



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: TRIPLE DIAMOND, L.L.C. D/B/A CAJUN CASINO
VP5000511762

ON REHEARING

ORDER

Rehearing of the original decision of February 21, 2001 of this Board having been granted and this matter having been considered by the Louisiana Gaming Control Board at its meeting of June 19, 2001:

IT IS ORDERED THAT the original decision of this Board reversing the decision of the Hearing Officer is **VACATED** and the decision of the Hearing Officer is **AFFIRMED**.

THUS DONE AND SIGNED on this the 24th day of June, 2001.

LOUISIANA GAMING CONTROL BOARD

BY:


HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 27th DAY
OF June 2001

APPEAL DOCKET CLERK

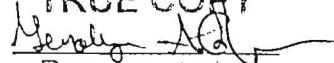

STATE OF LOUISIANA
GAMING CONTROL BOARD
ADMINISTRATIVE HEARING
October 31, 2000

WILLIAM H. BROWN
HEARING OFFICER

IN RE: TRIPLE DIAMOND, L.L.C.
D/B/A CAJUN CASINO

NO. 5000511762

TRUE COPY



Representative

Louisiana Gaming Control Board

IN RE: TRIPLE DIAMOND, L.L.C.
D/B/A CAJUN CASINO

NO: 5000511762

APPEARANCES:

For the State of Louisiana
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For Triple Diamond, L.L.C.
Brett A. Sulzer
Attorney at Law
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Baton Rouge, LA 70817

STATEMENT OF THE CASE:

By letter dated September 1, 2000 the Louisiana Gaming Control Board notified Triple Diamond, L.L.C. d/b/a Cajun Casino ("Applicant") that the Louisiana State Police, Video Gaming Division ("Division") had recommended denial of the Applicant's original application for a Type 5 video gaming license. The denial was based on the Division's belief that the Applicant's truck stop was located in Lafayette and St. Martin Parishes. Lafayette Parish voted out video poker gaming in the 1996 congressional general election, thus no portion of the truck stop can be located in Lafayette Parish. La. R.S. 18:1300.21, La. R.S. 217:306(A)(4)(c).

STATE'S EXHIBITS:

1. Notice of Hearing
2. Request for Administrative Hearing
3. Notice of Recommendation of Denial of Original Application
4. Plat by Reddoch prepared for Bordertown 3/29/2000
5. Cash sale between L. H. Boulet & RFP, Inc. 5/26/82
6. Plat of Estate of L. H. Boulet, Prepared by Donald L. Richard 6/72
7. Letter from St. Martin Parish Assessor's Office 9/17/98
8. Aerial Map from St. Martin Parish Assessor's Office
9. Plat of Fleur de Lafayette Subdivision, Prepared by Edmond E. Dupre, Jr. 3/2/81 revised 4/1/81, 5/25/81, 6/17/81, 10/26/81
10. Map of Property of L. H. Boulet, Prepared by Roland Laurent 5/3/82
11. Plat of Property of Le Triomphe Partnership, Prepared by F. Lee Jolly, 7/7/81, revised 10/21/83, 1/23/84
12. Letter from Lawrence Patin, Chief Deputy Assessor, St. Martin Parish 6/2/2000
13. Aerial Map from Lafayette Consolidated Government Planning, Zoning and Codes Department

14. Letter from Robert Benoit, Director of Lafayette Consolidated Government Planning, Zoning and Codes Department 6/2/2000
15. Plat by Reddoch prepared for Bordertown Country L.L.C. 3/29/2000 (as marked by Robert Benoit)

APPLICANT'S EXHIBITS:

1. Lafayette Parish Tobin Map 1955-61
2. Lafayette Parish Tobin Map 1955-61 (Copy of Exhibit-1)
3. Zoning Letter from St. Martin Parish Police Jury 12/3/98
4. Affidavit from Assessor for St. Martin Parish/copy of 1957 Tobin Map
5. August 8, 2000 Letter from St. Martin Parish Government with copy of Reddoch plat of survey dated 11/30/90, revised 10/6/99
6. Consent Judgment 8/15/2000
7. Reddoch's Plat of Survey 11/30/90, revised 10/6/99 (same as plat in Exhibit-5)
8. Partition of property 11/23/04
9. Cash sale 2/19/1895
10. Plat by Reddoch prepared for Bordertown Country L.L.C. 7/18/2000
11. Request for Mortgage Certificate by State Highway Department
12. Expropriation Suit, State Highway Department vs. Lloyd Boulet 2/20/62
13. Letter from Charles E. Hudson, State Highway Department with Reddoch's Plat 11/30/90, revised 10/6/99
14. Certificate of Compliance from St. Martin Parish for Video Poker Truck Stop

FINDINGS OF FACT:

On March 31, 2000 the Applicant filed an original application for a Type 5 video gaming license with the Division. The application was assigned to Trooper John Childers for a background investigation. Upon reviewing the application and attached survey, Trooper Childers noticed the survey had the following property description:

"Two certain tracts of land located in Section 10, Township 11 South, Range 5 West¹ of St Martin Parish, Louisiana and possibly partially in Lafayette Parish, Louisiana, and being more particular described as follows to-wit" (State Exhibit-4)

The description "possibly partially in Lafayette Parish" raised a 'red flag' for Trooper Childers. Lafayette Parish voted out video poker gaming in the 1996 congressional general election, therefore, none of the Applicant's truck stop

¹ Property is actually in Section 10, T-11-S, R-5-E.

location can be located in Lafayette Parish. Trooper Childers commenced an intense investigation.

In trying to determine the location of the 5.4 acre² tract the Applicant intended to occupy as a truck stop, Trooper Childers obtained a copy of the cash sale between L. H. Boulet, Jr and RFP, Inc., dated May 26, 1982. (State Exhibit-5). Attached to the cash sale is a plat survey made for the Estate of L. H. Boulet, Sr., dated June, 1972, prepared by Dominique, Szabo & Associates, Inc., Consulting Engineers. (State Exhibit-6). The cash sale excluded two tracts containing 2.23 acres each, shown on the survey map as Tracts C & D. Upon examining the survey map one will note that the northeast corner of the tract sold commences along U.S. Highway 90 and proceeds westerly along a bearing of S 89 degrees 19' 11" west a distance of 398.18 feet to the southwest corner of Tract D and an iron pipe, then N 75 degrees 25' 49" W a distance of 412.85 feet. This survey shows the boundary between Lafayette and St. Mary Parishes as intersecting Tract D less than 398.18 feet from U.S. Highway 90. This survey would indicate a part of Tract D is in Lafayette Parish.

State Exhibit-4, the survey attached to the application, does not show the boundary between Lafayette and St. Martin Parishes, however, using State Exhibit-6 to locate this boundary, it would cross Tract 2 somewhere west of the northeast corner of Tract 2. If so, part of Tract 2 is in Lafayette Parish.

Further investigation by Trooper Childers yielded a survey map of Fleur de Lafayette Industrial Development dated March 2, 1981, revised April 1, 1981, May 25, 1981, June 17, 1981 and October 26, 1981. Edmond E. Dupre, Jr. Land Surveyor, prepared this map. (State Exhibit-9). This map shows the boundary between Lafayette and St. Martin Parishes as bisecting Lot 22, Fleur de Lafayette Industrial Development Park in a north-south direction. Applicant's survey attached to its application (State Exhibit-4) shows Lot 22, Fleur de Lafayette Industrial Development Park, as immediately north of Tract 2. If the boundary of Lafayette and St. Martin Parishes as shown on State Exhibit-9 is correct, then the boundary crosses Tract 2.

Trooper Childers then located a survey map prepared by Roland W. Laurent, Consulting Engineer, dated November 12, 1998 showing property of L. H. Boulet, Jr., M.D. The boundary between Lafayette and St. Martin Parishes is shown to be west of the Applicant's property. (State Exhibit 10). This survey has these notations:

"Note:
No fieldwork was performed.

² The truck stop property consisted of Tract 1, containing 0.1 acre and Tract 2, containing 5.4 acre. Through out this decision, we will refer to Tract 2. See State Exhibit-4.

The reference used in the preparation of this map was a plat by Gerald Reaux, dated; May 11, 1982, entitled property to be leased by Marcus M. Hirsch from L. H. Boulet, Jr., M.D.

The location of the parish boundary as shown was taken from a plat prepared by F. Lee Jolly P.L.S. Reg. No. 4340, entitled LeTriomphe Partnerships from Harmon F. Roy, et. al."

State Exhibit-11 is a survey map of property to be acquired by LeTriomphe Partnership from Harmon F. Roy, dated July 7, 1981, revised October 21, 1983, January 23, 1984, which shows the property owned by Dr. Lloyd H. Boulet, Jr. as located in St. Martin Parish. The parish boundary is described as "approx parish line". F. Lee Jolly is shown as the land surveyor. Inasmuch as Tract 2 is a part of the Dr. Lloyd H. Boulet, Jr. tract, this survey would locate Tract 2 in St. Martin Parish.

During his investigation, Trooper Childers displayed State Exhibit-4, the survey of Tract 2, to Lawrence Patin, Chief Deputy Assessor of St. Martin Parish, who estimated 3.656 acres of Tract 2 as being in Lafayette. The same survey was shown to Robert Benoit, Director of the Planning, Zoning and Code Department of the Lafayette Consolidated Government, who estimated 4.2 acres of Tract 2 were in Lafayette Parish. Mr. Benoit places the approximate boundary line on State Exhibit-15.

Trooper Childers testified he reviewed a September 17, 1998 letter authored by Mitchell B. "Mike" LeBlanc, Assessor for St. Martin Parish, which declared that the 12.578 acres owned by RFP, Inc. in Section 10, T-11-S, R-5-E is in both St. Martin and Lafayette Parishes and has been assessed in St. Martin Parish for the past 94 years. Trooper Childers next visited Mr. Corville, an employee of the St. Martin Parish Assessor's Office who provided him an aerial map. (State Exhibit-8). After giving Mr. Corville the property description of Tract 2, he opined it was north of the Le Triomphe Subdivision and a significant portion of Tract 2 was in Lafayette Parish³

After ending his testimony, Trooper Childers was asked if his testimony was solely based on representations of others. His reply was, "Yes".

The Applicant's first witness was E. Leo Reddoch, III, a land surveyor from Lake Charles, Louisiana.⁴ Mr. Reddoch was tendered as an expert in the field of surveying. After questioning by the court, Mr. Reddoch was accepted as an expert, thus being able to give opinions. Mr. Reddoch identified Exhibit D-1 as a Tobin⁵ Aerial Survey Map dated 1955. Exhibit D-2 was identified as a copy of

³ The Hearing Officer allowed the hearsay evidence of Mr. Corville, but did not attached any probative value to such.

⁴ The transcript identifies Mr. Reddoch as Mr. Reddock.

⁵ A Tobin Map shows ownership of the property.

Exhibit D-1. Exhibit D-4 was identified as an affidavit from Mitchell B. LeBlanc, Assessor for St. Martin Parish who affirmed that the attached Tobin Map (Exhibit D-1, D-2) was used by the St. Martin Parish Assessor's Office to locate property in St. Martin Parish. Lafayette Parish Assessor's Office uses the same Tobin Map in locating property in its parish. The Tobin Map used by both Lafayette and St. Martin Parishes Assessors show the Loyd⁶ Boulet property as being located in St. Martin Parish. The testimony and exhibits agree that Tract 2 is part of the Loyd Boulet property shown on the Tobin Map.

Mr. Charles E. Cade, Jr., Director of Planning and Development for the St. Martin Parish opined that Tract 2 (Tract A, 5.50 Acres) was located in St. Martin Parish. (Exhibit D-3). Exhibit D-5 is a letter addressed to Triple Diamond, LLC from Scott A. Angelle, Parish President of St. Martin Parish Government, which declared the Applicant's truck stop property was in St. Martin Parish. In an effort to determine whether Tract 2 (the 5.50 acre tract) parcel of ground was in St. Martin Parish, the Applicant filed a Declaratory Judgment suit in St. Martin Parish.⁷ A consent judgment was granted upon the consent of Scott Angelle, President of St. Martin Parish Government and Chester Cedars, Assistant District Attorney for the Parish of St. Martin. (Exhibit D-6). Mr. Reddoch identified Exhibit D-7 as a survey of a portion of the property leased by Triple Diamond. He opined that the property (Tract A, 5.50 acres) was in St. Martin Parish. Exhibit D-8 was identified as an act of partition dated November 23, 1904 wherein the subject property was described as being in St. Martin Parish. Exhibit D-9 was identified as a cash sale dated February 19, 1895, wherein the subject property was part of a larger tract described as being as being in St. Martin Parish.

Mr. Reddoch identified Exhibit D-10⁸ as a survey he performed showing the subject property in St. Martin Parish. His survey located the parish boundary as being west of Tract 2. This exhibit notes that Mr. Reddoch has located the parish boundary by use of the Lee Jolly P.L.S., Gerald Reaux, P.L.S. and Roland W. Laurent, P.L.S. surveys. An examination of these surveys used by Mr. Reddoch indicates the parish boundary as "approx".

Exhibit D-11 was identified as a February 6, 1962 request by the Louisiana Department of Highway to the Clerk of Court for St. Martin Parish for a mortgage certificate on approximately 35 arpents of land in the name of Lloyd Boulet. Mr. Reddoch testified the subject property was a part of the 35 arpents owned by Lloyd Boulet. Exhibit D-12 is an expropriation suit filed by the Louisiana Department of Highway against Lloyd H. Boulet, expropriating land located in Section 10, T-11-S, R-5-E, St. Martin Parish. Mr. Reddoch opined the surveys

⁶ Mr. Boulet name in spelled Loyd on the Tobin Maps and Lloyd elsewhere.

⁷ Lafayette Parish was not a party to the Declaratory Judgment. The only defendant named was "Government of Parish of St. Martin".

⁸ The survey describes the property as being in Section 10, T-1-S, R-5-E. The true Township is 11 South.

attached to the expropriation pleadings indicated the subject property is in St. Martin Parish. Mr. Charles Edward Hudson, employed by the Louisiana Department of Highway, testified he was given a survey plat (Exhibit D-7) prepared by Mr. Reddoch and asked what Parish Tract A was located. He testified after examining maps and microfilm records of the Louisiana Department of Highway, he concluded Tract A was in St. Martin Parish.

Mr. Ray Bergeron, a real estate broker in Lafayette, testified he has been in the real estate business since 1964 and has experience in reading surveys and examining real estate records. He opined the subject property was located in St. Martin Parish. This opinion was based on his examination of the Jolly and Laurent surveys. Mr. Bergeron stated he was the real estate broker for RFP, Inc., the lessor of the subject property.

APPLICABLE LAW:

La. R. S. 21:306(A)(4)(c) provides:

As used in this Section a qualified truck stop facility shall mean a facility covering at least five developed contiguous acres, which sells fuel, lubricating oil, and other vehicular merchandise, such as batteries, tires, or vehicle parts for eighteen-wheel tractor-trailers, and which also meets all of the following criteria:

REASONS FOR JUDGMENT: ===

The Applicant must carry its burden of proof by establishing its truck stop location is entirely within St. Martin Parish. Depending on the circumstances, the degree of belief may be by a preponderance of the evidence, by clear and convincing evidence, or as otherwise required by law. **C.E. Article 302.** Having not found any legislative or judicial pronouncement on the applicable burden of proof in establishing boundaries, this Hearing Officer finds the burden of proof in this case to be proof by reasonable preponderance of the evidence.

After intensively examining the various documents of the Division and those of the Applicant, I do not find any of the survey plats contain sufficient information to locate the boundary between Lafayette and St. Martin Parish. The surveyors have relied on other surveys to locate the boundary. Those relied upon cautioned the public that the boundary was approximate. Messrs. Bergeron and Hudson expressed opinions as to the location of the subject property; however, the material they examined is not in evidence or if in evidence, of no probative value.

I find the subject property is located within St. Martin Parish for these reasons. First, the Tobin Aerial Survey Map used by the assessors of Lafayette and St. Martin Parishes locate the subject property in St. Martin Parish. It is identified as the "Loyd Boulet" tract. Secondly, the subject property, as part of a

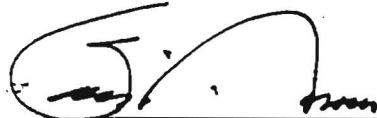
larger tract, was identified in a cash sale of February 19, 1894 and later in a November 23, 1904 partition as being in St. Martin Parish. It is well settled law in Louisiana, that where a boundary between two parishes has never been surveyed and established by conjoint survey and a certain section has been treated by parochial authorities and the owners as lying wholly within one of the parishes, the court will regard such area as having been wholly within such parish prior to the establishment of the boundary. **STATE VS. TEXAS COMPANY, 211 La. 326, 30 So2 107 (LA. 1947).**

ORDER

Considering that Triple Diamond, L.L.C. d/b/a Cajun Casino leased premises for its truck stop are entirely within the Parish of St. Martin,

IT IS ORDERED THAT the Louisiana State Police, Video Gaming Division, approve the original application of Triple Diamond, L.L.C. d/b/a Cajun Casino and issue it a Type 5 video gaming license as required by law.

Baton Rouge, Louisiana, this 12th day of December 2000.



William H. Brown
Hearing Officer
Louisiana Gaming Control Board

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 12th DAY
OF December 2000
[Signature]
DOCKET CLERK, ADMINISTRATIVE HEARING OFFICE

cc: Brett Sulzer, Esq.
Karen White, Esq.
Sgt. Jules Pinerio

A TRUE COPY ATTEST
LOUISIANA GAMING CONTROL BOARD
HEARING OFFICE
BATON ROUGE, LA 12-12-00
[Signature]
BY: CLERK