

**Afternoon Meeting
December 11, 2012**

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THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

OPEN MEETING

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

December 11, 2012, 1:00 p.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room E

1000 Washington Street

Boston, Massachusetts

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

CHAIRMAN CROSBY: I am pleased to call to order public meeting number 40 on December 11, 2012.

Commissioner Cameron has to leave at 2:00. So, I want to rearrange the schedule. Let's approve the minutes and then I want to rearrange the schedule. Has everybody had a chance to read the minutes for November 27? Any questions, comments? Does somebody want to move acceptance?

COMMISSIONER STEBBINS: Move to approve the minutes of November 27.

COMMISSIONER CAMERON: Second.

CHAIRMAN CROSBY: All in favor? Aye.

COMMISSIONER STEBBINS: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER CAMERON: Aye

CHAIRMAN CROSBY: Opposed? Okay. I want to move item number four, the IEB report up now. Commissioner Cameron, do you want to step in here?

COMMISSIONER CAMERON: Yes. Mr. Chair, with regard to scope of licensing, we are well

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1 on our way. We've taken those letters as they've
2 come in, working with our consultants who have been
3 making recommendations to us. We are making sure
4 we understand and agree with the recommendations,
5 doing some additional checks through the State
6 Police to make sure that all of the names are
7 appropriate, those that are recommended to be
8 waived.

9 And of course, all of the applicants
10 are aware that just because there's been a waiver
11 or an individual is not deemed a qualifier that does
12 not mean that they will not be investigated during
13 the course of the background investigation as the
14 investigation determines.

15 Three of those scope of licensing
16 letters have gone out. The rest, it's our hope to
17 get them out by the end of the week. I know in
18 talking to our consultants, there is one or two
19 issues where they're waiting on documents from some
20 of the investors involved with the companies. So,
21 it slowed down the process just a bit, but we feel
22 like we can move that along quickly.

23 CHAIRMAN CROSBY: We have all of the
24 requests in, all of the applicants?

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1 COMMISSIONER CAMERON: All those that
2 have had their scope of license meetings. And there
3 are additional meetings scheduled with regard -- for
4 newer applicants with regard to there was one this
5 week and there's another one scheduled later this
6 week, I believe.

7 MR. MICHAEL: As far as we know, any
8 interested party who has publicly said they are
9 interested in applying has submitted their initial
10 information to us, yes.

11 COMMISSIONER CAMERON: So, that
12 process is moving along smoothly, should be
13 completed, our hope is to complete by the end of the
14 week. And that would be dependent upon those
15 additional documents coming in so that a
16 determination can be made.

17 We also have two completed -- Well, I
18 have two submitted applications to the IEB. We are
19 in the process of starting a document review of the
20 applications. And we have assigned investigative
21 teams to those first two investigations. We are
22 just at the beginning stages of starting two
23 investigations for a submitted application.

24 So, all that is moving along smoothly

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1 also. And again, we have the investigative
2 resources to assign a team as soon as those
3 applications come to our office. That concludes my
4 report.

5 CHAIRMAN CROSBY: No issues so far
6 that are troublesome?

7 MR. MICHAEL: Not at this point. As
8 Commissioner Cameron said, there's just a few
9 technical things we need to tidy up with respect to
10 the status of some of the investors. And we need
11 more information on that but we hope to get all of
12 that done by the end of the week.

13 CHAIRMAN CROSBY: As far as we know at
14 the moment, no debates about qualifiers or not?

15 MR. MICHAEL: The reports that we have
16 submitted thus far both the consultants, the IEB and
17 the applicants have agreed to everything.

18 CHAIRMAN CROSBY: Okay, great. Okay.
19 I want also to move the Region C questions item 5B
20 up in order that Commissioner Cameron can for sure
21 be a part of that conversation. So Commissioner
22 McHugh, do you want to lead this off with your
23 memorandum?

24 COMMISSIONER MCHUGH: Surely, Mr.

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1 Chairman. Last week, we talked about a number of
2 factors that warranted a discussion about how to
3 deal with -- how the Commission could think about
4 dealing with Region C to achieve two goals.

5 One is to honor and allow the tribal
6 process to work its way through after the rejection
7 of the initial compact and the resumption of
8 negotiations. And at the same time, assure
9 ourselves and everyone that Region C would not be
10 left behind dramatically in the event that the
11 resumed negotiations did not ultimately bear fruit.

12 We discussed preliminarily last time a
13 couple of different approaches. So, I have in the
14 memorandum that's part of the packet today attempted
15 to take those discussions that we had preliminarily
16 last week and deal with them each in more detail.
17 And basically, the memorandum lays out three
18 possible approaches to the current Region C
19 situation.

20 One approach would be to do nothing at
21 the moment and continue to wait to see if some of
22 the issues that are confronting the Region and the
23 Tribe and the Commonwealth played themselves out,
24 resolved themselves. That approach is one that in

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1 my view is problematic because in the event that
2 nothing happens, we would have to begin the process
3 of figuring out what the alternative is some point
4 down the road. And it's difficult to figure out as
5 well at least from this vantage what would be the
6 appropriate amount of time to wait.

7 A second course would be not to do
8 anything at the moment but to set a deadline, either
9 a hard deadline or a soft deadline by which if
10 something didn't happen we would take action. A
11 hard deadline being sort of a drop-dead if nothing
12 happens by this date, we'll move forward. A softer
13 deadline would be we will reconsider things if there
14 isn't substantial progress by a deadline.

15 The problem with that is that we at the
16 end of the deadline if whatever we wanted to happen
17 hadn't happened, we'd be in the same position. And
18 that is we'd be having to consider what the
19 alternatives are and starting from scratch. And
20 Region C would be that much farther behind.

21 But an equally important consideration
22 is what the deadline would be for. We detailed at
23 the last discussion and in the last memorandum that
24 we all looked at a variety of factors that may affect

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1 the outcome here, the land in trust piece, the
2 compact piece, the approval of the compact piece.
3 No one of those dictate success. Any one can
4 dictate failure.

5 So, trying to pick one that had to
6 succeed by a certain date is no guarantee that the
7 next step would be successful even if that step were
8 achieved. So, one faces by setting a deadline for
9 a certain thing to happen, the specter of that thing
10 happening but still the process not having a greater
11 assurance of overall success.

12 That leaves really the third approach
13 and the one that -- the third that we discussed last
14 week. And that is to proceed on two tracks
15 simultaneously. To allow the tribal process to
16 continue to play itself out and at the same time to
17 set a date for accepting applications for the RFA-1
18 process from commercial applicants in Region C.
19 And allowing both processes to go forward at least
20 until the RFA-1 process was complete.

21 That would allow negotiations to
22 continue, would allow the preliminary or background
23 qualifying investigation to proceed. If the tribal
24 process achieves substantial success before or by

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1 the time of the end of the RFA-1 qualification
2 commercial process, we make a decision as to the
3 direction to take there. If it didn't, then we have
4 another decision.

5 But in either event, we would have some
6 commercial part of the process under our belt. If
7 we did that, fairness would require that we set a
8 new and separate deadline for the RFA-1 process in
9 Region C so as to give commercial applicants the same
10 90-day period that we allowed the commercial
11 applicants in Regions A and B.

12 We opened the application process for
13 Regions A and B on October 15. We'll close it on
14 January 15. So, if we open the commercial process
15 for Region C say on January 1 or January 15, we could
16 allow that same amount of time.

17 That would still if we went --
18 continued down the commercial process potentially
19 leave Region C a little bit behind but not
20 necessarily. It might be able to catch up if the
21 investigations could be processed smoothly and if
22 we went in the direction of a commercial license in
23 Region C as opposed to a tribal license.

24 That course, that third course doesn't

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1 eliminate the possibility of having to make a hard
2 decision at some point farther down the road. That
3 decision, there's no way to make it go away entirely.

4 But it does allow us to see how things
5 are playing out in the roughly six months that the
6 Phase I process will take. It seems to me that there
7 is a lot of energy, for example, right now in
8 Congress around the land in trust issue, the
9 so-called Carcieri fix. And we'll have a feel by
10 the end of that six-month period, I think, about
11 whether that fix is likely. We can make judgments
12 about progress with that in hand.

13 It strikes me as likely that we'll know
14 a lot more than we do now about the compact process
15 at the end of that period. It's either going to move
16 forward or it's not going to move forward.

17 So, this strikes me as a prudent course
18 for the Commission to consider taking that would
19 satisfy both the tribal interests and the commercial
20 interests and the interests overall, which is the
21 highest goal, of the people of Region C.

22 It may be thought that the specter for
23 a commercial applicant of having the Commission
24 ultimately decide to withhold a license from a

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1 commercial developer because the tribal casino is
2 in the lead puts the commercial developer at a
3 particular unfair advantage, even during the Phase
4 I process.

5 But if one thinks about it, the risks
6 are not different in kind from the risks faced by
7 any commercial applicant in an area where there is
8 competition. In Region C there would be, at least
9 at the outset here, competition of a different kind
10 slightly -- a different variety but not of a
11 different kind. There's still competition. And
12 nobody is guaranteed or assured that they are going
13 to wind up with a license in an area where there is
14 competition.

15 So, for all of those reasons, I
16 recommend that the Commission consider proceeding
17 on this two-track process. It's clear from the
18 legislation that the Legislature did not intend to
19 leave Region C far behind. This is a risk reduction
20 approach. It does not make a final decision on
21 anything. But it allows us to proceed in what I
22 would submit is a responsible manner, and at the same
23 time reduce the risks that Region C would not benefit
24 from the economic stimulus that this legislation was

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1 designed to provide to all citizens of the
2 Commonwealth.

3 So, that's the summary and that's what
4 I've put on the table.

5 CHAIRMAN CROSBY: Thank you.
6 Comments? Thoughts?

7 COMMISSIONER ZUNIGA: I would agree
8 with that in full. I'm not going to restate what
9 you eloquently pose at the risk of oversimplifying.
10 For all of the reasons that you articulate I see what
11 you label here as the third course, as the one that's
12 most advantageous given all of the considerations
13 that we have, a number of variable factors. And
14 pursuing this process in parallel allows the
15 Commission especially a lot of flexibility to take
16 steps but also consider other aspects of the tribal
17 region.

18 COMMISSIONER CAMERON: I also agree
19 with the third option that we run with two parallel
20 tracks for all of the reasons stated.

21 I originally had a concern that the
22 developers, commercial developers would be somewhat
23 at a disadvantage, but thinking about it in terms
24 of competition just at a different kind made a lot

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1 of sense to me. And I think it does offer us the
2 ability to be flexible and not let the Region fall
3 behind.

4 COMMISSIONER STEBBINS: Yes. I also
5 think it's a good strategy to make sure that Region
6 C doesn't fall behind. Interestingly enough, I
7 think if we essentially create a second RFA-1
8 process strictly for Region C, we might find
9 ourselves in the position of finding an applicant
10 who had been looking at Region A or B and for some
11 reason has either dropped out of the process and
12 essentially now have a second chance to increase the
13 competition in Region C. I don't know.

14 Though I could see probably why they
15 wouldn't pursue it, does this option necessarily
16 prohibit the Tribe from becoming an applicant for
17 the commercial license? I couldn't fathom a reason
18 that they would go this route but there's nothing
19 that would preclude them from --

20 COMMISSIONER MCHUGH: Nothing in this
21 approach would preclude the Tribe from being a
22 commercial applicant.

23 CHAIRMAN CROSBY: Quite the opposite.
24 They would be the one entity that would have two

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1 bites at the apple. They could go the commercial
2 route, and if they didn't win the commercial route,
3 they would still have the option of a tribal casino
4 if and when they do get land in trust. Which would
5 be a substantial competitive advantage if they did
6 apply commercially, because everybody else would
7 know that if somebody else won, the Tribe could still
8 come along when they get land in trust and do tribal
9 gaming.

10 So, not only does it not preclude that
11 for better or worse it gives the Tribe a strategy,
12 which has the two bites at the apple.

13 COMMISSIONER STEBBINS: I like it from
14 the fact that it doesn't leave Region C behind the
15 rest of the Commonwealth. We talked earlier this
16 morning about cannibalization and competition and
17 market decisions. Kind of allowing this track in
18 Region C, which may in the end be on course with the
19 application process in the other Regions, I think
20 it's a worthwhile step for us to pursue.

21 COMMISSIONER ZUNIGA: To be precise
22 and clarify, we would be following this or the RFA
23 Phase I process. We have still not made a
24 determination technically on when to bid out the RFA

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1 Phase II for any Region for that matter, but
2 certainly not for Region C.

3 CHAIRMAN CROSBY: That's not just a
4 technicality. That would be explicit. We would be
5 saying we are proceeding with RFA-1, and we will
6 determine at a later date whether we will proceed
7 with RFA-2 at some point.

8 COMMISSIONER MCHUGH: Right.

9 CHAIRMAN CROSBY: Let me just ask a
10 couple of questions about this. First of all, just
11 a matter of clarification, and there is clearly
12 misunderstanding about this. And I had it too at
13 the beginning. As Commissioner McHugh makes clear
14 in his memo, there is nothing in the legislation that
15 precludes the Commission from issuing a commercial
16 license process -- issuing a commercial license in
17 Region C, period.

18 What there is are a couple of
19 circumstances, which would compel us if the Tribe
20 didn't make certain benchmarks, if we made a certain
21 judgment about land in trust, then we would be
22 compelled to issue. But there is nothing in the
23 legislation that says we may not issue a commercial
24 license, no matter what happens to the Tribe.

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1 That's not widely understood, I don't think.

2 The question about the nature of the
3 risk. The difference in a casino -- in a bidder in
4 Region C here would be that they run the risk of
5 losing not because the merits of their case were
6 insufficient, but because we never gave them a
7 chance to compete. And you can at least
8 psychologically at least you can sort of see a
9 difference.

10 I'm a developer. I think I am good at
11 this. I've got a great idea. I'm willing to take
12 my chances. But when I don't get a chance to put
13 my best foot forward, a little bit sort of like the
14 point that Ameristar made about not being able to
15 get to the Gaming Commission for a pitch, is that
16 material? Does that make any difference?

17 COMMISSIONER MCHUGH: I am not sure.
18 I don't think so. And I want to just talk in really
19 hypothetical terms here. Everybody has to
20 understand that it's entirely hypothetical.

21 CHAIRMAN CROSBY: Say this to them.

22 COMMISSIONER MCHUGH: But I'm really
23 talking to beyond the people in this room. It's not
24 clear to me as a single Commissioner that for example

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1 if a compact were negotiated at a rate of return that
2 this Commission thought was too low hypothetically,
3 that the Commission couldn't go ahead and issue a
4 commercial license.

5 It's not clear to me that some
6 limitations in the compact might affect the
7 desirability of and financial feasibility of a
8 commercial license in that Region notwithstanding
9 the existence of a tribal casino.

10 So, it's not necessarily so that this
11 is a go/no-go decision. And in any event, even if
12 it were, and even if one considered it to be at this
13 point, it seems to me that the economic judgment is
14 there for sophisticated people to make.

15 Is it worth risking the initial sum
16 that would be required for the Phase I application
17 against a return of Y? Because we're not going to
18 go, in all likelihood, all the way through the RFA-2
19 process and then make a decision that we're not going
20 to go with a Tribe. At least we haven't made that
21 decision yet. And the commercial developers can
22 make an economic judgment based on that as they go
23 forward.

24 So, I don't see that it's apart from a

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1 psychological value a risk that's really different
2 in kind from the risk everybody else is facing at
3 this sort of uncertain stage of the process.

4 CHAIRMAN CROSBY: Right. And another
5 thought that occurred to me was in terms of the
6 timeframe, start the 90 days, but run it a little
7 bit later, the developers have been sort of frozen
8 in Region C for a long period of time.

9 Nobody has been able to do any
10 spadework. Nobody's thought about it. If they're
11 interest in Massachusetts, they may have focused
12 their resources on other Regions. But two things,
13 one doing the background check doesn't mean you have
14 to have a site necessarily. I mean you've got
15 plenty of time before you're going to get to Phase
16 II. So, you don't have to have done all of the
17 spadework.

18 And secondly, and I think this kind of
19 bears on the issue of the nature of the risk, all
20 we can do is the best that we can do given the so
21 to speak the deck of cards that we've been dealt.

22 And I think everybody has understood
23 that because of the tribal situation, this is
24 complicated. And this is going to be an imperfect

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1 situation if you consider the process in A and B
2 perfect. This is going to be imperfect. Trying to
3 accommodate the legitimate important interests of
4 the Tribe with the legitimate important interests
5 of Southeastern Mass. and the rest of the
6 Commonwealth.

7 So, maybe it's not perfectly parallel.
8 Maybe developers would be dealt with a little bit
9 differently, but given the circumstance that we
10 have, I'm not sure we can do any better than that.

11 A of couple things. We did mention --
12 I think I mentioned that I think this is an
13 environment -- this is a topic about which it's
14 completely appropriate for us to invite feedback
15 from the Legislature as well as from the Governor's
16 office. And since the idea was floated at your
17 suggestion last week, I have heard zero objection
18 from either of those places. And I have heard
19 probably directly or indirectly, probably 10 or more
20 expressions of support on the idea from the
21 Legislature for what that is worth.

22 The one thing I do think we need to --
23 If we adopt this approach, which it sounds like we
24 probably will, I think we agreed that we would have

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1 there be a period of comment because we'd like
2 feedback from people. And one of the things I think
3 we need to think through ourselves or I'd like
4 feedback about is we've asked bidders in A and B to
5 express intent for a Region. It may be that people
6 who are in the background check business now for A
7 and B would like to also be possible a candidate for
8 C.

9 So, we may need to permit people to
10 amend their background check forms because we
11 precluded them saying C was an area that they might
12 pursue. And there may be other wrinkles, sort of
13 the technicalities in this process that we may need
14 to work out.

15 There is also this issue that relates
16 to the risk. There's the nonrefundable \$400,000.
17 It seems kind of harsh not to refund a balance if
18 there is a balance if you don't eventually issue the
19 RFA-2. I'm not sure we have a way around that given
20 the law, but we might. And I think in a comment
21 period, we could invite comment on that as well.

22 So, it looks to me I think we probably
23 should vote. This is important enough. If we do
24 vote to tentatively go down the parallel track

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1 subject to a comment period, what's an appropriate
2 comment period? One week is the 18th. Two weeks
3 is the 25th. We probably won't even meet that week.
4 Three weeks is whatever the Tuesday after that is.
5 But now we've lost three weeks. So, what do you
6 think the proper amount of time is for comment?

7 COMMISSIONER MCHUGH: I would
8 recommend one week, Mr. Chairman. And somebody in
9 the one-week period can tell us that one week isn't
10 long enough. We began this discussion last week.
11 And so it's in the air as it were. And we do need
12 to move forward, and as I say, if we get comments
13 saying this isn't enough time to give you our fully,
14 we can reconsider.

15 I would recommend, rather than having
16 a vote on this today, if we agree that this a path
17 worth going down, we announce that this is the path
18 we're going down. That the details of this are as
19 stated in the memorandum or as we restate them. And
20 inviting comment on that and then having a vote after
21 we get the comment.

22 That would prevent the need to have
23 another vote if we had some ideas during the comment
24 period that were sound and would convey, I think,

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1 clearly that this is an idea we're very seriously
2 considering. But we do value the public comment
3 process before we made up our minds. It's a detail.

4 COMMISSIONER ZUNIGA: I would agree
5 with that. I would only note that we did have a
6 question not entirely related to this process in the
7 policy questions. We did receive some feedback not
8 necessarily in the parallel tracks that we are
9 considering relative to question C. I think for
10 that reason, one week may be sufficient to at least
11 solicit any feedback to the time relative.

12 CHAIRMAN CROSBY: The key policy in
13 question is whether or not the Commission should set
14 a deadline. And Commissioner McHugh and I worked
15 on that. And if you've seen his graphs, which we'll
16 talk about. I think it's on the agenda for
17 tomorrow's key policy question meeting. We were
18 recommending that we not do that.

19 That if we do indeed go down the
20 parallel path that postpones the issue of having to
21 make a deadline decision. So, the comment that came
22 in to people were about an issue that we're not going
23 to join. The comment came in about a deadline. And
24 we're recommending that we not join the issue of a

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1 deadline as yet.

2 COMMISSIONER ZUNIGA: Fair enough.

3 CHAIRMAN CROSBY: Just to be clear,
4 there's no need particularly to a vote. But nobody
5 seems to disagree with Commissioner McHugh's
6 suggestion.

7 So, it is the intention of the -- It is
8 the predisposition of the Commission to enter into
9 a phase, RFA-1 application phase for Region two as
10 quickly as possible --

11 COMMISSIONER ZUNIGA: C.

12 CHAIRMAN CROSBY: Sorry, Region C as
13 quickly as possible while watching and respecting
14 the Tribe's ongoing process with the various issues
15 that are before it. And also with no commitment one
16 way or the other to necessarily go to RFA-2 at the
17 end of the RFA-1 process.

18 So, we are choosing -- If we go forward
19 with this, we are choosing to get the commercial
20 process teed up through the background check process
21 in order that it can move quickly into Phase II if
22 we decide that some number of months down the road.

23 We will not have a formal decision or
24 a formal vote on this predisposition until a week

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1 from today at our regularly scheduled meeting. And
2 invite feedback, comment from anybody in the public
3 who is interested about that. Is that right?

4 COMMISSIONER MCHUGH: Yes.

5 CHAIRMAN CROSBY: Do you all have any
6 thoughts that you jump -- are champing at the bit
7 that you want to say publicly or --

8 MR. MICHAEL: No bits and no champing.
9 It sounds fine.

10 MR. CARROLL: Sounds reasonable.

11 MR. ZIEMBA: Mr. Chairman, just one
12 question. The form of the comments that should be
13 sent to the Commission, is that just in the written
14 form and remarks prior to the meeting next Tuesday?
15 Will it be open to members from the public at the
16 meeting?

17 CHAIRMAN CROSBY: I think the comment
18 ought to be on our comment mailbox as we've done all
19 of our other comments. People typically send in
20 comments hard copies and sometimes email as well as
21 that. But that has been our standard response.

22 We have remained a little bit flexible
23 that felt the need to let somebody speak who was
24 there. We've done it. But we are trying to

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1 discourage that. But we are open to it if there
2 seems to be a real serious contribution to the
3 conversation.

4 But fundamentally the comments should
5 be in writing. It should be submitted through the
6 comment box on the website. Okay. Does that work?
7 Here we are.

8 Now we are you going to back to the
9 agenda and go to administration, item three. And
10 that will be, start out with a look at the master
11 schedule, some of it we just talked about.

12 But if you can see the key, I think,
13 right here is starting investigations early. This
14 critical path point is January 15, which is when the
15 path tentatively assumed that we would start the
16 background investigations.

17 Thank you, gentlemen. See you later.
18 Thanks a lot.

19 But we've now discussed that we're
20 going to be starting the background checks at about
21 a month earlier, which is good news. We've
22 discussed the submissions of applications for
23 waiver requests. That all seems to be on track as
24 best we can understand, which is all of this

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1 material, all of these lines here.

2 Under regulations Phase II, today
3 we've come up with a change, which is we're going
4 to look at the regs. -- And pass this onto Bob and
5 Guy. - but we're going to look at the regs. to see
6 whether we can pull some regs. forward for the
7 category two license, because we're going to operate
8 on the presumption that we're going to do the
9 category two license early.

10 Now this plan, everybody should know,
11 has always assumed that. We've always assumed.
12 Everybody talks about the casino license as being
13 next February, March, but on our schedule we've
14 always had the category two license, the slots
15 license in November of this year.

16 So, we may not be able to tighten this
17 up very much, since we've always assumed that we
18 would put the slots parlor first. But we are going
19 to want to look at the regs. and see whether we pull
20 forward some category two regs. that we can do and
21 let the category one regs. rest for awhile.

22 There is this two-month period from
23 mid-March to mid-May, which is a regulatory process
24 that the State mandates. We cannot control that.

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1 That's a two-month process from the local government
2 advisory council to posting the regs. for the
3 Secretary of State, which we can't short-circuit.

4 But all of that then leads up to the
5 November issuing of the category one license, which
6 is wherever it is, right here. And anything that
7 we can do to tighten up this process to move the
8 category award from mid-November back, we will to
9 that.

10 You want to scroll up. Does anybody
11 else see any issues or challenge in that stretch?
12 This is really the guts of the operation. Okay. If
13 you'll scroll to the next page, this is the research
14 agenda. The RFP is out. All of the responses are
15 due January 6.

16 COMMISSIONER ZUNIGA: January 5.

17 CHAIRMAN CROSBY: January 5?

18 COMMISSIONER ZUNIGA: Yes.

19 CHAIRMAN CROSBY: Okay. We're
20 putting together the procurement management team so
21 that as soon as the RFPs come in for the research
22 project, we'll have the procurement -- the dream
23 team ready to go.

24 One thing I don't know about but

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1 Commissioner Cameron or David or somebody may, the
2 report that you're working on for the pari-mutuel
3 and so forth regs., it says find a sponsor. Does
4 that mean a sponsor for the legislation? And is
5 that in the process? Do we know? Are we doing
6 that?

7 COMMISSIONER CAMERON: We haven't
8 talked about a sponsor yet, but that is something
9 we know that is part of the process.

10 CHAIRMAN CROSBY: Okay. Because I
11 don't really know how that works. And I think
12 that's probably something we need to talk about with
13 the legislative leadership to figure out how they
14 want us to handle that. Unless somebody else --

15 COMMISSIONER CAMERON: Mr. Murray is
16 here if you'd like him to say a few words about that
17 process. He's gone through this process before.
18 Do you want to come up?

19 CHAIRMAN CROSBY: Introduce yourself.

20 MR. MURRAY: David Murray, I'm a
21 consultant for the Commission. At the moment, Mr.
22 Chairman, all that's been asked of the Commission
23 is the report together with some proposed
24 legislative language to the extent that the report

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1 offers recommendation as to changes in the law.

2 Beyond that, the Gaming Act is silent. So, we'll
3 have to feel our way as we go beyond that.

4 CHAIRMAN CROSBY: So, there's nothing
5 about finding a sponsor in the Act?

6 MR. MURRAY: Correct.

7 CHAIRMAN CROSBY: So, where does this
8 come from, sponsor?

9 COMMISSIONER ZUNIGA: It comes in the
10 case that there needed to be substantial changes
11 let's say to 128A and C, the Racing statutes, at
12 least that is my understanding, we would have to file
13 that legislation via a sponsor. And then it would
14 just be a requirement of in terms that we need to
15 represent it in time.

16 MR. MURRAY: My only comment would be
17 that if one can read anything into the way in which
18 the report is requested by the Legislature and
19 proposed legislative language has been solicited,
20 it suggests that the Legislature actually has in
21 mind its own digesting of the recommendations in the
22 report and the proposed legislative language and
23 I've assumed with a view to at least considering
24 doing this on its own. But that does not prohibit,

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1 obviously, the Commission from --

2 CHAIRMAN CROSBY: Do we know enough
3 yet to know whether we are going to call for changes,
4 which would require legislative changes before we
5 start the racing season on April 1?

6 MR. MURRAY: Well, this is a two-part
7 question, if I may, Mr. Chairman. One is the
8 question of what is the likelihood that the working
9 group is going to suggest to you, to the Commission
10 that there be legislative changes, and of course
11 whether or not the Commission agrees with that.

12 And then the second question is what
13 would be the timetable . If the Commission were to
14 vote in the month of January to make some legislative
15 change proposals to the Legislature, then I think
16 it would be a likely, just a practical matter, for
17 that to be completed and enacted prior to the
18 opening.

19 CHAIRMAN CROSBY: That's why I ask it
20 in the way I did. The question is is there likely
21 to be recommended changes, which would require
22 legislative action in order to get the racing season
23 started on time? Because if it is, we need to back
24 the process up, right? If we can start the racing

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1 season and let whatever is in the recommendations
2 take their own course, fine. Then we don't have to
3 worry about the racing season.

4 MR. MURRAY: I think the case is that
5 we can start it without changes.

6 CHAIRMAN CROSBY: Okay. So, the
7 sponsor in filing is a creation of our own doing.
8 It's not really a critical path item for us.

9 MS. GLOVSKY: So, do you want to take
10 it out of that?

11 CHAIRMAN CROSBY: Yes. I would say it
12 is submitting to the Legislature is critical. We
13 probably should have informal conversations with
14 the Legislature about expectations and what they
15 want from us. Okay. Thank you.

16 I don't see anything else as issues,
17 except if you just flip over to the third page. This
18 hire, the Director of Workforce Development and
19 Diversity and Supplier Development is meant to be
20 moved back, since we've already got that underway.

21 And still as far as we know, the
22 Executive Director here, we're aiming to have that
23 decision made by the end of the month. And as I said
24 last week, we're working on it as fast as we can.

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1 But I don't see any other issues on
2 this. I think Director Durenberger was going to
3 work on some of the racing critical path items and
4 flesh them out. And Ombudsman Ziemba may have some
5 items that are going to get added onto here. But
6 I think for the moment, I don't see any other
7 critical path problems. Does anybody else? Okay,
8 great.

9 What else, Director Glovsky, are you on
10 or you and Commissioner Zuniga?

11 MS. GLOVSKY: Fundamentally, most of
12 my activities right now in addition to the regular
13 administrative, back-office duties include working
14 with Director Durenberger on the Racing transition.

15 We are looking for ways -- We have to
16 physically move a lot of files. We also have
17 physical files, we also need to move electronic
18 files. We need to get new phone numbers, new
19 emails, that whole piece of it. So, there's a
20 significant chunk of work right now involved with
21 managing that transition, which is we're looking to
22 have completed by the end of the year.

23 Then the only other thing that I did
24 want to report on was that Arten Shtatnov and I went

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1 to a demo last week on Laser Fiche, which was a
2 document management system, which was very
3 interesting and I think gave us some additional
4 information so that we can look at finding a vendor
5 that will meet our needs within all of what we are
6 doing.

7 It was interesting. And this
8 particular vendor does do work with the City of
9 Newton and the City of Reading, so that there are
10 other government entities that are using it. And
11 it has sort of a wide variety of options for us. So,
12 I was very impressed with that and will be moving
13 forward on that as well.

14 COMMISSIONER MCHUGH: What is going to
15 the process for that phase of what we're going to
16 do? We do need to move forward with that. What's
17 going to be the process for selecting the system?

18 MS. GLOVSKY: I think fundamentally we
19 need to really do -- look at what our requirements
20 are first. And there was someone at that demo that
21 I think that we could contract with to come in, meet
22 with us and develop a solid list of what our
23 requirements are.

24 And the requirements then would form

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1 the basis of how we would do the procurement. And
2 I think that we might be able to do more of a short
3 form procurement, because I don't think it will be
4 that expensive for us to implement the software.

5 So, that's the piece is figuring out
6 what the requirements are for us. And I think
7 someone who works in this area is going to be much
8 better at helping us define that than for us to try
9 and do it on our own.

10 COMMISSIONER MCHUGH: Could we get,
11 not today, but could we get that on the critical
12 path?

13 MS. GLOVSKY: Sure.

14 COMMISSIONER MCHUGH: Because the
15 more we talk about the movement of paper and the
16 larger we get, the more I think the compelling need
17 to get this kind of the system in place becomes. So,
18 I would really like to see that begin to show up on
19 this document.

20 MS. GLOVSKY: Okay.

21 COMMISSIONER MCHUGH: Unless there's
22 some --

23 CHAIRMAN CROSBY: No. That's a good
24 point. That should be up there.

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1 MS. GLOVSKY: And that is all that I
2 have at this point, unless there are any questions
3 from the Commissioners?

4 COMMISSIONER MCHUGH: Thank you.

5 CHAIRMAN CROSBY: Personnel search
6 are -- Thank you very much. See you later. - See
7 you gentlemen, folks. -- are moving along as
8 planned. Commissioner Zuniga, employee manual.

9 COMMISSIONER ZUNIGA: Yes. Thank you
10 Mr. Chairman. I had submitted last week and
11 continue on the schedule that we set for ourselves
12 chapters or sections four and five of the employee
13 manual.

14 Last week they were submitted for
15 review. Granted we have had a very busy week in
16 terms of drafting of memoranda and whatnot. But I
17 had scheduled them for this week to take up for a
18 vote.

19 So, on that note, I can take any
20 questions or any observations. But these two
21 chapters are as latest as drafted with the latest
22 reviews and incorporate all of the discussions we've
23 had previously. And I submit it now for
24 consideration for a vote.

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1 COMMISSIONER CAMERON: Commissioner,
2 I think it's my understanding that most of these are
3 best practices from other agencies, correct?

4 COMMISSIONER ZUNIGA: Yes.
5 Particularly, I'm glad you mentioned --

6 COMMISSIONER CAMERON: These two
7 chapters.

8 COMMISSIONER ZUNIGA: Section four is
9 very straightforward because these are all the
10 benefits that we as a State agency and the State
11 offers. So, there is little that we could
12 realistically change here on Section four.

13 Section five has a little bit more or
14 borrows more, if you will, from other State
15 agencies, and is in full compliance with the
16 practices of HRD and other State agencies.

17 COMMISSIONER CAMERON: I know at one
18 point we had talked about an executive package with
19 regard to employees that we bring in that may have
20 considerable service elsewhere, but maybe not in
21 Massachusetts. This doesn't reflect that when I
22 look at --

23 COMMISSIONER ZUNIGA: Let me point to
24 the language right before 5.2 --

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1 CHAIRMAN CROSBY: Second page.

2 COMMISSIONER ZUNIGA: -- which is in
3 the second page. This is straight out of the Red
4 Book, which gives us the discretion to offer a
5 package in terms of vacation commensurate to the
6 experience that they have.

7 COMMISSIONER CAMERON: I see.

8 CHAIRMAN CROSBY: I didn't think about
9 this until Commissioner Cameron brought up the
10 packages. But it doesn't say anything, I don't
11 think, about employment contracts, right?

12 COMMISSIONER ZUNIGA: It does not.

13 CHAIRMAN CROSBY: So, we have some
14 flexibility if we feel like to bring somebody in we
15 need some kind of a point to do it. That's not
16 proscribed?

17 COMMISSIONER ZUNIGA: It's not
18 proscribed nor prohibited from this.

19 CHAIRMAN CROSBY: Because that's the
20 only other thing I can think of. I suppose things
21 like moving expenses that's not proscribed.

22 COMMISSIONER ZUNIGA: That's not
23 proscribed nor prohibited.

24 CHAIRMAN CROSBY: So, vacation,

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1 contract, moving, those are the only ones I can
2 really think of that are outside the normal state.
3 Okay. Any other comments or questions? Do you
4 want to move?

5 COMMISSIONER ZUNIGA: If there is no
6 more comments, I would move that chapters four and
7 chapter five of the employment manual be approved
8 as presented in the packet today.

9 CHAIRMAN CROSBY: Second?

10 COMMISSIONER STEBBINS: Second.

11 CHAIRMAN CROSBY: Further discussion?

12 All in favor? Aye.

13 COMMISSIONER ZUNIGA: Aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER MCHUGH: Aye.

16 COMMISSIONER CAMERON: Aye.

17 CHAIRMAN CROSBY: All opposed? The
18 ayes have it.

19 COMMISSIONER ZUNIGA: Thank you. I
20 submit the last chapter next week.

21 CHAIRMAN CROSBY: All right.

22 COMMISSIONER ZUNIGA: Sixth and
23 final.

24 COMMISSIONER CAMERON: Excellent job.

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1 COMMISSIONER ZUNIGA: We're going to
2 be done one day.

3 CHAIRMAN CROSBY: Okay, 3D,
4 incidental purchases, Commissioner Zuniga?

5 COMMISSIONER ZUNIGA: Yes. This was
6 another memorandum and recommendation that I have
7 submitted here. You may remember that a few months
8 ago we had a specific vote relative to a threshold
9 for allowing incidental purchases under which any
10 one Commissioner or even the Director of
11 Administration or our Chief Financial Officer could
12 only exercise their own criteria -- their own
13 discretion and utilize best practices.

14 That threshold was modeled after the
15 procurement regulations threshold, which was at the
16 time \$5,000.

17 The Executive Office of Administration
18 and Finance has advised that that threshold is
19 increasing effectively to \$10,000. They have not
20 yet quite made that timing decision. They have
21 advised that it's imminent.

22 But since we took a vote, my
23 recommendation is that we take it to adopt to be
24 \$10,000 and reflect that decision which is imminent.

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1 This could also give us a little flexibility in terms
2 of purchasing a few things that we need to continue
3 purchasing.

4 CHAIRMAN CROSBY: Discussion?

5 COMMISSIONER MCHUGH: I think it's a
6 very sound recommendation. They are going to go
7 that way with utmost confident that \$5000 is a little
8 outdated. So, I think it's a great suggestion.

9 CHAIRMAN CROSBY: Do you want to move?

10 COMMISSIONER ZUNIGA: Sure. If there
11 is no more discussion, I would move that the
12 Commission increase the threshold for incidental
13 purchases to \$10,000 in accordance with the
14 anticipated changes of 801 CMR, which are the
15 procurement regulations issued by administration
16 and finance and adopted by this Commission.

17 COMMISSIONER CAMERON: Second.

18 CHAIRMAN CROSBY: All in favor? Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER STEBBINS: Aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER CAMERON: Aye.

23 CHAIRMAN CROSBY: All opposed? The
24 ayes have it. All right. Item number five, key

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1 policy questions. I think we did our job this
2 morning. I don't know that there's anything else.
3 Does anybody have just some questions or feedback
4 about the way we did it or the process?

5 COMMISSIONER MCHUGH: I thought it
6 worked well.

7 CHAIRMAN CROSBY: So, tomorrow
8 morning we will have our sustainability and design
9 conference. And then we will be here, not here but
10 somewhere, right? Tomorrow will be here?

11 MS. REILLY: Room 1G.

12 CHAIRMAN CROSBY: Okay. We're in
13 this building but it's in 1G --

14 MS. REILLY: We're in this building,
15 room 1G tomorrow.

16 CHAIRMAN CROSBY: -- for the second
17 day's worth of key policy questions.

18 Region status C -- Region C status we
19 have dealt with. Racing Division update. We kind
20 of touched on the transition update. Is there
21 anything else between you all that you want to --

22 COMMISSIONER CAMERON: Director
23 Durenberger, have anything else to inform the
24 Commission about? I suspect she does.

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1 DR. DURENBERGER: Good afternoon,
2 Chairman and Commissioners. Director Durenberger,
3 Director of Racing. Yes, Director Glovsky did
4 steal a bit of my thunder regarding the transition
5 update.

6 I did just want to make the statement
7 on the record that in my absence, live racing did
8 conclude in the Commonwealth on November 29. So,
9 there is no live racing right now going on in the
10 Commonwealth.

11 I did participate telephonically in
12 the second working group meeting, if you will,
13 regarding regulatory reform on medication rule
14 changes. That was everybody else showed up at
15 Plainridge and I showed up as a little black tripod
16 on the conference table, and I would characterize
17 that as very successful. Some good discussion was
18 had and I'm going to be working on getting a report
19 together regarding our meetings thus far and where
20 we go from here.

21 We are in the process of interviewing
22 the former State Racing Commission staff and trying
23 to get them onboard in January. We're nearly done
24 with that process and then after that we'll be

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1 filling in some gaps. Not all employees chose to
2 move forward at the Gaming Commission. So, we do
3 have some holes that we'll have to fill. We have
4 some very nice resumes.

5 There will be some seasonal employment
6 that we'll have to start looking at because the next
7 racing season will come before we know it.

8 Staff is out at the lab today just
9 making sure that all of the loose ends that remain
10 at the lab can be tied up on the physical end. And
11 I've got some administrative things to take care of
12 tomorrow. But we should be okay there.

13 And the rest of it all had to do with
14 things that Director Glovsky reported on, just sort
15 of the challenges of merging one agency into a
16 successor agency and dealing with the transfer of
17 physical inventory and electronic inventory,
18 documents and things like that.

19 CHAIRMAN CROSBY: There's really
20 three different things. There's the transition
21 going on. There's the task force working on the
22 implementation of the reform recommendations. And
23 there is the local aid issue.

24 Was the meeting in Plainridge that was

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1 part of the task force, right, -- not the transition?

2 That was talking about the new medical standards?

3 DR. DURENBERGER: Regulatory changes,
4 yes.

5 CHAIRMAN CROSBY: That's part of the
6 task force? There's really four things, aren't
7 there?

8 DIRECTOR DURENBERGER: There are.

9 CHAIRMAN CROSBY: There's the
10 pari-mutuel simulcast review and there is task force
11 recommendations?

12 DR. DURENBERGER: Yes.

13 CHAIRMAN CROSBY: Questions? Bottom
14 line, notwithstanding having been out for a couple
15 of weeks, you feel like it's under control?

16 DR. DURENBERGER: Things are as under
17 control as they can ever be. But I thank the
18 Commission for their patience and for the directors
19 who stepped up in absence. For the public who is
20 wondering, I had adult chickenpox, and I'm here to
21 tell you that it's every bit as severe as they
22 promise it is. And I'm delighted to be back.

23 COMMISSIONER CAMERON: We're happy to
24 have you.

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1 COMMISSIONER MCHUGH: Happy to have
2 you back. It's not a pleasant experience.

3 CHAIRMAN CROSBY: Anything else?
4 Thank you. Okay. See you later. Break a leg, so
5 to speak.

6
7 (Commissioner Cameron exits meeting
8 room.)

9
10 CHAIRMAN CROSBY: Item number seven,
11 public information education information,
12 Ombudsmen Ziemba?

13 MR. ZIEMBA: Thank you, Mr. Chairman.
14 Over the last week, I've been focusing on getting
15 additional input on a number of the policy
16 questions.

17 CHAIRMAN CROSBY: Excuse me, John.
18 Just one thing I forgot to mention. It's on the
19 agenda if anybody has it. There is the local aid
20 payments under the Racing Division report. We've
21 decided we're not really ready to deal with that
22 issue. It's a pretty complicated issue. So, we'll
23 come back to that on another agenda when we've gotten
24 together. Sorry, go ahead.

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1 MR. ZIEMBA: In addition to the policy
2 questions, there was a lot of focus on the local aid
3 question as you just mentioned, a lot of
4 conversations with the Legislature about the intent
5 of that provision.

6 We've had further conversations and
7 discussions with potential host and surrounding
8 communities, similar to what I've reported in the
9 past there have been questions regarding the
10 definition, what resources are available and what
11 guidance the Commission should be providing to both
12 host and surrounding communities. A lot of this is
13 going to be addressed tomorrow in the policy
14 questions. So, I will defer until that time.

15 In regard to meetings, I'll note two
16 meetings. There is a community meeting in Everett
17 this evening. We have been asked to attend. I'll
18 be attending on behalf of the Commission to explain
19 the timing and the process that the Commission will
20 take on over the next number of months.

21 And then Springfield has a community
22 meeting tonight where they've asked applicants to
23 present their applications. And it's an
24 opportunity to receive comments from the public as

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1 well.

2 CHAIRMAN CROSBY: Excuse me. The
3 Everett presentation, the Everett participation
4 you're going to -- have chosen to do it in a certain
5 way, right?

6 MR. ZIEMBA: Yes. So, we've had
7 conversations with the City. So, I will be very
8 early in the process prior to any explanation of the
9 application by the potential applicant.

10 CHAIRMAN CROSBY: You'll do your part,
11 your presentation, your Q&A and then depart, so you
12 won't be a part of the --

13 MR. ZIEMBA: That's my intention, yes.
14 That's what I have to report today.

15 COMMISSIONER MCHUGH: That's good.
16 Thank you.

17 CHAIRMAN CROSBY: Thank you. Just
18 about done. I think tomorrow morning we have our
19 design. I've heard a lot about this from people
20 I've run across, people from BSA and AIA. And
21 everybody is excited about doing it. I'm looking
22 forward to this. Anything else to add? It starts
23 at 8:00, right?

24 COMMISSIONER STEBBINS: Registration

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1 starts at 8:00. I think the program kicks off at
2 8:15 with opening remarks by our host. Ultimately,
3 as you are probably all well aware, as a result of
4 this forum, they plan on presenting us with a white
5 paper, I guess, with findings and suggestions and
6 recommendations, which are probably timely to the
7 policy questions that we're looking at with respect
8 to RFA-2. It looks like a good program, good
9 agenda.

10 CHAIRMAN CROSBY: Great. It's going
11 to be at the Boston Society of Architects, which is
12 290 Congress Street, right next to the Fort Point
13 Channel. Then we'll come back here for our 1:00 key
14 policy questions meeting. Anything else anybody?
15 Motion to adjourn.

16 COMMISSIONER MCHUGH: So moved.

17 CHAIRMAN CROSBY: All in favor?

18 COMMISSIONER STEBBINS: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER MCHUGH: Aye.

21 CHAIRMAN CROSBY: All right. Thank
22 you.

23

24 (Meeting adjourned at 2:02 p.m.)

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1 ATTACHMENTS:

- 2 1. Agenda
- 3 2. Massachusetts Gaming Commission November
4 27, 2012 meeting minutes
- 5 3. Massachusetts Gaming Commission Section 4
6 of Employee Handbook
- 7 4. Massachusetts Gaming Commission Section 5
8 of Employee Handbook
- 9 5. December 5, 2012 Memorandum Regarding
10 Recommendation to Increase the Threshold
11 for Approval of Certain Incidental Expenses
- 12 6. December 7, 2012 Memorandum Regarding
13 Region C Options

14
15 SPEAKERS:

16 Guy Michael, Michael & Carroll

17 Robert Carroll, Michael & Carroll

18 David Murray, Consultant Racing Division

19

20 Dr. Durenberger, Director of Racing

21 Eileen Glovsky, Director of Administration

22 John Ziemba, Ombudsman

23

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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 12th day of December, 2012.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018