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THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #60

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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March 25, 2013, 1:00 p.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room G

1000 Washington Street

Boston, Massachusetts

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

CHAIRMAN CROSBY: We can call to order the 60th meeting of the Massachusetts Gaming Commission on March 25, 2013 at 1:00 p.m.

Today, we have a special agenda. As you know, this is not our regular meeting. We have two major items, the evaluation criteria and draft regulations. And we will jump right off into those. I believe Commissioner McHugh will walk us through the first item on our agenda.

COMMISSIONER MCHUGH: All right. First, let me just, if I might for just a second set the stage. There are three documents in front of us. There's the evaluation criteria. There is a document entitled action with a series of columns and X's on it. And then there are the regulations.

The evaluation criteria, which is the first one we're going to take up, is codified, if you will, in section 119.01 of the regs. So, it's in a different form there, but this is designed to be the criteria that we're going to be looking for

1 when we evaluate the applications. It's also  
2 designed to easily move into the application form  
3 itself.

4 So, the current version of this  
5 document has on the right-hand side columns that  
6 can be used as a check off for those who are trying  
7 to determine administrative completeness once the  
8 applications are filed, to determine whether the  
9 various items are there or aren't there. So  
10 that's essentially what that document is.

11 The document with the columns --

12 CHAIRMAN CROSBY: Excuse me. Will  
13 this essentially -- Will that replace eventually  
14 119? Because now 119 has a long list of criteria  
15 some of which are here, some of which are not.

16 COMMISSIONER MCHUGH: In substance,  
17 the idea is that they all I here, Mr. Chairman.

18 CHAIRMAN CROSBY: They are all in 119  
19 as well?

20 COMMISSIONER MCHUGH: Yes, they're in  
21 a different form in 119. The idea was 119 is  
22 basically a compilation of the statutorily mandate  
23 criteria. And we have expanded on some of those.  
24 We have phrased them differently for purposes of

1 putting them in here. But everything in 119 is in  
2 here in one form or another.

3 CHAIRMAN CROSBY: Okay. And they'll  
4 stay in these two different formats.

5 COMMISSIONER MCHUGH: And they'll  
6 stay in the two different formats, because they are  
7 grouped together in a way that the sort of linear  
8 progression in 119 doesn't allow.

9 In addition, that gives us the  
10 flexibility to actually combine some of these  
11 things on the evaluation criteria matrix, so, we  
12 don't have more appendices for related items than  
13 makes sense. So, we can refine that as we go  
14 forward. However we windup, we'll still have all  
15 of the information described in 119.

16 CHAIRMAN CROSBY: Okay.

17 COMMISSIONER MCHUGH: So, that's how  
18 that fits into the overall procedure. The other  
19 document, the second document with the events on  
20 the left and X's is really a discussion starter.  
21 It's found in 118.04.

22 Again, the desire is to maintain as  
23 much flexibility as we can. And this document is  
24 really designed to start us thinking about the

1 process and also to identify some of the components  
2 of 118.04 that may come up as we move forward. So,  
3 we can talk about that. We can talk about it in  
4 that order and then proceed to the regulations.

5 Then the regulations are a  
6 modification of the existing regulations, which go  
7 from 101 to 117. There are some modifications  
8 proposed to deal with the Phase-2 process. And  
9 then a new set of regulations beginning with 118  
10 and going to 131. So, hat's the framework for  
11 these documents and how they fit together.

12 If you want to go back now and start  
13 with the evaluation criteria, the evaluation  
14 criteria have five basic levels. We have an  
15 overview level. We have a financial level. We  
16 have a design and site level. We have an economic  
17 development level and a mitigation level.

18 We've been over in some detail  
19 everything in this document except the new  
20 overview section part one, which was inserted  
21 after our last meeting to deal with the kind of big  
22 picture. What is it that we're really trying to  
23 capture here? And is designed to help us and help  
24 the applicants tell us what their vision, their

1 overall vision for the project is before we get  
2 down into the more detailed analysis contained in  
3 each of the other four parts.

4 So, I'd be happy to start with the first  
5 section and proceed through in that order. I take  
6 it that everybody has had a chance to read the first  
7 section. So, why don't we just start right there?

8 CHAIRMAN CROSBY: Anybody?

9 COMMISSIONER ZUNIGA: I think that's a  
10 good idea.

11 CHAIRMAN CROSBY: Let's start with  
12 section one.

13 COMMISSIONER MCHUGH: Section one,  
14 yes.

15 CHAIRMAN CROSBY: In earlier versions  
16 because of different formats, some of these things  
17 appeared in other places. Are you going to pull  
18 those out when you edit or let them just sort of  
19 duplicate?

20 COMMISSIONER MCHUGH: These, I  
21 thought, we would leave as they are. And if  
22 there's redundancies deeper in the document, we'd  
23 take out the redundancies.

24 It seemed to me that this sort of

1 narrative requirement was a good thing to have  
2 people do at the beginning, because it gave them  
3 a chance to tell us in a relatively free form what  
4 they were proposing and thinking about in terms of  
5 their project. And the other material deeper in  
6 is much more detailed and fine-grained.

7 CHAIRMAN CROSBY: Right.

8 COMMISSIONER MCHUGH: So, if there are  
9 redundancies, they would come out of the deeper  
10 part and this would stay.

11 CHAIRMAN CROSBY: Good.

12 COMMISSIONER STEBBINS: Mr. Chairman,  
13 I just saw two minor kind of, I guess, technical  
14 corrections. One in the last line just read a  
15 little bit awkward where it finishes each region  
16 of our Commonwealth to travelers within and  
17 without Massachusetts.

18 COMMISSIONER MCHUGH: Yes. We can  
19 change that.

20 CHAIRMAN CROSBY: I like that. It's  
21 Old English, but without Massachusetts.

22 COMMISSIONER MCHUGH: It is Old  
23 English.

24 COMMISSIONER STEBBINS: Just a quick

1 correction a little further up, the second bullet  
2 how does the project you oppose --

3 COMMISSIONER MCHUGH: That's like the  
4 squirrels.

5 COMMISSIONER STEBBINS: I don't know  
6 how to score that one.

7 COMMISSIONER MCHUGH: No, that is  
8 proposed.

9 COMMISSIONER STEBBINS: I thought  
10 about these broad topics and appreciate the way  
11 it's written up. I drafted another question which  
12 I'll throw out for everybody's consideration about  
13 how an applicant can see -- I'll preface this in  
14 that this is somewhat of an unusual economic  
15 development project.

16 Again, if we ever had a circumstance  
17 where an employer was looking to come to  
18 Massachusetts and spend over a half billion  
19 dollars and hire 2,000 plus people, we'd be doing  
20 cartwheels to try to get them to say yes.

21 Here, we have somebody with somewhat  
22 same credentials or similar project that wants to  
23 come to the Commonwealth. And yet we seem to be  
24 in most sense just kind of standing back and saying



1 what can you do for us?

2 The question I would suggest adding to  
3 this kind of overview is how can an applicant see  
4 the Commonwealth and the Commission partnering  
5 with you to ensure a robust gaming industry that  
6 maximizes jobs and revenues?

7 Maybe there is something, again, that  
8 we can do to make sure they get opened faster, that  
9 they have an opportunity to thrive and succeed.  
10 Maybe they would want to make us aware of whatever  
11 those opportunities are.

12 CHAIRMAN CROSBY: I like that point.

13 COMMISSIONER CAMERON: I do too.

14 CHAIRMAN CROSBY: It fits with that  
15 part of our mission statement that says we are  
16 looking for a robust industry with a healthy ROI  
17 and so forth. So, I like that. Good addition.  
18 Others on category one?

19 COMMISSIONER ZUNIGA: I just have one  
20 broad one. It's implicit in a lot of what we say  
21 here. But relative to execution, people will  
22 present plans. But if there's a broad question  
23 relative to how they make sure that all of those  
24 plans happen. That would be one element that I

1 would like to highlight.

2 Commissioner Stebbins and I were  
3 briefly talking about an Edison quote, which says  
4 a vision without execution is just hallucination.  
5 Maybe that's not directly relevant here but --

6 CHAIRMAN CROSBY: I'm not sure that's  
7 where this would go. But clearly, that's a  
8 critical part. Do you have something in mind to  
9 frame it?

10 COMMISSIONER ZUNIGA: There are  
11 elements in the schedule, in the financing  
12 structure, clearly throughout the rest of it. But  
13 if at a broad level, we were talking about -- if  
14 applicants could summarize what they see as the  
15 attributes that they bring to make sure that in  
16 general their plans come to fruition.

17 CHAIRMAN CROSBY: That would be in the  
18 context of their historical experience as well.  
19 Yes, I think that is -- Does that make sense to you?

20 COMMISSIONER MCHUGH: Surely.

21 CHAIRMAN CROSBY: I think this is  
22 covered, Commissioner McHugh, elsewhere. We've  
23 said several times we don't want this to be the only  
24 criteria. We may come up with other criteria. I

1 don't know whether that's in the regs. clearly  
2 enough.

3           Obviously, if we came up with new  
4 criteria, we would give everybody a reasonable  
5 fair opportunity to respond. Even though I think  
6 this is becoming incredibly comprehensive, it's  
7 hard to think of anything we might have forgotten.  
8 But something might come up and we want to make sure  
9 that we're not limited in any way.

10           COMMISSIONER MCHUGH: My recollection  
11 is we do have that in the regs. And we'll get to  
12 that when we discuss the regs.

13           MS. BLUE: Yes, we do.

14           COMMISSIONER CAMERON: So, that's the  
15 better place for it in the regs. than in this  
16 material, that catchall at the end, right?

17           COMMISSIONER MCHUGH: In the regs., if  
18 you think of something else, we'll let you know and  
19 give us time to tell us what we want to know.

20           Okay. So, let's go onto to section two  
21 now. Section two through the end of it, this will  
22 be, I think, the third go at this. Hopefully,  
23 we've captured most of it. But the idea here is  
24 to finish this today so we can go into Thursday as

1 we adopt the regulations for discussion for the  
2 promulgation process to have this cinched down and  
3 firmly in mind.

4 Any new thoughts here or changes or  
5 amendments?

6 COMMISSIONER ZUNIGA: No. I provided  
7 a lot of comments that are now incorporated here.  
8 I think it tells quite a bit of the discussions that  
9 we had prior to this. So, I think this is a great  
10 section.

11 CHAIRMAN CROSBY: Commissioner?

12 COMMISSIONER STEBBINS: Nothing on  
13 the financial piece.

14 CHAIRMAN CROSBY: I don't know whether  
15 this is covered well enough or not, but I don't  
16 think it's explicit. Under financial and capital  
17 structure, would it be helpful to have something  
18 like demonstrate the capacity to sustain  
19 operations in the face of a serious economic  
20 turndown? That's what's happened in other  
21 places. And we will be looking at their  
22 financing, but whether we want to make that  
23 explicit or not.

24 COMMISSIONER MCHUGH: All right.

1                   CHAIRMAN CROSBY: We had talked, and  
2 again I'm not sure if this doesn't show someplace  
3 else, but we wanted to see a demonstration of  
4 diversity, if any, in their ownership and  
5 investors.

6                   COMMISSIONER MCHUGH: Yes. We have  
7 that in part in the Phase-1 application. We asked  
8 for detailed information about their makeup and  
9 the diversity of all the qualifiers. And in this  
10 section now, I believe we have added a section  
11 dealing with the same information with respect to  
12 financiers. And if we haven't, I intended to have  
13 that in here.

14                  CHAIRMAN CROSBY: I didn't see that in  
15 ownership and investors, financiers.

16                  COMMISSIONER MCHUGH: Let me double-  
17 check and make sure it's here because I intended  
18 it to be here. Although the officers and chief  
19 operators we'll learn about in the RFA-1 process.

20                  CHAIRMAN CROSBY: Probably a lot of it  
21 we are. It might just be easier to them have to  
22 tell us rather than have us go back to search it  
23 out.

24                               About half way down in the green

1 section, provide an enterprise pro forma five  
2 years for Category 2 and 15 years for Category 1.  
3 Where do those numbers come from just out of  
4 curiosity?

5 COMMISSIONER MCHUGH: The license  
6 term.

7 COMMISSIONER ZUNIGA: License term.

8 CHAIRMAN CROSBY: Oh, okay. I don't  
9 know. I have no idea if it's meaningful to see a  
10 15-year pro forma.

11 COMMISSIONER MCHUGH: One of the  
12 people we were talking with about this process  
13 asked for a 30-year pro forma recognizing that that  
14 is most impossible to predict. At least it gives  
15 an idea as to what people are thinking about.  
16 Given the fact that it is co-terminus with the  
17 license term, I thought we'd do it.

18 CHAIRMAN CROSBY: The last green above  
19 maximize revenues it's just a tiny typo, list any  
20 entities owned or controlled by the applicant or  
21 any entity that owns -- after the word applicant  
22 is the word or.

23 COMMISSIONER MCHUGH: Okay.

24 COMMISSIONER CAMERON: Commissioner

1 McHugh, are you done writing?

2 COMMISSIONER MCHUGH: I am.

3 COMMISSIONER CAMERON: On the old page  
4 three, the original before we have the overview,  
5 on financial the third page, the highlighted  
6 section 18 in pink.

7 COMMISSIONER MCHUGH: Right.

8 COMMISSIONER CAMERON: Just above  
9 that, if the marketing plans for a Massachusetts  
10 facility differs from the marketing plans used  
11 elsewhere, describe the factors that led the  
12 applicant to --

13 CHAIRMAN CROSBY: -- dot, dot, dot. I  
14 saw the same thing, just above the pink the  
15 sentence just disappears.

16 COMMISSIONER MCHUGH: Okay, yes.  
17 Okay. That's a formatting error. The rest of the  
18 sentence is there. You just can't read it.

19 COMMISSIONER CAMERON: It is there?

20 COMMISSIONER MCHUGH: It's not on your  
21 paper. It's in the machine.

22 CHAIRMAN CROSBY: Back on -- I'm using  
23 the old format too. In what was the second page,  
24 provide projections for tax revenue to the

1 Commonwealth. Is this meant to be all taxes?

2 COMMISSIONER MCHUGH: Yes.

3 CHAIRMAN CROSBY: Okay, all tax  
4 revenue. Let me just read through some notes that  
5 came from one of the submissions and see whether  
6 these are covered adequately.

7 One of the variables that makes these  
8 things attractive is its ability to bring in big  
9 acts. That attracts people. Do we have anything  
10 or should we have anything about describing  
11 strategies for attracting entertainment that  
12 attracts customers? It's a variable.

13 COMMISSIONER MCHUGH: We may not focus  
14 on the entertainment specifically.

15 COMMISSIONER ZUNIGA: On a couple of  
16 occasions, we mention strategy and business plan  
17 relative to attracting -- retaining and attracting  
18 gamers as well as tourism. It's probably if you  
19 want to cull it out specifically.

20 CHAIRMAN CROSBY: It just seemed to me  
21 it's one of the ways that these facilities really  
22 attract people. And knowing who knows how to do  
23 that, who does it well, what their track record is  
24 seems to me that might be a material variable.



1                   COMMISSIONER MCHUGH: Yes. I think  
2 we should include it. One can also argue that  
3 partnering with other entertainment venues to  
4 cross-market and attract to existing facilities  
5 would also be a way to do it.

6                   CHAIRMAN CROSBY: And we have that, I  
7 think.

8                   COMMISSIONER MCHUGH: We have that.

9                   CHAIRMAN CROSBY: That's a different.  
10 This is noncompetitive with the live entertainment  
11 venues. This is the really big acts that don't  
12 come to the regional places, but do bring in people  
13 from all around the place, you know, like Neil  
14 Diamond.

15                  COMMISSIONER MCHUGH: I don't think  
16 they'll get Neil Diamond.

17                  CHAIRMAN CROSBY: You know what I  
18 mean.

19                  COMMISSIONER MCHUGH: The one thing  
20 we've got to be careful about there and that's why  
21 in the editing process when we get all of the  
22 criteria down here, we've got to go through this  
23 once again just to make sure it is harmonious, is  
24 that we're talking about this as evaluation

1 criteria. We plan to use it as evaluation  
2 criteria. We don't want to give the impression or  
3 create confusion about competing criteria.

4 We're asking people to cross-market  
5 and rely on existing venues. We're asking people  
6 in the impacted live entertainment venue part of  
7 the application what precautions they're taking  
8 against getting headliners that are going to  
9 drowned out the live entertainment venues. And  
10 then asking about what entertainment acts and  
11 types you're going to bring in may cause people to  
12 think about downplaying that in order to meet other  
13 criteria. So, we just have to be clear about this.

14 CHAIRMAN CROSBY: Yes. I could be  
15 wrong. I was thinking that there are acts that are  
16 way out of the reach of what are defined as live  
17 entertainment venues between 1000 and 3500 seats.  
18 I could have that wrong.

19 COMMISSIONER MCHUGH: I don't know,  
20 but we can put it in as long as we're clear that  
21 we're going to make it -- we're not going to send  
22 signals we don't want send, I guess, is the best  
23 way I can put it.

24 CHAIRMAN CROSBY: Right That's a

1 good point. Another one is there any value in  
2 asking for demonstrations of their success in a  
3 competitive environment? Some folks may not  
4 either have done this before or may not have done  
5 it in competitive environment. They may be just  
6 Las Vegas. Is there anything about similar  
7 environments that we would want to see? It  
8 doesn't grab anybody.

9 COMMISSIONER MCHUGH: It doesn't grab  
10 me. And the reason it doesn't initially  
11 immediately is that it's hard. We've tried to get  
12 at that a couple of different ways here, but it's  
13 really hard to ask for a comparative environment  
14 and then let the person -- the applicant define  
15 what the environment is. I'm not sure what that  
16 yields in terms of useful information.

17 We've asked for history. We've asked  
18 for a variety of other things that get at history.  
19 We've asked for marketing plans in areas and  
20 processes that are similar to ours and dissimilar  
21 to ours. I just don't know what that is.

22 CHAIRMAN CROSBY: Okay. I get that.  
23 Anything else on finance?

24 COMMISSIONER MCHUGH: Then building

1 and site design, if we move onto that is perhaps  
2 the most detailed. A number of these criteria in  
3 the right-hand column are going to be combined.  
4 But they come, as we discussed the last time, from  
5 a variety of sources statutory, the AIA White  
6 Paper, the forums we held and other input we got,  
7 we received with respect to green and renewables  
8 -- green and renewable energy. Any other  
9 thoughts, things we've missed?

10 CHAIRMAN CROSBY: Under the first  
11 evaluation criteria, the third line down, describe  
12 relationship, if any, between host facility  
13 history and culture of its immediate region. I  
14 would just like to throw in architecture.  
15 History, architecture and culture of its immediate  
16 and regional surroundings.

17 COMMISSIONER MCHUGH: All right.  
18 That's one that would be a candidate, it seems to  
19 me, for homogenizing with the first part.  
20 Broadening it out a little bit, but that's the kind  
21 of thing that is in here in number of places that  
22 I think in the end would move to the overall  
23 discussion.

24 CHAIRMAN CROSBY: Yes. I get that.

1 As long I'm going under five, the pink, the yellow  
2 one below 9(17), I assume that's happened also.  
3 It ended up -- It's lost. It seems like the words  
4 are there.

5 COMMISSIONER MCHUGH: Yes.

6 CHAIRMAN CROSBY: Under compatibility  
7 with surroundings, the third item down, describe  
8 the steps, plans and measures. That looks like a  
9 mitigation one to me. I'm not sure why that would  
10 be here. It's got the word mitigate right in the  
11 middle of it.

12 COMMISSIONER MCHUGH: Yes, I know.

13 The reason it's there is that the overall design  
14 concept ought to include these kinds of things.  
15 And it's in the context of presenting us with the  
16 design concept that we'd like to know about that.

17 It does show up in a slightly different  
18 form in the mitigation piece. That's one of the  
19 things we are going to have to combine. But it  
20 makes more sense, it seems to me, to have traffic  
21 mitigation for the site, the immediate site as  
22 opposed to perhaps out in the surrounding  
23 communities and the like appear here.

24 CHAIRMAN CROSBY: I see.

1                   COMMISSIONER MCHUGH: Where are you  
2 going to put the buses? Where's the parking? How  
3 are you going to provide for getting people from  
4 the parking lot to the --

5                   CHAIRMAN CROSBY: I see. Okay, good.  
6 There is going to be some duplication, which we  
7 can't get out anyway. There is no problem with  
8 that. Then under pink 8, utilize sustainable  
9 development.

10                  COMMISSIONER MCHUGH: Yes.

11                  CHAIRMAN CROSBY: I guess show how  
12 building and site comply with LEED-ND, all these  
13 things, I think that came right out of the AIA  
14 letter.

15                  COMMISSIONER MCHUGH: It did.

16                  CHAIRMAN CROSBY: I have no idea what  
17 it's saying or whether it's a good idea or not, but  
18 maybe somebody does.

19                  COMMISSIONER MCHUGH: Maybe the  
20 better way to phrase it is something along the  
21 lines of addresses rather than complies with.  
22 LEED gold is a requirement. Certifiable as LEED  
23 gold is a requirement. The rest are not  
24 requirements. So, addresses.

1 CHAIRMAN CROSBY: Do you know what all  
2 those things stand for?

3 COMMISSIONER ZUNIGA: Yes.  
4 Neighborhood Development for LEED-ND, Existing  
5 Building indicates there is renovation as opposed  
6 to new construction.

7 CHAIRMAN CROSBY: Right.

8 COMMISSIONER ZUNIGA: EBOM is  
9 operations and maintenance. It has this  
10 continuity not just with the construction piece  
11 but during operations.

12 So, the comment of Commissioner McHugh  
13 is right on point. The idea of all of these  
14 different standards is whatever may be applicable  
15 to the proposed project. Not all of them may be  
16 applicable and I guess that's the point. Starting  
17 from LEED gold, there are other standards that are  
18 equally get to the objectives with the different  
19 idiosyncrasies of the projects.

20 CHAIRMAN CROSBY: What are these other  
21 two, ISI and IGCC?

22 COMMISSIONER ZUNIGA: I forget what  
23 they stand for, but they're also standards like  
24 LEED. One, ISI, I believe is an international

1 standard --

2 COMMISSIONER STEBBINS: And IGCC is  
3 also.

4 COMMISSIONER ZUNIGA: -- that get to  
5 the same sustainable, energy efficient, smart  
6 growth standards that are just a different metric,  
7 different standards.

8 COMMISSIONER MCHUGH: They're in the  
9 White Paper in non-acronym form.

10 CHAIRMAN CROSBY: Okay, fine.

11 COMMISSIONER MCHUGH: There is a  
12 source to see all of those.

13 CHAIRMAN CROSBY: I am going to use the  
14 privilege of the Chair and suggest we can take our  
15 coats off if it gets hot.

16 That was it for me on this one.  
17 Anybody else?

18 COMMISSIONER CAMERON: I see under  
19 security right at the next page, we did add some  
20 additional language there.

21 COMMISSIONER MCHUGH: We did.

22 COMMISSIONER CAMERON: That looks  
23 very good.

24 COMMISSIONER MCHUGH: Okay. If



1 there's no other questions with respect to the site  
2 design, and then mitigation is the next one.

3 Here again, there's some redundancy.  
4 If you look at the second page where we talk about  
5 traffic, again, we talk about traffic as we did  
6 with the site design. The main focus of the  
7 traffic mitigation as opposed to the traffic site  
8 design is the approaches, flyovers, traffic  
9 circles and other things that you have to use to  
10 get people through the main thoroughfares to get  
11 there, not so much what is going on on the site.  
12 So, that's the kind of homogenizing we have to do.

13 CHAIRMAN CROSBY: Anybody else?  
14 Under the first one, host community agreement, the  
15 third item -- the fourth item says state the total  
16 value of contributions of money or other things.  
17 Don't we want the individual contributions as  
18 opposed to the total value of contributions, the  
19 fourth item down?

20 COMMISSIONER MCHUGH: Well, we can.

21 CHAIRMAN CROSBY: I would like to have  
22 the total too, but I thought the whole point was  
23 to see the individual contributions that were  
24 made.

1                   COMMISSIONER MCHUGH: Yes, sure. We  
2 can do that. The contributions have to be  
3 reported to the city or town clerk individually,  
4 don't they? Isn't that in the regs.?

5                   MS. BLUE: They do. And we updated.  
6 You'll see in the amendments to the existing regs.  
7 we added language for disclosure on individual  
8 requests for anything of value have to be reported  
9 as part of the application.

10                  COMMISSIONER MCHUGH: We have the  
11 requests and the donations on an individual basis.  
12 Let me put a question mark next to that and make  
13 sure that we've got that covered on an individual  
14 basis someplace, the requests and the  
15 contributions.

16                  CHAIRMAN CROSBY: Right. Down the  
17 next one down, list each request for a contribution  
18 of money, other thing of value. The request  
19 received from an elected or appointed public  
20 official.

21                  I think when we adopted this point, it  
22 was anything of value that anybody requested,  
23 wasn't it? It was if your YMCA came and asked for  
24 money over \$1000, we wanted to know that. I'm not

1 sure. I can't remember how it is in the regs.

2 COMMISSIONER MCHUGH: I thought our  
3 discussion was that if somebody acting -- We were  
4 worried about somebody acting on behalf of a  
5 municipal or other public official. And we wanted  
6 to make sure we captured that. I didn't think we  
7 -- As a matter of fact, I thought we had explicitly  
8 decided that if the local church organization  
9 asked you to buy a ticket to the turkey dinner that  
10 was not the kind of thing that we --

11 CHAIRMAN CROSBY: Because it was under  
12 \$1000, but I think we put in the \$1000. We asked  
13 you, I think, to come up with language.

14 MS. BLUE: In the draft of 108.03, we  
15 have it by any person or persons listed in 108.  
16 So, it wouldn't be just municipal officials. It  
17 would be anybody. But we did put a dollar value.

18 COMMISSIONER MCHUGH: And the dollar  
19 value is \$1000?

20 MS. BLUE: Yes.

21 CHAIRMAN CROSBY: Okay, then we should  
22 make this the same.

23 COMMISSIONER CAMERON: Consistent.

24 COMMISSIONER STEBBINS: I had

1 recommended the January 15, because that was the  
2 deadline date for our applications to be in. Kind  
3 of at that point, we know who the real players are.  
4 But obviously, we had some people that ponied up  
5 their application fee prior to that.

6 CHAIRMAN CROSBY: What does the reg.  
7 say? It says any. It doesn't have a date or does  
8 it?

9 COMMISSIONER MCHUGH: It does have  
10 January 15.

11 COMMISSIONER STEBBINS: I think I had  
12 recommended the 15th, but obviously, if we had  
13 applicants who paid earlier, should we refine the  
14 language to say essentially, whenever you became  
15 an applicant? Because there might have been a  
16 month- or two-month window prior to that where they  
17 might have received a request. We obviously we  
18 had a few people apply on January 15, five minutes  
19 before the deadline.

20 COMMISSIONER CAMERON: We had one  
21 within days of soliciting for applications.

22 COMMISSIONER MCHUGH: The January 15  
23 was the deadline. That was the suggestion. But  
24 we can easily change it to from the day you became

1 an applicant. From the day you've paid your  
2 \$400,000 application fee really.

3 Because those people weren't formally  
4 applicants when they paid the fee early on. They  
5 were people who said they were going to become an  
6 applicant and agreed to be bound by the regs.  
7 governing applicants. So, we'll fool around with  
8 the language, but the idea is pretty clear.

9 CHAIRMAN CROSBY: Right. Under  
10 impacted live entertainment venue agreements, the  
11 last point describe the applicant's plan for use  
12 of exclusivity provisions. Would it be  
13 constructive to say describe the applicant's plans  
14 for use of and terms of exclusivity provisions?

15 COMMISSIONER MCHUGH: Okay.

16 CHAIRMAN CROSBY: And then I think  
17 under -- Maybe this is covered some other way, but  
18 under number six implement measures to address  
19 problem gambling. I think we might want their  
20 demonstration of the way the -- their historic  
21 behavior. Do we have that here?

22 COMMISSIONER MCHUGH: We don't.

23 CHAIRMAN CROSBY: How they do this  
24 elsewhere would be pretty interesting.

1                   COMMISSIONER MCHUGH: How do  
2 elsewhere and what metrics do they use to measure  
3 their success.

4                   CHAIRMAN CROSBY: Yes. They have the  
5 metrics. I'm sorry. Two up above they say  
6 describe the metrics will use and the use to which  
7 those  
8 metrics --

9                   COMMISSIONER MCHUGH: The history.

10                  CHAIRMAN CROSBY: -- the history of  
11 metrics, but other historic behavior it doesn't  
12 have anything else besides the metrics.

13                  COMMISSIONER MCHUGH: Okay. Let me  
14 work with that. The metrics are really just the  
15 measure of their overall effort.

16                  CHAIRMAN CROSBY: Right, as opposed to  
17 what do you do? What have you done in other  
18 jurisdictions?

19                  COMMISSIONER MCHUGH: What have you  
20 done and what are you measuring, right?

21                  CHAIRMAN CROSBY: Right.

22                  COMMISSIONER MCHUGH: And then how do  
23 you measure?

24                  CHAIRMAN CROSBY: My last one is under

1 other. There is a whole series of provide an  
2 assessment, provide assessment, provide an  
3 analysis, but it doesn't say anything about and  
4 your mitigation plan. It only talks about an  
5 assessment and an analysis, impact on housing,  
6 school populations, etc.

7 Do we also want to know besides your  
8 assessment, how do you propose to mitigate them?

9 COMMISSIONER MCHUGH: Well, it does  
10 ask for the effect. It says in each of these  
11 provide an analysis of existing water facilities  
12 and the impact the facility's water usage will have  
13 on those who share the same water resources. How  
14 do we get at that? If they give an assessment and  
15 it's adequate to serve all existing and additional  
16 uses, then there is nothing to mitigate, right?

17 CHAIRMAN CROSBY: Actually, yes, it's  
18 interesting. Because under available police,  
19 fire and emergency you do have an applicant --  
20 steps applicant plans to remedy any deficiencies  
21 and agreements been made. So, do we presume that  
22 sewage, water, school and housing --

23 COMMISSIONER MCHUGH: I suppose we  
24 could add any deficiencies throughout.

1                   CHAIRMAN CROSBY: Remedy  
2 deficiencies, if any, or something like that.  
3 That was it for me. Anybody else on mitigation?  
4 Then you got economic development.

5                   COMMISSIONER MCHUGH: Did I jump over  
6 it?

7                   CHAIRMAN CROSBY: I thought you had  
8 reordered it.

9                   COMMISSIONER MCHUGH: No. I thought  
10 we did do economic development, sorry.

11                  COMMISSIONER STEBBINS: I only had one  
12 comment and I think it's just on your duplication  
13 it got put in under the first block number four,  
14 implementing workforce development program in the  
15 last entry in green provide plans of detailed  
16 collaboration with tourism and other related  
17 industries. It's actually duplicated below under  
18 regional tourism and economic impact. It's  
19 probably where it's appropriately supposed to be,  
20 third bullet down.

21                  COMMISSIONER MCHUGH: Okay. It  
22 shouldn't be in both places. I thought I did take  
23 it out on the final version. We'll take it out so  
24 it only appears in one place.



1                   COMMISSIONER CAMERON: I had a  
2 question about the very last category under green  
3 at the bottom of what's my page four on the old one.  
4 So, it's the first page of economic development at  
5 the very bottom, green.

6                   COMMISSIONER MCHUGH: Yes.

7                   COMMISSIONER CAMERON: Provide  
8 documentation that outlines the ethnic diversity  
9 of the applicant's workforce. Are we looking for  
10 a percentage of what the populations are? Some  
11 places it may be very difficult to have ethnic  
12 adversity if in fact none exist in the state.

13                  COMMISSIONER MCHUGH: So, what would  
14 you propose? We're looking for --

15                  COMMISSIONER CAMERON: Maybe a  
16 percentage of the population in that area or  
17 something that would give us are you trying to  
18 mirror the diversity in that region.

19                  CHAIRMAN CROSBY: I would think they  
20 would take that on themselves. They are going to  
21 say here's our workforce and here's how it compares  
22 to the jurisdiction.

23                  COMMISSIONER CAMERON: You think  
24 that's implicit in that statement.

1           CHAIRMAN CROSBY: I don't know. It  
2 wouldn't hurt to put something else about it to  
3 make it contextual but I think they would do that  
4 themselves. I don't think they're going need to  
5 be defined on how to make themselves look good or  
6 not look bad.

7           COMMISSIONER MCHUGH: I also think  
8 these things are opportunities for questioning as  
9 well as self-contained answers. And we can  
10 certainly ask if it's low. I suspect all of the  
11 applicants are going to be vigorously pursuing  
12 that goal. And if not, we can ask them why. And  
13 if the answer is there just aren't that many people  
14 available, we can take that into account.

15          COMMISSIONER CAMERON: I just looked  
16 in doing my work with police departments, it's  
17 always of great interest to me what the  
18 demographics are like. And then you can judge  
19 accordingly how well they're doing.

20          COMMISSIONER MCHUGH: Suppose we said  
21 something along the lines of provide documentation  
22 of your efforts to achieve ethnic diversity at  
23 other locations and the results of those efforts  
24 in terms of the composition of the workforce? So,

1 we get their plans and results.

2 COMMISSIONER CAMERON: Yes, I like  
3 that.

4 COMMISSIONER MCHUGH: Okay. That  
5 would give an opportunity to take care of that kind  
6 of an issue.

7 COMMISSIONER ZUNIGA: I had a comment  
8 that could very easily be part of the form. When  
9 it comes to 9(12) on the number of employees, the  
10 number of jobs --

11 COMMISSIONER MCHUGH: Where are you  
12 looking now?

13 COMMISSIONER ZUNIGA: Job creation.

14 COMMISSIONER MCHUGH: The 12th line  
15 down?

16 COMMISSIONER ZUNIGA: The second one  
17 in yellow.

18 COMMISSIONER MCHUGH: 9(12), okay.

19 COMMISSIONER ZUNIGA: And this is  
20 statutory language relative to the number of  
21 employees. At some point, whether the form or by  
22 regulation, I suppose the form may be a better  
23 bidding place to stipulate that multipliers are  
24 usually separate.

1           That the multiplier effect is not  
2 embedded in the calculation. Or also to make sure  
3 we are talking about full-time employees versus  
4 FTEs. And those full-time employees are with  
5 benefits. I don't know if threshold is 31 and 32  
6 hours in excess of that. So, that there's a way  
7 to compare across applicants those kinds of  
8 numbers. Some of the job numbers could vary if  
9 those assumptions are used differently.

10           COMMISSIONER MCHUGH: Yes. I think  
11 that's a good idea. One of the things that we can  
12 do and should do in areas like that, it seems to  
13 me, is provide some kind of a standardized  
14 reporting sheet so that we easily can compare  
15 apples to apples. And as part of the various  
16 appendices include where it's applicable and makes  
17 sense these reporting sheets. That is a primary  
18 area, I think, for that.

19           CHAIRMAN CROSBY: I have two very,  
20 very minor editorial things. In the application,  
21 not so much here, but when we finally publish the  
22 application, there are some parallel structure  
23 issues. I don't know whether we care or not.

24           COMMISSIONER MCHUGH: There are a lot

1 of parallel structure issues and we will fix those.

2 CHAIRMAN CROSBY: Okay. We could  
3 just not worry about it, but everybody knows what  
4 we mean. Under job creation four will provide  
5 documentation to demonstrate how applicant will.

6 COMMISSIONER MCHUGH: That's part  
7 of --

8 CHAIRMAN CROSBY: Right. So, you're  
9 aware of all that.

10 Under supporting external businesses  
11 and job growth, I thought it would be good to add  
12 something about documenting performance on this in  
13 other portfolio facilities.

14 COMMISSIONER MCHUGH: What's the  
15 this?

16 CHAIRMAN CROSBY: All of their work  
17 with local communities and minority businesses and  
18 so forth. There's two things. It's diverse  
19 suppliers and local suppliers.

20 COMMISSIONER MCHUGH: Yes, history.

21 CHAIRMAN CROSBY: History, right.  
22 That was it for me. You did a great job, Judge.

23 COMMISSIONER MCHUGH: So, we'll make  
24 this last set of changes, circulate it, try to

1 circulate it tomorrow. And then it will be in  
2 place for Thursday. Recognizing that even then  
3 it's slightly plastic as we move forward.

4 COMMISSIONER CAMERON: Excellent  
5 work, thank you.

6 CHAIRMAN CROSBY: Go with your next.

7 COMMISSIONER MCHUGH: The next one is  
8 really a discussion starter and perhaps is better  
9 left for a thorough discussion until we discuss the  
10 regs. But it's designed to pick up at the point  
11 where we receive the RFA-2 application, and  
12 outline what we intend to do with it and the rough  
13 order in which we intend to do things and who's  
14 involved in doing them.

15 And it's designed to help us think  
16 through the process, the regs., the kind of staff  
17 support that we'll need by the time we get these,  
18 the kind of consultants that we'll need. And is  
19 designed to help us think through all of those  
20 things.

21 So, basically it contemplates at a very  
22 high level that we get the RFA-2 application. We  
23 would have a check for administrative completeness  
24 that is is the sort of checklist completeness. Do

1 we have the stuff? Is it in the form we asked for?

2 We'd have some kind of an initial  
3 presentation so that everybody and the public  
4 included, but ourselves and the staff would  
5 understand generally what was in these what will  
6 be very large proposals and what the unique  
7 features of them are.

8 Then we can go through the process of  
9 processing them with all of that in mind. We are  
10 required to have one statutory hearing in the host  
11 community, or in another venue if the host  
12 community asks for that for each application that  
13 we process. And that hearing we are required to  
14 have but it can last a number of days.

15 It doesn't have to be done in one day.  
16 It doesn't have to be done in one sitting. Maybe  
17 it will be preferable to have it done over a series  
18 of days.

19 But in any event, however we handle  
20 that hearing, we're not limited to simply one  
21 single hearing. We can have hearings on a variety  
22 of things. We can have public forums on a variety  
23 of things. There's a lot of things that we can do  
24 as we process them.

1           And it is likely that we won't process  
2 every one of these in exactly the same fashion.  
3 So, both this chart and the accompanying  
4 regulations maintain the flexibility that we'll  
5 need to deal with different problems, different  
6 issues that arise, different locations, different  
7 kinds of communities, and the unresolved issues  
8 that exist with some applications.

9           With respect to some, for example, we  
10 may not have any unresolved surrounding community  
11 issues. With respect to others, we may. And the  
12 same is true of impacted live entertainment  
13 venues. We may want to have a hearing on which we  
14 simply focus on some aspect of mitigation.

15           So, without going on endlessly, that's  
16 what this is designed to do. To start that  
17 conversation and really to help us think through  
18 the regs. and the next steps. And again, it's  
19 something we don't have to resolve today, probably  
20 shouldn't resolve today since we're just thinking  
21 about it for the first time and should simply open  
22 the discussion.

23           The yellow highlights are mine because  
24 they indicated a particular issue to focus on at



1 an appropriate time. Who participates in various  
2 activities? What are we going to have for a public  
3 hearing in the host community and the like? There  
4 aren't too many of them, but there are several that  
5 are highlighted with particular attention.

6 So that is essentially what this  
7 document is, and comments are welcome.

8 CHAIRMAN CROSBY: Commissioners?

9 COMMISSIONER ZUNIGA: I had a question  
10 relative to the third column on this spreadsheet  
11 outside experts.

12 COMMISSIONER MCHUGH: Right.

13 COMMISSIONER ZUNIGA: Is that  
14 effectively -- on the line that says action towards  
15 the middle, retention of experts to review the  
16 application. Are those the same experts that  
17 we're thinking about? Or does that refer to two  
18 difference sets of experts?

19 COMMISSIONER MCHUGH: No. This is  
20 designed to highlight the possibility that where  
21 conceivably we may need outside expert help, and  
22 to help us think through what expertise we need and  
23 when we need it.

24 So, it does not come with any

1 preconceptions. We have to just think about it  
2 and then decide that these are areas where we need  
3 help, what kind of help do we need.

4 CHAIRMAN CROSBY: They are the same  
5 experts. In the row and in the column, you're  
6 referring to the same experts.

7 COMMISSIONER MCHUGH: I'm sorry. I  
8 misunderstood the question. Yes. The answer as  
9 usual was a short answer and a long answer. I gave  
10 you the long one.

11 COMMISSIONER ZUNIGA: Technically, we  
12 could have an X there not be in other words.  
13 Because we don't need experts to tell us what  
14 experts. It's the same experts.

15 COMMISSIONER MCHUGH: I should add  
16 this qualifier. That the identification -- For  
17 example, take the identification of surrounding  
18 communities, outside experts. They probably will  
19 be the same experts that are referred to in the  
20 retention of experts to peer review applications.  
21 They probably will be. But that's part of the  
22 discussion, the thinking we need to do.

23 Are we likely to run into on occasion  
24 a surrounding community issue or a surrounding

1 community identification issue that calls for an  
2 expertise that isn't represented by an architect  
3 or a financial or an environmental or a gaming  
4 expert. Perhaps a traffic flow expert would be  
5 uniquely helpful for that. And that would not be  
6 the same as the environmental expert we get. I  
7 don't know, but it's something to think about.

8 COMMISSIONER CAMERON: Commissioner  
9 McHugh, sticking with the identification of  
10 surrounding communities, wouldn't the applicant  
11 have the first kind of responsibility there before  
12 it came to staff to make those identifications?  
13 It's be working --

14 COMMISSIONER MCHUGH: No question  
15 that the applicant would have that responsibility  
16 initially. And if there's, of course, an  
17 agreement then there is no issue here. This  
18 hypothesizes an application in which we receive an  
19 application from a surrounding community and the  
20 applicant says I don't think they're a surrounding  
21 community. And we need help resolving that  
22 dispute.

23 COMMISSIONER CAMERON: Okay.

24 CHAIRMAN CROSBY: These are all -- I

1 understand your point, but these are all after  
2 we've received the application.

3 COMMISSIONER MCHUGH: Right.

4 COMMISSIONER CAMERON: Okay.

5 CHAIRMAN CROSBY: Because the  
6 applicants have already made their judgment. So,  
7 they no longer need to be in it. But somewhat  
8 related to that, the statute says that we don't  
9 make the surrounding community judgment until  
10 after we've reviewed the entire application.

11 COMMISSIONER MCHUGH: Right.

12 CHAIRMAN CROSBY: You're putting this  
13 prior to the real substantive review. You're  
14 really putting it almost just in the -- You've got  
15 the completeness check and you've had  
16 presentation.

17 COMMISSIONER MCHUGH: Right.

18 CHAIRMAN CROSBY: But it's not after  
19 review of expert reports.

20 COMMISSIONER MCHUGH: Right.

21 CHAIRMAN CROSBY: Is that the way you  
22 read the statute? Do you think that's what that  
23 means?

24 COMMISSIONER MCHUGH: No. The

1 statute says that we make the judgment about  
2 surrounding communities after we've reviewed the  
3 entire application. The question is what does  
4 review mean? It can't, I think, logically mean,  
5 and something we can discuss, it can't logically  
6 mean after we've done everything but identify  
7 surrounding communities. That doesn't make any  
8 sense. There's too long a time there.

9 So, it seems to me that some of these  
10 things are likely to go on in some formal or  
11 informal way in parallel. We get the application.  
12 We have a certain group reviewing the application  
13 after the administrative completeness is decided.  
14 But not taking any formal action and not us taking  
15 any formal action. People are reviewing the  
16 surrounding community issues.

17 And at some point, we've gone far  
18 enough so that we can say we've reviewed the entire  
19 application. We know what the applicant's  
20 proposal is. We know what the nuances are. We  
21 see what that applicant has identified as the  
22 impacts.

23 And now we're in possession of enough  
24 information to move into a determination of who the

1 surrounding communities are. But we've been  
2 looking at that all along. And it seems to me  
3 we've got to proceed in that fashion. And it can't  
4 be entirely linear or the process will be strung  
5 out for an extraordinarily long time. That  
6 doesn't mean that that belongs there, Mr.  
7 Chairman.

8 CHAIRMAN CROSBY: I know. But I think  
9 aspirationally, it surely does belong there as  
10 you've described that. I agree with that. We can  
11 wait a little longer if we need to.

12 COMMISSIONER MCHUGH: Right.

13 CHAIRMAN CROSBY: Okay. That makes  
14 sense to me.

15 COMMISSIONER ZUNIGA: Just one  
16 thought relative to the experts to peer review the  
17 application. I think architects captures the  
18 general broad idea that's contained or implicitly  
19 here. But project managers as a subset or just  
20 like architects may also be very helpful, so  
21 architects/project or program managers.

22 COMMISSIONER MCHUGH: Okay.

23 COMMISSIONER STEBBINS: Just to go  
24 back to that identification of surrounding

1 community's point. Having it up that early in  
2 the process, we also expect that once we receive,  
3 and there's obviously a lot of attention around an  
4 RFA-2 application coming in, that we'll also have  
5 communities who will reach out to us to ask to be  
6 identified as a surrounding community. So, that  
7 isn't necessary just our own identification step.

8 COMMISSIONER MCHUGH: That's right.

9 COMMISSIONER STEBBINS: That maybe a  
10 notice or communication from the surrounding  
11 community.

12 COMMISSIONER MCHUGH: Actually,  
13 identification both in the surrounding community  
14 and in the impacted live entertainment venue  
15 columns should more properly be determination.

16 We've got to determine that and we've  
17 got to determine those before we can get to the next  
18 stage. But the determination is a process as I've  
19 described it, but that's the ultimate outcome.

20 CHAIRMAN CROSBY: Down below on the  
21 first page, initial screening and narrowing of  
22 field. I don't think we've ever talked about that  
23 before. Have you sort of picked that up from best  
24 practice or you just think it's a good idea?

1                   COMMISSIONER MCHUGH: No. I just put  
2 it on the table for discussion. And the idea is  
3 if we have four applicants, do we want to narrow  
4 the field to two and then proceed with a process,  
5 a further process with the two?

6                   Again, I think maintaining flexibility  
7 is really important here, rather than tying  
8 ourselves in advance to a particular process. But  
9 it may be that when we get applications that we get  
10 several. And several are pretty close. And  
11 those several are pretty far ahead of the others.

12                   And so, we can come to a conclusion  
13 before making a final decision that the others are  
14 not going to make it. We've given them the best  
15 shot that they can take and they're just not as good  
16 as the other two say. So, we might want to say  
17 we're not going to award it to you and then move  
18 on with other two.

19                   On the other hand, we may have four or  
20 three or however many that are very close and we  
21 can't make that kind of a judgment.

22                   CHAIRMAN CROSBY: So, this is a  
23 possible step?

24                   COMMISSIONER MCHUGH: That's right.



1                   CHAIRMAN CROSBY: Do we need to  
2 discuss now or at some point how we will manifest  
3 our decision? In other words, do you win by a  
4 majority vote of the Commission? Do you win by a  
5 plurality vote? Do we need to figure out?

6                   COMMISSIONER MCHUGH: We have not said  
7 that in the regulations and we don't say it here.  
8 And we do need to discuss it. I think we do not  
9 need to tie ourselves down to doing that. The  
10 statute says the Commission will decide. I think  
11 we need to let people know how we've done it, but  
12 I'm not sure we need to know and decide in advance  
13 exactly how we're going to do it.

14                  CHAIRMAN CROSBY: We certainly don't  
15 need to do it now.

16                  COMMISSIONER MCHUGH: Right.

17                  CHAIRMAN CROSBY: It's something to  
18 think.

19                  COMMISSIONER MCHUGH: Right. We do  
20 need to think about it. We do need to discuss it.  
21 And we certainly don't need to decide it now.

22                  CHAIRMAN CROSBY: What's under the  
23 other column, A/SC and A/LEV, what are those?

24                  COMMISSIONER MCHUGH: The surrounding

1 communities and the live entertainment venues.  
2 And the host community has to be involved in the  
3 host community hearing. On the next page agencies  
4 will undoubtedly be involved in drafting the  
5 conditions for the licensees, just an effort to --  
6 and the A in A/SC is applicant, so the applicant  
7 and surrounding communities.

8 CHAIRMAN CROSBY: And ES onto the next  
9 page under Open Meeting Law?

10 COMMISSIONER MCHUGH: Executive  
11 session and that's why it's highlighted. I'm not  
12 sure we would want to do that. I'm not sure we have  
13 the power to do that, but it's there to at least  
14 think about.

15 CHAIRMAN CROSBY; Yes. Okay.  
16 That's a big topic. It's a good point.

17 COMMISSIONER MCHUGH: It is. And  
18 structuring the Commission's role in this and the  
19 staff's role in this is something that we all need  
20 to think about as we go forward. It surely is not  
21 something we can decide today, but it's something  
22 we need to begin to think about.

23 CHAIRMAN CROSBY: That is something  
24 Director Day is working on too as he gets his arm

1 around the organization.

2 COMMISSIONER MCHUGH: Right. We  
3 began thinking about this early on in a very, very  
4 preliminary sense when there wasn't a staff to  
5 speak of. And I think all of us had in our mind's  
6 eye a process that was non-staff dependent. But  
7 happily we have a terrific staff and by the time  
8 we get to this we'll have added to that. And that  
9 gives us a lot more flexibility and a lot more  
10 resources.

11 CHAIRMAN CROSBY: None of them have  
12 kids, none of them needs to sleep. It's great.  
13 It's just an unusual staff that way.

14 COMMISSIONER MCHUGH: Don't worry.  
15 That was a joke.

16 CHAIRMAN CROSBY: I guess the only  
17 thing I was thinking, the yellow on the second  
18 page, negotiations with applicant BAFO, again this  
19 was something we never got around to thinking  
20 about.

21 COMMISSIONER MCHUGH: That's just  
22 highlighted.

23 CHAIRMAN CROSBY: For that reason.

24 COMMISSIONER MCHUGH: For that

1 reason.

2 CHAIRMAN CROSBY: We can negotiate  
3 with somebody to change their deal or whatever  
4 before we make a final decision.

5 COMMISSIONER MCHUGH: Right.

6 CHAIRMAN CROSBY: I think that's good.

7 COMMISSIONER MCHUGH: We have to think  
8 that through obviously. There's a lot of  
9 implications there. We have to think that  
10 through. That's a possibility you do that kind of  
11 a process.

12 COMMISSIONER ZUNIGA: Like the  
13 previous point, it's always important to have it  
14 as an option and not constrain ourselves out of or  
15 into it.

16 CHAIRMAN CROSBY: Right.

17 COMMISSIONER MCHUGH: As I said, I  
18 don't think there's a lot father we can go. We  
19 just touch the highlights of this now and think  
20 about it, but it helps to look at and understand  
21 why the regulation dealing with processing has  
22 been drafted the way it has been.

23 CHAIRMAN CROSBY: Right. So, we  
24 hope that Thursday we'll have the final approval

1 of the evaluation criteria.

2 COMMISSIONER MCHUGH: Right.

3 CHAIRMAN CROSBY: And then you and  
4 Commissioner Stebbins are moving on down the  
5 process and outside -- What are the next steps as  
6 you see it?

7 COMMISSIONER MCHUGH: The two things  
8 that are going be done on Thursday are to approve  
9 the evaluation criteria, approve the draft regs.  
10 to start the evaluation process.

11 Then Commissioner Stebbins and I are  
12 continuing to meet with various entities that do  
13 competitive RFPs to see how they process them after  
14 they get the RFPs.

15 Then revisit this process with all of  
16 you and with some idea of the kinds of expertise  
17 that we ought to be thinking of getting in order  
18 to prepare ourselves to do it.

19 And to think about perhaps refinements  
20 to this kind of a flowchart that will take it to  
21 the next level. I think we'll never get to a level  
22 where we have an exactly prescribed flowchart  
23 because I think there are too many variables. But  
24 we can refine it more and that would be the next

1 step.

2 CHAIRMAN CROSBY: Maybe on 3/11,  
3 maybe? Maybe not next week but the week after that  
4 --

5 COMMISSIONER ZUNIGA: 4/11.

6 CHAIRMAN CROSBY: Sorry, 4/11 would be  
7 a week to think about taking another look at the  
8 process and the criteria -- process and outside  
9 resources.

10 COMMISSIONER MCHUGH: That's two  
11 weeks from today.

12 CHAIRMAN CROSBY: Two weeks from  
13 today.

14 COMMISSIONER MCHUGH: Yes, I think  
15 that's right. I think that's right. I think  
16 that's right. I think that the kinds of expertise  
17 on which we will need to rely we can be pretty clear  
18 on that by then.

19 This piece I think -- I'm not sure we'll  
20 be ready to revisit this then, because one of the  
21 things that experts we get can help us think  
22 through is this. But anyway we can at least  
23 identify it then.

24 CHAIRMAN CROSBY: And give us an

1 update on all of these meetings that you've had  
2 with the people who have been through it.

3 COMMISSIONER MCHUGH: Right.

4 CHAIRMAN CROSBY: Then the other piece  
5 that was in our original flow, we had evaluation,  
6 we had weighting. And we had process and outside  
7 suppliers. Where are we on the weighting?

8 COMMISSIONER MCHUGH: The process  
9 includes how different people approach this.  
10 That's a question we're asking everybody and there  
11 are various views as to how you deal with that  
12 issue.

13 CHAIRMAN CROSBY: So, maybe we can at  
14 least start to talk about that on where you're at  
15 on 4/11.

16 COMMISSIONER MCHUGH: Right.

17 CHAIRMAN CROSBY: Okay. Great.  
18 Anything else on this stage? Let's take a quick  
19 break and then we'll come back and jump into the  
20 regs.

21

22 (A recess was taken)

23

24 CHAIRMAN CROSBY: We will reconvene at

1 2:13 and we will invite our crack legal team, and  
2 again pass the gavel to Commissioner McHugh.

3 COMMISSIONER MCHUGH: I am going to  
4 quickly pass the gavel on. General Counsel Blue  
5 and Counselor Todd Grossman have done a great job  
6 on this. And it consists of two parts, and they  
7 will explain it to you.

8 One is amendments to the existing regs.  
9 that is 101 to 117. Those are the ones we have in  
10 place, some amendments necessitated by this  
11 process and then a brand-new set of regs. beginning  
12 at 118.

13 You've seen the majority of 120 through  
14 131 before. I think the first time you saw 118 and  
15 119 was last week some time. But the discussion  
16 we just had I think is a helpful introduction to  
17 that. Without further adieu, I'll gladly  
18 surrender to you.

19 MS. BLUE: We can start this however  
20 you're comfortable. We can start with the  
21 amendments, if you want, to the existing  
22 regulations, the items in the red, right, Todd, are  
23 the changes that were made to the existing  
24 regulations.



1           A fair number of them are just  
2 numerical changes but there are few substantive  
3 changes. One of the biggest being in reg. number  
4 108. And that was the contribution or request for  
5 anything of value regulation we discussed a little  
6 as part of our other conversation today.

7           CHAIRMAN CROSBY: And you're going to  
8 amend that slightly to adjust to the effective  
9 date.

10          MS. BLUE: Yes.

11          CHAIRMAN CROSBY: We might as well go  
12 through the amendments first as long as you  
13 mentioned that. On 108.03, does this include  
14 mandatory disclosure requests, any requests -- I  
15 think there's a missing word. -- of anything of  
16 value. Does the way this is drafted would that  
17 include asking someone to hire a friend?

18          MS. BLUE: Yes. That was one of the  
19 points we were driving at, yes. That was the  
20 services or actions, actions to take or not taken.

21          CHAIRMAN CROSBY: Does anybody have  
22 other issues with the amendments? 102.06,  
23 matters not provided for. Is this a section that  
24 isn't drafted yet or is this actually the way the

1 section would read?

2 MR. GROSSMAN: That is the way the  
3 section would read. We put that in there and I  
4 wanted to draw your attention to that. That is  
5 language that is included in a number of other  
6 codes and regs. that I've seen in my travels.

7 I wanted to put it before you take a  
8 look at to see if it was something that you think  
9 would work in the context we're working in here.

10 CHAIRMAN CROSBY: Yes. It make sense  
11 to me. It kind of sort of covers the point that  
12 Commissioner McHugh and I were talking about about  
13 evaluation criteria. I think we've tried  
14 repeatedly to make sure that we're giving  
15 ourselves maximum flexibility, not inadvertently  
16 leaving something out.

17 So, having a catchall like this just  
18 simply reinforces that point. It certainly make  
19 sense to me. I didn't really it was something that  
20 is just sort of commonplace.

21 MR. GROSSMAN: I don't think it's  
22 commonplace, necessarily, but actually a similar  
23 provision has been reviewed by the Appeals Court,  
24 even though that wasn't the issue in the case, they

1 didn't comment on it in any kind of negative  
2 fashion.

3 CHAIRMAN CROSBY: Right. Okay.  
4 Anything else?

5 COMMISSIONER MCHUGH: It maintains  
6 flexibility and notice, which are both very  
7 important.

8 CHAIRMAN CROSBY: Right. 106.03 and  
9 04 are in yellow. What was the reason for that.

10 MR. GROSSMAN: Those were  
11 highlighted, because I thought this would be a good  
12 opportunity just to make sure that the Commission  
13 still favors this approach and that it will work  
14 for the RFA-2 process as well.

15 CHAIRMAN CROSBY: The only thing I saw  
16 in 106.03, and I'm not sure it can all be -- You  
17 can't file electronically a model of the site.  
18 And there may be other things, I don't know exactly  
19 whether there's other things that you couldn't  
20 file electronically. I don't know.

21 I guess maybe now these days you've got  
22 3-D printing. Maybe you can file this model of the  
23 site. But there must be -- I don't know maybe  
24 there's some things which you can't file

1 electronically, and this would just accommodate  
2 that.

3 COMMISSIONER MCHUGH: I think, Mr.  
4 Chairman, there is almost nothing that can't be  
5 filed electronically. And if there is something  
6 that can even file 3-d things, we can't print them.  
7 But somebody could certainly asked to be relieved  
8 from that if they had something so unique that they  
9 couldn't.

10 CHAIRMAN CROSBY: I suppose probably  
11 -- I'm so old-fashioned to think you'd have a model  
12 of the site. You'd probably have a video of the  
13 site where you would fly around and walk through  
14 it, right -- Duh.

15 What was the point of highlighting  
16 petitions for adoption, amendment or appeal?

17 MR. GROSSMAN: Again, it was just  
18 while we're reviewing the regs. just to draw this  
19 section to your attention. This sets forth the  
20 very specific manner in which the petitions have  
21 to be received and reviewed as opposed to allowing  
22 for a more flexible manner of doing it. Where if  
23 someone just has a comment, they can just send it  
24 in. You can look at it or not look at it or

1 whatever you want to do.

2 I didn't recommend that you delete this  
3 so as not to set off the alarm and have folks think  
4 that you were precluding any petition for  
5 amendment to the regulations. But I just wanted  
6 to draw your attention to this section that has a  
7 very specific procedure in place.

8 COMMISSIONER MCHUGH: One of the  
9 benefits of such a procedure is that it is clear  
10 that that's what the person is asking for, as  
11 opposed to having something that's ambiguous and  
12 we interpret it as a comment and the sender  
13 interprets it as a petition. And some court later  
14 on thinks the sender was right.

15 This way these things are flagged when  
16 they come in. We know what they are and we know  
17 what our obligation is in response to it is.

18 CHAIRMAN CROSBY: Let me ask about the  
19 electronic again. It seemed to me there might be  
20 lots of big color printing. There might be  
21 multiple page, many, many pages of stuff. If we  
22 have it electronically, we will very likely want  
23 to print some of it out. And do we want to do that?  
24 I guess we could always ask people who give it to

1 us to print it if we want to.

2 COMMISSIONER ZUNIGA: The regulations  
3 speak to 10 copies of the application.

4 CHAIRMAN CROSBY: Printed as well as  
5 electronic?

6 COMMISSIONER ZUNIGA: Yes.

7 CHAIRMAN CROSBY: Okay, fine. So,  
8 we're going to get a print and electronic?

9 MR. GROSSMAN: That's up for  
10 discussion as well. We flagged that area as well  
11 to have you discuss. We wrote that in.

12 CHAIRMAN CROSBY: I can't imagine that  
13 we could possibly review this stuff just on the  
14 computer screen. Many people are going to want a  
15 lot of printed material. And we're going to have  
16 multiple teams looking at these things. So, I  
17 would say we would want many printed copies of it,  
18 many hard copies, as well as having it online. So,  
19 if this requires electronically and 10 copies  
20 printed that makes sense to me. So, it should be  
21 both.

22 COMMISSIONER ZUNIGA: 119.02 that has  
23 completing the application.

24 COMMISSIONER MCHUGH: I was going to

1 ask why we needed 10 printed copies. I can  
2 understand needing a printed copy or two, but I  
3 don't know the answer to that question. It just  
4 seems to me that particularly with the volume we're  
5 going to have here that the electronic stuff is  
6 going to be easier to handle than the printed. But  
7 I don't think it's something to spend much time on.

8 We're going to have both. The  
9 question is whether we really need 10. It's going  
10 to be 20 to 25 volumes things. And they're going  
11 to require some warehouse space.

12 COMMISSIONER CAMERON: Security is an  
13 issue. Where did we get 10?

14 CHAIRMAN CROSBY: These are public,  
15 aren't they?

16 COMMISSIONER MCHUGH: There will be  
17 some financial things that will not be public in  
18 all likelihood. I'm sorry.

19 COMMISSIONER CAMERON: Was it  
20 recommended to us? I'm agreeing with you. I was  
21 wondering also.

22 MR. GROSSMAN: Some of those type of  
23 items came out of the Springfield application.  
24 And that might have been one of them. I don't know

1 that they asked for 10 specifically but they asked  
2 for a number.

3 CHAIRMAN CROSBY: Well, I don't think  
4 we have any idea. Let's get 10. My guess is we're  
5 going to need a bunch of them. Commissioner  
6 McHugh doesn't think we're probably going to need  
7 a bunch of them. So, let's just pick a number and  
8 get it. And we can always get more if we need it.

9 COMMISSIONER MCHUGH: I really do --  
10 I'm not being entirely facetious saying that the  
11 volume. If we get 25 -- take a look at the  
12 evaluation criteria, translate that into an  
13 application. Translate each one of those lines  
14 into an appendix. That's the worst case. We're  
15 going to consolidate some of them.

16 But still, the volume of stuff is going  
17 to be huge. And to have say 20 volumes, 200 thick  
18 notebooks for each of the 11 applications, you're  
19 talking about a big room full of stuff.

20 So, it seems to me that if we got it  
21 electronically and got a couple of printed  
22 applications and then if we needed them, ask the  
23 applicant for more, we'd be in better shape. We'd  
24 have the printed stuff. And we'd have the space



1 to store it. We'd only need one --

2 CHAIRMAN CROSBY: We have a principle  
3 here of everyone has permission to be wrong, so  
4 let's go with two.

5 COMMISSIONER STEBBINS: Well, we've  
6 only rented out so much space.

7 CHAIRMAN CROSBY: I'm fine with that.  
8 They can put a bunch up. Let's get one electronic  
9 and two in print.

10 COMMISSIONER ZUNIGA: This is minor,  
11 but I think it helps along the way. Unbound,  
12 three-ring binders really helps when needed to  
13 print or photocopy particular sections as opposed  
14 to a bound copy.

15 CHAIRMAN CROSBY: Yes.

16 COMMISSIONER MCHUGH: Yes.

17 COMMISSIONER CAMERON: That makes  
18 sense.

19 CHAIRMAN CROSBY: So, we are on the  
20 amendments. Are there any other questions in the  
21 amendments?

22 MR. GROSSMAN: The only other big  
23 issue in the amendments is the community  
24 disbursement section in which we provide for

1 involuntary disbursements. That works  
2 hand-in-hand with the surrounding community  
3 section. So, we could either look at this now or  
4 when we get to that.

5 I think we have actually discussed a  
6 great deal of that before. The only part you may  
7 not have seen before would be on page 24 where we  
8 adjusted the section that deals with what the  
9 Commission will do if any extra monies left in the  
10 account. But it seems like a fairly unlikely  
11 scenario. But instead of it going -- We just  
12 provide for a more specific procedure.

13 CHAIRMAN CROSBY: Okay. Is that it?  
14 So, we can move on, Attorney Blue.

15 MS. BLUE: On the new regulations, we  
16 would like to draw your attention to 118 and 119.  
17 These are the regulations that we talked a little  
18 bit about in terms of the evaluation criteria.

19 118 talks about our process. And this  
20 attempts to codify some of the things that you saw  
21 on the long sheets, the process sheet. This is  
22 what Commissioner McHugh was referring to when he  
23 said if you look at the sheet, this is what tracks  
24 the regulation. This is what 118 does.

1                   CHAIRMAN CROSBY: So, let's start out  
2 with 118. Anybody, go ahead, do you want to start  
3 Commissioner Zuniga?

4                   COMMISSIONER ZUNIGA: I think it's  
5 great. I think it lays the groundwork really  
6 well. I think it balances the flexibility that we  
7 need with the detail that needs to be put forward.  
8 I actually have no comments on 118. I think it's  
9 a great addition.

10                  CHAIRMAN CROSBY: Commissioner  
11 Stebbins?

12                  COMMISSIONER STEBBINS: Just quickly,  
13 118.01(3), the Commission shall have no obligation  
14 to accept or review an incomplete application  
15 submitted by the established deadline.

16                  The deadline comes and passes. We're  
17 looking at the application and we find it  
18 incomplete. We stop the review of it right there.  
19 That language just seemed somewhat awkward.

20                  MS. BLUE: We have language in another  
21 regulation that talks about -- actually, farther  
22 on in this one. If you look at 118.03 there's  
23 language for a positive determination and a  
24 negative determination. You would do that. If

1 you looked at an application that wasn't complete,  
2 we would make a negative determination.

3 COMMISSIONER STEBBINS: Okay.

4 CHAIRMAN CROSBY: Negative  
5 determination meaning what?

6 MS. BLUE: It's not complete.

7 CHAIRMAN CROSBY: Okay.

8 MS. BLUE: It's a negative  
9 determination of administrative completeness.

10 CHAIRMAN CROSBY: But then we would go  
11 back. That's what the step was on the evaluation  
12 process that Commissioner McHugh talked about.  
13 We would check for completeness, go back and get  
14 things completed if they weren't completed.

15 MS. BLUE: That's something we should  
16 discuss whether we want to do that or not. We have  
17 it set up now so that you'd make a determination.  
18 It says in 118.03 we can allow them to cure or they  
19 can file for an appeal.

20 COMMISSIONER MCHUGH: That's really  
21 designed to deal with the situation -- again, give  
22 the flexibility, but designed to deal with the  
23 situation in which somebody just throws together  
24 something that was clearly thrown together at the

1 last-minute.

2 It's unlikely, given all that the  
3 applicants would now have gone through to get to  
4 this stage, but let's assume that happens. This  
5 regulation allows us the opportunity to say this  
6 is just so bad we don't want to spend any more time  
7 with it.

8 CHAIRMAN CROSBY: Does this say that  
9 without a petition by the applicant? Can we just  
10 say to the applicant you missed a few sections, get  
11 them to us?

12 MS. BLUE: Yes.

13 CHAIRMAN CROSBY: So, either can  
14 happen?

15 MS. BLUE: Either/or, yes. And it  
16 really is about the flexibility. If you got an  
17 application that was so clearly deficient that you  
18 didn't want to consider it further, you wouldn't  
19 have to.

20 CHAIRMAN CROSBY: Okay.

21 COMMISSIONER STEBBINS: My only point  
22 was do we need to make a reference in 118.01(3) to  
23 the following section.

24 MS. BLUE: We can cross-reference

1 that, yes.

2 CHAIRMAN CROSBY: On the two above  
3 that section, presumably we're going to set a date  
4 for each license, presumably. So, for each of the  
5 licenses being considered, we'll set a date.  
6 Whether they're the same dates or not, we don't  
7 know, but at a minimum we'll set a common day. So,  
8 everybody will have to be in by some date certain  
9 for each license.

10 COMMISSIONER ZUNIGA: Or each region.

11 CHAIRMAN CROSBY: That's what I meant  
12 each license the Region B license, the Region A  
13 license, the slots license, right. Then if they  
14 wanted to file early they could. Or they could all  
15 come in on the last day.

16 Do we want to talk here or somewhere  
17 about when the application becomes public? What  
18 is the process there? We know having just gone  
19 through this with background checks that people  
20 thought were applications when they really aren't.  
21 People are going to be asking for the applications.  
22 What is our plan, commitment, issues about making  
23 these public and do we need to address that?

24 MS. BLUE: Well, certain parts of the

1 application will lend themselves easily to be  
2 public, depending on the information. We would  
3 have to review the information, review requests  
4 potentially for confidentiality exemptions from  
5 the public record statute.

6 So, we would need some period of time  
7 at which to review the application and see what was  
8 there. But it is something we should give some  
9 thought to as we did in the other Phase-1.

10 CHAIRMAN CROSBY: Yes.

11 COMMISSIONER MCHUGH: We could do this  
12 -- Thinking out loud now. We're going to have the  
13 application and almost all of the useful  
14 information is going to be in the appendices.

15 So, we can set up those appendices to  
16 highlight the financial information, the stuff  
17 that's likely to contain trade secrets and  
18 proprietary information. And create some kind of  
19 a presumption the way we did with the blackouts on  
20 the form. Then include in the instructions, for  
21 what it's worth, some kind of a signal for  
22 applicants to indicate if they think anything else  
23 belongs in that category.

24 Having appendices means that we have

1 easily removable pieces that will make this job a  
2 lot easier, I hope, than the thing we're going  
3 through now.

4 MS. BLUE: It should.

5 CHAIRMAN CROSBY: The application  
6 form like our last phase, the Phase-2 application  
7 form like the Phase-1 application form will have  
8 those sections in it, which we will volunteer may  
9 be redacted. And if anybody wants to have  
10 anything else redacted, they can so request. So,  
11 we probably ought to have something about that in  
12 the regs., about that process in these regs.

13 COMMISSIONER MCHUGH: We can do it in  
14 the application form. The Phase-1 regs. contain  
15 the criteria for distinguishing between the public  
16 and nonpublic pieces of it and the process for  
17 asking for additional -- the things in addition to  
18 those that we designate. But we need to take  
19 another look at it. The infrastructure is mainly  
20 there.

21 MS. BLUE: I think so. We can look at  
22 that.

23 COMMISSIONER MCHUGH: We can look at  
24 it.



1                   CHAIRMAN CROSBY:  As we've gone  
2 through this Phase-1 experience, we need to make  
3 sure that the bidders know what the rules of the  
4 road are here.  For my money, for the most part,  
5 the very most part, these are by definition public  
6 documents.  And it's going to be an unusual item  
7 in the Phase-2 applications, which are not public.  
8 But presumably there may be some, but it's going  
9 to be the exception by a long shot.

10                   But whatever those rules are, we just  
11 need to make sure that they are clear on them  
12 upfront.  So, wherever we discuss it, we need to  
13 discuss it.

14                   COMMISSIONER MCHUGH:  Right.

15                   COMMISSIONER STEBBINS:  I can  
16 certainly see where some financial and security  
17 information is probably going to be information  
18 we're not going to want to have public.

19                   Similar with, because in this section  
20 we're talking about the review and review by  
21 potential outside consultants, it may not fit in  
22 here, but should we have some type of  
23 confidentiality agreement that we hold a reviewer  
24 to to not share the information that's coming in?

1 MS. BLUE: I think it would make sense  
2 to do that. I don't know that it needs to be in  
3 the regs., but we can certainly have them do that.

4 COMMISSIONER MCHUGH: The contracts  
5 with reviewers.

6 MS. BLUE: Yes.

7 COMMISSIONER ZUNIGA: And the  
8 financial information in my view, there is a  
9 distinction between a public company and a private  
10 enterprise which already the markets incorporate  
11 all of that.

12 COMMISSIONER MCHUGH: We're also  
13 going to be asking for marketing plans. We're  
14 going to be asking for things that may legitimately  
15 fall into the category of trade secrets or kinds  
16 of things that really do distinguish one applicant  
17 from another and reveal things that anybody would  
18 consider a trade secret. So, there will be some  
19 things.

20 CHAIRMAN CROSBY: Okay. On 118.03  
21 (1)(c), 118.03 (1)(c), I guess we leave it to the  
22 Executive Director to determine -- This is what we  
23 talked about earlier. If you're incomplete, the  
24 Executive Director at his initiative may permit.

1 So, we assigned that role to the Executive  
2 Director, which kind of presupposes something we  
3 haven't really done organizationally. But I  
4 guess there's no harm in that.

5 Okay, 118.04(1) this is what we talked  
6 about before. Here it says that upon the  
7 determination that an RFA-2 is administratively  
8 complete, the Commission will determine the  
9 surrounding communities pursuant to 205 CMR.

10 And what we talked about I think was if  
11 we can, we will, but we may have to wait. So, I  
12 don't know whether that language needs to be a  
13 little different.

14 COMMISSIONER ZUNIGA: May, it may  
15 determine?

16 COMMISSIONER MCHUGH: No. The idea  
17 was -- And I'm not saying may isn't right. But the  
18 idea was that in doing so, the in doing so is  
19 critical because the in doing so flows into all of  
20 the other procedures that we are going to use.

21 In other words, we're going to decide  
22 the surrounding communities and the impacted live  
23 entertainment venues, and here's how we're going  
24 to do it. Here's a list of things we may do in

1 reaching that decision. Maybe that's not clear.

2 CHAIRMAN CROSBY: I think it is. I  
3 think I'm wrong. I think I jumped. Because as I  
4 was reading this, I didn't really read the whole  
5 thing. Once it's complete, we will determine  
6 communities; we will determine live entertainment  
7 venues and review the merits. It doesn't say in  
8 what order.

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: So, I think it gives  
11 us plenty of --

12 MS. BLUE: The order is flexible in how  
13 you do it.

14 CHAIRMAN CROSBY: And we certainly  
15 know as a practical matter we want to do that as  
16 soon as possible so we can get the process  
17 underway.

18 COMMISSIONER MCHUGH: Right. And  
19 this permits the parallel that you were talking  
20 about too.

21 CHAIRMAN CROSBY: I agree with that.  
22 Under (1) then it says Commission may take some or  
23 all of the following actions. It doesn't mention  
24 under (b) Refer the RFA-2 application, it doesn't

1 mention to other staff or outside consultants.

2 COMMISSIONER MCHUGH: (c) really was  
3 designed, I think, to do that.

4 MS. BLUE: Yes.

5 CHAIRMAN CROSBY: It says you can  
6 retain them. That's fine.

7 MS. BLUE: We can add that to (b) and  
8 have it referred to the experts in (c)

9 CHAIRMAN CROSBY: Maybe it's fine.

10 MR. GROSSMAN: No, we'll add it in.

11 CHAIRMAN CROSBY: So, we're still on  
12 118. 118.06(1) not sooner than 30 days nor later  
13 than 90 after the Commission votes to close the  
14 public hearing. So, we have one to three months.

15 COMMISSIONER ZUNIGA: After the  
16 hearing, after the closing of the hearing.

17 CHAIRMAN CROSBY: Right, after  
18 closing of the hearing.

19 MR. GROSSMAN: The vote to close  
20 language is a term of art that we've created up in  
21 the paragraph above in paragraph three,  
22 recognizing that some of these public hearings  
23 could in theory go on for days and we have to do  
24 11 of them.

1           So, you don't necessarily want to start  
2 this trigger after the first day of the first  
3 hearing, because you might not even be done with  
4 all of the public hearings by the time that 30 days  
5 elapses.

6           So, what this has done is it says that  
7 the public hearing is not closed until the  
8 Commission votes to close it, which means that you  
9 can keep it open for a number of reasons. You  
10 might want to take in further comment. You might  
11 want to allow written comment. There's a lot of  
12 things.

13           So, you can vote to close them all  
14 simultaneously or staggered at different points.  
15 But that the 30-day period will likely begin for  
16 all of the similar applications together.

17           CHAIRMAN CROSBY: And we can also make  
18 it longer if we want to.

19           COMMISSIONER ZUNIGA: That's (c).

20           CHAIRMAN CROSBY: That's (c) right.  
21 Why do we want to put 30 days not sooner than 30  
22 days? If we were ready in a week, why wouldn't we  
23 want to do that?

24           MR. GROSSMAN: The statute says 30

1 days.

2 CHAIRMAN CROSBY: Oh, the statute.  
3 I'm sorry. Let's go with the statute then.

4 COMMISSIONER MCHUGH: Why not?

5 COMMISSIONER STEBBINS: We could  
6 refer to it every once in a while.

7 CHAIRMAN CROSBY: When in doubt, stick  
8 with the law. This is just out of curiosity,  
9 118.07(1) our proceedings are administrative and  
10 legislative in nature not adjudicatory. Is that  
11 so we're not subject to review theoretically or  
12 what does that say?

13 COMMISSIONER MCHUGH: We want to  
14 maintain, and this whole section is designed to -  
15 it draws on existing language and existing  
16 decisions and the like. We want to make certain  
17 that this is understood to be not an adjudicatory  
18 process.

19 There isn't any right to subpoena  
20 witnesses. There isn't any right to  
21 cross-examine. There isn't any right to do a lot  
22 of other things that you do in an adjudicatory  
23 hearing.

24 In addition to that, we consider a

1 variety of things that are not governed by hearsay  
2 rules and best evidence rules and other kinds of  
3 things that you'd find in a judicial proceeding.

4 If you think about the nature of what  
5 we're doing and the kinds of criteria that are  
6 built in the statute and the broad public policy  
7 issues that are embedded in the decision we have  
8 to make, an adjudicatory hearing kind of process  
9 really isn't fit for this.

10 So, we want to make that point clear.  
11 That this is what we're doing and this is why we're  
12 doing it. And that gives us the flexibility that  
13 we need in order to make a sound judgment.

14 CHAIRMAN CROSBY: And because we say  
15 it makes it so?

16 COMMISSIONER MCHUGH: No, it doesn't.  
17 It's not that simple. First of all, the statute  
18 says that the hearing that we are to hold, the  
19 public hearing that we are to hold is to be done  
20 in accordance with chapter 30A section 11.5.  
21 Section 11.5 doesn't exist.

22 As close as we can determine and we have  
23 the power to determine this, that is a reference  
24 to the Open Meeting Law not another section of the



1 Administrative Procedure Act that refers to  
2 adjudicatory hearings. So, we start with that  
3 premise.

4 Second, we go to the nature of the kinds  
5 of decisions that we're going to have to make. And  
6 they are in section 18 broad policy decisions, not  
7 the kind of adjudicatory facts that typically you  
8 find in an adversary hearing.

9 The difference between what's a sound  
10 traffic flow pattern is a very different kind of  
11 judgment than whether the light was red or green  
12 at the intersection when the accident happened.

13 And thirdly, we have set up the hearing  
14 in this regulation in the sections that follow to  
15 show that we're not going to have any the  
16 attributes of an adjudicatory hearing such as the  
17 ability to subpoena witnesses, cross-examine them  
18 and do that.

19 So, it's that combination of things  
20 together that means that these hearings are not  
21 adjudicatory and shows what we're doing. That  
22 doesn't mean that we're having a formless hearing.  
23 We're going to have an opening and closing of the  
24 hearing. We'll have notice as to when the

1 meetings are going to be, create a record on which  
2 we'll do things. But it's not the kind of thing  
3 you'd have in an adjudicatory proceeding.

4 CHAIRMAN CROSBY: 118.08 gives us a  
5 little flexibility.

6 COMMISSIONER ZUNIGA: A lot of  
7 flexibility. It helps a lot.

8 CHAIRMAN CROSBY: Yes. Anything else  
9 on 118? Let's go to 119.

10 COMMISSIONER ZUNIGA: I did have a  
11 couple comments on 119, maybe comments, questions.  
12 I realize that a lot of language that's included  
13 here comes directly from the statute. But 18(i)  
14 talks about being certified as gold or higher under  
15 the LEED standard, which I know is part of the  
16 statute.

17 We've also talk about being  
18 certifiable higher. We've talked about not just  
19 the LEED standard, which could be platinum or  
20 higher or even gold or higher, but also other  
21 standards. Is that planned to be included here or  
22 is that something we can incorporate in the form  
23 of application?

24 MS. BLUE: We can include it here. We

1 drafted this based upon things that were from the  
2 left-hand side of the evaluation criteria sheets  
3 that you've seen. What we have drafted there, we  
4 hadn't looked at the most recent draft of that.

5 So, there will be some tweaking that we  
6 may want to do to that. But we can certainly  
7 change that language to reflect what's in the  
8 evaluation criteria.

9 COMMISSIONER ZUNIGA: It's the same  
10 comment for others. We can talk about those  
11 tweaks but (iv) in the same section procuring or  
12 generating on-site 10 percent or more would be my  
13 comment not just 10 percent, of the annual  
14 electricity from renewable sources.

15 COMMISSIONER STEBBINS: Just a quick  
16 typo going back to number 11 in the second line.  
17 The statement I think it should read committing to  
18 a community mitigation plan.

19 CHAIRMAN CROSBY: What does it mean  
20 the little greens, and those numbers?

21 MR. GROSSMAN: The green numbers at  
22 the end were included just for purposes of your  
23 review. They won't be in the actual regulations  
24 just so you could see where each of these

1 provisions comes from.

2 This whole section is based on  
3 requirements that are in the three statutes that  
4 discuss the application. It's section 9, 15 and  
5 18, I believe. That's why these are intended to  
6 be the minimum requirements. So, everyone has a  
7 sense as to what types of things would be included  
8 in the application. Certainly, there might be  
9 more things. I think it's likely that there'll be  
10 more things. But these are required to be in the  
11 application.

12 So, instead of us just saying we'll put  
13 in the application everything that's in 15 and 18,  
14 we kind of -- we list them out so you can see them  
15 so there's no question as to the types of things  
16 that will be on there.

17 COMMISSIONER STEBBINS: Is there harm  
18 in leaving them in?

19 MR. GROSSMAN: Is there harm?

20 COMMISSIONER STEBBINS: Any harm in  
21 leaving the statute reference in?

22 MR. GROSSMAN: The answer is no. The  
23 only point I would make is in the bulk of the  
24 remainder of the regulations, we've made efforts

1 not to reference the statute in many respects.  
2 So, it would be somewhat disjointed from that  
3 perspective.

4 COMMISSIONER MCHUGH: There's another  
5 mechanical problem and that is we don't want a  
6 reviewer or somebody else to think that we  
7 necessarily are drawing the language exactly from  
8 the statute that's cited, and then say we quoted  
9 it wrong, because that's not what we're trying to  
10 do here. We're just trying to show the provenance  
11 --

12 COMMISSIONER ZUNIGA: The origin.

13 COMMISSIONER MCHUGH: Yes. -- the  
14 origin of the concept. So, for clarity sake, we  
15 ought not put those in the final regs.

16 CHAIRMAN CROSBY: On number three it  
17 says that qualifiers maintain the association.  
18 There may be changes by now. So, does that get  
19 covered somewhere else?

20 COMMISSIONER CAMERON: Where are you?

21 CHAIRMAN CROSBY: Number three,  
22 119.01(3). You want to attest that they're still  
23 involved but also the new ones or the ones who have  
24 dropped out?

1 MR. GROSSMAN: I think you have an  
2 obligation to update the Commission if there are  
3 new ones who come in at some point. But what you  
4 would attest to here, I think, is that everyone who  
5 was on the qualifier list and every entity remains  
6 so.

7 CHAIRMAN CROSBY: So, 115 by  
8 referencing 205 CMR 115 you're accommodating the  
9 fact that there may have been changes between the  
10 original submission and now?

11 MR. GROSSMAN: Yes. That's why we  
12 referenced the suitability determination. And I  
13 think that's the key. Once you're deemed  
14 suitable, if there's been any changes between that  
15 time and the time you submit the RFA-2 application,  
16 you will have an obligation to update the  
17 Commission, and then certainly anything  
18 thereafter.

19 CHAIRMAN CROSBY: So, updates are  
20 implied in that?

21 MR. GROSSMAN: I think so. But we can  
22 certainly clarify that point if it's not clear.

23 CHAIRMAN CROSBY: I'm not sure how 115  
24 reads. If 115 makes it clear that it includes

1 updates then it's included. If it isn't, it  
2 isn't. It's just a small point.

3 Apparently, number on 29 page 10, I  
4 guess this comes straight out of the statute, the  
5 number of construction hours of labor?

6 COMMISSIONER ZUNIGA: Yes.

7 CHAIRMAN CROSBY: Yikes. Who the  
8 hell knows a number like that, give or take  
9 thousand.

10 COMMISSIONER CAMERON: That's going  
11 to be an estimate.

12 COMMISSIONER ZUNIGA: They can  
13 provide an estimate.

14 CHAIRMAN CROSBY: If it's right out of  
15 the statute, that's fine.

16 COMMISSIONER CAMERON: We won't hold  
17 them to that estimate, is that what you're saying?

18 CHAIRMAN CROSBY: Something like  
19 that, yes.

20 MR. GROSSMAN: I was just going to say  
21 on number 34, we got a request, a suggestion that  
22 we add one further category in there, which does  
23 seem to make sense. If you harken back to the  
24 presentation from the UAW relative to workplace

1 safety, just to add a clause in here making clear  
2 that we'll ask for information relative to  
3 workplace safety issues. I think that's where it  
4 would go.

5 COMMISSIONER STEBBINS: Make it (vi).

6 MR. GROSSMAN: Yes.

7 COMMISSIONER STEBBINS: Building off  
8 the track record, provide evidence of their track  
9 record, workplace safety.

10 MR. GROSSMAN: I think the application  
11 can get into more details as to specifically what  
12 information the Commission would like to see. But  
13 for our purposes here, we can just flag the issue,  
14 put everyone on notice that that will be something  
15 that will be asked for.

16 CHAIRMAN CROSBY: Yes, that was  
17 something that Barry mentioned. Yes, good.

18 COMMISSIONER ZUNIGA: I have a  
19 question on 27 relative to problem gambling  
20 measures. Cooperation to the research project  
21 from our applicants relative to the research  
22 project is perhaps very important for that effort.  
23 And I don't know if it could be placed in regulation  
24 as a subset to this topic or as a separate one.



1           CHAIRMAN CROSBY: There are some  
2 issues in the law that says they have to provide  
3 certain kinds of data, right?

4           COMMISSIONER ZUNIGA: Yes. There is  
5 an anonymizing effort relative to -- but that's  
6 during the operation period.

7           CHAIRMAN CROSBY: Right.

8           COMMISSIONER ZUNIGA: There are, I  
9 suspect, and one of the research proponents made  
10 this point, general efforts that could be  
11 complimented or provided by the applicants.

12          CHAIRMAN CROSBY: Yes, I think that's  
13 a good thing to have in there. Whether it's a  
14 separate number or whether it's a subset of 27. In  
15 addition to how you take measures to address  
16 problem gambling, how you take measures to  
17 cooperate with and support the Commission in its  
18 implementation of the research agenda in section  
19 whatever it is of the law.

20          COMMISSIONER ZUNIGA: Yes.

21          CHAIRMAN CROSBY: Good. Other things  
22 on 119?

23          COMMISSIONER ZUNIGA: Subsection 51,  
24 the statute does talk about the applicant becoming

1 a lottery agent, a sales agent. But where we go  
2 to say at the beginning of that page 13 that the  
3 applicant will not create, promote or operates  
4 sell games as determined by the Commission.

5 CHAIRMAN CROSBY: Which number are  
6 you?

7 COMMISSIONER ZUNIGA: That's 51.

8 CHAIRMAN CROSBY: Still 51, okay.

9 COMMISSIONER ZUNIGA: I want to  
10 clarify that that determination is of the Gaming  
11 Commission and not the lottery commission.

12 MS. BLUE: Yes.

13 COMMISSIONER STEBBINS: We sometimes  
14 capitalize Commission for the Gaming Commission  
15 and then we further in this same sentence reference  
16 lottery commission in small caps.

17 MS. BLUE: Yes.

18 CHAIRMAN CROSBY: Anything else on  
19 119? Okay, 120. An issue under 1(c) that I  
20 raised when I reviewed these with Todd. We I  
21 thought agreed that we would require a bidder has  
22 submitted -- filed their ENF.

23 This goes on to suggest that there has  
24 to be things subsequent to that which is the

1 conclusion of the comment period and copies of all  
2 the written comments. (A) I don't remember that  
3 we agreed on that. (B) I don't know that it  
4 matters or not. But it's just something that I  
5 wanted to review.

6 COMMISSIONER ZUNIGA: Doesn't the if  
7 any presuppose that if available it's still in  
8 progress. Is that the section that you're in?

9 CHAIRMAN CROSBY: No, section (c)  
10 doesn't have if any.

11 MR. GROSSMAN: I think section (c) is  
12 mandatory.

13 CHAIRMAN CROSBY: The way it's written  
14 here, right.

15 MR. GROSSMAN: And (d) and (e) are not  
16 mandatory and I think that was to address the issue  
17 you raised.

18 CHAIRMAN CROSBY: Right. So, John,  
19 maybe you can help us with this. We talked about  
20 this at length. And what did we agree to? And  
21 does this fit with it?

22 MR. ZIEMBA: Yes. What this requires  
23 is it requires the Secretary's certificate, but it  
24 also requires written comments that were submitted

1 to the MEPA unit.

2 So, there are a lot of comments that are  
3 submitted by the various agencies as part of the  
4 Secretary's review. So, what we're asking for is  
5 a copy of those comment letters, which don't always  
6 get attached to the Secretary's certificate. So,  
7 that we would be able to see what the Department  
8 of Transportation said during the comment period,  
9 for example.

10 CHAIRMAN CROSBY: How long would the  
11 comment period be typically?

12 MR. ZIEMBA: It is a period of 20 to 30  
13 days. I should know that. It's about 30 days.  
14 You've got to back out that period after you file  
15 your certificate.

16 CHAIRMAN CROSBY: So, we're now saying  
17 -- I don't think this is what we agreed to, but we  
18 might agree to it now, but I don't think this is  
19 what we originally agreed to. What we originally  
20 agreed to is you have to file the ENF and have  
21 evidence that you've done so.

22 What we're now saying is you have to do  
23 that 30 days before you file with us because you  
24 also have to have the comment period closed. Is

1 that what we want to say?

2 Why would we add that on just to say --  
3 Our point was we were saying that the EIS is going  
4 to take a long time. It isn't possibly going to  
5 be done. Let's just get them some modest way into  
6 the process. Now we're adding another step.

7 MR. ZIEMBA: That was part of the  
8 recommendations that were put forward previously.  
9 The purpose of that is so that we could get the  
10 advantage of knowing what the comments were during  
11 that comment period.

12 And I don't think that adding the  
13 additional 30 days before they had to file with us  
14 is actually too burdensome if they know that they  
15 had to get that in ahead of time. There's plenty  
16 of time to plan on that, especially since they're  
17 putting together all of their various plans as part  
18 of our application. And they have many months to  
19 plan to get that in.

20 CHAIRMAN CROSBY: Knowing as you do  
21 where the bidders are in the process, you're  
22 comfortable that this is not an unreasonable --

23 MR. ZIEMBA: No, very much so. And  
24 it's very valuable information to the Commission

1 and potentially the communities as well when they  
2 take a look at what other folks have issued as  
3 concerns.

4 CHAIRMAN CROSBY: Right. I'm fine  
5 with that. Anything else on 120 or 121 or 122?

6 MR. GROSSMAN: 122, if I may interject  
7 here. I think this just bears a review. I've  
8 been advised that there is a distinction to be made  
9 between a project budget and capital costs. And  
10 we should just be aware of that as we're putting  
11 this together.

12 Some of the things we have here would  
13 clearly fall into one's project budget. But in  
14 designing a project, not necessarily here and this  
15 is not necessarily what the Legislature  
16 contemplated when they provided for the capital  
17 investment, but typically some of the costs that  
18 we allow in the calculation of the capital  
19 investment would not be included in capital costs  
20 that a developer would typically anticipate. So,  
21 they would budget for them but not consider them  
22 as part of the calculations.

23 Things such as, I've been told anyway,  
24 three, six and nine in 122.03, which deal with the

1 design of the building, management fees for  
2 engineers, architects and related costs. So,  
3 it's just something to consider here as we put this  
4 together.

5 I think the language as it exists is  
6 certainly well thought out and it contemplates  
7 ensuring that the project of the magnitude that the  
8 statute anticipates is provided to. But that  
9 issue may come up again when it comes to what you're  
10 allowing and what we're not allowing.

11 CHAIRMAN CROSBY: In this case you're  
12 saying maybe we're over allowing.

13 MR. GROSSMAN: Yes.

14 MS. BLUE: Yes.

15 CHAIRMAN CROSBY: The bidders aren't  
16 going to complain about this. I think really --  
17 What's your thought about this?

18 COMMISSIONER ZUNIGA: Same as last  
19 time we discussed this, which is creating the  
20 balance -- I'll try to summarize. Creating the  
21 balance between the 10 percent deposit that's  
22 required upfront or the minimum capital investment  
23 that we hold in escrow versus the notion of  
24 creating destination resorts here.

1           So, the more that we are over  
2 inclusive, the more financial security in my view  
3 we get by virtue of the 10 percent that we hold.  
4 The less inclusive that we are the more that we  
5 require a destination resort, if you will, by  
6 setting the \$500 million threshold.

7           CHAIRMAN CROSBY: I hadn't remembered  
8 that point. That's a good point. But it cuts  
9 against maximizing the investment that the  
10 Commonwealth receives. Because the more  
11 inclusive you are, the less hard construction  
12 dollars they have to in fact put in.

13           If we're going to include their design  
14 costs that half million dollars or whatever it is  
15 gets to go towards their capital costs.

16           COMMISSIONER ZUNIGA: Right.

17           CHAIRMAN CROSBY: Which reduces in a  
18 way or might reduce the amount of capital cost if  
19 they're aspiring to a higher number.

20           COMMISSIONER ZUNIGA: I think the  
21 reality is in my opinion anyway that developers  
22 will look at it from what the market can support.  
23 And they don't start on the cost-plus. They start  
24 on revenue and what can we meet.



1           We have this tool anyway. I think an  
2           easy thing to exclude was everything we did  
3           initially, what we talked about outside of the  
4           boundaries of the property, legal fees and the  
5           like. They're all necessary. They come with the  
6           project. We could keep going and that makes for  
7           at some point there is diminishing returns  
8           pressing against that because many of these are  
9           necessary costs.

10           COMMISSIONER MCHUGH: The last time,  
11           just my simplistic approach to this, the  
12           difference between 03 and 04 was what costs add  
13           value to the site with the exception of 04(4). The  
14           things in 03 add value to the site and the things  
15           04 don't, I mean on a rough way.

16           COMMISSIONER ZUNIGA: Or to  
17           Massachusetts.

18           COMMISSIONER MCHUGH: Or to  
19           Massachusetts. So, it seemed to me that  
20           notwithstanding how an accountant might look at  
21           them or how an investment banker might look at  
22           them, but that was what we were looking for there.  
23           And that was the division, and it's a logical one  
24           with the exception of four and we talked about

1 04.(4) at some length last time. So, it seems to  
2 me that this does that.

3 CHAIRMAN CROSBY: Yes. I agree with  
4 that. I actually as I'm thinking I think that does  
5 make sense as sort of a tool, which brings me to  
6 number four, which I'll get back to in a second.  
7 Also, if we were concerned about them not getting  
8 to the minimum of \$500 million, then we might be  
9 concerned about them being able to use things like  
10 design costs to get from 450 to five.

11 But is that an issue with respect to the  
12 slots parlor? We never heard anybody talk about  
13 how much money they're going to put into the slots  
14 parlor. Casinos we've heard numbers from many  
15 places.

16 \$125 million for a slots parlor,  
17 particularly if you have a pre-existing building,  
18 I'm not sure where that 125 is going to come from.

19 COMMISSIONER ZUNIGA: And the slots  
20 parlor in my view -- Sorry I'm interrupting  
21 partially. There's the question of the license,  
22 of the duration of the license that is perhaps  
23 equally relevant. If you have to pay \$25 million  
24 for a licensing fee and you have only five years

1 to recover that along with the \$125 million capital  
2 investment, that's a much shorter duration from  
3 your operations than 15 years. That's also an  
4 important consideration.

5 Likely they'd be interested in getting  
6 their licenses renewed, but there's an analysis  
7 for that duration that's unequal.

8 CHAIRMAN CROSBY: The only reason this  
9 really matters to us, whether you count it or not  
10 in the calculation of capital investment, is  
11 whether they get to the minimum required by  
12 statute.

13 And everything we've seen about  
14 casinos, nothing that's done -- they're talking  
15 about so much more money. We haven't seen anybody  
16 that's remotely close to \$500 million. We talked  
17 about 577, I think, Mohegan Sun was the lowest  
18 number we heard or something like that. So, in a  
19 way it's academic. It doesn't really make too  
20 much difference whether it's in or out as long as  
21 they've made their threshold.

22 In the case of the slots parlor, if a  
23 slots parlor is going to need to spend a ton of  
24 money building a flyover for example somewhere or

1 some kind of major new interchange structure, it's  
2 not going to be in the site, but it's going to be  
3 real money.

4 It seems to me in the slots parlor,  
5 whether or not they can count number four, the  
6 other stuff is kind of marginal, but number four  
7 costs associated with designing, improving,  
8 constructing infrastructure outside the property  
9 boundaries, that could be a real material number.  
10 And it could be an issue about some of the slots  
11 bidders getting to the 125 minimum.

12 So, I just bring this up as an issue.  
13 Are we doing this right? I guess from your  
14 standpoint, in a way, this infrastructure  
15 improvement makes life easier if you want to get  
16 into the casino -- I mean to the slots parlor. It  
17 doesn't necessarily add to the inherent value of  
18 the region except for that fact. But it does have  
19 a lot of jobs associated with it and it probably  
20 would improve traffic flow in general.

21 COMMISSIONER MCHUGH: Right. And  
22 this is the discussion that we had the last time.

23 CHAIRMAN CROSBY: I'm raising it  
24 again.

1                   COMMISSIONER MCHUGH: I don't  
2 criticize, but for me this one, number four, is  
3 right on the cusp. You can make that argument  
4 either way.

5                   I thought that Commissioner Zuniga  
6 though the last time had an argument for putting  
7 it here that I agreed with, but I can't remember  
8 what the argument was.

9                   COMMISSIONER ZUNIGA: That if you  
10 start counting all costs that are outside of the  
11 property site, you may be left with very little as  
12 investment in property, which creates not a  
13 destination resort.

14                  COMMISSIONER MCHUGH: That's right.

15                  CHAIRMAN CROSBY: Then we don't pick  
16 them.

17                  COMMISSIONER MCHUGH: Well, \$500  
18 million with \$300 million outside, is different  
19 than dealing with \$450 million inside.

20                  COMMISSIONER ZUNIGA: Right. But I  
21 think it's important to see where we started.  
22 Back then we sort of ended up here. The point that  
23 Mr. Grossman is making is on the other direction,  
24 which is at least by some measures, AIA being one

1 of them, which is the opinion from John Nunnari  
2 that you are alluding to, would have us only with  
3 one, only the cost of the construction being the  
4 ones to be allowable under this capital  
5 investment. Everything else being into 122.04.

6 COMMISSIONER MCHUGH: Just before we  
7 think about the implications. That reduces the  
8 amount of the bond too, right?

9 COMMISSIONER ZUNIGA: Right.

10 COMMISSIONER MCHUGH: So, it reduces  
11 the incentive toward completion.

12 COMMISSIONER ZUNIGA: In some ways, or  
13 our ability to hold that incentive with both.

14 COMMISSIONER MCHUGH: Right.

15 CHAIRMAN CROSBY: If you try to step  
16 back and say what are we trying to do here?  
17 There's two things that are in the public interest.  
18 One is the size of the bond covering the maximum  
19 amount of risk of investment.

20 The second is to have as many quality  
21 bidders as possible. In general, I think we would  
22 probably think it would not be in our interest to  
23 lose a bidder because they can't get to the capital  
24 number, even though if you could count the \$50

1 million that they were going to put into the  
2 infrastructure outside the site would have gotten  
3 them to the capital number, I don't think that's  
4 in our interest.

5 We may not ultimately pick them,  
6 because they're putting in less money to the site.  
7 But to lose them as an option completely because  
8 they're not able to count infrastructure  
9 investment outside the site that doesn't seem to  
10 me to be in the public interest.

11 So, from those two standpoints, it is  
12 not a good policy decision to exclude these costs.  
13 Because if we include them, it increases the size  
14 of the bond, it increases the security of  
15 investment (A). And (B) makes it a little bit  
16 easier for people to get into the minimum capital  
17 investment by including what are completely  
18 legitimate and substantial capital costs outside  
19 the site. If that analysis is right, it would seem  
20 to me we ought to change this.

21 COMMISSIONER ZUNIGA: I guess we tried  
22 to achieve balance last time with this with some  
23 delineation of within the property confines.

24 CHAIRMAN CROSBY: I understand that.

1                   COMMISSIONER ZUNIGA: It's all a  
2 balance, I think.

3                   CHAIRMAN CROSBY: We are retreading  
4 trod ground, I agree. But I asked Todd to  
5 highlight this because I thought it was something  
6 that I was not particularly comfortable with.

7                   You're saying that yes, it might mean  
8 that there's tons of money spent outside and the  
9 site isn't very impressive. But I think we would  
10 then not pick them. We have a way to deal with  
11 that. That's the extreme case, \$500 million  
12 investment, \$300 million is outside and inside is  
13 only a convenience casino. All right. They get  
14 to qualify. They get into the bidding process,  
15 but we don't pick them.

16                   But if we lost somebody who was at 450  
17 because we wouldn't their 60 on the outside, that  
18 would be a bad loss. And we couldn't correct that  
19 problem.

20                   COMMISSIONER CAMERON: Mr. Chair,  
21 don't you think that they've already done their due  
22 diligence when they picked a site? They know the  
23 kind of work they have to do? They know the kinds  
24 of mitigating efforts they have to put forth? And



1 they know what our numbers are.

2 So, I don't think we'll be in that  
3 situation that we lose someone at this stage of the  
4 game because they're not going to make that number.  
5 I don't think we'll have that issue with the slots.

6 COMMISSIONER ZUNIGA: I would argue  
7 your same point, Mr. Chairman, relative to if they  
8 picked -- if somebody needs all infrastructure,  
9 which could be big costs outside of the property  
10 line to meet their minimum capital investment,  
11 maybe it wasn't a very good property to begin with.

12 CHAIRMAN CROSBY: I understand that.  
13 I'm not saying we would pick them. I'm just saying  
14 that may be true, in which case we would not select  
15 them. But it also may not be true. And if we lose  
16 them as an option because of that that doesn't seem  
17 to me to make sense. It doesn't seem to me a wise  
18 choice.

19 COMMISSIONER STEBBINS: You're  
20 predisposing that they will be lost that they don't  
21 have the ability to read this and make sure that  
22 there's costs that allow them to meet that  
23 threshold by virtue of what they design.

24 CHAIRMAN CROSBY: True.

1                   COMMISSIONER ZUNIGA: They could see  
2 this and say okay, because we have to meet these  
3 requirements, we can spruce up our design and make  
4 it worth \$500 million by virtue of everything  
5 that's inside the property.

6                   CHAIRMAN CROSBY: I think we're really  
7 talking about the slots parlors. I don't think  
8 the other ones are an issue. If you think about  
9 the slots parlors --

10                  COMMISSIONER MCHUGH: What about just  
11 differentiating between the slots parlors and the  
12 casinos in the regulations?

13                  MR. GROSSMAN: I would just add that  
14 the statute does make one important distinction  
15 between the slots parlor and the casinos in that  
16 it says, just to clarify, that as part of the  
17 capital investment costs the slots parlor can't  
18 include any traffic mitigation or improvements  
19 necessary to increase visitor capacity. So, that  
20 is a chunk, which kind of buttresses your argument  
21 to allow them to include everything else.

22                  CHAIRMAN CROSBY: So, does that mean  
23 if you had to fix the highway interchange, you  
24 couldn't count that?

1 MR. GROSSMAN: That would be my  
2 reading of what the statute says.

3 MS. BLUE: Yes.

4 CHAIRMAN CROSBY: So, it makes this  
5 academic, because that is the primary place money  
6 would go outside the site would be traffic  
7 mitigation. Beyond that it's going to be de  
8 minimis.

9 So, if you're reading that right, the  
10 point I'm making is fairly academic. So, if you  
11 can't include that by statute --

12 COMMISSIONER CAMERON: I think the  
13 difference in the dollar amount is significant.  
14 And that accounts for a smaller facility.

15 COMMISSIONER MCHUGH: The other way to  
16 deal with this and we now -- It's a difficult  
17 discussion. The other way to deal with it is to  
18 leave it the way it is now and let others comment  
19 on it.

20 CHAIRMAN CROSBY: I was going to say  
21 the same thing. I'm good with that.

22 COMMISSIONER MCHUGH: And revisit it.  
23 I'm sure that there will be comments.

24 CHAIRMAN CROSBY: Yes. I agree with

1 that. Any of our bidders out there who are  
2 thinking about this or watching, we're interested  
3 in your thoughts about this or anybody else for  
4 that matter.

5 Okay. Other things on 122?

6 MR. GROSSMAN: One other issue I'll  
7 just raise is the other issue that was raised or  
8 highlighted in 122.05. We have written in that as  
9 far as the deposit and bond is concerned is that  
10 the Commission would allow for the posting of a  
11 deposit bond as opposed to requiring the deposit  
12 of the cash.

13 The statute allows for the Commission  
14 to make that election. Obviously, there's a big  
15 difference between having the cash in hand and just  
16 allowing someone to post a bond.

17 CHAIRMAN CROSBY: The only issue to  
18 me, I guess, I like the idea of having the cash  
19 because it gives us something we can do something  
20 with or the Commonwealth to do something with.

21 COMMISSIONER ZUNIGA: It has to be in  
22 escrow.

23 MS. BLUE: In escrow.

24 CHAIRMAN CROSBY: I know we can't

1 spend it but where we put it might be of some  
2 interest to somebody. I didn't mean we could use  
3 it to --

4 COMMISSIONER MCHUGH: To build a new  
5 headquarters, right?

6 CHAIRMAN CROSBY: Is the liquidity of  
7 the bond equal to the liquidity of cash as a  
8 practical matter? If the answer is yes, then I'm  
9 okay with this.

10 COMMISSIONER ZUNIGA: It depends on  
11 the bond guarantor. Not too long ago, if it was  
12 American International Group in the midst of a  
13 financial crisis, we may have our doubts, which is  
14 why cash would be king like they say.

15 COMMISSIONER MCHUGH: But we have  
16 experienced counsel here to look at the terms and  
17 the institution.

18 MS. BLUE: We would need to review the  
19 terms and who issued it. We would want to be  
20 careful and give that very good thought when it  
21 came in.

22 COMMISSIONER ZUNIGA: We could set a  
23 requirement like the guarantor be rated certain  
24 rating or above. And that as soon as that rating

1 goes down, which is not uncommon in recent years,  
2 we could exercise an authority to either call or  
3 -- not call, require additional some additional  
4 cash or some other measure

5 MS. BLUE: Or a new bond from a  
6 different financial organization.

7 COMMISSIONER ZUNIGA: Or a new bond,  
8 yes.

9 CHAIRMAN CROSBY: This is pursuant to  
10 our approval. So, that's that. Okay. I'm fine  
11 with that.

12 What about a deadline? There's no  
13 date by which time they have to do this. There is  
14 for the license fee and the \$600 but there's no --

15 COMMISSIONER ZUNIGA: Is that 122.05?

16 CHAIRMAN CROSBY: 122.05.

17 COMMISSIONER CAMERON: The others  
18 were 30 days, correct?

19 MR. GROSSMAN: Right, 30 days.

20 COMMISSIONER MCHUGH: Let's make it  
21 all synchronous.

22 CHAIRMAN CROSBY: Is 30 days  
23 reasonable for something like that?

24 COMMISSIONER ZUNIGA: Yes.

1                   CHAIRMAN CROSBY: Section 123, on page  
2 26 (4) at the bottom -- No, I'm sorry. That's 124.  
3 123 is just page 25.

4                   Section 124, we have agreed and talked  
5 in the past about item (4) at the bottom. About not  
6 holding until a positive determination of  
7 suitability is made, the election can't be made.  
8 That issue has been raised by a number of  
9 communities and we're thinking about it. But for  
10 the moment, this is the way it stands. Anything  
11 else on 124?

12                   COMMISSIONER STEBBINS: Yes, just  
13 quickly under 124.05(1), it just seems to  
14 conflict. It says the polls can open at 6:00 no  
15 later than 7:00, have to be kept open at least 13  
16 hours. If I open at 6:00, I'm done by 7:00 p.m.  
17 but then it says the polls close until 8:00.

18                   CHAIRMAN CROSBY: Yes. Good point.  
19 Just the scratch that last sentence?

20                   MS. BLUE: Did we check the statute on  
21 that? That they couldn't close before 8:00?

22                   MR. GROSSMAN: The reason this is in  
23 here is because the statute Chapter 54 provides for  
24 different polling hours for cities and towns for

1 special elections. So, it was suggested to us  
2 that the Commission should come up with a  
3 prescribed time for it to be open, which is  
4 different from what you're saying.

5 So, you're saying necessarily it would  
6 be open at least 13 hours?

7 CHAIRMAN CROSBY: It's saying it can  
8 open at 6:00.

9 MR. GROSSMAN: If it was open 13 hours,  
10 it would be open until 7:00.

11 CHAIRMAN CROSBY: It can't close  
12 before 8:00.

13 COMMISSIONER MCHUGH: First of all,  
14 you don't want people to have the polls so that the  
15 voting is from 3:00 p.m. to midnight, or 6:00 to  
16 3:00 a.m.

17 So, you could have the polls shall be  
18 closed not later than 8:00 p.m. So, they've got  
19 a window from quarter to six to eight during which  
20 voting can take place. And it's got to be 13 hours  
21 within that window.

22 MR. GROSSMAN: Right.

23 COMMISSIONER MCHUGH: If we change  
24 close not later than.



1           CHAIRMAN CROSBY: Or it just means if  
2 you open earlier it's going to be opened earlier  
3 and more than 13 hours, I guess.

4           COMMISSIONER MCHUGH: Yes, they could  
5 do that too.

6           CHAIRMAN CROSBY: Just leave it the  
7 way it stands. Really all this is doing is saying  
8 it's got to be opened for 13 hours. And you can  
9 open anywhere between 6:15 and 7:00.

10          COMMISSIONER MCHUGH: But it says  
11 shall not be closed before that means --

12          MR. GROSSMAN: 5:45.

13          COMMISSIONER MCHUGH: -- if you open  
14 at 5:45 you've got to keep it open until 8:00. So,  
15 if we change it to not later than, then you can keep  
16 it open until 8:00 or you can just give the people  
17 a 13-hour shot and close it at 6:00 -- 7:00.

18          CHAIRMAN CROSBY: I don't know enough  
19 about it to know whether it makes any difference.

20          COMMISSIONER STEBBINS: It just  
21 seemed to be conflicting.

22          COMMISSIONER MCHUGH: It does  
23 conflict. Let's change it to not later than 8:00.  
24 Does anybody disagree violently with that?

1 I thought though if we go back to  
2 124.03, I may be mistaken, but I thought that last  
3 sentence we agreed to keep hands off of that.

4 COMMISSIONER STEBBINS: Which one is  
5 that?

6 COMMISSIONER MCHUGH: Provided  
7 however in the event that a municipality has  
8 executed a host community agreement with more than  
9 one -- Why did you highlight that?

10 MR. GROSSMAN: Because that is new.

11 CHAIRMAN CROSBY: No, we decided.  
12 If Everett were in two communities.

13 COMMISSIONER ZUNIGA: No, no, this is  
14 Springfield. We decided that they would hold it  
15 on the same day if they have two host community  
16 agreements.

17 COMMISSIONER CAMERON: Yes.

18 COMMISSIONER STEBBINS: But when we  
19 looked at one that maybe straddling two different  
20 jurisdictions, we didn't think we had the  
21 authority.

22 COMMISSIONER MCHUGH: That part I  
23 understood. But I thought we decided to keep our  
24 hands off of the two communities. Okay. If we

1 decided, I don't want to revisit.

2 MR. GROSSMAN: On Page 28, number  
3 three at the top is brand-new language. It was  
4 drafted in response to a question that was raised  
5 just for your review today. I'm not advocating  
6 one way or the other.

7 But it was intended just to clarify  
8 that precise situation you were just talking  
9 about. What would happen if there's more than one  
10 applicant on the ballot.

11 CHAIRMAN CROSBY: The Springfield  
12 situation.

13 MR. GROSSMAN: The Springfield  
14 situation.

15 CHAIRMAN CROSBY: We've never talked  
16 about how they would handle that. Certainly, the  
17 statute certainly never anticipated this. Is  
18 this the way it would be done? Is this the way we  
19 want it to be done? Does this make sense? We  
20 never really talked about this.

21 COMMISSIONER STEBBINS: Yes. You  
22 just have two referendum questions. And every  
23 voter goes - It's similar to any other election  
24 where you have referendum questions, you go down

1 and you get to vote on each question. Here it's  
2 just spelling out that ability.

3 CHAIRMAN CROSBY: So, you would put  
4 each one, you'd put each summary. And then they  
5 would vote yay or nay on each one?

6 COMMISSIONER MCHUGH: And you tell  
7 them they can vote yes on both or no on both. And  
8 that there's no specific order. There's no  
9 purpose to the order in which the questions appear.

10 COMMISSIONER CAMERON: How will the  
11 applicants be listed, alphabetically?

12 MS. BLUE: It would be up to  
13 municipality, as long as they put in the language,  
14 it's no particular order.

15 CHAIRMAN CROSBY: On page 29, 124.07,  
16 I know this is an extreme case, but if there is a  
17 tie does that mean it loses?

18 MR. GROSSMAN: 50-50.

19 CHAIRMAN CROSBY: 116 to 116 that  
20 means the referendum fails; is that correct?

21 COMMISSIONER MCHUGH: The statute  
22 says approved by a majority of the voters at a  
23 referendum, right.

24 CHAIRMAN CROSBY: So a tie is a

1 failure. Then the applicant shall not submit a  
2 new request to the governing body for a new  
3 election within 180 days of the last election. I  
4 know that comes from the statute.

5 But do we need -- This suggests that you  
6 could lose an election, wait 180 days and resubmit.  
7 The way our schedule goes, the decision will be  
8 done by then. This is kind of academic. Do we  
9 need anything else?

10 COMMISSIONER ZUNIGA: It depends.

11 CHAIRMAN CROSBY: I'm sorry, could be  
12 done. Do we need to think about whether we want  
13 a process? If you lose an election, do we want to  
14 have a process, which says you can come to us and  
15 say you want to resubmit and we'll think about it?

16 COMMISSIONER ZUNIGA: Well, there is a  
17 process effectively for extending the decision,  
18 the time, isn't there?

19 CHAIRMAN CROSBY: Extending which  
20 time.

21 COMMISSIONER ZUNIGA: It has to do  
22 with the hearings.

23 MS. BLUE: The Commission's time to  
24 make a decision, it can be extended to a certain

1 degree especially because it's based on when the  
2 public hearing closes.

3 COMMISSIONER MCHUGH: Yes, you don't  
4 close the hearing for six months.

5 MS. BLUE: So, you would have some  
6 time.

7 CHAIRMAN CROSBY: Right. At the  
8 moment, we don't have any process. If an entity  
9 loses a vote, all we know is that the law says you  
10 can apply again. And you can have another vote,  
11 apply for another vote in 180 days. We don't have  
12 anything else.

13 Do we need some kind of procedure that  
14 says if you lose a vote and you want to stay -- if  
15 you want to go away, that's fine. You're done.  
16 But if you'd like to see whether you can stay in  
17 the competition, fix your proposal, fix your HCA,  
18 get another vote. Should we have a procedure that  
19 says here's how you can raise that issue?

20 COMMISSIONER MCHUGH: I'd like to see  
21 what people who comment on this would say about  
22 that. My instinct says no. And that the real --  
23 That really holds things up a lot for the whole  
24 region if we grant that. And it seems to me that

1 the utility of the 180-day come back and have  
2 another election provision is if those that are  
3 existing within the region all withdraw or we find  
4 them not to be suitable and don't award a license.  
5 Or for some other reason, they should be given --  
6 it's essential for them to come back.

7 But I would really like to hear what the  
8 communities had to say about this, and what others  
9 in the region had to say. Because implications of  
10 creating a procedure that stops the thing for six  
11 months while we let them get their act together are  
12 really pretty profound.

13 And remember that's just to the next  
14 host community agreement -- referendum. You have  
15 all of that stuff that goes after it potentially.  
16 You may not have all of your surrounding  
17 communities lined up. You may not have a lot of  
18 other things in place. So, the 180 days could  
19 easily become a one-year delay.

20 CHAIRMAN CROSBY: Yes. I'm not  
21 lobbying in favor of giving them a chance to come  
22 back. I'm just lobbying in favor of saying what  
23 we think should happen.

24 COMMISSIONER MCHUGH: Right.

1 CHAIRMAN CROSBY: We could say if you  
2 lose a vote, you've missed your application  
3 deadline. We've already set an application  
4 deadline, it's passed. You're out.

5 COMMISSIONER MCHUGH: No, their  
6 application is in. They met the deadline for the  
7 application. They just didn't get the vote.

8 MS. BLUE: But your application  
9 wouldn't be complete at that point because part of  
10 their application would have to provide the vote.  
11 So, then you'd go into that other section of 118.

12 COMMISSIONER MCHUGH: That's right.  
13 That's right.

14 CHAIRMAN CROSBY: Okay. This might  
15 be worth having a question on the website. Make  
16 sure people see that we're asking for comment on  
17 this.

18 As a practical matter, I think we're  
19 all assuming that if you don't win the election,  
20 it's pretty much over. I just think it is  
21 something we need to think through and put some  
22 substance to.

23 COMMISSIONER ZUNIGA: There's any  
24 number of scenarios as you've suggested. If a



1 particular city chooses to vote on the ward loses  
2 and then thinks they should have voted for the  
3 citywide and would want to request that.

4 CHAIRMAN CROSBY: Right.

5 COMMISSIONER STEBBINS: Under  
6 124.06(4) looks like it got chopped off.

7 MR. GROSSMAN: Okay.

8 COMMISSIONER STEBBINS: Then in (5)  
9 the fifth line down, I'm not a lawyer. So, this  
10 may be a legal term recovered treble the disputed  
11 costs?

12 MS. BLUE: Three times.

13 COMMISSIONER STEBBINS: Thank you.

14 MR. GROSSMAN: That is a provision was  
15 highlighted because that was something that was  
16 developed to provide cities and towns with a hammer  
17 to address a situation where there's a negative  
18 vote and the applicant doesn't want to pay.  
19 That's where that came from. That's original  
20 language. That's not provided in the statute.

21 CHAIRMAN CROSBY: I asked that it be  
22 highlighted, because it's just a pretty big  
23 hammer. I don't have a problem with it.

24 MR. GROSSMAN: While we're on that

1 page, if I may Mr. Chair, if we could just go back  
2 to (4) in 05. It talks about the ballot question  
3 being accompanied by a fair and concise statement.

4 And it was brought to my attention that  
5 there's actually a body of law that addresses what  
6 the word accompanied by means. My reading was  
7 always just that it would be printed on the ballot.  
8 But there is a case Tobias versus the Attorney  
9 General. And there is a statute that talks about  
10 when it's okay basically for a sheet, a separate  
11 sheet of paper to be handed to voters with the  
12 summary.

13 So, it was suggested perhaps that the  
14 Commission just take a look at this issue and  
15 decide whether if it seems practical to just  
16 require that the summary be on the ballot. The  
17 term accompanied by can mean on the ballot.

18 CHAIRMAN CROSBY: I'm in favor of  
19 that.

20 COMMISSIONER ZUNIGA: That would make  
21 sense.

22 MR. GROSSMAN: As opposed to posting  
23 it on the wall or handing you a pamphlet or  
24 something.

1                   COMMISSIONER MCHUGH: Does the case  
2 say you can post it on the was as opposed to giving  
3 it to somebody?

4                   MR. GROSSMAN: The case gets into a lot  
5 of different nuances. It basically just affirmed  
6 some statutory language in which that was allowed.

7                   COMMISSIONER MCHUGH: In which what  
8 was allowed?

9                   MR. GROSSMAN: I think that it said you  
10 could post it.

11                   COMMISSIONER MCHUGH: We began - The  
12 only reason I'm pausing is we began this process  
13 by saying we're going to keep hands off the way  
14 municipalities were running this thing and  
15 consistent with the home-rule nature of our  
16 governmental system.

17                   Maybe this is not a deep incursion  
18 into that but it is a change. And it seems to me  
19 that although it's better to have it on the ballot,  
20 I don't know that so much better that we ought to  
21 dictate it.

22                   It's a better way to do it. Why don't  
23 we put it in there and again look for comment.

24                   MR. GROSSMAN: Just leave it?

1                   COMMISSIONER MCHUGH: No, no. Put in  
2 on the ballot and look for comment. Maybe there's  
3 no issue here. Maybe anybody affected by this  
4 potentially would say that's the right way to do  
5 it and will do it that way.

6                   CHAIRMAN CROSBY: Okay, 125.

7                   COMMISSIONER MCHUGH: Just before we  
8 do that, the treble damages provision is something  
9 we created. We need to look at the comments there  
10 too because our power to do that is not entirely  
11 here.

12                  MS. BLUE: That's right.

13                  CHAIRMAN CROSBY: Page 32 (c), this  
14 was one that asked be brought up. In determining  
15 whether potential impact on a community is  
16 significant and adverse, the Commission may  
17 consider whether the impact to be experienced is  
18 different in kind or greater in degree than impacts  
19 in other communities that are geographically  
20 nearby.

21                  This just seemed odd to me because many  
22 communities may have the same significant impacts  
23 but you can't qualify as a significant impact if  
24 your impacts aren't distinguishable from other

1 communities. It just seemed like an odd structure  
2 to me.

3 COMMISSIONER MCHUGH: Here's the  
4 idea. Maybe there's a better way to phrase it.  
5 The idea is that if one of these establishments  
6 goes into a region, there are likely to be  
7 repercussions felt by everybody in the region to  
8 some extent. So, the degree to which they're felt  
9 begins to increase in particularity the closer you  
10 get to the ground zero logically.

11 So, the dividing line between  
12 surrounding communities and other communities  
13 that have some impact is whether there is a  
14 measurable difference between the impact in that  
15 community and the impact that everybody in the area  
16 generally is going to feel.

17 CHAIRMAN CROSBY: That I understand.  
18 And I'm not sure this is important enough. But  
19 let's say you have got five surrounding  
20 communities. And all five surrounding  
21 communities are going to have a similar impact on  
22 their traffic patterns.

23 COMMISSIONER MCHUGH: Right.

24 CHAIRMAN CROSBY: It would make it

1 impossible for each one of the communities to  
2 distinguish themselves from the other communities  
3 because they all are having the same negative  
4 impacts. This maybe a complete waste of time.

5 COMMISSIONER MCHUGH: No. But all  
6 five of them then would likely be surrounding  
7 communities because they have a greater impact,  
8 measurably greater impact than communities  
9 outside of where they are. Maybe there's a way to  
10 make that clearer.

11 In other words, you don't have to have  
12 a unique impact to be a surrounding community.  
13 You simply have to have an impact that's different  
14 from the general impact felt in the region.

15 CHAIRMAN CROSBY: You could say in  
16 other committees that are not surrounding  
17 communities. But I think I'm torturing something  
18 here. I think we know what we're talking about.

19 COMMISSIONER MCHUGH: We know it when  
20 we see it.

21 CHAIRMAN CROSBY: We know it when we  
22 see it. I'll let that one go. Anything else on  
23 125?

24 COMMISSIONER STEBBINS: Yes, 125.01

1 (iii) on page 32, is there any concern that we're  
2 suggesting that a surrounding community  
3 designation may be in fact a temporary  
4 designation?

5 COMMISSIONER MCHUGH: What roman  
6 numeral are you looking at?

7 COMMISSIONER STEBBINS: (iii) as it  
8 relates to impact from factors and impacts  
9 generated during the construction period. Is  
10 there any concern there to be raised that the  
11 surrounding community in that sense may only be a  
12 temporary designation during the construction  
13 period?

14 CHAIRMAN CROSBY: Let's put it a  
15 different way. If a community is only going to be  
16 materially and significantly and adversely  
17 affected during the construction phase but not  
18 thereafter, the way this is written, they would  
19 still be able to qualify as a surrounding community  
20 meaning they'd have to have a signed agreement with  
21 the bidder. Is that okay?

22 COMMISSIONER STEBBINS: That's part  
23 of the question. And I am okay with that. Now I'm  
24 thinking further down the road. That community

1 who applies to us for mitigation monies.

2 CHAIRMAN CROSBY: They don't have to  
3 be a surrounding community to get mitigation  
4 funds.

5 COMMISSIONER STEBBINS: You're right.

6 CHAIRMAN CROSBY: I think you picked  
7 up a good point but you could become a surrounding  
8 community by virtue just of a temporary impact.  
9 And I think that's okay. Does that make sense to  
10 everybody else?

11 COMMISSIONER MCHUGH: Yes. The other  
12 thing you get from a surrounding community  
13 designation is a seat at the table, the right to  
14 present things at this hearing we have to have.  
15 So, you have an opportunity to come and tell us  
16 about the impacts and why the agreement's a good  
17 one or why it should be sweetened or whatever.

18 CHAIRMAN CROSBY: Right. I need a  
19 very quick break and we'll come back to 126.

20

21 (A recess was taken)

22

23 CHAIRMAN CROSBY: Shall we reconvene?

24 We are looking at section 126 on page 37.



1                   COMMISSIONER STEBBINS: Mr. Chairman,  
2                   can I go back to page 32 real quickly?

3                   CHAIRMAN CROSBY: Yes.

4                   COMMISSIONER STEBBINS: It's  
5                   highlighted in yellow, item (d) the Commission may  
6                   evaluate whether the positive impacts on the  
7                   community that may result in the development and  
8                   operation of a gaming establishment are of such a  
9                   nature so as to outweigh any negative impacts.  
10                  And then the rest of it got scratched.

11                  I'm just kind of wondering what  
12                  relevance it still plays if you take out that last  
13                  provision. If you could just explain that  
14                  flexibility the Commission may have with respect  
15                  to that provision?

16                  MR. GROSSMAN: Sure. I think there  
17                  were a couple of concerns that led to that  
18                  recommendation. The first is that by having what  
19                  appeared to be a balancing test, you invite  
20                  scrutiny as to whether it becomes an adjudicatory  
21                  type process or not. And by removing that  
22                  language you take out the balancing element of it.

23                  The other issue was raised by this was  
24                  whether solely because a project would bestow

1 positive benefits upon a community or in fact the  
2 positive benefits clearly outweigh the negatives  
3 would mean that a community would no longer qualify  
4 for surrounding community status even though there  
5 are negative impacts. And seemingly, even in that  
6 scenario, a community could still be a surrounding  
7 community. And impact fees and other mitigation  
8 would still be appropriate even if they were to be  
9 the recipient of great economic growth and  
10 otherwise.

11           There still may be traffic issues and  
12 public safety issues that require attention. And  
13 funding may be required to address that. So,  
14 that's why it was suggested that perhaps a  
15 community shouldn't necessarily lose its ability  
16 to become a surrounding community solely because  
17 it will also receive tremendous positive impacts.

18           With that being said, the way this is  
19 written, the Commission has the flexibility to  
20 consider all of this and decide whether in fact it  
21 would be the case. That there really aren't any  
22 negative impacts. It's all positive. And that  
23 this particular community, though it will be  
24 affected, would not be impacted.

1 CHAIRMAN CROSBY: Negatively.

2 MR. GROSSMAN: Negatively.

3 MS. BLUE: And I think there was a  
4 sense as well that the rest of the section only  
5 talks about negative impacts and you do want to  
6 consider the positive impacts.

7 CHAIRMAN CROSBY: If you can't balance  
8 them, why do you want to consider them?

9 MS. BLUE: I think you can balance  
10 them. I think when we talked before there was a  
11 question of how did you consider them because the  
12 rest of the regulations only talks about the  
13 negative impacts. So, I think you do want to  
14 balance them. How you balance them and where you  
15 come out on it is where the Commission has  
16 flexibility.

17 MR. GROSSMAN: It's not necessarily a  
18 scale that okay you're 47 percent positive and 53  
19 negative so you are a surrounding community.  
20 That's what that language suggests when you have  
21 that type of balancing test.

22 CHAIRMAN CROSBY: If the lawyers are  
23 comfortable with this, I am. Okay, so let's look  
24 at 126, live entertainment venues, any questions,

1 issues? 127.

2 COMMISSIONER STEBBINS: Just real  
3 quick on 126 is there any need to delineate the live  
4 entertainment venue as nonprofit or municipal?

5 MR. GROSSMAN: I think we do address  
6 that where we say that the Commission has to  
7 determine whether -- right in the middle of page  
8 37 (2) about halfway down we say in determining  
9 whether a venue will be designated an impacted live  
10 entertainment venue, the Commission shall ensure  
11 that the venue meets the definition of impacted  
12 live entertainment venue. It's in the  
13 definition. It sets for the parameters for that,  
14 although we could certainly spell it out.

15 MS. BLUE: It is defined in the statute  
16 as a nonprofit.

17 MR. GROSSMAN: Or a municipal.

18 CHAIRMAN CROSBY: You okay with that?

19 COMMISSIONER STEBBINS: Yes.

20 CHAIRMAN CROSBY: Okay. 127, do we  
21 have any open --

22 COMMISSIONER ZUNIGA: I have a  
23 question on the highlighted. I know what this  
24 language is trying to get at the significant and

1 material and adverse impact. Are we making a  
2 conscious decision that the degree of impact -- a  
3 very large variance in the degree of impact is not  
4 part of this definition?

5 Maybe an impact is predetermined or  
6 thought about. I'm just going to pick on traffic,  
7 and measures are put in place. But the degree of  
8 that impact turns out to be substantially  
9 different from what was originally intended as  
10 part of the host community agreement but the topic  
11 that event was anticipated.

12 MS. BLUE: I think it's something we  
13 should consider. I don't think we talked when we  
14 were going over this about the level of the impact.  
15 We did focus more on things that were unforeseen  
16 and things that were out of people's control as  
17 really being the basis for a reopening.

18 I don't think we had thought through  
19 completely whether it was an event that was perhaps  
20 already anticipated but now was somewhat larger  
21 than we had anticipated. So, I think it's  
22 something we should consider whether we want to  
23 have language in there that addresses that.

24 COMMISSIONER ZUNIGA: I'm not

1 suggesting that we should. I was just wondering  
2 if this is purely for unanticipated events.

3 MS. BLUE: I think that was the general  
4 thought behind it, yes, unforeseen out of the  
5 applicant's control, the municipality's control.

6 CHAIRMAN CROSBY: I think as a  
7 practical matter I think if it's something you  
8 anticipated but it's 10 times bigger, then you  
9 didn't anticipate it. This would conclude that.  
10 That's the kind of thing you're talking about.  
11 You thought it was just going to take this much  
12 water and it took 13 time that much water then  
13 that's not what you anticipated, so by  
14 definition --

15 COMMISSIONER MCHUGH: But we have to  
16 read that definition, which is simply the  
17 definition of a significant and material adverse  
18 impact with 127.02. Those are the only reasons  
19 for reopening the agreement. It has to be one of  
20 those two things that causes a significant adverse  
21 impact. And those are denials of permits,  
22 basically. And the denial of the permit has to  
23 undermine a basic premise on which the agreement  
24 was made.

1           So, it's not we got a little more  
2 traffic out here than we anticipated, so let's  
3 reopen the deal. Or we don't have enough  
4 rainwater to do the green part of it. You've got  
5 to get the permit denied and the permit denied has  
6 to basically make a basic condition of the project  
7 unachievable. That's a pretty big impact.

8           CHAIRMAN CROSBY: Does this say it has  
9 to be denied? I thought this says to get a  
10 conditional license and you are about to get it  
11 approved. And in approving it, it would cause the  
12 Commission to give you a final license and that  
13 would cause a significant and material adverse  
14 impact. It's not if it's not granted.

15           COMMISSIONER MCHUGH: I'm sorry, I  
16 overstated it. It's an action of a permit  
17 granting authority basically. I did overstate  
18 that. But it is not simply something that happens  
19 that allows you to reopen it.

20           Some intervening force of a permit  
21 granting authority has to play a role in this.

22           COMMISSIONER MCHUGH: I didn't get  
23 that either. So, it's not as if you operate away  
24 for a couple years and then it turns the traffic

1 impacts, the water impacts, the whatever impacts  
2 are vastly greater than you anticipated or there's  
3 an impact on some road you never even anticipated.  
4 That doesn't count.

5 COMMISSIONER MCHUGH: Right.

6 CHAIRMAN CROSBY: That doesn't get us  
7 into this. That might get you to the voluntary  
8 reopening or it might get you to our mitigation  
9 fund or something, but that doesn't get to a  
10 reopening.

11 COMMISSIONER ZUNIGA: Okay.

12 So, if there were a reopening under  
13 this scenario, we're not raising the issue about  
14 whether there needs to be another vote.

15 COMMISSIONER MCHUGH: No.

16 CHAIRMAN CROSBY: And I guess we're  
17 saying no matter how adverse, no matter how  
18 significant, no matter how much anticipated on the  
19 part of the community when they voted it, doesn't  
20 require another vote.

21 COMMISSIONER MCHUGH: Did we deal with  
22 that anyplace? In the last paragraph --

23 MR. GROSSMAN: We addressed in part  
24 anyway in the last paragraph.



1 CHAIRMAN CROSBY: Last paragraph of?

2 MR. GROSSMAN: 127, so it's 127.06 on  
3 page 44. That would encourage or it's designed to  
4 encourage the drafters of these agreements to seek  
5 to address as many contingencies as possible. So,  
6 that when the agreement goes before the host  
7 community as part of the election that the voters  
8 have an opportunity to see under what types of  
9 circumstances the agreement may be amended.  
10 That's what that allows for. Basically, we say if  
11 the voters had a chance to look at it and they  
12 signed off on it, then it's okay.

13 MS. BLUE: And if the agreement had a  
14 reopening clause in it and that was listed in the  
15 summary when it was voted on, then people would  
16 understand that there was an ability to reopen it.  
17 Hopefully, the conditions would be spelled out.

18 So, the hope would be that there would  
19 be a clause in a host agreement negotiated that  
20 said you could reopen under certain conditions.  
21 And then when you did you met those conditions,  
22 then you wouldn't need another vote because that  
23 had already been voted on, the ability to do that  
24 had been voted on.

1                   COMMISSIONER MCHUGH: That's an  
2 important point, because that undercuts the entire  
3 -- It's in host community agreement. It undercuts  
4 the entire premise that we were just talking about.  
5 Because they can agree on their own definition of  
6 when you get to reopen it. They can agree on the  
7 terms that you reopen it. They can agree on  
8 anything. And one needs to think about that.

9                   MS. BLUE: That's an entirely new  
10 section.

11                   COMMISSIONER MCHUGH: That's a  
12 standalone basically.

13                   MS. BLUE: Yes.

14                   COMMISSIONER MCHUGH: And that might  
15 be another one that we put out there and see what  
16 people comment on. That could be a big deal.

17                   CHAIRMAN CROSBY: I suppose you could  
18 have that in the host community agreement, right?  
19 The host community agreement could say if we reopen  
20 this then we get to have another referendum.

21                   COMMISSIONER MCHUGH: Yes, but it  
22 could also say that the parties may reopen the  
23 agreement in the event that they choose to do so,  
24 period. And reopen and revise the agreement in

1 the event that they mutually agree to do so. And  
2 there will be no further vote of the community  
3 involved.

4 So, you could theoretically and you're  
5 always thinking about cases that arise at the  
6 margins, but you could theoretically have a  
7 proposal (A) approved by the voters. And then a  
8 host community agreement reopened by mutual  
9 consent of the municipality and the applicant.  
10 And have proposal (B) worked out in essence between  
11 them. And they go forward with proposal (B)  
12 without another vote of the community. That's the  
13 worst-case scenario.

14 CHAIRMAN CROSBY: Same thing could  
15 happen in the involuntary if it comes about.

16 COMMISSIONER MCHUGH: Yes. But then  
17 you really do have an outside force. You could do  
18 that. But you really have the intervention of an  
19 outside force that you didn't anticipate doing  
20 something in a way you didn't anticipate that makes  
21 the agreement that the voters acted on  
22 impractical.

23 CHAIRMAN CROSBY: Right.

24 COMMISSIONER MCHUGH: That's the kind

1 of thunderbolt that that's designed to guard  
2 against.

3 This one is just we changed our minds.

4 CHAIRMAN CROSBY: Right. I think I  
5 would certainly welcome to listen to other  
6 people's comment and we'll have an opportunity for  
7 that. I think we are talking about extreme on  
8 extreme on extreme and to need another vote, it  
9 just throws the thing completely up in the air.

10 COMMISSIONER MCHUGH: I don't  
11 disagree with that. And I'm not talking about  
12 another vote being the remedy. But I am thinking  
13 about the certainty that voters have when they go  
14 to the polls and look at a host community agreement  
15 to know that apart from the intervention of some  
16 outside force that wrecks this, this is the deal  
17 that's going to go forward, which this provision  
18 would eviscerate.

19 CHAIRMAN CROSBY: So, I guess we agree  
20 to let it stand now subject to whatever else we  
21 hear?

22 COMMISSIONER MCHUGH: Yes.

23 CHAIRMAN CROSBY: Okay. 128 form of  
24 the gaming license, 129 transfer of interests. I

1 have a few questions on this one. 129.01(h), in  
2 the event there is a transfer, the Commission may  
3 require the transferor or both to pay a commission  
4 to the Commission for the Commonwealth's share of  
5 the increased value of the transferred licenses.

6 (A) I'm not sure I understand this.  
7 And (B) I certainly have no idea where it comes from  
8 in terms of the matter of equities and  
9 appropriateness. So, if somebody would explain  
10 this one to me.

11 MR. GROSSMAN: The Commonwealth's  
12 share language comes from the statute. As I  
13 mentioned, I don't exactly understand what that  
14 means.

15 CHAIRMAN CROSBY: You keep bugging me  
16 with these details.

17 MR. GROSSMAN: That doesn't really  
18 answer the question as to what it means. I'm not  
19 100 percent sure what that means exactly. But we  
20 thought we should put it in there just so we don't  
21 miss it. I was hoping you would know.

22 CHAIRMAN CROSBY: The Commonwealth's  
23 share of the increased value, what on earth does  
24 that mean?

1                   COMMISSIONER ZUNIGA: I have a  
2 scenario, I guess. The value of this license  
3 changes over time from the time that we award a  
4 license and during the construction period before  
5 it comes to fruition or even during the operations  
6 based on whatever happens at that site. Again,  
7 the fundamental value is going to change. In the  
8 event that we -- That statute, as you know,  
9 provides for a transfer of the license. If let's  
10 say the current operator goes bankrupt or any  
11 number of scenarios --

12                   CHAIRMAN CROSBY: Just sells it.

13                   COMMISSIONER ZUNIGA: That would have  
14 to be perhaps a little -- Fine, any number of  
15 scenarios. I think this provision gets to a fair  
16 calculation to the extent that we can to come to  
17 the Commonwealth. If the value of that license is  
18 determined to be a higher, let's say, to recapture  
19 -- for the Commonwealth to recapture that.

20                   CHAIRMAN CROSBY: I understand that  
21 the thing will change in value. But what is the  
22 Commonwealth's share? Based on what?

23                   COMMISSIONER ZUNIGA: Well,  
24 initially, it's \$85 million.

1                   CHAIRMAN CROSBY: The Commonwealth's  
2 share of the --

3                   COMMISSIONER ZUNIGA: The licensing  
4 fees is \$85 million for a Category 1. Then the  
5 potential of the gross gaming revenues are all the  
6 \$25 million based on some projection. Again, all  
7 of that determines the intrinsic value of the  
8 license. And those things change over time.  
9 They could change over different factors.

10                  CHAIRMAN CROSBY: If in five years  
11 somebody might have paid not \$85 million but \$125  
12 million, that the Commonwealth ought to get \$40  
13 million?

14                  COMMISSIONER ZUNIGA: Well, only in  
15 the event that this gets transferred.

16                  CHAIRMAN CROSBY: Yes, I understand  
17 that.

18                  COMMISSIONER MCHUGH: This one I  
19 couldn't figure it out either. None of us could  
20 figure it out. And it seems to me this is exactly  
21 the kind of thing a regulation is designed to deal  
22 with, to take out the ambiguities. So, when it  
23 happens we know what we're talking about.

24                  So, you start with the \$85 million.

1 The license fee initially is \$85 million and the  
2 thing is worth \$850 million. The Commonwealth's  
3 share would be 10 percent; is that right to start  
4 with? So, if it went up to on transfer a  
5 billion --

6 COMMISSIONER ZUNIGA: No, I'm not  
7 meaning the 10 percent that they're required to  
8 place on deposit.

9 COMMISSIONER CAMERON: No. He's  
10 doing the math.

11 COMMISSIONER MCHUGH: I'm just doing  
12 the math.

13 COMMISSIONER ZUNIGA: Okay, right.

14 COMMISSIONER MCHUGH: The  
15 Commonwealth's share of the value of the project  
16 would be 10 percent, \$85 million license for an  
17 \$850 million project.

18 COMMISSIONER ZUNIGA: That's right.

19 COMMISSIONER MCHUGH: So, if the  
20 market value of the project is a billion when it's  
21 transferred, then the Commonwealth gets 10 percent  
22 of the delta between the 850 and a billion? Is  
23 that how you'd calculate it?

24 COMMISSIONER ZUNIGA: That's one way



1 of calculating it. That's one way of calculating  
2 just the licensing fee portion. There's also  
3 expected revenues in the future that come to the  
4 Commonwealth by virtue of the gross gaming  
5 revenues.

6 COMMISSIONER MCHUGH: But those stay  
7 flat at 25 percent. We're going to get that  
8 anyway.

9 COMMISSIONER ZUNIGA: Right. But  
10 there could be any number of circumstances that  
11 make those projections change dramatically that  
12 cause -- there could be any number of circumstances  
13 that make those projections change.

14 COMMISSIONER MCHUGH: How would that  
15 affect the Commonwealth's share?

16 COMMISSIONER ZUNIGA: It could be  
17 less.

18 CHAIRMAN CROSBY: Less than 25  
19 percent?

20 COMMISSIONER ZUNIGA: No. Less than  
21 what was expected. The 25 percent of however many  
22 revenues in the future, those revenues may end up  
23 being very different by virtue of something that  
24 happens along the way.

1                   COMMISSIONER MCHUGH: So, you're  
2 saying that the market value or the value of the  
3 property initially -- because you have to have an  
4 initial value to calculate the increase, right?

5                   COMMISSIONER ZUNIGA: Right.

6                   COMMISSIONER MCHUGH: The initial  
7 value would be not only the capital investment but  
8 the anticipated going concern value?

9                   COMMISSIONER ZUNIGA: Let me put it in  
10 terms of an internal rate of return. These  
11 projects are going to come in with an expected  
12 return, overall return based on everything that  
13 they have to put in to make that happen and the  
14 revenues that are expected. That rate of return  
15 could change by something that goes wrong along the  
16 way.

17                  COMMISSIONER MCHUGH: No, I  
18 understand that.

19                  CHAIRMAN CROSBY: So, how do you  
20 calculate that into the Commonwealth's share?

21                  COMMISSIONER ZUNIGA: You look at what  
22 we thought we were going to get initially and the  
23 factors and circumstances that make that value to  
24 be very different.

1           CHAIRMAN CROSBY:  If our projected tax  
2 revenue is going to be less than we have been told  
3 in their pro formas, they've got to pay us the  
4 difference?

5           COMMISSIONER ZUNIGA:  We may want that  
6 only in the event that that gets transferred.

7           COMMISSIONER MCHUGH:  How is that the  
8 Commonwealth's -- It just talks about the  
9 Commonwealth's share of the increased value.  It  
10 doesn't talk about the Commonwealth's share of the  
11 decreased value.

12           It seems to me we need to come up with  
13 some kind of an interpretation on this and set it  
14 out in a regulation.  And we could do some kind of  
15 a market value approach.  We could do a going  
16 concern projection.  But some kind of a formula  
17 that establishes the initial value so that we have  
18 -- and use the same mechanism for calculating the  
19 value on transfer so we can see what the delta is.

20           COMMISSIONER ZUNIGA:  Yes, it could  
21 all be calculated on the net present value basis  
22 at different times.

23           CHAIRMAN CROSBY:  I was just going to  
24 say currently the statute says may.  Is that right

1 this was taken out of the statute?

2 MR. GROSSMAN: Yes.

3 CHAIRMAN CROSBY: The statute says  
4 may. I for one as a Commissioner don't get this  
5 one at all. So, I don't know that I would be  
6 interested in using our option here.

7 So, what I think we ought to do is I  
8 think we ought to table this one. We ought to try  
9 and find out what the Legislature was talking  
10 about. They had something in mind here when they  
11 add it. And see if anybody else has comments about  
12 this. Then let's pick it up again. We are  
13 groping in the blind here about what's going on.

14 COMMISSIONER MCHUGH: I don't  
15 disagree with that, but I do think that we can't  
16 reasonably leave a regulation that looks like this  
17 in the final set of regulations.

18 CHAIRMAN CROSBY: I agree.

19 COMMISSIONER MCHUGH: We have to take  
20 it out or --

21 CHAIRMAN CROSBY: Yes. We'll come  
22 back to this. We just need to understand more  
23 about it before we address it. I totally agree.  
24 We can't leave it like this. So, this is 129. Do

1 you know what the statutory reference is?

2 COMMISSIONER MCHUGH: It's 21(b).

3 And I think we're not going to resolve this by  
4 Friday. So, I think that the version we send out  
5 is going to contain this provision and we'll look  
6 for comments from everybody as well as whatever we  
7 can find out from the Legislature.

8 CHAIRMAN CROSBY: Okay. Number K --  
9 letter (k) no bona fide banking institution or a  
10 commercial financial institution, which becomes a  
11 substantial party of interest to the gaming  
12 licensee shall be considered a transferee.

13 I'm not 100 percent sure. I brought  
14 this up with Todd. I'm not 100 percent sure what  
15 this means.

16 But among other things it seems like if  
17 you went into bankruptcy and you took ownership of  
18 the entity or if you bought this or bought into it  
19 that you would not be considered a qualifier or you  
20 would not be considered a transferee. So, I'm not  
21 sure what this means. I don't understand the sums  
22 of the merit of this idea.

23 MS. BLUE: I think some of the  
24 conversation around it was if a bank or a

1 commercial financial institution took an interest  
2 in it of some kind that they wouldn't necessarily  
3 be considered a transferee, if they bought into in  
4 a small enough interest to comply with the statute.

5 I don't think that there was a lot of  
6 conversation about the question if it was a  
7 bankruptcy or if somehow the bank actually bought  
8 it. But I think the idea was there are commercial  
9 financial institutions that will finance these  
10 projects. And if they take a piece of the debt,  
11 for example, that they wouldn't necessarily be a  
12 transferee.

13 CHAIRMAN CROSBY: But that would be  
14 true of any financier in any financial hedge fund,  
15 they're going to qualify in the first instance  
16 and so would a banking institution. If they're  
17 going to do the subordinated debt, they would be  
18 a qualifier under this situation.

19 MS. BLUE: Within the parameters of  
20 our other regulations, yes.

21 COMMISSIONER ZUNIGA: But not a  
22 transferee.

23 MS. BLUE: But not a transferee.

24 COMMISSIONER ZUNIGA: We're in the

1 transferring section of licenses.

2 CHAIRMAN CROSBY: If a bona fide  
3 institution becomes a substantial party of  
4 interest -- If at the beginning they buy in or they  
5 provide debt or whatever, no problem. They're not  
6 a transferee. I don't know why this would be in  
7 here.

8 But what if they are a transferor?  
9 What if they take ownership in a bankruptcy? What  
10 if they buy the thing?

11 COMMISSIONER ZUNIGA: They're not  
12 licensed. They could have an interest but that  
13 doesn't mean that the license has transferred to  
14 them.

15 CHAIRMAN CROSBY: If they take  
16 ownership in bankruptcy, they wouldn't have the  
17 license?

18 MS. BLUE: Ownership in bankruptcy is  
19 a whole separate issue. There would be a number  
20 of questions in terms of how that was controlled  
21 and how that worked. So, that's probably  
22 something we can't spell out in a regulation and  
23 address.

24 But I view this as a situation where two

1 or three years down the road they now want to take  
2 out a loan, the licensee want to take out a loan.  
3 And they're going to take it from this bank. The  
4 bank is not a transferee in that the licensee isn't  
5 necessarily transferring an interest in the  
6 license to that institution. They have debt.

7 They might still end up being a  
8 qualifier. That could be true, but they wouldn't  
9 be a transferee for purposes of this regulation.

10 COMMISSIONER ZUNIGA: Maybe it's  
11 obvious, but that's exactly what this is trying to  
12 say.

13 COMMISSIONER MCHUGH: Suppose they  
14 took an equity interest?

15 MS. BLUE: If they took an equity  
16 interest within -- They could still be a qualifier  
17 but they wouldn't necessarily be a transferee. I  
18 think that could be true.

19 CHAIRMAN CROSBY: It seems like if  
20 they just became a financial party, I get it. No  
21 issue. They probably would be a qualifier.  
22 There's no transfer. But if they took ownership  
23 or they took a controlling interest, then I would  
24 think that would be a transferee. If they took a



1 51 percent operating interest for example.

2 COMMISSIONER ZUNIGA: Maybe we need to  
3 change some of the language relative to becoming  
4 a substantial party and clarify that we may be  
5 talking about financing specifically or making a  
6 distinction between financing or debt or equity.

7 MS. BLUE: And an ownership in the  
8 license, for example.

9 COMMISSIONER ZUNIGA: Financing or  
10 ownership.

11 COMMISSIONER MCHUGH: That's another  
12 one that we probably need to see if we can find out  
13 anything that the Legislature had in mind.  
14 Because substantial party of interest is not a  
15 defined term. They've got a million defined terms  
16 here, but that is not one of them.

17 CHAIRMAN CROSBY: Okay. Which  
18 section is that from?

19 COMMISSIONER MCHUGH: That's 23(b) as  
20 well, that's 23(b)(i).

21 CHAIRMAN CROSBY: So, we're going to  
22 hold on that one. 129.02(1) it says proposed  
23 sale, assignment, transfer or other disposition of  
24 any security issued by a corporation shall be

1 considered of a direct or indirect interest shall  
2 require approval.

3 And I just raised the issue with Todd  
4 about whether we want to put some standard of  
5 materiality in here. If you sell a one percent  
6 share or a three percent share, does that require  
7 approval? This says any security.

8 MS. BLUE: I think we probably need a  
9 distinction a public traded security as well  
10 because if it's a public traded security then  
11 that's going to happen. That's not necessarily a  
12 transfer.

13 CHAIRMAN CROSBY: Okay. So, there's  
14 two amendments then maybe to this one.

15 COMMISSIONER MCHUGH: We can go ahead  
16 and make those amendments now.

17 MS. BLUE: As Todd points out in 03, we  
18 do talk about the publicly traded. So, we have  
19 addressed that. So, it's just the materiality.

20 CHAIRMAN CROSBY: We're getting close  
21 here. Anything else in 129? On 130, appointment  
22 and the qualifications of the conservator. The  
23 only thing that I raised here was this seems to  
24 presume that a conservator would be a human being.

1           The question was do we mean to limit it  
2 to a human being or could a conservator also be an  
3 entity, in which case some language would change  
4 here?

5           You might bring in a company to run it.  
6 It wouldn't be Mr. Smith as a conservator. It  
7 might very well be another casino operator.

8           COMMISSIONER MCHUGH: Well,  
9 traditionally, you'd want an individual. I don't  
10 think we thought of this. Traditionally, you'd  
11 want, I think, you would want an individual to be  
12 the conservator and give him or her the power to  
13 hire somebody to assist.

14           MS. BLUE: Generally, conservators  
15 are individuals with authority. And then the  
16 individual would be potentially a qualifier. I  
17 think in the examples that were cited to us, they  
18 were individuals that were hired.

19           CHAIRMAN CROSBY: So, the model -- I  
20 don't know anything about this. The model would  
21 be that the entity gets in trouble. The  
22 conditions here trigger our ability to appoint a  
23 Conservator. We pick a person. And that person  
24 then decides what to do. Do they want to bring in

1 casino company X to run it? Do they want to hire  
2 a few other folks?

3 COMMISSIONER MCHUGH: Right.

4 CHAIRMAN CROSBY: Do they want to just  
5 reorganize internally?

6 COMMISSIONER MCHUGH: Right, that's  
7 the model.

8 CHAIRMAN CROSBY: That's fine with me.  
9 And if that covers it for us, then we're fine.  
10 The same thing would happen if they brought in  
11 another outfit, we would have qualify them.

12 COMMISSIONER MCHUGH: Right.

13 CHAIRMAN CROSBY: That's fine with me  
14 if that's the way the model works. Okay.  
15 Anything else on 130? Then on 131, I have a  
16 question under 131.02, the new licensee shall pay  
17 to the prior licensee the lesser of the depreciated  
18 investment. Where is the source and logic of this  
19 clause?

20 MS. BLUE: This was a conversation we  
21 had with the consultants about if there is a  
22 transfer to a new licensee, there should be some  
23 mechanism by which the pricing is established.  
24 So, as we talked this through, this was one way to

1 say to the transferee this is what you would have  
2 to pay to the transferor.

3 COMMISSIONER ZUNIGA: It dovetails  
4 into the previous one, by the way, in my opinion,  
5 into 129.01(h).

6 CHAIRMAN CROSBY: Again, this is  
7 beyond my range of knowledge and experience. It  
8 says in the event of a revocation or a failure to  
9 renew. So, we have 15 years from now we don't  
10 renew a license for whatever reason. So, the  
11 entity then must, I guess, pass it on to somebody  
12 else, they have to sell their --

13 MS. BLUE: Yes, because we are  
14 requiring them to remain in the same location.  
15 So, we're not giving them the option of taking the  
16 license and going someplace else.

17 CHAIRMAN CROSBY: The license is gone,  
18 but the facility that they own and all of the  
19 goodwill and the customers and the traffic and the  
20 relationships and so forth are all --

21 MS. BLUE: Still there.

22 CHAIRMAN CROSBY: -- still there. If  
23 you have the lesser of the depreciated capital  
24 investment or the fair market value, you're going

1 to go for the depreciated capital investment.

2 COMMISSIONER ZUNIGA: I think it means  
3 the difference not the lesser. That's not what it  
4 says, but what I believe is happening here is there  
5 is a market value of the license.

6 COMMISSIONER MCHUGH: Why would you  
7 want to have a transferee pay the difference  
8 between those two?

9 COMMISSIONER ZUNIGA: It's in  
10 calculating the actual fair market value. That's  
11 the confusing piece. However, anybody calculates  
12 the fair market value of this property is going to  
13 have to take into account the actual depreciation  
14 up until that point.

15 I would eliminate the area having to do  
16 with depreciated capital investment and just hone  
17 in on fair-market value.

18 MS. BLUE: One of the concerns raised  
19 to us was as we as the Commission determine how to  
20 transfer the license that there would be  
21 extenuating and ongoing to negotiations between  
22 the license holder and the transferee as to what  
23 the value of the property was. And that we should  
24 step in to say it has to be at least this number.

1 Because we didn't want to be in a position where  
2 it took too long to transfer the license.

3 CHAIRMAN CROSBY: I can understand  
4 that point, but I don't understand this mechanism  
5 of accomplishing that. It would seem to me that  
6 maybe we'd want to have an arbitration process that  
7 we could mandate.

8 In the event that we feel like too much  
9 time has gone by, we can set up an arbitration  
10 process. There's an arbitrated, negotiated fair  
11 market value. The fair market value should be the  
12 sine qua non here. If they're going to be debating  
13 about what is the fair-market value, we're not  
14 trying -- if we're not renewing somebody, we're not  
15 trying to force them to sell the property at less  
16 than what the market would bear. We just want them  
17 to be expeditious and fair about determining that.

18 That's the way I would accomplish what  
19 the consultants were telling you needs to be  
20 accomplished.

21 COMMISSIONER MCHUGH: But the  
22 arbitration has to proceed against the standard.  
23 And the standard would be the fair market value not  
24 the depreciated capital.

1                   CHAIRMAN CROSBY: Right. That's what  
2 I'm saying. The fair market value is the sine qua  
3 non. This is again one that I think our bidders  
4 and companies could inform us. Maybe there's  
5 something else going on here.

6                   But we would want the fair market value  
7 to be paid. We just need a process to compel that  
8 to be determined and executed.

9                   COMMISSIONER MCHUGH: We can make that  
10 change before Friday as well. We can just set up  
11 an arbitration process, right?

12                   MS. BLUE: We can use a similar one  
13 that we have in other places in the regulations.

14                   CHAIRMAN CROSBY: It's a little more  
15 complicated situation, I don't know whether the  
16 exact same process works.

17                   COMMISSIONER ZUNIGA: This fair  
18 market value determination rests on the  
19 Commission.

20                   CHAIRMAN CROSBY: And we would  
21 delegate it to the process.

22                   COMMISSIONER ZUNIGA: To our  
23 advisors.

24                   COMMISSIONER MCHUGH: This is just



1 what we're saying. It doesn't have to be based on  
2 what we say.

3 COMMISSIONER ZUNIGA: I'm sorry?

4 COMMISSIONER MCHUGH: This is just  
5 what we're saying. We could change that to say as  
6 determined by arbitration not just determined by  
7 us.

8 COMMISSIONER ZUNIGA: I kind of like  
9 our determination.

10 COMMISSIONER MCHUGH: I know.

11 CHAIRMAN CROSBY: I think that we've  
12 done it. Are there any other issues that need to  
13 be addressed? Do I have a motion to adjourn?

14 COMMISSIONER MCHUGH: There are no  
15 other issues to be addressed. You moved pretty  
16 fast.

17 CHAIRMAN CROSBY: Are there any other  
18 issues?

19 COMMISSIONER MCHUGH: I think there  
20 are none.

21 CHAIRMAN CROSBY: Motion to adjourn?

22 COMMISSIONER ZUNIGA: So moved.

23 CHAIRMAN CROSBY: Second?

24 COMMISSIONER CAMERON: Second.

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CHAIRMAN CROSBY: All in favor, aye.

COMMISSIONER STEBBINS: Aye.

COMMISSIONER ZUNIGA: Aye.

COMMISSIONER MCHUGH: Aye.

COMMISSIONER CAMERON: Aye.

CHAIRMAN CROSBY: Thank you all very  
much.

(Meeting adjourned at 4:30 p.m.)

1 ATTACHMENTS:

- 2
- 3 1. Massachusetts Gaming Commission March 25,  
4 2013 Notice of Meeting and Agenda
- 5 2. Massachusetts Gaming Commission Draft  
6 Evaluation Criteria
- 7 3. 205 CMR: Massachusetts Gaming Commission  
8 Regulation Amendments
- 9 4. 205 CMR: Massachusetts Gaming Commission  
10 RFA-2 Draft Regulations
- 11 5. Massachusetts Gaming Commission License  
12 Application Process Worksheet

13

14

15 SPEAKERS:

16 Catherine Blue, General Counsel  
17 Todd Grossman, Staff Attorney

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C E R T I F I C A T E

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

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

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

WITNESS MY HAND this 27th day of March 2013



A handwritten signature in black ink that reads "Laurie J. Jordan".

LAURIE J. JORDAN  
Notary Public

My Commission expires:  
May 11, 2018