

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: GREENWOOD GAMING AND ENTERTAINMENT, INC.'S

PETITION TO INTERVENE

\* \* \* \* \*

PUBLIC HEARING

\* \* \* \* \*

BEFORE: WILLIAM RYAN, CHAIRMAN

Gregory C. Fajt, James B. Ginty, Annmarie  
Kaiser, Keith R. McCall, Anthony C.  
Moscato, John McNally, Members; Christopher  
Craig, Representing Robert M. McCord,  
Robert Coyne, Representing Secretary to  
Department of Revenue Daniel P. Meuser and  
Mathew Meals, Representing Secretary of  
Agriculture George Greig

HEARING: Wednesday, March 13, 2013  
10:00 a.m.

LOCATION: Strawberry Square Complex  
2nd Floor  
Harrisburg, PA 17101

WITNESSES: Thomas Bonner, Esquire

Reporter: Jennifer T. Alves

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## A P P E A R A N C E S

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

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I N D E X

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CHAIRMAN:

We can now begin and today we have a number of public hearings on our schedule. The first and second public hearings listed on the agenda pertain to Greenwood Gaming and Entertainment, Inc.'s Petitions to Intervene in two Valley Forge petitions pending before the Board. Given the amount of overlap in these two matters I think it would be appropriate to consolidate the two requests for Greenwood for the purpose of giving them consideration. May I have such a motion?

MR. FAJT:

Mr. Chairman, I move the two requests of Greenwood to intervene in Valley Forge's petitions as listed on today's agenda be consolidated for the purpose of hearing and consideration.

MR. GINTY:

Second.

CHAIRMAN:

All in favor?

ALL SAY AYE

CHAIRMAN:

Opposed? The motion carries. I will

1 therefore ask all fact witnesses presenting evidence  
 2 today for Greenwood Gaming, Valley Forge and the  
 3 Office of Enforcement Counsel to please come forward.  
 4 Gentlemen, I would ask if you have any witnesses who  
 5 are not attorneys, that is individuals who are  
 6 presenting testimony or who are going to answer  
 7 questions I would ask that you have those individuals  
 8 stand so they can be sworn.

9 -----

10 WITNESSES SWORN EN MASSE:

11 -----

12 CHAIRMAN:

13 I'm sorry, sir?

14 ATTORNEY BONNER:

15 I'll be sworn in even though I'm an  
 16 attorney who will be presenting testimony.

17 CHAIRMAN:

18 That's okay. You don't have to be  
 19 sworn.

20 ATTORNEY BONNER:

21 You're going to trust me?

22 CHAIRMAN:

23 We make exceptions for attorneys, but  
 24 it's just the way we do things. Okay. Greenwood, you  
 25 may begin.

1                   ATTORNEY STEWART:

2                   Thank you, Mr. Chairman. May it please  
3 the Board, my name is Mark Stewart with the law firm  
4 of Eckert Seamans. That's S-T-E-W-A-R-T. Here today  
5 on behalf of Greenwood Gaming and Entertainment. As  
6 the Chairman noted, we are here on our Petition to  
7 Intervene in the proceedings with Valley Forge where  
8 they have requested to amend their previously approved  
9 Category 3 access plan. Our intervention is unopposed  
10 by the Office of Enforcement Counsel (OEC) and the  
11 Board has previously granted Greenwood intervention in  
12 the proceedings on Valley Forge's original and  
13 currently in place access plan.

14                   We fully participated in that proceeding  
15 and the pending petitions by Valley Forge seek to  
16 modify and expand the portions of that same plan that  
17 we had previously been a party to. In the original  
18 proceedings Valley Forge did not oppose our  
19 intervention, but it does now. However, we would  
20 submit that the law is very clear that Greenwood has  
21 standing to intervene in these matters as a Licensee  
22 and a competitor that stands to suffer competitive and  
23 pecuniary harm if the petitions are granted.

24                   There are numerous cases from the  
25 Commonwealth Court and a case from the Supreme Court



1 where the financial interest of a competitor have been  
2 found sufficient in firm standing. In our petitions  
3 we have cited Bensalem Racing Association against the  
4 Harness Racing Commission, which of course, we  
5 litigated as Greenwood Racing. And that is only the  
6 most recent of these cases. There are numerous others  
7 including MEC Pennsylvania Racing versus the  
8 Thoroughbred Racing Commission, which was a very  
9 analogous case and we're happy to get into all of  
10 those types of discussions, legal discussions, when  
11 the time is appropriate.

12 In these various cases the Court found  
13 that facts such as a competitor's loss or dilution of  
14 revenues, loss of attendance, sharing of the same  
15 geographic market and being an existing competitor of  
16 the proponent were all sufficient to establish and  
17 confirm standing. In this case Greenwood has asserted  
18 in its petitions and we'll represent evidence of  
19 through Mr. Bonner the very same interests and the  
20 very same harm that was alleged by both Penn National  
21 and MEC Racing in the MEC Racing case.

22 Interestingly enough, I represented MEC  
23 in that case. My colleagues on the opposing side  
24 represented Penn National in that case where we were  
25 both on the same side. I think I refer to them as my

1 learning colleagues, but, you know, we'll see how that  
2 works out this time. In any event, both parties  
3 allege a loss of revenue. Both parties were found to  
4 have standing and that's really what the Board's  
5 regulation requires. It's a standing test, the  
6 traditional standing test, that you should have a  
7 substantial right of immediate interest.

8           Our Supreme Court in William Penn stated  
9 that when applying that test you must assume the  
10 unlawful nature of the proposed action. And the real  
11 question is only whether the person seeking to  
12 intervene is a proper person to contest it. So here  
13 for the purpose of our analysis today the Board needs  
14 to assume that the petitions proposed by Valley Forge  
15 present violations of the Category 3 requirements.  
16 And the only question is whether Greenwood as a  
17 competitor who will suffer financial harm from those  
18 violations is the proper person to intervene. With  
19 that I will call Tom Bonner as our witness. Mr.  
20 Bonner, can you please ---?

21           CHAIRMAN:

22           Mr. Bonner, please state your name and  
23 spell your last name for the record.

24           ATTORNEY BONNER:

25           Certainly, Chairman. Thomas Bonner,

1 B-O-N-N-E-R.

2 CHAIRMAN:

3 And what's your position, sir?

4 ATTORNEY BONNER:

5 I am general Counsel of the Greenwood  
6 Racing and their parent company, major operating  
7 subsidiaries. I'm also a member of the Board of  
8 Directors of those same companies.

9 CHAIRMAN:

10 Thank you.

11 DIRECT EXAMINATION

12 BY ATTORNEY STEWART:

13 Q. Mr. Bonner, in your positions as you just  
14 described, are you familiar with Parx's gaming  
15 operations?

16 A. I am.

17 Q. And are you familiar with the gaming market in  
18 southeastern Pennsylvania?

19 A. Yes, I am.

20 Q. Can you please describe the nature of the gaming  
21 market in southeastern Pennsylvania?

22 A. It's primarily a convenience driven market as  
23 opposed to a destination market.

24 Q. So in your experience when you say convenience  
25 driven what is the primary driver of the patrons who

1 attend or visit the Casino?

2 A. The primary driver is proximity of that person's  
3 residence to the casino and the ease of traveling from  
4 that person's residence to the casino.

5 Q. And what has been Parx's specific experience with  
6 customers in this regard?

7 A. We are clearly a convenience property of ---  
8 about 71 percent of our rated customer play comes from  
9 people who live in a 25 mile radius of the Parx Casino  
10 location.

11 Q. Based on your experience do you believe that  
12 Valley Forge would have a similar type of patronage?

13 A. I mean, I think it would even though they're a  
14 Category 3. I think because they're located in a  
15 heavily populated area like we are I would imagine  
16 that their characteristics would be more similar to a  
17 convenience market than perhaps a destination of a  
18 remote location. I'm not certain, but I'm just  
19 thinking that convenience would be key for that  
20 property as well.

21 Q. And can you tell us approximately what the  
22 distance is between Parx and Valley Forge Casino?

23 A. Twenty-five (25) miles or so, maybe a few less  
24 than 25. I'm not exactly certain.

25 Q. Is there easy access between the two properties?

1 A. Yes. To get from Parx to Valley Forge it's  
2 pretty much a straight shot of about 25 or 26 miles on  
3 the Pennsylvania Turnpike. Parx is within a couple  
4 miles of the Turnpike exit and Valley Forge similarly  
5 is within a couple miles of the exit, close to the  
6 Valley Forge location. So, it's a pretty easy drive.

7 Q. In terms of the 25 mile customer area that you  
8 described would you say that the two --- those areas  
9 to the two casinos overlap?

10 A. They do. Because we are about 25 miles from each  
11 other probably not half, but probably more than a  
12 third of our prospective 25 mile radii would overlap.

13 Q. And do you consider Valley Forge to be a  
14 competitor of Parx?

15 A. Yes, we do.

16 Q. On the screen I'm showing you what's been marked  
17 as Parx Exhibit One.

18 (Parx Exhibit One marked for  
19 identification.)

20 BY ATTORNEY STEWART:

21 Q. Do you recognize Exhibit One?

22 A. I do.

23 Q. Can you tell us what Exhibit One reflects?

24 A. Yes. Exhibit One depicts the 25 mile radii  
25 around Parx and Valley Forge and where they intersect.

1 So, to the right the green circle is the Parx radius.  
2 To the left the reddish circle is the Valley Forge  
3 radius and in the middle the orange intersecting  
4 segment is where those two areas overlap.

5 Q. There's also an area on the Exhibit One that's  
6 designated as Valley Forge competitive area.

7 A. Right.

8 Q. Can you discuss a little bit about what that ---  
9 what it is?

10 A. Yeah. That's just an area that we've identified  
11 for marketing purposes as the area closest to Valley  
12 Forge in which we believe we compete for customers  
13 with Valley Forge.

14 Q. Can you tell us how many active members of Parx  
15 Players Club have addresses in the competitive area?

16 A. Approximately 11,000 members of our total active  
17 player base are within that area and we define active  
18 as having visited us in the last 13 months.

19 Q. Historically on a revenue dollar basis what did  
20 the Valley Forge competitive area represent for Parx's  
21 overall business?

22 A. Before Valley Forge opened about \$23.5 million of  
23 our business was coming from that area based on last  
24 year's performance.

25 Q. And has Parx seen an impact in its gross gaming

1 revenue in the Valley Forge competitive areas since  
2 the opening of the Valley Forge Casino?

3 A. Yes. That \$23.5 million figure dropped to about  
4 \$19.5 million after Valley Forge opened. So, it was  
5 about a \$4 million decline in total gaming revenue  
6 from that region after Valley Forge opened.

7 ATTORNEY STEWART:

8 One moment, please. Excuse me, Mr.  
9 Chairman. I'm just trying to ---.

10 CHAIRMAN:

11 Take your time.

12 ATTORNEY STEWART:

13 It's really an operator error I'm sure.  
14 It's always the most difficult part of the  
15 presentation. In any event I believe the hard copy  
16 was passed out to the Commissioners and Counsel  
17 received a hard copy last night.

18 BY ATTORNEY STEWART:

19 Q. Mr. Bonner, I'm showing you what's been marked as  
20 Parx Exhibit Two.

21 (Parx Exhibit Two marked for  
22 identification.)

23 BY ATTORNEY STEWART:

24 Q. Do you recognize Exhibit Two, Mr. Bonner?

25 A. Yes, I do recognize it.

1 Q. Can you please explain what Exhibit Two shows?

2 A. Yes. Exhibit Two is a graph of the percentage of  
3 total rated gaming revenue that came from Valley Forge  
4 from the first quarter of 2011 through the first  
5 quarter of 2013.

6 Q. Okay. And, obviously, it shows the decline that  
7 you discussed previously?

8 A. It does. The green bars on the left are bigger  
9 than the blue bars on the right. That means less  
10 revenue for the blue bars.

11 Q. As you know, Parx is seeking to intervene in the  
12 proceedings involved in Valley Forge's access plan.  
13 Are you familiar with the petitions that Valley Forge  
14 has filed?

15 A. Yes, I've reviewed them.

16 Q. And did Parx participate as a party in the  
17 proceeding on Valley Forge's original access plan?

18 A. Yes, we did.

19 Q. What do you see the impact being Valley Forge ---  
20 if Valley Forge is permitted to amend its access plan  
21 in ways that do not comply with the Gaming Act and  
22 facilitate unlawful casino entry by patrons?

23 A. If that were permitted, we think that the revenue  
24 declines that we've experienced in the Valley Forge  
25 competitive region would increase because we've seen



1 the decline, it's up on the screens now, with the  
2 access program as it's presently constituted. I  
3 believe that granting the petitions filed by Valley  
4 Forge would relax those access requirements and make  
5 it easier for folks to gain access to casinos if you  
6 want to use that term.

7 And I think if that were to happen because  
8 convenience is such a key factor in the Pennsylvania  
9 Gaming environment we think that that would accelerate  
10 the decline that we've experienced to date.

11 Q. And do you believe that some of the active  
12 members of Parx's Players Club and the Valley Forge  
13 competitive area may be more likely to frequent Valley  
14 Forge Casino instead of Parx?

15 A. Well, following up on that hypothetical, if it's  
16 more convenient for those folks either to get to  
17 Valley Forge or get into the casino once they get  
18 there we would anticipate that there would be some of  
19 those folks who might find Valley Forge a more  
20 desirable option than Parx under those circumstances.

21 ATTORNEY STEWART:

22 Thank you. We have no further questions  
23 for Mr. Bonner.

24 CHAIRMAN:

25 Does Valley Forge have any questions?

1                   ATTORNEY FABIUS:

2                   A couple quick questions, if I may.

3                   CHAIRMAN:

4                   And state your ---.

5                   ATTORNEY FABIUS:

6                   This is Michael Fabius from the law firm  
7 Ballard Spahr. With me is Kevin Hayes from Doherty  
8 Hayes representing Valley Forge.

9                   CHAIRMAN:

10                  Okay. Spell your last name, sir, for  
11 the record.

12                  ATTORNEY FABIUS:

13                  F as in Frank, A, B as in boy, I-U, S as  
14 in Sam.

15                  CHAIRMAN:

16                  Okay. Go ahead.

17 CROSS EXAMINATION

18 BY ATTORNEY FABIUS:

19 Q. Mr. Bonner, I noticed that the 25 mile range was  
20 --- I'm looking at Parx Exhibit One.

21 A. Okay.

22 Q. I noticed that the 25 mile range from SugarHouse,  
23 Harrah's and Sands are not shown in the Exhibit?

24 A. That's correct. They're not.

25 Q. Is it fair to assume that they overlap as well

1 within the competitive area?

2 A. Yes, as indicated on the map they would overlap  
3 to a certain extent.

4 Q. And you said there's --- you testified to a \$4  
5 million difference in revenues. Is it fair to assume  
6 that it's less than one percent of your total gaming  
7 revenue?

8 A. Yeah. The \$4 million decline is eight-tenths of  
9 a percent based on a \$500 million gross revenue, which  
10 is about what we did last year and we'll do a little  
11 bit better we hope this year.

12 ATTORNEY FABIUS:

13 Thank you. That's all I have.

14 CHAIRMAN:

15 Does the OEC have any questions?

16 ATTORNEY STUART:

17 No, sir, we do not.

18 CHAIRMAN:

19 Does Valley Forge have --- are you  
20 finished, Counsel?

21 ATTORNEY STEWART:

22 Yes, Your Honor.

23 CHAIRMAN:

24 Okay. Valley Forge?

25 ATTORNEY FABIUS:

1                   Thank you. Good morning, Commissioners.  
2 Michael Fabius from Ballard Spahr representing Valley  
3 Forge. Here the battle continues although the war is  
4 over. We're not here to decide whether or not Valley  
5 Forge will open for business. Valley Forge is open  
6 for business. What we've heard from Greenwood today  
7 is, you know, that their perceived injury, competitive  
8 injury, with Valley Forge being open for business in  
9 King of Prussia. The issue here is a legal question.

10                   It's a legal question the Board's  
11 already answered and it's the interpretation of  
12 Category 3 restrictions and the degree to which they  
13 reflect protections. I believe the Board's been  
14 handed a hand out --- these are highlights from the  
15 Board's brief to the Commonwealth Court in the access  
16 plan appeal, Greenwood Gaming Entertainment, Inc.  
17 versus Pennsylvania Gaming Control Board where the  
18 same arguments we made. And the Board, you know,  
19 explained in no uncertain terms that the Category 3  
20 access restriction, I quote, has nothing to do with  
21 competition concerns.

22                   So here we have, you know --- to put it  
23 in simple terms, if a TGIF Fridays opens up next to an  
24 Outback Steakhouse that doesn't give Outback  
25 Steakhouse a right to intervene to make sure TGIF

1 Fridays kitchen is up to code. The question is  
2 whether or not TGIF Fridays or Parx has an interest in  
3 Category 3 access restrictions and there's no  
4 competitive protections there. The purpose of the  
5 Category 3 access restrictions is to ensure a nexus  
6 between the resort amenities at Valley Forge and the  
7 casino amenity.

8           The General Assembly said, you know, in  
9 the Gaming Act itself, one of the purposes of the  
10 Gaming Act is to enhance the flow of tourism to the  
11 Commonwealth and that's what, you know, the Category 3  
12 access restrictions are meant to do. Counsel, I still  
13 consider him a learning colleague. Counsel for  
14 Greenwood cited to several Appellate cases that arise  
15 in the racing context. That's a very important  
16 difference between the Racing Law and the Gaming Act.  
17 The Racing Law has an expressed statutory provision  
18 that provides for, quote, equal rights between  
19 racetrack facilities that share a primary market area.  
20 There is no equal right to the market area in the  
21 Gaming Act.

22           There is only a 15 mile protective zone  
23 where a Category 3 location can't be located as was  
24 already litigated. And as Mr. Bonner conceded, Valley  
25 Forge is about 10 miles in excess of the 15 mile

1 protective zone. So, there's also a second issue here  
2 with regards to the scope of Greenwood Gaming's  
3 intervention. I don't want to get too far into that  
4 because it's only relevant to the extent Greenwood  
5 would have standing, but Greenwood in its proposed  
6 Answer, which is incorporated into the petition, wants  
7 to ask permission to bring an affirmative claim of  
8 misconduct.

9                   Essentially they feel we're doing  
10 something wrong. They want to turn the petition into  
11 an enforcement action so that there's hearing  
12 discovery on Valley Forge's conduct. The Gaming Act  
13 has a provision in place. BIE is the Board's  
14 investigator. OEC is the prosecutor. If there's any  
15 belief as to a violation it should be reported to BIE  
16 who, if appropriate, would investigate and we would  
17 cooperate with that investigation. It's not  
18 appropriate for the proceeding that we have here.  
19 With that I'll take any questions.

20                   CHAIRMAN:

21                   Does Greenwood have any response,  
22 questions of Valley Forge?

23                   ATTORNEY STEWART:

24                   We certainly do have a response to some  
25 of the comments that Valley Forge has made. First and

1 foremost, the attempt to limit the competition  
2 standing cases to the Racing Act and to the equal  
3 rights provision is simply unfounded and meritless.  
4 Bensalem Racing Act involved --- case involved ---.  
5 Or Association. Excuse me. It involved a shared  
6 primary market area issue. But that issue is not at  
7 all involved in the MEC Racing case and it was purely  
8 a competitive harm case where the Commonwealth Court  
9 found that the loss of attendance at a racetrack at  
10 the Meadows due to a new racetrack up in Erie and the  
11 loss of potential revenue at the Meadows was  
12 sufficient to convey standing onto the Meadows to  
13 intervene in the Presque Isle licensure case.

14                   The same was held for Penn National,  
15 which has an OTB in the vicinity of Erie and that  
16 business harm --- that threatened financial harm was  
17 enough to have a substantial direct and immediate  
18 interest in the proceeding. The same has held true in  
19 the various liquor license cases including El Rancho  
20 Grande at the Supreme Court level, two cases involving  
21 the Malt Beverage Distributors Association commonly  
22 referred to as the Wegmans case and Sheetz one case  
23 where beer was trying to get into grocery stores and  
24 the beer distributors in the surrounding area who  
25 would be harmed by that financially were found to have

1 sufficient interest to intervene in the proceeding.

2                   So, you really can't limit it that way  
3 nor can you limit it by basically claiming that the  
4 access requirements have nothing to do with  
5 competition. We obviously disagree with that  
6 analysis. We may agree that the purpose of a Category  
7 3 License in and of itself was to promote tourism, but  
8 we would maintain that the purpose of the access  
9 restrictions was to make sure that the Category 3  
10 Licensees were not mini Category 2s and to protect on  
11 the operating condition side of the license the  
12 Category 1 and Category 2 facilities.

13                   The distance requirement purely goes to  
14 where a license may be located and the comments of the  
15 Supreme Court and referenced by Counsel in regard to  
16 that distance restriction were limited to the  
17 licensing and location context, not the operating  
18 condition. But ultimately frankly the disagreement  
19 over the purpose of those access restriction is  
20 irrelevant because the Commonwealth Court has held  
21 that pecuniary harm in and of itself separate and  
22 apart from the interest in fair competition is enough  
23 to confer standing.

24                   So, that would be our retort on those  
25 issues. We would agree that Valley Forge's comments



1 against Greenwood's new matter is beyond the scope of  
2 the proceeding to the extent that it goes to our  
3 Answer once we're actually in the case. That said, we  
4 believe they overstated what we've actually done. We  
5 have not filed a complaint, although we believe we  
6 could because the general rules of administrative  
7 practice and procedure give us a right to file a  
8 complaint and the Board's regulations on complaints  
9 say that they supplement, they do not supersede the  
10 GRAPP (phonetic) rules.

11 But regardless, we have not done that.  
12 All we have done is deny an averment in their petition  
13 where they say that they have been and will continue  
14 to comply with the access --- or with the issuance in  
15 the activation procedures approved by this Board for  
16 access to membership cards. We denied that and then  
17 we filed some new matter, which explained --- further  
18 explained and provided details to support our denial.  
19 That's all that's happened there, but, again, we would  
20 agree that that is an issue for another day. Thank  
21 you.

22 CHAIRMAN:

23 OEC, anything to add?

24 ATTORNEY STUART:

25 We have no objection to the intervention

1 proceedings moving forward with Parx involved, but  
2 it's ultimately at the Board's discretion.

3 CHAIRMAN:

4 Okay. Thank you. Does the Board have  
5 any questions? Greg?

6 MR. FAJT:

7 Thank you, Mr. Chairman. As I  
8 understood it, Parx --- Valley Forge 25 miles away  
9 from your current facility; correct?

10 A. Roughly.

11 MR. FAJT:

12 How far is Parx from the northern most  
13 Applicant for the Category --- the new Category 2  
14 License in Philadelphia?

15 A. I think the northern most Applicant is within a  
16 mile of SugarHouse, so 10 miles, 12 miles. I'm not  
17 certain, Commissioner.

18 MR. FAJT:

19 And do you plan on intervening in that  
20 process?

21 A. We made no decision about that. I think that's a  
22 decision that would be made if this Board were to  
23 award the license to somebody in that vicinity. So, I  
24 can't prejudge that, Commissioner. I'm not trying to  
25 be evasive.

1                   MR. FAJT:

2                   No, understood. Let me ask a question  
3 about the 4.7 percent and the 3.9 percent to make sure  
4 I understand it. And this kind of dovetails on Mr.  
5 Fabius' question. On the revenue side I think you had  
6 said that you have 11,000 players give or take within  
7 the Valley Forge competitive area that you drew, rated  
8 players.

9 A. 11,000 customers who have player cards.

10                   MR. FAJT:

11                   Yes.

12 A. Correct.

13                   MR. FAJT:

14                   Exactly. And what percentage --- and if  
15 you can't give me the answer for competitive reasons,  
16 I understand, but what percentage of your total active  
17 players is represented by that 11,000?

18 A. 3.3 percent of the active total customer base  
19 with player cards.

20                   MR. FAJT:

21                   Got it. Okay. And I noticed in the  
22 chart that you gave us, the pre-Valley Forge average  
23 --- and, again, I know this is revenue, not numbers,  
24 but if I read this chart correctly, 4.7 percent of  
25 your total revenues came from people within this

1 Valley Forge competitive area and then post-Valley  
2 Forge opening it went down to 3.9 percent of your  
3 total revenue from people in that area. Am I reading  
4 that correctly?

5 A. That is correct, Commissioner.

6 MR. FAJT:

7 Okay. I also noted that, you know,  
8 within the last quarter, 2013 I guess you have here Q1  
9 and 2012 Q4 that we've noticed throughout the state a  
10 slight reduction in overall slot revenue. Is there  
11 any way you can overlay that overall slot revenue  
12 reduction that we've seen into this chart so we're  
13 really comparing apples and apples? Because I think  
14 everybody in this room knows that, you know, initially  
15 our slot revenues were going like this (indicating)  
16 and yours were, too. And over the last two, three,  
17 four months there's been a slight downturn in revenue,  
18 competitive forces, whatever else you want to  
19 attribute it to. So, I'm trying to get an apples to  
20 apples comparison.

21 A. Commissioner, there are people much smarter than  
22 I who can do that, who can present that to you.

23 MR. FAJT:

24 Great. Thank you.

25 ATTORNEY STEWART:

1                   We can represent that there's not a  
2 similar decrease in rated play in the other areas of  
3 Parx's performance. This was something that they've  
4 identified as unique to the Valley Forge competitive  
5 area.

6                   MR. FAJT:

7                   Okay. But if you could lay into that  
8 your reduction over the last, you know, month or two,  
9 or three --- and I think your slot revenues, if I'm  
10 recalling correctly, have gone down. I'd like to see  
11 that laid into that chart if I could.

12 A. We can do that.

13                   MR. FAJT:

14                   Great. Thank you very much.

15 A. We'll present that.

16                   CHAIRMAN:

17                   Anyone else? Ex Officio members? Go  
18 ahead, Tony.

19                   MR. MOSCATO:

20                   When you issue a Players Club card ---  
21 and you said that there's about 11,000 of your Players  
22 Club card members. Do you often issue cards to people  
23 that don't play regularly?

24 A. Unfortunately we do. We have a lot of folks ---  
25 we may be running a promotion that we're providing an

1 incentive for someone to come in and get a card and  
2 many of those folks come in, get a card and don't  
3 become regular customers of the casino.

4 MR. MOSCATO:

5 And is there any way of telling if these  
6 11,000 --- how many might fall into that category?

7 A. Well, we consider these active players, as I had  
8 mentioned, folks who've given us a visit within the  
9 last 13 months. We have many others who haven't given  
10 us a visit that recently and we have marketing  
11 programs that reach out to those folks and try to get  
12 them back, but this --- the numbers we've given you  
13 are numbers of people we consider to be active  
14 customers.

15 MR. MOSCATO:

16 Within the last three months?

17 A. Thirteen (13).

18 MR. MOSCATO:

19 Thirteen (13). Okay. Thank you.

20 CHAIRMAN:

21 Chris?

22 MR. CRAIG:

23 Just real quickly. I guess kind of the  
24 first comment. I share a little bit of the, I guess,  
25 questions or skepticism that Commissioner Fajt raised

1 about the different exterior factors that can affect  
2 competition. It really has nothing to do with Valley  
3 Forge's presence and I think any additional  
4 information that could be provided, you know, either  
5 clarifies that or at least acknowledges bad economic  
6 times, or construction on the road or whatever else  
7 could affect that.

8                   On the other hand, I just --- I guess I  
9 take a little bit personal interest in some of this  
10 because of the past involvement. I was wondering if I  
11 could ask Counsel for Valley Forge. Would you agree  
12 at least that each category, Category 1, 2 and 3, are  
13 associated with unique and particular requirements  
14 that they have to meet in order to satisfy the  
15 definition of category?

16                   ATTORNEY FABIOUS:

17                   Both Category 1 and Category 3, for  
18 example, have unique restrictions to those categories.  
19 Category 3s are a smaller resort casino that whether  
20 the casino amenities intended to complement and  
21 enhance the existing amenities. So, there are access  
22 restrictions in terms of getting onto the casino  
23 floor, making sure the person's already effectively a  
24 patron of the resort. Category 1 to further  
25 illustrate your point has special rules in both the

1 Gaming Act and the Racing Law for their racing  
2 behavior and the conduct of racing.

3           To the extent that, you know, the unique  
4 nature of restrictions on one category of license  
5 gives the other categories of license standing to  
6 intervene. It works both ways. Race restrictions are  
7 unique to Category 1s and to the same extent they  
8 would be for the benefit of the other categories by  
9 the extension of the same logic.

10           MR. CRAIG:

11           Well, for example, if for --- a Category  
12 1 facility has to have an active and existing  
13 agreement with the horsemen in order for them to  
14 operate their slot machines. If that agreement  
15 doesn't exist or if it's no longer valid those slot  
16 machines cannot operate. If a Category 1 venue were  
17 to disregard that and continue to operate their slot  
18 machines would you say that that --- even though the  
19 purpose of that was actually to protect the horsemen  
20 would you say that their ability to avoid that  
21 restriction would give them a competitive advantage  
22 over, let's say, Harrah's?

23           ATTORNEY FABIUS:

24           My first response is I don't think that  
25 the Gaming Control Board would allow that circumstance



1 to continue where they are not meeting the Gaming Act.  
2 There would be an enforcement action that would ---  
3 you know, if for whatever reason they didn't have the  
4 agreement they would have one shortly thereafter the  
5 Gaming Control Board and the Racing Commission become  
6 aware. You know, does that answer your question?

7 MR. CRAIG:

8 I think that's a fair response. I mean,  
9 the point that I'm trying to make is that while the  
10 purpose of different restrictions may be different,  
11 for example, you have to have --- a hotel has to have  
12 a certain number of rooms, it has to meet those  
13 certain requirements of ownership, et cetera, in order  
14 to satisfy a Category 3 License. Category 1s have to  
15 have a racing agreement in place.

16 Category 2s have to be within certain  
17 locations and they can't be you and they can't be a  
18 Category 1, but to the extent that restrictions that  
19 are unique to a particular category and start morphing  
20 into something other than what they're supposed to be  
21 doing would have a competitive impact whether or not  
22 the purpose of that particular restriction was to  
23 protect a Category 1 or a Category 2 or 3. I mean, I  
24 guess that's the point that I guess I wanted to  
25 illustrate for your, you know, comment or response.

1                   ATTORNEY FABIUS:

2                   I hear what you're saying. I wouldn't  
3 step to that ultimate conclusion that if one person  
4 accesses the gaming floor in Valley Forge in violation  
5 of Category 3 access restrictions is that a  
6 competitive injury to Parx? The underlying question,  
7 the petitions that they're seeking to intervene in, we  
8 don't want to get into those because they're not in  
9 front of us today.

10                   MR. CRAIG:

11                   Understood.

12                   ATTORNEY FABIUS:

13                   The question's ultimately about fair  
14 market value. We've proposed resort memberships, new  
15 resort memberships, at a certain price point and the  
16 issue is going to be whether that price point is  
17 correct. They're going to say the price point is not  
18 correct. We're going to say it's correct. I hadn't  
19 heard any evidence today as to why an incorrect price  
20 point creates a competitive injury.

21                   MR. CRAIG:

22                   And I'm not getting into the underlying  
23 merits. The point I'm trying to make is the blanket  
24 assertion that restrictions on categories is not  
25 intended to protect the other competing categories may

1 be a valid point, but it kind of ignores the fact that  
2 to the extent that a venue does not comply --- and I'm  
3 not suggesting you're not, but to the extent that a  
4 venue doesn't comply or is able to push the envelope  
5 that may have a competitive impact.

6           My last question to you is really one of  
7 ignorance because I don't consider myself an expert on  
8 liquor law, but you used the example of an Outback  
9 Steakhouse and I forgot the other type of --- Ruby  
10 Tuesdays or whatever the hell --- operating next door  
11 to each other. Are you aware of whether or not  
12 competing entities like that would have standing to  
13 intervene in a liquor licensing procedure application  
14 process? If Outback were the new competitive entry  
15 into the market and they were applying for one of only  
16 a few liquor licenses available within that  
17 municipality, would Ruby Tuesdays have an opportunity  
18 to intervene?

19                           ATTORNEY FABIUS:

20           To some extent I have to admit  
21 ignorance. I'm not an expert on liquor law. I do  
22 believe that there are protections in the liquor code  
23 for new market entry, but those would not be analogous  
24 to the circumstances here because we're not talking  
25 about new market entry. You know, that war is over.

1 Valley Forge is open for business and it's going to be  
2 in the resort marketing and operating in Valley Forge,  
3 but beyond that I'm --- I can't speak very well to the  
4 liquor code.

5 MR. CRAIG:

6 Understood. Thank you, Mr. Chairman. I  
7 appreciate it.

8 ATTORNEY STEWART:

9 If it's helpful, Mr. Craig, I believe  
10 that was essentially the scenario in the El Rancho  
11 Grande case the Supreme Court decided.

12 CHAIRMAN:

13 Okay. Anything else? All right,  
14 gentlemen. This matter is now closed. The Board will  
15 not rule on the matter today, but we'll come back to  
16 the matter at a future meeting.

17 ATTORNEY STEWART:

18 Mr. Chairman, could we just move the  
19 exhibits into the record?

20 CHAIRMAN:

21 The request is granted, yes, from all  
22 parties. Thank you. I appreciate it.

23 \* \* \* \* \*

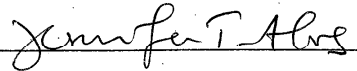
24 HEARING CONCLUDED

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CERTIFICATE

I hereby certify that the foregoing proceedings,  
hearing held before Chairman Ryan was reported by me  
on 3/13/2013 and that I Jennifer T. Alves read this  
transcript and that I attest that this transcript is a  
true and accurate record of the proceeding.

  
Court Reporter