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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #188 VOLUME 3

CHAIRMAN
Stephen P. Crosby

COMMISSIONERS
Gayle Cameron
Lloyd Macdonald
Bruce W. Stebbins
Enrique Zuniga

April 28, 2016 10:30 a.m.- 1:37 p.m.

THE SHAW'S CENTER
1 Feinberg Way
Brockton, Massachusetts

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

2

3 CHAIRMAN CROSBY: We are reconvening
4 public meeting 188 of the Massachusetts Gaming
5 Commission at the Shaw's Center in Brockton at
6 about 10:30 a.m. on April 28.

7 We have a couple of preliminary
8 items. First of all, there's a brief update
9 from Director Karen Wells of the Investigations
10 and Enforcement Bureau on the suitability
11 status of our applicant.

12 MS. WELLS: Good morning, Mr.
13 Chairman and members of the Commission. As I
14 reported to you on I guess it was Tuesday, I
15 had received information from the applicant
16 about not only violations that had occurred and
17 regulatory issues that had occurred since the
18 suitability update, but also some pending
19 matters. And there were three pending matters
20 in Pennsylvania that were resolved yesterday.
21 So, I thought I would come before you just to
22 give you the results of those hearings in front
23 of the Pennsylvania Gaming Control Board.

24 These are consent agreements that

1 were entered into yesterday. All three of
2 these matters were reported to you on Tuesday
3 as pending matters.

4 At the Rivers Casino, the
5 Pennsylvania Gaming Control Board issued a
6 \$7,500 fine. This is for the dealer that was
7 denied a renewal of his license but the casino
8 allowed him to work an extra 16 days. That
9 incident occurred in August 2014, it was now
10 resolved.

11 The second matter is from the
12 Sugarhouse Casino in Pennsylvania. In that
13 case, there was a consent agreement for a
14 \$33,000 fine. That is for three self-excluded
15 people being allowed to play at the casino.
16 Once identified, the casino did not confiscate
17 the winnings and did not timely notify board
18 compliance officers. That matter occurred in
19 2015.

20 CHAIRMAN CROSBY: It's part of their
21 rules that they would take winnings?

22 MS. WELLS: Correct. In addition,
23 there was a another \$15,000 fine levied against
24 the applicant Sugarhouse Casino. In that case,

1 two persons on the state exclusion list were
2 allowed to play. And once identified, similar
3 to the prior notification, their winnings were
4 not confiscated and they did not notify board
5 compliance officers in a timely manner. Both
6 of those were in April 2015.

7 So, the \$7,500 fine, the \$33,000
8 fine, the \$15,000 fine are in line with the
9 other fines that you saw, which I reported out
10 to you on Tuesday. They are also in line with
11 similar fines for similar offenses for casinos
12 across the country.

13 COMMISSIONER CAMERON: Director
14 Wells, I assume that these are reasonable
15 resolutions in your mind. And that your
16 recommendation that the company remain suitable
17 is certainly still the case today?

18 MS. WELLS: Correct. This is what I
19 would've expected given the information I
20 received from Mr. Donnelly as they were pending
21 matters.

22 COMMISSIONER CAMERON: Okay. So,
23 they handled it in a timely manner.

24 MS. WELLS: Yes.

1 COMMISSIONER CAMERON: Great, thank
2 you.

3 CHAIRMAN CROSBY: Anybody else?

4 COMMISSIONER CAMERON: We never
5 followed up on Director Wells' recommendation.
6 I would agree with Director Wells that although
7 we heard about some concerning matters, the
8 actions taken after the fact were certainly
9 appropriate. And I agree with your
10 recommendation that MG&E remains suitable
11 moving forward.

12 CHAIRMAN CROSBY: Further comments?
13 Go ahead, please.

14 COMMISSIONER MACDONALD: I was going
15 to get to this later, but on this, I am deeply
16 concerned, gravely concerned about the
17 \$1,650,000 fine and the facts of the
18 investigation that were reported to us by Ms.
19 Wells.

20 I agree and affirm my support for
21 her recommendation, the substance of which is
22 that if we today or tomorrow vote to approve a
23 conditional license, that the oversight
24 thereafter by our Investigations and

1 Enforcement Bureau be enhanced by a condition
2 to the license.

3 And one of the thoughts that I had,
4 I am not proposing it, but for our
5 consideration should we get to that point and
6 this borrows on my experience in much earlier
7 life in which I did quite a bit of SEC
8 enforcement work. To borrow from a remedy that
9 the SEC in serious failures of internal
10 controls adopts, namely that a compliance
11 monitor, independent compliance monitor be
12 appointed. The SEC typically appoints such
13 person or names such persons and then the
14 subject of the investigation pays for the
15 expenses of that professional's work.

16 As I say, I'm not proposing it, but
17 I on a full review of the circumstances of the
18 retention of the security and maintenance
19 contractor, the questionable background of Mr.
20 Simon, the even more questionable background
21 about one of his senior executives is something
22 that I think unusual measures are required for
23 it.

24 So, I adopt Ms. Wells'

1 recommendation and would propose as I just
2 stated to consider even more thorough remedies
3 to assure the integrity of our licensing
4 process and our operations going forward.

5 CHAIRMAN CROSBY: Anything else
6 anybody? I was going to make the same point.
7 That some of the press coverage neglected to
8 mention that you made a recommendation that if
9 we do make the award that because particularly
10 of the transaction in Illinois that we set up
11 some kind of regulatory, special regulatory
12 environment such as that suggested by
13 Commissioner Macdonald.

14 And the other thing I would say is I
15 have enormous respect for you all. If you all
16 judge this applicant or any other applicant to
17 be suitable, I think there's a huge degree of
18 presumption that we would go along with your
19 recommendation. And I do.

20 I just will say for the record that
21 missing somebody who is on a voluntary self-
22 exclusion list is a perfectly understandable
23 problem. It's hard. People who are addicted
24 to gambling are sick, have a terrible trouble.

1 They try to help themselves and then they sneak
2 in. And it's a terrible problem. And it's
3 hard for any casino operator to catch those.
4 They can clearly be good-faith accidents.

5 But to not take their winnings and
6 to not report the event is a different matter.
7 That's a real serious failure of training.
8 It's not something we would be at all happy
9 with. And I take it from your standpoint,
10 these are big operations. They have three
11 facilities. These things are going to happen.
12 I totally get that.

13 But those are avoidable errors. The
14 VSE problem is not an avoidable error, the
15 others are. I think that should be noted.
16 Having said that I am certainly happy with your
17 bottom line.

18 MS. WELLS: Certainly, for example,
19 if there are requirements for example at a
20 poker game -- If there are internal controls
21 that need to be followed, for example, if
22 someone is buying into a poker game,
23 identification is required before you enter
24 into a poker game so that they can run that ID.

1 Those are the types of internal controls on
2 voluntary excluded persons we need to make sure
3 are followed.

4 CHAIRMAN CROSBY: Right.

5 COMMISSIONER STEBBINS: Picking up
6 on the Chairman's comments, I guess I would
7 find myself having a different viewpoint about
8 the self-exclusion folks and understand it
9 happens.

10 I'm a little more concerned about
11 the assessment that was assigned to Rivers in
12 Pittsburgh for the unlicensed dealer who
13 remained on the job for almost two weeks. So,
14 if you can just share a little more detail
15 about that?

16 MS. WELLS: Mr. Donnelly provided me
17 with the consent agreement. The stipulated
18 facts are actually quite basic. Initially, in
19 2011 the employee was granted an initial gaming
20 employee permit as a table games dealer. That
21 permit was to expire July 18, 2014.

22 In May 2014, he submitted a renewal
23 application for his gaming employee permit. In
24 August 2014, so this would be after his permit

1 expired, he was issued a recommendation of
2 denial letter. Then in October, the Board
3 issued an order denying his renewal application
4 for a gaming employee permit.

5 During the period between October
6 2014 and November 7, 2014, he worked at Rivers
7 for 21 days for a total of 153.5 hours without
8 a valid gaming employee permit.

9 And then October 14, 2014 the
10 Board's denial order was sent by email to
11 Rivers Vice President of Human Resources. So,
12 after notice was given to Rivers that his
13 application for gaming employee permit was
14 denied, he then worked for the time period of
15 16 days as a table games dealer without the
16 permit. He was actively employed by Rivers
17 until November 7, 2014.

18 So, the violation is that the
19 licensing division or whatever division in
20 Pennsylvania who handles those matters similar
21 to our licensing division gave direct notice to
22 the casino that that permit was no longer
23 valid. He was denied, and his renewal
24 application was denied. And he was still

1 allowed to work.

2 CHAIRMAN CROSBY: Anything else,
3 Commissioner?

4 COMMISSIONER STEBBINS: That type of
5 case or that type of infraction seems to come
6 up less than some of the others that you
7 mentioned. I was just curious about some more
8 of the details.

9 MS. WELLS: Yes. I have no
10 explanation on the Rivers side on how something
11 like that could be missed.

12 CHAIRMAN CROSBY: Mr. Donnelly?

13 MR. DONNELLY: Yes, if I may. What
14 happened here is -- Thank you, John Donnelly.

15 What happened here is when a
16 person's license expires, they are allowed to
17 continue to work in Pennsylvania as long as
18 they filed an application and that application
19 is pending. This person was a dealer, a table
20 game dealer. His license had expired and there
21 was no indication on his license that it was
22 expired. So, visually he would be okay.

23 On October 8 there was a
24 determination or he had been denied. However,

1 the Board didn't take action until October 14.
2 He was denied by the Board on the eighth. We
3 received notice of that six days later on 14
4 October. And the notice came in the form of an
5 email to the VP of Human Resources, Andre
6 Barbieri at the time.

7 He was on vacation. And there was
8 an email to only one human being, Mr. Barbieri.
9 He was on vacation at the time. And he had his
10 computer set up as one of these bounce back
11 messages, I'm not here and so on.

12 That said, he did see the notice
13 later on during his vacation. And he forwarded
14 it to employees at Rivers Casino. Those
15 employees, he emailed two of his assistants.
16 One of them was on vacation as well. Second
17 person who was there dropped the ball. And for
18 a period then of 16 days after we actually got
19 notice, the man continued to work.

20 They have enforcement persons called
21 CCRs, which are casino -- I do not know the
22 acronym, but state of Pennsylvania personnel
23 who monitor the casino. They had not been
24 informed of this either. So, they didn't know

1 about it until after the 16 days. One of those
2 CCRs somehow or other determined that this man
3 didn't have credentials and advised us of that.

4 Mr. Barbieri who had bounced back
5 first his announcement that he wasn't there and
6 then forwarded it onto his underlings assumed
7 that that underling had done it, when in fact
8 that person had not. That was a failure of
9 that one underling.

10 And the second failure was that they
11 had only sent the message to one person. So,
12 what we did to remedy that is, and I put this
13 on the record yesterday that's where I was
14 yesterday that in the future we've made
15 arrangements so that we will get these emails
16 sent to multiple people at the property,
17 multiple property people who will have
18 responsibility to back check each other.

19 And secondly that they will be sent
20 to the CCRs, the state of Pennsylvania
21 investigators on the property. So, that if
22 they know that they can see a person who is not
23 licensed and all that. I think that will cure
24 the problem in the future. That's what

1 happened. And I think the remedy again, will
2 resolve a one-time occurrence.

3 I'd like to address the other things
4 too. I know there was a statement that all
5 these matters, the other matters were not
6 reported. They did get reported in some cases
7 to the state police who were present at the
8 time. Because oftentimes, as the Chairman
9 pointed out, especially with state excluded
10 people, two of these people were on the state
11 excluded list. Meaning that for some reason
12 some infraction the state had determined that
13 they weren't allowed to come back in.

14 CHAIRMAN CROSBY: So, this wasn't
15 the self- exclusion list?

16 MR. DONNELLY: There were two
17 classes, Chairman. There were three people who
18 had been on the self-excluded list and two who
19 were on the state exclusion list.

20 So, on the state exclusion list
21 those people often are confrontational. In
22 this case, they were. The error that I believe
23 that Sugarhouse made in those cases wasn't that
24 -- The state police were involved when they

1 were present. They often aren't present in the
2 evening.

3 But they allowed someone to cash out
4 their chips. In the future, they've been
5 retrained and in some cases discipline that if
6 that happens to the extent you can, you will
7 not let anyone (A) cash out the chips or (B)
8 they leave the table with the chips.

9 Sometimes you can't do that because
10 they are also trained and advised not to get
11 into a fight or a dispute. In one case, they
12 followed the guest out to the parking lot and
13 confronted him. And he just left. The other
14 case, they had security escort the man into the
15 holding room. In the meantime, even though he
16 was watched on surveillance, he was able to
17 pass off somehow or other some of the chips to
18 a confederate and some of the chips
19 disappeared.

20 But these were not hidden from the
21 commission. The commission -- I can't without
22 going through each consent give you the advice
23 as to when they heard about it, but all of
24 these were either self-reported at the time or

1 shortly thereafter.

2 And I'd be happy to work with
3 Director Wells during a break or something if
4 we're not in consensus were that happened. As
5 finally, and I'll shut up, one of the
6 commissioners on the record stated exactly what
7 you had said, Chairman, yesterday. With the
8 self-excluded, they asked Cyrus Pitre who is
9 Commissioner Wells' counterpart in Pennsylvania
10 how many people are on this list. And he said
11 on the self-exclusion list there is 9000
12 people.

13 So, it's virtually impossible to
14 seize people when they sneak in unless someone
15 cards them. One of these was an error that a
16 team member made by giving a person a Rush
17 Rewards card. But what that person had done
18 had given an additional initial. So, in other
19 words, instead of Stephen Crosby, the person
20 came up and said I'm Stephen P. Crosby.

21 We've now put in systems that will
22 give an alert when that happens again to make
23 sure that we're given the names of all the
24 Stephen Crosbys and to check whether or not

1 Stephen P. Crosby and so on.

2 Again, discipline, human error, that
3 person was disciplined and we think we've got a
4 cure.

5 CHAIRMAN CROSBY: Anything else?

6 COMMISSIONER ZUNIGA: I do certainly
7 agree with the recommendation of suitability.
8 I see any one of these as not systemic errors.
9 That to me is the greater threshold that we
10 need to be thinking about. I just want to
11 leave it at that and not belabor the point.

12 CHAIRMAN CROSBY: I for one, don't
13 feel the need of any further follow-up on this
14 point. Okay. Anything else on these
15 suitability issues? Okay. Thank you,
16 Director.

17 COMMISSIONER CAMERON: Thank you.

18 CHAIRMAN CROSBY: We had a number of
19 submissions pursuant to our so-called concerns
20 about material errors or other comments, as it
21 turns out. Ombudsman Ziemba, are you going to
22 orchestrate this or are we just going to go
23 through them ourselves?

24 MR. ZIEMBA: I think based on

1 yesterday's practice each of the Commissioner's
2 will take them in turn.

3 CHAIRMAN CROSBY: Okay. Why don't
4 we just run through. Did you receive any?

5 COMMISSIONER CAMERON: Yes.

6 CHAIRMAN CROSBY: Commissioner
7 Cameron, you have one.

8 COMMISSIONER CAMERON: Yes. The
9 comment, and I certainly wouldn't consider it
10 an error, but I'm happy to state for the
11 record. This was in regard to the close vote
12 that we discussed in the mitigation yesterday.

13 CHAIRMAN CROSBY: Close vote?

14 COMMISSIONER CAMERON: The close
15 vote with the host community vote. The
16 applicant wanted us to -- Pointed out that five
17 of the seven wards and 22 of the 28 precincts
18 in Brockton voted for the project at the
19 referendum.

20 So, what we've done in every project
21 is talk about the overall vote as part of
22 community support. But in this case, it was
23 important to talk about the wards and the
24 precincts. So, I'm happy to state for the

1 record that that is the case.

2 CHAIRMAN CROSBY: Thank you.

3 Anything else on that? Commission Macdonald
4 did you have anything?

5 COMMISSIONER MACDONALD: No.

6 CHAIRMAN CROSBY: Commissioner
7 Stebbins?

8 COMMISSIONER STEBBINS: No.

9 CHAIRMAN CROSBY: Commissioner
10 Zuniga?

11 COMMISSIONER ZUNIGA: No.

12 CHAIRMAN CROSBY: There were two
13 submissions, three actually. Mayor Carpenter
14 wrote a letter to the Commission taking some
15 exception to the criticisms that he felt that I
16 made of the application in my review of the
17 evaluation, mostly pointing out the needs that
18 Brockton has and the multiple ways that he
19 perceives that this application will meet those
20 needs.

21 Also Rush Street Gaming wrote to the
22 Commission and again took some exception to my
23 characterization of the wow factor. And
24 pointed out the strength of their relationships

1 with the community and other businesses and so
2 forth in each of their sites.

3 And I won't read them. They are
4 generally, I think, did not like my general
5 characterization and my assessment of
6 insufficiency on those issues that I addressed.
7 There's nothing I think that is pointed out as
8 error. A lot of this is, as I said yesterday,
9 a subjective read. And I know from personal
10 experience that it's no fun when you're
11 criticized, whether it's in good-faith or not.

12 There was also a letter from Stand
13 Up for Brockton responding to Mayor Carpenter's
14 letter raising a bunch of issues about the
15 significance of the points that he made. I
16 will only say a couple of things about my
17 comments.

18 First of all, they were very
19 considered and I completely standby all of
20 them. I did not say that I believed that the
21 application itself was insufficient. I only
22 said that in responses to three of the four
23 questions that I responded to that I evaluated
24 were insufficient. Whether that makes the

1 whole project insufficient is another matter
2 which we will soon talk about.

3 But as to the point that I made, the
4 first -- some of the reaction was as if mine
5 was sort of a standout. So, the distinctive
6 characterization of those portions of the
7 application maybe were inconsistent with other
8 portions.

9 And I want to point out that in the
10 site and building design report, the first
11 sentence of their summary says MG&E has
12 submitted an application that is "sufficient in
13 almost all respects. Taken as a whole, it is
14 solidly sufficient. There is nothing
15 especially exciting about the proposed casino
16 and hotel."

17 And then it goes on to acknowledge
18 the deference to the manufacturing style of the
19 building. There's nothing especially exciting
20 about the proposed casino and hotel. That's
21 pretty similar to my assessment of the project
22 as well in the terms of the four evaluation
23 criteria that I had.

24 The other thing that I would say is

1 graciously in the letter Rush wrote to us, they
2 did say that they would be willing, if they
3 were awarded a license, to reconsider the
4 design. And I actually was going to make that
5 point. And I neglected to yesterday that if we
6 do decide to make an award, that we might talk
7 about addressing some of the design issues if
8 my peers agree with me that there are issues
9 there. But I appreciate Rush's willingness to
10 put that on the table if in fact we get to that
11 point.

12 Anything else on these issues?

13 Okay. So, we get to the de neux main
14 (PHONETIC) which is to begin to consider all of
15 this information that we have collected, and
16 see whether we can come to a decision on
17 whether or not to make an award.

18 The process I'm going to suggest,
19 this is completely flexible, we can do it as we
20 like. But the process that I'm going to
21 suggest is that we start out by going over each
22 of the Commissioner's categories and just see
23 whether we agree or not with the assessments
24 that were made in those evaluations.

1 Then maybe sort of get a sense of
2 the group as to where we are simply on the
3 issue of whether we have a qualified
4 application here or not, independent of the
5 unique Region C variables. Then incorporate
6 and react to the special variables,
7 particularly the tribal situation which is
8 obviously a big one, and what the financial
9 implications of that are.

10 And then eventually begin to get and
11 assess a sense of where we are all coming from.
12 We try not to lock ourselves into a position
13 early on in anticipation of the possibility
14 that we may change our minds. But the process
15 is what the process is. And there are no rules
16 or regulations about that.

17 So, if that's all right with
18 everybody, let me start out with -- Who went
19 first, Commissioner Stebbins? You went first,
20 right?

21 COMMISSIONER ZUNIGA: No, I was
22 first.

23 CHAIRMAN CROSBY: I'm sorry, right.
24 Yours ripples right over into the tribal

1 situation. But you came up with -- Or why
2 don't you characterize your bottom line was a
3 firm sufficient.

4 COMMISSIONER ZUNIGA: Sufficient to
5 a very good.

6 CHAIRMAN CROSBY: To a very good.

7 COMMISSIONER ZUNIGA: Yes. We can
8 go back to the details. There's outstanding
9 elements of the application in their ability to
10 raise capital and their commitment to put it up
11 at risk. And that scored high notes in my
12 view.

13 There was an element of the market
14 assessment that had two elements. One of them
15 a very good the other one sufficient. In
16 balance in my view is a sufficient, very good
17 or a solid good relative to the market
18 assessment.

19 I did actually want to mention
20 something because today they sent, Rush Street,
21 Mr. Bluhm sent a letter relative to the Region
22 C revenue estimates, which tone I should say is
23 very professional and a little bit different
24 from the Innovation Group letter that we did

1 get the day before.

2 And I do want to say that I have
3 complete confidence in our advisors in HLT, in
4 Rob Scarpelli and Lyle Hall and others. None
5 of these projections come with any guarantees.
6 That should be may be really well understood by
7 the public. They are projections. They've
8 been doing them for many years collectively and
9 individually. The Innovation Group has also
10 been doing those projections for many years.
11 And they are also a very reputable company.

12 I put the Innovation Group in the
13 same category as I put HLT in their
14 professionalism, their reputation and their
15 experience having been making this sort of work
16 throughout the country and for many years. So,
17 I just wanted to kind of highlight that.

18 I think that the more important part
19 for us to think about is not necessarily a
20 given number for any given facility but what
21 the addition of a second casino does to the
22 region in general and to other facilities in
23 particular. I could go if my colleagues are
24 interested and look back at some of the charts,

1 but the most important takeaway in my view from
2 the market assessment is that there is an
3 impact in each of the categories that are
4 currently operating in Plainridge or about to
5 be operating because we've already licensed
6 them in Wynn and MGM.

7 And all of that impact is negative.
8 And in this, all of the professionals agree.
9 The difference to that impact gives way to this
10 professional disagreement. And I think we just
11 need to take them at their face value. And
12 again, the most important takeaway for us
13 should be how comfortable we are relative to
14 the other properties experiencing some impact
15 because we really cannot control after we award
16 a license if we do award a license on this
17 region.

18 There's also a mention of other
19 areas that we obviously cannot control but also
20 have a big impact into the robustness of the
21 gaming environment here in Massachusetts. And
22 that is how Connecticut and Rhode Island react
23 or have reacted in anticipation of casinos here
24 in Massachusetts.

1 A lot of that has to be assumed in
2 certain ways, taken from experience in other
3 states. But we really don't know and it would
4 be impossible to try to guarantee anybody to
5 tell us what that reaction may be because it's
6 predicated on many factors that we simply don't
7 control.

8 I don't know if we want to dive a
9 little bit more into the dynamics of the market
10 assessment or the ratings of my section. But I
11 felt that after the two letters, one with
12 language that wasn't helpful but another one
13 that does get to the core of what they present
14 to be an issue.

15 I think it's important for us to
16 note that we should be more cognizant of what
17 dynamics begin to take place once we have an
18 additional or the potential of an additional
19 casino in this region.

20 COMMISSIONER CAMERON: We're trying
21 to come to a consensus here. I would agree
22 with Commissioner Zuniga with his analysis. I
23 think you were very -- you graded. You were
24 generous I thought in some of your grades, but

1 the overall analysis was excellent. You are
2 probably the only category that had enough
3 information to really provide solid information
4 back to us. You had the financials you needed
5 in order to make your recommendation.

6 So, I agree with your
7 recommendations and all of the information
8 provided from the financial team.

9 We have that letter, but we'll
10 discuss that later? It is part of finance, the
11 \$85 million. Is that something we'll hold
12 until later?

13 CHAIRMAN CROSBY: In general, yes,
14 but as I said this is very flexible. I'm sort
15 of thinking let's figure out if we have a
16 quality application independent of the tribal
17 matters. If we don't, this is over. If we do,
18 then we get to the tribal matters.

19 COMMISSIONER CAMERON: I think the
20 letter is not just tribal matter. I really do
21 think it speaks to our comfort with their
22 commitment, frankly, which is part of their
23 assessment. So, I just didn't know if it was
24 appropriate. I think it's appropriate to

1 discuss now because I do think it speaks to the
2 commitment of this applicant.

3 COMMISSIONER ZUNIGA: Yes, I had a
4 similar thought Commissioner. I think as part
5 of my presentation and as part of my ratings,
6 they're not mine, they should be all of us,
7 there is a clear -- where the applicant scores
8 quite high is in the fact that they have the
9 wherewithal and they say they are willing to
10 put up the money to do this and do it quickly.

11 They say they are shovel-ready
12 project and they would start. At least at some
13 point, they characterize the probability that
14 they could be the first casino to open in the
15 state.

16 The letter that that they sent us
17 where they say pending resolution of the legal
18 matter, if we were to award a license or given
19 the threat of the Tribe to sue our authority to
20 award the license that they like to hold off on
21 the payment of the license does begin to put in
22 my mind chip away a little bit at that
23 commandment.

24 I understand why they are doing it.

1 I would probably in their shoes do the same
2 thing or ask to do the same thing. My response
3 to the letter would be I am not comfortable
4 doing that. I would not be, as one
5 Commissioner, willing to enter into an
6 agreement to defer the payment of the license
7 simply because of the threat of litigation from
8 the Tribe.

9 That threat was existing a long time
10 ago before we entered or that probability was
11 existing when they first submitted the
12 application. In their conversations with
13 Counsel Blue, I believe, I'm not particularly
14 sure if it's explicit in the letter, but they
15 allude to the fact that we did enter into
16 agreements to defer the award of two prior
17 licensees because of the referendum. And I
18 think that is an entirely different set of
19 circumstances.

20 The way it's phrased that letter
21 seems to turn the tables from the Commission to
22 them to give them the option, if you will, to
23 start pretty much when they feel it's
24 opportune. And in my view that's simply not

1 the way it works.

2 If we were to want to consider any
3 kind of legal clarity, we could easily defer
4 the bidding process altogether and consider
5 applicants this one or others at a later time.

6 COMMISSIONER CAMERON: I agree with
7 that. I think there have been challenges in
8 every single region. And that is part of the
9 process. It does give me concern about their
10 commitment and the timeliness to start this
11 process.

12 So, I would agree that the
13 referendum was a wholly different matter that
14 would have stopped gaming entirely in the
15 Commonwealth with not a clear mechanism to
16 return that \$85 million.

17 So, I think this is very different
18 as well and wanted to mention it because I do
19 think this speaks to the commitment bigger than
20 just a tribal issue. And I would agree with
21 your assessment that a condition to hold -- to
22 not deviate from the statute, to pay within 30
23 days, and also meet the timelines that they've
24 made assurances to. That would be a part of

1 that condition as well.

2 CHAIRMAN CROSBY: Other?

3 COMMISSIONER ZUNIGA: By the way,
4 having said that and I'm really just thinking
5 out loud here a little bit, there's ways in
6 which we could make provisions let's say to
7 hold the license in escrow, for example. I
8 don't know whether we would have the authority
9 to that.

10 I do know that the licensing fund
11 where the license is first supposed to flow
12 into has expired. It expired actually December
13 of last year and has not been renewed. That is
14 a very, very small technical issue in the
15 statute. But we could look at ways.

16 But that's not what the applicant is
17 really saying. They really seem to be saying
18 given uncertainty, I want to defer payment of
19 the fee for later.

20 CHAIRMAN CROSBY: And associated go-
21 forward costs. They don't want to start
22 material construction.

23 COMMISSIONER ZUNIGA: And to that
24 end, the biggest --

1 COMMISSIONER MACDONALD: What was
2 that, Mr. Chairman?

3 MR. STRUSINER: That was a
4 mischaracterization.

5 CHAIRMAN CROSBY: My understanding
6 of the letter was that it says we will not pay
7 the 85 until there's final adjudication or
8 until such time as we choose to break ground,
9 whichever is the sooner. Meaning that if they
10 are concerned about spending a ton of money
11 that they would have the right to not break
12 ground and to not pay the \$85 million. And
13 that would be a judgment left to them not to
14 us.

15 COMMISSIONER ZUNIGA: That's
16 precisely my point about turning the tables.

17 I think the biggest motivator on any
18 one of these projects going forward
19 expeditiously, as it was always intended, is
20 the payment of that \$85 million. Because until
21 such time as you can open and begin to reap the
22 benefits of the gaming revenues, shortening as
23 much as possible from the applicant's
24 perspective that duration is key to their

1 return on investment.

2 Again, the statute always envisioned
3 it that it was payable 30 days upon award not
4 beginning of operations. I always saw that as
5 the biggest motivator for any one of these
6 gaming companies to get going as quickly as
7 possible.

8 CHAIRMAN CROSBY: Other comments on
9 this? It does seem to me that this gets to a
10 very important issue, and that is the whole
11 economic situation is in Southeastern
12 Massachusetts.

13 One of the comments that Rush made
14 in their letter to me yesterday or this morning
15 was that part of the reason they did not --
16 They did not think it was fair to be compared
17 to Springfield and Everett because the ability
18 to get a return and therefore the ability to
19 make an investment in Southeastern Mass. is
20 constrained much more so than in Springfield
21 and in Everett.

22 That was part of the reason they
23 said why they weren't able to meet all of the
24 expectations that they had. They said

1 recognizing that the forecast of revenues for
2 Everett and Springfield are significantly
3 higher than for Brockton, particularly if there
4 is a casino in Taunton, we have designed what
5 we think the Region C market can support and
6 successfully sustain. That's totally
7 reasonable, totally reasonable.

8 You can debate about what you might
9 do within the \$500-\$700 million, but to look at
10 that is an entirely prudent way to go. But
11 what that might say to us is because of the
12 tribal status and because of the competitive
13 environment, there isn't enough opportunity to
14 justify the kind of facility that we and the
15 legislation wanted.

16 We don't have to make an award in
17 Region C. We have to determine whether the
18 objective conditions in Region C will justify a
19 commercial application which makes it in the
20 long-term overall best interest of the
21 Commonwealth and the reason as best we can
22 determine those interests.

23 So, there's nothing good, bad or
24 indifferent. It's totally prudent to try to

1 rationalize your investment to the level on
2 which you can get a reasonable return.

3 Our job is to determine whether that
4 rational determination fits and gives the
5 opportunity to produce the kind of facility
6 that we want. So, they're totally compatible
7 but I think the reason we only have one
8 applicant in Region C and why it was a long
9 time coming even getting one and why
10 Commissioner Zuniga had to lobby us
11 aggressively to permit additional items to be
12 considered in the \$500 million minimal cap ex.
13 was because it's a marginal region. All things
14 considered, it is a marginal region. That's
15 what the facts tell us.

16 Fine. Nobody should make a
17 proposition that is beyond economically
18 reasonable. The invisible hand of supply and
19 demand is going to run this decision-making.
20 But we have to determine whether that enables
21 them to do what we want in the facility.

22 So, I think these things all kind of
23 ultimately tie together.

24 COMMISSIONER ZUNIGA: Yes, I think

1 that is well put. Let me just complement that
2 with going back a little bit to the ratings.
3 What I can glean from my review of the total
4 application -- because I did read the whole
5 application. I did not rate all of them. And
6 I knew that the detailed analysis with
7 consultants was going to be done by each of the
8 different Commissioners. But my glean from the
9 application is that the applicant put together
10 the deal from a financial perspective first.

11 They figured out what can this
12 market bear. Could I do this? They were among
13 the people that when we first considered
14 opening the Region C that told us in their
15 comments, they were not the only ones, but they
16 were the ones who said you ought to consider
17 lowering -- including certain costs into the
18 minimum capital investment because there are
19 necessary costs that you've excluded. And that
20 begins to put in question the feasibility of
21 the project itself.

22 So, they clearly spent time thinking
23 about it.

24 CHAIRMAN CROSBY: Of course.

1 COMMISSIONER ZUNIGA: It perhaps
2 goes without saying, but I feel that the
3 ratings reflect that because we looked at --
4 The ratings in the finance section reflect
5 that. They've done this before very
6 successfully elsewhere. Real estate finance,
7 they clearly have a lot of capability in
8 putting together deals like this, not just in
9 gaming but in many other areas of real estate.

10 And after that they saw what could
11 be fitting into the project. And frankly,
12 that's a very reasonable way to go about it.

13 CHAIRMAN CROSBY: Totally.

14 COMMISSIONER ZUNIGA: What is going
15 to be my budget and then what do I have to
16 spend what is left for the bells and whistles.

17 CHAIRMAN CROSBY: I agree.

18 COMMISSIONER MACDONALD: I have a
19 couple of comments.

20 CHAIRMAN CROSBY: Yes, please.

21 COMMISSIONER MACDONALD: I don't
22 think that the letter reflects on Rush's
23 commitment. I do question their judgment as a
24 tactical matter for the impression that it

1 makes upon the Commission as the decision-maker
2 here on the license.

3 But to put this somewhat in
4 perspective, I have been advised that once the
5 licensing fee is paid if something were to
6 happen like an adverse court decision by the
7 Supreme Judicial Court upholding the challenge
8 by the Tribe, they couldn't get back any of
9 that money. So, once it's paid it's gone,
10 absent an act of the Legislature.

11 So, from a purely business finance
12 perspective, it's reasonable at one level for
13 an applicant in the situation that MG&E and
14 Rush Street is to at least try to get a little
15 bit of protection under the particular
16 circumstances that they are facing.

17 The Tribe has repeatedly through
18 their counsel threatened litigation if we are
19 to award a license to MG&E. They have
20 extremely skilled counsel that would be running
21 with this lawsuit.

22 I don't think it reflects on
23 commitment. Onto the Chairman's concern,
24 namely that the time period for the stand-down,

1 if you will, for having to pay the \$85 million
2 that this just puts into MG&E and Rush Street's
3 hands the discretion to hold off on an actual
4 diligent pursuit of permitting and other
5 preconstruction matters.

6 CHAIRMAN CROSBY: I didn't say that.
7 I think they probably would go forward with
8 preconstruction permitting.

9 COMMISSIONER MACDONALD: At least
10 that's how I inferred it. In any event, let me
11 just make the affirmative point that I'm
12 assuming, and as everybody knows I'm the new
13 person on this table, that if there were any
14 sense that a licensee was not in fact
15 diligently pursuing permitting and other
16 preconstruction hurdles that we would pull the
17 license.

18 So, I read that condition as one
19 that gives me some comfort, namely that once
20 construction starts, which would start as soon
21 as a diligent effort would allow it to start,
22 then they would pay the \$85 million.

23 Having said that I'm not saying I'm
24 in favor of accepting that but I just don't see

1 it as being significant in the way that has
2 been stated by Commissioner Cameron and the
3 Chairman and Commissioner Zuniga.

4 COMMISSIONER ZUNIGA: Let me just
5 say that I don't see it as significant either,
6 but I did say it starts to chip away at that
7 commitment which was pretty clear.

8 COMMISSIONER STEBBINS: Just to
9 chime in and I might have different thoughts
10 with respect to my colleagues. I think the
11 aurora of the scenario that maybe Commissioner
12 Zuniga refers to, this kind of chipping away at
13 the level of confidence, and correct me if I'm
14 paraphrasing incorrectly, I think some of this
15 has been
16 -- some of this concern about deciding to
17 withhold the \$85 million license payment may be
18 more intrigue into this scenario than maybe
19 there should be has been just simply brought
20 about by the fact that we got the letter three
21 days ago.

22 The threat of litigation has hung
23 over the balance of our Region C process
24 forever. I certainly see differences between

1 the argument the applicant was making of this
2 is comparable to the scenario we found
3 ourselves in with Wynn and MGM. There was
4 going to be no gaming whatsoever.

5 This is a different scenario I think
6 for all of the reasons, I think, Mr. Chairman
7 you alluded to those. It's a business savvy
8 and maybe Commissioner Zuniga, you said the
9 same thing, it's more of a business savvy
10 approach.

11 I think to suggest there is any
12 shaking of commitment to move forward with the
13 project I think only arises out of the fact
14 that we are getting the letter so late in the
15 process just a few days before deliberations
16 that maybe creates a cloud of uncertainty going
17 forward.

18 I certainly probably don't agree
19 with the applicant and see this as a similar
20 scenario to the situation involving Wynn and
21 MGM.

22 COMMISSIONER ZUNIGA: We simply
23 don't have to accept their ask, because this
24 letter after all is an ask. We could simply

1 point to very unequivocal language in the
2 statute where it says that the license is
3 payable upon award. We don't have to agree on
4 an agreement to an award.

5 CHAIRMAN CROSBY: Right. If we do
6 decide to make the award or make a conditional
7 award, we will decide whether or not to include
8 this as a condition that will be a matter at
9 the time.

10 Any other discussion? Is everybody
11 pretty much in agreement with Commissioner
12 Zuniga's bottom line sufficient to very good on
13 the finance evaluation criteria?

14 COMMISSIONER CAMERON: Yes.

15 COMMISSIONER STEBBINS: Yes.

16 COMMISSIONER MACDONALD: I would say
17 yes and I made notes here that the four
18 aggregated categories, financial strength, very
19 good/outstanding, investment plan
20 sufficient/very good, market assessment
21 sufficient, operations plan very good. All of
22 that seems to be borne out in Commissioner
23 Zuniga's presentation on the materials and the
24 application.

1 MS. BLUE: Mr. Chairman, I would
2 like to suggest that the Commission have a
3 conversation perhaps about how you feel about
4 the minimum capital investment and the use of
5 the contingency and whether you are comfortable
6 with that or how you feel about that.

7 I think that is part of the finance
8 section. And that would be an important
9 conversation to have.

10 COMMISSIONER ZUNIGA: Is that okay?

11 CHAIRMAN CROSBY: Sure, but they've
12 said don't worry, we'll make it happen.

13 COMMISSIONER ZUNIGA: Yes, which is
14 for all intents and purposes that's how I see
15 it. Something tells me that those
16 contingencies would very likely be spent on
17 hard costs, on eligible costs. And even if
18 they are not, the applicant has said that they
19 will comply with that requirement.

20 And if they don't we will make them.
21 So, I am not concerned about the minimum
22 capital investment. I think it's important to
23 have that conversation but I think my rating
24 reflects that.

1 COMMISSIONER CAMERON: Are you
2 suggesting a condition to the license to make
3 sure that the amount --

4 COMMISSIONER ZUNIGA: Yes.

5 COMMISSIONER CAMERON: -- that would
6 be the appropriate avenue to address that.

7 COMMISSIONER ZUNIGA: Yes. That was
8 my point about make them, which I highlighted
9 in my presentation. This would be a condition
10 of the license.

11 COMMISSIONER CAMERON: I would
12 agree.

13 CHAIRMAN CROSBY: I'm going to keep
14 going through this. I just want to make one
15 point.

16 We made a very significant decision
17 long ago not to come up with any formal metrics
18 process to calculate to get to this decision
19 point. We didn't assign numbers. We didn't
20 assign weightings.

21 We realized that in the final
22 analysis, these will be five independent
23 judgments of people selected from different
24 backgrounds by statutory direction, voting as

1 they best perceive the equities, the rights,
2 the merits of these issues.

3 So, just to make sure expectations
4 are set, four sufficient don't make an award.
5 One insufficient doesn't say no award. This is
6 just to sort of give us a sense of where we are
7 and to help inform our decision-making. But
8 there is no analysis of sufficient or
9 insufficient or very good or whatever that
10 leads to any inexorable conclusions. Those
11 decisions are up to us based on our own
12 individual best judgment.

13 COMMISSIONER ZUNIGA: Can I also
14 just perhaps for the record emphasize a point
15 that I made quickly when I presented this but
16 it bears repeating I think.

17 Carried interest costs are now
18 eligible under this region. That was alluded
19 to earlier. They are also an estimate just
20 like the contingencies are. If those costs go
21 higher and that was my point about also
22 monitoring those costs, then they take away
23 considerably because they could continue to try
24 to meet their minimum capital investment, at

1 other hot costs that are also implicit in the
2 quality of the facility.

3 I don't see that as a big problem
4 because at that point really the applicant
5 would be making choices about quality and their
6 ability to attract patrons if they were very
7 rigid about exceeding that capital investment.

8 So, there's a lot of business
9 decisions that they would have to make in that
10 scenario, but that was a piece that I wanted to
11 highlight for all of our collective
12 understanding that where that was never an
13 issue in other regions that is just a
14 consideration in this one.

15 CHAIRMAN CROSBY: All set?

16 COMMISSIONER ZUNIGA: Yes.

17 CHAIRMAN CROSBY: Okay, Commissioner
18 Stebbins you also ended up with a sufficient.
19 Do you want to just give a quick
20 characterization to see whether we're all in
21 agreement with that characterization or not?

22 COMMISSIONER STEBBINS: Sure and I
23 hope you all are. Again, to capitalize the
24 questions we reviewed again broken out into

1 three easy sections, job creation, external
2 business and job growth, and tourism. Overall,
3 we graded the applicant or rated the applicant
4 sufficient.

5 Underneath that I think you found a
6 variety of ratings that ranged from
7 insufficient, sufficient to sufficient to a few
8 instances of very good.

9 Again, and I believe I stated this
10 on Tuesday, there were a number of places where
11 we gave credit to the applicant for what they
12 shared with us about their past experience
13 working with their other facilities in other
14 jurisdictions.

15 I think there was some concern on
16 behalf of myself and the reviewers that
17 detailed plans where they were asked for in the
18 application just proved insufficient in terms
19 of their plans for the local Brockton facility.

20 CHAIRMAN CROSBY: Comments,
21 reactions?

22 COMMISSIONER MACDONALD: I concur in
23 Commissioner Stebbins' ratings. I have I think
24 several times publicly said how impressed I was

1 with his presentation. And the conclusions
2 seem to be very well based on the data that has
3 been provided to us and the input from our
4 consultants.

5 COMMISSIONER CAMERON: I would agree
6 as well. I think the sufficient rating
7 certainly makes sense. I know you,
8 Commissioner, noted that you would have liked
9 to have seen some more information which might
10 have helped for a higher ranking. But with the
11 limited information, it is sufficient to move
12 forward with this area.

13 CHAIRMAN CROSBY: I agree. I know
14 that you are as concerned as anybody about the
15 associated broad-based economic development
16 impacts, about the tying into local tourism.
17 But sufficient is responsive provide it was
18 comprehensible and met the minimum acceptable
19 criteria of the Commission and/or provided the
20 required or requested information. And I would
21 agree that it was sufficient.

22 COMMISSIONER STEBBINS: Thank you.

23 CHAIRMAN CROSBY: Commissioner
24 Macdonald?

1 COMMISSIONER ZUNIGA: Can I say
2 something?

3 CHAIRMAN CROSBY: Sure.

4 COMMISSIONER ZUNIGA: There is a
5 conversation to be had maybe now or later,
6 later today about the incremental jobs that
7 this proposal does bring given the conditions
8 of this region. And that's a point that the
9 applicant has made publicly and before even
10 this week.

11 Where regardless of what happens
12 with the other casino in this region, there
13 will be a delta, a positive delta in terms of
14 jobs. De facto by construction as soon as they
15 get building. And de facto by the operations
16 as long as they operate however competitive or
17 profitable they be.

18 So, I know that the point of this
19 ratings the first few days was to evaluate the
20 application by itself. But at some point, we
21 have the rollup discussion, whether it's an
22 overall or a statewide view where clearly the
23 benefit is that there's incremental jobs,
24 there's incremental jobs for Brockton who as

1 the mayor has said and others we should
2 acknowledge again that matter for this region.

3 COMMISSIONER STEBBINS: I would
4 agree.

5 COMMISSIONER CAMERON: I kind of had
6 held some of that for later for our discussion.
7 I agree with you. That is a piece of this.

8 CHAIRMAN CROSBY: Commissioner
9 Macdonald.

10 COMMISSIONER MACDONALD: Site and
11 design was solidly sufficient. We did identify
12 a number of concerns primarily relating to the
13 surrounding community and traffic impacts. But
14 that our consultants, Mr. Moore and the team,
15 emphasized to me that there was plenty of
16 opportunity in the upcoming MEPA process to
17 have those issues addressed.

18 So, it did not materially affect the
19 conclusion that the application on the building
20 and site design criterion was solidly
21 sufficient.

22 CHAIRMAN CROSBY: Comments?

23 COMMISSIONER CAMERON: Just in
24 agreement with the ratings with the analysis.

1 And agree that we have another opportunity
2 after the MEPA process to address any
3 outstanding issues. So, I'm in total
4 agreement.

5 CHAIRMAN CROSBY: I again agree with
6 the sufficient. I will say it does tie into
7 some of the issues I was referring to.

8 One of the criteria that
9 Commissioner Macdonald had to review was this.
10 The Commission shall evaluate and issue a
11 statement of findings as to how the applicant
12 proposes to build a gaming establishment of
13 high-caliber with a variety of quality
14 amenities to be included as part of the gaming
15 establishment and operated in partnership with
16 local hotels and dining, retail and
17 entertainment facilities so that patrons
18 experience the diversified regional tourism
19 industry.

20 That coupled with the issue of the
21 location itself and the decision that was made
22 about the exhibition building and so forth
23 gives me some significant pause on this, but
24 bottom line I agree with Commissioner

1 Macdonald's assessment.

2 COMMISSIONER STEBBINS: Chairman,
3 picking up your point, the compatibility with
4 surroundings I think is where Commissioner
5 Macdonald may have addressed your point. He
6 had several ratings there of
7 insufficient/sufficient.

8 CHAIRMAN CROSBY: Right. I noted
9 that and I think we agreed on that. Anything
10 else on Commissioner Macdonald's?

11 COMMISSIONER ZUNIGA: I wouldn't
12 suggest a change in any of the ratings, but in
13 my mind the insufficient ratings altogether,
14 not just for this category but any one of them
15 is a failure to present a plan or address the
16 topic.

17 I know technically they have not
18 done so in a couple of instances only because
19 of where they are in the MEPA process. But
20 because they are required to go through the
21 MEPA process, I would see that as implicitly
22 the plan because they have to address a couple
23 of those insufficients.

24 I would have probably put it as

1 sufficient but the overall result in rollup as
2 already articulated is the same which is that
3 sufficient that you articulated.

4 CHAIRMAN CROSBY: Commissioner
5 Cameron mitigation also sufficient.

6 COMMISSIONER CAMERON: Yes. Just
7 the summary here, this is a solid project. The
8 insufficient, just a couple that were
9 insufficient is really because more information
10 is needed. And I would agree the MEPA process
11 is place to handle those issues.

12 That will be sorted out in the MEPA
13 process. Other applicants were further along
14 in the MEPA process. So, we did have more
15 information to evaluate. Again, I mentioned
16 this earlier, we will have another opportunity
17 after MEPA if in fact this conditional license
18 is awarded.

19 The host and surrounding community
20 agreements are solid. They do have the
21 agreement with Brockton 21 for these two
22 facilities here. Certainly, appropriate
23 traffic mitigation and costs even though there
24 will be a little more work to do.

1 Certainly, they've agreed to comply
2 with our gaming practices. They had a good
3 approach to the lottery.

4 So, overall this is a solid
5 sufficient. I would like to make note that
6 there was some negatives mentioned about the
7 site. The positives are that this is a very
8 easy site to mitigate. And it is very close to
9 major highway, which makes it attractive to
10 patrons.

11 I don't think we should forget those
12 factors in talking about the site. Many of the
13 other sites have been much more difficult to
14 mitigate and are still having those issues.

15 So, I think it's important to note
16 that the site is attractive on a number of
17 levels.

18 COMMISSIONER ZUNIGA: Yes. That
19 project on Belmont Street has incredible timing
20 for this purposes. It's almost like the access
21 to the site.

22 We would look at the dynamics about
23 the completion of that project but we are doing
24 that with MGM anyway. So, it's no different in

1 my opinion.

2 COMMISSIONER STEBBINS: It's not
3 only timely, but having driven in on it in the
4 past couple of days, it's certainly warranted.

5 CHAIRMAN CROSBY: It's certainly
6 what?

7 COMMISSIONER STEBBINS: Warranted.

8 CHAIRMAN CROSBY: Right. So,
9 everybody is comfortable with Commissioner
10 Cameron's sufficient?

11 COMMISSIONER MACDONALD: I am.

12 CHAIRMAN CROSBY: I came up with an
13 insufficient for all of the reasons we
14 discussed at length. I felt this was -- I
15 don't want to overdo this wow factor thing, but
16 it was an effort to look for something special,
17 something as Commissioner Macdonald said in his
18 report, something that was exciting.

19 Something that could help pull this
20 up from being a nice local casino. There's
21 nothing wrong with a nice local casino, but I'm
22 not sure that's what we were looking for.
23 Something that would indicate some kind of
24 really shrewd tactile strategy for economic

1 development in the area. And I know by those
2 criteria, I just didn't feel that it measured
3 up.

4 COMMISSIONER CAMERON: Mr. Chair, I
5 think your group was a bit tough. I'll be
6 honest with you. And I think they have been in
7 the past as well.

8 I think this is more than a
9 convenience casino. I think a spa, a hotel, a
10 multipurpose room that could be used for any
11 number of events, although I would have liked
12 to see some more detail on how they use that
13 room. But I think numerous food and beverage
14 options make this much more than a convenience
15 casino.

16 Also, I think the facility is
17 attractive. I like the red brick. I think it
18 does blend. Again, I just mentioned the
19 positives of the site itself. I understand
20 some of your concerns, but I think your group
21 was tough. And I don't see this as an
22 insufficient, an overall insufficient with
23 regard to a topic that really is subjective.

24 So, I just -- I know that in Region

1 A, we did not utilize all of the findings
2 because we thought they were too tough, I'll be
3 honest with you, with that project. So, I have
4 the same feelings here. That's just my thought
5 on the matter.

6 CHAIRMAN CROSBY: I can go to my
7 grave having been too tough. No problem.

8 COMMISSIONER MACDONALD: I hesitate
9 to disagree with my boss of five months, my
10 friend for 50 years. Little known, the
11 Chairman and I were on the same football team
12 in college. More accurately we sat on the same
13 bench in college.

14 CHAIRMAN CROSBY: You had to tell
15 them.

16 COMMISSIONER MACDONALD: I strongly
17 disagree with the conclusion. And I won't go
18 into any particular detail, but one in
19 particular and I certainly understand the good
20 faith of the criticism, but taking MG&E and
21 Rush Street to task for the "inward focus" of
22 the plan that is something that we, and I say
23 we, we and our team recognized.

24 I think that in this particular

1 instance where the site is one that is located
2 adjacent to a number of residential communities
3 on the southeast side and the east side and not
4 very far from the residential community on the
5 northeast side. And also given its proximity
6 to the Brockton High School that an inward
7 focus, a separation from the neighborhood is
8 something which frankly, I think was
9 appreciated by the neighbors.

10 I think that I emphasized in my
11 presentation the care with which the design
12 incorporated a very substantial landscape
13 buffer between 100 and 200 feet around the
14 site. That buffer, it's not a wall, it's a
15 buffer is something that I anticipate was
16 welcomed by the residential community.

17 So, here the characterization of --
18 a characterization of it being an inward
19 focused plan is one that I would actually agree
20 with. And that speaking personally, I saw as a
21 commendable feature of the design.

22 COMMISSIONER STEBBINS: I can just
23 add some comments and I can do this because I'm
24 at the other the table of Commissioner Cameron.

1 I don't necessarily agree with her
2 argument about the assessment of this not being
3 a more regionally focused facility. I think in
4 fair comparison with the other licensees that
5 we have awarded, there has been a focus on not
6 only trying to capture the region, the local
7 market but also trying to position themselves
8 to be a facility that can capture the visitors
9 to the region, the visitors to the state.

10 I am not questioning the Chairman's
11 ratings, but I think in terms of his assessment
12 or characterization of this facility at this
13 time, it's more of a regional facility. And I
14 kind of dovetail that with the evaluation of my
15 portion of the analysis with respect to
16 tourism. We just saw a lot lacking in terms of
17 trying to draw visitors into Brockton, which is
18 obviously a goal of the city. They've
19 acknowledged that in some of their previous
20 economic development points.

21 Is there a potential, is there an
22 opportunity for this to be more than what we
23 may be defining the casino as today, I think
24 there is. But to characterize it now is more

1 of a facility to really garner a local market I
2 think is a fair assessment to make.

3 COMMISSIONER CAMERON: I would think
4 there is a difference between a convenience
5 casino and one that may just be regional. And
6 I would agree that some of the other
7 applications that we looked at and licenses we
8 awarded were stronger, thus they had very good
9 ratings.

10 So, I think I'm just commenting on
11 the insufficient and the fact that a total
12 convenience casino, we've been to many of them,
13 and they are very limited. That's at least my
14 opinion of a convenience.

15 I would agree that this focuses
16 regionally, not nationally or internationally.
17 I know those were some of the elements
18 mentioned in the legislation. We're comparing
19 to very strong projects elsewhere. My only
20 thought was that this is more than just a
21 convenience. And I thought anyway ranked a
22 little bit higher than insufficient.

23 COMMISSIONER ZUNIGA: I actually
24 agree with that. We were talking about this

1 earlier, but I see the result of the
2 application by an applicant really trying to
3 figure out what's possible, what is the most
4 that they could deliver with the constraints
5 and the competitive landscape.

6 It's a smaller region in terms of
7 projected gaming revenues. And on that several
8 consultants, several advisors agree. The big
9 region was always and is always remains Region
10 A. And I think they should be acknowledged and
11 in many ways commended for putting forward what
12 they believe is the most they could do with the
13 constraints that they have around them.

14 And the overall wow factor has
15 always been -- it may mean different things to
16 different people. And it's especially
17 important to perhaps try to uncouple the notion
18 that yes, we were looking for the extra in many
19 ways and have always been saying that.

20 But there's another dimension of
21 this category which is a bit of a rollup, an
22 overall -- a rollup of just about every aspect
23 of the application. And I think on that venue,
24 I think there is commendable work that we

1 should acknowledge as sufficient or otherwise
2 but not insufficient as to trying to put
3 together the best that they could with the
4 constraints that they have.

5 Having said that, there's also a
6 theme that emerged from a couple of other
7 sections, not the finance one, where they
8 provide instead of specific examples of what or
9 specific strategies that we've seen in other
10 applications, they say rightly that we have
11 experience elsewhere and we've done it before.

12 And we went and visited. Some of us
13 went to different facilities and we saw it.
14 And we heard testimonials from local people,
15 Chambers of Commerce and the town manager in my
16 case where they have been. They have done it
17 very well. The quality of the facility, the
18 neighborliness of the applicant, their
19 involvement in the community and the benefits
20 they bring to the community.

21 So, in some ways I would acknowledge
22 all of that which was acknowledged in the
23 write-up and everything but glean from that
24 into a slightly higher score than what you gave

1 it.

2 CHAIRMAN CROSBY: So, I would say
3 the sense of that is that probably if we had
4 voted on that amongst us, we probably would
5 have ended up being sufficient, maybe a
6 sufficient minus slightly.

7 Just to respond to a couple of those
8 points and I've said now repeatedly, I think my
9 category first of all not utterly dispositive,
10 and secondly clearly more subjective in many
11 ways than many of the other features.

12 As to the inward looking or not,
13 that's a very interesting point that you
14 recognized it as inward looking but saw that as
15 a virtue. And I think if you accept the
16 premise of the facility where it is and the
17 nature facility that notion of having some kind
18 of protection against the residential areas is
19 a meaningful point. And I get that. I hadn't
20 thought about it from that standpoint.

21 The point is that I think when we
22 originally talked about, used the words inward
23 looking versus outward looking, we were saying
24 we wanted them to be outward looking. Yes, if

1 you were going to be inward looking, then
2 there's a way -- if you are going to be at a
3 certain location, there is a virtue in being
4 inward looking.

5 But maybe that wasn't the kind of
6 location we were looking for. Outward looking
7 was something that we considered an inherent
8 virtue to this. So, for what it's worth.

9 Also, on the issue -- And I wrestled
10 with this as I wrestled -- I told the other
11 Commissioners I missed two turns on my drive
12 down here because I've been so deeply thinking
13 about this thing. But on the issue we've done
14 it elsewhere, it is right. You go there. You
15 go to these facilities, I was impressed by the
16 people. I met the senior management.

17 Commissioner Zuniga and I wandered
18 the neighborhood. But those are different
19 challenges. Those are very different
20 challenges. And Brockton -- Particularly, I
21 didn't go to Des Plaines, but particularly
22 Rivers and Sugarhouse are very different and I
23 think less rigorous challenges than this
24 location.

1 The Rivers location is right next
2 door to whatever that is, the science park or
3 museum or whatever and next door to the two
4 professional football stadiums in the downtown
5 area or in the city, right next to the river.

6 And Fishtown, albeit it was kind of
7 like our Seaport district, it was an area that
8 the city had been looking at and trying to work
9 on for a long time. The write-up that the
10 applicant included about look at Fishtown, look
11 what's happened in Fishtown did talk about how
12 Fishtown has come around but it didn't mention
13 the casino as having made that happen. But it
14 has been a part, there's no question. When you
15 talk to the neighbors there, they consider it a
16 good neighbor. And I totally accept that.

17 But in order to do that same kind of
18 development and to have that same kind of
19 impact in Brockton in this location, is a much
20 more rigorous challenge. And to demonstrate
21 how you were going to do that required in my
22 mind much more than simply referrals that we've
23 done it in these other non-analogous areas.

24 We start now to morph into the next

1 phase of this conversation, but the Legislature
2 wrestled for 30 years on whether we wanted to
3 do casinos or not. There was tremendous
4 debate about the kind of it. The way the law
5 is drafted gives a very, very unusual but in my
6 view clear message about the nature of the
7 facilities that we want.

8 And I just really worry. And if I
9 had to vote this second, I'm not sure how I
10 would vote but it's just not compelling to me.

11 There is the possibility that this
12 facility might be what we don't want in
13 facilities, which is a suck from the
14 surrounding community. We talked at the
15 beginning when we had all of these public
16 meetings about these casinos and how do we do
17 it and how can we do this right, how can we do
18 this well. And the old model is casinos which
19 are isolated from the community and that pull
20 revenue out of the community rather than
21 lifting it up.

22 Would that happen here, I don't
23 know. But I don't see the strategies or the
24 thought process or the commitment to break out

1 of that risk model. I don't see the attention
2 having been paid to that real possibility to
3 really creative and thoughtful strategic -- I'm
4 not just talking about fluff when we say wow.

5 I'm talking about essential
6 strategies for making this more than a
7 successful regional quality casino. I don't
8 doubt that it could be that but I'm not sure
9 that's what we were looking for. I think it
10 has a downside risk of actually undercutting
11 economic development rather than lifting
12 economic development.

13 I can't prove that but I don't see
14 the evidence to the contrary. So, that's why I
15 ended up where I ended up. But I accept my
16 peers' census. And to the extent we now move
17 into the next phase, I think on a consensus
18 basis, we sort of had it at an overall
19 sufficient.

20 Anything else on that before we move
21 on?

22 COMMISSIONER ZUNIGA: No, that's a
23 good point. I don't know if we start to
24 dovetail into the other but --

1 CHAIRMAN CROSBY: I'm going to make
2 one statement and you tell me whether you want
3 to go ahead with what you were you going to
4 say.

5 I was just going to ask if
6 everybody's comfortable with it, because I sort
7 of just did it independent of the tribal
8 factor, which is a nontrivial factor, where
9 are our states of mind at the moment?

10 What would be thinking if we were
11 just asked to make this award based on this
12 situation?

13 MR. BEDROSIAN: Do you want to take
14 a few minute break, Commissioners? It might be
15 worth staff just being able to consult with
16 each other before the Commission gets to the
17 potential next phase?

18 COMMISSIONER CAMERON: I could take
19 a break for other reasons.

20 CHAIRMAN CROSBY: We'll have a quick
21 break for a variety of reasons and there will
22 be no conversations amongst the Commissioners.

23

24 (A recess was taken)

1
2 CHAIRMAN CROSBY: We are ready to
3 reconvene public meeting 188. I will first
4 have a quick report from our Executive Director
5 on why the staff wanted a break.

6 We will then follow-through on the
7 discussion of sort of where we are, each of us
8 individually on the general sense of whether
9 this is an award worthy application. It's now
10 12:15. It'll probably be at least 12:30 by
11 then. We'll take about a half-hour lunch
12 break.

13 We'll come back at 1:00. We will
14 talk about the additional factors of our other
15 competitor or potential competitor. And we
16 will move on then to try to make a final
17 decision on whether to award or not. So,
18 Executive Director Bedrosian.

19 MR. BEDROSIAN: Thank you, Mr.
20 Chairman. I think you just aptly summarized
21 why we wanted to break which was mainly to make
22 sure that the Commission staff was on the same
23 page as to process going forward.

24 Two things arose during that break.

1 One is during the break Mr. Donnelly and
2 representatives from the applicant asked for
3 further time, which we of course gave them.
4 So, in terms of the length of the break that's
5 why the break was longer.

6 Also, we thought it would be a good
7 idea before you continue for General Counsel
8 Blue just to remind the Commission of the
9 standard under § 19 of Chapter 23K in which you
10 are deliberating.

11 And just seconds ago, the applicant
12 came back in and asked to make a 30-second to
13 one-minute statement to the Commission before
14 they continue deliberation. I would just point
15 out what I have been told that that has not
16 happened in the past, but it is certainly
17 within your discretion to accept a 30-second to
18 one-minute statement from the applicant at this
19 point.

20 CHAIRMAN CROSBY: Any sense,
21 Commissioners?

22 COMMISSIONER CAMERON: I go back to
23 my -- I made the point yesterday. I think
24 consistency is really important in these

1 evaluations/deliberations. And we have not
2 afforded others that opportunity, so I for one
3 would want to -- would error on the side of
4 consistency in trying to do this in a uniform
5 matter.

6 CHAIRMAN CROSBY: Anybody else?

7 COMMISSIONER STEBBINS: Just to be
8 clear, I don't think we have ever had the
9 request put before us. So, we're not really
10 comparing it to anything, but I do agree with
11 the consistency factor of our deliberations.

12 CHAIRMAN CROSBY: Which gets you to
13 what?

14 COMMISSIONER STEBBINS: No.

15 COMMISSIONER ZUNIGA: I am on the
16 other side of this. If it really is a very
17 short statement and it's all on the record, I'm
18 frankly curious as to what the applicant has to
19 say.

20 COMMISSIONER MACDONALD: Unless
21 advised to the contrary by our Counsel, I would
22 be in favor of hearing what Rush Street seeks
23 to communicate to us at this important
24 juncture.

1 CHAIRMAN CROSBY: I think that I
2 will allow this if the 30- to 60-second is
3 important. We have repeatedly gone out of our
4 way to try to give everybody fair shots. One
5 man's fair is another man's unfair, but the
6 stakes are huge. So, Mr. Donnelly, you have 30
7 to 60 seconds.

8 MR. DONNELLY: Thank you, I
9 appreciate it. I'll meet the timetable.
10 Number one, we want to state that we remain
11 fully committed to this project and to the city
12 of Brockton. So, we want to put that off the
13 table if it's on anyone's mind.

14 Number two, reflecting and kind of
15 bounce off the two statements that Commissioner
16 Macdonald made today. Number one, we
17 appreciate and agree to his comment that we
18 would under the letter that I previously sent,
19 we would have to and would and will fully
20 process and seek the approvals on a timely
21 basis and so on. We agree that that would be
22 appropriate.

23 Finally, we believe we continue to
24 believe, as I set forth in my earlier letter

1 that it would be appropriate to afford Rush
2 Street the same opportunity MGM had to enter
3 into an agreement with regard to the payment of
4 the licensing fee, especially given -- And
5 being a lawyer, I'm never going to consent that
6 there is no remedy. -- but given the discussion
7 that we've had that if that fee were paid there
8 would possibly be absolutely no remedy to
9 recapture that sum. Thank you, for the
10 opportunity.

11 CHAIRMAN CROSBY: Thank you, Mr.
12 Donnelly. Certainly, the issue of the \$85
13 million is something that if we do decide to
14 make an award will come up again in the
15 conditions discussion.

16 MR. DONNELLY: Yes, sir. Thank you.

17 MR. BEDROSIAN: Mr. Chair, I think
18 at this point I would just have General Counsel
19 Blue just remind the Commission of the standard
20 under Chapter 23K.

21 CHAIRMAN CROSBY: Great.

22 MS. BLUE: Thank you Commissioners.
23 Under § 19 of 23K there is set a standard for
24 making the decision. The standard is as

1 follows: gaming licensees shall only be --
2 Gaming licenses, excuse me, shall only be
3 issued to applicants who are qualified under
4 the criteria set forth in this chapter as
5 determined by the Commission.

6 Within any region, if the Commission
7 is not convinced that there is an applicant
8 that has both met the eligibility criteria and
9 provide a convincing evidence that the
10 applicant will provide value to the region in
11 which the gaming establishment is proposed to
12 be located and to the Commonwealth, no gaming
13 license shall be awarded in that region.

14 CHAIRMAN CROSBY: Thank you. I was
15 going to read the same section. So, just as a
16 reminder.

17 Okay. So, I had pretty much led off
18 this last phase explaining where I was coming
19 down in general. Setting aside the tribal
20 matters, I find this an extremely difficult
21 decision.

22 I accept totally the reasonable
23 limitations of the marketplace. I wonder
24 whether those reasonable limitations permit the

1 applicant to reasonably propose the kind of
2 product that we would want here independent of
3 the tribal issues.

4 That's sort of where I sit at the
5 moment. Does anybody else want to just give a
6 sense?

7 COMMISSIONER CAMERON: I'm not sure,
8 Mr. Chair what you meant by that.

9 CHAIRMAN CROSBY: If I had to vote
10 this second, I'm not quite sure how I would
11 vote. I'm deeply concerned about whether or
12 not independent of tribal issues this project
13 meets our requirements.

14 I think it is -- I agree whether
15 it's perfect or not relative to my own four
16 questions that it is sufficient. But is
17 sufficiency enough for never mind the
18 competitive environment, is sufficiency enough
19 to get us to an award. I have a real issue
20 with that.

21 COMMISSIONER ZUNIGA: Is it fair to
22 say that adding to the competitive -- Let me
23 ask, you've been public about this notion of a
24 two-step decision process, if I'm correct.

1 CHAIRMAN CROSBY: Essentially that's
2 § 19. And she said essentially sets out those
3 two steps. Have they met the criteria, has it
4 met the qualifications (A), and (B) are we
5 persuaded that it adds value to the region or
6 the Commonwealth.

7 COMMISSIONER ZUNIGA: Is it fair to
8 say also then that the first step would have us
9 concentrate on the application and the
10 applicant itself, and the evidence that they've
11 put forward including their experience in such
12 matters.

13 And therefore, the second step being
14 what the competitive environment for the
15 Commonwealth as a whole because it's really not
16 just the region. This would be the fifth
17 decision that we would be making -- fourth
18 licensing decisions.

19 CHAIRMAN CROSBY: Four licensing
20 decisions with a fifth beyond our control.

21 COMMISSIONER ZUNIGA: Right. So, we
22 are at the first juncture, I suppose. I think
23 perhaps coming from the finance perspective, as
24 I mentioned earlier, the application meets the

1 bar. There's nowhere else that it could be
2 more illustrative by that \$500.5 million in the
3 minimum capital investment given all eligible.
4 And I think that is a theme that I see
5 throughout.

6 It passes in some way. I've also
7 mentioned before, the applicant should be
8 commended for trying to meet -- to make the
9 most with the constraints they have around.
10 So, they are differentiating themselves from
11 other regions.

12 They feel they can compete with
13 existing licensees. And they can segment
14 themselves. Everything else comes to play
15 after that. So, from that juncture I think the
16 applicant meets the minimum.

17 I do see this as beginning to be a
18 very interrelated process because the minimum
19 of what is always in a context. I thought that
20 the fourth decision is much harder than the
21 first of course because now we have to have a
22 portfolio view not just an application by
23 itself view.

24 We need to consider what this

1 decision does. And if we were going to leave
2 that for the second process or second step,
3 I'll reserve my comments there.

4 But at least for the first piece, I
5 think the applicant has put together a
6 commendable effort to try to do the most with
7 the constraints that they have, and pointing in
8 many other areas to where they've done it
9 before.

10 I do agree that it's not the same,
11 no other project is the same. The casinos that
12 we know of in the other states, Pennsylvania
13 and Illinois for example don't have hotels.
14 They are in a different context, certainly in a
15 different competitive environment, but they are
16 also in a competitive environment. That also
17 kind of cuts both ways.

18 COMMISSIONER STEBBINS: I probably
19 -- First of all, I think we haven't really done
20 this before but I think it's important for us
21 to acknowledge the commitment that MG&E and
22 Rush Street has made to this point. This is
23 not an easy process to enter.

24 As executives, you get criticized,

1 name called. You are corrected on your
2 pronunciation of certain towns. To Mr. Carney
3 and his family, obviously, this is a very
4 public process and this is the community in
5 which you live in. So, to say thank you for
6 going through this process, I think is I would
7 hope is something we all share. It's a very
8 public process.

9 I think one of the overriding issues
10 for me, and most of this is probably generated
11 from my review of my section of the
12 application. I think it dovetails with the
13 results and the ratings that we came to. This
14 is a strong applicant. It's an applicant with
15 a decidedly successful track record in the
16 other jurisdictions in which it operates.

17 But we failed to find a lot of
18 detail exactly the exact plans that they had
19 for the city of Brockton. That was reflected
20 in the ratings and scorings and everything
21 we've talked to to this point.

22 It's certainly a different
23 competitive region. I kind of echo my
24 colleagues who have assessed that already. But

1 I also reflect on the fact that we have been
2 through this three times already. You have had
3 the benefit of watching our proceedings through
4 those three previous license awards.

5 And I think that left me somewhat
6 discouraged that you could have taken the
7 opportunity, again one Commissioners viewpoint,
8 you could have taken that opportunity to
9 understand I would think a little bit better
10 what we were looking for. This doesn't
11 necessarily get the other categories of
12 evaluation. That I think could have positioned
13 you better to come in with a stronger
14 application and may be one that would have
15 ranked overall, and again just in my section is
16 sufficient.

17 Again, it's weighing again a
18 credible applicant versus an application that
19 might not be as strong.

20 COMMISSIONER CAMERON: So, I would
21 agree with Commissioner Stebbins that that was
22 an opportunity missed, not to really look at
23 the things that we valued in the past and
24 tailor it a little bit.

1 But again, as you mentioned, I do
2 value their experience, their abilities to meet
3 commitments elsewhere, their financial
4 stability, and their realization that this
5 project really would help an economically
6 depressed city.

7 I find this is a competition, a
8 little different than the other regions, but I
9 believe this application is strong enough to
10 move forward into a competitive environment.
11 That's the next step of we have to do. That's
12 similar to what we've done in other regions
13 actually.

14 So, there is competition but I do
15 believe on the merits, it's strong enough to
16 move to that next discussion by this
17 Commission.

18 CHAIRMAN CROSBY: Commissioner?

19 COMMISSIONER MACDONALD: I think we
20 should go to the next stage.

21 CHAIRMAN CROSBY: I'm going to
22 suggest an order, but we talked about having
23 lunch. But it feels to me like this is an
24 awkward time to take lunch break. There are a

1 lot of people here with very big issues
2 weighing on them. And I am going to suggest
3 that we keep going.

4 If we can't come to a reasonable
5 quick solution, then we can take a lunch break
6 at some point. But I think we better keep
7 going.

8 So, we all have a sense -- The sense
9 here is that the application does get over the
10 threshold. It has to be something we would
11 very seriously consider awarding independent of
12 the rest of the situation.

13 But we do have this unique
14 competitive situation in Massachusetts -- I'm
15 sorry, in Southeastern Massachusetts both of
16 the hyper competition in or very close to the
17 region as well as the Mashpee Wampanoag
18 situation. And it's sort of been the elephant
19 in the room, and it's time to bring the
20 elephant into the room.

21 So, does anybody want to start off
22 on that? How does that bear on this
23 application?

24 COMMISSIONER CAMERON: I'll be happy

1 to start, Mr. Chair.

2 CHAIRMAN CROSBY: Okay. Fine.

3 COMMISSIONER CAMERON: I just
4 mentioned some of the things, some of the
5 attributes of this application. Again, I do
6 value the fact that the city needs these jobs.
7 Also, I didn't mention the commitment to attain
8 LEED goal certification, they are to be
9 commended for that. I did say financially
10 stable and the experience. You don't want to
11 discount the experience.

12 But there were a number of issues
13 that I was concerned about. One of them was
14 the close vote in this community. This is a
15 divided community. And we have not had a
16 situation in which we were going to award where
17 it was this close.

18 And one of the things I was
19 disappointed about was, and again we do have
20 the benefit of doing this three other times,
21 other applicants made a stronger effort after a
22 vote to appease, whether it be the surrounding
23 communities or those folks in the host
24 community that may have had issues around one

1 or more concerns. And I just didn't see that
2 here.

3 There were real concerns about how
4 close this was to the high school, I didn't see
5 any. I sent our team back to talk. Did they
6 have any meetings? Did they sit down and talk
7 to people about how they would make sure that
8 those fears would not become a reality. Same
9 thing with neighbors. Where were those
10 conversations after the vote? My team tells me
11 there is just no snow evidence of that.

12 So, I was concerned. That was
13 something I thought was a missed opportunity
14 for this applicant.

15 The other thing, a chart from the
16 economic development team, the legislation
17 really calls for high-quality jobs. And I was
18 concerned about the low salaries. And I
19 particularly looked at MGM because it's a
20 similar city. I didn't want to compare it to
21 the Boston area with the Wynn team.

22 With salaries and benefits, the
23 difference is \$10,000. We're looking at
24 \$42,394 compared to \$52,219. That's a lot of

1 money. That's a huge drop in a salary range
2 for this applicant compared to another one in
3 Western Mass. So that concerned me, again
4 looking at high-quality jobs here.

5 Those issues, and then of course we
6 get into the competition. Now I know that the
7 competition, we have kind of competing market
8 analysis. And I agree with Commissioner Zuniga
9 that we have used our consultants. Their
10 methodology has been out there for a of couple
11 years. It's never been questioned before. So,
12 I continue to believe that the work they do for
13 us is independent and of very high-quality.

14 So, I think the hurdle here is to
15 convince us that there's evidence that this
16 project will provide the value to the region
17 and the Commonwealth. So, we have to look at
18 all those factors. That market analysis does
19 not leave me convinced anyway, just from that
20 one factor. But I would like to hear your
21 viewpoints on that. That was concerning to me
22 that that in fact would not bring the
23 convincing evidence that this would be a value
24 to the region and the Commonwealth with the

1 competition. Those are just some of my
2 thoughts on this.

3 CHAIRMAN CROSBY: Anybody else?
4 You've spoken a lot about the tribal, the
5 lawsuit.

6 COMMISSIONER MACDONALD: I can't
7 separate the tribal issues from the other
8 issues. So, I'm just going to just jump in.

9 And where I want to start with is
10 the statute and the statutory objectives of the
11 Expanded Gaming Act, which after all is what we
12 as a Commission are obliged to comply with and
13 in everything that we do to achieve its
14 objectives.

15 And I see the Expanded Gaming Act as
16 committing the Commonwealth, formally
17 committing the Commonwealth to a program of
18 economic and social development through the
19 vehicle of regionally based casinos, all within
20 a framework of a strict regulatory structure to
21 assure the integrity of the process.

22 And in its first section, the
23 statute says that the paramount objective of
24 the statute is to assure the integrity through

1 the strict regulatory structure. But that the
2 -- not but, just underscoring it that the given
3 in my view that we are dealing with here is a
4 statute and an institutional existence as a
5 commission which is to advance economic
6 development through casino gaming in the
7 region. That's where I begin.

8 Some excerpts from the statute which
9 underscore this. In the first section,
10 financial stability is underscored, new
11 employment opportunities, particularly
12 opportunities for the unemployed. These are
13 quotes. "New construction through capital
14 investment and provide permanent employment
15 opportunities."

16 In § 12 of the statute listed
17 suitability underscoring the importance of
18 "financial stability". § 15 criteria for
19 eligibility for a license, addressing workforce
20 development and community development,
21 marketing programs focusing on minority
22 business enterprises and women and veterans.

23 § 18 objectives to be advanced,
24 promoting local business, maximum capital

1 investment, workforce development, development
2 of a skilled and diverse workforce, a high
3 number of quality jobs and affirmative action,
4 all quotes from the statute.

5 So, it's those excerpts that in my
6 view create the driver for the evaluation that
7 I would make of the application. And that
8 other than our Chair, I think that all of us
9 were comfortable in our sections of the
10 application to find the application at least
11 sufficient.

12 I pay particular attention to the
13 financial side of Commissioner Zuniga and
14 Commissioner Stebbins on workforce development.
15 Well aware of Commissioner Stebbins'
16 qualification because of the lack of specifics.

17 But first with Commissioner Zuniga's
18 assessment, again financial strength on its
19 aggregated basis, the financial strength is
20 very good or outstanding, the investment plan
21 is sufficient/very good, the market assessment
22 is sufficient and the operations plan very
23 good. So, on that that financial dimension --
24 and I'll get to the market analysis in a

1 minute. -- I see that as very strongly
2 supportive of the applicant.

3 While Commissioner Stebbins' report
4 on workforce development did have its
5 reservations with regard to a relative absence
6 of specifics, in the colloquy that we had this
7 week over it, it appears clear that in the
8 other jurisdictions where Rush Street has
9 operated casinos, they in fact have performed.

10 And in my mind, it's one thing to
11 write an application with bells and whistles
12 and whatever. It's another thing to perform.
13 And that there's no qualification as far as I
14 can see from the record that MG&E and the Rush
15 entities have not in fact made good on the
16 economic development representations that they
17 made in these other communities.

18 And I believe in the economic
19 development briefing that we had from HLT that
20 one of the conclusions was that Rush Street has
21 succeeded in the three other, which were
22 characterized as highly competitive markets
23 before, namely Philadelphia, Pittsburgh and Des
24 Plaines. One takeaway from that is then that

1 the prospect of going head-to-head with the
2 tribal casino is not something which they are
3 unfamiliar with.

4 So, I see on the finance side, on
5 the workforce development side, a compelling
6 reason to be confident that the Rush Street
7 entities in fact can produce the economic
8 return and positively affect economic
9 development and the social development that is
10 the objective of the statute to provide for.

11 With respect to the financial impact
12 and the competition with the Tribe, as I said
13 yesterday candidly and with a smile, I am no
14 expert by any means on this dimension. And I
15 struggled with it, but I have done the best
16 that I can.

17 Frankly, it reminds me of situations
18 that I used to oversee when I was a Superior
19 Court judge in a medical malpractice case. And
20 I've tried a lot of medical malpractice cases.
21 And you typically had on the plaintiff side and
22 the defense side consultants, witnesses, expert
23 witnesses, typically with absolutely impeccable
24 credentials. Harvard Medical School, Yale

1 Medical School, NYU Medical School, professor
2 here, professor that on opposite sides and
3 testifying to a jury that yes unqualifiedly,
4 the doctor's conduct complied with the standard
5 of care.

6 Then the other expert would get up
7 and say unqualifiedly, the doctors violated the
8 most basic standards of reasonable care. And
9 where did that leave the jury? What the jury
10 has to do is sort of take what they have, using
11 their good faith and their diligence to be able
12 to see basically what makes sense. What makes
13 sense at a basic level from what these experts,
14 the technical subjects of which the jurors
15 would not have a command of. But nevertheless
16 to make a judgment based on what they think
17 makes sense.

18 That's kind of how I've approached
19 this. The critique that was made by the
20 Innovation Group of the HLT market analysis,
21 which has been headlined in the media on the
22 bottom line basis that a second casino here
23 would result -- a second casino in Region C
24 would result in a net loss to the Commonwealth.

1 So, it is a highly, highly important
2 issue. But I was struck in reviewing the
3 Innovation Group's critique of HLT that they
4 drew attention to the very data in the HLT
5 analysis, which I had raised questions of with
6 our consultants. This is not a criticism, but
7 I share this because it is very, very
8 significant because of the implications on the
9 bottom line as to the competitive advantage
10 that were being analyzed.

11 And it has to do with market shares.
12 I met with our consultants. And I asked if you
13 look at this part of their analysis of what
14 would happen under the two casino scenario.
15 And amongst the markets that they focused on
16 were the Boston Metropolitan markets. And Rush
17 Street has stated that this is the market that
18 they would be targeting most specifically.

19 And in the HLT analysis of the
20 market share, where they have central Boston
21 south that they predicted that from central
22 Boston south that the market share of Brockton
23 would be 10 percent and Taunton would be 20
24 percent, in other words, twice. You've got

1 people coming from the central Boston south
2 area. They'd be driving down Route 24 and
3 twice as many people would just continue on
4 driving to Taunton. That didn't seem to make a
5 lot of sense to me.

6 Also, they focused on the Boston
7 southwest market. And here they predicted that
8 Brockton would get 10 percent of the market but
9 Taunton with get 22.5 percent. Again, driving
10 down 24 going to two competitive casinos, and
11 they're predicting that more than twice as many
12 of those potential customers would end up going
13 to Taunton. Again, it just doesn't seem to
14 make sense.

15 And Boston south, 15 percent would
16 go to Brockton and 30 percent would go to
17 Taunton. Again, twice again driving down the
18 same Route 24, again proceeding 15 miles or
19 whatever it is to Taunton. That just didn't
20 seem to make sense to me.

21 I met with our consultants and asked
22 them to explain it. And as I understand it and
23 others can correct me if I'm wrong, but first I
24 was advised that drive times under 10 minutes

1 is immaterial. That drive times only if
2 they're more than 20 minutes, differentials of
3 more than 20 minutes become material.

4 So, I was advised that the
5 circumstance here having to go further down to
6 Taunton doesn't pertain. So, what I understand
7 to be the gravity model doesn't pertain here.
8 Okay. Maybe that's so, but anyway.
9 Intuitively it doesn't seem to make sense.

10 And the second thought that I was
11 advised is that the scenario has Taunton on the
12 assumption that Taunton is bigger and better
13 than Brockton. Okay. Why is it necessarily
14 bigger and better? Yes, they have said they're
15 going to spend \$1 billion on it, but they've
16 also said that they are only committing to
17 phase 1 at this point in time. And depending
18 upon what happens in phase 1 will determine
19 whether they'll go to phase two, three and
20 four.

21 So, this grand vision of the First
22 Light Casino with its fabulous hotel, the
23 waterpark and all of the rest of it that is
24 something which is not the kind of thing that

1 we can rely upon. So, I question the
2 reasonableness of the analysis that is based on
3 the existence of a bigger and better Taunton
4 casino.

5 So, on balance just intuitively it
6 doesn't seem to make sense that people in the
7 south Boston market, which is being targeted by
8 Rush Street are going to go down almost twice
9 the distance from where they are located in
10 order to go to Taunton.

11 The bigger and better, I think it's
12 highly speculative. And if you factor in the
13 risk of the litigation that is pending, and I
14 characterized yesterday that while I certainly
15 don't hold myself out to be an expert on it, I
16 draw on a great deal of experience. And this
17 is a very, very weighty challenge. It is not a
18 harassment type of lawsuit.

19 That is going to at a minimum make
20 Genting reluctant to invest any more capital
21 than necessary to bring on phase 1, which I
22 think to use the phrase which the Chairman
23 used, I don't think there will be any doubt
24 that their phase 1 casino will be just a

1 convenience casino. Stripped down, no hotel,
2 very minor amenities to just up and running
3 with table games and slot machines and waiting
4 upon the coast to clear for further
5 development.

6 My bottom line on this in terms of
7 the financial projections is that it's
8 basically a wash. Commissioner Zuniga has
9 emphasized repeatedly that in this field, we
10 are dealing with uncertainties. And anybody
11 who suggests the contrary is not being
12 responsible. So, I look at this as probably
13 equal return to the Commonwealth if there is a
14 second casino, namely the Brockton casino.

15 And then I asked myself what would
16 it mean if we voted to not license a Brockton
17 casino? And I come back here to that portion
18 of my presentation, which I reported on the
19 facts and figures of the city of Brockton which
20 Ombudsman Ziemba was good enough to be able to
21 provide to me from the Brockton planning
22 department.

23 Just repeating that we are in a city
24 in which there's been a 38 percent decline in

1 manufacturing since 2001. 46 percent of the
2 children in this city are classified as
3 economically disadvantaged. The high school
4 dropout rate is twice the state average. And I
5 think it's fair to say -- It's not just fair to
6 say. I can report it because I was here. I'm
7 a witness that in our community meetings, the
8 local officials not just the mayor were
9 literally -- have literally begged us and using
10 that word begging us to license the Rush Street
11 casino.

12 And very significant in this regard,
13 although I don't remember her having presented
14 to us, but the superintendent of schools
15 unqualifiedly has supported this application.

16 So, we've got a city that
17 desperately needs economic development,
18 workforce development, and the infusion of
19 capital in order to be able to serve its
20 citizens. And then we have in the form of Rush
21 Street a private party, not a government
22 entity, a private party that is willing to
23 commit to invest almost \$700 million into the
24 community with a proven track record in three

1 other highly competitive urban areas.

2 So, I go back to the question let's
3 look at what a no vote means. A no vote means
4 Brockton we're sorry, you can't have it. And
5 furthermore what it means is it would leave
6 Region C in the hands of the Tribe and a
7 Malaysian operator over which we have no
8 binding jurisdiction.

9 We would forgo -- In that situation,
10 we would not have the opportunity, which we do
11 have with Rush Street to leverage the statutory
12 goals of the Expanded Gaming Act to promote the
13 economic development and social welfare of the
14 Commonwealth.

15 Finally, on that point and just
16 repeating what I said before about the legal
17 claim is that we would leave Region C with a
18 tribal casino where the Tribe's claim to a land
19 in trust, which is the very foundation of the
20 whole venture is subject to a very credible and
21 potentially fatal Federal Court challenge.

22 Putting all of this together, and
23 maybe I'm getting to the end prematurely, and
24 it's not to say that my mind is foreclosed from

1 others' views, but putting all this together, I
2 am strongly inclined towards approving this
3 license application.

4 CHAIRMAN CROSBY: Thank you,
5 Commissioner. You may be new to this, but I
6 would say you're getting the hang of it. I'm
7 going to have a very quick break and then we'll
8 come back to the rest of the Commissioners.

9
10 (A recess was taken)

11
12 CHAIRMAN CROSBY: We are
13 reconvening. Does another Commissioner want to
14 give a sense? Commissioner Stebbins are you
15 moving forward?

16 COMMISSIONER STEBBINS: I can. Just
17 a quick general impression or general sense in
18 sharing some feedback from Commission
19 Macdonald's comments as well. If you look at
20 this region in terms of jobs and economic
21 opportunity, a lot of people might argue that
22 there's no problem having two. You get more
23 jobs, you get more local spending. The
24 drawback to that is as we've heard from our

1 consultants is a potential loss of revenue
2 overall to the Commonwealth.

3 I am a competition sort of
4 individual. Competition keeps people on their
5 toes, keeps them motivated to be successful
6 within the marketplace.

7 Just to reflect on some of
8 Commissioner Macdonald's comments and thoughts,
9 I certainly appreciate his thoughts and
10 comments on the nature of the tribal lawsuit.
11 He said he's not a big expert on Indian law.
12 That would probably place the rest of us in the
13 novice category.

14 You spoke eloquently about the needs
15 for the city of Brockton. And I was reflecting
16 on that a little bit over the last of couple
17 days. I think one of the hardest jobs we've
18 had, the four of us, in the previous decisions
19 that we've made is that there have been
20 communities who have been desperately seeking
21 this type of economic infusion. I think one of
22 our hardest jobs has been denying some of those
23 communities.

24 In the Category 2, we know that the

1 city of Leominster had an applicant that put
2 together -- put forward a very competitive
3 application. And we saw how much it meant to
4 the city of Leominster.

5 In Region A, we heard lot from Mayor
6 Rizzo at that point and other elected officials
7 as to what impact that project could have on
8 the city of Revere. Unfortunately, again, we
9 were faced with a choice and the community was
10 denied.

11 I don't necessarily, and I hope I
12 got the sense of Commissioner Macdonald's
13 comments correctly. I don't necessarily think
14 that by denying this application we are denying
15 a casino for the city of Brockton. I
16 preference what I've just said with the fact
17 that I think there are tremendous strengths to
18 this application.

19 I think the site is a good site.
20 It's been talked about throughout our analysis.
21 This is a site that presents very few
22 challenges. I think it might've had an
23 opportunity to provide a few more opportunities
24 than necessarily we've realized in the

1 application process. But it's a good site.

2 And I think it affords itself a lack
3 of the headaches and challenges that our two
4 other licensees have faced.

5 I have general concerns. Again,
6 we've given this applicant a lot of credit
7 based on past experience, past history. I
8 would suggest that our other two licensees also
9 came to the table with strong past experience
10 and past history at the other facilities they
11 operate. But that didn't necessarily allow
12 them to forgo providing us a very good, rated
13 very good or above application.

14 And I think within this application,
15 I have some serious concerns. I've talked
16 about them already. Commissioner Cameron
17 raised one with respect to pay. I have
18 concerns about what the applicant has told us
19 are their retention rates, which is a concern.

20 And some suggestion that we can help
21 remedy these things, remedy these things
22 through license conditions. And I worry about
23 us having to overprescribe license conditions
24 to make this application a stronger application

1 and kind of pull it across the line for
2 approval.

3 Again, I go back to the fact -- And
4 again, I think this is a good site. I think
5 all of us at this table value the jobs and
6 economic opportunity a good application can
7 bring to a community. I think we are already
8 seeing that in the other two licenses that
9 we've awarded.

10 But I have some concerns about the
11 strength of this application. Understanding
12 the shot in the arm Brockton needs. That's
13 been very clear. I appreciate the mayor's
14 passion about that. I live in a community that
15 faces a lot of those same similar challenges.
16 But I don't want to make an award of a license
17 to an application that in my estimation is just
18 not up to the level of excellence that I would
19 expect.

20 Again, I said it before, I think we
21 have a very strong applicant. They have shown
22 success. They've shown good neighborhood
23 participation and cooperation with the
24 communities in which they operate in. That

1 didn't translate into the application all that
2 well for what they would do with the city of
3 Brockton.

4 And probably comments I take a
5 deeper dive that I would mirror some agreement
6 with the Chairman on the overall evaluation of
7 the facility. But I don't feel saying no to
8 this application necessarily, and again, maybe
9 I'm paraphrasing Commissioner Macdonald's
10 comments incorrectly, I don't think it means no
11 to a casino in Region C. And I don't believe
12 maybe it means no to a casino in Brockton. It
13 just may not be this application that I'm
14 comfortable with.

15 CHAIRMAN CROSBY: Thank you.
16 Commissioner Zuniga?

17 COMMISSIONER ZUNIGA: Let me start
18 with the goals of the Gaming Act like we
19 started before. And the ones that Commissioner
20 Macdonald chose are very, very relevant. I
21 remember having a conversation with a senator.
22 And the shorthand she used is we did this for
23 the money and we did this for the jobs. This
24 is a jobs bill.

1 I remember reading the Gaming Act,
2 all of it a few times over of course when I
3 first came on. Coming back with this idea of
4 balance.

5 There is so much that we have to
6 balance here. Chairman you have a shorthand
7 for this. You have to maximize the good and
8 minimize the bad. And there's many, many areas
9 where that comes to fruition many aspects of
10 what we do, responsible gaming and regulation,
11 in addition to economic development.

12 So, I would say that there is one
13 that comes to mind right now, one goal in the
14 Gaming Act. In addition to advancing the
15 economic development and providing
16 opportunities to unemployed and cities that
17 need it, we are also charged with creating a
18 robust gaming industry. Generating long-
19 lasting robust operations.

20 We become, as I've said for this
21 decision, we have to look back at the prior
22 ones and see what this does, what every
23 decision we make does on the prior ones that
24 we've made.

1 I would liken it to picking stocks
2 for a portfolio. There would be no comment, no
3 judgment on the stock that we pass on if we
4 already have a portfolio. Picking the first
5 one, it's very easy to pick, to pick good
6 stocks. And there's many out there.

7 So, the notion of robustness of the
8 gaming market is something that I start with.
9 When get from this application being fair, at
10 least in my mind, what does that mean for the
11 other -- for the rest of the state. And with
12 its uniqueness, again, no comment on the
13 applicant, but the competitive uncertainty that
14 begins to question in my mind something that
15 goes to the robustness that we're also
16 responsible for that ultimately benefit the
17 Commonwealth which we are tasked for.

18 In that standard of review, we need
19 to be cognizant of the default would have us
20 go, the presumption is if we're not convinced
21 that this provides an overall benefit to the
22 Commonwealth we shall not. It doesn't say we
23 may not, we shall not. So, I see that as a
24 high bar for us to think about what the overall

1 benefits to the Commonwealth, not just the city
2 and those would be clear but also the
3 Commonwealth.

4 So, let me mention a couple of
5 things on the comments on the market
6 assessment. I don't take that as any of the
7 projections as a factor into making the
8 decision on the financial terms. I've
9 emphasized that in my mind all that means is
10 there's more than this in this region.

11 I've always sort of felt sort of in
12 between when it came to thinking award or not.
13 I've sort of been 50-50 for a while. But if we
14 take everything including the robustness
15 notion, the standard of review that we have,
16 there's enough risk here at the overall level
17 that gives me pause.

18 I do want to chime in a little bit
19 on the land in trust notion. That it is quite
20 possible that this would be challenged. And
21 there's instances where they have in other
22 states those decisions have been challenged.
23 But the fact of the matter is that they did
24 obtain land in trust. It would take a reversal

1 of that to challenge the current decision.

2 When we first started this process,
3 when we opened the Region C casino, there was
4 no indication of land in trust. We reached out
5 -- You reached out to Mr. Chairman to the
6 Department of the Interior. They would not
7 tell us what may be down the line because they
8 couldn't. They didn't feel that they could.
9 Not because they were bound by anything but
10 they didn't know.

11 So, those circumstances changed
12 along the way. And there's now a decision
13 whether it's very likely to be challenged or
14 not, the decision is there. And the risk of
15 competition increases in my mind.

16 And there's a lot of other factors
17 that come into play. We talked about them.
18 And I don't feel I need to rehash them. But it
19 all begins to, in my mind, have a real question
20 as to the robustness of the gaming industry
21 which we want to be long-lasting.

22 Circumstances could change. If we
23 don't award the license, we retain the option
24 to re-bid this years down the line or however

1 long later. I know that's not what the city of
2 Brockton would like to hear, but in the notion
3 of risk there's a lot that we could learn along
4 the way simply by preserving the option to
5 award at a later time.

6 With that thought in mind, with the
7 standard of review, with the notion of the
8 robustness of the gaming industry, I would fall
9 in the notion of holding off on awarding a
10 license.

11 COMMISSIONER CAMERON: Mr. Chair, do
12 you want to go first and then I just wanted to
13 have a few more comments about the competitive
14 environment.

15 CHAIRMAN CROSBY: Go ahead.

16 COMMISSIONER CAMERON: I think we
17 spent a lot of our evaluation time talking
18 about an either/or scenario. I think that's
19 probably not the way to look at this anymore.

20 I agree with Commissioner Zuniga,
21 when we opened this, it was a very uncertain
22 Region C environment. We were told it would
23 take years to get the land in trust. The land
24 in trust was awarded. We were told there would

1 be many challenges. And it would take years
2 and years to adjudicate. And no one would risk
3 financing or building the project.

4 Well, they've broken ground and they
5 have credible financing and a credible
6 operator. So, the landscape has changed. It
7 is a competitive environment now. And I think
8 it's worth noting.

9 Also, with regard to this one
10 challenge by the abutters which is financed by
11 Mr. Bluhm, I don't think it's our job to
12 forecast an outcome. I don't think that should
13 be part of our decision-making. I'll be honest
14 with you.

15 That award was made. They have
16 credible financing and a credible operator. It
17 doesn't matter to me what country the operator
18 is from frankly. We've done our due diligence
19 there and it's a credible operator.

20 So, I would agree that in this
21 environment, which we always said we would
22 evaluate at the time of the license, there is
23 an awful lot of risk. I have much more faith
24 in our consultants and their market analysis.

1 But it does lead, as Commissioner Zuniga said,
2 it really speaks to the risk in this region.

3 I'm also concerned as you are with
4 the competitive -- The words you used, you took
5 it right from the statute. The highest, best
6 value to create a robust gaming market. That
7 means looking out for our other licensees
8 frankly. And each of them would sustain a loss
9 with a fourth resort casino which was not
10 intended in the legislation.

11 So, although again, I really do
12 value what this could mean to this city, I just
13 think our job is to look out for the entire
14 Commonwealth and what's best. And as we look
15 around the country at saturation that is
16 consideration here. It's not pleasant. I know
17 many, many people who have lost their jobs in
18 Atlantic City. And it's a concern that we
19 evaluate the risk involved here. So, I just
20 want to speak to that.

21 COMMISSIONER MACDONALD: Can I just
22 make one comment?

23 CHAIRMAN CROSBY: Sure.

24 COMMISSIONER MACDONALD: I may have

1 misspoken and it was absolutely not my
2 attention to in any way unfavorably
3 characterize the Genting organization by saying
4 that it's a Malaysian operator. The Genting
5 Company as far as I know is number one, totally
6 legit. It's enormously successful. And that I
7 was very impressed with their presentation when
8 we were at the tribal headquarters in March.

9 So, if my choice of words as I was
10 making my way to a conclusion was not artful,
11 it was certainly not intentional. The
12 competitive casino is one that is operated
13 entirely by, as far as I can tell, responsible
14 individuals. The Tribe is an established
15 recognized tribe. And I was very impressed
16 with their presentation in March as well.

17 So, if my choice of words suggested
18 a lack of respect for Genting or in any way
19 reflected adversely on the Tribe that was
20 absolutely not intended. And I wanted that to
21 be 100 percent clear.

22 CHAIRMAN CROSBY: Thank you, folks.
23 I take tremendous pride in the thoughtfulness
24 of the Commissioners.

1 I walk through my thought process as
2 well. See if I end at the end of it where I
3 start out. I agree in terms of financing. For
4 my money, it's a wash. We have no way of
5 knowing for sure whether it's, \$10-, \$20-, \$30
6 million up or down either way. I don't see that
7 issue as dispositive.

8 There is a contextual issue which in
9 one level is sort of outside the bounds, but on
10 another level I do think did have an impact on
11 our statute and on the compact. And that is
12 the federal government's public policy decision
13 to in a peculiar, to put it mildly, way used a
14 proprietary right in casinos to try to rectify
15 an injustice that was done to Native Americans
16 over many hundreds of years. Started with
17 genocide and continued through centuries of
18 rapacious legal and political and military
19 abuse.

20 Whether somehow or other as it
21 happened using casinos as a proprietary feature
22 to somehow or other contribute to the tribes
23 was a good idea is not our business, but it is
24 there. And I do think that our statute and our

1 compact reflect the fact that the Governor in
2 particular, and I think he was foursquare about
3 this at the time, and a number of the
4 legislators were puzzled as we have been by
5 what's right and equitable and appropriate in
6 this complicated environment, but wanted to
7 figure out a way to try to give the Tribe the
8 first bite at the apple.

9 It was clear and explicit that they
10 tried to give the Tribe the first bite at the
11 apple. As I scoured the statute and with the
12 help of the staff, scoured also the legislative
13 history and the press reports at the time,
14 there always was the anticipation of the
15 possibility of both a commercial and an Indian
16 casino. No question about it. The statute and
17 the compact anticipate that. And I think we're
18 on firm ground on that point.

19 But it was fundamentally what would
20 happen -- anticipating what would happen if the
21 Tribe came along after there was a commercial
22 casino. It wasn't anticipating the possibility
23 that there'd be a tribal casino and then along
24 would come a commercial award. It was

1 anticipating much more plausibly the likelihood
2 that we make a commercial award and someday
3 land in trust happens and we have a fourth
4 major casino.

5 That's not the circumstance here.
6 The circumstance here now is that we have the
7 clear presumption of a casino, which is what
8 the statute was looking for to pretty much say
9 okay, if they get their act together, let them
10 have it.

11 However, there has been this
12 incredible affiliate. None of the deadlines
13 that the Tribe has offered have ever been. We
14 didn't know how to continue to proceed, what
15 was fair. We wrestled with whether and how to
16 open it up to commercial application. The
17 legislation didn't really anticipate there
18 would be this long window, didn't gave us no
19 real guidance. And it added considerable
20 confusion and complication to our decision-
21 making process as that continually was delayed.

22 Appropriately, in my view we
23 eventually decided to move forward on a
24 commercial application process. We constantly

1 and incessantly pointed out that the commercial
2 award decision would ultimately be subject to
3 the tribal status consideration. And
4 commercial applicants knowingly proceeded at
5 their own risk with that clear parameter laid
6 out by us repeatedly.

7 Then all of a sudden land in trust
8 is awarded after we had gone well down the road
9 in the commercial application. But great
10 uncertainty remains as Commissioner McDonald
11 has said clearly and we all feel and are very
12 much aware, this phasing business is
13 unappealing. This Rush assertion that
14 financing is illogical under these
15 circumstances makes some sense.

16 We don't know for sure what's going
17 to happen with this casino. The mere award of
18 the lead in trust and the assertion that
19 there's going to be a fabulous casino does not
20 tell us whether or not that indeed will be
21 true. And of course, we have the unknown
22 factor of the Taunton lawsuit.

23 But we continue to go down the road
24 of the commercial application to get us to our

1 two-step process, do we have a quality
2 applicant and do we want to make the award if
3 we do.

4 And then we get to the final
5 Brockton commercial application. And has been
6 adequately discussed by everybody, it is
7 sufficient overall we judge, meaning it's met
8 the minimal qualifications. It's not in my
9 view a destination resort casino in the way
10 that the Legislature and we really anticipated.

11 It's not to denigrate it inherently,
12 it's just that it may not match what we were
13 looking for under the completely reasonable
14 constraints of this particular marketplace.

15 The reliance on performance in other
16 markets while, again, as we've all said this is
17 a credible impressive company, demonstrably so,
18 this market is not Fishtown. And it's not
19 where Rivers Casino is. And not having any
20 real solid evidence of how they would proceed
21 is in my mind problematic.

22 I think there is a good possibility,
23 and I said this before that we would end up
24 having a casino that's pretty much isolated

1 unto itself, maybe reasonably successful but
2 very likely not having the lifting of all boats
3 that was anticipated.

4 If this were a knockout proposal
5 with a great strategy and a great commitment to
6 lift Boston, this is such a close call -- I'm
7 sorry, Brockton, this is such a close call, I
8 for one may have come down in a different way.

9 But I don't think that this is the
10 kind of casino that Massachusetts has
11 envisioned. Will it lift Brockton up? One of
12 the most compelling parts of this argument is
13 the painful discussion about Brockton. And as
14 others have said, and I don't think there's any
15 gainsaying that at all. But I don't think
16 that's what the Legislature passed.

17 There is a different kind of
18 economic development strategy with a much lower
19 economic or a cap. ex. threshold and maybe even
20 a little higher tax base that you could
21 recommend putting something like this casino, a
22 more modest version in every gateway city, many
23 of which need help. That's not what our
24 Legislature eventually came up with. There was

1 a way to do that if they had wanted to do that.

2 Then at the last minute, there is
3 the issue of the \$85 million delay. I'm not
4 quite sure which way -- I sort of thought the
5 tribal threat of the lawsuit because I think
6 it's on such infirm ground was probably more of
7 a bluff. Now I think with the lawsuit there,
8 it's probably not a bluff. It's probably
9 pretty real that there would be a lawsuit for a
10 long time. But be that as it may.

11 Bottom line I end up feeling like
12 this does not meet the standards that are
13 required to make the decision. Difficulty in
14 this situation is you get to know the people
15 involved. And as Commissioner Stebbins said
16 eloquently, you don't like to say no but that's
17 why we get paid the big bucks.

18 I think that I too come down -- I
19 come down on the side that this does not -- All
20 things considered this does not warrant an
21 award.

22 If it turns out that there is no
23 land in trust ultimately or there is no
24 financing and no casino, as others have said,

1 we can reopen this at any time. But at the
2 moment that's where I would tend to come down.

3 So, let me ask, does anybody want
4 more conversation, more thought? Are there
5 issues you want to weigh out, wrestle or shall
6 we propose an initial vote?

7 COMMISSIONER MACDONALD: Let's vote.

8 CHAIRMAN CROSBY: You spoke first
9 Commissioner Cameron, do you want to frame a
10 question with the help of our General Counsel
11 about how to pose this?

12 MS. BLUE: I think the best way to
13 phrase the motion would be to move to vote to
14 deny the application as submitted by MG&E. I
15 think if that's the way the Commissioners feels
16 it wants to phrase it, we could do it that way
17 based on what I've heard.

18 CHAIRMAN CROSBY: And if the answer
19 to that is no, we do not vote to deny, then we
20 will go on.

21 MS. BLUE: Then you will go on, yes.

22 COMMISSIONER CAMERON: So, I move
23 that this Commission vote to deny the
24 application of MG&E.

1 CHAIRMAN CROSBY: Second?

2 COMMISSIONER ZUNIGA: Second.

3 CHAIRMAN CROSBY: Let's do this by
4 oral vote. Commissioner Cameron?

5 COMMISSIONER CAMERON: Aye.

6 CHAIRMAN CROSBY: Commissioner
7 Macdonald?

8 COMMISSIONER MACDONALD: Opposed.

9 CHAIRMAN CROSBY: Commissioner
10 Stebbins?

11 COMMISSIONER STEBBINS: Aye.

12 CHAIRMAN CROSBY: Commissioner
13 Zuniga?

14 COMMISSIONER ZUNIGA: Aye.

15 CHAIRMAN CROSBY: And the Chair
16 votes aye. So, the decision to deny the
17 application of MG&E for the Region C casino is
18 passed by a 4 to 1 vote -- I mean is passed by
19 a 4 to 1 vote.

20 I think that concludes our business.

21 MR. STRUSINER: Mr. Chairman, may I
22 just say a few words?

23 MR. CHAIRMAN: Sure.

24 MR. STRUSINER: I just want to say a

1 few words to thank a few groups of people. I
2 just wanted to take a moment to thank a few
3 groups, if that's okay.

4 First of all, I'd like to thank our
5 host community. We have now been in Brockton
6 for quite some time. We've gotten an
7 opportunity to meet a lot of people. A lot of
8 residents of this community strongly supported
9 our project. And even the ones who didn't, we
10 wanted them to know that we really would have
11 worked hard to give them a great project.

12 But this city has the title of the
13 City of Champions and they deserve it. There's
14 really great people. And there's a great heart
15 in the city. And while they are facing some
16 challenges, I certainly hope they have good
17 things come to them in the future.

18 I also want to particularly thank
19 the mayor who has been a strong supporter of
20 ours. And the people of Brockton really should
21 know that they have a mayor who genuinely cares
22 and is working really hard to try to make this
23 city as good as it can possibly be.

24 Second, I would like to thank our

1 team. This process is a long and hard process.
2 And not only do we have employees who have
3 dedicated a lot of time to it, we have a great
4 consultant team. As the Commission and the
5 staff understands, it's a tremendous amount of
6 work. And we have all sorts of consultants who
7 have not just worked on it because we were
8 paying them to work on it, but they really came
9 a lot of enthusiasm and energy and heart to
10 this project. And I greatly appreciate it. I
11 really thought we had a first-class team. And
12 we were really lucky to work with them.

13 Finally, I'd like to thank the
14 Gaming Commission. The Commissioners, staff,
15 consultants, although we disagree with your
16 decision and we think we would have not only
17 built a great project but been good for the
18 city of Brockton and Region C, we recognize
19 that this group, the Commissioners, the staff
20 and the consultants have worked very hard in a
21 very professional manner to try to make the
22 best decision that they can make.

23 And while we disagree with it, we
24 certainly respect the process and how much

1 thought and hard work has gone into it. And in
2 the spirit of trying to be -- you guys trying
3 to be good public servants, we appreciate that
4 you did your best in trying to live up to that
5 spirit. So, thank you very much.

6 COMMISSIONER CAMERON: Thank you.

7 CHAIRMAN CROSBY: Thank you. I
8 appreciate those remarks very much.

9 COMMISSIONER ZUNIGA: Thank you.

10 CHAIRMAN CROSBY: Do I have a motion
11 to adjourn?

12 COMMISSIONER CAMERON: So moved.

13 CHAIRMAN CROSBY: Second?

14 COMMISSIONER MACDONALD: Second.

15 CHAIRMAN CROSBY: All in favor, aye.

16 COMMISSIONER MACDONALD: Aye.

17 COMMISSIONER CAMERON: Aye.

18 COMMISSIONER ZUNIGA: Aye.

19 COMMISSIONER STEBBINS: Aye.

20 CHAIRMAN CROSBY: We are adjourned.

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22 (Meeting adjourned at 1:37 p.m.)

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ATTACHMENTS:

1. Massachusetts Gaming Commission April
26-29, 2016 Notice of Hearing and Agenda

GUEST SPEAKERS:

- John Donnelly, Esq. on behalf Mass Gaming and
Entertainment
- Scott Strusiner, Rush Street Gaming
- Rick Moore, City Point Partners

MASSACHUSETTS GAMING COMMISSION STAFF:

- Ed Bedrosian, Executive Director
- Catherine Blue, General Counsel
- Karen Wells, Director IEB

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 2nd day of May, 2016.



LAURIE J. JORDAN

My Commission expires:

Notary Public

May 11, 2018