

[J-122-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

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| HSP GAMING, L.P., | : | No. 179 EM 2007 |
| | : | |
| Petitioner | : | |
| | : | |
| | : | |
| v. | : | |
| | : | |
| | : | |
| CITY COUNCIL FOR THE CITY OF | : | |
| PHILADELPHIA, THE CITY OF | : | |
| PHILADELPHIA AND THE CITY | : | |
| PLANNING COMMISSION FOR THE | : | |
| CITY OF PHILADELPHIA, | : | |
| | : | |
| Respondents | : | |

DISSENTING STATEMENT

MR. JUSTICE SAYLOR

DECIDED: December 3, 2007

I do not believe that relief should be granted at the threshold stage of this case. In the first instance, I have substantial questions about this Court's jurisdiction to do so in this developing area of the law. Moreover, the pleadings have been filed directly in this Court, and there has been no lower court decision or, indeed, any fact-finding at all. There is therefore no record on which to determine the merits of Petitioner's claims. Accordingly, even if this Court has jurisdiction in such circumstances, I believe it would be more appropriate to appoint a special master as Petitioner requests, see Petition for Review of HSP Gaming LP at 49, to hold any necessary hearings and report back to this Court in an expeditious manner. In this way, the underlying, dispositive facts can be ascertained on a developed record. More generally, to the extent that the Court is, in

the fourth item of the Order, presently granting the mandamus relief requested by Petitioner, see id. at 48, I would simply note that, pursuant to recent precedent, it appears that we lack jurisdiction to entertain a request for such relief. See Philadelphia Entertainment and Development Partners v. City of Phila., ___ Pa. ___, ___ A.2d ___, 2007 WL 4105582 (Pa., Nov. 20, 2007).