

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

IN RE: MASON DIXON - PETITION FOR RECONSIDERATION OF
CATEGORY 3 AWARD

PUBLIC HEARING

* * * * *

BEFORE: GREGORY C. FAJT, CHAIRMAN

Raymond S. Angeli, James B. Ginty (via
telephone), Keith R. McCall, Anthony C.
Moscato, Gary A. Sojka, Kenneth I.

Trujillo; Members

Christopher Craig, Representing Robert M.
McCord, State Treasurer

Robert Coyne, Representing Daniel P.
Meuser, Secretary of Revenue

Dan Tufano, Representing George Greig,
Secretary of Agriculture

HEARING: Wednesday, June 8, 2011
10:00 a.m.

LOCATION: State Museum Auditorium
300 North Street
Harrisburg, PA 17123

WITNESSES: None

Reporter: Cynthia Piro Simpson

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

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CHAIRMAN:

Good morning, everyone. I'm Greg Fajt, Chairman of the Pennsylvania Gaming Control Board. As is our normal practice, I'd just like to ask everybody to please turn off your cell phones and PDAs, as they tend to interfere with our communication system. Joining us today is Christopher Craig, representing State Treasurer, Rob McCord, Rob Coyne, representing Secretary of the Department of Revenue, Dan Meuser, and Dan Tufano, representing Secretary George Greig from the Department of Agriculture. Thank you all for being here. We also have today, Commissioner Ginty with us via teleconference. Hello, Jim.

MR. GINTY:

Hello.

CHAIRMAN:

We have a quorum of the Board being present. I'd like to call today's meeting to order. As the first order of business please join me in the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

The first matter of business before the

1 Board today is something that was filed less than 48
2 hours ago, but requested an expedited consideration,
3 specifically Mason Dixon Resort, LP's Petition for
4 Reconsideration of the Board's May 20, 2011 Order and
5 Adjudication Awarding a Category 3 Slot Machine
6 License to Woodlands Fayette, LLC. I see Counselor
7 Schrier has taken the dais. Is there anybody else who
8 will be presenting with you today?

9 ATTORNEY SCHRIER:

10 No, Mr. Chairman. As far as I know,
11 there is not.

12 CHAIRMAN:

13 Thank you. So why don't we begin, Mr.
14 Schrier, on behalf of Mason Dixon on their expedited
15 Petition for Relief?

16 ATTORNEY SCHRIER:

17 Thank you, Mr. Chairman. For the record,
18 Stephen D. Schrier, S-C-H-R-I-E-R, with the law firm
19 of Blank Rome, LLP, on behalf of Mason Dixon Report,
20 LP --- Resort, LP, excuse me. Chairman Fajt,
21 Honorable members of the Board, as you know, my office
22 represents Mason Dixon Resorts, which was an Applicant
23 for a Category 3 Slot License during the proceedings
24 that were recently held. We filed a petition at the
25 end of the day, Monday, as you indicated, asking the

1 Board to voluntarily reconsider its May 20th, 2000
2 Order --- '11 Order and Adjudication awarding the
3 Category 3 Slot Machine License to Woodlands Fayette.

4 I appreciate that the time frame when
5 this was filed is now short and I also appreciate that
6 the Board has scheduled this on an expedited matter.

7 The reason for the petition involves a
8 Grand Jury report. Just days after the Board's
9 Category 3 Adjudication was released to Mason Dixon, a
10 Pennsylvania State Grand Jury Report, entitled In Re:
11 the 31st Statewide Investigating Grand Jury, dated May
12 19th, 2011 was released by the Pennsylvania Attorney
13 General. The Grand Jury report was provided to the
14 Board and outlined and detailed a substantial amount
15 of information obtained by the Grand Jury from sworn
16 testimony of witnesses related to the Board and to
17 Applicants before the Board pertaining directly to the
18 process and procedures of the Board in reviewing an
19 award of Slot Machine Licenses.

20 The Grand Jury report highlighted several
21 areas in the licensing process as deficient, unfair or
22 inappropriate. Of utmost concern to Mason Dixon was
23 the fact that while the Grand Jury report only
24 provided details on three of the Slot License Award
25 proceedings, the language itself of the Grand Jury

1 report indicated that all categories of licensing,
2 including Category 3 were fraught with problems and
3 failures. I'm going to quote from the Grand Jury
4 which stated as follows, the Grand Jury dutifully
5 followed where the evidence led, but is careful to
6 note that this is not to suggest that the problems and
7 concerns raised during its investigation only occurred
8 in these discreet cases. To recite all examples of
9 shortcoming in the process would require a report of
10 unmanageable complexity. These Applications represent
11 the best examples of problems and failures that
12 extended throughout the application and licensing
13 process in all the licensed categories. Now, that
14 last section I would highlight and add emphasis to
15 that the Grand Jury report indicates that the
16 testimony taken extended through all licensed
17 categories.

18 Our client reviewed the Grand Jury report
19 and has very substantial concerns at least in part on
20 that language which brings into present day, the Grand
21 Jury's review of the licensing procedure. Frankly,
22 it's unknown by Mason Dixon whether any of the Grand
23 Jury testimony pertained to current or past Category 3
24 License proceedings for any of the present Applicants,
25 but it certainly seems likely if the language of the

1 report is taken at its face.

2 It appears from the statements in the
3 report that the undertaking and deciding of this
4 Category 3 License proceeding and presenting the facts
5 on a legal basis for the determination in your
6 adjudication, the Board has not had an opportunity to
7 address some of the key areas of deficiency that were
8 raised in this Grand Jury report. Respectfully, Mason
9 Dixon believes the Board now has the opportunity to
10 address these substantial concerns by vacating its
11 determination and supplying the necessary information
12 in the adjudication to confirm that a fair and open
13 determination was made on behalf of all the
14 Applicants.

15 Our goal is to have this Board address
16 these issues in its adjudication, so that it's clear
17 that this Board conducted a fair, transparent and
18 complete examination of the merits of all the
19 Applicants.

20 I suggest to the Board that the
21 deficiencies outlined in the Grand Jury report are
22 seemingly still issues. One key example in the
23 adjudication in the Grand Jury report involves the
24 failure of the Board's Bureau of Investigation and
25 Enforcement to obtain suitability and criminal

1 background information from the Pennsylvania State
2 Police and the Pennsylvania Attorney General. How can
3 the adjudication say that all Applicants are suitable
4 and have clean records, while at the same time your
5 Finding of Fact Number states that the Pennsylvania
6 State Police and the Attorney General of this state
7 did not provide any information to the Board or to
8 BIE. These are the two top law enforcement agencies
9 in this Commonwealth.

10 My client knows its own criminal history
11 and certainly all Applicants provided responses on the
12 Board's application forms. But isn't it the statutory
13 duty of the Board and BIE to independently investigate
14 Applicants and Principals to determine if one or the
15 other are more or less suitable than another
16 Applicant?

17 Frankly, if Mason Dixon had known that
18 these law enforcement agencies had not provided
19 information after being requested to do so, it would
20 have objected or asked that the proceedings be slowed
21 until this information was obtained. Perhaps, BIE
22 didn't get the same information from other law
23 enforcement sources. That may be the case, but it's
24 not so stated in the adjudication. And here is an
25 opportunity for you to correct its record.

1 Another key area in the Grand Jury report
2 outlined the practice of holding executive sessions to
3 address information about the suitability or
4 eligibility of Applicants and the Principles of
5 Applicants when in some instances such information was
6 not protected as confidential under the Act. Though
7 Mason Dixon was present when the Woodlands Fayette
8 hearing began and the Board announced that a closed
9 session would occur, yet no reason was given as to the
10 nature or the type of information that would be
11 discussed during the closed session. Was it about
12 suitability? Was it about criminal matters? Was it
13 campaign contributions? Was it about financial
14 information? We don't know.

15 If Mason Dixon had read the Grand Jury
16 report, it would have acted differently. It may have
17 objected until there was a reason given or even a
18 hearing was held on whether the closed session topic,
19 itself, was really a protected topic.

20 Again, these are the things that the
21 Board can now choose to address and remedy before this
22 matter is out of its hand on appeal.

23 The third area involves the so-called
24 scrubbing of BIE background and investigation reports
25 prior to the provision of such reports for

1 consideration by this Board. Many of the facts in the
2 adjudication seem to Mason Dixon, at least, to rely on
3 the Applicant's own forms and not on BIE's statements
4 that they, in fact, verified and confirmed these
5 facts.

6 One example is a threshold issue of how
7 many year-round rooms Woodlands actually owns. In
8 that regard, the adjudication solely relies upon the
9 Applicant's own application and website. In Mason
10 Dixon's comparative presentation, which was not
11 mentioned other than the fact it was filed in the
12 adjudication, it pointed out with title report
13 evidence that townhomes and private homes at the
14 resort at Woodlands which were used to reach the 275
15 room requirement were owned by individual homeowners,
16 not Woodlands. Did BIE investigate this eligibility
17 issue? Was it in the report to the Board, or was it
18 taken out of the report before the Board actually saw
19 it? We don't know. But again, an opportunity exists
20 in our petition and our request to the Board to
21 address this threshold eligibility issue.

22 Most respectfully again, I understand the
23 sensitivity of challenging the actions and methods of
24 this Board, but put yourself in Mason Dixon's shoes.
25 One day we are reading an adjudication that seems to

1 ignore some key matters of comparison. The next day
2 you're reading a Grand Jury report on important
3 deficiencies that occurred in the process and which
4 appear to stretch among all licensed categories with
5 no time frame delineated.

6 It's as if we're in the Pocono 500 and
7 the Applicants themselves and this Board are racing to
8 finish with three laps to go. And at that point comes
9 crashing in front of us a Grand Jury report, and it's
10 sitting right in front of us. What do we do? The red
11 flag would go up at the race. And I am suggesting to
12 you that the red flag has gone up in the mind of Mason
13 Dixon, and respectfully should be considered by this
14 Board to have gone up in the mind of the Board. And
15 until the red flag is lowered by reason of explanation
16 or by reason of the fact that the deficiencies have,
17 in fact, been addressed and corrected and all of the
18 details that were outlined that may have been
19 applicable to this process have been resolved by the
20 Board, we should not race blindly on ahead.

21 I submit to you that it is fuzzy in your
22 regulations how to have this Board reconsider its
23 adjudication and Order. Your regulation provides for
24 reconsideration, but it also exempts reconsideration
25 of a licensing decision. We normally would go look at

1 the Administrative Code that arises as a fallback.
2 And that Administrative Code does permit
3 reconsideration, but again, indicates that that can be
4 superseded by the Board's own regulations.

5 I submit to you that we are in a very,
6 very unusual set of circumstances here. One that is
7 not contemplated by the regulations and probably could
8 not have been contemplated by any regulations looking
9 forward in this regard. But what I would suggest to
10 you is that you, like every other Tribunal and every
11 other agency in this state and every other Court in
12 this state, have the inherent authority to take a step
13 back, to stop the presses and to look at your decision
14 and vacate that decision when matters arise subsequent
15 to the time frame that you are afforded has been
16 entered. And I would respectfully ask you to do that
17 in this circumstance. Thank you.

18 CHAIRMAN:

19 Thank you. Questions from the Board?
20 Commissioner Trujillo?

21 MR. TRUJILLO:

22 Pardon me. Mr. Schrier, I guess where
23 I'd like to start is I need some clarification because
24 based on your last statement, it sounds to me that
25 this is not a collateral attack on the process, nor is

1 it, as I understand your last couple of sentences, a
2 request that the Order be vacated and that the Board
3 reach a different conclusion. It sounds to me like
4 you are suggesting that the Board entertain a sua
5 sponte review its adjudication and clarify it based
6 upon a Grand Jury report. I don't want to put words
7 in your mouth. Perhaps you can tell me, what is that
8 you want the Board to do.

9 ATTORNEY SCHRIER:

10 Well, as you indicated there are several
11 areas that have raised concern and were brought about
12 by the Grand Jury itself. These are not concerns that
13 my client has raised. But now that my client has
14 reviewed them, they do provide serious concern on
15 their part. So how do we address that? Because some
16 of the issues and the facts that I've set forth about
17 things that may have happened or could have happened
18 differently or that we might have objected to, are
19 opportunities for this Board to step back, because I
20 would assume that --- I don't want to answer your
21 question with a question. But if you would have had a
22 copy of this Grand Jury report before you wrote your
23 adjudication, would you have written the exact same
24 adjudication? I think the opportunity exists and what
25 we're seeking through our petition is to give you the

1 opportunity to address the issues raised and delineate
2 that these factors, if they were existing in this
3 particular licensing process, were done appropriately,
4 fairly and impartially. I don't know what you had in
5 front of you. I don't know what reports you read
6 compared to what reports may have been prepared by
7 BIE, for example. I do know certain facts that we can
8 glean from your adjudication that I just brought to
9 your attention. And I think in that case, I'm asking
10 you to vacate the award and go back and look at the
11 areas that you deemed appropriate to revisit to
12 clarify the issues that were brought about by the
13 Grand Jury report.

14 MR. TRUJILLO:

15 I take it that you are not requesting a
16 new set of hearings be conducted; is that accurate?

17 ATTORNEY SCHRIER:

18 That's correct.

19 MR. TRUJILLO:

20 Okay. Now, you have attached as your
21 exhibit, the Grand Jury report, which you've been
22 discussing. And I'd like to at least reach some
23 common understanding with you as to what this Grand
24 Jury --- the import of the Grand Jury report. You are
25 aware of what the Grand Jury report does and what it

1 is; are you not?

2 ATTORNEY SCHRIER:

3 Yes, I'm not a criminal attorney, but I'm
4 aware of what a Grand Jury report is.

5 MR. TRUJILLO:

6 And you're aware that a Grand Jury in the
7 state system at least and certainly in the federal
8 system --- I was a federal prosecutor and I did a lot
9 of Grand Jury work, so I'm relatively familiar with
10 it. You're aware that a Grand Jury has the capacity
11 and the authority to compel witnesses to testify; are
12 you not?

13 ATTORNEY SCHRIER:

14 Yes.

15 MR. TRUJILLO:

16 And you're aware that a Grand Jury has
17 the capacity and the authority to compel witnesses to
18 produce documents and other evidence at the Grand
19 Jury; are you not?

20 ATTORNEY SCHRIER:

21 Yes.

22 MR. TRUJILLO:

23 You are aware that --- or at least in the
24 federal system and in most other systems that a Grand
25 Jury is a secret process; are you not?

1 ATTORNEY SCHRIER:

2 As I understand it, it is a secret
3 process while it's ongoing, yes.

4 MR. TRUJILLO:

5 And I will then ask you, are you aware of
6 any process by which there --- a party which is asked
7 to supply information to a Grand Jury has the
8 opportunity to respond to the Grand Jury or to a Grand
9 Jury report?

10 ATTORNEY SCHRIER:

11 You're asking me if one of the witnesses
12 that ---?

13 MR. TRUJILLO:

14 No, I'm asking you, do you know of any
15 place, in any procedure in which, whether it's a
16 witness, a subject or a target of investigation has an
17 opportunity to respond to a report of a Grand Jury?

18 ATTORNEY SCHRIER:

19 As opposed to defending themselves if
20 there were indictments?

21 MR. TRUJILLO:

22 Correct.

23 ATTORNEY SCHRIER:

24 I'm not aware of whether there is or is
25 not.

1 MR. TRUJILLO:

2 And in fact, have you seen any such
3 response by any of the witnesses or anybody with
4 respect to this Grand Jury report?

5 ATTORNEY SCHRIER:

6 I have not asked or looked for that
7 information so I honestly don't know if any of the
8 witnesses have responded to the report, or asked for
9 corrections in the report, or asked for corrections of
10 their testimony in the report, or objected to the fact
11 that their testimony was misstated. I have no idea.
12 But that would be something that the Attorney General
13 would know, and the Attorney General has not responded
14 in this proceedings.

15 MR. TRUJILLO:

16 Well, let me suggest to you something
17 that is patently clear. That a Grand Jury report is
18 one-sided by its very nature. It is drafted on behalf
19 of the Grand Jury. You're aware of that; are you not?

20 ATTORNEY SCHRIER:

21 Yes.

22 MR. TRUJILLO:

23 And you're also aware that the Gaming
24 Control Board or anybody else who is --- participates
25 is not part of drafting that report; are you not?

1 ATTORNEY SCHRIER:

2 Yes.

3 MR. TRUJILLO:

4 And by the way, a Grand Jury report, at
5 least in my eyes, can generally be compared roughly to
6 the same thing as statements in a civil context, a
7 civil complaint. And you've drafted and served on
8 other people civil complaints; have you not?

9 ATTORNEY SCHRIER:

10 I've drafted and served civil complaints,
11 but I just --- I would defer to the extent that my
12 understanding of Grand Jury testimony is that's it's
13 given under oath. And that the reasons and the basis
14 for a Grand Jury report is based upon information
15 that's provided by, in this case, apparently,
16 numerous, numerous witnesses. Some of whom are
17 related to the Board, some of whom are unrelated to
18 the Board. All who provided testimony under oath. In
19 advance of preparing this report and the complaint,
20 the allegations are outlined by the lawyers based upon
21 information they receive, but there's no prior sworn
22 testimony provided in preparation of that complaint.
23 Which I would say is the distinction, at least in my
24 mind and the mind of Mason Dixon, the seriousness of
25 why a Grand Jury report has raised concern and a red

1 flag that I indicated.

2 MR. TRUJILLO:

3 Mr. Schrier, just to take that to the
4 last page of your own filing, with respect to
5 complaints in Pennsylvania, isn't there a requirement
6 --- and I guess I don't see it here. Isn't there a
7 requirement that complaints be verified by somebody
8 who has --- by penalty of perjury, by someone who has
9 knowledge of the facts contained in the complaint?

10 ATTORNEY SCHRIER:

11 Yes.

12 MR. TRUJILLO:

13 So, even a newly filed complaint, whether
14 it's under Rule 11 --- potential Rule 11 and other
15 sanctions in the federal system or the state court
16 system, when you file a complaint, you are confident
17 of the facts that you allege are true to the best of
18 your knowledge; do you not?

19 ATTORNEY SCHRIER:

20 I've done my best to research from
21 whatever source I have at that time that the facts
22 that are being alleged are accurate, yes.

23 MR. TRUJILLO:

24 And I would expect that and I do the same
25 thing. And I don't think you would be practicing ---

1 but nonetheless, a civil complaint is a sign that your
2 client introduced. It is not intended to, nor does
3 our system of justice expect it to be a balance or a
4 report or an objective. You are an advocate; are you
5 not?

6 ATTORNEY SCHRIER:

7 In my own complaint?

8 MR. TRUJILLO:

9 If you filed a complaint, you would be an
10 advocate. You are not trying to present to the
11 Court ---

12 ATTORNEY SCHRIER:

13 That's correct.

14 MR. TRUJILLO:

15 --- both sides of the story; correct?

16 ATTORNEY SCHRIER:

17 Yes.

18 MR. TRUJILLO:

19 All right. And I will tell you when I
20 was a prosecutor and I drafted complaints, I drafted
21 complaints that told a story based upon the facts as
22 I, as a prosecutor, saw them. And now as a practicing
23 lawyer, when I file complaints, I want to tell the
24 story. And I will tell you when I teach my courses at
25 law school, I tell my students that they should tell a

1 story and the facts that will be most advantageous to
2 their client --- my client, and in the case of a Grand
3 Jury report in the light most favorable to the
4 prosecution. You understand that?

5 ATTORNEY SCHRIER:

6 I don't know if that's how you do things.
7 And I would have to, you know, ---.

8 MR. TRUJILLO:

9 Well, would you differ from doing that,
10 Mr. Schrier?

11 ATTORNEY SCHRIER:

12 And I'm not trying to be argumentative
13 here, but I think that what we've established is that
14 you do prepare this and you've determined to your own
15 satisfaction that the facts are accurate and true.
16 So, if you're going to profess to your class that they
17 need to put those facts in, they might advocate one
18 way or another, but they still confirm that those
19 facts, in their mind, are accurate.

20 MR. TRUJILLO:

21 And so what is --- in the context of
22 whether it's a civil complaint or whether it is a
23 Grand Jury report, can you tell me what evidentiary
24 value a complaint has, for example?

25 ATTORNEY SCHRIER:

1 A complaint in a civil proceeding has no
2 evidentiary value.

3 MR. TRUJILLO:

4 What evidentiary value can you use as
5 evidence to contradict certain things that are said by
6 parties during their sworn testimony? I mean, you can
7 use a ham sandwich as I recall to Cross examine the
8 witness if it does contradict the witness. I mean, I
9 understand that. I think that's fairly clear. But
10 so, if it's neither a ham sandwich nor a complaint,
11 but here a Grand Jury report, can you tell me what
12 evidentiary value a Grand Jury report has?

13 ATTORNEY SCHRIER:

14 The report, itself, has any value? I
15 honestly don't know. I can tell you that, at least in
16 my opinion, once the report is issued and once the
17 Grand Jury investigation is concluded, there are ---
18 there are items of testimony given under oath by
19 various witnesses that would, if needed, become
20 available to use in other proceedings, I would assume.
21 If someone wanted to know about what was said in a
22 Grand Jury report and they couldn't get any other
23 information about it, they can request --- once the
24 Grand Jury is no longer in secret session, they can
25 request that information and there you have sworn

1 testimony. I don't want to debate with you about ---.

2 MR. TRUJILLO:

3 This is your petition, Mr. Schrier, so
4 you're --- and you're here to answer our questions
5 about this. And I would suggest to you that you're
6 mistaken that Grand Jury transcripts of --- and the
7 evidence produced at a Grand Jury, whether it's state,
8 federal or any that I'm aware of, are not available.
9 Not available to the witnesses. They're not available
10 to lawyers. The only time they become available is if
11 somebody's indicted. And until then, it is going to
12 be used as evidence in a trial in the criminal
13 proceedings, they're not available. We don't have
14 them. You can't have them. None of us in this room
15 can have them. So they're not available. So, what I
16 am interested in knowing is beyond the report, which
17 we have read, beyond what you've said here today ---
18 and I think it's fairly clear to me that the Grand
19 Jury report has zero evidentiary value. The only
20 evidence that I think we have is your petition,
21 because that's the only verified document. Beyond
22 that document, what evidence do you have to present to
23 us today that suggests that we ought to do what you've
24 suggested here today?

25 ATTORNEY SCHRIER:

1 Well, I do consider the Grand Jury report
2 to be evidential due to the fact that we had similar
3 proceedings here, that had we known the information in
4 that Grand Jury report, we may have acted differently
5 during our proceedings. We may have objected. We may
6 have raised requests for more information of the
7 Board. Those are the kinds of things that flowed from
8 that Grand Jury report when my clients read them. So,
9 whether or not that report could be introduced into
10 evidence in one of our proceedings that we were having
11 for our Category 3 Licenses, I guess I don't know the
12 answer to, but it may have. This is an Administrative
13 Tribunal. Hearsay is admissible generally in
14 Administrative Tribunals. So, arguably it could be
15 evidential.

16 MR. TRUJILLO:

17 And if I had known two weeks ago what the
18 stock market was going to do, I would have shortened
19 everything in my portfolio and I would have made a lot
20 of money. But we didn't have that and the Grand Jury
21 report was not part of the record; am I not correct?
22 Am I correct?

23 ATTORNEY SCHRIER:

24 You are correct. And that's the reason I
25 brought my petition before this matter leaves the time

1 frame where this Board has an opportunity to
2 reconsider it and re-evaluate it.

3 MR. TRUJILLO:

4 Okay. So, my final question is simply,
5 aside from the Grand Jury report, is there any other
6 evidence, documentary, testimonial or otherwise, that
7 your client wishes to present to the Board?

8 ATTORNEY SCHRIER:

9 Well, I think we've highlighted in our
10 petition, at least at this stage, other areas of
11 factual discrepancies that we've raised that we think
12 tie in, at least to some extent, whether it's the room
13 count uneligibility --- I mean, there's a whole
14 variety of things in the adjudication. If you would
15 like a laundry list of things, at least, we do not
16 agree with, that's one thing. But we're not here to
17 appeal the adjudication. We're here to raise the
18 issue that the Grand Jury has raised in terms of
19 deficiencies and issues that arose in this process
20 itself that may have arisen in this process.

21 MR. TRUJILLO:

22 So, Mr. Schrier, the problem I have with
23 this request is that quite literally anybody can make
24 a collateral attack on any adjudication by any
25 Tribunal. And anybody can call into question and say,

1 you should have, could have, would have. And so what
2 I --- and I agree with you that this is a little bit
3 of a crease proceeding. It's not one that is
4 necessarily contemplated by either the Pennsylvania
5 Rules of Appellate Procedure or by our regulation,
6 because as I understand your request, you're neither
7 asking us to open or to re-open the proceedings to
8 enter --- to take in new evidence, you're not
9 supplying any new evidence and you are not appealing
10 the decision. Consequently I go back to my very first
11 question, which is it seems to me that the only thing
12 you are asking the Board to do or inviting the Board
13 to do is, perhaps, contemplate sua sponte to review
14 the import or the relevance, if any, of the Grand Jury
15 report. Is that where we are?

16 ATTORNEY SCHRIER:

17 No. I think I would differ with that in
18 one respect. I am not introducing any new evidence,
19 but I respectfully submit to the Board that the
20 evidence is already in the record. You know what you
21 reviewed. You know what the Grand Jury report said.
22 You know where there were issues about things being
23 done, at least in a Grand Jury report, that we're
24 contending based upon some of the facts, in this
25 instance, may have been done here and may not have

1 been done here. And you know the answer to that. So,
2 you don't have to get new evidence. You need to go
3 back and look at your evidence and ask questions of
4 your investigative staff and find out, for example, if
5 you've got all the information you were supposed to
6 get and if you did, then you could amend your order
7 and adjudication to so reflect that. I can't create
8 that evidence. I don't have access to your files.

9 MR. TRUJILLO:

10 I have no further questions, Mr.
11 Chairman.

12 CHAIRMAN:

13 Thank you. Could I have Cyrus Pitre, our
14 Enforcement Counsel, please, take a seat at the dais?
15 And could we also ask if there are any other questions
16 from any other Board members? Commissioner Sojka?

17 MR. SOJKA:

18 Yes, maybe just a few issues that are of
19 concern that you have not been able to find. The
20 green light is --- it's a greener light now. Okay.
21 You raised several specifics that caused your client
22 some concern of whether they were or were not done.
23 You have some doubts. Maybe one of the benefits for
24 your client and for us, when you're bringing this to
25 us, we have some rather simple straightforward answers

1 to some of the issues. For example, room count at
2 Fernwood. I believe ---.

3 ATTORNEY SCHRIER:

4 Commissioner? I'm sorry. Nemaocolin.

5 MR. SOJKA:

6 No, you talked about the room count at
7 Fernwood.

8 ATTORNEY SCHRIER:

9 Did I say Fernwood? I meant Nemaocolin.
10 Nemaocolin.

11 MR. SOJKA:

12 I'm sorry then, I misunderstood that,
13 because we did have, indeed, a thorough discussion in
14 public with, for example, the issue of privately-owned
15 rooms and so on at Fernwood. And the issue of room
16 count is something that we did get and did worry about
17 and did have to make sure fit into the statutes. I
18 would just simply let you know and take away your
19 concern, that was done. Okay. So, that's not an
20 issue. There are three or four of us that were on the
21 Board at that time when those data were collected and
22 looked at, and so that's not an issue.

23 ATTORNEY SCHRIER:

24 Are you saying it's not an issue for
25 Nemaocolin or for Fernwood?

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MR. SOJKA:

It has to do with the issue of whether or not any of those candidates were suitable and the room count was taken into account and if they were looked at as being suitable. That room count issue was dealt with.

ATTORNEY SCHRIER:

And then that would be something that I think would be worthwhile to add into the adjudication, because if you look at your footnote 14 in the adjudication, itself, I see it's not clear as to how that room count is calculated and whether privately-owned is a distinction by the way we treat Fernwood's timeshare units, which were ---

MR. SOJKA:

Yes.

ATTORNEY SCHRIER:

--- which were considered as part of the regulation to be appropriate units versus a privately-owned home which is going to count as a room. And again, that's one area where I don't know what the Board or BIE did to go through that facility and count or look at the title reports. We did submit title reports indicating that those were privately-owned townhomes and private homes. So,

1 that's one example. But I think a clarification of
2 what the Board had in front of it --- it says you
3 relied on their Application and their website. I
4 think my clients would like to know that there was a
5 verification that was done by your investigative team
6 to verify the ownership.

7 MR. SOJKA:

8 Understood. And I'm just pointing out
9 that those are things that were done. I should also
10 mention that --- just in passing, that this is a
11 potentially contentious situation, and I'm not
12 unsympathetic with the situation in which you find
13 yourself. And I want you to know, at least as one
14 individual, I'm grateful for the tone which you set in
15 your opening comments. Thank you.

16 ATTORNEY SCHRIER:

17 Thank you.

18 CHAIRMAN:

19 Other questions or comments from the
20 Board? Mr. Trujillo?

21 MR. TRUJILLO:

22 I was curious about one thing that Mr.
23 Schrier could point me to. Because I reviewed for
24 this --- I've been on the Board, I guess, a year and a
25 half. And consequently, I was real interested in

1 knowing whether there was anything within the Grand
2 Jury report that suggested any issues, during my
3 tenure at least, and anything within the last few
4 years. Personally, I didn't find it. So if you can
5 point the Board to places --- and as I read your
6 petition, I think it suggested that there were more
7 questions or unanswered questions about dates and
8 timelines. But at least as I read the report, there
9 was nothing suggested in the last --- as I read it,
10 since --- I think, 2007, 2008 is the last time frame
11 that I read any dates on it. So, if there's anything
12 that you have that suggests that there was --- that
13 talked about this category, the most recent Category 3
14 proceeding, as opposed to the first Category 3
15 proceeding, I'd appreciate if you could either tell us
16 now or afterwards.

17 ATTORNEY SCHRIER:

18 Well, the only thing I can suggest is
19 that page 38 of the Grand Jury report, as I recited
20 earlier, the report talks about a mass of information
21 that was received from various witnesses. And I would
22 note that the witnesses identified said not only past
23 members of the Board or past members of staff or past
24 witnesses, but current as well. And then it also
25 indicated that the examples given in the Grand Jury

1 report were not the only problems and that it extended
2 --- I'm reading again, throughout the Application and
3 licensing process in all the licensed categories.
4 Now, I don't know if that means three months ago, or
5 if that means three years ago.

6 But the concern that Mason Dixon had when
7 they read that was if all licensed categories are
8 contemplated, even though all the data has not been
9 recorded, we have a concern about our current
10 proceedings, or maybe past proceedings involving some
11 of the same Applicants, and what information existed
12 there and whether that information was, in fact,
13 related to our current proceeding. We can't tell.
14 And again, I'm sensitive to the fact that this is a
15 Grand Jury report. But I also think it's significant
16 and unusual in the sense that we got an adjudication
17 on a Thursday or a Friday and on a Tuesday, even
18 though it appeared to have been dated even earlier,
19 all of us, Board included, got news of the Grand Jury
20 report that challenged the license proceedings in this
21 matter.

22 MR. TRUJILLO:

23 And again, we can go through this in
24 detail, but as I read the section you're talking
25 about, it starts at the bottom of page 37 and it says

1 under this heading, the licensing process in its
2 analysis of the investigations, preparation of
3 suitability reports, licensing hearings and ultimately
4 the licensing decisions made by the Board, the Grand
5 Jury focuses on the Applications of Presque Isle
6 Downs, Mount Airy #1, LLC, PITG Gaming, LLC and
7 Station Square Gaming. In part, this is due to the
8 vast amount of information provided by the current
9 employees of the Board, former employees of the Board,
10 gaming experts and individuals affiliated with
11 particular Applicants with regard to the events
12 leading up to the issuance of the licenses on December
13 20th, 2006. And then it says the Grand Jury dutifully
14 led --- followed the evidence where the evidence led.
15 And to note this is not to suggest that the problems
16 and concerns raised during the investigation only
17 occurred in these discreet areas.

18 Then is, I think, the point that you were
19 reading --- to recite all the examples of shortcomings
20 in the process would require a report of manageable
21 complexity. And at least as I read this, and I've
22 read it, and that's why I invite you --- I did not
23 read this report. And I think if you think about
24 timing, just as you were --- this investigation took
25 place over the course of a couple of years. I can't

1 remember the number of witnesses and the millions of
2 pages of documents that are --- and I do note,
3 however, and Doug correct me if I'm wrong, but at
4 least with respect to the documents provided by the
5 Board, those productions were substantially completed
6 by the time any adjudication was either in draft form
7 or ultimately issued.

8 ATTORNEY SHERMAN:

9 Commissioner, you're correct that the
10 majority of the documents that were requested and
11 provided, which I oversaw the production along with
12 Cyrus with his BIE documents were in the mid 2009,
13 early 2010 time period. I can unequivocally say that
14 at no time did we produce any documents related to
15 this Category 3 proceeding, nor were we requested to
16 do so.

17 MR. TRUJILLO:

18 And the other point with respect to
19 current witnesses, Mr. Schrier, you're well aware that
20 again today, even if you're involved in a lawsuit over
21 conduct some five years ago, very often you are going
22 to need to call current 30(b)(6) witnesses and the
23 like who have current knowledge and have access to the
24 documents and the information. And this is whether
25 it's a company or with an organization. So, I guess

1 I'm a particularly troubled by the notion that a
2 current, whether it's a Board member, employee or
3 otherwise, would be called to testify. So, I mean, I
4 don't know what all that means, but again, I would
5 just suggest to you that I think, at least as I have
6 read this, my conscience is quite clear that nobody is
7 pointing any fingers at me and anybody up here. Thank
8 you, Mr. Chairman.

9 ATTORNEY SCHRIER:

10 May I just respond ---

11 CHAIRMAN:

12 Certainly.

13 ATTORNEY SCHRIER:

14 --- to what was just stated? I may be
15 thinking a little bit differently than everyone else.
16 But exactly what you just said and exactly what I
17 heard Mr. Sherman say, it's the kind of information
18 that I think should go in your adjudication. The fact
19 that Mr. Sherman has indicated, that there were
20 millions of pages in documents and they stretch for a
21 certain period of time is news to me. I don't know
22 that to be true, but I certainly know that Mr. Sherman
23 is an honorable person and would not say something if
24 it wasn't the case. But my point is exactly that, why
25 not incorporate into your adjudication and order the

1 facts that you are now telling me are important enough
2 to you to feel comfortable with the decision that you
3 made. Those pieces of evidence were never looked at,
4 and that should be a part of your new Order and
5 adjudication, which is now vacated to add that
6 information. Even if it takes two weeks to do that,
7 you're just starting the clock over again.

8 MR. TRUJILLO:

9 And Mr. Schrier, I appreciate that and I
10 appreciate the places where your client is --- the
11 uncertainty that apparently the report has created. I
12 don't think your client's Order is the only place
13 where the report has raised questions and issues. And
14 so, I appreciate that.

15 However, when I said that I looked at it,
16 I didn't look in the context of, gee, did we make the
17 right decision with respect to these last Category 3s.
18 I looked at it with respect to how much did we, as the
19 Board, and somebody making a --- I don't care how
20 ridiculous some accusation is. We know if somebody
21 makes an accusation about you, about conduct, about
22 anything, we'll look into it to make sure that it is
23 --- that it's correct or not correct. You look into
24 it. And the Board, I will tell you with absolute
25 certainty, takes everything. Everyone of us has

1 looked at every one of these pages in this report to
2 ensure that we have done and are doing everything
3 appropriately. And I think you may appear, we are
4 comfortable where we are. But that is really a
5 separate issue in the adjudication. And so my concern
6 with your request is that it's an indication to us to
7 bring in something that, frankly, is completely
8 unrelated to the Category 3 licensing process that you
9 were part of and say --- and give you not either
10 clarification or a reconsideration, but a comfort
11 letter that says you were not --- and by the way, all
12 the stuff that we talked about in the Grand Jury
13 report did not --- it was not an issue with Category
14 3. So, I understand the reason for the request and
15 we'll take it quite seriously and decide. As you can
16 tell by asking you to come here immediately that we
17 are taking it quite seriously, and we'll respond very
18 seriously. But it does raise --- it has some
19 troubling aspects to it. And so like Commissioner
20 Sojka, I appreciate the tone of your request. And I'm
21 not sure it's well placed, but I appreciate the tone
22 at least. Thank you.

23 CHAIRMAN:

24 Commissioner McCall?

25 MR. MCCALL:

1 Thank you, Mr. Chairman. I just want to
2 make a comment. I'm new to the Board. I was
3 appointed in February of 2011. I read the Grand Jury
4 report and, in fact, the Grand Jury report makes no
5 mention of the licensing process in any of the
6 Category 3 Licenses, the two Category 3 Licenses that
7 were awarded. And the report really is a look back to
8 2005 or 2006, 2007, just five years ago. Clearly well
9 before I was appointed to this Board. I want to be
10 very clear, my decision was made based solely on the
11 facts. I came to this Board and they delayed the
12 issuance of the Category 3 License to give myself and
13 Commissioner Moscato a chance not only to review all
14 the facts, to travel around to the sites and review
15 the sites. On our own we did that completely
16 unannounced and unknown to any of the other Category 3
17 Applicants. We wanted to see firsthand what they had
18 to offer. I went to Mason Dixon, and the Eisenhower
19 facility, the Eisenhower Inn at Gettysburg. I went to
20 Nemaquin. I went to Fernwood. I went to the Penn
21 Harrah's facility here locally in Mechanicsburg. And
22 I can tell you that the staff of the Gaming Control
23 Board did an outstanding job. They provided us with
24 all the background information, the public hearing
25 information and the access to the actual public

1 hearings that took place across the Commonwealth for
2 these four licenses and I watched them all. I read
3 the suitability reports. And I had to make the
4 decision as a Commissioner and I made my decision
5 based on, first and foremost, as a regulator that was
6 involved in the writing of the law, did they meet the
7 definition of a well-established resort. I can tell
8 you, unequivocally, Nemaquin fit that like a glove.
9 And in my opinion, none of the other three even came
10 close to that Application. So, my decision, that
11 Grand Jury report aside, was based solely on that
12 information and that information of fact. I feel
13 very, very comfortable with the decision that I made.
14 I was very concerned about Mason Dixon's Application,
15 because of the concerns raised by the community,
16 because of the concerns of the battlefield and with
17 the full knowledge that we would have been in court
18 for another 15 years just with the local battle. I
19 felt very confident that Nemaquin was the right
20 choice, that this Board made the right decision in
21 granting that license to Nemaquin. And you know, all
22 that being said, your petition doesn't even mention
23 one single --- or allege one single error made by this
24 Board. All you say is there's a Grand Jury report and
25 we want you to reconsider. And I think you should

1 know, as a matter of fact, my decision was based on
2 Nemacolin's Application meeting every definition of a
3 Category 3 that I think the legislature intended.
4 Thank you, Mr. Chairman.

5 CHAIRMAN:

6 Thank you. Mr. Schrier, I have a couple
7 of questions for you and then a couple questions for
8 Attorney Pitre. Is your option agreement with the
9 Eisenhower Inn still in force?

10 ATTORNEY SCHRIER:

11 Yes.

12 CHAIRMAN:

13 It is. Thank you. You were aware that
14 we did have an executive session with Woodlands
15 Fayette regarding the licensing process; were you not?

16 ATTORNEY SCHRIER:

17 Yes.

18 CHAIRMAN:

19 Did you object at that point?

20 ATTORNEY SCHRIER:

21 No.

22 CHAIRMAN:

23 Okay. Mr. Pitre, a couple questions for
24 you. In our Board meeting on April 14th, I asked you
25 a series of questions before we made our decision on

1 the Category 3s, and I'll go through those again. But
2 before I do that, have you had a chance to review the
3 Grand Jury report in detail?

4 ATTORNEY PITRE:

5 Yes, I have.

6 CHAIRMAN:

7 My questions to you based on your
8 knowledge of the Grand Jury report, and I'm going to
9 ask you the same questions that I asked you back on
10 April 14th, but now looking back, you can --- I'd like
11 you to answer those same questions knowing what you
12 know that is contained in the Grand Jury report.
13 Question number one, in conjunction with the Bureau of
14 Licensing, you have had --- you have provided the
15 Board suitability reports which address the
16 suitability of each Applicant for licensure. In light
17 of your investigations, are you aware of any
18 information relative to the four Category 3
19 Applications which has not been reported onto the
20 Board and which would, in your opinion, render any of
21 them unsuitable for licensure?

22 ATTORNEY PITRE:

23 No, I have not.

24 CHAIRMAN:

25 Question number two, are you aware of any

1 information bearing on suitability of the Category 3
2 Applicants that had not been investigated by BIE or
3 otherwise reported on in OEC's reports which have been
4 submitted into the record of these various licensing
5 proceedings?

6 ATTORNEY PITRE:

7 No.

8 CHAIRMAN:

9 Question number three, the last question.
10 In conducting your investigations of the Category 3
11 Applicants, have you been halted in or received any
12 interference in your efforts to conduct those
13 investigations?

14 ATTORNEY PITRE:

15 No. In fact, we were given full freedom
16 to investigate the facts wherever they may lead us.
17 No one questioned us. No one halted us. No one gave
18 us any specific time periods that we had to meet.

19 CHAIRMAN:

20 Let me be a little more blunt. Are you
21 aware of any scrubbing of any of the reports with the
22 Category 3 Applicants?

23 ATTORNEY PITRE:

24 No. And to expand upon that even
25 further, when the Act changed in 2010 and put the OEC

1 in charge of preparing background investigation
2 reports to submit to the Board be made a part of the
3 suitability reports, we took that very seriously with
4 our attorneys. The attorneys in the OEC work
5 hand-in-hand with the agents to prepare these reports.
6 The suitability report is prepared by BIE's Financial
7 Investigative Unit for financial viability. We work
8 hand-in-hand with that unit, also in preparing the
9 background investigation report. No one outside the
10 BIE can change, can read, can do anything to those
11 reports until they're finalized by BIE, and that
12 includes OEC and the Financial Investigations Unit.
13 Once those reports are submitted, no one can change
14 them unless we authorize that those changes can be
15 made and it has to be made --- those changes have to
16 be made within BIE. No other Bureau, not the Board,
17 not anyone.

18 CHAIRMAN:

19 Thank you. One last question unrelated
20 to the ones I had asked you before. Mr. Schrier
21 raised the issue of the concerns of the State Police
22 and the Attorney General not responding to our
23 letters, I guess your letters to them. Could you
24 explain what those letters asked for and discuss
25 whether that's unusual or has it ever happened in the

1 past where there has been no response from those two
2 agencies?

3 ATTORNEY PITRE:

4 First of all, the letters requested any
5 information that they may have that reflects unkindly
6 on the Applicants. We send those letters as a matter
7 of course to everyone and their mother. Basically to
8 every law enforcement agency where an individual may
9 or may not --- may have been in the past. It's not
10 uncommon for us not to receive responses. But we do
11 receive their criminal background investigation, the
12 investigation information from the State Police based
13 upon the fingerprints that are taken of an individual.
14 And we do perform local police checks, where
15 individuals live, where an individual works, where
16 they've worked in the past, where they've lived in the
17 past. And we do gather that information and we do do
18 our own separate investigation into any criminal
19 activity or any alleged criminal activity that has
20 taken place.

21 CHAIRMAN:

22 In the background investigations and
23 fingerprint reports that you ran through the
24 Pennsylvania State Police, were you aware of any
25 information that arose from that that would have

1 caused any suitability issues with any of the four
2 Applicants?

3 ATTORNEY PITRE:

4 No, I am not.

5 CHAIRMAN:

6 Thank you. Any other questions from
7 Board members? Commissioner Ginty?

8 MR. GINTY:

9 I'm all right.

10 CHAIRMAN:

11 Okay. Thank you very much. Thank you,
12 Mr. Schrier.

13 ATTORNEY SCHRIER:

14 Yes. I just want to thank the Board
15 again. I understand the sensitivity of the issue and
16 I appreciate your time today and the expedited
17 hearing. Thank you.

18 CHAIRMAN:

19 Thank you. We're now going to adjourn to
20 executive session. We'll be back in 15 minutes.
21 Thank you.

22 ATTORNEY A. KING:

23 Mr. Chairman?

24 CHAIRMAN:

25 Yes, I'm sorry.

1 ATTORNEY A. KING:

2 On behalf of Woodlands Fayette, could we
3 simply move to have our letter submission that was
4 provided to the Board yesterday entered into the
5 record?

6 CHAIRMAN:

7 I apologize. Before we adjourn to
8 executive session, let me ask, are there any other
9 parties to the proceeding that would like to address
10 the Board. Mr. King, you want to come up to the
11 microphone? Would you state your name for the record?

12 ATTORNEY A. KING:

13 Yes, sir. Adrian R. King, Jr. from
14 Ballard Spahr on behalf of Woodlands Fayette. We'll
15 be extremely brief. We believe that the petition
16 should be rejected for appeal. There's been no
17 evidence presented in the petition itself or here
18 today which warrants review. And with that, we simply
19 ask that our submission submitted to the Board
20 yesterday be entered into the record.

21 CHAIRMAN:

22 We will do that. Any other parties to
23 the proceeding that wants to comment? Okay. We will
24 adjourn and be back in 15 minutes.

25 HEARING CONCLUDED AT 11:00 A.M.

CERTIFICATE

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I hereby certify that the foregoing proceedings, hearing held before the PA Gaming Control Board, was reported by me on 06/08/2011 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