

CITY OF WILKES-BARRE  
PENNSYLVANIA



# CITY COUNCIL AGENDA

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CITY COUNCIL

SPECIAL SESSION

AUGUST 24, 2006

4:30 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

RESOLUTIONS

GENERAL DISCUSSION

ADJOURNMENT

CITY COUNCIL  
AUGUST 24, 2006

**RESOLUTIONS**

Authorizing an Intergovernmental Agreement regarding the coordination of Economic Development Activities by and between certain Pennsylvania Political Subdivisions relative to the proposed development of Mohegan Sun at Pocono Downs.

Amending Resolution R0095-06 to increase the amount of the transfer from the general Fund to the 2006 Disaster Account to \$900,000 until which time funds are reimbursed from FEMA and/or PEMA.

**GENERAL DISCUSSION**

Vacation of streets in conjunction with the transfer of the former Shapiro property parcel on South Main Street.



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

WHEREAS, the Pennsylvania General Assembly enacted the Pennsylvania Race Horse Development Gaming Act; Act 2004-71, 4 Pa. C.S.A. §§ 1101-1904 (“the Gaming Act”) with the legislative intent to (1) enhance tourism; (2) promote economic development (3) create new and diverse jobs through the development of a horse racetrack with pari-mutual wagering, simulcasting, operation of slot machines, entertainment, lodging, food and beverage services and other permitted gaming operations; and;

WHEREAS, Downs Racing owns and operates the harness racing track known as Mohegan Sun at Pocono Downs in Plains Township, adjacent to Wilkes-Barre City, Luzerne County, Pennsylvania and has applied to the Pennsylvania Gaming Control Board (the “Board”) for a Category 1 Slot Machine License under the Gaming Act; and

WHEREAS, the City of Wilkes-Barre is permitted, under the Gaming Act, to enter into an Intergovernmental Cooperation Agreement with any other municipality for the sharing of money or to exercise any government function; and

WHEREAS, The City of Wilkes-Barre recognizes the valuable consideration represented by the establishment of mutually beneficial cooperative understandings leading to the uncontested findings of the types of programs mandated by the Gaming Act; and

WHEREAS, the City of Wilkes-Barre believes that this Intergovernmental Cooperation Agreement, attached as Exhibit “A” is beneficial not only to Plains Township, but also and specifically to the City of Wilkes-Barre, its residents and its work force.

NOW THEREFORE, be it RESOLVED, for all of the reasons set forth herein, and after review of the agreement, the City Council of the City of Wilkes-Barre hereby authorizes the proper City Officials to enter into the Intergovernmental Cooperation Agreement attached hereto as Exhibit “A.”

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

**AN INTERGOVERNMENTAL COOPERATION  
AGREEMENT REGARDING THE COORDINATION  
OF ECONOMIC DEVELOPMENT ACTIVITIES BY  
AND BETWEEN CERTAIN PENNSYLVANIA  
POLITICAL SUBDIVISIONS**

**THIS AGREEMENT**, made and entered into, this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between the County of Luzerne, a county of the third class situated in the Commonwealth of Pennsylvania (hereinafter the "County"), the City of Wilkes-Barre, a city of the third class organized under the Home Rule Charter and Optional Plans Law (hereinafter the "City") and the Township of Plains, a Township of the First Class under the laws of the Commonwealth of Pennsylvania (hereinafter the "Township").

**WITNESSETH:**

**WHEREAS**, the Pennsylvania General Assembly enacted the Pennsylvania Race Horse Development and Gaming Act, Act 2004-71, 4 Pa.C.S.A. §§ 1101-1904 ("the Gaming Act") with the legislative intent to: (i) enhance tourism; (ii) promote economic development; (iii) create new and diverse jobs through the development of the horse racing industry with pari-mutuel wagering, simulcasting, operation of slot machines, entertainment, lodging, food and beverage services and other ancillary permitted gaming operations; and

**WHEREAS**, Downs Racing L.P. ("Downs Racing") owns and operates the harness racing track, known as Mohegan Sun at Pocono Downs, in Plains Township, Luzerne County, Pennsylvania and has applied to the Pennsylvania Gaming Control Board (the "Board") for a Category 1 Slot Machine License under 4 Pa.C.S. §1302 and a Conditional Category 1 Slot Machine License under 4 Pa.C.S. §1315; and

**WHEREAS**, the Intergovernmental Cooperation Act, 53 Pa. Stat. Ann. § 2301, *et seq.* (hereinafter the "ICA Act") provides that two or more municipalities may cooperate in the exercise of their governmental functions; and

**WHEREAS**, in enacting the Gaming Act, the General Assembly found that "nothing [in the language of the Act] shall prevent any of the municipalities from entering into

Intergovernmental Cooperation Agreements with other jurisdictions for the sharing of this money." 4 Pa.C.S. § 1403 (c)(3)(xiv); *see also*, 4 Pa.C.S. § 1403 (c)(2)(ix); and

**WHEREAS**, the County, the City and the Township believe that the general welfare and economic development, stability and prosperity of their citizens will be promoted and enhanced by the development of a licensed gaming facility on the site of Mohegan Sun at Pocono Downs as well as the attendant economic development activities which will attract development and growth as well as the expansion of business, commerce and tourism; and

**WHEREAS**, the County, the City and the Township jointly agree that the development of a licensed gaming facility on the site of Mohegan Sun at Pocono Downs and any associated area development is a valuable economic development project which will deliver hundreds of jobs and millions of dollars to the local area;

**WHEREAS**, the County, the City and the Township now seek to further implement these reciprocal agreements regarding coordination of their collective economic development activities;

**NOW, THEREFORE**, in consideration of these premises and of the mutual covenants contained herein, and intending to be legally bound, the County, the City and the Township agree as follows:

**Section One: Commitment to Apply for Grant Funding.** In order to facilitate the development of a licensed gaming facility on the site of Mohegan Sun at Pocono Downs and any associated area development or economic development, the County, the City and the Township agree to apply for local, state or federal grants funding from any available source and, if funding is obtained, to utilize, as permitted by law, that grant funding to provide a funding stream for projects or to reimburse Downs Racing for improvements, expenditures, economic development initiatives and projects directly for the benefit of Downs Racing or required in connection with the development of a licensed gaming facility on the site of Mohegan Sun at Pocono Downs and any associated area development.

**Section Two: Cooperation With Grant Applications:** The parties agree to use their best efforts to cooperate with each other and Downs Racing (where necessary) to identify, prepare

and submit applications for available grants. As part of this Agreement, the City and the Township shall not submit or accept any grant applications which would cause them to breach their obligations under this Agreement.

**Section Three: Maximization of Grant Proceeds:** The County, the City, and the Township shall use its best efforts to obtain the maximum amount of grants collectively and the maximum amount available under each specific grant. Best efforts shall include, to the extent reasonably required, submitting multiple and periodic Grant applications as well as attending such hearings and public meetings as may be necessary to further any grant application.

**Section Four: Sole Source:** The parties agree that the funds described in Sections One through Three above shall be only required to be paid if they are the result of, or received from, the grants set forth in Section One above. There shall be no requirement that the parties pay any funds from any other source in lieu of the funds received from the grants set forth in Section One (including, but not limited to, the parties' General Fund) provided however, that the parties may, at their sole discretion, use whatever appropriate funds or funding sources necessary to receive and transmit funds received from the grants set forth in Section One above.

**Section Five: Assignment and Delegation.** No party shall have the right or power to assign or delegate any rights or duties under this Agreement without the written consent of the others.

**Section Six: Term.** This Agreement shall enter into effect upon the execution and shall remain in effect and binding on all parties until the earlier of: (a) the fifth anniversary of the full execution of this Agreement; or (b) the receipt by Downs Racing of an aggregate amount from all parties and all funding sources of a sum equal to Fifteen Million Dollars (\$15,000,000), recognizing that all such funds shall be only required to be paid if they are the result of or received from the grants set forth in Section 1 above. The parties shall remit to Downs Racing grant proceeds from grants which were applied for during the term of this Agreement notwithstanding that such grant proceeds are not received until after the fifth anniversary of the full execution of this Agreement.

**Section Seven: No Co-Partnership or Agency.** Unless otherwise separately agreed to by the parties, it is understood and agreed that nothing herein contained is intended or shall be construed in any respect to create or establish the relationship of co-partners between the County, the City or the Township or constituting any of the parties as being a representative or agent of the others for any purpose whatsoever.

**Section Eight: Notices.** All notices, reports and documents required or furnished pursuant to this Agreement shall be in writing and shall be mailed by First Class Mail, postage prepaid, or sent by telegraph, confirmed by letter addressed to each party as follows:

(a) As to the County or to other such places as the County may from time to time designate in writing:

*[Insert Address]*

(b) As to the City or to other such persons or places as the City may from time to time designate in writing.

*[Insert Address]*

(c) As to the Township or to other such persons or places as the Township may from time to time designate in writing.

*[Insert Address]*

**Section Nine: Compliance with Laws.** The parties shall fully obey and comply with all federal, state and local laws, statutes, ordinance, resolutions and administrative regulations which are, or shall be, applicable to any duties performed under this Agreement.

**Section Ten: No Personal Liability.** No elected official, director, officer, agent or employee of the County, City or Township shall be charged personally or be liable to the County, City or the Township under any term or provision of this Agreement or because of any breach herein.

**Section Eleven: Headings.** Headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or the intent of any provision of this Agreement nor shall they be construed to effect in any manner the terms or provisions hereof or the interpretation or construction thereof.

**Section Twelve: Severability.** The parties intend and agree that, if any paragraph, subparagraph, phrase, clause or other provision of this Agreement or any portion thereof shall be held to be void or otherwise unenforceable, all other portions shall remain in full force and effect.

**Section Thirteen: Amendment or Modification.** This Agreement constitutes the entire agreement of the parties on the subject matter hereof and may not be changed, modified or extended except by written amendment duly executed by the parties.

**Section Fourteen: Applicable Law.** This Agreement shall be deemed to have been made in and shall be construed according to all laws of the Commonwealth of Pennsylvania.

**Section Fifteen: Authorization.** This Agreement was authorized by the Board of County Commissioners on \_\_\_\_\_, 2006 with Agenda No. \_\_\_\_\_ and by the Council of the City of Wilkes-Barre by Ordinance No. \_\_\_\_\_ effective \_\_\_\_\_ and by the Township of Plains by Ordinance No. \_\_\_\_\_ effective \_\_\_\_\_.

**IN WITNESS HEREOF,** this Agreement is duly executed by the parties hereto on the date first written above.

**COUNTY OF LUZERNE**

**CITY OF WILKES-BARRE**

By: \_\_\_\_\_

By: \_\_\_\_\_

**TOWNSHIP OF PLAINS**

By: \_\_\_\_\_



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED by the City Council of the City of Wilkes-Barre:*

WHEREAS, Mayor Thomas M. Leighton declared a State of Emergency in the City of Wilkes-Barre by Proclamation dated June 27, 2006, due to the heavy rainfall affecting streams and the Susquehanna River; and,

WHEREAS, pursuant to the City Charter of the City of Wilkes-Barre, the City Council has the right to pass any legislation, by resolution or ordinance, in an emergency situation; and,

WHEREAS, City Council authorized the transfer of \$500,000 from the General Fund Account to the 2006 Disaster Account to cover the emergency costs until such time that reimbursement is received from FEMA and/or PEMA (Resolution R0095-06 dated June 28, 2006); and,

WHEREAS, an additional \$400,000 is required as an advance to pay contractors who have completed work under the recovery.

NOW, THEREFORE, BE IT RESOLVED, that Resolution R0095-06 dated June 27, 2006, is hereby, amended to increase the amount of the transfer from the General Fund to the 2006 Disaster Account to \$900,000 until which time funds are reimbursed from FEMA and/or PEMA.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS