

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

\* \* \* \* \*

IN RE: Philadelphia Entertainment & Development  
Partners, L.P. (Foxwoods) - Petition for  
Additional Time to Make Slots Available

PUBLIC HEARING

\* \* \* \* \*

BEFORE: GREGORY C. FAJT, CHAIRMAN  
  
Raymond S. Angeli, Jeffrey W. Coy, James B.  
Ginty, Kenneth T. McCabe, Sanford Rivers,  
and Gary A. Sojka, Keith Welks representing  
Ex-Officio Member State Treasurer Robert  
McCord, Ken Semph representing Ex-Officio  
Member Revenue Secretary Steve Stetler, and  
Frank Chebalo representing Ex-Officio  
Member Secretary Denny Wolff

HEARING: Friday, August 28, 2009, 10:02 a.m.

LOCATION: Hearing Room One  
  
North Office Building  
  
Harrisburg, PA 17120

WITNESSES: Brian Ford, Joseph Colebut

Reporter: Cynthia Piro-Simpson

Any reproduction of this transcript is prohibited  
without authorization by the certifying agency.

A P P E A R A N C E S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

DALE MILLER  
Deputy Chief Enforcement Counsel  
Pennsylvania Gaming Control Board  
Pittsburgh, PA 15222  
Counsel for Gaming Control Board

F. WARREN JACOBY, ESQUIRE  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103  
Counsel for Philadelphia Entertainment &  
Development Partners, L.P. (Foxwoods)

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PRESENTATION

By Attorney Jacoby 5 - 13

WITNESS: BRIAN FORD

STATEMENT

By Mr. Ford 13 - 31

WITNESS: JOSEPH COLEBUT

STATEMENT

By Mr. Colebut 31 - 32

CROSS EXAMINATION (OF MR. FORD)

By Attorney Miller 32 - 42

PRESENTATION

By Attorney Miller 42 - 47

DISCUSSION AMONG PARTIES 47 - 78

E X H I B I T S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

		Page
<u>Number</u>	<u>Description</u>	<u>Offered</u>
<u>Office of Enforcement:</u>		
1	Photos	43
1-50	Foxwoods' Demonstration	52

P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----

CHAIRMAN:

We'll now begin with the public hearing.  
First, may I have all parties involved in the Philadelphia Entertainment petition come forward? I believe they're already here. Will those who will present evidence relating to this petition stand and be sworn?

-----

WITNESSES SWORN EN MASSE

-----

CHAIRMAN:

If it's okay with the Board, we'll hear from both representatives of Philadelphia Entertainment and also our Office of Enforcement Counsel, and we'll reserve our questions until the conclusions of their presentations. Everybody okay with that? Okay.

Mr. Ford, you already spelled your name. Just for the stenographer, could Counsel please state and spell their names for the stenographer?

BRIEF INTERRUPTION

CHAIRMAN:

You may proceed with your presentation,

1 gentlemen.

2 ATTORNEY JACOBY:

3 Good morning, Mr. Chairman and members of  
4 the Board. We thank you very much for allowing us to  
5 appear before you today and to present our evidence  
6 and to answer your questions with respect to the  
7 petition that was filed in May of this past year,  
8 seeking an extension of the Category II Slot Machine  
9 License issued to Foxwoods in --- by Order of December  
10 of '06 and by adjudication of February of '07.

11 For purposes of clarity of the record, to  
12 avoid any confusion, when I refer to the word Foxwoods  
13 and when Mr. Ford and Mr. Colebut do, we're referring  
14 to the entity that is the licensed holder because  
15 there's so many various Foxwoods --- there's Foxwoods  
16 Development, just so the record is clear as to what we  
17 intend.

18 With me today, as you know, is Mr. Ford,  
19 who is the CEO of WPI, which is a majority investor in  
20 Foxwoods. Behind me is Mr. Colebut, who is the  
21 Chairman of the Board of Managers of Foxwood  
22 Development Company. Next to him is Mr. Timothy  
23 Walker, who is a member of the Board of Managers of  
24 Foxwood Development Company. Next to him is Nicholas  
25 Moles, who is a vice-president and general counsel of

1 Foxwoods. Next to him is Jeff Wosencroft, who is a  
2 vice-president of Foxwoods. And lastly, that is John  
3 Donnelly, my partner.

4           We're before the Board today to seek an  
5 extension of 24 months to commence operations under  
6 our license. There's been a great deal of musing in  
7 the press and elsewhere about why we're here today.  
8 Let's make it clear, as you've made it clear, we  
9 understand fully we're here solely for the purpose of  
10 asking this Board to rule on our petition as to  
11 whether we have the right to have an extension of our  
12 license for the site on Columbus Boulevard, in  
13 Philadelphia, Pennsylvania, which is the site that was  
14 specifically designated by the Board in its Order and  
15 Adjudication. And that is the sole purpose why we are  
16 here today.

17           Section 1210 of the Act is simply stated.  
18 It provides that an applicant has the right to request  
19 up to a 24-month extension upon good cause shown.  
20 Now, good cause shown is sort of, to us lawyers, like  
21 the word reasonable is. It has a lot of meanings and  
22 definitions. The Act itself has no specific  
23 definition of what good cause shown is. Having said  
24 that, we believe that for purposes of today's hearing  
25 and our petition, that good cause shown means two

1 things, legally sufficient reasons and whether or not  
2 what we seek achieves the objectives of the Act. We  
3 respectfully submit to the Board that the answer to  
4 both questions is yes.

5           It's hard to act in a vacuum with respect  
6 to this specific license. Not only has Foxwoods gone  
7 through two years of opposition and difficulty and  
8 false starts and expenditure of a great deal of money,  
9 but the Board needs to keep in mind that the ultimate  
10 expression of commitment that this casino license  
11 holder made was they owned their site. They had  
12 acquired their site at the time the Board ruled. So  
13 they had already acquired their site. There wasn't  
14 the issue that you might see when they have the site  
15 under some other equitable lien. They have held this  
16 site since before December 2006.

17           They have, in addition, committed \$160  
18 million to this site. And when I use the words this  
19 site, again, lest there be no question, this site is  
20 Columbus Boulevard. They have --- the two-year period  
21 ensuing from the issuance of their license commenced  
22 not one, not two, but five separate actions before the  
23 Pennsylvania Supreme Court, with differing results  
24 based upon technicalities. The most important thing  
25 is that finally they obtained an Order in October 2008



1 from the Pennsylvania Supreme Court appointing Judge  
2 McCloskey as the Special Master.

3           Now, there's a lot of people who muse,  
4 because a lot of people like to muse about this site  
5 and about this license, well, once we had the Judge  
6 appointed, why didn't we do something in October of  
7 2008? Mr. Ford will speak to that specifically in his  
8 presentation and will also answer your questions.

9           Now, mind you, during the same period we  
10 also negotiated and signed a development agreement  
11 with the city. We also, during that same time period,  
12 made payments in excess of \$2 million to the city  
13 pursuant to that agreement. And I'm only telling you  
14 these things not to remind you of perhaps things  
15 you're aware of already but so that the Board can  
16 appreciate the amount of --- the commitment that's  
17 been made to this site by Foxwoods, without any  
18 cooperation from the City, and to some extent, without  
19 any cooperation from other public officials. Imagine  
20 yourselves in this position of having committed this  
21 amount of funds, this amount of effort, this amount of  
22 time and expense, you'll forgive me, for lawyers, you  
23 know, and yet what do they have to show for it? They  
24 have their license. And for that, we appreciate it.  
25 But they've been stymied at every turn. And as I

1 said, Mr. Ford will address that.

2                   Now, there are those who say, well, why  
3 didn't you build a temporary facility? And then there  
4 are those who talk about, why did you waste your time  
5 considering alternative sites? Well, anybody who  
6 would suggest that, assuming that their agenda is in  
7 good faith, exists in a political and economic vacuum.

8                   First of all, historically, the use of a  
9 temporary site is just an excuse for further  
10 litigation. It's a tremendous waste of funds. It's a  
11 tremendous waste of time. When you're in a  
12 contentious situation, as Foxwoods was at the time,  
13 can you imagine the litigation that would have ensued  
14 had they suggested, we'll build a temporary site in  
15 lieu of what we told the Board we would do? It would  
16 make the lawyers rich, but that's all it would do. It  
17 would delay the process tremendously. And in addition  
18 to that, you can't be unmindful of what was going on.  
19 Starting in September of 2008, to give you a point of  
20 reference, that was when Lehman went in the tank. So  
21 the economy was starting its downward spiral. There's  
22 people today, commentators, who suggest that it's  
23 coming out of it. We certainly see some positive  
24 response from the economic and financing marketplace,  
25 and we think that's a positive thing for this site.

1                   And then the other musing about the  
2 alternative sites, the principals of Foxwood are  
3 primarily Philadelphia businesspeople. They're people  
4 who are situated in the community and have always  
5 worked for the community. Perhaps the greatest  
6 expression of that is the commitment made by the three  
7 principal investors to contribute to charity the  
8 proceeds of any cash flow that they receive. That's  
9 the ultimate commitment, not just to the community but  
10 to the public good. And that hasn't changed and will  
11 not change. So when people ask us, well, why do we do  
12 that? Can you imagine a scenario where you've been in  
13 a boxing match for nine rounds and at the end of the  
14 ninth round the people who've been making your life  
15 miserable say, why don't we talk? Well, that's ---  
16 that's a Hobson's choice. Of course you would talk.  
17 Number one, you have a commitment to the community.  
18 Number two, you've got the Chief Executive of the  
19 State saying, doesn't it make sense to see if there  
20 are alternatives, without committing the Board to  
21 anything, mind you, and doesn't --- and you have the  
22 mayor saying that and you have other senior public  
23 officials. It would be of the utmost of arrogance for  
24 us to have ignored that and not dealt with that in  
25 good faith. And we did. And regretfully, it's had a

1 deleterious effect on moving forward with this site,  
2 but it was unavoidable. And it also involved a  
3 substantial commitment of time and money and other  
4 resources. This, again, wasn't done. The vacuum ---  
5 I think Mr. Ford spoke about the Gallery site to you  
6 in April and briefly about 1801 Market Street in  
7 April, and we're not here to talk about that today.  
8 But the point is that we're not unmindful of the  
9 concerns you've heard from people with or without good  
10 faith, but we can assure you that we have always  
11 proceeded in good faith and with a sense of the  
12 community and charity.

13           Again, we're here today to get an  
14 extension of our license at this site and this site  
15 only. I don't believe that anybody could challenge  
16 our commitment to build a casino in this --- in  
17 Philadelphia, frankly, at this site. And Mr. Ford  
18 will go into that more. I don't think anybody can  
19 challenge our commitment to the community of  
20 Philadelphia. I think the most important thing ---  
21 I'll just keep talking through it. The most important  
22 thing is our recognition and our commitment to you  
23 today that we know that the sole authority to  
24 designate and identify the site was and still is this  
25 Board. We are committed to this site. We recognize

1 that it's the Board and only the Board that has the  
2 ability to decide if anything is to change.

3 I'm not here to cast blame on anyone.  
4 I'm only here to tell the facts. And the facts are,  
5 quite simply stated, that but for all the events that  
6 I've just described to you, you wouldn't be sitting  
7 here today. We would have an operating, successful  
8 casino in the City of Philadelphia, creating  
9 construction jobs, creating jobs for people to work at  
10 that facility, providing revenues for the city and the  
11 State in a situation where today everybody is  
12 scrambling. In fact, the folks in Harrisburg, in  
13 particular, are scrambling to find funds for the City  
14 of Philadelphia.

15 As I said before, we have two witnesses  
16 who will --- I've got a loud voice; that's fine. We  
17 have two witnesses who were to testify. Mr. Ford, who  
18 is the CEO of WPI, the major investor in Foxwoods.  
19 And Mr. Ford testified before you on April 8th, and he  
20 will bring you up to date as to where we are and as to  
21 why we're here, and he will also answer your  
22 questions. We also have Mr. Joe Colebut, who is the  
23 Chairman of the Board of Managers of Foxwoods, to  
24 assure you of the continuing commitment of Foxwoods to  
25 this project at this site, and likewise, to answer any

1 questions you may have.

2                   Lastly, we have produced and delivered to  
3 Mr. Pitre, Mr. Miller and the court reporter copies of  
4 exhibits that will be referred to generally by Mr.  
5 Ford in his presentation. There are about 50  
6 exhibits. The purpose is not to go through them here,  
7 but I wanted you to know that that had been done and  
8 they're part of the record. At this point I would  
9 like to introduce Mr. Ford. Brian?

10 -----

11 BRIAN FORD, HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS  
12 FOLLOWS:

13 -----

14 A. Good morning, Mr. Chairman and members of the  
15 board. I want to add my thanks for inviting us here  
16 today. As Fred said, my name is Brian Ford. I became  
17 the CEO of Philadelphia Investors last July. Prior to  
18 that, I was a partner in Ernst & Young for 37 years,  
19 where I was responsible for our global gaming  
20 practice. We are the majority owner of Foxwoods,  
21 Philadelphia. And as was alluded to, any time I use  
22 the word Foxwoods it will refer to the Foxwoods Casino  
23 in Philadelphia.

24                   In the matter presently before you,  
25 Foxwoods has filed a petition under Section 1210 of

1 the Gaming Act requesting a 24-month extension of time  
2 under its Category II Slot License to open Foxwoods  
3 for business and at least 1,500 slot machines  
4 operational at that casino. Foxwoods respectfully  
5 submits that, as dictated by Section 1210, there is  
6 good cause to grant this extension. Because of the  
7 significant obstacles that Foxwoods has overcome thus  
8 far in attempting to develop and construct the casino  
9 and the unprecedented problems that have gripped the  
10 financial and credit markets, granting Foxwoods its  
11 requested 24-month extension will bring about the  
12 generation of revenue and creation of jobs envisioned  
13 by the General Assembly when it enacted the Gaming  
14 Act. While my testimony will touch upon our efforts  
15 in evaluating alternative sites at the request of the  
16 governor, the mayor, and other state and city  
17 officials, we are not here today to address the issue  
18 of relocation. We are here today for the limited  
19 purpose to seek an extension of time to commence  
20 operations under the gaming license that the Board  
21 awarded to Foxwoods. Should we, in the future,  
22 determine to seek relocation, we recognize that it's  
23 the Board's sole authority to make such a  
24 determination and we would, of course, file the  
25 appropriate petition and seek the Board's approval to

1 do so.

2                   In December of 2006 the Board announced  
3 that the two Category II Slot Machine Licenses  
4 available for operation of gaming facilities in the  
5 City of Philadelphia would be awarded to Foxwoods and  
6 HSP Gaming. The gaming license issued to Foxwoods  
7 permitted it to construct and operate Foxwoods Casino  
8 at the site that I will refer to as the Columbus  
9 Boulevard site. The site is located between Columbus  
10 Boulevard and the Delaware River in south  
11 Philadelphia.

12                   Foxwoods immediately hit the ground  
13 running and set out immediately to obtain permits and  
14 approvals that it would need to begin construction.  
15 It had already acquired the site in January 2005. We  
16 had planned to break ground in March 2007, and we  
17 reasonably expected to be open in November 2008.  
18 Unfortunately, the process did not go smoothly.  
19 Notwithstanding our efforts and commitment, the City  
20 of Philadelphia and political leaders from the area  
21 encompassing the Columbus Boulevard site engaged in a  
22 continuing an unyielding effort to prevent Foxwoods  
23 from constructing the gaming facility as planned. As  
24 a result, from the very beginning Foxwoods has faced  
25 significant obstacles in obtaining zoning, permits,



1 licenses that it needed to begin construction. For  
2 example, in January 2007, even before the Board issued  
3 its adjudication concerning the two licenses, City  
4 Council of Philadelphia introduced a package of eight  
5 ordinances intended to expressly delay, limit or  
6 exclude gaming from the two Philadelphia sites  
7 selected by the Board. These zoning and permitting  
8 problems and the inability to obtain cooperation from  
9 the city have been the primary cause of the delay in  
10 developing the casino.

11       Between January and May 2007 Foxwoods faced down a  
12 long series of city ordinances, ballot questions that  
13 would have changed the zoning at Columbus Boulevard  
14 site to prohibit operation of a casino there.  
15 Confronted with an uncooperative local government,  
16 Foxwoods was thus forced to litigate a series of court  
17 cases to defend its ability to develop the gaming  
18 facility, and it was ultimately successful. Foxwoods  
19 began the process for obtaining judicial zoning relief  
20 in June 2007 by filing an application with the  
21 Pennsylvania Supreme Court. Foxwoods later filed two  
22 additional applications for relief with the Supreme  
23 Court in August of 2007. Unfortunately, these  
24 applications were denied. Notably, around the same  
25 time Foxwoods was filing the applications with the

1 Supreme Court, Philadelphia City Council asked  
2 Governor Rendell to support a relocation of the  
3 planned casinos in Philadelphia from their sites. The  
4 governor flatly rejected the request out of hand.  
5 Even though Philadelphia City Council refused to pass  
6 the necessary zoning ordinance, Foxwoods continued  
7 diligently to pursue its project. For example,  
8 working with Mayor Street's administration, we agreed  
9 to the terms of a development and tax settlement  
10 agreement with the city in November of 2007, and we  
11 signed the settlement agreement January 4th, 2008.  
12 Foxwoods immediately began performing under the  
13 agreement, paying a total of over \$2 million in  
14 property taxes, even though it had been unable to  
15 develop its casino even under this complicated  
16 agreement.

17 We also continued litigating the zoning question.  
18 Given the resistance of the City, in late 2007 we  
19 filed a fourth application with the Supreme Court for  
20 zoning relief. The fourth time was the charm, and on  
21 April 2nd, 2008 the Supreme Court granted Foxwoods its  
22 requested CED zoning for its site. In so doing, the  
23 Supreme Court concluded that City Council's inaction  
24 on zoning bills related to our construction of the  
25 Foxwoods Casino was a deliberate attempt by City

1 Council to delay construction. Among other things,  
2 the Court deemed the CED zoning for the site to be  
3 enacted, deemed Foxwoods' plan for development  
4 approved, and directed the City to issue its zoning  
5 and use permits. Despite the Supreme Court's  
6 decision, the City persisted in its efforts to prevent  
7 Foxwoods from building on that site. Although the  
8 Supreme Court had enforced the entitlement to zoning,  
9 Foxwoods still required approvals and permits from the  
10 City. The City used that fact to further frustrate  
11 our efforts. In June and July of 2008,  
12 notwithstanding the directive of the Pennsylvania  
13 Supreme Court in April, Foxwoods' zoning permit  
14 application for the Columbus Boulevard site was turned  
15 back as incomplete based on some apparently new  
16 unwritten City Planning Commission policies. It had  
17 become clear that Foxwoods would only be able to  
18 obtain the permits it needed through further  
19 litigation. We were forced back to the Supreme Court,  
20 and on July 16th, 2008 we filed our fifth application  
21 with the Supreme Court and requested the Court to  
22 enforce the prior directives of the Supreme Court and  
23 further appoint a Special Master to oversee the  
24 remaining license and permit applications necessary to  
25 develop and construct our casino.

1           On July 4th weekend, you may recall that the  
2 budget was coming to fruition at that point and  
3 several state senators and representatives announced  
4 at a press conference that they had formed a coalition  
5 to force the Philadelphia casinos to relocate from the  
6 riverfront and that as part of the budget process the  
7 governor had agreed to request that the Philadelphia  
8 licensees meet with State and City representatives to  
9 discuss the possibility of moving. In fact, on August  
10 23rd, with Foxwoods' petition to the Supreme Court  
11 pending, Governor Rendell asked representatives of  
12 Foxwoods Casino, which included representatives of  
13 both Foxwoods Development Company and the Washington  
14 and Philadelphia investors to attend a meeting with  
15 the governor, the mayor and certain other State  
16 legislators and other representatives of the  
17 Commonwealth and the City of Philadelphia to discuss  
18 the possibility of our moving our licensed location to  
19 a new location. On September 9th Foxwoods  
20 announced --- again met with the governor and the  
21 mayor and other representatives of government,  
22 indicating that we would evaluate the possibility of  
23 relocating. Foxwoods agreed to participate in talks  
24 and examined other possible locations in an effort to  
25 be good citizens of the State and the city

1 communities. We did not believe that we could reject  
2 this out of hand. However, while agreeing to examine  
3 other possibilities, other possible locations,  
4 Foxwoods specifically reserved its right to develop  
5 the Columbus Boulevard site. Furthermore, we reminded  
6 the other parties that the only --- only this board  
7 could grant permission to Foxwoods for it to relocate  
8 a casino from Columbus Boulevard.

9 Foxwoods agreed to participate in the talks for  
10 two primary reasons. First, the Supreme Court had not  
11 yet ruled on its latest application. There was no end  
12 in sight to the legal wrangling with respect to the  
13 Columbus Boulevard site. At the same time, Foxwoods  
14 had filed five applications with the Supreme Court.  
15 Those matters remained open and we prevailed months  
16 later. Though we did later prevail on our application  
17 for the appointment of a Special Master, we recognize  
18 that litigation is inherently uncertain, and there was  
19 no guarantee on whether or when the Supreme Court  
20 would grant the requested relief and appoint a Special  
21 Master. Moreover, we were becoming more and more  
22 concerned that the continuing delay and loss of  
23 momentum would create an inability to move forward.  
24 If the public officials continued their tactics and no  
25 Special Master was appointed, we were concerned that

1 the process would drag on for an extended period,  
2 without an end in sight. We hoped to avoid such a  
3 quagmire. Accordingly, we concluded that it was  
4 worthwhile to engage in discussions that might  
5 resolve, among other things, the opposition of the  
6 various public officials to the site of the proposed  
7 facility.

8 The second, the Foxwoods team, which is  
9 comprised of many Philadelphia businesspeople,  
10 believe that it was important to be part of the  
11 community. Here, community political leaders were  
12 urging Foxwoods to at least ---.

13 INTERRUPTION

14 CHAIRMAN:

15 Folks. Folks. Let me just --- folks,  
16 let me just say it. And I'm willing to let you stand  
17 there. You have the right to stand there and petition  
18 and protest, and that's fine. We're going to have a  
19 public hearing today. We are not going to entertain  
20 any catcalls, any outburst, from the people in this  
21 room. And if you continue this, you will be removed.  
22 Please proceed.

23 AUDIENCE MEMBER:

24 I'd like to say this before you --- I'd  
25 like you to act appropriately for these children. Set

1 the proper example as adults for the children.

2 INTERRUPTION

3 CHAIRMAN:

4 Folks, again, I'm going to ask you to  
5 please refrain from yelling out, and we're going to  
6 continue the hearing. If you don't, you will be  
7 removed. Thank you. Mr. Ford, continue.

8 A. As I was saying, second, the Foxwoods team, which  
9 is comprised of many Philadelphia businesspeople,  
10 believed that it was important to be part of the  
11 community.

12 AUDIENCE MEMBER:

13 Mr. Chairman, excuse me. The court  
14 reporter said she can't hear.

15 CHAIRMAN:

16 Folks, please.

17 A. Here community political leaders were urging  
18 Foxwoods ---.

19 INTERRUPTION

20 CHAIRMAN:

21 Sir, I'm going to ask you one last time,  
22 please refrain from yelling from the back of the room  
23 or you will be removed. Last time. Mr. Ford,  
24 continue.

25 A. Community political leaders were urging Foxwoods

1 to at least explore and evaluate other possible  
2 venues, which these political leaders consider  
3 preferable to the Columbus Boulevard site, and  
4 Foxwoods wanted to hear them out. As this Board  
5 knows, these local leaders believed that siting the  
6 gaming facility in Center City would be better for  
7 Philadelphia than siting it at the waterfront.  
8 Foxwoods believes that both of the sites have positive  
9 features. We recognized, however, that these leaders  
10 sincerely held their views about the Columbus  
11 Boulevard site. We have the utmost respect for the  
12 commitment and passion for doing what they believe in  
13 the best interest of their constituents. Under those  
14 circumstances we thought it best to engage with them  
15 in a dialogue and try to address whatever concerns  
16 they had about the Foxwoods gaming facility in  
17 Philadelphia. Further complicating the matters, while  
18 Foxwoods' application for zoning relief and the  
19 appointment of a Special Master was pending and  
20 Foxwoods was beginning discussions requested by the  
21 governor and other state and city elected officials,  
22 the financial world would begin to change quickly and  
23 dramatically. Fannie Mae and Freddie Mac were placed  
24 in conservatorships on September 7th. Lehman Brothers  
25 folded on September 15th. The Federal Reserve made



1 emergency loans to AIG on the 16th of September. The  
2 stock market, which was already below its prior highs,  
3 fell fast and hard. Credit markets were seizing up.  
4 Banks became afraid to even lend to other banks. The  
5 federal government authorized a \$700 billion emergency  
6 measure to try to stop the economic bleeding. The  
7 resulting financial and credit crisis severely limited  
8 financing opportunities for any new business and in  
9 any business venture of all types. This made it all  
10 the more important for Foxwoods to attempt to enter  
11 into a more cooperative and less adversarial  
12 relationship with the city. The uncertainties and  
13 additional expense involved in having to fight every  
14 application and permit in court would have made the  
15 project incredibly difficult to finance in such a  
16 tight credit climate in addition to the adverse effect  
17 that any litigation on the project would have on  
18 financing.

19 In September 2008 Foxwoods announced that we were  
20 evaluating a facility at The Gallery Shopping Mall at  
21 11th and Market Streets in Center City. Again, we  
22 made clear that we reserved the right to proceed at  
23 the Columbus Boulevard site and that any possible  
24 relocation required approval from the Board for good  
25 cause shown. A considerable amount of time was

1 invested in that effort. In October 2008, months  
2 after the governor requested Foxwoods to consider  
3 relocating the site, the Supreme Court did grant the  
4 application to enforce the Supreme Court's earlier  
5 April Order to appoint a Special Master. The Court  
6 directed the City to issue Foxwoods a zoning and use  
7 registration permit, and it appointed Senior Judge  
8 Joseph McCloskey as a Special Master to oversee the  
9 remainder of the licensing and permitting process.  
10 However, because we had agreed to do so, Foxwoods  
11 continued to talk to the city leaders and examine  
12 potential alternative sites, even after the Special  
13 Master was appointed. Having committed to evaluate  
14 other sites, it would have been inappropriate to break  
15 our word once we prevailed upon the Supreme Court. By  
16 evaluating these other sites in good faith, we  
17 fulfilled an important commitment to the governor, the  
18 mayor and other city and state elected officials. The  
19 purpose of the statute is to create jobs and generate  
20 revenue and promote development in the Commonwealth,  
21 city and community. We have always thought, as the  
22 Board agreed, that the Columbus Boulevard site  
23 achieved those goals. However, due to political  
24 wrangling and delay, we believed it appropriate to  
25 examine other locations and consider whether any other

1 locations could achieve those goals as well.

2       The Gallery Shopping Mall ultimately turned out  
3 not to be a workable alternative site. In February  
4 2009, Foxwoods then agreed to evaluate the Strawbridge  
5 & Clothier 801 Market Street building, a long-vacant  
6 building, as a possible site for relocating its gaming  
7 facility. Again, we made it clear that we reserved  
8 our right to proceed with the casino at the Columbus  
9 Boulevard site and that any relocation was subject to  
10 the approval from this Board.

11       The 801 Market site has a number of positive  
12 elements. City leaders support locating the casino  
13 there, and thus Foxwoods would face the same --- would  
14 not face the same permitting difficulties that were  
15 the primary source of delay for the project so far.  
16 Also, because 801 Market Street would primarily  
17 involve renovating an existing building, the project  
18 would be significantly less costly to develop and it  
19 could be built quickly and, therefore, open to the  
20 public in a shorter period of time. But the 801  
21 Market Street does have its potential issues. For  
22 example, the owner of the upper floors of the  
23 building, Gramercy Capital Corp, surfaced the first  
24 time during the City Council hearing in May 2009 on  
25 the rezoning. After our April 8th appearance before

1 the Board, they objected to Foxwoods locating its  
2 casino there. In addition to that issue, there is the  
3 real potential for litigation to flow from any effort  
4 to relocate the facility to that site, thereby  
5 delaying the project and its financing.

6 As I stated earlier, Foxwoods understands that its  
7 license is for the Columbus Boulevard site, and this  
8 Board has already approved and it is a license that we  
9 seek to extend. Foxwoods has always believed that it  
10 can develop a first-class gaming facility at the  
11 Columbus Boulevard site, and it continues to stand  
12 behind its decision to purchase the property and base  
13 its gaming license application on that property, and  
14 by the Board's decision, locate on that property. We  
15 understand that if we should determine to come back in  
16 the future to request a relocation of our site, that  
17 it is the Board's sole authority to make such a  
18 determination and that the Board might refuse such a  
19 request. If the Board grants Foxwoods an extension of  
20 time, Foxwoods is prepared to move forward with  
21 development and construction of a casino that would  
22 have at least 1,500 slot machines and have it  
23 operational by May 2011. We believe that our much-  
24 improved relationship with the City of Philadelphia  
25 and the leaders will allow this project to proceed

1 quickly. And because the Supreme Court has now  
2 appointed a Special Master to oversee the permitting  
3 and the licensing process, if needed, we anticipate  
4 that any difficulties would be resolved quickly. If  
5 the Board grants the extension, Foxwoods will  
6 obtain --- will work to obtain the necessary financial  
7 resources for its project, and based on the amount of  
8 conditions of the financial markets, whatever is  
9 reasonably obtainable, we will prepare and submit to  
10 the Board a revised plan of development, which we  
11 anticipate would include an interim phase one for the  
12 casino that would reflect the realities of the ongoing  
13 national financial and credit difficulties. Foxwoods  
14 will be prepared to submit the revised plan to the  
15 Board for review and approval as soon as it's  
16 finalized and then move forward with obtaining the  
17 City's approval of the revised plan and other permits  
18 and licenses needed to begin instruction. While it is  
19 difficult to go to the financial markets until the  
20 present issue of our license is determined, from  
21 observing the reaction of the financial markets to the  
22 fundraising efforts of HSP and other Pennsylvania  
23 operations, we believe that there is and will be a  
24 great deal of appetite for the investment and/or  
25 lending of funds for the development of our casino.

1 Given the desire to move forward as quickly possible,  
2 among other things, if we proceed at Columbus  
3 Boulevard, we anticipate that as HSP has elected to  
4 do, we would have our development plans in phases and  
5 focus on constructing an interim casino and providing  
6 parking for an initial 1,500 slot machines. Then as  
7 operations stabilize, we would proceed with the next  
8 phase of our efforts. While Foxwoods has not  
9 initially sought to proceed with an interim facility,  
10 given the obstacles that have impeded development so  
11 far and the ongoing national and financial economic  
12 difficulties, Foxwoods believes it is appropriate to  
13 consider that question now. Needless to say, this  
14 will be reviewed with the staff and with the City in  
15 order to obtain their input and approval.

16 In conclusion, Foxwoods respectfully submits that  
17 there is good cause for the Board to grant a 24-month  
18 extension under its license to have at least 1,500  
19 slot machines operational at Foxwoods Casino by May  
20 2011 because of the significant obstacles Foxwoods has  
21 overcome thus far in attempting to construct the  
22 casino and the unprecedented ongoing problems in the  
23 national financial and credit markets. In addition to  
24 which Foxwoods --- in granting Foxwoods the 24-month  
25 extension, we will further the purpose of the Gaming

1 Act by creating jobs and generating revenue as quickly  
2 as possible. While there are those who might question  
3 our efforts in considering alternative locations, we  
4 felt it was incumbent to pursue all alternatives  
5 available to us. It is important not to lose sight of  
6 the fact that, to date, we have committed \$160 million  
7 for our license, the purchase of the land and other  
8 development costs at the Columbus Boulevard site. We  
9 therefore ask the Board to extend our license for the  
10 presently approved site. There has been a great deal  
11 of speculation as to whether we will seek the Board's  
12 approval to relocate the site of our casino to another  
13 location. And sitting here today, we are not prepared  
14 to make that decision, given the many obstacles and  
15 issues that are involved, such as litigation, leasing  
16 issues sand other matters. Should we determine to  
17 seek relocation in the future, we will, of course,  
18 then file the appropriate petition and seek the  
19 Board's approval to do so. Thank you for giving our  
20 petition your consideration today.

21 CHAIRMAN:

22 Thank you, Mr. Ford. Folks, again,  
23 please. Mr. Ford, thank you very much. Before the  
24 Office of Enforcement Counsel does your presentation,  
25 do you have any questions for the witness. Mr.

1 Jacoby?

2 ATTORNEY JACOBY:

3 Sir, we have one more witness. We have  
4 Mr. Colebut. Let him make a brief statement, if we  
5 can.

6 CHAIRMAN:

7 Thank you. Please proceed.

8 -----

9 JOSEPH COLEBUT, HAVING BEEN PREVIOUSLY SWORN,  
10 TESTIFIED AS FOLLOWS:

11 -----

12 MR. COLEBUT:

13 Good morning, Mr. Chairman and members of  
14 the Board. My name is Joseph Colebut, and I'm the  
15 chairman of Foxwoods Development Company, LLC, which  
16 is wholly owned by the Mashantucket Pequot Tribe,  
17 Mashantucket, Connecticut. I would also like to thank  
18 you for inviting us here today.

19 As you know, Foxwoods Development Company  
20 is and has been a partner in the development of  
21 Foxwoods Casino, Philadelphia, since we first  
22 submitted our license application back to the Board in  
23 December of 2005. On behalf of Foxwoods Development  
24 Company, I would like to echo the testimony of Brian  
25 Ford. While Foxwoods Casino, Philadelphia, has not



1 opened its doors as --- for business as quickly as we  
2 had all hoped, Foxwoods Development Company continues  
3 to remain excited about moving forward with this  
4 project, as we have always been. We remain committed  
5 to bringing a first-class gaming facility to  
6 Philadelphia, in partnership with the other investors  
7 involved in this project. And as Mr. Ford stated, we  
8 fully expect to have Foxwoods Casino, Philadelphia,  
9 open for business with 1,500 operational slot machines  
10 by May 2011.

11 INTERRUPTION

12 A. And I would thank you for giving our petition your  
13 favorable consideration. Thank you.

14 CHAIRMAN:

15 You're welcome. Office of Enforcement  
16 Counsel, any questions for the witnesses before you do  
17 your presentation?

18 -----

19 BRIAN FORD, RECALLED TO TESTIFY

20 -----

21 CROSS EXAMINATION

22 BY ATTORNEY MILLER:

23 Q. Mr. Ford, you testified that, as you sit here  
24 today, that you are committed to the site on ---.

25 CHAIRMAN:

1                   Could you make sure your microphone is  
2 on?

3 BY ATTORNEY MILLER:

4 Q.   I'm Dale Miller, Deputy Chief Enforcement Counsel  
5 for the Eastern Region. So is it your testimony, Mr.  
6 Ford, that as you sit here today, Foxwoods is  
7 committed to building a facility with at least 1,500  
8 slot machines on Columbus Boulevard, at the site  
9 originally approved by the Board? Is that your  
10 testimony?

11 A.   It is my testimony. We've always been fully  
12 committed to the Columbus Boulevard site. And only if  
13 we were to seek relocation, which we know we would  
14 come back to this Board, would we change that  
15 commitment.

16 Q.   Well, that doesn't seem like a total commitment.  
17 Are you committed to building that facility on  
18 Columbus Boulevard?

19 A.   Absolutely.

20 Q.   And you said you had --- you would present to the  
21 Board a revised plan; is that correct?

22 A.   That is also correct.

23 Q.   Does such a plan exist?

24 A.   We would begin working on the plan once our  
25 license extension is considered and acted upon.

1 Approaching the financial markets at this timeframe is  
2 a process that is one that would have to take into  
3 account the current financial conditions that exist in  
4 the country and the capability of attracting  
5 additional financial resources of investments, as well  
6 as any financing that would have to be obtained. In  
7 order to do that, as I mentioned during my testimony,  
8 we would have to go forward with a process that  
9 considered phases of development at the river site,  
10 and that process would begin shortly.

11 Q. So your testimony is that you do not have  
12 committed financing at this point for building a  
13 casino on Columbus Boulevard; is that right?

14 A. As I mentioned during my testimony, when you go  
15 out to acquire financing, you have to have all of your  
16 plans, all of your approvals, in place. Once we've  
17 had all of the plans and approvals in place, we are  
18 very confident that we could obtain the necessary  
19 funds to move forward with construction.

20 INTERRUPTION

21 BY ATTORNEY MILLER:

22 Q. And your --- when do you think you will be able to  
23 provide a plan, a revised plan or any other plan, for  
24 Columbus Boulevard to this Board?

25 A. We recognize the importance of moving with all

1 dispatch to accomplish that objective, and we would  
2 begin working on that immediately. The first step in  
3 that process would be testing the appetite for an  
4 interim casino and what financing might be available.  
5 Once we had a basis of understanding the capability of  
6 --- once we understood the financing capability, then  
7 we would be able to design an interim facility based  
8 on that capacity.

9 Q. And when you say interim facility, you're not  
10 talking about a temporary facility, like some type of  
11 structure, you're talking about a hard-back building  
12 that would remain in place?

13 A. Yes. It is very important to recognize that in  
14 the current casino environment, the competitive  
15 situation is that there are casino alternatives all  
16 around Pennsylvania. So it would be our intention to  
17 build something of sufficient size, stature and  
18 quality to make sure that we were able to compete in  
19 that environment. So we would absolutely have to  
20 build a facility that would be sufficient to attract  
21 not just visitors for one time but consistently return  
22 time after time. We've learned over many years that  
23 the concept of temporary and the need to finance  
24 simultaneously both a temporary and a permanent  
25 facility is generally impractical. We also know that

1 trying to build a temporary facility at any location,  
2 Columbus Boulevard specifically, would still require  
3 all of the various permitting and licensing hurdles  
4 that have been, you know, part of the problem up to  
5 this point in time. So we think it's impractical to  
6 build temporary. We wouldn't want to talk about a  
7 tent or some other facility like that, like has been  
8 reported in the newspapers about some other sites. On  
9 the other hand, what we would do is do a phase  
10 development. Many casinos around the country and  
11 around the world have done this with great success,  
12 that you build something in the earliest stage which  
13 fits into a master plan of what you accomplish over a  
14 longer basis. You may recall that in our November  
15 2006 presentation there was phasing there as well. We  
16 would just adjust the phasing approach to the current  
17 economic conditions, as well as the current  
18 competitive marketplace.

19 Q. And you feel confident that if you ran into any  
20 problems with the City of Philadelphia, that you could  
21 utilize the services of Judge McCloskey and those  
22 services would help you to be successful? You're  
23 confident of that?

24 A. Yes. There's substantial evidence that we've  
25 built a better relationship with the city, and there's

1 also substantial evidence that, once a Special Master  
2 is appointed, that things tend to go a lot smoother.

3 INTERRUPTION

4 BY ATTORNEY MILLER:

5 Q. But you have not utilized the services of Special  
6 Master McCloskey, Judge McCloskey, to this point, have  
7 you?

8 A. That is correct. The appointment of the Special  
9 Master occurred some four months after we had agreed  
10 to start working with the City. And we felt that we  
11 should continue in good faith with the City and the  
12 State officials to work on the potential for a  
13 relocation before we enlisted Judge McCloskey's  
14 assistance, which is specifically directed to the  
15 Columbus Boulevard site.

16 Q. And if you wanted to break ground on the Columbus  
17 Boulevard site tomorrow, do you have the most basic  
18 permit that you need in order to break ground on  
19 Columbus Boulevard?

20 A. No. To break ground on Columbus Boulevard ---  
21 this is a more complicated question. We have the  
22 permits we need to break ground at Columbus Boulevard  
23 on the original site, with some things that have to be  
24 cleaned --- with the original design, with some things  
25 that have to be finalized. However, the current

1 economic conditions and the situation that we've seen  
2 demonstrated around the State, we would come back to  
3 the City with a new design that would require a new  
4 permitting process.

5 Q. Would you like to clarify that legally?

6 ATTORNEY JACOBY:

7 If I could clarify that to help my client  
8 out a little bit, I know an issue was raised with  
9 respect to the Corps application that was made, the  
10 Corps of Engineers, and that that was, in legal  
11 parlance, non prosced for lack of prosecution. And  
12 the reason for that was quite simple. It was twofold.  
13 Number one, I think it was in February of 2009 and it  
14 was during a period that we were, as I said, in  
15 discussions with the City and alternative sites, and  
16 we just couldn't double track it, so to speak.

17 Number two, reflecting on the site and  
18 reflecting on the proposed interim plan, it's not  
19 clear at this point whether we would require Corps  
20 approval, whether we would require DEP approval, and  
21 that is something that we will look at immediately to  
22 make sure that we have whatever federal or state  
23 approvals are necessary. A lot of it has to do with  
24 the positioning of the improvements on the site with  
25 respect to whether or not approvals are required now

1 or in the future. To some extent, the discussions  
2 with the Corps were sort of anticipatory regarding the  
3 development of the entire site, because once you put a  
4 garage on a certain location, a high-rise garage,  
5 you're not going to do an archaeological dig  
6 underneath of it. So to some extent it was  
7 anticipatory, and that is something that we certainly  
8 --- and we have spoken with the representatives of  
9 Foxwoods. We will sit down with our planners and  
10 reset that and come up with a critical path for what  
11 we need regarding the various state, city, federal  
12 licenses and approvals.

13 BY ATTORNEY MILLER:

14 Q. So basically you have to start the permitting  
15 process from the beginning again; correct?

16 A. Not necessarily.

17 ATTORNEY JACOBY:

18 No, that's not correct.

19 A. No.

20 ATTORNEY GRACIE:

21 If I might, Mr. Chairman? Robert Gracie  
22 on behalf of PEDP. One of the exhibits that will be  
23 admitted into evidence at Number 48 is the Order of  
24 the Supreme Court appointing the Special Master. Part  
25 of that Order, and a significant part of that Order,



1 and I think the most significant part is that it  
2 directed the City of Philadelphia to issue, and I  
3 quote, the zoning use registration permit that PEDP  
4 requested. That's the gatekeeper license that has to  
5 be obtained before any of the other licenses from the  
6 City can be obtained.

7 ATTORNEY MILLER:

8 And my question is, has it been issued?

9 ATTORNEY GRACIE:

10 We did not pull that license because, at  
11 the time this Order was entered on October 14th of  
12 2008, as Mr. Ford said, several months after we had  
13 filed --- we filed the application in July. When we  
14 entered into the discussions with the City and State  
15 officials in August, we didn't know when our petition  
16 was going to be granted or if it was going to be  
17 granted and what the relief would be. We ultimately  
18 got that relief as those negotiations and discussions  
19 were underway. So we didn't insult the City and the  
20 governor and go and immediately pull the license. The  
21 Supreme Court has ordered that it be issued. We have  
22 no doubt that when we ask for it, it will be issued.  
23 But no, at this point, Mr. Miller, it has not been  
24 issued.

25 BY ATTORNEY MILLER:

1 Q. Now, you're asking the Board to extend your time  
2 to provide us a casino with 1,500 slot machines until  
3 May 29th, 2011; correct?

4 A. That's correct.

5 Q. Are you confident, as you sit here today, that you  
6 could put forth some sort of plan for the Columbus  
7 site, some sort of financing ---.

8 INTERRUPTION

9 CHAIRMAN:

10 Ma'am, I'm going to ask you, please  
11 refrain from laughing, please refrain from your  
12 outburst, or you will be removed from the hearing  
13 room.

14 BY ATTORNEY MILLER:

15 Q. Continue through the permitting process, break  
16 ground and complete an interim facility or whatever  
17 facility you plan to build in that period of time, are  
18 you confident as you sit here today that you can do  
19 that?

20 A. As I stated in my testimony, we are confident that  
21 we can do that. We ---.

22 Q. Is it your testimony before this Board today that  
23 you will do that?

24 A. It is our testimony that we will do that.

25 CHAIRMAN:

1 Other questions from OEC before your  
2 presentation?

3 ATTORNEY MILLER:

4 No.

5 CHAIRMAN:

6 Please proceed with your presentation.

7 ATTORNEY MILLER:

8 We have no witnesses to call, Mr.  
9 Chairman, but we do have a series of photographs that  
10 were taken of the site on Columbus Boulevard on  
11 Wednesday. They are OEC Exhibit One, and they are  
12 photographs 1 through 13. And we have copies provided  
13 to Counsel, and we just ask that they be entered into  
14 evidence. Copies will be provided to the Board. I  
15 believe some are already on the table over there.

16 (Office of Enforcement Counsel Exhibit  
17 One marked for identification.)

18 ATTORNEY GRACIE:

19 We have no objection, Mr. Chairman.

20 CHAIRMAN:

21 Thank you.

22 ATTORNEY PITRE:

23 Now, with 21 months remaining in order to  
24 get those slot machines up and running, we do have  
25 some proposed conditions that we would like to impose

1 upon them, certain benchmarks that we would like to  
2 see them meet, if the Board so ordered. We would like  
3 to read those conditions into the record and ask the  
4 Board to consider those once they make a decision, if  
5 they decide to grant this extension today.

6 CHAIRMAN:

7 Please proceed.

8 MR. FORD:

9 Mr. Chairman, is there --- Cyrus, is  
10 there a copy that we can look at as you read or ---?

11 ATTORNEY PITRE:

12 Now, we realize these conditions are  
13 subject to change and that we are not basically  
14 putting ourselves in the shoes of the Board, but we  
15 thought this would be helpful to the Board because,  
16 once we start moving forward with this, there are  
17 certain things that are going to have to be done in a  
18 certain time frame in order to ensure that the  
19 facility is up and operating by May 2011. Mr. Miller  
20 will read those conditions into the record.

21 ATTORNEY MILLER:

22 These are proposed conditions. Number  
23 one, within 30 days of the Board's order, should the  
24 Board approve an Order, approve an extension of time  
25 to make slot machines available, provide the Board

1 with a written plan to make a minimum of 1,500 slot  
2 machines available for play on or before May 29th,  
3 2011 at its approved location on Christopher Columbus  
4 Boulevard.

5           Number two, provide written monthly  
6 updates to the Bureau of Investigations and  
7 Enforcement regarding its efforts to develop a  
8 facility with a minimum of 1,500 slot machines on or  
9 before May 29th, 2011 at its approved location on  
10 Christopher Columbus Boulevard.

11           Number three, provide written monthly  
12 updates to the Bureau of Investigations and  
13 Enforcement on efforts and progress to obtain  
14 financing for the Foxwoods planned facility at its  
15 approved location on Christopher Columbus Boulevard.  
16 Within six months after the date of the Board's  
17 approval of an extension of time, provide a financing  
18 plan and submit all financing documents and  
19 commitments for financing for its approved facility on  
20 Christopher Columbus Boulevard to the Bureau of  
21 Investigations and Enforcement for review. Within  
22 three months after the date of the Board's approval of  
23 an extension of time, submit to the Bureau of  
24 Investigations and Enforcement all architectural  
25 renderings, artist renderings, conceptual proposals,

1 engineering opinions, any and all other documents  
2 relating to construction of a facility to provide a  
3 minimum of 1,500 slot machines at its approved  
4 location on Christopher Columbus Boulevard and a  
5 detailed timeline for the commencement and completion  
6 of all phases of the facility at its approved location  
7 on Christopher Columbus Boulevard.

8           Six, provide written monthly updates to  
9 the Bureau of Investigations and Enforcement regarding  
10 the status of all outstanding licenses,  
11 certifications, and permits required by all federal,  
12 state, county, local or other agencies as  
13 prerequisites for construction of a proposed facility.

14           Seven, provide updates to the Board  
15 regarding the status of the facility development plan  
16 construction project at public meetings as scheduled  
17 by the Board.

18           Eight, notify the Board and the Bureau of  
19 Investigations and Enforcement prior to or immediately  
20 upon becoming aware of any impending change of  
21 ownership or change in control, change in financial  
22 status, including debt position, restructuring,  
23 receivership, merger, dissolution, bankruptcy or  
24 transfer of assets to any third party.

25           Nine, within six months after the date of

1 the Board's approval of an extension of time  
2 demonstrate to the Board's satisfaction in such  
3 measure and in such form as the Board shall prescribe  
4 that Foxwoods has obtained and to the extent required  
5 satisfactorily secured its performance with regard to  
6 any federal, state, county, local or other agency  
7 approvals, prerequisite the use and occupancy of its  
8 approved facility on Christopher Columbus Boulevard.

9           And finally, number ten, meet and  
10 negotiate with all interested groups in the  
11 neighboring community to discuss and offer those  
12 groups participation and agreements which will  
13 establish methods to lessen the impact of casino  
14 development and maximize the benefits of casino  
15 development to the community and provide written  
16 monthly updates to the Bureau of Investigations and  
17 Enforcements on the progress of the meetings and  
18 negotiations. Those were recommended conditions.

19           CHAIRMAN:

20           Does Foxwood have any questions for OEC?

21           ATTORNEY JACOBY:

22           Yes. Thank you. Subsequently, the  
23 conditions don't cause us concern. We think that  
24 they're consistent with our objectives. I'm a little  
25 concerned with the timelines. I believe --- I don't

1 know what Mr. Miller is looking for ---.

2 CHAIRMAN:

3 Mr. Jacoby, could you please speak into  
4 the microphone?

5 ATTORNEY JACOBY:

6 I'm sorry. Is that better?

7 CHAIRMAN:

8 That's much better. Thank you.

9 ATTORNEY JACOBY:

10 I don't know what Mr. Miller is looking  
11 for regarding a written plan and, number one, within  
12 30 days given the provisions, I guess, of paragraph  
13 five regarding the design documents, so we would like  
14 some clarification on that. Certainly we're willing  
15 to, on a monthly basis, update the staff and the Board  
16 as to what we're doing. And we're just concerned  
17 about creating --- I'm going to use it in the  
18 pejorative sense, arbitrary deadlines for things that  
19 may not be realistic. And we'll be glad to work with  
20 the staff on that issue in number one.

21 ATTORNEY MILLER:

22 Mr. Jacoby, these are our proposed  
23 conditions. The Board --- it's up to the Board to  
24 issue any conditions, and they're certainly free to  
25 work on other recommendations with you or anyone else



1 as to what you feel and the Board feels would be  
2 appropriate.

3 ATTORNEY JACOBY:

4 Thank you. And likewise, in paragraph  
5 four, again, it provides for six months of providing a  
6 financing plan. We would certainly be more than  
7 willing to come back to the Board within six months,  
8 if not sooner, if we have something to report, and  
9 advise them as to what our efforts have yielded and  
10 what's happening. It's a very dynamic situation.  
11 Hopefully, the light is at the end of the tunnel. But  
12 frankly, it's not clear whether the new --- the  
13 returning Chairman is correct or incorrect. Again, we  
14 have no problem in reporting back to the Board on  
15 these things. We're just worried about arbitrary  
16 deadlines that we might be in default of. And we  
17 certainly intend to communicate with the Board  
18 monthly. Likewise, in paragraph five, to provide them  
19 with final design documents in three months, I don't  
20 know that that's necessarily realistic, especially to  
21 the extent that the design of the project, as Mr. Ford  
22 has said, is influenced by the financing and  
23 investment opportunities out there. It's sort of the  
24 chicken or the egg a little bit. We're not trying to  
25 be evasive. But depending upon the kinds of returns

1 that investors or lenders would want might dictate the  
2 dynamics and the amount of bricks and sticks we can  
3 put into the building, how we lay things out. Again,  
4 it's not the concept. It's just the timing we're just  
5 concerned with, Mr. Chairman.

6           And then lastly, on page two, paragraph  
7 nine, to provide within six months that we've obtained  
8 all federal, state, local and other agency approvals  
9 that are requisite to use in occupancy, I don't know  
10 if that's realistic or necessarily fair. We're  
11 certainly going to move forward and obtain all the  
12 licenses we need as and when we need them, but the way  
13 that's worded, it might be capable but assumption that  
14 we're going to have to have every single license we  
15 require from any federal, state or local entity not  
16 just to build the building but to use it, improve it  
17 or whatever. And we can't control what the government  
18 does all the time, especially the federal government.

19           Lastly, with respect to number ten, we're  
20 certainly committed to working with the --- we're  
21 certainly committed to working with the community.

22 INTERRUPTION

23           MR. JACOBY:

24           We certainly --- we have tried before and  
25 we'll continue to try to enter into community

1 agreements with the community. I'm just concerned  
2 that the wording of this sort of puts a very difficult  
3 ax over our head in our negotiations. We're not  
4 unmindful of what the other people have done. For  
5 example, ---.

6 CHAIRMAN:

7 Folks, please.

8 MR. JACOBY:

9 We're not unmindful of the concept of  
10 community agreements. We know they were done with the  
11 sports complexes negotiated in Philadelphia. We know  
12 that HSP has negotiated those documents. Are we  
13 committed to proceeding promptly in that process?  
14 Yes, definitely. Are we committed to achieving the  
15 kinds of relationships that those documents yielded  
16 for the sports complex in South Philadelphia, as an  
17 example, and Sugarhouse as an example, yes. So it's  
18 not the concepts, Mr. Chairman or Mr. Miller or Mr.  
19 Pitre, it's more, you know, basically the timing and  
20 the specific wording. We're certainly committed to  
21 have all these objectives.

22 CHAIRMAN:

23 Thank you. At this time I'll open  
24 it --- I'm sorry.

25 ATTORNEY PITRE:

1           If I may, one more thing. As far as the  
2 timelines are concerned, we understand that those  
3 timelines may --- some of them may be short and some  
4 of them may be increased, but I think it's important  
5 to have some sort of reference to timing within those  
6 conditions in order that we see that we're seeing some  
7 sort of progression towards getting those machines up  
8 and running at the Columbus Boulevard site. Without  
9 some sort of timeframe in mind, we could be  
10 languishing this way for the next year-and-a-half.

11           ATTORNEY JACOBY:

12           I respectfully agree with the gentleman.  
13 I also want to say that one of the ways to deal with  
14 that is to have periodic updates with the staff so  
15 that the staff can see what it is we're doing. We  
16 have no problem being transparent with the staff, nor  
17 efforts.

18           CHAIRMAN:

19           Thank you. At this time, I'll open  
20 up ---.

21           ATTORNEY GRACIE:

22           Mr. Chairman, ---

23           CHAIRMAN:

24           Yes, Mr. Gracie.

25           ATTORNEY GRACIE:

1            --- I'm sorry, one matter of procedure  
2 for purposes of completing the record. I would ask to  
3 admit the two volumes of exhibits, 1 through 50, with  
4 the exception of Exhibit Number 47, which was included  
5 in error into the record of these proceedings. And  
6 those documents, by and large, demonstrate the hurdles  
7 that Foxwoods has had to overcome leading up to this  
8 point and supply, we believe, the underpinnings for  
9 the determination of good cause. So I would ask that  
10 they be admitted for purposes of the record.

11            CHAIRMAN:

12            We'll admit them into the record.

13            ATTORNEY JACOBY:

14            No objection.

15            CHAIRMAN:

16            Okay. At this time I'll open it up for  
17 the Board. Commissioner McCabe?

18            MR. MCCABE:

19            Yes. Mr. Chair, thank you. I have some  
20 concerns from what I'm hearing. I voted for your  
21 application, to award you the application for a number  
22 of factors. Two of them were the uniqueness of your  
23 project and the location. I'm now hearing that you  
24 want to change the location and you may want to change  
25 the design. I expect and I'm going to demand that you

1 construct the project that you had promised us and  
2 that was approved by the Board. I think you are ---  
3 I'm telling you you're wasting your time looking for  
4 alternative sites. I believe that if you try to move,  
5 we would have to take your license back and re-open  
6 the whole bidding process again because, at that  
7 point, it's a whole new application and it's not what  
8 I voted for. So I'm very concerned hearing that you  
9 want to move, you want to change the design, and I'm  
10 not going to go for that. So I want you to know that  
11 right up front. I expect you to deliver the project  
12 that you promised, which is Columbus Boulevard. Now,  
13 one of my questions is what have you done since  
14 October 2008, when the Master was ordered --- to  
15 proceed on the Columbus Avenue site?

16 ATTORNEY JACOBY:

17 First of all, Mr. McCabe, we fully  
18 understand your statement as to your view that we're  
19 committed to the site and that that's the site that  
20 was approved by the Board. We respect that and we  
21 intend to abide by it. You raised two issues. Number  
22 one is you raised an issue about the design. What we  
23 propose to do, so that our cards are up and everything  
24 is transparent, is that we envision, which is  
25 something that I think is not beyond the pale, that

1 because of the economy and everything else and the  
2 delay that's ensued, that the initial phase of the  
3 project will be, as Mr. Ford described, an interim  
4 phase as opposed to the specific phase one phase that  
5 was described in the submission. We're not trying to  
6 do a bait and switch, sir; we're really just  
7 responding to the reality of the current economic and  
8 financing condition.

9           But let me respond to your second  
10 question about October of '08. I don't want to appear  
11 disingenuous on behalf of my client or myself, but  
12 since October of '08, when Judge McCloskey was  
13 appointed as a Special Master, Foxwoods was heavily  
14 and deeply engaged with the various state and city  
15 officials in their negotiations. Regretfully, 20/20  
16 hindsight is always great. And I'm not suggesting to  
17 you --- I'm suggesting we might be guilty of that.  
18 But at the time we had to make a choice, and the  
19 choice we made, both economically and politically, was  
20 that we weren't abandoning the site. We had every  
21 intention of proceeding at Columbus Boulevard.  
22 However, it was such a breath of sunshine after two  
23 years of darkness to be told by the governor, to be  
24 told by the mayor and to be told by other state and  
25 city officials, let's talk about --- it's no longer we

1 don't want a casino. It's a question of where. And  
2 so we engaged in that process first at The Gallery,  
3 sir, and then at 801 Market Street, spent a lot of  
4 time and effort in doing so, and we're here today  
5 because we understand that at this point, in order to  
6 effectuate the Act, which says we have to have a  
7 casino operational within this 24-month period if we  
8 get the extension, we are proceeding forward on  
9 Columbus Boulevard, committing the resources and  
10 focusing on the financial markets, which may or may  
11 not --- would have been available during that time  
12 anyway, with the expectation we can do it. We think  
13 that 21 months is realistic. We think with Judge  
14 McCloskey, we know that Judge Heron has been effective  
15 for HSP. And I think the city has been cooperative.  
16 We think that a 12-month construction period is not  
17 unreasonable. We're watching other casinos, what  
18 they've done. So you're right to be skeptical about  
19 what we've done since October of '08, but we did it in  
20 good faith. We did it without any intention to  
21 abandon the license you issued to us. And we're here  
22 today to assure you that we're committed to moving  
23 forward at this site, as Mr. Ford has said.

24 MR. SOJKA:

25 Mr. Chairman, could I ask a question



1 following up on that? Unlike my colleague,  
2 Commissioner McCabe, I was not part of this Board when  
3 the decision was made, but that does not make me any  
4 less concerned about issues specifically having to do  
5 with the timetable. And my concerns really have to do  
6 with the multiple layers of permitting and zoning that  
7 you have to deal with. And we have this start point  
8 of 2008, and I've heard your explanation and I  
9 appreciate it, but the reality is that time is moving  
10 on. With the Master you've made comments about the  
11 likelihood of being able to move quickly with the  
12 city, but what about DEP, what about --- and this is  
13 not inconsequential. What about PennDOT, since there  
14 is so much discussion about traffic and congestion?  
15 And then finally you have a federal level of concerns,  
16 particularly the Historic Preservation Act. And I  
17 would ask that if any of those turn out to be  
18 intractable, if you cannot get the needed permits, at  
19 this point what do you do?

20 ATTORNEY JACOBY:

21 We have spent a considerable amount of  
22 time in anticipation of this hearing and vetting the  
23 kinds of issues you raised, sir. We, in retrospect,  
24 do not believe, without being indifferent to the  
25 Corps, that we necessarily need Corps approval for an

1 interim phase 1. We've already conducted a phase 1A  
2 and a phase 1B ---

3 MR. SOJKA:

4 So you've got that ---.

5 ATTORNEY JACOBY:

6 --- archaeological review. We're mindful  
7 of the need to do a phase 2 archaeological review.  
8 We're mindful of the need to talk to DEP and to  
9 satisfy whatever requirements they have, including  
10 back with the archaeological review. We think that  
11 could be done through DEP rather than the Corps.

12 MR. SOJKA:

13 Have you talked with them yet? You say  
14 you understand the need to talk with them.

15 ATTORNEY JACOBY:

16 We have investigated. We've talked to  
17 people involving other projects. We have talked to  
18 consultants in anticipation. We, again, didn't want  
19 to be presumptuous. To some extent, there's some  
20 lessons learned that we gained from watching PITG and  
21 HSP. Everything is a bit in a fishbowl, sir. And  
22 we've seen that what they've had to deal with. It's a  
23 matter of public knowledge either in the press or  
24 otherwise. And the good news and the bad news is we  
25 hope to gain from the lessons learned that they had

1 with what they've done, and when we talk to  
2 prospective consultants they're very aware of it.  
3 They talk among themselves. And I think we don't  
4 anticipate --- I'm not trying to be naïve when I say  
5 we don't --- the answer to your question, sir, is we  
6 don't anticipate a problem. That would be incredibly  
7 naïve. But we've tried to anticipate what is out  
8 there, especially for an interim phase one,  
9 recognizing the archaeological issues. And we think  
10 we can satisfy this time requirement.

11 MR. SOJKA:

12 Would you like to say anything specific  
13 about interaction with DEP?

14 ATTORNEY JACOBY:

15 We have initiated a new contact with  
16 them. We intend to do so immediately. As I said,  
17 they learned a lot --- not that they needed to learn a  
18 lot, but they learned a lot in the process with HSP  
19 down the road there, and we have been --- you know,  
20 had our ears open a great deal and watched what  
21 they've done.

22 You also mentioned PennDOT, by the way.

23 MR. SOJKA:

24 Uh-huh (yes).

25 ATTORNEY JACOBY:

1                   We have submitted initial traffic  
2 reports. We have met with Orth-Rodgers recently and  
3 talked with them about what needs to be done going  
4 forward and timing, and they've given us their crystal  
5 ball as to what they think we need for phase one. The  
6 more substantial matters involving PennDOT are really  
7 not a phase one issue, especially the 95 issue and the  
8 ramp. Certainly traffic controls on Delaware Avenue,  
9 Columbus Boulevard, I'm an old-timer, are. But we've  
10 integrated and handicapped that into our analysis of  
11 what we need to do. We're not being Pollyannas. In  
12 the two years of combat, you had to go to the Supreme  
13 Court to get the slightest decision approved. The  
14 Court sent us a very clear message when they issued  
15 their Order in October of 2008 with Judge McCloskey,  
16 who's a great Judge for this process. We're not  
17 unmindful of --- you know, Judge Heron has served a  
18 very effective purpose for HSP that I can tell. There  
19 hasn't been as much of a need for confrontation. It's  
20 like the schoolyard bully or someone like that. You  
21 have the guy there, and he's there; the people tend to  
22 talk more than they would otherwise. And we have  
23 every expectation that that will happen with Judge  
24 McCloskey as well.

25                   MR. SOJKA:

1 I appreciate your answer, and I really do  
2 understand the realities of what you're facing, but  
3 the dilemma I think we're all looking at is to answer  
4 now the last part of my question in context with the  
5 answer that you just gave Commissioner McCabe, and  
6 that is in the absence of actually having these  
7 concrete permits and zoning regulations in hand and  
8 possibly facing the need then to make contingency  
9 plans since you might not get exactly what you want,  
10 how do you deliver what Commissioner McCabe says  
11 essentially is promised? And that all boils down to a  
12 serious concern about time.

13 ATTORNEY JACOBY:

14 I think part of it is what I call a  
15 backward critical path, if you'll forgive me. We  
16 start with May of 2011. What do we have to deliver  
17 then? We have to deliver the slot machines. We have  
18 to deliver the personnel to run the business. We have  
19 to fit at the casino. We have to build the casino.  
20 And you decide for yourself, well, how much time  
21 should that take? I'm ignoring financing right now.  
22 I don't think it's unreasonable, plus or minus 12  
23 months, for what we anticipate. And I think there's a  
24 good precedent for that. And then you have to  
25 yourself, well, what permits do you need, you know,

1 and what's involved to get those permits? You have  
2 these two convergences. You have your tail end  
3 meeting. Again, I'm not being naïve, but we think  
4 it's doable. We think that an interim casino would  
5 not raise issues that could not be dealt with. And  
6 certainly, Commissioner, realizing the commitment  
7 we're making to you, when we make decisions in  
8 response to the public officials in our licensing,  
9 we're going to have to, in coming up with the  
10 decisions, have to say, look, I know what you told  
11 these gentlemen here, you know, and maybe --- well,  
12 we'd like to have this. We may have to do this to get  
13 that permit, and that will be factored into it. I'm  
14 not trying to be evasive, but you're going to have to,  
15 to some extent, trust the business judgment, as well  
16 as the integrity of the people sitting across from  
17 you.

18 MR. SOJKA:

19 Thank you.

20 CHAIRMAN:

21 Commissioner Rivers?

22 MR. RIVERS:

23 Yes. Gentlemen, first of all, let me say  
24 I sympathize with your plight and recognize what  
25 you've gone through over the last N number of years.

1 I guess my biggest concern evolves around when I hear  
2 it's going to be developed in phases, yet no one has  
3 articulated what phase 1, 2, 3 or phase 1A, 2A, 3A  
4 might look like or might incorporate. All I hear is  
5 that you're going to have 1,500 machines. I guess I'd  
6 like to have some assurance that we're going to have a  
7 facility that's going to have more than just 1,500  
8 machines to service the population that you're trying  
9 to entertain at your facility. So can you talk about  
10 that? What are some of the amenities that the phase  
11 one facility will involve?

12 MR. FORD:

13 Well, Commissioner Rivers, you're --- and  
14 Commissioner McCabe, as I mentioned during my  
15 testimony and in response to one of the questions, at  
16 the end of the day, a competitive facility is what  
17 makes a facility successful. And we fully intend to  
18 have a competitive facility at any phase of our  
19 development. What we're addressing here is a  
20 long-range plan and a short-range plan that have to be  
21 integrated totally with one another so that you have  
22 some sense of what the complete project will  
23 ultimately be as well as the interim phase. And today  
24 we cannot answer what kind of restaurants or  
25 entertainment or other facilities will be in each one

1 of those phases without further study. And to the  
2 point that Commissioner McCabe made about the 2006  
3 commitment, we'd also like the opportunity to come  
4 back to you with the knowledge that we've all gained  
5 competitively. The casino environment has changed  
6 remarkably since 2005, when the original concepts were  
7 developed by architects and various renderings. And  
8 in conjunction with that expanded knowledge, we now  
9 have the ability to look at what has occurred in  
10 Atlantic City in terms of the impact that Philadelphia  
11 and other Pennsylvania locations have had. We also  
12 have the ability to look at some of the other things  
13 that have been successful or less successful in the  
14 other facilities in Pennsylvania. So while we  
15 acknowledge the fact that ---.

16 INTERRUPTION

17 CHAIRMAN:

18 Stop, Mr. Ford. Ma'am, please. One more  
19 outburst, you will be removed from the room. Please  
20 proceed.

21 MR. FORD:

22 As I alluded to, a complete facility has  
23 to be competitive with all of the other environments  
24 that are in the proximity and in the marketplace. So  
25 any interim phase would only be a step in the process



1 that would continue to the more complete complex.

2 MR. RIVERS:

3 As you talk about a competitive facility,  
4 as I look at what's happening at Philadelphia Park,  
5 they're creating a new facility. As I look at what's  
6 happening in Chester Downs, they have a relatively new  
7 facility. Am I to assume that the facility that  
8 you're contemplating will be competitive to those two  
9 facilities?

10 MR. FORD:

11 It's not only an assumption; it's a  
12 necessity. If a customer has a choice, they'll go to  
13 a place that has a comfort zone for them. It consists  
14 of ease of access. It consists of safety. It  
15 consists of the right machines. It consists of the  
16 right training and ambiance of the people that service  
17 them. So at the end of the day, if you examine the  
18 results, and I'm sure you have as Commissioners in  
19 Atlantic City or other competitive environments,  
20 people compete with their capital and their capability  
21 to provide an exciting gaming facility. We find it  
22 foundational that that's what we must do at every  
23 phase at any development.

24 MR. RIVERS:

25 See, one of my concerns, too, is the fact

1 that we're talking about the largest city in the  
2 Commonwealth. And having facilities that will cater  
3 to, encourage those individuals to enjoy and to  
4 partake in this particular environment. And I  
5 just --- as Commissioner McCabe indicated, when we  
6 voted, we voted for something very specific. And what  
7 we want to see built is that same type of energy  
8 level, same type of ambiance, same type of facility  
9 that when you came to us, you said, this is what we're  
10 going to do, and we said, we like the A, the B, the C,  
11 the D, et cetera, et cetera, et cetera, therefore you  
12 got our vote. So just as you leave here today,  
13 remember that you made a commitment to this Board.  
14 You made a commitment to the Commonwealth. And we're  
15 going to hold your feet to fire that you live up to  
16 that commitment.

17 MR. FORD:

18 We understand. Thank you.

19 CHAIRMAN:

20 Mr. Angeli?

21 MR. ANGELI:

22 You mentioned your financing when the  
23 question was brought up about when you were going to  
24 complete it in the six-month timeframe that Counsel  
25 had presented. Are you doing --- are you going to do

1 anything between now and the time period when you put  
2 your financing ---?

3 MR. FORD:

4 It has to be a simultaneous effort. you  
5 know, any time that you're undertaking a major  
6 development that includes capital requirements, things  
7 happen simultaneously. So of course, we'd be talking  
8 design and financing on a simultaneous basis.

9 ATTORNEY JACOBY:

10 One of the principal parties involved  
11 with the current operations of Foxwood is someone who  
12 comes out of a --- I don't know what to call them  
13 anymore, major investment house in New York, who  
14 we --- who is actively involved with us in looking at  
15 the markets, observing what's happening with the other  
16 casinos as they raise money, and so this is a person  
17 who is already working. In fact, I had long  
18 conversations with them in anticipation of this  
19 meeting and in anticipation of Mr. Ford's statements  
20 that he is --- he is obviously looking at what's  
21 happening with HSP, their fundraising. It's ongoing  
22 now, we understand, from looking at the other casinos.  
23 So the answer is yes, we're working on that. And if  
24 we could --- if we could get some kind of a  
25 commitment, depending upon whether it's irrevocable or

1 at least an indication of interest earlier, that would  
2 help us a great deal in shaping what we're presenting  
3 to you with respect to our plan. And so we're not  
4 unmindful of that. I hope that was responsive. I  
5 wasn't trying to be evasive. We do have a full-time  
6 person involved in that.

7 MR. ANGELI:

8 Thank you.

9 CHAIRMAN:

10 Other questions? Mr. Sojka?

11 MR. SOJKA:

12 May I ask a question of the Office of  
13 Enforcement Counsel?

14 CHAIRMAN:

15 Yes.

16 MR. SOJKA:

17 Several questions, in fact. One, and I  
18 don't care who from that table answers these  
19 questions. It's simply directed to the table. We've  
20 heard Foxwoods' presentation to the core of the issue  
21 that we're dealing with today, and that is their  
22 attempt to meet their burden of establishing good  
23 cause for an extension of time under Section 1210(a)  
24 of the Gaming Act. What is your opinion, the Office  
25 of Enforcement Counsel, about whether or not the

1 delays in zoning, permitting and political wrangling,  
2 as it was described by Foxwoods, meets their burden of  
3 establishing good cause?

4 ATTORNEY PITRE:

5 Well, obviously, I think there was good  
6 cause leading up to October 8th --- the October 2008  
7 appointment of the Special Master. Obviously, after  
8 that Special Master was appointed, my opinion is that  
9 I would have liked to have seen them utilize that  
10 Special Master more often or at all.

11 Prior to that, they did enter into  
12 negotiations with the City and with the governor's  
13 office. And I'll take them at their word and the  
14 exhibits show that there was a lot of going back and  
15 forth, trying to be a good community citizen with  
16 regard to the local officials. And in that regard, I  
17 can't say that I hold that against them. In fact, I  
18 would probably applaud them for at least making that  
19 effort. But as we sit here today, I will say that I  
20 think they've met their burden. However, I think they  
21 have a lot of work to do in a very short amount of  
22 time. And I think that --- I don't think that our  
23 benchmarks are unreasonable. I think that they should  
24 be able to come forward in a timely fashion with the  
25 things that we've requested. And I think that once

1 they come forward, they have to understand that some  
2 of these things have to come through petitions before  
3 the Board and we have to schedule hearings, and so  
4 that's going to take some time. And that's --- that  
5 places us, in our opinion, at that 12-month period.  
6 And that's what we're concerned about, because we  
7 don't know how we're moving forward until they start  
8 coming to us in meeting these various benchmarks.

9 MR. SOJKA:

10 Thank you. That's helpful. Could I ask  
11 one more question quickly, just one quick one? And  
12 that is to Mr. Miller, and that is, you have  
13 stipulated a number of benchmarks and required  
14 reports, but I've not heard anything about either  
15 consequences or remedies should the benchmarks not be  
16 met or the quality of what's presented. Do you in any  
17 way feel comfortable about speaking to that or ---?

18 ATTORNEY MILLER:

19 I think I'll let Mr. Pitre speak to that.

20 ATTORNEY PITRE:

21 Commissioner Sojka, what --- if those  
22 benchmarks are not met, our intention, and I'll be  
23 quite frank, would be to follow a rule to show cause  
24 as to why their license should not be revoked. Once  
25 that hearing is held before the Board, if they've not

1 met the burden of showing that they were moving  
2 forward or trying to do their best to attain or reach  
3 certain benchmarks, then we would be filing an  
4 enforcement action to revoke the license. If the  
5 Board feels and we feel that they've made a lot of  
6 headway and progress and that the delay was through no  
7 fault of their own, then we'd be willing to give them  
8 a little bit more time. But I think we're in a do or  
9 die situation right now, and we have to start seeing  
10 some progress.

11 CHAIRMAN:

12 Thank you. Commissioner McCabe?

13 MR. MCCABE:

14 Mr. Chair, that was, in essence, my  
15 question. I wanted to know what the Office of  
16 Enforcement Counsel, their avenues were if Foxwoods  
17 didn't fulfill their agreements or didn't progress as  
18 we --- they had promised, what action could be taken.  
19 That would be my question.

20 ATTORNEY JACOBY:

21 Mr. Chairman, if I could just respond ---

22 CHAIRMAN:

23 Yes, Mr. Jacoby.

24 ATTORNEY JACOBY:

25 --- to the general view of the Board, as

1 well as these gentlemen to my right. Probably the  
2 greatest incentive for us to get this done is that if  
3 we don't get this done, our license under the Act is a  
4 wasting asset. We've committed \$160 million to date.  
5 That's a lot of money. We own the land. We have  
6 obligations we've created in order to fund what we've  
7 done. Each day we move forward and commit more  
8 resources to achieving these milestones, we have to  
9 get more money invested in this enterprise. So beside  
10 the commitment that I believe Foxwoods has always  
11 shown to the community and to the Board, regretfully,  
12 at the end of the day you've got their attention if  
13 for no other reason than they have so much time and  
14 money committed to this to date and will even have  
15 more money going forward.

16 CHAIRMAN:

17 Mr. Rivers?

18 MR. RIVERS:

19 Yes. Office of Enforcement Counsel, my  
20 concern is once upon a time they had the necessary  
21 permits, licenses to go forward; am I correct on that?

22 ATTORNEY MILLER:

23 Foxwoods never had that. No, sir.

24 MR. RIVERS:

25 You never have?



1                   ATTORNEY MILLER:

2                   The most basic permit you need is the  
3 Zoning and Use Permit. They don't have it. And as  
4 Mr. Gracie testified earlier, in October of 2008, I  
5 believe, when the Master was appointed, they could  
6 have asked for that permit. The Master could have  
7 ordered that it be done. But you didn't do that,  
8 so --- you said earlier today that if you wanted to,  
9 you could apply for that permit, and you feel  
10 confident that Judge McCloskey would help you get that  
11 permit, but you don't have that basic permit.

12                   ATTORNEY GRACIE:

13                   I'm not even sure, Commissioner Rivers,  
14 that we have to ask Judge McCloskey for that one  
15 because the Supreme Court directly ordered that. We  
16 simply haven't pulled it. And that, again, was as an  
17 accommodation to the city because of our ongoing  
18 discussions with them and with the governor. So we  
19 didn't pull it, but it's there. The Supreme Court  
20 directed that it be issued. And that is the --- as we  
21 described that, and it's described in the papers that  
22 we submitted to you, that's the gatekeeper, as Mr.  
23 Miller said. But we've explained our actions or  
24 inactions. And as my learned co-Counsel said, you  
25 know, hindsight is 20/20. Maybe we should have done

1 things differently, but we didn't. And we explained  
2 what we did or did not do and why we didn't do it. I  
3 would submit, though ---.

4 MR. RIVERS:

5 We don't need to go into that. I want to  
6 go back to my question, that is, the conditions that  
7 we've placed on you, that Office of Enforcement  
8 Counsel talked about today, I guess my concern is, are  
9 any of those conditions too onerous on you that the  
10 investment bankers might be afraid or concerned or  
11 have some type of push-back?

12 ATTORNEY JACOBY:

13 Our concern isn't with the substance of  
14 the conditions at the end of the day; it's with the  
15 timetables for the conditions. I hope I'm responsive,  
16 sir.

17 MR. RIVERS:

18 Okay. And had you seen those conditions  
19 prior to today?

20 ATTORNEY JACOBY:

21 I'm sorry, what?

22 MR. RIVERS:

23 Were you aware of those conditions prior  
24 to today?

25 ATTORNEY JACOBY:

1 I was aware conceptually that there would  
2 be conditions imposed upon. I didn't have the  
3 specific listing. But certainly there's nothing  
4 substantive in here that surprises me as being a  
5 condition.

6 MR. RIVERS:

7 And you will sit down with them,  
8 obviously, to move some of the dates around to  
9 accommodate what you perceive is good business  
10 practices?

11 ATTORNEY JACOBY:

12 That's correct, Commissioner.

13 MR. RIVERS:

14 Okay. Thank you.

15 CHAIRMAN:

16 Other questions? Mr. Angeli?

17 MR. ANGELI:

18 Yes. I'd like to go back. And Mr.  
19 Gracie, you referred to this, but Mr. Ford or someone  
20 else could probably answer this. You said you didn't  
21 --- you haven't pulled that permit yet. You could if  
22 you wanted to, but you haven't pulled that permit yet.  
23 When you pulled that permit, does that mean you're  
24 committed to the Columbus site?

25 ATTORNEY GRACIE:

1 I'm sorry, were you asking me or Mr.  
2 Ford?

3 MR. ANGELI:

4 I'll take anybody who will answer.

5 ATTORNEY GRACIE:

6 I'll let Mr. Ford answer, but I think we  
7 probably would have the same answer.

8 MR. FORD:

9 Yeah, we would be committed to that site  
10 as we pulled that permit.

11 MR. ANGELI:

12 When do you expect them pulling that  
13 permit?

14 MR. FORD:

15 It sounds like it's going to be very  
16 soon.

17 MR. MCCABE:

18 I suggest that if we award you the  
19 extension, Monday morning you're pulling that permit.

20 MR. FORD:

21 Thank you.

22 CHAIRMAN:

23 Other questions from the Board? Let me  
24 just make one final comment. I can't reiterate enough  
25 the concern of the Board on any further discussion on

1 relocation. As Commissioner McCabe and others up here  
2 stated, you know, you were given a license for  
3 Columbus Boulevard. You were given a license for a  
4 facility that you showed in front of this Board, big  
5 dog and pony show, what that facility would look like.  
6 We all understand --- we're all big boys and girls.  
7 We understand times change. But I cannot say it  
8 enough or say it emphatically enough that we expect if  
9 this petition is granted, and believe me, that's a big  
10 if, if this petition is granted, we expect that  
11 facility to be on Columbus Boulevard and to be  
12 substantially similar to what was presented to this  
13 Board. We understand the comments about phases.  
14 We're willing to consider that. But any  
15 discussion --- and Mr. Ford, I heard you talk about,  
16 you know, we may, you know, ask for another permit or  
17 ask for another site location. You haven't ruled that  
18 out. I'm telling you, that's --- it's a fool's  
19 errand, and I can't say it enough. If anybody else on  
20 the Board feels differently, please feel free to weigh  
21 in. We all have a vote on this. But we expect you, if  
22 this permit --- if this petition is granted, to get  
23 this facility up and running. You owe it to the  
24 taxpayers of this Commonwealth, who are waiting for  
25 tax relief, who are waiting for wage tax in

1 Philadelphia, waiting for property tax relief  
2 throughout the Commonwealth. You owe it to people who  
3 are looking for jobs in the Philadelphia area. And  
4 we --- if this petition is approved, we expect this  
5 thing to move and move quickly or we will yank the  
6 license.

7 MR. FORD:

8 You've been very clear. Thank you.

9 CHAIRMAN:

10 Any other questions on this matter? With  
11 that, we will thank you for coming. We'll now call up  
12 Greenwood Gaming.

13 \* \* \* \* \*

14 HEARING CONCLUDED

15 \* \* \* \* \*

16

17

18

19


20

21 CERTIFICATE

22

23 I hereby certify that the foregoing  
24 proceedings, hearing held before Chairman Fajt was  
25 reported by me on 08/28/2009 and that I Cynthia Piro

1 Simpson read this transcript and that I attest that  
2 this transcript is a true and accurate record of the  
3 proceeding.

4  
5   
6 Court Reporter  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25