

IN THE SUPREME COURT OF IOWA

<p>SCE PARTNERS, L.L.C.,</p> <p>Plaintiff-Petitioner,</p> <p>vs.</p> <p>THE DISTRICT COURT FOR POLK COUNTY,</p> <p>Defendant-Respondent.</p>	<p>Supreme Court No. _____</p> <p>Polk County District Court No.: CV9254</p> <p>PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR IMMEDIATE RELIEF UNDER RULE 6.1002(4) FROM THE OPERATION AND ENFORCEMENT OF THE POLK COUNTY DISTRICT COURT'S STAY ORDER OF DECEMBER 10, 2013</p>
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**EMERGENCY RELIEF REQUESTED: LIFTING OF DECEMBER 10, 2013 STAY
ENTERED BY DISTRICT COURT AGAINST NON-PARTY SIOUX CITY
ENTERTAINMENT, INC.**

COMES NOW Petitioner SCE Partners, L.L.C. ("SCE"), pursuant to Iowa Rules of Civil Procedure 6.107(1) and 6.1002(5), and hereby Petitions for Writ of Certiorari:

1. Having lost in its first attempt to enjoin SCE from even "apply[ing]for an IRGC (land-based casino) license"¹ in Sioux City with its former non-profit gaming partner, Belle of Sioux City, L.P., tried again a year later, this time in the context of a judicial review proceeding in which SCE was not a party; this time in the context of SCE already having been granted a license five months previous; and this time in the context of SCE already having spent millions of dollars in bringing to life the downtown redevelopment vision of its non-profit partner and the elected public officials of Sioux City. As with its first unsuccessful attempt at temporary relief,

¹ District Court order of October 29, 2012, contained in filings submitted on behalf of the State of Iowa.

Belle based its request to bring this project to its knees on the false premise that its operating agreement possessed eternal vitality notwithstanding a termination date of July 6, 2012. As a result of the district court's change of mind one week ago, staying SCE of its lawfully granted license without notice or an opportunity to be heard, this state approved endeavor now stands on the precipice of disaster. To say that SCE, the City of Sioux City, and, indeed, the public, have acted in detrimental reliance on the district court's greenlighting of SCE's involvement in October 2012 only to have it "illegally" reverse course some 14 months later is an understatement.

2. The relevant parties to or impacted by these proceedings include:

- a. Sioux City Entertainment, Inc.—The current licensee with rights to develop and operate a land-based casino ("The Hard Rock Hotel and Casino") in Sioux City.
- b. Belle of Sioux City/Argosy Casino ("Belle")—The former license holder whose license was lost as a result of failed negotiations and the lack of an operating agreement between the Belle and its non-profit partner.
- c. Missouri River Historical Development, Inc. ("MRHD")—a non-profit entity, former partner of Belle, and current partner of SCE, licensed to conduct casino operations in Sioux City.
- d. The Iowa Racing and Gaming Commission ("IRGC")—The state agency charged with licensing and oversight of casino operations. Awarded licenses to Sioux City Entertainment (SCE and MRHD to develop and operate a new land-based casino in Sioux City on April 18, 2013.
- e. The City of Sioux City, Iowa—The city in which the Belle was formerly licensed to operate and in which SCE and the "Hard Rock Hotel and Casino," are currently licensed to develop and operate. The city is heavily invested in the ongoing project with SCE and will be significantly and adversely impacted by any threat to that project.

3. The background of the multiple proceedings addressed herein includes:

- a. December 2011—Belle and MRHD begin the renewal process of their respective gaming licenses.

- b. March 8, 2012—Hearing before the IRGC, no new operating agreement finalized. IRGC approves renewal, pending submission of new operating agreement to IRGC by June 7, 2012.
- c. June 7, 2012—Belle and MRHD fail to agree to a new operating agreement. IRGC, recognizing this failure, votes to accept new license applications from all interested parties, including Belle and MRHD. IRGC also extends Belle and MRHD's licenses through March 31, 2013, conditioned on an agreement to an extension of their operating agreement through that date. No such agreement was made and no extension approved as a result thereof.
- d. July 6, 2012—The expiration date of the operating agreement between MRHD and Belle, established by the terms of said agreement.
- e. July 6, 2012—Belle files its first Petition for Judicial Review, challenging the IRGC's actions. *See* Polk Co. Case No. CV 9254.
- f. August 10, 2012—Belle files a second Petition for Judicial Review, challenging the IRGC's actions. *See* Polk Co. Case No. CV 9316.
- g. August 23, 2012—Belle participates in an IRGC meeting requesting an extension of its licenses. Said request is denied by the IRGC based on the lack of an operating agreement between Belle and MRHD.
- h. September 21, 2012—Belle files a third Petition for Judicial review, again challenging the IRGC's actions. *See* Polk Co. Case No. CV 9383.
- i. September 21, 2012—Belle files a damages action against MRHD in Polk County before Judge Robert B. Hanson and also requests a temporary injunction.
- j. October 12, 2012—MRHD announces it would partner with SCE and submit an application to the IRGC to operate a casino in Sioux City. Belle simultaneously announces it will apply with a new non-profit partner.
- k. October 19, 2012—SCE files a Motion to Intervene and Resistance to Belle's request for a temporary injunction.
- l. October 29, 2012—The Iowa District Court for Polk County, Judge Robert B. Hanson, grants SCE's Motion to Intervene and denies Belle's request for a temporary injunction to halt MRDH from proceeding with any actions related to the issuance of any license to any party other than Belle or any other activities related thereto.
- m. April 18, 2013—IRGC awards SCE its gaming license.

- n. May 17, 2013—Belle files yet another, fourth, Petition for Judicial review, once again challenging the IRGC's actions. *See* Polk Co. Case No. CV 45760.
- o. August 15, 2013—IRGC rejects Belle's application for a renewal of its license, again because of its failure to enter into an operating agreement with a qualified sponsoring organization.
- p. August 16, 2013 to present—SCE breaks ground on the Hard Rock Hotel and Casino in Sioux City. Construction has been ongoing, with the foundation and structure partially completed. Millions of dollars have been expended by SCE and the City of Sioux City in detrimental reliance on the IRGC's issuance of licenses to operate. *See* Exhibit 1, Affidavit of William Warner.
- q. Present—The stay threatens the revocation of project financing, endangering the project as a whole. *See* Exhibit 1, Affidavit of William Warner.

4. Plaintiff-Petitioner SCE was unable to raise the issues addressed herein before the district court, as, although it was an indispensable party, it was not included in the underlying proceedings. However, as further addressed in the Brief filed simultaneously herewith, SCE has standing to file this writ based on the public interest and the special injury to SCE. *See Alons v. Iowa Dist. Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005).

5. SCE, a current license holder, has substantial interest in this matter and the effect of the ruling issued by the district court. SCE's substantial interest stems from the fact that the stay order issued by the district court on December 10, 2013 effectively deprives SCE of its lawfully obtained license, which has the same effect as an unconstitutional taking of property compounded by the fact that SCE was not given notice nor an opportunity to be heard. In addition, SCE has an interest as a result of the economic impact, which, as set forth in the attached Affidavits, Exhibits 1 and 2, is more than significant.

6. The Iowa District Court in and for Polk County exceeded its jurisdiction or otherwise acted illegally in the following particulars:

- a. Violated Iowa Rule of Civil Procedure 1.234, Rule 1.1508 and the fundamental

rights of SCE. SCE was and is an indispensable party to the proceedings. Due to the court's failure to include SCE, the stay order exceeds the court's jurisdiction. Essentially, the court's stay order amounts to an *ex parte* reversal of a prior court order to which SCE was a party.

- b. Misapplied the standards of 17A.19 (5) and, thereby, acted illegally.
- c. Violated one of the most basic maxims of equity of maintaining the status quo. Rather, this is a disruption—if not an earthquake—significantly affecting and prejudicing both an innocent and law abiding licensee and Siouxland as a whole.
- d. Erroneously issued the stay order, which, in effect, is essentially a ruling on the merits of a contract claim between Belle and MRHD, and which further:
 - i. Nullifies the lawful rights of a non-party;
 - ii. Is the improper vehicle by which to reach the merits;
 - iii. Flies in the face of a prior ruling in which SCE prevailed;
 - iv. Contains no findings of fact as to the unlawful conduct which merits such an extraordinary remedy; and
 - v. By its breadth and scope, is an attack on the most basic functions of administrative law and violates its most basic tenents. *See Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993) (opinion of J. Harris stating, “A court's review of agency action is severely circumscribed. The administrative process presupposes that judgment calls are to be left to the agency. Nearly all disputes are won or lost there.” (citing *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815, 815–16 (Iowa 1991))).

7. As the District Court in and for Polk County exceeded its jurisdiction and acted illegally,

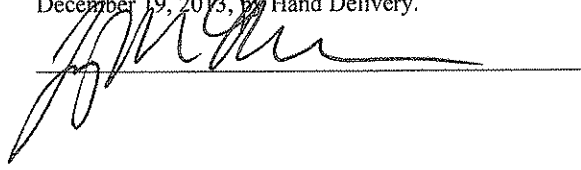
SCE respectfully requests this Court grant the instant Writ of Certiorari and reverse the Stay Order of December 10, 2013. In addition, SCE respectfully requests that the Court grant its request for immediate emergency relief and lift the stay during the pendency of review.

8. Further, for the foregoing reasons and to prevent additional and irreparable harm and prejudice to SCE, Siouxland, and the public, generally, and pursuant to Iowa Rules of Appellate Procedure 6.107(1)(f) and 6.1002(4)², Plaintiff-Petitioner SCE hereby request an emergency stay of the proceedings and the Stay Order of the District Court of Polk County issued on December 10, 2013 during the pendency of this review.

WHEREFORE Plaintiff-Petitioner SCE Partners, L.L.C., respectfully requests the Court reverse the December 10, 2013 Stay Order issued by the District Court of Polk County. In addition, while this review is pending, SCE respectfully requests that the Court immediately issue an emergency Stay of the District Court of Polk County's Order of December 10, 2013, pursuant to Iowa Rule of Civil Procedure 6.107(1)(f) to prevent further harm to Sioux City Entertainment, the State of Iowa, Woodbury County, the City of Sioux City, and the public as a whole.

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed as receiving notice on December 19, 2013, by Hand Delivery.



GREFE & SIDENT, P.L.C.

By:


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By:


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² Such requests for emergency relief under this Rule, where "it appears that rights would be lost or greatly impaired by delay," the Court may rule "at any time without awaiting a resistance." SCE requests that the Court do so here in order to prevent and/or halt the ongoing impairment of Plaintiff-Petitioner SCE's rights.

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IN THE SUPREME COURT OF IOWA

SCE PARTNERS, L.L.C.,

Plaintiff-Petitioner,

vs.

THE DISTRICT COURT FOR POLK
COUNTY,

Defendant-Respondent.

Supreme Court No. _____

Polk County District Court No.: CV9254

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI AND
REQUEST FOR IMMEDIATE RELIEF
UNDER RULE 6.1002(4) FROM THE
OPERATION AND ENFORCEMENT OF
THE POLK COUNTY DISTRICT
COURT'S STAY ORDER OF
DECEMBER 10, 2013**

**EMERGENCY RELIEF REQUESTED: LIFTING OF DECEMBER 10, 2013 STAY
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ENTERTAINMENT, INC.**

COMES NOW Petitioner SCE Partners, L.L.C. ("SCE"), pursuant to Iowa Rules of Civil Procedure 6.107(1) and 6.1002(5), and for its brief in support of its Petition for Writ of Certiorari, states to the Court as follows:

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	SCE IS ENTITLED TO CERTIORARI.....	3
III.	THE IOWA DISTRICT COURT OF POLK COUNTY'S STAY ORDER OF DECEMBER 10, 2013 EXCEEDED THE COURT'S JURISDICTION AND CONSTITUTES ILLEGAL ACTION	3
	A. The Order Exceeded the Court's Jurisdiction, as SCE is an Indispensable Party	3
	B. Illegalities	5

1. <u>Misapplication of 17A.19(5) Factors</u>	5
i. <i>The District Court Erred in its Analysis of Factor Three, the substantial harm to other parties to the proceedings</i>	6
ii. <i>The District Court Erred in its Analysis of Factor Four, the public's interest and reliance on the agency</i>	7
iii. <i>The District Court Erred in its Analysis of Factor One, the likelihood Belle may ultimately prevail</i>	9
iv. <i>The District Court Erred in its Analysis of Factor Two, whether Belle Will Suffer Irreparable Harm Absent a Stay Order</i>	11
2. <u>The District Court's Stay Order Violates the Basic Maxim of Equity—Maintain the Status Quo</u>	12
IV. CONCLUSION.....	12

I. INTRODUCTION

Plaintiff-Petitioner's Petition for Writ of Certiorari follows the District Court of Polk County's Ruling on a Motion for Stay of December 10, 2013, stripping SCE of its lawfully granted license without notice or an opportunity to be heard. In issuing the stay order the district court both exceeded its jurisdiction and acted illegally. Belle's invocation of constitutional and statutory rights violations by an arm of state government vested with the enforcement of an essential police power can never obviate the undisputed fact that, at best, its claim is based on how a reasonable person can interpret a contract. And from this contractual dispute and the IRGC's reasonable response thereto, i.e., issuing an RFP to ensure that the public welfare is served, a licensee and municipalities now see their investments and visions decimated? Did the district court exceed its jurisdiction? Absolutely. Did it act "illegally"? Yes. Should the false front of the house of cards Belle has constructed be swept away? Without a doubt.

II. SCE IS ENTITLED TO CERTIORARI

Certiorari is available to all persons who show a substantial interest in the activity challenged. *Alons v. Iowa Dist. Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005) (citing *State v. West*, 320 N.W.2d 570, 573 (Iowa 1982) (citations omitted)). Although, generally, only a party to the action may obtain the writ, an exception exists when the public is concerned with the subject matter of the action, in which case anyone interested may petition if they are able to prove that they have been injured in a special manner, different from that of the public generally. *Id.*

Here, both the public and SCE, individually, are significantly affected. The public insofar as it is concerned with the issuance and retention of licenses issued by the state, as well as the public interest in public development projects and the economic impact thereof. SCE is injured in a special manner as its lawfully issued state license to develop and operate a casino has been stayed, threatening the entire project, paralyzing said license, and causing significant injury.

III. THE IOWA DISTRICT COURT OF POLK COUNTY'S STAY ORDER OF DECEMBER 10, 2013 EXCEEDED THE COURT'S JURISDICTION AND CONSTITUTES ILLEGAL ACTION.

A. The Order Exceeded the Court's Jurisdiction, as SCE is an Indispensable Party.

In issuing the December 10, 2013 stay order, the Iowa District Court for Polk County exceeded its jurisdiction. Fundamental to the validity of any court order is the jurisdiction of the court rendering it over the person of the party to be bound. *See Buss v. Prudential Ins. Co. of Am.*, 126 F.2d 960, 966 (8th Cir. 1942) (citing *Pennoyer v. Neff*, 95 U.S. 714; *Gaar, Scott & Co. v. Taylor*, 105 N.W. 125; *Thornily v. Prentice*, 121 Iowa 89, 96 N.W. 728; *Crawford v. Zieman*, 185 N.W. 61). It is similarly fundamental that no court can adjudicate directly upon a person's right, without the party being either actually or constructively before the court. *Id.*

A party is indispensable if its interest is not severable, and his absence will prevent the

court from rendering any judgment between the parties before it; *or notwithstanding the party's absence the party's interest would necessarily be inequitably affected by a judgment rendered between those before the court.* Iowa R. Civ. P. 1.234(2) (emphasis added). If an indispensable party is not before the court, the court is obligated to order that party brought in, including in the event that the issue of indispensable parties is raised for the first time on appeal. Iowa R. Civ. P. 1.234(3); *Ditch v. Hess*, 212 N.W.2d 442, 450 (Iowa 1973).

SCE was and is a necessary and indispensable party not before the court at the time of the December 10, 2013 Stay Order. The Stay Order of December 10, 2013, directly adjudicates upon SCE's rights, by staying the issuance and effectiveness of the license granted to SCE. In fact, the Stay Order itself makes clear its impact on SCE, stating, "petitioner's [sic] motion for stay is GRANTED and the issuance and effectiveness of the licenses granted to Sioux City Entertainment, Inc. and nonprofit entity Missouri River Historical Development, Inc. for the development and operation of a land-based casino in Woodbury County, Iowa...are hereby stayed pending final resolution of the instant consolidated actions for judicial review." See Exhibit 4, December 10, 2013 Ruling on Motion for Stay, at p. 5. The stay order, issued without the inclusion of an indispensable party, SCE, arbitrarily stays and interferes with SCE's legitimately obtained rights to operate its business, including the ongoing construction of a new land-based casino in Sioux City, resulting in extreme prejudice to SCE. By the district court's failure to include SCE as an indispensable party, the court exceeded its jurisdiction in issuing the December 10, 2013 Stay Order and impeding the license lawfully obtained and held by SCE. The Supreme Court must grant SCE's Petition for Writ of Certiorari.

B. Illegality

In addition to exceeding its jurisdiction, the District Court for Polk County acted illegally

in issuing the December 10, 2013 Stay Order. Illegality exists when the court's findings lack substantial evidentiary support or when the court has not properly applied the law. *Alons v. Iowa Dist. Court for Woodbury County*, 698 N.W.2d 858, 863 (Iowa 2005) (citing *Pfister v. Iowa Dist. Ct.*, 688 N.W.2d 790, 794 (Iowa 2004)).

The district court's findings lack substantial evidentiary support. The court also erred in its application of the law by its analysis of the four factors to be evaluated in disposing of a request for a stay of agency action during the pendency of judicial review. Iowa Code Section 17A.19(5).

1. Misapplication of 17A.19(5) Factors.

Iowa Code Section 17A.19(5), in pertinent part, provides:

5. a. The filing of the petition for review does not itself stay execution or enforcement of any agency action. Unless precluded by law, the agency may grant a stay on appropriate terms or other temporary remedies during the pendency of judicial review.

c. If the agency refuses to grant an application for stay or other temporary remedies, or application to the agency for a stay or other temporary remedies is an inadequate remedy, the court may grant relief but only after a consideration and balancing of all of the following factors:

(1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.

(2) The extent to which the applicant will suffer irreparable injury if relief is not granted.

(3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.

(4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

Iowa Code Ann. § 17A.19; *See also, Grinnell College, et. al. v. Osborn*, 751 N.W.2d 396, 401 (Iowa 2009). The district court errors in applying the four factors are analyzed below, in order of the degree of the Court's errors.

i. *The District Court Erred in its Analysis of Factor Three, the substantial harm to other parties to the proceedings.*

The third of the four factors analyzed according to 17A.19 (5) and *Grinnell*, 751 N.W.2d at 403, requires the court to balance the extent a stay would substantially harm another party to the proceeding. As an indispensable party, the court's analysis should have necessarily included the harm this stay would cause SCE. SCE's legitimate business has been arbitrarily interfered with, putting in peril the project as a whole. This includes jeopardizing the loss of more than 44 million dollars incurred by SCE to date, risking the loss of \$70,214 per day in lost profit for any delay in compliance with the IRGC ruling, risking the loss of \$13,788 in interest alone for each day of delay in opening, risking the loss of construction financing, and creating potential exposure for fines against SCE by the Iowa Racing and Gaming Commission in the amount of \$55,665.75 per day, if SCE's development project is not completed on time as a result of the stay. *See* Exhibit 1, Affidavit of William Warner.

Additional harm to SCE, which was not considered by the district court includes, but is not limited to:

- a. Loss of the 4 million installment towards the \$20 million gaming license fee to the State of Iowa and the Iowa Racing and Gaming Commission;
- b. Loss of the \$5.1 million spent to acquire the 18 downtown parcels of land, including 5 parcels conveyed by the City of Sioux City;
- c. Loss of the \$7.1 million in transaction fees and \$1.7 million in interest expended to close SCE's \$66 million construction loan financing;
- d. Threatening construction contracts for the project with Conlon Construction, an Iowa-based company;
- e. The loss of hundreds of thousands of dollars spent by SCE in upfront commitment fees to enter into a trademark license agreement for the "Hard Rock Hotel and Casino" name, with a 20-year term;

- f. Losses related to SCE's lease of the fifth floor of the MidAmerican Energy Building in Sioux City, Iowa, for use as SCE's office;
- g. Losses related to the employment of a General Manager and supporting staff for the ongoing construction and development projects in Sioux City

See Exhibit 1, Affidavit of William Warner.

Thus, by ignoring and failing to analyze the substantial harm that would come to an indispensable party as a result of the stay, the district court erred in its application of the law, its findings lack substantial evidence, and acted illegally.

ii. *The District Court Erred in its Analysis of Factor Four, the public's interest and reliance on the agency.*

The court also erred in its analysis of the public's interest, the fourth factor of the under 17A.19 (5) and *Grinnell, supra*. The public has an interest in ensuring the orderliness and legality of the licensing process. This interest also includes preventing interference with a lawfully obtained license, as well as the protection of the legitimate business activities of an ongoing enterprise, such as the license and business operations of SCE. Moreover, while, as the district court found, the public may have an interest in maintaining gambling revenues and avoiding loss of jobs that may result from the loss of one casino's license, it also has an interest in promoting civic investment, development of Sioux City's downtown, infrastructure improvements, construction jobs, the addition of new jobs at a new casino, as well as the positive, substantial, collateral effect the significant investment of SCE will have on the Siouxland community as a whole. The benefits to the public which are endangered by this stay include, but are not limited to:

- a. More than 400 construction jobs;
- b. More than 500 permanent casino jobs;
- c. Numerous contracts awarded to state and local vendors;

- d. \$20 million in gaming licensing fees paid to the State of Iowa;
- e. More than \$20 million/year to the State of Iowa in gaming taxes, once operations commence;
- f. More than \$3.9 million per year to Missouri River Historical Development, sponsoring charitable organization;
- g. More than \$2.4 million annually to the City of Sioux City; and
- h. More than \$500,000 annually to Woodbury County;

See Exhibit 2, Affidavit of Robert K. Padmore, Interim City Manager, City of Sioux City.

Of additional interest to the public are the following actions taken by the City of Sioux City and significant expenditures related thereto, which are imperiled by the stay:

- a. Approval and entry into the Development Agreement, which mandates the use of the site on which construction is currently underway as a hotel/casino facility;
- b. Issuance and placement of the municipal bonds supporting the \$22-million TIF Financing, with funding to SCE of the first \$5.5 million implemented as of this date;
- c. Vacation of major downtown streets for the hotel/casino site, with such vacated portions deeded to SCE; and
- d. Approval of the plat for the project site.

See Exhibit 2, Affidavit of Robert K. Padmore, Interim City Manager, City of Sioux City. Further, local Sioux City business, utilities, and citizens are heavily impacted by the potential collapse of the project and losses mentioned above. See Exhibit 1, Affidavit of William Warner; Exhibit 2, Affidavit of Robert K. Padmore, Interim City Manager, City of Sioux City; Exhibit 5, Sioux City Journal Editorial.

For the foregoing reasons, the district court erred in its application of the law to the facts as a result of its failure to fully analyze the public's true interest in this matter and its findings lack substantial evidentiary support. As a result, the December 10, 2013 Order granting a stay should

be reversed.

iii. *The District Court Erred in its Analysis of Factor One, the likelihood Belle may ultimately prevail.*

In addition to the significant errors addressed, *supra*, which in themselves are sufficient to find that the district court acted illegally, the district court also erred in its application of the first factor under 17A.19 (5) and *Grinnell*. As stated by the district court in the stay order:

The first factor involves consideration of the extent to which the applicant is likely to prevail on the merits of the matter. *Grinnell*, 751 N.W.2d at 402. No particular degree of likelihood of success must be demonstrated; rather, it varies with the consideration of the other three factors. *Id.* A stay can be granted 'where the likelihood of success is not high, but the balance of hardships favors the applicant.' In other words, more of one factor excuses less of another factor. *Id.*

See Exhibit 4, December 10, 2013 Ruling on Motion for Stay, at p. 3. The alleged hardships do not favor the applicant nor can they demonstrate a reasonable likelihood of success on the merits.

As discussed in subsection B(a)(i) and (ii), above, the real hardships of the stay order weigh heaviest against SCE, the City of Sioux City, and the public in general. SCE, a legitimate holder of a lawfully obtained license to conduct operations and to develop, faces the potential loss of millions of dollars already invested in the ongoing project, loss of tens - if not hundreds of millions of dollars in financing, loss of millions of dollars in future earnings, and any number of other economic hardships, not to mention the interference with its constitutional rights. Moreover, the City of Sioux City and the public face extreme hardship, far beyond that Belle claims it will suffer.

Not only does the consideration of the other factors weigh against Belle, but Belle cannot demonstrate a likelihood of success. In fact, the District Court for Polk County goes so far as to recognize the extremely tentative grounds to support its conclusion, stating, "while the court is unable to say that [Belle] probably will succeed on the merits, it does conclude that there is a

substantial *possibility* that it will succeed on the merits.” See Exhibit 4, December 10, 2013 Ruling on Motion for Stay (emphasis added). This is simply an inequitable finding that runs against the appropriate standard of a “likelihood of success” analysis, particularly in light of the fact that the stay order is in the context of a judicial review of agency action proceeding. Finding that there is a possibility, but not any reasonable probability of success is an attack on the central functions of administrative law and violates its most basic tenents. See *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993) (opinion of J. Harris stating, “A court’s review of agency action is severely circumscribed. The administrative process presupposes that judgment calls are to be left to the agency. Nearly all disputes are won or lost there.” (citing *Leonard v. Iowa State Bd. of Educ.*, 471 N.W.2d 815, 815–16 (Iowa 1991))). While Iowa law may not specify the degree of likelihood of success necessary for a stay, equity requires more than a possibility of success to ignore the deference given to the validity of agency action and grant the extraordinary relief of a stay more than seven (7) months after the agency action.

Further, while the district court states that Belle made a substantial showing that [IRGC’s] actions may have been wrongful, it fails articulate what that substantial showing is or to cite to any precise evidence for its statement. Thus, the court’s stay order lacks substantial evidence to support its findings.

The Court’s issuance of the stay order is effectively a ruling on the merits of Belle’s Petition for Judicial review, by causing catastrophic impact to SCE. Moreover, the ruling is effectually a decision on the merits of a separate action and directly contrary to the same district court and judge’s prior ruling denying Belle’s request for a temporary injunction, issued on October 29, 2012. There, the District Court for Polk County found that “the evidence does not demonstrate the requisite ‘likelihood or probability of success on the merits’ ...” by Belle. The district court cannot

now, many months later and after substantial and detrimental reliance by multiple parties on the court's prior ruling, be allowed to find to the contrary in a separate action, but with the same effect against the same party concerned.

iv. *The District Court Erred in its Analysis of Factor Two, whether Belle Will Suffer Irreparable Harm Absent a Stay Order.*

Finally, the court also erred in its analysis of whether Belle would suffer irreparable harm absent a stay order, the second factor of the under 17A.19 (5) and *Grinnell*. As the district court set forth in its stay order, "The second factor considers the extent the [Belle] will suffer irreparable injury if a stay is not entered." See Exhibit 4, December 10, 2013, Ruling on Motion for Stay, at p. 4 (emphasis added). Nevertheless, the Court directly contradicts this standard, inexplicably finding that the IRGC's actions "may be violative of Iowa Code Section 99F.7(2)(c) but may also violate [Belle's] constitutional rights to due process." The district court errs in its application of the law, as this analysis considers whether the party will suffer irreparable harm, not whether the party may suffer irreparable harm. Absent a finding that the IRGC's actions *actually* violate the Iowa Code or Belle's constitutional rights, the Court not only errs in its application of the law, but its findings again lack substantial evidence to support its findings and are illegal.

2. The District Court's Stay Order Violates the Basic Maxim of Equity—Maintain the Status Quo.

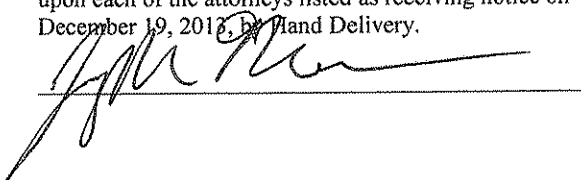
Rather than maintaining the status quo in Sioux City, the district court's stay order is akin to a massive earthquake in its disruption of the status quo. Contrary to Belle's claims that a stay would simply maintain the status quo, the stay order has affirmatively disrupts what has occurred since April 18, 2013 and will cause extreme damage to all parties concerned with, of course, the exception of Belle. Notwithstanding Belle's arguments to the contrary, any stay drastically upsets the status quo in Sioux City.

IV. CONCLUSION

For the foregoing reasons, Plaintiff-Petitioner SCE Partners, L.L.C., respectfully requests the Court reverse the December 10, 2013 stay order issued by the District Court of Polk County. In addition, while this review is pending, SCE respectfully requests that the Court immediately issue an emergency Stay of the District Court of Polk County's Order of December 10, 2013, pursuant to Iowa Rule of Civil Procedure 6.107(1)(f) to prevent further harm to Sioux City Entertainment, the State of Iowa, Woodbury County, the City of Sioux City, and the public as a whole.

Certificate of Service

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed as receiving notice on December 19, 2013, by Hand Delivery.

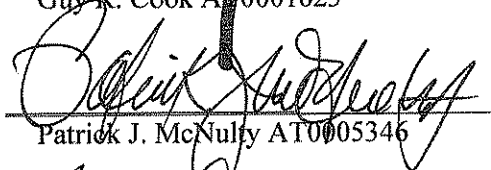


GREFE & SIDNEY, P.L.C.

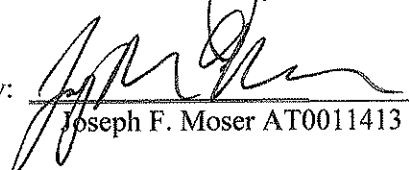
By:


Guy R. Cook AT0001623

By:


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ATTORNEYS FOR DEFENDANTS

IN THE SUPREME COURT OF IOWA

<p>SCE PARTNERS, LLC.,</p> <p style="text-align: center;">Plaintiff-Petitioner,</p> <p style="text-align: center;">vs.</p> <p>THE DISTRICT COURT FOR POLK COUNTY,</p> <p style="text-align: center;">Defendant-Respondent.</p>	<p>Supreme Court No. _____</p> <p>Polk County District Court No.: CV9254</p> <p>APPENDIX TO PETITIONER SCE'S WRIT OF CERTIORARI AND REQUEST FOR IMMEDIATE RELIEF UNDER RULE 6.1002(4)</p>
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Exhibit	Description	Appendix No.
1	Affidavit of William W. Warner, President and CEO of SCE Partners, LLC	1 - 5
2	Affidavit of Robert K. Padmore, Interim City Manager, City of Sioux City	6 - 7
3	12/17/13 – Photo of the construction of Hard Rock Hotel & Casino Sioux City	8
4	12/10/13 - Ruling on Motion for Stay of Respondent's Actions Pending Disposition of Judicial Review	9 - 14
5	12/15/13 – Sioux City Journal Editorial – “OUR OPINION: Community deserves faster court decision on casino”	15

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ATTORNEYS FOR DEFENDANTS

IN THE SUPREME COURT OF IOWA

SCE PARTNERS, LLC, Plaintiff-Petitioner, vs. THE DISTRICT COURT FOR POLK COUNTY, Defendant-Respondent.	Supreme Court No. _____ Polk County District Court No.: CV9254 AFFIDAVIT OF WILLIAM W. WARNER, PRESIDENT AND CEO OF SCE PARTNERS, LLC
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STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

(1) I, William W. Warner, am the President and Chief Executive Officer of SCE Partners, LLC ("**SCE**"). SCE is the developer of the Hard Rock Hotel & Casino Sioux City, a mixed-use hotel, casino and entertainment facility being built in downtown Sioux City, Iowa (the "**Project**").

(2) On April 18, 2013, the Iowa Racing and Gaming Commission (the "**IRGC**") selected the Project pursuant to a public, competitive application process to receive a gaming license for a land-based casino in Woodbury County, Iowa. The IRGC also imposed a Project completion deadline of September 30, 2014, with a fine of \$55,665.75 against SCE for each day beyond March 31, 2015 that the Project is not completed.

(3) To insure compliance with the IRGC decision of April 18, SCE promptly undertook raising capital and construction of the Project. SCE has incurred approximately \$44.1 million in costs to date towards the construction and development of the Project.

(4) The stay granted by the district court on December 10, 2013 ("**Stay**") will cause immediate irreparable harm to SCE, and each passing day threatens the collapse of the Project. Delay in opening the Project in compliance with the IRGC ruling, would, by my estimate, cost SCE \$70,214 per day in lost profit (derived from first-year estimated cash flow of approximately \$25.6 million). I would estimate that each day of delay in opening costs SCE \$13,788 in interest alone. These amounts do not include the impact of IRGC fines in connection with late opening (as described above), which accrue at a rate of more than \$20 million on an annualized basis.



(5) The Stay presents an immediate demonstrable risk to the Project. In addition to the failure to open on schedule, the uncertainty brought by the Stay puts in peril the structure of capital, labor, and contracts related to the Project. Any delay by the Stay will pose a serious danger to SCE's construction financing.

(6) With loss of construction financing, the Project will collapse. SCE will have no source of funds to pay outstanding invoices, or carry the costs to cover the Project (such as property taxes, insurance, and site preservation) during a halt in the construction. The existence of the Project is at risk.

(7) With the Stay in place, even if IRGC ultimately prevails on the merits of the petition for judicial review, real damage will occur to obtaining any new construction financing. The current date for hearing on the merits is scheduled a year from now. Such a long delay, with the Project incurring costs, will severely prejudice the ability of obtaining financing from any future lenders. If lenders could be found, SCE would incur millions of dollars in transaction costs alone in obtaining potential new financing.

(8) The Siouxland community and the State of Iowa – not just SCE – are presented with irreparable harm as a result of the Stay. The Project provides the following estimated economic benefits:

- a. More than 400 construction jobs;
- b. More than 500 permanent jobs;
- c. Numerous contracts awarded to state and local vendors, especially given our dedication to the state's "Iowa-first" guidelines. The IRGC has approved for the Project 33 contracts with Iowa or Siouxland vendors, with a total value of more than \$68 million. The business provided to local contractors and vendors will increase even more as our project moves from the construction phase to the operations phase;
- d. \$20 million in gaming licensing fees to the state;
- e. Over \$20 million per year to the state in gaming taxes and fees, following commencement of operations;

- f. More than \$3.9 million per year to Missouri River Historical Development, our local sponsoring charitable organization for disbursement to local charities;
- g. At least \$2.1 million to the City of Sioux City ("the City") in guaranteed annual receipts; and
- h. More than \$500,000 per year to Woodbury County.

The Stay threatens to delay or eliminate these benefits to the state and community.

(9) In order to meet the IRGC's deadlines, SCE has undertaken construction and development of the Project at a diligent pace. Additionally, the following actions have been taken since the IRGC's selection of the Project on April 18, 2013:

- a. SCE has paid the IRGC the first \$4 million installment towards the \$20 million gaming license fee (with the next four installments payable, under the IRGC's schedule, in 2014, 2015, 2016 and 2017);
- b. SCE, at a cost of \$5.1 million, has acquired 18 downtown parcels, including 5 parcels conveyed by the City;
- c. The City, by action and approval of its city council, has taken all of the following actions:
 - (i) Approval and entry into the Development Agreement for the site, which is recorded in the real estate records and mandates use of the site as a hotel/casino facility;
 - (ii) Issuance and placement of the municipal bonds supporting the \$22-million TIF financing, with funding to SCE of the first \$5.5 million already occurring;
 - (iii) Vacation of major downtown streets for the hotel/casino site, with such vacated portions deeded over to SCE; and
 - (iv) Approval of the plat for the site, which is now recorded in the real estate records.

The \$22 million in municipal bonds described above are to be recovered by the City through increased property taxes generated by the Project site, based on the site's increased value as a licensed casino.

- e. SCE closed on a \$66 million construction loan financing with a lender group led by Credit Suisse, made approximately \$1.7 million in interest payments on the loan, and paid \$8.0 million in transaction fees relating to the financing;
- f. SCE entered into the construction contract for the project with Conlon Construction, an Iowa-based company;
- g. SCE entered into a trademark license agreement for the "Hard Rock Hotel and Casino" name, with a 20-year term, and spent hundreds of thousands in upfront commitment fees under this agreement; and
- h. SCE leased the fifth floor of the MidAmerican Energy Building (near the Project site) for its office, and hired a General Manager and supporting staff for the Project. Employees have relocated to Sioux City to join the Hard Rock Hotel & Casino team.

(10) Significant construction has been undertaken on the Project, which involves renovation of the historic, 100-year-old Battery Building in Sioux City, and construction of a new 55,852 square-foot-structure adjoining the Battery Building. In connection with the construction project:

- a. SCE has demolished five buildings and performed significant lead and asbestos remediation;
- b. The roof and other exterior elements of the Battery Building have been opened, which will place the interiors in jeopardy if the construction project does not remain on schedule;
- c. Foundation work for the new structure is nearly completed, with substantial work completed towards the building's frame (*see* attached photograph taken on December 17, 2013). Stoppage of the construction project would require further work to brace the structure; and
- d. Conlon Construction and its subcontractors are averaging approximately 100 workers per day on site, and are anticipating a substantial increase in staff later this month if construction can remain on schedule.

Suspension of the construction schedule will directly impact these construction workers and their families, as well as downtown businesses being patronized by construction workers.

- (10) SCE has spent approximately \$2.3 million in design for the Project – to combine

preservation of the historic Battery Building with a new adjoining structure – to achieve a design for a very specific use: a hotel/casino/entertainment complex with a specific mix of amenities. This design and mix of amenities was presented to the IRGC and was an important basis for its selection of the Project. As the attached photograph of the construction site shows, the structure envisioned by this design is substantially in place.

(11) MidAmerican Energy, the local gas and electric utility, performed substantial re-routing and re-configuration of utility infrastructure to accommodate usage of the site for the hotel/casino Project. In particular, the Project required that MidAmerican abandon a major, 16-inch natural gas line that had been located under vacated Water Street (which was vacated by the City to accommodate this Project), and construct a new line surrounding the perimeter of the Project. This \$926,000 project has already been completed by MidAmerican.

(12) Downtown businesses, especially those in close proximity to the Project, have been positively impacted in various ways by the construction project. The lodging, food and beverage and retail establishments that have enjoyed increase patronage from Project and construction personnel would see such patronage suspended. Conversely, re-routing of traffic caused by the construction project would continue indefinitely if there were to be a significant construction delay, adversely impacting other area businesses. Some businesses have already been displaced by the construction project. In particular, SCE has agreed to relocate the Milwaukee Weiner House, a 95-year-old business in downtown Sioux City, to a parcel adjacent to the site, and to provide this business with a new building. The owners of Milwaukee Weiner House shut down their business in October 2013 to prepare for the relocation (See "Who Got the Last Hot Dog from Milwaukee Weiner House", Sioux City Journal, October 2, 2013), and the vacated building has been demolished. As of today, the new building is only partially completed.

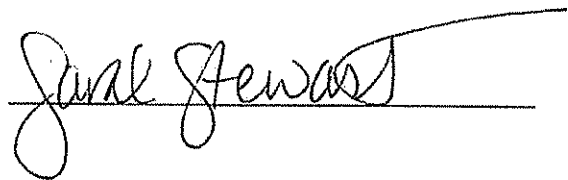
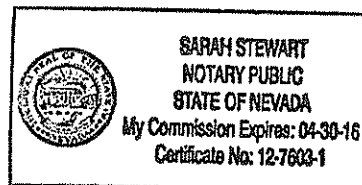
The foregoing matters are stated by the undersigned WILLIAM W. WARNER, to the best of his knowledge and belief, on this 18th day of December, 2013.



William W. Warner

On this 18th day of December, 2013, before me a notary public in and for said County and State, personally appeared William W. Warner to me, known to be the person named in and who executed the foregoing Affidavit and acknowledged that he executed the same as his voluntary act and deed.

(Notary Seal)



IN THE SUPREME COURT OF IOWA

SCE PARTNERS, L.L.C., Plaintiff-Petitioner, vs. THE DISTRICT COURT FOR POLK COUNTY, Defendant-Respondent.	Supreme Court No. _____ Polk County District Court No.: CV9254 AFFIDAVIT OF ROBERT K. PADMORE, INTERIM CITY MANAGER, CITY OF SIOUX CITY
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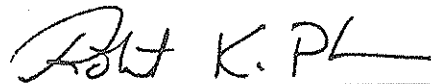
STATE OF IOWA)
) ss:
COUNTY OF WOODBURY)

- (1) I am the acting Interim City Manager for the City of Sioux City, Iowa (the "City"). After the issuance of a gaming license on April 18, 2013 for a land based casino in Woodbury County, Iowa to SCE Partners, LLC by the Iowa Racing and Gaming Commission, the City entered into a Development Agreement with SCE Partners, LLC ("SCE") in furtherance of the redevelopment of the City's downtown. The subject of the Development Agreement is the Hard Rock Hotel & Casino Sioux City, a mixed-use-hotel, casino and entertainment facility (the "Project").
- (2) Specifically, the following actions have been taken by the City with reference to the Project:
 - (a) Approval and entry into the Development Agreement, which mandates use of the site as a hotel/casino facility;
 - (b) Issuance and placement of the municipal bonds supporting the \$22-million TIF financing, with funding to SCE of the first \$5.5 million implemented as of this date;
 - (c) Vacation of major downtown streets for the hotel/casino site, with such vacated portions deeded to SCE; and
 - (d) Approval of the plat for the Project site
- (3) The Project, as planned to date, would provide the following benefits for Iowa and the Siouxland community:
 - (a) In excess of \$2.4 million annually to the City;



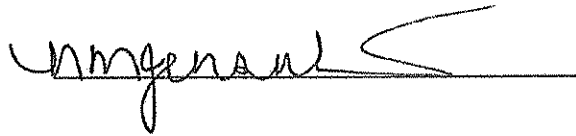
- (b) More than \$500,000 annually to Woodbury County;
 - (c) More than \$3.9 million per year to Missouri River Historical Development, the Project's licensed qualified sponsoring organization (for distribution to local charitable organizations);
 - (d) In excess of \$20 million per year in state gaming taxes;
 - (e) More than 400 construction jobs (currently working on the Project);
 - (f) More than 500 permanent casino related jobs (upon commencement of operations);
 - (g) Numerous Project construction and ongoing operational contracts for local businesses.
- (4) The Stay presents a significant threat to the continued development of the Project and the investment by the City.

Dated this 17th day of December, 2013.

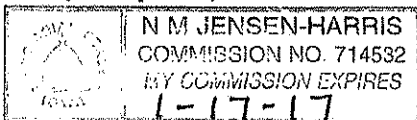


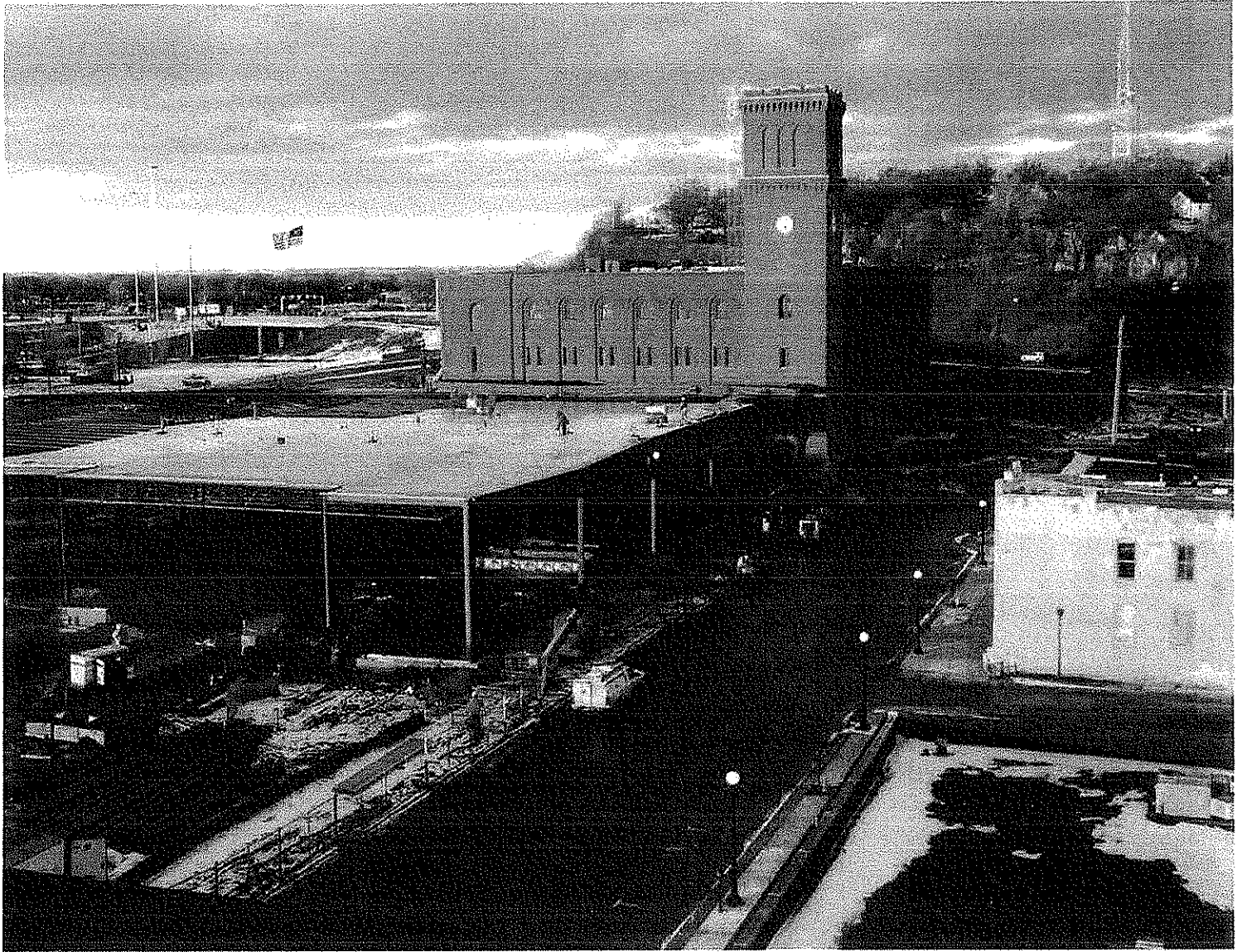
Robert K. Padmore

On this 17th day of December, 2013, before me a notary public in and for said County and State, personally appeared Robert K. Padmore to me, known to be the person named in and who executed the foregoing Affidavit and acknowledged that he executed the same as his voluntary act and deed.



(Notary Seal)





IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Belle of Sioux City, L.P., Petitioner, vs Iowa Racing and Gaming Commission, Respondent.	Case No. CV9254 Ruling On Motion For Stay Of Respondent's Actions Pending Disposition Of Judicial Review
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This matter came before the court on October 10, 2013, for hearing on petitioner's motion to stay respondent's activities in various regards pending this court's final disposition of the instant consolidated judicial review proceedings. Counsel of record appeared on behalf of the parties. Having entertained the arguments of counsel, having reviewed the court file, and being otherwise fully advised in the premises, the court now rules on said motion and **GRANTS** same for the reasons stated herein.

Preliminarily, the court addresses respondent's challenge to this court's jurisdiction to entertain petitioner's motion. At the hearing, respondent argued that this court lacked jurisdiction to entertain the motion because petitioner had not sought a stay from and/or been denied a stay by respondent. However, the court has now been advised by both parties that this objection has been withdrawn by respondent. Consequently, the court will address petitioner's motion on its merits.

Factual background –

Missouri River Historical Development, Inc. (MRHD) is a nonprofit entity which was first licensed on December 1, 1994, to conduct gambling activities at the Belle of Sioux City/Argosy Casino ("Belle"), an excursion gambling boat located in Sioux City, Iowa. MRHD partnered with Belle to operate the casino and Belle was licensed by respondent Iowa Racing and Gaming Commission (IRGC) as an excursion gambling boat operation. On June 9, 2005, I RGC approved the sale of Belle's assets to Penn National Gaming, Inc.



On December 29, 2011, IRGC received a combined application from MRHD and Belle to renew their respective gaming licenses for the term of April 1, 2012, to March 31, 2013. The applications stated that the current operating agreement between MRHD and Belle would, by its terms, expire on July 6, 2012. However, the parties represented to IRGC that negotiations to renew/extend said operating agreement were underway and it was expected that a new operating agreement would be finalized by IRGC's next meeting on March 8, 2012.

At its March 8, 2012, meeting, MRHD and Belle informed IRGC that, despite negotiations, no new operating agreement had been finalized. IRGC approved Belle's and MRHD's license applications on the condition that they would submit a new operating agreement to IRGC by its June 7, 2012, meeting. MRHD and Belle failed to meet the aforementioned deadline. IRGC then voted to accept new applications from all interested parties, including Belle and MRHD, to build and operate a land-based gaming facility in Woodbury County. IRGC also extended Belle's and MRHD's licenses through March 31, 2013, conditioned on Belle and MRHD agreeing to an extension of their operating agreement through that date. No such agreement was made and ultimately IRGC did not approve any extension.

IRGC proceeded to accept and evaluate new applications for the gaming licenses and, on April 18, 2013, IRGC awarded licenses to Sioux City Entertainment (SCE) and MRHD to develop and operate a new land-based casino in downtown Sioux City, Iowa. IRGC subsequently formally denied all other proposals. IRGC later gave necessary approvals to SCE of various construction and other contracts to facilitate construction of the proposed casino.

Belle subsequently applied to IRGC for renewal of its operator's license for the term of April 1, 2013, through March 31, 2014, which IRGC denied at its August 15, 2013, meeting, purportedly due to Belle's lack of an operating agreement with a qualified sponsoring organization to conduct gambling operations in Woodbury County. IRGC formally communicated its denial of Belle's application to Belle

by letter on August 27, 2013. IRGC has since allowed Belle's casino to continue operating pending resolution of the instant judicial review.

In the meantime, SCE has proceeded with construction of its casino. It has paid to IRGC the first installment of its licensing fee. Ground was broken for construction of the casino on August 16, 2013, and construction remains underway with a planned opening in July, 2014.

Ruling-

In support of its motion, Belle has presented evidence arguably demonstrating that, in early 2012, MRHD commenced a course of conduct designed to influence IRGC to revoke Belle's gaming license so that MRHD itself could develop a new land-based casino in Woodbury County. This evidence included, amongst other things, evidence arguably showing that, in or about July, 2012, certain representatives of MRHD began actively-but covertly-soliciting interest from other gaming companies to partner with it to develop a new land-based casino in Woodbury County to replace the one MRHD was operating with Belle. This evidence also arguably shows that, in the foregoing process, IRGC violated Belle's statutory and/or constitutional rights regarding its gaming license.

A process exists whereby petitioner can obtain a stay of execution and/or enforcement of agency action during the pendency of judicial review. Iowa Code Section 17A.19(5); Grinnell College, et al v. Osborn, 751 N.W.2d 396, 401 (Iowa 2008). In that process, the court must consider four factors in disposing of a request for such a stay. Id. The first factor involves consideration of the extent to which the applicant is likely to prevail on the merits of the matter. 751 N.W.2d at 402. No particular degree of likelihood of success must be demonstrated; rather, it varies with the consideration of the other three factors. Id. "A stay can be granted 'where the likelihood of success is not high but the balance of hardships favors the applicant.' In other words, more of one factor excuses less of another factor." Id. (citations omitted).

In this case, petitioner has made a substantial showing that respondent's actions to date relating to the granting and/or denial of its gaming license were illegal and/or that they were arbitrary and/or capricious and/or violative of petitioner's statutory rights pursuant to Iowa Code Section 99F. 7(2)(c) and/or its constitutional rights to due process. Respondent has countered with various opposing arguments justifying and/or excusing its actions. In this instance, while the court is unable to say that petitioner probably will succeed on the merits, it does conclude that there is a substantial possibility that it will succeed on the merits.

"The second factor considers the extent the [petitioner] 'will suffer irreparable injury' if a stay is not entered." 751 N.W.2d at 402. Economic loss does not equate with irreparable harm per se. Id. Also, petitioner has filed a related civil lawsuit for damages against MRHD, also pending before this court, in which petitioner claims that MRHD breached the parties' operating agreement in certain respects. However, extreme circumstances of financial loss, even if recoverable, can amount to irreparable harm. Id. (emphasis supplied). Further, petitioner argues and respondent does not dispute that violations of petitioner's statutory and/or constitutional rights would constitute irreparable harm to petitioner per se.

Petitioner has made a substantial showing that respondent's actions not only may be violative of Iowa Code Section 99F.7(2)(c) but may also violate petitioner's constitutional rights to due process which, if true, arguably demonstrates irreparable harm per se. At the very least, however, petitioner has made a substantial showing that respondent's actions will cause extreme damage to petitioner's business, reputation, and/or goodwill and, thereby, petitioner will be irreparably harmed.

"The third factor requires the court to balance the extent that a stay would substantially harm the [other] party to the proceeding." 751 N.W.2d at 403. Respondent does not dispute petitioner's assertion that imposition of a stay will not prejudice respondent.

"The final factor considers the public's interest." Id. Clearly, the public has considerable interest in ensuring the orderliness and legality of the instant licensing process. The petitioner has made a

substantial showing that a stay would not only further that interest but would also advance the public interests in, amongst other things, maintaining gambling revenues while avoiding loss of jobs and disruption of existing businesses.

The court concludes that the final three factors favor petitioner and, in combination with petitioner's demonstration of a substantial possibility that it will succeed on the merits, support issuance of the requested stay.

IT IS THEREFORE ORDERED that petitioner's motion for stay is **GRANTED** and the issuance and effectiveness of the licenses granted to Sioux City Entertainment, Inc. and nonprofit entity Missouri River Historical Development, Inc. for the development and operation of a land-based casino in Woodbury County, Iowa, and all other actions by respondent Iowa Racing and Gaming Commission in furtherance of the foregoing are hereby stayed pending final resolution of the instant consolidated actions for judicial review.

Dated this 10th day of December, 2013.

Robert B. Hanson
District Judge

Copies to:

Mark E. Weinhardt
mweinhardt@weinhardtlogan.com

John Lundquist
jlundqui@ag.state.ia.us



State of Iowa Courts

Type: OTHER ORDER

Case Number	Case Title
CVCV009254	BELLE OF SIOUX CITY, L.P. VS IOWA RACING & GAMING COMMISSION

So Ordered

A handwritten signature in cursive script, reading "Robert B. Hanson". The signature is written in dark ink and is positioned above a horizontal line.

Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2013-12-10 14:11:30 page 6 of 6

OUR OPINION: Community deserves faster court decision on casino

DECEMBER 15, 2013 8:00 AM • JOURNAL EDITORIAL BOARD

From the beginning of discussion about a new land-based casino, our focus has been on support of a downtown Sioux City location because we believe that's what's in the best interests of our community and county. On this, we have been clear and consistent.

We believe a stronger, more-vibrant downtown is key to this city's - and, by extension, this county's - future, and we believe a casino would transform downtown.

In an editorial published just days before the Iowa Racing and Gaming Commission chose a land-based casino project from four proposals (including three downtown proposals) in April, we simply repeated what we had said all along: The casino must be built downtown.

Today, we react to District Court Judge Robert Hanson's casino license ruling last week with the best interests of our community in mind again.

Hanson granted a motion by Penn National Gaming Co., owner of the Argosy Sioux City casino, to suspend the state gaming license awarded to Sioux City Entertainment (developer of the planned downtown Hard Rock Hotel & Casino) until Penn litigation against the Iowa Racing and Gaming Commission is resolved.

Hanson's ruling was a troubling development for our community because it cast a cloud of uncertainty over a casino project already under construction to which taxpayer dollars already have been committed.

Still, we understand and respect the fact a legal process is involved.

Our concern is how long final resolution of Penn's case against the state Racing and Gaming Commission might take. Last month, Hanson scheduled final arguments for Dec. 22, 2014, signalling the case likely wouldn't be settled until at least January 2015.

That's far too long to wait.

In our view, leaving a case of this magnitude to sit unresolved on a court docket for a year is absurd, and it's unfair to our community. In short, we deserve better.

All parties involved in and impacted by this legal dispute, in ways both direct and indirect, should want and should do whatever they can to push for an expedited decision.

We don't know how this case will turn out in the end, but we do know this: Everyone deserves to know the answer in timely fashion, and waiting a year isn't timely.

IN THE SUPREME COURT OF IOWA

SCE PARTNERS, L.L.C., Plaintiff-Petitioner, vs. THE DISTRICT COURT FOR POLK COUNTY, Defendant-Respondent.	Supreme Court No. _____ Polk County District Court No.: CV9254 ORDER ON PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR IMMEDIATE RELIEF
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Before the Court is Plaintiff-Petitioner's Petition for Writ of Certiorari and Request for Immediate Relief. The Court hereby finds, pursuant to 6.107(2) and 6.1002(4), that the Petition and Request should be granted.

Therefore, **IT IS HEREBY ORDERED** Plaintiff-Petitioner SCE Partners, L.L.C.'s Petition for Writ of Certiorari is **GRANTED** and a Writ shall issue in conformance with the rule. In addition, **IT IS HEREBY ORDERED** Plaintiff-Petitioner SCE's Request for Immediate Relief is **GRANTED** and, pursuant to Iowa Rule of Appellate Procedure 6.1002 (4), it is found that the rights of SCE would be lost or greatly impaired by delay in relief and, as a result, the stay order affecting the issuance and effectiveness of the licenses granted to Sioux City Entertainment, Inc. and nonprofit entity Missouri River Historical Development, Inc. for the development and operation of a land-based casino in Woodbury County, Iowa and all other actions by Iowa Racing and Gaming Commission in furtherance of the foregoing is **LIFTED**. Any party adversely affected by this ruling may within 10 days request review of the ruling.

Date

Justice, Iowa Supreme Court