

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC HEARING

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BEFORE: MARY DIGIACOMO COLINS, CHAIRMAN
Raymond S. Angeli, Jeffrey W. Coy, James B.
Ginty, Kenneth T. McCabe, Sanford Rivers,
and Gary A. Sojka, Members
Keith Welks, Ex-officio Designee

HEARING: Thursday, April 24, 2008
11:00 a.m.

LOCATION: North Office Building
Hearing Room 1
Harrisburg, PA

WITNESSES: Bill Doniger, Steven Price, Peter Carlino,
Bill Clifford, Tom Auriemma, Gary Luderitz,
Don Barden, Sam Marshall, Sean Harrison,
James Talerico, Cyrus Pitre

Reporter: Cynthia Piro-Simpson

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A P P E A R A N C E S

1
2
3
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I N D E X

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18
19
20
21
22
23
24
25

OPENING REMARKS

by Chairman Colins

5

STATEMENT

by Mr. Eisenhower

5 - 7

by Mr. Barden

7 - 14

QUESTIONS

14 - 35

STATEMENT

by Mr. Talerico

35 - 37

QUESTIONS

37 - 68

DISCUSSION AMONG PARTIES

68 - 71

CERTIFICATE

72

E X H I B I T S

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

<u>Number</u>	<u>Description</u>	<u>Page</u> <u>Offered</u>
---------------	--------------------	-------------------------------

NONE OFFERED

P R O C E E D I N G S

1
2
3
4
5
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8
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CHAIRMAN COLINS:

All right. We will now ask PITG to come forward, all those involved in that matter. All right. Good morning --- good afternoon. It just changed. All right. The first thing I'd like to ask is for those who are going to testify to please stand and be administered an oath, if you would. The court reporter to your left will administer the oath.

WITNESSES SWORN EN MASSE

MR. EISENHOWER:

I'll introduce the witnesses as I --- in my introduction.

CHAIRMAN COLINS:

All right. Then why don't you begin, Mr. Eisenhower?

ATTORNEY EISENHOWER:

Good morning, Madam Chair, members of the Board. I am Jim Eisenhower with the Schnader, Harrison Law Firm, and I represent PITG Gaming, LLC. We are here today on our amended petition for approval of modifications to our proposed permanent facility

1 pursuant to PA Code Section 441(a)36, an amendment of
2 the related statement of conditions.

3 First, I'd like to thank the Board for
4 allowing us to make this presentation today. We know
5 it was a rather short notice, and we appreciate you
6 accommodating us.

7 I'd also like to introduce the members of
8 our team here to make this presentation. First, of
9 course, Mr. Don Barden, who is the president and CEO
10 of PITG Gaming, LLC. To his right is Ms. Barbara
11 Kaye, K-A-Y-E, from the Honigman Law Firm in Detroit.
12 Ms. Kaye is handling this financing for PITG. To my
13 left is Mr. Sam Marshall, who is the vice president
14 for design and construction for PITG Gaming and is on
15 the ground in Pittsburgh every day at our construction
16 site.

17 What we are seeking from this Board ---
18 oh, I'm sorry. This is Mr. Justin Park, who is an
19 associate at the Schnader Harrison Firm and is
20 assisting me throughout this process. He does all the
21 work.

22 What we are seeking from the Board is the
23 following, approval of our proposed financing, which
24 was attached as Exhibit A in our amended petition,
25 approval of our project development plan, which was

1 attached as Exhibit B, and the amendment of the
2 statement of conditions, and they're listed in our
3 petition, which are implicated by the modifications
4 that we have requested in our petition.

5 So at this point, I'd like to have Mr.
6 Barden discuss the modifications that we are
7 undertaking, and he will lead the presentation.

8 MR. BARDEN:

9 Thank you, Jim. Good morning, Madam
10 Chair, members of the Commission. Don Barden is my
11 name, B-A-R-D-E-N, like a bar in the den of your home.

12 Good morning. Thank you very much for
13 allowing us the opportunity to appear before you to
14 present our petition. And I'll go directly to the
15 petition starting with some of the recitals. And item
16 one, of course, is just a recital. Item two is a
17 recital. Item three warrants a little commentary as
18 it relates to the cost now of the project
19 comparatively speaking from our application. That
20 number now would be \$600 million versus the \$450
21 million, and we can get into that later.

22 But the request starts out at item number
23 six in the petition. That deals with the --- our
24 proposal to refinance our bridge loan and finance the
25 completion of our facility as described in Exhibit

1 Eight --- I'm sorry, Exhibit A that's attached, and
2 seeks the Board's approval of the proposed financing,
3 including the proposed entity organizational structure
4 and debt reflection reflected therein. We expect to
5 close this financing not later than May 19th it says
6 here, but we actually have a scheduled date of May
7 12th to close this facility. The commercial bank debt
8 will be arranged by KeyBank. The first and second
9 lien debt will be arranged by Credit Suisse.

10 Now, I'd like to turn your attention to
11 the structure itself in Exhibit A, which references
12 how the company would be organized. The graph shows
13 our development as the owner of Durrett (phonetic),
14 and it also reflects ---. These two boxes, by the
15 way, are designed to differentiate between what Barden
16 Development owns and what the minority investors own
17 in PITG Gaming in Pittsburgh. And so that's what
18 those two boxes are.

19 The Super HoldCo is designed to
20 accommodate the commercial bank tranch of the
21 financing, and of course, the PITG Gaming HoldCo for
22 the first and second lien holders is designed to
23 segregate the first and second lien from the
24 commercial bank subordinated loan facility. All of
25 these, of course, are upstream from the owner of the

1 facility, the PITG Gaming, which is the owner/operator
2 of the Pittsburgh gaming operation.

3 Attached also as part of Exhibit A are
4 the summary of the terms and conditions of the
5 subordinated debt as well as the first and second
6 lien. Moving on to item number seven, we commenced
7 construction on the facility and we anticipate opening
8 in May of next year. We're on budget, on time, in
9 fact, a little ahead of schedule. And I don't know if
10 we were able to get the photographs to you. Do you
11 have a slide that we can show an update of where we
12 are in construction?

13 Thank you very much. Okay. And I have
14 some little ones I printed on my computer that were
15 done April 22nd. But Kevin will show that in his ---
16 that's very good. Thank you.

17 Item number eight, we're seeking approval
18 to proceed with the development of our project in
19 accordance with the proposed development schedule set
20 forth in Exhibit B attached hereto and incorporated by
21 reference to project development plan. The plan
22 reflects certain modifications in the nature of timing
23 as opposed to the scope of the project. The scope is
24 the same footprint. We're just deferring a couple of
25 items.

1 And that's on Exhibit B, if we could go
2 to Exhibit B. The first phase of operations will
3 include all of the original phase I items as presented
4 during our suitability hearing, including 3,000 slots
5 in the same footprint with the loan exceptions being
6 the deferral of the completion of the outdoor
7 amphitheater as well as a ballroom space. These
8 deferred items are intended to be fully developed and
9 built out during year three of operations.

10 Phase II, also in the first year of
11 operations will include all of the original phase II
12 items comprised of an additional 1,000 gaming
13 machines. These machines are intended to be added at
14 the rate of 200 games per month beginning in the
15 eighth month of operations to be completed by the end
16 of the 12 month following opening. Of course, all
17 subject to your approval upon our application.

18 Phase III, the second year of operations,
19 will include all the original phase III items
20 comprised of addition of parking structure,
21 completion of the shell space and a final 1,000 games
22 subject to your approval. The final phase III will be
23 completed by the end of the second year following
24 opening.

25 Item number nine, seek approval of the

1 facility to open with 3,842 parking spaces. In our
2 statement of conditions, we had stated that we would
3 open with approximately 4,100. So this is 257 spaces
4 less than was in our statement of conditions which was
5 approximately 4,100. So it really could technically
6 fall into the approximate number, but I want to
7 explain why that number has decreased, because we want
8 as much parking as we can get. And that is because we
9 are on a Brownfield site in Pittsburgh, and we're on a
10 water table. We wanted to go down one level, and the
11 city advised us we couldn't and shouldn't go down
12 because there was some monster foundations down there,
13 that we didn't have to go down that deep. And we did
14 not want to be threatened with the water table
15 problems that would exist if we went down one level.

16 And so, therefore, we eliminated the
17 basement level of the parking garages and lost those
18 257 spaces. We'll make those up in our third phase,
19 when we an additional garage, I think, with 1,200
20 spaces. But the situation here is is that we couldn't
21 go any higher than we are and we couldn't go any lower
22 than we are. So we had --- we're at the ground level
23 and we're at the maximum height, but yet still below
24 the Steelers' stadium substantially.

25 Item number ten, I received a call from

1 the Honorable County Executive Onorato and the Mayor.
2 They want to talk to me about the rights that were
3 promised to me in conjunction with the Penguins on the
4 \$3 million pledge we made. And I have honored their
5 request to meet with them, and this is not something
6 that's urgent anyway, because it wouldn't kick in even
7 if we were to pay it. I have to pay it until year two
8 --- after we open, two years from now roughly, ten
9 months after we open. So it's not an urgent matter.
10 So I would like to discuss it with them.

11 But just for background information, the
12 County Sports and Exhibition Authority, which is a
13 quasi public entity that oversees the Penguins and the
14 Convention Center and other entities, parking garages
15 and that in the City of Pittsburgh, passed a
16 resolution in 2005, I believe, that stated that
17 anybody who provides funding to the Penguins stadium
18 will get the development rights for the 28 acres where
19 the old Mellon Arena site is.

20 And so we gladly submitted to plan B,
21 which is \$7.5 million a year, and came up with the
22 concept of spurring economic development by providing
23 seed capital to get that development going, not to any
24 particular organization, not to any particular group,
25 not to the city, but money that we would spend in

1 architectures, engineers and designers to come up with
2 a plan to engage the community so that they can be a
3 part of development. And we bring in other developers
4 to create activity and excitement in that
5 neighborhood, which none of it could have occurred
6 until after the stadium is --- the new one is built
7 and the old site is cleared, which is three, four
8 years down the road.

9 In the negotiations with the Penguins,
10 which I was a part of early on, when they were trying
11 to get this facility built, I was a part of those
12 negotiations with the governor and with county and
13 representatives of the SEA, Sports and Exhibition
14 Authority. It was always the thought that I would
15 have the development rights to that site, because
16 along with those rights came \$1.5 million in parking
17 fees that you began to get immediately for the next
18 five years while the new place is being built. In
19 addition to that, you are buying the land at a
20 discount rate, about 50 cents on a dollar, and you
21 could --- you didn't have to pay for it until you were
22 taking it down to development. But I thought that was
23 pretty attractive, and I thought it was a nice quid
24 pro quo for us giving and contributing \$7.5 million
25 out of our cash flow to build an arena for the public

1 as well as the \$3 million that we were talking about
2 with respect to spurring economic development in the
3 area.

4 Lo and behold to me, when the deal was
5 announced, I was not at the last final one or two
6 meetings by non-invitation, and the rights were
7 granted to the Penguins for that site. I still tried
8 to be a gentleman about it and have not quarreled with
9 their decision and always have tried to be
10 cooperative. But it would seem unfashionable for me
11 to be required to spend money to do development and
12 planning and architecture and engineering work on a
13 site that the Penguins own and get all the benefits
14 from now and in the future.

15 Nevertheless, I'm still open to further
16 discussion with regard to that matter, and I requested
17 a deferral in terms of action by this Honorable Body
18 on that subject as it relates to the statement of
19 condition 56 this morning.

20 With that, that's our request and we'll
21 be happy to entertain any questions.

22 CHAIRMAN COLINS:

23 Mr. Eisenhower, anything further?

24 ATTORNEY EISENHOWER:

25 No. That would conclude our

1 presentation, Madam Chair, and we're ready for
2 questions.

3 CHAIRMAN COLINS:

4 Does the Office of Chief Enforcement
5 Counsel have any questions at this time?

6 ATTORNEY CREANY:

7 Yes, Madam Chairman. Mr. Barden, my name
8 is Barry Creany. I'm Deputy Enforcement Counsel
9 representing the Office of Enforcement Counsel.
10 First, with respect to the financing that you've
11 discussed today, the project has now grown from what
12 it had been licensed to \$650 million. Could you
13 explain the status of that financing to the Board for
14 the record?

15 MR. BARDEN:

16 Yes, I will. The status of that
17 financing, we are currently operating under a bridge
18 facility. And we are --- last week we were in New
19 York on a road show. We presented to multiple
20 investors throughout the week, and then we had a bank
21 meeting on Friday that was well attended. In fact, we
22 had to put up additional chairs for that bank meeting.
23 Our time schedule is to have comments and commitments
24 back by Monday, I believe, May 2nd. Okay. Is that a
25 Monday? May 2nd. But we'll start getting comments

1 back on Monday. And so we're proceeding, and it's
2 going well along the lines of our closing schedule.

3 ATTORNEY CREANY:

4 Can you speak to this, or perhaps of any
5 of the parties that you brought with you today, the
6 status of some of the loan documents that would be
7 more or less the actual permanent credit facility, not
8 the term sheet that's attached as your amended
9 petition Exhibit A.

10 MR. BARDEN:

11 I'll defer to Barbara Kaye on that.

12 ATTORNEY KAYE:

13 We have received a draft of the initial
14 credit agreement, and according to the timeline, that
15 would be available for review on Monday. We have not
16 yet received a draft of the commercial bank credit
17 agreement from Key, but are expecting that hopefully
18 yet this week. We have received drafts of most of the
19 security documents, although not all. And so by this
20 time next week, we should have documents that are in
21 substantially final form subject to any additional
22 lender comments. That's the schedule.

23 ATTORNEY CREANY:

24 From consultations with some of the
25 financial people within BIE, I was understanding there

1 would be a number of other documents. And could you
2 tell us with respect to that, is there going to be a
3 disbursement agreement, or does that exist at this
4 point?

5 ATTORNEY KAYE:

6 There will be a disbursement agreement.
7 The disbursement agreement has been received and is in
8 the process of being reviewed and will --- because it
9 is a significant document, it should follow
10 approximately the same time line as the credit
11 agreement.

12 ATTORNEY CREANY:

13 And just for clarity for the record,
14 you've talked about a draft of a loan agreement, but
15 we have here a couple of different liens. What about
16 the first lien term loan facility? Does that document
17 exist?

18 ATTORNEY KAYE:

19 That's the one that we received the draft
20 of and hoped to be in a position to post for lender
21 review Monday or Tuesday.

22 ATTORNEY CREANY:

23 Will there be or is there one in
24 existence of the first lien revolving credit facility?

25 ATTORNEY KAYE:

1 That is included within the first lien
2 term facility. There is one agreement for the first
3 lien term and revolving facility. That's the one that
4 we've received a draft of and are in the process of
5 comment --- reviewing and commenting on. The second
6 lien term loan facility will look fairly similar. We
7 have not yet received a draft. But because it will be
8 fairly similar, it would be, you know, easy to get
9 through once the first lien is created. And then the
10 commercial bank facility, the one that Key is the
11 arranger for, again, we should receive a draft of that
12 this week. Many of those provisions will also be
13 similar to what's in the first lien agreement. So
14 really it's the first lien agreement that's driving
15 all the documents.

16 ATTORNEY CREANY:

17 Ms. Kaye, just because I'm not certain,
18 but for the record at least, when you were just
19 referring to the one with Key, is that the second lien
20 term?

21 ATTORNEY KAYE:

22 No. That's what we call the commercial
23 bank ---

24 MR. BARDEN:

25 That's the HoldCo note.

1 ATTORNEY KAYE:

2 --- the Super HoldCo. The Super HoldCo.

3 ATTORNEY CREANY:

4 What about the second lien term loan
5 facility?

6 ATTORNEY KAYE:

7 That would be very similar to the first
8 lien term loan facility that's also coming from Credit
9 Suisse.

10 ATTORNEY CREANY:

11 Does it exist?

12 ATTORNEY KAYE:

13 Not yet. But because it will track the
14 first lien facility, it will be very --- if you read
15 the first lien, you don't probably need to really read
16 the second lien.

17 ATTORNEY CREANY:

18 What about the second lien subsidiary
19 guarantee?

20 ATTORNEY KAYE:

21 We have seen a draft of that?

22 ATTORNEY CREANY:

23 Is it in a stage close to completion?

24 ATTORNEY KAYE:

25 Yes. I would say again we're shooting

1 for the Key documents to be substantially final in the
2 beginning --- the first half of next week.

3 ATTORNEY CREANY:

4 With respect to any hedging agreements,
5 will any exist when this financing goes through?

6 ATTORNEY KAYE:

7 I believe it's immediately following
8 closing that the hedging agreements would be put in
9 place, and I have not seen a draft of those, but
10 they're standard forms.

11 ATTORNEY CREANY:

12 And when would you expect to see them
13 then, after closing date?

14 ATTORNEY KAYE:

15 Or probably immediately before because
16 they're standard forms and they're not really subject
17 to much negotiation. It's not a front end item.

18 ATTORNEY CREANY:

19 What about any credit enhancement funding
20 or indemnification agreements?

21 ATTORNEY KAYE:

22 We spoke with counsel for the Pension
23 Fund earlier this week, and they have promised us
24 documents the first half of next week.

25 ATTORNEY CREANY:

1 Will there be a subordination loan
2 facility agreement?

3 ATTORNEY KAYE:

4 That's the KeyBank facility.

5 ATTORNEY CREANY:

6 And that exists now?

7 ATTORNEY KAYE:

8 No. That we should see the beginning of
9 next week.

10 ATTORNEY CREANY:

11 I believe yesterday in the CIM that you
12 provided --- or actually I believe Michelle Sherman
13 from Mr. Barden's company provided us with what is
14 termed sources and uses type of statement within that.
15 So we have that at least before our financial people
16 at this time.

17 ATTORNEY KAYE:

18 Right. As well as the summaries of the
19 term sheets, which do reflect all of the material
20 terms of the financing documents other than the
21 financial covenants.

22 ATTORNEY CREANY:

23 So correct me if I'm wrong, but I
24 understand, then, this is --- there's a little bit of
25 fluidity to the final terms at this point, and we

1 didn't even see the documents.

2 ATTORNEY KAYE:

3 I would not say there's fluidity to the
4 final terms, because the key terms are in the term
5 sheets. The process of negotiating a credit agreement
6 is always that certain of the covenants or certain of
7 the financial covenants get negotiated as part of the
8 final transaction. But in terms of the amount and the
9 interest rate and maturity, you know, the key terms of
10 financing, those are agreed upon.

11 ATTORNEY CREANY:

12 I understand that. But with respect to
13 --- if you receive these draft documents early next
14 week, what is the timeline for these type of
15 negotiations, the terms that are going to be
16 negotiated in those documents?

17 ATTORNEY KAYE:

18 Next week. I mean, we received a credit
19 agreement that was 150 pages on Tuesday and we sent
20 back comments. So it's 24/7.

21 ATTORNEY CREANY:

22 Will there be any changes between this
23 draft and the finals?

24 ATTORNEY KAYE:

25 Once the document is posted for the

1 lenders to review, significant changes typically don't
2 occur.

3 ATTORNEY CREANY:

4 And when do you think that date will be,
5 that they'll be posted for lenders to review?

6 ATTORNEY KAYE:

7 The first lien credit facility, again,
8 the goal is Monday and that's what we're shooting for.
9 The Key facility, I'm assuming the end of next week,
10 but I don't know for sure.

11 ATTORNEY CREANY:

12 And the current financing that's the
13 bridge loan with Credit Suisse?

14 ATTORNEY KAYE:

15 They are the agent.

16 ATTORNEY CREANY:

17 Okay. With the permanent credit
18 facility, who's going to be the agent on that?

19 ATTORNEY KAYE:

20 Credit Suisse.

21 ATTORNEY CREANY:

22 Under the bridge loan agreement, what is
23 the required closing date or ---?

24 ATTORNEY KAYE:

25 May 19th. Prior to May 19th.

1 ATTORNEY CREANY:

2 What would happen if it doesn't close on
3 May 19th?

4 ATTORNEY KAYE:

5 There would be a default under the bridge
6 financing.

7 ATTORNEY CREANY:

8 Thank you very much. Mr. Barden, with
9 respect to the Exhibit A that you produced in the
10 amended petition, could you explain to the Board what
11 differences we have on that exhibit from what the
12 licensed entity was back in December of 2006 or to the
13 extent necessary any other parties you have with you?
14 What other entities or any new parties?

15 MR. BARDEN:

16 The new entities would be PITG Gaming
17 Super HoldCo and the other entity would be PITG Gaming
18 HoldCo. And Barbara can explain why those two
19 entities had to be inserted.

20 ATTORNEY CREANY:

21 Please.

22 ATTORNEY KAYE:

23 Starting from the bottom up, if you will.

24 ATTORNEY CREANY:

25 Sure.

1 ATTORNEY KAYE:

2 PITG Gaming HoldCo is being put in place
3 at the request of the first and the second lien
4 lenders to provide --- consistent with the existing
5 regulations in Pennsylvania, to allow the lenders to
6 PITG Gaming HoldCo to be able to transfer their
7 interest in the debt without being required to be
8 licensed. And the first and second lien lenders
9 always require that subordinated debt, which is the
10 commercial bank debt at Super HoldCo, be at a higher
11 level. That's part of the legal subordination,
12 structural subordination. And they prefer that it be
13 to a special purpose entity, a newly formed just clean
14 entity.

15 So if you go up the chain, there's no
16 change in the ultimate ownership. There's no change
17 in the ultimate ownership of the minority investors.
18 These are strictly holding companies. They're shell
19 holding companies solely to serve the purpose of
20 facilitating the financing.

21 ATTORNEY CREANY:

22 Thank you very much. Mr. Barden, you had
23 indicated in your testimony that an opening date was
24 projected for May of 2009 and that you were on target
25 at this time and budget on that matter.

1 MR. BARDEN:

2 Yes.

3 ATTORNEY CREANY:

4 I'm just curious. On the recent report
5 that we received, there is --- and you referenced the
6 footprints unchanged in terms of the development.
7 There's a building on that 28-acre property that was
8 under a lease. Has that been resolved?

9 MR. BARDEN:

10 That's not part of the current
11 construction site. That lease expires next year, but
12 they're early outing, I think, in July. Right, Sam?

13 MR. MARSHALL:

14 Yes.

15 MR. BARDEN:

16 But that's for additional future
17 expansion and for surface parking, or use it for a
18 warehouse after they vacate. But that's not part of
19 the --- that was not part of the original footprint.

20 ATTORNEY CREANY:

21 I just wanted to make that clear for the
22 record. All these things that are phased in later,
23 that has no relation --- that space is not going to be
24 affected by anything to do with that lease?

25 MR. BARDEN:

1 That's correct.

2 ATTORNEY CREANY:

3 In the Exhibit B, it recites narratively
4 a different phase-in with respect to the second --- or
5 the second implement of slot machines. You would open
6 with 3,000, and originally licensed, I believe, in the
7 licensing hearings and in our conditions there's a
8 requirement that by the ninth month you have an
9 additional 1,000 to put you at 4,000 by the ninth
10 month of your first year of operation. Can you
11 explain with that phase-in, has there been any change
12 that you anticipate in projected revenues over that
13 first year of operation?

14 MR. BARDEN:

15 No. With respect to how we would ratchet
16 up, getting to 3,000 or going from 3,000 up? We're
17 going to open with 3,000.

18 ATTORNEY CREANY:

19 In terms of just the overall operations,
20 have you received any revenue projections of how that
21 changes the operations of PITG going forward? Does
22 that phasing then affect your projected revenue?

23 MR. BARDEN:

24 No, because the slots are pretty much
25 phased in as they were originally phased in. It's

1 just the other stuff that's differed. But the slots
2 and the revenue would not be impacted because it's
3 pretty much the same as it was.

4 ATTORNEY CREANY:

5 With respect to your testimony of the
6 parking garage, other than the reduction in the number
7 of spaces, has the structure itself changed?

8 MR. BARDEN:

9 Nothing other than elimination of the
10 first floor. Is that right, Sam?

11 MR. MARSHALL:

12 There's no change to the parking garage.

13 MR. BARDEN:

14 No, there's no change.

15 ATTORNEY CREANY:

16 From the original blueprints that were
17 presented in November --- or I'm sorry, I believe it
18 was November of 2006?

19 MR. MARSHALL:

20 I can't testify to that, because I didn't
21 see the 2006. I wasn't involved in this.

22 MR. BARDEN:

23 In terms of the footprint, I'm not sure
24 what the height was at that time, but ---. And I just
25 don't recollect, but back in --- whenever we submitted

1 to the Board our information for the bridge loan, we
2 showed the plans and the print and the height and the
3 spaces for the garage and the footprint was that ---
4 does anybody recall, was that ---? We did the closing
5 in?

6 ATTORNEY KAYE:

7 November of '07.

8 MR. BARDEN:

9 November of '07.

10 ATTORNEY CREANY:

11 Do we have any other demonstrative
12 evidence today to present with respect to the
13 blueprints, the rendering of the facility or anything
14 of that nature?

15 MR. BARDEN:

16 Yes. We have a handout here that shows
17 the footprint of the floor space, the parking garage
18 ---. Sam, did you bring ---?

19 ATTORNEY CREANY:

20 Mr. Eisenhower, is there anything
21 additional that you have with respect to that that
22 you'd like to enter---?

23 ATTORNEY EISENHOWER:

24 Yes. We have an exhibit which we can
25 handout that shows the footprint of the casino,

1 and ---.

2 MR. BARDEN:

3 But it does not show the footprint of the
4 garage.

5 ATTORNEY EISENHOWER:

6 Right.

7 MR. BARDEN:

8 Well, yes, it does. I guess it does over
9 on the second page.

10 ATTORNEY EISENHOWER:

11 With the Board's permission, I'll hand
12 these out. Thank you, Madam Chair.

13 MR. BARDEN:

14 This is a larger print of what is being
15 handed out. I'll just show this over to counsel.

16 OFF RECORD DISCUSSION

17 CHAIRMAN COLINS:

18 Please, we have the stenographer that has
19 to listen to what you're saying.

20 ATTORNEY CREANY:

21 I'd ask that that be off the record. We
22 were just consulting on plans that Mr. Barden has
23 presented to review them to better understand. And
24 I'm going to leave it up to Mr. Eisenhower as to
25 whether he wants to have any of this admitted into the

1 record. But I wanted to better understand the changes
2 as to the development plan to further question Mr.
3 Barden.

4 MR. BARDEN:

5 And to that end, Madam Chairman, I'll
6 just describe what I discussed with respect to the
7 pass out that we have before you, and I'm sure Mr.
8 Eisenhower will ask that it be admitted.

9 On the first page, it shows a phase I and
10 phase II of --- and this relates back to the petition.
11 The information in yellow is the slot floor. You can
12 see that that remains the same. The expansion space
13 in blue, is what will be shelled in. And as we
14 expand, we'll just put in the carpeting and finish out
15 the space and knock down the wall, and it will be a
16 seamless expansion going from 3,000 to 4,000 to 5,000
17 over time.

18 The blue area, you can see, is the
19 amphitheater that's being deferred. And then the
20 little blue spot on the right is one of the
21 restaurants that will be shelled in. Nevertheless,
22 we're still opening with three restaurants in the
23 facility.

24 On the second page, you can see the
25 interior design and concept. That remains the same,

1 Las Vegas style first class facility. On the lower
2 part is the floor plan that has what, in essence, is
3 the footprint of the garage, which is the same as it
4 was when we originally submitted it. And it also
5 shows that the casino is on the --- this is the second
6 level of the casino, and it shows that part of the
7 casino is on the --- beneath the garage. And you can
8 see the ballroom in blue there. And actually, the
9 future use or the other items that will --- that the
10 ballroom actually is the one that's being deferred to
11 the phase, as it relates to the petition.

12 ATTORNEY CREANY:

13 Mr. Barden, in the earlier testimony you
14 had made reference to paragraph ten of the amended
15 petition, which was the matter relating to the
16 commitment to the statement of condition 56, which is
17 a \$3 million contribution to the Hill District. And I
18 think I understand your testimony, but I wanted to
19 clarify that you believed that the statement 56 and
20 the development rights had some sort of linkage; is
21 that correct?

22 MR. BARDEN:

23 Yes, that's correct.

24 ATTORNEY CREANY:

25 And was there also some linkage between

1 that and plan B?

2 MR. BARDEN:

3 Yes, it was.

4 ATTORNEY CREANY:

5 At this point, in addition to what
6 modifications were presented in this amended petition,
7 and that, just to recap I think it's the garage with
8 respect to spaces. We have a ballroom and an
9 amphitheater that are going to be phased in later. Do
10 you foresee any additional modifications to this
11 facility between now and the date of opening?

12 MR. BARDEN:

13 No, I don't.

14 ATTORNEY CREANY:

15 With respect to the prior financing, at
16 the point I believe of licensure, we had a credit
17 facility from Jefferies & Company. Would you, for the
18 record, state what was the disposition of that credit
19 facility? What happened basically?

20 MR. BARDEN:

21 Okay. Good question. A couple of
22 reasons. First of all, Jefferies and I still have a
23 very warm and friendly relationship. But basically,
24 Jefferies is a midsize firm that specializes in
25 bond-type financings. When the credit crunch hit in

1 July, last --- late July of last year, we recognized
2 that bond financing is probably not the way to go,
3 because you don't have as much flexibility. So we
4 went toward bank financing for a couple of reasons,
5 with a larger firm that's national --- much larger
6 nationally and internationally, with a broad reach for
7 investors that could provide bank-type financing and
8 first and second lien-type natures such as Fortress
9 and Penn National is doing, which gives us more
10 flexibility in terms of loan covenants. It gives us
11 the ability to deliver and pay down debt where you're
12 constrained by bond financing with higher rates,
13 longer terms and heavy penalties for early pay down
14 and payouts.

15 So this enables our company to deliver
16 utilizing excess cash flow to do so and gives us much
17 more flexibility in terms of improving and expanding
18 and re-investing in the facility. That's basically
19 it.

20 ATTORNEY CREANY:

21 Thank you, Mr. Barden. At this point, I
22 don't have any further questions as to the testimony
23 that has been presented so far. Mr. Eisenhower, do
24 you have anything further?

25 ATTORNEY EISENHOWER:

1 Not at this time.

2 ATTORNEY CREANY:

3 Madam Chairman, I would like to call one
4 witness. Mr. Talerico, please state your name and
5 title for the record, please.

6 MR. TALERICO:

7 My name is James Talerico, and I'm the
8 supervisor for the Financial Investigations Unit for
9 BIE.

10 ATTORNEY CREANY:

11 And in that capacity, what is your
12 responsibility with respect to the Gaming Control
13 Board?

14 MR. TALERICO:

15 Our Financial Investigations Unit reviews
16 the financial information that's submitted from
17 applicants.

18 ATTORNEY CREANY:

19 At this point, what submissions have you
20 had to review with respect to the proposed financing
21 that's the subject of the amended petition?

22 MR. TALERICO:

23 The Financial Investigations Unit has
24 reviewed the term sheet that was submitted as part of
25 Exhibit A to the petition, and we now have a general

1 idea of what should be included in the drafts and the
2 final documents when they're submitted --- drafts next
3 week and whenever the final documents are submitted.

4 ATTORNEY CREANY:

5 Based upon what you've received at this
6 point, are you able to make an evaluation or
7 recommendation to this Board relative to that
8 financing proposal?

9 MR. TALERICO:

10 As of right now, we withhold comment
11 until we actually receive the final documents --- the
12 draft documents and review them.

13 ATTORNEY CREANY:

14 And what documents specifically are
15 necessary for you to be able to make a recommendation
16 to evaluate this proposal and to make recommendations
17 to the Board?

18 MR. TALERICO:

19 The documents that you referred to
20 before. Do you want me to list them?

21 ATTORNEY CREANY:

22 Are you stating all the documents that I
23 discussed with ---

24 MR. TALERICO:

25 Yes.

1 ATTORNEY CREANY:

2 --- Mrs. Kaye?

3 MR. TALERICO:

4 Yes.

5 ATTORNEY CREANY:

6 With respect to those, how much time once
7 you receive those documents will you need in order to
8 review, analyze and make recommendations to this
9 Board?

10 MR. TALERICO:

11 We'll just review them as long as it
12 takes. I can't --- as long as it takes. I mean, if
13 the Board needs them in a certain amount of time,
14 we'll have them ready for the Board.

15 ATTORNEY CREANY:

16 Thank you very much, Mr. Talerico. I
17 have no further witnesses.

18 CHAIRMAN COLINS:

19 All right. Let me ask the Board. We'll
20 start with questions. Commissioner Ginty, do you mind
21 beginning?

22 COMMISSIONER GINTY:

23 I guess as the junior member, I
24 always ---.

25 CHAIRMAN COLINS:

1 If not --- I'll start if you'd rather.

2 COMMISSIONER GINTY:

3 I just don't want to monopolize. You
4 know, as a starting point --- and this is for you, Mr.
5 Eisenhower --- what do you see the responsibility of
6 the Board being in this situation?

7 ATTORNEY EISENHOWER:

8 Well, Commissioner, I think the
9 responsibility is the same or very similar to the
10 responsibility of the Board at the time of licensing,
11 and that is to take care and review the requests made
12 by the licensee, to protect the public interest and to
13 make sure that --- as Mr. Barden has committed all
14 along, that this is going to be a first-class facility
15 and as he's committed to today.

16 COMMISSIONER GINTY:

17 At the time of the Board's adjudication,
18 and I was not on the Board at that time, but I did
19 take an opportunity to read at least part of the
20 record, the Board made a very specific reference to
21 the, quote, firm commitment from Jefferies & Company.
22 And as you know, that was further reviewed by the
23 Pennsylvania Supreme Court. It went into the calculus
24 of this Board choosing between the competitive
25 applicants. And now, quite frankly, we're confronted

1 with a change and what I consider a major part of the
2 suitability question and we're asked to do it in a
3 very short time frame.

4 Before I'm prepared to act on it, I want
5 to know exactly what happens. Ms. Kaye, you said that
6 if you're not prepared to close on May 19th, you will
7 be in default. What exactly happens if you're in
8 default of the bridge loan?

9 ATTORNEY KAYE:

10 It depends on what the lenders under the
11 bridge loan would like to have happen. They may chose
12 to allow additional time to permit the refinancing.
13 They may require a payment in order to do that. They
14 may choose to exercise their collateral securing the
15 bridge loan.

16 COMMISSIONER GINTY:

17 Do we have representatives of Credit
18 Suisse in the ---? No, they're not with us.

19 ATTORNEY KAYE:

20 But Credit Suisse is the agent, and they
21 would take direction from their lenders. So ---.

22 COMMISSIONER GINTY:

23 And do we know who the lenders are yet?

24 ATTORNEY KAYE:

25 The current lenders?

1 COMMISSIONER GINTY:

2 Well, that would be the bridge loan
3 lenders. Okay. And we know who those are.

4 MR. BARDEN:

5 Yes.

6 COMMISSIONER GINTY:

7 I just have to admit that, quite frankly,
8 I'm disturbed. When did you decide to forego, Mr.
9 Barden, the arrangements you had with Jefferies &
10 Company?

11 MR. BARDEN:

12 It would have to be before --- during
13 August, I would think. When the credit crunch hit, I
14 mean, everything in the world changed.

15 COMMISSIONER GINTY:

16 And was the Board notified at that time?

17 MR. BARDEN:

18 I'm not sure, but it was notified in
19 September or October.

20 ATTORNEY EISENHOWER:

21 And the bridge loan was submitted to the
22 Board and approved in November.

23 COMMISSIONER GINTY:

24 And so that I understand, the bridge loan
25 came after you decided to go with --- in another

1 direction other than with Jefferies & Company?

2 MR. BARDEN:

3 Yes.

4 CHAIRMAN COLINS:

5 Was the bridge loan --- the change and
6 the adoption of the bridge loan requested by petition?

7 MR. BARDEN:

8 I don't know the formal procedure, but it
9 was approved by the Board, whatever ---. I don't know
10 if it was ---.

11 ATTORNEY EISENHOWER:

12 It was submitted to the staff, and the
13 staff advised us that by submitting it in the way that
14 we did, we had complied with all the conditions ---
15 statement of conditions as of that time. And a letter
16 was given to us by Ms. Neeb to that effect. And that
17 facilitated the closing of that loan.

18 COMMISSIONER GINTY:

19 You know, the other part of this is the
20 deferral of the ballroom and so forth. Why are you
21 deferring that to phase II?

22 MR. BARDEN:

23 Primarily because the conditions of the
24 financial markets. This is the toughest financial
25 market in 30-plus years is one reason. We were sued

1 by the losing bidders, and they've been sabotaging us
2 ever since all the way up until today and probably
3 tomorrow too to try to make us fail so that they can
4 and their friends can have this license. The other
5 reasons is that we had to resolve lawsuits with the
6 Steelers and the Pirates that delayed us. If it
7 wasn't for the losing bidders and all the lawsuits and
8 the obstacles put in our path, this thing would be
9 ready to open next month, not next year, and we would
10 not have had the same financial marketplace conditions
11 as we have.

12 COMMISSIONER GINTY:

13 Let me understand that. Is the decision
14 to move it to a phase II financially driven or
15 construction driven?

16 MR. BARDEN:

17 It's really --- I would just be honest
18 and say it's financially driven. It's only \$8
19 million, but that's a lot of million --- a lot of
20 money.

21 COMMISSIONER GINTY:

22 But if you get the 650 financing on May
23 19th, would that solve the financial ---?

24 MR. BARDEN:

25 It's not in the budget for that, but let

1 me just say this. We're just being cautious and being
2 able to deliver on our promise. If things go as well
3 as we think they should, then we could conceivably
4 accelerate that. We're just asking for the
5 flexibility because of all the obstacles that have
6 been put in our path by disgruntled bidders and
7 because of the credit markets that are affecting every
8 company in America, including the ones that just
9 appeared before you. That's all we're asking.

10 COMMISSIONER GINTY:

11 The Exhibit B to your petition, the
12 sources and uses of funds, that's to be provided? It
13 wasn't included at least in my copy of the petition.

14 ATTORNEY KAYE:

15 It was provided to staff yesterday, I
16 believe.

17 ATTORNEY CREANY:

18 Yesterday afternoon we received that from
19 Michelle Sherman of Barden Companies, and we've
20 distributed just in-house to our financial people in
21 BIE.

22 COMMISSIONER GINTY:

23 Mr. Eisenhower, I think you define, at
24 least as I see, my responsibilities the same I see
25 them. It would help me if you could get something to

1 us. I want to understand the full ramifications if
2 this does not go forward on May 12th.

3 MR. BARDEN:

4 We'll do that.

5 COMMISSIONER GINTY:

6 I have no further questions.

7 CHAIRMAN COLINS:

8 Okay. Thank you. Commissioner Sojka?

9 COMMISSIONER SOJKA:

10 I want to thank Commissioner Ginty. Mr.
11 Barden, you'll be aware that probably neither of us
12 have laid eyes on you or vice versa until today, and
13 so I had many of the same questions, Jim. Thank you.
14 Just a couple follow-ups in the same area. Again,
15 having to do with the architectural aspects and the
16 ballroom, I think I heard you say that from the
17 exterior of the building, it will look exactly as you
18 had presented it to this Board at the time of your
19 application. All that will be missing will be the
20 interior build out and putting it in its final form.
21 So it will be a space set aside with that as the sole
22 and only purpose.

23 MR. BARDEN:

24 Right. Yes, Commissioner, you won't be
25 able to tell at all from the outside or from the

1 inside because there will be a direct decorative wall
2 that will be up with paintings and design concepts.
3 And so it will be invisible to the naked eye.

4 COMMISSIONER SOJKA:

5 Okay. Thank you. And again, you'll
6 pardon me if I --- I just have to go back and sort of
7 laboriously try to understand the complexities of this
8 current change in the loan situation. The original
9 application was for \$450 million.

10 MR. BARDEN:

11 That's correct.

12 COMMISSIONER SOJKA:

13 There's now a \$200 million bridge loan,
14 and the final sum will be \$650 million. Am I --- no,
15 I'm getting a no from Ms. Kaye.

16 ATTORNEY KAYE:

17 There's a piece that you're missing.
18 You're missing the \$150 million mezzanine financing.

19 MR. BARDEN:

20 No, he's not talking financing. He's
21 talking cost of the project.

22 COMMISSIONER SOJKA:

23 I'm just talking about cost of the
24 project.

25 ATTORNEY KAYE:

1 I apologize. Sorry.

2 MR. BARDEN:

3 Go ahead.

4 COMMISSIONER SOJKA:

5 The project has grown from \$450 million
6 to \$650 million ---.

7 MR. BARDEN:

8 The \$450 is misleading, and that's what
9 the press has been printing, because the \$450 did not
10 include a lot of elements that are normally included
11 in the project cost. One is interest reserve, fees,
12 and those sort of things are not included. And that's
13 what I stated in my opening statement, that the \$450
14 --- the relevant number to that today is \$600. So the
15 price has increased about \$150 million because of a
16 lot of dynamics of the marketplace and final design
17 and things that were excluded originally. And that
18 \$450, by the way, was never intended to be a maximum
19 cost. It was a minimum cost.

20 COMMISSIONER SOJKA:

21 Am I still missing \$50 million? It's
22 at ---.

23 MR. BARDEN:

24 License fee of \$50 million.

25 COMMISSIONER SOJKA:

1 Oh, that's --- it's the license fee. So
2 I was missing. Okay. If I may reserve the right to
3 come back later, I'm happy to yield the floor.

4 CHAIRMAN COLINS:

5 Commissioner Rivers?

6 COMMISSIONER RIVERS:

7 Yes. Mr. Barden, you spent a
8 considerable amount of time talking with the planning
9 department and the City of Pittsburgh. Can you tell
10 us what was finally negotiated with the planning
11 department in terms of changes within what you
12 presented to us vis-à-vis changes that you presented
13 to them or what you presented to them?

14 MR. BARDEN:

15 I think everything that we're doing now
16 has already been presented and approved by the city.
17 I'm not sure that in terms of phasing the ballroom and
18 the amphitheater requires any action, Sam, at this
19 juncture.

20 MR. MARSHALL:

21 No. On the Planning Commission side,
22 they did not address the interior of the building
23 whatsoever, strictly the exterior of the building and
24 the site plan.

25 COMMISSIONER RIVERS:

1 There was considerable conversation
2 regarding the parking facility. Did you have to make
3 any changes to accommodate them?

4 MR. BARDEN:

5 Yes. We made changes by eliminating the
6 basement in order to accommodate them. They have
7 given approval to our parking garage, which I think is
8 nine stories or ten.

9 MR. MARSHALL:

10 It's nine elevated levels plus the ground
11 floor or ten as most lay people ---.

12 MR. BARDEN:

13 119 feet. But what we have there and
14 what we proposed is what has been approved and what is
15 being presented here today. It's what has already
16 been approved by the City of Pittsburgh. And we're
17 under construction. We have our permits and we're
18 proceeding. The only technicality is lenders are very
19 fickle. When we said approximately 4,100 parking
20 spaces, they want your blessings that 3,842 meets that
21 approximate requirement.

22 COMMISSIONER RIVERS:

23 There seems to be a fair number of
24 financial documents to be gathered and to be reviewed.
25 I guess my question is --- and here we're asking to

1 make a decision by either --- you know, maybe I'm
2 wrong here. Is it the 12th of May or the 19th of May?

3 MR. BARDEN:

4 Well, we'd like ---.

5 COMMISSIONER RIVERS:

6 I've heard two dates.

7 MR. BARDEN:

8 Yeah. The two dates are different. The
9 19th is the day that our bridge loan expires. We have
10 a scheduled closing on the 12th, that may slop over a
11 couple of days. So I would, you know --- and we need
12 to have these things approved in order for us to
13 close, to fund and pay off the bridge loan.

14 COMMISSIONER RIVERS:

15 So the 19th is a date that's cast in
16 stone?

17 MR. BARDEN:

18 That's right.

19 COMMISSIONER RIVERS:

20 But the 12th is a floating date; correct?

21 MR. BARDEN:

22 That's right. So that may go to the
23 16th, which is that Friday.

24 COMMISSIONER RIVERS:

25 I have no further questions.

1 CHAIRMAN COLINS:

2 Thank you. Commissioner Angeli?

3 COMMISSIONER ANGELI:

4 Mr. Barden, when all is said and done,
5 when you looked at the original proposal around \$450
6 million plus the other things that you had discussed
7 and now it's \$650 million, are you comfortable with
8 these to be able to support the financing of this in
9 the original projections?

10 MR. BARDEN:

11 Yes. And when you throw in everything
12 including lawyer fees, financing fees to investment
13 banks, interest reserve, construction contingency on
14 the owner's side, contingency for the contractor, all
15 the insurance matters, start up cash, we put
16 everything all together so there will be no doubt. We
17 reserved three years of interest for the first and
18 second lien and the HoldCo. So the total is \$770.
19 But in terms of hard cost for the project, it's in the
20 neighborhood of the \$600 million plus the \$650 for the
21 license. But we put everything together so we have
22 full financing so there's no question. I can sleep
23 for three years without having to worry about it.

24 COMMISSIONER ANGELI:

25 Thank you.

1 CHAIRMAN COLINS:

2 Commissioner Coy?

3 COMMISSIONER COY:

4 Thank you. Mr. Barden, just --- I guess
5 the one question that recurs to some of us is, do we
6 have your assurance that the dollars that you're
7 talking about now --- some of them appear to have
8 increased, but whether that was because of increasing
9 costs of goods or services or these terrible attorney
10 costs you talked about. Do we have --- all the money
11 you're borrowing is going in this project, is that so?

12 MR. BARDEN:

13 That's correct.

14 COMMISSIONER COY:

15 In other words, this Board does not need
16 to be concerned that there are dollars that are
17 flowing out of what you're borrowing here to Detroit
18 or wherever else?

19 MR. BARDEN:

20 No way. And it's prohibited in our
21 agreements.

22 COMMISSIONER COY:

23 And we have your assurance on that?

24 MR. BARDEN:

25 And you have my assurance, absolutely.

1 COMMISSIONER COY:

2 And do you understand folks' concerns
3 about the need to completely understand about the
4 dollars that you had indicated you would contribute to
5 the association we talked about in the Hill District?

6 MR. BARDEN:

7 Right. Yes.

8 COMMISSIONER COY:

9 I think it's important that the community
10 and the folks that are writing articles and folks that
11 are reading, people in government positions understand
12 that there is not an attempt ---. Let me ask a
13 different. Is there an attempt to back away from any
14 agreements that were made in that regard?

15 MR. BARDEN:

16 The request is that we not have to spend
17 money to benefit the Penguins. There's no time table
18 on when this money is said to be expended or fund
19 these activities over a three-year period. So let me
20 ask you, Mr. Commissioner, what do I spend the money
21 on, number one? Number two, ---.

22 COMMISSIONER COY:

23 Well, if you gave me a day or two, I
24 could make a list. But I guess ---.

25 MR. BARDEN:

1 Number two --- go ahead. I'm sorry.

2 COMMISSIONER COY:

3 No, that's all right. You can ask a
4 question, but I ---. My concern is that the dollars
5 that were committed when this Board made a decision to
6 grant the license are being changed and you're
7 requesting that they be changed. And that's fine. I
8 think the community --- the Greater Pittsburgh
9 community, the Allegheny County community, the
10 taxpayers of Pennsylvania need to know that you are
11 still committed in terms, if not equal to and maybe
12 greater than your original commitment both to the
13 project and to contributions to whatever area to ---
14 that would inure to the benefit of the Greater
15 Pittsburgh community.

16 MR. BARDEN:

17 I understand, Mr. Commissioner. Let me
18 just comment on that for a moment. It probably
19 shouldn't have been me at this juncture that requested
20 that. It should have come from the county and the
21 Sports and Entertainment Authority, the County
22 Executive, who said in yesterday's paper and today's
23 paper that it would be unfair to ask me to spend that
24 money there since they didn't give me the development
25 rights that they promised me to contribute all this

1 money. I have not quarreled about this \$7.5 million a
2 year and not getting the development rights.

3 I've been a pretty nice guy, and all I
4 asked them was, hey, what are we going to do about
5 this? I could have argued with them and contested
6 with them, the fact that they didn't give me the
7 rights. I probably could have made a big stink out of
8 the whole financing and funding of the Penguins'
9 arena, but I didn't do that. They promised me
10 millions of dollars that they reneged on, and I didn't
11 ask --- you know, so it should ---. In fact, I think
12 I read in the paper today that they should be making
13 the argument to you, not me.

14 COMMISSIONER COY:

15 I think I'll stop there. Thank you.

16 CHAIRMAN COLINS:

17 Mr. McCabe?

18 COMMISSIONER MCCABE:

19 Thank you. Mr. Barden, as you know,
20 Commissioner Rivers and I live in Pittsburgh. One of
21 the things --- to follow up a little bit on what
22 Commissioner Coy's theme has been is we're starting to
23 hear as people drive by the construction site saying
24 oh, well, that's as far as it's going to get. Are you
25 still committed to finishing that project?

1 MR. BARDEN:

2 Yes. As long as the people are not
3 permitted to sabotage and badmouth through innuendo
4 and all kinds of other things that they're trying to
5 do at every stop and turn. It's just the most
6 outrageous thing I've ever seen in my life, how people
7 are trying to cause us to fail, cause rumors to be put
8 in the paper, cause things to happen to scare people
9 away and rumors here and rumors there. I mean, I
10 don't know if anybody's going to show you the
11 pictures. Just to show you what happened --- you
12 know, now they see the thing is going vertical.
13 There's steel and concrete coming out of the wall, you
14 know.

15 And they keep saying it and they keep
16 saying it, even the reporters. Are you going to
17 finish it? I said, what do you think we're doing. I
18 mean, why don't you go out there and see? Get in your
19 car. I'll drive you. Don't you see the people are
20 there working every day? This thing is coming out of
21 the ground. It's being built. Why you guys still
22 trying to derail me? Why are you trying to sabotage
23 me? What kind of conspiracy is this and who's behind
24 it? And I have some suspicions as to some of the
25 people who are behind it. It's a conspiracy.

1 COMMISSIONER MCCABE:

2 My other question is, you got up and
3 testified before us that this was going to be a
4 flagship of your business. Is this still --- PITG, is
5 this still --- facility in Pittsburgh still going to
6 be the flagship?

7 MR. BARDEN:

8 It's the flagship, the mothership and the
9 fathership.

10 COMMISSIONER MCCABE:

11 Thank you.

12 CHAIRMAN COLINS:

13 Good afternoon. What is the cost ---
14 what will be the cost to build the amphitheater?

15 MR. BARDEN:

16 The cost is --- Sam, is it \$3 million
17 something? The total cost of the two, is it \$3
18 million and change?

19 MR. MARSHALL:

20 The amphitheater was \$3.5.

21 MR. BARDEN:

22 \$3.5.

23 CHAIRMAN COLINS:

24 And the other part of your project you're
25 asking for a delay on is that large banquet facility.

1 And what's the cost of that?

2 MR. MARSHALL:

3 Just to shell it out, the savings to
4 shell it out versus finishing out was about \$4.5.

5 MR. BARDEN:

6 Total of \$8 million.

7 CHAIRMAN COLINS:

8 And why --- those were essentially part
9 of your phase I proposal; correct, the amphitheater
10 and the banquet facility? Were they not part of phase
11 I?

12 MR. BARDEN:

13 I think they --- yeah, I think so.

14 CHAIRMAN COLINS:

15 See, I viewed --- I viewed your entire
16 phase I package as giving you a tremendous advantage
17 in the licensing process because it included this
18 entertainment facility. It was part of your flagship
19 concept. Why put off the building of this \$8 million
20 project until phase II when you're getting full ---
21 when you're getting the full financing now?

22 MR. BARDEN:

23 Well, we thought that the principal issue
24 you have to look at is providing the revenue to the
25 state. We did not want to cut out anything that would

1 impact putting in 3,000 slots and generating revenue
2 quickly for taxpayer relief. Just like the Meadows
3 eliminated their conference room and other things and
4 put in a garage, we already have a garage. So we
5 tried to do things that would have the least amount of
6 impact on generating revenue for the State of
7 Pennsylvania, the City of Pittsburgh, the county and,
8 of course, for our company.

9 CHAIRMAN COLINS:

10 I'm not understanding that. How would
11 that adversely affect developing revenue?

12 MR. BARDEN:

13 It's a matter of choices. If you have to
14 eliminate \$8 million from your budget, what's the
15 avenue of least resistance that impacts revenue the
16 least amount? And those were the answers, because you
17 need the restaurants. You need --- we still have an
18 entertainment room to draw entertainment. But you
19 don't necessarily need a ballroom. You don't
20 necessarily need an amphitheater. We're still doing
21 all the outdoor activity and the walkway and all of
22 that.

23 CHAIRMAN COLINS:

24 What's to guarantee us that you'll build
25 it in the next phase?

1 MR. BARDEN:

2 Because I think it's an attraction that
3 we want to build, and we're committed to here. We
4 can't --- we've got to come back to you again. We're
5 committing to do it.

6 CHAIRMAN COLINS:

7 With respect to the loan documents, it
8 sounds like all we have basically are the very
9 skeleton --- skeletal documents that will be the
10 underpinnings of these transactions; is that correct?

11 ATTORNEY KAYE:

12 By next week, you will have most of the
13 documents. You're about the same place we are right
14 now. But we concluded the bridge facility in a very,
15 very short period of time from start to finish. These
16 loan documents track the bridge facility documents,
17 and I was the lawyer who was involved in closing the
18 bridge facility, and we have the same lawyers
19 representing the agents, Credit Suisse. So we are
20 confident that we can get it done. We are on a very
21 tight time frame. We're working very, very hard, but
22 we are highly motivated and we're confident that we
23 can do it.

24 And based on the review of the documents
25 that I've seen thus far, there's no reason to believe

1 that we can't, again because they are fairly similar
2 in structure to the documents that we just read in
3 November. So I --- I mean, if you had had a meeting
4 next week, there would have been a lot of paper that
5 we could have shared with you. We very much
6 appreciate you hearing us today because of our
7 targeting closing on the 12th, and we understand that
8 we need to get those documents to you and will do so.

9 CHAIRMAN COLINS:

10 Right. I mean, we're having the hearing
11 today, but we don't have really much of a foundation
12 at this point.

13 MR. BARDEN:

14 We understand, Madam Chair. And we'll
15 get documents to you as --- even if, you know, some of
16 them are not final, so we can start reviewing them as
17 they come to us. We'll have everything to you next
18 week.

19 CHAIRMAN COLINS:

20 I have some concerns about this dispute
21 involving the \$3 million contribution to the
22 development of the Hill District. I was reviewing the
23 notes of testimony from the licensing --- your prior
24 suitability hearing, your licensing hearing, and I did
25 not see the linkage that you are talking about now. I

1 viewed this \$3 million development fund as your
2 charitable contribution to the community. And the
3 plan B that you've referred to and that you've
4 testified to is really something that you agreed to
5 with other entities, not the Gaming Board; is that not
6 correct?

7 MR. BARDEN:

8 Yes. Plan B was --- plan B was done
9 before then, and I have notes that --- with
10 scribblings on them as to who was going to do what in
11 terms of ---. Let me say this. In my mind, when I
12 entered into plan B, I was getting the development
13 rights. When I started to do the activity with
14 respect to the commitment --- in fact, when I had
15 testified, I did not have an amount and Chairman
16 Decker asked me would I want to quantify that, and I
17 said yes, I'll do it right here. I'll said I'll make
18 it the same as the other.

19 When I made that comment, I was under the
20 impression in my mind because I had committed to \$7.5
21 million by the Sports and Entertainment Authority that
22 I would have the development rights. So if you have
23 the development rights knowing that you're going to be
24 getting a million and a half in parking fees a year,
25 knowing that you're going to get discounted land going

1 forward, that's why I from the seat of my pants said,
2 well, if I'm going to do this, I don't mind giving
3 back and directing money for redevelopment.

4 But in terms of my testimony before the
5 Board, I did not say, Dear Gaming Control Board, I'm
6 not going to give this money if I don't get the
7 development rights. It didn't happen that way.

8 CHAIRMAN COLINS:

9 Right. And I understand how you're
10 linking it at this point. I understand the linkage
11 that you've outlined. But I guess my question is, you
12 know, the commitment to community development, I
13 wonder if the community understood that linkage at the
14 time ---

15 MR. BARDEN:

16 I think so.

17 CHAIRMAN COLINS:

18 --- when you made that commitment.

19 MR. BARDEN:

20 If you could talk to Representative Jake
21 Wheatley, he understands it. They understand it
22 clearly. In fact, they were very angry when I was not
23 given those rights. Again, as I said earlier, my
24 mistake was requesting it for myself. Now, it could
25 be very well that the county and the city will find

1 another way to compensate me for not giving me those
2 rights, and then I'd be happy to provide \$3 million in
3 planning and development.

4 CHAIRMAN COLINS:

5 Now, the --- essentially, I think, on
6 this area --- in this area of your petition --- and
7 you filed an amended petition, I believe, asking us to
8 defer this matter; correct? Because it's your
9 intention to have conversation with the mayor and the
10 commissioners; is that correct?

11 MR. BARDEN:

12 Yes, ma'am.

13 CHAIRMAN COLINS:

14 And this --- I mean, it seems to me, that
15 this portion of your petition has an impact that this
16 Board would want to hear more about as we go forward
17 as we have to decide this issue.

18 MR. BARDEN:

19 Yeah, we plan to meet next week.

20 CHAIRMAN COLINS:

21 All right. And I would expect that it
22 would --- for me, it would be significant to hear
23 their input, to hear community representatives on this
24 issue because this was an essential element of the
25 license in my opinion, community giving, giving back

1 to the community.

2 MR. BARDEN:

3 Oh, I don't disagree.

4 CHAIRMAN COLINS:

5 And so I think it's appropriate that we
6 set aside time to hear this and to give an opportunity
7 for people to speak on it.

8 COMMISSIONER MCCABE:

9 Madam Chair, I know being from
10 Pittsburgh, read in the press is that, in fact, they
11 --- you are supposed to meet with Dan Onorato and the
12 mayor. And they both have said that they wanted to
13 solve this and come before us, if need be, to offer us
14 a solution. So they publicly said they're willing to
15 try to put some type of proposal either in person or
16 through a letter to us.

17 CHAIRMAN COLINS:

18 What we'll do before we --- before we let
19 you go today, I want to take a brief executive session
20 to outline a --- so we can determine scheduling. But
21 are there any other questions from any of the Board
22 members at this time?

23 COMMISSIONER GINTY:

24 I just have a couple. On this last
25 issue, Mr. Eisenhower, you sent a letter to Frank

1 Donaghue on November 8th, 2006 outlining the
2 commitment and including some agreements. I'm not
3 going to go over them now, but I mean, that's kind of
4 what's in the record. And you know, you should
5 address those documents as well in any further
6 consideration of the issue.

7 ATTORNEY EISENHOWER:

8 Thank you, Commissioner. We will.

9 COMMISSIONER GINTY:

10 Cyrus, one question for you. Do we have
11 to license lenders?

12 CHAIRMAN COLINS:

13 Can I just ask one thing? Having
14 reviewed some of these documents, has anyone formed
15 --- and I know no one from Licensing is here right
16 now. Has anyone formed an opinion as to whether or
17 not there are additional people we have to investigate
18 in Licensing? Do we know that yet?

19 ATTORNEY CREANY:

20 Madam Chairman, I think from
21 consultations with the Bureau of Licensing the HoldCo
22 and Super HoldCo companies are probably either a
23 licensure issue or waiver issue, but they would have
24 to come in with applications to this Board.

25 MR. HARRISON:

1 After seeing the petition yesterday, the
2 Bureau of Licensing requests that applications from
3 the two newly formed intermediary companies, the
4 HoldCo and Super HoldCo.

5 ATTORNEY KAYE:

6 Right. And we got their request and
7 intend to file those applications. The people --- the
8 beneficial owners and the offices are all the same as
9 the entities who've already been licensed. We will
10 file that information promptly.

11 CHAIRMAN COLINS:

12 Thank you.

13 MR. BARDEN:

14 Madam Chair, might I add one thing. With
15 respect to our community contribution, because I know
16 it's important to you, it's important to me, I don't
17 want it to be forgotten that we're contributing \$3
18 million to the Northside Leadership Conference. No
19 problems there. That's a commitment we made. We have
20 an agreement with them. I talked to the leader the
21 first part of this week. We're contributing \$7.5
22 million to the Penguins. We're contributing \$1.2
23 million for improvements for the Steelers' stadium.
24 We're putting in \$9 million for highway and other
25 improvements that benefits the Steelers and the

1 Pirates and everyone else in the neighborhood.

2 We are making tremendous community
3 contributions unlike many other entities in
4 Pittsburgh, unlike many other people who are not taxed
5 like we're taxed, who are subsidized, but we're not
6 subsidized. And if we have to do something else, we
7 will certainly entertain that.

8 CHAIRMAN COLINS:

9 Thank you. That's why we're here today,
10 to take testimony and hear what you have to say on the
11 record on these issues. Anything further?

12 ATTORNEY EISENHOWER:

13 Yes, Madam Chair. I would just ask that
14 our petition and the exhibits attached, the floor plan
15 that was handed out during the course of the hearing
16 and the architectural drawing that was shown to staff
17 be included as exhibits in today's hearing.

18 CHAIRMAN COLINS:

19 All right. Thank you. I want to break
20 for an executive session ---.

21 ATTORNEY CREANY:

22 Madam Chairman, ---

23 CHAIRMAN COLINS:

24 Yes.

25 ATTORNEY CREANY:

1 --- before we break, could I have one
2 final statement from the Office of Enforcement
3 Counsel?

4 CHAIRMAN COLINS:

5 Sure.

6 ATTORNEY CREANY:

7 You had started with a question relative
8 to the financing that didn't need to be approved, and
9 I know that we've received internally the one sources
10 and uses that Commissioner Ginty ---. We'd like to
11 have, you know, at some point that submission as well.
12 But with respect to the prior bridge loan, I don't
13 know, is that the direction your question was earlier
14 before we went on to the issue of community
15 commitment?

16 CHAIRMAN COLINS:

17 Which was a request for the documents
18 regarding the financing, no.

19 ATTORNEY CREANY:

20 No. You had asked about whether the
21 lenders or some financing needed to be approved.

22 CHAIRMAN COLINS:

23 Oh, yes. That was the bridge loan I was
24 asking about, yes.

25 COMMISSIONER GINTY:

1 I'm asking about the permanent loan.

2 ATTORNEY CREANY:

3 And both of those are issues that the
4 Office of Enforcement Counsel would like to have ---
5 we recommend that there be an adjournment of the
6 hearing, that we'd have an opportunity to bring in
7 additional information once we receive the financial
8 documents and perhaps other witnesses as well.

9 CHAIRMAN COLINS:

10 Right. We're going to have an executive
11 session now pursuant to the Sunshine Act, and we're
12 going to discuss certain matters. And then we will
13 come back. I'm not going to release anyone in this
14 hearing. We'll come back. We're going to reschedule
15 the second part of this hearing, and then we'll get
16 into our executive session. I'm thinking of a break
17 of about a half an hour. Is that in agreement with
18 everyone? We'll take a half hour recess for executive
19 session.

20 SHORT BREAK TAKEN

21 CHAIRMAN COLINS:

22 Just by way of scheduling, we're going to
23 reschedule you for May 14th for another hearing. May
24 14th I believe is Wednesday, and that will take place
25 --- we are going to be actually out in the western

1 part of the state. We have a public meeting on the
2 15th. We will do a continuation on the 14th. We will
3 have to --- I'll have to get the exact address to you.
4 We will provide you with written confirmation of this.
5 The 15th we're doing the Valley View application
6 hearing, so it will be out there in Lawrence County.
7 We have to make sure we can get that room. We have to
8 get a secure room to have this on the 14th.

9 And that will give us time to get your
10 documents, to have more communication with you
11 regarding your refinancing. Let's see. What else?
12 And to have staff reach out to you and communicate
13 with you. Also, that gives you time to conduct your
14 conversations and meetings --- your conversations or
15 your meetings with Mr. Onorato or Mr. Ravenstahl,
16 whoever you have to talk to vis-à-vis the \$3 million
17 issue, Hill District issue. And it also gives them an
18 opportunity to come in and testify if they chose on
19 that issue. So it gives us a chance to create a full
20 and complete record. And once we do that, you'll have
21 our decision very quickly because I understand you're
22 under the gun for the 19th. All right.

23 ATTORNEY EISENHOWER:

24 Madam Chair, if I might, we were hoping
25 that the Board would consider reconvening two weeks

1 from today, which I believe is May 8th. It's my
2 understanding that having Board approval prior to the
3 date that the Chair has set is important in the
4 negotiations and making sure the investors are where
5 we need them to be to close the deal during the week
6 of the 12th. And perhaps, Ms. Kaye can address that
7 timing issue.

8 ATTORNEY KAYE:

9 I think that the 14th would be extremely
10 problematic for the financing. We are shooting for
11 the 12th. As Mr. Barden said, it may slip a day or
12 two. But the lenders will want assurance much earlier
13 than that, that the structure and the terms of this
14 financing are approved, are acceptable to the Board.
15 If there were any issues that arose on the 14th, it
16 would be nearly impossible to address the Board's
17 concerns in time to close.

18 CHAIRMAN COLINS:

19 I'm sorry, but at this point in time,
20 we're unprepared to schedule an earlier hearing.
21 Thank you. Thank you very much.

22 ATTORNEY EISENHOWER:

23 Thank you, Madam Chair. Thank you.

24 * * * * *

25 HEARING CONCLUDED