

THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #117

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

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April 17, 2014 10:30 a.m.

BOSTON EXHIBITION AND CONVENTION CENTER

415 Summer Street, Room 152

Boston, Massachusetts

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

2                   CHAIRMAN CROSBY: We are ready to  
3 call to order the 117th meeting of the  
4 Massachusetts Gaming Commission. We are at the  
5 Convention Center as usual at 10:30 in the  
6 morning on April 17. Just for planning  
7 purposes before we get started, one of the  
8 Commissioners has to leave. Commissioner  
9 Zuniga has to leave later on today. So, we're  
10 going to run through lunch. We're going to go  
11 until about 1:30. So, we won't stop for a  
12 lunch break until about 1:30.

13                   We will now jump directly to the  
14 approval of the minutes.

15                   COMMISSIONER MCHUGH: Yes, Mr.  
16 Chairman. There are three sets of minutes in  
17 the Commissioner's packet, but only two are  
18 noticed on the agenda. The March 6 minutes are  
19 not. So, I'm going to defer approval of those  
20 until our next meeting. There's no urgency to  
21 that. And I think just to make sure all of our  
22 i's are dotted and t's are crossed, we will do  
23 that.

24                   So I would ask if there are any

1 comment on the March 20 minutes, the second set  
2 that is in the packet. And if there are not  
3 then I would move the approval of them with the  
4 usual reservation of corrections for technical  
5 and typographical errors.

6 COMMISSIONER STEBBINS: So moved.

7 CHAIRMAN CROSBY: Second?

8 COMMISSIONER CAMERON: Second.

9 CHAIRMAN CROSBY: Any comments? All  
10 in favor of adoption, aye.

11 COMMISSIONER MCHUGH: Aye.

12 COMMISSIONER CAMERON: Aye.

13 COMMISSIONER ZUNIGA: Aye.

14 COMMISSIONER STEBBINS: Aye.

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

17 COMMISSIONER MCHUGH: We'll turn  
18 then to the April 3 minutes. And I'd make the  
19 same motion there that they be approved in the  
20 form contained in the packet with the usual  
21 reservation for typographical and mechanical  
22 errors -- correction of typographical and  
23 mechanical errors.

24 CHAIRMAN CROSBY: Second somebody?

1 COMMISSIONER ZUNIGA: Second.

2 CHAIRMAN CROSBY: I actually had a  
3 couple of comments on this. On page three, at  
4 the 3:30 PM item just to clarify something  
5 which we now talked about off and on. The  
6 third to the last nine starts out a Category 1  
7 license if it is awarded the license. And I  
8 would like to change that to something like if  
9 it accepts the award of the license. Because  
10 this is the issue that MGM wasn't 100 percent  
11 sure what we were talking about and if they  
12 accept the award rather than awarded.

13 COMMISSIONER MCHUGH: Yes. I think  
14 there was some internal ambiguity there too.  
15 So, to make it clear I think that's what we all  
16 intended.

17 CHAIRMAN CROSBY: Right. That's  
18 what we intended. We've clarified it, but the  
19 just for the record. In the 4:07 this is close  
20 to small potatoes it says motion made by  
21 Commissioner Zuniga that the Commission accept  
22 the recommendations outlined by Director Vander  
23 Linden in terms of selecting the University of  
24 Massachusetts to conduct a cohort study at a

1 date later determined by the Commission which  
2 date will be reviewed and voted on by the  
3 Commission. Because it's the date that we  
4 agreed we will need to approve before we go  
5 forward.

6           So again, just to make it a little  
7 bit more precise. So, a cohort study at a date  
8 later determined by the Commission, which date  
9 will be reviewed on and voted on by the  
10 Commission.

11           COMMISSIONER MCHUGH: It's really  
12 commencing at a date, right? Because it's  
13 going to extend over a period of time, yes.

14           COMMISSIONER ZUNIGA: I am fine with  
15 that.

16           COMMISSIONER MCHUGH: Me too.

17           CHAIRMAN CROSBY: Any other  
18 comments, discussion?

19           COMMISSIONER MCHUGH: I'd amend then  
20 the motion to move for approval of these  
21 minutes with those two corrections and subject  
22 to any mechanical or typographical corrections  
23 that need to be made.

24           CHAIRMAN CROSBY: All in favor, aye.

1 COMMISSIONER MCHUGH: Aye.

2 COMMISSIONER CAMERON: Aye.

3 COMMISSIONER ZUNIGA: Aye.

4 COMMISSIONER STEBBINS: Aye.

5 CHAIRMAN CROSBY: Opposed? The ayes  
6 have it unanimously.

7 Now the start to get to the meat of  
8 our day, Ombudsman Ziemba.

9 MR. ZIEMBA: Good morning, Mr.  
10 Chairman, members of the Commission. The focus  
11 of my report today will primarily relate to  
12 timeline issues in Regions A, B and C.

13 First, we'll start with the  
14 discussion of the Region C schedule and how a  
15 request for a variance from our minimum capital  
16 investment requirement may have an impact on  
17 that schedule.

18 Next, we'll hear from a panel from  
19 MGM including Mike Mathis, President of MGM  
20 Springfield and Jed Nosal and Marty Nastasia  
21 from Brown Rudnick representing MGM  
22 Springfield.

23 Finally, we will discuss variance  
24 requests to the Commission's Region A

1 arbitration schedule.

2 I would ask if we could first start  
3 with item 3b, which is a request for a variance  
4 from the Commission's minimum capital  
5 investment regulations. Just as a point of  
6 clarification, what we're talking about here  
7 are exclusions and what is included in the  
8 total amount for meeting the \$500 million  
9 statutory minimum capital investment  
10 requirement.

11 And that requirement relates to what  
12 is submitted in an application to the  
13 Commission. To the degree that an applicant  
14 wants to exceed the minimum, they are fully  
15 welcome to do so. And to the degree that a  
16 community wishes to engage in a dialogue with  
17 an applicant on what minimum they would like  
18 pursuant to a host community agreement or  
19 otherwise that is certainly not prohibited  
20 under our regulations and indeed that was a  
21 major focus in another area of the state.

22 So, in that regard, I am going to  
23 turn to Commissioner Zuniga. He's prepared a  
24 memorandum for your consideration.

1                   COMMISSIONER ZUNIGA: Yes, thank  
2 you. I wrote a memorandum that's included in  
3 the packet to try to frame the discussion.

4                   I would turn first to the third  
5 page, an attachment to that memorandum, which  
6 is titled the Market Shares Under Full  
7 Competition Scenarios that comes from the  
8 analysis that our consultants did for us, HLT,  
9 when we evaluated the Category 2 license. The  
10 Commission will remember that these  
11 calculations was relative to the whole state.  
12 It centered around what the different scenarios  
13 for the Category 2 proponents at the time were  
14 projecting.

15                   These are our own projections or  
16 that of our consultants but they had to be  
17 placed or seen through the lens of what each of  
18 the operations do to the other markets, to the  
19 Region A, B and C. What is labeled here is  
20 Boston, Springfield and Taunton. But I'll  
21 remind ourselves that they really are Region A  
22 and Region B and Region C.

23                   Springfield was the only proponent  
24 at the time, so it was a shorthand for Region



1 B. And Taunton was selected as the geographic  
2 center for that region. But it doesn't presume  
3 that this is what we were projecting for a  
4 casino from the Mashpee, for example.

5 What I want to highlight here is  
6 what's highlighted under the Plainville Penn  
7 National full competition scenario that gross  
8 gaming revenues -- It looks like this,  
9 Commissioner.

10 COMMISSIONER CAMERON: Location of  
11 documents?

12 CHAIRMAN CROSBY: 3b.

13 COMMISSIONER ZUNIGA: 3b, at the end  
14 of my memo. Sorry, I'm starting backwards.  
15 But the market that we have come up with which  
16 is the centerpiece for how much of a capital  
17 investment could be attained is different for  
18 each of the regions. Perhaps with no surprise  
19 as the Boston area or the Region A has the most  
20 market potential in terms of gross gaming  
21 revenues at \$749 million. The Category 1  
22 Region B has \$452 million in potential in gross  
23 gaming revenues. This again is under the full  
24 competition scenario where all of the licenses

1 have been awarded. While the Region C has a  
2 less market at \$370 million of gross gaming  
3 revenues a year. Can everybody see what I am  
4 saying?

5           There's two tables here. We can  
6 pick either one. I picked the top. At the  
7 time, our consultants were projecting a low  
8 scenario and a high scenario for the slots  
9 parlor. The numbers only changed for the slots  
10 parlor applicant. What I want to highlight is  
11 the relative difference between the three  
12 regions when it comes to gross gaming revenue,  
13 which in my mind really speaks to the  
14 potential. That's really the potential of the  
15 market and hence the potential for the capital  
16 investment.

17           So, under that lens I think it would  
18 be really fair to say that the region that  
19 would have the most difficulty meeting a  
20 minimum capital investment, especially as we  
21 have defined it, would obviously be Region C.

22           I can take questions now or keep  
23 going.

24           COMMISSIONER MCHUGH: You're looking

1 at the Taunton column on your chart?

2 COMMISSIONER ZUNIGA: Yes. So,  
3 comparatively the Region C compared to the  
4 other regions has less market potential just by  
5 virtue of the number of adults that are in that  
6 region.

7 CHAIRMAN CROSBY: And by virtue of  
8 the competitive situation.

9 COMMISSIONER ZUNIGA: That's right.

10 CHAIRMAN CROSBY: You mentioned in  
11 our memo, it says it's unique from other --  
12 different from other regions because of the  
13 tribal situation, which it clearly is. But it  
14 is also unique because it's got a slots parlor  
15 cheek by jowl. And it's got a full-blown  
16 casino, Twin Rivers within their prime target  
17 catchment area. So, it's unique in a lot of  
18 respects.

19 COMMISSIONER ZUNIGA: Well, the  
20 competition nearby the slots parlor that's  
21 already been awarded is already reflected in  
22 this number.

23 CHAIRMAN CROSBY: Right, I was just  
24 referring to --

1           COMMISSIONER ZUNIGA:  However, the  
2 prior point is an important one, which is not  
3 reflected in the number, which is a commercial  
4 license in that region would have to share a  
5 disproportionate amount of gaming revenues with  
6 an eventual Mashpee operation.

7           COMMISSIONER MCHUGH:  Why is that  
8 limited to that one?

9           COMMISSIONER ZUNIGA:  It's not.

10          COMMISSIONER MCHUGH:  We've heard  
11 from other applicants that they too think that  
12 particularly with the reduced tax that they too  
13 are going to be affected by the Mashpee.

14          COMMISSIONER ZUNIGA:  That's right,  
15 it's not, but they would have the bulk of that  
16 effect.

17          COMMISSIONER MCHUGH:  Why?

18          COMMISSIONER ZUNIGA:  Because of its  
19 proximity.  Under a scenario where the Mashpee  
20 get land into trust and eventual build a  
21 casino, this whole chart would change.  
22 Everybody would be affected Region A, Region B,  
23 Region C, which is your point.  But Region C  
24 would be the most affected.

1           COMMISSIONER MCHUGH: Well, that  
2 depends on a number of scenarios, doesn't it?  
3 After all, these casinos are supposed to be  
4 casinos that bring in new money from out-of-  
5 state not simply feed on in-state gamblers.  
6 There's going to be some of that of course.  
7 But the whole premise is that these places are  
8 going to bring people in from out-of-state and  
9 therefore contribute new revenues to the  
10 coffers and not simply shift around revenue  
11 that's already here being spent.

12           So, the degree to which there is a  
13 proximity effect is going to depend in some way  
14 on the inability of the casino to bring in new  
15 money from out-of-state.

16           COMMISSIONER ZUNIGA: I don't  
17 disagree with that. And there's also, I would  
18 note, there's a market estimate from  
19 neighboring states on each one of these regions  
20 highlighted in there. Now Category 1's -- the  
21 market assessment for Category 2 was a lot more  
22 straightforward because there was a 30-minute  
23 or 60-minute drive as the centerpiece of it.

24           COMMISSIONER MCHUGH: I agree.

1           COMMISSIONER ZUNIGA: Category 1's  
2 are going to be a little bit more complex for  
3 part of your point, which is how much tourism  
4 can these operations bring.

5           COMMISSIONER MCHUGH: Right.

6           COMMISSIONER ZUNIGA: But the  
7 simpler point is that the relative size of the  
8 market even without a Mashpee operation is less  
9 for Region C.

10          CHAIRMAN CROSBY: When you say  
11 without a Mashpee, without a fourth casino.

12          COMMISSIONER ZUNIGA: Without a  
13 fourth casino, right.

14          CHAIRMAN CROSBY: Assuming that  
15 Taunton here represents the commercial casino,  
16 not the Mashpee.

17          COMMISSIONER ZUNIGA: That's  
18 correct.

19          CHAIRMAN CROSBY: So, when there's a  
20 fourth with zero tax rate, it's going to have a  
21 distorting effect on everybody if that happens.

22          COMMISSIONER ZUNIGA: That's right.

23          CHAIRMAN CROSBY: Just one point,  
24 Commissioner McHugh, I would say priority

1 number one is repatriating Massachusetts  
2 dollars that are now out-of-state. Priority  
3 two is new money from out-of-state. And  
4 priority three is local regurgitation --  
5 repatriating is a big part.

6 COMMISSIONER MCHUGH: I understand  
7 that repatriation is a big -- is an important  
8 part of this, but I think the idea was beyond  
9 repatriation. I agree it's a significant  
10 portion. But the repatriation too depends on  
11 making what's better here than what's there, to  
12 paraphrase somebody.

13 COMMISSIONER ZUNIGA: Yes. And size  
14 of the facility matters. So, it's a bit of an  
15 art as well. It's not just a straightforward  
16 calculation. That's the premise of the whole  
17 gravity model that a bigger facility would  
18 attract gamers from larger or further away.

19 COMMISSIONER MCHUGH: Right.

20 COMMISSIONER ZUNIGA: However, the  
21 main point as well is something that is not  
22 really explicit in my memo but I think we're  
23 alluding to this is there's a risk that has to  
24 be evaluated fundamentally by the respondents.

1 That risk is the eventual very nearby operation  
2 of the Mashpee.

3           And I say eventual because there's a  
4 lot of things as we all know that have to  
5 happen for that process to come to fruition. I  
6 first talked a lot with our consultants  
7 relative to try to quantify that, and really  
8 coalesced around the notion that it's very  
9 hard. And we're not in a position to make  
10 those kinds of calculations. It's really up to  
11 the respondent. First of all, if we even get a  
12 bid. So, that's not something that I am  
13 prepared to try to quantify.

14           What I really wanted to highlight  
15 here is just a relative size in terms of market  
16 from those regions, which in my view is the  
17 most compelling argument for us to entertain  
18 the waiver that has been put before us relative  
19 to the inclusion or exclusion of certain costs.  
20 I think we should.

21           So, which would lead me to my memo.  
22 What I tried to do in this memo is to group  
23 what I saw were four categories of the costs  
24 that are presently excluded from our



1 regulations. The first one is infrastructure  
2 costs. The Commission will probably remember  
3 that we had a lot of discussion about this the  
4 merit of excluding certain of these costs. We  
5 drew a line along the property boundaries and  
6 said inside it's included, outside it's  
7 excluded.

8           The reality is that those costs are  
9 going to be incurred the same whether they are  
10 inside or outside. I would argue that in the  
11 order of priorities if we entertain relief of  
12 certain costs that this would be at the top.  
13 They are necessary. They are capital  
14 investment. They may come because of host or  
15 surrounding community agreements.

16           You'll remember Mr. Chairman that  
17 that is the one particular category that you  
18 had the most difficulty accepting this line  
19 around the property.

20           CHAIRMAN CROSBY: Right. I only  
21 ended up voting for it because at that stage of  
22 the game everybody was talking about  
23 investments so far beyond \$500 million that I  
24 decided it was academic. But now that we're at

1 this I totally -- that never made sense to me  
2 anyway. So, I would certainly agree with you.

3 When you're using the word property  
4 boundaries is that the word from our regs.? Is  
5 that synonymous to move us to another topic to  
6 gaming establishment?

7 COMMISSIONER ZUNIGA: I don't think  
8 boundary is in our reg. but we did talk a lot  
9 and delineated these costs as inside or outside  
10 the property.

11 CHAIRMAN CROSBY: I just was  
12 wondering whether it casts any light on the  
13 other conversation.

14 COMMISSIONER ZUNIGA: 205 122.03 and  
15 122.04, Catherine, if you have the language  
16 there ready.

17 COMMISSIONER MCHUGH: Four says  
18 costs associated with designing, improving or  
19 constructing the infrastructure outside of the  
20 property boundaries of the site of the gaming  
21 establishment.

22 CHAIRMAN CROSBY: Property  
23 boundaries of the site of the gaming  
24 establishment.

1           COMMISSIONER MCHUGH: Of the site of  
2 the gaming establishment.

3           CHAIRMAN CROSBY: So, it does make  
4 them pretty much -- implies that's what we're  
5 meaning, right. Before you go any further,  
6 does anybody disagree that we should waive some  
7 of this that we should loosen up the  
8 definition?

9           COMMISSIONER CAMERON: I'm not sure  
10 that we should. I would like to hear from  
11 others. Are we creating -- especially for  
12 those who have chosen to, already have made the  
13 decision to play by our rules and have invested  
14 in other regions, I would be interested in  
15 hearing if they think this is not a fair  
16 playing field because at this point we are  
17 looking to do this. So, I'm not sure. I am  
18 open to but I just don't know that we've done  
19 that yet. We haven't heard from anyone about  
20 this.

21           CHAIRMAN CROSBY: Well, we've asked  
22 anybody to comment. Has anybody objected from  
23 the other regions?

24           COMMISSIONER MCHUGH: Not from the

1 other regions, but Region C one has.

2 COMMISSIONER ZUNIGA: Not from the  
3 other regions. I would put it this way.  
4 Everybody so far has met or exceeded the  
5 minimum capital investment. Had there been  
6 somebody who had not met it under this  
7 definition and had been say excluded from  
8 continuing, I think we would be in the scenario  
9 that you may be alluding to Commissioner that  
10 would be unfair.

11 So, I am in favor of if we are going  
12 to do a waiver, this would be the cost that's  
13 easiest for me to waive on because these are  
14 the necessary costs. The boundary had a degree  
15 of arbitrariness, if that's a word, but your  
16 point is not unreasonable.

17 COMMISSIONER MCHUGH: Well, you  
18 asked whether anybody was --

19 CHAIRMAN CROSBY: I meant here, any  
20 of us.

21 COMMISSIONER MCHUGH: I just wanted  
22 to say that I too am unpersuaded at this point  
23 that we ought to waive any of these costs. I'd  
24 like to hear more, but there's also some other

1 things I'd like to say but I don't think it's  
2 intuitively obvious that we should.

3 CHAIRMAN CROSBY: Why don't you go  
4 ahead. So, let's go ahead and do your  
5 analysis. We could sort of debate it in the  
6 abstract or we could wait until --

7 COMMISSIONER MCHUGH: That's fine.

8 COMMISSIONER ZUNIGA: There is some  
9 persuaded maybe, going down what I thought was  
10 the order of priorities might not get us much  
11 further. But a second category is land costs,  
12 which the statute specifically gives us the  
13 discretion to exclude or include land costs.

14 They come in different forms as we  
15 see, or rather the land comes in different  
16 forms from different applicants. Some maybe  
17 already be existing owners. Others who want to  
18 come in bid would have to purchase that land.  
19 Furthermore, land comes with different degrees  
20 of additional costs. For example, remediation,  
21 which is included in our definition of capital  
22 expenditures.

23 So, seemingly a contamination-free  
24 land, which purchase price is higher would be

1 excluded from our capital investment  
2 calculation. But land with some liability  
3 because it would require cleanup, the cost of  
4 remediation would be included presently.

5 CHAIRMAN CROSBY: Not the cost of  
6 the land, but just the cost of the remediation.

7 COMMISSIONER ZUNIGA: The cost of  
8 the remediation. So, with that dichotomy, I  
9 would argue that we should consider whether at  
10 least for certain region, Region C in this case  
11 obviously the cost of land may be included.

12 When I first thought about this  
13 regulations, the cost of land was an easy thing  
14 to exclude because it never depreciates for  
15 one. And it's not one thing that is often  
16 thought of as capital investment, but in this  
17 case it may certainly, can certainly be.

18 CHAIRMAN CROSBY: Is there a metric  
19 that you could use to standardize the different  
20 financial structures so that you could count  
21 land equally? In other words, it's clear if  
22 you go out and buy the land that's an easy  
23 number. But if you contribute the land like  
24 Mr. Carney was in Raynham, that's a less easy

1 number. And if you are leasing the land that's  
2 a less easy number. So, is there a reliable  
3 methodology where you can always have apples to  
4 apples? It struck me that this is hard. You  
5 have to do some real contortions to try to  
6 figure out how to handle this equitably if we  
7 included land.

8           COMMISSIONER ZUNIGA: The only thing  
9 that comes to mind now but we could also ask  
10 for more comment or do more research -- the  
11 thing that comes to mind is we could cap this  
12 at a certain percentage, for example. We could  
13 say land costs could be included up to a  
14 maximum of 10 percent or five percent.

15           CHAIRMAN CROSBY: But how would  
16 Carney, how would that have factored in if he  
17 contributes the land?

18           COMMISSIONER ZUNIGA: Depending on  
19 the percentage, they would only be able to  
20 count the capital investment up to a certain  
21 point.

22           CHAIRMAN CROSBY: So, you would  
23 count that. You would count the contribution.

24           COMMISISONER ZUNIGA: Partially,

1 right.

2           CHAIRMAN CROSBY: That seems to be  
3 quite contrary to the real intent here. They  
4 wanted -- The Legislature wanted a minimum of  
5 \$500 million in cash coming into the economy.  
6 I think that was the idea. So if you can count  
7 the value of your land towards the \$500 million  
8 I think that would really undercut. So, if a  
9 Carney couldn't count his because he owns the  
10 land in advance, it seems inequitable me to let  
11 other people.

12           COMMISSIONER MCHUGH: It's really  
13 at the heart of our exclusion the first time  
14 around, wasn't it, that the land purchase price  
15 didn't really add anything to the economy. It  
16 was a transfer of an asset from one person to  
17 another without any value being added to  
18 anything. The land price is what it is,  
19 whether it's contributed or bought that was, at  
20 least as I recall it --

21           CHAIRMAN CROSBY: Right, or leased.

22           COMMISSIONER MCHUGH: -- the theme  
23 underlying our exclusion.

24           CHAIRMAN CROSBY: Right. That makes



1 sense to me. I think that exclusion makes  
2 sense to me for that reason as well as the  
3 complexity of standardizing.

4 COMMISSIONER ZUNIGA: The third  
5 category which I wanted to have a little  
6 background in terms of discussion here is our  
7 regulations speak to only to carried interest  
8 costs and other financing costs. This I would  
9 put in -- when I was thinking about these costs  
10 with Tttorney Grossman, I was thinking of could  
11 this could be a category that we instead of  
12 excluding or including, that we wait-and-see.

13 And I remember crafting a regulation  
14 with a wait-and-see was very difficult. And we  
15 always have the waiver provision which is what  
16 we are doing here today. So, we could always  
17 address them.

18 But I would characterize this costs  
19 as very different. They could come in very  
20 different forms. In a plain vanilla loan  
21 world, interest eligible for capitalization  
22 would be generally by accounting principles and  
23 tax purposes would be capitalized. The IRS  
24 lets private entities capitalize interest

1 costs, tag them to the cost of the project and  
2 depreciate them over whatever amount of  
3 depreciation they are allowed to do.

4 Under that lens, an interest cost is  
5 perfectly legitimate in my view to be counted  
6 towards the capital investment.

7 On the other side of this continuum,  
8 at the other end of this continuum, there's a  
9 lot of financial engineering that happens these  
10 days where carried interest is really a  
11 mechanism for one party or more to take out a  
12 profit or a participation, which I never  
13 thought of as capital investment. And there's  
14 anywhere in between.

15 Excluding carried interest under the  
16 one extreme I think is perfectly legitimate.  
17 However, including interest costs on the other  
18 extreme I think they're also perfectly  
19 legitimate.

20 I would like to say that maybe we  
21 could clarify this regulation to mean that we  
22 are talking about the interest eligible for  
23 capitalization as opposed to a purely carried  
24 interest cost. Or we could wait and see what

1 is ultimately presented in terms of a financing  
2 structure to this Commission to decide whether  
3 to include those costs or not. But the crux  
4 of the point here is that this could be a  
5 rather complex or priority determination.

6 COMMISSIONER MCHUGH: Two questions.  
7 The first is the interest portion doesn't  
8 necessarily contribute anything to the  
9 Massachusetts economy, right? If there's an  
10 out-of-state lender, the interest all goes out-  
11 of-state so, there's no benefit to  
12 Massachusetts from the lender.

13 COMMISSIONER ZUNIGA: True under  
14 that thinking. I could also argue that you  
15 really need a loan to build these things. And  
16 if you don't there's no project.

17 COMMISSIONER MCHUGH: That goes to  
18 my second question. And that is allowing  
19 exclusion of interest and financing costs from  
20 the \$500 million really favors the more highly  
21 leveraged operator, applicant, right? The more  
22 highly leveraged the applicant is the cheaper a  
23 building it can put up.

24 COMMISSIONER ZUNIGA: Yes. In the

1 end, yes, which if we wanted to normalize we  
2 could also put a limit to the amount of  
3 interest. But yes, the one who has the least  
4 ability to borrow would borrow at a higher  
5 interest cost.

6 COMMISSIONER MCHUGH: And also the  
7 one who had the lower amount of financing would  
8 have to put more into the ground.

9 COMMISSIONER ZUNIGA: Right. This  
10 starts gets to the point that Ombudsman Ziemba  
11 was talking about, which is when we compare  
12 different applicants, it will be evident by the  
13 amount of amenities that they are proposing and  
14 the amount of quality and overall total capital  
15 investment. But your point is well taken,  
16 Commissioner.

17 COMMISSIONER MCHUGH: Okay.

18 CHAIRMAN CROSBY: On that one,  
19 again, I think as usual you come up with some  
20 really nuanced thoughts on this. But I think  
21 from the standpoint of having money come into  
22 the economy, from the standpoint of maximizing  
23 the destination resort character of these  
24 facilities and the equity and the disincentives

1 that are created by counting interest, I think  
2 this one doesn't make sense to me either.

3           The Legislature didn't say we could  
4 consider whether or not to include interest,  
5 for example. They were really thinking about  
6 hard dollars in both to generate economic  
7 impact and to generate -- and to build  
8 facilities that are high quality not just  
9 convenience casinos. So, using that as the  
10 objective as the standard I think for my money  
11 this one would fail also.

12           If they're going to try to claim how  
13 much money they're putting into it, our total  
14 investment is \$1.3 billion and they're counting  
15 capitalized costs and so forth, that's legit.  
16 That is part of the costs.

17           But I don't think that's what the  
18 Legislature was getting out. It isn't how much  
19 money you are putting up. It's how much cash  
20 are you putting into the economy and how much  
21 cash are you putting into amenities to make  
22 these destination resorts.

23           COMMISSIONER ZUNIGA: I thought I  
24 was going to be able to convince more of you

1 with this argument, but I don't seem to be  
2 gaining much traction.

3 CHAIRMAN CROSBY: Welcome to the  
4 club.

5 COMMISSIONER CAMERON: I'm actually  
6 not convinced that we should change anything.  
7 I'll be honest with you. We have worked so  
8 hard to be consistent in every aspect of our  
9 evaluation. And to change now -- If there's so  
10 much risk then maybe folks shouldn't consider  
11 this. And that should be something -- I don't  
12 know that we should be the ones to be  
13 incentivizing.

14 There is risk. There is  
15 uncertainty. The reason we went down this path  
16 to begin with was public officials and citizens  
17 saying to us we need the opportunity in  
18 Southeastern Mass. as well and there was  
19 uncertainty. But to change the rules now in  
20 our regulations because of -- The market  
21 analysis was always there, right? Those  
22 figures were out there long before the regions  
23 were set. So, I'm not persuaded we should  
24 change this at all.

1           COMMISSIONER ZUNIGA: Let me pick up  
2 on the point about responding to local  
3 officials, because some of them have been  
4 asking that we don't leave that region behind.  
5 And I fear that by setting the bar as high as  
6 we have by virtue of the regulations when it  
7 comes to this minimum capital investment, we  
8 just might.

9           The \$500 million is great to think  
10 about in the abstract but it is really becoming  
11 more and more \$800 million the way we've  
12 defined and excluded lot of necessary costs.

13           So, it remains to be seen by the  
14 way. We may or may not get one or more  
15 applications. Timing is also a concern.  
16 There's a lot of moving pieces here. But I do  
17 believe that what the one applicant, potential  
18 applicant is telling us in the waiver request  
19 is precisely that given the risk in that  
20 region, the smaller size of that region and the  
21 way we've defined and excluded a lot of  
22 necessary costs out of the minimum investment  
23 calculation may translate into not getting a  
24 bid there in the first place.

1                   So, that's my concern. That's where  
2 I'm coming with the recommendation that we  
3 really think about a couple of these  
4 categories. I was ready to include at least  
5 two or three of these categories. The fourth  
6 one I haven't even spoken about because that's  
7 the one that I was ready to continue excluding,  
8 which I could talk about nor or just admit  
9 defeat right now.

10                   COMMISSIONER STEBBINS: Talk about  
11 the fourth one, because I have some questions  
12 about the fourth one.

13                   COMMISSIONER ZUNIGA: The fourth one  
14 is almost like a catchall in everything else  
15 that's generally seen as an expense. Fees,  
16 expenses, legal fees are usually thought of at  
17 least in my mind as not part of a capital  
18 investment. So, those were perhaps in my mind  
19 the easiest to exclude. They're necessary.  
20 They're real.

21                   They actually come upfront as  
22 evidenced by how many lawyers follow us and  
23 have to follow us and provide us feedback, etc.  
24 But they are not generally a part of a capital



1 investment in the world of capital investing.  
2 So, I was aggregating everything else to  
3 recommend that we continue to exclude those  
4 costs.

5 COMMISSIONER STEBBINS: The only  
6 question I had about this last category is may  
7 be breaking it out even a little bit further  
8 even though I don't think the total dollar  
9 amount at the end of the day would flip the  
10 equation one way or the other.

11 But certainly, local permitting  
12 fees, local sewer hookup fees all related to  
13 the capital project I would argue might be a  
14 cost that we would consider. Without one, you  
15 won't get the other. You've kind of lumped a  
16 whole bunch of them in but again, it's an  
17 infusion of money into the local government for  
18 inspections and building permits and things  
19 like that. They can be costly.

20 Again, they're not a big -- probably  
21 in the big scheme of things, they're probably  
22 not a big budget buster but certainly one  
23 doesn't get done without the other. They  
24 aren't necessarily ongoing operational costs as

1 well. I don't know how those have been  
2 factored in other projects. You're segmenting  
3 out a small piece.

4 COMMISSIONER ZUNIGA: They're a  
5 small piece in my estimation.

6 CHAIRMAN CROSBY: They are tiny  
7 really in all things considered.

8 COMMISSIONER ZUNIGA: Permit fees,  
9 local -- but the point is it's not dissimilar  
10 to the one I was trying to make relative to  
11 interest. You also need them. I think it  
12 would be very easy to include them. I don't  
13 know that they would make much of a  
14 difference.

15 CHAIRMAN CROSBY: It's so small. I  
16 don't think it's hardly worth the trouble. It  
17 seems to me Commissioner Cameron is talking  
18 about the equity of this. Is it fair to do  
19 this? Does it make sense to change the rules?  
20 I have two thoughts about it.

21 Number one, as I said, I never would  
22 have voted on excluding the infrastructure if I  
23 thought this was going to be this as an issue.  
24 I just thought it wasn't worth debating it

1 because it seemed like the numbers were so far  
2 beyond that. I'm just trying to understand  
3 what the Legislature was getting at. They  
4 picked a number \$500 million. It had some  
5 reason for it. And to exclude infrastructure  
6 investment in a highway that's outside the  
7 gaming establishment, I can't see any reason  
8 why you would do that. It just doesn't make  
9 any sense to me.

10                   So, I would pull that one back in.  
11 We can talk about the apparent resistance to  
12 the idea within Region C. That's worth talking  
13 about because there are equity issues there. I  
14 don't think there are equity issues relative to  
15 the other two. If anything, I think probably  
16 the competitors, the less investment there is,  
17 the happier they'll be because there's going to  
18 be less competition for their facilities.

19                   COMMISSIONER ZUNIGA: Yes.

20                   CHAIRMAN CROSBY: The less robust  
21 facility this is, the less competition it'll be  
22 for Regions A and B.

23                   COMMISSIONER CAMERON: Or if we're  
24 changing this, we're incentivizing where maybe

1 there wouldn't be competition at all if we kept  
2 the rules the way they are. You could look at  
3 that both ways.

4 COMMISSIONER ZUNIGA: Let me mention  
5 one thing. Nobody is precluding anybody else  
6 from Regions A and B to request a waiver at  
7 this point or in the near future. To say if I  
8 knew that I could have included interest costs  
9 for capitalization, I now want a waiver. They  
10 could do that conceivably.

11 But I think that fundamentally  
12 everybody is above. And that's a very  
13 important point that you make, Mr. Chairman,  
14 which is the other regions will likely benefit  
15 from a lesser overall total -- total investment  
16 amount in that region, Region C.

17 COMMISSIONER MCHUGH: Let's just go  
18 back for a minute before we raise the specter  
19 now of waivers in Regions A and B. I recognize  
20 that this first one was the one that provoked  
21 the most debate. But at the same time the idea  
22 was, as I recall it, that if out of the \$500  
23 million you took say \$100 million -- Obviously,  
24 using a big number but I think we did talk in

1 those terms. -- to build the bridge that you  
2 needed to get the facility, you were going to  
3 wind up with a \$400 million facility with a  
4 nice bridge. But bridges don't attract people.

5           Therefore the feeling was I think  
6 that ultimately carried the day was that we  
7 shouldn't incentivize putting that kind of  
8 money into a bridge as opposed to the ground.  
9 So, it seems to me that that still holds true.  
10 And to the extent that you're going to put  
11 money in infrastructure, you're not going to  
12 put it in the facility that's going to attract  
13 people.

14           When we raise the specter of waivers  
15 now in Regions A and B, we are talking about  
16 potentially upsetting and changing a whole set  
17 of rules that has affected the host community  
18 agreements, the surrounding community  
19 agreements, the mitigation. And people have  
20 played all of that out against the notion that  
21 you can't include that infrastructure cost in  
22 your overall expenditures.

23           So, anyway I think we can put that  
24 to one side. But that was the original basis

1 as I recall it for excluding these things. And  
2 I still think, though I can understand that it  
3 is a much closer call, I still think that holds  
4 water. A nice bridge is not going to bring  
5 people, a nice casino will.

6           CHAIRMAN CROSBY: We're in this  
7 weird business we're always in of weighing  
8 imponderables. But again, trying to figure out  
9 what was the Legislature wanting us to do at  
10 this stage of the game. If the trade-off is  
11 between having a robust competition or  
12 potentially any bidders but somewhere between  
13 any bidders and robust competition, if that on  
14 the one hand versus a pulling money out of the  
15 amenities because you can count money for the  
16 bridge, where would they have us come down?  
17 And they gave us this option. For sure they  
18 understood that we could have this debate.  
19 They invited us to have this debate. So, they  
20 were clearly on either side.

21           But on the whole, it seems to me,  
22 and we've certainly construed our business this  
23 way, on the whole first priority has been the  
24 integrity of the process. The second priority

1 has been robust competition. And that's what's  
2 driven our work to a very large extent. That's  
3 why are so flexible trying to give people the  
4 benefit of the doubt on breaks when there's  
5 problems and so forth. And I think that's the  
6 right thing to do notwithstanding the delays.

7           So, weighing these relative things  
8 it seems to me that probably the better case,  
9 and it's like a 55/45 case, but the better case  
10 if it might very well increase the competition  
11 for the license is probably to include the  
12 first category.

13           For me the other three are a  
14 stretch. I would probably technically agree  
15 with Commissioner Stebbins, but I think the  
16 money is so small that it's not really worth  
17 worrying about.

18           COMMISSIONER CAMERON: The other  
19 piece of this that I think about though is it  
20 wasn't contemplated there'd be a fourth casino.  
21 And we're using that language now like that's  
22 an inevitability. What's the exact language if  
23 we thought that there was little chance or no  
24 chance to get the land in trust. There's still

1 the original intent here. I understand why we  
2 opened this because there was so much concern  
3 about the region. And we are trying to be fair  
4 to everybody.

5 CHAIRMAN CROSBY: Explain to me what  
6 is your point?

7 COMMISSIONER CAMERON: The reason we  
8 opened the region that was not contemplated,  
9 right? That region was set aside for the  
10 tribe.

11 CHAIRMAN CROSBY: No, no. It wasn't  
12 set aside for the tribe.

13 COMMISSIONER CAMERON: Not set  
14 aside. That's the wrong word to use.

15 CHAIRMAN CROSBY: The Legislature  
16 saw the same problem we did which is this  
17 conundrum. There was this kind of window that  
18 gave the tribe a head start that's what it was.

19 COMMISSIONER CAMERON: Yes, I would  
20 agree with that. Now that the idea of zero  
21 when and if they open a facility, and now we're  
22 looking to change some of these regulations  
23 because people are concerned about that  
24 inevitability and the whole idea of saturation.



1                   CHAIRMAN CROSBY: Just for the  
2 record, I'm not assuming a fourth casino at  
3 all. We are going to get to Region C decision-  
4 making in due time, which is going to be really  
5 complicated.

6                   What I think Commissioner Zuniga's  
7 -- What the bidders are going through now is  
8 same thing we're going through. They don't  
9 know what's going to happen. And how much  
10 money can they afford to put up, realizing  
11 there could be a fourth casino. But they don't  
12 know what's going to happen any more than we  
13 do. That would blow them out of the water.

14                   How much money can they afford to  
15 put up? On the one hand they really want to  
16 play. They really want to invest. Foxwoods  
17 has an investment to protect and so on and so  
18 forth on the one hand. But on the other hand,  
19 they're rational people. And they want to pull  
20 their exposure down as low as they possibly can  
21 as they walk into these murky waters. And I'm  
22 sympathetic to that.

23                   COMMISSIONER MCHUGH: I'm  
24 sympathetic to it too. And it is a difficult

1 situation. We do have one who's willing to  
2 play, has said it's willing to play by the  
3 existing rules. But secondly --

4 COMMISSIONER ZUNIGA: I'm not  
5 convinced of that, Commissioner.

6 CHAIRMAN CROSBY: I'm not either.  
7 Yes, we do have somebody who has said that.

8 COMMISSIONER MCHUGH: That's what  
9 they said.

10 MR. ZIEMBA: We have a comment from  
11 the city, Commissioner. I don't believe we've  
12 received a direct comment from the applicant.

13 CHAIRMAN CROSBY: Right. I think  
14 that's very telltale. We've heard words from  
15 the city. We haven't heard a word from the  
16 applicant.

17 MR. ZIEMBA: The city made comments  
18 in conversations with the applicant in their  
19 latest comments in today's packet voicing  
20 opposition to the minimum capital investment  
21 reduction but there is no direct comments from  
22 the applicant.

23 COMMISSIONER ZUNIGA: Can I also say  
24 something on that note?

1                   CHAIRMAN CROSBY:  Sorry, I  
2 interrupted you.

3                   COMMISSIONER MCHUGH:  No, no, go  
4 ahead.

5                   COMMISSIONER ZUNIGA:  The closer you  
6 are to Taunton in that region --

7                   COMMISSIONER MCHUGH:  To what?

8                   COMMISSIONER ZUNIGA:  To Taunton, to  
9 the center, to the geographical center in that  
10 region, the more feasible that that license is  
11 because it is closer to the Boston suburbs.  
12 The farther away you are, the closer you are to  
13 the sea the less market, potential market that  
14 you have.

15                   So, my guess is that it may be a  
16 matter of time before we hear from the other  
17 proponents in Fall River and New Bedford for a  
18 waiver request.

19                   COMMISSIONER MCHUGH:  Okay.  So,  
20 that really gets back at the heart of my  
21 concern here.  And that is that, and I said  
22 this already once, but why not repeat it and  
23 say it again, the basic thrust of this was not  
24 to have three casinos.  It was to have three

1 destination casinos, right, that would bring in  
2 money for out-of-state and bring new money into  
3 the state. Because that's how you avoid the  
4 cannibalization that's how you create the new  
5 jobs that's how you create the new revenues for  
6 the state that's how you grow the economy not  
7 by shifting money around within the state.

8                   So, that to me is the polestar.

9 What is going to be the impact of lowering the  
10 components of the capital investment on our  
11 ability to deliver that to the Commonwealth?

12 And I fear that lowering the capital investment  
13 even with the inclusion of something that might  
14 under most circumstances be logical to include  
15 like infrastructure, internal infrastructure  
16 costs does that particularly in a region that  
17 needs a lot of pop to get people to come there.  
18 Of all regions that's perhaps the region that  
19 needs the most pop really to make these things  
20 a success in bringing in new money rather than  
21 drawing on people who are already there. So,  
22 that's thought number one.

23                   Thought number two is that if we do  
24 this, if we change the rules now in order to

1 increase competition, then really to be  
2 faithful to that objective we ought to reopen  
3 the bidding with the new rules because we don't  
4 know who's been excluded because they didn't  
5 want to come in and contribute \$500 million  
6 with these exclusions. If they have these  
7 exclusions others may well come in and say  
8 we're willing to play because that makes  
9 economic sense where the old rules didn't. I  
10 think we need to think seriously think about  
11 that if we change the rules now.

12 COMMISSIONER STEBBINS: We're also  
13 going to talk today about the schedule for the  
14 application date for Region C, whether it  
15 should be extended, whether it stays where it  
16 is. I am less inclined to think about offering  
17 a waiver on this minimum capital investment  
18 question until we actually see what the playing  
19 field looks like. Really we don't have a firm  
20 idea as to what that looks like until we  
21 actually set a deadline and tell people when  
22 their applications have to be in.

23 To grant the waiver prior to the  
24 application deadline and see what the

1 competition looks like I think would be  
2 somewhat doing a disservice to Region C.

3 CHAIRMAN CROSBY: You mean that you  
4 would let people put in their applications  
5 under this set of rules. And then if there  
6 weren't enough applications go back and change  
7 the rules then and invite more applications?

8 COMMISSIONER STEBBINS: If we set a  
9 deadline and there are two out of three players  
10 or whatever the mix is that says we can meet  
11 the \$500 million requirement or make the  
12 deadline whatever we decide to set it as, I  
13 would rather go through with that process  
14 first. And if nobody comes to the table then  
15 we revisit.

16 CHAIRMAN CROSBY: What if one comes  
17 to the table?

18 COMMISSIONER STEBBINS: One comes to  
19 the table. There are going to be several  
20 steps, I think, along the way in evaluating  
21 some of these applications as to whether their  
22 \$800 million project is better than anything  
23 else we could get.

24 Changing the rules before we have --

1 And I agree with Commissioner Cameron to a  
2 point that I understand the analysis of the  
3 region. I do think it is somewhat unfair to  
4 the two that have already been going through  
5 the process at this point. But to offer a  
6 waiver prior to even hitting our application  
7 deadline whenever that's going to be. I don't  
8 think I'm in favor of waiving the requirement  
9 of \$500 million investment at this point.

10 COMMISSIONER ZUNIGA: I think that's  
11 exactly backwards. I think if we're going to  
12 consider a waiver, it should be before the  
13 applications come in. Having said that I think  
14 we might not get an application on this region  
15 under the current definition of the capital  
16 investment.

17 CHAIRMAN CROSBY: We might not get  
18 it under any definition --

19 COMMISSIONER STEBBINS: Under any  
20 definition.

21 CHAIRMAN CROSBY: -- but  
22 particularly under this definition.

23 COMMISSIONER ZUNIGA: But I think  
24 the one applicant that has really looked at the

1 numbers is the one requesting this waiver. And  
2 to the point prior made by Commissioner McHugh  
3 and Commissioner Cameron as well, the idea was  
4 to get this region not behind. And I think as  
5 I try to articulate here perhaps  
6 unsuccessfully, the potential on revenues for  
7 this region is the one comparatively less to  
8 the other two regions. And that is what drives  
9 capital investment, the potential market.

10           And it's not me saying it. It's our  
11 consultants who quantify this market for us.  
12 Can everybody in Massachusetts drive in  
13 different directions to get to a casino, sure.  
14 Will they drive one time an hour and a half and  
15 another an hour, that's also possible. But the  
16 market potential here is the one comparatively  
17 less.

18           So, if we were to do any kind of  
19 waivers this one is the region to do it. And  
20 this one was the applicant that asked us for  
21 it. So, in my view it makes sense.

22           MR. ZIEMBA: Chairman, one  
23 suggestion is previously I asked if the  
24 Commission wants to hear directly from the



1 applicants that have a point of view on this.  
2 I think that we thought it probably made a lot  
3 of sense for us to do all of our reviews before  
4 or as an alternative to that. But I was  
5 wondering if that may be a good suggestion.

6           Because we at least have one full  
7 applicant considering Fall River. They have  
8 voiced that they will move forward with that  
9 application. We have at least one other in New  
10 Bedford. And they have not indicated any  
11 opposition to the minimum capital investment  
12 requirement reduction. And obviously, we have  
13 one that is pushing for a change to the  
14 requirement. I don't know if that would help  
15 with the Commission's deliberations.

16           CHAIRMAN CROSBY: Well, let's see  
17 how we do here. Maybe, I'd hate to put it off,  
18 but if we have to, we have to. But I think we  
19 have to try to acknowledge all of the facts,  
20 the reality on the ground. KG Urban has been  
21 at this for years. And they have not been able  
22 to get a deal. They can't get an operator.

23           They made a big point a year or more  
24 ago about saying to us in writing we don't care

1 anything about the tribal casino. It's not  
2 going be a problem. We are going to be there.  
3 And a year and a half later, whatever it is,  
4 they haven't been able to get a deal.

5 Foxwoods hasn't said a word to us  
6 that I know of anyway. It's made no formal  
7 statement about this issue. If they had a  
8 strong feeling about either one of these  
9 issues, they surely would've said something.  
10 We do know from our past experience with them,  
11 they didn't have a financial deal put together  
12 for Milford. They didn't have a deal for  
13 Milford and they had been working on it for God  
14 knows how long.

15 So, the fact that (A) they didn't  
16 have a deal for Milford and (B) they haven't  
17 said a word. I would not hold them out as a  
18 model of evidence that this number as it  
19 presently stands is doable. I just don't think  
20 that makes any sense given what we know. And  
21 the other outfit who have been working on it  
22 for a long time are foursquare in saying it.

23 Then there are these numbers. These  
24 are facts. It is a pretty reasonable bet that

1 the upside potential is \$370 million gross  
2 gaming revenue, which is 75 percent of  
3 Springfield and 50 percent of Boston. So, you  
4 put all of that together and I think we are --  
5 If we don't mind running the risk of not having  
6 any bidders then that's a perfectly reasonable  
7 the way to go. And that will solve our problem  
8 for us. That's one way to solve this problem.

9           But if we really want bids to  
10 maximize our opportunity, then I think this is  
11 a pretty small compromise. I don't quite agree  
12 with your characterization, Commissioner, that  
13 what's driving this is money from outside the  
14 state. Clearly, that is high-impact money and  
15 we want that. But nobody is doing projections  
16 where money from outside the state is driving  
17 this.

18           It's money inside the state that's  
19 driving it and repatriating. If we have a  
20 \$400,000 facility and \$100,000 bridge in Fall  
21 River or New Bedford or Bridgewater that is  
22 going to repatriate probably \$100 million  
23 dollars in gross gaming revenue, whatever it  
24 is. You're going to get that for sure, which

1 is the low hanging fruit.

2           COMMISSIONER MCHUGH: I think the  
3 in-state money is the low hanging fruit. I  
4 think in all of the applications we've gotten  
5 this far to one degree or another there's been  
6 an emphasis on bringing in out-of-state money.  
7 And out-of-state money has played a significant  
8 role in the projections albeit in a range that  
9 we've gotten from each of the Category 1  
10 applicants. So, it is a big chunk, although  
11 repatriation I fully agree is another important  
12 part.

13           Can we go back to suppose we --  
14 We're assuming that the reason that nobody can  
15 do this with these exclusions under these rules  
16 has to do that the rules rather than other  
17 considerations. And I'm not certain that  
18 that's the case. You pointed out that Foxwoods  
19 didn't have a deal in Milford. They didn't  
20 have a deal in Milford that wasn't in Region C  
21 that was in Milford.

22           And there are a number of things  
23 going on in New Bedford one could infer in  
24 addition to -- just a number of things going on

1 in New Bedford. What would be wrong with say  
2 leaving the application deadline where it is.  
3 Seeing what happens. And if we don't get a bid  
4 then revisiting this issue and opening it up  
5 everybody?

6 That's consistent with my view that  
7 if we change the rules we have to do that  
8 anyway. I know that doesn't have unanimous  
9 support. I can tell from the body language,  
10 but we can talk about that. But that would be  
11 a way to test really whether we are speculating  
12 on things that aren't going to happen or  
13 whether that's a reality. And if so, talk to  
14 the potential applicants, find out why they  
15 didn't do it and see what we need to do to get  
16 some competition.

17 COMMISSIONER ZUNIGA: I don't think  
18 there's anything wrong. I think that's a  
19 perfectly legitimate alternative. I think that  
20 would further extend the deadline, needless to  
21 say.

22 COMMISSIONER MCHUGH: There's no  
23 question.

24 COMMISSIONER ZUNIGA: We would go

1 back to the goal of trying not to leave that  
2 region too far behind. So, there would be an  
3 immediate reset by which we would now need to  
4 -- CHAIRMAN CROSBY: Right, at least a year  
5 probably.

6 COMMISSIONER ZUNIGA: Yes, it would  
7 be at least a year. I don't know, hopefully  
8 less, but who knows.

9 COMMISSIONER MCHUGH: I think that's  
10 fair. I think that's a fair projection and a  
11 fair reason not to do it, but again it's a  
12 balancing.

13 COMMISSIONER ZUNIGA: Let me mention  
14 something that I put in the memo that we  
15 haven't talked about, which is the Mashpee do  
16 not have a minimum capital investment  
17 requirement as per the compact. That is  
18 another competitive disadvantage for a  
19 commercial bidder.

20 And if we are thinking of this in  
21 the abstract of regions that could also leave  
22 that region behind as significantly or for the  
23 reasons that we are talking about attracting  
24 money out-of-state etc., etc.

1           So, that's something that's baked  
2 into the risk analysis that ultimately the  
3 commercial bidders have to make. It's only  
4 them who can make this analysis. But I think  
5 that's an important data point that I thought  
6 was going to be persuasive enough to consider  
7 some of these waivers.

8           COMMISSIONER STEBBINS: Not to sound  
9 like I'm trying to blow up my previous  
10 statement, but --

11          CHAIRMAN CROSBY: Oh, someone  
12 changes their mind.

13          COMMISSIONER STEBBINS: It's  
14 dangerous to brainstorm. But what if we  
15 proceeded with Region C and said there is a  
16 waiver of the \$500 million in terms of your  
17 project.

18          CHAIRMAN CROSBY: Just to be clear,  
19 we are not waiving the \$500 million. We are  
20 redefining what's in the \$500 million.

21          COMMISSIONER STEBBINS: Redefining  
22 the \$500 million, you're still going have host  
23 communities who are going to decide if that's  
24 worthy of a project to put forward in their

1 community. They may demand more. They may say  
2 that project doesn't fit with our community's  
3 plans.

4 I think at the end of the day when  
5 the applications all come to us, we will  
6 certainly -- We're looking, I think to  
7 Commissioner McHugh's point, we're looking for  
8 a project that has pop. We're looking for a  
9 project that has the strongest economic impact  
10 on the region in terms of construction jobs, in  
11 terms of permanent employment. Ant a lot of  
12 that could wind up being reflected in how  
13 somebody calculates their \$500 million. So,  
14 that's the other extreme.

15 CHAIRMAN CROSBY: Right. It sort of  
16 lets the market respond. If we do redefine it,  
17 we are in effect giving more confidence to the  
18 market to tell us what it can do.

19 Part of the reason the other bidders  
20 went up is because they were competing with one  
21 another. We saw what happened in Western Mass.  
22 The numbers kept going up. I guess I've said  
23 this. I never thought that we shouldn't have  
24 done this in the first place relative to that



1 first factor relative to infrastructure. And  
2 fixing that in the region which is the smallest  
3 under any set of circumstances by a lot and the  
4 most competitively intense and has this  
5 overhang of the tribal casino, fixing that one  
6 problem seems to me to be a relatively modest  
7 issue.

8                   And then the market takes over. And  
9 if nobody bids, nobody bids. That's life. But  
10 if a couple materialize, they're going to be  
11 competing with each other. They're going to  
12 see exactly what you're saying. We're going to  
13 like the one that has the better hotel and the  
14 more investment and the more money in. If the  
15 market can't sustain that, it won't sustain  
16 that. And we'll do what we've got to do. So,  
17 I would like to approach.

18                   Ombudsmen Ziemba said we could kick  
19 the can down the road for two more weeks or  
20 some period of time and invite people to talk  
21 further about it. Does anybody feel that is  
22 something we ought to do?

23                   COMMISSIONER MCHUGH: No. I for one  
24 think we shouldn't. I think we should just

1 decide this and move on.

2           CHAIRMAN CROSBY: I think we know.  
3 I don't think there's anything to be learned  
4 really. Maybe we could probe Foxwoods, but I  
5 think Foxwoods' silence has spoken pretty  
6 clearly to me on this one. Does anybody  
7 disagree with that?

8           COMMISSIONER ZUNIGA: No, I think  
9 might as well. We always have options of  
10 further extensions later on or further  
11 rebidding.

12           CHAIRMAN CROSBY: We can always  
13 reconsider this. Do you want to take a stab at  
14 a motion?

15           COMMISSIONER ZUNIGA: Yes, I will.  
16 I don't know if it will pass, but I would move  
17 that this Commission redefines the  
18 infrastructure costs in its regulations as it  
19 pertains to inclusion in the minimum capital  
20 investment calculation, and include all  
21 infrastructure costs inside and outside the  
22 property boundary for that calculation.

23           COMMISSIONER MCHUGH: How do we  
24 define infrastructure?

1           CHAIRMAN CROSBY:  So, you're talking  
2 about your first item?

3           COMMISSIONER ZUNIGA:  The first one,  
4 right.  I suspect the other three may or may  
5 not --

6           COMMISSIONER STEBBINS:  If we're  
7 going to open it up, would you include building  
8 in any local fees for construction?  Again,  
9 it's not a big dollar amount but -

10          COMMISSIONER ZUNIGA:  No, no, that's  
11 fine.  And include all necessary and obligatory  
12 permit fees locally and state.

13          CHAIRMAN CROSBY:  The phrase is the  
14 same phrase which is in the statute  
15 infrastructure design to support the site.

16          COMMISSIONER ZUNIGA:  Yes.

17          CHAIRMAN CROSBY:  Which falls  
18 outside the property boundaries of the premises  
19 of the gaming establishment.

20          COMMISSIONER ZUNIGA:  That's right.

21          CHAIRMAN CROSBY:  I don't know if  
22 there's any more definition than that that you  
23 were thinking about?

24          COMMISSIONER MCHUGH:  No.  I was

1 thinking of simply deleting so we raised the  
2 least ambiguity to the regulations, our  
3 existing regulations. And maybe we just  
4 eliminate number four. In other words, the  
5 motion would simply waive 122.04(4) for Region  
6 C.

7 COMMISSIONER ZUNIGA: Okay. That's  
8 a lot cleaner.

9 CHAIRMAN CROSBY: Do you want to  
10 reframe that?

11 COMMISSIONER ZUNIGA: Sure, 122 --

12 COMMISSIONER MCHUGH: 122.04(4),  
13 waive that for Region C.

14 CHAIRMAN CROSBY: Waive that  
15 exclusion.

16 COMMISSIONER MCHUGH: Waive that  
17 exclusion for Region C.

18 COMMISSIONER ZUNIGA: I would move  
19 that as it pertains to Region C this Commission  
20 waive the present regulation 122.04 subsection  
21 4 when it comes to the minimum investment  
22 calculation.

23 CHAIRMAN CROSBY: Second? Can I  
24 second?

1 COMMISSIONER MCHUGH: Sure.

2 CHAIRMAN CROSBY: Second. Any  
3 further discussion? All in favor of the  
4 motion, aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 CHAIRMAN CROSBY: So, out loud that  
8 was Commissioner Stebbins, Commissioner Zuniga  
9 and Commissioner Crosby who said aye.

10 CHAIRMAN CROSBY: And the nays?

11 COMMISSISONER MCHUGH: Nay.

12 COMMISSIONER CAMERON: Nay.

13 CHAIRMAN CROSBY: Commissioner  
14 Cameron and Commissioner McHugh. So, the ayes  
15 have it. I don't think it's worth trying any  
16 others, right?

17 COMMISSIONER ZUNIGA: If you think  
18 so, probably not.

19 CHAIRMAN CROSBY: I would join the  
20 other guys on the others ones.

21 COMMISSIONER ZUNIGA: On the nays?

22 CHAIRMAN CROSBY: Yes.

23 COMMISSIONER ZUNIGA: Then I think  
24 that's it for now.

1                   CHAIRMAN CROSBY: What else do you  
2 got? If anybody thinks this stuff is  
3 predetermined, you can sure see it isn't. I  
4 thought this one was a no-brainer.

5                   COMMISSIONER ZUNIGA: I thought it  
6 was easy too.

7                   COMMISSIONER MCHUGH: Maybe it was.

8                   MR. ZIEMBA: Okay, Mr. Chairman.

9 Now we turn to the Region C discussion relative  
10 to the timetable, the application date.

11                   I'm not going to repeat all of the  
12 conversations that the Commission has had over  
13 the last couple of meetings. However, as a  
14 reminder we modeled three different dates for  
15 the application deadline, November 17 with an  
16 estimated award date of April 1, 2015, October  
17 17 with an estimated award date of March 2,  
18 2015, and September 23 with an estimated award  
19 date of February 9.

20                   These award dates assume that there  
21 will be at least one surrounding community or  
22 ILEV dispute, impacted live entertainment venue  
23 dispute that will take the maximum allowable  
24 under our regulations. The dates assume that

1 the Commission will be able to determine  
2 suitability for any new qualifiers by August  
3 before the referendum dates permissible under  
4 these application dates.

5           Since the last meeting we have  
6 received comments from the city of Fall River  
7 and the city of Fall River's office of economic  
8 development asking that the Commission do not  
9 further extend the deadline passed the earliest  
10 deadline of September 23 of this year. As of  
11 last evening at least the last I checked, we  
12 had not received any further comments.

13           In regard to the three options, I  
14 don't believe it's possible to predict with  
15 certainty the consequences or benefits  
16 associated with each. The earliest date could  
17 lead to less development applications than the  
18 latest date. The latest date and the middle  
19 date could result in an award date that is  
20 later. However, there is not necessarily a  
21 definitive correlation between the award date  
22 and when the facilities will be ready to open  
23 as substantial permitting will be necessary  
24 after the award date under all three of these

1 application dates.

2           If the past is any indication, we  
3 may not have the benefit of a DEIR certificate,  
4 draft environmental impact certificate, when we  
5 are reviewing the Region C applications given  
6 that other Category 1 applications have taken  
7 over a year or years from the time of  
8 announcement for the DEIR certificate.

9           In all fairness, in my meetings with  
10 the city of Fall River, Fall River indicated  
11 that they fully expect that even with the July  
12 23 deadline that they would be able to achieve  
13 a DEIR certificate. However, just looking at  
14 the charts included in your packets, it's taken  
15 substantially longer in other instances.

16           There's also uncertainty regarding  
17 our ability to review the backgrounds of all  
18 qualifiers as we do not yet know who they are.  
19 Finally, we don't know how the conversations  
20 with surrounding communities will progress as  
21 they have not yet been initiated to the best of  
22 my knowledge. As we know, regardless of  
23 whatever our application deadline is, dispute  
24 with surrounding communities may lead to



1 substantial delays in the eventual award dates.

2           With any of these dates, the  
3 Commission may want to explore options to give  
4 everyone more predictability on surrounding  
5 community impacts before the application  
6 deadline. For example, perhaps the Commission  
7 could require rather than recommend an  
8 independent peer review or other review of  
9 traffic impacts before the application  
10 deadline. Such a review can allow communities  
11 to better understand impacts and could  
12 potentially lessen the risk that unfounded  
13 fears about traffic resulting from each of  
14 these facilities would lead to more lengthy  
15 surrounding community disputes after the  
16 application.

17           I just wanted to note that with each  
18 one of these application deadlines, obviously  
19 we need to back out 60 to 90 days before those  
20 application deadlines and an additional 10 days  
21 for certification periods. So, even though the  
22 deadlines of September, October or November it  
23 may appear quite far away at this point. If  
24 you back out the 60 to 90 days plus the

1 additional 10, they're a little bit closer than  
2 where we are today. But unfortunately, I don't  
3 have more certainty for you but where we are in  
4 this stage of the process I think that there's  
5 rather substantial uncertainty on a lot of  
6 different factors.

7           CHAIRMAN CROSBY: The only  
8 opposition is Fall River. And they claimed in  
9 their first round of letters that they would  
10 have a host community agreement by April 3 and  
11 a referendum in early June. That didn't  
12 happen. And they're not saying in their most  
13 recent letters they said they would have a host  
14 community agreement by early April and an  
15 election in June. And it's now April 17 and  
16 that hasn't happened.

17           So, I am not sure about the  
18 confidence I have with their sense of the  
19 schedule. Plus their partner has a big  
20 background check. You are here, I assume to  
21 give a sense of what's realistic about  
22 background checks. Do you want to come up  
23 here?

24           COMMISSIONER ZUNIGA: While Director

1 Wells gets to that, do they have an ENF  
2 certificate filed?

3 MR. ZIEMBA: No, not to the best of  
4 my knowledge. Again, that is probably one of  
5 the easiest of the application requirements.  
6 If you wanted to meet the minimum, we've always  
7 recommended that all applicants try to achieve  
8 well beyond the minimum at the EMF certificate.

9 COMMISSIONER ZUNIGA: But nobody has  
10 filed anyway?

11 MR. ZIEMBA: Correct. I think the  
12 project is still in development while they are  
13 working on the host community agreement.

14 MS. WELLS: I would just reiterate  
15 what I indicated at our last meeting, while we  
16 continue discussions with potential applicants,  
17 the IEB is yet to receive a complete picture of  
18 any deal for Region C. So therefore, it is  
19 impossible for me to ascertain when would be a  
20 realistic date that I could complete the  
21 suitability investigation.

22 I can guess as long as parties get  
23 their materials in in the next few weeks. As  
24 we know from prior experience that doesn't

1 always happen and things come up. And  
2 schedules slip. I do not want the IEB to be in  
3 the position, for example we were with one of  
4 the applicants for Region A where we're at the  
5 last minute and I have to report that I don't  
6 have a complete application and I could not  
7 complete the investigation.

8 So, that would be my concern. As of  
9 right now, with a significant entity and a  
10 significant number of qualifiers a minimum four  
11 months. The more weeks that pass by and we  
12 don't have the full picture, the more difficult  
13 it's going to be for us to match up any  
14 deadlines. So, I would suggest the IEB should  
15 not be held to a deadline but rather to have an  
16 estimate of when things can be completed.

17 COMMISSIONER STEBBINS: Do you get  
18 the sense that us setting a date will kind of  
19 back that timeline out for an applicant?

20 MS. WELLS: We discussed this when  
21 we were going through this with the other two  
22 regions. You can set a date where you have say  
23 for example all of your qualifiers in, the  
24 deal together, but the very nature of this

1 business is that qualifiers are going to come  
2 in and out. So, it's somewhat of a moving  
3 target and there inevitably are going to be  
4 some changes with any business organization not  
5 just within gaming. That's what makes it  
6 difficult here.

7           COMMISSIONER MCHUGH: Well, we don't  
8 know yet -- We think we have a number of  
9 applicants, I mean a number of people who have  
10 indicated interest who could be applicants.  
11 But there are a few others out there still,  
12 right? This is sort of like a pillow fight in  
13 a dark room. You don't know where the next  
14 piece is coming from.

15           CHAIRMAN CROSBY: It's more like  
16 baseball bat fight in a dark room.

17           COMMISSIONER MCHUGH: Is there  
18 something to be said for not deciding this  
19 issue now but for canvassing the known  
20 applicants as to the impact of what we just did  
21 with respect to the capital requirements on  
22 their ability to put a deal together and how  
23 long that's going to take before we make a  
24 deadline?

1           I think that setting nonfunctional  
2 deadlines always risks being ineffective  
3 because the deadline just won't work. I would  
4 much rather if it were possible to do so have a  
5 functional deadline that was based on an  
6 expectation that it was doable but at the same  
7 time would make people move forward.

8           MR. ZIEMBA: I think that makes a  
9 lot of sense.

10           CHAIRMAN CROSBY: You think there's  
11 information to be gleaned from that canvassing  
12 at this stage of the game? That this change  
13 was enough that the lay of the land will  
14 crystallize?

15           MR. ZIEMBA: We'd need to find that  
16 out if we have more than one applicant it would  
17 be interesting for the Commission to know in  
18 setting deadlines.

19           CHAIRMAN CROSBY: We said it's going  
20 to be no earlier than September and that leaves  
21 Region A no time, the loser in Region A  
22 couldn't re-gear. They're out of it if it's  
23 September.

24           COMMISSIONER MCHUGH: Right, but we

1 don't have to wait until September. My view  
2 would be within a couple weeks or a month at  
3 the outside see if this makes a difference. I  
4 can't project -- makes a difference and then  
5 take action based on that. And on the  
6 desirability if there is one to allow the  
7 Region A player to get in if they wanted to.

8           CHAIRMAN CROSBY: For Region A to  
9 get in, we'd have to put it off probably until  
10 next year basically, January probably. To give  
11 enough time for Region A player, because that  
12 decision doesn't get made until early to mid-  
13 August. And they need at least 90 days to get  
14 going.

15           Except for that one, I don't know  
16 whether time is going to make any difference  
17 here. I don't know how much difference this  
18 one is going to make. Maybe the change we made  
19 will at least crystallize one deal. I don't  
20 know. We will soon find out.

21           But I'm not sure how much difference  
22 time is going to make. I'm afraid that it's  
23 not time that's the problem. It's the  
24 marketplace that's the problem. But I guess

1 there's no harm in waiting. The harm in  
2 waiting is there's no certainty for people. Is  
3 that a bad thing?

4 COMMISSIONER MCHUGH: The certainty  
5 of the moment is September 23.

6 CHAIRMAN CROSBY: Right.

7 COMMISSIONER MCHUGH: So, doing  
8 nothing doesn't create a vacuum. It leaves in  
9 place a deadline that's really going to be  
10 difficult for anybody to meet, but it allows us  
11 to find out what's going on then change it in a  
12 functional way if necessary.

13 COMMISSIONER ZUNIGA: Another  
14 thought that came to mind. The statute  
15 originally contemplated one application  
16 deadline. We would turn over the application  
17 to the IEB, which would conduct its  
18 investigation and then upon that completion  
19 turned back to the Commission for the analysis  
20 and evaluation of the technical proposal. We  
21 bifurcated it into two phases, obviously. And  
22 one already has passed, the Phase 1. Now  
23 obviously we're talking about Phase 2.

24 COMMISSIONER MCHUGH: A piece of



1 Phase 1.

2 COMMISSIONER ZUNIGA: A piece of  
3 Phase 1, right.

4 COMMISSIONER MCHUGH: For each one.

5 COMMISSIONER ZUNIGA: Right.  
6 I  
6 guess I was thinking perhaps we could collapse  
7 those two phases into one as early as September  
8 27 and allow a determination of completeness  
9 relative to investigatory materials and then  
10 see what happens after.

11 COMMISSIONER MCHUGH: In other  
12 words, say that you have your complete deal  
13 into us by the now existing deadline and extend  
14 the RFA-2 deadline down the road. That's  
15 interesting.

16 COMMISSIONER ZUNIGA: That's right.

17 CHAIRMAN CROSBY: Oh, I didn't  
18 understand that. So, make September the RFA-1?

19 COMMISSIONER ZUNIGA: Or another  
20 date.

21 CHAIRMAN CROSBY: That's re-opening  
22 it to new applicants you mean.

23 COMMISSIONER ZUNIGA: We could have  
24 but don't have to. And I know it gets tricky

1 with the number of qualifiers that come in and  
2 out, etc. but instead of focusing on RFA-2  
3 deadline really focusing on RFA-1, which is you  
4 have all of your parties. We have to get the  
5 investigation done first and foremost and then  
6 see where we are then.

7 COMMISSIONER MCHUGH: That's really  
8 interesting. The RFA-1 --

9 COMMISSIONER ZUNIGA: -- is a hard  
10 deadline.

11 COMMISSIONER MCHUGH: -- as a hard  
12 deadline and then there's a sub-question there  
13 as to whether it's new applicants or just  
14 putting the full deal together for the existing  
15 applicants. Then setting the RFA-2 deadline  
16 down the road slightly to give the IEB a  
17 chance.

18 COMMISSIONER ZUNIGA: And if you're  
19 not complete in the eyes of the IEB after that  
20 deadline, that hard deadline then you are done.

21 COMMISSIONER CAMERON: So, we're  
22 talking September?

23 COMMISSIONER ZUNIGA: It could  
24 really be any deadline. It could be as late as

1 later if we think so or earlier.

2 COMMISSIONER CAMERON: So, four and  
3 a half months.

4 CHAIRMAN CROSBY: I guess we might  
5 as well go with getting a little more  
6 information, right? We might as well see if we  
7 can get anything that gives us any help here.

8 COMMISSIONER MCHUGH: Yes. If we  
9 did that -- I think this is an intriguing idea.

10 COMMISSIONER ZUNIGA: I got some  
11 success here.

12 CHAIRMAN CROSBY: Unlike the waiver,  
13 which was a really lousy idea.

14 COMMISSIONER STEBBINS: So, we've  
15 moved on, put it behind you.

16 COMMISSIONER MCHUGH: No, because  
17 that would give people now -- This is as much  
18 as we're going to do on the waiver. I still  
19 favor opening it up, but we don't have to  
20 decide that today. If we took in principle  
21 your idea then we would give people after we  
22 get a little time, a little more information, a  
23 deadline by which now you've got to put your  
24 deal together. This is all you're going to

1 get.

2 COMMISSIONER ZUNIGA: No more  
3 placeholders, in other words.

4 COMMISSIONER MCHUGH: Right.

5 COMMISSIONER ZUNIGA: You have to  
6 have all of your parties or whoever you think  
7 are going to be. There has to be a legitimate  
8 time for investigation.

9 CHAIRMAN CROSBY: There's a little  
10 bit of a definitional problem there because  
11 what comprises a complete deal. As we said  
12 they change. What happens if they --

13 COMMISSIONER CAMERON:  
14 Substantially.

15 COMMISSIONER MCHUGH: They have to  
16 have an operator. They can't be some guy they  
17 just drag out of the woods. It's got to be an  
18 operator.

19 COMMISSIONER ZUNIGA: They have to  
20 have their financing, financing plan not  
21 entirely the financing.

22 COMMISSIONER STEBBINS: And that's  
23 not a huge cost for them to assume compared to  
24 the RFA-2 process, which is a more costly

1 process for them to engage in with all of the  
2 market scenarios.

3 CHAIRMAN CROSBY: But you are  
4 talking about doing this after we get our  
5 research. Let's move on it. We're going to  
6 add this to May 1 and no doubt 2nd agenda, it  
7 looks like. So, we'll try to some research. I  
8 guess you can sort of characterize this as  
9 we're getting down to --

10 COMMISSIONER MCHUGH: Crunch time.

11 CHAIRMAN CROSBY: Thank you. I was  
12 trying to find an elegant way to say it. Yes,  
13 crunch time. It's time for people to start to  
14 put up or shut up, because we have to start  
15 putting in some deadlines here that we really  
16 stick with. So, if you can probe that would be  
17 helpful.

18 What else do you got? Thank you,  
19 Director Wells.

20 MR. ZIEMBA: One of three regions  
21 down. Now let's move to Region B. MGM has  
22 asked to address the Commission about issues  
23 relating to the timing and method of the award  
24 of the Region B licenses and the payment of

1 fees. They'd like to provide their perspective  
2 on the impacts of the potential ballot  
3 initiative and SJC proceedings regarding the  
4 ballot initiative.

5           As MGM understands, the Commission  
6 is in the midst of its reviews of its  
7 applications. MGM is not expecting that the  
8 Commission will address its comments and  
9 concerns during today's meeting. Instead MGM  
10 asks to directly address the Commission now as  
11 some of these issues are part of the  
12 conversations the Commission will be having in  
13 the days and weeks ahead.

14           With that I see we are joined by  
15 MGM, Mr. Mathis and his team. Thank you for  
16 joining us.

17           MR. MATHIS: Thank you.

18           MR. NOSAL: Thank you.

19           CHAIRMAN CROSBY: Welcome.

20           MR. NOSAL: Good almost afternoon,  
21 Chairman Crosby and members of the Commission.  
22 Jed Nosal from the law firm of Brown Rudnick.  
23 I am joined here with Marty Nastasia and  
24 Michael Mathis the President of MGM

1 Springfield. We appreciate the Commission's  
2 time today in allowing us to appear on the  
3 agenda to discuss the timing and structure of  
4 an award of license and payment of fees.

5           Before we begin, I do want to thank  
6 certainly your staff specifically General  
7 Counsel Blue and Ombudsman Ziemba for their  
8 time and ongoing accessibility and willing to  
9 discuss concerns and certainly steer us in the  
10 direction of where we need to be in bringing  
11 these to the Commission's attention. With that  
12 I'd like to turn it over to Mr. Mathis and  
13 he'll present to the Commission.

14           MR. MATHIS: Mr. Chairman,  
15 Commissioners, thank you for allowing me to  
16 appear today. Yesterday, I sent you a detailed  
17 letter outlining MGM's request and offer to  
18 bridge what we think maybe a two to three week  
19 period of uncertainty between the Commission's  
20 selection of the winner of the Western Mass.  
21 Category 1 license and what we hope and expect  
22 will be a dismissal by the Supreme Judicial  
23 Court of the effort to repeal the Massachusetts  
24 Gaming Act, which was signed by Governor

1 Patrick in November 2011.

2           The Commission's current schedule  
3 provides for a May 30 award of that license.  
4 As you know, MGM along with the towns of West  
5 Springfield and Longmeadow recently and I want  
6 to say jointly which has not been the case with  
7 some of those communities, asked the Commission  
8 for what is tantamount to a two-week extension  
9 of that selection in order for us to allow us  
10 to finalize our surrounding community  
11 agreements through arbitration.

12           I am pleased to report that the  
13 first of those hearings is to commence and to  
14 be completed by tomorrow. The other will be  
15 completed by early next week. The arbitrators  
16 in those proceedings have committed to provide  
17 a final decision on both of those matters by  
18 April 30.

19           Accordingly, we believe a mid-June  
20 licensee selection is very obtainable. With  
21 these last two surrounding community agreements  
22 resolved and the subsequent statutory closing  
23 of our final host community hearing in  
24 Springfield.



1                   We recognize the economic and  
2 budgetary benefit to the Commonwealth from an  
3 award of the Category 1 license for Western  
4 Massachusetts and the receipt of the \$85  
5 million licensing fee by the end of this June  
6 30 fiscal year. To make that possible, MGM is  
7 requesting that the Commission consider a two-  
8 step process in the award of the license.

9                   First, a selection or determination  
10 of the Commission's selection for the license.  
11 As the sole remaining bidder for that license  
12 in Region B, I hope you won't think us too  
13 presumptuous to suggest that MGM Springfield  
14 received that determination.

15                   I would also suggest that being the  
16 last bidder standing in this region is no  
17 accident. Respectfully, we believe that MGM  
18 Resorts is the best company with the best  
19 project in the best city and site in Western  
20 Mass. for this opportunity. Having spent time  
21 with our company and recently time in  
22 Springfield seeing our vision, I hope you will  
23 all agree.

24                   We believe that the law is working

1 as it should. A handful of communities have  
2 voted to approve a gaming casino facility in  
3 their community. And a handful of communities  
4 have rejected it. We believe that was what was  
5 intended by the Gaming Act.

6           Accordingly, such a selection or  
7 determination would allow MGM and the  
8 Commission to negotiate the form of award and  
9 related conditions in advance of what would be  
10 the formal award of the license, which we are  
11 proposing would only be conditioned on two  
12 events. The earlier of (A) the dismissal of  
13 the repeal petition by the SJC or the rejection  
14 by the voters if eventually part of a  
15 referendum.

16           MGM is offering under such a  
17 bifurcated process to waive our statutory right  
18 to 30 days to make payment of our various  
19 licensing fees including the \$85 million fee.  
20 And instead to make such a payment within five  
21 business days of the formal award. Further, we  
22 have committed to try to further expedite those  
23 payments in the event the SJC dismisses the  
24 petition in June and we are somehow able to

1 make that payment in this fiscal year.

2           We are more than happy to make those  
3 concessions and provide flexibility in what  
4 continues to be an evolving and complex  
5 process. We have also offered to advance what  
6 would be our proportionate share of operating  
7 costs of the Commission through the end of this  
8 calendar year. We are estimating that amount  
9 to be approximately \$2.7 million. We have  
10 offered to make that payment following our  
11 selection, which would be the first phase of  
12 this bifurcated process in advance of our  
13 formal award.

14           I also want to acknowledge and thank  
15 the Commission for the flexibility you have all  
16 shown throughout this process, specifically the  
17 latest revised regulations you passed to  
18 provide you the tools to accommodate some of  
19 the elements of this request.

20           In closing, I would be remiss not to  
21 mention some of the opportunities that are on  
22 hold while this process is under this cloud of  
23 doubt. The licensing fees and payments to the  
24 Commission are certainly important, but we also

1 have committed in our host community agreement  
2 to make millions of dollars of prepayments  
3 during the development period.

4           To fund such causes as early  
5 education and public safety once we can start  
6 construction. But it really goes beyond  
7 dollars, shovels in the ground means 2000 badly  
8 needed construction jobs in what will be the  
9 largest development project in Western  
10 Massachusetts. That is why the Carpenters  
11 Union joined us yesterday at the SJC with their  
12 own filing opposing the repeal petition.

13           Similarly, our project means joint  
14 marketing partnerships with the MCCA who  
15 manages this building and the MassMutual Center  
16 in Springfield. They along with their  
17 affiliated chamber of commerce of Springfield  
18 and the Greater Springfield Convention and  
19 Visitors Bureau also filed papers with the  
20 court yesterday on behalf of their impacted  
21 members.

22           We're also pleased to have the  
23 Massachusetts Competitive Partnership who  
24 represents some of the Commonwealth's top

1 business leaders file with the court as well.

2 Thank you for taking the time this  
3 morning to let us explain our proposal and we  
4 look forward to getting your feedback and  
5 thoughts. I'm happy to answer any questions  
6 that was in our detailed letter yesterday, but  
7 I think it largely speaks for itself. Thank  
8 you, very much.

9 COMMISSIONER MCHUGH: Thank you.

10 CHAIRMAN CROSBY: Thank you, Mr.  
11 Mathis. Any questions?

12 COMMISSIONER MCHUGH: No, I have no  
13 questions. The letter's in the packet, I  
14 believe, and it is detailed and comprehensive.

15 CHAIRMAN CROSBY: Commissioner?

16 COMMISSIONER ZUNIGA: I'm going to  
17 make a point that I think Mr. Mathis  
18 highlighted in the letter, but didn't mention  
19 now that I feel is very important. He's  
20 focusing on the payment of the fee, which is  
21 the thing that happens first, which is  
22 substantial and there's risk, etc. And then a  
23 lot of costs that come soon thereafter because  
24 of obligations that you have locally and etc.

1           But something that really resonated  
2 with me is what you described. If demolition  
3 started, if construction started in the city as  
4 you plan it and the repeal happened, it would  
5 be in my opinion devastating for the city of  
6 Springfield. Forget about one tornado or one  
7 gas explosion, it would probably look like five  
8 tornadoes.

9           So, there is a third party here that  
10 I hadn't thought of until you put in this  
11 letter to us that eventually is very important  
12 in our consideration of the timeline and the  
13 things that are at play that we cannot control,  
14 which is the SJC first and then an eventual  
15 potential referendum.

16           So, just wanted to mention that. I  
17 think that's especially something that  
18 resonates with me. If we are going to decide  
19 this matter now, I would be happy to talk more  
20 about it later. But I think it's important to  
21 underscore.

22           CHAIRMAN CROSBY: In the inimitable  
23 language of another lawyer, I don't think we  
24 want to get the cart before the horse here. I

1 don't think we're going to make any decisions  
2 on this now. There is a process still to be  
3 done here. Everybody is assuming where we're  
4 going to go. And it's probably a reasonable  
5 assumption, but let's not get too far ahead of  
6 ourselves.

7           Specifically, there's a lot of  
8 different ways to skin this cat and you've  
9 acknowledged that we put in the regs. give us  
10 the flexibility. You mentioned in your answer  
11 to question nine, I forget exactly how you  
12 referred to it here, but there are certain  
13 things like your land acquisition costs and  
14 your HCA obligations and so forth. There may  
15 be triggers that we don't know exactly what  
16 triggers what. And you said you knew we  
17 couldn't give you relief on these but you'd  
18 like our help.

19           If we end up sitting down trying to  
20 work our way through this, I think we'll want  
21 to understand what all of the issues are and do  
22 whatever we can to accommodate them. Whether  
23 this is the exact structure that we use remains  
24 to be seen, but this certainly is well within

1 the range of what I think we were giving  
2 ourselves the tools to do.

3 MR. MATHIS: Chairman, I appreciate  
4 that comment and really sort of consistent with  
5 the earlier dialogue about Region C, if you  
6 think about was the contemplation of the  
7 Legislature. I think the award of the license  
8 was intended to be truly the kickoff to the  
9 project.

10 And what we find ourselves in in  
11 terms of the repeal effort is an award of a  
12 license that does not allow for the  
13 commencement of construction. So, just to  
14 summarize somewhat and you're absolutely right.  
15 There are triggers that are unique to our  
16 development that would be different for other  
17 organizations. Simply put, there's the \$85  
18 million fee. There is a development 10 percent  
19 deposit, which depending on how you define it,  
20 we estimate between \$50 and \$60 million. Then  
21 in our case there would be \$45 million worth of  
22 closing costs on land.

23 So, you get close to a \$200 million  
24 check that is triggered by an award of a



1 license that is truly not an award one of a  
2 license potentially. That's all we're looking  
3 for relief on.

4           We're ready to go the minute that it  
5 is final and behind us. We've conceded that  
6 the Commission and the Commonwealth shouldn't  
7 have to wait 30 days because we know what that  
8 final condition will be. But appreciate your  
9 consideration and I know you're sympathetic to  
10 our situation.

11           CHAIRMAN CROSBY: I did have one  
12 question. You were operating on the assumption  
13 of a FY15 budget of \$14 million. Is that more  
14 or less right?

15           COMMISSIONER ZUNIGA: There's an  
16 update. That's in the ballpark.

17           CHAIRMAN CROSBY: Okay.

18           COMMISSIONER ZUNIGA: The budget  
19 will be coming later in the fiscal year, maybe  
20 towards the end of May.

21           CHAIRMAN CROSBY: Just for their  
22 planning purposes, if it was off by an order of  
23 magnitude of two that was real money. I guess  
24 it's somewhere in this range.

1 COMMISSIONER ZUNIGA: Yes.

2 CHAIRMAN CROSBY: Whether the  
3 proportions are right and so forth, but it's  
4 somewhere in this area. Okay.

5 MR. MATHIS: And to be clear,  
6 whatever the appropriate share based on the  
7 budget and the pro rata we are committing to.

8 CHAIRMAN CROSBY: Okay. Anything  
9 else for Mr. Mathis or MGM on this topic?

10 COMMISSIONER MCHUGH: No, that was  
11 very helpful.

12 CHAIRMAN CROSBY: Thank you. Do I  
13 have to disclose that Mr. Nosal used to work  
14 for me?

15 COMMISSIONER MCHUGH: You just did.

16 CHAIRMAN CROSBY: I just did, okay.  
17 Sort of. Thank you.

18 MR. ZIEMBA: Thank you, Mr.  
19 Chairman. Do you want to proceed to Region A?

20 CHAIRMAN CROSBY: Yes.

21 MR. ZIEMBA: First, let me just  
22 discuss a mutual request we have from Mohegan  
23 Sun and the town of Winthrop. This is located  
24 in tab d of three. There's the Somerville law

1 memorandum, the Chelsea memorandum and then  
2 Mintz Levin response. Then follows is the  
3 Winthrop request that I have included here.

4           So, the parties ask that the  
5 Commission grants a variance to our arbitration  
6 regulations requiring them to begin the  
7 arbitration process at the conclusion of the  
8 30-day negotiation period, which ends on April  
9 22. The town and the applicant request that  
10 they not be required to begin arbitration until  
11 May 1. Thus instead of spending time on  
12 finalizing arbitration, arbitrators and best  
13 and final offers, they can instead spend some  
14 additional time in negotiations.

15           Both parties agree with this  
16 proposal. The parties note that the extension  
17 will not directly impact the Commission's  
18 timeline because of the pending proceedings  
19 regarding the city of Boston status. These  
20 additional eight days could potentially lead to  
21 a surrounding community agreement much quicker  
22 and with significantly less contention and with  
23 much less expense in terms of time and  
24 resources that the arbitration process would

1 allow.

2           This request would work well within  
3 a proposal that Counselor Blue and I will  
4 explain a little bit later. Providing  
5 applicants and communities a little bit more  
6 flexibility regarding our arbitration deadlines  
7 as long as they are within a constrained period  
8 of time.

9           Given these reasons I recommend the  
10 Commission grant the variance. We are joined  
11 by representatives of Mohegan Sun and the town  
12 of Winthrop if the Commission has any  
13 questions.

14           CHAIRMAN CROSBY: Questions?

15           COMMISSIONER ZUNIGA: Both parties  
16 are making a joint request for an extension.

17           MR. ZIEMBA: They're making a joint  
18 request for the extension.

19           COMMISSIONER STEBBINS: To avoid  
20 arbitration.

21           MR. ZIEMBA: And they are very  
22 hopeful and optimistic that they can proceed  
23 through in finalizing an agreement in the near  
24 term but they do realize that there's still a

1 potential for arbitration but they're working  
2 toward that date.

3 CHAIRMAN CROSBY: From my  
4 standpoint, there's a two-part test here. It  
5 was the case in MGM when we had to also  
6 consider an arbitration. One is that both  
7 parties are agreeing to the request. And two  
8 is that there's no consequential prejudice to  
9 some other party.

10 And in this case I think it passes  
11 both tests. Because this isn't going to be a  
12 delay because there's already been a delay, and  
13 both parties are applying. From my standpoint  
14 it's harmless and would actually be  
15 constructive.

16 COMMISSIONER ZUNIGA: Same here.

17 COMMISSIONER CAMERON: I agree as  
18 well.

19 CHAIRMAN CROSBY: Okay. Do we need  
20 a vote for that? Yes, I guess we do.  
21 Commissioner McHugh?

22 COMMISSIONER MCHUGH: I move that  
23 the request of the two parties for an extension  
24 of the arbitration commencement deadline to

1 April 30, that's the date, be approved by the  
2 Commission.

3 COMMISSIONER CAMERON: Second.

4 CHAIRMAN CROSBY: Any further  
5 discussion?

6 MR. ZIEMBA: I think they asked for  
7 May 1.

8 COMMISSIONER MCHUGH: I'm sorry,  
9 substitute May 1 for April 30.

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

12 COMMISSIONER MCHUGH: Aye.

13 COMMISSIONER CAMERON: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER STEBBINS: Aye.

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

18 MR. ZIEMBA: Thank you, Mr.  
19 Chairman. We also have two requests for  
20 extensions from the cities of Somerville and  
21 Chelsea. The city of Somerville asks for an  
22 extension of the period of negotiation or  
23 preparation for arbitration of 30 days or some  
24 other period deemed appropriate by the

1 Commission.

2           The city of Chelsea asked for a  
3 similar extension to June 2, approximately a  
4 40-day extension. Both cities reference the  
5 Boston proceedings as the reason for their  
6 petitions. Both requests are opposed by the  
7 Wynn application team. I do note that parties  
8 are allowed and encouraged to continue  
9 negotiations even after the beginning of  
10 arbitration under our current regulations.

11           However, I do note that once the  
12 arbitration procedures begin that potentially  
13 it could be a little bit more difficult to  
14 reach a negotiated settlement. But we have  
15 always encouraged the parties to continue  
16 negotiations even in the event of arbitration.

17           The city of Somerville has asked for  
18 an opportunity to address the Commission. The  
19 city of Chelsea would like the Commission to  
20 deliberate based on its written submission.

21           With the Commission's permission, I  
22 would ask that Mr. Frank Wright, the city  
23 solicitor from a Somerville, present the city's  
24 request for five to 10 minute. Following Mr.

1 Wright's presentation, Tony Starr from Mintz  
2 Levin representing Wynn would address  
3 Somerville's request.

4           Before they begin, I would like to  
5 just commend both the city of Somerville and  
6 the Wynn applicant for a very thoughtful  
7 dialogue of potential impacts. We did receive  
8 a lot of back-and-forth between the city in  
9 trying to understand true impacts and the Wynn  
10 team submitting detailed responses to a lot of  
11 those concerns.

12           So, after the presentations and  
13 discussions of the Somerville petition, the  
14 Commission could then discuss the Chelsea  
15 petition, which involves very, very similar  
16 concerns on both the city of Chelsea and the  
17 applicant team. So, with your permission, Mr.  
18 Chairman, we could ask Mr. Wright to come join  
19 us.

20           CHAIRMAN CROSBY: Yes, okay. Good  
21 afternoon.

22           MR. WRIGHT: Good afternoon, Mr.  
23 Chairman, Commissioners. Frank Wright, city  
24 solicitor, city of Somerville. I'm accompanied



1 by Jason Grossfield, assistant city solicitor.  
2 We appreciate the opportunity to be heard this  
3 afternoon with regards to this matter.

4 Somerville has been working with  
5 Wynn. We met as recently as yesterday  
6 afternoon to discuss this. I just wanted to  
7 give you a little bit of additional information  
8 beyond that which is set forth in my letter and  
9 my motion.

10 Just a little history, the parties  
11 first met to discuss the proposed Wynn casino  
12 several months ago, going back to late summer,  
13 early fall. At that time, the city had  
14 requested that the Wynn team recognize  
15 Somerville as a surrounding community. Despite  
16 Somerville's location across the river, the  
17 Mystic River from the proposed casino site and  
18 the fact that Somerville is adjacent to and  
19 directly impacted by Sullivan Square rotary  
20 intersection as well as Wellington Circle, Wynn  
21 cited their intention to await and review their  
22 studies before making a decision on whether  
23 Somerville was a surrounding community.

24 The parties met several times

1 thereafter. During that time, Wynn also  
2 denied, rejected the city's request for funding  
3 with regards to retaining the MAPC to do  
4 independent studies.

5           Wynn awaited recognizing Somerville  
6 as a surrounding community until the deadline,  
7 which was an extended deadline set by this  
8 Commission. Since that time the parties have  
9 met and expressed their respective desire to  
10 reach an agreement, a surrounding community  
11 agreement and expressed their need to gather  
12 additional information with regards to the  
13 impacts.

14           On its own, the city has retained  
15 several consultants including the Metropolitan  
16 Area Planning Council as the regional planning  
17 body and worked with MIT as to the impacts of  
18 the proposed Wynn casino on Somerville. The  
19 parties have continued to produce and exchange  
20 substantive information as recently as this  
21 week.

22           Four reports were received and  
23 forwarded by Somerville to Wynn. They related  
24 to economic impact, transportation, housing and

1 open space. We anticipate a public safety and  
2 air quality report respectively to be received  
3 and produced to Wynn within the coming days if  
4 not today.

5           Wynn's Counsel also provided  
6 additional information to Somerville,  
7 substantive information on Tuesday. So, that  
8 information had been requested some time ago  
9 but has now been received. And city officials  
10 and Wynn reps. met yesterday and we've agreed  
11 to schedule additional meeting times.

12           Now that the city has the MAPC  
13 studies and Wynn has gathered the additional  
14 information, the parties are in a position to  
15 make a thoughtful supported decision and  
16 proposal as to reaching a surrounding community  
17 agreement.

18           Somerville is unaware of any other  
19 community in the Region A district that has  
20 undertaken the technical review both through  
21 the MAPC, MIT or otherwise to determine the  
22 impacts of a casino which has been universally  
23 recognized as going to have regional impacts.  
24 Concerning Wynn's decision not to recognize

1 Somerville as a surrounding community until the  
2 deadline, it would be unreasonable not to allow  
3 the parties an additional 30 days at this point  
4 to reach a surrounding community agreement  
5 considering the issues faced a densely settled  
6 community such a Somerville.

7           While we can pursue a dual track, a  
8 dual track we believe will not be as productive  
9 to the needs of the city and Wynn. The city  
10 has limited resources to devote to this matter.  
11 And a two track system would strain those  
12 resources to say the least.

13           Additionally, we lose this weekend  
14 due to the Good Friday, Easter and Patriots'  
15 Day weekend. So, we will lose four days along  
16 that line because of scheduled family and  
17 religious observances that our consultants and  
18 employees have.

19           Finally, as mentioned by Mr. Ziemba  
20 there will be no prejudice to either the city,  
21 Wynn or this Commission due to the pending  
22 motions filed by Boston. This decision with  
23 regards to awarding the Region A license will  
24 be held in abeyance pending those decisions.

1 And the Wynn decision or the Mohegan Sun  
2 decision will not in any way be delayed. Thank  
3 you.

4 COMMISSIONER MCHUGH: The only  
5 prejudice -- We'll hear from the Wynn interest.  
6 But so far as I know the prejudice as being  
7 suggested in the letter is the availability of  
8 the arbitrators and the costs that have been  
9 incurred. What if anything do you have to say  
10 about that?

11 MR. WRIGHT: To some degree -- I  
12 didn't receive that letter until last night by  
13 email. So, I just got a chance to look at it  
14 this morning. But I understand that that  
15 apparently is the position they're taking. The  
16 schedule due to a variety of reasons as they  
17 have been shifting sands here. You've had to  
18 adjust the schedule throughout this process.  
19 So, I don't necessarily accept the possibility  
20 that the Wynn team cannot adjust the schedule  
21 now should it make sense.

22 I would also say we may not have to  
23 go to arbitration. Both sides have shown a  
24 serious interest in resolving this thing

1 without having to get to arbitration. And I  
2 think because we just have the reports before  
3 us now, we're both analyzing them, we should be  
4 able to work this out I would anticipate if we  
5 get the time to do so. But to try to dual  
6 track this I think would be difficult at best  
7 for the city.

8                   COMMISSIONER MCHUGH: Let me try one  
9 other thought. What about if you proceeded to  
10 arbitration on the schedule --

11                   CHAIRMAN CROSBY: Which is what?  
12 Remind me what the dates would be.

13                   MR. ZIEMBA: April 23.

14                   CHAIRMAN ZIEMBA: April 23 is the  
15 end of the negotiating 30 days and starts the  
16 arbitration process.

17                   MR. ZIEMBA: April 22 end of  
18 negotiations and April 23 the beginning of the  
19 arbitration process.

20                   COMMISSIONER MCHUGH: But then  
21 jointly asked the arbitrator to hold the report  
22 to give you time after the arbitration to  
23 negotiate further with the Commission's  
24 agreement.

1           MR. WRIGHT: That's a possibility, I  
2 suppose, but as the city stands right now we  
3 are still analyzing those reports. We have to  
4 line up our consultants. Wynn has to some  
5 extent an advantage to the extent that they did  
6 their studies ahead of time. I think  
7 Somerville, unlike any other community as I  
8 stated in Region A at least if not statewide  
9 has on its own gone out and retained the MAPC,  
10 engaged individuals at MIT as well as another  
11 consultant.

12           Those reports are just getting back  
13 to us based on the fact that we didn't want to  
14 expend those monies when Wynn rejected our  
15 request to go down that road until we were  
16 absolutely sure that we were a surrounding  
17 community. Once we knew were a surrounding  
18 community, we invested that money pursuant with  
19 the statute and pursuant to this Commission's  
20 rules and regulations to address those matters  
21 which are supposed to be addressed when  
22 determining what the mitigation should be for a  
23 surrounding community.

24           COMMISSIONER MCHUGH: Okay. Thank

1 you.

2 CHAIRMAN CROSBY: When did we make  
3 the decision that Somerville was a surrounding  
4 community? What was the date?

5 MR. ZIEMBA: Very shortly after the  
6 application period in the 10-day window for  
7 surrounding community petitions Wynn then  
8 designated the city of Somerville right before  
9 the petition deadline.

10 CHAIRMAN CROSBY: Which was when?

11 MR. ZIEMBA: That was around January  
12 10 or 11th.

13 CHAIRMAN CROSBY: Somerville became  
14 a surrounding community January 10 or 11th?

15 MR. ZIEMBA: Approximately, yes. Is  
16 that correct, Solicitor?

17 MR. WRIGHT: It was around that time  
18 that they acknowledged our petition to this  
19 Commission. You obviously made your decision  
20 sometime in March.

21 COMMISSIONER MCHUGH: Effectively,  
22 you knew you were going to be a surrounding  
23 community in January.

24 MR. WRIGHT: Yes. And it was at



1 that time that we pursued the consultants.  
2 Obviously, the consultants needed to study  
3 transportation, the economic impact, public  
4 safety all of those things take time.

5 COMMISSIONER MCHUGH: Right.

6 CHAIRMAN CROSBY: Any other  
7 questions for General Counsel? Thank you very  
8 much.

9 MR. ZIEMBA: If Mr. Starr from the  
10 Wynn development team could join to us.

11 CHAIRMAN CROSBY: Good afternoon.

12 COMMISSIONER MCHUGH: Good  
13 afternoon.

14 MR. STARR: Good afternoon  
15 Commissioners. My name is Tony Starr from the  
16 law firm of Mintz Levin and I am presenting for  
17 Wynn today. I hope you have in your packets  
18 the correspondence that I sent over I believe  
19 on Tuesday with respect to Somerville and then  
20 Wednesday with respect to Chelsea.

21 I want to start by making clear that  
22 Wynn of course concurs with Somerville that  
23 Wynn and Somerville have been working very hard  
24 over the last several weeks and indeed months

1 to try to come to a surrounding community  
2 agreement. And it continues to be Wynn's  
3 strong desire that a surrounding community  
4 agreement be reached consensually with  
5 Somerville.

6           The Commission regulations establish  
7 a very well-choreographed process for the  
8 surrounding community arbitration. There are  
9 multiple steps with clearly and well-defined  
10 time periods. The time periods are indeed  
11 tight, but they have been part of your rules  
12 and regulations for many months now. And  
13 they've been well known to all of the parties  
14 during that period of time.

15           The applicants and the surrounding  
16 communities of course have had to plan for both  
17 eventualities. They've had to plan for  
18 reaching consensual surrounding community  
19 agreements. But they've also had to plan for  
20 the eventuality of an arbitration on a schedule  
21 that you published if those agreements couldn't  
22 be reached consensually.

23           Wynn has been meeting with the  
24 surrounding communities since last summer, been

1 doing briefings and providing information and  
2 so forth and making proposals. Indeed as the  
3 Commission knows, surrounding community  
4 agreements have been reached with a number of  
5 the surrounding communities. Others are very  
6 close. A couple of others might require  
7 arbitration, but time will tell on that.

8           CHAIRMAN CROSBY: Last summer  
9 doesn't have any relevance to this though. You  
10 didn't recognize Somerville until January, I  
11 gather.

12           MR. STARR: You're absolutely  
13 correct, Chairman. But meetings took place and  
14 information was provided. There was no  
15 prohibition against an applicant meeting with  
16 likely or potential surrounding communities  
17 early on in the process to begin the education  
18 and exchange information, explain the plans and  
19 so forth.

20           So, you're absolutely right until a  
21 formal designation took place and in this case  
22 Somerville was January. But the meetings with  
23 Somerville began last summer. Indeed the first  
24 week of December, the Wynn team met with the

1 Somerville team and walked them through our  
2 draft environmental impact report, which I  
3 believe is part of what the Commission has.  
4 And it's several thousand pages long. And it's  
5 the most comprehensive information that Wynn  
6 had on traffic impacts and so forth. And Wynn  
7 during the last week of December at the same  
8 time we delivered our final application to the  
9 Commission, we hand delivered it to Somerville  
10 as well.

11                 So, you are correct that they were  
12 not formally surrounding communities but  
13 information exchange and meetings have  
14 occurred.

15                 The current schedule was set in  
16 early March. There were a couple of changes in  
17 February but then you settled on a scheduled  
18 the first week of March. And at that point,  
19 Wynn continued the negotiations. But also Wynn  
20 thoughtfully began to prepare for the  
21 arbitration should those negotiations not prove  
22 to be fruitful.

23                 You set a very, as I said, well-  
24 choreographed timetable that told me as the

1 attorney for Wynn that I needed to start  
2 working on getting set for hearings, which  
3 would begin to take place after April 29 and  
4 must be concluded by May 18 or 19th. I had 20  
5 days to get ready for.

6           So, naturally we began the process  
7 of contacting likely witnesses and asking them  
8 respectfully keep that 20-day period of time  
9 open. In the event we don't come to closure on  
10 surrounding community agreements, we will need  
11 your testimony. And we asked our witnesses not  
12 to schedule anything for that 20-day period.  
13 You could be as busy as you want after May 19  
14 or before April 29. But during that 20-day  
15 period we asked them not to set any  
16 appointments. So, they could be available  
17 depending on what schedule for hearings the  
18 arbitrators ultimately set.

19           Likewise, we had to begin the  
20 process of determining who would be an  
21 appropriate neutral or arbitrator for this  
22 process. And we did just that. During the  
23 months of February and early March we developed  
24 a list of potential neutrals who had the

1 characteristics suggested by the arbitration  
2 regulations and the guide or handbook that you  
3 had published.

4           We developed a list. We contacted  
5 those arbitrators, those potential neutrals to  
6 conduct the mandatory interview to determine  
7 conflict and bias again suggested by your  
8 handbook. We did that. I did that. Then  
9 ultimately when we had determined from that  
10 list who did not have any conflicts, who did  
11 not have any bias, we then had to go over  
12 availability with them.

13           Certain potential arbitrators told  
14 me I would like to do this but I'm not  
15 available for those 20 days. These arbitrators  
16 book out two or three months in advance. But  
17 eventually we settled on several arbitrators  
18 who we felt met the criteria, keeping in mind  
19 we didn't know how many potential surrounding  
20 community arbitrations there could be three,  
21 four, five or six. We didn't know.

22           Deposits were made so that we could  
23 reserve time on these arbitrators' schedule.  
24 And indeed we've done that. In the case of one

1 very well respected neutral, I reserved six  
2 days on his schedule during that 20-day period.  
3 Because if I waited until April 29 to start  
4 calling arbitrators to participate in that  
5 process, no arbitrators would be available.

6           So, at this point it would be very  
7 difficult if the schedule was adjusted even by  
8 a matter of a couple of weeks. The arbitrators  
9 who we've spoken with have reserved that 20-day  
10 period for us or some number of days in it.  
11 But they are booked in the weeks and months  
12 that follow. They're already booked up.

13           Your regulations require this type  
14 of careful planning and that's exactly what we  
15 did. When Somerville says to you well, there's  
16 no prejudice to Wynn by postponing by 15 days,  
17 30 days or 45 days because the Boston situation  
18 has now postponed the determination of ultimate  
19 application on their situation that couldn't be  
20 further from the truth.

21           All of the preparation work that  
22 we've done over the last 10 weeks could be  
23 lost. As you know from my letter, one of my  
24 critical witnesses, when I spoke with her about

1 the arbitration schedule she said that's fine  
2 but I have a family trip for the next two and  
3 half weeks from May 16 to May 28 out of the  
4 country. If you push us back by even two  
5 weeks, that witness likely wouldn't be able to  
6 testify.

7           Of course, when I spoke with her in  
8 March, I asked her to reserve the time that  
9 your rules and regulations suggested that we  
10 set aside.

11           As Counsel for Somerville informed  
12 the Commission, there have been meetings  
13 ongoing for the past months and weeks. As I  
14 mentioned before, we did give Somerville a full  
15 project briefing in early December. We met as  
16 recently as yesterday. We offered to meet  
17 again next week. And I believe as one of the  
18 Commissioners pointed out, conversations can  
19 continue. And Wynn hopes that the  
20 conversations with Somerville will continue not  
21 just up to April 22, which is the deadline for  
22 the 30-day period, but over the next five or  
23 six days as we go through the dialogue of  
24 selecting an arbitrator hopefully by agreement.



1 But if not ultimately with your help as the  
2 rules provide, the conversations can continue.

3           And indeed during the 20-day window  
4 as information is presented to the arbitrator,  
5 hopefully each side if we haven't reached an  
6 agreement will thoughtfully assess their  
7 position as the arbitration process goes  
8 forward.

9           As I'm sure the Commissioners know,  
10 particularly formerly Judge McHugh, sometimes  
11 you need the finality of a trial or an  
12 arbitration with a set deadline to get the  
13 parties to focus on good-faith negotiations.  
14 And perhaps you need to even start the trial or  
15 the arbitration to actually hear what the  
16 information is and then assessments can be  
17 made.

18           So, the issues affecting surrounding  
19 community agreement with Somerville have been  
20 known for months. As Counsel acknowledged, it  
21 was in early January that they were officially  
22 designated as a surrounding community. And we  
23 have been meeting with them for months before.

24           I certainly think Judge McHugh,

1 Commissioner McHugh, your suggestion is one  
2 that I would be happy discuss with Wynn that if  
3 we can preserve the schedule so that the  
4 arbitration can go forward as scheduled, if it  
5 appears that negotiations during that time  
6 period could be fruitful to continue, we could  
7 ask the arbitrator again with the Commission's  
8 permission to hold his report for another week  
9 or 10 days. But at least get the evidence put  
10 in front of the arbitrator during the time  
11 period that it was intended to be presented.

12 COMMISSIONER MCHUGH: Let me try  
13 another offshoot of that. Suppose the  
14 arbitration went forward and you put on your  
15 witnesses and had your arbitrators during that  
16 time period. And then you took a pause for a  
17 while before Somerville put on its case to give  
18 them some time to get up to speed. After all,  
19 you're looking for a consensual resolution  
20 here. That's the best resolution, right?

21 This would give you an opportunity  
22 to get started, let Somerville hear where  
23 you're coming from, have the arbitrators  
24 proceed on their schedule and your witnesses

1 proceed on the schedule that they've reserved.

2           Somehow some way if there's some  
3 leeway find another time when the arbitrators  
4 are available to finish it off. We do have  
5 sometime in the overall scheme of things. I'm  
6 just speaking for myself, thinking out loud  
7 with you and with Somerville. What is your  
8 visceral reaction to that?

9           MR. STARR: Well, the logistical  
10 challenge, Commissioner McHugh, would of course  
11 -- If we're working with three arbitrators, as  
12 the Commission is aware, the process for  
13 arbitrators selection under your guidelines is  
14 the parties are asked to try and agree on a  
15 single arbitrator during that five-day period.  
16 And if no agreement can be reached, each side  
17 nominates one. And then those two party  
18 appointed arbitrators would endeavor to choose  
19 a third. And if that fails during that five-  
20 day period, then the Commission makes the  
21 appointment at the end of the five-day period.

22           So, if we're in the example of a  
23 single neutral then I think the chances of  
24 finding a date that that neutral was available

1 within a couple of weeks after the end of the  
2 20-day period seems reasonable. If you're  
3 dealing with three arbitrators and witness  
4 schedule and Counsel's schedule, Commissioner  
5 McHugh, it gets a little more complicated.

6 We move in June into the summer in  
7 New England when many arbitrators and others  
8 like to take advantage of the occasional good  
9 weather around here. Scheduling becomes more  
10 difficult.

11 COMMISSIONER MCHUGH: But nobody  
12 goes away until July.

13 MR. STARR: It could be done. The  
14 proposal could be accomplished.

15 COMMISSIONER ZUNIGA: Mr. Starr, do  
16 you have any indication as to whether you will  
17 end up with one or three arbitrators? Have you  
18 had discussions as recent as the last few weeks  
19 relative to that?

20 MR. STARR: There've been no  
21 discussions about the potential arbitrators.  
22 As I read the rules, it was my expectation that  
23 at the conclusion on the 22nd on behalf of  
24 Wynn, I would reach out with my nominee and

1 have a discussion with, in this case, Counsel  
2 for Somerville and we would begin that process.  
3 I'm certainly not opposed to commencing that  
4 process now. It's a week away. I'd be happy  
5 to begin that discussion now. If the  
6 Commission recommended it, I would certainly  
7 initiate that.

8           CHAIRMAN CROSBY: It seems like if  
9 you had the one that would maximize the chances  
10 of your compromise working. Maybe if we incent  
11 the city to be cooperative on trying to get  
12 this to one, everybody gives a little and gets  
13 what they want that might be a good way to go  
14 about it. If the parties could start the  
15 discussions now and by the 22nd have agreed on  
16 a single then that could work.

17           MR. STARR: It would also facilitate  
18 if we could agree to that now, Chairman Crosby,  
19 determining whether that single has a date the  
20 third or fourth week of May or the first week  
21 of June so that we could accommodate  
22 Somerville's requests for some additional time  
23 but not get into a delay, which I think would  
24 be prejudicial to Wynn. We have tried as I

1 indicated to proceed in accordance with the  
2 rules as the Commission has them laid out.

3           COMMISSIONER MCHUGH: There's no  
4 question about that. And I make the suggestion  
5 as I did the earlier suggestion when Mr. Wright  
6 was sitting in that chair, believing as I do  
7 that the best solution is a negotiated solution  
8 not the one that the arbitrator decides.  
9 That's going to be an either/or kind of  
10 solution.

11           So, I look at this in a functional  
12 sense and try to figure out a way that we can  
13 facilitate forward movement but at the same  
14 time a forward movement in a context that will  
15 help the parties get together for an consensual  
16 resolution. So, that's where that suggestion  
17 comes from.

18           MR. STARR: I do think, Commissioner  
19 McHugh, that by holding at least the start  
20 dates in place you provide incentive to both  
21 parties to try very hard over the next five to  
22 seven days to achieve an agreed to solution  
23 before the costs attendant to an arbitration in  
24 terms of the dedication of personnel and also

1 the risk.

2                   Eventually, if the parties are  
3 unable to reach an agreement, they turn over to  
4 one or three arbitrators the right under your  
5 rules to make the choice, subject to the second  
6 look, so to speak.

7                   COMMISSIONER MCHUGH: It's not a  
8 second look.

9                   MR. STARR: It's not a second look.  
10 Subject to what's in the rules and in the  
11 regulations they turn that over. That also is  
12 often a good prod to parties to be very  
13 thoughtful and stay focused. And I do  
14 appreciate what Counsel for Somerville has said  
15 Friday, Saturday, Sunday and Monday will be  
16 difficult days to meet. The Wynn folks are  
17 committed to meeting again by the middle of  
18 next week when we get through the long holiday  
19 weekend and continuing the process. I think  
20 your proposal may be very good one,  
21 Commissioner McHugh.

22                   COMMISSIONER MCHUGH: Thank you, Mr.  
23 Starr.

24                   CHAIRMAN CROSBY: Just out of

1 fairness, does Mr. Wright want to say anything  
2 about this idea we're working on?

3 MR. WRIGHT: Thank you, Mr.  
4 Chairman. Anything that extends this out will  
5 allow Somerville to devote its resources  
6 towards arbitration. As I said, we have  
7 limited resources. We haven't had the  
8 opportunity to focus as much on arbitration as  
9 we had hoped that this matter would be  
10 concluded with a surrounding community  
11 agreement negotiated between the parties.

12 That said a lot of this is news to  
13 me. We were unaware of all of Wynn's plans.  
14 They didn't have any obligation to disclose  
15 them to us, but if we had known how much effort  
16 they were putting into it, maybe we could be  
17 closer at this point to choosing and agreeing  
18 on whether it's going to be a one- or three-  
19 panel arbitration.

20 All of that said, I would at least  
21 ask you to look at what you've granted to the  
22 town of Winthrop and Mohegan Sun. We are  
23 effectively today is our last day, because the  
24 22nd comes after what is essentially a four-day



1 holiday weekend. So, if you could push us out  
2 into May 1, then that would allow us additional  
3 time.

4           Then at that point if we could look  
5 to the solution that Commissioner McHugh, Judge  
6 McHugh suggested which would be something along  
7 the lines of an arbitration where the applicant  
8 can put on its case. Maybe we can have a  
9 pause. We can then discuss can we resolve this  
10 thing. We can also have discussions ongoing  
11 during that period. But at least at that point  
12 we'd have a break.

13           Again, we have limited resources.  
14 Jason and I are the team for Somerville along  
15 with a few other staff members and that's it.  
16 So, we don't have as much flexibility in  
17 devoting our resources to a dual track. If we  
18 could go on something along that line of  
19 extending this out to May 1 for deadline and  
20 then focusing on the Wynn presentation, a pause  
21 and then the Somerville presentation, I think  
22 that would go a long way towards perhaps  
23 getting this thing settled rather than  
24 ultimately having an arbitrator having to make

1 a decision.

2 MR. ZIEMBA: Mr. Chairman, I was  
3 wondering if it made sense for Counsel Blue and  
4 I to discuss the proposal where we would  
5 provide more flexibility to applicants and to  
6 communities that come to agreement to have  
7 further extensions regarding our deadlines that  
8 make sense.

9 CHAIRMAN CROSBY: Because your plan  
10 if Wynn and Somerville agreed on this morphing  
11 plan, under your structure if we agree with  
12 that you would be able to let it happen. It  
13 wouldn't have to come back to us.

14 MR. ZIEMBA: That's right.

15 CHAIRMAN CROSBY: So, we could say,  
16 okay you talk to these folks and figure out how  
17 to make this fit.

18 MR. ZIEMBA: That's right.

19 CHAIRMAN CROSBY: That's probably a  
20 good idea. So, maybe we make this a general  
21 decision rather than a case specific decision  
22 and it gives you the tools to maybe find this  
23 middle ground.

24 MR. ZIEMBA: Again, the predicate of

1 the proposal that Counsel Blue and I put before  
2 you is that there is agreement.

3 CHAIRMAN CROSBY: The parties agree,  
4 right. But they're getting close to maybe  
5 agreeing to something. And then you can work  
6 out the details without our involvement.

7 MR. ZIEMBA: It's actually the  
8 parties if they work amongst themselves to try  
9 to get an agreement.

10 CHAIRMAN CROSBY: I mean you could  
11 approve that.

12 MR. ZIEMBA: Obviously, yes, I think  
13 they're both aware of that if we make some  
14 phone calls now and again.

15 CHAIRMAN CROSBY: Does everybody  
16 agree that that probably makes a good idea?  
17 So, we can thank you folks and we will see  
18 whether we can accommodate what you are talking  
19 about in this larger principle that's going to  
20 on the table shortly or next. Thank you.

21 I just want to take a five-minute  
22 break.

23

24 (A recess was taken)

1           CHAIRMAN CROSBY: We are reconvened.  
2 We are back to Ombudsman Ziemba. We are going  
3 to jump to your -- no, I guess it's all part of  
4 the same discussion.

5           MR. ZIEMBA: So, Mr. Chairman, in  
6 regard to the prior conversations, Counsel Blue  
7 and I have a proposal that would provide more  
8 flexibility to applicants and to communities to  
9 navigate their way through the arbitration  
10 process. What we recommend within the window  
11 of that 14 days that we have previously given  
12 to the Western Mass. application and a number  
13 of communities to provide a number --  
14 flexibility in meeting any of our specific  
15 arbitration deadlines, assuming that there is a  
16 mutual agreement between the parties.

17           So, in the example that we have  
18 here, the parties if they so agree could add on  
19 an additional 14 calendar days to the overall  
20 arbitration period. For example, regarding the  
21 city of Somerville question regarding the  
22 timetable or the difficulties that they'll  
23 experience over this current weekend, if the  
24 applicant agrees, the five-day period after the

1 beginning of arbitration, within five days  
2 after the beginning of arbitration both parties  
3 have to submit best and final offers. They  
4 also have to agree on a single arbitrator.

5           If the parties so agreed, they could  
6 extend that five-day period by a number of days  
7 that they thought would be useful in having  
8 negotiation before you even have to select your  
9 arbitrators or put forward your best and final  
10 offers.

11           Similarly, if they are okay with  
12 selecting the best and final -- excuse me  
13 selecting the arbitrator within that five days  
14 or if they are okay with putting forward their  
15 best and final offers but they needed more time  
16 to arbitrate for whatever reason, if the  
17 arbitrators are not available on a specific  
18 date, they might be available in a week and a  
19 half or two weeks, the parties could come to an  
20 agreement that we would extend that period, the  
21 arbitration period, which is currently at 20  
22 days, they could extend that by up to the 14  
23 days that we're recommending here.

24           So, thereby a lot of the nuances of

1 scheduling and other difficulties could  
2 potentially be alleviated but could only really  
3 be alleviated if both parties work together to  
4 try to find solutions to those scheduling  
5 difficulties or if they're both trying to reach  
6 agreement.

7           If one party just unilaterally  
8 extends a deadline, you do run into some of  
9 these issues where people have been trying to  
10 meet those deadlines that we've previously  
11 posted. I certainly do understand the  
12 difficulties of a community trying to put  
13 forward its best case within the constraints  
14 that they have as a municipality.

15           However, I think that this approach  
16 where we can provide more flexibility within a  
17 range of 14 days, you might have some of the  
18 creative solutions such as Judge McHugh just  
19 offered if the parties themselves will agree to  
20 work together.

21           CHAIRMAN CROSBY: So, in using this  
22 case as an example, because I didn't fully  
23 understand it in your write-up, but I think I  
24 do now, you could take seven of those 14 days

1 and make it from the 22nd to the 29th. Then  
2 put the second seven days, the second week at  
3 the end if they could find an arbitrator who  
4 could schedule that final week then who had the  
5 time, right? You could split the 14 days up.

6 MR. ZIEMBA: The parties don't have  
7 to take 14 days. If they needed one day or two  
8 days in a particular deadline. One of the  
9 difficulties that we face is that in between  
10 Commission meetings, we'll get questions from  
11 an applicant team or a community saying we just  
12 can't meet this very specific deadline. What  
13 are we going to do?

14 And right currently we are in a  
15 position where if there is no scheduled  
16 meeting, we can't even post a meeting within 48  
17 hours, we might have an occurrence where  
18 communities that are trying to live in the  
19 spirit of our overall quest for surrounding  
20 community agreements, they may be running afoul  
21 of our interim regulations.

22 So, we're hoping that this  
23 flexibility would lead to more creative  
24 solutions. Counsel Blue?

1           MS. BLUE: I agree. That would be  
2 the point to let people use those days. at the  
3 time and in the amount that they thought best  
4 for their process.

5           COMMISSIONER MCHUGH: Where does the  
6 14 come from?

7           MR. ZIEMBA: Fourteen comes from  
8 what was previously granted to the Western  
9 Mass. region. And it's a reasonable period  
10 that doesn't necessarily impact our overall  
11 timeline. One of the consequences of this is  
12 that this could potentially once the Boston  
13 process is resolved in the event that Boston is  
14 a surrounding community to one or more, this  
15 could potentially add an additional 14 days to  
16 the end of that process if utilized by the  
17 parties.

18           COMMISSIONER MCHUGH: There are no  
19 perfect solutions. So, I'm just testing here.  
20 What we heard from Mr. Starr was that  
21 potentially some of the arbitrators that  
22 they've selected wouldn't be available for two  
23 or three weeks after the thing started. This  
24 wouldn't solve that problem.



1           MR. ZIEMBA: Perhaps I think the  
2 recommendation that you had, which is that they  
3 could have the presentations from one of the  
4 arbitrator teams, if they had a gap where the  
5 arbitrator wasn't available for a week, perhaps  
6 that arbitrator could then be available after  
7 that period. I think what they were  
8 referencing was a consultant that was going to  
9 be out for a two-week period. Again, nothing  
10 works unless the parties try to figure out  
11 creative solutions.

12           COMMISSIONER MCHUGH: I understand.  
13 I was just trying to figure out why 14, 21.

14           MR. ZIEMBA: It could be 14, it  
15 could be 21. It could be a month. It could be  
16 two months. The risk is to the end of the  
17 schedule assuming that if Boston is labeled a  
18 surrounding community that would otherwise  
19 delay the issuance of the license because that  
20 arbitration proceeding would not be able to be  
21 completed until the total amount of days are  
22 utilized.

23           COMMISSIONER MCHUGH: And that  
24 decision is going to be made May 1, which under

1 our current schedule would require 30 days for  
2 negotiation and then the arbitration process  
3 kicks in. Then if we did it, added this 14 to  
4 that then that would be --

5 MS. BLUE: Usually, around the  
6 middle of August, mid to late August.

7 COMMISSIONER MCHUGH: We're on a  
8 mid-August track now.

9 CHAIRMAN CROSBY: First week to 10  
10 days, yes.

11 COMMISSIONER MCHUGH: And if we put  
12 this two weeks onto that, we'd be looking at  
13 the end of August if all of that time were  
14 taken.

15 MR. ZIEMBA: That's correct.

16 MS. BLUE: That's correct.

17 MR. ZIEMBA: One thing we'll note  
18 is, one thing that Counsel Blue and I figured  
19 out during this conversation regarding the  
20 ability of the start and stop scenario that  
21 Commissioner McHugh offered, there is a  
22 requirement on page two of this proposal that  
23 the parties can extend arbitrations provided  
24 that no later than 10 days after the selection

1 of the arbitrator or arbitrators on filing a  
2 best and final offer they provide notice to the  
3 Commission.

4 I don't know if we even need that  
5 restriction. That was meant to provide with  
6 the Commission just a little bit more certainty  
7 regarding the timetable. We get requests all  
8 of the time of when is this process going to  
9 begin and end. But this requirement that we  
10 know whether or not arbitration is going to  
11 extend beyond 20 days, by the 10th day although  
12 it seemed like a very good idea at the time, it  
13 does impede the flexibility of the parties for  
14 the creative solution that was offered today.

15 So, I'm not certain we need that.  
16 We would ask all of the parties to provide us  
17 notice as soon as possible, but we wouldn't  
18 prohibit arbitrations from being extended  
19 beyond 20 days if they weren't noticed within  
20 that first 10 days.

21 CHAIRMAN CROSBY: Might as well make  
22 this as flexible possible. That was the whole  
23 point. So, it seems to me we would be doing  
24 two things with this. One is giving you the

1 tools to fine tune close cases like this, deal  
2 with close cases like this. But also saying to  
3 applicants and communities from here on out  
4 that this is basically the end of the extension  
5 business.

6 Our deadlines are there for a  
7 reason. We're going to build in some  
8 flexibility because there are issues from time  
9 to time. If you take your 14 days from the  
10 Ombudsman, don't be thinking about coming back  
11 for more, which I think is reasonable.

12 The one I don't think you mentioned  
13 here, as we have looked at different requests,  
14 as I said in my mind there's a two-step test.  
15 First is it both parties? And second is it  
16 prejudicial to somebody else? And that would  
17 be something that you would need to be  
18 attentive to obviously, the use of the 14 days.  
19 If the use of the 14 days does something to  
20 somebody else or bumps the whole deadline or  
21 something or kicks \$85 million into another  
22 fiscal year or anything like that, then I would  
23 trust you'd be reluctant to use the 14 days.  
24 So long as you're mindful of that, which I know

1 you will be.

2 MR. ZIEMBA: I think the process  
3 would be if the parties agree that they wanted  
4 to extend, I think they would face little  
5 opposition or no opposition whatsoever.

6 CHAIRMAN CROSBY: As long as it  
7 didn't have some other ripple effect like the  
8 \$85 million kind of thing.

9 MR. ZIEMBA: Correct, as would  
10 Region A territory.

11 CHAIRMAN CROSBY: Free of that one,  
12 but there may be other ones election days  
13 whatever. Are you thinking about it? You look  
14 like you were.

15 COMMISSIONER MCHUGH: No, I was  
16 thinking about a collateral issue, which was  
17 triggered by what you just said a minute ago.  
18 I still have some concerns that I'll voice at  
19 an appropriate time about 30 days and 30 days  
20 once we make the surrounding or host community  
21 decision regarding Boston that I'd like to  
22 think about. I don't want what we do today to  
23 be viewed as foreclosing an opportunity to  
24 discuss those issues. That's all.

1           CHAIRMAN CROSBY: I see why you  
2 picked up on that and I understand that.

3           COMMISSIONER CAMERON: Mr. Chair, I  
4 don't think you were saying someone couldn't  
5 come to us, but we feel like we are already  
6 being flexible with the 14 days. But we didn't  
7 preclude someone.

8           CHAIRMAN CROSBY: No, no, no. Just  
9 a signal that somewhere along the line there's  
10 got to be an end to this but no, you wouldn't  
11 be precluded at all.

12          MR. ZIEMBA: Mr. Chairman, in the  
13 memo there's also the option for non-mutual  
14 extensions, but based on this conversation I'm  
15 assuming that that is probably not an idea that  
16 is going to be approved by the Commission.

17          CHAIRMAN CROSBY: Where is the  
18 reference to that?

19          MR. ZIEMBA: The second to last  
20 paragraph. Just another option for the  
21 Commission to consider would be for a smaller  
22 subset of days that the Commission could  
23 explore whether or not a non-mutual extension  
24 would be warranted. Again, that non-mutual

1 proposal does run into difficulties regarding  
2 such issues as timing and other things that  
3 we've talked about.

4           COMMISSIONER MCHUGH: I really don't  
5 think we want to get into this business of  
6 creating a new set of decision points or choke  
7 points for a process like that. We just can't  
8 move swiftly enough to be effective. We chew  
9 up all of the time and we've got a 48-hour  
10 requirement to schedule a hearing. So, I think  
11 this has got to be a consensual process.

12           I think the best thing to do if we  
13 go down this path is to delegate to you the  
14 power to approve use of those up to 14 days or  
15 21 whatever we decide. And to encourage you as  
16 you have in the past to help the parties get  
17 over rough spots and try to help them find  
18 mutually agreeable scheduling solutions where  
19 they seem to be a little stuck. It seems to me  
20 that's the most flexible.

21           CHAIRMAN CROSBY: Did that mean you  
22 would leave the mutual request in or not?

23           COMMISSIONER MCHUGH: The mutual  
24 request would stay in but --

1           CHAIRMAN CROSBY: That would be a  
2 precondition.

3           COMMISSIONER MCHUGH: -- that would  
4 be a precondition but we understand that--

5           CHAIRMAN CROSBY: -- John could  
6 encourage mutuality.

7           COMMISSIONER MCHUGH: Yes and help  
8 the parties find ways to agree.

9           CHAIRMAN CROSBY: Right. I could  
10 actually go either way on that. On something  
11 like this and giving you maximum flexibility, I  
12 think we have complete confidence in you and  
13 you're talking such small days that it's not  
14 going to be the end of the world.

15           COMMISSIONER MCHUGH: I'm sorry. I  
16 misunderstood you, Mr. Chairman. You mean  
17 perhaps giving the Ombudsman the power to grant  
18 non-mutual extensions.

19           CHAIRMAN CROSBY: Right, this  
20 paragraph that he just referred to. The  
21 suggestion was maybe for non-mutual the  
22 Ombudsman could on his or her own do up to  
23 seven days for non-mutual. I don't feel  
24 terribly strongly about it.



1           COMMISSIONER MCHUGH: I'd rethink  
2 that. And I would be happy to delegate to the  
3 Ombudsman the power to facilitate mutual  
4 agreements or to grant non-mutual agreements  
5 within a 14-day window.

6           CHAIRMAN CROSBY: I think I would  
7 too. There's really no need to take up the  
8 Commission time for stuff like this. And  
9 you'll make a judgment. If you think it's  
10 complicated enough or equities are hard to  
11 figure out, you'll bring it to us. But you  
12 have the option of using up to 14 days however  
13 you want.

14          MR. ZIEMBA: I think the proposal  
15 before -- it's a very easy proposal to grant  
16 mutually accepted proposals. As we've seen  
17 here, it gets quite murky even with a couple of  
18 days regarding whether or not someone is  
19 available or not.

20          CHAIRMAN CROSBY: But here all we're  
21 talking about is whether we would grant you the  
22 right -- grant you the authority to go ahead  
23 and even permit non-mutual up to 14 days if in  
24 your judgment you felt you wanted it.

1           So, I think what we're talking about  
2 here is pretty much taken the wraps off for 14  
3 days. For purposes of getting this all done,  
4 we would be delegating you the flexibility up  
5 to 14 days for pretty much however you wanted  
6 to use it, to put it simply.

7           MR. ZIEMBA: Just for direction for  
8 me, if we had a test case such as what we have  
9 seen today where a Wynn representative said 14  
10 days will blow through their schedule and you  
11 have an applicant on the other the side that  
12 says -- excuse me, a community that says we  
13 would need those 14 days, what should I do?

14           COMMISSIONER CAMERON: We're putting  
15 you in a tough position. I understand that.

16           COMMISSIONER ZUNIGA: If you don't  
17 know you come back to us.

18           MR. ZIEMBA: I'm putting forward an  
19 option for the Commission, because it's a  
20 very --

21           CHAIRMAN CROSBY: Which would you  
22 prefer? Which facilitates you doing your job  
23 the best?

24           MR. ZIEMBA: Well, my job has been

1 as the man in the middle, which makes it quite  
2 difficult to satisfy both ends.

3 COMMISSIONER CAMERON: We'll take  
4 the responsibility if there's a problem.

5 CHAIRMAN CROSBY: So, we go back to  
6 the mutual with tremendous flexibility on the  
7 14 days if there is a mutual agreement for a  
8 strategy, you have the authority to do that on  
9 your own hook. Okay. Anything else? Do we  
10 need to try to put that into the form of a  
11 vote?

12 COMMISSIONER MCHUGH: We should  
13 because we've got a regulation now.

14 CHAIRMAN CROSBY: So, be my guest.

15 COMMISSIONER MCHUGH: I move that  
16 the Commission authorize Ombudsman Ziembra to  
17 allow mutually agreed upon extensions of the  
18 several arbitration deadlines so long as the  
19 total number of days of extension does not  
20 exceed 21 days.

21 CHAIRMAN CROSBY: Where did 21 come  
22 from?

23 COMMISSIONER MCHUGH: I just threw  
24 it in there. No, that was in the back of my

1 mind. The proposal is 14. I was going to  
2 suggest 21.

3 CHAIRMAN CROSBY: Do I have a  
4 second?

5 COMMISSIONER CAMERON: Is it a  
6 second on the 14?

7 CHAIRMAN CROSBY: Right, 14.

8 COMMISSIONER CAMERON: Second.

9 COMMISSIONER MCHUGH: That was my  
10 Freudian slip.

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

13 COMMISSIONER MCHUGH: Aye.

14 COMMISSIONER CAMERON: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER STEBBINS: Aye.

17 CHAIRMAN CROSBY: Opposed? Ayes  
18 have it unanimously. So, that gives you the  
19 tools to work with the parties. And it looks  
20 like we can probably work something out, the  
21 Somerville and Wynn parties. Okay. Do we have  
22 anything else with you, Ombudsman Ziemba?

23 MR. ZIEMBA: No.

24 CHAIRMAN CROSBY: Before we take our

1 lunch break, I am going to move one -- I guess  
2 we're going to go to item five, the legal  
3 report, because we do want have all of the  
4 Commissioners here for that. And then we'll  
5 take a lunch break and come back with the  
6 Racing Division. Who's up?

7 MR. DAY: Thank you, Chairman  
8 Crosby, Commissioners. The next topic is the  
9 monitoring regulations that the Commission has  
10 been working on.

11 At this point, we've had the  
12 opportunity, Commissioner Zuniga has worked  
13 with us quite a bit on making some changes to  
14 try to comport I think with more the process  
15 that we have anticipated. I think as we begin  
16 any of the discussion with it though, we want  
17 to convey that this is sort of a work in  
18 process or design development as we keep  
19 talking about. The idea here is to get a  
20 process, get a monitoring process described.  
21 Have it on record where everybody can  
22 participate and see the basic rules,  
23 recognizing that as we do that this is a very  
24 new process.

1 Penn is already basically under  
2 construction moving forward with that project.  
3 And we want to make sure we facility, observe  
4 and listen, but don't act as a barrier. So, I  
5 think we've got emergency, this regulation we'd  
6 like to have them adopted by the Commission as  
7 emergency regulations which means of course  
8 that they would go in effect for 90 days while  
9 we conduct the regular process to continue to  
10 explore changes if necessary.

11 The latest draft is in your packet  
12 under item 5a where I found mine. I hope yours  
13 is in the same place. I don't know how much we  
14 want to actually go through each of these  
15 regulations. We did get some comment from Penn  
16 that I would like to talk about briefly about  
17 some suggestions and what we think might be  
18 appropriate. Commissioner Zuniga, do you have  
19 a comment?

20 COMMISSIONER ZUNIGA: Yes. Let me  
21 just mention or try to summarize one of the  
22 major points that are new to this reg. since  
23 the last version. I think we've done a lot of  
24 polishing. I'm very happy as where they stand.

1 I will explain one item and then address two  
2 items that Penn commented on on the latest  
3 version perhaps for everybody's background.

4           One change since the last version is  
5 this idea of a design review process that we  
6 currently have just the way these proposals are  
7 put together, conceptual designs, pre-drawings  
8 and the like. Very important site elements and  
9 draft environmental reports in some instances,  
10 but otherwise very conceptual drawings.

11           The idea here is that similar to the  
12 way we are approving a schedule or looking at a  
13 schedule and continue to monitor it, we would  
14 look at a design narrative after the award of  
15 the license. It would include more drawings.  
16 We would come at some point to look at  
17 something that's critical, which is the basis  
18 for the design after which packages are put out  
19 to bid and eventually constructed obviously.

20           The difficulty here, which is I  
21 think it's addressed by regulation, but one of  
22 the comments from Penn was relative to this  
23 approval of the design review or the design  
24 elements sometime into the future up to the

1 award of the license.

2 And the way I think it is addressed  
3 properly in the regulation again since we last  
4 saw it has been revised is that the Commission  
5 or its agent may approve such design drawings.  
6 They are limited to the architectural and the  
7 site drawings.

8 Where I suspect Penn is coming from  
9 in terms of their comment, which is right on  
10 point, is that there may be more than one of  
11 these design packages. They are building their  
12 project on a design build process, which really  
13 means they're going to be doing many of these  
14 small iterations of design and construction  
15 packages.

16 So, I think the comment is valid,  
17 but I think the regulation provides for that  
18 flexibility and I would let it stand as it's  
19 drafted here.

20 COMMISSIONER CAMERON: Which  
21 comment? There are several.

22 MR. DAY: Commissioner Zuniga, the  
23 staff also agree with what you just completed.  
24 It's 135.03 section four and five. And we took



1 a look definitely at the points Penn has made  
2 and their short brief response is clear is what  
3 they're worried about is the approval process  
4 interfering in their ability to move forward  
5 with construction because they are in a design  
6 construction format.

7           Only I think it's important for us  
8 to note that in section four what it says is  
9 the Commission or its representative may  
10 request for review and approval and it's the  
11 final site plan. So, that particular section  
12 wouldn't interfere in the ongoing process as  
13 such.

14           And they also had the concern about  
15 number five, which is the Commission's  
16 representative, again, may request construction  
17 packages for review. There is no approval  
18 actually incorporated in that particular  
19 sentence. So, the flexibility is there. The  
20 ability for us to keeping track. Because I  
21 think as Commissioner Zuniga has said that the  
22 actual construction packages do tell more about  
23 if the design is actually going forward than  
24 the design itself.

1           So, we think there are sections  
2 their suggestions there. We understand and we  
3 recognize that ability and the need for us to  
4 work together on it, but we don't think that  
5 part of the request we would agree with  
6 Commissioner Zuniga to not incorporate those.

7           COMMISSIONER CAMERON: How about  
8 135.02 where it is a shall and they're  
9 suggesting all significant or major stages?

10           COMMISSIONER ZUNIGA: That's one  
11 thing that I would agree with their comment.  
12 It's easily addressed if we simply insert the  
13 word major --

14           COMMISSIONER CAMERON: Correct,  
15 right.

16           COMMISSIONER ZUNIGA: -- stages.  
17 That would be 135.02 subsection two,  
18 subparagraph (a) where it says all stages we  
19 could simply say all major stages. There's  
20 another paragraph where that applies as well  
21 same section

22           MR. DAY: Paragraph four of 135.02  
23 has major in it as well, I think is the one  
24 you're referring to, Commissioner Zuniga.

1           COMMISSIONER ZUNIGA: 135.02  
2 subsection five subparagraph (d), I would also  
3 insert major stages of construction even though  
4 that really refers to the project schedule.  
5 But I think that addresses their concerns.

6           MR. DAY: We concur with your  
7 recommendations.

8           COMMISSIONER MCHUGH: In regard to  
9 135.03(2) and (3), isn't that something they --  
10 well (2).

11          CHAIRMAN CROSBY: 135?

12          COMMISSIONER MCHUGH: 135.03(2),  
13 isn't that something that they were required to  
14 include in the application?

15          COMMISSIONER ZUNIGA: Not the  
16 narrative, Commissioner. What we're  
17 introducing here is a narrative. And I was  
18 going to insert for clarification a sentence  
19 that says stipulating the basis for the design.

20          COMMISSIONER MCHUGH: But there is a  
21 part of the site design component of the  
22 application that requires the basis of design  
23 narrative.

24          COMMISSIONER ZUNIGA: For site or

1 for building or both?

2 COMMISSIONER MCHUGH: For both, I  
3 would think.

4 COMMISSIONER ZUNIGA: Maybe it does  
5 for site. I don't know that it does for  
6 building. Perhaps this is belts and  
7 suspenders. If it's already required in the  
8 application then it's also required by  
9 regulation here for monitoring and it would be  
10 just fine.

11 COMMISSIONER MCHUGH: Okay. Have  
12 the Pinck and site design consultant team  
13 looked at these regs.?

14 COMMISSIONER ZUNIGA: More than a  
15 few times.

16 MS. BLUE: Extensively.

17 COMMISSIONER ZUNIGA: Extensively  
18 and a few times in iteration.

19 COMMISSIONER MCHUGH: Okay. I was  
20 thinking particularly of one of the site design  
21 consultants who went through the Pittsburgh  
22 process.

23 COMMISSIONER ZUNIGA: Yes.

24 COMMISSIONER MCHUGH: Has she looked

1 at them?

2 COMMISSIONER ZUNIGA: No, but it's  
3 actually with her experience in mind that a lot  
4 of this is -- I remember that presentation well  
5 what Pittsburgh went through. And it's with  
6 that in mind that a lot of this is put together  
7 in my view anyway.

8 COMMISSIONER MCHUGH: It wouldn't  
9 hurt if -- Is a vote on these proposed for  
10 today as an emergency basis?

11 MS. BLUE: Yes.

12 MR. DAY: Yes, it is. And we went  
13 through a process to a review of both of our  
14 firms that were qualified for monitoring as  
15 well, and as Penn essential review at this  
16 point. That's why we think it's important for  
17 us to go ahead with emergency regs. if at all  
18 possible.

19 COMMISSIONER ZUNIGA: Sorry.  
20 There's another element which is something I  
21 made the point of last time we were ready to  
22 adopt this as emergency, which is that by  
23 reference we have the ability and intend to use  
24 it to issue guidelines for clarification in

1 terms of format, additional information, etc.,  
2 which I think is the right way to write  
3 regulations.

4           There were instances where we had  
5 inserted a couple of those things in regulation  
6 that would be hard to amend. Not hard, but  
7 just lengthy, I guess. So, there's the tool to  
8 issue guidelines from time to time here that  
9 it's embedded that would be very helpful in my  
10 view.

11           MR. DAY: I might just for  
12 clarification sake too, Penn did suggest  
13 135.02(5)(e) the last sentence. It reads now  
14 in the event the hiring of the aforementioned  
15 persons does not comply with the goals  
16 established, the licensee shall submit within  
17 20 days a request by the Commission a plan to  
18 bring the hiring into compliance with the  
19 goals.

20           What we would actually recommend is  
21 the additional language that was supplied by  
22 Penn, which basically adds in right after  
23 Commission a response as to why the goals have  
24 not been achieved, identify any good-faith

1 efforts that have been undertaken to achieve  
2 those goals. And then leaving the last part  
3 and a plan to bring the hiring into compliance  
4 with goals.

5           We basically talked about those  
6 steps anyway in asking for that information.  
7 So, it would seem reasonable to basically make  
8 those two changes. One is adding in major in  
9 135.02(a). Adding that phrase that I just  
10 described 135.02(5)(e) and then leaving the  
11 regulation as it is in 135.03.

12           I should note because we started out  
13 kind of in the middle is that since our last  
14 draft have added the definition of project  
15 here, so it is clear what the project is that  
16 we'll be monitoring. As Commissioner Zuniga  
17 stated in 135.02(1) we have added the ability  
18 to create guidelines. Part of the concern in  
19 the last version of the regulations was there  
20 was extensive detail. For the review, we  
21 thought well, it would actually be better to  
22 take some of that detail out, develop a  
23 handbook or a guidelines that would be used in  
24 the process of monitoring the project by the

1 project monitoring firm. So, that was added  
2 in.

3           A number of the other, 2a for  
4 instance was shortened quite dramatically to  
5 take out a lot of the detail that was in it  
6 about how it would be approved, what the days  
7 were 30 and 60 to allow us to work with Penn  
8 and work with the Commission to bring the  
9 actual design approval -- excuse me, the  
10 project approval here to the Commission. And  
11 do that in a fashion that would work with Penn  
12 to be able to get prepared for it. And work  
13 with the Commission to have the detail we  
14 needed here rather than trying to outline it  
15 altogether in that area.

16           Part of the change we just talked  
17 about is to make sure there was a process. If  
18 the proposed hiring plan did not go forward, is  
19 to have a process of coming before the  
20 Commission to make sure that there was an  
21 explanation of why that didn't occur. The  
22 other on page three, there was an (f) that's in  
23 red, that's actually just a reordering that was  
24 already in existence but we put it in that



1 place as well.

2           The big addition as Commissioner  
3 Zuniga described was the section of 135.03,  
4 which is the design review process. In order  
5 to make sure that we actually have a look at  
6 the design itself, we did -- Commissioner  
7 McHugh has mentioned the initial part. We did  
8 have a discussion also with the contract  
9 monitoring eval. A lot of this particular part  
10 of the process is already underway.

11           We thought in this case it doesn't  
12 actually hurt to have that as a foundation for  
13 our monitor, but doesn't hurt as well to  
14 include it at this point as we move forward  
15 with the design review. So, we did discuss  
16 that that may be a duplication, but would also  
17 be able to give us an opportunity to clarify  
18 what that initial design was as we begin  
19 monitoring.

20           Then we talked about the four and  
21 five, the attempt to bring construction  
22 packages, connect those a little bit better  
23 with the design itself, clarify the access to  
24 records and information.

1           As we move forward, we went through  
2 the process that the applicants need to go  
3 forward to get final approval and the  
4 Commissioners in that timeframe. I forgot to  
5 mention here as we talked about right to  
6 inspect, we took a lot of the shalls and mays  
7 and anys out. And we consolidated that to give  
8 flexibility to our contract monitor to request  
9 additional information that they may need to  
10 identify the primary elements that they're  
11 going to be taking a look at.

12           The Commission, later on today, we  
13 do have Jennifer Pinck coming forward as well  
14 to talk about their process of those areas that  
15 they plan are most significant to their  
16 monitoring to have that discussion with the  
17 Commission. And then get any redirection or  
18 clarification that you might give us as well.

19           We thought this book of framework  
20 would be good for us to ask the Commission to  
21 put in place via emergency regulation while we  
22 move forward with the rest of the project.

23           CHAIRMAN CROSBY: Other comments?  
24 Did you want to request that it be reviewed by

1 that consultant?

2 COMMISSIONER MCHUGH: No.

3 Commissioner Zuniga says he remembers  
4 everything she said. So, I'm sure -- She can  
5 take a look. This an ongoing evolutionary  
6 process. So, it's fine.

7 COMMISSIONER ZUNIGA: I do remember  
8 the main point she said, not everything she  
9 said.

10 COMMISSIONER MCHUGH: It's fine.  
11 And we do need to put it in place now. This is  
12 ongoing.

13 CHAIRMAN CROSBY: Okay, great.  
14 Commissioner Zuniga do you want to --

15 COMMISSIONER ZUNIGA: Sure. I would  
16 then move that this Commission adopt by  
17 emergency the regulations presented in the  
18 packet here labeled 205 CMR 135 as amended and  
19 edited with the discussions that took place  
20 just now.

21 COMMISSIONER CAMERON: Second.

22 CHAIRMAN CROSBY: And that's there's  
23 two edits. There's two changes.

24 MR. DAY: Correct, I have changes to

1 135.02, and 135.02(a) and 135.02(5)(e).

2 CHAIRMAN CROSBY: Any further  
3 discussion? All in favor, aye.

4 COMMISSIONER MCHUGH: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? The ayes  
9 have it unanimously. While we have General  
10 Counsel Blue, today is the deadline for  
11 receiving submissions relative to the gaming  
12 establishment question. I guess it's COB, is  
13 it?

14 MS. BLUE: It is close of business  
15 today. This is the deadline for receiving the  
16 first set of briefs. The responses are due on  
17 the 24th, which is a week from today. So, we  
18 will be looking to see what comes in either in  
19 hard copy in the office or monitoring email or  
20 through MGC comments today. We will do our  
21 best to get them all posted tomorrow so that  
22 folks have them to respond to for the deadline  
23 next week.

24 CHAIRMAN CROSBY: Do we have

1 anything yet?

2 MS. BLUE: We have nothing as of yet  
3 that I know of unless they came in hard copy  
4 while we've been here.

5 COMMISSIONER ZUNIGA: People know  
6 the deadlines, right?

7 MS. BLUE: Yes, they do.

8 CHAIRMAN CROSBY: And it's close of  
9 business, so we're talking about 5:00. So,  
10 anything submitted after 5:00 will not be  
11 accepted?

12 MS. BLUE: We would look at that,  
13 Mr. Chairman. We'd have to know exactly when  
14 they came in. We obviously want as much input  
15 as we can on this topic, but we would certainly  
16 not expect to take things that came in  
17 tomorrow, for example. That would be past the  
18 deadline.

19 CHAIRMAN CROSBY: 5:05 maybe but not  
20 tomorrow. Okay. Then I think we are ready to  
21 take a lunch break. Let's try 2:15, we'll try  
22 to reconvene at 2:15.

23

24 (A recess was taken)

1           CHAIRMAN CROSBY: We are ready to  
2 reconvene at 2:25 for meeting 117. We are now  
3 back to item number four on the agenda Racing  
4 Division, Director Durenberger.

5           DR. DURENBERGER: Good afternoon,  
6 Mr. Chair, Commissioners. How are you? I  
7 appreciate you taking the time out of an  
8 otherwise dizzying agenda to put on your racing  
9 hat for a few moments. I will try to keep it  
10 brief, but we do have a number of things to  
11 talk about today.

12           I first want to talk about yesterday  
13 was opening day at Plainridge Racecourse.  
14 That's our harness racing licensee. The  
15 attendance was fantastic. The first floor was  
16 full. The second floor was full. The apron  
17 was full.

18           From an operational perspective, we  
19 had a number of new things that we were, which  
20 I'm going to talk to you a little bit about.  
21 Those went off hitch free. And I think it was  
22 a good day of racing. So, we welcome the live  
23 racing season back in the Commonwealth.

24           Opening day at Suffolk Downs will be

1 May 3. And as part of my administrative  
2 update, I just wanted to let you know about a  
3 post-time change. They would like to do a  
4 post-time, first post of 2:15 on that day.  
5 What that does is it extends the live race card  
6 much closer to Kentucky Derby time. I think  
7 post time for the Derby is 6:45-ish. So, that  
8 just helps sync up the live racing card with  
9 the premier simulcasting event for that day.

10           And because we do receive frequent  
11 stakeholder requests about the Racehorse  
12 Development Fund, if I could just briefly add  
13 some additional horse racing color to the  
14 discussion regarding the timing of the gaming  
15 licensing monies.

16           As you're aware, five percent of the  
17 gaming licensing fund is distributed to the  
18 Racehorse Development Fund. The timing of the  
19 availability of that money to the purse  
20 accounts of our horsemen and women is one of  
21 the key variables which will affect the supply  
22 of horses this year, perhaps the critical  
23 variable right now for our thoroughbred  
24 horsemen and women. So, I just wanted to put

1 that out there. I would be happy to put  
2 together a brief brief kind of outlining that  
3 for you at the next meeting if you would like.  
4 But I did just want to add a little bit of  
5 color on that at this time.

6 CHAIRMAN CROSBY: Any more depth? I  
7 guess that's all right. Go ahead.

8 DR. DURENBERGER: The next agenda  
9 item actually is approval of racing and  
10 operating officials for Plainridge Racecourse.

11 In your packet item 4b, a couple of  
12 documents. I'm going to skip over page one at  
13 the moment. Page two has racing officials.  
14 One of those names was subsequently removed  
15 from the list. So, the completion of the list  
16 appears on the last page. All of the racing  
17 officials have successfully completed the  
18 background checks.

19 So, it's my recommendation to you  
20 that this racing officials be approved for the  
21 2014 season. You did delegate that authority  
22 to me last year. So, I had approved them  
23 conditional upon successful completion of the  
24 background check and that's where we are now.



1 I don't know if technically that becomes a  
2 voting item or if that's a reporting item.

3 COMMISSIONER CAMERON: I think we  
4 delegated it to you.

5 COMMISSIONER MCHUGH: Was there some  
6 kind of a certification that some people were  
7 going to have to get? What ever became of  
8 that?

9 COMMISSIONER CAMERON:  
10 Accreditation, the judges.

11 DR. DURENBERGER: So, those are the  
12 stewards and judges that we employ.

13 CHAIRMAN CROSBY: Stewards and  
14 judges.

15 COMMISSIONER MCHUGH: Right, not  
16 these people.

17 DR. DURENBERGER: The track employs  
18 one judge and he is accredited. On the first  
19 page we have key operating personnel. I am  
20 still waiting on just a couple of additional  
21 things on a couple of the individuals there.  
22 So, I am going to postpone. I'm just going to  
23 approve them all at once. So, they are at the  
24 moment approved pending successful completion

1 of the background check. And we will get back  
2 to you at the next meeting when those are  
3 complete. Moving right along.

4 COMMISSIONER CAMERON: Are all of  
5 our judges and stewards accredited?

6 DR. DURENBERGER: They are. All of  
7 the judges are for this year.

8 CHAIRMAN CROSBY: But some assistant  
9 judges aren't.

10 DR. DURENBERGER: We have an issue  
11 with our stewards at Suffolk Downs.

12 CHAIRMAN CROSBY: This is the guy we  
13 talked about, right? No, that was Plainridge.

14 DR. DURENBERGER: Yes, and that is a  
15 separate issue which has been resolved. All  
16 three judges, the two Commission judges as well  
17 as the Plainridge judge are accredited for  
18 2014.

19 COMMISSIONER CAMERON: Thank you.

20 DR. DURENBERGER: Your welcome.

21 COMMISSIONER CAMERON: I know that  
22 that was no easy to accomplish, correct?

23 DR. DURENBERGER: It was not easy  
24 this year in the face of uncertainty. We hope

1 that going forward that this will be the place  
2 that everyone wants to be.

3           Moving right along to issue 4c.  
4 Just a quick background on this. We've put  
5 out, as you know, a competitive RFP two years  
6 ago to contract with a laboratory to conduct  
7 our equine drug testing. We're in the second  
8 year of that contract. That's our primary drug  
9 testing lab.

10           We did adopt a split sample  
11 provision. One of the first things that the  
12 Commission did, which affords the licensee if  
13 there's a finding of a medication in a post-  
14 race sample to send off a referee sample at  
15 their expense to a different laboratory.

16           So, what this is is we send out a  
17 letters to all of the laboratories that meet  
18 the accreditation and other experiential  
19 criteria that we specified in our RFP. And  
20 these are the four that responded to us and  
21 agreed to take those referee samples. It is  
22 the same list of four that we approved last  
23 year. All four have agreed to provide that  
24 service to us this year. And my recommendation

1 would be that they meet your approval. I think  
2 this is a voting item.

3 CHAIRMAN CROSBY: Are they the same  
4 ones that do our testing, the first phase of  
5 testing?

6 DR. DURENBERGER: They are not. So,  
7 for the referee sample, it goes to a different  
8 laboratory but that laboratory has to test to  
9 the same standards as the original laboratory  
10 for obvious reasons.

11 CHAIRMAN CROSBY: How many  
12 laboratories are there?

13 DR. DURENBERGER: That's a very good  
14 question, Mr. Chair. Prior to last year there  
15 were 18 that did testing for pari-mutuel racing  
16 in this country. That number is now down to  
17 15. And I believe there are nine of them that  
18 are either already or going through RMTTC  
19 accreditation process. It's a lengthy process,  
20 and it requires some substantial resources.  
21 Our primary lab does meet that criteria as do  
22 these four.

23 COMMISSIONER STEBBINS: And this  
24 cost is borne by the?

1 DR. DURENBERGER: The cost is borne  
2 by the licensee.

3 CHAIRMAN CROSBY: If you lose a  
4 test, if a test comes back positive and you  
5 wanted to have it double-checked, you could do  
6 so with the second sample.

7 DR. DURENBERGER: Yes. And the  
8 terminology is the primary sample and that  
9 there's a notice of finding of a medication.  
10 And it isn't until such time as that split  
11 sample has been tested and there's a finding of  
12 fact before we call it a positive.

13 CHAIRMAN CROSBY: Okay.

14 COMMISSIONER STEBBINS: I'm assuming  
15 that's a typo, the 2043 season?

16 DR. DURENBERGER: Yes. So, we were  
17 30 years in advance, for those of you wondering  
18 what Commissioner Stebbins is asking about,  
19 there's a typo here that talks about the 2043  
20 racing season.

21 COMMISSIONER STEBBINS: I'll be 78  
22 when that year rolls around. I'm not sure I'm  
23 going to be on my game at that point.

24 DR. DURENBERGER: It should say

1 2014.

2 CHAIRMAN CROSBY: I wish I was going  
3 to be 78 in 2043.

4 COMMISSIONER CAMERON: Mr. Chair, I  
5 move that we accept the four labs outlined in  
6 the memo here to do split sample testing.

7 COMMISSIONER STEBBINS: Second.

8 CHAIRMAN CROSBY: Any further  
9 discussion? All in favor, aye.

10 COMMISSIONER MCHUGH: Aye.

11 COMMISSIONER CAMERON: Aye.

12 COMMISSIONER STEBBINS: Aye.

13 CHAIRMAN CROSBY: Opposed? The ayes  
14 have it four/nothing unanimously.

15 DR. DURENBERGER: Rolling right  
16 along, item 4d. I think some of these got out  
17 of sequence in your packet. So, 4d should be a  
18 single-page document with the title Medication  
19 Advisory on the top of it. It was 4e in some  
20 binders. Artem, I know you're looking for  
21 that.

22 CHAIRMAN CROSBY: 4e, got it.

23 DR. DURENBERGER: It's a one-page  
24 deal. One of things that the Commission has

1 done along the way is it adopted the controlled  
2 therapeutic substance schedule. And we're  
3 going to talk about that a little bit as part  
4 of the next item.

5           We made the recommendation that you  
6 adopt that schedule by reference, which you  
7 did. One of the primary reasons for adopting  
8 it by reference was the fact that this was  
9 meant to be a living document. As additional  
10 funding became available for additional  
11 scientific research, we knew that there would  
12 be a number of changes and modifications coming  
13 down the pike.

14           Just last week at the RCI meeting in  
15 Lexington, the board did approve five such  
16 amendments and changes to that rule. So, this  
17 is a summary of the changes. And what I'd like  
18 to point out is that when you see medications  
19 here, these are things that are being added to  
20 the list. So, they are not restricting the  
21 licensee's rights. They are actually  
22 increasing the number of medications that they  
23 may use.

24           So, we're not taking anything away

1 on short notice. I just wanted to put that out  
2 there because I know that's one of the concerns  
3 when you adopt by reference. This is how we  
4 will communicate these things to licensees.

5           This is going to be posted around  
6 our Commission offices, around the test barn.  
7 The veterinarians and the stakeholder  
8 distribution lists get copies of these as well.  
9 So, we can go into the science and the actual  
10 recommendations if you'd like or we can just  
11 leave it as an informational item.

12           COMMISSIONER CAMERON: So, you don't  
13 anticipate any controversy about this change in  
14 the medication policy?

15           DR. DURENBERGER: No. And in fact,  
16 the addition -- the two new medications that  
17 appear on this schedule appear there because  
18 stakeholders wanted to be able to use those  
19 medications in thoroughbreds and standardbreds  
20 therapeutically. But we can't expand that menu  
21 until such time as we know what an appropriate  
22 threshold is, so the level below which it  
23 doesn't affect performance. So, these are  
24 actually in response to stakeholder requests.



1           COMMISSIONER CAMERON: Excellent,  
2 thank you.

3           DR. DURENBERGER: Item 4d or e,  
4 depending on your binder, this is a welfare  
5 initiative that we'd like to spend a little bit  
6 of time talking about, have a little bit of  
7 discussion about. Artem, this is the seven-  
8 page memo with the appendixes. So, what I've  
9 done here is I've outlined for you in the memo  
10 just a little bit of context about horse racing  
11 in general in this country.

12           CHAIRMAN CROSBY: Which memo are you  
13 referring to?

14           DR. DURENBERGER: This is one, it is  
15 dated April 17.

16           CHAIRMAN CROSBY: Not this one?

17           COMMISSIONER CAMERON: It's at the  
18 end of (d).

19           CHAIRMAN CROSBY: At the end of (d),  
20 got it.

21           DR. DURENBERGER: But we don't have  
22 it for the screen. What we've done for you  
23 here is just provided a little bit of  
24 background about the state of the regulation of

1 racing in Massachusetts when the Commission  
2 took over. So, there's a little bit of  
3 background there. And basically what you asked  
4 me to do when we came in is to make a number  
5 changes to not only bring Massachusetts up to  
6 speed with the rest of the country, but to  
7 actually come to the forefront of some of the  
8 best practices and other initiatives that are  
9 out there. We did that.

10           We had a long list of things that we  
11 could choose from. And we thought the most  
12 effective way to accomplish these goals was to  
13 do it in sort of a phased in incremental  
14 process rather than try to bite off more than  
15 we could chew in the first year and not be  
16 successful at it.

17           So, on the second page of the memo,  
18 this is just a recap basically of what happened  
19 here last year starting with the Commission --  
20 the resolution in support of joining a regional  
21 and uniform medication initiative. The  
22 Commission's adoption of a comprehensive set of  
23 uniform model rules governing medication,  
24 veterinarian practices and safety standards.

1 We eliminated the administration of race day  
2 phenylbutazone. We were the last state to do  
3 that.

4 We drafted a number of manuals for  
5 our occupational licensees, for our trainers  
6 and our veterinary practitioners, which  
7 outlined all of the changes that affected them  
8 offering guidelines for compliance. Those were  
9 very well received and in fact were heralded by  
10 other jurisdictions and used as templates  
11 basically for some manuals that those guys are  
12 starting to put together.

13 As we just mentioned, we contracted  
14 with an accredited drug testing laboratory. We  
15 began the collection and review of treatment  
16 sheets from our private practitioners. That's  
17 an item that is very topical right now that's  
18 being discussed a lot in the industry, and in  
19 the trade publications this week and actually  
20 today. All horses which do die on licensed  
21 facility grounds now go to Tufts University  
22 Veterinary Hospital for the horse equivalent of  
23 an autopsy. It's called a necropsy and other  
24 testing.

1           We enhanced the professional resume  
2 of the Racing Division staff. And we began  
3 posting our steward's minutes on the Suffolk  
4 Downs website last year. This is a part of a  
5 transparency effort, which is also the topic of  
6 much discussion in the industry right now. So,  
7 we did all of this in a year, which I think we  
8 should all feel pretty good about.

9           But we weren't done. So, after we  
10 took a deep breath from last year's live racing  
11 season, we came to the Commission in the fall  
12 as part of the regular rulemaking process and  
13 we asked that you adopt the Association of  
14 Racing Commissioners International controlled  
15 therapeutic substance schedule and the multiple  
16 medication violation model rules. These are  
17 two rules that are cornerstones of the National  
18 Uniform Medication Initiative that our industry  
19 has called for for a long time. And we've made  
20 tremendous progress in the last year or two.  
21 And this condition was part of that.

22           Those regulations became effective  
23 in late January of this year. And if you turn  
24 your page to the next page of the memo, what

1 you've got there, the bullet points are  
2 basically how we're going to implement those  
3 new rules that were adopted over the winter.

4           So, starting yesterday, the  
5 Commission now is in control of the furosemide  
6 administration program. What that is is the  
7 last medication that's permitted on race day in  
8 race horses. The amount, the time, the dosage  
9 have all been controlled by regulation but  
10 there's a call in the industry for third-party,  
11 an independent third-party to administer it.  
12 In our instance here, we have a Commission  
13 employee that goes out with the private  
14 practitioners and takes care of all of that.  
15 It's basically supervised Commission  
16 controlled.

17           My understanding is it went very  
18 well yesterday. There was no hiccups much less  
19 kerfuffles, which is a racing technical term I  
20 want you to know about. Just checking to see  
21 if you're paying attention. We are  
22 implementing a blood gas testing program.

23           Plainridge did do this on their own  
24 in previous years under house rule. House

1 rules are sometimes difficult to implement.  
2 They have some logistical challenges, primarily  
3 in terms of the testing equipment that's used.  
4 So, the Commission did take control of that  
5 starting yesterday. And we will be  
6 implementing it at Suffolk Downs this year,  
7 which will be the first time that that's done.

8           This is a way to test, to make sure  
9 that horses are not being administered what are  
10 called alkalinizing agents, which can enhance  
11 performance. So, that's just a double-check on  
12 our integrity. We are looking at posting the  
13 results of those tests on the website. This is  
14 again part of a transparency initiative that  
15 the pari-mutuel customers in particular have  
16 been calling for for some time. So, we're  
17 exploring whether or not that's appropriate to  
18 do. The feedback so far has been good. We  
19 just have some logistical things to think about  
20 and we're working with Director Driscoll on how  
21 that would work.

22           CHAIRMAN CROSBY: Is there  
23 resistance to that to the idea?

24           DR. DURENBERGER: There is. And the

1 argument against doing it is that we have a  
2 threshold and you have a number. And we'll  
3 just use the number five for the nonsteroidals.  
4 It doesn't matter what the quantity is, but for  
5 bute. know that the level is five -- actually  
6 it's two in Massachusetts. So, we'll use two.

7           So, the thought is if you post  
8 results and people see that they were at one  
9 that they might administer more medication to  
10 try and get closer to two. There was a trainer  
11 that made a comment in the past about if the  
12 level is two then it's his job as the trainer  
13 to get the horse to 1.99. So, the thought is  
14 that you enable licensees to titrate these  
15 medications.

16           I'm of the opinion that if we as an  
17 industry have decided based on science that  
18 that's the appropriate level, then if you're  
19 below the level it shouldn't matter how far  
20 below the level you are. There's a risk that  
21 you're playing with fire if you're trying to  
22 get up there and you're trying to titrate and  
23 you're trying to get close to that level, you  
24 do run the risk of having an inadvertent

1 overage. But that's at the licensee's peril.  
2 That's the philosophy that I'm coming to this  
3 with.

4 CHAIRMAN CROSBY: That's not  
5 resistance to posting it. That's a resistance  
6 to doing it at all. Posting it means that a  
7 bettor can see who is the closest to the line,  
8 creates an incentive for people to get closer  
9 and closer to the line.

10 DR. DURENBERGER: The trainers or  
11 the veterinarians that may have medicated the  
12 horses may give a little bit more of that  
13 medication next time because they feel like  
14 there's a cushion. That's the concern is that  
15 the licensees will titrate to that number.

16 But from a philosophical standpoint  
17 we have made a decision based on science that  
18 that's a level that's appropriate. So, I am  
19 unafraid of that. And should an occupational  
20 licensee want to play with fire, if you will,  
21 and dance that close to the edge --

22 CHAIRMAN CROSBY: Right. Okay.

23 DR. DURENBERGER: It also relieves  
24 an administrative burden on us in that we did



1 report a lot of these last year to the  
2 licensees, which required us looking up, making  
3 a list of what the test results were. Handing  
4 them to our operations manager and then she'd  
5 have to go and track down the licensees and let  
6 them know. So, it also takes an administrative  
7 burden off of us as a practical matter.

8           Catastrophic injury review  
9 committee, this is a best practice that a  
10 number of tracks have been instituting  
11 recently. So, if there were ever a  
12 catastrophic injury on the racetrack either in  
13 training or racing hours, there's a committee  
14 with all of the interested parties to see what  
15 can be learned and what practices if any need  
16 to be changed going forward.

17           We're looking to host educational  
18 forums for occupational licensees throughout  
19 the year. Since we have enhanced our  
20 professional resume, we have a number of people  
21 that are now working for the Commission  
22 seasonally who spend a good part of the year  
23 giving lectures to people as part of continuing  
24 ed. and other programs. And we think we should

1 take advantage of that. And they're here and  
2 we don't have to pay expenses for them. So,  
3 why not put on a show and educate everybody who  
4 wants to come out and be educated.

5           And then we've got this Horses First  
6 initiative. Horses First was something that  
7 the title I came up with when I worked at NYRA  
8 that was the New York Racing Association. We  
9 just made that our in-house motto, if you will.  
10 But I brought it forward to the Commission  
11 here. It's a commitment to the safety and  
12 welfare of our equine athletes.

13           So, we talk a lot in the industry  
14 about safety and welfare. And the safety side  
15 we can quantify. We have metrics. We know  
16 whether things are safer. We have standards.  
17 We have data collection. So, we have handled  
18 the safety part really well.

19           The welfare side is not as numbers  
20 and data-driven. It's a little bit fuzzier.  
21 And I think that that's a dialogue the industry  
22 is starting to have this year.

23           So, my thought was we talked a lot  
24 about Horses First in our training last year

1 with our employees. We kind of look at it as a  
2 guiding principle. And this year the thought  
3 was why not put that in writing. So, we did.

4           And we drafted a letter to  
5 stakeholders. Basically, it's affirming our  
6 commitment on the Racing Division side to  
7 protecting the safety and welfare of our equine  
8 athletes. It's appearing in your packet as  
9 appendix A, which should hopefully follows this  
10 memo. It's in the occupational manuals that we  
11 put together for trainers and veterinarians.  
12 It appears on the website if you go to those  
13 things.

14           And it's with great pride that I  
15 tell you that of all of these things that we've  
16 done that we just outlined in the last five  
17 minutes, no single action that we've undertaken  
18 has been the target of more compliments than  
19 this document.

20           COMMISSIONER CAMERON: Excellent.

21           DR. DURENBERGER: But we would like  
22 to do more.

23           CHAIRMAN CROSBY: It's great. I  
24 think we have a mission statement and a

1 statement of values that we have got posted in  
2 various places around the offices. And I think  
3 this ought to go with it. I've not seen this  
4 before. I think it's terrific though.

5 COMMISSIONER MCHUGH: It's great.

6 CHAIRMAN CROSBY: It's among other  
7 things a statement of values and aspirations.  
8 I think it ought to go with the mission and  
9 value statement.

10 COMMISSIONER CAMERON: Very well  
11 done.

12 DR. DURENBERGER: Consider it done.  
13 That's what we're doing on the operation side.  
14 But we never are content with our status quo.  
15 So, I have a couple of things to come to you,  
16 sort of the next things that the Commission can  
17 do that we can ask your involvement in.

18 One of them is to consider endorsing  
19 or passing a resolution in support of a set of  
20 welfare guidelines. These would be applied to  
21 racing in the Commonwealth. I have included in  
22 appendix B, there are a set of four different  
23 guidelines. The first one that appears is from  
24 the International Group of Racing Specialists

1 Veterinarians. And it is the document that  
2 seems to be in the majority use. So, some  
3 close variant of it is already in place with a  
4 number of governing bodies internationally.

5           Following that is a statement from  
6 Standardbred Canada. They've taken a slightly  
7 different approach than any of the other  
8 jurisdictions that I've found. So, that's a  
9 one-page statement. The second one in your  
10 packet there. The third document is from the  
11 International Federation of Horse Racing  
12 Authorities. That's a statement that appears  
13 in the International Agreement on Breeding,  
14 Racing and Wagering.

15           Then the last document that appears  
16 in appendix B is a set of welfare guidelines  
17 from the American Horse Council. And what's  
18 notable about those is that we do have some  
19 domestic groups that have endorsed that that  
20 are involved in racing. So, United States  
21 Trotting Association is a signatory.  
22 Thoroughbred Owners Association is a signatory.  
23 So, I put all four of those in the packet.

24           What I would recommend on these even

1    though I do think that the first set is the one  
2    that's in the majority use, I would be very  
3    curious to hear what the public has to say,  
4    what our stakeholders have to say.  So, I  
5    propose that this go out for public comment,  
6    maybe a two-week period.  And then we'll  
7    assemble those and come back to you at the May  
8    15th meeting with whatever support or comments  
9    our industry has to say.

10                   COMMISSIONER CAMERON:  It's a good  
11    idea.

12                   COMMISSIONER MCHUGH:  Yes, excellent  
13    idea.

14                   CHAIRMAN CROSBY:  Yes.

15                   DR. DURENBERGER:  We'll get that  
16    done.  The second piece is we're coming to you  
17    this summer with a group of licensing  
18    regulation changes.

19                   There is an existing rule that  
20    prohibits conduct detrimental to welfare to our  
21    horses.  But we think that we can come up with  
22    some language.  It's not a model rule, so it  
23    would be something that we certainly would  
24    propose as a model rule, but we could bring

1 into Massachusetts that would put an  
2 affirmative duty on our participants in horse  
3 racing to report instances of conduct  
4 detrimental to welfare.

5 I don't have the language on that  
6 yet, but I wanted to put that out there that  
7 that would be part of this initiative coming  
8 before you. We'd also bring it in front of the  
9 RCI's model rules committee at that time.

10 COMMISSIONER MCHUGH: I'm a little  
11 troubled by that. Could you explain -- I'm  
12 familiar with that kind of a rule in other  
13 contexts. And it raises a lot of issues as to  
14 how far it goes and what it does to the  
15 culture. That's on the negative side. On the  
16 positive side it can spur a cultural change in  
17 which everybody is looking after a common set  
18 of objectives and has an obligation.

19 So, I'd welcome hearing more about  
20 it. I just put that out that I've seen the  
21 positive and the negative effects.

22 CHAIRMAN CROSBY: What's an example  
23 of how the negative manifests itself?

24 COMMISSIONER MCHUGH: That it

1 imposes obligations on people the dimensions of  
2 which they don't really know. They see  
3 behavior -- The standard for reporting is so  
4 broad that it turns everybody into either a  
5 constant reporter and puts them into a real  
6 quandary as to how they behave. And in the  
7 process changes the culture into which  
8 everybody is potentially reporting every  
9 marginal thing that everybody else has done and  
10 lowers levels of trust and collaborative  
11 behavior.

12           The Bar Associations have rules.  
13 And the disciplinary rules for lawyers include  
14 rules like this. And they've gone back and  
15 forth over the years as to how that rule is  
16 phrased and what the consequences of it are.

17           In some cases there are clear, clear  
18 violations that people have not reported and  
19 they ought to be under an obligation to report.  
20 And people have been disciplined in the Bar  
21 context for not doing it. On the other hand it  
22 has had some of these marginal problems.

23           CHAIRMAN CROSBY: Yes. You don't  
24 want to create an East German Stasi environment



1 network of informers.

2 COMMISSIONER MCHUGH: Right. And  
3 it's the levels of trust. So, I just need to  
4 hear more about it. And I think the discussion  
5 of it is desirable, because it spreads  
6 responsibility for reaching the goal. But how  
7 you do it without the undesirable components is  
8 a hard thing, I think.

9 DR. DURENBERGER: Duly noted and I  
10 look forward to having that discussion as we  
11 move forward with the rulemaking process.

12 CHAIRMAN CROSBY: Are you talking  
13 about putting these ideas out for conversation  
14 for discussion?

15 DR. DURENBERGER: This will be a  
16 piece that will come. We're doing a regular  
17 rulemaking process with some licensing  
18 regulations that are coming before you, I  
19 believe, in late May. So, by that time we'll  
20 have some language. And at that point, of  
21 course, it would go through the public comment  
22 period and a public hearing and all of the  
23 things that accompany that.

24 CHAIRMAN CROSBY: For anybody who's

1 interested, commenting on these three  
2 recommendations --

3 DR. DURENBERGER: Could do that  
4 right now.

5 CHAIRMAN CROSBY: -- any time, yes,  
6 would be interesting.

7 COMMISSIONER MCHUGH: Now where are  
8 the three --

9 CHAIRMAN CROSBY: It's in her cover  
10 memo.

11 COMMISSIONER CAMERON: Are there  
12 jurisdictions using this and how successfully,  
13 do we know?

14 DR. DURENBERGER: So, the existing  
15 model rules, and we actually have it, put this  
16 duty on racing officials to report. This would  
17 extend it to the other occupational licensees.

18 COMMISSIONER CAMERON: Trainers.

19 COMMISSIONER MCHUGH: Everybody,  
20 every licensed person.

21 COMMISSIONER CAMERON: Those are  
22 typically made anonymously now, correct?

23 DR. DURENBERGER: They are typically  
24 made anonymously, yes. Number three -- I'm

1 sorry. I wasn't sure if there was further  
2 comment.

3 COMMISSIONER CAMERON: No further  
4 comments. It's a good idea here.

5 COMMISSIONER MCHUGH: I agree.

6 DR. DURENBERGER: The third piece of  
7 this, and this is just temperature taking on  
8 this today, is whether or not the Commission  
9 would be interested in learning more about  
10 something that's called the Racing Regulatory  
11 Compact.

12 This was a project that RCI, Racing  
13 Commissioners International, began I believe it  
14 was in 2009. Essentially, I guess, the  
15 elevator speech here two key things about what  
16 this does. This would be a compact that would  
17 become effective, would take effect if six  
18 states passed legislation in support of it. To  
19 date three states have done so. The tipping  
20 point has not yet occurred.

21 CHAIRMAN CROSBY: Which three?

22 DR. DURENBERGER: Colorado, Kentucky  
23 and I can't remember if it's Virginia or West  
24 Virginia. And I knew you were going to ask me

1 that question and I've forgotten. It was under  
2 consideration in several other states in recent  
3 years, but the extent to which action has been  
4 taken has varied state to state.

5           Really the two key things here are  
6 as we know the business model of racing, the  
7 regulations and the law have not necessarily  
8 kept pace with the changes. Then we have a  
9 tremendous amount of changes on the medication  
10 and veterinary practice side. And those  
11 changes come quickly. They come in response to  
12 some very good science. Sometimes it's  
13 difficult and we have some states where  
14 medication things actually have to go through  
15 the legislative process.

16           So, we've got this patchwork out  
17 there of different approaches to regulation.  
18 So, it's difficult when there's a rule change.  
19 That rule change process has to go through 38  
20 different states. So, the key leadership  
21 positions of the various stakeholders have to  
22 go and appear and testify at potentially 38  
23 different states.

24           There are a couple of states that

1 have adopted model rules by reference. But for  
2 the most part, I know stakeholders who  
3 basically travel every week. And all they do  
4 is testify at meetings just like this one on  
5 potential rule changes.

6           So, one of the things this does is  
7 it concentrates the resources and gets the  
8 consensus piece together first with some sort  
9 of a centralized body, representatives from  
10 commissions and stakeholders. They go through  
11 all of that preliminary stuff, if you will, and  
12 take all of the testimony and come up and do  
13 the wordsmithing with the rules. Then the  
14 rules come back to the commission like ours and  
15 decide whether or not they should become  
16 promulgated.

17           It basically eliminates some of  
18 those first steps, the back-and-forth kind of  
19 things and then gives the commissions that have  
20 signed on the ability take the product that  
21 industry stakeholders have come up with more or  
22 less a consensus. So, it's a resource saving  
23 piece. That's the biggest piece of it, I  
24 think. And then again, because we do have the

1 rulemaking process taking such different times  
2 in different states, it helps harmonize that a  
3 little bit. So, it's a resource saving piece.

4           If you're interested in exploring  
5 this in more depth, I am not the subject matter  
6 expert on this at all. I've included the  
7 information from the informational website that  
8 RCI did put together. And we do have folks who  
9 are willing to come in and talk to you about it  
10 at some point. If you think this isn't the  
11 year to look at it because you've got a few  
12 other hundred things on your plate, we can  
13 certainly bring it back in the fall. But I  
14 just wanted to take your temperature right now  
15 and see what you thought about that.

16           COMMISSIONER MCHUGH: I don't know  
17 what -- whether it's a near-term agenda item or  
18 a long-term fall agenda item, but I am very  
19 interested in it.

20           It seems to me not only as a  
21 resource saving issue, but as a recognition  
22 that this is truly an interstate business and  
23 the solution is an interstate solution pushes  
24 us in this direction. I'm troubled, as a

1 matter of fact, by the ability of compacting  
2 states to opt out of particular rules. And  
3 that's something I'd like to know more about,  
4 why that's in there.

5           The success of the multistate  
6 lottery's Powerball and Mega Millions stems  
7 from the fact that there is a group, a  
8 compacted group that sets all of the rules and  
9 they're uniform across the country.

10           I mentioned in Atlantic City last  
11 week on the panel that I was on that I thought  
12 that the Internet gaming piece ought to look at  
13 this kind of approach to not only to outcomes  
14 and payoffs but standards as what kinds of  
15 games and the elements of games, because I  
16 think there too, it's an important multistate  
17 operation.

18           In fact, in the tribal gaming world  
19 there is a compacting process that's been  
20 started for Internet gaming in the upper mid-  
21 West. They are following this kind of a model.  
22 So, I think this has the potential to solve a  
23 lot of racings' problems.

24           I say that as an outsider

1 essentially. I'm not nearly as familiar with  
2 anything as you are. But it seems to me that  
3 this could really be the solution to the  
4 problems that racing is facing. So, I'd very  
5 much like to hear more about it.

6 CHAIRMAN CROSBY: I would second  
7 that. I think the issue is your bandwidth, not  
8 ours. When you're ready to move us forward on  
9 this, do so. I think we're ready whenever you  
10 are. I for somewhat similar reasons feel like  
11 my uneducated view is any pressure for  
12 centralization and standardization and for  
13 centralized management of leadership and  
14 strategy is good. So, I'd have a presumptive  
15 favorable instinct of working toward this kind  
16 of thing. Not just for this, eventually going  
17 to the full marketing and everything. So, I'm  
18 predisposed, favorably predisposed.

19 COMMISSIONER CAMERON: I would  
20 agree. I've heard this discussed at a couple  
21 of RCI meetings I attended and was kind of  
22 surprised too that it didn't have a greater --  
23 that folks were not really inclined to go in  
24 this direction. And I heard their reasons, so



1 I think we'd love to hear more.

2 DR. DURENBERGER: Some of those  
3 reasons, if I may, the context has changed in  
4 horse racing in the last couple of years since  
5 this project was initiated. I think that you  
6 would find if you took a survey of folks that  
7 were involved in the discussion that the sense  
8 of urgency to get something like this done has  
9 heightened in recent weeks and months.

10 COMMISSIONER MCHUGH: Well, the  
11 drugging program has probably heightened. You  
12 have anti-doping agencies prowling around the  
13 edges of racing is an essential reason to take  
14 a look at something like this.

15 DR. DURENBERGER: Yes. So, I can  
16 bring that back to you and we'll get that on  
17 the agenda for a future meeting.

18 CHAIRMAN CROSBY: Great.

19 COMMISSIONER CAMERON: Thank you,  
20 Director.

21 DR. DURENBERGER: You're welcome.  
22 That might be the end of it for today for  
23 Racing.

24 COMMISSIONER MCHUGH: Great, good

1 report. Thanks.

2 COMMISSIONER CAMERON: It just  
3 highlights this report all of the good work  
4 you've done on our behalf. And I just wanted  
5 to thank you for that. I know that wasn't your  
6 reason here today, to highlight your  
7 accomplishments, but I wanted to take a minute  
8 to recognize them because you've really helped  
9 us get to a place which is much more  
10 professional and standardized and it's a very  
11 good place for us to be. So, thank you.

12 COMMISSIONER MCHUGH: Yes, thank you  
13 very much.

14 CHAIRMAN CROSBY: And a place we  
15 couldn't possibly have been without your  
16 leadership. It just wouldn't even be close to  
17 this. So, I agree.

18 DR. DURENBERGER: Thank you for  
19 providing the tools and the interest in getting  
20 this done.

21 CHAIRMAN CROSBY: It's a pleasure.  
22 Thank you. Okay. I think we are onto item  
23 number six Workforce Development and Diversity,  
24 Director Griffin.

1 MS. GRIFFIN: If I could ask the  
2 members for Penn and Turner to come up.

3 CHAIRMAN CROSBY: Good afternoon,  
4 gentlemen.

5 MS. GRIFFIN: Good afternoon,  
6 Commissioners. I appeared before you on April  
7 3 with representatives from Turner Construction  
8 and Penn National Gaming to present their  
9 initial diversity plan to you.

10 Since that time we have posted Penn  
11 National's diversity plan on our own website  
12 and requested public comment. The diversity  
13 plan and opportunity to comment was sent out to  
14 members of our Vendor Advisory Team, the Mass.  
15 Diversity Gaming Coalition who are also members  
16 of our Vendor Advisory Team, the Mass. Casino  
17 Careers Training Institute, Treasurer  
18 Grossman's Diversity Advisory Committee and  
19 other interested parties. Treasurer Grossman's  
20 Diversity Committee had invited us to speak on  
21 our diversity efforts.

22 I received several verbal responses  
23 and one written comment prior to the public  
24 comment period. I've included that in your

1 packet. The written comment was from a  
2 minority contractor who received the  
3 information from one of our vendor advisory  
4 team members, the FBA. And he suggested that  
5 to improve cash flow for small businesses we  
6 should encourage quick pay for smaller  
7 contractors to ensure that the small businesses  
8 can truly participate in the construction phase  
9 of the project.

10 Generally, feedback from other state  
11 agencies and independent groups agree that the  
12 plan showed a strong expression of commitment  
13 and referenced all of the right organizations  
14 touching all of the bases.

15 I did receive a phone call this  
16 morning from Juan Cofield who is here who  
17 didn't quite make the deadline, but I did  
18 indicate that I would highlight his concerns.  
19 And he is here should the Commissioners have  
20 questions. So, I know you haven't had a chance  
21 to review his letter, but I will highlight his  
22 main points.

23 Again, the summary of the issues  
24 that Juan Cofield who represents the New

1 England Area Conference of the NAACP has  
2 summarized is -- he indicated that Penn  
3 National and Turner have set a self-imposed  
4 deadline for the project completion and have  
5 provided that deadline as a reason for not  
6 following the DCAM's established goals because  
7 it would delay on project completion. He also  
8 comments that the outreach strategy is  
9 insufficient.

10           Mr. Cofield also noted enforcement  
11 mechanisms in the plan for noncompliance are  
12 not strong. There's no plan for MBE and WBE  
13 utilization for the entire lifecycle of the  
14 construction project. And that issue I will  
15 talk about a little bit further because I do  
16 have some comments.

17           In terms of the enforcement  
18 mechanisms in the plan for noncompliance, I  
19 think Mr. Cofield, and he can correct me, was  
20 talking about financial penalties should a  
21 subcontractor not fulfill their -- should not  
22 meet their diversity goals.

23           So, I wanted to say that what I've  
24 seen of Penn National and Turner in terms of

1 the vendor fair that was very well attended,  
2 invitations were sent out by the Supplier  
3 Diversity Office and the Greater New England  
4 Minority Supplier Development Council. It was  
5 well advertised in the media. I would say that  
6 was a very good first step.

7 I've heard from the Supplier  
8 Diversity Office Reggie Nunnally, both he and  
9 Dr. Fred McKinney of the Greater New England  
10 Minority Supplier Development Council have been  
11 invited to participate in Penn National's  
12 Diversity Committee.

13 Originally, that committee the last  
14 time you saw the diversity plan was composed of  
15 internal Turner and Penn participants. And  
16 they did agree to invite these external folks  
17 who could help them think through diversity  
18 issues.

19 There was one issue that was raised  
20 by area stakeholders, and I think this was the  
21 issue that Juan Cofield mentioned in terms of  
22 the entire lifecycle of the construction  
23 project. During the design phase of the  
24 project, Penn has inherited this project. In

1 September of 2013 they acquired Plainville  
2 Racetrack. They inherited a design team. They  
3 inherited a completed garage. They have also  
4 raised the concern regarding specific --  
5 meeting the DCAM numbers for the design phase  
6 of the project.

7 CHAIRMAN CROSBY: What did you say?  
8 They what?

9 MS. GRIFFIN: Meeting the diversity  
10 goals that are consistent with the state  
11 diversity goals for the design phase of the  
12 project which are 17 percent for the design  
13 phase.

14 COMMISSIONER MCHUGH: That's because  
15 the design is largely completed, right?

16 MS. GRIFFIN: Exactly. I just  
17 wanted to give members of Penn National and  
18 Turner a chance to comment on this.

19 CHAIRMAN CROSBY: Let's just make  
20 sure we understand. You're talking about Mr.  
21 Cofield's letter at this point, right, the  
22 issues that he's raised when you say comment on  
23 this?

24 MS. GRIFFIN: Specifically, the

1 design phase of the project was raised actually  
2 prior to this in a phone call. I addressed  
3 this with Penn and Turner. So, it is a concern  
4 that Juan Cofield raised and also something  
5 that we discussed.

6 CHAIRMAN CROSBY: I just want to  
7 make sure I understand these points from Mr.  
8 Cofield's letter. Self-imposed deadline, and  
9 the differences, are you talking about the  
10 difference between the 17 and 16 percent?

11 MR. COFIELD: Chairman Crosby that's  
12 a combined total. The actual DCAM goals are  
13 17.9 percent for design and 10.4 percent for  
14 construction. So, they have sort of  
15 aggregated, combined the two.

16 We think in their plan one of the  
17 reasons that they suggest -- it is understood  
18 that in fact they have acquired some existing  
19 design work. But that was their choice and in  
20 fact that should not alleviate them of the  
21 obligation to meet the expectations of both the  
22 legislation, of you and of the Mass. Gaming  
23 Diversity Coalition.

24 They can still meet that goal. It's



1 not completed. And in their plan, they  
2 indicated that it would cause a delay if they  
3 now had to infuse a new design team or new  
4 design components into their existing work  
5 team. And it would delay their completion  
6 date.

7 I don't think the community ought  
8 suffer because they are trying to meet a self-  
9 imposed completion date as it relates to those  
10 goals. There are some other issues, which I'm  
11 happy to explain as well.

12 CHAIRMAN CROSBY: In addition to the  
13 deadline, which is sort of self-imposed but  
14 everybody has been pushing for speed here.  
15 They didn't just make this up out of old cloth.  
16 In addition, if the design work is already  
17 done, it would be just make-work to do it over  
18 again.

19 MR. COFIELD: It's not fully  
20 completed or at least that's not our  
21 understanding.

22 CHAIRMAN CROSBY: It probably isn't  
23 fully completed. They're in this design/build  
24 mode where the design continues to iterate over

1 I guess in levels of detail. So, you think  
2 that there's enough design work left yet to be  
3 contracted out that if they put their minds to  
4 it they could meet the DCAM goals?

5 MR. COFIELD: I do, Chairman Crosby.

6 CHAIRMAN CROSBY: The second bullet  
7 point, the outreach strategy that's  
8 straightforward what your observation is. By  
9 enforcement mechanism you mean no penalties?

10 MR. COFIELD: That's right. There  
11 is a monitoring system but the NAACP has found  
12 that when in fact there's not an enforcement  
13 mechanism, lots of companies don't take it  
14 seriously.

15 And there ought to be an enforcement  
16 mechanism that they have designed in this  
17 program. And there is no enforcement mechanism  
18 design. And by contrast let me suggest what  
19 happens in most project labor agreements.  
20 There is an enforcement mechanism, certainly in  
21 those contracts that are entered into in the  
22 Greater Boston area when there is  
23 noncompliance. And we think the same ought to  
24 exist here.

1                   So, this is nothing new in terms of  
2 an enforcement mechanism. In other  
3 construction projects, certainly with the  
4 workforce the monitoring can -- it leads to and  
5 tells the community whether or not they have  
6 met their goals and whether or not there has  
7 been a sufficient effort. And if those two are  
8 seen to be the case, there are penalties, there  
9 can be.

10                   COMMISSIONER CAMERON: Mr. Chair,  
11 are you still asking questions here?

12                   CHAIRMAN CROSBY: Yes. Let me go  
13 through these bullet points and come back. And  
14 then on the lifecycle, this plan is only about  
15 the construction phase. This is not about the  
16 operations phase.

17                   MR. COFIELD: What I mean by  
18 lifecycle, the real terminology for lifecycle  
19 is that there are sort of three phases of the  
20 construction project. The pre- and post  
21 construction phase, the design phase and the  
22 construction phase itself.

23                   Things that are included in pre and  
24 post are planning, legal work, OPM work or

1 owner project manager work if in fact there is  
2 an OPM and audit work. Those are some of the  
3 job categories that are typically included  
4 pre-/post construction work.

5 CHAIRMAN CROSBY: So, that work  
6 isn't included in their plan there?

7 MR. COFIELD: Correct.

8 CHAIRMAN CROSBY: Got it. The last  
9 point is straightforward.

10 MR. COFIELD: Let me add one other  
11 thing in my rush to get this to Ms. Griffin, I  
12 overlooked this. This is an important part.  
13 The construction workforce diversity goals are  
14 out of alignment with the demographics of the  
15 Commonwealth and the employment needs of  
16 communities of color and women. The Commission  
17 is asked to be cognizant of the substantially  
18 higher unemployment rates of communities of  
19 color across the Commonwealth. These goals  
20 that they have set forth are out of alignment  
21 with those demographics.

22 COMMISSIONER STEBBINS: Are they out  
23 of alignment with the statute, which only  
24 required they follow the A and F administrative

1 bulletin 14?

2 MR. COFIELD: I am not prepared to  
3 answer that.

4 CHAIRMAN CROSBY: That only replies  
5 to design and construction. It's either  
6 suppliers or workforce, one or the other. It's  
7 not both.

8 COMMISSIONER STEBBINS: It's  
9 workforce.

10 CHAIRMAN CROSBY: It's workforce?

11 MS. GRIFFIN: Yes.

12 CHAIRMAN CROSBY: And that's the 14  
13 percent, isn't it?

14 MR. COFIELD: I can speak more  
15 directly to the Boston PLA plan. In the Boston  
16 PLA plan there is a requirement for Boston  
17 residents and then 25 percent for minorities  
18 and 10 percent for women.

19 CHAIRMAN CROSBY: It's definitely  
20 out of sync with the demographics of the  
21 region. That's for sure. And we talked about  
22 this last time as well.

23 MS. GRIFFIN: Could I comment on  
24 that, Chairman?

1                   CHAIRMAN CROSBY: Sure.

2                   MS. GRIFFIN: Penn has adopted  
3 workforce participation goals on the  
4 construction project 16 percent minority  
5 workforce participation goal and a seven  
6 percent female. And I think both percentages  
7 compare favorably. The state goal is 15.3 for  
8 minority and 6.9 percent female. If you  
9 consider the demographics of Plainville and the  
10 surrounding community, I think the workforce  
11 goals seem solid to me.

12                   CHAIRMAN CROSBY: Okay. So, I've  
13 got my initial.

14                   COMMISSIONER MCHUGH: And there are  
15 commitments to hire locally in the surrounding  
16 and host community agreements, right?

17                   MS. GRIFFIN: There is significant.

18                   CHAIRMAN CROSBY: Do you actually  
19 know what the demographic makeup of the  
20 workforce is in the defined area, local?

21                   MS. GRIFFIN: I do have it, but I  
22 don't have it with me to share with the  
23 Commission.

24                   CHAIRMAN CROSBY: But do you know

1 that it's in the nature of 15, 16 percent  
2 minority?

3 MS. GRIFFIN: Well --

4 CHAIRMAN CROSBY: I'd say no would  
5 be the answer.

6 MS. GRIFFIN: No.

7 CHAIRMAN CROSBY: You said that it  
8 was, but I don't know that we actually know.  
9 You said that these numbers are compatible  
10 with --

11 MS. GRIFFIN: With the state.

12 CHAIRMAN CROSBY: With the state,  
13 right. But I thought you also said it was  
14 compatible with the region, with Plainville and  
15 its neighboring communities.

16 MS. GRIFFIN: I think Plainville and  
17 the surrounding communities, I think, are  
18 significantly less diverse.

19 CHAIRMAN CROSBY: The surrounding  
20 communities, not necessarily --

21 MS. GRIFFIN: -- not the region, but  
22 the surrounding communities.

23 COMMISSIONER CAMERON: I guess I  
24 would like to hear from Penn. But they may be

1 answered with Penn's responses and Turner. So,  
2 I think I'd love to give you an opportunity  
3 before I ask questions here.

4 COMMISSIONER STEBBINS: Are some of  
5 the changes you're recommending from your first  
6 version of the plan what's incorporated in red?

7 MS. BAILEY: That's correct.

8 COMMISSIONER CAMERON: Just one  
9 comment though. I think it was a good idea to  
10 include Dr. McKinney and Mr. Nunnally. Not  
11 only will they add value to the committee but  
12 they also will help with the outreach piece, I  
13 believe.

14 MS. BAILEY: Right, we agree. Thank  
15 you very much for the opportunity to respond.  
16 Joined with me today is Allison Stanton with  
17 Turner. So, she and I have been working  
18 together on developing this plan along with the  
19 broader group of our team.

20 CHAIRMAN CROSBY: I'm sorry. Did  
21 you give your name?

22 MS. BAILEY: I'm sorry. Karen  
23 Bailey on behalf of Penn National Gaming. And  
24 then I've also got with me today Jack Turner --



1 Jack Rauen, who is our Vice President for  
2 Project Development. He's overseeing the  
3 project on Penn's behalf. And then with him is  
4 Emil Giordano who's the compliance officer for  
5 Turner on this project. So, they're also  
6 available to answer any more specific questions  
7 that you may have as a result of our discussion  
8 today.

9           So, to touch base on some of the  
10 concerns outlined from the letter we've just  
11 been discussing, a couple of things. We did in  
12 this revised plan on page four, and you'll see  
13 this marked and tracked in red, we did address  
14 specifically design goals as the state  
15 administrative office has dictated or has out  
16 there 17.9 percent. We acknowledge that. And  
17 as you've already heard, we did adopt the  
18 design plan already in motion.

19           But we do still have some design  
20 work to be awarded. So, that's why in our  
21 introduction on page three and perhaps maybe we  
22 need to further clarify this, but we set a  
23 design and construction goal of 11 percent of  
24 minority and/or women-owned business

1 participation. So, that's 11 percent on the  
2 design side, 11 percent on the construction  
3 side.

4           So, we acknowledge that we're not  
5 available to meet that 17.9 percent because of  
6 the challenges and the unique situation that  
7 we're in, and the fact that we adopted a design  
8 already in motion and largely complete. But  
9 with the remaining awards that we have  
10 available to award, we are looking right now in  
11 working with our design professionals to see  
12 what opportunities are able to meet an 11  
13 percent participation goal.

14           With the enforcement discussions,  
15 and that is on -- forgive me here. It's in  
16 Turner's part. We did already have in place  
17 and in discussion in the original plan that we  
18 submitted a plan in place. And we see if a  
19 contractor is falling out of compliance in not  
20 meeting the goals that they set forward during  
21 their bid process and what they were awarded  
22 based on.

23           So, we already have a plan in place,  
24 a mechanism in place to obviously meet that

1 noncompliance immediately to see it and to  
2 address it and to set a plan in place to  
3 correct it. One thing that we added onto that  
4 is to have the Gaming Commission's involvement  
5 when necessary, if desired to participate in  
6 those corrective action meetings. So, we  
7 think that also in those scenarios whether it's  
8 on the construction side or on the workforce  
9 side is one of the reasons why extended the  
10 invitations to Mr. McKinney and Mr. Nunnally to  
11 participate, because to help us with those  
12 outreach opportunities as well as any  
13 corrective action that we may need to take,  
14 hopeful that we don't have to.

15 Penn has been successful in meeting  
16 and exceeding goals throughout all of the  
17 projects that they've done over the years. So,  
18 we hope that we don't end up in corrective  
19 action phase of any of this. But if we do, not  
20 only do we have our internal plans and the  
21 plans that Turner has already laid out, but  
22 also the involvement of the MGC early on in  
23 that process and not waiting for it to have  
24 then lead to even further corrective issues or

1 matters.

2 COMMISSIONER MCHUGH: Is that  
3 corrective process in the packet that we have?

4 MS. BAILEY: It is.

5 MS. STANTON: It's mentioned on page  
6 12. It's mentioned in two places because we  
7 would deal with it for two issues, for MBE,  
8 WBE, VBE. So, it's mentioned on page 12 under  
9 construction phase, item number three.

10 COMMISSIONER MCHUGH: Oh, yes.

11 MS. STANTON: That's where we are  
12 saying we can elevate to involve the MGC as  
13 well.

14 COMMISSIONER MCHUGH: Okay.

15 MS. STANTON: Then also it's listed  
16 in the workforce piece.

17 COMMISSIONER MCHUGH: What page is  
18 that.

19 MS. STANTON: That would be page 14  
20 item number three.

21 MS. BAILEY: It's in blue and red.

22 MS. STANTON: Again, we'd have, as a  
23 I mentioned last time, a corrective action  
24 isn't the last faith effort. It's something

1 that as specific to workforce, if we notice  
2 someone comes on with their core crew and the  
3 numbers are already not reflective of the  
4 goals, we might have a corrective action the  
5 first week in.

6           Then we would elevate it obviously  
7 to Penn would be involved right away. Then we  
8 felt if we progressed into the next week or so  
9 it was an issue, we'd like feedback and  
10 involvement from the MGC. We will always get  
11 backup and documentation from the subcontractor  
12 as to why these issues may be occurring, not  
13 just assume that they just don't want to meet  
14 the goals. They could have reasons or issues  
15 that they are facing. So, it needs to be an  
16 open discussion but would definitely look for  
17 the insight from the MGC.

18           I also want to mention, the first  
19 time around when we submitted the plan, we had  
20 not listed Dr. Fred and Reggie Nunnally,  
21 because we were still talking to them about  
22 their involvement. So, didn't want to list  
23 them until we had finalized that discussion.

24           But when we met with the advisory

1 committee originally, it was a great meeting.  
2 We received a lot of really good feedback from  
3 individuals in the room. Dr. Fred and Reggie  
4 both expressed that they could share insight on  
5 enforcement. So, they followed up with us  
6 after that meeting. And we started discussions  
7 surrounding some of those opportunities. We've  
8 met with Dr. Fred already and are meeting with  
9 Reggie next week. So, hope to be able to  
10 continue this discussion on some other things  
11 that might work, so, open to that discussion.

12 MS. BAILEY: To that point and  
13 Director Griffin already mentioned this the  
14 fact that our outreach efforts have already  
15 begun understanding that we are on a deadline  
16 that we'd like to get our product, obviously,  
17 quick to market. The outreach efforts  
18 literally began the day after you all were so  
19 kind to give us the award. So, those have been  
20 ongoing. They will not stop. Allison and  
21 Director Griffin have already outlined some of  
22 those efforts and those will continue  
23 throughout the phases of the project as well as  
24 in the design elements we talked about in

1 meeting those goals.

2 CHAIRMAN CROSBY: Others? What's  
3 the DCAM percentage for construction? It's  
4 17.9 for design and what is it for construction  
5 ordinarily?

6 MS. STANTON: 10.4.

7 CHAIRMAN CROSBY: So, you're  
8 slightly above that on the construction side.  
9 That problem doesn't strike me as being really  
10 out of -- I don't know enough about the  
11 particulars but in general the fact that you  
12 picked up a pre-existing product and are well  
13 into it, that doesn't strike me as  
14 unreasonable.

15 What did you mean, Mr. Cofield, by  
16 the outreach strategy is insufficient? What's  
17 missing in the plan? What I've seen and heard  
18 I thought the proof of the pudding is in the  
19 eating and their outreach is only outreach.  
20 But the outreach such as it was looked pretty  
21 good to me. What kind of things are not being  
22 done?

23 MR. COFIELD: Well, I have seen  
24 outreach plans that are more significant in

1 terms of reaching community organizations in  
2 terms of promotion and advertising than what I  
3 see in this plan.

4 MS. GRIFFIN: I think perhaps there  
5 is an opportunity to document and update what  
6 you have already done. Some of what you have  
7 shared with me, I wonder, could you give the  
8 Commission an update on some of the things  
9 you've done specifically regarding minority  
10 contractors?

11 MS. STANTON: Certainly. So, as  
12 Karen mentioned we originally had an  
13 opportunity fair. We discussed that at the  
14 last meeting. Since that time, of that event,  
15 we've had several businesses follow up from  
16 that event. We put those business in touch  
17 with Penn if we thought there were  
18 opportunities on the operations side.

19 We've also added them to our  
20 database. Turner has an MWBE database. This  
21 database itself is not just a concrete sub, a  
22 drywall sub. We refer to those a prime  
23 contractors, contractors that we would hold the  
24 contract with.



1           We also keep track of on our  
2 projects who are the lower tier subcontractors.  
3 So, for concrete it would be rebar, who is  
4 performing rebar. For drywall it might be a  
5 taper. So, we've always kept track of those  
6 individual companies, minority and women  
7 businesses and veteran businesses who do work  
8 on our projects that they're certified. They  
9 are who they say they say and they're  
10 performing the work that is specified.

11           So, we will utilize that database.  
12 But again that is not the be-all end-all  
13 database. That's why we reached out to the  
14 local MBDA center, Warren Bacon. We reached  
15 out to Dr. Fred. We reached out to Reggie  
16 Nunnally. And we're also talking right now to  
17 Massachusetts Minority Contractor Association  
18 to say here's the scope and here are the bid  
19 packages that are going to be taking place.  
20 Can you recommend qualified contractors and  
21 lower tier contractors?

22           So, that's some of the outreach that  
23 we're trying to do prior to even meeting with  
24 the advisory committee just because we have

1 those partnerships in place already. The great  
2 thing about going to the advisory committee was  
3 we were able to meet other organizations that  
4 we don't know where we can hopefully do the  
5 same thing.

6 Part of the reason we don't want to  
7 wait is because we know that the schedule will  
8 be such that awards are going to start  
9 happening. And you have to do this before the  
10 bid packages go out. It has to be -- outreach  
11 has to happen in advance. So, that's really  
12 where the push is right now to build our  
13 database of qualified subcontractors and lower  
14 tier.

15 Something very important to mention,  
16 I know Jill and I have talked about because the  
17 goal is combined. It's 11 percent MBE and WBE.  
18 On the project, we will be tracking  
19 participation of both separately to make sure  
20 that we make opportunity available for both  
21 minority businesses and women businesses as  
22 well as the veteran business piece as well, but  
23 that's already separate. So, that is something  
24 that's very important to us as well.

1           CHAIRMAN CROSBY: That's something I  
2 was going to ask about. Within the 11 is there  
3 a plan? Is there a target for what the MBE  
4 proportion would be?

5           MS. STANTON: So, we have not  
6 established separate goals. We are keeping  
7 them combined. Again, the reason for that is  
8 that the real numbers that we had to base these  
9 goals on were the disparity study done for  
10 DCAM, which was very helpful because it  
11 actually provided the numbers that were  
12 available in construction for the Commonwealth  
13 not just Boston. That's important to us. We  
14 want to involve, be inclusive of all businesses  
15 in the Commonwealth. And then also, the state  
16 goal is combined as well. Again, I don't  
17 consider myself an authority to try to -- I  
18 want to use what exists.

19           MS. BAILEY: We wanted to be  
20 consistent with what was already set and what's  
21 already been published and what's been studied.

22           CHAIRMAN CROSBY: That's been a  
23 subject of some criticism that we've heard.  
24 That by combining minority and women, you end

1 up disguising frequently or at least  
2 potentially you end up disguising the hard  
3 part, which is the -- the harder part which is  
4 the minority business.

5 MS. STANTON: Especially in this  
6 area, which I know people are often surprised  
7 by, but there tends to be more participation on  
8 the WBE side. I think a good example of this  
9 is we're getting ready now to make one of our  
10 first awards, finishing up some things with  
11 licensing.

12 But we're going to make an award to  
13 a larger company that is an MBE. Discussions  
14 were had with all of the bidders early on, even  
15 this company, to say okay, even though you are  
16 an MBE, you still need to come to the table  
17 with a plan. We're not just hanging our hat,  
18 okay, we've awarded the MBE, and that's the  
19 end.

20 So, this company is committing, it's  
21 an initial early commitment that we will track,  
22 but their early commitment is that they will be  
23 using a lower tier WBE for supplies. Then also  
24 using a local company for materials as well.

1           So, we feel that as I said, we will  
2 be tracking them separately. So, we'll be  
3 tracking number of awarded contracts and volume  
4 and payments so that we'll be able to make sure  
5 that there is a spread that it is not  
6 predominately W even though we are following  
7 that combined goal, we want to see  
8 participation on both sides.

9           COMMISSIONER MCHUGH: So, we can get  
10 from you if we choose reports that will give  
11 the combined as well as the separate.

12           MS. STANTON: Yes, 100 percent.

13           MS. GRIFFIN: Commissioners, can I  
14 just point out? We actually have required them  
15 to report to us separately. So, we will have  
16 that.

17           COMMISSIONER STEBBINS: The statute  
18 calls for it.

19           MS. GRIFFIN: The statute calls for  
20 it.

21           MS. STANTON: And also as I said,  
22 we'll report on number of contracts awarded as  
23 well down to the lower tiers. So, you'll be  
24 able to see that data also.

1           COMMISSIONER STEBBINS: One of the  
2 concerns I have is you set a goal for veteran  
3 participation I think on the workforce side --  
4 no, on the subcontractors side but not on the  
5 workforce side. To add to Dr. Fred's  
6 participation and Reggie's participation, it'd  
7 be great if we can find somebody from the  
8 Vendor Advisory Group who's specifically  
9 working with the veterans.

10           Again, we've talked about it before.  
11 This is kind of a new avenue for all of us to  
12 try to figure out where the resources are and  
13 where the touch points can be. But I would  
14 make that suggestion to you as well.

15           The letter that Jill included in the  
16 packet talked about quick turnaround, quick  
17 payment. Could talk about how you might be  
18 able to facilitate that? Obviously, cash flow  
19 for small companies is a huge issue.

20           MS. BAILEY: That's actually  
21 something Penn already does. Actually, not  
22 only just on a construction side, but as well  
23 as our regular operational procurement  
24 programs. That's not something that's not

1 unfamiliar to us.

2           We traditionally -- In construction,  
3 you're traditionally running most projects are  
4 60- to 90-day payment cycles. We've  
5 traditionally kept it at 30 days for fast pay  
6 turnaround. I saw in the letter that they had  
7 asked for 14 days. It's something we will take  
8 a look at, but it's not something we're not  
9 used to already doing.

10           COMMISSIONER STEBBINS: Okay. One  
11 of the members of our Vendor Advisory Team, we  
12 do have people on that team who are dealing  
13 with technical assistance to small businesses,  
14 kind of making that encouragement that we  
15 understand it's a cash flow issue but giving  
16 them a chance to sit down with somebody who  
17 might be able to help them manage through those  
18 cash flow issues would be encouraged.

19           MS. BAILEY: Even things like  
20 prepurchasing materials so they don't have to  
21 put their capital out for materials. All of  
22 these kinds of things we deal with on a one-on-  
23 one basis with businesses that are in need of  
24 that kind of assistance.

1                   COMMISSIONER STEBBINS: Just in  
2 going back to one of the other points that Mr.  
3 Cofield raised, you talked about that third  
4 group which is kind of the pre-/post design and  
5 construction services that are needed. Do  
6 those find their way into these numbers? Or is  
7 that a separate expense or something you could  
8 still revisit in terms of trying to induce some  
9 more --

10                   MS. BAILEY: That's something I need  
11 to understand a little bit more as to exactly  
12 what Mr. Cofield is referencing. Here in what  
13 we've included is our construction in the  
14 phases in which we've outlined in the plan.

15                   In terms of professional services  
16 like legal, accounting and all of those kinds  
17 of things, a lot of that is handled obviously  
18 in-house by our companies or from our corporate  
19 attorneys and corporate accounting. As a  
20 publicly traded company, we obviously have a  
21 lot of those mechanisms already in place. But  
22 we're certainly happy to examine exactly what  
23 it is that he's looking for and what other  
24 opportunities there might be.



1           CHAIRMAN CROSBY: I think that's a  
2 really straightforward idea. There's no reason  
3 not to -- wherever there is outside services  
4 that is related to the full cycle of the  
5 project to include that in the requirements.  
6 That is something that I would think makes a  
7 lot of sense.

8           MR. RAUEN: I think there was a good  
9 idea by the gentleman here, quite frankly one I  
10 hadn't thought of before, and that's post  
11 construction audit. We routinely audit our  
12 projects. We usually have it done by the firm  
13 Ernst and Young who does our corporate audit.  
14 Certainly, we can look at other sources to do  
15 that type of work.

16           CHAIRMAN CROSBY: That's right. And  
17 that's exactly what he was asking and I  
18 appreciate you're taking that as a good  
19 suggestion.

20           There's another idea that we've  
21 heard about. The reality of it is  
22 unfortunately that the number of small  
23 businesses out there, particularly minority  
24 small businesses, but women too that can handle

1 big projects are pretty few. Just because 16  
2 percent of the population is one thing doesn't  
3 mean 16 percent of the companies can handle 16  
4 percent of the volume.

5           But you can partner with folks and  
6 be creative about partnering. Take your Ernst  
7 and Young could partner with a local minority  
8 firm. Maybe the local minority firm wouldn't  
9 have the chops to be an auditor for a Penn  
10 National. But they could partner with a  
11 minority firm and lay a chunk of the work off  
12 on that firm and get credit themselves.

13           And the same thing is true with all  
14 of this other work. Even the design work,  
15 which is ongoing. The point here is to use  
16 this moment in time and the leverage of this  
17 public commitment to address a whole host of  
18 issues. And one of them is the lack of  
19 expertise, lack of wealth, lack of business  
20 opportunity in the minority community.

21           So, you ought to think of ways to  
22 force it through the pipeline. One way would  
23 be to go to your design firms who are well into  
24 it and partner with a smaller minority design

1 firm. Some of the work that your existing  
2 design firm was going to get, gets laid off on  
3 that smaller firm. There's a mentoring  
4 relationship that gets built. They get to know  
5 each other.

6           And I think that's something that  
7 you should require people. Use that as a tool  
8 to get past the understandable initial there's  
9 nobody out there, it's too slow or whatever.  
10 But I think you could think of ways through  
11 partnering to access a larger amount of the  
12 dollars and still do business with at a primary  
13 level the nature of the people that you for  
14 understandable reasons need to do business with  
15 or are doing business with.

16           COMMISSIONER MCHUGH: But it also  
17 seems to me that this has got to be a  
18 collaborative effort on the part of everybody.  
19 For example, Mr. Cofield represents a region  
20 wide organization and suggestions as to how to  
21 improve the outreach, specific suggestions and  
22 those kinds of things would be enormously  
23 helpful for people who are receptive in trying  
24 to do it.

1           I fully agree with what the Chairman  
2 just said, but I do think that everybody who  
3 wants to make this thing work and make it a  
4 success has an opportunity now to not only say  
5 this is not good enough, but here's a couple of  
6 ideas that you might try.

7           And it seems to me that we've got a  
8 receptive audience and this collaboration will  
9 be helpful in making it work.

10           COMMISSIONER STEBBINS: The Vendor  
11 Advisory Team is that somebody we've hoped  
12 would have a monthly interaction. Again, we  
13 know that this project is on a pretty tight  
14 timeframe to open up within a year. Some of  
15 the traditional reporting requirements that we  
16 had thought about at every quarter, we just  
17 felt too much could slip through the cracks at  
18 that point.

19           So, having Jill keep our Vendor  
20 Advisory Team together and organized in  
21 attempting to meet once a month hopefully  
22 allows, I think to Mr. Cofield's point the  
23 chance to jump on some problems before they get  
24 too big and nobody can address them.

1           I'm wondering is there a way we can  
2 -- It seems like there's two outstanding  
3 issues. One is consideration of any  
4 enforcement/penalty provisions, which are  
5 talking to some outside folks about how you  
6 might incorporate in this. As well as it seems  
7 this pre- and post-design construction work  
8 that might be available out there as well. Is  
9 there any way we can approve this -- I'm  
10 assuming you're looking for us to vote to  
11 approve or disapprove this report, but approve  
12 this report with those contingencies and  
13 hopefully you'll come back to us and address  
14 those?

15           MS. BAILEY: Happy to.

16           MS. STANTON: I think we both view  
17 this -- Obviously, there's certain things we  
18 want to make sure we focus on the goals and be  
19 proactive in working towards those and getting  
20 approval there is important. But we view this  
21 as a fluid document, something that we want to  
22 -- It's a base. It's not to say this is it,  
23 this is what we're doing. We want input. We  
24 want collaboration. We want insight so that

1 this grows as the project grows. So, we would  
2 definitely be open to that.

3 COMMISSIONER STEBBINS: No pressure  
4 that you're the first one out-of-the-box and  
5 that we have other projects coming down the  
6 line.

7 CHAIRMAN CROSBY: And we should be  
8 straightforward about this. We are all in a  
9 learning cycle. And we've got the three casino  
10 contracts coming up. And we're getting our  
11 training wheels on too. And we want to do this  
12 as well as we can. We're learning what we're  
13 doing well enough and what we're not. We'll be  
14 better the next time around.

15 COMMISSIONER STEBBINS: In light of  
16 that, I know our Category 1 folks left but they  
17 may not find themselves in a similar position  
18 as Penn found themselves kind of stepping in  
19 and assuming this project. But knowing that  
20 all of our Category 1's are doing some level of  
21 this preconstruction, the design work, etc.  
22 even though it's not the bulk of the work in  
23 that phase, we ought to remind them to be  
24 mindful that looking for this minority, women

1 and veteran business participation better be  
2 first and foremost even though they haven't  
3 been awarded a license that they can  
4 demonstrate that effort to us in the end.

5 CHAIRMAN CROSBY: I wanted to  
6 explore the enforcement mechanism too. You  
7 were talking about the Boston PLA, which I  
8 assume is essentially a commitment to use -- to  
9 pay union level wages and therefore to use  
10 union labor in Boston construction projects?

11 MR. COFIELD: Yes. And as a part of  
12 that PLA agreement there is language for three  
13 areas and a commitment for Boston residents,  
14 minority workforce and women workforce. And  
15 there are sanctions included in the PLA  
16 agreement if the contractor does not or the sub  
17 does not meet those goals after some point of  
18 working with them they just don't meet the  
19 goals. There's the opportunity for sanctions.  
20 And that's in the PLA agreement.

21 CHAIRMAN CROSBY: And do you know  
22 what they are offhand, the kinds essentially?  
23 Are they financial penalties?

24 MR. COFIELD: Yes. They certainly

1 include financial penalties. I don't remember  
2 specifically what they are. I can get it to  
3 Jill to the Commission.

4 COMMISSIONER CAMERON: I've never  
5 seen it with goals because if you have a  
6 financial penalty, it'll become a quota.

7 MS. STANTON: That's how we  
8 understood it also and kind of what we  
9 discussed last time when Commissioner McHugh  
10 asked a similar question. That's our  
11 understanding as well.

12 COMMISSIONER MCHUGH: You need to be  
13 very careful about that and get some really  
14 good advice before we go down that road,  
15 particularly with things in the state of flux  
16 that they are now in that area. And we want  
17 this to succeed. We don't want this thing to  
18 get cratered. It's a highly technical area and  
19 we don't want to get it cratered because we  
20 just stepped across the line too far.

21 CHAIRMAN CROSBY: I agree.

22 COMMISSIONER MCHUGH: And the same  
23 thing, we want to be vigorous.

24 CHAIRMAN CROSBY: I do believe and



1 my experience with this industry now, now in my  
2 wealth of two years of experience, I found this  
3 industry to be as sensitive and as genuine in  
4 their commitment to issues of diversity and  
5 workforce and supplier base and sort of  
6 inclusive cultures as pretty much genuine as  
7 I've seen in any industry, certainly a lot more  
8 than a lot I could mention.

9           So, I don't believe that these folks  
10 are just blowing smoke. I think the track  
11 records are pretty good. So, looking for more  
12 teeth here is less critical in a way than if I  
13 were dealing with an industry that I thought  
14 was just really here blowing smoke that didn't  
15 really care that was just trying to go through  
16 the motions, just trying to make us happy and  
17 go away.

18           Having said that, teeth are better  
19 than no teeth. And enforcement mechanisms are  
20 better than no enforcement mechanisms. I think  
21 within the limits and the sensitivities to the  
22 law that is something that I would like us to  
23 find. How far can we go and what more teeth  
24 can we apply? And then seriously consider

1 going however far that is. I guess I'm with  
2 Commissioner Stebbins that I would like to keep  
3 this issue open and let us keep pushing.

4 I want to come back to the numbers  
5 because I raised this too at the last meeting  
6 if you remember that the numbers struck me as  
7 -- I think the design is a legitimate concern  
8 although, as I said, I think there are ways  
9 around even that that you could address. But I  
10 think that's a fair concern, particularly posit  
11 relatively good faith here.

12 But beyond that the numbers are  
13 really just kind of the baseline norm  
14 acceptable rather than pushing the envelope,  
15 rather than putting a standard out there that  
16 is going to force people to stay up nights and  
17 really push hard. I'm not exactly sure. There  
18 are certain constraints you have to hire within  
19 -- There are best efforts at least to hire  
20 within Plainville and within surrounding  
21 communities. And I don't know what's in and  
22 what's out. I don't know whether Taunton is in  
23 or out. I don't know whether Brockton is in or  
24 out. But you apparently decided not to rethink

1 those numbers after we talked.

2 MS. BAILEY: We did rethink --

3 CHAIRMAN CROSBY: You rethought it  
4 and decided not to change them.

5 MS. BAILEY: -- and went back to the  
6 experts at Turner that were able to give us the  
7 guidance as well as the members of the Vendor  
8 Advisory Team. And we are comfortable with  
9 where we are at and the goals that we've set.  
10 As you'll even notice on the veteran -- the  
11 veteran goals are not really the height of  
12 conversation today. There's actually at the  
13 suggestion of the Vendor Advisory Team that we  
14 set the veteran goal as an aspirational because  
15 they believed that that's going to be a tough  
16 goal at three percent to meet.

17 So, we didn't put on aspirational at  
18 simply because we think we're going to have  
19 a challenge getting to that point. And really  
20 we're not comfortable pushing beyond that based  
21 on the expertise provided to us as well as the  
22 feedback we received.

23 MS. STANTON: And to your point also  
24 about the goals being where they are. We're

1 pushing every subcontractor that is close to  
2 winning to try to meet that 11 percent within  
3 their contract. So, that's kind of going a  
4 little above and beyond also because the hope  
5 is that if you push for that in every award,  
6 you're going to exceed that goal overall. So,  
7 that's how we're proactively approaching that.

8 MS. BAILEY: And I think you talk  
9 about this being sort of the first out of the  
10 gate and setting the standard. Because of what  
11 we've already started to do in terms of the  
12 awards and going to the lower tier  
13 subcontractors of the subcontractors we hope  
14 that that model in itself is something that  
15 others will follow. Because typically these  
16 kinds of awards and these kinds of programs are  
17 usually just sort of a first-tier, top-tier,  
18 you check box and people walk away.

19 That's not been Penn's experience or  
20 way of doing things. And certainly not the way  
21 we're going to be doing it here. We're going  
22 to be going into those several layers below our  
23 primes and our subs. And we hope that actually  
24 sets the model for the rest of the Commonwealth

1 and the other facilities that will be built  
2 over the next few years.

3 MR. RAUEN: While we listen  
4 carefully to Turner about what the market can  
5 do and deliver, it doesn't take away from our  
6 goal here and that's to excel and to do well.  
7 And we don't stop when we get to 11 percent.  
8 We push these guys very hard and so far the  
9 results have been pretty encouraging.

10 CHAIRMAN CROSBY: Meaning what?

11 MR. RAUEN: We have a couple of  
12 packages that are about to be awarded and the  
13 MBE participation is far better than I thought.  
14 And how deep they've dug and how hard they've  
15 pushed, I am encouraged. So we don't stop at  
16 11 percent.

17 CHAIRMAN CROSBY: Okay. Was the  
18 plan here that we would vote on this?

19 MS. GRIFFIN: That was the plan.

20 CHAIRMAN CROSBY: Just in  
21 summarizing to Mr. Cofield's letter, I guess  
22 we've talked quite a bit about the numbers.  
23 And I do think as I said I'm sensitive to the  
24 design issue. I think that does make some

1 sense, but I think there's ways to push the  
2 envelope no matter what. I hope you'll take  
3 advantage of the regional chapter of the NAACP  
4 in terms of outreach as well as all of the  
5 other, but there's one thing you want to be  
6 able to do right it's the outreach.

7 MS. STANTON: I met Mr. Cofield at  
8 the first vendor advisory meeting, and  
9 definitely opened to his feedback.

10 MR. COFIELD: But you didn't follow  
11 up.

12 MS. STANTON: I gave you my card.

13 MR. COFIELD: I gave you my card.

14 MS. STANTON: Then we need to get  
15 together.

16 MR. RAUEN: And neither of you  
17 called me. So, let's talk and figure out what  
18 we can do.

19 CHAIRMAN CROSBY: Good, that's the  
20 idea. The enforcement mechanism we're going to  
21 look into. Were there other comments from our  
22 advisory group about either the numbers or the  
23 enforcement mechanisms? Did our advisory group  
24 look at this and say they were okay with this?

1           MS. GRIFFIN: I had several verbal  
2 comments that indicated they were okay with the  
3 numbers. The numbers weren't a concern.  
4 Unfortunately, they did not put their comments  
5 in writing.

6           CHAIRMAN CROSBY: That's all right,  
7 but it was reviewed by our advisory group. And  
8 our advisory group did not raise that  
9 particularly as an issue?

10          MS. GRIFFIN: That's right.

11          CHAIRMAN CROSBY: We are presuming  
12 towards expanding the pre-/post definition into  
13 the total package of goods and services that  
14 are being measured. I think we have a pretty  
15 strong sense that we like that idea and that's  
16 a legitimate issue and you responded favorably  
17 to that.

18                 As far as the history of diversity  
19 if that is a useful part of the conversation,  
20 you can have that. But I am less interested in  
21 the history than in the future.

22          COMMISSIONER STEBBINS: That first  
23 call can be your references.

24          MS. STANTON: That's fine.

1           CHAIRMAN CROSBY: Commissioner  
2 Stebbins do you want to -- I think we want to  
3 move this ball forward but we want to leave  
4 some issues open for further work.

5           COMMISSIONER STEBBINS: Mr. Chair, I  
6 would move that the Commission give preliminary  
7 approval to the diversity plan for the design  
8 and construction phase of Plainridge Park  
9 Casino with subsequent issues to be addressed  
10 which are discussion around enforcement  
11 penalties and expanded definition of pre- and  
12 post-design work for MBES, WBES and VBES.

13           CHAIRMAN CROSBY: Second?

14           COMMISSIONER CAMERON: Second.

15           CHAIRMAN CROSBY: Any further  
16 discussion? Maybe as soon as next round, two  
17 weeks from now you give us an update on where  
18 we are on those issues.

19           MS. GRIFFIN: Okay. Sounds good.

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

22           COMMISSIONER MCHUGH: Aye.

23           COMMISSIONER CAMERON: Aye.

24           COMMISSIONER STEBBINS: Aye.



1           CHAIRMAN CROSBY:  Opposed?  Four to  
2 zero adopted.  Thank you all very much.

3           Now we need to move to the rest of  
4 your audience here.  I am going to take a very  
5 quick break.

6

7           (A recess was taken)

8

9           CHAIRMAN CROSBY:  Thank you for  
10 waiting around, folks.  What's next?

11           MS. GRIFFIN:  Commissioners, I  
12 wonder if I could suggest that we go to section  
13 8e of the agenda.  In section 8e, Commissioners  
14 you have a memo from Commissioner Stebbins and  
15 myself.  In that memo we recommend proposed  
16 legislative changes to the expanded gaming law  
17 relative to section 16 of Chapter 23K related  
18 to the automatic disqualifiers specifically for  
19 gaming service employees.  The automatic  
20 disqualifiers as you know are felony, theft,  
21 fraud and embezzlement.

22           CHAIRMAN CROSBY:  So, it is any  
23 felony or a conviction for theft or a  
24 conviction for fraud or is it a felony which is

1 about theft or fraud?

2 MS. GRIFFIN: It's a conviction -- I  
3 should probably have one of the attorneys.

4 CHAIRMAN CROSBY: Just explain  
5 exactly what -- The automatic disqualifier is  
6 exactly what?

7 MR. GORSSMAN: The way I read the  
8 statute and the way our regulations reflect  
9 what the statute says, this is section 16 of  
10 Chapter 23K, it's a felony or a conviction for  
11 fraud, theft, perjury or embezzlement or  
12 something like that. I always forget exactly.

13 COMMISSIONER CAMERON: Misdemeanors  
14 in those areas.

15 CHAIRMAN CROSBY: Fraud, theft,  
16 perjury and maybe something else or a  
17 characterization. So, I wasn't sure if it  
18 meant for or or. It's any felony or  
19 convictions, got it. Thank you.

20 MS. GRIFFIN: As you may remember,  
21 we received correspondence from Action for  
22 Regional Equity, a coalition of more than 10  
23 community organizations and One Everett, a  
24 local coalition, as well as Unite Here local

1 26. And I have members of those organizations  
2 behind me. And some were here earlier but had  
3 to leave. They have advocated for changes  
4 related to the non-gaming service jobs. And  
5 I've included those letters in your packet.

6 CHAIRMAN CROSBY: Was the Action for  
7 Regional Equity was that the group that led the  
8 CORI reform fight in the Legislature last time?

9 COALITION MEMBER I: No, we were  
10 not. The organizations that were part of  
11 leading that and were in the leadership of that  
12 was the Boston Workers Alliance and (INAUDIBLE)  
13 which is out of Worcester are part of our  
14 regional coalition.

15 CHAIRMAN CROSBY: When you're taking  
16 a position, you're of the same mind as the  
17 folks who led that other CORI fight?

18 COALITION MEMBER I: We are actively  
19 representing them minute to minute.

20 COALITION MEMBER II: And I am one  
21 of the leaders from that.

22 CHAIRMAN CROSBY: Okay, great.  
23 Thank you.

24 MS. GRIFFIN: So, you'll note in the

1 memo it's our view that the mandatory  
2 disqualifications of gaming service employees  
3 works at cross purposes with the Legislature's  
4 policy declaration of providing new employment  
5 opportunities in all sectors of the economy,  
6 particularly opportunities for the unemployed.

7           You'll note that we did consult with  
8 our consultants Michael and Carroll. They  
9 compared other gaming jurisdictions and also  
10 made the recommendation that we consult with  
11 the Legislature regarding changes to the  
12 statute.

13           CHAIRMAN CROSBY: Did we consult  
14 with them?

15           MS. GRIFFIN: We engaged them to  
16 compare the other jurisdictions. The other  
17 point is that keeping registration as a  
18 requirement for gaming service employees would  
19 allow the Commission to know who was working  
20 within the footprint of the property. It also  
21 retains the Commission's authority to remove an  
22 employee from the property potentially.

23           We also learned from our consultants  
24 that it's standard practice within the gaming

1 industry for casinos to conduct background  
2 checks and in many cases drug tests as well.

3           We also asked our applicants and our  
4 licensee for their views on this. You'll note  
5 in your book that MGM has provided an opinion  
6 through an email from one of their attorneys.  
7 They suggested that we look at other  
8 jurisdictions such as Nevada and New Jersey.  
9 And they further suggested that the level of  
10 the position -- we should focus on the level of  
11 position and the access folks who are handling  
12 cash, issuing credit or have access to  
13 confidential or sensitive information should of  
14 course be handled in a different manner than  
15 the gaming service employees.

16           We also received a letter from  
17 Mohegan Sun which detailed other areas that  
18 you're focusing on regarding the statute  
19 change. But they did indicate that they would  
20 like to take the opportunity to work with us  
21 regarding the proposed legislative changes for  
22 the automatic disqualifiers. They didn't raise  
23 an objection in that letter.

24           COMMISSIONER CAMERON: Well, I think

1 that's an important piece. Because we could  
2 make a change, but if our licensees are not  
3 willing to also embrace this case-by-case basis  
4 method, it really doesn't help. So, the fact  
5 that they're willing and that MGM is asking us  
6 to look at jurisdictions which do not have this  
7 automatic disqualifier any longer I think is a  
8 positive to what this is trying to accomplish.

9 COMMISSIONER STEBBINS: Again, this  
10 question was born out of a number letters that  
11 we received. And I think Mr. Chairman you were  
12 thinking should this be part of the package of  
13 legislative changes that we send to the  
14 Legislature.

15 I think we certainly know that some  
16 of our applicants are seeking licenses to  
17 construct facilities in areas that have higher  
18 rates of unemployment. I think we're mindful  
19 of the fact that the statute's goal was to  
20 create new job opportunities for people who  
21 might be long-term chronically unemployed,  
22 unemployed or underemployed. And looking at  
23 this disqualification period even beyond 10  
24 years if you're seeking a gaming employee

1 license or a gaming service registration, you  
2 would still have to prove rehabilitation.

3           So, to look at the issue and even  
4 recommend to the Legislature would they  
5 consider just allowing a demonstration of  
6 rehabilitation within that 10-year period I  
7 think is a conversation worth having. I'm not  
8 sure what drove them initially to have that 10-  
9 year disqualification period.

10           But then you look beyond that and  
11 let's say a change does happen now, what does  
12 that mean for the Gaming Commission in terms of  
13 licensing. The Gaming Commission in terms of  
14 licensing, the Gaming Commission in terms of  
15 our Bureau of Investigations and Enforcement  
16 Bureau. What are the standards for  
17 rehabilitation, it depends on any number of  
18 felonies. It depends on the misdemeanors.

19           And at the same time even though we  
20 may drop the requirement as Commissioner  
21 Cameron just pointed out, what are our  
22 licensees prepared to do? Again, you want to  
23 look at somebody's efforts to rehabilitate  
24 themselves. I guess the best way to avoid

1 going back to jail is having a job. And what  
2 are the corrective steps we can make to have  
3 that happen?

4           There certainly are going to be  
5 felony offenses that are never going to allow a  
6 person to enter and work in a gaming facility.  
7 It's a huge list. And I think the  
8 rehabilitation piece and the determination of  
9 that on our part is going to create additional  
10 work for us. But it's a conversation beginning  
11 -- worth having.

12           COMMISSIONER CAMERON: I think our  
13 Licensing and our IEB are very, very capable of  
14 looking at this on a case-by-case basis and  
15 making a recommendation to us. And we have the  
16 ability to look at it as well and make a  
17 determination. Director Acosta tells me it  
18 will be additional work, but I certainly think  
19 it's worth work that we are willing to take on  
20 to make sure we are providing opportunities  
21 when they're deserved.

22           MS. WELLS: It may be helpful to  
23 work with the licensees on gathering some data  
24 to provide to the Legislature on this issue.



1 Because sitting here before you, I don't know  
2 how many potential applicants are going to be  
3 out of the box just because the licensee  
4 excluded them based on their background where  
5 if the law was different, they may have come to  
6 us, and we may have taken a case-by-case look.

7 So, it might be helpful to get that  
8 information and then present that to the  
9 Commission if the licensees would be willing to  
10 sort of do an analysis of what kind of  
11 applicants they're getting for these types of  
12 jobs.

13 CHAIRMAN CROSBY: For gaming service  
14 employees today there's a rehabilitation for  
15 more than 10 years. What the proposal in the  
16 Cambridge Health Alliance letter is I guess  
17 that there be no term, no timeframe. That  
18 there is an automatic disqualification however,  
19 for anybody, it could be overcome by evidence  
20 of rehabilitation. That's what CHA is  
21 recommending.

22 I'm not quite clear what you are  
23 recommending.

24 MS. GRIFFIN: That's the Action for

1 Regional Equity letter, just to clarify.

2 CHAIRMAN CROSBY: It's signed by  
3 Cambridge Health Alliance. So, what you are  
4 recommending is that for any -- no matter when  
5 the crime occurred, when the conviction  
6 occurred that anybody should have an  
7 opportunity to demonstrate rehabilitation.

8 MS. GRIFFIN: That's correct.

9 COMMISSIONER STEBBINS: To be clear  
10 when the conviction occurred and making sure  
11 that the sentence has been served.

12 COMMISSIONER MCHUGH: All we would  
13 really have to do is take out -- We just have  
14 to have a slight change in 16B, right?

15 CHAIRMAN CROSBY: Yes. Take out  
16 which occurred before the 10-year period  
17 immediately preceding the application for  
18 licensure.

19 COMMISSIONER MCHUGH: Right.

20 CHAIRMAN CROSBY: That would tie it  
21 to what the coalition is saying.

22 COMMISSIONER MCHUGH: Right.

23 CHAIRMAN CROSBY: The thing that I  
24 was thinking about on this is what this does is

1 it puts the burden of proof on the offender to  
2 prove rehabilitation. I'm not exactly sure how  
3 you prove rehabilitation. But I wondered  
4 whether -- I'm just talking out loud here. For  
5 example, for convictions 10 years or more why  
6 should they have to prove rehabilitation? If  
7 they haven't done anything wrong, if they  
8 haven't had any problems in 10 years that seems  
9 to me on its face that's evidence of  
10 rehabilitation.

11           Maybe if it's more recent -- Is  
12 there any point at which the presumption  
13 suitability should be with the applicant even  
14 with a criminal conviction as opposed to the  
15 burden of proof of suitability be with the  
16 applicant no matter what if he's convicted of a  
17 crime. Is that understandable?

18           COMMISSIONER MCHUGH: Yes. But it  
19 seems to me that that in part should be based  
20 on or take into account the crime. If it's a  
21 theft or an embezzlement crime that's one  
22 thing. And we could do this by regulations.  
23 If it's home invasion involving something that  
24 happened in the home, I think we'd want a lot

1 more. And the burden conceivably could stay  
2 with the applicant for the rest of his or her  
3 life.

4           But I think if you take out and give  
5 us the discretion -- If the Commission has the  
6 discretion to deal with this either on a case-  
7 by-case basis or on a categorical basis with  
8 regulatory burden shifting or the like, I think  
9 we could come up with a scheme that would make  
10 great good sense and do justice.

11           The way this is written now theft is  
12 shoplifting, right? Or somebody's trying to  
13 feed their children, steals some milk, that is  
14 one that if some sentence or fine is imposed,  
15 it seems to me that might not ought to have the  
16 burden. But we could deal with it.

17           COMMISSIONER CAMERON: I just think  
18 it would be easier to overcome is what you're  
19 saying. That's the case-by-case piece.

20           COMMISSIONER MCHUGH: Sure. That's  
21 one way to do it. But you could also have a  
22 series of regulations that say for misdemeanors  
23 presumptively the burden is overcome after  
24 three years.

1                   COMMISSIONER CAMERON:  If there are  
2  30 of them?

3                   COMMISSIONER MCHUGH:  Presumptively,  
4  30 of them may defeat the presumption.  All I'm  
5  saying is there are various ways to handle  
6  that.  And I don't think there should be a  
7  burden shift one way or the other for  
8  everything.  I think it's more nuanced than  
9  that.

10                  MS. WELLS:  It would certainly be  
11  helpful for some guidance, because the more  
12  sort of abstract this becomes, it becomes more  
13  difficult for us to make recommendations to the  
14  Commission.  We also want equity among all of  
15  these potential applicants that are looking for  
16  licensure.  So, it should be fair across the  
17  board regardless of who's coming in or where  
18  they live, something like that that they're  
19  treated equally.

20                  COMMISSIONER MCHUGH:  Right.  If we  
21  get the 10-year period out of there, then we  
22  have a lot of room to maneuver and to create  
23  regulations and other kinds of procedures to  
24  deal with this.

1           CHAIRMAN CROSBY: Right. If we  
2 could get the Legislature to simply take out  
3 that 10-year clause and we would assure the  
4 Legislature that if they did that then we would  
5 put in via regulation the nuance.

6           COMMISSIONER STEBBINS: I think  
7 we're strictly talking about 16B. We're just  
8 talking about gaming service employees, leave  
9 the gaming employees with the same requirement.

10          COMMISSIONER MCHUGH: Right.

11          COMMISSIONER CAMERON: Yes.

12          COMMISSIONER STEBBINS: We as a body  
13 have not talked about this issue. I don't know  
14 if we have ever raised it with the architects  
15 of the legislation as to why it found its way  
16 in there. But it's a helpful conversation to  
17 start to have.

18          COMMISSIONER MCHUGH: It's a  
19 derivative, it seems to me of the preceding  
20 section in which they are talking about key  
21 gaming employees and the like in which there  
22 isn't that 10-year, there isn't any  
23 rehabilitation. So, it seems to me that we're  
24 trying to keep bad people out and they didn't

1 really stop and carefully think of what the  
2 consequences of this were.

3 MR. GROSSMAN: Can I just pick up on  
4 one point that Commissioner Stebbins just  
5 raised. 16B applies to gaming registrants and  
6 gaming employees, I believe. If you were to  
7 change 16B and were to remove the 10-year  
8 window for both of those categories.

9 COMMISSIONER STEBBINS: I'm saying  
10 only make the change relative to gaming service  
11 employees.

12 MR. GROSSMAN: Just to gaming  
13 service employees.

14 CHAIRMAN CROSBY: As opposed to?

15 MR. GROSSMAN: Gaming employees as  
16 well. Keys are in paragraph A, everyone else  
17 is paragraph B.

18 The other distinction is that there  
19 is a burden that's placed on the gaming  
20 employees to demonstrate their qualification by  
21 clear and convincing evidence. There is no  
22 burden on the registrants. There's a  
23 presumptive issuance of a registration to an  
24 applicant for a registration. So, it's a

1 little different process, not that that would  
2 affect this discussion, but it's just something  
3 to bear in mind.

4 CHAIRMAN CROSBY: So, it's not as  
5 simple as just taking out that one clause?

6 MR. GROSSMAN: It could be, but I  
7 just wanted to make sure everyone was clear on  
8 that point.

9 CHAIRMAN CROSBY: It would include  
10 gaming employees.

11 MR. GROSSMAN: Yes.

12 CHAIRMAN CROSBY: But that's not  
13 what we're talking about.

14 MR. GROSSMAN: I'm not sure. That's  
15 why I'm --

16 CHAIRMAN CROSBY: What's a gaming  
17 employee? A gaming employee is like a  
18 bartender in a --

19 MR. GROSSMAN: Dealer, surveillance,  
20 count room.

21 MR. DAY: Security personnel.

22 CHAIRMAN CROSBY: Right. I don't  
23 think we're talking about applying this to that  
24 category of people. We're only talking about



1 the gaming service employees, which is what  
2 you're saying too.

3 MS. GRIFFIN: That's right.

4 COMMISSIONER CAMERON: Yes.

5 CHAIRMAN CROSBY: Which is what  
6 you're saying too. So, that would require --

7 COMMISSIONER STEBBINS: As Todd  
8 points out gaming employees and gaming service  
9 employees right now have this 10-year exclusion  
10 thing.

11 COMMISSIONER MCHUGH: So, we'd have  
12 to separate them.

13 CHAIRMAN CROSBY: We'd have to  
14 separate them, right.

15 COMMISSIONER MCHUGH: That would  
16 stay for the gaming employees and disappear for  
17 the gaming service employees, right.

18 MR. GROSSMAN: Yes.

19 CHAIRMAN CROSBY: Right. Is anybody  
20 opposed to that? I think we agree.

21 COMMISSIONER MCHUGH: I think it's a  
22 good idea.

23 CHAIRMAN CROSBY: So, we need to --  
24 When we put something together in the

1 Legislature, we'll need to say exactly what the  
2 amendment would look like. And maybe you could  
3 help us draft this up make sure we're saying  
4 what we mean to be saying. Commissioner, do  
5 you want to make a motion? I think we're  
6 there.

7                   COMMISSIONER STEBBINS: Sure. Mr.  
8 Chairman. I move that the Commission encourage  
9 the inclusion in a potential legislative packet  
10 of an amendment to section 16, which would  
11 eliminate the automatic disqualifier language  
12 for a gaming service employee.

13                   CHAIRMAN CROSBY: Second?

14                   COMMISSIONER CAMERON: Second.

15                   CHAIRMAN CROSBY: Any further  
16 discussion? All in favor signify by saying  
17 aye. Aye.

18                   COMMISSIONER MCHUGH: Aye.

19                   COMMISSIONER CAMERON: Aye.

20                   COMMISSIONER STEBBINS: Aye.

21                   CHAIRMAN CROSBY: Opposed? The ayes  
22 have it unanimously four to zero. Thank you  
23 all very much.

24                   COMMISSIONER MCHUGH: Thank you.

1           CHAIRMAN CROSBY: We'll be trying to  
2 finalize our submission to the Legislature  
3 maybe by next meeting two weeks from now.

4           You've got something else, right?  
5 You've got the training school. You have one  
6 other?

7           MS. GRIFFIN: I have the training  
8 school. Commissioners, I am here to present  
9 draft 205 CMR 141 regulations that pertain to  
10 gaming schools.

11           These regulations focus on schools  
12 that teach people to be dealers, slot machine  
13 technicians or surveillance personnel. They  
14 cover private for profit and nonprofit schools  
15 that are under the jurisdictions of the  
16 jurisdiction of the Department of Professional  
17 Licensure and also Community Colleges who  
18 report to the Department of Higher Education,  
19 if these schools decide to open training  
20 related to gaming.

21           Training offered by a gaming  
22 licensee for its own employees is exempt from  
23 these draft regulations. And I'd add this is a  
24 first draft. And we're looking forward to your

1 thoughts on the direction that we're going.

2           One of the goals of this regulation  
3 is to ensure that we're tracking actual gaming  
4 equipment consistent with federal guidelines.  
5 This tracking of the equipment is in section  
6 140.05. We also recommend that instructors  
7 have at least five years of practical  
8 experience in the area that they are seeking to  
9 instruct. That's in section 141.04.  
10 Curriculum guidelines are provided in 141.02  
11 for the purposes of outlining a model  
12 curriculum.

13           Regarding the curriculum, these  
14 draft regulations outline this model curriculum  
15 for schools to follow. It's based on several  
16 other jurisdictions and specifically the  
17 Atlantic Cape curriculum. We did have phone  
18 calls with both the Department of Professional  
19 Licensure and the community colleges, the Mass.  
20 Casino Careers Training Institute.

21           The Mass. Gaming Commission would  
22 maintain a list of certified schools on its  
23 website. In order to be certified, a school  
24 would have to submit to the Commission's

1 division of licensing the following  
2 information: proof of licensure by either DPL  
3 or Mass. Department of Labor and Workforce  
4 Development or the Department of Elementary and  
5 Secondary Education, a curriculum outlining the  
6 courses, an itemized list of gaming equipment  
7 in addition to the other.

8 I invite my colleagues Todd Grossman  
9 or David Acosta to add to my remarks if I  
10 inadvertently left something out.

11 COMMISSIONER STEBBINS: Mr.  
12 Chairman, this goes back pre-Jill actually,  
13 very early on when the community colleges  
14 raised the concern with us that as gaming has  
15 expanded in other states that consumers need to  
16 be on the lookout for kind of fly-by-night  
17 poker schools, people that are looking to come  
18 in and make a quick buck. So, I think there  
19 was some element of consumer protection in all  
20 of this.

21 I think Commissioner McHugh and I  
22 had some earlier conversations with DPL. And  
23 DPL said, hey, listen, we're happy to monitor  
24 these private, for profit schools. But where

1 we could really use the Commission's help was  
2 with respect to help us understand what  
3 curriculum we should be looking for, what the  
4 level of experience of the instructors are.

5           So, this is really driven I think by  
6 the need to protect the consumer. We don't  
7 know how many schools may pop up, but we all  
8 decided early on that we wouldn't necessarily  
9 have the community colleges be the exclusive  
10 trainer. If for some reason the school popped  
11 up closer to somebody's home that was more  
12 convenient, we didn't want to take away that  
13 opportunity. But I think this helps the  
14 consumer, it helps give guidance to DPL if  
15 these regs. go forward. And again, we're  
16 charged with making sure there's a well-trained  
17 workforce in this new industry. And this is  
18 connected to that statute priority as well.

19           COMMISSIONER MCHUGH: I have some  
20 comments and things, but that's why this is  
21 here. And I'll send them off. I'm not going  
22 to deal with them now. I think this is a  
23 really good start.

24           I thematically wonder why going back

1 to what you just said, Commissioner, about the  
2 early status of this, those initial  
3 conversations, why it is that we are taking on  
4 the licensing and enforcement role here as  
5 opposed to simply setting out the curriculum  
6 and letting DPL which has the inspectors, it  
7 has the mechanisms, it has the hearing folks.  
8 It's got all of that set up that it does for  
9 all of the other trade schools, why are we  
10 setting up a parallel universe?

11 MR. GROSSMAN: I think I can take  
12 that one. We set out initially to do that. To  
13 essentially be able to say to any of the  
14 schools including the community colleges go get  
15 licensed as a trade school by DPL and come to  
16 us and we'll put you on our list.

17 What we learned though is that the  
18 statutes authorizing DPL to oversee trade  
19 schools contains a number of exemptions to  
20 their jurisdiction. One of them essentially is  
21 that they have no jurisdiction over essentially  
22 post-secondary schools offering these types of  
23 courses.

24 So, they could not oversee the

1 community college programs. One of the other  
2 exemptions is for I think essentially employers  
3 training their employees. So, that would be  
4 exempt.

5           So, we found ourselves in a  
6 situation where DPL could not legally oversee  
7 the community college segment of this program,  
8 which we envisioned to be at least at the  
9 beginning to be the most substantial segment of  
10 it. So, we set out to create a set of  
11 regulations that would essentially capture that  
12 essence, which is let the regulatory bodies who  
13 directly oversee these particular schools do  
14 their thing and then come to us. And we will  
15 essentially just offer you our certification as  
16 a matter of course assuming you're following  
17 their regulations. And that is the intention.

18           The caveat being that it was  
19 suggested to us by DPL and the community  
20 college folks to a degree that it would be  
21 helpful to have a set curriculum that they have  
22 to follow. DPL, if you're familiar with their  
23 program, they don't have necessarily the  
24 expertise in each of the areas for which they



1 license these schools.

2           So, they look to bodies like ours to  
3 advise them as to what should be in the  
4 curriculum and what qualifications the  
5 instructor should have. Then they have the  
6 administrative know-how to go out and enforce  
7 those rules.

8           So, that's why we thought it  
9 important to set out a set of standards by  
10 which the schools would operate. We modeled in  
11 large part these standards by those the state  
12 of Pennsylvania uses as far as the number of  
13 hours and things along those lines. And as far  
14 as the surveillance goes, we looked to the  
15 Atlantic Cape Community College program. And  
16 that's what we look for for the slot tech.  
17 program as well.

18           But to answer your question directly  
19 that's why we weren't able to just say go get  
20 licensed at DPL.

21           COMMISSIONER MCHUGH: Okay. That's  
22 very helpful. And I agree that we need to set  
23 out the curriculum and these regulations set it  
24 out well.

1           But we also have a whole, beginning  
2 with 141.06, we take on responsibility for  
3 discipline. And it's that enforcement power  
4 that I thought DPL was uniquely equipped to do  
5 and wonder why we are doing that. We are  
6 probably less adept at that than DPL would be.

7           I also wonder with respect to the  
8 community colleges, which have an oversight  
9 body they couldn't just be exempted from this  
10 although required to follow -- but that's a  
11 minor thing. I'll raise that and we can think  
12 about it some more. Why are we taking on the  
13 disciplinarian and enforcement role here as  
14 opposed to DPL?

15           MR. GROSSMAN: We are and we aren't.  
16 I thought it was important to include some  
17 infrastructure in the event that something  
18 happened. One of the primary reasons I think  
19 we would envision that we would take any  
20 disciplinary action is if the overseeing entity  
21 took disciplinary action then we would have to  
22 take the corresponding action based upon that.

23           COMMISSIONER MCHUGH: Why wouldn't  
24 we just accept their disciplinary outcomes?

1           MR. GROSSMAN: We could, but then we  
2 would have to use that for some purpose and  
3 that would be to decertify.

4           COMMISSIONER MCHUGH: Right.

5           MR. GROSSMAN: So, that's what it's  
6 for. It's foreseeable I thought that something  
7 else could happen that you would want to take  
8 some disciplinary action against one of these  
9 entities. This would give you the  
10 infrastructure to do that.

11           But the bottom line is I think one  
12 of the reasons we are here is to make sure that  
13 the Commission is comfortable with this model  
14 that we've proposed, not wed to any of these  
15 things, just presenting them to you. So, that  
16 in two weeks or so we can look to start to move  
17 this into the promulgation process.

18           COMMISSIONER MCHUGH: I understand  
19 that. That's what -- I'm talking about the  
20 model. I'm talking at a high level. So, if we  
21 had a model that said basically the DPL or  
22 other licensing boards, whoever licenses or  
23 oversees the community colleges, they certify  
24 the program. They come to us.

1           This is the curriculum you have to  
2 follow. We certify you as following the  
3 curriculum. And we leave it to those governing  
4 bodies to oversee execution of the curriculum.  
5 Then if there's a departure from the  
6 curriculum, a teacher is misbehaving or the  
7 school is misbehaving, the DPL or the community  
8 college board takes an action against them. On  
9 receipt of that, receipt of a certified copy of  
10 that we decertify them. That's a slightly  
11 different model.

12           MR. DAY: I think that's actually  
13 what we're attempting to get at here. One  
14 thing about the certification we didn't mention  
15 is it's also designed to track gaming equipment  
16 and the possession and use of gaming equipment  
17 under these particular circumstances.

18           So, there is one area pretty that  
19 we're much going to have to do -- could maybe  
20 do it under a separate rule for controlled  
21 gaming equipment or something like that. We  
22 thought it might fit just as well in here.

23           The idea was definitely, you see it  
24 in the first section 141.01(3) essentially the

1 key way we certify somebody is through proof of  
2 licensure by the professional -- by DPL or  
3 Workforce Development or the Department of  
4 Secondary Education. So, we're basically  
5 looking at, not that easy but they license we  
6 certify.

7           The other part of the concept was as  
8 Todd has mentioned, we would rely on them to  
9 take an enforcement action. But it's our  
10 certification that if we were going to pull it  
11 from somebody, at least it was the thought that  
12 we would need some kind of a process in order  
13 to take that kind of action as well.

14           Then we were struggling over the  
15 curriculum. And maybe it's part of my  
16 struggle, but there were some concerns I think  
17 about the Commission adopting a curriculum and  
18 then the process of changing it, updating it.  
19 Is it 60 hours for blackjack? Is it 120? Is  
20 it instructor five years or should they be  
21 three years, and how would we go about the  
22 process to change that? So, we have debated a  
23 little bit between a model rule or a model  
24 regulation or a model curriculum process as

1 opposed to straight adoption under regulation  
2 as well.

3           So, I agree Commissioner McHugh.  
4 What we were trying to get here though is is  
5 exactly what you're describing, certification  
6 so we know who the gambling schools are, where  
7 the equipment is. Employ what we would say are  
8 the experts in education and instruction as the  
9 primary approval authority. And then have that  
10 ability to at least have a list or a  
11 certification of who's in that club. I think  
12 that's pretty close to what we were trying to  
13 come up with here.

14           MR. GROSSMAN: I think that's right.  
15 I just circle back, Commissioner McHugh, to  
16 your question. The reason we put this  
17 infrastructure in place was just to ensure that  
18 if a situation were to arise that you wanted to  
19 decertify a school and perhaps DPL or  
20 Department of Higher Education didn't take any  
21 action that your hands wouldn't be tied, and  
22 you'd have some way to take that action. Even  
23 though it may not be our intention right now to  
24 utilize these provisions for any other reasons,

1 if something did happen this is how you would  
2 do it.

3           Otherwise, we're kind of stuck if we  
4 just say the only reason we will decertify you  
5 is if DPL takes action against you. So, that's  
6 really the only reason the end provision was  
7 included. But otherwise, I agree  
8 wholeheartedly.

9           To pick up on what Mr. Day just  
10 said, as you'll see in this draft, we frame  
11 this as model curriculum. That was something  
12 that met with some resistance from DPL  
13 specifically. And they were suggesting that we  
14 create just a curriculum, and say this is what  
15 the curriculum has to be. So, we should also  
16 look at whether we take out the word should and  
17 model and things like that and just say this is  
18 the curriculum.

19           And that of course, as with anything  
20 else, if someone has a better idea, a more  
21 inventive idea that can before the Commission,  
22 seek a variance and say I want to have my  
23 course be 100 hours instead of 120 hours and  
24 here's why.

1           COMMISSIONER MCHUGH: All right.  
2 That's really helpful. I'll take another a  
3 look at it with that in mind. That's helpful.  
4 Thank you.

5           CHAIRMAN CROSBY: This is just a  
6 draft. We're putting it out there right? So,  
7 it's for our comment as well as everybody  
8 else's.

9           MR. GROSSMAN: If it's okay, we can  
10 post this.

11           COMMISSIONER MCHUGH: I would like  
12 to -- I will make some comments promptly. But  
13 I understood this is phase one of this thing  
14 for internal comment. And then we go to phase  
15 two, which is public comment?

16           MR. DAY: That's correct.

17           COMMISSIONER MCHUGH: This ready for  
18 our internal.

19           CHAIRMAN CROSBY: So, you wouldn't  
20 post this yet.

21           MR. GROSSMAN: We'll wait.

22           COMMISSIONER MCHUGH: I really would  
23 like to take another look at this in light of  
24 what you just explained, and some of my



1 comments are going to go away.

2 MR. GROSSMAN: Okay.

3 CHAIRMAN CROSBY: All right, great.

4 We have a decision to make. It's quarter to  
5 five. Commissioner McHugh and I have a very  
6 hard stop at five. And I was hoping to  
7 actually be out before that. There is no way.  
8 We have quite a few things left to do all of  
9 which need to get done, 7a and then 8a through  
10 d, I think.

11 I'm wondering whether we could not  
12 adjourn completely and get together tomorrow  
13 morning or tomorrow afternoon, sometime  
14 tomorrow? No?

15 MS. BLUE: We haven't posted it as a  
16 continuation of the meeting. We could meet on  
17 Tuesday if we post it tomorrow.

18 COMMISSIONER MCHUGH: Doesn't the  
19 law allow you to just announce now that we're  
20 going to continue? We're not adjourning the  
21 meeting. We're just taking a 16-hour recess.

22 MS. BLUE: We have not done that in  
23 the past. Where we've had multiple days, we  
24 have posted. So, we would be probably better

1 served to post to get together Tuesday  
2 afternoon or potentially Wednesday morning.

3 CHAIRMAN CROSBY: I don't think we  
4 ought to be constrained by what we've done in  
5 the past necessarily. If the public meeting  
6 law accepts --

7 COMMISSIONER MCHUGH: I don't know  
8 that it does.

9 MS. BLUE: I don't believe that it  
10 does.

11 CHAIRMAN CROSBY: Loretta, are you  
12 shaking or nodding?

13 MS. LILLIOS: It requires a 48-hour  
14 posted notice.

15 CHAIRMAN CROSBY: For a second day?

16 MS. LILLIOS: Correct. It has not  
17 been posted initially as a two-day meeting.

18 CHAIRMAN CROSBY: Okay. All right  
19 then we're stuck.

20 COMMISSIONER MCHUGH: Maybe we ought  
21 to include that in our legislative request for  
22 fixes.

23 CHAIRMAN CROSBY: We should post  
24 everything for two days. We've got bigger

1 issues than that if we're going to take on the  
2 open meeting law. But we should always post  
3 for a second day because we know this is going  
4 to happen a lot.

5 MR. DAY: Mr. Chairman, just a  
6 couple of suggestions. I don't know if it  
7 would help. Item number seven, slot standards  
8 and approval process regulations, essentially  
9 we've been here before with an initial draft.  
10 We've taken the initial draft out, had some  
11 stakeholder comments and interior comments,  
12 made a lot of changes to that draft, but it is  
13 essentially for the same purpose here is just  
14 to have the Commission take a look at it. And  
15 then we'd like to put it for public comment.  
16 So, we can take those back, make any changes  
17 and prepare for the formal process.

18 So, I guess I would suggest that the  
19 Commission probably doesn't need to formally  
20 deliberate over this today if you wanted to  
21 save some time.

22 CHAIRMAN CROSBY: You mean just go  
23 ahead and post it?

24 MR. DAY: Just go ahead and post it.

1           CHAIRMAN CROSBY: I don't think  
2 anybody would have a problem with that.

3           COMMISSIONER MCHUGH: No, they're in  
4 very good shape.

5           MR. DAY: The policy handbook, we've  
6 already done item €. The policy handbook is  
7 hopefully something I can get the Commission to  
8 consider today. And that's just to adopt the  
9 changes, the revisions of the existing policy  
10 handbook that the Commission has had. We were  
11 hoping to be able to ask the Commission to  
12 adopt those changes so we can move that as a  
13 foundation forward in our overall development  
14 policy development process.

15           The quarterly report and monitoring  
16 process, although Derek is here, the quarterly  
17 report is written and is in each one of the  
18 packets. So, I'm not sure that you'd have to  
19 take time with that again today. Then we can  
20 also refresh it when we do the '15 report on  
21 May 1.

22           The monitoring process, of course,  
23 would be about 10 minutes or so.

24           CHAIRMAN CROSBY: There's no such

1 thing as 10 minutes. I really have a hard  
2 stop.

3 MR. DAY: Hard stop at now?

4 CHAIRMAN CROSBY: At five at the  
5 latest, I don't want to run the risk of getting  
6 into something. Is that the only thing we've  
7 got left?

8 MR. DAY: We basically have got the  
9 monitoring process and the policy handbook  
10 revisions. It depends on what the Commission  
11 thinks on the policy handbook revisions.

12 COMMISSIONER CAMERON: That's a  
13 living breathing document, the handbook. So, I  
14 don't have any problems. We will be making  
15 changes to that continually. We're having a  
16 couple of folks look at some different things.  
17 I read through it. I don't have any issues. I  
18 don't think it's something we have to spend a  
19 lot of time with, the handbook.

20 CHAIRMAN CROSBY: I was hoping to  
21 use this time as a chance to get highlights  
22 because I hadn't read it yet. If everybody  
23 else is comfortable with that I'm certainly  
24 comfortable with it.

1           COMMISSIONER CAMERON:  And the plan  
2  is --

3           CHAIRMAN CROSBY:  We can go back at  
4  that at any time.

5           COMMISSIONER CAMERON:  Yes.

6           MR. DAY:  The plan is is to take  
7  this version and submit it and actually move  
8  forward with the policy manual development.  
9  And each section will come back before the  
10 Commission again.

11          COMMISSIONER MCHUGH:  Then do we  
12 need an approval of this?  This is just a  
13 template.  Is a general approval of the content  
14 enough to move forward?

15          MR. DAY:  Yes.

16          COMMISSIONER MCHUGH:  Recognizing  
17 that each section of it is going to come back  
18 to the Commission for final approval.

19          MR. DAY:  Yes, each section  
20 probably.

21          COMMISSIONER MCHUGH:  And if we have  
22 some comments to make about that, we could just  
23 submit them so you could start accumulating  
24 comments for when it comes back.

1           MR. DAY: It would be very helpful,  
2 yes.

3           COMMISSIONER CAMERON: The  
4 monitoring team, Pinck and Company are giving  
5 me the five-minute that's all they need.

6           CHAIRMAN CROSBY: Five minutes,  
7 let's go.

8           MR. DAY: While we're assembling,  
9 does that mean we have a general approval of  
10 the policy revision to go forward with?

11          COMMISSIONER CAMERON: We do.

12          MR. DAY: Thank you very much.

13          MS. PINCK: Good afternoon. I  
14 promise not to take a lot of time on this. I  
15 do appreciate a few minutes at the end of the  
16 day to give you a quick overview of the  
17 approach to what we're calling compliance  
18 monitoring and reporting.

19                 I've been working very closely with  
20 Mr. Day and Commissioner Zuniga and some of the  
21 staff to come up with an approach to monitoring  
22 and reporting on the design and construction of  
23 the slot parlor in Plainville.

24                 So, what we've done is developed

1 what I am calling the OPM PMP, Oversight  
2 Project Management Program Management Plan.  
3 And it's something that we make a habit of  
4 doing on all of our projects which is to  
5 develop a guide for the entire team to  
6 accomplish their work.

7           The goals of this PMP is I think not  
8 limited to but really are about getting --  
9 making sure the revenue to Commonwealth arrives  
10 on time. The benefits to the Commonwealth are  
11 delivered. And that the licensee complies with  
12 the statutory, regulatory and license  
13 conditions among other things.

14           So, very quickly there's seven  
15 general areas that we're going to focus on.  
16 The number one importance is really the  
17 schedule. And I'll talk a little bit about  
18 each of these is as we move along, workforce  
19 and supplier diversity, facility design and  
20 construction, construction mitigation,  
21 financial, host and surrounding community  
22 agreements, and permits and approvals.

23           So, the PMP will address what we're  
24 going to do with each of these. The PMP also



1 will address how we do it. Today I'm going to  
2 really focus on the what we are doing, not how  
3 we're doing. That we'll work out with the  
4 staff.

5           Particularly, we'll address how we  
6 will coordinate -- what the review and approval  
7 process is for the things that you, the  
8 Commission, must approve. That's mostly and  
9 very much related to safety and surveillance.  
10 So, the first way we're going to approach this  
11 is we need to know what are the commitments,  
12 which we are very familiar with having been  
13 part of the evaluation process. They come from  
14 the items that you'll see on this slide, which  
15 I will skip over, the statutory, regulatory,  
16 etc.

17           Schedule development and review.  
18 The very first thing we will do is review and  
19 approve the developer's preliminary and  
20 detailed baseline schedule. And as the project  
21 progresses updates. And we will report  
22 monthly. They will report quarterly. We will  
23 forecast the really important milestones,  
24 particularly related to the things that the

1 Gaming Commission staff must approve. Because  
2 we don't want to be accused of holding them up,  
3 but you also want to be able to plan when do I  
4 need to look at this thing.

5           The schedule that we'll work with  
6 the developer to develop -- They'll develop it,  
7 we'll review it. -- has to be all-inclusive.  
8 We want everything related to the design and  
9 construction, but we also want those other  
10 things such as that are included in the  
11 surrounding community agreements where they  
12 have to do baseline studies prior to opening.  
13 So, we want that there so they know that we  
14 know that they're planning to do it before the  
15 facility opens.

16           It has to identify the critical  
17 path. It has to allot specific timeframes  
18 particularly for MGC actions. We would want it  
19 cost and resource loaded and updated monthly.  
20 The schedule is really the tool that we will  
21 use in the whole, during the life of the  
22 project.

23           Workforce and supplier diversity, we  
24 are a part of the team that will help make sure

1 these benefits accrue. We will review and  
2 monitor the plan. The M, the W and the veteran  
3 business enterprises both during design and  
4 construction, dollars committed, dollars spent,  
5 workforce and local hiring. And we will report  
6 independently because Penn's contract is going  
7 to report to us. We are going to have access  
8 to their data and do independent monitoring.  
9 I'm going to go faster. That's workforce and  
10 supplier diversity.

11 I'm going to just highlight the  
12 things here that are really important on the  
13 rest of the pages. Facility design and  
14 construction, the most important thing is to  
15 identify track schedule the things that the  
16 Gaming Commission staff must review and  
17 approve, safety and surveillance. As well as  
18 making sure they are complying with the design  
19 intent.

20 Construction mitigation monitoring,  
21 financial making sure that they comply with the  
22 financial requirements on the investment but  
23 also on their position, which is contained in  
24 the law.

1           Host and surrounding community  
2 agreements, we will keep a light tab on things.  
3 We want to make sure that there are not major  
4 issues a brewing that will show up in the  
5 newspaper. So, we'll keep a light tab on those  
6 kinds of things.

7           Permits and approvals, pretty much  
8 the same thing. We're not the DEP. We're not  
9 the highway department. We just want to really  
10 keep tabs on them and make sure that there's  
11 not trouble a brewing. And that there isn't  
12 anything that arises as a result of a permit  
13 condition that would alter their plan that you  
14 need to know about.

15           Then we're meant going to be doing  
16 reporting. And you'll see in your packet a  
17 template for a report that we worked with with  
18 the staff. And I know I spoke earlier today  
19 with the folks from Turner. And the data that  
20 we will report to you is exactly the data that  
21 they would expect us to be collecting. And  
22 they even also are going to make it accessible  
23 to us in a form that makes it easy and it's not  
24 an extensive manual effort.

1           And you'll see the last is the PMP,  
2 the table of contents. So, you'll see it's not  
3 only what we're doing but how we're doing it.  
4 And that's what we're working with Executive  
5 Director and the staff to come up with rules  
6 and regulations, if you will, maybe too high of  
7 a word, regulations, but how we're going to do  
8 this, so we know what we're doing.

9           It's a large team and it could  
10 potentially be very confusing. We don't want  
11 things falling through the crack, nor do we  
12 want five people doing what one person could  
13 do. And then lastly you'll see that we're  
14 making some checklists so we know what we're  
15 checking.

16           MR. DAY: Jennifer, you have your  
17 first meeting with Penn next week.

18           MS. PINCK: Next week, yes. So,  
19 that's my five-minute overview of the OPM PMP  
20 for the slots parlor Plainville.

21           COMMISSIONER CAMERON: Okay, a lot  
22 of P's.

23           COMMISSIONER STEBBINS: We should  
24 note we hired a WBE to do this work.

1           CHAIRMAN CROSBY:  Yes, right.  I  
2  wanted to talk about this some more.  This is  
3  something that's really important, but we'll  
4  have other opportunities talk about it.  So, I  
5  appreciate your rushing through it.

6           MS. PINCK:  We're getting going.

7           CHAIRMAN CROSBY:  The same thing is  
8  true as this is true of so many other things,  
9  we're sort of getting our systems up and  
10 running and getting the bugs out on the smaller  
11 operation so we're ready to go forward.

12          COMMISSIONER MCHUGH:  In that  
13 regard, I think this is really a very robust  
14 thoughtful thing.  The community liaison piece  
15 I am particularly interested in and look  
16 forward to discussing when we come back and  
17 discuss it.  Because I think both as a stalking  
18 horse for the larger developments and in and of  
19 itself is a really important part of this  
20 entire --

21          MS. PINCK:  I would agree.  And I  
22 think as a stalking horse it's important the  
23 way it looks in Plainville I suspect is very  
24 different than the way it will look in

1 Springfield or the Boston area.

2 COMMISSIONER MCHUGH: Right, right.

3 MS. PINCK: Thank you very much for  
4 the five minutes.

5 MR. DAY: We'll put the project  
6 monitoring status update on in two weeks.

7 CHAIRMAN CROSBY: Great. Motion to  
8 adjourn.

9 COMMISSIONER CAMERON: So moved.

10 COMMISSIONER MCHUGH: So moved.

11 COMMISSIONER STEBBINS: So moved.

12 CHAIRMAN CROSBY: Unanimously.

13 CHAIRMAN CROSBY: Thank you all very  
14 much.

15

16 (Meeting adjourned at 5:00 p.m.)

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## 1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission April 17,  
3 2014 Notice of Meeting and Agenda
- 4 2. Massachusetts Gaming Commission Meeting  
5 March 6, 2014 Meeting Minutes
- 6 3. Massachusetts Gaming Commission Meeting  
7 March 20, 2014 Meeting Minutes
- 8 4. Massachusetts Gaming Commission Meeting  
9 April 3, 2014 Meeting Minutes
- 10 5. Massachusetts Gaming Commission 3/31/2014  
11 Licensing Schedule Update Region B
- 12 6. Massachusetts Gaming Commission 3/31/2014  
13 Licensing Schedule Update Region C  
14 Scenario 1
- 15 7. Massachusetts Gaming Commission 3/31/2014  
16 Licensing Schedule Update Region C  
17 Scenario 2
- 18 8. Massachusetts Gaming Commission 3/31/2014  
19 Licensing Schedule Update Region C  
20 Scenario 3
- 21 9. Comment Letters Summary Issues

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23

24



- 1 ATTACHMENTS:
- 2 10. April 14, 2014 Massachusetts Gaming  
3 Commission Memorandum Regarding Discussion  
4 of Eligible Costs for Minimum Investment  
5 Amount - Region C with attachments
- 6 11. April 15, 2014 City of Somerville  
7 Memorandum
- 8 12. April 15, 2014 Mintz Levin Memorandum
- 9 13. April 16, 2014 Mintz Levin Memorandum
- 10 14. Massachusetts Gaming Commission April 16,  
11 2014 Memorandum Regarding Region A  
12 Arbitration Extension Requests
- 13 15. Plainridge Racecourse March 14, 2014  
14 Memorandum Regarding Key Operating  
15 Personnel
- 16 16. Plainridge Racecourse April 7, 2014  
17 Memorandum Regarding 2014 Racing Officials
- 18 17. Massachusetts Gaming Commission April 17,  
19 2014 Memorandum Recommendation Regarding  
20 Split Sample Laboratories for 2014
- 21 18. Massachusetts Gaming Commission Horses  
22 First and Attachments
- 23 19. Model Legislation for a National Racing  
24 Regulatory Entity

- 1 ATTACHMENTS:
- 2 20. Massachusetts Gaming Commission April 17,  
3 2014 Memorandum Regarding Horses First
- 4 21. RCI Medication Advisory
- 5 22. 205 CMR 135
- 6 23. Diversity Plan for the Design and  
7 Construction Phase of Plainridge Park  
8 Casino
- 9 24. Coastal Construction & Management  
10 Memorandum
- 11 25. DRAFT 205 CMR 141
- 12 26. DRAFT 205 CMR 138
- 13 27. DRAFT 205 CMR 139
- 14 28. DRAFT 205 CMR 140
- 15 29. Massachusetts Gaming Commission Gaming Lab  
16 Operating Model Roles
- 17 30. Pinck and Company Oversight Project  
18 Management Program Management Plan
- 19 31. Massachusetts Gaming Commission April 17,  
20 2014 Memorandum Regarding FY14 Third  
21 Quarter Budget Update
- 22 32. Massachusetts Gaming Commission Employee  
23 Handbook  
24

1 ATTACHMENTS:

2 33. Massachusetts Gaming Commission April 10,  
3 2014 Memorandum Regarding Proposed  
4 Legislative Changes Regarding Chapter 23K,  
5 Section 16

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## 1 GUEST SPEAKERS:

2 Karen Bailey, Penn National

3 Juan Cofield, New England Area Conference NAACP

4 Emil Giordano, Turner Construction

5 Michael Mathis, MGM Springfield

6 Jed Nosal, Brown Rudnick, LLP (MGM Springfield)

7 Jennifer Pinck, Pinck and Company

8 John Rauen, Penn National

9 Alison Stanton, Turner Construction

10 Tony Starr, Mintz Levin (Wynn Resorts)

11 Frank Wright, Somerville City Solicitor

## 12 MASSACHUSETTS GAMING COMMISSION STAFF:

13 Catherine Blue, General Counsel

14 Richard Day, Executive Director

15 Jennifer Durenberger, Director of Racing

16 Jill Griffin, Director Workforce, Supplier and

17 Diversity Development

18 Todd Grossman, Deputy General Counsel

19 Karen Wells, Director of Investigations and

20 Enforcement Bureau

21 John Ziemba, Ombudsman

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## C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 22nd day of April, 2014.

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