

1 THE COMMONWEALTH OF MASSACHUSETTS
2 MASSACHUSETTS GAMING COMMISSION

3
4 PUBLIC MEETING #46

5
6 CHAIRMAN

7 Stephen P. Crosby

8
9 COMMISSIONERS

10 Gayle Cameron

11 James F. McHugh

12 Bruce W. Stebbins

13 Enrique Zuniga

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16
17 January 17, 2013, 1:00 p.m.

18 OFFICE OF THE DIVISION OF INSURANCE

19 First Floor, Hearing Room E

20 1000 Washington Street

21 Boston, Massachusetts

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

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3 CHAIRMAN CROSBY: I think it's time to
4 call to order the 46th meeting of the Massachusetts
5 Gaming Commission on Tuesday, January 17. Welcome
6 everybody.

7 First item on the agenda is the
8 approval of minutes, Commissioner McHugh.

9 COMMISSIONER MCHUGH: Yes, Mr.
10 Chairman. The minutes have been distributed.
11 They were distributed yesterday.

12 I received from Director Durenberger
13 one suggested correction on page five of the
14 minutes. I have in the next-to-last paragraph
15 sentence that reads the current system, that's the
16 system of earmarking monies, is cumbersome and
17 expensive. And it is stated that the Racing
18 Division is close to recommending that the
19 Commission scrap the system and set up a fund for
20 capital improvements for those who need targeted,
21 earmarked takeouts.

22 And her suggestion was that that be
23 explained by saying that it was focused on those who
24 - that the money should go to improving the working

1 conditions of occupational licensees and those who
2 live at the tracks. And I think that's a better and
3 more -- a much better description of what we're
4 talking about here. But I would move -- If there
5 are no other comments.

6 CHAIRMAN CROSBY: Any other questions
7 on the minutes or anything?

8 COMMISSIONER MCHUGH: I would move the
9 acceptance of the minutes with that correction.

10 COMMISSIONER STEBBINS: Second.

11 CHAIRMAN CROSBY: Any other
12 discussion? All in favor, aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 CHAIRMAN CROSBY: Nay, opposed? The
18 ayes have it unanimously. Okay.

19 Item number three, administration.
20 We generally look at the schedule, but I think the
21 only thing that I can think of -- We know there's
22 a lot of work going on in the area of the timeframe
23 for background checks and the regs. in order that
24 we can try to move this process along as quickly as

1 possible.

2 And we're working on both the green
3 line, which is as many as six months for background
4 checks, hopefully, we can get them in more like
5 three, and also looking at the regs. process. But
6 we talked about that last week. I don't think
7 there's really anything to add.

8 The only thing that I know to add is
9 that Commissioner Zuniga and I are working on a
10 draft of a job description for a Director of
11 Research and Compulsive Gambling. We haven't
12 really talked about that yet but when we get the job
13 -- We sort of talked about it a little bit. But when
14 we get the job description, we'll bring it and we'll
15 talk about it. I think that's something Janice,
16 you might make a note to add to the hiring.

17 Other than that, I don't think there's
18 anything really going on in terms of the master
19 schedule since last Tuesday night.

20 Anything else in administration?
21 Commissioner Zuniga, anything that you wanted to
22 talk about?

23 COMMISSIONER ZUNIGA: No.

24 CHAIRMAN CROSBY: Okay. Application

1 process, this is sort of a catchall topic at the
2 moment. We have been working for the last nine
3 months in substantial part to assure that we have
4 a competitive environment. We have all talked
5 about it on the theory A - that this is what the
6 Legislature wanted. And B - a competitive
7 environment would insure the best possible set of
8 proposals from the various folks in the field who
9 are going to be bidding.

10 We now clearly have that competitive
11 environment. And our focus is going to start to
12 turn to what are the criteria that we are going to
13 use to make the decisions. It's obviously going to
14 be the regs. that we're writing.

15 But now, we want these competitors to
16 know what is that we really care about. And what
17 are the major values, what are going to weigh the
18 most? What are aspirations for what these might
19 really look like?

20 Commissioner McHugh, as everybody
21 knows, is working on a draft of an initial
22 evaluation tool, which we'll be looking at probably
23 in the next couple of weeks. But also you have a
24 memo that I distributed just to sort of be a blue-sky

1 document to start thinking about what else the
2 Legislature directs us to think about other
3 criteria beyond those which are articulated in the
4 legislation. And this memorandum articulates some
5 of the things that I think are important.

6 I do actually want to read a little bit
7 of this because I think it's important to put it into
8 the record. And then we'll start the conversation
9 going. So, if you'll bear with me.

10 There are a couple of points that I want
11 everybody, including all of the bidders to be aware
12 of. However, I think this point bears constant
13 reinforcement: the high impact dollars from
14 gaming that flow to the Commonwealth, both in
15 discretionary spending and incremental tax
16 revenue, are either those that are repatriated from
17 out of state, the \$900 million or so that apparently
18 is now gambled in other states, or that is brought
19 into the Commonwealth from out of state. Money
20 that is redirected from other discretionary
21 spending within the Commonwealth is of little or no
22 real value and will likely be a heavy cost to some
23 other business or institutions such as the Lottery.

24 Consequently, we want to do everything

1 we can do so that our casinos are maximally truly
2 destination resort casinos that are attractive to
3 folks from other states and folks from out of the
4 country. To do this, we need to influence the
5 developers to design features and strategies that
6 will help attract outsiders, create synergies with
7 our other major travel and tourism institutions,
8 MassPort, the Convention Authority, the
9 hospitality industry, tourism attractions, MOTT,
10 etc., and perhaps even look for synergies with our
11 other key industries, healthcare, higher
12 education, life sciences, venture capital,
13 financial services, etc. that can be combined with
14 a destination resort casino to attract larger than
15 expected numbers of gamblers and tourists from out
16 of state and out of country.

17 In a related issue, we are encouraging
18 casino developers to add amenities that will
19 enhance the broader tourism's goals of the
20 Commonwealth. Commissioner Cameron and I
21 recounted how the casinos in Singapore had
22 phenomenal additional features. One had a
23 convention center and an art museum while the other
24 had an MGM University theme park and a fabulous

1 aquarium.

2 We obviously don't have that kind of
3 leverage but we do need to think strategically about
4 how we can maximize such related and enhancing
5 facilities. As the competitive environment for
6 our licenses now is established, this may be the
7 time to begin to articulate these objectives.

8 And I lay off a bunch of ideas of the
9 kinds of things that I think would be wonderful
10 related amenities and steps to be taken. And I'm
11 hopeful that other folks who have other ideas,
12 understanding we are in the brainstorming mode
13 right now; eventually we will reduce this to hard
14 criteria. But this will start to give the sense of
15 the kinds of things that we really care about.

16 Other people have reactions to the
17 notion or particular ideas that we might focus on?

18 COMMISSIONER MCHUGH: I think this is
19 really critical. The gaming statute is clearly
20 designed to create destination resorts with the
21 thought in mind that we are going to bring in
22 out-of-state dollars. And I think that this
23 memorandum catches that notion nicely.

24 The examples are good. But I thought

1 that the three questions on page three of the
2 memorandum, specifically what is the Boston or
3 Western Massachusetts brand and how can developers
4 merge their product positioning and marketing with
5 those brands? What kind of tourism attractions
6 don't we have that a developer could produce? And
7 why assets do we have in the casino regions that can
8 be leveraged by strategic relationships with the
9 casinos?

10 I thought those were examples of really
11 important questions. And that for me the question
12 was how do you get responses, creative responses to
13 those questions. There might be others that fit
14 into the same category. And allow the creativity
15 and the energy of the developers to be brought to
16 bear on trying to outdo each other, if you will, in
17 answering those kinds of fundamental questions.
18 And I have some thoughts about that when we get to
19 the matrix and how we're going to evaluate things.

20 But I think that's really important to
21 capitalize on their energy as well as to contribute
22 our own thinking of how these things look in
23 concrete examples.

24 COMMISSIONER ZUNIGA: I agree with the

1 notion as well. I think we talked about how one
2 aspect of creating destination resorts is
3 emphasizing perhaps creativity by developers in
4 differentiating their product. In having a good
5 product, how that fits with the Commonwealth, what
6 makes the product unique.

7 And as we tease out those questions and
8 criteria that we are in the process of fine-tuning,
9 if you will, and being more descriptive about, I
10 think questions along those lines that are broadly
11 articulated in the statute, but clearly to the
12 extent that this Commission can emphasize the
13 importance of that by relative weight of the
14 criteria for example or by pre-requiring certain
15 things would be an important step toward that goal.

16 COMMISSIONER STEBBINS: I like, as
17 Commissioner McHugh pointed out, these three
18 questions on the last page. We've talked all along
19 about trying to get applicants to think outside the
20 box if these are truly to engage visitors from
21 outside or the region or outside the country to come
22 to Massachusetts.

23 Throughout the statute, there are
24 strong linkages made to tourism. And posing these

1 three questions, one might encourage an applicant
2 to begin to focus on building a relationships as we
3 talked about, with the local regional tourism
4 board. Figuring out what the Western Mass. brand
5 is, it would help if you had a conversation with the
6 Western Mass. Visitors Bureau and the visitor
7 entities out there.

8 I was struck by the article, I think in
9 the Globe this week that talked about efforts to
10 encourage visitors from China through direct
11 flights or whatever MassPort and MOTT are working
12 on, but encourage applicants to foster that
13 discussion.

14 Let's look at what MOTT's and
15 MassPort's long-term strategy is for reaching out
16 to South America and to Japan, direct flights.
17 Let's see how an applicant may be able to fold that
18 into their plans of we can help design a facility
19 that will be attractive to a potential gamer from
20 Brazil or Japan.

21 There's so many places that we can find
22 partnerships. And even on the revenue end where we
23 know we dedicate money to tourism funds, some plan
24 or some strategy potentially coming from this

1 Commission to say these monies are obviously
2 appropriated by the General Court, but maybe give
3 some suggestions, recommendations as to how that
4 money can be spent wisely to not only improve
5 obviously the tourism economy, but make sure that
6 we have that robust gaming industry that we're
7 looking for.

8 COMMISSIONER CAMERON: And I was, in
9 reading your memo Mr. Chair, thinking back to
10 Singapore and how they felt like they did not have
11 anything architecturally that people would travel
12 there to see. They didn't have any kind of a
13 building that people thought -- And that that was
14 one of their goals to create a casino resort that
15 architecturally would draw folks from around the
16 world. That was interesting.

17 And the other thing, the waterfront.
18 Their second facility is on the water. And they
19 took advantage of that with the whole waterfront,
20 you mentioned the aquarium, but the whole
21 waterfront resort with all of those amenities.
22 Whether it be jet skiing or private beach cabanas,
23 they took advantage of the waterfront.

24 And I know that other resort casinos,

1 I know that some of them in Atlantic City have really
2 emphasized the ocean and shopping mall that looks
3 like a ship. So, I really was struck with the same
4 idea that taking advantage of whatever it is here,
5 and there's so many things here, that are unique or
6 bring tourism in, taking advantage of that is a good
7 idea.

8 COMMISSIONER MCHUGH: Did you learn
9 whether the Singapore authorities came up with the
10 idea that an architecturally stunning building
11 would be the draw or whether that was the product
12 of applications?

13 COMMISSIONER CAMERON: They wrote it
14 into -- They clearly laid out what they wanted ahead
15 of time. So, that was one of the ideas that they
16 would judge the proposal. That was one of the ---

17 COMMISSIONER MCHUGH: On an
18 architecturally spectacular building.

19 COMMISSIONER CAMERON: Correct.

20 CHAIRMAN CROSBY: Well, the Adelson
21 building is an incredible building. The casino in
22 the other one, in the Genting facility is
23 nondescript.

24 COMMISSIONER CAMERON: But they only

1 wanted one. They wanted one on the waterfront that
2 incorporated -- Correct. Then the second one they
3 wanted in town with a building that was spectacular.

4 CHAIRMAN CROSBY: The other thing -- I
5 don't remember if we talked about it when we came
6 back from Singapore, the casino licensing process
7 was conducted by the tourism bureau. It wasn't a
8 gaming commission. They set up a gaming commission
9 later on to do the regulating. This was about
10 tourism.

11 It was basically saying okay, we know
12 that you can make a lot of money in the casino
13 business here. Fine, we're going to give you a
14 license to do that. What we want you to do is to
15 fulfill our objectives as a way to win this license.

16 COMMISSIONER MCHUGH: One of the
17 things that we have on our plate for the next week
18 is putting together the team that we'll need to
19 evaluate proposals. And the identity of the -- Not
20 the identity, but the characters of the team members
21 may itself be underscored, the importance of
22 various facets of what it is that we're looking at.

23 And so that's something it seems to me
24 we need to think about as an incentivizing tool as

1 we put that together so we can get some help really
2 evaluating the things that are important to us.
3 And do a comparative analysis.

4 CHAIRMAN CROSBY: Part of what I'm
5 wrestling with is how do we put the process by which
6 we articulate whatever this is that we come up with?
7 I think just talking about it amongst ourselves and
8 in the public so that participants, bidders can hear
9 us thinking. People will learn what we are
10 thinking about. But that's going to need to be
11 regimented to some extent.

12 For example, should we invite people to
13 comment on ideas? Should we have an educational
14 forum or a hearing where we kind of lay out this kind
15 of extended reach idea, particularly the attraction
16 of -- the incremental kinds of attractions and
17 attracting people from out of state. And invite
18 people to come in to give their ideas.

19 I'm sure there's plenty of people
20 working to help fix Springfield or resurrect the
21 Mystic River watershed or fix the wetlands around
22 Suffolk, East Boston or whatever. Would that be a
23 constructive idea to get other ideas that we could
24 then incorporate into our process?

1 COMMISSIONER MCHUGH: I think it would
2 be. If we work back from the evaluation criteria
3 to the things that we're looking for in the
4 application, it seems that that's the real way we
5 have to go. And put in the evaluation criteria
6 various things that will incentivize people to
7 respond to the things we think are important without
8 stifling them through specifics.

9 CHAIRMAN CROSBY: Right.

10 COMMISSIONER MCHUGH: And then put
11 together a team that is competent to help us
12 evaluate the responses. And then have some
13 discussion about it, about what we put together as
14 an evaluation platform. That might be --

15 CHAIRMAN CROSBY: Have a public
16 discussion you mean?

17 COMMISSIONER MCHUGH: Yes. We've
18 done in the past, we almost uniformly created some
19 idea, at least on the big things --.

20 CHAIRMAN CROSBY: -- and then ask for
21 comment.

22 COMMISSIONER MCHUGH: -- and then ask
23 for comment and before we even get the regulation
24 drafting stage so that we can get the input from

1 those. And then maybe, Mr. Chairman, a public form
2 of some kind to talk about that as well to encourage
3 it. But have this really good participatory
4 process with a lot of people with good ideas.

5 COMMISSIONER ZUNIGA: I want to
6 emphasize the tools that we have and I always assume
7 would be the main thrust of how we do this. The
8 response form, the criteria by which people are
9 going to be evaluated in some detail in some
10 granularity, I know this is broad. Many of the
11 broad criteria is articulated already in the
12 statute. But our interpretation of that list be
13 interpreted.

14 And I think the way to really emphasize
15 what's important is to come up with relative weight
16 with a scoring mechanism. I am just going to toss
17 out an example, if we group all of the criteria into
18 let's say five groups, because those are rational
19 groups, all things finance, for example, all things
20 destination resort and architecture etc., etc.
21 And we come up with a form that lays out those five
22 criteria with sub-criteria, without a relative
23 weight, I suggest that it could be interpreted that
24 we are giving 20% -- equal weight to all those five

1 criteria.

2 If instead, we said this particular
3 criterion in broad form is of a particular
4 importance in the aggregate, that's a real way to
5 emphasize that. Whereas maybe another set of
6 criteria is going to be a prerequisite or is assumed
7 that everybody will comply in this form or another.
8 That's where the real discretion, if you will, of
9 the Commission towards emphasizing what's
10 important is really implemented in my view.

11 COMMISSIONER MCHUGH: I think that's
12 right. I think we differ a little bit on how you
13 score. Do you score it verbally or do you score it
14 with numbers. We'll get to that.

15 But I think the idea of indicating how
16 important, somewhat, how important in the overall
17 process we believe. What are minimum criteria, as
18 you said, and then how important do we believe other
19 criteria are in the overall evaluation process is
20 really important.

21 COMMISSIONER CAMERON: I think of, and
22 it's not exactly a match to what we'll be doing, but
23 take for example Las Vegas. Building lot of
24 high-class golf courses and certain casinos

1 affiliating with those golf courses. So, a course
2 you may never be able to get on or like TPC, a course
3 that the pros play. And groups of golfers who used
4 to go to Florida or Myrtle Beach now go to Las Vegas
5 because you have a little gambling. You have the
6 nice shows and restaurants and you have these
7 beautiful golf courses.

8 So, in a way, that's what we're looking
9 at only in a singular manner, what other amenities
10 will bring groups of people from around the country
11 or around the world.

12 COMMISSIONER STEBBINS: Moving even
13 in front of the evaluation and the kind of criteria
14 setting phase, it may make sense -- we've only at
15 this point encouraged the tourism organizations
16 around the state at least have some type of --
17 they've only pursued some type of cross marketing
18 promotional relationship with a potential
19 applicant.

20 It may behoove us to talk to or invite
21 in MOTT and MassPort, the people that are focusing
22 on drawing in the international visitor and begin
23 to maybe put some more meat to the bones. So, the
24 projects of saying, it's great that we can promote

1 each other, but how can, again, an applicant lend
2 itself to boosting tourism for the entire
3 community, again, by filling that niche or looking
4 at broader plans to market outside of the country.
5 It may behoove us to have a conversation with Betsy
6 Wall at MOTT and those at MassPort to say let's keep
7 the conversation going.

8 CHAIRMAN CROSBY: We've done some of
9 that. But I think maybe that's a good idea to
10 focus. There's two things going on here. We're
11 trying to work amongst ourselves to really identify
12 criteria and eventually we'll figure out how to
13 weight those and rank those. But also, we're
14 trying to give our eventual partners an opportunity
15 to understand what the rules of the road are going
16 to be and try to get them to hear us about what we're
17 going to really value.

18 So, I think having those folks come in
19 and talk to the bidders through us about how they
20 might see these strategic relationships work is a
21 good idea.

22 COMMISSIONER STEBBINS: I think
23 sharing these three questions and they may be
24 prompted to think of a few more than we can't come

1 up with, but initiating those three questions to
2 them and seeing what kind of feedback and thoughts
3 and comments they give us.

4 And then eventually I think you can
5 boil it down to the local tourism boards who
6 probably have already had some conversations with
7 potential applicants and really begin to put a more
8 local focus to it.

9 COMMISSIONER ZUNIGA: I would only be
10 sensitive to the notion of timing. To the extent
11 that some this has to go in regulation and I'm
12 suggesting that maybe some of it doesn't but some
13 of it does, we are already in our timeline have to
14 be mindful about that. Because these discussions
15 -- If we were to organize a public forum, let's say,
16 that could mean a few weeks and whatnot.

17 So, I would be in favor of trying to
18 have those conversation in our public meetings to
19 the extent possible by soliciting input, as
20 Commissioner McHugh was suggesting, public input
21 like we have done so effectively in the past to make
22 sure that we can adhere and if possible improve our
23 schedule, like we have said as well.

24 COMMISSIONER ZUNIGA: I agree with

1 that. And I think that we ought to strive to get
2 the policy end of this, the evaluation criteria and
3 the other things done as quickly as possible so that
4 even before the regulations are done, people can see
5 what the regulations are going to build on and do
6 some planning. They're already planning, no
7 doubt, to meet the 19 criteria that are in the
8 statute. And they're pretty comprehensive.

9 And it seems to me that we could do that
10 and then have discussions about what kinds of things
11 fall within the -- we ought to think about that fall
12 within the criteria that we're talking about.

13 I mean, there's a million answers to
14 question one. And getting everybody to think about
15 that after we've settled on question one as a useful
16 question is something that can develop. Because a
17 lot of it isn't hardware but it is both forming
18 relationships and thinking about the environment
19 and the like. So, it seems to me we can do both.
20 But I agree that we need to outline this thing
21 quickly so that people can continue to plan

22 CHAIRMAN CROSBY: We had a vote a
23 couple of weeks ago that I lost four to one on it
24 that we don't want to open up to increase the

1 one-time license fee. That we made a statement, a
2 very powerful statement that we would rather see
3 improvements in the capital investment. If
4 there's extra money to be spent, we want it in the
5 capital investment.

6 The Legislature set for the casinos a
7 very modest tax rate. A 25 percent tax rate,
8 which fits right in the low middle of the commercial
9 tax rates. I don't know exactly where the slots
10 rate falls, but I think that's the Legislature
11 saying the same thing.

12 We're not going to hit you up really
13 hard on the tax rate. We want economic
14 development, job generation. That clearly was the
15 priorities and also the revenue. Obviously, we
16 don't want to compromise that.

17 It begins to tape together a message
18 that you can convey to the bidders about what we're
19 really looking for here. Because there's other
20 ways to pull money out of the bidders. One is a
21 higher tax rate. We chose not to do that. Another
22 way is to do a bigger licensee fee. We chose not
23 to do that. It's this kind of stuff that we're
24 looking for, where the real variables are going to

1 be.

2 There's one other thing that I just
3 want to mention that I think is important. And we
4 really strove to get competition. We got it. We
5 want to make the most of that. We're going to play
6 it for all it's worth. That's why we wanted
7 competition. That's going to be for the good of the
8 people of Massachusetts. I don't have the
9 slightest doubt about that.

10 But we don't want to get greedy. We do
11 have in our mission statement that we want our
12 partners in the business, our eventual licensees to
13 have a healthy return on their investment so they
14 can have a healthy business and make money, and be
15 stable and hire more people.

16 And I've told the cautionary tale
17 before about the cable-television industry. How
18 the municipalities got greedy and forced people to
19 make promises they couldn't keep in order to
20 compete. And then everybody went bankrupt and none
21 of the promises were kept.

22 So, there's a line to be walked. And
23 I want our bidders and our eventual partners to
24 understand that's what we're trying to do here. We

1 want to push as hard as we can, but not to the point
2 of doing damage to the business model. And I think
3 that's going to be the trick for us to work our way
4 through this.

5 So, what are specific steps here just
6 so that I'm clear. How would you turn your last
7 couple of comments into action or steps we should
8 take?

9 COMMISSIONER MCHUGH: Well, I think
10 the first is to post this memo right away on the Web
11 and invite comments. I think the second step is to
12 take a stab at putting these questions in some form
13 into the evaluation criteria.

14 And I think the third step is to put
15 together the evaluation criteria and have a
16 discussion that'll take everything down a few
17 thousand feet so that we're looking at more concrete
18 things, grouped as Enrique suggests.

19 CHAIRMAN CROSBY: Which will flow from
20 the process that you're starting?

21 COMMISSIONER MCHUGH: Yes. We've
22 already started that and it follows that model.
23 And I'm going to work with Commissioner Zuniga on
24 some more of granularity there. And then see if we

1 can come up with some evaluation criteria that
2 interweave real granularity with real space and
3 creativity. And then figure out how to weight it.
4 And that'll inevitably be a first draft. And we
5 need to discuss it.

6 And then settle on what those are at a
7 pretty firm state. And then ask for public comment
8 on it. Finalize them and then have a continuing
9 discussion about the kinds of things that we're
10 looking for. That would be my view as to how we
11 could proceed.

12 CHAIRMAN CROSBY: When would you think
13 that that might could realistically could happen?

14 COMMISSIONER MCHUGH: Well, I think
15 that I was shooting to have the first draft of this
16 criteria matrix next week. It'll be a draft and
17 will need some more work. I think we benefit by a
18 collective look at what's there.

19 I have reached out to a couple of
20 different people. I've got an appointment to see
21 some people early next week. And I would think that
22 within the next two to three weeks we could have a
23 good chunk of this done. That's my target.

24 CHAIRMAN CROSBY: So, by maybe the

1 second week of February maybe we could have
2 something that we could then get comment on and use?

3 COMMISSIONER MCHUGH: Yes, I think we
4 can.

5 CHAIRMAN CROSBY: Something like
6 that. Okay. What about having the idea of having
7 MassPort and MOTT and others come in while that's
8 going on?

9 COMMISSIONER MCHUGH: I think that's
10 great. I think that'd be great to have them come
11 in and the sooner the better, because we can
12 incorporate some of their ideas into this. And if
13 they can look at what we already are thinking about
14 and talk about gaps to fill or ways to spin out or
15 tease out something that would be helpful without
16 eliminating creativity that'd be great.

17 A number of this is self-evident, I
18 suppose. But a number of the criteria in section
19 18 or 19 are sort of yes/no criteria. You have at
20 least, goal or better. And that's a yes/no thing.
21 But others are extremely broad. And there's some
22 ideas for fitting things in there. But that's a
23 place where we could use help and then things that
24 aren't in the statute, obviously.

1 CHAIRMAN CROSBY: Okay. Great.
2 That's good. I'm glad I asked you. Thank you.
3 We'll follow right up on that. And anybody who's
4 watching this is invited to give us ideas on how to
5 accomplish these kinds of objectives.

6 Anything else application process? I
7 guess we're going to get to the real guts of it later
8 on. Anything else on this?

9 Number five, public education
10 information, Ombudsman Ziemba?

11 MR. ZIEMBA: Thank you, Mr. Chairman.
12 I continue to have meetings and answer questions by
13 communities and applicants. Notably, as I
14 reported last week that I was in Springfield last
15 week and West Springfield.

16 The purpose of these meetings are to
17 provide a status report to all parties of the latest
18 initiatives of the Commission. There are a
19 tremendous number of things that we decided in
20 December. And there's a number of other things
21 that are on their way. So, I think that the general
22 tenor of these conversations has been really good.
23 And I think that communities are getting a lot of
24 benefit out of them.

1 I am scheduled to attend a regional
2 forum with Mr. Grossman this evening hosted by the
3 Pioneer Valley Planning Commission. It may be
4 upwards of 20 to 30 different communities that may
5 be represented there. And we'll discuss a host of
6 issues such as surrounding community issues and
7 timelines and definitions and some of the things
8 we'll be discussing in a couple of minutes.

9 Over the next couple of weeks, I'll
10 concentrate some of my efforts on reaching out to
11 some of the new applicants from the applications
12 that we received earlier this week. And hopefully
13 with them I'll address some of the timing issues of
14 host community agreements, referendums and the like
15 and our applications that are due later on this
16 year.

17 The next two topics that I would like
18 to address are very much interrelated. If it's
19 okay with the Commission, I would like to just flip
20 the order. I would like discuss first --

21 CHAIRMAN CROSBY: John, excuse me.
22 Can I interrupt?

23 MR. ZIEMBA: Sure.

24 CHAIRMAN CROSBY: We had talked. I

1 remember I was keeping notes prior to hiring you
2 about some organizations or categories of
3 organizations that we had all met in our travels.
4 And we were thinking we might want to have a list
5 of either organizations or categories of
6 organizations to give to all of our bidders to say
7 here are people that you might want to be talking
8 to.

9 I think you and I talked about this.
10 It's like different kinds of environmental
11 organizations. Is there some such semi-list of
12 people who had seen us that we wanted to kind of
13 systematically make sure that all of the formal
14 bidders now know about?

15 MR. ZIEMBA: We have been mainly
16 concentrating on trying to set up methods for
17 technical assistance through the regional planning
18 agencies, as I've reported in the past. In tandem,
19 we've had other conversations with other
20 educational institutions such as the Collins
21 Center. We're in process of working on a project
22 that they had been working on for quite some time.
23 And that might be another form of technical
24 assistance.

1 I haven't compiled a direct list. I
2 can add that to my list.

3 CHAIRMAN CROSBY: To give to
4 developers not for the communities. Since I can't
5 think of them, maybe there's not anything there.
6 But I just remember -- There are categories like the
7 Live Entertainment Venue Group. To some extent,
8 it's up to the Live Entertainment Venue Group to
9 contact all of the bidders, but particularly newer
10 bidders may not even know yet.

11 It might move the process along if we
12 at least think through the idea of putting together
13 a list of people, as I said, organizations or
14 categories of organizations that -- it would be in
15 the interests of the bidders and it would be helpful
16 to those organizations if they all communicated
17 sooner than later.

18 MR. ZIEMBA: Okay.

19 CHAIRMAN CROSBY: And I can go back and
20 check in my notes and see who else I think of, but
21 that's an example. They're going to have to talk
22 to all those people such as the live entertainment
23 organizations, they're going to have to talk to them
24 at some point anyway. So, if we can help them all

1 get together sooner than later that would be good.

2 MR. ZIEMBA: That makes a lot of sense.

3 CHAIRMAN CROSBY: Compulsive
4 gambling, the Council on Compulsive Gambling, I
5 think there are others. I'll think about that too.

6 MR. ZIEMBA: Okay. I'll work on that.

7 CHAIRMAN CROSBY: Now that we know who
8 our defined group is.

9 MR. ZIEMBA: One of the main thrusts of
10 my conversations with applicants is to get them into
11 the process of talking to the state agencies as soon
12 as possible.

13 Obviously, we had that conversation
14 last week about the permitting process. And we
15 want people to start vetting some of the ideas as
16 soon as they are ready, given the short timetable.

17 But you have a very good point on the
18 organizations. I'll take a look at that.

19 CHAIRMAN CROSBY: Okay.

20 MR. ZIEMBA: So, two items as I was
21 mentioning for consideration today are the
22 community disbursements and the draft of the
23 surrounding community's definition. If it's okay,
24 I'd like to take the surrounding community's

1 definition first and then get into the community
2 disbursements.

3 On the surrounding community's
4 definition, what you have before you, this is
5 basically a codification of the policy that we
6 adopted in December as part of our policy meetings.

7 What I recommend on this draft is that
8 the Commission consistent with our discussion in
9 December, we immediately put this out for further
10 comment by all of the entities by as many
11 communities as we can. I'll try to do a very far
12 and wide notification to communities to get their
13 input.

14 We had anticipated that perhaps we
15 would have received some comments just on the basis
16 of the policy memorandum that we put out. But even
17 after some of our efforts, we really didn't receive
18 very many if at all comments.

19 But now that this is in the form of a
20 regulation in that what it will likely look like at
21 the time that we finally adopt the regulations come
22 the spring and January, this might give a very, very
23 concrete thing for people to take a look at.

24 In regard to my brief here, what I'm

1 recommending is not that the Commission take a vote
2 on this matter today, but what the Commission does
3 is actually put this out for comment. And then
4 after we receive those comments, hopefully we
5 receive those comments, then I will then bring it
6 again before the Commission for its vote. That
7 would be at this stage of the process.

8 And then once we receive those comments
9 and adopt the draft, it will be finally codified as
10 part of our regulations once our regulations are
11 codified. So, in terms of the process for looking
12 at this particular issue, I think by the end of the
13 process that is a lot of process. But it's s
14 probably a process that is due since it is one of
15 the main issues that people are concerned about.

16 CHAIRMAN CROSBY: Right.

17 MR. ZIEMBA: Instead of going over all
18 of what we had done before, what I'd like to
19 concentrate on is just a couple of areas of this
20 regulation. Let me bring it to your attention.

21 So, the one item, it's toward the end
22 of the regulation. It is number five in the last
23 page. This relates to the community disbursements
24 question. As we discussed last week, this section

1 is included to encourage applicants to provide
2 technical assistance funding to communities before
3 the application process.

4 The definition of surrounding
5 communities, as we discussed in December, we make
6 our final determination of what a surrounding
7 community is after we receive the application. But
8 that leaves the big area between now and that time
9 of who can receive technical assistance funding.

10 So, what we do here is we create a
11 special definition that would allow community
12 disbursements to be received by communities that
13 want to evaluate impacts but they have not
14 necessarily been deemed a surrounding community by
15 us as part of the application review process.

16 And what we're trying to do here is
17 we're trying, even if a community may or may not find
18 its way into an application by an applicant at that
19 later date, we could through our mechanisms and at
20 the signoff of an applicant, provide funding to
21 communities so that they could evaluate impacts,
22 which might be taken into account when we do our
23 evaluation as part of the review of the application.

24 CHAIRMAN CROSBY: I thought this was a

1 really good point. I've never seen this before. I
2 thought it was a really good point. It makes all
3 the sense it the world.

4 MR. ZIEMBA: Good.

5 CHAIRMAN CROSBY: Maybe I have seen it
6 before, if I did I forgot.

7 COMMISSIONER MCHUGH: It's really a
8 creative solution to a difficult problem, I think.
9 I hope that will be the way it's received, but we'll
10 find out when we put it out for the public comment
11 because it solves a whole range of problems.

12 It's important to underscore what you
13 said a minute ago though as a technical matter.
14 These comments that we are getting now and the vote
15 that we take to put this into effect are not the
16 final vote and not the final comment period. That
17 will come as the regulations are being promulgated,
18 the regulation promulgation process. But with
19 that said, this is great.

20 CHAIRMAN CROSBY: Yes.

21 MR. ZIEMBA: One other point in here is
22 that -- Sorry, I ran out of paper at my printer
23 earlier today. So, I'm relying on my -- But it
24 keeps on blinking out because of our security

1 features. But those are good as well.

2 So, one other thing that we specify in
3 here, previously there was no specification of how
4 communities would arrive at the Commission for the
5 determination of whether or not they are a
6 surrounding community.

7 What this regulation does is it
8 specifies that a community wishing to be designated
9 as a surrounding community must apply to or send a
10 letter to the Commission requesting that
11 determination within 21 days after we post the
12 application on our website involving that
13 community.

14 So, this establishes a discrete
15 timeline. It allows us to proceed with the
16 applications reviews in the fall. And hopefully
17 that will be well received by everyone.

18 COMMISSIONER MCHUGH: Those are the
19 communities that have not yet signed a surrounding
20 community agreement that are still trying to get in
21 the door, right?

22 MR. ZIEMBA: That's right.

23 COMMISSIONER MCHUGH: The others, as
24 the definition suggests, become surrounding

1 communities as soon as the agreement is signed or
2 recognized.

3 MR. ZIEMBA: Yes.

4 COMMISSIONER ZUNIGA: Those would
5 also be those that did not become limited
6 surrounding community by this point number five,
7 because everybody will have the opportunity to
8 participate in this limited role to evaluate their
9 impacts --

10 MR. ZIEMBA: That's right.

11 COMMISSIONER ZUNIGA: -- prior to that
12 time, the time of the application.

13 MR. ZIEMBA: And let me point out to
14 you something that is not included in this
15 regulation. If you take a look at number three on
16 the last page, surrounding community agreements.
17 We have reserved that section of our regulation.

18 What this is this is the protocols and
19 procedures that we are required to write for
20 resolution of disputes between applicants and
21 communities where no surrounding community
22 agreement has been concluded. So, we are given a
23 period of days, 30 days, under which the applicant
24 and the community shall work to get an agreement

1 concluded.

2 And at the end of that date, then the
3 Commission shall step in and establish protocols
4 and procedures to make resolution of that
5 agreement.

6 So, we have not attempted to include
7 those procedures because they need a little bit more
8 work in this definition. And that was outside of
9 the scope of we talked about in December. But that
10 is something that we really need to get to as soon
11 as we can.

12 COMMISSIONER ZUNIGA: But the
13 protocols and procedures could and should be put in
14 place at least in regulation prior to that RFA Phase
15 II deadline, if you will.

16 MR. ZIEMBA: Yes, they have to be.
17 They have to be. And this draft anticipates that
18 once we get that language ready that we can plug it
19 right into this draft definition.

20 CHAIRMAN CROSBY: John, on number two,
21 in the middle there, it says on the front page it
22 says Commission will make a determination at an open
23 meeting at least 30 days prior. I assume that by
24 at least there you mean not less than 30 days.

1 And I just wonder whether, this is
2 maybe too granular, but is 30 days too long a window?
3 Really this is the process that we're trying to move
4 along. There would be a lot going on. Should we
5 have a forced month window between those two things?
6 I don't know where that 30 days came from. It
7 seemed a little long to me.

8 MR. ZIEMBA: I think that was a
9 recommendation from our consultants, our legal
10 consultants in order to provide surrounding
11 communities the proper notice that we've made that
12 determination and that we would not hold the general
13 hearing on the entire request until after 30 days
14 after that designation.

15 CHAIRMAN CROSBY: Right. Well, if we
16 just plot it on the chart and see that that seems
17 reasonable. It just struck me -- It's not people
18 aren't going to know -- At this stage of the game
19 in a given area, everybody is going to be pretty up
20 to speed on what's going on. And it struck me as
21 maybe a little long.

22 MR. ZIEMBA: I think in reality the way
23 that it would work is once we make our
24 determination that a community is a surrounding

1 community then there also is that 30-day
2 requirement that they enter into negotiations.

3 CHAIRMAN CROSBY: Right.

4 MR. ZIEMBA: So, it's probably not
5 likely that we would want to hold the hearing on the
6 overall application before the 30-day date. So, I
7 think it may not be that problematic.

8 CHAIRMAN CROSBY: Right, right.
9 Okay.

10 MR. ZIEMBA: So, in this regard, I
11 recommend that the Commission put this out for
12 distribution for public comment.

13 My recommendation is that -- Take a
14 look at the timetable. We should at least put it
15 out for two weeks. After two weeks, is February 7,
16 is the Commission meeting that would be three weeks
17 from today. So, if we received comments by the
18 latest the fifth, the Tuesday the fifth prior to
19 that Thursday, that should be a reasonable time for
20 people to be able to get comments to us and it would
21 at least give us a couple of days to collect those
22 comments for distribution to the Commissioners.

23 CHAIRMAN CROSBY: Okay.

24 COMMISSIONER STEBBINS: John, quick

1 question, actually, two quick questions. Under
2 surrounding community agreements do you foresee
3 kind of defining who that entity is that a developer
4 has to negotiate a surrounding community agreement
5 with?

6 We've had questions raised to us,
7 again, other governmental entities like water
8 districts and things like that. Can we draw some
9 clarity to it when we get that surrounding community
10 agreement?

11 MR. ZIEMBA: That's a very good point,
12 yes.

13 COMMISSIONER STEBBINS: And then the
14 second thing is does the surrounding community kind
15 of draft reg. as you have it take into account a
16 community being a surrounding committee
17 potentially to more than one applicant? Or is
18 there a need to define that somewhere in here? Or
19 is it consistent to just say you're a surrounding
20 community and just to lay off here's a different
21 application if you might be a surrounding community
22 for more than one applicant?

23 MR. ZIEMBA: We discussed this matter
24 a little bit when we had our policy discussions in

1 December. We discussed whether or not we needed
2 any specific procedures to deal with a surrounding
3 community that may be a surrounding community to
4 multiple applicants.

5 And the determination at that point was
6 that all of those surrounding communities would
7 still have to go through each individual process for
8 the negotiation of the surrounding community
9 between the applicant and that surrounding
10 community.

11 So, if you have one community that is
12 a surrounding community to one of the applicants and
13 one that is to another applicant, it may actually
14 be engaged in two simultaneous conversations before
15 the Commission if indeed it is not included in one
16 of those applications.

17 So, it could be involved in two
18 separate protocols and processes process for
19 determination of the finalization of that
20 surrounding community agreement.

21 COMMISSIONER STEBBINS: Reflecting
22 back on that policy discussion, is there a necessity
23 or an urgency of the Commission to obviously urge
24 any potential surrounding community, especially

1 one which may be a surrounding community to multiple
2 applicants to again make every effort to negotiate
3 in good faith. Not leave one applicant kind of high
4 and dry or refuse to have a conversation with them.
5 I'd like to think that's a general message we can
6 encourage but --

7 CHAIRMAN CROSBY: We've said that
8 explicitly.

9 COMMISSIONER ZUNIGA: We've said that
10 explicitly.

11 COMMISSIONER MCHUGH: We did say that
12 if negotiations failed and they failed because a
13 surrounding community in that position was favoring
14 one over the other that we could take into account
15 the disparate terms of the agreement that they were
16 trying to proffer and make our own judgment as to
17 what is fair. So, in a policy subject we put that
18 out there now.

19 MR. ZIEMBA: Right. And the ultimate
20 risk to anyone who determines that they will not be
21 involved at this stage of the process is that at the
22 end of the game, obviously, we will work as hard as
23 we can to make sure that every judgment that we come
24 out with is fair reasonable, but it still might be

1 disadvantageous to a particular community in
2 comparison to what they thought it might be had they
3 engaged in the process earlier because it might be
4 out of their hands.

5 So, it may very well be to the advantage
6 of communities to make sure that they engage in
7 these conversations now as soon as possible. And
8 that's part of the message that we will take to
9 communities.

10 CHAIRMAN CROSBY: John, in the memo
11 that you originally distributed talking about --
12 you listed a series of bullet points of potential
13 examples that could be considered in each of the
14 categories.

15 MR. ZIEMBA: Yes.

16 CHAIRMAN CROSBY: Then in the reg.
17 you've gone back to a much broader definition. And
18 I kind of thought those bullet points were
19 instructive. You said we will evaluate whether A,
20 B, C, D, E, F. You put some text about it in the
21 reg. without any examples.

22 MR. ZIEMBA: The examples may appear
23 to be a little bit buried in the reg., but if you
24 take a look at 2A, B, C, and D. So, there's the

1 general statement, which is basically a statement
2 of compliance with the statutory provision.

3 For example, 2A the community is in
4 proximity to the host community and the gaming
5 establishment. And then the examples are the
6 Commission may take into account but not be limited
7 to shared border, geographic community distance
8 between the community and the gaming establishment,
9 and between residential areas in the community and
10 the gaming establishment. So, all of those, a
11 laundry list of factors are included in there.

12 CHAIRMAN CROSBY: Okay.

13 MR. ZIEMBA: Again, an important point
14 is that that laundry list of factors are things that
15 we may take into consideration. It doesn't require
16 that each and every determination involve every one
17 of these because they may not exist.

18 CHAIRMAN CROSBY: Nor that that would
19 exclusive.

20 MR. ZIEMBA: Nor they would be
21 exclusive.

22 CHAIRMAN CROSBY: Okay. Good.

23 MR. ZIEMBA: So, that's my
24 recommendation on the definition.

1 CHAIRMAN CROSBY: I don't think we
2 need to vote on that, right?

3 COMMISSIONER MCHUGH: No. Go ahead
4 and post it.

5 MR. ZIEMBA: Great, thank you. If I
6 could have Mr. Grossman join us for the community
7 disbursement section.

8 CHAIRMAN CROSBY: Oh, I don't know.

9 MR. ZIEMBA: So, you have heard us
10 discuss the question of what is the form of our
11 community disbursement? What is the form of the
12 technical assistance grant to communities? What
13 form should that take?

14 We've reported in the past that we've
15 been working on the actual form of the grant
16 agreement. Mr. Grossman has been doing an
17 excellent job of making sure that it is in a form
18 that is reasonable and it should be acceptable to
19 communities and to applicants. It follows a format
20 that we've had from the benefit of Commissioner
21 Zuniga from the School Building Authority.

22 And we've also written the cover memo,
23 which is a very sort of very short outline of the
24 procedures that the communities should take in

1 tandem with applicants to receive our funding.
2 We've put a copy of it before you.

3 The recommendation on this is that we
4 still are waiting for final word from the Division
5 of Local Services on the adequacy of this. We think
6 that it's in pretty much final form if not final
7 form. And we'd like to move forward on it as soon
8 as possible.

9 Perhaps Todd, if you can give us the
10 benefit of some of the -- not every aspect of the
11 grant agreement, but some of the bigger
12 considerations regarding reimbursement. And then
13 the policy that I just spoke to you about regarding
14 community disbursements and allowing funds to go
15 for technical assistance now is also baked into this
16 community disbursements language.

17 MR. GROSSMAN: That's right.
18 Ultimately here, we have set up a process that's
19 captured already in the regulations. It's section
20 114.03. It talks about the letter of
21 authorization.

22 As I mentioned last week briefly, there
23 are essentially two ways that we can insure that the
24 communities get the funds that were anticipated

1 under the statute, the not less than \$50,000, either
2 by way of a straight reimbursement if the funds have
3 been properly appropriated at the municipal level,
4 which is an easy method for us where they would just
5 simply just say we've expended these funds. Here's
6 the documentation.

7 We make a determination that they are
8 consistent with the intent of the statute, which is
9 for the cost to determining the impact of the
10 proposed gaming establishment and negotiating
11 community mitigation impact agreements. So, that
12 would basically be the only standard that we would
13 have to apply to insure that the funds are within
14 that broad category.

15 And assuming that that's the case and
16 they've already been expended, then we approve it
17 and reimburse them.

18 The second method would be by way of
19 this grant. So, they would have not in theory
20 appropriated the funds, but they would need the
21 funds to satisfy the impact evaluation. So, in
22 order to do that, they would enter into to the letter
23 of authorization with the applicant.

24 And we would essentially just be the

1 gatekeeper of the funds. So, it really comes down
2 to the applicant and the municipality agreeing on
3 how those funds will be spent. And then we just
4 ensure that it's consistent with the statute and
5 would distribute the funds consistent with this
6 agreement.

7 There are certainly a lot of legalese
8 in there that I think protects us. I think it
9 protects the municipalities as well. And it
10 insures that the funds are spent appropriately as
11 the statute envisions.

12 I certainly don't think you want to go
13 through every provision of this agreement, but it
14 does set up a number of things that are worthy of
15 a quick note.

16 It, first of all, requires us to
17 identify the specific expenditures that are
18 approved. They will have presented that to us.
19 The applicant will have agreed to them already.

20 It provides an audit provision and a
21 callback provision. So, we can at any time go in
22 and audit to make sure that the funds are properly
23 spent. It requires them to keep good records of how
24 the funds are spent. It allows us to recapture any

1 funds that are unspent at the conclusion of their
2 review process.

3 And it has other indemnification
4 provisions and the like to protect us and makes
5 clear that by virtue of the fact that we give out
6 this money, we're not accepting responsibility for
7 the review.

8 So, that's essentially what this
9 instrument does. As John said, it's consistent in
10 many respects with the agreement that Commissioner
11 Zuniga used for the school funds. And I think it's
12 a solid instrument here.

13 I think it would be helpful to, if
14 approved, to post this on our website so everyone
15 can see what we would expect them to sign if they
16 wanted to go forward with this process.

17 There are a number of other kind of
18 outstanding questions that will go along with this.
19 The first question is by way of process. Once we
20 receive this, how will the Commission process the
21 applications? Would we delegate that
22 responsibility to one Commissioner in particular?
23 Would you want to look at every application that
24 comes in? Or would there be other staff that you

1 would be comfortable having handle this?

2 I know Commissioner Zuniga, I believe,
3 in conjunction with Ms. Glovsky are setting up
4 accounts for us to handle these funds. So, they
5 would have to be done -- the review would have to
6 be done in conjunction with those accounts to make
7 sure we have sufficient funds and to request any
8 further funds as necessary.

9 So, that's the first issue that I think
10 else needs to also be addressed.

11 And secondly, just an understanding of
12 what would happen in the situation where an
13 applicant does not agree to a cost that a
14 municipality feels like they need to review, and
15 what role, if any, we would play in that situation?
16 Or does the Commission just leave that in the hands
17 of the applicant and the municipality to resolve?

18 It seems the system as presently set up
19 is such that we, as I said, are essentially just the
20 gatekeeper. Where the municipality and the
21 applicant are in a position to work this out
22 themselves. If an applicant doesn't agree to
23 provide funds to a municipality, whether they
24 believe them to be a surrounding community or not,

1 that they would kind of assume the responsibility
2 for that decision further on down in the process
3 where that would be a loose end that would be out
4 there when the Phase II application is finally
5 submitted.

6 And that seems to be what was
7 contemplated when the community disbursement
8 regulation was put in place.

9 CHAIRMAN CROSBY: Our reg.?

10 MR. GROSSMAN: Yes. There is no
11 provision in the present regulation for the
12 situation that I just described where an applicant
13 does not agree to enter into a letter of
14 authorization with a municipality in its entirety
15 or just doesn't agree to certain expenses that a
16 municipality thinks are important. We kind of
17 leave it to them to figure that out. And I think
18 it's important just to highlight that point.

19 COMMISSIONER MCHUGH: We do. That's
20 exactly right. But we did not make a decision that
21 that is the way we were going to leave it. We were
22 dealing -- This was before you arrived. We were
23 dealing then with regulations governing the RFA-1
24 process. And we were specifically dealing with

1 situations in which we got the \$400,000 before the
2 application was filed.

3 And surrounding communities and the
4 developers wanted to get at the mutual planning
5 process. So, we set up this consensual process to
6 allow them to do that. And left for a later day what
7 we would think about, how we would think about the
8 involuntary process.

9 So, you're absolutely right. That's
10 the way the regs. read now, but that's why they read
11 that way. And we do not make a policy decision that
12 we were never going to have an involuntary process
13 in advance of the RFA-2 being filed. We just didn't
14 cross that bridge.

15 CHAIRMAN CROSBY: So, should we
16 resolve those two right now? We need to get moving
17 on this, right? Is your intention to resolve those
18 two issues?

19 MR. ZIEMBA: I think my recommendation
20 is that we can move forward with the instrument that
21 we have currently.

22 And then when and if those problems
23 erupt then we'll need to come back to the
24 Commission. But I don't think we're in a position

1 of making a recommendation on how that process would
2 work now.

3 So, this document can live by itself.
4 But we do understand that there may be issues that
5 need further resolution.

6 CHAIRMAN CROSBY: Well, what about the
7 first one you brought up, which is the issue of
8 what's the process? Do we approve these at the
9 Commission?

10 MR. ZIEMBA: Yes.

11 CHAIRMAN CROSBY: We need to resolve
12 that today, right?

13 MR. ZIEMBA: Correct.

14 COMMISSIONER ZUNIGA: Or delegate
15 that.

16 CHAIRMAN CROSBY: Well, we need to
17 decide how we're going to do ot. I would think that
18 this would be something that we would delegate to
19 the Ombudsman with the help of whatever financial
20 staff or lawyers you might need. You'll eventually
21 have staff or tap from other people.

22 But I do think the Commission ought to
23 sign off on it. Every week if you give us a list
24 in one of your reports a list of claims and you

1 decided whether you approved them or not and then
2 run them by us and let us approve them at one of our
3 regular meetings. Does that make sense to other
4 people?

5 COMMISSIONER MCHUGH: Yes, in an
6 oversight sense. But it seems to me that these are
7 all by definition consensual claims. In other
8 words, there's no hostile claims that are
9 contemplated by this process.

10 So, getting an accounting periodically
11 -- I agree, it should be delegated and the Ombudsman
12 is a logical delegate. But I don't think the
13 Ombudsman needs to wait for our approval to make a
14 disbursement of an agreed-upon claim. And needs
15 only wait if he is in doubt about the propriety of
16 the disbursement notwithstanding the agreement,
17 monies to build a new gymnasium or something.

18 CHAIRMAN CROSBY: Which we might
19 agree.

20 COMMISSIONER MCHUGH: So, in an
21 accounting sense, I think it'd be helpful to see
22 where the money's going. But I don't think in an
23 approval sense we need to wait. That would be my
24 thought.

1 COMMISSIONER CAMERON: That makes
2 sense. I would agree with that process.

3 COMMISSIONER ZUNIGA: I would agree
4 with that too, which is what we envisioned.

5 CHAIRMAN CROSBY: Commissioner
6 Stebbins?

7 COMMISSIONER STEBBINS: Yes, quick
8 question. Recalling my city council days,
9 whenever the city received a grant, the city had to
10 vote to accept the grant. But I can't recall
11 whether that was a difference between an
12 institution giving the city money or another
13 governmental agency giving the money.

14 I don't know if that necessarily
15 needs to be a step. The city council accepting the
16 grant on behalf of the city or approving the
17 acceptance of the agreement.

18 MR. GROSSMAN: That is one of the
19 clauses actually that's built into the grant
20 instrument. So, before the city could even sign
21 off, they attest to the fact that they've gone
22 through whatever process they need to go through to
23 accept the money. And I think we can rely on that
24 signature. We don't really need to get into the

1 weeds of that.

2 COMMISSIONER STEBBINS: Right.

3 MR. ZIEMBA: But one of the purposes of
4 the grant that we discussed with Local Services that
5 grants like other grants throughout state
6 government they can be expended by communities
7 without having to go through an appropriation.

8 So for example, a town which relies
9 only on town meeting to do an appropriation, they
10 might have to wait four or five months before being
11 able to spend monies for technical assistance. And
12 the grant instrument would allow them to spend these
13 funds now when they need to.

14 COMMISSIONER ZUNIGA: Right.

15 MR. ZIEMBA: As long as they are
16 consistent with local procedures for spending those
17 dollars.

18 COMMISSIONER ZUNIGA: And that's the
19 genesis of the either or. They can request
20 reimbursement because they appropriated or they can
21 go for the grant. They can choose which one.

22 MR. GROSSMAN: I think that's an
23 important point, Mr. Chair, just to kind of add to
24 underscore this conversation. The whole point

1 here just so everyone is clear, is that
2 municipalities can't just expend a money that isn't
3 properly appropriated. That's why we had to come
4 up with this grant process. So, we can give them
5 the money under a specific statute that they can
6 expend without appropriation.

7 CHAIRMAN CROSBY: Okay. I think this
8 is probably something we should vote to authorize.
9 Do you want to move, structure the proposal?

10 COMMISSIONER MCHUGH: Surely. I
11 move, then Mr. Chairman that we accept the procedure
12 and process detailed in the memorandum of January
13 17, 2013 that we've been considering today. And
14 delegate to the Ombudsman the responsibility for
15 making disbursements upon receipt of applications
16 that he approves.

17 COMMISSIONER CAMERON: Second the
18 motion.

19 CHAIRMAN CROSBY: Any further
20 discussion? All in favor, aye.

21 COMMISSIONER STEBBINS: Aye.

22 COMMISSIONER ZUNIGA: Aye.

23 COMMISSIONER MCHUGH: Aye.

24 COMMISSIONER CAMERON: Aye.

1 CHAIRMAN CROSBY: Opposed?

2 MR. ZIEMBA: Mr. Chairman, can I just
3 ask for one. So, if for some reason that we need
4 any amendment from Local Services on this draft
5 document, should we bring this process back to the
6 Commission? Another recommendation potentially
7 could be you could designate one Commissioner that
8 could resolve any issues and determine whether or
9 not it requires a full vote of the Commission.

10 I have no expectation. We had recent
11 conversations with Local Services, recent internal
12 conversations regarding this process. It is hope
13 that this looks like the final document. But just
14 in order to avoid delays.

15 CHAIRMAN CROSBY: Commissioner
16 McHugh, it's your motion. What do you think?

17 COMMISSIONER MCHUGH: I would think
18 that I would be prepared to delegate to the
19 Ombudsman the judgment as to whether or not he ought
20 to come back here because of the nature of the change
21 Local Services was requesting. And that we simply
22 leave the motion as it is. Delegate to him that
23 exercise of judgment and bring it back to us if we
24 need - if he thinks we need to do it. And in any

1 event, if there are changes bring back a copy of the
2 finalized document so that we can post it on the
3 website.

4 MR. ZIEMBA: Thank you.

5 CHAIRMAN CROSBY: I agree with that.
6 Okay. Great. Anything else?

7 MR. ZIEMBA: That's the end of my
8 report.

9 COMMISSIONER MCHUGH: Those are two
10 major steps.

11 COMMISSIONER ZUNIGA: Major steps,
12 yes.

13 CHAIRMAN CROSBY: Thanks.

14 COMMISSIONER MCHUGH: Really very,
15 very helpful.

16 CHAIRMAN CROSBY: Item number six,
17 regulation update. Who is this?

18 MR. GROSSMAN: I can probably help you
19 with that.

20 CHAIRMAN CROSBY: All right, please
21 do.

22 MR. GROSSMAN: We discussed at the
23 last meeting the memo, which laid out a process by
24 which we would undertake the drafting of the Phase

1 II regulations and the complex gaming regulations
2 as a whole.

3 Since then, I've had discussion with
4 our consultants both legal and gaming. And an
5 outline has been developed. And we have made
6 preliminary assignments as to who would be
7 responsible for certain provisions. And I will
8 circulate that to you within about a day, probably
9 tomorrow morning.

10 We discussed the best way to proceed.
11 And it was suggested that the Phase II regulations
12 -- and you'll see from the outline what I mean by
13 the Phase II regulations. They include such
14 subjects as the surrounding community regs. we just
15 discussed, the designation of host communities,
16 things of that sort, the application as a whole, how
17 the application will be reviewed, a lot of the
18 policy issues that you've already contemplated.

19 That the Phase II process will be the
20 most difficult and time-consuming part of the
21 drafting process. So, the aim was to work our way
22 through that as quickly as possible.

23 And with that if we can do that in an
24 expeditious manner and all hands are on deck to get

1 that done that the rest of the regulations may be
2 able to move a little bit more swiftly than perhaps
3 we had even contemplated.

4 So, with that in mind, we have come up
5 with a draft schedule for the promulgation of the
6 regulations, which is actually consistent with the
7 schedule by and large that the Commission has
8 already approved.

9 The hope is that we can shorten the
10 timeline as much as possible. It's difficult to
11 pinpoint how much we'd be able to shorten that
12 schedule until we really delve into drafting the
13 Phase II regulations. And as you can see, some of
14 them are already done. The surrounding community
15 regulations are already done. And that moved
16 fairly quickly.

17 So, I think we're hopeful that we can
18 do this quicker than we even thought. But until we
19 actually jump in and start drafting, it's difficult
20 to set a meaningful goal as to how quickly that can
21 be done.

22 So, what we did is we came up with a
23 timeline by which we can insure ourselves that we
24 will have Phase II regulations in place by the time

1 the investigations are done. So, we will not be
2 delayed at all in getting the applications out there
3 and the review and moving them whatsoever.

4 We would just then have to follow up
5 with the rest of the regulations after we got
6 through the Phase II stuff shortly thereafter. So,
7 all of the regulations would be in place when they
8 were needed. There would be no delay in the
9 process.

10 So, that's the plan right now. And
11 I'll send you a copy of the outline for your review.
12 And perhaps at your next meeting, you can discuss
13 that, approve the outline. And any individual
14 Commissioners can insert themselves into any
15 specific sections that they are interested in. So,
16 we can further break up the responsibilities for the
17 drafting. So, that's the plan at this point if that
18 sounds satisfactory.

19 CHAIRMAN CROSBY: I think we'll all be
20 anxious to see the outline of the schedule, but yes
21 that sounds great. That's what we're looking for.

22 MR. GROSSMAN: Okay.

23 COMMISSIONER CAMERON: Mr. Chair, I
24 would just say that I've been working with Mr.

1 Grossman on looking at the timing of the -- and
2 Commissioner McHugh as well -- timing of the
3 regulations versus the timing of investigations.
4 And I just want to commend Mr. Grossman for,
5 frankly, being a problem solver. For
6 understanding our mutual needs and putting some
7 things in place that I think that will save us some
8 time. And really understanding the collective
9 goal and working hard toward making that happen when
10 it comes to the regulations.

11 CHAIRMAN CROSBY: Thank you.

12 MR. GROSSMAN: Okay.

13 CHAIRMAN CROSBY: Great. Is there
14 anything else on the regs. process? Great.

15 MR. GROSSMAN: Thank you.

16 CHAIRMAN CROSBY: Item number seven,
17 the Investigations and Enforcement Bureau, our
18 interim director.

19 COMMISSIONER CAMERON: Thank you, Mr.
20 Chair. First item is the scope of licensing. Very
21 busy week from when we reported last week. Lots of
22 meetings, lots of phone calls, lots of discussions,
23 emails, letters back and forth.

24 I want to credit our applicants for

1 being responsive to our requests in getting things
2 to us in a timely manner. And we are doing the same,
3 turning around determinations in a timely manner.
4 Listening, taking the meetings that are necessary
5 to understand the issues.

6 There are a couple of outstanding scope
7 of licensing decisions that have yet to be made, but
8 it has not slowed down the process. We are
9 continuing the application review. And in some
10 cases, even starting investigations before all
11 those determinations are made. So, that process is
12 working well and nearly complete.

13 With regard to investigations, we
14 reported last week that we had two applications
15 which had been reviewed by our team at IEB and had
16 been sent to our contract investigators in
17 conjunction with the State Police to start those
18 investigations. I am going to report today that
19 our team made up of state troopers frankly, have
20 been working very, very diligently as well as our
21 new staff attorney and have completed the
22 application review for five additional applicants.
23 I'll be more specific.

24 CHAIRMAN CROSBY: This is for

1 completeness basis?

2 COMMISSIONER CAMERON: Yes,
3 sufficiency in the application itself. There are
4 some deficiencies in every application, frankly.
5 When I talk about deficiencies, paperwork that may
6 be missing, documents that are not legible, they're
7 not clear. Qualifier information that maybe needs
8 to be further defined. Just many issues that we are
9 working out back and forth. Again, I will say the
10 applicants are responsive.

11 And we're working on some timeframes,
12 some goals to get those applications suitable so we
13 will not stop the background investigations.
14 Because if we turn over to our background
15 investigators an incomplete package, it's very hard
16 to move forward. Because there are certain steps
17 you want to take all at once in a background
18 investigation. And if you don't have all of the
19 information from all of the qualifiers, that just
20 slows down the process.

21 So, between today and tomorrow we will
22 have five additional applicants. And I'll be more
23 specific, MGM, Mass. Gaming and Entertainment,
24 Mohegan as well as Hard Rock and Wynn, the review

1 will be completed. They will be deemed sufficient
2 and sent out for background investigations to
3 begin.

4 CHAIRMAN CROSBY: The other two before
5 that?

6 COMMISSIONER CAMERON: We already had
7 Plainridge and Penn National complete. And those
8 investigations have started.

9 So, that process is working well, the
10 review process. We're getting these out for
11 background investigations very quickly. And the
12 remaining applicants are being reviewed as we
13 speak. And I would hope as soon as next week we'll
14 be in a position to turn those over for
15 investigation as well.

16 CHAIRMAN CROSBY: Great.

17 COMMISSIONER MCHUGH: Great.

18 CHAIRMAN CROSBY: Anybody?

19 COMMISSIONER MCHUGH: That's good.

20 CHAIRMAN CROSBY: Two questions. We
21 talked Tuesday night. We told the public Tuesday
22 night that we would review these for
23 confidentiality issues and eventually release the
24 non-confidential information. Do we have any

1 approximate idea of when that might be?

2 COMMISSIONER CAMERON: I do. That is
3 part of our regulation. I think there is so much
4 information that is required. Some of the
5 applicants did not send a redacted version. It is
6 a lot of work. All of our applicants have been
7 reminded that that is a requirement.

8 And we've given everybody two weeks to
9 get that redacted copy to us, which will have the
10 public information. There's also an opportunity
11 to request additional information to be held
12 confidential. And there's a process according to
13 the regs. of sending in a written document if they
14 request additional information. And we'll
15 evaluate that request.

16 CHAIRMAN CROSBY: So, there's a
17 two-step process. They're going to give us a
18 version that they think is appropriately redacted
19 plus extras if they want any.

20 COMMISSIONER CAMERON: It's clearly
21 laid out. So, they know what is required and
22 they'll get that document to us.

23 CHAIRMAN CROSBY: And then somebody
24 will review that.

1 COMMISSIONER CAMERON: Yes. One more
2 issue, if I may mention, part of this review process
3 helps refine our budget, our forecast for these
4 investigations. Several of them in initial
5 conversations with our contract investigation
6 teams will require additional revenue. And we will
7 be reaching out when we have a pretty substantial
8 forecast. We will be reaching out and providing
9 explanation as to why this investigation will be
10 more costly than the funds we've already
11 identified. So, that will be coming.

12 As we clearly finish up the scope of
13 licensing and we have a better idea of the business
14 entities where there are facilities around the
15 world, really the kind of investigation that will
16 be needed. And we are working on that now. We'll
17 have a better forecast of cost and we'll be in a
18 position to understand for each applicant what
19 those costs will be and we'll certainly communicate
20 that.

21 CHAIRMAN CROSBY: Great.

22 COMMISSIONER MCHUGH: Have we
23 identified and posted a schedule of the fees we're
24 going to charge and where these costs are coming

1 from? Has that been done?

2 COMMISSIONER ZUNIGA: Well, that's
3 the intention of this effort that we're undergoing.
4 For the most part, we already have the fees that have
5 to do with our consultants in the investigative
6 piece. And I'm developing additional proration
7 for some of the costs that the Commission will
8 incur. And that will be ready in the next few days.

9 COMMISSIONER MCHUGH: Yes.

10 COMMISSIONER ZUNIGA: To answer your
11 question the answer is not yet.

12 COMMISSIONER MCHUGH: No, no. I
13 understand that. But we will have something that
14 we will be prepared to post on the website that tells
15 what the fees are and how we are determining the
16 fees.

17 CHAIRMAN CROSBY: The fees meaning the
18 charges for the background check?

19 COMMISSIONER MCHUGH: The charges
20 against the 400,000, right. Our regulations
21 contemplate us posting a schedule of fees so that
22 the applicants, the developers and the world knows
23 what is happening with the \$400,000 and any
24 additional sums that may be necessary. So, it

1 seems to me we need to make sure that's done.

2 COMMISSIONER ZUNIGA: Yes.

3 CHAIRMAN CROSBY: You were aware of
4 that?

5 COMMISSIONER ZUNIGA: Yes.

6 CHAIRMAN CROSBY: I didn't remember
7 that. So, if you fold that into what you're doing.
8 That's something we ought to take a look at here and
9 then post that. So, whenever you get around to it,
10 next week or whenever.

11 The other thing is there are two
12 applicants who have not declared which license they
13 are looking for, at least as far as I know, but we
14 are going to try to do the slots first, which we
15 can't do if we don't know if either of those wants
16 be a slot. So, how do we handle that?

17 COMMISSIONER CAMERON: Again, these
18 were applicants that really moved their process
19 along very quickly in the last week. We were unsure
20 whether or not they would be able to put their deal
21 together in time to make our deadline. So, we have
22 not specifically asked.

23 As we review this application, it is an
24 interactive process. As many of you know, I've had

1 conversations with so many of you about the process
2 and whether it be when to get us documents or talking
3 through some of the issues.

4 So, we anticipate these two newest
5 applicants, we will have that same process.
6 Meaning that was we are reviewing that application
7 we will have conversation. And absolutely that is
8 one of the -- Although, we haven't required that
9 they tell us where at this point, we do think it's
10 important that they tell us which license. I don't
11 think that will be a problem.

12 And we should by next week, Mr. Chair,
13 have that information and make sure that our
14 investigative resources are used in a way that we
15 focus on the slots.

16 Again, there is a team for every single
17 applicant, a team of investigators. But we really
18 are emphasizing the slots license first. So, we'll
19 have that information by next week.

20 CHAIRMAN CROSBY: We'll make that
21 public, Director Driscoll, when we get those last
22 two. Okay. Anything else on IEB report?

23 COMMISSIONER CAMERON: That concludes
24 my report.

1 CHAIRMAN CROSBY: How's our new
2 director coming?

3 COMMISSIONER CAMERON: For IEB?

4 CHAIRMAN CROSBY: Yes.

5 COMMISSIONER CAMERON: Will start a
6 week from Monday after giving two weeks' notice to
7 her prior employer, but is already actively engaged
8 in understanding what we're doing and will be part
9 of a couple investigative meetings next week. So,
10 all is well.

11 CHAIRMAN CROSBY: Great. Okay.
12 Item number eight, Racing Division report.

13 DR. DURENBERGER: Good afternoon,
14 Mr. Chair, Commissioners. I have a relatively
15 brief transition update. This should probably be
16 our last transition update.

17 CHAIRMAN CROSBY: Because the
18 transition is over, great.

19 DR. DURENBERGER: Because the
20 transition is almost over. Any remaining physical
21 clean up activity that needs to be done at the
22 facilities that we vacated last week should be
23 completed by the end of next week. We do still have
24 some issues with some electronic files that are

1 coming over from the previous agency, but that
2 should also all be done by the end of next week.
3 Other than that I don't have much to report on the
4 transition other than it went really smoothly, I
5 think.

6 COMMISSIONER MCHUGH: That's great.

7 DR. DURENBERGER: Item 8b, I'd like to
8 present an overview for you, sort of a reminder of
9 where we were last week and a clarification to the
10 public of what the next step for them is.

11 Last week we introduced a number of
12 issues to you. And in the packet today there is a
13 memo that outlines those issues in some significant
14 detail.

15 And tomorrow we will make sure that on
16 the racing page of the Gaming Commission homepage
17 there is a clear request for public comment. I
18 think the request that appeared this week may have
19 been a little inconspicuous or unclear. So, we'll
20 make sure that we have good documentation there and
21 a very inviting area for people to make comments.
22 As of 5:00 yesterday, we had received no comments,
23 but I think that was a function of the way it was
24 posted. So, we will try to be clearer about that.

1 COMMISSIONER MCHUGH: These would be
2 comments, Director Durenberger, on the 8b
3 memorandum?

4 DR. DURENBERGER: Yes. So, this
5 would be the legislative review of the pari-mutuel
6 and simulcast laws. What we'd like to do today is
7 to focus this discussion on issues that we brought
8 up last week that we think can be addressed through
9 careful regulation. And then discuss which ones
10 may or may not require amendments or an introduction
11 of some statutory language.

12 Before we begin, I kind of want to show
13 you the forest before we start cutting down trees,
14 I think. So, one of the main issues that we talked
15 to you about last week was the creation of the
16 simulcast license, which is issued to non-racing
17 gaming licensees and some of the regulatory
18 challenges that we thought it presented to you.
19 And we do think -- Our recommendation is that we do
20 think that the Commission has broad regulatory
21 powers to regulate simulcasting in a gaming
22 licensee.

23 There's some question about whether or
24 not that can be coupled, whether we can provide a

1 regulatory quirk to language that appears in 128C,
2 which is the simulcast chapter. To the extent that
3 we are able to do that and do it comfortably and do
4 it well, there is still an elephant in the room,
5 which is that 128A and 128C are set to expire in
6 2014. Sections 39 and 41 of the Gaming Act have
7 repealed those chapters.

8 So, however we couple anything in the
9 Gaming Act to 128C, we still need to protect the
10 authority of the Commission in that sense. So,
11 that leads to a whole bunch of other issues, which
12 we're going to go into here for you, such as
13 equalizing the treatment of different simulcast
14 licensees, harmonizing and modernizing and those
15 issues that we brought up to you last week.

16 So, I think I will let David take over
17 at this moment and I will jump in whenever we see
18 fit.

19 COMMISSIONER MCHUGH: I raised the
20 question last week as to whether or not we needed
21 to -- we couldn't just sale along without 128A and
22 128C. So, as you get started, I think it is an
23 unstated premise that we do need 128A and C at least
24 in some form to provide licensing authority,

1 because that's the only place that you find
2 licensing authority. And without it, we can't by
3 regulation put ourselves in the business of issuing
4 licenses and creating new industries.

5 CHAIRMAN CROSBY: Racing, not
6 simulcast.

7 DR. DURENBERGER: Live racing.

8 COMMISSIONER MCHUGH: There is no
9 simulcasting license, per se, as I understand it.
10 But the racing license and then the simulcast is a
11 right that goes with a derivative of racing. So,
12 this discussion proceeds on an assumption I gather
13 that 128A and C at least the licensing authority in
14 128A and C in some form are going to be redone,
15 right?

16 MR. MURRAY: Yes. That Commissioner
17 McHugh --

18 COMMISSIONER MCHUGH: I raised that
19 issue and I sort of wanted to put it to rest.

20 MR. MURRAY: That's a good place to
21 start, actually.

22 CHAIRMAN CROSBY: Just to clear a
23 couple of points on this. The last lines of the
24 front page of this memo quotes our Gaming Act that

1 says the Gaming Act anticipates "continuation of
2 Chapters 128A and C".

3 COMMISSIONER MCHUGH: In this Act, in
4 this Act.

5 CHAIRMAN CROSBY: Yes.

6 COMMISSIONER MCHUGH: And in this --
7 I'm not quite sure what that means, but it's also
8 clear that 128A and C are repealed as of 2014 and
9 therefore something has to be done to rekindle.

10 CHAIRMAN CROSBY: Right. The point
11 that I was going to make is this an issue that we've
12 been wrestling with. And because this is one of the
13 issues that we're trying to figure out what the
14 legislative intent was here, we are going back and
15 forth with the Legislature trying to get their
16 reading on this as well. And haven't wanted to jump
17 in with both feet on this until we've had a chance
18 to get feedback from them. And we probably all are
19 going to read this the same way. But we just
20 haven't gotten to it yet with everybody. And we
21 want to do that before we take a strong position.

22 COMMISSIONER MCHUGH: Right. I hear
23 you. I understand.

24 CHAIRMAN CROSBY: You said is it

1 implicit in what you're saying, the answer is yes.

2 DR. DURENBERGER: I think that there's
3 two options, two ways to go. And one is whether we
4 tweak individual provisions of 128A and C or does
5 it make more sense to come up with some sort of
6 comprehensive racing chapter that ends this
7 perpetual sunseting and so on. So, that I think
8 that's a great overview and that'll help color the
9 discussion.

10 MR. MURRAY: The underlying
11 assumption, at least as we take it from Session Law
12 provision, section 104 of the Session Law is that
13 the Commission has a mandate to look at 128A and 128C
14 and to say whether it's effective to do its job in
15 the current context of certainly the racing
16 industry, but through section 7b of the Gaming Act.
17 It also incorporates, at least in our view, the
18 simulcasting that that is going to authorize.

19 And so I think the Commission should
20 expect that at least on the face of section 104 that
21 the Legislature will look at both of these chapters.
22 And our recommendations are your recommendations.
23 And as the Director says, it invites, at least in
24 our view, a rewrite if that's what is necessary, of

1 both 128A and 128C independent of this question of
2 whether or not there is sufficient authority to
3 under gird section 7B simulcasting.

4 CHAIRMAN CROSBY: As you know, the
5 only point I'm making here is we don't want to get
6 ahead of the people who wrote this legislation in
7 our interpretation of it. And I therefore support
8 that we just take our time on that point until we
9 got a chance to communicate fully with everybody.

10 MR. MURRAY: If I could just add to
11 that, we are merely going to make recommendations
12 to the Legislature. Obviously, the Legislature
13 needs to enact whatever it feels is appropriate
14 here.

15 I don't think there's very much other
16 than what we have said. We need 128A and 128C in
17 our view to under gird the authority of 7b. And
18 there are some structural issues if we are correct.

19 We need to look at how 128C regulates
20 simulcasting. And at present it regulates only
21 simulcasting that is the result of having a racing
22 license. Because that's all as presently
23 constituted chapter 128C deals with.

24 So, if there are going to be racing

1 licensee simulcasting and non-racing licensee
2 simulcasting and in that there's a mix of perhaps
3 some racing licensees are also going to be gaming
4 licensees. And some of the simulcasting licensees
5 are going to be former racing licensees. We need
6 to and we have put a lot of thought into how, if we
7 are going to streamline chapter 128C, what should
8 that streamline structure look like?

9 And we have taken some of the lead from
10 the way in which section 7b of the Gaming Act is
11 structured. How it talks about the involvement of
12 the Gaming Commission in setting the level of
13 takeout that would go into the racehorse
14 development fund to fund the industry, the racing
15 industry. And whether or not we ought to borrow
16 some of the design features of that and put them into
17 128C.

18 So, all of that we have thought a lot
19 about it and we have a lot of ideas. But until we
20 resolve these issues that are still extant and that
21 we're working on, we can't make a recommendation,
22 obviously, as to how and what that structures should
23 look like.

24 CHAIRMAN CROSBY: Did I understand

1 Commissioner McHugh to say that in the absence of
2 128A and C we don't even have the right to issue
3 simulcast licenses under 7b?

4 COMMISSIONER MCHUGH: You probably
5 did understand me to say that because I spoke too
6 broadly. 7b is an independent grant of authority
7 to issue a simulcasting license to a gaming
8 licensee. We do have that power.

9 CHAIRMAN CROSBY: Or a former license
10 holder.

11 DR. DURENBERGER: Yes.

12 COMMISSIONER MCHUGH: Yes. What I
13 meant to say is in the absence of 128A and C, we don't
14 have the power to issue a live racing license.

15 CHAIRMAN CROSBY: Right.

16 COMMISSIONER MCHUGH: And therefore
17 no live racing licensee can simulcast because there
18 won't be any live racing licenses.

19 CHAIRMAN CROSBY: Right. I was
20 afraid maybe once again I've lost track.

21 MR. MURRAY: There is however, Mr.
22 Chairman, something that we ought to keep our eye
23 on as we think about this ultimately to make a
24 recommendation to the Commission.

1 While section 7b clearly involves the
2 Commission at least to the extent of setting the
3 level of takeout, there isn't in the Gaming Act a
4 broad framework, a statutory authority to do all of
5 the things that are currently done on the basis of
6 the authority in 128C.

7 CHAIRMAN CROSBY: Are you talking
8 about racing now or simulcast?

9 MR. MURRAY: Simulcast.

10 CHAIRMAN CROSBY: Even in simulcast?

11 MR. MURRAY: Yes.

12 COMMISSIONER ZUNIGA: 128C is the
13 simulcast.

14 MR. MURRAY: So, that if 128A and C
15 went away, it would invite the question for
16 simulcasting licenses under 7b what statutory
17 framework or what statutory authority would there
18 be for the kind of regulatory framework that would
19 be necessary in order to regulate simulcasting
20 under 7b?

21 And the answer to that different people
22 can look at 7b and the structure of the Gaming Act
23 and come to different conclusions. We tend towards
24 the conclusion that we'd be far better off

1 structuring 128C in such a way as to accommodate the
2 Gaming Act simulcasting license and to incorporate
3 that into a revitalized streamlined 128C.

4 COMMISSIONER MCHUGH: But the memo
5 makes it quite clear that the regulatory power of
6 the Commission is broad.

7 MR. MURRAY: Yes, no question.

8 COMMISSIONER MCHUGH: And the statute
9 itself says in section 4, I believe it is that the
10 Commission has the authority to promulgate any
11 regulations that are necessary to carry out the
12 powers the Act contains.

13 So, while it would clarify things, I
14 guess is what you're saying, if there were a
15 statutory restructure to accommodate the grant of
16 power in 7b, in the absence of that grant of power,
17 our statutory restructuring and the Commission
18 could still do its work insofar as 7b simulcasting
19 licenses are concerned. Do I understand that
20 correctly?

21 MR. MURRAY: I think what I'm saying,
22 Commissioner, is that in order to carry out some
23 regulatory function, there has to be statutory
24 authority, specific statutory authority for it.

1 So, like in the case of the takeouts
2 that are currently authorized under 128C without
3 128C there is no at least expressed statutory
4 authority in the Gaming Act that would authorize
5 without argument, let's put it that way, the takeout
6 from simulcasting other than sending that 10
7 percent, minimum 10 percent over into the racehorse
8 development fund.

9 COMMISSIONER MCHUGH: I understand
10 that. I understand that. That is a tax like
11 power. It has to be expressly embodied in a
12 statute. But the conditions under which a
13 simulcasting license can be issued, who they're
14 issued to, the consequences of issuing them and the
15 obligations of the licensee, those are regulatory
16 -- things within the Commission's regulatory ambit,
17 although it would be better to have some statutory
18 indication from the Legislature as to what they
19 intended us to do if we could still do it. So, I
20 think we are the same --

21 MR. MURRAY: Yes, I think so.

22 CHAIRMAN CROSBY: So, I think we know
23 where we are. I think you all have identified and
24 come up with solutions for all of the sort of

1 operational matters here. The big kahuna is what
2 if anything is going to happen with 128A and C come
3 July 2014. That is going to be a decision for the
4 Legislature ultimately to make.

5 We have to figure out whether they want
6 us to make recommendations to them on our opinions
7 on what would happen in July and what ought to happen
8 in July. And that's what we're still waiting on,
9 sort of a heads-up from them on that. Okay.

10 DR. DURENBERGER: Item 8c, I want to
11 introduce to you some looming proposed regulatory
12 changes as they pertain to veterinary matters,
13 equine -- Equine is horse. -- medication and
14 veterinary practices on our racetracks. We put
15 together some proposed changes to 205 CMR 3 and 4.
16 And this letter that's in your packet as item 8c is
17 what would be the notice to the Local Government
18 Advisory Council. And I will pause one moment.

19 COMMISSIONER ZUNIGA: I know you sent
20 it by email, but I don't have it in my packet.

21 DR. DURENBERGER: This draft letter
22 here to Local Government Advisory Council basically
23 outlines which areas of the CMR are going to be
24 primarily affected, almost exclusively affected,

1 and what these new proposed rules are designed to
2 do.

3 So, I would just draw your attention to
4 repealing a current regulation that permits the use
5 of a race day medication. It's an
6 anti-inflammatory medication. Massachusetts we
7 believe is the last jurisdiction in North America
8 that permits this practice on race day.

9 CHAIRMAN CROSBY: You need to move the
10 microphone towards you.

11 DR. DURENBERGER: So, I'll just repeat
12 that. What these proposed changes would do,
13 they're going to do a lot of things, but the
14 important highlights that we think are that we
15 suggest repealing the current regulation which
16 permits the use of a race day medication. It's a
17 non-steroidal anti-inflammatory medication that in
18 Massachusetts can be by regulation administered to
19 horses on race day. And we believe Massachusetts
20 is the last jurisdiction in North America if not
21 even more globally than that that permits this
22 practice. And so, by repealing that, it would go
23 a long way toward moving Massachusetts towards the
24 uniformity that the industry is seeking.

1 We have included a provision for a
2 split sample or a referee sample for an owner and
3 trainer. If a post-race testing sample comes back
4 for a medication positive violation, Massachusetts
5 does not currently require the Commission to afford
6 the opportunity for that trainer to send the sample
7 out to another testing lab to verify, confirm or
8 deny the findings in the Massachusetts sample.

9 So, we have concluded that provision
10 basically affords additional due process for
11 licensees. That is industry standard. There are
12 few jurisdictions that are not doing that but
13 certainly the majority are. So, that's and
14 industry best practice. And it's the fair thing to
15 do.

16 We would be preventing the transfer of
17 horses in a suspended trainer's care to his or her
18 spouse during the period of suspension. Also an
19 industry practice.

20 The betting customer does not like when
21 they find out that the horse that they are wagering
22 on is being trained by the spouse of somebody who
23 has been ruled off or given a long suspension for
24 some sort of medication violation. So, this helps

1 protect integrity.

2 And providing clear withdrawal times
3 for accepted therapeutic medications to veterinary
4 practitioners and trainers in the form of treatment
5 restriction window. So, what this does is
6 currently if you're a trainer or veterinarian, you
7 know where a target might be, a target level of some
8 medication. If you go over that would trigger a
9 violation. But it's very difficult to know how far
10 out in advance you stop the treatment of these
11 medications.

12 And these medications that we're
13 talking about are therapeutic medications. So,
14 they're the medications that you and I would keep
15 in our cabinets.

16 Any sort of athletes suffers from aches
17 and pains, the occasional G.I. distress,
18 gastrointestinal distress. And so there are
19 medications that are very legitimate to be used on
20 horses in training, not on race day, but in
21 training.

22 And the vast majority of medication
23 violations that we see in the industry are simply
24 the result of being treat too close with some of

1 these therapeutic medications.

2 Doping in horseracing is very
3 uncommon. But the majority of things that you see
4 and that get the press in the industry are actually
5 overages of therapeutic medications.

6 So, the rules that we propose will give
7 the guidelines that the practitioners and the
8 trainers have been seeking. This is an industry
9 best practice. And Massachusetts will be joining
10 a number of states in rolling out this particular
11 rule.

12 So, with your approval, I would like to
13 take the draft -- For those of you who can't see the
14 A and the T are missing from the draft watermark.
15 But I would like to --

16 CHAIRMAN CROSBY: I thought it was a
17 whole new code you had, veterinarian's code.

18 DR. DURENBERGER: Daily Racing Form.
19 I would like to remove the draft watermark from
20 this, sign it and send it off to the appropriate
21 addressees tomorrow.

22 COMMISSIONER STEBBINS: On bullet
23 number three, is there any concern about the
24 suspended trainers ability to transfer ownership to

1 another family member? I mean, we're protecting
2 against the horse of a suspended trainer running,
3 basically.

4 Is that the only nuance we need to worry
5 about is just transfer to a spouse or another family
6 member?

7 DR. DURENBERGER: The answer is no.
8 And the industry is looking at that. And the Model
9 Rules Committee is looking at some new language.
10 So, you're going to start hearing terms like
11 inactive person, which would include people who are
12 suspended, people who did not renew their
13 occupational license or some other sort of where
14 there's an administrative something going on, and
15 then associated person.

16 So, there's a definition of associated
17 persons and how far out those tentacles reach. And
18 it's just striking a balance between what's fair.
19 I mean, there's only so far you can reach. Only so
20 much is fair for the betting public, for the
21 regulator because there is a burden on us, of
22 course, to make sure whether or not this practice
23 is occurring, and for the occupational licensees.

24 CHAIRMAN CROSBY: We don't need to

1 vote on this, do we?

2 COMMISSIONER MCHUGH: We're starting
3 the regulatory process. And we ought to have a vote
4 that I think starts that process. We have the draft
5 regulations. They're now going to be sent to Local
6 Government Advisory Committee. That's what this
7 letter goes to. And that really starts the thing
8 running. And we'll set up a comment period and the
9 like.

10 I would think it would be helpful to
11 have a vote. So, I would move that the Commission
12 authorize Director Durenberger to send this letter
13 enclosing the new proposed regulations dealing with
14 the subjects contained in the letter to the Local
15 Government Advisory Committee and otherwise take
16 the steps necessary to see to it that the
17 regulations are properly promulgated.

18 COMMISSIONER STEBBINS: Second.

19 CHAIRMAN CROSBY: This letter doesn't
20 actually convey the full amendments. I was going
21 to ask the question, which Commissioner McHugh
22 assumed. Is this meant to convey the whole
23 regulatory change, because if it is, it doesn't.
24 It just gives us highlights.

1 DR. DURENBERGER: Correct, it does.

2 And Mr. Grossman, can you answer that for me?

3 MR. GROSSMAN: We didn't intend to
4 forward the draft regulations since they haven't
5 been formally reviewed by the Commission. The
6 executive order doesn't require a transmission of
7 the regulations when you can adequately convey the
8 subject matter.

9 So, my opinion is that this letter
10 satisfies the obligation of the executive order.
11 And certainly if they're interested in seeing the
12 draft regulations once the Commission has an
13 opportunity to look at them.

14 COMMISSIONER MCHUGH: I misunderstood
15 what was happening then. So, I withdraw my motion.
16 It hasn't been voted on. It hasn't been passed yet.
17 Go ahead.

18 DR. DURENBERGER: My understanding of
19 the timetable is that given the appropriate
20 lead-time to the Local Government Advisory Council,
21 I come back to you with the actual regulations and
22 we can over them in whatever level of detail you
23 would like.

24 And we would also propose putting them

1 on the website, inviting public comment on that.
2 There's also a public comment period built in toward
3 the end where the public hearing is.

4 But we're not trying to hide the ball
5 on anyone. It was just my understanding was that
6 we needed to merely give them notice and certainly
7 be responsive to any additional inquiries they had.
8 And then we would be coming back to you in about two
9 weeks with the full text of the amendment.

10 COMMISSIONER MCHUGH: Okay. Is the
11 full text of the amendment -- What stage are we in
12 insofar as those are concerned?

13 DR. DURENBERGER: They are in draft
14 form, prepared for your review.

15 COMMISSIONER MCHUGH: They're ready.

16 COMMISSIONER ZUNIGA: Didn't you
17 distribute those over the weekend?

18 DR. DURENBERGER: I did.

19 COMMISSIONER ZUNIGA: Those are the
20 ones that I thought were them.

21 COMMISSIONER MCHUGH: Any reason that
22 we couldn't take them up next week?

23 DR. DURENBERGER: Perhaps I
24 misunderstood the amount of lead-time that the

1 Local Government Advisory Council needed. I'm
2 ready for next week.

3 COMMISSIONER MCHUGH: Internally,
4 there's no reason that we -- We don't have to notify
5 the Local Government Advisory Committee before we
6 think about the regulations, right?

7 MR. GROSSMAN: You don't have to.
8 This is just a way to get the process moving, because
9 there's a 14-day window we have to give them to
10 comment. So, this would just be a way to get a week
11 under our belts while you look at it.

12 COMMISSIONER MCHUGH: Right. I don't
13 quarrel with that. But we don't have to wait to do
14 anything because we're sending this letter to them
15 right away. So, I would recommend that we send the
16 letter, and I'll reformulate the motion. And then
17 put the regulations on the agenda for next week so
18 that we can take another week to look at them and
19 then adopt them. So, if they want to see them,
20 which they may ask to see, we have regulations to
21 give them.

22 MR. GROSSMAN: The only thing you
23 couldn't do during this 14-day is send notice to the
24 Secretary of State and publish it in the newspaper

1 and things of that sort, but you can look at them.

2 CHAIRMAN CROSBY: This is a response
3 to us saying is there a way we can look at that
4 schedule and squeeze things down within the limits
5 of the rules. So, I think it's a good step in that
6 direction. It's easy.

7 COMMISSIONER MCHUGH: I would move
8 that Director Durenberger be authorized to send the
9 letter January 17, 2013 to the Local Government
10 Advisory Committee promptly.

11 COMMISSIONER STEBBINS: Second.

12 CHAIRMAN CROSBY: Any further
13 discussion? All in favor, aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 CHAIRMAN CROSBY: Opposed? The ayes
19 have it unanimously.

20 DR. DURENBERGER: That concludes the
21 Racing Division's report this week.

22 COMMISSIONER MCHUGH: Thank you very
23 much.

24 CHAIRMAN CROSBY: Great.

1 COMMISSIONER MCHUGH: I would like to
2 just take a two-minute break.

3 CHAIRMAN CROSBY: We will have a brief
4 adjournment. We will be back in five minutes or so.

5
6 (A recess was taken)

7
8 CHAIRMAN CROSBY: We will reconvene
9 public meeting number 46. And we're at item number
10 nine, other business which are reserved for matters
11 the Chair did not reasonably anticipate at the time
12 of posting.

13 I'm required to post our agenda 48
14 hours, business hours before the public meeting.
15 And that didn't give us time after our meeting
16 Tuesday night when we got all of these waiver
17 requests. So, we filed a supplemental agenda,
18 which we posted also, and would like now to bring
19 up item number nine which was several requests for
20 waivers that were filed in our offices on or about
21 the end of the day on Tuesday.

22 And we've asked Commissioner McHugh
23 to walk us through these requests and invite our --
24 We will all then participate in the conversation as

1 he walks us through these. So, fire away.

2 COMMISSIONER MCHUGH: I wonder, Mr.
3 Chairman, if I could begin by asking Ombudsman
4 Ziemba to join us just for a minute to put in context
5 some of the processes.

6 Yesterday or this morning after we had
7 posted this, John, I asked you to reach out and let
8 people know that we were going to be taking this up
9 today. So, could you just briefly bring us
10 up-to-date on what --

11 MR. ZIEMBA: Sure. I contacted
12 representatives of all four of the requests for
13 extension earlier today. I either spoke with them
14 or left messages and an email for representatives.

15 In addition to making multiple phone
16 calls, I also contacted the host community that is
17 known in regard to the -- one of the applicants or
18 excuse me two of the requests for extensions, the
19 City of Holyoke, to let them know that it would be
20 discussed today and that our discussions would be
21 based on the items that we received.

22 Just prior to coming over to the
23 meeting today, we received a letter from the City
24 of Holyoke that relates to these applications.

1 COMMISSIONER MCHUGH: And that letter
2 we all have been provided, all of the Commissioners,
3 and will be available for everybody, copies will be
4 available for members of the press. So, if you
5 wouldn't mind staying there for a minute in case
6 come to any factual issues.

7 But let me then, Mr. Chairman, set the
8 stage. We received these four requests from people
9 who did not file an application or in one case filed
10 with the application a check by the deadline of five
11 o'clock on the 15th. And instead received these
12 requests for extensions of the time to do so.

13 There, under our regulations, are two
14 applicable provisions or two provisions that we
15 need to think about. The first is found for those
16 who keep score on these things, in section 111.016,
17 which provides that the Commission may, in its
18 discretion, extend the time for filing a complete
19 application to enable an applicant to cure a
20 deficiency in its application provided that the
21 application was submitted and the applicable fee
22 paid before the established deadline. Or to
23 provide a reasonable additional time for filing in
24 cases in which extraordinary circumstances

1 prevented a timely filing.

2 So, under that regulation, either
3 people who filed their application and paid their
4 fee can have an additional amount of time in our
5 discretion to do necessary things or if there are
6 extraordinary circumstances, we can extend the time
7 for filing.

8 Section 102.034 provides the
9 Commission, again, in its discretion with the power
10 to waive or modify any component of its regulations
11 including deadlines. And the Commission in
12 exercising that power has by regulations said that
13 it will consider four factors: Whether the waiver
14 is consistent with the statute, General Laws 23K.
15 Whether granting a waiver will not interfere with
16 the ability of the Commission or the Bureau, that's
17 the IEB, to fulfill its duties. Granting the
18 waiver will -- whether the waiver will adversely
19 affect the public interest. And whether failure to
20 grant the waiver would cause substantial hardship
21 to the person requesting the waiver.

22 Those are cumulative factors.
23 There's not one factor that points in one direction.
24 But those are the things the Commission has

1 undertaken to take into account in deciding whether
2 to grant a waiver or not.

3 So, that's the regulatory framework in
4 which we are considering these. And I thought it
5 would be helpful simply to look through them one by
6 one and deal with them in that fashion.

7 The first request is embodied in the
8 letter from Mayor Michael D. Bissonnette of the City
9 of Chicopee. His letter -- And all of these are
10 part of the packets that are available and which
11 have been distributed. -- says, and I'm going to
12 read just some of the highlights of this instead of
13 the entire letter.

14 As you are aware, I have long advocated
15 for the prospect of the City of Chicopee hosting a
16 resort casino development. Skipping now some
17 background, the impetus for my outreach to you today
18 is that within the last seven days, I fielded a very
19 strong and legitimate expression of interest about
20 a potential site in our city just taken under option
21 that warrants my serious consideration and that of
22 our residents. I respectfully request that the
23 Gaming Commission grant the City the additional
24 time we need to work with the site owner by allowing

1 a late application to be filed for a casino
2 development in Chicopee. And he goes on to say that
3 he's aware that it's a late request. It's the
4 eleventh hour, but the circumstances recited in his
5 letter are those on which he basis his request.

6 So, that is the first of the waiver
7 requests. It seems -- Well, I'll open that up for
8 discussion if you'd like or I'll go through and make
9 a recommendation.

10 CHAIRMAN CROSBY: I think if we start
11 with your recommendation would be good.

12 COMMISSIONER MCHUGH: All right. It
13 seems to me that this request is understandable from
14 the mayor of a city who is trying to advance the
15 interests of the city. But it does not fit within
16 the concept of extraordinary circumstances as the
17 first of the regulations that I mentioned requires.

18 The second thing in my view, Mr.
19 Chairman and colleagues, is that under the
20 four-part test I articulated, granting the waiver
21 would adversely affect the public interest. And it
22 would do so -- And this is going to be a common theme
23 that we need to think about today. This is an
24 interlocked process. We are trying as hard as we

1 can to move forward expeditiously to achieve the
2 goals that the statute requires and issue these
3 licenses. But in a competitive process, one really
4 can't decide how to approach the license issuing
5 decision until all of the competitors are in the
6 field.

7 So, to give somebody an opportunity to
8 file a license application at some place down the
9 road that's not defined, and to hold that on the hope
10 that some deal may come to fruition that would allow
11 the person seeking the postponement to file an
12 application or to have a developer file an
13 application, the mayor's not going to be the
14 applicant, would it seem to me endanger the process
15 of moving forward without any end time in sight.

16 So, I would recommend that in
17 consideration of all of the factors that we are
18 required to consider the we deny this request for
19 the extension.

20 COMMISSIONER CAMERON: I'd like to
21 speak to that also. I would agree with
22 Commissioner McHugh that I don't see this as -- What
23 is the word you used, Commissioner McHugh, from the
24 first part of the regulation, extraordinary?

1 COMMISSIONER MCHUGH: Extraordinary
2 circumstance.

3 COMMISSIONER CAMERON: Extraordinary
4 circumstance. In fact, in interest in fairness as
5 well, there were a couple of other developers/folks
6 from cities that were trying to put a deal together,
7 met with us as far as scope of licensing but were
8 not able to make the deadline. They could not and
9 understood. They thanked us for our meetings with
10 them, but explained that they were not able to put
11 the deal together in time.

12 So, there are others that have been in
13 the same situation and have respected our deadline
14 and understand what the rules are. So, I would
15 agree with you that this request -- Certainly, we
16 understand the need for mayors to advocate for their
17 cities, but it strikes me the same way that it is
18 not an extraordinary situation.

19 COMMISSIONER ZUNIGA: I would agree
20 with that. And I have three points to make to the
21 recurring theme that you allude to, Commissioner,
22 that are really along those lines. The deadline
23 has been reported accurately and in place for
24 months. Since our September hearing that was well

1 established. The deadline did not move. We did
2 not change it any time before that. So, I doubt
3 that it created confusion.

4 There's one piece perhaps that was not
5 widely understood, but it was certainly understood
6 by some of our applicants, which was that a site need
7 not be secured to become an applicant. The only
8 requirement was filling out the
9 multijurisdictional form and the Massachusetts
10 form, which was clearly stipulated on our website
11 for all of those months that I referred to.

12 So, I am disinclined to entertain any
13 waivers. And we can speak more about each one of
14 the other ones for all of those reasons.

15 CHAIRMAN CROSBY: Commissioner
16 Stebbins, do you want to add anything to that?

17 COMMISSIONER STEBBINS: Yes. I've
18 personally at least over the television heard the
19 mayor's interest and actually his extending an
20 invitation through the media to find a potential
21 operator to locate in the City of Chicopee. Who
22 knows, perhaps he can talk to one of our applicants
23 who hasn't necessarily decided where they would
24 choose to locate.

1 CHAIRMAN CROSBY: That's an important
2 point by the way. Anybody who is a bidder can go
3 anywhere. And there are two bidders that haven't
4 even picked a site yet as far as we know. So, that's
5 an important point. And the people who have picked
6 a site can pick a new site if they want to.

7 COMMISSIONER STEBBINS: In terms of I
8 don't need to harp on the points or reiterate the
9 points that have been made by my colleagues, because
10 I am consistent with their thinking. We have been
11 encouraged to move ahead with great speed and
12 applications or requests for waivers kind of just
13 extend that process out even further and further.

14 And I think again to reemphasize
15 Commissioner Zuniga's point, people have known
16 through the media, through our website, through any
17 number of public hearings what our fast and hard
18 deadline was, except for again, barring any
19 extraordinary circumstances.

20 CHAIRMAN CROSBY: I would just add a
21 couple of things. One is that the mayor
22 anticipated this in his own letter. But if we were
23 going to grant a waiver to somebody, we would grant
24 it to an applicant. We wouldn't grant it to the

1 city.

2 COMMISSIONER MCHUGH: Can I just
3 interrupt, because now we've had three comments
4 along the same lines, two that everybody has known
5 all along and then this one. And that the mayor
6 raised in his letter that some may say that he
7 doesn't have any standings, any right to come in to
8 ask for a waiver because he's not an applicant.

9 I think our regulation on its face
10 doesn't limit who may ask for a waiver to any
11 specific person. It says the Commission may in its
12 discretion waive any provision or requirement.
13 So, I think substantive -- We ought to think
14 substantively on this and consider the mayor as
15 somebody who has a right under our regulations to
16 request.

17 CHAIRMAN CROSBY: That's a good point.
18 I understand that. But if you come in with a party
19 -- but I hear your point. We're not standing on
20 principle here. We're not standing on a
21 technicality. It's the substance and I agree with
22 that.

23 And on that point you said something or
24 I heard something. You made it sound possibly that

1 you were saying because there wasn't a date certain,
2 he had this open-ended request that it was because
3 of the lack of a date certain that you felt like we
4 should -- Are you suggesting that were there a date
5 certain you would feel differently about this?

6 COMMISSIONER MCHUGH: I don't think I
7 would, but the point is there isn't. And that's one
8 of a number of factors that underlies -- It's one
9 thing if somebody says I can have it to you by the
10 end of the week. And then you apply those four
11 factors to that. But if there's no end-date in
12 sight, it is a different story.

13 CHAIRMAN CROSBY: I get that
14 distinction too and it's important. And I didn't
15 want to suggest that.

16 COMMISSIONER MCHUGH: Right.

17 CHAIRMAN CROSBY: So, I think we will
18 be voting on this. Commissioner McHugh, do you
19 want to frame --

20 COMMISSIONER MCHUGH: Yes, a motion
21 would be quite simple, Mr. Chairman. I would
22 recommend that the request for an extension of the
23 deadline contained in the letter to the Commission
24 sent by Michael D. Bissonnette, Mayor of the City

1 of Chicopee, the Honorable Michael D. Bissonnette
2 dated January 15, 2013 be denied.

3 COMMISSIONER MCHUGH: Second.

4 CHAIRMAN CROSBY: Any further
5 discussion? All in favor, aye.

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER ZUNIGA: Aye.

8 COMMISSIONER CAMERON: Aye.

9 COMMISSIONER MCHUGH: Aye.

10 CHAIRMAN CROSBY: Opposed? The ayes
11 have it unanimously.

12 COMMISSIONER MCHUGH: All right. The
13 second is from, the letter was written by Michael
14 Freedberg on behalf of Good Sam's Casino, Inc. I'm
15 not going to repeat the statute. The regulatory
16 framework, the same regulatory framework applies to
17 all.

18 And in this letter on behalf of Good
19 Sam's Casino, Mr. Freedberg says essentially as
20 follows, and I will summarize it again as I did with
21 Mayor Bissonnette's letter. Good Sam's Casino is
22 formally requesting that the Commission grant Good
23 Sam's an extension of time to come forward with its
24 \$400,000 entry fee into the license application

1 process.

2 The letter then briefly recites the
3 proposition that the target destination for this
4 casino is Holyoke. That the Holyoke mayor has
5 taken different positions insofar as casinos in
6 Holyoke are concerned. That his current position
7 is that he does not choose to engage in negotiations
8 with a potential developer for a Holyoke casino.

9 That in the author's view ultimately
10 the people ought to decide this issue not the mayor.
11 And that there is going to be a special election to
12 fill the seat --

13 CHAIRMAN CROSBY: There may be.

14 COMMISSIONER MCHUGH: There may be a
15 special election to fill the senate seat currently
16 occupied by Senator John Kerry. And that a
17 petition to allow casino gaming in Holyoke may be
18 wrapped into and folded into that. And he
19 therefore requests a six-month extension of the
20 time for paying entry fee to let that process play
21 out.

22 My analysis of this is the same.

23 CHAIRMAN CROSBY: Could I ask one
24 question?

1 COMMISSIONER MCHUGH: Yes.

2 CHAIRMAN CROSBY: Is this
3 distinguishable from WM Development, in which case
4 do you want them in the same - together?

5 COMMISSIONER CAMERON: Separate
6 requests.

7 CHAIRMAN CROSBY: I know that they're
8 separate requests, but they're the same fact
9 patter. I just wonder whether --

10 COMMISSIONER MCHUGH: They are the
11 same fact pattern except that WM Development's has
12 the additional -- Let's deal with them separately.
13 The same principles apply to both.

14 CHAIRMAN CROSBY: Fine.

15 COMMISSIONER MCHUGH: Let's deal with
16 them separately.

17 This is in entirely speculative as
18 well. We don't know when an election is going to
19 be held. We don't know if there's going to be an
20 election because there's a confirmation process in
21 the offing and reasonable expectations as to
22 whether it's likely to happen. But that's way out
23 beyond our jurisdiction.

24 And a four- or six-month postponement

1 of an application would raise havoc with our
2 schedule for Region A for the reasons I just
3 articulated before. We would now have to wait six
4 months to start an investigation provided that an
5 application was filed. These applications take
6 time.

7 So, we would be looking at the end of
8 the year in all likelihood before we could issue the
9 RFA-2 process. And that would throw Region A way
10 off.

11 So, it seems to me that the public
12 interest would not be satisfied by granting this
13 application for an extension notwithstanding the
14 undeniable fact that it's a hardship to the
15 applicant. So, I'd recommend that this one be
16 denied as well.

17 COMMISSIONER ZUNIGA: I would agree
18 for all of those reasons and just leave it at that.

19 COMMISSIONER CAMERON: I concur with
20 the analysis as well.

21 CHAIRMAN CROSBY: I do too.

22 MR. PETITTI: Mr. Chairman, no
23 proponent --

24 CHAIRMAN CROSBY: I'm afraid we are

1 not going to take comments. We've got the
2 applications here. We've got long letters from
3 people. And we are not going to take hear any
4 individual contribution on this.

5 MR. PETITTI: In the statute, Mr.
6 Chairman, there's Judge McHugh pointed out
7 extraordinary circumstances has arisen here in
8 Holyoke.

9 CHAIRMAN CROSBY: He understands
10 that. We understand that. That's what we're
11 going to talk about, whether or not these are
12 extraordinary circumstances. We thought about
13 whether or not we wanted to have this as an
14 opportunity for public conversation and we decided
15 that we do not want to do that.

16 So, we have your thoughts here and we
17 will consider them, but we are not going to have a
18 public conversation with you about it.

19 MR. PETITTI: Will there be a private
20 one then?

21 CHAIRMAN CROSBY: I don't know.

22 MR. PETITTI: I just want fairness.

23 CHAIRMAN CROSBY: Just to add, I agree
24 with that point. What I was going to say is, I think

1 this application and the next one do raise some
2 legitimately difficult circumstances that
3 transpired in the local community. But we have
4 gone through this many times where the Legislature
5 made this a local decision, a local process.

6 And we have many times pulled ourselves
7 out of local issues, a deference to the right of
8 locals to conduct these processes the way they
9 choose to. So, sometimes it works well and
10 sometimes it doesn't. That's an important part of
11 this.

12 MR. PETITTI: Mr. Chairman, Mr.
13 Chairman, there have been five mayors that have
14 considered having a casino in Holyoke.

15 CHAIRMAN CROSBY: Yes. I'm familiar
16 with the story. I'm sorry. I'm sympathetic to the
17 circumstances but we are not going to get into a
18 public conversation about it right now.

19 COMMISSIONER MCHUGH: All right. The
20 next petition is from --

21 CHAIRMAN CROSBY: We need to --

22 COMMISSIONER MCHUGH: Oh, I'm sorry.

23 CHAIRMAN CROSBY: Were there any other
24 comments?

1 COMMISSIONER MCHUGH: So, I would move
2 that the petition of Good Sam's Casino for an
3 extension of six months to file its application and
4 application fee be denied.

5 CHAIRMAN CROSBY: Second?

6 COMMISSIONER ZUNIGA: Second.

7 CHAIRMAN CROSBY: Any further
8 discussion? All in favor, aye.

9 COMMISSIONER STEBBINS: Aye.

10 COMMISSIONER ZUNIGA: Aye.

11 COMMISSIONER CAMERON: Aye.

12 COMMISSIONER MCHUGH: Aye.

13 CHAIRMAN CROSBY: Opposed? The ayes
14 have it unanimously.

15 COMMISSIONER MCHUGH: All right, Mr.
16 Chairman, the next one is from Nicolai Law Group on
17 behalf of WM Development Company, also known as
18 Paper City Development.

19 This too is a petition that looks at
20 circumstances that arose in Holyoke. Details in a
21 good thorough narrative form the entire progression
22 of the discussion in Holyoke, the mayor's position
23 and the change the mayor's position. But it adds
24 to the other one a note that the Holyoke City Council

1 has decided to put a casino ballot question before
2 the residents at some point in the future.

3 And it too will be tied to the upcoming
4 special election for the seat being vacated by
5 Senator Kerry. The petition makes that
6 assumption. But that is what I gather the City
7 Council assumption may have made as well.

8 In any event, the proposal is to tie a
9 vote on whether Holyoke should have casino gambling
10 to the upcoming vote if there is one with respect
11 to replacement of Senator Kerry.

12 I don't see any difference, Mr.
13 Chairman and colleagues, between this petition and
14 the last one that we considered. It seems to me
15 that to delay this and to allow the extension sought
16 here would have a negative effect on the public
17 interest and that it ought to be denied.

18 CHAIRMAN CROSBY: Any other
19 conversation?

20 COMMISSIONER STEBBINS: Just real
21 briefly, Mr. Chairman, to disclose to my colleagues
22 I am familiar both with the attorney for the law
23 group that represented Western Mass. Development
24 and also two of the principles from Western Mass.

1 Development. I disclose that at least interaction
2 and a familiarity I had with those individuals.
3 But I don't feel that it excludes me from taking
4 action on this.

5 In light of the new information, I
6 think surrounding information with respect to a
7 referendum or a new referendum to be put before the
8 voters, I think there was still an opportunity that
9 such a referendum even needs mayoral approval. So,
10 to cast even another question of argument in terms
11 of the process moving forward.

12 But understand the predicament that
13 they've faced. And certainly they've been very
14 thoughtful in terms of disclosing their project and
15 where it was intended to go and what they thought
16 the benefits are.

17 COMMISSIONER ZUNIGA: An additional
18 point to that point is that they are proposing a
19 nonbinding ballot question. So, by its very nature
20 it would be nonbinding.

21 CHAIRMAN CROSBY: This was what Mayor
22 Morse wrote about in his letter we got at the last
23 minute. For what it's worth, saying that he would
24 never negotiate a host community agreement with any

1 community and urging us not to be supportive of
2 this. To me, that's not of particular interest one
3 way or the other, but it's there on the record.

4 So, I would just reiterate what I said
5 before about the Legislature told us that these
6 issues were to be resolved at the local level. It's
7 a process that the locals determine. And for good
8 or ill that was what happened. So, I'll leave it
9 at that.

10 COMMISSIONER MCHUGH: And
11 underscoring that is that the host community
12 agreement, which is essential for predicate to
13 getting a gaming license must be signed by the
14 governing body. After that agreement is signed
15 must call for the election of a host community
16 agreement. And the mayor is part of that governing
17 body. So, that underscores your point, Mr.
18 Chairman.

19 CHAIRMAN CROSBY: Right.

20 COMMISSIONER MCHUGH: So, I'd move
21 then, if there's no further discussion that the
22 petition for an extension filed by WM Development
23 Company, LLC also known as Paper City Development
24 -- trading as Paper City Development be denied.

1 COMMISSIONER CAMERON: Second.

2 CHAIRMAN CROSBY: Any further
3 discussion? All in favor, aye.

4 COMMISSIONER STEBBINS: Aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER CAMERON: Aye.

7 COMMISSIONER MCHUGH: Aye.

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

10 COMMISSIONER MCHUGH: All right. The
11 final one is from Sun Moon Casino and Resort,
12 actually the Seafan Trust, d/b/a Sun Moon Casino and
13 Resort. Their issue is somewhat different, Mr.
14 Chairman and colleagues.

15 They are seeking an extension of 30
16 days based on an assertion that they were unable to
17 file their fee in the amount of \$400,00 because the
18 funder, the person who was to fund that request died
19 shortly before the application deadline. And as a
20 consequence, they were unable to get from him the
21 money they needed in order to file their
22 application.

23 They are requesting an extension of
24 less than 30 days and say that they will provide

1 their check within that period of time.

2 This one is a little bit different and
3 a little bit closer call at least on the face of it.
4 But the application piece that was filed, and there
5 was an application filed, was broadly
6 nonconforming, and evinces no real ability to
7 follow through on a gaming application -- a gaming
8 application in which the qualifying information is
9 present.

10 And it would be one thing if the
11 application were filed and the application were in
12 reasonable shape even and this unfortunate event
13 occurred and the money was unavailable. But on the
14 basis of what we have and on the basis of the content
15 of this letter, I think there is no realistic
16 possibility that the application is going to
17 proceed.

18 And it is under those circumstances
19 that it would not be in the public interest to delay
20 the processing of applications even for the 30 days
21 that's being requested. And I therefore would
22 recommend that the application be denied.

23 CHAIRMAN CROSBY: I didn't realize
24 that there had been an application. Can you tell

1 something more about what it was or was not.

2 COMMISSIONER CAMERON: It's very
3 limited. There had been no interaction with this
4 -- we're not sure it is a company. Because it was
5 last-minute, just before five o'clock --

6 CHAIRMAN CROSBY: There was no
7 qualifier meeting?

8 COMMISSIONER CAMERON: There was no
9 qualifier meetings, no understanding of a company
10 structure. That was not provided. It was a large
11 chart that was provided. It just was not in the
12 form we had requested and was very limited in
13 nature.

14 And I agree. I am certainly not
15 comfortable that this is a legitimate -- I don't
16 want say that they're not legitimate, but they have
17 not provided enough information for us to determine
18 if they would be serious in the process. And the
19 information they did provide was not in keeping with
20 what we had asked or we required, not asked.

21 And I would agree that this is not a
22 circumstance under which we should make an
23 exception for an extraordinary circumstance.

24 CHAIRMAN CROSBY: Other comments?

1 COMMISSIONER ZUNIGA: I agree with all
2 of that. My initial point about how the form of
3 submission was widely available in our website ever
4 since we posted it in September and has been for many
5 days. So, I would concur with the analysis and the
6 recommendation.

7 COMMISSIONER STEBBINS: In reviewing
8 the letter and the request, I guess what I didn't
9 see is even despite this individual's death, I would
10 assume based on my experience dealing with estates
11 that there is still no guarantee the individual's
12 resources would be used to pay the permit
13 application, whatever that individual's will may
14 all say.

15 They did say, just for a correction,
16 under item number four would preclude this entity
17 from submitting an application for a casino license
18 in Massachusetts for at least 15 years. I don't see
19 that information as being accurate, because they
20 argue a hardship. Again, not knowing where they
21 plan to be or --

22 CHAIRMAN CROSBY: Say that again,
23 Commissioner, I didn't recall that.

24 COMMISSIONER STEBBINS: Under number

1 four it says the Trust would certainly be precluded
2 from submitting an application for casino license
3 in Massachusetts for at least 15 years. That to me
4 is not accurate. Maybe it's not our place to
5 communicate that back, but we still haven't decided
6 whether we would issue a commercial license in
7 Region C. We may find the current applicants
8 aren't successful and re-bid a license.

9 CHAIRMAN CROSBY: Good point.

10 MS. WHEATON: Excuse me, Chairman
11 Crosby and members of the Commission. I am very
12 sorry to interrupt.

13 CHAIRMAN CROSBY: No, I'm very sorry
14 to interrupt you. But you heard me speak before.
15 We're not going to have an interactive conversation
16 here.

17 MS. WHEATON: I just wanted a point of
18 clarification. That was just a funder. It's not
19 the funder. That was only for the \$400,000
20 application fee. The funding is already available
21 for the payment. And this just provides the
22 opportunity to go forward to submit the other
23 information that does represent as qualification.

24 CHAIRMAN CROSBY: Okay. Thank you.

1 I think the point here is that the death of a funder
2 could be an extraordinary circumstance. Surely,
3 that is the kind of thing that's foreseen if in the
4 rest the context were persuasive. And what
5 Commissioner McHugh and Commissioner Cameron are
6 saying the rest of the context is not persuasive,
7 did not comply with our standards. And independent
8 of the \$400,000 this would not be a go forward
9 application.

10 MS. WHEATON: Given additional time,
11 all of the rest the information would be provided.

12 CHAIRMAN CROSBY: Right.

13 COMMISSIONER MCHUGH: The basis for my
14 motion, Mr. Chairman, is that the piece that was
15 capable of compliance wasn't complied with by the
16 deadline. And that is in and of itself a
17 circumstance that I think we have to take into
18 account, and use as a basis for our deciding whether
19 in our discretion we want to extend the deadline.

20 And if the application had been fully
21 conforming or substantially conforming and a modest
22 extension of time to pay the fee were all that was
23 being requested, that would be one thing, but that's
24 not this case.

1 CHAIRMAN CROSBY: Right.

2 COMMISSIONER MCHUGH: So, I would
3 move, if there's no further discussion, that the
4 application of Sun Moon Development -- of Seafan
5 Trust d/b/a Sun Moon Casino and Resort be denied.

6 COMMISSIONER CAMERON: Second.

7 CHAIRMAN CROSBY: Any further
8 discussion? All in favor, aye.

9 COMMISSIONER STEBBINS: Aye.

10 COMMISSIONER ZUNIGA: Aye.

11 COMMISSIONER CAMERON: Aye.

12 COMMISSIONER MCHUGH: Aye.

13 CHAIRMAN CROSBY: Opposed? The ayes
14 carry unanimously. Okay. And there's nothing to
15 do with the mayor's letter. So, I think that
16 concludes item nine. That concludes other
17 business. Anything else anybody?

18 COMMISSIONER ZUNIGA: Could I go back
19 to an administrative -- just as part of the
20 administration on the schedule, we had very brief
21 discussion. I just wanted to note that we did
22 comply -- complete successfully our milestone, very
23 important milestone of January 15.

24 And perhaps somebody who is not always

1 recognized but works very hard behind the scenes is
2 Janice Reilly, our Chief of Staff who makes all of
3 that possible. And I just want to publicly
4 recognize her.

5 CHAIRMAN CROSBY: Thank you. Great.

6 COMMISSIONER CAMERON: Good job.

7 COMMISSIONER MCHUGH: Here, here.

8 CHAIRMAN CROSBY: Some people just get
9 things done. Thank you, Commissioner Zuniga and we
10 all agree with that.

11 Do we have a motion to adjourn?

12 COMMISSIONER MCHUGH: So moved.

13 CHAIRMAN CROSBY: All in favor, aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER CAMERON: Second and
17 then in favor.

18 COMMISSIONER MCHUGH: Aye.

19 CHAIRMAN CROSBY: We are adjourned.
20 Thank you, very much.

21
22 (Meeting adjourned at 3:43 p.m.)
23
24

ATTACHMENTS:

1. Agenda
2. Massachusetts Gaming Commission January 10, 2013 Meeting Minutes
3. Massachusetts Gaming Commission Summary Schedule Update
4. Massachusetts Gaming Commission January 11, 2013 Regarding Evaluation Criteria for Casino Proposals
5. Massachusetts Gaming Commission January 17, 2013 Memorandum Regarding Community Disbursements
6. January 16, 2013 Draft of Regulation Regarding Determination of Surrounding Communities
7. Massachusetts Gaming Commission Grant Agreement
8. Question 1 Analysis
9. January 14, 2013 Racing Division Briefing Memorandum
10. January 17, 2013 letter to Department of Housing & Community Development and Massachusetts Municipal Association from Dr. Durenberger Regarding Amendment of 205 CMR

- 1 11. Supplemental Agenda
- 2 12. January 15, 2013 City of Chicopee Request
- 3 for Extension of Time
- 4 13. Letter from Massmouth Consulting Regarding
- 5 Good Sam's Casino, Inc. Request for Extension
- 6 14. January 15, 2013 Letter from Nicolai and
- 7 Accompanying Petition Regarding WM Development
- 8 Request for Extension
- 9 15. January 15, 2013 Seafan Trust d/b/a Sun Moon
- 10 Casino and Resort Letter Regarding Request for
- 11 Extension of Time in Which to Submit Phase I
- 12 Application Fee

13

14

15 SPEAKERS:

16 Dr. Durenberger, Director of Racing

17 Todd Grossman, Staff Attorney

18 David Murray, Racing Consultant

19 John Ziemba, Ombudsman

20

21 Mr. Petitti

22 Ms. Kathryn Wheaton

23

24

C E R T I F I C A T E

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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 18th day of January, 2013.



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