



MOHEGAN TRIBAL GAMING AUTHORITY

March 26, 2007

Via Federal Express and Electronic Transmission

Mr. Steve Cook
Assistant Chief Counsel
Pennsylvania Gaming Control Board
303 Walnut Street – Strawberry Square
Horizon Tower, Floor 5
Harrisburg, Pennsylvania 17101

Re: Category 3 Licensure Comments

Dear Mr. Cook:

In accordance with the instructions for submitting written instructions contained in the letter to me from Chairman Decker, dated March 21, 2007, attached hereto are the comments of Downs Racing, L.P. for submission into the record at the March 27, 2007 Public Meeting concerning Category 3 licensure.

Please communicate our gratefulness for having been invited to share our comments on this important matter. Please do not hesitate to contact me with any questions or comments that you may have.

Sincerely,

Michael J. Ciaccio
Vice President, General Counsel

Enclosures

cc: Mitchell G. Etes
Robert J. Soper



**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

REOPENING OF CATEGORY 3 : Docket No.
SLOT MACHINE LICENSE APPLICATION PROCESS :

**MOHEGAN SUN AT POCONO DOWNS'
COMMENTS TO BOARD'S INFORMATIONAL MEETING RECORD**

Downs Racing, L.P. t/a Mohegan Sun at Pocono Downs ("MSPD") submits these comments in response to the Board's March 21, 2007 correspondence scheduling a public informational meeting to address issues pertaining to reopening of the Category 3 slot machine license application process. In its March 21, 2007 letter, the Board invites members of the public and Category 1 and 2 licensees to either appear and testify at the hearing or submit written comments into the record. Through these comments, MSPD accepts the Board's invitation and submits the following written comments into the record of this proceeding.

COMMENTS

As a general matter, the current law embodied in Section 1305 of the Pennsylvania Race Horse Development and Gaming Act ("Gaming Act") and Chapter 443 of the Board's regulations strikes the balance intended by the General Assembly pertaining to eligibility of and business conduct by Category 3 applicants and licensees. Clearly, a significant factor in the establishment of these rules was to assure that Category 3 facilities do not improperly cannibalize the existing market of Category 1 licensees and the future markets of Category 2 licensees. As reflected in 4 Pa. C.S. § 1305 and this Board's regulations implementing that section, Category 3 applicants and any resulting facilities are required to be a very narrow licensure classification which will not adversely impact Category 1 and Category 2 markets.

To accomplish this objective, the following Category 3 eligibility requirements are established by Section 1305:

1. The Category 3 applicant can not be affiliated with Category 1 or 2 applicant/licensee.
2. The proposed licensed facility must be in a well established resort having no fewer than 275 guest rooms. The statutory reference to well-established, at a minimum means that resort was in business prior to enactment of the Gaming Act in July of 2004. Furthermore, it is clear that an eligible resort must have had 275 guest rooms prior to enactment and that a resort can not become eligible by expanding the number of guest rooms post enactment.
3. The resort and the casino must be under common ownership.
4. The resort must have substantial year-round guest amenities.
5. The proposed facility (and any resulting licensed facility) may only permit an individual in the gaming area if that individual is (A) a registered overnight guest at the established resort hotel; (B) a patron of one or more of the amenities provided by the established resort hotel to its registered guests. Under Section 1305(a) an individual is only a "patron of the amenities" if the individual is (a) a registered attendee of a convention, meeting or banquet event or a participant in a sport or recreational event or any other social, cultural or business event at the resort or (b) participates in one or more of the amenities provided to registered guests of the resort hotel and any participation in an amenity must be for non-de minimis consideration.¹ Under the statutory language, patronage of one of the amenities is a required condition before each visit of an individual to the gaming floor.
6. A Category 3 facility can not operate more than 500 slot machines; and
7. A Category 3 licensed facility can not be within 15 miles of another licensed facility.

¹ Through Section 443.5(a) of its regulations, the Board has defined the statutory term "non-de minimis consideration" as a payment of \$25 or more per person.

As indicated previously, these requirements and conditions are not arbitrary but were carefully crafted to define the scope of Category 3 gaming in the Commonwealth. Accordingly, these rules can not be ignored or interpreted unreasonably or it will expand gaming in Pennsylvania beyond that authorized by the Gaming Act and as intended by the General Assembly. Any such expansion of gaming may result in a required refund of MSPD's \$50 million licensing fee under 4 Pa.C. § 1209.

In its March 21, 2007 letter the Board requested that participants address the following questions for which MSPD responses are provided:

1. What constitutes a "patron of the amenities" as provided in the statute.

Answer. A "patron of the amenities" is an individual who is a registered attendee of a scheduled event at the resort or a participant in one or more of the amenities made available to guests of the resort hotel for non-de minimis consideration. It is clear from the language of Section 1305 that an individual must qualify as a "patron of the amenities" each time the individual visits the casino to meet the statutory condition for entering the gaming area.

- i) Whether the non-de minimis monetary requirement pursuant to Section 443.5 of the regulations should be increased or decreased?

Answer. The current request is consistent with the legislative interest and should be maintained.

- ii) Whether the monetary requirement should be daily, weekly, monthly or annually?

Answer. As explained above, Section 1305 is clear that an individual must meet the required condition of qualifying as a "patron of the amenities" each time the individual enters the gaming area of the licensed facility.

- iii) Whether amenities are limited to the resort or can include arrangements with surrounding entities.

Answer. Section 1305(a) is very clear that an individual entering the gaming area must be a "patron of one or more of the amenities provided by the established resort hotel." Section 1305(e) clarifies that the amenities must not only be provided by the resort hotel, but must also be made

available to registered guests. Accordingly, any arrangements with surrounding entities are clearly outside the scope of the eligibility requirement.

iv) Whether it was the intent of the General Assembly to allow the resort hotel to operate as a small casino, or whether the intent was that the amenities of the resort hotel (other than the slot machine area) be utilized?

Answer. The statutory requirement is even broader than the question suggests. Section 1305 clearly and unequivocally requires that the amenities be of the well established resort hotel not the licensed facility under common ownership with the resort. Accordingly, the amenities subject to patronage must be resort amenities and not casino amenities - including not only the gaming plan, but food, beverage, gift shop and other amenities within or associated with the casino.

2. Whether time-share units can be counted as guest rooms?

Answer. Time-share is a form of ownership of the living space for certain duration of time. Time-share participants are not registered guests of the resort, nor are time-share units guest rooms under Section 1305.

3. What qualifies a resort hotel as well established?

Answer. While the Board has some discretion in defining "well established," at a minimum in order to qualify for eligibility, a well established resort hotel with 275 guest rooms must have been open for business prior to enactment of the Gaming Act in July 2004.

4. Whether a resort hotel with less than 275 rooms can build additional rooms to meet the number.


Answer. No. In order to qualify for eligibility, and at a minimum, the well established resort hotel with 275 guest rooms must have been open for business prior to the enactment of the Gaming Act. Allowing post enactment expansion to result in eligibility is inconsistent with the plain language of Section 1305 and would destroy the market balance with Category 1 and 2 facilities intended by the General Assembly.

WHEREFORE, for all of the foregoing reasons, MSPD respectfully request that the Board retain the existing requirements and conditions placed on Category 3 applicants and

refrain from changing the rules in a manner that permits the unauthorized expansion of gaming
in the Commonwealth.

Respectfully submitted,

Downs Racing, L.P.

By: 
Robert J. Soper
Chief Executive Officer