

PENNSYLVANIA GAMING CONTROL BOARD

PUBLIC MEETING  
HSP GAMING, LP

SEPTEMBER 16, 2009, 12:02 p.m.

NORTH OFFICE BUILDING  
HEARING ROOM 2  
HARRISBURG, PENNSYLVANIA

BEFORE:

GREGORY FAJT, CHAIRMAN  
RAYMOND ANGELI, VIA TELEPHONE  
JEFFREY COY, VIA TELEPHONE  
JAMES GINTY, VIA TELEPHONE  
KENNETH MCCABE  
SANFORD RIVERS  
GARY SOJKA

SHANNON MANDERBACH  
REPORTER-NOTARY PUBLIC

CHAIRMAN FAJT: Good afternoon, everybody.  
I assume we have our other commissioners on the phone?

COMMISSIONER ANGELI: Yes. Ray Angeli.  
I'm here.

COMMISSIONER GINTY: Jim Ginty.

COMMISSIONER COY: Jeff Coy.

CHAIRMAN FAJT: Thank you, gentlemen.  
Good afternoon, everybody. I'm Greg Fajt, Chairman  
of the Pennsylvania Gaming Control Board. Just as a  
housekeeping matter, I would like to ask that you turn off  
your electronic devices as they tend to interfere with our  
telecommunication system that we have.

Present today are Commissioners McCabe,  
Rivers and Sojka. Participating via teleconference  
are Commissioners Angeli, Coy and Ginty. We also  
have Dave Barasch here representing Revenue  
Secretary Steve Stetler. Dave, thanks for being here.  
A quorum of the Board is present and this hearing  
is called to order. I would like to ask everybody to  
stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

CHAIRMAN FAJT: We have one item before the  
Board today. Specifically, we will address the Petition  
filed by HSP Gaming, LP, known as Sugarhouse. The  
Petition seeks Approval of Project Financing and Movement

of Slot Machine License.

Let's begin. May I have all the parties involved please come forward and those who will present evidence please stand and be sworn and that includes our staff, if you will.

(Witnesses sworn en masse.)

CHAIRMAN FAJT: Thank you. We will hear from both representatives of HSP, LP and then our Office of Enforcement Counsel (OEC). I would just like to ask if we reserve our questions until the conclusion of each presentation. HSP, why don't you proceed with your presentation, please.

MR. DONNELLY: Thank you, Commissioner. I want to, first of all, thank everybody. I know this is on relatively short notice. We appreciate it very much. I think we've got a lot of good news to tell today. I am going to let Mr. Bluhm tell most of it. I don't want to steal his thunder.

We're here to announce and request your permission to enter into a financing agreement that will finance the Philadelphia casino project that we've now been at since 2005. And financing, I don't think I have to advise this body, it is the most difficult time,

certainly, in my lifetime I've seen.

As an adjunct to that, we're also asking that the Commission approve a restructuring of HSP Gaming, LP so that we can consolidate the land, the equipment and the casino license in one entity which does two things. It simplifies our process and ultimately your process as well but also, more importantly, it's what the lenders want.

I want to hasten to add on that item that what we are doing is we're not introducing any no new owners or any new people or anything different at all. What we are doing is adding a couple start-up entities between the company that used to hold the license and the company that held the property and equipment and everything else like that to facilitate financing.

All those companies are start-up companies, same ownership, are already licensed and we filed applications for those entities many months ago. From a mechanical point of view, it's simply for financing and streamlining.

What we are seeking today is approval for approximately \$185 million worth of financing for the project, plus another \$35 million of equipment financing for a total of \$220 million worth of financing for this project. It has been a very arduous task.

You all remember that we were here in May. In May, Mr. Bluhm said, I'm not sure. I think we can do it. We've done Pittsburgh. I said I could do Pittsburgh. We did do Pittsburgh. I believe I can do Philadelphia in this environment and I think it will take four months. It's ten days more than four months since we last appeared before you.

We're bringing home what is going to be a giant deal for the City of Philadelphia. If this approval goes through, we will have men on the job in a couple days. We anticipate 500 construction workers. It won't all start at one time. We would like to close tomorrow or the next day. As soon as we close, we are going to have this site under development. It's been almost five years.

With that, I will turn it over to Mr. Bluhm to explain how he got this financing and what the financing is. Now, of course, we have presented documents to you. Before I get there even, staff has been -- once again, it's always difficult to get financing documents into a Gaming Control Board. I think more difficult now than it was in the past, by far.

Wall Street and bankers work at their own pace and have their own negotiations about the things they are doing. Staff has, again, lost its third summer

now working on these deals. It seems like we're in the middle of several of them and always asking supreme effort from staff and we always get it.

I apologize, to the extent I can, that we couldn't whip the bankers and their lawyers hard enough to produce documents as quickly as they could. I know that's a burden on you. It's a burden on staff. All I can say is we cracked the whip as hard as we could and want to thank everybody for bearing with us. With that, I will turn it over to Neil. Thank you.

MR. BLUHM: Thank you. Mr. Chairman, Members of the Board and Gaming Board staff, I'm Neil Bluhm. We're here to ask you to approve the financing that we have arranged. I want to give you a little background to this financing. When we were here in May, you approved a Modified Plan and we indicated we thought we couldn't guarantee you in this tough environment but we thought we could get financing in approximately four months. And here we are.

First, I want to tell you this has been an extremely difficult process to get financing. This is the first new casino financing that we know of for a new development called Greenfield Development in this country since Pittsburgh was done a little over a year ago.

We started out by talking to the major US

banks that, frankly, I've had relationships with for close to 40 years. The big banks -- I'm talking about Bank of America, who once had given us a commitment, or actually Merrill had given us the commitment, another part of Bank of America, JP Morgan Chase, who I have long-time relationships with -- none of those types of banks were willing when we went to them to make construction loans on new casinos.

The reason being -- and you read about it in the newspaper every day -- they are up to their neck in real estate and casino loans and if they are going to do any new ones, they certainly don't want to do a Greenfield construction loan.

So we went to what's called the syndicated loan market which, unfortunately, is more complicated and the interest cost is higher because most of the buyers of those loans are funds and investors who are looking for a higher yield than maybe a major commercial bank. But we got it done.

We are ready to close, if you approve it, and we can get rolling and pretty much be on the schedule that we had indicated. Once you approve this loan, we hope to close it in a matter of a couple days, possibly by the end of this week, depending on when we can get everything done, but certainly as quickly as possible.

while we actually are somewhat under construction already, we would start major construction with a view to opening this casino within roughly 10 months, which would be the end of July or early August of 2010.

Now, the second thing I want to mention is the parking garage. If you recall when we were here in May, we discussed the fact that we couldn't obtain enough financing to build a parking garage in this environment and that our plan was to try to build the parking garage out of cash flow.

We have that ability in our credit agreement with certain provisions dealing with that. Those provisions basically are as follows. First, we have to wait six months after the casino opens and the reason for that is so that they can see sort of a little more stabilized cash flow. Secondly, we have to hit a minimum amount of earnings or EBIDA in order to build the garage. Thirdly, we have to get it started within 30 months after we open the casino.

Now, let me explain the rationale for the 30 months. It's going to take us 10 months to build the casino. If we wait 30 months, we are now out 40 months and it takes roughly 14 months to build the garage. So you have 10 and 30 is 40 and another 14, you're at 54



months.

The whole loan is a five-year loan or 60 months. So it only leaves six months after you finish the garage. If you had any delay or any construction slow down or anything, it could be less. They want to know that if we're going to build the garage, the garage has to be finished before their loan is due because they are worried about refinancing the loan and getting paid off.

One of the reasons they are sensitive about the garage is that if we weren't building the garage, all of that cash flow would be distributed to the lenders which would reduce the amount of their debt. Instead, we are keeping that cash flow to pay for the garage.

We are committed to building the parking garage as soon as commercially practical. That's what we indicated when we were here in May. An obvious question is, well, what if we don't get the EBIDA requirements or we don't have enough cash in the account -- one of the requirements is we have to have built up 50 percent of the cost of the garage. By the way, we are personally guaranteeing, beyond the company, the completion of the garage. That's also part of the loan agreement, if we start it.

But our plan would be when we go to

refinance this loan, we would then try to make an arrangement with the new loan once this loan is refinanced to be able to build the garage. That's the situation as far as the garage is concerned.

Now, there is one other feature, which is a big plus here. Since May, this four-month period, for a variety of reasons, we had indicated that we were going to lease the pier 49 and 50 property -- that's the property right next door to us -- and that we were going to obtain an option to acquire that property.

We have concluded that we should buy that property and are entering into an agreement to actually acquire it. The benefits to the project are several by owning that property. First, while we are operating the interim facility, we will have more parking because we will have an additional roughly five acres right next to us.

Secondly, the whole site will lay out better. We will have more waterfront. We will clean up this property next to us and it helps us. Thirdly, it helps us build the -- when we go to build the garage, one of the problems before was that we were going to be tight on parking because when you're building the garage, you are using part of your property with construction and everything and by having this additional

five acres next door, we are able to have more parking during the whole process.

Also if we were leasing it, we were stuck with a warehouse on the property. So we were going to have to figure out how to park within that warehouse, plus on the land. This way we can knock the warehouse down and have a much simpler better parking arrangement.

Lastly, the lenders were really pushing us to own it rather than lease it. They just thought it was a better arrangement. So we will purchase this property for total payments of roughly \$12 million, something like that, to the seller. That's a plus. I think it gives us more flexibility and helps the project and we own more land. We're not making this project smaller. We think we're improving it.

The last two comments I would like to discuss deal with some of the restrictions in our loan agreement dealing with distribution of profits and payment of oversight fees, which are important to us.

As far as distribution of profits, under our loan agreement, we are prohibited from making any distributions of profits or dividends to the owners during the term of this loan. We can take out money for the payment of the taxes that the individuals would have on the project because it's a partnership for tax purposes.

So there's no taxes paid by the entity. It's paid by the owner of the entity. But other than that, we can't pay ourselves dividends.

We are permitted to pay an oversight fee. It's a very standard oversight fee. We have had it in other transactions including Pittsburgh. The oversight fee is basically limited in our credit agreement under a series of different tests.

The first test is that that oversight fee is permitted only if we hit a certain percentage of the projected EBIDA under a formula. Now, why is this oversight fee important to us? It's important to us for several reasons. First, as you know, we have invested, as we sit here today, almost \$170 million of cash equity. We have no debt on the project.

When we started this project, we thought we were going to invest about \$50 million. We had within our agreements with our partners that we would invest up to \$80 million. When we made our presentation to you, part of our numbers assumed a certain income from the property and we were asked to assure that we would have enough money even if there was no income during the development stage. So we committed to roughly \$105 million of equity. We have invested, so far, closer to \$170 million of equity.

But that's only half the story. The number I've given you does not include the cost of all of our employees. We've been working on this for roughly -- I'm talking about the sponsor employees. We've been working on this project almost five years. During this period, we've got a massive group of people who we are paying their salaries, their overhead and none of that is included in the equity number that I gave you.

The money we spent was to buy the land, pay the fee, pay for our legal expenses. You know what went on the over the last several years. We made the lawyers rich. We've done a lot of site work and construction work.

But none of that includes the cost of Greg Carlin, our general counsel, all the people working and planning this and our corporate overhead. We haven't obviously taken out a dime. All we've done is put in money people and it doesn't include all of the people I mentioned.

Receiving the oversight fee is very important to us. We've got to compensate our people. We've got to take care of them. So far we've just been spending money and we're only going to get it if we hit a high percentage of our projected EBIDA.

Those basically are my comments about where

we stand. We hope you will approve this. I would like to just mention one other item which deals with the complexity of the documents and the work of the staff.

In this environment, the lender documents are overwhelmingly protective for the lenders. The pendulum has swung 100 degrees from one situation to another. Three years ago you could have done this like this. Unfortunately, we were held up from doing it.

Now, after what happened over the last year, the lenders are so overbearing. The documents are hundreds of pages and I've been doing financing and deals for years. This is the toughest environment I've ever seen to do it. As I said, this is the only new construction that's occurred.

I want to apologize to the staff for throwing at them all these massive complicated documents. I can tell you it wasn't our doing. I would have preferred the old days but we have to live in today's world. I very much appreciate the time and effort.

As I think our counsel, John Donnelly, has said, we've ruined your summer last year and this year. It hasn't been a great summer for me and my staff either working on this. But we very much appreciate the effort in dealing with the complexities of this transaction, much of which is due to the environment that we're living in

today which hopefully will improve over the next year or two. With that, that concludes my comments.

CHAIRMAN FAJT: Thank you, Mr. Bluhm, and thanks for the comments about our staff. We're very proud of our staff. From top to bottom of the agency, our folks do a great job for us and for the industry. So thank you. Does OEC have any questions for HSP?

MR. PITRE: Yes, we do.

CHAIRMAN FAJT: Please proceed.

MR. PITRE: Mr. Bluhm, let's start off fairly light. Let's talk about the pier. What exactly do you plan on doing with the pier, at the pier? Are there any plans for constructing anything at that location or is that strictly to serve as parking?

MR. BLUHM: At this point, it's strictly to serve as parking. We haven't really developed our plan for the property. The only plan we have right now is to knock down that warehouse as soon as practical so that we can use the whole property as surface parking. As we further refine our plans as we go along, we will come to you with any revised plans for that property and get your permission and approvals.

MR. PITRE: The EBIDA requirements that you have to meet before you can begin the construction of the

parking garage, what if you don't hit those requirements? what if you don't meet the EBIDA requirements? what's Plan B with regard to the parking garage?

MR. BLUHM: First, we have a period of time. So if we didn't hit it the first year or whatever, we have up to 30 months to hit that level. That number is, I believe, a fixed number based upon our early projections. We could do it later as long as we had enough cash in the account.

Alternatively, as I indicated, if we weren't able to build the garage under the current loan, at some point we have to refinance that loan. Then we would try to negotiate something in our new loan that would give us enough money to build that garage.

I neglected to mention during my earlier comments, because I think this is an important factor, as you are all I'm sure aware, there is considerable thought being given by the Legislature to permit table games. The table games will require a license fee. No one knows what it might be, maybe \$15 million, \$10 million, in that range, plus some additional expenses to pay for tables and make changes. We feel that that is extremely important.

You will see, as you study these documents, that we have put in all kinds of provisions to let us use



through whatever funds we possibly can for the table games. That has a huge advantage, I think, to all parties concerned.

Number one, if we're going to spend \$10 million or \$15 million for a license and more money, we're going to expect that we're going to increase the projected EBIDA which was based upon solely our slots. Our current projections are that we would increase our earnings if we were able to get table games.

One of the advantages of this loan agreement is that we can use that cash flow that we're putting aside in this reserve account to pay for table games ultimately and that would give us an increased EBIDA we think which would give us more ability to generate EBIDA and more cash flow to pay for the garage.

MR. PITRE: As we sit here today, you are committed to building that parking garage whether or not you hit those EBIDA requirements and if it requires you to subsequently get refinancing or additional financing to build a parking garage if you do not hit those EBIDA requirements, you are committed to doing that?

MR. BLUHM: Yes, sir. We have said we will build the garage when commercially practical. I think we said that when we were here in May.

MR. PITRE: The other question I have is

going back to the pier again. Do you require any other permits or any Army Corps approvals? Do you need anything else to rehabilitate or to demolish that warehouse and do you anticipate any problems in getting those?

MR. BLUHM: I don't believe. I'm not 100 percent sure. I believe that to do our surface parking and knock down that warehouse we don't need anything from the Army Corps. Obviously, if we would build some structures or whatever, we would come to you at that time and lay out the plan and what permits, if any, we might require. But we don't need them to do what we are planning to do.

MR. PITRE: The other question is with regard to the number of slot machines. The projections that you gave us back in May were based upon 1,700 slot machines. Is there any plan to go below 1,700 slot machines and, if so, why?

MR. BLUHM: There are two parts to this discussion. There isn't any plan to go I would say significantly below 1,700. The only caveat to that I would say is there is some new machines that are proving to be extremely popular. These are the machines that are basically simulated Black Jack type tables. They take up more room but they are generating a huge volume of business.

Until you have table games, those are proving to be very popular. The same would be true for the machines that are more like roulette. It is possible that we would want to put in a few more of those. They might take up a little room and there might be an insignificant drop of the number of machines. Basically, we're talking about the 1,700 with minor de minimus changes.

The second element of all of this is that if table games are permitted, we will come to you with a plan. I'm sure every other casino in the state will do the same. But under that scenario, we would eliminate some of the slot machines and replace those with the table games. We would still expect to have well in excess of 1,500 slots but we will eliminate some.

In fact, depending on when the Legislation comes in, we will structure our slot purchases and maybe even lease a few if we think that we might have to get rid of them because we bring in some table games, all of which we would be doing because we think it will increase the EBIDA of the facility.

MR. PITRE: With regard to moving into Phase I of the project, if you meet the EBIDA requirements and if business is running better than you expected or what you expected, when do you anticipate beginning Phase

I? I assume that once you hit the EBIDA requirements, you're going to begin construction of the parking garage and expansion of the facility under the parking garage.

MR. BLUHM: Two questions. Let me answer the second first, when will we start the garage. We have to meet the tests of our loan agreement in order to start the garage and have sufficient projected cash flow so that we can pay off the rest of the cost of the garage.

The way it works is we have to have a certain EBIDA and we have to have 50 percent of the cost of the garage in cash in an account. Then we have to project out the future projected cash flow. We will do that conservatively to make sure that we have enough money to pay for the garage, present a plan and do that. All of that, in part, depends upon the success of the casino.

As far as completing Phase I, which is to move to 3,000 slots, that obviously depends, first and foremost, upon the earnings and success of the casino again and our greatest hope and goal and desire would be that this would be successful and we would be able to do it.

The second will be what the financing

markets look like at that time to go arrange the financing to complete the rest of the project. Our hope and belief is that if we are having good earnings and the financing markets will be better down the road, that is certainly our goal and our desire and we are committed to do that to the extent it's commercially practical or feasible.

MR. PITRE: I have no further questions.

CHAIRMAN FAJT: Why don't you proceed with your presentation then.

MR. PITRE: My presentation is basically I have one question for Jim Talerico. We prepared a report which we would like to submit as OEC Exhibit 1. I assume there is no objection from counsel.

MR. SKLAR: No.

MR. PITRE: The report speaks for itself. I only have one question for Mr. Talerico. He has heard Mr. Bluhm's testimony. Mr. Talerico, have you reviewed all the financing documents that have been submitted to us by HSP?

MR. TALERICO: Yes, we have reviewed all the documents.

MR. PITRE: You have heard Mr. Bluhm's testimony today. Is there anything in Mr. Bluhm's testimony or in those documents that would cause you to change anything in the report that we have prepared and

submitted as OEC Exhibit 1?

MR. TALERICO: No, everything Mr. Bluhm has testified to is in the documents they gave us.

MR. PITRE: That's the only question I had.

CHAIRMAN FAJT: Mr. Sherman?

MR. SHERMAN: Chairman Fajt, Doug Sherman, Acting Chief Counsel. Before any record is closed here, we also want to indicate that there was a letter received by the Board on behalf of Senator Farnese and Representative O'Brien. They would ask that that be placed into the record. A copy will be given to HSP counsel and I will submit that also for inclusion in the record. I just wanted to make sure we got that in before anything was closed.

CHAIRMAN FAJT: I had that on my hit list but thank you for mentioning that. I did note the presence of Representative O'Brien and his staff at the meeting earlier. Thank you. Mr. Donnelly?

MR. DONNELLY: Yes. We presented to staff this morning a compilation of the documents we have been feeding over the last month or so, which is entitled HSP Financing Credit Documents. We would like to move that into evidence.

CHAIRMAN FAJT: Any objection from Enforcement Counsel?

MR. PITRE: There is no objection, assuming that those documents are substantially similar and there have been no material changes to the documents and they are substantially similar to the documents that we have been reviewing for the past month.

CHAIRMAN FAJT: Mr. Donnelly, is that an accurate statement.

MR. DONNELLY: Yes.

CHAIRMAN FAJT: Mr. Donnelly, do you or anybody from HSP have any questions for the OEC on their presentation?

MR. DONNELLY: No.

CHAIRMAN FAJT: With that, I'll move to the Board. Questions from the Board?

COMMISSIONER ANGELI: Yes, Ray Angeli.

CHAIRMAN FAJT: Ray, go ahead.

COMMISSIONER ANGELI: Mr. Bluhm, we talked about the projected EBIDA. What is it? Is there a number for that?

MR. DONNELLY: We have been keeping those numbers confidential as they are projections. We have submitted them to staff and they have them. They are, unfortunately, probably buried in this pile of documents but they are in the documents that are available to the

Gaming Board.

CHAIRMAN FAJT: Commissioner Angeli, we can certainly talk about that when we go into Executive Session. I'll do a little housekeeping here. Once the Board is done asking questions, we will close the record and go into Executive Session, which means all of you in the room here except for the Board Members and certain staff will have to leave the room. Ray, we can at that point talk about the specific EBIDA. But if you have any questions generally regarding that, feel free to ask Mr. Bluhm or counsel.

COMMISSIONER ANGELI: Is it the same thing with your projected win per day? Do you have that or is that confidential also?

MR. DONNELLY: Yes, that would be the same answer. Again, I apologize. The fault is, as I said before with staff, we've been feeding documents over a period of time.

CHAIRMAN FAJT: We do have that information.

COMMISSIONER ANGELI: All right. Will Dr. Talerico be in the room also?

MR. PITRE: No, Dr. Talerico will not be there. But the projected EBIDA is in the FIU report.

COMMISSIONER ANGELI: I just have a couple



questions in session then. Thank you.

CHAIRMAN FAJT: Anybody else on the phone before we take questions from the Board members here?

COMMISSIONER GINTY: Mr. Bluhm, have you had an opportunity to look at the conditions counsel has proposed and, if so, do you agree with them?

MR. DONNELLY: Let me answer. We were given orally some of the proposed comments of Cyrus's office. As I understand, the final proposed conditions are going to be drafted after this meeting. I will have Michael discuss this.

MR. SKLAR: We certainly got OEC's proposed conditions in their answer that they are proposing be attached if the Board grants the relief requested. And we do have objections to certain of those conditions.

COMMISSIONER GINTY: Have you made those known?

MR. DONNELLY: Yes, we have not been shy with some of those comments that we have provided to Cyrus. We spoke to Executive Director O'Toole yesterday about a mechanism to allow us to have input into those comments. He assured us that he would allow us more time to enter comments.

I will say -- and we told Kevin yesterday

and Cyrus as well -- that we would like to get at that as soon as possible because the lenders want to see the conditions and have demanded to see them before we can close. Again, we are burdening everyone, ourselves included, but we have to address those as soon as possible. We are prepared to do that.

MR. PITRE: Commissioner Ginty, to answer your question, with regard to one of the conditions that I previously proposed in the answer with regard to holding back the distribution of any oversight fees, the reason I did that was because I wanted to be assured through Mr. Bluhm's testimony that he was committed to seeing that parking garage built.

I've heard that testimony. I'm fairly satisfied. Because the oversight fees are also subject to the EBIDA requirements, I have no objection to removing that part from my recommendation with regard to the oversight fees only.

COMMISSIONER GINTY: Thank you, Cyrus. I don't know how we can come to a conclusion today if we don't know what conditions you might get.

CHAIRMAN FAJT: We will talk about that during Executive Session, Jim.

COMMISSIONER GINTY: Okay.

CHAIRMAN FAJT: Commissioner McCabe,

thanks for your patience. Fire away.

COMMISSIONER MCCABE: First, Mr. Bluhm, I want to thank you again publicly, for you and your team, what you delivered in Pittsburgh. It's an outstanding facility. If it is any indication of what you can do, I think the people in Philadelphia should be excited about what you're going to be able to build in Philadelphia.

You have proven to me that you are a man of your word. When we did everything for the Rivers Casino, you said within three to five days that you would be writing the check and those workers would be paid that hadn't been paid for three months. I knew on that Monday they were getting their pay and they were beginning work again. You have proven to me that you are a man of your word and I believe you will be able to deliver on what you have been saying.

I have two questions. One, as part of what we're going to be doing on this financing, are there any new investors involved since we first awarded HSP the license? It's the same people, same group?

MR. PITRE: I can verify it's the same people and the same group.

MR. BLUHM: Yes. I think there's maybe one or two small changes, which you are aware of, that

have occurred since we made our presentation. But as far as 98 percent or something, it has not changed?

COMMISSIONER MCCABE: The second is, do you see any issues or problems that is going to delay the time frame that you have outlined to us? Is there anything out there pending that could delay all this?

MR. BLUHM: I don't believe so. We hope not. We are on very good terms with the city. We are working very cooperatively. We actually have gone out and ordered the steel because we would have been delayed before you have even approved this financing in hopes that you will so that we can meet this time schedule. We are putting in driving piles right now. We have the permits to do so even before you've done this so we can meet this time schedule. We believe we will open roughly July, August as planned.

COMMISSIONER MCCABE: Thank you.

CHAIRMAN FAJT: Other questions from the Board? Commissioner Sojka?

COMMISSIONER SOJKA: Chairman Fajt, I would like to ask to make sure, is this an appropriate time to discuss the motion dealing with confidentiality or would you like to take that up --

CHAIRMAN FAJT: No, I think this is a proper time to address that.

COMMISSIONER SOJKA: I would like to just have some assurances with regard to that. I've read the motion and it's clear what Sugarhouse attests to. So I really don't need to direct any questions to Sugarhouse, but to OEC.

I think it's important because this whole issue of what was and wasn't confidential was a major issue for us about a year ago. We struggled with these issues and I think at this moment, as we take this step, whatever we do is going to begin to be setting precedent that will bind this organization in the future.

I would ask you, did you have an opportunity, at least as Enforcement Counsel, to see any of that material or is it truly confidential and walled off from everything?

MR. PITRE: No, no. We have seen everything.

COMMISSIONER SOJKA: Would you suggest to this Board that there is anything in there that's being held confidential from us that ought to be of any concern to us?

MR. PITRE: You have exactly what we've seen and our report is indicative of what we've seen, all the information. The report contains a breakdown of the whole plan. We have submitted the whole financing plan

into the record to ensure that we're aware and we're going to compare the signed documents once they are signed to what was submitted into the record to ensure that it's everything that the Board approved today, if the Board should decide to do so.

As far as the Board is concerned and our office is concerned, that confidentiality requirement does not apply because the Board has to ensure the proper regulatory oversight and integrity of gaming in the Commonwealth.

COMMISSIONER SOJKA: Okay. Thank you.

COMMISSIONER COY: Mr. Chairman, Jeff Coy.

CHAIRMAN FAJT: Go ahead.

COMMISSIONER COY: I just wanted to make sure that I understood what Cyrus said earlier that based on having heard the testimony of Mr. Bluhm today, the OEC does not object to this supervisory or oversight fee arrangement that has been described.

MR. PITRE: That's correct. Based upon the testimony today, we're satisfied that the oversight fee should be reinstated.

COMMISSIONER COY: Very good. The other thing I wanted to say to the Sugarhouse team is I would hope that even though there are Legislators and Senators

who have either expressed concerns or objections to the plan, if you do go on and the Board approves this, that you will continue to meet with those Legislators and Senators to try to address community needs and concerns because even though they may have objected, as you all move forward, their voices and the voices of their constituents need to be at least heard and potentially addressed.

MR. BLUHM: Yes. We're happy to meet any Legislators who would like to meet. As far as community groups, we have an agreement with the community groups that we worked out with the groups and the city. We meet with them. As far as many of those groups, we think we're in a very open and good relationship. There are some anti-casino groups that we may never be able to persuade but we'll keep trying.

COMMISSIONER COY: Good. I appreciate that, especially the efforts toward the members of the State Legislature.

MR. BLUHM: We are happy to talk to them whenever they would like.

COMMISSIONER COY: Thank you, sir.

COMMISSIONER RIVERS: Mr. Chairman?

CHAIRMAN FAJT: Yes, Commissioner Rivers?

COMMISSIONER RIVERS: The question I have regarding your permits, I understand there are a lot of permits needed. As we sit here today, how many additional permits do you need to get this project started and completed?

MR. BLUHM: We have the permits to get started. As we go along, I anticipate no problems with the permits. We're working closely with the city. As you know, a master has been appointed by the Supreme Court to oversee the entire process. Frankly, I want to be very clear about this. The city and we are on the same page working together. They have been very cooperative and in support of what we're doing.

MR. DONNELLY: Michael has been dealing with Terri McKenna and can answer that.

MR. SKLAR: The first permit that we need to begin construction, the foundation permit, has already been issued and we have that. There's a sequence of permits that will be issued according to the construction schedule. We don't anticipate any problems. They will be issued in the ordinary course as we need them as we move forward with construction.

COMMISSIONER RIVERS: I was glad to hear you say that you have a positive working relationship with the City of Philadelphia because I'll



go back to what Commissioner McCabe said regarding the project in Pittsburgh. I think if they do with you with what happened with you Pittsburgh, the project will be very, very successful and I wish you the best of luck.

MR. BLUHM: Thank all of you.

CHAIRMAN FAJT: Any other questions from Commissioners? I have two quick ones but I'll go last. Any questions from those on the phone?

(No response.)

CHAIRMAN FAJT: Mr. Donnelly, you had mentioned and Mr. Bluhm had also mentioned that you hoped to be able to close the transaction which in my layman's terms means the money flows to you. So tell the Board, if you can, what steps remain to be done to close that transaction. Is it simply paper, documentation and dotting Is and crossing Ts or are there other major lifts involved?

MR. BLUHM: No. The documentation has basically been done. If there's any change, it would be a word or two. The documentation is basically done and been reviewed by the staff. The main thing would be to go over the statement of conditions, which we haven't seen in full, and make sure that we and the staff are in agreement as well as the lenders would then want to review

that.

I think in the past the way this has worked -- and you can explain this, John. But I think in the past, after the transaction was approved, we sat down and worked out the details of the statement of conditions. We had more time then. Now time is of the essence because we want to complete it and close the financing.

I should have mentioned very early why there is some urgency on our part besides getting the job started, creating jobs and getting the revenue rolling sooner. The other side of it is the financial markets. It's been so tough. I don't know what will happen four days from today and you never know when people can change their mind.

It isn't one lender that we're really dealing with. We have maybe 20 or whatever different parties who have taken pieces of the deal. They are all happy and it went well and things are good today. But in this environment, we want to get it closed.

Mr. Chairman, our view is the same as yours. Closed means they deposit the money. The way this loan works is on the day of the closing, they put into our account, which is under their control, all of the money. The full amount of the loan goes into an account and then we draw out of that account to build the property. The

key is getting it closed and having that money deposited in a bank and then we draw on it and build the project.

CHAIRMAN FAJT: Again, if I can recap your comment, the major issue or maybe the only issue remaining is the lenders review of the statement of conditions?

MR. DONNELLY: That's correct and we would like the opportunity to sit down and go over it and make sure it conforms with the documents and also we would like to get our oar in the water on some of those issues as well. That's it.

CHAIRMAN FAJT: Okay. One last question. On the EBIDA and the requirements to meet EBIDA and to construct the parking garage, does the EBIDA requirements have to be sustained?

In other words, if you meet EBIDA on a given month or a given quarter, however often they are reviewed, your lenders then say, okay, proceed in building the garage. What if a month later, two months later, three months later you don't hit that EBIDA requirement? What happens to the progress on the garage?

MR. BLUHM: Mr. Chairman, that's a very good question. I mean that sincerely. Here's the way it works. We have to hit that number. We have to have half the money in the bank. We have to hit that number and we have to have a projection that shows

there will be enough money to complete the project.

Then I'll tell you what happens. I hate to tell you this. But we have guaranteed that if we don't hit that number, we have to come up with a new set of projections based upon where we are at that date and we, the sponsor, which is my company, has to come up with the cash shortage and deposit the money to see that this garage gets built.

So we have stood up in every way to get this thing going. We have put up more money. We've guaranteed. The completion guarantee on the garage is very, very tough but we have agreed to do it so we can get this rolling and we have enough cash flow to build the garage.

But you're absolutely right. If the earnings are there and then the economy turned bad and got worse, that responsibility to keep the loan in balance is part of the completion guarantee of the garage.

CHAIRMAN FAJT: Thank you. Yes, Mr. Cook?

MR. COOK: Mr. Chairman, if I might, I think the record needs to be clarified with respect to conditions. There's been some talk back and forth and, really, I think it needs to be put on the record that there are two types of conditions. The Board often

will issue an Order with conditions that the Board wants imposed on the Applicant.

Then there is a Statement of Conditions that the Bureau of Licensing issues that is much more lengthy, much more particular to the Applicant and also could be 70 or 80 conditions long, some of which are particular to the Applicant, some of which are standard across all of our licensees.

Just so the record is clear, if the Board were to issue an Order with conditions, they would be in the Statement of Conditions but there is also the Bureau of Licensing in discussions with the licensee issuing conditions.

CHAIRMAN FAJT: Which one are the lenders concerned about, both?

MR. DONNELLY: Both.

MR. BLUHM: Just to make it clear, we have a Statement of Conditions now that we've all agreed to. Many of them are the standard and then there were some that were particular to our transaction. The existing conditions have all been agreed to.

It's the new conditions that are going to be issued in connection with the modified transaction that have to be reviewed by us and the lenders and agreed to by the staff. Is that a fair description?

MR. PITRE: And ultimately approved by the Board.

CHAIRMAN FAJT: Help me out here. Are those conditions that have already been approved, vetted and agreed to the Bureau of Licensing decisions or are they the conditions that we're talking about, no distribution to partners, we allow the management fee, those types of things?

MR. COOK: If the Board absolutely wants a condition imposed, it should be placed in the Order of the Board. Otherwise, the Bureau of Licensing has general things it's looking for and talks to our licensees about putting conditions in that address their concerns.

CHAIRMAN FAJT: Maybe I'm dense. I've been accused of that before. Is there anything that we've discussed today that hasn't been agreed to as a condition?

MR. COOK: I don't know the answer to that.

CHAIRMAN FAJT: Prior to Executive Session -- I know we can come up with additional conditions in Executive Session, which we understand the lenders have to approve before they will put the money in the account. But is there anything that we talked about today in this hearing that hasn't been previously vetted and agreed to?

MR. PITRE: Yes.

CHAIRMAN FAJT: what are they?

MR. PITRE: Those conditions are contained in the OEC answer. The Board has discretion whether to take those recommendations or not.

CHAIRMAN FAJT: Fair enough.

MR. PITRE: If the Board takes those recommendations, they are added to the Statement of Conditions.

COMMISSIONER COY: Then, Mr. Chairman, I have a question. I think the Applicant and their counsel should review that and the Board needs to know their reaction.

MR. PITRE: I'm sure they have a reaction to it. I've already agreed to remove the fee language. But I'll let them speak to any other things that they want to make argument to the Board on.

CHAIRMAN FAJT: Briefly, gentlemen.

MR. SKLAR: One of the conditions in OEC's answer deals with the timing with the garage. The concern there -- and we've had discussions with Cyrus and his staff about this -- it just has to be consistent with the credit documents and the restrictions that are in place as far as the timing with the commencement of the garage.

That was the concern and we voiced that to staff on that particular one. It's Condition B in the

answer. Cyrus talked about Condition I already with taking out the restriction on the payment of fees. Those are the two major ones that we have concerns with.

CHAIRMAN FAJT: Thank you.

COMMISSIONER COY: Thank you.

CHAIRMAN FAJT: Any other questions before we ask everybody to leave the room and convene Executive Session?

(No response.)

CHAIRMAN FAJT: We are going to clear the room, have an Executive Session with our Commissioners on the phone. We will call you all back in after we conclude that Executive Session.

MR. DONNELLY: Now, just to make clear, because it is a little confusing when we throw around these conditions. We've seen Cyrus's comments which Michael just addressed. What we need to see and look at and discuss and make conform with the documents and also I think have negotiations are Licensing's conditions. That's it.

MR. PITRE: Right.

CHAIRMAN FAJT: Thank you for that clarification. If I could ask everybody to leave the room, please.

MR. DONNELLY: One other thing. We



thank staff. I mean, we know it's a burden on the Board to come back to. We really appreciate this. Thank you.

CHAIRMAN FAJT: Again, no decisions will be made. We will call everybody back in in the next 10, 15, 20 minutes.

(Executive session.)

CHAIRMAN FAJT: If I could call the meeting back to order. It looks like we lost a few people but the good news is everybody at the front table is still here. I would like to reconvene the meeting and call on Deputy Chief Counsel Steve Cook to read into the record a Proposed Order for the Board's consideration. Steve?

MR. COOK: Thank you, Mr. Chairman. Before I do that, I would just like to note two things for the record. The first is in conjunction with considering this Petition, the Board is being asked to approve five affiliated entities for licensure, each of which have made application to the Board and have been fully vetted. For each of the entities, Bureau of Licensing and Bureau of Investigations and Enforcement have recommended licensure. There are no eligibility or suitability issues.

Additionally, the Board is also being asked to allow movement of a Category 2 slot machine licenses presently held by HSP Gaming, LP to a

subsidiary of that company, Sugarhouse HSP Gaming, LP. Again, after consultation with the Bureau of Licensing by the Office of Chief Counsel (OCC), there is no objection to that assignment either.

With that being said, I will read into the record a Proposed Order. And now this 16th day of September 2009, the Pennsylvania Gaming Control Board hereby grants HSP Gaming, LP's August 5th, 2009 Amended Petition for Approval of Project Financing and Movement of Slot Machine License.

Related thereto, the Board orders as follows, that based upon its review of Applications submitted and the Report of the Bureau of Licensing and the Bureau of Investigations and Enforcement (BIE) relating thereto the following entities satisfy the eligibility and suitability requirements to be licensed as principals: Sugarhouse HSP Gaming Prop Holdings GP, LLC; Sugarhouse HSP Gaming Prop Holdings, LP; Sugarhouse HSP Gaming Prop Mezz GP, LLC; Sugarhouse HSP Gaming Prop Mezz, LP; and Sugarhouse HSP Gaming Prop GP, LLC.

The principal licenses issued to these entities pursuant to this Order are subject to all conditions, restrictions and requirements of the Pennsylvania Racehorse Development and Gaming Act as

amended and all regulations of the Board.

The licenses are subject to conditions to be imposed by the Bureau of licensing as well as annual renewal and the Board retains the right to revoke, suspend, condition or deny issuance or renewal of any principal license for any violation of the Act or the Board's Regulations.

The Category 2 Slot Machine License presently held by HSP shall be assigned to Sugarhouse HSP Gaming, LP subject to the following conditions. Sugarhouse HSP Gaming Prop Mezz, LP and Sugarhouse HSP Gaming, LP shall close on the financial transaction outlined in the revolving credit and term loan agreement presented to the Board.

Sugarhouse HSP Gaming, LP shall exclude and abide by the Statement of Conditions provided by the Bureau of licensing. Sugarhouse HSP Gaming shall complete the design and construction of the modified gaming facility and all related amenities as proposed by HSP Gaming, LP at its hearing on May 6th, 2009 and approved by the Board on that date.

Sugarhouse HSP Gaming, LP will provide a detailed time line within 30 days of the date of this Order for commencement and completion of all phases of construction of the interim facility as approved by the

Board on May 6th, 2009.

Sugarhouse HSP Gaming, LP shall be responsible to fulfill and complete all commitments and representations made by HSP to the Board during the hearings of May 6th, 2009 and September 16th, 2009.

Sugarhouse HSP Gaming, LP shall begin construction of a parking garage as proposed in their Approved Modified Facility Plan as soon as practical after the opening of the interim facility provided that such construction shall not commence later than 30 months after the opening of the interim facility and shall be in accordance with the terms of the approved revolving credit and term loan agreement.

The project financing proposed is approved subject to the following conditions. Sugarhouse HSP Gaming, LP shall not open its interim facility with less than 1,700 slot machines absent Board approval for good cause shown.

Sugarhouse HSP Gaming, LP shall provide monthly updates to BIE on revenues and comparisons with revenue projections as soon as practicable after the opening of the interim facility. Sugarhouse HSP Gaming, LP shall provide monthly updates on the status of the parking garage liquidity reserve account as provided for in the parking garage dispersement agreement.

Sugarhouse HSP Gaming, LP shall submit a detailed plan for the use of land and construction on Piers 49 and 50 within 30 days of the date of this Order. All agreements and documents submitted to the Board in connection with the revolving credit and term loan agreement shall remain identical in all material respects. All documents executed at the time of the closing of this transaction outlined in the revolving credit and term loan agreement shall be provided to the Board within five business days of closing.

All agreements submitted to the Board in connection with the purchase of Pier 49 and 50 shall remain identical in all material respects. All documents executed at the time of the closing of the transaction outlined in the Agreement of Sale of Pier 49 and 50 shall be presented to the Board within five business days of the closing.

Sugarhouse HSP Gaming, LP shall not make, direct or indirect any distributions of profits to its direct or indirect owners prior to completion of Phase I of the project which includes the interim facility, the parking garage and the permitted facility except to satisfy any tax obligations of Sugarhouse HSP Gaming, LP's direct or indirect owners or to satisfy any obligation of Sugarhouse HSP Gaming Prop Mezz, LP under its credit

agreement.

Finally, the Board grants HSP's August 5th, 2009 motion to maintain the confidentiality of exhibits attached to its Amended Petition.

CHAIRMAN FAJT: Any questions or comments from the Board?

(No response.)

CHAIRMAN FAJT: With that, I will entertain a motion.

COMMISSIONER SOJKA: Mr. Chairman, I will move that the Board grant the Amended Petition of HSP Gaming, LP for Approval of Project Financing and Movement of Slot Machine License as described by the OCC.

COMMISSIONER RIVERS: Second.

CHAIRMAN FAJT: All in favor?

COMMISSIONER ANGELI: Aye.

COMMISSIONER MCCABE: Aye.

CHAIRMAN FAJT: Aye.

COMMISSIONER RIVERS: Aye.

COMMISSIONER COY: Aye.

COMMISSIONER GINTY: Aye.

CHAIRMAN FAJT: Opposed?

(No response.)

CHAIRMAN FAJT: Motion passes. Thank you, Steve. Before we conclude today, I want to make a couple

of comments. Number one, I want to thank our staff and the Commissioners for your attention to this matter. I think this was probably a matter of first cause for this Board. Given the volatility of the credit markets, I think we all understand what Mr. Bluhm and others in the casino industry are under right now.

I have often said that your success is our success. We are regulators. We have to keep that in mind. We have to be firm but fair regulators and we will do that. But at the same time, we have to also be cognizant of the business climate that's out there.

I want you to know and others in the room who represent other operators that we do have that in mind when we embark on discussions and make decisions at this Board. Given the extreme volatility in this industry and in the credit markets in general right now, that was the reason and that's why we're here today for this emergency meeting of the Board.

Again, thank you staff. As Mr. Donnelly said, this is probably the second year in a row, maybe the third year in a row that people didn't get vacations because of issues like this and also to my fellow Commissioners for making the journey here to Harrisburg and others on the phone for taking time to participate. This was a very important matter today.

COMMISSIONER GINTY: Mr. Chairman?

CHAIRMAN FAJT: Yes, Mr. Ginty.

COMMISSIONER GINTY: I was momentarily disconnected as voting aye.

CHAIRMAN FAJT: So noted. Looking ahead, the Gaming Control Board will hold its next regularly scheduled meeting on Wednesday September 23rd at 10:00 a.m. The meeting will be held in the State Museum auditorium. That concludes today business. Thank you very much. Motion to adjourn?

COMMISSIONER MCCABE: So moved.

COMMISSIONER RIVERS: Second.

(Hearing concluded at 1:44 p.m.)



I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.

Shannon L. Manderbach  
Notary Public