

Nos. 130036 & 130058

IN THE  
SUPREME COURT OF ILLINOIS

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WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company,  <p style="text-align: center;">Plaintiff-Appellee,</p> <p style="text-align: center;">v.</p> THE ILLINOIS GAMING BOARD, an Illinois administrative agency; in their official capacities, CHARLES SCHMADEKE, Board Chairman; DIONNE R. HAYDEN, Board Member; ANTHONY GARCIA, Board Member; MARC E. BELL, Board Member; and MARCUS FRUCHTER Board Administrator; and THE CITY OF WAUKEGAN, an Illinois municipal corporation,  <p style="text-align: center;">Defendants-Appellants.</p>	) On Appeal from the ) Illinois Appellate Court, First ) Judicial District, No. 1-22-0883 ) ) ) ) ) ) ) There on appeal from the Circuit ) Court of Cook County, Illinois, ) County Department, Chancery ) Division, No. 2021 CH 5784 ) ) ) ) ) ) ) ) ) ) The Honorable ) CECILIA A. HORAN, ) Judge Presiding.
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**OPENING BRIEF AND APPENDIX  
OF STATE DEFENDANTS-APPELLANTS**

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**NATURE OF THE ACTION**

Plaintiff-Appellant Waukegan Potawatomi Casino, LLC (“WPC”) brought this action against the Illinois Gaming Board; its Chairman, Charles Schmadeke; Board Members, Dionne R. Hayden, Anthony Garcia, and Jim Kolar; and Board Administrator Marcus Fruchter (collectively, “Board”), as well as the City of Waukegan (“City”). WPC claimed that the Board lacked statutory authority under section 7(e-5) of the Illinois Gambling Act (“Act”), 230 ILCS 10/1 *et seq.* (2022), to issue an owners license for a Waukegan casino. In November 2021 — on the eve of the Board’s scheduled vote — WPC brought this action and moved for a temporary restraining order (“TRO”) to prevent the Board from selecting a final applicant for the Waukegan license and voting on that final applicant’s “preliminary suitability” for licensure, a significant step in the regulatory process to open its casino in Waukegan. The circuit court denied WPC’s TRO motion, concluding that WPC lacked standing to challenge the Board’s authority to issue the Waukegan license. The appellate court denied WPC’s petition for review of the TRO order. C1522.

The circuit court later dismissed WPC’s action under section 2-619(a)(9) of the Illinois Code of Civil Procedure (“Code”), 735 ILCS 5/2-619(a)(9) (2022), again concluding that WPC lacked standing to challenge the Board’s issuance of a license because it never appeared before the Board. WPC appealed, but did not seek to enjoin any further Board action or expedite its appeal.



In the meantime, in December 2021, the Board voted to proceed with the licensing process, selected Full House Resorts, Inc., the parent company of FHR-Illinois d/b/a American Place (“Full House”) as the final applicant for the Waukegan license and found Full House preliminarily suitable for licensing. In June 2023, while WPC’s appeal was still pending, the Board granted Full House an unencumbered owners license and master sports wagering license. Full House had already begun operating Temporary by American Place Casino in February 2023 under its temporary operating permit prior to receiving full licensure in June 2023.

After the license issued, the Board and the City moved to dismiss WPC’s appeal as moot. The appellate court denied those motions, reversed the circuit court judgment, and remanded the action to the circuit court. As relevant here, the appellate court concluded that: (a) WPC had standing to sue the Board based on its interest in applying for the Waukegan license; and (b) the action was not moot because, although injunctive relief was no longer available, a court could still declare that the Board lacked statutory authority to issue the license, and thus require the Board to “retract the issued license” and “repeat the process.”

This Court granted and consolidated the Board and City’s separate petitions for leave to appeal.

**ISSUES PRESENTED FOR REVIEW**

1. Whether WPC lacked standing to bring a claim under the Act because section 7(e-5) of the Act, which directed the Board to consider an applicant for the Waukegan license only after the City tendered the requisite certification did not create any interest in a “fair and lawful certification process.”
2. Whether the appellate court erred in deciding this appeal, which became moot when the Board issued the Waukegan license because, at that point, a court could not, consistent with the Act, order the Board to retract Full House’s owners license and repeat the licensing process.

**JURISDICTION**

On May 13, 2022, the circuit court issued an oral ruling dismissing WPC's verified complaint with prejudice, R17-56, and on May 31, 2022, *nunc pro tunc* to May 13, 2022, the court issued a final written order dismissing the complaint in its entirety and resolving all other issues in the case, C1563 (A162).<sup>1</sup> WPC filed a timely notice of appeal on June 10, 2022. C1564-89 (A135-60). *See* Ill. Sup. Ct. R. 303(a)(1) (requiring notice of appeal to be filed within 30 days of final judgment). The appellate court issued its published decision on July 28, 2023. A1-14. On August 18, 2023, the Board and the City separately filed petitions for rehearing, A18-78, and both petitions were denied on August 22, 2023, A93. After obtaining one 35-day extension of time, the Board filed a timely petition for leave to appeal on October 31, 2023. This Court granted the Board's petition for leave to appeal, and consolidated it with the City's separately filed petition, on January 24, 2024. A15.

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<sup>1</sup> The record on appeal, which consists of a one-volume common law record, a one-volume report of proceedings, and a one-volume supplemental record is cited as "C \_\_," "R \_\_" and SR \_\_," respectively. The appendix to this brief is cited as "A \_\_."

**STATUTES INVOLVED**

Section 7(e-5) of the Act provides as follows:

In addition to licenses authorized under subsection (e) of this Section:

(1) the Board may issue one owners license authorizing the conduct of casino gambling in the City of Chicago;

\* \* \*

(3) the Board may issue one owners license authorizing the conduct of riverboat gambling in the City of Waukegan;

\* \* \*

Except for the license authorized under paragraph (1), each application for a license pursuant to this subsection (e-5) shall be submitted to the Board no later than 120 days after June 28, 2019 (the effective date of Public Act 101-31). All applications for a license under this subsection (e-5) shall include the nonrefundable application fee and the nonrefundable background investigation fee as provided in subsection (d) of Section 6 of this Act. In the event that an applicant submits an application for a license pursuant to this subsection (e-5) prior to June 28, 2019 (the effective date of Public Act 101-31), such applicant shall submit the nonrefundable application fee and background investigation fee as provided in subsection (d) of Section 6 of this Act no later than 6 months after June 28, 2019 (the effective date of Public Act 101-31).

The Board shall consider issuing a license pursuant to paragraphs (1) through (6) of this subsection only after the corporate authority of the municipality or the county board of the county in which the riverboat or casino shall be located has certified to the Board the following:

(i) that the applicant has negotiated with the corporate authority or county board in good faith;

(ii) that the applicant and the corporate authority or county board have mutually agreed on the permanent location of the riverboat or casino;

(iii) that the applicant and the corporate authority or county board have mutually agreed on the temporary location of the riverboat or casino;

(iv) that the applicant and the corporate authority or the county board have mutually agreed on the percentage of revenues that will be shared with the municipality or county, if any;

(v) that the applicant and the corporate authority or county board have mutually agreed on any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality or county;

(vi) that the corporate authority or county board has passed a resolution or ordinance in support of the riverboat or casino in the municipality or county;

(vii) the applicant for a license under paragraph (1) has made a public presentation concerning its casino proposal; and

(viii) the applicant for a license under paragraph (1) has prepared a summary of its casino proposal and such summary has been posted on a public website of the municipality or the county.

At least 7 days before the corporate authority of a municipality or county board of the county submits a certification to the Board concerning items (i) through (viii) of this subsection, it shall hold a public hearing to discuss items (i) through (viii), as well as any other details concerning the proposed riverboat or casino in the municipality or county. The corporate authority or county board must subsequently memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted by a majority of the corporate authority or county board before any certification is sent to the Board. The Board shall not alter, amend, change, or otherwise interfere with any agreement between the applicant and the corporate authority of the municipality or county board of the county regarding the location of any temporary or permanent facility.

230 ILCS 10/7(e-5) (2022).

## STATEMENT OF FACTS

### The Statutory and Regulatory Scheme

The General Assembly passed the Act, which authorized riverboat and casino gambling within this State, to benefit the people of Illinois by “assisting economic development, promoting Illinois tourism, and increasing the amount of revenue available to the State.” 230 ILCS 10/2(a) (2022). In doing so, the legislature recognized that successful gambling operations would require the State to maintain “public confidence and trust in the credibility and integrity of the gambling operations and the regulatory process.” *Id.* § 2(b). It therefore designed the Act “to strictly regulate the facilities, persons, associations, and practices related to gambling operations,” *id.*, including by establishing the Board and entrusting it with issuing casino licenses, *id.* §2(c), and “administering, regulating, and enforcing” the Act’s provisions, *id.* § 5(a)(1), (c).

Under the Act, the Board has jurisdiction over and supervises “all gambling operations.” *Id.* § 5(c). Among its enumerated duties, the Board issues gambling licenses, and must “decide promptly and in reasonable order all license applications.” *Id.* § 5(b)(1). Specifically, the Act directs the Board to “investigate applicants and determine the eligibility of applicants for licenses” and “select among competing applicants” the one that will “best serve the interests of the citizens of Illinois.” *Id.* § 5(c)(1). Additionally, the Board conducts “all hearings pertaining to civil violations” of the Gambling Act or any regulations or rules promulgated under the Act. *Id.* § 5(b)(2)-(3).

Initially, the Act authorized the Board to issue ten riverboat gambling licenses, designating specific locations for six of the licenses and authorizing the Board to approve the locations of the other four. *Id.* § 7(e). In July 2019, the General Assembly amended the Act by authorizing the Board to issue six new casino licenses within the State, including one for a casino in Waukegan. *See id.* § 7(e-5).

To be considered for one of the new licenses, an entity had to apply to the Board by October 26, 2019, and pay \$300,000 in nonrefundable application fees. *Id.* §§ 6(d), 7(e-5). Additionally, before the Board could consider an applicant for licensure, the municipality where the casino would be located had to certify to the Board that the entity had negotiated with the municipality “in good faith” and the two had “mutually agreed on” a permanent and temporary location for the proposed casino; the percentage of revenue that would be shared with the municipality; and any zoning, licensing, public health, or other issues that were within the municipality’s jurisdiction. *Id.* § 7(e-5)(i)-(v). The municipality also had to certify that it had passed a resolution or ordinance in support of the casino and that the applicant had made a public presentation regarding its casino proposal and posted a summary of it on the municipality’s public website. *Id.* § 7(e-5)(vi)-(viii). Prior to submitting the certification to the Board, the municipality also had to hold a public hearing to discuss the items that it would certify to the Board and pass a resolution memorializing the details concerning the proposed casino. *Id.* § 7(e-5).

Once an entity was certified to the Board by a host municipality, the Board would investigate the applicant and consider the applicant for a license. *See id.* 7(b); 86 Ill. Admin. Code § 3000.230(a)(1). If the municipality certified multiple applicants to the Board, then the Board had to undertake a competitive bidding process to select a final applicant. *See* 230 ILCS 10/7.5, 7.12(a). As part of that process, the Board was permitted to “conduct further negotiations” with applicants, allowing each applicant to “increase its license bid or otherwise enhance its bid proposal,” *id.* § 7.5(7), except that the Board could not “alter, amend, change, or otherwise interfere with any agreement” between the municipality and applicant “regarding the location of any temporary or permanent facility,” *id.* § 7(e-5).

After selecting a winning bidder as an applicant, the Board then would complete its investigation into the applicant to determine if the applicant established by “clear and convincing evidence” that: (1) it had met the requirements of section 7 of the Act; (2) its background, reputations, and associations would not harm Illinois or its gaming industry; (3) it had adequate business competence and experience to hold a license; (4) it had adequate funding for its proposed operation; and (5) it had satisfied the Board as to any other information deemed necessary for licensure. 86 Ill. Admin. Code § 3000.230(c). After that, the Board would vote on the applicant’s “preliminary suitability” for licensure. *See id.* § 3000.230(a)(2). As the Board Administrator has explained, although a finding of preliminary suitability



would provide “no guarantee of final licensure,” it is a “very significant step” toward “commencement of gaming operations and ultimate licensure.”

12/8/21 Bd. Mtg. at 30:05-30:40.<sup>2</sup>

After the Board has found the applicant preliminarily suitable, the applicant may continue preparing its site for gaming, obtain approval to begin construction of its temporary facility, hire the employees necessary to operate a casino, and undertake other required tasks. *See* 86 Ill. Admin Code § 3000.230(a), (e); *see* 6/15/23 Bd. Mtg., at 40:45-42:15. If the applicant successfully completes construction of the temporary facility and an assessment of its gaming operation demonstrates effectiveness, integrity, and compliance with the law and Board standards, 86 Ill. Admin. Code § 3000.230(e), the Board Administrator may authorize the applicant to conduct a final practice gaming session, *id.* § 3000.230(f). If the final practice gaming session is successful, the Administrator can authorize the gambling operation to commence under a temporary operating permit. *See id.* After successful completion of those steps, the Board would make a final decision on the applicant’s suitability for licensing. *Id.* § 3000.230(g).

Any party before the Board who was aggrieved by the Board’s decision to deny a license may request a Board hearing on the matter. 230 ILCS

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<sup>2</sup> This Court may take judicial notice of the Board’s video-recorded meetings, as well as its meeting minutes, which are publicly available on the Board’s website at <https://www.igb.illinois.gov/MeetingsMinutes.aspx>. *See People v. Pollution Control Bd.*, 103 Ill. 2d 441, 447 (1984) (court make take judicial notice of matters of public record).

10/5(b)(1). The Board’s final administrative decisions regarding the denial of a license are subject to judicial review under the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (2022). 230 ILCS 10/17.1(b) (2022).

### **The City Certified Casino Entities to the Board**

In July 2019, the City issued a request for qualifications and proposals (“RFQ”) to solicit developers for the development and operation of a Waukegan casino. C15. WPC alleged that it submitted a “casino proposal that met all the RFQ’s submittal requirements” and paid a \$25,000 application fee to the City. *Id.* In October 2019, the City Council held a special meeting to consider four proposals that it received in response to its RFQ, including WPC’s proposal and proposals from Full House, Lakeside Casino LLC (“North Point”), and CDI-RSG Waukegan, LLC (“Rivers”). *Id.*; C25-28, C287, C721. The City Council voted to adopt resolutions certifying the Full House, North Point, and Rivers proposals under section 7(e-5) of the Act, but voted against certifying WPC’s proposal. C16, C1055-56. On reconsideration, the City Council again voted against WPC’s proposal. C15, C1071.

### **WPC’s Federal Action**

WPC then sued the City in the circuit court of Lake County under 42 U.S.C. § 1983, the Act, and the Illinois Open Meetings Act, alleging that the City had “manipulated its entire certification process” and discriminated against WPC in its selection of casino proposals to certify to the Board. C16-17, C1065-66. WPC sought a declaration that the City’s votes on its certifying resolutions were void, an injunction requiring the City to certify its proposal to

the Board, and damages for the lost opportunity to develop a Waukegan casino. C16. In that action, WPC unsuccessfully moved for a TRO to prevent the City from submitting any certifications to the Board. *See* C1371-79.

The City later removed WPC's lawsuit to federal court. C16. On March 29, 2024, the federal court granted summary judgment in favor of the City on WPC's federal claim and declined to exercise supplemental jurisdiction over its state law claims. *Waukegan Potawatomi Casino, LLC v. City of Waukegan*, No. 20-cv-00750, 2024 WL 1363733 (N.D. Ill. Mar. 29, 2024), \*1. Relevant here, the court rejected WPC's allegations that the City engaged in a "rigged process," concluding that WPC failed to "rebut the conceivable state of facts that could have reasonably explained the City's refusal to certify [WPC]." *Id.* at \*\*9-10. The Board was not, and has never been, a party to that action.

### **The Board Initiated its Licensing Process**

In October 2019, North Point, Full House, and Rivers applied to the Board for the Waukegan owners license. *See* A180 (10/28/19 Bd. Press Release). Over the next two years, the Board undertook its statutorily mandated duties to investigate those applicants, conduct a competitive bidding process, and select a winning bid proposal for the Waukegan casino. 12/8/21 Bd. Mtg. at 40:45-42:15; *see* 230 ILCS 10/7.5(1)-(8), 7.12 (2022). After that, the Board evaluated the winning bid for preliminary suitability. 12/8/21 Bd. Mtg. at 40:45-42:15; *see* 230 ILCS 10/7; 86 Ill. Admin. Code § 3000.230(c). In

November 2021, the Board gave public notice that it would hold a special open session meeting to vote on matters related to the Waukegan license. C1295-97.

### **Proceedings in the Circuit Court**

On November 16, 2021 — two days before the Board’s scheduled vote on the Waukegan license — WPC brought this action in the circuit court against the Board and the City. C11-1297. In its verified complaint, WPC alleged that the City did not satisfy the Act’s “prerequisites to Board consideration of a Waukegan casino license.” C17. Specifically, WPC alleged that the City’s certifying resolutions stated that each applicant had “negotiated with the Corporate Authority in good faith,” but that the City and applicants had “mutually agreed *in general terms*” on the permanent and temporary locations for each applicant’s casino, the percentage of revenues to be shared with the City, and the zoning, licensing, public health, and other issues within the City’s jurisdiction. C17-18 (emphasis in original); *see* C29-31 (North Point), C298-99 (Full House), C721-22 (Rivers).

WPC also alleged “on information and belief” as follows. C17-20. The City had not negotiated “in any respect with casino applicants during the RFQ process,” nor had the City and applicants “mutually agreed” on the items in section 7(e-5)(ii)-(v) of the Act. C17-18. Further, the City’s then-corporation counsel had testified in WPC’s federal lawsuit that, in his view, it “was fundamentally impossible to mutually agree with the applicants” on those items before the Board considered issuing the license. C18. WPC further

alleged that the City's "decision not to negotiate with applicants" facilitated "the City's plan to manipulate the casino certification process to achieve a predetermined outcome." C18-19.

WPC claimed that because the City had not "satisfied the Gambling Act's prerequisites," the Board lacked statutory authority under section 7(e-5) of the Act to issue the Waukegan license. C20. WPC sought declaratory and injunctive relief to prevent the Board from "taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability" until the City had satisfied the Act's requirements. C23.

WPC also moved for a TRO and preliminary injunction to prevent the Board from taking formal steps to issue the Waukegan license, including by finding any applicant preliminarily suitable for licensing. C1298-1321. WPC argued that emergency relief was warranted because once the Board found an applicant preliminarily suitable, that applicant would commence development of its casino, which, WPC acknowledged, would effectively foreclose any chance it might have to apply for the Waukegan license. C1299, C1317-18, C1479. The Board, out of deference for the litigation process, deferred its vote to select a final applicant for the Waukegan owners license and to determine that applicant's preliminary suitability. *See* 12/8/21 Bd. Mtg. at 21:30-23:02; R6-7.

After a hearing, the circuit court denied WPC's motion insofar as it sought a TRO, concluding that it was unlikely to succeed on the merits of its claim because, as an entity whose proposal was not selected by the City, WPC

lacked standing to challenge the Board’s “purported lack of compliance” with the Act. C1398-99, C1481-84. On December 16, 2021, the appellate court denied WPC’s petition to review the denial of the TRO. C1522.

Meanwhile, on December 8, 2021, after the circuit court denied the TRO request, the Board unanimously voted to proceed with its vote on the Waukegan license, selected Full House as the winning proposal and final applicant, and found Full House preliminarily suitable for licensing under 86 Ill. Admin. Code § 3000.230(c). 12/8/21 Bd. Mins. at 2-3 (A90-91); 12/8/21 Bd. Mtg. at 23:00-31:45.<sup>3</sup> Even so, WPC did not join Full House as a necessary party in this action. In May 2022, the circuit court dismissed WPC’s claim with prejudice, again concluding that WPC lacked standing to challenge the Board’s issuance of a license under the Act. R45-46. As the court explained, WPC’s alleged injury resulted from the City’s separate selection process and thus enjoining the Board from issuing a license would not provide WPC with any effective relief. R45-46. The circuit court also noted that mootness issues were presented by the case. R46.

WPC appealed the circuit court’s judgment, C1564-89 (A135-60), but did not pursue its request for a preliminary injunction to prevent the Board from issuing the license. WPC also did not seek to expedite its appeal.

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<sup>3</sup> In September 2021, Rivers had requested and was granted leave to withdraw its application pursuant to 86 Ill. Admin. Code § 3000.220(e). *See* 12/8/21 Bd. Mins. at 2 (A90).

### **The Board's Award of the Waukegan License**

In the meantime, Full House continued to demonstrate its suitability for licensure. *See* 86 Ill. Admin. Code § 3000.230(e), (f). Full House constructed a temporary casino, completed pre-opening operations audits overseen by both Board staff and independent auditors, and successfully completed multiple practice gaming sessions. *See* 6/15/23 Bd. Mtg. at 40:19-42:30. On February 16, 2023, the Board's Administrator determined that Full House qualified for a temporary operating permit and authorized it to commence gambling operations. *See id.* The next day, Full House opened its temporary casino facility, called the Temporary by American Place, and commenced gambling operations in Waukegan. *See id.* On June 15, 2023, the Board unanimously voted to award Full House the unconditional Waukegan owners license under sections 7(b) and 7(e-5) of the Act, 230 ILCS 10/7 (2022), and 86 Ill. Admin. Code § 3000.230(g)(1). 6/15/23 Bd. Mins. at 3. The Board also unanimously voted to award Full House a master sports wagering license to accept sports wagers under section 25-35 of the Illinois Sports Wagering Act, 230 ILCS 45/25-35 (2022). *Id.* at 6; 6/15/23 Bd. Mtg. at 2:28:02-2:28:48. Full House was eligible for its major sports wagering license only because it held an owners license. *See* 230 ILCS 45/25-35 (2022).

### **Proceedings in the Appellate Court**

After the license issued to Full House, the Board and City separately moved to dismiss WPC's appeal as moot. A79-98 (Board motion); A99-134 (City motion). Both argued that because Full House now holds the sole owners

license for a casino in Waukegan, the court could not enjoin the Board from taking steps to issue the license. *See* A84-88 (Board); A102-05 (City). The Board later added, in a petition for rehearing, that a court could no longer grant effective relief to WPC because once the Board's licensing decision became final (35 days after it issued), a court could no longer enter an order that would divest Full House, a stranger to this litigation, of its interest in the owners license. A28-35.

The appellate court reversed the dismissal of WPC's complaint and denied the motions to dismiss the appeal as moot. A13, ¶¶ 26-28. As to standing, the appellate court held, first, that WPC had standing to challenge the Board's compliance with the Act, concluding that it had a "legally cognizable interest" in "its right to compete in a casino certification process that is fairly and lawfully conducted." A5-6, ¶ 11. The court further concluded that WPC adequately pleaded that it suffered a distinct and palpable harm based on its allegations that it participated in the City's "casino certification process" and paid the City's nonrefundable application fee, but was denied "the opportunity to fairly compete" due to "the City's alleged failure to perform the process lawfully." A6, ¶ 12. Lastly, the court concluded that WPC adequately pleaded that its injury was fairly traceable to the City and the Board, based on its allegation that "the Board's acquiescence in accepting the deficient resolutions and commencing the licensing process [was] necessarily



intertwined with the City's conduct, together denying [WPC] an opportunity to participate in a lawful and fair process." A8, ¶ 15.

As to mootness, the appellate court held that WPC's claim was not moot, even though the licensing process no longer could be enjoined after Full House acquired the sole Waukegan license. A12-13, ¶¶ 22-24. The court reasoned that WPC could still obtain effective relief in the form of a declaration that the Board lacked jurisdiction to issue the Waukegan license based on the allegedly deficient certifications, which would require the Board "to retract the issued license and repeat the process." A12, ¶ 22.

This Court granted and consolidated the City's and the Board's separate petitions for leave to appeal. A15.

**ARGUMENT**

The appellate court erroneously concluded that WPC, an entity that neither qualified nor applied to the Board for an owners license, could bring an action to challenge the Board’s licensing decision, even after the license was granted to another entity. The appellate court’s decision ignored well-established principles of justiciability that prevent a court from hearing matters that cannot affect the legal rights of the parties. These standing and mootness principles permit a court to decide cases only when “an actual controversy exists.” *McCormick v. Robertson*, 2015 IL 118230, ¶ 21; *see Cahokia Unit Sch. Dist. No. 187 v. Pritzker*, 2021 IL 126212, ¶ 35. That requires a dispute that “is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests.” *McCormick*, 2015 IL 118230, § 21.

WPC’s claim, which sought to prevent the Board from awarding the sole Waukegan license — a license that was awarded to Full House last year — does not present a justiciable controversy. First, WPC lacked standing to challenge the Board’s statutory and regulatory process because it was not a party aggrieved by any Board decision. Further, WPC’s claim became moot when the Board awarded the sole Waukegan license to Full House, a stranger to this action, because a court could no longer grant WPC the relief it sought, an opportunity to compete for the Waukegan license. This Court should vacate the appellate court’s decision and affirm the circuit court’s judgment.

**I. The standard of review is *de novo*.**

The *de novo* standard applies to the involuntary dismissal of a complaint under section 2-619(a)(9) of the Code, which admits the legal sufficiency of the complaint but asserts an affirmative matter that defeats the claim. *See State ex rel. Leibowitz v. Fam. Vision Care, LLC.*, 2020 IL 124754, ¶ 31 (standing presents legal question subject to *de novo* review); *In re Alfred H.H.*, 233 Ill. 2d 345, 350 (2009) (mootness presents legal question subject to *de novo* review). On review, this Court “accepts as true all well-pleaded facts as well as all reasonable inferences that arise from them,” but may “disregard all legal and factual conclusions in the complaint.” *Fam. Vision Care, LLC.*, 2020 IL 124754, ¶ 31. When applying *de novo* review, this Court “afford[s] no deference” to the determinations by the appellate or circuit courts, *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009), and may affirm the judgment on any basis supported by the record, *Rodriguez v. Sheriff’s Merit Comm’n of Kane Cnty.*, 218 Ill. 2d 342, 357 (2006).

**II. The appellate court erroneously concluded that WPC had standing to sue under the Act.**

This Court should affirm the circuit court judgment because WPC lacked standing to challenge the Board’s decision to award the Waukegan license to Full House. The standing doctrine bars lawsuits brought by parties who have no real interest in the outcome of a controversy. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). To have standing to bring a claim, the plaintiff must allege an actual or threatened injury to a legally cognizable

interest. *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 492 (1988). That means that the plaintiff's claimed injury must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* at 492-93. Moreover, in the context of declaratory relief, the plaintiff must possess "a personal claim, status, or right that could be affected if relief would be granted." *Id.* at 493. WPC cannot meet these requirements.

**A. WPC did not suffer an actual injury to a legally cognizable interest.**

To have standing, a plaintiff must have a "distinct and palpable injury;" that is, an injury that "cannot be characterized as a generalized grievance common to all members of the public." *Ill. Road & Transp. Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶ 17 (cleaned up). And a "legally cognizable interest" must be more than "mere curiosity or concern for the outcome." *Id.* Rather, a plaintiff must possess "some personal claim, status, or right that is capable of being affected by" the relief it seeks. *Glisson*, 188 Ill. 2d at 221.

In *Glisson*, for example, this Court concluded that a plaintiff lacked standing to enforce a state environmental law because that law did not expressly confer standing on private citizens and plaintiff's personal interest in preservation was insufficient as a matter of law to confer standing. *Id.* at 231-32. Instead, standing requires real potential that the plaintiff's rights or interests will be affected by the outcome of the action. *See Illinois Road*, 2022 IL 127126, ¶ 16-18 (association of transportation infrastructure contractors

had standing to sue county that allegedly improperly diverted funds from transportation-related projects based on the strong likelihood that county's policy caused its members ongoing loss of economic opportunity); *Greer*, 122 Ill.2d at 493 (alleged diminution in plaintiff's property values from proposed agency action gave them standing to challenge agency action).

Here, WPC had no legally cognizable interest in a casino license, nor did it have a right to any procedure or benefit under the Act. There is no common law right to engage in or profit from gambling. *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870. ¶ 26. Nor does the Act confer any right to obtain a gambling license. *See Doxsie v. Ill. Gaming Bd.*, 2021 IL App (1st) 191875, ¶ 15; *Lake Cnty. Riverboat L.P. v. Ill. Gaming Bd.*, 332 Ill. App. 3d 127, 140 (1st Dist. 2002). And because WPC did not participate in the Board's licensing process, WPC did not suffer a distinct and palpable injury that arose from the Board's licensing decision. *See Glisson*, 188 Ill. 2d at 230-31 (private citizen had no legally cognizable interest in administrative decision to construct dam). WPC therefore lacked standing to seek an injunction or declaratory relief to enjoin the Board's licensing process.

Despite that, the appellate court concluded that WPC had a legally cognizable interest in a "fair and lawful casino certification process" because it submitted a casino proposal to the City. A6, ¶ 12. The appellate court's conclusion incorrectly conflated the City Council's role in approving casino proposals with the Act's separate licensing process. WPC did not apply to the

Board (or pay the Board an application fees). *See* 230 ILCS 10/6, 7 (2022).

And because the City Council had voted not to approve WPC's casino proposal when the Board began its licensing process, the Board's actions did not deny WPC of an opportunity to compete for that license.

What is more, section 7(e-5) of the Act did not create a legally cognizable interest in participating in a "casino certification process that is fair and lawfully conducted," as the appellate court concluded. A5-6, ¶ 11. By its plain terms, section 7(e-5) directed the Board to consider an applicant for licensure "only after" the host municipality had certified that it had negotiated certain items with the applicant, passed a resolution in support of the applicant's casino proposal, and given public notice of the proposal. 230 ILCS 10/7(e-5)(i)-(viii) (2022). But this requirement did not mandate that the City follow a prescribed selection process. Indeed, as the appellate court acknowledged, under section 7(e-5), the host municipality could have negotiated with and certified a single applicant. A7, ¶ 13. The Act therefore did not create, as "a necessary corollary" to any statutorily prescribed process, a legally cognizable interest in participating in the City's selection process. A5-6, ¶ 11 (quoting *Keefe-Shea Jt. Venture v. City of Evanston*, 332 Ill. App. 3d 163, 171-72 (1st Dist. 2002)).

To be sure, the Board undertook a competitive bidding process to select a final applicant from among Full House, North Point, and Rivers, the three qualified applicants that had been certified by the City. *See* 230 ILCS

10/7.12(a) (2022) (“Owners licenses newly authorized pursuant to [section 7(e-5)] may be issued by the Board to a qualified applicant pursuant to an open and competitive bidding process.”). And under the Act, a party who has been denied a license pursuant to the Board’s process could request a hearing under the Act and the Administrative Review Law. *See* 230 ILCS 10/5(b)(1), 17.1(b) (2022). But WPC was not a party before the Board, and thus could not challenge the Board’s decision to grant the license. *See Bd. of Educ. of Roxana Cmty. Sch. Dist. No. 1 v. Pollution Control Bd.*, 2013 IL 115473, ¶ 20 (standing under Administrative Review Law is limited to parties of record before the administrative agency whose rights, duties, or privileges are adversely affected by the decision). Consequently, WPC lacked a legally cognizable interest in the Board’s decision after the City had voted not to approve its proposal.

**B. WPC’s alleged injury is neither traceable to the Board, nor redressable through this action.**

Even if this Court concludes that WPC had a legally cognizable interest at stake, its alleged “lost opportunity to participate in a fair selection process” is not traceable to the Board or redressable through this action. A10, ¶ 17. Under the standing doctrine, a plaintiff must allege a clear injury that can be alleviated by the relief requested in its complaint. *See Ill. Road*, 2022 IL 127126, ¶ 20; *Vill. of Chatham v. Cnty. of Sangamon*, 216 Ill. 2d 402, 421-22 (2005) (county lacked standing to challenge validity of zoning ordinance that did not directly regulate its property because requested relief not shown to affect its property rights); *Lake Cnty. Riverboat L.P. v. Ill. Gaming Bd.*, 332 Ill.

App. 3d 127, 135-40 (1st Dist. 2002) (casino license applicant lacked standing to challenge constitutionality of Act's amended renewal provision because it would not have qualified for license, even if provision was invalidated).

Traceability does not require "certainty," but it requires a substantial probability that granting the relief that the plaintiff sought "would inure to plaintiffs' economic benefit and thus remedy their alleged injury." *Ill. Road*, 2022 IL 127126, ¶ 26.

The traceability requirement is not satisfied here because the Board's "conduct of acting on the applications that have been certified in a non-compliant process," A8, ¶ 15, did not harm WPC's interests. As WPC alleged, the City Council voted twice not to approve its casino proposal, and instead submitted certifications for Full House, North Point, and Rivers to the Board. C15-16. Under those circumstances, WPC had "no chance" of becoming an applicant before the Board. *Lake Cnty. Riverboat*, 332 Ill. App. 3d at 135-40 (affirming dismissal of constitutional challenge to Act brought by prospective applicant that could not qualify for license). WPC therefore did not suffer any harm traceable to the Board's consideration of the certified applicants.

For the same reason, WPC's alleged injury is not substantially likely to be redressed, even if its requested relief in this action were to be granted. If WPC were to prevail on its claim, an order directing the City to redo its certifying resolutions and the Board to repeat its licensing process is not substantially likely to permit WPC to become an applicant before the Board.



A10, ¶17. A court order requiring the Board to comply with section 7(e-5) of the Act would not require the City to submit a certifying resolution in favor of WPC. In fact, the federal court recently concluded that there were “many rational bases for the City’s decision not to certify [WPC].” *Waukegan Potawatomi Casino*, 2024 WL 1363733, \*9. Thus, even if the Board had to redo its licensing process, it is not reasonably likely that WPC would be advanced to the Board. *See Chi. Teachers Union, Local 1 v. Bd. of Educ.*, 189 Ill. 2d 200, 208 (2000) (teachers lacked standing to challenge student waiver provision because scope and effect of provision on their class enrollment was “purely conjectural”). Because WPC is unlikely to obtain effective relief, it lacks standing to pursue its claim.

**III. The appellate court erred by concluding that WPC’s claim was not moot.**

Even if WPC had standing to bring its claim against the Board, that claim should be dismissed as moot. The appellate court’s decision on mootness threatens to undo the Board’s licensing process, invalidate an existing owners license, and force Full House to cease casino operations that have been ongoing for more than a year. Such an extraordinary remedy not only contravenes this Court’s decision in *Marion Hosp. Corp. v. Ill. Health Facilities Planning Bd.*, 201 Ill. 2d 465, 471 (2002), but it would also undermine the finality of administrative decisions and thwart the Act’s stated directive that the Board make timely licensing decisions for the benefit of Illinois citizens, 230 ILCS 10/2 (2022). Moreover, the appellate court decision would upend the Board’s

process even though WPC created the risk that its claim would become moot by waiting for two years — until the eve of the vote on preliminary suitability — to bring its claim, then by failing to obtain a stay of the Board’s licensing process during the pendency of its action. And the decision would adversely impact the interests of Full House, who was never made a party to this action.

**A. Under this Court’s precedent, WPC’s claim became moot when the Waukegan license issued.**

An appeal becomes moot if (a) the resolution of a question of law cannot affect the result of a case as to the parties or (b) the action that the plaintiff sought to compel or enjoin has already occurred. *Marion Hosp. Corp.*, 201 Ill. 2d at 471; *see also In re Tekela*, 202 Ill. 2d 282, 289-90 (2002) (appeal of order terminating mother’s parental rights became moot when adoption of child became final); *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 524-25 (2001) (joint owner’s appeal of order partitioning and permitting sale of property became moot when circuit court confirmed judicial sale of property). Both circumstances are present here. The award of the sole Waukegan license to Full House mooted WPC’s claim for declaratory and injunctive relief. There is no dispute that a court can no longer enjoin the completed licensing process. *See* A12-13, ¶ 22. And, contrary to the appellate court’s ruling, *id.*, a court could no longer grant effective declaratory relief because any such relief could not bind Full House, a stranger to this litigation, by divesting it of the interest it has obtained in its owners license.

In its complaint, WPC made allegations related to the City's selection and negotiations with casino entities that it certified to the Board. C17-19. But in *Marion*, this Court recognized that a claim challenging a pre-licensing process became moot upon the issuance of the license. 201 Ill. 2d at 467-69. There, the plaintiff brought an action against the Illinois Health Facilities Planning Board, the Illinois Department of Public Health ("IDPH"), and a permittee who sought to build and operate a competing orthopedic center, seeking judicial review of the Planning Board's decision to grant its competitor a building permit. *Id.* The circuit court affirmed the Planning Board's final administrative decision granting the permit, and the plaintiff appealed. *Id.* at 469. While the appeal was pending, the permittee completed construction of its center and IDPH granted it an operating license under the Illinois Ambulatory Surgical Treatment Center Act, 210 ILCS 5/1 *et seq.* (2022), which required proof that the applicant's center was constructed pursuant to a valid permit from the Planning Board. *Id.* at 469-70, 472; *see* 210 ILCS 5/4 (2022); 77 Ill. Admin. Code § 205.120(b)(15). The appellate court held that the appeal was not moot, concluding that the invalidation of the permit could adversely affect the permittee's operating license, and set aside the Planning Board's administrative decision granting the permit. *Marion Hosp. Corp.*, 201 Ill. 2d at 472-73.

This Court vacated the appellate court's decision, concluding that the appeal became moot once the permittee completed construction of its center

and obtained an operating license. *Id.* at 471. As the Court explained, upon completion of the project and award of the operating license to the facility, a court could no longer grant effective injunctive relief. *Id.* at 472. And an order declaring the permit invalid could no longer adversely affect the permittee's operating license because IDPH had already granted the operating license, based on the then-valid permit, pursuant to applicable regulations. *Id.* at 474. Under the relevant statutory scheme, the Court explained, a subsequent invalidation of the permit would not provide statutory grounds for IDPH to revoke or refuse to renew an already-issued operating license. *Id.* at 474-75.

*Provena Health v. Ill. Health Facilities Planning Bd.*, 382 Ill. App. 3d 34, 50 (1st Dist. 2008), on which the appellate court relied, A12, ¶ 22, is consistent with *Marion* and wholly different than this instance. There, the court concluded that a plaintiff's appeal challenging the Planning Board's decision to issue a permit for the construction of a hospital to the plaintiff's competitor, was not moot because, unlike in *Marion*, the permittee had neither completed construction of its proposed hospital nor obtained an operating license for it from IDPH. *Provena*, 382 Ill. App. 3d at 50-51. As a result, the court concluded, an order reversing the Planning Board's decision and invalidating the construction permit would effectively prevent the permittee from completing construction of its hospital and qualifying for an operating license. *Id.* at 51.

Under *Marion* and *Provena*, the Board's issuance of the owners license to Full House mooted WPC's claim. WPC challenged the Board's authority to act on the Waukegan license based on allegations that the City had "manipulated its entire certification process" and had not negotiated with casino entities before certifying them. See C12, C16-18. Like the plaintiff in *Marion*, WPC had not obtained a court order enjoining the Board from accepting those certifications or from considering applicants for the Waukegan license before the Board completed its licensing process. And, unlike in *Provena*, the Board process was complete and the sole owners license had issued before the appellate court considered the merits of the appeal. Thus, as in *Marion*, WPC's challenge to the Board's licensing process became moot when that process was completed. This Court therefore should find that the licensing process cannot be undone based on allegations regarding the selection of or negotiation with entities that occurred outside the Board's licensing process.

Further, the fact that Full House currently operates a temporary casino while it constructs its permanent facility should not alter that analysis, contrary to the appellate court's suggestion. A12, ¶ 22. Full House has a full unencumbered owners license. Completion of a permanent casino is not a statutory or regulatory prerequisite to obtaining an owners license. See 230 ILCS 10/7(b) (2022) (listing "facilities or proposed facilities" as factor for determining whether to grant owners license). Instead, the Act permits an

“owners licensee” to “conduct gaming at a temporary facility pending the construction of a permanent facility.” *Id.* § 7(k)(1). The Board therefore may complete its assessment of a new applicant’s gaming operations and vote on the applicant’s suitability for licensure while the applicant operates from its temporary facility. 86 Ill. Admin. Code § 3000.230(e), (f). And here, after concluding that Full House met all of the statutory and regulatory requirements for licensure, the Board awarded Full House an unencumbered owners license while it operated its temporary casino. 6/15/23 Bd. Mtg. at 1.04:00-1.06:25. Because Full House acquired an unencumbered owners license, the appellate court erred in considering the ongoing construction of Full House’s permanent facility in its mootness analysis.

The appellate court also erroneously viewed this case as “decidedly different” from *Marion* based on the “interplay” there “between a planning permit” from one agency and an operating license from a separate agency. A12-13, ¶22. The Act called for a similar “interplay” between the City and the Board: the City selected applicants before submitting certifying resolutions to the Board, which, in turn, commenced its licensing process upon its receipt of applications from the entities the City had certified. *See* 230 ILCS 10/7(e-5); 7.12 (2022). In other words, like in *Marion* and *Provena*, the statutory scheme here involved two separate processes by two separate governmental bodies. The Act provides no basis for the Board to revoke or rescind an owners license based on the City’s process, and the appellate court did not identify any such

statutory basis. On the contrary, the Act allows the Board to revoke or suspend a license only in compliance with applicable administrative procedures if the licensee has violated the Act or a regulation or has engaged in a fraudulent practice. *See id.* §§ 5(c)(11), (15); 86 Ill. Admin. Code § 3000.110. None of those statutory bases for revocation were alleged here.

Additionally, the appellate court's admonition that the Board proceeded with its licensing process "at [its] peril," A13, ¶ 24, overlooks the Act's specific directive to the Board to issue the licenses created under section § 7(e-5) of the Act within 12 months after the date that the license applications were submitted, 230 ILCS 10/7(e-10) (2022), as well as the general requirement that the Board decide all licensing applications "promptly," *id.* § 5(b)(1); *see id.* § 7.5(8) (Board evaluates winning bid "within a reasonable period of time for license suitability"). At all events, the Board deferred its consideration of the applicants for the Waukegan license, R6-7, until after the circuit court had denied WPC's TRO motion to vote on Full House's preliminary suitability, and the appellate court denied WPC's petition for review shortly after that vote, C1522. A ruling that would require the Board to suspend its proceedings beyond that stage not only would frustrate the legislative purpose of the Act, but it would also enable any disgruntled party to delay ongoing administrative proceedings by simply filing a lawsuit.

**B. Contrary to the appellate court’s holding, the Board cannot be required to retract the Waukegan license and repeat the process.**

Despite the completion of the licensing process, the appellate court ruled that a court could grant WPC effective relief by declaring that the Board lacked authority to issue the Waukegan license and thus requiring it to retract the license and redo the process. A12, ¶ 22. That conclusion is inconsistent with the Act, which authorized the Board to issue the license. It also ignores that Full House, who was not named as a party to this litigation, cannot be divested of its interest in the Waukegan license.

**1. Because the Board had jurisdiction to grant the license, its decision cannot be undone.**

This Court has recognized that a final administrative decision may be set aside in the limited circumstances in which the adjudicatory body acted without jurisdiction. *See Tekela*, 202 Ill. 2d at 289-90. But WPC’s allegations against the Board cannot, as a matter of law, support a claim that the Board lacked jurisdiction to issue the Waukegan owners license. Its final administrative decision therefore cannot be undone.

An administrative agency’s jurisdiction has three aspects: (1) authority over the parties, (2) the power to “hear and determine causes of the general class of cases to which the particular case belongs,” and (3) the agency’s scope of authority under the statute. *Bus. & Pro. People for Pub. Int. v. Ill. Com. Comm’n*, 136 Ill. 2d 192, 244 (1989); *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985). It is beyond dispute that the Board had personal jurisdiction over Full



House, who was an applicant for the Waukegan casino license, and the power to award owners licenses under the Act. *See* 230 ILCS 10/5(b)(1) (2022) (Board has duty “[t]o decide promptly and in reasonable order all license applications”). The third element also is met — the Board had statutory authority to issue the Waukegan license. *See id.* § 7(e-5)(3) (Board authorized to issue Waukegan license). WPC’s allegations regarding the City’s selection of applicants and the sufficiency of its certifying resolutions, could not, as a matter of law, support a conclusion that the Board lacked statutory authority to issue the Waukegan license.

The appellate court’s mootness decision rested on an erroneous premise that WPC’s allegations supported a claim that the Board acted without statutory authority. A12-13, ¶ 22. But a determination of whether the Board exceeded its statutory authority rests on whether it exercised a power that the Act did not give it, not on whether WPC has pleaded that the Board made an error in the application of its statutory authority. *See Bus. & Prof. People for Pub. Int.*, 136 Ill. 2d at 244-45 (agency acts with statutory authority even if it makes “erroneous decision”). Although it “can be difficult to discern” whether a challenged administrative action was “statutorily unauthorized,” rather than “merely erroneous,” *Genius v. Cnty. of Cook*, 2011 IL 110239, ¶ 28, this Court has recognized that treating an alleged error in an agency’s interpretation or application of its enabling statute as *ultra vires*, as WPC has advocated, “would allow a collateral attack on any order whenever the agency has failed to follow

the exact letter of a statutory provision,” *Newkirk*, 109 Ill. 2d at 37-39; *see Bus. & Prof. People for Pub. Int.*, 136 Ill. 2d at 245.

Thus, this Court has found that an agency exceeds its statutory authority only when it attempts to assert a power that was beyond the scope of its enabling statute. For example, in *Crittenden v. Cook Cnty. Comm’n on Human Rights*, 2013 IL 114876, ¶¶ 17, 24, this Court held that a county human rights commission exceeded its statutory authority by awarding punitive damages to a claimant because its enabling legislation did not provide it with that authority. Similarly, in *Cnty. of Knox ex. rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 555-58 (2000), the Court invalidated a county zoning board’s decision that would have prevented a landowner from constructing a hog confinement facility on its property because the county’s enabling statute specifically prohibited it from regulating property that would be used for “agricultural purposes.” As the Court explained, the statutory exemption for “agricultural purposes,” by its plain terms, could never be construed to give a county authority to regulate a hog facility. *Id.*; *see also Bus. & Prof. People for Pub. Int.*, 136 Ill. 2d at 245 (Illinois Commerce Commission exceeded its authority by entering order without agreement of intervenors that decided several issues outside context of traditional rate case).

In contrast, an agency does not act outside its statutory authority when it exercises powers expressly granted to it by statute, even if it erred in the exercise of those powers. *See Genius*, 2011 IL 110239, ¶¶ 24-36; *Newkirk*, 109

Ill. 2d at 37; *see also Fam. Amusement of N. Ill., Inc. v. Accel Ent. Gaming, LLC*, 2018 IL App (2d) 170185, ¶ 35 (Board order did not exceed its statutory authority where apparent flaws or errors in its order did not place “the order beyond the power of the agency to issue”); *NorthShore Univ. Healthsystem v. Ill. Dep’t of Revenue*, 2017 IL App (1st) 153647, ¶¶ 24-27 (agency did not exceed its statutory authority and thus act without jurisdiction when it accepted taxing authority’s hearing application to initiate challenge to tax assessment, even though application did not contain certain provisions that were required by statute).

In *Genius*, for example, this Court held that the Employee Appeals Board, charged with hearing employee appeals from “decisions” of a department head, did not exceed its statutory authority when it rendered a decision on an employee’s post-disciplinary appeal, even though the employee’s superintendent had not issued a “decision,” but instead had merely made “a recommendation that discharge proceedings be initiated.” 2011 IL 110239, ¶¶ 26-32. The Court reasoned that even if the Appeals Board had erred in hearing the appeal prematurely, that error did not divest it of its authority to render a decision on the employee’s discipline because its enabling statute required it in all cases to conduct a *de novo* review of an employee’s discipline, rather than to review a superintendent’s decision, *id.* at ¶ 28-29, and expressly tasked it with “decid[ing] the merits of disciplinary action,” *id.* at ¶¶ 31-32.

Similarly, in *Newkirk*, this Court concluded that a state mining board order integrating the parties' interests in a land parcel could not be declared invalid by a court in a declaratory judgment action, even though the Board had failed to include certain statutorily required provisions. 109 Ill. 2d at 32-37. The Court reasoned that while the mining board had a mandatory obligation to include the omitted provisions — and it thus erred in entering the order — it still had the inherent authority to issue the order. *Id.* As this Court explained, the mining board's order could be challenged on administrative review based on its failure to include the requisite provisions, but the order could not be set aside in a declaratory judgment action. *Id.* at 40.

Here, the Board unquestionably had statutory authority to issue the Waukegan license under the Act. *See* 230 ILCS 10/7 (2022). Indeed, the Act expressly authorized the Board to issue an owners license for a casino in Waukegan. *Id.* § 7(e-5). Under section 7(e-5), the Board was directed to consider issuing the license “only after” the City certified certain items to the Board. *Id.* And, by WPC's own allegations, the City provided certifying resolutions for all three of the applicants that the Board considered. C15-16, C29-297 (North Point), C298-423 (Full House), C721-92 (Rivers). Each certification stated that the certified entity had negotiated in good faith with the City and had agreed “in general terms” on the items identified in section 7(e-5) of the Act, *i.e.*, the permanent and temporary location for its casino, revenue-sharing with the City, and any other matters within the City's

jurisdiction. C17-18; *see* C29-31 (North Point), C298-99 (Full House), C721-22 (Rivers). Accordingly, the Board merely exercised a statutorily delegated duty when it accepted those certifications and initiated the process of considering the certified applicants before it. *See* 230 ILCS 10/7, 7.5, 7.12 (2022). In other words, the Board here undertook an express statutory duty; it did not attempt to assert a power that was not delegated to it by the Act. *Compare Newkirk*, 109 Ill. 2d at 32-37 (board's failure to issue compliant order did not implicate its statutory authority) *with Crittenden*, 2013 IL 114876, ¶¶ 17, 24 (commission's order was void because statute did not authorize it to award punitive damages), *and Masterson*, 188 Ill. 2d at 555-58 (order void because statute prohibited board from zoning agricultural property).

Moreover, the Board's statutory duty to issue the Waukegan license necessarily incorporated the power to accept applications for the license. The Board therefore followed its statutory mandate in accepting the certifying resolutions from the City. WPC's allegations that the City did not negotiate with each applicant or reach agreement regarding the items that it certified under section 7(e-5)(i)-(v) of the Act would suggest that the Board at most erred by accepting the certifying resolutions. But an error by the Board in exercising its statutory duties would not render it without statutory authority to undertake the statutorily mandated licensing process. *See Newkirk*, 109 Ill. 2d at 39 (board's error in application of statutory provision did not permit collateral attack); *cf. Fam. Amusement of N. Ill.*, 2018 IL App (2d) 170185,

¶¶ 32-37. The appellate court therefore erred in concluding that it could “undo” the Board’s licensing decision and invalidate Full House’s owners license.

**2. The Board cannot retract the license because Full House had obtained superseding interest in it.**

Contrary to the appellate court’s conclusion, a court cannot require the Board to “retract” the Waukegan license and “repeat” the licensing process. A11-12, ¶ 22. Full House, a stranger to this action, obtained an intervening interest in the owners license. That interest cannot be undone by any court order entered in this action. *See In re J.B.*, 204 Ill. 2d 382, 386-87 (2003) (parent’s appeal challenging termination of her parental rights became moot due to intervening adoption that became final during pendency of appeal); *Tekela*, 202 Ill. 2d at 289-90 (same); *Steinbrecher*, 197 Ill. 2d at 516 (appeal challenging court-ordered partition and sale of joint owners’ property became moot when court confirmed judicial sale of property).

Full House now holds the license, and because it was not made a party to this action, this court cannot enter an order affecting Full House’s interest in the license. *See People ex rel. Sheppard v. Money*, 124 Ill. 2d 265, 281 (1988) (“Due process requires the joinder of all indispensable parties to an action, and an order entered without jurisdiction over a necessary party is void.”); *Zenith Radio Corp. v. Hazeline Rsch., Inc.*, 395 U.S. 100, 110 (1969) (“It is elementary that one is not bound by a judgment *in personam* resulting from litigation in

which he is not designated as a party or to which he has not been made a party by service of process.”).

This principle is reflected in Ill. Sup. Ct. R. 305(k), which requires an appealing party to obtain a stay pending appeal to protect its interest in real or personal property from third parties who might obtain an interest in it. As the rule recognizes, a stay is necessary because the reversal or modification of a judgment cannot “affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed.” Ill. Sup. Ct. R. 305(k). The rule promotes “finality and permanence” by ensuring that a non-party to an action who acted in good faith is not adversely affected by judicial proceedings in which they were not involved. *Steinbrecher*, 197 Ill. 2d at 528. It would be unfair otherwise, as the nonparties were not put on notice that their interests could be affected.

In *Steinbrecher*, for example, this Court recognized that a court-ordered partition and sale of real property could not be undone after the property had been sold to a third party. 197 Ill.2d at 527-28. Instead, the sale of the property mooted the appeal because the nonparty purchaser had acquired all rights to the property, such that “any order invalidating that judgment and sale is without effect.” *Id.* at 523; *see also Town of Libertyville v. Moran*, 179 Ill. App. 3d 880, 886 (2d Dist. 1989) (absent stay, appeal becomes moot if “specific property, possession, or ownership of which is the relief being sought

on appeal, has been conveyed to third parties,” as long as record discloses that third-party purchaser was not “party or nominee of a party to the litigation”); *see also NBC-USA Hous., Inc., Twenty-Six v. Donovan*, 674 F.3d 869, 870, 872-73 (D.C. Cir. 2012) (agency’s sale of foreclosed property during pendency of appeal mooted appeal from foreclosure order because court could not “unravel” sale involving nonparty).

Similarly, the Court in *Tekela* ruled that the entry of a final adoption order mooted the mother’s appeal challenging a separate order terminating her parental rights. 202 Ill. 2d at 287-93. As the Court explained, because the mother had not secured a stay of the circuit court order terminating her parental rights, and the adoption process concluded before she obtained reversal of the termination order in the appellate court, the adoption became final and unchangeable. *Id.* at 289-90. As a result, the adoption order mooted the appeal challenging the termination order. *Id.* at 292.

The same principle applies here. Because WPC did not obtain a preliminary injunction from the circuit court preventing the Board from proceeding with the licensing process, and the Board completed that process while WPC’s appeal was pending, Full House obtained an interest in the license that cannot be undone by this action. The Board’s award of the sole Waukegan owners license to Full House was a final agency decision as to Full House’s interest in the license. *See Kosakowski v. Bd. of Trs.*, 389 Ill. App. 3d 381, 383-84 (1st Dist. 2009) (under Administrative Review Law, agency lacks



power to undo final administrative decision 35 days after its issuance); *Sola v. Roselle Police Pension Bd.*, 342 Ill. App. 3d 227, 231 (2d Dist. 2003) (same).

Thus, if the Board were to commence a proceeding to retract Full House's license for any reason that predated the issuance of the license, Full House could defeat it by invoking the Board's final administrative decision, which became conclusive under the Administrative Review Law after 35 days passed, 735 ILCS 5/3-102 (2022), as preclusive. In other words, because the Board has issued a final administrative decision awarding the sole Waukegan owners license to Full House, and the time to seek judicial review of that decision has passed, the Board's administrative decision is conclusive as to Full House's interests in the license. *See id.* ("any other statutory, equitable, or common law mode of review of decisions of administrative agencies heretofore available shall not hereafter be employed"); *Outcom, Inc. v. Ill. Dep't of Transp.*, 233 Ill. 2d 324, 333 (2009) (Administrative Review Law "eliminates the use of mandamus, certiorari, injunction and other equitable, statutory and common law actions as means of reviewing agency decisions").

This result is consistent with *Provena*, 382 Ill. App. 3d at 50-51, which the appellate court cited, A12, ¶ 22. There, as the court pointed out, the permittee whose construction permit was at risk was named as a defendant in the action challenging the Planning Board's administrative decision. *Id.* at 34, 51. As a result, even though the court did not enjoin the permittee from continuing to construct its facility under the challenged construction permit,

the permittee, as a party to the action, was aware of the risk of a reversal and could be bound by the court's decision regarding the respective interests of the parties. *Id.* at 51. Indeed, the court there had warned the permittee that its partial construction of the facility would not prevent the court from setting aside the permit. *Id.*

Here, in contrast, Full House was never a party to this action, and so its license cannot be retracted in this action. *See Steinbrecher*, 197 Ill. 2d at 516 (court cannot undo sale of property to nonparty); *NBC-USA Hous.*, 674 F.3d at 872-73 (same). Indeed, the judgment in this case can affect only the rights of the parties to this case. And the Board's grant of the license to Full House would have *res judicata* effect between the Board and Full House. *See Vill. of Bartonville v. Lopez*, 2017 IL 120643, ¶¶ 71-72; *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 56.

**CONCLUSION**

State Defendants-Appellants the Illinois Gaming Board; Chairman Charles Schmadeke; Members Dionne R. Hayden, Anthony Garcia, and Jim Kolar; and Board Administrator Marcus Fruchter ask this Court to vacate the appellate court's decision and affirm the circuit court judgment.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Ill. Sup. Ct. R. 315 and, to the extent applicable, Ill. S. Ct. R. 341(a) and (b). The length of this brief, excluding the pages or words contained in the Ill. S. Ct. R. 341(d) cover, the Ill. S. Ct. R. 341(h)(1) table of contents and statement of points and authorities, the Ill. S. Ct. R. 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Ill. S. Ct. R. 315, is 44 pages.

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# APPENDIX

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2023 IL App (1st) 220883

No. 1-22-0883

Opinion filed July 28, 2023

FIFTH DIVISION

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO, LLC,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	
THE ILLINOIS GAMING BOARD; CHARLES	)	
SCHMADEKE, Board Chairman; DIONNE R.	)	No. 2021 CH 5784
HAYDEN, Board Member; ANTHONY	)	
GARCIA, Board Member; MARC E. BELL,	)	
Board Member; MARCUS FRUCHTER, Board	)	
Administrator; and THE CITY OF	)	Honorable
WAUKEGAN,	)	Cecilia A. Horan,
	)	Judge presiding.
Defendants-Appellees.	)	

JUSTICE MITCHELL delivered the judgment of the court, with opinion.  
Presiding Justice Delort and Justice Lyle concurred in the judgment and opinion.

**OPINION**

¶ 1 Plaintiff, Waukegan Potawatomi Casino, LLC, appeals an order dismissing its complaint for declaratory judgment and injunctive relief. The principal issue presented in this appeal is as follows: did the circuit court err in dismissing Potawatomi Casino’s complaint for lack of standing because the alleged violations of the Illinois Gambling Act denied Potawatomi Casino its right to compete in a lawful certification process? Because the trial court did err, we reverse and remand.

¶ 2

## I. FACTS

¶ 3 The General Assembly amended the Illinois Gambling Act in 2019 to authorize the Illinois Gaming Board to issue 6 new casino licenses, including one in the City of Waukegan, in addition to the 10 existing licenses. Pub. Act 101-31 (eff. June 28, 2019) (amending 230 ILCS 10/7(e-5)). The Act provides for a licensing process specific for these new licenses, requiring the host municipality to initiate the process. *Id.* Notably, the Board can consider issuing a license to an applicant *only after* the host municipality has certified to the Board that it has negotiated with the applicant on certain specified details of the proposed casino:

“The Board shall consider issuing a license pursuant to paragraphs (1) through (6) of this subsection only after the corporate authority of the municipality or the county board of the county in which the riverboat or casino shall be located has certified to the Board the following:

(i) that the applicant has negotiated with the corporate authority or county board in good faith;

(ii) that the applicant and the corporate authority or county board have mutually agreed on the permanent location of the riverboat or casino;

(iii) that the applicant and the corporate authority or county board have mutually agreed on the temporary location of the riverboat or casino;

(iv) that the applicant and the corporate authority or the county board have mutually agreed on the percentage of revenues that will be shared with the municipality or county, if any;



(v) that the applicant and the corporate authority or county board have mutually agreed on any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality or county;

(vi) that the corporate authority or county board has passed a resolution or ordinance in support of the riverboat or casino in the municipality or county;

(vii) the applicant for a license under paragraph (1) has made a public presentation concerning its casino proposal; and

(viii) the applicant for a license under paragraph (1) has prepared a summary of its casino proposal and such summary has been posted on a public website of the municipality or the county.” 230 ILCS 10/7(e-5) (West 2020).

¶ 4 The City of Waukegan issued a request for qualifications and proposals, soliciting proposals to develop and operate a casino in the City. Waukegan Potawatomi Casino, LLC submitted a proposal in response, and the City held a public meeting during which four casino applicants presented their proposals. Subsequently, the Waukegan City Council voted on resolutions certifying those four applicants to the Board. The council passed resolutions certifying three of the applicants but declined to pass the resolution certifying Potawatomi Casino. A few days later, the council voted to reconsider the resolution regarding Potawatomi Casino but, on reconsideration, did not pass the resolution.

¶ 5 Following the council’s adoption of the resolutions, Potawatomi Casino filed an action in the circuit court of Lake County against the City, asserting claims under the fourteenth amendment of the United States Constitution (U.S. Const., amend. XIV), the Illinois Gambling Act, and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2020)). The City removed the case to the federal

district court, where the case remains pending. *Waukegan Potawatomi Casino, LLC v. City of Waukegan*, No. 1:20-CV-750 (N.D. Ill.)

¶ 6 Subsequently, Potawatomi Casino filed a separate action in the circuit court of Cook County against the City and the Board. In its complaint, Potawatomi Casino sought a declaratory judgment that the City had failed to comply with the statutory requirements in the Illinois Gambling Act to certify applicants to the Board. It also sought to enjoin the Board from issuing a casino license until the City had satisfied those requirements. The circuit court denied Potawatomi Casino's emergency motion for a temporary restraining order, and this court affirmed. *Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board*, No. 1-21-1561 (filed Dec. 16, 2021) (order denying plaintiff's interlocutory appeal). The Board, soon after, issued a finding of preliminary suitability in favor of one of the certified applicants, Full House Resorts. The City and the Board moved to dismiss Potawatomi Casino's complaint (735 ILCS 5/2-615, 2-619.1 (West 2020)), and the circuit court dismissed the complaint with prejudice for lack of standing. Potawatomi Casino timely appealed. Ill. S. Ct. R. 303(a) (eff. July 1, 2017).

¶ 7 II. ANALYSIS

¶ 8 A. Standing

¶ 9 Potawatomi Casino argues that the circuit court erred in dismissing its complaint for lack of standing because it did suffer an injury to its right to compete in a lawful certification process. Under Illinois law, standing "tends to vary" from federal law "in the direction of greater liberality." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 491 (1988). Illinois courts are generally more willing than federal courts to recognize standing on the part of any person "who shows that he is in fact aggrieved." *Id.* Lack of standing under Illinois law is an affirmative defense;

it is not jurisdictional. *Glisson v. City of Marion*, 188 Ill. 2d 211, 224 (1999); see also *Soto v. Great America LLC*, 2020 IL App (2d) 180911, ¶ 20. As a consequence, a defendant bears the burden to raise and establish lack of standing, and if not timely raised, it is forfeited. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). A defendant may properly raise lack of standing in a motion to dismiss brought under section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2020); *Glisson*, 188 Ill. 2d at 220. When considering such a motion, a court must accept as true all well-pleaded facts in the complaint as well as any inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. We review a dismissal under section 2-619 *de novo*.<sup>1</sup> *Glisson*, 188 Ill. 2d at 220-21.

¶ 10 The doctrine of standing is designed to preclude parties who have no interest in a controversy from bringing suit and assures that suit is brought “only by those parties with a real interest in the outcome of the controversy.” *Id.* at 221. In general, standing requires “some injury in fact to a legally cognizable interest.” *Id.* (citing *Greer*, 122 Ill. 2d at 492). The claimed injury must be (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be redressed by the grant of the requested relief. *Greer*, 122 Ill. 2d at 492-93.

¶ 11 Potawatomi Casino claims a legally cognizable interest in its right to compete in a casino certification process that is fairly and lawfully conducted. The Illinois Gambling Act prescribes a process with which the City is unambiguously required to comply before the Board can consider

<sup>1</sup>The City argues that we should review the appeal for “clear error” because it somehow implicates the Board's decision. This contention is wholly without merit. When a circuit court dismisses a complaint under section 2-619, our review is *de novo*. See *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 681 (2010) (reviewing a section 2-619 dismissal of administrative review complaint *de novo*).

issuing a license. 230 ILCS 10/7(e-5) (West 2020). An applicant participating in such statutorily mandated selection process would thus have a right to have a fair and compliant process. See *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 171-72 (2002) (a duty is owed to a bidder to award the contract to the lowest, responsive, responsible bidder as statutorily required, and, “as a necessary corollary, a bidder has the right to participate in a fair bidding process”). Although this interest is often implicated in cases involving a competitive bidding process, it is not strictly limited to such context. See, e.g., *Illinois Road & Transportation Builders Ass’n v. County of Cook*, 2022 IL 127126, ¶ 18 (the plaintiffs had standing where the county’s unconstitutional diversion of transportation funds decreased the number of projects they could bid on); *Aramark Correctional Services, LLC v. County of Cook*, No. 12 C 6148, 2012 WL 3961341, at \*1, 5 (N.D. Ill. Sept. 10, 2012) (request for proposals).

¶ 12 First, Potawatomi Casino’s alleged injury to this legally cognizable interest is distinct and palpable. “A distinct and palpable injury refers to an injury that cannot be characterized as a generalized grievance common to all members of the public.” (Internal quotation marks omitted.) *Illinois Road & Transportation Builders Ass’n*, 2022 IL 127126, ¶ 17. Potawatomi Casino submitted an application to participate in the City’s casino certification process and paid a nonrefundable application fee of \$25,000. Potawatomi Casino pursued a significant business opportunity to fairly compete for a casino license, and where that opportunity was denied due to the City’s alleged failure to perform the process lawfully, there is a distinct and palpable injury. See *Messenger v. Edgar*, 157 Ill. 2d 162, 171 (1993) (“ ‘[I]nterested’ does not mean merely having a curiosity about or a concern for the outcome of the controversy \*\*\*.”).

¶ 13 Next, this injury is fairly traceable to the actions of the City and the Board. The Act plainly requires that the host municipality “memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted \*\*\* before any certification is sent to the Board.” 230 ILCS 10/7(e-5). The Board can act upon the license applications *only after* the municipality sends certifications to the Board. *Id.* The statute does not require the municipality to negotiate with every applicant, but it does require a good-faith negotiation on enumerated items with applicants the municipality certifies to the Board. *Id.* Here, the resolutions that the city council voted on only stated, without more, that the City and each applicant agreed “in general terms” on the enumerated items. The resolutions pointed to each applicant’s initial proposal for “the details of the mutual agreements” and contemplated that final negotiations would take place after the Board completes its licensing process.<sup>2</sup>

¶ 14 Potawatomi Casino alleged that the City did not engage in any negotiations with the applicants during the certification process and that the City passed the certifying resolutions that fall short of the statutory requirements. The complaint expressly alleges the following violations:

“a. Contrary to the representation in the City’s ‘certifying resolutions,’ and the Gambling Act’s requirements, the City did not negotiate in any respect with casino applicants during the RFQ process.

b. The City and the applicants the City purported to ‘certify’ did not ‘mutually agree’ on the items required by the Gambling Act. In fact, the City’s ‘certifying resolutions’

<sup>2</sup>The City maintains that these resolutions are in substantial compliance with section 7(e-5). However, where Potawatomi Casino sufficiently alleged facts, including that the City did not engage in any negotiations with the applicants and that the City contemplated negotiating “after the fact,” we accept those factual allegations as true for the purpose of a section 2-619 motion to dismiss. *Sandholm*, 2012 IL 111443, ¶ 55.

recited only that the City and the applicant had ‘mutually agreed *in general terms*’ on the required items. [Citations.]

c. \*\*\* [T]he City did not ‘memorialize the details concerning the proposed riverboat or casino in a resolution’ adopted by the City’s corporate authority, as the Gambling Act requires, and the City’s ‘certifying resolutions’ do not purport to include any such memorialization.” C 17-18.

¶ 15 Further, the City’s corporation counsel admitted that the City did not engage in negotiations with any applicant during the certification process and that it was “fundamentally impossible” to mutually agree with the applicants on the items as to which the Act requires mutual agreement before the Board may consider issuing a casino owner’s license. It is this very failure that Potawatomi Casino complains of. The injury is also traceable to the Board’s conduct of acting on the applications that have been certified in a non-compliant process. According to the allegations of the complaint, the Board’s acquiescence in accepting the deficient resolutions and commencing the licensing process is necessarily intertwined with the City’s conduct, together denying Potawatomi Casino an opportunity to participate in a lawful and fair process:<sup>3</sup>

“35. \*\*\* Upon information and belief, the City’s decision not to negotiate with applicants reflected and facilitated the City’s plan to manipulate the casino certification process to achieve a predetermined outcome. For example, in purporting to rank casino proposals, upon information and belief, the City’s outside consultant solicited and considered supplemental information from other applicants, including Full House, but

<sup>3</sup>That the injury is traceable to the Board’s conduct is further evidenced by the redressability, as explained below, since the relief that redresses the injury would, in part, require the Board to retract the license already issued to another applicant.

refused to consider supplemental information from plaintiff. [Citation.] Upon information and belief, this discriminatory treatment occurred with the knowledge of and at the direction of the City. [Citation.]

36. Upon information and belief, by failing to reach agreement on details of casino proposals, the City was able to obscure contingencies and weaknesses in other parties' casino proposals. For example, upon information and belief, before the City's purported certification votes, North Point conditioned its casino proposal on being the City's sole selection, and advised the City that its proposal would be less favorable to the City if the City certified multiple proposals to the Gaming Board. [Citation.] Yet the City's resolution for North Point does not reflect this critical qualification. [Citation.]

37. Upon information and belief, the City did not negotiate with applicants because its casino certification process was a sham. Indeed, just before the formal start of the October 17, 2019 special City Council meeting, according to the sworn testimony of a City Council member in the related federal action, Waukegan Mayor Samuel Cunningham approached the City Council member and told him which proposals to vote for:

. . . as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that we want to send to Springfield [*i.e.*, to the Gaming Board]. Right. And that was what the vote was going to be. Right. Put those three down there. [Citation.]" C 18-19.

¶ 16 The City and the Board both argue that Potawatomi Casino's alleged injury is not traceable to their actions because the City Council had voted to not certify Potawatomi Casino. However, Potawatomi Casino's complaint alleged that the City engaged in a predetermined sham to certify

applicants despite their applications' contingencies and shortfalls while deliberately shutting Potawatomi Casino out of the process. Based on the allegations of the complaint, the City Council's vote to not certify Potawatomi Casino itself constitutes a part of the City's unfair and unlawful certification process at the cost of Potawatomi Casino's opportunity.

¶ 17 As a result, the requested relief is substantially likely to redress Potawatomi Casino's injury, the lost opportunity. Potawatomi Casino sought declarations that the City failed to satisfy statutory requirements for certification and that the Board consequently lacks authority to issue a casino license as well as an injunctive relief enjoining the Board from issuing a casino license until the City complies with the statute. In essence, Potawatomi Casino seeks to repeat the application process on fair and lawful terms. This remedy would correct the alleged injury since it would require the City to conduct the certification process again without the alleged illegality or unfairness. Because the injury is the lost opportunity, Potawatomi Casino need not be certain whether it would ultimately secure the City's certification to the Board in a fair process, so long as the opportunity itself is given. See *Illinois Road & Transportation Builders Ass'n*, 2022 IL 127126, ¶ 27 (“[P]articularly when the injury to a plaintiff is the loss of opportunity to obtain a benefit due to the government's failure to perform a required act \*\*\* it is rarely possible to know with any confidence what *might* have happened had the government performed the act at issue or the improper conduct had been corrected.” (Emphasis in original and internal quotation marks omitted.)). Accordingly, the circuit court erred in dismissing Potawatomi Casino's complaint for lack of standing.



¶ 18

## B. Private Right of Action

¶ 19 Defendants argue that the absence of a private right of action under the Act provides an alternative basis on which to affirm. See *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 50 (where there was no right of private action under the statute, the plaintiffs did not have standing to sue for statutory violations). The argument, however, is misguided. Plaintiff here is not seeking to bring an independent cause of action akin to a tort, but rather it is seeking to force statutory compliance. *Noyola v. Board of Education of Chicago*, 179 Ill. 2d 121, 132 (1997) (the four-factor test for private right of action not necessary where the plaintiffs were “not attempting to use a statutory enactment as the predicate for a tort action” but sought to force public officials “to do what the law requires”); *Landmarks Illinois v. Rock Island County Board*, 2020 IL App (3d) 190159, ¶ 62 (the plaintiffs sought only injunctive relief, not tort damages, to “enforce their protectable right to ensure that the public entity defendants do not act in a manner that would frustrate the proper operation of the law”). Accordingly, Potawatomi Casino need not demonstrate that the Act creates an implied right of action with respect to its claim to compel the City and the Board to comply with the Act.<sup>4</sup>

<sup>4</sup>Similarly, the argument that the Board has exclusive jurisdiction over Potawatomi Casino’s claim is unpersuasive. While the Board has the authority under the Act to “fully and effectively execute [the] Act” (230 ILCS 10/5 (West 2020)), an administrative agency’s authority is limited to that which is specified by statute. *Modrytzkji v. City of Chicago*, 2015 IL App (1st) 141874, ¶ 10. The plain language of section 7(e-5) conditions the Board’s exercise of authority on the host municipality’s certification. 230 ILCS 10/7(e-5) (West 2020). There is nothing in the language that allows the Board to bypass the City’s noncompliant certification process, and Potawatomi Casino’s claim here is not a claim on which the Board may exercise its exclusive jurisdiction. See *LifeEnergy, LLC v. Illinois Commerce Comm’n*, 2021 IL App (2d) 200411, ¶ 94 (when the plaintiff “challeng[ed] the scope of the agency’s power to act, not just identifying irregularities or defects in the process of exercising its power,” the claim is proper before the court).

¶ 20

## C. Mootness

¶ 21 While this appeal was pending, in February 2023, the Board issued a temporary operating permit to Full House, and Full House began operating a temporary casino. On June 15, 2023, the Board issued an owner's license to Full House and approved a one-year extension to operate the temporary casino while the permanent casino facility is under construction. After the issuance of the owner's license, both the City and the Board moved to dismiss the appeal as moot.

¶ 22 Defendants argue that the Board's grant of the license moots the appeal because the court can no longer grant effective relief. An appeal becomes moot "when the resolution of a question of law cannot affect the result of a case as to the parties, or when events have occurred which make it impossible for the reviewing court to render effectual relief." *Marion Hospital Corp. v. Illinois Health Facilities Planning Board*, 201 Ill. 2d 465, 471 (2002). Here, Potawatomi Casino sought more than just an injunction to prohibit the Board from issuing a license. It also sought a declaration that the Board lacked authority to issue a license because of the City's failure to comply with the statutory prerequisites in certifying applicants to the Board. If the court were to provide this requested relief, defendants would be required to retract the issued license and repeat the process. See *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 3d 34, 50 (2008) (case not moot even when the Board had already granted the construction permit because the court could still order effectual relief by enjoining the hospital from proceeding with the construction or from obtaining an operating license without a valid permit). Further, the permanent casino is still under construction, and Full House would be operating at its temporary location for another 12 months. This case is decidedly different from *Marion*, which involved the interplay between a planning permit for a surgery center obtained from the Illinois Health Facilities Board

and an operating license issued by the Illinois Department of Public Health. *Marion*, 201 Ill. 2d at 468-70. By the time of the *Marion* appeal, which challenged only the planning permit, a capital expenditure had been approved and made and an operating license had been issued (to which there was no challenge): “No statute or regulation had been cited which would have authorized the Department to suspend or revoke [the] operating license or otherwise limit its medical functions based on an improperly granted planning permit.” *Id.* at 475. In short, even assuming the planning permit was improperly issued, there was no longer an effective remedy because there was no legal basis to rescind the operating license.

¶ 23 Further, the fact that Full House has already commenced gambling operations at its temporary facility is of no moment. The Administrative Code allows the Board to find an applicant not suitable for licensing at the final stage of review, even after it has issued the applicant a temporary operating permit. 86 Ill. Adm. Code 3000.230(f)-(g) (2000).

¶ 24 Thus, the current circumstances of the case are such that the court may compel “a restoration of the status quo ante,” and where the court is able to render such effectual relief, the case is not moot. *Blue Cross Ass’n v. 666 North Lake Shore Drive Associates*, 100 Ill. App. 3d 647, 651 (1981) (“[I]f the defendant does any act which the complaint seeks to enjoin, he acts at his peril and subject to the power of the court to compel a restoration of the status quo ante \*\*\*.”).

¶ 25 III. CONCLUSION

¶ 26 The motions to dismiss the appeal as moot are denied.

¶ 27 The judgment of the circuit court of Cook County is reversed, and the case is remanded for further proceedings.

¶ 28 Reversed and remanded.

---

***Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board, 2023 IL App (1st) 220883***

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**Decision Under Review:** Appeal from the Circuit Court of Cook County, No. 2021-CH-5784; the Hon. Cecilia A. Horan, Judge, presiding.

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**Attorneys  
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Glenn E. Davis and Charles N. Insler, of HeplerBroom LLC, of St. Louis, Missouri, for other appellee.

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130036



## SUPREME COURT OF ILLINOIS

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FIRST DISTRICT OFFICE  
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January 24, 2024

In re: Waukegan Potawatomi Casino, LLC, Appellee, v. The Illinois Gaming Board et al., etc. (The City of Waukegan, Appellant).  
Appeal, Appellate Court, First District.  
130058

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

The Court also ordered that this cause be consolidated with:

130036 Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

A list of all counsel on these appeals is enclosed.

Very truly yours,

A handwritten signature in cursive script that reads "Cynthia A. Grant".

Clerk of the Supreme Court

**A15**

130036

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

WAUKEGAN POTAWATOMI CASINO, LLC,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 1-22-0883
	)	
THE ILLINOIS GAMING BOARD; CHARLES	)	
SCHMADEKE, Board Chairman; DIONNE R.	)	
HAYDEN, Board Member; ANTHONY	)	
GARCIA, Board Member; MARC E. BELL,	)	
Board Member; MARCUS FRUCHTER, Board	)	
Administrator; and THE CITY OF	)	
WAUKEGAN,	)	
	)	
Defendants-Appellees.	)	

**ORDER**

This cause coming to be heard on defendants-appellees the Illinois Gaming Board, Charles Schmadeke, Dionne R. Hayden, Anthony Garcia, Jim Kolar, and Marcus Fruchter's petition for rehearing, the court being fully advised in the premises;

IT IS HEREBY ORDERED that the petition for rehearing is DENIED.

*Matthew W. Delort*  
\_\_\_\_\_  
JUSTICE

*David W. Maxwell*  
\_\_\_\_\_  
JUSTICE

*Shedonna W. Byrd*  
\_\_\_\_\_  
JUSTICE

**ORDER ENTERED**  
**AUG 22 2023**  
**APPELLATE COURT FIRST DISTRICT**





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**CERTIFICATE OF COMPLIANCE**

**POINTS OVERLOOKED OR MISAPPREHENDED**

On July 28, 2023, this court issued an opinion that (1) reversed the circuit court's judgment dismissing Waukegan Potawatomi Casino's ("WPC") action for lack of standing and (2) denied the motions of State Defendants-Appellees Illinois Gaming Board; its Chairman, Charles Schmadeke; Members, Dionne R. Hayden, Anthony Garcia, and Jim Kolar; and Board Administrator, Marcus Fruchter (collectively, "Board") and Defendant-Appellee City of Waukegan to dismiss the appeal as moot.<sup>1</sup> On the first issue, this court ruled that WPC could pursue this action, which sought a declaration that the City failed to comply with the certification requirements of the Illinois Gambling Act, 230 ILCS 10/7(e-5) (2020), and that the Board thus could not proceed to consider candidates for issuance of the Waukegan casino license authorized by the Act. On the second issue, this court ruled that WPC's appeal was not moot, even though the Board had recently awarded the sole Waukegan owners license to Full House Resorts, Inc., d/b/a American Place ("Full House"). This court reasoned that it could still grant a declaration that the Board lacked statutory authority under the Act to grant the Waukegan license, which, in effect, would require the Board to retract Full House's license.

The Board seeks reconsideration of this court's mootness ruling because it overlooked that the Board's June 15, 2023 grant of a full owners license to

<sup>1</sup> By operation of law, current Board member Jim Kolar should replace former Board member Marc E. Bell as a Defendant-Appellee in this appeal. *See* 735 ILCS 5/2-1008(d) (2020).

Full House is now conclusive, and because Full House is not a party to this case, so that if WPC ultimately prevailed in its claim, the court in this action could not enter any relief that would divest Full House of that license. This preclusive effect of the Board's final administrative decision to grant Full House the Waukegan license would prevent the Board from rescinding that license on any ground that would have permitted it to deny the license, and now the Board could only seek to revoke that license for other reasons, such as a violation by Full House of the Act after June 15, 2023. As described below, Illinois precedent establishes that in these circumstances, WPC's claim is moot and its appeal should be dismissed. By contrast, the appellate court's decision in *Provena Health v. Ill. Health Facilities Planning Bd.*, 382 Ill. App. 3d 34 (1st Dist. 2008), is inapposite because there the entity to which the public agency issued the disputed permit was a party to the judicial proceeding, and thus was subject to the possibility that the court's order reversing the grant of the permit would require it to undo any interim actions that it had taken.

Here, WPC could have avoided the risk of mootness in two ways: by naming Full House as a party to this action so that it would be bound by a judgment in its favor; or by obtaining a court order preventing the Board from proceeding with the process for awarding the Waukegan license. But WPC did neither. Instead, this court affirmed the circuit court's denial of WPC's motion for a temporary restraining order ("TRO"), and WPC never sought a stay pending appeal of the circuit court's judgment dismissing this action.

**FACTUAL BACKGROUND**

On June 28, 2019, the General Assembly authorized the Board to issue six new owners licenses to operate casinos in the State, including one in Waukegan. 230 ILCS 10/7(e-5) (2020). The amended Act precluded the Board from considering any application for a new owners license until the corporate authority of the municipality in which the casino would operate had certified certain items about an applicant. *Id.* The City certified three entities seeking to apply for a license before the Board, but it did not certify WPC. *See* C15-16, C25-27, C1055-56. WPC sued the City in the circuit court, alleging that it “manipulated its entire certification process.” C 16-17. The Board is not a party to that lawsuit.

Over the next two years, the Board undertook its statutorily mandated duties to investigate the City’s applicants, conduct a competitive bidding process, select a winning bid proposal for the Waukegan casino, evaluate the winning bid within a reasonable time for preliminary suitability, and, ultimately, consider the winning bidder for licensure. *See* 230 ILCS 10/7, 7.5(1)-(8), 7.12 (2020); 86 Ill. Admin. Code § 3000.230. In November 2021, when the Board gave public notice that it would hold a special meeting to vote on the Waukegan license, WPC brought this action in the circuit court against the Board and the City, seeking a declaration that the City failed to comply with the certification requirements of the Act and thus that the Board lacked statutory authority to take any formal steps toward issuing a license, and an

injunction to prevent the Board from taking steps toward issuing a Waukegan license. C22. At the same time, WPC unsuccessfully moved for a TRO to prevent the Board from voting on that license at its special meeting, C 1298-1305; 1398-99, and this court affirmed the TRO's denial.

On December 8, 2021, following the circuit court's denial of WPC's TRO request, the Board proceeded with its vote, selected Full House as the winning proposal and final applicant for the Waukegan casino license, and found Full House preliminarily suitable for licensing under 86 Ill. Admin. Code § 3000.230(c). *See* 12/8/21 Bd. Mins., at <https://bit.ly/3YIP3Wo>, at 2-3; 12/8/21 Bd. Mtg., at <https://bit.ly/3dK48k8> (23:00-31:45). WPC did not seek a preliminary injunction to enjoin the Board from taking any further steps toward issuing Full House a license. Nor did WPC seek to expedite this appeal from the circuit court's judgment dismissing its claim.

In the interim, Full House continued to demonstrate its suitability for licensure. *See* 86 Ill. Admin. Code § 3000.230(e), (f). Full House constructed a temporary casino, completed pre-opening operations audits overseen by both Board staff and independent auditors, and successfully completed multiple practice gaming sessions. *See* 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (40:19-42:30). On February 16, 2023, the Board's Administrator determined that Full House qualified for a temporary operating permit and authorized it to commence gambling operations. *See id.* The next day, Full House opened

the Temporary by American Place, commencing gambling operations in Waukegan. *See id.*

On June 15, 2023, the Board unanimously voted to award Full House the Waukegan owners license under section 7(b) and 7(e-5) of the Act, 230 ILCS 10/7 (2020), and 86 Ill. Admin. Code § 3000.230(g)(1). 6/15/23 Bd. Mtg. Mins., at <https://bit.ly/3P3AGsS>, at 3. The Board also unanimously voted to award Full House a Master Sports Wagering license to accept sports wagers under section 25-35 of the Illinois Sports Wagering Act, 230 ILCS 45/25-35 (2020). 6/15/23 Bd. Mtg. Mins. at 6; 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (2.28:02-2:28:48).

Thereafter, the Board moved this court to dismiss this appeal as moot, arguing that this court could no longer grant WPC effective relief. On July 28, 2023, this court issued its opinion reversing the circuit court's judgment dismissing WPC's action for lack of standing and denying the motion to dismiss the appeal as moot. *Waukegan Potawatomi Casino, LLC v. Ill. Gaming Bd.*, 2023 IL App (1st) 220883, ¶ 1. Regarding mootness, this court ruled that it could provide effective relief in the form of a declaration "that the Board lacked authority to issue a license," thus requiring the Board "to retract the issued license and repeat the process." *Id.* at ¶ 22. The court reasoned that the license could still be rescinded under the Act because Full House was continuing to operate at the temporary location, as opposed to a permanent one. *Id.*



## ARGUMENT

**This appeal is now moot because Full House, which is not a party to this action, has acquired an interest in the owners license that cannot be rescinded under the Act.**

This court concluded that WPC's action was not moot because it could still declare that the Board lacked statutory authority to issue a license, thus requiring the Board to "retract the issued license and repeat the process."

*Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶ 22. But that relief is inconsistent with the plain language of the Act and overlooks the fact that Full House, who was not made a party to this action, has now acquired the sole Waukegan owners license available under the Act.

**A. Pursuant to the Board's June 15, 2023 decision, Full House is a licensed owner under the Act.**

This court erroneously concluded that WPC's action was not moot because Full House has not completed construction on its permanent casino.

*Id.* Completion of a permanent casino is not a statutory prerequisite to licensure under the Act's plain terms. Instead, the Act and corresponding regulations permit the Board to grant full licensure to a casino applicant, while at the same time authorizing the licensee to operate a temporary facility. *See* 230 ILCS 10/7(b) (2020) (applicants' "facility or proposed casino facility" is one factor in licensure decision) (emphasis added); 86 Ill. Admin. Code § 3000.230(f) (practice gaming session evaluated for "effectiveness, safety, and security" of gaming operation, not completion of permanent facility).

Pursuant to its final decision to issue the owners license to Full House, the

Board concluded that it met all of the statutory and regulatory requirements for licensure. *See* 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (1.04:00-1.06:25). And there has not been any challenge to that Board determination.

Although the Board also granted Full House authorization to operate a temporary casino based on section 7(1) of the Act, 230 ILCS 10/7(1) (2020), neither that action, nor Full House’s ongoing construction of a permanent facility affects its status as a licensed owner. Rather, section 7(1) allows an “owners licensee” to conduct gaming at a temporary facility while it constructs or remodels its permanent casino or relocates to a new facility. 230 ILCS 10/7(1) (2020); 86 Ill. Admin. Code § 3000.540. The provision does not condition the owners license on completion of the permanent facility. In other words, Full House holds an unencumbered owners license. And because its owners license is not conditioned on completion of its permanent casino facility, the ongoing construction of its permanent facility should not have been relevant to this court’s mootness analysis.

**B. The Act authorizes rescission of the owners license only under limited circumstances not applicable here.**

This court also erroneously concluded that WPC’s action was not moot because it could still issue a declaration that the City failed to comply with the certification requirements of the Act, and therefore the Board lacked statutory authority to accept the certifications, which would require the Board to retract Full House’s license and redo the process. *See Waukegan Potawatomi Casino, LLC*, 2023 IL App (1st) 220883, ¶ 22. But that relief has now been rendered

unavailable because Full House, a stranger to this action, obtained an intervening interest in the owners license that is conclusive between it and the Board and cannot be undone by any court order entered in this action. *See In re J.B.*, 204 Ill. 2d 382, 386-87 (2003) (parent’s appeal challenging termination of her parental rights became moot due to intervening adoption that became final during pendency of appeal); *In re Tekela*, 202 Ill. 2d 282, 289-90 (2002) (same); *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 516 (2001) (appeal challenging court ordered partition and sale of joint owners’ property became moot when court confirmed judicial sale of property).

Full House now holds the license, and because it was not made a party to this action, this court cannot enter an order affecting its interest in the license. *See Zenith Radio Corp. v. Hazeline Rsch., Inc.*, 395 U.S. 100, 110 (1969) (“It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party or to which he has not been made a party by service of process.”); *People ex rel. Sheppard v. Money*, 124 Ill. 2d 265, 281 (1988) (“Due process requires the joinder of all indispensable parties to an action, and an order entered without jurisdiction over a necessary party is void.”).

This principle is reflected in Ill. Sup. Ct. R. 305(k), which requires an appealing party to obtain a stay pending appeal to protect its interest in real or personal property from third parties who might obtain an interest in it. As the rule recognizes, a stay is necessary because the reversal or modification of a

judgment cannot “affect the right, title, or interest of any person who is not a party to the action in or to any real or personal property that is acquired after the judgment becomes final and before the judgment is stayed.” Ill. Sup. Ct. R. 305(k). The rule promotes “finality and permanence” by ensuring that a non-party to an action who acted in good faith is not adversely affected by judicial proceedings in which they were not involved. *Steinbrecher*, 197 Ill. 2d at 528. It would be unfair otherwise, as they were not put on notice that their interests could be affected.

In *Steinbrecher*, for example, the Illinois Supreme Court recognized that the court could not undo a court-ordered partition and sale of real property after the property had been sold to a third party. 197 Ill.2d at 527-28. As the Court explained, the sale of the property mooted the appeal because under the circuit court’s judgment, a nonparty had acquired all rights to the property, such that “any order invalidating that judgment and sale is without effect.” *Id.* at 523. *See also Town of Libertyville v. Moran*, 179 Ill. App. 3d 880, 886 (2d Dist. 1989) (absent stay, appeal becomes moot if “specific property, possession, or ownership of which is the relief being sought on appeal, has been conveyed to third parties,” as long as record discloses that third-party purchaser was not “party or nominee of a party to the litigation”); *see also NBC-USA Hous., Inc., Twenty-Six v. Donovan*, 674 F.3d 869, 870, 872-73 (D.C. Cir. 2012) (agency’s sale of foreclosed property during pendency of appeal mooted appeal from foreclosure order because court could not “unravel” sale involving nonparty).

Consistent with this principle, the Court in *Tekela*, 202 Ill. 2d at 287-93, ruled that once the adoption of a child became final, it mooted the mother's appeal of the order terminating her parental rights on which the adoption was predicated. As the Court explained, because the mother had not secured a stay of the circuit court order, the adoption process proceeded to conclusion before the appellate court reversed the order terminating the mother's parental rights. *Id.* at 289-90. As a result, the adoption became final and unchangeable, and the appeal from the termination of parental rights, in turn, became moot. *Id.* at 292.

The same principle applies in this case. Because WPC did not obtain a preliminary injunction from the circuit court preventing the Board from proceeding with the licensing process, the Board proceeded with it during the pendency of this appeal. The Board's June 15, 2023 decision awarding the sole Waukegan owners license to Full House was a final agency decision as to Full House's interest in the license. *See Kosakowski v. Bd. of Trs.*, 389 Ill. App. 3d 381, 383-384 (1st Dist. 2009) (under Administrative Review Law, agency lacks power to undo final administrative decision 35 days after its issuance); *Sola v. Roselle Police Pension Bd.*, 342 Ill. App. 3d 227, 231 (2d Dist. 2003) (same).

Moreover, this analysis is consistent with *Provena Health*, 382 Ill. App. 3d at 50-51. There, the plaintiff sought judicial review of the Illinois Health Facilities Planning Board's decision to issue a permit for the construction of a new facility to another hospital and named that hospital as a defendant in its

action. *See id.* at 34, 50-51. Accordingly, even though the court did not enjoin construction under the challenged permit, the hospital, as a party, acted subject to the risk of a reversal. *Id.* at 51. Indeed, the court had warned the hospital that although its permit remained valid during the pendency of the litigation, its partial construction of the facility did not prevent the court from setting aside the permit. *Id.*

Here, in contrast, Full House was not a party to this action, and so its license cannot be rescinded in this action. *See Steinbrecher*, 197 Ill. 2d at 516 (court cannot undo sale of property to nonparty); *NBC-USA Hous., Inc., Twenty-Six*, 674 F.3d at 872-73 (same). Indeed, the judgment in this case can affect only the rights of the parties to this case.

And the Board's grant of the license to Full House would be *res judicata* between the Board and Full House. *See Vill. of Bartonville v. Lopez*, 2017 IL 120643, ¶¶ 71-72; *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611, ¶ 56. Thus, if the Board were to commence a proceeding to rescind Full House's license for any reason that pre-dated June 15, 2023, Full House could defeat it by invoking the Board's final administrative decision, which became conclusive under the Administrative Review Law after 35 days passed, as preclusive.

Accordingly, Full House cannot now be divested of its license in a way that is consistent with the Act. *See Marion Hosp. Corp. v. Ill. Health Facilities Plan. Bd.*, 201 Ill. 2d 465, 473 (2002). In *Marion Hosp. Corp.*, like in *Provena*

*Health*, a plaintiff sought judicial review of the Planning Board's decision granting a permit that allowed a competing hospital to construct a new facility. *Id.* at 468-69. But unlike in *Provena Health*, the hospital completed the project and obtained an operating license for its facility while the plaintiff's appeal was pending. *Id.* at 469-70. The Illinois Supreme Court concluded that the issuance of the operating license mooted the plaintiff's appeal because, once the operating license issued, it could not be revoked under the applicable law "based on an improperly granted planning permit." *Id.* at 475.

Here, like in *Marion Hosp. Corp*, Full House has obtained its owners license. Accordingly, its license can be disturbed only in accordance with the Act. And the Act provides that a license may be revoked or suspended only in compliance with applicable administrative procedures based on a finding that the licensee has violated the Act or a Board Rule or engaged in fraudulent practice. *See* 230 ILCS 10/5(c)(11), (15) (2020); 86 Ill. Admin. Code § 3000.110.

Nor could WPC avoid mootness by arguing that the Board's final administrative decision awarding an owners license to Full House may be set aside as void for lack of jurisdiction. An administrative agency's jurisdiction has three aspects: (1) authority over the parties; (2) the power to "hear and determine causes of the general class of cases to which the particular case belongs"; and (3) the agency's scope of authority under the statute. *Bus. & Pro. People for Pub. Int. v. Ill. Com. Comm'n*, 136 Ill. 2d 192, 244 (1989); *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985). There is no dispute here that the

Board had jurisdiction over Full House, an entity that applied for the Waukegan owners license, or that the Board had the power to award an owners license. *See* 230 ILCS 10/5(b)(1) (2020) (Board has duty “[t]o decide promptly and in reasonable order all license applications”); 230 ILCS 10/7(e-5)(3) (2020) (Board authorized to issue Waukegan license).

And the Board acted within the scope of its authority under section 7(e-5) of the Act when it considered for licensure the applicants for which the City had submitted certifications. The Illinois Supreme Court has recognized that an agency does not act without statutory authority, even if it makes an error in the application of its statutory duty. *Newkirk*, 109 Ill. 2d at 39. Otherwise, a party “could merely point to any provision of a statute which was not complied with and claim that the agency did not have authority to act unless the provision was complied with.” *Id.* Instead, the court must ask if the agency took actions that the statute does not permit. *Cnty. of Knox ex re. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 553-55 (1999); *see Bus. & Prof. People for Pub. Int.*, 136 Ill. 2d at 245 (recognizing that agency acts with statutory authority even if it makes “erroneous decision”).

For example, in *Newkirk*, the Court affirmed the dismissal of a declaratory judgment action seeking to void an agency order that did not include certain statutorily mandated provisions. 109 Ill. 2d at 35-36. The court concluded that the omitted provisions “did not render the order void; it merely made the order voidable.” *Id.* at 40. As the Court explained, “a party



cannot collaterally attack an agency order in a [declaratory judgment proceeding] unless the order is void on its face as being unauthorized by statute.” *Id.* at 39; *see also Fam. Amusement of N. Ill., Inc. v. Accel Ent. Gaming, LLC*, 2018 IL App (2d) 170185, ¶¶ 32-37 (Board order requiring sales agent to dissociate from business partner was not void where lack of statutory authority to enter order was not facially apparent).

Here, the Board’s decision awarding a license to Full House was not facially void. The Board acted within the scope of its statutory authority when it considered the candidates that the City certified and ultimately awarded the owners license to Full House at the conclusion of its statutorily mandated licensing process. *See* 230 ILCS 10/7(e-5) (2020). This court’s decision, therefore, overlooked that because Full House was fully licensed under the Act before this court issued its decision, its intervening interest in the owners license mooted WPC’s appeal.

**CONCLUSION**

For these reasons, State Defendants-Appellees Illinois Gaming Board; its Chairman, Charles Schmadeke; Members, Dionne R. Hayden, Anthony Garcia, and Jim Kolar; and Board Administrator, Marcus Fruchter, ask this court to reconsider its order denying the Board's motion to dismiss this appeal as moot.

Respectfully submitted,

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August 18, 2023

**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Ill. S. Ct. R. 367(a) and, to the extent applicable, Ill. S. Ct. R. 341(a) and (b). The length of this brief, excluding the pages or words contained in the Ill. S. Ct. R. 341(d) cover, the Ill. S. Ct. R. 341(h)(1) table of contents and statement of points and authorities, the Ill. S. Ct. R. 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Ill. S. Ct. R. 342(a), is 15 pages.

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**CERTIFICATE OF FILING AND SERVICE**

I certify that on August 18, 2023, I electronically filed the foregoing **Petition for Rehearing of State Defendants-Appellees** with the Clerk of the Illinois Appellate Court, First Judicial District, using the Odyssey eFileIL system.

I further certify that the other participants in this case, named below, are registered service contacts on the Odyssey eFileIL system and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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No. 1-22-0883

**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

WAUKEGAN POTAWATOMI CASINO	)	
LLC, an Illinois limited liability company,	)	
	)	Appeal from the Circuit Court of Cook
Plaintiff-Appellant,	)	County, Illinois
	)	Chancery Division
vs.	)	
	)	Circuit Court No. 21 CH 05784
	)	Presiding Judge: Cecilia A. Horan
THE ILLINOIS GAMING BOARD, an	)	
Illinois administrative agency, and in their	)	
official capacities, CHARLES	)	Circuit Court Judgment: May 13, 2022
SCHMADEKE, Board Chairman, DIONNE	)	Date of Appeal: June 10, 2022
R. HAYDEN, Board Member, ANTHONY	)	Date of Appellate Opinion: July 28, 2023
GARCIA, Board Member, MARC E. BELL,	)	
Board Member, and MARCUS FRUCHTER,	)	
Board Administrator, and the CITY OF	)	
WAUKEGAN, an Illinois municipal	)	
corporation,	)	
	)	
Defendants-Appellees.	)	
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**CITY OF WAUKEGAN'S PETITION FOR REHEARING**

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**POINTS AND AUTHORITIES**

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## **INTRODUCTION**

Defendant City of Waukegan respectfully petitions this Court for rehearing of the decision filed on July 28, 2023 (the “Decision,” attached as Exhibit A), pursuant to Illinois Supreme Court Rule 367. The Decision reversed the Circuit Court’s Order that had dismissed Plaintiff Waukegan Potawatomi Casino, LLC’s complaint for lack of standing. Rehearing is warranted because the Circuit Court’s Order, however brief, was correct and this Court’s Decision overlooked or misapprehended binding authority and recent resolutions by the City of Waukegan.

This Court overlooked the past precedents of *Carmichael* and *Jackson*, which found that without a private right of action, a plaintiff could not enforce a statute, even in the context of a declaratory judgment action. This Court also overlooked the City of Waukegan’s January 2023 Resolution, which included extensive documentation of the items and points negotiated between the City and Full House Resorts. Finally, this Court overlooked the Illinois Supreme Court’s precedent on exclusive jurisdiction, when it failed to consider the *J & J Ventures Gaming* case. Rehearing is warranted to correct these issues.

## **REHEARING STANDARD**

A party seeking a rehearing must do so within twenty-one days of the filing of the judgment. Ill. S. Ct. R. 367(a). A party’s petition for rehearing shall state the points “claimed to have been overlooked or misapprehended by the court.” Ill. S. Ct. R. 367(b). The petition for rehearing is not the place for rearguing the appellate case. *Id.*

## **REHEARING ISSUES PRESENTED FOR REVIEW**

1. Did the Court overlook existing precedent on private rights of action when it failed to consider the *Carmichael* and *Jackson* cases?



2. Did the Court overlook Resolution No. 23-R-03, which sets out the extensive negotiations between the City of Waukegan and Full House Resorts, Inc.?

3. Did the Court overlook existing precedent on exclusive jurisdiction when it failed to consider the *J & J Ventures Gaming* case?

### **BRIEF FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

#### **This Lawsuit and the Quest for Injunctive Relief**

On November 15, 2021, the Illinois Gaming Board posted its agenda for a special meeting on November 18, 2021. C21 at ¶44. The Gaming Board’s agenda included “Consideration of Matters Related to the Pending Applications for the Owners License to Be Located in Waukegan,” and “Determination of Preliminary Suitability.” C1296. The very next day, Plaintiff Waukegan Potawatomi Casino, LLC (“Potawatomi Casino”) filed this lawsuit against the Gaming Board, the members of the Gaming Board, and the City of Waukegan. A202-A1488; C11-C1297.

Potawatomi Casino’s Complaint contained a single claim for Declaratory and Injunctive Relief under the Illinois Gambling Act. A213-A214 at ¶¶48-54; C22-C23 at ¶¶48-54. In particular, Potawatomi Casino’s lawsuit sought to enjoin the Gaming Board from “taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability” until the City of Waukegan had satisfied the requirements of the Illinois Gambling Act. A214; C23. Potawatomi Casino sought this injunctive relief because it believed that the City of Waukegan had “failed to satisfy the statutory prerequisites for the Gaming Board to consider issuing an owner’s license for a

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<sup>1</sup> The City of Waukegan is only providing those facts necessary for ruling on the current petition for rehearing.

casino in Waukegan.” A213 at ¶49; C22 at ¶49. This alleged failure, according to Potawatomi Casino, meant the Gaming Board lacked the statutory authority to take any formal steps toward issuing an owner’s license for a casino in Waukegan, including by issuing a determination of preliminary suitability. A213 at ¶50; C22 at ¶50.

Alongside its Complaint, Potawatomi Casino filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction. C1298-C1321. Potawatomi Casino’s motion sought to enjoin the Gaming Board from “taking formal steps toward issuance of [a] license to operate a casino in Waukegan, Illinois, including by issuing a finding of preliminary suitability.” C1304. Notably, the only process failure Potawatomi Casino alleged occurred during Waukegan’s review of proposals. The City considered and reconsidered the Potawatomi application, but denied it both times.

On December 7, 2021, following extensive argument, the Circuit Court for Cook County denied Potawatomi Casino’s request for a temporary restraining order. A200-A201. Potawatomi Casino petitioned this Court to review the denial of injunctive relief, C1400-C1402, but this Court declined to review the Circuit Court’s decision. *See Waukegan Potawatomi Casino, LLC v. The Illinois Gaming Board et al.*, No. 1-21-1561 (1st Dist. Dec. 16, 2021) (Smith, J., Lavin, J., Cobbs, J.).

### **The Circuit Court Grants the Motion to Dismiss**

Back before the Circuit Court, the City of Waukegan (and the Gaming Board) moved to dismiss the Complaint. C1403-C1507; C1510-C1518. On May 13, 2022, the Circuit Court held a hearing and granted the Defendants’ respective motions to dismiss, finding Potawatomi Casino lacked standing to proceed with its lawsuit. A33-A35. In particular, the Circuit Court found that even if Potawatomi Casino was granted the relief it

was requesting, Potawatomi Casino would not actually receive the relief it wanted. A34. On May 31, 2022, the Circuit Court entered its Order, dismissing the Complaint with prejudice. A4. This appeal followed. A45-A46.

### **The Gaming Board Issues a Formal License to Full House**

On December 8, 2021, the Gaming Board took formal steps toward issuing a casino license for the City of Waukegan and made a finding of preliminary suitability in favor of Full House Resorts, Inc.<sup>2</sup> See Brief of the City of Waukegan at 9-10. On January 3, 2023, the City Council of the City of Waukegan passed Resolution No. 23-R-03, entitled “A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of ‘The Temporary By American Place’ and the American Place Casino.” See Certification of Charles N. Insler at ¶5. On February 16, 2023, the Gaming Board issued a temporary operating permit to Full House, allowing Full House to operate the temporary casino in Waukegan. See Certification of Charles N. Insler at ¶8. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners License to Full House to operate its City of Waukegan casino. See Certification of Charles N. Insler at ¶10; see also Illinois Gaming Board, Board Meeting of June 15, 2023 at 1:05:00 to 1:06:30, [available here](#).

### **This Court Reverses the Circuit Court**

On July 28, 2023, this Court issued its Decision, finding the Circuit Court erred when it dismissed Potawatomi Casino’s complaint for lack of standing. *Waukegan*

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<sup>2</sup> Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the subsidiary company operating the Waukegan casino under the name American Place. See Certification of Charles N. Insler at ¶9. The Petition for Rehearing refers to the two entities, collectively, as “Full House.”

*Potawatomi Casino*, 2023 IL App (1st) 220883, ¶1. In doing so, this Court found that Potawatomi Casino had adequately alleged the defendants violated provisions of the Illinois Gambling Act and that these violations denied Potawatomi Casino its right to a fair certification process. *See id.* The City of Waukegan now seeks a rehearing of this Decision, which has drastic implications.

### **REHEARING ARGUMENT**

#### **A. This Court Overlooked Prior Precedents on Private Rights of Action**

The Defendants argued this Court could have affirmed the Circuit Court’s dismissal because the Illinois Gambling Act does not provide a private right of action. *Waukegan Potawatomi Casino, LLC v. Illinois Gaming Bd.*, 2023 IL App (1st) 220883, ¶19. This Court’s Decision rejected that argument, finding the Potawatomi Casino was not seeking to bring an independent cause of action “akin to a tort, but rather [was] seeking to force statutory compliance.” *Id.* (citing *Noyola v. Board of Education of Chicago*, 179 Ill. 2d 121, 132 (1997) and *Landmarks Illinois v. Rock Island County Board*, 2020 IL App (3d) 190159, ¶62). This Court’s analysis of the private right of action arguments did not extend beyond this single, solitary sentence. *See id.* Respectfully, this limited analysis overlooks and misapprehends prior precedents. *See, e.g., Carmichael v. Pro. Transportation, Inc.*, 2021 IL App (1st) 201386, ¶35; *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶14.

In *Carmichael* – a case decided by the First District a year after the Third District decided *Landmarks Illinois*<sup>3</sup> – this Court held that the trial court properly granted the defendant’s motion for summary judgment because there was no private right of action for

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<sup>3</sup> The most recent appellate court decision on point should be the controlling one. *See Schmidt v. Ameritech Illinois*, 329 Ill. App. 3d 1020, 1029-30 (1st Dist. 2002).

violations of the Illinois Vehicle Code. 2021 IL App (1st) 201386, ¶35. In *Carmichael*, as in this case, the plaintiff’s complaint sought a declaratory judgment the defendant had violated a statutory provision. *Id.* at ¶7, ¶15. But the exact nature of the cause of action was irrelevant. A given statute either “provides for a private right of action or it does not — it is not a fact-specific inquiry dependent on the particular circumstances of any given case.” *Id.* at ¶34. *Carmichael* is no outlier. In *Jackson*, the Fourth District noted how the “doctrine of standing precludes a plaintiff from bringing a private cause of action based on a statute *unless the statute expressly confers standing on an individual or class to do so.*” *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶14. *Jackson*, like *Carmichael*, involved an action for declaratory judgment, with the plaintiff seeking a finding the defendants had violated a statutory provision. *Id.* at ¶¶1, 5.

This Court’s Decision overlooks the *Carmichael* and *Jackson* decisions. This Court’s Decision also misapprehends the nature of a declaratory judgment. “Declaratory relief *presupposes* the existence of a judicially remediable right” and thus cannot be pursued without a predicate right of action. *Alarm Detection Sys., Inc. v. Orland Fire Prot. Dist.*, 929 F.3d 865, 871 n.2 (7th Cir. 2019) (emphasis added). This means that it “does not matter” that the plaintiff “seeks declaratory, rather than monetary, relief” under an Illinois statute. *Id.* A contrary holding – in which a plaintiff can still pursue declaratory relief – is “tantamount to allowing a private cause of action,” where none exists. *Villasenor v. Am. Signature, Inc.*, 2007 WL 2025739, at \*6 (N.D. Ill. July 9, 2007) (rejecting plaintiff’s attempt to bring a declaratory judgment action under the Illinois Retail Installment Sales Act). This Court’s Decision misapprehends the nature of a declaratory judgment by adopting this contrary holding.

**B. This Court Overlooked a Recent Resolution by the City of Waukegan**

The Circuit Court dismissed Potawatomi Casino's complaint for lack of standing. *Waukegan Potawatomi Casino*, 2023 IL App (1st) 220883, ¶9. This Court's Decision reversed that ruling, accepting the Potawatomi Casino's arguments that it had standing based on the City of Waukegan's purported failure to adequately follow the certification process requirements found in section 7(e-5) of the Gambling Act. *Id.* at ¶¶13-17. This Court noted how Potawatomi Casino sought declarations that the City failed to satisfy statutory requirements for certification and that the Illinois Gaming Board lacked the authority to issue a casino license "until the City complies with the [Gambling Act]." *Id.* at ¶17. Respectfully, this analysis overlooks the City of Waukegan's January 3, 2023 resolution, which approved a ground lease and development and host community agreement with FHR-Illinois LLC.

On January 3, 2023, the City Council of the City of Waukegan passed Resolution No. 23-R-03, entitled "A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of 'The Temporary By American Place' and the American Place Casino." *See* Certification of Charles N. Insler at ¶¶5-7; Exhibit 1 to Certification of Charles N. Insler. As part of this Resolution, the City Council approved the Ground Lease with FHR-Illinois, LLC and the Development and Host Community Agreement ("DHCA") with FHR-Illinois, LLC. *See id.* at ¶¶6-7.

In the DHCA, the City of Waukegan warranted that all of the Gambling Act's section 7(e-5) requirements had been satisfied. DHCA at ¶9.2(e). This is not a bare conclusion. The DHCA describes the location of both the temporary casino and the

permanent casino. *See* DHCA at Exhibits E-F (Temporary Facility); Exhibits A-D (Project Description and Project Plan). The Ground Lease describes the revenue sharing arrangement between the City of Waukegan and FHR-Illinois, LLC. *See* Ground Lease, §4.2 (noting annual rent payments would be the greater of \$3 million or 2.5% of adjusted gross receipts). The DHCA also describes any relevant zoning, licensing, or public health considerations. *See* DHCA at §5.1.

The signed DHCA and Ground Lease demonstrate there was mutual agreement on the required Gambling Act items. The two documents contain more than *two hundred pages* of documentation and negotiation. More to the point, Resolution No. 23-R-03, the Ground Lease, and the DHCA were all signed in January 2023, *before* the Gaming Board issued the license to FHR-Illinois, LLC. *See* Certification of Charles N. Insler at ¶5, ¶10. Accordingly, the Gaming Board issued the Waukegan license “only after the corporate authority of the municipality” had made the necessary certifications. *See* 230 ILCS §10/7(e-5). This Court’s Decision was incorrect when it found the Potawatomi Casino might be successful in proving the City failed to satisfy the statutory requirements for certification and that the Gaming Board lacked authority to issue a license because the City had not fully complied with the Gambling Act’s requirements. *See Waukegan Potawatomi Casino*, 2023 IL App (1st) 220883, ¶17.

Admittedly, Resolution No. 23-R-03 and the DHCA are not in the appellate record. The explanation for that is a matter of timing – the Circuit Court’s Judgment was appealed in June 2022, more than six months before the City of Waukegan passed the Resolution with the accompanying Ground Lease and DHCA. These documents could not have been presented below. *See Am. Nat. Bank & Tr. Co. of Chicago v. City of Chicago*, 4 Ill. App.

3d 127, 130 (1st Dist. 1971) (“The obvious reason that these events concerning the additional application were not of record was that they had not yet occurred at the time of trial.”). These documents are properly before this Court, particularly where the City of Waukegan has argued mootness. *See Unity Ventures v. Pollution Control Bd.*, 132 Ill. App. 3d 421, 430 (2d Dist. 1985). These documents are also properly before the Court because they are public documents subject to judicial notice.<sup>4</sup> *Am. Nat. Bank & Tr.*, 4 Ill. App. 3d at 130 (“[O]rdinances, decisions and rulings of the City Council are matters of public record, and as such this Court may take judicial notice thereof.”). This Court’s Decision failed to consider Resolution No. 23-R-03.

**C. This Court Overlooked Binding Precedent from the Illinois Supreme Court on Exclusive Jurisdiction**

As an alternative ground for affirming, the City of Waukegan argued the Gaming Board possessed the exclusive jurisdiction to resolve the issues raised by Potawatomi Casino. This Court’s Decision found that argument unpersuasive, though the analysis for doing so was limited to a single footnote. *Waukegan Potawatomi Casino*, 2023 IL App (1st) 220883, ¶19 n.4. Respectfully, this limited analysis overlooks binding precedent from the Illinois Supreme Court and misapprehends the exclusive jurisdiction doctrine.

In *J & J Ventures Gaming*, the Fifth District determined the Gaming Board had exclusive jurisdiction over the parties’ controversy surrounding the placement of video game terminals within licensed establishments. *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2015 IL App (5th) 140092, ¶1, ¶32. In doing so, the Fifth District found that whether certain

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<sup>4</sup> The Resolution is available [here](#). The Ground Lease is available [here](#). The DHCA is available [here](#) and its accompanying exhibits are available [here](#).



conduct violated the Video Gaming Act was “an exclusive question for the Gaming Board.” *Id.* at ¶48. The Illinois Supreme Court affirmed the Fifth District’s analysis, holding the “comprehensive statutory scheme” surrounding gaming operations “precluded [the courts] from addressing the merits of the parties’ claims.” *J & J Ventures Gaming, LLC v. Wild, Inc.*, 2016 IL 119870, ¶42. This Court’s Decision fails to grapple with – or even consider – the *J & J Ventures Gaming* case.

This Court’s Decision overlooks *J & J Ventures Gaming*; it also misapprehends the doctrine of exclusive jurisdiction. As a general rule, Illinois courts have original jurisdiction over all justiciable matters. *Illinois Ins. Guar. Fund v. Priority Transportation, Inc.*, 2019 IL App (1st) 181454, ¶45. However, the “legislature may vest exclusive original jurisdiction in an administrative agency when it has explicitly enacted a comprehensive statutory administrative scheme.” *Id.* Gaming represents one such statutory administrative scheme. Indeed, the Illinois Supreme Court expressly noted the “comprehensive statutory scheme” surrounding gaming when it found the parties’ controversy in *J & J Ventures Gaming* was within the “exclusive, original jurisdiction” of the Illinois Gaming Board. 2016 IL 119870, ¶42; *see also id.* at ¶32 (“[T]his statutory scheme demonstrates the legislature’s explicit intent that the Gaming Board have exclusive jurisdiction over the video gaming industry and the use agreements that are a necessary prerequisite of engaging in that industry.”).

The Gaming Board’s exclusive jurisdiction naturally extends to the question of whether Waukegan’s certifying resolutions satisfied the statutory requirements of the Gambling Act. The Gaming Board’s June 15 decision to issue the license to Full House *necessarily* meant the Gaming Board found the City’s certifying resolutions complied with

the Gambling Act – which is, of course, the very act the Gaming Board is charged with overseeing. *See* 230 ILCS 10/5. In enacting the Gaming Act, the Legislature gave the Gaming Board not only “the powers and duties specified in this Act,” but “all other powers necessary and proper to fully and effectively execute this Act for the purpose of administering, regulating, and enforcing the system of riverboat and casino gambling established by this Act.” *Id.* This Court lacked the legal authority to question whether the certifying resolutions were deficient.

Finally, this Court misapprehended the law when it accepted the Potawatomi Casino’s *allegations* that the City’s resolutions were deficient under the Gambling Act. *See Waukegan Potawatomi Casino*, 2023 IL App (1st) 220883, ¶14 (“According to the *allegations of the complaint*. . .”) (emphasis added). The question of whether a party has complied (or substantially complied) with a statutory requirement is a question of law – *not a question of fact*. *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (4th Dist. 2009). The Potawatomi Casino could not, therefore, overcome a motion to dismiss by simply *alleging* the City’s resolutions were deficient. *See id.* This Court’s Decision failed to include any analysis or discussion of the comprehensive statutory scheme that governs gaming in the state of Illinois and failed to distinguish between questions of law and questions of fact.

### **CONCLUSION**

This Court should rehear the case and affirm the decision of the trial court.

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 11 pages or 3,078 words.

By: /s/ Glenn E. Davis

**CERTIFICATE OF SERVICE**

I certify that a copy of the City of Waukegan's Petition for Rehearing will be served by email to the following attorneys of record on August 18, 2023:

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# EXHIBIT A

2023 IL App (1st) 220883

No. 1-22-0883

Opinion filed July 28, 2023

FIFTH DIVISION

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

WAUKEGAN POTAWATOMI CASINO, LLC,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	
THE ILLINOIS GAMING BOARD; CHARLES	)	
SCHMADEKE, Board Chairman; DIONNE R.	)	No. 2021 CH 5784
HAYDEN, Board Member; ANTHONY	)	
GARCIA, Board Member; MARC E. BELL,	)	
Board Member; MARCUS FRUCHTER, Board	)	
Administrator; and THE CITY OF	)	Honorable
WAUKEGAN,	)	Cecilia A. Horan,
	)	Judge presiding.
Defendants-Appellees.	)	

JUSTICE MITCHELL delivered the judgment of the court, with opinion.  
Presiding Justice Delort and Justice Lyle concurred in the judgment and opinion.

**OPINION**

¶ 1 Plaintiff, Waukegan Potawatomi Casino, LLC, appeals an order dismissing its complaint for declaratory judgment and injunctive relief. The principal issue presented in this appeal is as follows: did the circuit court err in dismissing Potawatomi Casino’s complaint for lack of standing because the alleged violations of the Illinois Gambling Act denied Potawatomi Casino its right to compete in a lawful certification process? Because the trial court did err, we reverse and remand.

¶ 2

## I. FACTS

¶ 3 The General Assembly amended the Illinois Gambling Act in 2019 to authorize the Illinois Gaming Board to issue 6 new casino licenses, including one in the City of Waukegan, in addition to the 10 existing licenses. Pub. Act 101-31 (eff. June 28, 2019) (amending 230 ILCS 10/7(e-5)). The Act provides for a licensing process specific for these new licenses, requiring the host municipality to initiate the process. *Id.* Notably, the Board can consider issuing a license to an applicant *only after* the host municipality has certified to the Board that it has negotiated with the applicant on certain specified details of the proposed casino:

“The Board shall consider issuing a license pursuant to paragraphs (1) through (6) of this subsection only after the corporate authority of the municipality or the county board of the county in which the riverboat or casino shall be located has certified to the Board the following:

(i) that the applicant has negotiated with the corporate authority or county board in good faith;

(ii) that the applicant and the corporate authority or county board have mutually agreed on the permanent location of the riverboat or casino;

(iii) that the applicant and the corporate authority or county board have mutually agreed on the temporary location of the riverboat or casino;

(iv) that the applicant and the corporate authority or the county board have mutually agreed on the percentage of revenues that will be shared with the municipality or county, if any;



(v) that the applicant and the corporate authority or county board have mutually agreed on any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality or county;

(vi) that the corporate authority or county board has passed a resolution or ordinance in support of the riverboat or casino in the municipality or county;

(vii) the applicant for a license under paragraph (1) has made a public presentation concerning its casino proposal; and

(viii) the applicant for a license under paragraph (1) has prepared a summary of its casino proposal and such summary has been posted on a public website of the municipality or the county.” 230 ILCS 10/7(e-5) (West 2020).

¶ 4 The City of Waukegan issued a request for qualifications and proposals, soliciting proposals to develop and operate a casino in the City. Waukegan Potawatomi Casino, LLC submitted a proposal in response, and the City held a public meeting during which four casino applicants presented their proposals. Subsequently, the Waukegan City Council voted on resolutions certifying those four applicants to the Board. The council passed resolutions certifying three of the applicants but declined to pass the resolution certifying Potawatomi Casino. A few days later, the council voted to reconsider the resolution regarding Potawatomi Casino but, on reconsideration, did not pass the resolution.

¶ 5 Following the council’s adoption of the resolutions, Potawatomi Casino filed an action in the circuit court of Lake County against the City, asserting claims under the fourteenth amendment of the United States Constitution (U.S. Const., amend. XIV), the Illinois Gambling Act, and the Open Meetings Act (5 ILCS 120/1 *et seq.* (West 2020)). The City removed the case to the federal

district court, where the case remains pending. *Waukegan Potawatomi Casino, LLC v. City of Waukegan*, No. 1:20-CV-750 (N.D. Ill.)

¶ 6 Subsequently, Potawatomi Casino filed a separate action in the circuit court of Cook County against the City and the Board. In its complaint, Potawatomi Casino sought a declaratory judgment that the City had failed to comply with the statutory requirements in the Illinois Gambling Act to certify applicants to the Board. It also sought to enjoin the Board from issuing a casino license until the City had satisfied those requirements. The circuit court denied Potawatomi Casino's emergency motion for a temporary restraining order, and this court affirmed. *Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board*, No. 1-21-1561 (filed Dec. 16, 2021) (order denying plaintiff's interlocutory appeal). The Board, soon after, issued a finding of preliminary suitability in favor of one of the certified applicants, Full House Resorts. The City and the Board moved to dismiss Potawatomi Casino's complaint (735 ILCS 5/2-615, 2-619.1 (West 2020)), and the circuit court dismissed the complaint with prejudice for lack of standing. Potawatomi Casino timely appealed. Ill. S. Ct. R. 303(a) (eff. July 1, 2017).

¶ 7 II. ANALYSIS

¶ 8 A. Standing

¶ 9 Potawatomi Casino argues that the circuit court erred in dismissing its complaint for lack of standing because it did suffer an injury to its right to compete in a lawful certification process. Under Illinois law, standing "tends to vary" from federal law "in the direction of greater liberality." *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 491 (1988). Illinois courts are generally more willing than federal courts to recognize standing on the part of any person "who shows that he is in fact aggrieved." *Id.* Lack of standing under Illinois law is an affirmative defense;

it is not jurisdictional. *Glisson v. City of Marion*, 188 Ill. 2d 211, 224 (1999); see also *Soto v. Great America LLC*, 2020 IL App (2d) 180911, ¶ 20. As a consequence, a defendant bears the burden to raise and establish lack of standing, and if not timely raised, it is forfeited. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 252-53 (2010). A defendant may properly raise lack of standing in a motion to dismiss brought under section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2020); *Glisson*, 188 Ill. 2d at 220. When considering such a motion, a court must accept as true all well-pleaded facts in the complaint as well as any inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. We review a dismissal under section 2-619 *de novo*.<sup>1</sup> *Glisson*, 188 Ill. 2d at 220-21.

¶ 10 The doctrine of standing is designed to preclude parties who have no interest in a controversy from bringing suit and assures that suit is brought “only by those parties with a real interest in the outcome of the controversy.” *Id.* at 221. In general, standing requires “some injury in fact to a legally cognizable interest.” *Id.* (citing *Greer*, 122 Ill. 2d at 492). The claimed injury must be (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be redressed by the grant of the requested relief. *Greer*, 122 Ill. 2d at 492-93.

¶ 11 Potawatomi Casino claims a legally cognizable interest in its right to compete in a casino certification process that is fairly and lawfully conducted. The Illinois Gambling Act prescribes a process with which the City is unambiguously required to comply before the Board can consider

<sup>1</sup>The City argues that we should review the appeal for “clear error” because it somehow implicates the Board's decision. This contention is wholly without merit. When a circuit court dismisses a complaint under section 2-619, our review is *de novo*. See *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 681 (2010) (reviewing a section 2-619 dismissal of administrative review complaint *de novo*).

issuing a license. 230 ILCS 10/7(e-5) (West 2020). An applicant participating in such statutorily mandated selection process would thus have a right to have a fair and compliant process. See *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 171-72 (2002) (a duty is owed to a bidder to award the contract to the lowest, responsive, responsible bidder as statutorily required, and, “as a necessary corollary, a bidder has the right to participate in a fair bidding process”). Although this interest is often implicated in cases involving a competitive bidding process, it is not strictly limited to such context. See, e.g., *Illinois Road & Transportation Builders Ass’n v. County of Cook*, 2022 IL 127126, ¶ 18 (the plaintiffs had standing where the county’s unconstitutional diversion of transportation funds decreased the number of projects they could bid on); *Aramark Correctional Services, LLC v. County of Cook*, No. 12 C 6148, 2012 WL 3961341, at \*1, 5 (N.D. Ill. Sept. 10, 2012) (request for proposals).

¶ 12 First, Potawatomi Casino’s alleged injury to this legally cognizable interest is distinct and palpable. “A distinct and palpable injury refers to an injury that cannot be characterized as a generalized grievance common to all members of the public.” (Internal quotation marks omitted.) *Illinois Road & Transportation Builders Ass’n*, 2022 IL 127126, ¶ 17. Potawatomi Casino submitted an application to participate in the City’s casino certification process and paid a nonrefundable application fee of \$25,000. Potawatomi Casino pursued a significant business opportunity to fairly compete for a casino license, and where that opportunity was denied due to the City’s alleged failure to perform the process lawfully, there is a distinct and palpable injury. See *Messenger v. Edgar*, 157 Ill. 2d 162, 171 (1993) (“ ‘[I]nterested’ does not mean merely having a curiosity about or a concern for the outcome of the controversy \*\*\*.”).

¶ 13 Next, this injury is fairly traceable to the actions of the City and the Board. The Act plainly requires that the host municipality “memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted \*\*\* before any certification is sent to the Board.” 230 ILCS 10/7(e-5). The Board can act upon the license applications *only after* the municipality sends certifications to the Board. *Id.* The statute does not require the municipality to negotiate with every applicant, but it does require a good-faith negotiation on enumerated items with applicants the municipality certifies to the Board. *Id.* Here, the resolutions that the city council voted on only stated, without more, that the City and each applicant agreed “in general terms” on the enumerated items. The resolutions pointed to each applicant’s initial proposal for “the details of the mutual agreements” and contemplated that final negotiations would take place after the Board completes its licensing process.<sup>2</sup>

¶ 14 Potawatomi Casino alleged that the City did not engage in any negotiations with the applicants during the certification process and that the City passed the certifying resolutions that fall short of the statutory requirements. The complaint expressly alleges the following violations:

“a. Contrary to the representation in the City’s ‘certifying resolutions,’ and the Gambling Act’s requirements, the City did not negotiate in any respect with casino applicants during the RFQ process.

b. The City and the applicants the City purported to ‘certify’ did not ‘mutually agree’ on the items required by the Gambling Act. In fact, the City’s ‘certifying resolutions’

<sup>2</sup>The City maintains that these resolutions are in substantial compliance with section 7(e-5). However, where Potawatomi Casino sufficiently alleged facts, including that the City did not engage in any negotiations with the applicants and that the City contemplated negotiating “after the fact,” we accept those factual allegations as true for the purpose of a section 2-619 motion to dismiss. *Sandholm*, 2012 IL 111443, ¶ 55.

recited only that the City and the applicant had ‘mutually agreed *in general terms*’ on the required items. [Citations.]

c. \*\*\* [T]he City did not ‘memorialize the details concerning the proposed riverboat or casino in a resolution’ adopted by the City’s corporate authority, as the Gambling Act requires, and the City’s ‘certifying resolutions’ do not purport to include any such memorialization.” C 17-18.

¶ 15 Further, the City’s corporation counsel admitted that the City did not engage in negotiations with any applicant during the certification process and that it was “fundamentally impossible” to mutually agree with the applicants on the items as to which the Act requires mutual agreement before the Board may consider issuing a casino owner’s license. It is this very failure that Potawatomi Casino complains of. The injury is also traceable to the Board’s conduct of acting on the applications that have been certified in a non-compliant process. According to the allegations of the complaint, the Board’s acquiescence in accepting the deficient resolutions and commencing the licensing process is necessarily intertwined with the City’s conduct, together denying Potawatomi Casino an opportunity to participate in a lawful and fair process:<sup>3</sup>

“35. \*\*\* Upon information and belief, the City’s decision not to negotiate with applicants reflected and facilitated the City’s plan to manipulate the casino certification process to achieve a predetermined outcome. For example, in purporting to rank casino proposals, upon information and belief, the City’s outside consultant solicited and considered supplemental information from other applicants, including Full House, but

<sup>3</sup>That the injury is traceable to the Board’s conduct is further evidenced by the redressability, as explained below, since the relief that redresses the injury would, in part, require the Board to retract the license already issued to another applicant.

refused to consider supplemental information from plaintiff. [Citation.] Upon information and belief, this discriminatory treatment occurred with the knowledge of and at the direction of the City. [Citation.]

36. Upon information and belief, by failing to reach agreement on details of casino proposals, the City was able to obscure contingencies and weaknesses in other parties' casino proposals. For example, upon information and belief, before the City's purported certification votes, North Point conditioned its casino proposal on being the City's sole selection, and advised the City that its proposal would be less favorable to the City if the City certified multiple proposals to the Gaming Board. [Citation.] Yet the City's resolution for North Point does not reflect this critical qualification. [Citation.]

37. Upon information and belief, the City did not negotiate with applicants because its casino certification process was a sham. Indeed, just before the formal start of the October 17, 2019 special City Council meeting, according to the sworn testimony of a City Council member in the related federal action, Waukegan Mayor Samuel Cunningham approached the City Council member and told him which proposals to vote for:

. . . as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that we want to send to Springfield [*i.e.*, to the Gaming Board]. Right. And that was what the vote was going to be. Right. Put those three down there. [Citation.]" C 18-19.

¶ 16 The City and the Board both argue that Potawatomi Casino's alleged injury is not traceable to their actions because the City Council had voted to not certify Potawatomi Casino. However, Potawatomi Casino's complaint alleged that the City engaged in a predetermined sham to certify

applicants despite their applications' contingencies and shortfalls while deliberately shutting Potawatomi Casino out of the process. Based on the allegations of the complaint, the City Council's vote to not certify Potawatomi Casino itself constitutes a part of the City's unfair and unlawful certification process at the cost of Potawatomi Casino's opportunity.

¶ 17 As a result, the requested relief is substantially likely to redress Potawatomi Casino's injury, the lost opportunity. Potawatomi Casino sought declarations that the City failed to satisfy statutory requirements for certification and that the Board consequently lacks authority to issue a casino license as well as an injunctive relief enjoining the Board from issuing a casino license until the City complies with the statute. In essence, Potawatomi Casino seeks to repeat the application process on fair and lawful terms. This remedy would correct the alleged injury since it would require the City to conduct the certification process again without the alleged illegality or unfairness. Because the injury is the lost opportunity, Potawatomi Casino need not be certain whether it would ultimately secure the City's certification to the Board in a fair process, so long as the opportunity itself is given. See *Illinois Road & Transportation Builders Ass'n*, 2022 IL 127126, ¶ 27 (“[P]articularly when the injury to a plaintiff is the loss of opportunity to obtain a benefit due to the government's failure to perform a required act \*\*\* it is rarely possible to know with any confidence what *might* have happened had the government performed the act at issue or the improper conduct had been corrected.” (Emphasis in original and internal quotation marks omitted.)). Accordingly, the circuit court erred in dismissing Potawatomi Casino's complaint for lack of standing.



¶ 18

## B. Private Right of Action

¶ 19 Defendants argue that the absence of a private right of action under the Act provides an alternative basis on which to affirm. See *Kagan v. Waldheim Cemetery Co.*, 2016 IL App (1st) 131274, ¶ 50 (where there was no right of private action under the statute, the plaintiffs did not have standing to sue for statutory violations). The argument, however, is misguided. Plaintiff here is not seeking to bring an independent cause of action akin to a tort, but rather it is seeking to force statutory compliance. *Noyola v. Board of Education of Chicago*, 179 Ill. 2d 121, 132 (1997) (the four-factor test for private right of action not necessary where the plaintiffs were “not attempting to use a statutory enactment as the predicate for a tort action” but sought to force public officials “to do what the law requires”); *Landmarks Illinois v. Rock Island County Board*, 2020 IL App (3d) 190159, ¶ 62 (the plaintiffs sought only injunctive relief, not tort damages, to “enforce their protectable right to ensure that the public entity defendants do not act in a manner that would frustrate the proper operation of the law”). Accordingly, Potawatomi Casino need not demonstrate that the Act creates an implied right of action with respect to its claim to compel the City and the Board to comply with the Act.<sup>4</sup>

<sup>4</sup>Similarly, the argument that the Board has exclusive jurisdiction over Potawatomi Casino’s claim is unpersuasive. While the Board has the authority under the Act to “fully and effectively execute [the] Act” (230 ILCS 10/5 (West 2020)), an administrative agency’s authority is limited to that which is specified by statute. *Modrytzkji v. City of Chicago*, 2015 IL App (1st) 141874, ¶ 10. The plain language of section 7(e-5) conditions the Board’s exercise of authority on the host municipality’s certification. 230 ILCS 10/7(e-5) (West 2020). There is nothing in the language that allows the Board to bypass the City’s noncompliant certification process, and Potawatomi Casino’s claim here is not a claim on which the Board may exercise its exclusive jurisdiction. See *LifeEnergy, LLC v. Illinois Commerce Comm’n*, 2021 IL App (2d) 200411, ¶ 94 (when the plaintiff “challeng[ed] the scope of the agency’s power to act, not just identifying irregularities or defects in the process of exercising its power,” the claim is proper before the court).

¶ 20

## C. Mootness

¶ 21 While this appeal was pending, in February 2023, the Board issued a temporary operating permit to Full House, and Full House began operating a temporary casino. On June 15, 2023, the Board issued an owner's license to Full House and approved a one-year extension to operate the temporary casino while the permanent casino facility is under construction. After the issuance of the owner's license, both the City and the Board moved to dismiss the appeal as moot.

¶ 22 Defendants argue that the Board's grant of the license moots the appeal because the court can no longer grant effective relief. An appeal becomes moot "when the resolution of a question of law cannot affect the result of a case as to the parties, or when events have occurred which make it impossible for the reviewing court to render effectual relief." *Marion Hospital Corp. v. Illinois Health Facilities Planning Board*, 201 Ill. 2d 465, 471 (2002). Here, Potawatomi Casino sought more than just an injunction to prohibit the Board from issuing a license. It also sought a declaration that the Board lacked authority to issue a license because of the City's failure to comply with the statutory prerequisites in certifying applicants to the Board. If the court were to provide this requested relief, defendants would be required to retract the issued license and repeat the process. See *Provena Health v. Illinois Health Facilities Planning Board*, 382 Ill. App. 3d 34, 50 (2008) (case not moot even when the Board had already granted the construction permit because the court could still order effectual relief by enjoining the hospital from proceeding with the construction or from obtaining an operating license without a valid permit). Further, the permanent casino is still under construction, and Full House would be operating at its temporary location for another 12 months. This case is decidedly different from *Marion*, which involved the interplay between a planning permit for a surgery center obtained from the Illinois Health Facilities Board

and an operating license issued by the Illinois Department of Public Health. *Marion*, 201 Ill. 2d at 468-70. By the time of the *Marion* appeal, which challenged only the planning permit, a capital expenditure had been approved and made and an operating license had been issued (to which there was no challenge): “No statute or regulation had been cited which would have authorized the Department to suspend or revoke [the] operating license or otherwise limit its medical functions based on an improperly granted planning permit.” *Id.* at 475. In short, even assuming the planning permit was improperly issued, there was no longer an effective remedy because there was no legal basis to rescind the operating license.

¶ 23 Further, the fact that Full House has already commenced gambling operations at its temporary facility is of no moment. The Administrative Code allows the Board to find an applicant not suitable for licensing at the final stage of review, even after it has issued the applicant a temporary operating permit. 86 Ill. Adm. Code 3000.230(f)-(g) (2000).

¶ 24 Thus, the current circumstances of the case are such that the court may compel “a restoration of the status quo ante,” and where the court is able to render such effectual relief, the case is not moot. *Blue Cross Ass’n v. 666 North Lake Shore Drive Associates*, 100 Ill. App. 3d 647, 651 (1981) (“[I]f the defendant does any act which the complaint seeks to enjoin, he acts at his peril and subject to the power of the court to compel a restoration of the status quo ante \*\*\*.”).

¶ 25 III. CONCLUSION

¶ 26 The motions to dismiss the appeal as moot are denied.

¶ 27 The judgment of the circuit court of Cook County is reversed, and the case is remanded for further proceedings.

¶ 28 Reversed and remanded.

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***Waukegan Potawatomi Casino, LLC v. Illinois Gaming Board, 2023 IL App (1st) 220883***

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**Decision Under Review:** Appeal from the Circuit Court of Cook County, No. 2021-CH-5784; the Hon. Cecilia A. Horan, Judge, presiding.

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Glenn E. Davis and Charles N. Insler, of HeplerBroom LLC, of St. Louis, Missouri, for other appellee.

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No. 1-22-0883

**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

WAUKEGAN POTAWATOMI CASINO	)	
LLC, an Illinois limited liability company,	)	
	)	Appeal from the Circuit Court of Cook
Plaintiff-Appellant,	)	County, Illinois
	)	Chancery Division
vs.	)	
	)	Circuit Court No. 21 CH 05784
THE ILLINOIS GAMING BOARD, an	)	Presiding Judge: Cecilia A. Horan
Illinois administrative agency, and in their	)	
official capacities, CHARLES	)	Circuit Court Judgment: May 13, 2022
SCHMADEKE, Board Chairman, DIONNE	)	Date of Appeal: June 10, 2022
R. HAYDEN, Board Member, ANTHONY	)	Date of Appellate Opinion: July 28, 2023
GARCIA, Board Member, MARC E. BELL,	)	
Board Member, and MARCUS FRUCHTER,	)	
Board Administrator, and the CITY OF	)	
WAUKEGAN, an Illinois municipal	)	
corporation,	)	
	)	
Defendants-Appellees.	)	
	)	

**CERTIFICATION OF CHARLES N. INSLER**

Charles N. Insler certifies as follows:

1. My name is Charles N. Insler. I am over the age of twenty-one (21) and under no legal disability.
2. I have personal knowledge of the facts in this §1-109 certification.
3. This certification is given in support of Defendant-Appellee City of Waukegan’s Petition for Rehearing.
4. I am an attorney with the law firm of HeplerBroom LLC, licensed to practice in Illinois. I am one of the attorneys for the City of Waukegan.

5. On January 3, 2023, the City Council of the City of Waukegan passed Resolution No. 23-R-03, entitled “A Resolution Approving a Ground Lease and a Development and Host Community Agreement for the Construction, Development, and Operation of ‘The Temporary By American Place’ and the American Place Casino.”

6. As part of this Resolution, the City Council approved the Ground Lease with FHR-Illinois, LLC and the Development and Host Community Agreement with FHR-Illinois, LLC.

7. A true correct copy of Resolution No. 23-R-03 (including the Ground Lease and Development and Host Community Agreement) is attached as Exhibit 1.

8. On February 16, 2023, the Gaming Board issued a temporary operating permit to FHR-Illinois LLC, d/b/a American Place, allowing American Place to operate the temporary casino. *See* Statement of Administrator Marcus Fruchter, Illinois Gaming Board, Board Meeting of June 15, 2023, at 41:20 to 41:55, [available here](#).<sup>1</sup>

9. Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the company operating the Waukegan casino under the name American Place. *See* Statement of Paul Jensen, Illinois Gaming Board, Board Meeting of June 15, 2023, at 43:30 to 43:40, [available here](#). On January 27, 2022, the Gaming Board approved Full House Resorts’ request to amend its application, so that its application was on behalf of FHR-Illinois, LLC, and no longer Full House Resorts, Inc. *See* Illinois Gaming Board, Open Session Minutes of January 27, 2022, attached as Exhibit E at 3. All of the Gaming Board’s prior actions, approvals, and findings (including the finding of preliminary suitability) transferred to FHR-Illinois LLC. *Id.*

10. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners

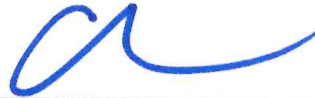
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<sup>1</sup> The full cite is:

<https://www.igb.illinois.gov/ViewMeetingVideo.aspx?BoardDate=6/15/2023%2012:00:00%20AM>

License to FHR-Illinois LLC to operate its City of Waukegan casino. *See* Illinois Gaming Board, Board Meeting of June 15, 2023, at 1:05:00 to 1:06:30, [available here](#).

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



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Charles N. Insler

# EXHIBIT 1



**CITY OF WAUKEGAN**

**RESOLUTION NO. 23—R—03**

**A RESOLUTION APPROVING A GROUND LEASE AND A DEVELOPMENT AND  
HOST COMMUNITY AGREEMENT FOR THE CONSTRUCTION, DEVELOPMENT,  
AND OPERATION OF "THE TEMPORARY BY AMERICAN PLACE" AND THE  
AMERICAN PLACE CASINO**

**ADOPTED AND PASSED BY THE CITY COUNCIL  
OF THE CITY OF WAUKEGAN**

**ON THE 03<sup>rd</sup>  
DAY OF JANUARY, 2023**

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**Published in pamphlet form by authority of the City Council, of the City of  
Waukegan, Lake County, Illinois, on the 04<sup>th</sup> day of JANUARY, 2023**

  
CITY CLERK JANET E. KILKELLY

**RESOLUTION NO. 23—R—03****A RESOLUTION APPROVING A GROUND LEASE AND A DEVELOPMENT AND HOST COMMUNITY AGREEMENT FOR THE CONSTRUCTION, DEVELOPMENT, AND OPERATION OF “THE TEMPORARY BY AMERICAN PLACE” AND THE AMERICAN PLACE CASINO**

**WHEREAS**, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City to contract with individuals, associations, and corporations in any manner not prohibited by law or ordinance; and

**WHEREAS**, in 2019, the Illinois General Assembly adopted Public Act 101-0031 which authorized the issuance of an owner’s license to conduct casino gambling in the City of Waukegan; and

**WHEREAS**, in the fall of 2019, after an open request for qualifications/proposal process and public hearing, the City of Waukegan adopted resolutions certifying three separate applicants to the Illinois Gaming Board (“**IGB**”) as potential operators for the Waukegan casino license, including Full House Resorts, Inc.; and

**WHEREAS**, in December of 2021, the IGB determined that Full House Resorts, Inc. was preliminarily suitable for the owner’s license designated for the City of Waukegan; and

**WHEREAS**, Full House Resorts, Inc. has created a wholly-owned subsidiary, FHR-Illinois LLC (“**Developer**”), to develop and operate both a temporary and permanent casino gaming facility along with appurtenant and accessory buildings and improvements in the City of Waukegan (collectively, the “**Project**”); and

**WHEREAS**, Developer seeks to develop and operate the Project on three adjacent parcels of property located within the City of Waukegan including (i) one parcel owned by the City (“**City-Owned Parcel**”); and (ii) two parcels owned by Developer (collectively “**10-Acre Parcel**” and together with the City-Owned Parcel, referred to herein as the “**Development Property**”); and

**WHEREAS**, on May 2, 2022, the City Council adopted Resolution 22-R-57 approving that certain Memorandum of Key Terms with the Developer summarizing the preliminary terms of agreement between the parties regarding the ownership, construction, development, and operation of the Project (“**Memorandum**”); and

**WHEREAS**, the City and the Developer subsequently negotiated agreements to facilitate the development and operation of the Project in accordance with the Memorandum, including (i) a ground lease over the City-Owned Parcel to allow for the long-term use of the City-Owned Parcel for the Project (“**Ground Lease**”) which includes a \$30 million purchase option (“**Purchase Option**”); and (ii) a Development and Host Community Agreement to govern Developer’s construction, development, and operation of the Project (“**DHCA**”); and

**WHEREAS**, pursuant to Section 2-481 of the City of Waukegan Code of Ordinances, the City Council has determined that (i) conveying the City-Owned Parcel to the Developer in accordance with the Ground Lease and the Purchase Option will generate the highest and best economic return to the City, including, but not limited to, increased tax revenue, jobs for local workers, and elimination of blight; and (ii) the terms of the conveyance to the Developer under the Ground Lease and Purchase Option are substantially and materially the same terms presented for consideration and public hearing in 2019; and

**WHEREAS**, the City Council further determines that the commitments made by the Developer in the Memorandum regarding the development and operation of the Project are substantially and materially incorporated and elaborated upon in the DHCA; and

**WHEREAS**, the Mayor and the City Council find that it is in the best interests of the City and its residents to approve and authorize the execution of the Ground Lease and the DHCA pursuant to, and in accordance with, its home rule powers; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WAUKEGAN, LAKE COUNTY, ILLINOIS, AS FOLLOWS:**

**SECTION 1: RECITALS.** The recitals set forth above are incorporated into this Section 1 by this reference as findings of the City Council.

**SECTION 2: APPROVAL OF GROUND LEASE.** The City Council hereby approves the Ground Lease with the Developer in substantially the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by Corporation Counsel.


**SECTION 3: APPROVAL OF DEVELOPMENT AND HOST COMMUNITY AGREEMENT.** The City Council hereby approves the DHCA with the Developer in substantially the form attached to this Resolution as **Exhibit B**, and in a final form to be approved by Corporation Counsel.

**SECTION 4: AUTHORIZATION TO EXECUTE.** The City Council hereby authorizes and directs the Mayor and the City Clerk to execute and seal, on behalf of the City, the Ground Lease, the DHCA, and all other documents and consents necessary to effectuate the intent of those instruments.

**SECTION 5: EFFECTIVE DATE.** This resolution shall be in full force and effect from and after its passage and approval by three quarters of the whole city council.

PASSED THIS 03<sup>rd</sup> DAY OF JANUARY, 2023.

RESOLUTION NO. 23—R—03  
CITY OF WAUKEGAN

  
\_\_\_\_\_  
MAYOR ANN B. TAYLOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK JANET E. KILKELLY

**ROLL CALL:** Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Hayes, Ald Bolton.

**AYE:** Ald Seger, Ald Moisio, Ald Kirkwood, Ald Newsome, Ald Turner, Ald Rivera, Ald Florian, Ald Hayes, Ald Bolton.

**NAY:** None.

**ABSENT:** None.

**ABSTAIN:** None.

**EXHIBIT A**

**GROUND LEASE**

**EXHIBIT B**

**DEVELOPMENT AND HOST COMMUNITY AGREEMENT**



Gambling Act, 230 ILCS 10/7 (2020), to FHR-Illinois, LLC, doing business as American Place, to operate its casino in the City of Waukegan. As a result, a court can no longer grant Plaintiff-Appellant Waukegan Potawatomi Casino, LLC (“WPC”) the declaratory and injunctive relief that it seeks in this action. Defendant-Appellee City of Waukegan also moved on June 27, 2023, to dismiss this appeal as moot, and on June 30, 2023, before the Board filed this motion, WPC responded to the City’s motion. The Board nonetheless joins in the City’s motion and additionally states as follows.

### **FACTUAL BACKGROUND**

1. In June 2019, the General Assembly passed Public Act 101-31, expanding gambling operations in Illinois by authorizing the Board to issue six new casino licenses, including one in Waukegan. *See* 230 ILCS 10/7(e-5)(3) (2020). For these new licenses, the host municipality initiated the selection process by selecting applicants. *See id.* Under section 7(e-5) of the Act, the Board would consider an applicant for an owner’s license “only after” the host municipality had submitted to the Board a certification concerning certain items regarding the applicant. *See* 230 ILCS 10/7(e-5)(i)-(viii) (2020).

#### **The Waukegan License**

2. In October 2019, the City certified three applicants for consideration by the Board for an owner’s license in Waukegan. *See* C15-16, C25-27, C1055-56 (A206-07, A216-18, A1246-47). Over the next two years, the Board undertook its statutorily mandated process to investigate the City’s applicants, select a winning bid proposal for the Waukegan casino, and evaluate the winning bid within a reasonable time for

license suitability. *See* 230 ILCS 10/7, 7.5(1)-(8), 7.12 (2020); 86 Ill. Admin. Code § 3000.230(c); *see also* 12/8/21 Bd. Mtg., at <https://bit.ly/3dK48k8> (23:00-24:00).<sup>2</sup>

3. On December 8, 2021, at its regular open-session meeting, the Board unanimously voted to: proceed with the selection process for the Waukegan owner's license; select Full House Resorts, Inc., as the winning proposal and final applicant; and find Full House preliminarily suitable for licensure under 86 Ill. Admin. Code § 3000.230(c). *See* Ex. A (12/8/21 Bd. Minutes); 12/8/21 Bd. Mtg., at <https://bit.ly/3dK48k8> (21:25-31:46). As the Board Administrator explained, although the finding of preliminary suitability did not constitute the grant of a license and provided "no guarantee of final licensure," it was a "very significant step" toward "commencement of gaming operations and ultimate licensure." 12/8/21 Bd. Mtg., at <https://bit.ly/3dK48k8> at 30:05-30:40.

4. After finding Full House preliminarily suitable for licensure, the Board approved Full House's request to begin construction of its temporary casino in Waukegan. *See* 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (40:19-41:00, 45:40-45:55). After Full House completed construction and satisfied other regulatory requirements, the Board authorized Full House to conduct a pre-opening operations assessment and practice gaming session under Board Rules 230(e) and (f), 86 Ill. Admin Code § 3000.230(e), (f). *See* 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU>

<sup>2</sup> This court may take judicial notice of events and documents that do not appear in the record on appeal but are relevant to the issue of mootness. *See In re Andrea F.*, 208 Ill. 2d 148, 156 (2003). Additionally, this court may take judicial notice of public records available on the Board's website. *See People v. Ware*, 2014 IL App (1st) 120485, ¶ 29.

(40:19-43:30). After successful completion of the practice gaming session, the Board issued Full House a temporary operating permit on February 16, 2023, and authorized it to conduct gaming operations at its temporary facility under Board Rule 540, 86 Ill. Admin. Code § 3000.540. *See* 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (40:19-43:30). The next day, Full House opened the Temporary by American Place, commencing gambling operations in Waukegan. *See id.*

5. On June 15, 2023, at a regular open-session meeting, the Board unanimously voted to: (a) grant Full House an owner’s license for a four-year period under section 7 of the Act, 230 ILCS 10/7 (2020), and Board Rule 230(g)(1), 86 Ill. Admin. Code §§ 3000.230(g)(1); and (b) extend for a 12-month period Full House’s license to operate its temporary casino in the City of Waukegan pursuant to Board Rules 540 and 543, 86 Ill. Admin. Code §§ 3000.540, 543. *See* Ex. B; 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (1.05:00-1.07:30). The Board also found John Nicholas Ferrucci, Maria Elena Jonas, Dora Elssy Maya, Maria Carmen Patlan, and Ajoyi Lynn Stackhouse suitable as key persons of Full House, doing business as American Place. *See* Ex. B; 6/15/22 Bd. Mtg., at <https://bit.ly/3XFp1CU> (1.05:00-1.07:30).

### **WPC’s Lawsuit**

6. On November 16, 2021 — two years after the Board began investigating the certified applicants submitted to it by the City and just before the Board was scheduled to select a winning bid proposal for the Waukegan casino license — WPC filed this action against the Board and the City in the circuit court. *See* C20-22; C1294-96 (A211-13; A1485-87). In its verified complaint for declaratory and injunctive relief, WPC alleged that the City “did not satisfy the [Act]’s prerequisites



to Board consideration of a Waukegan casino license,” in violation of section 7(e-5) of the Act, when it certified three candidates to the Board for consideration of an owner’s license to operate a casino in the Waukegan. C17-18 (A108-09). WPC sought a declaration that the Board “lack[ed] authority to consider issuing a license to operate a Waukegan casino,” C22-23 (A213-14), and an injunction prohibiting the Board “from taking formal steps to issue a Waukegan casino license.” C23 (A214).

7. At the same time, WPC filed a motion for a temporary restraining order (“TRO”) and preliminary injunction to prevent the Board from making its finding of preliminary suitability as to any candidate that the City had certified to the Board. C1298-1335. The circuit court denied the motion, concluding that WPC was unlikely to succeed on the merits of its claim. C1398-99; C1482-84 (A174-76). WPC filed a petition for review of the denial of its TRO in this court, which became moot when the Board found Full House preliminarily suitable for a casino license on December 8, 2021. This court denied the petition for review. C1522.

8. The Board and the City then moved to dismiss WPC’s complaint. *See* C1403-1507 (City); C1510-18 (Board). On May 13, 2022, the circuit court dismissed the complaint in its entirety with prejudice, concluding that WPC lacked standing to challenge the Board’s actions regarding a Waukegan casino license. R46-47 (A34-35). The court explained that the relief sought would not have “any impact on [WPC’s] application.” R46 (A34). WPC appealed the circuit court judgment. C1564-65 (A45-46).

**ARGUMENT**

9. Since October 2019, the Board has engaged in the statutorily mandated process of granting the owner's license earmarked for Waukegan. *See* 230 ILCS 10/7(e-5) (2020); 86 Ill. Admin. Code § 3000.230. By awarding Full House that license on June 15, 2023, the Board has now completed the licensure process. As a result, WPC's claim seeking a declaration that the Board lacked authority to issue a license and an injunction enjoining the licensing process can no longer be obtained. This appeal therefore should be dismissed as moot.

**I. An appeal is moot when the court cannot grant effective relief.**

10. The existence of a real controversy is “an essential prerequisite to appellate jurisdiction.” *In re Estate of Wellman*, 174 Ill. 2d 335, 353 (1996). Courts of review do not “decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.” *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). An appeal becomes moot when events have occurred “that make it impossible for the reviewing court to render effectual relief.” *Commonwealth Edison Co v. Ill. Com. Comm'n*, 2016 IL 118129, ¶ 10 (appeal became moot when agreements giving rise to claim were terminated); *see Marion Hosp. Corp. v. Ill. Health Facilities Planning Bd.*, 201 Ill.2d 465, 471 (2002) (judicial review action challenging agency decision to grant permit to build ambulatory center became moot when permit holder completed construction of and obtained operating license for its facility); *GlidePath Dev., LLC v. Ill. Com. Comm'n*, 2019 IL App. (1st) 180893, ¶¶ 26-28 (action for judicial review of agency approval to construct microgrid became moot once project vendors were approved and funds were expended).

11. Accordingly, an appeal will be deemed moot if the action that it sought to compel or enjoin has already occurred. *See, e.g., Marion Hosp. Corp.*, 201 Ill. 2d at 471; *GlidePath Dev., LLC*, 2019 IL App. (1st) 180893, ¶¶ 26-28; *Elsamny v. Peoria Cnty. Bd. of Election Comm'n*, 2018 IL App (3d) 170295, ¶ 10 (action to stay election of city council members deemed moot because election had occurred and elected officials had taken office); *People ex rel. Newdelman v. Weaver*, 50 Ill. 2d 237, 238, 241 (1972) (release of public aid monies mooted action seeking to compel agency to dispense such aid).

12. For example, in *Marion Hosp. Corp.*, the Illinois Supreme Court concluded that a potential business competitor's action challenging the Health Facilities Planning Board's grant of a permit to an operator for the construction of a surgical center became moot during the pendency of the action, when the operator had completed the expenditure of funds on the project and obtained an operating license from the Department of Public Health to operate its facility. 201 Ill. 2d at 471. Following *Marion Hosp. Corp.*, this court concluded in *Provena Health v. Ill. Health Facilities Planning Bd.*, that an appeal from the Planning Board's grant of a permit had not become moot because, at the time of the appeal, the permittee had not completed construction of its facility or obtained an operating license to commence operations at its facility and, as a party in the lawsuit, had been warned by the circuit court of the risk of continuing to make expenditures. 382 Ill. App. 3d 34, 50-51 (1st Dist. 2008).

**II. With the Waukegan license granted, this court can no longer grant effective relief.**

13. Here, the Board's grant of a license to Full House moots this appeal. The Board's issuance of an owner's license to Full House was the final step in a lengthy and detailed licensing process that began in October 2019 and is now complete. Specifically, the Board investigated the applicants for a Waukegan casino license, selected Full House as the winning bid proposal, conducted its required preliminary suitability investigations, audits, and processes, and made a finding that Full House was preliminarily suitable for a casino license. *See* 230 ILCS 10/7, 7.5, 7.12 (2020); 86 Ill. Admin. Code § 3000.230(b), (c). Then, after Full House constructed a temporary facility, completed a practice gaming session, obtained a temporary operating permit, and commenced gaming operations at its temporary facility, the Board completed its evaluation of whether Full House met the criteria for full licensure. *See* 230 ILCS 10/7 (2020); 86 Ill. Admin. Code § 3000.230(e), (f). Finally, the Board voted to award Full House an owner's license to operate its Waukegan casino, thus concluding the licensing process under Board Rule 230. With the license issued, the Board has taken all of the steps outlined in section 7 of the Act, 230 ILCS 10/7 (2020), and Board Rule 230, 86 Ill. Admin. Code § 3000.230(a), leaving nothing more for the Board to do regarding the issuance of this license.

14. Although here, unlike in *Marion Hosp. Corp.*, the Board has continued oversight over Full House's casino operations after it received its license, that does not alter the mootness analysis. As the Supreme Court there recognized, the claim for injunctive relief became moot because after the permit had been granted, the

permittee had also made the expenditures to construct its facility and obtained a license to commence operations at its facility. *Marion Hosp. Corp.*, 201 Ill. 2d at 472-73; *cf. Provena Health*, 382 Ill. App. 3d at 51 (finding appeal was not moot where permittee had not obtained licensure, which required valid permit). Thus, Full House's commencement of gambling operations, in addition to the award of full licensure, further moots WPC's claims to enjoin the licensing process.

15. And to the extent that WPC contends that the appeal is not moot because Full House has not completed construction of its permanent casino, *see* AT Br. 39-41, it is incorrect. That is because the applicable statutory and regulatory provisions do not make completion of the permanent casino facility a requirement of full licensure. Specifically, under section 7(b) of the Act, "the facilities or proposed facilities for the conduct of gambling" is just one factor that the Board considers when determining whether to grant an owner's license. 230 ILCS 10/7(b)(2) (2020). And nothing in the Board's rules precludes the Board from completing its assessment of a casino applicant's gaming operations and finding the applicant suitable for licensing while it operates a temporary facility. *See* 86 Ill. Admin. Code § 3000.230(e), (f). Here, as the Board Administrator represented during the June 15, 2023 Board meeting, the Board has concluded that all of the statutory and regulatory requirements for licensure have been met. *See* 6/15/23 Bd. Mtg., at <https://bit.ly/3XFp1CU> (40:20-43:30). As a result, the Board awarded Full House its owner's license, completing the licensure process. *Id.*; *see* Ex. B.

16. In sum, because the circuit court can no longer enjoin the Board from taking "any formal steps to issue a Waukegan casino license," C23 (A214), the circuit

court cannot grant WPC effective injunctive relief in this case, *Marion Hosp. Corp.*, 201 Ill. 2d at 472-73; *GlidePath Dev., LLC*, 2019 IL App. (1st) 180893, ¶¶ 27-28. For the same reason, there is no actual controversy between the parties to permit declaratory relief. See 735 ILCS 5/2-701 (2020) (declaratory judgment claim requires “actual controversy”); *Koshinski v. Trame*, 2017 IL App (5th) 150398, ¶ 19 (claim seeking declaration that firearm licensing statute was unconstitutional became moot upon restoration of petitioner’s firearm permit). The appeal from the dismissal of those moot claims therefore is moot.

### CONCLUSION

For the foregoing reasons, State Defendants-Appellees Illinois Gaming Board, Charles Schmadeke, Dionne R. Hayden, Anthony Garcia, Jim Kolar, and Marcus Fruchter ask this Court to dismiss this appeal as moot.

Respectfully submitted,

KWAME RAOUL  
Attorney General  
State of Illinois

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July 5, 2023



# ILLINOIS GAMING BOARD

JB Pritzker • Governor Charles Schmadeke • Chairman Marcus Fruchter • Administrator

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

## Regular Meeting, Open Session Minutes Illinois Gaming Board Chicago, Illinois December 8, 2021

The Illinois Gaming Board convened for a Regular Meeting on Wednesday, December 8, 2021 at 9:00 A.M. On November 12, 2021, Governor JB Pritzker issued a statewide disaster proclamation in response to the COVID-19 pandemic. Pursuant to Section 7(e) of the Open Meetings Act, the Board determined it was not practical or prudent, nor was it feasible, to hold an in person meeting due to the ongoing COVID-19 pandemic. Therefore, the Board held the meeting through electronic means. The meeting was accessible on the morning of December 8, 2021, via livestream at: <https://multimedia.illinois.gov/igb/igb-live.html>.

A roll call was taken. The following Board members were present: Chairman Charles Schmadeke, Member Marc Bell, Member Anthony Garcia and Member Dionne Hayden. Four members of the Board being present, a quorum was satisfied.

At approximately 9:01 A.M., Member Garcia moved that the Board go into closed session pursuant to Section 2(c), paragraphs (4), (11), (21) and (36) of the Open Meetings Act and Section 6(d) of the Illinois Gambling Act to discuss items on the closed session agenda relating to evidence received per the Board's adjudicatory authority, pending litigation, the review of closed session minutes of the Special Meeting Meetings held on November 18, 2021 and to deliberate on decisions of the Illinois Gaming Board in which there is discussed personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or information specifically exempted from disclosure by federal or State law. Member Hayden seconded the motion. The Board approved the motion unanimously by voice vote. Thereafter, the Board held its closed session meeting through electronic means, the minutes of which are separately recorded. The Board's closed session meeting was not accessible via livestream at <https://multimedia.illinois.gov/igb/igb-live.html>.

At approximately 11:02 A.M., the Board reconvened its Regular Meeting of Wednesday, December 8, 2021 pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* The meeting was held through electronic means and was accessible via livestream at: <https://multimedia.illinois.gov/igb/igb-live.html>.

Another roll call was taken. The following Board members were present: Chairman Charles Schmadeke, Member Marc Bell, Member Anthony Garcia and Member Dionne Hayden. Four members of the Board being present, a quorum was satisfied.

### APPROVAL OF OPEN SESSION MINUTES

The Board voted unanimously to approve the open session minutes from its Special Meeting held on November 18, 2021.

**BOARD MEMBER COMMENTS**

None.

**ADMINISTRATOR'S REPORT**

Administrator Fruchter began his report by announcing that Walkers Bluff Casino Resort, the applicant for an Owners license in Williamson County, recently commenced construction on its permanent casino facility. Administrator Fruchter noted that the IGB received three timely bid submissions for the online only sports wagering licenses that the IGB is authorized to issue under the Sports Wagering Act. The IGB also received one untimely bid which was rejected.

Administrator Fruchter announced that there are approximately 42,047 video gaming terminals (“VGTs”) currently operating in 7,898 location establishments. Approximately 4,570 of those establishments have 5 or more VGTS currently operating. For the month of October, VGTs generated total tax revenue of \$74,480,843 of which \$63,527,779 went to the State of Illinois and \$10,953,064 went to local municipalities. Casinos produced State tax of approximately \$29,124,528, with an additional \$6,196,200 going to the host communities. Sports wagering generated State tax of \$7,889,526. For the 10-month period ending October 31, 2021, combined gaming generated a total of \$848,096,038 in State tax and \$160,998,932 in local tax. Administrator Fruchter noted that, in advance of the IGB issuing a Request for Proposals (“RFPs”) in connection with the upcoming procurement for the Central Communications System, the IGB is seeking commentary from Video Gaming licensees, stakeholders and the public about potential features, functionality, requirements and related matters. He further noted that the public commentary period begins today (December 8, 2021) and ends on January 14, 2022. All comments will be posted on the IGB’s website under Video Gaming FAQs and comments should be sent to [igb.directorofpolicy@illinois.gov](mailto:igb.directorofpolicy@illinois.gov).

**ADMINISTRATIVE MATTERS**

- Proposed New Permanent Rule for Video Gaming – 1800.2070 Progressive Meters

The Board voted unanimously to adopt the staff’s recommendation to approve for submission to the Index Department of the Secretary of State on First Notice the proposed permanent Video Gaming Rule 1800.2070.

**CASINO****OWNERS LICENSEE ITEMS**

- Consideration of Matters Related to the Pending Applications for the Owners License to be Located in Waukegan

Pursuant to the authority delegated by the Board, the Administrator approved CDI-RSQ Waukegan, LLC’s request to withdraw its Owners license application for the license to be issued in Waukegan.

The Board voted unanimously to individually vote on each of the two remaining applications submitted for the Waukegan Owners license for the purpose of selecting the winning proposal and sole applicant for



the Owners license to be issued in Waukegan.

The Board voted unanimously to approve Full House Resorts, Inc. d/b/a American Place to become the final applicant for the Waukegan Owners license.

- Finding of Preliminary Suitability – Rule 230(c)

The Board voted unanimously to find Full House Resorts, Inc. d/b/a American Place preliminarily suitable for an Owners license.

- Consideration of Matters Related to the Pending Applications for the Owners License to be Located in South Suburban Cook County

The Board voted unanimously to reject South Suburban Development, LLC to become the final applicant for the South Suburban Cook County Owners license.

The Board voted unanimously to approve Wind Creek IL LLC to become the final applicant for the South Suburban Cook County Owners license.

- Finding of Preliminary Suitability – Rule 230(c)

The Board voted unanimously to find Wind Creek IL LLC preliminarily suitable for an Owners license.  
Key Persons

- Key Person Suitability Determination for Trust and Individuals of the Waukegan Owners License Applicant found Preliminarily Suitable

The Board voted unanimously to adopt the staff's recommendation to find the following individuals and trust suitable as key persons of Full House Resorts, Inc. d/b/a American Place

- Kenneth Adams
- Carl Braunlich
- Lewis Fanger
- Eric Green
- Elaine Guidroz
- Michael Hartmeier
- Daniel Lee
- Kathleen Marshall
- Michael Shaunnessy
- Kathern S. Green Irrevocable Trust

- Key Person Suitability Determination for Entities and Individuals of the South Suburban Owners License Applicant found Preliminarily Suitable

The Board voted unanimously to adopt the staff's recommendation to find the following individuals and entities suitable as key persons of Wind Creek IL LLC:

- Stephanie Bryan
- Dewitt Carter
- Candace Fayard
- Sandy Hollinger
- Timothy Manning
- Malcom Martin
- Robert McGhee
- Charlotte Meckel
- Arthur Mothershed
- Brent Pinkston
- Teresa Poust
- Jon Weglarz
- Vanya Weglarz
- Westly Woodruff
- Jon S. Weglarz, LLC
- PCI Gaming Authority
- The Poarch Band of Creek Indians
- V. Kathryn Weglarz, LLC

## **OCCUPATIONAL LICENSEE ITEMS**

### Level 2 and Level 3 License Applications – Approvals

The Board voted unanimously to adopt the staff’s recommendation to approve 6 Level 2 and 11 Level 3 occupational license applicants.

### Occupational License Renewals by the Administrator

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Level 1, 2, and 3 licenses of individuals who were licensed or renewed in December 2020 and who have properly updated their applications and complied with the requirements of the Illinois Gambling Act and the Board’s Rules.

## **SUPPLIER LICENSEE ITEMS**

### License Renewals

The Board voted unanimously to adopt the staff’s recommendation to renew Ainsworth Game Technology, Inc.’s Casino Supplier License for a period of four years, retroactive to November 2021, and expiring in November 2025 upon the condition that it continues to provide the requested updates until further notice.

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Casino Supplier license of Everi Games, Inc. for a period of four years, retroactive to November 2021, and expiring in November 2025, and the Casino Supplier license of Everi Payments, Inc. for a period of four years, expiring in December 2025.

**SPORTS WAGERING****SPORTS WAGERING OCCUPATIONAL LICENSEE ITEMS****Level 2 and Level 3 License Applications – Approvals**

The Board voted unanimously to adopt the staff's recommendation to approve 23 Level 2 sports wagering occupational licenses.

**Level 1, 2, and 3 License Renewals – Administrator Delegation**

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Level 1, 2, and 3 Sports Wagering licenses of the individuals who were licensed or renewed in December 2020 who have properly updated their applications and complied with the requirements of the Sports Wagering Act and the Board's Rules.

**VIDEO GAMING****VIDEO GAMING MANUFACTURER, DISTRIBUTOR, SUPPLIER LICENSE RENEWALS****License Renewals – Administrator Delegation**

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Video Gaming Manufacturer and Distributor licenses of IGT for a period of one year, retroactive to August 2021, and expiring in August 2022. The Administrator further renewed the Video Gaming Supplier license of Illinois Rewards, Inc. for a period of one year, expiring in December 2022.

**TERMINAL OPERATOR LICENSEE ITEMS****License Renewals – Administrator Delegation**

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the following Terminal Operator licenses for a period of one year, retroactive to November 2021, and expiring in November 2022:

- Dearborn Gaming, LLC
- Elite Gaming, LLC
- Illinois Gaming Entertainment, LLC
- National Gaming Operators LLC
- United Gaming Operator LLC

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the following Terminal Operator licenses for a period of one year, and expiring in December 2022:

- 777 Gaming, LLC

- Jackpot Video Gaming Inc.
- LS Gaming LLC
- Springfield Gaming, LLC
- Sunrise Gaming, LLC

## **TECHNICIANS & TERMINAL HANDLERS**

### Initial Licenses – Approvals

The Board voted unanimously to adopt the staff’s recommendation to approve 1 Technician and 2 Terminal Handler licenses for a period of one year, expiring in December 2022, subject to licensee’s payment of the applicable licensing fee on or before December 31, 2021.

### License Non-Renewal

The Board voted unanimously to adopt the staff’s recommendation to deny renewal to Michael Baxter.

### VG Technicians and Terminal Handler License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the licenses of Technicians and Terminal Handlers who were licensed or renewed in December 2020 who have properly updated their applications and complied with the requirements of the Video Gaming Act and the Board’s Rules.

## **VIDEO GAMING ESTABLISHMENT APPLICANT ITEMS**

### Initial Licenses - Approvals & Denials

The Board voted unanimously to adopt the staff’s recommendation to approve 65 Video Gaming Establishment License applications for a period of one year, expiring in December 2022, subject to licensee’s payment of the applicable licensing fee on or before January 31, 2022, and issue a Notice of Denial to the following applicant:

- GPM Midwest 18, LLC d/b/a Fas Mart #561 (200702438)

### VG Location Establishment Applicants – Rescission of Denials

The Board voted unanimously to adopt the staff’s recommendation to rescind its previous denial of Proviso Petroleum Co d/b/a King Gas and grant leave to withdraw its hearing request.

The Board voted unanimously to adopt the staff’s recommendation to rescind its previous denial, grant Shotgun Eddys, Inc. d/b/a Shotgun Eddys, Inc. an establishment license, and grant its request to withdraw its hearing.

### VG Location Establishment Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Video Gaming Location Establishment licenses that were licensed or renewed in December 2020 who have

properly updated their applications and complied with the requirements of the Video Gaming Act and the Board's Rules.

Location Establishment License Non-Renewals

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of Sanfilippo, LLC d/b/a Penny Road Pub (180702785).

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of Sammy Jo, Inc. d/b/a Sammy's Slots (150703785).

**ADJOURN**

The Board voted unanimously to adjourn the meeting.

**ILLINOIS GAMING BOARD**

JB Pritzker • Governor Charles Schmadeke • Chairman Marcus Fruchter • Administrator

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

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June 15, 2023

VIA email: [eguidroz@fullhouseresorsts.com](mailto:eguidroz@fullhouseresorsts.com)

RE: **Owner's License No. 19-OWN-05**  
**FHR-Illinois LLC d/b/a American Place**  
**Expiration Date: June 2027**

Ms. Guidroz:

Please be advised that on June 15, 2023, the Illinois Gaming Board ("IGB") adopted a motion to grant the Owners License of FHR-Illinois LLC d/b/a American Place for a term of four (4) years, expiring in June 2027.

Based on Staff's recommendation, the Board approved the request by **FHR-Illinois LLC d/b/a American Place** to grant its Owners License for a period of four years, expiring in June 2027.

The Board further found the following individuals suitable as key persons of FHR-Illinois LLC d/b/a American Place:

1. **John Nicholas Ferrucci**
2. **Maria Elena Jonas**
3. **Dora Elssy Maya**
4. **Maria Carmen Patlan**
5. **Ajoyi Lynn Stackhouse**

If you have any questions regarding this matter, please contact the legal department at (312) 814-4700.

Sincerely,

A handwritten signature in blue ink that reads "Marcus Fruchter".

Marcus Fruchter  
Administrator

No. 1-22-0883

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois limited liability company,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
THE ILLINOIS GAMING BOARD, an Illinois administrative agency; in their official capacities, CHARLES SCHMADEKE, Board Chairman; DIONNE R. HAYDEN, Board Member; ANTHONY GARCIA, Board Member; MARC E. BELL, Board Member; and MARCUS FRUCHTER Board Administrator; and THE CITY OF WAUKEGAN, an Illinois municipal corporation,	)	No. 2021 CH 5784
	)	
Defendants-Appellees.	)	The Honorable CECILIA A. HORAN, Judge Presiding.

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**ORDER**

THIS MATTER COMING BE HEARD on the motion of State Defendants-Appellees' to dismiss this appeal as moot, due notice having been given, and the court being advised in the premises:

IT IS HEREBY ORDERED THAT the motion is GRANTED / DENIED.

ENTER:

\_\_\_\_\_  
JUSTICE

\_\_\_\_\_  
JUSTICE

\_\_\_\_\_  
JUSTICE

Dated: \_\_\_\_\_  
Christina T. Hansen, AAG  
Christina.Hansen@ilag.gov

**CERTIFICATE OF FILING AND SERVICE**

I certify that on July 5, 2023, I electronically filed State Defendants-Appellees' Motion to Dismiss the Appeal as Moot with the Clerk of the Court for the Appellate Court of Illinois, First Judicial District, by using the Odyssey eFileIL system.

I further certify that other participants in this case, named below, are registered CM/ECF users and thus will be served via the CM/ECF system.

Dylan Smith  
dylansmith@sgrlaw.com

Martin Syvertsen  
martinsyvertsen@sgrlaw.com

Glenn E. Davis  
glenn.davis@heplerbroom.com

Charles N. Insler  
charles.insler@heplerbroom.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Christina T. Hansen  
CHRISTINA T. HANSEN  
Assistant Attorney General  
100 West Randolph Street  
12th Floor  
Chicago, Illinois 60601  
(312) 814-5659 (office)  
(872) 272-0819 (cell)  
CivilAppeals@ilag.gov (primary)  
Christina.Hansen@ilag.gov (secondary)



No. 1-22-0883

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**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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WAUKEGAN POTAWATOMI CASINO	)	
LLC, an Illinois limited liability company,	)	
	)	Appeal from the Circuit Court of Cook
Plaintiff-Appellant,	)	County, Illinois
	)	Chancery Division
	)	
vs.	)	
	)	Circuit Court No. 21 CH 05784
	)	Presiding Judge: Cecilia A. Horan
THE ILLINOIS GAMING BOARD, an	)	
Illinois administrative agency, and in their	)	
official capacities, CHARLES	)	Date of Appeal: June 10, 2022
SCHMADEKE, Board Chairman, DIONNE	)	Date of Judgment: May 13, 2022
R. HAYDEN, Board Member, ANTHONY	)	
GARCIA, Board Member, MARC E. BELL,	)	
Board Member, and MARCUS FRUCHTER,	)	
Board Administrator, and the CITY OF	)	
WAUKEGAN, an Illinois municipal	)	
corporation,	)	
	)	
Defendants-Appellees.	)	
	)	

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**CITY OF WAUKEGAN’S MOTION TO DISMISS THE APPEAL AS MOOT**

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The City of Waukegan moves to dismiss this appeal as moot, pursuant to Supreme Court Rule 361(h). This appeal is moot because Waukegan Potawatomi Casino’s lawsuit sought one form of relief: an injunction blocking the Illinois Gaming Board from issuing a formal license to Full House Resorts to operate the casino in Waukegan. This Court can no longer order that relief. On June 15, 2023, the Illinois Gaming Board issued a casino license to FHR-Illinois LLC<sup>1</sup> to operate its American Place casino in the City of Waukegan.

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<sup>1</sup> Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the subsidiary company operating the Waukegan casino under the name American Place. See Certification of Charles N. Insler at ¶6. On January 27, 2022, the Gaming Board approved Full House Resorts’ request to amend its application, so that

**STATEMENT OF FACTS<sup>2</sup>****This Lawsuit and the Quest for Injunctive Relief**

On November 15, 2021, the Gaming Board posted its agenda for a special meeting on November 18, 2021. C21 at ¶44. The Gaming Board’s agenda included “Consideration of Matters Related to the Pending Applications for the Owners License to Be Located in Waukegan,” and “Determination of Preliminary Suitability.” C1296. The very next day, Plaintiff Waukegan Potawatomi Casino, LLC (“WPC”) filed this lawsuit against the Gaming Board, the members of the Gaming Board, and the City of Waukegan. A202-A1488; C11-C1297.

WPC’s Complaint contained a single claim for Declaratory and Injunctive Relief under the Illinois Gambling Act. A213-A214 at ¶¶48-54; C22-C23 at ¶¶48-54. In particular, WPC’s lawsuit sought to enjoin the Gaming Board from “taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability” until the City of Waukegan had satisfied the requirements of the Illinois Gambling Act. A214; C23. WPC sought this injunctive relief because it believed that the City of Waukegan had “failed to satisfy the statutory prerequisites for the Gaming Board to consider issuing an owner’s license for a casino in Waukegan.” A213 at ¶49; C22 at ¶49. This alleged failure, according to WPC, meant the Gaming Board lacked the statutory authority to take any formal steps toward issuing an owner’s license for a casino in Waukegan, including by issuing a determination of preliminary suitability. A213 at ¶50; C22 at ¶50.

Alongside its Complaint, WPC filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction. C1298-C1321. WPC’s motion sought to enjoin the Gaming

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its application was on behalf of FHR-Illinois, LLC, instead of Full House Resorts, Inc. *Id.* The brief refers to the two entities, collectively, as “Full House.”

<sup>2</sup> The City of Waukegan is only providing those facts necessary for ruling on the current motion. A more complete factual statement can be found in its response brief.

Board from “taking formal steps toward issuance of license to operate a casino in Waukegan, Illinois, including by issuing a finding of preliminary suitability.” C1304. On December 7, 2021, the Circuit Court for Cook County denied WPC’s request for a temporary restraining order. A200-A201. WPC petitioned this Court to review the denial of injunctive relief, C1400-C1402, but this Court declined to review the Circuit Court’s decision. *See Waukegan Potawatomi Casino, LLC v. The Illinois Gaming Board et al.*, No. 1-21-1561 (1st Dist. Dec. 16, 2021) (Smith, J., Lavin, J., Cobbs, J.).

### **The Circuit Court Grants the Motion to Dismiss**

Back before the Circuit Court, the City of Waukegan (and the Gaming Board) moved to dismiss the Complaint. C1403-C1507; C1510-C1518. On May 13, 2022, the Circuit Court held a hearing and granted the Defendants’ respective motions to dismiss, finding WPC lacked standing to proceed with its lawsuit. A33-A35. In particular, the Circuit Court found that even if WPC was granted the relief it was requesting, WPC would not actually receive the relief it wanted. A34. On May 31, 2022, the Circuit Court entered its Order, dismissing the Complaint with prejudice. A4. This appeal followed. A45-A46.

### **The Gaming Board Issues a Formal License to Full House To Operate the Waukegan Casino**

On December 8, 2021, the Gaming Board took formal steps towards issuing a casino license for the City of Waukegan, and made a finding of preliminary suitability in favor of Full House Resorts, Inc. *See* Brief of the City of Waukegan at 9-10. On February 16, 2023, the Gaming Board issued a temporary operating permit to Full House, allowing Full House to operate the temporary casino in Waukegan. *See* Certification of Charles N. Insler at ¶5. The casino opened to the public the following day.

The license process is no longer at the preliminary stages. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners License to Full House to operate its City of Waukegan casino.<sup>3</sup> See Certification of Charles N. Insler at ¶¶7-11; see also Illinois Gaming Board, Board Meeting of June 15, 2023 at 1:05:00 to 1:06:30, [available here](#).<sup>4</sup>

### **LEGAL ARGUMENT**

#### **A. Illinois Law Requires a Case with an Actual Controversy**

A case with an actual controversy is an essential requisite to appellate jurisdiction. *Davis v. City of Country Club Hills*, 2013 IL App (1st) 123634, ¶10. The appellate courts do not generally decide abstract, hypothetical, or moot questions. *Id.* “A case on appeal becomes moot where the issues presented in the trial court no longer exist” because subsequent events have made it impossible for the appellate court to grant the complaining party effective relief. *Id.* This is true even if the mooted events happened while the appeal was pending. *Id.*

#### **B. This Appeal Is Moot Because this Court Can No Longer Grant WPC the Effective Relief It Seeks**

On November 16, 2021, WPC filed this lawsuit against the City of Waukegan, the Gaming Board, and the members of the Gaming Board. C11-C1297. WPC’s Verified Complaint for Declaratory and Injunctive Relief asserted a single claim for relief – a claim for declaratory and injunctive relief under the Illinois Gambling Act. C22-C23. WPC sought a declaration that the City of Waukegan had failed to satisfy the requirements for the Gaming Board to consider issuing a license to operate a casino in Waukegan, Illinois and a declaration that the Gaming Board lacks the authority to consider issuing a license to operate a Waukegan casino. C22-C23. Finally, WPC

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<sup>3</sup> The Gaming Board also granted FHR-Illinois LLC a Master Sports Wagering License, permitting Full House to offer sports betting at its Waukegan casino. See Certification of Charles N. Insler at ¶8.

<sup>4</sup> The full link is available here:

<https://www.igb.illinois.gov/ViewMeetingVideo.aspx?BoardDate=6/15/2023%2012:00:00%20AM>

sought injunctive relief “enjoining the Gaming Board from taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability. . .” C23. WPC’s complaint did not request any form of monetary relief. *See* C22-C23.

When WPC sought injunctive relief in the Circuit Court, it sought an injunction “enjoining the Illinois Gaming Board from taking formal steps toward issuance of a license to operate a casino in Waukegan, Illinois, including by issuing a finding of preliminary suitability.” C1298; *see also* C1304.

This Court can no longer grant WPC the effective relief that it seeks. On December 8, 2021, the Gaming Board made a finding of preliminary suitability in favor of Full House Resorts, Inc. *See* Brief of the City of Waukegan at 9-10. On February 16, 2023, the Gaming Board issued a temporary operating permit to Full House, allowing Full House to operate the temporary casino. *See* Certification of Charles N. Insler at ¶5. And, most recently, on June 15, 2023, the Gaming Board issued a Casino Owners License to Full House to operate its City of Waukegan casino. *See* Certification of Charles N. Insler at ¶¶7-11. The Gaming Board’s website reflects Full House’s status as a licensed owner:

**FHR-Illinois LLC (Licensed)** [Hide Details](#)  
 d/b/a The Temporary by American Place  
 600 Lakehurst Road  
 Waukegan, IL 60085  
**License Status: Licensed - 6/15/2023**

*See* Certification of Charles N. Insler at ¶11 (Exhibit C); *see also* Illinois Gaming Board, Owners Applicants & Licensees, available at <https://www.igb.illinois.gov/CasinoLists.aspx>. The Gaming Board’s license also reflects Full House’s status as a licensed owner. *See* Certification of Charles N. Insler at ¶9 (Exhibit A). This Court is now powerless to enjoin the Gaming Board from issuing a Waukegan casino license or to declare that the Gaming Board lacks the authority to issue a

Waukegan casino license, that license now having issued. This appeal should be dismissed because this Court cannot grant WPC the effective relief sought by its complaint.

**C. WPC's Own Briefing Concedes the Case is Now Moot**

The City of Waukegan raised the issue of mootness before the Circuit Court. *See* C1410-1411, C1543-1544; *see also* Plaintiff-Appellant Waukegan Potawatomi Casino, LLC's Brief on Appeal ("WPC Opening Brief") at 38. Anticipating this same mootness argument on appeal, WPC declared that the appeal was not moot precisely because the Gaming Board had not yet issued the owner's license: "Clearly, until the Gaming Board has issued a Waukegan casino license, it is *possible* to grant effectual relief. There is nothing in the record to suggest that this eventuality has occurred or will occur for some time." WPC Opening Brief at 38. WPC reprised these arguments in its reply brief, arguing that because "no Waukegan casino license has even issued, effectual relief is far from impossible." Plaintiff-Appellant Waukegan Potawatomi Casino, LLC's Reply Brief ("WPC Reply Brief") at 18.

The only eventuality, as argued by WPC, that was keeping the mootness issue at bay has now happened. The Gaming Board has now issued a final Waukegan casino license to Full House. WPC's own arguments on appeal effectively concede this case is now moot.

**D. WPC's Interpretation of §3000.230 Was Wrong**

Section 3000.230 of the Illinois Administrative Code governs the issuance of a casino owner's license by the Gaming Board. Ill. Admin. Code tit. 86, §3000.230. In arguing against mootness, WPC stated that the Gaming Board would not soon be issuing an owner's license because under "the Board's regulations, no license may issue until the permanent casino has been constructed and the Board has assessed its operations." WPC Reply Brief at 18 (citing 86 Ill.

Admin. Code §3000.230(a), (f)(1); *see also* WPC Opening Brief at 11 n.2, 39-40 (arguing the same thing). WPC’s interpretation of §3000.230 was wrong.

Nothing in §3000.230 of the Administrative Code speaks to a permanent or temporary casino. Instead, §3000.230 speaks of the following “procedures prior to licensure: 1) Investigation of the applicant and application; 2) Finding of preliminary suitability; 3) Assessment of the Riverboat Gaming Operation; 4) Final practice Gaming session; 5) Action of the Board and 6) Different or additional licensing procedures as required of an applicant by the Board. Ill. Admin. Code tit. 86, §3000.230(a). During the June 15, 2023 Board Meeting, Gaming Board Administrator Fruchter discussed each of these procedures, and noted how Full House Resorts had satisfied the regulatory requirements. *See* Illinois Gaming Board, Board Meeting of June 15, 2023, at 40:30 to 42:20, [available here](#) (discussing the Rule 230 requirements). The Gaming Board’s decision to issue the license shows how WPC’s interpretation of §3000.230 was erroneous.

**E. This Court Should Dismiss the Appeal in Its Entirety**

WPC’s complaint seeks only injunctive and declaratory relief; there is no claim for monetary damages. C22-C23. The mootness issue is, therefore, dispositive of the entire appeal. *See* Illinois Rule 361(h)(3)(c).

**F. WPC Retains its Federal Court Damages Case**

Dismissing this appeal would not leave WPC without a remedy. As its own complaint notes, WPC has “been pursuing relief in federal court against the City for what plaintiff alleges was a rigged casino review process that discriminated against plaintiff and violated the Gambling Act.” C12. WPC’s federal lawsuit remains pending and a dismissal in this case will not impact WPC’s federal case for damages.

**CONCLUSION**

This Court should dismiss the appeal as moot pursuant to Illinois Rule 361(h), the Gaming Board having now issued Full House an owners license. Further proceedings, including oral argument, will only impose unnecessary additional costs on the parties and consume the time and resources of the Court.

*/s/ Charles N. Insler*

Glenn E. Davis

Charles N. Insler

HeplerBroom LLC

701 Market Street, Suite 1400

St. Louis, MO 63101

T: (314) 241-6160

[glenn.davis@heplerbroom.com](mailto:glenn.davis@heplerbroom.com)

[charles.insler@heplerbroom.com](mailto:charles.insler@heplerbroom.com)

*Counsel for City of Waukegan*



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was e-filed with the Court via Odyssey eFileIL and served via e-mail on June 27, 2023, to the following attorneys of record:

Dylan Smith  
Martin Syvertsen  
Jill Anderson  
FREEBORN & PETERS LLP  
311 S. Wacker Drive, Suite 3000  
Chicago, Illinois 60606  
(312) 360-6000  
[mkelly@freeborn.com](mailto:mkelly@freeborn.com)  
[msyvertsen@freeborn.com](mailto:msyvertsen@freeborn.com)  
[janderson@freeborn.com](mailto:janderson@freeborn.com)

*Attorneys for Plaintiff-Appellant Waukegan Potawatomi Casino LLC*

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Certificate of Service are true and correct.

*/s/ Charles N. Insler*\_\_\_\_\_

No. 1-22-0883

**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

WAUKEGAN POTAWATOMI CASINO	)	
LLC, an Illinois limited liability company,	)	
	)	Appeal from the Circuit Court of Cook
Plaintiff-Appellant,	)	County, Illinois
	)	Chancery Division
vs.	)	
	)	Circuit Court No. 21 CH 05784
THE ILLINOIS GAMING BOARD, an	)	Presiding Judge: Cecilia A. Horan
Illinois administrative agency, and in their	)	
official capacities, CHARLES	)	Date of Appeal: June 10, 20222
SCHMADEKE, Board Chairman, DIONNE	)	Date of Judgment: May 13, 2022
R. HAYDEN, Board Member, ANTHONY	)	
GARCIA, Board Member, MARC E. BELL,	)	
Board Member, and MARCUS FRUCHTER,	)	
Board Administrator, and the CITY OF	)	
WAUKEGAN, an Illinois municipal	)	
corporation,	)	
	)	
Defendants-Appellees.	)	
	)	

**ORDER**

Defendant-Appellee The City of Waukegan has filed a Motion to dismiss this appeal as moot, pursuant to Supreme Court Rule 361(h). The Court hereby **ALLOWS / DENIES** the motion.

ENTERED: \_\_\_\_\_

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Judge

No. 1-22-0883

**IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

WAUKEGAN POTAWATOMI CASINO	)	
LLC, an Illinois limited liability company,	)	
	)	Appeal from the Circuit Court of Cook
Plaintiff-Appellant,	)	County, Illinois
	)	Chancery Division
vs.	)	
	)	Circuit Court No. 21 CH 05784
THE ILLINOIS GAMING BOARD, an	)	Presiding Judge: Cecilia A. Horan
Illinois administrative agency, and in their	)	
official capacities, CHARLES	)	Date of Appeal: June 10, 2022
SCHMADEKE, Board Chairman, DIONNE	)	Date of Judgment: May 13, 2022
R. HAYDEN, Board Member, ANTHONY	)	
GARCIA, Board Member, MARC E. BELL,	)	
Board Member, and MARCUS FRUCHTER,	)	
Board Administrator, and the CITY OF	)	
WAUKEGAN, an Illinois municipal	)	
corporation,	)	
	)	
Defendants-Appellees.	)	
	)	

**CERTIFICATION OF CHARLES N. INSLER**

Charles N. Insler certifies as follows:

1. My name is Charles N. Insler. I am over the age of twenty-one (21) and under no legal disability.
2. I have personal knowledge of the facts in this §1-109 certification.
3. This certification is given in support of Defendant-Appellee City of Waukegan’s Motion to Dismiss the Appeal as Moot.
4. I am an attorney with the law firm of HeplerBroom LLC, licensed to practice in Illinois. I am one of the attorneys for the City of Waukegan.

5. On February 16, 2023, the Gaming Board issued a temporary operating permit to FHR-Illinois LLC, d/b/a American Place, allowing American Place to operate the temporary casino. *See* Statement of Administrator Marcus Fruchter, Illinois Gaming Board, Board Meeting of June 15, 2023, at 41:20 to 41:55, [available here](#).<sup>1</sup>

6. Full House Resorts, Inc. is the parent company of FHR-Illinois LLC, the company operating the Waukegan casino under the name American Place. *See* Statement of Paul Jensen, Illinois Gaming Board, Board Meeting of June 15, 2023, at 43:30 to 43:40, [available here](#). On January 27, 2022, the Gaming Board approved Full House Resorts' request to amend its application, so that its application was on behalf of FHR-Illinois, LLC, and no longer Full House Resorts, Inc. *See* Illinois Gaming Board, Open Session Minutes of January 27, 2022, attached as Exhibit E at 3. All of the Gaming Board's prior actions, approvals, and findings (including the finding of preliminary suitability) transferred to FHR-Illinois LLC. *Id.*

7. On June 15, 2023, the Gaming Board approved the issuance of a Casino Owners License to FHR-Illinois LLC to operate its City of Waukegan casino. *See* Illinois Gaming Board, Board Meeting of June 15, 2023, at 1:05:00 to 1:06:30, [available here](#).

8. The Gaming Board also granted FHR-Illinois LLC a Master Sports Wagering License, permitting Full House to offer sports betting at its Waukegan casino. *See* Exhibit B.

9. A true and correct copy of the Owners License issued by the Gaming Board is attached as Exhibit A.

10. A true and correct copy of the June 15, 2023, Press Release from the Gaming Board is attached as Exhibit B.

11. A true and correct copy of the Gaming Board's website, designating Full House

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<sup>1</sup> The full cite is:

<https://www.igb.illinois.gov/ViewMeetingVideo.aspx?BoardDate=6/15/2023%2012:00:00%20AM>

Resorts' subsidiary, FHR-Illinois LLC, as licensed as of June 15, 2023, is attached as Exhibit C.

12. A true and correct copy of the Gaming Board's agenda for June 15, 2023, is attached as Exhibit D.

13. A true and correct copy of the Gaming Board's Open Session Minutes from January 27, 2022, is attached as Exhibit E.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



---

Charles N. Insler

# EXHIBIT A

# State of Illinois Illinois Gaming Board

## FHR-Illinois LLC d/b/a American Place

Having exhibited to the Members of the Illinois Gaming Board the qualifications for licensure established in the Illinois Gambling Act, we do therefore hereby authorize and license the above to own and operate a casino gambling operation in this State.

Witnessed this 15<sup>th</sup> day of June, 2023 and expiring in June of 2027

[Signature], Board Member

[Signature], Board Member

[Signature], Board Member

[Signature], Board Member

Illinois Gaming Board [Signature], Chairman

# EXHIBIT B





# ILLINOIS GAMING BOARD

JB Pritzker • Governor Charles Schmadeke • Chairman Marcus D. Fruchter • Administrator

## Press release

June 15, 2023

For More Information Contact:

Joe Miller-217-670-9138

[joe.miller@illinois.gov](mailto:joe.miller@illinois.gov)

### **Illinois Gaming Board Finds Chicago Casino Applicant Preliminarily Suitable**

*Issues Casino and Sports Wagering Licenses to Waukegan Casino, Renews Quad Cities Casino License, and Approves Extensions for Operations at Rockford and Waukegan Temporary Casino Facilities*

The Illinois Gaming Board (the “IGB” or “Board”) found Chicago casino license applicant Bally’s Chicago Operating Company, LLC (“Bally’s Chicago”) preliminarily suitable at its June 15 public meeting, meaning Bally’s can continue preparing its site for gaming and hiring the employees necessary to operate a casino. The Board also awarded casino and sports wagering licenses to the American Place Casino in Waukegan, approved 12-month extensions for temporary casino operations in Waukegan and Rockford, and renewed the license of Bally’s Quad Cities Casino and Hotel for another 4-year term during its regularly scheduled meeting today.

“The Board’s determination of preliminary suitability for Bally’s Chicago Casino is a significant, but not final, step in the regulatory process to open a casino in the City of Chicago,” said IGB Administrator Marcus D. Fruchter. “The IGB will continue to work with Bally’s Chicago and other stakeholders to complete the remaining statutory requirements in an efficient, ethical and compliant manner.”

Preliminary suitability allows an applicant to undertake and complete certain required tasks that will culminate in a pre-opening audit, a practice gaming session, and potential issuance of a temporary operating permit. The casino may open to the public when the next step is achieved: a temporary operating permit allows the holder to open its casino for gambling at either a temporary or permanent facility in advance of licensure. The matters to be assessed prior to commencement of gaming are found under Section (e) of [Casino Rule 230](#).

At the board meeting, the IGB:

- Granted preliminary suitability for Bally’s Chicago Operating Company, LLC under [Casino Rule 230\(d\)](#). Actual operation of temporary and permanent casino facilities is subject to future IGB regulatory approvals at the appropriate time after construction is completed;
- Granted FHR-Illinois LLC d/b/a American Place (“FHR”), a Casino Owners License and a Master Sports Wagering License;
- Approved a one-year extension for FHR to operate The Temporary by American Place Casino in Waukegan while it constructs its permanent casino facility. With the extension, FHR may operate its temporary casino facility for a total of three years from the date the temporary casino opened until February 17, 2026;

- Approved a one-year extension for 815 Entertainment, LLC d/b/a Hard Rock Rockford Casino (“HRCR”) to operate the Rockford Casino – A Hard Rock Opening Act while it constructs its permanent casino facility for a total of three years from the date the temporary casino opened until November 10, 2024;
- Approved the renewal of a four-year Casino Owners License for Bally’s Quad Cities Casino & Hotel. The casino, which is in Rock Island, began operating in 1992;
- Approved a settlement with Accel Entertainment Gaming, LLC to fully resolve a pending 2020 disciplinary complaint. Under the terms of the settlement, Accel acknowledged that its conduct underlying the disciplinary complaint did not meet the IGB’s standards and expectations for licensed video gaming terminal operators; agreed to pay a \$1 million fine, plus an additional \$125,000 to reimburse the IGB’s administrative and investigative costs associated with the disciplinary complaint for a total payment of \$1.125M; and committed to enhanced compliance training, monitoring and reporting requirements;
- Granted more than 460 new gaming licenses and related approvals for casino gambling, video gaming and sports wagering along with renewal of existing licenses;

For video gaming, the IGB approved licenses for:

- 1 video gaming terminal operators
- 95 video gaming locations
- 40 terminal handlers and one technician

The IGB denied licenses for:

- 4 locations and 2 terminal handlers

For casinos, the IGB approved licenses for:

- 6 level 1 casino occupational licenses
- 130 level 2 casino occupational licenses
- 108 level 3 casino occupational licenses

For sports wagering, the IGB approved licenses for:

- 66 level 2 sports wagering occupational licenses
- 5 key persons
- 1 Master sports wagering license

Illinois is home to 13 casinos, more than 8,300 licensed video gaming establishments and ten sportsbooks. Casino gambling, video gaming and sports wagering generated more than \$1.4 billion in tax revenue to the state and local communities in calendar year 2022.

The IGB serves as the state regulatory and law enforcement agency, overseeing all licensed casino gambling, video gaming and sports wagering to ensure the integrity and safety of gambling while generating revenue for the state and gaming host communities.

# EXHIBIT C



# Illinois Gaming Board

JB Pritzker • *Governor*

Charles Schmadeke • *Chairman*

Marcus D. Fruchter • *Administrator*

Illinois Gaming  
Board

Casino Gambling

**Video Gaming**

Applicable Law &  
Standards

Monthly Reports

Applications &  
Forms

Lists of Applicants  
& Licensees

Disclosure  
Statements

Municipalities  
Prohibiting Video  
Gaming

Disciplinary  
Complaints

Rule 320 Petitions

Frequently Asked  
Questions (FAQ)

Sports Wagering

Help for Problem  
Gamblers

Contact Us

## Owners Applicants & Licensees

[Show All](#)

**815 Entertainment, LLC (Licensed)** [Show Details](#)

**Alton Casino, LLC (Licensed)** [Show Details](#)

**Bally's Chicago Operating Company, LLC (Preliminarily Suitable )** [Show Details](#)

**Casino Queen, Inc. (Licensed)** [Show Details](#)

**Danville Development, LLC (Temporary Operating Permit )** [Hide Details](#)

d/b/a Golden Nugget Danville  
204 Eastgate Drive  
Danville, IL 61834

**License Status: Temporary Operating Permit - 5/26/2023**

**Des Plaines Development Limited Partnership (Licensed)** [Show Details](#)

**Elgin Riverboat Resort (Licensed)** [Show Details](#)

**FHR-Illinois LLC (Licensed)** [Hide Details](#)

d/b/a The Temporary by American Place  
600 Lakehurst Road  
Waukegan, IL 60085

**License Status: Licensed - 6/15/2023**

**HC Aurora, LLC (Licensed)** [Show Details](#)

**HC Joliet, LLC (Licensed)** [Hide Details](#)

d/b/a Hollywood Casino Joliet  
777 Hollywood Blvd.  
Joliet, IL 60436

**License Status: Licensed - 7/9/1992**

**Midwest Gaming & Entertainment, LLC (Licensed)** [Show Details](#)

**Par-A-Dice Gaming Corporation (Licensed)** [Show Details](#)

**Southern Illinois Riverboat/Casino Cruises LLC (Licensed)** [Show Details](#)

**The Rock Island Boatworks, LLC (Licensed)** [Show Details](#)

**Walker's Bluff Casino Resort, LLC (Preliminarily Suitable)** [Show Details](#)

**Wind Creek IL LLC (Preliminarily Suitable)** [Show Details](#)

## Organization Gaming Applicants & Licensees

[Show All](#)

**Fairmount Park, Inc. (Preliminarily Suitable)** [Show Details](#)

**Hawthorne Race Course, Inc. (Preliminarily Suitable)** [Show Details](#)

## Supplier Applicants & Licensees

[Show All](#)

**Acres Manufacturing Company (Pending)** [Show Details](#)

**Advantage Promotional Systems, Inc. (Licensed)** [Show Details](#)

**AGS, LLC (Licensed)** [Show Details](#)

**Ainsworth Game Technology, Inc. (Licensed)** [Show Details](#)

**Ainsworth Game Technology, Ltd. (Licensed)** [Show Details](#)

**Aristocrat Technologies, Inc. (Licensed)** [Show Details](#)

**BACHIL001 LLC (Pending)** [Show Details](#)

**Carey Heirs Properties, LLC (Pending)** [Show Details](#)

**Casinomoney, Inc. (Licensed)** [Show Details](#)

**Data Financial, Inc. (Licensed)** [Show Details](#)

**Ditronics Financial Services LLC (Licensed)** [Show Details](#)

**Everi Games, Inc. (formerly Multimedia Games, Inc.) (Licensed)** [Show Details](#)

**Everi Payments Inc. (formerly Global Cash Access, Inc.) (Licensed)** [Show Details](#)

**First American Bankcard, Inc. (Pending)** [Show Details](#)

**Galaxy Gaming, Inc. (Pending)** [Show Details](#)

**Gaming Partners International USA, Inc. (aka: Paul-Son Gaming Supplies, Inc.) (Licensed)** [Show Details](#)

**Genesis Gaming Solutions, Inc. (Licensed)** [Show Details](#)

**Global Payments Gaming Services, Inc. (Licensed)** [Show Details](#)

**GLP Capital, L.P. (Licensed)** [Show Details](#)

**HR Rockford, LLC (Licensed)** [Show Details](#)

**IGT (Licensed)** [Show Details](#)

**Incredible Technologies, Inc. (Licensed)** [Show Details](#)

**Interblock USA L. C. (Licensed)** [Show Details](#)

**International Hole-In-One Association (Licensed)** [Show Details](#)

**JCM American Corporation (Licensed)** [Show Details](#)

**Kehl Management-Williamson County, LLC (Pending)** [Show Details](#)

**Konami Gaming, Inc. (Licensed)** [Show Details](#)

**Landry Holdings, LLC (Licensed)** [Show Details](#)

130036

**LNW Gaming, Inc. d/b/a Light & Wonder (Licensed)** [Show Details](#)

**Medinah Building LLC (Licensed)** [Show Details](#)

**Medinah Holdings, LLC (Licensed)** [Show Details](#)

**Midwest Game Supply Company (Licensed)** [Show Details](#)

**Novomatic Americas Sales LLC (Licensed)** [Show Details](#)

**NRT Technology Corporation (Licensed)** [Show Details](#)

**Passport Technology USA, Inc. (Pending)** [Show Details](#)

**Patriot Gaming & Electronics, Inc. (Licensed)** [Show Details](#)

**Seminole Hard Rock Support Services, LLC (Pending)** [Show Details](#)

**SUZHAPP Gaming Solutions, LLC. (formerly Happ Controls, Inc.) (Licensed)**  
[Show Details](#)

**The United States Playing Card Company (Licensed)** [Show Details](#)

**VEMCO LLC (Pending)** [Show Details](#)

**VICI Properties 1, LLC (Licensed)** [Show Details](#)

**\*\*Pending applicants are NOT allowed to sell gaming equipment to Illinois casinos.\*\***



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# EXHIBIT D



## ILLINOIS GAMING BOARD

JB Pritzker • *Governor*   Charles Schmadeke • *Chairman*   Marcus Fruchter • *Administrator*

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

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### **Notice of Illinois Gaming Board Meeting Regular Board Meeting**

The Illinois Gaming Board will convene a regular meeting of the Board in Open Session on Thursday, June 15, 2023 at 9:00 A.M. The Board will immediately retire to Closed Executive Session. The Board will reconvene its regular meeting in Open Session following the Closed Executive Session. The Board will be present in person to hold the meeting at 160 N LaSalle, Fifth Floor Auditorium, Chicago, Illinois, and through electronic means. **The meeting will be accessible on the morning of June 15, 2023 in person and via livestream at:**  
<https://multimedia.illinois.gov/igb/igb-live.html>

The subject matters to be discussed are included on the attached proposed Regular Board Meeting Agenda. Please note that the Board Meeting Agenda is typically posted no fewer than 48 hours prior to the scheduled meeting date.





# ILLINOIS GAMING BOARD

JB Pritzker • *Governor*   Charles Schmadeke • *Chairman*   Marcus Fruchter • *Administrator*

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

## Illinois Gaming Board Regular Board Meeting Agenda

**Thursday, June 15, 2023**

### **I. Open Session**

- a. Call to Order
- b. Roll Call
- c. Motion to Enter into Closed Session

### **II. Closed Session**

- a. Review of Closed Session Minutes
- b. Employment and Performance of a Specific Employee
- c. Discussion of Evidence Received per the Board's Adjudicatory Authority
- d. Litigation
- e. Discussion of Privileged, Proprietary, Confidential and/or Information Related to Trade Secrets, Including Information Related to Pending Applications
- f. Motion to Adjourn Closed Session and Reconvene Open Session

### **III. Open Session**

- a. Review of Board Minutes:
  - i. Consideration of the minutes of the Regular Board Meeting of Thursday, April 27, 2023
  - ii. Amendments to the Board's Open Session Minutes for Its November 2017 and January 2018 Meetings
  - iii. Consideration and Review of Closed Session Minutes for Dissemination
- b. Board Member Comments
- c. Administrator's Report
- d. Public Commentary
  - i. Kevin McGourty
  - ii. Jeff Heimerdinger, President, Lucky Lincoln, LLC
  - iii. John Bosca
  - iv. Kevin Olson

### **IV. Casino**

- a. Owners Licensee Items:
  - i. Request for Final Consideration of Owners License
    1. FHR-Illinois LLC d/b/a American Place
  - ii. Request to Extend Operations at Temporary Casino Facility
    1. FHR-Illinois LLC d/b/a American Place
    2. 815 Entertainment, LLC d/b/a Hard Rock Casino Rockford

**A123**

- iii. Request for Final Consideration of Owners License Renewal
  - 1. The Rock Island Boatworks, LLC d/b/a Bally's Quad Cities Casino & Hotel
- iv. Determination of Preliminary Suitability
  - 1. Bally's Chicago Operating Company, LLC
- v. Key Person Approvals
  - 1. John Nicholas Ferrucci – FHR-Illinois LLC d/b/a American Place – Sr. Vice President & Chief Operating Officer
  - 2. Maria Elena Jonas – FHR-Illinois LLC d/b/a American Place
  - 3. Dora Maya – FHR-Illinois LLC d/b/a American Place
  - 4. Maria Carmen Patlan – FHR-Illinois LLC d/b/a American Place
  - 5. Ajoyi Stackhouse – FHR-Illinois LLC d/b/a American Place
  - 6. George Papanier – The Rock Island Boatworks, LLC d/b/a Bally's Quad Cities Casino & Hotel – Chief Executive Officer
- b. Occupational Licensee Items:
  - i. Level 1 Approvals
    - 1. Robin Corbeil – Casino Queen, Inc. d/b/a Draftkings at Casino Queen – Controller
    - 2. Albert Crimm – FHR-Illinois LLC d/b/a American Place – Director of Support Operations
    - 3. Nathan Matthew Kirby – FHR-Illinois LLC d/b/a American Place – Director of IT
    - 4. Michael Hastey – Casino Queen, Inc. d/b/a Draftkings at Casino Queen – Sportsbook Supervisor
    - 5. William Vermeulen II – FHR-Illinois LLC d/b/a American Place – Director of Slot Operations
    - 6. Jesse Daniel Wright – FHR-Illinois LLC d/b/a American Place – Director of Surveillance
    - 7. Derek Zelazny – The Rock Island Boatworks, LLC d/b/a Bally's Quad Cities Casino & Hotel – Information Technology Director
  - ii. Approvals and Denials of Level 2 & 3 Applicants

## V. Sports Wagering

- a. Initial Master Sports Wagering License:
  - i. FHR-Illinois LLC d/b/a American Place
- b. Occupational Licensee Items:
  - i. Approvals and Denials of Level 2 & 3 Applicants

## VI. Video Gaming

- a. Terminal Operator Licenses:
  - i. Initial Licenses
    - 1. Kings Entertainment LLC
- b. Technicians & Terminal Handler Licenses:

June 15, 2023

Regular Board Meeting Agenda

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- i. Approvals and Denials
- c. Video Gaming Location Applicant Items:
  - i. Approvals and Denials
  - ii. Rescission Items

**VII. Litigation**

**VIII. Motion to Adjourn**

# EXHIBIT E



## ILLINOIS GAMING BOARD

JB Pritzker • Governor Charles Schmadeke • Chairman Marcus Fruchter • Administrator

160 North LaSalle ♠ Suite 300 ♣ Chicago, Illinois 60601 ♥ tel 312/814-4700 ♦ fax 312/814-4602

### Regular Meeting, Open Session Minutes Illinois Gaming Board Chicago, Illinois January 27, 2022

The Illinois Gaming Board convened for a Regular Meeting on Thursday, January 27, 2022 at 9:00 A.M. On January 7, 2022, Governor JB Pritzker issued a statewide disaster proclamation in response to the COVID-19 pandemic. Pursuant to Section 7(e) of the Open Meetings Act, the Board determined it was not practical or prudent, nor was it feasible, to hold an in person meeting due to the ongoing COVID-19 pandemic. Therefore, the Board held the meeting through electronic means. The meeting was accessible on the morning of January 27, 2022, via livestream at: <https://multimedia.illinois.gov/igb/igb-live.html>.

A roll call was taken. The following Board members were present: Chairman Charles Schmadeke, Member Marc Bell, Member Anthony Garcia and Member Dionne Hayden. Four members of the Board being present, a quorum was satisfied.

At approximately 9:01 A.M., Member Bell moved that the Board go into closed session pursuant to Section 2(c), paragraphs (1), (4), (11), (21) and (36) of the Open Meetings Act and Section 6(d) of the Illinois Gambling Act to discuss items on the closed session agenda relating to the employment and performance of a specific employee, evidence received per the Board's adjudicatory authority, pending litigation, the review of closed session minutes of the Regular Board Meeting held on December 8, 2021 and to deliberate on decisions of the Illinois Gaming Board in which there is discussed personal, commercial, financial, or other information obtained from any source that is privileged, proprietary, confidential, or a trade secret; or information specifically exempted from the disclosure by federal or State law. Member Garcia seconded the motion. The Board approved the motion unanimously by voice vote. Thereafter, the Board held its closed session meeting through electronic means, the minutes of which are separately recorded. The Board's closed session meeting was not accessible via livestream at <https://multimedia.illinois.gov/igb/igb-live.html>.

At approximately 10:30 A.M., the Board reconvened its Regular Meeting of Thursday, January 27, 2022 pursuant to the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* The meeting was held through electronic means and was accessible via livestream at: <https://multimedia.illinois.gov/igb/igb-live.html>.

Another roll call was taken. The following Board members were present: Chairman Charles Schmadeke, Member Marc Bell, Member Anthony Garcia and Member Dionne Hayden. Four members of the Board being present, a quorum was satisfied.

#### APPROVAL OF OPEN SESSION MINUTES

The Board voted unanimously to approve the open session minutes from its Regular Meeting held on December 8, 2022.

**BOARD MEMBER COMMENTS**

None.

**ADMINISTRATOR'S REPORT**

Administrator Fruchter began his report by giving a brief update on casino expansion highlighting the significant progress that the Board has made in this area. The Administrator Fruchter noted that the new gaming measures signed into law in December 2021 include two long-time initiatives supported by the IGB; namely, the harmonization of gaming licensing for entities holding multiple licenses and the licensing of sales agents under the Video Gaming Act. Within the harmonization portion of the new law, the length of licenses for Terminal Handlers, Technicians and Establishments moves from one year to two years. The license term for all other licenses (e.g., Manufacturer, Distributor, Terminal Operator, etc.) moves from one year to four years. These license terms are consistent with similar licenses within the casino and sports wagering industries. Annual license fees will remain due on an annual basis regardless of the length of the license term. With respect to the licensing of sales agents, the Administrator stated that the new systems, processes and rule makings will be necessary for successful, effective, consistent and coordinated implementation of the law. He noted that the requirements and processes currently in place prior to the passage of the law in December, will remain in place until the Gaming Board is ready to implement this change. The Administrator further noted that the December 2021 legislation permits limited wagering on Illinois collegiate teams under a two year pilot program. Additionally, the bill provides a date certain for the sunset of in person registration for sports wagering account registration.

Administrator Fruchter informed the video gaming industry that the IGB will begin timely enforcement Video Gaming Rules 250(p) and 270(f). These rules require Terminal Operators and Establishments, respectively, to immediately remove VGTs that are out of service or otherwise inoperable for more than 72 hours. Given the dramatic increase in organized retail theft in Illinois and across the country, the IGB believes inoperable VGTs are a target for would-be thieves. The Administrator stated that his comments were made specifically to raise awareness within the industry about this important issue.

The Administrator mentioned that the IGB received public comments relating to the Request for Proposals for the Central Communication System. He noted that those comments are available for viewing on the IGB's website and that the IGB is taking them under advisement.

The Administrator reported that there are currently 7,924 licensed establishments operating approximately 42,349 VGTs. In November 2021, VGTs generated Net Terminal Income ("NTI") of \$205,366,029, which resulted in \$69,825,396 in tax revenue. The State received approximately \$59.5 million, while municipalities received \$10.2 million. Similarly, in December 2021, VGTs generated NTI of \$216,806,326, yielding \$73,714,202 in tax revenue. The State received approximately \$62.8 million and municipalities earned \$10.8 million. Administrator Fruchter further noted that casinos generated Adjusted Gross Receipts ("AGR") of \$103,962,512 in November 2021, which resulted in State tax of \$27,774,950 and local tax of \$5,904,515. In December 2021, casinos had an AGR of \$109,807,610, yielding State tax of approximately \$29.9 million and local tax of \$6.2 million. In November 2021, sports wagering earned the State \$11,899,107 in tax revenues while Cook County received another \$794,407. The sports wagering results for December were not available. For calendar year 2021, excluding sports wagering in December, total tax revenue generated from video gaming, casinos and sports wagering was \$1,232,687,412 with the State earning \$1,037,976,284 in tax revenue while local governments received \$194,711,128.

**PUBLIC COMMENTARY**

The Board entertained comments from Attorney James P. Murphy, Clark Hill PLC.

**CASINO****OWNERS LICENSEE ITEMS**

- Request for Final Consideration of Owners License – 815 Entertainment, LLC d/b/a Hard Rock Casino Rockford

The Board voted unanimously to grant an Owners License to 815 Entertainment, LLC d/b/a Hard Rock Casino Rockford.

- Request to Amend Owners License Application – Full House Resorts, Inc. d/b/a American Place

The Board voted unanimously to approve Full House Resorts, Inc.’s request to amend the application, with the express conditions that FHR-Illinois, LLC shall assume all agreements, commitments, and obligations Full House Resorts, Inc. has with the City of Waukegan, the State of Illinois, or the IGB related to the Waukegan casino project.

The Board additionally voted unanimously to make any prior Board actions, determinations, and findings with respect to Full House Resorts, Inc. be applicable, binding, and transferable to FHR Illinois, LLC.

- Waiver of Illinois Gambling Act Section 6(d) for Section 7.12(c) Written Decision Waukegan applicant selection

The Board voted unanimously to deem it necessary to use and publicly disclose any such information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board in connection of its review of Waukegan casino owners license applications solely to the extent necessary to issue a written decision as required under Section 7.12(c) of the Act.

**OCCUPATIONAL LICENSEE ITEMS****Level 2 and Level 3 License Applications – Approvals**

The Board voted unanimously to adopt the staff’s recommendation to approve 95 Level 2 and 138 Level 3 occupational license applicants.

**Occupational License Renewals by the Administrator**

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Level 1, 2, and 3 licenses of individuals who were licensed or renewed in January 2021 and who have properly updated their applications and complied with the requirements of the Illinois Gambling Act and the Board’s Rules.

**SUPPLIER LICENSEE ITEMS**

License Renewals

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Casino Supplier license of AGS, LLC for a period of four years, expiring in January 2026.

**SPORTS WAGERING****MANAGEMENT SERVICES PROVIDER LICENSE**

- BetMGM, LLC

The Board voted unanimously to grant BetMGM, LLC d/b/a Roar Digital a Management Services Provider license for a period of four years, expiring in January 2026. Furthermore, the Board found the following individuals and entities suitable as key persons:

1. Gary A. Deutsch
2. Gary M. Fritz
3. Adam Bryce Greenblatt
4. Robert G. Hoskin
5. Keith A. Meister
6. Jette Nygaard-Andersen
7. Robert M. Wood
8. MGM Sports & Interactive Gaming, LLC
9. MGM Resorts International
10. GVC Holdings (USA) Inc.
11. Entain Holdings (UK) Limited
12. Entain plc
13. IAC/InterActiveCorp

**SPORTS WAGERING OCCUPATIONAL LICENSEE ITEMS**Level 2 and Level 3 License Applications – Approvals

The Board voted unanimously to adopt the staff's recommendation to approve 119 Level 2 and 1 Level 3 sports wagering occupational licenses.

Level 1, 2, and 3 License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Level 1, 2, and 3 Sports Wagering licenses of the individuals who were licensed or renewed in January 2021 who have properly updated their applications and complied with the requirements of the Sports Wagering Act and the Board's Rules.

**VIDEO GAMING****VIDEO GAMING MANUFACTURER, DISTRIBUTOR, SUPPLIER LICENSE RENEWALS**



License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Video Gaming Manufacturer and Distributor licenses of AGS, LLC for a period of four years, expiring in January 2026.

**TERMINAL OPERATOR LICENSEE ITEMS**Initial Terminal Operator License

- Lakeview Gaming, LLC

The Board voted unanimously to adopt the staff's recommendation to grant a terminal operator license to Lakeview Gaming, LLC for a period of four years, expiring in January 2026.

License Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the following Terminal Operator licenses for a period of four years, expiring in January 2026:

- Admira, LLC
- Andy's Video Gaming Co.
- Heck Gaming, LLC
- Illinois Gold Rush, Inc.
- Illinois Video Slot Management Corp.
- JHey Enterprises, LLC
- J&J Ventures Gaming, LLC
- Lucky Lady, LLC
- Midwest SRO, LLC
- Quad Gaming, Inc.
- Sparrow Gaming, Inc.
- WG-Illinois, LLC

**TECHNICIANS & TERMINAL HANDLERS**Initial Licenses – Approvals

The Board voted unanimously to adopt the staff's recommendation to approve 1 Technician and 131 Terminal Handler licenses for a period of two years, expiring in January 2024, subject to licensee's payment of the applicable licensing fee on or before February 28, 2022.

**VG Technicians and Terminal Handler License Renewals – Administrator Delegation**

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the licenses of Technicians and Terminal Handlers who were licensed or renewed in January 2021, for a period of two years expiring in January 2024, who have properly updated their applications and complied with the requirements of the Video Gaming Act and the Board's Rules.

## VIDEO GAMING ESTABLISHMENT APPLICANT ITEMS

### Initial Licenses - Approvals & Denials

The Board voted unanimously to adopt the staff's recommendation to approve 114 Video Gaming Establishment License applications for a period of two years, expiring in January 2024, subject to licensee's payment of the applicable licensing fee on or before February 28, 2022, and issue Notices of Denial to the following applicants:

1. 101 South Commercial, LLC d/b/a Kay's Place (200701694 – Mt. Vernon)
2. 101 South Commercial, LLC d/b/a Kay's Place (200701729 – Mt. Vernon)
3. 101 South Commercial, LLC d/b/a Kay's Place (210701843 - Harrisburg)
4. 101 South Commercial, LLC d/b/a Kay's Place (210702517 - Lincoln)
5. CJ'S gaming, LLC d/b/a CJ'S Gaming (210701280)
6. Dee's Place South Elgin Inc. d/b/a Dees Place South Elgin Inc )200701209)
7. Jum Group LLC d/b/a Jum Group LLC (210700353)
8. Moe's Café, Inc. d/b/a Moe's Café (210702242)
9. Niko's R & R Supper Club LLC d/b/a Niko's R & R Supper Club (180703978)
10. SS Red Apple LLC d/b/a Red Apple (21700065)
11. Taco Madre Mendota, LLC d/b/a Taco Madre Mendota (200702681)
12. Taxco Restaurant Too, Inc. d/b/a Taxco Restaurant (200700390)
13. Wild Wet Grill Inc. d/b/a Wild West Grill Inc (210701413)

### VG Location Establishment Applicants – Rescission of Denials

The Board voted unanimously to adopt the staff's recommendation to rescind its previous denial of HATOOM INC. d/b/a VIP FOOD & LIQUOR and grant a location establishment license.

### VG Location Establishment Denial – statutorily ineligible

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator denied the Video Gaming Location Establishment license applications of PRIMAL MATTER, INC. d/b/a SPRINGERS BAR N GRILL and GERRY'S PIZZA, INC. d/b/a GERRY'S PIZZA as the applicants are ineligible under the VGA and Rules.

### VG Location Establishment Renewals – Administrator Delegation

Pursuant to the authority delegated by the Board on June 11, 2020, the Administrator renewed the Video Gaming Location Establishment licenses that were licensed or renewed in January 2021 for a period of two years, expiring in January 2024, who have properly updated their applications and complied with the requirements of the Video Gaming Act and the Board's Rules.

### VG Location Establishment License Non-Renewals

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of Joken Inc. d/b/a Kens Viaduct Lounge (140701516).

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of POST TIME SPORTS BAR AND GRILLE LLC D/B/A POST TIME SPORTS BAR AND GRILLE LLC (160704150).

The Board voted unanimously to adopt the staff's recommendation to deny the renewal of Mac's Convenience Stores LLC d/b/a Circle K #4701331 (161000288).

### RULE 320 PETITIONS

- J&J Ventures Gaming, LLC, Petitioner v. Midwest Electronics Gaming, LLC, Respondent, re: Sully's Friendly Tap Inc. d/b/a The Friendly Tavern (19-UP-004)

The Board voted unanimously to adopt the Administrator's Recommended Decision to grant J&J's request to withdraw its petition and make no findings of facts or conclusions of law on the merits of the petition.

- Accel Entertainment Gaming, LLC, Petitioner v. Renville Gaming, LLC, Respondent, re: Goose Lake Association d/b/a Goose Lake (19-UP-014)

The Board voted unanimously to adopt the Administrator's Recommended Decision that the Board grant Accel's request to withdraw its petition and make no findings of facts or conclusions of law on the merits of the petition.

- Illinois Gaming Investors LLC, Petitioner v. Grand River Jackpot, LLC, Respondent, re: Trailblazer Pub, Inc. d/b/a Trailbazer Pub (19-UP-018)

The Board voted unanimously to adopt the Administrator's Recommended Decision to grant Prairie State's request to withdraw its petition and make no findings of facts of conclusions of law on the merits of the petition.

- Randi M. Wagner d/b/a Wagner's Lounge, Petitioner v. Accel Entertainment Gaming, LLC, Respondent, re: Gold Rush Amusement, Inc. agreement (19-UP-024)

The Board voted unanimously to adopt the Administrator's Recommended Decision to dismiss the petition and make no findings of facts or conclusions of law on the merits of the petition.

- Gold Rush Amusements, Inc., Petitioner v. Accel Entertainment Gaming, LLC, Respondent, re: ElPatron Sports Bar, Inc. d/b/a El Patron Slots (19-UP-027)

The Board voted unanimously to adopt the Administrator's Recommended Decision to grant Gold Rush's request to withdraw its petition and make no findings of facts or conclusions of law on the merits of the petition.

### RULE 340 REQUEST

- Accel Entertainment Gaming, LLC/Gold Rush Amusements, Inc.

The Board voted unanimously to deny Accel Entertainment Gaming, LLC's Rule 340(a) request to obtain an equity interest in Gold Rush Amusements, Inc.

LITIGATION

- Villa Napoli L.T.D. v IGB et al. – 2018 CH 03063

The Board voted unanimously to adopt the administrative law judge's recommendation in re the disciplinary action of Villa Napoli L.T.D.

**ADJOURN**

The Board voted unanimously to adjourn the meeting.

**APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FOR THE FIRST JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

WAUKEGAN POTAWATOMI CASINO, LLC, )  
an Illinois limited liability company, )  
 )  
Plaintiff-Appellant, )  
 )  
v. )  
 )  
THE ILLINOIS GAMING BOARD, an Illinois )  
administrative agency, and, in their official )  
capacities, CHARLES SCHMADEKE, Board )  
Chairman, DIONNE R. HAYDEN, Board )  
Member, ANTHONY GARCIA, Board Member, )  
MARC E. BELL, Board Member, and )  
MARCUS FRUCHTER, Board Administrator, )  
and the CITY OF WAUKEGAN, an Illinois )  
municipal corporation, )  
 )  
Defendants-Appellees. )

Case No. 2021 CH 5784

Hon. Cecilia A. Horan

---

**NOTICE OF APPEAL**

---

PLEASE TAKE NOTICE that Plaintiff-Appellant Waukegan Potawatomi Casino, LLC, by its attorney, Freeborn & Peters LLP, hereby appeals to the Appellate Court of Illinois for the First District, pursuant to Supreme Court Rule 303, from an order of the Honorable Judge Cecilia A. Horan of the Chancery Division of the Circuit Court of the Cook County, Illinois, pronounced orally from the bench on May 13, 2022, and entered nunc pro tunc to that date in a written order dated May 31, 2022, granting Defendants-Appellees' motions to dismiss and dismissing Plaintiff-Appellant's Verified Complaint with prejudice.

The Circuit Court's final written order is attached hereto as **Exhibit A**. The transcript of the May 13, 2022 hearing is attached hereto as **Exhibit B**.

By this appeal, Plaintiff-Appellant Waukegan Potawatomi Casino, LLC will seek the following relief from the Appellate Court of Illinois for the First Judicial District:

1. Reversal of the Circuit Court's final order granting Defendants-Appellees' motions to dismiss and dismissing Plaintiff-Appellant's Verified Complaint.
2. Remand of this cause to the Circuit Court with directions to reinstate the Verified Complaint for further proceedings consistent with the Appellate Court's opinion, including trial on the merits as to all claims, or for such other and further relief as the Appellate Court may deem proper.

Dated: June 10, 2022

Respectfully submitted,

/s/ Dylan Smith

Michael J. Kelly

Dylan Smith

Martin Syvertsen

FREEBORN & PETERS LLP

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Firm No. 71182

*Attorneys for Plaintiff*

*Waukegan Potawatomi Casino, LLC*

# Exhibit A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

Waukegan Potawatomi Casino, LLC,  
Plaintiff,

v.

The Illinois Gaming Board,  
City of Waukegan, *et al.*,  
Defendants.

Case No. 21 CH 5784  
Calendar 9

Hon. Cecilia A. Horan  
Judge Presiding

**ORDER**

This matter came before the Court on May 13, 2022 for hearing on the Motion to Dismiss filed by the City of Waukegan and the Motion to Dismiss filed by the Illinois Gaming Board Defendants. The Court, having reviewed the parties' filings and heard argument, and otherwise being fully advised, hereby orders:

1. For the reasons stated in open court, both Motions to Dismiss are granted. The Verified Complaint is dismissed, with prejudice.
2. This is a final order, resolving all outstanding issues in the case.
3. This order is entered *nunc pro tunc* to the original hearing date of May 13, 2022.

ENTER:

/s/ Cecilia A. Horan Judge No. 2186  
Meeting ID: 956 5899 1093  
Password: 129359  
Dial-in: 312-626-6799

Prepared by:  
Alex Moe, Assistant Attorney General  
General Law Bureau  
Office of the Attorney General  
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Attorney Code 99000  
*Attorney for Defendant IGB*

Judge Cecilia A. Horan  
MAY 31 2022 ✓  
Circuit Court - 2186



# Exhibit B



**Transcript of Proceedings had in  
Waukegan Potawatomi Casino, LLC v. The Illinois  
Gaming Board; et al.**

**Taken On: May 13, 2022**

Royal Reporting Services, Inc.  
Phone: 312.361.8851  
Email: [info@royalreportingservices.com](mailto:info@royalreportingservices.com)  
Website: [royalreportingservices.com](http://royalreportingservices.com)

STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

WAUKEGAN POTAWATOMI CASINO, LLC, )  
an Illinois Limited Liability )  
Company, )

Plaintiff, )

-vs-

No. 21 CH 5874

THE ILLINOIS GAMING BOARD, et )  
al., )

Defendants. )

TRANSCRIPT OF PROCEEDINGS had at the  
hearing of the above-entitled cause via  
videoconference before Krista R. Dolgner, Certified  
Shorthand Reporter and Registered Professional  
Reporter, before the HONORABLE CECILIA A. HORAN, of  
the Richard J. Daley Center, 50 West Washington  
Street, Room 2008, Chicago, Illinois, on Friday,  
May 13, 2022, at 10:45 a.m.

1 APPEARANCES (via videoconference):

2 FREEBORN & PETERS, LLP  
3 MR MARTIN D. SYVERTSEN  
4 MR. DYLAN SMITH  
5 311 South Wacker Drive  
6 Suite 3000  
7 Chicago, Illinois 60606  
8 Phone: 312.360.6000  
9 E-mail: msyvertsen@freeborn.com  
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11 on behalf of Plaintiff;

12 OFFICE OF THE ASSISTANT ATTORNEY GENERAL  
13 MR. ALEX S. MOE  
14 100 West Randolph Street  
15 Chicago, Illinois 60601  
16 Phone: 312.814.3276  
17 E-mail: alexmoe@ilag.gov

18 on behalf of Illinois Gaming Board;

19 HEPLERBROOM, LLC  
20 MR. GLENN E. DAVIS  
21 211 North Broadway  
22 Suite 2700  
23 St. Louis, Missouri 63102  
24 Phone: 314.241.6160  
E-mail: glenn.davis@heplerbroom.com

on behalf of the City of Waukegan.

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1 THE COURT: Good morning. I am Judge Horan.  
 2 We're here on the case of Waukegan versus Illinois  
 3 Gaming Board, and this is the motion to dismiss  
 4 filed by both defendants. Do the parties want to  
 5 introduce themselves for the record, please?  
 6 MR. DAVIS: Yes. Good morning, Your Honor.  
 7 Glenn Davis. I'm counsel for the City of Waukegan.  
 8 THE COURT: Okay.  
 9 MR. SMITH: And good morning, Your Honor, Dylan  
 10 Smith for plaintiff, Waukegan Potawatomi Casino.  
 11 THE COURT: Good morning.  
 12 MR. SYVERTSEN: Good morning. Martin Syvertsen  
 13 also with Dylan Smith here.  
 14 MR. MOE: Good morning. Assistant Attorney  
 15 General Alex Moe for the Gaming Board.  
 16 THE COURT: Okay. And so I have reviewed all  
 17 the materials that the parties have provided to me,  
 18 and I'm ready to talk about the case today. It is  
 19 the defendant -- I don't know who wants to take the  
 20 lead of the two defendants. You can decide among  
 21 you. But I will allow you -- you can do it however  
 22 you want to do it. You can either give me a  
 23 full-blown hearing; you can rely -- you can just  
 24 point out the high points in your briefs; or you can

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1 give me -- you can rely on your briefs in total, if  
 2 that's what you want to do. But I will let the  
 3 defendant movants make that decision.  
 4 MR. DAVIS: Good morning, Your Honor. This is  
 5 Glenn Davis. I just have a couple of comments.  
 6 THE COURT: Sure.  
 7 MR. DAVIS: I think I will be very brief.  
 8 THE COURT: Okay.  
 9 MR. DAVIS: You know, the first thing I would  
 10 like to say is that I have the highest regard and  
 11 respect for Mr. Smith and Mr. Syvertsen. But I  
 12 think this case has gotten to the point where --  
 13 this particular case has gotten to the point where  
 14 it needs to end; and I say that because as set out  
 15 in our papers, there's really no basis for judicial  
 16 intervention at this point or what really will  
 17 require ongoing supervision of the Gaming Board and  
 18 its interactions with the City going forward.  
 19 And I think the thing of most importance,  
 20 the Court will recall that there is a pending  
 21 federal companion case, if you will, that the  
 22 Potawatomi have against the City of Waukegan.  
 23 They're not without any remedy in this situation.  
 24 There is an ongoing damages case there that's

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1 preceded this case by a couple of years. And that  
 2 case is under submission on a summary judgment  
 3 motion, and it has been for several months now.  
 4 And as I know you will also recall, we  
 5 were last here on a TRO motion; and I think you had  
 6 made some findings in the transcript and on the  
 7 record about the Potawatomis lacking standing to  
 8 complain about the Gaming Board's actions at that  
 9 point in terms of compliance with the Gambling Act  
 10 and further questioned and I think agreed with us  
 11 that the Illinois Gaming Act provides no potential  
 12 private right of action.  
 13 And I think those things contributed  
 14 ultimately to your order, which I think provided or  
 15 at least the basis of which was the lack of any  
 16 realistic likelihood of success on the merits at  
 17 that point, and I think that should -- all that  
 18 discussion, you know, informs how you should  
 19 continue to look at this case and rule today.  
 20 And, obviously, we're here on a 2-615  
 21 motion today, which is a little different. And  
 22 our -- you know, I think -- I'm not going to go  
 23 through every detail, but our basic grounds are that  
 24 the Illinois Gaming Board's actions to make the

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1 preliminary suitability determination on Full House  
 2 being the appropriate applicant to go forward with  
 3 the casino in Waukegan does moot this case.  
 4 If you look at the actual relief that is  
 5 sought on the complaint in this case, it is seeking  
 6 a declaration and injunctive relief only, seeking a  
 7 declaration that the City of Waukegan failed to  
 8 satisfy the requirements for the Gaming Board to  
 9 consider issuing a license to operate a casino in  
 10 Waukegan, and, two, the Gaming Board lacks authority  
 11 to consider issuing a license to operate a Waukegan  
 12 casino. That's from the verified complaint in the  
 13 wherefore clauses summarizing exactly what is  
 14 requested.  
 15 Now, there are other paragraphs that say  
 16 among other things or in addition or this is  
 17 including but not limited to, but, you know, I don't  
 18 think there's any question that what the Potawatomi  
 19 are seeking in this case is to find that the City  
 20 violated its obligations somehow under the Illinois  
 21 Gambling Act and the Illinois Gaming Board somehow  
 22 lacked authority to act based on that, and it's  
 23 just -- those are purely issues of law; and I don't  
 24 think there's any basis to find anything other than

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1 the broad grant of authority given to the Illinois  
 2 Gaming Board to conduct its affairs and to deal with  
 3 all civil matters related to its functions.  
 4 Looking at 230 ILCS 10/5(b)(2), the Gaming  
 5 Board has the authority to conduct all hearings  
 6 pertaining to civil violations of this Act or rules  
 7 and regulations promulgated hereunder, has extensive  
 8 authority, granting the board all powers necessary  
 9 and proper to fully and effectively execute the Act.  
 10 So we have a situation where it has  
 11 decided that the City can move forward with the Full  
 12 House team on their proposal. The process that has  
 13 gone forward, you know, the parties had every chance  
 14 to challenge with the Illinois Gaming Board up until  
 15 the time it made its determination. If it had an  
 16 objection, to do something, then certainly that  
 17 avenue would have been open to them. But the  
 18 Illinois Gaming Board has spoken, and it is moving  
 19 forward.  
 20 Now, the Potawatomis seem to want ongoing  
 21 supervision of this case, and they bring up matters  
 22 that are totally outside of the pleadings about  
 23 adjustments in some of the micro terms of the final  
 24 dealings between the City and Full House on real

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1 with these resolutions that they complain about that  
 2 are incomplete in their mind. And so, you know, we  
 3 think this case fails on multiple counts.  
 4 So as a declaratory judgment action in and  
 5 of itself, you know, at this point there really is  
 6 not an actual controversy concerning anything that  
 7 the Gaming Board has before it; nor given this  
 8 no lack of private right of action and standing  
 9 issues is the Potawatomi appropriately an interested  
 10 party in any such controversy. So we adhere to, you  
 11 know, what we have written in our briefs, and I  
 12 think those things speak for themselves. I think  
 13 they are purely questions of law.  
 14 You have to look at the actual relief  
 15 that's requested and not buy into this being sort of  
 16 an open-ended jurisdictional effort to keep this  
 17 case alive to keep picking at anything further that  
 18 goes on between the City of Waukegan and the Full  
 19 House group in progressing with their project.  
 20 It is no doubt true that down the road  
 21 there will be final approval once the Full House  
 22 facility is built and it's demonstrated capable,  
 23 ready to go, and exists, and the Gaming Board at  
 24 that point will make its final decision. That's the

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1 estate and such. And I don't think you should take  
 2 into account those things that have taken place  
 3 since the Gaming Board's determination. But if you  
 4 do, I mean, I think these are nothing but ordinary,  
 5 normal developments that are going to coincide with  
 6 the progression of a development project for a major  
 7 casino. So I don't think that's fair to bring that  
 8 up and consider it; but beside the fact, it doesn't  
 9 really address any of the legal arguments that we  
 10 have made as to why this case should be dismissed.  
 11 The Gaming Board's actions to date have  
 12 really mooted the relief that is requested on the  
 13 face of the complaint in this case. You know, the  
 14 Gaming Board and Waukegan are dutifully moving  
 15 forward as appropriate. There's nothing left to  
 16 enjoin at this point. Even if there was, you know,  
 17 something there, there really is no private right of  
 18 action provided for in the Gaming Act to support a  
 19 cause of action or a claim for relief on this.  
 20 And as we discussed at some length in the  
 21 prior hearing, you know, we continue to maintain  
 22 that the Potawatomi lack standing because  
 23 determinations were made on who was going to be  
 24 certified prior to, you know, anything having to do

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1 way it works. But that doesn't provide an ongoing  
 2 basis to have a dis- -- you know, I don't want to  
 3 say disgruntled -- I want to say excluded  
 4 participant in the process because they weren't  
 5 approved -- standing by and picking at it with a  
 6 declaratory judgment injunctive claim which appears  
 7 on the face of how this is proceeding to have no  
 8 logical end.  
 9 And so there really isn't any current  
 10 actual pending controversy. And I don't want to go  
 11 back over all of the arguments over the -- unless  
 12 it's addressed, you know, in some fulsome, more  
 13 fulsome manner by Mr. Smith again. But, you know,  
 14 the business about the propriety of the actual  
 15 resolutions that were submitted and used, those  
 16 things we don't -- we certainly don't agree with  
 17 their position, but I do want to remind you that  
 18 this -- the provisions that we're dealing with here  
 19 on submission of these resolutions is completely --  
 20 you know, their argument completely turns it on its  
 21 head.  
 22 The provision about negotiation or  
 23 preparation of the resolutions is just to ensure  
 24 that the applicant has negotiated in good faith and

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1 has produced a proposal that is meaningful and can  
 2 be accomplished. And the process that the City of  
 3 Waukegan provided, while it wasn't willing to  
 4 negotiate every detail with every participant -- it  
 5 would be illogical to do that -- up until the time  
 6 that someone is selected, it did have multiple  
 7 sessions, hearings with every applicant.  
 8 Everyone had their chance to have their  
 9 say. In fact, the Potawatomi had their chance to  
 10 have their say twice because they sought  
 11 reconsideration of the denial of their proposal,  
 12 which was granted. They were, again, voted down for  
 13 a second time.  
 14 So there is no lack of good faith on the  
 15 part of the City in dealing with their proposal.  
 16 You can quibble with the terms of the resolutions  
 17 all you wish, but it turns the whole situation on  
 18 its head because those resolutions are required to  
 19 make sure the City can certify that this is a  
 20 meaningful, realistic proposal. And it had that  
 21 information. It had sufficient information to make  
 22 those representations based on its resolutions that  
 23 it provided.  
 24 So I think that's all I will say about

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1 that; and, otherwise, unless something else comes up  
 2 that I feel a need to comment on, I think I will  
 3 just stand on our briefs.  
 4 THE COURT: Okay. Thank you, Mr. Davis.  
 5 Mr. Moe?  
 6 MR. MOE: Thank you, Your Honor. I won't  
 7 belabor the points in our papers. I know you have  
 8 read them and have had extensive experience with  
 9 this case at other procedural postures. If Your  
 10 Honor has questions about the mootness or private  
 11 right of action arguments that we addressed, I would  
 12 be happy to answer them.  
 13 With respect to standing though, I would  
 14 raise one small procedural nugget that was not  
 15 addressed in the papers. Specifically, the City of  
 16 Waukegan raises standing in the 615 context as a  
 17 challenge to whether plaintiff has sufficiently set  
 18 forth a cause of action for declaratory judgment.  
 19 The board has raised standing as a 619(a)(9)  
 20 affirmative matter.  
 21 At the end of the day, I think the  
 22 arguments are effectively the same. I don't know  
 23 whether the specific vehicle affects the outcome. I  
 24 certainly don't believe it changes the legal

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1 outcome, which is why I'm not going into the  
 2 standing argument here. But I did want to identify  
 3 that though both the City and the board have raised  
 4 it in slightly different vehicles, it is  
 5 substantially the same argument. And with that,  
 6 unless Your Honor has further questions, I would  
 7 rest.  
 8 THE COURT: I don't have any further questions.  
 9 Mr. Smith, I am happy to hear your  
 10 argument.  
 11 MR. SMITH: Thank you, Judge Horan. And I'll  
 12 just add, given Mr. Davis's kind words, that the  
 13 respect is certainly mutual; and this case is  
 14 certainly an example of the fact that, you know,  
 15 counsel can zealously represent their clients and  
 16 still get on, get on well; and I also want to  
 17 acknowledge Assistant Attorney General Moe for  
 18 jumping into the breach here. I know he is maybe  
 19 the third assistant on the file. So we appreciate  
 20 him making himself available so we can have the  
 21 hearing.  
 22 And, Judge Horan, I will try to hit the  
 23 high points and be brief, not only because I know  
 24 from our past appearances before you that you pay

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1 careful attention to the papers, but also because  
 2 I'm, as you may hear in my voice, on the upswing  
 3 from some illness; and I think no one wants to hear  
 4 me as my voice deteriorates. But let me try to hit  
 5 the high points.  
 6 On mootness, Judge, one thing I think is  
 7 important to point out is that the parties do cite  
 8 the same standard. The City in its reply brief  
 9 agrees that the standard is whether it's impossible  
 10 for the court to grant effectual relief. And,  
 11 respectfully, I understand the points the City has  
 12 made, but as a legal matter, given this standard,  
 13 this case is not moot.  
 14 And the request for relief includes a  
 15 declaration that the Gaming Board doesn't have  
 16 authority to issue a license. The Court can still  
 17 do that. No license has been issued. You know,  
 18 again, taking AG Moe's point about the procedural  
 19 issues, I do think the mootness question is one  
 20 where the City itself, when they talk about what the  
 21 Gaming Board did after the filing of the complaint,  
 22 there's some additional matter in there.  
 23 I won't get into all of that, but there's  
 24 no real -- there hasn't been a lease signed. No

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1 license has issued. A license will not issue for  
 2 some years, and the case is not moot.  
 3 I think what you're really hearing about  
 4 may be arguments that could be relevant to the  
 5 Court's exercise of its equitable discretion. But  
 6 it's not a basis for dismissal; and without  
 7 repeating the arguments, Judge, I would point you to  
 8 pages 7 to 8 of our brief where we cite in  
 9 particular Provena Health and the Pierce Downer's  
 10 case. If there was not mootness there where there  
 11 was an issue about the issuance of a certificate of  
 12 need for a hospital, and millions of dollars had  
 13 already been spent towards construction, and yet the  
 14 appellate court said the case wasn't moot, we're  
 15 definitely not in mootness territory here. And,  
 16 Judge, I will point out that neither of the  
 17 defendants addressed the authority we cited on those  
 18 pages in their reply briefs.  
 19 Judge, with regard to the issue of  
 20 standing and whether there's a private right of  
 21 action, I'm going to try to discuss those together  
 22 because I do think to some extent they blend  
 23 together legally and to a certain extent factually.  
 24 Let me quickly address the legal framework.

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1 We cite, and the City takes us to task for  
 2 this, primarily cases from the public bidding sphere  
 3 and competitive bidding, that prong of public  
 4 contracting. And, you know, the City's answer to  
 5 that is, one, well, those cases are about  
 6 competitive bidding. This was a different type of  
 7 public contracting process. And that's true. But  
 8 usually one thing you do when you look at case law  
 9 is you ask, okay, well, do those principles apply  
 10 here? And I'm talking about these cases, Cardinal  
 11 Health, STANLEY Magic Door, and L.E. Zannini cited  
 12 in our brief.  
 13 And, Judge, we would submit that there are  
 14 sort of three principles that come out of those  
 15 cases that are applicable here. One is that just  
 16 because a statutory regime primarily benefits the  
 17 public doesn't mean that there aren't protections or  
 18 ways in which participants in a statutorily  
 19 prescribed public contracting process is laid out.  
 20 Second, a recognition that the public  
 21 ultimately benefits if the standing of participants  
 22 in that process is recognized, even if it's  
 23 cumbersome or costly in the immediate case before  
 24 the Court because it's recognized that those

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1 participants are in the best position and most  
 2 likely to try to ensure compliance with the  
 3 legislature's statutory scheme.  
 4 And the third principle that comes out of  
 5 those cases that really is applicable here is that  
 6 when a municipality invites participation in a  
 7 statutorily prescribed public contracting process,  
 8 there is an enforceable expectation that the City's  
 9 process is going to comply with that statute. So,  
 10 Judge, we would submit that while those cases arise  
 11 from competitive bidding regimes, no doubt; those  
 12 principles really apply, if anything, with greater  
 13 force here.  
 14 Now, here's the other thing the City said  
 15 about those cases in its papers, which is  
 16 essentially those cases really are more about  
 17 standing than whether there's a private right of  
 18 action. For a couple of reasons I don't think  
 19 that's a fair response. One, because the test for  
 20 whether there's standing is a legal matter that sort  
 21 of overlaps with the first couple of factors of  
 22 whether there's a private right of action; you know,  
 23 the issue of whether this is intended to benefit the  
 24 plaintiff; two, what these cases, Cardinal Health or

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1 Cardinal Glass -- I'm sorry -- STANLEY Magic Door,  
 2 and L.E. Zannini are talking about, they are framed  
 3 in terms of standing. But those cases are also  
 4 clearly identifying a private right of action  
 5 because, after all, there wouldn't have even been a  
 6 standing issue if the statutes identified these  
 7 particular plaintiffs as having a right of action.  
 8 That's the whole essence of needing to imply a  
 9 private right of action.  
 10 And, Judge, if there were any doubt, I  
 11 would point the Court to the L.E. Zannini case that  
 12 we cite, which is 138 Ill. App. 3d 467. And at  
 13 page 477 of that opinion, the Second District draws  
 14 a distinction between a case called Cook, which  
 15 involved the Workers' Compensation Act. And the  
 16 Court distinguishes Cook, and one of the things it  
 17 says is, you know, okay, in Cook we looked at  
 18 whether there was an implied private right of  
 19 action.  
 20 And this is -- I'm quoting the Court now.  
 21 "Although the Court found that the plaintiff was  
 22 within the group the statute was designed to  
 23 protect, it refused to recognize an implied cause of  
 24 action, noting that the Workers' Compensation Act



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1 itself provided numerous remedies. The same cannot  
 2 be said in the instant case, for the School Code  
 3 contains no remedy for an unsuccessful bidder who  
 4 alleges a violation of Section 1021."  
 5 And it goes on. "As the Court observed in  
 6 Cardinal Glass, securing compliance with the statute  
 7 will, as a practical matter, best be served by  
 8 granting standing to successful" -- I'm sorry -- "to  
 9 unsuccessful bidders."  
 10 So, again, taking that principle, you  
 11 know, the very fact that there aren't prescribed  
 12 remedies for someone in Potawatomi's position is a  
 13 factor here in favor of at least considering whether  
 14 to imply a private remedy; and, you know, as is  
 15 possible for any litigant on either side of this  
 16 issue, both briefs cite cases either, you know,  
 17 expressing caution about implying private remedies  
 18 or pointing out that it's something that courts in  
 19 Illinois do. I think it's clear, Judge, that the  
 20 Illinois Supreme Court has not gotten circuit courts  
 21 out of the business of deciding whether it's  
 22 appropriate to imply private remedies.  
 23 Now, let me address the factual points,  
 24 which I think was the focus of Mr. Davis's argument.

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1 There's a strain in the City's brief, and I think  
 2 the State picked up on this, that argues that  
 3 basically noncompliance with the statute could have  
 4 no bearing on unselected applicants. This is really  
 5 part of the standing argument, but I think it bleeds  
 6 into the private right of action argument.  
 7 And the problem factually with the  
 8 defendants' argument there is it assumes that there  
 9 was selection and then certification. But here as a  
 10 practical matter, certification was the selection.  
 11 That's what the City Council was voting on was  
 12 resolutions that were before it that are attached as  
 13 exhibits to our complaint, was whether to certify  
 14 these applicants. And they were voting based on  
 15 these defective resolutions.  
 16 And, again, Judge, the requirement --  
 17 Mr. Davis suggested we're turning it on -- the  
 18 requirements on their head because the requirement  
 19 to negotiate in good faith is really something that  
 20 is for the City's protection, that applicants  
 21 negotiate in good faith. That may well be true, but  
 22 that's only one of the requirements in the statute  
 23 which, you know, you have sort of seen multiple  
 24 times now and is quoted in our brief.

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1 There's a requirement of mutual agreement  
 2 on certain details concerning the casino proposal,  
 3 not, you know, mutual agreement in "general terms"  
 4 as the City inserted into its resolutions. And  
 5 that's what defined what the finish line of this  
 6 process could be, again. And that impacts -- that  
 7 impacts the entire process.  
 8 If the City needs to reach some meeting of  
 9 the minds with the applicants and not just do what  
 10 the well-pleaded allegations of the complaint say  
 11 the City did, which was basically, look, we're going  
 12 to send the proposals up to the Gaming Board; it's  
 13 going to decide; and then we will negotiate later.  
 14 Those are two very different processes, Judge.  
 15 And what I would also say is, you know, I  
 16 think the standing argument, while it's framed as a  
 17 legal argument, it does take on the element of a  
 18 factual argument related to causation. Even if, you  
 19 know, the City may not -- I'm sure they won't --  
 20 concede my point that, you know, certification and  
 21 selection were one and the same here, but that's a  
 22 factual point. And, in fact, the allegations of the  
 23 complaint and, in fact, what is true is that, you  
 24 know, it wasn't like Potawatomi was winnowed out at

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1 some earlier stage. They were there in the voting  
 2 at the end on these certification resolutions.  
 3 And I think for purposes of these motions  
 4 to dismiss, the Court really needs to assume that  
 5 this process was not compliant with the statute.  
 6 And, you know, whatever arguments the defendants are  
 7 making in their briefs, they aren't and they  
 8 couldn't, and to their credit they are not arguing,  
 9 that the well-pleaded allegations of the complaint  
 10 fail to set out noncompliance with the statute. I  
 11 mean, after all, we're quoting or paraphrasing  
 12 deposition testimony from the City's former  
 13 corporation counsel.  
 14 So what went on clearly is not the  
 15 procedure the legislature prescribed. And, in fact,  
 16 I know Mr. Davis doesn't want me to talk about  
 17 current events; but, again, on this procedural  
 18 nicety, if we're talking about an additional  
 19 affirmative matter, the City only just last week  
 20 entered into a nonbinding memorandum that was a  
 21 framework for future negotiations. Again, whether  
 22 you're talking about mootness or standing, there is  
 23 no claim by the City; and, again, they couldn't --  
 24 or the Gaming Board -- that there's a lease or a

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1 host community agreement or any of that.  
 2 Look, I understand that there is a feeling  
 3 that the way the statute was drafted wasn't all that  
 4 practically expedient, and I understand that the  
 5 City is impatient to move forward. I understand the  
 6 Gaming Board is anxious to move forward. I believe  
 7 that, you know, there's a desire within the  
 8 executive branch of the state to get these casinos  
 9 up and running. But, you know, what is expedient  
 10 and desired by political actors is not necessarily  
 11 what the legislature prescribed.  
 12 You know, there is a rule of law here.  
 13 And, you know, the last sort of factual point and  
 14 legal point I would make would be to focus on the  
 15 Illinois Gaming Board. It just is not accurate for  
 16 the reasons that I just described to somehow try to  
 17 disentangle the Gaming Board's willingness to accept  
 18 these certifications from the harm to Potawatomi  
 19 from not having the opportunity to participate in  
 20 the process as the legislature prescribed it because  
 21 if the Gaming Board had recognized the limits on its  
 22 authority, the Waukegan City Council could not have  
 23 declared game over.  
 24 And, Judge, one of the points that both

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1 the City and the IGB make, that they believe is a  
 2 point in their favor, I would submit actually cuts  
 3 against them as a legal matter. There's, you know,  
 4 been a fair amount of discussion both at this stage  
 5 and in the earlier proceedings about the idea that  
 6 the Gaming Board has exclusive authority over  
 7 gambling, raw discretion. That makes the language  
 8 of the statute we're looking at, the gaming  
 9 expansion law, even more striking.  
 10 The board shall consider issuing a license  
 11 only after the corporate authority of the  
 12 municipality has certified to the board the  
 13 following -- mutually agreed on this, mutually  
 14 agreed on that. That's a pretty striking and  
 15 explicit statement by the legislature circumscribing  
 16 the Gaming Board's authority in the context of a  
 17 statute where, yes, the Gaming Board has a lot of  
 18 authority over gaming.  
 19 So what we're talking about here is an  
 20 express legislative restriction on the Gaming  
 21 Board's authority. And, Judge, we would  
 22 respectfully submit that the arguments that the City  
 23 and the Gaming Board have advanced do not allow the  
 24 Court to dismiss this complaint as matter of law.

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1 And beyond that, we would rest on the papers, Judge.  
 2 THE COURT: Mr. Davis, would you like a brief  
 3 reply?  
 4 MR. DAVIS: Yeah, just a couple of things for  
 5 Your Honor. I think the striking statement here or  
 6 the actual overriding of legislative choice is the  
 7 wholesale importation of public bidding, competitive  
 8 bidding principle cases into this mix where you have  
 9 by ordinance and by statute specific requirements  
 10 and things that are occurring. And here we're  
 11 dealing specifically with this Illinois Gaming Act  
 12 and then this particular statute authorizing this  
 13 issuance of this license.  
 14 And the legislature knows what it's doing  
 15 in this arena, and the Illinois Gaming Board knows  
 16 what it's doing in this arena, and it does not  
 17 provide anywhere for any right of action. It  
 18 doesn't authorize some broad protection for  
 19 participants outside of a normal request for  
 20 proposal situation. So this statute -- and I don't  
 21 think this is really contested -- is enabling  
 22 legislation. This is simply enabling legislation  
 23 that -- and the cases strongly support -- you know,  
 24 typically do not provide for private right of

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1 action.  
 2 We have never argued that the Court is not  
 3 in a position to address the issue of whether or not  
 4 an implied right of action exists. What we're  
 5 saying is that there just is no basis to imply a  
 6 private right of action in the setting that we are  
 7 examining here.  
 8 So they're not without their remedy. They  
 9 talk about, you know, the absence of remedies.  
 10 They're pursuing aggressively their remedies in  
 11 federal court, and that's ongoing.  
 12 You know, the Illinois Gaming Board, if it  
 13 had some problem with these resolutions, would have  
 14 said something, would have done something. They're  
 15 not unsophisticated actors in this situation. And  
 16 so, you know, they were certainly not disentangled  
 17 or entangled, however you want to put it. They were  
 18 very present in this process and acted upon, you  
 19 know, what was provided to them and understood fully  
 20 the process it went through.  
 21 Finally, you know, sort of the underlying  
 22 implication is here that somehow the Potawatomi were  
 23 excluded from something; and, you know, whatever  
 24 process was employed was the same process that

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1 resulted in multiple, multiple applicants' proposals  
 2 being submitted to the Illinois Gaming Board; and in  
 3 the end, only the Potawatomi's was the one that was  
 4 not submitted, and that informs what's really going  
 5 on.  
 6 But be that as it may, you know, the  
 7 Gaming Board received multiple proposals. It saw  
 8 the resolutions dealing with them. In our -- just  
 9 so we're clear, in our judgment there's nothing  
 10 wrong with those -- you know, those documents. They  
 11 completely satisfy what was required of the City.  
 12 The City made a good faith effort to do everything  
 13 required of it under the statute, to go through  
 14 them, and have put together a rational process to  
 15 comply with it and went through those steps. And it  
 16 is just incorrect to suggest that somehow the  
 17 Potawatomi were somehow excluded in that process  
 18 altogether. So I'll with that just thank you for  
 19 your time.  
 20 THE COURT: Thank you, Mr. Davis. Mr. Moe?  
 21 MR. MOE: Thank you, Your Honor. I would  
 22 briefly address the distinction between the standing  
 23 and private right of action arguments. I think I  
 24 agree that there is some overlap in terms of the

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1 legislature in establishing the statutory scheme and  
 2 so forth.  
 3 And here in (e)(5), as plaintiff  
 4 characterized it, there is substantial gatekeeping  
 5 authority. It seems fairly clear that no private  
 6 right of action is necessary here because the  
 7 statute is fully functional without it; and as a  
 8 result, plaintiff lacks standing.  
 9 And as a final bit there, I would observe  
 10 that the need to imply a private right of action  
 11 necessarily acknowledges that there is no existing  
 12 right of action, which goes back to the 615  
 13 arguments with respect to whether there's a hook  
 14 here for plaintiff to invoke this Court's  
 15 jurisdiction in the first place. So, for that and  
 16 the reasons set forth in the papers, we would  
 17 request that Your Honor dismiss this case with  
 18 prejudice. Thank you.  
 19 THE COURT: All right. Thank you, everybody.  
 20 There's a lot going on here; isn't there? You know,  
 21 to really get to the point, I am still finding that  
 22 there's a problem with standing; and I understand  
 23 that -- I think Mr. Smith is making an argument that  
 24 somehow the Potawatomi can act as members of the

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1 issues on the table. But both the standing and  
 2 private right of action arguments arise from  
 3 different legal bases. There is some overlap in the  
 4 issues, but not total overlap.  
 5 With respect to standing, plaintiff  
 6 acknowledges -- and this is in the response on  
 7 page 14 -- that there is "significant gatekeeping  
 8 authority" that has been issued to the City under  
 9 Subsection (e)(5). And I think that's telling here  
 10 because that's an acknowledgment of really what the  
 11 core of the standing argument is, namely, that with  
 12 respect to the board, plaintiff never really had a  
 13 seat at the table because the application was never  
 14 certified in the first place. That's the standing  
 15 in a nutshell.  
 16 The private right of action argument  
 17 extends far beyond that, and I think one of the  
 18 cases is I believe was cited by plaintiff in the  
 19 response papers -- this is the Channon case,  
 20 C-H-A-N-N-O-N -- goes through the elements in some  
 21 detail; and to imply a private right of action, that  
 22 goes far beyond any standing investigation. It gets  
 23 into the purpose of the statute. It gets into the  
 24 history of the statute, the intentions of the

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1 general public in making this complaint. But  
 2 really, the complaint -- I'm looking at, you know  
 3 paragraphs 52 and 53 -- talk about irreparable  
 4 injury and the relief requested here and how they  
 5 are going to suffer irreparable injury; but the  
 6 injury that they are really seeking or the relief --  
 7 the relief that they're seeking, if it was granted,  
 8 would not give them really the relief that they  
 9 want, which is to have them be able to participate,  
 10 again, I suppose in the process. Right?  
 11 And so I do have a problem with standing.  
 12 I think as pleaded, the Potawatomi at this point,  
 13 given the facts and given the law, lack standing to  
 14 proceed with this lawsuit; and so, for that reason I  
 15 am going to dismiss the complaint. I don't know  
 16 that it's impossible that they can plead that they  
 17 have standing because, you know, then we do get into  
 18 the mootness argument. But, yeah, I just don't see  
 19 that any relief that they would be given would have  
 20 any impact on their application.  
 21 So I do -- you know, the standing and the  
 22 actual controversy piece of it I think are a  
 23 problem. So I will dismiss the claim, and I will  
 24 dismiss it with prejudice. And, you know, I know

1 that there's another case out there under which  
2 they're seeking relief, and perhaps they can obtain  
3 some relief under that, the federal lawsuit; but  
4 here I just don't see it, and so that's my ruling  
5 today. Okay? All right.

6 MR. DAVIS: Thank you, Your Honor.

7 THE COURT: Then that -- I think that -- Does  
8 that dispose of the case in its entirety?

9 MR. DAVIS: Yes.

10 THE COURT: It does. Okay. All right. Very  
11 good. Then whoever prepares the order can indicate  
12 that the case is disposed of.

13 MR. SMITH: Thank you, Your Honor.

14 MR. DAVIS: Thank you, Judge.

15 THE COURT: All right. Have a nice day.

16 MR. MOE: Thank you, Your Honor.

17 (Proceedings concluded at  
18 11:31 a.m.)  
19  
20  
21  
22  
23  
24

1 STATE OF ILLINOIS )  
 ) SS:  
2 COUNTY OF C O O K )

3

4 I, KRISTA R. DOLGNER, a Certified  
5 Shorthand Reporter of the State of Illinois, do  
6 hereby certify that I reported in shorthand the  
7 proceedings had at the hearing aforesaid and that  
8 the foregoing is a true, complete, and correct  
9 transcript of the proceedings of said hearing as  
10 appears from my stenographic notes so taken and  
11 transcribed by me.

12 IN WITNESS WHEREOF, I do hereunto set my  
13 hand at Chicago, Illinois.

14

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22 CSR License No. 084-002878.

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<b>wasn't</b> 11:3 15:14 21:24 23:3	<b>works</b> 10:1	<b>312.361.8861</b> 32:19	
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	<u>Z</u>	<b>5</b> 28:9 29:3	
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	<b>zealously</b> 13:15	<b>52</b> 30:3	

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on June 10, 2022, I caused the foregoing **Notice of Appeal** to be electronically filed via the Court's electronic filing system by using the Odyssey eFileIL system, and to be served by email on counsel of record at the email addresses of record indicated below:

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**Illinois Gaming Board**

Alex S. Moe  
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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Dylan Smith

Dylan Smith



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

<p>Waukegan Potawatomi Casino, LLC, Plaintiff,</p> <p>v.</p> <p>The Illinois Gaming Board, City of Waukegan, <i>et al.</i>, Defendants.</p>	<p>Case No. 21 CH 5784 Calendar 9</p> <p>Hon. Cecilia A. Horan Judge Presiding</p>
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**ORDER**

This matter came before the Court on May 13, 2022 for hearing on the Motion to Dismiss filed by the City of Waukegan and the Motion to Dismiss filed by the Illinois Gaming Board Defendants. The Court, having reviewed the parties' filings and heard argument, and otherwise being fully advised, hereby orders:

1. For the reasons stated in open court, both Motions to Dismiss are granted. The Verified Complaint is dismissed, with prejudice.
2. This is a final order, resolving all outstanding issues in the case.
3. This order is entered *nunc pro tunc* to the original hearing date of May 13, 2022.

ENTER:

/s/ Cecilia A. Horan      Judge No: 2186  
Meeting ID: 956 5899 1093  
Password: 129359  
Dial-in: 312-626-6799

4569?  
*Nunc pro tunc*

Judge Cecilia A. Horan  
MAY 31 2022  
Circuit Court - 2186



IN THE APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT  
SECOND DIVISION

WAUKEGAN POTAWATOMI CASINO, LLC, an Illinois )  
limited liability company, )  
 )  
Plaintiff-Petitioner, )

v. )

No. 1-21-1561

THE ILLINOIS GAMING BOARD, an Illinois administrative )  
agency, and, in their official capacities, CHARLES )  
SCHMADEKE, Board Chairman, DIONNE R. HAYDEN, Board )  
Member, ANTHONY GARCIA, Board Member, MARC E. )  
BELL, Board Member, and MARCUS FRUCHTER, Board )  
Administrator, and the CITY OF WAUKEGAN, an Illinois )  
municipal corporation, )

ORDER

Upon consideration of Plaintiff-Petitioner Waukegan Potawatomi Casino, LLC's petition for review of order denying temporary restraining order filed pursuant to Illinois Supreme Court Rule 307(d), and upon consideration of the responses filed thereto,

IT IS HEREBY ORDERED THAT:

Plaintiff-Petitioner Waukegan Potawatomi Casino, LLC's petition for review of order denying temporary restraining order filed pursuant to Illinois Supreme Court Rule 307(d) is DENIED.

**ORDER ENTERED**

James Fitzgerald Smith  
Presiding Justice

DEC 16 2021

**APPELLATE COURT FIRST DISTRICT**

Terrence Lavin  
Justice

Cynthia Y. Cobbs  
Justice



4. This case is set for status on February 1, 2022, at 9:30 a.m. via Zoom, which may be accessed as follows:

Copy and paste the link below:

<https://circuitcourtofcookcounty.zoom.us/j/95658991093?pwd=VUYvQUZxcTA2K2x4YUhednpMTFBIQT09>

Alternatively, use the following Zoom log-in number and password:

**Meeting ID: 956 5899 1093**

**Password: 129359**

Alternatively, dial-in by calling **(312) 626-6799**.

ENTER:

/s/ Cecilia A. Horan Judge No. 2186

Meeting ID: 956 5899 1093

Password: 129359

Dial-in: 312-626-6799

Order Prepared By:

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*Attorneys for Plaintiff*

**IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CHANCERY DIVISION**

WAUKEGAN POTAWATOMI CASINO, LLC, )  
an Illinois limited liability company, )

Plaintiff, )

v. )

THE ILLINOIS GAMING BOARD, an Illinois )  
administrative agency, and, in their official )  
capacities, CHARLES SCHMADEKE, Board )  
Chairman, DIONNE R. HAYDEN, Board )  
Member, ANTHONY GARCIA, Board Member, )  
MARC E. BELL, Board Member, and )  
MARCUS FRUCHTER, Board Administrator, )  
and the CITY OF WAUKEGAN, an Illinois )  
municipal corporation, )

Defendants. )

15615003

Case No. **2021CH05784**

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Waukegan Potawatomi Casino, LLC complains against defendants the Illinois Gaming Board, and, in their official capacities, Charles Schmadeke, Dionne R. Hayden, Anthony Garcia, Marc E. Bell, and Marcus Fruchter, and the City of Waukegan, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this suit to avoid irreparable harm that will result from threatened action by the Illinois Gaming Board—action for which the Board lacks statutory authority. Under the Illinois Gambling Act, the Gaming Board may consider issuing a license to operate a casino in the City of Waukegan only after the City has satisfied certain statutory prerequisites. Although the City has not satisfied those preconditions, the Board yesterday signaled its intent to act imminently on a Waukegan casino license.

FILED DATE: 11/16/2021 10:30 AM 2021CH05784

2. As discussed further below, plaintiff has been pursuing relief in federal court against the City for what plaintiff alleges was a rigged casino review process that discriminated against plaintiff and violated the Gambling Act. Evidence obtained in discovery in that federal action supports a finding that the City's casino certification process was a sham, and that the City's disregard of the Gambling Act's requirements was part and parcel of the City's plan to reach a predetermined outcome. In the federal action, a magistrate judge has scheduled a mediation between plaintiff and the City for later this month.

3. The Gaming Board's threatened action would irrevocably prejudice plaintiff's ability to remedy the City's unlawful and unfair certification process. Yet because the Board and its members enjoy Eleventh Amendment immunity from federal suit grounded in state law, plaintiff cannot seek relief against the Board in the federal action. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99-106 (1984). The relief sought here against the Board is distinct from the relief sought against the City in the federal action. The federal action challenges the validity of the City's purported certification of casino proposals to the Gaming Board. The relief sought here concerns the Board's power to issue the one potential casino license for Waukegan. If the Board moves forward on a Waukegan casino license notwithstanding its lack of authority to do so, the Board will fatally undermine any effort in the federal action to rectify the City's flawed certification process. Therefore, to preserve the safeguards the legislature built into the Gambling Act and prevent irreparable harm to plaintiff and the public interest, intervention by this Court is necessary.

#### **PARTIES**

4. Plaintiff is an Illinois limited liability company owned by the Forest County Potawatomi Community of Wisconsin, which formed plaintiff for the purpose of applying for a

license to operate a casino in Waukegan, Illinois, and developing and operating a Waukegan casino.

5. The Illinois Gaming Board (the “Gaming Board” or the “Board”) is a five-member board appointed by the Governor and confirmed by the Senate that administers a regulatory and tax collection system for riverboat casino gambling and video gaming in Illinois. The Board has a headquarters and typically holds its meetings at 160 North LaSalle Street in Chicago.

6. Charles Schmadeke is Chairman of the Gaming Board. He is named here in his official capacity.

7. Dionne R. Hayden is a member of the Gaming Board. She is named here in her official capacity.

8. Anthony Garcia is a member of the Gaming Board. He is named here in his official capacity.

9. Marc E. Bell is a member of the Gaming Board. He is named here in his official capacity.

10. The City of Waukegan (the “City”) is an Illinois municipal corporation in Lake County, Illinois.

#### **VENUE AND JURISDICTION**

11. This Court has jurisdiction over defendants pursuant to 735 ILCS 5/2-209(a)(1), (a)(14), (b)(1), and (b)(3).

12. Venue is proper in the Circuit Court of Cook County, Illinois, because, among other reasons, the Illinois Gaming Board is resident in Cook County, and because this cause of action arises from anticipated conduct of the Illinois Gaming Board in Cook County against which plaintiff seeks injunctive relief.

**GENERAL ALLEGATIONS**

**Applicable Gambling Act Provisions**

13. On June 28, 2019, Governor Pritzker signed into law Public Act 101-31, expanding gaming in Illinois. Among other things, the law, as codified in the Illinois Gambling Act, authorizes the Gaming Board to issue one license to operate a casino in the City of Waukegan, as well as licenses for a number of other municipalities where casino gambling has not previously been authorized. *See* 230 ILCS 10/7(e-5).

14. Under the Gambling Act, the Gaming Board shall consider issuing a license for a Waukegan casino “only after” the City’s corporate authority has certified to the Board that certain conditions have been satisfied. 230 ILCS 10/7(e-5).

15. Specifically, the Gaming Board may consider issuing a license “only after” the City’s corporate authority certifies “that the applicant [for a casino license] has negotiated with the corporate authority in good faith,” and that the applicant and the corporate authority “have mutually agreed” on certain specific items—the casino’s permanent location, the casino’s temporary location, the percentage of revenues that will be shared with the municipality, and any zoning, licensing, public health, or other issues that are within the jurisdiction of the municipality. 230 ILCS 10/7(e-5).

16. Further, under the Gambling Act, the City’s corporate authority must “memorialize the details concerning the proposed riverboat or casino in a resolution that must be adopted by a majority of the corporate authority . . . *before* any certification is sent to the Board.” 230 ILCS 10/7(e-5) (emphasis added).

### The City's Purported Certification of Casino Proposals

17. On July 3, 2019, the City of Waukegan issued a request for qualifications and proposals ("RFQ") soliciting proposals to develop and operate a casino in Waukegan. The RFQ's submittal requirements included a "non-refundable application fee" of \$25,000.

18. On behalf of plaintiff, the Forest County Potawatomi Community paid the required \$25,000 fee, submitted a casino proposal that met all the RFQ's submittal requirements, and, on October 11, 2019, formed plaintiff for the purpose of applying for a casino license and developing and operating a Waukegan casino.

19. On October 17, 2019, the Waukegan City Council held a special meeting to consider resolutions purporting to certify the items required by the Gambling Act as to four casino proposals. In addition to plaintiff's proposal (the "Potawatomi" proposal), the City Council voted on resolutions regarding proposals from three other would-be casino developers: Lakeside Casino LLC ("North Point"); Full House Resorts, Inc. ("Full House"); and CDI-RSG Waukegan, LLC ("Rivers"). (See City of Waukegan Thursday, October 17, 2019 Special City Council Meeting Agenda attached as Exhibit 1.)

20. The resolution that the City Council voted on with respect to the North Point casino proposal, including the accompanying exhibits referenced in the resolution, is publicly available at <https://go.boarddocs.com/il/cowil/Board.nsf/Public>, and is attached as Exhibit 2.

21. The resolution that the City Council voted on with respect to the Full House casino proposal, including the accompanying exhibits referenced in the resolution, is publicly available at <https://go.boarddocs.com/il/cowil/Board.nsf/Public>, and is attached as Exhibit 3.



22. The resolution that the City Council voted on with respect to the Rivers proposal, including the accompanying exhibits referenced in the resolution, is publicly available at <https://go.boarddocs.com/il/cowil/Board.nsf/Public>, and is attached as Exhibit 4.

23. The resolution that the City Council voted on with respect to the Potawatomi proposal, including the accompanying exhibits referenced in the resolution, is publicly available at <https://go.boarddocs.com/il/cowil/Board.nsf/Public>, and is attached as Exhibit 5.

24. At the October 17, 2019 special meeting, the City Council passed the resolutions regarding the North Point, Full House, and Rivers proposals, but did not pass the resolution regarding the Potawatomi proposal. (*See* Exhibit 6 (10/17/2019 meeting minutes).)

25. At a meeting on October 21, 2019, the City Council voted to reconsider the resolution regarding the Potawatomi proposal, but, upon reconsideration, did not pass the resolution.

### **Plaintiff's Pending Claims Against the City**

26. On October 21, 2019, plaintiff sued the City in the Circuit Court of Lake County, Illinois. As amended, plaintiff's complaint asserts claims under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Illinois Gambling Act, and the Illinois Open Meetings Act. Among other relief, plaintiff seeks a declaration that the City Council's votes on the purported certification resolutions are void, an injunction requiring the City to certify Potawatomi's proposal, and damages for the lost opportunity to develop a casino.

27. In January 2020, the City removed plaintiff's suit to the United States District Court for the Northern District of Illinois, where it is captioned *Waukegan Potawatomi Casino, LLC v. City of Waukegan*, 1:20-cv-750 (the "federal action").

28. In the federal action, the parties have completed discovery and are in the process of briefing the City's motion for summary judgment. A copy of the public version of the City's summary judgment brief in the federal action is attached as Exhibit 7. A copy of the public version of plaintiff's response brief is attached as Exhibit 8.

29. As described more fully in Exhibit 8, plaintiff alleges in the federal action that the City manipulated its entire casino certification process to favor a developer who was a political benefactor of the City's then-mayor and several City Council members. (See Exhibit 8 at 2-18.)

30. In the federal action, the City has argued that, among other defenses, that it enjoys "absolute immunity" from suit. (See Exhibit 7 at 9-12.)

31. In the federal action, mediation between the parties is currently scheduled for November 30 before a federal magistrate judge.

### **The City's Non-Compliant Certification Process**

32. Despite purporting to do so, the City did not satisfy the Gambling Act's prerequisites to Board consideration of a Waukegan casino license. In particular, upon information and belief based on (i) plaintiff's participation in the City's certification process, (ii) the attached resolutions voted on by the City Council, and (iii) the below-described testimony by the City's former corporation counsel:

a. Contrary to the representation in the City's "certifying resolutions," and the Gambling Act's requirements, the City did not negotiate in any respect with casino applicants during the RFQ process.

b. The City and the applicants the City purported to "certify" did not "mutually agree" on the items required by the Gambling Act. In fact, the City's "certifying resolutions" recited only that the City and the applicant had "mutually agreed *in general*

*terms*” on the required items. (See Exhibit 2 at 2; Exhibit 3 at 2; Exhibit 4 at 2; Exhibit 5 at 2.)

c. As the attached resolutions show, the City did not “memorialize the details concerning the proposed riverboat or casino in a resolution” adopted by the City’s corporate authority, as the Gambling act requires, and the City’s “certifying resolutions” do not purport to include any such memorialization. As noted, under the statute, such memorialization must occur “before any certification is sent to the Board.” 230 ILCS 10/7(e-5).

33. The attorney who served as the City’s corporation counsel during the period relevant to this matter has admitted at deposition in the federal action that the City did not engage in negotiations to any extent with the casino applicants during the certification process. (See Exhibit 9 (Long 4/27/2021 Tr.) at 107:19-108:7.)

34. The same former corporation counsel testified that in his view it was “fundamentally impossible” to mutually agree with the applicants on the items as to which the Gambling Act requires mutual agreement before the Gaming Board may consider issuing a casino owner’s license for Waukegan. (See Exhibit 9 (Long 4/27/2021 Tr.) at 96:5-98:6, 99:22-103:2.)

35. The City’s non-compliance with the Gambling Act was more than merely technical. Upon information and belief, the City’s decision not to negotiate with applicants reflected and facilitated the City’s plan to manipulate the casino certification process to achieve a predetermined outcome. For example, in purporting to rank casino proposals, upon information and belief, the City’s outside consultant solicited and considered supplemental information from other applicants, including Full House, but refused to consider supplemental information from plaintiff. *See Ex. 8*

at 10-11. Upon information and belief, this discriminatory treatment occurred with the knowledge of and at the direction of the City. *See id.*

36. Upon information and belief, by failing to reach agreement on details of casino proposals, the City was able to obscure contingencies and weaknesses in other parties' casino proposals. For example, upon information and belief, before the City's purported certification votes, North Point conditioned its casino proposal on being the City's sole selection, and advised the City that its proposal would be less favorable to the City if the City certified multiple proposals to the Gaming Board. (*See Exhibit 8 at 11-12.*) Yet the City's resolution for North Point does not reflect this critical qualification. (*See id.* at 15-16.)

37. Upon information and belief, the City did not negotiate with applicants because its casino certification process was a sham. Indeed, just before the formal start of the October 17, 2019 special City Council meeting, according to the sworn testimony of a City Council member in the related federal action, Waukegan Mayor Samuel Cunningham approached the City Council member and told him which proposals to vote for:

. . . as the mayor entered, he came by, he had to pass by my chair, and he said to me, these are the three that we want to send to Springfield [*i.e.*, to the Gaming Board]. Right. And that was what the vote was going to be. Right. Put those three down there.

(*See Exhibit 10 (Turner Tr.) at 46:2-47:7.*)

38. Upon information and belief, which information and belief is based on (i) the City of Waukegan's "certifying" resolutions, (ii) the above-cited testimony by the City's former corporation counsel, and (iii) plaintiff's participation in the City's certification process, the City has not even mutually agreed with any casino developer on a price or other purchase terms for the City-owned parcel that is the presumed casino site. Under the Illinois Municipal Code, sale of that

City-owned land requires approval by a three-fourths vote of the City Council (which no casino proposal received). See 65 ILCS 5/11-76-1. (*See* Exhibit 6 (10/17/2019 meeting minutes).)

39. In contrast to Waukegan, before certifying a casino proposal in October 2019, the City of Rockford mutually agreed with a casino developer on the required statutory items and memorialized the details concerning the proposed casino in a host community agreement with the developer. (*See* Exhibit 11 (Rockford City Council 10/7/2019 meeting minutes); Exhibit 12 (excerpt from 10/7/2019 City Council agenda packet including draft resolution certifying applicant, Host Community Agreement, and draft resolution approving Host Community Agreement).)

40. In Waukegan’s case, because the City has not satisfied the Gambling Act’s prerequisites, the Gaming Board lacks authority to consider issuing an owner’s license for a Waukegan casino.

### **Recent Developments Necessitating Equitable Relief Against The Gaming Board**

41. The Gambling Act provides that “[t]he licenses authorized under subsection (e-5) of this Section [including a Waukegan casino license] shall be issued within 12 months after the date the license application is submitted,” but that, “[i]f the Board does not issue the licenses within that time period, then the Board shall give a written explanation to the applicant as to why it has not reached a determination and when it reasonably expects to make a determination.” 230 ILCS 10/7(e-10).

42. As of September 2021, according to press reports, the Illinois Gaming Board had advised that it contemplated potentially giving “initial approvals” to applicants for the Waukegan and other casino licenses in January 2022. (*See* Chicago Sun Times, “Slow play? Gaming board seeks final bids for Waukegan, south suburban casinos next month—so it can decide early next

year,” Sept. 9, 2021 (available at <https://chicago.suntimes.com/2021/9/9/22665368/new-casino-south-suburbs-waukegan-illinois-gambling-gaming-board-license>) (last visited Nov. 9, 2021).

43. According to press reports, Rivers has withdrawn its Waukegan casino proposal from consideration, leaving only the North Point and Full House proposals for consideration for a Waukegan casino license by the Gaming Board.

44. Late on the afternoon of November 15, 2021, the Gaming Board posted the agenda for a special meeting scheduled for this coming Thursday, November 18, 2021, at 9:00 a.m. (See Exhibit 13.)

45. Notwithstanding the City’s failure to satisfy the statutory prerequisites to the issuance of a Waukegan casino license, the agenda for the November 18 meeting indicates that the Board will make a “Determination of Preliminary Suitability,” and will take up the issue of “Individuals, Business Entities, and Trusts as Key Persons of Waukegan Owners License Applicant found Preliminarily Suitable.” (Exhibit 13 at 3.)

46. Under the Gaming Board’s rules, after a finding of preliminary suitability, the next step in the licensure process is that “the applicant’s Riverboat Gaming Operation shall be assessed to determine its effectiveness, integrity, and compliance with law and Board standards.” Ill. Admin. Code Tit. 86, Ch. IV, Sec. 300.230(a), (e). Matters to be assessed at this stage include such things as the gaming operations manager, proposed gaming operations and use of gaming equipment, the casino facility itself, handicapped access, support facilities, internal controls and operating procedures, security operations, and staffing. Ill. Admin. Code, Tit. 86, Ch. IV, Sec. 300.230(e)(1)(A).

47. Upon information and belief, based in part on the above provisions, the Gaming Board’s finding of preliminary suitability is effectively a selection of the presumptive licensee,

which can be expected to begin development of the casino in anticipation of the Board's assessment of gaming operations.

**CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF  
(ILLINOIS GAMBLING ACT)**

48. Plaintiff incorporates the preceding paragraphs of this complaint as if fully stated here.

49. The City has failed to satisfy the statutory prerequisites for the Gaming Board to consider issuing an owner's license for a casino in Waukegan.

50. Accordingly, the Gaming Board lacks statutory authority to take any formal steps toward issuing an owner's license for a casino in Waukegan, including by issuing a determination of preliminary suitability.

51. Among other purposes, the Gambling Act is intended to maintain "public trust in the credibility and integrity of the gambling operations and the regulatory process." 230 ILCS 10/2(b). Absent the relief requested here, that purpose will be undermined.

52. Plaintiff is among the beneficiaries of the Gambling Act, and, absent the relief requested here, will suffer irreparable injury of a kind the Act was designed to prevent.

53. Absent the relief requested here, plaintiff will suffer irreparable injury for which it has no adequate remedy at law.

54. The balance of harms favors an award of equitable relief against the Gaming Board and in favor of plaintiff.

WHEREFORE, plaintiff respectfully requests that the Court:

- a. Declare that the City has failed to satisfy the requirements for the Gaming Board to consider issuing a license to operate a casino in Waukegan, Illinois;

- b. Declare that the Gaming Board lacks authority to consider issuing a license to operate a Waukegan casino;
- c. Award temporary, preliminary, and permanent injunctive relief enjoining the Gaming Board from taking formal steps to issue a Waukegan casino license, including by issuing a determination of preliminary suitability, until the City has satisfied the Gambling Act's requirements; and
- d. Grant any other relief in plaintiff's favor, and against defendants, that the Court deems just and proper.

Dated: November 16, 2021

Respectfully submitted,

/s/ Dylan Smith

Michael J. Kelly

Dylan Smith

Martin Syvertsen

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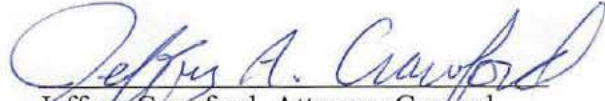
*Attorneys for Plaintiff*

*Waukegan Potawatomi Casino, LLC*



Verification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Jeffrey Crawford, Attorney General  
Forest County Potawatomi Community



# ILLINOIS GAMING BOARD

JB Pritzker • *Governor* Charles Schmadeke • *Chairman* Marcus D. Fruchter • *Administrator*

## Press Release

For Immediate Release  
October 28, 2019

### Illinois Gaming Board Receives New Casino Application Materials

**CHICAGO** –Pursuant to 230 ILCS 10/7 subsection (e-5) of the Illinois Gambling Act, the Illinois Gaming Board received application materials from the following host communities on or before 5 PM Central on October 28, 2019:

City of Danville:

- Haven Gaming, LLC

City of Waukegan:

- CDI-RSG Waukegan, LLC
- Full House Resorts, Inc.
- Lakeside Casino, LLC

City of Rockford:

- 815 Entertainment LLC

Municipalities wholly or partially located in one of the following townships of Cook County: Bloom, Bremen, Calumet, Rich, Thornton, and Worth Township (collectively “the South Suburbs”):

- City of Calumet City: Southland Live, LLC
- City of Homewood/East Hazel Crest: Wind Creek IL, LLC
- Village of Lynwood: Southland Ho-Chunk Entertainment, LLC
- Village of Matteson: South Suburban Development, LLC

Williamson County:

- Walker’s Bluff Casino Resort, LLC

As required by the Illinois Gambling Act, the Gaming Board will publicly open submitted applications for the City of Waukegan and the South Suburb applicants on October 29, 2019 at 11:30 AM in room C-500 of the Michael Bilandic Building in Chicago. The Michael Bilandic Building is located at 160 North LaSalle Chicago, IL 60601.

“The Illinois Gaming Board thanks the host communities for their submitted casino application materials and looks forward to the process of reviewing and assessing all of the documents submitted in an expeditious, ethical, independent and transparent manner, said Gaming Board Administrator Marcus Fruchter. P.A. 101-0031 provides the Board 12 months to process and determine eligibility for each applicant.

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11/16/2021	Plaintiff's Emergency Motion for a Temporary Restraining Order ("TRO") and Preliminary Injunction	C1298-C1305
11/16/2021	Plaintiff's Memorandum in Support of Emergency Motion for TRO and Preliminary Injunction	C1306-C1321
11/17/2021	Appearance of State Defendants ("Board")	C1322-C1326
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12/3/2021	Board's Memorandum in Opposition to Emergency Motion for TRO	C1331-C1345
12/6/2021	Order, setting hearing for December 7, 2021	C1346-C1347
12/6/2021	City's Motion for Leave to Exceed Page Limit for Memorandum in Opposition to Emergency Motion for TRO	C1348-C1351
12/6/2021	City's Memorandum in Opposition to Emergency Motion for TRO	C1352-C1379
12/6/2021	Plaintiff's Reply to the Board's Opposition	C1380-C1388
12/7/2021	Plaintiff's Reply to the Board's Memorandum in Opposition	C1389-C1397
12/8/2021	Order, denying Emergency Motion for TRO	C1398-C1399
12/9/2021	Plaintiff's Notice of Interlocutory Appeal	C1400-C1402

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1/14/2022	City's Motion to Dismiss Plaintiff's Verified Complaint	C1403-C1405
1/14/2022	Memorandum of Law in Support of City's Motion to Dismiss	C1406-C1507
1/28/2022	Board's Motion to Dismiss Plaintiff's Verified Complaint	C1508-C1511
1/28/2022	Board's Memorandum of Law in Support of Motion to Dismiss	C1512-C1518
2/1/2022	Agreed Order, setting briefing schedule on motions to dismiss	C1519-C1520
02/04/2022	Notice of issuance of the mandate	C1521-C1523
2/18/2022	Plaintiff's Consolidated Memorandum in Opposition to Motions to Dismiss	C1524-C1541
3/11/2022	Reply in Support of City's Motion to Dismiss	C1542-C1548
3/25/2022	Board's Motion for Extension of Time to File Reply Brief	C1549-C1554
3/30/2022	Order, granting motion for extension of time	C1555
4/13/2022	Board's Reply in Support of Motion to Dismiss	C1556-C1561
4/26/2022	Order, setting hearing on motions to dismiss	C1562
5/31/2022	Final Order, granting motions to dismiss and dismissing action with prejudice	C1563
6/10/2022	Notice of Appeal	C1564-C1589
6/24/2022	Request for Preparation of Record on Appeal	C1590

**Record of Proceedings**

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11/17/2021	Hearing regarding emergency motion for TRO	R2-R16
12/7/2021	Hearing regarding emergency motion for TRO	SR9-SR97
5/13/2022	Hearing regarding motions to dismiss	R17-R56

**CERTIFICATE OF FILING AND SERVICE**

I certify that on April 3, 2024, I electronically filed the foregoing **Opening Brief and Appendix of State Defendants-Appellants** with the Clerk of the Illinois Appellate Court, First Judicial District, using the Odyssey eFileIL system.

I further certify that the other participants in this case, named below, are registered service contacts on the Odyssey eFileIL system and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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