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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
92nd PUBLIC HEARING

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

Gayle Cameron

December 3, 2013, 9:05 a.m. to 12:16 p.m.

Boston Convention Center

415 Summer Street, Room 151 B

Boston, Massachusetts

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

MR. MCHUGH: All right. Good morning, to all. We are, I think, handicapped in some respects by the affects of the fire, and the Chairman is caught up in those. So we're going to start without him, and I'm going to call, with his permission, to order the 92nd meeting of the Massachusetts Gaming Commission.

The first item on our agenda is Professor John Quelch of Harvard and Mr. Mackey from Anderson and Kreiger and General Counsel Blue giving us -- and perhaps Ombudsman Ziemba, giving us an overview of foreign and corrupt practices. So without further adieu, I'm going to turn to the Professor and to Mr. Mackey. And thank you very much for being here, and we look forward to the interchange in the next few minutes.

MR. QUELCH: Okay. Good morning, Commissioner, and other members of the Commission. Thanks for the invitation to be here today.

I have a few opening remarks, and

1 then I'll be able to hopefully address
2 questions and comments from the members.

3 First of all, by way of background,
4 I'm a professor of business administration at
5 Harvard Business School. I've been on and off
6 the Harvard faculty since 1979. I've served in
7 overseas positions as dean of the London
8 Business School for several years, and also
9 most recently as dean of the China Europe
10 International Business School, which is the
11 leading business school in China, where I
12 served as dean on a leave of absence from
13 Harvard between 2011 and 2013, returning to
14 Boston in February of this year.

15 I've also served as an independent
16 director of approximately ten publically traded
17 companies in the U.S. and the UK during the
18 course of my career, many of which have
19 worldwide operations.

20 So with that particular background,
21 let me start by posing the question of whether
22 or not it's sufficient to comply with the
23 customs of each jurisdiction in which a company
24 operates around the world. And this particular

1 notion is centuries old. It stems from a
2 famous letter from Saint Ambrose to Saint
3 Augustine in which the quote that we're all
4 familiar with is included, "When in Rome, do as
5 Romans do." And this is a philosophy of what's
6 called ethical relativism as opposed to a
7 philosophy of universalism which holds that
8 there are fundamental moral principals that
9 cannot vary with time or space. And for the
10 Commission's benefit, although it may not be
11 necessarily pertinent to the issues under
12 consideration, I would subscribe more to the
13 universalist view more than the ethical
14 relative dispute.

15 Now, with that by way of
16 background, let me try and get a little bit
17 more practical. From the mid 20th century,
18 multinational corporations ran their foreign
19 subsidiaries largely as independent
20 decentralized operations. And respect for
21 local customs was a convenient fig leaf to
22 operate to lower standards in developing versus
23 developed countries.

24 During the latter part of the 20th

1 century, several forces meant the traditional
2 decentralized multinational company morphed
3 into a more centralized and integrated global
4 corporation with a worldwide brand reputation
5 to defend, and those forces would have
6 included, for example, freer cross-border trade
7 flow, cheaper and more rapid cross-border
8 communications and multi-country supply chains.
9 All of those integrated forces resulted in the
10 traditional multinational becoming more of a
11 globally integrated corporation operating to
12 one set of policies and standards worldwide.

13 Increasingly, customers in
14 developed countries are today interested in the
15 supply chain inputs associated with the
16 products and services they purchase. For
17 example, some Starbucks customers pay a few
18 cents more for fair trade coffee that provides
19 more of a financial benefit for small coffee
20 growers. And more recently, consumers have
21 pressed major retailers in the U.S. regarding
22 working conditions at their Bangladesh apparel
23 suppliers and their subcontractors following
24 the Rana Plaza building collapse in the early

1 part of this year in Bangladesh.

2 So customers are more concerned
3 about issues related to what's happening at the
4 front end of their supply chains for the
5 products and services they purchase.

6 Now, regardless of these trends,
7 developed country legislation contradicts and
8 has contradicted the de minimus standard of
9 complying with local customs. Notably, the
10 1977 Foreign Corrupt Practices Act in the U.S.,
11 the 1986 Anti-Money Laundering Act in the U.S.,
12 and the 2010 UK Bribery Act govern the global
13 behaviors of any company that does business in
14 the UK -- or in the USA and UK respectfully.

15 The UK Bribery Act of 2010 is
16 slightly tougher than the Foreign Corrupt
17 Practices Act in several respects. It makes a
18 company liable for bribery by individual
19 employees. And not just bribery of government
20 officials, but also private bribery as well, as
21 it's sometimes referred to. The UK Bribery Act
22 explicitly precludes hiding behind third-party
23 agents and spells that out in much more detail.
24 And it also renders local customs irrelevant as

1 a defense for bad behavior except when
2 permitted by law.

3 One point that I think I should
4 make is that pretty much every jurisdiction in
5 the world has a law against bribery. Whether
6 or not that law is actually enforced is a
7 different matter. But pretty much every
8 jurisdiction has a law of some sort on the
9 books against bribery. And therefore, if a
10 multinational company says that it is in
11 compliance with all local laws and with
12 relevant U.S. laws, then it is possible for the
13 company to be considered certainly de minimus
14 in compliance. And it's not necessarily the
15 case that a company could then be challenged
16 for not having standards of a U.S. character
17 enforced in jurisdictions where those standards
18 are not necessarily required by law, local law,
19 unless those standards relate specifically to
20 such things as the Foreign Corrupt Practices
21 Act.

22 Now, how do global companies stay
23 out of trouble, because let's face it, no
24 global company with a brand reputation is

1 interested in getting into trouble in this kind
2 of area. The cost of doing so reputationally
3 can be very high relative to the likely benefit
4 of not being very strictly adherent to
5 standards and to laws.

6 So the first thing that a company
7 has to do is assess its risk of exposure, for
8 example, to bribery by or for -- by or of
9 employees. And there are three questions that
10 you need to ask in order to assess your risk
11 exposure.

12 The first is the simple question,
13 are there opportunities for corruptions to
14 occur? Perhaps, for example, the company's
15 internal control systems are weak. Perhaps
16 there's inadequate monitoring or supervision.

17 The second question to ask in terms
18 of assessing risk is how severe are the
19 pressures and the temptations that bear upon
20 the company and its employees? Perhaps
21 competition is especially intense. Perhaps
22 employees are incented to achieve very
23 aggressive revenue targets at all costs. So
24 that's the second question, are the pressures

1 and temptations on the employees putting the
2 company's reputation at risk as well as the
3 employee's reputation.

4 And then the third question in
5 assessing risk is does the company allow easy
6 rationalization? Perhaps bribes have been
7 common place. Perhaps they've been approved
8 tacitly by superiors. Perhaps the bribes
9 appear to do no harm, indeed, perhaps to assist
10 government officials who are grossly underpaid.
11 So does the company allow easy rationalization.

12 So these are the three questions
13 that I think are typically used to assess the
14 degree of risk exposure to a company to getting
15 into trouble.

16 So having assessed the risks, the
17 company must then design compliance policies
18 and procedures, including a code of ethics.
19 And equally, if not more important, the
20 corporate leadership has to set an example and
21 tone that supports the unswerving
22 implementation of these compliance policies and
23 procedures.

24 I'll just, without going into too

1 much detail, very briefly give you six elements
2 that collectively represent a good code of
3 ethics and compliance.

4 So a good code requires an employee
5 to report any suspected violations to their
6 manager, to the legal department of the
7 subsidiary, or to the corporation's chief
8 ethics and compliance officer. A good code
9 offers a confidential ethics hotline and
10 assures protection by the board of directors
11 for any employee who raises a concern in good
12 faith.

13 A good code requires all managers
14 to ensure that direct reports understand the
15 code, foster an environment that requires
16 compliance, and maintain all relevant business
17 records.

18 A good code gives specific examples
19 to guide employee behavior, especially
20 regarding gifts. For example, all gifts to
21 government officials are typically banned, and
22 gifts to others, customers or vendors, are
23 typically limited to, say, below \$100 or some
24 nominal amount and should not be accepted or

1 given when doing so might create a feeling of
2 obligation or affect business decision making,
3 either of the employee, of the vendor, or the
4 customer.

5 Next, a good code is backed up by
6 online training programs that all managers must
7 pass and typically on an annual basis. And
8 finally, a good code requires all employees
9 sign a document each year affirming that they
10 have read, complied with, and will comply with
11 the code.

12 CHAIRMAN CROSBY: What was the
13 first of the five?

14 MR. QUELCH: The first is an
15 employee report any suspected violation to
16 their manager. I think there were six in all
17 that I mentioned.

18 Now, to reiterate, a strong code of
19 ethics and compliance is insufficient with the
20 appropriate emphasis on compliance and zero
21 tolerance is not set by the CEO and the board
22 of directors. In fact, the board of directors
23 should clearly oversee the compliance program,
24 and a specific officer, a chief compliance

1 officer, should have direct access and report
2 to the board of advisors. And in addition,
3 compliance should be a part of the assessment
4 of the discretionary bonus of all senior
5 managers.

6 In addition, the code of ethics and
7 the code of compliance has to be publically
8 expressed through the value statements of the
9 corporation. So not just the CEO setting a
10 tone on an ad hoc basis, but publically
11 expressed in the core values of the
12 corporation. And discipline has to be handed
13 not only to violators, but also consideration
14 has to be given to discipline being handed to
15 willing or unwitting bystanders in the
16 corporation who, shall we say, turn a blind eye
17 to something that they notice and suspect but
18 fail to report to management.

19 Just to give you one example, one
20 company's code of ethics is accompanied by a
21 letter from the CEO which states, to give you a
22 quote, "We compete on the quality and price of
23 our services and products. We do not compete
24 by making false or misleading statements about

1 our competitors or by engaging in illegal
2 business practices."

3 A few paragraphs of conclusion.
4 Large, well-known publically traded
5 multinational companies with strong brand
6 reputations have every incentive to avoid
7 problems or the appearance of problems. And in
8 my experience, problems are more likely to
9 arise with smaller, less experienced
10 multinationals that have grown quickly through
11 the acquisition of foreign companies and their
12 employees, that have not embedded their core
13 values worldwide throughout the employee base,
14 and have fewer resources to devote to
15 compliance.

16 So as you might imagine, typically,
17 the higher profile larger U.S. multinational is
18 going to have the resources available and the
19 common sense and will power to take the
20 relevant steps to be maybe not just in
21 compliance, but perhaps over and above and
22 beyond compliance as well.

23 I worked full time in China, as I
24 mentioned, for two years between January 2011

1 and 2013. I had many conversations with chief
2 executives of China subsidiaries of global
3 corporations regarding corruption, usually
4 requests for bribes or favors from government
5 officials to facilitate either customs
6 clearances or contract awards. And it became
7 clear to me that the FCPA and strong corporate
8 ethics empower local managers to say no. And
9 after saying no two or three times, those
10 soliciting typically simply move on to a less
11 steadfast company. But there's no evidence
12 that the performance of the people saying no,
13 the financial success or performance of the
14 people saying no, is deleteriously affected by
15 them taking that stand.

16 What honest government officials in
17 many emerging economies do seek and value, and
18 there are many, of course, the vast majority,
19 who are honest government officials, is not
20 bribes, but technical assistance from western
21 multinationals.

22 So a global food company for
23 example might provide behind-the-scenes advice
24 on how to legislate food safety or design and

1 implement food inspection programs. The
2 company benefits from the opportunity to shape
3 the regulations that may govern its operations,
4 but at the same time, the broader society and
5 government more broadly defined than a single
6 individual benefits from that kind of advice
7 and technical support.

8 So there is moreover, as I've
9 already indicated, no evidence that
10 corporations take a strong ethical line lose
11 business or underperform. On the contrary,
12 they're likely to command greater respect among
13 customers and vendors in emerging economies.
14 They're likely to attract and retain higher
15 performing employees and to cultivate the
16 perception that their products and services are
17 superior and differentiated and in high demand
18 with no need for bribes, kickbacks, or gifts to
19 be part of that equation.

20 Thank you, Mr. Chairman. And I
21 will now welcome your questions and comments.

22 CHAIRMAN CROSBY: Thank you, Mr.
23 Quelch. My apologies for being late. I take
24 pride in having been Jane Swift's chief of

1 staff when you were appointed the chair of the
2 Mass. Port Board after the 911 fiasco and did a
3 great job bringing that agency back in good
4 shape.

5 Commissioners, questions?

6 COMMISSIONER CAMERON: I had a
7 question about, Mr. Quelch, about talking about
8 the large corporate companies who seem to do a
9 better job at compliance and have the resources
10 to pay attention, but yet we continually hear
11 about well-known companies that are alleged to
12 have violated in various countries, pretty
13 well-known companies. So I guess I was
14 surprised when you said I guess overall they're
15 doing a better job, but there are still the
16 examples when a large company will have a
17 violation.

18 MR. QUELCH: Right. I think, first
19 of all, there's a little bit of sampling bias
20 because those are the cases that are more
21 likely to gain more media attention. But
22 secondly, in addition, if a jurisdiction is
23 seeking to make an example of -- in a
24 particular industry among a group of

1 multinational companies that may be steering
2 close to the edge, it would typically select
3 one of the higher profile companies in order to
4 make an example of that company.

5 So without naming names, for
6 example, in China at the moment, there's
7 recently been a series of allegations against a
8 major multinational pharmaceutical company
9 regarding essentially five years worth of
10 behavior that involved funds of the company
11 being used to pay doctors and hospital
12 employees who are government officials in China
13 moneys via false invoices for travel to
14 conferences, medical conferences, that never
15 took place, or may have taken place, but the
16 people in question never attended.

17 So that is a very substantial case
18 that is currently under investigation in China.
19 And when you look at what has happened, what
20 you find is that the local -- the senior local
21 employees were all complicit in it or the folks
22 who have been indicted are people who were
23 senior local employees, and the expatriate top
24 management seem to be oblivious or claims to be

1 oblivious to what was going on.

2 And I think that that is a good
3 example. Whether or not it's proven or not
4 remains to be seen. But the case in itself is
5 a good example of where there can be a
6 breakdown. It's where corporate headquarters
7 is pressing for increased revenue, increased
8 profit delivery. The senior manager on the
9 ground in a country has -- is feeling that
10 pressure and is transferring that pressure to
11 his or her subordinates. Those subordinates
12 are of the local culture and talking among each
13 other in the local language. The top person
14 may not speak that language or necessarily
15 socialize with those people. And this is
16 fundamentally where things go wrong.

17 Now, if there were a sufficiently
18 strong internal ordered and controlled system
19 supervised from offshore that meticulously
20 investigated each year the books in high risk
21 countries, then that might have been caught
22 earlier. But this is kind of the practice --
23 I'm giving you this in detail so you have an
24 example of a real scenario where things did

1 apparently break down and some of the reasons
2 why that breakdown occurred.

3 COMMISSIONER CAMERON: Thank you.

4 COMMISSIONER ZUNIGA: Mr. Quelch,
5 in just that very point, is it fair to say that
6 the more that profits come from an outside --
7 from outside of, say, the United States into
8 these satellite or other places, the more
9 incentive there will in what you described as
10 pressure to perform or over perform in those
11 places? Is that a fair statement?

12 MR. QUELCH: I'm not sure that the
13 connection that you're making has been proven,
14 but it's certainly the case that in the last
15 five years since the recession of 2008, the
16 multinational corporations have looked to
17 emerging economies to drive their profit and
18 their revenue growth. And that has resulted in
19 a level of -- a necessary level of
20 decentralization to the chief executive of the
21 subsidiary on the ground in each of these main
22 emerging economies to deliver. And, you know,
23 I think while they may, on the surface, look
24 like a raising of the risk profile for that

1 company, which I think is what you're implying.

2 COMMISSIONER ZUNIGA: Right.

3 MR. QUELCH: At the same time, I
4 believe that there has been a great realization
5 in most of the companies that I deal with, at
6 least, that they have to correspondingly up
7 their game in terms of the compliance effort
8 and the quality and number of people devoted to
9 the compliance function within their
10 corporation.

11 So I think maybe you're right in
12 saying the risk profile has gone up, but I'm
13 not sure that that has not been matched in most
14 cases by corresponding improvements in the
15 infrastructure for compliance.

16 COMMISSIONER ZUNIGA: Now, also, as
17 you know, we're particularly interested in this
18 topic because we're regulating or about to be
19 regulating multinational companies potentially
20 here that do a lot of business elsewhere where
21 there's also a lot of relation, and at that
22 intersection -- Bribery aside, for example,
23 that intersection could be very difficult to
24 sort out, if I may sort of oversimplify. What

1 can you tell us relative to that cross overlap
2 of regulation in general?

3 MR. QUELCH: Right. Well, the FCPA
4 is pretty-- pretty clearly focuses on bribery
5 of government officials. I think the thing to
6 bear in mind when you're thinking about this is
7 that in many emerging economies which have a
8 very large state sector, there are many people
9 who are government officials such as doctors,
10 for example, who in our context in the U.S. we
11 wouldn't necessarily consider as government
12 officials.

13 So the FCPA, therefore, when it's
14 applied in emerging economies, can be covering
15 a very substantial number of people in terms of
16 whom you are not to approach to bribe or accept
17 bribes from.

18 So that, I think -- Look, the FCPA
19 has been in place since 1977. I think there's
20 not a company that does business
21 internationally out of the United States that's
22 not aware of it. The question is how good a
23 job are they doing in making absolutely sure
24 nothing is going wrong. But I think the

1 awareness is very high.

2 A second area of potential overlap
3 is in the area of money laundering. So in
4 other words, the use of -- the movement of
5 funds for the purpose of concealing their
6 source. And this is governed by the money
7 laundering act, the Anti-Money Laundering Act
8 of 1986 and subsequent rulings.

9 And while I think that that's less
10 widely known about than the FCPA, companies --
11 large multinational companies could be
12 potentially vulnerable to that kind of behavior
13 on the part of suppliers or on the part of
14 customers, I think are very diligent about it,
15 but of course, it requires, in a sense, that
16 you know an awful lot about every customer who
17 comes into your business.

18 So there is -- there is, I think, a
19 practical issue there with respect to the
20 degree to which a multinational company can be
21 responsible for vetting the credentials, if you
22 like, of every single customer with whom it
23 does business.

24 Obviously, the smaller the number

1 of customers in your base, the easier it is to
2 then cope with that particular challenge.

3 If you're a retailer and you're
4 selling to millions of customers each day, I
5 don't think anyone would say, you know, you as
6 that retailer need to check the credentials of
7 everybody who comes in and buys a couple of
8 items from your store. On the other hand, if
9 you're selling airplanes, the number of
10 customers that you're dealing with is far fewer
11 in number, and you should be able to completely
12 monitor the credentials of everybody that
13 you're doing business with.

14 So I think that there is some
15 practical consideration that bears upon the
16 money laundering issue with respect to your
17 overlap question.

18 A third area, which you haven't
19 highlighted but I would just mention it because
20 it bears on the fair trade coffee example that
21 I shared with you earlier is the issue of
22 whether or not customers for your products are
23 interested in how you are managing your supply
24 chain. And there, I think what you find is

1 that some companies have -- some companies that
2 might be vulnerable to reputation damage in
3 this area have over and above compliance
4 requirements that bear upon and explicitly
5 refer to human rights and labor rights
6 practices in the jurisdictions that they
7 deal -- that they're dealing with.

8 So in other words, it wouldn't be
9 sufficient for someone to say we, ourselves,
10 don't employ any child labor, but we absolutely
11 require and ensure that all of our suppliers,
12 our independent suppliers, also do not use
13 child labor in making goods that our name is
14 then subsequently attached to.

15 So that might be an area in some
16 industries where there might be the overlap you
17 refer to and where there might be consumer
18 pressure from the public in the West to enforce
19 higher standards of supply chain production on
20 their -- on the brands that they buy from.

21 COMMISSIONER MCHUGH: That ties
22 into a question that I wanted to ask which goes
23 all the way back to the letter to Augustine.
24 And if I understood you correctly, you said

1 that so long as you comply with domestic law,
2 FCPA, and the AML, and the letter of foreign
3 law in the jurisdiction where you're doing
4 business, you can't be criticized for your
5 conduct. Did I understand you?

6 MR. QUELCH: I'm not a lawyer, but
7 that is my understanding. It's a big
8 question --

9 COMMISSIONER MCHUGH: I -- Go
10 ahead.

11 MR. QUELCH: I was just going to
12 say it's a question whether or not the famous
13 quote refers just to customs or whether it also
14 refers to laws as well as customs.

15 COMMISSIONER MCHUGH: As a matter
16 of ethics, not law, what's your -- did I
17 understand you, can you not be challenged
18 ethically if you are complying with domestic
19 law as well as the letter of foreign law?

20 MR. QUELCH: Yes. Because the
21 domestic law may, in certain cases, simply not
22 meet the standard that you or I would consider
23 ethically responsible or reasonable.

24 So there might, for example, be

1 labor laws in some countries that permit
2 children of a certain age to work legally. We
3 might ethically challenge that, but if a
4 company were in compliance with that and it was
5 not in violation of any U.S. law, then
6 technically, I guess the company would be
7 compliant.

8 But as we have seen in the case of
9 the brands that source their apparel from
10 factories with potentially poor workplace
11 safety conditions in Bangladesh, you know,
12 there are many consumers who have an ethical
13 issue with buying stuff that has been made
14 under those conditions. So you're absolutely
15 correct in your statement.

16 COMMISSIONER MCHUGH: So it's a
17 consumer pressure as well as overriding ethical
18 considerations that can combine to bring
19 criticism on practices that comply both with
20 the domestic and the letter of foreign law.

21 MR. QUELCH: Yes.

22 COMMISSIONER MCHUGH: The other
23 question I had is one I'm having trouble
24 thinking through what it really is, so. But

1 it's essentially this: How do you deal with a
2 situation in which there is some apparent
3 violation of foreign law, but -- and that it's
4 repeated on a relatively routine basis, but it
5 could not possibly be going on without
6 knowledge and acquiescence of the government at
7 the very highest levels?

8 And I'm not talking about personal
9 bribery. I'm not talking about things of that
10 type. But I'm talking about an economic
11 practice that is pervasive, widespread, and
12 that couldn't be going on unless government at
13 the very top were permitting it. How should a
14 responsible foreign corporation trying to do
15 business in that kind of an environment deal
16 with that?

17 MR. QUELCH: So I think the
18 Bangladesh case is actually a pretty good
19 example of this, because the ready-to-wear
20 apparel industry in Bangladesh is now the
21 largest export industry in the country. It has
22 grown enormously in importance in the last ten
23 years. And the conditions under which the
24 workers in the 5,000 or so factories, the

1 conditions under which they have to work are
2 ones that I don't think you or I would find
3 morally acceptable. And the government, of
4 course, is in a way a hostage economically to
5 the fact that this industry has mushroomed into
6 a level of -- to the level of importance it
7 has, and of course, there is the concern, I
8 think unjustified, that we would kill the
9 golden -- kill the goose that laid the golden
10 egg if we attempted as a government to restrict
11 heavily the practices that occur in this
12 industry.

13 In most cases, though, again, the
14 laws on the books are actually robust, but are
15 not enforced, or the funds available for
16 enforcement are simply not sufficient to deal
17 with the magnitude of the enforcement problem
18 given the growth of the industry over the last
19 decade.

20 Again, if you are a responsible
21 Western multinational, you are -- perhaps it
22 takes a tragedy, as it often does, in the
23 commons to stimulate action. And it took 1,100
24 people dying at Rana Plaza to stimulate the

1 leading manufacturers and retailers who source
2 from Bangladesh to come together with workers'
3 rights organizations and NGOs, and, in
4 fairness, with some people within the
5 government of the country to try and craft
6 solutions that would upgrade conditions and
7 compensation but at the same time preserve the
8 health -- economic health of the industry so
9 people would not lose their jobs as a result of
10 the industry migrating elsewhere to another
11 low-cost economy. I'm not sure if this example
12 helps answer your question.

13 COMMISSIONER MCHUGH: It does. And
14 I want to now just change the parameters of the
15 question a little bit. Suppose, to take your
16 example, that government were not hostage to
17 this economic center and suppose the issue were
18 purely economic, didn't involve human rights,
19 if you will, and so the government was not a
20 hostage, but had created or at least watched
21 with benevolence an economic pattern arise that
22 it could stop, but it doesn't want to stop for
23 a variety of reasons. It's pervasive. It's
24 purely economic in its impact. And foreign

1 corporations are in the middle of an
2 environment in which that exists. Can they
3 ethically participate in that even though it
4 may -- on the surface, it may violate the
5 letter of the law?

6 MR. QUELCH: The letter of
7 international law --

8 COMMISSIONER MCHUGH: Of domestic.

9 MR. QUELCH: -- law or local law?

10 COMMISSIONER MCHUGH: In other
11 words, there's a massive un-enforcement
12 tolerated not -- that's part of the economic
13 policy of the country, and it isn't because the
14 government is captive, it's because the
15 government wants it. The government, in
16 effect, as created a facade of legitimacy
17 knowing that it's not going to enforce the
18 barriers to economic activities? I realize
19 it's hypothetical. It's a hard question to
20 follow.

21 MR. QUELCH: No. I understand the
22 question. I think that the obligation on a
23 U.S. company is to follow the law of the
24 foreign jurisdiction, and not to follow the

1 current incumbent government's interpretation
2 or lack of interpretation of the law.

3 Again, I'm not a lawyer, and I'm
4 sure that the notion that certain behavior that
5 is not legal in the foreign jurisdiction is
6 somehow rather tolerated or permitted or
7 encouraged by the foreign government in
8 question would be used as a strenuous defense
9 on behalf of that company. But my reading of
10 the FCPA and the UK Bribery Act, for example,
11 would be that if the company is complying with
12 the law in the foreign jurisdiction, that is a
13 defense.

14 COMMISSIONER MCHUGH: Yes. I was
15 just -- I was more thinking of the ethical than
16 the legal.

17 MR. QUELCH: Well, I think every
18 company -- every company decides which
19 customers it wishes to serve and which markets
20 it wishes to operate in. And some companies
21 take the view that certain markets are too high
22 risk, going back to the various risk factors
23 that I mentioned earlier, too high risk for
24 them to wish to participate relative to the

1 return, and other companies decide for a
2 variety of reasons. Maybe that the market is
3 so attractive in a particular country that it's
4 impossible to ignore it if you want to be a
5 serious global player in that industry.

6 COMMISSIONER MCHUGH: Thank you.

7 COMMISSIONER STEBBINS: Is there
8 a -- I can't recall whether China is a member
9 of the WTO, but how does the WTO come down on
10 some of these issues?

11 MR. QUELCH: The WTO really governs
12 trade relations between countries and what the
13 WTO -- I think that's pertinent to this
14 particular discussion. What the WTO does not
15 permit is for country A to impose -- country A
16 that's a member of the WTO to impose
17 restrictions on its trade with country B that's
18 also a member of the WTO.

19 So for example, before the WTO, the
20 United States exerted considerable pressure on
21 Cambodia to raise its labor standards as a
22 result of imposing quotas or the threat of
23 quotas on Cambodian imports into the United
24 States, particularly in the textile arena.

1 Once the WTO came into being, among members of
2 the WTO, such acts, such unilateral acts are
3 prohibited.

4 So effectively, the leverage that
5 can be exerted in the current WTO environment
6 where China is a member of the WTO is
7 substantially reduced from where it was before.
8 Of course, there are provisions in the WTO
9 regarding dumping and such behavior that can be
10 pursued in the court.

11 COMMISSIONER STEBBINS: How would
12 you suggest -- You referenced companies that
13 you see as being helpful or aggressive in terms
14 of trying to work with the local host
15 government to offering changes and improvements
16 in regulations, you know, again, to raise their
17 standards so it meets their own standards or
18 their own efforts to protect their brand. How
19 do other bodies, how would you even suggest we
20 look at a company that's more proactive in
21 doing that than a company that's just kind of
22 following along to play along, and whatever the
23 government imposes upon me, ah, I'll deal with
24 it?

1 MR. QUELCH: Do you mean how would
2 you differentiate among those two types of
3 companies?

4 COMMISSIONER STEBBINS: Yes. And
5 what value does that bring?

6 MR. QUELCH: Right.

7 So one possibility is in an
8 oversight context to have and have a periodic
9 review of the company's compliance and ethics
10 codes and their enforcement. In other words,
11 the requirement that the -- an annual report
12 that is delivered by any company that is
13 receiving a license, that basically requires
14 them to report against a set of criteria that
15 might be established regarding what constitutes
16 a robust and well-enforced program, to
17 periodically review that for any company with
18 which you might be doing business.

19 And I think that those companies
20 that are operating in a self-confident fashion
21 and/or complying on an over and above basis.
22 Which many companies do by the way because they
23 wish to actually be ahead of the regulations.

24 In many industries, what you'll

1 find is that there are companies that have an
2 over and above -- above and beyond, I should
3 say, compliance policy. It takes several years
4 for new regulations to come into play. It's to
5 the advantage of a leading company to be
6 implementing those anticipated new regulations
7 ahead of when they're actually mandated, and
8 you can see in many industries differentiation
9 among that type of company and the type of
10 company who just implements to the letter of
11 the law the day after the law, whatever it may
12 be, goes into effect.

13 So I think that there are not
14 foolproof measures that can be taken, but there
15 are reporting requirements that can be
16 considered that could both send a message as to
17 the behavior that is expected and also, in a
18 practical sense, hold the company accountable
19 to a standard that you collectively may wish to
20 be held account to.

21 COMMISSIONER STEBBINS: Thank you.

22 CHAIRMAN CROSBY: This is sort of
23 an inchoate question, but I'm trying to -- And
24 maybe I missed something in the beginning, and

1 if I did, forgive me. But I'm trying to
2 reconcile the kind of language about bribery
3 with the reality, the day-to-day reality, that
4 there are many countries out there where you
5 can't get a driver's license, you can't get a
6 building permit, you can't avoid a traffic
7 ticket. I mean, you can't do anything without
8 what we would call a bribe, but in those
9 cultures are basically a cost of doing
10 business. I don't know whether it's considered
11 a bribe or not in the way that we consider a
12 bribe, but it's simply impossible to do any
13 business without some kind of extra legal
14 compensation to the official in the place. And
15 I just can't imagine how a company can do
16 business in that environment where that's just
17 the order of the day without greasing palms all
18 over the place to do business.

19 Am I wrong on that? Can you go
20 into these really impoverished countries with
21 very little rule of law, no culture of
22 performance standards or ethics or anything and
23 achieve a standard with no bribery and do
24 business; or are we kidding ourselves, and you

1 just sort of have to go along to get along and
2 we're all winking?

3 MR. QUELCH: Okay. So I think the
4 question is a good practical question. I would
5 say first of all, the problem of corruption is
6 one that is well documented, and Transparency
7 International, among other organizations,
8 publishes an annual list of countries in which
9 it attempts to rank the relative propensity or
10 susceptibility to corruption in that particular
11 country.

12 Typically, economically more
13 challenged countries have a higher level of
14 incidence of this type of problem because of
15 the inability to pay government officials with
16 sufficient frequency or insufficient -- with
17 sufficient funds. And that's usually a
18 function fundamentally of the inadequacy of the
19 government with respect to its tax collection
20 capability.

21 So having said all of that, you
22 know, it's clear that there is a challenge
23 every day in respect of what you have
24 described. I think what most companies try

1 very hard to do is to avoid the kind of
2 payments you're referring to when it comes to
3 any significant business decision.

4 So with respect to the -- with
5 respect to contracts with vendors or with
6 customers. With respect to customs clearance
7 procedures, these are significant elements of
8 business dealing that the company really should
9 work extremely hard to avoid getting into
10 trouble over.

11 As you say on a one-on-one basis,
12 there can arise situations where just to get
13 something done, you may need to give a gift. I
14 forget who it was who famously said "All gifts
15 are bribes," but we use euphemisms such as gift
16 in order to cover our tracks in this regard.
17 But I think the notion is that if there is
18 anything that is fundamental to the performance
19 or the dealing of the business that it should
20 be avoided.

21 But in addition to that, I know
22 that companies work very hard to educate their
23 employees on how to avoid dealing with the kind
24 of challenge that you rightly highlight in the

1 manner that you suggest is inevitable. And
2 there are ways in which that can be done in
3 terms of the provision of technical support
4 which I referred to earlier. It could be in
5 the provision of some community contribution
6 that is dispersed among many people rather than
7 directed at a single recipient.

8 So these are not perfect ways of
9 dealing with the ethical challenge that you
10 mention, but they at least attempt to reduce
11 the one-on-one reciprocity which is kind of
12 fundamental to the way in which we think of an
13 unethical bribe.

14 CHAIRMAN CROSBY: Yeah.
15 Interesting.

16 COMMISSIONER STEBBINS: Building
17 off of that, though, a little bit, are there
18 other ways foreign governments try to disguise
19 the bribe, i.e., it's not as kind of sinister
20 and back ally slip me an envelope. Gee, all of
21 a sudden my permit fees went up exponentially,
22 and the government official takes his little
23 piece off the top from some exorbitant fee.

24 MR. QUELCH: It's important to --

1 it really is important to understand that the
2 FCPA and the UK Bribery Act, even to a greater
3 degree, really prevent a company from using or
4 hiding behind third-party agents as a way of
5 delivering a favor. And the laws in question
6 are quite open ended with respect to allowing
7 for many, many ways in which that favor could
8 be transmitted. In other words, it's a very
9 general statement that would -- that the
10 scenario that you present would not be excluded
11 from being covered by the legislation.

12 CHAIRMAN CROSBY: Anything else? I
13 know Dr. Quelch has a ten o'clock stop point.
14 Anybody else? Anything urgent?

15 Well, this is fascinating, and we
16 really appreciate your time and help for giving
17 us a little window into this interesting world.

18 MR. QUELCH: Thank you, Chairman.

19 CHAIRMAN CROSBY: Thank you very
20 much for coming.

21 MR. QUELCH: Appreciate the
22 opportunity.

23 CHAIRMAN CROSBY: All right. Item
24 three on the agenda, approval of minutes.

1 Commissioner McHugh.

2 COMMISSIONER MCHUGH: The minutes
3 for the November 21, 2013 meeting are in the
4 packet. There are late additions to the
5 packet. They're there. I would move their
6 adoption subject to correcting any mechanical
7 or typographical errors that it contains.

8 CHAIRMAN CROSBY: Second?

9 COMMISSIONER CAMERON: Second.

10 CHAIRMAN CROSBY: Any discussion?
11 They look fine to me. All in favor of
12 adoption?

13 Aye.

14 COMMISSIONER CAMERON: Aye.

15 COMMISSIONER MCHUGH: Aye.

16 COMMISSIONER STEBBINS: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 CHAIRMAN CROSBY: Opposed?

19 The ayes have it unanimously.

20 Item No. 4, Ombudsman Ziemba.

21 While you start, I'm going to get a cup of
22 coffee, but please go ahead.

23 MR. ZIEMBA: Mr. Chairman, Members.

24 By way of general update, there are three host

1 community hearings for the Category 2
2 applicants this week, tonight through Thursday.
3 We've submitted questions to each one of those
4 applicants that may be asked over the next
5 couple of nights. Those will be included in
6 the Commissioners' packets for the brief to the
7 different hearings.

8 One item, we asked each applicant
9 to estimate about 15 minutes of opening
10 remarks. And based on the number of questions
11 that we presented to those applicants
12 beforehand, we've had a request to extend that
13 15 minute estimate to 25 minutes. I said that
14 we would certainly be accommodating, but I
15 would mention it to the Commissioners this
16 morning. So I don't know if the Commissioners
17 have any thoughts on that.

18 COMMISSIONER MCHUGH: Is that so
19 that the applicants can address some of the
20 questions in their opening remarks rather than
21 in response to specific questions we ask them?

22 MR. ZIEMBA: Exactly.

23 COMMISSIONER MCHUGH: It strikes me
24 if they want to do that, it's a good idea.

1 COMMISSIONER STEBBINS: Agreed.

2 COMMISSIONER MCHUGH: So let's go
3 ahead and do it.

4 MR. ZIEMBA: Okay. Thank you.
5 Second item, a general update. On November
6 27th, we received an agreement that was reached
7 between the Town of Attleboro and Penn
8 National. And among other things, it outlines
9 Penn National's obligation to pay for safety
10 expenses that may be incurred by the Town of
11 Attleboro. What's noteworthy is Attleboro was
12 not designated as a surrounding community in
13 the application, nor did it submit a
14 surrounding community petition to be so
15 designated. The applicant has told the
16 Commission that this agreement should not be
17 construed as the surrounding community
18 agreement pursuant to the statute and the
19 regulations.

20 And I guess that brings to mind,
21 you know, a question that we have received
22 regarding these types of agreements. There are
23 other agreements that have been reached between
24 the Raynham Park applicant and communities

1 such, and they're deemed nearby impact
2 agreements.

3 And when we take a look at the
4 statute and the regulations on how these
5 agreements should be construed, on the one
6 hand, I don't believe that there's anything in
7 the statute that prohibits applicants from
8 reaching agreements or contracts with any
9 parties, including surrounding communities;
10 however, you know, a contrary viewpoint is that
11 the statute just clearly specifies only one
12 type of agreement with communities, and that's
13 a surrounding community agreement.

14 For guidance, we take a look at
15 Section 17A of the statute, which is it
16 basically says after review of the entire
17 application and any independent evaluation, the
18 Commission shall identify which communities
19 shall be designated as a surrounding community,
20 provided however that any community that has
21 negotiated a surrounding community memorandum
22 of understanding with the applicant that was
23 submitted with the application shall be
24 considered a surrounding community by the

1 Commission.

2 And I think that there are some
3 important words that I don't think that we
4 further defined that any applicant that has
5 negotiated or any community has negotiated a
6 surrounding community memorandum shall be
7 determined to be a surrounding community, I'm
8 not sure that that limits the ability of
9 applicants to reach agreements with communities
10 even though they don't believe those
11 communities have impacts that'll rise to the
12 level of a significant and adverse standard as
13 called by our regulation.

14 But Counsel Blue and I have had a
15 number of different discussions, and I think
16 that there are a couple of ways of looking at
17 it.

18 MS. BLUE: And I think given the
19 number of agreements we have that fall into
20 this category, it's a good time to take a more
21 in depth look at that and look at the statute
22 and the regs and determine whether there's a
23 way to view them as one way or the other.
24 There certainly is nothing in the statute that

1 prohibits applicants from entering into other
2 agreements with other communities should they
3 choose to. The question is how are they
4 characterized under our statute.

5 So we will take a closer look at
6 that and provide the Commission with more
7 information.

8 COMMISSIONER ZUNIGA: I have a
9 general question that maybe guides other
10 questions or how we think about it. Would it
11 be fair to say that those communities that are
12 entering into nearby community agreement
13 understand the difference between surrounding
14 community and everything else that the statute
15 may or may not afford them?

16 MR. ZIEMBA: Specifically in the
17 Raynham Park agreements, there's a specific
18 section that says that they understand that
19 they are not a surrounding community for the
20 purposes of the statute and that there are not
21 significant and adverse impacts that rise to a
22 level of a designation.

23 Now, the difference between a
24 designated surrounding community and one of

1 these impacted communities pursuant to these
2 other types of agreements, there are a couple
3 of important provisions in the acts.

4 First of all, surrounding
5 communities are given an automatic place to
6 participate in the community hearings that
7 we'll be having, the host community hearings,
8 but I think that we have taken the stance that
9 even if a community is not the designated
10 surrounding community, that it can speak to the
11 Commission as part of the surrounding community
12 portion of the agenda as long as it has the
13 nexus to the sight.

14 There is nothing that we have said
15 that prohibits those communities from speaking
16 to the Commission as a member of the general
17 public, even though they are not a designated
18 surrounding community. And we've submitted
19 notices of upcoming hearings to communities
20 that, in fact, have since been designated as
21 not surrounding communities.

22 But there are other provisions
23 under the act that could have an impact on
24 surrounding communities, notably by surrounding

1 communities can participate in the advisory
2 committees on the community mitigation fund,
3 and surrounding communities, by statute, have a
4 place to get funds from the community
5 mitigation fund. There are regulations stated
6 that just because you are not a surrounding
7 community, that doesn't mean that you cannot go
8 and apply to us for funds.

9 So there are some differences, but
10 I wouldn't state that there are overwhelming
11 differences between the two, especially since
12 we have liberalized the standard for the
13 community mitigation fund.

14 COMMISSIONER MCHUGH: I think we
15 should deal with this, and I think we should
16 deal with it the sooner the better because it
17 seems to me that whether or not this is a
18 permissible form of agreement is something that
19 may play itself out and may be playing itself
20 out right now between negotiations between
21 applicants and communities.

22 It also seems to me the negotiation
23 that we would prohibit parties from coming to
24 an agreement of whatever dimension they wanted

1 because it doesn't fit within the categories
2 and the statute is a hard one to swallow. It
3 may be useful to have a regulation or a
4 practice or a policy statement or something
5 that would require the agreement, a nearby
6 community agreement, call it what you will, to
7 contain and express the disclaimer, to show
8 this is a complicated area, and to have
9 communities recognized in the agreement and
10 therefore focus through themselves or through
11 counsel on the advantages that they would get
12 if they were surrounding communities and that
13 they are giving up by not being surrounding
14 communities, and so state in the agreement.

15 But having done that, it seems to
16 me that as a policy matter, we ought to lean in
17 the direction of allowing people to do whatever
18 they want. Peace is a good thing, and these
19 would be peaceful resolutions to controversy,
20 so -- But I do think however we do it, we
21 should do it quickly.

22 CHAIRMAN CROSBY: I was going to --
23 Sort of taking a little bit stronger position.
24 It's not clear to me why we would be worried

1 about this at all. I mean, in the instant
2 case, they do specify it's not a surrounding
3 community. So that is included in the case
4 we're now talking about. I'm not sure -- And
5 this not a rhetorical question, this is a
6 question. Why would we be concerned that an
7 applicant wants to sign some other kind of
8 agreement with other communities? If there
9 were an issue about subterfuge, if they were
10 being tricked into it not realizing they were
11 giving something up, that would be something
12 else altogether, but that's not what we're
13 talking about here.

14 So it seems to me -- I don't
15 understand exactly why we would be worried
16 about this at all. Why are we troubled by
17 this?

18 MR. ZIEMBA: I just think that
19 there's been a general question that we try to
20 resolve it, as staff, how we should deal with
21 these. We've taken a look at our regulations
22 to see how we can accept agreements beyond
23 certain dates. And obviously, if applicants
24 are reaching agreements with communities, one

1 would expect that potentially you could get
2 credit in our reviews, in our reviews of the
3 applications, even though those agreements do
4 not rise to a level of a surrounding community
5 agreement.

6 So perhaps we might need to take a
7 look at our provisions so we can accept those
8 provisions for the purposes of giving due
9 credit to applicants as part of their review.

10 CHAIRMAN CROSBY: But I wouldn't
11 even think that would be the issue. We clearly
12 can accept those. I mean, we accept letters
13 from people on the street, we accept letters
14 from businesses, with chambers of commerce.
15 Obviously, we would accept letters. And we
16 clearly established that relationships with a
17 little "s," surrounding community, neighboring
18 communities is one of the things that we care
19 about. That will matter in the evaluation
20 process.

21 So I would think we should -- to
22 the extent there's an issue, I would think why
23 don't we -- I would suggest that we make it
24 clear now that we're wholly supportive of such

1 things, do recommend. I mean, we also have had
2 a stand offish position about monkeying around
3 with the local issues. This has been something
4 that's meant to be up to the local communities
5 and to the applicants to the maximum extent
6 possible.

7 Maybe we make a point of
8 recommending that such agreements acknowledge
9 the surrounding community status, the lack of
10 the awareness, the mutual awareness of the
11 surrounding community issue, but beyond that,
12 we welcome such things, or encourage such
13 things.

14 Does anybody disagree with that?

15 COMMISSIONER MCHUGH: I think I
16 would be in favor of that.

17 COMMISSIONER ZUNIGA: I would be as
18 well.

19 MR. ZIEMBA: Okay. Thank you.

20 Another issue, we've sent --

21 CHAIRMAN CROSBY: Commissioner
22 Stebbins, you okay with that?

23 COMMISSIONER STEBBINS: Yes. You
24 know, if -- you know, some of these neighboring

1 community agreements may come up. We've seen
2 the development I think around the Leominster
3 project of these mutual aid or we'll reimburse
4 another town if their fire truck has to go to
5 something on the premises. I think that's fine
6 and good to have a simple agreement to say
7 we'll reimburse you for that without going to
8 the extent of being designated as a surrounding
9 community, as long as the community is aware of
10 what that designation means. I think you've
11 summed it all up.

12 MR. ZIEMBA: I think both Counsel
13 Blue and I agree it's a matter within our
14 interpretation.

15 MS. BLUE: Yes.

16 CHAIRMAN CROSBY: Okay.

17 MR. ZIEMBA: At the last meeting,
18 given the length of a few of our last meetings,
19 I didn't properly thank the MAPC for all of
20 their efforts in helping to review the Milford
21 applicant. They spent a tremendous amount of
22 time looking through all of the studies and did
23 tremendous studies on their own to try to
24 assess those impacts to get ready for our

1 reviews. And, you know, of course we saw the
2 results of the election and the referendum, but
3 I would be remiss if I didn't thank them.

4 CHAIRMAN CROSBY: Yeah. I'd like
5 to add to that, too, because they were
6 subject -- as we have been, but, I mean, that's
7 what we're supposed to be doing. They were
8 subject to some very unprofessional, very
9 unseemly attacks for trying to do their job
10 appropriately, and they hung right in there.
11 And I would absolutely second that. And I hope
12 we make a point of saying to Director Marc
13 Draisen and to Joel that we really appreciate
14 that and we went out of our way to comment on
15 that, because there were attacks on them that
16 had no business taking place, and they stuck
17 right with us and tried to do their job and did
18 do their job as best they possibly could. So I
19 appreciate your making that point.

20 MR. ZIEMBA: The other general
21 item, we've recently received some
22 correspondence from Longmeadow. Longmeadow is,
23 obviously, in the midst of negotiations with
24 MGM. And, you know, as we've mentioned, we try

1 to respect negotiations as much as we possibly
2 can. There are parameters within the Gaming
3 Act that gives a lot of authority to locals.
4 However, there are some concerns that were
5 raised in there that have some implementations
6 to our regional planning agency process.

7 There were comments that the
8 lookback proposal that is being identified by
9 MGM runs contrary to the spirit of the Gaming
10 Act and what we're trying to achieve here. And
11 since that letter, we've had conversations with
12 both the Pioneer Valley planning commission
13 that is helping to conduct that regional
14 traffic study and also with the applicant, MGM,
15 regarding what is meant by the lookback
16 proposal.

17 I think the Commission in previous
18 meetings has expressed some support of having
19 provisions and agreements where you could at
20 some point later on look back at actual impacts
21 and try to mitigate to those impacts, but I
22 think what we've also stated is to the extent
23 that impacts are either known or knowable at
24 this point, that the parties should try to

1 negotiate those impacts at this point. And as
2 we go forward with the traffic impact study,
3 there'll be some results potentially as early
4 as December 10th, and we just anticipate that
5 those could be part of the conversations
6 between the parties when they negotiate
7 disagreements. And I believe that MGM also
8 understands that, and we're going to carry
9 forward under that approach.

10 CHAIRMAN CROSBY: I'd like to
11 second that, too. I think the lookback idea is
12 a very good one in many instances, and as sort
13 of a general principle, I think it is very
14 appropriate, but not to the -- accepting it to
15 the exemption of understandable, predictable,
16 knowable issues now, clearly. And that really
17 would be an abuse of the lookback notion to be
18 dismissive of current things. So I completely
19 agree with that.

20 COMMISSIONER MCHUGH: But, again,
21 if -- And I don't disagree with that so far as
22 it goes, but I would not want the implication
23 to come from this that if an applicant and town
24 mutually agreed on a host community -- a

1 surrounding community agreement that contains
2 just lookback provisions and did it freely,
3 that we would not --

4 CHAIRMAN CROSBY: No. Totally, I
5 agree.

6 COMMISSIONER MCHUGH: Make that
7 clear.

8 CHAIRMAN CROSBY: Yes. I agree.

9 MR. ZIEMBA: And these communities
10 are represented by counsel, so they're in the
11 midst of active negotiations and -- but to the
12 degree that anything was confusing regarding
13 how we have put forward our support of a
14 lookback, I thought it bore some explanation.

15 CHAIRMAN CROSBY: Thank you.

16 MR. ZIEMBA: General updates on
17 surrounding community negotiates. We've had
18 conversations with all of the applicants and
19 with at least one or more of the communities
20 since the designation letters were sent out.
21 We recently sent out the notices of the
22 designation to all those communities that
23 achieved surrounding community status as a
24 result of the petition and those that were

1 currently outstanding but had not reached
2 agreements.

3 There is a December 26th deadline
4 for communities to reach a negotiated
5 settlement. If they cannot reach a negotiated
6 settle by December 26, then they move forward
7 toward our arbitration procedures.

8 I would note that our arbitration
9 procedures do allow parties by mutual agreement
10 to enter into arbitration at an earlier date if
11 they believe their negotiations would not be
12 fruitful. Again, that's by mutual agreement,
13 but that's an option. And as we start taking a
14 look at some of the deadlines and how they
15 would carry forward well into the new year, if
16 communities and applicants are at a place where
17 they know that there's nothing left to do
18 before the end of that 30 days, that there's no
19 way of them reaching an agreement, then perhaps
20 they can take a look at this option, but in
21 this general premise that we really encourage
22 applicants and communities to reach a mutual
23 agreement because, with any arbitration, there
24 is going to be at least one loser to the

1 arbitration, if not both, given that there is
2 an adversarial process.

3 So we encourage all applicants and
4 communities to reach negotiated settlements,
5 but to the degree that there's an
6 impossibility, there is that procedure in our
7 regulations.

8 COMMISSIONER ZUNIGA: Roughly, how
9 many communities are for each of the applicants
10 undergoing active negotiations at this point?

11 MR. ZIEMBA: So we have the two
12 that were designated, Bolton and Bridgewater,
13 Bolton for the Cordish proposal; Bridgewater
14 for the Raynham proposal. Also for Raynham,
15 Middleborough, West Bridgewater, and Easton all
16 remain, and Foxboro remains from the Plainville
17 applicant.

18 CHAIRMAN CROSBY: Say it again,
19 John.

20 MR. ZIEMBA: So Cordish, it's
21 Bolton. For Raynham, it's Bridgewater,
22 Middleborough, West Bridgewater, and Easton;
23 and Foxboro for the Plainville facility.

24 CHAIRMAN CROSBY: And can you give

1 us a sense of where do you think those are at?
2 Because what -- We need to get real here now
3 about the deadlines. We've had a deadline
4 where we expected to make the announcement on
5 the slots parlor on January 9th or 10th. In
6 order for that -- But we've always said subject
7 to the possible delays by surrounding
8 communities and applicants not being able to
9 agree.

10 If, in order to make that deadline,
11 all of the surrounding communities agreements
12 would have to be concluded by December 10th,
13 which is long before the end of these two
14 30-day cycles. So any community and applicant
15 that do not have an agreement done by December
16 10th is causing the entire awards process to
17 start to slip, and slip to we don't know when
18 because we don't know when in this 60 day, two
19 30-day cycle these agreements will eventually
20 be done.

21 So can you give us a sense of where
22 you think we are, and are there any communities
23 that simply there's no progress being made and
24 they might be well advise to go straight to the

1 arbitration process?

2 MR. ZIEMBA: Some of the recent
3 conversations that I've had have indicated to
4 me that communities are in a place that they
5 want to continue having those conversations.

6 For example, the Plainville
7 situation, I believe that a meeting is going to
8 be scheduled this week or early next week in
9 order to progress those conversations. The
10 Cordish proposal, there's been information
11 shared between the applicant and the community
12 just recently and hopefully that is progressing
13 conversations. And then for the Raynham
14 applicant, there have been some attempts to
15 schedule meetings just recently. Given some
16 folks may be out of the country or other
17 places, they may not be as successful this week
18 in getting some of those meetings, but they
19 know there are some very pressing deadlines
20 ahead.

21 But I think there are still
22 definitely some room for optimism for these
23 conversations, but especially as we get towards
24 the end of next week or the following week,

1 we're going to run out of time, obviously,
2 before the holidays. So the key weeks in my
3 mind are this week and next week.

4 CHAIRMAN CROSBY: And next week.
5 Right. And I just want to make sure that
6 the -- I assume they do, but I want to make
7 sure that the applicants and the community -- I
8 mean, there are two sides to this. If folks
9 are negotiating in good faith and there are
10 difficult issues here and people are sharing
11 information and negotiating in good faith and
12 trying to move this along, fine. That's
13 important. The law provides this process.
14 That's fine. If it delays the process, if it
15 delays our award, we'll live with that. But if
16 they're not sharing data and not negotiating in
17 good faith and one party or the other is being
18 obstructionist, everybody's schedules is
19 getting screwed up here.

20 Our evaluation process -- You know
21 this, but I want the public to know this. Our
22 evaluation process can be -- but for the
23 surrounding community agreements can be
24 concluded in order to make the -- in time to

1 make the award by January 9th or 10th.

2 We've been all working our
3 evaluation processes at great length and great
4 intensity to be done. So it's going to only be
5 a surrounding community and an applicant that
6 can't get the deal done that's going to make
7 everybody have to wait on the slots parlor.

8 If it's good faith, fine, we'll
9 live with that. But if it isn't, then I think
10 we should do everything in our power to push
11 them into arbitration and just get this over
12 with.

13 COMMISSIONER ZUNIGA: I would only
14 actually highlight to that point only one
15 surrounding community and an applicant would
16 delay everybody else. It's not like we can go
17 ahead with the other two applicants, let's say,
18 if they were done with all their surrounding
19 community agreements. The problems you
20 highlight arise just by one negotiation being
21 delayed into arbitration or bad faith
22 negotiations.

23 CHAIRMAN CROSBY: Right. There are
24 thousands of construction jobs, there's money

1 to the Commonwealth, there's all these
2 communities that are trying to figure out are
3 we going to get this or not, there's people who
4 work at a racetrack that don't know whether
5 they're coming or going, and on and on. So
6 delay is in nobody's interest unless it
7 absolutely has to be in good faith, and I hope
8 you'll convey that in no uncertain terms to all
9 the participants.

10 MR. ZIEMBA: I plan to be a
11 constant remainder of that.

12 CHAIRMAN CROSBY: I'm sure you
13 have. And this wasn't directed at you, this
14 was directed at all your constituents. But
15 needless to say, I feel strongly about this.

16 Okay. Go ahead. Excuse me.

17 MR. ZIEMBA: One other item that
18 we'll have to approach over the next week or so
19 is how -- what parameters should exist for the
20 arbitrations, what instructions do we put
21 toward to the arbitrators.

22 As we discussed at the November
23 21st meeting, we're asking the arbitrators to
24 be guided by what the Commission found.

1 They're not limited to what the Commission
2 found, especially in some of those surrounding
3 community determinations as we discussed at
4 that November 21st meeting.

5 But we will need to put forward
6 basically sort of an instruction manual of how
7 the arbitrators should approach the issue of
8 here's what the Gaming Act says, here's what
9 our regulations state, here's what we're trying
10 to achieve in reaching a fair and reasonable
11 result.

12 Obviously, it's up to the
13 arbitrators to reach the reasonable result, but
14 we can put forward some further advice. For
15 example, one thing we will have to approach is
16 we've received a question regarding what is a
17 best and final offer. Our regulations just
18 require each the applicant and the community to
19 put forward their best and final offer, and
20 then that is what is arbitrated. But then how
21 do you deal with if an offer was made prior to
22 the arbitration, how do you approach that? Is
23 that considered part of the arbitration? Can
24 parties reference that as fairness?

1 And I think what we should do is we
2 should take a look at how things have been
3 approached in other arbitrations, and I think
4 our best and final arbitration is modelled
5 after things that have occurred in major legal
6 sports. And as I understand it, some of those,
7 if you have an offer that was made prior to
8 arbitration, that that is precluded from part
9 of the conversation.

10 But I think we always intended that
11 each party put forward their best and final
12 offer. That's what our regulation states. But
13 what conversations can occur in arbitration in
14 order for arbitrators to reach that result.

15 I don't know, Counsel Blue, if you
16 have any thoughts on that.

17 MS. BLUE: Well, I think the
18 concept would be that the parties put out an
19 offer at the time the arbitration takes place.
20 I don't believe we can necessarily limit what
21 they -- information they share with the
22 arbitrator. They may be able to share
23 information regarding prior negotiations or
24 prior offers. I don't think that the

1 arbitrator can really take that into account
2 except as it informs its judgment in general
3 about the situation.

4 But we can certainly put some
5 guidance together for that and make sure that
6 the arbitrator has a consistent set of rules
7 and policies.

8 COMMISSIONER MCHUGH: I think we
9 should -- If we're going to go down this road,
10 rather than leave the arbitrator to his or her
11 own approach to it, we need to have something
12 written out that we all take a look at. I
13 don't think -- And I haven't read the
14 regulation recently. You have much more
15 recently than I. But I don't think it's
16 exactly the same as a baseball arbitration in
17 that the arbitrator isn't limited to one offer
18 or the other.

19 MR. ZIEMBA: Yeah.

20 COMMISSIONER MCHUGH: And that
21 puts -- I don't think. And that puts an
22 overlay onto what we do with best and final
23 offer and how binding that is on the arbitrator
24 or the parties.

1 So it would be helpful to have some
2 guidelines for the arbitrator or some
3 background for the arbitrator maybe. I think
4 we need to be really careful as to how we draft
5 that, and I know we will be.

6 MR. ZIEMBA: Yes. And I wasn't
7 intending to provide basically an instruction
8 manual. I think we have to depend on the
9 professionalism of the arbitrators that are
10 selected. Our regulations have a very fair way
11 of selecting those arbitrators, but to the
12 extent that some of these arbitrators may not
13 have a familiarity with the Gaming Act, that's
14 something I think we should let them know
15 about.

16 COMMISSIONER MCHUGH: Right.

17 CHAIRMAN CROSBY: Well, should we
18 talk about and decide now whether the best and
19 final being independent of anything in the
20 past?

21 COMMISSIONER CAMERON: Well, I
22 think something from legal first would be
23 helpful that really spells out the regulation
24 and the intent, and then we would be able to

1 have a more informed discussion.

2 CHAIRMAN CROSBY: Okay.

3 COMMISSIONER MCHUGH: I agree with
4 that.

5 CHAIRMAN CROSBY: That's fine.
6 We're also -- Fine. Okay.

7 MR. ZIEMBA: Sorry for the random
8 grouping of issues that we're putting forth.

9 COMMISSIONER MCHUGH: No. These
10 are all issues.

11 MR. ZIEMBA: Things are moving
12 forward rather quickly, as you know.

13 Okay. Then let me just move
14 forward on item (c), (4c), the petition
15 deadline for Category 1 surrounding community
16 and live entertainment venues. The Commission
17 had a recent discussion regarding the status of
18 each one of the applicants.

19 The Category 1 applicants, they
20 came and made presentations to us on November
21 7th, I believe, about where they stood with
22 each one of their conversations with their
23 communities, surrounding communities and
24 neighboring communities. And there's questions

1 on what -- where do we stand with the December
2 31st deadline for surrounding community
3 petitions and, I guess, the December 31st
4 deadline for applications.

5 So that remains a question. I will
6 just bring to your -- remind us all of a few
7 things that might be an impact on that
8 discussion, and then potentially, we can
9 discuss whether or not it makes sense to have a
10 comment period on the current deadline.

11 One thing that is in our
12 regulations is that, as you know, surrounding
13 communities, within ten days of the application
14 date, they must submit their surrounding
15 community petition to the Commission. What we
16 anticipated in our regulation is that there
17 would be availability of the applications by --
18 the applications to those surrounding
19 communities when they file their petitions.
20 Our recent experience with Category 2's show
21 that it's very valuable information that
22 category -- excuse me, that communities need
23 when they submit their petitions to us on
24 whether or not they may be successful in their

1 approach.

2 We are trying to see -- to get our
3 information out as quickly as possible, the
4 applications out as quickly as possible;
5 however, it may not come as early as we hoped
6 within that, and it may not occur within that
7 ten-day period, depending on the complexity of
8 these applications. They have an
9 administrative review for completeness and that
10 completeness review may actually not conclude
11 until after the 10th.

12 So there's a probability that some
13 communities would not have access to the
14 application data in order to make their
15 petitions.

16 Now, we have provisions in your
17 regulations that allow for communities to get
18 access to those applications if they so choose
19 on our -- For example, on our host community
20 web page, all that the communities need to do
21 is they need to send an e-mail to the
22 Commission saying I want to receive copies of
23 studies and reports, and then we then require
24 those -- the applicants to submit those studies

1 to the communities when they submit the
2 applications to us. And we expanded that from
3 just the studies that are included in the
4 Gaming Act to include non-private portions of
5 their application.

6 However, today, a very de minimus
7 number of communities have signed up for that
8 process. We've sent out a couple of reminders.
9 But, you know, I don't blame the communities
10 because we send out a lot of reminders. So we
11 could potentially send out another reminder,
12 and we will, of the availability of that. But
13 at the end of the day, we may not have a
14 tremendous number of communities that have
15 signed up for that. So that's one thing I
16 mentioned.

17 We could also potentially consider
18 expanding our requirement of applicants to
19 submit copies of those non-private portions of
20 the applications to a greater number of
21 communities, perhaps all geographically
22 adjacent communities even though clearly all
23 geographically adjacent communities are not
24 necessarily surrounding communities, but for

1 the purposes of enabling these communities to
2 receive copies of the applications, that might
3 make some sense.

4 One other item to consider is that
5 over the next couple of weeks, there's a number
6 of significant reports for all three of the
7 applicants that will become available, and
8 given the holiday time and given the tight
9 timetable between now and December 31st, it may
10 be difficult for some of these communities to
11 fully integrate these studies into their
12 thinking when they're reaching these agreements
13 and that might potentially lead to a thought of
14 an extension, even an extension that is more
15 close in the number of days to what we did for
16 Category 2's.

17 For example, in the Wynn Resorts,
18 their draft environmental impacts report is
19 due, I believe, on December 16th. I note that
20 our requirements do not require a draft
21 environmental impact report, but Wynn, in its
22 representations to us and other communities,
23 noted how important that would be for
24 understanding impacts.

1 There is also a couple of other
2 studies, a transportation improvement
3 initiative and a water transportation system.
4 Conversations are ongoing with the communities
5 about those, but those are going to be
6 available more widely over the next few days.

7 The Suffolk Downs applicant, as we
8 know, or former applicant, we know that there
9 is a lot of conversations regarding their plan
10 and what their revised plan would be. So
11 communities may not be able to understand the
12 impacts.

13 And then finally with MGM, their
14 transportation report is due on the 10th of
15 December, and they have not yet released their
16 economic impact study.

17 So there are all number of
18 different reasons for potential request for
19 comment.

20 CHAIRMAN CROSBY: So are you making
21 a recommendation, or are you just laying out
22 the options?

23 MR. ZIEMBA: I can make a
24 recommendation if you want me to.

1 CHAIRMAN CROSBY: Well, I would be
2 interested to know what you think.

3 MR. ZIEMBA: I think we should have
4 a request for a comment about an extension.
5 There are a number of different reasons that an
6 extension -- certainly not the extension that
7 was requested by a number of the Palmer related
8 communities of 180 days. I just don't think
9 that's a possibility within what we're trying
10 to achieve here, but there could potentially be
11 a short extension, and we could potentially
12 still live within all of the expectations that
13 there are being put upon us by the legislature
14 and by others for revenues being made available
15 to the Commonwealth and jobs and all of things
16 that we've talked about.

17 If we extended the deadline by 17
18 days for Category 1, that is comparable to the
19 16-day extension that we did for Category 2.
20 We would still, based on my initial analysis,
21 if everything goes right, we could still
22 receive our licensing fees by June 27th, three
23 days before the deadline for receipt of these
24 licensing fees.

1 That does not leave us with any
2 margin of error. And I bring this to
3 everybody's attention because our ability to
4 grant extensions to any dates, absent some
5 change by the legislature and their expectation
6 of dollars, is really minimal. There's some
7 potential that you could have some payback to
8 the Commonwealth after the June 30th deadline,
9 but that's not a tremendously permissive
10 authority.

11 So when people look to the
12 Commission to ask for extensions of deadlines,
13 there really is not that much that the
14 Commission has singly within its own power to
15 grant. And what I've outlined to you of this
16 basically two-week extension or shortly after
17 that would test the limits of that authority.

18 COMMISSIONER ZUNIGA: Would that
19 timeline take into account at least potentially
20 one set of parties going into arbitration?

21 MR. ZIEMBA: Yes.

22 COMMISSIONER ZUNIGA: So even if
23 you call it, everything goes right, that would
24 still be within the confines of allowing for

1 negotiation plus arbitration?

2 MR. ZIEMBA: Yes.

3 CHAIRMAN CROSBY: And how much time
4 does that 17-day extension in your schedule
5 allow for the Commission to make the decisions
6 on who's a surrounding community or not?

7 MR. ZIEMBA: So what we would have
8 under the 17-day variance, instead of January
9 10th for submission of the surrounding
10 community petitions, the deadline would be
11 January 27th. We would receive applicant
12 responses to surrounding community petitions on
13 February 6th from applicants, and then 12 days
14 later, the Commission would meet to discuss
15 those petitions and the responses, and it would
16 have to designate -- make that designation on
17 that day in order to enable the -- Like, we
18 couldn't wait a few days after the decision by
19 the Commission to send out the written
20 designations. It would have to occur on that
21 day to enable communities to then go forward to
22 the negotiation process.

23 CHAIRMAN CROSBY: So that would be
24 February --

1 MR. ZIEMBA: 18th.

2 CHAIRMAN CROSBY: -- 18th, and then
3 60 days beyond that would be March, April.

4 MR. ZIEMBA: That's right.

5 CHAIRMAN CROSBY: How did you get
6 to June?

7 MR. ZIEMBA: So I'll just take you
8 through the timetable. And I think this is
9 correct.

10 So February 18th, the Commission
11 designates the surrounding communities. And
12 this would be both petitioning communities and
13 those that are designated in the application
14 consistent with our practice for Category 2,
15 thus, communities that have been designated
16 will also have just a little bit more time to
17 negotiate if we have them at the same schedule
18 as with those that have successfully petitioned
19 the Commission.

20 We would -- Our current plan is
21 that we would have hearings in the host
22 community on March 17th to the 19th. These are
23 the host community hearings. But they would be
24 concluded only after agreements are reached so

1 that they could be held open until April 28th,
2 which is seven days after surrounding community
3 arbitration.

4 So 2/18, we designate. 2/18 to
5 3/20, that's when surrounding communities would
6 negotiate with the applicants. 3/21 to 4/21,
7 that's the arbitration period. 4/28, that's
8 the -- we finish the hearings in the host
9 communities, and then 5/28, because we cannot
10 make an award until 30 days after the close of
11 those hearings, that's when we would be able to
12 take action on the gaming license. And then
13 applicants have 30 days from the decision to
14 pay us the licensing fees, that takes us to
15 June 27th.

16 CHAIRMAN CROSBY: I see. Okay. Go
17 ahead.

18 COMMISSIONER ZUNIGA: Well, I, for
19 one, would be very reluctant to extend the
20 deadline at this point anyway, but for the
21 instances that you describe relative to studies
22 being eminent about being available, I think
23 there are great success cases already in the
24 Category 2's. There's templates out there of

1 what they were able to negotiate and had agreed
2 upon. And frankly, the field has narrowed in
3 both regions A and B.

4 So applicants should be a lot more
5 incentivize in my opinion, but as well --
6 surrounding communities as well to sit down and
7 look at the impacts that they know and think
8 about what impacts they don't know and try to
9 hash something out, so.

10 COMMISSIONER STEBBINS: I would
11 agree. I'm a little reluctant to make that
12 extension also. We've had two applicants who
13 had their referendums pass back in June, and
14 we're coming up on the six-month anniversary of
15 that. You know, we've obviously encouraged
16 dialog between applicants and surrounding
17 communities. We've encouraged potential
18 surrounding communities to contact applicants.
19 I don't know if we're going to see some big
20 surprises.

21 MR. ZIEMBA: I do note that as
22 Mr. Silverstein told the Commission a few weeks
23 ago, that, yes, there certainly has been a lot
24 of time between certain referendums and now,

1 but in some regards, the communities have not
2 had some of the information to reach agreements
3 that they would need --

4 COMMISSIONER STEBBINS: And I echo
5 what Commissioner Zuniga said on that. The
6 date and the information, any of the ENF
7 documents, they can be returned to the
8 surrounding communities.

9 COMMISSIONER MCHUGH: I would be
10 reluctant to extend it as well because I don't
11 think 17 days is going to change anything or be
12 of any material help. I'd rather save that 17
13 days for extending something else if it's
14 necessary, but under controlled conditions so
15 that we could assure a result that's useful.

16 It seems to me, for example, that
17 if some applicant truly has been stonewalling a
18 community, it might be worthwhile to get the
19 applicant and the community as we did -- and it
20 wasn't a stonewalling case; it was a
21 misunderstanding case or an inability to agree
22 case -- as we did with another applicant in a
23 surrounding community and a community, get them
24 in here and talk to them face to face and see

1 what the problems are and then try to come up
2 with a tailored approach to what may solve
3 whatever problem exists, and then, if
4 necessary, give them a little bit of that 17
5 days in order to do it rather than simply give
6 a 17-day extension that may or may not really
7 deal with whatever problem exists.

8 COMMISSIONER CAMERON: And the
9 other point, I think, is it kind of takes away
10 that sense of urgency. You spoke about these
11 next two weeks being big weeks as far as making
12 progress and getting these things done. I
13 think if we push the deadline, that urgency
14 does not exist any longer, and it's probably
15 premature is what I'm thinking to consider
16 extending at this point.

17 CHAIRMAN CROSBY: I think we have a
18 consensus on this one. It does seem to be, for
19 whatever reason, good or bad, no matter whose
20 fault it is, that it is perfectly possible that
21 the -- some surrounding community aspirants may
22 not have had time to assess the application and
23 the studies by our deadline, but that doesn't
24 mean they can't submit the request for

1 surrounding community status. And I would
2 encourage any community that feels like it is
3 but hasn't had the chance to submit it. But we
4 will then do that analysis. They don't have to
5 do the analysis. All they have to do is submit
6 the letter, and then we will have our
7 consultants and we ourselves will do the
8 analysis.

9 So they're not -- by not having an
10 extension and by not having a chance to look at
11 the information on their own, they're not
12 compromised in their ability either (A) to
13 apply or (B) to get it. Because in the final
14 analysis, it will be we who make the decision,
15 and we will have the studies and the
16 application.

17 So I'm with everybody on this one.
18 I would strongly be disinclined.

19 MR. ZIEMBA: One thing I'd like to
20 mention is that if we go with the same policy
21 that we had with the Category 2 applicants, the
22 deadline for submission of a negotiated
23 settlement before the 30-day clock ticks would
24 be the end of January.

1 So under the policy right now, if
2 there's a surrounding community petition
3 deadline of January 10th, the Commission would
4 receive applicant responses to the petitions on
5 January 21st, and then we would have our public
6 hearings, input hearings on the 28th through
7 the 30th, and then the Commission would receive
8 its staff recommendations on surrounding
9 community status, if possible, within those ten
10 days on the 31st of January.

11 So if we go with the same policy
12 that we did with Category 2's, then before this
13 30-day negotiation period kicks in, it would be
14 potentially the 31st of January.

15 And so perhaps that's something
16 that we could make much more widely known.
17 We'd love the applicants and communities to be
18 able to reach agreements by our deadline, but
19 we'd also really encourage applicants to make
20 designation of surrounding community status
21 where they believe these communities are
22 surrounding communities.

23 And one thing I will note is that
24 we will incur substantial resources and we will

1 expend substantial resources in analyzing those
2 petitions, as you saw from the Category 2
3 applicants which will have much less impacts
4 than the Category 1's. It takes a tremendous
5 amount of analysis. And over the next couple
6 of weeks, we'll be having those constant
7 conversations that I mentioned a little bit
8 earlier with the applicants so that we as a
9 staff and our consultants can know who we need
10 to analyze because that ten-day window is -- or
11 12 -- ten day, yes, ten day with that one, is
12 quick.

13 And, you know, as the Commission,
14 we could come back. If the Commission so
15 decides, we can certainly come back with how we
16 would amend our policies so that communities
17 get access to those application documents as
18 soon as they can --

19 CHAIRMAN CROSBY: Sure.

20 MR. ZIEMBA: -- because it just
21 without those -- that data, I just can't see
22 how they would be able to submit quality
23 surrounding community petitions.

24 CHAIRMAN CROSBY: But just to be

1 clear, they don't have to submit quality
2 applications. I mean, they're not judged on
3 the basis of their applications. They're
4 judged on the basis of our judgment of the
5 actual impacts.

6 So I don't -- I mean, if I'm wrong
7 on this, please say so, because it's an
8 important distinction. But if we are giving
9 surrounding community aspirants license to just
10 sort of do a prophylactic application, that
11 relieves them of tremendous pressure. And we
12 are saying we will take the responsibility,
13 which we ultimately have anyway, of looking out
14 for their interests through an objective
15 assessment of the actual data. So if that's
16 right, then I think that's an important
17 distinction to make.

18 MR. ZIEMBA: That is right. That
19 is our responsibility, but obviously we are
20 aided by information that's put forth --

21 CHAIRMAN CROSBY: True.

22 MR. ZIEMBA: -- by the communities

23 --

24 CHAIRMAN CROSBY: I agree with

1 that.

2 MR. ZIEMBA: -- that are
3 experiencing the impacts. This information is
4 valuable to us as well.

5 CHAIRMAN CROSBY: Yes. I agree
6 with that.

7 You can also point out to
8 applicants and surrounding communities that the
9 secretary of administration and finance and the
10 chair of house and senate ways and means
11 commission will be watching to see who gets
12 done on time.

13 Okay. What's next?

14 MR. ZIEMBA: That's what I have in
15 my report.

16 CHAIRMAN CROSBY: All right.
17 Great.

18 COMMISSIONER ZUNIGA: Should we
19 take a break before.

20 CHAIRMAN CROSBY: Well, I was going
21 to do Mark's report. We have a hard -- for
22 everybody to know, we a hard stop at one
23 o'clock because the Commission has to go to
24 Leominster for its legislatively mandated host

1 community hearing. In order to get our web
2 streaming folks out there, we have to stop at
3 one o'clock in order that our vendor can get
4 out there and get set up to stream, so we have
5 to stop at 1:00. So I don't want to run the
6 risk of not getting your legislative report
7 done, so let's do this, we'll take a very quick
8 break, and then we'll do Suffolk Downs.

9 So this is Item No. 6, research and
10 problem gaming, Mark Vander Linden, director.

11 MR. VANDER LINDEN: Good morning,
12 Chairman.

13 CHAIRMAN CROSBY: I'm sorry, one
14 moment.

15 COMMISSIONER STEBBINS: I think she
16 needs to take a break.

17 CHAIRMAN CROSBY: Okay.

18 (Break taken.)

19 CHAIRMAN CROSBY: We're ready to
20 reconvene.

21 Director Vander Linden is here to
22 give his report.

23 DIRECTOR VANDER LINDEN: Good
24 morning. So just by way of background, Section

1 71 of the Gaming Act requires the Massachusetts
2 Gaming Commission to establish an annual
3 research agenda to assist in understanding the
4 social and economic effects of casino gambling
5 in Massachusetts and minimize the harmful
6 impacts.

7 Section 108 then is a statutory
8 requirement to submit a report of research
9 activity conducted under Section 71 no later
10 than two years after the effective date of the
11 act. And so therefore, I present to you in
12 your packet, the report of the research agenda
13 of the Massachusetts Gaming Commission.

14 As reflected in the report and as
15 you very well know firsthand, this is a complex
16 and impressive effort, one that I don't think
17 that I've seen done in the United States
18 previously. The Massachusetts Legislature
19 should be applauded for including such a
20 mandate within the Gaming Act. The current
21 research agenda, one, utilizes a framework to
22 accurately and comprehensively assess the
23 social and economic impacts of expanding gaming
24 in Massachusetts. It measures the current

1 rates of gambling and problem gambling in
2 Massachusetts, and it inventories the existing
3 treatment and prevention programs.

4 All the current efforts that we're
5 doing right now is intended to establish a
6 baseline of these three areas so that as gaming
7 expands in Massachusetts, we can then continue
8 to measure the impacts and respond accordingly
9 through policy, through treatment initiatives,
10 through prevention initiatives.

11 I wanted to provide an opportunity
12 for the Commission to provide comment, to
13 provide questions in advance of submitting this
14 then to the legislature.

15 COMMISSIONER CAMERON: One
16 question, Director. I thought this was an
17 excellent summary of where we are and where we
18 intend to go. I just wondered if there are any
19 challenges that had not been anticipated. It
20 seems like every initiative, so far we've had
21 some maybe unintended consequences. I just
22 wondered if there were anything here that you
23 could share, if there are.

24 DIRECTOR VANDER LINDEN: Yes. No,

1 I think there definitely are. There are
2 hurdles that it seems like we encounter every
3 week. And I think that doing this accurately,
4 making sure that what we're measuring is what
5 we're intending to measure, that we're getting
6 rid of the background noise on these specific
7 indexes to make sure that this is what we're
8 wanting to measure so that when we go forward
9 with this baseline, that we're continuing to do
10 this accurately and that there's integrity
11 within the process.

12 I do want to acknowledge, and I
13 meant to do this earlier, the SEIGMA team.
14 They've been fantastic to work with. Lead by
15 Dr. Rachel Volberg and her team, an incredibly
16 talented group of people that I think are doing
17 just this, that as we move forward, they want
18 to make sure that this is done correctly.

19 COMMISSIONER MCHUGH: Following up
20 on that question, are there any obstacles or
21 impediments or difficulties of a nontechnical
22 nature that the Commission could be helpful in
23 removing, any, for want of a better word,
24 political difficulties or interagency

1 cooperation difficulties or other kinds of
2 things where the Commission could put its
3 weight behind finding a solution.

4 DIRECTOR VANDER LINDEN: In the
5 five months that I've been here, at every step
6 of this, the Commission has been fantastic.
7 You, as commissioners, have been fantastic. If
8 there have been barriers of a political nature
9 of connecting with other agencies, it's been
10 very well received to figure out how can we
11 possibly remove these barriers.

12 There's a lot of different agencies
13 that we're trying to include in this. We are
14 capturing primary data certainly, especially
15 through our prevalence survey, but we're also
16 trying to coordinate a number of secondary data
17 sources and that requires the cooperation of
18 countless other agencies, the Commission has
19 been great, and when we've had difficulty
20 maneuvering through these, to try to remove
21 those barriers.

22 CHAIRMAN CROSBY: And you might
23 mention -- Well, we had a slow start with HHS
24 and DPH because of all the various things

1 they've been going through in the last year,
2 but we're now off to a really good start with
3 the Department of Public Health. We had a
4 meeting yesterday with Commissioner Cheryl
5 Bartlett, and we're working on an MOU to
6 oversee the management of the public health
7 trust fund. That's worked really well. That
8 relationship looks very, very promising.

9 So at the moment, I don't see
10 barriers other than just the magnitude of the
11 job. Commissioner Cameron and our law
12 enforcement people have been really helpful in
13 trying to figure out where we could get the
14 crime information that we need. But other than
15 just the magnitude of the task, I don't see any
16 challenges.

17 COMMISSIONER ZUNIGA: You know,
18 just following up on those three comments,
19 actually, I don't know if this is -- there's a
20 place for this in the report. But
21 acknowledging the amount of resources that we
22 are putting behind this is very important for
23 the legislature to really understand. We put
24 in regulations our ability to assess applicants

1 and eventually licensees up front for the
2 moneys that paid for this study, among other
3 things. And I think they should understand
4 just the amount of effort and finances that are
5 going to this effort. It's not something that
6 comes across on the executive summary, and I
7 think there's good reason. It's important to
8 highlight the activities. But somewhere,
9 whether it's by way of our ongoing
10 conversations with them or acknowledgments as
11 an appendix or something like that could go a
12 long way to frame our effort not just
13 coordinating with other agencies, but also
14 paying for this very expensive process.

15 And worthwhile. I don't want to
16 mention expensive as in not worth it. I think
17 it's very much worth it, and I think that's
18 exactly what the legislature intended us to do.
19 But it's not something that, in my opinion,
20 should go unmentioned somewhere.

21 CHAIRMAN CROSBY: I think that's a
22 very good point. I think it would have a place
23 in the executive summary. I think that's worth
24 saying the statute they envisioned, the public

1 health trust fund would pay for this research
2 project, but there is no public health trust
3 fund yet, and the Commission has had to and has
4 willingly spent, whatever it's going to be,
5 upwards of \$3 million or something like that
6 out of the -- out of our initial loan from the
7 rainy day fund, and the expense which was
8 anticipated by no one when this got started. I
9 think that's a very important point and should
10 be brought to the fore.

11 DIRECTOR VANDER LINDEN: Great. I
12 will include that, I think absolutely, in the
13 executive summary as well as then reflected in
14 the full report.

15 It is intended that the executive
16 summary is included in the full report, but
17 that it can also sit separate from the full
18 report as kind of just a summary of our
19 research activities. But I'll be glad to
20 include that. Thank you.

21 CHAIRMAN CROSBY: We would -- I
22 think it's a great job. I mean, everybody
23 feels good about it, feels good about the work
24 that's being done. Does somebody want to take

1 a motion here?

2 COMMISSIONER ZUNIGA: Sure. I'll
3 be happy to move that we accept the report as
4 presented here before us and forward that to
5 the relevant subcommittees of the legislature
6 that the Gaming Act provides for and in
7 compliance with the Gaming Act.

8 CHAIRMAN CROSBY: Subject to the --

9 COMMISSIONER ZUNIGA: Subject to
10 the changes that we discussed here today.

11 CHAIRMAN CROSBY: Second?

12 COMMISSIONER MCHUGH: Second.

13 CHAIRMAN CROSBY: Any further
14 discussion?

15 All in favor?

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER MCHUGH: Aye.

18 COMMISSIONER STEBBINS: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 CHAIRMAN CROSBY: Aye.

21 Opposed?

22 Ayes have it unanimously.

23 Great. Thank you.

24 DIRECTOR VANDER LINDEN: Thank you.

1 CHAIRMAN CROSBY: All right. We
2 are on now to Item No. 5, which is the Suffolk
3 Downs topic. I am going to suggest we have a
4 brief break. The agenda will start out with a
5 presentation by representatives of Suffolk
6 Downs on the new status that was presented to
7 the press yesterday.

8 So if the Suffolk Downs folks want
9 to avail themes of the seats, we'll be back in
10 hopefully just five or ten minutes.

11 (Break taken.)

12 CHAIRMAN CROSBY: Before we start
13 formally, I just wanted to say one thing about
14 of our constituent groups that is very much
15 affected by our work but that we not intended
16 to. We -- As you know, we supervise the racing
17 -- I mean, the Commission, the gaming business
18 and we also supervise the racing business. And
19 as we are dealing, and certainly you all too,
20 are dealing with the issue at Suffolk Downs,
21 there is a whole racing community. Our
22 employees, track employees, temporary employees
23 who are here seasonally, people who raise
24 horses, breed horses, they don't know from one

1 day to the next what's going on here. We think
2 about it mostly in the context of the gaming
3 business because that's the issue that we're
4 trying to decide on right now, but there are a
5 lot of folks out there whose lives are affected
6 by these decisions who simply don't know
7 whether they're going to have jobs next week,
8 whether there's going to be a track. I
9 understand that you all have -- are doing
10 what -- This is not directed at you at all.
11 This is simply to say that there is a
12 constituent group out there whose lives are
13 very much affected by this. We're not
14 unmindful of this.

15 As many of you know, we have tried
16 to figure out ways that we could be helpful in
17 this transition period. Frankly, there's not
18 much we can do. We will go out of our way for
19 any of you in the horse racing business and in
20 this case the thoroughbred racing business to
21 make our website a source of information where
22 we will give you as much information as we
23 possibly can. I'm sure Suffolk Downs is doing
24 the same thing.

1 But our racing division director,
2 Jennifer Durenberger, reminds us that there is
3 a group of folks out there whose lives depend
4 on what we are doing here, and I just wanted to
5 say to them, we understand, and we're all
6 working as hard as we can to get this resolved,
7 and once it is resolved one way or the other,
8 we will work with representatives of the
9 thoroughbred industry to do what we can to
10 ensure a future of thoroughbred and harness
11 bred racing in this state.

12 Commission McHugh is now back.
13 We're going to start out with representatives
14 of Suffolk Downs. There are so many of you, we
15 want to make sure our reporter gets your names,
16 so please be sure to introduce yourselves when
17 you start. And I think the topic here is your
18 new structure as you released to the press
19 yesterday, and then we will get on ourselves on
20 some of those others issues.

21 MR. TUTTLE: Mr. Chairman, thank
22 you. We too are very mindful of the people
23 about whom you just spoke, and they are one of
24 the big reasons that we are here before you

1 today.

2 My name is Chip Tuttle. I'm the
3 chief operating officer of Sterling Suffolk
4 Racecourse. Thank you, Mr. Chairman,
5 Commissioners, for the opportunity to come back
6 and update you on our status, our partnership
7 with Mohegan Sun, and our status with our host
8 community agreement of Revere. Mindful of
9 everybody's time and your hard deadline, let me
10 tell you who is here with me today, and we'll
11 get right to our presentation.

12 Immediately to my right, special
13 counsel Tom Reilly who was with us here before
14 and is back today to give you an update. And
15 then Sterling Suffolk Racecourse corporate
16 secretary Charles Baker. Mohegan Sun CEO,
17 Mitchell Etes. Next to Mitchell is Attorney
18 Kevin Conroy, attorney for Mohegan Sun from
19 Foley Hoag. And then who's next. Brian.
20 Yeah. Oh. Mayor Rizzo. Mayor Rizzo. I
21 thought Brian Falk was here. Mayor Dan Rizzo
22 from the City of Revere. Brian must be --

23 CHAIRMAN CROSBY: He's a shrinking
24 violet.

1 MR. TUTTLE: Brian moved over.

2 CHAIRMAN CROSBY: To part the sea.

3 MR. TUTTLE: Yes. So we'll get
4 started. And as always, we're happy to address
5 and answer any questions that you and any of
6 the Commissioners have. Thank you.

7 MR. REILLY: Good morning,
8 Mr. Chairman, members of Commission. My name
9 is Tom Reilly. I'm special counsel to Suffolk.
10 I'm with the law firm of Cooley Manion Jones in
11 Boston. I want to thank you for the
12 opportunity to participate this morning. My
13 role is very simple and that, and I'm very
14 mindful of your time limitations here, is to
15 explain, at least from my perspective, how we
16 got to this point with Mohegan Sun.

17 I see it as an exciting
18 development, very positive, but obviously,
19 that's your decision. But I think the most
20 important thing that can happen today is after
21 you have the opportunity to understand the plan
22 is to get your feedback. Because the most
23 important thing, and I'm sure you share this,
24 is to get this right. It's important to us,

1 it's important to you, and it's certainly
2 important to the region and to the state.

3 About ten days or maybe a little
4 bit more after the November 5th election, I was
5 asked by Suffolk Downs to take a look at
6 Mohegan Sun in a due diligence sense. In
7 undertaking that assignment, I was very mindful
8 of the gaming statute, particularly the
9 application which set out a process with two
10 main components. Number one, a host community
11 had voted in favor; and secondly, an applicant
12 that was suitable.

13 They'll speak to it this morning in
14 terms of Revere being the host community. I'll
15 deal with Mohegan. And I'm not going to
16 retrace. You've already found them suitable,
17 so that was not a hard process to get to that.
18 But to me, it was a -- the more I saw it and
19 the more I got into it, it was a perfect
20 alignment of what the statute is seeking to
21 accomplish in terms of a host community and a
22 suitable applicant.

23 Again, I'm not going to dwell on
24 the suitability. You've already found that,

1 had the benefit of the outstanding work of your
2 bureau, your investigative bureau. So it was
3 off to a good start.

4 As you'll hear, the structure is
5 basically the same with not just Mohegan but
6 that you've already been vetted before you and
7 that you're already familiar with in terms of
8 the role of Mohegan, the role of Brigade and,
9 frankly, the role of Suffolk.

10 But this was more than just
11 suitability. We had the benefit, but we wanted
12 to take another look ourselves for obvious
13 reasons that were discussed before in terms of
14 due diligence. And the more I looked at it,
15 there were some things that stood out here.

16 And first of all, Mohegan Sun is
17 New England based, and I think it's important
18 because they understand this area. They
19 certainly understand the culture of this area,
20 and I think that's important where they're
21 going to be operating and going to that, but
22 for obvious reasons, I think you know the
23 importance of that.

24 Moreover, certainly the experience

1 and the expertise, they certainly have it and
2 they have a track record to prove it.

3 Third, what jumped out at me was
4 their size. In a sense of they're large enough
5 to get this project done in an absolutely
6 first-class manner, particularly with the
7 financing with Brigade. But they're not too
8 big to let it get away from them. As I could
9 see it and as I study them, they are expanding
10 but very slowly and very carefully. And I
11 think that's wise, and I certainly hope they
12 stay that way.

13 But the main point I want to make
14 here is this. It's my perspective. They were
15 a breath of fresh air, quite frankly, to deal
16 with. Dave Rome is a class act in terms of
17 once I got into it, in terms of everything that
18 we have asked for, every document, every
19 record, frankly, pain in a neck to move that
20 quickly, but he did. Sunday night, he was
21 bombarding me again with it. And I say that in
22 a good way.

23 Everyone that we've asked to speak
24 to, they're open. Yes, ask them whatever you

1 want. You want us to be there, not be there.
2 Frankly, it's a breath of fresh air.

3 I have to say the same thing about
4 Brigade. I haven't had the personal experience
5 with them, but dealing with them on the phone,
6 again, the openness, the willingness to
7 cooperate.

8 We were supposed to be down there
9 tomorrow, but I think this will delay that
10 until we can get the records examined. But,
11 again, I can't emphasize that -- And it's
12 important to me in the following regard: No
13 one's hiding the ball here with either Mohegan
14 or Brigade that I can see for.

15 And I think that's important
16 because as no one knows better than you, this
17 is a tough business and things are going to go
18 wrong. There's no question. And you have to
19 build an element of trust that when they go
20 wrong, when problems arise, you can have
21 someone here, and you don't want to be policing
22 everyone.

23 What you want is to make sure that
24 somebody is playing by the rules, doing their

1 best to play by the rules, and certainly will
2 work with you and other local authorities to
3 make it work. And I got the impression that's
4 exactly what Mohegan is. And I got the
5 impression so far that's exactly what Brigade
6 is. And we're not done yet.

7 So in conclusion, that's my role.
8 I do see it as a positive development, frankly,
9 an exciting development, as you start dealing
10 with the folks at Mohegan and dealing with them
11 at some distance with Brigade. It's, frankly,
12 been a pleasure.

13 But I'll just close with this. I
14 think the most important thing today or however
15 much time is to get your feedback. This is
16 important. It's important to us. As I said,
17 it's important to the region. It's important
18 to the state. We want to get it right. So
19 your help in accomplishing that goal will go a
20 long way. Thank you for your patience.

21 MR. BAKER: Thank you for, again,
22 giving us the opportunity to appear before you.
23 Mr. Chairman, as I think the Commission may
24 recollect, prior to our appearance --

1 CHAIRMAN CROSBY: Excuse me, just
2 give your name, Charlie.

3 MR. BAKER: Charlie Baker,
4 corporate secretary, Suffolk Downs.

5 Prior to our appearance before you
6 on November 21st, 2013, Karen Wells, director
7 of the Bureau, appeared before you. One
8 question you asked her was whether all the
9 applicants were aware that there would be no
10 time for additional suitability reviews before
11 December 31st, and she answered in the
12 affirmative. Needless to say, we'd been in
13 discussions with both Karen and Catherine, and
14 we were aware of that, but where that leads us
15 to is we were aware that in order to find a
16 suitable gaming partner, we needed to be
17 dealing with somebody who you had already found
18 suitable. That created, as you might expect, a
19 relatively short list of candidates, but you
20 know, happily for us, it created a quality list
21 of candidates.

22 As Suffolk began to negotiate with
23 the Mohegan Sun team, it became clear to us
24 that from a cultural standpoint, there is a

1 good fit in terms of vision, goals, and
2 commitment. As we collectively began to lay
3 out a potential partnership structure, it
4 became apparent that given the fact that
5 Mohegan had a deal structure developed for the
6 Palmer project with their source of capital
7 Brigade, it was already vetted by the
8 Commission and provided a mechanism to ensure
9 adequate sources of capital and financeability.
10 To the extent that we could replicate that
11 structure, it would expedite our business
12 agreements.

13 Giving the looming December 31st,
14 2013 RFA deadline, utilizing that existing
15 structure was compelling. Therefore, under our
16 agreement, as in Palmer, Mohegan will be the
17 applicant as Sterling Suffolk's tenant and will
18 also the developer, operator, and applicant of
19 the gaming establishment as that term is
20 defined in Chapter 23K.

21 Yesterday, we supplied the relevant
22 binding agreement to the IEB as a privileged
23 and confidential document. The details of that
24 agreement are obviously before you. But let me

1 just describe what those documents basically
2 demonstrate.

3 What those documents demonstrate is
4 the following: This is a classic landlord
5 tenant ground lease relationship. It is the
6 tenant's responsibility to build, maintain, and
7 operate the gaming establishment, to permit the
8 project, and to construct what has been -- what
9 we hope you will find favorably you approve.
10 So they'll behind what ultimately is submitted
11 to you, and if we earn your trust, that you
12 guys support.

13 Separately, Sterling Suffolk
14 Racecourse, the landlord, will maintain the
15 property necessary to operate and conduct a
16 racing meeting in the remaining portions of the
17 property.

18 As it relates generally to the
19 questions you had posed to General Counsel
20 Blue, prior to our announcement with Mohegan
21 Sun, we supplied a joint brief yesterday. I
22 know, however, that one specific question
23 General Counsel Blue has been asked by you
24 which she has raised with me is what is the

1 status of the racetrack.

2 Our answer is straightforward. Our
3 commitment to maintain the racetrack remains
4 the same as it was ten days ago or ten years
5 ago. Contemporaneous with the RFA-2 process,
6 we will submit to the Racing Division of the
7 Gaming Commission our plans and progress to
8 find a suitable stabling area and to receive
9 the necessary approvals and permissions from
10 this Commission and the City of Boston and
11 continue to operate New England's remaining
12 thoroughbred racetrack.

13 As you are also aware, the revenue
14 provided by 23K is essential to financeability
15 of that operation.

16 CHAIRMAN CROSBY: When you say
17 "we," who's we?

18 MR. BAKER: Who's we? Sterling
19 Suffolk Racecourse, LLC.

20 CHAIRMAN CROSBY: Okay.

21 MR. BAKER: Will supply to the
22 Racing Division our -- our regularities of
23 Racing Commission, our plan to find a stabling
24 area and to maintain the racetrack in the

1 existing footprint.

2 CHAIRMAN CROSBY: I just wanted to
3 make sure --

4 MR. BAKER: Right.

5 CHAIRMAN CROSBY: -- who the "we"
6 is.

7 MR. BAKER: Right. So the "we" for
8 the racetrack is Sterling Suffolk Racecourse,
9 LLC. The "we" for the gaming applicant is
10 Mohegan.

11 CHAIRMAN CROSBY: Okay.

12 MR. ETESS: Thank you very much.
13 Mitchell Etes, chef executive officer of the
14 Mohegan Tribal Gaming Authority. Thank you
15 Mr. Crosby, other Commissioners. I want to
16 acknowledge that we have Aaron Daniels from
17 Brigade back here with us as well as David
18 Rome, and of course, this is Kevin Conroy,
19 Mohegan Sun's outside counsel, who has been so
20 helpful to us through all of our dealings with
21 you all.

22 It might be one of the biggest
23 understatements ever to say that a lot has
24 happened since we were last here for our

1 suitability hearing here in October. But it's
2 pleasure to be here again.

3 Mohegan Sun and Suffolk Downs both
4 began our pursuit of our place in the
5 Massachusetts gaming industry in different ways
6 and different locations. Challenging
7 circumstances have brought us together in
8 recent days. Mohegan Sun was extremely
9 disappointed. I can't tell you all the time
10 and energy we put into Palmer, how disappointed
11 we were by the referendum results, and it was
12 very tough for us.

13 But as we've kind of come to thaw,
14 perhaps fate here has prevailed. And we've
15 come to recognize that something truly special
16 can be created in Revere. We believe that
17 Revere is the ideal site for the Region A
18 Category 1 resort license.

19 Last Wednesday, Suffolk Downs,
20 Mohegan Sun and Brigade entered into an
21 agreement, and we provided the Commission with
22 that agreement yesterday. As part of this
23 agreement, our relationship with Brigade that
24 was discussed as part of the Mohegan Sun

1 suitability hearing remains exactly the same.
2 I believe this gives us the strongest financial
3 platform of any of the Massachusetts gaming
4 license applicants because of Brigade's \$15
5 billion investment advisor with extensive
6 experience in the gaming industry. This
7 ensures our availability to deliver a billion
8 dollar project for Revere.

9 Our partnership with Suffolk Downs
10 is built on our respective strengths and
11 histories. Suffolk Downs brings 78 years of
12 history in the community and region, great
13 support of the host community of Revere,
14 institutional relationships and local
15 credibility built upon decades of being a good
16 neighbor. And they also have a true commitment
17 of working with us to bring a resort casino to
18 Revere that will be the most prominent project
19 in the Massachusetts gaming industry.

20 Mohegan Sun is the region's leading
21 gaming brand and the best in the industry at
22 delivering the resort gaming experience that
23 will drive visitation to this region. Mohegan
24 Sun brings to this project a tremendous

1 marketing advantage through our strength and
2 regional brand awareness and our incredible
3 database of loyal guests who visit our resorts
4 in Connecticut, Pennsylvania, and Atlantic
5 City. By leveraging our brands and our
6 existing marketing database, we can begin
7 engaging customers immediately on the resort
8 casino project in Revere, and this provides
9 quicker revenues and significant advantage to
10 the Commonwealth.

11 Because of the strengths that I've
12 mentioned and because all three partners have
13 been found suitable by this Commission, our
14 project in Revere has become the strongest
15 proposal in Eastern Mass.

16 Obviously, in a short period of
17 time, we've been working feverishly, almost
18 nonstop, in creating design elements, gaming
19 programs, entertainment, and other amenities
20 that will be featured in our casino project in
21 Revere.

22 Now, because of the time parameter,
23 I can't give you a tremendous amount of details
24 on that, but I can tell you that the project

1 will be very unique and a signature project for
2 the region. We are going to create something
3 that not only serves as a regional gathering
4 place, but will be a national and international
5 tourist destination, only it has that wow that
6 someone that comes to the Greater Boston area
7 will want, from out of state or out of country,
8 will have to see as part of their visit here.

9 It's going to draw from our
10 expertise in Connecticut and in Pennsylvania.
11 And it became very clear to me after spending
12 the day in Revere that it's going to have to
13 harken and draw inspiration from the great
14 history of Revere Beach, and there's no
15 question that has to be woven into the feeling
16 that you get when you visit this property.

17 The project is going to create
18 2,500 construction jobs and 4,000 permanent
19 jobs with preference given to Revere residents.

20 Although time is short, we are
21 excited about the RFA-2 application that we're
22 crafting for submission to the Commission on
23 December 31st. Both Mohegan Sun and Suffolk
24 Downs have been putting together excellent

1 RFA-2 applications with the opportunity to
2 merge the best ideas of both applications. We
3 obviously have done a lot of work. It's going
4 to be a tight deadline, but we had put so much
5 into it from our side and Suffolk, we combine
6 those things and make an excellent, excellent
7 presentation for you.

8 Suffolk Downs has some great ideas
9 about workplace diversity and responsible
10 gaming that our RFA-2 application will be
11 better because of their involvement.

12 And lastly, regarding Revere, I had
13 the pleasure yesterday of getting to know Mayor
14 Rizzo, and I got to see a tour of Revere and
15 introduced to a lot of the local business folks
16 there, town council meeting and the zoning
17 hearing. I've been amazed by the excitement
18 and support for this casino in Revere.
19 Honestly, it was truly overwhelming, my day
20 yesterday. I can't even begin to describe it
21 to you.

22 I've assured the mayor that Mohegan
23 Sun will honor all the commitments made by
24 Suffolk Downs in its host community agreement

1 with the City of Revere, and the amendment to
2 the host community agreement, which I
3 understand is being negotiated right now.

4 Also we've already begun to work
5 with Suffolk Downs and the process is already
6 underway of reaching out for agreements with
7 the surrounding communities.

8 So we're thrilled about the
9 possibilities of our Revere casino and look
10 forward to our submission of our RFA-2
11 application between now and December 31st,
12 although I don't see too much rest between now
13 and then. With that, I'll turn it over to
14 Mayor Rizzo.

15 MAYOR RIZZO: Thank you very much,
16 Mitch.

17 Mr. Chairman, Members of the
18 Commission, thank you very much for this
19 opportunity, once again, to reinforce the
20 City's position on our desire to place a resort
21 style gaming establishment in Revere.

22 I am joined here today, although
23 not here at the table, by legal counsel for the
24 City of Revere Brian Falk and Nick

1 Anastasopoulos from Mirick O'Connell, my
2 economic development director John Festa, and
3 our city solicitor Paul Capizzi.

4 The City's position has not changed
5 from when I spoke here before you back on
6 November 21st. We're still very, very
7 enthusiastic and now more enthusiastic given
8 the relationship that's been formed between
9 Suffolk Downs and Mohegan Sun.

10 We have always, as I indicated back
11 on November 21st, wanted to have a development
12 in Revere, and I am elated now that Mohegan Sun
13 has forged this partnership and is moving ahead
14 to the extent possible with plans to develop in
15 Revere.

16 On November 5th, Revere voters,
17 almost 6,500 of them, came to the polls in
18 higher numbers, by the way, than they did
19 percentage wise in the City of Boston where
20 there was a real mayor's race for the first
21 time in over two decades. Percentage wise, a
22 higher percentage came to the polls to vote for
23 resort gaming at Suffolk Downs by almost a two
24 to one margin.

1 They came out because of the
2 benefits they knew that it was going to provide
3 the City of Revere and our region, 2,500
4 construction jobs, 4,000 permanent jobs at full
5 build out, transportation improvements,
6 economic development, collateral investment
7 opportunities. These were things that we
8 talked about with our residents for the months
9 leading up to the election, and, obviously, it
10 resonated with them.

11 Our host community agreement is
12 still in full force and effect. We are working
13 now to amend that agreement to reflect this new
14 change to move the project over to the
15 Revere-only side, and I'm very confident that
16 within the next week or two, we will have
17 finalized that.

18 Last night at a city council
19 meeting -- And I know, Mr. Chairman, this was
20 important to you at the last meeting where you
21 had asked me about city council support for the
22 project. They have passed a resolution that I
23 believe members of the Commission may have
24 supporting the project once again, again, by a

1 unanimous vote but for two city councilors that
2 were absent for personal reasons. So it
3 continues to not only draw support of our
4 residents, but full unanimous support of our
5 city council.

6 I ask that the Commission allow us
7 to move forward and bring this world class
8 first class facility to the Boston region and
9 support the efforts and allow the vote of our
10 community to matter when it comes to bringing
11 resort style gaming to the City of Revere.

12 Thank you so much.

13 CHAIRMAN CROSBY: Commissioners.

14 Go ahead.

15 COMMISSIONER MCHUGH: Well, this is
16 a very attractive proposal in my view, not only
17 because of the nature of the substance of the
18 proposal, but because of the array of people
19 who are sitting at the table in front of us,
20 people with whom we've worked and had a chance
21 to see and observe and watch them as they
22 worked to bring this to fruition.

23 But I'm troubled, candidly, by the
24 proposal because of the statutory requirement

1 for a vote, a vote that is informed. It seems
2 to me, essentially, by both the summary of the
3 agreement and by the host community agreement
4 itself. There would be no reason, though the
5 vote question is simply a location question, to
6 have a requirement for the summary posted on
7 the website and included on the ballot and the
8 60-day provision at least for the host
9 community agreement to be posted on the city's
10 website and available to citizens so that they
11 could inform themselves, if the contents of
12 those documents were not imported, to inform
13 the voters of the consequences of their vote on
14 the specific location.

15 I was troubled when we were
16 together last with the notion that, in part,
17 the facility, the gaming facility, the track
18 facility, notwithstanding the casino's location
19 in Revere, would be in East Boston, a community
20 that had rejected the vote that was put to them
21 on the day that the two towns voted. I was
22 troubled by that because under the statute, a
23 racing licensee was required and is required to
24 keep the track on its premises.

1 We had a discussion as to what the
2 word premises meant. I took a careful look at
3 that in Chapter 128A and respectfully disagree
4 with your interpretation of that, Mr. Baker,
5 and concluded that whether one looked at the
6 track as an amenity or something else, it was
7 one of two essential ingredients that the
8 statute requires a Category 1 gaming facility
9 have. One is a hotel and the other is if it's
10 a racing licensee, a track on its premises.

11 Now, that barrier has been removed
12 because the applicant is not a racing licensee.
13 But it seems to me this proposal now is so far
14 different in so many dimensions from the
15 proposal that the voters had before them when
16 they went to the polls that it stretches the
17 concept of a knowing community vote beyond
18 recognition. There is -- if one takes look at
19 the agreement, there are a number of things
20 that are in the summary and in the agreement
21 that are no longer present.

22 First of all, the voters have not
23 had an opportunity to vote on Mohegan Sun.
24 They voted on a proposal that was led by people

1 they knew, people who had been in their
2 community for years, people who had gone door
3 to door in their community, people who had
4 presented in both communities themselves as
5 capable operators, as people they could
6 interact with. Though we had found Mohegan Sun
7 suitable, though we believe they are suitable,
8 the voters ultimately need to understand who
9 they are and who it is that are -- who it is
10 that's making the commitments that the host
11 community agreement contains.

12 The host community agreement says
13 that the Suffolk Downs Racetrack is an
14 important amenity. The current agreement says
15 that, and it's preservation is an essential
16 ingredient or an essential objective of the
17 proposal. But as was said yesterday, the new
18 applicant can't guarantee that, and the new
19 applicant is a separate entity from the entity
20 that will operate the racetrack.

21 And so the kind of guarantee and
22 undertaking that is contained on Suffolk
23 Downs's part in the host community agreement
24 now no longer can be present because the

1 applicant does not control the track. The
2 track is simply the landlord. And neither can
3 the applicant guarantee the racing payments
4 that both the summary and the host community
5 agreement says are an important ingredient of
6 what the town seeks to obtain.

7 So I am, I'm troubled by those.
8 I'm troubled by those issues. I'm troubled by
9 the dramatic change in the content of the
10 agreement, in the -- from the agreement that
11 was before the voters when they voted. Even
12 though there was a substantive matter, it
13 strikes me that this, as I said at the
14 beginning, this is a very attractive proposal,
15 both by its nature and by the people who are
16 involved in it.

17 One thing I should observe in
18 closing is that the initial -- the statute
19 provides that if a proposal is rejected and
20 can't proceed, in which in my view was the case
21 under the original structure because of the
22 fact that the gaming establishment would
23 include something that was in East Boston, then
24 there can't be another vote for 180 days. It

1 seems to me that with the restructuring, that
2 prohibition is removed as well. That may be
3 academic, but it may not be academic. So I add
4 that observation as a coda for the remarks I
5 just made.

6 COMMISSIONER CAMERON: I just
7 wanted to make the point that I understand what
8 Commissioner McHugh is saying about the vote
9 being different, but I don't know how much
10 different it is than what we allowed in
11 Plainville where the applicant listed on the
12 ballot was not the same applicant at that time.

13 And the other thing that is -- that
14 strikes me is one thing we have found through
15 this whole process is that people are not shy.
16 They tell us what they feel. They write us
17 letters, they come to meetings, they express
18 their opinions. And the people in Revere have
19 not come out to talk to us about it's a
20 different vote, this is not what I voted for.
21 And I find that to be persuasive in that I
22 think we've received one comment from a voter
23 stating that there was a difference in the
24 vote, but that voter also acknowledged that

1 they voted no to begin with.

2 So that is something I personally
3 was looking for was how do the people in Revere
4 feel about this? Do they feel like this is a
5 different project? Is this something they're
6 not as interested in anymore? And I just
7 haven't seen that response.

8 COMMISSIONER ZUNIGA: Yes. I would
9 echo some of those comments in the sense that
10 we had a lot of discussions prior to any of
11 these in the past amongst ourselves relative to
12 the Phase One and Phase Two process and how the
13 Phase One application was not site specific.
14 The applicant for Phase One application was
15 never meant to be site specific or -- and in
16 fact, we did discuss and allowed the notion
17 that an applicant could move from one region to
18 another, from one category to another, and from
19 regions A and B eventually to region C. So we
20 had all of those discussion asks.

21 In that context, I disagree with
22 Commissioner McHugh's notion that this is a
23 fundamentally different proposal, especially at
24 this time. We could find out a lot more by --

1 after the December 31st deadline for one, but
2 even before that, I don't see -- At this point,
3 there's probably a lot of details to dive into,
4 but I don't see how at this point there is a
5 fundamentally different or substantially
6 different proposal.

7 I would ask our presenters here if
8 they have decided who the applicant may be
9 eventually to our Phase Two process that we --

10 MR. CONROY: Mohegan Sun is the
11 applicant.

12 COMMISSIONER ZUNIGA: Mohegan Sun
13 is the applicant.

14 CHAIRMAN CROSBY: Just before we
15 continue the discussion, which is the heart of
16 the matter, just a procedural thing. There was
17 an opportunity for Suffolk Downs to present its
18 case on the HCA and referendum and the other
19 issues which they did back on the 21st. So did
20 the opponents. Subsequently, both opponents
21 and Suffolk Downs have submitted written legal
22 arguments.

23 What this was going to be focused
24 on was the new operator, this section of the

1 meeting was going to be focused on the new
2 operator and, as it turns out, also a new
3 applicant, and then we were going to get to the
4 other issues and maybe were to have a few words
5 of introduction from you, Catherine. I'm not
6 sure.

7 I think -- So just for -- On the
8 issue of the new operator and the applicant, I
9 think we do need to make a decision -- we
10 certainly did with the case as Penn National --
11 as to whether we find acceptable the new
12 operator and, as it turns out, the new
13 applicant in -- separate and apart from all the
14 other issues. But I could be wrong about that.

15 So it seems to me that that is
16 something we ought to -- we may not want to
17 decide that right this minute because we
18 haven't had a chance to really think about it,
19 we haven't had legal counsel. The document,
20 the 25-page document, we got last night, I just
21 barely have had a chance to read. So maybe we
22 don't want to make a decision on that, but I
23 think we should decide that and then move on to
24 the other specific issues.

1 So does any of you have a thought
2 whether we should make a decision on the
3 operator or the applicant now, or should we do
4 that at the next -- at the next meeting after
5 having had a chance to think about it?

6 COMMISSIONER ZUNIGA: Well, I, like
7 you, have not had a chance to look at that
8 document fully. I skimmed through it
9 yesterday. I was curious, certainly, because
10 of today, but did not look at it in great
11 detail.

12 CHAIRMAN CROSBY: Okay. I mean, I
13 think personally, I think that is very similar
14 to what happened in Plainville, and, you know,
15 as a practical matter, I think it's awful
16 close. But we haven't looked at it carefully,
17 and we haven't asked our counsel to give us
18 advice on that.

19 So I think it would be imprudent to
20 make a final decision, which is yet another
21 thing floating out in the ether zone while
22 everybody's proceeding along, but I think we're
23 stuck with that.

24 So what I would suggest then is

1 that we come back to that at some subsequent
2 meeting soon, and we thank you folks for your
3 time and presentation, ask General Counsel Blue
4 to kick off the others and then pick up again
5 where we were with Commissioners McHugh and
6 Cameron and Zuniga. Is that all right with
7 everybody?

8 COMMISSIONER MCHUGH: I'm not --
9 The bifurcation, if you will, is as to whether
10 we're going to agree that the new operator can
11 come in and be the applicant? Is that what --

12 CHAIRMAN CROSBY: Both. Yes.
13 Well, yes. As a practical matter, the issue of
14 the operator is sort of off the table. The
15 real issue now is can we change applicants.

16 COMMISSIONER MCHUGH: Yes.

17 CHAIRMAN CROSBY: That's the real
18 issue.

19 COMMISSIONER MCHUGH: Yes. I do
20 think that's an issue. Right.

21 CHAIRMAN CROSBY: And I was
22 suggesting that it sounds pretty similar to
23 what we've done before, but we haven't had a
24 chance to really think about it. And I think

1 we would want to hear from our counsel on that,
2 so maybe we should make a final decision, put
3 that off until the next time we get a chance to
4 do it. I think we can address these other
5 issues.

6 COMMISSIONER MCHUGH: I agree with
7 the last part of the statement.

8 CHAIRMAN CROSBY: Which?

9 COMMISSIONER MCHUGH: We should
10 think it through carefully, and then I'm not
11 sure that I agree with the similarities.

12 CHAIRMAN CROSBY: With the Ourway
13 similarity. Okay. That's fine. That was
14 gratuitous on my part.

15 All right. So the way we had
16 anticipated, and we would have general counsel
17 come up and kick off our consideration of these
18 other issues. So I think we will say thank you
19 very much.

20 COMMISSIONER STEBBINS: One quick
21 question, I guess, for the city. Mr. Mayor,
22 has the city been reimbursed for your costs or
23 the applicant's costs of the election that was
24 held back in November?

1 MAYOR RIZZO: It is my
2 understanding that we have been. And just, if
3 I could, Commissioner, just revert back to what
4 Commissioner Cameron just said, because I think
5 it bears noting.

6 Commissioner, you've actually
7 received one more call than I have. I have not
8 had one person in the city come to me and say
9 why are we going forward. The only question I
10 get asked is when. When are we going to be
11 able to move ahead? They voted on a host
12 community agreement that provided certain
13 benefits to the city, whether it be jobs or
14 revenue stream. Safe to say that now the
15 project moving a thousand feet down the road
16 into Revere will be a more lucrative agreement
17 for the City.

18 I have -- and again, I don't have
19 anything to base, obviously, a vote on going
20 forward, but in my best estimate, I think the
21 valid question should it be voted on again on
22 the new agreement would be even a bigger margin
23 of victory, and that's coming from me as mayor
24 of the city. That's out talking to the people

1 each and every day.

2 Mitch had alluded to the fact that
3 we took him around the city yesterday. And if
4 you could have joined us, you would have seen
5 the enthusiasm that the residents of our
6 community have for this project going forward.

7 So I'm not sure I'm speaking out of
8 turn here or out of line, but I just thought it
9 bore noting to point that out.

10 COMMISSIONER STEBBINS: Two of us
11 could have joined you. Anymore than that would
12 have been a traveling -- You know, just before
13 you leave, I do want to just -- I appreciate
14 Commissioner McHugh's thoughts. In having a
15 chance to quickly look over the resolution
16 passed by your city council last night, I do
17 have -- I'm not in agreement with necessarily
18 the third line about it's simply being a land
19 use vote. We could call it a land use vote on
20 steroids or a land use vote plus, because
21 obviously the details of the host community
22 agreement are critical. With that, you know,
23 it takes up a good chunk of the ballot. If
24 people do not see any means to address traffic

1 issues or agreements and jobs or local spending
2 or anything else outlined in the host community
3 agreement, we're not sure how it would have
4 wound up.

5 So it's -- I've always taken the
6 position it's a little bit more than a land use
7 question. It's a land use question plus. But
8 I appreciate your time.

9 MAYOR RIZZO: Thank you,
10 Commissioner.

11 CHAIRMAN CROSBY: Thank you,
12 gentlemen.

13 COMMISSIONER MCHUGH: Thank you
14 all.

15 CHAIRMAN CROSBY: Okay. We've only
16 got about an hour, so let's really cut to the
17 chase here. I don't know if you had -- The
18 issue that -- There was an issue now on the
19 table which we didn't have on the table when we
20 first scheduled this conversation, which is the
21 issue about a new applicant. That we're going
22 to set aside.

23 The issues remain, for sure the
24 issue remains about the applicability of the

1 host community agreement and the fairness and
2 appropriateness of the referendum and the
3 issue -- Those two, I think, clearly up front
4 and center, and I think these are issues that
5 we should absolutely talk about today.

6 The issue of the gaming
7 establishment definition and premises has
8 changed quite a bit because of the nature --
9 because of the applicant changing, and the
10 issues about the track has changed because of
11 the applicant changing, and I'm not sure that
12 we can resolve those now without actually
13 seeing the plan and so forth anyway. But I
14 certainly think the issue of the HCA and the
15 referendum are ones that we should try to deal
16 with right now. So if you have anything to add
17 to say about that, fire away.

18 MS. BLUE: No. I would agree with
19 that. There were essentially four issues that
20 we looked at. I think you're correct when you
21 say that the issue of who is the applicant has
22 been -- the conversation has been started here
23 today. We have to look at that in more detail.
24 And the question of the impact on the racetrack

1 is also a slightly different issue now that we
2 know the new structure.

3 So the main issues for
4 consideration are the status of the ballot
5 referendum and the status of the HCA.

6 CHAIRMAN CROSBY: Okay. With three
7 people have spoken. Commissioner Stebbins, did
8 you have opening comments?

9 COMMISSIONER STEBBINS: Yes. Just
10 going back, we know we -- I somewhat disagree
11 with my colleagues that we can paint this as a
12 similar situation in Plainville, because it
13 isn't. Plainville, we understand that there
14 was a swap in who the applicant was.

15 CHAIRMAN CROSBY: Not on the
16 applicant issue. I meant -- Because we're
17 going to get back to that. But on the host
18 community agreement and the referendum.

19 COMMISSIONER STEBBINS: No. I
20 would echo some of the comments that
21 Commissioner McHugh already raised with respect
22 to the HCA. I don't think it can be downplayed
23 as part of what the vote was intended to be
24 about.

1 CHAIRMAN CROSBY: It seems to me
2 that -- There's no question that this was not
3 what was anticipated. I think that's obvious.
4 And -- But I do think -- I think the questions
5 are whether there was anything -- Was this
6 eventuality precluded from happening, and I
7 don't see that it was. I see the combination
8 of the expand clause. And I know it's very
9 debatable about expand, and I thought Suffolk's
10 definition of expand in its document was
11 tortured, to put it mildly. But there
12 certainly was anticipated the possibility of a
13 substantial change in the configuration. There
14 was a -- practically a re-opener, a clause
15 which begged for more development in Revere.
16 There was the clear statement on apparently
17 more than one occasion, but one at least that
18 we can touch where at least Chip Tuttle talked
19 at the eventuality that maybe East Boston would
20 lose, and if it did, that would be horrible,
21 and we don't want to talk about it or think
22 about it, but we're keeping our options open
23 for an alternative plan if that eventuality
24 happened.

1 There was -- This precise
2 eventuality was not anticipated, I don't think,
3 although we are told that it was. So I think
4 that bears some merit, but awfully close to
5 this was clearly anticipated. And then you get
6 to, you know, what's fair.

7 So the referendum the people voted
8 on in Revere was clearly not -- what they were
9 voting on was clearly not what's on the table
10 today. But what they didn't know, would it
11 have changed their vote? Was material
12 information withheld from them that colored
13 what their vote was? And given those other
14 factors and given all the other data points
15 that we have, a unanimous vote at the city
16 council -- I agree with Commissioner Cameron.
17 I'm flabbergasted that we haven't heard from
18 anybody, which I take as pretty clear evidence
19 that there's not a spontaneous -- I mean, now
20 that we're saying it, there probably will be
21 because, one, we organized. But there hasn't
22 been a spontaneous outpouring, and there have
23 been many, many spontaneous outpourings in
24 communities across the state going way back.

1 So to not permit Revere to go
2 forward with this option when I think all
3 reasonable deduction suggests that had this
4 specifically been on the table, it would have
5 been enthusiastically endorsed, would not be
6 fair. I mean, there's nothing fair about this
7 any way you cut it. I mean, the people in East
8 Boston are going to be -- feel like an outcome
9 -- somebody's going to feel like the outcome is
10 unfair here.

11 But to me, this does not boil down
12 to a legal argument. There's no clear legal
13 case that precludes or permits precisely this
14 situation, this becomes a public policy
15 question of what -- try to figure out what
16 serves the best interests of the most people,
17 and -- in a situation where the interests are
18 incompatible.

19 But I can't see -- And I've come at
20 a different place on this, but as I've look
21 into this more, I can't see a reason, a right
22 reason, a compelling, public policy right
23 reason to deny the people of Revere the
24 opportunity to play out their string on this.

1 Where it goes, if they get the chance to
2 proceed, is anybody's guess, but I don't see a
3 way that it would be right to precluded them
4 from going forward.

5 COMMISSIONER MCHUGH: Well, I
6 certainly respect that judgment. This is a
7 close and difficult call for all the reasons
8 that we're wrestling with here. But I think
9 the summary you just gave boils down to a
10 difference of opinion as to whether or not the
11 people or the Commission are entitled to decide
12 on what they want. We had a vote, and the
13 legislature said we have to have a vote because
14 they wanted to hear from the people, and the
15 people voted on something that now has
16 dramatically changed. And for the Commission
17 to say, well, that's okay because we know that
18 the people, had they had a chance to vote,
19 would have voted for this changed proposal is,
20 I submit, to substitute the Commission's
21 judgment for that of the people and the
22 legislature --

23 CHAIRMAN CROSBY: But there's.

24 COMMISSIONER MCHUGH: Just, I'm not

1 finished.

2 CHAIRMAN CROSBY: Sorry. Go ahead.

3 COMMISSIONER MCHUGH: And the
4 legislature gave to the people an important
5 role in making this decision, not the elected
6 officials, however much in good faith, and they
7 are acting in good faith; not to the applicant
8 or the landlord, however much in good faith
9 they're acting, and they are acting in good
10 faith; but to the people. Now I'm done.

11 CHAIRMAN CROSBY: If it were that
12 cut and dry, I might very well agree with you.
13 If there were no indication in the host
14 community agreement or in the summary of this
15 eventuality, then it would be a much -- that
16 would be an even tougher case, from what I'm
17 saying. But I think the threads are absolutely
18 in there.

19 And, you know, we have testimony as
20 to the intent. We have nobody disagreeing, and
21 the parties who signed the agreement. So there
22 are threads in there that give us an
23 opportunity to think what was in the folks'
24 minds, it's not just us substituting our

1 judgment. We can't.

2 COMMISSIONER ZUNIGA: I would also
3 point out the Gaming Act gave effectively the
4 elected officials, the local elected officials,
5 a lot of leeway, and we saw it before our very
6 eyes in Springfield when the mayor decided to
7 negotiate with only one gaming applicant. In
8 many other places, we saw boards of selectmen
9 that decided not to negotiate with prospective
10 applicants.

11 So there is a counter to that
12 notion of how all these factors converge in the
13 Gaming Act, and it's not as absolute as the one
14 vote, in my opinion.

15 I think I agree with you that it
16 boils down to the notion of whether these
17 summaries in the ballot represented a fair and
18 concise summaries, and the difference of
19 opinions that we have may be really the core of
20 that. I agree with the Chairman that it was --
21 the host community agreement was posted. It
22 anticipated and encouraged additional
23 development in the City of Revere.

24 So I find very hard to say this is,

1 at this juncture, an invalid vote, if it were
2 in that discussion.

3 CHAIRMAN CROSBY: Anymore? Well,
4 this is the kind of issue that it's important
5 for us to try to get to consensus on if we can,
6 but if we can't, then we have to deal with
7 that. And there was a suggestion in the brief
8 from Suffolk Downs -- I may be saying this
9 wrong, but I think there was a suggestion that
10 the Commission doesn't have the authority to
11 determine whether the host community agreement
12 and the referendum are still legitimate, and at
13 least the suggestion was that we don't have the
14 authority until the application comes in. And
15 that may be at that point. But I don't -- If
16 I'm remembering the brief right, I don't agree
17 with it. If I'm mischaracterizing it, it
18 doesn't matter. I'm saying I think we do have
19 the authority. And I think the reason we got
20 into this discussion back on the 21st is
21 because a lot of people are out there trying to
22 figure out what's going on and are looking for
23 somebody to try to clarify muddy waters.

24 Now, the waters are going to stay a

1 little muddy, but these two issues are ones
2 that I think we could deal with and be
3 dispositive one way or the other. So I'm going
4 to suggest, but it's just a suggestion, that we
5 do talk about it further, if there's more to
6 talk about; and if not, vote on it. Does
7 everybody --

8 COMMISSIONER MCHUGH: Well, I'm not
9 prepared to vote today. I think we need to --
10 Strike that.

11 I -- If the Commission wants to
12 vote on something today, we can vote on it
13 today. I think that -- And I haven't carefully
14 parsed the suggestion we don't have the
15 authority until an application is filed, but
16 even if we took some kind of -- rendered some
17 kind of an advisory opinion, at least we'd give
18 people a heads up as to what was the likely
19 outcome and go ahead and file the application
20 if they chose.

21 There's a lot of work gone into
22 this, and we could make a final decision
23 thereafter. But we had this discussion today I
24 think because we were trying to figure out how

1 to give people an idea as to which way the wind
2 was blowing, and I'm not sure we've succeeded.

3 CHAIRMAN CROSBY: Certainly not
4 yet. I hope you guys will appreciate out there
5 what it's like to have this conversation.
6 You'd like to be in a conference room talking
7 to yourself without five TV cameras and two
8 hundred people, but we have no choice.

9 COMMISSIONER CAMERON: Mr. Chair,
10 are you suggesting we vote on the referendum
11 question and hold off on the applicant question
12 until we have some more -- have a chance to
13 look at that?

14 CHAIRMAN CROSBY: Yes.

15 COMMISSIONER CAMERON: So we would
16 be making -- if we go ahead and vote on one
17 aspect, and the other aspect --

18 CHAIRMAN CROSBY: Yes. The
19 applicant issue and whether there are remaining
20 issues having to do with the track and the
21 definition of gaming establishment, those, I
22 think, I'm not sure where those issues really
23 are, given all the changes, but in any event, I
24 don't they're right and they probably wouldn't

1 be until we actually see the plan. Or that's
2 what I'm inclined to think at the moment.

3 COMMISSIONER MCHUGH: Respectfully,
4 I don't see how we can vote on the HCA without
5 considering the applicant. I mean, that is
6 part of my problem, at least, with the HCA is
7 that it doesn't describe who the applicant is.
8 And I think to try and parse these issues is to
9 inject an artificiality into something that
10 needs clarification. I'm not -- I just don't
11 know what value would come out of that kind of
12 a vote.

13 So I would be -- If we want to look
14 at the applicant issue further, and there's a
15 suggestion that we need to, then I'd suggest
16 that we hold off any kind of a vote until we've
17 done that, and then we have some kind of a vote
18 on the entire proposal, because I think the
19 issues are inextricably intertwined.

20 The track issue, the gaming
21 establishment issue, I think, falls by the
22 wayside under this new formulation, but I would
23 like a chance to make sure that that's right as
24 well. We only learned about this last night.

1 But I think it does. And if that's off the
2 table, then we're left with the referendum and
3 the HCA and the impact of the vote. But the
4 validity of the vote and the referendum and the
5 HCA, among other things, includes whether the
6 identity of the applicant is an essential
7 ingredient of the information that voters are
8 entitled to receive.

9 CHAIRMAN CROSBY: But we were
10 talking about having this conversation before
11 there was a change in applicant.

12 COMMISSIONER MCHUGH: I understand.

13 CHAIRMAN CROSBY: What I'm
14 suggesting is that same decision. The issues
15 that we were going to address before the
16 applicant changed haven't changed, which is can
17 there be a Revere-only proposal under the HCA
18 and the referendum. That issue isn't changed.
19 There's a second issue, which is can the
20 applicant come in and essentially buy the HCA
21 and take over and be a new applicant. That's a
22 different issue.

23 COMMISSIONER MCHUGH: I'm sorry,
24 because I don't see that there's -- that the

1 issue is the same. At least for me it's not
2 the same because the question of whether there
3 could be a Revere-only vote had to do with the
4 nexus between the racing establishment under
5 128A and the track and the casino under the old
6 proposal. And that was what gave me trouble
7 about a Revere-only proposal. The theory being
8 that a racetrack and a hotel were the only two
9 required components of a Category 1 gaming
10 establishment. Whether the racetrack was an
11 amenity or something else, it had to be on the
12 property, and that, for me, meant at least,
13 difficulty in seeing how you could proceed with
14 only one side approving.

15 That's gone now. So that's
16 different. And that's not the original issue
17 that's on the table. It's an issue that
18 contemplates the new structure, but the new
19 structure spills over into the validity of the
20 summary.

21 So if I'm alone in that view, then
22 that's fine, we can go ahead and take a vote on
23 the old issue. But I just don't think we help
24 anybody understand where we're going if we do

1 that.

2 COMMISSIONER CAMERON: Well, I
3 think not making any decision could be harmful
4 as well. You know, the community doesn't know,
5 nor does the applicant know, how to proceed.

6 So I guess my question is if we
7 were able to vote on the original issue, if we
8 saw them as different; and then the second
9 issue being the applicant itself, did we need a
10 week for a legal opinion, or did we need to see
11 an application and see the whole project to
12 understand that issue?

13 CHAIRMAN CROSBY: The applicant
14 issue?

15 COMMISSIONER CAMERON: Yes, the
16 applicant, the new applicant issue. I think I
17 was hearing two different things, one, that it
18 would -- and I agree that hearing from our
19 legal team is always invaluable to me. But the
20 second piece is then I was hearing that we may
21 not be able to make that decision until we see
22 the application.

23 CHAIRMAN CROSBY: No. I'm sorry.
24 I think I said that. I think the applicant

1 decision we can make. If we had a meeting next
2 week, I think we can make it next week.
3 Whether there are any residual issues about the
4 track and the definition -- You know,
5 Commissioner McHugh was saying probably those
6 issues are off the table. I think they are.
7 Those issues are kind of gone. And the
8 definition of the gaming establishment is --
9 assuming that the gaming establishment is
10 entirely in Revere is off the table. So I was
11 not --

12 COMMISSIONER CAMERON: I see.

13 CHAIRMAN CROSBY: I think that
14 probably is really gone unless we think about
15 it and bring it back to the table.

16 Do you have any advice about what's
17 the right way to proceed here, whether trying
18 to make a Commission position on the HCA and
19 the referendum is appropriate and constructive
20 or not?

21 MS. BLUE: I think that's the main
22 issue. I think that's the core issue that we
23 are focused on. I think a decision on that,
24 depending on how you decide, decides,

1 obviously, the applicant issue as well.

2 So to the extent that the
3 Commissioners agree that -- how they view the
4 core HCA referendum issue, then it would be
5 appropriate to vote on it. If the
6 Commissioners are unsure, individual
7 Commissioners are unsure as how they view what
8 that issue it, then it may be worth a little
9 more time to look at it and to understand that
10 a little bit better.

11 COMMISSIONER STEBBINS: I think
12 it's difficult to parse the two questions. I
13 mean, to Commissioner Cameron's point, we make
14 one suggestion and deliberation and vote today,
15 and then we're back here tackling another
16 question that stops everything dead in its
17 tracks. I just don't see that as a worthwhile
18 use of our time or the applicant's.

19 CHAIRMAN CROSBY: Say again. What
20 was the bottom line of that?

21 COMMISSIONER STEBBINS: I have a
22 problem parsing the two questions, parsing
23 today one vote on the HCA and delaying any
24 consideration of the question of the applicant.

1 To Commissioner Cameron's point, we're going to
2 set our applicant or the community off in one
3 direction, we turn around a week later and slam
4 on the brakes and everybody's frustrated and
5 confused, and we don't know where we've been
6 and what we've done.

7 CHAIRMAN CROSBY: Everybody's
8 frustrated and confused anyway.

9 COMMISSIONER STEBBINS: Further the
10 frustration.

11 CHAIRMAN CROSBY: Further
12 frustration, more confused.

13 Go ahead, were you going to say
14 something, Commissioner?

15 COMMISSIONER CAMERON: I'm just
16 trying to -- If we're only talking about some
17 legal advice here in order to really understand
18 the new applicant and what that means, and if
19 we're talking about a week, then I don't see
20 any issue with waiting a week if that's what
21 we're talking about and making the decision at
22 that point.

23 COMMISSIONER MCHUGH: That's
24 certainly what I think we could do. Do it -- I

1 don't think we should wait any longer than
2 that, and I think we can do it.

3 COMMISSIONER STEBBINS: The sooner
4 the better.

5 CHAIRMAN CROSBY: I'd sooner
6 separate them and do one now, but, you know, I
7 feel like this has been kicking around for a
8 long time. There's a lot of uncertainty out
9 there. This is one issue the people are
10 debating, whether the HCA understands that,
11 there are divided opinions. But a week isn't
12 the end of the world, and if three of you think
13 that we ought to wait for a week, then we can
14 deal with both the applicant and the HCA
15 referendum issue at that time.

16 COMMISSIONER CAMERON: Yes. I
17 think my reason for wanting to wait has to do
18 with the fact that there's still an outstanding
19 issue. So it's not a red or a green light on
20 that point, even if we were to vote today on
21 the one issue.

22 CHAIRMAN CROSBY: That's a fair
23 point.

24 Do you have any question in your

1 mind about whether or not we have the authority
2 to say either stop, this is over, you can't go
3 forward because of the either the applicant
4 change or insufficiency of the HCA or of the
5 referendum; or on the other hand that we can
6 say, fine, go ahead, due to the sufficiency of
7 both and the satisfaction of the application?

8 MS. BLUE: I think the Commission
9 has the authority to decide both questions in
10 the way that's it's comfortable, yes. And I
11 think, Mr. Grossman, would you agree with that.

12 MR. GROSSMAN: Right. I think the
13 Commission has tremendously broad authority
14 into the Gaming Act to decide all issues
15 relevant to the issuance of the gaming license,
16 and this certainly fits squarely in there.

17 CHAIRMAN CROSBY: Yes. I think
18 that's right. And so apologies to everybody
19 who has to wait, but I think we will -- I think
20 we have pretty well teed up that we will take a
21 dispositive go/no-go decision, to put it
22 colloquially, on the Revere-only proposal.
23 That's not exactly it, but as a practical
24 matter, that's what everybody wants to know,

1 can there be a Revere-only proposal. And I
2 think we've narrowed the issues, and but for
3 dramatically changed circumstances, we will try
4 to make the final decision on that next week.
5 I'm not sure what meeting we have next week,
6 but we'll find one. We have a lot of meetings.

7 COMMISSIONER MCHUGH: I have a lot
8 of meetings.

9 CHAIRMAN CROSBY: All right. Is
10 there anything else?

11 All right. Do we have a motion to
12 adjourn?

13 COMMISSIONER STEBBINS: So moved.

14 CHAIRMAN CROSBY: All in favor?

15 COMMISSIONER CAMERON: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 COMMISSIONER STEBBINS: Aye.

18 COMMISSIONER ZUNIGA: Aye.

19 CHAIRMAN CROSBY: Aye. The ayes
20 have it.

21

22 (Whereupon the hearing was adjourned at

23 12:16 p.m.)

24

1 ATTACHMENTS:

- 2 1. Agenda for December 3, 2013
- 3 2. Foreign and Corrupt Practices Training -
- 4 Professor John Quelch, Harvard University
- 5 3. November 21, 2013 Meeting Minutes
- 6 4. Report on the Research Agenda of the
- 7 Massachusetts Gaming Commission - Mark Vander
- 8 Linden

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10 SPEAKERS:

- 11 Professor John Quelch, Harvard University
- 12 John Ziemba, Ombudsman
- 13 Catherine Blue, Mass. Gaming General Counsel
- 14 Mark Vander Linden, Director of Research and
- 15 Problem Gambling
- 16 Chip Tuttle, Sterling Suffolk, LLC
- 17 Thomas Reilly, Special Counsel to Suffolk Downs
- 18 Charles Baker, Corporate Secretary Suffolk Downs
- 19 Mitchell Etes, CEO Mohegan Sun
- 20 Kevin Conroy, Outside Counsel for Mohegan Sun
- 21 Daniel Rizzo, Mayor of the City of Revere

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C E R T I F I C A T E

I, Amie D. Rumbo, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Amie D. Rumbo, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Amie D. Rumbo, 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 Stenographic means, and transcript was produced from a computer.

WITNESS MY HAND this 5th day of December, 2013.

Amie D. Rumbo



Amie D. Rumbo, Notary Public

My Commission expires: 10/23/2020