *Thomas v. Zoning Board of Appeals of Town of Somers*, 2022 WL 16570901 (Conn. Super. Ct. 2022)

That’s the question a state court recently answered in a case where the Town of Somers, Connecticut was named as defendant. The case concerned a proposed garage that Matthew Moylan sought to construct on their property.

Moylan’s abutting neighbors, David and Mary Thomas (the plaintiffs), did not want him to build the garage.

Moylan applied for a building permit, which listed the proposed garage’s dimensions as 40 feet by 60 feet with a height of 20 feet. The application included an attached building plan, which indicated that the walls would be 20 feet with additional height created by an angled roof of undefined height. The building plan included a scale of one-fourth inch equals one foot.

The town’s zoning officer approved the permit, and Moylan began construction.

In April 2021, the plaintiffs notified the zoning officer that the structure wasn’t in compliance with the permit that had been granted or the local zoning regulations.

The following day, the zoning officer issued a stop-work order. The plaintiffs filed an appeal asking the board to rescind the permit. The board overruled the appeal and found the application as submitted was compliant with the zoning regulations.

The plaintiffs continued to assert that the permit wasn’t compliant, because the building plan attached to the application was noncompliant with the zoning regulations. They claimed the attorney for the board should have advised the board that it could amend the stop-work order to require any further construction to adhere to the 20 feet height listed on the application.

Moylan, conversely, asserted that the application was for a garage with a permitted maximum height of 35 feet pursuant to Somers zoning regulations. He noted that the attached plans showed the height of the structure would exceed 20 feet and that Somers was equitably estopped from rescinding the permit because he acted in reliance upon the permit by building the structure.

The question for the court was whether there was substantial evidence in the record to support the ZBA’s decision to uphold the approval and issuance of a zoning permit.

DECISION: Affirmed.

There was substantial evidence to support the ZBA’s decision.

A CLOSER LOOK AT THE VALIDITY OF THE PERMIT

The plaintiffs claimed the permit wasn’t valid because Moylan’s application had listed the height of the building as 20 feet, but the attached building plan was for a building taller than 20 feet. Moylan argued that his application was filed for a garage, which was allowed a maximum height of 35 feet under the zoning regulations.

The applicable section of Somers’ zoning regulations stated that zoning permit applications had to be filed with the Commission or its authorized agent on a form it provided. The application also had to include a written statement by the owner of the property or their authorized agent giving consent for the Commission or its agent to inspect the property. A copy of the application had to be submitted along with three copies of a “Class A-2 certified site plan in ink” at scale. Additionally, “dimensional plans of floors and elevations of any proposed or existing structure, and specifications to indicate the size, kind and quality of the proposed construction” had to be provided.

Once the application was filed, the commission could deny or approve the application as submitted and either approve or deny the site plan as submitted or modify and approve it.

The bottom line: “Based on the scale in the plans the design appear[ed] to be approximately [30] feet in height. The listed purpose on the application for the building was ‘garage.’ ” Therefore, based on the zoning regulations, “it could . . . be built up to [35] feet in height provided it was not taller than the primary structure on the property. In the hearing Moylan repeated to the board his intent to use the structure as a garage within the meaning of the zoning regulations,” the court ruled. Thus, the record before the ZBA supported a decision that the “application was in substantial compliance with the zoning regulations, and the board’s decision was reasonably supported by the record.”

Non-conforming Use

Homeowners seek approval so tenant can stay in rear structure

Citation: *Saer v. City of New Orleans*, 349 So. 3d 624 (La. Ct. App. 4th Cir. 2022), writ denied, 2022-1537 La. 12/6/22, 2022 WL 17425366 (La. 2022)

Jennifer Page and her husband, Joseph Koveleskie (the Koveleskies) owned a home at 1321 Calhoun Street in New Orleans, Louisiana, which they purchased in February 2016. The property was located in a residential district zoned as the HU-RD2 Historic Urban Two-Family Residential District, under the City of New Orleans Comprehensive Zoning Ordinance (CZO).

The Koveleskies’ property had a principal building and a second rear structure that had originally been built as a garage and later converted to an apartment.

In 2018, the Koveleskies obtained an emergency permit for the second structure from the City of New Orleans, Department of Safety and Permits (DSP), which allowed emergency repairs to the roof, interior termite repair and painting of the second structure.

A month later, they filed an application entitled “Determination of Non-conforming Status” with the DSP to change the zoning status of the property from a single dwelling to a double dwelling by renovating the second structure into an apartment and including it as a separate structure on the property.

Attached to their application, the Koveleskies included:

- notarized affidavit from themselves and their neighbors and others with direct knowledge of occupancy or operation;
- a cable bill addressed to the occupant of the second structure;
- a property appraisal;
- a floor plan of the second structure; and
- an inspection report and photographs of the second structure.

In 2020, the DSP determined the property hadn’t attained/retained legal non-conforming use status under the provisions of the CZO because there was no evidence of, “culinary facilities,” i.e., a kitchen.

Since there was no evidence that the rear structure was a full dwelling unit with culinary facilities, the zoning administrator concluded the property hadn’t retained/attained legal non-conforming status as a second principal structure.

The Koveleskies asked the DSP to reconsider the matter. The attached additional documentation to their re-evaluation request including Jennifer’s Page’s affidavit as the property owner, 2014 rent deposits from the occupant of the second structure, and utility bills.

Upon reconsideration, the DSP concluded the property had attained legal, non-conforming status under the CZO. It re-evaluated the newly produced documents and determined that historically there was a kitchen on the property.

The Koveleskies’ neighbors objected to the second structure being designated as a legal non-conforming use. The New Orleans Board of Zoning Adjustments (BZA) held a hearing on the matter and ultimately denied the appeal.

The neighbors then filed suit challenging the BZA’s decision. The lower court affirmed the BZA’s finding, and the case went up for further appeal.

DECISION: Affirmed.

The BZA’s decision wasn’t arbitrary, capricious, or an abuse of discretion.

The neighbors contended the BZA erred in finding the second rear structure met legal non-conforming use status as a second dwelling. By adopting the DSP’s reasoning, they asserted, the BZA conflated “non-conforming use” and “non-conforming structure” in its determination.

But, “the record reflect[ed] that the [DSP had] determined that the property had retained non-conforming use status

based on an exception under the CZO,” the court noted. The DSP had “relied on the exception to the rule, that there may not be two principal structures on the property zoned under HU-RD2, outlined in [the] CZO.” Specifically, the CZO stated that “[i]n the HU-RD1 and HU-RD2 [d]istricts, more than one (1) principal building may be permitted on a lot of record provided that historical authentication can verify the historical existence of more than one (1) principal building on such lot, and provided further that such information can be properly documented to the Department of Safety and Permits and, when applicable, the Historic Districts Landmarks Commission. All such buildings and appurtenances require the approval of the Department of Safety and Permits and, when applicable, the Historic Districts Landmarks Commission.”

The DSP found that “that the existence of a permanent cooking facility, in the second structure, for several years qualified the structure as having historical existence as a separate principal structure. Due to the length of time the second structure contained a cooking facility, [it] determined that the ‘ongoing use as a two-family dwelling with two principal structures [wa]s permitted.’ ”

There was evidence the DSP had:

- verified the historical existence of a second principal building based on the newly submitted evidence from the Koveleskies; and
- relied on the affidavit from Jennifer Page stating that the second structure has contained a gas stove since its conversion to residential use in the 1960s.

The appeals court also noted that the CZO didn’t define “historical existence.” But an “exact definition” of the term “historical existence” wasn’t warranted because the CZO stated that “ ‘historical existence’ [wa]s contingent upon ‘historical authentication.’ ” “Thus, for a property to qualify for non-conforming use status under the historical existence exception, the [DSP] need only authenticate the historical use of the second structure on the property,” it added.

The bottom line: “In light of the submitted documentation, the [DSP] found ‘that the second structure’ on the property had ‘operated as a second dwelling unit and separate principal structure for at least [10] years’ ” and the BZA hadn’t found any error with the DSP’s determination, and since the neighbors as plaintiffs in this case had the burden of proof to show the BZA had erred, the court couldn’t find it had entered an arbitrary or capricious finding or had abused of discretion in upholding the DSP’s ruling.

A CLOSER LOOK

The BZA had the authority to determine and vary the application of a zoning regulation so it was “ ‘in harmony with [the] general purpose and intent and in accordance with the general or specific rules contained’ ” in the regulations. And a court could review the BZA’s findings by taking additional testimony or evidence as part of the consideration of an appeal a BZA decision. Thus, the court’s review was to determine if the evidence had established a “ ‘legal and substantial basis for the [BZA’s] decision.’ ”

Here, the court analyzed whether the BZA had erred in

determining that the DSP had properly re-evaluated the 2020 decision, regarding the property's non-conforming use status, after the expiration of the 45-day period to appeal the determination.

Case Note:

In reconsidering the matter and finding that the structure had legal non-conforming second-dwelling status, the DSP noted that it had operated as a second dwelling unit and separate principal structure for at least 10 years.

Takings

Ninth Circuit decides if case alleging county violated property owners' Fifth Amendment rights ripe for review

Citation: *Ralston v. County of San Mateo*, 2022 WL 16570800 (9th Cir. 2022)

The Ninth U.S. Circuit has jurisdiction over Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

Randy Ralston and Linda Mendiola (collectively, the plaintiffs) appealed the dismissal of their Fifth Amendment takings claim against the County of San Mateo and the California Coastal Commission.

DECISION: Affirmed.

The county hadn't reached a final decision as to how the regulations at issue would apply to the plaintiffs' property so their takings claim wasn't ripe for federal review, the Ninth U.S. Circuit Court of Appeals found.

"The Fifth Amendment Takings Clause 'prohibit[ed] the government from taking private property for public use without just compensation.' " And a court "should not consider the merits of a takings claim unless it is ripe for adjudication," the Ninth Circuit noted, explaining that "[a] regulatory takings claim ripen[ed]s when there [was] no question . . . about how the 'regulations at issue appl[ied] to the particular land in question.' "

Here, Ralston argued the claim was ripe based on San Mateo, California County's Local Coastal Program (LCP) regulations, which he claimed categorically prohibited him from building a house on his property. He asserted that no development permit application was necessary for a use prohibited by law.

"Ralston's argument fails for multiple reasons," the court found, noting that:

- He hadn't "clearly allege[d] that his property [wa]s located in a defined riparian corridor subject to the [c]ounty's LCP development restrictions"; and
- he relied on a 2006 map on the county's website to support his allegation that his property had been "depicted" as being entirely within a riparian corridor.

But, as the [c]ounty explained, "the LCP define[d] ripar-

ian corridors based on the type and amount of plant species in the area, which c[ould] change over time. The same 2006 map provide[d] the caveat that '[s]ite specific boundary surveys, riparian buffer delineations and biological studies' [we]re required to determine permissible developments in these areas."

Ralston never submitted a permit application so the county didn't have the necessary information to determine whether Ralston's property met the LCP's riparian corridor criteria and to what extent, if any, its regulations might restrict development on his property.

And even assuming the property was located entirely within a riparian corridor and subject to the LCP's development restrictions, the county's LCP by itself couldn't "serve as the [c]ounty's final decision for an as-applied takings challenge."

PRACTICALLY SPEAKING

The county had discretion pursuant to the California Coastal Act concerning how to apply the LCP regulations. For instance, the law "create[d] a 'narrow exception to strict compliance with restrictions on uses in habitat areas' if necessary to avoid an unconstitutional taking." If Ralston's argument that the county's LCP regulations alone had served as the county's final decision, that would "strip the [c]ounty of its ability to interpret and apply its own regulations as they relate[d] to Ralston's property."

Zoning News Around The Nation

California

Santa Barbara County's PDD releases interactive map showing potential rezoning for Housing Element update

The County of Santa Barbara's Planning and Development Department recently released an interactive map detailing where potential rezoning in the county could take place to address Housing Element updates. The map, which allows users to see the various areas that could be rezoned, also lets them type in an address to see if potential rezoning will affect a given property.

The county noted that development that's allowed for certain properties may change. That's because the county may vote to make zoning amendments that would allow residential rather than commercial uses on certain properties and commercial and residential uses in commercial zones. "The interactive map displays 45 sites throughout the unincorporated county that are identified as potential rezones. The map shows more potential rezones than are needed to meet the State's housing requirements and will provide County decision-makers flexibility in determining the sites to be rezoned," a press release explained.

The county also recently held Housing Element workshops to educate the public on the process for updating the Housing Element and what the county needs to do to meet regional housing needs in its unincorporated areas. Each workshop also included facilitated discussion so members

of the public had the opportunity to share their ideas for housing.

To view the map, visit independent.com/2022/11/10/the-county-of-santa-barbara-releases-proposed-zoning-map-to-meet-future-housing-needs/.

Source: independent.com

Massachusetts

Cambridge eliminates parking requirements from zoning code

Cambridge, Massachusetts' city council has removed parking requirements from the city's zoning code, paving the way for more affordable housing and sustainable transportation, *The Daily Free Press* reported.

Not having to allocate space for parking will save developers money, which means the overall price of the available units may be less expensive since the price tag for a parking space can be between \$50,000 and \$100,000 for larger units, a city councilor told the news outlet.

In November 2022, the city also released its "Climate Resilience Zoning Draft." "Climate resilience means preparing the city for a future that will have higher temperatures, more rainfall, and rising sea levels. This proposal takes an innovative, forward-looking approach to setting climate resilience standards for buildings and landscaping," the city explained.

Specifically, the standards are based on:

- models of the city's climate 50 years from now (which regular updates based on scientific studies);
- measures to reduce impacts of extreme weather events; and
- requirements and incentives for property owners and developers to make properties more resilient to benefit the future community.

To download the draft proposal, visit cambridgema.gov/-/media/Files/CDD/ZoningDevel/OtherProjects/resiliencetaskforce/20221031_CRZoning_PublicReviewDRAFT.pdf.

Sources: dailyfreepress.com; cambridgema.gov

New Hampshire

Hampton considers zoning amendments

In November 2022, the Town of Hampton, New Hampshire held a planning board meeting to consider proposed amendments to the town's zoning ordinance concerning:

- short-term rentals;
- building lot configuration;
- sign modifications; and
- keeping domesticated chickens.

The text of each proposed zoning amendment is available for review at the following links:

- hamptonnh.gov/CivicAlerts.aspx?sort=date/DocumentCenter/View/5640/1-Short-Term-Rental-Ordinance-with-Overlay-District-Map (short-term rentals);
- hamptonnh.gov/CivicAlerts.aspx?sort=date/DocumentCenter/View/5637/2-Amendment---Footnote-22-Standalone-Section (building lot modifications);

- hamptonnh.gov/CivicAlerts.aspx?sort=date/DocumentCenter/View/5638/3-Amendment---Sign-Ordinance-Changes (sign modifications); and
- hamptonnh.gov/CivicAlerts.aspx?sort=date/DocumentCenter/View/5639/4-Amendment---Keeping-of-Domesticated-Chickens (keeping domesticated chickens).

Source: patch.com

Rhode Island

Wiccan church granted permit in Coventry

A Wiccan church may proceed in Coventry, Rhode Island now that the town has granted it a zoning permit, *Uprise RI* reported recently.

Horn and Cauldron, Church of the Earth, which the ACLU and the ACLU of Rhode Island represented, submitted an application for a zoning permit that would allow it to hold religious services and educational activities at its property located in Coventry. The Coventry Zoning Board of Review initially denied the permit approval after Coventry's planning department and planning commission recommended approval.

After the ACLU threatened to file a lawsuit, the town voted to approve the permit application, so now the Wiccan church, which promotes nature-based religion, may follow through with its wishes to hold faith-based activities and services on the premises.

A press release explained that the church had been "holding activities on the property many years and the Planning and Zoning department ha[d] not received any complaints since the church's founding." But, during a public hearing, zoning board members claimed that allowing it to continue to operate would result in parking issues and pose a fire hazard. The press release stated there wasn't any evidence to support those contentions, though.

If the permit hadn't been granted, it's likely the ACLU and the ACLU of Rhode Island would have filed suit alleging violations of the church's First Amendment rights and under the Religious Land Use and Institutionalized Persons Act, which "provides heightened protections to houses of worship in zoning proceedings and ensures that governmental entities may not discriminate against any faith."

Source: upriseri.com

Washington

Governor announces plans to combat affordable housing and homelessness hurdles

Governor Jay Inslee recently previewed the 2023 legislative session by announcing that recent state budget investments in housing and homelessness are helping the state deal with these two important issues. His office said funding for "additional services and new models of rapid housing aimed at speeding up the availability of supportive shelter and housing options" are giving people better chances to reside in the state.

For 2023, expect to see more legislation introduced that deals with constructing more affordable housing, his office explained. "Homelessness and housing affordability is hurting communities all across the country. The scale of this

challenge is daunting, but we are learning that the new approaches we're taking can and will work," Inslee said. "There is no simple answer for fixing homelessness fast. In the short term, we need more shelters that provide more services so people get back on their feet. Over the long term, we need more housing that average workers can afford. Both of those solutions require every community to do their part," he added.

"Since 2013, legislators have steadily been increasing funding for the state's Housing Trust Fund, including funding for new housing projects, but these often take years to build. In 2021, legislators passed the first budget to fund a new approach called rapid capital acquisition funding," Inslee's office noted. "These funds allow communities to purchase properties such as hotel or apartment buildings, and quickly turn them into a shelter or housing facility. In the 2022 session, legislators approved funding to almost double the number of new units to more than 4,400."

Other legislative priorities are expected to focus on:

- increasing density near transit corridors through a public-private partnership transit-oriented development program and by establishing requirements affordable housing units in those areas;
- accelerating development through a new permitting pilot program and digital permitting platforms; and
- providing tax incentives to homeowners who sell property to first-time home buyers with lower incomes through the state's home-buyer program. "Availability and affordability are two sides of the same coin," Inslee said. "Affordable housing is necessary for preventing people from sliding into homelessness, for helping people transition out of shelters and into permanent housing, and for strengthening the ability of working people to establish economic stability and security."

Source: governor.wa.gov

IN THE SUPREME COURT OF PENNSYLVANIA

No. _____

STADIUM CASINO RE, LLC,

Petitioner,

v.

PENNSYLVANIA GAMING CONTROL BOARD,

Respondent.

PETITION FOR REVIEW

Mark A. Aronchick (ID No. 20261)
Jason A. Levine (ID No. 306446)
Cary L. Rice (ID No. 325227)
Gianni M. Mascioli (ID No. 332372)
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Dated: February 23, 2023

IN THE SUPREME COURT OF PENNSYLVANIA

STADIUM CASINO RE, LLC,

Petitioner,

v.

PENNSYLVANIA GAMING CONTROL
BOARD,

Respondent.

No. _____

NOTICE TO PARTICIPATE

SC Gaming OpCo, LLC

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If you intend to participate in this proceeding in the Pennsylvania Supreme Court, you must serve and file a notice of intervention under Rule 1531 of the Pennsylvania Rules of Appellate Procedure within thirty (30) days.



Mark A. Aronchick

*Attorney for Petitioner Stadium
Casino RE, LLC*

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PARTIES	7
III.	STATEMENT OF JURISDICTION	8
IV.	ORDERS AND DETERMINATIONS SOUGHT TO BE REVIEWED	9
V.	PROCEDURAL HISTORY AND FACTUAL BACKGROUND.....	10
A.	The Gaming Act and Category 4 Licenses	10
1.	The General Assembly Authorizes Three Categories of Gaming Licenses in 2004.....	10
2.	The General Assembly Establishes a Fourth Category of Gaming License in 2017 and Authorizes Auctions in 2017, 2019, and 2020 to Bid on the Right to Apply for a Category 4 License.....	11
B.	Lubert Submits the Highest Bid at the September 2, 2020 Auction and Creates New Entities to Apply for the License	15
1.	The Board Conducts the Auction Required by the May 2020 Amendment to the Fiscal Code.....	15
2.	SC Gaming Applies for a Category 4 License.....	16
C.	The Board Ignores Stadium’s Multiple Requests for Information About Lubert’s Winning Bid and SC Gaming’s Application	18
D.	Stadium Files a Petition for Review in the Nature of a Complaint in the Commonwealth Court	18
E.	The Board Proceeds with the Licensing Process While the Commonwealth Court Action is Pending, Grants Stadium Only Nominal Intervention Status, and Denies Stadium’s Request for Discovery and an Active Role in the Licensing Proceeding.....	20
F.	The Board Denies Stadium’s Request to Supplement the Record.....	26
G.	The Board Issues Its Order and Adjudication of the Matter on January 25, 2023 and February 7, 2023, Respectively	30

H.	On February 8, 2023, the Commonwealth Court Rules in Stadium’s Favor	34
VI.	GENERAL STATEMENT OF OBJECTIONS	36
A.	Based on the limited facts in the current record, the Board could not, as a matter of law, narrowly define “ownership” and interpret and apply Section 1305.2 of the Gaming Act as it did.....	36
1.	The Board lacked a basis to conclude that it had the authority to consider SC Gaming’s application under Section 1305.2(c)(10) of the Gaming Act	37
2.	The Board lacked a basis to conclude that Lubert complied with Section 1305.2(c)(7) of the Gaming Act	41
B.	The Board erred as a matter of law and violated due process, or at a minimum, abused its discretion, when it denied Stadium the right to conduct discovery and actively participate in the licensing proceeding.....	44
1.	Stadium satisfied the requirements for obtaining discovery and taking an active role in the licensing proceeding.....	45
2.	The Board erred in concluding that the information Stadium seeks is confidential and cannot be provided to Stadium	48
3.	The Board’s refusal to allow Stadium discovery or an active role in the licensing proceeding underscores the Commonwealth Court’s concerns in its February 8, 2023 Memorandum Opinion about why the judiciary, not the Board itself, should decide the threshold question of the Board’s statutory authority	50
C.	The Board abused its discretion by denying Stadium the right to supplement the record with an expert report after it denied Stadium’s right to actively participate in the licensing hearing.....	52
VII.	REQUEST FOR ACCESS TO THE RECORD.....	53
VIII.	RELIEF SOUGHT.....	55

I. INTRODUCTION

In both the licensing proceeding before the Pennsylvania Gaming Control Board (the “Board”) and in a parallel case currently pending before the Commonwealth Court, captioned *Stadium Casino RE, LLC v. Pennsylvania Gaming Control Board*, No. 249 MD 2021 (the “Commonwealth Court Action”), Petitioner Stadium Casino RE, LLC (“Stadium”) challenges (1) the Board’s statutory authority to consider an application for a Category 4 slot machine license that the General Assembly did not give the Board the authority to consider, and (2) the Board’s failure to comply with mandatory directives in the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1101, *et seq.* (the “Gaming Act”). The Board erred in the licensing proceeding below by preventing Stadium from obtaining discovery and developing a record, and by refusing to wait for the Commonwealth Court to address on a full record the threshold issue of the Board’s statutory authority, which the Commonwealth Court has made clear it intends to do.

This dispute involves a single mini-casino license that the Board issued to SC Gaming OpCo, LLC (“SC Gaming”), an entity formed by Ira Lubert and his investment group to open a casino near Penn State University. The statutory authority for the Board to consider an application for this one license is in a May 2020 amendment to the Fiscal Code, which instructed the Board to conduct an auction for the right to apply for the license at which only existing slot machine

licensees in Pennsylvania or persons with an ownership interest in an existing licensee could bid. This is the first, and only, time the legislature has authorized the Board to accept bids from persons with an ownership interest in a licensee.

In September 2020, the Board conducted an auction for this license at which there were two bidders: Stadium, which owns Live! Casino in Philadelphia, and Lubert, who owns a small interest in Rivers Casino Pittsburgh. Lubert submitted the higher bid, but it appears that he did not fund the bid himself. Instead, as this Petition and further briefing will show, there are several facts indicating that Lubert solicited other persons, who were themselves ineligible to bid or apply for this mini-casino license, to form an investment group that would fund Lubert's bid in exchange for an ownership interest in any eventual licensee and casino. These facts include language in SC Gaming's highly redacted application for the slot machine license, comments from some of the purported third-party investors, and Bally's Corporation's securities filings, which highlight a partnership with Lubert in which Bally's "will maintain a majority equity interest" in this specific project.

The problem with what Lubert did is that the Gaming Act requires the winning bidder for the Category 4 license, and the winning bidder alone, to pay the bid and apply for the license. *See* 4 Pa.C.S. §§ 1305.2(c)(7), (10). If the winning bidder does not himself pay the winning bid, as required by Section 1305.2(c)(8) of the Gaming Act, or apply for the license, as required by Section 1305.2(c)(10)(i),

the Board does not have the authority to even consider the application, let alone grant a license. Instead, the Board is required to either “award[] the right to . . . apply for the Category 4 slot machine license” to “the second highest bidder,” *id.* § 1305.2(c)(8), or, at a minimum, “conduct another auction,” *id.* § 1305.2(c)(10)(ii).

In this case, if Lubert parceled out interests in his various entities and the gaming project, as the facts available to Stadium indicate, Lubert himself did not bid or apply for the license; rather, he created an investment group of individuals or entities that neither are licensed casinos in Pennsylvania nor own an interest in an existing licensee and who, therefore, were not statutorily authorized to bid or apply. The Board nonetheless accepted Lubert’s bid and SC Gaming’s application, resting on an artificial, constricted view of ownership – namely, that Lubert applied in the name of applicant SC Gaming and “presently” owns all of its stock. To the Board, no other ownership interests mattered. This conclusion is inconsistent with the plain text and clear intent of the Gaming Act and the May 2020 amendment to the Fiscal Code. By considering SC Gaming’s application, the Board exceeded its statutory authority and failed to comply with mandatory directives in the Gaming Act.

Stadium, the only other bidder at the auction, has a direct interest in this one license and a statutory right to challenge whether the Board had the authority to consider SC Gaming’s application. Stadium did so in July 2021 by filing a

complaint in the aforementioned Commonwealth Court Action. In response, the Board, SC Gaming, and Lubert filed preliminary objections, seeking to block Stadium from obtaining the information it needs to pursue its challenge. But in an Opinion and Order dated February 8, 2023, the Commonwealth Court rejected the preliminary objections and concluded that the case should proceed to discovery, and it is now moving forward.

Unfortunately, while the preliminary objections were pending, and even though Stadium repeatedly asked the Board not to proceed with the licensing process until the Commonwealth Court ruled, the Board nonetheless proceeded. This forced Stadium to petition to intervene in the administrative proceeding to protect its rights and to do what it could to demonstrate that the Board did not have the authority to consider SC Gaming's application. But the Board ruled against any substantive participation by Stadium every step of the way, culminating with the Adjudication it issued on February 7, 2023, **the day before the Commonwealth Court ruled**, in which the Board effectively acknowledged that Bally's and other investors do have conditional and convertible ownership interests in SC Gaming and the casino project – and nevertheless concluded that those interests don't matter. This was a complete end-run around both (a) the plain text and intent of the legislature's May 2020 amendment to the Fiscal Code, and (b) Stadium Casino's challenge to the Board's authority in the Commonwealth Court Action.

To be clear, the question of ownership interests has never before affected the Board's statutory authority to consider a bid or application for a slot machine license. It is only this one, unique license, authorized by the legislature in the May 2020 amendment, where having an ownership interest in an existing licensee mattered. In other words, the outcome of this appeal and the Commonwealth Court Action will not affect any other slot machine license.

Specifically, the Board blocked Stadium from meaningfully participating in the administrative proceeding by:

1. Denying Stadium the ability to obtain discovery, even though every other participant in the licensing process had the information Stadium sought;
2. Denying Stadium – the only party challenging the Board's statutory authority – the opportunity to present evidence and cross-examine witnesses at the licensing hearing;
3. Denying Stadium the ability to submit an expert report as untimely, even though Stadium filed its request to do so on the deadline the Board set for both the parties and Stadium to submit additional materials that they would present at the licensing hearing; and
4. Taking an unduly narrow view of "ownership" – a view that is contrary to both the plain text of the Gaming Act and this Court's decisions interpreting the Act – that essentially limits who has an ownership interest in an entity to those who currently have common stock, ignoring the very convertible ownership interests that Lubert gave up to fund his bid and the casino project.

All of these decisions are improper and an abuse of the Board's discretion.

Had the Board waited for the Commonwealth Court to rule, it would have seen that

questions about its statutory authority are predicate, jurisdictional questions, and the proper forum to resolve such questions in the first instance is the Commonwealth Court. Stadium therefore requests that this Court vacate the Board's decision to grant SC Gaming a slot machine license and related orders denying Stadium the opportunity to participate in a proper adversarial proceeding and direct the Board to either (1) hold SC Gaming's application for a Category 4 slot machine license in abeyance until the threshold issues of the Board's statutory authority to consider SC Gaming's application and compliance with mandatory directives in the Gaming Act are decided in the Commonwealth Court Action, or (2) in the alternative, allow for discovery and an adversarial process, with Stadium participating with full-party status, so that the Board's statutory authority can be determined on a complete record these threshold issues.

Eventually, this Court may have to decide the threshold issue of the Board's statutory authority to consider this one mini-casino license, but, respectfully, it would need to do so on a full record developed in the normal adversarial process – a process the Commonwealth Court is now conducting. Stadium therefore will be promptly filing an application seeking to stay this matter until the Commonwealth Court rules on that threshold issue, as a stay will preserve this Court's and the parties' resources and avoid piecemeal litigation and appeals.

II. PARTIES

1. Petitioner Stadium Casino RE, LLC (“Stadium”) is a limited liability company organized in Delaware. Stadium holds a Category 2 slot machine license and does business in the Commonwealth as Live! Casino Philadelphia.

2. Respondent Pennsylvania Gaming Control Board (the “Board”) is a legislatively-created agency of the Commonwealth of Pennsylvania, charged with “general and sole regulatory authority over the conduct of gaming and related activities” and “sole regulatory authority over every aspect of the authorization, operation and play of slot machines” in the Commonwealth. 4 Pa.C.S. § 1202(a)(1). The Board’s principal office is located in Harrisburg, Pennsylvania.

3. SC Gaming OpCo, LLC, is a limited liability company organized in Delaware with its principal place of business in State College, Pennsylvania. In March 2021, SC Gaming applied to the Board for a Category 4 slot machine license, which the Board granted in its January 25, 2023 Order.

4. Ira Lubert is an individual who, on information and belief, resides in Pennsylvania. Lubert was the winning bidder at the Board’s auction for the right to apply for a Category 4 slot machine license, held on September 2, 2020. SC Gaming and Lubert are not yet participants in this appeal, but Stadium has provided them notice of the appeal pursuant to Rule 1531 of the Pennsylvania Rules of Appellate Procedure.

III. STATEMENT OF JURISDICTION

5. Section 1204 of the Gaming Act vests this Court with “exclusive appellate jurisdiction to consider appeals of any final order, determination or decision of the board involving the approval, issuance, denial or conditioning of a slot machine license, the award, denial or conditioning of a table game operation certificate.” 4 Pa.C.S. § 1204.

6. The Board approved the application for a Category 4 slot machine license of SC Gaming pursuant to an Order dated January 25, 2023. Stadium is an aggrieved party seeking review both as an intervenor in the proceeding below and as a party with a substantial, direct and immediate interest in that proceeding. *See* 4 Pa.C.S. § 1204; Pa. R.A.P. 501, 702.

7. Although this Court has jurisdiction under Section 1204, Stadium’s underlying challenge – a challenge for which there must be a fully-developed record – is to the Board’s statutory authority to consider SC Gaming’s application. Of course, if the Board did not have the authority to consider SC Gaming’s application, then the Board’s decision to grant SC Gaming a license was null and void because there was nothing for the Board to consider in the first place.

8. Stadium files this Petition to preserve its rights and seek redress of the Board’s procedural errors, including its proceeding with the licensing process while the Commonwealth Court Action remains pending, and its failure to allow

Stadium to conduct discovery and meaningfully participate in an adversarial proceeding. However, as this Petition and further briefing will show, the question of the Board’s statutory authority should be decided by the Commonwealth Court in the first instance, not the Board itself, and it must be decided on a fully-developed record, which the Commonwealth Court’s recent decision directs the parties to do.

IV. ORDERS AND DETERMINATIONS SOUGHT TO BE REVIEWED

9. Stadium seeks review of (a) the Board’s December 14, 2022 Order and corresponding determination during its December 13, 2022 hearing granting only nominal intervention rights to Stadium and denying Stadium’s request for discovery and an active role in the licensing proceeding; (b) the Board’s January 24, 2023 Order, in which the Board denied Stadium’s petition to supplement the record with an expert report; (c) the Board’s January 25, 2023 Order (filed on January 26) and corresponding determination during its January 25, 2023 hearing granting a Category 4 license to SC Gaming; and (d) the Board’s February 7, 2023 adjudication (hereinafter, the “Adjudication” or “Adj.”).¹

¹ Pursuant to Pa. R.A.P. 1513(d)(7), Stadium has attached the following exhibits to this Petition: (i) as Exhibit A, a copy of the Board’s December 14, 2022 Order, PGCB Docket No. 10577-2022 (hereinafter, the “Order on Intervention”); (ii) as Exhibit B, a copy of the Board’s January 24, 2023 Order, PGCB Docket No. 9923-2021 (hereinafter, the “Order on Request to Supplement”); (iii) as Exhibit C, a copy of the Board’s January 25, 2023 Order, PGCB Docket No. 9923-2021 (hereinafter, the “Order Granting License”), and (iv) as Exhibit D, a copy of the Adjudication, PGCB Docket No. 9923-2021. Unless otherwise indicated, all other record

V. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The Gaming Act and Category 4 Licenses

1. The General Assembly Authorizes Three Categories of Gaming Licenses in 2004

10. In 2004, the General Assembly established the first three categories of slot machine licenses – Categories 1, 2 and 3. *See* 4 Pa.C.S. §§ 1302, 1304, 1305.

The legislature granted the Board the authority to issue slot machine licenses “based upon the requirements of [the Gaming Act].” *Id.* § 1325(a). The Gaming Act controls how many licenses can be issued for each license category, and it prescribes the particular circumstances under which and to whom a license may be issued. Any eligible person² may apply for a particular Category 1, 2 or 3 license, and the Board has the discretion to award that license to any one of the eligible applicants based on specific statutory criteria in the Gaming Act.

11. For over a decade, many companies applied for these licenses, and a robust and successful gaming market developed.

citations in this Petition refer to documents in the certified record that will be transmitted by the Board pursuant to Pa.R.A.P. 1541.

² Consistent with the definition in the Gaming Act, 4 Pa.C.S. § 1103, the word “person” means both individuals and entities.

2. The General Assembly Establishes a Fourth Category of Gaming License in 2017 and Authorizes Auctions in 2017, 2019, and 2020 to Bid on the Right to Apply for a Category 4 License

12. In 2017, the General Assembly took a very different approach with a fourth license category – Category 4. *See* Act 42 of 2017, P.L. 419 (Oct. 30, 2017), codified at 4 Pa.C.S. § 1305.1. These Category 4 licenses were established for smaller casino operations, with limitations on who could bid, in order to generate additional revenue without upending an already thriving and balanced gaming market. *See* 4 Pa.C.S. § 1102(3), (12.5) (describing legislature’s intent); *see also* Aug. 26, 2023 Pet. to Intervene, PGCB Dkt. 10577-2022 (hereinafter, “Pet. to Intervene”), Ex. B (Public Hr’g, Gaming Oversight Committee of the Pa. House of Representatives, Apr. 12, 2017) at 4:13-17; 6:21-24; 10:18-11:5; 57:14-21; 58:11-60:9; 64:20-65:3; 73:19-25 (excerpted statements of legislators and others).

13. The 2017 legislation changed the approach to licensure in two ways. First, whereas multiple applicants were permitted to apply for licenses under Categories 1, 2, and 3, a person secures the right to apply for a Category 4 license by being the winning bidder at an auction conducted by the Board. *See* 4 Pa.C.S. § 1305.2.

14. Therefore, because only the winning bidder may apply for the license (after paying its bid), the Board has *no discretion* over which applicants it may consider for a Category 4 license. This allows the Board to more expeditiously

consider the winning bidder's single application, rather than simultaneously considering multiple applications and choosing among them.

15. Second, only existing licensees (*i.e.*, holders of Category 1, Category 2, or Category 3 licenses) were eligible to bid and then apply. *Id.* § 1305.1(a).

16. Notably, however, if one of these initial auctions failed to generate any bids, the 2017 legislation allowed the Board to conduct additional auctions for a limited period of time at which not only existing licensees, but also any “other qualified entity,” could bid, *id.* § 1305.2(b.1), which includes any entity that is not an existing licensee but nonetheless “has satisfied the requirements of [the Act] and any criteria established by the [Board] for licensure,” *id.* § 1103. Bally's, for example, may be a qualified entity.

17. In other words, the Board had the ability to conduct auctions at which non-licensed persons could bid for the right to apply for a license, *only if* the initial auction failed to generate any bids.

18. Pursuant to the 2017 legislation, the Board conducted five auctions, the first four of which resulted in winning bidders. *See* Pet. to Intervene, Ex. A (Complaint in Commonwealth Court Action, hereinafter “Compl.”) at 9, ¶ 27.³ The

³ The Complaint filed in the Commonwealth Court Action itself has several exhibits, all of which are part of the administrative record before the Board. Those exhibits are referred to herein as “Compl., Ex. 1, 2, etc.”

Board received no bids at the fifth auction, and, importantly, it chose not to hold any more auctions under that legislation. *Id.*; Adj. at 6, ¶ 2.

19. In June 2019, the General Assembly attempted to secure additional Category 4 license bidders, enacting a provision under the Fiscal Code instructing the Board to conduct additional Category 4 auctions until one was held with no bidders. *See* Act 20 of 2019, P.L. 173 (June 28, 2019), codified at 72 P.S. § 1724.1-E(c). In September 2019, the Board held an auction at which there were again no bidders, and thus it could not hold another auction without legislative authorization. Adj. at 6, ¶ 4.

20. After that unsuccessful attempt, the General Assembly enacted a second provision under the Fiscal Code addressing Category 4 licenses in May 2020, which is the statute at issue here. *See* Act 23 of 2020, P.L. 158 (May 29, 2020), § 7, codified at 72 P.S. § 1724.1-E(e).

21. The May 2020 amendment gave the Board the statutory authority to conduct one more auction, but removed any authority to accept bids from other “qualified entities” – *i.e.*, entities that are not existing licensees – that the Board had the discretion to accept bids from under the 2017 legislation. In other words, unlicensed entities no longer could bid or apply.

22. The amendment also gave the Board additional, limited authority to accept bids from not only existing licensees, but also persons “with an ownership interest in a slot machine licensee.” 72 P.S. § 1724.1-E(e)(2)(iv)(B).

23. The May 2020 amendment further required the Board to “conduct the auction according to the procedures under 4 Pa.C.S. § 1305.2(c).” *Id.* § 1724.1-E(e)(2)(i). Section 1305.2(c) in turn requires, among other things: (1) “[t]he winning bidder shall pay to the board the bid amount within two business days following the auction”; and (2) “[t]he winning bidder shall submit an application for the Category 4 slot machine license within six months of the payment of the winning bid.” 4 Pa.C.S. § 1305.2(c)(7), (10)(i). “If the winning bidder does not pay the bid amount . . . , the second highest bidder shall be awarded the right to select a Category 4 location and apply for the Category 4 slot machine license.” *Id.* § 1305.2(c)(8). Similarly, if the winning bidder fails to timely “submit an application,” it “shall result in forfeiture of the bidder’s right to apply,” and “[t]he board shall conduct another auction.” *Id.* § 1305.2(c)(10)(ii). These are mandatory, statutory directives.

B. Lubert Submits the Highest Bid at the September 2, 2020 Auction and Creates New Entities to Apply for the License

1. The Board Conducts the Auction Required by the May 2020 Amendment to the Fiscal Code

24. Pursuant to the May 2020 amendment, the Board held an auction on September 2, 2020, at which there were only two bidders: Stadium, an existing licensee; and Lubert, who has a small ownership interest in Holdings Acquisition Co., LP, a Category 2 licensee doing business as Rivers Casino Pittsburgh.

25. Lubert submitted the high bid at the auction, meaning that he won the right to apply for the Category 4 license. Lubert selected a location in Centre County, Pennsylvania, near Penn State University, for placement of the proposed Category 4 casino.

26. Stadium has alleged, and presented evidence to show, that Lubert assembled a group of investors, including Robert Poole, Richard Sokolov, and possibly other persons or entities to fund his winning bid, such that Lubert did not use his own funds or funds from credit obtained in the ordinary course of business as required by the Gaming Act, 4 Pa.C.S § 1305.2(c)(7). Instead, he brought in investors with convertible, conditional, or springing interests to fund his bid and the casino project. In fact, Mr. Poole told David Cordish, the CEO and Chairman of the Cordish Companies, prior to the auction that he (Mr. Poole) intended to contribute to Lubert's winning bid, and Mr. Sokolov likewise told Mr. Cordish

after the auction that he had contributed to the winning bid payment. *See* Pet. to Intervene, Ex. E (D. Cordish Verification).

2. SC Gaming Applies for a Category 4 License

27. After the winning bid was paid, Lubert and his investment group began preparing to apply to the Board for a Category 4 license.

28. Although the Gaming Act required Lubert, as the winning bidder, to “submit an application for the Category 4 slot machine license within six months of the payment of the winning bid amount,” 4 Pa.C.S. § 1305.2(c)(10)(i), Lubert did not do so. Instead, at least the following steps were taken:

29. *First*, on November 5, 2020, Lubert formed several limited liability companies, including (a) Respondent SC Gaming OpCo, LLC (“SC Gaming”); (b) SC Gaming HoldCo, LLC (“HoldCo”); and (c) SC Gaming, LLC (“SC NewCo”). Lubert formed another entity, 2901 ECA Associates, LLC (“LandCo”), on February 5, 2020, and according to SC Gaming’s application, LandCo’s sole member and manager is now HoldCo. SC Gaming’s sole member is also HoldCo; and HoldCo’s two members are SC NewCo (98%) and Lubert (2%). *See* Compl. at 14-15, ¶ 45 & Ex. 1 (ownership information provided to the Board).

30. *Second*, on January 4, 2021, Bally’s Corporation announced that it had signed an agreement with Lubert to jointly design, develop, construct, and manage a Category 4 licensed casino in Centre County, the total costs of which are

expected to be approximately \$120 million. *See* Compl., Ex. 2 (SEC Form 8-K). Bally’s represented that it would “*maintain* a majority *equity* interest in *the partnership*, including 100% of the economic interests of all retail sports betting, online sports betting and iGaming activities associated with the project.” Compl. at 15, ¶ 45 (emphasis added).

31. *Third*, on or around March 4, 2021, SC Gaming, and not Lubert, submitted an application to the Board for a Category 4 license. *Id.* at 15, ¶ 45. SC Gaming applied on behalf of both itself and the investors in Lubert’s investment group. The application identifies Robert Poole and Richard Sokolov – the two individuals that told David Cordish they were contributing to Lubert’s winning bid – as well as Ara Kervandjian. These individuals are identified as officers of each of LandCo, HoldCo, and NewCo, and as managers on the Board of Managers of NewCo. The application further states that “each of [SC Gaming’s] principals, affiliates, intermediaries, subsidiaries and holding companies” submitted separate applications, Compl., Ex. 3 (SC Gaming’s redacted application) at Attachment to Pg. 3, though none of those applications have been made publicly available. Neither Stadium, nor the public, were told who all of these individuals and entities are (presumably they include Mr. Sokolov, Mr. Poole, and Bally’s) or what precisely they received for their participation or investment(s) in the project.

C. The Board Ignores Stadium’s Multiple Requests for Information About Lubert’s Winning Bid and SC Gaming’s Application

32. After receiving the public, highly-redacted version of SC Gaming’s application to the Board in March 2021, Stadium asked the Board to investigate SC Gaming’s application and the Board’s authority to consider it.

33. Specifically, Stadium sent several letters to the Board between March and June 2021 detailing its concerns about SC Gaming and Lubert’s compliance with the Gaming Act and the Board’s authority to consider SC Gaming’s application for the Category 4 license. In response, the Board summarily dismissed these concerns, refused to explain the basis for its authority to consider SC Gaming’s application, and refused to make public any of the information about Lubert’s bid and investment group or SC Gaming’s and its principals’ and affiliates’ applications. Compl., Exs. 4-11 (correspondence between Stadium and Board).

D. Stadium Files a Petition for Review in the Nature of a Complaint in the Commonwealth Court

34. In light of the Board’s failure to resolve, much less acknowledge, the threshold issue of its jurisdiction over SC Gaming’s application for this single mini-casino license, Stadium filed the Commonwealth Court Action on July 28, 2021.

35. In that action, Stadium seeks a declaration that Lubert violated the Gaming Act when he funded his winning bid for the Category 4 license by obtaining contributions from “Robert Poole, Richard Sokolov, and possibly other persons or entities” in exchange for “an interest in the Category 4 license for which Lubert would have the right to apply as the winning bidder,” thereby “allow[ing] persons not otherwise eligible to bid to obtain an interest in a license simply by paying an eligible bidder.” Compl. at 11-12, 16, ¶¶ 42, 43, 61.

36. Furthermore, Stadium seeks a declaration that the Board lacked authority to consider SC Gaming’s Category 4 license application, “because it was not the winning bidder at the September 2, 2020 auction” and because SC Gaming “is owned or controlled by persons other than Lubert, including the individuals who helped fund [Lubert’s] winning bid,” rendering it “an improper applicant[.]” *Id.* at 12-13, 18, ¶¶ 47, 70.

37. Stadium also seeks an injunction preventing the Board from considering SC Gaming’s Category 4 license application, and an order requiring the Board to act pursuant to 4 Pa.C.S. § 1305.2(c) to award the license to Stadium or conduct a new auction, given that Lubert “failed to timely submit an application.” *Id.* at 17-19, ¶¶ 65, 70, 74.

38. In filing the Commonwealth Court Action, Stadium has sought to propound discovery to obtain a record of all of the interests in SC Gaming and its affiliates so that those interests can be examined in an adversarial proceeding.

39. But SC Gaming, Lubert, and the Board immediately filed preliminary objections on September 17, 2021, in an effort to block Stadium's ability to conduct discovery in a judicial forum. SC Gaming and Lubert specifically argued that Stadium failed to exhaust administrative remedies before the Board. But all three respondents also claimed that none of Lubert's alleged conduct violated the Gaming Act, and that the Board was duly authorized to consider the SC Gaming Category 4 license application.

40. Briefing on the preliminary objections was completed on November 19, 2021, and the Court heard oral argument on March 7, 2022.

E. The Board Proceeds with the Licensing Process While the Commonwealth Court Action is Pending, Grants Stadium Only Nominal Intervention Status, and Denies Stadium's Request for Discovery and an Active Role in the Licensing Proceeding

41. During the pendency of the Commonwealth Court Action, the Board received public comment on SC Gaming's proposed use of the Category 4 license, from August 16, 2021 to June 12, 2022.

42. The Board received over 1,200 pages of public comments on SC Gaming's proposal. The overwhelming majority of these comments – 672 out of the 773 written comments – expressed opposition to the proposal. *See Adj.* at 4. In

addition, petitions asking the Board to deny SC Gaming’s application that were signed throughout the public comment period received over 3,300 signatures, and were themselves accompanied by over 570 additional comments near universally expressing opposition to SC Gaming’s proposal.⁴

43. Choosing not to await a ruling in the pending Commonwealth Court Action, in which the threshold issue of the Board’s authority is being litigated, the Board issued a scheduling order on July 12, 2022, setting deadlines for interested parties to petition to intervene in its consideration of SC Gaming’s Category 4 license application. *See* Jul. 12, 2022 Order, PGCB Dkt. 9923-2021.

44. Accordingly, while Stadium maintained that the Board lacked the authority to consider SC Gaming’s application, and that the Commonwealth Court is the appropriate forum to resolve such a challenge to the Board’s authority, Stadium was forced to file a petition to intervene in the matter before the Board to preserve its rights.

45. In its petition, Stadium reiterated its position that “because SC Gaming is different in substance from Lubert, SC Gaming’s application for the

⁴ The Board has posted copies of these comments, and of the signatories to each petition, on its website under materials relevant to its August 16, 2021 public input hearing. 2021 PGCB Board Meeting Calendar, PENN. GAMING CONTROL BD. (<https://gamingcontrolboard.pa.gov/?p=71&yr=2021>, last accessed Feb. 7, 2023).

Category 4 license is void and the Board does not have the authority even to consider it.” Pet. to Intervene at 16, ¶ 59.

46. But because the Board was proceeding to consider SC Gaming’s application nonetheless, Stadium sought both “full party status as an [i]ntervenor in the [p]roceedings” and “authority to propound narrow discovery requests on SC Gaming relating to the persons and entities that have an ownership or control interest” therein. *Id.* at 3. In fact, Stadium’s sole focus was on developing a record in the usual adversarial manner on the Board’s statutory authority to consider this application and, relatedly, the Board’s mandatory obligations under Section 1305.2 of the Gaming Act. Stadium made it clear that it was not seeking to intervene on any other issue.

47. This discovery included documents and materials necessary to show “who helped pay for Lubert’s winning bid at the [Category 4 license] auction and on what terms the payments were provided,” “each and every person or entity with an interest in or any control of SC Gaming,” “SC Gaming’s relationship with Bally’s [Corporation],” *id.* at 28-29, ¶ 114, and other details about information included in SC Gaming’s Category 4 license application, including vague references in the application to transactions involving successors and other entities “to organize and capitalize the project,” Compl., Ex. 3 (SC Gaming’s redacted application) at Attachment to Sch. 32.

48. This discovery is core to Stadium’s intervention in both this proceeding and the Commonwealth Court Action, because, as Stadium explained, “[d]isclosure of this information is necessary to . . . fully vet and assess whether SC Gaming complied with the Gaming Act and whether the Board has the authority to consider SC Gaming’s application.” Pet. to Intervene at 28, ¶ 113.

49. Further, Stadium noted that “the Board, SC Gaming, and Lubert ha[d] tacitly acknowledged that there are other persons or entities besides Lubert who have some interest in SC Gaming,” by characterizing Lubert’s alleged sole ownership as a 100% “net ownership interest.” Notably, “net ownership interest,” under the Board’s definition, is “limited only to ‘common stock and does not account for other stock or debt offerings,’” such as “preferred stock, convertible notes, and/or options or warrants that the holder can execute if/when the Board issues a license to SC Gaming.” These are exactly the types of interests that Lubert may have exchanged for investments in his bid. *See id.* at 14-15, 20 ¶¶ 53, 56, 78.

50. On September 6, 2022, the Board’s Office of Enforcement Counsel (“OEC”), SC Gaming, and Lubert filed answers and new matters in response to the petition to intervene, with accompanying briefing submitted on October 3, 2022. None challenged SC Gaming’s right to intervene in the matter. *See, e.g.*, Oct. 3, 2022 SC Gaming/Lubert Opp. to Pet. to Intervene, PGCB Dkt. 10577-2022

(hereinafter “SC Gaming/Lubert Br.”) at 1; Oct. 3, 2022 OEC Opp. to Pet. to Intervene, PGCB Dkt. 10577-2022 (hereinafter “OEC Br.”) at 4.

51. However, despite the fact that Stadium was both the only party challenging the Board’s statutory authority and the only party without the information to prosecute that challenge, OEC argued that the Board should apply a supposed “general rule of limited participation” to Stadium’s intervention, and “limit Stadium [Casino]’s presentation of evidence to the submission of its petition,” OEC Br. at 7. This was, of course, a *non sequitur* since the petition to intervene was seeking the right to meaningfully participate and obtain limited discovery to develop a record on the threshold issue of the Board’s statutory authority. OEC further suggested that “the discovery requested by Stadium is not necessary to develop a comprehensive evidentiary record in the instant matter,” *id.* at 8, because it (OEC) would do so unilaterally, another odd twist on what should have been a record developed in the familiar adversarial manner.

52. OEC further argued that “the Board already has the documentation that would satisfy Stadium’s discovery requests,” *id.* at 8-9, and that “the Board will have the opportunity to carefully consider the question of whether SC Gaming’s ownership structure violates the Act and the Board’s regulations based on the evidence presented to it by Stadium, OEC and other parties” in the “application and background investigation process,” *id.* at 9, 13.

53. But as Stadium had noted, “[n]either the OEC nor any other division within the Bureau of Investigations and Enforcement [the “BIE”] is tasked with considering whether the Board has the statutory authority to consider an application, nor has any division within the Bureau ever addressed that issue in a license proceeding.” Pet. to Intervene at 8, ¶ 30. To be sure, OEC and BIE are statutorily tasked with investigating and ensuring compliance with several criteria for licensure under the Gaming Act, including eligibility and financial fitness requirements, but *not* with assessing the threshold question of whether Board itself (including OEC and BIE) have the statutory authority to consider an application.

54. Moreover, the Board, through its Office of Chief Counsel, had already taken the position in the Commonwealth Court Action that Stadium’s challenge lacks merit because the only interests that matter for determining ownership under the Gaming Act, including whether a winning bidder is substantively identical to an applicant as required by Section 1305.2(c), are current common stock interests. And, even more fundamentally, no other party to the administrative proceeding was acting as an adversary on the threshold issue of statutory authority.

55. Nevertheless, on December 13, 2022, the Board held oral argument on Stadium’s petition, in which it voted to allow only limited intervention by Stadium into the matter. The Court issued a one-page order the next day, clarifying that Stadium would be permitted to intervene only as a “participant”; that Stadium

would not be permitted to obtain any discovery; that “no other testimony, witness statements or other evidence [would] be accepted, absent a future Board ruling,” from Stadium; and that Stadium would be limited to only fifteen minutes of oral argument at the licensing hearing, following a limited, unilaterally developed record by all the other parties. *See* Order on Intervention.

F. The Board Denies Stadium’s Request to Supplement the Record

56. After the Board voted to allow Stadium nominal intervention at the December 13 hearing, counsel for Stadium orally requested an opportunity to supplement Stadium’s Petition to Intervene and corresponding written statement. In response, Chairperson Smyler stated that such a request was premature, and that Stadium could make such a request in writing at a later time.⁵

57. Consistent with Chairperson Smyler’s instruction, Stadium filed a request to supplement the record with the Board on January 23, 2022, the date the Board identified as the deadline for the parties to send additional materials that they would present at the hearing. *See* Jan. 18, 2023 Email from L. Wanich, Board Clerk, to all parties and Stadium.⁶

⁵ The Board has not yet published the transcript of the December 14, 2022 hearing, but the video recording of the hearing is posted on the Board’s website at <https://gamingcontrolboard.pa.gov/?p=141>. Chairperson Smyler’s statement is at 1:28:00 through 1:28:20 of the video recording. Stadium anticipates that the Board will include the transcript as part of the record pursuant to Pa. R.A.P. 1541.

⁶ Stadium likewise anticipates that the Board will include this email as part of the record pursuant to Pa. R.A.P. 1951.

58. Attached to Stadium’s request was the Expert Report of Tami Bogutz Steinberg, the chair of law firm Flaster Greenberg’s Gaming Industry Group, who has practiced “for over 30 years,” “has represented gaming clients in a variety of general corporate, contractual and regulatory matters, including before the Board,” and who has “substantial experience structuring transactions and investment groups on behalf of clients.” Jan. 23, 2023 Request to Supplement, PGCB Dkt. 9923-2021 (hereinafter “Request to Supplement”) at 6, ¶ 17.

59. Ms. Steinberg’s report “identifies a variety of ways that parties structure transactions and parcel out ownership or control interests to investors,” *id.* at 4, ¶ 9, and explains “how investment groups are commonly structured, including what investors typically require in exchange for their funds,” and the “several different ways such interests are issued to investors,” *id.* at 6, ¶ 18.

60. One of the types of ownership interests that Ms. Steinberg identifies is convertible debt, whereby a person loans funds in exchange for a promissory note that is convertible to stock at an agreed-upon time in the future. *See id.*, Ex. A (Proposed Expert Report) (hereinafter, “Proposed Expert Report”) at 4. This is apparently one of the vehicles that Lubert used to structure his investment group, but neither SC Gaming nor the Board acknowledged even that general concept until (a) the licensing hearing on January 25, 2023, *see* Jan. 25, 2023 SC Gaming Slide Deck Presentation (the “SC Gaming Presentation”) at 36, and (b) the Board’s

Adjudication (at page 18) issued after the Board had already denied Stadium’s request to supplement the record with Ms. Steinberg’s report.

61. Lacking this information or any other information about Lubert’s investment group’s ownership or control interests, Ms. Steinberg’s report nevertheless identified and analyzed publicly-available information, flagging “statements in these documents that are indicia of [third-party] ownership or control” in SC Gaming. Request to Supplement at 7, ¶ 20.

62. This includes SC Gaming’s “highly redacted application submitted to the Board,” which references SC Gaming’s “principals, affiliates, intermediaries, subsidiaries and holding companies,” who helped “organize and capitalize” the gaming project. *Id.*

63. It also includes Bally’s “Form 8-K, dated March 4, 2021,” which, again, states that Bally’s “entered into a ‘partnership’ with Mr. Lubert to ‘jointly design, develop, construct and manage a Category 4 licensed casino in Centre County, Pennsylvania,’ in which Bally’s ‘*will maintain a majority equity interest.*’” *Id.* at 7-8, ¶¶ 20-23 (emphasis added).

64. Ms. Steinberg also relied on the verification submitted by David Cordish that “details statements that Richard Sokolov and Robert Poole made to Mr. Cordish about their investments in Mr. Lubert’s winning bid,” and explained in that context “how investors in speculative investments like gaming projects are

unlikely to invest without obtaining an ownership or control interest in the project.” *Id.* at 8, ¶ 24.

65. Accordingly, Stadium reiterated that these “potential interests underscore[] the importance of a fair proceeding on a complete record to determine whether those interests exist here,” and “further show[] that the Board’s Order limiting Stadium’s role in this licensing proceeding, and denying Stadium the ability to conduct discovery, present evidence, and cross-examine witnesses, constitutes an abuse of discretion and legal error.” *Id.* at 9, ¶ 25.

66. Nevertheless, on January 24, 2023, just *one day after* the request was filed, the Board issued an order stating that it denied the petition to supplement “[d]ue to the lateness of the filing and the lack of time for the other parties to respond to the filing.” *See Order on Request to Supplement.*

67. However, Stadium had transmitted this request to the Board on the exact date the Board identified as the deadline for materials to be presented at its January 25, 2023 hearing. *See supra* ¶ 57.

68. Moreover, the Board scheduled this hearing “at the earliest possible date after its December 14, 2022 Order,” Request to Supplement at 9, ¶ 27, rendering it impractical for Stadium to file its request any sooner than it did. As Stadium stated, “Stadium worked diligently over the holidays to identify, engage, and provide information to Ms. Steinberg, and Ms. Steinberg likewise worked

diligently to draft the Report based on the limited information available to Stadium.” *Id.*

G. The Board Issues Its Order and Adjudication of the Matter on January 25, 2023 and February 7, 2023, Respectively

69. On January 25, 2023, the Board held a hearing at which it formally considered SC Gaming’s Category 4 license application.

70. In SC Gaming’s presentation to the Board, SC Gaming publicly acknowledged for the first time that it issued non-bank debt to persons not eligible themselves to bid or apply for the license, including without limitation Bally’s. *See* SC Gaming Presentation at 36. But the details of those transactions still were not revealed. The presentation confirmed the vague references to Lubert’s efforts “to organize and capitalize the project” in SC Gaming’s application, *see* Compl., Ex. 3 (SC Gaming’s redacted application) at Attachment to Sch. 32, but failed to state how interests in SC Gaming were actually parceled out to third parties. Further discovery is essential to determining exactly what interests Lubert conveyed to those persons, and whether they constitute “ownership” under the Gaming Act.

71. SC Gaming also represented that Lubert “has the ability to self-fund the entire \$127.6M project budget” for the development of the casino. *See* SC Gaming Presentation at 36. In other words, SC Gaming admitted that Lubert could have paid for his bid, applied for the license and developed the casino without (a) forming an investment group made up of persons whom themselves were ineligible

to bid or apply and (b) applying on their behalf. Incredibly, this representation contradicts the Board’s argument in the Commonwealth Court Action that it is “untenable” that an individual could timely pay a \$10 million bid himself. *See* Sept. 17, 2021 Board Preliminary Objections, Commonwealth Court Action, at 3 n.3.

72. Despite the fact that the Board was privy to this information throughout its licensing proceeding, counsel for Stadium were permitted to provide a mere fifteen minutes of argument at the licensing hearing, without consideration of their expert’s report or any of the discovery they sought. *See* Adj. at 19.

73. During the hearing, immediately following the parties’ presentations and arguments, the Board voted unanimously to grant SC Gaming’s Category 4 license application.

74. The Board subsequently issued a written order, which was dated January 25, 2023 but filed by the Board clerk on January 26, 2023, granting the Category 4 license application to SC Gaming. *See* Order Granting License. A separate Adjudication explaining the Board’s decision was issued on February 7, 2023. *See* Adj.

75. In the Adjudication, the Board stated at various points that SC Gaming is wholly owned by Lubert, and that Lubert “currently remains the sole owner of SC Gaming,” *see id.* at 4, 18, 21, based solely on an unduly narrow

interpretation of “ownership” that excludes preferred stock, convertible notes, and any other conditional and springing interests that are not common stock.

76. The Board also admitted that, during its investigation, “SC Gaming [] represented that a change in control of SC Gaming involving multiple investors – one of which is Bally’s, the project’s developer and manager – will be initiated shortly after the award of the Category 4 slot machine license.” *Id.* at 18. This is also consistent with the aforementioned materials that SC Gaming presented at the January 25, 2023 hearing, which confirmed that Lubert intends to “convert the non-bank debt into equity in SC Gaming, LLC and take an equity investment from Bally’s in SC Gaming HoldCo, LLC,” effectively admitting to an ownership interest in SC Gaming. *See* SC Gaming Presentation at 36.

77. Without ever expressly addressing it, the Board implicitly contends that this arrangement complies with the Gaming Act, and that it possesses the statutory authority to consider SC Gaming’s application, notwithstanding that no record had been developed on the issue, and that no ruling had yet been made on Stadium Casino’s petition in the Commonwealth Court Action. *See* Adj. at 18.

78. Even in the absence of a fully-developed record on precisely what the Board and Lubert are basing their conclusions – a record needed to make an informed decision about the Board’s statutory authority – this position cannot be right as a legal matter, as it “nullifies the statutory provisions limiting the persons

eligible to bid and apply for a Category 4 license, including those in the May 2020 amendment.” Pet. to Intervene at 23, ¶ 91.

79. The Board also reiterated the reasons for its order granting Stadium intervenor status in this matter as a participant, rather than a party – namely, that its “regulations governing intervention” allegedly “allow for participant status only,” the Board “has all of the information it needs or has required from SC Gaming to undertake its investigation of the applicant,” and it is “the duty of BIE/OEC,” and “not the duty of Stadium,” to “analyze the ownership structure” of SC Gaming “and to advise the Board whether the application is compliant with the Act and Regulations.” Adj. at 17.

80. This is even as the Board made an outright finding that “OEC admitted in its [answer to Stadium’s Petition to Intervene] that it did not intend to challenge the Board’s authority to consider SC Gaming’s application.” Adj. at 16.

81. The Board further stated that the discovery sought by Stadium “is confidential under the [Gaming] Act and the Board’s regulations,” and that it “therefore, cannot be turned over to Stadium as discoverable information,” Adj. at 18-19, even as Stadium contended that it would enter into a confidentiality agreement, and pointed out that the basic ownership information it sought is not confidential under the Gaming Act or the Board’s regulations.

82. Finally, the Board also reiterated its position that Stadium’s Request to Supplement the Record was denied “due to the lateness of the filing and the lack of time for the other parties to respond to the supplemental filing,” notwithstanding that any lateness was caused by the Board’s artificial and unnecessary deadlines. Adj. at 15 n.6.

H. On February 8, 2023, the Commonwealth Court Rules in Stadium’s Favor

83. *Immediately following* the Board’s issuance of the Adjudication, on February 8, 2023, the Commonwealth Court entered a unanimous order in favor of Stadium. *Stadium Casino RE, LLC v. Pennsylvania Gaming Control Bd.*, No. 249 M.D. 2021, 2023 WL 1807764 (Pa. Commw. Ct. Feb. 8, 2023). Specifically, the Court denied the preliminary objections of the Board, SC Gaming, and Lubert to Stadium’s Complaint.

84. The Court found the respondents’ preliminary objections unavailing, given that Stadium’s allegation that “[SC Gaming] is *not* solely owned by Lubert, but is owned and controlled in large part by others,” was “more than a bare unsupported assertion, [and] is based on various circumstantial evidence outlined in the Petition.” *Id.* at *5 (emphasis in original).

85. The Court also highlighted the inadequacy of the Board’s investigation to resolve Stadium’s threshold challenge to its jurisdiction, correctly noting that Stadium is “not challenging the . . . issuance of a Category 4 license to

[SC Gaming],” but rather “that [SC Gaming] is ineligible to seek the license, and , therefore, the Board lacks the authority to *consider* [SC Gaming]’s application.”

Id. at *7 (emphasis in original).

86. The Court also presciently surmised the substantive challenge of developing a record during the licensing proceeding and having Stadium’s claims adjudicated by the Board:

Given the Board’s refusal to even consider Stadium Casino’s informal claims that [SC Gaming] is ineligible nor to give Stadium Casino any information on [SC Gaming]’s ownership, we do not have any reason for optimism, let alone confidence, that the Board will exercise its discretion to allow such discovery to Stadium Casino, even if intervention were allowed. . . . **Moreover, if Stadium Casino were limited to the usual role of intervener and denied discovery, the Board’s broad discretion over the matter would likely preclude any prospect of appellate relief from a decision awarding the license to [SC Gaming].**

Id. at *6 (emphasis added).

87. The Court thus found that “a material factual dispute exists” on the issue, given that “Stadium Casino has been denied information [by the Board] on this issue and it has been redacted from the public version of [SC Gaming]’s application.” *Id.* at *5.

88. Accordingly, Stadium served discovery on the Board and SC Gaming on February 22, 2023, in order to obtain the information needed to adequately determine (a) ownership of SC Gaming and its affiliates and, relatedly, (b) the Board’s authority to consider the Category 4 license at issue in this proceeding.

89. Even OEC has stated that Stadium’s claims “are appropriately before the Commonwealth Court.” OEC Br. at 2 n.1.

90. Given the Commonwealth Court’s decision denying the preliminary objections, Stadium is pursuing discovery in that Action so that the Commonwealth Court may reach a decision on the merits of Stadium’s claims on a complete record.

91. Stadium anticipates that, however the Commonwealth Court ultimately rules on the threshold question of statutory authority, its decision will be appealed to this Court.

VI. GENERAL STATEMENT OF OBJECTIONS

A. Based on the limited facts in the current record, the Board could not, as a matter of law, narrowly define “ownership” and interpret and apply Section 1305.2 of the Gaming Act as it did

92. The Board may only consider an application for a Category 4 license if such consideration is authorized by the General Assembly.

93. In May 2020, the General Assembly instructed the Board to conduct one auction in accordance with the procedures under Section 1305.2(c) of the Gaming Act at which only certain persons could bid for the right to apply for a Category 4 slot machine license. *See* Act 23 of 2020, P.L. 158 (May 29, 2020), § 7, codified at 72 P.S. § 1724.1-E(e).

94. Although a full record is needed to address this issue, and although this issue is properly before the Commonwealth Court, the limited record to date does not support, as a matter of law, the Board's interpretation and application of the legislature's intent in the May 2020 amendment to the Fiscal Code and the mandatory legislative directives in Section 1305.2(c) of the Gaming Act.

1. The Board lacked a basis to conclude that it had the authority to consider SC Gaming's application under Section 1305.2(c)(10) of the Gaming Act
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95. The Gaming Act requires the winning bidder at the auction to "submit an application for the Category 4 slot machine license within six months of the payment of the winning bid." 4 Pa.C.S. § 1305.2(c)(10)(i). "Failure of the winning bidder to submit an application within [six months] shall result in forfeiture of the bidder's right to apply for the license and forfeiture of the winning bid amount," and "[t]he board shall conduct another auction at a time determined by the board." *Id.* § 1305.2(c)(10)(ii). These are mandatory legislative directives; the Board has no discretion here.

96. The Board incorrectly found that Lubert is the sole owner of SC Gaming and, accordingly, that it had the authority to consider SC Gaming's application under Section 1305.2(c). *See* Adj. at 4, 18, 21. This finding is premised on the position that an individual winning bidder (here, Lubert) is substantively identical to an entity applicant (here, SC Gaming) simply because the winning

bidder currently owns all of the common stock in the applicant, regardless of whether other persons ineligible to bid in the first instance hold interests that they can use to exert control over the applicant and/or convert their interests to equity.

97. This position is wrong as a matter of law. It is inconsistent with (a) the plain text and intent of the statutory authorization provided by the legislature's May 2020 amendment to the Fiscal Code, (b) the Gaming Act's broad definitions of ownership, (c) multiple Pennsylvania Supreme Court cases that have broadly interpreted ownership interests in the Gaming Act, and (d) basic concepts of ownership in state and federal law outside the gaming context.

98. SC Gaming's application says only that Lubert has 100% "net ownership interests" in SC Gaming. *See* Compl., Ex. 3 (SC Gaming application) at App'x. 44. The Board, in this particular litigation, defines "net ownership interest" to include only "common stock," not "other stock or debt offerings." Compl., Ex. 1 (ownership information provided to Board).

99. In fact, persons other than Lubert have ownership or control interests in SC Gaming that are not currently common stock, as stated in the Board's Adjudication, during the January 25, 2023 hearing, and elsewhere in the record. Specifically, "SC Gaming has represented [to the Board] that a change in control of SC Gaming involving multiple investors – one of which is Bally's, the project's developer and manager – will be initiated shortly after the award of the Category 4

slot machine license.” Adj. at 17; *see also* SC Gaming Presentation at 36. Bally’s has likewise said that it will “*maintain* a majority *equity* interest in *the partnership*.” Compl., Ex. 2 (Bally’s 8-K). The other “investors” to which SC Gaming referred almost certainly also include, without limitation, Messrs. Poole and Sokolov, who have stated that they helped pay for Lubert’s winning bid. Compl. at 3-4, 14-17, 24, ¶¶ 5, 45, 47-48, 69-71. The Board took the same opaque position with regard to all of them.

100. Notably, whatever it is that SC Gaming has said about Bally’s and the other investors’ interests in the casino project, the details of their interests and the other transactions described in the application, including the Bally’s transaction, were (and still are) withheld from the public record and from Stadium.

101. Those interests and transactions have therefore not been subjected to an adversarial process; instead, the Board chose to adjudicate its own statutory authority unilaterally, even though it is well-established that agencies in the Commonwealth cannot decide their own statutory authority and jurisdiction. *See, e.g., Bucks Cnty. Servs., Inc. v. Phila. Parking Auth.*, 71 A.3d 379, 384-85, 388-89 (Pa. Commw. Ct. 2013) (holding that Philadelphia Parking Authority cannot rule upon “its power to issue” regulations); *Spooner v. Sec’y of Com.*, 539 A.2d 1, 3 n.6 (Pa. Commw. Ct. 1988) (holding it does “not believe that any agency is the proper body to determine whether it has authority under a statute”).

102. Unequivocally, third-party ownership interests in SC Gaming and the casino project make the entity substantively different from Lubert. However, because the Board denied Stadium's request for discovery, Stadium does not yet know the exact nature of these interests, and therefore this Court cannot decide on the existing record the threshold question of the Board's statutory authority to consider SC Gaming's application.

103. The Board's consideration of SC Gaming's application, which includes the investment group that Lubert put together encompassing other persons and entities that are not existing licensees or persons with an ownership interest in a licensee, effectively recodified the "qualified entity" concept that the General Assembly removed from the Gaming Act. That is not what the legislature intended when it granted the limited statutory authority to the Board in the May 2020 amendment to the Fiscal Code.

104. The Adjudication implicitly relies on Section 1328(a) of the Gaming Act, which provides a mechanism to change the ownership in a licensee, by acknowledging that SC Gaming has disclosed its plan to effect a change in control following its granting the Category 4 license to SC Gaming and discussing the mechanism for the Board to approve that plan. *See* Adj. at 19.

105. But Section 1328(a) does not provide an end-run around the limitations the legislature imposed in the May 2020 amendment or support the

Board’s narrow reading of ownership under the Gaming Act. Section 1328 applies only to licensees, not applicants. *See* 4 Pa.C.S. § 1328(a). The provision does not give the Board the authority to consider a change in ownership of an applicant, much less an applicant whose application the Board did not have the authority to consider in the first place. If that were the case, it would effectively nullify the statutory provisions limiting who can bid and apply for this Category 4 license.

106. Furthermore, even if the Board’s strained interpretation of “ownership” under the Gaming Act has merit (and it does not), the Board had an obligation to inform the public of its position and ensure all bidders were treated fairly. This publicity would have allowed other persons and entities (such as Stadium) interested in a gaming license to make use of the same funding scheme as the persons who invested in Lubert’s winning bid and SC Gaming’s application. Plainly, the General Assembly did not intend such a gaping loophole – where any person interested in having a stake in a Category 4 license could shoehorn itself into the bid of an authorized bidder by purchasing, for example, a convertible interest in the applicant – in its statutory scheme or it would have written the May 2020 Fiscal Code amendment that way in the first place.

2. The Board lacked a basis to conclude that Lubert complied with Section 1305.2(c)(7) of the Gaming Act

107. The Gaming Act requires the winning bidder to “pay to the board the bid amount within two business days following the auction.” 4 Pa.C.S. §

1305.2(c)(7). The “winning bidder” is expressly defined in the Gaming Act and is limited to only the person or entity that submitted the winning bid. *Id.* § 1103. “If the winning bidder does not pay the bid amount . . . , the second highest bidder shall be awarded the right to select a Category 4 location and apply for the Category 4 slot machine license.” *Id.* § 1305.2(c)(8).

108. A winning bidder cannot solicit other investors to fund their bid by granting them an ownership or control interest in a future applicant, as it would provide an end-run around the limitations imposed by the General Assembly in the May 2020 amendment and the Gaming Act.

109. There is ample evidence that Lubert did that here. Although the Adjudication states the Lubert paid the winning bid “via wire from his personal account,” Adj. at 7, ¶ 11, Stadium has alleged, and presented evidence to show, that Lubert assembled a group of investors by parceling out interests in the bid, application and putative licensee such that Lubert did not pay the winning bid with only his own funds or from credit obtained in the ordinary course of business. *See, e.g.,* Compl. at 13-14, ¶ 43; Pet. to Intervene, Ex. E (D. Cordish Verification) at 1-2, ¶¶ 5-9.

110. The question of who funded the winning bid and the casino project, and on what terms they did so, requires a multitude of inquiries in an adversarial process. However, because the Board did not await a ruling in the Commonwealth

Court Action and denied Stadium's request for discovery and to meaningfully participate in the licensing proceeding, Stadium does not yet know the exact nature of these investments or what these investors received in exchange for their funding.

111. Stadium is currently seeking exactly this information in the Commonwealth Court Action, where its challenge should proceed, as neither the parties nor this Court can address the questions of the Board's statutory authority and compliance with mandatory directives in the Gaming Act unless and until a full evidentiary record is developed.

112. Pursuant to the text of the Gaming Act, Lubert's bid may well be invalid. *See* 4 Pa.C.S. § 1305.2(c)(8) ("If the winning bidder does not pay the bid amount within the [applicable] time period . . . , the second highest bidder shall be awarded the right to . . . apply").

113. While Stadium does not challenge a bidder's ability to obtain financial support in the form of a bond, letter of credit, or other financing arrangement made in the name of the bidder in the ordinary course of business, the Gaming Act and May 2020 amendment do not allow a bidder to sell ownership or control interests in the applicant in exchange for financial support.

B. The Board erred as a matter of law and violated due process, or at a minimum, abused its discretion, when it denied Stadium the right to conduct discovery and actively participate in the licensing proceeding

114. Given the issues identified above, discovery is necessary to develop a comprehensive record in this matter. The Board's order allowing Stadium to nominally participate in the licensing proceeding as a participant, without the ability to conduct discovery, present evidence, or cross-examine witnesses, constitutes legal error and a denial of basic due process rights or, at a minimum, an abuse of discretion.

115. A comprehensive record is needed to determine whether SC Gaming and Lubert complied with the Gaming Act and whether the Board has the statutory authority to consider SC Gaming's application. Indeed, further details on how Lubert parceled out interests in SC Gaming to help fund its casino project would have clarified that (a) persons other than Lubert contributed to the payment of the winning bid in violation of 4 Pa.C.S. § 1305.2(c)(7) and (8), and (b) SC Gaming is substantively different than Lubert, and therefore the Board was not permitted to consider SC Gaming's application under 4 Pa.C.S. § 1305.2(c)(10).

Fundamentally, the Board prevented a necessary adversarial proceeding on the threshold issue of its own statutory authority in connection with a highly controversial casino project.

1. Stadium satisfied the requirements for obtaining discovery and taking an active role in the licensing proceeding
-

116. The Board “may grant a request for discovery if the request will serve to facilitate an efficient and expeditious hearing process, will not unduly prejudice and burden the responding party and as may be required in the interests of justice.”

58 Pa. Code § 493a.11(b). Stadium’s request for discovery met each of these requirements.

117. Similarly, the Board has the discretion to allow Stadium to actively participate in the licensing proceeding, including by presenting evidence and cross-examining witnesses. *See, e.g.*, 58 Pa. Code § 441a.7(z)(6).

118. The Adjudication concluded that the Board “has all of the information it needs or has required from SC Gaming to undertake its investigation of the applicant,” and that therefore Stadium is not entitled to discovery or an active role in the licensing proceeding. Adj. at 17. That conclusion is wrong.

119. The Board’s conclusion is premised on an unduly narrow view of ownership that is inconsistent with the Gaming Act and this Court’s decisions interpreting the Act. Because Stadium was not given an opportunity to conduct discovery or take an active role in the licensing proceeding, no party could (or at least was willing to) prosecute Stadium’s challenge or represent its interests on a complete record.

120. No bureau, division, or department of the Board is unilaterally tasked with determining the Board’s statutory authority to consider an application for a Category 4 slot machine license. OEC, for its part, expressly acknowledged that it “does not intend to challenge the Board’s decision to consider SC Gaming’s application at this time.” Sep. 6, 2022 OEC Answer to Pet. to Intervene, PGCB Dkt. 10577-2022 at 6, ¶ 32. Relatedly, the BIE – a statutorily-created bureau within the Board – is charged with investigating slot machine license applicants’ suitability and eligibility for licensure, not determining the Board’s statutory authority to consider an application for a Category 4 slot machine license. In fact, nowhere in the Gaming Act or the Board’s regulations are questions of statutory authority or the Board’s compliance with mandatory directives in the Gaming Act – including, for example, the directive in Section 1305.2(c)(8) to award the right to apply to the second-highest bidder if the winning bidder fails to timely pay the bid himself; or the directive in Section 1305.2(c)(10) to conduct another auction if the winning bidder fails to timely apply for the license – delegated to any departments/bureaus within the Board.

121. The Board likewise made its position clear in the Commonwealth Court Action, proclaiming on an incomplete record that it has the authority to consider SC Gaming’s application, and that no interests other than common stock – including “outstanding warrants, options, security interests, debt-to-equity

conversions and the like which have not been exercised” – matter for purposes of determining whether SC Gaming is substantively identical to Lubert. Sep. 6, 2022 SC Gaming/Lubert Answer to Pet. to Intervene, PGCB Dkt. 10577-2022, Ex. F (Nov. 19, 2021 Board Reply In Support of Preliminary Objections in Commonwealth Court Action) at 8. The Commonwealth Court rejected that position and directed that the case before it should proceed.

122. The Board’s refusal to more fully develop the record in the licensing proceeding is also inconsistent with precedent of this Court, including its decision in *SugarHouse HSP Gaming, LP v. Pennsylvania Gaming Control Board*, 162 A.3d 353 (Pa. 2016), in which this Court rejected the Board’s narrow interpretation of the term “financial interest” in Section 1330 of the Gaming Act and remanded the matter to the Board to more “conclusively determine” whether a party has a “financial interest” as the Court broadly defined the term, including by “re-open[ing] the evidentiary record and develop[ing] evidence to answer those questions.” *Id.* at 377-78 & n.32.

123. The Adjudication also states that the Board’s “Regulations governing intervention allow for participant status only.” Adj. at 17. That statement is incorrect, because the Board’s regulations are not so limited, and it is inconsistent with how both the Supreme Court and the Board have described intervenors. *See, e.g., Appeal of Municipality of Penn Hills*, 546 A.2d 50, 52 (Pa. 1988) (describing

intervenor as “a party to the action”); Board’s Brief in Opposition to Petition for Review, *Sugarhouse HSP Gaming, LP v. Pa. Gaming Control Board*, No. 175 EM 2014, 2015 WL 9101466, at *11 (Pa. July 24, 2015) (stating that “[a] person may gain party status” as an intervenor if it meets the standard for intervention in 58 Pa. Code § 441a.7(z)).

2. The Board erred in concluding that the information Stadium seeks is confidential and cannot be provided to Stadium

124. The Board denied Stadium’s request for discovery on the grounds that the information Stadium requested is “confidential under the [Gaming] Act and the Board’s Regulations.” Adj. at 18. That conclusion is incorrect.

125. As an initial matter, the information Stadium seeks about the various ownership and control interests in an applicant for a slot machine license is not confidential. *See* 4 Pa.C.S. § 1206(f)(1) (listing categories of information to be considered confidential under the Gaming Act, none of which would cover ownership or control interests in an applicant).

126. In fact, the Board has the power “to collect and post information on its Internet website with sufficient detail to inform the public of each person with a controlling interest or ownership interest in an applicant for a slot machine license.” 4 Pa.C.S. 1202(31). In furtherance of this power, the Board has for at least a decade posted on its website information about applicants’ and licensees’ ownership interests.

127. In this case, the Board has taken an unduly narrow view of what constitutes ownership that is inconsistent with the Gaming Act and exacerbated that error by deeming any interests in an applicant outside its narrow view of ownership as confidential. If the Board interpreted ownership in a manner consistent with the Gaming Act, the various interests that Lubert parceled out to his investment group would have already been made public under Section 1202(31) of the Act.

128. The only reason this matters here is because, under the unique statutory directive in the May 2020 amendment to the Fiscal Code, persons with ownership interests in licensees could bid for the right to apply for this one mini-casino license. For every other Category 4 license, as well as every other slot machine license category, the ownership interests in an applicant could not have affected the Board's statutory authority to merely consider the application, as they do here. In other words, the types of ownership interests that Lubert parceled out to investors only matter to this one application for licensure, and no others.

129. In any event, Stadium expressed several times during the licensing proceeding and in the Commonwealth Court Action its willingness to enter into a confidentiality agreement that limits its ability to use or disseminate the information. Such an arrangement is commonplace in adversarial proceedings. But the Board improperly dismissed that offer as insufficient in its Adjudication.

130. If the Board's position were correct, it would vitiate the role of the judiciary in interpreting the Gaming Act and violate Stadium's due process rights. As the Commonwealth Court has explained, "Stadium Casino would not be in a position to present evidence of its claim unless it were able to obtain discovery of the information that has, so far, been withheld." *Stadium Casino*, 2023 WL 1807764, at *6.

131. Thus, the Board's attempt to allow Stadium into the proceeding on a "limited" basis, deem it unnecessary to have an adversarial proceeding, and then stymie Stadium's ability to get an answer to the legal question Stadium raised, was legal error and a violation of due process and, at a minimum, a clear abuse of discretion.

3. The Board's refusal to allow Stadium discovery or an active role in the licensing proceeding underscores the Commonwealth Court's concerns in its February 8, 2023 Memorandum Opinion about why the judiciary, not the Board itself, should decide the threshold question of the Board's statutory authority

132. The Commonwealth Court rejected SC Gaming and Lubert's argument that Stadium was required to first exhaust its administrative remedies in the licensing proceeding before the Board, concluding that the Board proceeding would not provide an adequate remedy to Stadium.

133. Specifically, the Commonwealth Court recognized that "Stadium Casino would not be in a position to present evidence of its claim unless it were

able to obtain discovery of the information that has, so far, been withheld,” and it rejected SC Gaming and Lubert’s argument that Stadium needed to exhaust its administrative remedies before the Board because it did “not have any reason for optimism, let alone confidence, that the Board will exercise its discretion to allow such discovery to Stadium Casino, even if intervention were allowed.” *Stadium Casino*, 2023 WL 1807764, at *6. The Court was particularly concerned that, “if Stadium Casino were limited to the usual role of intervener and denied discovery, the Board’s broad discretion over the matter would likely preclude any prospect of appellate relief from a decision awarding the license to [SC Gaming].” *Id.* at *6.

134. This is exactly the position Stadium is in now. The Board denied Stadium discovery based on the incorrect decision that Stadium can nominally participate in the licensing proceeding as a mere participant, and accordingly it was unable to develop a complete record or present evidence of its claim.

135. That the licensing proceeding played out exactly as the Commonwealth Court anticipated underscores why Stadium did not have an adequate remedy before the Board, why the Commonwealth Court must decide on a complete record the threshold question of the Board’s statutory authority, and why the Board should never have proceeded with a one-sided administrative process while the litigation was (and remains) pending in the Commonwealth Court. Stadium requested as much from the Board time and time again.

C. The Board abused its discretion by denying Stadium the right to supplement the record with an expert report after it denied Stadium's right to actively participate in the licensing hearing

136. The Board's decision to deny Stadium its right to supplement the record with the expert report of Tami Bogutz Steinberg was also an abuse of discretion that should be vacated by this Court.

137. The Board's January 24, 2023 Order denying the petition to supplement the record, on the sole basis of timeliness, defies logic, given that the Board (a) identified the very date that Stadium submitted the request as the deadline for the parties and Stadium to send materials that they would present at the hearing, and (b) scheduled the licensing hearing at the earliest possible date after its December 14, 2022 Order, denying Stadium the opportunity to obtain discovery or present evidence without leave from the Board.

138. The Report would not have prejudiced any other parties, all of whom had ample notice of the issues in dispute and had an opportunity to present their own evidence and opinions about how SC Gaming and Lubert structured their investment group.

139. The Report is also acutely relevant to Stadium's challenge to the Board's authority. The Report provides several examples of techniques implemented to provide ownership to investors in a venture without issuing them

common stock, including convertible debt interests, which SC Gaming and the Board now acknowledge are among the interests Lubert issued to his investors.

VII. REQUEST FOR ACCESS TO THE RECORD

140. The Rules of Appellate Procedure require the agency to prepare and transmit the record. *See* Pa. R.A.P. 1541, 1921.

141. Stadium avers that the Board, in rendering its decision, relied upon information submitted by OEC, the BIE, the Bureau of Licensing, and/or the Applicants, including SC Gaming and Lubert. Said records were reviewed, discussed, and testified to in executive sessions, or other non-public sessions, that were not available to Stadium.

142. Stadium respectfully requests that this Court issue an order directing the Board to provide a complete index of all records pertaining to the licensing proceeding below, and to provide Stadium access to all records that were a part of these proceeding. Should the Board seek to seal any of these records, Stadium should be provided an opportunity to review any sealing request as to content, and have an opportunity to review said records *in camera* to determine whether an agreement as to sealing can be reached, or whether a further proceeding to determine the propriety of the sealing request is required.

143. As this Court has ordered in prior appeals from the Board's licensing decisions, Stadium respectfully requests that the Court issue an order directing the

Board to fully identify all records which should be included in the certified record to the Petitioner and the Court.

144. Given that Stadium has not been given access to the full record considered by the Board, Stadium expressly reserves its right to amend and supplement this Petition to raise additional objections to the Board's orders and Adjudication. This Court has permitted such amendments in prior appeals from licensing decisions.

145. In addition, Stadium requests an evidentiary hearing, if necessary, to determine all parts of the record, public and confidential, that were available to the Board in reaching its Order dated January 25, 2023 and its subsequent Adjudication dated February 7, 2023, as well as the other orders and determinations by the Board challenged in this Petition. This is a procedural request to ensure Stadium receives the entire record before the Board.

146. To be clear, however, Stadium does not seek to develop a complete record before this Court for the purpose of pursuing its challenge here in the first instance. Rather, Stadium seeks the entire record to show why the Board erred and why it is necessary to remand the Board's decisions reached during the licensing proceeding. The record should be developed in the first instance in the Commonwealth Court Action, where discovery regarding the threshold issue of the Board's statutory authority is now proceeding.

VIII. RELIEF SOUGHT

147. Petitioner Stadium respectfully requests that the Court enter an Order (a) vacating the Board's December 14, 2022, January 24, 2023, and January 25, 2023 Orders and its February 7, 2023 Adjudication, and (b) directing the Board to hold SC Gaming's application for a Category 4 slot machine license in abeyance until the threshold issues of the Board's statutory authority to consider SC Gaming's application and compliance with mandatory directives in the Gaming Act are decided in the Commonwealth Court Action.

148. In the alternative, Petitioner Stadium respectfully requests that the Court enter an Order providing as follows:

a. The Board shall issue a complete index of all records pertaining to its award of the Category 4 license to SC Gaming, provide Stadium access to all records that were part of the proceeding before the Board, and identify fully all records which should be included in the certified record. If necessary, an evidentiary hearing shall be held to determine all parts of the record that were available to the Board in reaching its decisions and Adjudication and that should be a part of the certified record.

b. The Board's Order dated January 25, 2023, and subsequent Adjudication dated February 7, 2023, issuing a Category 4 slot machine license to SC Gaming are hereby VACATED, and this matter shall be remanded to the Board

to allow for discovery and an adversarial proceeding to determine on a complete record whether Lubert and SC Gaming complied with Section 1305.2(c) of the Gaming Act and whether the Board has the statutory authority to consider SC Gaming's application, as well as further consideration and relief consistent with this Petition.


c. The Board's Order dated December 14, 2022, denying in part Stadium's Petition to Intervene is VACATED, and this matter is remanded to the Board for Stadium to participate in the licensing proceeding with full-party status and for further consideration and relief consistent with this Petition.

d. The Board's Order dated January 24, 2023, denying Stadium's Request to Supplement the Record is VACATED, and this matter is remanded to the Board for further consideration and relief consistent with this Petition.

e. Such other relief deemed just and proper.

Respectfully submitted,
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER

Dated: February 23, 2023



Mark A. Aronchick (I.D. No. 20261)
Jason A. Levine (I.D. No. 306446)
Cary L. Rice (I.D. No. 325227)
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One Logan Square, 27th Floor
Philadelphia, PA 19103
(215) 568-6200
Counsel for Petitioner

CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 23, 2023

A handwritten signature in black ink, appearing to read "Mark A. Aronchick", written over a horizontal line.

Mark A. Aronchick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, February 23, 2023, a true and correct copy of the foregoing Petition for Review was served in the manner described below:

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, and EMAIL

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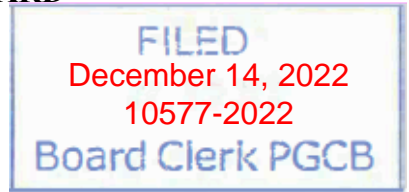
Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Dated: February 23, 2023


Mark A. Aronchick

EXHIBIT A

IN THE PENNSYLVANIA GAMING CONTROL BOARD



PETITION OF STADIUM CASINO RE,
LLC, TO INTERVENE IN THE
CATEGORY 4 LICENSE
APPLICATION OF SC GAMING
OPCO, LLC

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:
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:
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PGCB DOCKET NO.: 10577-2022

ORDER

AND NOW, this 14th day of December 2022, the following hereby is **ORDERED**:

1) Stadium Casino RE, LLC is **GRANTED INTERVENOR STATUS AS A PARTICIPANT** in the Category 4 License Application of SC Gaming OpCo, LLC.

2) The discovery requests proposed in the Petition to Intervene by Stadium Casino RE, LLC are **DENIED**.

3) Stadium Casino RE, LLC's participation in the proceedings will be limited to the following:

- a. The Petition to Intervene, all other subsequent filings on the docket as of this date in this matter, and the transcript of the oral argument from the December 14, 2022 Board Meeting. No other testimony, witness statements or other evidence will be accepted, absent a future Board ruling.
- b. Stadium Casino RE, LLC will be permitted fifteen (15) minutes to address the Board in oral argument at the licensing hearing on the Category 4 Application of SC Gaming OpCo, LLC.

By the Board:



Denise J. Smyler, Chair
Pennsylvania Gaming Control Board

EXHIBIT B

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

In Re: :
:
Category 4 License Application : Docket # 9923-2021
of SC Gaming OpCo, LLC :

ORDER

By Order dated December 14, 2022, the Board granted Stadium Casino RE, LLC intervention status as a participant and, consistent with the Board's regulations, directed that outside of the filings as of that date, any additional testimony, witness statements or other evidence offered by Stadium Casino RE, LLC would not be accepted, absent the Chair's ruling on any such requests in the affirmative.

On Monday January 23, 2023 at approximately 3:07 pm, the Board's Office of Hearings and Appeals received an electronic filing from Stadium Casino RE, LLC. This filing was docketed as a Request to Supplement the Record in the above captioned matter.

The above captioned matter is scheduled to be heard by the Board in a public hearing at its public Board meeting on Wednesday January 25, 2023, beginning at 10:00 am.

The Request to Supplement the Record filed by Stadium Casino RE, LLC was filed less than forty-eight (48) hours before the start of the Board public hearing in this matter.

Due to the lateness of the filing and the lack of time for the other parties to respond to the filing before the hearing commences on Wednesday January 25, 2023, it is hereby

ORDERED that the Request to Supplement the Record by Stadium Casino RE, LLC is
DENIED.

DATE: 1/24/2023



Denise J. Smyler, Chair

EXHIBIT C

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA GAMING CONTROL BOARD**

IN RE: The Matter of the Application of SC Gaming OpCo, LLC, GID #133208-1
Category 4 Slot Machine License

ORDER

AND NOW this 25th day of January 2023, the Pennsylvania Gaming Control Board (the “Board”), based upon the full and careful consideration of the application and record of evidence before it, finds that SC Gaming OpCo, LLC satisfies the requirements for a Category 4 slot machine license pursuant to the provisions of the Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. §§ 1101 – 1904, as amended, (the “Act”) and the Board’s accompanying regulations as follows:

1. SC Gaming OpCo, LLC submitted an application for a Category 4 slot machine license pursuant to 4 Pa.C.S. § 1305.2(c)(10)(i) and caused payment of the application fees.

2. Pursuant to 58 Pa. Code. § 433a (relating to principals) and 58 Pa. Code § 435a.2 (relating to key employees), the following applicants submitted for licensure in conjunction with SC Gaming OpCo, LLC’s application along with the required application fees:

- SC Gaming HoldCo, LLC – GID #134292-1
- SC Gaming, LLC – GID #134240-1
- 2901 ECA Associates, LLC – GID #134290-1
- AMK SCG, LLC – GID #134212-1
- Kervandjian Family Limited Partnership – GID #134209-1
- Ira M. Lubert – GID #19436-10
- Ara Kervandjian – GID #134213-1
- Robert Poole, Jr. – GID #134277-1
- Richard Sokolov – GID #134271-1
- Eric Pearson – GID #97359-2
- Frederick Isick Sahakian – GID #135202-1

3. After evaluating the suitability of SC Gaming OpCo, LLC, the Board finds that SC Gaming OpCo, LLC has proven that it is of good character, honesty and integrity and is otherwise eligible and suitable for licensure.

4. The eligibility and suitability of the applicants identified in Paragraph 2 have been investigated and the Board finds that each is of good character, honesty, and integrity and is otherwise eligible and suitable to be issued a license in connection with SC Gaming OpCo, LLC's Category 4 slot machine license.

5. Each of the entities and individuals licensed pursuant to this Order are subject to all conditions, restrictions and requirements of the Act and all regulations of the Board.

6. The licenses issued pursuant to this Order are subject to renewal every five years and are nontransferable pursuant to 4 Pa.C.S. § 1326 (relating to renewals) and 4 Pa.C.S. § 1327 (relating to nontransferability of licenses).

7. Pursuant to 58 Pa. Code § 421a.1(a) (relating to general requirements), a license or other approval issued by the Board is a revocable privilege.

8. Pursuant to 4 Pa.C.S. §1202(a)(1) (relating to general powers), the Board has sole regulatory authority over every aspect of the authorization, operation and play of slot machines, table games and interactive gaming devices and associated equipment in this Commonwealth.

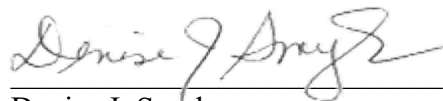
9. Pursuant to 4 Pa.C.S. § 1202(b)(12) and (15) (relating to specific powers), the Board has authority to issue, approve, renew, revoke, suspend, condition, or deny issuance or renewal of slot machine and any other type of license.

WHEREFORE, IT IS ORDERED THAT the Board hereby approves the Category 4 slot machine license for SC Gaming OpCo, LLC and the licensure of the applicants identified in Paragraph 2, subject to continuing compliance with the Act, including the Board's regulations promulgated thereunder, including notice and filing requirements.

WHEREFORE, IT IS FURTHER ORDERED THAT the Board shall issue the Category 4 slot machine license to SC Gaming OpCo, LLC upon satisfaction of the following conditions:

- a. SC Gaming OpCo, LLC pays any outstanding fees, as determined by the Board, pursuant to 4 Pa.C.S. § 1208 within 10 business days of notification by the Board; and
- b. SC Gaming OpCo, LLC agrees to the Board's conditions of licensure for a Category 4 slot machine license as evidenced by the signing of the Statement of Conditions by SC Gaming OpCo, LLC's executive officer or authorized designee within 10 business days of the receipt of the same.

BY THE BOARD:

A handwritten signature in cursive script, appearing to read "Denise J. Smyler", written over a horizontal line.

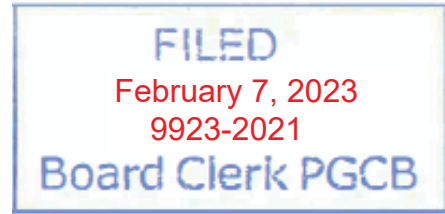
Denise J. Smyler
Chair

DATED: January 25, 2023

The Board will issue an adjudication that will be forthcoming.

EXHIBIT D

PENNSYLVANIA GAMING CONTROL BOARD



IN RE:

Application of SC Gaming
OpCo, LLC

Application for Category 4
Slot Machine License

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:
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OHA Docket # 9923-2021

ADJUDICATION

This matter is before the Pennsylvania Gaming Control Board (“Board”) pursuant to an application by SC Gaming OpCo, LLC¹ (“SC Gaming”) for a Category 4 slot machine license in accordance with the Pennsylvania Race Horse Development and Gaming Act (“Gaming Act” and/or “The Act”), Act of July 5, 2004, P.L. 572, No. 72, *as amended*, 4 Pa.C.S. §§1101-1904 and Act 23 of 2020, (“Act 23”), which amended the Fiscal Code at 72 P.S. §1724.1-E to provide that the Board shall conduct an auction pursuant to 4 Pa.C.S. §1305.2(c)(12) of any Category 4 slot machine license for which the Board has denied the application filed by the winning bidder of an initial auction, subject to certain limitations.

In July 2004, after the Gaming Act was ratified, Pennsylvania began an expansive initiative to provide for legalized slot machine gaming at a limited number of licensed facilities in the Commonwealth. The primary expressed objective of the Gaming Act is to protect the public through regulating and policing of all activities involved in gaming. Other objectives include enhancing live horse racing and breeding programs; increasing entertainment and employment opportunities in the Commonwealth; establishing a significant source of income to the

¹ SC Gaming OpCo is a limited liability company that was formed on November 5, 2020, in the State of Delaware for the purpose of holding the Category 4 slot machine license and operating the casino facility proposed by and on behalf of Ira Lubert.

Commonwealth for tax relief; the creation of broad economic opportunities for Pennsylvania's citizens; and developing tourism. The amendments to the Gaming Act in 2017 specifically address Category 4 facilities, stating that it is the intent of the General Assembly to auction Category 4 locations and the right to apply for Category 4 locations in the Commonwealth to ensure the sustainability and competitiveness of the commercial gaming industry in locations in a manner to avoid the cannibalization of existing commercial locations. 4 Pa.C.S. §1102(12.5)

To meet these stated objectives, the Board is charged with strictly monitoring the licensing of specified locations, persons, associations, practices, and activities while considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions. Ultimately, the Board must maintain the integrity of the regulatory control of the industry. 4 Pa.C.S. §1102

The Act established the Board, which is comprised of three (3) gubernatorial and four (4) legislative appointee members. 4 Pa.C.S. §1201(b). The Board is vested with general jurisdiction over all gaming and related activities including, but not limited to, overseeing the acquisition and operation of slot machines, table games and other equipment, and issuing, approving, renewing, revoking, suspending, conditioning, and denying slot machine licenses. 4 Pa.C.S. §1202

Four categories of slot machine licenses have been authorized by the Gaming Act and its Amendments. The category at issue here is the Category 4 slot machine license authorized by 4 Pa.C.S. §1305.1, and for this particular license, Act 23 of 2020, amending §1724.1-E of the Fiscal Code, 72 P.S. § 1724-1E. The Fiscal Code Amendment directed that the Board conduct an auction pursuant to 4 Pa.C.S. §1305(c)(12) of the Gaming Act. This directive provided that eligible

bidders in the auction could include slot machine licensees in good standing with the Board or persons with an ownership interest in a slot machine licensee that holds a license in good standing with the Board.² Other eligibility requirements for a Category 4 license include the location of the proposed casino, 4 Pa.C.S. §1305.1(b); timely payment of the bid amount, 4 Pa.C.S. §1305.2(c)(7); and the timely submission of the Category 4 application, 4 Pa.C.S. §1305.2(c)(10).

The Gaming Act also imposes more general eligibility criteria on applicants for all categories of slot machine licenses, which include the development and implementation of a diversity plan to assure equal opportunity in employment and contracting, as well as a requirement that the applicant be found suitable, consistent with the laws of the Commonwealth, and are otherwise qualified for licensure. 4 Pa.C.S. § 1325.

Other sections of the Gaming Act impose further restrictions on who may be issued a license, including imposing good character, honesty, and integrity requirements upon applicants, requiring letters of reference from law enforcement and other casino jurisdictions where the applicant may be licensed, 4 Pa.C.S. § 1310, and imposing strict financial fitness requirements on the applicant to assure the financial and operation viability of the proposal, 4 Pa.C.S. § 1313, among others. In addition to the eligibility criteria, the Gaming Act also provides extensive guidance for the Board’s consideration in issuing licenses. 4 Pa.C.S. § 1325(c).³

In accordance with the second Fiscal Code Amendment, on September 2, 2020, at a public meeting of the Board, an auction was conducted for a Category 4 license previously applied for by Mt. Airy #1, LLC and subsequently denied by the Board. Ira Lubert (“Mr. Lubert”) submitted the

² This amendment to the Fiscal Code differs from the 2017 Gaming Act Amendment authorizing Category 4 slot machine licenses by permitting any person with an ownership interest in a slot machine licensee that holds a license in good standing with the Board to submit an auction bid. It also differs from a previous amendment to the Fiscal Code which required the auction process to restart and was subsequently halted after receiving no bids.

³ Section 1325(c) provides that the Board may take the listed factors into consideration when determining whether the grant of a license is in the public interest and in accordance with the objectives of the Act.

winning bid of \$10,000,101.00. This was one of two bids received at this auction. A second bid was submitted by Stadium Casino RE, LLC (“Stadium”). Mr. Lubert also secured a location for placement of a Category 4 casino within a 15-mile radius area with a center point in Unionville Borough in Centre County. Mr. Lubert timely paid the winning bid amount to the Pennsylvania Department of Revenue on September 3, 2020. After securing a Category 4 location, Mr. Lubert created SC Gaming OpCo, LLC, an entity owned wholly by himself, to apply for the Category 4 license and operate the casino.

Board staff received SC Gaming’s timely Category 4 application on March 2, 2021, and the Bureau of Licensing (“BOL”) and the Bureau of Investigations and Enforcement (“BIE”) subsequently engaged in an extensive review and investigation of the applicant. On August 16, 2021, the Board held a Public Input Hearing at the Penn Stater Conference Center in State College Pennsylvania. During the Public Input Hearing, SC Gaming made a presentation and eleven (11) individuals spoke about the proposed project. In addition, a public comment period was established and subsequently extended until it closed on June 12, 2022, wherein the Board accepted, and made part of the record, written submissions by anyone who chose to provide the same. During the extended public comment period, the Board received 773 written comments regarding the SC Gaming project. Six hundred and seventy-two were opposed to the project, one hundred were in favor and one was neutral.⁴ The Board placed a large amount of information about the project on its website, as well as the written public comment and conducted a public Suitability Hearing for SC Gaming on January 25, 2023, in Harrisburg Pennsylvania.⁵

⁴ The Board also received two (2) petitions with signatures of individuals opposed to the project.

⁵ See: <http://www.gamingcontrolboard.pa.gov/?p=71&yr=202>

In addition to the eligibility criteria cited above, factors the Board took into consideration when reviewing this application are contained in Section 1325 of the Act. The Board fully considered all these factors to arrive at its decision on licensure based upon all of the evidence that comprises the evidentiary record in this case. The Board also had the opportunity on several occasions to question SC Gaming about its proposal.

Throughout the entire licensing and investigative process, BIE reached out to various federal, state and local law enforcement agencies, including the Federal Bureau of Investigation (“FBI”), the Pennsylvania State Police (“PSP”) and the Pennsylvania Attorney General, requesting any information in the possession of those agencies related to the suitability of SC Gaming. These agencies have not provided the Board with any information that would preclude SC Gaming from being found suitable for licensure.

Based upon each Board member’s comprehensive evaluation of all information obtained throughout the entire licensing process and contained in the evidentiary record, the Board collectively engaged in quasi-judicial deliberations in several executive sessions, during which it met to fully and frankly discuss the eligibility and suitability of this applicant and its proposed project.

On January 25, 2023, the Board met during a public meeting in accordance with the requirements of the Pennsylvania Sunshine Act, 65 Pa.C.S. Chapter 7, and Section 1206 of the Gaming Act, to consider and vote on the Category 4 slot machine application of SC Gaming. During the January 25, 2023, public meeting, the Board voted unanimously to grant SC Gaming a Category 4 license. The following Findings of Fact and Conclusions of Law set forth the Board’s rationale for this determination.

FINDINGS OF FACT

1. On October 30, 2017, Governor Wolf signed Act 42, creating a Category 4 slot machine license, and directing the Board to establish procedures by which auctions will be held to obtain both a Category 4 location and the right to apply for a Category 4 license.
2. Successful auctions were held on January 10, January 24, February 8, February 22, and April 4 of 2018. On April 18, 2018, the Board held an auction at which no bids were offered. The Board stopped the auction process at that point per their discretion in 4 Pa.C.S. §1305.2(b.1).
3. On June 28, 2019, Governor Wolf signed Act 20 which amended the Fiscal Code to, *inter alia*, require the Board to restart the auction process for the remaining five (5) Category 4 licenses with the stipulation that should an auction not receive a bid, the process would again halt.
4. On September 4, 2019, the Board held an auction pursuant to Act 20. No bids were offered.
5. On November 20, 2019, the Board denied the application for a Category 4 slot machine license that Mount Airy #1, LLC had won the right to submit after reserving a Category 4 Location in Big Beaver, PA, by successful bid on February 8, 2018.
6. On May 20, 2020, Governor Wolf signed Act 23 which amended the Fiscal Code a second time to, *inter alia*, require the Board to conduct another auction to re-auction any Category 4 license that it had previously denied. 72 P.S. § 1724.1-E(e).
7. Pursuant to Act 23, eligible bidders are defined as a slot machine licensee in good standing with the Board or any person with an ownership interest in a slot machine licensee that holds a license in good standing with the Board. 72 P.S. § 1724.1-E (e)(2)(iv).

8. On September 2, 2020, an auction was held pursuant to Act 23. There were two bids offered. Mr. Lubert won that auction with a bid of \$10,000,101. Unionville Borough, Centre County, was the center point of a fifteen-mile radius selected as the Category 4 Location. Stadium offered the second, and losing, bid.
9. At the time of the September 2, 2020 auction, Mr. Lubert was eligible to bid pursuant to 72 P.S. § 1724.1-E(e)(2)(iv)(B) as he held a 3.150% ownership interest in Holdings Acquisition Co., LP – a Category 2 slot machine licensee operating as Rivers Casino Pittsburgh. He also held a principal license in good standing with the Board.
10. The winning bidder was required to remit the bid amount within two business days of the auction, or the second highest bidder shall be awarded the right to select a Category 4 Location. 4 Pa.C.S. §1305.2(c)(7), (8).
11. Mr. Lubert timely paid his winning bid amount of \$10,000,101 to the Pennsylvania Department of Revenue on September 3, 2020, via wire from his personal account.
12. On November 5, 2020, in the state of Delaware, SC Gaming, a limited liability company, was formed for the purpose of holding the Category 4 slot machine license and operating the casino facility on behalf of Mr. Lubert.
13. A winning bidder was required to file an application for a Category 4 slot machine license within six (6) months of winning the bid or forfeit the right to apply for the license and the winning bid amount. 4 Pa.C.S. §1305.2(c)(10)(i), (ii).
14. After winning the auction and reserving the Category 4 location, SC Gaming filed a timely application for a Category 4 slot machine license on March 2, 2021.

15. Once an application is received, it is first reviewed by the BOL to ensure completeness and, if necessary, the applicant is provided with an opportunity to cure any deficiencies within the application. 58 Pa. Code §423a.4(a).
16. Upon an application being deemed complete by the BOL, it is transmitted to the BIE so they may “[i]nvestigate and review all applicants and applications for a license....”. 4 Pa.C.S. §1517(a.1)(2).
17. Certain information within that application is statutorily deemed to be confidential and cannot be disclosed by the Board. 4 Pa.C.S. §1206(f)(1).
18. Beyond what the statute specifically delineates, it is within the Board’s discretion to further restrict the release of information it deems, on its own, to be confidential. 4 Pa.C.S. §1207(2).
19. The Board may not require an applicant to waive confidentiality. 4 Pa.C.S. §1206(f)(5).
20. BIE shall enforce the provisions of the Act. 4 Pa.C.S. §1517(a.1)(1).
21. Within the BIE, the Office of Enforcement Counsel (“OEC”) is established to “[a]dvise the bureau on all matters, including the granting of licenses....”. 4 Pa.C.S. §1517(a.2)(1)(i).
22. BIE and OEC are the only entities statutorily enabled and authorized to investigate applications and enforce the Act. 4 Pa.C.S. §1101, *et seq.*
23. BIE and OEC have conducted an extensive investigation into the application, applicant, and proposed project and do not object to the Board’s award of this Category 4 slot machine license.
24. In their application, SC Gaming indicated that in addition to their slot machine license, they intended to also file Petitions to operate table games, interactive gaming, and sports wagering.

25. Mr. Lubert has substantial experience successfully developing and running a casino. He states that he was the lead partner in the group that developed Valley Forge Casino Resort, a Category 3 licensee in good standing, and he intends to apply the same skills to the Category 4 project in State College.
26. SC Gaming's proposed facility will be located at the Nittany Mall, 2901 E. College Ave., Suite 200, State College, Pennsylvania, 16801, in the space formerly occupied by a Macy's department store.
27. The proposed facility will occupy 94,766 square feet of currently vacant space within the existing 550,000 square foot mall.
28. Of the 94,766 square feet of space, the gaming floor will occupy 36,192 square feet, while the retail sportsbook will occupy 830 square feet.
29. The total budget for the project is \$128 million.
30. The location is currently zoned in College Township's C-1 General Commercial Zoning which indicates that a gaming establishment is "use-by-right" and will not need any additional zoning compliance.
31. SC Gaming proposes to operate 750 slot machines and 30 table games at the commencement of operations, the most allowed under the Gaming Act for a Category 4 facility.
32. Per the provisions in 4 Pa.C.S. §1305.1(d)(3)(iii), SC Gaming indicated that it will file a Petition, and pay the \$10,000/machine fee, to operate each of its proposed 750 slot machines.
33. SC Gaming indicated that it will file a Petition, and pay the requisite \$2,500,000 fee, to operate the 30 table games as specified in 4 Pa.C.S. §13A11(b)(2.2)(i).

34. SC Gaming indicated in its application that it, or its appropriate affiliate, will Petition for a sports wagering certificate to operate both retail and interactive sports wagering.
35. SC Gaming further indicated that it, or its appropriate affiliate, will Petition to operate all three available forms of Interactive Gaming.
36. The proposed site plan also includes a sports themed restaurant and bar with a stage for live music and special events, as well as quick serve food and beverage outlets. Once commenced, construction is anticipated to take no longer than one (1) year.
37. The facility will have three entrances with one entrance into the mall space. The facility is planned to be a non-smoking facility.
38. At all casino entrances there will be security personnel checking the ID of any patron looking under the age of thirty and employing ID scanning and verification technology to confirm patron ages.
39. There will be 24/7 surveillance coverage of, among other areas, the casino floor, all public spaces where customers can circulate, as well as in the parking lots. The parking lots will have roving security patrols and constant roving patrol coverage during peak times.
40. SC Gaming's proposed location in the Nittany Mall is already well-suited to the kind of volume and traffic that a casino facility can bring. In total, it has over 2,000 parking spaces and, to ease traffic flow, six access points - three that are signalized and three that are not – to surrounding roads.
41. The proposed location is also less than two (2) miles from Interstate 99, as well as having easy access to Interstate 80 and US 322, which will open the primary market service area within 50 miles of the property.

42. SC Gaming anticipates creating jobs through both the initial construction and ongoing operations. They anticipate 350 construction jobs to last during the anticipated one-year construction timeline and averaging an annual salary of approximately \$46,000.
43. SC Gaming also avers that there will be about 350 full-time equivalent jobs to maintain operations upon opening and 400 full-time equivalent jobs once the facility stabilizes at an average annual salary of \$47,000. Employees will have benefits such as paid time off, a 401(k) plan, medical, dental and vision insurance, as well as other employee benefits offered.
44. All employees will be required to complete annual responsible gaming training to work on the casino floor, as well as responsible alcohol training.
45. In addition, SC Gaming anticipates 110 full-time equivalent indirect jobs during construction, 240 full-time equivalent indirect jobs upon opening, and 300 indirect jobs upon stabilization in other industries to support the facilities ongoing operations. These jobs will mostly be in healthcare and social assistance, retail, transportation and warehousing, finance and insurance, and accommodations and food services.
46. It is anticipated that these jobs, both direct and indirect, will be attainable to a wide range of people with backgrounds ranging from entry-level to senior management.
47. SC Gaming anticipates an increase in tourism to College Township and a revitalization of the Nittany Mall as a result of the project.
48. SC Gaming represents that it plans to recruit a workforce reflective of the diversity of Centre County based upon estimates provided by the U.S. Census Bureau.
49. SC Gaming further represents that its policies, work environment, and practices will mirror this commitment to diversity.

50. SC Gaming also commits to equality of opportunity in contracting by any contractors, subcontractors, assignees, lessees, agents, gaming service providers, and suppliers.
51. According to a local impact analysis, the project proposed by SC Gaming should negligibly impact street maintenance and will not require additional improvements to meet usage demands for sanitation, water, and sewer.
52. That same analysis suggests the project will not impact the capabilities of current police, fire, or EMS staffing or operations. SC Gaming representatives testified that if projected calls for these services are greater than anticipated, they will address new needs as they arise.
53. Because the location of the proposed facility is within an existing shopping mall, it is anticipated that current traffic patterns and infrastructure will not need any substantial improvements to meet any increased demand and is already capable of handling the volume. The only suggested improvement by College Township's engineer was to potentially adjust the timing of certain nearby traffic signals.
54. At SC Gaming's public input hearing held by the Board, former State Senator Jake Corman pointed out that while crafting the concept of the Category 4 slot machine license, the General Assembly contemplated a structure by which local municipalities could opt out if they did not want to participate in gaming. College Township did not choose to opt out.
55. Former Senator Corman also pointed out that Mr. Lubert is a local resident who will have a personal and vested interest in a high-quality facility.
56. The district manager for State Representative Kerry Benninghoff testified that he is encouraged by SC Gaming's chance to revitalize the Nittany Mall, which has become vacant.

57. The district manager testified that Representative Benninghoff believes the facility can become a good community partner that will provide good, family-sustaining, and local jobs.
58. Local government, union, and Nittany Mall representatives further testified to what they believe are the merits of this project and the good they believe it will do for the local community.
59. Four local residents testified on behalf of the project at the public input hearing. One was in support, two were opposed, and one was neutral.
60. Supporters of the project cited the potential for economic revitalization, employment, and tourism.
61. Reasons for opposition included immorality, gambling addiction, proximity of the project to children, insufficient parking, and a vague plan.
62. In addition to testimony at the public input hearing, the record remained open until June 12, 2022, to accept written comments. One hundred people submitted written comments in support of the project and six hundred and seventy-two people submitted written comments in opposition to the project. Two petitions with signatures of those opposing the project were also provided to the Board.

CONCLUSIONS OF LAW AND DISCUSSION

The Board has the “sole regulatory authority over every aspect of the authorization, operation and play of slot machines, table games and interactive gaming devices and associated equipment” in Pennsylvania. 4 Pa.C.S. §1202(a)(1). Moreover, the Board has the “specific power and duty...at its discretion, to issue, approve, renew, revoke, suspend, condition or deny issuance or renewal of slot machine licenses.” *Id.* § 1202(b)(12).

With this authority and duties in mind, as well as the objectives and criteria set forth in this adjudication, the Board has reviewed the entire evidentiary record for the SC Gaming application, as well as the filings related to the intervention of Stadium Casino. Based upon all of this information the Board concludes that SC Gaming is eligible and suitable for a Category 4 slot machine license and it would be in the best interest of the Commonwealth and its citizens to award such a license to SC Gaming. The Board's reasons and rationale supporting its decision follows.

I. Intervention of Stadium Casino RE, LLC

Procedural Background

On July 28, 2021, Stadium filed a Petition for Review in Commonwealth Court against the Board, SC Gaming and Mr. Lubert. As of this date, the Petition for Review remains pending. Specifically, the parties are awaiting a decision on preliminary objections filed by the Board.

On August 26, 2022, after an Order was filed by a Hearing Officer setting a deadline for any Petitions to Intervene in the SC Gaming application process before the Board, Stadium filed a Petition for Intervention ("Petition") raising the same issue presented in the Commonwealth Court, although now seeking discovery from the Board and the opportunity to present witnesses and testimony at SC Gaming's licensing hearing. After filing the Petition to Intervene, between August and October 2022, SC Gaming, Stadium and OEC filed several documents, including Answers, Replies and Briefs in support thereof.

On December 14, 2022, a public hearing was held wherein the Board granted Stadium intervenor status as a participant, but denied Stadium's discovery request and ordered that its participation in the proceedings be limited to:

- a. Submission of the Petition to Intervene, all other subsequent filings on the docket at that time, and the transcript of the oral argument from the December 14, 2022, Board meeting.

No other testimony, witness statements or other evidence was to be accepted, absent a future Board ruling.⁶

b. Stadium Casino Re, LLC was permitted fifteen (15) minutes to address the Board in oral argument at the licensing hearing on the Category 4 Application of SC Gaming Op Co, LLC.

Summary of Intervention Issues

1. Intervention

The Board's regulations governing intervention in a licensing proceeding are found at 58 Pa. Code §441a.7(z). This subsection pertains exclusively to intervention in a licensing hearing. The right to intervene in a licensing hearing under this section is within the sole discretion of the Board. *Id.* The regulation provides that a person may file a petition to intervene under this subsection if the person has an interest in the proceeding which is substantial, direct, and immediate and if the interest is not adequately represented in a licensing hearing. *Id.* §441a.7(z)(2). The regulations also provide that, except when the Board determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in a licensing hearing will be limited to the presentation of evidence through the submission of written statements attested to under oath. *Id.* §441a.7(z)(6). The written statements shall be part of the evidentiary record. *Id.*

Stadium argued at the December 14, 2022, public hearing that as the losing bidder in the September 2020 auction, it has an interest that is substantial, direct, and immediate as required by the Regulations. Stadium also argued that its interests in the licensing proceeding would not be

⁶ On Monday January 23, 2023, later in the afternoon, Stadium filed a request seeking to supplement the record with additional expert witness testimony. This request to supplement the record was denied by Order dated January 24, 2023, due to the lateness of the filing and the lack of time for the other parties to respond to the supplemental filing.

adequately represented by either OEC/BIE or SC Gaming because neither would address the issues Stadium raised concerning the Board's statutory authority under the Gaming Act. Specifically, Stadium questioned whether the Board has the authority to consider SC Gaming's application because, Stadium asserts, it did not submit the application in the manner required by the Gaming Act.

OEC admitted in its September 6, 2022, Answer that it did not intend to challenge the Board's authority to consider SC Gaming's application. However, OEC did deny that OEC/BIE would not adequately represent Stadium's interests in the issue raised. OEC/BIE is charged with enforcement of the Act, which includes, among other responsibilities, protecting the citizens of the Commonwealth, including Stadium, and enforcing regulatory compliance with the Act. Furthermore, OEC/BIE is charged with investigating SC Gaming's application, including assessing whether Mr. Lubert and SC Gaming complied with the Gaming Act during the application process and to make reports, recommendations and objections to the Board based on their investigation and assessments. OEC/BIE averred that it would represent the interests of Stadium, as well as the general public, in discharging these duties when determining whether the application complied with the Gaming Act.

58 Pa. Code §441a.7(z), sets forth the rights of an intervener at a license hearing to submit written statements attested to under oath. Accordingly, Stadium requested in its filings that the Petition to Intervene and its other filings on the record serve as their written statement under oath, to which neither OEC nor SC Gaming objected, and which the Board ordered following the December 14, 2022, hearing.

2. Participant or Party

The Board also took up the issue of whether Stadium should be deemed to be a participant or a party to the matter for the purpose of intervention. At the December 14, 2022, public hearing the Board determined that Stadium should be granted intervenor status as a participant and not as a party.

The Board's regulations at Section 491a.2 provide the following definitions of Party and Intervenor (hereinafter "participant"):

Intervener--A person who petitioned to intervene in a proceeding and who was admitted by the Board as a participant to the proceeding.

Party--A person who is named in or admitted to a proceeding before the Board and who has a direct interest in the subject matter of the proceeding.

The Board determined that Stadium should be permitted to intervene as a participant for the following reasons and in accordance with the provisions of Section 441a.7(z): 1) the Board has the discretion, but not the obligation to permit Stadium to intervene in this matter; 2) the Regulations governing intervention allow for participant status only; 3) Board staff has all of the information it needs or has required from SC Gaming to undertake its investigation of the applicant, and there is no new factual information that Stadium could provide to the Board; and 4) it is not the duty of Stadium, but instead the duty of BIE/OEC, to review the applications, analyze the ownership structure and to advise the Board whether the application is compliant with the Act and Regulations.

3. Discovery Request

Stadium averred in its Petition to Intervene that Mr. Lubert, after winning the auction bid, partnered with Bally's Corporation, which then obtained a majority equity interest in the partnership and formed multiple entities and sold ownership or controlling interests in those

entities to others who would not have been eligible to submit a bid at the auction in their own right. Stadium also alleged that Mr. Lubert did not pay the winning bid amount himself, with his own funds, but that others funded the bid amount. Stadium therefore sought discovery related to the persons and entities that they alleged have an ownership or control interest in SC Gaming or SC Gaming affiliates in support of their averments set forth above.

Ownership

Mr. Lubert, as the winning bidder for the Category 4 slot machine license, formed SC Gaming for the purpose of holding the Category 4 slot machine license. SC Gaming has been wholly owned by Mr. Lubert since its formation, including at the time it filed the application, submitted the appropriate license fee, and throughout the background investigation process. Mr. Lubert currently remains the sole owner of SC Gaming. SC Gaming has represented that a change in control of SC Gaming involving multiple investors - one of which is Bally's, the project's developer and manager - will be initiated shortly after the award of the Category 4 slot machine license. The change in control will require that: (1) SC Gaming file a petition with the Board requesting approval of the transaction(s); and (2) each individual and/or entity file the appropriate application, undergo background investigations, and independently qualify for licensure.

Confidential Information

Section 407a.3 of the Board's regulations, which governs confidential information and its release by the Board, is clear: the information sought by Stadium regarding the ownership structure of SC Gaming and its subsidiaries is confidential under the Act and the Board's regulations and, therefore, cannot be turned over to Stadium as discoverable information. The information Stadium seeks is contained in SC Gaming's Category 4 application. The

confidential information contained in the public version of the application was redacted pursuant to the confidentiality provisions found Section 407a.3. This information can only be released to the public, including Stadium, under very narrow circumstances, none of which were present in this matter. The Board is without authority to order disclosure of documents that are specifically required to be maintained and protected as confidential under the Act and Regulations, thus Stadium's request for discovery in this matter was denied.

4. Oral Argument

The Board has the discretion to allow Stadium to participate in the proceedings beyond what is provided for in 58 Pa. Code § 441a.7(z)(6), which limits the participation of an intervenor to the submission of written statements under oath. However, to have a full record for the Board to consider, the Board ordered that Stadium be given fifteen (15) minutes to present its oral argument prior to considering SC Gaming's application. Stadium presented its oral argument at the January 25, 2023, public hearing, prior to the Board making its determination in the matter of SC Gaming's application for a Category 4 license.

II. Eligibility of SC Gaming for a Category 4 slot machine license

As noted, Act 23 of 2020 amended the Fiscal Code to provide the following:

Notwithstanding 4 Pa.C.S. Pt. II or any other provision of law to the contrary, the following shall apply:

- (1) Within 90 days of the effective date of this subsection, the board shall conduct an auction pursuant to 4 Pa.C.S. § 1305.2(c)(12) of any Category 4 slot machine license for which the board has denied the application filed by the winning bidder of an initial auction, subject to the limitations under paragraphs (2), (3) and (4).
- (2) In conducting the auction under this subsection, the following shall apply:

- (i) The board shall conduct the auction according to the procedures under 4 Pa.C.S. § 1305.2(c).
 - (ii) The board shall set the date, time, and location of the auction at least two weeks prior to the auction and make auction information available on the board's publicly accessible Internet website.
 - (iii) If the auction fails to generate a bid, further auctions may not be conducted.
 - (iv) Eligible bidders must be one of the following:
 - a. A slot machine licensee as defined under 4 Pa.C.S. § 1103 that satisfies the following:
 - i. the slot machine licensee's license and table games operation certificate are in good standing with the board; and
 - ii. the slot machine licensee agrees to locate a Category 4 licensed facility as provided under 4 Pa.C.S. § 1305.1(b)(1), (3), (4), (5), (6) and (7).
 - b. A person with an ownership interest in a slot machine licensee as defined under 4 Pa.C.S. § 1103 that satisfies the following:
 - i. the person holds a license in good standing issued by the board;
 - ii. the person satisfies the requirements of 4 Pa.C.S. Part II and any criteria established by the board for licensure, including, but not limited to, financial and character suitability requirements, and has been approved by the board; and
 - iii. the person agrees to locate a Category 4 licensed facility as provided under 4 Pa.C.S. § 1305.1(b)(1), (3), (4), (5), (6) and (7).
- (3) A winning bidder's Category 4 location may not be located within 40 linear miles of a licensed facility, as defined under 4 Pa.C.S. § 1103, or a proposed Category 4 licensed facility.
- (4) A winning bidder that is not an existing slot machine licensee shall follow the procedures set forth under 4 Pa.C.S. § 1305.1(d)(3)(iii) by filing a petition with the board to operate slot machines and paying the authorization fee per authorized slot machine.

72 P.S. § 1724.1-E.

In accordance with this provision, the Board conducted an auction for the Category 4 slot machine license for which Mount Airy #1 LLC had unsuccessfully applied. The auction occurred at the Board's public meeting on September 2, 2020.

Mr. Lubert was eligible to submit a bid at the auction for the Category 4 slot machine license because he has an ownership interest in a slot machine licensee⁷ and holds a principal license that is in good standing with the Board. Mr. Lubert's winning bid amount of \$10,000,101 was one of two bids received, the other belonging to Stadium. Mr. Lubert also secured a location for the casino that complies with the Act and Regulations.

Pursuant to 4 Pa.C.S. § 1305.2(c), the winning bidder of a Category 4 auction is required to pay the bid amount within two business days following the auction and submit an application for the slot machine license within six months of the payment of the winning bid amount. If the winning bidder does not pay the bid amount within two business days, the second highest bidder is awarded the right to apply for the Category 4 slot machine license and choose a different location. Additionally, failure to submit an application within the required time results in forfeiture of the bidder's right to apply for the license and forfeiture of the winning bid amount.

Mr. Lubert timely paid the winning bid amount to the Pennsylvania Department of Revenue on September 3, 2020, via wire from his personal account, and timely submitted an application for a Category 4 slot machine license by way of his wholly owned entity, SC Gaming, on March 2, 2021.

The Board finds that SC Gaming has met the required eligibility criteria.

⁷ Mr. Lubert holds 3.150% net ownership interest in Holdings Acquisition Co, LP, a Category 2 slot machine licensee (Rivers Casino Pittsburgh).

II. Suitability of SC Gaming for a Category 4 slot machine license

Pursuant to 4 Pa.C.S. § 1325(c), in addition to the eligibility criteria provided above, the Board may also consider the following factors when reviewing an application for a slot machine license:

1. The location and quality of the proposed facility, including, but not limited to, road and transit access, parking, and centrality to market service area.
2. The potential for new job creation and economic development which will result from granting a license to the applicant.
3. The applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility.
4. The applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant.
5. The applicant's good faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, gaming service providers and suppliers it may employ directly or indirectly.
6. The history and success of the applicant in developing tourism facilities ancillary to gaming development, if applicable to the applicant.
7. The degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs, and full-time permanent jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular.
8. The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations, and employees in other locations.
9. The degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, childcare, public transportation, affordable housing, and social services, will be mitigated.
10. The record of the applicant and its developer regarding compliance with:

- (i) Federal, state, and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and
- (ii) State and local labor relations and employment laws.

11. The applicant's record in dealing with its employees and their representatives at other locations.

The Board notes that SC Gaming provided detailed information relating to these factors in its application for the Category 4 license and at the public input and suitability hearings before the Board.

Location

The proposed casino location is 2901 East College Avenue, which is the Nittany Mall located along Benner Pike (S.R. 1050) and College Avenue (S.R. 0026) in College Township, Centre County, Pennsylvania. This is a prominent retail location with several anchor stores and additional retail outlets. The Nittany Mall, located in the existing College Township Commercial District, is an ideal location which is already an established and well-designed location for a high-volume consumer-oriented retail business such as SC Gaming's proposed Category 4 casino. It is highly visible in the surrounding area. The site will offer over 2,000 parking spaces with six access points to the Nittany Mall complex. The proposed facility will be located just over one (1) mile from Interstate 99 and will also be close to Interstate 80 and US-322, giving the facility access to local and interstate traffic and serving the casino's primary service area, which encompasses a fifty (50) mile radius around the property. This location has ample road and transit access, providing for ease of ingress and egress.

Currently, the Nittany Mall is not fully occupied due to the nationwide trend of decreased retail shopping in physical locations, as online shopping has become more popular. Re-use of this roughly 94,000 square feet of space will create and encourage revitalization opportunities at the under-utilized mall.

According to SC Gaming's application, there are two places of worship, one adult development center, two charitable institutions, one daycare center, and one family entertainment facility within a 1,500-foot radius (about ¼ of a mile) of the proposed facility. There are no hospitals, parks or zoos that would be frequented by the public within this 1,500-foot radius.

Based upon these factors, the Board concludes that SC Gaming's proposed location is suitable for a Category 4 slot machine facility.

Traffic

Road and transit access, also referred to simply as traffic, is a factor which the Board may take into account when considering an application. While neither SC Gaming nor OEC anticipate that the casino will create additional traffic problems due to its location in an established mall, concerns about traffic should not be ignored. The concern is based upon two things. First, traffic congestion is detrimental to a casino's success since people may refrain from patronizing the casino if access is difficult. Second, significant additional traffic congestion is detrimental to the interests of those living in the surrounding communities who may use the road network for other purposes, including patronizing other tenants at the Nittany Mall.

The Nittany Mall location has six (6) points of access, of which three (3) contain traffic signals and three (3) do not. The traffic impact study provided by David E. Wooster and Associates, Inc. ("Wooster") indicated that these access points will not change as the result of this project. Trip generation research done by Wooster indicates that the number of weekday PM peak trips to a mini casino will be very similar to the number of trips that would be generated if the space was occupied by the prior tenant, Macy's. The number of Saturday midday peak hour trips will be less than the number of trips that Macy's generated.

The Wooster traffic report does note that, currently, the Nittany Mall is not fully occupied and not operating at its full trip generation potential. Based on current trends it is highly unlikely it will ever return to its full trip generation potential. However, the access configuration and infrastructure surrounding the mall was designed to support the full trip generation potential of the mall. Therefore, it is safe to conclude that the site and surrounding roadway infrastructure as currently designed, are more than adequate to support the proposed Category 4 casino.

Finally, during the Board's suitability hearing, SC Gaming testified that it has committed to conducting a post-opening traffic study one year after the casino is open to the public to determine if any additional traffic mitigation is necessary to ease any possible traffic issues. This commitment is also a condition of the Board awarding the Category 4 license to SC Gaming.

Quality of Facility

The proposed casino will use the existing structure and infrastructure, about 94,000 square feet, to provide a full 750 slot machine complement, 30 live table games, a sportsbook and sports restaurant and bar, as well as live entertainment. Once construction commences, SC Gaming anticipates that it will be completed within one year.

While the "quality of the facility" factor is not easy to quantify in any objective way, the Board has reviewed all aspects of SC Gaming's architectural presentations, plans, testimony, and other evidence and has, in its discretion determined that the proposed Category 4 casino is appropriate for gaming and will serve as a high-quality conduit to deliver the benefits of gaming to the Commonwealth.

Potential for Job Creation, Economic Development and Revenue Generation

SC Gaming and its Consultant, Econsult Solutions, provided financial projections in its application. Included in these projections were its anticipated EBITDA at stabilization (10 years)

of \$18,382,008, with an estimated win per unit per day of \$1,673 for 30 table games and \$326 for 750 slot machines.

Per the Board's Financial Task Force the one-time economic impact of the proposed casino's construction on the Pennsylvania economy is estimated to be \$73.3 million, which is projected to support approximately 520 full-time equivalent (FTE) jobs. Construction is projected to also generate approximately \$1,061,000 in tax revenues for the Commonwealth. While the construction-related benefits of the development are temporary in nature, over the course of construction, the project is projected to support an estimated 350 direct construction jobs and 170 additional indirect and induced jobs in Pennsylvania.

The statewide total economic impact of ongoing operations is projected to be \$146.6 million in the first year of operations and \$185.9 million per year after 10 years, along with the concurrent creation of an estimated 710 jobs in the first year and over 850 at stabilization (10 years). The proposed casino's activities will also generate more than \$2 million annually in income, sales, and business taxes to the Commonwealth.

At stabilization, the economic impact of the casino is expected to represent approximately:

- \$121.6 million in annual economic impact within the College Township economy, supporting 480 jobs and \$22.5 million in earnings,
- \$164.0 million annual economic impact within Centre County, supporting 740 jobs and \$34.1 million in earnings, and
- \$185.9 million in annual economic impact within the Commonwealth economy, supporting 850 jobs and \$39.4 million in earnings.

Revenue generation is of critical concern, as the success of the applicant in generating revenue is directly related to the economic benefit to the Commonwealth through the receipt

of tax revenues for the benefit of Pennsylvania citizens. Based upon both the Board's Financial Task Force's careful investigation and credible calculations, and the credible calculations made by SC Gaming and its Consultant, Econsult Solutions, in its economic impact study, the Board is satisfied that SC Gaming is likely to maintain a financially successful, viable and efficient business operation and will maintain a steady level and growth of revenue.

Diversity Plan

As part of its application, SC Gaming represented that it recognizes an environment that welcomes diverse perspectives, regardless of race, religion, gender, ethnicity, sexual orientation, or disability, leads to success in business. Although it is a newly formed company presently without any active business operations or employees, SC Gaming represented that it plans to recruit a diverse workforce reflective of the diversity of Centre County as a whole, based on estimates provided by the U.S. Census Bureau.

SC Gaming represented that diversity and inclusion will be key components of SC Gaming's business and that it will carefully analyze its diversity practices and initiatives in an effort to achieve the following core objectives:

- A diverse workforce and diverse business partners that reflect the diversity of the surrounding community;
- A diverse work environment with policies, procedures and systems that support and encourage the principles of diversity;
- A diverse workforce where different cultures, capabilities, genders, and ages are respected and cultivated as a strength;
- Improved patron relations through better understanding of varying backgrounds and presenting positive business practices;
- Increased cooperation, collaboration and team building amongst workforce members;
- Improved profitability through a stronger work environment; and

- Enhancing our surrounding communities through inclusion of all cultures.

To further facilitate an open and welcome environment for all, SC Gaming represented that it is committed to diversity and inclusion with the central goal of equal opportunity in all aspects of business, which includes internal recruitment and external procurement of vendors.

The Board finds that SC Gaming has committed to meeting the required diversity criteria.

Developing Tourism Facilities Ancillary to Gaming

While SC Gaming is newly formed and does not have a history of developing tourism facilities, Mr. Lubert and Mr. Pearson, the proposed Chief Executive Officer/General Manager, each have a demonstrated record of success with the development and operation of other facilities within Pennsylvania. Mr. Lubert has an extensive track record of financial wherewithal as the principal financial backer for the Valley Forge Casino Resort project as well as being a minority investor in Rivers Casino Pittsburgh. He is also a highly successful businessman with more than 35 years of private equity and real estate investing experience. Mr. Pearson has more than 20 years of successful history working in the casino industry and was responsible for the development, operations, and financial performance for the Valley Forge Casino Resort for almost two years. The Board concludes that the success of these individuals in the casino industry, real estate and other business and investment experience bodes well as an indicator of their potential success as operators in State College, Pennsylvania.

Record of Applicant in Meeting Community Commitments

Being a newly formed limited liability company in connection with its application for a Category 4 licensed facility, SC Gaming does not yet have a record of meeting community commitments. SC Gaming's Consultant, Econsult Solutions, in its Economic impact study,

states that they anticipate the regional market draw of the casino is expected to have a net-positive impact on College Township tourism, helping to revitalize the Nittany Mall and attract other retail and hospitality operators to the area.

The economic impact study that was submitted by SC Gaming, as well as testimony from the Borough Manager of the College Township Council during the public input hearings, detail that this casino project will easily fit in with the Township's existing infrastructure and will serve as a complimentary piece to the efforts to revitalize the Nittany Mall and the surrounding area.

As to prior history with casino commitments in this Commonwealth, under Mr. Lubert's then-ownership and leadership, Valley Forge Casino Resort voluntarily continued paying host fees to Upper Merion Township in December 2016 during the period when the collection of local host fees in the Gaming Act were enjoined from enforcement by the Supreme Court of Pennsylvania. Despite the Court's determination that such fees were unconstitutional, Mr. Lubert and Valley Forge valued their collaborative relationship with the township.

Record of Applicant Complying with Employment and Wage Laws

Based upon the record before it, the Board concludes that SC Gaming and its principals have favorable records of compliance with Federal, state, and local discrimination, wage and hour, disability, occupational, environmental, health, and safety laws, as well as state and local labor relations and employment laws. The Board also concludes that SC Gaming has a favorable record of dealing with its employees and their representatives. There has been no evidence presented to cause the Board to conclude that SC Gaming will not conduct itself in a similar manner at this proposed facility.

Potential Adverse Effects

A public input hearing for SC Gaming's Category 4 license was held on August 16, 2021, at the Penn Stater Conference Center, 215 Innovation Boulevard, State College, Pennsylvania. In addition to testimony from SC Gaming regarding its project, as well as testimony from state and local government officials and several community group members, the Board heard statements from four individuals. Of these four individuals, two spoke in opposition to the project, one spoke in favor of the project, and one individual neither supported nor opposed the project.

Those who were unable to attend the hearing were encouraged to send written comments to the Board. As of June 12, 2022, of the 773 written comments that were received, 12.94% supported the project, 86.93% opposed the project, and 0.13% were neutral.

Support of the Project

Several state legislators and representatives from the local community government testified in support of the SC Gaming casino at the public hearing. These included The Honorable Jake Corman, Senate of Pennsylvania (34th District including Centre County and College Township), Mark A. Long, District Manager, Office of State Representative Kerry Benninghoff (171st District including part of Centre County), and L. Eric Bernier, Council Member, College Township. In summary, the above government officials testified that they applaud the effort to repurpose the currently vacant space in the Nittany Mall and to make it more vibrant, while finding ways to keep local people employed and the local economy moving ahead. They commended the proposed development plan in its effort to be conscientious in the design of the facility and how it will be incorporated into the existing structure. They also testified that they believe that this facility can become a good community partner, provide good family-sustaining jobs with benefits and the opportunity for advancement. They stated that an additional hospitality business and other

downstream service economy sector jobs will only help grow the local economy and ensure that diverse jobs remain and continue to grow in number. They further stated that this major investment will create a strong anchor tenant for the Nittany Mall, which will in turn serve as a significant catalyst for economic growth and bring more people back to Centre County.

Representatives from local community groups also testified at the public hearing and testified, in summary, that they believe that the casino will be a tremendous opportunity for the area of State College and the union carpenters that represent the area. Additional testimony provided that one of the many positives the casino would bring include new retail and leasing opportunities, as the Nittany Mall has already had numerous inquiries from retail and restaurant owners, and that more retailers could possibly bring in a younger demographic to shop at a brick-and-mortar establishment. Additional testimony supported that this would be an evolutionary use of the Nittany Mall property and would bring in jobs that are high in number and in quality, and that there is a positive economic energy around the mall area that will support the casino and any new retailers or restaurants. They also stated that the addition of a mini casino will assist in efforts to grow leisure traveler visitation, the group tour market, meeting market, and the image or sports markets. They believe that a mini casino will provide greater job opportunities to the regional work force, strengthen the local tax base, help revitalize the Nittany Mall, potentially attract new entertainment options to the area and enhance efforts to grow visitation and visitor spending, generating positive impacts for the entire community.

One hundred people submitted written comments in support of the licensing of SC Gaming's proposed casino. They cited reasons such as: the creation of a good source of local revenue; economic growth; increased tax revenue; the contribution to a diverse economy; the creation of skilled jobs and careers; the revitalization of the Nittany Mall; the potential return of

retail business to the local community; progressive movement for the town; the creation of more consistent revenue during periods of low local activity; increased tree planting and space recovery; the addition of new entertainment attractions; the lack of any change to the beauty or safety of the community; the much needed economic boost to the community; the possibility that growth in the hospitality industry could strengthen the employment base in the community; and the creation of an additional attraction that can be promoted for tourism.

Opposition to the Project

At the public hearing, two individuals testified in opposition of the project. In summary, they provided the following reasons for their opposition: the casino will not provide subsistence to the poor; the potential degradation of the quality of life for Centre County; gambling addiction; the possibility that the community's poor will experience the greatest loss; the claim that gambling is a menace to society, morally, socioeconomically and spiritually; the assertion that parking at the Nittany Mall is inadequate; the close proximity of the casino to children who visit the mall; the belief that gambling in any form to support children and youth sports organizations is wrong; and the belief that not enough specifics were provided about the positive and negative financial impacts on College Township and Centre County.

Six hundred and seventy-two people submitted written comments in opposition of the licensing of SC Gaming's casino license. Additionally, four petitions with 7,335 total signatures opposing the casino were submitted. Some of these individuals may have also individually spoken at the hearing and/or submitted written comments.

Reasons cited for their opposition fell into many categories, including the following: people oppose a casino in their community because they believe a casino does not fit with the family friendly culture and value of the community; the fear that a casino will drain money from

Pennsylvania residents; the fear for the safety of families and children; the fear of a negative impact on families, such as domestic violence, child neglect, abuse and financial strain, divorce, bankruptcy and suicide; an increase in traffic; the fear a casino will put the youth of the community at risk to drugs, alcohol and gambling; the fear of an increase in crime; the possibility that the casino could harm property values; the potential detriment to the well-being of students at the local university, who may be susceptible to over-spending and gambling addiction; the risk that the casino will have a negative economic impact on State College and the prestige of the world-renowned Penn State University; the potential to draw business and the work force away from local establishments; the risk that the casino will strain the already extreme shortage of workers available in the community; the increased burden and demand on police, fire and EMS resources; the potential increase in costs and strain on social services that comes with an increased need for those services; and the assertion that tax revenue generated by the casino for the county and/or township could be negligible.

By legalizing gaming in 2004, the Legislature determined that gaming in Pennsylvania would benefit its citizens through job creation, an increase in tourism, and generation of tax revenue, among other benefits. It has tasked the Board with the duty to license casino operators, regulate legalized gaming in Pennsylvania, and keep the public safe from any potential adverse effects of legalized gaming.

The Board is aware of and recognizes the potential adverse effects gaming may bring to any community that hosts a casino in Pennsylvania. Issues such as those cited above raised by those opposing this casino project may arise no matter who the licensee is or where the project is located. Therefore, the Board believes that the most appropriate way to deal with any potential adverse effects is through strong enforcement of the Gaming Act and the Board's regulations, the

monitoring of SC Gaming's compulsive and responsible gaming plan to assure compliance, the encouragement of SC Gaming to build strong relationships with community groups and service providers, such as police, fire and EMS providers, to ensure the safety of the community members as well as casino patrons, and to monitor traffic and require SC Gaming to conduct a traffic study after one year of operation to ensure that any traffic issues will be addressed, among other efforts to mitigate any adverse effects that may arise.

Finally, while the Board also recognizes that even with all the above measures in place potential adverse effects may still exist at any facility. However, the Board finds that SC Gaming's proposed facility will provide substantial benefits to the surrounding communities in terms of job creation, tax revenue, infusion of tourism dollars and monies, among other benefits to the community and to Pennsylvanians in general. In sum, the Board believes, based upon the evidence presented, that a balance can be achieved in which the benefits to the public from legalized gaming in the community will offset and compensate for any negative effects that the SC Gaming facility may have on State College and its surrounding communities.

CONCLUSION

Based upon the findings of fact, conclusions of law and discussion set forth above, which are supported by substantial evidence in the evidentiary record, the Board finds that SC Gaming has satisfied the eligibility and suitability requirement of the Gaming Act for a Category 4 license and that it is in the best interest of the public and the Commonwealth that SC Gaming be granted a Category 4 slot machine license. In addition, the Board has considered the additional factors set forth in Section 1325 of the Act and finds that pursuant to same, SC Gaming is appropriate for licensure.

The grant and issuance of a Category 4 license does not give SC Gaming a property right and the Board may, at its discretion, revoke or suspend the license of SC Gaming if the Board finds that SC Gaming, its officers, employee or agents have not complied with the conditions of the license, provisions of the Gaming Act, and the Board's Regulations and that it would be in the best interest of the public to revoke or suspend its license.

BY AND ON BEHALF OF THE
PENNSYLVANIA GAMING CONTROL BOARD:

DATE: 2/7/2023



DENISE J. SMYLER, CHAIR

IN THE SUPREME COURT OF PENNSYLVANIA

: New Case
:
:

PROOF OF SERVICE

I hereby certify that this 23rd day of February, 2023, I have served the attached document(s) to the persons on the date(s) and in the manner(s) stated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service

Served: Stephen S. Cook
Service Method: eService
Email: stcook@pa.gov
Service Date: 2/23/2023
Address: 303 Walnut Street
Harrisburg, PA 17101
Phone: 717-346-8300
Representing: Respondent Pennsylvania Gaming Control Board

/s/ Mark Alan Aronchick

(Signature of Person Serving)

Person Serving: Aronchick, Mark Alan
Attorney Registration No: 020261
Law Firm: Hangle, Aronchick, Segal, Pudlin & Schiller
Address: Hangle Aronchick Et Al
1 Logan Sq Fl 27
Philadelphia, PA 191036995
Representing: Petitioner Stadium Casino RE, LLC



COLLEGE TOWNSHIP

MUNICIPAL OFFICES

1481 E COLLEGE AVE, STATE COLLEGE, PA 16801 ■ TELEPHONE: (814) 231-3021 ■ WWW.COLLEGETOWNSHIP.ORG

March 3, 2023

Mr. Ash Toumayants
165 Meadowsweet Dr.
State College PA 16801

Dear Mr. Toumayants,

We are pleased to welcome you as a member of an Authority, Board, and Commission in College Township. At their March 2, 2023, Council Meeting, the College Township Council authorized your appointment on the Township's Planning Commission as an Alternate Commissioner with a term expiration date of December 31, 2025. The attached resolution outlines the duties and responsibilities of an alternate commission member.

The Planning Commission meets on the first and third Mondays of each month at 7:00 PM. The next Planning Commission meeting is scheduled for March 7, 2023. All meetings are held in the 2nd Floor Meeting Room of the Municipal Building. Included for your information, you will find contact information for your board associates on the enclosed listing and the approved Planning Commission meeting dates for the remainder of the year. You will need to take an Oath of Office. Please make plans to stop by the office and we can take care of that so you can be an active participant in the PC as soon as possible.

On behalf of the College Township Council, please accept our appreciation for your willingness to serve as a valued member of the College Township Planning Commission. Should you have any questions, please feel free to call us at 814-231-3021.

Sincerely,

Adam T. Brumbaugh
Township Manager

Enclosure
cc: PC