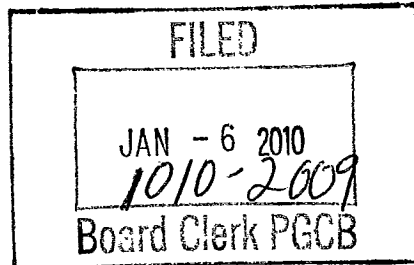


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PA GAMING CONTROL BOARD
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**In re: Philadelphia Entertainment and
Development Partners, L.P., d/b/a Foxwoods
Casino Philadelphia**

Docket Number: 1367

Counsel of Record:

Stephen A. Cozen, Esquire
(PA ID #03492)

F. Warren Jacoby, Esquire
(PA ID #10012)

John V. Donnelly III, Esquire
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(PA ID #26722)

**ECKERT SEAMANS CHERIN &
MELLOTT, LLC**
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000

**PRELIMINARY MOTION TO STRIKE IN PART
THE LEGISLATORS' OPPOSITION TO MOTION
TO EXTEND TIME AND MEMORANDUM OF LAW**

NOW COMES, Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP"), by and through its counsel, Cozen O'Connor and Eckert Seamans Cherin & Mellott, LLC, and, pursuant to 58 Pa. Code § 493a.9, hereby makes this Preliminary Motion requesting that the Pennsylvania Gaming Control Board (the "Board") strike the Opposition to PEDP's Motion to Extend the Time to Make Slot Machines Available

(the “PEDP Motion”) filed with the Board by Senators Lawrence M. Farnese, Jr. and Michael J. Stack, and Representatives Michael H. O’Brien, Michael P. McGeehan, John Taylor, and Babette Josephs (the “Legislators”), and limit consideration of the Legislators’ Memorandum of Law to issues properly raised by the parties to this matter. In support thereof, PEDP avers as follows:

INTRODUCTION

1. The Legislators’ Opposition to the PEDP Motion is improper and exceeds the scope of allowable participation in this matter by the Legislators as *amici curiae*. As *amici*, the Legislators are limited to arguing the issues presented by the parties, and it is improper for them to file an answering pleading to the PEDP Motion and to request specific relief from the Board.

2. PEDP therefore respectfully requests that the Board strike the Legislators’ Opposition to the PEDP Motion and limit its consideration of the Legislators’ Memorandum of Law to its proper scope — that is, solely to discussion of the issues raised by the parties and not to any new issues that the Legislators may seek to interject.

BACKGROUND

3. On November 30, 2009, the PEDP Motion was filed with the Board, where it remains pending. Through that Motion, PEDP has requested that the Board extend by three months the timeframe for PEDP to submit to the Board’s Bureau of Investigations and Enforcement (the “BIE”) the reports, information and other documents called for by Conditions 5 and 6 of the Board’s September 1, 2009 Order and Adjudication granting PEDP’s May 22, 2009 Petition to Extend Time to Make Slot Machines Available (the “Order Granting Extension”).

4. By letter dated December 9, 2009, the Legislators filed with the Board an answering pleading in the form of an Opposition to the PEDP Motion, as well as a supporting Memorandum of Law. (True and correct copies of the Legislators' filings are attached hereto as Exhibit "A" and made a part hereof.) It is unclear to PEDP when the Opposition and Memorandum of Law were filed. At odds with the cover letter, the Opposition is dated December 10, 2009, and copies of the papers were not received by PEDP's counsel until December 14, 2009.

5. The Legislators' Opposition contains a prayer for relief that requests specific relief from the Board in opposition to the PEDP Motion. (See Legislators' Opposition at 10-11, prayer for relief.) Specifically, the Legislators:

- a. "submit that PEDP's Motion fails to aver facts sufficient to show good cause for an extension of time," (*id.*);
- b. "request[] that the Board deny PEDP's Motion and require that PEDP immediately provide to BIE" the information and documents called for by Conditions 5 and 6 of the Order Granting Extension, (*id.*);
- c. "suggest[] that the Board conduct a full evidentiary hearing," (*id.*);
- d. request "that the Board take the necessary steps to revoke PEDP's Category 2 Slot license and reissue said license to a suitable applicant" in the event that the Board "find[s] that PEDP's efforts toward meeting the requirements of Conditions 5 and 6 shows a lack of effort or commitment sufficient to raise doubt of PEDP's continuing suitability and ability to meet its deadline of May 29, 2011 to make 1,500 slot machines available to play," (*id.*); and
- e. request "[a] hearing on the Motion to Extend Time." (*Id.*)

6. In another September 1, 2009 Order and Adjudication (the "Order Granting *Amicus Status*") issued together with the Order Granting Extension, the Board held that the Legislators did not have standing to intervene as parties in this matter, but it also granted the Legislators permission to intervene as *amici curiae*. Specifically, the Board concluded:

Having failed to meet the intervention requirements in Section 493a.12 of the Board's Regulations, 58 Pa. Code § 493a.12(a) and (e), the Legislators are not entitled to intervene as parties in the proceedings regarding Foxwoods' Petition for Extension of Time; however, they have established sufficient grounds for the Board to grant them *amicus curiae* status.

Accordingly, the Board will consider the Legislators' filings with the Board, as *amicus curiae* participants in the Foxwoods Petitions for Extension of Time proceedings.

(Order Granting *Amicus* Status at 6-7, a true and correct copy of which is attached hereto as Exhibit "B" and made a part hereof.)

REQUEST FOR RELIEF

7. PEDP respectfully requests that the Board strike the Legislators' Opposition and limit its consideration of the Legislators' Memorandum of Law to discussion of issues raised by the parties to this matter.

8. The Legislators are only participating in this matter as *amici curiae*, not as parties. (See Order Granting *Amicus* Status.)

9. "An *amicus curiae* is not a party and cannot assume the functions of a party He has no control over the litigation and no right to institute any proceedings therein; *he must accept the case before the court with the issues made by the parties.*" *Commonwealth v. Cotto*, 708 A.2d 806, 808 n.2 (Pa. Super. 1998) (emphasis in the original) (*quoting Frank v. Peckich*, 257 Pa. Super. 561, 590 n.15, 391 A.2d 624, 638 n.15 (1978) (opinion in support of affirmance by equally divided court)).

10. One who lacks standing to intervene and participate as a party to an action is not entitled to file pleadings in the action by virtue of participation as an *amicus curiae*. *Schor v. Becker*, 437 Pa. 409, 411-12, 263 A.2d 324, 326 (1970). Rather, only a party with standing may

file pleadings, and pleadings filed by a non-party, even one who participates in the action as an *amicus curiae*, “could not and should not have been considered.” *Id.*

11. Thus, *amici* are properly limited to briefing the issues that have been raised by the parties. *See Hospital & Healthsystem Ass’n of Pennsylvania v. Dep’t of Public Welfare*, 585 Pa. 106, 115 n.10, 888 A.2d 601, 606 n.10 (2005); *In re Scheidmantel*, 868 A.2d 464, 478 (Pa. Super. 2005).

12. The Legislators’ submission of an answering pleading in the form of their Opposition to the PEDP Motion, which seeks specific relief from the Board as set forth in the *ad damnum* clause, exceeds the scope to which *amici* are properly allowed to participate in an action in which they are not party-litigants.

13. The Legislators’ Opposition is thus a nullity that cannot and should not be considered by the Board. *See, e.g., Schor*, 437 Pa. at 411-12, 263 A.2d at 326. The Board should accordingly strike the Legislators’ pleading.

14. While the Legislators may as *amici curiae* brief the issues that have been raised by the parties to this action, any consideration by the Board of their Memorandum of Law should be limited to the proper and permissible scope of participation by *amici curiae* — that is, the Board should limit its consideration of the Memorandum of Law to discussion of the issues raised by the parties.

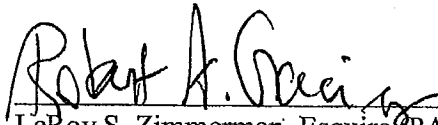
WHEREFORE, PEDP respectfully requests that the Board strike the Legislators' Opposition, limit its consideration of the Legislators' Memorandum of Law to discussion of issues raised by the parties to this matter, and enter an Order in the form attached.

COZEN O'CONNOR



Stephen A. Cozen, Esquire (PA ID #03492)
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LLC**



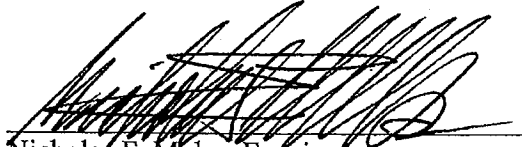
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*Attorneys for Philadelphia Entertainment and
Development Partners, L.P., d/b/a Foxwoods
Casino Philadelphia*

Dated: January 6, 2010

VERIFICATION

I, Nicholas F. Moles, hereby state that the facts above set forth in the PRELIMINARY MOTION TO STRIKE IN PART THE LEGISLATORS' OPPOSITION TO MOTION TO EXTEND TIME AND MEMORANDUM OF LAW are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Nicholas F. Moles, Esquire
Vice President and General Counsel
Philadelphia Entertainment and Development Partners, LP

Date: 12/29/09

CERTIFICATE OF SERVICE

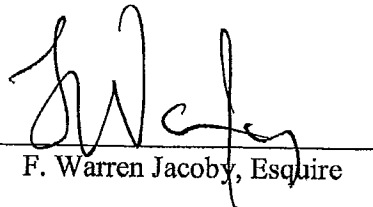
I certify that I am this day serving a complete copy of the foregoing Preliminary Motion to Strike in Part the Legislators' Opposition to Motion to Extend Time and Memorandum of Law by U.S. Mail upon the following:

Mary Elisa Reeves, Esquire
Brian McEwing, Esquire
DONNA ADELSBERGER & ASSOCIATES, P.C.
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Chief Counsel
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303 Walnut Street, 5th Floor
Harrisburg, PA 17101-1825

By: _____


F. Warren Jacoby, Esquire

Dated: January 6, 2010

EXHIBIT "A"

DONNA ADELSBERGER & ASSOCIATES, P.C.
ATTORNEYS AT LAW

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mreeves@dlalawyers.com
Reply To Glenside

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December 9, 2009

Via Electronic Mail
Office of the Clerk
PGCB Office of Hearings and Appeals
One Penn Center
2601 North 3rd Street
Suite 520
Harrisburg, PA 17110-2060

RE: Petition to Intervene in PEDP, L.P.'s Petition for Extension of Time
PGCB Docket No. 1367

Dear Sir/Madam,

Pursuant to my offices conversation with Alta of your office, enclosed for filing please find an original of the Opposition of Legislators as Amicus Curiae to the Motion to Extend Time of PEDP, L.P. d/b/a Foxwoods Casino Philadelphia with Supporting Memorandum of Law and Verification, which is being filed electronically. Kindly time stamp the extra copy of the first page of the Opposition and Memorandum of Law and return them to us electronically.

Thank you for your attention to the above. Please do not hesitate to contact us if you have any questions with regard to this filing.

Very truly yours,

DONNA ADELSBERGER & ASSOCIATES, P.C.


Mary Elisa Reeves

MER/das
Enclosure
cc: All Counsel (via First Class mail w/encl.)

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BY: Brian McEwing, Esquire

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and Representatives McGeehan,
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and B. Josephs

In re: Philadelphia Entertainment
Development Partners, L.P., D/B/A/
Foxwoods Casino Philadelphia

: COMMONWEALTH OF PENNSYLVANIA
: BEFORE THE PENNSYLVANIA GAMING
: CONTROL BOARD
:
: Docket No. 1367

HEARING REQUESTED

**OPPOSITION OF LEGISLATORS AS AMICUS CURIAE TO MOTION TO EXTEND
TIME OF PEDP, L.P. D/B/A FOXWOODS CASINO PHILADELPHIA**

The Legislators, Senators Lawrence M. Farnese, Jr. and Michael J. Stack, and Representative Michael H. O'Brien, Representative Michael P. McGeehan, Representative John Taylor, and Representative Babette Josephs hereby oppose Petitioner Philadelphia Entertainment and Development Partners, L.P.'s ("PEDP") Motion for additional time to make its submissions in response to Condition 5 and 6 of the Board's September 1, 2009 Order granting PEDP's Petition to Extend the Time to Make Slot Machines available to play, and respond to the averments in the Motion as follows:

1. Admitted.
2. Denied as stated. It is denied that good cause exists to grant the requested extension of time or that PEDP has moved diligently forward in its efforts to

develop a Category 2 Slot License facility at the Columbus Boulevard site. The Legislators are without knowledge and information sufficient to form a belief as to the truthfulness of the averment that PEDP has timely satisfied all prior conditions of the Board's Order.¹

3. Denied as stated. PEDP's May 22, 2009 petition sought not only an extension of time to make 1,500 slot machines available,² but implicit approval to relocate its licensed facility to 801 Market Street.³

4. Denied as stated. The Board's Orders and Adjudications speak for themselves.

5. Denied as stated. The Board's Orders and Adjudications speak for themselves.

6. Denied as stated. The Board's Orders and Adjudications speak for themselves.

7. Denied as stated. The Board's Orders and Adjudications speak for themselves.

8. Denied as stated. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 8, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

9. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining averments in Paragraph 9, therefore

¹ All submissions by PEDP as required by the Board's September 1, 2009 Order have been deemed confidential because such submissions are part of an "ongoing investigation" of PEDP by the Bureau of Investigations and Enforcement.

² In Re: PEDP Petition to Extend Time to Make Slot Machines Available at 15.

³ *Id.* at ¶ 30-31, and 36.

same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

10. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 10, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

11. Admitted.

12. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 12, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

13. Denied. It is denied that funding of the development of the facility is the *first* and most critical hurdle in ensuring that PEDP has at least 1,500 slot machines available for play on May 29, 2011, or that the source, manner and timing of amounts of funding dictate the timing and direction of development issues. Mr. Brian Ford, CEO of Philadelphia Investors, testified before the Board on behalf of Foxwoods Philadelphia Casino on August 28, 2009 that "when you go out to acquire financing, you have to have all of your plans, all of your approvals in place. Once we've had all of the plans and approvals in place, we are very confident that we could obtain the necessary funds to move forward with construction."⁴ It is further denied that the realities of the national credit and financial markets since September 1, 2009 are materially different from the reality of those same markets at the time of Mr. Ford's testimony on August 28, 2009,

⁴ In Re: PEDP Petition to Extend Time, Hearing Transcript, page 35, lines 14-19.

therefore same are denied and PEDP should be required to provide evidence of supporting this averment at a full evidentiary hearing.

14. Denied as stated. It is denied that PEDP is required to provide "detailed" timelines for commencement and completion of all phases of development of the Foxwoods project. The Board's Order of September 1, 2009 requires submission of a timeline, not a "detailed timeline." Further, the Order requires submission of all phases of development regarding a facility with a minimum of 1,500 slot machines, not full build-out of all future phases.

15. Denied. It is denied that PEDP has stated legally sufficient reasons amounting to good cause for failing to meet the submission requirements of Conditions 5 and 6 of the Board's Order of September 1, 2009, as will be more fully set forth below, therefore same are denied. Further, to the extent that PEDP has developed any and all renderings, proposals, opinions or other documents and timelines for construction, PEDP should be required to immediately provide same to the Board for evaluation of PEDP's efforts and commitment in developing the Columbus Boulevard site.

In addition, it is clear that on October 16, 2009, a full six weeks after the Board's Order, PEDP had not even hired the necessary professionals to design a facility and prepare the plan of development required by the Board's September 1, 2009 Order.⁵ Failure of a licensee to hire the required personnel to develop designs, drawing, plans and timelines is not good cause to extend time.

16. Denied. It is denied that the source, manner, timing and amounts of financing and funding for the facility dictate the details of rendering, proposals and other

⁵ Foxwoods' letter of October 16, 2009 to Chairman Gregory C. Fajt, Esquire at page 4, ¶ 1 states: "At present Foxwoods is consulting with various design and construction professionals to evaluate *how to prepare an updated development plan* for the facility and *who to retain* as part of that process."

documents and timelines required by Conditions 5 and 6 of the Board's Order of September 1, 2009, for the reasons set forth in Paragraph 13 above and Paragraph 25 below, therefore same are denied and PEDP should be required to provide evidence supporting this averment at a full evidentiary hearing.

In addition, PEDP is on record against constructing a temporary facility due to the difficulties in financing both a temporary and permanent facility simultaneously and correctly acknowledges that the same development hurdles exist whether building an interim or temporary facility.⁶ Further, the Board's Order of September 1, 2009 directed that the "Foxwoods" project be built as proposed,⁷ and one factor in selecting the Foxwoods project for licensing was the fact that PEDP did not plan to build a temporary facility,⁸ therefore, the Board should deny any request by PEDP to construct a temporary facility.

17-21. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraphs 17-21, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

22. Denied as stated. PEDP was granted a Category 2 Slot License by the Board. PEDP is obligated under the Board's September 1, 2009 Order to construct a Category 2 Slot License facility substantially similar to that approved by the Board in December, 2006. PEDP committed to the financing and construction of a Category 2 Slot license facility. The impact of proposed table game legislation on project financing the development of a Category 2 Slot License facility should therefore not be

⁶ In Re: PEDP Petition to Extend Time, Hearing Transcript, page 36-37.

⁷ In Re: PEDP Petition to Extend Time, Adjudication at 14.

⁸ In Re: Adjudication of Category 2 Slot Licenses, ¶ 158.

considered by the Board in deciding the requested relief. It is further evident that PEDP's short list of "interested parties" is unwilling to finance the development of a Category 2 Slot License facility. The Legislators therefore deny that the proposed table game legislation in any way impacts financing of a Category 2 Slot License facility and PEDP should be required to provide to the Board a list of parties interested in financing a Category 2 Slot License facility at the Columbus Boulevard site, and further question PEDP on financing commitments at a full evidentiary hearing.

23. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 23; therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

24. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 24, and therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

25. Denied. It is denied that PEDP has stated sufficient reason amounting to good cause for failing to make its required submissions to the Board. PEDP avers that it is unable to meet the submission deadline because investors will only commit to financing of a Category 2 Slot License facility if table games are approved.⁹ PEDP is not licensed for table games and the Legislators respectfully suggest that any averment tying financing of the Slot facility to table games should be ignored by the Board.

PEDP further avers that it is unable to meet the submission deadlines of Conditions 5 and 6 because financing dictates design elements, but that PEDP is willing

⁹ In Re: PEDP Motion to Extend Time, ¶ 22.

to construct a temporary facility.¹⁰ This averment is contrary to the testimony of PEDP that plans and approvals are necessary in order to obtain funding (See ¶ 13 and Fn. 4 above), and also that construction of a temporary facility is impractical because of the need to fund both the temporary facility and the interim or permanent facility simultaneously. (See ¶ 16 and Fn. 5 above).

PEDP further avers that the credit markets have changed since the Board issued its Order on September 1, 2009, and that the changes make funding the development of the facility the first and most critical hurdle. This averment is contrary to the testimony of the PEDP (See ¶ 13 and Fn. 4 above), and therefore PEDP should be required to provide evidence of same at a full evidentiary hearing.

PEDP further avers that its renderings, proposals, opinions or other documents and timelines for construction lack an appropriate level of specificity and detail to submit to the BIE.¹¹ It is inappropriate for PEDP to solely determine whether to withhold required submissions from the BIE that it is obligated to provide as Conditions of its license imposed by a Board Order. The Legislators respectfully suggest that it is for the BIE, not the Licensee, to determine whether such submissions are of the appropriate level of specificity and detail. Further, and more importantly, the BIE may glean from such submissions the degree of commitment and effort of PEDP, thus far, in designing, financing and constructing the "Foxwoods" project which may assist the BIE in assessing PEDP's continuing suitability.

26. Denied. For the reasons set forth more fully above, it is specifically denied that PEDP has shown good cause for extending the time in which to submit responses to Conditions 5 and 6 of the Board's Order of September 1, 2009, therefore same are

¹⁰ *Id.* at ¶¶ 13,16.

¹¹ *Id.* at ¶ 15.

denied and PEDP should be required to submit its responses to Conditions 5 and 6 without further delay.

REQUEST FOR RELIEF

27. The Legislators incorporate all paragraphs of their Opposition as though fully set forth herein.

28. Denied as stated. The regulation speaks for itself.

29. Denied as stated. The Board has only defined "good cause" to be "substantial reason amounting to a legal excuse for failing to perform an act required by law as determined on a case-by-case basis."¹² The Board has held that "litigation, community opposition and obstacles from Philadelphia City Council are good cause to grant an extension of time."¹³

30. Denied. It is denied that PEDP has shown good cause to extend the time in which to submit responses to Conditions 5 and 6 for the reasons set forth above and those in the supporting memorandum of law.

31. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 31, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

32. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 32, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing.

¹² In Re: PEDP Petition to Extend Time, Adjudication at 13, citing BLACKS LAW DICTIONARY, 6th Edition (1990).

¹³ In Re: HSP Gaming, L.P.'s Application for Extension of Time to Make slot Machines available to Play.

33. Admitted.

34. Denied. It is specifically denied that any factor beyond PEDP's control has forced PEDP to reorder its priority in which to pursue development goals or that PEDP has the authority to do so, and therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing.

35. Denied as stated. The Board's Order of September 1, 2009 requires that PEDP submit any and all renderings, proposals, opinions or other documents and timelines for construction, not necessarily "final" documents. The Legislators, therefore, respectfully suggest that the Board should ignore PEDP's assertion that the national credit and financial markets bear upon their ability to submit "*any and all* renderings, proposals, opinions or other documents and timelines for construction." Further, such averments do not amount to good cause for the reasons stated above and in the supporting memorandum of law.

36. Denied in part. The requested extension of time is double that authorized by the Board in its Order of September 1, 2009, therefore, said request is not minimal. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the remaining averments in Paragraph 36, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

37. Denied. PEDP has averred that it must obtain financing prior to finalizing the plan of development and construction timeline.¹⁴ PEDP also avers that it does not have financing commitments from any interested parties and that the interested parties are unwilling to commit to funding until the final form of the pending table game

¹⁴ In Re: PEDP Motion to Extend of Time, ¶ 16.

legislation is known.¹⁵ PEDP also avers that its renderings, proposals, opinions or other documents and timelines for construction lack an appropriate level of specificity and detail.¹⁶

Given the absence of progress to date, in the financing and design of the Foxwoods Category 2 Slot License facility, and PEDP's mistaken reliance upon funding of a Slot facility upon passage of table games legislation in a form acceptable to investors, it is highly likely that PEDP will miss the March 1, 2010 deadline for submission of financing documents and financial commitments, and the ultimate deadline of May, 29, 2011 to make 1,500 slot machines available to play, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing.

38. Denied. The Legislators are without knowledge or information sufficient to form a belief as to the truthfulness of the averments in Paragraph 38, therefore same are denied and PEDP should be required to provide evidence of same at a full evidentiary hearing. (See Fn. 1).

WHEREFORE, the Legislators respectfully submit that PEDP's Motion fails to aver facts sufficient to show good cause for an extension of time pursuant to 58 Pa. Code § 497a.5. It is, therefore, respectively requested that the Board deny PEDP's Motion and require that PEDP immediately provide to BIE the current version of "all architectural renderings, artist renderings, conceptual proposals, engineering opinions, any and all documents relating to construction of a facility substantially similar to that approved by the Board on December 20, 2006, and a timeline for commencement and completion of all phases of development regarding its facility in accordance with

¹⁵ *Id.* at 22.

¹⁶ *Id.* at 15.

Conditions 5 and 6 of the Board's September 1, 2009 Order. It is further respectfully suggested that the Board conduct a full evidentiary hearing in the interest of transparency wherein the Board may assess PEDP's efforts and commitment; and that should the Board find that PEDP's efforts toward meeting the requirements of Conditions 5 and 6 shows a lack of effort or commitment sufficient to raise doubt of PEDP's continuing suitability and ability to meet its deadline of May 29, 2011 to make 1,500 slot machines available to play, that the Board take the necessary steps to revoke PEDP's Category 2 Slot license and reissue said license to a suitable applicant so that the tax relief intended by the Gaming Act not be further delayed.

A hearing on the Motion to Extend Time is requested.

Respectfully submitted,

BY: Mary E. Reeves

Mary Elisa Reeves, Esquire
Brian McEwing, Esquire
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Counsel for Petitioners

Dated: December 10, 2009

DONNA ADELSBERGER & ASSOCIATES, P.C.

By: Mary Elisa Reeves

Attorney I.D. No. 44194

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Attorneys for Petitioners,

Senators Farnese and Stack

and Representatives McGeehan,

M. O'Brien, J. Taylor and

B. Josephs

IN RE:	: COMMONWEALTH OF PENNSYLVANIA
THE APPLICATION OF	: BEFORE THE PENNSYLVANIA GAMING
PEDP L.P., D/B/A	: CONTROL BOARD
FOXWOODS CASINO PHILADELPHIA :	:
FOR AN EXTENSION OF TIME	: Docket No. 1367

VERIFICATION

Michael H O'Brien hereby state that the facts set forth in the attached Opposition to the Motion of PEDP, L.P. to Extend Time are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

By: Michael H O'Brien

Date: 12/8/09

DONNA ADELSBERGER & ASSOCIATES, P.C.

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In re: Philadelphia Entertainment	: COMMONWEALTH OF PENNSYLVANIA
Development Partners, L.P., D/B/A/	: BEFORE THE PENNSYLVANIA GAMING
Foxwoods Casino Philadelphia	: CONTROL BOARD
	:
	: Docket No. 1367

**MEMORANDUM OF LAW IN SUPPORT OF LEGISLATORS OPPOSITION
TO THE MOTION TO EXTEND TIME OF PEDP, L.P.,
D/B/A FOXWOODS CASINO PHILADELPHIA**

Senators Lawrence M. Farnese, Jr. and Michael J. Stack, and Representative Michael H. O'Brien, Representative Michael P. McGeehan, Representative John Taylor, and Representative Babette Josephs (hereinafter "Legislators") hereby oppose Petitioner Philadelphia Entertainment and Development Partners, L.P.'s ("PEDP") Motion for additional time to make its submissions in response to Conditions 5 and 6 of the Pennsylvania Gaming Control Board's ("Board") September 1, 2009 Order granting PEDP's Petition to Extend the Time to Make 1,500 Slot Machines available to play, and files this memorandum of law in support thereof.

Standing

The Legislators sought amicus curiae status in a petition filed with the Board on June 11, 2009. The Board granted amicus curiae status to the Legislators in proceedings by Foxwoods for extension of time in its Order of September 1, 2009. The

Legislators, therefore, have standing to file an opposition to PEDP's November 30, 2009 Motion to Extend Time.

Conditions 5 and 6

PEDP was required by the Board's Order of September 1, 2009 to submit to the BIE by December 1, 2009 "all architectural renderings, artist renderings, conceptual proposals, engineering opinions, any and all documents relating to construction of a facility substantially similar to that approved by the Board on December 20, 2006, and a timeline for commencement and completion of all phases of development regarding its facility (hereinafter "Submissions")."

Good Cause Standard

Thus far, the Board has found "good cause" to extend time where outside forces acted *in opposition* to the Licensee's efforts and such opposition prevented the Licensee from meeting deadlines of a License Condition, but not where the Licensee has simply been unable to meet a Condition's deadline. The Board has held that the "good cause" standard requires that the licensee come forward with "substantial reason amounting to a legal excuse for failing to perform an act required by law, as determined on a case-by-case basis." (*Board's Order of September 2, 2009* granting PEDP's Motion to Extend Time at 13).

The Board previously granted an extension of time to PEDP wherein it held that where "litigation, community opposition and obstacles from Philadelphia City Council were responsible for delay in progress in developing its facility, and none of the delay resulted from any fault of Foxwoods, good cause is shown." *Id.* at 14. The Board's holding makes clear that where outside forces *act in opposition* to the efforts of a

Licensee to develop its facility, such active opposition may amount to good cause. The Board's holding also makes clear that where the Licensee is responsible for delays, good cause is not shown. There is, as the Board rightly stated, a distinction to be made between acts in opposition to a Licensee which cause delay in developing a facility, and delay as a result of the inability of a Licensee to successfully plan, fund and develop a facility as required by Conditions to its License. The former is a "legally sufficient excuse," and the latter, a mere excuse.

PEDP has not shown "good cause" to seek the requested extension of time. PEDP has presented no evidence that any outside force acted *in opposition* to its financing or development efforts. PEDP does not aver that City Council, the community or litigation has hampered its efforts. PEDP has not averred that it faced any adversity *because of* its efforts to develop the Columbus Boulevard site. Instead, PEDP relies upon one unsupported statement about changes in national credit and financial markets since September 1, 2009, that the final form of table game legislation must be known before any investor will sign on to finance the Foxwoods project and that the changes in the national credit and financial markets necessitate a reordering of the Board's Order. It will be shown that PEDP has simply been unable to convince investors to sign on to its project because PEDP has not committed to construct the facility that it was Ordered to construct by the Board, and further, that PEDP has failed to make the required Submissions to the BIE for the same reason -- failure to commit to construct a facility substantially similar to that approved by the Board on December 20, 2006.

Failure to Comply with Conditions

Although lack of funding of the Foxwoods project may be a legally sufficient excuse for failing to construct its facility, it is not a legally sufficient excuse for failing to

provide "renderings, proposals and other documents" necessary to develop its facility, particularly where such documents are necessary to market the Foxwoods project to potential investors. More importantly, the absence of "renderings, proposals and other documents" is likely the cause for PEDP's inability to obtain financing, and not changes in the national credit and financial markets since September 1, 2009, as averred by PEDP.

PEDP avers that it cannot meet the deadline of December 1, 2009 to provide the required Submissions in accordance with Conditions 5 and 6 of the Board's September 1, 2009 Order because changes in the national credit and financial markets necessitate reordering of the Conditions imposed by the Board. The "good cause" standard necessarily requires that solid documentary evidence be provided by the moving party. Yet, PEDP has not averred any facts or presented any evidence of how the national credit and financial markets have changed significantly since September 1, 2009, or a single sufficient fact that explains why a reordering of the Conditions is necessary. PEDP has, therefore, failed to offer any evidence to the Board, let alone a legally sufficient reason amounting to "good cause" to reorder the Conditions imposed by the Board.

In fact, PEDP admits that "since September 1, 2009, it has devoted its most significant efforts to identifying and locating funding and financing for development of its facility."¹ PEDP has simply not devoted any efforts toward actual development of the

¹ In Re: Foxwoods Motion to Extend Time at ¶ 12.

Submissions that were due to be submitted to the BIE on December 1, 2009. PEDP admitted as much in its October 16, 2009 letter to Board Chairman Gregory C. Fajt.²

PEDP has failed to meet the deadline for Submissions as required by the Board's Order of September 1, 2009 because PEDP has failed to allocate any time, money or personnel to the task. Further, their failure to do so has negatively impacted their ability to attract investors. More importantly, PEDP has ignored the Board's Order to construct a facility substantially similar to that approved by the Board on December 20, 2006, and instead, as will be shown below, has pursued everything but such a facility. PEDP has, therefore, not shown "good cause" to extend the time for making Submissions to the BIE.

PEDP should, therefore, be required to immediately provide the required Submissions to the BIE in accordance with Conditions 5 and 6 of the Board's September 1, 2009 Order.

Lack of Financing Commitment

PEDP avers that it cannot meet the deadline for Submissions to the BIE because of changes in the national credit and financial markets necessitate that funding must precede development of the required Submissions. However, PEDP has failed to elucidate what changes have taken place in the national credit and financial markets since September 1, 2009, and how those changes meet the "good cause" standard, or to elucidate how those changes necessitate a reordering of Conditions imposed by the Board upon PEDP's Category 2 Slot license. PEDP has, therefore, failed to state any

² Foxwoods' letter of October 16, 2009 to Chairman Gregory C. Fajt, Esquire at page 4, ¶ 1 stated: "At present Foxwoods is consulting with various design and construction professionals to evaluate *how to prepare an updated development plan* for the facility and *who to retain* as part of that process."

facts or provide any evidence that would rise to the level of a substantial reason amounting to a legally sufficient excuse.

PEDP further avers that its ability to obtain funding for the development of the Foxwoods Category 2 Slot facility is wholly dependent upon the "final form" of proposed table game legislation. (*PEDP November 30, 2009, Motion to Extend Time* at ¶ 22.) The final form of table game legislation is wholly unrelated to financing of a Category 2 Slot License facility and any attempt by PEDP to use such an excuse to show good cause is simply disingenuous. Therefore, the inability of PEDP to obtain financing of a facility because of the uncertainty of the final form of pending "table game legislation" is not "good cause" to extend time.

The facts show that PEDP, despite being ordered by the Board to construct a facility "substantially similar to what was presented in its initial proposal as approved by the Board,"³ and the fact that the Board "expressly limited its grant of an extension of time to commence operations solely for the purpose of Foxwoods developing a casino as described in the Board's February 1, 2007 Adjudication,"⁴ has pursued everything but such a facility. In fact, PEDP has stated that "Foxwoods has recently been contemplating an interim facility,"⁵ and that Foxwoods is "analyzing whether... to seek the Board's permission to develop a temporary facility."⁶

It is obvious why PEDP missed the deadline for providing the required Submissions – it has simply vacillated on what type of facility to construct, to the point of paralysis. PEDP has shown by its own words that it has failed to commit to a facility. Without committing to a facility, it is impossible for PEDP to have developed the

³ In Re: PEDP Petition to Extend Time to Make Slots Available at 6.

⁴ *Id.* at 14-15.

⁵ Foxwoods' letter of October 16, 2009 to Chairman Gregory C. Fajt, Esquire at page 3, ¶ 4.

⁶ *Id.* at page 3, ¶ 3.

required Submissions. PEDP is, therefore, solely responsible for the delay in developing the required Submissions. PEDP's failure to commit to a facility is not only an insufficient legal excuse, it is absolutely contrary to the Board's Order to construct a facility "substantially similar to what was presented in its initial proposal as approved by the Board"⁷ and the Board's "express grant of an extension of time to commence operations solely for the purpose of Foxwoods developing a casino as described in the Board's February 1, 2007 Adjudication."⁸ PEDP has, therefore, not shown good cause to extend the time in which to provide the required Submission to the BIE.

Conditioning of License

The Board may impose a Statement of Conditions upon a license. 58 Pa. Code § 423a.6(b)(4). Failure to comply with Conditions constitutes a violation of the Conditions and may result in the imposition of Board-imposed administrative sanctions, up to and including revocation. § 423a.6(b)(5). PEDP's Category 2 Slot License is subject to Conditions imposed by the Board. PEDP has failed to comply with said Conditions, particularly Conditions 5 and 6 of the Board's September 1, 2009 Order, and has not shown good cause for failing to comply; therefore, the Board may take action up to and including revocation of PEDP's Category 2 Slot License.

Conclusion

For the reasons set forth in this Memorandum of Law and in the Opposition to PEDP's Motion to Extend Time, it is respectfully suggested that the Board deny PEDP's Motion; cause PEDP to provide to the BIE, without further delay, the Submissions required by Conditions 5 and 6 of the Board's September 1, 2009 Order; and that the

⁷ In Re: PEDP Petition for Extension of Time to Make Slots Available at page 6.

⁸ *Id.* at page 14-15.

Board conduct a full evidentiary hearing in the interest of transparency and in order to ascertain PEDP's continuing suitability for licensure.

Respectfully submitted,

BY: Mary E. Reeves

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Counsel for Petitioners

Dated: December 9, 2009

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In re: Philadelphia Entertainment
Development Partners, L.P.; D/B/A/
Foxwoods Casino Philadelphia

: COMMONWEALTH OF PENNSYLVANIA
: BEFORE THE PENNSYLVANIA GAMING
: CONTROL BOARD
:
: Docket No. 1367

HEARING REQUESTED

CERTIFICATE OF SERVICE

I, Mary Elisa Reeves, Esquire, hereby certify that on the date set forth below, I sent a copy of the Opposition of Legislators as Amicus Curiae to the Motion to Extend Time of PEDP, L.P. d/b/a Foxwoods Casino Philadelphia with Supporting Memorandum of Law, via First Class mail, postage prepaid, to the following:

LeRoy S. Zimmerman, Esquire
Robert A. Graci, Esquire
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Pennsylvania Gaming Control Board
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Conshohocken, PA 19428-5300

DONNA ADESLBERGER & ASSOCIATES, P.C.

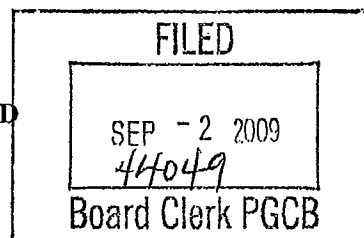
A handwritten signature in cursive script that reads "Mary E. Reeves". The signature is written in dark ink and is positioned above a horizontal line.

Mary Elisa Reeves, Esquire
Attorney for Petitioners

DATE: December 9, 2009

EXHIBIT “B”

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD



IN RE: :
PHILADELPHIA ENTERTAINMENT AND :
DEVELOPMENT PARTNERS, L.P. : PGCB Docket No. 1367
: :
Senators Farnese and Stack and Representatives :
McGeehan, O'Brien, Taylor and Josephs :

ADJUDICATION

This matter is before the Board for disposition of Senators Lawrence M. Farnese, Jr. and Michael J. Stack and Representatives Michael P. McGeehan, Michael H. O'Brien, John Taylor and Babette Josephs's ("Legislators") June 11, 2009 Petition to Intervene as Amicus Curiae in Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods' ("Foxwoods") May 22, 2009 Petition to Extend Time to Make Slot Machines Available ("Petition for Extension of Time").

After a review of the relevant filings in this matter, the Board makes the following findings.

Findings of Fact

1. The Board awarded Foxwoods one of the two available Category 2 Slot Machine Licenses for the City of Philadelphia ("License" or Philadelphia License") on December 20, 2006; the Board issued the License on May 28, 2009.
2. Foxwoods' proposal included, *inter alia*, plans to build a slot machine casino facility at Columbus Boulevard, between Reed and Tasker Streets, on the South Philadelphia waterfront ("Columbus Boulevard Site").
3. Foxwoods filed a Petition for Extension of Time on May 22, 2009.

4. On June 11, 2009, the Legislators filed a Petition to Intervene in the above-captioned matter in which they aver:
 - a. The districts they represent are contiguous to the Delaware River and are made up of constituent taxpayers and Commonwealth citizens.
 - b. The intended economic benefits from Foxwoods' project would be delayed further were the Board to grant them an extension to operate.
 - c. Many of the issues encountered by Foxwoods at the local level are a result of the controversial location (i.e. the Columbus Boulevard Site) selected by Foxwoods on which to develop its casino.
 - d. Foxwoods has yet to acquire all the necessary permits to begin construction at the Columbus Boulevard Site.
 - e. Foxwoods has not adequately sought to begin operations through a petition to relocate or to construct a temporary facility.
5. The Board's Office of Enforcement Counsel ("OEC") filed an Answer and New Matter to the Legislator's Petition to Intervene on June 25, 2009 in which it does not object to the Board granting the Legislators *amicus status*.
6. Foxwoods filed an Answer and Opposition to the Legislator's Petition to Intervene on June 26, 2009.
7. Both OEC and Foxwoods' object to the Board granting the Legislators' Request to Intervene.

Conclusions of Law

1. The Board has jurisdiction over the parties and the subject matter of the instant proceeding.
2. The decision to grant a Petition to Intervene in a proceeding before the Board is within the sole discretion of the Board.
3. It is within the Board's discretion to grant a Petition to Intervene if it determined that the petitioner:
 - a. has an interest in the proceeding which is substantial, direct and immediate.
 - b. the interest is not adequately represented by a party to the proceeding.
 - c. the petitioner may be bound by the action of the Board in the proceeding.
4. A petition to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding.
5. Granting a petition to intervene gives the petitioner full party status.
6. Granting a petition for *amicus status* does not give the petitioner full party status.
7. The Legislators are not entitled to intervene in the proceedings regarding Foxwoods' Petition for Extension of Time.
8. The Legislators are entitled to participate in the proceedings regarding Foxwoods' Petition for Extension of Time through *amicus curiae* status.

Discussion

The present petition which seeks to intervene as *amicus curiae* invokes two legal concepts which generally are distinguishable and exclusive from each other. When an individual

seeks to intervene in a proceeding, he or she does so to seek status as a party to the action or matter. On the other hand, to participate as “amicus curiae” means literally “friend of the court” and is pursued by a person with a strong interest in the matter. The person granted amicus status is not a party to the action, and typically wishes only to express a view or opinion which seeks to promote a public interest. Because intervention and amicus curiae status are different, we treat them as such and address intervention first, followed by a discussion as to whether participation as amicus curiae is warranted.

Standing to intervene as a party before an administrative agency is within the discretion of the agency. 1 Pa. Code § 35.9 and 58 Pa. Code § 493a.12(e). The Board’s Regulations direct that the Board, in its discretion, *may* grant a petition to intervene if (1) the petitioner has a substantial, direct and immediate interest in the proceeding; (2) the petitioner’s interest is not adequately represented by a party to the proceeding; and (3) the petitioner may be bound by the action of the Board in the proceeding. 58 Pa. Code § 493a.12(a) and (c).

The Supreme Court of Pennsylvania has determined that a person’s interest is “direct” if the person can demonstrate “causation of the harm to his/her interest by the matter of which he/she complains”; a person’s interest is “immediate” if the person demonstrates a close causal nexus between the alleged harm and the challenged action; and, a person’s interest is “substantial” if “there is some discernable adverse effect to some interest other the abstract interest of all citizens.” *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (1975) and *Citizens Against Gambling Subsidies, Inc. v Pa. Gaming Control Bd.*, 916 A.2d 624 (2007).

The Board’s Regulations further direct that a “petition to intervene must be in writing and set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of

the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully advise the parties and the Board of the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the petition or complaint initiating the proceeding, and citing by appropriate reference provisions or other authority relied on.” 58 Pa. Code § 493a.12(e).

Here, in its Petition to Intervene, the Legislators claim that their interest in Foxwoods’ Petition for Extension of Time is “substantial, direct and immediate;” “not adequately represented;” and “that it will be bound” by the Board’s decision in the matter because their constituents are taxpayers and citizens of the Commonwealth who live and/or work within the City of Philadelphia contiguous to the Delaware River (the proposed site of Foxwoods Casino)¹.

The Pennsylvania Supreme Court has found that “unless the matter involves interference with the specific powers unique to the petitioning legislators’ functions as legislators, nonparty legislators’ asserted interest in the matter is no different from the interest that each citizen has in the law’s proper execution and does not constitute grounds to assert standing as a nonparty.” *Wilt v. Beal*, 363 A.2d 876 (Commwlt. Ct. 1976). Here, the Legislators asserted interest as “taxpayers and citizens of the Commonwealth who live and/or work within the City of Philadelphia” are no different than those of all citizens and, therefore, the Legislators have not shown a “substantial, direct and immediate” interest sufficient to warrant intervener status in the Foxwoods proceedings.

While we do not believe the Legislators have established a compelling reason to intervene in the proceedings regarding Foxwoods’ Petition for Extension of Time, it nevertheless

¹ Notwithstanding these arguments, the Legislators do not appear to actually seek intervention as a party but only choose to proceed as *amicus curiae*.

would be appropriate for the Board to grant these legislators *amicus curiae* status. It is well established that an adjudicator, at its discretion, may consider argument(s) by a nonparty to a proceeding by granting that nonparty *amicus curiae* status. *Amicus curiae* status is generally limited to interested persons that seek to address/raise an argument not raised by the parties to the controversy. Unlike persons granted permission to intervene in a controversy, *amicus curiae* participants do not have “party standing” and their arguments are therefore limited to addressing the issues as framed by the parties (i.e. *amicus curiae* participants may not raise issues not raised by the parties to the controversy).

Similar to the Environmental Hearing Board (“EHB”) which, in 1998, denied a legislator’s attempt to intervene in a matter but granted him *amicus curiae* status, *Levansjy v. Dep’t of Env’tl. Prot.*, 1998 EHB 571 (Pa.Env.Hrg.Bd. 1998), when the Board denied these same legislators’ intervention request in the matter of HSP Gaming, L.P.’s December 10, 2008 Application for Extension of Time, the Board granted them *amicus curiae* standing.

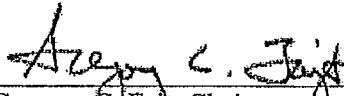
Here, the controversy before the Board and the legislators’ arguments are nearly identical to that in the aforementioned HSP matter; accordingly, the Board grants the Legislators *amicus curiae* status in the Foxwoods’ Petition for Extension of Time proceedings.

Conclusion

Having failed to meet the intervention requirements in Section 493a.12 of the Board’s Regulations, 58 Pa. Code § 493a.12(a) and (e), the Legislators are not entitled to intervene as parties in the proceedings regarding Foxwoods’ Petition for Extension of Time; however, they have established sufficient grounds for the Board to grant them *amicus curiae* status.

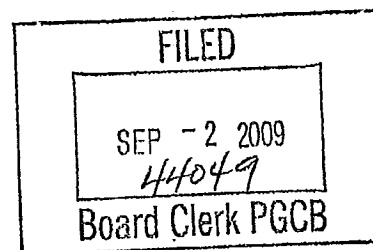
Accordingly, the Board will consider the Legislators' filings with the Board, as *amicus curiae* participants, in the Foxwoods Petitions for Extension of Time proceedings.

Dated: September 1, 2009

By: 
Gregory C. Fast, Chairman
Pennsylvania Gaming Control Board

If you disagree with the Board's Adjudication and Order, you have the right to file an appeal with the Commonwealth Court of Pennsylvania within thirty (30) days of the date of this Order. See, Pennsylvania Rule of Appellate Procedure 1512.

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

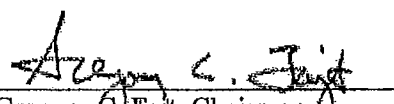


IN RE: :
PHILADELPHIA ENTERTAINMENT AND :
DEVELOPMENT PARTNERS, L.P. : PGCB Docket No. 1367
: :
Senators Farnese and Stack and Representatives :
McGeehan, O'Brien, Taylor and Josephs :

ORDER

AND NOW, this 1st day of September 2009, for the reasons outlined in the attached Adjudication, the Board hereby **GRANTS** the request of Senators Lawrence M. Farnese, Jr. and Michael J. Stack and Representatives Michael P. McGeehan, Michael H. O'Brien, John Taylor and Babette Josephs's ("Legislators") Legislators' request for *amicus curiae* as sought in their June 11, 2009 Petition to Intervene as Amicus Curiae in Philadelphia Entertainment and Development Partners, L.P.'s May 22, 2009 Petition for Extension of Time (but not party status) and will consider all filings, and arguments therein, from the Legislators currently on file with the Board.

By:


Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board

If you disagree with the Board's Adjudication and Order, you have the right to file an appeal with the Commonwealth Court of Pennsylvania within thirty (30) days of the date of this Order. See, Pennsylvania Rule of Appellate Procedure 1512.

**BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD**

IN RE :
PHILADELPHIA ENTERTAINMENT AND :
DEVELOPMENT PARTNERS, L.P., d/b/a : **PGCB Docket No. 1367**
FOXWOODS CASINO PHILADELPHIA :
:

ORDER

AND NOW, this ___ day of _____ 2010, the Board hereby **GRANTS** the Preliminary Motion to Strike in Part the Legislators' Opposition to Motion to Extend Time and Memorandum of Law filed by Philadelphia Entertainment and Development Partners, L.P., d/b/a Foxwoods Casino Philadelphia ("PEDP").

The Opposition to Motion to Extend Time filed by Senators Lawrence M. Farnese, Jr. and Michael J. Stack, and Representatives Michael H. O'Brien, Michael P. McGeehan, John Taylor, and Babette Josephs (the "Legislators") as *amici curiae* is **STRICKEN**. The Board will consider the Memorandum of Law filed by the Legislators with respect to PEDP's Motion to Extend Time only insofar as it discusses issues that have been raised by the parties to this action. The Legislators as *amici* are not permitted to institute proceedings or file pleadings, but are limited to briefing any issues that are raised by the parties.

By: _____
Gregory C. Fajt, Chairman
Pennsylvania Gaming Control Board