

COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #78

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BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 156-A

Boston, Massachusetts

P R O C E E D I N G S

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3 CHAIRMAN CROSBY: I think we are good
4 to go. I'm calling to order Public Meeting
5 #78 of the Massachusetts Gaming Commission on
6 Thursday, October 3rd at the Boston
7 Convention Center.

8 We are going to go straight to the
9 item two, the Mohegan Sun suitability
10 discussion. But I do want to make just two
11 quick announcements.

12 We have -- we have determined and
13 made public, that Penn National, the final
14 applicant for the slots parlor license has
15 been found suitable by the Commission. That
16 decision has been posted and we will be
17 holding a public hearing on Monday during
18 which time all three of the applicants, the
19 suitable applicants for the slots parlor
20 license, the Category 2 license will be
21 making live 90 minute presentations on their
22 proposals. So, that will be next Monday.

23 Now, we are going to go to the
24 Mohegan Sun suitability. And I think that

1 we're going to start with our Director of
2 Investigations and Enforcement Bureau, Karen
3 Wells.

4 DIRECTOR WELLS: Good morning
5 Chairman and members of the Commission. I am
6 pleased to present the findings for the
7 suitability investigation into the Applicant,
8 Mohegan Sun, Massachusetts, LLC.

9 I'd like to initially thank all of
10 the investigators, state police and our
11 consultants at Michael and Carroll for all of
12 their work on the project. It was an
13 extremely comprehensive review of the
14 Applicant. And I'd also like to mention for
15 the Commissioners' edification that the
16 investigators found that this particular
17 Applicant was not only cooperative, but
18 extremely responsive to requests and
19 forthcoming with information. And I got a
20 very positive response from both the state
21 police and the consulting investigators with
22 respect to how the investigation went. And I
23 think that is very telling on what kind of
24 company this is and what it would be like to

1 regulate them going forward. So, I just
2 wanted to comment on that as an initial
3 matter.

4 The Applicant is seeking a Category 1
5 gaming license. They have a proposed
6 facility planned for Palmer, Massachusetts.
7 That's in Region B. The Applicant has
8 indicated that the casino resort estimated to
9 cost approximately \$775,000,000.00 would lie
10 directly off of Palmer's exit on the Mass
11 Pike not far from its main street where the
12 Applicant believes the railroad would bring
13 additional tourism to the location.

14 The Mohegan Sun executives envision a
15 resort with 600 room -- a 600 room luxury
16 hotel, casino gaming, including slots and
17 table games, world-class restaurants and
18 branded retail stores, and meeting and
19 entertainment space.

20 Although the Applicant is presently
21 owned 100 percent by the Mohegan Tribal
22 Gaming Authority, or MTGA, it is the
23 intention of the parties that ultimately
24 there will be a 60 percent share held by one

1 or more funds managed by Brigade Capital
2 Management, LLC.; with the 40 percent
3 residual share being retained by MTGA.

4 The investigation conducted an in-
5 depth inquiry into all of those persons and
6 entities whose qualifications are a statutory
7 and regulatory precondition to the
8 suitability of the Applicant, that is they
9 are the qualifiers. In all, eight entity
10 qualifiers and 22 natural person qualifiers
11 were investigated for the two sides of the
12 proposed operation.

13 As to the Mohegan side of the
14 application, as to the entity qualifiers,
15 like other applicants we have seen, there are
16 a series of companies in the Mohegan
17 ownership structure.

18 The Applicant itself Mohegan Sun,
19 Massachusetts, LLC which is owned 100 percent
20 by MGA Palmer Partners, LLC; MGA Palmer
21 partners, LLC is currently 100 percent owned
22 by MGA Holding, Mass, LLC, which is in turn
23 owned by Massachusetts Gaming Advisors, LLC.
24 MGA, Massachusetts Gaming Advisors is wholly

1 owned by MTGA, the company I previously
2 referenced, an instrumentality of the Mohegan
3 Tribe Indians of Connecticut. There are no
4 individual owners of Mohegan Sun,
5 Massachusetts, LLC; MGA Palmer Partners, LLC;
6 MTGA or any intermediary companies or any of
7 the assets of the Mohegan Tribe, as all the
8 assets are owned on an undivided basis for
9 the Tribe and its members.

10 As to MGA Palmer Partners, LLC,
11 that's an LLC formed on November 15, 2012
12 which owns 100 percent of the membership
13 interest of casino Applicant, Mohegan Sun,
14 Mass., LLC. Palmer Partners is based at the
15 Mohegan Sun in Connecticut. That's a casino
16 in Connecticut. And has no employees, only
17 company managers and officers, all of whom
18 are currently employed by the MTGA. Michael
19 -- Mitchell Etes is the manager; Gary
20 VanHettinga is the manager and president;
21 Mario -- pardon me, Kontomerkos is the
22 treasurer. He is also the CFO of MTGA and
23 David Rome is the Secretary.

24 Upon award, the casino license to MSM

1 and the admission of New England Gaming
2 Partners, LLC as a member of Palmer Partners,
3 a total of five directors will be named, up
4 to three by New England Gaming Partners, LLC;
5 that is a subsidiary of the Brigade entity,
6 which I'll refer to later. And up to two by
7 MGA Holdings Mass, LLC to a new Board of
8 Directors, which will operate as a board of
9 managers to the LLC.

10 MGA Gaming Mass, MA, LLC, that's the
11 management company for this proposed
12 operation. It was formed in January of 2013
13 by the Mohegan Gaming Advisors, LLC in
14 connection with the RFA-1 application of MSM,
15 or Mohegan Sun, Massachusetts, pursuant to
16 the agreements between Brigade and Mohegan
17 Gaming Advisors, LLC. They'll manage
18 operations at the Mohegan Sun, Massachusetts
19 to be owned by Mohegan Sun, Massachusetts,
20 LLC on behalf of that company and its partner
21 company, MGA Palmer Partners.

22 MGA Gaming is the same management and
23 operating structure as its parent company,
24 Mohegan Gaming Advisors, LLC and is the same

1 two managers and same three company appointed
2 officers. Managers and officers all of whom
3 are currently employed by the MTGA. Mitchell
4 Etes is the manager; Gary VanHettinga, the
5 manager and president; Mario Kontomerkos, the
6 treasurer, also the CFO of MTGA and David
7 Rome is the secretary. Same structure.

8 MGA Holdings, Mass, LLC was formed by
9 Mohegan Gaming Advisors, LLC in January of
10 2013 in connection with the -- again in
11 connection with the RFA-1 application.
12 Holding is the 100 percent owner of MGA
13 Palmer Partners, LLC or to be the sole owner
14 of MSM, the casino Applicant.

15 Now, as I've indicated, Holding will
16 transfer 60 percent ownership interest in
17 Palmer Partners to New England Gaming
18 Partners, LLC and retain a 40 percent
19 ownership following the award of a casino
20 license. Holding is based at Mohegan Sun in
21 Connecticut and has the same management and
22 the operating structure as its parent
23 company, same two managers and same three
24 company appointed officers, all of which are

1 currently employed by the MTGA. Mitchell
2 Etes is the manager; Gary VanHettinga is the
3 manager and president; Mario Kontomerkos is
4 the treasurer and David Rome is the
5 secretary.

6 Mohegan Gaming Advisors, LLC was
7 formed in July of 2012 by the MGA division of
8 the MTGA to own investments in gaming
9 facilities outside of Connecticut,
10 management companies managing other gaming
11 facilities and to provide services under
12 contract to other Native American and
13 commercially owned gaming facilities. It's
14 based in Mohegan Sun in Connecticut and MG
15 also does business in New Jersey. It formed
16 two wholly owned subsidiaries, MGA Gaming LLC
17 and MGA Holding, LLC to manage and to hold
18 ownership interest in MGA Palmer Partners,
19 LLC which formed Mohegan Sun Massachusetts as
20 a wholly owned subsidiary. It is the same
21 management and operating structure as its
22 subsidiary previously mentioned. It has the
23 same two managers and the same three company
24 appointed officers.

1 The Mohegan Tribal Gaming Authority
2 was established by the Mohegan Tribe in 1995
3 with the exclusive authority to conduct and
4 regulate gaming activities for the Tribe on
5 tribal lands and the nonexclusive authority
6 to conduct such activities elsewhere. It's
7 governed by a nine member management board
8 whose members all -- also compromise Mohegan
9 Tribal Council.

10 MTGA is the direct owner of Mohegan
11 Sun in Connecticut. It was formed -- it
12 formed the Mohegan Gaming Advisors Division
13 to pursue gaming management and ownership --
14 and ownership of gaming operations outside of
15 Connecticut.

16 The nine member board of MTGA includes
17 Bruce "Two Dogs" Bozsum who's the Chairman;
18 R. James Gessner, Jr., the Vice Chairman;
19 Kathleen Regan-Pyne, the Corresponding
20 Secretary; Cheryl A. Todd, the Recording
21 Secretary; and Thayne Hutchins, Jr., the
22 Treasurer, all of whom are considered the
23 officers of the management board.

24 They also have Mark Brown as a member,

1 William Quidgeon is a member; and Mark Sperry
2 is a member. They also have Jonathan
3 Hamilton, Sr. But his term is ending in
4 October when his successor will be identified
5 and sworn in. That individual will be
6 subject to qualification by the Commission as
7 well.

8 The corporate officers of the MTGA are
9 appointed by a management board and they are
10 Mitchell Etess, the CEO and Mario Kontomerkos
11 is the CFO.

12 MTGA and all wholly or majority-owned
13 subsidiaries are Native American or minority
14 owned businesses. MTGA is currently licensed
15 by and in good standing with a number of
16 various gaming authorities, including Mohegan
17 Tribal Gaming Commission. Their status is
18 current and in good standing. The
19 Pennsylvania Gaming Control Board, their
20 status is current and in good standing; the
21 New Jersey Casino Control Commission, on
22 September 4, 2012, the term transactional
23 waiver was approved for them and the National
24 Indian Gaming Commission on December 31, 2012

1 they were found to be in compliance with the
2 applicant IGRA and NIGC regulations.

3 On the Mohegan side of the
4 application, the investigation confirmed that
5 all of the Mohegan related qualifiers have a
6 successful multi-jurisdictional licensing or
7 qualification and a history of maintaining
8 such status in good standing.

9 On October 12, 1996 the Mohegan Sun
10 casino formally opened in Uncasville,
11 Connecticut, and remains highly successful.
12 The Mohegan Tribal Gaming Commission is an
13 arm of the Mohegan Tribe and is the primary
14 regulatory authority overseeing operations at
15 the Mohegan Sun. The Mohegan Sun is licensed
16 by the MTGC and the Connecticut Department of
17 Consumer Protection Division of Gaming has
18 additional authority over matters such as
19 individual licensing which it shares with the
20 MTGC.

21 The MTGC and Connecticut Gaming report
22 and due to the nature of the dual tribal
23 state regulatory oversight, there are no
24 regulatory findings or fines related to

1 Mohegan Sun. Mohegan Sun was fined for three
2 violations of the liquor law during 2012 and
3 four times during 2011 for violations
4 relating sales of minors or intoxicated
5 patrons.

6 MTGA also manages Mohegan Sun at
7 Pocono Downs in Plains Township, Pennsylvania
8 and Resorts Casino Hotel in Atlantic City,
9 New Jersey. Mohegan Gaming Advisors
10 announced in August of 2012 that they'd be
11 entering into a consulting contract and
12 investment agreement with Resorts Hotel
13 Casino -- pardon me, Resorts Casino Hotel in
14 Atlantic City, New Jersey. MGA holdings New
15 Jersey, LLC is an equity investor currently
16 holding 10 percent interest of the equity
17 interest in Resorts, Atlantic City.

18 Through its subsidiary Down Racing LP,
19 MGA owns and operates the Pocono --
20 aforementioned Pocono Downs which I referred
21 to in Plains Township, a 400 acre gaming and
22 an entertainment facility, and several off-
23 track wagering facilities located elsewhere
24 in Pennsylvania.

1 The Pennsylvania Gaming Control Board
2 first issued a license to Downs Racing on
3 September 20, 2006 -- 27, 2006, although the
4 investigation found some examples of
5 infractions casinos typically face. All have
6 been identified and addressed in an
7 appropriate manner. In fact, the
8 Pennsylvania Gaming Control Board renewed
9 Downs' racing license on August 21, 2013.

10 MTGA and Mohegan tribal qualifiers on
11 the Pennsylvania license and the Pennsylvania
12 Gaming IED recommended on April 29, 2013 that
13 both entities be found suitable for
14 licensing.

15 The MTGA has additional projects, and
16 interests and entities that are owned and
17 controlled by the Mohegan Tribe include the
18 Mohegan Basketball Club; Mohegan Golf. They
19 also have additional diversification
20 projects.

21 They have a Cowlitz project, which --
22 the project deemed the Cowlitz project. The
23 MTGA formed Mohegan Ventures Northwest, LLC
24 in July of 2004 to participate in the Cowlitz

1 project, a proposed casino to be owned by the
2 Cowlitz Indian Tribe, which will be located
3 in the Clark County, Washington.

4 Mohegan Ventures Northwest, Salishan
5 Company, LLC, an unrelated entity, and
6 Mohegan Tribal membership interests in that
7 operation -- proposed operation. Salishan
8 will assist Mohegan in securing financing as
9 well as administer and oversee the planning
10 in Washington.

11 Development of the Cowlitz project is
12 subject to certain governmental and
13 regulatory approvals. They also propose a
14 Menominee project in October 24. MTGA
15 entered into a management agreement with the
16 Menominee Indian Tribe and the Menominee
17 Kenosha Gaming Authority. MTGA will manage,
18 operate and maintain the Menominee project, a
19 proposed casino to be owned by the Menominee
20 Tribe in Kenosha, Wisconsin for a period of
21 seven years commencing with its opening.

22 In Center City, Philadelphia,
23 Skimokiming Gaming Advisors, a subsidiary of
24 a MTGA will join Market East Associates, LLP

1 as a partner to operate the gaming
2 entertainment portion of the urban
3 entertainment center to be developed in
4 Philadelphia to be known as Market 8. MGA
5 formed two new wholly owned subsidiaries in
6 relation to Market 8. MGA Gaming
7 Pennsylvania, LLC and MGA Holding
8 Pennsylvania, LLC.

9 MTGA has entered a -- engaged in a
10 large -- pardon me, has engaged a large
11 commercial real estate developer, Finard
12 Properties of Boston, Mass. to assist in the
13 development of retail hospitality and water
14 park facility in conjunction with the gaming
15 -- proposed gaming project in Massachusetts.

16 The MTGA secretary and legal counsel
17 has certified that Finard will not have any
18 involvement in the gaming activities, gaming
19 management or any gaming operational
20 decision-making, nor will Finard directly
21 participate in any gaming revenue -- in
22 gaming revenue generated by the applicant
23 operations.

24 As a result, although Finard is

1 currently not a qualifier pursuant to IEB
2 standards, if MSM is found suitable, the
3 final iteration of the MSM Finard partnership
4 will be carefully examined during the Phase 2
5 process. It is anticipated however that the
6 retail cinema and other commercial subtenants
7 of Finard will participate with MSM to
8 coordinate player and loyalty programs and
9 promotional activities to better drive
10 gaining revenue.

11 As to the Brigade side of the
12 application, the parent entity is Brigade
13 Capital Management, LLC. The investment
14 entity will provide financing through the
15 management of investment funds that will hold
16 a 60 percent interest in MGA Palmer Partners
17 if the project is chosen by the MGC for a
18 Category 1 license.

19 Brigade has established a subsidiary
20 entity, New England Gaming Partners, LLP,
21 which will be involved in this project along
22 with other non-qualifying Brigade entities.
23 It was formed, this New England Gaming
24 Partners for -- to receive an ownership

1 interest in MGA Palmer Partners, LLC upon
2 award of the Category 1 license and therefore
3 has no present ownership in MGA Palmer
4 Partners, LLC.

5 Brigade is an employee owned SEC
6 registered investment advisor focusing on
7 investing in a global high yield market. The
8 firm was founded by Donald E. Morgan and
9 Patrick W. Kelley in 2006 with headquarters
10 in New York City and a research office in
11 Zürich, Switzerland. Brigade asserts its
12 investment process is fundamentally driven,
13 focusing on asset coverage and free cash flow
14 with an emphasis on capital preservation.

15 Qualifier Donald E. Morgan, III, the
16 firm's managing partner leads a team of 37
17 other investment professionals. Patrick W.
18 Kelley, Brigade's president and COO leads the
19 business management and support staff.

20 Brigade's total assets have reached
21 approximately \$13,000,000,000.00. Over 66
22 percent of Brigade's clients are pooled
23 investment vehicles. Brigade is classified
24 as an investment institutional investor in a

1 number of jurisdictions where it manages
2 investments related to gaming properties, and
3 requires that a gaming license either in the
4 form of a waiver -- in the form of waiver or
5 qualification, depending on the jurisdiction,
6 be issued. Those jurisdictions include
7 Colorado, Indiana, Mississippi, Ohio,
8 Pennsylvania, and West Virginia. In all
9 jurisdictions Brigade remains in good
10 standing. Brigade and none of its individual
11 qualifiers have been subject to any
12 disciplinary action.

13 Brigade as a managing member of New
14 England Gaming Partners, LLC, would not have
15 any ownership interest in the ultimate
16 Category 1 license applicant. Ownership
17 interest will be held by various investment
18 funds managed by Brigade. At this time the
19 specific funds are yet to be determined.

20 Raymond Luis is the only appointed
21 officer of New England Gaming Partners, LLC
22 and holds the position of authorized person.

23 At this time, New England Gaming
24 Partners, LLC does not have any officers,

1 directors, trustees, or employees.

2 With the exception of Neil Goldman,
3 most Brigade related individual qualifiers
4 have a 5 percent or greater interest in
5 Brigade. These include Donald E. Morgan,
6 III; Patrick William Kelly; Rosario Diminni;
7 John Carney Hawks; Benjamin Renshaw and Ivan
8 Krsticevic.

9 Other Brigade qualifiers have less
10 than 5 percent interest in the company but
11 hold key management positions. These are
12 Douglas C. Pardon; Stephen Patrick Vincent;
13 and Raymond Luis. Neil Goldman is a former
14 Brigade partner, has been identified as a
15 person Brigade would tend to appoint and sit
16 on the Board of MSM.

17 All of the Brigade related qualifiers
18 has -- have a history of industry regulation
19 compliance and none have ever been the
20 subject of any disciplinary action. The
21 individual qualifiers are the -- pardon me.
22 As stated above, pursuant to the limited
23 liability agreement dated July 1, 2013
24 Brigade established -- is established the

1 managing member in NEGP.

2 At this time -- oh, as I indicated, at
3 this time the specific funds are yet to be
4 identified. However -- that are going to be
5 used for the funding of the project.

6 However, the types of funds might include
7 pension, insurance, and endowment foundation
8 funds. Should a Category 1 license be
9 awarded to the ultimate licensee, MSM and the
10 MGC will be -- will be notified of the names
11 of the designated funds, and once identified
12 we can conduct any due -- do further due
13 diligence if and as needed.

14 Overall, all of the entity and
15 individual qualifiers were invested -- were
16 investigated in the areas of good character,
17 honesty, integrity, and reputation as well as
18 for sufficient business ability and
19 experience.

20 Ultimately it is the recommendation of
21 the IEB that the applicant and qualifiers be
22 deemed suitable. I have notes for the
23 individual qualifiers, but given the interest
24 of time, unless the Commission wants further

1 information on a particular qualifier I'll
2 defer to the report which I know you have all
3 read.

4 One matter, just for clarification
5 that the Applicant brought to my attention.
6 There is, in the report, a section regarding
7 a couple of lawsuits, and the Applicant
8 wanted to clarify there are in fact two
9 separate lawsuits. I think it's on -- on or
10 about page 43.

11 The section notes that Mohegan
12 Resorts, Mass, LLC was named as an equitable
13 reach and apply defendant in a lawsuit filed
14 by the former lobbyist, The Suffolk Group of
15 Northeast Realty Associates. The action did
16 not accuse the Mohegan entity of any
17 wrongdoing, rather the lawsuit requested the
18 Mohegan entity's lease payments be used as
19 collateral for the damages in the lawsuit.

20 In any event, the Mohegan entity was
21 dismissed from the lawsuit because the court
22 found that lease payments could not be
23 attached.

24 The section also describes a separate

1 lawsuit filed by Northeast Realty Associates,
2 LLC against individual Peter Picnelli. No
3 Mohegan Sun related entity was named in the
4 lawsuit, and was dismissed. I just want to
5 clarify that for the record for the
6 Applicant.

7 As the IEB has recommended that the --
8 there be no conditions on a finding of
9 suitability, the -- the -- I would just defer
10 to the Applicant to present their information
11 to the Commission and why additionally they
12 should be found suitable. I will refer the
13 Commission to page 10 of my cover letter
14 where I do indicate should they be awarded a
15 license, that there should be considered by
16 the Commission the following conditions to
17 the license. I'll just highlight
18 recommendation number three.

19 Any grant of license involving the
20 Mohegan Tribe should be conditioned on a full
21 and complete explicit waiver of sovereignty
22 and waiver of tribal court jurisdiction as it
23 involves the activities of the Tribe directly
24 or indirectly in connection with the

1 Massachusetts gaming facility and related
2 conduct.

3 That waiver should be memorialized in
4 a Tribal Council resolution, the awarding of
5 which should be subject to the approval of
6 the Commission. As this is a commercial
7 license, I don't see that as an issue, but I
8 just wanted to highlight that for the
9 Commission.

10 So, I'm available for any questions.
11 And the Applicant is here, and they've
12 brought individual witnesses to give
13 information to the Commission.

14 MR. CROSBY: Anybody, any questions
15 before we go to the Applicant?

16 COMMISSIONER MCHUGH: I just had -- I
17 had one question on the point that you -- you
18 just mentioned. And that's whether such --
19 were -- where certain of such waivers are
20 valid.

21 DIRECTOR WELLS: Well, I think that we
22 can --

23 COMMISSIONER MCHUGH: And I raise
24 that, not because there's any -- any

1 suggestion of any intent other than to have
2 this a fully operational commercial casino,
3 but --

4 DIRECTOR WELLS: Right.

5 COMMISSIONER MCHUGH: -- but this is
6 an unfamiliar area.

7 DIRECTOR WELLS: I think that having
8 the waiver is -- and having a conversation
9 with the Applicant of how to do that and
10 working that with our legal counsel and their
11 legal team is an appropriate discussion
12 point. And it should be subject to the
13 Commission's approval. But I would recommend
14 that it at least be on the table, we have
15 conversation with the legal team, get a legal
16 opinion as to the -- as to either the
17 necessity or the -- how that should be worded
18 and whether it's valid.

19 So, I think that's -- that's an
20 appropriate point you make. But it's
21 something we should definitely explore just
22 to make sure that we're -- got all our bases
23 covered.

24 CHAIRMAN CROSBY: Does Michael and

1 Carroll have any insights to this issue?

2 MR. ATTENDEE: Yeah, this -- typically
3 this might involve issues of tribal
4 sovereignty and the sovereignty the tribal
5 counsel and its governmental functions. Our
6 review of this at this point would be that
7 individual tribal council members who are
8 making this representation are making it as
9 individual tribal council members, not as the
10 Tribe per se.

11 And with that, in that respect that
12 they could be considered as a valid
13 representation on those individuals' behalf.
14 And that we would -- we would expect that
15 that would be an appropriate way to view
16 them.

17 If they were making that
18 representation on behalf of the Tribe itself,
19 there would be more sovereignty issues
20 involved. But as individuals, we are
21 confident that they would be a valid exercise
22 of that individual's representation.

23 COMMISSIONER MCHUGH: I guess my
24 question went a little bit deeper. They are

1 a sovereign nation.

2 MR. ATTENDEE: Yes.

3 COMMISSIONER MCHUGH: And the question
4 is can a sovereign nation waive its
5 sovereignty?

6 MR. ATTENDEE: Yes, that's -- that's
7 clear. Tribal nation cases are quite common
8 where a nation has to knowingly and
9 voluntarily --

10 COMMISSIONER MCHUGH: Right.

11 MR. ATTENDEE: -- waivers are waived
12 -- waivers waive sovereignty. And it's done
13 in a commercial context quite often.

14 COMMISSIONER MCHUGH: Okay.

15 CHAIRMAN CROSBY: I had a question on
16 the -- on the issue you raised about the
17 lawsuit. And I just, I remember, who was Mr.
18 Dragone? Where does he fit -- he fits with
19 Northeast, right?

20 MR. KELLY: Yes, he --

21 CHAIRMAN CROSBY: So, and is Northeast
22 the property owner?

23 MR. ETESS: Yes, they are our
24 landlord.

1 CHAIRMAN CROSBY: The landlord?

2 MR. ETESS: Yes.

3 CHAIRMAN CROSBY: And there was, in
4 the news reports there was the story about
5 Dragone and Picnelli having had conversations
6 about Picnelli getting out of the Mohegan
7 deal and maybe offering something under the
8 table to Dragone. I think Dragone was
9 asserting that this had transpired. Did that
10 all just evaporate, nothing -- nothing came
11 of that? It was all found to be --

12 MR. CONROY: Commissioner, I can -- I
13 can address that.

14 CHAIRMAN CROSBY: Okay.

15 MR. CONROY: The report talks about
16 two different lawsuits. And we wanted to
17 make this clear, because I think there's --
18 there's a little confusion that's caused by
19 the report. Mohegan Sun was named in a
20 lawsuit that -- involving -- it's not on?

21 CHAIRMAN CROSBY: Excuse me. Kevin,
22 would you introduce yourself.

23 MR. CONROY: It's not on? Sorry. I'm
24 Kevin Conroy. I'm outside counsel for

1 Mohegan Sun from the law firm of Foley, Hoag.

2 The report talks about two different
3 lawsuits. One lawsuit, Northeast was a
4 defendant in a lawsuit. They were sued by
5 their former lobbyist, the Suffolk Group.
6 Mohegan Sun was named as a reach and apply
7 defendant in that lawsuit. That -- that
8 lawsuit was trying to attach the lease
9 payments that Mohegan Sun was making -- makes
10 to the Northeast Group. There was no
11 allegation of any wrongdoing on Mohegan Sun's
12 part in that lawsuit. Mohegan Sun was
13 dismissed from that lawsuit.

14 The Superior Court found that it was
15 inappropriate to attach lease payments when
16 -- when Northeast owned property that was
17 worth \$3,000,000.00.

18 The second lawsuit you're referring to
19 in your comments is a lawsuit that Northeast
20 brought against Mr. Picnelli relating to
21 issues that -- of a partnership agreement or
22 some sort of agreement they had. Mohegan Sun
23 was not named as a defendant or not named in
24 that lawsuit in any way. Northeast is our

1 landlord. The report talks about -- Mohegan
2 Sun's landlord reports talk about we have a
3 triple net lease with them. We make lease
4 payments to them on a monthly basis. It's --
5 it's a typical landlord-tenant relationship.
6 And -- and he is -- that entity, Northeast
7 plays no role in any gaming operations or any
8 decision-making operations at -- with Mohegan
9 Sun.

10 CHAIRMAN CROSBY: Thank you for
11 clarifying that. We did -- we did look --
12 the lawsuit, the Northeast lawsuit against
13 Picnelli was terminated how, what -- what
14 eventually came of that?

15 MR. CONROY: I -- I believe that -- I
16 believe that Mr. Picnelli was able to get it
17 dismissed.

18 DIRECTOR WELLS: That's our
19 understanding as well.

20 CHAIRMAN CROSBY: Okay. We do wrestle
21 with the issue about what the relevance of
22 the business of land owners or lessors, the
23 relevance of their make-up to the suitability
24 of the lessee. So, whoever this guy Dragone

1 is and relative to them, they were pretty
2 serious allegations that were made in public.
3 And I just wanted to make sure that we were
4 aware of that transaction. Okay.

5 MR. CONROY: So, Commissioner, if I
6 may continue, I just wanted to introduce our
7 team members here today. And we're going to
8 make -- we know this is a public hearing.
9 We're going to make very brief presentations
10 today. Mitchell Etes is our -- the CEO of
11 Mohegan Sun. Next to him is Patrick Kelly,
12 who is the President and CEO of Brigade
13 Capital Management, and next to him is Doug
14 Pardon, who is a partner at Brigade Capital
15 Management.

16 I also wanted to introduce the second
17 row here. This is David Rome, who is the
18 Secretary and General Counsel of Mohegan Sun,
19 Massachusetts. Dave Waddell, and next to him
20 is Robert Russell, who are with Regulatory
21 Management Counselors, and they represent
22 Brigade. And finally, we also have Aaron
23 Daniels, who is Associate General Counsel.
24 He is right behind me, at Brigade Capital

1 Management.

2 Go ahead, Mitchell.

3 MR. ETESS: Thank you, Kevin. Good
4 morning and -- and thank you, Commissioners
5 for having us here today. We're really
6 delighted to be here.

7 On behalf of Mohegan Sun,
8 Massachusetts, I want to thank the Commission
9 and your staff, and the investigators, and
10 the Massachusetts State Police for the
11 comprehensive and thorough investigation of
12 our qualifying entities and individuals.

13 As an individual qualifier myself, I
14 can personally attest to the professionalism
15 of the investigators involved, and the
16 thoroughness of their work. And I want to
17 say a particular thank you to IEB Chief,
18 Karen Wells, and all the attorneys and
19 investigators that were assembled.

20 And I've said this many times in
21 various presentations publicly, but, you
22 know, I think you all should be very proud of
23 the work they do, but of this entire process
24 that you're running here. I've been involved

1 in several of these things and though I
2 haven't found any one that has really matched
3 up to this process, it is very thorough and
4 it has been a pleasure to part of.

5 I take great pride in the Mohegan Sun
6 suitability report that was issued by your
7 Investigations and Enforcement Bureau. We
8 recognize that the gaming industry is built
9 on integrity and ethics, and as an
10 organization we're very proud and we're told,
11 and on here, the words that were said on here
12 in the beginning, and when I see the report
13 and I'm quoting from the summary, page eight,
14 "that we have demonstrated to investigators a
15 sincere dedication to ensure the integrity of
16 our operations as well as a willingness to
17 make timely corrected actions if and when
18 warranted."

19 That -- that dedication to integrity
20 is exactly what we've tried to achieve in the
21 jurisdictions where we are licensed,
22 including Connecticut and Pennsylvania and
23 where we've got this approved management
24 agreement, and are waiting for a final

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licensure in New Jersey.

We recognize that Sections 12 and 16 of the Massachusetts Gaming Act create a very high bar of suitability. And we are pleased that the IEB has recommended that Mohegan Sun be found suitable.

We also recognize that ultimate suitability is -- decision is made by you all, and the Commission, and therefore we are here today to address any questions that you might have.

But firstly, I want to address the Mohegan Tribal Gaming Authority or MTGA. As the report notes, the MTGA is the instrumentality of the Mohegan Tribe Indians of Connecticut. It's a federally recognized Indian tribe which has ultimate owner of all of Mohegan tribal holdings.

The Mohegan Tribe has been a presence in southeastern Connecticut for hundreds of years, and in 1994 received their federal recognition through the Bureau of Indian Affairs administrative process.

Throughout the centuries the Tribe has

1 identified with what has become referred to
2 as the Mohegan way. We actually extended
3 that for marketing to call it the Mohegan Sun
4 Way, but it's the Mohegan way. And the
5 Mohegan way is to live and work closely and
6 honestly with one's neighbors, and give back
7 to the state and the community, just like
8 they've been doing for years.

9 And you can look back historically to
10 when the Mohegan Way started by deeding --
11 the Tribe deeded nine square miles 350 years
12 ago to incorporate what is now the city of
13 Norwich, Connecticut. More recently in our
14 host community agreement that we've signed
15 with the town of Palmer. And the Mohegan way
16 has been evident in all years in between.

17 Indian gaming has been a tremendous
18 opportunity for the Mohegan Tribe. It is now
19 allowed the MTGA to grow into a diversified
20 gaming hospitality and entertainment
21 business. The new Mohegan way is to build
22 gaming and entertainment facilities to last,
23 to grow responsibly, with responsible gaming.
24 To provide an unparalleled employment

1 experience while training and developing our
2 team members. And provide advancement
3 opportunities for them because we realize
4 that our employees and our team members are
5 the difference in all of our operations and
6 ultimately are the core of our success.

7 The Tribe, through MTGA was the first
8 Indian tribe to go to Wall Street in 1995,
9 and we've been there ever since, operating
10 essentially as a public company with publicly
11 held bonds and public reporting through the
12 SEC.

13 I also joined the MTGA in 1995 as part
14 of the preopening senior management team for
15 Mohegan Sun in Connecticut, and I've been the
16 CEO since 2004. Our core values and a
17 commitment to integrity, transparency and
18 regulatory compliance and those principles
19 have allowed us to make the successful
20 transition from on reservation Indian gaming
21 to commercial state licensed gaming company
22 in Pennsylvania, and now more recently in New
23 Jersey, and hopefully here in Massachusetts.

24 Mohegan Sun, Massachusetts will allow

1 that transition to continue as it will be
2 owned and managed by companies formed under
3 state law, and will be a commercial casino,
4 just like our facilities and operations in
5 Pennsylvania and New Jersey.

6 We have absolutely no issues with the
7 licensing conditions referenced in Director
8 Wells' letter, and the suitability report
9 related to the Bank Secrecy Act compliance
10 and sovereign immunity waiver. We have
11 granted waivers in Pennsylvania, with Brigade
12 and even our host community agreements, so
13 it's very common for us in our financial
14 transactions and other things to do that.

15 As an SEC filer, and having operated
16 one of the largest and most successful
17 casinos in the country for the past 17 years,
18 our comprehensive compliance structure
19 adheres not only to the casino and anti-money
20 laundering requirements of the Bank Secrecy
21 Act, as amended by the Patriot Act, and the
22 financial crimes enforcement network rules
23 added in 2007, but SEC requirements such as
24 Sarbanes-Oxley and the availability of a

1 toll-free compliance hotline for employees.

2 While we don't operate abroad, our
3 compliance program encompasses also the
4 reporting requirements for the Foreign
5 Corrupt Practices Act and other applicable
6 federal laws.

7 Our Compliance Department reports
8 directly to the Audit Committee of our Board.
9 And I meet regularly with the Board along
10 with my executive team to address all aspects
11 of our business including compliance.

12 With respect to sovereign immunity, as
13 I indicated we will provide the waiver
14 requested as we've done in other contexts.

15 In the same spirit of transparency in
16 compliance that our entire nine-member
17 Mohegan Tribal Council which is the same nine
18 men and women that make up the management
19 board of the MTGA proactively suggested that
20 they be subjected to qualification in
21 Massachusetts. We believe this is
22 unprecedented among Tribes seeking commercial
23 casino licenses and reflects the Tribe's
24 recognition of the importance of transparency

1 and regulation in gaining.

2 We intend to site our casino in Palmer
3 on 152 acre parcel that's located just off
4 the Mass Pike. We have a history in Palmer,
5 we leased our site in 2008 and have had a
6 storefront office in Palmer since 2009.

7 Before selecting Palmer as our site,
8 we toured numerous sites throughout
9 Massachusetts and we believe we found the
10 best site in Massachusetts because of its
11 transportation access, its rural character,
12 and support for the casino.

13 Although the suitability report makes
14 reference to the fact that our casino project
15 will be about \$775,000,000.00, we expect the
16 proposed project will now be in the
17 \$1,000,000,000.00 range. We're envisioning
18 two hotels, an aqua adventure water park, and
19 many retail options along with the casino and
20 related amenities.

21 Not only is the Mohegan Sun brand
22 extremely powerful in New England, but we
23 also think that our database of millions of
24 customers who are already in New England

1 distinguishes us from our competitors and
2 provides us with the best opportunity to
3 bring customers here from outside of
4 Massachusetts, one of the goals of the act.

5 In addition, our ability and our
6 requirement under our partnership agreement
7 with Brigade to market immediately to this
8 existing database gives us the opportunity to
9 jumpstart our operation and expedite the flow
10 of tax revenues to the Commonwealth. As the
11 standard ramp up period generally needed to
12 build up your database will really be
13 shortened.

14 Mohegan Sun entered into a host
15 community agreement with the Town of Palmer
16 in late August. A referendum is scheduled
17 for early November. We are actively
18 participating in the process organized by the
19 Pioneer Valley Planning Commission to
20 facilitate the surrounding community
21 agreements, and we recognize the importance
22 of mitigating the impacts of our casino and
23 all surrounding communities.

24 Mohegan Sun is feverishly preparing

1 its RFA-2 application in the hopes that you
2 will look favorably on our suitability and we
3 look forward to sharing a full application
4 with you in December, and then when we are
5 able to to present our thing personally to
6 you as well.

7 We have been a partner in the
8 development of legal and responsible gaming,
9 first in Connecticut, and more recently in
10 Pennsylvania, where we were the first casino,
11 the first casino to be licensed under their
12 gaming law and the first to open there. If
13 intrusted with a gaming license in Region B,
14 our board, myself, our executive and
15 development team, and our gaming and
16 financial partners at Brigade Capital
17 Management will all be working to establish a
18 great new partnership with the Commonwealth
19 and to maximize the capital investment, job
20 opportunities, and other benefits and vision
21 in the gaming act.

22 Another thing that distinguishes our
23 casino project is the involvement and
24 commitment of Brigade Capital. Brigade will

1 draw on its managed mutual funds for major
2 capital investments in the casino in Palmer.
3 Its funds will hold a majority interest in
4 the casino, with Mohegan Sun owning the
5 minority and also be responsible for the
6 management of the facility.

7 As you know, Brigade and ten
8 individuals associated with Brigade were
9 subject to qualification as part of the IEB's
10 investigation. Brigade brings its own Wall
11 Street savvy and experience to the project.
12 It is well known and respected by MTJ and
13 other gaming operators.

14 We are pleased that the IEB recognized
15 what we knew, that Brigade values and
16 demonstrates integrity and ethics to the same
17 level as Mohegan Sun. And while the report
18 reflects the financial stability and
19 integrity of each of Brigade and Mohegan Sun,
20 we believe that when you put us together it's
21 a case of one plus one equaling three, where
22 we have a very strong financial and gaming
23 management team capable of taking on all of
24 the opportunities in the inevitable

1 challenges of an enduring and successful
2 legalized gaming industry in Massachusetts.

3 And with that, I'd like to introduce
4 Patrick Kelly, the President and CEO of
5 Brigade Capital Management.

6 MR. KELLY: Well, good morning. Thank
7 you, Mitchell, very much, and thank you
8 Commissioner members. This is truly an honor
9 and a pleasure to be here to address you this
10 morning.

11 I'd like -- I'd like to echo the
12 comments made earlier related to the
13 professionalism by which the investigation
14 into Brigade Capital Management was
15 completed. It is clear to me that no stone
16 was unturned by the assigned investigative
17 team led by Mr. Guy Michael and Mr. Bob
18 Carroll.

19 The team they assembled was extremely
20 professional and thorough throughout the
21 entire process of data collection,
22 interviewing and follow-up questioning. I
23 would also like to thank the Massachusetts
24 State Police and the Massachusetts Gaming

1 Commission Staff for providing our company
2 with timely responses to all questions
3 relating to the investigative process and
4 further ensuring that the investigation was
5 completed in a thorough manner.

6 As outlined by Mitchell, Brigade
7 Capital Management is a hundred percent
8 committed to this project. And believes that
9 if awarded the opportunity by the State, the
10 Mohegan Sun, Massachusetts development will
11 provide for the highest level of secure
12 investment and success for the Commonwealth
13 of Massachusetts and its citizens.

14 As set forth in the very detailed
15 investigative report, Brigade Capital takes
16 extreme pride in all of its investment
17 decisions. And our firm is fully committed
18 to compliance with all federal, state and
19 local regulatory and licensing obligations.

20 Under my oversight and direction, as
21 well as fifty others will comprise our
22 business team at Brigade Capital, we will
23 ensure that the State has access to any and
24 all information it requires throughout the

1 licensing and registration process.

2 Brigade has been built upon a
3 foundation of integrity by doing business in
4 an extremely compliant and thorough manner.

5 On behalf of Brigade Capital's
6 managing director, Don Morgan and myself, we
7 can assure you that by finding Brigade
8 suitable for licensing and permitting our
9 team to compete for the Category 1 license in
10 the Western District, you will be getting a
11 true partner that is committed to ensuring an
12 extremely transparent and forthright process.

13 I like -- I'd like to now introduce my
14 partner Doug Pardon, who is a Senior Analyst
15 at Brigade Capital. He is also head of
16 research, and he heads our firm's gaining
17 investment division and who's been working
18 hands-on with the Mohegan Sun investment team
19 from the beginning. Thank you very much.
20 Doug.

21 MR. PARDON: Thank you, Pat. And
22 thank you Commission members. I am honored
23 to be here today and to have Brigade Capital
24 Management's suitability investigation up for

1 your consideration.

2 As has been stated previously, there
3 is a great deal of anticipation about meeting
4 this milestone in the investigation and
5 competitive selection process. As an
6 individual who is monitored and been actively
7 investing in the gaming and casino industry
8 for over ten years, the Massachusetts
9 opportunity excites me due to its
10 comprehensive approach to gaming and
11 effective regulation.

12 The state legislature established a
13 robust process to ensure the greatest level
14 of investment into the State. One that will
15 provide the greatest benefit for the citizens
16 of the Commonwealth.

17 Importantly, your commission has
18 established a thorough process that provides
19 for the utmost transparency. The combination
20 of a solid foundation and dedication to
21 detail will ensure that the licenses awarded
22 will be granted to the most talented
23 financially capable, and committed partners
24 to the Commonwealth.

1 During the State's investigative
2 process, you have had the opportunity to
3 learn more about the strengths of Brigade
4 Capital Management and its partners, and have
5 learned about our commitment to this
6 investment and the details surrounding the
7 Mohegan Sun, Massachusetts development.

8 In addition to our commitment to the
9 Commonwealth, we are also 100 percent
10 committed to the Mohegan Sun organization and
11 have complete faith that they are the best
12 casino management firm to partner with.
13 Their commitment to both the Commonwealth and
14 the Town of Palmer appears to be self
15 evident.

16 Upon completing my own due diligence
17 into the Mohegan Sun Massachusetts
18 opportunity, I had the opportunity to learn
19 in-depth about the casino operation,
20 marketing, and project development approaches
21 that they have brought to the table.

22 This due diligence began years ago as
23 I have had the opportunity to personally
24 monitor the business approach taken by the

1 Mohegan team prior to entering the agreement
2 which resulted in the creation of our
3 Category 1 application to the Commonwealth of
4 Massachusetts.

5 As stated by our firm's president and
6 CEO, Mr. Kelly, we are 100 percent committed
7 to creating a world-class one-of-a-kind
8 gaming destination in Palmer, Massachusetts.

9 MR. ETESS: And that is our prepared
10 remarks, and we will do our best to answer
11 all the questions that you have for us.

12 CHAIRMAN CROSBY: Thank you.
13 Commissioners?

14 COMMISSIONER CAMERON: I just had a
15 couple of questions. Good morning gentlemen.

16 I was looking at the Tribal Council
17 and the elections, and that that individual
18 who would not know anything about gaming then
19 takes a seat on the management board for the
20 Mohegan Tribal Gaming Authority, is there a
21 transition or training, or what would
22 transpire for that individual?

23 MR. ETESS: That's a great question.
24 There's -- there's two sets of counselors.

1 There's a group of five and a group of four.
2 They serve four-year terms, and they are
3 elected every two years. We've had a lot of
4 stability actually over the years, and we
5 haven't had one -- more than one councilor
6 leave at any one given election.

7 They do have a -- they -- they do a
8 screening before the election to make sure
9 that they actually would be basically
10 licensable in jurisdictions. Our most recent
11 addition, Lieutenant Colonel Kevin Brown, I
12 think already has filed his -- submitted his
13 materials for licensing.

14 And then they are often times,
15 sometimes the councilors happen to be working
16 in the casinos, so they do have some
17 experience. Sometimes they don't. They are
18 put in a very thorough, you know, kind of up
19 to speed kind of fast-track learning
20 experience. But they're one person, they
21 generally take a slow approach. They have
22 eight other people with them and it's in a
23 very wait and see as you go. And one person
24 where, you know, eight, the kind of take

1 their lead. So, it's -- actually it's been a
2 very smooth transition and it's served us
3 very well.

4 COMMISSIONER CAMERON: And one -- one
5 other question.

6 MR. ETESS: Yeah.

7 COMMISSIONER CAMERON: It's apparent
8 from reading the report that you successfully
9 made the transition from tribal gaming to
10 commercial gaming and there are many
11 differences, regulatory differences in
12 particular. Was that -- were there some
13 growing pains? I know in Pennsylvania and in
14 New Jersey you now operate commercial
15 facilities. It's -- it seems to be that that
16 was a smooth transition, but I'd just like to
17 hear a little bit from your perspective.

18 MR. ETESS: Yeah, it really was. And
19 I think it has a lot to do with the, you
20 know, actually the strict regulation that we
21 have in Connecticut as far as the Gaming
22 Commission being there, really responsible
23 not to us, to the Tribal Council and really
24 focusing on Mohegan Sun. There is also

1 various lawyers there in terms of the State
2 of Connecticut and some national Indian
3 Gaming Commission as well. But I think that
4 our discipline and our structure, and also
5 our public debt basically we've had since the
6 beginning has led us to really always act as
7 a public company. So, the transition was
8 very, very smooth.

9 In fact, we were the first casino to
10 open in Pennsylvania under their new
11 regulation. And we worked really closely
12 with their -- with their -- its Gaming Board
13 there as far as the pre-opening procedures
14 and how to do things, and it was a really
15 smooth transition. And I think a lot of it
16 did, as I said, had to do the discipline that
17 we had in Connecticut. So, it's been really,
18 it's been very, very seamless.

19 COMMISSIONER CAMERON: Thank you.

20 MR. ETESS: Thank you.

21 COMMISSIONER CAMERON: That's all I
22 have, Mr. Chair.

23 CHAIRMAN CROSBY: Commissioner?

24 COMMISSIONER MCHUGH: I had -- Mr.

1 Etess, you mentioned a toll-free compliance
2 hotline. I hadn't heard about -- about that
3 in other presentations before. Could you
4 explain what that is and how it works.

5 MR. ETESS: Yeah, that is a -- that's
6 basically a -- what's the word -- whistle
7 blower line that is always there if anybody
8 sees any compliance issues, as an 800 number
9 that's -- I think it goes a voicemail that if
10 you have an issue that you're concerned
11 about, some issue of compliance that you feel
12 you need to bring to the attention, you can
13 use.

14 COMMISSIONER MCHUGH: And who -- who
15 is -- who are the presumptive users,
16 employees?

17 MR. ETESS: The presumptive users
18 would be employees, correct. People who see
19 things that they might be uncomfortable with.

20 CHAIRMAN CROSBY: And who answers the
21 phone?

22 MR. ETESS: The -- yeah, it is
23 answered by our Compliance, the Director of
24 Compliance, Brian Richards. He's a -- he is

1 the head of the Compliance Department that
2 reports up to the Audit Committee.

3 COMMISSIONER MCHUGH: And are these
4 reports permitted to be anonymous?

5 MR. ETESS: Are they permitted to be
6 anonymous?

7 MR. ROME: You want me to take the
8 microphone there?

9 MR. ETESS: Yeah, you want to take the
10 mike?

11 MR. ROME: I think I'll have to come
12 up here.

13 COMMISSIONER ZUNIGA: It might be
14 stuck here, the wire.

15 MR. ROME: Thank you. Again, I'm
16 David Rome, R-O-M-E. I'm Corporate Secretary
17 to the Company and inhouse counsel to
18 Mohegan. It is the -- it's a Sarbanes-Oxley
19 requirement to have a whistle blower hotline,
20 so we've structured along those lines, I do
21 -- I don't know the answer to whether
22 anonymity is, you know, is maintained
23 throughout the process. But I believe so.

24 COMMISSIONER MCHUGH: So, this is part

1 of Sarbanes-Oxley?

2 MR. ROME: Yes.

3 COMMISSIONER MCHUGH: I didn't -- I
4 didn't realize that. Okay. Thank you very
5 much. That's it.

6 COMMISSIONER ZUNIGA: I did have a
7 couple of questions for the principals from
8 Brigade, Mr. Kelly.

9 MR. KELLY: Yes, sir.

10 COMMISSIONER ZUNIGA: So, you've
11 operated senior investment vehicles in other
12 jurisdictions, Pennsylvania, I believe. Is
13 that -- is that also the same kind of
14 structure as early equity investor managing
15 other people's money, investing that -- that
16 type of structure?

17 MR. KELLY: It's certainly always us
18 managing other people's money, as well as all
19 of our own money are in these funds as well,
20 I'll add. In terms of the timing of it, I'll
21 refer to my partner, Doug Pardon to address
22 that. It's all stages, but let me have him
23 --

24 MR. PARDON: Sure. We've done both

1 debt and equity investing for new
2 development. So, we've done several new
3 casino and hotel projects in various
4 jurisdictions. We've -- we've made
5 investments and have lent money to existing
6 operations, but we also have done several new
7 project developments as well.

8 COMMISSIONER ZUNIGA: Okay. And so,
9 your intention is to be an early equity
10 partner here with funds, monies from funds
11 that you -- that you manage.

12 MR. PARDON: Mm-hm.

13 COMMISSIONER ZUNIGA: What happens if
14 along the way you get early redemptions, one
15 of your pension funds decides that they want
16 to -- they no longer want to be, you know,
17 invested --

18 MR. PARDON: Invested.

19 COMMISSIONER ZUNIGA: -- with this
20 operation. I mean, these --

21 MR. PARDON: Sure.

22 COMMISSIONER ZUNIGA: -- projects have
23 a very long rate of return --

24 MR. PARDON: Excellent question. We

1 manage money for some 450 entities. 100 of
2 whom are some of the largest and best known
3 pension plans in the world, much less
4 America. We are constantly out raising and
5 managing the process of formative, you know,
6 you know, capital, raising capital. Our firm
7 has a history that goes back to the mid-90s.
8 So, almost 20 years of managing money for
9 pensions.

10 So, although I won't disagree to say
11 that I guess you could imagine, I couldn't
12 imagine the circumstances. We got through
13 '08 and we -- we, I think we were, you know,
14 maybe down in the One-Fund we had at the
15 time, we have many other funds now, 15 or 18
16 percent in terms of capital redemptions. And
17 then we built that back up. So, I think that
18 diversification of our investor base, coupled
19 with the nature of the different types of
20 funds we have all strategically structured as
21 solution-based asset liability programs, if
22 you will, for the -- so, we're -- we partner
23 -- just like we partner here with the Tribe,
24 we partner with our investors. So, it's an

1 ongoing dialogue and -- and it's really part
2 of a solution-based package that they put
3 together that we are part of.

4 So, and let me just add that we have
5 enough, you know, we have a couple of, you
6 know, 150; 180,000,000 of partner capital in
7 the funds as well that is not going anywhere,
8 hopefully.

9 COMMISSIONER ZUNIGA: Right. Right.

10 MR. KELLY: The only thing that I
11 would add to that is, you know, we are
12 managing over \$14,000,000,000.00 today and
13 this investment is a, you know, in the grand
14 scheme of the, we run a diversified
15 portfolio. It's not as if this is a huge
16 proportion of that 14,000,000,000.

17 COMMISSIONER ZUNIGA: Understood.
18 Would the same be true for, if there was a
19 requirement of additional equity infusions
20 throughout -- throughout the life of the
21 project? Is that --

22 MR. KELLY: In terms of sourcing more
23 capital?

24 COMMISSIONER ZUNIGA: Yes.

1 MR. KELLY: You know, we are
2 constantly looking for other -- for other
3 opportunities. We defer to Doug and the
4 investment team, and Don Morgan for that.
5 But we'd certainly be ready, willing and able
6 absolutely to commit more capital in an -- on
7 an ongoing basis. Yes, sir.

8 CHAIRMAN CROSBY: Mr. Stebbins?

9 COMMISSIONER STEBBINS: Just following
10 up quickly with two additional questions for
11 Brigade. The report talks about funds to be
12 identified for this project. Are you any
13 closer to identifying any of those resources
14 of the funds you plan to use?

15 MR. KELLY: Well, I -- I believe, and
16 Doug can comment on this as well, and if
17 Aaron wants to say anything. But my
18 understanding would be we -- we know the
19 funds, we're going to raise more funds. As I
20 mentioned, we have 400 investors; we have 100
21 institutional investors and we're not going
22 to close anybody out if we get more. But we
23 -- we pretty much know probably where we put
24 it. It's not that we're trying to be

1 evasive, but it's just that we want to have
2 flexibility and the suitability based on the
3 terms and the pricing, and the conditions are
4 always a function of what you put into, you
5 know, the -- the portfolio. So, it will
6 depend on what the deal ultimately looks like
7 and -- and what our particular clients are in
8 need of at the time that that has to come
9 together.

10 Fortunately, we've built a broad base
11 of investors or people that have given us
12 money to act as their -- as their fiduciary,
13 which we take extremely seriously.

14 So, we -- we have them all identified,
15 it's just a question of, you know, where --
16 where it will go. I don't know if you
17 gentlemen have anything to comment on.

18 COMMISSIONER STEBBINS: One of the
19 jurisdictions that I believe you have been
20 active and is in Michigan and Detroit. I'd
21 be curious if you could just kind of review
22 your interaction, and experience, and
23 history, and investing in gaming operations
24 in Detroit.

1 MR. PARDON: Sure, I'd be happy to do
2 that. And also, Dave Waddell and Rob Russell
3 represented us as well in Detroit. And, you
4 know, assisted us through the licensing
5 process there.

6 So, we made an investment in a casino
7 called Greektown Casino, a commercial casino
8 in Detroit. But the project, the casino had
9 gone into bankruptcy. We were not involved
10 previous to the bankruptcy, and we were
11 approached with an opportunity to provide
12 capital to basically finish some major
13 construction that had gone on. Part of the
14 reason why they went into bankruptcy dealt
15 with construction and construction overruns,
16 as well as the timing of the financial
17 crisis.

18 So, we -- we were approached with the
19 opportunity. We made an equity investment,
20 so we were an owner of the casino, along with
21 other funds. Went through that process, it
22 lasted probably twelve months just given,
23 dealing with the bankruptcy issues and the
24 bankruptcy court, as well as the regulatory

1 issues with Detroit.

2 So, after about a year, you know, we
3 emerged from bankruptcy and we were one of
4 the owners. We went through suitability, we
5 were found suitable.

6 And ultimately sold the investment
7 several years later to Dan Gilbert, who is a
8 big, you know, investor in the Detroit area,
9 and is making his way into the casino
10 business. And we closed on that transaction
11 earlier this year.

12 COMMISSIONER STEBBINS: Thank you.

13 COMMISSIONER ZUNIGA: I have another
14 question. Do you see any, in your future,
15 and the future of your firm, any instance of
16 going public, taking this partnership that
17 you have, this employee owned partnership?

18 MR. KELLY: It's never been discussed.

19 COMMISSIONER ZUNIGA: Okay.

20 MR. KELLY: But having been around for
21 a long time, we never say never. But it's
22 absolutely never even been raised as an
23 issue, you know, or consideration. So, I
24 would say highly unlikely, but --

1 CHAIRMAN CROSBY: Mr. Etes, you said
2 I think that the compliance officer and staff
3 report to the Audit Committee. You
4 apparently don't have a separate Compliance
5 Committee.

6 MR. ETESS: Correct. We have an Audit
7 Committee and a Compliance Department.

8 CHAIRMAN CROSBY: And what is the
9 makeup of the Audit Committee?

10 MR. ETESS: The Audit Committee is
11 made up of five of the tribal counselors.
12 Mark Rianna is the Chairman; Kathy Regan-
13 Pyne; James Gessner, the treasurer; Thayne
14 Hutchins is on it, and one of the other --
15 and then -- Bill Quidgeon, Bill Quidgeon, the
16 one of the five Tribal councillors.

17 They also have a professional group
18 that also advises them, Phil Cahill and Leo.
19 Phil is the COO of the Tribe, and a former
20 public accounting auditor with Anderson. And
21 Leo is a former CFO of the MTGA and for the
22 local hospital. And so, they advise them as
23 well because they don't, you know, many of
24 the board members don't actually have the

1 professional expertise of audit and so forth
2 and so on. So, those two gentlemen along
3 with PWC, our external auditors, assist them.

4 CHAIRMAN CROSBY: Usually, certainly
5 on the compliance side and I think on the
6 audit side as well, there are outside
7 members. You don't have any outside members.
8 What's the thought process there?

9 MR. ETESS: You know, I -- I -- it's
10 -- the whole board is made up just of the
11 Tribe. So I can't really speak exactly to
12 what the thought process was. I wasn't there
13 when it was constructed, but I would imagine
14 it's all kept inside, and Council takes care
15 of their business, and they have these
16 outside advisers, you know, to kind of guide
17 them.

18 CHAIRMAN CROSBY: You know, you -- you
19 have such a good report that there's no
20 problem to solve, you don't want to solve a
21 problem that doesn't exist. On the other
22 hand, the principle of outsiders on an
23 audit/compliance committee, I mean as we've
24 now gone through this process --

1 MR. ETESS: Right.

2 CHAIRMAN CROSBY: -- it seemed that a
3 failure of a Compliance Committee is
4 sometimes where problems generate, problems
5 generate and it seems to me it's a matter of
6 best practice --

7 MR. ETESS: Yeah.

8 CHAIRMAN CROSBY: -- and something
9 that's worth thinking about.

10 MR. ETESS: That's a great point.
11 I'll definitely bring it back.

12 CHAIRMAN CROSBY: Yeah. Any other --
13 there have been some expressions of concern
14 that our -- we have contemplated as we have
15 been reading, as we have been considering the
16 report.

17 In particular, there was a letter
18 submitted to us on September 30th from State
19 Senator Stephen M. Brewer, who is the
20 Chairman of the Senate Ways and Means
21 Committee.

22 The substance of his letter was a
23 concern that there wasn't enough time between
24 the time we announced the suitability hearing

1 and hearing for the public to participate.
2 And other people have expressed that same
3 concern. And I want to just mention because
4 we have considered that, and as I say other
5 people have made this same point.

6 Back in April -- the point here I
7 think on net is that, twofold. A, there is a
8 and has been an ongoing process of inviting
9 comment from any and all public and
10 constituencies that has gone on for a long
11 time and will continue, A. B, the
12 suitability process that we are going through
13 now, culminates in a snapshot in time. The
14 process doesn't stop.

15 We will -- we will continue to
16 consider suitability up to and through the
17 final review of your final application. And
18 any changes in circumstances, any data that
19 people come to us with subsequent to this
20 event will be considered. So, suitability --
21 and in the end of the day, suitability is a
22 relative consideration. One can be more
23 suitable than another.

24 So, this is an ongoing process and

1 with multiple opportunities for people to
2 participate as there have been in the past.

3 In particular, in April, the
4 Commission established a mechanism on the
5 website to solicit input for Investigations
6 and Enforcement Bureau and we've repeatedly
7 promoted that. On April 23rd, we wrote
8 letters to all of the representatives of
9 surrounding host communities and everybody
10 else we could think of.

11 The e-mail read contact -- the letter
12 said contact MGC's Investigations and
13 Enforcement Bureau. That was back in April.
14 As of this morning, the suitability report in
15 it's redacted form is available on our
16 website. People will have an opportunity to
17 review that redacted report and comment to us
18 on an ongoing basis. If you do go ahead and
19 submit a report -- an application, there will
20 be at least two public hearings, one of which
21 will be held in the surrounding communities
22 area, one of which will be held by
23 legislative mandate in the host community.

24 So, there are a multitude of

1 opportunities for input which we will
2 continue to welcome and invite. And I
3 appreciate Senator Brewer's concern. As I
4 said, I think other people have the same
5 concern. So, I wanted to address that, so
6 that does not become a problem for us in
7 addressing the suitability decision.

8 We also got a letter, let me see now.
9 From a Diane -- an e-mail from a Diane Pikul,
10 P-I-K-U-L, who had a long and quite
11 thoughtful series of observations about the
12 application. They really didn't have much,
13 if anything, to do with the issue of
14 suitability. They had to do with concerns
15 about mitigation activities which you will
16 eventually deal with in your second phase.

17 So, we -- again, her comments were
18 worth considering and will be -- but will be
19 more appropriate when we get the final
20 applications. I just want to --

21 COMMISSIONER MCHUGH: Those --

22 CHAIRMAN CROSBY: Sure.

23 COMMISSIONER MCHUGH: Can I just jump
24 in there, Mr. Chairman?

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CHAIRMAN CROSBY: Yeah.

COMMISSIONER MCHUGH: Those are part, as are Senator Brewer's letter, those are part of the public record and your attention is invited to those comments as well.

CHAIRMAN CROSBY: Yeah. Thank you. I just wanted to read one thing from the minutes of last week's meeting that reinforces the point that I was making about the suitability process being an ongoing one.

(As read:) The Commission discussed how the suitability reports will be factored in to the RFA-2 evaluation, the final site specific proposal, and agreed that the full Commission, rather than individual evaluation teams will be able to consider relative suitability in making its final determination.

This is something we talked about last week. So, I think with that, that is the extent of my comments and the extent of the recent concerns that were expressed by the public. Does anybody else have anything they want to talk about?

1 All right. I think we need to make a
2 decision then, a formal decision on whether
3 we were to find Mohegan Sun suitable.

4 Commissioner McHugh, do you want to
5 formulate something?

6 COMMISSIONER MCHUGH: No, but I will
7 read something that somebody else has
8 formulated, that I fully approve of.

9 Whereas, on January 14, 2013, Mohegan
10 Sun, Massachusetts, LLC filed an RFA-1
11 application for a Category 1 license, which
12 application included a business entity
13 disclosure form and forms, multi-
14 jurisdictional personal history disclosure
15 forms, and Massachusetts supplemental forms
16 for the entities and individuals who are part
17 of the Mohegan Sun, Massachusetts RFA-1
18 application; and whereas Mohegan Sun
19 Massachusetts paid all of the fees required
20 by our regulations specifically 205 CMR
21 114.01; and whereas the Investigations and
22 Enforcement Bureau conducted a thorough
23 investigation of Mohegan Sun, Massachusetts'
24 suitability for a Category 1 license, all as

1 more fully described in the report entitled
2 Report of Suitability of Applicant Entities
3 and Individual Qualifiers, Mohegan Sun,
4 Massachusetts, LLC that was discussed here
5 today and is dated September 23, 2013 and
6 made a part of the Commission's records and
7 incorporated by reference into this
8 resolution; and whereas the IEB, the
9 Investigation and Enforcement Bureau, that
10 is, recommends that the Commission issue a
11 positive determination of suitability to
12 Mohegan Sun, Massachusetts, and include the
13 addition of certain license conditions if a
14 Category 1 license is eventually awarded to
15 Mohegan Sun, Massachusetts as more fully
16 described in the letter from the Director
17 Karen Wells to the Commission dated September
18 23, 2013, that is made a portion of the
19 Commission's records and incorporated by
20 reference into this resolution, and that the
21 Commission allow Mohegan Sun Massachusetts to
22 proceed to file an RFA-2 application for a
23 Category 1 license with the Commonwealth for
24 the Commission's review and evaluation in

1 accordance with Massachusetts General Laws
2 Chapter 23K and the Commission's regulations;
3 and whereas the Commission agrees that the
4 IEB's recommendation to issue a positive
5 determination of suitability to Mohegan Sun,
6 Massachusetts and the inclusion of the
7 license conditions as described in the Wells
8 letter, and to allow Mohegan Sun,
9 Massachusetts to proceed to file an RFA-2
10 application for a Category 1 license is
11 appropriate, now it is hereby resolved that
12 the Commission finds after review of the
13 suitability reports upon the IEB's
14 investigation of Mohegan Sun, Massachusetts
15 and the entities and individuals that make up
16 Mohegan Sun, Massachusetts' RFA-1
17 application, the Wells letter, and the
18 receipt of information at the public hearing
19 held on October 3, 2013, that Mohegan Sun,
20 Massachusetts meets the requirements of
21 General Laws Chapter 23K and the Commission's
22 regulations for suitability as an applicant
23 for a Category 1 license, and it is resolved
24 that the Commission hereby issues a positive

1 determination of suitability to Mohegan Sun,
2 Massachusetts, and agrees that certain
3 license conditions be included in the license
4 if one is eventually granted to Mohegan Sun,
5 Massachusetts. And it is further resolved
6 that Mohegan Sun, Massachusetts is deemed
7 suitable to proceed to file an RFA-2
8 application for a Category 1 license for the
9 Commonwealth's review and its evaluation,
10 pursuant to General Laws Chapter 23K and the
11 Commission's regulations.

12 And it is further resolved that the
13 Commission will continue to review Mohegan
14 Sun, Massachusetts' ongoing suitability as it
15 proceeds through the RFA-2 process and may
16 request additional information from Mohegan
17 Sun, Massachusetts as needed to ensure
18 Mohegan Sun, Massachusetts' continuing
19 suitability.

20 So, that is the resolution and the
21 basis for the resolution, Mr. Chairman and
22 Commissioners, that I would move the
23 Commission accept.

24 CHAIRMAN CROSBY: Thank you. Second?

1 COMMISSIONER CAMERON: Second.

2 CHAIRMAN CROSBY: I will say that out
3 of deference to our constituents who do
4 business with the SEC we might need to come
5 up with a better expression than "Wells
6 Letter."

7 DIRECTOR WELLS: Yeah.

8 COMMISSIONER MCHUGH: That was Karen
9 Wells.

10 CHAIRMAN CROSBY: I can see a whole
11 bunch of hairs standing on end.

12 COMMISSIONER MCHUGH: Every -- every
13 -- let me -- let me make it perfectly clear.
14 Every reference to the Wells letter was a
15 reference to the letter authored by IEB
16 Director Karen Wells.

17 CHAIRMAN CROSBY: Okay. All right.
18 Do we have any further discussion on the
19 motion? All in favor say aye. Aye.

20 COMMISSIONER MCHUGH: Aye.

21 COMMISSIONER CAMERON: Aye.

22 COMMISSIONER STEBBINS: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 CHAIRMAN CROSBY: All opposed? The

1 Ayes have it unanimously. Congratulations.

2 COMMISSIONER MCHUGH: Congratulations.

3 COMMISSIONER CAMERON:

4 Congratulations.

5 MR. ETESS: Thank you.

6 CHAIRMAN CROSBY: We will take a quick
7 break and be back in five or ten minutes.

8

9 (A recess was taken)

10

11 CHAIRMAN CROSBY: Are we on? We're
12 on. We are now reconvening Public Meeting
13 #78 of the Massachusetts Gaming Commission.
14 And we will go to the approval of the
15 minutes, Commissioner McHugh.

16 COMMISSIONER MCHUGH: Mr. Chairman and
17 colleagues, the minutes are found at tab --
18 tab -- they're found at tab 3A.

19 CHAIRMAN CROSBY: Three.

20 COMMISSIONER MCHUGH: And I would move
21 -- those are the minutes of the meeting of
22 September 19, 2013. And I'd move their
23 approval in the form contained in the meeting
24 materials, subject to any typographical or

1 other mechanical corrections that may later
2 be determine -- later be found.

3 CHAIRMAN CROSBY: Can I have a second?

4 COMMISSIONER STEBBINS: Second.

5 CHAIRMAN CROSBY: I just had just a
6 question. It wasn't really relating to the
7 substance of the minutes or the form of the
8 minutes, and I don't know whether without
9 Director Day here we know. But it refers to
10 --

11 COMMISSIONER MCHUGH: Where is the
12 reference, Mr. Chairman?

13 CHAIRMAN CROSBY: It's 9:54 on page
14 two.

15 COMMISSIONER MCHUGH: All right.

16 CHAIRMAN CROSBY: 9:54 a.m. on page
17 two.

18 COMMISSIONER MCHUGH: Right.

19 CHAIRMAN CROSBY: We were talking
20 about the process by which we will get
21 clarifications of answers to RFA questions.
22 And the staff was going to come up with a
23 written description of that process and
24 standards. Is that -- is that in the

1 pipeline somewhere, do you happen to know?

2 DIRECTOR WELLS: I believe we are
3 looking at it. We have not completed it yet.

4 CHAIRMAN CROSBY: I see Jennifer.

5 MS. PINCK: Yes.

6 CHAIRMAN CROSBY: Okay. So, it's in
7 the pipeline, okay. Great. Any other
8 questions, comments about the minutes? All
9 in favor of acceptance of the minutes as
10 proposed, say aye. Aye.

11 COMMISSIONER MCHUGH: Aye.

12 COMMISSIONER STEBBINS: Aye.

13 COMMISSIONER CAMERON: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 CHAIRMAN CROSBY: Opposed? The motion
16 is accepted unanimously. We will now go to
17 item number four on the agenda,
18 Administration and Legal, Catherine Blue,
19 General Counsel and Todd Grossman, Deputy
20 General Counsel.

21 COUNSEL BLUE: Good morning
22 Commissioners. We do not have an
23 administrative report say as Executive
24 Director Day is not with us.

1 The first item we would like to
2 consider is the legislative report. And
3 Commissioner Zuniga is going to give us an
4 update on that, and then there will be a vote
5 on submitting that.

6 CHAIRMAN CROSBY: Okay.

7 COMMISSIONER ZUNIGA: Thank you. As
8 you'll recall, I presented a draft in the
9 last commission meeting of the report that's
10 due to the legislature at the end of
11 September. That covers the fiscal, the full
12 fiscal year of fiscal year '13.

13 I received some edits from, you know,
14 a couple of people, notably some
15 commissioners. And I am presenting this
16 report in its current draft form for approval
17 and can take any additional edits or comments
18 if anybody thinks necessary.

19 CHAIRMAN CROSBY: No, we talked about
20 it before and I -- I thought you did a great
21 job, and everybody expressed appreciation in
22 your taking the lead in doing it. Any other
23 comments?

24 COMMISSIONER MCHUGH: I just echo that

1 one. I thought it was great.

2 CHAIRMAN CROSBY: Yeah, you want to
3 move acceptance of the report?

4 COMMISSIONER ZUNIGA: Then I will move
5 that this Commission approve the report as
6 drafted and send it to -- all the -- all the
7 honorable members of the legislature, and the
8 Governor's office that we are required to
9 submit this report to.

10 COMMISSIONER CAMERON: Second.

11 CHAIRMAN CROSBY: All in favor?

12 COMMISSIONER MCHUGH: Aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 CHAIRMAN CROSBY: Opposed? The ayes
16 have it unanimously.

17 COMMISSIONER ZUNIGA: Thank you.

18 CHAIRMAN CROSBY: Thank you.

19 COUNSEL BLUE: The next item on the
20 list is in your section --

21 CHAIRMAN CROSBY: Excuse me, just one
22 second, Catherine. Janice, we just want to
23 make sure that we do in fact follow up on
24 this and send this off to the right group of

1 folks. So, if you'll just help us to
2 remember to do that. Okay. Sorry.

3 COUNSEL BLUE: Item 4B in your package
4 is the list of outstanding policy questions.
5 I just want to bring your attention to a
6 couple of matters on that. The first item on
7 that list is part of the discussion we will
8 be having on October 17th with Executive
9 Director Day.

10 And then there was a later item on
11 this list regarding licensing. We will be
12 addressing that in item number 7 of your
13 package today.

14 In the interim, the Legal Department
15 is looking at various kinds of regulations to
16 address some of the policy questions in this
17 list. We have worked with the consultants
18 and asked them for examples of best practices
19 in other jurisdictions, so we will be putting
20 together draft regulations and draft
21 suggestions to present to the Commission as
22 the fall rolls on. So, I just wanted to let
23 you know that we're working on that.

24 CHAIRMAN CROSBY: Well, are you

1 -- are we planning on -- we never got around
2 to discussing these last time, right, last
3 week?

4 COUNSEL BLUE: We did not. We're
5 going to discuss the licensing section today
6 in detail. And I think that is on the second
7 page of this list. It's item number 50. We
8 will be addressing that in some detail.
9 Those are the first set of regulations and
10 policy questions.

11 CHAIRMAN CROSBY: And are we going to
12 be discussing the other questions?

13 COUNSEL BLUE: We are going to be
14 discussing the first item on this list next
15 week as part of the long --

16 CHAIRMAN CROSBY: Right.

17 COUNSEL BLUE: -- and broader
18 discussion.

19 CHAIRMAN CROSBY: But all the other --

20 COUNSEL BLUE: The others we will as
21 we -- as we present options to the Commission
22 on those --

23 CHAIRMAN CROSBY: All right.

24 COUNSEL BLUE: -- we will.

1 COMMISSIONER MCHUGH: So, this is just
2 a preview of coming attractions?

3 COUNSEL BLUE: Essentially, yes. Yes.

4 CHAIRMAN CROSBY: Well, I do have some
5 thoughts on these, but I can take them up
6 with Todd or somebody independently.

7 COMMISSIONER MCHUGH: Well, I thought
8 the process would be -- would be like the
9 process we used before, and that is have the
10 questions here. This time the staff, as
11 opposed to one of the Commissioners will
12 prepare a recommendation in writing and then
13 we get a chance to look at it, and then we
14 discuss it. And then decide the policy
15 question. Something along those lines.

16 COUNSEL BLUE: That is the process.

17 COMMISSIONER MCHUGH: Okay.

18 COUNSEL BLUE: And we are working with
19 Executive Director Day on that.

20 COMMISSIONER MCHUGH: Okay.

21 COUNSEL BLUE: So, we will have a
22 white paper, for lack of a better term, on
23 that policy question for the Commission to
24 consider.

1 CHAIRMAN CROSBY: For each of these
2 questions?

3 COUNSEL BLUE: Yes.

4 CHAIRMAN CROSBY: So, there will be a
5 group discussion about each of these
6 questions?

7 COUNSEL BLUE: Yes, there will be.

8 CHAIRMAN CROSBY: Okay. All right.

9 COUNSEL BLUE: And that is all that we
10 have for the legal report this morning.

11 CHAIRMAN CROSBY: Okay. Then we will
12 jump to the Ombudsman report.

13 COMMISSIONER ZUNIGA: Mr. Chairman,
14 can I go back to --

15 CHAIRMAN CROSBY: Sure.

16 COMMISSIONER ZUNIGA: -- part of
17 administration. I -- I did insert a matter
18 --

19 CHAIRMAN CROSBY: Oh, yes.

20 COMMISSIONER ZUNIGA: -- of this on
21 the same --

22 CHAIRMAN CROSBY: Right.

23 COMMISSIONER ZUNIGA: Item number four
24 relative to fees and stipends for individual

1 evaluators.

2 COMMISSIONER MCHUGH: Yeah.

3 COMMISSIONER ZUNIGA: I was wondering
4 if we could have brief a discussion about
5 that.

6 CHAIRMAN CROSBY: Absolutely. I think
7 we should have -- I meant to do that, yeah.
8 Did you want to go ahead?

9 COMMISSIONER ZUNIGA: Sure. There --
10 some of it teams that we have begun to
11 formulate for the evaluation of the five
12 sections include, or may include individuals.
13 And my recommendation, some of these
14 individuals will spend a significant amount
15 of hours helping us read through the relevant
16 sections of the -- of these proposals. And
17 my recommendation is that we establish a not
18 to exceed fee that will follow a stipend in
19 recognition for those -- those hours. And
20 in the instances where those individuals are
21 state employees in another agency, that that
22 stipend be forwarded not to the individual,
23 but the agency in the manner that they direct
24 us.

1 This is merely in recognition for the
2 amount of time that this would take. This is
3 under the threshold that the -- the
4 recommended threshold that I have here is
5 under the procurement thresholds for
6 incidental purchases, or it's actually at
7 that threshold. Which is why I just wanted
8 to talk about it for the record and establish
9 it as -- as we move forward with these
10 evaluations.

11 I can take any questions.

12 CHAIRMAN CROSBY: Yeah, that's
13 absolutely important and I'm glad you brought
14 it up. And I just want to expand on that a
15 little bit. We are -- we are each of the
16 Commissioners is heading up one of the five
17 evaluation criteria categories. In some
18 cases we are procuring paid consultants to
19 help where there's really a huge amount of
20 work and a lot of expertise required.

21 But in other cases, we are simply
22 asking citizens, just folks to help us kind
23 of be a part of the brainstorming and
24 evaluation advisory process. But it's --

1 requires enough work that we felt it was too
2 much to ask of most people to do the kind of
3 work that's going to be involved to review
4 all these applications without getting some
5 kind of payment.

6 And so, we've agreed that this stipend
7 for such folks is important. And I'm
8 certainly in favor of doing it, but I want to
9 make sure everybody understands and the
10 public understands what we're doing, and why.

11 COMMISSIONER ZUNIGA: Right. I'm
12 simply intending as a best practice to say
13 here's -- here's a stipend that's applicable
14 to everybody. And we're not in a position
15 where somebody gets more or less. It's a not
16 to exceed fee, and it's based on level of
17 effort, and hours, etcetera, etcetera. But
18 establishing that as a -- as a maximum I
19 think is important.

20 CHAIRMAN CROSBY: Right. I agree. Do
21 we need a vote for this? Do you think? It
22 wouldn't hurt.

23 COMMISSIONER MCHUGH: It's -- it's --

24 COMMISSIONER ZUNIGA: We have voted in

1 the past for all incidental purchases under
2 \$10,000.00 to leave to the staff. But as the
3 Chair suggests, it doesn't hurt.

4 COMMISSIONER CAMERON: We have or have
5 not voted?

6 COMMISSIONER ZUNIGA: We have.

7 COMMISSIONER CAMERON: We have.

8 COUNSEL BLUE: We have.

9 COMMISSIONER MCHUGH: I think we
10 should have a vote. We may need to have a
11 confirming vote down the road. This -- this
12 is not an agenda item for today. That's my
13 only concern.

14 COUNSEL BLUE: That -- Commissioner
15 McHugh is correct.

16 CHAIRMAN CROSBY: Turn the mike.

17 COUNSEL BLUE: Commissioner McHugh is
18 correct. This isn't listed specifically on
19 the -- on the agenda, so we could wait until
20 next time and have a formal vote listed then.
21 That might be the better way to do that.

22 CHAIRMAN CROSBY: Yeah, so let's do
23 that.

24 COMMISSIONER MCHUGH: I think we're

1 all --

2 CHAIRMAN CROSBY: We're certainly
3 comfortable.

4 COMMISSIONER MCHUGH: -- we're
5 certainly comfortable with this.

6 CHAIRMAN CROSBY: Yeah, right. Okay.
7 Great. Thank you. Now, to item number 5,
8 the Ombudsman report, Ombudsman Ziemba.

9 MR. ZIEMBA: Thank you, Mr. Chairman.
10 Before I begin my remarks, we're going to be
11 talking about some surrounding communities.
12 We're going to provide you a surrounding
13 community update. Obviously mitigation of
14 surrounding communities is a -- is a central
15 tenet of our application process. But before
16 I begin that review, I'd like to allow
17 Commissioner McHugh to give a little bit of a
18 an update regarding another very significant
19 item of mitigation that's important as part
20 of our application process, notably the
21 Lottery.

22 COMMISSIONER MCHUGH: Yes. Mr.
23 Chairman and colleagues, this is not an
24 agenda item either. But I don't think any

1 vote is necessary.

2 We have been unwavering, I think is
3 the best word we can use, in our public and
4 private pronouncements about the importance
5 of protecting the Lottery as this process
6 moves forward.

7 In that connection, Commissioner
8 Zuniga and I some months ago met with
9 representatives of the Lottery to encourage
10 them to reach out to applicants to try to
11 arrange on agreements, Lottery agreements.
12 All successful applicants, all licensees are
13 required to have a license to sell lottery
14 products, and support the Lottery. And there
15 are other statutory conditions, so we urged
16 them to reach out.

17 Later, the Chairman and I met with
18 Lottery representatives and treasury
19 representatives and reiterated the same
20 thing. Apparently some question has arisen
21 as to whether or not a signed Lottery
22 agreement was a prerequisite to filing an
23 application. Nothing that Commissioner
24 Zuniga and I said or that the Chairman and I

1 discussed with -- with Lottery officials was
2 intended to suggest that that was the case.
3 But apparently there's some confusion on that
4 part.

5 So, I think I am speaking for all of
6 us when I say that even though it's not a
7 requirement for filing an application, A, the
8 application process will evaluate and take
9 seriously into consideration the Lottery
10 mitigation efforts that are contained in the
11 RFA-2 application. There is a checklist
12 that's part of question five, the mitigation
13 section, that deals with that.

14 Question 5-22 specifically asks
15 questions about how the mitigation efforts
16 will proceed, and the Commission is going to
17 pay serious attention to those.

18 And in addition, because of the way
19 that the Statute is written, a license will
20 -- agreement will have to be in place -- I'm
21 sorry, a -- a agreement between the applicant
22 and the licensee will have to be in place
23 before the license decision is made. And
24 we'll consider that as part of the

1 application process.

2 And I'm not asking for a vote on that.
3 I -- I'm simply trying to restate what I
4 thought was our common understanding and see
5 if I'm correct in what I thought was our
6 common understanding. But if I'm not, this
7 is a good opportunity to discuss it and make
8 sure we're on the same page.

9 COMMISSIONER ZUNIGA: Yeah, well the
10 -- and the central -- just to reiterate, the
11 central -- the point to this was whether an
12 executed agreement, mitigation agreement was
13 necessary prior to submitting an application
14 or later. Prior to being licensed or even
15 prior to opening an operation.

16 That's -- that's the fine point. The
17 Lottery -- the people from the Lottery
18 believe that having an executed agreement
19 prior to an application had them in a better
20 position in terms of negotiating an
21 agreement. But just as Commissioner McHugh
22 suggested, prior to the licensure is also
23 another important milestone.

24 CHAIRMAN CROSBY: Now I'm confused. I

1 don't -- I don't know what the bottom line is
2 here.

3 COMMISSIONER MCHUGH: The bottom line
4 is that we are committed to reviewing in
5 careful and thoughtful fashion, placing
6 emphasis on the Lottery mitigation efforts
7 described in the application, and that we are
8 committed to having a license agreement
9 between the Lottery and the applicant in
10 place before we award the applicant a
11 license.

12 COMMISSIONER ZUNIGA: That's right.

13 COMMISSIONER MCHUGH: I'd like --

14 CHAIRMAN CROSBY: But not before the
15 application.

16 COMMISSIONER MCHUGH: Not before the
17 application is fine. And I thought that -- I
18 thought that in the remarks I just made I was
19 restating what we already had agreed on. And
20 I wanted to make sure that that was the case,
21 so that the Lottery understood that the
22 Commission as a whole and the applicants
23 understood that the Commission as a whole
24 stood behind those two principles, careful

1 monitoring of mitigation efforts, agreement
2 in place before a license is issued.

3 CHAIRMAN CROSBY: So, during -- so
4 during the application process, what you're
5 saying squares with what my impression was.
6 That during the application process we'll be
7 interested in knowing what their strategies
8 are, what --

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: -- their commitments
11 are, what their ideas are --

12 COMMISSIONER MCHUGH: Right.

13 CHAIRMAN CROSBY: -- but there doesn't
14 necessarily have to be a signed agreement in
15 place.

16 COMMISSIONER MCHUGH: Not before the
17 license -- the application is filed, but
18 there does have to be a --

19 CHAIRMAN CROSBY: Right.

20 COMMISSIONER MCHUGH: -- signed
21 application in place before we award a
22 license.

23 CHAIRMAN CROSBY: Right. Okay.

24 COMMISSIONER MCHUGH: I think that's

1 where we've been from the --

2 CHAIRMAN CROSBY: Yes, it is. I'm
3 completely fine with that. It gives me a
4 chance, however, to -- to say something that
5 I say all over the place, and I think it's
6 really important. There is a very high
7 priority in the legislation to protect the
8 Lottery. Why? Because as most of you know,
9 there's a billion dollars a year that goes to
10 local aid from the proceeds of the Lottery.

11 In order to generate that billion
12 dollars a year for local aid, there has to be
13 a total of five billion dollars a year
14 gambled by pretty much the people of
15 Massachusetts to generate the -- what amounts
16 to the profit which goes to local aid.
17 \$5,000,000,000.00 or \$725.00 for every man,
18 woman and child in Massachusetts, more than
19 two times the national average.

20 Nobody knows what happens when you
21 introduce expanded gaming into a jurisdiction
22 with this much lottery gambling. So, we're
23 under this mandate to protect the Lottery and
24 we talk about it everywhere we go. But

1 there is this issue, how much money out
2 there, how much discretionary income is there
3 to be gambled beyond the \$5,000,000,000.00
4 which is already gambled on the Lottery. And
5 it's something that the public and everybody
6 needs to be aware of, that there is this
7 issue. We will do everything we possibly can
8 to implement the legislative intent. But it
9 is, it is a significant issue that none of us
10 can predict the outcome of.

11 COMMISSIONER ZUNIGA: Well, I -- I
12 would argue that our research study is going
13 to help us to a great deal in understanding
14 some of those impacts, outcomes and things
15 like that.

16 CHAIRMAN CROSBY: We'll definitely
17 know after the fact. But I'm saying it's
18 hard to predict now, you know, what -- what
19 -- what the impact is going to be.

20 COMMISSIONER ZUNIGA: Right.

21 CHAIRMAN CROSBY: Mr. Ombudsman.

22 MR. ZIEMBA: Thank you, Mr. Chairman.

23 As for my update, at the last commission
24 meeting the Commission discussed concerns

1 that no surrounding community agreements had
2 yet been reached for both Category 1 and
3 Category 2 applications.

4 The Commission also discussed that the
5 constraints of time resulting from the
6 impending October 4th Category 2 deadline
7 might force applicants and communities into
8 arrangements that might not be optimized for
9 the long-term relationship between the
10 parties.

11 To the best of my understanding, as of
12 this hour, no surrounding community
13 agreements have yet been reached. However,
14 as one would imagine with a deadline
15 Thursday, a significant increase in activity
16 over the last couple of weeks since I made my
17 report some communities may soon be able to
18 reach an agreement.

19 Yet communities and applicants have
20 both stated that they -- they need more time
21 to reach agreements. Communities also need
22 more time to understand what level of impacts
23 will result from these facilities.

24 At the last meeting, the Commission

1 discussed a plan to help communities and
2 applicants reach agreements that are
3 mutually beneficial or to determine what is
4 necessary for applicants and communities to
5 determine impacts or lack of impacts with
6 facilities.

7 The Commission discussed having both
8 communities and applicants appear before the
9 Commission in order to brief the Commission
10 on how they can achieve these goals.

11 The Commission also instructed me and
12 General Counsel Blue to brief the Commission
13 at this meeting about any changes to the
14 Commission's procedures that might be
15 necessary.

16 In regard to how best to achieve the
17 aims of the appearances by the applicants and
18 the communities, we offer the following:

19 We recommend that each of the Category
20 2 applicants appear at the Commission's next
21 meeting to brief the Commission about the
22 status of their plans with surrounding
23 communities, and communities that have
24 expressed an interest in becoming a

1 surrounding community. Each of these
2 applicants would explain how they plan to
3 work with communities, so that they can
4 understand impacts or the lack of impacts,
5 and what needs to be done to enable
6 communities that believe they are surrounding
7 communities to reach surrounding community
8 agreements, if that is appropriate.

9 Each of the applicants can discuss
10 community needs or requests for technical
11 assistance, or other resources that would be
12 necessary to conclude agreements.

13 In the alternative, applicants could
14 explain -- explain how the agreements that
15 they are proposing provide a method for
16 addressing such needs as more details on the
17 project become finalized either through the
18 MEPA process or if there are other processes
19 that will occur in the future.

20 After this discussion, at our next
21 meeting on the 17th of October, the
22 Commission will soon thereafter have input
23 sessions in communities. We plan to hold at
24 least one input session in a surrounding

1 community for each one of the applications.
2 At this meeting we'll receive comments from
3 surrounding communities, communities that
4 believe they are surrounding communities, and
5 members of the general public.

6 In this meeting, communities that wish
7 to provide comment on the status of the
8 discussions with applicants could do so.
9 They would have the advantage of hearing the
10 testimony of the applicants on the 17th.
11 Through this public dialogue, both the
12 Commission and the public would be informed
13 about the status of their communities.

14 Well before the 17th appearance by the
15 applicants and before the public input
16 meetings, Commission staff will continue to
17 work with applicants, communities and
18 regional planning agencies to try to achieve
19 the goals that were announced last week --
20 two weeks ago by the Commission.

21 As for the second part of the
22 Commission's directive from our last meeting,
23 I recommend that the Commission change it --
24 change its procedures on surrounding

1 community petitions to allow for continued
2 dialogue between communities and applicants.

3 We've been working on the final
4 aspects of this recommendation when we
5 received a request included in your packet
6 from one of our applicants, PPE Casino
7 Resorts, and a number of communities,
8 Lancaster, Lunenburg, Townsend, and
9 Westminster. They are requesting that the
10 Commission extend our deadline for
11 surrounding community petitions until October
12 31, 2013. This is an extension of 16 days
13 from our current October 15th deadline for
14 surrounding community petitions.

15 The 15th instead of the 14th because
16 the tenth day for surrounding community
17 petitions falls on Columbus Day.

18 This letter states that the applicant
19 and the community submit that their time and
20 resources would be better spent over the next
21 several weeks attempting to finalize
22 negotiations than initiate -- initiating an
23 adversarial proceeding before the Commission.

24 We recommend that the Commission

1 extend this deadline. If communities which
2 have not been designated as surrounding
3 communities in an application reach a
4 surrounding community agreement after our
5 deadline, our regulations allow for the
6 Commission to accept this agreement.

7 Our regulation states that an
8 applicant may assent to any petition by a
9 community to become a surrounding community,
10 and that such assent shall result in the
11 community becoming the surrounding community.
12 Our regulations also provide that
13 negotiations concluded after the deadline can
14 result in an agreement that is included as
15 part of our second review phase.

16 Here, by allowing the extension, we
17 hopefully give enough time for communities to
18 reach agreements with applicants without
19 having to resort to the adversarial process
20 that is specified in our regulations.

21 In addition to the extension of the
22 surrounding community petition deadline, we
23 also note that communities that have been
24 designated as surrounding communities in an

1 application but have not reached agreement
2 yet can utilize provisions of the regulations
3 to just give them more time.

4 Under our regulations, communities
5 that have been designated as a surrounding
6 community in an application have ten days to
7 notify the Commission that they assent to
8 such designation. It is only after that that
9 the Commission is required to issue a written
10 notice designating the community as a
11 surrounding community.

12 Thus, surrounding communities have at
13 least this ten-day notice period in the time
14 that the Commission takes to issue the
15 written determination before the clock starts
16 ticking on the thirty-day statutory
17 negotiation period between communities and
18 applicants.

19 The Commission has further flexibility
20 in determining when that written
21 determination is made, thus starting that
22 thirty-day negotiation period.

23 While the above conversations between
24 communities -- between applicants and

1 surrounding communities continues, the
2 communities still have the ability to work
3 with any regional planning review process
4 that has been started. Further, communities
5 will also be able to utilize any resources
6 that the applicant has agreed to provide.
7 And finally communities can still petition
8 the Commission for involuntary disbursements.

9 The Commission would need to weigh how
10 such reviews would be beneficial for
11 determining surrounding community status,
12 and allowing for the parties to reach an
13 agreement.

14 Our surrounding community petition
15 regulation does not put a limit on the time
16 that the Commission has to make a
17 determination on surrounding community
18 status. It merely states that communities
19 have ten days or 26 days if an extension of
20 it is granted, presumptive of this
21 recommendation, to file with the application
22 -- to file with the Commission.
23 Applicants have ten days to respond. Then
24 the Commission is required to make a

1 determination, but no time period is
2 specified on how much time the Commission
3 needs to make a determination based on the
4 filings from both the community and the
5 applicant.

6 The time in making such a
7 determination could be used in determining
8 what would be necessary for the Commission to
9 make a determination on surrounding community
10 status that is based on the facts.

11 I'd also like to note that an
12 extension would be important for another
13 reason. Under our regulations and under our
14 application, we have a process whereby
15 communities can notify us if they wish to
16 receive copies of reports and copies of
17 application sections that relate to
18 surrounding community status. But in that
19 regulation and that application, it requires
20 communities to affirmatively send a -- an e-
21 mail to us, which we would then forward to
22 the applicants stating that communities would
23 like to do so.

24 And despite efforts to publicize the

1 availability of that -- of that method of
2 being informed about the application, only a
3 small percentage of communities have taken
4 advantage of that section.

5 The fallback we have always had in our
6 -- in our process was that we are going to
7 make our application as publicly available as
8 soon as possible. And hopefully within days
9 of receiving the October 4th application, we
10 will make that publicly available. But still
11 each and every day that it takes for us to
12 get that application publicly available would
13 otherwise eat into that ten-day period for
14 communities to file their applications.

15 So, within this general construct of
16 what I've just talked about, the Commission
17 -- if the Commission agrees to the -- to
18 extend the date, I'll ask Counsel Blue or
19 Attorney Grossman to provide detail on how we
20 could actually accomplish this extension.

21 CHAIRMAN CROSBY: Do you want to go
22 ahead with that? Yeah, okay. Mike.

23 COUNSEL BLUE: So, the Commission
24 could grant this extension by granting to the

1 applicants -- or to the surrounding
2 communities rather, a variance, which would
3 extend the time frame. And as the Commission
4 knows under 205 CMR 102.3, there are four
5 things that need to be considered in the
6 granting of a variance.

7 Those things are whether the granting
8 the variance is consistent with the purposes
9 of Chapter 23K; granting the variance --
10 whether the granting the variance will not
11 interfere with the ability of the Commission
12 to -- or the Bureau to fulfill its duties;
13 whether granting the variance will adversely
14 effect the public interest; and if not
15 granting the variance would cause a
16 substantial hardship to the person requesting
17 the variance.

18 I think Ombudsman Ziemba makes a very
19 good point, that this would be very helpful
20 to the surrounding communities, and we have
21 at least one applicant who agrees with that.
22 So, if the Commission were to today make a
23 motion to grant a variance for the extension
24 of the time frame, it could certainly do

1 that.

2 MR. ZIEMBA: One thing I'll note is
3 that we received a late comment from the Town
4 of Bridgewater supporting an extension to
5 promote further dialogue that -- with that --

6 CHAIRMAN CROSBY: I'm not a hundred
7 percent sure, I don't think anybody else is,
8 exactly what's being recommended. There's a
9 September 23rd memo from Attorney Grossman,
10 and I thought that that was suggesting that
11 we extend our period, our ten-day period
12 when we have to determine whether or not the
13 community is a surrounding community. And
14 that -- and that the -- but the community
15 would still have to file this -- the
16 petition.

17 Are you suggesting that we waive the
18 requirement that the -- that the community
19 file the petition within that ten days?

20 MR. ZIEMBA: Yes.

21 CHAIRMAN CROSBY: So, we can do that.

22 MR. ZIEMBA: Yes.

23 CHAIRMAN CROSBY: Okay. I thought
24 that was legislatively mandated and couldn't

1 be -- okay.

2 COUNSEL BLUE: No, that's part of our
3 regulations.

4 CHAIRMAN CROSBY: Okay. So, why --
5 why is that a waiver? Why don't we just
6 extend the exist -- vote to extend it?

7 COUNSEL BLUE: It's a variance from
8 the regulation, so the ten-day period is in
9 the regulations. So, you would be varying
10 the regulation.

11 CHAIRMAN CROSBY: And the only way we
12 can do that is to give a waiver to the
13 surrounding community?

14 COUNSEL BLUE: To vote for a variance.

15 COMMISSIONER ZUNIGA: One of the --
16 one of the ways.

17 COUNSEL BLUE: One of the ways that --
18 the easiest way.

19 CHAIRMAN CROSBY: The easiest way?

20 COUNSEL BLUE: Yes.

21 COMMISSIONER ZUNIGA: We could issue
22 an emergency regulation.

23 CHAIRMAN CROSBY: It would be -- so,
24 it would be a blanket waiver to any -- it

1 wouldn't be just for anybody who asked for
2 it. It would be a blanket waiver. Okay.

3 COUNSEL BLUE: Yes.

4 COMMISSIONER ZUNIGA: Can I -- you was
5 suggesting in your remarks that there be a
6 presentation in the next meeting of the
7 Commission on the 17th.

8 MR. ZIEMBA: Yes.

9 COMMISSIONER ZUNIGA: By the
10 applicants as to the progress on their
11 discussions with surrounding communities, but
12 we also have scheduled a presentation from
13 each of these applicants on Monday. It
14 occurs to me that that could be -- that that
15 would also be a good opportunity for them to
16 provide a quick update.

17 I know everybody's been working on
18 submitting the application and etcetera, but
19 if each of them spend five minutes as to --
20 describing what process they have undertaken
21 at that point, that might be helpful as well.

22 MR. ZIEMBA: I think that's a very
23 good point. I would imagine that each of the
24 applicants if such -- it's such a significant

1 part of our application, that they would
2 address that as part of their presentations.
3 And hopefully they will do so. But the --
4 the follow-up meeting gives us the benefit of
5 what has occurred between basically our
6 application date and the 17th, and what
7 progress is being made. So, both would be
8 very important, I agree with that.

9 COMMISSIONER MCHUGH: On Monday,
10 though, the format is simply to give the
11 applicants 90 minutes to say what they want.
12 This is a good heads-up that part of what we
13 want, and therefore hopefully they want is an
14 update on, at least touching on what they're
15 doing with the surrounding communities.

16 MR. ZUNIGA: That's right.

17 CHAIRMAN CROSBY: This -- I don't know
18 whether this really matters or not, but it
19 doesn't -- I don't -- we're going to --
20 you're proposing that today we grant a
21 blanket waiver. So, the ten-day window is
22 irrelevant and it will be now until the end
23 of October.

24 COUNSEL BLUE: Mm-hm.

1 CHAIRMAN CROSBY: So, we're not -- we
2 don't need any more data to decide whether or
3 not we're going to do that. You're
4 recommending that we do that now, so putting
5 an additional burden on the applicants who
6 are already here via the grapevine scrambling
7 to get their 90 minute presentation together,
8 that -- that is -- we've invited them to come
9 in and present to us whatever they want to
10 present to us, to put their best foot forward
11 to us and in public to present their case.

12 You know, if they want to give us an
13 update on the surrounding communities, that's
14 their business. But it doesn't really seem
15 to me that we would want to add on to their
16 agenda telling us about the -- their status
17 on surrounding communities.

18 Doing it on the 17th makes sense, but
19 I'm not sure that it does on the 7th.

20 COMMISSIONER MCHUGH: I'm not
21 proposing we add any requirements at all, Mr.
22 Chairman. I'm simply suggesting that the
23 sense of the Commission is that we are
24 interested in this issue and if they want to

1 weave that into whatever they present on
2 Monday, that will be -- that will be good.
3 If they don't, they don't.

4 CHAIRMAN CROSBY: All right. Are you
5 okay with --

6 COMMISSIONER ZUNIGA: Absolutely.
7 That was a -- that was the point of my saying
8 today, hey, there's a great opportunity to --

9 CHAIRMAN CROSBY: Yeah.

10 COMMISSIONER ZUNIGA: -- tell the world
11 where you are on -- on this statutory
12 requirement, surrounding community
13 agreements.

14 MR. ZIEMBA: One further thing that I
15 will note is that the extension of the
16 deadline for the Category 2 deadline to
17 October 31st does bring into question what we
18 should do regarding the same deadline ten
19 days for our Category 1 applications. And I
20 think what we'd recommend or what I would at
21 least I'd recommend is that that ten-day
22 period probably should be re-looked at,
23 especially in the -- in the context of when
24 our applications are made available to the

1 general public and to communities. And
2 obviously that we've been getting a number of
3 different requests for additional time from
4 communities, and that that issue bears a lot
5 of further reflection.

6 There -- there's some time between now
7 and December 31st application deadline, but
8 that window is growing shorter every day.

9 COMMISSIONER MCHUGH: On that -- on
10 that, I wonder if there isn't a lesson here
11 for us. It seems to me that -- that at --
12 rather than extending a deadline now for the
13 Category 1 process, should we consider being
14 as a Commission, I know that -- that you have
15 been proactively working with -- with the
16 applicants and communities to try and get
17 them together and think about this and focus
18 on it, but I wonder if there isn't an
19 opportunity for us as a Commission to -- to
20 get behind this in some fashion.

21 We're going to have, under your
22 proposal, with which I agree, the applicants
23 come in on the 17th and tell us where they
24 are. We're going to extend the deadline now

1 so that the process can work.

2 I would recommend that we -- we stay
3 on the applicants after -- after this and
4 monitor them, and -- but I wonder if it
5 isn't, there isn't an opportunity for us to
6 get the Category 1 applicants in here soon
7 after we finish with the Category 2
8 applicants and say where are you on this.
9 Because it's really important to us and we
10 don't want to hold up the -- we don't want to
11 hold up the process because you haven't
12 addressed it.

13 We don't have as much room in back of
14 the Category 1 process until the end of the
15 fiscal year as we do here. So, that's
16 another reason it seems to me we ought to be
17 more proactive to try and get this buttoned
18 up.

19 COMMISSIONER ZUNIGA: I would agree
20 with that. And in I guess looking back and
21 when we formulated the schedule, and had the
22 numerous discussions about time lines and
23 concurrent activities, we all assumed that
24 there would be a lot of community --

1 surrounding community discussion at the same
2 time as the host community negotiations were
3 taking place. The reality is now looking
4 back that almost everybody has waited until a
5 host community has been executed, a host
6 community agreement has been executed.

7 CHAIRMAN CROSBY: And the referendum.

8 COMMISSIONER ZUNIGA: And the
9 referendum, for them to begin discussions
10 with the surrounding communities. As a
11 practical matter, they were all focused on
12 meeting the first threshold I guess of having
13 a positive referendum. So --

14 COMMISSIONER STEBBINS: I -- I agree
15 with both of those points. I pick up on what
16 the judge says. I mean we -- we understand
17 that applicants have been reluctant to
18 approach surrounding communities until the
19 referendum in the host community agreement is
20 earned. But we've had some referendums that
21 are now three months old. So, you know, the
22 value of the meeting on the 17th would be
23 great to hear from those applicants as to
24 what their efforts are. And I'm referring to

1 the Class 1 category, you know, what have
2 their efforts been and what kind of reaction
3 have they gotten from potential surrounding
4 communities.

5 But, you know, three months have
6 passed, we had hoped there would be a little
7 progress.

8 CHAIRMAN CROSBY: I second or
9 third all -- all of that. I think we have to
10 really let the Category 1's understand that
11 their feet are to the fire here and have to
12 stick -- have to know that. So, I think
13 we're all -- think we're all on the same
14 page.

15 All right. Do you want to -- does
16 somebody want to -- is there more discussion
17 on the -- are we -- are we comfortable with
18 the idea?

19 I mean obviously by doing this, we,
20 for the first time really have opened up the
21 non-trivial possibility that we will not be
22 awarding our Category 2 license at the end of
23 December/first week or so of January as we
24 had planned. Now, we don't know what will

1 happen, but this is the first step that could
2 lead to that.

3 Now, we've -- we've known that
4 surrounding community negotiations are the
5 biggest delay in the process, or we've
6 learned that surrounding community
7 negotiations are the biggest delay in the
8 process. And we've said repeatedly we won't
9 be a slave to the schedule; we do want to
10 give everybody time. But -- but having said
11 that, this is -- doesn't mean the possibility
12 of slipping that deadline in a more formal
13 way than we ever have before.

14 COMMISSIONER ZUNIGA: That's a real
15 possibility. I would -- I would like to
16 think, but maybe I'm too much of an optimist,
17 and that additional days on the front end may
18 mitigate the thirty days that we have on our
19 schedule and then the further days that come
20 in terms of arbitration. But we'll -- I
21 guess we'll see.

22 CHAIRMAN CROSBY: Sometimes even a
23 turtle on Ambien is going to fast. Okay.
24 So, it sounds that we're all familiar with

1 that, we're comfortable with that. Does
2 somebody want to put that in the form of a
3 motion? We clearly do need to vote on this,
4 I think.

5 COMMISSIONER MCHUGH: We do. And we
6 need to -- we need to coalesce around some
7 principles along the lines that General
8 Counsel Blue laid out for us.

9 It seems to me that we, from the
10 discussion here, agree that granting a
11 variance from the -- from the regulatory
12 scheme by extending the deadline until
13 October 31st would be consistent with Chapter
14 23K because Chapter 23K really focuses on
15 robust protective surrounding community
16 agreements. And this gives, this -- this
17 push back will give us an opportunity to make
18 sure that that happens.

19 It won't interfere with the ability of
20 the Commission or the Bureau. The Bureau
21 really isn't involved directly here, but it
22 won't interfere with the ability of the
23 Commission to -- to carry out its duties
24 because it will enhance our ability to make a

1 judgment about -- about the quality of
2 surrounding community agreements. And --
3 and without having the arbitration process
4 create involuntary surrounding community
5 agreement. It won't adversely affect the
6 public interest, on the contrary it will
7 enhance the public interest because it will
8 give more communities more time to work with
9 the applicants. And not granting the
10 variance would cause a substantial hardship
11 to the applicants and to the communities,
12 both of whom are requesting this because it
13 would force them into an adversarial process
14 prematurely when an adversarial process may
15 not be necessary.

16 So, I think I'm restating what we all
17 implicitly agree on, and I therefore move
18 that we adopt those recitations as findings.
19 And that we move the deadline for filing
20 surrounding community designation
21 applications to October 31, 2013.

22 CHAIRMAN CROSBY: Second?

23 COMMISSIONER ZUNIGA: And just to
24 clarify before -- I guess we could second.

1 But -- but just to clarify, the deadline for
2 submitting an application for Phase 2 for the
3 applicant is not moving. I don't want to
4 confuse --

5 COMMISSIONER MCHUGH: No, no, no.

6 COMMISSIONER ZUNIGA: -- any, that the
7 real deadline which is upon us, it is -- it
8 is about the agreement, it is Commissioner
9 McHugh --

10 COMMISSIONER MCHUGH: It's just the
11 surrounding community agreement. The
12 deadline reminds tomorrow.

13 COUNSEL BLUE: Yeah.

14 CHAIRMAN CROSBY: And you know this
15 better than anybody, but there's a lot of
16 different deadlines out there. And a lot of
17 them dimly, vaguely aware -- aware under
18 comprehension and the surrounding communities
19 about which deadlines are which.

20 So, we're going to have to be really
21 proactive and being clean, clear and
22 repetitive in advising the communities what
23 we've done here. Because you know better
24 than anybody. Any further discussion on this

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motion?

All in favor? Aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER CAMERON: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER STEBBINS: Aye.

CHAIRMAN CROSBY: All opposed? The ayes have it unanimously. What's next?

MR. ZIEMBA: Mr. Chairman, we have a request from PPE Casino Resorts for a temporary waiver of the requirement in 205 CMR 119017. That its Phase 2 application include a certificate showing that the applicant has received a certified and binding positive vote on a ballot question at an election in the host community in favor of the license.

The applicant notes in its variance request that under state election law, the Leominster City Clerk may not certify the election results of the Leominster September 24th referendum until 5:00 p.m. on October 4, 2013.

Our Category 2 application deadline is

1 October 4, at 2:00 p.m. The Commission has
2 previously discussed it would entertain
3 requests for such waivers or variances.

4 The minutes from the Commission's June
5 27, 2013 minutes state: In order to give
6 applicants more time to provide the election
7 certification required as part of the RFA-2
8 application, the Commission will consider
9 request for a waiver of the requirement to
10 include the certification with the submission
11 of the RFA-2 application, as long as the
12 applicant submits the uncertified results
13 with the RFA-2 application and submits
14 certification to the Commission as soon as it
15 is available. Applicants should submit such
16 requests as soon as possible, and the
17 Commission will review the request on a case-
18 by-case basis.

19 This variance is in keeping with the
20 Commission's discussion on June 27th, and
21 will have either no impact or de minimis
22 impact on the Commission's application
23 review. Therefore I recommend that the
24 Commission vote favorably on this variance

1 request.

2 We received a number of comments to
3 this variance request of which have been
4 included in the Commissioners' packets.
5 Those provided comments stated that if the
6 applicant was not able to meet the specified
7 time frames, the variance should not be
8 granted, that the variance resulted from
9 haste in the local referendum process whereby
10 the public was not properly informed about
11 the facility, that negative impacts of the
12 facility were not properly discussed prior to
13 the referendum, and that studies were not
14 completed prior to the vote.

15 Others have raised concerns about the
16 facility and about how it would impact the
17 family character of the City of Leominster.

18 I note that comments seem to be more
19 wide ranging and do not speak to the
20 specificity of the purpose of the regulation
21 at hand. The regulation was included so that
22 the Commission would have evidence that the
23 election results are certified.

24 The comments perhaps would be more

1 properly evaluated in the context of the
2 Commission's review of the degree of public
3 support in the community and its local
4 procedures.

5 The Commission will have -- the
6 Commission will hold a public hearing in the
7 host community where members of the public
8 will be given the opportunity to speak
9 directly to such issues. These comments will
10 then be evaluated by the Commission in making
11 its license determination.

12 And for these reasons, I recommend the
13 variance.

14 CHAIRMAN CROSBY: Conversation?

15 COMMISSIONER CAMERON: I see no reason
16 why we don't adopt this variance -- approve
17 it, rather.

18 CHAIRMAN CROSBY: I just want to
19 reinforce what Ombudsman Ziemba said about
20 the public comments. We did get many
21 comments urging us to not grant this
22 variance. They had little to do with the
23 substance of the variance, as you said they
24 had a lot to do with really thinking that

1 they weren't properly informed in the
2 election. There were a couple of people who
3 sent in the letter that was written by the
4 president of the Leominster City Counsel,
5 Susan Zephir, who talked a lot about the
6 insufficiency of the studies and
7 insufficiency of the mitigation information.

8 But as you said, most of the concerns
9 are concerns which could be addressed at
10 subsequent events here, and don't have to do
11 with this. But I -- since we got, I don't
12 know, twenty or more e-mails on our MGC
13 comments, I just wanted to highlight that.
14 We have them all in our binders. We have
15 thought about them and they're appreciated
16 and taken into consideration.

17 Any further discussion? Somebody?

18 COMMISSIONER MCHUGH: Oh, yes, I --
19 oh, I'm sorry.

20 CHAIRMAN CROSBY: Go ahead.

21 COMMISSIONER MCHUGH: No, I don't have
22 any further discussion. I have a motion.

23 CHAIRMAN CROSBY: But how about a
24 motion?

1 COMMISSIONER MCHUGH: Okay. Now, I
2 have a motion. But -- but the motion is
3 based on my understanding of our conversation
4 that first of all, granting the variance
5 would be consistent with the purposes of
6 General Laws Chapter 23K in that the
7 requirement is simply an evidentiary
8 requirement. It is a requirement designed to
9 facilitate the Commission's ability to
10 proceed with knowledge that in fact the vote
11 has passed. So, giving another week to do
12 that would allow the Commission to be sure
13 that the vote in fact that passed. It won't
14 interfere with the ability of the Commission
15 to fulfill its duties, in fact it will
16 enhance them.

17 It will not adversely affect the
18 public interest. The comments, as we've
19 discussed, are comments directed to the
20 substance of the proposal and the information
21 available for the vote, not for the -- not at
22 the -- at the impact of the one-week
23 extension.

24 And there will be a continuing process

1 that this is just now beginning to solicit
2 those concerns, to get answers to the
3 questions, to ensure that studies are
4 available before the Commission makes any
5 final decisions. And so, granting the
6 variance will adversely affect it. And
7 indeed, if the certification is not presented
8 within a week, then the Commission simply
9 stops the application process dead in its
10 tracks at the end of the next week if we
11 don't get the certification.

12 And not granting the variance, it
13 seems to me would cause a substantial
14 hardship, the variance -- the certification
15 could be available at 5:00. It probably
16 won't be available at 5:00, but not having it
17 for the -- for the applicant would -- would
18 be a substantial hardship all out of
19 proportion to the yield to the Commission and
20 the public interest.

21 So, I think those are the findings
22 that -- that reflect the sense of our
23 discussion and I move that we adopt those
24 findings and allow the request for a

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variance.

CHAIRMAN CROSBY: Second?

COMMISSIONER STEBBINS: Second.

CHAIRMAN CROSBY: Any further discussion? All in favor of the variance as described say aye.

COMMISSIONER CAMERON: Aye.

COMMISSIONER STEBBINS: Aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER ZUNIGA: Aye.

CHAIRMAN CROSBY? Opposed? Nay? The Ayes have it unanimously. What's next?

MR. ZIEMBA: Mr. Chairman, the City of Boston is requesting a variance from the sequencing requirements contained in the Commission's regulation 205 CMR 115056A.

I'll first provide a summary of the comments that we've received from the public, and also the support for the variance that has been put forward by the City. I'll then give a brief summary of the context of the regulation. If the Commission has any further questions of the Applicant or the City, they are available to answer any

1 questions you may have.

2 First to the comments. We received a
3 number of comments and calls from the City of
4 Boston's requests, and there are also
5 numerous e-mails that we received late in the
6 day yesterday. I'm not certain if they are
7 part of the Commissioners' packets. But they
8 will be part of the ongoing record.

9 The comments, they noted that the
10 City of Boston and City Council were aware of
11 the regulations and that the licensing
12 process should be adhered to. They -- they
13 noted that the City and the Commission were
14 both on notice that the Council was in
15 violation of the Commission's rule when they
16 allowed the vote to move forward.

17 They noted that the granting of the
18 variance would weaken the credibility of the
19 Gaming Commission and its enforcement of its
20 regulations. They noted that the variance
21 would prevent a full discussion about the
22 proposed casino. They noted that if the City
23 of Boston cannot keep the law in small things
24 like this, then how would it -- would it be

1 impossible to keep the law once the facility
2 is up and running.

3 Mr. Cameron, a resident of East Boston
4 who had contacted the Commission both before
5 and after the City Council vote provided
6 substantial comments. Mr. Cameron contacted
7 and he included very specific detail
8 regarding the numerous contacts that he made
9 to both the Commission and to the City on
10 this issue. He noted that the City was
11 clearly on notice of the mistake and does not
12 now deserve an opportunity to have the
13 mistake corrected by the Commission. He also
14 asked that the Commission issue findings
15 required under the regulation and also notes
16 that the Commission -- the -- that other
17 communities have followed the Commission's
18 regulation, and that Boston should be no
19 exception.

20 Mayor DeMaria, who I believe is here
21 currently, also provided some very
22 significant comments. He noted that the City
23 of Everett when it passed its referendum and
24 when it followed the process leading up to

1 the referendum, they followed the
2 regulations. He also notes that the reason
3 behind the adoption of the regulation is so
4 that the public can understand the vote at
5 the time in the election box has no weight on
6 the Commission's suitability determinations.
7 Finally, he notes that such a variance would
8 impact the perception of our overall process.

9 In the Boston letter of support, the
10 City of Boston states that the public
11 interest protected by the act and regulations
12 will be served and the regulatory
13 requirements will be fulfilled, albeit in a
14 slightly different sequence. The outcome of
15 this process was to proceed with the
16 requested election date of November 5, 2013.
17 Without the variance, the City would not be
18 able to proceed with the date that the City
19 Council determined would be in the best
20 interest of the public. The City's
21 governing body had a full and complete
22 process including a public hearing with
23 public comment. Failure to grant the
24 variance would cause substantial hardship to

1 the City of Boston.

2 By way of background on this specific
3 sequencing provision of our regulation, the
4 Commission's regulation requires that prior
5 to the request by the applicant for an
6 election in accordance with 205 CMR 12402,
7 the governing body of the community formally
8 approves of holding the election prior to a
9 positive determination of suitability having
10 been issued to the applicant by the
11 Commission.

12 On September 25th, the Boston City
13 Council voted to approve the holding of a
14 host community election prior to the
15 Commission's determination of suitability of
16 the Suffolk Downs applicant. However, this
17 vote occurred after the request was made by
18 the applicant for the scheduling of the
19 election.

20 The sequencing and the regulation was
21 designed to help avoid the legal complexities
22 that would result if a community chose to
23 move forward with the referendum without
24 first voting that such election could be held

1 prior to the Commission's determination of
2 suitability.

3 In this situation, the City of Boston
4 has voted that such election could be held
5 prior to the Commission's determination of
6 suitability. Therefore the Commission is not
7 faced with the legal complexities that would
8 have otherwise been involved if the City
9 decided to move forward with an election
10 regardless of the Commission's requirements
11 that the governing body must approve of
12 holding an election prior to a positive
13 suitability determination.

14 In addition to this governing body
15 vote, in order to have the election prior to
16 suitability, the City must still provide the
17 Commission with a notice to be mailed to
18 voting households that explains that the
19 election is being held prior to the
20 Commission's determination of suitability.
21 Further, the City is required to provide the
22 Commission with a description of other
23 methods to inform the community about the
24 Commission's determination of suitability

1 standards and procedures.

2 As has been the case with all other
3 applications utilizing this section of the
4 Commission's regulations, the notice to
5 voting households will need to be approved by
6 the Commission prior to the election.

7 The notice has been designed to ensure
8 that voters understand that even though they
9 may approve of an application at an election,
10 there remains the possibility that an
11 applicant will not be allowed to proceed to
12 the next stage of the application process.

13 Our regulations state that only
14 applicants with positive suitability
15 determinations may file second phase
16 applications with the Commission. The notice
17 will be mailed to all voting households prior
18 to the election unless the application has
19 been deemed suitable by the Commission. Both
20 the City and the City Council have requested
21 that the Commission determine suitability
22 prior to the election. However, the City has
23 been informed that although we are working
24 expeditiously, and thoroughly, and carefully,

1 the Commission can provide no guarantee that
2 it will be able to conclude our suitability
3 determinations prior to that date of the
4 election, November 5th.

5 Although the City Council made its
6 determination with an understanding that the
7 Commission's suitability determination may
8 still be forthcoming by the election date, a
9 regulation contemplates that communities are
10 fully responsible for informing its voting
11 households about the Commission's suitability
12 determination.

13 At this time I welcome any questions
14 or discussion, and representatives from both
15 the City and the applicant are available for
16 any questions you may have as well.

17 CHAIRMAN CROSBY: Do you want to come
18 forward? Do you want to introduce
19 yourselves, and do you have anything you want
20 to say before the Commissioners ask
21 questions?

22 MS. DELLO RUSSO: Elizabeth -- is this
23 on? Elizabeth Dello Russo for the City of
24 Boston.

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MS. MARSHALL: Mary Marshall from Nutter, McClennen, representing the City of Boston.

MR. STEFANINI: John Stefanini, D.L.A. Piper representing Sterling Suffolk, LLC, the applicant.

CHAIRMAN CROSBY: And do you have any -- anybody have anything to say before we ask questions?

MS. DELLO RUSSO: Thank you, Commissioners; thank you, Mr. Chairman. I'll just begin by giving some background information to the Commission, if I may, on the time line here.

By way of background, on August 27th, the City of Boston and Sterling Suffolk reached its host community agreement August 27th. On September 5th, the applicant requested a date certain for a referendum. That date certain was November 5th, which is a previously scheduled municipal election. Quite a big election in the City of Boston.

On -- the very next meeting after the signing of the host community agreement of

1 the City Council was September 11th.

2 So, the next meeting after signing the
3 host agreement, orders were placed before the
4 City Council. And those two orders were the
5 two requirements of the Council, one to
6 decide whether or not to move forward without
7 a suitability determination; and the second
8 being whether November 5th was the date that
9 they would vote on for the referendum.

10 On September 20th, they held a
11 hearing, a four-hour, almost four-hour
12 hearing on those two orders. And then at
13 their next meeting September 25th, they voted
14 on those two orders.

15 So, just by way of time line, I think
16 you can see that were the City of Boston --
17 the City of Boston was faced with a choice.
18 One was could we proceed and go to the City
19 Council prior to reaching a host community
20 agreement to talk about having a vote
21 without a determination of suitability. And
22 that did not seem logical. And no other
23 community has done so.

24 So, in that case, Boston waited the

1 very next meeting after reaching that
2 agreement, and went to the City Council for
3 that determination. Unlike any other
4 municipality so far that I'm aware of, the
5 City -- the City of Boston has a different
6 form of government. And that form of
7 government has -- it's modified Type A
8 government and it allows for the City Council
9 as one half of that governing body for the
10 City of Boston to -- to not vote to ratify
11 the host community agreement.

12 So, in other examples, there was an
13 opportunity for municipalities to go before a
14 City Council or Board of Selectmen to talk
15 about the suitability piece after reaching
16 the agreement or as part of reaching that
17 agreement. That -- there is not that
18 opportunity in the City of Boston.

19 So, that's by way of kind of
20 background information for your discussion.

21 CHAIRMAN CROSBY: Okay. Questions?
22 Thoughts? Anybody? Well --

23 COMMISSIONER MCHUGH: I'm sorry. For
24 anybody, could -- could you, one of you, just

1 spit out the legal complexities that this
2 regulation was designed to avoid in succinct
3 fashion.

4 CHAIRMAN CROSBY: You know that's
5 asking --

6 ATTORNEY GROSSMAN: Succinct is not my
7 strong suit, but I'll try.

8 CHAIRMAN CROSBY: Yeah, that's asking
9 a lot.

10 ATTORNEY GROSSMAN: Well, as Mr.
11 Ziemba pointed out, you do have to go back
12 and think about why this provision of the
13 regulation was put in place in the first
14 place. And it's -- it's located in 205 CMR
15 115.05, Paragraph 6, specifically 6A, where
16 it says prior to the request by the applicant
17 for an election in accordance with the
18 regulation, the governing body of the
19 community shall formally approve of holding
20 the election prior to a positive
21 determination of suitability, essentially.

22 So, you have to try to piece together
23 the whole process to understand why that was
24 put in place. And that was that the statute

1 says that an election has to be scheduled by
2 the City within 60 to 90 days from the date
3 that the request is made by the applicant.
4 The Commission added in a regulation that
5 said you can't hold an election, however,
6 prior to suitability being determined.

7 So, you have those two provisions in
8 place. Subsequent to that, the Commission at
9 the request of a number of
10 applicants/municipalities enacted or agreed
11 to enact a provision that said okay, if you
12 want to hold your election prior to
13 suitability, even though we've said we don't
14 -- that's not the preferred route, you can do
15 it. But it's up to the municipality to
16 review the matter and decide that it's in our
17 best interest to do so, understanding that
18 there is a chance that there will be issues
19 with the suitability after the fact.

20 So, in order to avoid the
21 confrontation between the statute and the
22 regulation that Mr. Ziembra talked about,
23 which is that the statute says that you have
24 to hold an election within 60 to 90 days

1 from the date the request is made versus the
2 Commission's other regulation that says you
3 can't hold an election prior to suitability.
4 We said, the Commission said by regulation if
5 you want to hold the election prior to
6 suitability being determined, that discussion
7 by the City Council, Board of Selectmen
8 etcetera, has to take place prior to the
9 decision to move forward going.

10 So, in the event that the City Council
11 was opposed to moving forward prior to
12 suitability, the applicant would know not to
13 submit the request and start the clock.

14 So, in this case, and this -- this
15 might be going a little bit beyond. But in
16 this case where the City Council has decided
17 that it's okay with moving forward with the
18 election prior to suitability, the concern
19 and the confrontation between the statute and
20 the regulation has been alleviated. It's --
21 it's not an issue anymore. So, even though
22 they are out of sequence, the confrontation
23 before -- between the statute and the
24 regulation was negated by the fact that prior

1 to coming to you here today, the City Council
2 has approved of having the election prior to
3 suitability. That is, it's recognized the
4 potential risks associated with having the
5 suitability hearing after the election. So,
6 that's the history of the regulation; what it
7 was intended to prevent against.

8 And one could certainly argue, as I'm
9 sure Mr. Stefanini, et al, will argue that
10 that concern is not in play here.

11 COMMISSIONER MCHUGH: So, if I -- if I
12 understand that correctly, and thank you for
13 that thorough explanation, we're revisiting
14 history in a way here. That regulation was
15 put in place to ensure that the City Council
16 was amenable, or the governing body was
17 amenable to having an election before the
18 suitability findings were made to prevent a
19 situation in which a request for an election
20 were made and then the suitability
21 determination was not made within the 60 to
22 90 days, and the election could not be held
23 in a timely fashion. It was an effort to
24 mitigate the likelihood that that would

1 occur. And -- and now that -- that the --
2 the governing body has determined that the
3 election can proceed before the suitability
4 finding, the feared harm or the harm that
5 that regulation was designed to ward off
6 isn't going to occur anyway. So -- so the
7 regulation isn't necessary to serve that
8 purpose.

9 ATTORNEY GROSSMAN: I think that's a
10 more succinct way of saying what I said. But
11 I --

12 COMMISSIONER MCHUGH: No, no, I --

13 ATTORNEY GROSSMAN: I agree with that.
14 I agree with that.

15 COMMISSIONER MCHUGH: I'm just trying
16 to say back to you what I --

17 ATTORNEY GROSSMAN: Yes.

18 COMMISSIONER MCHUGH: -- I gleaned
19 from your thoughts.

20 CHAIRMAN CROSBY: That's why he was a
21 judge.

22 COMMISSIONER MCHUGH: Right. Right.

23 MR. ZIEMBA: And I'm am Ombudsman.

24 CHAIRMAN CROSBY: Right. Okay.

1 Others? I have a couple of -- of points.

2 A Mr. Holt wrote us an e-mail where he
3 says if the City of Boston cannot keep the
4 law in small things like this, then how will
5 it possibly be able to keep the law once a
6 billion-dollar casino is built in the City.
7 I think that's a jump. But I do think as
8 witnessed at this table, there have been an
9 awful lot of lawyers involved in this
10 process, and to have this slip through the
11 cracks which is, I assume what happened, is a
12 little disturbing. But the bigger -- or not
13 disturbing, but notable.

14 The bigger point, there's a very
15 thoughtful letter from Nina Estrella Luna,
16 who was apparently a Professor of Law at
17 Northeastern and a resident of East Boston.
18 And he goes to the substance of the whole
19 issue about whether suitability votes should
20 precede -- a suitability decision should
21 precede a referendum or not. He is hoping
22 that we would take advantage of this kind of
23 technical mistake to revisit the substance of
24 the issue. And I want to set this in

1 context.

2 We originally, as the Ombudsman said,
3 determined as the law suggested was probably
4 right, that it made sense to have a
5 suitability agreement done -- decision done
6 before the referendum in order that the
7 public could vote in a fully informed way on
8 the pros and cons of the applicant. We then
9 got a lot of pressure -- not pressure, but
10 requests from cities and towns to give a
11 waiver for that -- for -- to that policy
12 decision for practical reasons, basically.

13 We thought about it and had to weigh
14 what we think is the public interest in
15 having fully informed referenda versus the
16 legislative intent to have these decisions
17 made at the local level where humanly
18 possible, where practically possible.
19 Somewhat reluctantly I think it's fair to say
20 we decided to go along with this request and
21 grant the right to have the local government
22 call for a vote, a referendum prior to the
23 suitability decision so long as certain
24 conditions were met. We set those

1 conditions.

2 This procedural mistake reopens --
3 puts us in the position of reopening the
4 substance of this question because the
5 criteria, as Commissioner McHugh read on
6 other variance issues for why we can grant,
7 or under what conditions we can grant a
8 variance, include that granting the variance
9 will not adversely affect the public
10 interest.

11 So, my question is this. The
12 background check isn't done. This is a big
13 complicated organization with lots of
14 qualifiers. Nobody has any idea how it will
15 come out. The information good, medium, or
16 not good will clearly be of interest to the
17 people who vote on this. Are you really sure
18 that you want to go ahead with having a
19 referendum even though the suitability report
20 may not be completed?

21 MS. DELLO RUSSO: Chairman Crosby, as
22 you know, the City of Boston is not involved
23 in the suitability determinations. That
24 said, the City of Boston applauds this

1 Commission's efforts there. I -- I've --
2 I've seen, you know, with watching other
3 applicants how much work goes into the
4 suitability determination. And we -- we
5 fully hope and expect that that much work has
6 gone on and will be going on with the
7 Sterling Suffolk application. It's a very
8 important part of this process. But one that
9 is resting on the Mass Gaming Commission, not
10 the City of Boston.

11 What was before the City of Boston,
12 the governing body of the City of Boston was
13 shall we proceed with a vote if, in case
14 suitability is not yet determined. Our
15 number one hope and expectation is that
16 suitability will be determined. We continue
17 to hope for that. However, the governing
18 body of the City of Boston, the City -- City
19 Council and the Mayor have determined that
20 they would proceed despite suitability. And
21 not -- and as you know, that procedure
22 involves education within the community and
23 outreach there about what that means. So,
24 that determination has been made by the City

1 of Boston, yes.

2 MR. STEFANINI: And Mr. Chairman, I
3 would just add to that, the robust discussion
4 you're talking about, it took place last
5 winter. At that point in time it was the
6 Commission's expectations reasonable at the
7 time that RFA-1 determinations would be done
8 in the spring, then the summer, then the
9 fall. At this point in the conversation, as
10 you know, every applicant for a casino
11 license has in fact had to do it prior to the
12 RFA-1, because they have not been done. If
13 in fact you were to revisit that and change
14 that and apply it to only us as an applicant,
15 the likelihood that we would be able to
16 conduct it within the time period would be
17 virtually mathematically impossible because
18 our determination, if it were to take place
19 let's say on November 1st, there's not enough
20 time to schedule it in to have the hearings
21 before the end of December 31st to file the
22 RFA-2 application.

23 The last thing I would say is as has
24 been noted in a lot of your dialogue, and

1 most notably I think Judge McHugh and the
2 discussion around Penn and Plainridge, this
3 is a land use question. It is, and lastly I
4 would say the City of Boston has accomplished
5 all of the substantive goals of the statute
6 under 23K and the accompanying regulations.
7 They have voted all of the exact things
8 required by the Commission.

9 The sequencing is off, and if you look
10 at the sequencing in other communities, they
11 literally were minutes apart. So, ours were
12 a couple of days apart. Theirs in fact were
13 seconds apart where vote one took place,
14 request took place, vote took place. So,
15 this is not a substantive aberration, it is
16 in fact a technical one.

17 COMMISSIONER ZUNIGA: I want to just
18 take us back a little bit to the -- to the
19 genesis of this, because you mentioned, Mr.
20 Chairman, the law. And it's really the
21 regulation -- the regulations that stem from
22 policy decisions that we made that have us in
23 this sequencing status.

24 We decided early on to bifurcate Phase

1 1, Phase 2 applications. That's -- that's
2 the earliest genesis of this. The way that
3 the statute is written is -- would -- would
4 not have anybody conclude that anybody going
5 to the polls would have the benefit of the
6 suitability determination.

7 When we split that into Phase 1 and
8 Phase 2, fast forward a little later to the
9 next policy decision that we made, we
10 concluded that would be ideal to have that
11 vote be part of -- be -- the suitability be
12 part of the information that the voters would
13 take with them. But as everybody have stated
14 here, the reality has been something somewhat
15 different. And I just wanted to emphasize
16 that there's not any waiver or any variance
17 from what the statute requires. It is just
18 like what Mr. Grossman articulate -- very
19 articulately put it before us, it's the
20 conflict, if you will, or the tension between
21 regulations that took place, two of them,
22 after policy decisions along the way.

23 CHAIRMAN CROSBY: Yeah, thank you for
24 that. You're right. Thank you for that

1 clarification. I -- I agree. Any other
2 thoughts?

3 COMMISSIONER CAMERON: I just think it
4 is important to note that we -- we all think
5 it -- take it very seriously that these
6 investigations are thorough. And like any
7 investigation, you have to follow through
8 with every single lead, additional
9 information that comes in and -- and I know
10 how thorough we've been. And anyone that's
11 watched us in an adjudicatory hearing knows
12 how thorough we've been. So, in some cases
13 has taken us longer to complete than we
14 anticipated originally. So, it's not
15 necessarily on the applicant that --

16 COMMISSIONER ZUNIGA: Or the host
17 community.

18 COMMISSIONER CAMERON: -- that that's
19 the case frankly.

20 CHAIRMAN CROSBY: Right. And we --
21 we will be trying hard, as you know, to
22 complete the background investigation if you
23 do go forward with the 5th, November 5th.
24 But it's not completely within our control.

1 And we will let it take as long as it takes
2 to get it done properly.

3 The net of this is I think that -- and
4 it has its roots in our earlier discussion,
5 that whether we agree with the -- with you or
6 not, that this is a wise decision on your
7 part that the -- that this was a part of the
8 process that the legislature wanted to be
9 within the hands of the locals. And that's
10 -- we end up being deferential to your
11 judgment on that. So, I think we're maybe
12 ready to go ahead and frame the issue.

13 Commissioner McHugh, you want to do it
14 again?

15 COMMISSIONER MCHUGH: Well, I -- I
16 would like to summarize what I think the
17 thrust of the discussion is and -- against
18 the four criteria.

19 As Commissioner Zuniga pointed out,
20 this is not inconsistent -- granting this
21 variance is not inconsistent with the
22 provisions of Chapter 23K. Chapter 23K as
23 written on its face, envisioned a situation
24 in which no suitability determination would

1 have been made in any case before a vote were
2 taken because it anticipated that nothing
3 would be filed, or at least was capable of
4 being read to suggest that nothing would be
5 filed until after the host community vote.
6 It certainly permitted that.

7 And the Commission, in an effort to
8 speed the process up and ensure that the
9 process was done economically under its power
10 to adopt regulations designed to enforce the
11 statute split the suitability piece from the
12 substantive piece, and let the suitability
13 piece go on and be hopefully completed before
14 the substantive piece was -- was done. And
15 in every case that's going to happen.

16 So, granting this variance doesn't
17 impact the purposes of Chapter 23K. Chapter
18 23K really isn't impacted at all by this.
19 Granting the variance, it seems to me from
20 our discussion, will not adversely impact or
21 interfere with the ability of the Commission
22 or the Bureau, the IEB to fulfill its duties.

23 It's been said time and time again
24 that this is simply the beginning of a long

1 process of determining suitability. The
2 initial suitability determination as Chairman
3 Crosby said earlier is a snapshot of a moment
4 in time.

5 But as we move forward, the Commission
6 is going to continue to look at suitability
7 as -- as new events take place, as new
8 investors come in, as investors leave, as the
9 composition of the -- of the applicant
10 changes, as more information comes to light,
11 as information is presented by the public as
12 we move forward. The suitability
13 determination is continuously under
14 consideration by the Commission. And the
15 variance allowance will not impact either the
16 ability of the -- of the Commission to do
17 that, or the strength with which it pursues
18 the suitability concerns.

19 It won't adversely affect the public
20 interest because the public interest is in --
21 not in the -- in the sequencing, the problem
22 proposed by the sequencing is not going to
23 arise. The sequencing was designed to avoid
24 simply isn't going to arise in this case as

1 Mr. Grossman explained to us.

2 And there is a strong interest in
3 allowing a vote that's unencumbered by the
4 concerns the regulation was designed to
5 address. And this is going to occur. So,
6 it's not going to adversely affect the public
7 interest.

8 The underlying concerns about a
9 casino, should there be a casino, should
10 there not be a casino, those are not
11 implicated at all by this. This doesn't
12 determine the outcome of that.

13 And finally, would a substantial
14 hardship be visited on the applicant, the
15 City of Boston and the applicant in this
16 case, and the answer to that seems to me to
17 be yes, but it would prevent a vote from
18 being taken. It would require rescheduling,
19 if indeed that's possible, of an election
20 that's now already scheduled and it would upset
21 the thinking of the public body that thought
22 the best way to get a good turnout apparently
23 would be to schedule this vote at a time when
24 other things are on the voters' mind as well.

1 It might bring them to the polls. And of
2 course, if the electorate disagrees with
3 this, they have a remedy at the polls, now or
4 in the future.

5 So, I think that is the sense of our
6 discussion and I would move that we grant the
7 variance, and adopt those findings -- adopt
8 those -- that recitation as our findings for
9 doing so.

10 COMMISSIONER CAMERON: Second.

11 CHAIRMAN CROSBY: Any further
12 discussion?

13 COMMISSIONER STEBBINS: I just -- just
14 a point, and I thank Judge McHugh for walking
15 through the conditions of the variance
16 request. And I had a question or concern, or
17 thoughts on my mind about the ability of the
18 party requesting the variance to meet
19 criteria number four. And I think you
20 explained it sufficiently enough that --

21 CHAIRMAN CROSBY: I'm a little less
22 comfortable with criteria three or four than
23 Commissioner McHugh's characterization of it,
24 but not sufficient to cause a federal case.

1 COMMISSIONER MCHUGH: Even a state
2 case?

3 CHAIRMAN CROSBY: Even a state case.
4 Even a city case. Well, maybe a city case.
5 Any further discussion? All in favor of
6 Commissioner McHugh's motion say aye. Aye.

7 COMMISSIONER MCHUGH: Aye.

8 COMMISSIONER CAMERON: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER STEBBINS: Aye.

11 CHAIRMAN CROSBY: Opposed? The ayes
12 have it unanimously. It's now 12:15, let's
13 take a break, a lunch break until one and we
14 will reconvene with the rest of our meeting
15 at that time.

16
17 (A recess was taken)

18
19 CHAIRMAN CROSBY: All right. We are
20 ready to go. We are going to reconvene
21 Public Meeting, what, #78 at 1:00. And we
22 will go to item number 6 on the agenda, which
23 is our Director of Research and Problem
24 Gambling.

1 DIRECTOR VANDER LINDEN: Great. Thank
2 you. Mr. Chairman, Commissioners, the first
3 thing that I wanted to talk about is the
4 Responsible Gambling Forum. Something I'm
5 very excited about.

6 Before I really dive into what the
7 forum is about, I just wanted to lay a little
8 bit of groundwork for that. So, as I
9 understand it and as I read it, there are --
10 there are numerous provisions within the
11 Expanded Gaming Act that enable the
12 Commission to adopt regulation and take other
13 action to mitigate harm which may occur
14 through the introduction of casinos and the
15 slot parlor.

16 To guide these efforts, I recommend
17 that we as a Commission to adopt responsible
18 gaming framework. It will help guide the
19 development of regulation as well as assist
20 the gaming operators to establish a site
21 based responsible gambling program.

22 So, what do I mean by responsible
23 gaming? In my vision of what responsible
24 gambling is, it's -- it's -- really runs the

1 spectrum from talking about how do you -- how
2 do you gamble responsibly, all the way
3 through to making sure that there is a
4 framework or network of support for
5 individuals who have been harmed by gambling.

6 So, responsible gaming is a provision
7 of gambling services in a way that seeks to
8 minimize the harm to customers and the
9 community associated with gambling while
10 simultaneously maximizing the potential
11 benefits of gambling.

12 I've said this all along, I think that
13 in order for us to realize the vision of
14 maximizing benefits, economic, jobs,
15 otherwise, we need to at the same time look
16 at how do we minimize the harm that's caused
17 by it.

18 A responsible gaming program is kind
19 of a generic term that incorporates
20 components of consumer protection, harm
21 minimization and harm reduction.
22 Responsible gambling programs are intended to
23 prevent or reduce the potential of gambling
24 related harms. I'm going to talk a little

1 bit about those components in just a second.

2 So, to inform this framework that I'm
3 proposing, I would like to -- I would like to
4 have what I'm calling a Responsible Gaming
5 Forum. I have the agenda attached in your
6 binder. It's in Section 6A.

7 This forum will bring together a group
8 of leading thinkers in this area. There is
9 no one size fits all approach. I've -- I've
10 looked for it; it doesn't really exist.
11 There's many different ways to think about
12 it. What I want is for these experts to help
13 the Commission consider the most thoughtful
14 way to construct a framework that will work
15 for Massachusetts.

16 I've contacted numerous leaders in the
17 area. Those include Marlene Warner of the
18 Massachusetts Council on Compulsive Gambling;
19 Dr. Jeffrey Mirada, who has a business,
20 Problem Gambling Solutions. He's a former
21 state administrator in Oregon and is now a
22 consultant internationally. Keith White is
23 the Executive Director of the National
24 Council on Gambling. Judy Patterson is vice

1 -- I'm sorry, the Executive Director of the
2 American Gaming Association. Dr. Robert
3 Ladisore from LaVal University in Quebec.
4 Howard Schaffer, who is here locally. He is
5 with the Cambridge Health Alliance Division
6 on Addiction; and Dr. Leah Nower, who is with
7 the School of Social Work at Rutgers
8 University; and last, but not least, Dr.
9 Rachel Volberg, who is working with us on our
10 research agenda currently.

11 Each of these individuals I think have
12 a very specific take on this issue. Many
13 have already done research in some of the
14 areas.

15 As you can -- also you can see in the
16 agenda, Section 6A, I talk a lot about what
17 are the different components of a responsible
18 gambling program. Some of them are -- are
19 somewhat defined within the -- within the --
20 I'm sorry, within the statute already. I
21 think that there's a lot of leeway, though,
22 for us to kind of round that out and to
23 create a model, to create a framework that
24 will -- will inform what we are doing now,

1 and carry it out through the history or down
2 the road with the Commission.

3 The overall goals of the forum, one, I
4 want to provide the Commission, you, as the
5 Commissioners, others with the basic
6 understanding of what are the concepts of
7 responsible gambling. I want to cover what
8 is the most recent research on this area
9 specifically about the different components
10 on responsible gaming. I want to create this
11 framework. I wanted to inform both
12 regulation as well as policy as we begin to
13 construct that piece of it. With that, are
14 there any questions?

15 CHAIRMAN CROSBY: Commissioners?

16 COMMISSIONER CAMERON: It looks like
17 you've assembled a tremendous group of
18 experts. That's -- that's a tribute to you
19 and how much these folks respect you. And I
20 think this will be a really informative and
21 substantive day.

22 DIRECTOR VANDER LINDEN: Yeah.

23 COMMISSIONER MCHUGH: I agree -- I
24 agree with that. Fresh from our visit to Las

1 Vegas and our opportunity to look -- take a
2 look at a lot of the stuff that we saw in the
3 -- on the exhibition floor, and reading
4 Addiction by Design, is there -- will any
5 parts of this program focus on ways to deal
6 with I guess what was called in that book,
7 the zone, or the -- or the sort of trance
8 that people can get into that keeps them
9 going long beyond the time when they should,
10 and specific things. And whether those
11 things are technologically feasible.

12 You introduced us, I think to some
13 folks who were going to have an exhibition
14 down in Providence not too long from now,
15 about -- about some of the things they were
16 thinking of doing.

17 This question is getting more and more
18 open ended, but is going to be any -- is
19 there going to be any focus on any of the
20 sort of practical ways that we could design
21 regulations to deal with relevant issues, and
22 whether those regulations are technologically
23 technically feasible?

24 DIRECTOR VANDER LINDEN: Yeah, I --

1 yes, the short answer is yes.

2 COMMISSIONER MCHUGH: A short answer
3 to a very diffuse question.

4 DIRECTOR VANDER LINDEN: Any other
5 questions? I -- I think that that's really
6 important. The zone that you're talking
7 about refers to individuals that would sit
8 down at a gaming machine or sit down and
9 engage in gambling and -- and find that time,
10 space, money slides away.

11 And there are -- there are ways in
12 which you can -- you can try to put a stop to
13 that zone, create sort of natural -- natural
14 boundaries around a gaming session.

15 I think that yes, those will be
16 addressed. And some of those natural
17 boundaries would be does a time clock work;
18 does a -- does a pop up on a gaming machine
19 that would say that you have been gaming for
20 this -- this amount time and you've spent
21 this amount of money, would that work. I
22 want to -- I would like to talk about all of
23 these.

24 One unique thing about the forum that

1 I would like to introduce or to use at the
2 end is more of a dialogue between these panel
3 experts and Commissioners, so that those
4 questions can precisely make -- we make sure
5 that those get addressed.

6 COMMISSIONER MCHUGH: All right.

7 COMMISSIONER ZUNIGA: Can I -- can I
8 ask, there's -- there's -- when you talk, the
9 microphone is humming. Is there a way to
10 regulate that, please. Thank you.

11 COMMISSIONER STEBBINS: Quick
12 question, Mark. Was there any -- I know you
13 were out in Vegas I guess ahead of the G2E
14 meeting with your colleagues and counterparts
15 from around the country. Was there any new
16 development, new issue that emerged for you
17 and your colleagues that you had a chance to
18 learn about while you were in Vegas?

19 MR. VANDER LINDEN: Yeah, you know,
20 there is -- we are fortunate to locally have
21 the National Center for Responsible Gaming.
22 And they host an annual conference that
23 coincides with the Global Gaming Expo. It
24 starts a day early -- earlier than the G2E

1 and then it overlaps by a day.

2 Commissioner Stebbins, you and I have
3 attended one specific section that looked
4 specifically about what is does a responsible
5 gaming framework look like. I -- I don't
6 think it's on.

7 COMMISSIONER ZUNIGA: Now it's off.

8 DIRECTOR VANDER LINDEN: So, Dr. Sarah
9 -- I'm sorry, Dr. Debbie LaPlante from --
10 also from the Cambridge Health Alliance, did,
11 I thought did a really good job of outlining
12 some of the components that would go -- could
13 potentially work within a responsible gaming
14 framework. She also, I think did a pretty
15 good job of outlining what are some of the
16 pros and cons of some of those components,
17 which I think that we want to be sure that
18 we're paying attention to.

19 While we may have very good intentions
20 of implementing responsible gaming framework
21 with components that do exactly as
22 Commissioner McHugh had mentioned, which is
23 to, you know, remove somebody from the zone,
24 are there any unintentional consequences that

1 those types of mechanisms can create. And
2 so, Dr. LaPlante did a good job of
3 highlighting those. And I think that we --
4 we need to look at all sides of each of those
5 components, which I hope to do during the
6 forum.

7 CHAIRMAN CROSBY: The panel
8 discussion, and it seems to me the -- the
9 forum in general is pretty focused on what we
10 can do directly, and it's within the casino
11 and our regs and so forth. Only the last
12 point at the 12:45 panel discussion, Linkage
13 with Local Treatment and Community Services
14 talks about -- something the legislation
15 talks about quite a bit, which is, you know,
16 and we have money for, which is to fund
17 whatever the best practices are outside the
18 facility and outside our reach to -- to
19 initially, to mitigate the occurrence of
20 problem gambling and then to treat it when it
21 does occur. Is that meant to be part of this
22 framework?

23 DIRECTOR VANDER LINDEN: I -- I would
24 like it to be part of the framework,

1 absolutely. And, you know, perhaps it needs
2 more time. It's no small feat to make sure
3 that when we look at what -- what does a
4 casino look like and how does it interact
5 within the community, and how do we make sure
6 that there are linkages between what happens
7 within the casino and the different community
8 providers, that we get a model that can
9 really stand up and can really support people
10 who are struggling with gambling problems,
11 who are at risk of gambling problems, who are
12 in recovery from gambling problems that --
13 that this is -- this is a very important
14 issue. And probably one that we'll continue
15 to need to have a discussion about.

16 I -- I really -- and so, I don't want
17 to gloss over that. But I also really want
18 this -- this forum to inform the regulation
19 that we need to be developing now in advance
20 of the slot parlor opening up.

21 CHAIRMAN CROSBY: Right. Well, I -- I
22 agree with that. It might -- maybe it makes
23 sense to clarify that one way or the other.
24 Maybe this is sort of principally internal if

1 you will, and there's still to come
2 principally external.

3 DIRECTOR VANDER LINDEN: Mm-hm.

4 CHAIRMAN CROSBY: But I don't -- I
5 think it -- you ought to be clear in your
6 mind's eye and in your -- and in your mission
7 to your panelists and so forth where you are
8 on that continuum and what you're really
9 expecting from them.

10 DIRECTOR VANDER LINDEN: Okay.

11 CHAIRMAN CROSBY: And related to that,
12 is the Department of Public Health involved
13 in this, have they been involved either in
14 the design of it or in the -- in the event
15 itself?

16 DIRECTOR VANDER LINDEN: Yeah, I've
17 spoken with them about it. They did not
18 actually participate in the development of
19 the agenda, but I certainly absolutely need
20 to be in contact with them to make sure that
21 they're on board and --

22 CHAIRMAN CROSBY: Yeah.

23 DIRECTOR VANDER LINDEN: -- at every
24 step of it.

1 CHAIRMAN CROSBY: Yeah, and their role
2 will be more on that latter part, on the
3 external part.

4 DIRECTOR VANDER LINDEN: Right.

5 CHAIRMAN CROSBY: I think having them
6 be involved as much as possible early on is
7 desirable.

8 DIRECTOR VANDER LINDEN: You know, it
9 makes me wonder about, especially as we begin
10 awarding licenses, to have almost a Phase 2
11 of the forum where we really pull in the --
12 those communities and the surrounding
13 communities to have a strategy that informs
14 how -- how that plays out as well.

15 CHAIRMAN CROSBY: I think that would
16 be a great idea.

17 COMMISSIONER STEBBINS: That's great.

18 CHAIRMAN CROSBY: -- that would be
19 more externally focused because it would be
20 looking for --

21 DIRECTOR VANDER LINDEN: Right.

22 CHAIRMAN CROSBY: -- you know, the
23 representatives of the treatment centers who
24 are in those -- particularly in those regions

1 and so forth. So, I think that would be a
2 great idea. You could -- you could bridge
3 that now with DPH and maybe -- maybe partner
4 with DPH in your Phase 2 forum.

5 DIRECTOR VANDER LINDEN: Right.

6 CHAIRMAN CROSBY: Or your second round
7 of the forum.

8 DIRECTOR VANDER LINDEN: So, I would
9 propose that we introduce kind of almost as
10 it is in here. We introduce it without the
11 intention of diving too deep into that --
12 that piece of it, and then as the licenses
13 are awarded --

14 CHAIRMAN CROSBY: Right.

15 DIRECTOR VANDER LINDEN: -- we begin
16 to very thoughtfully plan that with DPH, with
17 the local communities.

18 CHAIRMAN CROSBY: I think that would
19 be great, and to be explicit about that.

20 DIRECTOR VANDER LINDEN: Okay.

21 CHAIRMAN CROSBY: And to discuss it
22 with DPH sooner than later.

23 DIRECTOR VANDER LINDEN: Sure.

24 CHAIRMAN CROSBY: What is -- there is

1 a deliverable I believe. This is not just to
2 be a conference; the conference is over then
3 people walk away. There's a deliverable in
4 your mind, right?

5 DIRECTOR VANDER LINDEN: That's
6 correct.

7 CHAIRMAN CROSBY: And then what's
8 that?

9 DIRECTOR VANDER LINDEN: The
10 deliverable is -- is the framework. My hope
11 is that we -- we have a model -- that we have
12 a model that's documented, that can be, that
13 will be implemented within Massachusetts that
14 will inform -- it will directly inform the
15 regulation. But that I think that it will
16 also kind of lay a -- create a model that has
17 not been created before.

18 There are a couple of different models
19 out there, responsible gaming models. In
20 fact, a couple of the people that I'm
21 inviting were instrumental in creating those
22 -- those models. But what I would like to do
23 is create a model that has a lot more
24 direction within it, that it's less

1 conceptual and more operational.

2 CHAIRMAN CROSBY: I think that would
3 -- that would be great. And if -- if you're
4 -- given that you're going to -- what you
5 want out of this is a written product that
6 you can go back to us and say this is the
7 proposed framework for our problem gambling
8 program. And if you can facilitate this
9 well, you know, and I guess that's what Jeff
10 Mirada is doing, then if you do, you know,
11 proper note taking and proper question asking
12 and so forth, you'll sort of outline the
13 framework as you go along. Otherwise if you
14 don't do that, you'll sort of have to pull it
15 together from the random pieces of the
16 conference.

17 So, it's not easy to do, but there are
18 facilitators who can make a -- a conference
19 like this, you know, deliver, produce the
20 structure, the fundamental content that you
21 want in the eventual report.

22 DIRECTOR VANDER LINDEN: Right. I
23 wouldn't -- I would not be able to facilitate
24 and take notes the way that it deserves to be

1 done. Dr. Mirada is -- has experience in
2 that. And what I envision is that he and I
3 would co-facilitate this process. And that
4 as we guide it we have an understanding of
5 what the product is that we're trying to
6 create.

7 CHAIRMAN CROSBY: Great. And --
8 excuse me. And just establish that up front,
9 too. Make sure that at the beginning of the
10 -- of the day people understand that this is
11 not just a conversation we're having, this is
12 a design to produce the content that will
13 form the outlines at least of the -- of the
14 final -- of the final product.

15 DIRECTOR VANDER LINDEN: Right.

16 COMMISSIONER ZUNIGA: And on that
17 note, I, for one would be very interested in
18 whatever documents or materials you could
19 forward about the models that you referenced
20 that are existing, you know, because I'm a --
21 think this is a great idea to take a look at
22 what -- what is out there and try to come up
23 with the best outcome.

24 DIRECTOR VANDER LINDEN: Yeah, I would

1 be glad to do that. Thank you. There's --
2 there's a lot of information that's out
3 there. What I would be glad to do is try to
4 narrow it a little bit to what would be
5 relevant for our day.

6 COMMISSIONER MCHUGH: I would
7 appreciate that, too. I think that's a great
8 suggestion. I'd love to read that. But I
9 think that the focus on operational, an
10 operational model is really a great idea,
11 because there is not -- I've read a number of
12 things and they are all theoretical. And if
13 we could create here a scheme that was
14 operational and worked, we would be doing
15 ourselves and everybody else a service I
16 think. So, I'm really in favor of that
17 approach. I congratulate you for thinking of
18 that.

19 DIRECTOR VANDER LINDEN: I think it's
20 -- it's just a great opportunity.
21 Responsible gaming frameworks have been
22 implemented in other places, but rarely, if
23 ever, have they been implemented at this
24 stage of the process. And so, I think that

1 -- that we have do a -- it's a -- it's a good
2 opportunity.

3 CHAIRMAN CROSBY: Great. We've talked
4 about this a little bit before, too. But in
5 your -- in your mind's eye, in collaboration
6 with Director Day, figuring out, you know,
7 once you've got this, what your critical path
8 steps are to getting it in place, and what
9 the time line is and so forth is an important
10 step that I know you're thinking about.

11 DIRECTOR VANDER LINDEN: Yes,
12 absolutely.

13 CHAIRMAN CROSBY: On the master chart
14 right now, the research is fairly well
15 fleshed out. The problem gambling is not.
16 So, that needs to get added to that.

17 DIRECTOR VANDER LINDEN: Right.

18 CHAIRMAN CROSBY: I had -- also, just
19 curiosity, a question on the DSM-V discussion
20 that you attached here. There's always been,
21 as I've read it, this distinction between
22 problem gambling and pathological gambling.
23 With pathological being really serious;
24 problem means you're at risk sort of, but

1 pathological meaning you're past the risk,
2 you're -- you're there.

3 Is this -- and to qualify under DSM-V,
4 you need four of these nine questions to be
5 answered in the affirmative.

6 DIRECTOR VANDER LINDEN: That's
7 correct.

8 CHAIRMAN CROSBY: Does that mean you
9 are a problem gambler or you are a
10 pathological gambler, or is that a meaningful
11 distinction?

12 DIRECTOR VANDER LINDEN: Well, and
13 that -- moving onto the next agenda item then
14 --

15 CHAIRMAN CROSBY: Sorry.

16 DIRECTOR VANDER LINDEN: That's okay.
17 This -- it is actually really interesting.
18 So in the DSM-IV, we -- the DSM-V was just
19 introduced in May of this year. And it is
20 distinctly different from the previous
21 version, the DSM-IV. And the DS-IV -- well
22 actually, let me just give you a little bit
23 more of a background.

24 So, the DSM, the Diagnostic

1 Statistical Manual of Mental Disorders is put
2 out by the American Psychiatric Association.
3 And this is kind of the key reference book of
4 mental health disorders. It includes
5 everything. But it also includes how do you
6 define -- how you diagnose somebody that is
7 -- has in the DSM-IV said, a pathological
8 gambler as in the DSM-V it's slightly --
9 there is a slightly different definition of
10 that.

11 So, there -- there -- in the DSM-IV,
12 there were ten criteria. If you met five of
13 those criteria you met the diagnostic
14 criteria as a pathological gambler. If you
15 take a look at the different criteria, and
16 I've listed nine that are in the DSM-V, if
17 you're meeting a majority of those criteria,
18 you're -- you have a profound problem with
19 your relationship to gambling.

20 And so, problem gambling was intended
21 to identify persons that were subclinical.
22 People that had anywhere between one and --
23 and four criteria, but did not kind of go
24 over the top and meet the five criteria. So,

1 it's a non -- in a lot of ways it's
2 considered a nonclinical term. But at the
3 same time I don't want to -- I don't want to
4 ignore the needs of persons who would be
5 problem gamblers or don't necessarily meet
6 the clinical threshold of full on gambling
7 disorder.

8 The changes that happened within the
9 DSM-V I think are significant. The DSM-V
10 removed pathological gambling and changed the
11 name to what we are calling a gambling
12 disorder. I think that that has a lot of
13 meaning, that -- that there was a lot of
14 criticism about calling somebody a
15 pathological gambler, that just that term, in
16 and of itself can carry stigma, carries
17 problems that are associated with it.

18 It also then went into an impulse
19 control disorder not elsewhere specified,
20 along with compulsive hair pulling or
21 Trichotillomania, or intermittent explosive
22 disorder, or kleptomania, or pyromania. So,
23 it sat in a rather -- a spot within the --
24 the DSM that wasn't very well known. By

1 changing the location of it, they put it --
2 gambling disorder into an area called
3 substance related and addictive disorders.
4 So, it would -- it would go alongside and
5 within the same chapter as a substance use
6 disorder. And the rationale is that there's
7 a lot of similarities between a gambling
8 disorder and a substance use disorder.

9 There were other changes as well that
10 I -- I do think that are significant for how
11 we -- we look at this. So, the diagnostic
12 criteria went from being within a lifetime to
13 narrowing it to a twelve-month period.

14 So, when it was lifetime you could
15 have one criteria when you were 20, one
16 criteria when you were 28, one criteria when
17 you were 30, and so on and so forth until you
18 actually amass the number of criteria in
19 order to be considered a pathological gambler
20 and meeting the diagnostic criteria.

21 Under the new DSM, it's with --
22 captured within a twelve-month period. So,
23 you need to meet four criteria within a
24 twelve-month period in order to be diagnosed

1 with a gambling disorder.

2 Another important feature is that they
3 took out -- there was a criterion in the DSM-
4 IV for illegal acts. That criterion was --
5 was eliminated. You no longer -- that's no
6 longer a criterion in order to meet the
7 diagnostic threshold of a gambling disorder.

8 I originally had some concern about
9 that. It seems to me that if you're
10 committing illegal acts in order to finance
11 your gambling, that -- that you're pretty far
12 down the road. But that's exactly the case.
13 It was discovered that if you are committing
14 illegal acts, it's not necessarily a good
15 indicator because chances are you're meeting
16 numerous other criteria as well. And so, it
17 didn't really hold much weight as being a
18 criteria.

19 So, anyway, that -- that's the
20 background on it. It's a -- it is a
21 significant change. I think by and large
22 across the field, it's been a welcome change.
23 There are some interesting implications.
24 What will it do to the prevalence rate of

1 pathological gambling -- or, I'm sorry,
2 gambling disorders within our population.
3 It's something that we're taking a look at
4 right now in Massachusetts. What will it do
5 in terms of how it's viewed within the
6 substance abuse field now that it's alongside
7 other substance use disorders as it's
8 something that's going to get more attention
9 from clinicians and from the field.

10 It will be interesting to see what it
11 does with insurance coverage, too. In many
12 states, gambling treatment is not -- not
13 recognized and not covered by many insurance
14 carriers. It will be interesting to see how
15 this -- that impacts it as well.

16 COMMISSIONER ZUNIGA: Does -- excuse
17 me. Does the DSM-V also have the prior two
18 tier, although it doesn't sound like it was a
19 two tier in the DSM-IV --

20 DIRECTOR VANDER LINDEN: Yeah, it --

21 COMMISSIONER ZUNIGA: -- the
22 definition of problem and pathological, is
23 there -- is there a relevant analogy?

24 DIRECTOR VANDER LINDEN: You know, it

1 -- it does not have the two tier to it. As a
2 field we still recognize individuals that
3 don't meet the diagnostic threshold, but --
4 so they're subclinical but still have -- have
5 a number of consequences or problems that are
6 related to their gambling.

7 So, even without the diagnostic
8 threshold I think that attention is being
9 paid to those -- those individuals that are
10 subclinical, but still have problems.

11 DSM-IV and DSM-V aren't -- aren't any
12 different, other than in the DSM-V it's five
13 -- it's four out of nine criteria, and the
14 DSM-IV it was five out of ten criteria.

15 COMMISSIONER ZUNIGA: Okay. Thank
16 you.

17 CHAIRMAN CROSBY: Anybody else?
18 Great.

19 COMMISSIONER ZUNIGA: I think it's a
20 great approach.

21 COMMISSIONER CAMERON: Yeah.

22 DIRECTOR VANDER LINDEN: And just one
23 last point. I think that it aligns it really
24 well within a public health strategy.

1 Whereas right now within the Department of
2 Public Health in Massachusetts, substance --
3 substance abuse treatment, substance abuse
4 prevention are housed within the Department
5 of Public health, as well as problem
6 gambling. But I think that this could bring
7 strategies more -- more closely aligned
8 strategies in a way that -- that helps out
9 problem gambling. We can look at prevention
10 strategies that -- that probably are more
11 closely aligned, always should have been more
12 closely aligned. But now with -- with some
13 changes, you can conceptualize it in an
14 easier way.

15 CHAIRMAN CROSBY: And that would be
16 some of -- some of the content for the next
17 round of the forum, right?

18 DIRECTOR VANDER LINDEN: Yeah. Great.

19 CHAIRMAN CROSBY: And how you -- what
20 that public health strategy approach would be
21 for this -- these issues.

22 DIRECTOR VANDER LINDEN: Right.

23 CHAIRMAN CROSBY: Yeah.

24 COMMISSIONER MCHUGH: Great.

1 CHAIRMAN CROSBY: Yeah, good stuff.
2 Thank you.

3 MR. VANDER LINDEN: Okay.

4 CHAIRMAN CROSBY: Are you doing -- or
5 is Commissioner Zuniga, I guess is doing the
6 last item there?

7 COMMISSIONER ZUNIGA: I -- I can. And
8 I want to put it in the context of Mark's
9 increased involvement in the management and
10 oversight of this research project.

11 CHAIRMAN CROSBY: Well, I didn't mean
12 to take it away if it's -- it's --

13 COMMISSIONER ZUNIGA: Well, let me
14 just reference this and then turn it over to
15 you. And then ask for a vote to approve the
16 payment.

17 As you will recall, we engaged a team
18 of UMass Amherst in the research project.
19 And we have reached a -- what was the first
20 -- what is now the first milestone on the
21 first payment that -- it was stipulated in
22 our ISA or inter-service -- interagency
23 service agreement. So, given the magnitude
24 of the payment, I thought it was relevant to

1 come for a vote to direct the Finance
2 Department to issue that payment. But wanted
3 to have the opportunity to have an update in
4 terms of the progress as well as, you know,
5 the look ahead on the -- on the coming months
6 on this important project.

7 DIRECTOR VANDER LINDEN: All right.
8 So, I've been working very closely with UMass
9 Amherst. Dr. Rachel Volberg is the principal
10 investigator and lead on behalf of UMass
11 Amherst. She and I have -- meet at least
12 weekly, often times having communications
13 several times a week where the project is
14 moving forward with the input and guidance of
15 the Commission. If we want to take a -- if
16 you take a look at what are the deliverables
17 of the project, those deliverables are right
18 on track at this point.

19 The most recent piece of it is getting
20 the baseline population survey in to the
21 field, which began just after Labor Day.
22 We are, at this point, ahead of schedule on
23 collection of those surveys. In fact, as of
24 Monday we were I think thirty percent ahead

1 of where we had anticipated that we would be,
2 or about a tenth of the way through the total
3 collection of the baseline population survey.

4 Other deliverables are -- are right on
5 track. I -- they are working on a two-year
6 report that needs to go to the legislature.
7 Rachel and I have been working on that
8 together. And all indications that -- that
9 we will have -- that we will -- we will
10 finish this on time.

11 CHAIRMAN CROSBY: What's the status of
12 the cohorts?

13 DIRECTOR VANDER LINDEN: The cohort
14 study, we are -- we are going to ask two
15 applicants to submit applications to that.
16 There are two applicants that have hold a
17 kind of a unique advantage or unique
18 perspective on this. It would be UMass
19 Amherst and Cigna, led by Dr. Rachel Volberg.

20 There was also a small sort of trial
21 or baseline study that was conducted by
22 Cambridge Health Alliance. And -- and so
23 they -- they would be interested in
24 submitting a proposal that would continue

1 that model.

2 And so, we are going to, rather than
3 have the Commission or -- make a
4 determination on which direction we should
5 go, we're looking at having those two
6 entities submit applications and having it
7 judged by external reviewers.

8 CHAIRMAN CROSBY: So, are you just
9 asking them orally to sit in, or is there
10 some kind of a formal solicitation that will
11 --

12 DIRECTOR VANDER LINDEN: I'm
13 developing an application process where they
14 would -- they would submit -- those two
15 entities would be invited to submit an
16 application.

17 CHAIRMAN CROSBY: Great. Anything
18 else?

19 MR. VANDER LINDEN: No.

20 CHAIRMAN CROSBY: All set?

21 COMMISSIONER ZUNIGA: I was, well, I
22 was actually hoping for a vote on this.

23 CHAIRMAN CROSBY: Oh, sorry.

24 COMMISSIONER ZUNIGA: Sorry to be

1 formal, but I think that the amount is
2 important enough to reflect in a vote, if
3 that's okay with you, Mr. Chairman.

4 COMMISSIONER MCHUGH: We had a budget
5 that you distributed a few months ago. Is
6 this the number that was in the budget?

7 COMMISSIONER ZUNIGA: That's precisely
8 the case, yes.

9 CHAIRMAN CROSBY: Are you suggesting
10 that maybe if we already voted on a budget,
11 we don't need --

12 COMMISSIONER MCHUGH: No, I was just
13 curious as -- because -- I mean, I haven't --
14 I didn't have a chance to go back and look at
15 that budget, and I have in mind a place down
16 the road that -- I want to make sure we were
17 still on track to that --

18 COMMISSIONER ZUNIGA: It is very much
19 on track, the amount includes a ten percent
20 retainage that is payable at the end of the
21 period, including -- in other words, the next
22 fiscal year. But yes, this amount was
23 reflected in that budget accordingly.

24 COMMISSIONER MCHUGH: And is this the

1 net amount or the gross?

2 COMMISSIONER ZUNIGA: It's the net
3 amount.

4 COMMISSIONER MCHUGH: Okay.

5 CHAIRMAN CROSBY: Do you want to --

6 COMMISSIONER ZUNIGA: So then, if
7 there is no further comment, I will ask that
8 the Gaming Commission authorize the Finance
9 Department to issue the first scheduled
10 payment to the University of Massachusetts
11 Amherst for the economic and social impact
12 research project for the amount of
13 \$1,037,817.00.

14 CHAIRMAN CROSBY: Second?

15 COMMISSIONER MCHUGH: Second.

16 CHAIRMAN CROSBY: Any further
17 discussion? All in favor?

18 COMMISSIONER MCHUGH: Aye.

19 COMMISSIONER CAMERON: Aye.

20 COMMISSIONER ZUNIGA: Aye.

21 COMMISSIONER STEBBINS: Aye.

22 CHAIRMAN CROSBY: Opposed? The ayes
23 have it unanimously.

24 DIRECTOR VANDER LINDEN: Thank you.

1 CHAIRMAN CROSBY: Who's next?
2 Director Acosta?

3 COMMISSIONER STEBBINS: Director
4 Durenberger.

5 CHAIRMAN CROSBY: Director
6 Durenberger, oh, yeah. Right.

7 DIRECTOR DURENBERGER: Good afternoon.
8 Am I on?

9 COMMISSIONER CAMERON: Good afternoon.

10 COMMISSIONER ZUNIGA: Good afternoon.

11 DIRECTOR DURENBERGER: It's been a
12 long time since I sat before you. Actually,
13 it's been a month because two meetings ago I
14 was off and we didn't make it last time, so I
15 have a lot to talk about.

16 CHAIRMAN CROSBY: Nice to have you
17 back.

18 DIRECTOR DURENBERGER: Thank you, Mr.
19 Chairman. We do have an incredible amount
20 going on in racing right now, so I do have a
21 fair amount to talk about. I have
22 extensively scripted myself, my apologizes.
23 I'm just -- I'm very prone to tangents these
24 days, it's a reflection, I think, of the

1 world that we're all living in, there's a lot
2 moving parts. So I will try not to bore you
3 with my scripted response, but rather just
4 use it to keep myself on point.

5 I have an extensive administrative
6 update to go through. I'd like to start off
7 with some reminders about some upcoming
8 public racing events. Currently, we have a
9 public comment period for proposed changes to
10 205 CMR 3.29, and 4.52, medications and
11 prohibited substances. That goes through
12 this Friday at 4:00. Information about the
13 proposed changes, including the proposed
14 language is on the website. The public
15 hearing on these changes is scheduled for
16 next Wednesday, October 9th. They'll be at
17 84 State Street on the 7th floor, 12:30 p.m.

18 We note that the United States
19 Trotting Association, which is the governing
20 body for standard bred harness racing last
21 week withdrew its support for some of these
22 proposed changes. We have received to date,
23 no public comment or stakeholder comment
24 regarding this development. But I do intend

1 to provide a synopsis of the issue at the
2 public hearing, including the written
3 response from the president of the Racing
4 Commissioners International, which continues
5 to support these changes.

6 On the thoroughbred side, I would note
7 --

8 COMMISSIONER MCHUGH: Why did the
9 trotters go away from this?

10 DIRECTOR DURENBERGER: The argument is
11 that the way that the breeds race is
12 different.

13 COMMISSIONER MCHUGH: The way that the
14 what?

15 DIRECTOR DURENBERGER: The way that
16 the breeds race is different. Standard
17 breds, for example, will compete four or five
18 times a month, as opposed to thoroughbreds.
19 And we can talk about that quite a bit at the
20 public hearing, and I've got both the USTA's
21 position paper and the regulatory response,
22 which I will present to you next Wednesday.

23 On the thoroughbred side, we note that
24 there is an online petition on the website,

1 horseracingreform.org. As of late yesterday,
2 there were 237 signatures in support of these
3 proposed changes in the State of
4 Massachusetts.

5 CHAIRMAN CROSBY: Great.

6 COMMISSIONER MCHUGH: So what is the
7 trotters -- what -- what is the difference in
8 that -- and just the short version -- in the
9 --

10 CHAIRMAN CROSBY: Succinct.

11 COMMISSIONER MCHUGH: Yeah, which I
12 find increasing difficulty with.

13 DIRECTOR DURENBERGER: I'm with you,
14 Commissioner.

15 COMMISSIONER MCHUGH: What is the
16 trotter's --

17 COMMISSIONER ZUNIGA: Concern?

18 COMMISSIONER MCHUGH: -- principal
19 objection to these?

20 DIRECTOR DURENBERGER: The principal
21 objection surrounds a couple of the
22 medications, just a couple of them.

23 COMMISSIONER MCHUGH: Oh, I see.

24 DIRECTOR DURENBERGER: And the

1 withdrawal times that are proposed in these
2 changes are such that essentially because the
3 harness horses race so frequently, it will
4 preclude their use altogether, and they are
5 acknowledged as therapeutic substances. They
6 appear on the controlled therapeutic
7 substance use. If you're only racing every
8 21 days and the recommended time is 14 days,
9 it doesn't affect you as a thoroughbred the
10 same way that it would as a standard bred.

11 COMMISSIONER MCHUGH: I see.

12 DIRECTOR DURENBERGER: On the flip
13 side of that, is that the reason for these
14 withdrawal times is that the potential for
15 abuse on these medications is such that maybe
16 it's appropriate for the industry to take a
17 position and say that the potential for abuse
18 outweighs the benefit of the use.

19 COMMISSIONER MCHUGH: Okay, I got it.
20 Thanks.

21 DIRECTOR DURENBERGER: Was that
22 succinct enough?

23 COMMISSIONER MCHUGH: Yeah. That's
24 great.

1 DIRECTOR DURENBERGER: And that wasn't
2 in the script.

3 CHAIRMAN CROSBY: Even I understood
4 that.

5 DIRECTOR DURENBERGER: We have a horse
6 racing forum scheduled for two Wednesdays
7 from now, Wednesday, October 16th. That's
8 going to be at the Hynes Convention Center on
9 Boylston Street. I'm going to walk you
10 through a draft agenda a little bit later in
11 this report.

12 The Racing Division is in possession
13 of three applications for live racing dates
14 in the Commonwealth for the year 2014. The
15 applicants are Sterling Suffolk Race Course,
16 LLC, to conduct running horse or thoroughbred
17 racing at its facility in East Boston,
18 Revere; Springfield Gaming and Re-
19 Development, LLC, to conduct harness horse or
20 standard bred racing at an existing facility
21 in Plainville; and Brockton Racing, LLC, to
22 conduct harness horse racing at an existing
23 facility in Brockton.

24 The applications are currently under

1 review for administrative completeness.
2 Authorization forms for background checks
3 would be sent to appropriate parties early
4 next week. And we'll have to schedule public
5 hearings to be scheduled in the respective
6 host communities. Right now, tentatively
7 scheduled for the week of October 28th.
8 Recommendations from the racing division will
9 follow, and then the Commission's final
10 approval or denial would be heard on the
11 Public Meeting on November 7th. That's the
12 current time line.

13 In other news, yesterday was a meeting
14 of the Horse Racing Committee. This is the
15 committee established by Chapter 23K, Section
16 60, that makes a recommendation to the
17 legislature on the proportional split of the
18 race horse development fund monies to the
19 standard bred and thoroughbred industries.
20 Commissioner Cameron is the Commission's
21 representative on the Committee. At this
22 time, it appears that the committee's
23 anticipated date for that recommendation
24 would be in February.

1 Any notes on that, Commissioner
2 Cameron, or is that a fair --

3 COMMISSIONER CAMERON: I will give a
4 more thorough update because there will be
5 some monies involved that I'd like the
6 Commission to know about. But we have plans
7 to do that on the 17th. So, I'll hold off
8 until then for --

9 DIRECTOR DURENBERGER: Great.

10 COMMISSIONER CAMERON: -- a little
11 more detailed update. But thank you for
12 mentioning our proposed date. I know you
13 wanted to get it out there because of -- the
14 horsemen have been looking for that
15 information.

16 DIRECTOR DURENBERGER: Pursuant to the
17 authority that you recently delegated to me,
18 I have given conditional approval to four new
19 racing officials, two at Plainridge Race
20 Course and two at Suffolk Downs, pending
21 successful completion of the requisite
22 background checks, which are almost complete.

23 We could turn your attention to the
24 item in 7A in your packet. This document

1 appeared as part of a presentation that I
2 gave to this Commission a while back, at the
3 62nd public meeting. If I could just refresh
4 your memory about that. This was part of
5 that first hundred days update that I gave
6 you, the first hundred days of operation.
7 And we identified some areas of concern at
8 that time that required additional attention.
9 And one of those areas involved the statutory
10 distributions of our parimutuel takeout, and
11 that was what was presented here.

12 We're confident that the amount being
13 withheld from the parimutuel pool does
14 represent the correct takeout percentages.
15 But we have secured the services of an
16 independent auditing firm to review the break
17 out of the takeout, as we've started calling
18 it colloquially around the office. In other
19 words, we want to ensure that all of the
20 intended beneficiaries of the 128A and C
21 monies are receiving all of the funds to
22 which they're entitled.

23 Under review are the various funds
24 that we enumerated here back at the 62nd

1 Public Meeting. They include monies to the
2 various capital improvements funds, the
3 promotional trust funds, racing stabilization
4 fund, monies to breeders, purse account,
5 signal fees, and premiums. And we hope to
6 have this project wrapped up by year's end.
7 We'll update the Commission as the project
8 progresses.

9 If it pleases the Chair, I would like
10 to skip ahead to item C on the agenda.

11 CHAIRMAN CROSBY: I'm sorry, so the
12 report for this is due, when did you say?
13 For item A?

14 DIRECTOR DURENBERGER: For item A, we
15 intend to have -- we hope to have the project
16 wrapped up by the end of the year.

17 CHAIRMAN CROSBY: Okay.

18 DIRECTOR DURENBERGER: And we will
19 give you updates as needed along the way.

20 CHAIRMAN CROSBY: Okay.

21 DIRECTOR DURENBERGER: If I could skip
22 to item C. It's going to sort of flow
23 naturally from this next and last item in my
24 administrative update.

1 When this -- what I'd like to do right
2 now is just to present an update to you on
3 our thought process regarding the recommended
4 legislative language as it pertains to 128A
5 and C. This was a project that we worked on
6 last winter. When the Racing Division came
7 on board last October, we inherited the task
8 of responding to a legislative mandate,
9 Section 4 of Chapter 194 in the session laws
10 of the expanding app. to review existing
11 parimutuel and simulcast laws for efficacy
12 and need to change.

13 We talked about that a lot over the
14 winter. There was a review that was
15 completed. Earlier this year we summarized
16 it in a report and filed that with the
17 legislature back in April. It was
18 necessarily a high level attempt to modernize
19 and harmonize the racing statutes with an
20 enormously changed parimutuel business model
21 in the face of a rapidly evolving landscape,
22 in the wake of the passage of the Gaming Act.

23 While written submissions were
24 requested of licensees and a series of

1 meetings were held with stakeholders over the
2 course of the winter, the fiscal and
3 operational activities of the predecessor
4 agency continued to be housed within Division
5 of Professional Licensure under an
6 interagency service agreement. So, as a
7 result, none of the specific applications of
8 those statutes to the day-to-day activities
9 of the Commission of the licensees and the
10 stakeholders really had been reviewed at that
11 point. And we've had our hands on those
12 operations now for about six months.

13 We are developing an appreciation for
14 how the law actually functions in practice
15 and we've identified areas where the law
16 gives us some pause. In particular, we've
17 stumbled upon some areas where the
18 predecessor agency's approval of or direction
19 regarding the implementation of the law
20 appears to conflict with our developing
21 understanding of its provisions. In other
22 areas we've received some additional requests
23 for clarification from licensees.

24 So, the Racing Division is prepared to

1 author a second follow-up type of report and
2 set of recommendations that we see would be
3 fully informed by our operational experience.
4 And we think this would provide a critically
5 important second chapter to our review of
6 those statutes.

7 So, where I'm going with this --
8 because Commissioner McHugh looks very
9 concerned --

10 COMMISSIONER MCHUGH: No, I'm not
11 concerned. I'm just --

12 CHAIRMAN CROSBY: Succinct.

13 COMMISSIONER MCHUGH: Succinct.

14 DIRECTOR DURENBERGER: Succinct, keep
15 it succinct, Director Durenberger.

16 The sands are shifting beneath the
17 feet of the parimutuel industry in
18 Massachusetts as we speak. I've mentioned
19 this to you before in previous meetings, but
20 I think we're all feeling it now. The
21 immediate future of live racing in the
22 Commonwealth is, to use a very anemic
23 adjective, unclear. It's difficult for
24 stakeholders, operators and quite frankly,

1 racing division staff to focus on what could
2 be when none of us really know what will be.

3 Next year we could see live racing in
4 the Commonwealth on both classes of horses.
5 We could have running horse racing; we could
6 have thoroughbred racing; we might only have
7 live racing in one class, or it could be a
8 dark year all together, we don't know.

9 What we do know is that the existing
10 Chapters, 128A and C, are set for repeal on
11 July 31st of next year. And it appears to us
12 that there are three options. Option one,
13 the industry, and in the term industry I
14 include stakeholders, operators, and the
15 agency itself, could do nothing and let the
16 chapters expire. So, with it parimutuel
17 activity in the Commonwealth, and that would
18 seem to me to be unthinkable. I hope you
19 agree.

20 We could join together, we could
21 support one last extension of existing law
22 with some mutually agreed upon changes
23 designed to help protect the industry in this
24 period of transition. Or the industry could

1 attempt to propose replacement legislation
2 all together, hastily fashioned, served by
3 self-interest and lacking the requisite
4 foundation necessary to create solid and
5 meaningful long-lasting change.

6 CHAIRMAN CROSBY: Sounds perfect.

7 COMMISSIONER ZUNIGA: It happens all
8 the time.

9 COMMISSIONER MCHUGH: That's the
10 normal course, right?

11 DIRECTOR DURENBERGER: Usually my goal
12 is to make you all laugh at least one time
13 during the meeting.

14 To that end, I think the sensible
15 approach is to work with racing stakeholders,
16 reach a consensus on what form one last
17 extension of existing law could take. I
18 think if this agency, the breeders, the
19 occupational licensees and the operators,
20 could join together on a single proposal that
21 would incorporate the necessary tools to help
22 navigate these uncharted waters ahead of us
23 and form a bridge to the future, I think it
24 could be well received and I might be naive

1 about politics in Massachusetts, but it seems
2 to me that I would challenge our industry's
3 leaders to work together and combine the
4 efforts of the regulator and the regulated
5 for the immediate protection and
6 stabilization of the parimutuel industry we
7 serve, and all of its many agra-business
8 extensions.

9 Once the dust has cleared from the
10 award of the gaming licenses and the
11 construction, we'll be in a position to have
12 an intelligent, participatory, and fully
13 informed discussion about the next chapter of
14 the Massachusetts parimutuel industry. We
15 could find ourselves presented with the
16 opportunity to participate in creating a
17 historic piece of replacement legislation.
18 We'll have some certainty about what
19 facilities will be operating live racing. We
20 will have some certainty about the amount of
21 monies available to the race horse
22 development fund. We will have had the
23 operational experience, the time, and the
24 ability to think clearly about the future

1 challenges to our industry, and our response
2 will be fully informed by the lay of the
3 land. Our eyes will be wide open, and we
4 have none of that at this time.

5 I believe I heard the Chairman say at
6 our last meeting that haste makes waste. And
7 as much as I believe that the existing racing
8 chapters would benefit from complete
9 overhaul, and as much as we made that
10 recommendation to you over the course of the
11 winter in that project, and as much as I
12 believe the legislature was looking to this
13 agency to help get that done, I think now is
14 the time to seek reinforcement and
15 stabilization of our regulatory structure and
16 not out right reform.

17 Our stakeholders right now, as we
18 speak, are doing their best to make their
19 business plans in the face of uncertainty,
20 which is why we -- one of the reasons why
21 we've scheduled this horse racing forum for
22 Wednesday the 16th.

23 The way that we have it set up is that
24 the morning session would be an educational

1 format on the state of the thoroughbred and
2 standard bred industries from the national
3 perspective. But I'd like to dedicate the
4 afternoon to discuss the state of the
5 industry in Massachusetts as it stands on the
6 precipice of expanded gaming.

7 And while the Commission is wise to
8 maintain the Chinese wall between gaming and
9 racing, we can't ignore the elephant in the
10 room any longer. Racing is an existing
11 activity in the Commonwealth, which this
12 Commission regulates and there are timing and
13 logistical details of the gaming licensing
14 process that are having very real and
15 practical effects on the industry as we
16 speak.

17 The time line is what it is, and those
18 of us on the racing side of the wall
19 appreciate -- we're resigned to the timing.
20 Timing is not good for the industry, but it
21 is what it is, and I think we're resigned to
22 that.

23 But parties are trying to negotiate
24 things right now. For example, their purse

1 agreements for next year's racing meets. It
2 would seem to me that they're attempting to
3 negotiate in the dark. They're working on
4 their best assumptions, their best estimates
5 of what the landscape will look like, as we
6 all are. How much money will be flowing in
7 and out of the Race Horse Development Fund,
8 what that split is going to look like, and
9 while I can't ask the Commission to have a
10 crystal ball, I think to the extent that some
11 of those whens might be answerable. Some of
12 the underlying assumptions we can talk about,
13 and have an open and honest discussion
14 involving some potential scenarios.

15 That would help the Racing Division
16 begin to consider drafting regulations or
17 identifying potential changes to be
18 incorporated into any suggested extension of
19 the existing statutes.

20 Again, our goal here is just to
21 protect and nurture the industry over these
22 next critical months, and so we've prepared
23 this draft agenda for the forum. Again, the
24 morning being more of an educational, the lay

1 of the land. Because what happens at a
2 national level certainly informs what happens
3 at the local level.

4 And then in the afternoon, I guess I'm
5 going to call it either the anxiety relieving
6 or the anxiety provoking part of the day,
7 which is dedicated to some policy
8 discussions.

9 I think the deliverable -- the
10 deliverables there, in anticipation of the
11 Chairman's question, will be to help us focus
12 on areas where we can start to look at
13 drafting some regulations, have a policy
14 discussion.

15 I've said for a long time, when people
16 ask me questions about how 23K works, I
17 always laugh at them and say, that's not my
18 statute because I've got 121A and C to worry
19 about, and those are -- those are headaches
20 in and of themselves. But the reality is
21 that there are things in 23K that affect
22 racing and we need to start looking at doing
23 some regulatory framework for those
24 provisions.

1 So, I think the deliverables for the
2 afternoon session of the forum will be to
3 help the parties achieve certainty where we
4 can, and help us identify areas where we can
5 develop sensible regulations or even look to
6 places where we might incorporate some
7 language into whatever forum the replacement
8 or extension legislation would take.

9 I will pause there before we go into
10 the agenda, unless you want me to go right
11 into the agenda?

12 CHAIRMAN CROSBY: No, I think you can
13 stop there. That's good.

14 COMMISSIONER MCHUGH: And I think it's
15 a good place to stop. So, do I understand
16 now, from that presentation, that we're
17 abandoning the legislation that we have
18 pending up on the Hill?

19 DIRECTOR DURENBERGER: I don't think
20 there's any abandonment at all. I don't
21 think that there's anything in that report
22 that I would say that we needed to back away
23 from or apologize for.

24 I think it was very strong in and of

1 itself. But I think it was a high level,
2 philosophical type of review, and I think
3 after actually having some of the operational
4 knowledge now, there are a lot of the nit-
5 picky things that we didn't really explore at
6 the time. And I just use the word nit-picky
7 in a very flippant sense.

8 COMMISSIONER MCHUGH: No, but I
9 thought we had legislation, actual draft
10 legislation up there.

11 DIRECTOR DURENBERGER: We filed a
12 report. We did.

13 COMMISSIONER MCHUGH: No, I know we
14 filed a report, but didn't the report contain
15 legislation that we were urging --

16 DIRECTOR DURENBERGER: It did.

17 COMMISSIONER MCHUGH: -- the
18 legislature to adopt?

19 DIRECTOR DURENBERGER: Did we urge? I
20 -- I --

21 COMMISSIONER MCHUGH: Let's not play
22 with words. Was there draft legislation as
23 part of the report?

24 DIRECTOR DURENBERGER: There was a

1 recommendation and there was draft
2 legislation, yeah.

3 DIRECTOR MCHUGH: Okay. Are we now in
4 a position -- I mean, is it your position
5 that that legislation is not legislation we
6 would like the legislature to enact as is?

7 DIRECTOR DURENBERGER: Parts of it,
8 yes, and parts of it, no. So to the extent,
9 for example, there was a recommendation about
10 the removal of premiums. Looking at the --

11 COMMISSIONER MCHUGH: Let's not go
12 into -- I don't mean to cut you off. But I'm
13 just trying to get at a -- at a picture of
14 where we are because we've got a -- we've got
15 a proposed legislation up there. And I've
16 been actually curious as we get closer and
17 closer to July 31st of where -- where that
18 is. But are we -- are we going to ask -- are
19 we going to ask the legislature to pass that,
20 or are we going to formulate a recommendation
21 to replace parts of what we have up there
22 with something new, or what is your -- what
23 is your view of where that should be going?

24 DIRECTOR DURENBERGER: Thank you for

1 focusing the question. So, I think that
2 there are some things that we've identified
3 that we think are important to the industry
4 in this period of this transition that should
5 be added to that language. And there may be
6 some things in that proposed language that
7 could be harmful right now in this transition
8 period. So --

9 CHAIRMAN CROSBY: So it seems like --
10 seems like what you're saying in effect is we
11 ought to pull that back and refashion it for
12 whatever today's set of priorities are and
13 the schedule that you're suggesting.

14 DIRECTOR DURENBERGER: Maybe where I'm
15 getting hung up on is the pull it back. I
16 don't -- maybe I misunderstood what we did
17 with that report. I thought it was filed,
18 but I didn't know that it, for example, had a
19 bill number or was going -- going through. I
20 thought that it was a recommendation or
21 report as opposed to --

22 CHAIRMAN CROSBY: I don't -- I don't
23 think it has gone anywhere.

24 COMMISSIONER MCHUGH: No, it hasn't

1 gone anywhere.

2

3 CHAIRMAN CROSBY: But as a practical
4 matter, wherever it is in the pipeline we
5 don't want the legislature to suddenly pick
6 that up, and file it, and move forward. What
7 we -- what we want is to revamp our
8 recommendations pursuant to a lot of new
9 data.

10 And so, basically I think we want to
11 eliminate that as a current piece of
12 legislation idea, recommendation, and start
13 over again, and fit it to the new
14 circumstances.

15 DIRECTOR DURENBERGER: And so that's
16 maybe one step more. I had looked at it as
17 perhaps submitting a Chapter 2. But that may
18 be the more sensible approach. Yeah.

19 CHAIRMAN CROSBY: Whatever, but as a
20 functional matter we want to stop that one
21 and replace it with something else.

22 COMMISSIONER MCHUGH: What happens if
23 nothing happens? The legislation -- the
24 existing legislation, 128A and C disappears

1 as of July 31st, right?

2 DIRECTOR DURENBERGER: That's it.

3

4 DIRECTOR MCHUGH: So, there's no more
5 legislation. That was your first scenario.
6 So we've got to do something by then to
7 replace the current 128A and C, or just have
8 128A and C extended for a while. That's part
9 of your possible scenario, right?

10 DIRECTOR DURENBERGER: Correct.

11 COMMISSIONER MCHUGH: We -- and we
12 need to make a decision about that fairly
13 quickly, don't we?

14 DIRECTOR DURENBERGER: Correct.

15 COMMISSIONER MCHUGH: Okay. And is it
16 -- is your preferred course, or do you have a
17 preferred course, that we, instead of simply
18 seeking an extension of 128A and C, modify
19 them slightly, or that we modify the
20 legislation we've proposed slightly, or that
21 -- or what? Or do you have a recommendation?

22 DIRECTOR DURENBERGER: I do. I
23 challenge -- I do challenge the industry and
24 all of the stakeholders to come together.

1 And I think that what you're looking at, what
2 seems to make the most sense would be for an
3 extension, a bridge piece of legislation an
4 extension of 128A and C, the existing
5 statutes, with some modifications that would
6 help protect the industry during this
7 transition time.

8 And then the recommendation that we
9 made and the language that appears in what we
10 called 128D, the legislative language, would
11 be the piece after that. So, for example, it
12 seems as though 128A and C get renewed on a
13 two-year cycle. So, 128D, if you will, might
14 be something that comes down the road in
15 2016, but with enhancements.

16 Now that we have the operational
17 experience, now that we understand the
18 application of the law to the day-to-day
19 activities, the landscape will be a little
20 bit clearer. So, I think it'll be a more
21 informed report. That 128D was envisioned as
22 a hybrid chapter of both A and C, A being
23 live racing, C being simulcasting, and so we
24 looked at a hybrid chapter. It may be that

1 enough disruption would be caused by that
2 kind of complete reform at this moment -- at
3 this critical moment in time in the
4 Massachusetts parimutuel industry, that it
5 may do more harm than good.

6 Not that it's not a good thing and not
7 that it's not change that's needed, but this
8 might be really bad timing.

9 COMMISSIONER MCHUGH: So this October
10 16th gathering is designed to produce or
11 provide a platform for producing that bridge
12 legislation, is that right?

13 DIRECTOR DURENBERGER: I don't think
14 so, actually. I think it's more the
15 mechanics of the application of some of the
16 provisions in 23K that affect racing.
17 Administration of the race horse development
18 fund, for example, timing for some of the
19 awards of things like the gaming licensing
20 fund, who the potential applicants are is
21 something that is a very interesting
22 question.

23 When the legislation was introduced it
24 was anticipated that the existing racing

1 licensees would be applicants for gaming
2 licenses, and it's a little bit of a changed
3 landscape now. So I -- my intent, and we
4 can change it, we can amend it, we can -- we
5 can bolster it. But I think my intent was to
6 get more at some of the regulation questions
7 that we're getting, which are how is this
8 going to work, when is this going to happen.

9 COMMISSIONER MCHUGH: If we -- okay.
10 I'd like to come back to that in a second.

11 COMMISSIONER DURENBERGER: Sure.

12 COMMISSIONER MCHUGH: Because I think
13 that's a great idea. But how are we going to
14 get at and when are we going to get at the
15 desired -- the changes you think in 128A and
16 D -- A and C, would be appropriate for this
17 bridge legislation?

18 DIRECTOR DURENBERGER: I think having

19 --

20 COMMISSIONER MCHUGH: And how do we --
21 how do we formulate a consensus around that,
22 because time is short. And I guess my
23 understanding was that there is some
24 disagreement as to -- among stakeholders as

1 to the content of 128D. It would be unusual
2 if there weren't.

3 COMMISSIONER DURENBERGER: Correct.

4
5 COMMISSIONER MCHUGH: But how do we --
6 how -- what's your plan for the bridge
7 legislation and getting support to coalesce
8 around you?

9 DIRECTOR DURENBERGER: So, Director
10 Day and I have had a couple of meetings with
11 some of the stakeholders -- affected
12 stakeholders in anticipation of this.

13 I think that the overall time line is
14 to have conversations. Whether or not they
15 all be public forum, or if we go out to the
16 stakeholders as we did last year, with the
17 thought of coming together with the
18 recommendations after the first of the year
19 and finding a sponsor, you know, after the
20 first of the year in January, when the
21 January session starts.

22 COMMISSIONER MCHUGH: So, we would
23 have something that was finished from our
24 standpoint, and ready to go, and ready for a

1 sponsor by sometime in early January?

2 COMMISSIONER DURENBERGER: From the
3 Agency's standpoint I don't think there's a
4 lot of tweaking that needs to be done to A
5 and C. I think we've identified some areas
6 where it would be helpful to help protect the
7 industry. And I think our stakeholders have
8 some pretty good ideas too. The challenge,
9 of course, will be to develop consensus.

10 And I'm mindful of the fact that this
11 is not a popular subject when it comes up
12 every so often in the legislature, which is
13 why I think it's important if we can come
14 together, the regulator, the regulatees, if
15 we can all come together on some kind of
16 consensus document it would be more
17 palatable.

18 COMMISSIONER MCHUGH: Okay. Yeah.
19 Sure. Sure, it would.

20 COMMISSIONER ZUNIGA: I'm curious
21 about the timing because the -- when we first
22 did the report and the initial -- we had
23 those discussions about 128D. The big
24 elephant in the room was, you know, who the

1 license might go to, and the survival of, or
2 not, a racing operation without a gaming
3 license. Will that still be the case if we
4 present in January, which legislation? We
5 will not yet know, necessarily, at least one
6 operation. Does that still present a bit of
7 a sequencing problem?

8 DIRECTOR DURENBERGER: It's -- there
9 is a sequencing problem, but that's one of
10 the reasons why extending the existing is
11 probably a better way to go right now than
12 the complete overhaul. Of course, we would
13 like to have a fully informed discussion
14 about the future of the landscape. But the
15 reality is we won't. And so what is the best
16 thing we can do in the interim, and I think
17 this is a sensible approach.

18 CHAIRMAN CROSBY: So, we may be -- we
19 may be setting up for an extension for an
20 industry which doesn't exist, we don't know
21 for sure. But we just -- we need a
22 prophylactic so -- and yes, the elephant is
23 in the room, but we don't have any choice.

24 DIRECTOR DURENBERGER: Yeah.

1 CHAIRMAN CROSBY: We have to get
2 something done in case and in hopes that
3 there is an ongoing industry come the middle
4 of the summer.

5
6 COMMISSIONER ZUNIGA: Right. Which
7 would appear that the only reasonable thing
8 to do is to extend --

9 CHAIRMAN CROSBY: Right.

10 COMMISSIONER ZUNIGA: -- there's other
11 changes --

12 CHAIRMAN CROSBY: With as few other
13 changes as possible.

14 COMMISSIONER ZUNIGA: There's other
15 changes that -- that are going in there and
16 -- anyway, I'm just thinking time wise how
17 this becomes something to consider.

18 COMMISSIONER CAMERON: Director, have
19 you had preliminary conversations with
20 stakeholders about getting together, trying
21 to have some consensus around -- not the
22 overhaul, but just continuing for another
23 year with some modifications, have you had
24 those preliminary discussions?

1 DIRECTOR DURENBERGER: There have been
2 a few preliminary discussions.

3 COMMISSIONER CAMERON: And is there --
4 does there seem to be, this is -- this is
5 something that's a good idea? Is that the
6 feedback you're getting?

7 DIRECTOR DURENBERGER: We've had
8 positive feedback. I have the sense that
9 perhaps some of the people we've spoken with
10 are just a bit overwhelmed by the situation
11 in general, which is why I think it's great
12 if we could take the lead on this.

13 I would assume that in years past when
14 it was time for an extension that it was the
15 stakeholders themselves that directed that
16 legislation. And so, it may be more
17 appropriate for us to be in that spot at this
18 point. But the feedback has been positive.

19 COMMISSIONER CAMERON: Okay.

20 CHAIRMAN CROSBY: I think following up
21 on Commissioner McHugh's point, it would be
22 -- I'd like -- and I think it makes sense to
23 do the race horse development fund type
24 issues at the conference on the 16th. But I

1 think it would make sense, maybe in that
2 second segment in the afternoon, to have this
3 be the place where you try to start -- at
4 least start, if not end, the developing a
5 consensus on this interim bridge step. You
6 have everybody in the room and you invited --
7 you know, you could tee up the conversation,
8 try to figure out what the minimal tweaks
9 are, let everybody talk about the minimal
10 tweaks, make sure legislators are there. I
11 think that would be a very valuable addition.

12 COMMISSIONER MCHUGH: I think so, too.

13 CHAIRMAN CROSBY: To the proposal and
14 no better time to do it to the plan, and to
15 the forum. And no better time to do it than
16 that -- than that. Are legislators invited?

17 DIRECTOR DURENBERGER: I was going to
18 get through this meeting today since this was
19 a draft agenda --

20 CHAIRMAN CROSBY: Okay.

21 DIRECTOR DURENBERGER: -- and get any
22 feedback from you, and then tomorrow that was
23 on my list of --

24 CHAIRMAN CROSBY: Okay. Yeah, because

1 I think that would --

2 DIRECTOR DURENBERGER: -- things to
3 do.

4 CHAIRMAN CROSBY: -- obviously that
5 would be valuable if we could -- whoever the
6 key legislators are in the House and Senate,
7 if they could -- they or their staff could be
8 here, that would be very valuable.

9 But I -- I think it makes a lot of
10 sense to pursue the plan you're talking
11 about, but to add it to the agenda on the
12 16th.

13 DIRECTOR DURENBERGER: Okay.

14 CHAIRMAN CROSBY: And be as explicit
15 as we can that that's what we're trying to
16 do.

17 DIRECTOR DURENBERGER: Okay.

18 CHAIRMAN CROSBY: And try to, you know
19 -- you know, the dynamic of the group more,
20 but whatever, you know, if you need to bring
21 in big guns to help do it, if there are
22 outside speakers, you know, if we should
23 speak, or do something, whatever. But to try
24 to coalesce that alliance ASAP, that'd be

1 good.

2 COMMISSIONER MCHUGH: Yeah, I think --
3 I agree with that.

4 I also think that to the extent we
5 discussed these other topics, which I think
6 are key topics as well, we ought to have some
7 idea of what the goal is, because quite
8 frankly I'm not sure what -- what the issues
9 are, I guess, that are paramount in each of
10 those areas.

11 And it'd be helpful to have some
12 understanding of what they are, so that we
13 could listen attentively or participate in a
14 discussion that's designed to form a
15 consensus. So that at some time before this
16 it would be helpful to get a list of those --
17 of those things that -- issues that seem
18 paramount to you.

19 DIRECTOR DURENBERGER: And so what
20 I've done on the agenda items that did appear
21 is I've been creating issue statements for
22 items A, B, C, and D.

23 COMMISSIONER MCHUGH: Great.

24 DIRECTOR DURENBERGER: And they're

1 fairly lengthy. So, I may also do an
2 executive summary. But we could do a similar
3 thing for -- I think what I'm hearing is
4 we're going to bifurcate the afternoon and do
5 some of -- do these things first, or whatever
6 the order is, but have two different pieces
7 in the afternoon. So, I could do the same
8 thing for the legislative part of the day.

9 CHAIRMAN CROSBY: Yeah, that would be
10 great.

11 COMMISSIONER MCHUGH: Is there going
12 to be enough time to do that, both of those?

13 DIRECTOR DURENBERGER: I am game to
14 put as much effort into it as I need to, the
15 question is --

16 COMMISSIONER MCHUGH: No, I know --

17 DIRECTOR DURENBERGER: -- on the other
18 side.

19 COMMISSIONER MCHUGH: -- but I mean --
20 but realistically, if -- I mean, you know the
21 -- you know the stakeholders better than we
22 and what the divide is.

23 It seems to me that in terms of
24 timeliness, and I may be wrong, that forming

1 a consensus around the statutory replacement
2 for -- or the statutory extension of 128A and
3 C is paramount, because we've got to get
4 something drafted and final promptly. And
5 that the regulatory pieces are of secondary
6 importance and there's no -- in terms of
7 temporal -- temporal importance. And there's
8 no reason we can't do this again. It
9 probably is a good idea to have periodic
10 meetings with the stakeholders.

11 But am I wrong about -- so the
12 question is, can we really get both of these
13 things done that afternoon, or should we pick
14 one of them and just allocate the time
15 necessary to get it done, and cinch down.

16 DIRECTOR DURENBERGER: So, there's a
17 tremendous amount anxiety -- of anxiety among
18 the stakeholders regarding some of the issues
19 that appear here. Some of the timely issues,
20 in particular, sort of, you know, the future
21 is unknown types of questions.

22 COMMISSIONER MCHUGH: Some of the ones
23 that are in A through D?

24 DIRECTOR DURENBERGER: Yes.

1 COMMISSIONER MCHUGH: Okay.

2 DIRECTOR DURENBERGER: And to the
3 extent that the -- some of the smaller
4 stakeholders are trying to make their
5 business plans for next year. I mean, we --
6 everyone -- like I said, everyone is resigned
7 to the timing of the award of licenses and
8 that's fine. But to the extent that if they
9 know the whens, the when will we know, that
10 in itself relieves quite a bit of anxiety,
11 you know, because we know, we don't know, but
12 when will we know what we don't know.

13 CHAIRMAN CROSBY: If I can make a
14 suggestion?

15 DIRECTOR DURENBERGER: You can.

16 CHAIRMAN CROSBY: You could -- you
17 could make it a working lunch, have only a
18 half hour, we've added a half to the evening
19 by doing that -- to the afternoon by doing
20 that. Then, pursuant to what Commissioner
21 McHugh is saying, make the bridge legislation
22 first, so we don't run out of time, and then
23 make the A, B, C, D second. And if we run
24 out of time, we run out of time. But we will

1 have done -- we will have done the one that
2 we have to get done. And try not to run out
3 of time because I understand what you're
4 saying, that people need to know these
5 things. But if we switch the order then we
6 surely won't run out of time.

7 COMMISSIONER MCHUGH: And we could end
8 with a commitment if we do run out of time
9 just --

10 CHAIRMAN CROSBY: To come back
11 together.

12 COMMISSIONER MCHUGH: -- reconvene and
13 not let people walk out of the room without a
14 commitment to reconvene at a specified time.
15 But at least we'd be able to start the
16 statutory process moving.

17 CHAIRMAN CROSBY: Does that make sense
18 to you?

19 DIRECTOR DURENBERGER: That does make
20 sense to me. So, I think the limiting -- the
21 critical factor, then, is not necessarily the
22 amount of work that I can put into it, but
23 whether or not interested staff,
24 representative, senators would be available

1 -- is that -- did you -- you wanted me to
2 invite them?

3 COMMISSIONER ZUNIGA: Well,
4 stakeholders --

5 CHAIRMAN CROSBY: Stake --

6 COMMISSIONER ZUNIGA: More importantly
7 stakeholders I would argue.

8 CHAIRMAN CROSBY: Well, the
9 stakeholders --

10 DIRECTOR DURENBERGER: The
11 stakeholders are intending to come.

12 CHAIRMAN CROSBY: Yeah, that'll --

13 DIRECTOR DURENBERGER: Yeah.

14 CHAIRMAN CROSBY: -- they'll be there.
15 But I mean if you can't get the legislators,
16 it doesn't matter, we'll take whatever we
17 come up with to them.

18 DIRECTOR DURENBERGER: Yeah.

19 CHAIRMAN CROSBY: But it would be nice
20 to get them there if we possibly could, and
21 staff. But it's not a -- it's not a gaming
22 item.

23 COMMISSIONER MCHUGH: And we don't
24 have to have a legislation drafted --

1 CHAIRMAN CROSBY: No.

2 COMMISSIONER MCHUGH: -- by that
3 meeting, as long as we have concepts --

4 CHAIRMAN CROSBY: Right.

5 COMMISSIONER MCHUGH: -- to discuss.

6 CHAIRMAN CROSBY: Yeah. And if we
7 could -- yeah, if we could agree on the
8 concept, agree largely on what, if any,
9 tweaks we felt we had to have --

10 COMMISSIONER MCHUGH: Right.

11 CHAIRMAN CROSBY: -- the easiest thing
12 would be to simply do it again -- the same
13 thing again, no tweaks. But whatever tweaks
14 we feel we have to have and, you know, then
15 maybe some little working group or some
16 process for finalizing the legislation and
17 getting it going forward. Okay.

18 COMMISSIONER STEBBINS: Is there any
19 reason we can start a little bit earlier,
20 pick up a half hour?

21 DIRECTOR DURENBERGER: Janice?

22 MS. REILLY: Yes.

23 DIRECTOR DURENBERGER: Yes.

24 COMMISSIONER STEBBINS: I believe I'm

1 suggesting that the --

2 CHAIRMAN STEBBINS: Yeah, you can
3 spend the night in Boston. Yeah, there's an
4 hour we just picked up in those two, by
5 shortening lunch and starting a half hour
6 early, we've added an hour to the full
7 process. So, we ought to be able to get this
8 done.

9 DIRECTOR DURENBERGER: I'd like to
10 point out actually that the morning we have
11 some heavy hitters coming. These -- these
12 gentlemen that are going to be attending the
13 educational part of the forum, I think this
14 is a testament to our industry, that we
15 reached out and said, we'd like a little help
16 and some education. And they dropped what
17 they were doing.

18 October is an extremely busy month in
19 horse racing. The National and World
20 Championships for both breeds are going on,
21 there's some very significant race meets.
22 And they all wanted to come, they were very
23 enthusiastic, so --

24 CHAIRMAN CROSBY: Great.

1 COMMISSIONER MCHUGH: Great.

2 COMMISSIONER CAMERON: Director, one
3 more question. In looking at these policy
4 discussions, a lot of them are legal in
5 nature. Do we have enough time to prepare to
6 be -- to have a fully informed discussion
7 within the next two weeks?

8 COUNSEL BLUE: A number of these
9 discussions have been ongoing, we have been
10 looking at them. And I also want to advise
11 the commission that we have started on a
12 markup of the tweak of the legislation, we've
13 been playing with that too. So we've -- so
14 we've been having some ongoing internal
15 discussions about these, we should be okay.

16 COMMISSIONER CAMERON: Yeah, I -- I
17 just wouldn't want stakeholders to think
18 we're going to have all these answers and
19 time lines will be exacting because that may
20 not be possible.

21 COUNSEL BLUE: No, I agree, but we
22 should have at least some basic format.

23 DIRECTOR DURENBERGER: I think just
24 the dialogue, too. I think the industry --

1 COMMISSIONER MCHUGH: Yes. Right.
2 Exactly. No question.

3 DIRECTOR DURENBERGER: -- is looking
4 to the dialogue and they want to understand
5 that you understand the issues.

6 COMMISSIONER MCHUGH: Yes.

7 COMMISSIONER CAMERON: Yeah.

8 CHAIRMAN CROSBY: Yes. One last
9 thought, since we're here to give you our
10 gratuitous suggestions.

11 DIRECTOR DURENBERGER: That's why
12 that's presented to you.

13 CHAIRMAN CROSBY: The idea -- I think
14 we ought to -- my suggestion would be that
15 another thing that we -- you announce, is
16 that May 1st, or some date certain after the
17 A and B decisions will have been made, there
18 will be another such forum. And I think we
19 ought to pick the date now and -- at which we
20 will then have all the data, and then we'll
21 talk about whether this industry, but it's,
22 you know, we're all waiting with baited
23 breath to know what's going to happen to the
24 licenses. And every other conversation we

1 have is just sort of treading water until we
2 know that.

3 So -- but if you were to say you will
4 be getting this industry together, you know,
5 a week later, I think that might be
6 constructive.

7 DIRECTOR DURENBERGER: Duly noted.

8 COMMISSIONER MCHUGH: I would just
9 like to -- amplifying on that a bit, you used
10 the phrase, Director, the wall between racing
11 and gaming, did I -- I think you used that
12 phrase.

13 CHAIRMAN CROSBY: She said the Chinese
14 wall.

15 COMMISSIONER MCHUGH: Fire wall. Fire
16 wall?

17 CHAIRMAN CROSBY: Chinese wall, she
18 said.

19 COMMISSIONER MCHUGH: Yeah.

20 DIRECTOR DURENBERGER: Chinese wall,
21 yeah.

22 COMMISSIONER MCHUGH: Yeah. Well, I
23 -- I conceptually, I don't view there being
24 any wall, or if there is a wall I think it

1 should come down. I mean, this is one
2 entity. It's an entity in which racing is a
3 critically important part, not only for the
4 farms and others that the legislation
5 supports, but as this report that you
6 prepared describes some 3,000 jobs in the
7 tracks themselves.

8 And so, if there is a sense of a wall
9 between the two parts of this singular
10 entity, today is not the time to resolve
11 this.

12 I think we ought to -- ought to
13 discuss that at some point in an appropriate
14 fashion and form, and tear the wall down.
15 Because I don't think -- I don't think -- I
16 don't think it's good that there either be a
17 perception or a reality of a wall existing.
18 So, that's just a little throwaway, but I am
19 concerned about that.

20 COMMISSIONER ZUNIGA: Yeah, I would
21 agree. Actually, there's quite a bit of that
22 nonexisting wall in Chapter 23K, that cross
23 over in terms of requirements, of gaming
24 licenses, about simulcasting --

1 COMMISSIONER MCHUGH: Integration.

2 COMMISSIONER ZUNIGA: Yeah, exactly,
3 exactly.

4 CHAIRMAN CROSBY: When you referred to
5 that, what were you referring to?

6 DIRECTOR DURENBERGER: I think we're
7 all mindful of the fact that we have an
8 existing racing licensees and other
9 applicants. And so I think we're mindful of
10 just not crossing that line.

11 CHAIRMAN CROSBY: Yeah. But I think
12 it was sort of a, it was a narrower reference
13 I think that --

14 DIRECTOR DURENBERGER: It was a
15 narrower reference, yeah.

16 CHAIRMAN CROSBY: Yeah, but
17 nevertheless, there are -- there are a lot of
18 factors which contribute to keeping the units
19 somewhat separate. That -- that's the one of
20 them, the biggest one.

21 But -- but our geographic locations,
22 where we're physically located, how long
23 we've been around, you know, what we spend
24 our day working on. I mean, there is a lot

1 of other reasons why, you know, it's easy to
2 sort of shift off into a perceived gaming and
3 other, or racing and other, and I think that
4 it's important for us to keep in mind, as the
5 Commissioner said, that that's not what we
6 want to be either actual or perceived.

7 DIRECTOR DURENBERGER: So, I think the
8 date, whatever date certain, as you referred
9 to it, May 1st, whatever it be, is the day
10 that the wall comes down.

11 CHAIRMAN CROSBY: Yeah. Right.

12 DIRECTOR DURENBERGER: The licenses
13 will be awarded and -- yeah.

14 CHAIRMAN CROSBY: Yeah, all --
15 everybody's interest has become substantially
16 congruent at that point, right? Okay. Good.
17 Thank you for that. Where are we now?

18 DIRECTOR DURENBERGER: Where are we
19 now? Should we turn to 7B, occupational
20 licensing structure?

21 CHAIRMAN CROSBY: Yes.

22 DIRECTOR DURENBERGER: And I'm told by
23 employees of our predecessor agency that the
24 occupational licensing fees for participants

1 in horse racing have not had an increase
2 since 1989.

3 We've done a 38 state parimutuel
4 survey of licenses in the rest of the
5 country. Our existing fees really aren't
6 significantly out of whack, out of balance
7 with the rest of the country's, but there are
8 some updates that we think we should make.

9 And we've identified some additional
10 categories of licensees that we think are
11 appropriate and we'd like to recommend them.
12 But there's a threshold issue that needs to
13 be discussed, and that is that our
14 occupational license fee structure appears in
15 another agency's regulations, they are housed
16 over an Administration and Finance, 801 CMR4.

17 So, the question that we would have
18 for the Commission is whether we simply
19 request changes in the fee structure, propose
20 them to A and F, have them undergo the rule
21 making process, or if we should proceed with
22 requesting that that entire structure be re-
23 honed, if you will. That way the licensing
24 regulations for racing and gaming would

1 reside side by side. Again, tearing down the
2 wall.

3 Legal has been in contact, I think,
4 with the folks over in A and F. It doesn't
5 seem like an overwhelming process, but as a
6 matter of timing we may actually need to do
7 both. Our licenses -- our current
8 occupational licenses all expire in December.
9 They're calendar year licenses, they'll be
10 done December 31st. So as a practical
11 matter, making some suggestions now in
12 October, I'm not quite sure we'd get all of
13 that done by the end of the year.

14 CHAIRMAN CROSBY: Off the top of -- go
15 ahead.

16 COMMISSIONER MCHUGH: Oh, I was going
17 to say it seems to me we ought to have all of
18 our fees with us. You -- you know how the A
19 and F --

20 CHAIRMAN CROSBY: Well, there's
21 something about the role that A and F either
22 has imposed or has some role, but I don't
23 know exactly what it is. But what I was
24 going to say, I wonder whether it's worth

1 doing this now or whether we ought to lump
2 this into everything else, which is let's
3 just keep our powder dry on everything other
4 than the one essential we need, which is the
5 bridge, and put everything into the post wall
6 coming down bucket.

7 COMMISSIONER MCHUGH: Right.

8 CHAIRMAN CROSBY: I mean, it sort of
9 seems like to go through a -- you know, a --
10 trying to get this done in time for maybe one
11 racing meet, you know, is it worth the
12 trouble?

13 COMMISSIONER MCHUGH: Especially if we
14 are going to reform, you know, and that that
15 would be coming at a later date. This is
16 just the bridge, that doesn't make sense.

17 CHAIRMAN CROSBY: Yeah, I don't feel
18 strongly about it. If you feel strongly that
19 there are proactive reasons why we should do
20 it, I'm fine with that. But it's hard for me
21 to imagine it's going to make much difference
22 if we do this again for -- if we keep it the
23 way it is for a year and just wait until we
24 know what we're doing.

1 DIRECTOR DURENBERGER: In the absence
2 of identifiable harm, other than we could
3 increase revenue for my operating budget,
4 there's no other identifiable harm for
5 continuing the structure as it currently
6 exists.

7 CHAIRMAN CROSBY: Well, recovery --

8 COMMISSIONER CAMERON: And would that
9 be fair to increase revenue, again, not
10 knowing the landscape. It would seem the
11 better -- the better time --

12 CHAIRMAN CROSBY: Right.

13 COMMISSIONER MCHUGH: -- to do that
14 would be when the landscape is known and the
15 revenue is coming in and --

16 CHAIRMAN CROSBY: And there's optimism
17 again in that.

18 COMMISSIONER CAMERON: Yes.

19 DIRECTOR DURENBERGER: Duly noted.

20 CHAIRMAN CROSBY: Okay.

21 COMMISSIONER CAMERON: All right.

22 DIRECTOR DURENBERGER: That moves us
23 to 7D. Report from the independent
24 accounting. We've got some documents there.

1 Earlier this year we had an
2 independent auditor examine licensee
3 procedures regarding telephone account
4 wagering at two of our licensees, Plainridge
5 Race Course and Raynham Park. The results of
6 those examinations, as well as some
7 recommendations regarding existing regulatory
8 structure inherited by this Commission are in
9 your packet, along with an executive summary
10 that I produced.

11 I'm happy to walk you through the
12 reports, or the summary, or I could let them
13 speak for themselves. I would just note that
14 several of the recommendations that appear in
15 the recommendations part of the report have
16 already been incorporated into the draft
17 revised 205 CMR6 and 7, which we've been
18 sitting on. We're in the process of
19 reviewing the remaining recommendations.
20 We've also received some suggestions from
21 other folks in the industry about how other
22 states regulate this particular area. So I
23 will look to you for guidance, how detailed
24 we want to get into those reports right now.

1 CHAIRMAN CROSBY: What's -- what's
2 your plan to -- what do you plan to do with
3 these reports? What's the consequence of
4 these reports at this stage of the game?

5
6 COMMISSIONER ZUNIGA: Well, they were
7 required by statute, for one, and they
8 provide recommendations. I know the question
9 is to you, but they provide recommendations
10 that I think are very relevant, especially in
11 the last two points. Two agenda items that
12 we've discussed, for in terms of regulating
13 going forward.

14 CHAIRMAN CROSBY: So, what was that?
15 I didn't --

16 COMMISSIONER ZUNIGA: Well, I think
17 these recommendations are -- there's
18 recommendations here in this report that
19 would enable a better oversight of the racing
20 operations and the simulcasting as well.

21 I think just like we discussed in the
22 last two agenda items, there's an element of
23 timing. When I read these, I figured let's
24 see if we can start implementing some of

1 these recommendations as soon as possible,
2 but there's all these other things going on.

3 The genesis of this audit is what --
4 as I mentioned, these audits are required by
5 statute --

6 CHAIRMAN CROSBY: Right.

7 COMMISSIONER ZUNIGA: -- which is how
8 we came about on these -- on these reports.

9 COMMISSIONER MCHUGH: But the
10 recommendations can broadly be divided into
11 two categories, can't they? One is
12 regulations designed to fix existing problems
13 and two, regulations and statutory changes
14 decide -- designed to bring us up to the
15 world as it exists today.

16 COMMISSIONER ZUNIGA: True.

17 COMMISSIONER MCHUGH: Which is a --
18 which is a more fundamental change. There's
19 a lot of stuff in here about pretty raggedy
20 practices, quite frankly. And some of the
21 regulations are designed to fix that. Would
22 it make sense to try to fix those and
23 incorporate the more broad recommendations,
24 the updating, bringing us into the twentieth

1 century, into this second piece that we're
2 going to do later in any event?

3 DIRECTOR DURENBERGER: So,
4 Commissioner McHugh I think, read the racing
5 division's mind on that. We -- we, this
6 summer went to you, you know, came to you and
7 said, we want to revise 6 and 7. 6 and 7 of
8 the 205CMR regulate the betting, the
9 wagering. And we identified very early on
10 that there were some significant security
11 issues, not necessarily with our licensees,
12 but in general that wagering security is very
13 important to the industry at large.

14 And just like 128C, the regulations to
15 regulate 128C go back to a time when the
16 model was very different. Before
17 simulcasting started there was debate whether
18 or not it would ruin the industry and now
19 it's the lifeblood of the industry.

20 And these regulations haven't really
21 been updated much more than the statute has.

22 So there are some areas where we think
23 change is appropriate right now and we can do
24 that very painlessly. We have a draft,

1 205CMR6 and 7, with some -- I was going to
2 say minor changes, they're not minor changes,
3 they're few in number, but they're
4 significant changes. And then -- but it's
5 also difficult to rewrite regs for a statute
6 that you're looking to either revise or
7 replace. So I think that Commissioner
8 McHugh, a bifurcated approach is perfect.
9 So, we'll incorporate a few but important
10 changes over the winter so that by the start
11 of next year we can have that strength, the
12 regulatory strength and clarification where
13 we need it. And then we will look to do a
14 more comprehensive revision of these two
15 chapters along -- it would make sense to
16 parallel any kind of statutory change going
17 forward.

18 CHAIRMAN CROSBY: All right. So none
19 of the -- in your term, would be statutory,
20 they would be all regulatory --

21 DIRECTOR DURENBERGER: In the regs,
22 yeah.

23 CHAIRMAN CROSBY: -- themselves?
24 Right.

1 COMMISSIONER MCHUGH: Yeah.

2 CHAIRMAN CROSBY: That makes a lot of
3 sense to me.

4 COMMISSIONER MCHUGH: Yeah, that's
5 good.

6 DIRECTOR DURENBERGER: Wow, we're
7 doing sensible things in racing today.
8 This is good.

9 The draft annual report, and I
10 apologize, it looks like the piece that got
11 in your packet had some red ink and some
12 formatting errors, which did not appear on
13 the version that -- when I opened on my
14 computer. So, I don't quite know what to
15 attribute that to.

16 So, the history here traditionally, in
17 this state and other states that have summer
18 racing, racing reports are issued on a
19 calender year, rather than a fiscal year
20 basis. The preliminary draft is here, we're
21 not asking for your vote for approval today
22 because you've had a busy last ten days or
23 so, but I wanted to put it in front of you in
24 case you did have any preliminary discussion.

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COMMISSIONER MCHUGH: Right.

DIRECTOR DURENBERGER: We would come back to you with the proper formatting and ask for your approval at the October 17th meeting.

We remind everybody that it was the Division of Professional Licensure that was managing these activities of the old state Racing Commission through an inter-agency service agreement through last year. So, we maintained the same format as previous years' reports.

These statutory requirements for the content were previously found in Chapter 6, but they were repealed by the Gaming Act, they were repealed on May 20, 2012. And we don't see any express replacements in Chapter 23K, but we kept all of the same information that was in the previous reports.

We've got a library that we put together of annual reports from other jurisdictions. We're going to create an entirely new template for the 2013 report.

1 We're going to provide more than just a
2 recitation of numbers, we're going to present
3 it in a way that's proactive and educational
4 for people.

5 These reports really are the subject
6 of quite a few public records requests, so --
7 particularly from students that are in
8 various agra-business equine industry
9 programs. So, to the extent that we can
10 provide information that's of more benefit
11 than to just the legislature, we'd like to do
12 that in the future. We think we can -- we
13 can provide some pretty neat reports going
14 forward. But for this year we did keep --
15 choose to keep the status quo.

16 CHAIRMAN CROSBY: Okay. I would just
17 point out that --

18 DIRECTOR DURENBERGER: So, I can
19 entertain --

20 CHAIRMAN CROSBY: -- Tim Murray is no
21 longer the Lieutenant Governor.

22 DIRECTOR DURENBERGER: There you go,
23 that's a fantastic change.

24 CHAIRMAN CROSBY: I've earned my pay.

1 DIRECTOR DURENBERGER: That's it.
2 That's it, we can all go home now.

3 CHAIRMAN CROSBY: I can go home.

4 DIRECTOR DURENBERGER: That's great.
5 All right. So, that should have been in red
6 ink, huh? No one ever reads the cover page.
7 No one ever -- right? No one proofreads the
8 cover page. There we go. What else can we
9 talk about? How about one more thing?

10 The form of the approval of the racing
11 licenses. So, we talked earlier about how we
12 had three applicants.

13 Now, legal came to me with a very
14 interesting question of how we think that the
15 Commission should issue its decisions
16 regarding these applications. The past
17 practice appears to have been a motion and a
18 vote at the Public Meeting closest to that
19 November 15th deadline. Then the
20 Commissioners would affix their signatures to
21 an eight and-a-half by eleven piece of paper
22 with the seal of the Commonwealth on it, and
23 then there were a series of brief letters
24 that were sent, signed by the program

1 coordinator, which would signify the approval
2 of the dates, the simulcast schedules,
3 premium free period, special events, and
4 account wagering providers.

5 But I am in complete agreement with
6 legal that I'd like to suggest that you
7 consider issuing your determinations in a
8 manner that parallels that what you're doing
9 with the gaming licensing process. I think
10 this is termed a decisional format -- is that
11 the right terminology?

12 COUNSEL BLUE: That's correct.

13 DIRECTOR DURENBERGER: So, this would
14 enable you to recite findings of fact,
15 specify conditions perhaps, and it would
16 afford you other discretionary flexibilities
17 that are not provided by the past practice.
18 And it seems to make sense, again, as we're
19 tearing down the wall, for the racing
20 processes to parallel those of the gaming
21 processes.

22 COMMISSIONER MCHUGH: It strikes me as
23 a really good idea. There's a bunch of --
24 particularly this year, there's a bunch of

1 concerns that potentially we will have that
2 more -- more appropriately fit into a set of
3 findings and conditions. So, I would like us
4 to adopt that format, at least in principle,
5 and see how it plays out.

6 CHAIRMAN CROSBY: Are those -- will
7 those be adjudicatory, or will those be just
8 Public Meeting?

9 COUNSEL BLUE: They're just, by
10 statute, public hearings. So, we will have
11 the public hearings and then put together a
12 draft decision that the Commission can then
13 deliberate on in public at the next available
14 public meeting.

15 CHAIRMAN CROSBY: Sounds good to me.

16 DIRECTOR DURENBERGER: It may be
17 something else for 128A revision down the
18 road.

19 COUNSEL BLUE: Oh, yes, definitely.

20 DIRECTOR DURENBERGER: Yes,
21 definitely, says General Counsel.

22 CHAIRMAN CROSBY: Is that it?

23 DIRECTOR DURENBERGER: I think that
24 concludes the Racing Division's report.

1 CHAIRMAN CROSBY: Thank you.

2 COMMISSIONER MCHUGH: Great. That was
3 very, very thoughtful.

4 DIRECTOR DURENBERGER: Thank you.

5 COMMISSIONER CAMERON: Thank you,
6 Director.

7
8 CHAIRMAN CROSBY: Thank you. Good
9 stuff.

10 COMMISSIONER MCHUGH: Good stuff.

11 CHAIRMAN CROSBY: We will have a quick
12 break and then reconvene with, I think
13 Director Acosta. Okay.

14
15 (A recess was taken)

16
17 CHAIRMAN CROSBY: Director David
18 Acosta, item number 7.

19 DIRECTOR ACOSTA: No, item number 8,
20 Mr. Chairman.

21 COMMISSIONER CAMERON: 8.

22 CHAIRMAN CROSBY: Item number 8, as I
23 said.

24 DIRECTOR ACOSTA: Chairman Crosby,

1 Commissioners, good afternoon.

2 COMMISSIONER CAMERON: Good afternoon,
3 Director.

4 COMMISSIONER MCHUGH: Good afternoon.

5 DIRECTOR ACOSTA: Good afternoon.

6 Before you, in your package, there are five
7 memorandums dated October 3, 2013, which
8 lists recommendations from licensing. With
9 respect to five questions, we're hoping that
10 we can get some direction from the
11 Commission, so that the Legal Department and
12 licensing can commence drafting regulations
13 as it pertains to licensing.

14 Now, the first memorandum talks about
15 application originating through the gaming
16 establishment versus individuals having the
17 ability or requiring that individuals file
18 the applications, and not originating from
19 gaming establishment.

20 I've had experience with both methods
21 of submission. I am recommending that
22 applications originate from the gaming
23 establishments.

24 One of my arguments for that is, is

1 that in New Jersey we had applications filed
2 directly by individuals and not through
3 gaming establishment. And one thing that we
4 found was that individuals would invest time,
5 effort, and money to file an application only
6 to be told that they are unemployable. We
7 often found individuals requesting full
8 refunds of application because they're unable
9 to find a job. Having an application
10 originate from the gaming establishment, at
11 least gives the appearance, at a minimum,
12 that a job has been promised.

13 In addition to that, there could be a
14 mechanism in place where the individual can
15 offset the cost of the application through an
16 agreement with the gaming establishment
17 through payroll deduction, because the person
18 may not have the initial fees for a gaming
19 application.

20 I also indicated in the argument that
21 by having the individual go through the
22 gaming establishment that is an initial
23 vetting level that is incorporated into the
24 process, eliminating -- or not eliminating,

1 but minimizing the number of individuals that
2 would submit an application and for lack of
3 understanding what the requirements are with
4 respect to suitability they have no
5 opportunity of getting a license.

6 Your guidance in this particular issue
7 would help us to formulate how the regulation
8 should read with respect to the filing of an
9 application.

10 CHAIRMAN CROSBY: Jill, could you come
11 up?

12 COMMISSIONER CAMERON: Director, I
13 certainly think we want to -- we certainly
14 want to rely on your expertise. This makes
15 perfect sense to me, but you did mention on
16 page three, an exception. And I was
17 wondering -- which -- which also made sense,
18 that there is a mechanism if someone did want
19 to, but what did you have in mind for an
20 exception, which as you say, should be --
21 should not be the norm? What were you
22 referring to? Give me an example.

23 DIRECTOR ACOSTA: There are
24 individuals who wish to file an application.

1 Information on the application may be
2 required by the commission, but it's not
3 information that the individual wants to
4 share with the employer. For the application
5 to originate through the gaming
6 establishment, it, in essence, gives the
7 gaming establishment all information that's
8 required on the application.

9 In New Jersey there were a number of
10 individuals who did not want to disclose, for
11 whatever particular reason, all of the
12 information that was required to be disclosed
13 in part of the application. And they just
14 did not want to do that.

15 We did have a process in which the
16 gaming establishment will give them a letter
17 referring to registration -- back in those
18 days referred to hotel registrations, where
19 they will get a letter indicating I have
20 promised this person a job, but he has
21 indicated that he wishes to apply directly
22 through the Commission, and they were okay
23 with that.

24 I don't know if the letter from the

1 casino would necessarily be part of this
2 process. It was in New Jersey, but to allow
3 an individual to file the application on
4 their own, at least the process is there if
5 there is reasons to do that.

6 COMMISSIONER CAMERON: Was there an
7 exception in Ohio?

8
9 DIRECTOR ACOSTA: No, in Ohio it was
10 strictly --

11 COMMISSIONER CAMERON: Through the --
12 through the applicant?

13 DIRECTOR ACOSTA: Through the
14 applicant. And the reason -- one of the main
15 reasons --

16 COMMISSIONER ZUNIGA: Through the
17 gaming establishment.

18 DIRECTOR ACOSTA: What's that?

19 COMMISSIONER ZUNIGA: Through the
20 gaming establishment.

21 DIRECTOR ACOSTA: Yes. But the
22 statute in Ohio specifically stated that the
23 gaming establishment would be billed for the
24 application fee. So, it was clear there

1 that, you know, we would bill them directly
2 and there was no other -- no other choice.

3 Other states, like Maryland, also
4 initiate an application via the gaming
5 establishment, so it's a practice that's
6 common in a number of other states.

7 COMMISSIONER MCHUGH: How do you -- if
8 you do it -- your recommendation makes great
9 sense to me as well. But how do -- how do
10 you ensure that you're going to deal with a
11 focus on hiring local people as opposed to
12 out of state people? Or -- or -- let me put
13 it another way. Is -- do you know if either
14 way is more conducive to getting local people
15 licensed than it is -- than the other way is?

16 DIRECTOR ACOSTA: My experience in
17 both states have found that neither system
18 really encourages local employment. In New
19 Jersey for a number of years it was required
20 by statute that the applicant be a New Jersey
21 resident, and there was language to say that
22 you must provide verification that you were a
23 New Jersey resident. For example, a copy of
24 a voter registration or a driver's license.

1 COMMISSIONER MCHUGH: Right.

2 DIRECTOR ACOSTA: That requirement did
3 go away. In Ohio that didn't -- didn't
4 happen in the casinos that bordered other
5 states. For example in Toledo, where it
6 bordered Michigan, there were a significant
7 number of individuals who applied from the
8 state of Michigan. They were probably closer
9 to the casino than other residents of Ohio.

10 COMMISSIONER MCHUGH: Right.

11 DIRECTOR ACOSTA: The same thing
12 occurred in Cincinnati. However, the
13 dynamics in Cleveland and in Columbus was
14 that it was primary local individuals,
15 because it's expensive to relocate and the
16 commute would be, you know, cost prohibitive.

17 COMMISSIONER MCHUGH: Right.

18 CHAIRMAN CROSBY: I'd like to expand
19 on that because I had the same thought that
20 -- I agree with others who have said this
21 looks like it's the most efficient system. I
22 can see what the advantages of it are, but it
23 starts all of a sudden to get right to the
24 heart of issues of local hiring, diversity,

1 hard to employ groups.

2 The casino is going to have a premium,
3 is going to put a premium on efficiency, on
4 speed. To some extent, as we've heard, about
5 upward mobility for their own people, they're
6 going to be under certain constraints. Their
7 HCA constraints and whatever, you know,
8 conditions are on our license. But they
9 aren't going to have the same interests that
10 we have and that the Commonwealth has in
11 local diverse and so forth. So, if we --
12 what we do is create a bottleneck, which
13 easily could be a bottleneck for -- well,
14 let's say it could be easily used as a way to
15 facilitate the casino's fast tracking the
16 people that they were interested in getting.

17 So, if we're going to do this, first
18 of all I'd like to have your folks, advisory
19 folks think about this, you know, and is this
20 an issue. And we need to make sure that
21 these regs are reviewed by people who bring
22 the perspectives to the table that some of
23 your advisory groups do.

24 But if we go down this route, we need

1 to make sure that we've written regs about it
2 in a way that don't run counter to our other
3 important public policy objectives.

4 DIRECTOR ACOSTA: One thing I can say
5 is, in reviewing the application, there are a
6 number of questions that are being asked from
7 the potential licensees as to how they are
8 going to address the issue of hiring local
9 individuals. So, the Commissioners who will
10 be evaluating that particular section can
11 look and see which casino has the best plan.

12 It will be our job after the awarding
13 of the license to gather information data to
14 find out if what they presented is being
15 supported by facts. We're in the process of
16 putting together a licensing system. And
17 I've had conversations with other staff in
18 which we're looking at trying to gather
19 information that would enable us to review
20 how, in fact, the casinos are complying with
21 this, who are the individuals they are
22 hiring; where do they come from, you know,
23 what groups are they -- are they groups --
24 are they females, are they Hispanics, are

1 they --

2 CHAIRMAN CROSBY: Well, I think that's
3 well said and I -- I agree with that. And as
4 I said, there are -- there are other
5 mitigating factors to this. But we just want
6 to make sure that we don't set up an
7 institutional structure, which is
8 institutionally built to be -- to be
9 countered. We don't want to be constantly
10 running up an institutional structure which
11 doesn't really facilitate our public policy
12 objectives. So, we just need to take both of
13 those sides of the -- both of those different
14 public policy interests in mind when we're
15 drafting the regs that will implement this.

16 Do you have any particular perspective
17 on this one way or the other?

18 DIRECTOR GRIFFIN: No, I'd like to
19 better understand the implications in terms
20 of diversity in local hiring. And as you
21 suggested, Director Acosta and I have been
22 speaking about bringing in work force
23 development stakeholders and folks who are
24 concerned about diversity to have some of

1 these discussions.

2 CHAIRMAN CROSBY: All right. Okay.

3 COMMISSIONER MCHUGH: It may in fact
4 be -- that's interesting. It may in fact be
5 easier to hold people's feet to the fire if
6 you had --

7 CHAIRMAN CROSBY: True. Good point.

8 CHAIRMAN CROSBY: -- a license -- a
9 vendor based licensing system, because then
10 you know exactly who they're applying for and
11 can pick up demographic data much more
12 easily.

13 CHAIRMAN CROSBY: Right. And who's
14 accountable.

15 COMMISSIONER MCHUGH: Who's
16 accountable, right.

17 COMMISSIONER STEBBINS: I had a little
18 bit of a different opinion, David, with your
19 -- with your recommendation. And certainly
20 understand I think in a ramp up period when
21 we know licensees are looking to hire at a
22 rapid pace, bring people on board, get them
23 trained, regardless of what training they may
24 have already gone through in the first place.

1 And certainly see a window where not clogging
2 up the licensing system with people that are
3 just throwing license applications, but as
4 opposed to let's handle the license
5 applications for people that are -- to a
6 degree, and probably a higher degree,
7 guaranteed some form of employment.

8 But I certainly see a period where
9 after these licensees are up and running that
10 if I'm an individual and I choose to go
11 through a training, I want to position myself
12 for a job at some point, that I should be
13 able to apply for a license regardless of
14 whether I have an offer of a job. But be
15 able to market myself as saying, I have the
16 training, I have the skills, I've been
17 through any number of training programs and
18 I'm licensed by the Commonwealth. I would
19 think that positions that individual to be a
20 more attractive candidate when a -- when a
21 applicant has an opening and wants to hire
22 somebody.

23 So, I agree with the context of the
24 initial hiring process to again, not clog our

1 system with people who either don't have a
2 job or we may ultimately find unsuitable.
3 But finding a way through our regs to
4 position a process where after the startup
5 period somebody who chooses to want to pursue
6 this career as we see in any other -- many
7 other occupations, where you go out, you get
8 trained, you get licensed, and then, you
9 know, hopefully that makes you more
10 marketable in applying for a position.

11 I don't know if there's a way to --
12 whether I'm the lone voice in this or not,
13 whether there's a way to kind of allow for
14 that adjustment in the regulatory process. I
15 know you also mentioned talking about, you
16 know, non-gaming vendor registration should
17 originate also through the gaming
18 establishment. Again, I think there's a
19 marketability for a company that wants to be
20 a non-gaming vendor to be able to say, I'm
21 licensed, I've been, you know, reviewed by
22 the Gaming Commission, I can easily supply
23 widgets and gadgets, you know, to you, Mr.
24 Casino, a licensee.

1 So, I -- I just kind of look at your
2 recommendations, kind of, under two
3 viewpoints. That initial early startup view
4 point and then a ongoing operation of the
5 system, you know, in the months or years to
6 -- you know, years ahead, after a license has
7 been awarded.

8 DIRECTOR ACOSTA: Duly noted. Again,
9 I -- I try and answer the question about what
10 are the exceptions. In the exceptions, maybe
11 an example like what you just provided could
12 be part of that.

13 Again, I can only say I hate to be the
14 person to tell an individual who went through
15 training, who got a license, and for some
16 reason the casinos are looking for somebody
17 who smiles a certain way, and that person
18 cannot smile that certain way.

19 COMMISSIONER STEBBINS: Right.

20 DIRECTOR ACOSTA: And doesn't find
21 what they're looking for, and gets totally,
22 you know, frustrated. And comes back to us
23 and says, I want my money back, this didn't
24 get me nowhere, what can I do with this.

1 COMMISSIONER STEBBINS: And to a
2 degree, I think that has a lot to do -- and
3 not only our responsibility, to put out as
4 much -- as much information as we can in
5 advance, and hopefully direct the public to
6 look at that information. But certainly in
7 a, you know, our partnership with the
8 community colleges, they think about
9 screening vetting all these people that, you
10 know, hopefully the system at the bottom of
11 the funnel won't get clogged up with those
12 people who are not -- have no chance, as you
13 pointed out the other day over at Bunker
14 Hill, have no chance of being found suitable.

15 So, you know, some ability or some
16 responsibility back on our part to put enough
17 information out there that we don't -- I hate
18 to keep using the word, clog up because --
19 but you know, fill our system with people
20 that we're just going to spin our wheels on
21 and ultimately not find suitable for our
22 license.

23 Again, I just don't know how that
24 translates into regulatory language to make

1 the --

2 DIRECTOR ACOSTA: With respect to
3 vendors, the process I'm familiar with the
4 states that have registration, Pennsylvania
5 and New Jersey, you have a product that you
6 want to sell. The vendor registration is
7 just a basic, you know, name, rank, and
8 serial number form that is submitted via
9 casino. I enter into an agreement, the
10 Purchasing Department of sends it to
11 Licensing Department. We then have an
12 application that's a little bit more in depth
13 and tell the individual you have so many days
14 to fill this out on the registration, because
15 it's a registration. That person will then
16 fill out the registration form that's a
17 little bit more in depth and we will then
18 start monitoring the level of business that
19 is being conducted by that company. Once
20 they're registered they can do business with
21 anybody else, they don't have to re-register.

22 I don't know what other way would
23 really be efficient, for a lack of a better
24 word, for a non-gaming vendor registrant than

1 going to the casino and saying, look this is
2 the product I have, it's just a registration
3 versus a license, where -- a vendor license,
4 obviously, a gaming vendor license, that has
5 to be independent from -- from originating
6 from -- from a casino. That individual who
7 is considered a gaming vendor should submit
8 an application directly to the Commission
9 without having to go through a casino. Ones
10 that have their license, they can go in and
11 negotiate with whatever casino they wish.

12 And again, those individuals, the
13 vetting process is much more significant,
14 it's much more longer, the companies are
15 bigger --

16 COMMISSIONER STEBBINS: Right.

17 DIRECTOR ACOSTA: -- they're much more
18 complicated, you know. So, they need to
19 apply directly to the Commission. The
20 employees and the registrants I strongly
21 recommend, understand your -- your position,
22 and I'm sure that -- I believe our department
23 and licensing will get together and try to
24 draft regulations. We'll have some

1 consideration to make those exceptions and
2 particular to the ones that wish to go and
3 apply, you know, after they've completed a
4 training, keeping in mind the other
5 stakeholders, that being colleges, the job
6 training programs, and that kind of stuff.

7 MR. STEBBINS: We had, you know,
8 another topic that came up in a meeting we
9 had the other day. Talking about, you know,
10 small business opportunities are -- for folks
11 that are going to need financing to be able
12 to build their capacity to be a qualified
13 vendor. And, you know, the brainstorming
14 came back around the idea of, well, if you
15 directly approached an applicant and the
16 applicant was giving you some sign or
17 guarantee of work, how could, you know, a
18 potential vendor kind of take that not almost
19 guarantee of work and translate it into some
20 type of collateral for financing from any
21 number of lending institutions.

22 But interesting dynamic in terms of
23 how our licensing process may end up helping
24 a small business be able to position itself

1 for more work, or guarantee work, or
2 guarantee the resources that they need to
3 have the capacity to make sure they can
4 service that contract. So, a little creative
5 thinking on our part maybe.

6 COMMISSIONER MCHUGH: I wonder if we
7 could come back to -- Commissioner Stebbins'
8 thought about -- about the initial ramp up as
9 opposed to the later licensing for
10 individuals. And simply create now, because
11 you do need to get started on this, a
12 licensing scheme that predominantly focused
13 on casino based licensing. Take a look and
14 set a deadline internally for looking at what
15 that's produced and hasn't produced over a 18
16 month period, and then take a second look at
17 how we're doing things.

18 My concern is, although I understand
19 what you're saying, is that the secondary
20 regulatory apparatus that we might have to
21 put in place in order to make that work is
22 something I think we need to take a look at
23 and think about. The educational pieces, the
24 certification pieces, do we need any of those

1 things.

2 There's a paper here that we're going
3 to get to in a minute. But we'll have a much
4 better idea of what this thing looks like,
5 who's being excluded, what the experience of
6 the Mass Community College Training Institute
7 is after 18 months to 2 years, say. And then
8 can take another look at how we go about this
9 and have a streamline thing that gets
10 everybody up and running initially, and moves
11 forward.

12 CHAIRMAN CROSBY: Okay. You got the
13 gist of that?

14 DIRECTOR ACOSTA: Yeah, I'm taking
15 notes on it.

16 CHAIRMAN CROSBY: Good.

17 DIRECTOR CROSBY: The next question
18 memorandum is a question pertaining to the
19 Commission's role in the approval of
20 licensure.

21 And that one is one that --

22 CHAIRMAN CROSBY: Which one is this?

23 COMMISSIONER CAMERON: The second one.

24 DIRECTOR CROSBY: Mr. Grossman and I

1 have had a number of conversations, as well
2 as other staff. As you probably read in the
3 -- in the memorandum -- and you may want to
4 hopefully join in, there are sections of the
5 -- of the act that talk about the IEB's role
6 in the approval. And there's also sections
7 on the act that talks about the Commission
8 issuance of a license.

9 My past experience has been that the
10 Commission has reviewed and approved all
11 gaming related vendors, all key and
12 qualifiers, and any recommendation that
13 contains derogatory information. And that is
14 something that I'm hoping is practiced here
15 in Massachusetts, in the Commonwealth, but
16 still take into consideration the language
17 that currently exists.

18 I think it is important for the
19 Commission to look at who are the policy
20 makers in the gaming world. Who are the
21 CFOs, the CEOs, the head of security, the
22 head of audit. And the Commission have an
23 opportunity to view the investigative report
24 to determine whether or not this person has

1 met the standard, the bar that's been
2 established by the Commonwealth.

3 My recommendation is that those
4 individuals be presented before the
5 Commission, that a recommendation report be
6 presented to you at a Public Meeting. And
7 the Commission at that point, can decide
8 whether or not the issuance of a license is
9 appropriate.

10 With respect to registrants and gaming
11 licenses that do not contain derogatory
12 information, that is the authority of the IEB
13 and the IEB can grant that license without
14 any further review by the Commission.

15 COMMISSIONER CAMERON: Director, is it
16 your experience in New Jersey and Ohio that
17 there's an appeal process for someone who may
18 disagree with an IEB licensing decision?

19 DIRECTOR ACOSTA: My understanding of
20 the way the statute reads that if the IEB
21 recommends -- if the IEB denies a license,
22 the individual is able to request for a
23 hearing before the IEB. And the IEB has an
24 established procedure how that's going to

1 take place. If the individual decides that
2 IEB's decision is not one that they're
3 comfortable with, they can at that time
4 appeal that decision to the Commission and
5 the Commission will hear it as a whole.

6 COMMISSIONER CAMERON: That -- that's
7 reasonable.

8 COMMISSIONER ZUNIGA: Go ahead.

9
10 ATTORNEY GROSSMAN: Let me just pick
11 up on one point, just to make sure we're all
12 on the same page, because I think this is an
13 important part of what David is saying.
14 Licensing, as you're probably all aware, is
15 largely governed by Section 30 of Chapter
16 23K, and a process set out by law relative to
17 the different types of licensees, this
18 doesn't really touch on vendors, but more the
19 individuals.

20 So, there's three classes of licenses.
21 You have your key gaming employees, your
22 gaming employees, and the gaming service
23 employees who don't have to be licensed, but
24 only registered.

1 And what this statute does is it talks
2 about, as -- as David was mentioning, the
3 process and the interaction between the IEB
4 and the Commission. So, we thought, as a
5 preliminary matter, that it's important that
6 everyone's on the same page in its reading of
7 Section 30 and understanding what it says.
8 Because a quick read of it would lead you to
9 believe that there may be some
10 inconsistencies, but there is a way we
11 believe -- or at least I believe, I think we
12 believe, to read it harmoniously. That is to
13 be able to reconcile each of the different
14 sections and ensure that what the IEB is
15 doing is consistent with what then the
16 Commission does.

17 And what I think is being suggested is
18 essentially you have to start to understand
19 how the flow of applications would go.

20 In that -- and then, of course, we
21 also have to talk about at some point what
22 role the Division of Licensing would have
23 because the statute doesn't talk about the
24 Division of Licensing, it just talks about

1 the Bureau. Though clearly the way the
2 organization has been set up, the Division of
3 Licensing will play a substantial role in
4 this process.

5 But what the statute talks about, I
6 think a fair reading suggests, anyway, is
7 that an application would come in to the
8 Commission, the Division of Licensing or the
9 Bureau would vet it, make sure that it meets
10 all of the administrative requirements,
11 perform a full background check, do whatever
12 else it is that is decided that they have to
13 do, and essentially make a recommendation to
14 the Commission to either approve or to deny.

15 And to pick up on what Commissioner
16 Cameron was just saying, in the event that
17 the IEB recommends that an application be
18 denied, the statute talks about an appeal
19 process that one could follow. The first
20 appeal would go to the IEB. So, the first
21 decision that gets made by the Division of
22 Licensing/Bureau is really an administrative
23 decision on the papers alone, there's no
24 hearing or anything like that. Where the

1 Bureau finds that, for whatever reason,
2 there's a problem with this application.
3 Whether it's a conviction or some other
4 matter that would lead one to find an
5 individual unsuitable. Notice goes to the
6 person saying we find you unsuitable, we
7 can't issue the license. The person has an
8 opportunity to appeal to get a hearing at the
9 IEB level. A hearing gets conducted.

10 The IEB, at that point, either affirms
11 its previous decision saying that there is a
12 problem here, or it reverses it and says
13 okay, after, you know, further consideration,
14 we approve.

15 In the event -- in either event, at
16 that point, the Commission would -- would
17 then likely get involved. In the event that
18 the IEB affirms its decision that an
19 application should be denied, the individual
20 then has a chance by statute to appeal to the
21 Commission.

22 To have that matter heard, they could
23 bring the issue to you and say, here's the
24 conviction, here's the issue, you know, you

1 should issue me a license anyway.

2 In the event that it's approved, the
3 IEB either approves it in the first instance,
4 on the paper, or after a hearing. This is
5 really I think the key -- one of the key
6 policy considerations. After we ensure that
7 we're on the same page as to what the statute
8 says, one of the key considerations is how
9 does the Commission want to handle the
10 approval process. So that is, once the IEB
11 recommends the approval of the license
12 application, what role does the Commission
13 want to play.

14 And I think it's important to look at
15 the approval process for each of these three
16 categories of licenses perhaps separately.
17 The registrations, the gaming employees, and
18 the key gaming employees. And perhaps you'll
19 have a different level of deference to the
20 recommendation of the IEB, depending on the
21 class of license we're talking about.

22 And there are different ways to look
23 at it. I have seen, in my past experience,
24 that assuming there -- for the registration

1 type issue, of course, for starters, if an
2 applicant meets all of the prerequisites, the
3 IEB does their background check, they
4 recommend approval. Perhaps they just come
5 into the Commission and they say, here's a
6 list of a hundred people who have applied for
7 registration, we did a thorough background
8 check, we recommend approval. And you, as
9 the Commission say okay, approved.

10 As opposed to perhaps, with the gaming
11 -- the key gaming employees. Maybe you'll
12 want to look at each one a little more
13 closely given the position they'll have at
14 the -- at the establishment. So, that gets
15 down to the approval process and that's
16 something that I think needs to be fleshed
17 out a little bit, is how are you going to
18 deal with the recommendations for approvals,
19 and what involvement do you want to have in
20 that process. Do you want to just defer,
21 essentially, the judgement of the IEB and
22 Division of Licensing, or do you want to have
23 a more active role? What type of proceeding
24 would you want to engage in? And so those

1 are, I believe, the issues that we'll have to
2 wrestle with as we move forward.

3 As a footnote to the conversation,
4 there are, in your existing regulations,
5 provisions for administrative hearings for
6 appeals, that have already been set in place.
7 So, it's important to reference those as we
8 move forward.

9 But I think -- and that doesn't get
10 into the vendors, which I haven't actually
11 closely studied the vendor statute yet. But
12 as a preliminary matter we took a look at
13 Section 30, which deals with this. And those
14 seem to be the issues that we sought your
15 guidance on to make sure that when we start
16 drafting regulations, that we do it in a
17 fashion that you'll find to be consistent
18 with the statute and as a matter of policy,
19 kind of covers all the bases.

20 CHAIRMAN CROSBY: Comments?

21 COMMISSIONER ZUNIGA: Yeah. I -- I
22 like the thought of being involved on the key
23 -- having -- having the report, if you will,
24 on the key employees. I just want to make

1 sure, how would we define -- is it defined,
2 is the key employee defined currently, or is
3 that something that we need to define better
4 by regulation?

5 DIRECTOR ACOSTA: No, it needs to be
6 defined better by regulation. There is some
7 basic language that talks about a key. But
8 that needs to be defined because there are
9 some -- for example, a pit boss in one state
10 is a key because they have discretionary
11 decision, they're able to approve credit for
12 high levels; they're able to approve
13 complementaries, etcetera. But in some
14 jurisdictions, in Ohio a pit boss is not
15 required to have a key. In other states, a
16 pit boss is required because of those things.

17 So, a list of some of the functions
18 that need to be -- needs to be defined a
19 little further through regulation as to who
20 is key.

21 I'm recommending, for example, at a
22 minimum, that every shift in the security
23 department is supervised by an individual who
24 holds a key. They have significant authority

1 over the security of a big, you know, big
2 corporation. And who knows what happens on a
3 Friday at 1:00 in the morning that requires a
4 supervisor to make some real significant
5 decision. And that person should be vetted
6 and licensed to a very high standard. We
7 need to ensure that --

8 CHAIRMAN CROSBY: The answer to the
9 question is we need to be -- we have to do
10 more work.

11 DIRECTOR ACOSTA: Yes.

12 COMMISSIONER ZUNIGA: Yeah, but that's
13 -- I appreciate those examples. Could you
14 also just help me understand the idea behind
15 these recommendations relative to anybody's
16 whose application contains derogatory
17 information?

18 DIRECTOR ACOSTA: An individual may
19 have an application that does not have any
20 arrest information, but owes a significant
21 amount in child support. And there may be an
22 agreement in which this individual -- in the
23 state of New Jersey we used to practice this,
24 and it was actually very popular with respect

1 to other state agencies. There will be an
2 agreement that's signed, and the agreement
3 will be considered at a Commission level,
4 where the person's -- an order will go out to
5 the employer and say X amount of dollars will
6 be taken out of his paycheck to address his
7 child support. The amount that's in
8 arrearage. That type of decision would be a
9 decision that's made by the Commission
10 because it requires an execution of an order
11 to allow for payment to be taken out of his
12 paycheck to address a child support. And I'm
13 just giving you one example of a potential
14 derogatory information.

15 COMMISSIONER ZUNIGA: That's fine. I
16 may have termed it not as derogatory, but you
17 know, private or confidential, but be that as
18 it may I understand your --

19 COMMISSIONER MCHUGH: My concern, my
20 thoughts are that if we could -- I think the
21 language of the statute is capable of
22 supporting almost any approach that we want
23 to take. And -- and it seems to me that we
24 ought to have at the Commission level, a

1 volume of routine applications that we can
2 give meaningful review to.

3 I'm concerned about getting a list of
4 300 people with assertions that we've
5 investigated all these people, and they're
6 all qualified, and we recommend you issue a
7 license. I don't know what that additional
8 formality brings to the process and it
9 invites, I think, a level of cavaliness, if
10 that's a word, that's inconsistent with --
11 with what should go on at our level.

12 I would much prefer to have a system
13 under which denials got a right to appeal to
14 us and the top supervisors got the right --
15 automatically came to us for approval with
16 some kind of a writeup that we actually took
17 a look at and considered.

18 Personally, I'd feel more comfortable
19 with that kind of a regulatory regime than I
20 would with one that had 200 -- 200 people or
21 a 150 people to approve every couple of
22 weeks. The startup period is going to be
23 different than the flat state, I know, but
24 that I -- I just throw that out for

1 consideration.

2 CHAIRMAN CROSBY: How do you -- how do
3 you -- are you suggesting that maybe we
4 should have a different standard at the
5 beginning when there's just going to be such
6 a high volume?

7 COMMISSIONER MCHUGH: No, no, I'm
8 suggesting that in the -- that key -- not
9 necessarily all key gaming employees which
10 were defined in the statute as anybody who
11 has -- has supervisory authority. And I know
12 we have to refine that more. But that not --
13 that they don't automatically come to us for
14 licensing. That the -- that the licensing
15 buck stops with the IEB unless there's a
16 denial. Then everybody gets the right to
17 come to us, but that we define a layer of
18 supervisory authority that's closer to the
19 top, and those people automatically come to
20 us for the final approval. So that you -- we
21 approve the final -- give final approval to
22 the people at the top as a routine matter.
23 Maybe it's the top 50 people in a casino, or
24 the top -- I don't know, some number, but

1 some number that's manageable that we can
2 actually do something with, rather than just
3 all be equipped with a rubber stamp.

4 CHAIRMAN CROSBY: Yeah, I'm -- I
5 guess, if the issue is volume, that's going
6 to change dramatically from the first X
7 period of months to steady state operations.

8 If the issue is what level of
9 responsibility is really worth the
10 Commission's review, which I think is the
11 question, then we ought to let the volume
12 sort of go wherever it goes. You know, the
13 question is what level of supervision really
14 requires us to review it, but if it means
15 that for the first six months we're sort of
16 swamped, that's okay, but --

17 COMMISSIONER MCHUGH: I think that the
18 two are more intertwined than that because as
19 a practical matter, giving review, meaningful
20 review at our meetings, bi-weekly meetings,
21 has something to do with the amount of time
22 we have available to look at the packages
23 represented and the information we get in
24 those packages. And that is certainly going

1 to be greater at the beginning than it is in
2 a steady state. But it's going to be
3 significant in a steady state.

4 I don't know what the turnover is in
5 these positions, but we could have 50 -- we
6 meet 26 times a year, we could -- if we have
7 it -- anybody who has supervisory authority,
8 we could easily have 50 per meeting, it seems
9 to me, just on a steady state. I got that
10 number out of the air.

11
12 CHAIRMAN CROSBY: That's 2500.

13 COMMISSIONER MCHUGH: Yeah.

14 DIRECTOR ACOSTA: In New Jersey, the
15 keys were actually broken down into two
16 categories similar to what you're describing.
17 There was that key qualifier level, which
18 were the real high keys, and then there was
19 another category that we referred to as basic
20 keys, the -- supervisors, the security
21 supervisors.

22 CHAIRMAN MCHUGH: Right. Right.

23 DIRECTOR ACOSTA: But yes, they are
24 vetted to a higher standard than a gaming

1 employee, but not need to complete a multi-
2 jurisdiction form with a supplemental form.
3 And there was a condensed key application
4 that was greater than a gaming application,
5 but not as great as the key qualifiers.

6 So, your suggestion has been practiced
7 in New Jersey where the keys are broken down.
8 And this is something that we can -- when we
9 define what are keys, we can break it down
10 into level. There have been other practices
11 in other states.

12
13 COMMISSIONER MCHUGH: I would -- I
14 would really like to explore that.

15 CHAIRMAN CROSBY: I agree with that.
16 I think that's a great suggestion.

17 COMMISSIONER ZUNIGA: Yeah, it sounds
18 like we're in all in agreement and it's --
19 the point is, just who is a key.

20 CHAIRMAN CROSBY: Yeah.

21 COMMISSIONER MCHUGH: Right.

22 COMMISSIONER ZUNIGA: How many and
23 what's the -- what does a chart look like?

24 COMMISSIONER MCHUGH: Right.

1 CHAIRMAN CROSBY: So, you've got a
2 direction. I have two quick, I hope quick
3 questions. One is -- both this question and
4 the one before refer to temporary licenses.

5 We've never discussed temporary
6 licenses, I don't know what they are, but
7 that's another --

8 ATTORNEY GROSSMAN: I think the
9 statute, it talks about temporary licenses.

10 CHAIRMAN CROSBY: What does it -- does
11 it define them?

12 ATTORNEY GROSSMAN: I don't know that
13 it defines it. Basically --

14 CHAIRMAN CROSBY: Let me just -- we --
15 just obviously another question is, what is a
16 temporary license, what is sufficient
17 justification for a temporary license, what
18 process awards it.

19 I didn't want to just all of sudden
20 start talking about temporary licenses
21 without everybody having determined what they
22 are, where they come from, how many there
23 are, what the process is.

24 DIRECTOR ACOSTA: My understanding of

1 the temporary license, because I -- what I
2 read is similar to it in New Jersey. During
3 the time of suitability investigation, the
4 gaming establishment will submit a request to
5 the Commission saying this person is urgent
6 to our operation, we need them to commence
7 employment sooner than suitability. In
8 particular with keys because the suitability
9 investigation for a key may take -- New
10 Jersey was taking, you know, ten weeks,
11 twelve weeks. So, it would allow the casino
12 to demonstrate an urgent need to the
13 Commission to issue a temporary license for a
14 period of time to allow for the suitability
15 investigation.

16 CHAIRMAN CROSBY: Okay. I -- I
17 understand that. And I'm sure there will be
18 some such situation that we would accept.
19 But I'm just bringing it up as something
20 we're going to need to define to determine
21 what -- what the process is. And that's the
22 kind of thing where everybody could be
23 temporary, you know, it could become, sort
24 of, the norm, it happens in the state all the

1 time. So, I just -- I'm just raising that as
2 something that is a new term to us that needs
3 to be figured out.

4 Secondly, does the statute call for
5 IEB to be the decision maker on licensing?
6 I'm gathering the way you speak, the answer
7 is yes.

8 COMMISSIONER CAMERON: Some licenses.
9 I mean, that's where we're going to need
10 regulations to clarify where they -- where
11 are they authorized on behalf of the
12 Commission to make those decisions.

13
14 CHAIRMAN CROSBY: Well, we're going to
15 delve --

16 COMMISSIONER CAMERON: Yeah.

17 CHAIRMAN CROSBY: Right. Well, yeah.
18 But what strikes me as a little funny, and
19 maybe this is wrong, is that it seemed to me
20 the Licensing Department should be the
21 department that makes decisions on whether or
22 not somebody gets a license. The IEB should
23 be what the IEB is to us, which is the finder
24 of fact, and does the investigations, and

1 goes to the Licensing Department whose
2 expertise is to say, okay, under these
3 circumstances you're in or you're out. Does
4 that --

5 COMMISSIONER CAMERON: Doesn't make
6 sense to me, because the investigation is
7 what you're making that judgment. And
8 certainly the IEB has a better sense of the
9 investigation of what that means. That's not
10 the way I understand licensing, although
11 there is some clarification on pieces that
12 licensing could do, i.e. fingerprints, and
13 assist, and do the early -- the front-end
14 work for the IEB.

15 COMMISSIONER MCHUGH: The statute
16 really talks about filing applications with
17 the Bureau and registering with the Bureau,
18 is what the statute talks about.

19 Now, certainly regulations can be
20 created to create and effect an interface
21 between the Licensing Division and the
22 Bureau. So, there's a lot of ways that that
23 can be done.

24 CHAIRMAN CROSBY: Right. I mean, we

1 could delegate whatever responsibility. Do
2 you -- do you have a sense? I mean, you now
3 know our structure. Does it -- in your
4 experience does it make sense to have IEB be
5 the decision maker on who gets what licenses,
6 or the Licensing Department make the
7 decisions on who gets what licenses?

8 DIRECTOR ACOSTA: Both New Jersey and
9 Ohio, the IEB or the equivalent of the IEB
10 made the decision to recommend or deny based
11 on their findings. The License Division was
12 the administrative arm that carried on the
13 process to the point of issuance of a license
14 to creating a credential, to ensuring that
15 that credential is issued to the appropriate
16 person.

17 CHAIRMAN CROSBY: And that feels right
18 to you?

19 DIRECTOR ACOSTA: And that feels right
20 to me. It's worked in other places, I think
21 the IEB here will be --

22 COMMISSIONER ZUNIGA: The difference
23 --

24 DIRECTOR ACOSTA: -- for that role.

1 COMMISSIONER ZUNIGA: -- the
2 difference being administrative versus
3 investigatory.

4 COMMISSIONER CAMERON: Yes.

5 CHAIRMAN CROSBY: Well, there's three
6 phases. There's administrative, there's
7 investigatory and then there's decision
8 making. But whatever. So, shall we move on
9 to the next one?

10 DIRECTOR ACOSTA: The next one is
11 licensing fees, registration fees. I'm
12 recommending that the Commission establish a
13 set fee for gaming employee license and
14 registrants. And that key qualifiers have a
15 fee that it is an initial deposit, and you
16 can bill up to a certain amount to cover
17 whatever cost is incurred to complete
18 suitability. That has been practiced in
19 other places.

20 In New Jersey there was an initial fee
21 of \$750.00 and they could bill a maximum of
22 \$4,000.00. The average cost of the key
23 license in New Jersey was about 2,800. The
24 state of Ohio, there was an application fee

1 of \$2,000.00. At a time of licensure, there
2 was another \$500.00 and then \$46.00
3 associated with fingerprints.

4 The end result is that the application
5 fee for a key is pretty much close, but there
6 were circumstances in New Jersey where the
7 background investigation exceeded the 25,
8 \$2,600.00 that other states established. And
9 this mechanism of establishing a deposit, a
10 minimum deposit, and up to a maximum is one
11 that I found to be a most efficient practice
12 by a number of other states.

13 You will see, there's a chart attached
14 to it there lists different fee structures of
15 some of the states that we were able to
16 verify. And you will see that some of the
17 states have similar things where there is an
18 application fee, and at the end of the day
19 the cost exceeded that amount they will be
20 billed.

21 For gaming employees, an established
22 fee, that's -- incorporates some of the costs
23 associated. In the state of New Jersey it
24 was \$350.00, that included fingerprints. In

1 the state of Ohio it was \$250.00, and at the
2 time of application it would be \$46.00 for
3 fingerprints, and at time of licensure there
4 was another \$250.00 that was due, that was
5 billed directly to the casinos. And the
6 casinos would pay the Commission. And the
7 casinos would work out some type of payment
8 agreement between the employee and the -- and
9 the perspective applicant.

10 In New Jersey the cost was \$350.00,
11 which was a lot less than 500. When the cost
12 to investigate a background for a gaming
13 employee exceeded the \$350.00, the Commission
14 was able to bill as administrative cost into
15 the billing of the casinos, and therefore
16 only \$350.00 was recouped from the applicant.

17 In Ohio there was a straight budget.
18 There was no way to bill back to the company
19 any additional cost. So, that's why it was
20 essential for them to establish an initial
21 license fee that was significantly higher
22 than other states.

23 I would say that the average is about
24 \$300.00 for a three-year license fee. I

1 would recommend to be along those lines with
2 respect to fees.

3 We should also consider what the fee
4 will be like for renewals, because there's
5 another question that we'll be talking about
6 in here that I think goes along with this fee
7 structure. And that is if you establish a
8 fee -- because renewals have already been
9 established as three years for keys in
10 gaming, that if we establish a fee of
11 \$350.00, to ask the individual to file an
12 application on the timely basis that there'd
13 be some carrot. So, for example, you're
14 having \$350.00 for three years, but if you
15 renew on a timely basis it's \$350.00 for four
16 years or \$300.00 for four years. It
17 encourages the individual to file the
18 application on a timely basis. They do not
19 file the application on a timely basis, then
20 at that point you revert back to the initial
21 license fee. So, there's some incentive
22 there to file the application on a timely
23 basis.

24 When considering fees, the renewal

1 factor also has to be considered. With
2 respect to registrations, I know the State of
3 Delaware -- New Jersey was a little bit
4 different, but the state of Delaware has a
5 fee for five years. After the five years
6 they re-register and there's a fee there. In
7 New Jersey it was a one time registration
8 fee, then they added a caveat that if you
9 were out of the industry for three
10 consecutive years, your registration became
11 inactive and you're required to re-register.

12 In talking to Commissioner Wells, I
13 think the five years re-registration with a
14 nominal fee would probably work best here.
15 We would at least get the updated
16 information.

17 With respect to registration, we're
18 hoping to incorporate a process that in New
19 Jersey we used to refer to as a the flag
20 system, in Ohio we just referred to it as the
21 rat back system, and that is we will provide
22 a list to the state police, the state police
23 will monitor this list. And they will notify
24 us when an individual on that list has been

1 arrested. The investigation enforcement unit
2 will then investigate the circumstances
3 around that arrest and bring action if
4 suitability is now in question.

5 There was a fee associated with
6 maintaining that list by the state police.
7 In New Jersey that list became well over
8 300,000 and the cost became very prohibited,
9 and that's when they put the provision where
10 if you were unemployed, out of the industry
11 for a period of three years, you're not
12 registered any longer and you'll be off that
13 list. So, keep the cost down by asking that
14 you re-register every five years, we can
15 control that as well.

16 Rat back, flag system, I don't know
17 what they would call it in Massachusetts,
18 currently doesn't exist. My understanding is
19 that that is being looked at in other areas.
20 And hopefully, we can be a part of that as
21 well.

22 Again, I'm recommending keys be a fee
23 that's minimum a deposit up to a certain
24 amount, that the gaming applications be a

1 flat fee, the registrations be a nominal fee.

2 The registrations will be with people
3 who will be working in hotels, restaurants,
4 etcetera. Gaming -- gaming vendors will also
5 be -- be similar to keys where there is a
6 minimum deposit and there is a maximum amount
7 billed, and may also include, depending on
8 the number of qualifiers that that company
9 may have, there may be additional costs per
10 each qualifier because of the extent of the
11 bill, the background investigation the cost
12 associated with that.

13 For vendor registrants, there is a
14 level of business that they must establish
15 before they become suitable for registration.
16 That there'll be no fee once they reach a
17 certain level of business, and they now
18 trigger the license fee. Then at that time
19 there would be a fee associated with the --
20 with that application.

21 CHAIRMAN CROSBY: Comments?

22 COMMISSIONER MCHUGH: That all sounds
23 good to me.

24 COMMISSIONER CAMERON: Yeah.

1 COMMISSIONER MCHUGH: I mean, I think
2 that's -- that sort of sensitive approach
3 tailored to the position, sounds like --
4 sounds like a good approach.

5 COMMISSIONER ZUNIGA: That's --

6 COMMISSIONER MCHUGH: The details, I'd
7 be happy to take your recommendations as to
8 what the fees are.

9 COMMISSIONER ZUNIGA: Same here.
10 Sorry for interrupting, but I -- I wonder, it
11 occurs to me that as we invest in a licensing
12 system, if we were to apportion all the costs
13 of licensing, we may not be able to defray
14 all of the costs on this particular licensing
15 structure. Which is fine, we have the
16 ability to assess our applicants and we will
17 -- we will do that.

18 But what -- what -- I suspect the
19 threshold that you recommend is arrived at
20 trying not to put too much burden on the
21 employees because ultimately they are the
22 ones who bear that cost. Is that -- is that
23 a fair statement?

24 DIRECTOR ACOSTA: That is a fair

1 statement. That is correct. In particular
2 for registrants who are people who are
3 probably most in needs for finding these jobs
4 are the unemployed, the ones who probably
5 will have the most difficulty in paying for
6 license, fee at the very -- very beginning.
7 Once they are employed, obviously, you know,
8 the circumstances may change and they --they
9 could afford that. But yes, that -- that is
10 the thought process for this recommendation.

11 COMMISSIONER ZUNIGA: I think your
12 recommendations are very sound.

13 CHAIRMAN CROSBY: I -- just to follow
14 up on that, I hope that we would be at the
15 low end of the cost scale for just that same
16 reason that you're already sensitive to. We
17 don't want this to become a barrier in any
18 way to the audiences that we're most trying
19 to attract or serve.

20 DIRECTOR ACOSTA: We touched a little
21 bit about the licensing, registration and
22 renewals with respect to fees. The
23 Commission has already made a decision that
24 the initial license period for keys and

1 gaming is for three years.

2 There was no mention, and I haven't
3 read anywheres where there's been a
4 recommendation for a time period for
5 registrants. I'm recommending that the
6 registrant period of time the five years.
7 And then they re-register.

8 With respect to keys and gaming
9 employees, that after the initial three
10 years, that a year will be added to the
11 renewal, so that the second time that they
12 renew on a timely basis will be four years
13 versus a three-year license. And we can
14 leave the license fees the same, but the
15 incentive would be to file early is that
16 extra year of licensure. I think four-year
17 cycle is sufficient with respect to going
18 back and reviewing suitability. We should be
19 able to keep track of individuals. The
20 section in the statute that talks about a
21 duty to disclose, so it's the individual's
22 responsibility to tell the Commission
23 anything that is material during the period
24 of time from the issuance of a license to the

1 time of renewal. If they fail to do that,
2 and we discover that, we can take action for
3 failure to disclose. Especially if they've
4 committed an offense that may jeopardize
5 their suitability.

6 COMMISSIONER MCHUGH: Sounds good.

7 COMMISSIONER CAMERON: Yeah.

8 CHAIRMAN CROSBY: This is another area
9 where I was hoping Jill, that your -- you and
10 your people would -- would review this with a
11 really sensitive eye, because, you know, this
12 is a lot of steps, you know. You've got to
13 go to a computer, you got to do a lot of
14 things and it's the kind of process that some
15 people will have a hard time with.

16 And maybe I'm oversensitive to it, I
17 don't know. But people who are not
18 oversensitive to it who know about this, I
19 think should review this. So, that's one
20 thing. Go ahead.

21 DIRECTOR GRIFFIN: No, I think you're
22 sensitive to it and I think that's great. I
23 think there does need to be a discussion
24 about how folks get help maybe filling out,

1 and there are resources. So, that could be
2 part of the discussion.

3 CHAIRMAN CROSBY: Yeah, right. And
4 cures for missing deadlines. There's a whole
5 bunch of stuff. But anybody who is --

6 DIRECTOR GRIFFIN: Right.

7 CHAIRMAN CROSBY: -- who works with
8 this target audience will read these bullet
9 points and be able to say is this really
10 problematic or not.

11 DIRECTOR GRIFFIN: Okay.

12 CHAIRMAN CROSBY: The second thing is
13 that you propose the gaming service employee
14 required to undergo a standard background and
15 a CORI check. I guess we haven't decided
16 what the result of the CORI check necessarily
17 means. But this is something we talked about
18 for a year now, that -- that CORI, credit and
19 drugs are going to be a problem for some
20 number of people.

21 And I think we want to think through
22 what -- what level of results under CORI,
23 credit and drug are going to be a problem --
24 problematic. So, it's -- I didn't want this

1 to just go unnoticed, that we've
2 automatically, you know, decided that gaming
3 service employees, people who are making beds
4 are going to go -- undergo -- no, sorry this
5 is -- yeah, gaming service employees, like
6 people who are making beds are going to have
7 a CORI check, if that automatically implies
8 if something comes up they are out. So, I
9 just think this is a -- this is a content
10 area, this is a policy area, and this again,
11 involves you, Jill, that we want to talk
12 about really carefully and try to figure out
13 how can we apply thoughtful law enforcement,
14 you know, and thoughtful protection of the
15 public and of the integrity of the facility
16 and so forth, while not compromising our
17 ability to employ target groups.

18 COMMISSIONER MCHUGH: All three aren't
19 necessarily on the same level. The credit
20 piece is going to be pervasive.

21 CHAIRMAN CROSBY: Right.

22 COMMISSIONER MCHUGH: In the part of
23 the community we want to attract undoubtedly.
24 And that -- and that is conceivably different

1 than CORI or drugs.

2 CHAIRMAN CROSBY: Right. I agree. I
3 just think all three of those --

4 COMMISSIONER MCHUGH: Right.

5 CHAIRMAN CROSBY: -- we really need to
6 -- we really need to spend some time --

7 COMMISSIONER MCHUGH: Right.

8 CHAIRMAN CROSBY: -- to hash out what
9 -- what our standards are. And to have the
10 help of people who work with the -- those
11 appropriate demographic groups.

12 DIRECTOR ACOSTA: The last piece is a
13 policy question pertaining to suitability.
14 That if a person is granted a license just
15 based on suitability, or that it also include
16 an education piece. And I am recommending
17 that there be strong language to encourage
18 that the casinos hire people who are trained
19 and that they work with the employment and
20 training programs, that they work with the
21 community colleges. But the actual
22 verification of education not be included as
23 a piece of licensure.

24 We did that in New Jersey. It was --

1 we had a whole unit that was assigned to do
2 that. It was very labor intensive, it was
3 rather expensive. And I don't know if that's
4 the most efficient way to go about it.

5 There's only one state that I know of at this
6 time that does require licensure to also
7 include education as well as suitability, and
8 that is the state of Pennsylvania.

9 I remember a number of calls while I
10 was still in New Jersey from individuals who
11 worked in New Jersey, were educated in New
12 Jersey who went to work in Pennsylvania, were
13 having a difficult time obtaining a license
14 because they were unable to verify to
15 Pennsylvania that they did have in fact the
16 educational requirements.

17 There were a number of schools that
18 went out of business, they did not have their
19 certificates. They were unable to get their
20 certificates. The State didn't have their
21 certificates. These individuals had to take
22 courses in Pennsylvania in order to get a
23 license. It became a real hardship for
24 people that really needed to work.

1 I understand the piece of requiring
2 education. I understand the intent of
3 partnering with the colleges, partnering with
4 the employment and training. I think this is
5 another area that we can look at while you're
6 doing the evaluation for licensure as to how
7 these companies are going to be fulfilling
8 that.

9 We can write in internal controls,
10 stringent procedures to ensure that they do
11 have qualified individuals. And if they
12 don't they could be subject to penalties and
13 fines without having to require licensure to
14 be suitability and education as well.

15 COMMISSIONER CAMERON: So, the burden
16 is on the casino and their hiring folks as
17 opposed to the Commission.

18 MR. ACOSTA: Correct.

19 COMMISSIONER CAMERON: And we have the
20 compliance piece, which is if we find out
21 you're not doing it properly, there are fines
22 and whatever else. Is that what you're
23 saying?

24 DIRECTOR ACOSTA: That is correct.

1 COMMISSIONER MCHUGH: It seems to me
2 that -- that -- that approach flows from a
3 decision that we're going to have primarily
4 casino-based licensing.

5 COMMISSIONER ZUNIGA: Yeah.

6 COMMISSIONER MCHUGH: Because from the
7 school to the casino, to the licensing board.
8 Or from the -- from the background and
9 experience to the casino, to the licensing
10 board in the market, the market interest in
11 qualified employees is parallels the casino's
12 interest in qualified employees. The casino
13 doesn't want an incompetent blackjack dealer
14 or an incompetent croupier.

15 So, it seems to me that that makes
16 sense, and it also removes a big chunk of
17 regulatory mechanism that otherwise we would
18 have to have in place with probably imperfect
19 results. So, I -- I think that makes sense.

20 COMMISSIONER ZUNIGA: I agree.

21 CHAIRMAN CROSBY: I agree. Okay.
22 That was easy enough.

23 DIRECTOR ACOSTA: That concludes --

24 CHAIRMAN CROSBY: All right.

1 DIRECTOR ACOSTA: -- those five
2 questions.

3 CHAIRMAN CROSBY: Thank you.

4 COMMISSIONER MCHUGH: That's great.
5 That gets us --

6 COMMISSIONER CAMERON: Thank you.

7 CHAIRMAN CROSBY: This old horse is
8 smelling the barn.

9 DIRECTOR ACOSTA: And I want to thank
10 Todd for -- Todd and Karen Wells for helping
11 me walk through all of this. It's not easy.

12 COMMISSIONER MCHUGH: Good team
13 effort, yeah. Thanks.

14 CHAIRMAN CROSBY: Item number 9,
15 Director Griffin.

16 DIRECTOR GRIFFIN: Mr. Chairman,
17 Commissioners, I know I'm between you and the
18 door. But --

19 COMMISSIONER MCHUGH: The barn door?

20 DIRECTOR GRIFFIN: The barn door. But
21 this is an important issue. So, Chapter 23K,
22 Section 1-6 states that promoting local small
23 business and the tourism industry including
24 new and existing small business is

1 fundamental to the policy objectives of this
2 chapter.

3 So, I'm here today recommending that
4 Mass Gaming Commissioners define small
5 business. And I'm here asking you to do
6 this, or to clarify for a number of reasons.

7 One is that on the federal definition
8 of a small business is simply inadequate when
9 you describe the Massachusetts economy. The
10 federal definition has a threshold of 500
11 employees, or a revenue size of up to 35.5
12 million, depending on the NAICS code or the
13 type of business.

14 So, in Massachusetts, according to
15 that definition and this is according to Bob
16 Nelson, Massachusetts District Director of
17 the SBA, according to that definition, 98
18 percent of businesses in Massachusetts would
19 be considered a small business. According to
20 the U.S. Department of Commerce census that
21 was done in 2008, the latest census, 85.5
22 percent of the businesses in Massachusetts
23 have 20 or fewer employees. Only 7 or 8
24 percent have more than 100.

1 Outside of greater Boston,
2 approximately 95 percent of the firms have
3 fewer than 10 employees. So, you know, if
4 you're looking at the western part of the
5 state, you know, this is really a concern.
6 After our vendor advisory task force, members
7 suggested that we issue a clarification to
8 applicants.

9 The other reason, in addition to the
10 inadequate federal definition, there's a real
11 difference between a business, and I'm sure
12 you know this, but a multimillion dollar
13 operation and hundreds of employees, you
14 know, and a really small business. They have
15 different perspectives, radically different
16 needs. For example, access to capital, the
17 day-to-day operations. And an applicant or a
18 licensee may want to radically change their
19 procurement policies or other -- other
20 thought processes if they were targeting a
21 much smaller business in a vendor/supplier
22 capacity.

23 So, some of the things we've looked at
24 are existing definitions of small business in

1 the Commonwealth. And there does -- the
2 Commonwealth has a couple of definitions that
3 are related to a specific program. For
4 example, the Mass Growth Capital Corporation
5 adheres to the federal definition of a small
6 business. Whereas the -- and I think I
7 attached the small business purchasing
8 program which adheres to a much smaller
9 definition, which is 50 full-time workers or
10 less than 15,000,000 average gross annual
11 revenues over a three-year period. And these
12 are businesses based in Massachusetts in
13 business for at least one year.

14 The other definition, which is --
15 which is similar -- a similar threshold, is
16 the Mass Group Health Insurance definition of
17 a small business which also looks at up to 50
18 employees.

19 So -- so, I guess what I'm suggesting
20 is that we issue a clarification of what is a
21 small business or what are the targeted sizes
22 of small businesses that we would like
23 applicants to think about.

24 And I'll just add, we've had

1 discussions with Bill Vernon from the
2 National Federation of Independent
3 Businesses; with Andre Porter from the Office
4 of Small Business and Entrepreneurship; with
5 Chris Garren from the Associated Industries
6 of Massachusetts. You know, all agree that
7 the federal definition doesn't seem to serve
8 our purpose.

9 So, I think there are two choices. We
10 can adopt an existing definition, say the one
11 that the small business purchasing program
12 uses of 50 employees, or we could land
13 somewhere in the middle. Andre Porter
14 suggests that perhaps 100 employees wouldn't
15 rule folks out, but it would at least target
16 a it little bit more. So --

17 COMMISSIONER CAMERON: Director, are
18 we in -- I mean is there -- is there a
19 formula? I understand the federal model
20 doesn't work for us, but just creating our
21 own, are we in any jeopardy of how did you
22 come about that, what standards do you use,
23 is it -- does it make more sense to use one
24 that's already in existence for that reason?

1 If it fits our needs, obviously.

2 DIRECTOR GRIFFIN: I think it makes
3 sense to adopt a program that is in
4 existence, like the one I included in your
5 packet.

6 COMMISSIONER MCHUGH: Do we -- do we
7 have an idea -- we have certain kinds of
8 businesses that are logically going to
9 interact with the casinos, right? We have --
10 we have linen supplier; we have food
11 suppliers; we have restaurants; we have
12 others we can see. And then during the
13 construction phase we can identify a whole
14 bunch of others that are going to interact.
15 Do we have any idea of what the impact of one
16 or more of these definitions would have on
17 that target group? I was thinking as you
18 were talking, about restaurants. We are
19 trying to ensure that -- that the casinos
20 interact with restaurants. Does -- certainly
21 the corner -- the corner -- the corner
22 restaurant employees less than 50 people, so
23 it would be a small business.

24 DIRECTOR GRIFFIN: Yeah.

1 COMMISSIONER MCHUGH: Does the -- does
2 the higher end restaurant, that you'd also
3 want to be part of this, employ more than 50
4 --

5 DIRECTOR GRIFFIN: Yeah, usually the
6 definition focuses on full-time permanent
7 employees.

8 COMMISSIONER MCHUGH: Right.

9 DIRECTOR GRIFFIN: And so, you know, I
10 -- I wouldn't think it would have a huge
11 impact on the restaurant industry. You know,
12 and -- and I think the local neighborhood
13 restaurants and some of the local businesses
14 that we are trying to grow would potentially
15 have a positive benefit.

16 COMMISSIONER MCHUGH: Yes. I -- I
17 don't disagree with that. I -- it's not the
18 -- it's not so much the benefit of the --

19 DIRECTOR GRIFFIN: Yeah.

20 COMMISSIONER MCHUGH: It's -- it's who
21 are we potentially excluding. That's just
22 what I just was --

23 DIRECTOR GRIFFIN: Well, I guess we're
24 not trying to exclude anyone. What we're, I

1 think trying to get applicants to think about
2 is, I think that very large businesses don't,
3 you know, have no problem doing business with
4 a larger businesses.

5 COMMISSIONER MCHUGH: Right.

6 DIRECTOR GRIFFIN: What we're trying
7 to maybe get them to think about is how do
8 you work with a local business that has
9 maybe, you know, smaller capacity.

10 COMMISSIONER MCHUGH: Right.

11 DIRECTOR GRIFFIN: You know, do you
12 split contracts, do you, you know, that sort
13 of thing.

14 COMMISSIONER MCHUGH: Right.

15 DIRECTOR GRIFFIN: And I'd invite
16 Commissioner Stebbins to join in since we've
17 been discussing this.

18 COMMISSIONER STEBBINS: Did you have
19 something you wanted to --

20 COMMISSIONER ZUNIGA: Well, I -- I
21 was, I did. Perhaps we should also -- I
22 think the definition of small business is
23 important, and I think, you know, we should
24 continue exploring that. I also would --

1 would point to some of the approach that the
2 Operational Services Division has taken and
3 also the Supplier Diversity Office, which is
4 to recognize that you may be contracting with
5 a large business, but that business itself
6 may have a larger or smaller participation of
7 small business. And that should be accounted
8 for --

9 DIRECTOR GRIFFIN: Right.

10 COMMISSIONER ZUNIGA: -- because even
11 though initial purchase order may be only
12 fulfilled by a large conglomerate, they
13 themselves have a lot of activity, some of
14 them -- some of which could be local and some
15 of which could be small business as well.
16 Now --

17 DIRECTOR GRIFFIN: Absolutely.

18 COMMISSIONER ZUNIGA: The -- so -- so
19 this takes me back to a previous point
20 relative to measuring. How do we keep track
21 of this, but I would sort of leave it at
22 that. We wouldn't want, you know, the second
23 subcontractor to measure where they buy from
24 necessarily. But -- but I think the first

1 relationship, the sub of that first supplier
2 is an important thing to consider.

3 DIRECTOR GRIFFIN: Absolutely. I
4 would agree, and definitely something we need
5 to figure out how to measure.

6 COMMISSIONER STEBBINS: I would -- I
7 would just comment to say, you know, we had
8 this discussion a long time ago when we were
9 going through initial set of policy
10 questions. And I think we all remarked as we
11 have today, that, you know, 500 employees
12 just seemed ludicrous as a definer in
13 Massachusetts as a small business.

14 Certainly, you know, healthcare
15 legislation and other programs, come along,
16 and maybe give us better definition. I was
17 looking at, you know, the small business
18 purchasing program sheet, and not only does
19 it delineate a small business as 50 or fewer
20 full-time equivalents, but an interesting
21 piece is it has its principal place of
22 business in Massachusetts.

23 DIRECTOR GRIFFIN: Yeah.

24 COMMISSIONER STEBBINS: You know, the

1 notion of an applicant telling us they're
2 working with small business, you know, a
3 small business like Microsoft, but who only
4 has 40 employees in Massachusetts I think
5 would be a little disingenuous. You know, I
6 would -- I would like to suggest, again I'm
7 not feeling that we're under a serious time
8 line to get this issue addressed. Maybe, you
9 know, floating the question out on our
10 comments line as to, you know, should a small
11 business in Massachusetts be defined as 50 or
12 100. And certainly I like the definition or
13 adding to the definition in having its
14 principal place of business in Massachusetts.
15 Put it out there for a week or so and see
16 what kind of comments and feedback we get, so
17 we don't, you know, inadvertently X somebody
18 out or put somebody at a disadvantage.

19 I mean, we've had some comments from
20 people that, you know, are part of our
21 stakeholder group that have asked for changes
22 in the definitions, or define it a little bit
23 better. But you know, if we have some time
24 we should put it out and see what kind of

1 comment and feedback we get.

2 COMMISSIONER MCHUGH: Your -- your
3 comments led me to a second thought. And
4 that is what are the consequences of our
5 definition. I mean, apart from the practical
6 impact on employers. The -- the consequences
7 are -- begin to appear as we evaluate the
8 applications, right?

9 COMMISSIONER STEBBINS: Mm-hm.

10 COMMISSIONER MCHUGH: So, some of the
11 evaluations -- some of the applications are
12 going to be here tomorrow.

13 COMMISSIONER STEBBINS: Right.

14 COMMISSIONER MCHUGH: So, it's too
15 late to affect probably the content of those.
16 But that -- but that does mean that we ought
17 to deal with this quickly, right. Do the --
18 and what are the -- I mean, so we've got --
19 we've got questions in the application that
20 talk about how you -- how we're going to deal
21 with small businesses. And that would be
22 affected by this definition. What other --

23 DIRECTOR GRIFFIN: Right.

24 COMMISSIONER MCHUGH: What other

1 regulatory impacts would this definition
2 have?

3 DIRECTOR GRIFFIN: I don't know that
4 this is regulatory. The -- many of the host
5 community agreements, the applicants have
6 specified that they will --

7 COMMISSIONER MCHUGH: I see.

8 DIRECTOR GRIFFIN: -- work with the
9 local communities and hire local vendors and
10 small businesses.

11 COMMISSIONER MCHUGH: Okay. So, it
12 would have an impact on the host community
13 agreements and -- and the target groups to
14 satisfy the obligations under those
15 agreements.

16 CHAIRMAN CROSBY: And the legislation
17 doesn't set out any thresholds, right?

18 COMMISSIONER MCHUGH: No, it doesn't.

19 CHAIRMAN CROSBY: It speaks to promote
20 these --

21 COMMISSIONER MCHUGH: Right.

22 CHAIRMAN CROSBY: -- kind of -- but it
23 leaves open any kinds of specifics.

24 COMMISSIONER MCHUGH: Right, right.

1 CHAIRMAN CROSBY: Yeah. I'm certainly
2 comfortable with Commissioner Stebbins' idea
3 of putting this out. Has you -- have you run
4 the proposal of using the small business
5 purchasing program by that advisory group?

6 DIRECTOR GRIFFIN: Not by the entire
7 advisory group. We've reached out to a
8 handful of members.

9 CHAIRMAN CROSBY: Those people by
10 definition would be as good a group as any to
11 review this.

12 DIRECTOR GRIFFIN: Yeah.

13 CHAIRMAN CROSBY: Say send it out to
14 the whole group. And in -- but I think
15 inviting broader comment is fine. I also
16 agree that time is pretty short because if
17 the Category 1 folks are going to have a
18 chance to speak to it, it's going to have to
19 happen, you know, fairly soon.

20 But in general I think the small
21 business program is fine. I mean it's
22 arbitrary, 50 as opposed to 45 or 65 is kind
23 of irrelevant. But these are commonsense
24 numbers. And it's been practiced, and it's

1 tried-and-true for the State. So, I think
2 that sort of having a presumption that this
3 is the way we want to go. Run it by our
4 Expert Advisory Board and invite outside
5 comment, and give it a week or so and see
6 what we come up with. But with the
7 presumption that this idea is good.

8 COMMISSIONER STEBBINS: I just -- I
9 just think having to, you know, to Jill's
10 efforts, having a conversation about this
11 because I think people are more mindful of
12 the SBA definition, which, you know, 500 as a
13 small employer in Massachusetts is somewhat
14 laughable. You know, looking at the optics
15 of it all of an applicant saying I'm
16 supporting small business and, you know, I'm
17 contracting with people who are at 500 I
18 think, you know, the reaction of the general
19 population would be that's -- that's not a
20 small business.

21 So, I think kind of drawing a
22 delineation or at least some type of
23 editorializing that the SBA definition kind
24 of goes out the window here in Massachusetts,

1 and that there are some reasonable
2 alternatives that have been produced to, you
3 know, the public sector I think will balance
4 the equation and the conversation and the
5 results a little bit better.

6 CHAIRMAN CROSBY: Good. I agree.

7 DIRECTOR GRIFFIN: Thank you.

8 CHAIRMAN CROSBY: So, we've got a
9 plan. Do we have anything else?

10 COMMISSIONER MCHUGH: How could we?

11 CHAIRMAN CROSBY: Do we have a motion?

12 COMMISSIONER MCHUGH: I move that we
13 adjourn.

14 CHAIRMAN CROSBY: Second?

15 COMMISSIONER CAMERON: Second.

16 CHAIRMAN CROSBY: In favor? Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER STEBBINS: Aye.

19 COMMISSIONER MCHUGH: Aye.

20 CHAIRMAN CROSBY: Unanimous. Thank
21 you, folks.

22

23 (Proceedings concluded at 4:17 p.m.)

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GUEST SPEAKERS:

- Mitchell Grossinger Etess, Mohegan Sun
- David Rome, Mohegan Sun
- Patrick W. Kelly, Brigade Capital Management
- Doug Pardon, Brigade Capital Management
- Kevin C. Conroy, Foley, Hoag
- John A. Stefanini, DLA Piper
- Elizabeth Dello Russo, City of Boston Law Dept.

MASSACHUSETTS GAMING COMMISSION STAFF:

- Catherine Blue, General Counsel
- Todd Grossman, General Counsel
- Jill Griffin, Director of Workforce Supplier and
Diversity Development
- John Ziemba, Ombudsman
- Mark Vander Linden, Research and Problem Gaming
- Jennifer Durenberger, Racing Division
- David Acosta, Licensing Division

C E R T I F I C A T E

I, Pauline L. Bailey, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Pauline L. Bailey, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Pauline L. Bailey, further certify that 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 7th day of October, 2013.

PAULINE L. BAILEY
Notary Public



My Commission expires:
November 7, 2014

