

1 THE COMMONWEALTH OF MASSACHUSETTS
2 MASSACHUSETTS GAMING COMMISSION
3 PUBLIC MEETING #169
4

5 CHAIRMAN

6 Stephen P. Crosby
7

8 COMMISSIONERS

9 Gayle Cameron

10 Lloyd Macdonald

11 Bruce W. Stebbins

12 Enrique Zuniga
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21 November 12, 2015 10:30 a.m.- 4:28 p.m.

22 MASSACHUSETTS GAMING COMMISSION

23 101 Federal Street, 12th Floor

24 Boston, Massachusetts

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

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4 CHAIRMAN CROSBY: I am happy to call
5 to order public meeting 169 of the
6 Massachusetts Gaming Commission back at our own
7 offices at 101 Federal Street at 10:30 on
8 November 12.

9 The last item on the agenda is
10 always reserved for other business, which is
11 matters that the Chair could not have
12 anticipated at the time the agenda was
13 published. Our agenda was published Tuesday
14 morning as is required by law.

15 Tuesday night there was a great big
16 development in the fantasy sports world that
17 has occasioned a lot of inquiry and interest
18 from folks. We didn't put it on the agenda,
19 fantasy sports, this week because there wasn't
20 anything particularly new for us to report.

21 But, we are working hard on this.
22 And I thought it was important just to sort of
23 remind everybody what's going on because there
24 is this big new development.

1 First of all, important for
2 everybody to remember is that the Gaming
3 Commission has no statutory responsibility in
4 this area at all. If it is given to us, we
5 will willingly take it but at the moment we
6 have no responsibility for this at all.

7 However, there has been a lot of
8 interest expressed in us using the experience
9 that we've had of introducing a new industry, a
10 new gaming industry and thinking about the
11 nature of regulation and the quality of
12 regulation and the type of regulation and the
13 degree of regulation and so forth.

14 So, there's been interest expressed
15 by a number of policymakers in our views to
16 help inform the decision-makers on which way we
17 might go on the issue of regulation of fantasy
18 sports. We are not decision-makers. We are
19 simply offering our experience and advice to
20 decision-makers.

21 Several people have asked how long
22 this is going to take. And both Commissioner
23 Cameron and I have said we are trying to do it
24 within a very small number of months. We know

1 this is a pretty important issue.

2 We have reached out under
3 Commissioner Cameron's leadership to a number
4 of different kinds of experts, all of the way
5 from people who really just understand the
6 internal control issues and the technology and
7 the software to other affected industries.

8 I mentioned last week that we are
9 coordinating with the Attorney General on this.
10 We don't want to go off half-cocked. This is
11 subtle and complicated. And we want to take
12 our time to offer advice that is advice that
13 will have some real legs and some real
14 substance behind it.

15 One of the issues that we're trying
16 to contemplate, for example, is that although
17 today everybody is going crazy about fantasy
18 sports, not long ago they were going crazy
19 about online poker and not long before that
20 online casino games, online lottery games. And
21 in the very near future, it will be E-sports
22 that people are talking about.

23 The technology in Internet gaming is
24 exploding as is technology in Internet

1 everything exploding.

2 So, what we would like to do if we
3 can is offer not just a guidance on today's hot
4 button, which is DFS, daily fantasy sports, but
5 advice which can maybe accommodate this whole
6 range of things that will be coming before our
7 decision-makers, the Legislature and the
8 Governor. If we could come up with some kind
9 of a template that would help guide them
10 through not only today's hot button issue but
11 the future hot button issues, we think our time
12 would be better spent.

13 So, we're moving as quickly as we
14 can on this. We are very much sensitive to the
15 importance of this not only to the operators,
16 the Draft Kings and the Fan Duels of the world,
17 but a whole lot of consumers who are enjoying
18 this and are now concerned. A whole lot of
19 vendors who aren't entirely sure which way the
20 law is going, and of course the policymakers
21 too.

22 So, we will move on this as quickly
23 as we can. But we won't move without some real
24 careful thought and judiciousness with thinking

1 about what are complicated issues on a number
2 of scores.

3 So, just as a background for an item
4 that we couldn't anticipate when the agenda was
5 put together a couple of days ago. Anything
6 else Commissioners? Commissioner Cameron, do
7 you want to add anything to that?

8 COMMISSIONER CAMERON: No. You
9 pointed it all out, Mr. Chair. And I think you
10 mentioned everything and where we are, where we
11 are going and how quickly we're trying to move
12 but yet still be very thoughtful about it. So,
13 well said.

14 CHAIRMAN CROSBY: Okay. The second
15 item on the agenda is the approval of minutes.
16 Since we don't have a Secretary yet, I'm going
17 to ask Treasurer Zuniga to walk us through that
18 review.

19 COMMISSIONER ZUNIGA: Thank you, Mr.
20 Chairman. The October 29 minutes are in the
21 packet. I would move that they be approved as
22 submitted with the typical reservations for
23 correcting mechanical or typographical errors.

24 CHAIRMAN CROSBY: Second?

1 COMMISSIONER CAMERON: Second.

2 CHAIRMAN CROSBY: Any discussion?

3 All in favor, aye.

4 COMMISSIONER CAMERON: Aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 CHAIRMAN CROSBY: All opposed? The

8 ayes have it unanimously. For the record,

9 Commissioner Macdonald was not here yet.

10 COMMISSIONER MACDONALD: Right. I

11 was about to make the point that I was not

12 present so I would go on record as abstaining.

13 CHAIRMAN CROSBY: Thank you.

14 COMMISSIONER ZUNIGA: Similarly, the

15 November 5 meeting minutes are also in the

16 packet. I would move that they be approved as

17 submitted with the usual reservations for

18 correcting typographical errors.

19 CHAIRMAN CROSBY: Second?

20 COMMISSIONER CAMERON: Second.

21 CHAIRMAN CROSBY: I did have one

22 minor correction. You pointed out that former

23 Mayor Units was former Mayor Units and welcome

24 again, Mayor. But also Larry DiCara was former

1 Boston City Councilor not a Boston City
2 Councilor. That's my tiny note. Any other
3 thoughts on the minutes? All in favor, aye.

4 COMMISSIONER MACDONALD: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? The ayes
9 have it in this case five to zero. Okay,
10 Executive Director Wells.

11 MS. WELLS: Good morning, Mr.
12 Chairman, members of the Commission. I have
13 nothing in particular on the general update.
14 So, I will turn it over to our CFO Derek Lennon
15 for the MGC quarterly budget report.

16 MR. LENNON: Thank you, Karen. Good
17 morning, Mr. Chairman and Commissioners. Agnes
18 and I are here to present to you our first FY16
19 quarterly budget update and an update on our
20 supplier diversity spending figures. Following
21 that Trupti and Dean will give an update on MGC
22 employee diversity and then propose some new HR
23 policies.

24 In your packet is a memorandum

1 summarizing the FY16 first quarter update
2 material and three appendices. The first
3 appendix A is a chart of all of our spending
4 accounts and their corresponding revenue
5 sources. It shows annual approved level for
6 each appropriation, actual spending and revenue
7 for the first three months of the fiscal year.

8 Appendix B is a detailed list of the
9 budget amendment request for this quarter. And
10 appendix C is each division's approved budget
11 and spending as of last week against that
12 approved budget.

13 On appendix C, what I noticed is I
14 haven't updated it. So, it says hundred, I
15 think, 38 percent of the fiscal year has
16 passed. So, it's rolling from last year. It's
17 actually 38 percent of the fiscal years passed.
18 So, I will update that for our next quarterly
19 update.

20 In order to give you the first
21 update, I have to give you a quick overview of
22 how FY15 closed out. In the gaming control
23 fund, spending was \$4 million less than initial
24 projections. And revenue was \$690,000 less

1 than our initial projections. This resulted
2 after all of the changes that we did over the
3 course of the year in a \$6.6 million surplus of
4 revenue which will be rolled into FY16.

5 Up at \$6.6 million, \$3.29 million is
6 for restricted purposes such as investigation
7 collections, grant funding and FY16 revenue
8 that was collected in fiscal year 15. After
9 netting those out, there's about \$3.32 million
10 that will result in a credit to licensees' FY16
11 assessments.

12 Page two of the memo is a chart that
13 goes over all of the information that I just
14 briefly summarized in two seconds. If you have
15 any questions on that I will take a pause now
16 to answer them. Otherwise, I can continue on.

17 CHAIRMAN CROSBY: Anybody anything?

18 COMMISSIONER ZUNIGA: Yes. Derek,
19 you mentioned the \$3.2 million or \$3.3 million?

20 MR. LENNON: \$3.32 million.

21 COMMISSIONER ZUNIGA: Those are the
22 proposed adjustments and that's on the
23 assessment for fiscal year 16?

24 MR. LENNON: Correct.

1 COMMISSIONER ZUNIGA: That would be
2 the -- remind me.

3 MR. LENNON: We've already done our
4 first assessment. So, on page four of the
5 memo, we'll get into that, it shows what the
6 new assessment amounts will be. So, it takes
7 the FY15, backs it out, takes into FY16, and
8 shows the roll forward.

9 COMMISSIONER ZUNIGA: Okay. Thank
10 you.

11 MR. LENNON: In June of this year,
12 the Commission approved an FY16 budget of \$28.3
13 million for the gaming control fund. This
14 required an assessment on our licensees of
15 \$22.2 million.

16 While there were adjustments being
17 made throughout the first quarter of FY16,
18 which was on appendix B, they are all revenue
19 neutral. So, they don't require coming in
20 front of you to ask for an increase or decrease
21 in the budget.

22 Therefore, the Commission's budget
23 remains in balance. And if you look at
24 appendix B, the majority of those are taking

1 what was the set-aside for responsible gaming
2 and reappropriation that to the actual places
3 that Mark has a need for now.

4 At the beginning of the year, we
5 knew that there'd be some movement across his
6 programs. So, he said let's just put this
7 money aside. And then when I get the upticks,
8 I'll know where to assign it to. And he's done
9 that quickly.

10 There are a few other places you'll
11 see we had money set aside because we thought
12 it would hit against a credit card. We ended
13 up going with an exact vendor. So, we moved it
14 from an E to a K, but they are all neutral.
15 There are no new things coming on.

16 Page four of the memorandum deals
17 with the non-restricted excess revenue from
18 FY15 that rolled into FY16. 205 CMR 121
19 specifically deals with assessing the
20 Commission's annual costs on casino licensees.
21 And 201 CMR -- 205 CMR 121.05 paragraph two
22 discusses a scenario where annual assessments
23 exceed final spending in a given fiscal year
24 and gives the Commission the discretion to

1 either return the excess revenue to the
2 licensees or credit it to the licensees against
3 their subsequent fiscal year assessment in the
4 same proportion to which they paid the
5 assessment that resulted in the surplus.

6 So, if they paid 45 percent say Wynn
7 in 15, 45 percent of that \$3.32 million goes
8 back to crediting their FY16 assessment. You
9 don't use a 46 or 47 percent that they may bump
10 up to the next year. The chart on page four
11 shows how I arrive at those calculations and
12 what I'm recommending we do.

13 I'm not recommending that we return
14 it. I'm recommending that we just give them a
15 credit on their subsequent assessment.

16 CHAIRMAN CROSBY: I'm sure they're
17 fine with that, right?

18 MR. LENNON: I haven't heard any
19 complaints.

20 COMMISSIONER CAMERON: They are
21 aware that this is the way you would like to
22 move forward.

23 MR. LENNON: I know two of them are.

24 CHAIRMAN CROSBY: They are now.

1 COMMISSIONER ZUNIGA: Derek, remind
2 us the assessments are based on the number of
3 slot machines that have been approved.

4 MR. LENNON: So, it's gaming
5 positions. The way the slot machines are, it's
6 either approved as part of your license or
7 approved as your operations certificate.

8 COMMISSIONER ZUNIGA: Okay. So,
9 there will be some fluctuations. MGM for
10 example has a couple of design revisions. We
11 don't change until the operations certificate
12 is issued.

13 MR. LENNON: Correct, because it'd
14 be going all over the place every time there
15 was a change. And they they'd have to come
16 back to you to get that approval.

17 COMMISSIONER ZUNIGA: We could be
18 sort of running in circles.

19 MR. LENNON: And that's not in
20 regulations. That's just a decision that we
21 made in a public meeting. If you want to
22 change that we can always revisit that
23 decision.

24 If the Commission agrees with this,

1 I know Maria is ready to send out the bills for
2 the next quarterly assessment. We collected
3 the first quarter. We were holding off until
4 we did this presentation.

5 CHAIRMAN CROSBY: The only issue as
6 Commissioner Cameron was suggesting would if
7 the operators cared one way or the other. I'm
8 sure they don't. But if they did, and I don't
9 think we care either. If for some reason it
10 made any difference to them, maybe just as a
11 certain double-check with the third that you
12 haven't talked to.

13 MR. LENNON: All right. I'll make
14 the call.

15 COMMISSIONER STEBBINS: Derek as you
16 look out to not this next quarterly assessment
17 but the following two near the end of the
18 fiscal year, is there at least a sense now that
19 you can set a mark as to what they're going to
20 be so our licensees can plan for that amount
21 that you don't see any fluctuation in those
22 last two quarterly assessments at this point?

23 MR. LENNON: So, there are still
24 some things that we're working on internally

1 that I don't think anything will drive the
2 costs up, but it could go down again.

3 And then there is still the indirect
4 rate discussion that hasn't been had, which
5 could get us money back from last year if we
6 are successful in arguing that which would be
7 another \$1.2 million that then would drive down
8 the assessment.

9 COMMISSIONER ZUNIGA: But the
10 approach is what I would argue an appropriate
11 one in terms of being conservative and planning
12 for the worst-case scenario. So, in the case
13 of the indirect costs that's included as of now
14 in the assessment, right?

15 MR. LENNON: No, it is not.

16 COMMISSIONER ZUNIGA: In fiscal year
17 16?

18 MR. LENNON: No, it is not. We made
19 that decision during the budget process not to
20 include it because we had two roads. We could
21 either go to the Executive Branch and argue
22 that we should not have it included at all.

23 Or we could go and ask for the state
24 Comptroller's office to negotiate a rate to us

1 which would result in \$5500 being added to our
2 budget based on last year's performance. So,
3 out of \$28.3 million, we didn't think it would
4 be important to add it in there.

5 COMMISSIONER ZUNIGA: Okay. That's
6 fine.

7 COMMISSIONER STEBBINS: Again, we
8 have seen more fluctuations in the last two
9 quarters and hopefully giving our licensees
10 some ability to plan if there are more
11 fluctuations.

12 MR. LENNON: There's a \$500,000 item
13 outstanding on the LMS that we haven't picked
14 up yet. So, that could go either way. Right
15 now I think the go-live for the CMS will be
16 this month. So, then we start taking up those
17 costs.

18 But if it's pushed off another month
19 -- There are things that we are not in steady-
20 state yet that could fluctuate. But to the
21 best of our knowledge, everything that we've
22 seen to date, this is --

23 COMMISSIONER ZUNIGA: -- your best
24 guess.

1 MR. LENNON: -- my best guess.

2 CHAIRMAN CROSBY: Are you done?

3 MR. LENNON: So, the '16 budget
4 stays in balance. If you don't have any other
5 questions, we'll move onto the supplier
6 diversity spending. And I'll turn it over to
7 Agnes.

8 MS. BEAULIEU: Good morning,
9 Commissioners. Before you you have the FY16
10 benchmarks for our supplier diversity as well
11 as the FY15 benchmarks that we did.

12 The FY15 shows that we reached all
13 of our benchmarks except for one category,
14 which was the minority business benchmark which
15 was off by four percent. But all of the others
16 we did surpass it. So, we did quite well
17 there.

18 In FY16, just to give you a little
19 history of how we developed the benchmarks from
20 supplier diversity program is to take our
21 overall budget, then we deduct our
22 nondiscretionary items such as payroll, fringe
23 charges, rent, grants, things that we really
24 can't control.

1 Once we have that total, we then
2 deduct any intergovernmental agency expenses
3 such as the state police, chargeback for IT
4 services, payroll expenses, MMARS costs as well
5 as any ISAs that we may have such as with the
6 Department of Public Health.

7 Finally, there's nondiscretionary
8 procurement such as the phone services as well
9 as management consultants that were mandated
10 through the legislation. Then we have our
11 final net appropriation amount, which totals
12 \$9.27 million. Then we apply the percentage
13 benchmarks to that number.

14 This year they have gone up a
15 percentage point here and there. And hopefully
16 we will make it. But there is some changes
17 this year with some of the contracts that hit a
18 couple of categories that may or may not be in
19 play for the full year. So, we have our work
20 cut out for us.

21 CHAIRMAN CROSBY: All right. Stick
22 with it. As you know, we go through the same
23 thing with the licensees. They have the same
24 things. And we don't have any excuses from

1 them either. So, stick with it.

2 MR. LENNON: Any questions on the
3 supplier diversity spending? Then we'll turn
4 it over to Trupti for the employee diversity.

5 MS. BANDA: Good morning,
6 Commissioners. Today, I want to share with you
7 the -- Dean and I are here to share with you
8 the employee statistics. Today, we have 72
9 employees at MGC.

10 CHAIRMAN CROSBY: Trupti, are those
11 72 all full-time?

12 MS. BANDA: No. A few we have
13 interns.

14 CHAIRMAN CROSBY: Okay. It's
15 counting the interns.

16 MS. BANDA: It's 72, but we have
17 also 20 seasonal employees out at Plainville in
18 racing for a total of 92 employees. Since my
19 last report back in May, we've hired eight
20 gaming employees and three seasonal employees.

21 And if you recall, we touched base
22 on our diversity numbers. And Greater Boston's
23 diversity is 34.4 percent and Massachusetts is
24 19.5 percent. And MGC's goal is 25 percent.

1 And now we are working towards that.

2 Since May from gender side, our
3 demographics is exactly 50-50, 50 percent male,
4 50 percent female. And the eight employees
5 we've hired excluding the racing hires, 50
6 percent were diverse. So, we really focus on
7 when we are hiring to have a greater pool of
8 candidates to really look at the cross of skill
9 sets and how they can contribute to the agency
10 in a broad way and insure that we have a
11 diverse pool throughout the process.

12 CHAIRMAN CROSBY: That's great.

13 MS. BANDA: Back in May, we were at
14 3.8 percent from goal of 25 percent. Now keep
15 in mind that 20 of our employees who are part
16 of the total overall picture make up -- we're
17 1.1 percent away from goal.

18 However, if you were to look at just
19 our full-time hires, we're at 29 percent
20 diverse. Our seasonal hires we give preference
21 to those who had previous experience with MGC
22 who have worked in the racing and were rehired
23 for the Plainville racing season this year.
24 Just to remind you that was one of the

1 decisions we made when we were hiring, to hire
2 experienced folks in that area.

3 COMMISSIONER CAMERON: And that was
4 not a diverse group, if I recall.

5 MS. BANDA: That's correct. That is
6 five percent diverse. So, MGC the regular
7 full-time employees 29 percent. So, I think
8 overall, the hires that we are making, we are
9 making great progress. But we will continue to
10 look with our racing folks as well as all of
11 our hires.

12 And I think that we have a strong
13 commitment from our managers as we are looking
14 to broaden our pool and ensure that we have a
15 diverse pool. So, I think that that's been
16 helpful.

17 COMMISSIONER CAMERON: Great. Thank
18 you.

19 MS. BANDA: Some of the steps that
20 we've taken to ensure that we have a diverse
21 pool is develop an enhanced affirmative action
22 records form. We've also engaged with several
23 affinity groups and diversity groups to ensure
24 that MGC is out there and we're extending job

1 postings. Also, we've implemented an applicant
2 tracking system which allows us to ensure that
3 we have a diverse pool or we have at least
4 statistics of a diverse pool.

5 COMMISSIONER CAMERON: Is that form
6 optional for folks to fill out?

7 MS. BANDA: Yes, it is optional.
8 It's encouraged, optional. So, we are 1.1
9 percent away from goal, but I think we are
10 making progress in the right direction.

11 COMMISSIONER CAMERON: Three percent
12 since May, very good work.

13 MS. BANDA: Thank you. Any
14 questions?

15 COMMISSIONER STEBBINS: Trupti, I'm
16 just wondering, is it possible that we can also
17 begin to track for veteran status?

18 MS. BANDA:: Yes, we can. That is
19 one of the categories within our form that
20 we've added. I just don't think we have enough
21 of a population right now, but we are keeping
22 an eye on that as well.

23 CHAIRMAN CROSBY: We don't have
24 enough of a population meaning we don't have

1 enough veterans?

2 MS. BANDA: Our veterans at this
3 point is 2.2 percent overall.

4 COMMISSIONER CAMERON: Have we
5 checked from all of our employees? You just
6 started tracking.

7 MS. BANDA: For the candidate pool
8 we don't have enough but for our employees we
9 have 2.2 percent veterans right now. We do
10 track that.

11 COMMISSIONER CAMERON: So, you've
12 asked them to say whether or not they are
13 veterans?

14 MS. BANDA: Yes, we've asked. But
15 we just don't have the pool for the candidate
16 pool when we recruit. For a pool of candidates
17 we just don't have enough information at this
18 time.

19 CHAIRMAN CROSBY: I think what
20 Commissioner Stebbins is getting at is we might
21 as well add it to the list, to our report. And
22 if we're not where we want to be that's fine
23 but we'll work on it. Might as well put it on
24 there.

1 MS. BANDA: Okay. Will do.

2 CHAIRMAN CROSBY: Anything else?

3 MS. BANDA:: Thank you. I think I'm
4 up next as well. Today, I'd like to talk to
5 you a little bit about our policies. We
6 revised two policies that were adopted by the
7 Commission last year in November. The purpose
8 is to provide a neutral beneficial arrangement
9 between employees and Commission and enhance
10 productivity.

11 To address changes in the MGC
12 workforce to support gaming facilities, which
13 operate on a 24/7 basis for the employees who
14 are out in Plainridge and we need to ensure
15 that we review our policies to support the
16 agency in that capacity and the staff there.

17 The new policy I'd like to bring
18 before you is the workplace flexibility.
19 Benefits to the Commission would be to attract
20 and retain qualified employees. Possible
21 reduction in turnover, increase productivity,
22 reduction in missing work due to illness, non-
23 work demands and support MGC's core values of
24 diversity, inclusion issues related to gender,

1 care-giving status and general issues and
2 reasonable accommodations overall.

3 Benefits to the employee, it allows
4 them to have a greater control over when and
5 how they get their work done, a better
6 work/life balance. And employees can be
7 involved in community, schools, family events
8 that take place during -- earlier in the day or
9 later in the day.

10 So, the goal here is to provide
11 flexibility in a standard work schedule. Our
12 standard work hours are 8:45 to 5:00. A good
13 example would be if someone needed to come in
14 at 8:15 and maybe leave at 4:30 so they can
15 make accommodations for daycare or catch a
16 train or different things like that.

17 The other option is a compressed
18 workweek where someone might work longer days
19 in part of the week in exchange for a shorter
20 day another day or a different day off to
21 accommodate for the full-time schedule.

22 Some other things that we will take
23 into consideration when granting this
24 flexibility would be that employees must be

1 with MGC for a minimum of six months, must be
2 in good standing, and the schedule can't vary
3 from week to week. It would be a committed
4 schedule so that the daily operations could
5 manage.

6 The employees must have this
7 conversation with their manager and see if the
8 work could be supported at the agency. And the
9 accommodations must meet within the core hours.
10 So, it wouldn't make sense for them to work
11 unreasonable hours earlier than 7:30 or working
12 after 7:00. We need to ensure that they would
13 be part of the Commission and the agency and
14 available when needed.

15 All employees must request a change
16 in schedule in writing and must be approved.
17 That's kind of what we're looking for. And
18 abuse of this policy would result in
19 termination of the policy for that person, so,
20 termination in being able to have that
21 flexibility. Any questions on that policy?

22 COMMISSIONER ZUNIGA: The memo on
23 some of what you outlined, Trupti, talks about
24 a flexible arrangement.

1 MS. BANDA: Yes.

2 COMMISSIONER ZUNIGA: And that
3 arrangement is effectively between the manager
4 or supervisor and the employee, right?

5 MS. BANDA: That is correct.

6 COMMISSIONER ZUNIGA: They come to
7 an understanding or an agreement I'm going to
8 use these days this day and be off that other
9 day or whatever it may be. That's in writing
10 and then it goes onto HR.

11 MS. BANDA: That is correct. The
12 employee would first work with their direct
13 supervisor and then that would then transition
14 to the department head for approval to ensure
15 that the business needs are met.

16 Then they would come to HR to ensure
17 approval and in the employee file. It can be
18 for a duration of time, for a period of two or
19 three months or that could be an ongoing
20 schedule. All of that is documented and
21 managed that way.

22 COMMISSIONER MACDONALD: Trupti, as
23 you know I'm the new person here. I'm curious
24 as to what the origin of these policies was.

1 Was it something that resulted from requests by
2 our current staff or was it something that came
3 more from the top down?

4 MS. BANDA: A few staff do have
5 varying schedules just for personal needs and
6 still being able to manage family/work life
7 balance. And we've accommodated those.

8 We think it's important that we
9 formalize the process, have a policy with
10 specific guidelines as we as we are growing
11 just to ensure that there is a fair and
12 equitably across the agency with all staff.
13 That's why we decided that it would make sense
14 for us to have a formal policy. This a new
15 policy that was not part of our policies that
16 were approved back in November.

17 COMMISSIONER MACDONALD: Okay, thank
18 you.

19 COMMISSIONER ZUNIGA: We also have
20 now people assigned at the casino that are
21 working through weekends 24/7. So, some of
22 what is here, it occurred to me, has become
23 more apparent to think through because those
24 schedules are less typical.

1 MS. BANDA: For the folks who are at
2 the casino, they would work with their
3 supervisor to make schedule accommodations to
4 ensure that there's coverage.

5 COMMISSIONER CAMERON: And it also
6 fits with one of our goals, right, making MGC
7 great place to work.

8 MS. BANDA:: Absolutely. Any other
9 questions on that front? I will go ahead and
10 move onto --

11 CHAIRMAN CROSBY: Excuse me, Trupti.
12 We don't need votes. We adopted these things
13 by vote, right? Do we need to vote on these?

14 MS. BANDA: Yes, we do need votes on
15 these. This flexible work arrangement is a new
16 policy. The two I'm about to review are
17 policies which were approved, but we've made
18 some significant changes to them. So, we
19 wanted to bring that before you.

20 CHAIRMAN CRSOBY: So, should we talk
21 about, Catherine, do the three of them first
22 altogether and then deal with them in one vote?
23 Is that what you're getting at?

24 MS. BLUE: I think that's a

1 convenient way to do it. So, yes, go through
2 all of them first. And then you can vote on
3 them together.

4 CHAIRMAN CROSBY: Okay.

5 MS. BANDA: Thank you. The next
6 policy is the office closure in inclement
7 weather. So, with the winter approaching us
8 and now that we have a facility where we have
9 gaming agents out in Plainville where they are
10 required to work 365 days a year. They are
11 essential employees.

12 So, one of the things that we
13 decided to do is identify employees who are
14 essential and let them know sort of what are
15 the requirements in the event that there is a
16 closure.

17 So, the division head must create
18 and maintain an updated list of employees who
19 are essential so both parties are aware. And
20 in the event of inclement weather, they would
21 be required to attend work provided they can
22 get there safely. Or make arrangements to have
23 a schedule that would give them flexibility to
24 get there when they can.

1 All gaming agents and supervisors
2 must be classified as essential employees
3 because of the nature of the work. Essential
4 employees will not receive extra pay, comp.
5 time with the exception of nonexempt employees.
6 Employees who will be entitled to -- Those
7 employees will be entitled to overtime per the
8 FLSA.

9 Essential employees may be excused
10 from service at the discretion of the division
11 head for reasons such as medical leave, certain
12 personal circumstances such the childcare,
13 eldercare, other matters such as that.

14 And essential employees who do not
15 report to work during the suspension of
16 operation will use accrued time unless exempted
17 by the division head. So, there is some
18 flexibility recognizing where the employees
19 live and how they can get there and how we can
20 continue to provide the support that we do.

21 Then in your packet there is a form
22 that outlines some of the specifics for the
23 essential employees. Any questions on that?

24 COMMISSIONER ZUNIGA: You mention in

1 your remarks that essential employees were all
2 those gaming agents and supervisors. But
3 supervisors assigned to the casino or does that
4 include supervisors who may be working at the
5 central office?

6 MS. BANDA: Essentially supervisors
7 assigned to the casino but there are some
8 employees at the Gaming Commission who may need
9 to be on call or may need to be reachable and
10 in some way can be defined as essential.

11 COMMISSIONER ZUNIGA: Okay.

12 MS. BANDA: A good example would be
13 someone who typically works in the Boston
14 office and are responsible for overseeing all
15 of the agents and is a senior level employee.
16 They are typically not in the field but due to
17 shortage in staff, they may be at the facility
18 to support the needs. So, they would be
19 qualified as essential.

20 MR. LENNON: No initials, just
21 names, Bruce Band.

22 COMMISSIONER ZUNIGA: I guess that's
23 where I was going, as long as we understand as
24 you understand who those people are.

1 MS. BANDA: Yes.

2 COMMISSIONER CAMERON: Trupti, does
3 this pretty much mirror the state policy on
4 essential employees?

5 MS. BANDA:: Yes.

6 CHAIRMAN CROSBY: Get your four-
7 wheel drive vehicle, Bruce.

8 MS. BANDA:: Any other questions on
9 that? And the last revision is with the
10 holiday policy. The gaming facilities must be
11 fully staffed on holidays. Racing facilities
12 may be fully staffed on holidays depending on
13 racing schedules.

14 Employees who are required to work
15 on a holiday will receive their regular pay
16 plus 1.5 hours of holiday comp. time for each
17 hour worked.

18 So, if a gaming agent was required
19 to work on a holiday, then instead of getting
20 eight hours of holiday time on an alternate
21 day, they would receive 12 hours of holiday
22 time as a premium for working on a holiday.

23 Employees who choose to work a
24 holiday but are not required to do so must have

1 prior permission from their manager and will
2 receive one for one in terms of holiday comp.
3 time. Holiday comp. time must be used within
4 30 days.

5 In the event an employee leaves the
6 Commission, we would pay for those days and
7 that time accrued. Any questions on that?

8 COMMISSIONER ZUNIGA: I have a
9 hypothetical. So, if somebody is normally
10 assigned to the casino on Sundays, what would
11 happen on Easter Sunday which is a holiday but
12 that nobody else really has.

13 MS. BANDA: If I were assigned on
14 that Sunday, I would work that Sunday. I would
15 get paid for that Sunday, in addition I would
16 receive 12 hours of holiday pay that I could
17 take at another time.

18 MR. LENNON: And there will be rare
19 instances, which you may want to throw in,
20 where someone can't take a holiday within 60
21 days to use those 12 hours. I know the state
22 did something where you can do it once or twice
23 a year, actually get paid those 12 hours, the
24 additional holiday pay versus -- but it

1 shouldn't be regular just bonus save up time.

2 It should be you use the vacation
3 time. And if you can show a good reason why
4 you can't use it within 30 or 60 days, whatever
5 the policy says, we can pay you out, but it
6 should be the exception versus the rule.

7 COMMISSIONER CAMERON: It's the
8 supervisor's responsibility to make sure that
9 the time is being utilized and there are no
10 deviations that haven't been vetted.

11 MR. LENNON: Correct.

12 MS. BANDA: We plan to have
13 quarterly reports on the balance of the
14 holidays and what that looks like and share
15 that with the supervisors to remind them that
16 perhaps we may need to work out a schedule
17 where they can take the time off. That's
18 actually a good way to ensure that employees
19 have a work life balance especially where they
20 have a fluctuating schedule.

21 COMMISSIONER CAMERON: Are
22 supervisors trained? Is this part of their
23 training that they are aware that they are
24 responsible for all of these things?

1 MS. BANDA: Yes. Upon the approval
2 of these policies, what I'd like to do is also
3 train the supervisors and staff on how they
4 should enter the time, how it's accrued, how
5 they should manage. And we will be the second
6 set of eyes with follow-up or notification of
7 okay, let's try to manage this time off.

8 COMMISSIONER CAMERON: Thank you.

9 MS. BANDA: Sure. Any other
10 questions?

11 CHAIRMAN CROSBY: Shall we proceed
12 into a motion, Commissioner Zuniga?

13 COMMISSIONER ZUNIGA: Sure. I'd be
14 happy to. I was just going to mention great
15 work. Thank you for having thought through all
16 these. The second time around that we went
17 through the exhaustive policy review, I thought
18 we were going to be done for a little while.
19 And here we are again.

20 But this is very important because
21 we are now operating 24/7 in a facility. We
22 have a winter that is coming, if you will, and
23 we need to be prepared for all of the
24 centralities and continue to review these

1 policies.

2 So, I would move that the Commission
3 approve the workplace flexibility policy, the
4 holiday policy and the inclement weather policy
5 as submitted and discussed here today.

6 COMMISSIONER CAMERON: Second.

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

9 COMMISSIONER MACDONALD: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER ZUNIGA: Aye.

12 COMMISSIONER STEBBINS: Aye.

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

15 MS. BANDA: Thank you.

16 MR. LENNON: Thank you.

17 CHAIRMAN CROSBY: Next up is
18 Ombudsman Ziemba. Actually, John, before we
19 start, I'm just going to suggest we take a real
20 quick break and come back in five minutes or
21 less.

22

23 (A recess was taken)

24

1 CHAIRMAN CROSBY: Ready to reconvene
2 the 169 meeting and Ombudsman Ziemba.

3 MR. ZIEMBA: Thank you, Mr.
4 Chairman. First item on the agenda was a
5 hearing on the petition from the town of
6 Pembroke for a surrounding community status
7 with Mass Gaming and Entertainment. I'm
8 pleased to report that Pembroke and MG&E have
9 reached an agreement thereby no hearing will be
10 necessary.

11 They plan to formalize the agreement
12 as early as next week but they have to come to
13 terms on the agreement. That concludes all of
14 the petitions for surrounding community status.
15 We have a number of surrounding community
16 agreements that are still in process of being
17 negotiated by the applicant and surrounding
18 communities. And I think that's proceeding
19 well.

20 CHAIRMAN CROSBY: Great.

21 COMMISSIONER ZUNIGA: So, there's no
22 more petitions for surrounding communities?

23 MR. ZIEMBA: No more petitions for
24 surrounding communities. As Jill will mention

1 in a little bit, we have one remaining impacted
2 live entertainment venue petitioner.

3 COMMISSIONER ZUNIGA: Right. This
4 is probably part of your analysis, but this
5 shortens the timeframe, right -- in terms of
6 going to arbitration?

7 MR. ZIEMBA: It's quite possible. I
8 had a conversation with the applicant this
9 morning. And I think what we discussed was
10 that we would stay in touch over the near-term
11 to see what modifications we could make to the
12 schedule.

13 We've allocated some time so that
14 those communities could reach that agreement.
15 So, if they can reach that agreement, we could
16 avoid arbitration and then dramatically quicken
17 the pace of our review. But they're still in
18 the process of those negotiations. As of right
19 now, I'm not recommending a change to the date
20 by which we would kick off arbitrations, but
21 it's really good news.

22 COMMISSIONER CAMERON: And the
23 report said all of those negotiations are
24 progressing.

1 MR. ZIEMBA: They are progressing,
2 yes. And they're going to proceed even more
3 quickly over the near-term.

4 COMMISSIONER CAMERON: Okay, thank
5 you.

6 MR. ZIEMBA: Second item on the
7 agenda are the draft 2016 mitigation fund
8 guidelines. Let me just first explain what I
9 mean by a concept draft.

10 We value the input of the
11 surrounding communities, those communities,
12 nearby communities and all of the committees
13 with which we've been interacting over this
14 past in the development of our policies for the
15 community mitigation fund.

16 As you know, earlier this year
17 received an ethics determination that some of
18 the members of our committees might be placed
19 in a difficult position under the state ethics
20 laws as a result of dual responsibilities to a
21 municipality and to us.

22 So, a lot of the meetings that we
23 had contemplated over the summer to get further
24 input regarding the community mitigation fund

1 were displaced. We couldn't have those
2 meetings because we couldn't have a quorum
3 while people were reconsidering whether or not
4 they could remain on the committee or not.
5 We're still in the process of trying to
6 establish those quorums so that we can get
7 valuable advice on the community mitigation
8 fund. But we are still not there yet.

9 Given the tightness of time, as you
10 know, the community mitigation fund statutory
11 deadline for applications is February 1 of each
12 year. So, given that tightness of time before
13 the next program, what we determined we would
14 do is we would put out a concept paper. Then
15 we would get input on definitive concepts
16 included in those guidelines.

17 So, what we have before you are the
18 concepts that could be put into the mitigation
19 fund, but I'm not asking for an approval of the
20 mitigation fund guidelines at this point.

21 What I'm basically asking for is
22 does this concept paper, is it sufficient to
23 enable communities and others to provide
24 comment to the Commission? So, I've outlined a

1 number of different changes from the 2015
2 program in this concept paper. But I first
3 wanted to see if that is a general approach
4 that you think that we should utilize.

5 First, we have the Commission just
6 review it and maybe at the next Commission
7 meeting, if it's deemed necessary. Then we
8 solicit the comments from the whole range of
9 folks I just mentioned. I then back that back
10 to the Commission for further refinement of the
11 actual language of the guidelines and any
12 changes or additions that are recommended by
13 those parties.

14 So, I guess that's the first item
15 that I put out for you if that general premise
16 works.

17 CHAIRMAN CROSBY: I think these are
18 really interesting and important conditions
19 that you are proposing. And I think we ought
20 to take the time to walk through at least some
21 of them. Were you just about to raise issues?

22 COMMISSIONER CAMERON: I was just
23 going to ask, it seems like these are kind of
24 lessons learned, right? That these bullet

1 points, you feel like this can clarify and make
2 the process smoother and accommodate better.
3 Is that where these changes came from?

4 MR. ZIEMBA: Yes. I plan to go
5 through each one of the recommended changes,
6 but just the general philosophy that we have
7 the concept paper now. We can get the input
8 and bring it back to you for further
9 conversation.

10 CHAIRMAN CROSBY: That's fine. It's
11 totally consistent with the way we approach all
12 of these things. So, that's great.

13 MR. ZIEMBA: Why don't we walk
14 through.

15 CHAIRMAN CROSBY: Commissioner
16 Macdonald?

17 COMMISSIONER MACDONALD: I was just
18 going to say I think that makes a lot of sense.

19 MR. ZIEMBA: Great. So, let me just
20 walk through some of the changes to the
21 program. Just by way of background, as you
22 know, in the 2015 program we established there
23 was basically two ways that communities and
24 others could get funding. They could get

1 funding for specific impacts. Then we also
2 established a reserve fund in this past year.

3 So, we established the reserve which
4 in essence became a more of rolling grant
5 process versus the time-limited process that we
6 currently have. Because none of the
7 facilities, none of the Category 1 facilities
8 were in construction by the February 1 deadline
9 of this year, and the Category 2 facility
10 operational by this year, we realized it would
11 be rather difficult for communities and others
12 to put forward applications that were very well
13 delivered and well put together.

14 So, in essence by creating this
15 reserve fund, we allowed communities to as they
16 saw impacts from facilities to come to the
17 Commission with those specific requests and
18 then if they, after working with Ombudsman's
19 office, I would then in turn bring those
20 requests to the Commission for their approval.

21 Once the application was fully
22 developed and questions were answered, I'd
23 bring that to the Commission for its approval
24 of each individual reserve.

1 This program builds upon that last
2 year's program, but specifically last year's
3 program was for construction only as the
4 Plainville facility was in construction and no
5 facilities were in operations.

6 The first recommendation is to
7 expand the program for the Plainridge Park
8 facility to be operational-related impacts. It
9 is now an operational casino and there may be
10 impacts that are being experienced relative to
11 the operations of the facility.

12 I continue to recommend that for
13 specific impacts that are being put forward on
14 the Category 1 facilities that we still limit
15 those to construction only impacts for specific
16 impacts.

17 COMMISSIONER ZUNIGA: Are we going
18 to discuss each one? I had a question about
19 one or another. Should we just go down the
20 list?

21 CHAIRMAN CROSBY: Let's do them
22 right now. So, go ahead if you've got
23 thoughts.

24 COMMISSIONER ZUNIGA: I had a

1 thought on expanding the potential use of the
2 fund to include operational costs at
3 Plainridge.

4 We have and I think it's
5 appropriate, not carved out monies that came
6 from each of the licenses for each of the
7 regions. Because we just don't know - There's
8 a number of unknowns and we are better off not
9 making that assumption up front.

10 However, the Category 2 license
11 operations do not fund, unlike the Category 1,
12 the Category 2 does not contribute anything to
13 the ongoing community mitigation fund. It all
14 goes to local aid or the Horse Race Development
15 Fund.

16 So, you could take that as a policy
17 statement from the statute as either not
18 anticipated a lot of impacts on the ongoing
19 operations or did not intend any mitigation
20 monies go to the Category 2 for its operations
21 because of its size or whatever else.

22 This would open the door to that
23 notion, your first recommendation and for is
24 that was some limit to what the \$25 million

1 funded from the Category 2 for this mitigation
2 fund.

3 MR. ZIEMBA: My memory is that 10
4 percent of the \$25 million that was put forward
5 by the licensee --

6 COMMISSIONER ZUNIGA: -- by the
7 Category 2.

8 MR. ZIEMBA: -- got put into the
9 community mitigation fund. So, \$2.5 million
10 contribution from Plainridge.

11 COMMISSIONER ZUNIGA: And did we use
12 any of that for the construction period?

13 MR. ZIEMBA: No. But we did reserve
14 -- include a number for reserve for Category 2
15 communities.

16 COMMISSIONER ZUNIGA: A number of
17 \$100,000 reserves?

18 MR. ZIEMBA: That's right.

19 COMMISSIONER ZUNIGA: Was the idea
20 at least in this initial concept recommendation
21 to use up to those monies available there?

22 MR. ZIEMBA: What we did put in here
23 is sort of a soft cap for the program for this
24 year and places a limit of \$500,000 on awards

1 related to any Category 2 specific impacts.

2 That's in recognition of the fact
3 that there is a limited number of funds for the
4 next three years under the mitigation fund
5 because we will not have any new avenues until
6 Category 1 facilities are operational. But in
7 reaction to the need to budget over the next
8 three years, we place the limit of \$500,000
9 from Plainville and this next year's program.

10 COMMISSIONER ZUNIGA: But they could
11 be multiple, right? There could be a number of
12 multiple requests for \$500,000?

13 MR. ZIEMBA: No, as a total overall
14 limit.

15 COMMISSIONER ZUNIGA: Oh, total.
16 For this year?

17 MR. ZIEMBA: For this year.

18 CHAIRMAN CRSOBY: You can't tell
19 from the wording. I didn't know that you meant
20 that. But add another word, a total of 500. I
21 wasn't sure what you meant either.

22 Other thoughts on Commissioner
23 Zuniga's point? I think it's really
24 interesting. There is no way for us to figure

1 what the Legislature had in mind. I do think
2 that as we go along, not so much in the near-
3 term, but certainly over the long haul, it's
4 worth keeping in mind for what it's worth that
5 the operations of Plainridge are not
6 contributing to what will then become the
7 constantly being replenished community
8 mitigation fund.

9 So, I think that's something we have
10 to keep in the back of our minds. Why that is,
11 I don't know except for the fact that it's a
12 much smaller facility and there's not likely to
13 be anywhere close to the impacts maybe or
14 something else.

15 But I'm not sure that we ought to
16 lock that in stone. I think the idea of making
17 it available in good faith if there are real
18 issues out of the operations, I don't think we
19 want to proscribe ourselves from dealing with
20 them. If it comes up, we want to remember is
21 this fair even where the monies come from. But
22 I don't think we want to have a blanket
23 proscription from doing that.

24 I think it's a very interesting and

1 important point. My sense would be to go ahead
2 with this as it stands, bearing in mind that as
3 each one comes up, we might have to keep this
4 point in mind. That's my two cents worth.

5 COMMISSIONER CAMERON: I agree with
6 that. I think we should limit those who may
7 have a real impact because we are not sure what
8 was intended.

9 MR. ZIEMBA: From everything we have
10 heard, we have not hear a tremendous level of
11 impacts being experienced by the facility. So,
12 this \$500,000 limit was meant to be probably
13 even a little bit larger than the number of
14 requests that we would likely get in this
15 upcoming year.

16 But to the point of development of
17 the policy, I think I agree with that Mr.
18 Chairman. As in we had one year program. This
19 program is going to go on for three plus 15
20 years. We'll continue to develop the policies
21 year after year on how things should be
22 allocated.

23 Should there be one single fund?
24 Should it be split between facility based as in

1 only MGM money gets paid into a kitty for MGM
2 related communities and Wynn similarly treated?

3 I'm not attempting to answer the
4 questions in this year's program.

5 CHAIRMAN CROSBY: Right.

6 COMMISSIONER ZUNIGA: I'm generally
7 on the same page. Perhaps for a slightly
8 different reason taking together the one about
9 expanding the potential use with the cap, the
10 cumulative cap, we may very well be -- If we
11 did the same in following years, we would still
12 be tapping from what's already available from
13 that Category 2 license during the five years
14 of operation if you account the \$500,000 times
15 five.

16 So, I think it's very prudent at
17 this point to proceed with caution on that
18 first one.

19 MR. ZIEMBA: The second
20 recommendation is that we automatically reserve
21 unused 2015 community mitigation fund reserve
22 funds for those committees awarded reserves in
23 2015. This is meant to be as administratively
24 efficient as possible whereby we're not asking

1 those communities where we have established the
2 reserves to again notify us that they would
3 like to keep the reserves.

4 We would just rollover the reserves
5 into this next year. We would notify the
6 communities that the reserves are preserved
7 into 2016. There's a requirement under the
8 statute that communities apply by February 1,
9 2016, but I think the first application that
10 they made for the reserve can count as that
11 application.

12 COMMISSIONER ZUNIGA: Could this
13 have the effect of duplicating if they asked
14 for a second year worth of reserves?

15 MR. ZIEMBA: So, the guidelines
16 specify that there is no second set of
17 reserves. So, just the initial reserve.

18 COMMISSIONER ZUNIGA: The initial
19 reserve. It's just not simply a use it or lose
20 it. You can just roll it over.

21 MR. ZIEMBA: We'd roll it over. And
22 that's consistent with what we've said in the
23 past.

24 COMMISSIONER ZUNIGA: It makes

1 sense. I'm fine with that.

2 MR. ZIEMBA: There were a number of
3 communities this past year that for one reason
4 or another did not either apply to the reserve
5 or were not eligible for the reserve. For
6 example, one community missed the deadline for
7 applying for the reserve but indicated that it
8 wanted to apply for the reserve. What this
9 does is this allows those four communities to
10 apply for the reserve in 2016.

11 CHAIRMAN CROSBY: Those would be --
12 What communities would those be?

13 MR. ZIEMBA: That is Hampden,
14 Melrose, Attleboro and North Attleboro.

15 CHAIRMAN CROSBY: Do I remember
16 correctly that we established that it would
17 only be available to surrounding communities?

18 COMMISSIONER ZUNIGA: Neighboring
19 communities and surrounding community
20 petitioners not designated.

21 MR. ZIEMBA: That's right. So,
22 surrounding communities, communities that
23 reached a nearby community agreement which was
24 not a full surrounding community agreement and

1 those committees that petitioned to be a
2 surrounding community.

3 And that got almost every one of the
4 geographically adjacent communities with the
5 exception of one. Revere was not included in
6 that list because they were neither a
7 petitioner, a nearby community or a surrounding
8 community.

9 CHAIRMAN CROSBY: Did we create a
10 reserve for Boston?

11 MR. ZIEMBA: Boston petitioned to be
12 a surrounding community.

13 CHAIRMAN CROSBY: So, the only one
14 that's outstanding is Revere. And this is a
15 decision for them to make, but I think we
16 should be willing to contemplate that. I don't
17 know if you had this in mind when you drafted
18 this anyway, but I think if Revere wanted to --
19 I guess there's a new administration in Revere.
20 If they wanted to rethink that, I think we
21 should be willing to accommodate that. Is that
22 included in this point?

23 MR. ZIEMBA: No. But I could
24 certainly reach out to Revere about that. They

1 applied this past year and they were ineligible
2 because they didn't meet one of those
3 categories. And at the time that we discussed
4 it back in July, we contemplated that we could
5 reconsider that for the 2016 program.

6 CHAIRMAN CROSBY: Okay. I think
7 that would be worth reaching out and finding
8 out if they're interested.

9 MR. ZIEMBA: That'd be great.

10 COMMISSIONER ZUNIGA: They could
11 always be asked to be -- They could always
12 petition to be a surrounding community for this
13 purposes only, correct?

14 MR. ZIEMBA: We have not set up that
15 type of a process because in our regulations
16 determinations of surrounding community
17 status --

18 COMMISSIONER ZUNIGA: -- has all
19 kinds of other implications.

20 MR. ZIEMBA: Yes.

21 COMMISSIONER ZUNIGA: Fair enough.

22 CHAIRMAN CROSBY: But I think the
23 intent here and I like this, the intent here is
24 these are not meant to be preclusive. These

1 are meant to be as inclusive as possible.

2 Where we can help people deal with
3 the possibility of these kinds of issues, we
4 want to do it. So, whether there have been
5 political spats or forgotten paperwork or
6 whatever, we don't to want let those get in the
7 way of giving a community a shot at this if it
8 seems reasonable. So, I think that kind of
9 outreach is great. Expanding this makes total
10 sense.

11 COMMISSIONER STEBBINS: Revere did
12 not petition for a surrounding community to
13 Everett because they were restricted in the HCA
14 that they had signed?

15 MR. ZIEMBA: That's exactly right.
16 The next point, it's the expansion of
17 eligibility for the one-time reserve to include
18 host communities.

19 When we established the 2015
20 program, we did not include host communities as
21 eligible for the reserve because of the fact
22 that these agreements that were reached with
23 the applicants were sizable agreements. And so
24 in terms of allocating dollars as effectively

1 as we could, we did leave host communities out
2 of the eligibility for the reserve.

3 But upon further reflection, I think
4 that the host communities could benefit from
5 the \$100,000 reserve. Certainly, they have
6 some sizable host community agreements. To a
7 lesser extent, Plainville has obviously a much
8 less generous package than the Category 1
9 facilities. But the \$100,000 reserve which is
10 utilized for either planning or specific
11 impacts could enable the host communities to
12 meet needs that weren't anticipated when they
13 reached these agreements.

14 For example, there are a number of
15 different businesses that are experiencing
16 parking-related issues, construction-related
17 within the city of Springfield. And a number
18 of those businesses made questions of could we
19 apply to the community mitigation fund? Should
20 we go to Springfield for funding? Where should
21 we go?

22 While further decisions about
23 Springfield's use of its host community dollars
24 are being made over time, at least this

1 \$100,000 reserve could be a pot that could
2 address some of those immediate needs without
3 the need to have tremendous amount of
4 reflection about whether or not it's going to
5 impact public safety needs or other plan needs
6 within the city of Springfield.

7 This could be an additional
8 allocation of funding to make it a little bit
9 easier for impacted businesses and others to
10 find funding under the 2016 mitigation fund.

11 COMMISSIONER ZUNIGA: You are not
12 suggesting that this reserve would go to a
13 private business.

14 MR. ZIEMBA: It would not go to a
15 private business. Under our guidelines of 2015
16 and our current guidelines, the fund does not
17 directly pay any private entities. It is only
18 to governmental entities.

19 In the 2015 program, we allowed
20 governmental entities to apply for a program
21 that would benefit private entities but that
22 they would have to be responsible for, they the
23 governmental entity, would have to be
24 responsible for the program assistance to

1 private entities.

2 This would be the same. I don't
3 recommend opening it up to private entities,
4 our fund. But if a community chose to set up a
5 program for their own private entities,
6 businesses and the like we would continue what
7 we did in 2015 by enabling them to do so.

8 COMMISSIONER ZUNIGA: I am of the
9 original mind -- I understand your
10 recommendation and even though the dollars are
11 small enough for planning which could be
12 appropriate, I think the fact that there's a
13 host community agreement that governs a lot of
14 these issues, the parties could decide to
15 reopen it. That could be in and of itself be
16 -- there's all kind of reopener provisions that
17 they could look at for all kinds of anticipated
18 or unanticipated which could work both ways.
19 The party could have decided to fund in
20 anticipating that is not itself manifesting.

21 All of that could be negotiated by
22 the parties. So, I am less inclined to go
23 along with this one.

24 CHAIRMAN CROSBY: Before we respond

1 further on this one, you might want to mention
2 the second one down from this relates to it.
3 Why don't you mention that one.

4 MR. ZIEMBA: At the bottom of the
5 page, there is a recommendation that we require
6 a match or a partial match by a government
7 applicant or licensee or both for any fund
8 requests for assistance to nongovernmental
9 entities.

10 What this is designed to do is to
11 provide some boundaries to our program while
12 we're trying to determine how best to utilize
13 the fund, and what are the overall limits of
14 the fund and how many dollars are we going to
15 have? How many needs are we going to have?

16 At least for the near term, we are
17 asking that if a community or another entity
18 wants to fund a program to benefit a private
19 entity such as businesses that are impacted,
20 that that community would be required to put
21 forward a match. Or if the community doesn't
22 put forward a match, an applicant -- excuse me,
23 a licensee could put forward a match.

24 So, by asking for participation by

1 either the licensee or the community, it might
2 have the effect of putting some boundaries on a
3 program that may become too expansive given
4 that there's a limited pot of funding over the
5 next few years.

6 COMMISSIONER ZUNIGA: So, are they
7 supposed to go together or not necessarily?

8 MR. ZIEMBA: Either a licensee or
9 the community could put forward a match or a
10 partial match or they could both put forward a
11 match or a partial match to any funding from
12 the Commission.

13 COMMISSIONER ZUNIGA: Including
14 planning which is the original \$100,000 reserve
15 point.

16 MR. ZIEMBA: No. This is for
17 specific impacts to private entities. This is
18 not the reserve for planning.

19 COMMISSIONER ZUNIGA: I'm sorry.
20 So, bullet number four and bullet number five,
21 are they meant to work together?

22 CHAIRMAN CROSBY: Four and six you
23 mean?

24 MR. ZIEMBA: Four and six.

1 COMMISSIONER ZUNIGA: Four and six,
2 any one four, five or six are meant to work
3 together?

4 MR. ZIEMBA: When the Chairman made
5 mention that the two relate, I think what he
6 was mentioning is that the purposes that I was
7 mentioning for the \$100,000 reserve i.e., it
8 could be utilized for impacted businesses that
9 also gets brought into the requires for the
10 match for the governmental applicant or
11 license. The reserve is separate from the
12 specific grant requests. The bottom dot point
13 that relates to specific grants not to the
14 reserve.

15 Under our reserve, what you're
16 remembering correctly Commissioner is that
17 under our reserve, we require communities to
18 put forward some sort of an in-kind
19 contribution to planning dollars. So, they
20 need to demonstrate to us that they will expend
21 some local resources in order to take advantage
22 of the planning grants.

23 But this is specific to specific
24 grant requests.

1 CHAIRMAN CROSBY: So, I muddled
2 that.

3 MR. ZIEMBA: You were right on point
4 that they related entirely together.

5 CHAIRMAN CROSBY: But I sort of
6 confused issues, apologies.

7 COMMISSIONER ZUNIGA: That is why
8 we talk to clarify.

9 COMMISSIONER MACDONALD: John, can
10 you review for me what the process is that is
11 followed when a request is made of these
12 reserves? Specifically, is there an
13 application to the Commission to approve it?

14 Or is once reserved, is it then up
15 to the local community to make its decision
16 unaffected by the Commission's --

17 MR. ZIEMBA: So, it's by application
18 to the Commission. And they fill out a fairly
19 simple form. They provide that application to
20 the Commission. The Commission staff then
21 reviews that. We seek the input of the
22 licensee to see what their thoughts were, their
23 thoughts are about the application.

24 And we pull together any other

1 guidance that may relate to the application
2 such as any reviews by any regional planning
3 agencies or the like. The staff convenes to
4 review the reserve applications.

5 We follow up with the applicants
6 with any questions we as a staff have. Then we
7 assemble a packet and we bring that forward to
8 the Commission for its approval of whether or
9 not that reserve request meets the guidelines
10 and is consistent with the Commission's
11 policies.

12 And after the Commission reviews it
13 and grants the grant then we fill out the grant
14 paperwork with the community and make that
15 available to them.

16 COMMISSIONER MACDONALD: There's a
17 substantial oversight function that's reserved
18 in the Commission before any of these funds are
19 actually authorized to be spent.

20 MR. ZIEMBA: That's right. Some key
21 things that we look at, these grants are for
22 the purpose of assisting communities and
23 entities in dealing with impacts from a
24 facility. They're not for general government

1 purposes. So, we review the submissions to
2 make sure that they meet our guidelines
3 including that policy.

4 COMMISSIONER ZUNIGA: Commissioner,
5 we are the trustees of this community
6 mitigation fund. So, we make all funding
7 decisions and disbursements as we go along.

8 CHAIRMAN CROSBY: And it further
9 means that if we did go along with your
10 recommendation to make it available to host
11 communities, we create the reserve, we wouldn't
12 necessarily have to grant any money out that
13 we'd have another bite at the apple. Other
14 thoughts on this one?

15 COMMISSIONER STEBBINS: I looked at
16 bullet number four and my initial impression
17 was probably the impression I carried over from
18 when we previously had discussions of the host
19 community agreement should be able to provide a
20 host community with essentially what they need.
21 It still doesn't prohibit them from applying to
22 the community mitigation fund.

23 I was leaning somewhat against
24 concept number four. But thinking through

1 concept number six, don't we run into an issue
2 where state and/or municipal governments have
3 legal confinements as to spending money on
4 behalf of a nongovernmental entity?

5 Essentially, on behalf of -- In this case if
6 you're going to bring up the example of
7 Springfield, a business -- spending money on
8 behalf of a business.

9 Obviously, their issues are not
10 related to the business itself. And it sounds
11 like it's clearing up parking issues and a
12 number of other things. But is that wading too
13 into the weeds on this that they would run into
14 some type of constraint in doing that?

15 MR. ZIEMBA: That's not something
16 that I had previously researched. I can
17 certainly do that.

18 CHAIRMAN CROSBY: Had not previously
19 researched?

20 MR. ZIEMBA: I had not researched
21 the limitations of municipalities in being able
22 to anything -- because I think the thought is
23 that these are community mitigation funds. The
24 statutory purpose is to mitigate impacts.

1 So, if you're mitigating impacts,
2 those impacts could be impacts on private
3 entities. So, it was included in the general -
4 - At least the thought I was operating under is
5 it's included in the general statutory purpose
6 of mitigating those impacts.

7 And you can mitigate governmental
8 impacts and impacts to private entities. But I
9 guess I hadn't really realized that there may
10 be further municipal limitations on
11 expenditures of dollars for private entities.

12 COMMISSIONER STEBBINS: And I only
13 raise that as a question or a caution. I give
14 you big credit for trying to figure out a way
15 to -- As you've been close to these communities
16 and watching some of these issues that none of
17 us had anticipated kind of popped to the
18 surface.

19 The one in Springfield being impacts
20 on parking to some of the area businesses.
21 That's obviously impacting their bottom line.
22 Springfield could certainly come to us and say
23 unanticipated consequence of the construction.

24 I'm just trying to find a way that

1 it would fold into our existing policy without
2 kind of moving the concepts around too much but
3 work within our existing framework.

4 So, in that case, Springfield comes
5 to us and says we have an issue with parking
6 for whatever reason. The parking garage isn't
7 up yet. It's impacting some of the local
8 businesses. We want to do something to make
9 more parking on our streets available for these
10 area businesses.

11 That to me would seem to be a
12 reasonable solution and a reasonable
13 application for that community to make. Again,
14 I know you're trying to think -- You're taking
15 one example and trying to think of a broader
16 concept for it. But boiling it back down to
17 the example that's kind of driving the thinking
18 on this that would still seem to fit within the
19 existing framework that we somewhat already
20 adopted.

21 MR. ZIEMBA: That was an eligible
22 activity under the 2015 program. But
23 Springfield would have to apply on behalf of
24 those businesses.

1 COMMISSIONER STEBBINS: But they be
2 applying to solve a problem on behalf of those
3 businesses that's impacting those businesses.

4 MR. ZIEMBA: Rather than providing
5 direct assistance.

6 CHAIRMAN CROSBY: Could I suggest
7 that unless you happen to have an answer to
8 this right off the top of your head, it's a
9 really good point. None of us have thought
10 about it. So, maybe we could set that aside
11 and have the legal department check into this
12 and see whether not the way this is framed.

13 I think Commissioner Stebbins is
14 exactly right. We can accomplish the intent of
15 this without these exact words or without this
16 exact process. So, let's just find out if the
17 process is a problem and adjust it if it is.
18 But there is not point in us speculating any
19 further whether it is or it isn't.

20 COMMISSIONER CAMERON: John, if an
21 applicant or licensee were unwilling to match
22 or partially match there's no ability to use
23 that fund; is that accurate?

24 MR. ZIEMBA: Well, under this new

1 thought this new concept --

2 COMMISSIONER CAMERON: -- there
3 would need to be consensus to do it.

4 MR. ZIEMBA: Yes. Partially this
5 was a reflection to our prior conversations
6 where we talked about how for example host
7 community dollars really should be utilized to
8 deal with host community issues.

9 I wanted to see if there was some
10 way that we could help solve some of those
11 problems that may be experienced by local
12 businesses through a contribution from the
13 state but recognizing that there is a role to
14 play by the host community.

15 So, even though this is a limitation
16 on those dollars, in essence it's almost like
17 an expansion of the state's involvement in some
18 of those host community issues because of our
19 prior thoughts about host community dollars
20 being utilized to solve those host community
21 problems.

22 I just don't want the entities that
23 are being impacted to somehow get placed in an
24 unenviable position of state, licensee,

1 community each looking at one another. And
2 part of that is how we develop our
3 communication to solve problems. And MGM and
4 Springfield have been great at working through
5 all these obstacles and we're going to continue
6 to do that.

7 Systemically, I was trying to find a
8 way to solve problems.

9 COMMISSIONER ZUNIGA: I in general
10 like the match idea, the principle subject to
11 all of the details about whether any one of
12 those is restricted or precluded.

13 CHAIRMAN CROSBY: I have the same
14 predisposition I think that Commissioner Zuniga
15 has and Commissioner Stebbins also that we
16 always made a point of saying that the
17 legislation dealt with the host communities
18 very, very carefully and generously, gave them
19 incredible capacity to protect their own
20 interests prior to an application even getting
21 to us.

22 So, we've had a pretty strong
23 predisposition to say, hey, that was your job
24 to take care of your issues, the issues within

1 your community.

2 You're suggesting the possibility of
3 expanding this in two ways. One is letting the
4 host communities get a reserve. I sort of lean
5 against it just from what we've been talking
6 about. But we've got more feedback to go.
7 We're not making a final decision here.

8 And I also sort of agree with
9 Commissioner Zuniga that if we are going to let
10 a community come in and say we didn't
11 anticipate, hypothetically, this parking
12 problem which is affecting a bunch of
13 businesses. We'd like to come to you, the
14 community mitigation fund and get some money
15 that at least requiring some skin in the game,
16 maybe it's a good idea.

17 So, I think we have got to work
18 through how long we want to stick with this
19 idea sort of stiff arming the host community
20 saying that was your job. If you blew it, you
21 blew it. You've got to come up with some more
22 money and figure out how you deal with a
23 problem you neglected to anticipate.

24 But like I got through saying

1 earlier, this is not meant to be preclusive.
2 This is meant to be an inclusive process. So,
3 maybe we should ease up on that. That's where
4 I lean sort of at the moment.

5 MR. ZIEMBA: On these items, I sort
6 of go to maybe what the legislative intent that
7 the Legislature obviously created host
8 community agreements and created mitigation
9 funds.

10 And there was no limitation on where
11 those mitigation funds could go to surrounding
12 communities or nearby communities. So, I glean
13 from that an intent that host community
14 agreements could be complemented by the
15 mitigation funds. And indeed that's where it's
16 likely that most of the impacts will be felt.

17 In that regard, I do understand the
18 argument that these are sizable agreements but
19 perhaps there's a way to weave these together.

20 CHAIRMAN CROSBY: I'm just saying
21 that's my prevelation(PHONETIC). And that's
22 sort of the way we've been leaning in the past.
23 I'm not sure that should control going forward.
24 But we'll have another chance to talk about

1 these issues when other people have commented
2 too.

3 MR. ZIEMBA: Exactly, yes. The one
4 dot point, the new guidelines create a new
5 transportation planning fund grant to enable
6 communities to engage in planning for
7 transportation projects, which typically take
8 many years to plan.

9 So, this might be a little bit
10 confusing because obviously the reserves can be
11 utilized for planning purposes. That \$100,000
12 reserve can be used for transportation planning
13 purposes and other planning purposes. And that
14 stays in the program.

15 But what this does is that if there
16 are needs in excess of that \$100,000 for
17 planning activities, this creates a segment of
18 the 2016 mitigation fund for transportation
19 planning fund guidelines.

20 What this goes back to is one of the
21 early issues that were raised to us by
22 communities that our 2015 program for specific
23 impacts it was limited to just impacts that
24 were being felt at the time of the application

1 or have been felt at the time of the
2 application. Therefore actual impacts that we
3 would only address actual impacts.

4 But many communities put forward the
5 argument that hey, it probably makes sense to
6 actually anticipate impacts that we as
7 reasonable people believe will likely occur.
8 Specifically, some projects take a good amount
9 of time to put together in advance. And it may
10 take some years to put together some types of
11 projects. And specifically with transportation
12 projects, there is a long lead time for
13 transportation projects.

14 So, as the argument goes, okay,
15 Commission and MEPA, the Massachusetts
16 Environmental Policy Act, MEPA and others have
17 made predictions about what the actual impacts
18 will be from traffic and other items. But what
19 if we're wrong?

20 If we're wrong and there are greater
21 impacts than predicted, a community might be
22 placed in a bad position for a very long period
23 of time while the remedy is being developed.
24 So, if traffic is worse than expected, it may

1 take a couple of years to come up with the fix
2 for that unanticipated traffic impact.

3 So, in reaction partially to that
4 recommendation from communities that we should
5 think about anticipated impacts, we created
6 this transportation planning fund grant that
7 specific type of impact. We limit it to just
8 transportation items because transportation
9 items do take years to develop.

10 But people have asked for
11 anticipated impacts for a range of things.
12 They've asked for additional crime might be
13 experienced. So, can we put together
14 applications for police radios or for other
15 communication systems.

16 And I think at this point, given
17 where we are in the development of the program,
18 I don't think that I'd be prepared to recommend
19 opening it up to all anticipated impacts.

20 But transportation planning is
21 indeed something that takes quite a bit of a
22 period of time to put together. So, if we have
23 a little bit more of a limited program for this
24 year on transportation related matters, I think

1 that that would go a long way.

2 COMMISSIONER STEBBINS: John, just
3 to help me understand. None of the host or
4 surrounding community agreements had kind of
5 proactive planning money where they will assess
6 traffic, will assess crime, public safety
7 impacts, etc. So, there was more review of
8 impacts as opposed to this proactive plan.

9 MR. ZIEMBA: No, there were. What
10 you're referring to is a lot of look back
11 provisions. They did involve looking back to
12 see if there were impacts and then that would
13 be addressed after the impacts are determined.

14 But some of the agreements indeed
15 did address potential anticipated impacts. For
16 example, the Wellington in the Medford
17 agreement included some dollars for some design
18 money and planning dollars to take a look at
19 that.

20 But Medford was one of the big ones
21 that was pushing for this concept of
22 anticipated impacts related to transportation.
23 They had a \$2 million request in this past
24 year. And that was not consistent with our

1 guidelines. So, that portion of their
2 application was rejected.

3 But this new transportation planning
4 fund grant could partially deal with that type
5 of a request.

6 COMMISSIONER STEBBINS: So, building
7 off of what you just said about -- And I
8 remember Medford's request. The next page,
9 you're talking about setting aside targeting a
10 limit of \$982,000.

11 Kind of wearing your old MassDOT
12 hat, what will that really help us get or help
13 the communities get in terms of what they would
14 need to do some of these planning purposes?

15 MR. ZIEMBA: They could do some
16 concept planning. You're not going to engage a
17 full design. For example, Sullivan Square I
18 think \$11 million was allocated for design of
19 that facility. The \$982,000 especially if it's
20 split between a number of different projects
21 would not get you that substantially along in a
22 design, but it could get you some consultations
23 to move forward in concept planning.

24 COMMISSIONER STEBBINS: And I like

1 this idea. I think it's pretty creative. I
2 have a couple of other questions kind of
3 related to some of the additional information
4 you provided further back in terms of what I
5 was looking for was where is the earliest
6 introduction of the RPA -- I know we're getting
7 a little bit into the weeds. -- the RPA's role
8 in this type of planning.

9 And I walked away with thinking that
10 you want the RPAs to help us review the
11 applications. Where I feel more comfortable if
12 the RPAs were really helping the communities
13 not spin their wheels but be more involved in
14 the planning process on the front-end. I like
15 the idea of the money helping communities
16 understand what exactly it's going to get them.

17 MR. ZIEMBA: We for planning dollars
18 require applicants to actually reach out to the
19 RPAs as part of our application process to see
20 if they are engaged in anything of a similar
21 nature.

22 And I think that's a concept you put
23 forward in the 2015 program where they reach
24 out to the RPAs so you don't have individual

1 silos of communities just doing studies in and
2 of themselves. At least if they reach out to
3 the RPAs, they know that each community is
4 pushing for it. And maybe there's a way to do
5 it together to save dollars.

6 It doesn't require the planning to
7 go through the RPAs. As in if they needed to
8 use outside consultants instead of the RPAs to
9 do actually the transportation planning work,
10 they could do so. But it does require that
11 consultation.

12 CHAIRMAN CROSBY: Other thoughts on
13 this one?

14 COMMISSIONER ZUNIGA: I do think
15 that the transportation planning may be very
16 useful in a couple of very important issues.

17 When it comes to mitigation what we
18 heard throughout all of the hearings we had,
19 the number one thing was traffic or
20 transportation related impacts. And I know
21 that these are very long lead projects. So, I
22 am totally fine with that.

23 CHAIRMAN CROSBY: I'm interested in
24 knowing what other people think about this as

1 we go through the request the hearing process,
2 the feedback process. As you said to me, I'm
3 not sure whether we ought to just lift the
4 planning restriction.

5 Why shouldn't this money will be
6 available for planning if we decide any given
7 application is appropriate. And I can think of
8 environmental planning, for example, there
9 could be -- I think you're right.
10 Transportation is the sort of most predictable,
11 long-term thing. But there are a lot of
12 environmental issues, watershed development or
13 something or other where there might very well
14 be sort of a long-term planning need.

15 So, do we want to just have this
16 targeted modification permitting planning? Or
17 should we just kind of lift the barrier? I'm
18 not sure at this point.

19 COMMISSIONER ZUNIGA: I think we are
20 still in the phase of trying to be judicious
21 with the one-time funding that came from the
22 licenses. And the fact that the next funding
23 comes until these things are operational as a
24 principle.

1 The other side of the coin in
2 lifting planning for all kinds of purposes is
3 that it could open the door for the limited
4 funds and result in not being able to fund
5 something that comes and that manifests later.

6 CHAIRMAN CROSBY: Right.

7 COMMISSIONER MACDONALD: I'd like to
8 make an observation. I'm kind of surprised at
9 the need for this given what's been noted as
10 the common fundamental nature of the traffic
11 issue for any facility.

12 So that the concern that I would
13 have is that by building in this almost like a
14 second bite of eligibility for funds that it
15 would diminish the discipline, if you will, of
16 the original commitments that applicants were
17 entering into.

18 Is there something in particular
19 that has happened that has highlighted the need
20 for this kind of flexibility in the traffic
21 area so far?

22 MR. ZIEMBA: Well, we tried to be
23 thoughtful about the mitigation that's required
24 specifically in transportation projects. Of

1 course, the MEPA process has been extensive in
2 reviewing traffic conditions.

3 Even in our awards we had some
4 provisions that dealt with contingent issues
5 such as in our Wynn award, our Wynn conditions,
6 we place some conditions on what would happen
7 if they did exceed their traffic thresholds.

8 So, they have their anticipated
9 traffic and if they exceed those traffic
10 thresholds there is a payment of \$20,000 per
11 vehicle over the thresholds that they have to
12 contribute as part of their license award. And
13 that that gets put into something that can be
14 utilized by the city of Boston to address those
15 increased needs.

16 But it's very difficult obviously to
17 predict with absolute precision on whether or
18 not the allocations that we anticipate of how
19 many folks will use vehicles, how many folks
20 will use boats, how many folks will use public
21 transportation, how many employees will use
22 public transportation. It's very difficult to
23 predict with certainty all of those things.

24 And this is in reflection to

1 communities that think currently they say well,
2 we think that regardless of how good a job the
3 state did or others did, we believe that it's
4 going to be a more severe case than what has
5 been put forward in the conditions either under
6 MEPA or under ours.

7 And what this would do is that this
8 would at least enable the planning process to
9 more forward so that in the event these
10 contingencies come up and these impacts beyond
11 the current projected impacts that there'd be
12 some ability to react as quickly as we can so
13 that the community, the public and those
14 neighborhoods' needs can be addressed as
15 quickly as possible.

16 COMMISSIONER MACDONALD: Thank you.

17 CHAIRMAN CROSBY: On that point
18 though, there is one prospective issue too.
19 There are negotiations going on with
20 surrounding communities right now with MG&E.
21 We wouldn't want MG&E to be able to say hey,
22 don't worry about that planning issue, there's
23 going to be this transportation planning grant.

24 MR. ZIEMBA: Right.

1 CHAIRMAN CROSBY: Again, those are
2 our off the top of our head reactions. We'll
3 be interested in hearing what people have to
4 say going forward.

5 MR. ZIEMBA: I can just quickly get
6 through the last couple. There's a
7 recommendation that we -- It's a soft
8 allocation of \$4.9 million for the fund. It's
9 basically a soft cap that reflects one-third of
10 the available funding over the next three
11 years.

12 If we have needs that exceeded that
13 4.9, the guidelines don't prohibit that, but
14 this is a signal that in all likelihood we
15 would not attempt to spend more than what is
16 available for the next three years.

17 COMMISSIONER ZUNIGA: So, it's 14.75
18 divided by three?

19 MR. ZIEMBA: Divided by three. So,
20 what that reflects is openings of the Category
21 1 facilities in 2018. And hopefully, we will
22 receive some revenues during 2018 from those
23 facilities.

24 So, for example say both Wynn and

1 MGM Springfield were open by the final quarter
2 of that year, we project \$18 million
3 conservatively as a full year's worth of
4 revenue. So, if they were both open for that
5 final quarter, \$18 million divided by four.
6 So, we approximately have about \$4.5 million to
7 go into the 2019 program if they were both open
8 that final quarter.

9 If they are not open for that final
10 quarter and it takes until the end of the year,
11 there may be zero dollars left in the fund by
12 2019. But as we get closer, we certainly can
13 make adjustments as to what the expectation
14 would be for each individual year's award.

15 CHAIRMAN CROSBY: It also would be
16 affected if we granted the license in Region C.
17 Obviously, that would replenish the fund.

18 MR. ZIEMBA: Right. There's a
19 footnote in these guidelines that says they do
20 not do deal with Region C because that decision
21 has not been made. But again, there would be
22 more revenues with the Region C license as well
23 and more needs.

24 COMMISSIONER ZUNIGA: I think this

1 is just a guideline. Might as well as a
2 budgeting tool. It's straight-line budgeting,
3 so it's pretty straightforward. We don't have
4 to --

5 MR. ZIEMBA: And the final point is
6 we just include the fact that the Commission
7 has already determined that it would contribute
8 \$350,000 to the Springfield Historic
9 Preservation Trust Fund. That is upon
10 application from the city of Springfield. And
11 language is included in the guidelines that
12 makes it clear that this does not impact the
13 city of Springfield's ability to apply for and
14 their purposes.

15 COMMISSIONER STEBBINS: Do we have a
16 timeline for that application?

17 MR. ZIEMBA: It needs to be received
18 by February 1, but I think we'll ask to get it
19 as soon as we can get it well in advance of
20 February 1.

21 CHAIRMAN CROSBY: Anything else on
22 topic (a)?

23 MR. ZIEMBA: I think that's it.
24 It's such a lengthy presentation.

1 CHAIRMAN CROSBY: Not at all. It
2 was interesting. Those are great. They're
3 really interesting and as somebody said, you're
4 close to these communities. And this is trying
5 to figure what the impacts are and how to
6 mitigate them.

7 So, this really helpful. It's
8 great.

9 So, you have item number (b), right?

10 MR. ZIEMBA: That was item number
11 (b). Item number (a) was the Mass Gaming and
12 Entertainment, which we dealt with.

13 CHAIRMAN CROSBY: Sorry. So, your
14 draft here simply codifies what we've just been
15 discussing.

16 MR. ZIEMBA: Yes. And we will make
17 sure that everybody knows that this is a
18 concept draft. We'll explain to them what
19 concept draft is. Hopefully, we'll get some
20 comments.

21 CHAIRMAN CROSBY: Proactively
22 putting this out, Elaine, for public comment.

23 MR. ZIEMBA: Yes.

24 CHAIRMAN CROSBY: Thank you. I'm

1 going to suggest another real quick break.

2

3 (A recess was taken)

4

5 CHAIRMAN CROSBY: We are ready to
6 reconvene meeting 169. We've made a slight
7 adjustment in the schedule to try to
8 accommodate people who are here visiting. We
9 are going to deal with the impacted live
10 entertainment venue issue move the racing issue
11 forward and do that next.

12 And then we'll take a lunch break so
13 those of us who are here can get something to
14 eat. We'll finish up our agenda items, all of
15 which are internal after that. So, the two
16 that people have come in for we'll do now.
17 Director Griffin.

18 MS. GRIFFIN: Commissioners. The
19 materials that you have reflect the two
20 petitions on behalf of six facilities
21 requesting to be designated as impacted live
22 entertainment venues relative to the Mass
23 Gaming and Entertainment application.

24 I'm pleased to report to you that

1 two venues have come to mutual agreement with
2 the applicant Mass Gaming and Entertainment and
3 have thus withdrawn their petitions.

4 So, Brockton 21st Century
5 Corporation on behalf of the Shaw's Center and
6 Campanelli Stadium both located in Brockton
7 have withdrawn their applications in light of
8 the recent live entertainment cooperation
9 agreement with Mass Gaming and Entertainment.
10 They no longer want, need or wish to be
11 designated as an impacted live entertainment
12 venue. So, that's great news. And we
13 congratulate both parties.

14 So, today we're going to hear from
15 and I'm joined with the Mass Performing Arts
16 Council. We have Peter Martin who is here on
17 behalf and representing the Mass Performing
18 Arts Council.

19 South Shore Playhouse Associates
20 doing business as South Shore Music Circus in
21 Cohasset, Cape Cod Melody Tent in Hyannis. And
22 Vincent Longo is representing those
23 organizations. Lynn Auditorium in Lynn,
24 Massachusetts and today we have Justin LaCroix

1 from Zeiterion Theatre in New Bedford.

2 So, I just wanted to remind the
3 Commissioners since it's been a little while
4 since we talked about impacted live
5 entertainment venues, these petitions are
6 handled in a similar manner to the surrounding
7 community petitions.

8 Petitioners and applicants will be
9 allowed time today to be heard. They
10 understand that decisions will not be made
11 today but plan for the December 10 public
12 Commission meeting. At that time, you can
13 decide whether to accept or deny their
14 petitions.

15 And the parties are here and are
16 prepared to address the following conditions
17 and considerations that are provided in the
18 statute and the regulations. Whether the venue
19 meets the definition of an impacted live
20 entertainment venue set forth in Chapter 23K
21 under section 2. Designated in whole or in
22 part for the presentation of live concerts,
23 comedy or theatrical performances which the
24 Commission determines experiences or likely to

1 experience a negative impact from the
2 development or operation of a gaming
3 establishment.

4 Under the regulatory definition, the
5 Commission is to consider factors referenced in
6 section 4(39), the Commission consider factors
7 including but not limited to the venue's
8 distance from the gaming establishment, the
9 venue capacity and the type of performances
10 offered by that venue.

11 Also, the Commission will consider
12 whether the applicant intends to include a
13 geographic exclusivity clause in the contracts
14 of entertainments at the proposed gaming
15 establishment or in some other way intends to
16 limit the performance of entertainers within
17 Massachusetts.

18 So, to start us off with this
19 discussion, we have a presentation like I said
20 from the Mass. Performing Arts Council. And
21 we're going to start with Peter Martin who is
22 an attorney representing the Mass. Performing
23 Arts Council.

24 MR. MARTIN: Thank you, good

1 afternoon. Peter Martin, Bowditch and Dewey in
2 Worcester representing the Massachusetts
3 Performing Arts Coalition. A private
4 organization that represents seven not-for-
5 profit or municipally owned live entertainment
6 venues in accordance some of the criteria for
7 identifying impacted live entertainment venues.

8 We have been in pretty much
9 continuous discussions with MG&E since early
10 September. I will volunteer my opinion that
11 both sides have been very active and creative
12 and have been acting in negotiating in good
13 faith to try to negotiate and finalize an ILEV
14 agreement. We have not been able to do that at
15 this point.

16 We are seeking the ILEV designations
17 in part, because as you know, after the
18 designation of the venues as ILEVs starts a 30-
19 day clock for continued negotiation of the ILEV
20 agreement. And failing an agreement during
21 that 30-day period, then we would go to
22 arbitration.

23 I know it's MPAC's desire to enter
24 into an agreement short of arbitration. But if

1 we do need to go to arbitration, we will
2 certainly do that. Your designation of the
3 four venues in Mr. Siebel's letter of November
4 9 will all allow those discussions to continue.

5 I will simply reiterate a couple of
6 the points made in Mr. Siebel's letter which is
7 as you see it goes through a number of other
8 ILEV designations or ILEV agreements with other
9 applicants with other members of MPAC. The
10 physical proximity criteria are certainly met
11 by those venues as they are met by the four
12 venues in Mr. Siebel's letter.

13 But almost more important than
14 physical proximity in terms of impact is the
15 overall ability of a casino applicant, given
16 the market power and advertising and other
17 things that my colleagues will talk about
18 later, is to divert acts from the MPAC members,
19 particularly the larger national acts that may
20 be coming through once a year into New England
21 and would have choose between one or another
22 venue for their swing through the area.

23 They naturally are seeking to
24 perform at venues that can pay more for the act

1 than the MPAC people members can. There are
2 highly likely to be very adverse impacts on
3 MPAC even if there are no exclusivity clauses
4 in the agreements.

5 My understanding is MG&E said they
6 will not seek exclusivity clauses affirmatively
7 in their contracts with entertainers. But as
8 Mr. Siebel points out in the letter, even
9 absent exclusivity clauses the fact of the
10 matter is that our smaller, less wealthy venues
11 are at a disadvantage with respect to competing
12 for acts that may be appearing at the casino
13 site.

14 So, having said I think I will turn
15 it over to Vince Longo of the South Shore
16 Playhouse Associates so he can put some flesh
17 on the bones of what these adverse impacts
18 might look like.

19 MR. LONGO: Commissioners, what we
20 are finding out is that we think that the
21 Legislature wanted to create more of a level
22 playing field. It's never going to be level.
23 As of right now, we compete with each other
24 within our organization, but we discuss things

1 about what acts might be worthwhile of putting
2 in in a certain period of time.

3 What's different here is that I
4 represent two 2300-seat theaters in Region C.
5 The difference is that some of the playing
6 field has already changed before we start
7 talking about the fact that we basically meet
8 all of the ILEV requirements right now.

9 What's changed has nothing to do
10 with what we did or the Commission did. It has
11 to do with Wampanoag Indians having land in
12 trust in Taunton. That's 14 miles away from
13 Brockton. If that goes through, which there
14 are all indications are that we all waited for
15 land in trust and that was the big trigger and
16 First Light project it's going to be built,
17 then most likely First Light will take a
18 majority of our better acts at least the first
19 few years.

20 Some of them will what's called
21 residences. Like Celine Dion in Las Vegas,
22 she's been there for months. Britney Spears at
23 Caesars I think it was for a month at a time.
24 So, it just takes the audience to a different

1 level and into a different area. And we have
2 no capacity to pull that act for years after
3 that because it had done so many shows within
4 the market. And it's likely they come back to
5 the same people that gave the money to do the
6 residency. So, we feel like that difference
7 changes the whole thing here.

8 We're very, very confident that MPAC
9 can live within its own means and book certain
10 acts and understand the advertising
11 restrictions that we all work with.

12 However, the tribe will not have any
13 of that. They will do and rightfully so, they
14 have no restrictions whatsoever on what we're
15 talking about today. So, bringing in another
16 establishment down the road would basically
17 take what's left off the plate for live
18 entertainment. And therefore putting us at an
19 extreme disadvantage and the difference from
20 us, we've been around for 64 years. We are
21 very different as a 501(c)(3). Some people
22 have never heard of this type of 501(c)(3).

23 We have to have the talent and the
24 advertising region get people to come to those

1 shows because we live and die by the ticket
2 sale. We are very different. We don't collect
3 money from anyone else. We collect money from
4 doing good business. And we've been able to do
5 that for the 21 years I've been involved and
6 making six-figure donations into our
7 communities to support other 501(c)(3)s.

8 We're in a different situation here.
9 If we go, 130 people that are getting money
10 from us every single year, six figures gone.
11 They don't get the money. So, they have to go
12 someplace else to get the money.

13 I think that that kind of puts it
14 over-the-top as to why the South Shore Music
15 Circus and the Cape Cod Melody Tent should
16 definitely be ILEVs in this situation, on top
17 of the fact that we already meet the criteria
18 before all this goes on.

19 We won't be around. South Shore
20 Playhouse Associates most likely won't be
21 around if we can't book talent. If you put two
22 venues right down the street from me, we won't
23 be able to book talent. It's as simple as
24 that. We've been unable to come to an

1 agreement. Every time we say one thing and
2 Brockton comes back with an off the scale
3 response that's not even close. We say six
4 shows, they say 18 shows. We are trying but we
5 are not getting anywhere.

6 It's not just booking the act.
7 What's hard to understand is that this all
8 happens with an agent who has no idea what's
9 going on within the state regarding some rules
10 and regulations that might come out of this.

11 The agent is going to go where the
12 money is. Some loyalty, thank God that's
13 what's kept us in business. That loyalty, 25
14 percent of it of the talent that comes in is
15 through the loyalty relationship that over the
16 years that the booker, me, has with the agents.
17 But I can't guarantee that they can look around
18 and say, well, I'm getting \$100,000 over here
19 down the street and you've been offering me 50
20 for many years, I'm going with the \$100,000.
21 It's just economics.

22 And then when those shows start
23 advertising at either of the two either in
24 Brockton or in Taunton, and Taunton has no

1 restriction whatsoever in advertising, and we
2 would like to know that there would be some
3 kind of restriction with our ILEV in our
4 agreement when we get to it that would help us.
5 Help us continue to do what we do, putting
6 money back in our communities. I think that's
7 all I had to say.

8 MR. MARTIN: Just to sum up. We
9 believe that the four venues described in the
10 letter meet all the criteria for ILEV status.
11 They're nonprofits or municipally-owned
12 theaters. They're comparable venue sizes.

13 The letter describes the types of
14 acts that they typically have. And what
15 Vincent has just described to you is sort of
16 the raw economic reality. The fact that this
17 deep pocketed competitor coming into the market
18 potentially devastating these smaller less
19 wealthy organizations.

20 If you choose to designate the four
21 venues as ILEVs, as I said, we'll continue to
22 diligently pursue an agreement with MG&E. And
23 being a glass half full kind of guy, I think we
24 actually will be able to do that.

1 I think we're going to have to --
2 I'll have to go back to our members and try to
3 be more creative in terms of thinking of
4 perhaps output measures as opposed to input
5 measures and come up with some new and creative
6 ideas to try to bridge the gap between the
7 parties.

8 I assume we'll continue to discuss
9 in good faith and diligently the issues and I
10 think we'll be able to come to some agreement.
11 But we need the opportunity, the extra time
12 through the ILEV designation in order to get
13 that to happen.

14 CHAIRMAN CROSBY: Questions?

15 COMMISSIONER ZUNIGA: I have a
16 couple. Through your remarks, you allude to
17 the fact that you may currently be experiencing
18 difficulty booking acts. Is that a fair
19 statement or not currently?

20 MR. LONGO: We have this playing
21 field we're working with. And it's not I pick
22 up the phone and then the other venue says,
23 okay, I'll look at it. We still negotiate with
24 each other. We negotiate with each other

1 because that's the ethical right thing to do.
2 That's how we've been able to maintain good
3 business through all of these years by just
4 having those kind of relationships with even
5 other impacted venues.

6 COMMISSIONER ZUNIGA: Within the
7 members of the coalition.

8 MR. LONGO: Some within and most
9 without the coalition.

10 COMMISSIONER ZUNIGA: Help me
11 understand the supply side, putting aside the
12 exclusivity agreements which I understand why
13 this is a very important thing for you and I
14 get all that. Assuming that there is no
15 exclusivity agreements, is there a limited
16 supply and is that because of the number of
17 agents that you have to deal with? At least in
18 theory, isn't there a lot of acts?

19 MR. LONGO: It's not exactly like
20 that. There are number of acts that managers
21 of those acts have designated they want to go
22 through New England within this period of time.
23 In my case, I have to put all that into two
24 months because we are summer theaters.

1 It's not like all of these acts
2 might come off their tour to go through two
3 days in New England. This is all planned out
4 in advance. And there is only a finite number
5 of acts that are coming through the Boston
6 marketplace next summer. That's it.

7 And those negotiations take place
8 with the agent who is actually planning to
9 touring of these particular acts. Such as they
10 don't want to put six hours in between each
11 show. They'd like to go from one show to the
12 next to be under 600 miles or under 500 miles.

13 In New England, they can do four
14 shows in the marketplace in the greater
15 marketplace inclusive of Mohegan Sun and drive
16 within a couple of hundred miles. So, it's
17 very lucrative for the agents to book acts
18 here. But there's only so many of those acts
19 that will be able to us in a given time period.

20 COMMISSIONER ZUNIGA: So, the supply
21 constraint comes from scheduling in a way.
22 Your particular example because you have a
23 window that you have to operate within, but
24 also because -- I don't know if this is the

1 right term. -- but there's a cartel of agents
2 that you have to deal with that narrow that
3 ability. They're to ones picking and choosing,
4 if you will, what's going to make through here.
5 Is that a fair statement?

6 MR. LONGO: Yes, that's true.

7 COMMISSIONER ZUNIGA: And those
8 negotiations --

9 MR. LONGO: They are going on right
10 now. We have a few shows booked. They
11 continually happen throughout the year. All of
12 the venues that are in are always doing that,
13 always trying to gain an advantage of some
14 kind.

15 Most of the time or some of the
16 times personally or relationship wise or
17 longevity within the business. But then
18 somebody comes in and says \$100,000. And our
19 hands are tied behind our back.

20 So, what we want to do is we want to
21 try to get to a level playing field with the
22 establishments that are coming in. Right now,
23 we have no deal and we will never have a deal
24 and they don't even what to talk to us, with

1 the tribe. A couple of letters back and forth,
2 but nothing. They don't even want to hear from
3 us. Think about it, why should they.

4 COMMISSIONER ZUNIGA: You know
5 that's outside of our control too.

6 MR. LONGO: Yes, I understand that.
7 But that's there now. And then there's another
8 one down the street now. So, the possibility
9 of having two is unrealistic number one in my
10 view, but having one of them in Brockton
11 limiting us and not negotiating to the point
12 where we can get to somewhere that just can't
13 work out.

14 COMMISSIONER MACDONALD: Without
15 asking you to get into the details of your
16 negotiating points with MG&E, can you help me
17 just describe what kind of the nature of what
18 it is that you're looking for?

19 MR. MARTIN: When I said sort of the
20 input measures that we're talking about, we
21 have used a provision of some of the other ILEV
22 agreements that try to identify the universe of
23 sort of relevant acts by using a system called
24 PollstarPro that takes entertainers and acts

1 that have averaged over the last 24 months
2 ticket sales between 1000 and 3500 per
3 performance or matching the definition of live
4 entertainment venues. And then seeking to come
5 up with a reasonable cap on the number of those
6 acts that the applicant's venue could host over
7 the course of the year.

8 We entertain other mechanisms by
9 saying if you do enter into discussions with an
10 agent for one of these acts that you'll notify
11 one of our members and we'll have sort of a
12 right of first discussion with them. And if we
13 can't enter into an agreement with them over a
14 period of time, then you can sign them up.

15 This PollstarPro universe of acts
16 and a cap on the number per year of
17 performances that those acts can perform at the
18 gaming establishment has been set. We had
19 proposed six or eight. And MG&E has come back
20 with a much higher number.

21 I completely understand their point,
22 which is they want to have maximum flexibility
23 in terms of the acts that they produce.

24 But I think that number given the

1 fact that the acts might actually perform
2 multiple nights at the same venue takes 18 and
3 turns it into 30 or 40, which is really a lot
4 of performances that otherwise might appear at
5 an impacted venue.

6 When I said I was thinking maybe we
7 should get away from that way of thinking and
8 start talking about what if we take, just
9 throwing this out, I haven't talked to MPAC
10 about this, what if we take the acts that have
11 appeared at MPAC venues over the last five
12 years and look at an annual or semiannual basis
13 at how many of those acts are now appearing at
14 the gaming establishment and not at an impact
15 venue and measuring impact in that manner.

16 And having some sort of maybe a
17 contribution to the mitigation fund or
18 something like that that reacts to those
19 outcomes as opposed to trying to put some input
20 constraints on MG&E. That's just one idea that
21 we're going to try to explore. There may be
22 others. I'm sure there'll others that we'll
23 need to work on.

24 I think it's fair to say that is

1 kind of the big sticking point for us right
2 now.

3 MR. LONGO: May I add that we
4 absolutely have no strength with agents,
5 overall strength of any agent for that matter.
6 You have what you have. You work with it and
7 you try to create good situations for the
8 patrons to go to shows at my two venues for
9 example and all the impacted venues.

10 Are there situations where we can
11 work together, yes, there are. For example, I
12 just brought up we're just in the summer. We
13 start advertising in February maybe a show that
14 is on a one year in, one year out rotation can
15 go somewhere else for that advertising period
16 for that particular year. And then the next
17 year they can come in the summer.

18 There are things that could get
19 worked out especially if you really emphasize
20 it upfront on your offer when your offer goes
21 into the agency. It's all about that's the
22 starting point to negotiate. And then you make
23 an offer then they give you a deal memo.

24 In that deal memo, they might say

1 we're planning on going back to the casino next
2 year. Do you have a problem with that? At
3 that point, I'm getting my date. Of course I
4 have no problem with that.

5 Forget about the radius clauses.
6 That is so overblown as to how effective it is.
7 Any acts manager doesn't want to come back
8 within a year in any given market. It's just
9 kind of like the way it is. There's a few
10 exceptions with country acts. So, the radius
11 clauses are just saying something that's
12 already kind of happening.

13 COMMISSIONER MACDONALD: What's a
14 radius clause?

15 MR. LONGO: A radius clause is when
16 an offer goes in, on that offer on my venues
17 for example I've got that experience, it says
18 that we are not interested in that act playing
19 within 85 miles of either of our venues until
20 September 6, 2016. That also includes
21 advertising any acts past that.

22 So, start your advertising after
23 September and do October, November, December
24 dates and that wouldn't affect us basically.

1 So, we're seasonal in that matter.

2 The radius clause is basically a
3 circle around where you are and where you do
4 business. And any of those venues that fall in
5 there, whether they are our venues or whether
6 they are Live Nation's venues, just don't go to
7 that venue in that amount of time.

8 Almost everybody -- I don't know
9 anybody that doesn't have a radius clause. And
10 it serves the same purpose as whether they're
11 going to bring the act in twice in the same
12 year. You are really not going to do that.
13 It's kind of moot.

14 But people like to hang onto radius
15 clauses. It's something in the music business
16 that's really not. It's very simple.

17 CHAIRMAN CROSBY: Other questions or
18 thoughts? There are two steps here, obviously.
19 One is are these facilities ILEV, qualify as an
20 ILEV. And then once they are, what is a fair
21 and reasonable deal?

22 Mr. Siebel's letter, at least on a
23 quick reading of the correspondence we have
24 seems to make the case that there are a number

1 of other ILEVs that have been recognized in
2 other ILEV agreements that have similar
3 logistical relationships, same distance away,
4 similar sizes even in the Raynham deal which
5 Mr. Carney was a part of recognized an ILEV in
6 that discussion which was quite similar in its
7 relationship to that facility as some of yours
8 are to this facility. So, that goes to the
9 issue of should it be a surrounding community
10 or not. And on the face of it that's
11 interesting.

12 But I'm wondering -- Is it Mr.
13 Longo?

14 MR. LONGO: Longo.

15 CHAIRMAN CROSBY: Longo, sorry, you
16 made it sound as if because of the Taunton
17 casino that you are going to need to extract
18 from the casino, from the Region C casino, the
19 Brockton casino a more rigorous set of
20 standards than you might have had there not
21 been the Taunton casino.

22 MR. LONGO: Yes, that is absolutely
23 true. The playing field has changed. When we
24 made our deal with Wynn, Wynn told us he wasn't

1 going to do live entertainment. And if he was
2 going to do live entertainment, he was listen,
3 we'll work something out. Basically, that's
4 what it really came down to. They were standup
5 guys. It's we're not going to do it, but if we
6 do do it, this is how we will protect you. We
7 don't want you going out of business.

8 So, sometimes people that are
9 working on ILEVs will look at the other ILEVs
10 that we have and take the best paragraph out of
11 them and try to put them in theirs and try to
12 make a comparison as this is exactly what you
13 did with Wynn. Why can't you do it with us?

14 The reality is that even if the
15 tribe was not there in Taunton, every single
16 one of these is different because of mileage,
17 because of what type of talent each one of our
18 venues does. Some of it's theatrical. Some of
19 it's only concerts.

20 CHAIRMAN CROSBY: I understand that.
21 What I am suggesting is that there's a question
22 in my mind about whether it's fair to impose on
23 the Brockton casino a new set of standards
24 which had not applied in other situations

1 because of something which is outside of their
2 control and which by the way is going to hurt
3 them a lot anyway, the tribal casino.

4 So, as we as ultimate decision-
5 makers or as an arbitrator is thinking about
6 that it seems to me that's an issue that a
7 decision-making might well take into
8 consideration. Is it fair to push the Brockton
9 MG&E further because of the situation in
10 Taunton? I don't have an answer to that.

11 MR. LONGO: Maybe it's not fair,
12 maybe it's a share. We haven't been able to
13 get to fair.

14 MR. MARTIN: I think the overall
15 point is the fact that there could be these two
16 new entrants in this particular region as
17 opposed to just one new entrant exacerbates the
18 potential problem for the impact venues.

19 And it may very well end up being
20 that we have an ILEV agreement that deals with
21 individual impacted venues in different ways
22 because of the periodicity of the performances
23 or the location or that sort of thing. And
24 we're certainly open to doing that.

1 CHAIRMAN CROSBY: Any other
2 thoughts? Do you have another side of the
3 story to be presented?

4 MS. GRIFFIN: That's right. We have
5 some folks from Mass Gaming and Entertainment.

6 CHAIRMAN CROSBY: Thank you very
7 much.

8 MS. GRIFFIN: I'm going to ask
9 Charles LeRay and Jack Units to come up to the
10 mic.

11 MR. UNITS: Good morning. Thank you
12 for having us this morning and provide a brief
13 response. My name is Jack Units. I'm an
14 attorney from Brockton and I'm working with
15 MG&E.

16 Charles LeRay is going to deal
17 specifically with negotiations. I'm just going
18 to give you a summary of the global
19 implications of what we're faced with in
20 Brockton. I'm not going to address the INdian
21 issue. I think we did that last week.

22 I don't know whether there will be a
23 tribal casino or not but I couldn't hear it
24 stated better than we stated it last week. I

1 will simply say that we are doing everything we
2 can, not just because we want to resolve this
3 issue, but because out of genuine respect for
4 the arts and entertainment to resolve this
5 matter.

6 And we will continue to work with
7 MPAC over the course of this couple weeks.
8 Charles will talk to you a little bit more
9 specifically about what MPAC points are and how
10 we think we can get them resolved.

11 The other thing I want to keep in
12 mind as we speak today is that the charge the
13 Legislature gave us all was to roll back some
14 of the Massachusetts money that's exiting our
15 Commonwealth on a regular basis. And to do
16 that, we have to recognize the market dynamics
17 that go on in the gaming industry and
18 particularly in the entertainment world.

19 Mr. Longo couldn't have stated it
20 better. It's a very difficult world to predict
21 and a very difficult world to lock down. But
22 we gave two major concessions early on on this
23 issue with MPAC. We agreed to minimize the
24 size of our venue.

1 It'll be mostly multipurpose venue.
2 And the seating capacity will be far less than
3 half of what is in the other MPAC premises. In
4 addition to that we agreed there would be no
5 geographic exclusivity clauses. And I think
6 that's a very important thing for us all.

7 Brockton is a community that is huge
8 on the arts. It's so understated because our
9 history and our tradition seems to be in
10 sports. But four to 500 students at Brockton
11 High School participate somehow in either
12 music, the performing arts and theater this
13 year and every year.

14 From Brockton to Foxboro we compete
15 nationally on our music competitions. We
16 understand the value of the arts to a
17 community. And we respect the fact that these
18 kids are looking for venues when they get
19 older. Many of them stay in this business.
20 Many Brockton kids are down in New York City
21 now. And many more are working in the media
22 industry.

23 So, we want to do everything we can
24 to make this a viable program that presents

1 another forum for our kids in the future --
2 another venue for them to perform in.

3 And let me say that's been a big
4 point of the mayor and a big point that MG&E
5 has responded to from day one in our
6 discussions.

7 The second thing I wanted to say,
8 and you heard it so well last week is that
9 we're talking about a quality, quality company.
10 And a quality company has quality employees.
11 Their history in Pennsylvania and Illinois is
12 to give back to the community and to give back
13 in a big way.

14 And that means supporting the arts
15 and we will continue to do so. There will be
16 cross marketing opportunities that will develop
17 over time with MPAC. We certainly don't want
18 to be in a situation where we're negatively
19 impacting long-term other venues, other artists
20 performing venues.

21 I should point out just a few things
22 though on a practical side. The four venues
23 we're talking about today may look close on the
24 map, but in reality the trip given Boston's

1 incredible success in the last few years, the
2 trip to seaport from almost any place on the
3 south shore is no 75 minutes.

4 Another 30 minutes to Lynn isn't
5 going to do it for most regional consumers in
6 our area. The same holds true obviously of the
7 Cape Cod Melody tent. On a good day, it's a
8 75-minute ride. In the summer, it could be a
9 month. It's not in our competitive arena.

10 We don't want to hurt any of these
11 venues but they really are not in a geographic
12 parameter that would impact what I think the
13 Legislature had in mind.

14 The third is Cohasset. And Cohasset
15 is a wonderful tradition. Don't get me wrong,
16 I've been there myself on many occasions. But
17 it is a terrible, terrible drive from our area
18 to get to Cohasset.

19 Will there be an impact, I'm sure
20 there may be a minimal impact, but in the long
21 run the positive sides of what we can do for
22 the arts and entertainment industry in Brockton
23 I think outweighs that.

24 Finally, I just want to say that

1 when we talk about the future when these
2 casinos do come online and the entertainment
3 potential for us to expand our venues is real,
4 remember that we will be competing against some
5 tough competition in Connecticut, Rhode Island
6 maybe even in Tiverton. And we have to be top
7 shelf.

8 We have to go back to what Neil
9 Bluhm told you last week about a quality,
10 quality facility, a quality destination
11 entertainment zone. And to do that we're going
12 to need a little bit more flexibility than MPAC
13 would like us to have.

14 So, I think that given that issue,
15 given long-term prognosis in this industry, I
16 think the Mass. Cultural Council ultimately
17 will become a real focal point of how all of us
18 can work together to make sure the Boston
19 region, Boston becomes the Austin of the East
20 Coast.

21 It's possible the casinos can help
22 drive that train. So that our millennials and
23 all of our customer base in New England has a
24 chance to enjoy theater, arts and music in an

1 affordable way in multiple jurisdictions. That
2 I think will be Mass. Cultural Council's long-
3 term goal. And I think it'll work. And New
4 England will be a beneficiary of that.
5 Charles?

6 MR. LERAY: Good afternoon, Chairman
7 Crosby and Commissioners. I'm Charles LeRay
8 with Dain, Torpy, Le Ray. We represent Mass
9 Gaming and Entertainment.

10 I want to echo what former Mayor
11 Units said about our deep respect for MPAC and
12 its members and what they're achieving. And we
13 have been working very hard with them for last
14 few months to try to reach an agreement.

15 We've cleared away a lot of issues.
16 The one remaining issue really is what was
17 alluded to, how do you identify a certain world
18 of performers where we will have a limited
19 ability to attract them and MPAC will have a
20 priority ability to attract them?

21 And I think we all agree as we talk
22 through lists of performers that have been in
23 our other venues and lists of performers that
24 have been at their venues, there's little

1 overlap and we sort of know what we want to do.
2 And the sticking point is how do you put that
3 into words that work in all situations?

4 We've been talking a lot about
5 something called PollstarPlus (SIC) which is an
6 industry reporting system that talks about how
7 many attendees have been at the venues that a
8 particular performer has performed at over the
9 recent years. Can we find some way of using
10 that measurement to agree on what this world
11 is?

12 That's basically where we're at is
13 figuring out where the goal lines are there. I
14 think we'll achieve something. It's taking us
15 a little longer to thrash it out.

16 Part of the tension is that we need
17 to be able to attract a certain type of act to
18 draw people away from Taunton, away from
19 Tiverton, away from other out-of-state casinos
20 to our facility so that we can use that as one
21 more way to repatriate revenue back into the
22 Commonwealth.

23 But we need to do that in a way that
24 doesn't adversely affect MPACs venues. So,

1 it's defining that world that we're working
2 down to.

3 As you know, there's criteria in the
4 regulations for determining whether a venue is
5 an ILEV, venue capacity, type of performers and
6 geographic exclusivity. What's conspicuously
7 absent from that is any reference to whether or
8 not there is any gaming facility.

9 The Legislature certainly knew when
10 it drafted the gaming statute that the
11 possibility of a new gaming facility was on the
12 horizon. They did not include that as an ILEV
13 criteria.

14 With respect to venue capacity,
15 three of the venues are over 2000 seats. We,
16 as you know, are limited to less than 1000
17 seats by the statute. And in terms of the
18 types of performances, the types of
19 experiences, we're looking at having a multiuse
20 performance conference center that might be
21 broken up into smaller rooms for a convention
22 one week.

23 It might be used by a wedding one
24 weekend. It might be used by a performer

1 another time. This is very different from the
2 South Shore Playhouse and the Melody Tent where
3 they have basically theater in the round in a
4 tent facility that operates a few months in the
5 summer where 2300 people at each location.

6 This is different from the New
7 Bedford facility which is built like a classic
8 Symphony Hall theater type acoustically tapered
9 situation. And it's different from the
10 auditorium in Lynn, which seats about 2000.

11 So, the types of entertainers that
12 are looking for that venue versus our venue I
13 think in many cases are very different. We've
14 said from the beginning that we're not going to
15 ask for geographic exclusivity or any other
16 performing in other location restrictions in
17 any of our contracts.

18 As many have alluded to, although
19 some of the locations appear somewhat closer
20 when you look at them on the map and would be
21 closer if you were flying a drone from one to
22 the other, the reality is trying to get off
23 Cape Cod from Hyannis to Brockton in the
24 summer, is not something many people would

1 attempt. Trying to get from Lynn or north of
2 Lynn down to Brockton is not something people
3 will attempt most of the time. So, the
4 realities of the road network and the traffic
5 patterns that make these venues much further
6 apart than if you're flying point to point.
7 Thank you.

8 CHAIRMAN CROSBY: Questions?

9 COMMISSIONER ZUNIGA: I do get the
10 argument about or the notion that it takes a
11 lot more time to drive what as the crow flies
12 may be a very small distance. But the argument
13 that they make is not one of consumer, the end
14 consumer, the one rather of supply.

15 As in there's only certain number --
16 There is a window and there's a certain number
17 of acts and there's agents or whatever that are
18 going to restrict the supply and therefore have
19 an impact.

20 You did talk about that rating
21 system to identify at least those number of
22 acts. And it sounds like you may be making
23 some progress. Is that ultimately what we're
24 talking about here, that piece the supply side;

1 is that a fair statement?

2 MR. LERAY: Well, Pollstar is a
3 measurement of how large an audience a
4 particular entertainer has been attracting for
5 the previous year or two. So, we've been
6 trying to use that as a way of identifying
7 entertainers that would typically hit the
8 venues of over 1000 seats less than 3500 seats
9 the sort of protected ban into which three of
10 the venues in question fall. I guess all four
11 do.

12 That doesn't directly address the
13 supply question. But none of us have the
14 ability to influence the agents' behavior
15 directly so we try to come up with some proxy
16 measure to protect their access to the types of
17 acts they want.

18 COMMISSIONER ZUNIGA: Mr. Carney did
19 you want to speak on this issue?

20 MR. CARNEY: My name is George
21 Carney. I've been running the Brockton Fair
22 for many years. I had no intention of speaking
23 today, but my past experience in Brockton is
24 it's been big in the entertainment business,

1 especially at the Brockton Fair. I did
2 business with General Actors Corporation of
3 America and the agent's name was Alder Stacy.

4 One of the things that was a big
5 plus for him was when he had acts come to the
6 Brockton Fair that this way here, he had them
7 coming from California or wherever they were
8 coming from. We had the Lennon Sisters, the
9 Supremes, all top-flight entertainment. And
10 the biggest thing he had was that we had an act
11 that really wasn't the top that he would bring
12 them into Brockton, and I'm not making this
13 statement up, he could then send them off over
14 to Cohasset, I believe it was in Cohasset
15 Melody Tent and then on down to the Cape.

16 This way here he was bringing them
17 to the East Coast. The people who were going
18 to come to Brockton would have no effect on the
19 people going to the Cape.

20 I just add that. Not to repeat
21 myself, I had a no intention of speaking but it
22 was a big, big plus to the agent. He put
23 General Actors Corporation of America, one of
24 the biggest entertainment companies in the

1 world at that particular time. And it was
2 Brockton, brought the acts to Brockton and then
3 they would go down to the Cape because of the
4 two different audiences and the same with the
5 Cape Cod Melody Tent.

6 That's all I want to say because
7 I've been through that before. It got to the
8 point we couldn't bring the acts that we were
9 used to bringing in because Las Vegas was
10 paying so much more that they weren't even
11 interested in coming to the East Coast at that
12 particular time. Thank you for your time.

13 CHAIRMAN CROSBY: Thank you.

14 COMMISSIONER CAMERON: I have a
15 question for Mr. Le Ray. You mentioned that
16 because of the difference in size, 2000 versus
17 1000 or less that that's a different audience.
18 Could you elaborate on your research regarding
19 that? A different act would be attracted to
20 the smaller; is that the point you were trying
21 to make?

22 MR. LERAY: A certain type of act
23 isn't going to be able to get booked in a
24 larger venue because they don't have a track

1 record yet that they can fill a place of that
2 size. The physical differences of the
3 facilities, a type of theater presentation is
4 appropriate for theater in the round may not
5 play so well in a multipurpose space that's
6 really a conference room one day, a wedding
7 banquet the next day, and a music space the
8 next day.

9 COMMISSIONER ZUNIGA: And the point
10 that Mr. Carney was making is something that
11 could very well be operationalized in an
12 agreement, right? Right of first refusal, for
13 example, like somebody else mentioned or some
14 kind of system to check in with those other
15 theaters. Are you going after these kinds of
16 acts or are we competing in some form? All of
17 that could be in a framework in an ILEV
18 agreement. Is that a fair statement?

19 MR. LERAY: Yes. As we said, we
20 have no interest in imposing geographic or any
21 other exclusivities. So, if an act wants to
22 come to us and then go to the Melody Tent and
23 then go to Lynn and then go to somewhere else,
24 it's all good. More entertainment for the

1 area.

2 CHAIRMAN CROSBY: Anybody else?
3 Okay. Thank you very much. Jill is that it?

4 MS. GRIFFIN: That concludes my
5 presentation.

6 CHAIRMAN CROSBY: Okay, thank you.
7 We are now bringing the racing issue up. We'll
8 have a minute for Dr. Lightbaum and all to get
9 set up and then we'll undertake that topic.

10

11 (A recess was taken)

12

13 CHAIRMAN CROSBY: We are ready to
14 reconvene. Director Lightbaum.

15 DR. LIGHTBAUM: Good afternoon, Mr.
16 Chairman and Commissioners. The Commission has
17 received four applicants to conduct live horse
18 racing in Massachusetts in 2016.

19 One of them is Plainville Gaming and
20 Redevelopment, LLC which is Plainridge
21 Racecourse to conduct 115 days of harness
22 racing, Sterling Suffolk Racecourse, LLC,
23 Suffolk Downs to conduct six days of running
24 horse racing, Brockton Agricultural Society,

1 Brockton Fair, to conduct 15 days of running
2 horse racing and the Middleborough Agricultural
3 Society, Middleborough, to conduct 15 days of
4 running horse racing.

5 In order to grant the racing
6 licenses, the Commission must take into
7 consideration the criteria provided in Chapter
8 128A section 3(i) in addition to any other
9 appropriate and pertinent factors. Those
10 criteria are the financial ability of the
11 applicant to operate a racetrack, the
12 maximization of state revenue, the suitability
13 of the racing facilities for the appropriate
14 time of year for operation at that time of year
15 for which the dates are assigned, that large
16 groups of spectators require a safe environment
17 and facilities. And having and maintaining
18 proper physical facilities for the racing
19 meetings. And according fair treatment to the
20 economic interests and investments of those who
21 in good faith have provided and maintain the
22 facilities.

23 I'm now going to turn it over to
24 Catherine Blue to discuss the simulcasting

1 regulations.

2 MS. BLUE: Good afternoon,
3 Commissioners. As the Commission knows Chapter
4 128A and Chapter 128C are currently scheduled
5 to sunset in July 2016.

6 That's not uncommon. That's
7 happened every two years for that last number
8 of years. But one of the conditions that will
9 be attached to any license that is granted by
10 the Commission is that that may be a topic that
11 has to be addressed.

12 So, while the Commission may have
13 the authority to issue licenses today and to
14 issue licenses for days that make occur after
15 July '16, if for some reason the Legislature
16 does not extend the statute then we will be
17 forced to address that question at that time.

18 But just to make it clear to the
19 applicants if they haven't considered it
20 already, there is a possibility that some of
21 those days may not be valid if the Legislature
22 takes action that at this point we can't
23 determine.

24 So, I just wanted to remind the

1 Commission that that was out there and that
2 will be a condition of each of the licenses if
3 they are granted.

4 COMMISSIONER ZUNIGA: Are you going
5 to get into whether each of the applicants
6 assume -- take into consideration that date?
7 And in their applications assume that some of
8 those race days may be after July?

9 MS. BLUE: I don't know if they did
10 in their applications. All of the licenses as
11 I recall have dates after that July date. I
12 think that -- Assumptions, I can't speak to
13 their assumptions. I know that the history in
14 the past has been that the Legislature does do
15 something before July of each year.

16 Hopefully, they will do something
17 this year in early 2016 as well. But I don't
18 know if the licensees or the applicants have
19 taken that into account.

20 CHAIRMAN CROSBY: While we're on
21 this, you were going to look into whether we
22 owe them anything. Are they awaiting a
23 recommendation from us? We had the
24 conversation. We did make a -- Have you had

1 the chance to do that?

2 MS. BLUE: Yes. So under our act of
3 Chapter 194 of the Acts of 2011, we were
4 required to provide to the Legislature a
5 recommendation on just 128C, the simulcasting.
6 We in fact did that in April 2013. So, we have
7 satisfied what we were required to do under our
8 act.

9 It may be a good thing for us to see
10 if the Legislature would like some information
11 from us as they look towards reviewing this
12 issue in early 2016 that perhaps we could
13 provide them with the benefit of our experience
14 having addressed racing issues over the last
15 few years. They may find that helpful.

16 CHAIRMAN CROSBY: But there's
17 nothing that we owe them at this point.

18 MS. BLUE: No, that's right.

19 CHAIRMAN CROSBY: Okay, thanks.
20 Were you finished with your comments?

21 MS. BLUE: Yes, I am done.

22 DR. LIGHTBAUM: So, the first
23 license that we have is Plainridge Racecourse.
24 They do meet the requirements of Chapter 128A

1 section 3(i). They're the only facility that
2 applied for a harness racing license.

3 They also meet the requirements of
4 Chapter 23K, the gaming legislation, in regard
5 to increasing their days to 115 next year.
6 This year they were required by that chapter to
7 do 105. And they are on course to complete
8 that.

9 And they also meet 128C, the
10 simulcasting legislation, regarding having at
11 least 100 days and 900 races will be met under
12 their application.

13 So, the Racing Division recommends
14 that the Commission approve the application of
15 Plainridge Gaming and Redevelopment, LLC for
16 live harness racing in 2016 with the condition
17 that they have an independent expert review the
18 track surface prior to racing.

19 I want to just explain that a little
20 bit. That was something that we asked Suffolk
21 to do this year. And when we were reviewing
22 licenses, we figured we would ask Plainridge to
23 do that also. It's not an indication that we
24 feel there's anything wrong with their track.

1 It's just we would like to have that done.

2 This is just up for a vote or any questions.

3 COMMISSIONER CAMERON: I certainly
4 concur with your recommendation. Plainridge
5 Racecourse has been a very good partner, very
6 responsive to our needs and our requests. And
7 they provide us with timely information about
8 whatever the issue may be. I think the track
9 itself is known to be one of the better tracks
10 in harness racing, but certainly we want to be
11 consistent and have the same requirements for
12 all the facilities here in the Commonwealth.

13 So, I certainly wholeheartedly agree
14 with your recommendation that we approve this
15 license.

16 COMMISSIONER STEBBINS: Alex is
17 there any question about the additional race
18 days, the supply of equine athletes able to
19 participate?

20 DR. LIGHTBAUM: The purses for next
21 will increase over this year with the Race
22 Horse Development Fund kicking in. So, they're
23 hoping that that will attract enough horsemen.

24 They do have the time period in the

1 middle of the summer when there's fair racing
2 that they would be going up against where
3 they'll be racing three days instead of four to
4 relieve the pressure on the horse population.

5 COMMISSIONER STEBBSIN: Okay.

6 COMMISSIONER ZUNIGA: Steve O'Toole,
7 did you want to mention anything to that
8 effect?

9 MR. O'TOOLE: Steve O'Toole,
10 Director of Racing for Plainville Gaming and
11 Redevelopment. Just on the condition on the
12 license which is something new. Alex had
13 mentioned this to me and we have absolutely no
14 problem with it.

15 However, it's kind of ambiguous that
16 the review of the track surface prior to
17 racing. So, I think when I talked to Alex
18 maybe I thought it was just a safety review of
19 the track not of the actual surface itself, the
20 consistency of the surface.

21 What happens in the course of
22 racing, both thoroughbred and standardbred
23 racing, I'm not so sure about dog racing
24 because I have no expertise in that particular

1 area, but there is so many different horses
2 with so many different likes and dislikes as
3 far as racing surfaces go. There are many,
4 many opinions on racing surface and how racing
5 surface is. And we try to be as consistent as
6 possible.

7 So, I'm not really sure about what
8 the evaluation of the track surface. I was
9 under the impression it was for safety but in
10 the recommendation it's kind of ambiguous.
11 Maybe I took that for granted when I talked to
12 Alex that I jumped to the conclusion that it
13 was for safety. But if we could just have some
14 clarification on that condition, I'd appreciate
15 that.

16 COMMISSIONER CAMERON: Dr.
17 Lightbaum, we are talking about safety,
18 correct?

19 DR. LIGHTBAUM: Yes. We are talking
20 about safety and consistency. With Suffolk
21 Downs, there's different groups that will
22 actually come in and do tests on your track to
23 make sure.

24 I'm sure it's slightly different for

1 harness racing because the track surfaces
2 themselves are very different. So, I'm
3 willing to work with Steve on getting somebody
4 in that we are both mutually comfortable with
5 as far as evaluating the track.

6 COMMISSIONER ZUNIGA: But is this
7 consistency on the surface throughout the whole
8 track that it ought to be the same without
9 differences within it?

10 DR. LIGHTBAUM: There might be some
11 give-and-take as to certain parts of the track,
12 may be a little different going into the turns.
13 A lot of times it is a different with the
14 banking and things like that. But overall and
15 generally, you do want the track to be
16 consistent throughout. Things like making sure
17 the base is even.

18 COMMISSIONER ZUNIGA: But Mr.
19 O'Toole's point is if we can be clear as to
20 what they are expected to do, test for X, Y, Z
21 and where the results show X, Y, Z then you can
22 proceed or do some remediation on it.

23 DR. LIGHTBAUM: Right.

24 COMMISSIONER ZUNIGA: Is that

1 understood? Or could that be understood?

2 DR. LIGHTBAUM: Yes.

3 MR. O'TOOLE: There is express
4 standards for thoroughbred tracks. Through the
5 NTRA has express standards. There are no
6 express standards for a harness track. It
7 would be left to an expert to come in and say
8 the track is definitely safe or it's not safe.

9 What my concern is that an expert
10 may come in and say this is the way I like it.
11 So, you need to do X, Y, Z where it wouldn't be
12 might be for the weather or however we maintain
13 our track and add material to our track, etc.
14 and how we maintain the surface.

15 COMMISSIONER ZUNIGA: Remind me.
16 This year because of the winter, you had to
17 push out some dates for the track to get
18 drained and other things?

19 MR. O'TOOLE: Correct. There
20 couldn't be any truer statement in the criteria
21 for racing as far as Plainridge is concerned
22 because three months in the wintertime we
23 definitely just cannot race.

24 And it's very difficult to have a

1 track open for trainings because of the way the
2 track is positioned, the sun where it comes
3 across the track. The neighborhood that's
4 behind it blocks-- it's in the shade.

5 So, we have a difficult time. We
6 would never be able to fit the criteria of
7 licensure in at least three months in the
8 winter. And that raised havoc last winter will
9 all the snow we had. It was just a crazy
10 winter. We got the track back together. The
11 track has been very good.

12 We haven't had a horse in the last
13 two years, and I can't even remember before
14 that, fan off of our racetrack due to racetrack
15 impact injury, the impact of the horse actually
16 racing on the surface. We had a couple of the
17 instances where the horses bumped into each
18 other, but as far as impact for racing, we
19 haven't had any catastrophic injuries for at
20 least the last two years.

21 And I'd have to go back and check
22 the records to see when the last time that has
23 happened. We're very confident our track is
24 safe. We meet that criteria.

1 I'm just a little bit cautious about
2 being open to interpretation about what kind of
3 surface. That can get into a whole other --
4 There's a couple of different surfaces out
5 there. There's clay. There's stone dust. I
6 just don't want to open up something where we
7 would liable to recreate the whole track.

8 COMMISSIONER ZUNIGA: I understand
9 that. I don't think the condition opens the
10 door to that. I think the way it's written, it
11 says review by an expert. And those
12 recommendations would not be binding from your
13 perspective as I read this condition. It would
14 be subject to what those findings may or may
15 not say. And you trying to figure out what if
16 any may be a remedy.

17 DR. LIGHTBAUM: Any expert would
18 take into consideration the region that we're
19 in, the weather that we have, what materials
20 are commonly used in the area. All that is
21 taken into account.

22 COMMISSIONER CAMERON: Mr. O'Toole,
23 there was an issue with a track in
24 Pennsylvania, correct? And it was a safety

1 issue on a harness track?

2 MR. O'TOOLE: Pennsylvania? At what
3 point in time?

4 COMMISSIONER CAMERON: I guess my
5 point is --

6 MR. O'TOOLE: Oh, yes, yes.

7 COMMISSIONER CAMERON: You know what
8 I'm referring to?

9 MR. O'TOOLE: Yes, yes, that was a
10 couple of years ago.

11 COMMISSIONER CAMERON: Yes. So, I
12 think we're really looking at safety here, and
13 just consistency across the board with safety
14 with the expert that you both agree, and
15 knowing we are not looking for a preference as
16 we are just the safety of the facility.

17 MR. O'TOOLE: Yes, that's fine.
18 That's all I was looking for. I'm trying to
19 read that. My eyes aren't as good as they used
20 to be. I just didn't see the safety. I just
21 saw the condition that they have an independent
22 expert review the track surface prior to
23 racing. So, I just want to make sure it's a
24 review for safety. Thank you very much.

1 CHAIRMAN CROSBY: That works for you
2 too to modify?

3 DR. LIGHTBAUM: Yes.

4 CHAIRMAN CROSBY: So, when we have
5 the motion, we can clarify that. Clearly, you
6 are absolutely right that it's very vague and a
7 lot can fall in there at this point. But we
8 will fix that in the motion itself.

9 MR. O'TOOLE: Thank you very much.

10 COMMISSIONER CAMERON: Thank you.

11 CHAIRMAN CROSBY: Any other issues,
12 questions? Commissioner, do you want to put a
13 motion forward on Plainridge?

14 COMMISSIONER CAMERON: Yes, Mr.
15 Chair. I move that we approve the 2016 license
16 application for Plainridge Park Racetrack,
17 Plainridge Gaming and Redevelopment Plainridge
18 Racecourse for 115 days of racing. The
19 condition is a safety check conducted before
20 racing on the track itself.

21 CHAIRMAN CROSBY: So, before racing
22 begins in 2016 an expert review satisfactory to
23 the issue of the safety of the track compatible
24 I guess with Dr. Lightbaum's judgment. Second?

1 COMMISSIONER ZUNIGA: Second.

2 CHAIRMAN CROSBY: Any other
3 discussion?

4 CHAIRMAN CROSBY: All in favor, aye.

5 COMMISSIONER MACDONALD: Aye.

6 COMMISSIONER CAMERON: Aye.

7 COMMISSIONER ZUNIGA: Aye.

8 COMMISSIONER STEBBINS: Aye.

9 CHAIRMAN CROSBY: Opposed? The ayes
10 have it unanimously. Next up?

11 DR. LIGHTBAUM: We have two
12 thoroughbred licenses, actually three when you
13 consider the two fair licenses will each
14 require their own vote. So, I'd like to talk
15 about all of them together first before we do
16 the vote since they do kind of overlap and
17 intertwine.

18 And also, before I start on that, I
19 just want to make it clear that today we're not
20 addressing the issue of the splinter horseman's
21 group and whether we are going to recognize
22 different groups and all that. The Commission
23 is working on that and looking into that. We
24 will bring that up at a later Commission

1 meeting.

2 Suffolk Downs and Brockton and
3 Middleborough have both applied for running
4 horse racing dates. The Chapter 128A section
5 3(e) permits both to be licensed at the same
6 time. So, the Commission is within their
7 rights to approve both of them.

8 Basically (e) says that no license
9 shall be issued to permit running horse
10 meetings to be held or conducted except in
11 connection with a state or county fair at the
12 same time of day at more than one racetrack
13 within the Commonwealth unless the race tracks
14 are more than 75 miles apart.

15 Provided that no license shall be
16 issued to permit a running horse meeting to be
17 held at a racing strip of less than one mile
18 except for a racing meeting in connection with
19 a state or county fair. Provided however that
20 in no case shall more than two licenses be
21 issued for meetings to be held or conducted on
22 the same date same time of day.

23 So, going over Suffolk's
24 application --

1 CHAIRMAN CROSBY: Same time of day
2 or same day?

3 DR. LIGHTBAUM: Same time of day.
4 So, going over Suffolk's application, they meet
5 requirements of Chapter 128A. We are currently
6 reviewing the purse distribution for the 2015
7 meet.

8 I've gotten different studies in
9 from different people with what they feel the
10 distribution is. So, I need more time to go
11 through that and to actually verify it. But we
12 do intend to bring that forward at a later date
13 also.

14 COMMISSIONER ZUNIGA: Sorry, Dr.
15 Lightbaum, say that last point one more time
16 please.

17 DR. LIGHTBAUM: There's been some
18 questions about how the purse money was
19 distributed, whether it went to people that
20 were considered local horsemen that raced at
21 Suffolk last year. How many of them might have
22 been Massachusetts residents, how many of them
23 were at Suffolk last year. How many of them
24 may not have been considered a Suffolk trainer

1 but they supported Suffolk with having horses
2 race at Suffolk. So, we're ongoing with the
3 analysis on that. We don't have that today.

4 As you know, we've mentioned it at a
5 few of the different Commission meetings, the
6 handles at Suffolk and the attendance. The
7 attendance was in the 10,000 range on at least
8 two of the days.

9 They did end up only doing two of
10 the steeplechase races instead at one time they
11 said they might do nine. So, that worked out
12 well as far as purse money goes. More of it
13 staying in state. They did get the
14 Massachusetts bred races done. There were nine
15 of them. Considerable money went out for
16 those. As a matter of fact, part way through,
17 purses were increased due to the money from the
18 Race Horse Development Fund.

19 CHAIRMAN CROSBY: What's the
20 proposal for Mass. bred in the six-day meet?

21 DR. LIGHTBAUM: They would do the
22 same, the three races. Well, actually with the
23 six days, they might spread it out differently.
24 But this year they did three races on each of

1 the days. They did a total of nine Mass. bred
2 races.

3 CHAIRMAN CROSBY: So, this year they
4 did nine?

5 DR. LIGHTBAUM: Right.

6 CHAIRMAN CROSBY: Next year, the
7 plan is still --

8 DR. LIGHTBAUM: I'm not sure what
9 the plan is. They'll have to look at it,
10 because some of the horses race and they're
11 eligible for several of the races. So, they
12 still would need to be spread out over the
13 month's time. They couldn't run the Saturday
14 and then come back and run that Sunday.

15 CHAIRMAN CROSBY: Wasn't the
16 commitment to a certain number of Mass. bred
17 races in their application last year? Do I
18 remember that correctly or incorrectly? Do you
19 want to come up Mr. Tuttle?

20 DR. LIGHTBAUM: I don't remember.
21 Chip can address that.

22 MR. TUTTLE: Thank you, Mr.
23 Chairman, members of the Commission. We did
24 commit to running races for the Massachusetts

1 breeders this year. And we are committed to
2 doing the same next year.

3 The exact number and the date will
4 depend in part on their racing program and how
5 they -- They really decide how they want to
6 spread out the races based on the horses that
7 are eligible and the conditions of the races.
8 But we are committed to doing that. In fact,
9 that was one of the reasons we spread the dates
10 out to do one day every four weeks so that the
11 horses that ran on one day would be able to
12 rest and recover and come back and run for the
13 next.

14 The dates we've requested for 2016,
15 July 9 and 10 then the first weekend in August
16 and then Labor Day weekend allows us to do the
17 same thing. Whether there are nine Mass. bred
18 races, 10 or 12 is still up for some discussion
19 with the Mass. breeders.

20 CHAIRMAN CROSBY: One of the issues
21 that you've heard us talk about we can't really
22 get our hands around yet is the extent to which
23 the Suffolk monies are benefiting local folks.
24 And we'll look at that.

1 But one way to help that would be to
2 make a commitment at have more Mass. bred
3 races. Is there a way that you're comfortable
4 with that you could modify this to make a
5 commitment so that everybody knew that there
6 were going to be more Mass. bred races this
7 time?

8 MR. TUTTLE: It's a function of more
9 Mass. bred horses as well. So, we're obviously
10 willing to work with the Mass. breeders and
11 card as many as they feel are practical and
12 competitive. But we certainly don't want to
13 make a guarantee and then not have enough
14 horses to fill the races.

15 CHAIRMAN CROSBY: Right. So, you'll
16 take it as a commitment that you will work with
17 -- What you said is we'll give them as many as
18 they can. I don't know if you meant that but
19 you will work with them to try to as hard you
20 can to maximize the number of Mass. bred races.

21 MR. TUTTLE: Absolutely.

22 CHAIRMAN CROSBY: Okay. Thank you.

23 DR. LIGHTBAUM: And one thing they
24 also did was they had a number of races that

1 were restricted to horses that had raced at
2 Suffolk in 2014. So, they were able to run
3 quite a few of those races too.

4 CHAIRMAN CROSBY: Right.

5 DR. LIGHTBAUM: Every horse in those
6 races had local ties.

7 CHAIRMAN CROSBY: Right. Okay.

8 DR. LIGHTBAUM: One of the
9 advantages to the Suffolk Downs Racetrack is
10 that they do have a turf course and that they
11 are a mile course. I'll go on now and talk
12 about Brockton briefly.

13 COMMISSIONER ZUNIGA: Can I ask a
14 question, a couple of questions? This is
15 really for Mr. Tuttle. What if anything are
16 you assuming in the number of dates that you
17 have in your application relative to the July
18 date in which if the Legislature doesn't do
19 anything your rights to simulcasting will
20 cease?

21 MR. TUTTLE: We've asked for six
22 days, two before that legislative sunset
23 deadline and four after. If by some chance the
24 Legislature does not continue to allow racing

1 and simulcasting after July 31, we will have
2 fulfilled our requirement under the legislation
3 that passed this year extending our 2014 racing
4 license through July 31, 2016.

5 So, we did this in a way to make
6 sure that we would fulfill that legal
7 obligation regardless. As the Chairman
8 mentioned, it is been regular practice for the
9 racing and simulcasting legislation to sunset
10 every two years, which is certainly not the
11 most effective way to plan long-term for your
12 business operation but has been a legislative
13 tradition.

14 And we've been able to work with
15 that in the past. But they do understand the
16 deadline and will be working with the other
17 licensees, with Plainridge and with Mr. Carney
18 and the horsemen and others on whenever the
19 next legislative extension on simulcasting is
20 going to be.

21 COMMISSIONER ZUNIGA: That's kind of
22 where I'm going because this year is not like
23 any other, right? It involves essentially what
24 your plans may be and those of your bosses, the

1 owners for that track long-term, isn't it?

2 MR. TUTTLE: Correct. We've been
3 very candid publicly about our long-term desire
4 to develop the property. So, but by the same
5 token we made the judgment over the winter when
6 approached by the horsemen, we had the
7 conversation that up until the time we have
8 planned fully and begun permitting development
9 at the property, it's in our interest to
10 continue to simulcast and continue to race.

11 COMMISSIONER ZUNIGA: So, will you
12 be seeking an extension of the simulcast rights
13 like you have in the past?

14 MR. TUTTLE: I think that remains --
15 I can't say definitively. I think it remains
16 to be seen. The HBPA has asked us to consider
17 that. We would like to help them get to their
18 longer term plan of having their own facility.
19 It appears that's taking a little longer than
20 they had hoped, but we don't have any plans
21 beyond 2016. I'd be happy to come back and
22 update the Commission in the first part of the
23 year if that changes.

24 COMMISSIONER ZUNIGA: I will

1 appreciate that.

2 CHAIRMAN CROSBY: Is it your
3 understanding that if the sunset does occur
4 that your simulcast rights stop on July 31 also
5 or do they continue for the balance of the
6 calendar year?

7 MR. TUTTLE: I think it would depend
8 on what the new version of the legislation is.

9 CHAIRMAN CROSBY: Well, if there
10 weren't any, if it just died.

11 MR. TUTTLE: If it just died -- 128A
12 is the racing law, 128C is the simulcast law.
13 Technically, you could race without
14 simulcasting. We've always had the ability to
15 race for two days. Simulcasting was always
16 tied to a number of races. So, I suppose that
17 there could be live racing after July 31 if
18 someone wanted to race live, if we wanted to
19 race live.

20 CHAIRMAN CROSBY: It was the other
21 side that I was talking about. I thought as I
22 looked at the recent extension I thought that
23 it in effect said that if you have at least one
24 race in 2016 that you would then be able to

1 have simulcast for calendar 2016.

2 COMMISSIONER ZUNIGA: No, it's up
3 until June.

4 MS. BLUE: Yes. The extension that
5 gave Suffolk the ability to simulcast also
6 sunset in July 16. The Legislature has synced
7 them up together.

8 MR. BARNETT: Bruce Burnett from DLA
9 Piper, Counsel to Suffolk Downs. I think
10 there's a little bit of language that you may
11 be referring to in Chapter 10 of the Acts of
12 2015 which adds a question, because it says
13 with one day of live racing Suffolk Downs can
14 simulcast for the entire year.

15 But it also talks about simulcasting
16 under Chapter 128C. That sunsets on July 31,
17 2016. There may be a question there. I don't
18 know that we've answered that to our full
19 satisfaction about what would happen. Our
20 assumption is that the Legislature will act as
21 it always has, the tradition Mr. Tuttle was
22 referring to.

23 CHAIRMAN CROSBY: Hopefully, we
24 won't have to address that but I saw the same

1 gray area that you did when I read it.

2 COMMISSIONER ZUNIGA: Did you see
3 that gray area?

4 MS. BLUE: I don't. That Acts of
5 2015 has a sunset provision in itself that it
6 only goes until July '16. I would imagine
7 because the Legislature would want it all to
8 sync up at once. Hopefully, we don't run into
9 that situation but I think the Legislature was
10 trying to make them end at the same time.

11 CHAIRMAN CROSBY: Okay, fine. Dr.
12 Lightbaum?

13 DR. LIGHTBAUM: I'll talk about
14 Brockton, Middleborough now. They're two
15 separate licenses so they'll require two
16 different votes but they're both going to be
17 run at the Brockton Fairgrounds.

18 The applications meet the
19 requirements of 128A although there are parts
20 of the applications that aren't complete. They
21 obviously need executed agreements with the
22 horseman's association, more information about
23 their insurance policies, security plans,
24 things like that.

1 Commissioner Cameron and I visited
2 the site last fall. And I was involved when
3 they last raced there. Obviously, the facility
4 needs upgrading things like putting in a new
5 rail. So obviously, today that are not ready
6 to race. But it is our expectation that they
7 would be able to get everything up to speed by
8 the time their dates would be run.

9 The advantage to the Brockton,
10 Middleborough licenses is that they are looking
11 for 30 days and there would be training time at
12 that track. It is a smaller track so there are
13 some people who would choose not to race there
14 because of that fact.

15 In looking at the general picture of
16 racing in Massachusetts, the two applications
17 together would give more racing for the
18 Commonwealth. It would allow horsemen that are
19 at different levels to race. We'd have
20 different types of racing at the two
21 facilities.

22 So, I think for the Commonwealth at
23 this point although it is not ideal neither the
24 six days nor the 30 days is going to provide a

1 living for people but it will be another bridge
2 towards whatever may happen with thoroughbred
3 racing in Massachusetts.

4 Let me go back now to the Suffolk
5 Downs -- Did you have any questions?

6 COMMISSIONER ZUNIGA: I did have
7 some questions, but they may pertain to the
8 applicant. What else might they be assuming
9 with this application in terms of simulcasting,
10 for example?

11 DR. LIGHTBAUM: They'll need to go
12 back and get the simulcasting legislation for
13 the fairs changed because that's very specific
14 as it actually mentions the days of the week
15 that you can simulcast on.

16 And the days that they've applied
17 for some of the actual days of the week are
18 different. That's one of the things that they
19 would be going to the Legislature on.

20 And Mr. Carney has already
21 approached me that if they were granted the
22 license there's different things they'd like to
23 go to the Legislature on.

24 MR. CARNEY: My name is George

1 Carney, I live in Brockton, 122 Fairview
2 Avenue. That's a new address for me.
3 (INAUDIBLE) for 50 years, but unfortunately I
4 had a bad accident not too long ago. And
5 getting to the second-floor was a problem. So,
6 I moved over with my daughter not for financial
7 reasons but it was more convenient.

8 Anyway, as far as the thing is
9 concerned, I've ran the Brockton Fair for the
10 last 50 plus years. And I've enjoyed it very
11 much. Had a great time and we've always had
12 good racing. We always had very clean racing
13 as far as the thing is concerned. We always
14 ran a first-class operation.

15 As far as the thing is concerned,
16 this way here being a product of the Great
17 Depression, I feel this way here, I don't put
18 all of my eggs in one basket. I wear two hats
19 at this particular Commission. One, I'm
20 involved hopefully for the casino. We won't
21 talk about that because that's not on the
22 agenda for today.

23 The second is I like to have a
24 fallback position whereby I would still like to

1 go back to Brockton. My son is going to take
2 over as far as that's concerned. And I really
3 feel that we could do a good job there. We
4 won't be competing for them. We won't be
5 looking for to get the top grade horses, but we
6 will be able to take care of a lot of the
7 locals.

8 As far as the thing is concerned, if
9 we can get some help from the purse account
10 where we can give better purses, which I think
11 has been one of the biggest reasons that
12 Foxboro is going to so well in the future. I
13 think we qualify for that. That's the only
14 help we need.

15 We don't need any help financially.
16 We have our own equipment. We can put the
17 place in good shape in a hurry. As a matter of
18 fact, the only reason the rail is gone was one
19 of our neighbors took it down because it was
20 aluminum. I went to the junkyard for about
21 \$30. It'll cost about \$100 to replace. That
22 goes along with it.

23 But we are here today hoping the
24 Commission will look favorably upon our

1 application. I also will work with Suffolk in
2 any way we can on the dates if there's any
3 conflicts as far the thing is considered. And
4 I'm going to turn it over my son and I thank
5 you for your time.

6 COMMISSIONER ZUNIGA: Would you be
7 looking for -- Is this a special simulcasting
8 license that you have from before or will you
9 be looking to get the rights to simulcast?

10 MR. CHRISTOPHER CARNEY: We had the
11 rights to simulcast from the day we open until
12 the day we close the last time under the 2001
13 -- I'd have to look back at the legislation,
14 but just for the time that we run.

15 CHAIRMAN CROSBY: Others?

16 COMMISSIONER STEBBINS: I had a
17 quick question Alex going back to some of the
18 recommendations for the license, the two fair
19 applicants. You talk, number three about a
20 good-faith effort will be made towards
21 obtaining NTR safety and integrity.

22 I don't like safety and integrity to
23 be kind of good-faith effort language included
24 in it. But tell me what you had in mind when

1 you added that condition and what were you
2 hoping to get?

3 DR. LIGHTBAUM: Suffolk has obtained
4 that safety accreditation and they did that
5 many years ago. And it's updated occasionally.
6 Every couple of years they have to go through
7 the inspection process again to make sure
8 they're still up-to-date.

9 So, we'd like to have the Brockton
10 Fair meet that also. They do do inspections
11 for fairs for smaller tracks. It's just a
12 matter obviously if there was some glaring
13 deficiency then we would ask them not to go
14 forward. But usually what the NTRA does is
15 they'll maybe a conditional approval. And
16 they'll list if there's areas that they need
17 improvement, they'll list those. They'll work
18 with the tracks on getting that done.

19 MR. CHRISTOPHER CARNEY: We would
20 have no problem with that.

21 COMMISSIONER ZUNIGA: What sort of
22 supplemental monies for purses have you assumed
23 or would seek from the Horse Race Development
24 Fund?

1 MR. CHRISTOPHER CARNEY: We'd like
2 to meet with the Gaming Commission, set up a
3 time and discuss certain monies. We weren't
4 looking for all of it. We were looking for 50
5 percent of it. We were looking for a
6 proportional. We wouldn't be looking for a 10
7 race card, a million dollars to give away. We
8 are looking for a proportional for two of the
9 fairs and local people could enjoy.

10 COMMISSIONER CAMERON: Both
11 applications require a letter to spell out in
12 detail what monies they'd be requesting and
13 exactly what they'd be used for.

14 COMMISSIONER ZUNIGA: That approval
15 will come later from us.

16 COMMISSIONER CAMERON: Yes, as part
17 of a condition to the license.

18 DR. LIGHTBAUM: I did speak with the
19 Mass. Thoroughbred Horseman Association which
20 is the group that's interested in working with
21 Brockton. Obviously, that's a matter for
22 another day but they were looking at maybe
23 \$100,000 a day which would end up being around
24 \$3 million. Obviously, that's up for

1 discussion.

2 And Suffolk was looking for around
3 \$2.4 million. So, it looks like that's in the
4 realm of possibility and that there would be
5 money left over after that. Again, that's one
6 of the requirements for both licensees is that
7 they come before the Commission with the actual
8 amounts that they want. And the Commission
9 could look into it then and decide if that was
10 appropriate.

11 COMMISISONER STEBBINS: But just to
12 be clear, the goal for your Brockton,
13 Middleborough, the two fair applications in
14 making horse time running time available to
15 horses that probably or horses and owners that
16 probably wouldn't be able to or would have a
17 preference for this type of track is you are
18 going to balance that with the Race Horse
19 Development Fund request. So, that some of
20 these horses that don't have the opportunity to
21 race otherwise aren't going to be bumped coming
22 in that will snatch the purse money.

23 DR. LIGHTBAUM: Right. \$100,000 a
24 day was about what Suffolk was doing in 2014,

1 what they were giving out then. So, the levels
2 would be similar to what they gave out then and
3 theoretically attract a similar horse
4 population.

5 CHAIRMAN CROSBY: Go ahead. Forgive
6 me if this has been clear. If MG&E gets the
7 casino license, they've talked aggressively
8 about moving fast and opening soon.

9 Is it clear that if they get the
10 casino license that the track will still be
11 available to be used for all of next year?

12 MR. CHRISTOPHER CARNEY: We would
13 probably move it to our Raynham location.

14 CHAIRMAN CROSBY: But you could do
15 that fast enough?

16 MR. CHRISTOPHER CARNEY: We did it
17 the last time in 2000 with Dr. Lightbaum. I
18 don't know how we did it, but we did it. We
19 did it inside of six months or less and put the
20 racetrack together myself.

21 CHAIRMAN CROSBY: Does that seem
22 credible to you Dr. Lightbaum and Gayle, I
23 don't know if you're familiar with it.

24 COMMISSIONER CAMERON: It was my

1 understanding that this summer Brockton
2 Fairgrounds would be available. And after that
3 you would consider plans to enlarge the track.

4 MR. CHRISTOPHER CARNEY: Yes, move
5 the location if we are fortunate enough to be
6 granted the license.

7 COMMISSIONER CAMERON: So, this
8 particular year, it would be in Brockton.

9 CHAIRMAN CROSBY: All of 2016 would
10 be in Brockton?

11 MR. CHRISTOPHER CARNEY: It would be
12 in Brockton this year, yes. The casino project
13 wouldn't start probably until the fall of the
14 year anyways. We'd run 2016 in Brockton. And
15 we'd look to move our license to Raynham, which
16 we own the property there too.

17 MR. CARNEY: Right now we're trying
18 to review over at Raynham to see how about how
19 to lay out the track for 5/16 mile as far as
20 the thing is concerned -- 5/8 of a mile rather.
21 Try to figure it out to lay it out so the turns
22 wouldn't be narrow and it would be a 5/16
23 shoot.

24 As far as the thing is concerned, I

1 just want to clarify so there's not a mix-up on
2 the record here. We're going to be looking at
3 that but as far as the thing is concerned. I
4 just don't want to sit here and give misleading
5 signals.

6 It would depend on what the
7 Commission is going to do with our application
8 which is not the thing here tonight. But we'd
9 have to think about moving to Raynham but we'd
10 probably want to change the dates from up in
11 July, we'd want to put them later in the fall.
12 That way there we wouldn't have the time to do
13 it. So, we want you to know that. We would be
14 moving the dates to the fall of the year.

15 CHAIRMAN CROSBY: Okay. I think
16 there's some confusion on this point. I know
17 when I was in Brockton just last week I guess
18 it was talking with the MG&E representatives, I
19 asked them what happens to the track if you get
20 the license. And he said the track is gone.
21 There won't be any racing.

22 MR. CARNEY: That's true.

23 CHAIRMAN CROSBY: But Commissioner
24 Cameron thinks there would be next year. Now

1 maybe there might be.

2 MR. CARNEY: I don't want to say
3 because I don't want to have discussion here.
4 I don't want to give misleading signals here
5 today. It all depends as far as the thing is
6 concerned. Like I said, when I first started,
7 I don't know what the Commission is going to do
8 with our application at Brockton.

9 As far as if we're fortunate enough
10 to win in Brockton that's why I'm making
11 Raynham available. It won't be available to
12 open up in July because we wouldn't have the
13 time. I told you that I'm not a magician.

14 But I would like to put the track
15 over there. As far as the thing is concerned,
16 I haven't even had the layout completed you to
17 do that. And not being licensed in Brockton
18 with the casino that I want to have something
19 going to keep my people working.

20 CHAIRMAN CROSBY: I don't know
21 whether it goes to the issue of yay or nay on
22 this application or not. I just think it needs
23 to get cleared up. There clearly are different
24 perceptions here. As soon as you all can

1 figure out what it would need, would be useful
2 for us and everybody in the horse industry to
3 understand what you're talking about.

4 MR. CARNEY: As far as the thing is
5 concerned, you can't wear two hats and promise
6 two different things. I don't want to lose my
7 credibility.

8 CHAIRMAN CROSBY: That's fine.

9 MR. CARNEY: My first choice
10 actually would be what we spent a lot of money
11 on is to have a casino in Brockton as far as
12 the thing is concerned.

13 If we were fortunate enough to be
14 licensed in Brockton, then I would like to go
15 to Raynham and do what we were saying. But
16 that's the second choice to be honest with you.

17 I don't want to lose my credibility
18 because I have a good reputation for 50 plus
19 years I don't want to be coming up here like
20 wearing two hats.

21 CHAIRMAN CROSBY: That's fine.
22 There's no indication -- That's not an issue.
23 Your credibility is not an issue. I just think
24 there is some confusion on this point. Maybe

1 it's not even confusion, it's genuine
2 difficulty figuring out the staging of this.

3 But we have different perceptions
4 amongst us about how you're intending to do
5 that. As soon as you can clarify that it would
6 be helpful. I respect that it's complicated,
7 but nevertheless.

8 MR. CHRISTOPHER CARNEY: I think
9 what he's hoping is the licensing process be
10 determined in March. If so and Brockton is
11 picked to be licensed in Brockton, then we
12 would look to lay out the track in Raynham and
13 run in the fall. That's what he was saying.

14 CHAIRMAN CROSBY: Okay. Alex back
15 to you.

16 DR. LIGHTBAUM: If you don't have
17 any further questions, then I'll go ahead and
18 talk about the approval process and the
19 recommendations.

20 CHAIRMAN CROSBY: Yes.

21 DR. LIGHTBAUM: So, the Racing
22 Division recommends that the Commission approve
23 the application of Sterling Suffolk Racecourse,
24 LLC, Suffolk Downs for live running horse

1 racing in 2016 with the following conditions:
2 Suffolk Downs will have an independent expert
3 review the traffic surface prior to racing,
4 every effort will be made to limit the number
5 of steeplechase races.

6 After each of the two days of
7 racing, Suffolk will report to the Commission
8 the numbers and percentages of recent Suffolk
9 horsemen and horses that benefited from their
10 races. Number four that Suffolk Downs will
11 work with Brockton, Middleborough so that they
12 can race on different days. Number five
13 Suffolk Downs will request in writing to the
14 Commission how much money they would like from
15 the Race Horse Development Fund and how it
16 would be spent.

17 COMMISSIONER ZUNIGA: Dr. Lightbaum
18 that condition number three, should it be after
19 each of the six days racing?

20 DR. LIGHTBAUM: They are planning on
21 three weekends of two days each and they're
22 about a month apart. So, I figured after the
23 first two days there'd be about a month before
24 they race the next ones. Then in that month

1 period if they could get us the information on
2 where the purse money went for those two days.
3 We could also do it at the end, either way.

4 COMMISSIONER STEBBINS: Could you
5 talk about number two, every effort to limit
6 the number of steeplechase races?

7 DR. LIGHTBAUM: The steeplechase
8 racing was a little bit of a sore spot among
9 horsemen that had been supporting the Suffolk
10 product because obviously the steeplechase
11 people had not been at Suffolk for years. And
12 purse money was going to them.

13 It was part of Suffolk's festival
14 plan to have add something different to draw
15 people in, it's something unusual. So, they
16 did go ahead and do that. Originally, they
17 were thinking of running three steeplechase
18 races a day. It ended up being that they just
19 ran to the first day.

20 They did get some in. It did
21 contribute to the festival experience, but also
22 it limited -- with just having the two, it
23 limited the amount of money that was going
24 obviously out-of-state.

1 COMMISSIONER ZUNIGA: It is
2 difficult to put a hard number because they
3 have to see who is going to be coming. And
4 they have to field those cards, etc.

5 DR. LIGHTBAUM: Right. And that was
6 one of Lou Raffetto's ideas was that if he
7 didn't have enough of the regular races that he
8 could fill up the card with some of these
9 steeplechase races.

10 CHAIRMAN CROSBY: Is there anything
11 that -- Is Suffolk Downs's interest different
12 than the local folks on this? Do they do
13 better if there's a steeplechase race?

14 DR. LIGHTBAUM: No.

15 CHAIRMAN CROSBY: So, for them to
16 make a good- faith commitment is completely
17 reasonable. There is no reason why they
18 wouldn't.

19 DR. LIGHTBAUM: Yes. They did this
20 for this year also. That was right in one of
21 the requirements for the meet this year for
22 2015.

23 CHAIRMAN CROSBY: Okay. Other than
24 the leavening of it and trying to have some

1 variety, I guess, there's some value to that.

2 DR. LIGHTBAUM: Right. It added
3 some variety, something different.

4 COMMISSIONER CAMERON: Are we taking
5 these one by one, correct?

6 DR. LIGHTBAUM: Yes.

7 COMMISSIONER CAMERON: That's your
8 first recommendation?

9 DR. LIGHTBAUM: That's the first
10 recommendation. So, if we could vote on the
11 Suffolk Downs applications.

12 COMMISSIONER CAMERON: I would just
13 like to comment about our hearings as well as
14 all -- half of this book are comments on
15 racing. I know that there's a group that are
16 very unhappy with the six days. It's not
17 enough. The simulcast, there are a number of
18 reasons, many of the reasons are legitimate
19 frankly. Then there are just as many
20 comments --

21 CHAIRMAN CROSBY: I think it's more
22 actually.

23 COMMISSIONER CAMERON: There's
24 another group that feels strongly against the

1 fair racing. So, it's difficult for us because
2 the horsemen are split on this issue. That's
3 just something we're going to have to deal with
4 we can't fix that or in any way accommodate
5 everyone.

6 So, we're left with the decision of
7 either approving both or picking one over the
8 other. We listen. We read every comment. We
9 understand the issues. But I agree with your
10 recommendation because it is still -- racing is
11 still in flux.

12 As we just heard, there are issues,
13 obstacle to the Brockton license. And there's
14 a lot of disagreement about the Suffolk
15 license. But I think what we are trying to do
16 is in any way possible continue racing.

17 And I think this gives the best
18 opportunity to do that approving this license
19 at this time. And I just didn't want folks to
20 think we didn't listen and read and understand
21 the issues. And I agree with your
22 recommendation.

23 DR. LIGHTBAUM: As I mentioned
24 earlier, the six days, the 30 days, the 36

1 days, we are all very aware that that doesn't
2 provide a livelihood for anybody. All it will
3 do is get some of the money out there and allow
4 these people to race some.

5 And as we were all saying, hopefully
6 move towards something better in the future.

7 COMMISSIONER CAMERON: Great.

8 COMMISSIONER STEBBINS: I just want
9 to go back on the every effort will be made to
10 limit the number of steeplechases. I don't see
11 a reason why we wouldn't take it out. Chip is
12 saying and correct me if I'm wrong, but there
13 is no financial benefit more than running a
14 couple more races on the traditional track.

15 My assumption is we ran up against
16 issues of being able to fill fields because we
17 got to this application last year so late in
18 the year, people had already made some other
19 plans. But we're tackling this in November
20 2015, does that change the dynamics?

21 DR. LIGHTBAUM: It's really up to
22 Suffolk if they feel strongly that they need
23 that as sort of a card in their deck to allow
24 if they need more courses. I'm not sure how

1 strongly they feel that they need the 13 races.
2 The first day was 13. Then they did 12 then
3 they did 11.

4 Different things went into the
5 handles on the different days. One day had the
6 Breeders' Cup. One day was Halloween. So,
7 it's hard to balance them all out.

8 COMMISSIONER CAMERON: And I'm not
9 sure if there is a way to measure those folks
10 who really like steeplechase and came to the
11 event because of that. I don't know that we
12 can --

13 CHAIRMAN CROSBY: Were you
14 suggesting taking out this condition or are you
15 suggesting prohibiting steeplechases? What
16 were you suggesting?

17 COMMISSIONER STEBBINS: I was just
18 suggesting it doesn't seem to be a benefit to
19 the Mass. horse owners or the Mass. breeders to
20 just eliminate the steeplechases.

21 I know it was part of the proposal
22 and part of the idea of the creation of the
23 fair to have steeplechases. It's something
24 different to watch, it's a different product.

1 COMMISSIONER CAMERON: I actually
2 was out there that day and saw them. And it
3 was different to watch.

4 DR. LIGHTBAUM: It's something
5 different. And it's something that they can
6 advertise as different from what the everyday
7 racing at Suffolk has been.

8 COMMISSIONER STEBBINS: Okay.

9 CHAIRMAN CROSBY: Go ahead.

10 COMMISSIONER ZUNIGA: You mentioned
11 the options before us, Commissioner. There's
12 another one, denying both applications but I
13 don't think that serves the purpose that you
14 point out here.

15 I made this point before and I think
16 I'll make it again. I think we, somebody, one,
17 a staff needs to engage with the Legislature on
18 this topic, eventually. I don't know when.

19 Have them understand that this what
20 they have been doing in terms of extensions may
21 not quite work. Maybe it worked in the past,
22 but the circumstances were very different.
23 There was a prospect of a license, a gaming
24 license, and the economics were very different.

1 And I think aside from what we do
2 here today and review the updates to these
3 applications because they come with conditions,
4 we ought to be speaking to those who would
5 listen at the Legislature as to what they might
6 decide to do with racing and number of dates
7 and the rights to simulcast as it all is part
8 of a mix that is complex.

9 And there's real constituents that
10 feel strongly about it. And they will listen
11 to those constituents. So, I do appreciate
12 we're in somewhat of the tough spot here in
13 terms of timing, because we need to act by the
14 legislature. But there's always the next
15 medium-term that they need to be understanding.

16 CHAIRMAN CROSBY: Anybody else? I
17 very much agree with what Commissioner Cameron
18 said that this is really hard for us. The
19 industry seems to be genuinely split.

20 I was frankly impressed and a little
21 bit surprised by all of these expressions of
22 support for Suffolk Downs and NEHBPA proposal.
23 They were not a form letter. They were
24 individual emails, independently composed.

1 So, there are good-faith commitments
2 and beliefs on both sides. We don't have a way
3 -- With the industry being so split, we just
4 don't have a way to make a judgment other than
5 to give them both the benefit of the doubt.
6 So, I agree with that. That's certainly where
7 I would end up.

8 Do you want to frame this? Just one
9 other thing. We do have in the record the
10 clarification on the expert review of the track
11 surface. And that same clarification is in our
12 record for safety. This will subsume that
13 discussion in this motion.

14 COMMISSIONER CAMERON: Mr. Chair, I
15 move that the Commission approve the
16 application of Sterling Suffolk Racecourse, LLC
17 Suffolk Downs for live running horse racing in
18 2016 with the following conditions: Suffolk
19 Downs will have an independent expert review
20 the track surface prior to racing for safety;
21 every effort will be made to limit the number
22 of steeplechase races; after each two days of
23 racing, Suffolk will report to the Commission
24 the number of percentage of recent Suffolk

1 horsemen and horses that benefit from their
2 races.

3 Suffolk Downs will work with
4 Brockton Middleborough so that they race on
5 different days. And Suffolk Downs will request
6 in writing to the Commission how much money
7 they would like from the Race Horse Development
8 and how that money will be spent.

9 CHAIRMAN CROSBY: Second?

10 COMMISSIONER STEBBINS: Second.

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

13 COMMISSIONER MACDONALD: Aye.

14 COMMISSIONER CAMERON: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER STEBBINS: Aye.

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

19 DR. LIGHTBAUM: Okay. So, now we're
20 going onto the Brockton Middleborough one. As
21 I said these are two separate occasions. So,
22 we'll need to vote on each one. Both of them
23 are to be raced at the Brockton Fairgrounds or
24 as we've had the previous discussion to be

1 seen.

2 So, the conditions that I recommend
3 for this license are that at least 30 days
4 before their first race, they provide the
5 Commission with the information needed to
6 complete their application. That Brockton will
7 have an independent expert review the track
8 surface prior to racing for safety purposes. A
9 good faith effort will be made towards
10 obtaining the NTRA safety and integrity
11 alliance accreditation.

12 After each of their 15 days of
13 racing, Brockton and Middleborough will report
14 to the Commission the number and percentage of
15 recent Suffolk horsemen and horses that have
16 benefited from their races. Number five that
17 Brockton Middleborough will work with Suffolk
18 Downs so that they race on different days. And
19 number six that Brockton Middleborough will
20 request in writing to the Commission how much
21 money they would like from the Race Horse
22 Development fund and how it will be spent.

23 So, first we can have you vote on
24 the Brockton Agricultural Society application.

1 COMMISSIONER CAMERON: So, Mr.
2 Chair, I move that the Commission approve the
3 application for the Brockton Agricultural
4 Society, Brockton for running horse racing in
5 2016 with the following conditions: at least 30
6 days before the first race they provide the
7 Commission with the information needed to
8 complete their application; Brockton will have
9 an independent expert review the track surface
10 prior to racing for safety.

11 A good-faith effort will be made
12 toward obtaining NTRA safety and integrity
13 alliance accreditation. After the 15 days of
14 racing, Brockton will report to the Commission
15 the number and percentage of recent Suffolk
16 horsemen and horses that benefit from their
17 races. Brockton will work with Suffolk Downs
18 so they race on different days. And Brockton
19 will request in writing to the Commission how
20 much money they would like from the Race Horse
21 Development Fund and how it will be spent.

22 CHAIRMAN CROSBY: Second?

23 COMMISSIONER MACDONALD: Second.

24 CHAIRMAN CROSBY: Any further

1 discussion? Should we put anything in there
2 about where the races are going to actually be
3 held?

4 COMMISSIONER CAMERON: I would think
5 that would be covered at least 30 days before
6 they would have the information needed for
7 their application to be completed.

8 CHAIRMAN CROSBY: Other discussion?
9 All in favor, aye.

10 COMMISSIONER MACDONALD: Aye.

11 COMMISSIONER CAMERON: Aye.

12 COMMISSIONER ZUNIGA: Aye.

13 COMMISSIONER STEBBINS: Aye.

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

16 COMMISSIONER CAMERON: And one more
17 motion which is I move that Middleborough
18 Agricultural Society, Middleborough be approved
19 for live racing in 2016 with the following
20 conditions: at least 30 days before the first
21 race they provide the Commission with the
22 information needed to complete their
23 application; Middleborough will have an
24 independent expert review the track surface for

1 safety; a good-faith effort will be made toward
2 obtaining the NTRA safety and integrity
3 alliance accreditation.

4 After their 15 days of racing,
5 Middleborough will report to the Commission the
6 number and percentage of recent Suffolk
7 horsemen and horses that benefited from their
8 races. Middleborough will work with Suffolk
9 Downs so that they race on different days.
10 Finally, Middleborough will request in writing
11 to the Commission how much money they would
12 like from the Race Horse Development Fund and
13 how it will be spent.

14 CHAIRMAN CROSBY: Second?

15 COMMISSIONER MACDONALD: Second.

16 CHAIRMAN CROSBY: Further
17 discussion? All in favor, aye.

18 COMMISSIONER STEBBINS: Aye.

19 COMMISSIONER CAMERON: Aye.

20 COMMISSIONER ZUNIGA: Aye.

21 COMMISSIONER STEBBINS: Aye.

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

24 COMMISSIONER CAMERON: Thank you.

1 thank you all.

2 CHAIRMAN CROSBY: Now we are going
3 to adjourn for a lunch break or an early supper
4 break. Let's come back at 2:45. We are
5 adjourned.

6

7 (A recess was taken)

8

9 CHAIRMAN CROSBY: We are ready to
10 reconvene public meeting 169 at about 2:45.
11 First on the agenda is the Interim Executive
12 Director, Ms. Wells.

13 MS. WELLS: Good afternoon, Mr.
14 Chairman and members of the Commission. As far
15 as the Investigations and Enforcement Bureau
16 report, I'd like to start out just by
17 introducing the new supervisor of the financial
18 investigations division, Mr. Marlin Polite.

19 He comes to us -- He was the senior
20 director of internal audit at Aetna, worked as
21 an internal control specialist at Price
22 Waterhouse Coopers, an audit supervisor Boston
23 Financial and auditor at Ernst and Young.
24 We're thrilled to have him here. He has a

1 degree in accounting from UMass. And he's a
2 certified risk professional from the Bank
3 Administration Institute.

4 He comes to us with a wealth of
5 management experience which I think will be
6 tremendously helpful to us aside from having
7 the accounting and the financial experience.
8 And he'll be leading our financial
9 investigation team within the IEB, leading them
10 on the financial component of license
11 suitability investigations for vendors and
12 employees, ongoing suitability of our licensees
13 and the parent companies as well as audit
14 investigations of the Massachusetts operations.

15 I just wanted to introduce you, give
16 you an opportunity say a few words to Marlin.
17 And have him introduce himself to you as well.

18 COMMISSIONER CAMERON: Welcome,
19 thank you. Nice resume.

20 COMMISSIONER STEBBINS: Where are
21 you from Marlin?

22 MR. POLITE: I'm from the western
23 part of the state.

24 COMMISSIONER STEBBINS: Excellent.

1 CHAIRMAN CROSBY: So, was it UMass
2 Amherst or which UMass campus?

3 MR. POLITE: UMass Amherst.

4 CHAIRMAN CROSBY: Too bad, it could
5 have been better. How is your first week?

6 MR. POLITE: It's actually been two
7 weeks. They've been great. I'm getting my sea
8 legs and just getting a broad understanding and
9 appreciation of the work that has been done and
10 the work that needs to be done within the
11 Commission.

12 CHAIRMAN CROSBY: Great.

13 COMMISSIONER ZUNIGA: It's really
14 good to have you. I'm familiar with your
15 background as part of some of the interviews.
16 And I think you bring a great experience into a
17 lot of what we need to do. Among them, some of
18 the internal audit function that we also need
19 to be thinking about for our purposes and risk
20 management. But there is plenty of that for us
21 to think about.

22 CHAIRMAN CROSBY: I'll just throw my
23 two cents in. Were you going to say something?

24 COMMISSIONER MACDONALD: I was. I

1 was going to welcome you and to tell you that
2 if you need any guidance from me as your duties
3 or how to get around the office, just come to
4 me because I've been here eight days. I think
5 we could make a great team.

6 MR. POLITE: Thank you for that.

7 CHAIRMAN CROSBY: I was just going
8 to sort of follow up on what Commissioner
9 Zuniga said, which is one of the issues that we
10 have to figure out and/or keep in mind always
11 is what degree of investigation is appropriate.
12 Then we've got to do those investigations and
13 do them well.

14 But we are constantly about what
15 level is appropriate, what's too much, what's
16 too little. Where do we need hard looks?
17 Where do we not need hard looks? What's
18 appropriate use of our time? How much it will
19 cost. How do you protect the public interest?

20 And your help and from time to time
21 helping us stay at that sort of high level and
22 think about how does your department protect
23 the public interest. And help us focus on that
24 as well as actually getting the blocking and

1 tackling done which is critical. That will be
2 an important part of your contribution to the
3 sake of the agency. Welcome.

4 MS. WELLS: We are absolutely
5 thrilled to have him here. The unit is already
6 firing on all cylinders and responding well to
7 his leadership. So, it's going very well.

8 COMMISSIONER CAMERON: Great.
9 Thanks.

10 MS. WELLS: So, the next matter we
11 have is just for the Plainridge Park Casino
12 performance metrics. I have Bruce Band, our
13 Gaming Agents Division Chief and Paul Connelly
14 the Director of Licensing.

15 MR. BAND: Mr. Chairman,
16 Commissioners, we are here today to go over the
17 metrics that we plan on posting on our website
18 on a monthly basis. The first page, which is
19 financial end of it is something that we
20 already have posted on our website in this
21 fashion. The next part that we post is with
22 licensing, which I'll Paul talk about.

23 MR. CONNELLY: Just a reminder, the
24 intent of the reporting on the active employees

1 and active vendors is to try and indicate level
2 of economic impact and activity. So, how many
3 folks are currently employed. How many vendors
4 are currently being utilized.

5 And just a note for understanding on
6 the vendor side, what we do is we do a 90-day
7 look back. So, vendors that have been active
8 in the past 90 days knowing that payment cycles
9 can be quite long, we had discussed it
10 internally quite a bit with my team about
11 what's a good indicator that someone is
12 currently active. And anyone who has been paid
13 within the past 90 days is a vendor that we are
14 considering.

15 MR. BAND: On the next page is with
16 patron complaints, which is a metric for one on
17 how Plainridge Park is keeping their customers
18 satisfied and taking care of any complaints
19 that come their way. As you see, that we have
20 really very few complaints when you do that.
21 It's a good metric to look at.

22 CHAIRMAN CROSBY: Bruce, excuse me.
23 I guess I fell asleep or something, but the
24 first page, the slot machine revenue. Did you

1 talk us through that?

2 MR. BAND: Yes. I said that that
3 one we currently have on our website in this
4 form and fashion. So, this wouldn't be a new
5 one that we would be adding. This is the
6 monthly statistics that Derek puts together.

7 CHAIRMAN CROSBY: Right.

8 COMMISSIONER ZUNIGA: You'll
9 remember that halfway through the next month,
10 what we expect to be reporting the next month,
11 these figures do not include October yet,
12 although October is now behind us. So, this
13 chart will be --

14 CHAIRMAN CROSBY: -- in arrears.

15 COMMISSIONER ZUNIGA: Well, will be
16 updated very soon in a matter of a couple days.

17 MR. BAND: I believe it's the 15th.

18 CHAIRMAN CROSBY: I'm sure I missed
19 something, so forgive me if this is obvious,
20 but there were three numbers in September that
21 were extraordinarily out of line with the
22 others. I just wondered, I'm curious what the
23 slot promotional anomaly was and how your whole
24 percent and your payout percent. They don't

1 make sense.

2 COMMISSIONER ZUNIGA: The whole
3 percentage and payout percent I think it's a
4 formatting issue. It should really be nine
5 percent and 91 percent not \$9.9. That would be
6 very much in line with the others. Am I
7 correct on that, Bruce?

8 MR. BAND: Yes.

9 CHAIRMAN CROSBY: So, those are just
10 typos.

11 COMMISSIONER ZUNIGA: The slot
12 promotionals, you can probably speak better to
13 it, but they're --

14 MR. BAND: The slot promotionals is
15 marketing credits where they give free play and
16 things like that. You can see they increase
17 that to try to attract more players.

18 CHAIRMAN CROSBY: So, all that is
19 just they added -- is it a two and half times
20 increase? That's customary that happens?

21 MR. BAND: That wouldn't be unusual
22 for a casino in establishing themselves. See
23 in the first few months it really wasn't
24 necessary because people were coming regardless

1 because it's a new property. But this is how
2 you keep customers and some of your better
3 players keep coming.

4 CHAIRMAN CROSBY: Would you expect
5 it to stay at that level rather than fall back?

6 MR. BAND: No. That's a number you
7 might see change. It really kind of depends
8 what your competition is doing as to what
9 emphasis you would put on those free ones.

10 CHAIRMAN CROSBY: Okay, great.
11 Thanks.

12 MR. BAND: Then the patron
13 complaints, like I said was really a gauge of
14 customer service. If we're getting a lot of
15 complaints, I would have some concerns that
16 they weren't treating their customers very
17 well. So, it's some way to gauge that. On the
18 last page --

19 COMMISSIONER MACDONALD: Can I ask a
20 question about the customer complaints. What
21 makes a complaint?

22 MR. BAND: It would be one that
23 would either come to my gaming agents on the
24 floor where a customer requests to talk to

1 somebody and we follow through. And a lot of
2 times Penn themselves would rectify the
3 situation and make the customer happy.

4 Sometimes we get them through our
5 website we would get complaints. But these
6 numbers are pretty low having been in the
7 gaming industry for a long time. Other
8 properties, I know New Jersey we were running
9 maybe 40 complaints or 50 complaints a month.

10 COMMISSIONER MACDONALD: Does it
11 require completion of a formal form?

12 MR. BAND: We would complete the
13 form. We would take it orally and the person
14 could give us their name or not give us their
15 name. But it's a pretty simple feature.
16 That's the way it was designed so people
17 wouldn't hesitate to file something if they
18 thought it was appropriate.

19 COMMISSIONER CAMERON: To follow up
20 on that we always document, correct?

21 MR. BAND: Yes.

22 COMMISSIONER CAMERON: No matter
23 what form we receive the complaint?

24 MR. BAND: All of this is

1 documented. This doesn't really indicate
2 whether it was rectified. But the fact that it
3 got as far as it did to us means that they
4 didn't rectify it prior to us being involved.

5 COMMISSIONER CAMERON: Correct. And
6 our form, which we document does that have a
7 resolution component to it?

8 MR. BAND: Yes, it does.

9 COMMISSIONER CAMERON: When you get
10 a moment, I'd love to see it.

11 CHAIRMAN CROSBY: Send it to all of
12 us.

13 MR. BAND: Sure.

14 CHAIRMAN CROSBY: And on the same
15 direction that Commissioner Macdonald was
16 going. The GameSense advisors spend a lot of
17 time trying to figure out how do you define a
18 contact, because we're trying to find out how
19 many contacts we have, what's a meaningful
20 contact. And there's big definitional
21 challenges so that we're measuring apples to
22 apples, comparing apples to apples.

23 Is that an issue at all here or is
24 it basically any time anybody comes with

1 something it gets recorded?

2 MR. BAND: It would depend because a
3 lot of times people will get confused about how
4 a machine operates or how you win the jackpot.
5 And the gaming agent might assist them doing
6 that or at least get somebody to assist them.
7 That wouldn't necessarily be reported.

8 It's usually I put \$20 in the
9 machine and I got no credit. Well, we get more
10 involved in that. We'll pull back the film,
11 look at their pay for play to see if it's
12 actually a legitimate complaint or not. A lot
13 of times it's money that didn't go all of the
14 way into the box yet you can see him put the
15 \$20 in there and no credits come up on the
16 machine.

17 So, we kind of follow through the
18 process like that. We act as an advocate for
19 the patron in that case.

20 COMMISSIONER STEBBINS: Is there a
21 protocol should these complaints -- Do you ever
22 recommend to an individual to go talk to
23 someone from Plainridge Park first?

24 MR. BAND: Yes. We would call --

1 Actually, it's not totally the compliance
2 officer, but it would be the head person on
3 duty in that department. We would bring them
4 into the mix and give them an opportunity to
5 fix the problem. And Penn's been great with
6 those kinds of issues.

7 The last page is underage people.
8 As you can, see we've only found people on the
9 floor one time and that was in July. The
10 number for October of people actually trying to
11 get in has dropped considerably, but that could
12 be because school is in session now too.

13 COMMISSIONER ZUNIGA: I learned
14 something, this could very much be anecdotal,
15 but from talking to the GameSense advisors and
16 given the proximity to Rhode Island where Rhode
17 Island allows 18-year-olds to visit the casinos
18 that some of the initial customers from the
19 area assumed that it was similar to
20 Massachusetts. So, they came not realizing
21 that the age here is 21.

22 MR. BAND: I do read a lot of those
23 in my reports. The majority of them that get
24 turned away have no ID. So, it tell me that

1 they're trying to get in being underage or
2 something. Any questions about these numbers?

3 COMMISSIONER ZUNIGA: I went on just
4 talk a little bit about the employees which I
5 think this what we agreed to on reporting. And
6 I think it's great.

7 But it reminded me of something that
8 I was in front of the Joint Committee on
9 Economic Development and Emerging Technologies
10 testifying before Chairman Wagner on Tuesday on
11 charitable gaming. And I can give an update on
12 that if my colleagues would like.

13 One of the bills that is being
14 proposed has to do jobs, pay ranges. They want
15 to go as far as providing names, which the
16 committee did not want to entertain. But they
17 don't feel that there might be legislative
18 action needed to accomplish what that bill
19 wants to accomplish.

20 That we have essentially the
21 authority to report on a number of things not
22 just at this level but in more granular detail.
23 So, the statute speaks very specific to an
24 annual report. That could be the frequency we

1 wanted to but there's a lot of metrics that we
2 should consider reporting perhaps more
3 frequently that are not necessarily included in
4 this exhibit which would also accomplish this
5 goal of that other bill which was better
6 reporting in terms of jobs and all things
7 associated with it.

8 MR. BAND: I know there's a lot more
9 metrics. I think it's next week's meeting that
10 are metrics that are required in the statute to
11 be done. I think that's on the agenda for next
12 week. So, it might include some of the things
13 you're looking for.

14 COMMISSIONER ZUNIGA: Great. So,
15 we're doing that quarterly?

16 MR. BAND: Yes. It's quarterly,
17 there's annual. There's a bunch of different
18 metrics that it requires.

19 MR. CONNELLY: And I believe that
20 discussion is happening in the next meeting,
21 discussion about will be in the quarterly
22 reporting as well as the initial reporting on
23 that front.

24 COMMISSIONER ZUNIGA: Great.

1 CHAIRMAN CROSBY: That would be the
2 place if we had ideas about other metrics that
3 we were interested in, next week is the time to
4 talk about that?

5 MR. CONNELLY: Always, frankly
6 anytime is a good time. For the monthly
7 reporting, if there's something additional, you
8 wanted the employees, obviously we can provide
9 whatever you need.

10 I think when you look at it, I'll be
11 the first to admit, it seems kind of a blunt
12 number. The intent was because there is
13 turnover like any big employer, there's going
14 to be people coming and going was to try and
15 capture almost like from a balance sheet
16 perspective, how many folks are actively
17 employed at a given point in time.

18 Because when we looked at it in
19 particular with summer, there was ups and downs
20 in terms of turnover. People are new to the
21 industry. They don't quite know what to
22 expect. They may find that it's not entirely
23 what they expected. A 24-hour schedule is
24 something that the difference between the

1 perception and reality can be quite vast.
2 Working midnights can wear on someone after a
3 time.

4 So, where we ended up with was the
5 active employees. That being said that along
6 with saying we do have other information about
7 the employees that are there. If there was
8 some additional level of analysis that you
9 wanted, we can work to provide it based on what
10 we collect.

11 COMMISSIONER ZUNIGA: Just based on
12 the conversation with that committee, it occurs
13 to me that quarterly may be appropriate.
14 Yearly like the statute says is too long of a
15 time it appears given the interest of
16 legislators to see how things are turning out.

17 But monthly I don't think -- The
18 purpose of this monthly report is good and I
19 understand it. So, perhaps whether it's coming
20 from our staff or from Penn on a quarterly
21 basis, more detail relative to some of the --
22 we can talk about this, the pay scale, etc.

23 You have to do it of course
24 protecting the confidentiality of people and

1 aggregating and maybe like ranges or what have
2 you, but at least that committee, and it's an
3 important committee for us, was interested in
4 understanding that in more detail.

5 CHAIRMAN CROSBY: Other thoughts? A
6 couple of other categories where I think it's
7 worth thinking about whether we would want to
8 have more. One would be in the number of
9 applications, license applications that we get.
10 The number that we approve. The number that we
11 disapprove. Maybe the reasons for disapprove,
12 I'm not sure about that. That's an important
13 metric for lots of reasons.

14 Then on the law-enforcement side,
15 the arrests --

16 MR. BAND: We had discussed putting
17 the arrests in a little bit. Because all of
18 these cases are pending and it hasn't started
19 to go through the judicial process yet, we
20 thought it would probably be better not to
21 include that. Maybe that would something in a
22 yearly report to put in.

23 CHAIRMAN CROSBY: Well, we're going
24 to get information from Bruce Band, right

1 Commissioner? It's going tell us about a lot
2 of stuff about what's going on a relative real-
3 time basis.

4 COMMISSIONER CAMERON: I'm sorry.
5 Are you talking about Christopher Bruce?

6 CHAIRMAN CROSBY: I'm sorry. I just
7 wanted to see if you were awake.

8 COMMISSIONER CAMERON: Yes. We are
9 going to get all of the information in the
10 first-quarter criminal activity throughout the
11 host and surrounding communities.

12 CHAIRMAN CROSBY: So, that would be
13 an even more comprehensive look than just a
14 report from the facility. We are getting his
15 presentation pretty soon about what he's got.

16 COMMISSIONER CAMERON: Yes.

17 CHAIRMAN CROSBY: On the one hand,
18 there's the reluctance to deal with those kinds
19 of issues publicly. That's an understandable
20 reluctance. On the other hand that's one of
21 the things people are most concerned about.

22 And from what little we've heard so
23 far, there has been very little impact,
24 negative impact on the law-enforcement side.

1 And I think that's a good thing that we would
2 like people to know. So, walking a line
3 between what we don't really want to talk about
4 and what we really should be talking about.

5 MR. BAND: I think the concern more
6 was people having access to our reports before
7 any charges have formerly been brought or the
8 person has been officially charged, it would be
9 unfair.

10 CHAIRMAN CROSBY: We should never
11 talk about who the person is.

12 MR. BAND: I understand that.

13 CHAIRMAN CROSBY: Totally anonymous.

14 MR. CONNELLY: And I'm happy to go
15 through the number of applications received.
16 Just remember the original time we had the
17 conversation which was not in a meeting but
18 more in a planning session was we had debated
19 between discussing activity versus impact. And
20 the focus and try to led the focus to the
21 impacts of how many people are working as
22 opposed to how many people may be coming
23 through the system.

24 That's absolutely something we can

1 provide. Just as long I'd want to make sure --
2 I'd have to do a good job in explaining any
3 discrepancy between the number of applications
4 that come in and people that are working. That
5 delta doesn't always mean that those people
6 didn't make it through the process. It may
7 mean that they opted out or there was any
8 number of other factors that could have
9 happened.

10 COMMISSIONER CAMERON: But analyzing
11 that information is critical to the future.
12 For example, if there's a group of individuals
13 who aren't making it for a couple of reasons,
14 training individuals how to overcome those
15 reasons whatever that may be and getting that
16 information to most of the hiring will come in
17 the future.

18 But if there's any information that
19 can be gleaned and is a trainable issue
20 whatever that may be. I know truthfulness is
21 huge. And that may be something when you have
22 a job fair, this is what happened at
23 Plainridge. You may want to think about
24 answering the questions properly.

1 Whatever we can provide which will
2 help individuals be successful. I know we did
3 a lot of that in the state police really trying
4 to get them to be successful after looking at
5 areas which kept a large group of people out.

6 MR. CONNELLY: Exactly. And that
7 level of analysis, Mr. Chairman and
8 Commissioners, has to happen even outside of
9 reporting on a monthly basis.

10 It's an essential part building into
11 the master schedule as we look towards opening
12 the other facilities. We can't project what
13 the workflow will look like until we understand
14 with reasonable projections who is going to be
15 coming through the door, how long it takes us
16 to process, what the likelihood of someone
17 successfully going through the process is, etc.

18 So, it has to happen regardless.
19 And we're intent on doing that and have started
20 that already.

21 COMMISSIONER STEBBINS: Can we also
22 keep in mind information that we may be
23 collecting here can also be overlaid with some
24 of the things that Mark and the team from UMass

1 need for their overall research projects?

2 One of the things and I think it
3 would probably be pretty easy to calculate
4 because we're getting their numbers on what
5 their spend is would be adding to the active
6 vendor page how much is being spent with those
7 three categories of vendors.

8 Because I think if you look at
9 nongaming vendor are going to be the local
10 folks and seeing what that overall dollar
11 amount is, you're going to actually see what
12 they're putting back into the community.

13 MR. CONNELLY: And to second that
14 point, anywhere where we can work together with
15 UMass to do the analysis that would be helpful.

16 CHAIRMAN CROSBY: Is there anything
17 else that we'd be interested in knowing or the
18 public would be interested in knowing? Okay,
19 great.

20 COMMISSIONER CAMERON: Good work,
21 thank you.

22 MS. WELLS: The next item on the
23 agenda is just the temporary license update.
24 Just to inform the Commission, we issued

1 temporary key gaming standard licenses to
2 Sherry Baker Player Services Supervisor and
3 Michael Milano, Lead Surveillance Agent both at
4 the Plainville facility.

5 These will start to become less and
6 less as that level of employees starts to stay
7 longer. So, I'll just periodically update you
8 when I get a few of them to bring before the
9 Commission just to let you know that those are
10 going on.

11 The next item on the agenda is just
12 a summary for you of the report which you
13 received on Jason Gittle. Because he is a key
14 gaming executive that means a vote before the
15 Commission in order to issue him a license.

16 As you are aware from the report, he
17 currently has a temporary license. In December
18 2014, Mr. Gittle was hired as Director of
19 Information Technology for Plainridge Park
20 Casino. As such, he was required to obtain a
21 GKE license by the MGC based on that position.
22 He submitted all of the required forms and
23 supplemental document requests to the licensing
24 division and the IEB. And the investigators

1 conducted a rigorous background check.

2 I've been through the criteria
3 numerous times, but given this is Commissioner
4 Macdonald's first opportunity to vote on a key
5 gaming employee license, I'll just review.
6 We're talking about employment history,
7 political contributions, criminal record,
8 references, media coverage, education,
9 directorships and shareholder interests, civil
10 litigation, bankruptcies, property ownership.

11 The investigators also conducted a
12 financial responsibility evaluation. That
13 resulted in a positive determination. He was
14 interviewed in person by the IEB state police
15 and the financial investigators as part of the
16 standard protocol for that type of
17 investigation.

18 Mr. Gittle attended the University
19 of Massachusetts Lowell where he was awarded a
20 BS in business administration in 1993. Prior
21 to working at the Plainridge Park Casino, he
22 was Director of Technology at Siemens Industry.
23 He had also been Director of Technology at
24 Newport Grand in Newport, Rhode Island,

1 Director of Technology at the Twin River Casino
2 in Rhode Island and an Information Systems
3 Manager at North Attleboro Electric.

4 He disclosed in his application he
5 had been licensed and registered to participate
6 in gaming in Rhode Island, specifically for the
7 Twin River Casino and the Newport Grand. And a
8 check with Rhode Island confirmed his license
9 certification and its status.

10 His license is currently inactivate.
11 And prior to its inactive status, it was in
12 good standing and no derogatory information
13 relating to Mr. Gittle's licensure was
14 identified.

15 There were not significant
16 investigative issues uncovered related to Mr.
17 Gittle's application for licensure. Overall,
18 he has demonstrated by clear and convincing
19 evidence that he is suitable for licensure in
20 Massachusetts. Therefore, the IEB is
21 recommending that the Commission find him
22 suitable for a key gaming executive license and
23 recommend you take that action.

24 COMMISSIONER CAMERON: We received

1 that secure report, had a chance to take a look
2 at it, a very clean report. Certainly, I
3 concur with your recommendation.

4 CHAIRMAN CROSBY: You need a vote
5 from us?

6 MS. WELLS: Yes.

7 CHAIRMAN CROSBY: Commissioner
8 Cameron?

9 COMMISSIONER CAMERON: I move that
10 we license as a key gaming executive Mr. Jason
11 Gittle.

12 COMMISSIONER STEBBINS: Second.

13 CHAIRMAN CROSBY: Further
14 discussion? All in favor, aye.

15 COMMISSIONER MACDONALD: Aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER STEBBINS: Aye.

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

21 MS. WELLS: That's all I have on the
22 agenda. I'll turn it over to Mr. Glennon.

23 MR. GLENNON: Good afternoon, Mr.
24 Chairman, Commissioners. A couple of things on

1 the agenda this afternoon.

2 First up, we have presentation on
3 skill-based electronic gaming. I think Floyd
4 and Todd have done some really good work to
5 kind of call this out and make it clear and
6 differentiate this between the type of skill-
7 based gaming that's in discussion for the
8 sports fantasy issues. So, I'm going to turn
9 it over to Floyd and Todd at this point.

10 MR. GROSSMAN: Thank you, John.

11 Good afternoon Mr. Chairman and members of the
12 Commission. Today, we want to talk about
13 skill-based gaming, which as you may be aware
14 for a variety of reasons is positioned to be an
15 important component in the future of casino
16 gaming.

17 So, what we would like to do today
18 is to give you a broad overview of the subject
19 with an ultimate goal of positioning ourselves,
20 if the Commission is supportive, to ensure that
21 we have the regulatory infrastructure in place
22 to welcome the idea when the technology becomes
23 ready to go.

24 So with that, I'll just let you know

1 what we plan on talking about here this
2 afternoon is what skill-based gaming is. Show
3 you what it looks like. We'll talk a little
4 bit about what skill-based gaming is not.
5 We'll talk about whether it's legal in
6 Massachusetts, in our opinion anyway. We'll
7 get into a little bit about what its status is
8 in the industry and then where we go from here.

9 So without further ado, I'll turn it
10 over to Floyd to get the presentation started.

11 MR. BARROGA: Good afternoon,
12 everyone. First of all, we want to go over
13 what is skill-based gaming and sort of set that
14 expectation so that there is a clear definition
15 as far as what we plan to implement if the
16 Commission chooses to accept skill-based
17 gaming.

18 There are only a few minor
19 modifications to the technical requirements
20 that will allow this type of implementation
21 into the states or into our state. First of
22 all, all of the slot machines that you see at
23 Plainville right now are considered random.
24 They implement the random number generator

1 where there is no skill-based tied to them.

2 So, if John were to play and Todd
3 were to play a game and I were to play a game,
4 it wouldn't be agnostic to the person playing
5 those games. So, it would be no skill tied to
6 it and it'd be purely random as far as what you
7 see the outcome to those players.

8 As we see the industry implement
9 skill-based gaming, there is that added feature
10 that allows whether it's your 80s style pinball
11 machine or if it's a skill that's acquiring
12 certain items on the screen, there is skill
13 base to where there would be differences
14 between the three of us between certain games
15 where Todd might be the most skilled. John
16 might be sort of the mediocre and I would be
17 the least skilled depending on what game it is.
18 So, it would affect your initial payouts or
19 your final payouts over time.

20 COMMISSIONER MACDONALD: Can I ask
21 you what the RNG stands for, it was random --

22 MR. BARROGA: Random number
23 generator.

24 COMMISSIONER MACDONALD: Random

1 number generator.

2 MR. BARROGA; So, anytime you hit
3 spin on a slot machine, there's a call to that
4 random number generator. Then it allocates the
5 outcome which is displayed, whether it's three
6 cherries or a different outcome on the slot
7 machine.

8 CHAIRMAN CROSBY: It's the device
9 that drives the slot machine to come up with
10 utterly random wins or losses.

11 MR. BARROGA: As the industry moves
12 forth, there is sort of a transition in sort of
13 mating the skill-based gaming to what you see
14 traditionally today. That's what we call
15 hybrid. And I'll show examples coming up next
16 as far as the differences between a hybrid
17 game, a purely skill-based gaming and your
18 traditional slot machine.

19 CHAIRMAN CROSBY: What does this
20 mean, a game can be fully skill-based or a
21 hybrid of skill including classic RNG slot
22 playing?

23 MR. BARROGA: So, we'll go over
24 examples. Basically, as far as only skill-

1 based game, your skill will be tied to your
2 payout. The hybrid game would have a
3 combination of your RNG, the random number
4 generator game, and then if that game were to
5 trigger a bonus, you would enter that skill
6 component of the game. So, it'll be more clear
7 once I go through the examples.

8 MR. GROSSMAN: With every backdrop,
9 I think it's important just to pause and take a
10 look at a minute at what we are not talking
11 about.

12 We are not talking about daily
13 fantasy sports. We are not talking electronic
14 table games. People often confuse skill-based
15 gaming with daily fantasy sports because the
16 whole skill/chance elements is integrated in an
17 element of both.

18 At least in my humble opinion, the
19 two are completely different. The problem or
20 the issue with daily fantasy sports essentially
21 is what the federal law says about the use of
22 the Internet for these types of activities.

23 In the case of skill-based gaming,
24 we're talking about essentially slot machine

1 devices that are in the casino. So, the
2 federal laws that are at issue are not at issue
3 when it comes to the skill-based gaming.

4 And the second component are the
5 state laws and whether the daily fantasy sports
6 games are legal or illegal under state law.
7 And in our case, and we'll get to this in a
8 little more detail further on in the
9 presentation, the state law specifically allows
10 this activity, skill-based gaming.

11 So for those reasons, I would submit
12 that skill-based gaming and daily fantasy
13 sports shouldn't be mixed up.

14 COMMISSIONER ZUNIGA: And when
15 you're talking about skill-based gaming, you're
16 talking about skill-based slot machines.

17 MR. GROSSMAN: Basically, skill-
18 based slot machines.

19 COMMISSIONER ZUNIGA: And table
20 games, there's an element of skill there, but
21 for the purposes of this discussion skill-based
22 slot machines.

23 MR. GROSSMAN: That's right. It's
24 actually videogames in some respects is what

1 we're talking about now.

2 You may recall, and the other thing
3 this is not exactly are electronic table games
4 which they have in Plainridge Park Casino.
5 We've talked about this in a separate context
6 once before.

7 We actually have regulations that
8 govern electronic table games, whether it's
9 black jack or poker or roulette, craps. The
10 distinction between skill-based gaming and
11 electronic table games essentially is the fact
12 that in the case of the electronic table games,
13 the rules of the games are fairly well known
14 and understood. And the house advantages are
15 understood. The odds have already been
16 calculated.

17 So, when they come before us through
18 the whole licensing process we know what to
19 expect and the independent testing labs know to
20 look for. In the case of these skill-based
21 games, we have no idea what the rules of the
22 games are, what the house advantages are, what
23 the odds are and all of that.

24 So, it is a separate issue that we

1 need to explore here. But at its core, it's
2 the same. There may or may not be a random
3 number generator element to it. And there is
4 skill involved in both electronic table games
5 and skill-based games.

6 So, if there are any similarities to
7 be drawn, it's between electronic table games
8 and skill-based games and not daily fantasy
9 sports. Those are totally separate. So, I
10 think it's important to recognize that.

11 MR. BARROGA: In our first example,
12 you can see the traditional slot, your non-
13 skill slot where, as I mentioned before -- As
14 we said in another example, it doesn't matter
15 as far as who is playing. These games are non-
16 skill. It makes the call to the random number
17 generator each time. And over say a billion
18 plays, you'll see the return to player
19 percentage correlate to what you see reported
20 at Plainridge Park which is about 90 percent.

21 So, here you can see this is a
22 purely based game. It's done by a company
23 called Nanotech. It's called Vegas 2047. The
24 way it correlates is you see that pie in the

1 center where the higher the player bets on the
2 game, the more percentage of an EV they get.
3 So, the better chance the more they bet, they
4 higher percentage they can use. And the lower
5 the player bets you see red and that's the
6 lower percentage that the player is returned
7 to.

8 COMMISSIONER MACDONALD: Did you say
9 EV?

10 MR. BARROGA: Yes, it's basically
11 your pay percentage.

12 COMMISSIONER MACDONALD: What does
13 it stand for?

14 COMMISSIONER ZUNIGA: Expected
15 value.

16 MR. BARROGA: As you can see with
17 this purely based skill game if Todd was one of
18 the greatest players, he would be at the higher
19 end of the pay percentage. And if I'm not one
20 of the best players at pinball, then I would be
21 at the lower end of that pay percentage.

22 COMMISSIONER ZUNIGA: But the player
23 can calibrate that. Maybe not in this example,
24 but you can calibrate the level of skill versus

1 payout.

2 MR. BARROGA: Yes. So, the display
3 where it's the red, the more red that you see
4 the lower payout percentage it equates to. And
5 the more green that you see, the more that you
6 bet the higher pay percentage you see.

7 COMMISSIONER ZUNIGA: That is
8 determined by the amount that you wager.

9 MR. BARROGA: Yes. In this
10 particular example, it's by the wager.

11 COMMISSIONER ZUNIGA: It's by wager,
12 right. Because there's other examples where
13 you can determine -- you can set it up and then
14 wager and then the odds will then correlate.

15 MR. BARROGA: Yes. For this
16 particular game, yes. The next example, it's a
17 hybrid game where you actually have your
18 traditional random number generator slot. And
19 within the game say if you were to achieve
20 three bonus symbols, then it would take you to
21 your skill-based component game which in this
22 case a Centipede.

23 So, depending on how skillful you
24 are, you can achieve different levels of wins

1 within the game. And just like the machine
2 that you played say back in the arcade, it
3 basically correlates to the more points that
4 you win, the more skillful that you are, the
5 higher win percentage that you achieve in the
6 game.

7 So, there's two components of the
8 hybrid game. It's your random slot on top of
9 your skill-based bonus and component.

10 COMMISSIONER STEBBINS: Is the game
11 evolving? You take a slot machine and say I
12 lost or I won and the machine didn't spit
13 something out. We can go back and look at the
14 tape essentially inside the machine.

15 Is this going to get more
16 complicated if somebody says I shot the spider
17 but the spider landed on me. Are you going to
18 be able to go back and retrace that through the
19 game to see whether the person actually is
20 telling the truth or not?

21 MR. BARROGA: Yes. Within
22 Massachusetts it's technical requirements that
23 the games must allocate space for the last 10
24 game plays. So, within each spin within each

1 of the bonus play, we will have data for the
2 last 10 games.

3 So, if there is a customer dispute
4 they can certainly raise the issue with the
5 property, raise the issue with the IEB and we
6 can certainly gather that history within the
7 game itself or the CMS.

8 COMMISSIONER STEBBINS: Okay.

9 COMMISSIONER ZUNIGA: I actually
10 think I can bring some personal experience
11 because I used to play that game back in the
12 80s more than I wish to admit.

13 COMMISSIONER STEBBINS: You were in
14 elementary school back then.

15 COMMISSIONER ZUNIGA: The algorithm
16 is such and that can be program and tested and
17 that is the key here in the question that it
18 gets more and more complicated as you go along.

19 You feel that little spider attacks
20 you directly as soon as you start making all
21 the bonus rounds. And depending on how -- All
22 of this would have to be understood by the
23 independent testing labs. What's the
24 theoretical payouts and tested?

1 The same controls that exist
2 currently will just have a different flavor as
3 to what that skill component and how is that
4 being paid out.

5 MR. BARROGA: So, we'll get into it.
6 Nevada right now has a tolerance within their
7 requirements of one percent RTP. Where say the
8 machines at Plainville payout at 90 percent,
9 the tolerance will allow as high as 91 percent
10 or as low as 89 percent. So, depending on
11 what the state would like to adopt whether it's
12 a one percent tolerance or say five percent
13 tolerance that really will affect your payout
14 percentage.

15 With Nevada going at one percent, it
16 doesn't have a huge effect on the initial games
17 payout. Especially if say there are only 10
18 games that are skill-based at Plainridge, 10
19 out of 1500 machines won't be a huge hit to the
20 overall financials of that property.

21 COMMISSIONER ZUNIGA: Where does
22 that 10 percent come from? It's just an
23 example?

24 MR. BARROGA: If there was 10 games

1 out of 1500 machines at Plainville, it wouldn't
2 be a huge impact.

3 COMMISSIONER ZUNIGA: And for the
4 benefit, RTP range of theoretical payout, is
5 that what it stands for?

6 MR. BARROGA: Return to player
7 percentage.

8 COMMISSIONER ZUNIGA: Return to
9 player, okay.

10 COMMISSIONER CAMERON: Floyd, I
11 assume in a hybrid game individuals would be
12 attracted to this because they want to test
13 their skill. So, the random generation of
14 numbers must get a greater percentage of people
15 there, correct?

16 In other words, other than a regular
17 slot machine it would seem that because people
18 want to get to that next level would it be a
19 higher percentage that are allowed to go onto
20 the skill level because of the way it's
21 generated or no?

22 MR. BARROGA: No. Different
23 manufacturers, they tend to allocate the
24 bonuses say if you're going into the bonus 10

1 percent of the time on one manufacturer and 20
2 percent of the time on a different
3 manufacturer, it really depends on how that pay
4 table is implemented.

5 Within the hybrid games, it's
6 similar to gaining a free spin bonus or a
7 picking bonus. That's sort of the frequency as
8 far as when you achieve that bonus. It's
9 purely random until you achieve say three bonus
10 symbols or four cherries.

11 COMMISSIONER CAMERON: You could
12 play an awful long time before you get to
13 utilize the skill component.

14 MR. BARROGA: Correct.

15 COMMISSIONER ZUNIGA: There's games
16 where it's reversed where you enter a skill
17 upfront and if you get to a certain level and
18 you may be able to spend purely on chance now
19 for the whatever bonus.

20 MR. BARROGA: In the example of
21 Vegas 2047, as soon as you allocate your wager
22 you would be in the skill component. But
23 within a hybrid with the randomness of your
24 traditional slot and the skill, it's really

1 tied to actually randomly achieving the bonus
2 feature then getting you to your skill-based
3 component.

4 COMMISSIONER MACDONALD: With the
5 skill-based games are they all programmed to a
6 certain percentage that would be at least in
7 the aggregate the odds of the house winning
8 against the person who is playing?

9 MR. BARROGA: Correct. As within
10 our technical requirements we do have an 80
11 percent minimum return to player. So,
12 regardless once those are submitted to
13 independent test labs are defined the state,
14 those test requirements will ensure that all
15 games whether it's skill or random game or a
16 hybrid game will pay out at 80 percent.

17 So, regardless it will meet the
18 requirements. And depending on what we deem as
19 the tolerance whether it's one percent or two
20 percent, three percent, those test requirements
21 will be implemented and ensure that those games
22 will payout at those tolerances.

23 COMMISSIONER MACDONALD: What does
24 the word tolerance mean? I'm sorry to ask

1 these dumb questions, but I'm new.

2 MR. BARROGA: That's okay. It's the
3 min and max of your standard pay percentage.
4 So, at Plainville we've seen a 90 percent
5 payout. If the state shows a two percent
6 tolerance, the highest payout would be 92
7 percent. The lowest would be 88 percent. It's
8 basically your maximum --

9 CHAIRMAN CROSBY: It's a range.

10 COMMISSIONER ZUNIGA: It's a margin
11 of error that you give the legislative
12 regulations so that they can calibrate, the
13 manufacturers and operators can calibrate
14 accordingly.

15 MR. BARROGA: As you can see here,
16 we illustrate the least and most skilled
17 player. The red signifies the standard 90
18 percent payout. And within the different
19 tolerances, if the state chose one percent
20 tolerance you can see there is a minor
21 difference whether you have the most skilled
22 player or the least skilled player.

23 But if we chose the 25 percent
24 tolerance, it greatly affects your return, your

1 pay percentage of that game depending if you're
2 the most skillful player on that particular
3 type of machine.

4 CHAIRMAN CROSBY: There may be a
5 place for much more in depth for this class of
6 ignoramus here. I don't understand how if it's
7 a skill-based game how can you dictate the
8 percentage of payout? The percentage of payout
9 has got to be driven by the degree of skill.
10 If you have a whole bunch of people who are
11 terrible at playing it --

12 MR. GLENNON: It's a component. The
13 skill is going to have an impact of one percent
14 on the outcome, the deviation from the average.

15 So, if you said for the most
16 skillful player they could achieve 91 percent.
17 And the least skillful player for the skill
18 impact would be 89 percent return to player.

19 So, in the hybrid the random number
20 generator still determines the majority of the
21 outcomes. The return to player percentage that
22 the Commission has set the basement of 80
23 percent, and again, the property sets the 90 is
24 what the player is going to get. So, the

1 effect that skill has on the outcome is minor.

2 CHAIRMAN CROSBY: What about in a
3 pure skill game?

4 MR. BARROGA: Again, that is set by
5 the state. It's set by the requirements. In
6 Nevada, they are only allowing a one percent
7 deviation or a one percent tolerance from the
8 mean. If the state were to have a greater
9 tolerance then that player skill comes more
10 into hand as opposed to --

11 COMMISSIONER ZUNIGA: Let's just
12 mention, there's not skill only game. There's
13 always an element of chance even where we're
14 talking about skill-based. Maybe it is a
15 misnomer a little bit but it's not because of
16 the current conversation.

17 But there is no thing as a skill
18 purely only determined by skill even those
19 games represented here have an outcome that's
20 undetermined and it's going to migrate to the
21 payouts. It's all depending on the payout and
22 those payout percentages that you're talking
23 about.

24 MR. BARROGA: And it really depends

1 on what we define as the tolerance. If we go
2 with the minimal tolerance then it won't have a
3 huge impact on your return to player. If it's
4 larger, then of course it will.

5 As far as what's occurring in the
6 industry, in Nevada and New Jersey, they've
7 been conservative that one percent.

8 COMMISSIONER MACDONALD: So, when
9 you use the term conservative at one percent,
10 does that mean there is only one percent
11 difference between a truly skilled person's
12 take and just an ordinary schmuck?

13 MR. GLENNON: It's worst.

14 COMMISSIONER ZUNIGA: It's two
15 percent if you go in either direction plus one,
16 minus one. So, it's two percent.

17 MR. BARROGA: So, it really depends
18 on what we choose as a tolerance. But the
19 industry has gone very conservative. Nevada is
20 at one percent. Quebec is at four which is the
21 higher side.

22 COMMISSIONER ZUNIGA: Don't forget
23 there's another component which is time. So,
24 it's skill, it's wagering, it's the uncertainty

1 of the outcome, but then how long it takes you
2 to advance to the next level which may be based
3 on your level of skill.

4 COMMISSIONER CAMERON: Floyd, did
5 you tell me the other day that you were going
6 to get a couple of machines in the lab that
7 could demonstrate some of this?

8 MR. BARROGA: Correct. We can place
9 requests between the various manufacturers and
10 have demos within our lab.

11 COMMISSIONER CAMERON: So, when you
12 do that I'd be interested in a little remedial
13 class.

14 CHAIRMAN CROSBY: I'm with
15 Commissioner Cameron. We'll be here all day if
16 all of us ask all of our questions. So, let's
17 keep moving along.

18 We've all been looking to get some
19 machines in the lab for a lot of reasons. It's
20 true relative to the play management system.
21 It's relevant to this. Even it's relevant to a
22 lot of the other exotic regular slot stuff that
23 some of us still don't understand. So, the
24 sooner we can get those in and get some serious

1 tutorials the better off we'll all be.

2 MR. BARROGA: Yes. John and I are
3 projecting that by the end of the year, we will
4 have the CMS in the lab along with between 15
5 to 20 machines. So, beginning next year we can
6 run full demos.

7 COMMISSIONER CAMERON: Great. Look
8 forward to that.

9 MR. BARROGA: Similar to Centipede,
10 this is a hybrid game with a skill component.
11 So, you randomly trigger your donut wheel
12 bonus. Within the donut wheel bonus, the
13 player can actually use the skill component.

14 There's a sensor on the machine that
15 allows them -- that senses their hand and the
16 placement of their hand. Where they place that
17 hand allows them to catch the sprinkles. And
18 that correlates to more free spins.

19 So, the more skilled that player is,
20 the more they achieve free spins. So, there's
21 the combination of skill on top of their free
22 spins which is a random occurrence.

23 COMMISSIONER ZUNIGA: That hand
24 looked awful young over there.

1 MR. BARROGA: You can see that they
2 won six free spins -- I'm sorry, eight free
3 spins. And then it brings them back into a
4 randomly triggered or an RNG column for your
5 free spins. Any questions?

6 COMMISSIONER CAMERON: It looks like
7 you win a donut.

8 MR. GROSSMAN: Let me just quickly
9 touch on whether this is all legal in
10 Massachusetts. And I would suggest to you that
11 it is.

12 So, to get there to start with the
13 law -- what the law authorizes gaming licensees
14 to do in the first place. And here I think in
15 the two definitions from Chapter 23K section 2,
16 Category 1 and Category 2 licensees are
17 essentially authorized to operate slot machines
18 in their establishments.

19 On the next page, we get into what a
20 slot machine is. And I highlighted the
21 relevant portion or what I believe to be the
22 relevant portion which says essentially that
23 it's a device in which the player operation
24 whether by reason of the skill of the operator

1 application or the element of chance or both
2 may deliver essentially a prize.

3 That's exactly what we're talking
4 about here. The Legislature and the Governor
5 in the passage of this law specifically allowed
6 for this activity, and again, allowed for
7 electronic table games as well. It's the same
8 type of situation.

9 So, no legislative change is
10 necessary here. There are a number of other
11 jurisdictions in which there was some change or
12 some initiative that was required. So, that's
13 been done. It was done in Nevada. There's an
14 ongoing effort in Pennsylvania to have the law
15 updated. But I would submit that the law here
16 or there is a law in place that allows for this
17 right now.

18 COMMISSIONER MACDONALD: Todd, can I
19 come back on that? I'm trying to follow it.
20 What you're quoting from here and under this
21 slide is skill-based gaming legal is the gaming
22 statute. So, maybe the response to that is
23 well of course it's legal because it's provided
24 for in the gaming statute.

1 But could there be an argument that
2 skill-based gaming doesn't even fall within the
3 category of gaming as construed by -- as
4 provided in the gaming statute?

5 MR. GROSSMAN: One could make that
6 argument. I would suggest though what actually
7 is going on with these machines is exactly what
8 the definition of slot machine contemplates.

9 It's not like you are just playing a
10 videogame or just playing pinball. You're
11 actually putting money in in anticipation of
12 playing a game and possibly receiving a prize.
13 So, I think that distinguishes it from just a
14 regular arcade where you get tickets or what
15 have you.

16 COMMISSIONER MACDONALD: But it
17 seems, I'm just thinking out loud here, that
18 what makes it gaming as conceived by the gaming
19 statute is the programming of the machine such
20 that the outcome is not actually determined by
21 skill but is actually determined in significant
22 part by a random driver.

23 COMMISSIONER ZUNIGA: Or both,
24 remember the definition includes both skill or

1 chance or both.

2 COMMISSIONER MACDONALD: But as I
3 understood the description of skill-based
4 gaming that it's really not driven exclusively
5 by skill. Is that there's -- I'm probably
6 using the wrong word here, but the machine is
7 programmed in a way that in spite of one's
8 level of objective skill, the outcome is
9 dependent upon a random input.

10 CHAIRMAN CROSBY: Why does that make
11 it not gaming somehow?

12 COMMISSIONER MACDONALD: Because you
13 earned it.

14 CHAIRMAN CROSBY: This says
15 specifically, doesn't that say specifically?

16 COMMISSIONER MACDONALD: Yes, it
17 does. So, it's legal within the context of the
18 casino because it's provided for in the
19 statute. I'm just wondering conceptually if a
20 skill-based game that is driven entirely by
21 skill and is not subject to a random -- the
22 input of a random factor it that's essentially
23 outside of the jurisdiction.

24 MR. GROSSMAN: You mean whether it

1 could be legal elsewhere.

2 COMMISSIONER MACDONALD: Anywhere.

3 MR. GROSSMAN: I would say no
4 because it meets the definition of a slot
5 machine. There are criminal laws that prohibit
6 possessing slot machines outside of the license
7 issued by the Commission.

8 So, yes, someone could try that I
9 suppose, but they could try just having a
10 regular slot machine. I don't know that
11 there's a distinction to be made between
12 possessing a skill-based slot machine and just
13 a regular slot machine that's governed by the
14 random number generator exclusively because
15 they both meet the definition of slot machine
16 in Massachusetts.

17 CHAIRMAN CROSBY: All right. That's
18 how many angels can dance on the head of that
19 pin.

20 MR. BARROGA: In the future as
21 jurisdictions allow skill-based games, online
22 games and mobile games, here's an example of
23 what say a casino floor can look like in the
24 near future.

1 You will have that mix of say an 80s
2 arcade or an arcade that you've seen in the 90s
3 intertwined with your traditional slot
4 machines. As jurisdictions like New Jersey
5 even in Canada as well as online gaming you
6 will have mobile devices, tablet devices
7 allowed for whether you are betting on sports
8 or you're playing slots.

9 So, basically this is a good example
10 as far as what we can see down the road say
11 within the next year, within the next five
12 years because the technology is constantly
13 changing. The regulations are constantly
14 changing. And we need to look at requirements
15 that allow for this because the industry is
16 moving towards this.

17 CHAIRMAN CROSBY: Who did this
18 slide?

19 MR. GROSSMAN: This was from AGEM,
20 the Association of Gaming Equipment
21 Manufacturers. We did not create this on our
22 own.

23 CHAIRMAN CROSBY: I was going to say
24 if Mike Sangalang did this, I'm impressed.

1 MR. GROSSMAN: So, with all that
2 said, if the Commission is open to the idea, at
3 this point, what we would submit is that we
4 open this whole concept up to public input.
5 Allow folks to comment on the direction perhaps
6 that this should move.

7 And authorize us to begin developing
8 regulations and other policies to ensure, as I
9 said before, that the regulatory infrastructure
10 is in place so that if our licensees want to
11 use this technology that there is no barrier
12 standing in their way, and that we've fully
13 vetted this in advance of them coming to us.

14 So, that's where we are looking to
15 go with this. On the next slide, we get into
16 what some of the regulations may look like,
17 some of the concepts that we think would be
18 included. These were taken from Nevada and the
19 way that the Nevada Gaming Commission has
20 approached this issue.

21 They have included specific
22 definitions, and this is in the Nevada statute
23 as well, of what a game of skill actually is.
24 They've distinguished it from a hybrid game.

1 They've talked about such things as defining
2 skill itself.

3 So, there would certainly be a
4 component in which we define certain terms and
5 make the distinction between so-called regular
6 slot machines and skill-based slot machines,
7 because there are differences in the way that
8 we would regulate. It's not whether it's legal
9 or illegal but how they're regulated.

10 CHAIRMAN CROSBY: What would be an
11 example? What's a really important example of
12 that the difference in regulation?

13 MR. GROSSMAN: For example, we would
14 need to know what the odds are, what the house
15 advantages are, things like that what the
16 functionality is.

17 CHAIRMAN CROSBY: Don't we already
18 need to know that for the slot machines?

19 MR. GROSSMAN: We do need to know
20 that. So, that's a good point.

21 CHAIRMAN CROSBY: What's missing
22 from our regulatory environment now that would
23 keep us from permitting and regulating skill-
24 based games if they appeared tomorrow?

1 MR. BARROGA: So, essentially we
2 need to define those different type of
3 components. The definition of what a skill
4 game is what do we feel what it means. The
5 definition of hybrid, so what's classifying the
6 difference between purely skill and then hybrid
7 say including your random number generator.

8 And then identifying the tolerances
9 that are acceptable to us. So, really those
10 few components really will allow us to
11 implement what the manufacturers are already
12 releasing in Nevada and New Jersey.

13 CHAIRMAN CROSBY: Are you following
14 up on what I was asking?

15 COMMISSIONER ZUNIGA: Sort of, maybe
16 in a roundabout way.

17 CHAIRMAN CROSBY: Why do we need to
18 define skill-based and hybrid? We already have
19 to calculate permissible tolerances already,
20 right -- in our slot machines? So, why do we
21 need new regulations -- This is not a
22 rhetorical question. I just don't know exactly
23 what it is that we need to define in our
24 regulations that we don't already have in

1 place?

2 If somebody brought in this
3 Centipede hybrid example why are we not capable
4 of regulating that already? What are we
5 missing?

6 MR. GROSSMAN: I think that's part
7 of what we need to do is figure out what if any
8 the distinctions are. For example, one of the
9 things that was brought up is understanding
10 whether the equipment itself needs to be
11 calibrated when there's a joystick involved.
12 Whether that could come off kilter if people
13 are ripping it back and forth.

14 So, there are different play issues
15 that could come to bear that we need to look
16 at. But the answer to your question, maybe
17 there really is not much of a difference
18 between a regular slot machine and a skill-
19 based slot machine.

20 But that's really what we need to
21 explore is what the differences are. Whether
22 we need to plug our regulations in anyway.
23 It's our understanding that GLI is if not
24 actively that it will begin to work on its own

1 set of standards for skill-based.

2 So, it seems fairly well understood
3 in the industry that there is some distinction
4 between the way you would test these machines.
5 I can't obviously speak too intelligently to
6 what they are, but I think we need to figure
7 that out so that if we're going to open the
8 door to this that we have addressed these
9 issues.

10 The Nevada regulation by the way for
11 skill-based gaming are not lengthy. They are
12 really just a handful of provisions that
13 they've addressed. So to your point, there may
14 be primarily similarities between the two.

15 MR. GLENNON: So, the meat on the
16 bone here is going to be the technical
17 standards which further define hybrid and
18 skill-based games and how they're going to be
19 tested and validated.

20 We adopt GLI standards here in
21 Massachusetts almost wholesale. And GLI is now
22 working on technical standards that speak to
23 the Nevada regulations that have been passed.

24 So, really I think the Nevada

1 regulations open the door. The technical
2 standards will refine and define how those
3 games are measured and how do you measure skill
4 and the differentiation between them.

5 CHAIRMAN CROSBY: Just to finalize
6 this, this says what would regulations,
7 probably what we meant was what might
8 regulations -- It's important to come at this
9 with the predisposition of let's not do
10 anything here unless we really have to.

11 If we can really define missing
12 elements, fine, because we've got to address
13 them. But let's not get into a process sort of
14 without thinking about it. I'm saying don't do
15 any more than we have to. And let's be
16 rigorous about that.

17 MR. GROSSMAN: Just to that point, I
18 would also add and we were just discussing that
19 to the extent we can mirror what some of the
20 other leaders in this arena have already done
21 that would be ideal. So, there's a
22 standardized uniform set of rules that govern
23 this.

24 So, while the manufactures are

1 developing these games, they don't have to
2 create different components or meet different
3 requirements for the same games.

4 MR. BARROGA: For example, as Nevada
5 as New Jersey sets their tolerances, the
6 manufacturers will then develop to those
7 tolerances and make it configurable where they
8 set the Massachusetts tolerance, the New Jersey
9 tolerance, the Nevada tolerance.

10 So, they sort of use those as the
11 guidelines and it's sort of translated across
12 the industry. So, if we were to implement
13 these requirements sort of adhering to the lead
14 industry standard.

15 COMMISSIONER ZUNIGA: I was going to
16 say something that's already sort of said. A
17 couple of us attended the Global Gaming Expo
18 recently in September. And there was a lot of
19 discussion about skill-based slot machines.

20 They also are coming from responding
21 to what the industry feels they need to go to
22 attract millennials who are not much engaged in
23 the traditional slot machines but are very much
24 so when you add an element of a video game of

1 sorts.

2 And I attended a session of where
3 there was a panel that included Chairman
4 Burnett from the Nevada Gaming Commission. He
5 laid it out well in the sense that this is a
6 bit of a breaking from the traditional way of
7 regulating in which traditionally, the game was
8 developed. That the standards were set. The
9 game was developed and then tested to those
10 standards, those technical standard.

11 And just the way the technology has
12 progressed, they have recognized, both Nevada
13 and New Jersey that they needed to take a first
14 step, if you will, in introducing some general
15 concepts relative to the component of skill and
16 see how the industry responds. And brings
17 product and develops games and what have you
18 and whether those can be met with acceptable
19 ranges of tolerance or what have you. And then
20 this could be done iteratively, as opposed to
21 the traditional way.

22 I think the two 800 pound gorillas
23 have made a big move, New Jersey and Nevada
24 here in terms of allowing this. This is where

1 the industry is going. And I think it's great
2 that it fits under our legislative definition.
3 We could of course put it for comment, but this
4 is where the industry is going. And I would be
5 very much in favor of that construct.

6 COMMISSIONER CAMERON: I agree.
7 Floyd would you expect those tolerance levels
8 to change and become more like the Canadian
9 standards? They're starting slow to see how it
10 goes and then possibly change so more skill is
11 rewarded?

12 MR. BARROGA: I wouldn't expect it
13 to change.

14 COMMISSIONER CAMERON: No. One
15 percent you think will be the standard.

16 MR. BARROGA: I think properties
17 would fight back. It would change their
18 revenue. And if there's audits that their
19 revenue varied across-the-board it would cost
20 them. So, I don't see a huge deviation.

21 COMMISSIONER MACDONALD: Would that
22 suggest though that the truly skilled people
23 who have a deep pocket would head for Canada?

24 MR. BARROGA: Regardless, if that

1 jurisdiction posted their numbers and you know
2 within their requirements of four percent
3 difference you can correlate how much that in
4 turn would be on a specific game.

5 COMMISSIONER ZUNIGA: Remember that
6 the operator has a lot of leeway here and
7 should be allowed a lot of leeway. What we
8 currently do is we set a minimum of a payout.

9 Ours is 80 percent, which is very
10 much like other jurisdictions. That doesn't
11 mean that that's what the operator will choose.
12 That's the floor. They are currently paying
13 out about 90 percent. They have to do that --
14 They have to be able to have the flexibility in
15 order to compete with what would perhaps be a
16 tight market in New England or a not such a
17 tight market in parts of Canada.

18 So, that's going to continue to be,
19 in my estimation, part of the dynamics here.
20 So, if you set a range, the operator will
21 decide either by the mix of games that they
22 offer or some of the other amenities decide to
23 come with a mix of products in order to
24 compete.

1 CHAIRMAN CROSBY: It's a fascinating
2 Catch-22 because on the one hand you want to
3 reward skill in order to attract a different
4 demographic. But if you reward skill very
5 much, the economics fall apart.

6 If all of the rich people go to
7 Canada for the four percent, Canada is going to
8 have to change its tolerance down to one
9 because they'll go bankrupt. So, there won't
10 be anybody putting in money to pay out to those
11 skilled players.

12 So, it's a tough conundrum for the
13 industry to try to figure out how you merge
14 these two competing interests.

15 But I totally reinforce what
16 Commissioner Zuniga said. We want to be ready
17 to accommodate this ASAP. As soon as the
18 industry wants to play these games, given the
19 mandate that we already have in the law, we
20 want to be ready. So, the faster we can shake
21 out what new regs. we need, if any, and get
22 them on it, the better off we are.

23 COMMISSIONER ZUNIGA: Yes. I think
24 because it's a competitive issue for

1 Massachusetts. If we're lagging behind others
2 getting into the program then there is some
3 competitive loss.

4 COMMISSIONER STEBBINS: The fact
5 that we kind of have a digital games cluster
6 that is growing here, the fact we could say
7 Massachusetts is ready and prepared and excited
8 about opening the door to these types of
9 machines speaks well to a cluster that might
10 already be here and doing well. And having
11 Massachusetts products in some of these games
12 would be kind of exciting.

13 There's a resource right next door.
14 There's the Division of the Game Show Network
15 which is headquartered right around the corner
16 from us which is dealing with Internet based
17 games, skill-based games. And after meeting
18 with them, they said they'd be happy to talk to
19 us and weigh in.

20 So, I echo what everybody else is
21 saying in terms of let's be more proactive.
22 You're opening the door essentially by showing
23 that you have regs. that are going to work to
24 allow them to try out these new technologies in

1 your games.

2 What was also conveyed to me, and I
3 don't know how much of this we need to think
4 about, but the fact that and I talked about it
5 with the two of you is that you might end up
6 starting -- you might start out playing a game
7 on a handheld device obviously with no money
8 being cashed out, but starting to play a game
9 on a handheld device. And then bringing that
10 handheld device or continuing that gaming
11 inside the bricks and mortar establishment.

12 I'm not sure what that might do to
13 our conversation about regulations, but as
14 Commissioner Zuniga said it's all about trying
15 to attract the millennials to play this new
16 generation of games.

17 CHAIRMAN CROSBY: That's a really
18 good point. If tying it into our local
19 industry is a great connection.

20 Mr. Gittle, if there's anything we
21 can do as regulators to make it easy for you to
22 test things, to experiment, to I don't know
23 what, if Penn wants to have a working
24 relationship with some of the developers here

1 who are in this games network or anything else,
2 anything else we can do, we would love to talk
3 with you about it.

4 COMMISSIONER MACDONALD: I think I'm
5 going to revise an observation that I made
6 before. And now in looking at this at the text
7 of the statute of section two of table games
8 and slot machines with the slot machines being
9 emphasized. I could see a creative argument
10 that these skill-based games are not slot
11 machines.

12 I think that maybe it really is
13 important, proactively important for
14 regulations to be propounded that make explicit
15 that these different types of games generically
16 referred to as skill-based games are in fact
17 slot machines.

18 MR. GLENNON: So, we will continue
19 to work.

20 CHAIRMAN CROSBY: Yes. Why don't
21 you guys coordinate on this point that
22 Commissioner Macdonald is trying to make. If
23 the statute says it's not slot machines, you
24 might have a little problem here. We can't fix

1 that with regs. So, maybe you guys can talk
2 off-line and try to figure out is there a
3 disconnect here.

4 Okay. What's next?

5 MR. GLENNON: A very quick update on
6 the central management system. On October 19,
7 we started implementing the Intelligen IGT
8 central management system.

9 The document in the packet has 780
10 machines. Since the packet was submitted on
11 Monday, we are up. We added 202 machines.
12 We're up to 982 of 1374 machines online. And
13 we're bringing on more machines every night.

14 A big thank you to the staff, Mike
15 Toma, Jason Gittle and their staff at
16 Plainridge. They've been a great help in this
17 process. I think we've ended up using their
18 resources a bit more than we had anticipated.
19 But very much successful to this point.

20 We expect to complete getting all of
21 the systems online and on the system by
22 November 20. And then we'll run in parallel
23 for the month of December and cut over to the
24 CMS as the system of record the first of the

1 year, around the first of year.

2 A couple of other things, we are
3 implementing a change to the time of day for
4 CMS. Right now the gaming day concludes the
5 6:00 a.m. We want it to conclude at 5:00 a.m.
6 so that's concurrent with ACSC so that the
7 meters and reports from both systems mirror one
8 another. So, we're making that change.

9 Then we're working on the backup
10 data center. As you might recall, equipment
11 fell off the back of the truck when being
12 delivered to Springfield. So, that equipment
13 is being redelivered and will be brought online
14 pretty quickly.

15 Really I think a good news story.
16 And I would offer each Commissioner the
17 opportunity to take a tour of the NOC. Just
18 let me know or let Floyd know and we'll walk
19 you through. It's up and running 7/24. And
20 everything is going very well. Thanks to all
21 involved and we'll keep you updated.

22 CHAIRMAN CROSBY: Great.

23 COMMISSIONER CAMERON: Excellent
24 thank you.

1 CHAIRMAN CROSBY: Anything else,
2 anybody? Thank you, John.

3 CHAIRMAN CROSBY: Where are we?
4 Director Vander Linden. Nothing like the last
5 topic on the agenda after a six-hour meeting.

6 MR. VANDER LINDEN: I'm always
7 amazed at the stamina of our Commissioners.
8 Good afternoon. I am bringing before you this
9 afternoon an update on the play management
10 timeline.

11 I think it was last month I came
12 before the Commission and gave you an update on
13 the content, the development of the content as
14 well as the timeline. What I'm bringing back
15 before you today is not an update on the
16 content but I'll certainly take any questions
17 you have, but an update on the specific
18 timeline and a little bit more detail on what
19 needs to happen between now and when it goes
20 live.

21 I apologize. I should have
22 introduced Jason Gittle but his name was
23 brought up so many times during the meeting, I
24 feel that introductions weren't necessary.

1 Thank you Jason for coming here today.

2 I have two documents for you. I
3 have a memo as well as a timeline. I am not
4 going to go back over the whole history of
5 where play management has come. In brief, this
6 is a process that began over a year ago. In
7 January of this year, it was approved by the
8 Commission to be implemented on a test basis at
9 Plainridge Park Casino.

10 The effort and development began in
11 earnest in February when we convened Penn along
12 with our evaluators at the Cambridge Health
13 Alliance, our partners at the Massachusetts
14 Council on Compulsive Gambling, the casino
15 management system at Bally or SciGames and key
16 members here at the Commission including John
17 Glennon.

18 A lot happened over the spring and
19 summer to develop that content. Bally did a
20 fantastic job in partnership with us to develop
21 the system that aligned with what the
22 requirements the Commission had adopted back in
23 January of this year.

24 So, that brings us kind of up to

1 where do things stand right now. I have to say
2 I'm thrilled to report to you that this is a
3 very important week for play management,
4 because I was just talking with Jason to confirm
5 and as you see on this timeline that Bally has
6 an install specialist at Plainridge Park Casino
7 now, and are in the process of pushing the
8 content of play management onto its test system
9 at Plainridge Park.

10 Jason maybe you want to say just
11 briefly how that's going and any background
12 information you have.

13 MR. GITTLE: Certainly. So, it's
14 been a successful week. They have successfully
15 installed the system onto our test environment.
16 Everything has reacted as we predicted and
17 hoped for.

18 We are by the end of the week going
19 to have a kiosk and two slot machines running
20 the full system. And I believe today's agenda
21 for the Scientific Games' folks were to end the
22 day with those three devices up and having done
23 some level of user acceptance testing, content
24 testing based on the recent review meetings

1 we've had with Mark and his team.

2 MR. VANDER LINDEN: The next steps
3 for play management, and as you can see on the
4 timeline, we kind of go into a quiet period for
5 the Thanksgiving holiday. But starting on
6 November 30, Monday, November 30 through that
7 week is another big week as we do two things
8 really.

9 We have the Mass. Gaming Commission
10 and other key stakeholders have the opportunity
11 to test the system at the lab at Plainridge
12 Park Casino.

13 We also that week have an
14 opportunity -- We are also going to be doing
15 some key training of what we will call the
16 superusers. Those will include our GameSense
17 advisors who will be a superuser. It will
18 include myself and I think other key staff from
19 MGC. It will include the Division on
20 Addiction.

21 So, that superuser is an important
22 week. It's not to be mistaken when the end-
23 user training right before we go live.

24 COMMISSIONER CAMERON: Superuser?

1 MR. VANDER LINDEN: I like to call
2 it superuser. They will have a full
3 understanding of what the system capacity is,
4 what type of information -- how to help a
5 patron enroll in the system, but also what
6 types of information you can get from it.

7 COMMISSIONER CAMERON: Mark, I know
8 in the past you've stated that in other
9 jurisdictions who have tried try this -- I know
10 this is a technical memo as far as the
11 timeline. -- they just didn't market it well
12 and people weren't aware of it. Have you done
13 some work along those lines, how we're going to
14 do that differently?

15 MR. VANDER LINDEN: Yes. It isn't
16 included in the memo, but I actually did want
17 to address that what types of promotional
18 campaigns are being developed both in terms of
19 what I've done with Elaine Driscoll and Mike
20 Sangalang in collaboration with Penn and our
21 marketing company for GameSense, More
22 Advertising. If I can come back to that, I
23 would like to do that.

24 COMMISSIONER CAMERON: Sure.

1 MR. VANDER LINDEN: So, the week of
2 11/30 there will be those two key pieces.
3 There will be the walk-through for the Mass.
4 Gaming Commission including the five
5 Commissioners and other key staff.

6 I've spoken with Chairman Crosby and
7 come up with a list of other key individuals
8 that we would like to have test that system and
9 that preview of the system and an opportunity
10 to provide feedback. This will also be a very
11 important time for our other licensees to test
12 the system and get a firsthand look as we get a
13 firsthand look at the system going live.

14 There is an opportunity from 12/7
15 until 12/24 for revisions to be made to the
16 system. Some of those revisions actually I was
17 assured by SciGames that they can be made on
18 the spot as we are testing it. If there's
19 small revisions that we want to see that's
20 easy. If there's more complex revisions,
21 there's time blocked out to make those changes
22 to the system.

23 Moving on, we have the live
24 installation of the software. We would install

1 the play management server and configure
2 communication. That would also include
3 configuring it for the electronic gaming
4 machines or slot machines as well as the kiosk.
5 That would happen right after the first of the
6 year from January 4 to January 8.

7 We would have end-user training.
8 So, I talked about the superusers that will
9 have a full understanding of the system. We
10 want to make sure that right before the system
11 goes live that we have end-user training at
12 Plainridge Park Casino. This will include key
13 staff on the gaming floor. You patrons have
14 questions about play management, we want to
15 make sure that Penn staff are there and able to
16 respond to those questions that the patrons
17 have.

18 We would look to go live on January
19 12. That we would push it out to the games on
20 the gaming floor. I think that's a very
21 realistic timeline at this point. We pushed
22 that timeline out a couple of times over the
23 past year. I think that now looking at the
24 task list to do, I think that that's a very

1 realistic timeline.

2 COMMISSIONER CAMERON: Excellent.

3 MR. VANDER LINDEN: There were four
4 pieces that I wanted to come back to that
5 aren't captured on this timeline. Commissioner
6 Cameron, you are right the promotional campaign
7 is very important.

8 We want to make sure that we have a
9 campaign that promotes this because one of the
10 failings of play management or precommitment in
11 other jurisdictions was that it was not not
12 promoted and not well utilized by patrons.

13 So, working very closely with Elaine
14 to come up with an overall strategy of how we
15 want to roll that out. We've had
16 communications with Michelle Collins at Penn as
17 well to try to talk about how we can integrate
18 our marketing efforts with Penn as well.

19 Another key piece is the data which
20 speaks to another one of the central criticisms
21 of play management was that there had been very
22 little evidence of effectiveness of play
23 management.

24 We wanted to make sure that we

1 addressed that as well. So, Jason actually has
2 been working very closely with the Division on
3 Addiction to make sure that we have the data
4 standards set up in advance of the system going
5 live. And Jason will address that.

6 MR. GITTLE: So, where we are right
7 now is the Division on Addiction has given us
8 their requirements. We are evaluating how much
9 of those requirements we can meet. I would
10 tell you that without giving you any scientific
11 information, I think we can meet most if not
12 all of it.

13 We're learning a little bit about
14 some of the deeper dive requests that they've
15 had and how our player tracking system folds up
16 that information in the timeframes they'd like
17 it.

18 I could provide you one example, one
19 simple example. In an electronic table game,
20 they're looking for pattern information. Six
21 five-dollar bets on one spine, one of the
22 difficulties we see is what we see is that it's
23 one \$30 spin on one spin. So, we're working
24 the nuances of that type of issue. There's not

1 too many of them, I am happy to report.

2 The request was a little larger in
3 scope than we were anticipating. I thought it
4 was going be something myself and our director
5 of database marketing sat down and worked
6 through. This is going to end up being a
7 request of Scientific Games.

8 And I think at the end of the day
9 that's the wisest approach anyways, something
10 consistent, something certified, something part
11 of our underlying code that our folks can go to
12 at any time and produce the data as they see.

13 We're fastly working with Scientific
14 Games on that. They should be by the end of
15 the week this week, end of the day tomorrow
16 providing us their update on data availability.

17 At that point -- We're having a
18 meeting once a week on the data requirement
19 with the Division on Addiction. I believe next
20 Wednesday at 3:00 is our next meeting and we'll
21 be looking to scope that creation of that
22 report with Scientific Games.

23 So, while it is still a bit murky,
24 confidence level is very high that we're going

1 to be able to help them out.

2 COMMISSIONER MACDONALD: Scientific
3 Games is that a vendor we do business with?

4 MR. GITTLE: Otherwise known as
5 Bally, the provider of our ACSC player tracking
6 system.

7 COMMISSIONER ZUNIGA: It's the
8 casino that's doing business with them.

9 CHAIRMAN CROSBY: Did you have more,
10 Mark?

11 MR. VANDER LINDEN: Yes. Another
12 key project that we're trying to develop at
13 same time that supports that is building play
14 management into the capacity of our own gaming
15 lab. And I've been working closely with Floyd
16 and with John and with Bally. John do you want
17 to address that today?

18 MR. GLENNON: So, essentially what
19 we'll be doing is bringing in a smaller version
20 of the ACSC management system that is run at
21 Plainridge that Jason operates. So that we
22 have ability to replicate their test
23 environment in our lab essentially.

24 So, we'll be putting -- We'll have

1 not only a CMS. We'll have a cut down version
2 of ACSC along with the play management system.
3 So, we'll be able to do the testing that's
4 going on and will go on in the Plainridge test
5 environment, we'll be able to replicate in our
6 own laboratory.

7 COMMISSIONER CAMERON: Thank you,
8 excellent.

9 CHAIRMAN CROSBY: Is that it, Mark?
10 This what I'm about to say applies to all the
11 directors but since we're on this topic and I'm
12 just thinking about when we have a meeting like
13 this I think of all of the things that are new
14 to Commission Macdonald that we've now had
15 three years' worth.

16 But have you had a good chance to
17 sit down and sort of do a top to bottom
18 briefing of what research and responsible
19 gaming is doing under your tutelage?

20 MR. VANDER LINDEN: I think we've
21 had chapter one of that.

22 COMMISSIONER MACDONALD: (INAUDIBLE)

23 CHAIRMAN CROSBY: There's a lot
24 going on that's tremendously innovative as

1 there is in a lot of our departments.

2 And as I say, Karen, actually this
3 is something maybe we should think about a
4 little more systematically, is there a way for
5 all of the directors to begin to help Lloyd
6 breed in.

7 But this one happens to be
8 particularly interesting and current. Last
9 thing was something else that I did not know
10 but when we set up the agenda which was the
11 outcome of your meeting, your legislative
12 hearing and anything that you thought might
13 appropriate for other Commissioners to hear or
14 talk about or whatever.

15 COMMISSIONER ZUNIGA: Sure. Just by
16 way of the update, I came before the committee
17 that we report to the Joint Committee of the
18 Legislature for Economic Development and
19 Emerging Technologies to testify about a
20 proposed bill, I'm not going to get the number
21 right, but it's a bill that would modify the
22 laws of charitable gaming in the Commonwealth.

23 CHAIRMAN CROSBY: Our legislation.

24 COMMISSIONER ZUNIGA: Our

1 legislation, right. This is something that we
2 were directed to do by the statute.

3 We did the analysis. We provided
4 recommendations including draft language for
5 the new law, for clarifications to the existing
6 charitable gaming laws. That didn't make it
7 through in a previous legislative session and
8 we are now going at it again.

9 The committee was very engaged and
10 interested in understanding a number of topics,
11 asked a number of questions. And there are
12 also a couple of other bills before that
13 committee, one of which I also provided some
14 feedback. That bill would legalize slot
15 machines with some limits on certain veteran
16 organizations. That was a lively discussion by
17 others, not necessarily by my testimony, but I
18 provided some feedback on that as well.

19 For your background, there's also --

20 CHAIRMAN CROSBY: What was the
21 committee's reaction to that?

22 COMMISSIONER ZUNIGA: It was mixed.
23 Some didn't realize that those machines are
24 currently technically illegal. The veterans,

1 the people that support the veterans to
2 continue to operate them are very much in the
3 camp of saying well, they've always been
4 allowed to operate these machines for a number
5 of years. But the reality is something else.

6 CHAIRMAN CROSBY: Have they talked
7 to Colonel Cameron?

8 COMMISSIONER ZUNIGA: She has
9 stories about New Jersey herself. So, that was
10 it in a nutshell. There were questions as to
11 what that would open the door to and those are
12 very legitimate questions. And from my read, I
13 don't know what will happen to this bill.

14 There's other bills that the
15 committee did not hear about but are
16 considering including the reporting
17 requirements that I mentioned. I believe we
18 have enough capability to meet all of those
19 requirements by our authority. And that may
20 not need legislative action. And there's a few
21 others relative thoroughbred breeders and
22 responsible gaming measures.

23 My takeaway message to Chairman
24 Wagner was we can come back at any time, have

1 stuff meet with staff or have up to two
2 Commissioners meet with anybody and explain
3 what we are doing. They very much would
4 welcome that as well.

5 CHAIRMAN CROSBY: Great. Thank you,
6 that's great. And with a tip of the hat to
7 Commissioner McHugh in getting his charitable
8 gaming bill done? Anything else, anybody?
9 Motion adjourn?

10 COMMISSIONER CAMERON: So moved.

11 CHAIRMAN CROSBY: Second?

12 COMMISSIONER MACDONALD: Second.

13 CHAIRMAN CROSBY: All in favor, aye.

14 COMMISSIONER MACDONALD: Aye.

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER ZUNIGA: Aye.

17 COMMISSIONER STEBBINS: Aye.

18 CHAIRMAN CROSBY: The ayes have it
19 unanimously.

20

21 (Meeting adjourned at 4:28 p.m.)

22

23

24

1 ATTACHMENTS:

- 2
- 3 1. Massachusetts Gaming Commission November
- 4 12, 2015 Notice of Meeting and Agenda
- 5 2. Massachusetts Gaming Commission October
- 6 29, 2015 Meeting Minutes
- 7 3. Massachusetts Gaming Commission November
- 8 5, 2015 Meeting Minutes
- 9 4. Massachusetts Gaming Commission November
- 10 12, 2015 Memorandum Regarding Fiscal Year
- 11 2016 First Budget Update with attachments
- 12 5. Massachusetts Gaming Commission Employee
- 13 Statistics
- 14 6. Massachusetts Gaming Commission Workplace
- 15 Flexibility Policy
- 16 7. Massachusetts Gaming Commission Holiday
- 17 Pay Policy
- 18 8. Massachusetts Gaming Commission Office
- 19 Closure/Inclement Weather Policy
- 20 9. Town of Pembroke October 8, 2015 Letter
- 21 Regarding Surrounding Community
- 22 Designation with attachments
- 23
- 24

- 1 10. Massachusetts Gaming Commission November
- 2 9, 2015 Memorandum Regarding Draft 2016
- 3 Mitigation Fund Guidelines with attachment
- 4 11. October 13, 2015 Brockton 21st Century
- 5 Corporation Letter Regarding ILEV
- 6 Designation
- 7 12. MPAC October 8, 2015 Letter Regarding ILEV
- 8 Designation
- 9 13. Dain Torpy October 23, 2015 Letter
- 10 Regarding Request by MPAC ILEV
- 11 Designations
- 12 14. Massachusetts Gaming Commission Metrics -
- 13 Plainridge Park Casino
- 14 15. Massachusetts Gaming Commission November
- 15 12, 2015 Memorandum Regarding Temporary
- 16 Key Gaming Employee Licenses Issued
- 17 16. Massachusetts Gaming Commission November
- 18 12, 2015 Presentation Regarding Skill
- 19 Based Electronic Gaming Devices
- 20 17. Massachusetts Gaming Commission November
- 21 12, 2015 Presentation Regarding Central
- 22 Management Project Update

23
24

1 18. Massachusetts Gaming Commission November
2 12, 2015 Memorandum Regarding Update on
3 Play Management Timeline

4 19. Massachusetts Gaming Commission November
5 9, 2015 Memorandum Regarding Applications
6 to Conduct Live Horse Racing in 2016 with
7 attachments

8

9 GUEST SPEAKERS:

10 Charles LeRay, Esq., on behalf of MG&E

11 Vincent Longo, MPAC

12 Peter Martin, Esq., on behalf of MPAC

13 Jack Units, Esq., on behalf of Brockton

14

15 Steve O'Toole, Plainridge Racecourse

16 Bruce Barnett, Esq., on behalf of Suffolk Downs

17 Chip Tuttle, Suffolk Downs

18

19 Christopher Carney, Brockton Fairgrounds

20 George Carney, Brockton Fairgrounds

21

22 Jason Gittle, Penn National

23

24

1 MASSACHUSETTS GAMING COMMISSION STAFF:
2 Bruce Band, Deputy Director IEB
3 Trupti Banda, Human Resources Manager
4 Floyd Barroga, Gaming Technology Manager
5 Agnes Beaulieu, Finance and Budget Office
6 Manager
7 Catherine Blue, General Counsel
8 Paul Connelly, Director of Licensing
9 John Glennon, CIO
10 Jill Griffin, Director Workforce, Supplier and
11 Diversity Development
12 Todd Grossman, Deputy General Counsel
13 Derek Lennon, CFAO
14 Dr. Alex Lightbaum, Interim Director Racing
15 Marlin Polite, Supervisor Financial
16 Investigations
17 Mark Vander Linden, Director of Research and
18 Responsible Gambling
19 Karen Wells, Interim Executive Director/
20 Director IEB
21 John Ziemba, Ombudsman
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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 17th day of November, 2015.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018