

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

* * * * *

IN RE: WESTERN PA GAMING VENTURES, LLC
PETITION FOR WITHDRAWAL OF APPLICATIONS
AND RELEASE OF BOND

* * * * *

PUBLIC HEARING

BEFORE: WILLIAM H. RYAN, JR., CHAIRMAN
Gregory C. Fajt; Annmarie Kaiser; Keith R.
McCall; John J. McNally, III; Anthony C.
Moscato; David W. Woods, Members, Jennifer
Langan Representing State Treasurer Robert
McCord; Robert Coyne Representing
Acting Secretary of the Department of
Revenue Eileen McNulty; Jorge Gusto
Representing Secretary of Agriculture
Russell Redding

HEARING: Wednesday, May 20, 2015, 10:01 a.m.

LOCATION: Pennsylvania Gaming Control Board
Strawberry Square Complex
2nd Floor
Harrisburg, PA 17101

Reporter: Rhonda K. Thorpe

Any reproduction of this transcript is prohibited
without authorization by the certifying agency.

A P P E A R A N C E S

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

ADRIAN R. KING, JR., ESQUIRE
Ballard Spahr, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
COUNSEL FOR WESTERN PA GAMING VENTURES, LLC

OFFICE OF ENFORCEMENT COUNSEL
CYRUS PITRE, ESQUIRE
Chief Enforcement Counsel
Pennsylvania Gaming Control Board
P.O. Box 69060
Harrisburg, PA 17106-9060
Counsel for Pennsylvania Gaming Control Board

I N D E X

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

OPENING REMARKS

By Chairman

4 - 5

DISCUSSION AMONG PARTIES

5 - 6

PRESENTATION

By Attorney King

6 - 12

DISCUSSION AMONG PARTIES

12 - 14

QUESTIONS FROM BOARD

14 - 16

P R O C E E D I N G S

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

CHAIRMAN:

Good morning, everyone. My name is Bill Ryan, Chairman of the Pennsylvania Gaming Control Board. With us today is Jorge Augusto, representing Russell Redding, Secretary for the Department of Agriculture; Jennifer Langan from the State Treasurer's Office; and Rob Coyne, representing the Acting Secretary, Department of Revenue, Eileen McNulty. Thank you for coming.

All the members of the Board are present, and I will, therefore, call this meeting to order. I would ask everyone to please stand for the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE RECITED

CHAIRMAN:

Thank you very much. Today we have two hearings scheduled. The first hearing is for Western Pennsylvania Gaming Ventures, LLC, regarding their Petition for Withdrawal of Applications and Release of Bond. The second hearing is for Endeka Entertainment, L.P., regarding their Petition for an Extension of Time.

So, we'll begin with Western PA. And I

1 see all the parties are ready to go. Western?

2 ATTORNEY KING:

3 Chairman Ryan, members of the Board, good
4 morning. My name is Adrian King. I'm a partner in
5 Ballard Spahr Law Firm. I'm here today on behalf of
6 Penn National Gaming and its wholly-owned subsidiary,
7 Western PA Gaming Ventures, in connection with Western
8 PA's Petition for Withdrawal of Applications and
9 release of the bond pursuant to 58 Pa. Code, Section
10 423a.5. Joining me today is Mr. B.J. Fair, who is
11 Penn National's Chief Development Officer, and Mr.
12 Carl Sottosanti, who's Penn National's General
13 Counsel. And at the end of our presentation they will
14 be available to answer any questions that you may
15 have. I don't know, administratively, whether we
16 should swear them in.

17 CHAIRMAN:

18 Well, why don't we get them sworn in now?

19 ATTORNEY KING:

20 Yes, sir.

21 CHAIRMAN:

22 Gentlemen, could you both please rise? I
23 would ask the court reporter to swear in the
24 witnesses.

25 -----

1 WITNESSES SWORN EN MASSE

2 -----

3 CHAIRMAN:

4 All right. If you will, gentlemen,
5 please just state your name, spell your last name and
6 what your position is.

7 MR. FAIR:

8 My name's William Fair. I am the Chief
9 Development Officer at Penn National Gaming.

10 CHAIRMAN:

11 How do you spell your name, sir?

12 MR. FAIR:

13 I'm sorry. F-A-I-R.

14 ATTORNEY SOTTOSANTI:

15 Hi. Carl Sottosanti, General Counsel at
16 Penn National, S-O-T-T-O-S-A-N-T-I.

17 CHAIRMAN:

18 All right. Thank you, gentlemen. You
19 may sit down. Mr. King?

20 ATTORNEY KING:

21 Yes, sir. Before I dive into the details
22 of our petition and request for relief, I think a
23 brief history of the Lawrence Downs project is in
24 order.

25 As many of you know, this is not the

1 first time the Lawrence Downs project has come before
2 the Board. The project was first conceived over 12
3 years ago, when competing applications for a harness
4 racing license were filed with the Harness Racing
5 Commission at the beginning of 2003.

6 After more than four years of litigation
7 over the harness racing licensing process, Centaur
8 Gaming ultimately secured the harness racing license
9 and filed a Category 1 License Application with the
10 Gaming Control Board in October 2007. I must confess
11 I represented Centaur and filed that application in
12 2007. As many of you know, Centaur filed for
13 bankruptcy protection in 2009, and the project then
14 ground to a halt due to the economic downturn.

15 In 2010, American Harness Tracks, which
16 I'll refer to as AHT, which is now part of the Endeka
17 ownership group, purchased the Lawrence Downs project
18 in a Bankruptcy Court-approved auction. And after
19 that purchase was approved by the Harness Racing
20 Commission in July of 2011, Endeka joined AHT in the
21 summer of 2012, and the Harness Racing Commission
22 approved that transaction in October of 2012. Endeka
23 then proceeded to identify a gaming company to work
24 with it on the project.

25 On May 31st of 2013, slightly less than

1 two years from today, Western PA entered into a series
2 of comprehensive interconnected and carefully-
3 negotiated written agreements with the Endeka
4 ownership group, which I'll refer to as the
5 transaction documents, to serve as developer and
6 manager for the project. At the same time, Western PA
7 and Penn National, as an affiliate of Western PA,
8 filed licensing applications with the Board.

9 The transaction documents were agreed to
10 by sophisticated parties and their principals, who had
11 significant business and contracting experience. And
12 importantly, the written agreements included Western
13 PA's unilateral right to withdraw from the project at
14 its sole discretion. The Endeka ownership group was
15 well aware of Western PA's withdrawal rights. And of
16 course, the Gaming Control Board and the staff were
17 made aware of Western PA's withdrawal rights when the
18 transaction documents were filed with the Board as
19 part of the gaming application process. In fact,
20 despite the filing of many pleadings in three separate
21 and ongoing State court actions regarding the Lawrence
22 Downs project, no one has contested Western PA's
23 withdrawal rights.

24 The transaction documents made clear that
25 the Endeka ownership group and all its constituent

1 partners shared a responsibility with Western PA to
2 secure the Category 1 Gaming License. For its part,
3 Western PA diligently and in good faith attempted to
4 move the project forward by taking, among others, the
5 following actions. First, Western PA obtained a \$50
6 million bond in favor of the Commonwealth to enable
7 Endeka to submit its gaming license application to the
8 Board. We engaged outside providers to perform budget
9 and design review. We assisted with and paid for the
10 defense of litigation filed by Presque Isle Downs to
11 challenge the validity of Endeka's harness racing
12 license. We engaged in discussions with potential
13 lenders regarding EB-5 financing and ultimately
14 obtained more favorable EB-5 financing terms. We met
15 with Citibank and the County Industrial Development
16 Authority, reviewed the economic analysis supporting
17 the issuance of county bonds in support of the project
18 and ultimately came up with a more favorable
19 structure. We engaged in continued financial analysis
20 of the project and refined the program design. We
21 refined the project budget through value engineering
22 to secure cost reductions. Specifically, the project
23 scope was reduced to \$210 million. Following
24 additional financial analysis, we developed a project
25 phasing solution with an initial phase one that

1 included 1,000 slot machines. We commissioned an
2 independent financial analysis of the project, the HLT
3 report in order to assist with project financing. And
4 finally, we covered over \$1.5 million in project
5 costs, including licensing, bond costs, real estate
6 and school taxes, Endeka's legal fees, design and
7 architectural consultant costs, and we paid for all
8 outstanding Gaming Control Board investigatory fees
9 for all applicants, including those not affiliated
10 with Penn National.

11 Now, despite all of its good-faith
12 efforts to move the project forward, Western PA and
13 Penn National grew concerned about whether a project
14 had met both Penn National's corporate requirements
15 and the Commonwealth's statutory requirements,
16 specifically a minimum of 1,500 slot machines could
17 successfully be developed at the Lawrence Downs site.
18 Western PA raised these concerns periodically with the
19 Endeka Ownership Group, and in late October, early
20 November of 2014, the parties decided that the HLT
21 report, which I had discussed previously, would be
22 commissioned to obtain an independent third-party
23 review of the envisioned projects' economic viability
24 and financial return. If the report had been
25 positive, it would have facilitated financing efforts.

1 Ultimately, however, the HLT report concluded that
2 gross gaming revenues would be lower than Penn
3 National's internal estimates. As such, on January of
4 2015, Western PA informed the Endeka Ownership Group
5 that it would soon be exercising its unilateral right
6 to withdraw from the project and sought to engage the
7 Endeka Ownership Group in an orderly transition
8 process to a new manager.

9 Now, while the Lawrence downs project may
10 not be the right fit for Western PA and Penn National
11 does not mean that the projects do not work for
12 another developer or manager with different metrics or
13 a different analysis. And as such, we main committed
14 to transitioning the project to the Endeka Ownership
15 Group's new partners in a professional, orderly and
16 efficient manner.

17 We also wish to commend the Lawrence
18 County Commissioners, and specifically Commissioner
19 Dan Vogler, for their patient and tireless efforts to
20 bring the Lawrence Downs' project to fruition. While
21 there may be disappointment in Penn National's
22 decision not to proceed, we truly wish the project
23 well.

24 In conclusion, we respectfully request
25 that the Board grant Western PA's Petition for

1 Withdrawal of Applications and release the
2 applications of Western PA and all of its affiliate
3 individuals and entities. And we further request the
4 return of our bond forthwith, since without
5 applications pending, our bond does not the
6 requirements of Section 1313(c) of the Gaming Act. In
7 making this request for relief, we note that the
8 Office of Enforcement Counsel (OEC) has no objection
9 to the withdrawal of the applications. Mr. Fair and
10 Mr. Sottosanti and I are now available to answer any
11 questions you may have. I respectfully request that
12 the Board take into consideration the three separate
13 State Court actions concerning Western PA's withdrawal
14 that I mentioned earlier. And I ask that as I
15 respectfully submit the issues addressed in those
16 lawsuits are not particularly germane to today's
17 proceeding and it serves no one's interest to litigate
18 those matters in this forum. Thank you for your
19 courtesy and consideration.

20 CHAIRMAN:

21 Thank you, Mr. King. Any questions or
22 comments from Enforcement Counsel?

23 ATTORNEY PITRE:

24 Cyrus Pitre, Chief Enforcement Counsel,
25 P-I-T-R-E. Chairman, members of the Board, we have no

1 questions for Western PA Gaming Ventures. We do
2 confirm that all outstanding fees and expenses have
3 been covered by Western PA Gaming Ventures. We
4 received payment for that and have confirmed the
5 receipt of those payments. We have no objection to
6 their withdrawal. As a result, we leave the issues
7 relating to the bond to Board's discretion. I would
8 caution the Board that a bond must be in place in
9 order for an application to be pending before the
10 Board. But I leave that to the Board's discretion as
11 to how it would like to handle that matter.

12 CHAIRMAN:

13 Cyrus, do you agree with the facts as
14 asserted by Mr. King in his statement?

15 ATTORNEY PITRE:

16 I can speak to the information that has
17 been provided to me. Obviously, I've been kept in the
18 loop along the way by both Mr. Doherty and Mr. King.
19 I have received a copy of the third independent study
20 that they conducted. I believe that the Endeka group
21 has a different opinion of that study than Penn
22 National. But for all the information that Mr. King
23 put forward, I find nothing that would --- I would
24 disagree with.

25 CHAIRMAN:

1 All right. Thank you, sir. Any
2 questions or comments from the Board? Greg?

3 MR. FAJT:

4 Thank you, Mr. Chairman. A question for
5 Mr. Fair and Mr. Sottosanti. I'd like you to each
6 answer this question individually. Was there any
7 attempt by your company to freeze this license in the
8 western Pennsylvania area to prevent competition for
9 your other properties, either Hollywood Casino or in
10 Charles Town? Mr. Fair?

11 MR. FAIR:

12 Absolutely not.

13 MR. FAJT:

14 Mr. Sottosanti?

15 ATTORNEY SOTTOSANTI:

16 There was no such attempt.

17 MR. FAJT:

18 Thank you.

19 CHAIRMAN:

20 Any other questions from the Board? Mr.
21 King, what was the total expenditure by Western/Penn
22 National during the course of this relationship? Do
23 you have that?

24 ATTORNEY KING:

25 Yes, I do, sir. All of the fees that I

1 mentioned were close to 1.4 --- I'm sorry, 1.5 million
2 --- just shy of \$1.5 million. Fees alone to the
3 Board, at least that we paid, there was \$55,000 in
4 fees and the subsequent payment that was recently made
5 was \$128,379.

6 CHAIRMAN:

7 And I believe you also said that your
8 firm --- Penn National also paid for the fees during
9 the licensing process that Endeka was responsible for;
10 is that correct?

11 ATTORNEY KING:

12 Yes, sir. By way of example, there was
13 almost \$100,000 in legal fees.

14 CHAIRMAN:

15 Dave?

16 MR. WOODS:

17 Mr. King, the bond, it's due to expire at
18 the end of this month?

19 ATTORNEY KING:

20 Bond is currently set to expire as of
21 June 1st. There are ways that it may be kept in place,
22 but the terms, as it now states, it expires on June
23 1st.

24 MR. WOODS:

25 Is there a financial cost between now and

1 June 1st to keep it in place or are those monies
2 already expended?

3 ATTORNEY KING:

4 We pay I believe approximately \$37,500 a
5 month. And if the bond were to be released today, I
6 believe we would get some credit towards the payment
7 for this particular month.

8 ATTORNEY SOTTOSANTI:

9 That's correct.

10 CHAIRMAN:

11 Any other questions from the Board?
12 Ex-officio members? Anything further, ladies and
13 gentlemen? All right. Thank you. The vote on the
14 petition is scheduled for later today under the Office
15 of Chief Counsel (OCC) section of the agenda.

16

17

18 * * * * *

19 HEARING CONCLUDED

20 * * * * *

21

22

23

24

25

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

CERTIFICATE

I hereby certify that the foregoing proceedings,
hearing held before Chairman Ryan was reported by me
on 5/20/15 and that I Rhonda K. Thorpe read this
transcript and that I attest that this transcript is a
true and accurate record of the proceeding.


Court Reporter