

1 THE COMMONWEALTH OF MASSACHUSETTS
2 MASSACHUSETTS GAMING COMMISSION
3 PUBLIC MEETING #174
4

5 CHAIRMAN

6 Stephen P. Crosby
7

8 COMMISSIONERS

9 Gayle Cameron

10 Lloyd Macdonald

11 Bruce W. Stebbins

12 Enrique Zuniga
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21 January 7, 2016 10:30 a.m.- 1:15 p.m.

22 MASSACHUSETTS GAMING COMMISSION

23 101 Federal Street, 12th Floor

24 Boston, Massachusetts

1 P R O C E E D I N G S :

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3 CHAIRMAN CROSBY: We are ready to
4 call to order the 174th meeting of the
5 Massachusetts Gaming Commission today at our
6 offices on Federal Street at 10:30 in the
7 morning.

8 We'll start out as usual with the
9 minutes, Commissioner Macdonald.

10 COMMISSIONER MACDONALD: I'd make a
11 motion that the minutes of the prior meeting be
12 accepted subject to the corrections or
13 typographical or other immaterial matters.

14 CHAIRMAN CROSBY: There are two.
15 There's December 9 and December 17.

16 COMMISSIONER MACDONALD: For both
17 dates.

18 COMMISSIONER CAMERON: I second for
19 the meeting December 9 and the 17th.

20 COMMISSIONER MACDONALD: The phrase
21 would be subject to any correction or
22 typographical errors or other nonmaterial
23 matters.

24 CHAIRMAN CROSBY: Okay. Any

1 thoughts, any questions or issues? I don't
2 know whether this is worth worrying about but I
3 thought on the meeting on the 17th, the minutes
4 say that the two GameSense advisors provided a
5 summary of their professional background. And
6 there was much more than that.

7 It was really interesting talking to
8 those two people. I thought maybe it was worth
9 adding the words and discussed their
10 experiences at PPC or something like that. It
11 was just so interesting. It's worth putting in
12 the notes at 12:27 and 12:32 adding those few
13 words.

14 COMMISSIONER MACDONALD: So moved.

15 CHAIRMAN CROSBY: Okay. So, with
16 that amendment to the amendment, are we all in
17 favor say aye, aye.

18 COMMISSIONER MACDONALD: Aye.

19 COMMISSIONER CAMERON: Aye.

20 COMMISSIONER ZUNIGA: Aye.

21 COMMISSIONER STEBBINS: Aye.

22 CHAIRMAN CROSBY: Opposed? The ayes
23 have it unanimously. We then go to I think our
24 new Executive Director, item number three Mr.

1 Bedrosian, Executive Director in his fourth day
2 welcome aboard -- third day.

3 MR. BEDROSIAN: Thank you. So, let
4 me take this opportunity to, although I've done
5 it individually, officially thank the
6 Commission as a group for this opportunity. I
7 look forward to helping staff and you do a
8 continued great job. I also appreciate the
9 fact that although I know all of the executive
10 assistants are great, you apparently assigned
11 me the best executive assistant. I appreciate
12 that very much.

13 As far as general updates go, I
14 don't have much other than as you said this is
15 my fourth day. I've enjoyed my first three
16 very much. But I did in my conversations with
17 General Counsel Blue have some conversations
18 about the Boston litigation. It might just be
19 worthy of a quick 30,000 view update.

20 MS. BLUE: Good morning,
21 Commissioners. I thought I would give you an
22 update as to where we are on the various pieces
23 of litigation that pertain to the award of the
24 Wynn license in Region A.

1 So, we have roughly five pieces of
2 litigation that pertain to that. In terms of
3 the city of Boston, there was a challenge to
4 the Wynn's license. That was dismissed by the
5 court in its entirety back in November. And no
6 appeal has been filed as of this date on that
7 suit.

8 There is also the Boston challenge
9 to the MEPA certificate. That is suit was
10 filed Wynn not against the Commission, at least
11 not as of this date. Wynn was served. We also
12 have a request from the city to notify them as
13 soon as our Section 61 Findings are complete.

14 There is litigation filed by the
15 city of Somerville. There was a general
16 challenge the award of the license. That suit
17 was filed but stayed by agreement of the
18 parties. So, that is still out there but there
19 is no action on it at the moment.

20 Somerville did file a challenge to
21 the MEPA certificate. They filed suit against
22 both the Commission and Wynn. The Commission
23 was served on December 10. And we are busy
24 compiling the administrative record. We have

1 roughly 90 days to turn that over. So, we're
2 working with our counsel and with the
3 Department of Environmental Affairs to get that
4 record put together and served to the court.

5 Then finally, we have what we call
6 the Revere litigation. The Revere litigation
7 consists of litigation by Revere, Mohegan Sun,
8 the IBEW and the four citizens in the open
9 meeting law. In terms of litigation, the court
10 dismissed all of the claims outright except
11 Mohegan Sun's Chapter 249, which is known to
12 certiorari litigation.

13 We have filed, the Commission has
14 filed an interlocutory appeal at the appeals
15 court. We did that because we believe that's a
16 very critical issue to the Commission. Our
17 statute is very clear that applicants do not
18 have a right to challenge the Commission's
19 decision on an award.

20 So, we thought that this should be
21 best addressed right away instead of going
22 through the more common process of going to
23 court on that issue. We have filed an
24 interlocutory appeal. Mohegan has until

1 January 12 to respond to that.

2 CHAIRMAN CROSBY: Excuse me,
3 Catherine. The essence of the issue there is
4 whether or not what we have always thought was
5 a proscription about the appeal by applicants
6 is firm, will stand? Is that the essential
7 issue?

8 MS. BLUE: Yes, that's correct.

9 CHAIRMAN CROSBY: We're just saying,
10 without getting into the merits we're just
11 saying you don't have the right to appeal.
12 That's in statute, see you later. And the
13 judge did not uphold our whatever it was,
14 summary judgment on that?

15 MS. BLUE: She did not agree with
16 that. She agreed that there was no what they
17 call a 30A appeal, an appeal from the record of
18 the Commission's decision. But she did say she
19 thought there was a right under certiorari.

20 So, again it's a very important
21 issue to the Commission that we feel strongly.
22 We feel that our statute speaks to it very
23 directly. So, that's why we filed what we call
24 interlocutory appeal. And that's an appeal

1 that takes place before final action of a
2 court. We have permission to do it. But we
3 thought it was that it was that important that
4 rather than trying to go through it on the
5 merits and then appeal, we would take this
6 appeal first.

7 CHAIRMAN CROSBY: That appeal goes
8 to?

9 MS. BLUE: The appeals court.

10 CHAIRMAN CROSBY: The appeals court?

11 MS. BLUE: Yes.

12 CHAIRMAN CROSBY: Just for the
13 record, this is one of those things which is
14 just hard for us to deal with because we can't
15 talk unless we have a public meeting. But this
16 was -- The appeal that was agreed to by outside
17 counsel, you and the Commissioner MacDonald,
18 correct?

19 MS. BLUE: That's correct.

20 CHAIRMAN CROSBY: You all felt that
21 this was the appropriate thing to do.

22 MS. BLUE: Yes, that's correct.

23 CHAIRMAN CROSBY: Good.

24 MS. BLUE: So, the balance of that

1 litigation, the Revere, Mohegan and IBEW and
2 the four citizens except for the one Mohegan
3 claim, all of those claims were dismissed by
4 the court.

5 We understand now that the city of
6 Revere on January 4 did file an appeal of
7 dismissal of their claims. And the four
8 citizens on the open meeting law have filed an
9 appeal of their claims.

10 We haven't seen anything so far that
11 would suggest that the IBEW has filed an
12 appeal. The timeframe for filing an appeal was
13 over Monday, I believe. So, right now we know
14 that Revere and the four citizens have an
15 appeal.

16 We will respond to that. We will
17 have approximately 10 days unless there is an
18 extension. So, we'll be responding to their
19 appeal. They filed the same kind of appeal
20 that we filed. It's to the appellate court.
21 It's an interlocutory type of appeal.
22 Essentially, the same basis that we're using,
23 they're saying that it's very crucial for their
24 claims that they be allowed to get the issue of

1 whether they have a claim or not in front of a
2 judge and decide it before they move forward.

3 So, that's where we are. There's
4 certainly much less litigation than when we
5 started. We're narrowing down the issues, but
6 we still do have some matters ahead that we
7 need to resolve.

8 COMMISSIONER ZUNIGA: Catherine, you
9 mentioned timeframe expiring recently for
10 Revere and others and the balance of the
11 Mohegan claim. Is that also true for the city
12 of Boston's appeal?

13 MS. BLUE: The city of Boston --

14 COMMISSIONER ZUNIGA: Or potential
15 rather?

16 MS. BLUE: Potential appeal?

17 COMMISSIONER ZUNIGA: Yes.

18 MS. BLUE: Municipalities generally
19 have 60 days to file. We have 30 days. So,
20 there's a different statute of limitations for
21 filing for municipalities on the theory, I
22 believe that they have to take a little longer
23 to get things together and pull records
24 together and things like that.

1 Revere made within the 30 days.
2 They may or may not have had additional time
3 should they want it. But the city of Boston we
4 believe does have the additional time. So, if
5 they chose to appeal, they still have that
6 ability.

7 CHAIRMAN CROSBY: There's a funny
8 situation in Revere, right -- where the appeal
9 was filed on the last day of the outgoing
10 mayor's term. Whether the new mayor will take
11 the same approach is unknown to us at this
12 point.

13 So, we have to I guess wait until he
14 sort of settles in and then basically talk with
15 him about what do you want to do about this,
16 right - to his lawyers?

17 MS. BLUE: Our attorneys speak both
18 to the attorneys for Somerville and the
19 attorneys for Revere. I'm sure there'll be
20 additional conversations with all of the
21 parties to the litigation lawyer to lawyer.

22 CHAIRMAN CROSBY: Okay, great.
23 Thanks.

24 COMMISSIONER CAMERON: Thank you.

1 COMMISSIONER ZUNIGA: Thank you.

2 MR. BEDROSIAN: So, Mr. Chair, I
3 think the next matter is the delegation of the
4 Investigations and Enforcement Bureau. Just to
5 set the plate. As I understand under the
6 statute, 23K §6, you are the person to whom the
7 Deputy Director reports directly. And then
8 under the regulations 205 CMR 104.02 you have
9 the ability, which you have exercised in the
10 past, to delegate that responsibility.

11 My understanding is you had
12 delegated to a previous executive director.
13 When that person left then Ms. Wells, the
14 Director of the IEB became both functions, good
15 compliance dictated that that not be in one
16 person. And you then exercised your authority
17 and re-delegated the supervisory authority to
18 Commissioner Cameron. But now that there is a
19 new executive director, you may want to revisit
20 that.

21 CHAIRMAN CROSBY: Yes. Just to
22 recap the history of this, we talked about this
23 we back. Actually, when I first read the
24 statute before I even took the job, I thought

1 that was kind of a funny arrangement to take
2 the most significant division of the agency and
3 pull it out from under the executive director
4 and give it to a Commissioner or the Chairman.
5 But it does make a statement about what the
6 Legislature thinks about the importance of this
7 part of the agency and the criticality of that
8 relationship.

9 Nevertheless, our outside
10 consultants in their original look at the law,
11 Michael and Carroll, felt that that was an odd
12 decision. I eventually felt and then we talked
13 about it at a meeting that we didn't want an
14 executive director to only have two-thirds of
15 the agency or half of the agency.

16 So, I made the delegation, everybody
17 agreed with that. Out of respect for the
18 statute, I do have some little bit of
19 occasional contact with the ED and the IEB
20 Director just to make sure that I'm not too
21 totally far out of the loop. But as a
22 reporting matter for sure, it was important to
23 make that change.

24 I think it was the right change to

1 make. And I don't think we need a vote on
2 this, but my instinct would be that I would
3 make that same delegation. I think our new ED
4 is more than extremely well-qualified to
5 oversee that department, certainly keep a close
6 watch on our Director. Any other?

7 COMMISSIONER CAMERON: Mr. Chair, I
8 concur with your decision, a sound decision.
9 The skill sets to oversee are clearly there.
10 And it's a good working relationship.

11 CHAIRMAN CROSBY: Yes, I absolutely
12 would under that authority delegate to you, Ed,
13 Executive Director, the line responsibility for
14 IEB.

15 MR. BEDROSIAN: Thank you, Sir. The
16 next issue is the response from the Division of
17 Open Government of the Attorney General's
18 office to a request by the Commission to look
19 at some of the Commission's meeting practices.

20 This letter came in during the
21 holidays. I suspect you all individually have
22 had an opportunity to read it. I read the
23 letter. To be clear, these are folks that I
24 used to work with in the Attorney General's

1 office very closely.

2 CHAIRMAN CROSBY: Actually, who used
3 to report to you.

4 MR. BEDROSIAN: Correct. I do want
5 to thank them. I think it seemed like it was a
6 very thoughtful analysis. And additionally,
7 I've been in touch with Ms. Nable who suggested
8 at the end of her letter that we engage in some
9 follow-up training. I have been in touch to
10 start that communications to get that done.

11 My sense is that the Attorney
12 General recognized the unique context of this
13 Commission being a start-up agency with a full-
14 time board, working to get a new sector up and
15 running in the Commonwealth. And a lot of the
16 concerns that were addressed in the letter
17 seemed to be in that context of what I might
18 call legacy concerns. Although I wouldn't say
19 anything not repetition that unique context is
20 not going to repeat itself because we now have
21 a staff. And there's a lot more foundation
22 underneath you all who used to do it all.

23 However, I would suggest there are
24 two areas that at the appropriate time deserve

1 a little more discussion. One is the
2 Commissioners' lunches and the second is the
3 agenda setting meetings.

4 CHAIRMAN CROSBY: Right. Let me
5 speak to those. Usually, I ask other people to
6 speak first but those are both meetings that
7 I've initiated.

8 So, I felt, just to sort of recap,
9 when the story was written in the Herald, we
10 all thought that we think we are adhering to
11 the law even in the very difficult situation
12 that we have with five full-time Commissioners.
13 But we wanted to ask the AG if in fact we were
14 adhering to the law. And if not, we would
15 rearrange our activities.

16 And we gave them everything we
17 possibly have, all of our schedules, all of our
18 backup materials, notes, records, everything.
19 And I frankly thought the report was quite
20 fair.

21 They saw some breaches of the open
22 meeting law and they said so, but they also, as
23 Ed said, they were very aware of our difficult
24 circumstances and how hard we tried to comply

1 and do comply on all substantive matters. They
2 went out of their way to say that there's never
3 been any breach whatsoever with respect to any
4 of our really important work like licensing and
5 so forth.

6 Having said that, as Ed Bedrosian
7 said, they were focused on two things: the
8 Commissioner lunches which we have typically
9 had for the last year or two every Wednesday.
10 I think we all agreed, and Commissioner McHugh
11 when he was here was a part of that decision
12 too, we all felt that it was important for
13 Commissioners just sort of from a morale and
14 spirit de corps and getting to know one another
15 to have a little bit of a social relationship.

16 We started to do it at dinners.
17 That was difficult because one of our
18 Commissioners lives in Springfield. So, we set
19 up this idea of the regular lunches. The vast
20 majority of the things we talked about at these
21 lunches are either personal, grandkids or
22 sports, or our own personal activities that
23 have been going on, new condominiums in
24 Florida.

1 But occasionally, principally at my
2 initiative we would talk about certain things
3 which the letter referred to. One is we made a
4 point of having those lunches be an opportunity
5 for the Commissioners to report back on their
6 field trips, if they've gone particularly to
7 conferences.

8 When I would go to a problem
9 gambling conference or any of us would go --
10 Gayle went to the International Regulators
11 Conference. We would come back and report to
12 the Commissioners. I thought that was not
13 public business. We are constrained to be in
14 an open meeting for any public business under
15 our jurisdiction. I didn't think that was
16 public business. And I was wrong about that.

17 The second thing we talked about
18 occasionally, and we were forthcoming was sort
19 of staff morale, how things are going at a very
20 kind of high-level sense about how are things
21 going in the Commission; how are the working
22 relationships going. Again, I didn't think
23 that was public business and neither did
24 Commissioner McHugh, none of us did. But we

1 did talk about that. And we told the AG that
2 we talked about that. I was wrong on that one
3 as well. That one also is construed as public
4 business under the open meeting law.

5 So, I think we ought to bag the
6 lunches. I think it still is important for us
7 to get together from time to time. We have
8 this weird relationship where we are
9 constrained in our ability to talk to one other
10 even though we sit right beside each and have
11 now for almost four years, except for
12 Commissioner Macdonald who is beginning to
13 learn how constraining this is.

14 But I think just for both
15 appearances sake and just the risk of
16 inadvertently making an open meeting error that
17 we ought to just ditch the lunches. I think
18 getting together for dinner once in a while we
19 can still do. And the AG said that's entirely
20 appropriate. And we'll find ways to kind of
21 keep the personal relationships going.

22 The second one is the agenda setting
23 meetings. Just so everybody knows, every two
24 weeks we have a meeting on the Wednesday before

1 the two following Thursdays. So, for a
2 Wednesday of week X about the meeting X plus
3 one. And we go through the agenda.

4 It's a draft agenda just like we
5 have here in front of us now. We go through
6 each of those agenda items. We make sure items
7 are ready to come to the agenda. And sometimes
8 I move them around.

9 It's my job to set the agenda
10 ultimately, but I do it with the input of
11 whether things are ready, are right and so
12 forth.

13 And then we also have a list, which
14 is publicly available of all of our pending
15 items that are coming up on subsequent
16 meetings. And we go through those. Are those
17 ready? Are they getting ready for the meeting?

18 The AG basically has said that they
19 realize how careful we are, how hard we try.
20 All Commissioners are usually at those
21 meetings. Most of our directors are at those
22 meetings. They use to last quite a while.
23 They're run by me now. They now last no more
24 than an hour at the most, sometimes as little

1 as half an hour.

2 And the AG has said we know how hard
3 we try. We always have counsel, generally
4 General Counsel Blue is right there making sure
5 that we are very careful about what we are
6 talking about. But there is sometimes if
7 you're talking about an agenda item, it is easy
8 to kind of inadvertently shift over into the
9 substance of the topic even if a Commissioner
10 says I really think we should have that on the
11 agenda sooner because it's really important.
12 Under the strictest reading of the law that's
13 probably an open meeting violation although I'm
14 sure nobody would be terribly upset about it.

15 So, we have three alternatives with
16 the agenda meeting. We have to have the agenda
17 meetings in one form or another. There's no
18 question about that. I think we all agree,
19 it's been very important to the way the
20 Commission has been run. Executive Director
21 Bedrosian will make his own judgment as we go
22 along. And if he and I have different ideas,
23 we can talk about it.

24 But at this point, it's been a

1 really important part of our operations. We
2 can do three things. We can do what we've
3 continued to do and just be very mindful as the
4 AG has said and be very careful and make sure
5 we don't veer over the lines.

6 We could switch it to a meeting
7 where no more than two Commissioners attend.
8 It would be I and either no other Commissioners
9 or I and one other Commissioner. That we
10 wouldn't have a quorum problem. Personally, I
11 don't like that because I think the need for
12 all of the Commissioners and all of the
13 directors to have this common hearing about the
14 status of the agenda is important for human
15 reasons as well as process reasons.

16 And the third was recommended by, or
17 suggested not necessarily recommended but
18 suggested by Commissioner Zuniga that we could
19 make those meetings open meetings. Just have
20 another whole other set of opening meetings.

21 So, every two weeks we would have an
22 open meeting, open public meeting that would be
23 posted. We would not stream it. We would not
24 keep a transcript but we would have minutes as

1 the law requires. That would permit us to go
2 ahead and do our regular business but it would
3 cover us if we inadvertently veered out of the
4 lane into some kind of slightly substantive
5 comment.

6 My reaction to that is Jesus, we
7 have a lot of public meetings. Is that really
8 overkill? But it's certainly worth thinking
9 about. So, I think this is a decision we all
10 should make together. So, feel free to comment
11 on the AG's letter, anything I've said but
12 particularly on the agenda meetings.

13 COMMISSIONER CAMERON: I have a
14 suggestion, Mr. Chair. As Executive Director
15 Bedrosian just mentioned, he has already been
16 in touch with the Attorney General's office and
17 Ms. Nagle who heads up the open public meeting
18 section over there to initiate training.

19 I think before we make a decision of
20 (A), (B) or (C) that you just laid out, we
21 could have that training, really be able to ask
22 questions about best practices around agenda
23 setting. And understand clearly what they are
24 talking about when this may cross a line or

1 not.

2 I just think that would give us more
3 information to make an informed decision since
4 it's already in the works as to how to move
5 forward. I would be more comfortable with more
6 information before deciding (A), (B) or (C).

7 CHAIRMAN CROSBY: Other thoughts?

8 COMMISSIONER ZUNIGA: Well, I
9 suggested it so you know where I stand. I
10 think we don't have to make the decision now.
11 So, we could just as easily make that training
12 and make sure we're not assuming something
13 wrong, although I kind of doubt it. So, I'll
14 go along with that.

15 I do think that it's a real
16 possibility that could inoculate from any
17 possibility of stepping over a line
18 inadvertently or not. And it might be just
19 worth trying. We could always revert back to
20 one of the other alternatives the way we've
21 been doing it before or a one Commissioner, two
22 Commissioner option.

23 I did want to mention and I agree
24 with your characterization of all the events,

1 Mr. Chairman, and the substance of the letter
2 from the Attorney General. I do think that
3 there's mention as to the efforts that we've
4 made.

5 But I want to mention for the record
6 that we did go above and beyond on the regular
7 business of the Commission in streaming every
8 -- and recording and archiving and transcribing
9 every meeting that we've had which is very near
10 and dear to me personally. It's allowed us to
11 create this great record that we can look back
12 on as we sometimes do for all kinds of reasons.

13 We know that people streamed as far
14 as way of Central America when we made the
15 decision. That's a little factor that you may
16 not be aware of.

17 CHAIRMAN CROSBY: To watch our --

18 COMMISSIONER ZUNIGA: To watch our
19 decision when it was Region A.

20 CHAIRMAN CROSBY: That was
21 Commissioner Cameron.

22 COMMISSIONER ZUNIGA: No, she was
23 here making the decision.

24 CHAIRMAN CROSBY: I'm kidding.

1 COMMISSIONER ZUNIGA: I have my
2 suspicion as to who it was, by the way, but it
3 shall remain nameless. But many other places
4 outside of the state and many news outlets who
5 constantly watched us, and that has served the
6 public interest greatly. I just wanted to
7 mention that.

8 There is a mention in that letter
9 but I think it bears remembering that we have
10 tried to go above and beyond. And credit goes
11 to Commissioner McHugh who from the very get-go
12 as keeper of the minutes said we need to
13 transcribe everything. My initial reaction,
14 some of you know, was oops, that's going to be
15 expensive. But it has served us really well.

16 CHAIRMAN CROSBY: You see,
17 representatives from Wynn, what I'm talking
18 about? He's looking out for your money.

19 COMMISSIONER ZUNIGA: But it served
20 us really well. It's been very cost-effective
21 for a number of reasons. Again, we can always
22 look back at the record. And that's there for
23 posterity, transcribed in full and archived for
24 everybody to see.

1 CHAIRMAN CROSBY: Yes.

2 COMMISSIONER STEBBINS: I echo
3 Commissioner Zuniga's points. The letter was
4 very informative. I think as you look around I
5 think we are in a different place than where we
6 were probably when we got the last training.
7 So, I think the new training will be extremely
8 helpful.

9 Even this week picking up the
10 newspaper in Western Mass., the open meeting
11 laws are a challenging guideline and regulation
12 to follow. More stories at least out of
13 Western Mass. of communities that are grappling
14 with decisions that are being challenged on
15 whether they followed the open meeting law.
16 So, it's tough for public bodies to follow it.
17 So, I certainly would welcome any additional
18 conversation.

19 I agree with dropping the lunches.
20 I can now resort to unhealthy stuff and not
21 have people give me the evil eye. I think when
22 it comes to the agenda setting meetings,
23 because I value being part of those
24 conversations, it allows me to go back, look at

1 the agenda items that I know I want to sit down
2 with staff and begin to schedule out my week
3 that finding a model that works for all of us
4 to continue to participate I think is
5 important.

6 CHAIRMAN CROSBY: And the idea of
7 putting it off until after the training?

8 COMMISSIONER STEBBINS: I am okay
9 with that. That's fine.

10 MR. BEDROSIAN: Mr. Chairman why
11 don't I suggest --

12 CHAIRMAN CROSBY: Let me just see if
13 Commissioner Macdonald had anything to add or
14 say on that.

15 MR. BEDROSIAN: I'm sorry
16 Commissioner Macdonald.

17 COMMISSIONER MACDONALD: Yes, I do.
18 Number one as a new Commissioner, I have two
19 general observations to make. One is it's been
20 striking as to how strictly my fellow
21 Commissioners --

22 MR. BEDROSIAN: Commissioner, I'm
23 sorry. Is your mic on?

24 COMMISSIONER MACDONALD: I thought

1 so,. No, it's not. Let me start again. I
2 have two comments to make as a new
3 Commissioner.

4 One is that since becoming a member
5 of the Commission, I have been struck by how
6 strictly my colleagues have kept me to the
7 tether of the open meeting law. I have not
8 prior to this had any experience that would be
9 applicable other than as a Superior Court judge
10 making decisions as to whether there have been
11 violations of the open meeting law. But I've
12 never been in a circumstance where my conduct
13 was covered by the open meeting law.

14 And that my colleagues, with the
15 Chairman's leadership, have strictly complied
16 by and insisted on my complying by the so-
17 called rule of two. That we have no
18 discussions amongst each other on matters
19 material to the Commission's jurisdiction
20 outside of a public meeting with any more than
21 two Commissioners. And I have done my best to
22 comply with that.

23 And that brings me to my second
24 observation. And that is how difficult it is

1 to operate in this environment of each of us
2 being full-time Commissioners and not being
3 permitted to do what at least for me is the
4 instinctive thing to do when one is addressing
5 a matter of one's responsibility as a public
6 official to engage in the details and
7 substantive issues of that responsibility.

8 I come from a background in which --
9 a professional background in which
10 brainstorming amongst colleagues on matters of
11 importance to whatever organization that I've
12 been associated with is the essence of an
13 intelligent way to go about responsibly dealing
14 with those issues.

15 And the public meeting law, policies
16 of which I respect enormously, do create -- And
17 there is no question about this. -- do create a
18 very significant constraint on public officials
19 like ourselves as we are going about the
20 process of dealing with a complex - a set of
21 complex issues of enormous public import.

22 I'm not suggesting that the public
23 meeting law should be amended. I'm simply
24 saying it's difficult to comply with. And that

1 in the short term, especially from somebody who
2 is coming on board and trying to catch up
3 imposes a real burden on the efficiency with
4 which a person in a position like my own can
5 get up to speed. So, that's my observation.

6 As to what we should do, I am
7 totally comfortable with Commissioner Cameron's
8 suggestion that we ought to postpone a decision
9 as to making our agenda setting meetings public
10 until such time as we have the opportunity for
11 the further training under the leadership of
12 the Attorney General's office.

13 COMMISSIONER CAMERON: I would just
14 like to add, when we had the training
15 initially, we were brand-new at this. We have
16 a lot of new staff who by the way makes it
17 easier to comply because we do have staff to go
18 to and discuss an issue that we may not have
19 enough information about. So, that's very
20 helpful.

21 But I really would look forward, and
22 I do look forward to the training because now
23 that we have specifics, we can ask specific
24 questions. And I think that really for me will

1 be helpful. And anything we do, there's room
2 for improvement. So, I for one -- I know that
3 we take it seriously, but we will continue to
4 do so. And additional training and the ability
5 to ask specific questions I think will really
6 be helpful.

7 CHAIRMAN CROSBY: I agree. I would
8 like to make sure -- We're going to have to
9 have several training sessions. There's so many
10 people. And I think the whole organization
11 should go through this eventually at least.
12 But I want to make sure that the Commissioners
13 have a session just themselves.

14 MR. BEDROSIAN: I would suggest, Mr.
15 Chair, the Commissioners, myself and Ms. Blue
16 be in the first training session.

17 CHAIRMAN CROSBY: Fine.

18 MR. BEDROSIAN: So, why don't I
19 reach back out to the Attorney General's office
20 and see. Obviously, now we're talking about
21 probably two schedules over there, all of our
22 schedules but do the best we can to get that
23 scheduled as soon as possible.

24 I want to pick up on Commissioner

1 Zuniga's comments. Something I should have
2 said earlier on to pick up on his comments is
3 that Statehouse News recognized our
4 communications director as communications
5 director, PR person of the year. As part of
6 that talked about the streaming efforts that
7 the Commission has done headed up by Elaine.
8 So, I do think there's a recognition out there
9 of what you all have done in the past.

10 CHAIRMAN CROSBY: Yes, I think there
11 is too. Good. So, we'll put that off. In the
12 meantime, there'll probably be another meeting
13 or two. We will do it as we normally have.
14 We'll just be exceedingly careful about making
15 sure what we're doing at those agenda setting
16 meetings until we make another long-term
17 decision.

18 MR. BEDROSIAN: Sure. I think the
19 next agenda item is yours, Mr. Chair.

20 CHAIRMAN CROSBY: Yes. This is the
21 daily fantasy sports update. Apropos of the
22 open meeting law -- The open meeting law says
23 that we have to -- A quorum of us, more than
24 two of us may not deliberate in any way about

1 anything about "any public business within its
2 jurisdiction".

3 My original reading of that meant we
4 don't have any jurisdiction over daily fantasy
5 sports at all. Nothing that we do or say will
6 have any bearing on what actually happens
7 unless the Legislature decides to read our
8 white paper and do something about it.

9 It is not within our jurisdiction in
10 any way, shape or form. We've been foursquare
11 about that. So, I thought maybe we would not
12 have to worry about the open meeting law.
13 Counsel and Commissioner Zuniga in particular
14 thought we ought to double-check that. We did.

15 I talked with the head of the Open
16 Meeting Law Division, Amy Nable. She said,
17 tough question, I understand the problem. But
18 it's close enough to what you do that at least
19 to be on the safe side, you probably ought to
20 adhere to the open meeting law on that. So,
21 that's just for the record.

22 And it'll make it slightly harder to
23 close the loop here than it might otherwise
24 have been. We're going to try to get this done

1 the end of this week. The staff and I have
2 been working assiduously on this now. And we
3 are going to try to see if we can get it done
4 by the end of this week.

5 I would like to ask the Commission
6 to delegate to me the ability to sign off on
7 this. There's been tons of conversation about
8 the substantive issues. I'm going to raise two
9 here that I think we need to talk a little bit
10 about. Staff will be available. I know we've
11 all talked to staff. And staff will be
12 available to talk on if there's a need. Just
13 to make life simple, if you're comfortable with
14 that I'd like to be able to have you delegate
15 to me to sign off on the final draft.

16 The two issues -- Let me just first,
17 is that all right? If not, say so.

18 COMMISSIONER ZUNIGA: That was. I
19 had mentioned that before in a meeting here. I
20 look forward to any matters high level or
21 otherwise on the final draft, have the
22 opportunity to weigh in whether now or at the
23 end of the final draft.

24 CHAIRMAN CROSBY: Justin and Paul

1 will both be available to talk about issues
2 that you might have in mind.

3 COMMISSIONER ZUNIGA: Which we can
4 do at a meeting. I'm not suggesting that be
5 otherwise.

6 CHAIRMAN CROSBY: Right. We're
7 going to try to get it done this week. The
8 next meeting is two weeks from now. I don't
9 want to wait for two more weeks. The
10 Legislature has been saying where's your
11 report.

12 COMMISSIONER STEBBINS: I'm okay
13 with offering you that authority to kind of
14 sign off on it. Again, keeping in mind the
15 spirit of the open meeting law, I would
16 certainly invite Commissioner Cameron because
17 she's also been point on daily fantasy sports
18 to kind of coordinate that final approval with
19 you before you send it up.

20 CHAIRMAN CROSBY: Okay. Good.

21 COMMISSIONER CAMERON: Mr. Chair,
22 I'd be comfortable as well. I am pleased that
23 the staff who has worked so hard and frankly
24 know more about this than anyone, hours and

1 hours of interviews, have the ability to talk
2 to you about why they think something is
3 important to stay in the report or they're
4 comfortable taking something out.

5 We had extensive meetings yesterday
6 on that. And I would just like to reiterate
7 from day one we thought it was important that
8 we adhere to the open meeting law. So, from
9 the beginning of this project we've done that.
10 We've never had more than two Commissioners
11 involved. In fact, in a series of all-day
12 meetings, we rotated Commissioners in with
13 their areas of expertise.

14 CHAIRMAN CROSBY: And our forum was
15 a public meeting.

16 COMMISSIONER CAMERON: Yes, it was a
17 public meeting. So, we have thought about
18 that, thought a lot about that and are very
19 comfortable that we did in fact comply. So, we
20 are not as out of step with the advice that you
21 received.

22 CHAIRMAN CROSBY: Where I was --
23 Relative to the drafting of the report, you all
24 did a very good job of just assuming the public

1 meeting obligations, which is fine.

2 The two issues that I think --

3 COMMISSIONER MACDONALD: I am
4 comfortable with it.

5 CHAIRMAN CROSBY: The two issues
6 that we never really talked about is licensing
7 fees. There's sort of been an operating
8 presumption that if there is going to be a
9 regulation of daily fantasy sports that it
10 would be paid for by the operators, which is
11 the case with racing, with everything we do,
12 with the casinos. But we never really
13 discussed that, number one.

14 And related to that is the issue of
15 license fees. In the case of the casinos, as
16 we all know casinos pay \$85 million for their
17 license for the Category 1 and \$25 million for
18 the Category 2. Either one of those, as I say,
19 it is sort of presumed that it'll be paid for
20 -- that any regulation would be paid for by the
21 operators but we haven't been very explicit
22 about that. We haven't talked about license
23 fees or license at all so far.

24 COMMISSIONER CAMERON: I think we

1 intentionally did not talk about licensing
2 because frankly, there is no recommendation to
3 license, because that gets into so many other
4 issues. So, I think using the term license in
5 itself creates -- may be problematic. And we
6 haven't used that term in the report as far as
7 suggesting or recommending that.

8 Certainly, if there are additional
9 regulatory steps, I do believe it would be
10 appropriate to have reasonable costs covered
11 for regulatory efforts as they are with
12 everything, everything in the Commonwealth
13 that's regulated.

14 But I think that would be up to the
15 Legislature to decide if in fact additional
16 regulatory scheme is necessary. And then at
17 that time, it may be appropriate to discuss
18 what that should look like. I think it might
19 be premature to do that now, Mr. Chair.

20 COMMISSIONER ZUNIGA: I do think
21 that in the spirit of the omnibus approach and
22 it is no doubt that it would be a decision of
23 the Legislature to regulate, set amounts, etc.
24 -- to set fees, structures or whatever the case

1 may be.

2 The Legislature ought to be at least
3 reminded of the models that are out there that
4 you alluded to already that may or may not
5 apply given the different circumstances. Sure,
6 the industry is not profitable for example at
7 the beginning, but I might argue that horse
8 racing has not been profitable for many years
9 and there is still takeout on the pari-mutuel
10 handle. And that has perhaps more to do with
11 legacy than actual reality, but there are ways
12 to at least think about a framework for
13 addressing if that was to be a choice of the
14 Legislature, how and whether to assess fees.

15 There's another parallel to be made
16 with the casinos. You mentioned a figure of
17 \$85 million in our case. My understanding of
18 it is that the state in our case is able to
19 command such a figure of an upfront licensing
20 fee because it offers something in return. It
21 offers original monopoly, which is very
22 valuable in the case of a casino.

23 COMMISSIONER CAMERON: You're
24 talking about exclusivity in the region?

1 COMMISSIONER ZUNIGA: Yes,
2 exclusivity in a region. I don't know whether
3 there's parallels here to daily fantasy sports,
4 because first they exist in cyberspace, if you
5 will. And there's too many players but there's
6 many others.

7 Again, in the spirit of an omnibus
8 understanding of the industry and where it may
9 go, where is the next game or the next -- those
10 concerns at least in my view bear mentioning as
11 to what may be existing models.

12 A fee by itself is perhaps missing
13 the point. But a framework that may establish
14 an agency, existing or otherwise, to assess,
15 recover investigatory fees for example, needs
16 to be considered perhaps more than to recover
17 tax revenue which at a minimum should also be
18 at least be envisioned as a possibility.

19 And that's I guess a point I would
20 make or try to insert in the white paper.

21 Again, under the rubric of rather than just
22 fantasy sports, the Legislature ought to be
23 considering the very near future and very
24 speedy way in which something like this could

1 be developed for an online platform.

2 COMMISSIONER STEBBINS: I would
3 agree with the conversations about covering the
4 regulatory costs if and when there should be
5 any.

6 With respect to the license fee to
7 add on to what Commissioner Zuniga said, it
8 wasn't only as a reward for the exclusivity. I
9 think they set that higher target to make sure
10 who we were dealing with were serious
11 contenders. And that we didn't get fly-by-
12 night operations coming in that were willing to
13 kind of drag out the process.

14 That said, I'm not saying that
15 there's a particular dollar amount. I think
16 that's something Legislature thought about when
17 they did the \$85 million or the \$25 million for
18 the slots parlor license. And I would hope
19 they would kind of continue that thought
20 process if they thought about establishing a
21 license fee. Every business in Massachusetts
22 pays some type of license fee or some type of
23 registration fee, but hopefully they would keep
24 that in mind.

1 CHAIRMAN CROSBY: One of the things
2 that the staff has pointed out is that the
3 absence of a license fee -- put it either way,
4 either the absence of a license fee keeps the
5 barriers to bad behavior down or the presence
6 of a license fee raises it.

7 You've got the skin in the game,
8 you're less likely to play fast and loose with
9 the rules. You might lose your license, if you
10 put some real serious skin in the game,
11 whatever that number is. So, staff has pointed
12 out that that's a means of encouraging
13 integrity which is kind of the point you're
14 making. If you've got to put up \$85 million,
15 you're not just a fly-by-night player. And
16 there's some that's comparable here to a
17 certain extent.

18 COMMISSIONER MACDONALD: The only
19 observation that I would make in addition to
20 those that have been made already is that I
21 don't think we ought to be terribly concerned
22 about having as part of the white paper a
23 highly refined proposal with regard to the
24 structure of fees and licensing.

1 That at our forum this was a subject
2 that was not directly addressed. It's clearly
3 one which can be addressed on a going forward
4 basis with the Legislature taking counsel from
5 other bodies and individuals. I would hate to
6 see the timeliness of our product compromised
7 by a desire to cover all the bases that could
8 be imagined as ultimately relevant to a
9 structure for dealing with fantasy sports going
10 forward.

11 And I haven't been involved in any
12 aspect of this in our consideration of the
13 issue of daily fantasy sports but that this is
14 something which -- I'll just repeat myself. I
15 know that there are many people out there --
16 And this is one of the things that was
17 emphasized at our forum. -- around the country
18 who are looking to our take on the subject of
19 daily fantasy sports.

20 That's what the white paper is all
21 about. As anybody who reads the papers can see
22 that there are developments occurring at a
23 lightning pace around the country on this. And
24 we have something to say, and I think we ought

1 to say it without being too concerned about it
2 being a totally, comprehensive refined product.

3 CHAIRMAN CROSBY: I think that's a
4 good point. And I think that fits. And I
5 think Commissioner Zuniga said we ought to at
6 least allude to it. It's an issue there. It's
7 already in a little bit in the staff drafts.
8 So, I think we can clarify that a little bit,
9 said it needs to be attended to. Here's a
10 couple of things to think about and not let it
11 get in our way.

12 The second one that I have talked
13 about with staff, but we haven't talked about
14 with Commissioners is the issue about taxation.
15 Above and beyond a fee and above and beyond
16 operating expenses, a onetime fee and operating
17 expenses is the issue of taxation.

18 It's talked about in other
19 environments. We've not addressed it at all.
20 I think the sense, if I'm remembering this
21 correctly, and Paul tell me if I'm not, but I
22 think when I talked about it with staff, it was
23 everybody's sense that this is, of all the
24 issues, this is really one for the Legislature,

1 number one. So, we maybe want to make a
2 passing reference to it. We're not not aware
3 of it, but it's really not our place to speak
4 to that issue.

5 The second issue that was more my
6 perspective on it is I don't know how you would
7 address the issue. How do you address a tax
8 rate for an industry which is so young that
9 it's still losing money?

10 So, for those two reasons I think at
11 the moment the sense was we would again
12 acknowledge that it's an issue but say we
13 didn't think this was our place to weigh in.
14 Paul is nodding.

15 So, that's where we stand at the
16 moment. We haven't talked about it with the
17 Commissioners.

18 COMMISSIONER ZUNIGA: One way to
19 address it is by taxing the handle. But I
20 agree with everything you say relative to it's
21 obviously the choice of the Legislature.

22 If we did, much like we did on the
23 prior topic, make a reference as to other
24 models existing to consider. One parallel that

1 I've always seen is pari-mutuel betting. The
2 takeout, in that industry, the takeout is
3 indicated by law by the Legislature out of
4 which pays a number of things, all the choice
5 of the Legislature, including the
6 administrative expenses for the operators with
7 some leeway. That's just a model to look to.

8 CHAIRMAN CROSBY: That's been
9 assessed independent of profitability.

10 COMMISSIONER ZUNIGA: Precisely.
11 Again, it comes at a cost. There is an effect
12 in the industry. It's not just free. What
13 that may do to the handle itself may have a
14 repercussion. Again, that's another thing for
15 them to consider. All I'm saying is maybe we
16 just make that kind of reference as one of the
17 models to look at.

18 COMMISSIONER CAMERON: I think staff
19 would tell you that there are pitfalls in
20 making that reference because it is not a
21 similar product.

22 So, I am in total agreement with
23 staff that we stay away from this. It is not
24 ours to decide. I don't think just throwing

1 out another model without thinking about all of
2 the consequences is probably not a smart way to
3 go.

4 I've listened to staff about all of
5 the consequences. If you say it's like this,
6 there are federal implications. So, I just
7 think we're in a better position to present our
8 findings. And that is clearly not one that we
9 are in a position to make or should be, I don't
10 think.

11 CHAIRMAN CROSBY: I don't know.

12 COMMISSIONER ZUNIGA: I don't
13 understand why it's a pitfall.

14 CHAIRMAN CROSBY: The document is
15 replete with ideas. Most of the time we are
16 not taking positions. Sometimes we're sort of
17 making recommendations or sort of indicating
18 leaning towards one solution or another.

19 But we've routinely said these are
20 things to think about. I think just off the
21 top of my head if we're going to make -- We
22 have to just allude to it at some version. If
23 make a passing allusion to it, to raise the
24 issue of a tax on gross, in effect, as similar

1 to the way other gambling has been taxed.

2 Ask Tom Cruise, there's a benefit to
3 getting a percent of gross not a percent of
4 profit that I don't see why that would be a red
5 flag particularly. There may be other models
6 we could refer to, although offhand I don't
7 think of one.

8 COMMISSIONER CAMERON: I think horse
9 racing is an approved, it has been defined as
10 gambling, legal gambling. So, all of those
11 issues are in play here. So, to point to a
12 model and say you can do it like this I think
13 there are implications. I just have always
14 thought that we --

15 CHAIRMAN CROSBY: Are you thinking
16 about PASPA?

17 CHAIRMAN CROSBY: State as well as
18 authorization. There's just a lot of verbiage
19 that can be problematic and really would be up
20 to the Legislature to settle those issues as we
21 pointed out repeatedly in the report. But I
22 don't know that it makes a lot of sense without
23 us thinking a lot about it, which we haven't,
24 and research to just throw in there this could

1 be the way to do this.

2 COMMISSIONER ZUNIGA: Couldn't we
3 just raise that concern if that's a concern? I
4 think being silent maybe worse off.

5 COMMISSIONER CAMERON: We're not
6 silent at all with regard to, look, these are
7 the issues. Federally these are the issues.
8 Statewide these are what the laws say. These
9 are areas in which if you want this to happen
10 things could change.

11 COMMISSIONER ZUNIGA: Does that
12 include taxation?

13 COMMISSIONER CAMERON: Throwing out
14 a model of a legal gambling operation here for
15 decades in the Commonwealth and saying this
16 might be a way, I'm just hesitant to do that.
17 Because first of all, it's not up to us to make
18 taxation decisions.

19 COMMISSIONER ZUNIGA: I'm not
20 suggesting that.

21 COMMISSIONER CAMERON: And secondly,
22 we haven't researched what the implications of
23 just giving one scheme may be. So, those are
24 my hesitations in putting that piece in the

1 report at this late date.

2 COMMISSIONER STEBBINS: On the
3 taxation question, the question I had for staff
4 was I was thinking about the taxation scheme,
5 more about a rate than an actual scheme for
6 collection. And how would our licensees view a
7 taxation rate on essentially another gaming
8 scheme coming into the Commonwealth?

9 When the Legislature looked at the
10 49 percent on gross gaming revenue for the slot
11 parlors and the rate for -- they looked at
12 other jurisdictions, other regions, how can we
13 make them more competitive.

14 So, I'm not necessarily afraid of
15 making some recommendations or where they could
16 look, but I go along with the idea that the
17 taxation issues, I think, are best left to the
18 Legislature. And trying to keep Massachusetts
19 competitive is an environment for where these
20 companies will want to operate.

21 CHAIRMAN CROSBY: It's not like
22 taxing gross gaming revenue is a secret. It's
23 not like the Legislature isn't going to think
24 about it. It's obvious. They did it at

1 length. And as both of you said, they
2 calculate that rate based on other things.

3 They know that in the long run, a
4 business has to do a return on investment. And
5 they calculate all of their expenses. One of
6 their expenses is a tax, if any. One is a
7 capital upfront cost, etc. So, it's not like
8 this is a secret. They understand this fully
9 well.

10 It just seems a little maybe odd to
11 me if we don't allude to it as sort of an
12 interesting principle. It's not just racing.
13 It's also racing and casinos both.

14 COMMISSIONER ZUNIGA: That's it. If
15 there's an issue, if taxation creates an issue,
16 I think that needs to be described. And maybe
17 it is in whatever version we have.

18 All I'm saying is a reference to
19 other models might bear mentioning because one,
20 they exist whether it's exactly the same or not
21 we can acknowledge that obviously. The
22 circumstances given the industry obviously have
23 to be taken into account by someone else, by
24 the Legislature. But we're trying to draw

1 parallels where we can, I think is
2 intellectually relevant.

3 CHAIRMAN CROSBY: We could also in
4 the same way just make a reference to the fact
5 that there is a school of thought, which is a
6 nontrivial one that there shouldn't be any tax
7 rate at this stage of the game beyond the
8 normal taxes because it's too early in the
9 business to have it.

10 So, it would be an even-handed.
11 There is more than one constructive thought
12 that we could put in there that would make sure
13 we weren't overweighing. Paul, did you want to
14 say something?

15 MR. CONNELLY: Sure. I just wanted
16 to give a little bit of sense about how we came
17 to the decision not to really address the
18 taxation issue in the draft of the white paper.

19 As we had thought about it and
20 discussed it, it seemed to us that the issue of
21 taxation was one that clearly was entirely
22 within the purview of the Legislature, in the
23 sense that where we're trying to add our value
24 was to think about daily fantasy sports.

1 Introduce, again reintroduce frankly, the
2 concept of what the industry represents and
3 importantly the public policy issues that its
4 mere existence presents, as well as raise some
5 potential remedies to those public policy
6 issues.

7 So, issues around player fairness
8 and transparency are certainly some that come
9 to mind. And offer up some suggestions that
10 the Legislature could think about in terms of
11 how to address those as well as overall
12 regulatory philosophy.

13 The taxation issue I think was one
14 at least I'll say one of the ways I thought of
15 it, is a bit more to the point the Chairman
16 made up front of form following function. So,
17 if the Legislature decides, whatever type of
18 schema they decide, if any, to impose around
19 fantasy sports, a payment method to support
20 that would follow.

21 So, a light regulatory schema would
22 necessitate one type of payment. A heavy style
23 would necessitate another. And the issue of
24 taxation is one that I think we didn't want to

1 dive into for a number of reasons, not the
2 least of which is the one Commissioner
3 Macdonald brought up, which is I think to
4 pursue that avenue of discussion may never end.

5 But what I heard from you,
6 Commissioner Zuniga, I think just as I think
7 through the thoughts we collected in trying to
8 compose a draft is to point out that this is
9 clearly -- and what we've tried to do
10 throughout the white paper is create places for
11 the Legislature to hang kind of avenues of
12 inquiry.

13 This is another one that obviously
14 taxation is something that needs to be thought
15 about. That's obvious but that there are
16 certain pre-existing models that should be
17 considered that could be referenced without
18 going down that road. Because we didn't really
19 want to get into what is possibly going to be
20 the most contentious area, and one that I don't
21 know if it falls within our core competency in
22 terms of trying to provide thought.

23 But that was the approach that we
24 were taking as we drafted the paper.

1 COMMISSIONER ZUNIGA: I feel we're
2 sort of talking about the same thing and
3 effectively the same mentioning. I agree with
4 all the notions about nobody should ever get
5 close to trying to come up with a rate or a
6 recommendation when it comes to taxation
7 whether it's appropriate or not school of
8 thoughts, etc. withstanding.

9 But my only point is failure to
10 mentioning anything on it might not be, in my
11 opinion, may just leave something out there
12 that obviously needs to be considered by them,
13 by the Legislature no doubt. But simply
14 mentioning what it may mean, why we make no
15 mention of taxation. How we came about. And
16 it could be very much just what you said.

17 Here's all the present issues,
18 player fairness, game dynamics, challenges with
19 Massachusetts versus the rest of the country,
20 whatever, which is why we chose to mention what
21 we chose. But still there's an element that
22 needs to be thought out and there's other
23 models out there I think is all I'm saying.

24 MR. CONNELLY: I completely

1 understand. That's where we are right now with
2 the paper is trying to identify those spots
3 where an educated reader would pick it up and
4 say why does it have all of these things and
5 they didn't consider this?

6 So, again, to the opening of today,
7 these are the types of discussions that we can
8 only have completely in public. It's exactly
9 where we are in the process is trying to close
10 those final holes. I think that may be one,
11 considering what I am hearing, at least the
12 reluctance not to mention it at all may have
13 been a reluctance based on the fact that once
14 you start, you don't know where you end. But I
15 think you're outlining a pretty clear set of
16 boundaries.

17 COMMISSIONER ZUNIGA: An approach
18 that may work. Thank you.

19 CHAIRMAN CROSBY: I don't think we
20 are very far apart. I'll take a crack at a
21 very simple short thing so we make some kind of
22 a passing reference to the existence of the
23 issue, why the Legislature should -- and maybe
24 something about different schools of thought.

1 We've repeatedly said if you decide
2 to do such and such then. And we might also
3 say here, if you decide to consider the issues
4 of taxation, here are a couple of competing
5 schools of thought in a paragraph, basically.
6 Okay.

7 I think that's it for that. Anybody
8 who is watching, we will try to get this out
9 before the end of the week. There's a good
10 chance we won't just the way things go but
11 it'll be the very first of next at the very
12 latest.

13 COMMISSIONER ZUNIGA: I look forward
14 to the final draft or the final product.

15 CHAIRMAN CROSBY: That Executive
16 Director Bedrosian is it for me.

17 MR. BEDROSIAN: Thank you. I think
18 we can now go on to Ms. Blue.

19 MS. BLUE: Thank you. I have HR
20 Director Ms. Banda here. And we are going to
21 talk to you about the hiring policy and then a
22 little discussion about references. So, I'll
23 let Ms. Banda start off and then I want to
24 update the Commission or brief the Commission a

1 little bit on the statutory requirements behind
2 the policy.

3 MS. BANDA: Good morning,
4 Commissioners. Before we have our discussion
5 regarding the references, I thought it would be
6 helpful to discuss our hiring process.

7 In your packet is the MGC hiring
8 policy approved by the Commission in November
9 2014. The purpose of this policy is to ensure
10 a consistent and transparent hiring process.
11 All persons expressing interest in working at
12 the MGC must formally apply through our online
13 applicant tracking system by submitting a cover
14 letter and a resume for a specific position.

15 Candidates who meet the minimum
16 requirements are forwarded to the hiring
17 manager for review. The hiring manager selects
18 a pool of candidates to be considered for two
19 to three-step interview process, which will
20 include human resources, staff and hiring
21 manager.

22 Once the interviews are concluded,
23 the interviewing team deliberates on a
24 candidate or candidates to proceed forward in

1 the process. At this point, if human resources
2 received any recommendations or referrals, that
3 information will be shared with the hiring
4 manager as a factor in the decision-making
5 process.

6 At this point, the hiring manager
7 may request reference checks in advance of
8 extending a conditional offer or extend a
9 conditional offer and conduct reference checks
10 as part of the background check process.

11 That is essentially our hiring
12 process. And before we move on to the next
13 part of our conversation, I think it's
14 important for me to go over a few key terms
15 that I mentioned. One being letter of
16 recommendation. Letter of recommendations for
17 this conversation in general is recommendations
18 are unsolicited and provided by the candidate.

19 Reference checks are a process of
20 validating what the final candidate or
21 candidates said in the interview such as their
22 background, accomplishments, responsibilities,
23 reasons for leaving. All final candidates are
24 required to provide references. They may do so

1 unsolicited upon request by the MGC.

2 Lastly, verification of employment,
3 a process whereby HR contacts the candidate
4 employer for at least the last 10 years to
5 validate employment dates, job titles, reason
6 for leaving and if they left in good standing.

7 So, essentially this is our process.
8 Those are some of the things we'll talk about.
9 And I'd like to turn it over to General Counsel
10 Blue to give you some framework around some of
11 the statutory requirements which allowed us to
12 formulate our hiring policy.

13 COMMISSIONER STEBBINS: Trupti, I
14 have a quick question as it relates to -- I
15 know the base of the reason that we're talking
16 about this item today is around reference
17 checks and recommendations.

18 But going back to the material that
19 you included in the packet, I have a quick
20 question. Under the accepting applications
21 process, and that point is why we would reserve
22 a right not to post a particular opening.

23 CHAIRMAN CROSBY: Not to what? I
24 couldn't hear you.

1 COMMISSIONER STEBBINS: Why we would
2 not -- Why we would reserve a right not to post
3 a particular opening?

4 MS. BANDA: Essentially, all of our
5 positions are posted. In the rare instance
6 where we may have a person in that position who
7 is specifically qualified, has been doing the
8 job and it's a unique circumstance. That would
9 be a one-off why we would not post but in
10 general we would post our positions.

11 COMMISSIONER CAMERON: Trupti, I had
12 a question about the letters of recommendation
13 which I clearly understand are different than
14 references. But those can be opened at the
15 time that you have final candidates, correct?

16 MS. BANDA: Correct. As you can
17 imagine, it's challenging when the reference
18 letters come in. So, our direction to all of
19 our directors and managers and staff are to
20 direct all recommendation letters directly to
21 human resources. It would sit with me as we
22 work through our process.

23 Then through the deliberation period
24 is when we would open up the reference letters.

1 Of course, I would have seen it.

2 COMMISSIONER CAMERON: Through the
3 deliberation period, would you explain? For
4 example, if you have two final candidates that
5 would be the appropriate time to open letters
6 of recommendation.

7 MS. BANDA: Absolutely. And that
8 would be one of the factors that would be
9 considered as part of the decision in hiring.

10 COMMISSIONER CAMERON: Who at that
11 time has access to the information from those
12 letters of recommendation? Say it's down to
13 two candidates, you and who else?

14 COMMISSIONER ZUNIGA: The hiring
15 manager.

16 MS. BANDA: Myself and the hiring
17 manager.

18 CHAIRMAN CROSBY: What is the
19 thought process for not having the hiring
20 manager see those letters before there are
21 finalists? Just hypothetically, if you've got
22 five strong candidates and you're trying to
23 figure out how do you winnow it down to a
24 number to two or three finalists?

1 MS. BLUE: I think if I can speak to
2 that a little bit. There is a statute. The
3 Commonwealth has a statute that addresses this.
4 It's ch. 66 § 3A. And it's a recently enacted
5 statute. And what the statute -- The statute
6 makes a distinction and I think it's important
7 for us to all keep in mind because sometimes
8 we --

9 CHAIRMAN CROSBY: Ch. 66, section?

10 MS. BLUE: § 3A. -- we talk a lot
11 of times about references and recommendations
12 kind of in the same vein, but the statute does
13 view them differently.

14 What the statute says is that
15 recommendations submitted in support of
16 candidates applying for employment with the
17 Commonwealth, so that's recommendations coming
18 in, shall not be considered by the hiring
19 authority until the applicant has met all other
20 qualifications and requirements for the
21 position to be filled.

22 The statute does go on to say though
23 you can check references. So, they view
24 references as something different. There's

1 this statute and then there's a very long
2 ethics advisory opinion that has to do quite a
3 bit more with who can write recommendations and
4 who can't.

5 The section of the ethics advisory
6 on receiving recommendations talks about the
7 fact that a recommendation is generally
8 something that comes unsolicited. It may or
9 may not be from someone who knows the candidate
10 well. It's not something that the hiring
11 agency has asked for. But it is different than
12 a reference.

13 A reference is usually a name and a
14 contact that comes from the candidate and the
15 candidate says you can call and check this.
16 When we drafted our hiring policy, we did that
17 in the context of this statute and also as part
18 of our high performance management team.

19 So, we were trying to have
20 compliance with the statute but also giving our
21 policy and our practice as much flexibility as
22 we could. Our hiring process really requires
23 that a candidate is not fully qualified, if you
24 take that sort of to the logical extent, until

1 they pass the background check because we have
2 a very, very strong background check.

3 Certainly, we would want to see
4 letters of recommendation before we got to that
5 point. But in order to comply with the
6 statute, one of the ways to get those
7 recommendations at the right point in time is
8 when you've narrowed it down to one or two
9 finalists who have otherwise deemed to have
10 been qualified but for the background check by
11 the hiring manager and if there's a hiring
12 group that worked on it by that person.

13 Again, those recommendations are
14 letters that come outside not from the
15 candidate. They are letters that come directly
16 to the agency. They don't have to be letters.
17 They can also be written. They can be oral.
18 They can be emails. The statute doesn't really
19 make any distinction. But that's why we've
20 asked that those kinds of things come to the HR
21 manager who holds them. And then when you get
22 down to the last finalists, then you can give
23 them to the hiring manager to review.

24 COMMISSIONER CAMERON: So, they can

1 be used at that point not at the end of the
2 background, which typically isn't done until --
3 because I would say that they are deemed
4 qualified unless in a background something came
5 out that they were less than honest about
6 something. That changes their kind of
7 prequalification status at that point.

8 My only point was to consider them
9 at the time of you have a couple of finalists,
10 because if you wait until after the background,
11 what good are they?

12 COMMISSIONER ZUNIGA: You don't want
13 to wait until after the person is hired,
14 certainly. It's useless. We always struggle
15 with how many backgrounds do you want to run
16 because it's a cost benefit, right? Not just
17 in actual cost of running the background in
18 terms of hanging people out there for like
19 you're a finalist, you're a finalist then maybe
20 they have other things going because that
21 background check could take a few weeks.

22 I think you're getting to the core
23 of something that I just understood today which
24 is the qualification I always took that to be

1 to do the job regardless of the background.

2 So, you can be qualified, make it
3 through the whole winnowing down, get to three
4 or five, if it's appropriate whatever that may
5 be, see those letters of recommendations that
6 came unsolicited and must be in writing and
7 it's all prescribed. And that could factor
8 into the final decision after which we can do
9 the background because all of our conditional
10 offers are subject to the background check. If
11 there's something that is no good that goes
12 away.

13 But at least we benefit from the
14 intention of that statute, which is you cannot
15 short-circuit anybody just by some -- and jump
16 ahead of the line without having at a minimum
17 met the minimum qualifications. But these
18 letters of recommendation are valuable and we
19 should consider them or the hiring manager
20 should consider them at this stage of the
21 finalists.

22 MS. BANDA: One thing I'd like to
23 also add is if we narrow down a pool to two
24 candidates, we can't run, by law, run a check

1 on both of them and then decide. We have to
2 offer a conditional offer before we can run a
3 background check.

4 COMMISSIONER ZUNIGA: Therefore the
5 qualification should, in my view, exclude the
6 background check.

7 MS. BANDA: That's correct.

8 CHAIRMAN CROSBY: If we're
9 ambivalent about that I think we should ask for
10 an opinion. But I think for the sake of this
11 discussion we should assume that background
12 checks is not part of being qualified under the
13 statute. So, that's out.

14 So, the question is when in the
15 process of assessing candidates -- There's two
16 issues I think that we need to discuss. Should
17 the kinds of letters of recommendation that
18 you're talking about that are unsolicited that
19 come in or emails or whatever and reference
20 checking, not for the background check, but
21 reference checking because in the normal course
22 of hiring most of the time your primary source
23 of data is the person and references.

24 And you call people that they used

1 to work for who know them or whom you know who
2 know them or whatever that's where you get your
3 best information. And I think that it should
4 be up to the hiring manager to be able to do
5 that whenever the hiring manager thinks it's
6 appropriate after they've met the threshold of
7 being in the game.

8 We know where the law came from. It
9 came from the probation scandal. Commissioner
10 McHugh and I were on the Harshbarger committee
11 that did hiring and promotion practices for the
12 judiciary under the direction of the Supreme
13 Court. I think we know what the issues are
14 here.

15 What we don't want is somebody
16 getting somebody to get into consideration that
17 doesn't deserve to be into consideration.
18 That's what I take the intent of the qualified
19 to be. I'm totally clear on that. And I think
20 that's really important.

21 But think about the process you go
22 through. We've got 70 applications. Sixty of
23 them or 55 or them or whatever it was were
24 nowhere close. You couldn't even consider

1 them. They were not credible candidates that
2 fundamentally met the threshold criteria.

3 But from that point forward prior to
4 getting to Ed and Charles, you may well have
5 wanted to and I think you did actually, you
6 were interested, I think, in having the
7 opportunity to call around to a few people and
8 check out some of the others who might have
9 made it to the finalist pool and to see what
10 recommendations.

11 So, my suggestion would be that once
12 people have met the threshold of credible
13 candidate, legitimate credible candidate, met
14 the basic criteria so that it is reasonable to
15 consider them that the hiring manager at that
16 point can use letters of recommendation or
17 proactively make reference calls in the
18 discretion of the hiring manager.

19 MS. BANDA: That's correct.

20 CHAIRMAN CROSBY: But before you
21 were talking only the finalists and I'm talking
22 about before finalists.

23 MS. BANDA: Yes. Once you narrow
24 down the candidates to say you if you have

1 three candidates that you're interested in,
2 possibly considering, you can conduct --

3 CHAIRMAN CROSBY: Pre-finalists.

4 MS. BANDA: Yes. -- you can conduct
5 reference checks on all three. And then based
6 on those findings and identifying the fit based
7 on the background and what the needs are that
8 would be a factor in your decision-making
9 process, yes.

10 MR. BEDROSIAN: So, Mr. Chairman two
11 points. I was told I was up against 70
12 credible candidates.

13 More importantly, I'd want to think
14 maybe a little more about what that subjective
15 qualification is because you want to be
16 consistent. You want to have some guidelines
17 around what a hiring manager should be looking
18 for and those credible standards.

19 I think we trust our hiring
20 managers, and they would do it. But I also
21 think you've learned for the probation, I've
22 learned from the probation. We just want to
23 make sure we are dotting the I's and crossing
24 the T's.

1 CHAIRMAN CROSBY: That would mean we
2 can make a policy decision today when we make
3 it but we'd ask staff to put it into language
4 that gives it some specificity and commonality.

5 MR. BEDROSIAN: And I agree that the
6 background check should act as a disqualifier
7 not a qualifier.

8 COMMISSIONER ZUNIGA: That's a good
9 way to put it.

10 MS. BLUE: I think too,
11 Commissioners, we want to think about not just
12 this particular statute although it does inform
13 what we do, there are general employment law
14 issues as well. So, to the extent from an
15 employment law basis that you are going to go
16 out and check references, not letters of
17 recommendation but references and you were
18 either going to go out and solicit those on
19 your own or check some that you have, we want
20 to be consistent on how people do them, who
21 does it.

22 My recommendation would be that many
23 times that should be handled by HR. There is
24 very interesting employment case law out there

1 about how these things occur. So, consistency
2 is key in terms of how we do it in our policy,
3 but it's also we have to be careful on what
4 kinds of questions we ask, how we ask those
5 questions, how we document the results. So,
6 there's many levels of how this works not just
7 our statutory requirement.

8 COMMISSIONER MACDONALD: Excuse me,
9 Catherine. Can I ask you a point of
10 clarification? Did you say that in the statute
11 that we're dealing with here is that there is
12 not a prohibition on verbal references being
13 considered?

14 MS. BLUE: That's correct. We in
15 our policy have required them to be in writing,
16 but the statute does talk about there can be
17 verbal references and the Ethics Commission's
18 opinion talks about verbal references too.

19 COMMISSIONER MACDONALD: For my
20 benefit, what is the reason that verbal
21 recommendations are not acceptable under our
22 policy?

23 MS. BLUE: Largely because they are
24 hard to document. If at least it's in writing

1 we know who gave us a recommendation. We know
2 exactly what they said. If we are questioned
3 by a particular applicant about that we have
4 something we can respond to. All
5 recommendations that come to us are public
6 records. So, we do have to turn them over if
7 we are asked.

8 So, that's why we prefer to get them
9 in writing. It makes it easier for us to
10 comply with public records law and to be clear
11 about what was provided.

12 COMMISSIONER ZUNIGA: Remember also
13 they also come initially to HR. It's easier to
14 handle them the way we intend to handle them
15 which is to be kept from the hiring manager
16 until after everybody has met the minimum
17 qualifications. So, there's some practical
18 reasons here.

19 It's also very hard to gauge the
20 significance, in my view, this is just my
21 opinion, or warmth of a verbal recommendation.
22 When it's in writing, when somebody whoever
23 that may be sits down and types something up --

24 CHAIRMAN CROSBY: Just to be clear,

1 when we do reference checks --

2 COMMISSIONER ZUNIGA: I'm talking
3 about letters of recommendation.

4 CHAIRMAN CROSBY: I understand. But
5 when we do reference checks, they're oral. And
6 the hiring person doing the interview takes
7 notes.

8 COMMISSIONER ZUNIGA: This is where
9 I think we really need to distinguish them.

10 CHAIRMAN CROSBY: I'm talking about
11 reference, not the background check. The
12 background check, forget that. That's over.
13 We're not talking about that.

14 COMMISSIONER ZUNIGA: I'm talking
15 about letters of reference that come
16 unsolicited.

17 CHAIRMAN CROSBY: You're saying that
18 it should be in writing because only if it's in
19 writing can we really know what's transpired.

20 COMMISSIONER ZUNIGA: Well, we can
21 gauge it better.

22 CHAIRMAN CRSOBY: All I'm saying is
23 that may be right, but I'm just saying as a
24 practical matter if our hiring manager or HR

1 calls somebody in a reference, it's an oral
2 conversation. And we think that's okay. So,
3 I'm not quite sure why we wouldn't think an
4 oral reference would work.

5 COMMISSIONER CAMERON: Because the
6 references have been provided. I'm sure those
7 conversations are then documented. What I
8 don't like about an oral recommendation is in
9 many times it's used for the opposite.

10 They're not courageous enough to put
11 in writing something but they're very
12 courageous to pick up the phone and say don't
13 hire this guy. Let me tell you why. Those are
14 the kinds of things that I think are
15 inappropriate. And I've seen so much of it
16 over the years.

17 So, I like the written record. If
18 you have an opinion, you would be willing to
19 put it in writing, sign your name to that for it
20 to be considered.

21 COMMISSIONER ZUNIGA: Remember the
22 direction that those are going. When we are
23 calling them up, we are initiating it. We have
24 our pen and paper. We have our process when

1 have a consistency approach.

2 When it's coming in the other
3 direction, we don't -- It's anything but
4 consistency almost by definition. So, in my
5 view having that be in writing at least
6 attempts to put some level of consistency as
7 well.

8 COMMISSIONER MACDONALD: Just for my
9 edification, if somebody were to call out of
10 the blue aware that a person was under
11 consideration for a significant position at the
12 agency and says I'm aware that so and so has
13 applied. I've worked with this person for a
14 significant period of time. I don't know
15 whether you're directly involved in the hiring
16 process but I just want you to know that I
17 think the person is terrific blah, blah, blah.
18 Assume that it's all on the level, is that
19 forbidden by our policy?

20 COMMISSIONER ZUNIGA: It depends if
21 you're the hiring manager or not.

22 MS. BLUE: It's not forbidden, but I
23 would say from a purely legal perspective, I
24 would be a little concerned. I would like to

1 ask that person could they put that in writing
2 and send that to the HR department so that we
3 could then consider it in our process.

4 Because I am concerned about the
5 situation, for example, where an applicant
6 doesn't get a job. And the applicant believes
7 that there has been some recommendation good or
8 bad made and that was part of the process. And
9 we can't really document it.

10 So, I would say if we do get an
11 unsolicited call preferably would be would you
12 put that in writing for us so we can consider
13 it as part of our process.

14 CHAIRMAN CROSBY: It seems like
15 that's clear. It's not preferably. The answer
16 to your question I think is under our rule as
17 it stands, you would have to say to that person
18 I can't use what you just said to me in our
19 system. If you'd like to make that
20 recommendation and make sure that it gets to
21 eventually to the hiring manager, put it on
22 paper and send it into our HR department. That
23 would be what you would have to say. That's
24 not an option. That's not you get to consider

1 that. That's what you do.

2 COMMISSIONER MACDONALD: Okay.

3 MR. BEDROSIAN: Mr. Chair, would you
4 like staff given the direction of the
5 Commission to work on a proposed modification?

6 CHAIRMAN CROSBY: Yes. Let me just
7 restate what concerns me and see if everybody
8 agrees with that. I understand obviously that
9 we have to comply with all the laws and so
10 forth and so on. That's clear.

11 But in hiring next to the person,
12 the most important source of data in the
13 decision is other human beings who have had an
14 interaction of one sort or another with that
15 person. And I don't want us to be artificially
16 prescribed or proscribed from getting access to
17 that.

18 Basically, as long as the person has
19 met the threshold, however you end up defining
20 that beyond that threshold qualified, I think
21 the HR and the hiring manager should be free to
22 reach out to whoever they want under whatever
23 the proper rules are and to read recommendation
24 letters whenever in the process they want to

1 after the threshold qualification. Are you
2 agreeing with that?

3 COMMISSIONER ZUNIGA: I think all of
4 that had already been discussed by the high-
5 performance and the policy group. However, it
6 may mean that we can further clarify this one
7 paragraph where we talk about reference and
8 recommendations.

9 CHAIRMAN CROSBY: That's right.
10 This has to be changed for sure.

11 COMMISSIONER ZUNIGA: But for
12 clarification purposes not for substantive in
13 my view.

14 COMMISSIONER CAMERON: Yes. For
15 clarification that you can in fact look at
16 those letters before a background check is
17 completed and an offer of employment.

18 MS. BANDA: Correct.

19 CHAIRMAN CROSBY: It's the way we've
20 ended up interpreting this is the problem, not
21 what necessarily is in here.

22 COMMISSIONER ZUNIGA: Precisely.

23 MR. BEDROSIAN: What our practice is
24 on qualified.

1 CHAIRMAN CROSBY: So, it's a
2 clarification. Let's have a quick break and
3 then will come back to wherever we are on the
4 agenda. Actually, it's 12:00. Where are we?

5 MR. BEDROSIAN: We are on -- Ms.
6 Blue has another matter.

7 CHAIRMAN CROSBY: Do you want to go
8 ahead and get it done? It probably won't take
9 us more than an hour so or do you want to have
10 lunch break?

11 COMMISSIONER CAMERON: I'm thinking
12 run through without the lunch break.

13 CHAIRMAN CROSBY: Let's take a quick
14 break now and then we will come back and try to
15 finish up before lunch.

16
17 (A recess was taken)

18
19 CHAIRMAN CROSBY: We are reconvening
20 public meeting number 174 at 12:05. And we are
21 with General Counsel Blue.

22 MS. BLUE: Commissioners, I have for
23 you today Deputy General Counsel Grossman and
24 Director Bruce Band to talk to you about the

1 variance report. This was something we had our
2 former executive director put together. And I
3 know that you were interested in a report on
4 that. So, Mr. Grossman and Mr. Band will speak
5 to you about that.

6 MR. GROSSMAN: Thank you, and good
7 morning. As you'll recall, the Commission
8 promulgated a regulation that delegated
9 authority to the executive director to grant
10 variances from the internal control regulations
11 for specific reasons. As part of that process
12 though a report was mandated by the executive
13 director to the Commission.

14 It's discussed in § 138.02(6)(a).
15 And it essentially says that the variance shall
16 be identified in the written approval issued by
17 the executive director and a report filed with
18 the Commission that identifies the provision of
19 the regs. that a variance was granted from and
20 provides the general reason the variance was
21 granted.

22 And you'll recall that we included
23 this provision to ensure that the Commission
24 was aware of any variances that were granted

1 because they wouldn't be done in a public
2 setting.

3 So, we have for you today a copy of
4 a report that outlines all of the variances
5 that were granted from the internal control
6 submission presented by Plainridge Park Casino.
7 Essentially, the questions before you revolve
8 around the format and the procedure.

9 So, the two questions essentially
10 are are you comfortable with this format?
11 There are a number of different options.
12 Secondly, how often would you like to see this
13 report?

14 So, as for the format, what you see
15 before you is a report that has two components.
16 The first is a part where we have a grid of all
17 of the variances that were granted and the
18 provisions that were granted a variance from.
19 There's a very basic explanation as to why the
20 variance was granted or not granted for that
21 matter.

22 And then the second part of the
23 report you'll see is a full explanation as to
24 what the request was and why it was granted.

1 And what those explanations are, they are a
2 direct copy and paste from the approval letters
3 that were sent to the licensee.

4 So, the threshold question for me is
5 whether it is of interest to you to see those
6 full explanations as to what the request was
7 and why it was granted. Or are you comfortable
8 with just the grid? And seeing the grid, of
9 course, then you would be able to request to
10 see the letter if that particular variance was
11 of interest to you. That's the first matter
12 that we seek some guidance on as to the format
13 of this report.

14 And secondly, and this is much
15 quicker, is just how often you'd like to see
16 this report. Do you want to see it on an
17 annual basis, biannual or just as the variances
18 are granted from here on out?

19 CHAIRMAN CROSBY: Comments?

20 COMMISSIONER CAMERON: These 13
21 requests occurred over what, a six-month
22 period; is that correct?

23 MR. GROSSMAN: I don't recall
24 exactly the timeframe but most of them have and

1 will in the future I would anticipate occurred
2 during initial submission of the internal
3 controls to the executive director. It's
4 unlikely that there'll be any large changes to
5 these I would imagine, probably a one by one
6 type thing.

7 COMMISSIONER CAMERON: So, the bulk
8 will happen upfront and then there will be an
9 occasional request throughout a timeframe.

10 MR. BAND: And we have gotten
11 occasional requests from Penn.

12 COMMISSIONER CAMERON: It seems to
13 me this is six months, although most of them
14 occurred early. That timeframe is fine.
15 Thirteen is a manageable number. Maybe when we
16 have bigger facilities we could reconsider and
17 do them in a more timely manner because there
18 may be so many more. But for now I think a
19 six-month report like this is certainly
20 appropriate.

21 CHAIRMAN CROSBY: With the
22 additional detail?

23 COMMISSIONER CAMERON: You know
24 what, it's only a nine-page report. I thought

1 it just gave a little more context and was easy
2 to follow. So, I think this is appropriate.

3 COMMISSIONER STEBBINS: I like the
4 summary better than the grid.

5 COMMISSIONER ZUNIGA: I like the
6 summary as well. I am learning some of the
7 nuances still about what's behind the internal
8 controls and the reasons to adjust or not. So,
9 I like when you describe what was requested and
10 when you also describe the solution. It's part
11 of the letter, if it's not that onerous and it
12 doesn't sound as you are pointing out. I would
13 prefer this.

14 COMMISSIONER MACDONALD: What are
15 you referring to is the summary? The summary
16 that's the existing summary here?

17 COMMISSIONER ZUNIGA: Yes. The
18 question was whether we would be satisfied with
19 just the grid or the explanation of each of the
20 items that comes underneath the grid.

21 COMMISSIONER MACDONALD: I would
22 agree on that. I think the grid is actually
23 helpful but that the summary is the crucial
24 part. Do I understand right that if we had a

1 question as to any particular one where there
2 is redactions in almost all these that we would
3 have access to them?

4 MR. BAND: Yes.

5 COMMISSIONER ZUNIGA: We could also
6 get this report outside of -- just be forwarded
7 to us outside of the public -- of the open
8 meeting packet. You will get it unredacted.
9 It's here for illustration purposes on the
10 format.

11 CHAIRMAN CROSBY: So, I think we all
12 agree six months in this format is great. What
13 were the standards that you used for redaction
14 on this? Did you do that?

15 MR. GROSSMAN: Yes. In this case
16 where there was no public record request or
17 anything, anything that had to do with
18 security, surveillance or some of these real
19 internal controls I took out out of an
20 abundance of caution. If there was an actual
21 request for it, we'd have to go back and look
22 at it again under the public records law.

23 MR. BAND: Internal controls
24 basically describes how they do things. And

1 you don't want to make that an open book
2 necessarily in every phase. Everyone would
3 know exactly how they operate on doing certain
4 issues.

5 CHAIRMAN CROSBY: Okay. Anything
6 else on this one? Thank you.

7 COMMISSIONER CAMERON: Thank you.

8 MR. BEDROSIAN: Ms. Wells is next.

9 MS. WELLS: Good afternoon, Mr.
10 Chair and members of the Commission. As a
11 preliminary matter, I'd like to compliment you
12 on your selection of Mr. Bedrosian as the new
13 executive director. I know how lucky I am to
14 have the opportunity to work with him. And I'm
15 really excited. I'm thrilled that he is part
16 of the team now.

17 Before the Commission this afternoon
18 I have two key gaming executive licenses for
19 your consideration. The first was one is for
20 Roberta Gregoire. She in April 2015 was hired
21 to be the compliance manager at Plainridge Park
22 Casino and therefore was required to obtain a
23 key gaming executive license. She is currently
24 there working under a temporary license.

1 She did submit all of the required
2 forms, supplemental document requests to the
3 licensing division and the IEB. And we
4 completed the background check. And I have
5 previously indicated the subject matter for
6 those checks. I won't go over that again.

7 She was interviewed in person by the
8 IEB state police and financial investigators as
9 part of that standard key gaming investigation
10 protocol. And a financial responsibility
11 evaluation was done on her with positive
12 results.

13 She attended Dean College in
14 Franklin, Massachusetts where she was awarded
15 an associates of science degree in business
16 administration in 1992. She also attended
17 Bentley College in Newton, Massachusetts where
18 she was awarded a bachelor of science degree in
19 management in 1999.

20 Prior to her current position at
21 PPC, she held several positions including
22 compliance manager at Scudder, a premier
23 associate at Fleet Bank, a compliance
24 specialist at Loan Snap, an associate financial

1 planner at Connelly and Associates, and a
2 compliance manager at Ameriprise Financial.

3 She disclosed in her questionnaire
4 she had never been licensed in any
5 jurisdictions for any gaming activity. We
6 confirmed that. And generally there were no
7 significant issues uncovered related to her
8 application for licensure.

9 And she demonstrated by clear and
10 convincing evidence that she is suitable for a
11 key gaming employee license -- key gaming
12 executive license by the Commission. And
13 therefore the IEB is recommending that you vote
14 and award her that license.

15 COMMISSIONER STEBBINS: Do you want
16 to do these together?

17 MS. WELLS: I can do both and then
18 you can vote together.

19 The second matter for your
20 considerations for Seth Stratton. In December
21 2014, he was appointed to the position of VP
22 and General Counsel of MGM Springfield. As
23 such, he was required to obtain a key gaming
24 employee executive license by the Mass. Gaming

1 Commission.

2 He was also interviewed, submitted
3 all the forms, completed all necessary
4 requirements as part of the background
5 investigation. He attended Colgate University,
6 was awarded a bachelor's degree in political
7 science graduating in 1998. Further disclosed
8 he attended the University of Massachusetts
9 where he was awarded a master's degree in
10 public affairs in 2001 and then attended
11 Suffolk University School of Law where he was
12 awarded a juris doctorate, graduating in 2004.

13 Prior to his current position, he
14 also held several positions including working
15 at the Mass. State Senate, Mass. Executive
16 Office of Public Safety, Brown Rudnick, LLP,
17 Bingham McCutchen, LLP and Fitzgerald Attorneys
18 at Law.

19 He has never been granted or denied
20 a gaming license in any other jurisdiction. He
21 is new to gaming. He is licensed to practice
22 law in Massachusetts and Connecticut. Both
23 licenses are in good standing and no
24 disciplinary action have been taken. He also

1 has a real estate sales and broker's license in
2 Massachusetts where the investigation confirmed
3 to be active and in good standing.

4 Like Ms. Gregoire, there were no
5 significant issues uncovered related to his
6 application for licensure and demonstrated by
7 clear and convincing evidence his suitability.
8 And therefore, like Ms. Gregoire, the IEB is
9 recommending that the Commission vote to grant
10 him a key gaming executive license.

11 COMMISSIONER STEBBINS: I personally
12 was excited to see two residents of
13 Massachusetts with no previous gaming
14 background being hired for gaming executive
15 positions within this new industry.

16 CHAIRMAN CROSBY: Did you say Seth's
17 application came in September 2014?

18 MS. WELLS: He was hired in 2014.
19 With MGM, he was hired but there really wasn't
20 a gaming establishment. So, I think that's my
21 recollection is when he was hired. He's been
22 there for about a year. And I think he's been
23 working with --

24 CHAIRMAN CROSBY: When did he apply

1 for this form?

2 MS. WELLS: For the license, I don't
3 know when they actually had him submit the
4 forms. It's a little interesting with the
5 regulations as far as us making a determination
6 when they actually need to apply for the
7 license.

8 Because a qualifier for say MGM
9 would have to apply as soon as they're deemed a
10 qualifier. But we didn't want folks, because
11 there is a fee associated with the license, we
12 weren't pushing them to apply for the licenses
13 right away while the gaming establishment
14 really wasn't up and running.

15 But it got to the point where he was
16 doing enough work, there was enough contact
17 that we thought it's now appropriate to start
18 having those folks require them to submit for
19 licensure. That was more of a policy
20 discussion.

21 CHAIRMAN CROSBY: That's something
22 we probably ought to hear about, think about
23 because it's going to happen in spades coming
24 up. It sounds like you're just kind of working

1 on when's the right time.

2 MS. WELLS: Yes, kind of that
3 reasonable balance where because there's a fee
4 and because there's a process, we're trying to
5 figure out the right time.

6 Initially, we didn't want to push
7 too early because they'd have to be up for a
8 renewal when the casino was opening. So, this
9 a good time. But I can certainly bring that
10 before the Commission.

11 COMMISSIONER CAMERON: Would the
12 fact that if the person is hired to just do
13 initial work and there is no intent for them to
14 work at the gaming establishment be one of the
15 factors rather than someone who in this case,
16 General Counsel with all intent to be part of
17 that gaming establishment team, executive team.

18 MS. WELLS: That would also be
19 whether they are required not to have a
20 license. There's two issues, one are they
21 required to have that key gaming and then when
22 do we do that. So, the when has been a little
23 tricky because under the law they're employees
24 of the gaming establishment and there's no

1 building yet. So, that's where it's a little
2 tricky.

3 COMMISSIONER CAMERON: I would think
4 sooner rather than later because if there is an
5 issue.

6 CHAIRMAN CROSBY: That's what I was
7 going to say. There's an optics problem if
8 something goes wrong and we haven't got around
9 to it yet. I understand there's issues. Amy,
10 would you make sure, I don't see Janice, but
11 that that goes onto the pending list for issues
12 that we ought to have on the agenda at some
13 point.

14 COMMISSIONER ZUNIGA: I thought you
15 were also asking about how long it takes us.

16 CHAIRMAN CROSBY: Yes. That's where
17 I started.

18 COMMISSIONER ZUNIGA: I'm still
19 curious about that and you can tell me later.

20 MS. WELLS: I'd have to check on
21 this. I just don't know the date that that
22 came in. There's been a lot of prioritization
23 within the IEB. So, someone who is looking --
24 For example, temp. licenses, we're looking to

1 get them hired. They're up and running, the
2 folks at Penn. Those have got a higher level
3 of priority because we wanted to get people to
4 work. Because he already had a temp. license,
5 finishing the investigation had less of a
6 priority than the folks that needed to get into
7 their positions and get to work. So, that's
8 part of it.

9 COMMISSIONER ZUNIGA: I understand
10 that. But I look forward to whenever you can
11 ascertain in general average or whatever
12 standard deviation we have just roughly how
13 long it takes us to process this.

14 MS. WELLS: That's fine.

15 CHAIRMAN CROSBY: Okay. Should we
16 vote?

17 MS. WELLS: You have to vote.

18 COMMISSIONER STEBBINS: Mr. Chair,
19 I'd move that the Commission approve the key
20 gaming executive licenses for Roberta Gregoire
21 at Plainridge Park and Seth Stratton with MGM
22 Springfield.

23 CHAIRMAN CROSBY: Second?

24 COMMISSIONER MACDONALD: Second.

1 CHAIRMAN CROSBY: Commissioner
2 Macdonald seconded. Further discussion? All
3 in favor, aye.

4 COMMISSIONER MACDONALD: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? The ayes
9 have it unanimously.

10 COMMISSIONER CAMERON: Thank you,
11 Director.

12 CHAIRMAN CROSBY: All right.
13 Director Vander Linden, item number six.

14 MS. BLUE: So, Commissioners, I
15 thought I would kick this off before we have
16 our other fellow colleagues present.

17 We are here today to get some
18 guidance from you about an interpretation of
19 our regulation. It's 205 CMR 133. There is a
20 provision in it. It's § 7 under I think
21 133.06. And it talks about what happens when
22 someone on the voluntary self-exclusion list
23 goes into a casino and then gambles and then is
24 asked to leave.

1 There's been a situation, and we're
2 not going to discuss this particular situation
3 today, but to put it into context, where
4 someone on the list goes into a casino. They
5 put money in the machine. They they're
6 escorted out. What happens to that money?

7 There's a ticket obviously that
8 references what went in. How do we
9 characterize that? Our section of our
10 regulation attempts to do that. We obviously
11 talked a little bit about our regulation in
12 general, but we never talked about this
13 specific section and how that would impact
14 someone who was on the voluntary self-exclusion
15 list.

16 So, we have today to discuss this
17 with you. We have Director Vander Linden who
18 can talk about what his thoughts on the
19 interpretation and what he's seen in other
20 jurisdictions.

21 We have Deputy General Counsel
22 Grossman who helped write the regulation at the
23 time. We also have Director Bruce Band who can
24 also tell you about how it's enforced here and

1 also in other places where they've been.

2 So, we are looking forward to your
3 guidance on whether we think there should be a
4 clarification or a change. Whether our
5 interpretation makes sense or what else we
6 might need to do.

7 MR. VANDER LINDEN: Good afternoon,
8 Mr. Chairman and Commissioners. This is
9 actually a very interesting issue and one that
10 I'm anxious to discuss with you and get your
11 feedback on.

12 In terms of taking a look at what is
13 happening in other jurisdictions, how do other
14 jurisdiction manage when a voluntary --

15 CHAIRMAN CROSBY: Mark excuse me.
16 Was it made clear exactly the fact pattern here
17 that we're talking about? I didn't hear you
18 say --

19 MS. BLUE: Let me clarify so we are
20 all on the same fact pattern. This is the
21 fact pattern. A person who is on the voluntary
22 self-exclusion list and has entered into a
23 voluntary self-exclusion agreement goes into a
24 casino. And they begin to gamble. They put

1 some money in a slot machine. Or they put
2 money into a table game, but it becomes more of
3 an issue with a slot machine.

4 At that point, they are recognized
5 as someone who is on the list. And they're
6 asked to leave, because under our regulations
7 the casino has to require them to leave. So,
8 they're escorted off the premises.

9 Our regulation says that you can't
10 keep your winnings and you can't recoup your
11 losses but it's oftentimes not quite that
12 clear. So, what about money that was put in
13 the slot machine but you haven't quite pressed
14 the button yet.

15 CHAIRMAN CROSBY: You haven't lost
16 it yet. In other words, you put in a \$10 bill.
17 And before you push the button, you're
18 identified and you're asked to leave. You're
19 \$10 is still in there. There's a voucher that
20 will verify that. Do you get your \$10 back or
21 not? That is the presenting issue here.

22 MS. BLUE: We have interpreted that
23 under our current regulation to mean you can't
24 get that money back. So, the question really

1 is is that a fair interpretation? We did not
2 discuss it when we enacted the reg. So, we
3 want some guidance on how we should proceed
4 with that.

5 CHAIRMAN CROSBY: Okay, good. So,
6 go ahead, Mark.

7 MR. VANDER LINDEN: If I may, it
8 further states within our regulation that
9 winnings including jackpot winnings, chips,
10 tokens, machine credits, ticket vouchers, or
11 any other form of winning whether in the
12 individual's possession or control while on the
13 premise of a gaming establishment or presented
14 for payment that that would be confiscated and
15 transferred to the gaming revenue fund within
16 45 days.

17 I think that as the regulation was
18 written that that situation specifically is
19 addressed. But the question is whether or not
20 that's the intent of the Commission.

21 We took a close look at what other
22 jurisdictions are doing. We took a look at
23 nine different jurisdictions. Six of the nine
24 have a regulation that's very similar to what

1 our Commission has and is addressing it that
2 way. Three of them -- Actually, two of them
3 state specifically what they'll confiscate
4 really is only the winnings of the individual
5 but that the tickets, chips would be cashed in
6 before the person would be escorted or cited
7 for trespassing.

8 New Jersey, the third, is somewhat
9 unclear of what it is that they do or how they
10 manage that situation.

11 MR. BAND: I can address that. They
12 take all chips, vouchers or anything that the
13 person has visible on the person. They won't
14 go into their pockets or anything.

15 MR. VANDER LINDEN: So, it would
16 actually be similar to the way that it's
17 written in Massachusetts.

18 CHAIRMAN CROSBY: I don't agree with
19 your reading of this document. So, let's not
20 make it about what the reg. says. Let's make
21 it about the actual activity.

22 So., are you saying that in six of
23 the nine jurisdictions --

24 COMMISSIONER ZUNIGA: Seven.

1 CHAIRMAN CROSBY: -- seven of the
2 nine jurisdictions that in our fact pattern,
3 our case in point you put in \$10, you haven't
4 pushed any buttons yet, you get recognized and
5 you're escorted out, in seven of them they
6 would keep the \$10?

7 MR. VANDER LINDEN: Correct.

8 COMMISSIONER ZUNIGA: For the
9 record, I do agree with the read of the
10 regulation.

11 COMMISSIONER MACDONALD: You agree
12 with what?

13 COMMISSIONER ZUNIGA: We may have a
14 split direction over here.

15 COMMISSIONER MACDONALD: You do or
16 do not?

17 COMMISSIONER ZUNIGA: I do agree
18 with the way the regulation is written and has
19 been interpreted. Now whether that was the
20 intention, we can discuss about it but I'm just
21 setting the stage for what may be a healthy
22 discussion on the approach here.

23 CHAIRMAN CROSBY: We can clarify the
24 reg. to make sure it says what we want. We

1 need to figure out what we want it to say. And
2 that's what we're differing on.

3 I just want to make sure we're
4 talking about this fact pattern not debating
5 what this says because it doesn't matter. We
6 need to understand what we mean to have happen
7 under this fact pattern. Then we'll make sure
8 the language says that.

9 MR. VANDER LINDEN: To shift gears a
10 little bit and how I'd want to address this
11 issue is was that the intent. I support the
12 regulation.

13 And I go back to as Todd and I were
14 talking about it when we were drafting it and
15 even further back into the responsible gaming
16 framework. I recall when we were talking about
17 developing this regulation, we didn't want this
18 to be punitive.

19 A person who signs up for the
20 voluntary self-exclusion program is taking an
21 active step in addressing a problem that they
22 have. And that should be celebrated. We
23 should recognize that that's a significant
24 action by this person who has a problem with

1 gambling.

2 And we address that mostly in what
3 should we do if they're discovered on the
4 floor? Should they be escorted off? Should
5 they be cited for trespassing? Some states
6 cite the individual for trespassing. And we
7 decided no. We don't want to do this. we
8 don't want it to be a penalty.

9 I see this as a different type of
10 issue. What I'm looking at is how can we make
11 this as clear as possible to the individuals
12 that are coming onto this list of what will
13 happen should you violate this voluntary self-
14 exclusion agreement. It's an agreement that
15 they enter into. And there's a large amount of
16 responsibility for the individual to adhere to
17 that part of their agreement of this voluntary
18 self-exclusion agreement.

19 So, when a person violates certainly
20 there is a responsibility of our operators to
21 enforce it as we've outlined in the regulation,
22 but there is also a burden of responsibility, a
23 large burden of responsibility on the
24 individual who has signed up and entered into

1 that agreement.

2 COMMISSIONER CAMERON: I certainly
3 support the regulation. When we talked
4 punitive, we were absolutely talking about not
5 arresting the person for trespass, which I
6 wholeheartedly agreed with. What's important
7 to me, and I had this discussion, was how are
8 our GameSense advisors advising the person so
9 they clearly know what they are signing up for.

10 They will clearly know, look, you
11 won't be arrested but you will be escorted out
12 and there will be no return of funds. That's
13 part of the message, right -- that they want --
14 They recognize an issue. They want to be self-
15 excluded. Giving the money back I think sends
16 the wrong message to the person who has
17 admitted a problem.

18 But what is really important to me
19 is all of those things are explained clearly to
20 the individual. And when they sign, they know
21 exactly what they signed up for. That's the
22 piece I think that would be important to me.
23 That that person clearly knows no money back.

24 It doesn't matter if you just put it

1 in or you've already gambled a couple of times
2 on the machine, none of that matters. You will
3 not receive any money back because you've said
4 you have a problem and you want to self-
5 exclude. These are the rules. So, that's the
6 piece I think I would I want to know if in fact
7 we are being very clear about what we're
8 saying.

9 COMMISSIONER ZUNIGA: What is in the
10 form on that note?

11 CHAIRMAN CROSBY: Do you know at
12 this point?

13 MR. VANDER LINDEN: I do. And to
14 that fact, I think that we should revisit this.
15 In fact, we are redrafting that part of the
16 self-exclusion agreement.

17 We worked with our GameSense
18 advisors and the staff at the Mass. Council on
19 Compulsive Gambling, our gaming agents, anybody
20 who is what we call a designated agent in order
21 to administer a voluntary self-exclusion
22 agreement to do it in a very specific manner
23 and method. Given that I think that there is
24 some room for improvement here.

1 The piece of the terms and
2 conditions that specifically addresses this
3 part of the regulation, the individual needs to
4 initial that they understand that. It states
5 that I understand that I may not collect any
6 winnings or recover any losses resulting from
7 any gaming activity at the gaming establishment
8 for the duration of the exclusion period.

9 That's it.

10 It doesn't explicitly state what is
11 in the regulation, but our regulation considers
12 winnings as I interpret it and General Counsel
13 Blue and Counsel Grossman may have different
14 interpretations as well, but I interpret
15 winnings as a jackpot winnings including chips,
16 tokens, machine credits, ticket vouchers and
17 any other form.

18 CHAIRMAN CROSBY: Even on the
19 Commission, we don't interpret the term
20 winnings the same way. So, it's clear that
21 there can't possibly be a consensus when even
22 we don't agree on it.

23 Once we determine what we do want to
24 do in this specific case, not this individual

1 but this particular kind of a fact pattern then
2 you can write the GameSense advisor -- because
3 I certainly agree whatever we come up with,
4 particularly if we support your present
5 interpretation, I agree with Commissioner
6 Cameron that making sure that the person has
7 heard what the consequences are is critical.

8 COMMISSIONER MACDONALD: I'm having
9 a difficult --

10 COMMISSIONER ZUNIGA: Isn't there
11 also a question of what constitutes a wager?
12 Because there's language in regulations -- or a
13 bet. Doesn't that operate here as well?

14 MR. BAND: And I think it does as to
15 what works on a slot wager. Because if you put
16 \$1200 in a slot machine and cash out that
17 ticket, the IRS counts that all as winnings and
18 you have to pay withholding on that.

19 COMMISSIONER ZUNIGA: Yes.

20 CHAIRMAN CROSBY: If you put in
21 \$1200, don't bet anything, you just cash out
22 without betting, the IRS interprets that --

23 MR. BAND: Yes. The way they've
24 interpreted it for slot machines. We've gone

1 back and forth on this.

2 CHAIRMAN CROSBY: Even if you can
3 document that that's what happened?

4 MR. BAND: We had a patron do that.

5 CHAIRMAN CROSBY: I can't believe
6 that's true.

7 MR. BAND: I am not in disagreement
8 with you but that's the way it was interpreted.

9 CHAIRMAN CROSBY: I can imagine that
10 if you can't document that that's the case that
11 you might be required to pay taxes on it. But
12 if you can document it.

13 MS. BLUE: I think from the
14 perspective of the IRS rules, when you go to
15 the window with that ticket, they're going to
16 report it. What happens when you get to the
17 IRS may be a different story.

18 CHAIRMAN CROSBY: That's different.
19 That's totally different. That's not what
20 Bruce said though. What Bruce said is the IRS
21 makes you pay on that if documented.

22 MR. BAND: And that's what happened
23 in this one instance. I don't know what's
24 happened since then.

1 COMMISSIONER CAMERON: You can
2 probably appeal it.

3 CHAIRMAN CROSBY: I can accept that
4 as a principle in IRS law.

5 COMMISSIONER MACDONALD: I'm having
6 a difficult time reconciling the text of the
7 regulation with the hypothetical. Somebody
8 putting \$10 in a slot machine, doesn't play and
9 then gets identified and is escorted out.

10 The oldest most prevalent rules of
11 construction in the law is the plain meaning
12 rule. A gaming licensee shall not pay any
13 winnings derived from gaming to an individual
14 who is prohibited from gaming. And then the
15 rest of it goes on to repeatedly describe or
16 use the term winnings including jackpot
17 winnings, chips, tokens, machine credits, but
18 machine credits are part of winnings, ticket
19 vouchers or any other form of winnings.

20 How could the \$10 that is put into
21 the slot machine be considered winnings if no
22 gaming has occurred?

23 COMMISSIONER ZUNIGA: That's a good
24 question but I think I have a more likely

1 scenario, which presents a pragmatic
2 difficulty. May I? That's a very relevant
3 question that I don't know can be answered
4 necessarily or I look forward to that.

5 But the more likely scenario is when
6 somebody puts in \$10 and plays --

7 CHAIRMAN CROSBY: But we're not
8 talking about that. This gets confusing. If
9 you want to talk about that we can. But we
10 have to figure out this particular fact
11 pattern.

12 If you bet and you lose your 10, you
13 win your 10, you 15, you lose 30 and you've got
14 10 left after you've gone through all that
15 that's a different situation. We can talk
16 about that if you want, but that's not what
17 we're talking about right now.

18 And we aren't really talking about a
19 definition of winnings because I happen to
20 agree with you. Commissioner Zuniga disagrees.
21 So, it doesn't matter. We don't have to debate
22 what this says. We have to debate what we want
23 it to say and then we will make sure that it
24 says that.

1 So, let's go back to the specifics.
2 We're dealing with this because it happened.
3 It actually happened. It's not going to happen
4 very often. It's a weird case.

5 MR. BAND: Just as a heads-up, I
6 have another one on my desk as we speak.

7 COMMISSIONER MACDONALD: Timely
8 consideration.

9 CHAIRMAN CROSBY: The situation that
10 you're describing is different and worth
11 discussing and making sure we agree on that,
12 but it's a different situation. We do have to
13 come up with a policy for this fact pattern.

14 COMMISSIONER ZUNIGA: I don't see
15 that different. I understand you see a big
16 difference, but if you're on the self-exclusion
17 list and you're already in the casino and
18 you've inserted \$10 and in your example you
19 have not done any gaming, I might argue are you
20 defeating already the purpose? Are you already
21 engaging in the activity that you yourself
22 thought you were excluding yourself? Has it
23 constituted a wager yet, good question. Maybe
24 we can help define it. Do we need to clarify

1 that on the form?

2 CHAIRMAN CROSBY: No. We need to
3 decide whether we think that person should get
4 the \$10 back or not. That's all we have to
5 decide.

6 COMMISSIONER ZUNIGA: Okay.

7 COMMISSIONER MACDONALD: If the
8 person doesn't get it back, then I would say we
9 have to amend this because winnings are
10 winnings.

11 CHAIRMAN CROSBY: We'll get to that.

12 MR. BAND: I don't want to muddy
13 this up a little bit but the one instance when
14 somebody put a certain dollar amount in, play a
15 little bit but to what that individual said
16 didn't lose it all. So, do you take the whole
17 thing there? That's an issue as well.

18 CHAIRMAN CROSBY: That's true. We
19 have a question in front of us where we do know
20 the facts. Apparently, there's another one.
21 In the next section down, we talk about where
22 it's reasonably possible the losings will get
23 collected and paid back to the gaming fund,
24 paid back to us.

1 So, there are situations where we
2 know you can go in and try to figure what
3 happened. But again that's Commissioner
4 Zuniga's issue. And that is a different issue
5 from one where the facts are known. They did
6 not gamble.

7 In some people's minds they haven't
8 yet lost that. It's certainly not a winning in
9 some people's minds. It sounds like you think
10 for various reasons once you put the money in,
11 you've broken your pledge not to gamble and you
12 should be penalized for it.

13 You lose your 10 bucks whether you
14 gamble or not. That's a legitimate point of
15 view, but that is the issue. We need to figure
16 out where the five of us come down on that
17 question.

18 COMMISSIONER ZUNIGA: Let me take
19 the known gaming scenario putting the \$10 in,
20 so it's not \$1200, and cashing it out is going
21 to require at least currently for me to go to
22 the window because I can only cash it in the
23 window. And it's going to require the licensee
24 to see among other things like whether they owe

1 taxes to the state whether they are also
2 indicating in the self-exclusion list. And at
3 that juncture, they are --

4 CHAIRMAN CROSBY: No, no. In this
5 fact pattern --

6 COMMISSIONER ZUNIGA: Bear with me.
7 Just inserting and cashing out without IRS
8 disclosure, currently, correct me if I'm wrong,
9 the licensee has to run --

10 MR. BAND: They could go to an
11 automatic redemption machine, one of the
12 voucher machines.

13 COMMISSIONER ZUNIGA: And what would
14 the automatic redemption do?

15 MR. BAND: You would stick that in.
16 You would get your \$10 back.

17 COMMISSIONER ZUNIGA: Does that
18 machine check against self-exclusion?

19 MR. BAND: It wouldn't at that
20 point. What would check against self-exclusion
21 is if that player played with the players card
22 and that would send up a signal that way.

23 MR. GROSSMAN: Which you can't do
24 because if you're on the list your players card

1 privileges are terminated. You wouldn't know
2 who they are.

3 MR. BAND: As far as investigating
4 this, I think with the current technology and
5 everything you could get some idea of loss by
6 investigating it through camera coverage. And
7 even though they don't have a card in the
8 machine, you know what times they are playing.
9 You can go to ACSC and see what the machine
10 says is wagered, lost and so on. It's a lot of
11 work.

12 CHAIRMAN CROSBY: That's a different
13 fact pattern.

14 COMMISSIONER ZUNIGA: Besides the
15 kiosk, the redemption kiosk, my understanding
16 was that agents before they pay out tickets run
17 through the self-exclusion list.

18 MR. GROSSMAN: For under \$1200, if I
19 understand it, you just hand them the ticket
20 and they give you the cash. They don't check
21 ID or anything like that.

22 MR. BAND: If you go where you have
23 to file and kind of paperwork --

24 COMMISSIONER ZUNIGA: Until the

1 \$1200?

2 MR. BAND: Yes.

3 MR. GROSSMAN: They don't even know
4 who you are. But to that point and before
5 Commissioner Zuniga and Commissioner Cameron
6 draw your conclusions, I'd like to just outline
7 the other side of the story if I may to
8 Commissioner Macdonald's point initially.

9 And I appreciate the opportunity to
10 present the other side of the story here. And
11 as we do have a real live situation, it became
12 very real for us. And we went through this
13 whole thing when we drafted the regulation.
14 And as Mark said, I don't think we ever really
15 spent a lot of time contemplating what it meant
16 to define winnings. I think we did it very
17 imprecisely at that.

18 And before I go any further, I just
19 wanted thing Jim Baldacci (PHONETIC) from Penn
20 National Gaming who actually conducted the
21 survey of some of their properties to find out
22 for us how this issue is handled in the other
23 jurisdictions.

24 And what we saw as we looked at some

1 of the regulations is most of the other states
2 just say that someone on the list can't collect
3 winnings. But it doesn't really define what a
4 winning is or is not. So, it was important for
5 us to find out what the practice was.

6 What we found out, as Mark
7 discussed, is that though the vast majority of
8 jurisdictions do take your money from you if
9 you are on the list, there are two that allow a
10 person who is on the list to cash out assuming
11 that it's not actual winnings, meaning it's not
12 a jackpot where the machine froze up and now we
13 know that's winnings. Or presumably if you're
14 at a blackjack table or what have you and they
15 see that you just won a hand or you're at the
16 craps table and you just won actual money. Now
17 that's winnings.

18 But otherwise what we have is just
19 as you said, it's just money you stuck in the
20 machine. It's not winnings under any plain
21 reading definition of it.

22 But to me, when I think about this
23 issue I like to start at the very beginning --
24 With your indulgence, I'll just go back really

1 quickly to that. -- and think about why it is
2 that we have a voluntary self-exclusion list to
3 begin with and what its purpose is.

4 When you distill this issue to its
5 very essence, I believe what you're left with
6 is that we, the Commission, has developed a
7 number of tools in the tool shed to allow
8 people to help themselves, people who are
9 suffering from some type of disorder or
10 prospective disorder or they have a gambling
11 problem or some moral objection to gambling
12 whatsoever.

13 But the bottom line is in our shed
14 we've provided people with a number of tools.
15 We have the voluntary self-exclusion list. We
16 have play management. We have GameSense. And
17 the common thread amongst all of these tools is
18 that they are designed to help people, bottom
19 line. They're not designed to be punitive in
20 any way, shape or form.

21 So, the question is here are we
22 being consistent with that theme when we talk
23 about taking people's money because they are
24 caught in a casino and there's money stuck in a

1 machine. And my position is that it's just not
2 fair and it's not winnings and it's not the way
3 it should be done.

4 The way that we should consider
5 doing it is the way that these other two
6 jurisdictions do it apparently, which is that
7 they find you on the list. They tell you to
8 cash your ticket, cash your chips and skip
9 town. That is the fairest way to deal with it.

10 It serves the therapeutic intent of
11 this particular rule. I think it's a mistake
12 to think that you are really deterring people
13 by telling them that if you come in here we're
14 going to keep your money. I don't think
15 there's any empirical or clinical evidence or
16 data that supports that conclusion. I think
17 it's just wrong and it's unfair.

18 You can hear about all kinds of
19 anecdotes about how someone may keep coming
20 back in and keep coming back in but my answer
21 that is so what. We're here to help people.
22 These are not criminals. These are not bad
23 people. These are people, as Mark stated, who
24 took the step of recognizing an issue and

1 voluntarily placed their name on this list.

2 So, I say so what if they keep
3 coming back in here. We're trying to help them
4 help themselves. And as part of addiction, as
5 part of disorders and this type of issue, we
6 have to remember that there are relapses that
7 happen. Oftentimes, there are multiple
8 attempts that an individual has to undertake
9 before they are able to fully combat whatever
10 issue they are facing.

11 And for us to take someone's money
12 just seems like it leads to the wrong result
13 unless we can be certain that they're actual
14 winnings.

15 COMMISSIONER ZUNIGA: That's the
16 key.

17 MR. GROSSMAN: If they're actual
18 winnings, I agree 100 percent that we take it.

19 COMMISSIONER ZUNIGA: How would you
20 go about determining whether somebody's credits
21 are winnings or purely credit?

22 MR. GROSSMAN: That's another great
23 point. And I will just represent the Penn
24 National Gaming position on this, which I

1 suspect is similar to some of the others. And
2 I think it's in some respects similar to ours,
3 which is I don't think and they don't think
4 it's really beneficial to engage in any type of
5 forensic investigation as to whether a person
6 is up or down or whatever.

7 So, I think the burden should be on
8 us or the agent at the casino to know for sure
9 that the monies at issue are winnings. That
10 means that a jackpot was hit on the machine.
11 Clearly, those are winnings. Or a dealer or
12 agent or someone else saw a person win a hand
13 at blackjack or a bet at craps or what have
14 you. But at the end of the day, I'm suggesting
15 we come up with a more precise definition of
16 what a winning is.

17 But in any event the burden is on
18 us, not on the person. The presumption should
19 be that the money are not winnings and that
20 they should get the money back. Again, I think
21 it's very important to keep in mind these
22 people did not do anything wrong. They are not
23 criminals. They are trying to help themselves.
24 So, why is it important for us to come in and

1 take people's money.

2 COMMISSIONER CAMERON: You've made
3 your point.

4 COMMISSIONER STEBBINS: You come
5 back to the notion they haven't done anything
6 wrong. Haven't they necessarily entered into a
7 contract with us and our licensee not to be on
8 site?

9 MR. GROSSMAN: If you want to get
10 into a legal discussion, perhaps there's a
11 valid contract but that misses the point. The
12 point is we're trying to help people here.

13 COMMISSIONER CAMERON: But you're
14 assuming that giving the money back helps them.
15 I would take the opposite viewpoint that it's
16 not punitive. You understood the rules clearly
17 and giving the money back is like I get my
18 money back. I can try this again. Where if
19 you get no money back, you understand clearly
20 those are the rules and I think that's a better
21 way to help someone.

22 MR. GROSSMAN: You are imputing
23 rational, non-addictive thinking to a situation
24 where someone is suffering from some type of

1 issue. And it's not a fair leap, I don't
2 think. I think people who suffer from these
3 issues don't always put that --

4 CHAIRMAN CROSBY: Todd, excuse me.
5 You've taken this, and I've been trying to get
6 everybody to stick with the fact pattern.
7 You've taken this to a new level, which is that
8 they should be to take their voucher and cash
9 it out and go.

10 MR. GROSSMAN: Yes.

11 CHAIRMAN CROSBY: And not to worry
12 about whether there may be some kind of winning
13 or it was their original cash, not to worry
14 about it. So, to our fact pattern, very
15 narrow, you put in \$10. You haven't gambled at
16 all. Your answer is that person should be able
17 to get his \$10 back.

18 MR. GROSSMAN: Absolutely.

19 CHAIRMAN CROSBY: That's fine. We
20 got it. Your larger view is interesting about
21 gambling and stuff and about addiction. And I
22 sympathize with you too. That's why I feel
23 like in our narrow fact pattern, it's a penalty
24 to take that money away. If it's uncertain, if

1 you've gone like this and you can't tell, no
2 reasonable person can figure out do you still
3 have money left in, it's gone. That's the
4 chance you take.

5 To me that's straightforward in
6 Commissioner Zuniga's case. But where you can
7 document that the money has not been lost,
8 that's still that person's money and it
9 effectively is a fine if you take that money.
10 And that's a step we would not want to take.

11 MR. BAND: I look at more not as a
12 penalty but as a deterrent. If we have a
13 person that's on the list caught gambling on
14 the floor, we would go after the casino and
15 penalize them. Just about every state does
16 that. It's a little unfair to put them where
17 they're getting financially hit on this when
18 there is no repercussion at all for the player
19 to go as many times as they want.

20 CHAIRMAN CROSBY: That's not right,
21 Bruce. They lose everything. If they sin,
22 they lose. If you can't tell what they've
23 done, they lose.

24 MR. BAND: That's what I'm saying.

1 If we make it where we just give them back
2 everything that they have, there is no
3 deterrent --

4 CHAIRMAN CROSBY: What do you mean
5 give them back everything?

6 MR. BAND: Let's say they have a
7 voucher and some chips from the table we let
8 them go cash out and leave.

9 CHAIRMAN CROSBY: But that's not
10 what we're talking about.

11 MR. BAND: That's what Todd was
12 talking about.

13 CHAIRMAN CROSBY: We're trying not
14 to go there. We have to determine this
15 specific issue.

16 COMMISSIONER CAMERON: In this
17 particular case, I think we all understand the
18 facts. I come down on the side, I agree with
19 Mark that you know what, once you enter into
20 the contract you clearly understand the rules.
21 You enter the facility, you've violated the
22 contract already, never mind putting money in
23 the machine.

24 So, I am coming down in favor of

1 clearly educating people that these are the
2 rules, and you signed up for those rules. And
3 I think it keeps it clean. And people realize
4 if you break your contract you come in, you put
5 in money, you lose that money and you're
6 escorted out. That's how I think is the best
7 way to help the person.

8 CHAIRMAN CROSBY: So, Commissioner
9 Cameron for good reason is in favor of in this
10 fact pattern once it's been clear, this may not
11 apply to the particular person in the case, but
12 going forward as long as it's absolutely clear
13 that this is what's intended that in our fact
14 pattern the \$10 would be lost, would not be
15 returned.

16 Just so we can get this behind us
17 and then move on let's see if we're at a point,
18 sort of like a straw poll.

19 COMMISSIONER ZUNIGA: I am on that
20 too.

21 CHAIRMAN CROSBY: You would say they
22 do not.

23 COMMISSIONER ZUNIGA: They do not
24 get the 10 back.

1 CHAIRMAN CROSBY: I'm saying they do
2 get it back. Commissioner Stebbins, in our
3 narrow fact pattern.

4 COMMISSIONER STEBBINS: In our
5 narrow fact pattern, I don't think it is
6 necessary to have a conversation about do we
7 need to further define winnings in this fact
8 pattern. Because if you look at the regs., the
9 individual regardless of what they've done
10 other than put the money in the machine, the
11 individual has been identified by our licensee.
12 The regulation calls for where appropriate a
13 gaming agent is contacted.

14 The only way to get the money back
15 out of the machine is through a ticket voucher
16 which that gaming agent can't cash out. So,
17 there is no way to get the money back as I see
18 it.

19 I echo the comments of Commissioner
20 Cameron about the contract, but if we're just
21 looking at this narrow fact pattern, for me
22 it's not necessarily a question of whether it's
23 winnings or not. If you look at our process,
24 the ticket voucher is coming out because you

1 don't get the cash back. And the gaming agent
2 can't take that cash voucher or the gaming
3 licensee can't take that cash voucher to a
4 window or to a kiosk and redeem the money.

5 CHAIRMAN CROSBY: I don't understand
6 that. Why can't they?

7 COMMISSIONER STEBBINS: They're not
8 allowed under our regulations.

9 CHAIRMAN CROSBY: Don't worry about
10 the regs. We're going to rewrite the regs. to
11 do whatever we think should be done.

12 Do you think it's right or wrong for
13 this person X who has put in the \$10, has not
14 played anything and then they get discovered as
15 a violator of VSE, should they be able to get
16 their \$10 back or not?

17 COMMISSIONER STEBBINS: And I say no
18 based on what I interpret our regulations as.
19 They can't get the money back.

20 CHAIRMAN CROSBY: Say we didn't have
21 a reg., we were just starting fresh. We have
22 no regs. One of the things that Mark puts
23 before us is what happens when a person
24 violates the VSE rule, walks up to a slot

1 machine, puts in \$10, doesn't ever gamble and
2 then is identified. We don't have any regs.
3 What's the right thing to do in that situation.

4 COMMISSIONER STEBBINS: The right
5 thing to do is not to give the individual his
6 money back. Now you're going back to we've
7 already had regs. around the application and
8 program and what they've already signed up for.

9 CHAIRMAN CROSBY: That's three of
10 us. I'm interested.

11 COMMISSIONER MACDONALD: I'd give
12 the money back. I don't think it's a close
13 case. I would add a contractual analysis to it
14 that comes to an exactly opposite conclusion
15 from Commissioner Cameron. Because if you
16 didn't give the money back, a person could go
17 into the Wrentham District Court and do a small
18 claim against the casino. And the person would
19 provide the judge with a copy of this
20 regulation, would provide the judge with a copy
21 of the contract which refers to winnings. I'm
22 just --

23 CHAIRMAN CROSBY: You're being a
24 judge.

1 COMMISSIONER MACDONALD: I'm simply
2 saying with the regulation written the way it
3 is --

4 COMMISSIONER CAMERON: We're going
5 to fix that.

6 COMMISSIONER MACDONALD: That's not
7 the point. -- it's not even close. They would
8 be legally entitled to get it.

9 CHAIRMAN CROSBY: If there were no
10 regulation?

11 COMMISSIONER MACDONALD: That's
12 something else. I'd give them back anyway.
13 It's a matter of equity.

14 CHAIRMAN CROSBY: That's all that
15 matters. So, it's three to two you don't get
16 it back.

17 COMMISSIONER ZUNIGA: What about the
18 scenario which I still believe that is more
19 likely which is -- because let's face it, they
20 walked into the casino they put some money in
21 there. I'm going to guess I know their
22 intention, right, to hit that button.

23 The more likely scenario is that by
24 the time somebody is spotted, which again

1 happens more often than we care for all the
2 reasons that we know, for all the reasons that
3 you articulated, relapses and things, and
4 you've had a level of activity that includes
5 original credit, winnings, losses, perhaps more
6 credit, more winnings and more losses and you
7 have a balance.

8 To me because of that more likely
9 scenario, at the time that you're spotted,
10 granted it should be clearly communicated
11 perhaps better in the self-exclusion contract,
12 in the regulation but because that scenario is
13 more likely, and it would be very onerous for
14 anybody, the gaming agent on the floor, the
15 dealer at the table, to try to say those are
16 winnings and those are original credit.

17 CHAIRMAN CROSBY: I agree with you,
18 but we don't have to address that because we've
19 just taken the hardest case, which is they put
20 their 10 in. They never gambled. Everybody
21 knows it. Everybody agrees to it. We take
22 their 10 bucks anyway.

23 So, as long as we're taking that 10
24 bucks, we're taking everything else. We don't

1 have to deal with your fact pattern.

2 COMMISSIONER ZUNIGA: That's how I
3 came to the original pattern which is because
4 -- anyway.

5 CHAIRMAN CROSBY: So, given that
6 this has been so contentious, we probably
7 should have a vote just to have it straight.
8 So, you started out. Do you want to try to put
9 the frame on this?

10 COMMISSIONER CAMERON: Mr. Chair, I
11 move that we -- that our intent of this
12 Commission is for any time an individual who
13 has voluntarily excluded themselves enters the
14 casino, puts money into a machine, it's our
15 intent that that money be confiscated as part
16 of this self-exclusion policy.

17 And that we are also directing staff
18 to make sure the training is appropriate, clear
19 up the regulations so that is clearly stated
20 and get back to us with a draft that is clear
21 to understand as well as policy for gaming
22 agents that make it very clear the individual
23 excluding that that is the policy.

24 COMMISSIONER ZUNIGA: I second that.

1 CHAIRMAN CROSBY: I think everybody
2 knows what we're trying to say here. And I
3 think we don't want to prescribed, limited by
4 winnings. We're trying to make it very clear
5 what we are saying here. And I'm sure we can
6 figure out a way to say that.

7 Is there any further discussion
8 about this?

9 COMMISSIONER MACDONALD: Yes,
10 further discussion with the motion having been
11 framed the way it has, I am in favor of that
12 motion but I am not in favor anybody being
13 denied the return of the money which
14 indisputably was not gambled.

15 CHAIRMAN CROSBY: That is what she
16 means to be saying. That was the intent of her
17 motion.

18 COMMISSIONER MACDONALD: I thought
19 it was more going forward.

20 CHAIRMAN CROSBY: Going forward.
21 Yes, going forward. Commissioner Cameron has
22 been very clear that you should not lose your
23 money if we didn't do a good job of telling you
24 what this meant. Because common people might

1 very well read winnings to read it the way you
2 and I are reading it, which is if I put my 10
3 bucks in, I never gambled that would not be
4 considered winnings.

5 So, she's been very clear. You've
6 got to understand what the rules are. And that
7 would very clearly imply that if there's
8 anybody that's had this experience prior to
9 now --

10 COMMISSIONER ZUNIGA: No, it
11 doesn't. Could we then distinguish that up
12 until now, if anybody whether it's one or two
13 cases that we decide that separately? That it
14 come either before us or what do we about the
15 two cases pending, because you did say we're
16 not going to discuss them in detail.

17 MS. BLUE: There's a couple of
18 concerns with that. I think if we want to
19 consider cases, prior cases, we're going to
20 need to consider them based on their very
21 specific terms.

22 And we're also going to have to
23 consider how we treat the licensee. Because
24 under our current regulations, which the

1 licensee is trying to comply with in good
2 faith, were they to give the money back they
3 run the risk of being penalized because they
4 would have violated the regulation.

5 CHAIRMAN CROSBY: Penalized by whom?

6 COMMISSIONER ZUNIGA: By us.

7 MS. BLUE: By us. This is how our
8 regulations are set up. And a licensee that
9 violates our regulation is potentially subject
10 to penalty by us.

11 CHAIRMAN CROSBY: We can deal with
12 that.

13 MS. BLUE: If we're going to do
14 individual cases that predate the Commission
15 action today, I think we want to think about a
16 specific way to consider those and those are
17 going to be very fact-based.

18 We are going to need probably more
19 information than we have on the current cases
20 that are before us. So, we should think about
21 if we want to do that that's fine.

22 If we just want to say this
23 interpretation is the one that we think
24 governs, but we do have to make some

1 clarification, we can do that too. And that
2 relates back to the individual cases that are
3 on the table.

4 We did specifically say that we were
5 not going to discuss individual cases at this
6 point and we didn't. But we want discuss maybe
7 how we impact that by actions we take today.

8 CHAIRMAN CROSBY: Okay. So, the
9 intention of the motion was that going forward
10 in our fact pattern that person would lose the
11 \$10 so long as the rules are written clearly
12 and the person who causes the person to sign
13 the VSE form has clearly and -- thank you, what
14 it says including this particular fact pattern.

15 Once you put money into the machine,
16 if you are found out as being in there, it is
17 gone no matter what as long as that person has
18 been properly informed of that. That is the
19 intent of the motion if I have it right.

20 COMMISSIONER CAMERON: Correct, Mr.
21 Chair.

22 CHAIRMAN CROSBY: So, let's deal
23 with that.

24 MS. BLUE: I just want to interrupt

1 for a second. One of the things you might want
2 to think about is how we're going to prove that
3 they were adequately informed at the time they
4 entered into the agreement.

5 This is a question that Mark would
6 have to deal with and the gaming agent. So,
7 let's assume the fact pattern you have but the
8 person involved comes back and says I wasn't
9 clearly informed. So, we're going to have to
10 figure out how do we make that interpretation.

11 COMMISSIONER CAMERON: The form
12 should clearly say these are the circumstances
13 in which you will lose your money and it
14 clearly says it. And the person signs the form
15 that they have clearly said it.

16 COMMISSIONER ZUNIGA: I would simply
17 insert in winnings and losses, credits, you
18 cannot recover existing credits.

19 MR. VANDER LINDEN: I feel
20 comfortable that through revision of that form
21 and staff training that coupled together that
22 we can make that message very clear.

23 COMMISSIONER STEBBINS: You're going
24 to need to change regulations under the

1 application too to reflect credits.

2 MR. BEDROSIAN: We'll double-check
3 that and make sure.

4 CHAIRMAN CROSBY: Further discussion
5 on Commissioner Cameron's motion? All in
6 favor?

7 COMMISSIONER MACDONALD: Aye.

8 COMMISSIONER CAMERON: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER STEBBINS: Aye.

11 CHAIRMAN CROSBY: All opposed?

12 Opposed. You're not opposed?

13 COMMISSIONER MACDONALD: I don't
14 think so. I thought it was going forward.
15 We're not addressing the two cases.

16 CHAIRMAN CROSBY: But in the future,
17 if a case puts in the 10 bucks, no gambling,
18 they lose their 10 bucks.

19 COMMISSIONER MACDONALD: After the
20 regulation has been revised to no longer refer
21 to winnings and rather credits and otherwise be
22 clear on that I have no problem with that.

23 CHAIRMAN CROSBY: Okay. Fine. So,
24 the motion carries four to one. Okay. What

1 else do we have here?

2 This all came up initially I think
3 because I heard about this specific case in
4 point and it did not strike me as fair. I may
5 be in the minority about that I don't know
6 about going forward. But I think we do need to
7 resolve apparently two cases which will have
8 occurred prior to this. And these people, if
9 they want to, they have a right to appeal to
10 us.

11 MR. BAND: The second case is a
12 little different in the fact that one of our
13 gaming agents discovered the individual who had
14 been playing for four and a half hours on the
15 floor. So, it actually might lead to a
16 complaint against Penn for not identifying the
17 individual.

18 CHAIRMAN CROSBY: That's a totally
19 different situation. That is Commissioner
20 Zuniga's fact pattern. So, it sounds like
21 there is really only one case that we know of.
22 And as we've said this is a really unusual
23 case, because for the most part, it's rarely
24 going to happen like this.

1 COMMISSIONER CAMERON: How long does
2 it take to push a button?

3 COMMISSIONER STEBBINS: Like
4 Commissioner Zuniga said, it's a small
5 snapshot.

6 MR. BEDROSIAN: I would suggest Mr.
7 Chair, we understand now the intent of the
8 Commission, the majority of the Commission.
9 Let us go back to staff level and see if there
10 is a resolution if possible. If not, we'll
11 figure out what the process is.

12 CHAIRMAN CROSBY: That's fine with
13 me. Is that all right with everybody else?

14 COMMISSIONER CAMERON: Yes.

15 COMMISSIONER ZUNIGA: Yes.

16 COMMISSIONER MACDONALD: Yes.

17 CHAIRMAN CROSBY: Where are we?

18 MR. BEDROSIAN: Director Lightbaum.

19 CHAIRMAN CROSBY: Director
20 Lightbaum.

21 DR. LIGHTBAUM: Good afternoon,
22 Commissioners. Today in front of you you have
23 a request from Plainridge for reimbursement
24 from their Capital Improvement Trust Fund for

1 the tractors.

2 You approved this project earlier
3 going forward and now they've completed it.
4 And today we've got Senior Financial Analyst
5 Doug O'Donnell here. He gathered the
6 information supporting the proposal. And Steve
7 O'Toole, the director of racing for Plainridge
8 is here if you have any further questions.

9 MR. O'DONNELL: Good afternoon,
10 Chairman and Commissioners. What you have in
11 front of you is the request for reimbursement
12 for the Plainridge Capital Improvement Trust
13 Fund dated January 7. In the packet it said
14 2015, but we can adjust that and correct that.
15 It's 2016.

16 There was a request for
17 consideration back in August 2015 at the
18 meeting which you did approve for them to move
19 forward. They in fact did move forward and
20 purchased all of the equipment that we had in
21 the request. There is a letter in there from
22 Dixon Salo who is the architect who does in
23 fact approve the project. He went out,
24 inspected the equipment. It has been paid for.

1 There is also a letter from Mr.
2 O'Toole who is a manager at Plainridge with all
3 of the backup documentation for the equipment,
4 all of the canceled checks and pictures of the
5 equipment itself. The project is complete.

6 COMMISSIONER CAMERON: How is the
7 tractor working?

8 MR. O'TOOLE: They're working great.

9 COMMISSIONER ZUNIGA: Doug roughly
10 or if you know or if you can get back to me,
11 how much might be currently in the Capital
12 Improvement Trust Fund?

13 MR. O'DONNELL: After the payment of
14 this project, there will be approximately
15 \$300,000 in the Capital Improvement Trust Fund.
16 They also have another \$100,000 in the
17 Promotional Trust Fund.

18 COMMISSIONER ZUNIGA: Right, okay.

19 MR. O'DONNELL: That increases as
20 you know.

21 COMMISSIONER ZUNIGA: On the handle.

22 MR. O'DONNELL: Yes.

23 CHAIRMAN CROSBY: Do we need to vote
24 on this?

1 MS. BLUE: Yes.

2 COMMISSIONER MACDONALD: I'd just
3 like to make an observation that I was
4 intrigued by the name of the vendor Big Boys
5 Toys. I was also disappointed that they don't
6 carry Kubotas, because I have a Kubota tractor.
7 I have no substantive comment to make.

8 CHAIRMAN CROSBY: I want to just
9 throw something out here. We've talked about
10 this with our new executive director and
11 everybody else. We're in the business at this
12 point among other things of kind of
13 reconsidering our regulatory structure. Are we
14 regulating as much as we want, less than we
15 want or more than we want in a host of
16 different areas.

17 This came up before. This money
18 comes from the track. It's money that comes
19 out of winnings, the handle, the takeout at the
20 track. It is used at the track. And it feels
21 to me like to have to go through all of this to
22 spend basically their money on their facility
23 is a symbol of a residual regulatory
24 environment which is just in this day and age

1 is just way over the top.

2 To give us an accounting, maybe at
3 the end of the year or something. But to have
4 to prove to this extent that these expenditures
5 are on the up and up seems to me to be way over
6 the top. I don't want to make too much out of
7 this, but I do think there is -- I think about
8 this because of working on the DFS thing, there
9 is a residual mindset about what's appropriate
10 to handle gambling that you intuitively sort of
11 bring forward. But now we're trying to say
12 hey, is this really necessary?

13 So, I just would throw out, if
14 people totally disagree with me, then we can
15 forget it. But if we agree, maybe it's
16 something that we can start to think about.

17 COMMISSIONER STEBBINS: I for one
18 couldn't agree with you more. That was the
19 steam coming out my ears as I was reading this
20 again, other than I got a chuckle out of Big
21 Boys Toys invoice.

22 It's a legacy program. For whatever
23 reason, it was started and incorporated however
24 long ago. They are going to make decisions

1 about capital improvements just based on one,
2 their need to operate. And two, their ability
3 to continue to market the facility as an
4 attractive place to come. Not to mention, we
5 have an architect signing off on the purchase
6 of a bunch of tractors, which no knocking the
7 profession of being an architect but --

8 CHAIRMAN CROSBY: What do they know
9 about tractors? Maybe it should have been a
10 Kubota.

11 COMMISSIONER STEBBINS: Unless they
12 have a Kubota and they know personally.

13 COMMISSIONER ZUNIGA: Remind me
14 either Alex or Doug or Catherine, the
15 requirement to approve disbursements, is that a
16 statute or a regulation?

17 MS. BLUE: It's in the statute.

18 COMMISSIONER ZUNIGA: All of the
19 points are well taken, and we have taken steps
20 to send to the Legislature updates to 128A and
21 C. And it sounds like there's a big agreement
22 that this could be among the many changes.

23 MS. BLUE: This would be at the top
24 of the list, yes.

1 COMMISSIONER ZUNIGA: We are
2 required to do this by statute.

3 CHAIRMAN CROSBY: Do this, maybe
4 not. We're required to approve it sounds like.
5 What approve consists of it doesn't have to be
6 this.

7 COMMISSIONER ZUNIGA: Good point.

8 COMMISSIONER CAMERON: The money is
9 in then the money is out that's all statutory,
10 right?

11 MS. BLUE: That's correct.

12 CHAIRMAN CROSBY: Again, I'm just
13 throwing this out. It sounds like at least
14 Commissioner Stebbins has a similar instinct.
15 I think there's a vastly less onerous way for
16 us to approve. We don't want anybody stealing
17 their money. Those things happen. So, some
18 kind of a simple something or other.

19 COMMISSIONER ZUNIGA: Could we
20 delegate it to one Commissioner?

21 DR. LIGHTBAUM: That's one of the
22 things with our regulations. There's a few
23 things with the racing regulations that we
24 wanted to get in place before the meets open in

1 April, the medication changes and this was one
2 of them.

3 The possibility is to for you all to
4 delegate to the Executive Director. As you
5 remember, earlier this summer Suffolk has an
6 ongoing water diversion program. The amount
7 was huge. And as the money comes in we pay it
8 off.

9 This summer you guys did vote to
10 give that delegation to the Executive Director.
11 That the next time there was enough money in
12 the fund for Suffolk to receive a payment on it
13 they could. Doug is working currently working
14 on the memos for that to give to the new
15 Executive Director to just get the money out
16 that way. In that case, we won't have to bring
17 that in front of you.

18 CHAIRMAN CROSBY: I think it's
19 clear. You haven't said anything Commissioner,
20 but it sounds to me like everybody agrees that
21 if this particular process can be streamlined
22 and simplified and still be in compliance with
23 the statute that that is in our -- would like
24 to have happen. And that is just indicative of

1 a host of similar kinds of things that we want
2 to be thinking about. So, we'll let you guys
3 figure out how to do that.

4 MR. BEDROSIAN: But you still need
5 to vote on the tractor.

6 CHAIRMAN CROSBY: That's right. Do
7 we have a motion?

8 COMMISSIONER CAMERON: Mr. Chair, I
9 move that we approve the request for
10 reimbursement for Plainridge Racecourse Capital
11 Improvement Trust Fund dated January 7, 2016
12 for the new tractors.

13 CHAIRMAN CROSBY: Second?

14 COMMISSIONER ZUNIGA: I second that.

15 CHAIRMAN CROSBY: Any further
16 discussion? All in favor, aye.

17 COMMISSIONER MACDONALD: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER STEBBINS: Aye.

21 CHAIRMAN CROSBY: The ayes have it
22 unanimously.

23 DR. LIGHTBAUM: Thank you.

24 CHAIRMAN CROSBY: All right. I

1 believe that brings us to the end of this
2 delightful day. Anything else? Do I have a
3 motion to adjourn?

4 COMMISSIONER ZUNIGA: So moved.

5 CHAIRMAN CROSBY: Second?

6 COMMISSIONER MACDONALD: Second.

7 CHAIRMAN CROSBY: All in favor, aye.

8 COMMISSIONER MACDONALD: Aye.

9 COMMISSIONER CAMERON: Aye.

10 COMMISSIONER ZUNIGA: Aye.

11 COMMISSIONER STEBBINS: Aye.

12 CHAIRMAN CROSBY: Thank you all.

13

14 (Meeting adjourned at 1:15 p.m.)

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1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission January 7,
3 2016 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission December
5 9, 2015 Meeting Minutes
- 6 3. Massachusetts Gaming Commission December
7 17, 2015 Meeting Minutes
- 8 4. Massachusetts Gaming Commission Vote to
9 Adopt Section 61 Findings for MGM
10 Springfield
- 11 5. Massachusetts Gaming Commission Vote to
12 Take Final Agency Action on Region B
13 Category 1 Gaming License
- 14 6. Massachusetts Gaming Commission Hiring
15 Policy
- 16 7. Massachusetts Gaming Commission November
17 23, 2015 Draft Memorandum Regarding
18 Variance Report for FY 2015 205 CMR
19 138.02(6)
- 20 8. Massachusetts General Laws ch. 23K § 45
- 21 9. 205 CMR 133 Voluntary Self-Exclusion
- 22 10. Massachusetts Gaming Commission January 7,
23 2016 Memorandum Regarding Request for
24 Reimbursement, Plainridge Racecourse

1 Capital Improvement Trust Fund, with
2 attachments

3
4 MASSACHUSETTS GAMING COMMISSION STAFF:

5 Bruce Band, Deputy Director IEB

6 Trupti Banda, Human Resources Manager

7 Ed Bedrosian, Executive Director

8 Catherine Blue, General Counsel

9 Paul Connelly, Director of Licensing

10 Todd Grossman, Deputy General Counsel

11 Alex Lightbaum, DVM, Director of Racing

12 Doug O'Donnell, Sr. Financial Analyst

13 Mark Vander Linden, Director Research and
14 Responsible Gaming

15 Karen Wells, Interim Executive Director/
16 Director IEB

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C E R T I F I C A T E

I, Laurie J. Jordan, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Laurie J. Jordan, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Laurie J. Jordan, further certify I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by Verbatim means, and transcript produced from computer.

WITNESS MY HAND this 9th day of January, 2016.

LAURIE J. JORDAN	My Commission expires:
Notary Public	May 11, 2018