



*Senate of Pennsylvania*

July 31, 2008

**Via Hand Delivery**

The Honorable Mary D. Colins, Chairperson  
Pennsylvania Gaming Control Board  
5<sup>th</sup> Floor, Strawberry Square  
Harrisburg, Pennsylvania 17101

**Re: Joint Application of PITG Gaming, LLC and Holdings Acquisition Co, LP for Approval of the Reorganization, Change of Control and Recapitalization of PITG Gaming LLC and other relief, PGCB Dkt. No. 42028.**

Dear Chairperson Colins:

The purpose of this letter is to renew our emphatic request for the public release of documents submitted in support of the Joint Application of PITG Gaming, LLC and Holdings Acquisition Co, LP, (hereinafter "Joint Petition") that have been declared confidential by the Joint Petitioners. Failure or additional delay in providing this information will render any public comment meaningless. Please include this request as part of the formal evidentiary record in the above captioned matter.

On July 14, 2008, five days following the filing of the Joint Petition, a formal request for copies of all transactional documents was submitted to the Board in the form of a Notice of Dispute of the claim of confidentiality. The formal request was made pursuant to Board's administrative regulations – 58 Pa.Code § 407a.1(d). The confidential documents at issue include;

- (1) a non-binding indication of interest letter establishing the conditions upon which appropriate financing would be secured for the PITG development project,
- (2) an agreement governing the reorganization, recapitalization and change of control of the development project which would identify the names of the proposed equity stakeholders, the percentage interest, and the manner in which the change in control of the license would be completed,
- (3) a joint venture agreement that would govern the rights, obligations and control of the license which would outline the conditions upon which equity control may change or financing would be provided, including a timetable for such,

- (4) debt financing documents outlining the cost of the transaction, the debt payment schedule, interest rates and payment terms, and
- (5) business organizational chart indicating corporate governance, management control and lines of authority.

On July 18<sup>th</sup>, a second letter was submitted to the Board, repeating our request for the public release of the described transactional documents. On July 24<sup>th</sup> during the Senate Community, Economic & Recreational Development Committee hearing, this request was again made by several members of the Committee – including Senators Jay Costa and Jane Earll. In response, both you and counsel for the Joint Petitioners recognized the public importance of this matter and the reasonableness of our request for the disclosure of these transactional documents. In so doing, a commitment was made to the members of the Committee that the Board would immediately seek to disclose such non-proprietary portions of the transactional documents.

That was a week ago. To date, no documents have been publically released. The Board's administrative regulations are clear – requiring the Board to determine the proper classification of any disputed confidential documents “as soon as administratively possible.” 52 Pa.Code § 407a.1(d). Claims of confidentiality are limited to those documents that are related to background information involving character requirements, personal information or account records, proprietary information such as trade secrets, security information, or information specifically declared confidential by statute or may otherwise constitute an invasion of privacy. 52 Pa.Code § 407a.3. Though a document may be deemed “confidential”, such a determination does not end the Board's consideration. Like most administrative agencies, the Board is authorized to permit the release of confidential documents pursuant to a protective order or confidentiality agreement. 52 Pa.Code § 407a.1(c).

This request is not controversial. In fact, much of the requested information has been publicized by this Board on its internet site as part of the original slot machine application process. For example, organizational charts, percentage equity investments amounts, and investor identities may currently be found on the Board's internet site.<sup>1</sup> The chart provided by counsel for the Joint Petitioners, though an improvement from prior submissions, still does not identify the majority investors associated with the various Walton Street corporations.<sup>2</sup> Furthermore, contrary to the representations made by counsel for the Joint Petitioners, revenue projections by applicants, such as win-per-machine, and total gross revenue, have also been previously publicized by the Board.<sup>3</sup>

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<sup>1</sup> See, e.g., [http://www.pgcb.state.pa.us/files/licensure/reports/Ownership\\_Interests.pdf](http://www.pgcb.state.pa.us/files/licensure/reports/Ownership_Interests.pdf) (list of all equity stakeholders and the percentage of ownership for each licensed gaming venue).

<sup>2</sup> It is worth noting that the chart identifies Don Barden's equity interest in the reorganized project as 16.65% – explicitly contradicting prior representations by the Joint Petitioners that Don Barden's stake was 25%. Compare, Pennsylvania Gaming Control Board, Public Hearing on PITG Petition (July 10, 2008), Hearing Transcript at 10 (Bluhm testified that “Mr. Barden would retain a 25 percent interest”).


<sup>3</sup> See, e.g., Application of IOC Pittsburgh, PITG Gaming, Station Square Gaming, for Category 2 Slot Machine License in Pittsburgh, PaGCB Dkt. 1357, 1361, 1363 ((February 1, 2007) at 21 (listing PITG's projected gross terminal revenue estimate, win-per-position estimate, and number of positions estimate).

Debt payment terms and schedules, organizational and management charts, interest rates, credit risk assumptions are all critically important pieces of information to state, county and city officials seeking to determine the value of the proposed Joint Petition. In particular, the terms of the debt financing agreement are directly relevant to whether the financial commitments made by the proponents of the Joint Petition to the City of Pittsburgh are viable, or if there are certain conditions that may delay, alter, or place these commitments at risk


It has been over 2 weeks since our initial request. Unfortunately we have yet to receive a response from the Board. This request is reasonable and entirely consistent with the public interest of ensuring an open and transparent process. It is our intention to fully participate in any scheduled public hearing before the Board. However, the inability to obtain these documents in a timely manner undermines any meaningful participation, and threatens the Board's due process obligations under Pennsylvania's Administrative Agency Law.

Your immediate response to this request is sincerely appreciated.

Sincerely,



**JANE C. ORIE**  
Majority Whip  
40<sup>th</sup> Senatorial District



**JIM FERLO**  
State Senator  
38<sup>th</sup> Senatorial District

cc: The Honorable Jane M. Earl, Chair  
Senate Community, Economic & Recreational Development Committee  
All members of the Pennsylvania Gaming Control Board  
All counsel of record