

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC HEARING

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BEFORE: GREGORY C. FAJT, CHAIRMAN
Jeffrey W. Coy, James B. Ginty, Kenneth T. McCabe, Gary A. Sojka, Kenneth Trujillo, Raymond S. Angeli (Via telephone), Russell Redding, Secretary of Agriculture, Ex-Officio Member, David Barasch Deputy Secretary of the Department of Revenue, Representative, Keith Welks Deputy State Treasurer for Fiscal Operation, Ex-Officio Designee

HEARING: Wednesday, January 27, 2010, 10:05 a.m.

LOCATION: PUC - Keystone Building, Hearing Room 1
400 North Street, Plaza Level
Harrisburg, PA 17105

WITNESSES: None

Reporter: Cynthia Piro-Simpson

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A P P E A R A N C E S (cont.)

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E X H I B I T S

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*exhibit not attached

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CHAIRMAN:

Good morning, everybody. I'm Greg Fajt, Chairman of the Pennsylvania Gaming Control Board. And just as a housekeeping matter, I'd like to ask everybody to turn off their cell phones, pagers, Blackberries, as they tend to interfere with our microphone system, so thank you. Joining us today is Secretary of Agriculture, Russell Redding. Nice to have you here. David Barasch, Executive Deputy Secretary of the Department of Revenue, and Keith Welks, Deputy State Treasurer for Fiscal Operations from the Treasurer's Office. Thanks for being here today.

A quorum of the Board is present and I'd like to call today's proceeding to order. As a first order of business, please stand for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

Also, we have Commissioner Ray Angeli on the phone today. Ray, can you hear us?

MR. ANGELI:

Yes, I can. Thank you.

1 CHAIRMAN:

2 Great. Thank you. We have two related
3 items before the Board today by the way of public
4 hearings, which will take place prior to our public
5 meeting. The first matter addresses the petition of
6 Keystone Redevelopment Partners, LLC, to intervene in
7 the matter of Philadelphia Entertainment and
8 Development Partners, LP's motion to extend time. May
9 I have Counsel for Keystone, Philadelphia
10 Entertainment and the Office of Enforcement Counsel
11 (OEC) please come forward?

12 ATTORNEY GRACI:

13 Good morning, Mr. Chairman.

14 CHAIRMAN:

15 Good morning.

16 ATTORNEY GRACI:

17 Robert Graci and Fred Jacoby on behalf
18 of ---.

19 CHAIRMAN:

20 Can you just hold on, Counselor? This is
21 a hearing by which the Board will receive oral
22 argument as to whether Keystone shall be allowed to
23 intervene in the Philadelphia Entertainment and
24 Development Partners, LP, motion to extend time. I
25 would ask Counsel to limit your arguments to the

1 question of whether intervention should be allowed,
2 and the Board will reserve its questions until the
3 conclusion of the arguments. Prior to the arguments,
4 could all Counsel please state and spell your names?
5 Ms. Sajer, we will start with you.

6 ATTORNEY SAJER:

7 Yes. Good morning, Chairman Fajt,
8 members of the Board. I'm Marsha Sajer. Sajer is
9 spelled S-A, J as in Julia, E-R. I'm with K&L Gates.
10 I'm representing Keystone Redevelopment Partners.

11 CHAIRMAN:

12 Mr. Graci, thank you.

13 ATTORNEY GRACI:

14 Good morning, Your Honor, Mr. Chairman,
15 and thank you. Robert A. Graci, G-R-A-C-I, and F.
16 Warren Jacoby, J-A-C-O-B-Y, on behalf of Philadelphia
17 Entertainment and Development Partners, LP. And with
18 us is our General Counsel from Philadelphia
19 Entertainment and Development Partners, Nick Moles,
20 M-O-L-E-S.

21 CHAIRMAN:

22 Thank you. Counsel, ---.

23 ATTORNEY GRACI:

24 I will be making argument in opposition
25 to Keystone.

1 CHAIRMAN:

2 Thank you. Counsel for Keystone, you may
3 begin.

4 ATTORNEY SAJER:

5 Yes, Chairman. We have appeared before
6 this Board on several occasions now to seek
7 intervention in various matters pertaining to
8 Foxwoods, and for sake of simplicity, would ask that
9 the Board consider the allegations of our Petition as
10 far as Keystone's direct substantial and immediate
11 interest in these proceedings and Foxwoods.

12 In addition, and this is what I'd like to
13 focus this Board's attention on, assuming that the
14 Board will incorporate our previous arguments made
15 before this Board by reference, as this Board is
16 aware, Keystone had appealed the very order that
17 Foxwoods is now attempting to alter in this
18 proceeding. And as a matter of procedure, this Board
19 lacks the authority certainly to --- the Board can
20 certainly enforce the Order, and enforcement means
21 sanctions. Not to alter it, amend it, or extend the
22 times because that Order is subject to appeal and has
23 been filed and docketed with the Commonwealth Court.

24 So on that basis, Keystone also asserts
25 that it has an immediate interest in this matter,

1 because should the Board continue to allow Foxwoods
2 leeway and additional extensions, that harms not only
3 Keystone's ability to compete for a Category II
4 license in Philadelphia, but will also harm and
5 interfere with Keystone's right of Petition and review
6 before the Commonwealth Court.

7 And as a final matter, and I've wanted to
8 make this a matter of record, as this Board is aware,
9 Keystone's standing, we assert, goes all the way back
10 to the time of 2006, where Keystone believed it was
11 competing for a Category II license in the City of
12 Philadelphia on a level playing field. And at that
13 point in 2006, Foxwoods asserted that it had financial
14 suitability and it was qualified and it was eligible
15 by virtue of the fact that Foxwoods Development
16 Company was going to put up \$50 million, \$30 million
17 in equity, that Merrill Lynch had committed to
18 arranging \$460 million worth of funding for Foxwoods
19 to build its casino, and Foxwoods at that point
20 committed to financing phase one of its casino at a
21 value of approximately \$525 million.

22 Keystone continues to protest the fact
23 that this Board allows Foxwoods, notwithstanding its
24 apparent abandonment of its license, to have
25 additional time and additional time to build a casino

1 for which it appears that not only has Foxwoods
2 abandoned its license, but no longer is qualified,
3 eligible or suitable to hold. It appears that no
4 other party is raising this issue and Keystone should
5 be able to do so. Subject to your questions,
6 Chairman, that's all I've got.

7 CHAIRMAN:

8 Thank you. We will now hear from OEC.

9 ATTORNEY MILLER:

10 Thank you. Dale Miller. Dale Miller,
11 Deputy Chief Enforcement Counsel for OEC. Mr.
12 Chairman, members of the Board, we have filed a
13 pleading in this matter. Our pleading speaks for
14 itself. We object to Keystone's intervention in this
15 matter. Keystone is a failed applicant with no
16 standing to intervene in the matter of Foxwoods. They
17 have been failed applicants since they were denied a
18 license, and they remain so to this day. Our position
19 is they have no standing and have failed to meet any
20 of the criteria of the regulations regarding
21 intervention. Thank you.

22 CHAIRMAN:

23 Thank you. Finally, we'll hear from
24 Counsel for Philadelphia Entertainment. Mr. Graci?

25 ATTORNEY GRACI:

1 Chairman Fajt and members of the Board,
2 thank you very much for the opportunity to address
3 this important issue. We, too, have filed our answer
4 and objection to the Keystone Petition and we would
5 incorporate our arguments made in that document into
6 this record for purposes of the Board's adjudication.
7 As Ms. Sajer indicated to the Board, Keystone has been
8 before this Board on a number of occasions trying to
9 interfere in the proceedings involving Philadelphia
10 Entertainment and Development Partners, LP, also known
11 as Foxwoods, Foxwoods Casino Philadelphia.

12 You've already denied intervention
13 petition on virtually the same facts and allegations
14 presently before this Board on Keystone's prior
15 application. On virtually the same facts and
16 allegations, it was determined that Keystone lacked
17 standing to intervene. On virtually the same facts
18 and allegations, you've determined that Keystone fails
19 to satisfy the Board's requirements for intervention.

20 If Keystone lacked standing to intervene
21 in the underlying Petition to extend time to make
22 1,500 machines available, they likewise logically lack
23 standing to intervene in a proceeding that simply
24 requests relief, temporary relief from a portion of
25 the Order that this Board entered in relation to that

1 --- to our requested relief.

2 Counsel says because this matter is up on
3 appeal, you can't take any further actions. The rules
4 of appellate procedure specifically allows you to
5 enforce your Orders. We're seeking temporary relief
6 from the Order in their filings. Either with the
7 Board and with the Commonwealth Court, they've never
8 asked for a stay of any of those proceedings or of the
9 Board's Order. If they wanted to stop the process,
10 they could have asked the Commonwealth Court to do
11 that. But in order to do that, they would have had to
12 show a number of things, including a reasonable
13 likelihood of success on the merits of their appeal.
14 They've never made any attempt to do that, so it is
15 our Petition, as set forth in our pleadings, that you
16 are not barred from acting on our requested relief
17 today, and we would ask again that you prohibit and
18 deny Keystone the opportunity to interfere, or to use
19 their word, intervene in our proceedings. And I would
20 be happy to answer any questions that the Board might
21 have. Thank you.

22 CHAIRMAN:

23 Does the Board have any questions
24 regarding this matter? Commissioner Ginty?

25 MR. GINTY:

1 Ms. Sajer, would you please address Mr.
2 Graci's last point? I mean, you've put forth at least
3 to me a fairly novel idea that when an order is on
4 appeal, that we lack any jurisdiction to change it.
5 And yet Mr. Graci makes, I think, the valid point that
6 you had not sought a stay of that Order in the court.

7 ATTORNEY SAJER:

8 Yes, Chairman, we have --- excuse me,
9 Member Ginty, we have not --- it is not necessary for
10 a party to seek a stay of any further proceedings.
11 The law is clear that once an Order has been appealed,
12 the lower court, or in this case the administrative
13 body, loses the authority, except in a few exceptions
14 which I'll discuss momentarily --- but loses
15 authority, it loses jurisdiction over the matter. It
16 simply cannot alter or amend an Order that is pending
17 appeal.

18 Now, Foxwoods could have sought
19 reconsideration of this Board's original September 1st
20 Order and did not do so. Foxwoods could have appealed
21 the original September 1st Order if it disagreed with
22 the timeline set for it, and it did not do so. Even
23 before this Board, Foxwoods did not seek timely
24 reopening of the proceedings. It did not file
25 exceptions. It did not seek reconsideration. And

1 this Board could have granted --- within that first
2 30-day window of opportunity, could have granted
3 reconsideration or relief. But now that the appeal
4 period has come and gone, Keystone has, in fact,
5 appealed to the Commonwealth Court. That appeal is
6 pending. This Board may enforce its Order with
7 sanctions, but cannot alter and amend it in a way that
8 changes the nature of the Order that Keystone has
9 appealed, and we would offer to brief this legal issue
10 because it does come down to a legal issue of, what
11 does enforcement constitute? And we believe that the
12 law is on our side in this issue.

13 CHAIRMAN:

14 Any other questions?

15 MR. TRUJILLO:

16 Yes, I have one. I'm sorry, Mr.
17 Chairman. I just wanted to be clear. So is it your
18 position that the Board lacks jurisdiction at this
19 stage?

20 ATTORNEY SAJER:

21 That's a very lawyerly question. The
22 Board has --- as a general rule, the Board lacks
23 jurisdiction over the Order once it has been appealed.
24 The Rules of Appellate Procedure set out some things
25 that the Board can do, and it certainly allows the

1 Board to continue to enforce an order, but it cannot
2 alter it or amend it. And so I'm reluctant to say the
3 Board is without jurisdiction, although effectively
4 that's what's happened. Jurisdiction over this Order
5 has passed to the Commonwealth Court. There had been
6 no filings by Foxwoods, by the way, in front of
7 Commonwealth Court to preserve any sort of rights,
8 although I can't think of what they might be, to get
9 an amendment of this Order.

10 MR. TRUJILLO:

11 And this order, when you speak of this
12 order, are you speaking about the granting of the
13 extension, or of the denial of your petition to
14 intervene?

15 ATTORNEY SAJER:

16 The granting --- we have got --- both
17 Orders have been appealed to the Commonwealth Court.
18 We have appealed both the grant of the extension,
19 which contained the different reporting conditions
20 that this Board placed on Foxwoods' continuing
21 extension as well as having appealed the denial of our
22 intervention in that matter.

23 MR. TRUJILLO:

24 And is it your position that even though
25 you were denied the right to intervene, you had

1 standing to appeal the order against the Foxwoods?

2 ATTORNEY SAJER:

3 That's exactly the case.

4 MR. TRUJILLO:

5 I understand.

6 CHAIRMAN:

7 Other questions? Okay. This will
8 conclude our first hearing. After the next matter is
9 heard, which is, in fact, the hearing on the matter
10 for which the intervention is sought, we will adjourn
11 to executive session to consider both matters.

12 EXECUTIVE SESSION HELD.

13 CHAIRMAN:

14 Representatives from Philadelphia
15 Entertainment, you may now proceed with your motion to
16 extend time.

17 ATTORNEY GRACI:

18 Thank you, Mr. Chairman. May I just, as
19 a housekeeping matter --- listed on the agenda was the
20 legislators' petition to participate as amicus curiae,
21 which we have also opposed, not --- we know that the
22 Board has already granted the legislators --- certain
23 legislators amicus status. We have challenged the
24 thing that they filed, because quite frankly it looks
25 like a pleading. And you didn't give them status as a

1 party because they did seek to intervene. You only
2 gave them amicus status and we believe that while you
3 can consider what they filed, that you can only
4 consider it as it relates to issues that either the
5 parties --- and quite frankly, in this matter, the
6 only parties currently before the Board are Foxwoods
7 and the OEC representing the Bureau of Investigations
8 and Enforcement (BIE).

9 So to the extent that any matters raised
10 by the legislators are not part of anything that
11 either we or BIE has raised, and I don't think they
12 are, then the Board has not considered what is in
13 essence nothing more than a pleading by a party, and
14 they are not a party.

15 CHAIRMAN:

16 So noted.

17 ATTORNEY GRACI:

18 Thank you, Mr. Chairman.

19 MR. TRUJILLO:

20 Mr. Chairman, before we proceed, if I
21 may, Mr. Graci and Mr. Jacoby, I think it's no secret
22 that I was a prior investor in Riverwalk Casino. I
23 have, of course, disclosed that fact from the very
24 beginning of my participation on this Board and even
25 prior to that, of course, and have, of course, also

1 disclosed that fact to my fellow Board members. I am
2 not aware of anything or any fact that would --- from
3 that prior investment some few years back that would
4 prevent me from being fair and impartial, and
5 accordingly, it is my intention to participate in this
6 proceeding. I wanted to see whether you had any
7 objection to my participation in this proceeding.

8 ATTORNEY MOLES:

9 No objection, sir.

10 MR. TRUJILLO:

11 Thank you.

12 CHAIRMAN:

13 Philadelphia Entertainment, why don't you
14 proceed then? Thank you, Commissioner Trujillo.

15 ATTORNEY GRACI:

16 Thank you again, Mr. Chairman, and
17 members of the Board. Today is the time scheduled for
18 a public hearing on Foxwoods' petition to extend the
19 time to provide certain documents pursuant to two of
20 the conditions set forth in the Board's Order of
21 September 1st. We have filed, Mr. Chairman, a
22 verified Petition. And Mr. Moles, the Vice President
23 and General Counsel of Philadelphia Entertainment and
24 Development Partners, LP, is present as I indicated
25 and introduced him before the Board earlier. We would

1 incorporate into the record of these proceedings that
2 verified Petition wherein we believe we have and do
3 establish good cause for the relief, the temporary
4 relief that we request from conditions for --- and I'm
5 sorry, five and six of this Board's Order.

6 And again, Mr. Chairman and members of
7 the Board, we are not seeking to alter or change the
8 Board's Order. We are not seeking relief from having
9 to provide that information. We are only seeking
10 relief with respect to the timing of the provision of
11 that information. Under the Board's Order of
12 September 1st, that was called for --- certain
13 renderings and drawings and whatnot were called for to
14 be provided to OEC by December 1st. We filed a
15 petition in advance of that, knowing that we could not
16 meet that deadline, seeking a temporary reprieve from
17 that requirement until March 1st of this year, a
18 three-month delay, when other financial information is
19 required to be filed under the Board's Order of
20 September 1st.

21 As we set forth in our Petition, there
22 have been ongoing discussions with financiers and we
23 are prepared today, if the Court --- if the Board
24 deems it appropriate, to present a statement by my
25 Co-Counsel, Mr. Jacoby, and if need be, to have Mr.

1 Jacoby sworn in to provide that information and to
2 respond to questions by the Board, if that would be
3 necessary. So would that be satisfactory to the
4 Board?

5 CHAIRMAN:

6 Yes, that would be.

7 ATTORNEY GRACI:

8 Do you wish to have Mr. Jacoby sworn?

9 CHAIRMAN:

10 I do.

11 -----

12 F. WARREN JACOBY, HAVING FIRST BEEN DULY SWORN,
13 TESTIFIED AS FOLLOWS:

14 -----

15 A. Good morning. Good morning, Mr. Chairman and
16 members of the Board. Thank you for inviting us here
17 today. We appreciate the opportunity to speak to the
18 Board in support of our motions before you, and more
19 importantly, to answer any and every question that you
20 have to the extent we're able to. We're here before
21 the Board today to seek a very limited extension of
22 time, only dealing with conditions five and six from
23 December 1st 'til March 1st, 2010 for the Foxwoods
24 Casino.

25 Now, I'm going to refer to them hopefully not

1 interchangeably as Foxwoods Casino or PDP; I'm
2 referring to the same entity, just so you understand
3 what I'm saying, for Foxwoods to make the submissions
4 required by conditions five and six that Mr. Graci
5 just alluded to.

6 The Board's regulations provide for such an
7 extension upon good cause. Section 497(a)5 of the
8 Board's regulations authorizes the Board to extend any
9 period of time set forth in any order of the Board
10 upon timely motion and for good cause shown. Section
11 497(a)5 in relevant part provides, whenever under this
12 part or by order of the Board, or notice given there
13 under, an act is required or allowed to be done at or
14 within a specified time, the time fixed or the period
15 of time prescribed may be extended by the Board for
16 good cause, upon motion made before expiration of the
17 period originally prescribed or as previously
18 extended. As Mr. Graci said, we filed our motion
19 prior to December 1st with that in mind.

20 This Board has previously considered good cause to
21 be a substantial reason amounting to a legal excuse
22 for failing to perform an act required by law on a
23 case-by-case basis. We believe that as part of the
24 deliberation you must undertake, in response to our
25 motion, and we respectfully submit this, the Board

1 must consider the background and the progress Foxwoods
2 has made towards commencing operations.

3 And I think it's important to outline the issues,
4 the conditions at issue. On September 1st, 2009,
5 after our hearing on August 28th, the Board issued an
6 Order and Adjudication granting Foxwoods' Petition to
7 extend time to make slot machines available. The
8 Board extended until May 29, 2011 the time for
9 Foxwoods to commence operations with at least 1,500
10 slot machines operational and available for play at
11 the Foxwoods Casino. Most importantly, and the reason
12 why we're here today, is that the Board imposed nine
13 reporting conditions on Foxwoods as a condition of
14 that Order. The first seven of these conditions
15 directed Foxwoods to report at designated times,
16 primarily to BIE, as to the status of Foxwoods
17 progress towards commencing operations. The remaining
18 two conditions required Foxwoods to report additional
19 information to the Board if certain conditions
20 occurred, or as requested by the Board.

21 Foxwoods has timely satisfied condition one by
22 submitting to the Board, on October 16th, 2009, its
23 written plan to make a minimum of 1,500 slots
24 available by May 29th, 2011. We also have timely
25 satisfied conditions two, three and seven on an

1 ongoing basis by submitting regular written status
2 reports to BIE each month. And in fact, we have one
3 due on Monday.

4 These reports detail Foxwoods' progress in moving
5 forward with development efforts in obtaining
6 financing for developing the facility, and in
7 obtaining necessary licenses, certifications and
8 permits. Foxwoods will and intends to fully comply
9 and timely satisfy conditions two, three and seven by
10 submitting to the BIE the required written updates
11 each month.

12 At the present time, subject to any change
13 regarding the nature and size of the project, as I
14 will discuss in more detail below, Foxwoods expects to
15 satisfy condition four when it becomes due on March
16 1st, 2010, by submitting to BIE all financing records
17 and commitments for financing and development of the
18 project.

19 As Mr. Graci alluded to, conditions five and six
20 deal with design on one hand and establishing a
21 detailed timeline for the commencement and completion
22 of all phases. But it's hard to separate the two.
23 And in fact, the reason why we're here today is it's
24 hard to separate them from any financing process as
25 well, because right now things are sort of turned

1 upside down, as I alluded to when I spoke to --- with
2 you previously, with respect to the financing
3 marketplace.

4 As of November 30th, Foxwoods had not been able to
5 develop these documents to an appropriate level of
6 specificity and detail to submit to the BIE, which is
7 why we submitted our motion.

8 The reasons why we need this extension are as
9 follows. The reason is that, first, we must finalize
10 the rankings for financing and funding the facility
11 before we can complete the detailed renderings,
12 conceptual proposals and timeline as required by
13 conditions five and six.

14 When the Board issued its Order on September 1st,
15 2009 --- this is not a criticism; this is an
16 observation --- it was in a vacuum. It was in a
17 vacuum that existed following the hearing of August
18 28th. And at the time the Board asked me how I felt
19 about those conditions, I said I believe that they're
20 achievable. And to this day at that time, I believe
21 they were achievable. However, for better or for
22 worse, given the state of the current national,
23 financial and credit markets, it soon became clear
24 that it was imperative to secure the financial aspects
25 of the development before we're in a position to

1 finalize the development plans as anticipated by
2 conditions five and six.

3 As I'm sure that you can appreciate, the source,
4 manner, timing and amounts of financing and funding
5 for the development of facility will dictate many of
6 the details that must go into the renderings,
7 proposals, opinions and other conditions, documents,
8 and timelines required.

9 I'd like to tell you what we've been doing. I
10 hope I'm not repeating myself from, at this point,
11 everything that's in the news, but you're hearing it
12 firsthand from Foxwoods today. Foxwoods has been
13 working with its investment advisor on a nonstop basis
14 since the issuance of the Order on September 1st in an
15 effort to address financing and funding for the
16 project.

17 Beginning then and running through late October,
18 they identified and distributed marketing materials to
19 at least 15 potential investors or funders. During
20 that period, we entered into confidentiality
21 agreements with many of these potential investors and
22 their advisors, engaged in extensive meetings,
23 telephone conferences and the exchange of documents.
24 As I'm sure all of you can appreciate, when you're
25 soliciting someone to be an investor or source of

1 financing for a project of this magnitude, they have a
2 lot of questions to ask, especially in today's
3 economy.

4 Foxwoods also, during this period, facilitated
5 due-diligence inquiries. We had many, many meetings
6 with advisors from various potential investors,
7 architects, engineers, environmental issues. As you
8 know, we're on the water. And frankly, we believe
9 we've satisfied all of the issues that they would have
10 raised at the time.

11 More recently, we've been negotiating with a much
12 smaller subset of people. At this point, we're down
13 really to one primary investor, and I'll talk about
14 that shortly. We've also exchanged terms sheets with
15 the one investor and had some negotiations with the
16 second investor, but right now we're focusing on one
17 primary investor. This primary investor is an
18 international gaming company and they're prepared to
19 provide financing and obtain --- and provide funding
20 for the development subject to a few remaining
21 substantive conditions.

22 We're working on a terms sheet. I've, from time
23 to time, told staff, brought staff up-to-date as to
24 what we're doing. I know that at the time we have an
25 agreement in principle, but not a binding agreement.

1 We intend to sit down with BIE and whomever else at
2 staff is necessary to vet the terms sheet to see if it
3 provokes any issues from them with respect to any of
4 its terms or conditions. Our investor is aware of
5 that. And we anticipate, frankly, going --- reaching
6 that point in time next week, which I'll address in a
7 moment.

8 Also exacerbating the process, and I sort of
9 caught myself because I suspect people are tired of
10 hearing about it, but I've got to say it. Table
11 games. All the goings-on about the legislation. You
12 folks are correct; your staff is correct. Our license
13 is for slot machines, and we're not trying to tell you
14 anything other than that. However, again, you've got
15 to play the cards you're dealt. And the cards we're
16 dealt is when we go out into the environment, the
17 economic environment and financing environment, in the
18 last quarter of 2009, when all the news that's fit to
19 print is about major changes in gaming, table games,
20 credit, smoking and extension. It's difficult to
21 divert any investor from having that kind of
22 discussion. Any investor of any magnitude, any
23 investor with any vision is going to want to plan
24 through the future. And as I'll describe to you
25 briefly later, the investor we're working with has a

1 great vision, and the vision isn't just out of slot's
2 power.

3 So I know that you folks are tired hearing in the
4 news or from us directly about the legislation, which
5 really wasn't signed until January 7th, although there
6 was a great deal of expectation before that. And to
7 some extent, it was like the Sword of Damocles. We
8 were waiting constantly for it to be approved, but
9 there were a lot of other things going on beside our
10 casino that had to be dealt with as part of that.

11 But I want you to understand that we're not hiding
12 behind that. We're only explaining the situation
13 we're dealing with. And I think at the end of the
14 day, both the Board, both the Commonwealth, and both
15 the City and the taxpayers are better served with the
16 end product that we anticipate coming out with. The
17 building of an interim facility or building a
18 temporary facility, which everybody raised their
19 hackles about, we're trying to do the best thing by
20 everybody and we hope you understand that, whether you
21 necessarily agree with us or not. I can only do the
22 best I can.

23 Among other things, I don't know that you're
24 aware, but Judge Herron has been appointed as the new
25 special master for Foxwoods in place of Judge

1 McCafferty, who I think is now senior-senior status.
2 McCluskey. I'm sorry. I think he went to a status
3 that was --- then he couldn't serve anymore. In fact,
4 we and the City of Philadelphia met with Judge Herron
5 already and we have our next --- I guess it's two-week
6 update on Monday with him. So we will build in the
7 regimen that exists for SugarHouse as well. We're
8 starting a dialogue with the City of Philadelphia with
9 respects to all the issues of import regarding
10 permitting, traffic, everything else, environmental
11 and all the issues, both (sic) state, federal and
12 local.

13 We've been negotiating with current lenders. We
14 have not a major amount of debt, but we have debt that
15 if we're going to bring in a new investor and new
16 financing, we have to work something out with our
17 current investors, whether it's to enter into an
18 intercreditor agreement or whatever. But you know, we
19 can't do this, again, in a vacuum. We've spent a lot
20 of time with them. We think we're very close to
21 reaching agreements with them that will satisfy both
22 us and our potential investor. And we're working with
23 them and their outside counsel.

24 The current investor with whom we're working has
25 entered into a relationship with a well-respected

1 Philadelphia construction manager who has substantial
2 experience in developing casinos, and most
3 importantly, has substantial experience in working
4 with the city, state and federal governments with
5 respect to getting them built, both from a permitting
6 standpoint and environmental standpoint, and all of
7 the ancillary issues that eat up all the time and
8 problems.

9 The senior officers of the construction manager
10 met with our proposed investor last week and went to
11 their offices. They spent a great deal of time there,
12 met with their people, and I spoke with them last
13 evening and understand that they're about to cement a
14 plan to the investor for a project that consists of
15 approximately 200,000 square feet of casino space,
16 75,000 square feet of back-of-the-building space, a
17 freestanding garage, and at least 2,500 to 2,700 slots
18 and 80 to 100 tables, in addition to some initial
19 hotel capacity. So when I mentioned before about the
20 vision, the vision is what we've been working for and
21 anticipating and what we intend to bring to the Board,
22 if and when we close our transaction with this
23 investor.

24 And as part of this, another telling issue, I know
25 especially with the City, is traffic and the impact.

1 And they've been working extensively in developing
2 answers to the concerns expressed by the very --- by
3 not just the population that lives there is concerned,
4 but also by the state and city government.

5 As we sit here today, there have been a series of
6 meetings with our partners. We have --- PDP consists
7 of two major partners. There's FDC, which is the
8 tribe which owns 30 percent, and WPI, which owns 70
9 percent. I spent most of yesterday at meetings with
10 the major partners, today as the second meeting, with
11 the sub-partners of WPI to review the proposed
12 transaction with them and to get whatever signoff or
13 input we need. As I said, we're trying to move to
14 closure. We just received Thursday evening the latest
15 in a very close proposal from our proposed investor,
16 and we expect to have a response back to that this
17 week with an idea that will close next week in
18 principle, and then sit down with the Board.

19 Now, we have not sat idly by. When we first
20 learned of the schedule meeting, I spoke to staff. We
21 asked whether they would agree to an extension until
22 the next hearing, because we wanted to have all of our
23 ducks in a row. And the staff, who was just great to
24 work with, responded that the staff wanted to hear and
25 you folks wanted to hear where we were now. And so

1 we're here, but at the end of the day, we understand
2 that we're still coming here with an open end. And
3 among other things, at the end I'm going to request if
4 you would consider deferring your ruling until your
5 next hearing date, so hopefully at that point in time
6 we're coming to you with everything in place. We
7 realize that we're asking something that's not
8 requested in our motion and it's not on the agenda.
9 And if at the end of the day you decide to rule on our
10 motion, so be it, but I wanted to say that.

11 We submit that Foxwoods has shown good cause, a
12 legally sufficient reason to seek the requested
13 extension. We've satisfied all the conditions to date
14 and continue to do so. We fully expect to satisfy
15 condition four, subject to one caveat. If and when we
16 sign the terms sheet with the investor, we envision
17 sitting down with the Board and talking to the Board
18 about two things. One, whatever changes in design are
19 necessary to implement the proposed design, and we
20 know under the Act, the amended Act, that will require
21 a local input public hearing, I believe. And number
22 two, talking with the Board about if and when we make
23 an application for an extension of time with the end
24 date. And that's something that we anticipate we
25 would talk to them as we talk with them about the term

1 sheet, just to put in place something that's
2 consistent with a project of this magnitude. And once
3 they're comfortable in vetting the investor in their
4 plan, then it's legitimate.

5 We believe that what we're asking for is perhaps
6 material to some people but minimal at the end game.
7 Right now, we're still working with the May 29, 2011
8 date. And until we make an application, we understand
9 that's the date that we're subject to. And what we're
10 asking for the Board today, if the Board is unwilling
11 to defer ruling, would be to grant our request that
12 the due dates for conditions five and six be moved to
13 March.

14 We've tried to be and I think we've been very open
15 with the Board and the staff. We intend to work
16 closely with BIE as well as Counsel in moving forward,
17 and we hope you give us the opportunity to do that.
18 We appreciate your patience and your cooperation.
19 We're very excited. This is something that I never
20 --- we never contemplated the nature of the project
21 that we're talking about today, and we hope that the
22 Board, although perhaps somewhat jaundiced because
23 we've been before you before, understands that this is
24 a great effort, this could be a great outcome, and
25 we'd just ask you to work with us a little longer and

1 to give us your support as we move towards an ultimate
2 achievement which will be vastly different than was
3 contemplated.

4 Thank you very much, and I'm prepared to answer
5 any questions you have.

6 CHAIRMAN:

7 Thank you. Office of Enforcement
8 Counsel, do you have any questions?

9 ATTORNEY MILLER:

10 Thank you, Mr. Chairman. Mr. Jacoby, is
11 it not correct that as of December 1st, and in fact,
12 as of today, you have no architectural renderings,
13 artist renderings, conceptual proposals, engineering
14 opinions, or any other documents relating to the
15 construction of the facility on Delaware Avenue to
16 build a casino; is that not true, you have none?

17 A. I'll answer your question not on a yes-or-no
18 basis. There was a plan that was approved, but that's
19 not the plan under which we intend to operate, number
20 one. Number two, we have planned from the standpoint
21 of a footprint of what is proposed to be done on the
22 site, including traffic control and building the
23 improvements that I just described in my remarks. If
24 you're asking me literally, do I have
25 architect-stamped, engineer-stamped plans to submit

1 for the building, the answer is no. And I've always
2 been candid and open about that. We've told you why
3 that has been the case. We didn't have the plans at
4 the end of August when we moved for the extension.
5 And as I've explained countless times, perhaps not to
6 your satisfaction, it's the chicken or the egg. We
7 had to get the financing in place. We had to get a
8 financier, an investor in place in order to determine
9 what the end product would look like, how much capital
10 was out there to build it. The footprint has changed
11 materially from what we envisioned from a temporary
12 interim facility to something of greater magnitude,
13 which we believe is consistent with, if not greater,
14 what was submitted to the Board initially.

15 ATTORNEY MILLER:

16 So your testimony is that you're going to
17 a financier without a plan and asking for money; is
18 that correct?

19 A. Actually, that's not how it's done. When you deal
20 with someone like the person we're dealing with, you
21 don't go to them with a plan. You go to them with an
22 opportunity. They develop the plan. It would be
23 audacious and impertinent to go to, as an example, the
24 investor we're talking about, and tell him you've got
25 to build this, and we didn't. And it wouldn't have

1 worked. This investor is not only going out in the
2 market based on its own reputation for credit, but
3 it's also going to provide substantial credit from its
4 own funds. And that's what we've done and I've been
5 very open about that.

6 ATTORNEY MILLER:

7 Well, you will agree that you have a duty
8 to keep the Board informed of changes in finances and
9 changes in ownership? You will agree to that;
10 correct?

11 A. I'm sorry, would you repeat that?

12 ATTORNEY MILLER:

13 You will agree that as a holder of a
14 slots license in Pennsylvania, you have a duty to keep
15 the Board informed as to any changes in finances and
16 changes in ownership?

17 A. Yes. I recognize that duty, and I think I've
18 spoken frankly, even with you, about the contemplation
19 to sit down with you once we had a terms sheet in
20 principle. And what I said to you was, we don't have
21 any commitments for financing. We don't have a
22 commitment for an investor. I just learned last night
23 about the proposed plan for 200,000 square feet. I'm
24 here this morning to present it to the Board. I'm not
25 sure what it is you're asking for me to do beyond

1 that.

2 You folks, frankly we've turned our cards up to
3 you constantly with respect to what we're doing and
4 what we contemplate doing. I don't think we could
5 have been more transparent with you to this point in
6 time, which is why we're before this Board today.

7 ATTORNEY MILLER:

8 In your Petition for extension, which you
9 filed on November 30th, 2009, you stated in paragraph
10 21 that you have exchanged and negotiated proposed
11 terms sheets with the subset of interested party, and
12 at this point in time, has reached substantial
13 agreement as to proposed terms with at least one of
14 interested parties. That was on November 30th.

15 A. That's right.

16 ATTORNEY MILLER:

17 This is now January 27th. Have you
18 submitted the term sheet to BIE for review?

19 A. I thought I stated previously that when the
20 parties reach an agreement in principle as to the term
21 sheet, which they hadn't as of today, we would sit
22 down with BIE and review the terms sheet with them to
23 determine whether there were any proposed conditions
24 in that term sheet that they have a problem with
25 before we enter into an agreement to bind us to the

1 provisions of the term sheet.

2 ATTORNEY MILLER:

3 Is the term sheet you're talking about
4 today the same terms sheet that you talked about in
5 your Petition on November 30th, 2009?

6 A. The terms sheet --- if you've ever engaged in
7 negotiations of this magnitude, the terms sheet is an
8 evolutionary document. It's --- I don't know how many
9 iterations of this terms sheet we've had. It's been
10 probably too many, from the standpoint of the people
11 paying their lawyers, including our investment
12 consultants. The answer is no. It's not the same
13 one. In fact, we just got one Thursday evening at ten
14 o'clock from the investor and we intend to submit a
15 counterproposal, hopefully the final one, sometime by
16 the end of this week.

17 ATTORNEY MILLER:

18 Is the investor mentioned in your
19 petition of November 30th, 2009 the same investor
20 you're talking about today?

21 A. Yes.

22 ATTORNEY MILLER:

23 So that hasn't changed?

24 A. No, that hasn't changed. And the Gaming Act was
25 approved January 7th, 2010.

1 ATTORNEY MILLER:

2 What guarantees, what assurances can you
3 give this Board that if they were to extend your ---
4 to give you an extension to respond to present plans
5 to the Board, what guarantees or assurance can you
6 give to the Board that on March 1st you'll be able to
7 do that?

8 A. I can only tell the Board what we've done and what
9 we're doing and what we contemplate doing. I can only
10 tell the Board that that's to the best of my knowledge
11 and information. And the reason I'm here and willing
12 to be sworn under oath is because I've been actively
13 involved in it. Can I be certain that this investor
14 will sign the terms sheet? No. Do I expect the
15 investor to sign a mutually-agreeable terms sheet very
16 shortly? Yes. I can't go beyond that.

17 I mean, this is a dynamic business. We're not
18 talking about, you know, a minor transaction. This is
19 a very complex transaction. We're dealing with our
20 assisting lenders, we're dealing with the investor.
21 We're dealing with sources of funds for that investor,
22 and it's not --- I'd like to describe it as herding
23 cats, but that would be basically to understate the
24 complication of it.

25 You ask for a guarantee. I can't give a personal

1 guarantee. I wish I could. I wouldn't be here today.
2 I think I'd probably be out somewhere investing money.

3 ATTORNEY MILLER:

4 Well, Mr. Jacoby, why don't you tell us
5 who the investor is?

6 A. I'm not able to do that. I have a confidentiality
7 agreement with that investor. When the terms sheet is
8 agreed to in principle, I am prepared --- and I've
9 said it repeatedly, including to you and to Chief
10 Counsel, to meet with the staff, walk through the
11 terms sheet, have you tell me whether there's any
12 terms you find unacceptable and then sit down with the
13 proposed investor and the staff and deal with those
14 concerns before we sign the terms sheet. The terms
15 sheet is probably --- I think it's 14 or 15 pages.
16 The word sheet is a misnomer.

17 ATTORNEY PITRE:

18 Cyrus Pitre, Office of Enforcement
19 Counsel. Mr. Jacoby, I'm a little perplexed that the
20 newspapers are reporting, you know, one particular
21 name, but this Board who regulates an industry in the
22 State can't seem to get any information on what's
23 going on with Foxwoods. To that end, based on what
24 you testified today, it seems that basically we can
25 come to several conclusions. There's no financing,

1 that you're talking to someone in the industry about
2 investing, that we can contemplate a change of
3 ownership based on the fact that this person will have
4 significant say on what's done and how it's done, and
5 the fact that this Board has already licensed
6 Foxwoods, licensed the location, and basically said
7 that this is the type of facility we want to see.
8 Basically you're just telling this Board today that
9 all of that is up in the air and we don't know for
10 sure what's going to be coming down the pike. I mean,
11 tell me if I'm putting words in your mouth, but that's
12 the way I interpret it.

13 A. May I respond?

14 ATTORNEY PITRE:

15 Yes.

16 A. I understand what Cyrus mentioned. First of all,
17 I can't speak for the press. You know, if the press
18 said that Yankee Doodle Dandy was the investor, does
19 that mean that that's true? I'm not in a position ---
20 I mean, just because the press wants to speculate as
21 to who the investor might be doesn't mean I should
22 violate and my client should violate a confidentiality
23 pact, with all due respect to BIE and this Board.
24 Number two --- and I don't think you want us to,
25 frankly.

1 Number two, I don't think we're talking so much
2 about a change of ownership, but potentially down the
3 road a change of control, which is something that's
4 fully contemplated by the Gaming Act and will be done
5 pursuant to the auspices of the staff and the Board
6 and will comply with the Act and the regulations.

7 Number three, in fact, the project that I've
8 described to you early in the presentation, I believe,
9 is consistent with, if not more substantial than, that
10 for which approval was obtained initially, which is
11 something I was not in a position to tell you would
12 happen as a first phase when I was before you on
13 August 28th. I know this Board and I know you folks
14 have been very patient with us, and I appreciate it.
15 I've tried to be candid with you. From time to time,
16 I've spoken with you as well as Chief Counsel to give
17 you an idea as to where we are and where we're
18 heading, which is one of the reasons why I asked if
19 this meeting, if this hearing could be put off until
20 next month, because then maybe perhaps you wouldn't
21 have the skepticism that you express, Cyrus, as to
22 what I've said to the Board and to you today. I can
23 only tell you that it was with a great deal of
24 trepidation that I decided that I had to make this
25 statement and be sworn in to give you a level of

1 comfort as to what you were hearing from me, and I can
2 only tell the Board that we're fully committed to
3 this. We've been meeting with our partners, as I've
4 described before, and we are --- we believe we'll have
5 a final terms sheet going out to this investor ---
6 today is Wednesday, so I would hope by the end of the
7 week. And then with an idea we have an agreement in
8 principle, then I'll schedule a meeting with BIE and
9 whomever else needs to be there and walk through the
10 terms sheet, and then I'll bring in counsel for the
11 investor as well.

12 ATTORNEY PITRE:

13 Have any of the local permits that you
14 anticipated being issued in October, in your October
15 letter to me, have any of those permits been issued?
16 And if so, can you give the Board an update on what
17 permits, if you have that with you?

18 A. The only permit that was available to pick up was
19 concerning a zoning use permit and that was based upon
20 a design that under any scenario was going to be
21 inoperative.

22 ATTORNEY PITRE:

23 Okay. How about the applications for
24 those permits, have you submitted applications for the
25 additional permits?

1 A. There's no basis to do that without a design,
2 without the design in hand to --- upon which the
3 permit's to be issued. A permit is an authorization
4 to develop and build and take action based upon a
5 submission. The submission that went to the Planning
6 Commission previously was the basis on which the
7 zoning use permit was issued and which is referred to
8 in the Supreme Court's order. I think Commissioner
9 McCabe asked me about that last time, if I recall, and
10 why we didn't pick it up. And the reason we haven't
11 picked it up --- and we had this discussion with Judge
12 Heron, and he fully understands and he's the Special
13 Master, is that it's no longer operative. Now,
14 whether it just needs amendment to reflect the
15 proposed plan going forward or whether it needs to be
16 reissued, I don't know that. I don't do land use law,
17 but we'll do whatever the law requires. We're working
18 with the City of Philadelphia Solicitor's Office on
19 these issues, and as I said, we had a meeting on
20 Monday with Judge Heron and the City.

21 ATTORNEY PITRE:

22 How about any of the state permits, the
23 applications for the state permits, have any of those
24 been submitted?

25 A. Again, whatever state permits you're talking

1 about, whether it's a PennDOT permit or an
2 environmental permit, those are things that are
3 conditioned on how we intend to develop and improve
4 the site, which again is part of the discussion with
5 Judge Heron and the City and part of the design.
6 There's a lot of moving pieces. We have to make a
7 decision as to how to proceed with the core, with
8 respect to the archeological issues that were out
9 there before. We have to decide how to deal with both
10 the EPA and DEP with respect to the piers and the
11 water line. A lot depends on how the site's
12 developed, what the footprint on the site is and what
13 the displacement of the site is. And again, I wish I
14 could --- Cyrus, I wish I could tell you what --- I
15 wish I could tell you I had them, but I can't get them
16 without plans to submit, which is the basis for going
17 forward.

18 ATTORNEY PITRE:

19 So things are pretty much as they were on
20 October 1st, 2009?

21 A. I don't know if they're pretty much the way they
22 were on October 1st, 2009, but we haven't been able to
23 get those permits because of the conditions we
24 described in our motion and I described today.

25 ATTORNEY PITRE:

1 I have no further questions.

2 CHAIRMAN:

3 Any other comments from Philadelphia
4 Entertainment on your presentation?

5 ATTORNEY GRACI:

6 Not on the factual presentation, Mr.
7 Chairman.

8 CHAIRMAN:

9 Thank you. I'll now ask OEC to make your
10 presentation, please.

11 ATTORNEY MILLER:

12 Mr. Chairman, we have no witnesses. We
13 objected to the extension when Foxwoods asked for it
14 back on November 30th. We respectfully submit that
15 they have presented no evidence at this hearing or at
16 any other time to show good cause for an extension of
17 time to respond to the condition imposed upon them by
18 the Board. They came before this Board in August,
19 asked for an extension of time to build a casino. The
20 Board, in its wisdom, gave them that time, but imposed
21 those conditions, nine of them, upon Foxwoods.

22 The reason that OEC asked for those
23 conditions, and I think the Board imposed those
24 conditions, was to keep the Board informed of the
25 progress that Foxwoods was making to build this

1 casino. They were given that extension with the
2 understanding that they would tell us what they were
3 doing. Failing to inform the Board, as is required by
4 these conditions, is certainly not in compliance with
5 the Board's understanding of why this extension was
6 granted in the first place. Our position is that
7 because they have failed to show good cause, that the
8 Board should deny Foxwoods' request to extend the time
9 to respond to this condition. If that is the case,
10 then Foxwoods could very well be subject to
11 enforcement action which the OEC could take against
12 them for failing to respond to a condition imposed by
13 the Board.

14 If the Board decides to give Foxwoods
15 another break and allow them the extension of time, we
16 ask that you send a strong message to Foxwoods along
17 with that break. That message should be in the form
18 of a fine for each day they have failed to fulfill
19 this condition and keep the Board informed of any
20 progress that they're making towards building this
21 casino. We recommend a fine of a minimum of \$1,000
22 per day. And as of today, Foxwoods would owe \$58,000
23 and counting. And we recommend that the fine remain
24 at \$1,000 a day until such time as Foxwoods informs
25 the Board of what they're doing and satisfies the

1 conditions imposed by the Board.

2 This isn't to punish Foxwoods or deter
3 future conduct, but to send a message to them and all
4 licensees that they must, above all else, keep the
5 Board informed.

6 CHAIRMAN:

7 Thank you. Questions from Philadelphia
8 Entertainment for OEC?

9 A. Yes. My question is simply stated, we have
10 submitted monthly updates including the update of
11 October 16th. And I don't understand the basis on
12 which you can say, forget what you read in the press
13 where you may learn the name of the proposed investor
14 that tells you everything we're doing, but I don't
15 know how you can say to this Board and argue to us
16 that we haven't kept you informed. Not only have we
17 submitted the updates, including the October 16th
18 update, where we've described everything we're
19 describing today. We've described everything. In
20 addition to that, you and I have --- time to time,
21 we've talked. You've called me after you got the
22 update. You know, we have no way of knowing that you
23 didn't know what we've been telling you and what we
24 submit to you and what we tell you when we call you
25 and say, we're working on a terms sheet. When the

1 terms sheet is agreed to in principle, we'll meet with
2 you. You know we're not building down there. You and
3 I have an understanding that we wouldn't go on the
4 site unless I told you ahead of time, even to clean
5 it. We've been --- we couldn't be more candid, so I
6 don't understand how you can sit here and tell this
7 Board, tell the people in this room that we have not
8 disclosed to you what's been happening. Have we
9 disclosed to you the details of our negotiations? No.
10 Because they're just that, they're negotiations. So I
11 would like you to please respond to that.

12 ATTORNEY PITRE:

13 I don't think it's a failure to disclose.
14 Where the failure has been is that there's been no
15 progress, and the progress that we've anticipated
16 seeing or the progress that we should be seeing, we're
17 not seeing. And that's where the problem is.

18 A. Let me respond to that, if I may, Cyrus. You're
19 right. Have we made progress on the milestones that
20 were set in the conditions on October --- on September
21 1st in the Order? No. Have we made progress in doing
22 all the things we've done that I outlined here today,
23 whether it's with Judge Heron, whether it's
24 negotiating? When you talk about assessing us \$1,000
25 a day, you tell us it's not to punish us. Of course

1 it is. We spent tens of hundreds of thousands of
2 dollars since August between invested advisors and
3 counsel in trying to get us to the point we are today,
4 where we're very, very close to consummating a terms
5 sheet. You know, we haven't just sat there and let
6 the time run idly, like some Aesop Fable with the
7 grasshopper and the ants. We've been out there.
8 We've been working hard. We're working 24/7. So if
9 it's not to punish us, that \$1,000 a day, what is it?

10 We've told you constantly what's been going on.
11 We've told you constantly --- you could just read the
12 Wall Street Journal, and frankly, you can go look at
13 MSNBC and see what's happening with the economy.
14 We're fighting that same economy. We're talking about
15 a project here that is between \$300 and \$500 million
16 dollars. That's a lot of money. And you know what?
17 We're not getting it from the government. We're
18 getting it from a private investor. And I don't
19 understand how you can say we've made no progress.

20 You know, if progress is putting a shovel in the
21 ground, you're right, we've made no progress. Have we
22 made progress in the ultimate objective, I think it's
23 material. When we started before you on August 28th,
24 we had nothing to show for it. And we have begged,
25 borrowed and stole and got to the point now where we

1 believe we're within a week of closing on a terms
2 sheet, which we'll sit down with you before we sign
3 off on it. And we think that's huge progress.

4 We've taken a site that probably was going to have
5 a temporary facility, some building, whatever it's
6 going to be, or some other kind of interim face thing,
7 and come back to you with a very substantial proposal,
8 and frankly, when all the facts are transparent, which
9 we just can't disclose now --- I'm sorry, I just can't
10 --- you'll see a vision. You'll see somebody who's
11 prepared to invest in this site, in this community,
12 far beyond anything that was ever contemplated at the
13 time we met on August 28th. So I think we have made
14 progress. It's just a question of how you keep score.

15 ATTORNEY PITRE:

16 With that, we'll gladly submit your
17 monthly updates that you've submitted to us, to the
18 Board, and they can read them for themselves. I
19 believe you can go ahead and read the dates into the
20 record.

21 ATTORNEY MILLER:

22 Mr. Chairman, if I may, we would like to
23 have marked as Office of Enforcement Counsel Exhibit
24 One, the reports submitted thus far by Foxwoods. And
25 those reports are a letter of October 1st, 2009, a

1 letter --- which is the first monthly report
2 requirement, a letter of October 16th, 2009, which is
3 not the monthly report requirement which was required
4 by one of the conditions, a letter of November 2nd,
5 2009, which is a monthly report requirement, a letter
6 of December 1st, 2009, which is a monthly report
7 requirement, and a letter of January 4th, 2010, which
8 is the latest monthly report requirement which has
9 been submitted. I have copies for each member of the
10 Board, and I would ask that one copy be marked as
11 Exhibit One, and I submit them to the Board for their
12 consideration, ---

13 (Office of Enforcement Counsel Exhibit
14 Number One marked for identification.)

15 CHAIRMAN:

16 Thank you.

17 ATTORNEY MILLER:

18 --- subject to the rules of
19 confidentiality.

20 CHAIRMAN:

21 Thank you.

22 A. Exactly. Mr. Chairman, I believe that those
23 reports are confidential, and if there is such a
24 notion before this Board of placing something under
25 seal, I believe that those documents should also be

1 placed under seal, whatever protective mechanism needs
2 to be put in place. We think the BIE is fully aware
3 of this issue.

4 CHAIRMAN:

5 Okay. Thank you. Any other questions
6 from Counsel on either side before we entertain Board
7 questions?

8 ATTORNEY PITRE:

9 No, Your Honor.

10 ATTORNEY MILLER:

11 No, Mr. Chairman.

12 CHAIRMAN:

13 Let's move to the Board questions.
14 Commissioner Coy?

15 MR. COY:

16 Thank you, Mr. Chairman. Just a few
17 questions, Mr. Jacoby. I understand your reticence
18 about naming the investor, but to give the Board a
19 little comfort level, is it fair to say that this
20 potential investor has gaming experience?

21 A. Substantial. International.

22 MR. COY:

23 And is the investor an investor in any
24 Pennsylvania casino that would preclude his
25 participation in this by law?

1 A. No, sir.

2 MR. COY:

3 Okay. Does the construction manager have
4 a name?

5 A. The construction manager had asked that I not
6 divulge the name, but ---.

7 MR. COY:

8 That would cause problems also?

9 A. You've got me in the horns of a dilemma here.

10 MR. COY:

11 Well, I mean, if the answer is no, the
12 answer is no, but I just --- we're trying to get ---
13 as you have been trying to do, give the Board a level
14 of confidence that you're moving forward. I'm trying
15 to help you a little bit here.

16 A. Keating.

17 MR. COY:

18 Keating?

19 A. Keeting Building Corporation.

20 MR. COY:

21 The one that participated in The Rivers
22 in Pittsburgh?

23 A. And SugarHouse, yes, the same one.

24 MR. COY:

25 And SugarHouse. Correct. I know you

1 went out of your way to mention that you're --- the
2 license you're working under and this building is for
3 slots, but now the table games have passed. Does this
4 make it easier to find an investor?

5 A. Substantially. Substantially. And that's why you
6 had this paralysis for a couple of months, because if
7 we were going to build --- and I hate to use the
8 colloquialism. A slots pile, it's one thing, but with
9 table games, the whole vision is changed. In addition
10 to the willingness to go full boar, we're talking
11 about putting in hotel capacity at the first round as
12 well. It's just a sea of change --- a sea change in
13 the project, yes.

14 MR. COY:

15 Right. Okay. Does the terms sheet or
16 the terms sheets that you have been working with, do
17 they have an end date on them? Are they limited in
18 time so that we --- once you do accomplish an
19 agreement, do things have to move forward in a certain
20 amount of time?

21 A. The terms sheet envisions that --- in order to
22 build the project contemplated by the terms sheet,
23 that there would at some point be an application to
24 the Board for an extension of time for the end date.
25 The terms sheet itself --- when you say has an end

1 date, an end date to reach definitive documents; is
2 that your question?

3 MR. COY:

4 Yes.

5 A. The end date right now is probably the end of
6 February of 2010, to reach definitive documents.

7 MR. COY:

8 So that's the only expiration date on the
9 terms sheet?

10 A. Yes. That's the date after which either party, if
11 there isn't definitive documents, could walk away.

12 MR. COY:

13 Okay. This request for an extension of
14 time, could the Board have some sort in assurance that
15 this would be the last request for an extension?

16 A. A good question. Hard to answer, but I'll try.
17 The answer is, in the present mode, yes. I believe
18 that when the terms sheet is approved and signed that
19 the proposed investor will want to sit down with the
20 staff and talk about the future. The future being,
21 I'm envisioning building this substantial project, I'm
22 getting financing, I'm going to want to start the
23 process to apply for an extension of the end date.
24 Based on the plans I'm submitting to you in the
25 vision, I'm submitting to you whatever other documents

1 you need, as a condition in granting the application
2 under the Act. And I suspect we also have to then
3 start to think about the --- I believe that the Act as
4 amended requires a local input public hearing for
5 change in design. So it's a long answer to a short
6 question. Currently, yes, but it's conceivable when
7 they sit down with the staff to work through the
8 proposal, that they may establish a whole new set of
9 conditions and time frames that are consistent with
10 whatever they work out with the staff. So right now,
11 yes, that's the request.

12 MR. COY:

13 Currently yes, but probably no?

14 A. Correct.

15 MR. COY:

16 One last question. I'm more curious than
17 anything, but in the Act that was recently passed by
18 the Assembly and signed by the Governor, there was an
19 extension of time granted for you; correct?

20 A. I don't know that --- I know that the press liked
21 to call it the Foxwoods Extension. I don't know that
22 the extension was specifically for us. I don't know
23 if there's anybody else out there who could take
24 advantage of it. Conceivably SugarHouse could, but I
25 don't know.

1 MR. COY:

2 Can I ask you, did Foxwoods seek this
3 extension legislatively?

4 A. I'm not in a position to answer the question. I
5 know that I wasn't involved in seeking the extension
6 legislatively. I can't answer --- I know Foxwoods PDP
7 did not itself reach out and do that, no. And I think
8 the problem with the question as phrased is that
9 nobody, per se, sought it.

10 MR. COY:

11 Do you know, did any --- did anybody that
12 represents Foxwoods seek it?

13 A. I'm not in a position to answer that question.

14 MR. COY:

15 Okay. Do you think you could find out
16 and report back to the Board?

17 A. I don't know how to answer the question about
18 whether they sought it or didn't seek it. I don't
19 believe they sought it, per se. Was it something that
20 was inquired about? Yes. I don't know if it was
21 sought, per se, though.

22 MR. COY:

23 In my service in the legislature, things
24 like that, my recollection is that things like that
25 don't get in bills without someone asking them to be

1 put in. I mean, they just sort of don't show up.

2 Well, if you can't, you can't.

3 A. I'm not that familiar with the legislative
4 process, sir.

5 MR. COY:

6 Okay. Thank you, Mr. Chairman.

7 CHAIRMAN:

8 Commissioner McCabe?

9 MR. MCCABE:

10 Thank you, Mr. Chairman.

11 Mr. Jacoby, after listening to your
12 testimony today and reading your Petition, I have a
13 number of concerns. And I don't know, really, where
14 to start. I want to let you know that we as a Board
15 have a lot of experience now with refinancing, with
16 the change of ownership. And having seen somewhat of
17 the same circumstances with another casino who went
18 through terms sheets, the negotiation phase, so I
19 think we're very well aware of that.

20 But one of the things that concerns me is
21 what I'm hearing from you, that you're going to come
22 in with a new proposal. We, in December 2006,
23 approved a specific plan that Foxwoods put forth at
24 that time. Are you saying now that you're going to
25 come in with a whole new architectural design, a whole

1 new plan, and specifically are you still talking about
2 building on the Columbus Avenue site or are you going
3 to change that, too?

4 A. The plan is to build on Columbus Avenue's site.
5 The plan in order of magnitude is consistent with, if
6 not substantially improved from, the plans submitted
7 to you. And it's anticipated that, pursuant to the
8 requirements of the Act, if we want to change that
9 design to comport with what I outlined, we will make
10 an application and go through the process. I think
11 it's, at a minimum, an improvement, if not a
12 substantial improvement, over what you originally saw.

13 MR. MCCABE:

14 I have a concern, because with less
15 probable cause than what you're presenting here, there
16 were people that were calling for us to pull the
17 license of another casino that was going to change
18 ownership but still maintain the exact same design,
19 same location that we had approved. They wanted us to
20 pull the license and open the process again, re-bid
21 it. I'm hearing from you that we're going to have a
22 whole new --- some proposal that we didn't approve.
23 So why shouldn't we pull your license and reopen the
24 process?

25 A. Well, first of all, we're at the same site.

1 Second of all, I think it's not uncontemplatable that
2 there would be a need to bring in additional sources
3 of funds and investors. I think that as an example,
4 the Foxwoods, the tribe itself is a little bit changed
5 and I won't comment beyond that. It's not within my
6 province to talk about that. But I think that what
7 we're doing is consistent with what you presented to
8 us in the adjudication. We think we're implementing
9 what you said. I think if you're talking about PITG,
10 that was something that was under construction at the
11 time. And with all due respect, Commissioner, I think
12 it's a vastly different situation than we have.
13 We're, if anything, trying to avoid that. I don't
14 think this is a different situation. It's
15 contemplated that Foxwoods, the tribe, would continue
16 to have a role in this going forward. It's
17 contemplated that all the people, all the principals
18 who have been identified will continue to have a role
19 with it in the future. One of the differences,
20 Commissioner, is this, is --- I hate to do what I'm
21 exposing myself to with cynicism, is table games.
22 We're playing --- when I look at the footprint of the
23 SugarHouse, that footprint was committed to. In fact,
24 it's in place, to some extent, if you look at the
25 site, before they really had the vision of table

1 games. They're going to accommodate table games. We
2 have --- either it's the benefit or the detriment,
3 depending on your view, Commissioner, of knowing that
4 there's table games, so that our development will
5 encompass table games, and therefore, will have a
6 different face on it because of that. But it will be
7 a substantial improvement.

8 MR. MCCABE:

9 I would like to interrupt you for this.
10 And I don't know if you were involved at the time, but
11 I know Commissioner Coy and myself, and I think
12 Commissioner Angeli, were during the hearings. One of
13 the questions we asked all of the applicants was in
14 relation to, are you going to be able to handle table
15 games? Do you have a plan to add table games if that
16 is, in fact, passed? And I'd have to go back and
17 check the record, but I believe we asked Foxwoods that
18 and at that time we were told, yes, because I think
19 all the applicants, when they initially presented to
20 the Board their plans, they had concluded in their
21 mind and then they testified to us that they had
22 planned space for table games. And that if, in fact,
23 table games was passed, they then would show on their
24 board or their graphic where they were proposing to
25 put the table games. So I don't know if you --- I

1 don't think you were involved at that time, so you
2 don't have any recollection of that, but having
3 some ---.

4 A. I wasn't involved, but I'm told from Mr. Moles
5 through Mr. Graci, that table games, if contemplated,
6 would not have been the first phase; they would have
7 been in a later phase.

8 MR. MCCABE

9 But we did ask all of the applicants
10 about that.

11 A. So you did have the dialogue; you're correct,
12 Commissioner.

13 MR. MCCABE

14 Another concern I have is I heard today
15 that you said you just now started talking to the
16 City. We issued the license in December 2006. Why is
17 it just now that you're starting to talk to the City
18 about some of these problems, these permits?

19 One of the --- also the other thing that
20 we heard during the application phase and public
21 hearings and the presentations from the applicants was
22 their plan to mitigate the traffic problems. Why are
23 you saying now you're just now getting around to
24 talking to the City about that, when there was a plan
25 proposed and presented to us at that time of how you

1 were going to mitigate any type of traffic problems?

2 A. There's two answers to it. First of all, I have
3 had conversations with Rhonda Cutler, who is the
4 City's representative for transportation. We had our
5 meeting with Judge Herron. Again, and we haven't had
6 conversations with the City, because frankly, we
7 didn't know what we were going to be building from the
8 standpoint of this new investor. We are very --- I
9 think I mentioned previously and it was probably in a
10 plan --- it was probably in a submission I made, maybe
11 the October 16th submission, that we have looked at
12 alternative --- we have looked at alternative ways to
13 address the traffic problem. Now, let me, if I can,
14 just check with Mr. Moles to see whether he wants to
15 add to anything I've said about that because that's
16 something particular to him. Nick, do you want to
17 add ---?

18 ATTORNEY MOLES:

19 Yes. Do I need to be sworn, Mr.
20 Chairman, or ---?

21 CHAIRMAN:

22 Sure.

23 ATTORNEY MOLES:

24 Nicholas, N-I-C-H-O-L-A-S. Last name is
25 Moles, M as in Michael, O-L-E-S.

1 -----
2 NICHOLAS MOLES, HAVING FIRST BEEN DULY SWORN,
3 TESTIFIED AS FOLLOWS:
4 -----

5 ATTORNEY MOLES:

6 Commissioner McCabe, if I may, I just
7 want to clarify one point. I don't want the Board to
8 be misled that we did not reach out to the City after
9 the license was immediately granted. We spent
10 substantial amounts of time. I started with the
11 project in May of 2007, and roughly 90 percent of my
12 working time was spent in meetings with the City,
13 including issues with regard to traffic, including
14 issues with regard to water facilities, with every
15 design element of the project. We took the plan all
16 the way up to the point where we applied for the
17 zoning and use permit, and it was at that point that
18 we had to go to the Supreme Court to get the Court to
19 order the City to react with respect to that.

20 It is only with respect to the situation
21 that has occurred since our appearance before you in
22 August of 2009, with respect to the realization that
23 the plan may have to be tweaked to some extent.
24 Obviously only with approval of the Board that we have
25 not --- or recently just began having discussions with

1 the City, and the reason for that is the same reason
2 that we're unable to give you specific details in the
3 reports that were due on December 1st. And that is,
4 until we have assurance as to exactly what the new
5 investor's plans would be, subject again to the
6 Board's approval, we don't have information to give
7 them with specificity as to the plans that we need, or
8 the approvals that we need.

9 MR. MCCABE:

10 I have just a couple more points. I
11 know, Mr. Jacoby, you asked us in your statement to
12 consider the background and progress, and I have been.
13 And the background that I see and that I highlight is
14 that nothing has been done outwardly. For the first
15 year or so, all we heard about was how Foxwoods was
16 looking for an alternate site, not trying to work to
17 develop the Columbus Avenue site that we had licensed
18 you for. That there were missed deadlines, that
19 you've come in and asked for an extension of time.
20 Come in and asked for extension of time. We've given
21 you an extension of time and nothing has happened.
22 Now, we have not seen a result. You've come in for
23 another extension of time.

24 We gave you an extension of time to come
25 in and meet this deadline December 1st. Here we are,

1 almost 60 days later, and we still don't have the
2 plans. I have no confidence that if we grant you an
3 extension to March 1st, you're not going to be in here
4 asking for more time. And also knowing a little bit
5 and having observed and seen from this position now of
6 how these negotiations go and the terms sheets and the
7 offers, from what we saw in some of our experience
8 now, all it takes is one little word, one item within
9 a sentence within that terms sheet to destroy the
10 whole deal. Somebody doesn't want to accept, somebody
11 wants more control or change in the color of the
12 flooring or the draperies or something because a wife
13 was going to --- had picked that out, that this deal
14 doesn't fall through. I'm praying honestly that it
15 doesn't. I want Foxwoods to build their casino. I
16 want it to get open. I think it's hurting the people
17 of Pennsylvania.

18 Coming from the west and seeing all of
19 these other casinos contribute to the property tax
20 relief, the economic development fund --- and
21 Philadelphia is benefiting for this, but they're not
22 putting anything into this state. I want the
23 Philadelphia casinos to get built, up and running
24 because they're going to knock the socks off of
25 everybody. They're going to be outstanding. So I'm

1 looking at all of that and I don't know if an
2 extension is going to help. Again, the FBI in me is
3 coming out. You had a deadline, you missed it; there
4 should be something --- some repercussions.

5 I'm going to end it on a high note, a
6 positive note. I'm very happy to hear that you have
7 Keating Construction. Having experience with Keating
8 in Rivers Casino and saw what he did, how he treated
9 his subcontractors, they got paid, they worked for
10 him, they're loyal, he came in on time, on schedule,
11 on budget. SugarHouse, he's doing the same thing. He
12 has an outstanding reputation in the industry of
13 building casinos on time, on budget. So that to me is
14 very encouraging. And I believe if Mr. Keating says
15 he's going to be able to build this casino and it will
16 open at this time, I will believe Mr. Keating.
17 Everybody else I don't know about, but I've seen he
18 has a successful track record and I'm very encouraged
19 that you have got him. So thank you.

20 A. Thank you.

21 CHAIRMAN:

22 Commissioner Ginty?

23 MR. GINTY:

24 Yes. First a comment. Mr. Jacoby, when
25 you were responding to the OEC, you expressed some

1 frustration at your inability to get your case across.
2 You're fairly recent to this project. I think you're
3 sensing some frustration on the part of the Board as
4 well as OEC in getting this project which was licensed
5 in 2006 up to speed. So we feel your frustration.

6 A. I understand. And I have the greatest respect for
7 these two gentlemen, but I'm trying to deal with the
8 situation at hand today and trying mightily, if I can,
9 to get you folks to realize it's a much different team
10 that you're dealing with, with respect to this getting
11 this done.

12 MR. GINTY:

13 Well, it is with respect to the attorneys
14 that are recently on board. Our frustration is, quite
15 frankly, with the management structure and I would
16 hope that that improves. Two questions, three maybe.
17 One is your extension today is it to comply with
18 conditions five and six of our Order?

19 A. That's correct.

20 MR. GINTY:

21 And is your prospective investor aware of
22 those conditions?

23 A. Yes, sir.

24 MR. GINTY:

25 And if you come to terms, is he prepared

1 to comply with those conditions by March 1st?

2 A. He is prepared to comply with them to the extent
3 that when we sit down with the staff, we can reach
4 some alternative consistent with his plans for
5 development of the site based on the proposal
6 outlined, yes.

7 MR. GINTY:

8 That's the type of answer that raises a
9 lot of frustration.

10 A. I know. I'm not trying to do it. I'm trying to
11 be honest with you. And because I can't speak for the
12 investor necessarily, but I know --- as a practical
13 matter, the conditions are milestones to get from here
14 to there, Commissioner, and I know your frustration.
15 And I'm only saying to you that if and when we sit
16 down with staff and walk through the investor --- what
17 the investor is prepared to do, whatever the investor
18 can put on the table, whether it's plans or whatever
19 to make these gentlemen comfortable or commitments for
20 financing, you know, it's conceivable --- and I'm not
21 suggesting that it's a certainty, sir. But it's
22 conceivable that if we're able to get a further
23 extension of the outside date, that they would create
24 a new set of gates, milestone gates, to get from here
25 to there on that basis. But they understand ---

1 they're coming there today with those conditions
2 imposed. They understand that.

3 MR. GINTY:

4 Well, I'll just have to say that my ---
5 and I understand that. I mean, 30 days is a short
6 period of time. And my frustration is you're here
7 asking for an extension to March 1st, and quite
8 frankly, 30 days is a short period for your
9 prospective investor to get this done.

10 A. When you think about the three elements that are
11 due March 1st, which are the financing documents, the
12 design and the timeline, I think that the time line is
13 something that can certainly be developed by then,
14 especially in working with Keating, who is familiar
15 with the whole process. I think that with respect to
16 the financing, to the extent that it's an iterative
17 process, you know, I think that the investor is
18 sophisticated enough that they could put enough on the
19 table to satisfy BIE going forward that we're, you
20 know, in substantial compliance or whatever. And I
21 think with the design, if it's an interpretation thing
22 --- and I don't want to sound like a lawyer when I do
23 this to you. But if we're talking about a plan, if
24 we're talking about a concept, a footprint, things
25 like that and maybe whatever backup is needed, I think

1 that's easily doable by March 1st, realizing that it's
2 --- there's more that has to be done to get the
3 building built, whether it's specs and approvals or
4 stuff. But I really do. My background is in
5 construction and I really think it is doable.

6 MR. GINTY:

7 I'll just reiterate Ken's comment that
8 the next time you're before us, I certainly would like
9 to see Mr. Keating here because he does have
10 credibility.

11 A. Thank you.

12 MR. GINTY:

13 That's all I have.

14 CHAIRMAN:

15 Commissioner Sojka?

16 MR. SOJKA:

17 Yes. I do have a couple of questions.
18 They're not going to be in brand new areas. They're
19 going to be in areas that we have already been working
20 over, but I'd like to ask them in slightly different
21 ways or put slightly different nuance in there.

22 And the first issue for me comes directly
23 from your testimony. And I should explain that when
24 Foxwoods received its license, I was not a member of
25 this Board. In fact, three of us that are here before

1 you today were not. But we are aware that it was a
2 competitive process, and what we have available to us
3 were the proposals. Those proposals were challenged
4 by unsuccessful candidates and there was adjudication,
5 and we've seen that. I walk into this meeting with
6 the assumption that you're on Columbus Street and that
7 you're building essentially what was proposed and
8 that's reasonable within the boundaries of a
9 competitive process.

10 But in your own testimony you talk about
11 a final product that, I think to use your word, you'd
12 never contemplated. That sounds rather distinctly
13 different. When we say, are you going to present
14 plans or did you show this yet-to-be-named investor
15 the plans, you say how could we limit a person of such
16 vision with an already existing plan; what we'll get
17 from this person is his vision. And what bothers me
18 is the process. Because I think, you know, if you're
19 going to have a yet-to-be-named investor who is a
20 person of vision and might produce something, I don't
21 know that that leaves us with the competitive process
22 that got us to this point. And I say that as a person
23 who comes lately to the Board.

24 A. May I respond?

25 MR. SOJKA:

1 Yes, please.

2 A. First of all, as a point of clarification, when I
3 used the words contemplated, it was in my own mind
4 when I was here in August, with respect to the time we
5 anticipated something that would be slots, temporary
6 or an interim type of facility. So I hadn't
7 contemplated, when I came before the Board and we
8 talked through --- even when I talked through the
9 conditions at the time, that rather than going into
10 that mode, there be something that would be more
11 substantial. I think in my communications with the
12 Board and the updates, you'll see that I constantly
13 refer to an interim facility, a temporary facility.
14 So that's a point of clarification. Your point is
15 well taken. I apologize for any confusion.

16 I think with respect to the vision, I think a
17 vision to me is not somebody who is coming in here and
18 turning things upside down, but a vision to me is
19 somebody who is coming in here who has some
20 recognition as to what was approved by the Board, but
21 in the context of the current environment, in the
22 context of the current economy, in the context of the
23 rate of return necessary to support whatever the
24 economic burden is --- and I hate to say it again, but
25 table games --- it will be consistent with the plan

1 that this Board approved. This Board had a number of
2 elements that were important to it. The location, it
3 was the plan. It was the involvement of Foxwoods,
4 it's still involved. It was the charitable interests
5 of the three principals of WPI and there was a host of
6 reasons, not one of which I think was independently
7 material, but all of which were collectively the basis
8 for it. So I don't believe that we've deviated from
9 that screen that the Board applied.

10 MR. SOJKA:

11 Have you seen anything then in your
12 communication with this yet-to-be-named investor, a
13 scribble on a napkin, a waive of the arm, a verbal
14 description that makes you comfortable that this is
15 going to be pretty much, in terms of plan, what this
16 Board awarded the license for?

17 A. Sitting here today, I'm not in a position to make
18 that specific representation to the Board, but
19 certainly at some point in time sooner rather than
20 later, that issue will be before the staff and/or the
21 Board, if there is an issue as to whether it is or is
22 not consistent with the letter or spirit of the plan
23 that was submitted.

24 MR. SOJKA:

25 Okay. I think we've worked that one.

1 I'd like to just go to one other point, and that is
2 the --- and I clearly understand your difficulty in
3 saying you cannot provide a personal guarantee that
4 this next iteration of the evolving terms sheet will
5 be the final one. I understand that. But you've told
6 us you think it will be. Can I ask you --- there were
7 pervious iterations; is that correct? Did you see
8 them?

9 A. Many.

10 MR. SOJKA:

11 You saw them?

12 A. I helped negotiate them.

13 MR. SOJKA:

14 Did you think any of them were the final
15 iteration?

16 A. No.

17 MR. SOJKA:

18 Then what were they?

19 A. They were an evolutionary process. There are so
20 many moving pieces in the terms sheet at this point,
21 all of which, save a few, have been crystallized. The
22 ones that are open now are very finite. They're on
23 the table. They're almost yes or no answers. I mean,
24 I know specifically what they are. I've had
25 conversations with counsel for that investor, and that

1 person and I are both agreed that those are the issues
2 and either we're going to do X or Y, but ---.

3 MR. SOJKA:

4 So you know what you would be willing to
5 do on the terms sheet, but there is still the unknown
6 issue of the yet-to-be-named investor who could,
7 seeing your final iteration, decide that's not his.
8 That's correct. So are we not describing a process
9 which might be infinitely lengthy?

10 A. No. And the reason ---.

11 MR. SOJKA:

12 Why not?

13 A. The reason is, I believe we're at a point in the
14 negotiations --- it's almost a human dynamic. You get
15 a little bit negotiation weary and there's certain
16 things that are important, you know, that we set with
17 our partners, the initial test was must-have,
18 like-to-have. Well, we're done with the
19 like-to-haves. We're not going to do that anymore.
20 Both sides are down to the must-haves, and they're
21 very finite. They're basically two groups of issues,
22 one dealing with the liquidity exit, liquidity issue,
23 which is important, and the other having to do with
24 just dealing with certain financial aspects that are
25 again very finite in concept. I believe, having sat

1 through --- and I'll respond, Commissioner. I'm sorry
2 to be so longwinded. Having sat through a meeting
3 yesterday of the principal partners of my client, I'm
4 satisfied that they'll be resolved. Without divulging
5 any confidences ---.

6 MR. SOJKA:

7 I didn't really enter this line of
8 questioning to make you uncomfortable, and it may seem
9 like I'm doing that.

10 A. No. That's ---.

11 MR. SOJKA:

12 The point that I'm getting to is that
13 these issues can be long and sometimes interminable,
14 and we as a Board are a player in this game as well.
15 And I'm asking you if there is anything within the
16 purview of this Board that we might do that would
17 simply bring this to a close because, as my colleague
18 has mentioned, the taxpayers of the Commonwealth of
19 Pennsylvania are waiting for this project and we want
20 to see something happen. Could we do something?

21 A. I think that this hearing has been a material
22 catalyst towards that end. The minute that the word
23 got out that we had this hearing, I got over the
24 transom, almost a best and final terms sheet from the
25 investor, which is what we're reviewing to go back

1 with our final offer. So I think that today's
2 colloquies, I think that the scheduling of this, which
3 is why --- again, which is why I suggested perhaps we
4 were more than willing to come back in front of you at
5 your next hearing day --- I think it's the 11th, I'm
6 not sure --- because our timeline is such that we
7 expect to be done and we expect to have sat down with
8 Cyrus and Dale and walk through the terms sheet and
9 taken their temperature as to any issues they might
10 have.

11 MR. SOJKA:

12 Thank you.

13 CHAIRMAN:

14 Commission Trujillo?

15 MR. TRUJILLO:

16 Mr. Jacoby, a few questions. I won't
17 limit myself to two or three. What role, if any,
18 beyond financing does your proposed investor have?

19 A. It's conceivable at some point in time that the
20 proposed investor may become an active manager of the
21 facility.

22 MR. TRUJILLO:

23 And when you say an active manager, I
24 assume you are referring to a role as operator?

25 A. Yes.

1 MR. TRUJILLO:

2 I assume that that may be a material part
3 of the terms sheets that you're negotiating; am I
4 correct?

5 A. One of the items, yes. I mean, there are capital
6 issues as well as operational issues so that --- yes,
7 you're correct. It's an issue. Although, frankly,
8 they don't --- I don't think they're issues today.
9 They were certainly an issue in negotiating.

10 MR. TRUJILLO:

11 And what happens if you don't reach a
12 deal?

13 A. If we don't ---?

14 MR. TRUJILLO:

15 Reach a deal.

16 A. I guess at that point in time, we would probably
17 have to go forward and build a slots-only temporary
18 facility. There are other people out there who have
19 expressed interest, but there's only so many things
20 you can do when you're negotiating a deal. So we have
21 put them off to the side, so they would have to be
22 dealt with in the future if we don't cut a deal with
23 this investor.

24 MR. TRUJILLO:

25 So if you do not have ---?

1 A. We fully expect to. I'm sorry. I cut you off. I
2 apologize.

3 MR. TRUJILLO:

4 No, no, no. I cut you off. I apologize.

5 A. We do fully expect to. We think both sides are
6 highly motivated to do this transaction. I think this
7 investor's highly motivated to be involved with this
8 casino in the City. As the Commissioners have
9 described, it's a great opportunity.

10 MR. TRUJILLO:

11 But sitting here today, there is no deal.
12 There is no new investor; am I correct?

13 A. There are people who we've been talking with, but
14 at this point in time, because we're so close with
15 this other investor, we have not continued any further
16 negotiations with them. But there are certainly
17 people out there who are very interested. Whether
18 we're just initially as a slots operation and then it
19 evolves, that might be the material difference.

20 MR. TRUJILLO:

21 Now, I never --- that in the course of
22 two days I would invoke Ludwig Wittgenstein twice, but
23 the world that we know today is all that is the case.
24 And the world that we have today is the license that
25 was granted to you, which does not include this

1 investor that we don't know the identity or anything
2 else about; correct?

3 A. Correct.

4 MR. TRUJILLO:

5 And so sitting here today, if your plan B
6 as I understand it would be to have slots only, not to
7 take --- and no table games, even though table games
8 legislation was signed just a short --- less than a
9 month ago; is that accurate?

10 A. I didn't hear the last part of what you said. I
11 apologize. Could you speak ---?

12 MR. TRUJILLO:

13 Certainly. I'm sorry.

14 A. I'm a little hard of hearing.

15 MR. TRUJILLO:

16 Let me move this up over here. So as I
17 understand your testimony then, without this new
18 investor, the world that we know today, you would then
19 come back March 1st with a slots-only casino without
20 table games?

21 A. We'd probably come back March 1st with a temporary
22 interim facility for a slots casino, correct, ---

23 MR. TRUJILLO:

24 Okay.

25 A. --- subject to whatever applications we have to

1 make to this Board to do a temporary facility.

2 MR. TRUJILLO:

3 And who would be the operator of that
4 facility?

5 A. Sitting here today, Foxwoods Development Company.

6 MR. TRUJILLO:

7 Is it your testimony that they have the
8 capacity to live up to all of their agreements and
9 responsibilities today?

10 A. I don't know that for sure. We have also
11 considered and interviewed, as part of this whole
12 process, people who are just operators as opposed to
13 investors. And certainly, subject to whatever we
14 negotiate with Foxwoods, it's conceivable we would
15 bring in, if appropriate, depending on Foxwoods'
16 capacity, a new operator. And there are people that
17 approached us just for that purpose alone versus
18 investing.

19 MR. TRUJILLO:

20 I believe you said that the lease, what
21 you're currently contemplating was something along the
22 magnitude of 27 --- ultimately, 2,700 slot machines
23 and 85 table games; is that accurate?

24 A. Yes, 2,700 plus or minus the 80 to 100 table
25 games. Yes, that's what I said.

1 MR. TRUJILLO:

2 The one --- this is not a question but an
3 observation, and it came from both my visit at Parx
4 Casino when it was opened in December, which is I was
5 interested --- and that was before table games was
6 passed. There were a number of open slots, open
7 pieces of real estate throughout the facility which we
8 were told, in the event table games is passed, that is
9 where tables will go. If table games does not pass,
10 then we'll have a restaurant or some other use of that
11 space. It's just an observation, Mr. Jacoby.

12 What changed between September 1st and
13 the end of November that gives good cause for the
14 extension you're seeking today?

15 A. What changed was --- and this is probably not so
16 much as a change, which is why I'm hesitating. It's
17 the reality of the economy. As we went into the
18 marketplace with our investment advisors and found
19 that because of the economy, because of everything
20 else that's been happening out there and other
21 requirements for funds, that the traditional sources
22 of financing and investors were not necessarily
23 available. And if they were available, they had
24 different expectations as to the opportunities before
25 they commit their capital. And so what changed was,

1 whereas before, you know, normally you might plan a
2 project and then go to your lenders to get a
3 construction loan or perhaps you take out a loan on a
4 more traditional note. It became clear to us that the
5 tail had to wag the dog and that it was too important
6 --- if you're looking at somebody not just as a
7 third-party source of financing but as an investor, it
8 was too important that they have some say in the
9 evolution of that design and that time --- and that
10 the design comes and then the timeline is a function
11 of the design, frankly, Commissioner. So they go hand
12 in hand.

13 So when we first discussed the conditions on
14 August 28th on a more traditional note, it wouldn't
15 have been unusual to have the construction, at least
16 the schematics or whatever, developed at that point in
17 time and then go to the street for financing. In this
18 case, given the identity and the types of financing
19 you would get for this kind of a venture, it didn't
20 work like that because of the economy. And instead we
21 had to basically get our arms around the financing
22 investment process in order to fine-tune the design
23 process, and the design process bloated the timeline.
24 The timeline's really an interpretation of the design
25 and implementation. And then I --- you know, a

1 timeline in a vacuum can be developed instantly. It's
2 just a question of having it be real and reflect what
3 you need to do, whether it's a PennDOT or EPA or DEP
4 or whatever.

5 And that's what changed, if there was a change.
6 It was just going into the marketplace. We spent
7 countless hours --- and then again, I know that my
8 compatriots here across the aisle talk about lack of
9 progress. We have spent --- I can't count the number
10 of hours that either the professionals or some of the
11 principals have spent in this effort, whether it's the
12 negotiations with potential investors, whether it's in
13 the other things we've had to deal with, if it's
14 working with the partners to get them to coalesce.
15 So there wasn't so much a change as there was the
16 dynamic of the economy that we had to deal with that
17 we hadn't taken into consideration until we got active
18 with our investment advisor.

19 MR. TRUJILLO:

20 Well, how does the dynamic of the economy
21 affect the ability to develop --- and as I read the
22 conditions five and six, I believe that the
23 requirements were conceptual drawings. They weren't
24 construction documents. It wasn't full documentation.
25 It was conceptual drawings and architectural concepts.

1 And I don't --- I mean, quite frankly, given where the
2 economy was back in January of last year, I can't for
3 the life of me understand how there was any material
4 change between September or the end of August and the
5 end of November that wasn't fully in place back in
6 August. And then on top of that, I can't understand
7 how, given the dynamics of the economy as they existed
8 the entire 2009, why there would not be a plan B or a
9 plan C, and therefore, why you would not submit
10 conceptual drawings and the like as required by
11 conditions five and six that you would say to the
12 Board, based upon our assumptions that X, here's the
13 set of drawings. If that is not the case, then it may
14 --- then we may have to go to plan B.

15 But what we have here is zero, and that,
16 I think, is the most troubling thing to me, is that
17 six months later, virtually six months later, we have
18 nothing. And that's the part that if the standard is
19 some level of cause, much less good cause, it's
20 difficult for me to see how that --- how you can
21 possibly show that. That's not a question. I
22 understand. But if you want to respond to that,
23 that's fine.

24 A. We have found --- and I don't know whether it's
25 unique; I doubt that it is --- that the types of

1 people who invest, whether they're financing or
2 investing in casinos are very different types of, if
3 you forgive me, animals. It's not a very traditional
4 arms-length, objective process. A lot of the people
5 who are investors see the end product as a reflection
6 of themselves. Not only do they see the product
7 itself as a reflection of themselves, but they see the
8 --- they are conscious of the effect it would have on
9 their other operations.

10 So when you go out to the marketplace and want to
11 raise the kind of money that we found we needed to
12 raise, there aren't a lot of choices. There's a lot
13 of talkers, Commissioners. There aren't a lot of
14 doers. And so when we got down to the wheat and cut
15 the chaff out of there, the doers were people that
16 were doers for a reason. They were successful. They
17 were confident. They knew what they wanted to do and
18 to a great extent we had to work within whatever
19 constraints they were laying out, realizing that we
20 have our own endgame because of our obligations to
21 you. It's a delicate balance, so I'm not being
22 responsive or evasive, but it's been one hell of a
23 process.

24 I think it's hard to compare us, as an example,
25 with SugarHouse going to the market for financing when

1 it did. I don't know the details of it, but you've
2 got a Neil Bluhm there who's got vast contacts and who
3 himself is actively immersed in casinos on an
4 international basis. And it's a much different
5 situation that they had when they went to the market
6 to get their raise, whatever that was, more recently
7 than we did. But it was expensive, whatever he paid,
8 I suspect, from what I hear from our own investment
9 people because the book was on the street.

10 So you're right. I guess if we had decided that
11 we were prepared to do the bare minimum, you're right
12 that we could have come up with some temporary
13 facility slot plans and thrown them on the wall and
14 started that process. But I think the intention of
15 the principals of PDP was to do the best thing for the
16 City and everyone else. They're not lining their
17 pockets. Just the opposite. As a result of whatever
18 happens, as you can imagine, there'll be dilution of
19 interests, in addition to the economics of the
20 operational process. So none of the people who are
21 PDP are getting rich or richer or wealthy from this
22 process. What they're trying to do is they're trying
23 to get done what they committed to this Board that
24 they would do in the most expeditious and most
25 economical way possible, not for their own benefit but

1 for the benefit of the City and the taxpayers in the
2 Commonwealth.

3 MR. TRUJILLO:

4 Thank you.

5 CHAIRMAN:

6 Commissioner McCabe?

7 MR. MCCABE:

8 I just have one last question. What
9 happens to your investor and the terms sheet if we
10 pull your license and open up the process again? Is
11 he still committed to then go through the competitive
12 stage of applying for a license and then building the
13 casino, if you are successful at winning it again? Is
14 he still going to be the investor?

15 A. I can't speak for the investor, number one. And
16 number two, with the greatest of deference and
17 respect, I don't believe that such an action by this
18 Board would be appropriate on the circumstances, in
19 any event. But I can't speak for the investor,
20 Commissioner McCabe. It's a fair question.

21 MR. MCCABE:

22 Thank you.

23 CHAIRMAN:

24 Do we have Commissioner Angeli on the
25 phone? You're still trying to reach him? Okay. Let

1 me ask some questions, Mr. Jacoby. I have to be
2 honest with you, I am --- pardon me?

3 BRIEF INTERRUPTION

4 CHAIRMAN:

5 Commissioner Angeli?

6 UNIDENTIFIED SPEAKER:

7 Oh, hold on one moment.

8 CHAIRMAN:

9 Thank you.

10 OFF RECORD DISCUSSION

11 MR. ANGELI:

12 Hello?

13 CHAIRMAN:

14 Yes, Commissioner Angeli. Do you have
15 any questions for either the Foxwoods' lawyers or
16 Enforcement Counsel?

17 MR. ANGELI:

18 The only question I have is, you know,
19 the best-case scenario, if this thing moves forward,
20 do you expect any concerns, opposition or impediments
21 from the City to you moving forward with your design
22 and everything else you're going to do?

23 A. Is this question for me?

24 CHAIRMAN:

25 Yes.

1 A. The answer is no.

2 MR. ANGELI:

3 Okay. That's all I have.

4 CHAIRMAN:

5 Thank you. A couple of questions, Mr.
6 Jacoby, just to button down some information I think
7 that I'm not sure of the exact answer. You had talked
8 about this 14-page --- 14, 15-page terms sheet. When
9 do you expect that to be signed? And I'm assuming
10 that the signatories to that would be Philadelphia
11 Entertainment and this investor, slash, operator.
12 When exactly do you think that will be signed?

13 A. The answer to your second question is yes, who the
14 parties would be. And with respect to when, when the
15 parties agree that they have an agreement in principal
16 as to the terms sheet, I then need to visit with the
17 staff to walk through the terms sheet ---.

18 CHAIRMAN:

19 Give me a date, Mr. Jacoby.

20 A. I'm sorry? What?

21 CHAIRMAN:

22 Give me a date, this week, next week?

23 A. When an agreement in principal is reached.

24 CHAIRMAN:

25 Three weeks from now, a month from now?

1 A. When an agreement in principal is reached. So I
2 can go to sit down with BIE, sir.

3 CHAIRMAN:

4 So you don't have a date?

5 A. Oh, no.

6 CHAIRMAN:

7 You don't know whether it's going to
8 be --- you said earlier two things. It said it was
9 going to be next week that you would sit down with
10 BIE. Then I heard you say that it would be this week
11 that you would come to terms with the operator, did
12 you say that or did I mishear you?

13 A. I did. What I said to you was I would expect to
14 have a terms sheet agreed to in principle by the end
15 of this week, and then I would sit down next with BIE
16 to walk through the terms sheet to see if there's any
17 conditions of the terms sheet that they had a problem
18 with before we signed it.

19 CHAIRMAN:

20 Thank you. You talked earlier, in
21 response to Commissioner Coy's questions, about was
22 you, your law firm or anybody involved in negotiation
23 --- in the negotiations with the extension, and you
24 know, in my mind you gave a lawyerly answer, which
25 wasn't adequate for me. I read the Philadelphia --- I

1 believe it was the Philadelphia Inquirer article where
2 your law partner, Mr. Cozen --- it wasn't a
3 supposition that he was involved, he admitted, I
4 thought, that he was involved in the negotiation of
5 that language. Did you read that article?

6 A. I did.

7 CHAIRMAN:

8 Did you come to the same conclusion I
9 did?

10 A. From the article?

11 CHAIRMAN:

12 Yes.

13 A. No.

14 CHAIRMAN:

15 And what conclusion did you come to?

16 A. The conclusion that I came to was that Steve Cozen
17 had some input, whether he initiated it --- which is
18 why I responded to the word seek, I don't know whether
19 he initiated or whether it was solicited from him. He
20 had some input with respect to possible language to be
21 included in the bill, pursuant to which, subject to
22 the approval of this Board, Foxwoods can gain an
23 extension until December 31st, 2012. That's the way I
24 read that article.

25 CHAIRMAN:

1 Okay. I came to a different conclusion,
2 based on the quotes from Mr. Cozen. Let me move to
3 another area. You had mentioned that your agreement
4 that you reached with the Board on October (sic) 28th
5 as to the various conditions that you would comply
6 with were agreed to --- I believe the term you used
7 was in a vacuum?

8 A. Yes.

9 CHAIRMAN:

10 Again, I disagree with that. To
11 Commissioner Trujillo's line of questioning, there is
12 no vacuum out there as to the financial markets. I
13 don't agree that there's even a vacuum out there as to
14 the financial markets involving casino construction.
15 You represented yourself as --- you didn't use the
16 word expert, but you said that you have vast
17 experience in the construction industry and you are a
18 construction lawyer. That to me means, implies that
19 you're familiar with the markets out there, the
20 financial markets. In my mind --- and again, I could
21 be wrong. But in my mind, I think the financial
22 markets have, quite frankly, improved slightly since
23 August 28th of this year. So again, I'm concerned.

24 We're all concerned that we are getting
25 jerked around. And you know, you're making agreements

1 and not living up to them. And now you're asking for
2 an extension of time to March 1st. I think you heard
3 concern from this Board today that we don't have a
4 whole lot of faith, based on past practice --- and
5 that's all we have to go on, Mr. Jacoby, past
6 practice, past commitments, past commitments broken.
7 We don't have a lot of faith that you're going to be
8 able to meet those commitments. And what do you say
9 to us?

10 A. May I respond to what you said, first of all,
11 about the vacuum and then this construction lending?
12 When I used the term vacuum, what I intended to convey
13 --- and I apologize if I didn't --- was I had not seen
14 those conditions until they were handed to me across
15 the table on August 28th as a fait accompli, a
16 Hobson's Choice. So when I looked at them, I hadn't a
17 chance to give a moment's thought to --- you know, to
18 role play out, if I were going to come to you with
19 dates --- in fact, I asked someone. I don't know
20 whether it was one of the gentlemen here or somebody
21 else at the time. I said, are these negotiable? No.
22 The only thing that changed from what was submitted to
23 me was condition ten with respect to the community
24 agreement. So when I respectfully, Mr. Chairman, used
25 the word vacuum, it was in that context. So when I

1 looked at this thing, I looked at them solely in the
2 context of what was in my radar anyway, which is a
3 temporary or interim phase, slots type of facility.
4 And I'm not trying to be disingenuous with you, Mr.
5 Chairman, but that's what I meant when I used the
6 term.

7 With respect to the construction industry, I, for
8 one, believe with all due respect --- although I've
9 had a Judge tell me that it's all fruit, that it's
10 apples and oranges. And I think that you can't
11 compare a more traditional construction or even a
12 non-construction venture, although venture is a little
13 shaky, but I certainly don't have the expertise you
14 have in the financial area, but I don't think you can
15 compare a more traditional construction loan,
16 permanent takeout kind of marketplace with what went
17 on here with respect to the need to get an investor.
18 Usually your source of funds is not somebody who also
19 stays on after the financing is over, and that was the
20 dynamic that we couldn't anticipate. We went out to
21 the market to see who was willing to invest, whether
22 it's a venture fund, which is different. A venture
23 fund's a venture fund. They're going to look at it
24 much differently than somebody who's investing for
25 their own account.

1 And again, I'm not trying to be disingenuous, sir,
2 but that's what I'm talking about when I said that.
3 That was very surprising. And when I talk to the
4 people who advise us, who are well-regarded Wall
5 Street investment officers, they were very surprised
6 too with the feedback they were getting from people as
7 to the opportunities and the give-and-take. It
8 certainly wasn't a sellers' market. It was a buyers'
9 market, a lenders' market, investors' market.

10 I apologize. With respect to your last point, I
11 can't change what went on. I mean, you folks have
12 heard it ad nauseam with respect to the City. Okay.
13 That's yesterday's news. Let's move beyond that. We
14 talked about Strawbridges in the Gallery. Let's move
15 beyond that, whatever that was about. Let's move
16 beyond that.

17 I --- we picked up the ball around May of 2009.
18 That's when our firm first became involved. And I'd
19 like to hope, from the standpoint of the Board and the
20 staff, that things have improved materially in the
21 communications, and I guess, the disclosures. I know
22 you're very frustrated by the lack of transparency
23 today and I apologize. If I had my druthers, I could
24 tell you everything you want to know, which is why I
25 had hoped to push it off until, you know, the next

1 meeting. And I'm not trying to use that as an excuse.
2 I just know my hands are tied coming in here and I
3 made a lot of calls last night to see if I could get
4 some relief, and I couldn't. And I know you --- and
5 you're probably right to be cynical and jaundiced
6 about us, but I think you'll find that the end product
7 that we spent all this time and money and effort on
8 --- and I mean, I spent most of Sunday on a conference
9 call, negotiating. I think you'll find that the
10 deliverable is something that equals or exceeds what
11 your expectations are and what you have a right to
12 demand from us.

13 I know you've been patient. I know there's a hue
14 and cry to lynch us. I know there's a hue and cry,
15 we've had too much time, you should pull our license.
16 I know there's this issue with Steve Cozen with
17 respect to the article in the Inquirer. And I'm not
18 trying to be disingenuous with you. I just don't
19 think it's something I need to get involved in,
20 frankly. If you have those kinds of questions, if
21 they're relevant, then I guess Steve, you and I should
22 sit down and talk, whoever is interested.

23 But we're here because we're here in good faith.
24 Counsel for the investor, frankly, is well aware of
25 this, that we're here today. And all I can do is make

1 a commitment to you on a best-efforts basis, based on
2 my reputation of practicing law all this time, Mr.
3 Cozen's reputation, the principals of Foxwoods and of
4 WPI, and all I can do is ask you to just give us a
5 little more time on this thing. I know that BIE is
6 very frustrated with us. I've tried to be candid with
7 them, and I guess I haven't been as consistent as they
8 want. I thought I had, but that's fine. I'll work it
9 out with Cyrus and Dale.

10 So we're at your mercy. I mean, we understand
11 that we don't come here with --- we knew our backs
12 from the standpoint of the past history of this
13 project. We only believe that the solution we're
14 going to present to you will be very, very
15 satisfactory and a good result for the economy and for
16 the Board.

17 CHAIRMAN:

18 Two quick questions. I thought you had
19 said that there were basically two open items on the
20 terms sheet. I don't want to put words in your mouth.
21 The terms sheet's a 14 to 15-page document. How many
22 open items, in your mind, are on the terms sheet?

23 A. There's two groups. One is a very simple one.
24 That's just simple dollars and cents. It deals with
25 assumed liabilities. I think it's easily disposed of.

1 The other, the two or three groups we call --- and
2 I've had a conversation with someone about this on
3 staff, just generally --- liquidity issues, exit
4 issues, to make sure that we create sufficient
5 liquidity, particularly, Mr. Chairman, under condition
6 57, for the charities, to make sure that there's a
7 mechanism in place for them to, you know, exit if they
8 decide they want to. And those are the other
9 groupings; they're liquidities. Whether it's a
10 put-call type of issue and things like that or call
11 issues, they're not governance; they're liquidity
12 issues. And we think --- based on my meetings
13 yesterday, we think we're in a position to close out
14 those issues, too. We've gotten a consensus of our
15 partners, the parties who are decision-making
16 partners, as to what they want to do.

17 CHAIRMAN:

18 One final question. The negotiations on
19 the terms sheet, I assume that that's basically lawyer
20 to lawyer, their lawyers and you and other lawyers
21 representing Philadelphia Entertainment; is that
22 correct?

23 A. Substantially. There were negotiations to some
24 extent with some of --- the CFO, as an example, for
25 the proposed investor, at times the principal --- one

1 of the principals, and from time to time, two of our
2 principal parts, WPI also engaged in conversations.

3 CHAIRMAN:

4 Are these negotiations over the phone or
5 face to face?

6 A. Both, sir.

7 CHAIRMAN:

8 Has there been any negotiations, any
9 meetings between your principals --- and I'll be
10 specific, Mr. Cat Snyder or Reuben --- and the
11 principal or the operator of the entity that you're
12 talking about, has there been any face-to-face
13 meetings between them?

14 A. Yes.

15 CHAIRMAN:

16 How many?

17 A. I believe four.

18 CHAIRMAN:

19 Thank you. Any other questions?

20 MR. TRUJILLO:

21 Mr. Chairman? One thing you said really
22 concerns me, and I want to make sure that we
23 understand exactly what you meant. You said when we
24 saw the need to get an investor, I'd like you to
25 explain what you meant by your need to get an

1 investor.

2 A. We realized that for this project to move forward,
3 we needed substantial funds. Traditional lines of
4 funds weren't available to us for --- at the magnitude
5 we needed to build a casino in this current
6 environment. I know this environment has been around
7 for a while, but I'm not sure it has been and so we
8 knew that we needed not just --- it wasn't just a
9 question of going to a venture fund or going to a
10 financial institution to get funds. We needed to
11 bring somebody in who also was prepared to contribute
12 additional capital to the operation and also to bring
13 funds with them, whether it was third-party
14 institutional funds or whether it was their own
15 sources of funds. And that's --- the investor with
16 whom we're negotiating today has those
17 characteristics. And there aren't a lot of people out
18 there that have that capability.

19 MR. TRUJILLO:

20 When did you know that and when did you
21 inform the Board?

22 A. I believe we knew that --- it became apparent to
23 us in October or November, and I believe that in our
24 report on October 16th, we indicated that the
25 conditions were upside down from the standpoint of

1 that we really needed to have conditions five and six
2 coalesce with condition four because of what we
3 realized, the personality of --- not the personality
4 of this investor, but the personality of an investor
5 in this kind of business. And I believe I thought I
6 had all the updates with me. Do you guys have ---?

7 ATTORNEY MILLER:

8 Give him the October 16th ---.

9 A. Thanks. We discussed substantially in paragraph
10 numbered one --- it's a numbered paragraph in our
11 letter to the Chairman on October 16th. I think it
12 was a consistent decision from the --- do you have, I
13 guess, October 1st here, too?

14 ATTORNEY MILLER:

15 It's right underneath.

16 A. It's right underneath it? Thanks, Dale. Okay.
17 Now, on October 1st, we're advising that we're in the
18 process of going out in the marketplace, and then on
19 October 16th we're starting to give the Board notice
20 that we're finding this dynamic.

21 MR. TRUJILLO:

22 Thanks. Just to be clear, I don't ---
23 I'm not seeing where --- I'm looking at page two under
24 both development efforts and financing efforts of the
25 October 1, 2009 letter, and I am not seeing where it

1 says there that you need to get an additional investor
2 to move forward.

3 A. On October 1, what we're announcing in paragraph
4 numbered two is that we've retained --- at the time we
5 said the Blackstone Group, which is our advisor, by
6 the way, and they started the process. It's the
7 October 16th letter that we submitted to the Chairman,
8 pursuant to the conditions that talks about what we're
9 starting to find in the marketplace. It's about two
10 weeks after this October 1st letter.

11 MR. TRUJILLO:

12 Thank you.

13 CHAIRMAN:

14 Any other questions? Thank you. I'd
15 also like to note, as a matter of record, that several
16 legislators, specifically Senators Farnese and Stack
17 and Representatives Mike O'Brien, McGeehan, John
18 Taylor, and Josephs were granted amicus status in this
19 matter. The Board will consider their filings as
20 well, Mr. Graci, notwithstanding your earlier
21 comments. And this will conclude the public hearing.
22 We're going to recess into executive session to
23 further consider these matters. We estimate that it
24 will take us somewhere around 30 to 45 minutes for our
25 executive session. Thank you.

1 A. Thank you.

2 EXECUTIVE SESSION HELD

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HEARING CONCLUDED AT 12:30 P.M.

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CERTIFICATE

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I hereby certify that the foregoing

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proceedings, hearing held before Chairman Fajt, was

11

reported by me on 01/27/2010 and that I Cynthia Piro

12

Simpson read this transcript and that I attest that

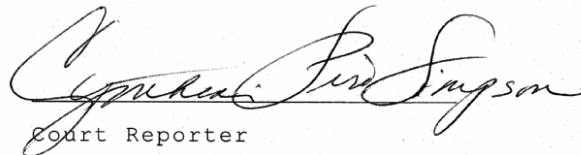
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this transcript is a true and accurate record of the

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proceeding.

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Cynthia Piro Simpson
Court Reporter

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