

PENNSYLVANIA GAMING CONTROL BOARD

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IN RE: PUBLIC MEETING

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CAPITAL COMPLEX HEARING ROOM #1

COMMONWEALTH AND NORTH AVENUE

HARRISBURG, PENNSYLVANIA

THURSDAY, SEPTEMBER 6, 2007

\* \* \* \* \*

BEFORE:

MARY DIGIACOMO COLINS, CHAIR

RAYMOND ANGELI

JEFFREY W. COY

KENNETH MCCABE

SANFORD RIVERS

GARY A. SOJKA (Via Teleconference)

REPORTER: KENNETH D. O'HEARN

REPORTER - NOTARY PUBLIC

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1                   MS. COLINS:

2                   Good afternoon. If you could all turn  
3 your cell phones off, I'd greatly appreciate it. And  
4 I'll call this session to order. This is basically a  
5 hearing where we're accepting argument and testimony  
6 in the matter of the petitions which were filed asking  
7 for an extension of time to pay the Category 2 slot  
8 machine license fees. Those petitions were filed by  
9 HSP, Sugarhouse and Philadelphia Entertainment and  
10 Development Partners, Foxwoods. What I will do at  
11 this point is ask our Chief Counsel Frank Donaghue to  
12 address the Board and begin this process.

13                   ATTORNEY DONAGHUE:

14                   Thank you, Chairman Colins. On December  
15 20th, 2006 the Board voted to grant the two Category 2  
16 slot machine licenses available to the City of  
17 Philadelphia to HSP, Sugarhouse and Philadelphia  
18 Entertainment and Development Partners, Foxwoods.  
19 That decision was set forth in the Board's  
20 adjudication and order dated February 1st, 2007. A  
21 competitor applicant, Riverwalk Casino, along with  
22 four civic or local government groups in the City of  
23 Philadelphia appealed the Board's decision granting  
24 the licenses to the Pennsylvania Supreme Court. The  
25 Supreme Court rejected those appeals and affirmed the

1 decisions of the Gaming Control Board. The resolution  
2 of these last appeals occurred on July 17th, 2007.

3 Under the terms of the Board's order  
4 dated February 1, 2007, the licensees were to pay the  
5 \$50 million licensing fee to the Commonwealth within  
6 ten days of the Supreme Court's dismissal of the last  
7 of the appeals which would have made a payment date  
8 due on or before July 27th, 2007. On July 23rd, 2007,  
9 Foxwoods filed a motion for an extension of time to  
10 pay the licensing fee based preliminarily upon the  
11 inability to gain zoning and construction permits  
12 necessary to begin construction from the City of  
13 Philadelphia as well as other litigation and city  
14 ordinances which had been enacted causing the delay.

15 On July 25th, 2007, HSP filed a similar  
16 motion for an extension based upon the delays caused  
17 by the City's actions or inactions. In addition, the  
18 Board will recall Philadelphia City Council had  
19 overridden the mayor's veto and passed an ordinance to  
20 place a referendum question on the May primary ballot  
21 amending the City's home rule charter to prohibit  
22 casinos in the very sites which the Board had chosen.  
23 Upon the Board and the successful licensee's challenge  
24 to the City's action and based upon the authority to  
25 site casinos being given to the Board by statute, the

1 Supreme Court struck the City's action resulting in a  
2 homerule charter issue not being placed on the ballot.

3           A special meeting of the Gaming Control  
4 Board was convened on July 26th, 2007 for the purpose  
5 of considering the two motions. Based upon the  
6 assertions contained in the petitions and following a  
7 presentation of Board Council, the Board voted to  
8 grant a temporary continuance to both licensees of  
9 their obligation to pay the licensing fee until such  
10 time the Board can conduct a full evidentiary hearing  
11 as to the facts and reasons underlying the petitions.  
12 The Board established a date of August 27th, 2007 for  
13 the parties to file supporting briefs and  
14 documentation, and this date, September 6, 2007, for  
15 hearing on the merits of the request for the  
16 extension. Briefs and supporting exhibits have been  
17 filed by both licensees and have been provided to the  
18 Board members and are included in the evidentiary  
19 record for the Board's consideration. The matters of  
20 the petitions for the extension are now ready for this  
21 Board to conduct a hearing to receive further evidence  
22 and argument concerning the request for extension of  
23 the time to pay the licensing fee.

24           MS. COLINS:

25           Thank you very much. As a matter of

1 housekeeping just for the record, I want to state that  
2 there is a quorum present. Member Sojka I believe is  
3 on the phone right now by teleconference; is that  
4 correct?

5 MR. SOJKA:

6 I am here.

7 MS. COLINS:

8 All right. Thank you very much.

9 MR. SOJKA:

10 Mary, can you hear me?

11 MS. COLINS:

12 Yes, we can. Thank you.

13 MR. SOJKA:

14 Okay. I have been on from the beginning.

15 MS. COLINS:

16 All right. So a quorum is present, and  
17 now we'll continue. I want to --- yeah, I want to  
18 address some other procedural issues first. The  
19 matter came before the Board by way of petitions that  
20 were filed by the two licensees seeking this  
21 modification. The proceedings represent a matter  
22 between the licensees and the Board who are the  
23 regulators of gaming in the Commonwealth. And this is  
24 not a public input type of hearing as we've had in  
25 prior licensing proceedings when members of the public

1 stood and spoke in favor or against proposed licensing  
2 projects. This proceeding is more --- is, in fact,  
3 more like a traditional court proceeding where the  
4 parties have come before the Board to be heard and for  
5 the Board to issue an order affecting their rights and  
6 obligations.

7           It's imperative that the Board respect  
8 the rules governing these proceedings to assure that  
9 the record is developed in a legally appropriate  
10 fashion without influence of inadmissible evidence  
11 which could give rise to any appeal by the licensees.  
12 Nonparties to a proceeding who have an interest  
13 recognized by the law and which would be affected by  
14 the Board's decision have the ability to seek to  
15 intervene in proceedings to protect their interest in  
16 accordance with the rules and regulations as set forth  
17 for intervention and standing. No one's filed a  
18 petition to --- no parties --- no one filed a petition  
19 to intervene in either of these matters that the Board  
20 is hearing today, and therefore, we're proceeding with  
21 the parties, HSP and Foxwoods. And it's their  
22 opportunity to present argument and evidence.

23           Now, because of the similarity of the  
24 issues in these two matters, we'll hear both matters  
25 together. Procedurally we'll be hearing from Foxwoods

1 first followed by HSP, and I believe we've done that  
2 based on who filed first. And after the conclusion of  
3 the presentations of both applicants, then the Board  
4 --- each of the members will have an opportunity to  
5 ask questions of the applicants and their witnesses.  
6 And so we ask that the witnesses remain throughout and  
7 until the completion of the proceedings.

8 Now, would Counsel for Foxwoods --- would  
9 you identify yourselves for the record, please?

10 ATTORNEY SCHRIER:

11 Yes. Good afternoon, Chair Colins and  
12 honorable members of the Board. My name is Stephen  
13 Schrier of Obermayer, Rebmann, Maxwell & Hippel. I'm  
14 here on behalf of Philadelphia Entertainment Partners  
15 doing business as Foxwoods Philadelphia Casino. Would  
16 you like to know who is with me today?

17 MS. COLINS:

18 What I would like now --- great, great.  
19 So if you could tell us who your witnesses are,  
20 introduce them and then we'll ask them ---.

21 ATTORNEY SCHRIER:

22 Yes. I'd like to introduce Jim  
23 Dougherty. Jim is sitting next to me on my left, and  
24 Jim is the general manager of Foxwoods Casino  
25 Philadelphia. On my right is Nick Moles. Nick is the



1 vice president and general counsel of Foxwoods  
2 Philadelphia Casino. And Ira Gubernick who represents  
3 the local partners in this project as counsel is  
4 sitting on my far left. Also with us today is Jeffrey  
5 Greene. Jeff is our traffic consultant. You may  
6 remember him from back in our earlier hearings. He's  
7 with Orth-Rodgers, and he's here. And I would suggest  
8 that all those folks could be sworn if that --- if  
9 now's the appropriate time.

10 MS. COLINS:

11 That's fine. Now's the time. That's  
12 great. Would you rise, please? I will ask the  
13 stenographer to administer the oath.

14 -----

15 WITNESSES SWORN EN MASSE

16 -----

17 MS. COLINS:

18 All right. Thank you. Ms. Schrier, do  
19 you want to proceed with opening remarks?

20 ATTORNEY SCHRIER:

21 Yes. Thank you. It's amazing that nine  
22 months have passed since I last appeared before you.  
23 Quite a bit has happened if you read any of the papers  
24 that we filed, and I'm sure you've been following all  
25 the activities that this Board has been involved with.

1 I want to thank you for hearing our petition today and  
2 hearing our emergent application a few weeks back.

3           Before you, you have an extensive  
4 verified petition which contains exhibits, and you  
5 also have a brief which was recently filed that also  
6 contains numerous exhibits. We rely upon those  
7 pleadings and those exhibits as evidence here today.  
8 But to briefly summarize it for you, our petition  
9 seeks to extend the time for payment of the \$50  
10 million license fee due to extenuating and unusual  
11 extraordinary circumstances that we and this Board  
12 have faced in the ability to properly develop our  
13 casino in Philadelphia at this site that you selected.

14           At this point, we cannot implement your  
15 decision because the Philadelphia City Council has  
16 refused to honor your authority to site the casino in  
17 Philadelphia. Respectfully, under these circumstances  
18 it would be inconsistent with the intent of the Gaming  
19 Act and patently unfair to make us take our license  
20 and pay our \$50 million along with the substantial  
21 debt service that goes with it when the site selected  
22 by this Board can't be utilized by Foxwoods as a slot  
23 casino due to no fault of ours or this Board's. As  
24 we've submitted, Pennsylvania law both in  
25 administrative law and case law authorize

1 administrative agencies such as this Board to exercise  
2 their powers of equitable relief to extend the time  
3 when good cause is shown particularly when there are  
4 extraordinary and unusual circumstances such as this.

5           As Chief Counsel noted earlier, on July  
6 17th, the Supreme Court denied Riverwalk's challenge  
7 to this Board's decision awarding Foxwoods the license  
8 at its site in Philadelphia. That was a major  
9 milestone and one that was anticipated by Foxwoods.  
10 However compelling that decision was, it only resolved  
11 one of a multitude of legal challenges and  
12 governmental roadblocks that face Foxwoods and this  
13 Board in implementing the award of these two site  
14 specific licenses in the City of Philadelphia.

15           When the Board awarded our license in  
16 February, many of us anticipated that there would be  
17 legitimate challenges in the courts. However, no one  
18 expected the unabashed misuse of the local political  
19 process to try to frustrate this Board's selection of  
20 the Foxwoods' site for gaming. At present, we're  
21 suffering enormous delays and substantial expenses in  
22 order to address both the legitimate and the  
23 non-meritorious processes that have been required in  
24 the Philadelphia political arena to obtain zoning and  
25 building permits. The Board is well aware of the

1 legal actions taken to uphold its own power to select  
2 a site for gaming in Philadelphia, and we and  
3 Sugarhouse have stood firm with the Board in these  
4 cases. These cases are identified in our papers and  
5 in our exhibits and are public knowledge. Two more  
6 Supreme Court cases confirming this Board's authority  
7 to select the site for casinos in Philadelphia have  
8 been favorably decided by our Supreme Court in the  
9 last 30 days.

10                   Going back to the time when you did grant  
11 us our license application, thereafter Foxwoods  
12 promptly filed an application for zoning approval with  
13 the City of Philadelphia under the existing C3 zoning  
14 which is commercial zoning that existed on its site.  
15 And we filed that in January of 2007. As outlined in  
16 detail in our exhibits, almost all of which represent  
17 the public record, the City failed to take action on  
18 our application for months. We were promised that  
19 more appropriate zoning under a zoning plan known as  
20 CED would soon be proposed for our site, but that  
21 result was never achieved. Instead City Council did  
22 just the opposite and enacted a flood of anti-gaming  
23 and anti-Foxwoods legislation. Those ordinances  
24 numbering approximately eight are attached to our  
25 petition and brief as exhibits.

1                   When no positive action was forthcoming  
2 and it was evident that the City Council would not  
3 honor this Board's authority to site a casino in  
4 Philadelphia, Foxwoods affirmatively challenged City  
5 Council's illegal actions by filing our own emergency  
6 application with the Supreme Court. That case is  
7 still pending at this time, and the City and City  
8 Council have filed their briefs about a week ago and  
9 we filed our reply brief two days ago. I will mark  
10 those new pleadings and filings here in evidence today  
11 with Ms. Kane (phonetic) at the conclusion of our  
12 presentation.

13                   The full litany of these claims and  
14 challenges of the past nine months are detailed in our  
15 petition, but I would like to briefly summarize some  
16 key evidence that provides good cause for relief.  
17 During the pendency of our zoning application to  
18 develop our casino, City Council actually rezoned our  
19 property from commercial to residential, and that's  
20 contained on Exhibit H to our petition. Throughout  
21 the period from January to the present, City Council  
22 has refused to apply CED zoning to Foxwoods' property.  
23 The only zoning that permits a slot casino in  
24 Philadelphia is CED. Until our site is zoned as such  
25 or until the Supreme Court orders the City to act as

1 we've requested in our action with the Court, our site  
2 cannot be used as a slot casino.

3           A prerequisite to applying for CED zoning  
4 to any site --- I'm sorry, to apply CED to any site  
5 required review by the City Planning Commission, and  
6 again over the months we were delayed with the City  
7 Planning Commission and prevented from obtaining that  
8 preliminary approval. However, on August 21st, two  
9 weeks ago, the City Planning Commission did approve  
10 CED for our site. Now, it's up to City Council to  
11 propose this change for our site and introduce a bill  
12 as such when they resume.

13           As further evidence of our concerns that  
14 we're not moving forward, City Council formed a  
15 special committee to study relocation of the casinos  
16 in Philadelphia, and that's at Exhibit FF of our  
17 brief. And even four weeks ago on August 9th,  
18 Councilman DiCicco wrote to the governor and requested  
19 consideration of a relocation of the two city casinos.  
20 To dispel any doubts, our exhibits contain our own  
21 letter to City Council President Verna which clearly  
22 advises that Foxwoods will not and I repeat will not  
23 entertain any concepts of relocation of its site, and  
24 that's contained in Exhibit GG to our brief.

25           So where are we? Even under optimal

1 circumstances, an extension of time to pay the license  
2 fee is warranted here given the procedural  
3 requirements necessary for City Council to apply CED  
4 zoning to our property. At this time, there is no  
5 proposal pending before City Council to apply the  
6 proper zoning to our site. We have no indication that  
7 any such proposal will be made when Council returns on  
8 the 14th of September. Even if they did, the  
9 procedural requirements of the City zoning process  
10 require that there be a passage and time passing so  
11 that the zoning resolution must first pass Council and  
12 be signed by the mayor. And that process, as we've  
13 outlined in our papers, would take us at the very  
14 optimal and best case scenario to mid October just to  
15 obtain that basic zoning approval. Thereafter, it  
16 takes additional time in the normal course before a  
17 building permit could be obtained.

18                   Today we remain unable to use our site in  
19 a manner consistent with the Board's licensure order  
20 because of the City Council's attempt to obstruct  
21 gaming through the enactment of these blatantly  
22 illegal and unconstitutional ordinances that are  
23 adverse to gaming generally and which are designed to  
24 hamper Foxwoods' ability to secure the zoning and  
25 building permits necessary to begin our construction.

1 This substantial degree of governmental interference  
2 is unique to Philadelphia and constitutes ample good  
3 cause for the Board to consider and grant Foxwoods'  
4 extension request.

5           Highlighting some of the legal aspects  
6 from our brief, I submit to the Board that you have  
7 the authority to grant extensions when conditions and  
8 circumstances of a particular case warrant it. As we  
9 set forth in our legal arguments in the brief,  
10 Pennsylvania law generally vests administrative  
11 agencies with the authority to request extensions of  
12 time from the regulations or from orders entered by  
13 administrative agency. Pennsylvania Administrative  
14 Code, Chapter 31, Section 31.15 applies to this Board  
15 at this stage in time and to its orders and, in fact,  
16 mirrors to a great extent the Board's own pending  
17 regulation regarding extensions of time. That  
18 provides that whenever an act is required or allowed  
19 to be done within a specified period of time the Board  
20 may extend those time frames upon a showing of good  
21 cause. The cases we've referred to in our petition,  
22 in our brief, support the Board's discretion were the  
23 applicant seeks relief within the proper time and  
24 provides a reasonable basis for such relief.

25           Respectfully, payment of the license fee



1 in the absence of our zoning and permits would cause  
2 Foxwoods undue financial hardship by exposing it to  
3 the possibility of servicing a substantial debt for an  
4 indeterminate period of time while at the same time  
5 being unable to use its site or its license for the  
6 intending purpose. The debt service alone we estimate  
7 would amount to approximately \$400,000 per month which  
8 would impact existing budgets for this project.

9 Balancing the factors here, good cause also exists for  
10 deferring payment for the license fee because doing so  
11 posing no financial risk to the Commonwealth. The  
12 Board has our letter of credit as full security for  
13 the ultimate timely payment of this obligation, and  
14 that will remain. That's attached as Exhibit M to our  
15 petition.

16                   Equitable consideration surely exists  
17 here as neither Foxwoods nor this Board could have  
18 predicted this extraordinary governmental interference  
19 in one location. And neither Foxwoods nor the Board  
20 are the cause of these delays. Foxwoods will  
21 immediately pay the fee when it can do what you have  
22 asked us to do. But to ask for the payment now while  
23 so many unexpected and costly battles are being waged  
24 is only encouraging a continuation of the abuse of  
25 litigation strategy of those who oppose this project.

1 It's kind of like piling on after the whistle has  
2 blown if we had to pay the fee in the midst of all  
3 these ongoing and costly procedural processes that we  
4 are part of.

5           Further, the provisions of the Gaming Act  
6 do not require payment of the license fee until a  
7 license is issued, and the relief we seek is not  
8 contrary to any statutory provision in the Gaming Act.

9           Finally, good cause exists for the Board  
10 to provide us with an extension of time to tender the  
11 fee where the ability of this license holder to use  
12 the license to develop a casino is effectively  
13 impossible today.

14           This is a new industry and a developing  
15 gaming jurisdiction. I was lucky enough to be a part  
16 of Atlantic City's emerging industry in the 1980s on  
17 the regulatory side. Time frames and deadlines are  
18 highly important, and they add to the integrity of  
19 these processes. But one cornerstone of any  
20 regulatory framework is the flexibility to accomplish  
21 goals as long as the applicant is acting in good  
22 faith.

23           In sum, the Gaming Board and Foxwoods are  
24 in the same position. Both Foxwoods and the Gaming  
25 Board want us to be built and operating as quick as

1 possible at this site. We both want construction to  
2 begin to bring jobs and future revenues to the  
3 Commonwealth, and we both worked together to overcome  
4 both the anticipated and the unanticipated challenges  
5 that have stood in the way of our project. And I  
6 think we're both optimistic that the reasons for these  
7 continued hurdles will be solved promptly and  
8 reasonably. Neither one of us have been the cause of  
9 these delays, but rather the political process itself,  
10 the legal maneuvering and the unique aspects of the  
11 Philadelphia City legislative process have created our  
12 extensive and unanticipated roadblocks to getting  
13 started. And as a result, we submit that ample good  
14 cause exists to provide equitable relief to extend the  
15 time for payment of our license fee until we're in a  
16 position to break ground on this project.

17 I'd like to introduce Jim Dougherty, the  
18 general manager of the Foxwoods Project. Jim is next  
19 to me, and he would also like to make some remarks.

20 MS. COLINS:

21 Go on, sir.

22 ATTORNEY DOUGHERTY:

23 Thank you, Steve. Madam Chairperson and  
24 distinguished board members, as Mr. Schrier has just  
25 discussed, Foxwoods has been faced with and is

1 continuing to deal with an extraordinary level of  
2 governmental interference in what has become a  
3 protracted and highly politicized local zoning and  
4 development process which has already delayed Foxwoods  
5 from starting construction for several months.

6           Despite having overcome these hurdles,  
7 Foxwoods is extremely excited about bringing a world  
8 class facility to our South Columbus Boulevard site  
9 along with the substantial tax revenues anticipated by  
10 the General Assembly, thousands of well-paying jobs  
11 and millions of dollars in charitable contributions  
12 which our partners at irrevocably pledged to benefit  
13 disadvantaged children, all which Foxwoods promised  
14 this Board it would deliver and which Foxwoods will  
15 deliver to the citizens of Philadelphia.

16           In the nine months since the issuance of  
17 the licensing order, the Board, Foxwoods and  
18 Sugarhouse have had to content with a vast array of  
19 legal challenges to the Board's licensing decision.  
20 We have been working diligently to resolve the  
21 numerous appeals to this Board's licensing decision  
22 before the Supreme Court as well as the many obstacles  
23 placed in our path by the anti-gaming activists.  
24 Despite having been successful in each court  
25 challenge, the Supreme Court expressed determination

1 that this Board has the sole and exclusive authority  
2 to locate casinos in Philadelphia and the  
3 Commonwealth.

4                   Development of Foxwoods' slot machine  
5 facility continues to be delayed by unusual local  
6 governmental interference, specifically the refusal of  
7 City Council for the City of Philadelphia and the  
8 Department of Licenses and Inspections to issue the  
9 local zoning and building permits necessary to enable  
10 Foxwoods to begin construction and the introduction  
11 and passage of a series of illegal political and  
12 legislative obstacles for Foxwoods and this Board.  
13 These attempts to misuse zoning powers to challenge  
14 this Board's authority have yet to survive any  
15 challenge in the court and have required both this  
16 Board and Foxwoods to bring actions before the Supreme  
17 Court. Foxwoods' action which is currently pending  
18 challenge an ordinance which rather than applying CED  
19 zoning classification to our site, City Council has  
20 instead rezoned the property from commercial to  
21 residential. This ordinance along with the rest of  
22 the anti-gaming program of legislation adopted by City  
23 Council illustrates the lengths to which City Council  
24 has gone in its attempts to resist and undermine this  
25 Board's licensing decision.

1           In the face of these ongoing resistances  
2 to gaming, Foxwoods continues its efforts to move the  
3 zoning process forward. To that end, Foxwoods is  
4 currently in the process of negotiating a development  
5 agreement with the City of Philadelphia and recently  
6 successfully persuaded the City Planning Commission to  
7 unanimously recommend to City Council that CED zoning  
8 be applied to our site. Unfortunately, this is only  
9 an early step in the process, and under the best  
10 circumstances in that City Council from this point  
11 forward acts favorably in every instance and moves as  
12 fast as its rules and procedures permit, Foxwoods  
13 cannot receive the CED zoning and approval plans ---  
14 excuse me, planning development before mid October.  
15 Given what has taken place since the Board awarded  
16 Foxwoods' license last December, however, it is not  
17 expected that this time table can realistically be  
18 met.

19           As a consequence of this uncertainty,  
20 Foxwoods is requesting that the Board grant an  
21 extension of time to pay the \$50 million licensing fee  
22 until such time we have secured the approvals and  
23 permits needed to begin construction.

24           In addition to defending the various lawsuits  
25 since the Board's licensing decision in December of

1 '06, Foxwoods has continued to address the legitimate  
2 concerns of the City and community. One action of  
3 these efforts that has not --- has not been given much  
4 attention to date is our efforts to address the  
5 concerns of the people who will become Foxwoods'  
6 neighbors and substantial support Foxwoods already  
7 enjoys throughout South Philadelphia.

8                   Since February of 2006, we have began an  
9 extensive grassroots community outreach campaign with  
10 residents, civic associations, churches, nonprofit  
11 agencies and businesses in the Philadelphia area which  
12 continues to this day. Foxwoods' employees and  
13 representatives have hosted or attended more than 60  
14 meetings during that time, answering questions,  
15 providing information on topics including but not  
16 limited to our traffic mitigation plan, charitable  
17 donations, security, employment opportunities and the  
18 special service district. In light of the concerns  
19 regarding traffic, we have made our traffic  
20 consultant, Jeff Greene, of Orth-Rodgers available to  
21 answer questions at any of these meetings.

22                   In addition to meeting with the local  
23 citizens, last fall we hosted a job fair attended by  
24 more than 400 individuals. In the spring of '07, we  
25 held a construction fair attended by more than 200

1 local vendors. Other local residents have attended  
2 public hearings and other proceedings on our behalf,  
3 most recently at the July 17th planning commission  
4 meeting where nearly 20 neighbors, community business  
5 leaders and union members attended the planning  
6 commission meeting in support of Foxwoods.

7           To encourage and facilitate communication  
8 with members of the local community, we have  
9 established a local telephone number and e-mail  
10 address for residents to direct questions, make  
11 comments or request a meeting. Foxwoods' effort to  
12 foster a meaningful dialogue with the community are  
13 ongoing, and it is committed to being a good neighbor  
14 in South Philadelphia for many years to come.

15           Since we were in front of the Board last  
16 November, we have made substantial progress in  
17 furthering our traffic design improvements. Last  
18 month we received approval from both PennDOT and the  
19 City to translate our updated and revised intersection  
20 improvements into a \$5 million construction plan. We  
21 were also proceeding on the design of a state of the  
22 art traffic signal system for our section of Columbus  
23 Boulevard, and surely we'll be meeting with the  
24 Sugarhouse representatives to ensure the that traffic  
25 signal system designs are coordinated in all details.



1 I have our traffic engineer, Jeff Greene, from Orth-  
2 Rodgers to answer any questions that you may have.

3           Let me say that while working  
4 cooperatively with the staff and leadership of the  
5 City Streets Department, the Philadelphia City  
6 Planning Commission and PennDOT, we were able to  
7 improve our designs and reduce delays at the  
8 intersections on Columbus Boulevard to a point where  
9 traffic will flow better after Foxwoods opens its  
10 doors than it does today. We've had numerous meetings  
11 with PennDOT, City Streets and the Planning Commission  
12 staff to report on our progress and work through the  
13 comments and concerns put forward by these public  
14 agencies.

15           As a result of these meetings, we have  
16 enhanced and improved our designs as follows. One,  
17 we've incorporated the goals of essential waterfront  
18 development plan into our site and our traffic  
19 improvement plan by maintaining full width sidewalks,  
20 bike lanes and --- I'm sorry, bike lanes the length of  
21 Columbus Boulevard. We've provided a pedestrian  
22 concourse to the Delaware River along Reed Street and  
23 a pedestrian promenade along the river. We've  
24 incorporated to set the bus operations into a bus  
25 station we are constructing on Tasker Street, and we

1 are providing free bus bays for their routes that  
2 service this area.

3           We've enhanced the design of the state of  
4 the art traffic signal system to include an incident  
5 management function for diverting traffic from I-95  
6 when it is blocked by an incident. And lastly, we  
7 will provide a communication link from the Columbus  
8 Boulevard traffic signal system to the City of  
9 Philadelphia and PennDOT's traffic management centers  
10 so they can monitor traffic and any incidents that may  
11 happen. And we will continue to work with both the  
12 City and the State to provide --- excuse me, refine  
13 our traffic design.

14           In conclusion, the excessive governmental  
15 interference with local zoning and the development  
16 process continue to delay construction of Foxwoods  
17 Gaming Facility. Compelling Foxwoods to pay the \$50  
18 million licensing fee in this uncertain environment in  
19 which local zoning ordinances are being blatantly  
20 misused in an attempt to second guess this Board's  
21 licensing decision would cause a substantial financial  
22 hardship for Foxwoods and it's unjustified. For these  
23 reasons as well as those set forth in our petition and  
24 supplemental brief, Foxwoods respectfully contends  
25 that good cause exists for this Board to grant its

1 petition and extend the time for Foxwoods to make  
2 payment of its licensing fee until all final  
3 non-appealable zoning and building permits necessary  
4 to begin construction of its license gaming facility  
5 have been issued.

6                   As the general manager, of Foxwoods  
7 Casino Philadelphia, I'd like to thank the Board for  
8 allowing me the opportunity to address you all today.  
9 While it is regrettable that misguided efforts of a  
10 few have delayed the tax relief and the economic  
11 development, what the General Assembly intended with  
12 the introduction of gaming in Pennsylvania, we are  
13 extremely optimistic that all of these obstacles will  
14 soon be overcome and that Foxwoods will play a  
15 meaningful role in the enhancement and creation of  
16 tourism and business opportunities in Philadelphia for  
17 many years to come. I'm happy to respond to any  
18 questions you may have.

19                   MS. COLINS:

20                   Thank you. We'll reserve our questions  
21 to the end. Mr. Schrier, anybody else?

22                   ATTORNEY SCHRIER:

23                   Yes. That concludes our affirmative  
24 presentation. I understand we'll be provided with a  
25 time for closing as well.

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MS. COLINS:

Yes. Now, Counsel for HSP? All right.  
Counsel, will you state your name for the record?

ATTORNEY DONNELLY:

Good afternoon. John Donnelly appearing on behalf of HSP. With me today are Bob Sheldon who's president of the company, Chuck Hardy who's one of our chief legal officers who has been representing us in many of these matters and Terry McKenna who is the project executive who is going to testify.

MS. COLINS:

Great. What I'd like to do is have an oath administered to whoever will be testifying. And you see we've developed some mood lighting for you in order to do that.

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WITNESSES SWORN EN MASSE

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ATTORNEY DONNELLY:

I'd also like to introduce Lee Whitaker who's a graduate of Temple Law School, and he's recently joined the company as director of communication and welcome her to her first --- first experience before the Gaming Board.

I won't reiterate everything --- I won't

1 reiterate everything that Steve Schrier ably put forth  
2 with regard to the history. It's contained in our  
3 brief. I do want to make some points.

4           When we last visited here which was in  
5 December, we all left happy and very encouraged and  
6 optimistic. Perhaps we were a little bit naive as  
7 well. I think everyone believed that this process  
8 would complete itself shortly. Okay. We firmly  
9 believed that we would be in this project in the  
10 spring. That didn't happen, and as we've set forth in  
11 our brief, as Steve just pointed out, and as your  
12 staff well knows because your staff's been involved in  
13 this litigation, we've been frustrated in the process  
14 has been delayed substantially. We were almost  
15 immediately flung into an extraordinary mixture of  
16 both legal and politics that surround this.

17           So I think it's --- we welcome the  
18 opportunity here and think it's entirely appropriate  
19 that we're back here again to address the Board and  
20 tell you a little bit of what has gone on since that  
21 time and give you our prospective from this. It's a  
22 good time to step back and look at where we are.

23           Everyone agrees. I think the Board  
24 agrees. The governor agrees, and he's quoted the  
25 Supreme Court that the --- what has happened is

1 unanticipated and extraordinary. It's been difficult.  
2 It's been extremely costly, and it's been time  
3 consuming. Ironically, it was Ben Franklin,  
4 Philadelphia's own, who said time is money. And time  
5 indeed is money. The persons who --- small group of  
6 persons who object to this experiment have made it  
7 plain in testimony and otherwise that their goal is to  
8 delay and if they can't --- if they can't prevent,  
9 which is their primary goal --- and if they can't  
10 delay or prevent to obstruct the operation. It's  
11 plain what their agenda is.

12                   We have on the other side this Gaming  
13 Board which has been appointed by the legislature,  
14 both houses of the legislature which approved the  
15 Gaming Act, the governor's office, the Supreme Court  
16 and the State of --- Commonwealth of Pennsylvania and  
17 the City of Philadelphia who is in favor of this. The  
18 vast majority of the people in the City of  
19 Philadelphia are in favor of this. Polls have shown  
20 that. They haven't changed. This Board knows that  
21 because this Board reviewed in April of last year the  
22 task force report and the polls and policies that  
23 surrounded that. Almost 118 people, I think, who  
24 testified, 308 written statements and nearly 500 pages  
25 of the task force. So one myth with which to dispel

1 of right away, and I'm glad to see that some press is  
2 here, is that this matter wasn't completely vetted and  
3 it was completely vetted.

4                   But this is a democracy, and we all know  
5 democracy is messy and not sometimes the most  
6 efficient way of governing ourselves. We are in a  
7 process, and we don't reject or criticize that  
8 process. That's the process. We are a new novel  
9 business and a new novel neighbor coming to  
10 Philadelphia. We recognize that there are citizens in  
11 the City who legitimately are concerned about us.  
12 That's fair. We also know there are some people who  
13 don't care about us or gaming but want to stop the  
14 process. That's unfair.

15                   But the process takes time. And when you  
16 have new novel different matters, as we all know in  
17 our democracy, the first level that you go to is your  
18 closest representative and that's City Council. I  
19 think City Council and we think City Council has been  
20 reacting in a way that one would expect. I'm not here  
21 to criticize those persons on City Council. It would  
22 serve no purpose to do that. They have  
23 constituencies. They've listened to them. They are  
24 trying to and have sorted out what the problems are  
25 and what they will be, and they're still in that

1 process. We're here today to tell this Board that we  
2 as a participant in that process continue to pledge  
3 our good faith that we will follow that process, and  
4 we're absolutely positively convinced that at the end  
5 of that process we will be open and have a facility  
6 that everyone in the City and everyone here is going  
7 to be more than proud of.

8                   What I want to present today as well as  
9 the legal argument is to demonstrate to this Board  
10 that we have not been idle during that time period.  
11 As I said, I'm going to present Chuck Hardy who will  
12 talk about what we've been doing on both the legal  
13 front and the City Council, City of Philadelphia  
14 front. Terry McKenna, our project executive, will  
15 present where we are on the very important issue of  
16 traffic. I don't have to tell this Board, but maybe  
17 some people weren't in this room, that it was a  
18 serious issue that this Board had a lot to say about  
19 and grilled us extensively on. And we did one report  
20 that we presented to you. I have today with me a  
21 second report, a five incher give or take. That is  
22 our second report. And Terry has an extremely  
23 dramatic announcement that he's going to make. I  
24 won't steal his fire, but there's been a powerful  
25 development that is very positive to this issue.



1                   Bob is going to talk about what we've  
2 been doing with our community and with the City. I'm  
3 happy to announce and we'll steal a bit of his fire  
4 that we entered to on August 2nd an extremely lengthy  
5 term sheet with the City of Philadelphia that provided  
6 I think there were 12 major sections and innumerable  
7 subsections that govern another --- a number of other  
8 items that this Board quizzed us about. That is  
9 security at the property, the emergency responses to  
10 the property, utilities, environmental green issues  
11 and access to the property. All addressed. In  
12 addition to those, we also addressed with the City,  
13 because they were concerned as well, the employment  
14 opportunities for the citizens of Philadelphia and for  
15 diverse persons of that community.

16                   This process, which again we don't  
17 criticize and really embrace, has as I said been  
18 costly and has caused delay. Our project ourself is  
19 more from about 450 --- \$450 million to about \$650  
20 million. Part of that's because of the delay. Part  
21 of it is because we've made our project better, but it  
22 hasn't helped. We have expended approximately \$13  
23 million on this project to date. We're not going  
24 anywhere. We're going to see this day and we're going  
25 to succeed and we're going to see this process to the

1 end. The reason we're here today is we are asking the  
2 Board to continue the relief they granted in August  
3 and not cost more money and cause more soft costs that  
4 don't go into things that really aid the citizens in  
5 this building.

6 I want to comment again to the extent  
7 that the public is here as to the extraordinary  
8 success that this Board and this legislature and in  
9 part the Supreme Court has brought in already. The  
10 casinos that are open are stunningly successful. None  
11 of the horrors that people talked about have  
12 occurred to my knowledge. I read the reports on them.  
13 The numbers are staggering. As I understand it,  
14 Chester and Philadelphia Park, the two bookends to  
15 Philadelphia, will have to date paid almost \$200  
16 million in tax revenue. Now, \$200 million, what does  
17 that mean? Let me give you a little perspective.  
18 When Resorts International opened in 1978, it was the  
19 most successful casino in the world. It's competitor  
20 at the time was Caesar's Palace. What did resorts do  
21 in that first year of gaming revenue, not taxes, total  
22 revenue? \$230 million. Those two casinos, those two  
23 bookends have already generated \$200 million in tax  
24 revenue. It's astonishing. And to suggest that some  
25 people in Philadelphia want to stop that, delay,

1 prevent, obstruct that and nullify the actions of this  
2 Board, the actions of the governor, the actions of  
3 both houses of the legislature and the actions of the  
4 Supreme Court is beyond belief.

5           Some statistics that the press should  
6 remind the world of that we will be paying over a  
7 billion dollars in five years in taxes we project.  
8 \$17,000 million of host fees to Philadelphia, \$5  
9 million of which --- \$5 million goes directly to  
10 schools. Imagine what the Philadelphia schools could  
11 do with \$5 million --- will do with \$5 million. \$7 to  
12 \$8 million of that is local taxes. Over a ten year  
13 period almost \$67 million in additional property tax  
14 on rateables and other taxes. The convention center  
15 will expand and throw out Lord knows how many jobs.  
16 We ourselves are predicting 1,100 direct job, 2,500  
17 spin-off jobs, 1,000 construction jobs. That's almost  
18 5,000 jobs. And yet, some people want this to stop.

19           My grandmother from Indiana used to call  
20 telling me about don't let the genners (phonetic) get  
21 you. That's Hoosier for those who are against  
22 everything, genners. There are some genners out  
23 there. They'd be opposed to gambling in Las Vegas.  
24 That has nothing to do with what's going on in this  
25 City. As Mr. Sheldon and Mr. McKenna will point out

1 --- Terry is going to show you a drawing, a couple  
2 drawings. This is what the waterfront looks like now.  
3 Now, we're showing where Sugarhouse is located ---  
4 this is the waterfront that a couple people want to  
5 preserve.

6 MR. SOJKA:

7 Excuse me. I'm losing the microphone.  
8 Is someone walking away from it? Hello?

9 ATTORNEY DONNELLY:

10 I'm back. This is the waterfront that  
11 some people would suggest should be preserved. It's  
12 been like that since before and certainly after the  
13 Jack Frost Refinery left. It cannot be accessed.  
14 It's blocked off by chain link fence. This is just  
15 the waterfront. The property in front of it is full  
16 of concrete and rebar. It is next to a public park  
17 that is a disgrace next to that public park.

18 As this Board knows, we've proposed to  
19 change this to now a \$650 million project with a  
20 promenade on the waterfront with access by the public,  
21 one of things this Board demanded and one of the  
22 things that the City demanded and which we have  
23 guaranteed both you and the City will occur. But  
24 we're frustrated in delivering that.

25 I won't reiterate, as I said, Steve's

1 arguments. They were all very fine. I can just say  
2 we can't begin at this time. We want to. The cost to  
3 us we estimate for to pay this \$50 million now when we  
4 can't use it would be \$417,000. That's at 10 percent,  
5 \$50 million divided by 12. It's there somewhere. As  
6 Steven mentioned, there's no risk to this Board. Our  
7 letter of credit remains up and can be drawn at any  
8 time.

9           We have pledged and pledge again to take  
10 every step, use all of our resources to faithfully  
11 pursue the opening, construction and benefits that we  
12 --- that we've talked to you about. And as soon as we  
13 can do that, we will do that. We won't be able to do  
14 that until we get our first un-appealable permit and  
15 get into the ground. And we ask this Board to stay  
16 --- continue the stay you issued in August until such  
17 time as we have the ability to have that first permit  
18 and get into the ground. I can't predict when that  
19 will happen. Steve said it's an indeterminate date.  
20 He's right. We don't know. We don't know how long it  
21 will take. But I am as confident of anything I've  
22 been confident of that reason will prevail. No one  
23 who looks at this waterfront, no one who hears these  
24 statistics about what gaming can do, no one who sees  
25 what Chester did and Philadelphia Park has done for

1 those communities can long say --- long remain against  
2 it because it doesn't make sense. And the people ---  
3 the majority of the people who want these benefits to  
4 come will ultimately put it at an end.

5           As I said, democracy is a slow, messy,  
6 time consuming, difficult rough and tumble. We've  
7 been through it. Much more than anyone else. We ask  
8 this Board to continue what it did in August and  
9 continue to permit us to fight this battle and not  
10 cost us this \$417,000 a month which would be money  
11 soft costs out of the project, money that cannot be  
12 used for the benefit of the project, the benefit of  
13 gaming revenues, the benefit of all the economic  
14 generation that we want to create.

15           With that, I will call my first witness  
16 who's going to be Mr. Hardy.

17           MR. HARDY:

18           Good afternoon, Chairman Collins and  
19 members of the Board. My name is spelled H-A-R-D-Y.

20           I am Chuck Hardy, an attorney for HSP  
21 Gaming, LP. I've been asked to summarize for you the  
22 legal activities in which HSP has been engaged since  
23 this Board approved HSP's application for a Category 2  
24 slot machine license.

25           All of these legal efforts have been in

1 furtherance of obtaining the approvals necessary for  
2 our company to move forward with development the  
3 Sugarhouse Casino. I will also highlight some of the  
4 legal obstacles which none of us could have  
5 anticipated which have arisen since your decision and  
6 which continue to arise causing unexpected delay.

7           Within 30 days after this Board's  
8 adjudication of February 1st, 2007, five separate  
9 petitions for review were filed in the Supreme Court  
10 of Pennsylvania and proceeded as separate challenges  
11 to this Board's approval of HSP's application. Each  
12 proceeding was brought by different organizations and  
13 individuals and in one instance by the Philadelphia  
14 City Council, and each raised different issues. HSP  
15 participated in each proceeding, drafting and filing  
16 briefs, applications and other pleadings as  
17 appropriate.

18           In the appeal by Riverwalk, one of the  
19 applicants not selected for a Philadelphia license,  
20 where argument was requested by the Supreme Court, HSP  
21 took a lead in the oral arguments before the Court.  
22 In each of these five proceedings our goal was to  
23 support the decision which this Board had reached, and  
24 as your general counsel can attest, we worked long and  
25 hard to achieve the results which both you and we

1 sought. In every case we were successful, either in  
2 having the petition for review dismissed or in  
3 prevailing on the merits before the Supreme Court.  
4 The last of these appeals was decided July 17th, 2007.

5           Almost immediately after this Board's  
6 decision approving HSP and Foxwoods for Philadelphia  
7 licenses, a so called citizens' petition drive began  
8 to place on the Philadelphia election ballot a  
9 referendum question which if approved by the voters  
10 would have prevented either Sugarhouse or Foxwoods  
11 from ever being able to construct the facilities this  
12 Board had approved. In fact, it would have prevented  
13 casinos from being built virtually anywhere in the  
14 City of Philadelphia. The initiative would have  
15 required a 1,500 foot buffer between any casino and  
16 the nearest resident, house of worship, school or  
17 park.

18           HSP Gaming's attorneys represented  
19 opponents of this initiative in a hearing before Judge  
20 Ward Clark who issued an injunction which stayed the  
21 referendum. Promptly after Judge Clark ruled,  
22 Philadelphia City Council enacted its own version of  
23 the very same ballot initiative. This Board and HSP  
24 all brought challenges to this action in the Supreme  
25 Court of Pennsylvania. After a preliminary injunction



1 issued, which kept the initiative off the spring  
2 primary ballot, the full matter was ruled on by the  
3 Supreme Court which properly held as we and your  
4 Counsel argued it should, that this Board and only  
5 this Board can determine the locations of casinos in  
6 Philadelphia.

7                   Here again the litigation involved time,  
8 effort, preparation of pleadings and other court  
9 filing. Thankfully, you and we were again successful  
10 in these efforts to uphold and implement the decision  
11 you had made in selecting the Sugarhouse Casino and  
12 Foxwoods.

13                   The opponents of your decision for  
14 Philadelphia have now opened a new front. They've  
15 introduced in the state legislature bills which would  
16 enact the 1,500 foot buffer in Philadelphia as a  
17 matter of state law. These bills have no yet come to  
18 a vote in either chamber of the legislature.

19                   Throughout this year, HSP Gaming  
20 proceeded like any developer must in Philadelphia to  
21 comply with applicable local zoning and land use  
22 requirement so that we could ultimately receive the  
23 building, zoning and use permit necessary to construct  
24 and operate the Sugarhouse Casino. In Philadelphia,  
25 these requirements are found in our Commercial

1 Entertainment District Ordinance referred to by Mr.  
2 Schrier by its short name the CED.

3           The Sugarhouse plan complies fully with  
4 the requirements of the Commercial Entertainment  
5 District Ordinance. The approval process for HSP  
6 involves a minimum of three sets of approvals under  
7 that ordinance. First, the Planning Commission ---  
8 the Philadelphia Planning Commission must review and  
9 approve a plan of development for the casino examining  
10 traffic affect, provisions for parking, height, bulk,  
11 building setbacks, landscape plans and other typical  
12 zoning requirements. Second, the Philadelphia City  
13 Council has to designate the area where the casino  
14 will operate as a special zoning district called a  
15 Commercial Entertainment District and also must  
16 approve a plan of development which --- the same one  
17 which was approved by the Planning Commission.

18           Finally, permit applications must be  
19 submitted to the Department of Licenses and  
20 Inspections to be approved and for permits to issue.  
21 In our case, there are many permits that are going to  
22 be necessary, building permits, zoning, use permits.  
23 The first permit we're going to need to obtain is our  
24 foundation permit so that we can pour the foundations  
25 and footings to get our construction under way.

1                   HSP worked closely with the City Planning  
2 Commission Staff, the Philadelphia Department of  
3 Streets, the Philadelphia Water Department, the City  
4 Solicitor's office and other city officials to develop  
5 the ordinances, applications and plans necessary for  
6 this process. I can report that we have now made  
7 substantial progress to date, but the process is by  
8 its nature a slow one.

9                   Our plan of development has been approved  
10 by the Planning Commission. Our ordinances have been  
11 drafted and have been introduced in City Council.  
12 City Council is currently in recess, and when it  
13 resumes in the fall, we fully expect that we will be  
14 able to have our ordinances passed and our permit  
15 applications approved. However, as you've heard,  
16 there is opposition to our proposal, and the opponents  
17 have proved to be politically resourceful and very  
18 litigious. We cannot predict when the process will be  
19 completed and what further legal challenges to our  
20 approvals may lie ahead.

21                   One area of concern is a package of seven  
22 anti-gaming bills pending in City Council where they  
23 are currently in committee, any one of which, if  
24 passed, would prevent HSP from obtaining the permits  
25 it needs. I think Mr. Schrier referred to eight

1 bills. There are seven bills which apply to both of  
2 us and one bill that applies only to Foxwoods which is  
3 why there's a difference in the numbers.

4 I believe many of these bills to contain  
5 provisions which are contrary to state law given the  
6 opinion of the Supreme Court making it crystal clear  
7 that this Board has the sole authority to determine  
8 the location of the casinos which these proposed  
9 ordinances seek to undermine.

10 In sum, HSP Gaming has dedicated enormous  
11 legal resources to moving our project forward at great  
12 cost and expense, and we are committed to continuing  
13 to do so. We fully expect to continue our regard of  
14 progress and our record of success to fulfill your  
15 decision and our intentions to construct the  
16 Sugarhouse Casino on the Delaware Waterfront. We will  
17 be focusing all of our resources over the coming  
18 months to completing the approval process. That  
19 concludes my remarks. Mr. Donnelly?

20 ATTORNEY DONNELLY:

21 Thank you, Chuck. Terry, would you  
22 present your remarks, please?

23 MR. MCKENNA:

24 Good afternoon, Chairman Colins and  
25 Members of the Board. I am Terrence McKenna of

1 Keating Consulting, the development management for HSP  
2 Gaming on the Sugarhouse Casino project. My role on  
3 the project is to direct the overall development  
4 activities from approvals through design to  
5 construction of the actual casino. This afternoon  
6 I've been asked to briefly summarize to the Board the  
7 progress which has been made relative to traffic  
8 impacts and design on the Sugarhouse Casino project  
9 since December 2006.

10                   As the Board is aware, prior to December  
11 2006, HSP Gaming's traffic consultant, Gannett  
12 Fleming, Incorporated, performed an extensive analysis  
13 of traffic impacts which would result from the  
14 development of the Sugarhouse Casino project. That  
15 analysis concluded that while PennDOT was  
16 reconstructing the I-95 Girard Avenue interchange  
17 traffic flow both arriving and departing the  
18 Sugarhouse Casino would have only a slight impact on  
19 the area surrounding the casino as the capacities of  
20 the roadways and the area of the site combined with  
21 the current and future traffic volumes were more than  
22 adequate to handle the additional trip vehicles ---  
23 vehicle trips to be generated by the Sugarhouse  
24 Casino.

25                   While the traffic plan at that time was

1 extremely viable, HSP Gaming, the local neighborhoods,  
2 the City of Philadelphia, PennDOT and the Board's  
3 traffic consultant, Edwards and Kelcey, had some  
4 concerns with the necessity of southbound I-95 traffic  
5 exiting at Girard Avenue and traveling on local  
6 neighborhood streets to get to the casino.  
7 Nevertheless, the planned traffic flow patterns  
8 worked, and we were confident that Sugarhouse Casino  
9 traffic would have a minimal impact on the surrounding  
10 community.

11                   Now, what I have to say next has been  
12 well publicized in the areas surrounding the site, but  
13 not much further than that. In January 2007, shortly  
14 after HSP Gaming was selected by the Board in December  
15 2006 PennDOT made public their interim plan to further  
16 alleviate traffic impacts to the neighborhood areas  
17 directly west and northwest of the Sugarhouse Casino  
18 site. The decision by PennDOT was hands down one of  
19 the important and huge decisions made to date relative  
20 to the development of Sugarhouse Casino. And HSP  
21 Gaming commends PennDOT for recognizing the concerns  
22 of the surrounding neighborhoods, the City and HSP  
23 Gaming relative to traffic flow on neighborhood  
24 streets. PennDOT's January 2007 decision calls for  
25 the construction of temporary on and off ramps at the

1 I-95 Girard Avenue interchange prior to the opening of  
2 the Sugarhouse Casino as well as prior to the start of  
3 the major interchange reconstruction activities.

4           Construction of these ramps is scheduled  
5 to begin in March 2008 and will be completed in  
6 December 2008. The result of these temporary ramps is  
7 that visitors to Sugarhouse Casino traveling on  
8 Interstate 95 will be able to exit at the Girard  
9 Avenue interchange and immediately access the main  
10 arterial roadway leading to Sugarhouse Casino. No  
11 traffic exiting or entering at this interchange will  
12 need to travel over neighborhood streets to reach the  
13 casino. Public reaction at the community meetings  
14 where PennDOT presented this plan was overwhelmingly  
15 in favor of the proposed improvements, and shortly  
16 thereafter any criticism of Sugarhouse Casino's  
17 traffic management plan as described back in December  
18 decreased significantly to the point where now traffic  
19 is not typically mentioned as a concern during HSP  
20 Gaming's meetings with the community residents.

21           Given the planned PennDOT improvements,  
22 it became necessary for Gannett Fleming to perform a  
23 complete update of the traffic impact analysis for the  
24 Sugarhouse Casino as the previous October 2006  
25 analysis was no longer considered valid due to the

1 changes in the proposed traffic patterns. In  
2 addition, at the request of PennDOT and the City of  
3 Philadelphia, HSP Gaming expanded the study of  
4 intersections further south on North Delaware Avenue  
5 and Columbus Boulevard to the Market Street Bridge.  
6 The purposes of the request was twofold, number one,  
7 to confirm that the additional intersections  
8 significantly south of the site would not require any  
9 mitigation measures beyond signal timing adjustments,  
10 and number two, to ensure that accurate, up to date  
11 traffic data existed for the full length of the  
12 roadway between Foxwoods Casino and the Sugarhouse  
13 Casino. The City and PennDOT requested that Foxwoods  
14 expand their study north to the Market Street Bridge,  
15 and Foxwoods also agreed in this regard.

16               As a result, on May 21st, 2007 Gannett  
17 Fleming issued a completely updated traffic impact  
18 analysis for the Sugarhouse Casino, a copy of which we  
19 have on the table in front of us here and which the  
20 Board has a summary of in Exhibit V as in Victor.  
21 This report concludes that beyond major intersection  
22 reconstruction activities that were always planned  
23 directly in front of the Sugarhouse Casino no other  
24 significant mitigation measures are required beyond  
25 traffic signal timing adjustments. Furthermore, the



1 report confirms that visitors to the Sugarhouse Casino  
2 will not need to travel neighborhood streets to reach  
3 the facility. This is a tremendous accomplishment  
4 given the planned presence of a casino in a highly  
5 urban area. And all parties involved in the process  
6 including the City, PennDOT and the neighborhood  
7 associations deserve recognition in this regard.

8           HSP Gaming, the City of Philadelphia and  
9 PennDOT continue to hold conversations relative to the  
10 data presented in the May report as a move from the  
11 conceptual phase of traffic management to the design  
12 phase. Design activities to address the needed  
13 mitigation measures began in August 2007 by Gannett  
14 Fleming. On August 9th, 2007, HSP Gaming received a  
15 letter from PennDOT which included combined comments  
16 from both the City and PennDOT on the May report. The  
17 Board has also been provided with a copy of this  
18 letter. We are confident that we can address each of  
19 these comments during the design phase and months  
20 ahead.

21           Looking forward to the coming months, HSP  
22 Gaming will be meeting regularly with the City of  
23 Philadelphia, PennDOT and neighborhood groups to  
24 refine our traffic flow assumptions in order to ensure  
25 that our design and construction mitigation measures

1 are sufficient to meet the needs of the Sugarhouse  
2 Casino as well as the surrounding neighborhoods. In  
3 addition, the City of Philadelphia has requested that  
4 HSP Gaming work with Foxwoods Casino on merging and  
5 analyzing the additional North Delaware Avenue,  
6 Columbus Boulevard data in order to demonstrate the  
7 potential traffic --- demonstrate that potential  
8 traffic impacts have been evaluated for the entire  
9 roadway between the two casinos.

10           In closing, HSP Gaming views traffic  
11 impacts and management as one of the most important  
12 factors relative to development of the casino. We  
13 have worked extremely hard over the past eight months  
14 to ensure that the proper traffic mitigation measures  
15 are designed and constructed for the facility, and we  
16 will continue to work extremely hard over the coming  
17 months with the City, PennDOT and surrounding  
18 neighborhoods to implement our plan and further refine  
19 our traffic management during the reconstruction of  
20 I-95.

21           While it is extremely important to HSP  
22 Gaming that the traffic associated with the Sugarhouse  
23 Casino have minimal impact on surrounding  
24 neighborhoods, it is just as important that our  
25 customers move smoothly from I-95 to the Sugarhouse

1 Casino and that means on the wide North Avenue  
2 Delaware --- Delaware Avenue arterial roadway and not  
3 the narrow neighborhood residential streets. This  
4 concludes my remarks.

5 ATTORNEY DONNELLY:

6 Terry, thank you. Just for the record,  
7 would you turn around and look at the two photographs  
8 and tell the Board if those photographs accurately  
9 depict the existing site of the --- at the Sugarhouse  
10 --- the waterfront at the Sugarhouse site.

11 MR. MCKENNA:

12 Yes. Both photographs do. They are  
13 views of the site from the riverside from east looking  
14 west.

15 ATTORNEY DONNELLY:

16 All right. And we also brought another  
17 bunch of photographs --- or you did. And do those ---  
18 which we'll submit to the Board at the end. Do those  
19 two depict the existing view of the site?

20 MR. MCKENNA:

21 Yes, once again all views from the river  
22 looking west.

23 ATTORNEY DONNELLY:

24 Thank you.

25 MR. MCCABE:

1 Are these recent?

2 MR. MCKENNA:

3 They were in the fall of 2006.

4 ATTORNEY DONNELLY:

5 Has anything changed since then other  
6 than the aforementioned?

7 MR. MCKENNA:

8 No other changes, no.

9 ATTORNEY DONNELLY:

10 Thank you. I call Robert Sheldon.

11 MR. SHELDON:

12 Good afternoon, Chairman Colins and  
13 Members of the Pennsylvania Gaming Board. My name is  
14 Robert Sheldon, and I'm the president and chief  
15 operating officer of Sugarhouse Casino.

16 Since we were last before this body,  
17 we've reached some significant milestones in the  
18 development of our project including reaching a  
19 development agreement with the City of Philadelphia,  
20 laying the groundwork for a community benefits  
21 agreement and the impacted communities and  
22 establishing an office adjacent to our site in the  
23 local community as well as hiring some key executives  
24 including our director of information technology, Mr.  
25 Nick Kontonicolas (phonetic), our director of

1 communications, Ms. Lee Whitaker and our vice  
2 president of slot operations, Mr. George Mancuso  
3 (phonetic).

4           Most significantly in August 2007 we  
5 signed a development agreement with the City of  
6 Philadelphia that will govern the development of the  
7 Sugarhouse Casino project. This took months of frank  
8 negotiations with the City. Chief among the terms of  
9 the agreement with the City is the commitment by  
10 Sugarhouse to address public safety concerns raised by  
11 our neighbors. We agreed to fund costs such as 9-1-1  
12 connectivity, EMS services within the casino,  
13 ambulance services and security costs.

14           We've memorialized our commitment to  
15 incorporate an environmental green roof design at a  
16 cost of \$1 million. We also agreed to make payments  
17 to the City totaling at least \$67 million over ten  
18 years. We committed to the relocation and expansion  
19 of the combined sewer outfall necessary to address  
20 previous flooding in nearby homes. We also agreed to  
21 develop a comprehensive transportation management plan  
22 which Terry McKenna just spoke to you about. And  
23 importantly we promise to provide public access to the  
24 waterfront and our waterfront promenade.

25           As part of the development agreement with

1 the City, Sugarhouse has also agreed to develop an  
2 economic opportunity plan that dovetails with the plan  
3 that we submitted to you in order to ensure  
4 participation in the development, construction and  
5 operations of the casino by minority and women  
6 employees and vendors. A key component of the  
7 development agreement with the City is a commitment by  
8 Sugarhouse to enter into a community benefits  
9 agreement with the neighboring communities that may be  
10 impacted by our project. While the terms of the  
11 community benefits agreement have not been finalized,  
12 Sugarhouse has committed to contributing at least \$1  
13 million annually to fund the special services district  
14 for the benefit of and use by the neighboring  
15 communities. In addition to the annual contribution,  
16 Sugarhouse is committed to working with neighboring  
17 communities to address issues related to construction  
18 activity, traffic management, security and sanitation.

19           Finally, Sugarhouse has agreed to create  
20 and implement a system that will ensure residents of  
21 the neighboring communities receive timely information  
22 about job and vendor opportunities. We believe that  
23 we'll have a signed agreement in the near future.

24           As part of our continued commitment to  
25 this project and to the neighboring community, we've

1 done extensive outreach to our neighbors. We've  
2 conducted walking tours where we've knocked on  
3 hundreds of doors to introduce ourselves to our  
4 neighbors. We've held meetings in their living rooms  
5 and participated in coffee klatches to connect with  
6 our neighbors and answer concerns about our project.  
7 In addition, we've provided funding for numerous  
8 programs that are important to the immediate community  
9 including soccer camps and street cleaning in the  
10 neighborhood's American Legion Memorial Day Parade,  
11 just to name a few.

12                   It was as a result of these efforts that  
13 residents of Fishtown spontaneously formed Fishtown  
14 Action also known as FACT, a local neighborhood  
15 association that is committed to its --- has committed  
16 its work to making our project a reality and a  
17 positive addition to their community. Despite what  
18 you may have read in the papers, we believe that the  
19 majority of the Philadelphia community supports the  
20 project. In the local community alone to date we've  
21 received written expressions of support from over  
22 1,500 of our closest neighbors. We've also received  
23 nearly 1,000 formal job inquiries, 75 percent of which  
24 are from Philadelphia residents and 30 percent are  
25 residents of the immediate surrounding neighborhoods.

1 Sugarhouse Casino is committed to this project and to  
2 the benefits it will bring to the citizens of  
3 Philadelphia and the Commonwealth of Pennsylvania.

4           We've established an office in the  
5 neighborhood adjacent to our site and recruited and  
6 hired a core team of key executives who are working to  
7 move this project forward. To date we've expended  
8 approximately \$13 million on the Sugarhouse Casino  
9 project. The challenge we face in hiring additional  
10 staff and contracting with vendors is the uncertainty  
11 of the project's timeline. Payment of the \$50 million  
12 would cost approximately \$417,000 per month in  
13 carrying charges. Delay benefits no one. Delay only  
14 piles on soft costs that will not help Philadelphia or  
15 its citizens. Having said that, we're confident that  
16 we will soon be able to build a first class  
17 entertainment venue in Pennsylvania's largest city. I  
18 thank you very much for allowing me to testify today.

19           ATTORNEY DONNELLY:

20           Thank you. I'd like to follow --- I'll  
21 follow your lead, Madam Chairman. Should we close  
22 now? Should I introduce exhibits now?

23           MS. COLINS:

24           Let's introduce the exhibits, then go to  
25 closings and then we'll go to our questions.



1                   ATTORNEY DONNELLY:

2                   Thank you. I'd like to move the  
3 following exhibits, number one, the photo packet that  
4 Mr. McKenna spoke of. I have seven photos. Photo  
5 number four depicts one of the big blocks. We're  
6 apparently missing the other big block, so with the  
7 Board's permission I'll submit that extra photo at a  
8 later date. That would be a total of eight  
9 photographs.

10                   MS. COLINS:

11                   And after we're completely finished, you  
12 can confer with the clerk, mark it and go through all  
13 the housekeeping, but there's no need to delay now for  
14 it. Go on.

15                   ATTORNEY DONNELLY:

16                   Thank you. There's an August 2nd, 2007  
17 letter from the City Solicitor of Philadelphia  
18 referencing the development agreement that Mr. Sheldon  
19 spoke of. That's previously been submitted to the  
20 Board. The Board has copies of that. Staff does.  
21 I'd like to have that into evidence. I'd like our  
22 brief and evidence --- and exhibits moved into  
23 evidence. The Gannett Fleming report that Mr. McKenna  
24 spoke of which is in front of me as well as the  
25 comment letter which we submitted under separate cover

1 to staff, and that would be the PennDOT comment  
2 letter. And finally, the development agreement itself  
3 that we executed --- it's the term sheet that we  
4 executed with the City of Philadelphia and the  
5 associated equal opportunity plan. Those are the  
6 exhibits that I'd like moved.

7 ATTORNEY DONAGHUE:

8 No objection to the introduction of  
9 those.

10 ATTORNEY DONNELLY:

11 Thank you. And if you don't mind, Madam  
12 Chairman, I'd like give them to the secretary right  
13 now. I think it might be useful.

14 MS. COLINS:

15 I'm going to ask you to close. If you  
16 want us to refer to them as a point of your closing,  
17 let us know.

18 ATTORNEY DONNELLY:

19 Thank you. Thank you again for having us  
20 here today. Again, I think it's completely fitting  
21 that we appear today to give the Board an update. I  
22 think by the evidence that we've presented today and  
23 through these documents that Board can only conclude  
24 that Sugarhouse has done everything that it pledged to  
25 this Board that it would do. It has acted in complete

1 good faith and has extended an enormous amount of  
2 time, effort and resources to try to achieve what we  
3 firmly believe everyone in the State of Pennsylvania  
4 with the exception of a very small handful of people  
5 want to see happen which is revitalization of the  
6 waterfront, rejuvenation of the economic base of the  
7 City and the completion of a project that will ---  
8 which will bring in an enormous amount of tax revenues  
9 and jobs to the City and something that everyone will  
10 remark upon and be extremely proud of.

11                   We ask only that the Board continue what  
12 it already did back in August, and that is to give us  
13 the relief from expending carrying charges, interest  
14 costs that will essentially benefit no one. We can't  
15 use those moneys for the project. We can't use those  
16 moneys for jobs. We can't use those moneys to  
17 generate taxes. We are not asking for an open ended  
18 indefinite extension nor are we asking the Board to go  
19 and risk it all. We will maintain the letter of  
20 credit which would permit this Board to take down the  
21 \$50 million license fee at any time. We ask only that  
22 the Board allow the process, this messy, rough and  
23 tumble, slow and cumbersome process that's going, to  
24 complete itself without more burdens being placed upon  
25 us.

1           There are some people who would love to  
2 see more trees cut down in the road and more obstacles  
3 put in our path. We ask that you do not add one more  
4 obstacle. We pledge in return that we will continue  
5 to spend the time, money and effort to reach the goal  
6 that everybody has, and we're utterly confident that  
7 we will reach that goal in a short period of time. So  
8 we ask that this Board continue this stay until such  
9 time as we get that first permit where we can go into  
10 the ground. Thank you very much. Thank you for your  
11 time.

12                   MS. COLINS:

13           Thank you. If you could let Mr. Schrier  
14 come up and provide us a closing. Then after that  
15 I'll ask the witnesses come forward to field our  
16 questions.

17                   ATTORNEY SCHRIER:

18           Thank you. Thank you, Chair Colins.  
19 Just for the record, Stephen Schrier again. Thank you  
20 for the opportunity to address you once again. Before  
21 we begin, just the housekeeping portion of it, I have  
22 provided to the clerk earlier today three exhibits,  
23 two of which are already in the possession of the  
24 Board. Foxwoods Exhibit One is a verified petition  
25 with its attachments. Foxwoods Two is our brief with

1 Exhibits A through double M, I believe. And Foxwoods  
2 Three represents the latest Supreme Court filings that  
3 we made this week on Tuesday with the Supreme Court.  
4 And that has all been provided to the clerk.

5 ATTORNEY DONAGHUE:

6 No objection.

7 ATTORNEY SCHRIER:

8 Thank you. By now, I think you get the  
9 gist of why we're both here and certainly have heard a  
10 significant amount from both applicants in this case  
11 about the issues that we have faced in our ability to  
12 get started effectively on this site that you've  
13 chosen and the site that we've chosen with regard to  
14 the City of Philadelphia. And frankly, I think  
15 there's really just two points that I would like to  
16 make in closing.

17 First of all, this is obviously a major  
18 city. It's a highly urban environment, as was said.  
19 The circumstances that exist are extraordinary and  
20 unusual with regard to our situation. This Board  
21 perhaps, and certainly I did, as John said, may have  
22 had sort of a naïve hope that everything would go  
23 smoothly as it has with regard to the other licensees  
24 gone smoothly. Philadelphia is a little bit of a  
25 different animal at this point in time with regard to

1 our ability to get a shovel in the ground. But I do  
2 think that two things provide the good cause necessary  
3 for this Board to issue an order which extends the  
4 extension of time to pay this fee.

5           First of all, I think the law supports  
6 your authority to grant this kind of an additional  
7 extension. I don't think there's any doubt about that  
8 in the administrative code or the case law, and I  
9 think that the circumstances that we've presented, the  
10 litany of delays, ordinances, City Council issues and  
11 the processes that exist support a finding of good  
12 cause in this situation. Neither applicant, at least  
13 from what I've heard, has done anything to cause this  
14 upon themselves and certainly the Board has not, so I  
15 would respectfully ask for your consideration of this  
16 extension until, as Mr. Donnelly said, we can obtain  
17 our permits and get started on a project that we're  
18 all very excited about and that we know is going to be  
19 a terrific addition to the waterfront and the City.  
20 Thank you.

21                   MS. COLINS:

22           Thank you. If Counsel would come on up,  
23 and what we'll do is we'll direct, assuming the Board  
24 members have questions --- and I know I do. But we'll  
25 ask you some questions. And if you can field them or

1 if you have people with you who you'd like to answer,  
2 you bring them up at your discretion. But I'll ask  
3 --- start with --- to my right, Commissioner Angeli  
4 and ask if you have any questions if you'd like to  
5 proceed.

6 MR. ANGELI:

7 Actually, I'd ask you both in general if  
8 --- if City Council and everything went your way and  
9 approvals were forthcoming, what's to say that there  
10 aren't more appeals from other groups that it moves  
11 forward that delays us even further?

12 ATTORNEY DONNELLY:

13 Well, I don't think we can guarantee that  
14 there won't be. I think that --- I took a lot of  
15 solace in the Supreme Court's opinion that came out  
16 with regard to the referendum question. It was as  
17 strong as --- it was very judicious, but it was  
18 extremely strong. It made it crystal clear that there  
19 is no --- there's to be no more shenanigans to put it  
20 in a vernacular. I don't think anyone could read that  
21 any other way. And I think that any court including  
22 if it goes back to the Supreme Court would read that  
23 way, and if there were other --- more litigation, I  
24 think it would be given a very short trip. That's my  
25 own theory. And Chuck can address the administrative

1 process which he knows far better than I do.

2 ATTORNEY SCHRIER:

3 I don't think I have much to add to what  
4 John said. It's kind of like when my clients often  
5 ask me well, if I do what you tell me, then I won't  
6 get sued; right? And I say, no, you might get sued,  
7 but hopefully you'll win if you do. And I think  
8 that's the position that we're in. At this point in  
9 time, really our hurdle involves getting our permits.  
10 If there are additional legal maneuvers that take  
11 place after that time, there are a lot of issues that  
12 might stop those maneuvers from proceeding in a fairly  
13 prompt manner, whether somebody has standing and they  
14 would have to be post bounds and so forth, which I  
15 think may at that point in time eliminate some of the  
16 activity that we've seen so far where there were no  
17 downsides to those kinds of filings.

18 So I'm hopeful that the City process and  
19 the permitting process will really allow us to begin,  
20 notwithstanding no guarantees that there may not be  
21 other challenges.

22 MR. ANGELI:

23 What made me think about that is, I mean,  
24 even --- and you may be comfortable with a decision  
25 that if it came your way, such issues as environmental



1 issues that could be brought up, do you feel pretty  
2 confident that you've addressed most of those things  
3 that could be brought up that would slow this down  
4 even further?

5 ATTORNEY SCHIER:

6 At least from the Foxwoods' prospective,  
7 we've attempted to address all the issues that we  
8 think may come up. Of course, in a permitting process  
9 involving state agencies and federal agencies and the  
10 City, of course, you know, there are always issues  
11 that will arise in any normal development project.  
12 But I don't think we have anything that is outside of  
13 a normal development project with regard to this kind  
14 of a project.

15 ATTORNEY DONNELLY:

16 I'd echo that for Sugarhouse. We worked  
17 closely with Army Corps of Engineers within the  
18 Department of Environmental Protection of  
19 Pennsylvania, and we have been addressing issues like  
20 environmental issues and other similar issues which  
21 might arise. I wanted just to give you some comfort,  
22 Mr. Angeli, if I could in the fact that the Gaming Act  
23 itself provides that if there are challenges brought  
24 to further permitting activities and if we are stopped  
25 along the way, they come directly to the Supreme Court

1 of Pennsylvania, and we've seen that the Supreme Court  
2 is moving very expeditiously in disposing of appeals  
3 that come to it in gaming related matters.

4 MR. ANGELI:

5 So you probably wouldn't be seeking  
6 further --- if you got decisions initially from  
7 Philadelphia, you wouldn't be seeking further delay of  
8 anything from us once you got the ---?

9 ATTORNEY DONNELLY:

10 Once we have that foundation permit,  
11 we're off and running and we'll be --- somebody will  
12 be running up here with \$50 million to hand to you.  
13 We're very anxious. We want to be in a position to  
14 pay it. We want to do that.

15 MR. ANGELI:

16 Okay. Thank you.

17 MS. COLINS:

18 Anything further?

19 MR. ANGELI:

20 Not at the moment.

21 MS. COLINS:

22 Commissioner Rivers?

23 MR. RIVERS:

24 Yes. This is for Foxwoods. I thought  
25 you said your traffic consultant was here.

1                   ATTORNEY SCHRIER:

2                   Yes, he is.

3                   MR. RIVERS:

4                   Okay. Then I'd like to hear some  
5 conversation regarding to the changes that have been  
6 made and the associated cost of those changes of  
7 traffic in that area.

8                   ATTORNEY SCHRIER:

9                   I'd be happy to present Jeffrey Greene  
10 from Orth-Rodgers. And Jeff, if you feel you need to  
11 use any visuals, we can certainly do that as well.

12                   MR. GREENE:

13                   When we meet the Board in November and I  
14 talked to you about the plans and the studies that we  
15 have completed, I talked about intersection  
16 improvements at the I-676, I-95 ramps, Washington  
17 Avenue, Reed Street, Dickinson Street, Tasker Street  
18 and Morris Street. The improvements at Morris,  
19 Washington and I-676 remain identical to what we  
20 testified to in the studies that your consultant,  
21 Edwards and Kelcey, reviewed and recommended.

22                   In front of the site at Reed, Dickinson  
23 and Tasker, we've improved the plan with the help of  
24 both PennDOT and the City Streets Department so that  
25 we actually were able to find a way to further improve

1 traffic flow. And I'd like to show you what that plan  
2 looks like, if I might.

3 ATTORNEY SCHRIER:

4 I apologize to Commissioner Sojka if you  
5 can't hear, but Jeff is going to speak for a few  
6 moments on a board.

7 MR. SOJKA:

8 I can't hear and I can't see.

9 ATTORNEY SCHRIER:

10 It looks great I'm telling you right from  
11 here from where I'm standing.

12 MR. SOJKA:

13 I'm happy to hear that.

14 MR. GREENE:

15 I'll stay on this side because that's  
16 where the mic is. Columbus Boulevard goes  
17 horizontally across the plan. North is away from me  
18 to my left. Tasker Street is at the right side of the  
19 plan. Dickinson in the middle and Reed Street on the  
20 left.

21 The changes that we began working with  
22 grow out of the study that the City is working very  
23 diligently on for the central waterfront development  
24 plan that they are developing. And they came up with  
25 some themes that they wanted to move forward with

1 Columbus Boulevard, one of which was no double left  
2 turn lane. It was maintenance of sidewalks as wide as  
3 possible, and it was maintenance of bike lanes on each  
4 side. PennDOT in its progressing of the plan was  
5 insistent upon three lanes in each direction on  
6 Columbus Boulevard, and believe me three lanes in each  
7 direction is what is needed on Columbus Boulevard.

8           So the biggest single difference is  
9 eliminating the double left turn lane that we proposed  
10 at Dickinson Street to turn into the site and then  
11 providing three lanes in both directions. If you look  
12 closely at the plan I testified to last November, in  
13 the southbound direction which I'm pointing to now to  
14 get the double left turn lane, we used the left turn  
15 lane at Dickinson Street that exists and the left most  
16 through lane converting it to a left turn lane because  
17 of the heavy left turn volumes into the site.

18           In order to get the three lanes in each  
19 direction, we went back to a single left turn lane,  
20 which works. Now, we can get a level service B at the  
21 intersection of Dickinson Street. B is the next best  
22 when you consider A being the best. Level of service  
23 is like your child's report card. In a city you try  
24 to get better than D, D or better. We're at B at  
25 Dickinson. So taking away the second left turn lane

1 didn't hurt. We had a major redesign at Tasker  
2 Street.

3 MS. COLINS:

4 Didn't hurt what? The flow of traffic  
5 into the casino or the flow of traffic along the road?

6 MR. GREENE:

7 Both. Both because one affects the  
8 other. When backups in the left turn lane extend into  
9 the through lanes, then traffic for both is hurt. And  
10 we were able to fit them both in.

11 So in order to maintain three southbound  
12 lanes at Tasker Street where there really is no room  
13 --- there's only like 36 feet of pavement and that's  
14 really enough for three lanes of travel with a bike  
15 lane. What we did was created a left turn lane that  
16 crossed the railroad tracks just south of Dickinson  
17 and moved in its own little shoot or separated by two  
18 medians, one separating the railroad tracks from the  
19 left turn lane and the other median separating the  
20 three northbound lanes to create a left turn lane  
21 going into Tasker Street.

22 Now, how can we get the three northbound  
23 lanes because we're taking one lane away? Well, there  
24 is extra pavement width, and we were able to adjust  
25 the location of the garage and a roadway in turning to

1 our site that provides for southbound left turn lanes  
2 from Tasker that goes north along the frontage of our  
3 garage and then goes into the Dickinson Street signal  
4 to turn left, almost an English T as we call it in the  
5 traffic engineering trade. So by putting the left  
6 turns in different roadways, the left turn from Tasker  
7 Street in its own roadway along the garage and the  
8 left turn going into Tasker Street from southbound  
9 Columbus Boulevard on the other side of the railroad  
10 tracks, we were able to improve our level of service  
11 from E to B at Tasker Street and Columbus Boulevard.  
12 Those are major improvements.

13 I testified in November that even without  
14 these latest innovative improvements we made traffic  
15 flow better on South Columbus Boulevard than today.  
16 This improves it an additional four percent. So this  
17 is a significant improvement in traffic flow. That's  
18 the single biggest improvement.

19 We, too, got a letter from PennDOT dated  
20 August 9th. And it talked about the traffic signal  
21 system as one of the major things. And you've heard  
22 Mr. Dougherty talk to you about the major elements.  
23 PennDOT has asked us for a major incident management  
24 program. To PennDOT Columbus Boulevard is a diversion  
25 route. It's a local artery, and it serves the

1 waterfront in the eyes of the city. But to PennDOT if  
2 something happens on I-95, traffic will divert to  
3 Columbus Boulevard as assigned route. And PennDOT  
4 wanted --- and it's in the management program, wanted  
5 us to develop it for our section of Columbus  
6 Boulevard, and Sugarhouse will develop one for their  
7 section. And it means that the traffic signal system  
8 has to be able to accommodate substantial amount of  
9 increased traffic. And the way it does is with  
10 special signal timing programs that extend the green  
11 time on Columbus Boulevard to the maximum it can be  
12 --- maximum green time it can be without severely  
13 impacting the neighborhood.

14                   So those are the biggest single  
15 improvements since we --- since I saw you last  
16 November.

17                   ATTORNEY SCHRIER:

18                   May I just ---?

19                   MR. RIVERS:

20                   Go ahead.

21                   ATTORNEY SCHRIER:

22                   Jeff, if I could, I know that when we  
23 first presented our traffic plan to the Board we had  
24 discussions with PennDOT and City Planning and Streets  
25 Department. Today, now that we've had all this time



1 to sit down with them, what kind of feedback are you  
2 getting from those traffic planning agencies and which  
3 traffic planning agencies with regard to our  
4 representations that we would make traffic better than  
5 it is?

6 MR. GREENE:

7 Well, both PennDOT, City Streets  
8 Department and the City Planning Commission have  
9 directed us to design the improvements that I just  
10 showed you along with the other improvements on  
11 Columbus Boulevard. They have accepted the concept of  
12 the improvement, and they believe that they will  
13 improve traffic better than it is today.

14 ATTORNEY SCHRIER:

15 Thank you. I apologize to the  
16 Commissioner.

17 MR. RIVERS:

18 Actually, that was the question I was  
19 about to ask, so you must be clairvoyant.

20 MS. COLINS:

21 Thank you. Commissioner McCabe?

22 MR. MCCABE:

23 Thank you, Madam Chair. Thank you all  
24 for being here. I appreciate you taking the time.  
25 The testimony that I've heard about all the community

1 involvement, all the job fairs, all the traffic  
2 improvement really doesn't surprise me, and how you're  
3 moving forward in trying to build your projects  
4 doesn't surprise me because we selected you. And we  
5 selected you both, Foxwoods and Sugarhouse, because  
6 you were the best applicants, and we expected you to  
7 do this.

8           One of the things that I'm trying to  
9 figure out here is through all this testimony, what  
10 are the reasons why we should delay collecting the \$50  
11 million. One of the things that I was able to pull  
12 out from listening to the testimony is that one of the  
13 reasons is it's going to cost you more money in  
14 interest each month that you initially hadn't planned  
15 on and that that then would affect somehow your  
16 project. One of the things we heard about is a  
17 democracy. We're a democracy, and a democracy is  
18 built on laws, rules, equal and fair treatment and  
19 justice for everybody.

20           As best to my knowledge so far, and  
21 Counsel correct me, but I think all the other  
22 licensees have already paid their \$50 million. To  
23 include one applicant or one licensee that did not  
24 have all his approvals from the City and had a very  
25 powerful group opposing his plan to build --- and one

1 of things I'm looking for is what makes you different  
2 than them were he paid his \$50 million, then fought  
3 the battle with the City Council and got the  
4 approvals. And he didn't come in and ask for us to be  
5 delayed even though a powerful group from Pittsburgh  
6 was trying to oppose him. And you, what's the  
7 difference there?

8 ATTORNEY SCHRIER:

9 Well, at least from my prospective,  
10 Commissioner, I understand your question, but I guess  
11 if we look at the historical prospective of that other  
12 applicant at this point in time today they were able  
13 to get their approvals as I understand it. I think to  
14 me it comes down more to --- not only the --- I think  
15 the obvious things are that there is a substantial  
16 soft cost as John said and is a cost of the project  
17 that was not anticipated. But more than that, there's  
18 a time factor in this particular instance that has  
19 created a whole host of issues that, well not being  
20 certainly familiar with the other applicant's troubles  
21 in obtaining their approval, in this particular  
22 instance I think are unique.

23 To obtain a license, at least in our  
24 particular situation, for a site where we have no  
25 ability at this time to use it I just think is unfair

1 and burdensome. And in light of what we have been  
2 doing, I don't think that it's unfair of us to request  
3 not that we not have to pay this fee, which we  
4 certainly understand and gladly would pay, as Mr.  
5 Hardy said, as soon as we can break ground and do what  
6 we're asked to do, but it's like acquiring something  
7 and paying for it without getting the consideration.  
8 And I think that's really where the good cause exists.  
9 We are stymied and we have been delayed, and that  
10 continues. And we don't know at least from our  
11 prospective when that delay will end.

12                   Does it have to end? Yes, it will end.  
13 We're optimistic that it will end, but at this point  
14 in time I think we are in a very unique situation.  
15 And I also think that the burden --- at least the  
16 legal burden that exists for this Board to consider  
17 that extension is one of good cause. It's not clear  
18 and convincing evidence. It's not, you know, beyond a  
19 reasonable doubt that we're approving all of these  
20 facts. But that there is a reasonable and equitable  
21 basis for what we're seeking, and I think in our  
22 situation we want to do what you want us to do. We  
23 want to pay our license fee, but when we get that  
24 license, we want to be able to use it, and we can't  
25 use it right now.

1                   ATTORNEY DONNELLY:

2                   I'd have three answers to that. Number  
3 one, I want to reiterate what you said. Yes, \$417,000  
4 that goes to soft costs is just money that's lost to  
5 the project and lost to the development and what we  
6 want to build and what the City wants. What I think  
7 is different from others is we have active  
8 governmental obstruction, if you will, on these  
9 processes, which I don't believe they had in  
10 Pittsburgh. I think it was private entities.

11                   The Supreme Court went so far as to say  
12 that it was improper and illegal to --- for some of  
13 the actions that were proposed. So we're in an  
14 extremely extraordinary situation where it isn't even  
15 one branch of government but a creature of the State  
16 of Pennsylvania --- or the Commonwealth of  
17 Pennsylvania which is a municipality. It's a creature  
18 of the Commonwealth. One branch of that government of  
19 the creature that's created by the Commonwealth is  
20 frustrating the will of the Commonwealth. That never  
21 happens or in my experience I've never seen it happen.  
22 So it is extremely extraordinary that a government  
23 agency would do this and do this in light of what the  
24 Supreme Court said that you can't do it, you shan't do  
25 it, and what you're doing is improper and we're going

1 to stop you from doing it because the result would be  
2 illegal. That's very extraordinary.

3           And finally, the intent of the Act. The  
4 intent of the Act was to do --- when we were preparing  
5 for this, Commissioner, we sat and we spent a lot of  
6 time, what does Pennsylvania want. And we came up  
7 with two things, speed, economic development. They  
8 want the most bang for the buck as fast as possible,  
9 and they want someone who will mitigate any kind of  
10 problems that might come along with that. We tried to  
11 boil it down to the essence. We can't do that. It is  
12 --- the common analogy would be if you in your home  
13 wanted to build a deck on the back of your house and  
14 the building inspector said, fine, you want to build a  
15 deck, pay me \$500 for a building permit. At the same  
16 time, the city council said we absolutely not only  
17 will not give you a permit we won't hear your permit  
18 application. Now, you would say that's extremely  
19 unfair to have me pay money when I can't even get a  
20 hearing, and that's the situation we find ourselves  
21 in.

22           So to use your words, it's unfair and  
23 inequitable to make us, just as it would be unfair and  
24 inequitable to make any homeowners to do that.

25           MR. MCCABE:

1                   Thank you. One other thing is I think  
2 Counsel did an excellent job in outlining how the City  
3 of Philadelphia and the State of Pennsylvania is  
4 hurting and being aggrieved by you not moving forward,  
5 getting this built on time. How is this going to  
6 affect if you have to pay this extra interest the  
7 project? How is the project going to be hurt, the  
8 facility?

9                   ATTORNEY DONNELLY:

10                   Our principle --- one of the points we  
11 made was that we've very extremely financially sound,  
12 and we are. But the project has already by virtue of  
13 some of this delay increased in costs of about \$200  
14 million. The continued unnecessary --- absolutely  
15 unnecessary soft costs attributed against this project  
16 which would be, you know, another \$5 million annually  
17 when there's no --- we really cannot predict when this  
18 exact --- when it's going to happen. Has got to ---  
19 the project --- people sit down and have accounts and  
20 look at the numbers have to say we can't continue to  
21 bleed forever. We have to cut somewhere else. We've  
22 seen it recently in some of the casinos down at the  
23 shore, which are experiencing some criticism because  
24 they are cutting back on employees, they're cutting  
25 back on benefits to employees and they're --- the

1 Commission down there is very unhappy with that. It's  
2 an economic reality. There's not unlimited funds in  
3 this world.

4           And whenever any developer gets into one  
5 of these things, one of the first things they start to  
6 try to do is control their soft costs. Hard costs are  
7 a different thing because you're getting --- you're  
8 getting return for that. And the bigger we can build  
9 it --- we're putting a million dollars into a green  
10 roof. Now, that's because we wanted to be responsible  
11 and we wanted to address the issues you raised and the  
12 City raised. But I mean, how many million dollars can  
13 we do for things like that. We would rather do it on  
14 a green roof than spend it --- give it to bank or  
15 someone in the form of interest. We'd like to control  
16 our soft costs.

17           And so, yes, it hurts the project. Am I  
18 suggesting there that we will walk away? I've said  
19 quite the contrary. We're not walking away from this  
20 project. But we don't have --- we have to have ---  
21 look at the bottom line, and this is an unnecessary  
22 cost that I don't think will benefit the project at  
23 all. And I frankly don't think it will benefit the  
24 state at all because if that \$417,000 monthly that we  
25 could put in the project doesn't get put in that's not



1 for the good of anyone, certainly not for the good of  
2 Philadelphia which is looking for rateables.

3 ATTORNEY SCHRIER:

4 Thank you. We agree with what Sugarhouse  
5 has explained. There is a budget process that we  
6 have. We have an approved budget. And the ability to  
7 have this \$417,000 monthly expense and not being able  
8 to get the control in that, at some point in the  
9 future will have an impact on what we're able to do  
10 with our project.

11 MR. MCCABE:

12 Thank you. You don't think they'll ever  
13 cut back on the lawyers though?

14 ATTORNEY DONNELLY:

15 Well, I was thinking when I was talking  
16 about soft costs that might be going to lawyers.

17 MS. COLINS:

18 Anything further?

19 MR. MCCABE:

20 No, I'm done.

21 MS. COLINS:

22 Anything else? Okay. Commissioner Coy?

23 MR. COY:

24 Thank you, Madam Chairman. It's been a  
25 pretty heavy afternoon so far and serious and all

1 that. I feel when you're end of the line like this on  
2 questioning and you just --- you know, you're the  
3 fifth person to ask questions, I feel a little bit  
4 like Elizabeth Taylor's sixth husband on the wedding  
5 night. You know, I know what to do and I know what to  
6 say. I just don't have the ---.

7 MR. SOJKA:

8 If you're the sixth person, what am I?

9 MR. COY:

10 Gary liked that. Yeah, Mr. Donnelly, I  
11 couldn't help but think when you were talking about  
12 --- when you were talking about the difference between  
13 hard and soft costs --- and I think you try to say on  
14 the issue of hard costs that they were something you  
15 really got something for, and I was wondering where  
16 the legal costs fell in that regard.

17 Let's talk about interest rates for one  
18 thing. I suspect that both of you have securitized  
19 the \$50 million by a letter of credit.

20 ATTORNEY DONNELLY:

21 Yes.

22 ATTORNEY SCHRIER:

23 Correct.

24 MR. COY:

25 And you all have, too. Since you have

1 securitized that, have the banks or the institutions  
2 where you have negotiated that raised the interest  
3 rates?

4 ATTORNEY DONNELLY:

5 Now, that's fixed, but other rates are  
6 going up like for everything else is going up.

7 MR. COY:

8 Like? But the actual --- the interest  
9 rate on the letter of credit has not now.

10 ATTORNEY SCHRIER:

11 That is correct. It's staying. It's  
12 staying.

13 MR. COY:

14 So you negotiated a fixed rate?

15 ATTORNEY SCHRIER:

16 That is correct.

17 MR. COY:

18 For how long? Do you know?

19 ATTORNEY SCHRIER:

20 I think the letter of credit was only  
21 good for a matter of time. I'm not sure that we have  
22 a yearly rate.

23 ATTORNEY DONNELLY:

24 I don't know. I think it is --- I can't  
25 answer that with accuracy.

1                   MR. COY:

2                   So that cost is not increased at this  
3 point?

4                   ATTORNEY SCHRIER:

5                   No.

6                   MR. COY:

7                   And although some other interest rates  
8 have. I guess my next question is, what --- short of  
9 the actual being able to turn the ground and start the  
10 building and pour the footers and so on, is there a  
11 time when you feel that it is appropriate to pay the  
12 fee? I mean, if appeals continue, if legal challenges  
13 continue, is there a time short of that when you feel  
14 it's appropriate? In other words, at some point would  
15 you just say, all right, we're going to pay it because  
16 it's the right thing to do?

17                   ATTORNEY DONNELLY:

18                   I wouldn't say no to that. No one  
19 anticipated what we've seen, and I can't really  
20 predict what we'll see in the future. But that's  
21 certainly a possibility. Right now I don't know what  
22 it would be. But let's --- let me ---.

23                   MR. COY:

24                   You're not there yet?

25                   ATTORNEY DONNELLY:

1           No. But hypothetical if everybody all of  
2 a sudden started saying okay, we're working concert to  
3 get something done and there's some, you know,  
4 bureaucratic noninterference type obstacle, then I  
5 wouldn't have an objection to that.

6           MR. MOLES:

7           Commissioner Coy, if I may, I'm Nicholas  
8 Moles. I'm vice president and general counsel for the  
9 Applicant. And my answer to your ---.

10          MR. COY:

11          The Applicant Foxwoods?

12          MR. MOLES:

13          That's correct, sir. And my answer to  
14 that question would sort of dovetail with the question  
15 Commissioner McCabe answered --- or asked, I should  
16 say. When he posed the question what's different  
17 about this case. And Mr. Donnelly alluded to it. But  
18 what is different about this case is in every  
19 development project you anticipate you're going to  
20 have a certain level of folks objecting, a certain  
21 level of negotiating you're going to have to do to get  
22 your project approved, et cetera and so forth. What  
23 is different in this case is that we're experiencing  
24 unusual governmental interference at the local level,  
25 and that to me is what makes the difference.

1           It's one thing if a group takes advantage  
2 of an appeal process and utilizes that process  
3 appropriately and files their appeal and the Court  
4 hears the appeal. They're the type of risks that you  
5 take. A good example in Foxwoods' case is that what  
6 City Council did with us was they actually took a step  
7 backwards. Instead of going from the C-3 commercial  
8 zoning that we already had to the CED zoning that will  
9 permit the construction of the casino hotel what they  
10 did was they took the zoning and reversed it to  
11 residential. They took us a step further. And when  
12 you are faced with --- as an applicant with a  
13 government body that basically is not giving you  
14 access to government that you're entitled to get,  
15 that's extraordinary. And that's what we think is  
16 different here.

17           And what I would say to you, sir, is that  
18 when we reached the point where we've gotten over  
19 those extraordinary hurdles, that's the appropriate  
20 point where I think we would say it's time to pay our  
21 \$50 million.

22           MR. COY:

23           But you're not there yet?

24           MR. MOLES:

25           We are clearly not there yet, sir.

1                   ATTORNEY DONNELLY:

2                   And I'd just like to add one thing. Of  
3 course, this Board retains complete jurisdiction over  
4 us and could revisit this issue, and Staff's on top of  
5 this all the time as to what's going on. And we try  
6 to keep Staff involved. So if the circumstances  
7 changes, this Board can rethink this issue at any  
8 time.

9                   MR. COY:

10                  Would you imagine that either or you  
11 would appeal the decision of this Board either way?

12                  ATTORNEY DONNELLY:

13                  I really can't answer that on ---.

14                  MS. COLINS:

15                  Lawyers always threaten to appeal.

16                  ATTORNEY DONNELLY:

17                  I'll tell you we ---.

18                  MR. COY:

19                  Bad question?

20                  ATTORNEY SCHRIER:

21                  It's an excellent question. I think I  
22 can answer it. If the advice were coming from outside  
23 counsel who bill by the hour, they would definitely  
24 recommend that we appeal.

25                  MR. COY:

1 Or by the word.

2 ATTORNEY SCHRIER:

3 Definitely by the word.

4 ATTORNEY DONNELLY:

5 You know, there's --- this Board's always  
6 acted equitably. And I'm telling you we never thought  
7 there was anyone that was going to appeal the  
8 decisions the Board made before. All the smart money  
9 was betting it won't happen at all. And to my mind  
10 the way this Board operates, it's pretty much a fool  
11 appealing because everything's done appropriate above  
12 board with plenty of evidence and all that. So that's  
13 all I can say, but I can't commit the company one way  
14 or another.

15 MR. COY:

16 Okay. Thank you. I just wanted to  
17 react. I think again it was Mr. Donnelly that raised  
18 the issue and indicated that very seldom have you ---  
19 I think what you said was very seldom have you  
20 witnessed creatures of the state, that is  
21 municipalities in this regard or counties or cities or  
22 whatever going against the action of the legislature  
23 or the Supreme Court.

24 ATTORNEY DONNELLY:

25 Yeah. And this is just one branch of the



1 city. We've entered into this development agreement,  
2 term sheet with the administration.

3 MR. COY:

4 I mean, I --- my recollection is it  
5 happens all the time.

6 ATTORNEY DONNELLY:

7 Well, ---.

8 MR. COY:

9 I mean, candidly the city has taken on  
10 the state on the issue of issues like gun control and  
11 smoking ordinances and challenged the authority of the  
12 Commonwealth to do this. So I guess I wouldn't be so  
13 surprised.

14 ATTORNEY DONNELLY:

15 Okay. I guess I misspoke. What seems  
16 extraordinary here is on some of these Council actions  
17 the solicitor --- well, the Mayor vetoed and the  
18 solicitor issued opinions that what they were doing  
19 wasn't illegal. So one branch of government went off,  
20 you know, without the --- it wasn't the whole city.  
21 And, in fact, there was a big debate over the caption  
22 of the case that it wasn't the city that was  
23 appealing. It was --- so that's what --- it was  
24 extraordinary. But you're right. There's a ---.

25 ATTORNEY SCHRIER:

1                   If I may, what I would suggest is  
2 extraordinary here. While you'll always have  
3 situations where the city or county or municipality  
4 may challenge the things the state does, the  
5 difference here is that as a citizen we're required to  
6 pay a \$50 million license fee that is not usable for  
7 the site this Board selected as a result of what the  
8 city is doing. It's not merely that the city is  
9 challenging something the state did. In this case, we  
10 are a citizen, an applicant asking for the privilege  
11 of license and we're being asked to pay an exorbitant  
12 fee with this governmental road block in our way.

13                   MR. COY:

14                   I understand. I guess I see some  
15 similarities to other things like smoking ordinances  
16 and things like that. Just one more question, Madam  
17 Chair, and I will desist. And that is maybe another  
18 sort of question like will you appeal question. And  
19 that is do you think as you continue --- because  
20 obviously there's the arguments that you continue to  
21 make with us on this issue and you make arguments with  
22 City Council on the issue of moving forward and the  
23 various groups there and then you make public  
24 arguments on behalf of your clients about proceeding  
25 with this, raising the issue of jobs and of the

1 expansion of the economy and so on. Do you think that  
2 by paying the \$50 million fee you would enhance your  
3 argument that it's time to move further and get your  
4 license?

5 ATTORNEY DONNELLY:

6 I don't or we would --- we'd be in a  
7 different posture. I really don't think. I think it  
8 would give solace to the people who are against us  
9 because they can count too. And I don't think it  
10 would advance the ball at all.

11 ATTORNEY SCHRIER:

12 And I would echo that --- that remark  
13 because so far from what I have seen the process we've  
14 been faced with totally defies logic. What you're  
15 proposing is a very logical approach to it, but ---.

16 MR. COY:

17 It's not a proposition. It's a question.

18 ATTORNEY SCHRIER:

19 But in order to answer it as a question,  
20 I'll call it a proposition if I can do that.

21 MR. COY:

22 Okay.

23 ATTORNEY SCHRIER:

24 And further to that, Mr. Dougherty  
25 testified that we have met with --- held, you know, 60

1 different meetings which continue from even before the  
2 time the license was granted to Foxwoods, reaching out  
3 to groups. And there is no way that the folks who  
4 have their heels dug in the ground are going to be  
5 reasonable in approaching this issue. So I don't  
6 think that paying the fee would make that difference.  
7 I agree if there were some guarantee that it would,  
8 we'd be there. We wouldn't be sitting here.

9 MR. COY:

10 Okay. Thank you very much.

11 ATTORNEY DONNELLY:

12 I found it exciting and interesting.

13 MS. COLINS:

14 Thank you. Thank you very much.

15 Commissioner Sojka?

16 MR. SOJKA:

17 Yes. Thank you. First of all, I'd like  
18 to join my fellow Commissioners in thanking both  
19 Sugarhouse and Foxwoods for the careful preparation of  
20 the petitions. I found it interesting reading, and I  
21 found listening today to be helpful. I'd also like to  
22 express my gratitude to my fellow Commissioners whom I  
23 think have already asked the important questions.

24 But I have some disadvantages, first of  
25 all, being where I can't see and second of all being

1 the last to join the Commission up to this point. And  
2 so I have not been engaged in this actual process. So  
3 I need to ask three technical questions, each of which  
4 I believe could be answered fairly briefly.

5           The first is I can't see the photographic  
6 exhibits having to do with the current state of the  
7 riverfront at these proposed sites. But I'm gathering  
8 from what I hear that they're not in great shape, and  
9 I'm hearing that kind of comment. But I remember in  
10 reading your preparation that there was considerable  
11 comment from the Longshoremen Union about concern that  
12 somehow the construction of these casinos would  
13 interfere with loading and unloading ships. Is  
14 something like that going on, or will it go on in the  
15 future if you don't build there?

16           ATTORNEY DONNELLY:

17           Short answer from Sugarhouse is no. It's  
18 --- and my understanding is that issue is kind of  
19 evaporated. But it didn't --- it didn't have anything  
20 to do with our waterfront.

21           MR. SOJKA:

22           Thank you. Okay. That helps me.  
23 Secondly, the issue of the City Council in  
24 Philadelphia, do they have discretion to delay a  
25 decision on this issue almost indefinitely, or do they

1 have some fixed time period in which they have to rule  
2 one way or the other?

3 ATTORNEY DONNELLY:

4 I'll ask Mr. Hardy to answer that.

5 MR. HARDY:

6 The City Council of Philadelphia could  
7 sit forever on one of the bills that we need, and  
8 that's the bill that would designate our area as a  
9 commercial entertainment district. There are some  
10 default provisions with regard to the plan of  
11 development which we need to have approved that might  
12 be ---.

13 MR. SOJKA:

14 And so your only remedy would be to go to  
15 Court to get them to move?

16 MR. HARDY:

17 Correct.

18 MR. SOJKA:

19 Okay. And then thirdly, there is ---  
20 we've been focusing on City Council and on the City of  
21 Philadelphia, but you did mention there are now a  
22 number of bills pending in the legislature that could  
23 have profound effect on this project. Is there anyone  
24 who can comment on the likelihood of when those would  
25 be dealt with and what the outcomes might be? Or is

1 that pure speculation?

2 MR. HARDY:

3 This is Chuck Hardy. I'm with  
4 Sugarhouse. Our understanding is that even the  
5 sponsors of those bills do not believe they have a  
6 good chance of passing at all. I raised them in my  
7 testimony only to point out the various fronts on  
8 which we have found ourselves having to battle to be  
9 able to get our casino up. And one of those fronts  
10 has been educating people in the legislature and  
11 examining and analyzing what the affect of those bills  
12 might be. But at the present time our best estimate  
13 is that there is almost no likelihood that those bills  
14 would pass. And if they did, we understand that the  
15 governor has said he would veto them.

16 ATTORNEY SCHRIER:

17 Commissioner Sojka, this is Steve  
18 Schrier. I would echo that as well. And also just to  
19 backtrack one question, if I may, your question as to  
20 the indefinite time that these bills could be delayed  
21 by City Council is actually the subject of the legal  
22 action that we've taken in the Supreme Court which is  
23 currently pending. So there are avenues, and we've  
24 argue that no action represents action, so to speak,  
25 under the Gaming Act Section 1506. So I think there

1 are remedies to avoid the indeterminate length of  
2 delay.

3 MR. SOJKA:

4 Okay. Good. Thank you. Madam Chairman,  
5 that concludes my questions. I thank you for the  
6 opportunity.

7 MS. COLINS:

8 Thank you. I have a number of questions  
9 I'd like to pursue. Regarding that emergency petition  
10 before the State Supreme Court which is basically a  
11 request for mandamus --- is it not?

12 ATTORNEY SCHRIER:

13 There are actually two parts to it. The  
14 first part is seeking the invalidation of the zoning  
15 from commercial to residential.

16 MS. COLINS:

17 Right.

18 ATTORNEY SCHRIER:

19 And that the grounds for that were  
20 illegal. So reversing that determination and  
21 invalidating the ordinance. The second is a mandamus  
22 action to order the City Council to grant the zoning  
23 either under the C-3 commercial that we originally  
24 filed under or under the City's own casino zone, CED.

25 MS. COLINS:



1                   Okay. And the status of that matter  
2 right now?

3                   ATTORNEY SCHRIER:

4                   On that ---.

5                   MS. COLINS:

6                   Briefs filed? Is everything ready to go  
7 on it?

8                   ATTORNEY SCHRIER:

9                   Yes. As of Tuesday this week, the reply  
10 that we submitted was filed and the Supreme Court has  
11 indicated that it will hear the matter on briefs.

12                   MS. COLINS:

13                   Oh, okay. So there's no hearing. It  
14 will be on the briefs. Okay.

15                   ATTORNEY SCHRIER:

16                   That's what we've been advised by the  
17 Court, yes.

18                   MS. COLINS:

19                   Okay. Good. Then regarding the bills  
20 that are introduced into the legislature that would  
21 dramatically change the status of our order granting  
22 you the license, does not the statute say or provide  
23 that if there are changes in legislation that the \$50  
24 million --- that the \$50 million licensing fee would  
25 be returned under those circumstances? Does that

1 statute not say that? Haven't the legislatures spoken  
2 to that?

3 ATTORNEY DONNELLY:

4 That's a good --- a good question. I'm  
5 not sure I have the answer, but I think there is --- I  
6 want to want to look at that. There are certainly  
7 provisions in there that may trigger something.

8 MS. COLINS:

9 I remember that it addresses that.

10 ATTORNEY SCHRIER:

11 My recollection is that there are  
12 provisions talking about a change or a refund based  
13 upon the change in the ability to conduct gaming in  
14 the manner that it was conducted. Whether this fits  
15 or not, I think is a question, like John said, I'd  
16 like to look at.

17 MS. COLINS:

18 Okay. All right. Another question I  
19 have is you've outlined in your briefs and in your  
20 argument all the litigation that has --- that has  
21 ensued as a result of the passage of the Gaming Act.  
22 The Supreme Court, as we could expect, has been  
23 actively dealing with this litigation. It's new.  
24 It's controversial. It's not surprising the issues  
25 are litigated now. And would you agree that every

1 opinion has supported the --- not only the  
2 constitutionality of the statute but the power of the  
3 Board that's been vested by the state? Is that not an  
4 accurate assessment ---

5 ATTORNEY DONNELLY:

6 Absolutely.

7 MS. COLINS:

8 --- of the state of the law as of right  
9 now?

10 ATTORNEY SCHRIER:

11 I don't think there's any doubt.

12 MS. COLINS:

13 Okay. And going forward as litigation  
14 would continue ---- I mean, there's no automatic stay.  
15 Absent the Supreme Court being asked to stay actions  
16 by the Board, the filing of a lawsuit in and of itself  
17 would not stay what the Board does; is that correct?

18 ATTORNEY DONNELLY:

19 That's my understanding, yes.

20 MS. COLINS:

21 Okay. So that really brings us down to  
22 the issue of City Council and their failure to act as  
23 of this date with respect to giving you the zoning CED  
24 status or the C3 status. That's really the heart of  
25 all this; isn't it?

1                   ATTORNEY DONNELLY:

2                   Yes.

3                   ATTORNEY SCHRIER:

4                   Yes.

5                   MS. COLINS:

6                   Okay. You've got the mandamus action in  
7 place. The Supreme Court is going to decide it on the  
8 briefs. That's correct; right?

9                   ATTORNEY SCHRIER:

10                  Yes.

11                  MS. COLINS:

12                  Okay. Let me ask you, the cost --- the  
13 monthly cost of the debt service on the \$50 million, I  
14 believe you mentioned it's \$417,000 a month and I  
15 believe Foxwoods alluded to about \$400,000 a month;  
16 correct?

17                  ATTORNEY SCHRIER:

18                  Correct.

19                  MS. COLINS:

20                  Okay. What's the cost --- you have  
21 letters of credit in place for \$50 million. What's  
22 the cost on a monthly basis for those letters of  
23 credit?

24                  MR. HARDY:

25                  We actually calculated that, and we

1 arrived at \$417,000 by subtracting that, and it is  
2 half a percent ---.

3 MS. COLINS:

4 Okay. So that's a net figure?

5 MR. HARDY:

6 That's a net figure. It's a half a  
7 percent of the face of the letter of credit.

8 MS. COLINS:

9 Okay. And over the year --- if City  
10 Council doesn't act for a year, if the Supreme Court  
11 lets that mandamus action sit for a year, it will cost  
12 you \$5 million over a year in soft costs because  
13 there's been no ---?

14 ATTORNEY DONNELLY:

15 Give or take, yes.

16 MS. COLINS:

17 But City Council is thinking of acting in  
18 October, or they're scheduled to re-adjourn in  
19 October; is that right?

20 ATTORNEY SCHRIER:

21 We may be in different position on that.  
22 We, as I said, have --- even though we've succeeded at  
23 the planning commission, which is a prerequisite  
24 to ---

25 MS. COLINS:

1 Right.

2 ATTORNEY SCHRIER:

3 --- the introduction of ordinances  
4 pertaining to our zoning and application of the CED to  
5 our site. At this time, we have not been introduced  
6 by City Council. That would be something that  
7 affirmatively would have to happen at a meeting of  
8 Council, which the first one is September 14th.

9 MS. COLINS:

10 Procedurally, who has to introduce the  
11 bill in Council?

12 ATTORNEY SCHRIER:

13 A member of Council has to introduce ---.

14 MS. COLINS:

15 Just a member in general?

16 ATTORNEY SCHRIER:

17 But --- yeah. I mean, Council  
18 prerogative is usually that the council person of that  
19 particular district would be the one to introduce it  
20 and that is Councilman DiCicco in our case. So we  
21 have no assurances as I sit here today that we will be  
22 introduced on September 14th. Now, SugarHouse may be  
23 in a different ---.

24 MR. HARDY:

25 We are in a different situation. Our

1 bills have been introduced.

2 MS. COLINS:

3 Yours have been introduced. Right.

4 MR. HARDY:

5 And we've had a hearing in the rules  
6 committee on bills that we need.

7 MS. COLINS:

8 So you're further along?

9 MR. HARDY:

10 We're further along. Our outside date  
11 --- if the rules committee held the bills after one  
12 hearing, which means they have to have another  
13 hearing, there is one scheduled for early --- for the  
14 end of September. If it passed --- if it was reported  
15 out from that hearing, it would then go to a first  
16 reading the following day. The second reading would  
17 be a week later in council, and that would be October  
18 11th. And it could actually pass on October 11th. It  
19 then would become law the following session when it  
20 was reported back by the mayor, which would be October  
21 18th.

22 MS. COLINS:

23 October 18th. So if the moon and the  
24 stars align, it could be October 18th for HSP?

25 MR. HARDY:

1 Correct.

2 MS. COLINS:

3 Okay. And then if you get that zoning,  
4 getting the building permits is administrative?

5 MR. HARDY:

6 That's correct.

7 MS. COLINS:

8 Okay. And then if they get --- if HSP  
9 get its zoning and there's no action taken on Foxwoods  
10 --- on Foxwoods in City Council, then you have waiting  
11 in the wings a request of the Supreme Court to ask  
12 City Council to act on your behalf with precedent.  
13 I'm creating a best case scenario. If the  
14 precedent ---.

15 ATTORNEY SCHRIER:

16 I'm hoping that the hypothetical does not  
17 occur.

18 MS. COLINS:

19 The precedent of Council having granted,  
20 Foxwoods their zoning.

21 ATTORNEY SCHRIER:

22 Yes. Effectively, we could be on the  
23 same track as HSP, but we --- we are not ---.

24 MS. COLINS:

25 But there's no guarantee.



1                   ATTORNEY SCHRIER:

2                   There's no guarantee of that, and it is  
3 fair to say that we do have a pending action seeking  
4 City Council to take the action we're asking for.  
5 Certainly if the action was refused or not taken after  
6 another reasonable period of time and we're still in  
7 court, we would amend our pleadings to include any of  
8 those potential claims as well.

9                   MS. COLINS:

10                  Okay. And just to clear something up, I  
11 think someone had mentioned in terms of the site that  
12 these were the sites that the Board had chosen. Well,  
13 in fact, the way the statute is crafted, the applicant  
14 chooses sites and the applicant does due diligence and  
15 site selection; correct, which I'm assuming ---?

16                  ATTORNEY DONNELLY:

17                  That's correct.

18                  ATTORNEY SCHRIER:

19                  Yes.

20                  ATTORNEY DONNELLY:

21                  You're right. We chose the site  
22 presented to the Board.

23                  MS. COLINS:

24                  And we chose the best overall applicant  
25 which was a total package including a site, business

1 integrity, the viability of the business on an ongoing  
2 basis and many other important factors. Would you  
3 agree with that?

4 ATTORNEY DONNELLY:

5 Precisely.

6 ATTORNEY SCHRIER:

7 I would agree with you, yes. But I think  
8 that the critical difference here is that the  
9 opposition that we're facing is not to our integrity  
10 or to any of the factors that the Board --- well, that  
11 may not be so in terms of some of the issues of  
12 traffic and so forth.

13 MS. COLINS:

14 Right. And ---.

15 ATTORNEY SCHRIER:

16 But effectively it's a site issue.

17 MS. COLINS:

18 Right. And I want to thank you very much  
19 for going to the trouble of making very clear at this  
20 hearing the work you've done going forward in making  
21 sure that the impact of your proposal is a very  
22 positive impact. The projected traffic corrections,  
23 the job opportunities, the --- especially the traffic  
24 studies that you've reviewed and the work you've done  
25 in conjunction with PennDOT and the City, I want to

1 thank you for that. I think it's very important that  
2 this Board know that you've moving forward and doing  
3 what you said and promised you would do along those  
4 lines. That's very important to us.

5 ATTORNEY DONNELLY:

6 Thank you.

7 ATTORNEY SCHRIER:

8 Thank you.

9 MS. COLINS:

10 I just want to take a quick look at my  
11 notes. The standard is good cause, not hardship;  
12 correct?

13 ATTORNEY SCHRIER:

14 Yes.

15 MS. COLINS:

16 And is there a difference?

17 ATTORNEY SCHRIER:

18 I believe so. It's interesting  
19 considering the length of time that there's been an  
20 Administrative Code in Pennsylvania. There weren't a  
21 whole lot of cases that tried to distinguish good  
22 cause from any other factors, but I think the good  
23 cause standard is effectively a reasonable basis for  
24 decision that exists for a board to change its  
25 existing determination of order.

1                   MS. COLINS:

2                   And you're saying basically that what's  
3 unanticipated here --- and I know you represent very  
4 sophisticated clients who've done site selections  
5 before. And, you know, the controversy of gaming is  
6 not a new thing to you. I know that. But what you're  
7 saying is what's unanticipated here is the refusal of  
8 the --- of City Council to act upon your request; is  
9 that correct, your request for zoning?

10                   ATTORNEY DONNELLY:

11                   Yes. I mean, what's extraordinary here  
12 is we're not being turned down because our plan is  
13 inappropriate or we're not even --- the doors aren't  
14 even open to us. We're not --- we haven't been ---  
15 neither one, the zoning hasn't been changed, and we  
16 haven't had the opportunity for somebody to consider  
17 the plan and says it's a good plan, bad plan,  
18 indifferent plan. That's a typical risk. The risk  
19 that we're facing here is --- again, I go back to my  
20 analogy of the deck, you can't build a casino here  
21 period.

22                   MS. COLINS:

23                   Pardon me?

24                   ATTORNEY DONNELLY:

25                   You can't build a casino here period even

1 if it's the best casino in the world.

2 MS. COLINS:

3 And if you were --- if you had broken  
4 ground and you would hit some incredibly difficult  
5 substance that would cause you to have to bring in  
6 special types of ---?

7 ATTORNEY SCHRIER:

8 Hopefully gold or oil perhaps.

9 MS. COLINS:

10 Exactly. Like the Beverly Hillbillies  
11 and you struck crude or whatever, you would not be  
12 coming to us and asking for a delay in that situation?

13 ATTORNEY DONNELLY:

14 I think that's an entirely different  
15 situation.

16 ATTORNEY SCHRIER:

17 That's accurate.

18 MS. COLINS:

19 Okay. Thank you very much. Those are  
20 all of my questions. And at this point, I want to  
21 thank you. The Board will take this matter under  
22 advisement. We'll be reviewing the transcript of  
23 everything that occurred today. We will deliberate  
24 and make quasi judicial capacity as we did in the  
25 licensing matters regarding the subject matter of this

1 hearing, and then we'll vote at an upcoming public  
2 meeting whether or not to grant the relief requested.  
3 A temporary continuance, which we already granted,  
4 will remain in effect until further action by this  
5 Board. And I want to thank you.

6           Before I adjourn, though, just as a  
7 matter of important for all of us here, for any of you  
8 who have met or had the good fortune to do business  
9 with one or our attorneys, Jim Dougherty. I want to  
10 announce that Jim much to our dismay will be leaving  
11 the Gaming Board on September 12th for bigger and  
12 better things, and we will be very sad to see him go.  
13 We will miss his expertise and his great legal mind.  
14 We wish him good luck. And with that, I'm going to  
15 ask for a motion to adjourn this hearing.

16           MR. MCCABE:

17           So moved.

18           MR. COY:

19           Second.

20           MS. COLINS:

21           Okay. Thank you.

22

23                           \* \* \* \* \*

24                           HEARING CONCLUDED AT 4:15 P.M.

25                           \* \* \* \* \*