

**STATE OF ILLINOIS
ILLINOIS GAMING BOARD**

HYPERACTIVE GAMING, LLC,)	
)	
Petitioner,)	
)	
v.)	No. 17-UP-001
)	
TAP ROOM GAMING, LLC,)	
)	
Respondent.)	
)	

RE: Foss Park District d/b/a Foss Park Golf Course (License No. 120708003)

FINAL BOARD ORDER

This matter comes before the Illinois Gaming Board (the “Board” or “IGB”) pursuant to the Video Gaming Act (the “VGA”), 210 ILCS 40, and Section 1800.320(b) of the Board’s Adopted Rules for Video Gaming (the “Rules”). 11 Ill. Adm. Code 1800.320(b).

FINDINGS OF FACT

The Board has before it the entire record of *Hyperactive Gaming, LLC*, (“Hyperactive”) v. *Tap Room Gaming, LLC, Respondent*, (“Tap Room”) *Re: Foss Park District d/b/a Foss Park Golf Course* (“Foss Park”) (License No. 120708003), including the filed Petition, all other pleadings received, and the Administrator’s Recommended Decision.

On March 22, 2017, Hyperactive filed the above-captioned Rule 320 Petition against Tap Room¹ to contest the validity and enforceability of an agreement that purports to control the placement and operation of video gaming terminals (“VGTs”) at Foss Park. On March 21, 2022, Hyperactive notified the Board and all parties it wished to withdraw the Petition. On March 31, 2022, Board Administrator Marcus D. Fruchter issued an Administrator’s Recommended Decision that the Board grant Hyperactive’s request to withdraw the above-captioned Petition. No exceptions were filed.

CONCLUSIONS OF LAW

Pursuant to the VGA, the Rules, and *J&J Gaming Ventures, LLC v. Wild, Inc.*, 2016 IL 119870, the Board has exclusive and original jurisdiction over agreements that purport to control the placement and operation of video gaming terminals. In *Wild*, the Illinois Supreme Court affirmed the long-established rule that there is no common law right to profit from gambling. *Wild* at ¶ 32. The Court also held that the VGA’s legalization of video gaming is an exception to the general prohibition on gambling,

¹ On December 19, 2019, J&J Ventures Gaming, LLC (“J&J”) acquired Tap Room, and subsequently Tap Room assigned the Foss agreement to J&J. J&J currently services Foss under the assigned agreement as amended on March 6, 2020. Accordingly, references to Tap Room in this Final Order incorporates J&J as successor in interest to the Foss agreement.

that video gaming is allowed only as authorized by the VGA or the Rules, and that by “legalizing the use of video gaming terminals for commercial gambling purposes, the legislature enacted a comprehensive statutory scheme, creating rights and duties that have no counterpart in common law or equity.” *Id.*

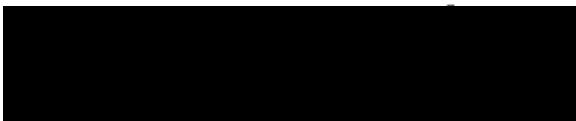
Hyperactive’s request to withdraw its Petition is sufficient to conclude this matter. In *Doxsie v. Ill. Gaming Bd.*, 2021 IL App (1st) 191875, the Appellate Court affirmed the Board’s authority to interpret and administer the Rules. *Doxsie* at ¶ 17. While the Rules do not specifically contemplate a Petitioner’s ability to withdraw its Petition, in keeping with our authority to interpret and administer the Rules, the Board finds that it may grant a Petitioner’s request to withdraw its Rule 320 Petition. Moreover, in this instance the Board finds it is not a proper use of the limited time and resources of all involved to continue this matter.

Therefore, after careful review and consideration of the entire record, the Board hereby:

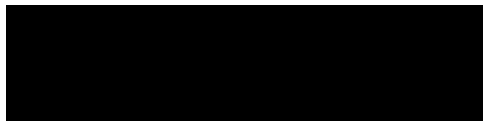
- (1) Adopts the Administrator’s Recommended Decision to the extent it recommends concluding the Petition;
- (2) Grants Hyperactive’s March 21, 2022 request to withdraw its above-captioned Petition regarding Foss Park District;
- (3) Makes no findings of fact or conclusions of law on the merits of Hyperactive’s Petition; and
- (4) Closes this Petition.

This is a Final Order subject to judicial review under the Administrative Review Law pursuant to 230 ILCS 10/17.1. The Rules of the Illinois Gaming Board do not permit motions or requests for reconsideration of this Order.

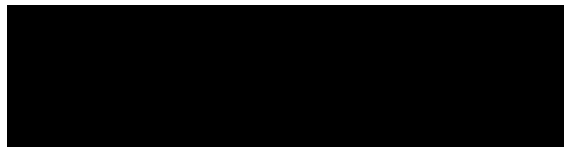
VOTED THIS THE TWENTY-EIGHTH DAY OF APRIL 2022



Charles Schmadeke, Chairman



Dionne R. Hayden



Marc E. Bell

Anthony Garcia

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RE: Foss Park District d/b/a Foss Park Golf Course (License No. 120708003)

ADMINISTRATOR’S RECOMMENDED DECISION

This dispute comes before the Illinois Gaming Board (the “Board” or “IGB”) under Section 1800.320(b) of the Board’s Adopted Rules (the “Rules”). 11 Ill. Adm. Code 1800.320(b). This Recommendation issues under Rule 320(b)(6). 11 Ill. Adm. Code 1800.320(b)(6).

On March 22, 2017, Hyperactive Gaming, LLC (“Hyperactive”) brought the above-captioned Rule 320 Petition against Tap Room Gaming, LLC (“Tap Room”) to contest the validity and enforceability of an agreement that purports to control the placement and operation of video gaming terminals (“VGTs”) at Foss Park District d/b/a Foss Park Golf Course (“Foss”).¹ On March 21, 2022, Hyperactive notified the Board and all parties it wished to withdraw the Petition.

As such, the Board should permit Hyperactive to withdraw its Petition, thereby closing this matter and allowing the existing UA between Tap Room and Foss to continue in operation according to its terms.

For the foregoing reasons, I recommend that the Board enter an Order:

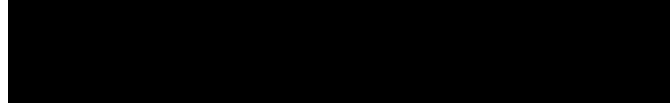
¹ On December 19, 2019, J&J Ventures Gaming, LLC (“J&J”) acquired Tap Room, and subsequently Tap Room assigned the Foss agreement to J&J. J&J currently services Foss under the assigned agreement as amended on March 6, 2020. Accordingly, references to Tap Room in this Recommendation shall also refer to J&J as successor in interest to the Foss agreement.

1. Granting Hyperactive's request to withdraw its Petition in this matter; and
2. Directing that all further proceedings shall be cancelled, and the matter concluded.

Pursuant to Rule 320(b)(7), any party to this Petition wishing to file exceptions must do so by 5 p.m. central standard time no later than 14 days after receipt of this Recommended Decision.

DATED: March 31, 2022

RESPECTFULLY SUBMITTED,

A large black rectangular redaction box covering the signature of Marcus D. Fruchter.

**MARCUS D. FRUCHTER
ILLINOIS GAMING BOARD ADMINISTRATOR**