

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: SC GAMING OPCO, LLC - CATEGORY 4 LICENSING

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BEFORE: MEMBERS OF THE BOARD:

DENISE J. SMYLER, CHAIRMAN

Frank Dermody

Sara Manzano-Diaz

T. Mark Mustio (phone)

Nedia Ralston

Frances J. Regan

Shawn Dillon

HEARING: Wednesday, January 25, 2023

10:05 a.m.

Reporter: Derek Richmond

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LOCATION: Pennsylvania Control Board
303 Walnut Street
Commonwealth Tower, 5th Floor
Harrisburg, PA 17101

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CHAIR: This morning, the first matter on our Agenda is SC Gaming OpCo, LLC's Application for a Category 4 Slot Machine License. In this matter we will hear from the Applicant and then the Office of Enforcement Counsel, following by Intervenor, Stadium Casino - Stadium Casino will have 15 minutes to make it's legal argument. Before I begin, I would ask that any nonattorneys who will be presenting evidence today for SC Gaming or OEC, please stand to be sworn in by the Court Reporter.

COURT REPORTER: Please raise your right hand.

WITNESSES SWORN EN MASSE

CHAIR: Thank you. I would also ask that everyone who is going to speak, to please state and spell your name for the Court Reporter prior to speaking.

So, SC Gaming, you may begin.

ATTORNEY KING: Thank you, Madam Chair. We appreciate the opportunity to be in front of you. For the Court Reporter, my name is Adrian, A-D-R-I-A-N, King, K-I-N-G, from the Law Firm of Ballard Spahr.

1 We are very pleased to be back in
2 front of you. Obviously we did have a hearing last
3 month, but it did occur to me that it's almost been
4 unbelievably two-and-a-half years since we were all
5 in State College for the Public Input Hearing back
6 in August of '20. And so we are pleased to have
7 gone through, obviously, the very extensive
8 background investigation process and application
9 process, and now we are here for our licensing
10 hearing, and we are pleased to be here.

11 I will introduce the team who will be
12 speaking today on behalf of the project and then
13 we'll dive right into it. To my immediate left is
14 Mr. Lubert, Ira Lubert, L-U-B-E-R-T, who, as you
15 know, is the Category 4 Auction winning bidder with
16 the highest bid, who is the founder and sole member
17 of SC Gaming.

18 And to Ira's left is Eric Pearson,
19 P-E-A-R-S-O-N, who is the prospective casino CEO and
20 General Manager. Also joining me today to Eric's
21 left is Mike Fabius, my partner at Ballard Spahr.
22 And with respect to Stadium's intervention to the
23 extent necessary, my partner, Stephen Kastenberg is
24 also here, who appeared before the Board last month.
25 We are also joined by Counsel for Bally's

1 Corporation, Elia Trowbridge, who's sitting next to
2 Stephen.

3 A little bit of background just
4 quickly about Ira and Eric as well. Ira has, as
5 many of you may know, more than 35 years of private
6 equity and real estate investing experience. He's
7 the Co-Founder of Lubert-Adler Management Company,
8 LLR Management, Quaker Partners Management, LEM
9 Capital, LBC Credit Management, Independence Capital
10 Partners and Patriot Financial Partners.

11 I think most important and relevant to
12 the process today, to the hearing, he's the former
13 Chairman of the Valley Forge Casino Resort in King
14 of Prussia, which as you know, was a Category 3
15 Casino that opened in March of 2012. He used the
16 casino license there to revitalize the Valley Forget
17 Convention Center and Hotel Complex and it became
18 the leading Category 3 Casino and a very successful
19 casino at that in the Commonwealth. And after more
20 than six years of successfully operating that
21 project, he sold that casino to Boyd Gaming in
22 September of 2018.

23 He's a graduate of Penn State
24 University in the Food Service and Housing
25 Administration Program. He's a former Chairman of

1 the Penn State Board of Trustees and currently, he's
2 on the Board of the Franklin Institute, the National
3 Constitution Center and Thomas Jefferson University
4 Hospital.

5 Turning to Eric, who, as I noted
6 before, is the Prospective CEO and General Manager.
7 Eric has been working on the project for over two
8 years. He was also with us up at Penn State for the
9 Public Input Hearing, as you'll recall. And he's
10 been responsible for the design, development and
11 ongoing operations of the project. He has 24 years
12 of experience in casino resort operations, marketing
13 and management. And he's a former - he's not
14 unknown to some of you and certainly the staff, he's
15 the former President and CEO of the Valley Forge
16 Casino Resort. He was recruited by Mr. Lubert to
17 lead the growth of that project for two years, which
18 did conclude with the sale to Boyd that I mentioned
19 before.

20 He had extensive experience in the
21 industry. Previously he worked at Foxwoods Resort
22 and Casino in Connecticut, which is the largest
23 casino resort in North America. He's also worked
24 for MGM Resorts International in Las Vegas on the
25 strip, working at the Luxor, Excalibur and Circus

1 Circus properties, and he's currently serving as an
2 Adjunct Instructor for Penn State University School
3 of Hospitality Management.

4 So, with those introductions, we're
5 primarily going to put this part of the presentation
6 in the hands of Ira and Eric. And Ira, turn it to
7 you.

8 MR. LUBERT: Thank you, Adrian. Chair
9 Smyler and Members of the Board, good morning. My
10 name is Ira Lubert. It's been spelled in - spelled
11 for the record, I believe. I'm pleased to appear
12 before you today. As you know, I was the winning
13 high bidder in the Gaming Control Board's September
14 2nd, 2020 Category 4 License Auction. And I'm the
15 sole, 100 percent owner of SC Gaming, the entity
16 that I created to submit my Licensing Application in
17 this proceeding.

18 I'm extremely pleased to have this
19 opportunity to appear before you and provide this
20 updated overview of the Category 4 Casino that I
21 seek to construct at the Nittany Mall in College
22 Township. As you may know, I'm a longtime member of
23 the State College community. I graduated from Penn
24 State in 1973 and since then State College has
25 always been a place I call home. In the years

1 following my graduation, I've returned to the
2 university and the State College area frequently.

3 About 12 years ago I purchased a
4 residence in State College and I'm also a State
5 College business and property owner. In addition,
6 I've been an enthusiastic and engaged supporter of
7 the University. I served on the University's Board
8 of Trustees for 17 years and ultimately retired from
9 the Board on December 31st, 2020, following my
10 service as Board Chair. Because of all of this, I
11 feel I know this area, the State College community
12 very well.

13 As you also may be aware, I was the
14 lead partner in a group that developed the Valley
15 Forge Casino and Resort. I started that project in
16 the face of the 2008, 2009 financial crisis and put
17 my personal capital squarely behind it to get it
18 done. In fact, I submit that I won that license
19 because I was the only applicant willing to put
20 personal financial resources on the line during a
21 period of significant Economic uncertainty.

22 Some might say it was a risky move, but I
23 truly believe that adding the Category 3 Casino
24 amenity into a declining regional convention center
25 and resort hotel could turn things around and create

1 a new Economic driver and job creator in the King of
2 Prussia area.

3 I was right about that. And Valley
4 Forge Casino property has been one of the most
5 successful in the Commonwealth. As you know, that
6 property was acquired by Boyd Gaming in 2018. In
7 some ways the financial crisis then, in 2008,
8 reminds me of the environment we are now in
9 post-pandemic, with significant concerns about a
10 looming Economic downturn or worse, possibly a
11 recession, but once again I see an opportunity for
12 the Commonwealth and a local community in need of
13 additional Economic engines.

14 As we have all seen brick-and-mortar
15 retail shopping has taken its lumps in recent years
16 as internet-driven retail commerce has grown and
17 then skyrocketed in the age of COVID. Shopping
18 malls in particular have been hit hard, and this
19 includes the Nittany Mall. I intend to use the same
20 formula I used at Valley Forge, here. I believe
21 that the Category 4 Casino I intend to construct at
22 the Nittany Mall will reinvigorate the property and
23 draw new businesses to the mall itself and the
24 surrounding area. This in turn will create jobs and
25 help State College region's Economy grow forward.

1 As an aside, I note that three of the
2 four existing category facilities are already
3 successfully employing a similar formula, including
4 Hollywood Casino in York, at the Galleria Mall and
5 the new Parx Casino in Shippensburg that is located,
6 in what I understand to be, a long, dormant big-box
7 store.

8 Finally, on this point, with Penn
9 State's immense alumni base and other visitors,
10 tourist flooding into the area throughout the year,
11 not just for football seasons, we will provide a new
12 entertainment venue that everyone can enjoy. Thank
13 you for the opportunity to be with you today and at
14 this point, I'm going to ask Eric Pearson, our - and
15 our Counsel to give you a full, formal presentation
16 about the project.

17 Eric formerly worked with me at Valley
18 Forge Casino Resort where he served as the CEO and
19 General Manager. I'm very happy to have him on my
20 team again as he knows how to operate casino
21 properties in a successful and responsible fashion.
22 He also knows how casino properties can be good
23 corporate citizens in the communities in which they
24 operate. And that's why I asked Eric to serve as
25 the CEO and general manager in my State College

1 casino, both in the development phase and once it's
2 open. I'll be available to answer any of your
3 questions that you may have at the conclusion of our
4 presentations. Thank you. Eric?

5 MR. PEARSON: Good morning, Chair
6 Smyler and Members of the Board. My name is Eric
7 Pearson, and I think we have the spelling. Thank
8 you so much for your time here today. I'll be going
9 over - through an overview of the project, beginning
10 with a brief timeline of the licensing process thus
11 far.

12 So, on September 2nd, 2020 Mr. Lubert
13 won the Category 4 License Auction to develop a
14 casino with a bid of \$10,000,101. This was the
15 first Category 4 Auction conducted with eligibility
16 extending beyond the Slot Machines Licensees. Mr.
17 Lubert paid that winning bid amount the very next
18 day on September 3rd, via a wire transfer from his
19 personal accounts. This validated the General
20 Assembly's intent and goal with the expanded
21 eligibility by generating more revenue than would
22 have existed with the second-highest bid.

23 The radius center point for the
24 project was designated within a 15-mile point in
25 Unionville Borough in Centre County, Pennsylvania.

1 The casino site location was later specifically
2 identified as the former Macy's Department Store at
3 the Nittany Mall in College Township. Mr. Lubert
4 then formed three entities as his wholly-owned
5 business structure for the proposed casino
6 operations on November 5th, 2020. These entities
7 are SC Gaming, LLC, SC Gaming OpCo, LLC and SC
8 Gaming HoldCo, LLC. And another entity, 2901 ECA
9 Associates, LLC was previously formed to secure the
10 right to acquire the former Macy's Department Store
11 location at the Nittany Mall. And the chart on the
12 slide there shows the ownership structure of those
13 entities.

14 Mr. Lubert submitted his Category 4
15 Gaming License Application to the Pennsylvania
16 Gaming Control Board in the name of his wholly-owned
17 entity, SC Gaming OpCo, LLC on March 2nd, 2021. As
18 part of our development processes, we submitted and
19 received conditional approval of our land
20 development plan by College Township on July 12th,
21 2021. We held our Public Input Hearing on
22 August 16th, 2021 in State College at the Penn
23 Stater Hotel and Conference Center. That land
24 development plan was final-approved and recorded by
25 College Township on December 28th of 2022, and that

1 brings us to this hearing today.

2 I'll do a quick overview of the
3 Nittany Mall location in the former Macy's
4 Department Store where we'll be locating the casino.
5 So, the Nittany Mall is an existing 543,000 square
6 foot mall with excellent access, visibility and
7 parking. It has a good central location with easy
8 access to I-99, I-80 and U.S. 322. The casino
9 project is designed to create and encourage
10 revitalization opportunities within the Nittany
11 Mall.

12 The Nittany Mall, as Ira mentioned,
13 like many, you know, smaller-town malls has - has
14 gone through some rough times and it's currently
15 about 50 percent occupied. We seek to adopt every
16 use of the roughly 94,000 square foot former Macy's
17 Department Store, which is an anchor store at the
18 site. It's highlighted in yellow in - on the image
19 there. The Nittany Mall resides in the existing
20 College Township Commercial District and has
21 excellent infrastructure and nearby shopping, dining
22 and related businesses that we are very excited to
23 collocate this casino project with.

24 As part of our application process, we
25 completed a Traffic Impact Study on the project.

1 There are some highlights of that study, as there
2 are six points of access into the casino site at the
3 Nittany Mall, three are signalized, three are
4 unsignalized, and we have access to over 2,000
5 parking spots within the mall complex. There are
6 only minor entry point changes needed for the casino
7 development, which we have and are already reflected
8 in our final and recorded land development plan with
9 College Township.

10 The site and surrounding roadway
11 infrastructure, as currently designed, is more than
12 adequate to support the addition of the proposed
13 casino development. You know, originally designed
14 to handle the entirety of the mall. In addition to
15 this, we'll perform a Post-Development Traffic Study
16 one year after opening of the casino to verify all
17 of the initial results and assumptions of the
18 previous study are good and if there are any changes
19 that we need to make, we can do that at that time.

20 We engage with Econsult Solutions to
21 perform a local and Economic impact study for the
22 project. Econsult worked directly with the local
23 municipal department leaders and College Township
24 staff to determine the project impact to the
25 community's infrastructure. These were their

1 findings. In terms of street maintenance,
2 negligible impact. The proposed location is already
3 built to high levels of commercial activity well
4 beyond what the casino will generate.

5 From sanitation, water and sewer
6 standpoint, also a negligible impact. No additional
7 improvements are needed to meet the usage and demand
8 of the casino. With the police force, again, no
9 material impact on the department's current police
10 force staff and/or allocated police service hours to
11 College Township with an estimate of 6.2 calls per
12 month. For fire department, another, you know, no
13 additional anticipated increases in fire calls,
14 related expenses due to the casino project. For
15 emergency medical services not anticipated that the
16 proposed casino would create any further capacity
17 challenges for Centre LifeLink EMS services, with an
18 estimate of only two calls per month.

19 Econconsult also completed an Economic
20 Impact Study for the project and the primary results
21 they found are that the regional market draw of the
22 casino is expected to have a net-positive impact on
23 College Township tourism, helping to revitalize the
24 Nittany Mall and attract other retail and
25 hospitality operators to the area. The proposed

1 casino's customers will be a mix of local and
2 out-of-town destination either for the casino
3 attraction and may stay longer in the area because
4 of the entertainment and experiences the casino will
5 provide.

6 These customers bring additional
7 potential spending into the community and other
8 local businesses including restaurants, hotels and
9 retail. The casino development is expected to have
10 a negligible on College Township capital improvement
11 needs and tax revenues to the Township from the
12 casino will be significant net positive to the
13 Township budget. From a direct construction and
14 development standpoint, the project is estimated to
15 deliver around 350 direct FTEs or full-time
16 equivalencies and 170 indirect positions.

17 The construction budget is 35 million
18 dollars and the upfront positive impact to the
19 Economy with direct, indirect and induced impacts
20 are directly, for College Township, \$43.6 million in
21 one-time Economic impact, supporting 360 jobs and
22 \$16.4 million in employee earnings to the larger
23 Centre County, \$61.4 million in one-time Economic
24 impacts, supporting 460 jobs and \$21.3 million in
25 employee earnings. And to the Commonwealth of the

1 Pennsylvania as a whole, \$73.3 million in one-time
2 Economic impacts supporting 520 jobs and 24.7
3 million dollars in employee earnings with \$1 million
4 in personal income, sales and business taxes during
5 the construction period alone.

6 A general overview of the project, in
7 its totality is a 127.6 million dollar project
8 budget. The casino will be built in a 94,000 square
9 foot facility and it will be completed in a single
10 phase. The construction is expected to take about
11 12 months. We are envisioning a 24-hour,
12 seven-day-a-week operation with 750 slot machines,
13 30 tables games and a retail Sportsbook. For
14 nongaming amenities, we'll have a sports-themed
15 restaurant and bar with - which will also include a
16 stage for live entertainment and other events. In
17 addition to our sit-down restaurant, we'll have a
18 quick-serve food court with multiple outlets.

19 I have a few architectural renderings
20 to share to give you some idea of the design
21 approach and, you know, our intent is really to
22 bring a first-class casino to - to Centre County.
23 This is our entry experience here (indicating).
24 This is our interior floor layout (indicating). The
25 color-coded areas, the light red is the slot floor.

1 The darker-red areas are where are table game pits
2 are designed to go. The blue areas are our F&B
3 areas. The larger box is the sit-down sports bar
4 restaurant. The smaller one is our food court. The
5 areas highlighted in green are restrooms and then
6 the greyed-out areas are the back-of-house and
7 support and administrative spaces. There are two
8 main external entrances and we - and one entrance
9 that interfaces directly with the mall, to help
10 support their operations there.

11 I apologize that these are in black
12 and white, but these next few shots would give a
13 sense of our interior design and the architectural
14 elements and features. So, this is the entrance
15 experience directly coming in from the front
16 entrance, which are sort of, you know, I call our
17 security airlock where we'll have security posted to
18 ID patrons coming in and out of the property.

19 This is a view of our table game pits
20 (indicating). Slot floor area. This is a separate
21 view of the area (indicating) and this gives a
22 better sense of some of the architectural elements
23 we're looking to include in the ceiling. I know
24 it's not ideal in a black-and-white sense, but we
25 put significant effort into creating exciting design

1 elements, dynamic lighting. We engaged Nelson
2 Worldwide, who's an architectural firm that we've
3 worked with in the past at Valley Forge and has
4 significant experience within the casino sector,
5 designing many exciting properties and
6 gaming-related elements.

7 This is an exterior view of the
8 entrance into our sports bar restaurant
9 (indicating). You can notice there's a bar that
10 bisects the gaming space, the restaurant space and
11 can serve customers on both ends. This is an
12 interior view of the restaurant (indicating) and you
13 can note we'll have, you know, extremely large
14 format television screens. It's going to be a great
15 place to watch the game. We have a lot of - a lot
16 of big sports fans with Penn State and we're excited
17 to bring this to market.

18 This is a rendering of our quick-serve
19 area of our food court (indicating). We'll have
20 multiple outlets in there, so if you're looking to
21 get a quick bite, you should stop in.

22 In my over 20 years of working in this
23 industry, I've come to view safety and security as
24 not only the operating functions, but as truly a
25 competitive advantage. As such, a brief overview of

1 - of how we'll operate from a safety and security
2 standpoint is, you know, obviously, 24-7 coverage
3 with security personnel, fully all-manned entrances.
4 We'll ID all patrons who appear 30 or younger,
5 actually most likely it will be 35 or younger.

6 And we'll be employing, in addition to
7 visual inspections, the latest ID scanning software
8 and equipment to make sure that everyone who comes
9 into the casino floor is of legal age. Also, 24-7
10 coverage through surveillance of the casino floor,
11 public spaces and parking lots of course. And
12 speaking specifically to parking lot coverage, we'll
13 have regularly, hourly patrolling coverage and
14 during peak times, constant coverage of the lots.

15 In terms of employment opportunities,
16 we're projected to have between 350 and 400
17 permanent full-time equivalency positions once we're
18 open and stabilized. And offering an excellent
19 employee benefits package, including paid-time off,
20 401K, medical, dental, vision insurance, many
21 voluntary benefits to include term life, whole life,
22 accident, critical illness, short-term disability.

23 Dynamic career growth opportunities.
24 This is really not just a bullet point for me. I
25 started in this business bussing tables when I was

1 16 years old. My mother was a cocktail waitress in
2 the casinos. I grew up in a town called Laughlin,
3 Nevada, which is a small gambling town and the -.
4 Whenever - at the properties I've worked at, when we
5 do new-hire orientation classes, I do my utmost best
6 to attend every one. I think I've only missed a
7 couple in my entire tenure, because one of the
8 things that I love the most about this industry is
9 that the opportunities that it provides for you to
10 start at the bottom and work your way up.

11 I'm an excellent example of that.
12 Many of my peers and colleagues in this industry
13 are. I'm a huge believer in internal development
14 and being able to provide those pathways for people
15 to be able to come in, in line-level positions and
16 work their way up into the executive ranks.

17 I think the casino business is great
18 in that regards because you can come in, in a
19 sector, you know, maybe you come in, in
20 environmental services or work on the casino floor
21 or as a cook in food and beverage or something like
22 that. If you have a career path or desired goal,
23 it's likely we have a position to fit within that
24 field. If you're interested in accounting, we have
25 that. Legal positions, if you want to - if you're

1 interested in trades, we have electricians, we have
2 carpenters, we have HVAC technicians.

3 If you're interested in computer
4 science or data analysis, we - we have all of these
5 types of avenues for growth and development and
6 being able to offer and grow these types of
7 positions is something that I'm very passionate
8 about and love that that's a big part of what my job
9 is. Along with that we obviously will offer many
10 employee and management training programs to spur on
11 that growth. Obviously competitive wage packages
12 will be offered and we'll also have a free Tables
13 Games Dealer training when we open up.

14 Our diversity and inclusion statements
15 are, we seek to establish a diverse workforce and
16 business partnerships, which reflect and represent
17 the surrounding community. We'll focus on creating
18 a working environment with policies, procedures and
19 systems that support and encourage the principals of
20 diversity and inclusion. We'll build a working
21 environment where everyone is respected and given
22 opportunities to grow and develop. We enhance our
23 surrounding communities for the inclusion and
24 celebration of its diverse cultures and backgrounds.
25 We'll serve our guest, drive results and create

1 success through embracing our team's diversity of
2 strengths, backgrounds, experiences and outlooks.

3 I know many of these statements look
4 similar. I know you've seen these. I can tell you
5 what diversity means for me is, in addition to being
6 the right thing to do, it is also - I view it as a
7 competitive advantage. One of the things that I
8 love about this business is that every day when I
9 come into work, I face a new problem. There's a
10 constant stream of new challenges and issues. And
11 what I found through my career, by embracing
12 diversity of inclusion, having a diverse group of
13 people with a diverse background offers solutions to
14 these problems that if we didn't have that, we would
15 not find otherwise.

16 I've experienced this many, many times
17 in my career and have worked for organizations
18 including MGM Resorts where this was very-highly
19 fostered and encouraged and we worked a lot on this
20 and saw firsthand how impactful embracing these
21 things are to the bottom-line operation of the
22 organization. So, it's not only good practice
23 because it's good practice, it's also good practice
24 because it's good business.

25 Our responsible gaming initiatives.

1 All employees will - are required to complete annual
2 responsible gaming training to work on the casino
3 floor. A Responsible Gaming Executive Committee
4 will meet quarterly and, you know, the Responsible
5 Gaming phone number, the 1-800-GAMBLER number and
6 associated messaging, it will be included in all
7 marketing messages, advertising assets, materials
8 both on and off property. In addition, the
9 responsible gaming pamphlets and support literature
10 will be available at numerous locations around the
11 casino floor, including the casino cage, ATMs and
12 security stations.

13 I also want to mention our prospective
14 management company, Bally's Corporation. We entered
15 with a framework agreement with Bally's Corp to
16 serve as our prospective management company.
17 Bally's offers a large national network of casino
18 resort properties and a national customer database,
19 including an affiliation with the property on the
20 Las Vegas Strip. They are currently operating 15
21 casinos in ten states, and Bally's brings a
22 globally-recognized brand to State College. And
23 through their partnership with Sinclair
24 Broadcasting, there's also a national TV presence
25 that is constantly out there and getting the Bally's

1 brand out there. This is something that was very
2 attractive for us.

3 A quick overview of Bally's
4 Corporation and their retail operations. Again, 15
5 casinos in ten states. They have over 8,000
6 employees, 500,000 square feet of gaming space,
7 15,000 slot machines in their portfolio, 500 table
8 games, 5,300 hotel rooms, two horse racetracks. And
9 some highlights of their operating capacities are
10 over 500,000 monthly customers with, as I mentioned
11 before, excellent brand awareness through their
12 media and content partnerships.

13 That's all I have. Thank you. I am
14 going to hand it over to Mike Fabius.

15 ATTORNEY FABIUS: Good morning, Madam
16 Chair, Commissioners, Ex-Officio Officers, I am
17 Michael Fabius from the Law Firm Ballard Spahr
18 representing Mr. Lubert and SC Gaming OpCo. While
19 SC - while Eric spoke to the substance and merits of
20 Mr. Lubert's proposed facility, I'm here to briefly
21 address the merits and the authority for Mr.
22 Lubert's application under the unique Category 4
23 requirements. I plan to move through my slides, my
24 remarks relatively quickly, as to be candid, there
25 are not a robust category of Category 4 requirements

1 and they're broadly not in dispute, notwithstanding
2 Shifting Sands' arguments to the contrary that we
3 heard at length last month.

4 In front of you here, to start, Act 23
5 of 2020 expanded eligibility to bid in the 2020
6 auction, broader than any prior auction. As you
7 heard, Eric said that this resulted in a higher bid,
8 more licensing fee revenue than the Commonwealth
9 would have received if Mr. Lubert had not been
10 designated eligible by the expanded eligibility.
11 And to put this in a broader context, Act 23 of 2020
12 was passed just after Mount Airy was refunded 21
13 percent of its 21 million dollar revenue, and there
14 were several unsuccessful auctions for Category 4
15 bids. There were originally ten Category 4
16 Licenses, but only five were originally awarded
17 because of insufficient demand. So, the increased -
18 the broadened eligibility was to increase
19 competition to increase licensing fee revenue.

20 Mr. Lubert, there's no dispute that
21 he's eligible as a bidder. There's no dispute that
22 the location meets the statutory criteria. I'm not
23 going to belabor the location criteria. There's no
24 dispute that Mr. Lubert submitted the highest bid.

25 The winning bidder is required to pay

1 the Board the bid amount within two business days
2 following the auction. Simply put, there's no
3 restriction in the Gaming Act or the Fiscal Code on
4 the permitted sources of funds Mr. Lubert can use to
5 finance his auction bid or his overall project. As
6 you can see, right in Section 1305(c)(7), the Board
7 has discretion to accept any method acceptable to
8 the Board for the payment of the winning bid amount.
9 In Section 1313 of the Act, Slot Machine Licensees
10 can have financial backers who are, themselves,
11 subject to principal licensure. And even in
12 1305.2(c)(3), there's a recognition that a winning
13 bid could be paid by a third party, such as a letter
14 of credit.

15 In this instance, Mr. Lubert paid the
16 winning bid amount via wire out of his personal bank
17 account. All of Mr. Lubert's sources of funds for
18 his proposed project and the bid payment had been
19 disclosed, detailed and evidenced during the course
20 of OEC and BIE's investigation. That evidence
21 consisted of all the - the documentation,
22 agreements, applications for the appropriate -
23 applicable individuals, interviews with the
24 applicable interview - individuals and sworn
25 Affidavits.

1 The winning bidder at each Category 4
2 Auction wins the - what's called the right to apply.
3 Not the license, but the right to apply. And Mr.
4 Lubert exercised that right to apply by submitting
5 the application that is now before the Board.
6 There's simply no dispute as to that. And there's
7 no dispute that he timely submitted the application
8 now before the Board. The only thing that is in
9 dispute is that he submitted that application not in
10 his own personal name, but in the name of SC Gaming
11 OpCo, LLC. And there is simply no restriction in
12 the Gaming Act or Fiscal Code that precludes the
13 winning bidder from applying in the name of a
14 wholly-owned entity. Naturally it makes commercial
15 sense to apply for the license through an entity,
16 not through an individual.

17 And to the contrary, there's actual
18 precedent for this. We didn't make this up. This
19 is - you have in front of you the background from
20 2018, 2019 when Stadium Casino set the precedent,
21 winning the bid and then designating a wholly-owned
22 entity as its applicant.

23 So, what you have here are two
24 Category 4 Auctions, two Category 4 Applications.
25 You have the winning bidder at the top. You have

1 the Category 4 Licensee at the bottom and they are
2 both wholly-owned top to bottom. Now, we have, you
3 know, provided documentation as to Mr. Lubert's
4 sources of funds. The plan is to, you know, a mix
5 of personal equity, nonbank debt, bank debt and
6 operating affiliate fees, which is essentially, a
7 payment of the sports-wagering licensing fee.

8 Wells Fargo has provided the highly
9 confident letter that they can help finance up to
10 \$90 million in debt financing, but regardless of the
11 - of the mix of these four sources, Mr. Lubert has
12 provided documentation that he can self-fund the
13 entire budget. And Mr. Lubert and Mr. Pearson have
14 a successful track record in operating casinos, not
15 only in general, but in Pennsylvania with the
16 successful operating of Valley Forge.

17 Well, you know, we've acknowledged and
18 provided documentation and testimony and sworn
19 affidavits to the effect that Mr. Lubert has the
20 ability to convert that nonbank debt into equity in
21 SC Gaming, LLC. And he has the ability to take an
22 equity investment from Bally's and SC Gaming HoldCo,
23 LLC, but to be clear, those are not presently before
24 the Board and they are not springing or automatic.
25 They - Mr. Lubert today is the 100 percent owner of

1 SC Gaming, LLC. Before that would ever change, we
2 would be back before you with a Petition seeking
3 approval to do so under 4 PA C.S. 1328. And unless
4 and until you approve otherwise, Mr. Lubert will be
5 the sole owner of SC Gaming OpCo, as he is today.

6 I have here in the slide deck - I'm
7 not going to belabor this. These are slides just to
8 set forth the timeline, Category 4 Auction history.
9 These are all matters which the Board can take
10 official notice of. And there's a bibliography of
11 your press releases and your records supporting the
12 timeline. This is all just to show the General
13 Assembly's intent in expanding the eligibility to
14 bid by - to increase competition.

15 And with that, I will - before we take
16 questions, I'll turn this back to Adrian to
17 conclude.

18 ATTORNEY KING: Thanks, Mike.

19 So, I just want to bring this to a
20 conclusion. As I'm sure you prefer, we're trying to
21 be as efficient as we possibly can. I want to touch
22 on - on two high-level points as we conclude. First
23 of all, as with every application that has been
24 passed on and approved in this Commonwealth for the
25 last 16 years, this project has been subject to a

1 very comprehensive investigation and report by your
2 team in the BIE and in OEC.

3 As you know, under 4 PA C.S.
4 1517(a)(1) and (a)(2), OEC and BIE have the power
5 and the duty to investigate and make recommendations
6 to the Board on all matters of eligibility and
7 suitability. And in this case - and I would also
8 just point out, all that is done through a sworn
9 process and under threat of charges of perjury if
10 there is any sort of obviously people not
11 representing the facts correctly.

12 In this case, Mr. Lubert, SC Gaming
13 and every associated applicant have fully cooperated
14 with OEC and BIE's investigation, producing all
15 requested information, including extensive
16 applications, documentation, licensing interviews
17 and sworn statements. OEC and BIE have conducted a
18 thorough investigation into the eligibility and
19 suitability, including, as we would all expect them
20 to, the assertions that Stadium has made in this
21 process.

22 It has all been thoroughly reviewed
23 and vetted every way possible. Following that, in
24 the Suitability Report, OEC is of the opinion that
25 the Applicant is suitable and eligible to hold a

1 Category 4 Slot Machine License, obviously if the
2 Board were to come to that decision.

3 OEC and BIE recommend that SC Gaming
4 be found suitable and eligible. And as Mike
5 mentioned, FIU, Financial Investigations Unit within
6 BIE has determined that Mr. Lubert has the ability
7 to self-fund the approximate 128 million dollar
8 project cost of the proposed Category 4 Facility.
9 And I would just point out, this is no surprise
10 because that is what FIU found in 2008, 2009 with
11 the Valley Forge project. I worked very closely
12 with Mr. Lubert on that then and we have, again,
13 brought evidence of his ability to self-finance
14 before the Board and before the team.

15 So, that is, you know, a very
16 important point in front of the Board in terms of
17 comprehensive investigation and report that is
18 before you. And then just wrapping up, in terms of
19 high-level eligibility and suitability, we have
20 Category 4 eligibility. We have the right to apply.
21 There's no reasonable dispute about that. With
22 respect to financial suitability, and wherewithal,
23 more than adequate financial resources to develop
24 the proposed project.

25 There has been a finding of good

1 character, honesty, integrity, including not only
2 Mr. Lubert and all the financial backers, but again,
3 for Mr. Lubert and Mr. Pearson. No surprise there.
4 They've held licenses and successfully operated a
5 casino in this Commonwealth before. And as you
6 know, Mr. Lubert also has an interest in Rivers
7 Pittsburgh.

8 Getting to operational viability, more
9 than sufficient business ability and experience to
10 create and maintain a successful and efficient
11 operation, and ability to maintain a steady level
12 and growth of revenue. Again, not only for the two
13 gentlemen here who have a track record in this
14 Commonwealth to do exactly just that, but also
15 bringing in a high-level manager to work with them
16 with respect to Bally's.

17 We have an eligible location, no
18 dispute, with secured land development approvals
19 from College Township. So, from the host community,
20 those elected officials have approved the land
21 development plan. And I'll just tick off, you know,
22 all the additional criteria set forth under the Act.
23 Location and quality of the proposed facility. The
24 potential for new job creation and Economic
25 development. Eric has explained that. Good-faith

1 plan to recruit, train, upgrade, diversity
2 employment and procurement. History and success of
3 the Applicant in developing tourism facilities.

4 Again, look at Valley Forge. Look at
5 what it was before the amenity was introduced. Look
6 at what it has become. And a favorable record and
7 meeting commitments to local agents and
8 organizations. And a limited need of mitigation of
9 local impacts.

10 And I can just briefly touch again on
11 - on sort of local support. I just want to remind
12 the Board again, if we go back to the public impact
13 (sic) hearing, there was extensive support that day
14 from the people who came to testify from local
15 officials, at the state level, the local level
16 business leaders, community members, all the people
17 that took the time to come and actually appear, were
18 universally supportive.

19 We certainly are aware that there are
20 people in the State College area who don't support
21 the casino - this casino project, but I would submit
22 for the Board that the real opposition is they don't
23 like gaming, but respectfully to them, I will state
24 respectfully, the Commonwealth itself crossed that
25 bridge back in 2004 when the Gaming Act was passed.

1 Most opposition to gaming is based on fears of crime
2 and of underage gaming and responsible gaming not
3 being conducted, but I think the track record of
4 this industry over the last 16 years has
5 demonstrated that just it's simply an unfounded
6 concern.

7 This organization, the Gaming Control
8 Board with its law enforcement partners and with its
9 operator partners work extremely hard to ensure that
10 those problems do not arise. You know that. We
11 know that. Anybody in the industry knows that. And
12 so while I, again, respect the opinions of people
13 who are opposed to gaming, I would just ask you to
14 recall who came before you to testify and the local
15 support that has been demonstrated most recently,
16 less than 30 days ago with - with the approval of
17 the land development plan.

18 So, with that, I'm going to wrap up
19 our presentation. I appreciate the time. I know
20 we'll probably turn it over to OEC and then we'll be
21 available to answer any questions. If I could just
22 procedurally, we'll move into the record our
23 presentations. And I may as well say it now, you
24 know, obviously, respectfully, we seek your approval
25 for the issuance of - well, the approval of this

1 License Application.

2 CHAIR: OEC, any objection to the
3 exhibits?

4 ATTORNEY GABRIELLE: Good morning,
5 Chair and Commissioners, Ashley Gabrielle,
6 G-A-B-R-I-E-L-L-E. No objection.

7 CHAIR: Do you have any questions for
8 SC Gaming?

9 ATTORNEY GABRIELLE: Yes, Chair. May
10 I proceed?

11 CHAIR: You may proceed. Yes.

12 ATTORNEY GABRIELLE: Thank you. I'd
13 like to turn to the project overview, the Nittany
14 Mall location slide that should be around page
15 eight. The project overview. I think this is -.

16 ATTORNEY KING: Go back one I think,
17 Eric. Yep.

18 ATTORNEY GABRIELLE: Right there.
19 Okay.

20 What is the proximity of the proposed
21 facility to Penn State University?

22 MR. PEARSON: It's about three miles.
23 Approximately three miles.

24 ATTORNEY GABRIELLE: Okay.

25 Has anyone associated with SC Gaming

1 OpCo engaged any representative from Penn State
2 regarding the student body and consequences of
3 underage gambling or on any other topics?

4 MR. PEARSON: I'm actually on faculty
5 at Penn State as an Adjunct Instructor. I've have
6 many conversations with - within the school there.
7 We have not had - I have not had any structured
8 conversations beyond that, but I have - we have had
9 we have had conversations with them about that.

10 ATTORNEY GABRIELLE: Okay.

11 Do you anticipate having any further
12 discussions regarding this topic or any other
13 topics? Do you feel - see the need to?

14 MR. PEARSON: Not - there's nothing
15 scheduled to the present. I know as - as the
16 project develop - as the project develops, you know,
17 Penn State is a huge member of the community and we
18 will continue to interface with them and do that,
19 but -.

20 ATTORNEY FABIOUS: We would anticipate
21 that the University would be a good partner and we
22 have a - two excellent relationships with the
23 University in educating and making sure the student
24 body is aware of the 21-plus, and we won't be shy
25 about using those relationships to make sure the

1 student body is aware.

2 MR. PEARSON: Yeah, absolutely.

3 ATTORNEY GABRIELLE: I'm referring to
4 the Traffic Impact Study slide. This should be the
5 next slide. Can the surrounding roadway
6 infrastructure support the proposed casino when
7 there is additional traffic during Penn State
8 Football season?

9 MR. PEARSON: Absolutely. Yeah. The
10 additional traffic that the casinos projected to
11 generate is far below what the design specs were for
12 the mall when it was originally constructed, and all
13 that did take into account the additional visitation
14 of large events that happen at Penn State.

15 ATTORNEY GABRIELLE: Okay.

16 The next slide, Local Impact Study.
17 I'm taking a look at the figures here for the
18 estimated calls per month to police, fire and EMS.
19 How are these figures for these estimated calls for
20 month determined?

21 MR. PEARSON: So, Econsult Solutions,
22 they had done many of these studies for - for us in
23 the past and for also other Pennsylvania casinos and
24 they used historical data from like-projects
25 throughout the Commonwealth to generate these

1 figures.

2 ATTORNEY GABRIELLE: Okay.

3 Should be about two slides forward,
4 Economic Impact, Construction and Development. Can
5 you explain the calculations involved in the figures
6 you cite with regard to the upfront positive impacts
7 to the College Township Economy, Centre County
8 Economy and then also the Pennsylvania Economy?

9 MR. PEARSON: Yes. So, - and like how
10 they escalate, is that right?

11 ATTORNEY GABRIELLE: Correct.

12 MR. PEARSON: Right.

13 ATTORNEY GABRIELLE: And the sources.

14 MR. PEARSON: Yeah. So, it's - the
15 primary impact is, you know, the construction,
16 development itself and then all of the sourcing and
17 ordering and all the materials that go along with
18 that. So, as those circles get larger from College
19 Township proper, you know, we engaged with
20 additional firms in Centre County and contractors
21 that may be not located within College Township.
22 And then that's - that's why the number gets higher
23 the further out of the bubble it goes, because the
24 firms that exist, you know, with - within
25 Pennsylvania as a whole, you know, don't necessarily

1 exist within Centre County, but the focus of the
2 development is to concentrate as much of that
3 Economic activity as possible with local and
4 statewide firms and sources.

5 ATTORNEY GABRIELLE: Interior Floor
6 Plan Layout. This should be about three slides
7 forward. You stated that there was one access point
8 to the proposed casino from inside the Nittany Mall.

9 Is that correct?

10 MR. PEARSON: That's correct.

11 ATTORNEY GABRIELLE: How many public
12 access points are there to the facility in total?

13 MR. PEARSON: There are - for
14 customers, there are three access points. One
15 access point going into the Nittany Mall and two
16 external access points. We also have an access
17 point at the rear, which is employee-focused, but
18 for guests, it's - it's three.

19 ATTORNEY GABRIELLE: Okay.

20 Will the public access points have
21 security posted and identification scanning
22 technology?

23 MR. PEARSON: Yeah, 24 hours a day,
24 yes.

25 ATTORNEY GABRIELLE: And how many

1 access points are there to the Gaming Floor itself?

2 MR. PEARSON: Those three points, you
3 know, for guests. Those same three.

4 ATTORNEY GABRIELLE: To the - the
5 access points to the Gaming Floor as the same as the
6 access points to the facility?

7 MR. PEARSON: Yes.

8 ATTORNEY GABRIELLE: Okay.

9 Are there access points to the
10 restaurant or quick-serve food and beverage outlets
11 from outside the casino?

12 MR. PEARSON: There are none
13 envisioned at this time.

14 ATTORNEY GABRIELLE: Is there any
15 intention to request Board-approval for underage
16 access to the restaurant or quick-serve food and
17 beverage outlets?

18 MR. PEARSON: No, not at this time.

19 ATTORNEY GABRIELLE: Will smoking be
20 permitted at the facility?

21 MR. PEARSON: We are envisioning to
22 have a nonsmoking casino facility.

23 ATTORNEY GABRIELLE: Okay.

24 Security Policies and Procedures
25 slide. That's around page 23. What public spaces

1 are included in the surveillance 24-7 coverage?

2 MR. PEARSON: So, any - any
3 circulation space, the casino floor obviously
4 itself, and then any space where customers can go.
5 The nature of the - it's relatively small. It's
6 almost all casino floor. So, we'll have
7 surveillance coverage in the food and beverage
8 areas. Obviously, not to the extent we would have
9 in the gaming spaces, but any circulation space, our
10 food and beverage areas, the casino floor and the
11 parking lot. We will not have cameras in the
12 restrooms.

13 ATTORNEY GABRIELLE: Understandable.

14 What parking lots are included in the
15 surveillance 24-7 coverage?

16 MR. PEARSON: So, there are two
17 primary lots on either side of the casino and those
18 will have - is there an overview we can run? Yeah.

19 So, really, on - on all three sides of
20 that yellow rectangle will have surveillance
21 coverage. The primary main lot of the casino is,
22 you know, directly sort of below, leading out and
23 then in the rear, that would be not really guest
24 parking, but we'll have coverage of all those lots.

25 ATTORNEY GABRIELLE: And what parking

1 lots are including in the roving-patrol coverage
2 area?

3 MR. PEARSON: Those same lots.

4 ATTORNEY GABRIELLE: And then the
5 Employment Opportunities slide?

6 MR. PEARSON: Oh, I got to go around
7 the horn.

8 ATTORNEY GABRIELLE: There you go.

9 MR. PEARSON: Sorry.

10 ATTORNEY GABRIELLE: Will there be any
11 part-time employment opportunities available?

12 MR. PEARSON: Yes. We'll have a mix
13 of full time and part time.

14 ATTORNEY GABRIELLE: And will these
15 part time positions include any benefits? And if
16 so, what benefits will be included?

17 MR. PEARSON: There will be - we
18 haven't totally finalized the actual packages, but
19 they're - we will have options for part-time
20 benefits and for part-time employees to participate
21 in the - the - you know, the medical, dental, all
22 the voluntary benefits will be open to part-time
23 employees.

24 ATTORNEY GABRIELLE: Okay.

25 And what do you mean by the provision

1 of free Table Games Dealer training? Does that
2 anticipate a possible Dealer school? Or would this
3 be more like a post-certification training?

4 MR. PEARSON: It would be both. So,
5 pre-opening we'll operate a Dealer school to train
6 all the Dealers that will come in. You know, we
7 don't - because of where we're located in the state,
8 we're not very nearby other casino properties, so
9 we're not anticipating a large pool of
10 already-trained Dealers to draw from. So, we're
11 going to have to sort of grow our own and that's
12 what this Dealer school is intended to do, but also
13 we'll maintain the ability to do that to continue to
14 train new Dealers, hopefully as internal promotions
15 through the course of operations of the casino.

16 ATTORNEY GABRIELLE: And then the
17 Responsible Gaming slide. What specific training
18 programs will employees be required to complete as
19 part of the annual responsible gaming training?

20 MR. PEARSON: So, we partner with, you
21 know, the Council on Compulsive Gambling in
22 Pennsylvania and the Executive Director Josh Ercole,
23 who I recently just spoke with in terms of my class
24 at Penn State actually on some responsible gaming
25 content. So, it's the - all of the standard

1 training that all the other casinos in the state
2 engage with on understanding problem gambling
3 concerns and identifying how to handle those issues.

4 ATTORNEY GABRIELLE: Would this
5 include the prevention of the over-service of
6 alcohol to overly-intoxicated guests?

7 MR. PEARSON: Absolutely.

8 ATTORNEY GABRIELLE: Would this also
9 include training for the prevention of underage
10 gaming?

11 MR. PEARSON: Absolutely. Yeah.

12 ATTORNEY GABRIELLE: And would this
13 also include training for the prevention of leaving
14 minors unattended?

15 MR. PEARSON: Absolutely. Yeah. That
16 is a - that'll be a key focus point that, you know,
17 in addition to those training programs, we'll adjust
18 it with signage and other things that - you know,
19 through the Board's guidance and the industry
20 response has become commonplace throughout the
21 Commonwealth.

22 ATTORNEY GABRIELLE: And which groups
23 of employees will receive Responsible Gaming
24 training?

25 MR. PEARSON: I believe all employees

1 will receive Responsible Gaming training.

2 ATTORNEY GABRIELLE: On all topics?

3 MR. PEARSON: Yes.

4 ATTORNEY GABRIELLE: Okay.

5 I have no further questions, Chair.

6 CHAIR: Thank you. Any questions or
7 comments from the Board? Commissioner Mustio, do
8 you have any questions?

9 MR. MUSTIO: I do not.

10 CHAIR: Okay.

11 Commissioner Dermody?

12 MR. DERMODY: Thank you, Madam Chair,
13 just one brief question. You mentioned benefits for
14 part-time employees and some voluntary benefits.
15 What's that mean?

16 MR. PEARSON: So the voluntary
17 benefits like accidental, you know, injured, like
18 the AFLAC stuff.

19 MR. DERMODY: Okay.

20 MR. PEARSON: There's - yeah,
21 disability. So, there's - there will be a suite of
22 benefits that employees can have the choice to opt
23 in or out of the - outside the core like medical,
24 vision, dental.

25 MR. DERMODY: Are those benefits they

1 would have to pay - pay towards them?

2 MR. PEARSON: Yes, sir. Yes, sir.

3 MR. DERMODY: Okay.

4 That's what I was getting at.

5 All right. Thank you.

6 CHAIR: Any other questions?

7 I do have a question with regard to
8 the Local Impact Study. I know you relied on
9 Econsult, but the numbers of calls for police, fire
10 and EMS per month is pretty low. I gather there's
11 no 24-7 operation in that mall right now.

12 Right?

13 MR. PEARSON: That's correct.

14 CHAIR: So I can envision that these
15 numbers are going to increase once you're fully
16 operational. How do you plan to address the
17 increase? Are you going to provide your own extra
18 security? Are you partnering with PSP? Penn State?
19 I mean, what are you going to do? Because these
20 numbers are really low, six calls a month, two calls
21 a month.

22 MR. PEARSON: It's - through our
23 research through my experience operating at Valley
24 Forge and in looking at the other communities in the
25 state, the nature of - of our property and we - we

1 think that they're relatively realistic. I will say
2 the most fun part of my job, as I mentioned before
3 is every day when I come in, we have new problems to
4 deal with. And how we dealt with that at Valley
5 Forge is we partnered very closely with the local
6 community. And if the realities change beyond what
7 our expectations are now, we move and adapt. As I
8 said, safety and security is not something that is
9 just an operational checkbox for me and for us. It
10 is a competitive advantage. A safe and secure
11 casino floor is the first thing that we must satisfy
12 in - if we have any desire to attract gaming
13 customers.

14 So, that is, you know, one of our top
15 priorities. So, if we run into issues that seem to
16 be exceeding there, absolutely we will pivot and
17 adapt if that's adding additional staff, we'll do
18 that. If that's working with the local community
19 and local law enforcement to help them augment that,
20 we will absolutely do that in the safety and
21 security. If we can't do those two things, it'll be
22 hard for us to be successful in any other metric.

23 CHAIR: Okay.

24 Thank you. Ex-Officios, any
25 questions, comments?

1 Okay.

2 Thank you very much. We will now hear
3 from OEC.

4 ATTORNEY GABRIELLE: Thank you. We do
5 have one witness to call, Chair. Mr. Bauer.

6 And OEC would like to call Christopher
7 Bauer to discuss his review of the Traffic
8 Evaluation associated with SC Gaming OpCo's Category
9 4 Slot Machine License Application and the proposed
10 facility to be located in State College, PA.

11 The Board has previously accepted Mr.
12 Bauer as an expert for the purpose of reviewing
13 traffic impact studies submitted in conjunction with
14 the Category 4 Slot Machine License Applications of
15 Mountainview Thoroughbred Racing Association, LLC,
16 or Hollywood Morgantown at its licensing hearing
17 held on June 12th, 2019; Stadium Casino,
18 Westmoreland RE, LLC at its licensing hearing held
19 on August 14th, 2019; Mountainview Thoroughbred
20 Racing Association, LLC or Hollywood York at its
21 licensing hearing held on December 18th, 2019 and GW
22 Cumberland OpCo at its licensing hearing held on
23 January 19th, 2022. Therefore, barring no
24 objection, OEC requests that eh Board continue to
25 accept Mr. Bauer as an expert in this regard.

1 CHAIR: Any objection?

2 ATTORNEY KING: No objection.

3 CHAIR: You may proceed.

4 ---

5 CHRISTOPHER K. BAUER, P.E.,
6 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
7 HAVING PREVIOUSLY BEEN DULY SWORN, TESTIFIED AND
8 SAID AS FOLLOWS:

9 ---

10 DIRECT EXAMINATION

11 ---

12 BY ATTORNEY GABRIELLE:

13 Q. Mr. Bauer, can you please explain what a
14 traffic -?

15 CHAIR: Can you ask him to spell his
16 name, please, state his name and spell it?

17 ATTORNEY GABRIELLE: Yes.

18 BY ATTORNEY GABRIELLE:

19 Q. Can you please state your name and spell
20 your last name for the record?

21 A. Christopher K. Bauer, B-A-U-E-R.

22 Q. Thank you.

23 Mr. Bauer, can you please explain what a
24 Traffic Impact Assessment and Trip Generation Study
25 is?

1 A. A traffic evaluation, Traffic Impact
2 Assessment is the forecasting of traffic conditions
3 that the transportation network and the traveling
4 public is likely to experience as a result of the
5 traffic generated by a proposed development. It's
6 the tool used to determine if improvements to the
7 transportation network are required to mitigate the
8 impact of the development.

9 The Trip Generation Study forecasts the
10 number of trips a development is expected to
11 generate.

12 Q. Is the Pennsylvania Department of
13 Transportation's Bureau of Maintenance and
14 Operations, or BOMO, responsible for the review and
15 assessment of the Traffic Impact Assessment
16 submitted by applicants for proposed Category 4
17 Casinos in the Commonwealth?

18 A. Yes

19 Q. And has the BOMO hired your company,
20 McMahon Associates, to review and assess the Traffic
21 Impact Assessment submitted by applicants for
22 proposed Category 4 Casinos in the Commonwealth on
23 its behalf?

24 A. Yes.

25 Q. Has your company been retained to review

1 and assess the Traffic Impact Assessment and Trip
2 Generation Study completed by David E. Wooster &
3 Associates, Inc., and dated February 25th, 2021,
4 which was submitted by SC Gaming OpCo for their
5 proposed Category 4 Facility to be located in State
6 College, PA?

7 A. Yes.

8 ATTORNEY GABRIELLE: OEC has marked
9 the February 25th, 2021 Traffic Impact Assessment
10 and Trip Generation Study by David E. Wooster &
11 Associates that Mr. Bauer is referring to as OEC
12 Exhibit 1, and OEC's exhibits have been provided to
13 the Board prior to this hearing.

14 ---

15 (Whereupon, OEC Exhibit 1, 2/25/21 David E.
16 Wooster & Association Traffic Impact Assessment
17 and Trip Generation Study, was marked for
18 identification.)

19 ---

20 BY ATTORNEY GABRIELLE:

21 Q. What is your involvement in the review of
22 this Traffic Impact Assessment and Trip Generation
23 Study?

24 A. Review and oversight of the review.

25 Q. What methodology did you use for your

1 review?

2 A. Industry and PennDOT standards for the
3 review of Traffic Impact Assessments.

4 Q. At any time during your review and
5 assessment of the information, did anyone attempt to
6 influence or coerce you to provide a favorable or
7 unfavorable review?

8 A. No.

9 Q. Are you aware of any attempt to influence
10 or coerce McMahon Associates during the course of
11 its review?

12 A. No.

13 Q. Is McMahon satisfied with the scope of
14 the assessment provided by David E. Wooster &
15 Associates, Inc.?

16 A. Yes.

17 Q. Did Wooster's evaluation recommend any
18 improvements to the study area identified in the
19 evaluation?

20 A. No.

21 Q. Did McMahon respond to Wooster's Traffic
22 Impact Assessment and Trip Generation Study and were
23 any comments offered?

24 A. Yes. The review of the submission
25 generated 11 comments. The most important comment

1 was the main topic of trip generation. Trip
2 generation is the number of vehicles that the
3 development will likely see - use the facility and
4 therefore, the driveways serving the facility. The
5 submission relied on older data derived from casinos
6 with different operating parameters than the
7 Category 4 Licenses. It was requested that the
8 Applicant collect data at the Category 4 Licenses
9 there were - casinos that were in operation at the
10 time to determine a more representative trip
11 generation.

12 Q. And were these comments stated in the
13 letter and provided to Wooster & Associates?

14 A. Yes.

15 ATTORNEY GABRIELLE: OEC has marked a
16 Letter dated April 7th, 2022 from McMahon Associates
17 that Mr. Bauer's referring to as OEC Exhibit 2.

18 ---

19 (Whereupon, OEC Exhibit 2, 4/7/22 Letter from
20 McMahon Associates, Inc., was marked for
21 identification.)

22 ---

23 BY ATTORNEY GABRIELLE:

24 Q. Did Wooster respond to this
25 correspondence and how were your comments addressed?

1 have been reduced over the years. There are
2 concerns that signal timing and storage lane lengths
3 at the driveways and intersections of SR 150 with SR
4 26 and Shiloh Road may be inadequate to accommodate
5 the traffic utilizing the site. It was recommended
6 that a Post-Development Study to be conducted a year
7 after opening of the casino.

8 Q. And does McMahon agree with the study's
9 conclusion?

10 A. Yes. With the caveat that the
11 Post-Development Study be conducted to ensure that
12 the signal timing and storage lane lengths at the
13 driveways are - and the intersections are adequate
14 to accommodate the forecasted casino traffic.

15 Q. Does McMahon have any recommendations for
16 the Applicant following its review of the traffic
17 evaluation and subsequent submissions by Wooster?

18 A. Yes. Only to conduct the
19 Post-Development Study.

20 ATTORNEY GABRIELLE: Thank you, Mr.
21 Bauer. Chair, I have no further questions.

22 CHAIR: Any questions from SC Gaming?

23 ATTORNEY KING: No questions. I just
24 want to confirm what Mr. Pearson had already
25 testified to, that we've agreed and will conduct the

1 Post-Development Survey and obviously take into
2 account any recommendations.

3 CHAIR: Any objection to the exhibits
4 of OEC?

5 ATTORNEY KING: No objection.

6 CHAIR: Those -.

7 ATTORNEY GABRIELLE: I would like to
8 move those Exhibits 1 through 4 into the record,
9 please

10 CHAIR: So moved.

11 ---

12 (Whereupon, OEC Exhibit 1, 2/25/21 David E.
13 Wooster & Association Traffic Impact Assessment
14 and Trip Generation Study, was admitted.)

15 (Whereupon, OEC Exhibit 2, 4/7/22 Letter from
16 McMahon Associates, Inc., was admitted.)

17 (Whereupon, OEC Exhibit 3, 7/18/22 Letter from
18 David E. Wooster & Associates, was admitted.)

19 (Whereupon, OEC Exhibit 4, 7/28/22 Letter from
20 McMahon Associates, Inc., was admitted.)

21 ---

22 CHAIR: Any questions or comments for
23 OEC from the Board? Commissioner Mustio, any
24 questions for OEC?

25 MR. MUSTIO: No questions. No

1 questions, Chair.

2 CHAIR: Ex-Officio, any questions?

3 All right.

4 Thank you very much.

5 ATTORNEY GABRIELLE: Thank you.

6 CHAIR: So Stadium Casino -.

7 ATTORNEY GABRIELLE: Madam Chair, if I
8 may, we do not have any further evidence to present,
9 but I did like to make a statement, if I may, in
10 closing?

11 CHAIR: Okay.

12 ATTORNEY GABRIELLE: Thank you.

13 Before the Board this morning is the
14 consideration of SC Gaming OpCo's Category 4 Slot
15 Machine License Application. According to the
16 Pennsylvania Racehorse Development and Gaming Act
17 and the Board's regulation promulgated thereunder,
18 the Board shall have the specific power and duty at
19 its discretion to issue Slot Machine Licenses. The
20 Board shall not grant a Slot Machine License unless
21 the Board finds that the applicant satisfies the
22 eligibility and suitability requirements of the Act
23 and the Board's regulations.

24 An applicant for a Slot Machine
25 License shall appear before the Board and at all

1 times have the burden to establish and demonstrate
2 by clear and convincing evidence its eligibility and
3 suitability for licensure. Category 2 Slot Machine
4 Licensee, Stadium Casino RE, LLC has raised concerns
5 regarding the Board's statutory authority to
6 consider the Category 4 Slot Machine License
7 Application of SC Gaming OpCo based on its various
8 allegations of improper ownership interest and
9 funding in and organizational structures of SC
10 Gaming OpCo.

11 According to the Act and the Board's
12 Regulations, the Bureau of Investigations and
13 Enforcement, or BIE, shall investigate and review
14 all applicants and applicants for a license. OEC
15 shall advise the BIE on all matters, including the
16 granting of licenses, the conduct of background
17 investigations and the investigation of potential
18 violations of the Act.

19 Pursuant to this mandate, the BIE has
20 conducted a background investigation of SC Gaming
21 OpCo, its proposed management company, associated
22 affiliates, Principal entities and Principals, which
23 was guided and advised by OEC. Further, the BIE's
24 Financial Investigations Unit, or FIU, also
25 conducted an investigation into the financial

1 fitness of the Applicant, which was also guided and
2 advised by OEC.

3 The members of OEC and BIE staff who
4 performed work on the investigations associated with
5 this Applicant have a combined 127 years of gaming
6 experience through employment with the Pennsylvania
7 Gaming Control Board and other gaming regulatory
8 jurisdictions. Since their inception, OEC and BIE
9 have analyzed thousands of business transactions
10 involving formation, restructuring, reorganization,
11 bankruptcy, financing, mergers and acquisitions,
12 just to name a few examples as one of its many
13 duties under the Act.

14 The FIU, which is responsible for
15 conducting the financial investigations associated
16 with this Applicant has nearly 100 years of
17 experience in professional accounting and finance to
18 include public accounting and corporate finance
19 experience. FIU's staff have received Bachelor of
20 Science degrees in Accounting, with one member
21 having a Master's degree in Taxation. The entire
22 FIU team is licensed as Certified Public Accountants
23 and complete the yearly continuing-education
24 requirements to maintain licensure in the
25 Commonwealth.

1 Staff members also hold the following
2 credentials or certifications. Certified Fraud
3 Examiner, Certified in Financial Forensics,
4 Chartered Global Management Accountant, Certified
5 Information Technology Professional and Certified
6 Anti-Money-Laundering Specialist. In their careers,
7 the FIU team has performed audits, tax return
8 preparation, litigation support, forensic
9 accounting, business valuations, corporate
10 analytics, corporate forecasting and budgeting.

11 The FIU team has drafted hundreds of
12 reports on various topics, including corporate
13 restructuring involving complex financial matters,
14 financial suitability, mergers and acquisitions and
15 capital financing structuring on all types of
16 entities, including, but not limited to
17 corporations, partnerships and limited liability
18 companies for the Pennsylvania Gaming Control Board.

19 The BIE, FIU and OEC have paid
20 particular attention to the issues raised by Stadium
21 throughout the background investigation process.
22 BIE, FIU and OEC must rely on the provisions of the
23 Act and Board's Regulations in the conduct of and
24 advising on the background investigations. BIE, FIU
25 and OEC specifically investigated the Applicant's

1 eligibility for a Category 4 Slot Machine License
2 and compliance with the provisions of the Act and
3 the regulations corresponding to the issues raised
4 by Stadium.

5 In summary, the Act requires each
6 Applicant for a Slot Machine License to produce the
7 information, documentation and assurances concerning
8 financial background and resources as the Board
9 deems necessary to establish by clear and convincing
10 evidence the financial stability, integrity and
11 responsibility of the applicant. Each applicant
12 shall, in writing, authorize the examination of all
13 bank accounts and records as may be deemed necessary
14 by the Board. This includes a review of bank
15 references, business and personal income and
16 disbursement schedules, tax returns and other
17 reports filed with governmental agencies, business
18 and personal accounting and check records and
19 ledgers, and a review of all financial backers and
20 all lenders either in effect or proposed.

21 The integrity of the financial sources
22 shall be judged upon the same standards as the
23 applicant, and any such person or entity shall
24 produce for the Board, upon request, any document or
25 information which bears any relation to the

1 application. Additionally, any agreement to conduct
2 business between a person and a Slot Machine
3 Licensee is required to be produced and is subject
4 to the approval of the Board in accordance with
5 rules and regulation promulgated by the Board.

6 BIE's background investigation
7 included a comprehensive review of this information.
8 According to the Act and the Board's Regulations,
9 OEC shall review all information discovered during
10 an investigation relating to an applicant's
11 suitability and eligibility for a license and in
12 accordance with law independently determine the
13 content and scope of that information and prepare a
14 Final Background Investigation Report for inclusion
15 in a final report to the Board relating to an
16 applicant's suitability and eligibility for a
17 license.

18 In contrast, OEC is also vested with
19 the authority to make objections to the Board
20 relating to the issuance of licenses on behalf of
21 the BIE, which may prevent the Board for considering
22 and applicant's full application for licensure at
23 all when such applications are denied or withdrawn
24 with prejudice prior to receiving full consideration
25 due to unsuitable activity. Such instances have

1 resulted when OEC demonstrates the ineligibility of
2 an applicant or the unsuitability of the applicant
3 through the Board's hearing process.

4 In this instance, OEC, on behalf of
5 BIE prepared a Final Background Investigation Report
6 for inclusion in the final report relating to SC
7 Gaming OpCo's eligibility and suitability for a
8 Category 4 Slot Machine License for the Board's
9 review and consideration. The information in OEC's
10 Background Investigation Report is reflective of the
11 information found through BIE's exhaustive and
12 detailed background investigations.

13 FIU completed a report of its
14 investigation and a supplemental report addressing
15 the Applicant's financial fitness, which are
16 attached as exhibits to the Background Investigation
17 Reports drafted by OEC. After review of the
18 applications and background investigations of SC
19 Gaming OpCo, its affiliated entities and its
20 Principal license applicants and an analysis of the
21 submissions and investigations comparatively with
22 the eligibility and suitability requirements of the
23 Act and the Board's Regulations as applied to each
24 license, OEC is of the opinion that SC Gaming OpCo
25 is eligible and suitable for the issuance of a

1 Category 4 Slot Machine License at this time.

2 As such, OEC is of the opinion that
3 the Board has the authority and duty to consider
4 this application as it does any other application
5 that is ripe for consideration. If the Board
6 decides to award the Category 4 Slot Machine License
7 to SC Gaming OpCo, OEC requests that the Board
8 implement the special condition addressed during Mr.
9 Bauer's testimony today and as provided in the SC
10 Gaming OpCo Background Investigation Report
11 regarding a Post-Development Traffic Study to occur
12 one year after the opening date of the facility.

13 Thank you. And OEC is available for
14 any questions you may have.

15 CHAIR: Any questions or comments for
16 OEC? Again, based on the final statement?

17 No?

18 Okay. Thank you very much. Stadium
19 Casino, as the Board has granted you an intervention
20 in this matter, now is your opportunity to address
21 the Board. You will have 15 minutes.

22 Mr. Aronchick, there will be a yellow
23 light when you're one minute short of 15 minutes and
24 then a red light when your time is over. And just
25 also for the record, after Stadium's argument, SC

1 Gaming and OEC will have a brief opportunity to
2 address their argument.

3 So Mr. Aronchick, you may -.

4 ATTORNEY ARONCHICK: My name is Mark
5 A-R-O-N-C-H-I-C-K. I'm here for Stadium, and with
6 me is Jason Levine, L-E-V-I-N-E.

7 Honorable Board, in the very brief
8 time you've given me to address very important
9 issues, I will have to go right to one core issue
10 that was just addressed by OEC. And that is one of
11 the reasons why they have said repeatedly, you do
12 not have to hear from us. You don't have to hear
13 our - our evidence. You don't have to provide
14 discovery is that they will address eligibility in
15 their report. They're the ones to address
16 eligibility.

17 There's two fundamental problems
18 going down that road. First of all, the question we
19 raise is much more fundamental than eligibility. It
20 goes to the core of whether or not you have the
21 statutory authority to even consider this particular
22 application for a license, and you don't.

23 And the second is, eligibility is
24 being stretched beyond what the statute actually
25 says eligibility is in 1305.1(a), 1724(e) - 4 Pa.

1 Code 421(a)(1) and many other provisions.
2 Eligibility is about good standing, about character,
3 location, diversity and the like. That's not why
4 we're here. We're here because of a very narrow
5 issue, but an important fundamental issue and that
6 is, do you have the statutory authority that the
7 General Assembly say that you can consider this
8 particular application the way it's structured? And
9 the answer, I - I - we've briefed and I will try to
10 address quickly is, the answer is no.

11 Agencies do not have unilateral,
12 unreviewable power to define their own jurisdiction.
13 And OEC, under the - under the statutes hasn't been
14 given the obligation or the responsibility to
15 address your statutory authorization. That is
16 something that is done in hearings with evidence,
17 adversarial process. Nobody on - that you've heard
18 from is going to address or challenge your statutory
19 authority. They've all said, and OEC has said in
20 their briefs and in their Answer, they're not going
21 to challenge your authority.

22 Mr. Lubert certainly isn't. He's not
23 going to challenge it. And your own counsel, a year
24 and - a little bit more than a year ago in
25 Commonwealth Court, before all this record, before

1 anything we've seen today, just said we're not going
2 to challenge statutory authority.

3 We are the only people that can
4 challenge the statutory authority and you have tied
5 our hands. You are not permitting us to do it in
6 the proper way, and that is not right. Why don't
7 you have the statutory authority? We've heard from
8 SC Gaming that this Category 4 particular Mini
9 Casino License, the General Assembly expanded
10 eligibility. They expanded the concept of who could
11 bid and who could apply. In some degree that is
12 true, but they did not expand it to the level that
13 this - that you have before you in this
14 presentation.

15 They said specifically, it's in the
16 legislative intent, it's in the - in the history,
17 it's in the statute itself that this particular
18 license goes to existing casinos or people with or
19 an individual with an interest in existing
20 operations. In a sense to keep this inhouse among
21 the people already in Pennsylvania. That's what
22 they said. That is the expansion, so you will - so
23 to speak, that Mr. Lubert can come in now with an
24 interest in River Casino and he can bid and he could
25 apply, but what he did - and there are red flags

1 galore all over this place - is not what the General
2 Assembly created. It is not what your authorization
3 is.

4 He has gone out and assembled a
5 collection of entities and individuals and parceled
6 out ownership interest, direct and indirect, with
7 people who are not licensed in Pennsylvania, are not
8 part of the process. And let's just go over some of
9 the red flags. There are so many that,
10 respectfully, mandated an actual adversarial
11 hearing.

12 We've heard with a hand wave that
13 Bally's - well, Bally's has some kind of conditional
14 or contingent or future right to become an equity
15 member in SC Gaming and the family of companies.
16 Well, as Bally's in their AK doesn't say that it's
17 some kind of future right. They say they will
18 maintain a majority equity interest in this project.
19 That's what they told the public in their Securities
20 Act filing. That's what they will maintain, a
21 majority equity interest.

22 Now, we asked, okay, let's look at
23 this. Let's see what it is that we're talking
24 about. Let's discover what it is - what's the
25 transaction? What's the documents? Let's put it

1 under a microscope. Let's have people testify as to
2 whether that's an ownership, direct or indirect
3 interest. No. We're prevented from doing that. We
4 just have to accept the fact, without any analysis,
5 about what is Bally's right, and then apply the
6 legal standards, your own, in your own regulations
7 at - at 58 Pa. Code 433(a)(3) and (a)(4), you say
8 that indirect ownership interests matter. It's not
9 just direct, indirect.

10 Indirect ownership includes
11 conditional interests, options, warrants, springing
12 interest, all kinds of conditions where someone has
13 the right to future ownership. That needs to be put
14 under a microscope, because -. And the same with
15 all of the other red flags we raised.

16 For another example, in their own
17 application, they say they're only going to answer
18 questions with respect to it and not Principals,
19 affiliates and their intermediaries and
20 subsidiaries, holding companies, they're going to
21 submit their own applications and say what their
22 interest are. They - when they're asked about
23 successors, they say, well none other than
24 transactions Mr. Lubert entered into before he
25 applied, none other than these transactions before

1 he applied with other entities or individuals.

2 That means there are other
3 transactions and they've conveyed interest. And you
4 can't just sweep away and say, well, it's a
5 conditional interest because some day they have to
6 get your approval. That's not the answer. If they
7 have a legal right, a conditional right, a warrant,
8 an option, a springing interest, any sort of kind of
9 indirect ownership interest, that needs to be
10 examined.

11 Step back for a second. Do you think
12 the General Assembly, when they enacted the statute
13 for this particular one mini casino, to exist in
14 casino operations or folks with an interest and in
15 Mr. Lubert's case, in Rivers, in Pittsburgh -. Do
16 you think they said, well, what we're really doing
17 here is, we're creating a Trojan house for Mr.
18 Lubert to take his one interest and then go out and
19 parcel out ownership interest, direct or indirect?
20 And we're going to bring in Bally's and we're going
21 to bring in other individuals, none of whom are
22 licensed.

23 Do you actually think that's what the
24 General Assembly intended here? There's no possible
25 way they intended that, because they say they didn't

1 in their legislative history and in the text of the
2 statute.

3 Now, in addition, there are other
4 interests that we know that exist. Mr. Cordish, who
5 you know, has submitted a verified statement of what
6 he was told by Mr. Sokolov and Mr. Poole. None of
7 that was even discussed today. None of that was
8 even addressed.

9 The point about your authority is, you
10 can't sit here and decide the General Assembly said
11 we have to be - we can give a license for a specific
12 reason on a specific basis, but we're going to look
13 at clever statements in the application, clever
14 ideas like Mr. Lubert saying I have the net
15 ownership interest in SC Gaming, the net, because I
16 have the common stock. And the OEC coming along in
17 a brief that they filed and said, net means we're
18 not listing indirect interest like convertible
19 interest options, warrants, we're not going to list
20 them.

21 Well, that could be okay if that's
22 what they want to do and that's how they want to
23 defend this act, but I contend they had to be listed
24 and we had to have the right to see them. And we
25 have the right to tell you why that is an improper

1 expansion of what the General Assembly allowed.

2 Now, they say, oh, Stadium, you know,
3 did the same thing in the past, they threw a hand
4 wave that this is what Stadium did. We don't even
5 have the opportunity to present evidence to show,
6 no, we put in our petition, our response to that,
7 that's been their mantra since the first letter I
8 wrote two years ago, almost, explaining why you're
9 even going forward, Board, in - I mean, - yeah,
10 Board, in handling this application. Explain that.

11 Their mantra is, well, Stadium,
12 Stadium, Stadium, Stadium did the same thing.
13 That's not true. We have addressed it in our
14 Petition that it's not true, but if you are
15 interested in that, if that even matters, we should
16 have had a hearing about that where we could show
17 you that it's no bearing, has no relationship to
18 what Mr. Lubert has done here right now. No
19 bearing.

20 Now, the - that gets me to the - to
21 the sort of basic point about these whole
22 proceedings. I don't understand. I never - I don't
23 think I ever will, why it is that there's been so
24 much effort to prevent an actual hearing on this
25 subject when you know that in SugarHouse where

1 similar - a different, earlier Board did the same
2 thing with regard to the study of a financial
3 interest, not indirect ownership interest, and then
4 they were reversed by the Pennsylvania Supreme
5 Court, sent back to have an actual hearing.
6 Adversarial with Cross Examination and the like.
7 That's what happened there.

8 We had said last - when I appeared
9 before you last, why make the same mistake? Why do
10 that all over again? And instead what we've gotten
11 from you is, you denied party status. They say, oh,
12 sour grapes. Not sour grapes. We have a statutory
13 right that the General Assembly gave us as the
14 second bidder to challenge what happened with the
15 first bid. That's a statutory right. It's not sour
16 grapes.

17 The General Assembly want - wants
18 people in our position to make those challenges.
19 They built it into the statute, because from that,
20 either it becomes an award to us or another auction.
21 We're denied party status when others in the past
22 have -. The Board itself in briefs have said,
23 intervention can be party status.

24 Then we're denied discovery over an
25 attenuated claim of confidentiality that falls apart

1 under analysis. Here we're - they can stand here
2 today and tell you about the Bally's contract and
3 what it means and what it is, and we have to sit
4 there not knowing what they're talking about.
5 They've addressed it publicly, but somehow it's now
6 confidential to look at.

7 These transaction documents that Mr.
8 Lubert entered into were not confidential. That's
9 not what the list of confidentiality says in your
10 regulations and in the statute, and that could've
11 been worked out and that could have been managed.

12 We're not looking for all these
13 reports that BIE and all the other things you've
14 heard today. You didn't - you don't - you're not
15 even waiting for the Commonwealth Court to rule.
16 They have pending before them our challenge where
17 there would be a proper proceeding, adversarial on
18 this fundamental question, which it's so
19 fundamental, I mean, we all know that agencies
20 cannot exceed their authority. It's - you're a
21 product of the General Assembly.

22 You denied our Motion to - the other
23 day to submit an expert report, because it was not
24 timely, that which would have addressed to you what
25 is - it's clear anyway, you know, and evident that

1 there's a variety of ways to structure projects that
2 amount to indirect ownership interest, akin to
3 ownership interest and the need to examine. And you
4 said, well, it's not timely.

5 You gave notice of this hearing about
6 two weeks ago, two weeks ago. We didn't know there
7 was going to be a hearing today until two weeks ago
8 and then we got together this expert report and we
9 submit it on Monday, where the other day you gave
10 notice that if you have graphics, and evidence and
11 other things you want to put on electronically with
12 PowerPoints, submit it on Monday. It became moved
13 into evidence.

14 Everything that was submitted on
15 Monday was moved into evidence today. We submit the
16 expert report on Monday and it's not timely. That's
17 not fair. That's not right. And you could easily
18 have managed a response another - given another day
19 or two to respond to it, if that was really the
20 issue. That's just not right.

21 Fifteen (15) minutes to address these
22 fundamental questions, a limited amount of time to
23 address these fundamental questions, where all the
24 essential facts are kept from us, where I have to go
25 and argue about red flags that exist. No opinion

1 explaining any of your rulings. No written opinion
2 explaining to us or to the public, your - all of
3 these rulings. And you know something? Only - the
4 proceeding where everyone else here has the
5 information, the basis information that we've
6 sought, except us.

7 Now, there's a fundamental truth here.
8 In all of the briefing before you, no one has
9 addressed in any reasoned, developed manner, the
10 legal basis for your statutory authority. They just
11 say, well, it's eligibility. It's different. It's
12 not eligibility. It's a difference concept. And no
13 analysis of the facts, no one. Instead, a lot of
14 the diversionary arguments about what Stadium did
15 without a hearing, on what Stadium really did about
16 exhaustion, about discretion, about confidentiality,
17 about everything other than the fundamental
18 question.

19 You don't have that discretion to
20 decide your own jurisdiction unilaterally or in a
21 setting like this, respectfully, you do not. It is
22 an abuse of - I'm finishing. It's an abuse of
23 discretion, a gross abuse. It violates our
24 statutory rights. It violates due process. It's
25 unprecedented and it's not what the General Assembly

1 intended.

2 Thank you for the - the limited
3 opportunity, at least, to address you today.

4 CHAIR: Thank you, Mr. Aronchick.

5 SC Gaming, would you like to respond?
6 And you will have no more than five minutes.

7 ATTORNEY KASTENBERG: Yes. Thank you,
8 Madam Chair. Stephen Kastenberg,
9 K-A-S-T-E-N-B-E-R-G. And I apologize that I have a
10 hard candy, but as you hear, my - my voice and
11 throat are a little stressed today.

12 Just I want to make a few basic points
13 here to the Board. You know, first, although my
14 colleague has been fond of repeating today and last
15 month that this is a jurisdictional and a statutory
16 authority question for the - for the Board, and I
17 think much of the argument we heard today was sort
18 of in the nature of a motion for reconsideration of
19 what we already argued a month ago.

20 The fact is, the statutory authority
21 of this Board is established by 441a.7(d) of Chapter
22 58, and that's to regulate the conduct of gaming and
23 related activities. And you also have the statutory
24 authority to consider or deny and approve licenses.
25 That's your statutory authority. And under 12 -

1 that's 1202(b)(12). And the fact is that as part of
2 deciding the eligibility, as part of deciding to
3 approve a license, you do look at eligibility and
4 you do look at suitability. And according to the
5 statutory scheme, eligibility includes the
6 requirement that the applicant be in compliance with
7 the Gaming Act.

8 So, all of the things that my
9 colleague says are challenges to your statutory
10 authority are, in fact, exactly what you should be
11 doing four-square as part of your determination of
12 eligibility. It is not some unique animal out
13 there. It's simply, you know, the heart of what you
14 do. The fact is that intervention is also governed
15 by the Code, as we discussed a month ago and you
16 only allow a petitioner to present evidence when
17 they would have something unique to bring to develop
18 the evidentiary record. That has not ever been
19 argued here. That this is all information that has
20 been subject to the exhaustive assessment of BIE and
21 OEC, who explicitly advised the Board today that
22 they reviewed and considered and addressed the
23 concerns that were aired by the Petitioner,
24 appropriated aired in a written statement, as
25 they're supposed to do.

1 So, I think there is nothing that's an
2 affront to discretion or affront to statutory
3 authority here. The BIE and OEC has done their job.
4 They've reviewed in much more exhaustion than a
5 petitioner could the financial aspects of this and
6 ownership aspects. The fact is that financial
7 backers, management companies, these are all, you
8 know, ordinary course of dealings approved by the
9 regulations, have been done many, many times by
10 applicants, Stadium included, but not just Stadium.
11 And there's nothing sort of unusual about this -
12 about this. And we agree that BIE and OEC's
13 assessment and report address these issues and agree
14 with their recommendation.

15 The only other thing I would say is
16 about the expert report. We certainly agree with
17 the decision of the Board not to consider it.
18 Besides the timelines question, which of course,
19 Stadium has been a Petitioner for many months and it
20 applied to be a Petitioner for even longer, is the
21 fact that the expert report doesn't even add
22 anything.

23 As my colleague said, all it does is
24 state some general platitudes about a business
25 organization and then go on to say the - the

1 so-called expert, an attorney in gaming, could not
2 offer a specific opinion. So, even beyond the fact
3 of the lateness, it is not, in our view, a - a
4 subject worth consideration as an expert report.

5 Thank you very much for your
6 consideration. Do you have anything further, Mike,
7 to add?

8 ATTORNEY FABIUS: No. We'll revert
9 the rest of our time.

10 CHAIR: And Mr. Kastenberg, did you
11 state and spell your name for the record?

12 ATTORNEY KASTENBERG: I did. Thank
13 you.

14 CHAIR: Okay.

15 ATTORNEY KASTENBERG: I learned my
16 lesson.

17 ATTORNEY FABIUS: We gave the Court
18 Reporter the spelling of all our people before the
19 hearing. We try to make it as easy as we can for
20 the Court Reporter.

21 CHAIR: Okay.

22 OEC, would you like to respond to
23 Stadium?

24 ATTORNEY PITRE: Cyrus Pitre,
25 P-I-T-R-E, Chief Enforcement Counsel. Very, very

1 brief, Madam Chair.

2 CHAIR: Thank you.

3 ATTORNEY PITRE: The authority is in
4 the Act. The Act is replete with the authority of
5 this Board. So, as far as I'm concerned, that
6 argument goes out the window. Everything submitted
7 by Mr. Lubert, as an Applicant, is similar to just
8 about every other application that we've received
9 for a Category 1, 2, 3, 4 License. His application
10 is no different from Stadium's application or any
11 other applicant that came before us in general.
12 There is nothing unsuitable about the application.
13 There's nothing unsuitable about the integrity of
14 the funds, the source of the funds, the source of
15 the bid. All of that has been investigated and is
16 of a suitable nature.

17 The only difference in Mr. Lubert's
18 application than any other application - and well,
19 not any other application, because we did have an
20 application where an individual applied through an
21 LLC. Is that we have a Slot Machine Licensee that
22 bid and a Principal licensee that bid. That is the
23 only difference in these applications.

24 Okay?

25 The financial sources, the agreements,

1 they all differ. They're all complex, but they're
2 all of the same nature. They all come from
3 legitimate sources of funding under the Act.
4 Whether it's the bid or whether it's the proposed
5 financing or the financial backers or any management
6 agreement.

7 And the final thing is that any future
8 ownership, any future ownership, cannot occur unless
9 a Petition is filed with this Board and this Board
10 approves that Petition. Anything else jeopardizes
11 the application. It jeopardizes the license. And
12 believe me, I will be the first person to take an
13 action to ensure that that application or that
14 license is revoked or denied or whatever action is
15 necessary if there's any other hidden ownership in
16 this application or any application or licensing.

17 So, with that, I just want to ensure
18 the Board that you do have the authority, and that I
19 request that you move forward in your consideration
20 of this application. Thank you.

21 CHAIR: Thank you.

22 ATTORNEY ARONCHICK: Your Honors, can
23 I have 45 seconds to address two points?

24 CHAIR: Only 45.

25 ATTORNEY ARONCHICK: Only 45.

1 Number one, your authority derives
2 from Section 1305.2(c)(10), which the legislature
3 has specifically said is the limit of your authority
4 to consider this particular application. And if Mr.
5 Lubert, in substance, did not apply - and we contend
6 that he did not because of these indirect ownership
7 interests, these other transactions - you have a
8 mandatory directive to rebid. That's where your
9 statutory authority lies.

10 Number two, this notion that the
11 expert report wouldn't add anything, I don't know
12 where that comes from. Our Petition that
13 accompanied it, if you would read it again, you
14 would see, does not say that at all. It would've
15 added a great deal to this particular proceeding.
16 That's it. Thank you.

17 CHAIR: Thank you. We will now go
18 into Executive Session. We will resume probably
19 11:55, maybe 12:00, somewhere between that. So
20 don't go far. Thank you.

21 EXECUTIVE SESSION HELD

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23 HEARING CONCLUDED

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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Chairman Smyler, was reported by me on January 25, 2023 and that I, Derek Richmond, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Date the 16 day of February, 2023



Derek Richmond,
Court Reporter