

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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PUBLIC HEARING

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BEFORE: GREGORY C. FAJT, CHAIRMAN
Jeffrey W. Coy, James B. Ginty, Kenneth T. McCabe, Gary A. Sojka, Kenneth Trujillo, Raymond S. Angeli (via telephone)
David Barasch Deputy Secretary of the Department of Revenue, Representative, John Lisko, Chief of Staff to Treasurer McCord

HEARING: March 3, 2010, 10:10 a.m.

LOCATION: PUC - Harrisburg
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17105

WITNESSES: None

Reporter: Cynthia Piro-Simpson

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CHAIRMAN:

Good morning, everybody. I'm Greg Fajt. I'm the Chairman of the Pennsylvania Gaming Control Board. And as is our normal practice, as a general matter of housekeeping, I'd like to ask everybody to turn off their cell phones, BlackBerries and other PDAs. They tend to interfere with our communication system here.

Joining us today is John Lisko, the Chief of Staff to Treasurer Rob McCord. Welcome, John, as an Ex-Officio member. And a quorum of the Board is present. I'd like to call today's proceedings to order. And as a first order of business, I'd like everybody to stand for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

Also, as a housekeeping matter, we have Commissioner Ray Angeli on the phone this morning. Ray, can you hear us?

MR. ANGELI:

Yes, I can. Thank you.

CHAIRMAN:

Great. And I see Dave Barasch, Executive

1 Deputy Secretary for Secretary Dan Hassell from the
2 Department of Revenue, has also joined us.

3 We have two related items before the
4 Board today by way of public hearings, which will take
5 place prior to our public meeting. The first item of
6 business today is oral argument on a Petition to
7 Intervene filed by Keystone Development Partners, LLC.
8 Keystone seeks to intervene in Rule to Show Cause
9 proceedings, which are scheduled to be heard second by
10 the Board today.

11 The second public hearing is to be held
12 for the purpose of the Board determining why further
13 sanctions should not be imposed upon Philadelphia
14 Entertainment & Development Partners, also referred to
15 as Foxwoods, due to its failure to meet certain
16 deadlines imposed by the Board in its September 1,
17 2009 Order and which relate to the development of the
18 Foxwoods project.

19 By way of background, the Foxwoods
20 license was granted by the Board to build a Category 2
21 slot machine facility in the City of Philadelphia, as
22 authorized by the Pennsylvania Race Horse Development
23 & Gaming Act. The granting of that license was
24 affirmed on appeal by the Pennsylvania Supreme Court
25 in June 2007. Thereafter, the Board was beset by a

1 host of delays, which resulted in the Board granting
2 an extension of time to Foxwoods to commence
3 operations of at least 1,500 slot machines until May
4 29, 2011. That Decision was set forth in a written
5 adjudication and Order dated September 1, 2009. The
6 Order also contained a number of benchmark conditions
7 requiring Foxwoods to submit reports and documents to
8 the Board or the Bureau of Investigations &
9 Enforcement to demonstrate ongoing compliance toward
10 the March --- or May 29, 2011 deadline.

11 While Foxwoods had complied with the
12 first two submission date requirements, at the end of
13 November 2009 Foxwoods filed a motion to extend the
14 requirements for submission of architectural diagrams
15 and rendering and timeliness for completion, as
16 required in paragraphs five and six of the September 1
17 Order. The Board conducted a public hearing on that
18 motion on January 27th, 2010, at which time the Board
19 acknowledged the relevant filings of Foxwoods, the
20 Office of Enforcement Counsel (EOC) and amicus
21 legislators and received testimony and documentary
22 submissions. At that time, Foxwoods testified and
23 represented that it was engaged in negotiations with
24 an internationally-known gaming company to become an
25 investor in the Foxwoods project. It was represented

1 that the potential investor would bring the resources
2 necessary to complete the project.

3 Notwithstanding Foxwoods' evidence,
4 following deliberations, the Board denied the motion
5 for further extension and imposed a \$2,000 per-day
6 fine upon Foxwoods for failing to comply with the
7 deadlines commencing December 1, 2009. In doing so,
8 the Board stated, the inability of Foxwoods to provide
9 timely, definitive documents relative to the project
10 or to provide sufficient details to enable the Board
11 to determine that the project is viable and can be
12 completed in a timely manner is of significant concern
13 to the Board. The Commonwealth's interests in
14 economic development, job creation and fulfillment of
15 the legislative intent of the Gaming Act is
16 significant. Allowing the Foxwoods project to linger
17 without readily apparent forward momentum is contrary
18 to the Board's duty to timely implement gaming.
19 Foxwoods has failed to establish good cause for its
20 delay in complying with Conditions Five and Six of the
21 Board's Order of September 1, 2009. Accordingly, the
22 Board denies Foxwoods' request for an extension of
23 time and will impose a \$2,000 per day sanction,
24 beginning with the established deadline for
25 satisfaction of these sections, December 1, 2009, and

1 continuing until compliance with Conditions Five and
2 Six of the Board's September 1, 2009 Order is met.
3 Furthermore, the Board issues a Rule to Show Cause
4 upon Foxwoods to show at a hearing to be held on March
5 3rd, 2010 why the Board should not levy further
6 sanctions, including possible revocation of its
7 license for failure to comply with the Board's
8 September 1, 2009 Order. I do note for the record
9 that Foxwoods has delivered a check in the amount of
10 \$186,000 to the Board, representing the payment of the
11 \$2,000 per day fine from December 1, 2009 through
12 today.

13 As I've noted, the first matter to be
14 heard today is oral argument on the Petition of
15 Keystone Redevelopment Partners, LLC, to intervene in
16 Rule to Show Cause issued upon Philadelphia
17 Entertainment & Development Partners, LP. Pursuant to
18 the Board's regulations, unless the Board determines
19 otherwise, if Keystone is granted intervention, its
20 involvement will be limited to the presentation of
21 evidence through the submission of written statements
22 attested to under oath.

23 The way the Board will proceed will be to
24 hear arguments of Counsel on this intervention
25 request. We will then adjourn that matter and

1 immediately proceed with the second hearing on the
2 underlying Rule to Show Cause. After the parties are
3 heard from in that second proceeding, the Board will
4 then take a recess to conduct quasi judicial
5 deliberations on both matters before returning to
6 conduct our regularly-scheduled meeting. During that
7 meeting, both of these matters are agenda items. I'm
8 almost finished. Having explained all of that, may I
9 have Counsel for Philadelphia Entertainment and
10 the --- I see our OEC is already at the table, and
11 also for Philadelphia.

12 As I've stated, this is a hearing by
13 which the Board will receive oral argument as to
14 whether Keystone shall be allowed to intervene in the
15 Rule to Show Cause proceedings of Philadelphia
16 Entertainment. Keystone has presented argument for
17 intervention in past proceedings involving this
18 license, including on the motion for the extension out
19 of which this proceeding arises. The Board is
20 familiar with the basis for intervention asserted in
21 the documentary submissions, and therefore request
22 Counsel to only address any basis for standing to
23 intervene which have not already been argued in
24 submissions or in prior proceedings. In addition, I
25 ask Counsel to limit their argument to the question of

1 intervention and not as to the merits of the matters.
2 The Board will reserve questions until conclusion of
3 the arguments. And prior to the argument, could
4 Counsel please state and spell their names for the
5 stenographer?

6 ATTORNEY SAJER:

7 Good morning, Chairman Fajt, members of
8 the board. My name is Marsha Sajer, spelled S-A-J, as
9 in Juliet, E-R. I'm with K&L Gates here in
10 Harrisburg, representing Keystone Redevelopment
11 Partners.

12 CHAIRMAN:

13 Mr. Graci?

14 ATTORNEY GRACI:

15 Thank you, Mr. Chairman, members of the
16 Board. My name is Robert Graci, G-R-A-C-I, of Eckert,
17 Seamans, Cherin & Mellott. I'm here with F. Warren
18 Jacoby of Cozen O'Connor, and we represent
19 Philadelphia Entertainment & Development Partners, LP.

20 CHAIRMAN:

21 Counsel for Keystone, you may begin.

22 ATTORNEY SAJER:

23 Thank you, Chairman Fajt. I had
24 intended, knowing that the Board was familiar with
25 Keystone's position, to address the new issues raised

1 by filings in opposition to Keystone's Intervention
2 Petition. Let me run through them quickly.

3 There's an objection made to Keystone's
4 Intervention Petition as being untimely. We'll note
5 that Keystone filed its Petition to Intervene one day
6 after this Board filed its Order based on the January
7 27th meeting, and that should certainly be timely.
8 There is no merit to the argument raised by the Board
9 that because the Board disagrees with Keystone's
10 standing to appeal this Board's September 1st Orders
11 that granted an extension of time to PEDP to build a
12 casino, that somehow that should negate the appellate
13 procedures and rules that regulate at which point a
14 lower tribunal loses control of an action once it is
15 appealed. And as stated in the January public
16 meeting, because Keystone has appealed this Board's
17 September 1st Orders to the Commonwealth Court, this
18 Board can certainly exercise its authority to enforce
19 its previous Order but cannot grant the positive
20 relief requested by PEDP.

21 I understand your point, Chairman Fajt,
22 that you don't want me to enter into the merits of
23 this, but the fact of the matter is that the merits
24 are of relevance to Keystone's standing, which has
25 been repeatedly challenged.

1 CHAIRMAN:

2 Ms. Sajer, let me just interrupt you.
3 I'm not saying I don't want you to enter into the
4 merits, I want --- what I said was we don't need to
5 rehash documentation and oral arguments already on the
6 record in prior proceedings. So if you have anything
7 else to add in addition to what you have already
8 stated on the record in our prior hearings, we'd
9 certainly be willing to listen to that.

10 ATTORNEY SAJER:

11 Very good, Chairman Fajt. The focus
12 today is on whether PEDP has complied with the
13 requirements of the Board's Order. And what we
14 anticipate the Board will hear today relates directly
15 to Keystone's standing and its direct, immediate and
16 substantial interest in and that derives from
17 Keystone's interest in a fair and level playing ground
18 in which to compete for a Category 2 License. We
19 would ask this Board that it carefully listen to PEDP
20 to determine to what extent what it is now offering is
21 conditional in nature, to what extent PEDP seeks to
22 transfer nearly wholesale a license to an entity that
23 had declined to previously compete for the Category 2
24 License and is now in a position of taking advantage
25 of what amounts to a distress sale and also the newly

1 enacted table games legislation.

2 Keystone will be prejudiced should the
3 Board permit this kind of transferrable license when
4 it is not consistent with the Statement of Conditions
5 that PEDP entered into and certainly inconsistent with
6 PEDP's presentation to this Board on which PEDP
7 competed and which Keystone competed. And we ask that
8 Keystone be permitted to intervene in this proceeding.

9 CHAIRMAN:

10 Thank you, Counselor. OEC?

11 ATTORNEY MILLER:

12 Mr. Chairman, members of the Board, Dale
13 Miller, Deputy Chief Enforcement Counsel for the OEC.
14 The position of the OEC is that we object to the
15 request to intervene, and our position to that effect
16 is a matter of record. Keystone remains a failed
17 applicant for a casino license with no standing to
18 intervene in this matter under our regulations, and we
19 continue that objection that we made previously.
20 Thank you.

21 CHAIRMAN:

22 Thank you. Finally, we'll hear from
23 Counsel for Philadelphia Partners.

24 ATTORNEY GRACI:

25 Thank you, Chairman Fajt and members of

1 the Board. I'd like to note for the record, Mr. Fajt,
2 that our Vice-President and General Counsel from PEDP,
3 Nick Moles, is present today, as is our Vice-President
4 and CFO, Deborah Marchese.

5 Mr. Chairman and members of the Board,
6 this is the third time, as the Chairman noted, that
7 we've been before you to oppose an attempt by Keystone
8 to intervene and interfere in our proceedings, first
9 on the September 1st Order, then on the November 30th
10 filing, and now today. It's actually the fourth time
11 that you've made virtually the same ruling because
12 when Keystone sought to reopen its Petition, you
13 similarly concluded that they did not have a direct,
14 immediate and substantial interest necessary for a
15 party to have standing before an administrative
16 tribunal. You have three times already made that
17 determination that they do not have the necessary
18 direct, immediate and substantial interest required to
19 confer standing on a party. You've similarly
20 concluded that they do not meet the Board's
21 requirements, as set forth in the Board's regulations,
22 to intervene. Nothing has changed. They're trying to
23 intervene now in a subsequent proceeding based on this
24 Board's September 1st Order, which this Board already
25 determined that they did not have standing to

1 participate in. They continue to say that they are
2 trying to protect an interest as an applicant for a
3 Category 2 License. There is no available Category 2
4 License, as this Board has repeatedly said. Nothing
5 has changed from the positions that they've previously
6 asserted. We do submit that their application was
7 untimely. This Board entered its Order from that
8 bench on January 27th. The filing they made makes no
9 reference to the Board's Order of February 10th. It
10 makes reference to the January 27th hearing. The
11 Board's regulations say that a Petition to Intervene
12 has to be filed at least 30 days prior to the
13 scheduled hearing. You scheduled this hearing from
14 the bench on January 27th for today. They didn't file
15 their Petition until sometime in February, so it is
16 untimely and, again, another violation, not that they
17 let violations of the Board's rules get in their way
18 of filing useless paper. So with that, Mr. Chairman
19 and members of the Board, we continue to object to the
20 Petition to Intervene and ask that it be denied.

21 CHAIRMAN:

22 Thank you. Any questions from the Board?
23 Commissioner McCabe?

24 MR. MCCABE:

25 Yes, Mr. Chairman. This is for Counsel

1 for Foxwoods, Marsha. How can you say that these
2 plans are not consistent with what we have first
3 approved when we don't even know what the plans are?
4 Nobody has presented anything to us to show that what
5 they're planning on doing is any different. I know
6 what you've read in the newspaper, and no disrespect
7 to my friends over here, but you can't always believe
8 everything you read in the newspaper. So right now,
9 as of today, we don't have any change of any plans of
10 how --- the development of this site. So how are you
11 saying that this is going to change?

12 ATTORNEY SAJER:

13 That's a very good question, Commissioner
14 McCabe. And we understand that this has all become
15 extremely conditional. But the fact of the matter is
16 that even if you discount anything that has been
17 published in the media and rely simply on the
18 representations made by Foxwoods' representative, Mr.
19 Jacoby, in the January 27th meeting, it appears that
20 there will be substantial differences in what will be
21 proposed today from the ownership, the control, the
22 participation of the Tribal National, potentially the
23 charitable component and certainly the design of the
24 casino. We had understood from Mr. Jacoby's comments
25 at the January 27th public meeting that the new

1 investor would choose to design and build his own
2 casino. Certainly we have not heard anything that
3 would indicate that the new investor intends to
4 strictly comply with the Statement of Conditions and
5 Design previously presented to this Board during the
6 2006 competition for this Category 2 License.

7 CHAIRMAN:

8 Other questions? Commissioner Trujillo?

9 MR. TRUJILLO:

10 Actually, first, Mr. Graci, our Order
11 that is in place is an Order to Show Cause why further
12 sanctions, including revocation, should not be imposed
13 by the Board. Does the fact that the Board may
14 consider revocation of the license affect your
15 argument to us?

16 ATTORNEY GRACI:

17 I don't believe so, Commissioner
18 Trujillo. Unless and until the Board would issue such
19 a revocation, we don't believe that there are grounds
20 for that. That's, of course, the matter for the next
21 hearing. There is no license available. Even if
22 there is, it wouldn't make it available to Keystone,
23 as this Board has repeatedly said. The process would
24 start anew. They wouldn't just step in as a former
25 disgruntled and disappointed applicant. They'd have

1 to apply again, as the Board has said at least twice,
2 if not three times in its prior Orders. But I
3 certainly know they said it with respect to the
4 September 1st Adjudication, denying intervention, and
5 I believe it was the October 21st Order, denying their
6 application to reopen. The Board said, we don't know
7 if they continue to be a qualified and eligible
8 applicant because so much has changed since the
9 original application was filed by Keystone. So I
10 don't think it changes our argument one wit.

11 MR. TRUJILLO:

12 So I take it then that you think that a
13 request for modification of existing plans, a request
14 for a modification of the schedule, the prior requests
15 by PEDP, are the same in kind as the enforcement by
16 this Board of this Order? I believe ---.

17 ATTORNEY GRACI:

18 I'm sorry.

19 MR. TRUJILLO:

20 Well, maybe that was a little
21 inarticulate.

22 ATTORNEY GRACI:

23 No, no, no. I'm sorry. I don't mean to
24 cut you off. I think I understand. Our request to
25 extend the time to make slot machines available ---.

1 MR. TRUJILLO:

2 You said that there was no difference
3 between this request to intervene and prior requests,
4 if I'm correct.

5 ATTORNEY GRACI:

6 That's correct. I mean, if you look at
7 the pleadings, they're virtually identical. There are
8 a few additional paragraphs to make up for the
9 additional time that's gone by and the things that
10 have happened in the meantime, although they don't
11 usually talk about the fact that you've denied their
12 requests.

13 MR. TRUJILLO:

14 And we have denied their requests to
15 date. And what I'm saying, though, is I believe your
16 argument was that, in fact, there was no difference
17 today than with the prior requests. So what the Board
18 is considering today, is that, in your mind, the same
19 as the previous kinds of requests made by PEDP?

20 ATTORNEY GRACI:

21 It's not the same because it's not a ---
22 first off, it's not a request by PEDP. It's a sua
23 sponte Order by the Board, but it arises out of the
24 very same initial Order that this Board granted on
25 September 1st to grant us an extension of time in

1 which to make 1,500 slot machines available under
2 Section 1210 of the Act. This is just a further
3 proceeding --- as was the November 30th --- our
4 November 30th motion was related to that September 1st
5 Order. And today's hearing, which flows from the ---
6 and the Order to Show Cause, which flows from the
7 January 27th Order of this Board relates to
8 enforcement of this Board's Order of 2000 ---
9 September 1, 2009, if they didn't have a basis to be
10 in. And quite frankly, what it comes down to is they
11 want to put themselves in the position of BIE and the
12 OEC. It's the OEC's responsibility, if there be
13 violations, to bring those violations to the attention
14 of the Board, not an interloper. And they say that
15 you can't --- and I wanted to make this point earlier.
16 They say that you can't act because they have an
17 appeal pending in the Commonwealth Court. As I said
18 in the last argument and as this Board found in their
19 Order, I believe it was of February 18th, they never
20 sought a stay either before this body or before the
21 Commonwealth Court. And you obviously have the
22 authority to enforce your Orders. But they want to
23 put themselves basically as a private OEC, and that's
24 not their role. They have no role other than anybody
25 else walking in off the street.

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MR. TRUJILLO:

That's all. Thank you.

CHAIRMAN:

Any other questions from the Board?

Okay. This will conclude our first hearing. After the next matter is heard, which is, in fact, the hearing on the matter for which intervention is sought, the Board will adjourn to executive session to consider both matters.

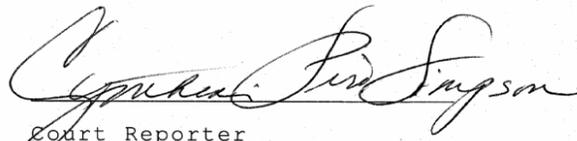
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HEARING CONCLUDED AT 10:30 A.M.

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before the Pennsylvania Gaming Control Board, was reported by me on 03/03/2010 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