

THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #109

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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February 24, 2014 1:30 p.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 104

Boston, Massachusetts

1 P R O C E E D I N G S :  
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4 CHAIRMAN CROSBY: I am happy to call  
5 to order public meeting number 109 of the  
6 Massachusetts Gaming Commission this time being  
7 held at the Convention and Exhibition Center  
8 convening at 1:30 on February 24.

9 I think I will turn to our staff,  
10 Executive Director Day, for starters for the  
11 first item on our agenda recommendation  
12 regarding review consultant contract.

13 MR. DAY: Thank you, Chairman  
14 Crosby. Good afternoon members of the  
15 Commission. I have a staff recommendation  
16 actually from the legal bureau at this point.  
17 So, I will refer to Catherine for review of  
18 that recommendation.

19 MS. BLUE: Good afternoon,  
20 Commissioners. You have your package a memo  
21 from me. Basically, what the memo describes  
22 is that the Commission staff was contacted by  
23 attorneys for Mohegan Sun regarding a potential  
24 conflict of interest with a contractor that

1 works with the Commission, McFarland Johnson.

2           And as described in the memo, we  
3 solicited information both from applicant's  
4 counsel and from McFarland Johnson to review  
5 the matter. After review of the matter, the  
6 legal department determined that McFarland was  
7 not in compliance with the terms of its  
8 contract.

9           The legal department recommends that  
10 the contract be terminated immediately and that  
11 McFarland not be paid for work done under  
12 Category 1 contract. And we would ask that the  
13 Commission review that recommendation and then  
14 any questions that we can answer and vote on  
15 that.

16           CHAIRMAN CROSBY: Commissioners?

17           COMMISSIONER MCHUGH: As I  
18 understand it, McFarland had a contract with  
19 Mohegan Sun. And in September -- I haven't  
20 seen any of the correspondence. This is all by  
21 my understanding. In September, sent a letter  
22 to Mohegan Sun saying --

23           CHAIRMAN CROSBY: -- and was  
24 required to terminate as part of our agreement.

1           COMMISSIONER MCHUGH: I'm not  
2 finished, Mr. Chairman. -- sent a letter to  
3 Mohegan Sun saying that we're not going to  
4 perform any more work under that contract that  
5 as I understand it, now correct me if I'm wrong  
6 on any of this contract that was in essence a  
7 put contract.

8           In other words, it gave Mohegan Sun  
9 the right to assign various tasks to McFarland  
10 Johnson. And the termination date of that  
11 contract was 2017. And so it didn't accept any  
12 more work after that. It finished some work,  
13 some minor work, a few hundred dollars' worth  
14 of work that it was doing, but it didn't  
15 effectively terminate the contract. And  
16 Mohegan Sun didn't effectively terminate the  
17 contract.

18           And under our expanded ethics rules,  
19 section 10 no contractor or consultant to us  
20 can have a contract with somebody else. So,  
21 technically they did have a contract with  
22 somebody else even though they'd given notice  
23 to Mohegan Sun that they weren't going to  
24 perform any more work under it. Do I have that

1 right?

2 MS. BLUE: I'm not sure I would  
3 characterize it as a put contract, because  
4 there was ongoing -- As I understood this, they  
5 had to perform certain functions under at least  
6 one part of it during years to come, but they  
7 may have been able to take other work as well.

8 It is also true that they did not  
9 have the ability to terminate the contract.  
10 Only Mohegan had the ability to terminate, yes.

11 COMMISSIONER MCHUGH: Right, right.  
12 I am not saying that the problem isn't there.  
13 But I think the record ought to reflect the  
14 nature of the problem. It is fairly clear to  
15 me that there was a misunderstanding as to what  
16 had happened. The net effect of which was that  
17 that contract continued. And under our  
18 expanded ethics rules, we have no choice but to  
19 terminate.

20 MS. BLUE: I would say under our  
21 expanded ethics rules and under the terms of  
22 the contract because they did not comply with  
23 the conditions of the contract.

24 COMMISSIONER MCHUGH: Right, right,

1 right. Okay.

2 CHAIRMAN CROSBY: That was the point  
3 that I was going to ask for clarification. Was  
4 it clear in our contract with McFarland Johnson  
5 that they were required to terminate any work  
6 for and contractual relationship with any of  
7 the applicants that they were going to be  
8 looking at?

9 MS. BLUE: Yes, and it specifically  
10 called out Mohegan Sun.

11 CHAIRMAN CROSBY: Because they gave  
12 this advice in advance that they were already  
13 doing work for Mohegan Sun.

14 MS. BLUE: Yes, that's correct.

15 CHAIRMAN CROSBY: Would you agree  
16 with the characterization that this was a  
17 misunderstanding?

18 MS. BLUE: I would say the parties  
19 don't necessarily agree that it was a  
20 misunderstanding. I think when I look at it,  
21 there were certainly miscommunications perhaps.  
22 The termination letter was sent to an  
23 individual at Mohegan that no longer worked  
24 there at the time the letter was sent.

1           Whether the parties understood that  
2 be the case or not, I don't know. But there  
3 was certainly some level of miscommunication  
4 between the parties.

5           CHAIRMAN CROSBY: It seems to me, I  
6 wasn't quite sure where Commissioner McHugh was  
7 going whether if the point was to make it that  
8 this is really sort of a technical and trivial  
9 issue or not. I'm not sure if that's where you  
10 were going.

11           It does seem to me that we have  
12 enough conversation about the issues of  
13 conflicts and that we are explicit enough in  
14 our contracts with our suppliers and with the  
15 critical role that these consultants are  
16 playing in helping the Commissioners evaluate  
17 the proposals from the bidders, one of whom the  
18 party was still working for, whatever the  
19 intent and I can't speak to that, it's a big  
20 deal.

21           If it was a miscommunication or  
22 inadvertence that's unfortunate. But it puts  
23 at risk the both reality and appearance of  
24 objectivity on the part of the party. And I

1 think under the circumstances, your  
2 recommendation is right.

3           The problem is, and we should talk  
4 about this, that it will now do damage. If we  
5 have to redo the work that they did on behalf  
6 of clients with whom they had an ongoing  
7 conflict of interest, then presumably we will  
8 have to redo that work which or at least  
9 quality control that work to make absolutely  
10 sure that there is no bias. And that's going  
11 to throw our schedule out of whack, which we've  
12 been bending heaven and earth to adhere to.

13           So for myself, I would certainly  
14 willingly accept your recommendation, I think,  
15 in spades. But I think we need to talk about  
16 what's the impact. Maybe we should talk about  
17 accepting the recommendation first, if any  
18 other Commissioners have any other reactions to  
19 that.

20           COMMISSIONER MCHUGH: I just want to  
21 clarify. I'm not suggesting that there is an  
22 alternative to termination of the contract.  
23 I'm not suggesting that it's not an important  
24 misstep however it came about. But I do think



1 the record ought to reflect the facts because  
2 it is a public process. And it is a public  
3 process that calls into account our contractual  
4 and other relationships with a firm that has  
5 done excellent work for us in the Category 2.

6 I was just reciting facts so that  
7 the facts, as I understand them at least, are  
8 clear. I don't disagree with the outcome.

9 COMMISSIONER ZUNIGA: The work that  
10 gets impacted specifically is relative to  
11 Region A; is that correct?

12 MS. BLUE: Yes, that's primarily  
13 what's impacted.

14 CHAIRMAN CROSBY: Primarily?

15 MS. BLUE: That's where they did  
16 work for Category 1's, Region A.

17 CHAIRMAN CROSBY: That is the impact  
18 of the conflict is Region A period.

19 MS. BLUE: Yes, that's correct.

20 COMMISSIONER ZUNIGA: Because we  
21 knew about this prior relationship when we  
22 engaged them for our Category 2 review, but we  
23 had decided that there was no conflict there  
24 because the applicants are - Well, they are not

1 under contract with those applicants.

2 MS. BLUE: That is true, but the  
3 contract for Category 2 did have the same  
4 requirement that they sever their relationship  
5 with Mohegan Sun at the time of the 2's. So,  
6 we knew that there wasn't a conflict, but we  
7 had already put that concern out there.

8 COMMISSIONER ZUNIGA: Right. But  
9 this only gets to the point that the schedule  
10 implication here applies to Region A and solely  
11 Region A.

12 CHAIRMAN CROSBY: Correct.

13 MS. BLUE: Yes, that's correct.

14 COMMISSIONER CAMERON: I agree with  
15 the legal recommendation that we terminate due  
16 to the facts as laid out in your memo.

17 CHAIRMAN CROSBY: Anyone else,  
18 Commissioner? Do we need a vote?

19 MS. BLUE: Yes.

20 CHAIRMAN CROSBY: Let's deal with  
21 that and then let's come back to the issue of  
22 the impact on the schedule. Do I have a motion  
23 from somebody?

24 COMMISSIONER CAMERON: I move that

1 we accept the recommendation from our legal  
2 department to terminate the contract of  
3 McFarland Johnson.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER ZUNIGA: Is this the  
6 one that we currently have for Region A?

7 MS. BLUE: Yes.

8 COMMISSIONER ZUNIGA: I want to be  
9 clear that what we're terminating.

10 MS. BLUE: It's for Category 1's.  
11 We had an overall contract for Category 1.

12 COMMISSIONER MCHUGH: A and B.

13 MS. BLUE: A and B.

14 COMMISSIONER MCHUGH: And C.

15 MS. BLUE: Yes, and C.

16 COMMISSIONER ZUNIGA: But not for  
17 Category 2.

18 MS. BLUE: But not for Category 2.  
19 That was completed.

20 COMMISSIONER ZUNIGA: Okay. That's  
21 right.

22 CHAIRMAN CROSBY: Second?

23 COMMISSIONER MCHUGH: Second.

24 CHAIRMAN CROSBY: Any further

1 discussion? All in favor of terminating the  
2 contract as recommended say aye. Aye.

3 COMMISSIONER MCHUGH: Aye.

4 COMMISSIONER CAMERON: Aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 CHAIRMAN CROSBY: Opposed? The ayes  
8 have it unanimously. What does this do to our  
9 schedule?

10 Just to remind everybody, the plan  
11 had been that assuming the worst case on  
12 surrounding community negotiations, meaning  
13 that the surrounding communities that did not  
14 come to an agreement use their full -- but were  
15 designated as surrounding communities use their  
16 full first approximate month of negotiating  
17 with the bidder, and their full second  
18 approximate month for the arbitration process,  
19 assuming that worst case scenario happened, our  
20 plan to date had been to make the decisions on  
21 Category (SIC) A and B, and we are still saying  
22 this for B, on approximately the last day of  
23 May, May 30.

24 That would keep the ability to get

1 the license fee from that licensee, since it  
2 has to be paid 30 days later, into this fiscal  
3 year, which is what the Legislature and the  
4 Governor had been counting on. And we've been  
5 endeavoring with all of our might to  
6 accommodate.

7 That still holds for Region B. What  
8 do we now have for Region A?

9 MR. ZIEMBA: Mr. Chairman, in your  
10 packet I have a recommendation regarding the  
11 schedule for Region A. As was noted, we  
12 learned about the potential conflict that  
13 impacted our surrounding community analysis.

14 CHAIRMAN CROSBY: Because McFarland  
15 Johnson did some of the analysis that we would  
16 have used to make these decisions, right?

17 MR. ZIEMBA: Correct, correct. They  
18 were part of the team. So, they did individual  
19 analysis. And then they were part of the team  
20 that had conversations regarding what the  
21 recommendations would be on surrounding  
22 communities for the eastern part of the state.

23 So, while we are in the process of  
24 completing those recommendations, we learned

1 about the conflict. And it was determined that  
2 we couldn't move forward with the Region A  
3 recommendations last week February --18 of  
4 February.

5           So, in your packet, I have a revised  
6 recommendation. The revised recommendation  
7 takes into account a couple of key milestones  
8 that are forthcoming. Notably there are a  
9 couple of environmental certificates that are  
10 being issued and will be issued.

11           On Friday the certificate for the  
12 Wynn proposal was issued by MEPA. And on March  
13 14, the certificate based on the Mohegan Sun  
14 notice of project change will be issued by  
15 MEPA. The comment period for that is due to  
16 conclude on March 7.

17           So, given that we experienced the  
18 delay that we were not able to get in the  
19 decisions on the 18th, which would have enabled  
20 us to get our decisions as you mentioned by May  
21 30, keeping the payments in this fiscal year,  
22 what I am now recommending is because of these  
23 other dates are looming or imminent, that that  
24 would be very valuable information that we

1 could utilize in making our determinations on  
2 surrounding community status.

3           And given that both of these  
4 certificate are due to be issued within a short  
5 timeframe of each other, it's my recommendation  
6 that we utilize those certificates in making  
7 our recommendations.

8           I can't guarantee that what is in  
9 there or what is not in those certificate will  
10 have a material impact upon the  
11 recommendations, but in the past it has been a  
12 pretty important component of some of our  
13 recommendations regarding surrounding community  
14 status, what we've learned from the agencies  
15 and others as part of the certificates.

16           CHAIRMAN CROSBY: The essence of it  
17 is, since the McFarland Johnson problem has  
18 kicked us into the next fiscal year, we might  
19 as well take a little bit of extra time and get  
20 this environmental information which may be  
21 helpful in our deliberations.

22           MR. ZIEMBA: That's correct. And as  
23 you know, as you mentioned, in all of our  
24 scheduling, we had very conservative

1 scheduling, they anticipate that a least one  
2 surrounding community or one impacted live  
3 entertainment venue will go all of the way  
4 through arbitration to the very final day. To  
5 the degree that the parties can reach  
6 negotiations, a negotiated settlement before  
7 then, we can issue our licenses earlier.

8 CHAIRMAN CROSBY: And we will  
9 continue to hope for that.

10 MR. ZIEMBA: With that, March 14, as  
11 I mentioned that is the date of the Mohegan Sun  
12 certificate issued on a Friday. We'll try to  
13 get our hands on that certificate on that  
14 Friday. Sometimes it is not always readily  
15 obtainable on that date, but we will work with  
16 MEPA and Environmental Affairs to try to get  
17 that. And do the analysis over the weekend  
18 into the early part of the next week.

19 The next regularly scheduled meeting  
20 after March 14 is Thursday, March 20. And it's  
21 my recommendation that we make determinations  
22 on that date.

23 COMMISSIONER ZUNIGA: When is that?  
24 I'm sorry.



1 MR. ZIEMBA: March 20, Thursday.

2 That is the Thursday, after the March 14  
3 Mohegan Sun certificate issuance date.

4 CHAIRMAN CROSBY: Just carry  
5 through --

6 MS. BLUE: So, if we make our  
7 determinations on March 20, after the entire  
8 period of arbitration and negotiation, after we  
9 make our determinations there's the 30-day  
10 statutory negotiation period. Then there is  
11 our regulatorily specified arbitration period.

12 If you carry those through to the  
13 very last day and then you schedule the  
14 hearing, the conclusion of the host community  
15 hearing right after the end of the arbitration  
16 award, then we could then issue our licenses on  
17 June 30 -- excuse me, issue the Region A  
18 license on June 30. That would be with a May  
19 27 end of arbitrations. So, if we issue the  
20 award on June 30 then the license payments  
21 would be due July 30.

22 CHAIRMAN CROSBY: Okay. Our  
23 standards have been that we push, push, push to  
24 move as quickly as we possibly can on behalf of

1 all of the parties who have wanted us to push  
2 quickly, but in the final analysis we don't  
3 jeopardize the integrity of the process for  
4 speed.

5           And I think reluctantly I think this  
6 is the right thing to do. I have no reason to  
7 think that McFarland Johnson really did have  
8 any bias when they did their work, but we can't  
9 have a process where that is left open to  
10 suspicion or open to litigation. So at this  
11 point, we have to let the integrity of process  
12 be the dominant consideration which means the  
13 schedule has to slip. I think we are just  
14 stuck with that.

15           COMMISSIONER ZUNIGA: John, can you  
16 refresh my memory and help me draw a parallel  
17 to Region B? The MGM proposal had the  
18 certificate available before we made the  
19 determination on Longmeadow?

20           MR. ZIEMBA: Yes.

21           COMMISSIONER ZUNIGA: Part of that  
22 certificate was the recommendation to study  
23 those two intersections along Route 5 --

24           MR. ZIEMBA: That's right.

1           COMMISSIONER ZUNIGA:  -- which gave  
2 way to analysis --

3           MR. ZIEMBA:  Correct.

4           COMMISSIONER ZUNIGA:  -- for that  
5 determination.

6           MR. ZIEMBA:  Correct.

7           COMMISSIONER ZUNIGA:  Do we expect  
8 that there will be a parallel here as a result  
9 of the certificates as well?  Or do we have  
10 information already relative to the  
11 intersections that need to be studied and the  
12 volume that's expected by the applicants to  
13 flow through those intersections?  Traffic of  
14 course being the one that is usually at the top  
15 of these discussions.

16           MR. ZIEMBA:  I am not certain.  I  
17 haven't had the opportunity to look at  
18 certificate.  I haven't received actually the  
19 certificate that was issued on Friday.  I do  
20 note that one intersection in Cambridge was  
21 part of the DEIR filing by the Wynn folks.  I'm  
22 not certain how that's going to result in the  
23 certificate.

24           Then similarly, I'm not exactly sure

1 how much direct impact the Mohegan Sun  
2 certificate findings will have on the two  
3 specific communities that we're talking about.  
4 But there's a potential that we might get  
5 comments that might have an impact on the final  
6 analysis.

7 COMMISSIONER ZUNIGA: And the two  
8 communities are Everett for Mohegan Sun?

9 MR. ZIEMBA: That's right.

10 COMMISSIONER ZUNIGA: What's the  
11 second one?

12 MR. ZIEMBA: Somerville. Then we  
13 have Cambridge and Saugus for the Wynn  
14 proposal.

15 COMMISSIONER CAMERON: I think it's  
16 a good recommendation that we have as much  
17 information as possible to make an informed  
18 decision.

19 COMMISSIONER ZUNIGA: Even though we  
20 already have -- I'm on the push, push side for  
21 a minute, Mr. Chairman. Even though we already  
22 have the certificate, although I have not seen  
23 it either or studied it in detail for Wynn  
24 because this is a region that has another

1 applicant, it's important to look at it as the  
2 latest of.

3 MR. ZIEMBA: Correct.

4 COMMISSIONER ZUNIGA: We would still  
5 be a situation where the schedule slips if only  
6 one applicant is forced to negotiate or  
7 arbitrate with a surrounding community.

8 MR. ZIEMBA: That's correct. But  
9 because the certificates are being issued  
10 within a short time of each other due to  
11 completeness and fairness, especially in the  
12 light of what we are considering today, that it  
13 would be a good recommendation to take a look  
14 at the certificates for both and make a fair  
15 and reasonable determinations based on all of  
16 the information.

17 One thing I will note is that for  
18 the McFarland team, I have no indication or  
19 evidence whatsoever of any bias in any of their  
20 reviews. But I think what we're trying to do  
21 is be as cautious as we can to make sure that  
22 the decisions are fair and just.

23 COMMISSIONER MCHUGH: This is a  
24 particularly complex set of interlocking

1 traffic considerations, among other things.  
2 And having the opportunity to look at somebody  
3 else's analysis before we go forward with ours,  
4 I think, given the time span, given where we  
5 are right now, I think makes good sense. Makes  
6 good sense for the Commission, makes good sense  
7 for the applicants, make good sense for the  
8 communities affected. So, I think it's a good  
9 recommendation as well.

10 CHAIRMAN CROSBY: I think we're in  
11 agreement on this. I don't think we need to  
12 vote on this. We've agreed that the  
13 recommendation on the termination that the  
14 schedule is -- We agree with you on this.

15 So, we are now bifurcating A and B.  
16 We'll go ahead and get B made on the schedule  
17 that we planned thus far and probably have to  
18 slip on A depending on the surrounding  
19 community negotiations and the final analysis.

20 MS. BLUE: Right.

21 COMMISSIONER MCHUGH: That's not  
22 necessarily so if we don't have to go to  
23 arbitration. People can come to agreements and  
24 surrounding community agreements, and after our

1 surrounding community decisions then we don't  
2 lose anything.

3 CHAIRMAN CROSBY: Right, which is  
4 what happened with all of -- Every other  
5 surrounding community negotiation has in fact  
6 negotiated to successful conclusion and not  
7 gone to arbitration.

8 So, we may be able to correct this  
9 but we've also always set expectations by  
10 assuming the worst case, which is an  
11 arbitration takes the full amount of time. So,  
12 to be consistent we'll use the same.

13 COMMISSIONER MCHUGH: Yes, I don't  
14 disagree with that.

15 COMMISSIONER ZUNIGA: The stakes are  
16 higher on the Category 1's, but hopefully more  
17 information like the draft certificate will  
18 really help in these negotiations.

19 CHAIRMAN CROSBY: Okay. Is that it  
20 for item two?

21 MR. ZIEMBA: Yes.

22 CHAIRMAN CROSBY: Item three, Region  
23 A surrounding community meetings.

24 MR. ZIEMBA: Mr. Chairman, that's

1 what we were just discussing. But there's a  
2 further item that we have input meetings that  
3 we had planned in each one of the areas for  
4 their surrounding communities.

5 CHAIRMAN CROSBY: Excuse me, John.  
6 People should understand that this is not  
7 legislatively mandated. There is a  
8 legislatively mandated host community meeting  
9 held in the host community prior to the  
10 conclusion of the evaluation process for each  
11 license.

12 We've also added in a second just  
13 public input meeting which will be held in one  
14 of the surrounding communities just to give us  
15 one final shot at feedback from the  
16 communities. So, it's those meetings that  
17 you're now talking about.

18 MR. ZIEMBA: That's right. So, we  
19 had tentatively and on our schedule that's been  
20 posted, we had planned on having our  
21 surrounding community input sessions March 3  
22 through the fifth next week for all three of  
23 the applicants.

24 But given the change in the



1 schedule, I recommend that we keep the Region B  
2 schedule for Monday the third, but that we move  
3 the input sessions for the Region A applicants  
4 to later in the month after our determinations  
5 of surrounding community status.

6 So, my tentative recommendation for  
7 dates would be March 25 and March 26 for the  
8 input sessions, for Mohegan Sun first on the  
9 25th and Wynn on the 26th March.

10 COMMISSIONER ZUNIGA: What day is  
11 the host community hearing in Springfield  
12 scheduled for?

13 CHAIRMAN CROSBY: April 1.

14 MR. ZIEMBA: So, April 1 would be  
15 our host community public hearing given our  
16 current schedule. And that would be the first  
17 of at least two.

18 COMMISSIONER ZUNIGA: What would be  
19 the host community for Region A, host community  
20 hearing, the statutorily mandated host  
21 community hearing under this scenario?

22 MR. ZIEMBA: So, those would be  
23 later than April. I think that we would need  
24 to determine when the first hearing would be,

1 but that we would close the hearings at the  
2 conclusion of arbitration.

3 So, that we would have the  
4 conclusion of the host community hearings on  
5 May 30 and May 29. And a little flexibility on  
6 when we would convene the first public  
7 hearings, the first host community public  
8 hearing.

9 COMMISSIONER ZUNIGA: This is the  
10 latest possible date as it stands right now on  
11 closing the hearing?

12 MR. ZIEMBA: Closing, correct.

13 CHAIRMAN CROSBY: In order to get  
14 the decision made by June 30.

15 MR. ZIEMBA: For payment by July 30.

16 CHAIRMAN CROSBY: Okay. That change  
17 can be made without doing any further violence  
18 to the schedule.

19 MR. ZIEMBA: Yes.

20 CHAIRMAN CROSBY: I think that seems  
21 fine. And we will follow your lead on that.

22 MR. ZIEMBA: Okay.

23 COMMISSIONER MCHUGH: The other  
24 benefit is that the people coming to the

1 community input meetings will have an  
2 opportunity to take a look at the DEIR  
3 certificates as well. So, there's added  
4 information for people to have in-hand when  
5 they come and tell us about the things they  
6 remain concerned about.

7 CHAIRMAN CROSBY: Right. Okay. Is  
8 that it?

9 MR ZIEMBA: Yes, it is.

10 CHAIRMAN CROSBY: Let's go to item  
11 four, the city of Boston petition.

12 MR. ZIEMBA: Mr. Chairman, we have  
13 two petitions for extension of our surrounding  
14 community deadline. The city of Boston  
15 requests that we extend our deadline to March  
16 18 from what it was of February 18 last week.

17 Just prior to receiving the  
18 petitions, we had internally made our  
19 determination that we weren't going to be able  
20 to move forward with the Region A surrounding  
21 community determinations. The date that we  
22 just decided for surrounding community  
23 determinations of March 20 falls later than the  
24 requested date from the city of Boston.

1           So, given that our date is actually  
2 two days later than the city of Boston's  
3 recommendation, I urge the Commission to take  
4 no action on these petitions at this time.

5           CHAIRMAN CROSBY: Because they de  
6 facto got what they wanted.

7           MR. ZIEMBA: Correct. There is some  
8 communications going back and forth between the  
9 city of Boston and applicants regarding  
10 information that is necessary for the full  
11 review of the applications. They continue to  
12 work together.

13           There was information sharing  
14 requests and answers at the end of last week.  
15 They continue to work on that. We'll be in  
16 communication with both the applicants and the  
17 city of Boston to see how we can try to  
18 facilitate answers to the reasonable questions.

19           COMMISSIONER MCHUGH: I think that's  
20 really important. This has been going on for  
21 quite some time now. And we asked one  
22 applicant and the city to come in last fall.  
23 And we had a discussion in here. And that led  
24 to a conclusion and reaching an agreement as to

1 not substance but status.

2           And I really don't think we can  
3 afford to let this run up to March 20 and have  
4 problems still outstanding. So, I think we  
5 need to be prepared to facilitate if necessary  
6 in this forum an interchange between parties to  
7 see where the stumbling blocks are and to see  
8 how we can break them. And I'm fully prepared  
9 to do that.

10           CHAIRMAN CROSBY: When would we  
11 decide whether to do that or not?

12           COMMISSIONER MCHUGH: March 6 looks  
13 like a good date. Maybe that's too soon.  
14 Maybe we ought to think about a separate  
15 meeting. But I think that -- I've read some of  
16 the correspondence that has been going back and  
17 forth. It seems to me that at least in some  
18 quarters they're on a positive track.

19           But I don't think we ought to let it  
20 linger much more -- much longer. So, March 6  
21 is our next regular meeting. Maybe that's too  
22 quickly. And maybe we'd be prepared to have a  
23 special meeting just to devote ourselves to  
24 that question.

1                   CHAIRMAN CROSBY:  What we did last  
2 time, we didn't say anything.  We just asked  
3 them to come in and talk.  And that got them  
4 talking to one another.

5                   COMMISSIONER MCHUGH:  That's exactly  
6 right, but we spent a lot of time, as the  
7 transcript will reveal asking for specifics.  
8 What information do you need?  And listening to  
9 the information that was being proffered.

10                   And asking if you'd given that piece  
11 of paper to the other side.  And asking the  
12 other side if they'd gotten that piece of  
13 paper.  And the result of that kind of  
14 conversation produced an agreement.  We didn't  
15 make any decision but it produced an agreement.  
16 And those kinds of conversations often do.

17                   Unfortunately, busy people and  
18 thoughtful people and dedicated people  
19 sometimes get bound up in misunderstandings.  
20 And it's very helpful sometimes just to clear  
21 the air by having a conversation with them to  
22 help them see where they are and where they  
23 aren't.

24                   CHAIRMAN CROSBY:  So, we are now

1 scheduled for a surrounding community decision  
2 on the 20th?

3 MR. ZIEMBA: Correct.

4 CHAIRMAN CROSBY: So, if they  
5 haven't decided, we are going to decide on the  
6 20th. So, maybe the 6th isn't too early.

7 COMMISSIONER ZUNIGA: Maybe I should  
8 -- Is there still a question relative to  
9 surrounding community versus host community?

10 MR. ZIEMBA: I think it'd be fair to  
11 say that Boston has reserved its rights on host  
12 community status. They are reviewing a lot of  
13 the information that we are also revealing in  
14 the environmental impact reports and the like.  
15 And there have been requests back and forth for  
16 information that have a bearing on host  
17 community status.

18 COMMISSIONER STEBBINS: For both  
19 applicants?

20 MR. ZIEMBA: Correct.

21 COMMISSIONER MCHUGH: I would be  
22 troubled if that was the posture in which this  
23 came back to us. We were prepared to have an  
24 adjudicatory hearing last fall on host

1 community status or surrounding community  
2 status with respect to one of the applicants  
3 and the city of Boston.

4           And that was the agreement. The  
5 agreement that was reached then and the  
6 agreement that I've been operating under ever  
7 since is that Boston was a surrounding  
8 community vis-a-vis that applicant.

9           So, whatever reservations of rights  
10 are being made at least with me, this  
11 Commissioner, there is an impediment to  
12 accepting that reservation. With respect to  
13 Mohegan Sun of course that's with the other  
14 applicant, Mohegan Sun that is, it's a brand-  
15 new ballgame. So, that stands in my view on a  
16 different plain.

17           I am only one Commissioner. I  
18 simply announce my --

19           COMMISSIONER ZUNIGA: I agree with  
20 that because if that's a stumbling block then  
21 it's a whole other ballgame. We may get to  
22 March 6 or March 17 with no better outcome in  
23 the foreseeable future.

24           CHAIRMAN CROSBY: But we can decide



1 on the 20th. If we decide on the 20th that  
2 somebody is a surrounding community or not it's  
3 decided. We don't have to get into whether  
4 they're a host community or not if we decide  
5 they're a surrounding community.

6 COMMISSIONER ZUNIGA: Right.

7 CHAIRMAN CROSBY: It will be decided  
8 on the 20th one way or the other as things  
9 stand. It's not an open-ended --

10 COMMISSIONER ZUNIGA: Fair enough.

11 MR. ZIEMBA: And I'm certain that  
12 the parties will let us know. I'm sure that  
13 the city of Boston will let us know of any  
14 reasons why it believes that it would be a host  
15 community to one or the other applications.  
16 One of the reasons why they submitted the  
17 petition was because of the looming deadline on  
18 the 18th. And they understand that we will be  
19 making our determinations that even those  
20 designated communities are surrounding  
21 communities at that time.

22 CHAIRMAN CROSBY: Why don't we sort  
23 of follow your lead on this, John. I agree  
24 with Commissioner McHugh. It's much better to

1 get this resolved between the parties if we  
2 can. If you think it would be constructive if  
3 we had everybody come in and speak their piece  
4 and try to facilitate the conversation like it  
5 did last time then let's do that. And the  
6 sixth is a good time, but you can tell us if  
7 you think it should be another time. But we'll  
8 sort of follow your lead on that. Are you okay  
9 with that?

10 COMMISSIONER MCHUGH: I am. And I  
11 think the idea is not to be compulsory. The  
12 idea for that kind of a conversation is to be  
13 facilitators.

14 CHAIRMAN CROSBY: Right.

15 MS. DELLO RUSSO: Thank you. Good  
16 afternoon. Elizabeth Dello Russo for the city  
17 of Boston. I'm joined today by Corporation  
18 Counsel Jean O'Flaherty, by city of Boston  
19 outside counsel Bill Kennedy, Tom Frongillo and  
20 Ariel Raphael.

21 Thank you, Commissioners for this  
22 opportunity to present before you. As  
23 Ombudsman Ziemba has reported, the city has  
24 filed two emergency -- two petitions for an

1 emergency hearing similar to what you're  
2 discussing doing on March 6. At the core of  
3 these two petitions is the city's seeking of  
4 information from the applicant, both  
5 applicants.

6           And we do think it is necessary that  
7 the Commission plays a role in compelling some  
8 of the information that the city has been  
9 seeking.

10           We've been asking for that for some  
11 time. And I think the time has come that the  
12 Commission has to facilitate that sharing of  
13 information. It's only through this open  
14 sharing of information that the city can study  
15 these two applicants both for status but also  
16 for impact. So, we welcome an opportunity to  
17 have that conversation with the Commission.

18           COMMISSIONER MCHUGH: I don't oppose  
19 that as you can tell from my earlier remarks.  
20 But I thought with at least one of the  
21 applicants a number of documents and papers and  
22 things had been delivered last week. And that  
23 you're in the process of reviewing them or at  
24 least have those documents to review. Are

1 those insufficient in your view to satisfy your  
2 request from that applicant?

3 MS. DELLO RUSSO: I think you are  
4 referring to Thursday the city received some  
5 documents from the Wynn applicant. Those  
6 documents, they were not responsive in the  
7 city's view to the document request.

8 There was some document sharing. It  
9 was redacted. And some documents just remained  
10 outstanding, and that's true for both  
11 applicants. And the city really needs to  
12 understand the land, the permits, the impacts  
13 of the development.

14 And we turn to you now to help us in  
15 doing that, which is what the city's job is in  
16 protecting the city of Boston residents and the  
17 visitors and the business owners.

18 Yes, we are talking about documents  
19 received on Thursday of last week in an ongoing  
20 search that's been going on for quite some time  
21 now.

22 COMMISSIONER MCHUGH: Is there a  
23 list, a specific list? I saw a list but it had  
24 categories. Is there a specific list of

1 documents that you think are relevant to your  
2 inquiry that you have not received?

3 MS. DELLO RUSSO: Yes. And what  
4 we'd like -- what we'd propose to you,  
5 Commissioners, is that we can work collectively  
6 with Ombudsman Ziemba on a schedule and a  
7 process of both applicants with lists  
8 scheduling when the city can review those so  
9 that the city can feel satisfied in its review.

10 COMMISSIONER ZUNIGA: Could you give  
11 me an example of both a document and a  
12 redaction of a document?

13 MS. DELLO RUSSO: Sure. The city is  
14 interested in the permits that are needed and  
15 required from the city to develop the two  
16 applicants -- for the two applicants --

17 COMMISSIONER ZUNIGA: From the city  
18 of Boston?

19 CHAIRMAN CROSBY: From the city of  
20 Boston?

21 MS. DELLO RUSSO: Yes, and from the  
22 state. We're interested in the overall  
23 permits. But certainly the city of Boston  
24 permits that are needed. I don't know why that

1 list should be redacted.

2 COMMISSIONER ZUNIGA: Isn't that  
3 information that the city could conceivably  
4 have?

5 MS. DELLO RUSSO: The city has  
6 requested this information and it has received  
7 a redacted list.

8 CHAIRMAN CROSBY: But don't you tell  
9 them what permits they need?

10 MS. DELLO RUSSO: Well, under your  
11 own application guidelines, you must present a  
12 list of permits. The Commission has a list of  
13 all of the permits that are needed that the  
14 applicants need from the state and from  
15 different municipalities. But the city Boston  
16 does not have that list.

17 There's documents that the  
18 Commission has received that are requirement of  
19 your application that somehow are redacted when  
20 presented to the city of Boston. That's one  
21 example. Another example is very pertinent  
22 information for the city of Boston is  
23 information about land acquisition and  
24 information about egress and access to the two

1 sites.

2 CHAIRMAN CROSBY: In the instance of  
3 the Wynn discussion, this is not almost host  
4 community versus surrounding community. This  
5 is negotiating a surrounding community  
6 agreement.

7 MS. DELLO RUSSO: No, I disagree  
8 with that statement. In both applicants, the  
9 city does not have pertinent and necessary  
10 information to know its status and also to know  
11 the impacts on the city regardless of status.

12 COMMISSIONER MCHUGH: What was the  
13 effect of the agreement you reached last fall?  
14 We were on a road to an adjudicatory hearing to  
15 resolve this issue last fall. And you and the  
16 Wynn interests said by agreement you were  
17 proceeding with a surrounding community  
18 agreement and no adjudicatory hearing was  
19 necessary.

20 MS. DELLO RUSSO: I think the city  
21 and Wynn said in a public statement --

22 COMMISSIONER MCHUGH: No, in an  
23 email to us.

24 MR. ZIEMBA: Commissioner, that was

1 meant as a public statement.

2 MS. DELLO RUSSO: And it's a fair  
3 question. So, since that time, the city has  
4 said that there has not been adequate  
5 information sharing to assess impacts or  
6 understand status.

7 At that hearing, one of the items  
8 that was presented was a site plan. And I  
9 think you may remember that site plan. We have  
10 asked for information bearing on that site  
11 plan, land ownership, access, egress. And that  
12 is the type of information that we do not have  
13 satisfactory answers regarding. That does have  
14 an impact on the city's host status. It does.

15 COMMISSIONER MCHUGH: I think that  
16 the sooner with your participation and with the  
17 applicant's participation and Mr. Ziemba's  
18 work, the sooner we can get everybody in here  
19 and go through this, the better off everybody  
20 is going to be. These things happen, but I  
21 really think we need to even if we have to  
22 devote a special meeting to this, we need to  
23 get this resolved.

24 CHAIRMAN CROSBY: We have meetings



1 all week long.

2 COMMISSIONER MCHUGH: I'm not  
3 suggesting we do it tonight. But I do think as  
4 soon as we reasonably can do it, we ought to do  
5 it.

6 CHAIRMAN CROSBY: That's what I'm  
7 saying. We have meetings all week. So, we can  
8 do it any time this week without having to call  
9 a special meeting as well as we've got next  
10 week available.

11 There's a difference as Commissioner  
12 McHugh's been saying between facilitation,  
13 trying to get the parties to talk and share  
14 data and so forth. That's what we thought  
15 happened with the Wynn Boston discussion last  
16 time.

17 There's another which is to have us  
18 make a decision. Without some real work, we're  
19 not going to be competent to computer lines of  
20 egress. So, what we can do at this stage of  
21 the game is what we did at that earlier hearing  
22 with Boston and Wynn which is to try to  
23 facilitate people talking to one another and  
24 say don't be silly and refuse to show obvious

1 stuff.

2           If it comes to us having to make the  
3 decision then we really do need our consultant  
4 support and staff support so we can make an  
5 informed decision.

6           John, I think the city is saying  
7 sooner than later. The sixth is too long. If  
8 you tend to agree with that then if we can tee  
9 it up this week so much the better on the  
10 facilitation side.

11           COMMISSIONER MCHUGH: Can I make a  
12 demur there? I'm all for going as fast as we  
13 possibly can. We've got a big decision to make  
14 this week. And I would be looking personally  
15 for the beginning of next week at the earliest.  
16 The judgments we have to make this week are in  
17 and of themselves filled with work, at least so  
18 far as I can see.

19           CHAIRMAN CROSBY: This would be the  
20 facilitating meeting not the decision-making.

21           COMMISSIONER MCHUGH: But Mr.  
22 Chairman, this has been going on now since the  
23 fall. I think we need to be prepared to stay  
24 with this for as long as it reasonably takes to

1 figure out what documents are reasonably needed  
2 by specific identity, when they're going to be  
3 produced, by whom they're going to be produced,  
4 in what room they're going to be produced, at  
5 what time of the day they're going to be  
6 produced, because it seems to me that parties  
7 are having a difficulty getting together on  
8 those rudimentary things.

9           And I think we ought to be prepared  
10 to stay here if it's necessary all day. Send  
11 people out of the room to talk and come back.  
12 And try to get to the bottom of this and try to  
13 get some basis for an agreement.

14           I don't personally want to be faced  
15 after we've made a surrounding community  
16 decision with a continuing contention that the  
17 city is a host community. And vice versa, I  
18 don't want to have to avoid looking at some  
19 kind of a host community process if we've  
20 concentrated all of our time on surrounding  
21 communities.

22           So, I think this is something we  
23 ought to be prepared to spend a day on if  
24 necessary. And get people going out of the

1 room with a firm schedule and a firm plan for  
2 resolving it if they can, recognizing that on  
3 March 20 we are going to make the surrounding  
4 community decision.

5 CHAIRMAN CROSBY: If we have to do  
6 that level of handholding, I'd say we should  
7 just make the decision ourselves. It's silly  
8 for us to spend a day.

9 COMMISSIONER MCHUGH: I don't agree  
10 that it's silly. I don't agree that it's  
11 silly.

12 CHAIRMAN CROSBY: I know. I do.

13 COMMISSIONER MCHUGH: Well, all  
14 right. We have a disagreement, but I don't  
15 want to be in this position after we've made  
16 that decision with this dispute clouding the  
17 process all the way down to the license award  
18 if we can reasonably avoid it. And I think we  
19 can reasonably attempt to avoid it by getting  
20 into that level of detail.

21 COMMISSIONER ZUNIGA: Let me ask  
22 something that you alluded to, Ms. Dello Russo.  
23 The way you described the information you need  
24 relative to ownership, in order to determine

1 impacts, ownership of land for example. In  
2 order to determine impacts, isn't it reasonable  
3 to assume that there is already a lot of  
4 information at least in traffic whether the  
5 land is owned -- whether the demarcation goes  
6 wherever, isn't there a reasonable -- enough  
7 information more of it coming in the  
8 certificate that we are about to get soon  
9 relative to the areas that need to be studied?  
10 For example Sullivan Square or wherever they  
11 may be that where the ultimate demarcation may  
12 not necessarily be the issue that decides it?

13 MS. DELLO RUSSO: I think the  
14 certificates would be incredibly useful for the  
15 city to review. The city doesn't have either  
16 certificate yet. One I understand now has  
17 issued on Friday. We don't have that yet.  
18 Then the other will happen in March.

19 So, yes, I agree the certificates  
20 are important documents to review. That's why  
21 it makes a lot of sense to us to postpone or  
22 defer your surrounding community designation  
23 upon reviewing those.

24 But I think the point of access and

1 the point of egress to both sites is hugely  
2 important to status, and by status I mean host  
3 or surrounding. That's true for both sites.  
4 There is a question on that point of egress and  
5 access for both sites and that has to do with  
6 land acquisition. So, that's why the city has  
7 asked repeatedly for.

8                   COMMISSIONER ZUNIGA: Which is what  
9 I am trying to decouple. If you could decouple  
10 status from the conversation of impacts, could  
11 you proceed trying to determine and negotiate  
12 impacts, in this case traffic for example,  
13 regardless of where ultimately the egress goes  
14 through? Isn't that fair to say that the  
15 impacts could be studied as far as it pertains  
16 to traffic separate from that conversation?

17                   MS. DELLO RUSSO: I think it's very  
18 fact specific. So, in the case of Mohegan Sun,  
19 I think, you really do need to understand the  
20 entrance -- the access and the egress at that  
21 site which is, as you know, a new applicant.  
22 We studied extensively the Suffolk Downs  
23 applicant, but now we have a new point of  
24 access and a new point of egress potentially.

1 So, you really need to understand that to  
2 understand the change of impact.

3 So, in that example, factually we  
4 would need to understand that access in order  
5 to understand impacts. On the Wynn side, the  
6 city has filed extensive comments on the Wynn  
7 DEIR discussing where there are factual  
8 differences between the study that was done on  
9 traffic and the city's own studies on traffic.

10 So, in that instance maybe the point  
11 of access is still I think is an important  
12 piece the city really needs to understand but  
13 potentially less needed for impact analysis.  
14 We're already engaged in impact analysis.

15 COMMISSIONER MCHUGH: But host  
16 community status is a question of geography not  
17 impact, right?

18 MS. DELLO RUSSO: Yes. This is not  
19 an argument of host community status related to  
20 impact. This is an argument of two things  
21 bifurcating as the Commissioner said.

22 So, the city needs to understand  
23 these developments, point-blank, we need  
24 understand these developments. We're missing

1 information and analysis to do so. That's why  
2 we've asked to come before you in an emergency  
3 fashion to help us and compel some of that  
4 information we're seeking.

5 But we also as a piece of that  
6 information are seeking information that will  
7 help us in making that status determination.

8 I am very pleased to come before you  
9 again at March 6 or at a separate date.

10 Pleased to work with Ombudsman Ziemba on a  
11 schedule of information and how the city can  
12 process that information as has been suggested  
13 here.

14 CHAIRMAN CROSBY: John, do you have  
15 a synthesis in view here? Do you --

16 CHAIRMAN CROSBY: Go ahead.

17 COMMISSIONER MCHUGH: I'm sorry. I  
18 think that the Wynn interest at least wanted to  
19 say something in response.

20 CHAIRMAN CROSBY: Okay.

21 MS. KRUM: Hello, Commission. My  
22 name Jacqui Krum and I am Senior Vice President  
23 and General Counsel of the development division  
24 of Wynn Resorts. Sorry, we weren't prepared



1 today to address or to have an adjudicatory  
2 hearing on host or surrounding community.

3 COMMISSIONER MCHUGH: This not an  
4 adjudicatory hearing.

5 MS. KRUM: Understood.

6 COMMISSIONER MCHUGH: This is an  
7 exploratory probing.

8 MS. KRUM: And quite honestly, we  
9 had thought that the host issue was resolved in  
10 the fall of last year as well and that we had  
11 designated the city of Boston as a surrounding  
12 community.

13 So, the question of surrounding  
14 community status to us is one that's been  
15 resolved, pending of course your confirmation  
16 that they are actually a surrounding community.

17 With respect to the information  
18 request, we did receive an information request  
19 in the form of a petition that was filed with  
20 the Gaming Commission. And we responded with  
21 all non-confidential and nonproprietary  
22 documentation.

23 Specifically, with respect to the  
24 permit request, what we did was we provided the

1 city of Boston with a list of all permits and  
2 who they needed to be filed with. What was  
3 redacted from that document was the timing that  
4 we would be filing those permits.

5           As you know, this has been somewhat  
6 of a political process for us. And we're sort  
7 of adjusting to this and we thought that that  
8 was confidential information. And we were  
9 concerned about somebody using that frankly to  
10 put up roadblocks.

11           So we had requested confidential  
12 treatment of that portion of the document with  
13 the Gaming Commission staff. And that had been  
14 granted. So, that is what we gave to the city  
15 of Boston.

16           With respect to some of the other  
17 requests, there were requests made for instance  
18 about the profit participation that some of the  
19 owners of the land that we have under option  
20 would be receiving. As it happens, no one has  
21 any profit participation, but frankly we're not  
22 sure what the significance of that information  
23 would be to the city of Boston.

24           There was some other requests for

1 confidential information including copies of  
2 our actual option agreements, which as you can  
3 appreciate do contain confidential information  
4 and are subject to confidentiality provisions.

5 But having said that we are  
6 perfectly willing to engage with the city of  
7 Boston through whatever forum the Commission  
8 would like including having meetings set up  
9 later this week with them, which we do have to  
10 discuss transportation and environmental  
11 issues.

12 And we will continue to have those  
13 meetings and to provide whatever information we  
14 can. And if there's a determination made that  
15 we are not providing information that we should  
16 be providing, we're happy to provide that  
17 information.

18 COMMISSIONER ZUNIGA: Can you help  
19 us understand a little bit, if confidential  
20 information is at least part of the sticking  
21 point, is this something that you could  
22 facilitate? For example, you are the custodian  
23 of that information, the unredacted version.  
24 You could have perhaps and I may be speaking

1 out of turn here, but have both representatives  
2 from the applicant and the city come observe  
3 that information, whatever may be relevant to  
4 them?

5 I understand the argument about  
6 relevance but is it possible that they could  
7 come to your office and they can observe  
8 certain pieces of information that may resolve  
9 some of this?

10 MS. BLUE: I think if the applicant  
11 is comfortable with that we can certainly work  
12 on that. We granted confidential status in  
13 accordance with our statute and regs. If the  
14 applicant was amenable to having it available  
15 in our offices for the city to review, we could  
16 certainly set that up.

17 CHAIRMAN CROSBY: But that doesn't  
18 really speak to the issue of the applicant.

19 COMMISSIONER ZUNIGA: Baby steps,  
20 maybe there is a little bit that could  
21 facilitate. I'm not suggesting everything  
22 might be. I understand the argument about  
23 relevance, but just a thought.

24 CHAIRMAN CROSBY: As long as we are

1 here, can you enumerate any particular things  
2 beyond the things which have just been  
3 addressed that you would like to have that you  
4 think you need that you don't have from Wynn?

5 MS. DELLO RUSSO: Certainly,  
6 Commissioner. I think we have presented a  
7 lengthy list of documents. This has been going  
8 on since July. We've kind of a long back-and-  
9 forth correspondence. I've brought with me  
10 here today a couple of those document requests.  
11 We put a couple of them in front of the  
12 Commission already in the form of our latest  
13 two petitions.

14 So, permits remain incredibly  
15 important. I like Commissioner Zuniga's idea  
16 that we could go -- if there's a concern of the  
17 city holding these documents, we could go to  
18 the Commission offices.

19 CHAIRMAN CROSBY: The issue isn't  
20 the permits. The issue according to Ms. Krum  
21 the issue is the dates in which you're expected  
22 to get them.

23 MS. KRUM: Right, the timing we're  
24 planning for them and when they would be

1 granted.

2 CHAIRMAN CROSBY: Are you contesting  
3 that?

4 MS. DELLO RUSSO: Yes. We have a  
5 list. For the permits it just says permits  
6 needed for the city of Boston, Boston  
7 Transportation. We're looking to say what are  
8 the permits? What are you talking about? What  
9 is the work that is being done that you need  
10 these X, Y, Z permits.

11 CHAIRMAN CROSBY: And there's a  
12 disconnect.

13 MS. KRUM: Actually, no. I  
14 apologize. We misunderstood that request  
15 because that was never set forth. The  
16 Commission doesn't have any additional  
17 information that the city of Boston does not  
18 have. That was not contained in our  
19 application either.

20 The only thing that was redacted  
21 from what we provided to the city of Boston was  
22 just the timing.

23 COMMISSIONER MCHUGH: See, this is  
24 why with all due respect to everybody, I know

1 everybody's been working very hard. And this  
2 is why I think we just need to have everybody  
3 here and either broker a deal or go through  
4 that list and say give them that or don't give  
5 them that in the exercise of our power and get  
6 this done.

7           CHAIRMAN CROSBY: I really object.  
8 We'll do it if we have to but I think that's  
9 absurd for us to have to sit here and have to  
10 do that.

11           I think you get the gist. Take this  
12 one example. There's some disconnect. And if  
13 you set aside emotions and the history and the  
14 prior politics and so forth and just try to  
15 figure out what is it that you really want and  
16 can you give it to them.

17           And you sit in a room with people  
18 like Counsel Kennedy whom I would have  
19 confidence could take a deep breath here, then  
20 I can't believe you can't get this done. If we  
21 have to do it, we will. But it's preposterous  
22 for us to spend our time to go through that  
23 kind of a list with you.

24           I would take a crack at it. Maybe

1 send somebody new into the room welcome aboard,  
2 Counselor O'Flaherty, and then if you can't get  
3 it done, we'll do it. But it's ridiculous.

4 MS. KRUM: As I mentioned earlier,  
5 we do have meetings scheduled with the city of  
6 Boston this week I believe on Wednesday and  
7 Thursday with our traffic consultants and  
8 environmental consultants. And we remain  
9 hopeful that that will get us through yet  
10 another step. And that hopefully we can then  
11 narrow down the field of documents that are  
12 still outstanding, if any.

13 MS. DELLO RUSSO: Commissioners,  
14 thank you. And I agree with Attorney Krum.  
15 We're happy to work collectively. We just  
16 think at this juncture we ask for your  
17 involvement. I just want to point out that  
18 beyond the applicants, the city has made  
19 requests of the study of impacts to a  
20 neighboring municipality in the city of  
21 Everett. And that is long outstanding as well.

22 So, we are looking beyond the  
23 applicants to say other municipalities, how  
24 have you studied this. Can you explain the



1 land? Can you explain the impacts? Can you  
2 explain any piece of these developments? And  
3 we're still waiting for those. So, it does go  
4 beyond the applicants.

5 COMMISSIONER MCHUGH: What authority  
6 do we have to start ordering cities and towns  
7 to produce things?

8 MS. DELLO RUSSO: Well, the city has  
9 engaged in a public records requests to the  
10 city of Everett.

11 COMMISSIONER MCHUGH: There's a  
12 forum for that but it's not this.

13 MS. DELLO RUSSO: I just point it  
14 out as this is beyond the applicants. I would  
15 add that what the city is trying to do here is  
16 understand these developments. It's that  
17 simple. There's not a nefarious purpose behind  
18 this. It is to understand these two applicants  
19 and to be able to assess impacts from those  
20 applicants.

21 COMMISSIONER ZUNIGA: There's how  
22 many surrounding communities around Springfield  
23 that already made an assessment as to their  
24 status. And they had all of the information

1 they could reasonably get. And there was I'm  
2 going to guess at least some assumptions of the  
3 future just like all of these studies. All of  
4 these studies present assumptions of the  
5 future. And they were able to reach a number  
6 of agreements.

7           Some of them with some  
8 contingencies, some look-back provisions, etc.  
9 So, I think if anything they provide a great  
10 example as to the ability to get to a  
11 resolution in terms of an agreement about  
12 information that may be imperfect.

13           I don't know where that leaves us  
14 but I just want to point out that it can be  
15 done. These are rather large and unique in  
16 many ways, but they are not something new in  
17 terms of the type of traffic and construction  
18 that they bring to a city.

19           There's been a lot of development in  
20 the Longwood area, for example that I would  
21 equate. I go through every day and I would  
22 equate some of the impacts of all of that  
23 construction that has happened over the last  
24 few years may have a parallel to what could

1 happen if a casino came to the city of Everett  
2 or Revere.

3 MS. DELLO RUSSO: I agree,  
4 Commissioner. The city of Boston does large-  
5 scale development every day of the week, The  
6 city knows how to study developments. And we  
7 are trying to do that same process here.  
8 There's nothing unique about documents or  
9 information that the city is looking for. This  
10 is the information we need to assess big  
11 developments.

12 MS. KRUM: Except respectfully, our  
13 development is not within the city of Boston.

14 COMMISSIONER MCHUGH: Okay. We are  
15 not going to get anywhere there.

16 CHAIRMAN CROSBY: I think you get  
17 the drift. The body language of the Commission  
18 is suggesting that this is an unbecoming  
19 conversation and shouldn't be necessary,  
20 although we all appreciate all of the different  
21 issues. Believe me, we all appreciate, all of  
22 the passions. But it's nevertheless unbecoming  
23 and pointless.

24 If you all can find a room and

1 people to talk to one another who can resolve  
2 these issues, great, get it done. If not John,  
3 tell us when we need to do it. If the sixth is  
4 soon enough, fine. If it needs to be sooner,  
5 but just let us know.

6 MS. DELLO RUSSO: Thank you.

7 MS. KRUM: Thank you.

8 CHAIRMAN CROSBY: What's next, draft  
9 license award with conditions.

10 MS. BLUE: Commissioners, in your  
11 package you have a revised draft of the  
12 license.

13 CHAIRMAN CROSBY: We are going to  
14 take a very, very quick break.

15

16 (A recess was taken)

17

18 CHAIRMAN CROSBY: And we're back  
19 again at 2:35 with item number five.

20 MS. BLUE: Commissioners, in your  
21 packet you have a draft form of the license  
22 with conditions. This has been redrafted in  
23 accordance with our discussion at our last  
24 meeting as well as with a review of all the

1 comments that we received from applicants and  
2 others.

3           You will see that it is set up in a  
4 decisional and comparative form. It will track  
5 hopefully the findings that the Commission  
6 makes as it goes through the Category 2  
7 reports. We will incorporate them into this  
8 license form once the reports are completed and  
9 the decision is made.

10           We've taken out the laundry list of  
11 conditions that were from the statute. And  
12 we've simply required compliance with the  
13 statute and the regs. Then we added a few  
14 other non-statutory provisions that were both  
15 suggested to us and items that staff thought  
16 should be included.

17           CHAIRMAN CROSBY: Okay. Questions,  
18 thoughts?

19           COMMISSIONER STEBBINS: Catherine, a  
20 couple of quick questions. How do we reference  
21 or suggest to an eventual licensee those terms  
22 in regard to their compliance with what they  
23 promised in the application?

24           MS. BLUE: Those would be under the

1 section that's for specific provisions. And we  
2 would make specific reference to things that  
3 they provide to us such as timelines,  
4 construction schedules. If they proffered  
5 particular types of activities, we would put  
6 that in the specific conditions portion.

7           COMMISSIONER STEBBINS: I have some,  
8 coming out of the discussion with folks that  
9 helped me evaluate economic impacts some  
10 suggested conditions with respect to tourism,  
11 with respect working with various state  
12 departments, with respect to working with our  
13 gaming vendor resource team, complying with the  
14 MOUs I believe all of the applicants signed  
15 with the Mass. Community College Casino Career  
16 Training Institute, things like that. Where  
17 can we find room to put those in without kind  
18 of adding them onto the conclusion conditions?

19           MS. BLUE: They would be best added  
20 on to the condition section. They could be  
21 added into the general conditions section as  
22 they may be applicable to all applicants. But  
23 if there are specific items that fall into  
24 those categories that you would like a

1 particular licensee, the actual successful  
2 licensee to comply with, we would put them in  
3 specifically and relate to that licensee. But  
4 we can do some of these in the general overall  
5 conditions as well.

6 COMMISSIONER STEBBINS: Because I do  
7 have some language that I played with with  
8 respect to just some of those provisions. So,  
9 somehow I'd like to find a way to find their  
10 way into the license.

11 The other question I had, and you  
12 reference it on page four item number 17, which  
13 I know is taken directly from the statute. And  
14 that affirmative action program is referenced  
15 later in the statute under section 21.

16 What I wanted to suggest is that I  
17 think the language provides that they offer an  
18 affirmative marketing program for our MBEs,  
19 WBEs and VBEs for design and construction and  
20 ultimately supply or vendors during operation  
21 of the facility. I guess I have a worry that  
22 unless we put some timelines in for those plans  
23 to be in front of us, because they all require  
24 Commission approval that they do that within a

1 short timeframe.

2           Some of these folks have already  
3 engaged people to help with design. They're  
4 already looking at construction. And I worry  
5 not having a timeline attached to those  
6 provisions, whether it's 30 days, 60 days  
7 whatever it is, I want to make sure that they  
8 know what their obligations are. We're not  
9 waiting around. We actually miss a boat during  
10 this design and construction window.

11           Similarly, in section 21 subsection  
12 22 they need to come up with the affirmative  
13 action program for minority women and veterans  
14 to be involved in the construction process.

15           Again, there there is no timeframe  
16 either provided in the statute. But I want to  
17 enlist some type of timeframe that is amenable  
18 to all parties that fits within their  
19 obligations to us and how quickly we can view  
20 that plan, because we don't want to slow them  
21 up in design and construction once the license  
22 is awarded. But I don't want to put the  
23 Commission behind the eight ball in terms of  
24 our responsibilities either.



1 MS. BLUE: I think we can add  
2 timelines here. And it makes sense to add them  
3 in that this is an issue that we would address  
4 in the regulation that we're looking at  
5 regarding preconstruction and monitoring. But  
6 we are not far along in that process to have  
7 gotten comments and incorporated it into that  
8 regulation.

9 So, since we are where we are in  
10 terms of the license decision process versus  
11 the regulation that might address it, it makes  
12 sense to me to put some timelines in the  
13 license itself for the Category 2.

14 By the time we get to the ones, we  
15 will probably have some timelines built into  
16 the regulation that address that. So, I would  
17 be comfortable with putting in timeline that  
18 the Commission felt acceptable into the license  
19 form to address your concerns.

20 COMMISSIONER STEBBINS: Okay.

21 COMMISSIONER ZUNIGA: So, on page  
22 five, I see that you have in this form -- I am  
23 particularly thinking of the finance section.  
24 I'm familiar with it. -- effectively what is

1 our subcriteria and criteria. And you have a  
2 box that says here is your vision or  
3 recommendation that we will have the ratings  
4 and/or the summary of statements or full  
5 statements that we have behind each one of  
6 these?

7 MS. BLUE: I think in the finance  
8 section -- when I was looking at the templates,  
9 I think have actually have too many criteria in  
10 there. I have the subcriteria. So, I think  
11 what we will do in the finance section is go to  
12 the broad criteria. And we will have the  
13 descriptions that come out of your reports of  
14 each applicant from that particular section.

15 I have I think too many, quite  
16 frankly, too much detail in the finance  
17 section. So, I want to sync that up to the  
18 reports once they're finalized.

19 CHAIRMAN CROSBY: Because you have  
20 four criteria, right?

21 COMMISSIONER ZUNIGA: Yes.

22 CHAIRMAN CROSBY: Can you match  
23 that?

24 MS. BLUE: That's what I would like

1 to go to. I have too many now. I have also 11  
2 of your --

3 COMMISSIONER ZUNIGA: --  
4 subcriteria.

5 MS. BLUE: Yes, and I will cut that  
6 back to the four criteria that you have.

7 COMMISSIONER ZUNIGA: But it's not  
8 just simply the rating, it's all of the  
9 discussion that happened that we'll be getting  
10 into tomorrow.

11 CHAIRMAN CROSBY: Well, that will be  
12 here not in these boxes.

13 MS. BLUE: What comes out of the  
14 reports will be in the boxes. The discussion  
15 will be a little bit in more detail the  
16 comparative discussion as to why the Commission  
17 thought one applicant over another maybe had a  
18 better position in a particular group. So, it  
19 will overlap to some degree.

20 COMMISSIONER ZUNIGA: Okay.

21 CHAIRMAN CROSBY: In your mind's  
22 eye, the five sections, the comparative  
23 discussion, are you talking a little paragraph?  
24 Are you talking a page? How do you anticipate

1 doing that?

2 MS. BLUE: In the five sections with  
3 the tables --

4 CHAIRMAN CROSBY: Not the tables.

5 MS. BLUE: In the overview?

6 CHAIRMAN CROSBY: IN the comparative  
7 discussion section four.

8 MS. BLUE: It could be a few pages,  
9 hopefully not, but a page probably to cover all  
10 three at a minimum, a page or two. And that  
11 would be based upon the Commission's  
12 discussions as to the various merits of each  
13 applicant.

14 CHAIRMAN CROSBY: This presumably  
15 will be passed by us in draft, right.

16 MS. BLUE: Yes.

17 COMMISSIONER MCHUGH: The statute  
18 section 18 says we have to issue a statement of  
19 findings on how each applicant proposes to  
20 advance the following objectives. And then  
21 follows the 18 or 19 objectives that are on  
22 pages three, four and five. Where is that  
23 statement of findings of how each proposes to  
24 achieve those objectives?

1 MS. BLUE: The objectives of the  
2 list that comes -- section 18 objectives --

3 COMMISSIONER MCHUGH: In determining  
4 whether an applicant shall receive a gaming  
5 license, the Commission shall evaluate and  
6 issue a statement of findings of how each  
7 applicant proposes to advance the following  
8 objectives. And then there are these 19  
9 objectives that are listed on pages two, three,  
10 four and five. Where is that?

11 MS. BLUE: My hope was to address  
12 that in the tables along with a discussion of  
13 what you found for each particular criteria.

14 COMMISSIONER MCHUGH: For example,  
15 if you take number eight there are six subparts  
16 or seven subparts to eight. How would you do  
17 that in a table?

18 MS. BLUE: I would take that  
19 information out of the reports that you  
20 generate. The table will be large. It's going  
21 to be a larger table for something like that.

22 CHAIRMAN CROSBY: We've got the  
23 specific wording of the statute calling for the  
24 findings, how each proposal will answer the 18

1 questions, the 18 points. Then we got a little  
2 more broad sort of functional plan that we want  
3 to write something up that reasonably describes  
4 to a reasonable reader what our thought process  
5 was and how our analysis was concluded.

6           They don't fit exactly. But maybe  
7 the easiest -- but I think the latter thing is  
8 what really matters. You could accomplish  
9 Commissioner McHugh's point by incorporating  
10 their applications by reference because they  
11 did it. That's the applicant saying how they  
12 plan to address those 18 issues. That takes  
13 care of the statutory requirement.

14           Then let you and us go ahead and  
15 have a more kind of general functionally based  
16 conversation in sections three and four of our  
17 conclusions.

18           COMMISSIONER ZUNIGA: In addition to  
19 that, I'm just looking at number three here,  
20 which is an easy one, the reference for  
21 realizing the minimum capital investment --  
22 maximum capital investment is there is a  
23 section in the finance section that's very  
24 discrete. I know it. We worked on it. If

1 anything the regs. helped us arrive to it. So,  
2 there's multiple references that exist not just  
3 whatever the applicant submitted.

4 In other words, information that we  
5 created, analyzed and therefore are finding and  
6 in my view complies with that requirement of  
7 finding of facts.

8 COMMISSIONER MCHUGH: Surely. I  
9 just was wondering where we are going to put  
10 that.

11 CHAIRMAN CROSBY: We don't want to  
12 rewrite an 18-question, three-person chart  
13 where we try to recapitulate everything that  
14 they said and put it back in there, but we do  
15 have to comply with the law.

16 I would think the easy thing to do  
17 is to get rid of that sort of literal and  
18 technical requirement by incorporating the  
19 applications. And then use the findings  
20 section three, which is your number, the very  
21 good, excellent, insufficient? Or are you  
22 planning on having more.

23 MS. BLUE: I was going to put in the  
24 description, the narrative description that we

1 have for each of the criteria for each of the  
2 applicants, yes.

3 CHAIRMAN CROSBY: So, you'd have the  
4 very good and the bullet points or however  
5 we've done it.

6 MS. BLUE: Yes, that would be the  
7 information we would incorporate.

8 COMMISSIONER MCHUGH: It seems to me  
9 that that information, if we're going to take  
10 that out of these various reports combined will  
11 answer all of those 19 questions. I mean  
12 address all of those 19 questions in various  
13 forms in these reports and the presentations.  
14 I don't think they have to be --

15 CHAIRMAN CROSBY: Excuse me. Except  
16 what's going to be in section three is findings  
17 which is our interpretation, our judgments.  
18 It's not what the applicants put forward  
19 necessarily. I'm okay with it if you are.

20 COMMISSIONER MCHUGH: We're supposed  
21 to make findings, Mr. Chairman, findings on how  
22 they propose to do it. And I think the  
23 legislative intent was to make a finding, not  
24 simply to accept whatever they said. And it



1 seems to me that the process that we've been  
2 through is designed to test what they said and  
3 see if it's realistic.

4 CHAIRMAN CROSBY: If you're good  
5 with it, I am. That's fine. I thought you  
6 were taking a different approach.

7 COMMISSIONER MCHUGH: No. I just  
8 wanted to know where it was because I assumed  
9 and now I understand that I am wrong, I assumed  
10 that what's on five, six and seven would be  
11 those sufficient, insufficient, very good,  
12 outstanding.

13 MS. BLUE: Not just alone, no. It  
14 would be the paragraphs that go with them.

15 CHAIRMAN CROSBY: Okay, fine. Are  
16 we cool with this? Anybody else?

17 COMMISSIONER MCHUGH: Then the  
18 particular conditions could go, did I  
19 understand you correctly in response to  
20 Commissioner Stebbins question, in and after  
21 paragraph nine on page nine?

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

23 COMMISSIONER MCHUGH: Okay.

24 MR. DAY: Mr. Chairman that's a

1 particularly area we seem to still have some  
2 confusion on as to how the Commission will  
3 address conditions in the process tomorrow.

4 CHAIRMAN CROSBY: Right.

5 MR. DAY: We tried to explore that  
6 and see if we can come to some determination as  
7 to how the Commission might want to go about  
8 that. I guess there are several options that  
9 have come forward.

10 I think the big part of the  
11 discussion is does the Commission want to take  
12 consideration -- As we start with the first  
13 day, as we move through the reports, the  
14 concept is is that the Commissioners may choose  
15 to make the presentation, also make some  
16 recommendations per applicants. As they move  
17 forward --

18 CHAIRMAN CROSBY: Recommendations  
19 for conditions.

20 MR. DAY: Conditions, thank you. As  
21 we move forward through that process, the  
22 thought is that staff would record those  
23 conditions to keep track of it. As we got to  
24 the end of the report period, staff would then

1 come before the Commission. We'd review what  
2 conditions there are.

3           The Commission may very well have a  
4 discussion about whether there are other  
5 conditions. At some point at the Commission's  
6 request if these conditions were something the  
7 Commission wanted to move forward, we would  
8 visit with the applicants about it, and come  
9 back before the Commission and have the  
10 applicant specifically discuss any conditions.

11           Lastly, is that one of the  
12 conditions that are in this final decision is  
13 payment of fees.

14           CHAIRMAN CROSBY: You're talking  
15 about the one-time license fee.

16           MR. DAY: Yes, payment of the one-  
17 time license fee. From the staff's  
18 perspective, we were thinking that and that's  
19 the way this particular document is designed is  
20 that would be a condition once the final  
21 decision is entered, signed by the  
22 Commissioners, and would be in the final  
23 decision that they have to make payment  
24 according to statute and regs., the regulation

1 which provide the exceptions that the  
2 Commission recently approved and adopted for  
3 emergency regulation.

4           So, there are different options.  
5 The Commission could talk about all of the  
6 conditions right at the end. They could do a  
7 combination. There's all kinds of varieties,  
8 but we thought it would be important at least  
9 to discuss that with the Commissioners today  
10 before you actually get into your reports and  
11 then have to face whether or not what you're  
12 going to do with the conditions.

13           COMMISSIONER CAMERON: Along those  
14 topic, I had a question about conditions. For  
15 example, if the applicant has already agreed to  
16 protect and enhance lottery is an example from  
17 mitigation. They already have an agreement  
18 with the lottery, a signed agreement. Do we  
19 then have to make that a condition? I guess my  
20 question is if they've already agreed to  
21 something, then does it have to be a condition?

22           MS. BLUE: In that instance, that's  
23 a condition that's required by statute. So,  
24 it's covered by our overall compliance with 23K

1 and all of the regulations. So, you wouldn't  
2 have to do it again.

3 COMMISSIONER CAMERON: So, I don't  
4 have to on top of that say at the end of my  
5 presentation that's one of the conditions  
6 because it's already covered.

7 MS. BLUE: That's correct.

8 CHAIRMAN CROSBY: It's correct that  
9 she does not to say that.

10 MS. BLUE: She does not say that  
11 again.

12 COMMISSIONER MCHUGH: But wouldn't a  
13 reasonable condition be that they maintain and  
14 comply with the contract that they've entered  
15 into?

16 MS. BLUE: And we have that in this  
17 license now as a condition with all of the host  
18 community agreements, surrounding community  
19 agreements, ILEVs, lottery agreements and all  
20 federal, state and local permits. So, we do  
21 have that.

22 To follow your example where you  
23 might have a special condition is if it's part  
24 of complying with the lottery agreement, they

1 had some special situation that they agreed to  
2 that you felt was appropriate to call out, we  
3 could put that in the specific condition  
4 section.

5           So, if there were some special  
6 agreement on lottery machines or something that  
7 was unique, we could potentially call that out.  
8 But if it's just to comply with the lottery  
9 agreement, you would not have to call that out  
10 again.

11           COMMISSIONER CAMERON: Okay. Thank  
12 you for clarifying.

13           COMMISSIONER ZUNIGA: Some  
14 applicants entered into agreements like  
15 neighboring community agreement that is not a  
16 designation of a surrounding community or an  
17 ILEV. Would any of those fall under the  
18 specific conditions or could we just  
19 incorporate broadly in the form of license here  
20 on number six?

21           MS. BLUE: I will add that to number  
22 six to cover other community agreements.

23           CHAIRMAN CROSBY: As a practical  
24 matter, I've imagined that these conditions of

1 which we don't know whether there are any, this  
2 is just speculative. But if for example we  
3 felt that they were too few parking spaces, and  
4 we felt like everything else was fine. We pick  
5 you but that feels to us like too few parking  
6 spaces, might that be a condition that we would  
7 discuss and then add in under nine? Is that  
8 the kind of thing you're talking about?

9                   We are obviously going to hold them  
10 to the commitments they've made. That's clear.  
11 But are you talking about anticipating the  
12 possibility that there might be additional  
13 things like that which are not part of what  
14 they have previously committed to but which we  
15 in our power to negotiate would add?

16                   MS. BLUE: I think that's possible.  
17 I think more likely it would be issues that  
18 came up in your review of their applications  
19 where you found something that you thought  
20 needed to be addressed or perhaps the  
21 professional consultants came forward with a  
22 recommendation.

23                   CHAIRMAN CROSBY: What for example?  
24 How is that different from more parking spaces?

1 MS. BLUE: Well, I think more  
2 parking spaces is one, but I think there may be  
3 -- I would think that probably came up in the  
4 review discussions and that's how that gets  
5 raised. It's something I think the Commission  
6 probably would have considered as part of the  
7 evaluation but there could be other issues that  
8 the Commission discusses and decides as a  
9 Commission that you would like to see.

10 CHAIRMAN CROSBY: So, it's basically  
11 number nine is other things -- Yes, it says  
12 other issues. It's commitments that we want  
13 from them that they've not already made but we  
14 consider preconditions to the award. And it's  
15 pretty open-ended. We have broad authority.

16 We have said repeatedly we have the  
17 authority to negotiate here just like they  
18 competed with one another, we can add in terms  
19 too. So, if we wanted to add in terms, we have  
20 that authority. And that is the kind of thing  
21 that may previously have arisen out of the  
22 suitability assessments or might arise out of  
23 our conversations over the next few days, our  
24 evaluations.



1 MS. BLUE: Yes, that's correct.

2 CHAIRMAN CROSBY: It gives us to  
3 make it clear what we're talking about but also  
4 gives the bidders notice that we consider it  
5 within our authority to add preconditions.

6 MR. DAY: I think, Mr. Chairman,  
7 there's actually three different types or kinds  
8 that may come up as conditions that came up as  
9 a result of each Commissioner's review and that  
10 they would recommend move forward.

11 Something that comes up during the  
12 discussion as well and then when we actually  
13 talk about discussions at the time, the  
14 Commissioners may decide at that point that  
15 there is some other special condition that they  
16 might want to impose on the applicants.

17 So, it could be when you're all  
18 done, we might be wasting our time speculating.  
19 There may be no conditions. But at least we  
20 are trying to postulate where that might occur  
21 in the process.

22 CHAIRMAN CROSBY: Okay. You started  
23 this off. Do you want to go-ahead on this?  
24 Does that clarify what you --

1           COMMISSIONER CAMERON: It does  
2 clarify for me that I know for example I will  
3 not have any additional conditions, because  
4 they are all covered in one of these  
5 categories, one through nine, regulations,  
6 signed agreements, ILEV, host and surrounding  
7 community. So, I'm clear if there was anything  
8 additional I needed to do to be prepared and  
9 what's covered.

10           CHAIRMAN CROSBY: You understand the  
11 nature of the kinds of things we're talking  
12 about --

13           COMMISSIONER CAMERON: I do, yes.

14           CHAIRMAN CROSBY: -- that could  
15 conceivably come up. Okay. Now there's a  
16 second step. So, I think we're all clear on  
17 all conditions but the last one, which is a  
18 condition here of paying your license fee  
19 within 30 days of the award.

20           And if I understood what you're  
21 saying, and maybe I didn't, what you're  
22 suggesting is that prior to the final award,  
23 the staff if there are anything under nine,  
24 will have gone back to the bidders and said

1 before we make the final decision, we just want  
2 to make sure that you're okay with what's under  
3 nine. And you will then report back to us. We  
4 will then make our final decision. Am I right  
5 about that?

6 MR. DAY: That's correct. We would  
7 go to the applicants. We would have a  
8 discussion with them. We would explain those.  
9 We wouldn't be in a bargaining position at all.  
10 Then both applicant and staff would come back  
11 to the Commission.

12 CHAIRMAN CROSBY: Then if I heard  
13 you right, you come back to us. They accept or  
14 not. We then make our decision. We have a  
15 vote. We make an award. That triggers the  
16 award. One of the conditions on the awarded  
17 license is the payment of license fee within 30  
18 days.

19 You then take that agreement to the  
20 parties. And if a party says I don't want to  
21 pay the \$25 million, then they come back to us  
22 or they have the opportunity to come back to us  
23 and say I don't want to pay the \$25 million.  
24 Is that right?

1           And then we discuss the various  
2 options maybe. We then decide whether we move  
3 onto number two or whether we discuss options  
4 for dealing with that. Do I understand that  
5 correctly?

6           MR. DAY: Actually, slightly  
7 difference at least. That's a possibility, I  
8 think. But what we were suggesting is that the  
9 question of fee payment actually be put in as  
10 it is in this, which is a condition for the  
11 license or award, whatever we want to call it.  
12 That will actually be issued at a separate time  
13 up to the licensee, they would request a  
14 hearing before the Commission and come before  
15 the Commission on that subject or any other  
16 condition they were coming before, but most  
17 likely it would be on that subject.

18           At that time, the Commission could  
19 listen to what they had to say around why they  
20 couldn't pay the fees or what other suggestion  
21 they had. And the Commission would decide  
22 accordingly.

23           CHAIRMAN CROSBY: Right. But  
24 requirement for the license fees is in here

1 now.

2 MR. DAY: Yes.

3 CHAIRMAN CROSBY: It's already in  
4 there. So, that's what the award is assuming.

5 MS. BLUE: It's assuming that the  
6 payment will be made within 30 days of the  
7 issuance of the award, yes.

8 CHAIRMAN CROSBY: So, we make the  
9 award. Thirty days starts to run. If a  
10 bidder, this round or another round, a license  
11 award witness says I don't want to pay the  
12 license fee, they come back and you're saying I  
13 gather Counselor that we can implement our  
14 various -- we could consider the various  
15 options we've given ourselves under the regs.  
16 which would be to extend the 30 days in various  
17 fashions in that scenario, if we chose to.

18 MS. BLUE: The applicant -- The  
19 successful licensee would have to come back and  
20 explain why they couldn't comply with the  
21 license. And we then moved into a situation  
22 where the Commission can determine what it does  
23 with that license.

24 And it could consider the

1 alternatives that it has under regulations if  
2 it chooses to in terms of how to address the  
3 applicant's concern. But the burden would be  
4 on the applicant to come back and explain why  
5 they can't comply with the terms of the  
6 license.

7           COMMISSIONER MCHUGH: It seems to me  
8 that we're in a very tricky ground if we do it  
9 that way because the statute says pay within 30  
10 days of the award. We've made the award.  
11 We've said 30 days. Now it doesn't seem to me  
12 we have all that much leeway to implement those  
13 other things that we created.

14           MS. BLUE: Well, I view this as the  
15 determination of an issuance.

16           COMMISSIONER MCHUGH: Determination  
17 of a what?

18           MS. BLUE: Of the issuance of an  
19 award. So, I view this as the Commission's  
20 determination that they will award a license.  
21 How the Commission proceeds with that --

22           COMMISSIONER MCHUGH: When does the  
23 obligation to pay arise if we haven't awarded  
24 the license?

1 MS. BLUE: We are going to take the  
2 position that it runs from this term. But  
3 that's something for the Commission to consider  
4 as they are walking through the reports and  
5 looking at what determination they want to  
6 make.

7 COMMISSIONER MCHUGH: What if we  
8 decided, went all of the way through this, made  
9 a vote and said we are going to vote to award  
10 the license to X on the following conditions,  
11 the statutory and then the other special ones.  
12 And gave the staff then time to talk to the  
13 applicant and say is there anything about these  
14 conditions that troubles you?

15 And if there is something that  
16 troubles you, go in tomorrow. You've got 24  
17 hours. Go in tomorrow and talk to the  
18 Commission and let the Commission hear what you  
19 have to say. And then we haven't done  
20 anything. And then talk to them and see if (A)  
21 we accept their concerns and (B) if we have a  
22 remedy for them. And then make the award.

23 Up to that point, we've just  
24 signaled an intention to make an award. Nobody

1 can possibly argue that we are blocked in by 30  
2 days. And we have time to negotiate, which was  
3 what we spent all of the time doing setting up  
4 our negotiating room, particularly around  
5 payment of fees. What would be the downside of  
6 doing it that way?

7 MS. BLUE: I think the Commission  
8 could certainly do it that way. I think it's a  
9 question of what kind of conversations and  
10 conditions there are with that particular  
11 situation and what the conversations look like.  
12 But I think from a process perspective yes, the  
13 Commission could do it that way.

14 COMMISSIONER MCHUGH: I'm not sure I  
15 understand that point because the conversation  
16 could be as simple as do you have -- to the  
17 applicant and staff, do you have any problem  
18 with any of these conditions? Yes, we don't  
19 want to do X, Y and Z. We don't want to do  
20 some statutory thing that we haven't even  
21 thought about, regulatory thing. And you  
22 explore that a little bit and say we can fix  
23 that or you'll have to go back and talk to the  
24 Commission tomorrow about that.



1           MS. BLUE: That was what Executive  
2 Director Day proposed in terms of all of the  
3 other conditions that might be under section  
4 nine. We hadn't added the condition under  
5 section one. We can certainly do that and have  
6 that conversation as well.

7           COMMISSIONER MCHUGH: Yes. It seems  
8 to me we ought to know all of the conditions.

9           CHAIRMAN CROSBY: Up until now, we  
10 have been bifurcating. We had a plan in place  
11 where all of the category nine conditions would  
12 be addressed before we made our decision,  
13 before we make our final decision but then we  
14 make our decision -- because we were  
15 bifurcating the number nine from the license  
16 fee.

17           And I like it being clean that way.  
18 I want to keep the license fee as far away from  
19 our evaluation process as we can. But it  
20 sounds like you're putting them together again  
21 that all conditions would be looked at at the  
22 same time which would be right at the very last  
23 minute.

24           COMMISSIONER ZUNIGA: It's only up

1 until there is an apparent successful bidder.

2 COMMISSIONER MCHUGH: The problem  
3 with the apparent successful bidder is I'm not  
4 sure how we know there's an apparent successful  
5 bidder unless we say so.

6 CHAIRMAN CROSBY: Well, we call it  
7 -- The reg. says the vote.

8 COMMISSIONER MCHUGH: We have the  
9 vote.

10 CHAIRMAN CROSBY: But I can turn to  
11 each of you and say do we have a consensus  
12 before we vote. The problem I think you're  
13 addressing is the same one I was addressing.

14 Once we vote, we start the 30 days  
15 the way things stand. And I'm not sure we have  
16 the ability to undo the 30 days. But if we  
17 have made it clear where we are leaning but  
18 then we double-check on the license fee and  
19 then if they say no, we come back and talk. If  
20 they say yes, we vote and go forward.

21 COMMISSIONER MCHUGH: Okay, I hear  
22 you. Whether or not we have a formal vote, I  
23 don't think we trigger anything by saying we  
24 intend to award you the license on the

1 following conditions if you accept the  
2 following conditions. We can say that.

3           And then you have that discussion.  
4 They either agree to them or not agree to them  
5 and we work things out. But then we have the  
6 vote saying, okay, you got the license now on  
7 the following conditions as originally stated  
8 or as modified by our discussion and then the  
9 30 days begins to run. I don't think anybody  
10 can argue that we --

11           CHAIRMAN CROSBY: I am agreeing.

12           COMMISSIONER MCHUGH: I'm putting  
13 things back together.

14           CHAIRMAN CROSBY: Right. You're  
15 saying add up all of the conditions, whatever  
16 they are. We don't know whether there's going  
17 to be more than nine or not. Then we don't  
18 have any conversation with anybody until we get  
19 right to the point of saying we are going to  
20 pick such as such as long as they go forward  
21 with the conditions. Then the staff talks and  
22 we see whether we have any issues or not before  
23 the vote is taken.

24           COMMISSIONER CAMERON: I think that

1 is much cleaner. I didn't like the idea or I  
2 couldn't visualize the idea of trying to stop  
3 our deliberations in order to have you go talk  
4 to an apparent successful -- I just couldn't  
5 envision that. And I like this method.

6 CHAIRMAN CROSBY: To be clear that  
7 is what we are doing.

8 COMMISSIONER CAMERON: But we've  
9 said this is the successful bidder. We've said  
10 that. We haven't voted, but we say that. Is  
11 that what I'm hearing?

12 CHAIRMAN CROSBY: Yes, subject to  
13 these whatever the conditions are.

14 COMMISSIONER CAMERON: Correct, but  
15 before we weren't going to --

16 COMMISSIONER MCHUGH: It's a  
17 labeling thing. This is a clearer way.

18 CHAIRMAN CROSBY: Maybe we should  
19 just -- if we're close. But just to choose my  
20 example of the category nine condition of too  
21 few parking spaces, what I thought we were  
22 originally talking about is, okay, all of the  
23 evaluations have been made. And somebody has  
24 recommended that there ought to more parking

1 spaces for applicant A.

2 It would be good to know whether  
3 they were going to agree to the more parking  
4 spaces prior to us deciding which one we pick,  
5 because maybe we wouldn't pick them if we  
6 didn't know about the parking spaces.

7 However, if everybody else prefers  
8 it the other way, I'm fine with that. So, we  
9 lump them all together.

10 COMMISSIONER MCHUGH: Yes.

11 MR. DAY: And I hesitate to add  
12 anything to the discussion further.

13 CHAIRMAN CROSBY: Only where angels  
14 fear to tread.

15 MR. DAY: Part of what we were  
16 contemplating is to try to keep all of the  
17 applicants involved during at least the first  
18 half of it. So, we would take -- We didn't  
19 know the apparent successful and we didn't  
20 anything about the fees yet.

21 As the Commissioners reported, we  
22 would be collecting the conditions. When we  
23 got all that process done, we would talk about  
24 all of the conditions with the Commissioners.

1 We would then go review those that apply to  
2 each one of the licensees. So, we're not  
3 identifying a separate or an apparent winner at  
4 this time. Then we would come back.

5           From what I hear what the concept is  
6 is we won't even mess -- the Commission would  
7 continue with the report and the deliberation.  
8 And when you were at a point where you thought  
9 you had an apparent winner essentially, we  
10 would then contact the applicants and address  
11 the conditions with them to include the fees,  
12 license fees.

13           CHAIRMAN CROSBY: I was with you on  
14 the earlier one, but I'm happy to go the  
15 consolidated way if everybody prefers that.

16           COMMISSIONER ZUNIGA: I do. I would  
17 prefer that.

18           COMMISSIONER CAMERON: Yes.

19           MR. DAY: We've got that.

20           CHAIRMAN CROSBY: After the tacit  
21 winner pre-vote, all conditions.

22           COMMISSIONER MCHUGH: Yes.

23           MR. DAY: Good.

24           CHAIRMAN CROSBY: You got that,

1 Jacqui? Tacit vote, preconditions.

2 MR. DAY: I have one other little  
3 matter. It's kind of fill in the blank thing  
4 is the period of licensing. It isn't  
5 specifically attached or defined in the  
6 statute. So, we wanted to recommend to the  
7 Commission it might be good before you start in  
8 your process tomorrow to clarify to the  
9 licensees what the period is going to be.  
10 That's the five- or 15-year period by when it's  
11 going to start.

12 At least the staff's perspective and  
13 I think what we have understood generally is  
14 that period would begin with the operation,  
15 approval of the operation temporary or  
16 permanent by the Commissioners. That seems to  
17 be a good place to start that period, the five-  
18 year period or the 15-year period. If that  
19 would be something the Commissioners would be  
20 interested in approving, I think it would be  
21 helpful.

22 COMMISSIONER ZUNIGA: I think that's  
23 a good recommendation. At least I always  
24 assumed that the period of the license, the 15

1 years and the five years, included only  
2 operations and not say permitting and  
3 construction. The financials as we run them  
4 always assumed that.

5 CHAIRMAN CROSBY: It seems right to  
6 me too.

7 COMMISSIONER ZUNIGA: It would seem  
8 that we would be eroding the ability of the  
9 applicant to essentially make money if we were  
10 to include the construction period in the life  
11 of the license. Plus there's safeguards  
12 relative to delays elsewhere in the statute  
13 that would allow us to press on making sure  
14 that construction period doesn't get out of  
15 hand. I wouldn't see how we could impose that  
16 restriction by including it as part of the  
17 license.

18 COMMISSIONER MCHUGH: I don't  
19 disagree with that. That makes economic sense.  
20 That makes good economic sense.

21 COMMISSIONER ZUNIGA: You got me  
22 there for a minute too.

23 COMMISSIONER MCHUGH: Yes, I had me  
24 there for a minute.



1           CHAIRMAN CROSBY:  You woke up on the  
2 wrong side of the bed today.

3           COMMISSIONER MCHUGH:  It seems to me  
4 that we need to think about a condition with  
5 respect to payment of Commission fees.

6           COMMISSIONER ZUNIGA:  Yes.

7           COMMISSIONER MCHUGH:  That's got to  
8 be a special condition because they're not a  
9 licensee.

10          COMMISSIONER ZUNIGA:  That's right.

11          MS. BLUE:  The assessment, you're  
12 referencing assessment.  That is in there that  
13 they have to pay the assessment.  It's  
14 condition number five.

15          COMMISSIONER MCHUGH:  Yes.

16          MS. BLUE:  That references the  
17 sections under 121.

18          COMMISSIONER MCHUGH:  So, the  
19 license is issued but the term doesn't begin  
20 until construction is complete.  So, we're  
21 bifurcating the license issuance and the  
22 commencement of the term of the license.

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

24          COMMISSIONER MCHUGH:  Fair enough.

1 I'll go back to sleep. Thank you.

2 MR. DAY: The term won't start until  
3 the operational --

4 MS. BLUE: Yes, that's right. But  
5 the assessments would start right away.

6 COMMISSIONER MCHUGH: Gotcha.

7 MS. BLUE: I would ask the  
8 Commission to keep in mind that we do have to  
9 define gaming establishment for the successful  
10 licensee. So, just kind of keep that in the  
11 back of your mind when you deliberate.

12 CHAIRMAN CROSBY: Is that a  
13 statutory requirement? What do you mean we  
14 have to define gaming establishment?

15 MS. BLUE: Well, a gaming  
16 establishment is a term. And then other things  
17 are triggered by it. So, we would want to  
18 define for the successful licensee what the  
19 gaming establishment consisted of.

20 CHAIRMAN CROSBY: Beyond what's  
21 required in the statute?

22 COMMISSIONER MCHUGH: It may be in  
23 metes and bounds.

24 MS. BLUE: Yes, it could be metes

1 and bounds. If there are certain phases, for  
2 example, if there's a hotel but it's coming  
3 down the road and that's part of the gaming  
4 establishment, you would want to include that  
5 now.

6 CHAIRMAN CROSBY: How long would you  
7 estimate in your mind's eye between the vote to  
8 award, which is the award and the execution of  
9 this document?

10 MS. BLUE: A couple of days, I think  
11 it would be fairly quick. We would be adding  
12 some things. I know the successful licensee  
13 would want to look at it. The Commission would  
14 need to review it as well.

15 CHAIRMAN CROSBY: Right. Okay.  
16 Anything else?

17 MR. DAY: That's it.

18 CHAIRMAN CROSBY: Item five,  
19 patiently waiting, Region B, impacted live  
20 entertainment venue petition, the Big-E.

21 MS. GRIFFIN: Good afternoon,  
22 Chairman Crosby, Commissioners. The issue  
23 today is whether Eastern States Exposition is  
24 an impacted live entertainment venue relative

1 to the MGM Springfield development of a resort  
2 casino.

3           Today you could decide whether to  
4 accept or deny ESE's petition based on the  
5 conditions provided in the statute and  
6 regulations. And just to recap the question is  
7 whether the venue meets the definition as set  
8 forth under Chapter 23K section two, a not-for-  
9 profit or municipally owned performance venue  
10 designed in whole or in part for the  
11 presentation of live concerts, comedy or  
12 theatrical performances which the Commission  
13 determines experiences or is likely to  
14 experience a negative impact from the  
15 development or operation of a gaming  
16 establishment.

17           Under the regulatory definition, the  
18 Commission has to consider factors including  
19 but not limited to the venue's distance from  
20 the gaming establishment, the venue capacity  
21 and the type of performances offered by that  
22 venue.

23           And also the Commission will  
24 consider whether the applicant intends to

1 include a geographic exclusivity clause in the  
2 contracts of entertainers at the proposed  
3 gaming establishment or in some way intends to  
4 limit the performance of entertainers within  
5 Massachusetts.

6           In Eastern States Exposition, I'll  
7 call them ESE's ILEV petition, they focus on  
8 agreements with existing venues, the Mass.  
9 Convention Center Authority, the owners of the  
10 MassMutual Center and an agreement with the  
11 city of Springfield through their host  
12 community agreement, an agreement with MGM and  
13 the city of Springfield to underwrite a  
14 specified number of events as Symphony Hall and  
15 CityStage.

16           CHAIRMAN CROSBY: Do you remember  
17 how many of those there are?

18           MS. GRIFFIN: MGM has agreed to  
19 program four events at the MassMutual Center  
20 and three events at Symphony Hall and three  
21 events at CityStage, all of which are  
22 municipally or state-owned facilities, existing  
23 facilities.

24           In ESE's petition, they indicate

1 that their ability to host top act  
2 entertainment performances would be restricted.  
3 They are concerned about limitations and  
4 restrictions prohibiting entertainers from  
5 performing within a certain radius. And  
6 they're concerned that they will be forced to  
7 compete with and be unable to secure and  
8 contract with top quality entertainers at their  
9 venue.

10           You may recall that an HLT analysis  
11 determined that overall ESE does not qualify as  
12 an ILEV or an impacted live entertainment  
13 venue. That rather two particular venues  
14 within ESE could be considered because those  
15 are the two venues that during the 17 days of  
16 the Fair program live entertainment, Xfinity  
17 Arena and the Coliseum.

18           So, during the February 18  
19 Commission meeting, you gave Eastern States  
20 Exposition and MGM more time to see if they  
21 could come to an agreement regarding the ILEV  
22 petition. Although both parties communicated  
23 over the weekend, no agreement was reached.

24           I recognize that the substance of

1 negotiations are not supposed to be part of the  
2 final determination, but in this case, both  
3 parties requested that you be provided both the  
4 emails and the agreements that were  
5 communicated over the weekend.

6           So, in your packet there are several  
7 offers including one titled ESE's revised offer  
8 to MGM dated January 22. And then MGM's  
9 executed offer to ESE dated February 20. It's  
10 redlined against their original January 17  
11 offer.

12           Did you want me get into some of the  
13 details of the negotiations?

14           COMMISSIONER CAMERON: It would be  
15 helpful if you just summarized the progress or  
16 lack thereof.

17           MS. GRIFFIN: So, I think it comes  
18 to this. MGM believes that the Chapter 23K  
19 section two of the statute contemplates a  
20 negative impact from competition at the gaming  
21 establishment and not competitive impact from  
22 the company support of other local venues. So,  
23 they are interpreting the statute and the  
24 definition they contest that ESE is an ILEV.

1           They indicate that they are willing  
2 to co-promote. And they have agreed to some of  
3 ESE's request in their original negotiations.  
4 They've offered to co-promote ESE's venues  
5 through their website, social media, other  
6 marketing channels. And they clarified that.

7           They however are not willing to  
8 provide ground shuttle transportation between  
9 ESE and MGM during the 17 days of the Fair.  
10 They did not agree to co-promote to the motor  
11 coach industry. And I think this probably is  
12 one of the larger sticking points they did not  
13 agree to sponsor and co-promote two  
14 entertainment performances, one during the Big-  
15 E and one outside the 17 days of the Big-E  
16 Fair.

17           Additionally, and I'm summing it up  
18 now, MGM indicates that they have not extended  
19 the restrictive -- their programming  
20 restriction at the venues, as HLT has  
21 suggested, 45 days before the Big-E and 30 days  
22 after for three reasons. The main reason I  
23 think that they list is that it would impact  
24 their prior contractual relationships with the



1 owners of MassMutual, Symphony Hall and  
2 CityStage that require that they program a  
3 specified number of events throughout the year.

4 I might just stop there and see if  
5 you have questions. I should add that both  
6 parties are here and are willing to clarify or  
7 answer any questions should you be interested  
8 in that. HLT is also here should you require  
9 clarification from their summary.

10 CHAIRMAN CROSBY: Let me ask a  
11 question and make sure we are all on the same  
12 page for starters. We gave another week in the  
13 hopes that the parties could make this  
14 determination themselves, come to an agreement  
15 themselves. They have not.

16 I think therefore the question  
17 before us is not to mediate the terms of an  
18 agreement, but rather to determine whether or  
19 not ESE is an ILEV. Not to push the parties to  
20 go further or not further or to clarify those  
21 positions but to determine whether or not they  
22 are an ILEV. Am I right? Does everybody agree  
23 that's where we're at?

24 COMMISSIONER MCHUGH: Right.

1 COMMISSIONER CAMERON: Yes.

2 COMMISSIONER ZUNIGA: Yes.

3 CHAIRMAN CROSBY: Does anybody want  
4 to start? I've got some questions, but --

5 COMMISSIONER ZUNIGA: Why don't you  
6 start with the questions because I have --

7 CHAIRMAN CROSBY: You have the  
8 answers?

9 COMMISSIONER ZUNIGA: I have  
10 opinions.

11 CHAIRMAN CROSBY: I just was going  
12 to ask you to sort of re-summarize why you  
13 concluded that ESE was not an ILEV and help me  
14 tie it carefully to the language of the  
15 statute.

16 MR. HALL: We determined that ESE,  
17 the exposition and the Fair did not constitute  
18 an ILEV because it did meet the definition of a  
19 performance venue for concerts, comedy or  
20 theatrical performances.

21 CHAIRMAN CROSBY: So, it's not a  
22 performance venue because --

23 MR. HALL: The Fair itself and the  
24 Exposition grounds that includes some 40

1 buildings do not meet that definition. But two  
2 buildings on the site the Coliseum and the  
3 Xfinity Arena do meet the definition.

4 CHAIRMAN CROSBY: Of an ILEV.

5 MR. HALL: Of an ILEV from the point  
6 of view of proximity to the casino and  
7 capacity.

8 CHAIRMAN CROSBY: So, if the old  
9 Wang Center, now City Center, which has several  
10 venues within it but that is the entity, the  
11 contracting entity, the parent corporation  
12 entity, if they were claiming status as an ILEV  
13 but it was because of one of their two or three  
14 venues would be impacted would you say the City  
15 Center is not an ILEV by extension, by the same  
16 logic?

17 MR. HALL: I'm sorry, Mr. Chair.  
18 I'll admit I don't know the building that well.  
19 But my sense is that the focus here was on  
20 specific performance venues with an entrance  
21 and egress that put performances on stage for  
22 the benefit of the audience in that contiguous  
23 building. And that's the view and the  
24 definition that we used going forward.

1           Therefore, from a proximity and a  
2 capacity point of view, those two structures on  
3 the ESE grounds meet the definition. The third  
4 part of the definition is programming. And the  
5 focus there is on comedy, theatrical or concert  
6 events. In our view, only through the 17 days  
7 of the Fair are those buildings used to stage  
8 those types of events.

9           Because MGM has effectively  
10 mitigated 100 percent of that by saying they  
11 would put events on in the buildings they had  
12 an arrangement with during the Fair, we didn't  
13 see any negative impact. And therefore rather  
14 than suggesting that the two buildings were an  
15 ILEV for two days and not -- or determining  
16 they're an ILEV because of two weeks, we  
17 determined they are not an ILEV because the  
18 only two weeks where they qualify to meet the  
19 definition, the applicant has mitigated the  
20 negative impact.

21           CHAIRMAN CROSBY: Is that doing the  
22 job right? The question is are you an ILEV?  
23 And are we to take into account pieces of the  
24 negotiation that may or may not adhere? Or is

1 that overstepping our interpretive bounds?

2           This is a question, not a rhetorical  
3 question. This is a question. It sounds to me  
4 like you're saying these two facilities would  
5 be an ILEV except that somebody has agreed that  
6 they won't operate during those and therefore  
7 they're not an ILEV.

8           That sort of feels like cherry  
9 picking from the negotiations in advance.

10           MR. HALL: Mr. Chairman, just to  
11 clarify or Commissioner Zuniga. If it was the  
12 run of the year where we were making this  
13 determination, it would be I think different  
14 than the fact that it's just the 17 days.

15           So, by definition these buildings  
16 are operating under for special purposes for a  
17 short-run event. And the fact that the  
18 applicant has mitigated the impact on that  
19 event, we looked at that, HLT looked at that  
20 differently than if the buildings were used  
21 throughout the year for these competitive  
22 purposes and that there was a blanket  
23 commitment given for a much longer period of  
24 time.

1           COMMISSIONER MCHUGH: The definition  
2 says -- I'm sorry, were you going to go there?

3           COMMISSIONER ZUNIGA: I was going to  
4 go to the definition. It's experiences or is  
5 likely to experience significant impacts. So,  
6 if in our view the commitment from MGM makes it  
7 such that we believe the two venues are not  
8 likely to experience significant impacts --

9           CHAIRMAN CROSBY: Because of the  
10 commitment.

11           COMMISSIONER ZUNIGA: -- because of  
12 the commitment that's made, then it wouldn't  
13 meet the definition on that side.

14           CHAIRMAN CROSBY: Is that what you  
15 were going to --

16           COMMISSIONER MCHUGH: It says a  
17 negative impact, not a significant impact, any  
18 negative impact. But yes that corresponds with  
19 my reading. There would have to be a  
20 condition. If we went that way, they could  
21 renew the petition if MGM didn't keep the  
22 competitive stuff out, but they've made a  
23 commitment to do it.

24           CHAIRMAN CROSBY: You then went onto

1 say the other day that probably 17 days wasn't  
2 enough. To get to the read that these two  
3 Commissioners are getting to in the statute, it  
4 would require not only a blackout of those 17  
5 days but some other considerable blackout. And  
6 you threw out different numbers that I thought  
7 was 30 and 15, but I guess were 30 and 45.

8           So, given apparently that those are  
9 not agreed to what does that say about in your  
10 view whether they are an ILEV or not?

11           MR. HALL: It would be ideal if  
12 there was a buffer period before and after the  
13 17-day event. I still believe that. Again, I  
14 think it comes down to the quantum of negative  
15 impact that can occur over a given time. And I  
16 think what the applicant has said in good faith  
17 is that there will be nothing during the event,  
18 nothing during the 17-day Fair. And that any  
19 events before or after would be minimized. My  
20 suggestion still would be that that might be  
21 something that the Commission might consider  
22 making as a condition of the license. But it's  
23 the 17-day Fair, which is the main focus.

24           COMMISSIONER ZUNIGA: I was on the

1 side of the later part of the definition.

2 CHAIRMAN CROSBY: Where are you  
3 reading?

4 COMMISSIONER ZUNIGA: The legal  
5 framework on page three, which is essentially  
6 what MGM argues.

7 CHAIRMAN CROSBY: Page three of  
8 which?

9 COMMISSIONER ZUNIGA: Of six. And I  
10 am focusing specifically on the words  
11 development and operation. MGM is supporting  
12 these existing venues and is neither developing  
13 as in building nor operating the events that  
14 they promise to their host community. They are  
15 underwriting and they're promoting but not  
16 operating.

17 My read of what's behind this in the  
18 statute comes from the construction, the  
19 restriction on the number of seats that any one  
20 of these venues can have. And further the  
21 definition here, I always equated development  
22 to actual construction.

23 If MGM was taking over the  
24 MassMutual Center, for example, because it made



1 business sense, then they would probably be  
2 developing or operating, maybe operating for  
3 sure or perhaps developing. But my read is  
4 that they are not doing any of those. That the  
5 concern, which is a legitimate one for the Big-  
6 E emanates from their underwriting, which in my  
7 view does not meet this definition of other  
8 venues for the benefit of in great ways the  
9 host community.

10           They're trying to develop the center  
11 of Springfield and support other assets of the  
12 Commonwealth. So, I am satisfied with the  
13 commitment that they do not program anything  
14 under those 17 days. And I don't see them as  
15 an ILEV because of this latter part of the  
16 definition. They are neither developing or  
17 operating.

18           CHAIRMAN CROSBY: They are  
19 developing or operating a gaming establishment.  
20 Clearly, part of the development of the gaming  
21 establishment is among other things the  
22 negotiation of the HCA. That's part of the  
23 development of the gaming establishment I would  
24 argue.

1                   COMMISSIONER ZUNIGA:  As it  
2  pertains --

3                   CHAIRMAN CROSBY:  It doesn't say  
4  develop or operate a competitive theater.  It  
5  says development or operation of a gaming  
6  establishment.  So, it's sort of their full  
7  plan of operation.  Everything they do,  
8  developing and operating a gaming  
9  establishment.

10                  COMMISSIONER ZUNIGA:  My read in  
11  conjunction the restriction on the number of  
12  seats is to protect venues as it pertains to  
13  what the applicants do on that same realm,  
14  developing and operating theaters for example,  
15  or other venues.

16                  CHAIRMAN CROSBY:  Anybody else?

17                  COMMISSIONER CAMERON:  I agree with  
18  HLT's conclusion that the 17 days, the  
19  likelihood of a negative impact is relatively  
20  small.  I agree with their assessment for that  
21  reason that they are not -- they recommend we  
22  don't deem them an ILEV and I find their work  
23  to make sense.

24                  COMMISSIONER MCHUGH:  I take a look

1 at the statutory definition, a not-for-profit  
2 or municipally owned venue designed in whole or  
3 in part for presentation of live concerts,  
4 comedy or theatrical performances. I suppose  
5 one could conclude that the entire grounds is  
6 the venue.

7 But even if that's the case, the  
8 fact remains that based on the record before  
9 us, the only two components of that venue are  
10 the Xfinity Center and the Coliseum. And those  
11 are in operation for the 17 days.

12 And I do not see, I believe, and  
13 this is retreating to an important concept that  
14 sometimes is trivialized. I don't believe that  
15 ESE has satisfied its burden of proof that that  
16 component of the venue is likely to experience  
17 a negative impact from the development or  
18 operation of a gaming establishment if MGM  
19 adheres to its 17-day blackout, which I would  
20 make, if we award a license to MGM, a condition  
21 of that license.

22 CHAIRMAN CROSBY: Do we have the  
23 authority to add some of the time that HLT --

24 COMMISSIONER MCHUGH: We do.

1           CHAIRMAN CROSBY:  Would that not be  
2 a good idea?  If HLT is saying -- to be fair, I  
3 guess, they're saying they think it would be  
4 best if there were X time added to that 17  
5 days.

6           COMMISSIONER MCHUGH:  It seems to me  
7 we ought to do that in the context of the  
8 license award to MGM.  And I look at this as --  
9 Well, I guess I can't, can I, given what I just  
10 said, consistency.

11           I don't know that we've got the  
12 foundation to make that judgment.  I'd like to  
13 pursue it further.  I'd like to think more  
14 about it.  But at a minimum, the head-to-head  
15 competition is something that I think is what  
16 would create a competitive disadvantage.

17           CHAIRMAN CROSBY:  Right.

18           COMMISSIONER MCHUGH:  I hear you.

19           CHAIRMAN CROSBY:  If it was the day  
20 before and the day after, that clearly would  
21 have some impact.  If it's a week, it's less, a  
22 month.

23           COMMISSIONER MCHUGH:  Right.

24           CHAIRMAN CROSBY:  There is an

1 important word here. This says designed in  
2 whole or in part which the Commission  
3 determines experiences or is likely to  
4 experience, suggesting that we can reopen this.

5           You can't experience until you are  
6 in operation. So, clearly this gives us the  
7 authority to make an ILEV designation expo  
8 facto. And whatever designation we come up  
9 with now, all or partial or no ILEV, I think if  
10 there were data that suggested later on that  
11 this maybe does have more of a negative impact  
12 than we had thought or less of a negative  
13 impact than we had thought, we can reopen this.

14           COMMISSIONER STEBBINS: Is that what  
15 the statute says?

16           CHAIRMAN CROSBY: Well, since it  
17 says experiences.

18           MS. BLUE: Yes.

19           COMMISSIONER MCHUGH: Right, present  
20 tense.

21           COMMISSIONER ZUNIGA: And the  
22 community mitigation fund would not have the  
23 ability to distribute funds to other than  
24 surrounding or host communities, correct?

1 MS. BLUE: I believe that's  
2 correct, yes.

3 COMMISSIONER MCHUGH: That's an  
4 important point though. I hadn't seen that.  
5 That's a very important point.

6 CHAIRMAN CROSBY: We could open it  
7 later. We get another bite at this apple for  
8 whatever decision we make, one way or the  
9 other.

10 COMMISSIONER STEBBINS: I wrestled  
11 with this because certainly in my mind the  
12 first part, actually the bulk of the definition  
13 I think -- and here again maybe the Legislature  
14 didn't anticipate every wrinkle we would come  
15 up against. But the ESE, not-for-profit whole  
16 or in part for the presentation of live  
17 concerts and those are certainly the draws the  
18 nights I've been there, short of again kind of  
19 placing into a condition at some later point  
20 what we've heard from the applicant they would  
21 agree to to lessen the impact, I wrestle with  
22 how I wouldn't designate them based on  
23 something that is in the application or is a  
24 condition, a potential condition of a license

1 to come later.

2 CHAIRMAN CROSBY: I'm sorry. Just  
3 say that again?

4 COMMISSIONER STEBBINS: The  
5 justification being made by the applicant is  
6 their willingness not to book anything during  
7 the two-week window. And we obviously have our  
8 consultant who's suggesting a longer window,  
9 which from the documentation may not be  
10 amenable to the applicant.

11 Somehow giving some basis to that  
12 measurement, again maybe this is me just  
13 wrestling with having to come up later in the  
14 condition of the license. Short of that, I am  
15 not sure how I cannot suggest that they are an  
16 impacted live entertainment venue.

17 CHAIRMAN CROSBY: I totally agree  
18 with that. To me until you get to the window  
19 of the 17 days, it is an ILEV. To me in whole  
20 or in part, as you said, covers that part from  
21 my standpoint. What the other Commissioners  
22 are saying is the fact that that window has  
23 already been taken away means that the likely  
24 to experience a negative impact is according to

1 our consultant at least is substantially  
2 modified if moderated if not eliminated.

3           And that feels a little funny to me,  
4 as I said. It feels like you're kind of cherry  
5 picking pieces of the debate, but I think the  
6 consensus here is it works within this  
7 language.

8           So I'm with you but now they're  
9 saying, okay, let's do at least the 17. Maybe  
10 let's do 17 and change on either side. And at  
11 that point, particularly since you can reopen  
12 this later on, a year from now or two or  
13 whatever number of years from now to take a  
14 look at it and see what's going on, that maybe  
15 that's the appropriate.

16           COMMISSIONER STEBBINS: I appreciate  
17 the fact that we think we can reopen it.  
18 Obviously, I think there's more to come on this  
19 subject as we move towards if this applicant is  
20 issued a license that it has the opportunity to  
21 become a condition of the license, I guess.

22           CHAIRMAN CROSBY: Right. It seems  
23 to me that it's somewhat arbitrary, but it  
24 seems to me there ought to be some -- we ought



1 to add something onto the window itself, onto  
2 the 17 days.

3 COMMISSIONER ZUNIGA: Let's not  
4 forget that it's not because MGM is not  
5 amenable. They have made commitments with the  
6 host community relative to other timeframes.

7 CHAIRMAN CROSBY: That's a good  
8 question. I didn't understand that. Maybe  
9 somebody can tell us. Why you've got 10 events  
10 I think you're committed to. What in those  
11 commitments make it impossible for you to add  
12 time to either end of the 17 days?

13 MR. NOSAL: Thanks, Chairman. Jed  
14 Nosal, representing Blue Tarp Redevelopment,  
15 MGM Springfield.

16 To go back to your answer, you're  
17 referring to essentially to one of the portions  
18 of the company's agreement as part of its host  
19 community agreement agreed to program certain  
20 events at various venues around the city. We  
21 talked about that MassMutual as well as  
22 CityStage and Symphony Hall. It's 10 events,  
23 and I believe there is an option for I think an  
24 additional two under that agreement. So, it's

1 a total of 12.

2 So, what we feel is happening here  
3 is that agreement was negotiated certainly I  
4 believe back at the end of 2012 for the  
5 purposes of that programming. And we feel by  
6 adding anything to the 17 days, you are going  
7 to materially impact our ability to meet those  
8 commitments.

9 And we already have the challenges,  
10 certainly, to program those events. As you  
11 take away essentially time where we're able to  
12 meet our commitments to those venues, it hurts  
13 our ability to meet what we negotiated in good  
14 faith as part of our agreement with the city of  
15 Springfield.

16 So, the consultant is talking about  
17 adding potentially 87 days for which that time  
18 period would go. We would then be forced to  
19 essentially now program 12 events within a less  
20 than a nine-month period.

21 CHAIRMAN CROSBY: You're forced to  
22 do 10 not 12. You have the option of two more.

23 MR. NOSAL: Additional event  
24 commitment, paragraph three, that we've agreed

1 to two events per calendar year at any of those  
2 venues.

3 CHAIRMAN CROSBY: It seems to me if  
4 you added a day on each side, that would not be  
5 a big deal. If you added 100 days on each  
6 side, that would be a big deal. So, there is  
7 some distance between one and 100 which would  
8 do something in our consultant's view to  
9 further mitigate the impact on ESE without  
10 doing too much violence to you all.

11 And short of throwing a dart, I'm  
12 not sure how you come up with that. But it  
13 does seem to me that under the peculiar  
14 circumstances here adding some material amount  
15 of time to the 17 days, it makes sense.

16 COMMISSIONER MCHUGH: But whose  
17 burden -

18 CHAIRMAN CROSBY: The other side  
19 wants to -

20 COMMISSIONER MCHUGH: Now they  
21 should.

22 MR. CRESS: Mark Cress, appearing  
23 for the Eastern States Exposition. I think,  
24 Commissioner, some of your earlier comments you

1 have it right. And I think the most important  
2 point that needs to be made here is this issue  
3 goes back to the first issue on the agenda, the  
4 process is important.

5 Under the process envisioned by the  
6 statute and regulations, if the Eastern States  
7 Exposition is determined to be an ILEV, which I  
8 think everyone has acknowledged now, and I'll  
9 use the example, but for MGM saying that it  
10 will not compete during those 17 days. If it  
11 had a major event right in the middle of  
12 Eastern States Exposition, I think everyone has  
13 acknowledged Eastern States or the venues would  
14 be an ILEV.

15 If that being the case, the process  
16 isn't the applicant saying okay we'll blackout  
17 these 17 days, and we'll disregard everything  
18 else that Eastern States Exposition has asked  
19 for in these negotiation which were made part  
20 of some paperwork that was floated and have the  
21 Commission endorse it.

22 If in fact Eastern States Exposition  
23 -- It's an on-off switch, Commissioner. You  
24 said it last time. You either are or you

1 aren't. The position of Eastern States is that  
2 in the words of Mr. Cassidy on the drive here,  
3 it was inconceivable that Eastern States would  
4 not be determined to not be an ILEV.

5           So, that being the case, the process  
6 under the statute and regulations is that there  
7 is an additional 30 days to negotiate an  
8 agreement. And after that there is an  
9 arbitration process. That is the process and  
10 the protocol under the statute and the  
11 regulations.

12           It's not to allow an applicant to  
13 pick and choose what's acceptable to it,  
14 proffer an agreement and say okay, they're  
15 protected. We don't believe and the correct  
16 amount of days is 92 days. Thirty and 45, 45  
17 and 30 at the beginning and end of the  
18 exposition.

19           The reason why we are where we are  
20 is we are still concerned even if there were  
21 those blackout dates that MGM would figure out  
22 being in the business that it's in that there  
23 are a million and half people going through  
24 that venue during that period. Eighty plus

1 percent, it could be as much as 85 or 86  
2 percent of the entire Exposition's revenue is  
3 during that 17 days. Even a small portion if  
4 that were impacted, literally the survival of  
5 the Exposition is in jeopardy. It's that  
6 important.

7           We are not trying to -- And that's  
8 probably the most troubling part of this whole  
9 process. Eastern States Exposition is not the  
10 bad guy here. These are not-for-profit people  
11 trying to protect an institution, a 100-year-  
12 old institution. And the way MGM has handled  
13 itself throughout this process is really  
14 troublesome.

15           COMMISSIONER MCHUGH: How is Eastern  
16 States Exposition likely to experience a  
17 negative impact from the operation of the  
18 gaming establishment if the gaming  
19 establishment blacks out the Eastern States  
20 Exposition dates?

21           MR. CRESS: Again, Commissioner, I  
22 apologize if I wasn't clear. That's not the  
23 point.

24           COMMISSIONER MCHUGH: I believe it

1 is. So, my question to you is a factual one.  
2 And I accept your disagreement, but assuming  
3 that I'm correct, how is Eastern States likely  
4 to be adversely affected, negatively affected  
5 if MGM has a blackout during that 17-day  
6 period?

7 MR. CRESS: Well, I think the  
8 Commission's own consultant agreed that there's  
9 some time period before and some there's some  
10 time period after at a minimum in order to  
11 protect the Eastern States Exposition.

12 For instance, people planning on  
13 coming from everywhere in New England, if they  
14 play around a big event at one of the MGM  
15 venues either before or after, that's a loss of  
16 a customer, a loss of a paying recipient to a  
17 potentially competing event.

18 And one final point, the subject  
19 matter of the negotiations and the approach  
20 Eastern States tried to take in these  
21 negotiations is let's get these folks involved.  
22 Let's get them to have a vested interest in an  
23 event during the Eastern States Exposition.  
24 So, that the likelihood of them competing

1 against themselves is diminished, vested  
2 interest.

3 Now that's being thrown back at us.  
4 That's not acceptable. And the blackout after  
5 -- We're only going to give you 17 days. Once  
6 again, for the record, I just feel that that is  
7 extremely important. That's not what the  
8 statute and the regulations contemplated. And  
9 I think it's safe to say that the Eastern  
10 States Exposition begs you to please protect  
11 it.

12 CHAIRMAN CROSBY: Did you have  
13 something else you wanted to add?

14 MR. CASSIDY: I am Gene Cassidy. I  
15 am the president of the Eastern States. And I  
16 appreciate the opportunity to have this moment  
17 to address you.

18 I don't want to get into the weeds  
19 because it's a complicated business.  
20 Entertainment is very complicated. I was going  
21 to offer an example of how we could be sort of  
22 shut out of the business.

23 What might be the most easy thing to  
24 understand is for example if both MGM and



1 Eastern States were vying for a particular  
2 named talent, MGM certainly has much more  
3 capacity to pay talent than Eastern States  
4 does. They also may have a more attractive  
5 indoor venue than Eastern States does.

6 COMMISSIONER ZUNIGA: But they  
7 don't. They are committing to underwrite the  
8 MassMutual and other venues.

9 MR. CASSIDY: I think we're parsing  
10 words. They have access to venues and I think  
11 that's really the point. But aside from that,  
12 we're competing say for the same talent. MGM  
13 decides to advertise that talent because that  
14 talent is going to come to visit them in say  
15 December. And Eastern States has booked that  
16 talent in September.

17 It completely takes that wind out of  
18 our promotional sail if our potential customer  
19 has an opportunity to see that individual in a  
20 better location or a different location at a  
21 time either after the Fair or before the Fair.  
22 It takes the allure of presenting that famous  
23 person out of the promotional marketplace.

24 That's why I believe that the

1 consultant would have suggested as he did 45  
2 days prior, 17 days during, 30 days after. But  
3 frankly that's not even enough. It's something  
4 but it's not enough. And my goal really was  
5 probably naïvely to try to work out an  
6 arrangement whereby the two of us would be  
7 vested as partners, but I was rebuked every  
8 time. I have right as of this moment more face  
9 time with you Commissioners than I have had  
10 with MGM.

11 COMMISSIONER STEBBINS: So, is it a  
12 question of getting clear the 14-day window --  
13 the 17-day window of the Fair, is it a request  
14 to have the two of you figure who gets what act  
15 in during the year?

16 You just talked about we're worried  
17 about competing for Def Leppard or whoever  
18 else. That'd be my preference but coming in at  
19 the beginning of the year as opposed to the  
20 blackout window.

21 MR. CASSIDY: Yes, Commissioner that  
22 would be very helpful. In the equation that  
23 would be very helpful. To date, I have not  
24 seen any willingness on the part of our friends

1 to have any constructive dialogue about that  
2 very topic.

3 COMMISSIONER ZUNIGA: Didn't they  
4 forward an agreement -- Isn't there some  
5 document that was forwarded by MGM relative to  
6 some of these conditions? For example, this  
7 restriction, the supply side restriction  
8 they're willing to abide by it?

9 MR. CASSIDY: There is. I'm not an  
10 attorney. I'm a trained public accountant by  
11 profession. But the fact of the matter is it's  
12 all predicated upon they're be able to -- it's  
13 at their discretion. If they were to error, if  
14 they were to make an error of omission or  
15 intent, there was no recourse. To me that just  
16 seemed to be an empty promise.

17 COMMISSIONER ZUNIGA: That's  
18 something we could clearly put in some of our  
19 conditions. I mean if anybody has recourse  
20 here, it's us, correct -- when we regulate the  
21 applicant.

22 CHAIRMAN CROSBY: I am obviously  
23 wishy-washy on the point. It does feels -- I  
24 said it feels funny to me for us to negotiate

1 the terms under which it is not an ILEV or the  
2 terms under which the ILEV status in effect is  
3 mitigated.

4 I don't know whether 17 days does  
5 the job or not. We have an informed opinion  
6 from a consultant, which is somewhat committed  
7 to but not absolutely committed to. I wouldn't  
8 know what to put in there for time.

9 And it seems to me that the process  
10 here is for us to pre-negotiations, pre-  
11 variables to make a determination if they can't  
12 agree themselves about whether there is the  
13 potential for material adverse impact. And  
14 that the answer to that is yes.

15 Whether the 17 days takes that away  
16 or not even though our consultant said to a  
17 substantial extent it does, I don't know that.  
18 And it seems to me that we would be better  
19 served by having the two parties have to hammer  
20 it out.

21 COMMISSIONER CAMERON: And they  
22 weren't able to.

23 CHAIRMAN CROSBY: Then they go to  
24 arbitration.

1                   COMMISSIONER CAMERON:  Then we're  
2  disagreeing with our consultant's  
3  recommendation.

4                   CHAIRMAN CROSBY:  Yes.  That's what  
5  I'm saying.

6                   COMMISSIONER MCHUGH:  It's not the  
7  potential for it.  It's the likelihood of.  
8  That's not just words.  I just thought it would  
9  be helpful that those are the words.  And  
10 somebody's got the burden, and as I said a  
11 minute ago I don't think the burden has been  
12 met.

13                  CHAIRMAN CROSBY:  You don't think  
14 the burden has been met because of the parties  
15 -- because of MGM's willingness to put the 17-  
16 day window.

17                  COMMISSIONER MCHUGH:  Right.

18                  CHAIRMAN CROSBY:  I just don't have  
19 enough knowledge to know whether that's true or  
20 not.

21                  COMMISSIONER CAMERON:  It's  
22 likelihood, and I would agree with Commissioner  
23 McHugh that the burden has not been met.  And  
24 our consultants have served us well and I

1 believe they have in this case also with their  
2 recommendation.

3 CHAIRMAN CROSBY: You're the first  
4 person to say let's not delegate everything to  
5 a consultant.

6 COMMISSIONER CAMERON: We're not  
7 delegating. We're deciding whether or not what  
8 they say has merit. I believe it does.

9 CHAIRMAN CROSBY: I believe it has  
10 merit. I think even the consultant was metsa  
11 metsa on this issue and considers it a gray  
12 area. And so do I.

13 So, I think there's a better process  
14 for resolving the gray area than to have us put  
15 a stake in the ground either at 17 or 17 plus  
16 some arbitrary number that we come up with.  
17 That's just my own opinion. Anymore? Anymore  
18 thoughts?

19 MR. NOSAL: I understand today  
20 wasn't to come back and rehash exactly what we  
21 have already presented, I think, to the  
22 Commission, the record that is before it for  
23 purposes of making this determination.

24 We are certainly comfortable in the

1 way that we have approached this issue. We've  
2 attempted in good faith to put out offers to  
3 resolve this within the context of what the  
4 impacted live entertainment venue statute and  
5 regulations could possibly contemplate. What  
6 we're talking about here today is some sort of  
7 potential, absolutely hold harmless from any  
8 competition in the marketplace.

9           It's not what was intended. It  
10 goes back to what I believe Commissioner Zuniga  
11 described as the supply-side. We've addressed  
12 that. There is no impact. The Commission's  
13 consultant has said that there is not a  
14 negative impact. The record before the  
15 Commission is clear and that's what this  
16 decision needs to be based on.

17           CHAIRMAN CROSBY: I don't think the  
18 consultant said there's not a negative impact.  
19 It was a little softer than that. But we've  
20 all heard it.

21           MR. CRESS: Again, this is for the  
22 record. The only reason there is no negative  
23 impact is because MGM has chosen to assert that  
24 there isn't because of this 17-day blackout.

1 It is an ILEV.

2 MR. NOSAL: We dispute that for many  
3 of the reasons that the Commission has talked  
4 about. They don't meet the statutory  
5 definition.

6 This was a venue that was not  
7 contemplated when it comes to dealing with  
8 these particular issues and this particular  
9 statutory structure.

10 CHAIRMAN CROSBY: All right. This  
11 is one we have to make a decision on. Does  
12 somebody want to make a motion?

13 COMMISSIONER ZUNIGA: Sure. I would  
14 move that this Commission do not designate the  
15 Eastern States Exposition as an ILEV based on  
16 information presented before us and the  
17 discussion we've had among ourselves.

18 CHAIRMAN CROSBY: With the 17-day  
19 blackout as a condition?

20 COMMISSIONER ZUNIGA: Yes, we could  
21 easily --

22 CHAIRMAN CROSBY: Are you saying  
23 just not an ILEV and that's the end of it? Or  
24 are you saying with certain conditions it's not



1 an ILEV?

2 COMMISSIONER ZUNIGA: The way I  
3 understand it and the way it's been before the  
4 record here, to me the fulcrum has been is  
5 likely to experience a negative impact with the  
6 commitment that MGM has made relative to this  
7 17-day blackout, I don't believe the grounds  
8 are likely to experience a negative impact.

9 So, it's with everything else with  
10 the commitment they've made. We could make  
11 that a condition at a later time. We could  
12 reopen it as you suggest if we find out in the  
13 future that this impact -- this forecast didn't  
14 turn out to be the case.

15 COMMISSIONER MCHUGH: Would you  
16 accept an amendment to that motion that said  
17 provided that MGM adheres to its 17 day  
18 blackout and without prejudice to the Eastern  
19 States Exposition's right to repetition the  
20 Commission in the event that it experiences a  
21 negative impact from the operation of an MGM  
22 controlled venue?

23 COMMISSIONER ZUNIGA: Yes.

24 COMMISSIONER CAMERON: Second.

1                   CHAIRMAN CROSBY: Further  
2 discussion? I would just say that I think you  
3 can make the point that if 17 days matters, 18  
4 days matters, probably 19 days matters,  
5 probably need 20 days matters. I don't know  
6 whether it's somewhere between 20 or 180. So,  
7 to pick 17 clearly does not do the job in my  
8 judgment. And I don't think we have the  
9 wherewithal to pick a number.

10                   COMMISSIONER STEBBINS: I come back  
11 to the argument that I think it's the 17 days  
12 that matters. I think it's the ability to  
13 compete for talent that each side might pursue.

14                   CHAIRMAN CROSBY: How does that cut?

15                   COMMISSIONER STEBBINS: I don't want  
16 to amend the amended motion.

17                   CHAIRMAN CROSBY: Any other  
18 discussion? All in favor of the motion to  
19 determine ESE as not an ILEV subject to the  
20 amendment of the 17-day commitment by MGM and  
21 no prejudice to the option of reopening if ESE  
22 at some point feels it does experience, I  
23 guess, or for that matter is likely to  
24 experience a negative impact please signify by

1 saying aye.

2 COMMISSIONER MCHUGH: Aye.

3 COMMISSIONER ZUNIGA: Aye.

4 COMMISSIONER CAMERON: Aye.

5 CHAIRMAN CROSBY: Opposed? No.

6 COMMISSIONER STEBBINS: No.

7 CHAIRMAN CROSBY: The ayes have it  
8 three to two. Thank you. I have one more  
9 quick break to take.

10

11 (A recess was taken)

12

13 CHAIRMAN CROSBY: We have one other  
14 item, which is the other business item, which  
15 we reserve in this case -- We love that you  
16 folks are talking. And please keep it up, but  
17 somewhere else.

18 This is reserved for matters which  
19 the Chair didn't have a chance to anticipate  
20 prior to setting the agenda. And that is a  
21 media report recently about the expenses of the  
22 Commission. I think it's important that we  
23 take note of that and talk about it a little  
24 bit and make sure that (A) the public knows

1 what we're doing, and (B) that we are doing it  
2 properly and well.

3           There are two important points that  
4 we do want to emphasize and we've said in our  
5 statement, which is (1) that no state money, no  
6 taxpayer dollars will be used for any of the  
7 Commission's expenses ever unless the  
8 legislation is changed. We are borrowing money  
9 from the Rainy Day fund for some of our initial  
10 operating expenses. That will be repaid  
11 completely by my license fees from the  
12 applicants.

13           The second is I for one feel quite  
14 confident that for the very most part the  
15 expenses are appropriate. Each of the things  
16 that sometimes sound a little bit extravagant,  
17 many of them have logical, rational, acceptable  
18 explanations. However, we know we are a fast-  
19 moving, fast-growing agency. We have some  
20 forms and standards in place. We need to  
21 review those. We need to be more careful.

22           We are in the public eye and  
23 appropriately so. And we will have these kinds  
24 of assessments made from the time. We have

1 already suggested -- not already suggested, but  
2 committed to having an outside third-party come  
3 in and help us take a look at some comparable  
4 agencies. This is idiosyncratic agency with  
5 unusual demands for expenses, particularly the  
6 investigatory expenses. But it's important  
7 that we understand what the standards are of  
8 other comparable agencies who do similar kind  
9 of work across the country. And that we are in  
10 conformance with the best practices of those  
11 agencies.

12           So, it is at its bottom line  
13 constructive criticism and we take it  
14 seriously. And we will look hard at our  
15 policies. There's a lot of work going on  
16 already with our new director of finance and  
17 administration. But we will take a special  
18 step to address these issues and to review them  
19 by an outside party.

20           So, that's what I wanted to say. If  
21 anybody else wants to speak to any of this, now  
22 is the time.

23           COMMISSIONER MCHUGH: I would just  
24 like to echo a couple of things. Number one,

1 for me it is not as important that this is not  
2 state money. We have an obligation, and I know  
3 we all share this, to spend whoever's money it  
4 was and are bound and determined to do it.

5           Secondly, we have committed to an  
6 independent review of our policies. We need to  
7 look at the policies that we have in place now.  
8 Those policies were created at a time when we  
9 were seven or eight people and operating long  
10 before we got into the investigatory phase of  
11 operations. And we've now grown to 50. We are  
12 finished the first round of the investigations.

13           And it is inevitable that the  
14 policies that ought to apply to this  
15 organization in this stage and its activities  
16 now are different from those that we had in  
17 place when we weren't doing any of this stuff.  
18 And simply trying to get the basis for hiring  
19 and getting people aboard who could do the work  
20 that the Commission needs to do.

21           So, I echo the fact that we need to  
22 carefully look at what's happened. We need to  
23 carefully look at the policies that we have in  
24 place. We need to get an independent review of

1 those policies. We need to get to a stage  
2 where we are able to post all of our financial  
3 information routinely and regularly so it's  
4 available to all citizens of the Commonwealth.  
5 And we need to get there as quickly as we  
6 possibly can.

7           We are in the midst of doing a  
8 number of things and always you try to  
9 prioritize. Events like this tend to be a  
10 wake-up call for perhaps the reordering of  
11 priorities. So, we need to do it and we need  
12 to do it quickly and we need to do it promptly.  
13 And I'm confident that we will.

14           COMMISSIONER ZUNIGA: I agree. The  
15 only thing that I would add to that is not just  
16 look at our policies, but certainly our  
17 procedures and the implementation of those  
18 policies and how they have evolved. And  
19 perhaps now need to evolve yet again as we grow  
20 and have departments that grow. And it's no  
21 longer just one or two people, but there are  
22 more people that report up the food chain, etc.

23           So, it's something that needs to be  
24 looked at continuously and I think is a good

1 opportunity for us to take a hard look at all  
2 of that.

3           COMMISSIONER CAMERON: Another  
4 important piece is that everyone understands  
5 what the procedures are. I think that there is  
6 probably -- one of the things we probably  
7 haven't had the time or taken the time to do is  
8 enough training when it comes to what the  
9 procedures and policies are. With the new  
10 CFAO, I think it's the perfect time to review,  
11 amend and then make sure everyone understands  
12 what the procedures are.

13           COMMISSIONER ZUNIGA: And I would  
14 like to just perhaps add a fine point to some  
15 of the remarks earlier. All of our costs are  
16 available through different venues. We are an  
17 open checkbook. We have always been from the  
18 beginning by virtue of using MMARS.

19           Sometimes because MMARS is a  
20 standardized system, sometimes the detail of  
21 those expenses are difficult to ascertain but  
22 not impossible. And we have a lot of breakdown  
23 and detail behind that that's available.  
24 That's the piece that we should be a lot more



1 diligent in providing to the public but also to  
2 this Commission on a regular basis. So, it's  
3 something we should do as well.

4 CHAIRMAN CROSBY: Anybody else?  
5 Anything else? Do I have a motion to adjourn?

6 COMMISSIONER MCHUGH: So moved.

7 CHAIRMAN CROSBY: All in favor, aye.

8 COMMISSIONER MCHUGH: Aye.

9 COMMISSISONER CAMERON: Aye.

10 COMMISSIONER ZUNIGA: Aye.

11 COMMISSIONER STEBBINS: Aye.

12 CHAIRMAN CROSBY: The ayes have it  
13 unanimously.

14

15 (Meeting adjourned at 4:18 p.m.)

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## 1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission February
- 3 24, 2014 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission Checklist
- 5 for Issuance of Category 2 License

6

## 7 GUEST SPEAKERS:

- 8 Eugene Cassidy, Eastern States Exposition
- 9 Mark Cress, Eastern States Exposition
- 10 Elizabeth Dello Russo, city of Boston
- 11 Lyle Hall, HLT Advisory
- 12 Jacqui Krum, Wynn Resorts
- 13 Jed Nosal, Blue Tarp Redevelopment, MGM
- 14 Springfield

15

## 16 MASSACHUSETTS GAMING COMMISSION STAFF:

- 17 Catherine Blue, General Counsel
- 18 Richard Day, Executive Director
- 19 Jill Griffin, Director Workforce, Supplier and
- 20 Diversity Development
- 21 John Ziemba, Ombudsman

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 25th day of February, 2014.

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