

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC MEETING

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BEFORE: GREGORY C. FAJT, Chairman
James B. Ginty, Gary A. Sojka, Sanford
Rivers, Kenneth T. McCabe, Jeffrey W. Coy
and Raymond S. Angeli, David Barasch
representing Honorable Stephen Stetler,
Secretary of Revenue, Keith Welks
representing Honorable Robert M. McCord,
State Treasurer and Frank Jurbala
representing Honorable Russell Redding,
Secretary of Agriculture

HEARING: Wednesday, October 21, 2009
10:00 a.m.

LOCATION: State Museum Auditorium
Harrisburg, PA

WITNESSES: None present

Reporter: Cynthia Piro Simpson

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CHAIRMAN:

Good morning, everybody. Good morning.
If I could ask everybody to please take their seats,
we'll get started with today's meeting. Good morning.
I'm Greg Fajt, Chairman of the Pennsylvania Gaming
Control Board. And just as a housekeeping matter, I'd
like to ask you to turn off your cell phones,
Blackberries and other electronic devices, as they
tend to interfere with our sound system here. So, if
everybody would be willing to do that, I'd appreciate
it. Today we have David Barasch, ex-officio designee,
representing Revenue Secretary Steve Stetler; Keith
Welks representing State Treasurer Rob McCord; and
Frank Jurbala is here representing Secretary of
Agriculture Russell Redding. Thank you for being here
today fellows.

A quorum of the Board is present.
Today's proceedings are called to order. I'd like to
ask everybody to join me in the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

We'll now commence with our scheduled
public meeting. The first order of business is old

1 business and announcements. By way of announcements,
2 the Board held an Executive Session yesterday, October
3 20th, 2009 in accordance with the Sunshine Act. The
4 purpose of the Executive Session was to discuss
5 personnel issues, litigation matters and to conduct
6 quasi judicial deliberations relating to matters
7 pending before the Board.

8 Looking further ahead, the Pennsylvania
9 Gaming Control Board will hold a hearing on Thursday,
10 November 12th, 2009, to gather evidence, including
11 public comment on the renewal of the Category 1 Slot
12 Machine Operator's License of Mountainview
13 Thoroughbred Racing Association, operators of
14 Hollywood Casino at Penn National Racecourse. The
15 hearing will be at 10:00 a.m. at the East Hanover
16 Township Municipal Building located at 8848 Jonestown
17 Road, in Grantville, Pennsylvania. Again, that
18 hearing is Thursday, November 12th.

19 Citizens, community groups and elected
20 officials wishing to present oral or written testimony
21 in this matter can register at the Gaming Control
22 Board website at www.pgcb.state.pa.us. The deadline
23 for registration and the receipt of written comments
24 is noon on Tuesday, November 10th. You may also send
25 your comments via mail, however it must be postmarked

1 no later than Tuesday, November 10th, to again, the
2 Pennsylvania Gaming Control Board, P.O. Box 69060,
3 Harrisburg, Pennsylvania, 17106, attention: Board
4 Secretary. Or you can fax those comments to
5 (717)346-8350.

6 Let's move on now to the minutes and
7 transcripts. May I have a motion to approve the
8 minutes and transcript of the September 16th, 2009
9 meeting?

10 MR. ANGELI:

11 Mr. Chairman, I move that the Board
12 approve the minutes and the transcripts of the
13 September 16th, 2009 meeting.

14 CHAIRMAN:

15 Second?

16 MR. COY:

17 Second.

18 CHAIRMAN:

19 All in favor?

20 AYES RESPOND

21 CHAIRMAN:

22 Opposed? Motion passes. Moving on to
23 new business, I'd like to ask our Executive Director,
24 Kevin O'Toole to come forward and provide his report.
25 Kevin?

1 MR. O'TOOLE:

2 Good morning, Chairman Fajt, members of
3 the Board. My report this morning will be brief. I
4 have something very pleasant to discuss this morning.
5 Today I would like to ask your support in recognizing
6 the work of Acting Chief Counsel, Doug Sherman. For
7 the past year Doug has worked to provide sound
8 guidance and counsel to the Executive Director and to
9 the Board. His leadership and actions during this
10 time frame have demonstrated his commitment to the
11 role and the function of the Pennsylvania Gaming
12 Control Board.

13 As many of you are aware, prior to
14 accepting the role of Acting Chief Counsel, Doug
15 served as Deputy Chief Counsel for litigation. In
16 recognition of Doug's leadership and counsel through
17 his entire tenure with the Board, I recommend that a
18 motion be presented to formally appoint R. Douglas
19 Sherman to be the Pennsylvania Gaming Control Board's
20 Chief Counsel. Thank you.

21 CHAIRMAN:

22 Any questions or comments? May I have a
23 motion?

24 MR. COY:

25 Mr. Chairman, in recognition of his years

1 of providing this Board with sound, thoughtful and
2 learned legal advice on any variety of matters and his
3 ongoing commitment to the role and function of the
4 Pennsylvania Gaming Control Board, including service
5 as both this Board's Deputy Chief Counsel for
6 litigation and more recently as this Board's Acting
7 Chief Counsel, I hereby move that we formally appoint
8 R. Douglas Sherman, Esquire to be this agency's Chief
9 Counsel.

10 CHAIRMAN:

11 Second?

12 MR. MCCABE:

13 Second.

14 CHAIRMAN:

15 All in favor?

16 AYES RESPOND

17 CHAIRMAN:

18 Opposed? Motion passes.

19 APPLAUSE

20 CHAIRMAN:

21 Doug, just a quick public comment from
22 the Board, you know, to follow up on Kevin's comments
23 and Commissioner Coy's comments. You have earned this
24 promotion. You have done great work, you're a
25 tireless worker, you're competent, you're always

1 available, and it's great to see. And again, on
2 behalf of the Board we congratulate you on this
3 well-deserved promotion.

4 ATTORNEY SHERMAN:

5 Thank you, Chairman Fajt. And to all the
6 members of the Board, I certainly appreciate the
7 opportunities that have been provided to this point.
8 I am very grateful for the vote of confidence in the
9 work I've performed. And needless to say, we have a
10 lot of work ahead of us over the next several months,
11 probably six months, I think, a minimum we say.

12 I pledge to you that you'll continue to
13 get the service and the tireless effort not only of me
14 but all of the Office of Chief Counsel (OCC)
15 throughout this period and moving forward.

16 CHAIRMAN:

17 Thank you. Anything further, Kevin?

18 MR. O'TOOLE:

19 That's it, Chairman.

20 CHAIRMAN:

21 Okay. Thank you very much. Next up is
22 our Budget Manager, Dave Rhen.

23 MR. RHEN:

24 Good morning.

25 CHAIRMAN:

1 Good morning.

2 MR. RHEN:

3 Today's budget report focuses on results
4 through September. Through September we have had
5 Board expenses of \$5.8 million. Eighty-three (83)
6 percent of those expenses, or \$4.8 million, have been
7 for personnel. And the remaining 17 percent, or
8 \$993,000, have been for operating expenditures.

9 The month of September saw total
10 expenditures of \$2.1 million. Personnel accounted for
11 \$1.8 million, and the remaining \$290,000 was for
12 operations. The Board's primary operating
13 expenditures for the year include \$573,000 for rentals
14 and leases, \$148,000 for travel, \$143,000 for
15 telecommunications, and \$88,000 for other operating
16 expenditures. This is primarily for expenses related
17 to the database searches used in background
18 investigations.

19 Overall, we are still on track not to
20 exceed the fiscal year 2009/'10 appropriation of
21 \$31,644,500. That concludes my remarks.

22 CHAIRMAN:

23 Thank you. Any questions or comments
24 from anybody? Thank you, Dave.

25 Next up is our OCC, Doug Sherman.

1 ATTORNEY SHERMAN:

2 Mr. Chairman, members of the Board, today
3 the Board has two petitions before it for
4 Consideration. Both petitions are scheduled to be
5 considered upon the documentary records. In each case
6 the Board has been provided with a petition, the
7 response of pleadings of Enforcement Counsel, any
8 additional pleadings and briefs, as well as all
9 supporting evidentiary and other materials. All
10 parties have been notified that the Board is
11 considering their matters today and that they have the
12 right to be present to address the Board.

13 The first petition before the Board is
14 that of Keystone Redevelopment Partners. It is a
15 Petition to Reopen and for Related Relief. In the
16 petition filed in January of this year, Keystone
17 alleges that because Foxwoods had not commenced
18 construction and was discussing relocating its
19 facility, that Foxwoods had effectively abandoned its
20 license, that the Board should revoke that license,
21 and as a final step, that the Board should award the
22 Foxwoods license to Keystone Redevelopment Partners.
23 Both Foxwoods and the Office of Enforcement Counsel
24 (OEC) filed answers to the petition, arguing that
25 Keystone lacks standing to make this motion --- or

1 bring the petition.

2 In May of 2009, as you will recall,
3 Foxwoods filed a Petition to Extend the Time to Make
4 Slot Machines Available. Keystone sought to intervene
5 in that petition. And the Board granted, after a
6 hearing, Foxwoods' extension and denied Keystone's
7 intervention for lack of standing.

8 On September 1st of 2009 Foxwoods
9 appeared before the Board and expressly testified to
10 this Board that it was not seeking to move to another
11 location but rather was committed to timely building
12 at the South Columbus Boulevard site. The Board
13 granted the request for additional time and provided
14 Foxwoods until May 29th, 2011, which is the time that
15 would be permitted under the extension provision in
16 the statute. And of course, the Board expressly
17 limited that extension and the --- to build at the
18 original South Columbus Boulevard site and not at
19 another location. Representatives of the parties are
20 both present today, and they may wish to address the
21 Board any oral argument that they see fit.

22 CHAIRMAN:

23 Thank you. Is Keystone's Counsel here?
24 Marsha?

25 ATTORNEY SAJER:

1 Yes. Good morning.

2 CHAIRMAN:

3 Marsha, I'd like to ask that you limit
4 your comments to five minutes, and the same will be
5 true for Mr. Graci.

6 ATTORNEY SAJER:

7 Is this on?

8 CHAIRMAN:

9 It is on.

10 ATTORNEY SAJER:

11 Good morning, Chairman Fajt and members
12 of the Board. I'm Marsha Sajer of K&L Gates,
13 representing Keystone Redevelopment Partners, LLC.
14 We're very pleased to have the opportunity to address
15 the Board on Keystone's position to reopen, which has
16 been pending before the Board since January 2009,
17 particularly since there have been additional changes
18 that have occurred since Keystone filed its petition
19 to reopen the proceedings.

20 The changes that have occurred since the
21 filing of the Petition to Reopen give weight and
22 emphasis to the necessity to grant Keystone the relief
23 requested, which is to reopen the licensing
24 proceedings for the Category 2 license in Philadelphia
25 and to conduct a full evidentiary hearing regarding

1 the license issued for the Foxwoods Casino in light of
2 Foxwoods' failure to undertake the development of the
3 casino at the Foxwoods' location in accordance with
4 the license issued to it by this Board and change
5 circumstances with respect to Foxwoods' ability to
6 perform at all at this point.

7 To be clear, this is not an appeal of the
8 Board's original licensing decision but rather changes
9 that occurred well after that licensing decision.
10 Those changes included the fact that Foxwoods, within
11 several months of issuance of its license in May of
12 2008, ceased and abandoned work to develop its
13 Foxwoods casino, spent its time devoted to negotiating
14 and locating an alternative unapproved casino site,
15 and more recently, Foxwoods' indications of its
16 failures to have sought various licenses and permits
17 from DEP, EPA, Corps of Engineers, to have undertaken
18 to create a development plan, failure to make use of
19 Judge McCloskey, who was appointed as a Special
20 Master, to assist Foxwoods in navigating the City of
21 Philadelphia's licensing process. But let me make a
22 couple of points in response to the new Chief
23 Counsel's comments.

24 I will not reiterate Keystone's standing
25 arguments. I think they have been very well developed

1 in our various pleadings. I know that Keystone has
2 been described as a disappointed bidder who has no
3 entitlement to be here. As a minimum, Keystone has
4 presented --- there has been no objection to the fact
5 that Keystone has asked to reopen its own licensing
6 application. There seems to be no contradiction to
7 that ability to do so. But even a disappointed bidder
8 has the right to seek enforcement of the statutes and
9 regulations that govern the process. And in this case
10 I'm referring to the Category 2 licensing process in
11 which there were multiple competitors, the Board's own
12 regulations mandate a comparative evaluation. And in
13 light of the changed circumstances --- and I say that
14 because Foxwoods' changed circumstances present
15 something of a moving target. First they had proposed
16 a waterfront casino, then they were looking at two
17 sites in Center City. Now they're talking about an
18 interim facility. Then, more recently, Foxwoods'
19 counsel has filed a plan to move forward that talks
20 about a temporary facility. So, if Foxwoods is not
21 going to build the casino as proposed, then it's
22 absolutely time to reopen the bidding and allow
23 Keystone to participate in that licensing process.
24 And that goes to the second point I wanted to make in
25 response to the Chief Counsel. It does no good to

1 emphasize that Keystone would ultimately like to get a
2 license out of the process. But that was only one of
3 the types of relief requested. The primary relief
4 requested is the opportunity to have a full
5 evidentiary hearing to adjudicate the disputed issues
6 of fact with respect to Foxwoods' abandonment or
7 forfeiture of its license or whether this Board should
8 continue to renew Foxwoods' license. This Board has
9 never held an evidentiary hearing to resolve this.
10 And in fact, in its Executive Decision that ordered
11 Foxwoods to return to its original site, the Board
12 sidestepped the issue of Foxwoods' abandonment
13 entirely. It's not a moot point. In fact, it's a
14 central issue because if Foxwoods had, in fact,
15 abandoned or forfeited or should not have its license
16 renewed, then an extension of a license would be, in
17 effect, a legal nullity.

18 Let me just emphasize again the relief
19 requested. It's very much a threshold issue. Give
20 Keystone an opportunity to participate in an
21 adjudicatory proceeding and evidentiary hearing with
22 discovery in front of a Hearing Officer to determine
23 whether, as an initial matter, Foxwoods has abandoned
24 or forfeited its license. Thank you.

25 CHAIRMAN:

1 Thank you, Counselor. Mr. Graci? And
2 just for the record, you're here on behalf of
3 Foxwoods; correct?

4 ATTORNEY GRACI:

5 Yes, Mr. Fajt --- Mr. Chairman and
6 members of the Board. And congratulations to my
7 friend, Doug Sherman, on his permanent appointment.

8 Mr. Chairman and members of the Board,
9 I'll be brief in my remarks. If I might respond to a
10 couple of the points made by my learned opponent, Ms.
11 Sajer. She claims that the primary relief that her
12 Petition to Reopen sought was a hearing on the merits.
13 And I would say to the Court --- to the Board --- and
14 she said that she didn't want to rehash her standing
15 arguments, but the primary response to her request for
16 a hearing is that Keystone lacks standing. That's the
17 position that we raised in our Motion to Dismiss, the
18 petition filed on behalf of Keystone. She said that
19 this is not an attempt to appeal the Board's prior
20 ruling, but she did note that she is --- and Keystone
21 is a disappointed bidder. Well, --- or a disappointed
22 applicant. The remedy for Keystone was a remedy that
23 arose some three years ago, and that was to appeal the
24 Board's decision in 2007. They didn't do that. And
25 now they're coming around and trying to say that we

1 have a right to reopen.

2 She claims that you never addressed, head
3 on, the claim of Keystone that Foxwoods has abandoned
4 its prior site and abandoned its license. If you
5 didn't expressly resolve that matter in your Order of
6 September 1st, you certainly implicitly did so when
7 you granted Foxwoods' Petition based on the record
8 that we created at the hearing on August 28th, seeking
9 the extension of time in which to make 1,500 machines
10 available for play under our license. So, we believe
11 that we fully --- that those matters are fully
12 resolved.

13 When you did deny their Petition to
14 Intervene and they claim that they have standing and
15 nobody has challenged their right to file a petition
16 at their own docket number, separate and apart
17 from --- and this is a joint petition. They
18 challenged our license at our docket number and said
19 that they wanted to reopen their own. We filed a
20 Petition to Dismiss. I'll rely essentially on that
21 petition --- or response to our Motion to Dismiss. In
22 reaching the conclusion on September 1st, when you
23 denied intervention to Keystone, you said that
24 Keystone does not presently remain an applicant for a
25 license, and you described Keystone as a disappointed

1 applicant --- or as among the disappointed applicants.
2 Under the Board's regulations, only parties,
3 applicants, licensees, permittees, registered and
4 certified persons and those who are authorized by the
5 Board may file petitions. Keystone is not a party.
6 They are not an applicant. They are not a licensee,
7 so it is not eligible under the Board's own
8 regulations to file a petition. At one time Keystone,
9 of course, was an applicant, but they're no longer an
10 applicant. They're no longer --- they're no different
11 than anybody else who wants to come in. They have no
12 right --- in a point that Counsel made they say that a
13 disappointed bidder has a right to come in and
14 complain about what went on. That's the role --- if
15 there are any violations, and we submit that there are
16 not, if there are any violations of the Board's Rules
17 or Regulations or of Foxwoods' License, that's a
18 matter for the OEC, not a matter for anybody walking
19 down the street, which is, in essence, what Keystone
20 is. They're no different from anybody else at this
21 point, to bring to the Board's attention. And I note
22 that Enforcement Counsel has not brought any such
23 action.

24 Since they are not a party, since they're
25 not claimed in any --- named in any proceeding and

1 since they have no direct interest in this proceeding,
2 which is your definition of what makes a person a
3 party, as found in your rules, they do not have
4 standing. In denying the Petition to Intervene in
5 September, you made a decision that they did not have
6 the direct interest necessary for standing, and
7 likewise, they do not have the direct interest
8 necessary to be a party. I would respectfully ask the
9 Board to deny the requested relief made by Keystone.
10 Thank you very much.

11 CHAIRMAN:

12 Any questions or comments from the Board?
13 Office of Enforcement, could you weigh in on this
14 matter, please?

15 ATTORNEY PITRE:

16 In a nutshell, we don't believe the
17 license has been abandoned in any form or fashion.
18 Our office is charged with monitoring each Licensee.
19 And if we had believed the license had been abandoned,
20 we would have filed an enforcement action to simply
21 revoke the license. We are keeping track of what's
22 going on with Foxwoods. If it's necessary that it
23 would be for us to move to revoke the license because
24 we don't feel that they're living up to the
25 responsibilities that they should be, then we'll do

1 that. But we don't see that there's an issue of a
2 license being abandoned in this situation. And Deputy
3 Chief Enforcement Counsel Dale Miller can address this
4 matter more thoroughly.

5 ATTORNEY MILLER:

6 Members of the Board, our pleadings
7 adequately and thoroughly express our position in this
8 matter and that is that Keystone is a failed applicant
9 with no standing to file or litigate this issue. The
10 issue, in fact, is moot because if there ever was, and
11 we would never agree that there was an abandonment by
12 Foxwoods, they stated on the record at the May hearing
13 that they were committed, absolutely committed, to
14 building on Columbus Boulevard the casino for which
15 you approved back in December of 2006. For that
16 reason the issue is moot, there is no standing, and
17 the Board should dismiss it.

18 CHAIRMAN:

19 Thank you.

20 MR. GINTY:

21 I have a question. Who would have
22 standing? Let's assume that there is an issue of
23 abandonment. Who would have standing to challenge
24 Foxwoods?

25 ATTORNEY MILLER:

1 The regulations spell out, and I think
2 Mr. Graci stated those to the Board, spelled out
3 exactly which persons --- and by persons I mean more
4 than individuals, have a right to file a petition and
5 litigate issues before the Board. Clearly someone who
6 is directly affected by an action of the Board may
7 possibly have standing if they fit in one of those
8 categories. A failed applicant is not an applicant
9 who would have standing in front of the Board.

10 CHAIRMAN:

11 Can you be more specific and answer the
12 question? I don't remember who Mr. Graci said they
13 might be. And I think Commissioner Ginty --- who are
14 appropriate parties to challenge that action and would
15 have standing?

16 ATTORNEY MILLER:

17 I think Mr. Graci had the regulations
18 right in front of him.

19 CHAIRMAN:

20 I mean, I guess one of the parties would
21 obviously be our Enforcement Counsel, Jim.

22 ATTORNEY MILLER:

23 That is correct, Mr. Chairman.

24 ATTORNEY PITRE:

25 What would normally happen in a situation

1 like that, if we believed the license would be
2 abandoned, we'd move against the license holder to
3 recover --- basically recover that license.

4 ATTORNEY GRACI:

5 I can give you a list, Mr. Chairman, if
6 you give me a second. Petitions may be filed by BIE,
7 which would be done by --- through OEC, parties which
8 are specifically defined, applicants, licensees,
9 permittees, persons registered or certified by the
10 Board and other persons authorized by the Board.
11 Between the designation applicants and persons
12 registered and certified by the Board, they're
13 specific entities or individuals that the Board would
14 receive an application from, somebody registered or
15 certified to be a vendor, for instance. And then other
16 persons authorized by the Board is the only one that's
17 not specifically defined.

18 MR. GINTY:

19 A certified vendor would not have
20 standing to challenge.

21 ATTORNEY GRACI:

22 Well, I wouldn't think so. They have
23 standing to file a petition in some instances. I
24 would agree with what Mr. Miller said, that a
25 disgruntled applicant or a dissatisfied applicant or

1 disappointed applicant, whatever phrase you want to
2 use, never fits within. Otherwise, you're opening the
3 floodgates to any good and honest citizen who wants to
4 bring something to the attention of the Board.

5 MR. GINTY:

6 And I think that's the point I was about
7 to make. You know, Keystone had an opportunity to
8 challenge the Board's decision initially. It did not
9 seek review at the Supreme Court. So, I mean, I have
10 a difficult time, quite frankly, seeing where you are
11 any different than Joe Smith out on the street at this
12 point.

13 CHAIRMAN:

14 Other questions or comments?

15 MR. ANGELI:

16 Excuse me. When we define applicant,
17 we're talking about a current applicant? An applicant
18 is someone who has presented something before the
19 Board during a certain time period. Was not ---
20 wasn't Keystone an applicant at one time?

21 ATTORNEY SHERMAN:

22 Chairman, they were an applicant up until
23 December 20th. When they were denied a license, they
24 ceased to be an applicant because there was no other
25 license available.

1 MR. ANGELI:

2 Thank you.

3 CHAIRMAN:

4 Thank you. Mr. Sherman, ---?

5 ATTORNEY SHERMAN:

6 Yes. Simply as stated, there are
7 substantial questions which exist regarding the
8 standing of Keystone Redevelopment Partners to bring
9 this challenge to the Foxwoods situation. In
10 addition, the factual basis of Keystone's Petition,
11 i.e. whether or not Foxwoods had abandoned their site
12 and hence the right to the license also is in
13 question, those matters have been fully briefed before
14 the Board, and both of those issues are before the
15 Board for a decision at this point.

16 CHAIRMAN:

17 Thank you. Any further questions or
18 comments? May I have a motion, please?

19 MR. GINTY:

20 Mr. Chairman, I move that the Petition of
21 Keystone Redevelopment Partners be denied.

22 CHAIRMAN:

23 Second?

24 MR. ANGELI:

25 Second.

1 CHAIRMAN:

2 All those in favor?

3 AYES RESPOND

4 CHAIRMAN:

5 Opposed? Motion passes. Next.

6 ATTORNEY SHERMAN:

7 The next petition for the Board's
8 consideration is Sands Bethworks' Petition Requesting
9 Additional Slot Machines and Approval of the
10 Reconfiguration of the Gaming Floor. Sands currently
11 operates 2,973 machines, with a maximum allowance of
12 3,000. Sands is requesting approval to exceed the
13 maximum number of machines by 250, for a total of
14 3,250 machines, to purchase 132 additional slot
15 machines, to move 145 machines from the warehouse to
16 the gaming floor, and approval to reconfigure the
17 gaming floor to accommodate the additional machines in
18 accordance with Operating Plan Six, which has been
19 submitted to the Board's various bureaus. The OEC did
20 not object to the relief requested, provided that
21 Sands meets 13 conditions listed in the OEC Answer.
22 Those conditions also have been provided to the Board
23 in advance of this meeting.

24 Sands simultaneously filed with their
25 petition a motion to protect the confidentiality of

1 certain documents, and that is the exhibits to the
2 petition which include floor diagrams and
3 security-sensitive information. The OCC recommends
4 that the Board grant both the relief requested and the
5 Sands Petition, as well as the Motion to Maintain
6 Confidentiality. Representatives of Sands and the OEC
7 are present here to my left and right in the event
8 there are any questions.

9 CHAIRMAN:

10 I note Mr. DeSalvio from Sands Bethworks
11 is present. Bob, do you have any comments to add?

12 MR. DESALVIO:

13 No, other than the fact that we're really
14 looking forward to opening up the northern end of the
15 casino. Not only would your approval grant the
16 addition of these machines but also an opportunity for
17 us to add two new restaurants and a lounge to the
18 casino floor and complement the Non-Gaming amenities.
19 So, we are really looking forward to hopefully a
20 favorable decision by the Board. Thank you.

21 CHAIRMAN:

22 One question I have. And I know it's
23 been, you know, some point of discussion in the public
24 is that initially you had talked about 2,000
25 additional machines, and now the request is for 250.

1 If you could just state for the record your reason for
2 going from 2,000 to 250.

3 MR. DESALVIO:

4 Yes. The reason for the 250 request is
5 for business purposes, based on demand currently.
6 Back when we made the original application, of course,
7 it was a different time, different economic time and
8 number of years ago. Based on our current demand, our
9 weekends are far exceeding our midweek business to the
10 point where our midweek demand is about 60 percent
11 greater than our midweek demand. And so that's been
12 reflected in the fact that we want to increase the
13 capacity to accommodate the weekend demand. We're
14 currently running about 92 percent occupancy on the
15 games on the weekend. In our business, if you start
16 approaching 92 percent, that's a number whereby a
17 guest who might come to the property might not have
18 the game that they want available. So, by adding the
19 250 we figure that we're going to reduce our weekend
20 occupancy down to about 85 percent, which is a
21 comfortable range. So, we'll have the equipment
22 available we need on the weekends, but during the week
23 we have plenty of excess capacity. So, we didn't feel
24 putting --- going up to the full 2,000 would be
25 appropriate. I certainly hope that as the economy

1 continues to expand, as time goes on, as we continue
2 to develop the facility that someday will be back to
3 you with the request to increase that number based on
4 demand, we'd be very happy to be back here at a later
5 date, asking for more equipment. But for now this
6 satisfies the current business demand.

7 CHAIRMAN:

8 Thank you. Any other questions or
9 comments? If not, could I have a motion, please?

10 MR. MCCABE:

11 Yes, Mr. Chair. I move that the Board
12 grant the Petition and Motion for Confidentiality of
13 Sands Bethworks, LLC, as described by the OCC.

14 MR. RIVERS:

15 Second.

16 CHAIRMAN:

17 All in favor?

18 AYES RESPOND

19 CHAIRMAN:

20 Opposed? The motion passes.

21 MR. DESALVIO:

22 Thank you very much.

23 ATTORNEY SHERMAN:

24 Next before the Board for consideration
25 are four Reports and Recommendations received from the

1 Office of Hearings and Appeals (OHA) relative to two
2 Non-Gaming Employee Registrations and two Gaming
3 Employee Permits. The Reports and Recommendations,
4 along with evidentiary records for each, have been
5 provided to the Board in advance of this meeting.
6 Additionally, in each case the Applicant has been
7 notified that the Report and Recommendation will be
8 presented to the Board and that they have the right to
9 be present to address the Board if they so see fit.
10 If any of the individuals are present today, they
11 should come forward when their name is announced.

12 First is Frank Burbules. On June 8th,
13 2009 the State Police notified the Board that Mr.
14 Burbules, a Non-Gaming Employee of Presque Isle Downs,
15 was arrested and charged with one count of forgery, a
16 felony offense. The OEC requested an Emergency
17 Suspension on July 16th, and the Board's Executive
18 Director granted the request and issued an Order of
19 Emergency Suspension at that date --- on that date.

20 At the Board's August 28th, 2009 meeting,
21 an Order was entered directing Hearings & Appeals to
22 conduct an evidentiary hearing to determine the
23 validity of the Executive Director's Order. The same
24 date Hearings & Appeals notified Mr. Burbules of the
25 September 3rd hearing by first-class mail. Notice was

1 not returned as undeliverable. And Mr. Burbules did
2 not appear for the hearing, so it was conducted
3 without his presence.

4 The OCC recommends that the Board
5 consider a motion adopting the Report and
6 Recommendation of the Hearing Officer, which
7 recommends that the suspension be continued at this
8 time.

9 CHAIRMAN:

10 Is Mr. Burbules present in the room?

11 Okay. May I have a motion?

12 MR. RIVERS:

13 Yes. Mr. Chairman, I move that the Board
14 issue an Order to adopt the Report and Recommendation
15 of the OHA regarding the Non-Gaming Employee
16 Registration of Frank Burbules, as described by the
17 OCC.

18 CHAIRMAN:

19 Second?

20 MR. SOJKA:

21 Second.

22 CHAIRMAN:

23 All in favor.

24 AYES RESPOND

25 CHAIRMAN:

1 Opposed? Motion passes. Next.

2 ATTORNEY SHERMAN:

3 The next Report and Recommendation before
4 the Board is that pertaining to Domenic Scicchitano,
5 who worked as a bartender at Harrah's Chester Casino &
6 Racetrack. On April 5th, 2009, during a random review
7 of surveillance tape, Harrah's Surveillance Department
8 witnessed Mr. Scicchitano improperly ringing up
9 beverages at the bar on numerous occasions. The video
10 showed Mr. Scicchitano ringing up the alcoholic
11 beverages as either non-alcoholic beverages or not
12 charging for the beverage which he provided.

13 On April 14th Harrah's Surveillance
14 Manager informed the Board's Casino Compliance
15 Representative of its ongoing investigation, which
16 eventually resulted in Harrah's interviewing Mr.
17 Scicchitano and then subsequently terminating his
18 employment. The OEC filed an enforcement action
19 seeking to revoke Mr. Scicchitano's Registration. Mr.
20 Scicchitano requested and attended a hearing, which
21 was held on August 25th, 2009. He attempted to offer
22 an explanation for his actions, explaining that he was
23 compensating himself for tip monies received earlier
24 in the shift and requested leniency from the Board.
25 The Report and Recommendation concludes that Mr.

1 Scicchitano failed to maintain his suitability as an
2 employee in the gaming industry and therefore should
3 have the registration revoked. The matter is
4 appropriate for the Board's consideration at this
5 time.

6 CHAIRMAN:

7 Is Mr. Scicchitano in the audience? Any
8 questions or comments from the Board? If not, could I
9 have a motion, please?

10 MR. SOJKA:

11 Yes. Mr. Chairman, I move that the Board
12 issue an Order to adopt the Report and Recommendation
13 of the OHA relating to the Non-Gaming Employee
14 Registration of Domenic Scicchitano, as described by
15 the OCC.

16 MR. COY:

17 Second.

18 CHAIRMAN:

19 All in favor?

20 AYES RESPOND

21 CHAIRMAN:

22 Opposed? Motion passes.

23 ATTORNEY SHERMAN:

24 The next matter relates to Michael King.
25 Mr. King submitted an application for a Gaming

1 Employee Permit to work as a security officer at
2 Harrah's. On April 21st, 2009 OEC issued a Notice of
3 Recommended Denial due to non-disclosures on his
4 application. Specifically Mr. King failed to disclose
5 a February 2000 arrest for assault and related
6 charges. He requested a hearing, which was scheduled
7 for May 28th, but he failed to show up for the
8 hearing. As a result, it was held in his absence.
9 Based upon Mr. King's non-disclosures and his failure
10 to appear at the hearing, the Hearing Officer
11 recommended that he be denied the Gaming Employee
12 Permit. The OCC concurs in that, and it's appropriate
13 for the Board's consideration at this time.

14 CHAIRMAN:

15 Is Mr. King in the audience? Any
16 questions or comments from the Board? If not, a
17 motion, please.

18 MR. ANGELI:

19 Mr. Chairman, I move that the Board issue
20 an Order to adopt the Report and Recommendation of the
21 OHA relating to the Gaming Employee Permit of Michael
22 King, as described by Chief Counsel.

23 MR. COY:

24 Second.

25 CHAIRMAN:

1 All in favor?

2 AYES RESPOND

3 CHAIRMAN:

4 Opposed? Motion passes.

5 ATTORNEY SHERMAN:

6 And the final Report and Recommendation
7 concerns Ellen White. Ms. White submitted a Gaming
8 Employee Application on June 16th, 2009, seeking work
9 in the Security Department at Harrah's Chester Casino
10 & Racetrack. Again, OEC issued a Notice of
11 Recommended Denial based upon her failure to disclose
12 the entirety of her criminal history, as well as some
13 other issues. Ms. White did request a hearing. It
14 was scheduled for September 1st, and she did not
15 appear for the hearing. The hearing was held in her
16 absence. Based upon her failure to report the
17 entirety of her criminal history, the other issues and
18 failure to attend the scheduled hearing, the Hearing
19 Officer recommended the denial of her application. We
20 would concur in that result and ask the Board to
21 entertain a motion.

22 CHAIRMAN:

23 Is Ms. White in the audience? Any
24 questions or comments from the Board? If not, a
25 motion, please?

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MR. COY:

Mr. Chairman, I move the Board to issue an Order adopting the Report and Recommendation of the OHA relating to the Gaming Employee Permit of Ellen White, as described by the OCC.

CHAIRMAN:

Second?

MR. GINTY:

Second.

CHAIRMAN:

All in favor?

AYES RESPOND

CHAIRMAN:

Opposed? Motion passes.

ATTORNEY SHERMAN:

That concludes the matters of the OCC.

CHAIRMAN:

Thank you, Doug. Next we'll have our Director of Licensing, Susan Hensel, provide her report. Welcome, Susan.

MS. HENSEL:

Thank you, Chairman Fajt and members of the Board. The first matters before the Board are the renewals of the Chester Downs and Marina, LLC, Category 1 License and the Harrah's Chester Downs

1 Management Company, LLC, Management License. The
2 records in these matters are open. I will turn to
3 Dale Miller, with the OEC, to continue the
4 proceedings.

5 ATTORNEY MILLER:

6 Good morning, Mr. Chairman and members of
7 the Board. A hearing was held on September 16th, 2009
8 in Chester City Hall regarding the renewal application
9 of Harrah's Chester Downs and Harrah's Management
10 Company. The record for that hearing is open until
11 the Board votes on the renewal. At this time, Counsel
12 and representatives of Harrah's Chester Downs are
13 present in the meeting room for any questions the
14 Board may have.

15 CHAIRMAN:

16 Any questions from any members of the
17 Board? If not, I'll entertain a motion.

18 ATTORNEY MILLER:

19 Mr. Chairman, we have a few housekeeping
20 matters, a few things that have occurred since the
21 hearing. Since the hearing, as the Board is well
22 aware, a Consent Agreement was entered into between
23 Harrah's Chester Downs and the Pennsylvania Gaming
24 Control Board, wherein Harrah's agreed to pay a fine
25 of \$45,000 and do some other things in order to remedy

1 a situation that occurred in the casino. That
2 agreement was not entered into at the original hearing
3 simply because it didn't exist at that time. At this
4 time Counsel for Harrah's Chester Downs and the OEC
5 have entered into a stipulation with regard to that
6 agreement and the application itself, which I would
7 like to read into the record at this time.

8 CHAIRMAN:

9 Please proceed.

10 ATTORNEY MILLER:

11 The stipulation --- this is a second
12 stipulation between Chester Downs & Marina, LLC, and
13 the Pennsylvania Gaming Control Board, OEC. The
14 stipulation is as follows. On September 16th, 2009 a
15 hearing was held before the Director of Hearings &
16 Appeals, Ms. Linda Lloyd, to receive testimony and
17 evidence on the renewal application for Harrah's
18 Chester Category 1 Slot Machine License in order to
19 prepare a report on Harrah's Chester renewal
20 application to the Pennsylvania Gaming Control Board.

21 Paragraph two, at that time, Harrah's
22 Chester and the OEC entered into a Stipulation of
23 Record accepted by the Hearing Officer regarding
24 enforcement actions taken by BIE, that's the Bureau of
25 Investigations & Enforcement, since the initial

1 licensure of Harrah's Chester.

2 Third paragraph, subsequent to the
3 hearing on September 16th, 2009, one additional
4 enforcement action against Harrah's Chester was
5 concluded by the PGCB, which the parties also wish to
6 enter into the record.

7 Four, Harrah's Chester also desires to
8 have admitted into evidence the entirety of its
9 renewal application and the renewal application
10 submitted by Harrah's Chester Management Company, LLC,
11 Harrah's Chester Management, in support of the renewal
12 of its Category 1 Slot Machine License. Wherefore,
13 the parties do agree to the following stipulation.
14 The OEC and Harrah's Chester have entered into a
15 Board-approved Consent Decree since the time of
16 Harrah's Chester's initial licensure. The Consent
17 Decree and PGCB Order approving the Consent Agreement
18 is attached to the Stipulation as OEC Exhibit 23.
19 Harrah's Chester is fully complying with its
20 obligations under this third Consent Decree by paying
21 \$45,000 in civil penalties, by providing additional
22 training to its employees, and by changing its analog
23 security cameras to digital cameras. In support of
24 the renewal of its Category 1 Slot Machine License,
25 Harrah's Chester has submitted its renewal

1 application, as well as renewal applications for
2 Principals and Key Employees to the PGCB Bureau of
3 Licensing. In support of the renewal of Harrah's
4 Chester's Category 1 Slot Machine License, a renewal
5 application also has been submitted for Harrah's
6 Chester Management and for its Principals and Key
7 Employees to the PGCB Bureau of Licensing.

8 Final paragraph. The Harrah's Chester
9 and Harrah's Chester Management renewal applications,
10 as well as the Principal and Key Employee renewal
11 applications and subsequent submittals in connection
12 therewith shall be admitted into evidence without
13 physical production of these documents at hearing due
14 to their large volume and possession by the PGCB
15 Bureau of Licensing. The Stipulation is signed by
16 myself, Dale W. Miller, and by Counsel Victor P.
17 Stabile. And I ask that this Stipulation be entered
18 into evidence as OEC Exhibit 24. And I ask that the
19 Consent Agreement be admitted into evidence as OEC
20 Exhibit 23.

21 CHAIRMAN:

22 Those will be admitted into evidence.

23 Thank you.

24 (OEC Exhibits 23 and 24 marked for
25 identification.)

1 ATTORNEY MILLER:

2 And with that, Mr. Chairman, I believe
3 Licensing has a recommendation.

4 MS. HENSEL:

5 Based on the materials and information in
6 the application and the cooperation received from the
7 applicants, the Bureau of Licensing is not at this
8 time aware of any issues that would preclude renewal
9 of the Category 1 Slot Machine License for Chester
10 Downs & Marina, LLC, or the Management Company License
11 for Harrah's Chester Down's Management Company, LLC.

12 ATTORNEY MILLER:

13 Likewise, Mr. Chairman, at this time the
14 BIE has --- is not aware of any information which
15 would preclude the renewal of the license of Harrah's
16 Chester Downs & Marina, LLC, or Harrah's Chester
17 Management Company.

18 CHAIRMAN:

19 Thank you. Any questions from the Board?

20 MR. GINTY:

21 As I understand it, there was no
22 objection at the public meeting to the renewal of the
23 license?

24 ATTORNEY MILLER:

25 There was not, sir.

1 MR. GINTY:

2 I also understand that Chester Downs
3 employs about a thousand people.

4 ATTORNEY STABILE:

5 Over a thousand.

6 MR. GINTY:

7 Over a thousand. And that you're active
8 in the community?

9 ATTORNEY STABILE:

10 Oh, yes. That was all part of our
11 presentation. Chairman Fajt, if I might?

12 CHAIRMAN:

13 Yes.

14 ATTORNEY STABILE:

15 On behalf of my clients, I would just
16 simply ---.

17 CHAIRMAN:

18 Have a seat. Please sit down and speak.
19 Thank you.

20 ATTORNEY STABILE:

21 Thank you.

22 CHAIRMAN:

23 Could you introduce yourself?

24 ATTORNEY STABILE:

25 Yes. My name is Victor Stabile, Counsel

1 on behalf of Chester Downs and its Management Company
2 this morning. I just wanted to offer our appreciation
3 and thanks to the Board and to its staff for its
4 consideration of our application and, again, the
5 generous cooperation in assisting us through this
6 process. Thank you.

7 CHAIRMAN:

8 Thank you, Mr. Stabile.

9 MR. GINTY:

10 You know, I think it's worth noting, Mr.
11 Chairman, that Chester has paid over \$492 million in
12 taxes. It's something that sometimes isn't always
13 recognized.

14 CHAIRMAN:

15 Good point. Thank you. With that I will
16 entertain a motion.

17 MR. MCCABE:

18 Mr. Chair, I move that the Board grant
19 the Application for License Renewal of Chester Downs &
20 Marina, LLC's, Category 1 Slot Machine License, as
21 described by the Bureau of Licensing.

22 CHAIRMAN:

23 Second?

24 MR. SOJKA:

25 Second.

1 CHAIRMAN:

2 All in favor?

3 AYES RESPOND

4 CHAIRMAN:

5 Opposed? Motion passes. Next, Susan.

6 MS. HENSEL:

7 Yes. We also need a motion regarding the
8 Harrah's Chester Downs Management Company.

9 CHAIRMAN:

10 Any objection from OEC?

11 ATTORNEY PITRE:

12 There's no objection.

13 CHAIRMAN:

14 Okay. Any questions or comments from the
15 Board? If not, could I have a motion for that,
16 please?

17 MR. MCCABE:

18 Yes. Mr. Chair, I move that the Board
19 grant the Application for License Renewal of Harrah's
20 Chester Downs Management Company, LLC's, Management
21 Company License, as described by the Bureau of
22 Licensing.

23 MR. RIVERS:

24 Second.

25 CHAIRMAN:

1 All in favor?

2 AYES RESPOND

3 CHAIRMAN:

4 Opposed? Motion passes. Thank you.

5 Susan?

6 MS. HENSEL:

7 I will now turn to other licensing
8 matters. The first matter is a planned change to the
9 Bureau of Licensing's policy regarding who is required
10 to obtain a Non-Gaming Employee Registration. Patrick
11 Williams, who is the manager of the Employee
12 Permitting Unit and oversees the Non-Gaming
13 Registration Process, is here with me to assist in
14 answering any questions you might have about this
15 policy change.

16 As you know, Non-Gaming Employees are
17 those employees who do not have contact with slot
18 machines or associated equipment other than exterior
19 cleaning. Non-Gaming Employees include those
20 employees of a slot machine licensee who do not work
21 on the gaming floor or in a restricted area but who,
22 as part of their jobs, interact with gaming patrons in
23 areas immediately adjacent to the gaming floor. These
24 positions involve employees who work in food, beverage
25 and retail positions in restaurants and stores around

1 the gaming floor. After a thorough examination, the
2 Bureau of Licensing is preparing to change its policy
3 to eliminate the need for employees who work adjacent
4 to the gaming floor to obtain a Non-Gaming
5 Registration.

6 We began exploring a change to our
7 Non-Gaming Employee Registration policy some months
8 ago. As part of that process, we researched the
9 treatment of employees who would be equivalent to our
10 Non-Gaming Employees in other jurisdictions. Of the
11 11 jurisdictions that we researched, only two required
12 licensure of Non-Gaming Employees in areas adjacent to
13 the gaming floor. The other jurisdictions, including
14 New Jersey and Nevada, had determined that
15 credentialing these employees was not necessary to
16 protect the integrity of gaming.

17 In addition to researching other
18 jurisdictions, the Bureau of Licensing spoke with the
19 OEC, the BIE and Casino Compliance, and each supports
20 the proposed policy change. The Bureau of Licensing
21 is, therefore, planning to eliminate the registration
22 requirement for retail food and beverage workers in
23 areas adjacent to the gaming floor. This change in
24 policy will not affect valet parkers, who will still
25 be required to obtain Non-Gaming Registrations in

1 order to perform their jobs. We propose the following
2 plan for implementation of this change.

3 First, following the Board meeting, we
4 will notify each of the facilities to advise them of
5 the planned change. We will next work with the
6 facilities to review their jobs compendiums to
7 identify those positions no longer requiring Non-
8 Gaming Registrations, and we will establish a system
9 for the return of Non-Gaming Credentials that are no
10 longer needed. Once these steps are completed, we
11 will implement the policy change. Patrick and I are
12 available to answer any questions that you might have.

13 CHAIRMAN:

14 Any questions, Commissioner Sojka?

15 MR. SOJKA:

16 I have one quick question, Susan.
17 Obviously this policy would eliminate the requirement
18 of a person seeking licensure in that way. But if the
19 operator should choose to want to have persons
20 licensed, is that opportunity still available? Would
21 we do that for them if we said we want these people
22 licensed?

23 MS. HENSEL:

24 Yes. And we do see some facilities that
25 extend Non-Gaming Registrations to employees today

1 that we may not necessarily even require today, but
2 they want that flexibility in the workforce to be able
3 to move employees in and out of positions that require
4 registrations versus those that don't.

5 MR. SOJKA:

6 And that makes sense to me, but it does
7 constitute, if you will, a kind of local option that
8 would provide potential inconsistency in hiring across
9 our various operators that I think does not exist in
10 any other area; right?

11 MS. HENSEL:

12 Well, I don't know if I would call it ---
13 we work with the facilities to provide them with the
14 staff that they need and to accommodate the business
15 that they're conducting in the manner that they wish
16 to conduct it. So, for instance, if they have a
17 bartender that works off of the gaming floor and would
18 no longer be required to obtain a Non-Gaming
19 Registration, they might seek to get a Non-Gaming
20 Registration so that the bartender could be moved onto
21 the gaming floor should they have a staffing shortage.
22 So, I don't see it so much as an inconsistency as an
23 accommodation of the businesses, you know, allowing
24 them to proceed with business in the manner that
25 assures them the most success.

1 MR. SOJKA:

2 I think that's an excellent point. And
3 then that would fall, therefore, under the category of
4 what we might call serious but reasonable regulation.

5 MS. HENSEL:

6 Yes.

7 CHAIRMAN:

8 Thank you. Any other questions? Okay.
9 Next, Susan?

10 MS. HENSEL:

11 Okay. I will turn next to the remaining
12 licensing matters. The first matter for your
13 consideration is the approval of Principal and Key
14 Employee Licenses and Waivers. Prior to this meeting,
15 the Bureau of Licensing provided you with a Proposed
16 Order for five Principals, one Principal Waiver and 14
17 Key Employee Licenses for Chester Downs & Marina, LLC,
18 Presque Isle Downs, Inc., Holdings Acquisition Co, LP,
19 Sands Bethworks Gaming, LLC, and Valley Forge
20 Convention Center Partners, LP. I ask that the Board
21 consider the motion approving these Licenses and
22 Waivers.

23 CHAIRMAN:

24 Any questions or comments from
25 Enforcement Counsel?

1 ATTORNEY PITRE:

2 No objection. Any questions or comments
3 from the Board? If not, could I have a motion,
4 please?

5 MR. RIVERS:

6 Yes. Mr. Chairman, I move that the Board
7 issue an Order to approve the issuance of Principal
8 and Key Employee Licenses, as described by the Bureau
9 of Licensing.

10 CHAIRMAN:

11 Second?

12 MR. SOJKA:

13 Second.

14 CHAIRMAN:

15 All in favor?

16 AYES RESPOND

17 CHAIRMAN:

18 Opposed? Motion passes.

19 MS. HENSEL:

20 We also have an Order regarding the
21 issuance of Temporary Key Employee Licenses to 55
22 individuals. Prior to this meeting, the Bureau of
23 Licensing provided you with an Order regarding the
24 issuance of Temporary Key Employee Licenses. I ask
25 that the Board consider this Order approving the

1 licenses.

2 CHAIRMAN:

3 Any questions or comments from
4 Enforcement Counsel?

5 ATTORNEY PITRE:

6 There's no objection.

7 CHAIRMAN:

8 Thank you. Any questions or comments
9 from the Board? If not, could I have a motion,
10 please?

11 MR. SOJKA:

12 Yes. Mr. Chairman, I move that the Board
13 issue an Order to approve the issuance of Temporary
14 Key Employee Licenses as just described by the Bureau
15 of Licensing.

16 MR. ANGELI:

17 Second.

18 CHAIRMAN:

19 All in favor?

20 AYES RESPOND

21 CHAIRMAN:

22 Opposed? Motion passes.

23 MS. HENSEL:

24 In addition, there are Gaming and
25 Non-Gaming Permits and Registrations. Prior to this

1 meeting, the Bureau of Licensing provided you with a
2 list of 179 individuals, including 119 initial and 60
3 renewals, who the Bureau has granted occupation
4 permits to, and 131 individuals who the Bureau has
5 granted registrations to under the authority delegated
6 to the Bureau of Licensing. I ask that the Board
7 adopt a motion approving the Order.

8 CHAIRMAN:

9 Any questions or comments from
10 Enforcement Counsel?

11 ATTORNEY PITRE:

12 No objection.

13 CHAIRMAN:

14 Questions or comments from the Board?
15 Can I have a motion, please?

16 MR. ANGELI:

17 Mr. Chairman, I move that the board issue
18 an Order to approve the license --- the issuance of
19 Gaming Permits and Non-Gaming Registrations, as
20 described by the Bureau of Licensing.

21 MR. COY:

22 Second.

23 CHAIRMAN:

24 All in favor?

25 AYES RESPOND

1 CHAIRMAN:

2 Opposed? Motion passes.

3 MS. HENSEL:

4 In addition, we have recommendations of
5 denial for one Gaming and two Non-Gaming Employees.
6 Prior to this meeting, the Bureau of Licensing
7 provided you with Orders addressing these applicants
8 who the BIE has recommended for denial. In each case
9 the applicant failed to request a hearing within a
10 specified time period. I ask that the Board consider
11 the Order denying the Gaming and Non-Gaming
12 Applicants.

13 CHAIRMAN:

14 Questions, comments from Enforcement
15 Counsel?

16 ATTORNEY PITRE:

17 We request that the applications be
18 denied.

19 CHAIRMAN:

20 Questions or comments from the Board?
21 With that, could I have a motion, please?

22 MR. COY:

23 Mr. Chairman, I move the Board to issue
24 an Order to approve the denial of Gaming and Non-
25 Gaming Employee Applications, as described by the

1 Bureau of Licensing.

2 CHAIRMAN:

3 Second?

4 MR. GINTY:

5 Second.

6 CHAIRMAN:

7 All in favor?

8 AYES RESPOND

9 CHAIRMAN:

10 Opposed? Motion passes.

11 MS. HENSEL:

12 There are also withdrawal requests for
13 Gaming and Non-Gaming Employee Applications. In each
14 case the application is no longer required due to
15 circumstances such as the employee accepting a job
16 with a different employer, the job offer being
17 rescinded or the employee failing to report to work.
18 For today's meeting I have provided the Board with a
19 list of 26 withdrawals for approval and ask that the
20 Board consider the Order approving this list of
21 withdrawals.

22 CHAIRMAN:

23 Enforcement Counsel?

24 ATTORNEY PITRE:

25 No objection.

1 CHAIRMAN:

2 Any questions or comments from the Board?
3 Could I have a motion, please?

4 MR. GINTY:

5 Mr. Chairman, I move the Board issue an
6 Order to approve the withdrawal of Gaming and
7 Non-Gaming Employee Applications, as described by the
8 Bureau of Licensing.

9 CHAIRMAN:

10 Second?

11 MR. MCCABE:

12 Second.

13 CHAIRMAN:

14 All in favor?

15 AYES RESPOND

16 CHAIRMAN:

17 Opposed? Motion passes.

18 MS. HENSEL:

19 Finally, we have Orders regarding
20 vendors. The first is to certify the following seven
21 vendors, Contract Cleaners Supply, Inc.; G.C. Zarnes &
22 Company, Inc.; O&M Multi-Trade, Inc.; Pocono Produce
23 Company, Inc.; S.A. Communal Company, Inc.; Sirna &
24 Sons, Inc.; and Turner Construction Company. I ask
25 that the Board consider the Order approving the

1 vendors for certification.

2 CHAIRMAN:

3 Questions, comments from the Enforcement
4 Counsel?

5 ATTORNEY PITRE:

6 No objection.

7 CHAIRMAN:

8 Questions or comments from the Board? If
9 not, could I have a motion?

10 MR. MCCABE:

11 Yes. Mr. Chair, I move that the Board
12 issue an Order to approve the applications for Vendor
13 Certification, as described by the Bureau of
14 Licensing.

15 MR. RIVERS:

16 Second.

17 CHAIRMAN:

18 All in favor?

19 AYES RESPOND

20 CHAIRMAN:

21 Opposed? Motion passes.

22 MS. HENSEL:

23 The Bureau of Licensing also provided you
24 with an Order and an attached list of 44 Registered
25 Vendors. I ask that the Board adopt a motion

1 approving the Order registering these vendors.

2 CHAIRMAN:

3 Enforcement Counsel, comments?

4 ATTORNEY PITRE:

5 No objection.

6 CHAIRMAN:

7 Questions from the Board? If not, a
8 motion, please?

9 MR. RIVERS:

10 Yes. Mr. Chairman, I move that the Board
11 issue an Order to approve the application for Vendor
12 Registration, as described by the Bureau of Licensing.

13 CHAIRMAN:

14 Second?

15 MR. SOJKA:

16 Second.

17 CHAIRMAN:

18 All in favor?

19 AYES RESPOND

20 CHAIRMAN:

21 Opposed? Motion passes.

22 MS. HENSEL:

23 Finally, there are Proposed Orders
24 denying the Vendor Certification Applications of
25 Capital Sign Company, Inc. and Aerotech Mechanical

1 Contractors, Inc. Both vendors failed to cooperate
2 with the BIE in the investigation process despite
3 receiving a notice that their failure to cooperate
4 would result in their applications being recommended
5 for denial. I ask that the Board consider the Orders
6 denying the applications for Capital Sign Company,
7 Inc. and Aerotech Mechanical Contractors, Inc.

8 CHAIRMAN:

9 Enforcement Counsel?

10 ATTORNEY PITRE:

11 We would request that the applications be
12 denied.

13 CHAIRMAN:

14 Questions from the Board? If not, a
15 motion.

16 MR. SOJKA:

17 So moved.

18 CHAIRMAN:

19 Second?

20 MR. COY:

21 Second.

22 CHAIRMAN:

23 All in favor?

24 AYES RESPOND

25 CHAIRMAN:

1 Opposed? The motion passes.

2 MS. HENSEL:

3 The Bureau of Licensing also provided you
4 with an Order, the approval of which would result in
5 the following vendor being added to the Prohibited
6 Vendors List, Emerson Power, Leibert Global Services,
7 Inc. This vendor has done business with a slot
8 machine operator, licensee or applicant, but has
9 failed to complete its applications. I ask that the
10 Board consider the Order adding the named vendor to
11 the Prohibited Vendors List.

12 CHAIRMAN:

13 Enforcement Counsel?

14 ATTORNEY PITRE:

15 There's no objection.

16 CHAIRMAN:

17 Questions from the Board? If not, a
18 motion, please.

19 MR. ANGELI:

20 So moved.

21 CHAIRMAN:

22 Second?

23 MR. COY:

24 Second.

25 CHAIRMAN:

1 All in favor?

2 AYES RESPOND

3 CHAIRMAN:

4 Opposed? The motion passes.

5 MS. HENSEL:

6 And that concludes the Bureau of
7 Licensing's presentation.

8 CHAIRMAN:

9 Thank you, Susan. Next up, our last
10 presenter, I believe, for the day will be our
11 Enforcement Counsel, Cyrus Pitre. Cyrus?

12 ATTORNEY PITRE:

13 We have one Consent Agreement for the
14 Board's consideration today. We have Ms. Renee
15 Colbert, here on behalf of W.G. Tomko, Mike Roland on
16 behalf of OEC. I'll turn it over to them.

17 CHAIRMAN:

18 Counsel?

19 ATTORNEY ROLAND:

20 Good morning, Mr. Chairman, members of
21 the Board. Mike Roland, with the OEC. I believe this
22 is the last matter before you today. It involves W.G.
23 Tomko. Tomko filed an application for Vendor
24 Certification in December of 2007. The BIE commenced
25 its background investigation of Tomko and its

1 Principals. In the course of that background
2 investigation it discovered that William G. Tomko, Jr.
3 pled guilty to and was convicted of federal income tax
4 evasion, in violation of 26 U.S. Code, Section 7201,
5 in the U.S. District Court of Western Pennsylvania.
6 Based upon the prohibition against licensure in
7 Section 1213 of our Act and the general suitability
8 requirements of Section 1202(b)(23), BIE objected to
9 the Board's approval of William G. Tomko, Jr.'s
10 Principal Application, along with the application of
11 Tomko, and recommended that both be denied or
12 withdrawn with prejudice.

13 Tomko requested a hearing, which was held
14 before the OHA on January 20th, 2009. That hearing
15 was continued to February 12th, 2009. On March 20th,
16 2009, the OHA issued a Report and Recommendation,
17 which recommended that the Vendor Certification
18 application of Tomko be denied.

19 On April 6th, 2009 Tomko filed exceptions
20 to the Report and Recommendation. The OEC responded
21 to those on April 9th, 2009. As Mr. Pitre has pointed
22 out, before you today is consideration of a Consent
23 Agreement. The terms of the agreement include that
24 Tomko will withdraw its Vendor Certification
25 Application with prejudice pursuant to 58, Section

1 423(a)(5)(d) of our regulations. Tomko acknowledges
2 and understands that itself, its affiliates,
3 subsidiaries, intermediaries, holding companies,
4 owners, officers and directors shall not conduct
5 business with a slot machine applicant or licensee,
6 nor reapply for licensure with the Board for a period
7 of five years from the date of the Consent Agreement,
8 unless otherwise the Board approves them to do so.
9 Should Tomko desire to reapply for certification in
10 the future, it agrees to cooperate with the Board and
11 supply all necessary documents seeking that
12 certification. The remaining payments due for Tomko's
13 services, which they've already provided to Washington
14 Trotting Association, Inc., they've submitted invoices
15 for the dates of September 29th and October 7th, 2009.
16 Again, this is for services that have already been
17 provided. OEC and BIE have agreed that those payments
18 will be released, and in return Tomko agrees it will
19 conduct no further business with Washington Trotting
20 Association or any other slot machine applicant or
21 licensee which warrant additional or future
22 compensation for Tomko.

23 Tomko also agreed, and in fact, it's
24 already satisfied this requirement, that it would pay
25 all the investigative fees and costs that are due to

1 the Board. That amount was \$20,153.19. I can confirm
2 that I, in fact, received that check and it has been
3 processed by our Financial Management Department.

4 In addition, Tomko shall be permitted to
5 conduct warranty-related services for slot machine
6 applicants or licensees for work performed prior to
7 the date of this agreement. Tomko fully agrees and
8 understands that it may not be compensated in any
9 fashion, monetary or otherwise, for the performance of
10 the warranty-related services. And Tomko also
11 understands that before it can complete any of that
12 warranty service, it must first notify the Board
13 before stepping on licensed premises.

14 Tomko has agreed to abandon and withdraw
15 its motion for a permanent injunction filed with the
16 Commonwealth Court. That's a matter that's still
17 pending. It was actually filed on January 23rd of
18 2009. That was the original --- there was a
19 Preliminary Order that ordered the release of the
20 funds that were held in escrow for Tomko. It's still
21 hanging out there. It's not been completely resolved.
22 But they've agreed to abandon that. And lastly, Tomko
23 has agreed to withdraw the exceptions which it filed
24 to the Report and Recommendation on April 6th of 2009.
25 Also, as Mr. Pitre had mentioned, Ms. Colbert is here

1 for any questions. I can certainly take any questions
2 if you have any.

3 CHAIRMAN:

4 Thank you, Mike. Ms. Colbert, do you
5 have any comments to add to his report?

6 ATTORNEY COLBERT:

7 The only thing I would add, Mr. Chair,
8 members of the Board, is that Tomko has paid all of
9 the investigative fees that were incurred by OEC
10 during the course of the application process. And the
11 Board --- in addition to the \$20,000 that has been
12 paid in support of this Consent Agreement, Tomko did
13 tender with its application \$9,200. So, approximately
14 \$30,000 was expended on this application, and that has
15 been paid in full.

16 CHAIRMAN:

17 Thank you. Any questions or comments
18 from the Board? If not, could I have a motion,
19 please?

20 MR. ANGELI:

21 Mr. Chairman, I move that the Board
22 approve the Consent Agreement between the OEC and W.G.
23 Tomko relating to Vendor Certification.

24 CHAIRMAN:

25 Second?

1 MR. COY:

2 Second.

3 CHAIRMAN:

4 Thank you. All in favor?

5 AYES RESPOND

6 CHAIRMAN:

7 Opposed? Motion passes.

8 ATTORNEY PITRE:

9 Mr. Chairman, at this time I would like
10 to take the opportunity to update the Board regarding
11 the matters involving SEA and the Rivers Casino.

12 CHAIRMAN:

13 Yes. Please proceed.

14 ATTORNEY PITRE:

15 As you know, regarding the negotiations
16 between the representatives of the Rivers Casino and
17 the Sports & Exhibition Authority, I've been
18 monitoring that situation. After several months of
19 monitoring the negotiations between the respective
20 representatives, I determined that the negotiations
21 were not progressing in a manner that would
22 sufficiently preclude potential harm to the
23 Commonwealth and its citizens. As a result, on
24 October 7th the OEC filed an Enforcement Action
25 Complaint against Rivers Casino in order to protect

1 the Commonwealth and its citizens from potential harm.
2 On the morning of October 8th I began
3 discussions with Counsel for the Rivers. Based upon
4 those discussions, I agreed to withdraw the
5 Enforcement Action Complaint if and when the Rivers
6 made a payment to the SEA in accordance with the
7 agreed-upon payment schedule. This payment schedule
8 had been previously agreed to by both sides and was
9 not the subject of the disagreement and negotiations.
10 Later that day I received correspondences illustrating
11 Rivers' commitment to making the first payment in
12 accordance with the agreed-upon payment schedule. At
13 approximately 3:45 p.m. on October 8th I received a
14 written confirmation that the appropriate payment of
15 approximately \$2.3 million had been wired by Rivers to
16 the Sports & Exhibition Authority. As a result, on
17 October 14th the OEC filed a Notice to Withdraw its
18 Enforcement Action in this matter. I've had
19 discussions with representatives from both sides and
20 will continue to monitor the negotiations as they
21 proceed. I have explicitly expressed to each side
22 that it is in their best interest to reach an
23 agreement in this matter and that I will not hesitate
24 to act in the future should the Commonwealth or its
25 citizens face potential harm. While I cannot discuss

1 the detailed or specific facts regarding the
2 negotiations at this time, I wanted to provide the
3 Board with an update regarding the matter and the
4 reasons behind the actions of Enforcement Counsel.

5 CHAIRMAN:

6 Thank you, Cyrus. Any questions or
7 comments from the Board?

8 MR. ANGELI:

9 When is the next payment due?

10 ATTORNEY PITRE:

11 Not until April, according to the payment
12 schedule. And I understand their negotiations are
13 continuing and that they've almost got the matters ---
14 I don't expect it to last until April, basically.

15 MR. ANGELI:

16 Thank you.

17 CHAIRMAN:

18 Any other questions? That concludes
19 today's business. Looking ahead, the Board will hold
20 its next public meeting on Wednesday, November 4th,
21 2009, at 10:00 a.m., here in the State Museum
22 Auditorium. Any final questions or comments from the
23 Board? If not, may I have a motion to adjourn?

24 MR. RIVERS:

25 So moved.

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CHAIRMAN:

Second?

MR. MCCABE:

Second.

CHAIRMAN:

Meeting is adjourned. Thank you.

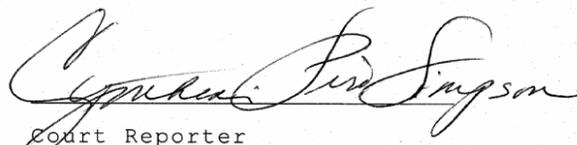
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MEETING CONCLUDED AT 11:20 A.M.

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Gregory C. Fajt, Chairman was reported by me on 10/21/2009 and that I Cynthia Piro Simpson read this transcript and that I attest that this transcript is a true and accurate record of the proceeding.


Cynthia Piro Simpson
Court Reporter