

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #100

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

December 19, 2013, 9:30 a.m.

BOSTON EXHIBITION AND CONVENTION CENTER

415 Summer Street, Room 151

Boston, Massachusetts

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

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3 CHAIRMAN CROSBY: I am pleased to
4 call to order what I think will be our last
5 meeting in 2013. That would be the 100th
6 meeting of the Massachusetts Gaming Commission,
7 hard to believe, on December 19, 9:30 at the
8 Boston Convention Center. The first item on
9 the agenda is approval of minutes, Commissioner
10 McHugh.

11 COMMISSIONER MCHUGH: We have, Mr.
12 Chairman two sets of minutes. The first is in
13 tab 2a, it's the minutes of December 3, 2013.
14 And they're in the book. I move their adoption
15 as printed in the book with leave to make
16 technical and typographical corrections.

17 CHAIRMAN CROSBY: Second?

18 COMMISSIONER CAMERON: Second.

19 CHAIRMAN CROSBY: Any discussions on
20 the minutes? They seem fine to me. All in
21 favor of adoption, aye.

22 COMMISSIONER MCHUGH: Aye.

23 COMMISSIONER CAMERON: Aye.

24 COMMISSIONER ZUNIGA: Aye.

1 COMMISSIONER STEBBINS: Aye.

2 CHAIRMAN CROSBY: Opposed? The ayes
3 have it unanimously.

4 COMMISSIONER MCHUGH: The second set
5 of minutes is in tab 2b. I'd make the same
6 motion, i.e. that we adopt them as printed
7 subject to correction of technical and
8 typographical matters.

9 COMMISSIONER STEBBINS: Second.

10 CHAIRMAN CROSBY: Any further
11 discussion? All in favor, aye.

12 COMMISSIONER MCHUGH: Aye.

13 COMMISSIONER CAMERON: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER STEBBINS: Aye.

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

18 COMMISSIONER MCHUGH: The agenda
19 calls for us to deal with a third set of
20 minutes. And those are for the December 13
21 meeting. Those are not ready. We want to,
22 before preparing those, check the transcript to
23 make sure that we have recorded motions
24 accurately. So, we'll have those --

1 CHAIRMAN CROSBY: Which meeting was
2 that?

3 COMMISSIONER MCHUGH: The December
4 13 meeting was a meeting where we discussed a
5 number of important matters.

6 CHAIRMAN CROSBY: As always.

7 COMMISSIONER CAMERON: I recall
8 those important matters.

9 COMMISSIONER MCHUGH: But I must
10 confess at the moment I can't recall which they
11 were.

12 CHAIRMAN CROSBY: But they were
13 really important.

14 MS. BLUE: It was our meeting -- it
15 was in between our suitability hearing. The
16 meeting where we came out of suitability on
17 Monday and then talked about arbitration
18 matters and then went back.

19 COMMISSIONER MCHUGH: Right.

20 CHAIRMAN CROSBY: Okay.

21 COMMISSIONER MCHUGH: And the
22 December 16 minutes are in tab 2d, but they're
23 not on the agenda. So, I think we'll wait for
24 approval of those until our January 9 meeting.

1 CHAIRMAN CROSBY: Okay, great. Then
2 we'll move onto the Racing Division starting
3 with Director Durenberger.

4 DR. DURENBERGER: Good morning, Mr.
5 Chair, Commissioners.

6 CHAIRMAN CROSBY: Good morning.

7 COMMISSIONER CAMERON: Good morning.

8 COMMISSIONER MCHUGH: Good morning.

9 DR. DURENBERGER: I can't let too
10 much time go by without keeping racing in front
11 of you. So, I just wanted to give you a brief
12 update this morning on some industry matters,
13 things that are happening out there in the rest
14 of the country. Then we're going to talk about
15 some changes that were approved by the
16 Commission back in October, and their timeline
17 for the rulemaking process.

18 So, I've just recently returned from
19 a series of meetings, three of them in fact.
20 There was the Association of Regulatory
21 Veterinary Conference, the Association of
22 Racing Commissioners International Winter
23 Conference, and that was held in conjunction
24 with the Global Symposium on Racing. The RCI

1 Model Committee met for two days to discuss a
2 number of new rules and amendments to existing
3 rules. Of particular note that I'd like to put
4 before you is the contemplation of another
5 schedule of drugs or substances that we would
6 regulate by threshold. That's titled
7 Endogenous Dietary and Environmental
8 Substances.

9 You'll recall that last year the
10 industry made a paradigm shift where we
11 distinguished between prohibited substances
12 which have no business being in a horse at all
13 on race day. And controlled therapeutic
14 medications which we recognize are therapeutic
15 value to the horse, but want to regulate them
16 at a level such that they don't have any effect
17 on performance.

18 That was a really important paradigm
19 shift for the industry to make. And this new
20 schedule, proposed schedule introduces this
21 third category. And it's adopted at the
22 request of the horsemen. It's really a due
23 process issue.

24 Horses live in an environment that

1 is contaminated, if you will, by that which
2 grows in the field; that which is in the
3 processing machinery of the feed mill; that
4 which is on the hands of the people that take
5 care of their daily needs. And so from the
6 horsemen's perspective, if you are the absolute
7 insurer of the horse's condition, and that's a
8 subtle case -- that's a subtle question in our
9 industry, then it would be good if there were
10 threshold levels for those substances that are
11 essentially an occupational hazard of being a
12 horse, if that makes sense to you.

13 The trick is twofold for these
14 things. One is that the threshold that we
15 adopt has to be supported by science. We've
16 talked in the past about how these medication
17 rules originate. They're deep in subcommittee.
18 People who have an awful lot of letters after
19 their last name, they bring forth the
20 recommendations. And so that process has
21 started.

22 The second part, of course, though
23 is that we need to find out whether or not
24 there's a level beyond which there is an effect

1 on performance.

2 So, the National Horseman's
3 Benevolent and Protective Association, which is
4 the national group. Our thoroughbred horsemen
5 belong to the New England Chapter. They've
6 submitted a list I think of 23 substances that
7 they'd like to see on that schedule. Right now
8 we have the science to support eight.

9 So, the take-home message is that
10 we're still going to be hearing more about
11 that. The reason is that this becomes a
12 resource issue. So, do we devote the bulk of
13 our available funds on administration studies
14 on the science part? These substances
15 typically result only in a handful of fairly
16 benign violations every year.

17 Or do we devote our limited
18 resources to pursuing sort of more malevolent,
19 what's the word I'm looking for, really bad
20 stuff? It's a resource issue. If you're the
21 guy though that gets popped for caffeine
22 overage, for example, then it's a matter of
23 huge import to you. And that's the kind of
24 substance we're talking about. There's

1 caffeine in the environment and it can show up
2 in the horses. Obviously, if you've got a lot
3 of caffeine in you, as I do this morning, you
4 take off at an extreme rate of speed. So,
5 that's the issue there. We're going to be
6 hearing more about it.

7 The RCI Board of Directors meeting,
8 I wanted to let you know that we heard from the
9 president of United States Trotting
10 Association, Mr. Phil Langley.

11 CHAIRMAN CROSBY: The United States
12 what?

13 DR. DURENBERGER: The United States
14 Trotting Association. This is the group that
15 recently withdrew its support for the uniform
16 medication initiative and its seat as well on
17 the Racing Medication and Testing Consortium
18 Board. This is the organization, of course,
19 that comes up with these threshold
20 recommendations.

21 I would characterize the discussion
22 as being respectful on both sides. Mr. Langley
23 and the USTA continue to assert the position
24 that the adopted thresholds on a couple of the

1 medications will preclude their therapeutic in
2 standardbred racehorses because of the business
3 model. We heard that discussion at our horse
4 racing forum in October.

5 The RCI position continues to be
6 that it should be the effect on the horse and
7 not the business model that drives our
8 threshold decisions. So, uniformity of course
9 being of the utmost importance to the racing
10 industry at this time, basically what we've
11 done -- Mr. Alex Waldrup, who you remember
12 spoke to you at the horse racing forum.

13 He spoke -- He chairs the RMTC. And
14 he invited the USTA to continue the dialogue.
15 And that invitation was positively received.
16 So, I think that we haven't closed any doors.
17 We're trying to keep everybody in the fold
18 within the industry as we move forward on the
19 uniformity issue.

20 Just briefly, at the Regulatory
21 Veterinary Conference, we heard about some
22 really exciting industry initiatives that we
23 could potentially be a part of next year. And
24 I hope we can be. Our industry as a whole is

1 getting a lot better about funding and coming
2 up with some partnerships, local veterinary
3 schools, research centers. And we hope that we
4 can continue that trend here in Massachusetts
5 in the coming years.

6 We are becoming a very data-driven
7 sport, and that's a good thing. We've also
8 been invited by the Racing Officials
9 Accreditation Program to be part of a beta
10 testing program involving an enhanced
11 administrative rulings database. We're likely
12 to make the recommendation --

13 CHAIRMAN CROSBY: Administrative
14 what database?

15 DR. DURENBERGER: Administrative
16 rulings. And we're likely to recommend being
17 involved in that because this is going to be
18 basically recommending best practices for these
19 administrative rulings. And we're all about
20 best practices in the Racing Division. And I
21 know that's important to this Commission as
22 well.

23 So, as that unfolds, we'll put some
24 kind of proposal in front of you that's

1 probably a late spring initiative. What else
2 can I tell you? The Global Symposium on Racing
3 was information. We got lots of business done
4 there before and after the meetings. Lots of
5 folks there from jurisdictions all over the
6 country in North America.

7 CHAIRMAN CROSBY: Lots of business
8 done like what?

9 DR. DURENBERGER: Like discussing
10 reform on pari-mutuel in particular.

11 CHAIRMAN CROSBY: Industry business,
12 not our Racing Division business particularly.

13 DR. DURENBERGER: No, just in
14 particular, innovative ideas and ways to make
15 the product better. I think that was really
16 the focus this year was how do we improve the
17 product. Because when you improve the product,
18 you bring more money in. And that's
19 everybody's goal.

20 One of the most important things
21 probably to happen in racing all year happened
22 during that meeting. There is now a
23 thoroughbred after-care alliance. The
24 thoroughbred after-care alliance formed in

1 2012. And they recently named a group of 23
2 after-care retirement organizations that went
3 through a rigorous accreditation process. They
4 also receive grant money. And this was a
5 really big deal.

6 The reason for that is it completes
7 what I call the horseracing industry, the
8 winning trifecta. And the winning trifecta is
9 the safety initiatives. A lot of those began
10 in 2008 and 2009. Sensible regulation and
11 uniformity and that's where we come in. And
12 this commitment to after-care now. So, that
13 when the race is over, the horses have
14 somewhere to go. We're in great shape in all
15 three in Massachusetts and we hope to continue
16 that trend.

17 Finally, some really good news for
18 the Commission, Massachusetts General Laws
19 Chapter 128A section 5(h) provides for a
20 \$20,000 fund to assist folks employed in the
21 thoroughbred industry in Massachusetts who are
22 experiencing unexpected economic hardship. And
23 it was my pleasure to be able to approve four
24 of those requests this week just in time for

1 the holidays.

2 Typically, these requests involve
3 unexpected medical leave due to accident or
4 unforeseen illness. They often come from
5 people that either don't qualify for FMLA or
6 have exhausted their leave. So, it's my hope
7 that these awards this week will help alleviate
8 some of the difficulties that these folks are
9 facing.

10 CHAIRMAN CROSBY: How much were the
11 awards?

12 DR. DURENBERGER: The individual
13 awards depend on the documentation that the
14 folks provide. It's a \$20,000 fund though.
15 And we do use that up every year. I just
16 wanted to remind you that racing really does
17 take care of its own. And this is one way to
18 do that.

19 CHAIRMAN CROSBY: Great.

20 COMMISSIONER MCHUGH: Great.

21 COMMISSIONER ZUNIGA: I have a
22 question just on the uniformity discussion or
23 topic. Do you see that eventually the industry
24 will move toward two different set of standards

1 or thresholds, one for standardbred and one for
2 thoroughbred?

3 It just seems that they come from
4 different -- there's merit for each of the
5 associations that have the different breed.
6 But there seems to be this impasse, if that's
7 the right word.

8 DR. DURENBERGER: I don't know that
9 it's reached an impasse yet. And the reason
10 for that is the commissions in North America,
11 the majority of those that have signed on to
12 the uninformed initiative have passed the same
13 rules in both breeds.

14 Three are three or four -- Just so
15 you guys know, an update, we've recently had
16 some new jurisdictions sign on. You'll recall
17 that we were part of an original gang of eight.
18 It was a mid-Atlantic and New England
19 consortium. The eight now has grown to 11.
20 And we've included now some major horse racing
21 jurisdictions, California and just last week
22 Kentucky, which passed the same rules for both
23 sets of breeds. There are still three that are
24 contemplating doing both, New York,

1 Pennsylvania and Ohio.

2 I think that the business model
3 versus the science model is a good one. It's a
4 good distinction to make. It's a philosophical
5 decision as well. In other words, what are we
6 trying to do? Are we trying to regulate the
7 medications that are in the horse and the
8 effect that it has on the horse long-term, for
9 example?

10 Or are we trying to change the way
11 that we treat the horse to fit a business
12 model? Some of the things that were discussed
13 at the RCI Board of Directors meeting were some
14 little tweaks maybe that could be made to the
15 business model, and then that would solve that
16 problem. So, those are something that the
17 industry is looking at. So, I wouldn't
18 characterize it as an impasse.

19 The other piece of it is that
20 Massachusetts is a really good example where
21 the thoroughbred business model isn't that
22 different from the standardbred model. A lot
23 of the horses that raced at Suffolk raced every
24 week. So, you could also approach that

1 question from do you make the distinction
2 between the breeds or how they race?

3 You can imagine very quickly that
4 you would have two sets of standards for the
5 same breed. This thoroughbred races every five
6 days, therefore, he should be subject to this
7 category of rules. And this thoroughbred races
8 every week. So, he should be subject to this
9 category of rules.

10 That's kind of the standardbred
11 argument. They race every week. It's a
12 different business model. Well, a lot of our
13 thoroughbreds race every week. Maybe not all
14 year, but they do race a lot more frequently in
15 some jurisdictions than others.

16 CHAIRMAN CROSBY: Do the
17 standardbreds only race every week? I thought
18 they raced more frequently even within a week.

19 DR. DURENBERGER: They could.
20 Typically, that doesn't last all year long, but
21 you can get clusters of races. Again, part of
22 that is driven by the shortage of horses. So,
23 you may see a horse running on a Thursday and
24 again on a Sunday that becomes of concern to

1 the industry. But that's part of the pressure
2 to keep the horses in the entry box, keep the
3 fields full, keep the races going, keep the
4 number of race days up.

5 CHAIRMAN CROSBY: I was going to
6 pursue the same angle, the same topic. Is your
7 personal belief, your personal belief that
8 there should be a single standard? That there
9 are not ultimately defensible reasons for
10 having two sets, even splits, even minimal
11 places where there are splits in standards?

12 DR. DURENBERGER: I strongly believe
13 in a uniform threshold proposal based on the
14 science. I will say that there are minor
15 differences. Quarter horses and standardbreds
16 sometimes run, they have what they call trials
17 or futurities that qualify you to get into a
18 stakes race. And the timing of that sometimes
19 is such that that trial race or that futurity
20 comes six or seven days before the big race
21 that you're qualifying to get into.

22 So, one of the things talked about
23 at the RCI Board of Directors meeting and one
24 of the things that a racetrack that I worked at

1 in Louisiana did was they just backed up that
2 race, that qualifying race. They backed that
3 up one day to help accommodate that.

4 So, I think there are some minor
5 tweaks that can be made to reflect the reality
6 of the business model, but I don't think you
7 make your decisions on medicating the horse
8 based on the business model.

9 CHAIRMAN CROSBY: As a veterinarian,
10 is there a difference that's significant
11 between what the body of the horse goes through
12 in a standardbred race as opposed to a
13 thoroughbred race? Looking at it, you get a
14 sense that one is sort of a very controlled, a
15 limited set of muscles, different set of
16 muscles. And in a constraint that in a way
17 actually holds back maximum exertion.

18 Whereas in a thoroughbred race, it
19 looks like it's all about absolute maximum
20 exertion. Is that a significant matter?

21 DR. DURENBERGER: We can debate the
22 significance of the matter. There's no
23 physiological difference between the breeds.
24 We hear that term being used in this industry

1 discussion right now that they're
2 physiologically different. But the use is
3 different.

4 And we do know based on science and
5 as a veterinarian that the way, for example,
6 that you stress bone, bone responds to the
7 stresses that are put on it. And its Wolff's
8 law, it's a very basic tenet of science is that
9 if the bone is subject to a lot of compression
10 in one angle then it redistribute the different
11 cells and it makes it stronger to withstand
12 that.

13 So, there are differences in use.
14 But overall I don't think that the
15 recommendations that are being put forth by the
16 scientists are in conflict with that at all.

17 CHAIRMAN CROSBY: Could you take a
18 thoroughbred colt and train it to be a
19 standardbred colt?

20 DR. DURENBERGER: Yes. So, for
21 example, one of the things that's happening in
22 standardbred racing right now, to turn that on
23 its head, is they are having pari-mutuel races
24 with standardbreds under saddle.

1 COMMISSIONER ZUNIGA: Under saddle?

2 DR. DURENBERGER: Yes. So, they're
3 being ridden often by celebrity jockeys to
4 bring folks in.

5 CHAIRMAN CROSBY: Like Danielle.

6 DR. DURENBERGER: Like Danielle.
7 You've just been volunteered to participate.
8 There are some gait differences. So, for
9 example the pace, which is one of the gaits
10 that the standardbred horse has, is not a
11 natural gait to the thoroughbred. It's also
12 not necessarily a natural gait to all
13 standardbreds. Some are trotters. So, can you
14 train them to be used differently, yes.

15 CHAIRMAN CROSBY: Interesting. I
16 think we need some more 15 minutes of racing.

17 DR. DURENBERGER: I know. This is
18 wonderful to have the time to talk to you this
19 morning.

20 CHAIRMAN CROSBY: Anybody else?
21 Questions on the update? Great. That sounds
22 really --

23 COMMISSIONER MCHUGH: Fascinating
24 stuff.

1 DR. DURENBERGER: We should do this
2 more often.

3 CHAIRMAN CROSBY: It's totally
4 appropriate. There has been a fair amount of
5 things going on, but it's not always going to
6 be like this. And having substantive updates
7 like this is really constructive and helpful.
8 So, we should make sure this gets on the agenda
9 once in a while just for our interest sake if
10 nothing else. Thanks.

11 DR. DURENBERGER: The next item is
12 our amended medication and penalty regulations.
13 You'll recall that the Racing Division faces a
14 unique rule-making requirement in that our
15 regulations have to go up to the Legislature
16 for review before they become effective.

17 We have amendments and enhancements
18 to 205 CMR 3.29 and 4.52. This is medications
19 and penalties. They were approved at a public
20 meeting by this Commission on October 17 and
21 have been duly filed. And I'll have Attorney
22 Danielle Holmes describe to you where we are in
23 that timeline and discuss the small business
24 impact statement that will need to be filed

1 soon.

2 CHAIRMAN CROSBY: Before you start,
3 I was just thinking it might be possible that
4 we could influence one of our major
5 metropolitan newspapers, if any of them happen
6 to be represented here today to do some kind of
7 a feature on the horse racing industry, because
8 there are all of these interesting factors
9 involved and decision points being made. And
10 people other than we would be interested in
11 knowing this story. If anybody happens to be
12 in the room who happens to know an editor.
13 Yes, Ma'am.

14 MS. HOLMES: Good morning, the
15 Racing Division has put before you their
16 amended small business impact statement and the
17 final version of the regulation changes to 205
18 CMR 3.29 and 4.52. We are just looking for
19 your approval to file them with the Secretary
20 of State.

21 COMMISSIONER MCHUGH: The
22 regulations are the ones that are unchanged
23 from the version that was sent to the
24 Legislature?

1 MS. HOLMES: Yes. The 60 days at
2 the Legislature is up tomorrow. So, we would
3 be getting your approval to file them
4 contingent upon receiving no adverse comments
5 from the Legislature by tomorrow. We have not
6 received anything from them yet.

7 CHAIRMAN CROSBY: Has there been any
8 direct communication? You've talked with some
9 of them at the Legislature?

10 DR. DURENBERGER: Not on this set of
11 rule changes.

12 MS. HOLMES: I've gotten just minor
13 emails from them asking for PDF forms and
14 stuff.

15 CHAIRMAN CROSBY: From the
16 Legislature?

17 MS. HOLMES: From the Legislature to
18 have them in electronic form. So, they have
19 them and they've received them.

20 CHAIRMAN CROSBY: Great. Great.

21 COMMISSIONER MCHUGH: If tomorrow we
22 got something, what would it take tomorrow to
23 stop this process? Would it take a formal vote
24 or an expression of anxiety by some committee

1 chair or representative? What would stop this?

2 MS. BLUE: There is an action that
3 the Legislature takes. I would have to check
4 and see, but they would tell us that they
5 disapprove them. And so we would have to --

6 COMMISSIONER MCHUGH: So, it would
7 be a formal kind of thing not just a phone call
8 from somebody?

9 MS. BLUE: Yes. And then we would
10 come back before the Commission again and
11 revise them.

12 COMMISSIONER MCHUGH: Interesting
13 process, unique I guess.

14 COMMISSIONER ZUNIGA: Unique, yes.

15 CHAIRMAN CROSBY: I was just
16 wondering whether maybe nine nannograms per
17 milliliter of ketoprofen wouldn't be better
18 than 10.

19 DR. DURENBERGER: And this is why
20 these rules start deep, deep, deep in
21 subcommittee. To pick up on that if I can, and
22 I don't know how many folks in the industry are
23 watching this, but when we get to these debates
24 after it started in subcommittee and these

1 folks who actually do this stuff for a living,
2 make these recommendations.

3 And then it goes through and it gets
4 approved by one committee. Goes to the next
5 committee, gets approved by the board comes to
6 the model rules -- actually comes into RCA
7 through the Drug Testing and Standards
8 Practices Committee. Then goes to Model Rules
9 Committee. Then goes to the Board of
10 Directors. So, if at that point someone raises
11 their hand and says, woe. It makes you think
12 really? We've been doing this for two years
13 looking at these numbers.

14 CHAIRMAN CROSBY: Right. Well, it's
15 a pretty impressive process actually. That you
16 can get this many data points through that much
17 of a process through that many people and
18 opinions. I'm sure it's agonizing but it's
19 pretty impressive once it gets through it.

20 DR. DURENBERGER: Agonizing and ti
21 takes a lot of resources. So, anyone out there
22 who wants to donate to the RMTTC can keep
23 fighting the fight that's a good thing to do.

24 CHAIRMAN CROSBY: Great.

1 COMMISSIONER MCHUGH: So, we need a
2 vote here, right? We need a motion to file the
3 small business impact statement.

4 CHAIRMAN CROSBY: We're doing that
5 separately or the same?

6 MS. HOLMES: The amended small
7 business impact statement has to be filed
8 before the final version of the regulations are
9 filed and can be filed within the 60 days that
10 the regs. are at the Legislature. So, that
11 will get filed first. And then the final
12 version of the regulations will be filed at
13 least a day later.

14 COMMISSIONER MCHUGH: So, maybe we
15 ought to have two motions. The first being
16 authorize -- I move that we authorize the
17 filing of the small business impact statement
18 with the appropriate authorities forthwith.

19 CHAIRMAN CROSBY: Second?

20 COMMISSIONER STEBBINS: Second.

21 CHAIRMAN CROSBY: Any discussion?
22 All in favor, aye.

23 COMMISSIONER MCHUGH: Aye.

24 COMMISSIONER CAMERON: Aye.

1 COMMISSIONER ZUNIGA: Aye.

2 COMMISSIONER STEBBINS: Aye.

3 CHAIRMAN CROSBY: Opposed? The ayes
4 have it unanimously.

5 COMMISSIONER MCHUGH: And I would
6 move that we file with the Secretary of State
7 the new versions of 205 CMR 3.29 and 4.52 as
8 soon as the 60 days elapses and the day between
9 filing the small business impact statement and
10 the minimum time for filing occurs.

11 COMMISSIONER CAMERON: Second.

12 CHAIRMAN CROSBY: Did everybody get
13 that?

14 COMMISSIONER MCHUGH: I'm not sure I
15 do.

16 COMMISSIONER ZUNIGA: Maybe you need
17 some more caffeine.

18 CHAIRMAN CROSBY: Add the ability
19 for technical adjustments to that amendment.
20 All in favor, aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER STEBBINS: Aye.

1 CHAIRMAN CROSBY: All opposed? The
2 ayes have it unanimously.

3 DR. DURENBERGER: That concludes the
4 Racing Division's portion this morning.

5 COMMISSIONER MCHUGH: Thank you very
6 much.

7 DR. DURENBERGER: Happy holidays.

8 COMMISSIONER MCHUGH: Happy holidays.

9 CHAIRMAN CROSBY: Item number four
10 on the agenda is the legal division, General
11 Counsel Blue.

12 MS. BLUE: Good morning. I would
13 like to ask Mr. Ziemba and Mr. Grossman to join
14 me, since I'm sure they will want to weigh in
15 on the topics that we have in front of us.

16 The first matter before us this
17 morning is the waiver request filed by Mohegan
18 Sun and the city of Revere. This is the waiver
19 request that was filed in response to the
20 discussion at our December 10 Commission
21 meeting. The waiver was timely filed with the
22 Commission. As you recall, there was a seven-
23 day time limit. It was received by the
24 Commission within that time limit.

1 And the waiver request, the waiver
2 that we discussed which is the ability to file
3 the certification of the election after the
4 RFA-2 application.

5 CHAIRMAN CROSBY: Comments on the
6 waiver or anything else?

7 COMMISSIONER MCHUGH: I looked at,
8 as I'm sure we all did, I looked at the
9 request. And it certainly conforms to the
10 requirements we adopted in our vote. I guess
11 that's really all I have to say. So, I would
12 be in favor of allowing the request.

13 CHAIRMAN CROSBY: We got a letter
14 from the city opposing it --

15 COMMISSIONER ZUNIGA: The city of
16 Boston.

17 CHAIRMAN CROSBY: -- the city of
18 Boston, right, based in part on the fact that
19 they have not seen it. And I don't know that
20 that's necessarily a precondition. But I
21 wonder maybe if we could ask the
22 representatives from Mohegan Sun and Suffolk
23 Downs. Apparently, it's been requested. Is
24 there some reason why Boston hasn't seen or

1 been given the waiver?

2 MR. BAKER: We were unaware of the
3 request but we will submit it.

4 CHAIRMAN CROSBY: It says although
5 requested, the Commission has not provided --
6 Oh, I'm sorry. The Commission has not
7 provided, I take that back. I'd rather blame
8 you guys. I don't know about that. Did we get
9 a request from the city for some reason?

10 MS. BLUE: We did a request in the
11 last few days. And we thought it was
12 appropriate for the Commission to be able to
13 review it first before releasing it publicly.
14 It is in the Commission package. It is up on
15 our website now.

16 CHAIRMAN CROSBY: I don't know that
17 I would have agreed with that, but it's not
18 exactly a secret, but whatever.

19 Is there any other comment on the
20 waiver? Do you want to make a motion,
21 Commissioner?

22 COMMISSIONER MCHUGH: Yes. I move
23 that the Commission grant the request by
24 Mohegan Sun Massachusetts, LLC and the city of

1 Revere for a waiver of 205 CMR 119.017 to
2 permit the filing of a certified copy of the
3 results of the vote that they have committed to
4 hold after the deadline for submission of RFA-2
5 applications on December 31, 2013.

6 CHAIRMAN CROSBY: Second?

7 COMMISSIONER STEBBINS: Second.

8 CHAIRMAN CROSBY: This is such an
9 important issue to a lot of people, I just
10 think it should be noted. I kind of hate to
11 just let this slide through without comment.

12 We have wrestled hard with trying to
13 figure out how to reconcile the no vote in East
14 Boston with the yes vote in Revere. And there
15 is no perfect solution. There's nothing clear
16 in the law or the regs. that tells us exactly
17 what to do. We've been trying to figure out
18 what's the fairest way to go forward.

19 Commissioner McHugh came up with a
20 very, I think, creative and substantively
21 helpful approach that I think we all agree
22 with. I think we're to the fact that it's an
23 imperfect situation. There's no perfect
24 reconciliation here. But I can't think of a

1 better way to try to reconcile this issue.

2 And I appreciate Commissioner McHugh
3 coming up with it. I just want to note that we
4 are sensitive to the fact that there are
5 competing interests and competing passions on
6 this. And we are doing the best that we can to
7 figure out a fair and a reasonable way to
8 approach it.

9 Any other discussion? Then all in
10 favor of the motion as framed by Commissioner
11 McHugh signify by saying aye. Aye.

12 COMMISSIONER MCHUGH: Aye.

13 COMMISSIONER CAMERON: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER STEBBINS: Aye.

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

18 MS. BLUE: The next item on the
19 agenda is what we call the arbitration
20 handbook. We received a number of requests and
21 questions regarding the arbitration process.

22 So, we worked with outside counsel
23 to put together a guidebook to answer some of
24 those questions. We hope that this would be

1 helpful. We wanted the Commission to take a
2 look at it and to get your thoughts and
3 comments on it.

4 There were two questions that have
5 come up. The best and final question we
6 discussed at our last meeting. There was some
7 question about the ability of the arbitrator to
8 have flexibility in terms of conforming its
9 report or award up to 23K. And I think, John,
10 there was one other question that we got?

11 MR. ZIEMBA: There was a question
12 regarding the applicability of the Uniform
13 Arbitration Act.

14 MS. BLUE: That's right. And we did
15 discuss that with outside counsel who has done
16 the research for us, and advises us that the
17 Uniform Arbitration Act is not applicable to
18 this situation. This is arbitration by
19 statute. That act apply to arbitration by
20 written agreement or contract.

21 COMMISSIONER MCHUGH: Would you say
22 that again?

23 MS. BLUE: Our outside counsel --

24 COMMISSIONER MCHUGH: Not the

1 outside counsel part. This is arbitration by -

2 MS. BLUE: This is arbitration
3 required by statute as opposed to an agreement
4 or by contract.

5 COMMISSIONER MCHUGH: I see. Yes,
6 right. What the statute requires is that the
7 Commission create a mechanism for resolution of
8 impasses in the surrounding community agreement
9 process. And the Commission created this
10 arbitration process in fulfillment of that
11 statutory obligation.

12 MS. BLUE: That's correct.

13 COMMISSIONER MCHUGH: That's
14 basically the way we get the statutory driver
15 for the arbitration process.

16 MS. BLUE: Yes.

17 COMMISSIONER MCHUGH: Well, I agree
18 with that, I think it is not governed by the
19 statutory arbitration rules.

20 COMMISSIONER ZUNIGA: The 251,
21 right?

22 MS. BLUE: 251, that's correct.

23 COMMISSIONER MCHUGH: Right. I had
24 a couple of other questions unless there's

1 further discussion on that piece.

2 COMMISSIONER ZUNIGA: Yes, I agree.
3 If for some reason we thought that 251 applied
4 here, our timeline would be entirely different
5 and much, much longer.

6 That was in my estimation never the
7 intention when we looked at the timeline. We
8 knew and I suspect we contemplated that this
9 arbitration had to be short in nature so that
10 we could get to a resolution quickly. And that
11 the specter of that timeline would really weigh
12 in on hopefully incentivizing the parties to
13 reach a negotiated agreement prior to that
14 arbitration.

15 If 251 applied, we would be here
16 next year. Next year as in not this January,
17 but next December without a surrounding
18 community awards and that is just simply never
19 what we contemplated. And it's not in the
20 interest of our mission I would argue.

21 COMMISSIONER MCHUGH: And I would
22 add to that by saying I recognize the force of
23 some comments that this is a very short
24 process. I understand that. The 30 days if

1 viewed in isolation is a short period to do
2 this.

3 But number one, the Commission has
4 terms of power the discretion to create
5 regulations that implement the purposes of the
6 statute. And the purposes of the statute were
7 to create a mechanism that would allow filing
8 of timely applications to keep this process
9 from moving forward. So, I think the solution
10 we've come up with is well within our
11 discretionary powers.

12 Perhaps more important, this is a
13 process that actually has been going on for
14 some considerable period of time. This is not
15 30 days at the first think about the issue and
16 then come to a resolution. The applications,
17 Category 1 applications were filed -- the RFA-1
18 applications were filed on January 15 of this
19 year. That was the deadline.

20 And it's been no secret since
21 January 15 that these proposals were being
22 made. And then we looked at the formal RFA-2
23 proposals back in October. So, more detail was
24 fleshed out there. So, we're not starting from

1 scratch with the 30-day -- commencement of the
2 30-day window. And that's something that has
3 to be kept in mind in assessing the burden that
4 it's placing on people.

5 CHAIRMAN CROSBY: Does that in your
6 view, Commissioner, deal with the issue that
7 Mr. Talerman raised in point three? Mr.
8 Talerman says that there's a conflict between
9 laws --

10 COMMISSIONER MCHUGH: Well, if
11 Chapter 251 applies, and that's the issue that
12 we were just talking about -

13 CHAIRMAN CROSBY: -- which you're
14 now saying it does not.

15 COMMISSIONER MCHUGH: Does not, then
16 there would be a conflict between the 30-day
17 timeline and the provisions of Chapter 251.

18 CHAIRMAN CROSBY: So, we have
19 reconciled that.

20 COMMISSIONER MCHUGH: Yes.

21 CHAIRMAN CROSBY: What about the
22 item, question number one that he raises, which
23 is one we've talked about and one I raised.
24 Would somebody explain right now how you think

1 this stands?

2 What we said is you have to pick --
3 the arbitrator has to pick between the two best
4 and final offers but that the arbitrator may
5 make adjustments pursuant to 23K. What does
6 that mean today as a practical matter?

7 MS. BLUE: Well, I believe that what
8 that means is that the arbitrator can delete
9 provisions or terms that are included if they
10 conflict with 23K. I don't believe that that
11 gives the arbitrator a great deal of leeway to
12 make changes or add provisions to the
13 proposals, if in the arbitrator's judgment they
14 think somehow it is allowed under 23K. I view
15 it as more restrictive, I think, than some of
16 the questions I've gotten on that topic.

17 So, if you look at the arbitration
18 handbook, what we've suggested is that folks
19 give the arbitrator an agreement, a fully
20 formed contract is their best and final offer.
21 In that situation, I would believe that if
22 there was a term in that contract that violated
23 23K, the arbitrator could remove that term. If
24 they wanted to accept one of the offers, they

1 could remove that term from the offer, and then
2 they could make that as the award.

3 I don't believe the arbitrator has
4 the ability to go in and make large changes
5 because they think under 23K maybe it's not
6 reasonable enough or there's things that should
7 be added. I think it's much more limited to
8 making sure it doesn't conflict with 23K.

9 COMMISSIONER MCHUGH: I wonder about
10 that, Counsel. The statute says that the
11 Commission shall establish protocols and
12 procedures for ensuring the conclusion of a
13 negotiation of a fair and reasonable agreement.

14 What would happen if -- And this is
15 obviously a hypothetical. It's not going to
16 happen. But what would happen if there were a
17 situation in which the applicant in terms of a
18 community impact fee offered zero, and the
19 surrounding community wanted a billion dollars?

20 Certainly, neither one of those is
21 fair and reasonable. Let's assume zero is not,
22 because it is a surrounding community. So,
23 we've determined there's some kind of an
24 impact. Certainly, the arbitrator would not be

1 forced to pick one or the other of those,
2 right?

3 MS. BLUE: I think that's correct.
4 I think both of them probably violate 23K. So,
5 my sense is the arbitrator would have to go
6 back to the parties and request additional
7 input. Or they would review -- As we've talked
8 about, they can submit other surrounding
9 community agreements of that applicant or
10 another applicant. So, maybe the arbitrator
11 could use those as an indication of what was
12 reasonable for that situation.

13 COMMISSIONER MCHUGH: Yes. But the
14 principle that emerges from that is that the
15 arbitrator does have some ability to change
16 terms and make adjustments in order to ensure
17 that the result is fair and reasonable, but
18 that the arbitrator ought to exercise restraint
19 in doing that. I gather that's how --

20 MS. BLUE: I would agree with that.
21 I think in that situation, the arbitrator would
22 be best advised to go out and ask for another
23 submission as opposed to imposing their own
24 judgment on that. They would get potentially

1 another submission if it was that far apart.

2 COMMISSIONER MCHUGH: Okay. Let's
3 follow this all of the way through because
4 these people aren't going to go to arbitration.
5 The people that go to arbitration are likely to
6 be locked up.

7 And let's assume the arbitrator asks
8 for another submission and it turns out to be
9 \$100 and \$900 million and now the deadline is
10 approaching. It seems to me the arbitrator has
11 to have the ability to make changes that will
12 assure a fair and reasonable outcome in the
13 last analysis, even though they are not in
14 either side's offer.

15 But because this is the model that
16 we're using is the best and final offer
17 process, the arbitrator needs to exercise
18 restraint before diving in and imposing her own
19 view of what's fair and reasonable on the
20 parties. I don't see any other way to
21 reconcile it.

22 COMMISSIONER ZUNIGA: I think to
23 take examples to extreme situations is helpful
24 to kind of try to gauge incentives. I would

1 argue in the first case that you talk about,
2 the zero and a billion, the specter or the
3 probability however small that that could occur
4 should incentivize the parties to say if we
5 think it's a billion but we could end up with
6 zero, maybe we should rethink the billion.

7 And it works both ways the same way.
8 If we think that it is something more than
9 zero, we don't want to be in a position to be
10 having to fork over a billion because it kills
11 our proposal.

12 So, one could argue that just that
13 small probability however that is that the
14 arbitrator does not exercise or exercises a lot
15 of discretion on that basis, should get people
16 to reasonable in their mind proposal or offer.

17 But I take your point. It's not an
18 easy one because people come from different
19 angles, from different perspectives.
20 Surrounding communities could come from a place
21 of I don't want this in the first place, etc.

22 COMMISSIONER MCHUGH: I think I
23 fully agree with that. The whole best and
24 final thing is designed to incentivize people

1 to come put reasonable proposals on the table.
2 But this is really a question, the question I
3 was discussing and I think that's being raised
4 in this question is a question of power. What
5 does the arbitrator have the power to do if the
6 parties aren't incentivized to come to the
7 table with reasonable proposals? Can the
8 arbitrator produce something that is
9 reasonable?

10 COMMISSIONER ZUNIGA: And I think
11 there is tremendous precedent at that point. I
12 would argue, like it's been argued that similar
13 agreements with other surrounding communities
14 should be a factor. That prior offers whether
15 higher or lower to the best and final should be
16 taken into account, because that may also
17 coupled with the other surrounding communities
18 could gauge reasonability to the proposal.

19 I think it gets very dicey in the
20 sense of people tend to, for the right reasons,
21 focus on an impact fee. But there are so many
22 other things that factor in, assumptions about
23 the future that we don't know, for sure, what
24 those impacts are going to be, etc., etc. I

1 don't know where that leaves us.

2 CHAIRMAN CROSBY: We wrote this,
3 right? So, if we don't understand it, it's
4 pretty clear that they aren't going to
5 understand it. So, we either need to amend it
6 and say whatever it is -- I don't exactly know
7 for sure. I don't think we agree on exactly
8 what we mean.

9 It seems to me that if you give the
10 arbitrator the right to make this fair and
11 reasonable, then they have the right to make it
12 fair and reasonable by their judgment,. And if
13 that's what we want, fine. Then let's say
14 that's what we want. If that's not what we
15 want, then let's try to constrain it with
16 explicit language that defines what we do want.

17 MR. GROSSMAN: Mr. Chairman, if I
18 may add just a little texture to the
19 conversation. As you referenced, we do have
20 the benefit of having written this. And I can
21 offer my recollection as to the legislative
22 intent, if you will, to this provision.

23 Originally, when this whole process
24 was being put together, my recollection was

1 that it was designed so that it was essentially
2 all or nothing. It was best and final. Each
3 party came in with an offer.

4 CHAIRMAN CROSBY: This is the way we
5 designed it?

6 MR. GROSSMAN: Well, as it was being
7 designed internally and was finally approved by
8 the Commission, yes.

9 CHAIRMAN CROSBY: But you said
10 legislative intent, were you talking about the
11 Commission?

12 MR. GROSSMAN: Well, the Commission
13 intent, the regulatory intent. So, it wasn't
14 the Legislature. It was your intent.

15 It was a best and final. It was all
16 or nothing. The arbitrator had to pick one.
17 And we said, hold on a second. That's not
18 going to work 100 percent. So, that's why the
19 Commission added this sentence in here, which
20 said at least my recollection that the
21 arbitrator may make adjustments to the selected
22 best and final offer only if necessary to
23 ensure the report is consistent with Chapter
24 23K.

1 It was intended to be a very narrow,
2 I believe, authority that was going to be given
3 to the arbitrator to make adjustments. To the
4 extent that one of the proposals was clearly
5 fairer than the other, but there was some
6 provision in there that would be inconsistent
7 legally speaking with Chapter 23K.

8 For example, if it extinguished the
9 other side's right to do something it could
10 legally do to like access the community
11 mitigation fund or something like that, that
12 the arbitrator does have the flexibility to
13 accept the proposal but take that one clause
14 out.

15 My recollection, it was not intended
16 to give the arbitrator broad authority to
17 redraft or re-craft the provisions, whether the
18 monetary provisions or otherwise to ensure that
19 they accomplish the objectives of 23K. That I
20 think approach was set aside in an effort to do
21 what Commissioner Zuniga and others have
22 suggested which is to almost force the parties
23 to come together to some kind of agreement
24 short of arbitration.

1 But as you may recall, the
2 Commission added one additional provision into
3 the arbitration section in the event that a
4 best and final offer was selected that neither
5 of the parties felt was really fair. And that
6 was that after the arbitrator selected one of
7 the offers that the parties then had an
8 additional five days to look at the report
9 issued by the arbitrator and to sign a
10 surrounding community agreement.

11 So, they could go back to the
12 drawing board and rewrite the agreement in any
13 way they saw fit. So, if it was the difference
14 between zero and a billion, and the arbitrator
15 was forced to pick one, both sides could agree
16 that that's not fair, and let's go back to this
17 number. That provision was built in to allow
18 the parties to have the final say as to what
19 the terms of the agreement would be.

20 And in fact, if they were unable to
21 do that after the arbitrator picked one or the
22 other, that the parties would have to live with
23 one best or final offer or the other.

24 And I bring that up now just to

1 bring you back to this is many months ago when
2 this provision was drafted. That's my
3 recollection of where this came from, but that
4 it was not to afford great latitude to the
5 arbitrator to essentially come up with a fair
6 agreement.

7 COMMISSIONER MCHUGH: So, the bottom
8 line of that is that this process is not a
9 process designed necessarily to produce a fair
10 and reasonable agreement? It does not have to
11 produce a fair reasonable agreement.

12 CHAIRMAN CROSBY: It doesn't have to
13 produce what is in the mind of the arbitrator a
14 fair and reasonable agreement.

15 COMMISSIONER ZUNIGA: Insofar as you
16 believe that neither of the parties came with a
17 fair and reasonable proposal.

18 COMMISSIONER MCHUGH: It could wind
19 up producing a surrounding community agreement
20 that was not fair and reasonable. Take the
21 zero, billion that could be the result of it.
22 I raise that because that was not my
23 understanding of this when we started out. And
24 I may have been a minority and I may have

1 failed to articulate my concerns, but I
2 certainly didn't read it that way. I thought
3 that the fair reasonable requirements of the
4 statute were an overlay to this entire best and
5 reasonable process.

6 CHAIRMAN CROSBY: And my memory of
7 it, I remember that we talked about the
8 baseball model. And we adopted largely, I
9 think, the baseball model which is designed to
10 force a settlement, force an agreement. I
11 wasn't particularly comfortable with it at the
12 time. Then I remember there was lots of stuff
13 going on. But that was my memory. I think
14 Commissioner Zuniga was really an advocate of
15 that position.

16 But be that as it may, it would be
17 good if we could agree on what it was we were
18 intending to do, but in any event, we wrote it
19 in such a way that reasonable people can differ
20 on its intent. And I think we have to figure
21 out what it is we are giving -- what
22 instructions we are indeed giving our
23 arbitrators, and the two parties that are out
24 there trying to negotiate not knowing for sure

1 what the rules of arbitration are.

2 So, I think we need to have an
3 emergency amendment to the reg. or at least
4 something that will provide binding direction
5 to the arbitrator that resolves this issue one
6 way or the other, whatever mechanism we use to
7 do that.

8 COMMISSIONER CAMERON: We made this
9 decision. There are questions because maybe
10 it's hard to write it in a way that clearly
11 articulates. But are you suggesting that now
12 we go back and change and go to a new standard
13 which --

14 CHAIRMAN CROSBY: No. I'm just
15 saying we should clarify whatever it is we were
16 trying to say. Even amongst ourselves at the
17 moment, we are not agreeing on what it was we
18 were trying to say. And we know that the
19 parties don't know for sure what we were trying
20 to say.

21 COMMISSIONER ZUNIGA: I do think
22 that what we've written, as you've explained
23 it, which is pick one or the other with minor
24 adjustments. First of all, the conflict with

1 Chapter 23K is an easy one. If there's really
2 a provision there that doesn't belong, but they
3 thought they could throw it in there to come to
4 a resolution is very important.

5 But if the arbitrator has a little
6 bit of leeway in that context and with the
7 additional five days to come to an adjustment
8 between the parties would be in my opinion or
9 at least in theory very useful. It would
10 accomplish our need to resolve this quickly,
11 but also incentivize the parties to really come
12 with their best proposals, something that can
13 be deemed reasonable.

14 COMMISSIONER CAMERON: I would hope
15 it would be very unlikely that someone would
16 come in with an extremely unreasonable offer at
17 this point. They've been at this for some time
18 now. I would hope that that would be the case.

19 And in fact, that would be something
20 we'd be looking at when we have decisions to
21 make here. And we think somebody is really
22 being unreasonable, especially on the side of
23 the applicant, I think that that would not be a
24 wise move when we are evaluating all of their

1 abilities to work effectively with communities.
2 We're looking at that in the mitigation piece
3 of this.

4 So, I would think that would be
5 unlikely. And I don't know that it's all that
6 helpful to talk about extremes right now at
7 this late date. If we need some more
8 clarification that would be fine.

9 CHAIRMAN CROSBY: Just for the
10 record, the extremes, I don't think we're
11 necessarily expecting that people are going to
12 come in zero and a billion. I think
13 Commissioner McHugh was just -- we're trying to
14 establish the principle. Does the arbitrator
15 have the right to interpose his or her judgment
16 on what's fair and reasonable under 23K?

17 And he was just using an extreme
18 case to suggest, yes, there is some room. So,
19 if there's room on the extreme case, then you
20 back down to the more -- How do you come up
21 with a principle? That's the point here. What
22 the arbitrator can do, how much discretion does
23 the arbitrator have?

24 COMMISSIONER CAMERON: My

1 recollection is certainly the way Todd
2 explained it, very narrow. If there's a piece
3 of it that does not conform, we're not looking
4 at a judgment at that point; we're looking at a
5 legal basis.

6 And I do remember having those
7 conversations. And the reason for that was to
8 have them be able to do this ahead of time and
9 really force someone to enter into a good-faith
10 negotiation of sort.

11 COMMISSIONER ZUNIGA: I keep
12 thinking of there's many factors into these.
13 There's an over focus, in my opinion, on an
14 impact fee, zero and a billion in this extreme
15 example. But we have already seen in some of
16 these agreements a one-year we'll come back and
17 revisit this. We'll agree that we will
18 mitigate the measurable impacts a year from now
19 and pay for all of that. That carries a
20 present value of zero, but a future value that
21 a community may live with.

22 And when you add those kinds of
23 provisions with anything else that they can
24 come up with, compare them with surrounding

1 community agreements that have executed
2 surrounding community agreements, thankfully,
3 and look at however many offers have been made
4 or rejected in the past, I would like to think
5 that an arbitrator would with all of the
6 context, come up with one or another as to what
7 is fair and reasonable with the ability of
8 minor suggestions.

9 COMMISSIONER MCHUGH: We keep
10 talking about desirable outcomes. And nobody
11 can disagree with any of these desirable
12 outcomes. But the real question is power.

13 Assuming that we've got a bad
14 situation and we may in some cases, what power
15 does the arbitrator have? And I would not be
16 in favor of an emergency correction to this
17 regulation now. I think this is certainly is
18 being interpreted in a way that is different
19 from the way I understood it.

20 I would like to reopen the bidding
21 on this for the next set of licenses and go
22 through this and think about it again. But for
23 present purposes --

24 CHAIRMAN CROSBY: For the slot

1 licenses?

2 COMMISSIONER MCHUGH: No, for the
3 casino licenses.

4 CHAIRMAN CROSBY: Reopen the casino.

5 COMMISSIONER MCHUGH: Leave this in
6 place now. I think it's too disruptive to the
7 process given where it is now to try and create
8 an emergency change to it. People have got
9 expectations that are reasonably settled. And
10 they've been working on them for a while.

11 But I would like to reopen for the
12 casino licenses this discussion, because I
13 don't think that this is the best way to go. I
14 may lose that ultimately if we reopen it.

15 What I do think is a break. And I
16 hadn't thought of it, but it emerged as I think
17 something Commissioner Cameron said. Is the
18 fact that once this is done, if the arbitrator
19 is forced to pick between two borderline
20 unreasonable alternatives, ultimately the
21 Commission can and will take into account the
22 reasonableness of the surrounding community
23 agreements as a whole in making a license award
24 decision.

1 So, in the zero and a billion case,
2 the Commission would be probably hard-pressed
3 to award the license to the applicant. And I'm
4 only speaking for myself. I as a Commissioner
5 would be hard-pressed to award a license to an
6 applicant that was offering zero or a
7 surrounding community that was getting a
8 billion dollars.

9 So, I think that break is what we
10 have to rely on here. And it would be an
11 additional incentivizer for the people to come
12 together with something that was reasonable
13 unless there was a community that simply didn't
14 want to have this thing at all.

15 CHAIRMAN CROSBY: So, your advice to
16 communities, applicants and arbitrators now on
17 how to interpret our reg. is what?

18 COMMISSIONER MCHUGH: Is that the
19 best and final offer is the picking between the
20 one or the other of the offers is the preferred
21 outcome with such changes as are necessary to
22 deal with some provision of the agreement that
23 clearly violates 23K. It is not a broad
24 empowerment to the arbitrator to impose her own

1 notions of what is fair and reasonable.

2 CHAIRMAN CROSBY: If we agreed with
3 that by consensus or whatever mechanism, does
4 that do the job of telling the arbitrators what
5 to do?

6 COMMISSIONER MCHUGH: I think that
7 it does. We can never get and shouldn't strive
8 to get a perfect set -- a set of directions
9 that allows no maneuvering room for the
10 arbitrator. We can't do it. We can't get
11 there. And I think that's about as close as we
12 can get to a channeling of the arbitrator's
13 undoubted discretion, best and final.

14 CHAIRMAN CROSBY: This is a real
15 question not a rhetorical question.
16 Communities have been asking, folks have been
17 asking us for clarification on this. Is
18 agreeing to your interpretation and having that
19 be in the minutes of our meeting, is that
20 binding clarification so that the arbitrators
21 must conform with that and the parties know
22 that? Do we do the job of clarifying this by
23 just having this in our minutes?

24 COMMISSIONER MCHUGH: I would take

1 the step of putting it in the handbook.

2 MS. BLUE: In the handbook as well,
3 yes.

4 COMMISSIONER MCHUGH: And having it
5 in there in the form that we are comfortable
6 with, i.e. I just articulated a thought, I'd
7 like to see that in writing but that would
8 basically be the thought. And I would like to
9 see it in the handbook.

10 MS. BLUE: That's where we would add
11 it.

12 MR. ZIEMBA: Commissioners, just to
13 be clear. And I don't think anyone is
14 advocating that an arbitrator can do a
15 traditional this entity offered \$1 million,
16 this entity offered \$500 million, let's cut it
17 in the middle and end it at that.

18 What you're talking about is basing
19 the two offers based on fairness and
20 reasonableness and whether or not something can
21 be amended would be based on whether or not it
22 complies with that portion of the statute.
23 We're not telling arbitrators that they should
24 cut things in the middle.

1 COMMISSIONER MCHUGH: We are not,
2 no.

3 CHAIRMAN CROSBY: Quite the
4 opposite.

5 COMMISSIONER MCHUGH: Quite the
6 opposite right now. And I think we would want
7 to stay even if we reopen this for the next
8 group, we would want to stay away from just
9 arbitrator you do whatever you think is right.
10 But I'd like to fine tune it to make these
11 clarifications.

12 CHAIRMAN CROSBY: I definitely
13 agree. So, we do need to clarify. I'm quite
14 mixed on what I think is the right way to go.
15 But I am certainly okay to go with the position
16 at the moment if that's sort of the sense that
17 that's been what we really were intending. Is
18 it possible to read back what Commissioner
19 McHugh said?

20 THE COURT REPORTER: I would just
21 need a few minutes.

22 CHAIRMAN CROSBY: Commissioner
23 McHugh articulated a limit on the discretion of
24 the arbitrator. And it was basically along the

1 lines of what you were saying. I thought it
2 was well said.

3 It's all right. We'll go ahead.

4 COMMISSIONER ZUNIGA: It's alluded
5 to in the handbook. We can tighten up the
6 language.

7 COMMISSIONER MCHUGH: It's not in
8 the handbook.

9 MS. BLUE: It's not exactly in the
10 handbook. But we can tighten that language up
11 and we can bring the handbook back to you for
12 your review.

13 CHAIRMAN CROSBY: Is everybody okay
14 with that as this intent, clarifying this
15 intent and articulated basically the way
16 Commissioner McHugh did?

17 COMMISSIONER ZUNIGA: Yes.

18 COMMISSIONER CAMERON: Yes.

19 CHAIRMAN CROSBY: So, that tells
20 folks who are involved in this process where we
21 are coming from. And will memorialize that as
22 clearly as possible in the handbook.

23 COMMISSIONER MCHUGH: Then we'll put
24 the handbook up on the Web promptly so that

1 everybody --

2 MS. BLUE: Yes, make it fully
3 available.

4 CHAIRMAN CROSBY: And we'll put in
5 the tickler file to reopen this when we talk
6 about the next round.

7 COMMISSIONER MCHUGH: Right.

8 CHAIRMAN CROSBY: I had one other
9 question on the draft itself of the handbook.
10 Under considerations for the arbitrators in
11 arriving at the final decision.

12 COMMISSIONER CAMERON: Page?

13 CHAIRMAN CROSBY: Seven. It sort of
14 seemed like all of this goes counter to what we
15 just got through talking about. And I don't
16 know how you reconcile all of this.

17 This is giving the arbitrator a
18 series of criteria, which are not limited even
19 to these criteria to determine fair and
20 reasonableness. And it invites precisely the
21 action that we think we just got through saying
22 we didn't want to take.

23 COMMISSIONER ZUNIGA: I'm not sure I
24 agree with that.

1 CHAIRMAN CROSBY: Okay. That's
2 fine. It says the arbitrator must arrive at a
3 fair and reasonable agreement. The arbitrator
4 or arbitrators must arrive at a fair and
5 reasonable agreement. To do that the
6 arbitrators may consider and evaluate a whole
7 range of factors.

8 COMMISSIONER ZUNIGA: Right.

9 CHAIRMAN CROSBY: How is that not
10 inviting them to do what we just got through
11 saying we didn't want them to do?

12 COMMISSIONER ZUNIGA: If you're
13 going to select one or the other, you have to
14 take into consideration all of these things.
15 They've all encompassing.

16 CHAIRMAN CROSBY: Then it really
17 should say must select not arrive at.

18 COMMISSIONER ZUNIGA: Okay.

19 CHAIRMAN CROSBY: That's a huge
20 difference. I don't understand how this was
21 written given the attitude that you were
22 expressing earlier. It just doesn't make any
23 sense to me. So, if I'm right and if we want
24 go the way Commissioner McHugh just said, I

1 think we have to either eliminate or certainly
2 radically change this section.

3 COMMISSIONER ZUNIGA: We could just
4 eliminate the word arrive and supplant it with
5 the word select.

6 CHAIRMAN CROSBY: As between the two
7 choices.

8 COMMISSIONER ZUNIGA: As between the
9 two choices subject to inconsistencies with
10 23K. But all of the rest of the factors
11 continue to be very relevant. Is that a fair
12 statement?

13 MR. ZIEMBA: I think they probably
14 included the word arrive recognizing that there
15 could be modifications. So, it may not be
16 selection of the two best and final offers that
17 were offered if the arbitrator needed to modify
18 that's how they arrive at.

19 But I think the Commissioner's
20 language of selecting subject modifications
21 pursuant to the earlier section would be
22 clarifying.

23 MS. BLUE: We can certainly make
24 that change. I think the factors that come

1 from the statute in the regs. and I think we
2 wanted to point out the arbitrator these are
3 the kinds of issues that they would see.

4 But we can clean up that language to
5 say that have to select one or the other based
6 upon these factors.

7 CHAIRMAN CROSBY: Right. And then
8 the last thing is if we do want to give them
9 parameters to use in selecting between the two
10 proposals, what about the parameter of the
11 positive benefits? This is one we've always
12 found a little confusing. But we didn't list
13 -- Isn't there a parameter of the positive
14 benefits? Why is that not listed?

15 MS. BLUE: We can add that. That is
16 in our regulations that we can consider
17 positive impacts.

18 CHAIRMAN CROSBY: And in the law.

19 MS. BLUE: And in the law too.

20 We'll add that as a factor.

21 COMMISSIONER CAMERON: That's a good
22 point.

23 CHAIRMAN CROSBY: Okay. I'm sure
24 everybody feels totally clarified now. So,

1 we'll do a quick redraft. How are we going to
2 do this now? The arbitration processes will be
3 starting when?

4 MS. BLUE: 27th of December, that's
5 when the arbitration period opens.

6 CHAIRMAN CROSBY: And we won't have
7 any more meetings.

8 COMMISSIONER CAMERON: We can
9 approve this based on these limited language
10 adjustments.

11 CHAIRMAN CROSBY: And maybe
12 designate to the General Counsel and
13 Commissioner McHugh the ability to fine tune
14 the language which will then be adopted on our
15 behalf.

16 MS. BLUE: Yes, that would work. We
17 could do that.

18 COMMISSIONER ZUNIGA: That's fine by
19 me.

20 CHAIRMAN CROSBY: Do we need motion
21 to that effect or is okay just to leave it?

22 MS. BLUE: I think that would be
23 helpful to have the motion on the record.

24 CHAIRMAN CROSBY: Commissioner

1 McHugh, do you want to do this again?

2 COMMISSIONER MCHUGH: All right. I
3 move that the Commission adopt the document
4 entitled Handbook for Binding Arbitration
5 Between an Applicant and Gaming Establishment
6 Licensee -- An Applicant for a Gaming
7 Establishment License and a Surrounding
8 Community to Reach a Surrounding Community
9 Agreement with modifications conforming to the
10 discussion the Commission just concluded, and
11 that will be reflected in the transcript of the
12 Commission's meeting.

13 CHAIRMAN CROSBY: And delegate to
14 the General Counsel and to Commissioner McHugh
15 to approve those amendments.

16 COMMISSIONER MCHUGH: Yes.

17 COMMISSIONER CAMERON: I second.

18 CHAIRMAN CROSBY: Anymore
19 discussion? All in favor, aye.

20 COMMISSIONER MCHUGH: Aye.

21 COMMISSIONER CAMERON: Aye.

22 COMMISSIONER ZUNIGA: Aye.

23 COMMISSIONER STEBBINS: Aye.

24 CHAIRMAN CROSBY: Opposed? The ayes

1 have it unanimously.

2 MS. BLUE: Thank you. The next item
3 on our list is early application filings.

4 We have heard that perhaps some
5 applications will be filed earlier than
6 December 31. The question that comes up then
7 we have a number of timelines that we have
8 advised applicants would run -- we've said from
9 the 31st assuming people file on that date.

10 So, we thought that the Commission
11 could consider how we would like the timelines
12 to run. For example, assenting to a
13 designation or filing a petition whether the
14 Commission would want those dates to run from
15 the 31st, whether the applications are filed
16 sooner or not. Or whether the Commission would
17 go with regulations as written and have those
18 timelines run from the date the application is
19 actually filed.

20 We think that perhaps for
21 communities and applicant planning situations
22 the 31st as the date we've always had out
23 there, it might be better to have all of those
24 run from the 31st as currently scheduled.

1 COMMISSIONER CAMERON: I think it
2 makes sense to use the 31st. Certainly, we
3 have holidays before that that could
4 potentially shorten that tight timeframe. So,
5 having everybody know no matter if they submit
6 it on the 27th that clock starts on the 31st
7 makes sense. There's some consistency for
8 everyone as far as scheduling and holidays and
9 those kinds of things.

10 MS. BLUE: To do that, we would want
11 to vote on a variance from our regulations.
12 That we would set our date to be the 31st
13 whether they're filed on the 31st or not and
14 moving forward from there.

15 COMMISSIONER ZUNIGA: I agree that
16 the deadline should remain the same after which
17 the dates start counting for assenting and
18 those kinds of things. But couldn't we always
19 receive early applications?

20 MS. BLUE: We can. We can always
21 receive them. That's not the problem.

22 COMMISSISONER ZUNIGA: And we can
23 just sort of put them in a closet.

24 MS. BLUE: Some things are tied to

1 when the application is filed. It is a fair
2 question that's been raised to us, because some
3 communities are looking at continuing
4 negotiations thinking that they can continue
5 their negotiations out to the 31st.

6 Some are trying to decide whether
7 they would petition or not if they weren't
8 designated. So, they're trying to think in
9 advance when that petition would be due.

10 It's also holidays. Some
11 communities don't have meetings. If they need
12 meetings to take certain actions, it would be
13 difficult. So, we just wanted to try and
14 clarify that in the event applications are in
15 fact filed either late this week or next week
16 before the 31st.

17 COMMISSIONER ZUNIGA: Because we
18 tied certain things to the filing of the
19 application not the deadline for filing of the
20 application.

21 MS. BLUE: Yes, that's right.

22 CHAIRMAN CROSBY: I didn't realize
23 that. So, I agree. If that's the case, I
24 didn't realize that was the case. So, we need

1 to -- What does that mean? We need to have an
2 emergency amendment to the regs.?

3 MS. BLUE: No. We would just grant
4 a variance for those timelines. Instead of
5 running from the filing of the application
6 itself, it would run from December 31. For
7 those regulations that are tied to the filing
8 of the RFA-2 instead of running from the date
9 the app.'s filed, it would run from the 31st,
10 similar to what --

11 CHAIRMAN CROSBY: I agree with that.
12 So, I am in favor of that. Is there any other
13 consequence that we need to think about of
14 receiving the applications early? When they
15 become public? We have our own administrative
16 review process in place. Is there any other
17 consequence of early receipt that we need to
18 think about? Would it become public? We
19 release it, right? The applicant doesn't
20 release it.

21 MS. BLUE: The applicant sends
22 portions of it to the larger surrounding
23 communities group. So, they would potentially
24 get them earlier. But in terms of doing the

1 administrative completeness review, I haven't
2 discussed this with Executive Director Day, but
3 I don't believe he would start before the 31st
4 if they came in early.

5 CHAIRMAN CROSBY: Which is fine. I
6 was just trying to think of other consequences.
7 So, I guess if an applicant wants to make the
8 application public that's their right. We
9 don't have any problem with that.

10 MR. ZIEMBA: One very minor point is
11 that applicants are in the process right now of
12 printing their applications. And there's a lot
13 of notices that have been included. For
14 example, in our regulations if you designate a
15 community as a surrounding community in your
16 application, you have to provide them notice
17 that within 10 days of the application they
18 have to provide their assent to the Commission.

19 So, I don't think that we would be
20 asking applicants to go in and extract those
21 letters that they've already printed from their
22 applications. We can just clarify to those
23 communities that have been designated that they
24 have an additional couple of days if something

1 has been submitted.

2 CHAIRMAN CROSBY: Can you handle
3 that all right?

4 MR. ZIEMBA: Yes.

5 CHAIRMAN CROSBY: Okay. So, you can
6 take care of that. Does somebody want to put
7 this into an appropriate motion?

8 COMMISSIONER MCHUGH: I move that
9 for purposes of -- First of all, it seems to me
10 that the four criteria for a variance are met
11 here. It's in the public interest. It's
12 consistent with the statute. It would be a
13 hardship on surrounding communities if we
14 didn't do this. And it otherwise is a sound
15 exercise of the Commission's discretion. So,
16 all of the criteria for a variance from the
17 regulation as written in the case of early
18 filed applications are met.

19 So, I would move under those
20 circumstances that for all timelines that are
21 tied in our regulations to the date on which an
22 RFA-2 application for a Category 1 license is
23 filed that the date for -- that the timeline
24 commence on December 31 and not any earlier

1 date on which the application is in fact filed.

2 Does that do it?

3 MS. BLUE: That works.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER ZUNIGA: Second.

6 CHAIRMAN CROSBY: Any further
7 discussion? All of favor, aye.

8 COMMISSIONER MCHUGH: Aye.

9 COMMISSIONER CAMERON: Aye.

10 COMMISSIONER ZUNIGA: Aye.

11 COMMISSIONER STEBBINS: Aye.

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

14 MS. BLUE: Thank you. The last
15 question under the legal update is the question
16 about the lottery Keno machines and slots.

17 We've been asked the question as to
18 whether the number of Keno machines count
19 towards the number of slot machines that are
20 permitted in a gaming establishment. We have
21 looked at those regulations. We believe they
22 do not.

23 I'll let Mr. Grossman explain the
24 legal analysis behind it. But we have some

1 folks that are looking for clarity on that.

2 So, Todd if you want to explain that?

3 MR. GROSSMAN: Sure. The place to
4 start with this issue is the definition of slot
5 machine, which is found in Chapter 23K section
6 2. And it is somewhat lengthy, but there are a
7 couple of important parts of it.

8 It defines it essentially as a
9 mechanical, electrical or other device,
10 contrivance or machine which upon insertion of
11 a coin, token or similar object therein or upon
12 payment of any consideration whatsoever is
13 available to play or operator. Then it goes
14 through a number of other provisos that have to
15 be met in order for it to be considered a slot
16 machine.

17 But I think in the context of this
18 question, those are the important parts. So
19 ultimately, based upon a review of the Lottery
20 Commission website where it outlines how Keno
21 is played and my own personal experience having
22 played Keno before, and assuming those are the
23 types of machines that will be included at the
24 gaming establishments, it seems reasonably

1 clear that for a couple of reasons that those
2 types of machines should not be included within
3 the definition of a slot machine.

4 First, is that the player him or
5 herself doesn't actually play or operate the
6 machine. They fill out a ticket with their
7 numbers and hand it to someone else, the
8 operator who then runs it through the lottery
9 machine. So, from that perspective alone, I
10 would suggest that it wouldn't be a slot
11 machine.

12 That again assumes that the machines
13 that would be placed at the casinos wouldn't be
14 any different from the machines that are
15 presently in operation. And secondly, it seems
16 unlikely that when this definition was drafted
17 by the Legislature that they intended to
18 include these Keno machines within the
19 definition as they are independently overseen
20 by the state lottery.

21 So, that's kind of a basic analysis
22 of the definition of slot machine as it relates
23 to Keno machines that I would be comfortable
24 with at this point.

1 COMMISSIONER STEBBINS: I would
2 agree. I think the question of the player
3 operation is critical because I'm at a slot
4 machine, it's up to me to hit the button. Keno
5 is played on a consistent timely process.

6 Not to mention all of the practical
7 reasons why they wouldn't want these to be
8 considered as part of the count for the
9 required number of slots in the slots parlor, I
10 would agree with your analysis.

11 CHAIRMAN CROSBY: Anybody else?

12 COMMISSIONER ZUNIGA: I agree.
13 Commissioner Stebbins alluded to the practical
14 reasons. But if we for whatever reason we were
15 to take the opposite view that Keno machines
16 counted against slot machines, we would be in a
17 very uncomfortable situation of being pitted
18 against the lottery, for one. And that would
19 make for every Keno machine, it would make the
20 financial visibility of the slots parlor
21 considerably less. So, thank you for that
22 sound legal analysis. In my opinion, I am
23 wholly in agreement.

24 COMMISSIONER CAMERON: I agree as

1 well.

2 CHAIRMAN CROSBY: It sounds like we
3 don't need a vote for this?

4 MS. BLUE: No.

5 CHAIRMAN CROSBY: You're going to
6 give this advice to people who asked.

7 MS. BLUE: Yes.

8 CHAIRMAN CROSBY: Okay.

9 MS. BLUE: That's all we have unless
10 the Commission has any questions for us.

11 COMMISSIONER MCHUGH: No.

12 MS. BLUE: Thank you.

13 CHAIRMAN CROSBY: Great. Next is
14 the Ombudsman report from Ombudsman Ziemba.

15 MR. ZIEMBA: Thank you, Mr.
16 Chairman, members of the Commission. Executive
17 Director Day asked me to go over the licensing
18 schedule update that we've been included in
19 your packets.

20 And what this update is is a
21 reflection of an understanding of where we
22 think we are today with Category 2 applicants
23 and where we may be soon with Category 1
24 applicants.

1 What this should be viewed as is a
2 schedule that is perhaps the most extended
3 schedule based if all applicants or one
4 applicant in a community go to arbitration and
5 then that arbitration extends to the entire
6 amount of time that is allowable under our
7 regulations.

8 So, the way that our licensing
9 schedule works is that we cannot issue a final
10 determination on a license until all
11 surrounding community agreements have been
12 concluded. So, necessarily even if just one
13 applicant and one community are involved in
14 arbitration that extends our licensing
15 timeline.

16 Although this may seem as a
17 conservative approach, the one that we are
18 putting forward before you, I think that there
19 is a likelihood that we'll have such and
20 arbitration in either Category 1, Category 2 or
21 potentially both. So, let me just walk through
22 some of the key dates for you. First, let me
23 start with Category 2 then I'll move onto
24 Category 1.

1 So, as we've discussed the 30-day
2 negotiation period with Category 2 applicants
3 and communities that ends on the 26th of
4 December. As a reminder, we have currently
5 both in Foxboro, Easton and Bridgewater that
6 are still in negotiations. Middleboro and West
7 Bridgewater have reached agreements.

8 Starting 12/27, the arbitration
9 process begins. By January 6, the parties will
10 select an arbitrator or arbitrators and submit
11 their best and final offers to those arbitrator
12 or arbitrators. The parties arbitrate for 20
13 days and then have an opportunity for five
14 calendar days to negotiate following the
15 arbitration.

16 CHAIRMAN CROSBY: Five calendar
17 days?

18 MR. ZIEMBA: Yes. So, Mr. Grossman
19 is really good at this. But the definition of
20 days under our regulation, for any days that
21 are less than seven days you exclude Saturdays,
22 Sundays and holidays. If it is over seven
23 days, those are included within the definition
24 of days.

1 So, when I have been saying 30 days
2 of arbitration forever that's not really true
3 because --

4 CHAIRMAN CROSBY: Yes. You just
5 used the expression calendar days. Okay, fine.
6 Gotcha.

7 MR. ZIEMBA: On February 3, after
8 those 20 plus five days, arbitration would be
9 complete. So, if arbitration is complete at
10 this latest point, we can conclude our host
11 community hearings on February 5 or perhaps
12 February 6. We penciled in those dates for
13 potential meetings where we could conclude the
14 host community hearings. By statute, the
15 Commission cannot render a decision until 30
16 days after the close of the host community
17 hearings.

18 Therefore, given this we have a
19 projected of a decision on Category 2 license
20 on March 7. That's if arbitration continues to
21 the full extent that it is allowed to.

22 So, now for Category 1. December 31
23 is the application date. As we've just
24 decided, January 10 will be the date for

1 surrounding community petitions. So on that
2 date, those communities that want to petition
3 to become a surrounding community shall send in
4 that to the Commission.

5 Also on that date, any community
6 that has been designated as a surrounding
7 community in an application, but they have not
8 reached an agreement with the applicant, we
9 would expect that those assent letters reach
10 the Commission by that January 10 date or
11 earlier pursuant to the notices sent by the
12 applicant.

13 On January 21, applicants are
14 required to provide their response to the
15 surrounding community petitions to the
16 Commission. They're given that response period
17 under our regulations.

18 What we anticipate is that
19 potentially on January 22 at a Commission
20 meeting we could have presentations by the
21 Category 1 applicants. These are the 90-minute
22 presentations of each one of the Region A and
23 Region B applicants.

24 The very next day on January 23, we

1 could have potential presentations by the
2 surrounding community petitioners and
3 applicants. That would allow us some time to
4 on February 6 make decisions on those
5 surrounding community petitions. But we could
6 also designate those communities that have been
7 designated in a surrounding community -- excuse
8 me, designated as surrounding communities in an
9 application as a surrounding community.

10 So, basically under our regulations,
11 a surrounding community can be included in an
12 application by being designated but the 30-day
13 statutory negotiation period does not start
14 until we issue a written determination that
15 that community is a surrounding community.

16 So, for all intents and purposes if
17 you're designated in an application, you are a
18 surrounding community. But the way that we've
19 crafted our regulations is that the 30-day
20 statutory period of negotiation doesn't tick
21 until we issue that written determination.

22 And as was decided at a previous
23 meeting, we talked about treating the
24 surrounding community petitioners and those

1 designated on the same timeline. So, as of
2 February 6 that would begin the 30 days of
3 negotiations.

4 CHAIRMAN CROSBY: Right.

5 MR. ZIEMBA: One good thing about
6 this date is that it would allow communities
7 that have not been able to reach an agreement
8 pretty significant period of time from the
9 application date to February 6 to reach an
10 agreement. And then 30 days thereafter there's
11 another 30 days of negotiation period.

12 So, as we discussed, there's very
13 valuable information in those applications.
14 People have talked about the lack of
15 information, a lack of studies. Hopefully,
16 those applications will be robust and include
17 everything that they are supposed to under the
18 statute so that communities can be in a
19 position to negotiate agreements by that
20 February 6 date. If they cannot reach that
21 date (SIC) by February 6, they have the
22 additional 30 days of negotiation.

23 So, after February 6 on February 25
24 to February 27, we could potentially have

1 surrounding community public input hearings.
2 These would be scheduled out in the surrounding
3 communities. They would be after we have
4 designated communities that have petitioned.
5 So, we will know the universe of those
6 communities that are surrounding communities.
7 And thereafter February 25 to the 27th, on
8 March 10 would be the end of the 30-day
9 surrounding community negotiation period, the
10 statutory period.

11 Beginning on March 11, that would be
12 the beginning of arbitration. April 14 that
13 would be the end of the arbitration after the
14 "30 days". After the 14th of April, April 28
15 to April 30 we could have our host community
16 hearings. After those host community hearings
17 we could then in turn make an award potentially
18 by May 30.

19 We are disallowed, as you know, to
20 award anything earlier than 30 days after the
21 conclusion of the host community hearings.

22 COMMISSIONER MCHUGH: The
23 arbitrations are going to be finished on the
24 14th. Why are we going to wait until the 28th

1 to begin the statutory hearings?

2 COMMISSIONER ZUNIGA: There are two
3 Commissioners on vacation on those weeks.

4 COMMISSIONER CAMERON: One week.

5 COMMISSIONER ZUNIGA: One week and
6 then there's an overlap of others. Is that a
7 correct --

8 MS. BLUE: There are Commissioner
9 vacations scheduled for April, I think.

10 COMMISSIONER STEBBINS: Oh, I'm
11 sorry. That's February. I'm sorry there's
12 school vacation in April and one Commissioner
13 myself may be out or may be in.

14 CHAIRMAN CROSBY: But also a lot of
15 people are.

16 COMMISSIONER ZUNIGA: A lot of
17 people are. And having the host community
18 hearing during school vacation was something we
19 avoided in the schedule.

20 COMMISSIONER MCHUGH: Here's my
21 concern. I'm not sure that we are going to
22 finish these statutory hearings in one day.
23 For the Category 2 we had a couple of really
24 long days.

1 CHAIRMAN CROSBY: These are for the
2 public input meetings as opposed to the
3 statutory meetings.

4 COMMISSIONER MCHUGH: No. The
5 statutory meetings that we had for the Category
6 2 in the host communities, which is what we're
7 talking about for the 28th and 29th and 30th.
8 The ones that we had for the Category 2's, each
9 of them started at 4:00. One went until 9:30.
10 And another went to 8:30 and we had one that
11 was much shorter. That's fine. I think these
12 are going to be more complex and require a lot
13 more attention than the Category 2's did.

14 We held the Category 2's a long time
15 ago, relatively long time ago. And we're going
16 to go back and close them with only the issues
17 that came up after surrounding community
18 agreements were signed.

19 Why don't we adopt the same process
20 here and give ourselves the option of having
21 these hearings for a couple of days if
22 necessary rather than crowd them in where we
23 really won't have any time under this schedule?
24 We really have to get these licensing decisions

1 made by the 30th of May, if it's at all
2 possible to do it.

3 Why don't we have the host community
4 statutory hearings sometime in late March? And
5 then as we did before close them after the
6 surrounding community process is finished, if
7 necessary?

8 MR. ZIEMBA: Or as an alternative,
9 there is some time available that week of
10 April, April 14, 15, 16, 17 and 18 before the
11 school vacation week where potentially you
12 could host a hearing.

13 CHAIRMAN CROSBY: Where are the
14 public input meetings?

15 MS. BLUE: The surrounding community
16 meetings?

17 COMMISSIONER ZUNIGA: No. They're
18 not reflected in the schedule but they are
19 right after --

20 MR. ZIEMBA: Those are February 25th
21 to 27th, surrounding committee public input
22 meeting.

23 CHAIRMAN CROSBY: So, they'd be out
24 of the way. We don't have to really nail this

1 down. And I know Director Day is tracking
2 this. But I think this is a really good
3 suggestion. Anything that we could do would be
4 helpful. And on the face of it, I don't see
5 any reason why we couldn't do that. That may
6 save a couple of weeks which would be great.

7 COMMISSIONER ZUNIGA: I agree. I
8 suspect -- I wasn't in the this drafting or
9 redrafting of the schedule, but I suspect part
10 of the impetus was to have only one hearing or
11 set of hearings after all surrounding community
12 agreements had been executed and arbitrated.
13 But I think the cause that you point out being
14 very close to our next fiscal year outweighs
15 the notion of having one of those public
16 hearings.

17 COMMISSIONER MCHUGH: I agree we
18 can't pin it down now. But I would like to
19 give this some more thought.

20 CHAIRMAN CROSBY: I think it's a
21 really helpful suggestion. And obviously the
22 other thing, and I know you're doing this is to
23 remind the applicants and the host communities
24 -- I mean the applicants and the surrounding

1 communities that this schedule is problematic
2 for us and we are encouraging them to get this
3 done so, the need to go to arbitration doesn't
4 screw up our whole schedule, continue to.

5 MR. ZIEMBA: It was my hope to get
6 the message out to communities that are
7 contemplating negotiations at least the early
8 date of February 6 date, the likely date that
9 we would make determinations on those
10 designated surrounding communities.

11 Should I wait until we discuss this
12 again question before making those
13 communications or does that sound like
14 something that I could do?

15 CHAIRMAN CROSBY: Why would there be
16 a reason to wait?

17 MR. ZIEMBA: I think you just
18 discussed that you might want to revisit some
19 parts of the schedule.

20 CHAIRMAN CROSBY: But that's the
21 later part of the schedule.

22 MR. ZIEMBA; I'm just confirming.
23 It's just that portion of the schedule?

24 CHAIRMAN CROSBY: Unless I'm missing

1 something, there is no problem going ahead and
2 confirming what you're saying. Commissioner
3 McHugh's suggestion is a month later, a month
4 or two later.

5 MR. ZIEMBA: Okay, great. I was
6 just confirming that. Thank you.

7 CHAIRMAN CROSBY: Okay. Anything
8 else on the master schedule?

9 MR. ZIEMBA: No.

10 CHAIRMAN CROSBY: Believe it or not,
11 we're going to have to start talking about
12 Region C sometime fairly soon.

13 MR. ZIEMBA: I gave a little bit of
14 an update on Category 2. As I noted, there are
15 four outstanding both in Foxboro, Easton and
16 Bridgewater. Middleboro reached an agreement
17 on Monday, December 16. West Bridgewater
18 reached an agreement on December 11.

19 In regard to the remaining, I'm not
20 going to go into too much detail as to I'm
21 privy to a lot of information regarding
22 negotiations on both parts. But I will say
23 that depending on the time of the day, I am
24 rather optimistic or pessimistic. Thankfully,

1 I concluded at the end of --

2 CHAIRMAN CROSBY: Counsel Lee is
3 smiling as you say that.

4 MR. ZIEMBA: I talk to Ms. Lee quite
5 often. And I thank her for that. Thankfully
6 at the end of the day, I think I ended on a
7 positive note yesterday. And that has not been
8 ruined so far this morning. I haven't looked
9 at my email, but I think that there still is a
10 very good possibility that the applicants and
11 communities could reach a negotiated
12 settlement, if not by the 26th potentially even
13 shortly thereafter.

14 CHAIRMAN CROSBY: All of them are
15 you saying?

16 MR. ZIEMBA: There is the
17 possibility of that, a slight possibility but
18 there is a possibility of that. And what we've
19 told people is parties can continue to
20 negotiate even during the arbitration period.

21 Specifically, in that window period
22 between the beginning of arbitration on the
23 27th and January 5. Excuse me, is it January
24 5?

1 MS. BLUE: Fifth or sixth.

2 MR. ZIEMBA: January 5 or 6 when
3 they actually have to commence the actual
4 arbitration, the selection of the arbitrators.
5 That timing seems to be ripe for reaching a
6 real settlement. So, I am very optimistic.

7 Because true expenses really start
8 kicking very shortly after the 27th. And they
9 really start kicking in once the 20-day
10 arbitration occurs. And depending on how
11 things go, as you know, the arbitration costs
12 are split between the community and the
13 applicant if they cannot decide on a single
14 arbitrator, which could be a very likely
15 outcome. Split 2/3 to 1/3.

16 CHAIRMAN CROSBY: Right.

17 COMMISSIONER MCHUGH: I fully agree
18 with that, but I'd take it even a step further.
19 All of the things you said are exactly on, but
20 the arbitration and negotiation aren't mutually
21 exclusive. I would strongly encourage
22 communities even if the arbitration process has
23 started to continue to negotiate --

24 MR. ZIEMBA: Exactly.

1 COMMISSIONER MCHUGH: -- because the
2 agreements they come to are going to be far
3 better and more satisfactory than the
4 agreements picked by a third-party, however
5 wise.

6 CHAIRMAN CROSBY: Right.

7 COMMISSIONER ZUNIGA: Let's hope
8 that the holidays put people in a good mood
9 when they're contemplating this.

10 And I would argue -- not argue,
11 there's been real expenses incurred by the
12 applicant and to a lesser degree but equally
13 important by all communities because time is
14 also being a big factor for everybody here.
15 So, one would hope that they come to a
16 resolution soon.

17 MR. ZIEMBA: While you mention that,
18 Commissioner, just another note. I've said
19 this before but we are going to begin utilizing
20 resources to analyze surrounding community
21 petitions for Category 1's very soon. Because
22 if we have a number of those, it's going to
23 take a tremendous amount of staff and
24 consultant work to get decisions -- to get

1 recommendations to the Commission by the 6th of
2 February.

3 These applications are going to be
4 4- to 5000 pages each. To get that done in
5 that short a period of time is going to be a
6 rather intense period.

7 So, we hope that no applicant
8 forgets to leave off a surrounding community
9 off their list if they believe that that
10 surrounding community is likely to experience
11 impacts. Obviously, it's up to them to make
12 those designations but we hope that they do so
13 wisely.

14 CHAIRMAN CROSBY: Okay. Great.
15 Anything else? Thank you, Ombudsman.

16 MR. ZIEMBA: Thank you.

17 CHAIRMAN CROSBY: That concludes all
18 of our posted topics. Under item six, other
19 business reserved for matters the Chair did not
20 reasonably anticipate at the time of posting.
21 I just want to mention one thing and get a go-
22 ahead from the Commission if I may, if I can.

23 You know that we are in negotiations
24 with the Department of Public Health to work

1 out a memorandum of understanding, which will
2 govern the Public Health Trust Fund. They also
3 are looking to hire a director or administrator
4 of research and problem gambling who will be a
5 counterpart to our Director of Research and
6 Problem Gambling. They don't have all of the
7 funding to pay for that position. They have
8 \$50,000 in this fiscal year sequestered for
9 this position, but it might cost more than that
10 this fiscal year, it may not also but it might.

11 And we have told them that we would
12 support whatever the costs are. We would pay
13 them whatever the costs are for this person
14 until the Public Health Trust Fund gets up and
15 running in which case we can bill the Public
16 Health Trust Fund for this.

17 So, if that's okay, I would just
18 like the authorization maybe for Commissioner
19 Zuniga and me to negotiate with the Department
20 of Public Health and be willing to put whatever
21 relatively small amount of money this fiscal
22 year that's required on the table to pay for
23 that extra person, if need be.

24 I think we're pretty clear on this,

1 but I just wanted to mention I heard from them
2 just recently that they did have the \$50,000
3 but they didn't have any more than that. And
4 it might require some money for us this fiscal
5 year. And I want to show them that we're
6 really moving and responsive.

7 So, if that's okay, I don't know
8 that we really need a vote on this because it's
9 a relatively small amount of money. I just
10 wanted to get --

11 COMMISSIONER CAMERON: It sounds
12 reasonable, Mr. Chair.

13 COMMISSIONER MCHUGH: It does sound
14 reasonable to me too. I look forward having
15 said that to the presentation of the upcoming
16 budget. And I take it that this has all been
17 open whatever small amount of money is going to
18 be required contingently has been looked at in
19 the context of budget preparations that are now
20 ongoing. Is that fair?

21 COMMISSIONER ZUNIGA: That's fair.
22 This is a small amount at this point, but every
23 small amount counts when we are talking about
24 in the aggregate. Our new CFO, Derek Lennon,

1 and Director Day and I have been working
2 towards a financial report coming early January
3 that closes our second quarter.

4 And compare that to what we know and
5 now we know a lot more in terms of assumptions
6 that we made at the beginning of this fiscal
7 year and cash flow that comes soon after we
8 award the licenses. So, we'll have an update
9 on that projection early January. And we are
10 looking at things very closely because we have
11 to.

12 CHAIRMAN CROSBY: And I did talk
13 about this with Commissioner Zuniga and CFAO
14 Lennon before I brought it up here.

15 Okay. That's it for item six,
16 unless anybody else has anything. Do we have a
17 motion to adjourn?

18 COMMISSIONER CAMERON: So moved.

19 CHAIRMAN CROSBY: Second?

20 COMMISSIONER MCHUGH: Second.

21 CHAIRMAN CROSBY: All in favor, aye.

22 COMMISSIONER MCHUGH: Aye.

23 COMMISSIONER CAMERON: Aye.

24 COMMISSIONER ZUNIGA: Aye.

1 CHAIRMAN CROSBY: Thank you folks.

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3 (Meeting concluded at 10:58 a.m.)

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20 MASSACHUSETTS GAMING COMMISSION STAFF:

21 Catherine Blue, General Counsel

22 Todd Grossman, Deputy General Counsel

23 Danielle Holmes, Staff Attorney

24 John Ziemba, Ombudsman

1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission December
3 19, 2013 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission December
5 3, 2013 Meeting Minutes
- 6 3. Massachusetts Gaming Commission December
7 10, 2013 Meeting Minutes
- 8 4. December 16, 2013 Massachusetts Gaming
9 Commission Memorandum Regarding Changes
10 and Amended Small Business Impact
11 Statement
- 12 5. Waiver Request of Mohegan Sun
13 Massachusetts, LLC and the City of Revere
14 of 205 CMR 119.01(7)
- 15 6. Draft of Handbook for Binding Arbitration
16 Between an Applicant for a Gaming
17 Establishment License and a Surrounding
18 Community to Reach a Surrounding Community
19 Agreement
- 20 10. Massachusetts Gaming Commission 12/17/2013
21 Licensing Schedule Update

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 20th day of December, 2013.

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