

THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #96

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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December 10, 2013, 1:00 p.m.

BOSTON EXHIBITION AND CONVENTION CENTER

Room 151 A&B

415 Summer Street

Boston, Massachusetts

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

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3                   CHAIRMAN CROSBY: I am happy to call  
4 to order what I think is the 96th meeting of  
5 the Massachusetts Gaming Commission. Today is  
6 December 10. It is one o'clock and we are at  
7 the Boston Convention Center.

8                   We have one item on our agenda  
9 today, listed on the agenda as Mohegan  
10 Sun/Sterling Suffolk, LLC discussion with the  
11 possibility of a vote.

12                   I'm going to sort of just try to  
13 very, very briefly remember where we were last,  
14 and then we'll pick up with our General  
15 Counsel. Basically, when the East Boston vote  
16 lost and the Revere vote won, as everybody  
17 knows, Suffolk Downs decided to try to  
18 reconfigure their plan and go to Revere only.  
19 That was certainly in the broad public  
20 unanticipated, and a lot of people were  
21 thinking asking including we, can they do this.

22                   And there were a lot of issues  
23 raised having to do with the location of the  
24 gaming establishment and the situation with the

1 racing licensing and the racetrack itself. We  
2 felt that it was time to begin to discuss this.  
3 We had a number of parties come in, including  
4 the applicant, including Revere, including No  
5 Eastie Casino and including a handful of just  
6 public citizens. We've also invited, public  
7 comment and got I can assure you a lot over the  
8 last week or two.

9           Then we had a meeting back on  
10 whatever the date was, the third, I'm not even  
11 sure what the date was last week. At that  
12 point, we felt that we could particularly talk  
13 about -- And this is my language and not to put  
14 words in anybody else's mouth. -- but  
15 particularly we could talk about whether the  
16 host community agreement that was signed  
17 between Revere and what we'll call Suffolk  
18 Downs and the referendum, which was held and  
19 included a summary of that host community  
20 agreement, whether the HCA and the referendum  
21 and the HCA summary reasonably enough  
22 anticipated this eventuality that going forward  
23 with the Revere only proposal was something  
24 that we could accept as a viable option within

1 the HCA and the referendum as it was required  
2 by law.

3           We talked about that quite a bit.  
4 There were differences of opinion as to how to  
5 interpret the host community agreement. How to  
6 interpret the significance of the summary. How  
7 to interpret the significance of the reopener  
8 clause. How to interpret, ultimately, the  
9 significance of the referendum. Some of us  
10 were interested in maybe voting at that moment.  
11 Others felt we should wait.

12           And then we all ultimately decided  
13 that it made more sense to ask our own legal  
14 team to do some more research on these issues.  
15 And also ask any other advocates of one sort or  
16 another, any side to comment to us further, and  
17 give us a chance to think a little more, and  
18 that we would convene again.

19           And today was the day picked where  
20 we would see if we could come to some kind of  
21 the conclusion so at least some of the issues  
22 can be put to rest. And so that at least some  
23 of the anxiety and uncertainty that many  
24 parties are feeling about this could be put to

1 rest. More or less, I think that's how we got  
2 to where we are. Does anybody, any  
3 Commissioners want to modify that?

4 So, General Counsel Blue, we asked  
5 you and your staff to do some more research.  
6 Do you want to give any sort of highlights of  
7 where you're at?

8 MS. BLUE: So, after our last  
9 Commission meeting, we listened to the issues  
10 that were before the Commission. And we went  
11 back and tried to distill those issues into a  
12 framework, which we could review the matter and  
13 hopefully be able to discuss it further.

14 After doing that, the issue seems to  
15 my colleagues and I come to the meaning of the  
16 ballot question and the referendum. That seems  
17 to be the seminal issue before the Commission  
18 at this point.

19 There's differing points of view on  
20 this. The applicant had submitted information  
21 in its position on it. We got comments from  
22 the public and folks with different points of  
23 view. So, I think at a high level, the  
24 framework as we see it is along these lines:

1 the first thing the Commission may want to  
2 consider is what is the meaning of the ballot  
3 question? And that's something to look at and  
4 determine what was the point of the ballot  
5 question. It is provided by statute.

6 The second issue after that is in  
7 light of the present proposal, is the summary  
8 that was on the ballot sufficient to support  
9 the present proposal? We looked into things  
10 like whether the referendum -- what you had to  
11 have in terms of a standard. We did look at  
12 case law about significantly misleading in  
13 terms of questions regarding ballot referendums  
14 in the past in the Commonwealth.

15 We looked a little bit at the  
16 significance of the negative vote in East  
17 Boston and what that meant. That gives the  
18 Commission the ability to consider the current  
19 proposal as opposed to the past proposal.

20 And then we looked at what's the  
21 Commission's authority relative to this issue.  
22 We did talk at the last meeting that the  
23 Commission has broad authority, both in  
24 interpreting its own statute and in crafting

1 any kind of resolution on this matter.

2           So, what we would suggest now is  
3 that the Commission look at and discuss those  
4 matters a little in more detail. And if there  
5 is a potential resolution that the Commission  
6 is comfortable on, they could vote today and  
7 they could make that determination.

8           CHAIRMAN CROSBY: Okay.  
9 Commissioner, you were the one who was  
10 particularly looking for some time to tie these  
11 things together. Do you want to start off?

12           COMMISSIONER MCHUGH: Surely, Mr.  
13 Chairman. I will. As I look at this and think  
14 about it, and thought about the thoughtful  
15 analysis prepared by our legal team, some  
16 things became clear and the divides became  
17 equally clear.

18           There's no doubt that the November 5  
19 vote was valid and binding at the time taken.  
20 Nobody disputes that. The question for now and  
21 the question we've been wrestling with is  
22 whether that vote permits the current proposal.  
23 And we've received a lot of thoughtful  
24 memorandum and writings and comments from

1 people who say that it does. We've received a  
2 lot of thoughtful and careful comments that say  
3 that it doesn't permit it to move forward. And  
4 I think a case can be made for either. I have  
5 a personal preference as to which case is  
6 stronger, but a fair case can be made for  
7 either.

8           But we do know one thing about the  
9 current proposal and it is a very different  
10 proposal than the one that was before the  
11 voters on November 5. The question is whether  
12 the November 5 vote authorized that proposal.

13           The statute and our regulations, I  
14 think, Mr. Chairman and colleagues, provide a  
15 way to avoid at least for the moment deciding  
16 that very difficult question of what the vote  
17 permits and forbids, a way that meets and  
18 resolves what I perceive to be the issue at the  
19 very center of the current debate, the role of  
20 the voters in deciding whether to allow a  
21 casino proposal to move forward.

22           That it seems to me, regardless of  
23 what position people are taking on the outcome,  
24 is a recurring and dominant theme in the



1 correspondence that we've received. And that's  
2 appropriate because it's a dominant theme in  
3 the statutory schemes.

4 CHAIRMAN CROSBY: Say again what  
5 that theme is.

6 COMMISSIONER MCHUGH: The theme is  
7 the role of the voters in deciding ultimately  
8 whether this proposal should be permitted to  
9 move forward. No matter whether people are  
10 opposed to the outcome or in favor of an  
11 outcome that's a theme that keeps recurring  
12 that the voters need to be involved in this.

13 And there's a way to recognize that  
14 the current proposal is different and a way to  
15 recognize the role of the voters. And that is  
16 to treat the proposal for what it is, a  
17 different and new proposal. That would mean --  
18 A proposal by the way that could've been  
19 presented at the outset. There's nothing wrong  
20 with having presented this proposal at the  
21 outset and configuring the arrangements from  
22 the very beginning to look like what we  
23 understand the current approach to be.

24 But treating it now as if it were a

1 new proposal means a new host community  
2 agreement followed by a new request for a vote  
3 in Revere.

4 Under the governing statute, because  
5 there is a new applicant there could be a vote  
6 in about 60 days, I think, that that's the  
7 minimum time from the time a request is made.  
8 If a request were made promptly and a host  
9 community agreement were determined promptly,  
10 that could be mid-February.

11 The current application deadline of  
12 December 31 could be enforced and the  
13 requirement for the filing of the application  
14 could remain in place so that it could move  
15 forward expeditiously.

16 And to allow that to happen, all we  
17 would need to do is to modify the requirement  
18 of our regulations, not a statutory requirement  
19 but the requirement of our regulations that a  
20 certification of the vote's outcome accompany  
21 the application. That's a requirement of our  
22 regulations. That was put in place for reasons  
23 we can discuss, but it was put in place.

24 We've already in one instance waived

1 that. That was a mechanical issue before a  
2 community in which the vote took place  
3 immediately before the deadline. I think it  
4 was one or two days before the application  
5 deadline. And we allowed the extension so that  
6 we could get the certification after our  
7 regulation's deadline.

8           There are four requirements for a  
9 waiver set out in the regulations, in our  
10 regulations. That the waiver is consistent  
11 with the purposes of the statute; that in  
12 granting it won't interfere with the  
13 Commission's or the IEB, the Enforcement  
14 Bureau, the Investigation Bureau's ability to  
15 do its job. That it won't adversely affect the  
16 public interest. And that not granting the  
17 waiver would cause a substantial hardship to  
18 the person or entities requesting it. It seems  
19 to me that all four of those criteria are met  
20 in this case.

21           The overall purpose of the statute,  
22 of course, is to add to the Massachusetts  
23 economy through job creation in communities  
24 where voters have decided that they want the

1 job creating entity to be that is the casino.  
2 And that's what the statute is designed to do,  
3 to create jobs to add to the economy, but also  
4 to give local control to the voters to decide  
5 whether they want a facility that is going to  
6 create the jobs and create the economic  
7 benefits to be in their communities.

8           Granting a waiver won't interfere  
9 with the ability of the Commission or the  
10 Bureau to fulfill its duties. The only duties  
11 it has right now are to wait for the  
12 substantive application, the so-called RFA-2  
13 application. And then to begin to process and  
14 analyze those applications the way we are  
15 processing and analyzing the slots parlor  
16 applications.

17           The evaluation process has been  
18 done. Both Mohegan Sun and Suffolk have passed  
19 the evaluation process and have been found to  
20 be qualified -- I should say the qualification  
21 process.

22           Granting the waiver won't adversely  
23 affect the public interest. In fact,  
24 proceeding this way the voters will have a say

1 on this revised proposal and unlike the voters  
2 in other communities, they will have the full  
3 application before them. They will have more  
4 information for an informed vote, in fact, than  
5 all of the communities did. They had sketches.  
6 They had presentations. They had a variety of  
7 things but they didn't have the full  
8 application if this proposal were to be  
9 adopted, the voters in Revere would have.

10           And the voters from adjoining  
11 communities could participate and seek to  
12 influence their colleagues in nearby  
13 communities as to what the outcome should be.

14           And finally, not granting the waiver  
15 would cause a substantial hardship to the  
16 people who requested the waiver if a request  
17 were made. I assume it would be made either by  
18 the city or by the applicant or both.

19           CHAIRMAN CROSBY: Could I just jump  
20 in on this?

21           COMMISSIONER MCHUGH: Yes.

22           CHAIRMAN CROSBY: So, you're not  
23 saying this in response to a request.

24           COMMISSIONER MCHUGH: No. I'm

1 suggesting what would happen if we got a  
2 request, Mr. Chairman. I'm going to get to  
3 that at the end.

4 CHAIRMAN CROSBY: I'm sorry.

5 COMMISSIONER MCHUGH: That's all  
6 right. That's where I'm heading. We don't  
7 have such a request at the moment. But if we  
8 got a request, it seems to me that allowing the  
9 request would not -- denying the request would  
10 create a substantial hardship to the people who  
11 are making the request.

12 Many believe that a casino will  
13 yield substantial benefits at an acceptable  
14 cost. Many believe it won't. But for those  
15 who believe it and from the presentations we've  
16 heard before, the leadership of Revere believes  
17 that it will yield enormous benefits for the  
18 city at an acceptable cost. So, to deny the  
19 waiver to allow that vote to proceed would  
20 cause a substantial hardship to those who hold  
21 that view.

22 So, what I would propose is that we  
23 allow the city and the applicant, if they so  
24 choose, to request a waiver from our

1 certification deadline. That's the deadline  
2 for certifying the vote; that they proceed with  
3 a new vote; that they get the results of that  
4 new vote; that they be required to meet every  
5 other single requirement that we have with  
6 respect to this substantive application,  
7 including filing that application on December  
8 31.

9           That application, of course, would  
10 have to demonstrate that this truly is a  
11 proposal in Revere only and not a proposal in  
12 both cities, because if it wasn't then this  
13 whole thing doesn't work at all, but we can  
14 examine that.

15           Then apply for a waiver of the  
16 certification deadline. And I've indicated  
17 that it seems to me that we ought to think  
18 favorably about such an application.

19           If they don't choose to go forward,  
20 Mr. Chairman and colleagues, then it seems to  
21 me we go back to the hard decision, the  
22 difficult decision of deciding whether the vote  
23 taken on November 5 authorizes them to go  
24 forward anyway.

1           But at least this gives them an  
2 opportunity to go to the voters and go to the  
3 voters with this proposal and do what seems to  
4 be at the heart of the statute and let the  
5 people have a say.

6           So, that's what I recommend we take  
7 as an approach to resolving this problem here  
8 today. If we allow them -- If we do this, I  
9 would recommend that we have a fairly short  
10 deadline for making that decision, say no more  
11 than seven days.

12           CHAIRMAN CROSBY: For them to make a  
13 request to us?

14           COMMISSIONER MCHUGH: To make a  
15 request to us or let us know that they don't  
16 want to go this route. But that's a way it  
17 seems to me that we can really -- that we can  
18 allow this proposal to go forward and at the  
19 same time serve the fundamental purposes that  
20 the statute was created to serve.

21           CHAIRMAN CROSBY: I think I know why  
22 you were a judge. I have some questions.  
23 Others, thoughts or questions?

24           COMMISSIONER ZUNIGA: Yes. I



1 remember some of our discussions from last  
2 week, of course. And your thorough analysis  
3 starts with the premise of accepting that this  
4 proposal is fundamentally new, a new proposal.  
5 And at the time I was and I am still curious as  
6 to whether except for the location whether this  
7 proposal has a significantly different number  
8 of rooms, number of gaming positions, projected  
9 traffic visitation days and things like that.

10 I was always assuming that it  
11 didn't, but that it was prudent for us to  
12 ponder that, ask that of the applicant and  
13 decided at a later time.

14 However, I think you appropriately  
15 probably put it back on the applicant, if you  
16 will, in terms of either demonstrate why this  
17 is not a different proposal or decide whether  
18 you want to go ahead with a new vote. Is that  
19 a fair statement?

20 COMMISSIONER MCHUGH: It certainly  
21 would avoid us making the decision whether this  
22 was so new, so different that the November 5  
23 vote wouldn't support it. It avoids for the  
24 moment us making that decision and does give

1 them, the applicant, the city the choice of  
2 taking this other approach. It does.

3 CHAIRMAN CROSBY: Others?

4 COMMISSIONER CAMERON: I think the  
5 proposal makes a lot of sense. Again, I go  
6 back to the comments and what people's thoughts  
7 are. And when we look at the legal analysis,  
8 depending on who the lawyer is supporting, we  
9 get a different viewpoint. And our own legal  
10 team does explain that it's not so clear. The  
11 law is not so clear on this issue and there are  
12 ways to support either position.

13 I think this is a very good  
14 strategy, which just allows for a waiver of the  
15 regulation. And we are hearing a lot from  
16 voters, surrounding communities. And it would  
17 be nice on this proposal to hear exactly what  
18 the people in Revere say. So, I think this  
19 makes a lot of sense moving forward.

20 COMMISSIONER STEBBINS: I appreciate  
21 the Judge's outline. As I went back and  
22 reviewed not only the host community agreement  
23 but the ballot resolution, I think I would have  
24 been -- not been able to have supported

1 pivoting the project using the November 5 vote  
2 to clearly only have a Revere proposal.

3           The project has changed. The people  
4 in the project have changed. I've said from  
5 the outset that it isn't just a land-use vote  
6 or else why would we publish for a 60-day  
7 requirement all of the components of the host  
8 community agreement. We know all of those  
9 components will substantially change if a new  
10 proposal is presented to us. So, I like the  
11 proposal or the suggestion that Commissioner  
12 McHugh has put forward.

13           CHAIRMAN CROSBY: As you know, I was  
14 leaning the other way. The beauty of this is  
15 that it might get us past having to decide  
16 this. Let me just go through a few things just  
17 to make sure.

18           I think most people would commonly  
19 think that the referendum has to be done before  
20 the application is due. Would you just explain  
21 again, go through what's being postponed and  
22 what isn't. What is the mechanism that makes  
23 this possible in what needs to be postponed?

24           COMMISSIONER MCHUGH: First of all,

1 the statute does not require that the vote take  
2 place before the application is filed. The  
3 statute, and it's section 15, General Laws  
4 Chapter 23K, section 15(13) is one of a number  
5 of subsections of Chapter 23K section 15 that  
6 talk about what the applicant must state it is  
7 going to do, state in the application it is  
8 going to do. And there are a number of them  
9 that look like in syntax that they both have to  
10 do them and state that they're going to do them  
11 at the time the application is filed. But most  
12 of them are things that the applicant has to  
13 say it is going to do in the future.

14           For example, it says that it must  
15 say that it is going to be a lottery agent.  
16 That it will invest not less than the required  
17 capital. That it will own or acquire within 60  
18 days after the license is granted the land on  
19 which the facility is to be built.

20           The vote is one of those that it  
21 does not have to say it has done. So, the vote  
22 under the statute can take place after the  
23 application is filed.

24           Indeed, remember that the Commission

1 at the outset broke this application process  
2 into two parts. We had the power to do that  
3 under our regulations and under our authority.  
4 And we did it because it made sense. But we  
5 could have had a unitary process in which  
6 everything was done at once and then we decided  
7 suitability and other things afterwards.

8           So, a lot of what we've done and the  
9 fact that certain things have followed in a  
10 certain order is as a result of the way we  
11 started things at the outset, but it didn't  
12 have to be done that way.

13           The only thing that we have to  
14 change is the requirement of our regulations.  
15 It's not a requirement of the statute. The  
16 requirement of our regulations that a  
17 certification of the vote, that's the formal  
18 piece of paper that the town clerk signs saying  
19 the results of the vote was so-and-so. That we  
20 said in our regulations has to be filed with  
21 the application. And in order for this  
22 proposal to work, we'd have to waive that  
23 requirement and allow it to be filed 10 days  
24 after the vote.

1           As I said, we've done that before,  
2 not for six or eight weeks, which would happen  
3 in this case, but we did do it once before when  
4 the vote took place too close to the  
5 application deadline for the certification to  
6 be done on time. But that's the only thing  
7 we'd have to change.

8           Everything else including the  
9 contents of the application, the time for the  
10 application to be filed, our own processing of  
11 the application, all of that would go forward  
12 as if the vote had taken place and been  
13 completed earlier.

14           COMMISSIONER ZUNIGA: And that would  
15 not run against the 180-day requirement that a  
16 new vote take place because this vote has not  
17 been in the negative?

18           COMMISSIONER MCHUGH: No. It would  
19 not run up against the 180-day deadline because  
20 the 180-day deadline is for the applicant to  
21 seek a new vote. This is a different  
22 applicant.

23           CHAIRMAN CROSBY: If they lost the  
24 first one.

1           COMMISSIONER MCHUGH:  If they lost  
2 the first one.  This is a different applicant.

3           COMMISSIONER ZUNIGA:  Because it's a  
4 different applicant, not because --

5           COMMISSIONER MCHUGH:  It's a  
6 different applicant and even if it were the old  
7 applicant, it didn't lose.  I hadn't thought  
8 about it, but it's a different applicant.

9           CHAIRMAN CROSBY:  That does raise a  
10 question in my mind.  You suggested the  
11 possibility that the applicant, in this case I  
12 guess we're being told it's a new applicant.

13           COMMISSIONER MCHUGH:  Yes, we are  
14 being told that it's a new -- it's a different  
15 applicant.

16           CHAIRMAN CROSBY:  So, it's a  
17 different applicant.  So, an applicant would  
18 request a waiver of this requirement that the  
19 certification of the vote be filed with the  
20 application.

21           COMMISSIONER MCHUGH:  Correct.

22           CHAIRMAN CROSBY:  And that they  
23 would then negotiate a new host community  
24 agreement?

1                   COMMISSIONER MCHUGH: The order in  
2 which they did those things, Mr. Chairman,  
3 could be in any order. My understanding is,  
4 but it's simply from reading the press, that  
5 negotiations are going on now for a host  
6 community agreement. They'd sign the host  
7 community agreement. They'd go to the city  
8 council and ask for an election date.

9                   And at some point, before the  
10 December 31 application deadline, they'd file a  
11 request for a waiver of the appropriate  
12 regulation, which for those were interested in  
13 looking at it is 205 CMR 119.017. And that is  
14 the component of the regulations that requires  
15 the certification to be filed with the  
16 substantive application.

17                   So, that's a windy answer to your  
18 question, but I hope it covers it the ground.

19                   CHAIRMAN CROSBY: This may be a  
20 technicality, it may be not, but in terms of  
21 trying to figure out does this proposal work  
22 within our rules and law, it seemed to me that  
23 it might make more sense that that be an  
24 amended HCA not a new HCA. Because if it's a



1 new HCA doesn't that negate that there's been  
2 an HCA?

3 COMMISSIONER MCHUGH: It seems to  
4 me, Mr. Chairman, that this proposal basically  
5 treats this current structure as a new  
6 undertaking. It is not piggybacking itself on  
7 the old one. It is basically a new  
8 undertaking.

9 CHAIRMAN CROSBY: But it's not new  
10 subsequent to -- Well, maybe it is. Is it new  
11 subsequent even to the January 15 filing date?  
12 So, this is as if -- This is totally de novo as  
13 if that first entity, the Suffolk Downs entity,  
14 they're not purchasing the HCA from and  
15 assuming the obligations of that HCA?

16 COMMISSIONER MCHUGH: The new host  
17 community agreement, as I understand the  
18 structure, would be between the operator  
19 Mohegan Sun and the city not between the city  
20 and Suffolk Downs. That's my understanding.

21 CHAIRMAN CROSBY: Okay.

22 COMMISSIONER MCHUGH: And I think  
23 that's what we were told by the applicants the  
24 last time they were here. So, that this is a

1 different host community agreement. It's got  
2 different parties to it. It's got different --  
3 will have different obligations and it is a  
4 different host community agreement.

5 CHAIRMAN CROSBY: I sort of can't  
6 debate the point. But I just sort of leave  
7 this as an issue is I thought they were hanging  
8 their hat on the reopener clauses that the new  
9 applicant was assuming the HCA from the prior  
10 applicant and was hanging their hat the  
11 reopener provisions. And you wouldn't need to  
12 worry about the reopener provisions if this is  
13 a whole new HCA. Somebody smarter than I can  
14 figure out whether it's better to amend or make  
15 it whole.

16 COMMISSIONER MCHUGH: It seems to me  
17 you get to the same result either way.

18 CHAIRMAN CROSBY: Right. Bruce,  
19 were you going to --

20 COMMISSIONER STEBBINS: No, sorry.  
21 I'm just agreeing.

22 CHAIRMAN CROSBY: Muttering?

23 COMMISSIONER STEBBINS: Muttering in  
24 agreement.

1           CHAIRMAN CROSBY: I have a couple of  
2 other.

3           COMMISSIONER ZUNIGA: Just to  
4 clarify to make sure. Your suggestion, I am  
5 going to stop calling it proposal because  
6 there's a proposal at the level of what the  
7 applicant proposed to be built in Revere.

8           Your suggestion, Commissioner, is  
9 that we put this on the applicant to decide  
10 whether they want to seek another vote, a  
11 Revere only vote that would be within the  
12 confines of our exception to our regulations,  
13 the one that you just quoted, which is that of  
14 the certification of a vote of a host  
15 community, starting with the premise of course  
16 that this is a new applicant or a new proposal  
17 and/or a new location, a new host community  
18 agreement. And that they can do everything  
19 that the rest of our regulations do within 60  
20 to 90 days, request a vote and obtain it, etc.  
21 etc.?

22           COMMISSIONER MCHUGH: Yes.

23           COMMISSIONER ZUNIGA: And if we hear  
24 back from them that they do not see it this way

1 that they would rather have us make the choice  
2 that you and I agree is the difficult choice of  
3 determining whether the past summary of the  
4 host community in the ballot was fair and  
5 concise and what the meaning of that ballot  
6 question was and whether it all fit within  
7 everything that they're proposing is within the  
8 confines of all those reopeners, we could  
9 decide at a later time. Is that a fair  
10 statement?

11 COMMISSIONER MCHUGH: That's a fair  
12 statement.

13 COMMISSIONER ZUNIGA: If they choose  
14 not to follow up on a Revere only vote, future  
15 vote.

16 COMMISSIONER MCHUGH: Right. It's  
17 really that dichotomy. Stripped to its  
18 essentials, the dichotomy is between letting  
19 the voters decide or letting us decide whether  
20 this proposal goes forward or not.

21 CHAIRMAN CROSBY: Who else has a  
22 stake in this? There's at least one other  
23 applicant that's presently in the mix assuming  
24 they get through their suitability check. How

1 are they affected? I'm asking you this because  
2 I'm sure you thought this through. But is this  
3 fear to the other pending applicant?

4 COMMISSIONER MCHUGH: I have thought  
5 it through, Mr. Chairman, I welcome all of your  
6 thoughts on this, but it seems to me that is  
7 fair to the other applicant.

8 It was remember only as of November  
9 5 that the other applicant -- There were two  
10 applicants on November 5 left, but as for the  
11 Wynn applicant, as of November 5 it knew it was  
12 facing competition. And it came into this  
13 market and filed its application, which was an  
14 excellent event. We sought competition  
15 aggressively.

16 And they came in here knowing that  
17 they had competition. They on November 5  
18 perhaps believe that they had one less  
19 competitor. But it seems to me that they  
20 haven't changed their position in any material  
21 respect based on the absence of competition  
22 between then and now or between then -- or will  
23 change their position between then and December  
24 31.

1                   They may be understandably  
2 disappointed that now if this proposal is taken  
3 and if there is a vote that they do have a  
4 favorable vote that they do have competition  
5 again. But they haven't changed their position  
6 in light of a reasonable expectation of no  
7 competition.

8                   I am certain that the East Boston  
9 voters who voted against this would feel that  
10 any renewal of the process would be unfair.  
11 But as I said, this is something that could've  
12 been done and shaped up this way at the very  
13 beginning. And if it turns out on our  
14 inspection of the final proposal that this  
15 really is the old proposal, i.e. a two-city  
16 proposal, disguised some way, we can handle  
17 that then.

18                   CHAIRMAN CROSBY: After we assess  
19 the formal physical application.

20                   COMMISSIONER MCHUGH: Right, after  
21 we all take a look at it, after the city takes  
22 a look at it, after the residents of East  
23 Boston take a look at it. After everybody  
24 takes a look at it, we'll know exactly what we

1 are looking at.

2           And if it is indeed a two-city  
3 proposal, we can go back -- we can revert  
4 because we will not have been proceeding on an  
5 accurate premise.

6           So, it seems to me that this is fair  
7 to everybody, not happy for everybody if this  
8 proposal were followed, not happy for  
9 everybody. But it does seem to me it's fair  
10 and it ultimately lets the people -- lets the  
11 voters go to the polls and do what the statute  
12 envisions.

13           CHAIRMAN CROSBY: I guess from the  
14 standpoint as you said its essentials it boils  
15 down to is should we decide or shall the voters  
16 of Revere decide whether this Revere only  
17 option is viable, and at least the media  
18 handicapped our Commission predisposition last  
19 week as saying that we would be in favor of the  
20 Revere proposal going forward. So, from the  
21 Wynn standpoint, they may be better off under  
22 this as it's subject to a vote.

23           COMMISSIONER MCHUGH: That may be  
24 but still they have no legitimate expectation.

1           CHAIRMAN CROSBY: Right, I  
2 understand.

3           COMMISSIONER MCHUGH: And I suspect  
4 that they are not banking on it.

5           CHAIRMAN CROSBY: I am just trying  
6 to anticipate who is going to feel like they're  
7 (INAUDIBLE).

8           COMMISSIONER ZUNIGA: To that end,  
9 it doesn't appear that we are extending the  
10 deadline, the overall deadline for Phase 2 in  
11 order to accommodate the changed timeframe.

12          COMMISSIONER MCHUGH: Right.

13          COMMISSIONER ZUNIGA: What we would  
14 be providing is a particular exception to one  
15 section of the requirements, section 15(13) of  
16 the statute.

17          COMMISSIONER MCHUGH: No. I don't  
18 want to interrupt you. I'm sorry,  
19 Commissioner. But that's really important.  
20 We're not changing section 15(13). We have no  
21 power to change the statute. We're changing  
22 our own regulation, which we do have the power  
23 to change and that's 205 CMR 119.01.

24          COMMISSIONER ZUNIGA: Thank you for



1 that correction. That's important. But we are  
2 not modifying the whole Phase 2 application  
3 deadline wholesale, if you will. It is rather  
4 this exception to our regulations, which is  
5 important to note. Thank you for that.

6 CHAIRMAN CROSBY: In that context,  
7 just so for the audience as much as for anybody  
8 else, walk this through the schedule. Walk  
9 this through the evaluation process. Just take  
10 this through as a hypothetical, when this would  
11 work, when the 60 days would fall, where that  
12 fits in our evaluation process.

13 COMMISSIONER MCHUGH: So, let's have  
14 a timeline. December 31 is the substantive  
15 application deadline for all casino applicants.  
16 They would file their completed application on  
17 December 31. The Commission then would take  
18 those applications and would begin the process  
19 of examining and evaluating them. That would  
20 take about two weeks into the middle of  
21 January.

22 The Commission after taking an  
23 initial look to make sure the applications were  
24 complete, and giving a waiver of completeness

1 on the one aspect, the certification of a vote  
2 to the applicant for the Revere casino, would  
3 say the applications are complete and the  
4 Commission would begin its substantive  
5 evaluation the same way it's evaluating the  
6 slots parlor applications now.

7           That process will take about 85 to  
8 100 days under the schedule that we currently  
9 have. A month after it starts say, about the  
10 middle of February, the Revere vote would take  
11 place. If the vote were successful, nothing  
12 would change. The evaluation process would  
13 continue. If the vote were unsuccessful, the  
14 Revere proposal would stop at that point and  
15 we'd be evaluating one proposal for Region A  
16 and that would proceed to conclusion.

17           If the Revere vote were successful  
18 and so we proceeded with two, we'd stay right  
19 on schedule and have the licensing decision  
20 made mid-to-late May with one of the two.

21           So, our schedule wouldn't be  
22 interrupted. The applicant would be required  
23 to pay the costs of the analysis just as the  
24 other ones are, regardless of how the vote came

1 out. That's how it would work.

2 COMMISSIONER CAMERON: It reminds me  
3 of another way in which value the competition.  
4 Another example of that is what we're doing in  
5 Region C where the deadline for new  
6 applications has passed, but those who have  
7 already been found qualified still have the  
8 ability to get in the mix in that region.

9 So, we're valuing the competition  
10 here and we did have one positive vote. And I  
11 think the proposal makes sense moving forward  
12 if the applicant chooses to go in this  
13 direction.

14 CHAIRMAN CROSBY: Right. Anything  
15 else? I agree with that. I was trying to  
16 think about -- Let me first of all, I meant to  
17 ask do any of you who are very close to this,  
18 Rick, Todd, John, Catherine, do you see not any  
19 issues but are there any inequities in terms of  
20 other decisions we've made with other bidders  
21 or any distorting parallels that we're not  
22 thinking of.

23 MS. BLUE: I think it conforms in  
24 similar ways to other situations that we've

1 analyzed that are similar in the past. So, we  
2 are being consistent. We are valuing  
3 competition, which we have always valued from  
4 the beginning. So, to me this proposal makes  
5 sense.

6 I would defer to Mr. Ziemba in terms  
7 of what he hears from the communities and  
8 whether he's hearing anything out there.

9 MR. ZIEMBA: I agree with  
10 Catherine's comments that this seems to comport  
11 with those standards that we've developed in  
12 previous conversations. If you take a look at  
13 the interests that are involved, we have the  
14 interests of the Commonwealth and its citizens  
15 and the jobs and the revenues, cities and towns  
16 in terms of those revenues. This puts forward  
17 a vote in the host community.

18 Ultimately, it's the host community  
19 that gets to decide whether or not a casino  
20 resides in that host community. As the Judge  
21 mentioned, we will continue to take a look at  
22 the application, if it doesn't appear that it  
23 is as has been offered. So, in that regard,  
24 there are a number of different interests.

1           Obviously, as with many of our  
2 decisions, not many people are happy and in  
3 unanimity with all of our decisions but --

4           CHAIRMAN CROSBY:  Maybe once, just  
5 once.

6           MR. ZIEMBA:  In regard to the  
7 surrounding communities, obviously the  
8 Commission is concerned about surrounding  
9 communities.  And I think that we did outline a  
10 process by which there could be significant  
11 time for surrounding communities to take a look  
12 at this issue.

13           If for example there is any  
14 surrounding community petitions that go  
15 forward, if we treat this the same way that we  
16 discussed at the last Commission meeting where  
17 that we don't do the written designations that  
18 there still will be some significant time after  
19 January 1, perhaps two months of negotiations  
20 whereby the surrounding communities could still  
21 take a look at these proposals.  So, in that  
22 regard that's another one that we can --

23           CHAIRMAN CROSBY:  That actually is  
24 an interesting point.  If you take Commissioner

1 McHugh's schedule, it was about the middle of  
2 February when the referendum in Revere would  
3 take place --

4 COMMISSIONER MCHUGH: -- could.

5 CHAIRMAN CROSBY: Sorry?

6 COMMISSIONER MCHUGH: Could.

7 CHAIRMAN CROSBY: -- could, yes, if  
8 it were requested. And typically we've had a  
9 hard time getting applicants negotiating with  
10 surrounding communities prior to their  
11 referenda being completed. So, I guess the  
12 surrounding community process would continue to  
13 go forward, right? Nothing changes, everything  
14 stays the same.

15 MR. ZIEMBA: That's right.

16 COMMISSIONER STEBBINS: We have the  
17 advantage at this time though, actually have  
18 the application. We've allowed for that window  
19 after the application is presented for a  
20 community to see how they're going to be  
21 impacted.

22 CHAIRMAN CROSBY: Right. So,  
23 surrounding communities are in a better  
24 position than they would be. Right.

1           COMMISSIONER MCHUGH: The one  
2 difference is that Boston would become a  
3 surrounding community as opposed to a host  
4 community. So, that would be a new status for  
5 Boston, East Boston.

6           CHAIRMAN CROSBY: Yes, that would be  
7 a new status.

8           COMMISSIONER MCHUGH: But the  
9 process could start.

10          CHAIRMAN CORSBY: But the process  
11 would stay exactly the same. If Boston thinks  
12 it's a surrounding community, it will say so.  
13 And if they can agree then they are and if not  
14 then they'll come to us and we'll decide.  
15 Okay.

16          COMMISSIONER ZUNIGA: Can I say  
17 something else too that you alluded to briefly,  
18 Mr. Chairman. Our usual test of public  
19 procurement processes is who may have  
20 reasonably responded to a bid whenever an  
21 agency like ours modifies or accepts a waiver,  
22 etc.

23                   And I think that doesn't apply here  
24 because it is not a new applicant de novo that

1 is coming here and potentially joining with  
2 Suffolk Downs. Mohegan Sun complied with the  
3 deadline of January 15. We never made that  
4 deadline site-specific. They have been through  
5 the process.

6           It's not as if somebody else is  
7 parachuting in the middle of this that could  
8 then make the current bidders elsewhere say  
9 well, this is unfair. So, Commissioner McHugh  
10 also alluded to why it is not.

11           CHAIRMAN CROSBY: Commissioner  
12 Cameron said some of this, but I think just to  
13 highlight. From my standpoint, there are three  
14 kind of themes of our work that this is  
15 compatible with. One is the competition  
16 priority that we have always felt is in the  
17 long run in the public interest.

18           Two is the local control which the  
19 Legislature clearly made a powerful emphasis  
20 that to the maximum extent possible, these  
21 issues were meant to be controlled at the local  
22 level. And the third is transparency and  
23 participation. And this broadly extends the  
24 transparency and participation in this



1 decision-making.

2           So, I think it's a really good  
3 proposal. I'm often reluctant to put things  
4 off, but I think this is one that is  
5 appropriately -- I think this is a very  
6 constructive idea. I think it's really great.

7           In a deeply imperfect and  
8 challenging situation, I think this is about as  
9 creative and fair a solution as one could come  
10 up with. Should we vote on this?

11           COMMISSIONER ZUNIGA: Could I  
12 mention something else, because I think this  
13 will bear into the conversation in some way,  
14 and I hope it does.

15           The notion of the maintenance of the  
16 track in this site, whether by virtue of being  
17 a new applicant, Mohegan would have the same  
18 requirement or not would be relieved from the  
19 requirement to maintain racing. I just raise  
20 it as a topic that's very much of interest of  
21 many constituencies of ours. So, I would just  
22 put it out there as something that we would  
23 like to hear in detail whenever we get to this.

24           COMMISSIONER CAMERON: As that is

1 playing out now with the slots who are or are  
2 not affiliated with the track, this would be  
3 appropriate for the Phase 2 evaluation process.  
4 That would be the appropriate time to evaluate  
5 what that means and what the added value is to  
6 the application as we're doing presently in the  
7 Phase 2 evaluation process for the slots.

8 CHAIRMAN CROSBY: Yes. It could be  
9 addressed in the new or amended HCA, but it  
10 will have to be addressed at some point. As  
11 Commissioner Cameron says, it certainly is  
12 going to be addressed in our evaluation  
13 process. It's obviously a key question.

14 Should we vote on this?

15 MS. BLUE: Yes. We should make a  
16 motion and then vote on it.

17 CHAIRMAN CROSBY: Right, I think so.  
18 And it's a little bit hard to structure since  
19 it's got some conditional tenses in it.

20 Commissioner McHugh, do you want to tee it up?

21 COMMISSIONER MCHUGH: I would move  
22 that the Commission allow the current applicant  
23 for the casino proposed for Revere,  
24 Massachusetts and the city to proceed with

1 their application upon the condition that they  
2 request from the Commission a waiver of the  
3 vote certification requirements of the  
4 Commission's regulation, and commit in their  
5 application for that waiver to hold a vote  
6 conforming to the requirements of General Laws  
7 23K section 15(13) in the city of Revere within  
8 60 to 90 days after execution of a host  
9 community agreement between the applicant and  
10 the city.

11 COMMISSIONER STEBBINS: Second.

12 COMMISSIONER ZUNIGA: Is that new or  
13 amended?

14 COMMISSIONER MCHUGH: Did I say that  
15 right?

16 CHAIRMAN CROSBY: I'd like to see it  
17 in writing to make sure.

18 COMMISSIONER CAMERON: Is it or  
19 proceed without that request and we would have  
20 to decide accordingly.

21 COMMISSIONER MCHUGH: I'm sorry.  
22 Provided that they make that request -- I'm  
23 amending the motion now. Provided that they  
24 make that request for a waiver and accompanied

1 by that commitment within seven days from  
2 today.

3 CHAIRMAN CROSBY: Right. Do you  
4 second that as well?

5 COMMISSIONER STEBBINS: Yes.

6 COMMISSIONER ZUNIGA: And that is a  
7 new or amended host community agreement, is  
8 that any different?

9 COMMISSIONER MCHUGH: That is not  
10 part of the motion. It's a host community  
11 agreement.

12 CHAIRMAN CROSBY: Right. We'll  
13 cross that bridge. Anymore discussion?  
14 Anything else we need to think about?

15 MS. BLUE: No.

16 CHAIRMAN CROSBY: All in favor of  
17 the motion as stated, signify by stating aye,  
18 aye.

19 COMMISSIONER MCHUGH: Aye.

20 COMMISSIONER CAMERON: Aye.

21 COMMISSIONER ZUNIGA: Aye.

22 COMMISSIONER STEBBINS: Aye.

23 CHAIRMAN CROSBY: Opposed? The ayes  
24 have it unanimously. I think we're done.

1 Anything else? See you in a week.

2 COMMISSIONER MCHUGH: I move that we  
3 adjourn, Mr. Chairman.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER CAMERON: Second.

6 CHAIRMAN CROSBY: All in favor, aye.

7 COMMISSIONER MCHUGH: Aye.

8 COMMISSIONER CAMERON: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER STEBBINS: Aye.

11

12 (Meeting adjourned at 1:50 p.m.)

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1 MASSACHUSETTS GAMING COMMISSION STAFF:

2 Catherine Blue, General Counsel

3 Richard Day, Executive Director

4 Todd Grossman, Deputy General Counsel

5 John Ziemba, Ombudsman

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

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

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

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

WITNESS MY HAND this 11th day of December, 2013.

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