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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #62

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

April 4, 2013, 9:00 a.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room H

1000 Washington Street

Boston, Massachusetts

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

CHAIRMAN CROSBY: We are ready to call to order the 62nd meeting of the Massachusetts Gaming Commission on April 4, 2013. We will start as usual with approval of minutes, Commissioner McHugh?

COMMISSIONER MCHUGH: There are three sets of minutes, Mr. Chairman. The agenda says four, but that was aspirational. We have first the minutes of March 12. I welcome any comments, suggestions, changes to any of those. They were distributed yesterday, so it may be that not everyone's had a chance to read them and that's understandable as well.

COMMISSIONER ZUNIGA: I have a question really for my edification on the minutes from March 12.

COMMISSIONER MCHUGH: Right.

COMMISSIONER ZUNIGA: Page four, I recall and I think it's well summarized here that there was discussion relative to the contributions, disclosure of contributions and requests for contributions.

1 COMMISSIONER MCHUGH: Right.

2 COMMISSIONER ZUNIGA: Specifically
3 talking about the paragraph right before the
4 subtitle there for Racing Division.

5 COMMISSIONER MCHUGH: Right.

6 COMMISSIONER ZUNIGA: I'm not sure if
7 we reached a conclusion. And if we did, perhaps
8 it could be more explicit here. Or do we need to
9 make it more explicit?

10 COMMISSIONER MCHUGH: I think that
11 summarizes the conversation that we had then. But
12 then we have since then adopted regulations that
13 puts this into practice. And the November 21 date
14 for requests, November 21, 2011 is not the
15 applicant date. It's the date when people paid
16 the application fee for the requests. It is
17 November 21 for contributions. That was in the
18 old regs.

19 COMMISSIONER ZUNIGA: Right.

20 COMMISSIONER MCHUGH: So, this really
21 was the discussion as of that time that's been
22 superseded by the regs. that we've adopted or
23 refined, I should say for the regs. we adopted.

24 COMMISSIONER ZUNIGA: Fair enough.

1 CHAIRMAN CROSBY: Does that work for
2 you?

3 COMMISSIONER ZUNIGA: That works
4 fine.

5 CHAIRMAN CROSBY: I had not finished
6 reading 21. I did read 12 and 14. I would like
7 to maybe postpone voting on 21.

8 But I did have a couple of questions on
9 page two of 21. In the last full paragraph, that
10 big paragraph there that starts Commissioner
11 Zuniga?

12 COMMISSIONER MCHUGH: Yes.

13 CHAIRMAN CROSBY: Down in the third
14 line, the last sentence says every few years that
15 proposal would aggregate data on a new 17,000
16 person sample. We don't know for sure whether
17 it's 17,000. It would just be on a new sample. I
18 don't think there's any guarantee that it would be
19 17,000.

20 COMMISSIONER MCHUGH: Okay.

21 CHAIRMAN CROSBY: Then the last
22 sentence, Commissioner Zuniga stated that the
23 latter study would cost 1.2 million. It's
24 actually the former study, which is the CHA study,

1 right?

2 COMMISSIONER ZUNIGA: That's correct.

3 COMMISSIONER MCHUGH: Oh, all right.

4 CHAIRMAN CROSBY: Just to make it
5 clear, I'd say the Cambridge --

6 COMMISSIONER MCHUGH: That's a
7 substantive correction. I missed that. I
8 misunderstood. I thought it was the UMass.

9 CHAIRMAN CROSBY: No. I'm glad we
10 clarified that because that was a huge factor in
11 the thought process. It was a close call
12 substantively, but not a close call pricewise at
13 all.

14 COMMISSIONER MCHUGH: Okay. Well
15 that's important. I misunderstood.

16 CHAIRMAN CROSBY: Good. I'm glad we
17 got that. I'd like to read the rest of 21.

18 COMMISSIONER MCHUGH: It's good
19 reading.

20 CHAIRMAN CROSBY: It's fascinating
21 reading. Does anybody else have comments? We
22 can vote on 12 and 14. Does anybody else have
23 comments on 12 or 14?

24 COMMISSIONER MCHUGH: So, I move that

1 the minutes of the March 12 meeting be approved as
2 presented.

3 COMMISSIONER CAMERON: Second.

4 CHAIRMAN CROSBY: All in favor, aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER CAMERON: Aye.

8 COMMISSIONER MCHUGH: Aye.

9 CHAIRMAN CROSBY: Opposed? The ayes
10 have it.

11 COMMISSIONER MCHUGH: The ayes have
12 it. And then I move that the minutes of the March
13 14 meeting be approved as presented.

14 COMMISSIONER CAMERON: Second.

15 CHAIRMAN CROSBY: All in favor, aye.

16 COMMISSIONER ZUNIGA: Aye.

17 COMMISSIONER STEBBINS: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER MCHUGH: Aye.

20 CHAIRMAN CROSBY: The ayes have it.

21 COMMISSIONER MCHUGH: The ayes have it.

22 And then we'll have the 21, 25 and 28 next meeting.

23 And there will be a couple of others that we

24 sprinkle in there too. And then we'll be up to

1 date.

2 CHAIRMAN CROSBY: Great. Okay. We
3 usually go to the master schedule. Can we put up
4 the master schedule on the screen? I do want to
5 have the -- Elaine, can you have the main page of
6 the screen of the master schedule up when we're
7 having these next two conversations? Oh, you got
8 it. Sorry about that.

9 We're going to hold the master schedule
10 conversation until we have the next two topics
11 because they bear on the schedule. So, we will
12 next call on Director Wells for an update on the
13 Investigations and Enforcement Bureau.

14 MS. WELLS: Good morning.

15 COMMISSIONER MCHUGH: Good morning.

16 COMMISSIONER CAMERON: Good morning.

17 MS. WELLS: I am pleased to report all
18 11 of the investigations are well underway. I'm
19 generally pleased with the progress and the pace
20 of the investigations. The Massachusetts State
21 Police along with the consultants are extremely
22 busy. And there is a lot of work that's going to
23 be going on right now.

24 As I reported previously, the four

1 slots investigations have been expedited. As of
2 yesterday, the expectation was that three of the
3 four probably will be finished by the end of this
4 month, the end of April. And the fourth may go
5 into the first through the third week of May. So,
6 that would be my best estimate right now.

7 CHAIRMAN CROSBY: So, I just want to
8 check in here. By the end of April, Commissioner
9 Zuniga, can you look at this?

10 COMMISSIONER ZUNIGA: Yes.

11 CHAIRMAN CROSBY: End of April was
12 what we had put on the schedule, right?

13 COMMISSIONER CAMERON: The original
14 schedule.

15 CHAIRMAN CROSBY: Right.

16 COMMISSIONER ZUNIGA: The
17 investigations for the Category 2, this is the
18 Category 2 line. We are on track for 4/30.

19 MS. WELLS: Yes. I mean that's
20 pushing it. I'll put that out there. But they're
21 really working hard. And they really have
22 prioritized these investigations. They've done a
23 good job and they're moving on those, with the
24 caveat one entity is a privately held company.

1 And there are particular sensitivities with a
2 privately held company. We are taking those into
3 consideration with respect to the investigation,
4 with their corporate structure.

5 At least one of the slots applicants,
6 they recently made a change to their structure,
7 which we expect that'll necessitate the addition
8 of another qualifier. That means a whole other
9 set of forms. We've got to go through the process
10 with that potential individual again. I'm going
11 to watch that. I just received information
12 yesterday about that. So, I have to watch that.

13 So, this is a fluid process. It's
14 somewhat of a moving target. So, I want to make
15 sure the Commission is aware of that. So, as
16 investigations go, you can lay your plans out, but
17 if we get something that's concerning, we'll
18 follow that path and see where that leads.

19 But right now, as of today, that is my
20 best estimate on the expectation of the timeline.

21 COMMISSIONER CAMERON: Director
22 Wells, when you talk about completion of the
23 investigation, I believe you were referring to all
24 of the information, all of the interviews will be

1 complete. Then will you need additional time to
2 prepare a report and a presentation to the
3 Commission?

4 MS. WELLS: Yes, that is my
5 expectation. That would be the best thing for the
6 Commission. And I think just putting together
7 that information in a way that is sort of puts all
8 the same -- the four applicants on sort of the same
9 footing, apples to apples. You're explaining it
10 in the same way and being able for the Commission
11 to have a good comparison.

12 I will be evaluating all of the
13 information from the consultants and the State
14 Police in presenting that to the Commission for
15 their consideration so they can vote.

16 So, I am in the process of also looking
17 at other jurisdictions to see how they present the
18 information so we can do it the most comprehensive
19 and understandable manner for the Commission.

20 COMMISSIONER CAMERON: So, you
21 anticipate that taking -- You would need a couple
22 of weeks, I would suspect.

23 MS. WELLS: Potentially, yes. It
24 depends on what the result is. Obviously, if the

1 information comes back that everything looks good
2 for all four qualifiers, that's much easier
3 presentation to the Commission.

4 However, if there are potential issues
5 that I think need to be addressed and I have certain
6 concerns, that I think will need some time to flush
7 out because I have to present what's the basis for
8 that concern.

9 I've said previously, if everything
10 works out well, there's not much to say. But if
11 there are issues with those four or any of those
12 four, then that will take some more time. As of
13 right now, it's impossible to say for sure. But
14 I just want the Commission to be aware of that
15 beforehand.

16 CHAIRMAN CROSBY: Okay. So, I just
17 want to look at this. On our present plan, we were
18 anticipating approving the Category 2
19 applications -- background checks by the end of
20 April.

21 MS. WELLS: Yes.

22 CHAIRMAN CROSBY: And at this stage of
23 the game, it looks like we will have --

24 COMMISSIONER MCHUGH: Not approving.

1 CHAIRMAN CROSBY: Sorry, making the
2 recommendations to us. Sorry, completing the
3 background checks.

4 COMMISSIONER ZUNIGA: Completing the
5 background checks.

6 MS. WELLS: Then there's the
7 presentation part.

8 CHAIRMAN CROSBY: Right, sorry.
9 Thank you for correcting me. That's right.
10 Completing the background checks, which is what
11 we're talking about --

12 MS. WELLS: Correct.

13 CHAIRMAN CROSBY: -- by the end of
14 April. And it looks at this stage of the game like
15 at least three or four will be okay.

16 MS. WELLS: That's my guess.

17 CHAIRMAN CROSBY: And the fourth may
18 go over two or three weeks into May.

19 MS. WELLS: That's right.

20 CHAIRMAN CROSBY: Then we have given
21 ourselves this almost a two-month hearing period
22 in case there are appeals to the IEB decision.

23 MS. WELLS: Correct.

24 CHAIRMAN CROSBY: And we may or may not

1 have that. So, fundamentally at this point --
2 This is now going to go to our eventual
3 conversation on the master schedule. It looks to
4 me like for the most part relative to Category 2,
5 we're okay in terms of our regular schedule.

6 COMMISSIONER CAMERON: Mr. Chair,
7 other than -- if you're talking about suitability
8 that determination could not be made until report
9 preparation and presentations and then a vote.

10 CHAIRMAN CROSBY: Right.

11 COMMISSIONER CAMERON: So, that does
12 push us back a couple of weeks.

13 CHAIRMAN CROSBY: That's out here.
14 Determine suitability on our present schedule
15 doesn't happen until July 25.

16 COMMISSIONER ZUNIGA: That's correct.

17 CHAIRMAN CROSBY: And we've been
18 talking about can we move everything back a little
19 bit in order to maybe award the license sooner than
20 December. And we'll talk about that further later
21 on when we hear more stuff.

22 So, the only thing that was scheduled
23 to happen -- I misspoke originally. The only
24 thing that was scheduled to happen by the end of

1 April was the end of the background checks. The
2 decision by the Commission was not until the end
3 of July.

4 COMMISSIONER ZUNIGA: That's correct.

5 COMMISSIONER CAMERON: And the
6 hearing period.

7 CHAIRMAN CROSBY: Right here.

8 COMMISSIONER CAMERON: Correct. But
9 those would be for hearings --

10 MS. WELLS: -- appeals once the
11 decision is made.

12 COMMISSIONER CAMERON: -- appeals
13 once the decision is made.

14 COMMISSIONER MCHUGH: Can we back up
15 for a second? The decision by whom?

16 MS. WELLS: My understanding is that I
17 would present a recommendation to the Commission.
18 But the Commission would vote. And it's their
19 vote. And then after that review, there is a
20 potential hearing or is that backwards?

21 COMMISSIONER MCHUGH: Appeal to us
22 from our decision?

23 MS. WELLS: Oh, no. Right.

24 COMMISSIONER MCHUGH: The regulatory

1 structure, if my memory serves me, is that the IEB
2 makes the suitability determination.

3 MS. WELLS: And not a recommendation
4 to the Board?

5 COMMISSIONER MCHUGH: And not a
6 recommendation. And then there's the right to
7 appeal to us relative that suitability
8 determination.

9 MS. WELLS: So, then I would need to
10 have that done by that calendar by the first of May?

11 COMMISSIONER MCHUGH: No. My
12 recollection is that the MGC review period was for
13 the IEB to process the results of the
14 investigation, make a determination, notify the
15 applicants of the IEB determination. And then the
16 hearings period was to take account of the appeals
17 to the Commission by a disappointed applicant if
18 there happens to be a disappointed applicant.

19 MS. WELLS: Okay.

20 COMMISSIONER MCHUGH: And then we
21 decide that appeal and we vote.

22 MS. WELLS: So, if all four the IEB
23 recommended say on 5/29 that they were all
24 suitable, we're done on that date. There's no

1 need to go before the Commission. Or does the
2 Commission have to approve that recommendation?

3 COMMISSIONER MCHUGH: My recollection
4 is that that is an IEB determination.

5 MS. WELLS: Okay.

6 CHAIRMAN CROSBY: Right. Determine
7 suitability is after we find out whether there are
8 appeals or not.

9 MS. WELLS: Okay.

10 CHAIRMAN CROSBY: If there are not,
11 then you'll make your recommendations to us and we
12 will decide. But if there are appeals on your
13 decision --

14 MS. WELLS: Okay.

15 COMMISSIONER MCHUGH: That's a
16 technical point, Mr. Chairman. My recollection,
17 and I should have read these regs. again last
18 night, but my recollection is that if the IEB
19 concludes that they are qualified, the IEB reports
20 to us and that's it.

21 MS. WELLS: Okay.

22 COMMISSIONER MCHUGH: That we get
23 involved if there is an appeal for a negative
24 determination and then we have the hearing

1 process.

2 COMMISSIONER ZUNIGA: That's my
3 recollection as well. And perhaps the title of
4 the activity that begins at least as part of this
5 schedule that begins on May 1 really should be the
6 IEB report formulation. It confuses because it
7 implies, at least as it is written here, that it's
8 the Commission the one reviewing.

9 MS. WELLS: Okay.

10 COMMISSIONER CAMERON: Is that the
11 regulation?

12 COMMISSIONER ZUNIGA: No, I'm just
13 talking technically about --

14 COMMISSIONER CAMERON: Oh, you're
15 looking at the schedule.

16 CHAIRMAN CROSBY: This language right
17 here is misleading.

18 COMMISSIONER ZUNIGA: That title is
19 misleading.

20 CHAIRMAN CROSBY: That's really IEB
21 determination.

22 MS. WELLS: Okay.

23 CHAIRMAN CROSBY: It's worth just
24 double-checking this.

1 COMMISSIONER MCHUGH: It is for sure.

2 CHAIRMAN CROSBY: And I think you
3 probably ought to have this stepped out.

4 MS. WELLS: Okay. I can work with
5 legal and just make sure we're all squared away on
6 the regs. Either way works for me. We'll make a
7 recommendation one way or the other if it gets
8 appealed.

9 COMMISSIONER MCHUGH: It's a big
10 difference in how quickly we can do this if there's
11 no negative assessments.

12 CHAIRMAN CROSBY: Right, right. But
13 I'm not sure that I necessarily agree with your
14 point that if the IEB recommends approval that
15 that's the end of it.

16 COMMISSIONER MCHUGH: I would have to
17 look at the reg.

18 CHAIRMAN CROSBY: The question is
19 whether the Commission will and need to approve
20 approvals as well as disapprovals.

21 MS. WELLS: Okay.

22 CHAIRMAN CROSBY: But let's do clarify
23 that for everybody's purposes. But in the
24 overview, I think we know what we're talking about.

1 And I think for the time being what we're saying
2 is apropos of Category 2 licenses, we're doing fine
3 schedule wise.

4 MS. WELLS: I think we're in good
5 shape.

6 CHAIRMAN CROSBY: For the time being.

7 MS. WELLS: I do, I do.

8 CHAIRMAN CROSBY: As to whether we can
9 move the dates forward or not, there's a big factor
10 that's beyond our control --

11 MS. WELLS: Correct.

12 CHAIRMAN CROSBY: -- which is the
13 hearing possibility.

14 MS. WELLS: Correct.

15 COMMISSIONER ZUNIGA: We'll likely
16 get into this on line item five. But at least one
17 of the scenarios that we presented that we will
18 talk about later have that date of April 30 moved
19 up. It doesn't sound like what you're saying,
20 Director, that that's much of a possibility right
21 now.

22 MS. WELLS: No, no I would not say
23 that. If we have time savings, it's between that
24 5/1 date and the 7/25 date.

1 CHAIRMAN CROSBY: Right.

2 MS. WELLS: That's a reasonable
3 expectation, but until we complete the
4 investigation we won't know that for sure.

5 CHAIRMAN CROSBY: Right, yes. Even
6 for hearings that's a lot of time. That's three
7 months that we've put in there for cushion.

8 MS. WELLS: But as Commissioner
9 Cameron mentioned, if there is an issue and that
10 information needs to be presented to the
11 Commission if there's a negative finding, her
12 point is very important that there needs to be time
13 for preparation of that. It's almost like putting
14 a case on for a jury.

15 CHAIRMAN CROSBY: Yes.

16 MS. WELLS: So, that's significant.
17 That will take time.

18 CHAIRMAN CROSBY: Right.

19 MS. WELLS: Because that's a different
20 process and you'll need to know that information.

21 CHAIRMAN CROSBY: Okay. Then that's
22 good. But whoever came up with this original
23 chart did a pretty good job because that gives us
24 the right amount of time.

1 MS. WELLS: Yes.

2 COMMISSIONER MCHUGH: That was us.

3 COMMISSIONER ZUNIGA: That was us.

4 CHAIRMAN CROSBY: Right.

5 MS. WELLS: Good job, thank you.

6 CHAIRMAN CROSBY: Commissioner Zuniga
7 and Commissioner McHugh, nice job.

8 COMMISSIONER MCHUGH: No, no, no, I
9 mean collectively.

10 COMMISSIONER ZUNIGA: Collectively
11 with the help of our consultants as well. So, we
12 cannot take all of the credit.

13 CHAIRMAN CROSBY: No, but that's good.
14 But let's do be specific that we should write out
15 the process, exactly what the process is between
16 IEB determination and approval of applicants just
17 so we know exactly what these steps are we've just
18 been talking about.

19 MS. WELLS: Okay, sounds great. And
20 then as to the other seven applicants for Category
21 1 licenses, I think the expectation was to the
22 consultants and to the Massachusetts State Police
23 that this probably would be about a six-month
24 investigation time period.

1 I just want to point out that six months
2 is a compacted timeframe for these types of
3 investigations.

4 CHAIRMAN CROSBY: Let me just
5 interrupt and make sure everybody knows this.

6 We are now talking about Category 2 --
7 I'm sorry Category 1 and the background checks on
8 this schedule getting to the same point, which is
9 the IEB determinations was approximately six
10 months from January 15. On the schedule here it
11 is the end of June, 6/28.

12 MS. WELLS: Six months from really --
13 If they came in on January 15, six months is July
14 15. There's a little time with the paperwork and
15 getting everything to them. I think a fair
16 assessment of the six-month time period for them
17 to start working really is the beginning of August.

18 These are complex investigations with
19 both with both domestic and international issues.
20 Until we received the table of organization from
21 all of these companies, we didn't know how far they
22 went. Now there are significant international
23 components to a number of these investigations.
24 And that will take some time.

1 Generally, I found that the applicants
2 have been very cooperative in complying with
3 supplemental document requests. What happens is
4 the applicants fill out their initial forms.
5 They're reviewed by the consultants, the State
6 Police, all of the investigators on the individual
7 applicant. And then a supplemental document
8 request has gone out.

9 So, based on what they've been given,
10 they asked for additional information based on
11 what the structures of their company, potential
12 issues. They do open source checks on all of these
13 entities and check them. And then they will ask
14 for supplemental documents to come in.

15 Now for example, we would give
16 supplemental document requests, indicate -- you
17 know, there's 50, 60, 70 items and give them 15 days
18 to respond.

19 CHAIRMAN CROSBY: Like what, for
20 example?

21 MS. WELLS: It can vary, information
22 on litigation. They may want information from
23 bank records. They might want more information on
24 an incident that occurred within their company.

1 They may want minutes from some kind of -- on an
2 issue that they have on their company internally.
3 It runs the gambit.

4 And there may be information they have
5 right in-house. But there may be information
6 they're needing from third parties as well. And
7 there may be information from individual
8 qualifiers as well, not just the company but the
9 individual qualifiers.

10 As you know, we're investigating
11 approximately 300 individual qualifiers, some of
12 whom have been investigated before and they know
13 the routine. And they can get their information
14 pretty quickly.

15 Some have not been investigated
16 before. And that is somewhat difficult for them
17 because there's a lot of information.
18 Information from their curriculum vitae or from
19 their bank records or from litigation they may have
20 had. So, that becomes a little more difficult for
21 someone who's never been through the process
22 before, collecting that information.

23 So, what we're finding is that
24 generally the applicants are in good-faith trying

1 to get us the information. But if we give them a
2 deadline, sometimes they can only give 60 percent
3 of the information. And they say hey, look, we've
4 got you this piece. We're still working on the
5 rest. And that's what we're finding. There's a
6 back-and-forth with the applicants where they're
7 giving it to us as they can, somewhat on a rolling
8 basis.

9 It's not necessarily, some may, but not
10 necessarily giving them a deadline and then they
11 hand us a thumb drive with all of the information
12 already to go on that deadline.

13 CHAIRMAN CROSBY: Right.

14 MS. WELLS: So, we're working with
15 them. It's an ongoing process. But it does take
16 some time. Things can be complicated. As I
17 mentioned, third-party information can be a little
18 difficult. If you're looking for tax records, if
19 you're looking for information from other third
20 parties, from banks. They are reliant on the
21 banks and their timeframe.

22 Issues regarding international
23 requests. If for example, we're dealing with the
24 Macau Data Privacy Act. There's some information

1 that if we're looking from Macau, we can't -- they
2 can't send it out because it's against the law for
3 them to send the information out. We need to send
4 someone over to Macau to view that in that
5 jurisdiction. They can't release the
6 information. So, we just continue to work with
7 the applicants.

8 CHAIRMAN CROSBY: How many of the
9 seven have international presence?

10 MS. WELLS: That's hard to say.
11 There's companies that have international
12 casinos. For example, Wynn and MGM have casinos
13 in Macau, for example. But other entities have
14 qualifiers who may live overseas or may have
15 business dealings overseas.

16 So, I can't say for sure. It's a good
17 portion of the whole project has some
18 international components and we've got to check in
19 with them. They were just interviewing someone
20 recently. They did a Skype interview with someone
21 from overseas.

22 Once all of the information is
23 compiled, we do interviews of these qualifiers or
24 people that are involved in these entities. And

1 you need to have all of your information before you
2 can prepare for your interviews. You can't just
3 go do your interview and then wait for the
4 supplemental document request to come in, because
5 you have to be prepared and figure out what
6 questions you need to ask. So there's a structure
7 for the investigation.

8 Also, there may be entities where we
9 have to do a secondary interview based on some more
10 information that we get.

11 So, they're working on it. They're
12 scheduling them. I do not think that those
13 investigations will be done by the middle of June.
14 I think there's at least a few that will definitely
15 go over that time period.

16 COMMISSIONER ZUNIGA: We have the end
17 of June here. You're suggesting that they could
18 really go further than that.

19 MS. WELLS: Yes, at least one maybe a
20 few more I think will take some more time.

21 CHAIRMAN CROSBY: What's the status of
22 all of the redaction stuff?

23 MS. WELLS: As I had mentioned
24 previously at the previous meeting, the State

1 Police once the redacted version of the
2 application pursuant to the specimen form that was
3 posted online, those came in. The State Police
4 checked all of those.

5 They found the majority of those were
6 replete with problems. Mostly over redacting,
7 there was some under redacting. So, they went
8 through all of that, which was more than 21,000
9 pages.

10 So, as a result, because we could not
11 just release those forms because they had errors
12 throughout them, we went through several options
13 of how to do this. Eventually, we came to the
14 determination that the most expedient thing to do
15 was to have State Police take the original form
16 again and re-redact it. Because to unredact their
17 redacted version, just because of the software,
18 it's very onerous because you'd have to add in the
19 information that they had taken out.

20 So, it's easier to just go through the
21 form and use the software to redact. So, they're
22 in the process of doing that right now, which is
23 a drain on our resources. Having had to go through
24 that before and now having to go do this process

1 where we basically re-redact all of the original
2 forms, that is draining our investigative
3 resources.

4 And it was an unforeseen expenditure of
5 our State Police time. And the State Police are
6 heavily involved in investigations. So, we're
7 managing as best we can.

8 We're prioritizing the 11 entity
9 applicants, the license holder applicants. And
10 the expectation is once we get through all of that
11 we can release those first. So, we can get moving
12 on the process, because I know the public has a
13 great interest in looking at these.

14 CHAIRMAN CROSBY: Right.

15 MS. WELLS: So, the entities, they
16 have made a request for additional redactions, the
17 formalized process. I've already responded from
18 the IEB what our determination is on that. I have
19 received some requests for reconsideration on
20 that. We'll hear those.

21 And then if they want to appeal that
22 decision to the full Commission, they have a right
23 to appeal that decision to the full Commission
24 before that information is released.

1 They also will have an opportunity to
2 look at our form and see this is what's going out.
3 So, before anything goes out, they'll be sent to
4 the applicant. They'll have either seven or 10
5 days to look it over before anything goes out. So,
6 they'll get to check for clerical errors and then
7 those forms may be released.

8 But I expect that would be on a rolling
9 basis because it just takes too long to do all 300
10 of these all at once. That's a big project that
11 we're also working on while we're doing to
12 investigations.

13 CHAIRMAN CROSBY: Okay. I want to
14 just clarify this a little bit, because I think
15 this is important for a lot of reasons. First of
16 all, there a lot of people that have asked for --
17 including Freedom of Information Act -- asked for
18 the RFA-1 applications, which we will deliver to
19 whoever wants them as quickly as we possibly can.
20 But we cannot do it until the redactions are done
21 properly.

22 And as you just explained, because
23 there are so many pages of stuff, that is taking
24 a while. And it's an interative process going

1 back and forth with the bidder.

2 But secondly, when you think about
3 fixing the redactions, one would think well it's
4 just a clerical problem. Get in a bunch of
5 clerical people, but of course the information in
6 these applications is the most sensitive
7 information that all of our bidders have. And it
8 is protected by appropriate exemptions throughout
9 both our law and the public records law.

10 So, we have to use people with security
11 checks to do what is a clerical function of fixing
12 the redacting. The people with security checks
13 were our State Police. So, we had to take the
14 backbone of our inspection process and do what the
15 bidders should have done in the first place, which
16 was get the redaction right and tie them up still
17 it sounds like in cleaning up the redaction, which
18 is taking a big chunk of our investigative
19 resources out of the investigation process and had
20 to put them into this clerical process.

21 So, there's two consequences here as a
22 result of simply the bidders doing a lousy job of
23 doing the redacting in the first instance. One is
24 it's slowing us down in our ability to get these

1 forms accurately released to those who want it.

2 And two, it's slowing down our
3 investigating process by tying up our State Police
4 doing the job of the bidders in the first instance.

5 I want to make sure that the press and
6 the public understand that because it's an
7 important distinction. And we've always said
8 we'll make our deadlines. And we'll get to this.
9 We're probably still pretty close to our deadlines
10 but we've always said repeatedly we can make our
11 deadlines if we get really buttoned up cooperation
12 from our bidders.

13 And this was one place where we flat out
14 did not. I mean there's no bad guys involved here
15 but it was just not a good buttoned up job of
16 responding to the required information. And that
17 has had a negative effect on a lot of important
18 things that we were trying to do.

19 COMMISSIONER MCHUGH: Also, if I could
20 just add a coating to that, is an experience that
21 we need to look at for the second phase. It seems
22 to me -- And part of the problem as you've described
23 it, is we are prohibited from releasing certain
24 information, not just that we're trying to protect

1 certain, but we're prohibited --

2 CHAIRMAN CROSBY: We're prohibited by
3 law, right.

4 COMMISSIONER MCHUGH: -- by law from
5 releasing certain private information. And it
6 seems to me that we ought to think very hard on the
7 next go around about including in the application
8 that the bidders sign a release from the statutory
9 privacy issues for information that could be
10 protected but that they failed to indicate should
11 be protected.

12 It doesn't deal with the over reduction
13 problem. We still have to deal with that. But it
14 would reduce a substantial amount of this. We
15 need to think about it because we've just spent too
16 much of our resources doing this sort of thing. We
17 can't do that again.

18 CHAIRMAN CROSBY: Yes. That's a good
19 point.

20 COMMISSIONER ZUNIGA: In addition to
21 that, a point you've made before, which is to
22 really identify what's all of the information that
23 could be intellectual property, etc., and really
24 cull that out as a separate attachment --

1 COMMISSIONER MCHUGH: Right.

2 COMMISSIONER ZUNIGA: -- from
3 everything that is not.

4 COMMISSIONER MCHUGH: Right.
5 Organizing in a different fashion.

6 COMMISSIONER ZUNIGA: Organizing it
7 in a way -- I know by necessity the Phase 1 had to
8 include in the same form private and non-private
9 information. But we may be in a better position
10 in Phase 2 to be able to cull it out, if you will.

11 CHAIRMAN CROSBY: Yes. Yes, that's a
12 good point. You're finished -- Are you finished
13 with your --

14 MS. WELLS: Yes.

15 COMMISSIONER MCHUGH: Could I before
16 Director Welles finishes. I've now read the
17 regulations and found out that I was dead wrong.

18 CHAIRMAN CROSBY: So, we go back.

19 COMMISSIONER MCHUGH: Let's go back
20 for a minute.

21 CHAIRMAN CROSBY: Here is Category 2
22 process.

23 COMMISSIONER MCHUGH: Because it does
24 have an implication for our next topic. So, the

1 regulations provide this that the Bureau completes
2 its investigation, prepares a report. Submits
3 the report to us and to the applicant.

4 And the applicant, if there's a
5 negative finding in the report, has 30 days to file
6 a claim with us seeking to challenge either a
7 conclusion or a factual finding to the report.

8 If there is no negative in the report,
9 then we can proceed. But in either case, we have
10 to have an adjudicatory hearing and make a finding
11 as to qualification.

12 So, we can have that adjudicatory
13 hearing. We have to give public notice that we're
14 going to have it. We have it. We make the
15 finding. We can do that quickly if there is no
16 claim of error in the IEB's factual findings or
17 conclusions. If there is, then we have to give the
18 applicant 30 days to file with us its statement of
19 why the finding or conclusion is wrong.

20 MS. WELLS: So, just for purposes of
21 clarification for me. If there is potentially
22 some information in there they don't agree with but
23 ultimately there is a finding -- a recommendation
24 of suitability by the IEB, do they still have the

1 right to appeal that issue?

2 COMMISSIONER MCHUGH: Our reg. says
3 they have the right to file a claim and have us
4 decide whether a factual finding or a conclusion
5 is wrong.

6 MS. WELLS: Okay.

7 COMMISSIONER ZUNIGA: So, we'll,
8 especially me, stand corrected about the title of
9 that activity. It is indeed the review of the
10 Commission of that report that starts on May 1.

11 COMMISSIONER MCHUGH: No, I think not.
12 I think the IEB needs to at the end of the
13 conclusion prepare its report. So, I think you
14 still have an IEB processing period, which is what
15 is now denominated MGC review. Then they file
16 with us and the applicant.

17 The hearings can start right then for
18 an applicant that gets a completed clean bill of
19 health. There's nothing they're going to
20 challenge. So, we can do that. We can have a
21 hearing, post a notice, have a hearing.

22 COMMISSIONER ZUNIGA: No one shows up.

23 COMMISSIONER MCHUGH: And come to a
24 conclusion and forward we go. So, the hearing

1 period opening on the 29th or whatever date as soon
2 as the IEB is finished its review and given us its
3 report still is fine.

4 But we have to allow at the moment at
5 least a 30-day period for claims to be filed with
6 us in the event that the IEB comes out with an
7 application that contains a negative finding or
8 conclusion.

9 COMMISSIONER ZUNIGA: So, is a 30-day
10 period as represented here starts -- does it start
11 on May 1 or May 29?

12 COMMISSIONER MCHUGH: May 29, it
13 starts from the time the IEB gives its report to
14 us and to the applicant.

15 CHAIRMAN CROSBY: It's probably
16 somewhere in between as a practical matter.

17 MS. WELLS: If I can get it done
18 earlier, I'll get it done earlier.

19 CHAIRMAN CROSBY: Right. You
20 probably take a couple of weeks to prepare your
21 reports. So, maybe the first two weeks here is IEB
22 preparing reports. Then say middle of May you
23 make your reports. And then the 30 days run.

24 MS. WELLS: Except there's that three

1 of the four, I think, that would work for. But the
2 fourth one --

3 CHAIRMAN CROSBY: The fourth will take
4 a little longer, right.

5 MS. WELLS: Right. That might push us
6 back a few weeks.

7 CHAIRMAN CROSBY: Right, right.

8 COMMISSIONER MCHUGH: The aggregate
9 time, I guess is fairly close.

10 CHAIRMAN CROSBY: I think so. Right.
11 I think so.

12 MS. WELLS: But the applicant will get
13 that 30-day window. So, we're sort of on hold
14 potentially for 30 days while they have a chance
15 to review it.

16 COMMISSIONER MCHUGH: Right.

17 CHAIRMAN CROSBY: Right. Okay. I
18 just wanted to go look at back up on Category 1.
19 So, at this stage of the game, the completion the
20 background checks on our schedule is 6/28, which
21 isn't even six months from 1/15. So, maybe
22 January 15, which is six months.

23 MS. WELLS: July.

24 CHAIRMAN CROSBY: Sorry, July 15.

1 MS. WELLS: Even there, I just don't
2 want to set expectations that I can't meet.

3 CHAIRMAN CROSBY: No, that's fine.

4 MS. WELLS: And I am concerned,
5 particularly with one applicant. We've got some
6 issues we're really looking hard at. And with the
7 nature of the investigations, you just don't know
8 until you start. And we're being very thorough.

9 And we are really including
10 Massachusetts and our State Police in those
11 investigations. We're not just sending it off to
12 a company to do their investigations and just get
13 a report and sign off on it. So, given the nature
14 of that and some of the issues, we're looking hard
15 at some things.

16 I don't think I'd be being honest with
17 you if I said, oh, yes, I'll get it done by the 25th,
18 because I don't think that's true.

19 COMMISSIONER ZUNIGA: What's the best
20 guess? And I guess we can always change it back.
21 We can change it further, just for planning
22 purposes.

23 MS. WELLS: At least some time into
24 August, maybe if we could push it mid to late

1 August. There's one that I'm concerned we won't
2 get done by then. But I'll just keep you posted
3 on that. The remaining ones I think probably are
4 in good shape.

5 CHAIRMAN CROSBY: You've got seven of
6 them. Some are going to be done sooner.

7 MS. WELLS: Correct.

8 CHAIRMAN CROSBY: Some are going to be
9 done later.

10 MS. WELLS: That's right. And you
11 know, expediting the slots licenses, they're
12 really working hard on doing this. And they're
13 using their resource on the slots, which means a
14 lot of the work on the other ones, although they're
15 making the requests and doing the documents, a lot
16 of the interview time and all that they're spending
17 on the slots. I think that's factored into that
18 a little bit.

19 COMMISSIONER CAMERON: Director Wells
20 you anticipate rolling recommendations, correct?

21 MS. WELLS: I could do that if the
22 Commission would like it that way, yes.

23 COMMISSIONER CAMERON: Does that make
24 more sense? In other words, if we're talking just

1 the Category 1's now, put the Category 2's aside.
2 And one is done say in June and it was a more
3 straightforward investigation --

4 COMMISSIONER STEBBINS: Yes and there
5 are some that are easier, yes.

6 COMMISSIONER CAMERON: -- prepare a
7 report and start that process of delivering that
8 to the Commission as well as the applicant. Does
9 that make more sense than waiting until all of them
10 are complete to move the process forward?

11 MS. WELLS: I think that would be more
12 expeditious. I don't know if there's concerns.
13 Maybe you want to group them. Like do all the
14 Region A and then Region B, something like that.
15 I'm willing to work with the Commission however
16 they want it presented.

17 But yes, my expectation there will be
18 some that will be done sooner than others.

19 COMMISSIONER MCHUGH: The doing it
20 some sooner than others would only make a
21 difference in the end, a real difference, if we
22 group them by regions, right? Because once we --

23 CHAIRMAN CROSBY: If there's one
24 laggard you can't go forward with RFA-2, right.

1 COMMISSIONER MCHUGH: Right. So, you
2 could conceivably think about the one that was
3 going to take the most time. You wouldn't have to
4 reveal who it was. But the region that that one
5 is in could be done after the region in which the
6 others were done.

7 CHAIRMAN CROSBY: Right. I think
8 doing it on a rolling basis does do a couple of good
9 things. One, it stretches out our workload rather
10 than plunking it all down at one time, (A). And
11 (B) it gets communities set up to do their
12 referendum, depending on how we resolve that
13 issue.

14 COMMISSIONER MCHUGH: You're right.
15 You're right.

16 CHAIRMAN CROSBY: So, I think doing a
17 rolling presentation of decision-making of
18 suitability does make sense. When we get further
19 into it, we'll see whether we can do a group.
20 Maybe Region A or Region B will get done, all of
21 them will be done and we can do that, make that
22 determination sooner.

23 But we can cross that bridge when we get
24 to it. But I think as a presumption we definitely

1 would want you to come give us suitability
2 recommendations on a rolling basis.

3 MS. WELLS: As we go, okay.

4 CHAIRMAN CROSBY: Yes.

5 COMMISSIONER CAMERON: I think it's
6 important to note that because something takes
7 more time doesn't necessarily mean there are
8 problems.

9 MS. WELLS: That's correct.

10 COMMISSIONER CAMERON: They just may
11 have many, many more -- a much larger corporate
12 structure.

13 MS. WELLS: Right. There are some
14 entities that are a fraction of the qualifiers that
15 the other entities have.

16 COMMISSIONER MCHUGH: Right.

17 CHAIRMAN CROSBY: Right.

18 MS. WELLS: That doesn't make any
19 difference.

20 CHAIRMAN CROSBY: So, we don't have a
21 lot to talk about here. Again, in anticipation of
22 Ombudsman Ziemba's presentation and in our
23 conversation, so it could be that one or more of
24 the background checks will drag well into August.

1 And conceivably -- who knows? If one
2 or two did drag into August, we still might be on
3 this schedule. We're just not going to really
4 know, even with the potential hearing problem.
5 So, I don't think we know probably enough to make
6 any significant changes in this yet, but it will
7 get us to some other topics.

8 MS. WELLS: Yes.

9 CHAIRMAN CROSBY: Okay. Anything
10 else on your? Why don't you stay here, because
11 once John finishes his report then we're going to
12 come back and look at this one more time.

13 MS. WELLS: Okay.

14 COMMISSIONER CAMERON: Thank you,
15 Director.

16 MS. WELLS: Thank you.

17 CHAIRMAN CROSBY: I meant don't go
18 away.

19 We are now on item number four, public
20 information -- education and information and the
21 report from the Ombudsman.

22 MR. ZIEMBA: Thank you, Mr. Chairman.
23 I think that today's discussion is going to be
24 predominately related to the timeline the

1 Commissioners asked me to talk to host communities
2 to determine whether or not they will be able to
3 meet some of our aspirational deadline that we put
4 forth.

5 Specifically, we put forth a September
6 1 aspirational deadline for award of licenses
7 under Category 2. So, we've asked each of the host
8 communities their opinion on whether or not they'd
9 be able to meet that. Because it's about the same
10 time as the special election date, June 25, we've
11 also asked the communities on whether or not they
12 are anticipating that they would take advantage of
13 that June 25 deadline.

14 So, the June 25 deadline and the
15 roughly July 1 deadline by which applicants would
16 have to have -- applicants for Category 2 licenses
17 would have to have their referendum completed,
18 they're right about the same time.

19 CHAIRMAN CROSBY: Say that last
20 sentence again. What was that?

21 MR. ZIEMBA: If we have a September 1
22 aspirational deadline for award of licenses --

23 CHAIRMAN CROSBY: Of Category 2.

24 MR. ZIEMBA: -- of Category 2, the

1 referendum would be to be completed basically, on
2 or before July 1 in order to enable us to evaluate
3 the applications, hold the public hearings that
4 we're required to do.

5 After our hearing, there's a 30-day
6 window after our decision. So, if you back forth
7 September 1 roughly you at least need, at least two
8 months in order to evaluate all of those
9 applications.

10 CHAIRMAN CROSBY: If the RFA-2
11 application came in the day after the referendum,
12 you're saying that would give us two months, which
13 would be the minimum we would need probably to make
14 the ultimate decision on Category 2.

15 MR. ZIEMBA: Right. So,
16 coincidentally the special election date of June
17 25 and July 1 are roughly about the same time.

18 CHAIRMAN CROSBY: Yes, I understand.

19 MR. ZIEMBA: So, I'm mixing apples and
20 oranges but when it comes to the timetables, I
21 think it's sort of instructive that I go through
22 the laundry list of all of the communities to tell
23 you where they stand.

24 CHAIRMAN CROSBY: Great.

1 MR. ZIEMBA: And then I'll go more
2 deeply into the Category 2 schedule. To start
3 with the Category 2's, Raynham reports that in
4 order to have the referendum on June 25, they would
5 have to have an agreement in place by basically
6 April 21 -- April 25 and that they report that that
7 would be impossible.

8 CHAIRMAN CROSBY: They would not have
9 a host community agreement ready by --

10 MR. ZIEMBA: April 25. Worcester
11 reports that a longer deadline is better and that
12 September 1 is almost unworkable. Plainville
13 reports --

14 CHAIRMAN CROSBY: September 1 as an
15 award date.

16 MR. ZIEMBA: September 1 as an award
17 date. Plainville reports that meeting the
18 requirements associated with the September 1
19 deadline is certainly doable and that what is
20 problematic is not having a firm target date.

21 It's engaged a consultant that will
22 meet any deadline that the Town sets. However,
23 the Town would find it very problematic if the
24 consultant were required to complete a fairly

1 onerous among of work in a very compressed
2 timeframe only to have the date moved out.

3 So, as you can imagine, everybody is
4 sort of reacting to whatever deadlines we put
5 forward. And we've discussed this in the past of
6 the importance of setting concrete deadlines.

7 The Cordish proposal PPE Casino, as you
8 know, it has not selected a host community.
9 Therefore, it would be almost impossible to have
10 a host community agreement in place by June 25.

11 CHAIRMAN CROSBY: By April 25.

12 MR. ZIEMBA: Correct, by April 25 in
13 order to have the referendum for June 25, exactly.
14 Excuse me.

15 Onto the Category 1 applicants. West
16 Springfield does not expect to hold the ballot
17 election concurrently with the special Senate
18 election in June. The election will more likely
19 take place in the summer or in the fall.

20 The City of Springfield is hoping to be
21 able to meet the June 25 date. As you know, they
22 previously reported that they are hoping to have
23 the referendum in June in their RFP documents.
24 But they clarified that they are hoping to be able

1 to meet the June 25 date.

2 West Springfield does not expect -- I
3 think I went over that one.

4 Everett reports that it plans to hold
5 the referendum by the Senate special election date
6 or earlier.

7 Palmer reports that it will not use the
8 June 25 Senate special election date but that the
9 referendum may be held in September.

10 Boston and Revere have out provided an
11 official answer to our request. Therefore, it
12 cannot be stated with certainty that they plan to
13 use the Senate special election date.

14 I do note that the deadline for the
15 environmental certification on the ENF proposed by
16 the applicant is due back from the Secretary
17 tomorrow. That's a very significant document
18 that will have to be evaluated by both the City of
19 Boston and the City of Revere. But again, they've
20 been evaluating these impacts for quite some time.

21 Previously in conversations, in
22 testimony by the City of Revere, they provided
23 testimony that they didn't want the Commission to
24 be involved in the question of whether or not we

1 have to have suitability determined prior to the
2 referendum, noting home rule as an issue.

3 So, that is where communities stand.

4 CHAIRMAN CROSBY: We must be missing
5 somebody.

6 COMMISSIONER STEBBINS: Milford.

7 CHAIRMAN CROSBY: Milford.

8 MR. ZIEMBA: Excuse me. Milford
9 reports that it will not be able to meet the Senate
10 special election date. On April 8 next week they
11 have a tentative plan for a visit from the
12 applicant to the Board of Selectmen. But to date,
13 no significant details have been provided to the
14 community about that development. So, in
15 conversations with the community that date would
16 be impossible.

17 CHAIRMAN CROSBY: Okay.

18 COMMISSIONER MCHUGH: Just to review
19 the bidding here, three of the four Category 2's
20 say they can't be the June 25 date.

21 MR. ZIEMBA: Yes.

22 COMMISSIONER MCHUGH: And one or two
23 of the Category 1's say they can, the other five
24 say they cannot or will not.

1 CHAIRMAN CROSBY: Three, Springfield,
2 Everett and Boston/Revere say they would like to,
3 could.

4 MR. ZIEMBA: Well, Springfield and
5 Everett say that they would like to. Everett is
6 more firm on whether or not they plan to go forward.
7 And Boston, we have not received their official
8 response.

9 CHAIRMAN CROSBY: But in previous
10 times they have said that that's what they're
11 looking for, right?

12 MR. ZIEMBA: I don't think they've
13 ever made an official position of when their
14 election date has been. But they have provided
15 testimony to the Commission that they wanted us to
16 not to be involved in --

17 CHAIRMAN CROSBY: -- managing that.
18 Okay.

19 COMMISSIONER MCHUGH: So, we've got
20 one firm 7/25 or earlier. One aspirational 7/25.

21 CHAIRMAN CROSBY: 6/25.

22 COMMISSIONER MCHUGH: 6/25, and the
23 other five are according to most recent survey
24 either silent or no.

1 MR. ZIEMBA: Yes.

2 COMMISSIONER ZUNIGA: Could we talk
3 about the Category 2 in particular? Because it
4 occurs to me that the aspirational date of
5 September is less and less feasible. We'll be
6 talking about this in the scenarios but you may
7 recall scenario one moving the current schedule as
8 it is now contemplated further up appears
9 impractical; is that a fair statement?

10 MR. ZIEMBA: I think that's a fair
11 statement.

12 CHAIRMAN CROSBY: Yes, it sounds like
13 Plainville is being flexible, but the other three
14 are clear they can't make it.

15 MR. ZIEMBA: Yes.

16 CHAIRMAN CROSBY: Even if we could
17 make it, right?

18 MR. ZIEMBA: Right.

19 CHAIRMAN CROSBY: Okay.

20 MR. ZIEMBA: So, in regard to the
21 schedule, I don't know if you want to look at the
22 licensing schedule scenarios that previously
23 we've discussed. And there's important policy
24 considerations that go into each of these

1 different scenarios.

2 The scenario one roughly anticipates
3 what I just discussed of a July 1 date. It allows
4 for another additional couple of weeks into July
5 for the referendum to occur and the submission of
6 applications to us. But the scenario one is
7 roughly what I just discussed.

8 The scenario two that we have in here
9 provides a little bit more flexibility for the
10 completion of the referendum. But what's notable
11 about this date is that the award of licenses can
12 occur earlier than our December 2 date. But it
13 still anticipates some difficulties with meeting
14 our schedules based on what we need to do for
15 protocols and procedures.

16 One thing new about all of these
17 schedules is they incorporate our recently
18 proposed procedures for resolving disputes
19 between host and surrounding communities. Even
20 though we believe that is sort of a very efficient
21 process, there is a good number of days that need
22 to be added into the calculation of our scenarios
23 if indeed we have basically even one potential
24 surrounding community that goes through that

1 process.

2 Because if you have four applicants,
3 you obviously cannot make the award until you go
4 through the process with the surrounding community
5 whichever applicant it is.

6 CHAIRMAN CROSBY: Right.

7 MR. ZIEMBA: So, if you take a look at
8 the scenario two, what that anticipates is an
9 election date that occurs basically in the summer
10 time.

11 Scenario two, if you look at the
12 summary that's been provided by our consultants,
13 is says that the host community agreement shall be
14 executed no later than June 3, three months from
15 today. And that the HCA referendum shall be no
16 later than late July or early August.

17 With a referendum no later than late
18 July or early August, you obviously have the issue
19 of what happens with voters who are on their summer
20 vacations. Do you have questions about the
21 referendum from the electorate? Again, I don't
22 believe that everybody goes on vacation at the same
23 time, but it has been stated as a concern by the
24 communities and by other folks who have reviewed

1 this process.

2 The host community agreement executed
3 no later than June 3, 2013, that likely in my
4 opinion, it is potentially doable by a majority of
5 the Category 2 applicants. The Worcester
6 proposal, they would have to do some serious work
7 between now and then to get into their host
8 community agreement.

9 CHAIRMAN CROSBY: And Cordish too, I
10 would think.

11 MR. ZIEMBA: And the fourth one,
12 because there has been no site identified, it's
13 probably less on the border of whether or not a June
14 3 host community agreement is possible.

15 CHAIRMAN CROSBY: Right.

16 MR. ZIEMBA: From Worcester's
17 perspective, even though they said September 1 is
18 almost undoable anticipating the April 25 host
19 community agreement, there still is a good amount
20 of evaluation of the proposal that they would need
21 to do. And to the best of my knowledge, they
22 haven't begun that work with the consultant.

23 So, they would need to get a consultant
24 on board very quickly in order to start doing those

1 reviews. I don't know, Mr. Chairman, if you want
2 to talk about some of the issues regarding summer
3 elections or do you want me to go into the third
4 scenario?

5 CHAIRMAN CROSBY: Yes, I think so.

6 MR. ZIEMBA: So, under the third
7 scenario that we've crafted, this anticipates that
8 the Commission would be able to award the license
9 earlier than we currently propose under the best
10 situation.

11 So, under scenario three, the
12 Commission could award a Category 2 license by
13 November 6, which is roughly a month earlier than
14 we currently propose. Again, that is under the
15 best of all circumstances. If indeed any one of
16 these applicants have a surrounding community
17 issue that has to be resolved, the date could
18 extend to 12/22, which is roughly about three weeks
19 after our current timetable.

20 But this schedule does reflect some
21 movement so that we were able to move the schedule
22 a little bit forward based on compared to our
23 current schedule but that if indeed things do not
24 go well on the surrounding community issue, it

1 would be at least a couple of weeks after our
2 current deadline.

3 CHAIRMAN CROSBY: Right. Okay.

4 MR. ZIEMBA: Scenario three reflects a
5 referendum date, which is scheduled for early
6 September after Labor Day. So, applicants would
7 have to submit their applications no later than
8 September 10, 2013 under scenario three.

9 CHAIRMAN CROSBY: Never mind the
10 surrounding community issue that would give us
11 just barely two months to do the review, to make
12 the decision.

13 MR. ZIEMBA: Correct.

14 COMMISSIONER MCHUGH: Is that
15 referendum date feasible in your judgment for
16 everybody?

17 MR. ZIEMBA: I think so. Again, we
18 have an applicant that has not identified a site.
19 But in communications with that applicant, they
20 have said that we can publicly report that even
21 though they have not identified a site, that they
22 have been doing the due diligence on that site such
23 as at the time that they announce that site, a lot
24 of what goes into designing the facility and

1 determining some of its impact such as its traffic
2 impacts will be available by the time that they
3 make a public announcement.

4 So, given that statement and again we
5 have no documentation to back it up, but given that
6 statement it may be much more doable rather than
7 an applicant that announces on one day and says we
8 need several weeks or months to review the impact
9 and then make that information available to
10 communities.

11 COMMISSIONER MCHUGH: They have three
12 months basically to get their act together and do
13 the host community agreement from now.

14 MR. ZIEMBA: Yes.

15 CHAIRMAN CROSBY: Three months from
16 now, yes, because you'd have to announce the
17 election in July 1.

18 COMMISSIONER MCHUGH: Yes.

19 MR. ZIEMBA: So, that might leave them
20 with a pretty tight timetable between the time of
21 their announcement and a host community agreement.
22 For example, if that applicant comes in, it's now
23 April. If they come in and make their
24 announcement of site in May or late May, then they

1 would have basically one month to execute a host
2 community agreement with that community.

3 COMMISSIONER MCHUGH: Yes, and that's
4 a value judgment that we have to make. The
5 applications were due January 15 and were filed
6 January 15.

7 CHAIRMAN CROSBY: I think we have a
8 series of decisions to make here. We had raised
9 the issue of can we move the Category 2 license
10 award back even as soon as September if not
11 September some other date. We clearly cannot move
12 it to September. At least three of the four
13 couldn't make it even if we were ready. So,
14 September 1 is off the table or early September is
15 off the table.

16 My sense at this point is that we might
17 as well leave our deadline where our deadline is,
18 which is the first few days of December, and not
19 try to do a lot of angst for everybody to pick up
20 a month or two. The month or two at the end of it
21 is just not going to make a lot of difference in
22 the end of the world.

23 And everybody now, not just our
24 background checks, but the bidders and the

1 communities are now coming to grips with how
2 complicated this process is, and are beginning to
3 say whoa, ease off a little bit and give us some
4 time. Even the Plainvilles that are ready to move
5 really quickly if they can would just as soon not
6 get really pressed.

7 So, my suggestion would be, and this is
8 just to get the conversation going, my suggestion
9 would be that we formally decide to leave -- Can
10 you go back up to the schedule as it is? -- that
11 we leave the targeted award in the first week of
12 December with a dotted extension if there's a
13 surrounding community problem.

14 But I wouldn't want to move the
15 deadline out to January in order to accommodate the
16 possibility of a surrounding community problem,
17 because we want to keep the pressure on the bidders
18 in the surrounding communities to resolve these
19 issues. We don't want any surrounding community
20 problems to come to us. We don't want to delay
21 this thing.

22 So, I think we ought keep the deadline
23 in December but also we can demonstrate that if we
24 -- Where are we now? So, 12/2 Commission awards

1 Category 2. We have underneath this is the green
2 dotted lines that suggests there could be a problem
3 if there's a surrounding community problem, which
4 I would leave like that.

5 And then as we work with the various
6 communities -- I'm sorry. So, if we leave
7 December 2, I think we also have to set a deadline
8 for when the RFA-2 proposals have to be in. We
9 can't let somebody who hasn't picked a site yet
10 push everybody else later with their RFA-2
11 applications. So, yes, we now have 10/5, October
12 5.

13 COMMISSIONER ZUNIGA: At the Phase 2
14 deadline.

15 CHAIRMAN CROSBY: As the RFA-2
16 deadline.

17 COMMISSIONER ZUNIGA: Yes.

18 CHAIRMAN CROSBY: I actually would be
19 inclined -- Well, maybe. I don't know. I'd be
20 inclined -- That only gives us two months. And we
21 can probably do it in two months, but it will be
22 our first round through. And there's a ton of time
23 prior to that.

24 I would be half inclined to move the

1 10/5 deadline back to at least September 15. So,
2 that the first week -- If they want to have their
3 referendum after Labor Day, they have it the first
4 week after labor day. And then they submit the
5 RFA-2 application, which is ready to go
6 momentarily thereafter.

7 If they want to have a referendum in the
8 summer time that's their business. They can do
9 what they want. So, there's my straw man for
10 people to react to.

11 The long and short of it is leave
12 December 2 as our expected award date subject to
13 the wrinkle if there's a surrounding community.
14 And move the submission for RFA-2 forward by a
15 couple of weeks at least, a couple, three weeks to
16 mid-September.

17 COMMISSIONER ZUNIGA: And then we have
18 to talk about and contemplate those host community
19 agreements. Because that October 5 deadline
20 comes from the three places, from the host
21 communities, the surrounding communities, the
22 preparation of Phase 2, all of which are not driven
23 by this Commission but by our applicants and
24 colleagues in the local governments.

1 CHAIRMAN CROSBY: Right. It's just a
2 judgment call. It seems to me from what I can see
3 that there's plenty of time for surrounding
4 community, host community and the RFA-2. When we
5 release the RFA-2 application form when?

6 COMMISSIONER MCHUGH: June 7, when we
7 finalize the Phase 2 regs., the idea is as with the
8 Phase 1 that application form would be ready to go.

9 CHAIRMAN CROSBY: So, the first week
10 or so of June, we release the RFA-2 applications.
11 That would give them June, July, August, September
12 four months.

13 COMMISSIONER ZUNIGA: 120 days there,
14 four months, it's the orange bar for them to
15 prepare the application.

16 CHAIRMAN CROSBY: That's four months.

17 COMMISSIONER CAMERON: So, moving
18 that two weeks should not be problematic.

19 CHAIRMAN CROSBY: It's really a
20 question of whether --

21 COMMISSIONER MCHUGH: Except that it
22 does move the deadline for the -- strike that.

23 CHAIRMAN CROSBY: It's really a
24 question of whether we can take a couple, three

1 weeks away from the bidders to get their side of
2 the work done and give it to us so we've got another
3 couple, three weeks to review the RFA-2
4 applications and still make our decision on time.
5 Maybe I'm fine-tuning this too much.

6 COMMISSIONER ZUNIGA: I'm sorry.

7 Regarding the preparation of the applications, it
8 occurs to me that applicants out there may be
9 waiting for a referendum, for the result of a
10 positive referendum to spend additional resources
11 necessary in preparing and submitting that
12 application. To the tune of really designing,
13 studying further impacts if they haven't already.

14 It's something that we don't know
15 about. It's something that we don't control.
16 But we should just keep in mind that the
17 preparation -- That orange line is not just
18 contingent on us releasing the form. It is
19 contingent on something going on locally and
20 internally with our applicants. And that has to
21 do with whether they believe they can and should
22 spend a lot of resources fine-truing that
23 application if they don't have a positive vote.

24 COMMISSIONER MCHUGH: If they don't

1 have a positive vote, they're done for 180 days,
2 right? As a practical matter, they're done.
3 They get one shot at this deal.

4 COMMISSIONER ZUNIGA: That's right.

5 COMMISSIONER MCHUGH: And so, there
6 may be things that -- Your point though is
7 certainly valid in that there may be things that
8 come up during the election process that they want
9 to fine tune notwithstanding the fact that they got
10 a positive vote on the referendum.

11 It may be, for example, that a
12 surrounding community has a particular issue.
13 And it really provokes a lot of intensity. And
14 they can figure out a way to fix that in their
15 ultimate presentation. And it's the referendum
16 process that will surface some of those issues.

17 So, that favors giving the applicants
18 as much time as is consistent with trying to meet
19 the December deadline to let this process cook, if
20 you will. My sense, Mr. Chairman, is that a couple
21 of weeks isn't going to yield that much. That we
22 have from now until the application deadline to put
23 into place a team to evaluate and a process. These
24 applications by their nature are going to be

1 complicated, but less complicated.

2 CHAIRMAN CROSBY: Lesser than, right.

3 COMMISSIONER MCHUGH: And that's sort
4 of a dress rehearsal for the others. And this
5 schedule has been out there since the beginning.
6 And unless there is a real value to shrinking down
7 the time even slightly, we ought to just leave it
8 alone, right? And then begin to enforce
9 rigorously the deadline that are necessary for us
10 to meet.

11 CHAIRMAN CROSBY: Right. I agree
12 with that.

13 MR. ZIEMBA: Mr. Chairman, one thing I
14 will note is that -- And I don't know if Worcester
15 is planning to utilize this date. But Worcester
16 has an election on September 17 of this year, sort
17 of in the middle of the month.

18 CHAIRMAN CROSBY: A municipal
19 election?

20 MR. ZIEMBA: Yes. I'm not aware that
21 either Raynham or Plainville have a fall election.

22 CHAIRMAN CROSBY: Yes. I think I
23 agree with what Commissioner McHugh said. So, I
24 agree with that. As you and Commissioner Stebbins

1 have been talking to people, agencies that do
2 review of big proposals, have you picked up
3 anything that gives you a sense of whether we've
4 given ourselves the right amount of time to do it?

5 COMMISSIONER MCHUGH: I think it's
6 tight but I think it's doable. It really depends
7 on the team that's in place and how much up front
8 work and preparation work goes into getting ready
9 to receive the applications.

10 CHAIRMAN CROSBY: But we've got time
11 to do that.

12 COMMISSIONER MCHUGH: We've got
13 plenty of time to do that. And I think we will
14 begin to work on fleshing out an approach next week
15 with our Executive Director. So, I think it's
16 aggressive the two months but doable.

17 COMMISSIONER ZUNIGA: We should note
18 though that at least in theory for Category 2
19 proposals, which would be the first ones to come
20 to this Commission, we've allowed the early
21 submissions, if they happen in this blue line here
22 represented right after July 26.

23 CHAIRMAN CROSBY: With line are you
24 talking about now the blue line?

1 COMMISSIONER ZUNIGA: It's dark blue
2 July 26. It looks more gray. July 26, there is
3 conceivably after the submission of suitability on
4 July 25 that somebody could come in as early as
5 then.

6 CHAIRMAN CROSBY: That's the deadline
7 for receiving the applications.

8 COMMISSIONER ZUNIGA: That's the
9 deadline for receipt, but we could be in a position
10 of evaluating the early proposals.

11 CHAIRMAN CROSBY: That's a good point.
12 We don't just have the two months. We have the two
13 months plus whatever we get if somebody comes in
14 beforehand.

15 COMMISSIONER ZUNIGA: Right.

16 CHAIRMAN CROSBY: Good point.

17 COMMISSIONER MCHUGH: It's people
18 that have managed to get them in as early as
19 possible.

20 COMMISSIONER ZUNIGA: Right. We did
21 not have that big activity if you will, on the
22 Category 2 -- I'm sorry on Category 1 further up
23 on the screen here.

24 COMMISSIONER MCHUGH: We have the same

1 kind of thing.

2 COMMISSIONER ZUNIGA: But the same
3 theory applies that any time between October and
4 the January 1, the deadline, the actual deadline
5 there could be somebody submitting.

6 COMMISSIONER MCHUGH: As soon as the
7 suitability determination is made, we're ready to
8 take a Phase 2 application.

9 COMMISSIONER ZUNIGA: Right.

10 CHAIRMAN CROSBY: Okay. This
11 evaluate proposals after 10/16. That's actually
12 the same as Category 2, evaluate early proposals.

13 COMMISSIONER ZUNIGA: That's right.

14 CHAIRMAN CROSBY: Can you move that a
15 little further to the right?

16 COMMISSIONER ZUNIGA: Yes.

17 CHAIRMAN CROSBY: I see. Yes, the
18 same thing. Great.

19 COMMISSIONER ZUNIGA: Two months but
20 that could be early proposals here.

21 CHAIRMAN CROSBY: So, I think Category
22 2 we've got a consensus, right? We're just going
23 to leave it as is.

24 COMMISSIONER ZUNIGA: Can I make one

1 more point? If we decide and communicate that if
2 our applications could be or should be submitted
3 in pieces, let's say, if there's a piece that's
4 ready let's say all things mitigation IV in our
5 evaluation criteria, just for the sake of
6 argument, that could be received by this
7 Commission, put forward to some analysis while
8 they're also preparing, let's again, for the sake
9 of argument other pieces of the application.

10 Unless we wanted for the application to
11 be all complete before we actually saw it. That's
12 something that I am just throwing out there as we
13 are contemplating this schedule. I don't know if
14 it's practical or even desirable.

15 COMMISSIONER CAMERON: It seems it
16 makes more sense to me to have a complete
17 application. And then we can check it for
18 completeness, have a process in place. It just
19 doesn't sound to me that the piecemeal application
20 -- Are you aware of projects that --

21 COMMISSIONER ZUNIGA: Preferably,
22 yes, we would need a complete application. But if
23 there is a way to parcel it out because the
24 criteria, our advisors, the teams etc. would lend

1 themselves collectively to that evaluation, it's
2 just an idea.

3 COMMISSIONER MCHUGH: It's certainly
4 worth considering. The draft regs. don't
5 contemplate that. They contemplate -- and this
6 one I do remember, I think -- a determination of
7 administrative completeness before we move into
8 the substantive analysis.

9 And it might be a little hard to figure
10 out, for example, the adequacy of the mitigation
11 plan until you know and knew what was being
12 mitigated. But it's certainly worth thinking
13 about. And we have until the regulations are
14 promulgated to continue to think it through and see
15 if we can tweak them and find chunks that we could
16 get earlier and encourage that to happen.

17 COMMISSIONER ZUNIGA: We'd have to be
18 very clear as to what we would allow, because we
19 could be in the scenario that you allude to,
20 Commissioner, where somebody interprets as well I
21 have plenty of time to do that and not that.

22 CHAIRMAN CROSBY: I think there's a
23 second consideration that we would need to think
24 through, which is at what point would an early

1 piece become public? Because a bidder may not
2 want to put their information out before other
3 people have put their information out.

4 But having said that, I think thinking
5 this through is entirely appropriate. And we're
6 going to be having this process conversation over
7 the course of the next few weeks. Maybe we can
8 figure out a way to do that.

9 COMMISSIONER MCHUGH: The financial
10 pieces may be isolated.

11 CHAIRMAN CROSBY: That's what I was
12 thinking too.

13 COMMISSIONER MCHUGH: And they're
14 largely confidential.

15 CHAIRMAN CROSBY: Right, good point.
16 It's definitely worth thinking about. Okay.
17 Were you about to say something?

18 COMMISSIONER ZUNIGA: No.

19 CHAIRMAN CROSBY: I just wanted to
20 take a quick look down at Category 1 . It looks
21 to me, the question as I was preparing for the
22 meeting that I wanted to ask is are we on track as
23 best as we can tell for Category 1 to be awarded
24 in the February/March area next year?

1 It looks to me like we believe there
2 will be some delay of one or possibly more.
3 They'll definitely be later than June 28 for most
4 of the background checks.

5 MS. WELLS: At least one, yes.

6 CHAIRMAN CROSBY: And there may well
7 be one or more that drag in as late as August.
8 Having said that though, if you roll the line on
9 out with all of the various cushions that we have
10 built in here, like the hearings deal, we don't
11 know anything now that would make us rethink our
12 deadlines. So far, so good. Even with some of
13 the problems that have arisen, I think my sense is
14 we are fine for Category 1 as well for the time
15 being.

16 So, the one remaining question is given
17 what we now know, which is that no Category 1
18 players are pushing for the right to have the
19 referendum on June 25 -- I'm sorry, Category 2
20 players.

21 And the Category 1 players,
22 Springfield is hoping for it. Everett would like
23 to do it maybe even sooner than that. And
24 Boston/Revere we don't know. So, the question

1 comes do we want to reconsider a decision that we
2 made which is to preclude a referendum prior to the
3 decision on suitability?

4 I think we do need to discuss it. I
5 think the communities -- There was a lot of
6 emerging pressure from communities, which has
7 began to ebb as they've come to grips with their
8 own problems. So, it's not as pressing a question
9 I think it was even two or three weeks ago, but it's
10 still a question. And I think it is something we
11 need to talk about.

12 COMMISSIONER ZUNIGA: I'll jump right
13 in. I did want to talk about the funding for the
14 investigations. Because if for the sake of
15 argument we were to say there's no longer a
16 constraint with an ongoing investigation, we may
17 be in a position where Springfield notably, and I'm
18 just speculating here, could very shortly decide
19 on only one applicant at which point to put it on
20 the ballot and to try to make the June election.

21 We've have to look at how much -
22 Practically, one of the other investigations could
23 come to a screeching halt, if you will, or it may
24 not. I'm just speculating here. So, we'll have

1 to look at how much resources have been funded, are
2 being spent. And we would not want to be in a
3 position of having to have that applicant give us
4 the remaining of funds, let's say, if those
5 expenditures are over the 400,000 application fee.

6 CHAIRMAN CROSBY: Are you concerned
7 that they might owe us money but they're out and
8 therefore we may have trouble collecting our
9 money? Is that the issue?

10 COMMISSIONER ZUNIGA: Technically,
11 yes, that's it. That's it. All applicants some
12 very little but some significantly will be over the
13 400,000 application fee. At the rate that the
14 investigations are going, the burn rate is
15 significant. We are at the thick of it.

16 And we get the bill from our
17 consultants, that takes a few days to look back at
18 the prior month. And we have 30 days to -- We remit
19 an invoice to our applicants and they have 30 days
20 to pay us. So, because of that duration, we may
21 be in a position where we have less.

22 CHAIRMAN CROSBY: We have less
23 leverage, I hear that. But I don't think that's
24 a good reason to make the -- Assuming that somebody

1 might try to stiff us on the money, they're going
2 to have to continue to do business around the rest
3 of the country. They may want to do business
4 elsewhere in Massachusetts.

5 (A) I think it's unlikely that one of
6 these people is going to try to stiff us. And (B)
7 I think anticipating that they might is not a very
8 good reason for affecting this decision. That's
9 just my --

10 COMMISSIONER ZUNIGA: I wouldn't
11 characterize it as stiffing us. I would say
12 they're less than incentivized to pay the costs
13 that have been incurred.

14 CHAIRMAN CROSBY: How would you
15 distinguish that from stiffing us?

16 COMMISSIONER ZUNIGA: Just in time.
17 Even before that, we could call it stiffing us. We
18 would have to make a quick decision on stopping
19 those investigations.

20 CHAIRMAN CROSBY: That's true.

21 COMMISSIONER ZUNIGA: That perhaps
22 goes without saying. And we'd have to do some
23 tallying of all of those resources. If they have
24 been planned, if they had been scheduled for

1 certain things that now are effectively no longer.

2 COMMISSIONER CAMERON: I think
3 originally we thought it would be best for the
4 citizens to know about the financial wherewithal
5 and the integrity of the company planning to build
6 in their community. And I still think that's a
7 very valid point.

8 We were getting the concerns by the
9 applicants who said, look, we're spending all of
10 this money and we really want to know whether or
11 not they want us here before we continue. That was
12 your point earlier, Commissioner.

13 But listening to the changes really in
14 the applicants who may not be ready now, who are
15 hoping but they don't know if they can meet those
16 deadlines, I don't know if the rationale is as
17 strong as it was at one point to consider changing
18 our regulation which now states -- I know it's not
19 promulgated yet -- that suitability will be
20 complete before you can actually have the vote.

21 And then there was talk about can you
22 schedule the vote, but actually holding the
23 referendum without a finding is a question.

24 I think it's really important, and I

1 had this discussion with Director Wells, whatever
2 we decide along those lines, that will not change
3 the recommendation, the investigation. That
4 there will be no change in how that will be
5 presented and what those recommendations will be
6 with regard to suitability.

7 I guess the question for me is how
8 important is it for people to know that ahead of
9 time? That's the original reason we stated that.
10 Am I correct in stating that was our original
11 thought and why we wanted that vote -- the
12 suitability first?

13 CHAIRMAN CROSBY: I think there were
14 two reasons. One is we thought it made sense for
15 people to know. But also we thought that we didn't
16 want the community to go through all of that angst
17 and then have to have it amount to nothing even
18 though theoretically the bidder has to pay for the
19 cost of the election, it's still big Magilla for
20 a community to go through if there's no other
21 election.

22 And we made that decision before we
23 knew there was going to be a special election for
24 John Kerry. So, the issue of convenience was one

1 of our two concerns. That one's gone away. The
2 other one apropos of June 25 that one's gone away.

3 The one you're talking about now, which
4 may have been the more important one is still
5 right.

6 Could you move this over a little bit?
7 I just want to see when were we anticipating
8 referenda on the present schedule?

9 COMMISSIONER ZUNIGA: For Category 1
10 or 2?

11 CHAIRMAN CROSBY: Yes, one. We need
12 to slide it over a little bit.

13 COMMISSIONER MCHUGH: It went to
14 October 4, right?

15 CHAIRMAN CROSBY: October 4 was
16 Category 2.

17 COMMISSIONER MCHUGH: Oh, I'm sorry.

18 CHAIRMAN CROSBY: So, December 31 was
19 the deadline by which we were expecting Category
20 1 referenda. That would have left us our couple
21 of months to process the applications unless they
22 came in earlier down here. Right, okay.

23 So, in terms of our original schedule,
24 June 25 is miles away from when we thought these

1 would normally be taking place.

2 COMMISSIONER ZUNIGA: Well, at least
3 for this as represented here, the Category 1 is
4 really the latest up. It could be as early as the
5 determination of suitability, which for Category
6 1 is October or even earlier than that if there is
7 no hearings and appeals. So, we are only
8 representing a latest case, a later date case.

9 COMMISSIONER MCHUGH: It seems to me
10 that there are four considerations. There is the
11 cost consideration, but I put that to one side.
12 Collapse the election into the special election or
13 another election and you save costs. But that's
14 the applicant's concern. The applicant has to pay
15 for those costs. So, the costs are there. It is
16 a consideration, but it's not coming out of the
17 public treasury. It's coming out of the
18 applicants' pockets.

19 The second is voter fatigue. We've
20 been having a lot of elections here. And a concern
21 about having too many elections, everybody stays
22 home. I think this election has enough punch that
23 people aren't going to stay home. There's energy
24 around this on both sides. And it seems to me

1 that's unlikely to be an impediment -- fatigue is
2 unlikely to be an impediment to an active
3 electorate showing up for these elections.

4 On the other side, we said before, and
5 I'm going to quote now: "It's absolutely
6 critically important that the communities not make
7 final judgments of people who have not passed the
8 background checks. There's nothing more
9 fundamental in our licensing and regulatory
10 process than to make sure that the people who are
11 in the game are people who we want in the game and
12 will pass the most rigorous standards." I don't
13 think anything has changed about that since we said
14 that.

15 And fourthly, the past months have
16 shown that this is an animated process. That
17 people are engaged and that rumors about people,
18 their qualifications, their backgrounds, their
19 dealings have proliferated. And it seems to me
20 that by allowing an election to proceed before we
21 finish the qualification process risks injecting
22 into the middle of an electoral process
23 information that has not been verified, that may
24 not be true and that affects perceptions of the

1 qualifications of the applicants in a way that
2 would be unhelpful and distracting from the
3 issues.

4 We have this investigatory process,
5 which really is something I think the public should
6 admire the way that the people are going about this
7 and the team that's been assembled to do it. These
8 are dedicated people who are skilled and who are
9 really digging.

10 And it seems to me important to put to
11 rest or to verify information that may bear on
12 people's judgments before the election takes place
13 so that the election deals with real issues and not
14 allusions. So, I would be in favor of leaving the
15 regulation for those reasons, where it is.

16 CHAIRMAN CROSBY: That's really well
17 said. I hadn't thought about that last point.
18 And I think that's a really meaningful point.

19 Interestingly, the two sites,
20 Springfield and Everett, that we know are
21 interested in having the election possibly before
22 the suitability test have bidders that are
23 internationally involved, which is one of places
24 that's most replete with misinformation and

1 disinformation and so forth.

2 And also by definition just from what
3 Director Wells told us, two of the background
4 checks that are going to take the longest. So,
5 there'd likely be the longest distance between the
6 referendum and the eventual suitability decision.
7 So, I think that's a very important point.

8 Let me ask just one, outside of the fact
9 that some of the bidders want to get this done
10 quickly, is there any loss in not permitting them
11 to get it done until the suitability? Is there any
12 public policy interest protected by giving them
13 the option of doing it before suitability?

14 MR. ZIEMBA: I'm sorry. I was going
15 back and forth on that.

16 CHAIRMAN CROSBY: Is there any
17 argument, a public policy argument in favor of
18 giving them the right to have the vote before
19 suitability? We just got four reasons why there's
20 public policy reasons not to permit it. Do we lose
21 anything? Does the public lose anything? Does
22 the process lose anything if we don't do it?

23 MR. ZIEMBA: One of the arguments
24 that's been put forth by applicants is that

1 certainty has a value to applicants. If they know
2 that they are able to proceed based on an election,
3 it is easier for them to expend the dollars that
4 would be necessary for fully evaluating what they
5 need to do with surrounding community agreements,
6 for example. Or to proceed a little bit more
7 expeditiously with permitting, for example.

8 So, we've said that there's a minimum
9 requirement for state permitting. We're asking
10 you to exceed that minimum requirement. But to
11 the degree that they don't know the feelings of the
12 host community, they may be a little bit more
13 reluctant to move forward with more expeditious
14 permitting. They may be a little bit more
15 reluctant to be more forthcoming with the dollars
16 for technical assistance, for example, to enable
17 communities to evaluate that.

18 So, there is some value for an earlier
19 decision point.

20 CHAIRMAN CROSBY: Yes, interesting.
21 Anybody else? Reactions, opinions, thoughts?

22 COMMISSIONER CAMERON: I was so
23 focused on suitability will not change no matter
24 if there is a yes or no vote. That will not change.

1 Well, obviously if there's a no vote that would be
2 a different scenario. But because people have
3 voted yes would not change the way we investigated,
4 the way we brought forth findings.

5 I hadn't considered the thought that
6 misinformation could affect the vote. And that is
7 I think a very important consideration that I
8 hadn't thought of as affecting the vote,
9 misinformation.

10 CHAIRMAN CROSBY: Take Springfield as
11 a perfect example. The MGM case is already
12 brooded about, whatever the transaction was in New
13 Jersey. The voters in Springfield are not going
14 to know what their regulatory agency thinks about
15 those concerns. And that's a big data point.

16 Never mind people can throw mud or
17 distort and so forth. But it's a critical data
18 point. If you were trying to vote, you'd say I
19 wouldn't vote for this if there was a real serious
20 problem in New Jersey. But I would if either there
21 wasn't or if it's been corrected or whatever. So,
22 I think that's a really significant point.

23 MR. ZIEMBA: Mr. Chairman, can I put
24 forward an argument that could be raised on that

1 issue would be that potentially voters could go
2 into the ballot box with the knowledge that they
3 are voting on the proposal that's before them, but
4 they know that the Commission at some point or
5 another may say yes or no based on suitability.
6 So, that that doesn't have to be brought into their
7 equation going into the ballot box. That's a
8 potential scenario.

9 But I guess I would also say that that
10 sort of level of sophistication of the voters is
11 probably not existent now and there's been no
12 education efforts to date, obviously, because we
13 have the existing policy to explain to voters that
14 that would be the process.

15 So, if the Commission decided to change
16 its policy, one would have to engage in a very
17 significant public outreach effort.

18 One other thing I just wanted to
19 mention, in some of our meetings, at least with one
20 of the applicants, they put forward what has
21 occurred in other jurisdictions, notably in New
22 Jersey where there is a potential of a preliminary
23 determination by the Agency of suitability, and at
24 some later point the final determination.

1 I don't think it was in this particular
2 context where you're putting forward for a vote but
3 it's in another context. And at least one of the
4 applicants wanted to provide that as an
5 alternative to the Commission.

6 COMMISSIONER CAMERON: I see that as
7 problematic. I see that you're not completed with
8 the investigation. So, you're inclined to say
9 okay, they're conditionally suitable, which
10 gives someone the idea that I'm going to vote a
11 certain way based on that. And later for us to
12 come back and say oh jeez, we hadn't considered
13 this, they're not suitable, I think is really
14 problematic, something you shouldn't consider.

15 COMMISSIONER MCHUGH: If we know what
16 the host community is going to do, we'll spend more
17 energy and money getting our permits in order piece
18 is important. I just don't think it trumps the
19 other pieces. I think the planning can go on at
20 a certain level. I think the meetings with the
21 various agencies can go on. We've arranged that.

22 I know it's expensive. We respect
23 that. But I don't think it changes my view at
24 least of how the equation balances out. It's a

1 close question, but it doesn't change my view.

2 COMMISSIONER CAMERON: And so many of
3 the applicants are not prepared to vote on that
4 June date.

5 CHAIRMAN CROSBY: And only one is
6 foursquare in saying that they want to.

7 MR. ZIEMBA: Springfield wants to,
8 they hope to I guess is the word.

9 CHAIRMAN CROSBY: Hope to, right.

10 COMMISSIONER MCHUGH: But Springfield
11 when we were commenting on this, when we were
12 considering this, said that the Commission -- said
13 that we ought to do this that we ought to require
14 the completion of the qualification investigation
15 before we permitted a vote. And that that ought
16 to be a uniform policy across the state, if my
17 memory serves me.

18 CHAIRMAN CROSBY: Is that right?

19 MR. ZIEMBA: That's correct because it
20 was based on -- I think what it was based on that
21 they previously agreed in a letter to the
22 Commission that that's the process that they would
23 do. So, in order for fairness, they wanted
24 uniformity.

1 COMMISSIONER MCHUGH: That's right.
2 That's how that came about.

3 CHAIRMAN CROSBY: Yes, good point.
4 Consistency is the hobgoblin of small minds.

5 COMMISSIONER ZUNIGA: And big ones
6 too.

7 CHAIRMAN CROSBY: Yes, right. Any
8 other thoughts?

9 COMMISSIONER MCHUGH: Foolish
10 consistency is actually --

11 CHAIRMAN CROSBY: Yes, foolish
12 consistency, right, right.

13 COMMISSIONER MCHUGH: Not all
14 consistency.

15 COMMISSIONER ZUNIGA: I'm also
16 persuaded by the well articulated points of
17 Commissioner McHugh. I think there's value to
18 continue the way we set out to do for all those
19 reasons. So, I'd be perfectly fine going along
20 with leaving our regulation in place.

21 COMMISSIONER STEBBINS: I'm just not
22 thinking we -- Picking up on Commissioner McHugh's
23 last point about the rumor the innuendo, I think
24 we're somewhat doing a disservice not only to the

1 voters but to the applicants themselves by sending
2 people into the ballot box with a just kind of air
3 of complexity.

4 I have no doubt that whenever an
5 election is scheduled that people at the local
6 level will probably turn out in higher numbers than
7 they will for a statewide election, albeit a
8 special Senate election. This is something that
9 I think they realize that the power of their vote
10 is stronger, as opposed to being one of however
11 many votes are cast statewide. It certainly
12 impacts their community more.

13 I think we're going to see applicants
14 and opposition groups spending money to alert to
15 people to whenever that date happens. And I think
16 it's incumbent upon us that the suitability
17 declaration that we're providing the voters, and
18 again, I think we're helping both the voters and
19 the applicants to be able to go into the voting box
20 voting booth with the best information that we can
21 provide them as the regulatory body.

22 CHAIRMAN CROSBY: That sounds like we
23 got a consensus. So, I think we'll leave the reg.
24 as it is. Okay.

1 MR. ZIEMBA: One little substantive of
2 that regulation is that currently we still afford
3 communities and applicants to schedule the
4 referendum, but if we are not able to get them a
5 determination of suitability by that time of the
6 election then they are not allowed to proceed.

7 And the time period for the positive
8 determination on suitability pursuant to our
9 regulations is after the IEB presents it to the
10 Commission and after any appeals. That is the
11 period under our regulation.

12 So, we've heard some commentary that
13 June 28 would be basically the earliest in some
14 regards that we'd be able to meet that. I guess
15 the policy -- if we're sticking with the current
16 policy, communities could still move forward with
17 that date, but I guess they would be forewarned
18 that we've had some testimony already that it is
19 not likely that we are going to meet that date.

20 CHAIRMAN CROSBY: Yes. I would say we
21 would want to be pretty foursquare about that,
22 which we just have been. We've just been public
23 stating that particularly for those entities which
24 have international operations and linkages, is

1 we're not going to be making those deadlines. So,
2 I think we should be -- through you, we should be
3 pretty straightforward with people about that.

4 COMMISSIONER ZUNIGA: I want to make
5 sure I understand. There's a 60-day period that
6 you're referring to, right -- the scheduling and
7 when the election takes place. Somebody locally
8 could schedule a vote with some 60 days to go and
9 hope that our forecast of determination of
10 suitability falls within that 60 days. Is that
11 what you're really alluding to?

12 MR. ZIEMBA: That's our current
13 policy, yes.

14 CHAIRMAN CROSBY: That's the way it
15 stands now. And I think relative to June 25 that's
16 pretty much off the table. Just as a practical
17 matter, for the people that are talking about doing
18 it, Springfield and Everett, the likelihood of us
19 making those deadlines is not good at all we now
20 hear.

21 But, if we leave that rule in place that
22 you may schedule in advance, you get around to the
23 first Tuesday after Labor Day, then you'd have to
24 schedule that in July. And we may well know by

1 then that we're close to done. And we wouldn't
2 want them to wait until the end of August when we
3 finally conclude to announce their 60 days.

4 So, I think leaving the option open of
5 scheduling without suitability, although it's
6 tricky and I grant that, I think it's constructive.
7 Not now anymore because of June 25, but because of
8 the likely September elections, referendums.

9 MR. ZIEMBA: I guess my
10 recommendation would be for any of those
11 applicants and communities that were thinking
12 about the June 25th deadline, including Boston and
13 Revere, they should very quickly check about the
14 status of our investigations.

15 And we've publicly stated that at least
16 for a couple of the applicants, June 28 would be
17 difficult to meet. I'm not certain we've made a
18 determination on all applicants.

19 CHAIRMAN CROSBY: No, we haven't.
20 Right, right.

21 MR. ZIEMBA: So, they'd be urged to
22 communicate quickly with our IEB.

23 CHAIRMAN CROSBY: Yes, and through
24 you, probably.

1 You had couple of other things.

2 COMMISSIONER MCHUGH: Before we leave
3 this, a technical piece just occurred to me. And
4 that is that the regulation prohibits this. We
5 have a policy in place that says no election until
6 there's been a qualification determination.

7 But the regulation that contains that
8 is the Phase 2 regulation. The Phase 2 regulation
9 has not yet been promulgated. It's in the
10 promulgation process. It won't be a final
11 regulation. We have to take a look at the comments
12 and the like, but it won't be a final regulation
13 until June 7. That's our target date.

14 I take it that nobody is likely to have
15 an election before June 7, but if we had any concern
16 about that we have two approaches. One to simply
17 convey to the would-be host communities and
18 applicants that this is our policy. And we
19 anticipate it will be a regulation. And expect
20 and hope that they'll follow it even though the
21 regulation isn't in place.

22 Or two, to adopt an emergency
23 regulation next week putting that in place.

24 It seems to me that we're dealing with

1 people of sophistication and business sense and
2 knowing that this is our position, even if the
3 regulation isn't in place, they would not go
4 forward given what we've said about our
5 intentions, but just --

6 CHAIRMAN CROSBY: Actually, I'm glad
7 you bring this up. Because I think that is true
8 what you said about people we are dealing with.
9 But the same people are accustomed to getting their
10 way and will push us and are pushing us as hard as
11 they possibly can to get their way. And if we give
12 them a window, some of them might try to take it.
13 Might as well be on the safe side and do a reg. next
14 week.

15 COMMISSIONER MCHUGH: I say next week,
16 but certainly let's talk with the legal team and
17 see how soon we can get an emergency reg. to adopt
18 that piece of regulations.

19 CHAIRMAN CROSBY: It should be clear
20 to all bidders what our policy is. There's no
21 question about that and we will stick with that
22 whether there's a reg. or not. But I also think
23 for the record getting the reg. done as soon as we
24 can is probably a good idea.

1 MR. ZIEMBA: One thing I would
2 recommend is that bidders and communities might
3 have something that we've never contemplated.
4 And as is usual, they have the ability to present
5 any ideas to us for our consideration. And we will
6 gladly hear them.

7 With the one idea that was tossed out
8 was the conditional approval, maybe there's other
9 ideas about how people can meet it. I can't
10 understand what that would be, but that's probably
11 a good practice that we've always followed.

12 COMMISSIONER MCHUGH: We have always
13 followed it and I'm not suggesting we shouldn't
14 follow it again here. But remember this is the
15 second time that we are going to take public
16 comments. The first time we got 11, 12, 14 public
17 comments on exactly the same proposition. So,
18 that hasn't changed. But that doesn't mean we
19 shouldn't do it again and we ought to think about
20 that.

21 CHAIRMAN CROSBY: Yes. You had a
22 couple of other things on your agenda?

23 MR. ZIEMBA: I think the other thing
24 that I'll report is that on our RPA election, you

1 have a chart in your packet that shows that we have
2 received a unanimous either approvals or maybes
3 from our applicants on whether or not they would
4 like to participate in our process.

5 So, we had asked for each of the
6 different applicants to tell us whether or not they
7 are interested in utilizing some or all of the RPA
8 services. And that they will attend a
9 planning/scoping meeting. That they have not
10 determined that they are interested in using some
11 or all the services but that they will attend the
12 planning/scoping meeting.

13 And then the third category was that
14 they are not interested at this time in using some
15 or all of RPA services. And they will not attend
16 a planning/scoping meeting.

17 CHAIRMAN CROSBY: This is missing
18 Cordish and Worcester.

19 MR. ZIEMBA: Yes. This is nine out of
20 11. Because we have no site for the 11th, there
21 is no RPA that we could consult about whether or
22 not they would be able to provide those services.

23 But what I do report is that the Central
24 Mass. Regional Planning Commission has told us

1 that it would very much like to participate in our
2 process. And they said that we should utilize
3 them in meeting the needs specifically in the Metro
4 West area.

5 They have jurisdiction over the
6 Worcester area. They have jurisdiction over the
7 western part of the Milford proposal and then a
8 limited portion of the Palmer proposal as well.

9 So, our conversations are ongoing
10 about how regional planning agencies deal with
11 multiple jurisdiction questions and how that is
12 being dealt with. But that will be part of the
13 scoping/planning meetings that we have with the
14 applicants and the communities. We are in the
15 process of trying to schedule those now.

16 CHAIRMAN CROSBY: Okay.

17 MR. ZIEMBA: But obviously, we have to
18 move pretty quickly.

19 CHAIRMAN CROSBY: Right. Yes, that's
20 great. I think it's great that so many people are
21 interested in doing this. I think this will make
22 everybody's lives a lot easier. Anything else?

23 MR. ZIEMBA: One other thing I wanted
24 to mention is that we've attended some recent

1 meetings where we've received comments about
2 different things that the Commission could
3 consider.

4 And along the line of our
5 investigations, it hasn't been entirely clear to
6 communities how they can provide information to
7 the Commission about anything related to the
8 background checks. So, if for any reason they
9 find something that they think is worthy of our
10 review, there hasn't been a formal set process by
11 which they can submit comments to the Commission.

12 Director Wells and I have had
13 conversations about how we would go about setting
14 that up. And I think what we will do is we will
15 put forward an advisory to communities on how they
16 can put forward information to the IEB so that it
17 can be put more formally into the investigation.

18 CHAIRMAN CROSBY: That you would send
19 out proactively to all of the communities as well
20 as post?

21 MR. ZIEMBA: Right.

22 CHAIRMAN CROSBY: No, I think that's
23 great. We have heard that a few times. And it's
24 important to clarify that we want anybody who's got

1 information they think may be relevant to know what
2 the channel is to get it into the mix.

3 MR. ZIEMBA: And it fits within that
4 other conversation that there shouldn't just be
5 these sort of ancillary raising of issues. The
6 proper channel for investigation is through the
7 Commission. We're investing obviously
8 substantial resources into evaluating those and to
9 determine whether or not they're real not real with
10 seasoned experts, obviously.

11 CHAIRMAN CROSBY: Right.

12 COMMISSIONER MCHUGH: And really
13 welcome public help and input and any information
14 that they have.

15 CHAIRMAN CROSBY: Absolutely.

16 MR. ZIEMBA: The one other thing that
17 I wanted to report to the Commission is that we get
18 questions every now and then about how are we going
19 to evaluate the public outreach by applicants.
20 And it is a statutory criteria.

21 It's part of the evaluation criteria
22 that their outreach to communities is part of our
23 evaluation. It's included in our regulations and
24 is part of our evaluation. But it's something for

1 us to consider as we continue to move forward and
2 define how we look at our evaluations, how they're
3 weighted and what importance do each of the
4 proposals -- each of the criteria have.

5 Obviously, mitigation has been put out
6 as a very important criteria for the Commission to
7 determine. But it's beyond just the surrounding
8 community agreements or host community
9 agreements. It's the outreach as well that's part
10 of the statutory criteria.

11 CHAIRMAN CROSBY: Okay.

12 MR. ZIEMBA: That's what I have to
13 report.

14 COMMISSIONER MCHUGH: Before you
15 leave, we've decided to leave the schedule, the
16 macro schedule in place for these things. And
17 they have deadlines for various events. Do we
18 need to set any other deadlines? Are there site
19 identification deadlines that we need to set? Are
20 there identify all your qualifier deadlines that
21 we need to set? Or are we okay?

22 CHAIRMAN CROSBY: Do you want to come
23 back and join us for this?

24 MR. ZIEMBA: So, the Commission had

1 asked Director Wells and myself to take a look at
2 the four applicants and determine whether or not
3 there should be a specific deadline for
4 qualifiers. We had conversation with each of the
5 four Category 2 applicants to determine how they
6 will be able to meet our schedule for
7 qualification.

8 And we did receive a proposal on how one
9 of those four would be able to meet our
10 qualification schedule, even the absence of a
11 defined site. So, I'm going to let Director
12 Wells.

13 MS. WELLS: The proposal we're still
14 evaluating, will be working with legal.
15 Generally, the set up would be that if this entity
16 brought forth a new qualifier based on the land
17 deal, that they would have the contract in place,
18 if you will, or the agreement in place that if that
19 person was found nonsuitable by the Commission --
20 by the IEB that that would then trigger the default
21 provision that the land would be sold.

22 There are still some provisions in
23 there that I am looking at. And it's not
24 necessarily a set deal. We've spoken with the

1 consultants who have indicated to me that yes, this
2 could work. So, you could move forward and it
3 would not affect the timeline. And then
4 ultimately if someone is not suitable, they're
5 out. So, there is no concern that there is
6 somewhat in the process.

7 However, I'd have conversation with
8 Commissioner Cameron, we want to be careful as well
9 that this is not someone working behind the scenes,
10 still involved in the process and they're just
11 skirting that issue. I'm not necessarily seeing
12 that at this point. But I just wanted make sure
13 that we check every provision before we agree to
14 it.

15 On its face potentially that's a
16 reasonable solution and we're working with the
17 applicant to see if that's fair and that that would
18 work.

19 COMMISSIONER CAMERON: Director, we
20 have the ability, and it's clearly articulated
21 that anyone that we deem as a qualifier just
22 because the company didn't identify them we may see
23 somebody's in a business relationship and/or
24 control whether that be behind the scenes or

1 upfront, we have the ability to say you are a
2 qualifier, submit your information. I think
3 we're covered along those lines as well.

4 CHAIRMAN CROSBY: We're talking about
5 Cordish, which is the one that doesn't have a site
6 identified. It's not a secret.

7 MS. WELLS: Yes.

8 CHAIRMAN CROSBY: And it's probably
9 Cordish that because of being late to the game that
10 will not be done by the end of April, right? Will
11 not have the background check done by the end of
12 April.

13 MS. WELLS: That has not to do
14 necessarily with this issue, but yes.

15 CHAIRMAN CROSBY: Yes, but for various
16 corporate reasons and whatever. Again, it's
17 fine. There's no negative involved in this.

18 MS. WELLS: Correct.

19 CHAIRMAN CROSBY: But you must be
20 making an assumption on when you will be given this
21 key qualifier in order to think you will be able
22 to be done within a couple of weeks into May.

23 MS. WELLS: Although, the nature of
24 these organizations my understanding is that they

1 can change how their businesses structured as time
2 goes on. So, for example, we've had a few
3 qualifiers already drop out because they've
4 resigned. They've had a couple of circumstances
5 where we've had changes in the table of
6 organization.

7 CHAIRMAN CROSBY: Vornado.

8 MS. WELLS: Exactly. So, this is a
9 fluid analysis. So, Cordish is telling us if you
10 set a deadline, we will meet the deadlines. So,
11 if we have to -- as this goes on, even through the
12 Phase 2, if they make some changes to their
13 organization, we may identify another qualifier.
14 This is not a situation where on a certain date deal
15 is done and nobody can change positions within the
16 company because the nature of companies they're
17 going to change.

18 CHAIRMAN CROSBY: But this one is
19 different. We know there is a missing piece.
20 Somebody is going to own the land on which this
21 thing is going to sit. And we don't know whether
22 they are yet -- who they are.

23 MS. WELLS: Correct.

24 COMMISSIONER CAMERON: That's the

1 case with many of the applicants. They will not
2 buy the land until they have the license.

3 CHAIRMAN CROSBY: But they've
4 optioned the land.

5 COMMISSIONER CAMERON: Correct.

6 CHAIRMAN CROSBY: And we have the
7 right to determine whether we think the person
8 whose land is optioned is a qualifier or not. Now
9 we don't know -- At some point, what if it turns
10 out to be that the person that owns the land for
11 Cordish is a big international company and we're
12 trying to do a background check on them? It could
13 take months. It could slow the whole process down
14 by who knows what.

15 It seems to me, I'm just talking out
16 loud here. I don't have my mind made up on this,
17 but it does seem to me that in order for us to meet
18 the deadlines that we've got here, we can make them
19 having the final decision made on the fourth bidder
20 early in May. Okay, we're fine with that.

21 But you need to have a date certain by
22 which you will have their package done that is
23 their full table of organization, all of their
24 qualifiers identified in order that you'll be able

1 to get your background investigations done by
2 early May.

3 MS. WELLS: Yes. And they've said if
4 the Commission wants a deadline such as that then
5 they will do it. I'm happy to work however the
6 Commission would like on that issue. If the
7 Commission is not comfortable not knowing who that
8 landowner -- And I'm not sure. They haven't told
9 me. So, I don't know who the potential additions
10 may or may not be. I just don't know.

11 COMMISSIONER MCHUGH: Why couldn't we
12 set a deadline that is functionally related to what
13 has to be done by when? And you're saying now
14 that, as I understand you, we're talking about the
15 second or third week of May just because of things
16 you know is going to be when you'll finish with
17 them.

18 Why shouldn't we set a deadline that
19 would enable you to finish by the second or third
20 week of May including the new information?

21 MS. WELLS: I'm comfortable with that.

22 COMMISSIONER MCHUGH: If it's one
23 single landowner you could explore that. If it's
24 a single landowner, then you have one person to

1 deal with. If it's a multinational corporation --

2 CHAIRMAN CROSBY: Right, but even if
3 it's a single landowner, as we've gone through
4 these people like Vornado they had no idea what
5 they're getting into. They may say whoa, I'm not
6 going to do this.

7 COMMISSIONER CAMERON: What was the
8 assurance they made you that if there was a problem
9 with the landowner they would buy that person out
10 immediately?

11 MS. WELLS: I don't have the paperwork
12 economy in front of me, but there was a trigger.
13 So, there would be a sale.

14 In their proposal, for example, they
15 had also talked about potential long-term lease
16 and I had said that I would not accept that because
17 that keeps that person in the game that potentially
18 we'd have to have a sale. So, there were certain
19 provisions we're still looking at.

20 So, this is by no means agreed to, by
21 no means a done deal. This is just something they
22 have brought to our attention for consideration
23 and we are in that process of looking at it.

24 COMMISSIONER MCHUGH: As I listen to

1 this, it's not the outcome that's the problem, it's
2 the process of getting to the outcome.

3 CHAIRMAN CROSBY: Correct.

4 COMMISSIONER MCHUGH: And if it takes
5 you three months to get to there's a problem piece,
6 then we delay the whole Category 2 by three months.

7 MS. WELLS: And this is what I think
8 their argument may be and we still have to have some
9 discussion on it. -- This was somewhat brought to
10 our attention recently -- is that I think their
11 argument is -- Say there is this land for sale, if
12 there's a problem, it should not necessarily --
13 it's almost like a conditional approval because if
14 this person is found unsuitable, you could
15 continue that investigation through the Phase 2.
16 And if there's an issue where they're found
17 nonsuitable, they're out of the game because
18 they're automatically bought out. I think that's
19 their argument.

20 CHAIRMAN CROSBY: But they'd have to
21 have a host community agreement without
22 suitability being made.

23 MS. WELLS: I think it's conditional
24 suitability. So, they've got the piece. Maybe

1 the Commission is not comfortable with that.
2 Their argument to me right now, which we are
3 flushing out, is that if that entity -- if there's
4 a problem with that entity, that entity will be
5 automatically removed.

6 CHAIRMAN CROSBY: Right. But I think
7 that really misses the point that Judge McHugh
8 made. And it's the way I feel too. The more I
9 talk about this, the more I think it's really
10 important because we know now from our own personal
11 experience that these things can be very elongated
12 or people can say we're not going to do it. We've
13 had both things happen.

14 And if it's a local person who's never
15 been through this before and they don't have any
16 idea what the background checks are going to be,
17 it's happened to us with the a very sophisticated
18 investor. What is it going to be with an
19 unsophisticated investor?

20 The more I think about it, the more I
21 think we need to know pretty damn soon, because
22 you're going to need the time. There's no way to
23 predict how long it will take it to get the
24 background done on this qualifier until we know who

1 they are.

2 MS. WELLS: I agree.

3 CHAIRMAN CROSBY: And we don't need to
4 know the site. We don't need to know the site. We
5 need to know the qualifier.

6 MS. WELLS: And I'll check. They may
7 provide additional information to me -

8 COMMISSIONER CAMERON: There's no
9 timeframe. They just haven't been forthcoming?

10 MS. WELLS: They keep not telling me.

11 COMMISSIONER MCHUGH: Because I think
12 it affects the next part of the schedule as well.
13 How do you anticipate negotiating when those
14 people don't even know they're under
15 consideration?

16 MS. WELLS: That's where they're
17 coming back saying, you know what, that's on us.
18 If we don't meet the deadline that's on us.

19 CHAIRMAN CROSBY: And I agree with
20 that. That's their problem. Our problem is the
21 background check.

22 COMMISSIONER ZUNIGA: Could we look at
23 the schedule for a minute just to take the latest.
24 Is it fair to say that July 25 as represented here

1 would be the very latest day by which -- because
2 we have to determine the suitability by then at
3 least as forecasted here.

4 And take that date of 7/25 and back out
5 a number of days, and average number of days, your
6 best guess as to what it would take for an
7 individual or a corporation. And that's the
8 deadline.

9 CHAIRMAN CROSBY: No. You're focused
10 on the wrong day. That assumes hearings.

11 COMMISSIONER ZUNIGA: I'm focusing on
12 the latest possible date. There could be an
13 earliest. I guess the earliest is yesterday.
14 Just for a matter of saying what's the latest
15 possible. I don't think there's any later than
16 7/25. That's where I'm coming from.

17 CHAIRMAN CROSBY: To be determined
18 suitable after hearings and everything.

19 COMMISSIONER ZUNIGA: Right. In
20 other words, everything that Director Wells is
21 saying relative to automatic triggers, to
22 purchases, whatever, really in my view unless
23 somebody has another argument, that latest day
24 would be July 25. Now back out from that date

1 what's realistically taking you to determine
2 suitability of an individual, a corporation,
3 either. And that's our deadline, which could then
4 afford us the period of hearings etc., etc.

5 CHAIRMAN CROSBY: But it's what
6 Director Wells has said. May 15 more or less is
7 when she expects to be able to have all of the
8 background checks done. That's the deadline not
9 7/25. So, she needs to back up from May 15 to say
10 in order that I can make a recommendation to the
11 Commission by middle of May when do I need to know
12 who this qualifier is.

13 I'm saying the more I think about it,
14 the more I think it's right about now because it's
15 so totally unpredictable how long it's going to
16 take. It could take a week. It could take six
17 months.

18 COMMISSIONER MCHUGH: In other words,
19 there could be a nonhidden qualifier in that
20 organization who the IEB makes a negative
21 determination about. They appeal. They need
22 time to prepare their report. Then they've got 30
23 days to appeal. So, it really is by the 15th.

24 CHAIRMAN CROSBY: Of May, right.

1 COMMISSIONER ZUNIGA: By May 15 or May
2 29.

3 COMMISSIONER MCHUGH: Using your
4 functional analysis is right, but you've got all
5 that time that automatically comes out.

6 CHAIRMAN CROSBY: That's right. It's
7 without our control. All of those dates are
8 locked in.

9 COMMISSIONER ZUNIGA: So, then the
10 latest would be perhaps May 29 at least as
11 representative here.

12 CHAIRMAN CROSBY: But we've changed
13 that based on what she said.

14 MS. WELLS: Maybe they have something
15 set up where they can just buy the land and there's
16 no additional qualifiers. Maybe that's why
17 they're not worried about it. I'm a little in the
18 dark.

19 COMMISSIONER CAMERON: You probably
20 need additional information on this applicant.

21 MS. WELLS: To get the timeframe. But
22 if the Commission wants any person that would be
23 involved in the land deal or deemed a qualifier to
24 have that be completed by the 15th and not because

1 of the trigger provision allow it to go into Phase
2 2, then we can check in with them and set that
3 deadline. I'm perfectly comfortable with that.

4 CHAIRMAN CROSBY: I think that's what
5 we're saying.

6 MS. WELLS: Okay, absolutely.

7 COMMISSIONER ZUNIGA: May 15 then?

8 CHAIRMAN CROSBY: May 15 is not an
9 absolute but her informed best judgment at this
10 point was May 15. If you can't make May 15, then
11 it's May 29. Fine, we'll live with that. But at
12 the moment she's targeting May 15. So, we don't
13 want this one wild card to blow a schedule, which
14 everybody else could make.

15 MS. WELLS: Okay. Certainly, I can do
16 that.

17 CHAIRMAN CROSBY: Okay.

18 COMMISSIONER CAMERON: Thank you.

19 COMMISSIONER MCHUGH: Thank you.

20 CHAIRMAN CROSBY: Thank you.

21 COMMISSIONER MCHUGH: That was really
22 helpful.

23 COMMISSIONER ZUNIGA: Mr. Chairman, I
24 need a break.

1 CHAIRMAN CROSBY: Yes, I make the same
2 suggestion. Wow. Next up is -- We've done the
3 master schedule without formally getting to it. I
4 think we've beaten that one to death. Let us take
5 a quick break and we'll do Racing Division in a
6 minute.

7
8 (A recess was taken)

9
10 CHAIRMAN CROSBY: Reconvening public
11 meeting number 62 with agenda item number six
12 Racing Division, Director Durenberger.

13 DR. DURENBERGER: Good morning, Mr.
14 Chair and Commissioners.

15 COMMISSIONER CAMERON: Good morning.

16 DR. DURENBERGER: I had to think for a
17 minute. We come before you with a pretty good list
18 of things talk about today.

19 I'm going to start with an
20 administrative update, which will probably be one
21 of the longer ones that I've presented to you.
22 There's a lot going on right now in racing.

23 First, we'd like to start off by
24 reminding everybody that the Racing Division is

1 requesting public comment on our latest round of
2 proposed changes to 205 CMR 4.00 and 6.00. The
3 proposed changes were adopted by the Commission on
4 an emergency basis last week, and they can be found
5 on our website.

6 The deadline for public comment is
7 Friday April 19. And a public hearing has been
8 scheduled on the matter for Monday, April 22 at 84
9 State Street, not in this building but 84 State
10 Street at 11:00 a.m.

11 Live racing in the Commonwealth, we're
12 excited to remind everybody that live racing
13 season is rapidly approaching. Plainridge
14 Racecourse actually will be taking entries
15 tomorrow for its first round of qualifying races
16 to be held this Saturday. Additional qualifiers
17 are tentatively scheduled for April 9 and 13th.
18 So, there'll be activity at the racetrack.
19 Opening day for live racing is Monday, April 15 at
20 1:00 p.m.

21 And the Suffolk Downs backstretch will
22 open for training on Saturday April 20. So, that
23 also is just right around the corner. And we also
24 welcome the Thoroughbred horsemen back and welcome

1 their participation in the 2013 season.

2 CHAIRMAN CROSBY: All of our friends
3 are invited to come to opening day -- what do you
4 call it?

5 DR. DURENBERGER: Opening day or any
6 day.

7 CHAIRMAN CROSBY: -- or any day, but
8 starting April 15 all of our friends are invited
9 to come to the opening of Plainridge and later
10 Suffolk Downs.

11 DR. DURENBERGER: Right.

12 COMMISSIONER ZUNIGA: June 2, right?

13 DR. DURENBERGER: June 1.

14 CHAIRMAN CROSBY: June 1 for Suffolk
15 Downs but Patriots' Day, I guess, for Plainridge.

16 DR. DURENBERGER: That is correct.
17 We have an update on the pari-mutuel auditing
18 system that resulted from an RFP the Commission put
19 out. This is the Pari-Global Group otherwise
20 known as PRIMS. We're in the implementation
21 period as we speak of this. And we could be up and
22 running as soon as April 19, which is fantastic,
23 I think. Full functionality is expected in
24 mid-May. And we'll have representatives from the

1 company on site mid-April to assist with setting
2 up and training. The system will run in parallel
3 with our existing system, of course, initially
4 until such time as it's appropriate to
5 discontinue.

6 CHAIRMAN CROSBY: Since our existing
7 system is so good.

8 DR. DURENBERGER: Our equine drug
9 testing laboratory update, this is the racing
10 medication testing program also resulting from an
11 RFP that the Commission put out. Supplies have
12 been shipped to Plainridge. We've had to order
13 some additional equipment, some storage equipment
14 and other sampling items. Everything has been
15 ordered. Everything looks like it's going to
16 arrive on time. And we expect that program to be
17 fully operational by the start of live racing.

18 CHAIRMAN CROSBY: That's great.

19 DR. DURENBERGER: It is great. I like
20 reporting good news.

21 CHAIRMAN CROSBY: Yes, it's great.

22 DIRECTOR DURENBERGER: I do have a
23 racing personnel update matter. The live racing
24 licensees submit to us lists of key operating

1 officials and racing officials for approval for
2 the live racing season typically 30 days before the
3 meet starts.

4 We did have a Racing hearing on March
5 20 at which time Plainridge submitted that list to
6 us. And they put forward on Monday evening after
7 we had already posted the agenda, they put forward
8 an additional name for approval.

9 This is for the position of the judge
10 at Plainridge. The name is Anthony Salerno. And
11 my recommendation would be to approve Mr. Salerno
12 pending completion of a background check. That is
13 typically how we handle the racing officials at the
14 meeting on March 20 that we had, the Racing
15 hearing. So, that would be my recommendation to
16 you today. But I think that may have to be put in
17 a form of a motion.

18 CHAIRMAN CROSBY: I don't know that it
19 does.

20 COMMISSIONER MCHUGH: Have we
21 approved these people before?

22 DR. DURENBERGER: Commissioner
23 Cameron in her capacity as a hearing officer
24 presided over the list that came to us on March 20.

1 So, Commissioner, do you wish to make any comment
2 on that as you're drinking your tea?

3 COMMISSIONER CAMERON: This is a
4 timing issue.

5 DR. DURENBERGER: It's a timing
6 issues.

7 COMMISSIONER CAMERON: Rather than
8 wait for our next hearing, you're asking the full
9 Commission to take this matter up today.

10 DR. DURENBERGER: Yes.

11 COMMISSIONER CAMERON: This is in
12 addition to the group that was submitted to me.
13 So, I move that we conditionally approve this
14 official, his name Mr. Salerno, as I have done with
15 the other key employees and that's pending a
16 successful background investigation by the State
17 Police.

18 CHAIRMAN CROSBY: I'm happy to vote on
19 this, but do we vote on employees? I don't
20 remember that we even voted on employees before.

21 DR. DURENBERGER: I have done it on
22 behalf of the Commission.

23 CHAIRMAN CROSBY: Why don't you do it
24 on behalf of the Commission again?

1 COMMISSIONER CAMERON: Well, since
2 the whole Commission is here, it probably makes
3 more sense for all of us to move forward with this.
4 And rather than wait, Mr. Chair, until next month's
5 hearing, we want to move this along.

6 CHAIRMAN CROSBY: That's fine. Do I
7 have a second?

8 COMMISSIONER ZUNIGA: Motion is
9 second.

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

12 COMMISSIONER ZUNIGA: Aye.

13 COMMISSIONER STEBBINS: Aye.

14 COMMISSIONER MCHUGH: Aye.

15 COMMISSIONER CAMERON: Aye.

16 CHAIRMAN CROSBY: Opposed? The ayes
17 are with you all the way.

18 DR. DURENBERGER: I think that
19 concludes my administrative update. We will turn
20 to the legislative review project, which should be
21 the conclusion of that.

22 This was to remind everyone in the
23 Session Laws of 2011 the Commission was mandated
24 to review the pari-mutuel and simulcast laws for

1 efficacy and need to change. We've come before
2 you with a draft report to be filed with the
3 Legislature as well as some recommended statutory
4 language.

5 We've come before the Commission with
6 that. And what we have today are some
7 incorporated changes, some comments based on those
8 comments received from the Commission, I believe,
9 two weeks ago at the meeting. So, I am going to
10 let David take up this piece. Danielle is here
11 with us as well.

12 MR. MURRAY: Mr. Chairman,
13 Commissioners, if I could just take up first on
14 page 16 of the report, draft report that you have.
15 What we have done is to put some flesh on the bones
16 with respect to premiums, a little history of
17 premiums and some bit of policy analysis as to why
18 it is we are recommending the premiums be abolished
19 and in effect, as the Legislature has done already
20 in the Gaming Act, replace it with the money that's
21 being put into the Racehorse Development fund from
22 gaming and for racing.

23 Before I take up what's in the proposed
24 new chapter, there are a couple of -- there's one

1 typo that we caught thanks to Judge McHugh's eagle
2 eye, and another which is a bit more of a
3 substantial omission.

4 The first would appear on page four,
5 subsection (c). At the end there it says
6 convicted of violating section 5. It should be
7 section 5(c). And we will make that change.

8 COMMISSIONER ZUNIGA: David, are you
9 talking about the report or the proposed new
10 chapter?

11 MR. MURRAY: The proposed new chapter
12 on page four subsection (c) on that page four at
13 the bottom. At the end it says been convicted of
14 violating section 5, it should be section 5(c).

15 The more substantial omission is on
16 page 25 again of the proposed new chapter. You
17 will see that the last redline insertion says and
18 the simulcast licensee that that is not a. That's
19 obviously garble. What it should say is and a
20 simulcast licensee that is not a racing meeting
21 licensee shall pay a substantially similar amount
22 to be determined by the Commission by rule or
23 regulation into the Racehorse Development Fund.

24 What that is trying to do is to balance

1 as is made clearer over the page on that redline
2 insertion that we could not warrant to have race
3 meeting licensees for simulcasting at a
4 disadvantage with respect to takeouts or
5 compulsory payments from gross wagering in the
6 house.

7 We don't want them to have a different
8 takeout structure than for the gaming licensee
9 that is not the race meeting licensee but is also
10 simulcasting pursuant to a 7b license.

11 So, what we have tried to do is to
12 mirror for 7b licensees the takeout structure and
13 each individual item of takeout that is applicable
14 to -- mirror these takeouts that are applicable to
15 racing licensees to non-racing gaming 7b
16 licensees.

17 COMMISSIONER MCHUGH: I understand
18 the extent. This was the only question I had about
19 this draft, what is substantially the same mean?
20 I guess my question is better put why isn't it
21 possible to just set up a structure for both in
22 terms of percentages that would yield that result
23 rather than leaving it to the regulators to create
24 regulations?

1 MR. MURRAY: That's because some of
2 the takeout provisions don't require a fixed
3 percentage. Like for example, in section 7b it
4 says a minimum of 10 percent must be taken out.
5 The Commission could increase that amount to 12
6 percent, for example. And that would require
7 adjustments with respect to perhaps other
8 obligations, takeout obligations of a 7b licensee.
9 So, there is wriggle room, perhaps that's an
10 unfortunate phrase, but there is some
11 discretionary factor that's written into the
12 simulcast provisions of the gaming statute. And
13 there are also some discretionary factors that are
14 in place now in Chapters 128A and 128C.

15 So, in order to give authority to the
16 Commission to craft remedies should someone come
17 and say we're being disadvantaged because of
18 takeout structure that's applicable to 7b
19 licensees as opposed to racing meeting licensees,
20 we've put in, Judge McHugh, this catchall.

21 COMMISSIONER MCHUGH: We can do
22 takeouts by regulation?

23 MR. MURRAY: I think that we can adjust
24 takeouts if the principal that is directing the

1 adjustment is in the statute.

2 COMMISSIONER MCHUGH: Okay.

3 COMMISSIONER ZUNIGA: I have a couple
4 of questions. Perhaps we could go to the relevant
5 sections for my edification. 128D:8, relative to
6 the employment of veterinarians, Director
7 Durenberger, you've expressed in the past that
8 other jurisdictions as a best practice, those
9 veterinarians sometimes are employed by the
10 Commission directly?

11 DR. DURENBERGER: Yes.

12 COMMISSIONER ZUNIGA: Is there
13 language here that would allow us to do that in the
14 near future or does that matter?

15 DR. DURENBERGER: It does. The
16 language that's here and actually this is existing
17 language, but this language continues the ability
18 of the Commission to employ as many it sees
19 important to.

20 COMMISSIONER ZUNIGA: Excellent.
21 Section 10, 128D:10 wagering by minors only
22 carries a penalty of \$100? Is there any
23 similarity or parallel on the Gaming Act relative
24 to that? Or will this be superseded by regulation

1 for the casino floor, for example?

2 MR. MURRAY: I've not looked at the
3 Gaming Act, Commissioner, to see whether there is
4 some penalty, what the size of the penalty is.

5 COMMISSIONER CAMERON: It's
6 significantly more.

7 MR. MURRAY: If it is the wish of the
8 Commission, obviously we can simply amend that to
9 make it equivalent to what now appears in the
10 Gaming Act.

11 COMMISSIONER ZUNIGA: Okay.

12 CHAIRMAN CROSBY: Are you suggesting
13 we do that?

14 COMMISSIONER ZUNIGA: Yes. Under the
15 same general principle of a harmonizing that you
16 expressed in the past. That which leads me to my
17 last point on 10A, which is also the exclusion of
18 certain persons.

19 I know there is a lot of language in the
20 Gaming Act relative to exclusion of certain
21 persons. Whether that also needs to be harmonized
22 with racing operations because it is conceivable
23 that one of our operators may or may not get a
24 license for gaming.

1 DR. DURENBERGER: Do we know if any of
2 these numbers appear in a penal code anywhere
3 Massachusetts where -- Do we have the ability to
4 just change them here or do we need to make sure?

5 MR. MURRAY: We can always change them
6 here. It's the Legislature that's going to be
7 making in the change. So, this number \$100 in
8 section 10 is what is currently in the equivalent
9 of our section currently enforced. Since the
10 Legislature is going to be making any change -- if
11 they do make a change, any change that we
12 recommend, they would clearly have the power to do
13 that notwithstanding any other statute.

14 COMMISSIONER ZUNIGA: Absolutely.
15 Again, the theme of the last two comments is from
16 my perspective in terms of harmonizing with the
17 Gaming Act, because I think it's a worthy goal if
18 relevant or appropriate.

19 MR. MURRAY: Is that, Commissioner,
20 just harmonizing the penalty provisions of 10A or
21 something more that you would wish?

22 COMMISSIONER ZUNIGA: The penalty
23 provisions is what caught my eye. But if there's
24 other areas, I defer to you.

1 CHAIRMAN CROSBY: Well, you were
2 saying the excluded persons list.

3 COMMISSIONER ZUNIGA: Right, but the
4 hulk is the penalties.

5 CHAIRMAN CROSBY: Yes. Is there
6 compatibility between the excluded person lists
7 and this?

8 COMMISSIONER ZUNIGA: Yes, that's an
9 important point.

10 CHAIRMAN CROSBY: The excluded
11 persons list will be a big deal in the gaming side
12 and it probably ought to be mirrored in the racing
13 side.

14 DR. DURENBERGER: And it touches on
15 the very large issue, policy issue, which is the
16 gaming establishment and the definitions of which
17 part is gaming establishment and which part is
18 racing establishment.

19 CHAIRMAN CROSBY: Or if it's
20 standalone if it doesn't have a gaming license,
21 it's just a racetrack, still we would want to
22 harmonize the exclusion lists I would think.

23 COMMISSIONER MCHUGH: Would we? Is
24 that done elsewhere? What about the OTB sites?

1 DR. DURENBERGER: We looked at that
2 initially in the project and felt like we were
3 getting ahead of ourselves on the scope because we
4 were trying to restrict it to the -- and then it
5 seemed as though that opened up a project of some
6 considerable sinkhole characteristics, in other
7 words, taking us away from our focus here.

8 Because we had looked at what other
9 states do that have racinos. And we looked at how
10 they manage that the gaming versus the racing. If
11 someone is excluded in racing are they also
12 excluded from the casino or not?

13 COMMISSIONER CAMERON: Would it be
14 more appropriate to wait until licenses are issued
15 and if in fact that occurs to take a look? Or this
16 is really our one opportunity to make these
17 changes?

18 DR. DURENBERGER: Both.

19 MR. MURRAY: One of the policy issues
20 here is whether or not there's going to be any, for
21 want of a better word, continuation or continuity
22 with respect to how racing has been handled as an
23 entity. Or does the Commission see the racing
24 component as simply being absorbed within, to take

1 from the Director's model here, part of racing
2 establishment -- the gaming establishment.

3 And if the latter is the case, then
4 Commissioner Zuniga's comment has even more force,
5 because we would have to not only harmonize
6 penalties, but also the kinds of access
7 restrictions that exist in the Gaming Act.

8 And that's something that I would
9 recommend the Commission think about for a while.
10 Certainly, the Gaming Act has a much more rigorous
11 -- is a much more rigorous environment than has
12 ever existed for racing. So, I'm not sure that the
13 Commission should plunge into treating them
14 exactly the same.

15 COMMISSIONER MCHUGH: That strikes me
16 as right.

17 CHAIRMAN CROSBY: I'm thinking the
18 same.

19 COMMISSIONER MCHUGH: I think we
20 should take a look at it. And I think we shouldn't
21 jump into it. I think we need to think it through.

22 CHAIRMAN CROSBY: It's too bad because
23 I think that there are not going to be a lot of times
24 to amend this legislation. But I think that's

1 right. It's probably just something to go into
2 your tickler file. When we all get breathing room
3 is to say okay, now let's step back and take a look
4 at where else does there need to be decisions made
5 about the integration of these entities.

6 DR. DURENBERGER: Yes, it's
7 definitely there.

8 CHAIRMAN CROSBY: But it's a tickler
9 file item not a today. I agree. But very good
10 thoughts, thank you. Anything else?

11 DR. DURENBERGER: I just wanted to
12 report we met with the Thoroughbred Horsemen's
13 Group yesterday, the HBPA, New England HBPA, to
14 address some concerns that they had in the report
15 that was part of the packet when we brought this
16 to you a couple of weeks ago.

17 So, we discussed our thoughts. We
18 listened to their thoughts. I think their
19 concerned vis-à-vis the premiums is that they are
20 looking as we are at an uncertain landscape in
21 terms of what kind of revenue we're looking at from
22 commercial casinos. Decisions haven't been made.

23 And as we've kind of discussed with you
24 all along, we're kind of building some

1 hypotheticals on hypotheticals, using the best
2 information that we have. But I think their
3 baseline fear is that if we make changes here and
4 things aren't as rosy as we all hoped that they will
5 be, I think they're just concerned about what
6 consequences they may have, these decisions may
7 have.

8 So, it's a valid concern and I
9 understand where they're coming from. And I just
10 thought that I would carry that water to this
11 meeting. I don't know that any of the
12 recommendations that are in here I would change at
13 this point because we are in the same position they
14 are. And we need to put forward the best proposal
15 that we think based on the information that we all
16 share, the best information that we have. But I
17 did just want to let you know we met with them and
18 that is their concern. And that is the
19 overarching principle behind that letter.

20 COMMISSIONER MCHUGH: Having in mind
21 that then maybe a flashpoint when this gets to the
22 Legislature that this thoughtfully drafted report
23 is going to be read by a lot of people who do not
24 have a lot of familiarity with racing.

1 DR. DURENBERGER: Yes.

2 COMMISSIONER MCHUGH: Would it be
3 worthwhile to add on page 14, 15, somewhere in
4 there just a definition of what a premium is?

5 DR. DURENBERGER: Okay.

6 COMMISSIONER MCHUGH: It presupposes
7 knowledge of what a premium is. I'm not sure that
8 everybody knows.

9 MR. MURRAY: I think it's in here, but
10 I think it would do no harm, Judge, to repeat it.

11 CHAIRMAN CROSBY: So, this will go
12 when -- the report to the Legislature?

13 DR. DURENBERGER: Well, it sounds like
14 we have a few more changes to make. And they're
15 probably significant enough that you would like to
16 see them again before we send them out?

17 CHAIRMAN CROSBY: I'm not sure that we
18 do. No.

19 COMMISSIONER MCHUGH: This is in
20 really good shape.

21 DR. DURENBERGER: Okay. Well, I'm
22 delighted you think so.

23 COMMISSIONER CAMERON: Excellent job.

24 CHAIRMAN CROSBY: These will both go

1 together, this will go with the report and it will
2 carry this section.

3 DR. DURENBERGER: Yes.

4 MR. MURRAY: And the chart that you've
5 already seen that's going to be attached to the
6 report.

7 COMMISSIONER ZUNIGA: The comparison
8 chart.

9 CHAIRMAN CROSBY: Right. Okay.

10 MR. MURRAY: Just to make sure that I
11 understand, we are going to make the changes to the
12 \$100 penalty or not? Just leave it as it is for
13 now?

14 COMMISSIONER ZUNIGA: I would say
15 leave it as it is for the points that we're agreed
16 on. We look at it because it's part of a larger
17 conversation about harmonizing and defining
18 policy wise the notion of racing floor versus
19 gaming floor, etc.

20 CHAIRMAN CROSBY: Okay. Do we have a
21 motion?

22 COMMISSIONER ZUNIGA: Sure. I move
23 that we accept the report and proposed chapter as
24 drafted with the small edits as suggested by this

1 conversation. And then forward this report to the
2 Legislature as we were required to do.

3 CHAIRMAN CROSBY: Second?

4 COMMISSIONER MCHUGH: Second.

5 CHAIRMAN CROSBY: Any further
6 discussion? What is the process now? Does it
7 just go straight to them once we approve it?

8 MR. MURRAY: Yes.

9 CHAIRMAN CROSBY: Any other
10 discussion? All in favor of the motion, aye.

11 COMMISSIONER ZUNIGA: Aye.

12 COMMISSIONER STEBBINS: Aye.

13 COMMISSIONER CAMERON: Aye.

14 COMMISSIONER MCHUGH: Aye.

15 CHAIRMAN CROSBY: Opposed? Ayes have
16 it unanimously. I think tracking this with the
17 Legislature, the appropriate chiefs of staff need
18 to be -- know that it's coming. There're probably
19 going to be some briefing opportunities again,
20 even though we've sort of briefed them once or
21 twice.

22 As you're able, I think making sure
23 that it doesn't just go off into a black hole but
24 that the right chairs get this that their staffs

1 know about it and we stay abreast of it because we
2 want to make sure we're really ready to brief
3 people and to defend these positions when they come
4 up, either in informal conversations or hearings
5 or whatever. So, that's an important
6 coordination I think. And Janice can help on that
7 with the key staff people.

8 DR. DURENBERGER: Okay.

9 COMMISSIONER MCHUGH: We have to have
10 this replace the existing legislation, which
11 disappears in a year, a little over a year, right?

12 MR. MURRAY: A year and a day.

13 CHAIRMAN CROSBY: Okay, next?

14 COMMISSIONER CAMERON: Thank you,
15 good work.

16 CHAIRMAN CROSBY: Yes, great work.

17 COMMISSIONER ZUNIGA: Yes, great
18 work.

19 DR. DURENBERGER: I had next on the
20 agenda was a discussion about potentially having
21 a hearing officer for Racing. And I think
22 Catherine maybe wanted to join me for that.

23 General Counsel Blue, I think, brought
24 this us either last week or two weeks ago and

1 discussed the time has perhaps come to appoint a
2 hearing officer for the Racing Division.

3 So, we just went back and looked
4 through the previous rulings from years past, the
5 appeals to the Commission from the initial
6 administrative hearings that are heard at the
7 track. In 2012, 29 such appeals were scheduled.
8 So, it is a fairly significant workload for
9 someone. There's scheduling. There's time
10 involved in preparation. There's time at the
11 hearings. And then there's tentative decisions.
12 So, it is a fairly significant piece.

13 Commissioner Cameron had been
14 designated by the Commission on June 12 of last
15 year to act in that role as hearing officer. So,
16 we just wanted to discuss with you that this is the
17 appropriate time to reconsider that, creating an
18 in-house administrative hearing function. Did
19 you have any additional?

20 MS. BLUE: Looking at the number of
21 hearings that we see in Racing and then
22 anticipating the kinds of hearings we may have
23 under the Gaming Act, it makes sense at this point
24 to start that process and then create a hearing

1 officer function where there's a presentation on
2 behalf of the Commission, a hearing officer that
3 hears it and then written decisions that get
4 written by that officer.

5 That way, it creates a good record if
6 it's an appeal to the Commission or if in fact it
7 goes farther than the Commission. So, I think
8 that the timing in terms of workload would make
9 sense to start now. And that would give us good
10 practice as we get ready for the similar issues
11 under the Gaming Act.

12 COMMISSIONER MCHUGH: I think the
13 Gaming Act piece is really important to consider.
14 And the phase in, the gradual phase in is really
15 important. We're going to need this. We're
16 going to have 10,000 licensed people by the time
17 we get revved up. The enforcement problems are
18 going to be there. The workload is going to be
19 significant.

20 This is unique enough an area that we
21 don't want to send it over to DOLA. So, beginning
22 to structure this now, I think, really is a good
23 idea.

24 CHAIRMAN CROSBY: Yes, two thoughts.

1 The only one I might have a question about is this
2 says hiring a part-time hearing officer. I'm not
3 sure given how quickly we're going to start needing
4 -- if we're going to license the slots parlor by
5 December, the next day there's going to start being
6 a licensing and a hearing process probably from the
7 gaming side.

8 I don't know whether it's the same
9 people or not, but you might need somebody
10 full-time rather than part-time is all I'm
11 thinking in getting ready.

12 My second thought was really this is
13 between you all and Executive Director Day at this
14 point. I think we're starting to get out of this
15 kind of decision-making. And we'll defer to you
16 all and Director Day. When you guys think it's
17 ready to go, I think go for it.

18 MS. BLUE: I think we can look at the
19 timing in terms of hiring whether it's a part-time
20 person or a full-time person. Some of the
21 agencies that I've talked to have similar
22 structures, have multiple part-time people. Some
23 of them have full-time and part-time combination.
24 So, there's a lot of ways we can think it through

1 and take a look at it.

2 CHAIRMAN CROSBY: Right. But that's
3 really -- We're out of that business now, pretty
4 much, I'm happy to say.

5 COMMISSIONER MCHUGH: Great, thank
6 you.

7 COMMISSIONER CAMERON: Thank you.

8 CHAIRMAN CROSBY: Okay.

9 DR. DURENBERGER: That leaves the
10 first quarter review of the Division of Racing
11 activities.

12 CHAIRMAN CROSBY: These are in the
13 packets, right - that the press got?

14 DR. DURENBERGER: Yes, they are. To
15 give you an overview of what we've done and what
16 this document shows, your authority of course, you
17 took over the regulatory responsibility of the old
18 State Racing Commission on May 20 of last year, and
19 had been working with Division of Professional
20 Licensure under an ISA.

21 And you had brought in a consultant
22 group Spectrum was part of it. Last Frontier with
23 Annie Allman was the racing piece of that, to come
24 in and assess the state of the industry, of the

1 racing industry in Massachusetts. That report
2 was put before you back in July.

3 CHAIRMAN CROSBY: Could I interrupt
4 you?

5 DR. DURENBERGER: You certainly can.

6 CHAIRMAN CROSBY: I noticed this in
7 the report that you wrote. Did we ask her to
8 assess the racing industry or we asked her to
9 assess the Commission and its operations?

10 DR. DURENBERGER: Both.

11 CHAIRMAN CROSBY: Did we? Okay,
12 fine.

13 COMMISSIONER CAMERON: Yes, we did.
14 We wanted to know the state of the industry.

15 CHAIRMAN CROSBY: Okay, fine.

16 DR. DURENBERGER: So, the report when
17 it was presented to you in July had five key
18 recommendations. And so I have reprinted those in
19 this document, one through five. This really
20 looked at the regulatory structure of the State
21 Racing Commission, the regulations that were in
22 place for the industry, medication and testing and
23 personnel.

24 So, I want to just give you the overview

1 here that we're going to look at two pieces. The
2 regulatory structure piece and then the
3 operational piece that we've had since January 1.

4 So, the five recommendations from that
5 report, one was to adopt model rules from the
6 Racing Commissioners International model rules of
7 racing. Then what I've done for you is I've
8 outlined what the steps the Commission has taken
9 and where they've succeeded so far.

10 The bulk of the RCI model rules as they
11 pertain to veterinary practices and medication
12 were adopted by the Commission on an emergency
13 basis. Some of the model rules for safety
14 equipment and other things that protect racing's
15 participants have been adopted on an emergency
16 basis and are going through the regular rulemaking
17 process as we speak. That's where the requests
18 for public comment is on the website right now.

19 We are reviewing the model rules
20 pertaining to racing officials and duties of
21 licensees. And we anticipate after the live
22 racing season is done that we will be revisiting
23 that. We'll go through the regular rulemaking
24 procedure for that, working with the legal

1 department as well to tighten up some of the
2 language that appears as far as appeals and
3 administrative hearings and things that appear in
4 our regs. as opposed to the Procedure Act.

5 I'd also like to add that we're also
6 going to review the wagering and totes security
7 protocols, because I think that's an area too that
8 we've identified as needing some assistance and
9 some strengthening. So, we'll be doing that this
10 fall.

11 And we've been participating in a
12 regional consortium, a working group to attest the
13 medication and testing uniformity issues. As you
14 know, you passed a resolution to support those
15 initiatives and we've been working very closely
16 with them.

17 In terms of having accredited racing
18 officials working for the Commission, I'm proud to
19 say we've been able to recruit a steward who -- the
20 stewards act as administrative heads at the race
21 track. So, they preside over the occupational
22 licensees. They make fitness determinations on
23 licensing. They do the initial hearings if there
24 are any allegations of violations of

1 administrative rules.

2 So, we've brought in a steward who is
3 not only ROAP, and that stands for Racing Officials
4 Accreditation Program, not only ROAP accredited
5 but actually also one of their course instructors
6 and a member of the National Stewards Advisory
7 Council. So, we've done very well there.

8 Both of our commission judges, judges
9 are the equivalent of stewards at the harness
10 tracks, they are currently applying for licensure
11 with the USTA. And one of our commission judges
12 has already registered for the next 60-hour
13 accreditation course, which will be held this
14 July.

15 The consultants suggested strongly
16 that we outsource the drug testing for the
17 racehorses in the State of Massachusetts. We have
18 executed a contract now with an equine drug testing
19 laboratory. That is this is an international
20 standard here, the ISO 17025. That's an industry
21 standard.

22 And this laboratory also recently
23 submitted an application to the racing and
24 medication testing consortiums accreditation

1 program, which is a very racetrack specific
2 accreditation program that is up and running. So,
3 they've submitted their application and will be
4 working on that accreditation piece as well.

5 Recommendation for the licensing
6 procedure to include fingerprinting, we do note
7 that beginning July 31, 2014 our statute will
8 mandate fingerprinting of applicants for
9 occupational licenses. And we are working with
10 Investigations and Enforcement Bureau. We'll be
11 in compliance by that date if we can get that going
12 ahead of that time, we'll be happy to do so.

13 A recommendation was made to establish
14 random drug and alcohol testing of occupational
15 licensees. And as the consultants noted, there
16 was a case here in 1989 in Massachusetts enjoining
17 regulations that authorized both random and
18 reasonable suspicion-based drug testing.

19 We note that Suffolk Downs has adopted
20 its own testing program for jockeys in late 2012.
21 And we have identified a model program that we'd
22 like to use as we work with the legal department
23 to see if we can devise some sort of structure that
24 would be in comport that we could do.

1 So, we're reviewing our available
2 options there and we have found a nice model. Our
3 hands are a little bit tied at the moment until we
4 do some more research on that area.

5 Second key recommendation from the
6 consultant's report was to upgrade the audit and
7 financial reporting system. We have, as I
8 mentioned earlier, executed a contract with an
9 automated pari-mutuel auditing services company.
10 We are in the contract implementation phase right
11 now.

12 And the exciting thing about this is
13 one that it's web-based. Two that by being
14 web-based and by being automated, we have
15 eliminated redundancy issues and the
16 opportunities for human error. And we think it's
17 also going to provide greater transparency and
18 data accessibility. So, in real-time we can go in
19 at any moment and see real-time data coming in from
20 totes.

21 And I believe they have additional
22 add-ons where racetracks and for example
23 horsemen's groups can also pay to purchase
24 password-based things. And they can also go in at

1 any time and access their data. This should be up
2 and running really within the next 30 to 60 days
3 certainly. The latest date they gave us was May.

4 The third key recommendation was to
5 update the licensing system and/or utilize
6 technology to enhance and streamline information
7 management. The Gaming Commission is one of a
8 handful of state regulators working with Racing
9 Commissioners International on a beta testing
10 program of a web-based licensing system.

11 What this will do is it eliminates the
12 opportunity for input error by having some smart
13 keys. So, that if people have names with
14 apostrophes or suffixes, it will highlight that,
15 did you mean to put in just as a double-check.
16 It's web-based. So at any time, we can respond to
17 inquiries from other racing commissions looking
18 for licensing data on applicants in their states.

19 We do note that there's room for
20 improvement of the security features that appear
21 or currently don't appear on the individual badges
22 issued by the Commission. And will be working
23 with the IEB and Division of Licensing as they get
24 staffed up to talk about the security issues.

1 CHAIRMAN CROSBY: Could this
2 licensing software work for the gaming licensing
3 as well? Or is this specialized to racing?

4 DR. DURENBERGER: At the moment, it's
5 specialized to racing. But it's interesting,
6 because some of the commissions that are part of
7 the beta testing program do have racinos.

8 CHAIRMAN CROSBY: Gaming, yes.

9 DR. DURENBERGER: And it does have
10 functions where you'll able to click -- you can
11 enter in the amount of money that you received from
12 the occupational licensee as they're paying for
13 their license or fines, administrative fines.
14 And you can print out receipts.

15 So, it seems as though that could
16 potentially be something that could be added on.
17 But Racing Commissioners International does
18 regulate racing.

19 CHAIRMAN CROSBY: Racing, yes.
20 Again, this is something that you in collaboration
21 with Executive Director Day are going to take care
22 of. That would be great, wonderful if there were
23 efficiency between the two systems.

24 DR. DURENBERGER: And if not, what

1 this does is it's a great bridge, because it's at
2 no cost to us as part of the beta testing program
3 and members of RCI.

4 It can run in parallel with our
5 existing system. But it's also an Access database
6 based system. So, whatever decisions are made by
7 the licensing department, it should be able to
8 seamlessly be updated and imported into our
9 systems. We thought this was a fantastic way to
10 go.

11 CHAIRMAN CROSBY: Great.

12 COMMISSIONER MCHUGH: That's great.
13 Does it also allow us to look into the databases
14 of other racing commissions and vice versa?

15 DR. DURENBERGER: It does. And
16 again, knowing that the database is only as good
17 as the people that put data in. So, in other
18 words, it's incumbent upon us to enter our rulings
19 and to enter our licensee information correctly.

20 But once that's in there, yes. If an
21 applicant is in Florida, it will pull up all of the
22 information, any rulings if there are any, dates
23 of licensure, dates of fingerprinting. So, many
24 commissions will do the printing every three

1 years. And it'll show the last date and where
2 those prints were done so the background check can
3 proceed in a faster, more efficient manner.

4 COMMISSIONER MCHUGH: That's great.

5 COMMISSIONER ZUNIGA: What's the name
6 of this system, do you know?

7 DR. DURENBERGER: I don't know if it
8 has a working name. I can certainly find out for
9 you

10 COMMISSIONER ZUNIGA: I'll follow up
11 on that.

12 DR. DURENBERGER: Offered by Racing
13 Commissioners International. I believe there are
14 seven states that are part of this beta group.

15 COMMISSIONER CAMERON: Is
16 Pennsylvania one of them?

17 DR. DURENBERGER: I don't know off the
18 top of my head. It's been awhile since I've
19 reviewed the list.

20 COMMISSIONER CAMERON: They have a
21 very comprehensive system there. It was
22 brand-new for licensing.

23 DR. DURENBERGER: It may be because
24 they work closely with RCI that group.

1 COMMISSIONER MCHUGH: The fact that
2 this is networked with all different states is
3 itself terrific.

4 COMMISSIONER CAMERON: That's what
5 this one was. It was obviously very helpful.

6 DR. DURENBERGER: Commissioner
7 McHugh, we do have the ability right now when
8 someone comes in to get licensed, they are licensed
9 under the Massachusetts system, but RCI does offer
10 web-based lookup. As part of the licensing
11 process, our staff do enter that occupational
12 licensee's name into the RCI database and pull up
13 any administrative rulings.

14 COMMISSIONER MCHUGH: Right, great.

15 DR. DURENBERGER: It's a patch between
16 the two. Where were we? Recommendation number
17 four, investing in human resources to enhance the
18 professional profile of the State Racing
19 Commission and the Racing Division of the
20 Massachusetts Gaming Commission.

21 We note that we've been able to recruit
22 several individuals with broad industry
23 experience at the national level that would
24 include your Director of Racing. We've also

1 received -- We've been able to hire our Chief
2 Pari-Mutuel Officer. Her start date has been
3 delayed. But she is on her way. We have this
4 Associate Commission Steward who has tremendous
5 experience in the industry.

6 We've also contracted with several key
7 industry professionals to provide in-service
8 training, conference calls, webinars, and other
9 educational materials. And that's actually been
10 a great thing to do, because we've been able to get
11 the best people in the field on a one-stop or a one-
12 or two-day basis, or even just a lengthy conference
13 call.

14 And that's been fantastic, and it's
15 been a great exercise for me, because it
16 strengthens our connections to other commissions,
17 other groups nationally but then it also -- I'm
18 noticing enthusiasm among my colleagues as well
19 for doing this. More people should do this. We
20 should do things like this more often. So, it's
21 been a very nice industry dialogue.

22 We do note that when we posted for
23 stewards and judges, we had interviewed several
24 ROAP accredited and USTA licensed judges, but were

1 unable to reach mutually agreeable pay rates. And
2 racing operations in the past have always been
3 revenue neutral. And we've really been trying to
4 stick to that for a number of reasons.

5 But we do anticipate that until the
6 operating budget, if you will, of the Racing
7 Division is increased by some of the changes that
8 actually are in that report. Some of the
9 recommendations we've made are to have some
10 increased money coming into our budget to help
11 defer the costs of regulation. Until those monies
12 come in that is a realistic ceiling on our ability
13 to enhance the professional profile of the
14 Division.

15 CHAIRMAN CROSBY: This is part of why
16 I made the point about talking about the
17 Legislature about this report, because there will
18 be pushback, as you said, on various issues. But
19 we have a tremendous interest in making sure we've
20 got enough money to do the regulation right. And
21 tying it into this is really important that they
22 understand that's one of the reasons why we're
23 doing this.

24 COMMISSIONER ZUNIGA: Can I pause for

1 a minute here and just thank you. I think one of
2 our best investments in human resources has been
3 your hire.

4 CHAIRMAN CROSBY: No question.

5 COMMISSIONER ZUNIGA: I'm glad you
6 mention it here, but I want to highlight it for the
7 record and for everybody, because not only for when
8 it comes to racing but really when it comes to the
9 business of the Commission. So, I just want to
10 express my thank you.

11 DR. DURENBERGER: Thank you,
12 Commissioner.

13 COMMISSIONER MCHUGH: I would
14 thoroughly agree with that. This has been a sort
15 of -- improvements over the last year and the
16 changes over the last year and the upgrading in the
17 administration over the last year have been at your
18 hands, Director Durenberger, just terrific.

19 They're enormously refreshing and bode
20 well for the future of racing in Massachusetts.
21 It's been a real pleasure to watch this happen and
22 to see you work and work your way through these
23 difficult issues each time making the organization
24 better than it was. So, thank you.

1 DR. DURENBERGER: Thank you,
2 Commissioner.

3 CHAIRMAN CROSBY: I was going to wait
4 until after recommendation five, but as long as
5 we're doing this, I'll just jump in. I think there
6 are two things that are worth noting.

7 One is Commissioner Cameron, when she
8 took this over, got the idea of getting Annie
9 Allman as an objective assessment to come in and
10 take a clean fresh look at this, which is where
11 these recommendations came from. That was a
12 traffic idea. Annie was great. Her assessment
13 was really good. Then Commissioner Cameron also
14 discovered Director Durenberger and we hired her.

15 We've quietly remade this total
16 Commission structure in dramatic ways. As you are
17 going to say, there are still issues to deal with.
18 But it's been quite a remarkable and quiet
19 transition.

20 Starting with you, Commissioner and
21 now with you, Director, deserve a lot of credit for
22 this.

23 COMMISSIONER CAMERON: I think we all
24 collectively thought it was important to -- Okay,

1 this is our first opportunity to regulate. Let's
2 do it very, very well. And that will be -- we will
3 follow by doing the same with gaming.

4 Again, I don't want all of the credit.
5 I did a little recruiting, but Director
6 Durenberger is the subject matter expert here and
7 really has taken on some very difficult issues.

8 CHAIRMAN CROSBY: I can see the press
9 is now tweeting out Commission pats itself on the
10 back. Big news, Commission pats itself on the
11 back. But anyways, thank you. It's been great.
12 It's really important.

13 COMMISSIONER ZUNIGA: Unanimously.

14 CHAIRMAN CROSBY: A 5-0 vote the
15 Commission patted itself on the back, right.

16 DR. DURENBERGER: No abstentions.

17 CHAIRMAN CROSBY: No abstentions,
18 right. Thank you and congratulations now and
19 please proceed.

20 DR. DURENBERGER: Thank you, Mr.
21 Chair. Let's see, where were we, key
22 recommendation number five that the Gaming
23 Commission should arrange for an independent audit
24 of the Racing Division. It says as noted earlier.

1 This was just taken right out of the report. So,
2 as noted in the consultant's report, the old State
3 Racing Commission had not had the benefit of such
4 an audit for several years.

5 So, you all prior to my arrival as part
6 of your transition process, had contacted the
7 State Auditor's office to look at the period July
8 1, 2011 through May 20, 2012. And the results of
9 the audit were issued December 31, 2012 and were
10 discussed here at the meeting on January 3 of this
11 year.

12 It was a clean audit. The report
13 concluded that the old commission adequately
14 administered its operations and had adequate
15 controls in place to safeguard assets. Had
16 adequate and complete accounting and contractual
17 documentation and complied with applicable laws,
18 rules and regulations for the areas tested.

19 We note that we are going to be
20 currently working with an outside independent
21 auditor to schedule and conduct a number of
22 periodic audits, which appear in 128A and C. Some
23 of them are mandated. Others are authorized as
24 the Commission sees fit. So, we'll work on a

1 schedule of those audits for you.

2 So, that's the regulatory structure in
3 a nutshell. I really think the reason that the
4 Commission did this was, as it says in our mission
5 statement on the website, on the Racing Division
6 website is to strengthen the regulatory structure
7 in anticipation of the monies coming in from
8 expanded gaming.

9 I think what you've done is you've been
10 proactive. There are other states that maybe were
11 not in a position to be proactive and had to be
12 little bit more on the reactive side. So, I think
13 taking advantage of this window of time and
14 strengthening that structure before the money
15 comes in from expanded gaming is really going to
16 do the industry well in the state. So,
17 congratulations back to you all.

18 That has been ongoing work really since
19 you all took over in May of last year, getting that
20 regulatory structure in place.

21 The other piece of this, part two, if
22 you will, of the report is the operational
23 activities that we have taken over since the ISA
24 expired on December 31. So, we've had our hands

1 on these for 90 days. I'll go through this with
2 you as well. There are some updates to report that
3 are here, some recent successes and a couple of
4 things that I also want to add.

5 One is, as I said, we're going to be
6 doing some significant look at wagering and totes
7 security protocols over the summer and the fall.
8 We're going to look at model rules. We're going
9 to look at best practices in other jurisdictions.

10 Commissioner Cameron and I are
11 attending the Racing Commissioners International
12 annual conference in April, later in April this
13 month. And one of the big topics there is also
14 going to be the wagering and integrity protocols.
15 So, we expect there's going to be some big changes
16 for that coming in coming down the road.

17 Public records requests have been an
18 issue. We do have a valid forwarding address from
19 the old State Racing Commission's address, but it
20 does take a while for the mail to find us. So, we
21 have been in receipt of some public records
22 requests well after the 10 days that we had to
23 respond had expired.

24 So, we're working on that now that

1 we've been made aware of it. We're checking on a
2 weekly basis on the mailroom here. We've
3 double-checked that the forwarding address, the
4 forwarding order is in place. It is. But we have
5 responded to all of the requests that we know are
6 out there. We've responded to all of them and
7 we've sent a letter of apology and explanation if
8 that was appropriate.

9 CHAIRMAN CROSBY: Is there another set
10 of issues, which relates to the other stuff? In
11 other words, are we having a hard time responding
12 to public records requests because we can't get the
13 data?

14 DR. DURENBERGER: No, it's purely just
15 getting the requests in that case. In fact, we
16 still get quite a bit of mail addressed to One
17 Ashburton. So, by the time that finds its way, it
18 does --

19 COMMISSIONER MCHUGH: Addressed to
20 One Ashburton?

21 DR. DURENBERGER: Yes.

22 CHAIRMAN CROSBY: That was how many
23 years ago?

24 COMMISSIONER MCHUGH: That was back in

1 the twenties.

2 COMMISSIONER ZUNIGA: That was before
3 it came to DPL here.

4 CHAIRMAN CROSBY: Right, okay.

5 DR. DURENBERGER: All of the requests
6 that we know that we've received have been
7 responded to.

8 The 2011 report here reflects that we
9 only were in possession of it in draft form.
10 However, late yesterday afternoon, we did receive
11 the final report from Mark Kmetz, the Director of
12 DPL. We did get that. So, I think what I have to
13 do, I have to double check the procedures on it.

14 Typically, the Commission would need
15 to approve it before it went up the chain, I think.
16 But this was the 2011 report, calendar year report,
17 which was issued in draft form, I believe, in July
18 of last year. But I don't know that -- I'm not
19 sure. I need to look out to find what this
20 procedure is here. We're looking at that. We'll
21 bring it before you next week either way and we'll
22 just figure out what we need to do with that.

23 COMMISSIONER MCHUGH: Who does it go
24 to when it moves on beyond us, if we do anything

1 to it at all? Do we know? Does it go to the
2 Legislature?

3 DR. DURENBERGER: It used to. But
4 that section -- And I have to go back and look at
5 it, but I thought that section had been repealed
6 and it was not replaced in the Gaming Act. So, we
7 need to find that.

8 COMMISSIONER CAMERON: We can't
9 verify the information, correct?

10 DR. DURENBERGER: That's what I need
11 to find out.

12 COMMISSIONER CAMERON: So, it would be
13 difficult for us to approve it.

14 DR. DURENBERGER: Exactly.

15 COMMISSIONER MCHUGH: Right.

16 DR. DURENBERGER: But it may have been
17 approved at some level before it went up the chain
18 through the agencies. So, I need to work on that
19 piece. And I will report to you next week --

20 COMMISSIONER CAMERON: Thank you.

21 DR. DURENBERGER: -- on what happened
22 to it after it left staff hands last year.

23 The next page, periodic audit, so as I
24 mentioned briefly a few moments ago, our law,

1 pari-mutuel and simulcasting law requires the
2 Commission to conduct a number of periodic audits
3 and authorizes a number of others. We note that
4 with the exception of one of the authorized audits,
5 and that is the purse review, which is an important
6 audit, other than that, we don't believe that these
7 audits have been conducted in recent years.

8 So, what we've done is we've compiled
9 a list, a schedule. We've made a calendar of them
10 and we are working with an independent auditing
11 group to begin work on those, to do some
12 prioritization and some scheduling. And we'll be
13 in compliance on that piece.

14 We've had a lot of technology issues.
15 And I think this maybe what you were alluding to
16 with the public records requests. So, we've had
17 numerous network and software issues since the
18 transfer, the electronic transfer of the files
19 from DPL to MGC, which took place -- it says January
20 1, it was really I think about the middle of January
21 before all of the file transfers were complete.

22 The system, the financial reporting
23 system that the Commission was using and the
24 licensing database that the Commission was using

1 is not fully functional yet at this point. We're
2 working on that.

3 We're working with the programmer of
4 the software. We're working with our folks
5 in-house, our IT as well as the A&F support that
6 we had through that group. It's been challenging
7 and frustrating for all of us. We've been unable
8 to access some of the reports that we need, for
9 example, for the 2012 annual report. We have
10 pieces of information, but we've had difficulties
11 assembling all of the things that we need to
12 assemble.

13 We are working with this auditing
14 services company to help us with the financial
15 reporting system, financial services reporting
16 system. That's the existing software. So, the
17 new auditing services system provider is meant to
18 take over that particular piece of software, as
19 well as what we're working on with the licensing
20 database.

21 So, we want to eliminate the need for
22 the Commission's continued reliance on these
23 programs. We anticipate both of the new systems
24 to be operating in parallel with existing systems

1 within the next 30 to 60 days. And we're doing the
2 best we can with what we've got right now.

3 COMMISSIONER MCHUGH: Is this a
4 technology issue or a personnel issue? This is an
5 issue we talked about once before, right?

6 DR. DURENBERGER: And my IT knowledge,
7 I may understand racing, I don't understand IT
8 issues. I wish I could be an expert in all areas.
9 My goal is to be the Renaissance woman, but I fail
10 miserably in the IT department.

11 So, I'm understanding now, I got an
12 email yesterday saying that it has to do with
13 processing speed now. Apparently and none of this
14 is verifiable at the moment, but slowness of the
15 computer networks, slow processing issues have
16 affected the ability of these systems to update
17 from the tracks. So, we're looking at that. I
18 just received this yesterday and haven't had a
19 chance to respond to it.

20 CHAIRMAN CROSBY: That's a report on
21 the old system or that's a report on the new system?

22 DR. DURENBERGER: This is a report
23 from the programmer who designed the software
24 programs for the old system.

1 CHAIRMAN CROSBY: The old system.

2 Okay.

3 DR. DURENBERGER: And it's been
4 frustrating for him as well, no doubt.

5 CHAIRMAN CROSBY: Right.

6 DR. DURENBERGER: So, this is a
7 challenge that we've identified and we're doing
8 the best we can with it. And we've enlisted some
9 outside help. We've put out the RFPs. We're
10 working with RCI on the licensing piece of it. But
11 it's a work in progress at the moment.

12 COMMISSIONER ZUNIGA: I want to
13 emphasize something that I think is key that you
14 mentioned, which is you really are taking
15 important steps to replace it --

16 DR. DURENBERGER: Yes.

17 COMMISSIONER ZUNIGA: -- with the RFP
18 that you did with PariGlobal. So, that the new
19 system will be in much better shape. There's
20 still the look back. There's still the report of
21 2012 among other things. But I think that's very
22 important to highlight.

23 COMMISSIONER MCHUGH: Yes, that's
24 fine.

1 DR. DURENBERGER: In a similar vein
2 some data issues that we're having. I think we're
3 taking proactive steps to insure that the
4 integrity of all of our programs going forward but
5 I do have some concerns about the accuracy of some
6 of the historical information that was collected.
7 And I want to bring it to your attention and let
8 you know what we're doing about it.

9 In particular, the calculations the
10 financial reporting system was meant to do, there
11 are a number of statutory allocations where money
12 when takeout is withheld from wagers where those
13 monies go. There are a number of funds, statutory
14 funds that are created. There are commissions
15 that come to the Commission. There's a number of
16 distributions.

17 The distributions depend on the place
18 where the wager was placed. So, if it was placed
19 at Plainridge, one thing happens to it. If it was
20 placed at Suffolk, if it was placed at Raynham,
21 something else happens to it. It depends on where
22 the race that the people are betting on is.

23 So, if it's from out-of-state, one
24 thing happens to it. If it's in-state something

1 else happens to it. If it's on a harness race,
2 something different happens to it than what's on
3 a thoroughbred.

4 So, it's a really complex web of
5 distributions and allocations. Those changed.
6 As we've talked about with the perpetual sun
7 setting of the pari-mutuel and simulcast laws
8 every two years, those were subject to change.
9 Then when you add the Acts of 2008, which abolished
10 live greyhound racing in the State, since that time
11 every year in the Sessions Laws has appeared some
12 sort of amendment affecting the Racing
13 Stabilization Fund among other things.

14 So, there have been a lot of changes.
15 These change frequently. Some states, the
16 takeout is the takeout, the allocations are the
17 allocations. And they may be only revisited every
18 10 years. Here that's not the case.

19 So, you've got a system where
20 percentages change with some regularity. And you
21 had a commission that was operating for a period
22 of time without an Executive Director or a CFO or
23 a Director or Pari-Mutual Operations. And where
24 the twain shall meet is the question. So, I'm just

1 concerned that some of those changes along the way
2 got missed.

3 So, we're working with an independent
4 auditing group that's going to try and help us with
5 the look back piece.

6 CHAIRMAN CROSBY: This is KPMG?

7 DR. DURENBERGER: This is KPMG, yes.
8 So, they're going to help us with the look back
9 piece. They're going to help us make sure that as
10 we implement the new system that the new system is
11 implemented and it reflects current law. And we
12 need to make sure -- There's a number of funds that
13 are affected here.

14 If you go to the next page, the Racing
15 Stabilization Fund is one of them. This is the
16 fund that was set up to provide for the humane care,
17 maintenance and adoption of greyhound dogs and to
18 assist efforts to secure alternative employment
19 and retraining opportunities for workers
20 displaced by the abolition of greyhound racing.

21 We have three different groups of
22 previous occupational licensees that continue to
23 receive periodic checks. We've been making those
24 payments, but we're calling them estimated

1 payments at this point for two reasons.

2 Initially, it was because we couldn't access the
3 data that we needed to make those payments in the
4 financial reporting system.

5 Now we can access it, but there's some
6 question as to the percentage that's being
7 allocated there. So, we're looking at that.

8 There are enumerated distributions in
9 the live racing statute in section 5, in the
10 simulcast statute sections 4 through 6. This
11 includes distributions to the Commonwealth,
12 various capital and promotional trust funds, purse
13 accounts, breeders funds, Tufts Veterinary
14 School. There's just a lot of places where this
15 money goes.

16 And I'm working very hard to try and
17 make sure that the right people are getting it in
18 the right amounts. Again, we've enlisted the
19 outside help of KPMG.

20 COMMISSIONER MCHUGH: Are they going
21 to do this piece, help with this piece too?

22 DR. DURENBERGER: Yes, they are.
23 It's a tangled web. We don't know the extent of
24 it. I can't give you an order of magnitude.

1 Maybe everything was fine. Maybe the changes were
2 communicated to the software programmer in a
3 timely manner. Because it is also complicated by
4 the effective dates of some of this legislation
5 as well. So, it's just a lot of moving pieces.
6 So, we really want to make sure that everything is
7 being done appropriately.

8 COMMISSIONER CAMERON: So, there
9 aren't adequate records that reflect changes,
10 that's why you're unsure if these amounts were
11 paid?

12 DR. DURENBERGER: Yes. We've noted
13 that other things like, as I mentioned, what
14 happens to the takeout from the wager depends a lot
15 on many different factors. And we've noticed we
16 have somebody new is out at the tracks doing some
17 auditing work there. And by auditing there, I
18 mean actually taking the totes settlement sheets
19 and entering data into the computer.

20 We noticed that there was a racetrack
21 that had been programmed into the system as a
22 thoroughbred track and in fact it was a harness
23 track. So, where there's one there maybe more.
24 Maybe it's only one. Maybe there's more. I don't

1 know.

2 But we do know that we are distributing
3 money to all of the intended recipients. In other
4 words, if this group or Tufts Veterinary or the
5 breeders are supposed to be getting money, they're
6 getting money. We have been making distributions
7 there. We just need to insure that they're the
8 correct ones.

9 And I guess I'm going to conclude.

10 CHAIRMAN CROSBY: Before you finish on
11 that, I just want to emphasize that. That we will
12 continue to make disbursements based on the
13 formulas that we have.

14 Meanwhile, we are running the Racing
15 Division and KPMG is called in to go back and do
16 what is practically forensic accounting. Go back
17 and figure out how many of these are right or wrong.
18 We will at some point figure that out. It's going
19 to be a while because it's complicated.

20 DR. DURENBERGER: Yes.

21 CHAIRMAN CROSBY: And if there are
22 mistakes, then we will sort it all out and try to
23 correct it. You didn't mention this or maybe you
24 did, yes, the Racing Stabilization Fund, we've had

1 representatives from the former dog owners and
2 kennel owners concerned about this. It's a
3 legitimate concern on their part. We're working
4 on it as fast as we can.

5 So, we're going to continue to make the
6 distributions in as well-informed a way as we can
7 but understanding that in due time we're going to
8 check out all of these formulas, and if there are
9 problems we will correct it after-the-fact.

10 DR. DURENBERGER: That's a great
11 summary, Mr. Chair. And for the Racing
12 Stabilization Fund, the estimated payments that
13 we're making were based on those last payments that
14 had been made through DPL. So, we're using that.

15 CHAIRMAN CROSBY: And KPMG has
16 started, right? They're going to do both the
17 audits, which haven't been done for quite a while
18 and they're going to do the backward look to assess
19 what the problem is.

20 DR. DURENBERGER: Yes, that's the
21 plan.

22 CHAIRMAN CROSBY: Great.

23 DR. DURENBERGER: I enjoyed your
24 conclusion. So, I may actually leave it at that.

1 Again, I guess the big umbrella here is
2 that we've got the two pieces, the regulatory
3 structure, which you've had a little more time to
4 work on. And the strides going from here to here,
5 and the Commission has now positioned itself to be
6 right on track with the rest of the industry as it
7 makes additional changes and amendments.

8 These model rules change sometimes
9 more than once a year, amendments and things like
10 that to it. So, we'll stay on top of that. So,
11 we'll be in lockstep with everybody else, which is
12 just a huge piece.

13 And then there's the operational
14 aspect, which we've noted some deficiencies. And
15 we are working. This is our plan. And we are
16 doing the best we can with it. And I think that
17 reaching for the outside help was an excellent
18 thing to do. They certainly know what they're
19 doing. And we'll work with them and get this thing
20 sorted out sooner rather than later.

21 CHAIRMAN CROSBY: It turns out KPMG
22 does have personnel who have racing experience,
23 which is really important.

24 COMMISSIONER ZUNIGA: Not only that,

1 local personnel as well.

2 CHAIRMAN CROSBY: Local personnel,
3 which is great because this is such an arcane area.

4 DR. DURENBERGER: Specialized
5 vocabulary.

6 COMMISSIONER MCHUGH: This is great,
7 excellent report.

8 COMMISSIONER CAMERON: Great work,
9 great report.

10 CHAIRMAN CROSBY: Yes, great report.

11 DR. DURENBERGER: If I could add, in
12 our initial conversation with KPMG, they were not
13 surprised by this story. This is not the first
14 state that's had to deal with this issue. So, they
15 are familiar with the story and understand the
16 reasons how these things occur.

17 CHAIRMAN CROSBY: Good point. Thank
18 you. Anything else?

19 DR. DURENBERGER: I think that's
20 plenty, Mr. Chair.

21 CHAIRMAN CROSBY: That was plenty.

22 COMMISSIONER CAMERON: Great job.

23 COMMISSIONER MCHUGH: Great job, that
24 was great. Thank you.

1 CHAIRMAN CROSBY: Thank you. Okay.
2 It is now almost 12:30. We have one topic left,
3 the Region C conversation. I think we should take
4 a lunch break. How long do you want to break? Is
5 a half-hour enough?

6 COMMISSIONER MCHUGH: Yes.

7 CHAIRMAN CROSBY: We'll be back here
8 let's make it 1:00 and it pick up with that topic
9 as soon we get back.

10

11 (A recess was taken)

12

13 CHAIRMAN CROSBY: We will reconvene
14 meeting number 62. We will go to agenda item
15 number seven discussion about Region C. We're
16 going to start off with Commissioner McHugh just
17 trying to give us sort of a background status
18 report and we will take it from there.

19 COMMISSIONER MCHUGH: Okay, Mr.
20 Chairman. So, this little presentation is
21 designed simply to bring us -- try and consolidate
22 some of the variables that we've discussed with
23 respect to Region C over the last few months. And
24 it's designed just to be a discussion starter so

1 we can all be essentially on the same page.

2 The piece of paper I just handed to
3 you simply has, and I'll come back to that in a
4 second. And we'll post it on the web as part of
5 the meeting. It simply has the text of section 91
6 of the Expanded Gaming Statute 2011 Chapter 194.
7 Then it has below it section 2.6 of the compact,
8 just those two things quoted verbatim. I'll talk
9 little bit more about those as we get deeper into
10 this.

11 But there are four principal issues
12 that we need to think about or should think about
13 among others as we think about Region C. The
14 status of the Tribal project of course is the
15 first. The land in trust application, the current
16 litigation involving K.G. Urban and then
17 commercial RFP considerations. Those are, at
18 least it seemed to me, the four main topics on which
19 we ought to focus as we think about what if anything
20 to do about Region C at the present time.

21 So, I'm going to start with the status
22 the Tribal project and go through each of those
23 issues seriatim. The compact as you know has been
24 executed, the new compact has been executed. It's

1 been sent to the Legislature by the Governor.
2 It's now in the Joint Committee on Technology and
3 Economic Development. It will be reported out of
4 that committee at some point. There'll be
5 hearings no doubt. But we don't have any
6 indication as to when that's likely to happen.
7 It's not going to be a long way away but we have
8 no date for that.

9 Thereafter, approval of the compact by
10 the BIA, the Bureau of Indian Affairs, a sub-branch
11 of the Department of the Interior is necessary.
12 Before it can be sent to the BIA, the Legislature
13 has to approve it. Approval by the BIA according
14 to the Tribe seems likely.

15 We do know from a conversation that I
16 had with Assistant Secretary Washburn who's the
17 head of the Bureau of Indian Affairs that the BIA
18 this time gave both the Tribe and the State some
19 technical assistance on parts of the compact that
20 they requested help with. So, that is a factor to
21 take into account in thinking about the likely
22 approval.

23 And the BIA has 45 days from submission
24 to act, approve or disapprove. So, it's not

1 unreasonable, I think, to suspect that that action
2 will take place sometime over the summer. I just
3 put mid-August up there as a reasonable date. I
4 have no information that would lead me to say
5 that's the date. Just thinking things through
6 that's probably a date when we can expect some
7 action.

8 The project status insofar as the
9 project itself is concerned is as follows. These
10 are the highlights. There is more to it. It's
11 all available on the City of Taunton website.
12 They've done a good job of putting up the various
13 components of this.

14 The site of course has been identified.
15 The voters approved Tribal gaming at that site on
16 June 9. There was a referendum in Taunton and they
17 approved it on June 9, 2012.

18 There's an intergovernmental
19 agreement between the Tribe and the City that was
20 signed a month later on July 10, 2012. That of
21 course is analogous to the host community
22 agreement. The order was a little different, but
23 of course they're not governed by the statutory
24 process. And then the Tribe paid the City \$1.5

1 million, which was a specified mitigation fee in
2 mid-August of 2012.

3 An ENF certificate was issued by the
4 Secretary of Energy and Environmental Affairs on
5 August 24. And it stated that the Tribe was
6 required to prepare a draft environmental impact
7 report. Since then, a number of studies that been
8 done and one assumes that that process is moving
9 forward smartly.

10 There is the MEPA process, which is the
11 state process. And then there is the NEPA
12 process, which is the federal process. And the
13 interrelationship between them is somewhat
14 complicated. But the MEPA process presumably
15 will govern the non-land in trust site that needs
16 to be dealt with in order to make the projects
17 succeed after the property is taken into trust if
18 it is.

19 And the NEPA process will deal with the
20 site itself as well as some of the surrounding
21 areas. But both processes seem to be moving
22 forward in parallel.

23 On the Bureau of Indian Affairs front,
24 the initial reservation determination was

1 approved on February 17 of this year, just last
2 month or a month and a half ago. That is an
3 approval that's necessary under a statute that
4 says that after a date in 1988 tribal lands going
5 to be used for gambling if they were taken into
6 trust if there are certain federal exceptions that
7 apply, and the BIA concluded that the initial
8 reservation exception applied to the Tribe. So,
9 they've gotten that approval.

10 That only matters if the land is taken
11 into trust ultimately. But at least it's another
12 piece that they have -- another step that they have
13 accomplished.

14 The final decision on taking the land
15 into trust, if one looks at these details, is the
16 big step that has yet to be taken and yet to be done.
17 And an outcome favorable to the Tribe, I submit,
18 is unclear at best. And even if it is favorable,
19 the timing of it is at this point very difficult
20 to determine. But it's unlikely to come soon, I
21 think, because there are several issues.

22 The first of them is the Carcieri
23 decision. That is the trickiest and the largest
24 hurdle. The Carcieri decision refers to a Supreme

1 Court of the United States decision in 2008 that
2 interpreted the statute that deals with when the
3 Secretary of the Interior can take land into trust.

4 And the Court in that decision, the
5 majority -- It was a six to three decision. So,
6 it's not a one vote changer. -- said that land
7 maybe taken into trust only for a recognized tribe
8 that was under federal jurisdiction -- And that's
9 a term that has some implications. -- in June of
10 1934 when the statute was passed.

11 There's no question that this Tribe,
12 the Mashpee Wampanoag is recognized. The under
13 federal jurisdiction piece though is a much more
14 difficult issue. There is no definitive federal
15 decision that defines what that phrase means. And
16 whatever it means, it will require a really fact
17 intensive determination.

18 In 2010, in a decision involving the
19 Cowlitz Tribe from the State of Washington, the
20 Bureau of Indian Affairs took land into trust.
21 And in addressing Carcier, it said that the under
22 federal jurisdiction inquiry was a two-part
23 inquiry.

24 The first, and I think it's worth

1 quoting this although it's -- Well, it's worth
2 quoting. "The first question said the Bureau in
3 that case is to examine whether there was
4 sufficient showing at the tribe's history at or
5 before 1934, that it was under federal
6 jurisdiction, i.e., whether the United States had
7 in 1934 at some point in the tribe's history prior
8 to 1934, taken an action or series of actions
9 through a course of dealings or other relevant acts
10 for or on behalf of the tribe or in some instances
11 tribal members that are sufficient to establish or
12 that generally reflect federal obligations,
13 duties, responsibility for or authority over the
14 tribe by the federal government."

15 So, it's an historical inquiry to see
16 whether any of those criteria, none of which has
17 sharp edges, I submit, existed in 1934 or earlier.
18 And if the answer to that is yes, there is some
19 indication, some showing that the tribe was under
20 federal jurisdiction before 1934, was it under
21 jurisdiction, under federal jurisdiction in 1934.
22 That's how the BIA defined the term in the Cowlitz
23 decision.

24 Cowlitz has been challenged. It's in

1 litigation now, has been since January 31, 2011 in
2 the Federal District Court in Washington, DC, I
3 believe. And is in various procedural stages
4 there with no decision yet on the merits.

5 The Bureau in this case is at work.
6 It's taken other land into trust since Carcierri was
7 decided. And the Carcierri analysis is now a top
8 priority for the BIA Solicitor Hilary Tompkins
9 according to a letter she sent recently to the
10 Tribe. So, that's being actively investigated by
11 the Solicitor's office.

12 However, in that same letter Ms.
13 Tompkins stated that the majority of the Carcierri
14 determinations require a comprehensive fact
15 intensive analysis that can be time intensive and
16 costly. It can take a long time, cost a lot of
17 money basically is what that is says. She
18 continued by saying that the Office of the
19 Solicitor is committed to giving this a top
20 priority, but she gave no estimate of when she
21 would be finished.

22 In addition to that, her determination
23 will take the form of advice to the Assistant
24 Secretary for Indian Affairs. It will not be a

1 separately announced finding.

2 So, the Secretary then will consider
3 her advice and make a judgment as to whether to
4 accept it, whether to reject it, whether to seek
5 modification of it, whether to seek more
6 information. It's ultimately his determination
7 and not her independent determination.

8 There have been a number of legislative
9 efforts to "fix" the Carcieri decision. The
10 Legislature, the Congress can fix it, change it,
11 change the statute, because it's a statutory
12 interpretation. It's not a constitutional
13 interpretation. So, on a going forward basis at
14 least, the Congress can fix it.

15 Those have not succeeded. And one can
16 only say that at this point it's unlikely that
17 there will be a fix. And we ourselves have no
18 independent basis for making the under federal
19 jurisdiction issue. We just don't have the
20 wherewithal. We don't have the tools. We don't
21 have the know-how, the background or the
22 expertise, I think, to make that determination but
23 that's something we can talk about.

24 A second issue is the NEPA process. It

1 has to be completed before the trust decision is
2 made. The process is started. The Tribe
3 predicts that it will be completed in early 2014.

4 We had some independent discussions
5 with the EPA who said that the Tribe's estimate was
6 within the range of reason. It was doable, no
7 guarantees. The EPA is not conducting the
8 process. It has the status of a commentator, not
9 a decision-maker. But they've been around the
10 block a few times, so their assessment that it's
11 within the range of reason is worth something.

12 Kevin Washburn, the Assistant
13 Secretary for Indian Affairs, as I mentioned, has
14 simply said that it takes time. In my
15 conversation with him, he did not give an estimate
16 as to when it would be completed. Nor did he give
17 an estimate of how long it would take. He simply
18 said it takes time. These are complicated.

19 The record in other cases suggest that
20 the entire land in trust process including the NEPA
21 component has taken years to conclude. That is
22 not an aberrational -- Those cases in which it's
23 taken years to conclude do not appear to be
24 aberrational.

1 The next issue, the third issue is
2 post-decision litigation. Litigation is likely
3 it seems given the nature of the decision that has
4 to be made and the intensity one can feel as to some
5 of the issues that have surfaced thus far.

6 Litigation is likely over the Carcieri decision
7 and whether the Bureau has the power to take the
8 land into trust, and then the merits.

9 The merits inevitably for those who are
10 opposed to a favorable BIA decision, the merits are
11 likely inevitably going to be fact intensive.
12 There's going to be ground for challenge, not
13 necessarily a successful challenge, but there's
14 going to be ground for a challenge. And that could
15 be both time-consuming and expensive as well.

16 A June 2013 Supreme Court decision in
17 a case called Salazar against Patchak broadened
18 the class people who had the right to challenge a
19 BIA determinations to take land into trust. And
20 had the effect of giving challengers six years to
21 do so. So, that's six years from the time the
22 decision, the BIA decision is made. The BIA
23 because of that decision, as I understand it, no
24 longer will postpone the effective date for its

1 land in trust decision.

2 CHAIRMAN CROSBY: Which is in effect
3 what it did in Cowlitz.

4 COMMISSIONER MCHUGH: It did not do it
5 in Cowlitz, because Cowlitz was a post -- That's
6 right. It did not postpone the effective date of
7 that. It used to, as I understand it, postpone the
8 effective date because it was believed that people
9 who were to bring suit only had 30 days to do so.
10 So, for some reason that led them to postpone the
11 effective date of the decision. It's my
12 understanding that they no longer are going to do
13 that while litigation is pending.

14 It's possible that an injunction could
15 postpone the effective date of it. But it is
16 difficult to predict whether an injunction would
17 issue, because an injunction is always
18 discretionary on the part of the judge who is
19 hearing the case. And it depends on a showing of
20 irreparable harm. And one would really have to
21 take a look at the circumstances as they then
22 existed to see whether a showing of irreparable
23 harm could be made. And whether the other factors
24 necessary for a preliminary injunctive relief

1 could be made. It's just very difficult to
2 predict whether that could happen.

3 But it is predictable that if
4 litigation does occur, it would take several years
5 -- I've said four. There's no magic to that. --
6 to conclude. I think about two years, two and a
7 half years in the trial court and another 18 months
8 to get through an appeal to the First Circuit,
9 assuming this were brought in as it likely would
10 be in the Federal District Court.

11 Longer if this were the first case to
12 effectively raise the under federal jurisdiction
13 issue and the Supreme Court were interested in
14 revisiting that Carcieri case or expanding on and
15 explaining the meaning of the phrase. Then you
16 could add more time to that if the Supreme Court
17 took it. But I think about four years would be a
18 good estimate of how long it would take without
19 that.

20 So, that really is the status as I see
21 it. Those are at least the factors in thinking
22 about where the process is of the Tribe. The other
23 factor that has to be considered is the K.G. Urban
24 litigation. I don't want to get too far into that

1 because it's not necessary to do so. But it's now,
2 as we know, pending in the District Court after a
3 remand from the First Circuit.

4 The importance of this is that the
5 First Circuit decision may limit the amount of time
6 that the Commission has to -- is permitted simply
7 to do nothing.

8 The First Circuit decision said in
9 effect that it is okay to freeze Region C to
10 commercial applications but only for the period
11 necessary to support the Indian Gaming legislation
12 and let that work its way through an appropriate
13 process. And that the longer the freeze remains
14 in place, particularly without a defined end date,
15 the less likely the Court will be to consider the
16 freeze as a temporary support for the IGRA process,
17 the Indian Gaming Process. And the more likely it
18 will be to view the freeze as a race based
19 preferential set-aside that would be subject to
20 something called strict scrutiny, which rarely
21 allows the legislation or the administrative act
22 to survive.

23 K.G. Urban's case basically is a 14th
24 amendment equal protection case. It's other

1 things as well, but that's the core of it based on
2 what K.G. Urban claims is an impermissible racial
3 preference for a tribal casino. So, that's
4 another piece that's in the mix.

5 If we turn to the idea of a commercial
6 RFP in Region C, the issue there is Section 91 of
7 the Expanded Gaming Act. That's why I circulated
8 the text, because this is an issue that we've
9 discussed on a number of occasions. But it's one
10 that we really need to think about with precision
11 here because there is, I think, a misunderstanding
12 of exactly what is stated where.

13 The first relevant portion of Section
14 91 is Section 91(e). And 91(e) says, and I'm
15 paraphrasing here. You have the text in front of
16 you. And as I say for others who are watching and
17 listening, it will be up this little sheet with the
18 text will be up on our website when we finish all
19 of this. Section 91(e) says that the Commission
20 must issue applications for Region C commercial
21 licenses if there is no signed compact approved by
22 the Legislature by July 31, 2012, condition one.
23 Or if the Commission determines that the BIA will
24 not take land into trust. So, if either of those

1 two things happens, then the Commission must issue
2 a commercial RFP in Region C.

3 The section does not prohibit, there's
4 nothing in that section that prohibits the
5 Commission from issuing an RFP for commercial
6 licenses at any time. There's no prohibition in
7 the statute. There's no prohibition in the text.
8 The Commission is not barred by the text of the
9 statute from issuing a commercial license.

10 CHAIRMAN CROSBY: If I could just add
11 to that, it's our interpretation as our lawyers
12 read it, if I understand that that's also the
13 advice that we've gotten from the Attorney General
14 the way that office reads it?

15 CHAIRMAN CROSBY: We've not gotten any
16 formal advice from the Attorney General.

17 CHAIRMAN CROSBY: But we have done our
18 best to get legislative intent clarified on this.
19 And the clear statement from the various drafters
20 in the Legislature was that this is the accurate
21 reading of the law.

22 COMMISSIONER MCHUGH: Yes. That's
23 so. And it also is faithful to the text of the law.
24 So, we have that.

1 There was in the last compact and there
2 is in this compact a section, a number of sections.
3 It's replete with sections. It's a long document,
4 carefully thought out, carefully negotiated.
5 Paragraph 2.6 of the current and former compact
6 interprets Section 91(e) as stating that, and I'm
7 quoting, "The Commission will not issue" a
8 commercial RFP in Region C unless it determines
9 that the BIA will not take land into trust. That
10 is not what Section 91(e) says. 91(e) says what
11 I just it says. But the compact says that it says
12 something different.

13 So, the question there becomes whether
14 a contract basically negotiated between the
15 Governor and the Tribe and approved by the
16 Legislature, as the last one was, can alter
17 statutory language that says something different
18 than the contract (SIC) says. That is an issue
19 that I'm not aware has ever arisen before, but it
20 strikes me as unlikely that it can do so.

21 But there you are. That's what it
22 says. That's how it got there. The revenue
23 portions of both compacts expressly contemplate
24 that the Commission's issuance for an RFP for

1 Region C and decrease the Commonwealth's share of
2 tribal gaming revenues if it does so.

3 So structurally, the compact has built
4 into it a remedy or a concession fee or concession
5 fee schedule basically that kicks in if the
6 Commission does what -- if the Commission issues
7 a commercial RFP. It also gives the Tribe in the
8 event that the Commission issues an RFP for a
9 Category 1 casino and grants a license the right
10 to terminate the compact entirely and proceed
11 without it.

12 The Tribe could also bid and become a
13 commercial applicant. So, the Tribe would have a
14 number of options if the Commission opened Region
15 C for commercial activity. That's about all I
16 have to say about the compact and its relationship
17 to the statute as a discussion starter piece.

18 Insofar as a commercial RFP is
19 concerned, another issue to consider is a
20 timetable. If we use for Region C the timetable
21 that we have used for Regions A and B and adjust
22 for the delayed start, the timetable would look,
23 I think, something like this. We'd issue an RFP
24 for Phase 1, the deadline I mean for submitting RFP

1 Phase 1 applications would be August of this year.

2 Suitability determinations would be
3 concluded by May of next year. The Phase 2
4 deadline would be a year from this August, August
5 2014. And a licensing decision would come in
6 December 2014. That is -- It's better than
7 throwing darts against a dartboard, but that would
8 parallel what we've done. I think we could
9 improve on that schedule but that's a starting
10 point.

11 COMMISSIONER ZUNIGA: Commissioner?

12 COMMISSIONER MCHUGH: Yes.

13 COMMISSIONER ZUNIGA: Could we go back
14 to the prior slide, I believe, slide number 10. I
15 just want to make sure we make this distinction.
16 This is something that I just begun to realize the
17 difference. I guess I always assumed --

18 COMMISSIONER MCHUGH: This one,
19 Commissioner?

20 COMMISSIONER ZUNIGA: Yes, the last
21 sub-bullet at the very bottom. -- that the
22 revenue projections would change in the manner
23 that they do with award of a license.

24 COMMISSIONER MCHUGH: Right.

1 COMMISSIONER ZUNIGA: Not the
2 issuance of an RFP.

3 COMMISSIONER MCHUGH: Yes, I misspoke
4 if I said otherwise. They change when the license
5 is awarded.

6 COMMISSIONER ZUNIGA: When the
7 license is awarded, right. Thank you.

8 COMMISSIONER MCHUGH: And they change
9 under the current structure if the Tribe is the
10 only Category 1 full-fledged casino in the State,
11 they pay 21 percent of revenues, gross gaming
12 revenues to the Commonwealth. If there's another
13 someplace in the State, it's 17 percent. And if
14 there's a casino in Region C, it's zero. And if
15 there's a slots parlor in Region C either the 21
16 percent or the 17 percent drops down by two
17 percent. That's the structure.

18 CHAIRMAN CROSBY: Just for the record,
19 actually, if you look at that bullet point, it is
20 miswritten, it says Commission's issuance of a
21 commercial RFP and it should say commercial
22 license.

23 COMMISSIONER MCHUGH: Commercial
24 license, yes, sorry. That's right. So, we'll

1 correct that in the version that's posted on our
2 website. That's an important difference.

3 COMMISSIONER STEBBINS: Going back a
4 little bit earlier, I guess, you talk about the
5 Patchak decision, I think you referred to 2013
6 decision, slide eight.

7 COMMISSIONER MCHUGH: There must be a
8 more elegant way to do this.

9 CHAIRMAN CROSBY: June 2012, is that
10 what you mean?

11 COMMISSIONER MCHUGH: 2012, you're
12 right. Yes, another typo, another mistake.

13 COMMISSIONER STEBBINS: I didn't know
14 if you had any insight into what the Supreme Court
15 was deciding --

16 COMMISSIONER ZUNIGA: Was that
17 decision Salazar or was that decision the
18 Potawatomi Indians versus Patchak?

19 COMMISSIONER MCHUGH: It's known as
20 Salazar, I think he was another party to that.

21 Okay, with those corrections and
22 amplifications, those are some background
23 considerations.

24 Now the question is or questions for

1 discussion include these. What are some of the
2 issues that may arise if the Commission waits for
3 more clarity before it issues or decides not to
4 issue permanently a commercial RFP in Region C?

5 The first is obvious, there's likely
6 that there'll be no construction or gaming revenue
7 in Region C for a considerable period of time,
8 though the length is impossible to determine with
9 the information we have now. It's going to be some
10 period of time and at best estimates it looks like
11 it will be considerable without -- but there's no
12 way to tell when.

13 If the land in trust decision is
14 negative at the end of that period, then the
15 Commission will have to begin a commercial process
16 perhaps years after licenses have been awarded in
17 Regions A and B. Leaving a part of the state
18 that's really been hit by the economic downturn
19 without the revenue stream that these casinos are
20 providing to other regions.

21 And if the land in trust decision is
22 positive, the Commission will face not only a
23 revenue stream eight to 10 percent less than a
24 revenue stream from the commercial casinos, but

1 also a revenue stream that could start
2 considerably later. So, you lose the time -- the
3 money over time. And Commissioner Zuniga is going
4 to talk to us a little bit about that in a minute.
5 So, those are some, I think, obvious consequences
6 of waiting.

7 If we proceed now to issue a commercial
8 RFP in Region C, the Tribe could elect to pursue
9 it without abandoning its land in trust
10 application. They could pursue both
11 simultaneously. There's no reason why they
12 couldn't. They could be a commercial applicant as
13 well as pursuing the land in trust.

14 If it doesn't elect to pursue a
15 commercial license or if it applies and is the
16 unsuccessful bidder for a commercial license, it's
17 possible that the land in trust application will
18 be successful and that Region C will then have two
19 casinos operating. One of which will have a much
20 lower overhead because its gaming revenues will be
21 untaxed. If there are two, the Tribe pays the
22 State nothing.

23 The Tribe could also disavow the
24 compact and operate Class II gaming at least --

1 which is essentially a slots parlor. It's more
2 than that but it's essentially a slots parlor. --
3 without any Commonwealth participation or
4 oversight. So, those are the consequences,
5 potential consequence of proceeding now. We
6 proceed without knowing the outcome of the Tribal
7 process and without the applicant's knowing the
8 outcome of the Tribal process. So, that could be
9 a consequence.

10 Financial considerations, I just
11 wanted to state the questions and then
12 Commissioner Zuniga is going to talk about them.
13 This is really picking up on the second what
14 happens if we proceed now theory. Would a
15 commercial casino be viable in the same region as
16 an untaxed tribal casino?

17 What kind of rate of return would be
18 required for an investor to take account of the
19 risk of that kind of competition?

20 And would that necessary rate of return
21 make the entity a viable entity?

22 What kind of a market share would the
23 commercial casino require in Region C in order to
24 yield to the Commonwealth tax revenues equal to the

1 15 to 17 percent that a Tribal casino would yield
2 if it were operating exclusively in that region?

3 And then what kind of revenues would be
4 needed to account for the absence of any revenue
5 between now and the time the dust settles?

6 So, that may be a good segue to turn
7 that over to you, Commissioner.

8 COMMISSIONER ZUNIGA: Sure. As I was
9 contemplating this from a purely financial
10 standpoint, I started with the question of timing.
11 Because as we contemplate timing, there's a direct
12 question in my mind financially on timing.
13 Although I don't have slides to guide the
14 discussion, I can perhaps dish it out conceptually
15 and we can discuss more details.

16 Because the compact sets forth a lower
17 rate than a commercial license, one way to look at
18 this would be how sooner or when would the Indian
19 operation have to be compared to a commercial
20 license -- And we can go back to the slide that has
21 a tentative time of a commercial request. -- for
22 the Commonwealth to be indifferent?

23 There's the difference of eight to 10
24 percent, which is significant. But there's also

1 the difference of 85 million upfront that comes to
2 the Commonwealth in the form of the licensing fee.
3 That does not come when we are contemplating the
4 Tribal operation.

5 So, you factor those two differences
6 and make some projections, the reality is -- and
7 brings at some discount rate today between the two
8 options. The reality is that for the Commonwealth
9 to be neutral under those two scenarios, the Tribal
10 operation would have to be up and running
11 significantly earlier than that.

12 But I want to say let's put that aside
13 for a little bit because that is really not the
14 choice. The choice is the one you finished with
15 which is waiting for one that Tribal operation for
16 some period of time. And we can talk about the
17 timeline there. Or requesting issuing an RFP for
18 a commercial license with the real probability
19 that sometime in the future that commercial
20 license has competition in the region by virtue of
21 how the Tribal operation reacts to that. Whether
22 they don't respond to the commercial RFP or whether
23 they respond and are not awarded. And whether
24 they go further and conduct on their own right --

1 by their own right Class II gaming.

2 So, that's really what we should be
3 contemplating and the way to finish those slides.
4 So, if those are the two scenarios, the first point
5 in slide number 15, Commissioner, if you don't
6 mind, is a very important one.

7 And I would further make the point
8 within here, which is the risk evaluation will have
9 to be made by the operator.

10 COMMISSIONER MCHUGH: By the
11 commercial operator.

12 COMMISSIONER ZUNIGA: -- by the
13 commercial operator. It would depend on how far
14 away they may be, may or may not be with another
15 operator. Whether they can by virtue of whatever
16 time it takes the Tribe whether they can enjoy a
17 lengthy or a short period of exclusivity which may
18 give them an advantage. It really dovetails into
19 the notion of capturing market share in that
20 context.

21 But it is reasonable to assume that a
22 commercial bidder could or would have to make
23 provisions for seeing some outer year cash flows
24 decreasing in some manner, potentially. I think

1 they are the ones best suited to make those
2 calculations.

3 But the point here is important also
4 highlighted in the second bullet. They will
5 likely demand that out of their internal rate of
6 return and they would have to consider the minimum
7 investment amount that is set forth as per our
8 regulations.

9 I don't have an answer. We, of course,
10 don't have an answer, but that's certainly a topic
11 for discussion. I think the key point there is
12 this Commission or this State cannot really know
13 unless it bid out that commercial license, cannot
14 really know that internal rate of return. Those
15 assumptions behind future cash flows, the
16 certainty behind or the sensitivity analysis
17 behind the future cash flows, all of this is
18 conjecturing at this point.

19 If and only this Commission bid out
20 this region, the only way to really gain more
21 information to that effect is by seeing what a
22 proponent or proponents would put forward.

23 I can talk a little bit more about any
24 of this, but I will go talk a little bit about the

1 third bullet as well, which is a very important
2 point. And I think it's at the crux of many of the
3 comments we heard a week ago when we were in Fall
4 River. And I would term it as an opportunity cost.

5 There are number of opportunity costs
6 in this decision that we face. There are the ones
7 that I would say are more direct, the forgone
8 revenue, the revenue that doesn't come in because
9 there is time that passes now and then continues
10 to drag.

11 There's those that are also direct,
12 less able to estimate but are very important, and
13 those are the jobs, which I think are also very
14 important.

15 But there are other costs that I would
16 submit are very hard to quantify on the
17 conversation of opportunity costs that could be
18 substantial. If a project like this, and we heard
19 this last week, ends up being the catalyst for say
20 certain pieces of economic development, like the
21 rail down to that region, rail expansions or other
22 factors like that. And this catalyst doesn't come
23 to fruition, that's a significant opportunity
24 cost.

1 Again, it's very hard to estimate. I
2 could only phrase them as significant. Those were
3 the main points that I wanted to make relative to
4 the distinction -- relative to this discussion
5 rather.

6 I think when I was talking to one of our
7 consultants relative to the financial aspect of
8 this, they were bringing up the point, I think
9 appropriately that the main decision for a
10 commercial bidder would have to be relative to
11 meeting -- and for the Commission relative to
12 whether they can appropriately meet the minimum
13 investment required, satisfy the rate of return
14 that they would demand for the risk that they would
15 take. Because they would be taking the risk of
16 some uncertainty about how much time they would be
17 able to enjoy in terms of exclusivity.

18 Because what gives real value to this
19 licenses is enjoying a sphere of geographical
20 exclusivity, which is how this legislation was put
21 forth to begin with.

22 COMMISSIONER CAMERON: Do we know that
23 that's accurate? You got that information from
24 one of our consultants, correct?

1 COMMISSIONER ZUNIGA: That's correct.

2 CHAIRMAN CROSBY: Do we know that
3 what's accurate?

4 COMMISSIONER CAMERON: That
5 exclusivity is worth so much. If you look at the
6 Pennsylvania experience, they have casinos within
7 30 minutes of on another doing extremely well,
8 extremely well, better than the projections were
9 for them to do.

10 So, I just sometimes wonder if that is
11 worth all -- if there's a way to project that
12 accurately.

13 COMMISSIONER ZUNIGA: Well, there is.
14 And that's an important point, because they have
15 not done something that can be done, which is in
16 the end an estimation. But to draw what they term
17 gravity models to see within, depending on the site
18 of a casino, to look at a bubble that's normally
19 within one-hour drive time. And look at the
20 wealth and amount of population that's within that
21 sphere of influence. And whether that overlaps
22 with another operation. And if so, how so or how
23 much?

24 I'm glad you point out -- In the case

1 of Philadelphia or some areas of high
2 concentration of population and wealth, those are
3 important factors depending on -- that factor in
4 to the viability of two operations, let's say.

5 But in our case we'd have to consider
6 that along with the minimum investment amount.
7 So, these are all risks or factors that pull in a
8 couple of different directions. The point is that
9 we would first have to know when two operations
10 were -- I'm sorry two potential operators would
11 have to be, what are they proposing? Are they able
12 to meet the minimum investment required? And does
13 that make them a viable option by virtue of the
14 market and wealth that's within the sphere of
15 influence?

16 When Spectrum did the initial
17 projections, for that region, actually for the
18 State for all three regions, at least for Region
19 C they picked, just because there was no
20 information for them to do otherwise, they picked
21 the geographic center of Region C as any place that
22 a casino could come.

23 That may turn out to be not the case
24 because of all of these factors. Taunton is not

1 necessarily the geographic center, for one. But
2 there's other areas that could be the host of a
3 casino that are also not in the geographic center,
4 but could be elsewhere.

5 So, that would have to factor in all of
6 those things.

7 COMMISSIONER MCHUGH: When you're
8 talking about the third bullet there, the
9 opportunity cost, the opportunity cost analysis is
10 -- the difficulty with that analysis is compounded
11 by the fact that it is the difference between the
12 commencement of two revenue streams, right?

13 Because if we start now, we're not
14 going to have a casino there tomorrow. We're
15 going to have it some years down the road. There's
16 some amount of time that's the fastest something
17 could be up and running. And depending on which
18 of them it is, that time may differ. So, the
19 analysis has really got those two variables as
20 components, right?

21 COMMISSIONER ZUNIGA: Very much. And
22 they are very complicated. They are confounding
23 in a way. We could some of it ourselves or we could
24 have our consultants do some projections and

1 modeling. But ultimately these are - they
2 inherently contain a lot of variability.

3 CHAIRMAN CROSBY: And we never know
4 the dates. That's the whole problem. If we knew
5 the dates here, this would be a whole lot easier.
6 But every date we come up with is just a guess.
7 That's the whole problem here.

8 Okay. Any other sort of background?
9 That's great. Thank you, both of you for that.
10 And I think it's really helpful to try to get our
11 arms around it. Is there other just kind of
12 background thoughts that anybody has to contribute
13 to the data collection we've been doing?

14 COMMISSIONER CAMERON: I also think
15 this a really good analysis. And in checking with
16 -- because we've had the opportunity to hear from
17 those who are in favor of opening this up and those
18 who are in favor of keeping the exclusivity for the
19 Tribe, and in speaking to our consultants who
20 really do have a lot of information, a lot of
21 knowledge, subject matter expertise, and have
22 reviewed everything that we have seen, their
23 analysis is that they do not see this happening
24 quickly for the Tribe.

1 They do not see a way for this to
2 happen. Their best analysis is years and years
3 away from happening. They're disagreeing with,
4 of course, the Tribe's analysis, which of course
5 they're optimistic that they can do it quickly.

6 So, that was a factor that I thought was
7 important is the timing factor.

8 COMMISSIONER ZUNIGA: Along those
9 lines relative to exclusivity and a point you made,
10 Commissioner, relative as well to the ability of
11 the Tribe to pursue a commercial license, they like
12 to correctly point out that they've made some
13 strides with the vote that they have in Taunton,
14 with the ENF certificate and other things under the
15 MEPA process.

16 COMMISSIONER MCHUGH: Right, right.
17 They're way ahead of everybody else.

18 COMMISSIONER ZUNIGA: They're way
19 ahead of everybody else. That would in my view
20 serve them real well if they were pursuing a
21 commercial license.

22 COMMISSIONER MCHUGH: Right.

23 COMMISSIONER ZUNIGA: If we decided to
24 open this region, they would be positioned perhaps

1 better than anybody else to do it by virtue of those
2 things, a host community agreement or something
3 like it. I know there's differences, but they've
4 made significant strides in that regard compared
5 to anyone else.

6 Unfortunately, for them is that there
7 are issues that are significantly important under
8 their land in trust that precede all of those
9 efforts, which you correctly point out. But I
10 think it's important to highlight.

11 CHAIRMAN CROSBY: Commissioner, you
12 look like you were going to --

13 COMMISSIONER STEBBINS: I look at the
14 language, and I know we talk about timing, but I
15 look at the language of the statute. The
16 Commission determines the Tribe will not have land
17 taken into trust by the United States Secretary of
18 the Interior.

19 So, it has less to do with -- Are we
20 making a determination on eventuality? Are we
21 making a determination on timing? As I dug deeper
22 into this, I guess I started looking further into
23 the Indian Gaming Regulatory Act passed in 1988,
24 which prohibits gaming on lands acquired in trust

1 after the enactment of the bill except for certain
2 provisions. In just reviewing some of the
3 determinations that, I guess, the BIA made,
4 applications are pending for anywhere from seven
5 to eight years, applications being denied.

6 I'm wondering if we shouldn't -- Again,
7 as we look to draw a final conclusion as to whether
8 we ever see this land being taken into trust,
9 whether there shouldn't be, I guess, a thorough
10 review of those applications that went before the
11 BIA and why they were turned down or why they
12 weren't approved. I guess overlaying the IGRA
13 bill over Carcieri over Patchak. I guess that's
14 kind of the quandary I find myself weighing.

15 CHAIRMAN CROSBY: That's only
16 operative, that clause is only operative if we are
17 deciding whether by our statute we must issue a
18 commercial process, which we would be compelled to
19 do if we determined that it would never get land
20 in trust, which is an impossibility. There is no
21 way to ever determine that because any new
22 Congress, new President, new whatever.

23 But it's not that clause that we're
24 operating under. It's this that we were left with

1 the right to go ahead with a commercial if we wanted
2 to at any time of our choice. Understanding that
3 there was a legislative predisposition to give the
4 Tribe a shot and an understanding that nobody
5 wanted more than one casino.

6 We're not sitting here having to try to
7 figure out an impossibility, which is whether or
8 not the Tribe will ever get land in trust. What
9 we're doing is weighing incompatible interests
10 without clear guidance from the Legislature on
11 what they wanted us to do.

12 As I've been wrestling with this, as I
13 know everybody else has, I've been reading -- not
14 to get pretentious about this, but I've been
15 reading Meachum's new autobiography of Thomas
16 Jefferson.

17 Jefferson had real problems. He was
18 debating whether or not to go to war with Britain
19 in 1807 and 1808. But as he was wrestling about
20 it, he's talking about trying to resolve between
21 irreconcilable and incompatible interests. And
22 he says what is good in this case cannot be affected
23 he wrote Galton. We therefore have to only find
24 out what will be least bad.

1 And I think that's sort of the
2 situation we're in. The good situation would have
3 been to be able to do what the Legislature
4 envisioned, which was get a compact that the
5 Legislature could happily approve, it did. Move
6 expeditiously down the road so Southeastern Mass.
7 didn't get left far behind. That didn't happen.

8 That was the plan. That's what
9 everybody would have preferred. That would have
10 been in this definition that would have been what
11 was good. Some parties would have been unhappy
12 but that's what the Legislature clearly preferred
13 at the outset.

14 That didn't happen. Now we're trying
15 to figure out what do we make of this. And we're
16 trying to search around for some criteria that make
17 us feel comfortable making a decision where these
18 incompatible interests are going to get resolved.

19 And I see some things, which under
20 other circumstances might be a little exogenous,
21 but what I don't think are exogenous as we are
22 wrestling with what to do here, if we're going to
23 wait around for the compact, operating under the
24 compact protects surrounding communities

1 significantly less than a commercial application
2 protects surrounding communities. If there's a
3 compact and it's happening that's the way we're
4 stuck, then we'll deal with that. But that is a
5 value. Surrounding communities are not anywhere
6 near as well protected.

7 Similarly, live entertainment venues
8 are not as well protected. Similarly, and this is
9 an important one, the Commission, if it's
10 supervising a compact has very compromised ability
11 to enforce its judgments. Our first priority is
12 to protect the integrity of the gaming in
13 Massachusetts. That's by law our first -- by
14 mandate our first priority.

15 Under the old compact, we would have
16 had a hard time doing that because we can't say yes
17 or no about anything. We can complain and take it
18 to arbitration, but that is a very compromised way
19 to implement our judgments about protecting the
20 integrity.

21 The new compact, which we were never
22 given an opportunity to look at or to review prior
23 to its being agreed-upon takes it a step further
24 and takes all of the non-gaming activities and

1 venues out of our purview altogether, even though
2 that's lots of the times where the troubles are,
3 the laundry provider, the this, the that and the
4 other thing.

5 So, as I'm sitting here, the compact
6 arrangement is an imperfect arrangement, is a
7 suboptimal arrangement in terms of protecting the
8 public interests.

9 So, if we're wrestling with can we
10 possibly influence which of the two outcomes we
11 select, there is some reason to think, in my view,
12 that the compact is less desirable.

13 COMMISSIONER MCHUGH: Can I just --

14 CHAIRMAN CROSBY: Yes.

15 COMMISSIONER MCHUGH: Without getting
16 into that analysis, one of the outcomes is two,
17 right -- the Tribe operating under the compact but
18 paying zero revenues. So, one of the outcomes
19 possibly is a commercial casino plus whatever
20 difficulties you just outlined by the compact.

21 CHAIRMAN CROSBY: One of the many
22 things we don't know is if we did do a commercial
23 license what in fact will happen.

24 COMMISSIONER MCHUGH: That's right.

1 CHAIRMAN CROSBY: We don't know if
2 there'll ever be land in trust. If there is land
3 in trust, will they be able to get the financing
4 to do the kind of facility, etc.

5 COMMISSIONER MCHUGH: All I wanted to
6 do is to make sure we understood it was not
7 either/or.

8 CHAIRMAN CROSBY: I agree with that.
9 I agree with that. As best again, we have made an
10 effort to try to figure out legislative intent.
11 This is one place where we did want to ask the
12 advice of the Legislature because we are trying to
13 figure out what they would want us to do under these
14 circumstances.

15 And to the extent that anybody will
16 talk with us and talk straight, it is I think quite
17 clear that the Legislature's higher priority as
18 between waiting for a long time or having the
19 possibility downstream of two, waiting for a long
20 time is less desirable.

21 There is little appetite that I can
22 hear about that has the Legislature suggest that
23 they'd like us to wait, and that that was the
24 intention.

1 So, I'll tell you where I come down on
2 this, unless anybody wants to say something else.
3 The thing as I wrestled with this that ends up being
4 crucial to me is that if we open it up to commercial
5 licenses, one of the options we will continue to
6 consider is the Tribal option.

7 It's just as if in a practical matter,
8 the Tribe either can bid commercially if it wants.
9 Or if it chooses not to bid commercially it can just
10 keep going down the land in trust process.

11 If the Tribe's assertions about when
12 it's going to get land in trust are true, are
13 accurate, it will happen before we are making a
14 decision on the commercial license. So, we would
15 then look at the situation and we will be trying
16 to determine what's in the best economic interest
17 of the Commonwealth.

18 If they got their land in trust, then
19 we will have that as an option. And we might say
20 to the commercial bidders we're not going to go
21 commercial bidder. We're going to go with the
22 Tribe. So, the Tribe doesn't lose the option of
23 us still deciding that's a better way to go by us
24 opening up to the commercial market.

1 That's just in the nature of things.
2 That's not a conscious decision or not to do
3 two-track. It's just in the nature of things
4 because they have every right to continue to go
5 ahead and pursue the land in trust. And if it's
6 on the schedule they say it's on, we will know a
7 lot before we make that final licensing decision.

8 The Tribe actually in this -- All of
9 these choices are lousy. I agree. But among
10 lousy choices, the Tribe has more options than
11 anybody else. They get to bid commercially if
12 they want to. If they bid commercially and lose,
13 they can still do a casino on their own hook if they
14 do get their land in trust.

15 And the best choice of all is that if
16 their assertions as to schedule are right and they
17 put the land in trust option in front of us with
18 a signed, approved compact before we make the
19 licensing decision for the commercial. So, as
20 suboptimal as it is, it's less suboptimal than any
21 other choice.

22 COMMISSIONER MCHUGH: I see it in
23 essentially the same terms with one clarification.
24 And maybe it's not a clarification, maybe it's the

1 same thing. We've talked before about parallel
2 tracks, i.e., we'd go down the commercial track,
3 we'd go down the Tribal track. By the time we're
4 ready to issue a license, we'd look to see where
5 the Tribe was. If the Tribe had succeeded, we
6 would withdraw the commercial piece.

7 We've talked about how fair that would
8 be to the commercial applicant. We've talked
9 about whether under that kind of a situation a
10 commercial applicant would bid. We've talked
11 about the equal protection kinds of problems that
12 would remain.

13 It seems to me though that if we did
14 what you suggested and said basically that we were
15 going to open it up, but when it came time to our
16 licensing, commercial licensing, the piece that we
17 have control over, we were going to look at this
18 purely as an economic and other decision.

19 So, that if the Tribe were there and up
20 and running that did not necessarily mean that we
21 wouldn't issue a commercial license. It would
22 mean that we would require the commercial licensee
23 to demonstrate to us on a business sense that this
24 was a commercially viable venture. And take into

1 account the 15 to 17 percent we could get from the
2 Tribe, among other things before making a
3 judgment. But the judgment would be made on
4 economic and other terms, not on a set aside term.

5 CHAIRMAN CROSBY: Exactly.

6 COMMISSIONER MCHUGH: That it seems to
7 me --

8 CHAIRMAN CROSBY: I just want to make
9 one thing. That was actually a click in my brain
10 that I hadn't quite got to. If we go commercial,
11 the Tribe is perfectly able to go ahead and do what
12 it's doing right now anyway. And it can come to
13 us at any time with land in trust and a compact and
14 say we want to go with you.

15 And we will have to make that decision
16 if it comes to us. It's not like us opening up two
17 tracks. It's just its own natural process taking
18 place. And we will then be directed by our statute
19 to make the decision which enhances the economic
20 development and revenues and everything else the
21 best for the Commonwealth.

22 So, the commercial bidder, the
23 commercial bidder in Springfield has to bid
24 against three other bidders, three other

1 commercial bidders. At the moment, there's one
2 commercial prospect in Southeastern Mass. In
3 effect, they are going to have to consider the
4 Tribe as potential competition knowing that it
5 could turn out that the Tribe offers a better
6 financial and economic situation for the
7 Commonwealth. So, that's no big deal. Everybody
8 has competition.

9 COMMISSIONER ZUNIGA: I would agree
10 exactly with those notions. It's a different kind
11 of competition but what I was terming relative to
12 the financial projections of a commercial bidder
13 and what those projections turn out to be if
14 there's a competing interest, all of that would
15 have to be analyzed on the merits of that proposal.

16 How we feel they've assessed that risk
17 and whether they have incorporated it. Or simply
18 before we make the licensing decision, whether
19 there's new information that informs those risks
20 that I keep talking about. That makes our
21 decision to be based on the merits of the financing
22 for one among other things.

23 COMMISSIONER CAMERON: Let me see if
24 I'm understanding. I know you're saying

1 something a little bit different. Mr. Chair, what
2 I first heard from you was kind of assess both
3 situations and make a decision. And Commissioner
4 McHugh, was saying well, that decision should be
5 made on the best proposal, the economics.

6 CHAIRMAN CROSBY: What I'm saying now
7 is given what I know as best I can discern what the
8 Legislature wanted, as best I can figure out about
9 all of the different competing interests here, it
10 is not a wise choice on our part to wait further
11 for a commercial option for an unknown future on
12 the Tribal side. The cost of doing that is a cost
13 too high in my opinion.

14 What helped me come to that conclusion,
15 however, is realizing that if we go down the
16 commercial route, we're still going to have the
17 Tribe sitting there doing whatever the Tribe does.
18 And if it comes to us with a proposition that it
19 can demonstrate is economically attractive to the
20 Commonwealth, maybe more attractive than the
21 option that the commercial bidder has, we can look
22 at that and we can make that decision.

23 COMMISSIONER CAMERON: So, we could
24 look at saying okay, the Tribe has made enough

1 progress or their proposal is such that that's the
2 only, we're going with that option? And we're not
3 going to issue a commercial license?

4 CHAIRMAN CROSBY: No, in my scenario
5 we would be deciding -- Oh, I'm sorry. Yes. We
6 might decide not to issue a commercial license.

7 COMMISSIONER CAMERON: Is that fair to
8 say here's your \$400,000, we're opening up the
9 Region. And then get down the road and say, oh,
10 we're not going to issue a commercial license?

11 COMMISSIONER ZUNIGA: I would
12 underscore what Commissioner McHugh was saying.
13 We have control and analysis over the commercial
14 license, unless of course the Tribe decides to bid
15 commercially. With that aside, if we were to
16 issue an RFP, we give it some time because that's
17 what our process calls for, get a proposal back.
18 We analyze that proposal with all of the context
19 around it taking into place.

20 Meaning, whether there's more doubt
21 relative to the viability of that license, the
22 commercial license that we issue by virtue of
23 whatever the Tribe may have or may have not
24 accomplished between now and then. But we would

1 be analyzing the merits of the proposal for which
2 we control, which is the commercial license.

3 COMMISSIONER MCHUGH: I think that is
4 a difference, Mr. Chairman, between what I said and
5 what Commissioner Zuniga just restated and what
6 you said.

7 As I view it, if we go down the
8 commercial path, we would take the commercial path
9 to the end.

10 COMMISSIONER ZUNIGA: Yes.

11 COMMISSIONER MCHUGH: And we would get
12 a commercial proposal or proposals. And we would
13 look at the commercial proposal or proposals and
14 make a judgment, economic and other based on the
15 facts as they then occurred and appeared at the
16 time, taking into account whether the Tribe had its
17 approvals and was likely to succeed. Or had
18 progressed in such a way that we could tell it was
19 likely to succeed or unlikely to succeed.

20 And then look at the economic and other
21 viability of the commercial proposal as against
22 what we then knew about the Tribe. And make a
23 decision as to whether to issue a commercial
24 license --

1 CHAIRMAN CROSBY: Or not.

2 COMMISSIONER MCHUGH: -- or not based
3 on our assessment of its economic viability but not
4 because the Tribe -- but not act if the Tribe got
5 to us first and said here's a really good proposal.

6 In other words, we start down the
7 commercial path, go to the end. Take a look at the
8 facts as they then existed and make a decision as
9 to whether to issue a license or not based on a
10 value to the Commonwealth in light of all facts as
11 they then existed.

12 COMMISSIONER CAMERON: So, that is a
13 dual track.

14 COMMISSIONER MCHUGH: No. Because
15 the dual track that we were talking about before
16 was a track in which if the Tribe got its land in
17 trust, we would say, no matter where we were, we're
18 not going to issue a license.

19 That we're going to proceed down two
20 separate tracks. The Tribe would go down its
21 track. We would go down the commercial track.
22 But we would stop the commercial track if the Tribe
23 succeeded to a certain level. That's the idea
24 that was initially dual.

1 This is not a dual track in the sense
2 that we could very well have confidence that the
3 Tribe was going to get its casino and yet the
4 commercial casino was an economically viable
5 entity, notwithstanding the Tribe.

6 COMMISSIONER ZUNIGA: Right.

7 COMMISSIONER MCHUGH: And as you said
8 in Pennsylvania there maybe some synergy there
9 that it could be demonstrated so that the
10 Commonwealth winds up in a better deal -- both
11 sides end up in a better deal.

12 COMMISSIONER CAMERON: I'm not sure
13 how the Commonwealth could end up with a better
14 deal after getting zero percent from the Tribe.

15 COMMISSIONER ZUNIGA: There would be
16 jobs in construction for that operation.

17 COMMISSIONER MCHUGH: They would have
18 to make the case that the 25 percent the commercial
19 casino generated was greater than the 17 or 15
20 percent that the Tribal casino would have
21 generated had it been there exclusively.

22 And they would have to show that by
23 doing market share analysis as well as revenue
24 analysis. Maybe they can't do it. But at least

1 that's an economic judgment rather than a
2 political judgment.

3 CHAIRMAN CROSBY: Or set aside.

4 COMMISSIONER MCHUGH: Set aside.

5 COMMISSIONER ZUNIGA: I don't mean to
6 complicate things, but --

7 COMMISSIONER MCHUGH: Go ahead.

8 COMMISSIONER ZUNIGA: -- the only ones
9 that can in my mind, in my opinion can really have
10 a dual track are the Tribe. If we decide to open
11 up for a commercial license that region, they could
12 start to put together a commercial bid and continue
13 with their land in trust process until such time
14 it becomes convenient for them to withdraw or not
15 or suspend. Withdraw their application, if it's
16 with us or suspend their efforts if they feel they
17 can further continue their commercial license
18 application, because they feel good about it.

19 I guess we're now in agreement, you and
20 I Commissioner, relative from our perspective if
21 we issue an RFP for that Region, we should analyze
22 the proposals that come under that RFP on the
23 merits, on their own merits. Again, taking into
24 account what's around it, but what makes those cash

1 flows confident or viable.

2 COMMISSIONER CAMERON: So, if
3 proposals came in, commercial proposals and they
4 didn't demonstrate to our satisfaction that they
5 were more advantageous than what the Tribe could
6 offer, than we would not issue a commercial
7 license.

8 COMMISSIONER MCHUGH: Depending on
9 where the Tribe was, yes. We'd take into account
10 where the Tribe was, what we were reasonably
11 certain the Tribe's prospects were as it then
12 appeared, what the value we would get from a
13 commercial casino given what we know about where
14 the Tribe was at that time. And does that value
15 from the commercial casino outweigh what we think
16 we can get from the Tribe when it comes. It's a
17 competition of a different kind is what we're
18 talking about.

19 CHAIRMAN CROSBY: Right. Given what
20 we've heard from the one bidder that's in the
21 market, the one bidder that's in the market has
22 repeatedly said to us, we don't care what's going
23 on with the Tribe. We want to go forward. We
24 don't care whether it's another casino. It's not

1 a problem. That's what they've been saying.

2 (A) This will flesh out what the market
3 will really bear. The question you were
4 originally saying, can they see an ROI that has a
5 minimum \$500 million plus an \$85 million licensing
6 fee. This will flesh out whether this is for real.
7 And is there anybody else besides K.G. that's
8 interested.

9 But also I don't see it as different in
10 kind really in any fundamental way, especially
11 given what they're saying so far from the
12 competition that everybody else is going through.
13 I don't see why this is any different from the
14 people in Springfield -- I'm sorry in Western Mass.
15 where they have at best a 25 percent chance of
16 winning. We're going to make the decision based
17 on an economic analysis of what's best for the
18 Commonwealth.

19 COMMISSIONER CAMERON: Correct, but
20 we are most assuredly unless they are all very poor
21 quality bids, we are going to issue a commercial
22 license. There is no certainty of that.

23 CHAIRMAN CROSBY: We are going to
24 issue a license.

1 COMMISSIONER CAMERON: A commercial
2 license.

3 COMMISSIONER MCHUGH: In the other
4 regions.

5 COMMISSIONER CAMERON: Yes, but
6 there's no certainty that with this plan that
7 you're proposing.

8 COMMISSIONER ZUNIGA: Technically, we
9 don't have to issue a license in any region unless
10 we're convinced that they bring an economic
11 benefit to the Commonwealth. I think it's under
12 the same general principle for Region C we start
13 with a very different flavor of competition we'd
14 be analyzing.

15 COMMISSIONER MCHUGH: It is a
16 different flavor of competition. But it's not one
17 that has any noncompetitive elements to it. In
18 other words, there's no disappearing eligibility
19 based on -- automatically disappearing
20 eligibility based on what the Tribe does.

21 The commercial person goes through,
22 they have to demonstrate what they're going to do
23 vis-à-vis Twin Rivers, if they're viable vis-à-vis
24 whatever Twin Rivers turns out to be, whatever

1 turns out to be what the Tribe does, what happens
2 in Region A, where a slots parlor is. There's a
3 lot of variables. And that's just one more
4 variable than exists in other regions. But the
5 analysis is the same in all regions.

6 CHAIRMAN CROSBY: We're going to make
7 a decision based on which bidder offers us the best
8 economic values basically.

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: And that's going to
11 be true -- that would be true in Region C as well
12 as Region A and B. The exact same criteria are
13 going to be at play. What is the best long-term
14 economic deal for the Commonwealth.

15 COMMISSIONER ZUNIGA: Among those is
16 how viable a commercial license with the prospect
17 of competition from the Tribe and how sustainable
18 that is and for how long. It's not just at one
19 point in time. We'd have to be convinced that even
20 with competition, by virtue of the Tribe
21 potentially pursuing Class II gaming on their own,
22 what would that do to that license, Region C
23 commercial license.

24 CHAIRMAN CROSBY: You were thinking

1 about maybe getting some more information here,
2 where are you at this point about --

3 COMMISSIONER STEBBINS: I'm just
4 sitting here thinking back about benefits for the
5 Tribe and kind of a revised dual track scenario.

6 COMMISSIONER MCHUGH: One thing we
7 could do, Mr. Chairman, and we've been talking
8 about this for a long time, as we should. This is
9 a big deal. We need to decide and we need to move
10 forward. But one step might be to coalesce to the
11 extent we can around a target solution. And give
12 everybody one more chance to comment on that target
13 solution for say a couple weeks. And then come
14 back and make the decision to make sure we haven't
15 overlooked something.

16 And make sure that everybody has a
17 chance to give us a final comment. They may say
18 just what they said before. As much as I believe
19 that the solution we've been talking about is the
20 right solution, that might be a way, a good way to
21 proceed. And simply look at those comments and
22 then make a decision that we haven't overlooked
23 something.

24 CHAIRMAN CROSBY: Given how long it's

1 been and given how much comment we've had, I think
2 my preference would be to structure it a little bit
3 differently. If we indeed do support this
4 approach, do a presumptive step in that direction.
5 Then put out some assignments.

6 We've got to think about how this would
7 work operationally. What would we do next? And
8 invite comments on that presumptive vote. And if
9 something comes up that makes us want to rethink
10 it, we could rethink it.

11 COMMISSIONER MCHUGH: I don't think
12 we're saying different things.

13 CHAIRMAN CROSBY: Okay.

14 COMMISSIONER MCHUGH: Just not take a
15 final vote today. Coalesce around some plan.
16 Draft the mechanics of that plan, come back and
17 consider whatever comments we've received. And
18 then implement the plan or not if we've overlooked
19 something. Is that what you were saying?

20 CHAIRMAN CROSBY: Not quite. It's
21 partly semantic. But I think there's a sense that
22 it's decision time. And I think it's decision
23 time too. And we have really gone head over heels
24 to give everybody a chance to give us their say-so

1 and to have us say we'll make a final decision in
2 a week or two -- I guess I would like to have a vote,
3 I think.

4 I'd like to have a vote that creates a
5 clear presumption that we're on a certain road.
6 And as we then step off to flesh that out, if
7 something comes out of the woodwork that we totally
8 missed, then of course we'd reconsider that.

9 For what it's worth, I would prefer to
10 make a decision.

11 COMMISSIONER ZUNIGA: I would agree
12 with that. I think it's incumbent upon us and our
13 public and our constituents to make a decision.
14 There's a lot of time that passes between deciding
15 to issue an RFP and eventually licensing. I don't
16 want to get caught up into a dual track. I think
17 what we talked about is, I think, is fundamentally
18 understood. But I think it's decision time.

19 COMMISSIONER MCHUGH: I think I know
20 -- I don't think I know, I know what I think is the
21 right decision. So, I'm prepared to do that. I
22 sense that --

23 CHAIRMAN CROSBY: Just a little bit of
24 a way, it's -- I think everybody would agree with

1 you that if something comes out of the woodwork
2 that we hadn't anticipated, we would think about
3 that. I think the way we structure, the way we
4 frame -- the way we phrase the action we take today
5 is what we're concerned about.

6 COMMISSIONER CAMERON: This
7 particular plan has not been out there, correct?
8 No one has commented on this particular path
9 forward.

10 COMMISSIONER ZUNIGA: I would argue
11 that they have.

12 CHAIRMAN CROSBY: I agree.

13 COMMISSIONER CAMERON: Well, we got
14 the negatives about a dual track, but what this is
15 now is different than what was spoken about before.

16 COMMISSIONER ZUNIGA: No, no. We
17 would issuing an RFP, if the majority approves
18 that. Of course that could be defeated and then
19 we wait. But we'd be issuing an RFP for Region C.

20 COMMISSIONER CAMERON: But with the
21 difference -- To me it's not the same as an RFP for
22 Region C because there are different
23 circumstances. There's a piece here that that
24 commercial license may never be awarded. So, I do

1 see it as different.

2 COMMISSIONER ZUNIGA: Just like any
3 other license will not be awarded if it's not
4 viable.

5 COMMISSIONER CAMERON: There is a
6 distinction. There is a distinction.

7 COMMISSIONER ZUNIGA: All I'm saying
8 is I think what we've been discussing is if and when
9 we get a commercial bidder -- If we issue the RFP,
10 if and when we get a response that response is going
11 to be analyzed on its own merits subject to the
12 financial suitability.

13 And that financial wherewithal would
14 have to by necessity take into account how real is
15 a Tribal operation however far from where they
16 propose. If that's taken into account properly
17 with some degree of confidence, we'd have to see
18 if it meets the minimum investment requirement, if
19 it's beneficial to the Commonwealth and then make
20 a decision on awarding of a license or not.

21 CHAIRMAN CROSBY: Clearly, we're
22 using different words. There's no question about
23 that. I think what dawned on me was this is not
24 an action that we are taking. This is an action

1 that is there.

2 If we go down the commercial path,
3 anybody who is really thinking clearly about this
4 realizes that any point in time, the Tribe might
5 get land in trust and maybe have a signed compact
6 and be ready to present an alternative. It's not
7 within our control.

8 So, if anybody's been thinking about
9 this carefully, they would realize that this has
10 always been an option if we go down the commercial
11 route. So, in that sense it's nothing new for
12 people to think about if they've really been paying
13 attention.

14 But I understand what you're saying.
15 We're framing it a little differently.

16 Okay, where are we?

17 COMMISSIONER CAMERON: I was
18 comfortable with really trying to get some
19 comments, because I think there could be things
20 that we're not thinking about. This is the first
21 time that I've heard this plan. I had a different
22 opinion about the dual track, which I do see the
23 distinction.

24 But this particular plan I don't think

1 anyone necessarily would have thought about. I
2 don't think that people would have seen this
3 clearly by imagining a commercial, but then we're
4 going to assess and see where the Tribe is and look
5 at all of the economics. I don't think anyone
6 would have necessarily thought through all of
7 those ramifications.

8 So, I was comfortable when you,
9 Commissioner McHugh, said look, we could ask for
10 comments for a week or two. And I do understand
11 that we don't want to drag this out. And it is
12 important the region does not fall behind. So, I
13 do understand that sense of urgency.

14 But I do think this is something -- I'm
15 trying to think of in this -- How long have we been
16 talking about this, for an hour? I'm trying to
17 think of all of the possibilities around this new
18 scenario that I'm hearing for the first time.

19 COMMISSIONER MCHUGH: I would really
20 like, as we all would, everybody to be comfortable
21 with this.

22 CHAIRMAN CROSBY: Everybody meaning?

23 COMMISSIONER MCHUGH: The five of us.
24 I think we all would. I understand the

1 desirability of stopping talking and doing
2 something. But I don't think two weeks is going
3 to make that big a difference if it could raise the
4 universal comfort level around this table.

5 So, I reiterate the desirability of
6 doing that. I will tell you plainly, I'm prepared
7 to vote yay today, but I do not think -- on what
8 we talked about. And it will take some powerful
9 comments to change my mind. I think this is the
10 right way to go. I've thought about it. We've
11 talked about it, listened to it. But I think it's
12 very important for the decision to be unanimous if
13 it can be. Let me put it that way.

14 CHAIRMAN CROSBY: Do you have a sense
15 just on this issue about whether to vote or not?

16 COMMISSIONER STEBBINS: I guess I join
17 with Commissioner Cameron and the Judge's original
18 notion of laying out the scenario for comment.
19 Because I think it is different than anything we
20 talked about before. I totally subscribe to
21 deciding one way or the other how we're going to
22 proceed. We don't want to leave Region C behind.

23 CHAIRMAN CROSBY: In that case, for
24 sure it might be that if we had a vote to do that,

1 it wouldn't go forward. But even without that,
2 the two certain we would rather let this think a
3 little bit plus at least a partial also, I think
4 for better or worse we should wait a couple of
5 weeks.

6 COMMISSIONER MCHUGH: I would like to
7 say that -- I'm sorry. I didn't mean to cut you
8 off. Go ahead.

9 COMMISSIONER ZUNIGA: Please.

10 COMMISSIONER MCHUGH: I would like to
11 say not we're going to wait a couple of weeks. I'd
12 like to frame a target in the terms that we talked
13 today. And in essence say we will receive
14 comments on why we should not do X. And spell out
15 what X is so that everybody has a firm target about
16 which to comment.

17 And so that all of us understand what
18 the comments are in that and have a proposal on the
19 table. So, in that sense we're advanced and we
20 either come back in two weeks and say we're going
21 to go forward with that target. We're going to
22 make slight modifications or somebody's told us
23 something that changes our mind.

24 CHAIRMAN CROSBY: That's actually

1 helpful, I think. Do we do by consensus, just by
2 consensus of the group that there is a pretty broad
3 consensus that this plan is the right way to go,
4 but because this is the first time it's really been
5 considered in detail, we want to give a last couple
6 of weeks opportunity for people to comment. Make
7 sure that there is no points that we're missing.
8 And unless we hear that there are some points that
9 we were missing, we would then confirm that in two
10 weeks.

11 COMMISSIONER MCHUGH: That's the way
12 I'd like to frame it.

13 COMMISSIONER ZUNIGA: I may not be
14 joining the consensus only because I don't think
15 it's a new plan. Like you stated earlier, it was
16 always --

17 CHAIRMAN CROSBY: Excuse me. The
18 consensus was that this is the right way to go, not
19 a consensus that this is a new plan.

20 COMMISSIONER ZUNIGA: I know. I
21 won't be joining the first consensus because I
22 think this is not a new plan. The plan to bid
23 Region C -- or rather the option to bid Region C
24 always carried with it the risk of the Mashpee

1 eventually obtaining land into trust, and being
2 able to conduct Class II gaming by their own right
3 in that region. The compact contemplates that.
4 It was affirmed twice.

5 It's not a new option. It's important
6 for us to clarify and for everybody to be
7 comfortable with, and I agree with that. But I
8 just want to state perhaps now three times that I
9 don't think it's a new plan.

10 CHAIRMAN CROSBY: I don't disagree.
11 I'm not crazy about two weeks for everybody to get
12 all ginned up. And you can imagine the firestorm
13 that's going to -- we're going to have a tsunami
14 coming down on us for two weeks. But such is life.

15 And I defer to the concern --

16 COMMISSIONER ZUNIGA: To the
17 majority, I guess.

18 CHAIRMAN CROSBY: Even if it's not a
19 majority. If there are two strong feelings that
20 this is almost for sure the right way to go, but
21 we need a little bit of time to think about it, then
22 I think that even if it were just two, I would defer
23 to that.

24 COMMISSIONER STEBBINS: I just am a

1 little bit in disagreement of this isn't a new
2 approach. Because as we've been talking about it
3 and explaining it, there is an evolution
4 relatively new at the end of this path that before
5 we award a commercial license, we would look at the
6 status of the Tribe's --

7 COMMISSIONER ZUNIGA: No, no, we would
8 not. We would look at the status of that bid, the
9 bid of the commercial license, and how reliable the
10 financing of that bid is in the context of what's
11 around it. I'm sorry I interrupted you,
12 Commissioner.

13 COMMISSIONER STEBBINS: No, no, no.

14 COMMISSIONER ZUNIGA: I think that's
15 the key of the difference, which we're not doing
16 a then look at what's going on with the Mashpee and
17 say do need us to wait some more, or anything like
18 that.

19 We're going to get confident or not
20 that that license is reliable -- I'm sorry, viable.

21 CHAIRMAN CROSBY: And the best way to
22 go.

23 COMMISSIONER ZUNIGA: And the best way
24 to go. It's the case for any other region. For

1 Region A or B we may end up, whether it's four that
2 gets narrowed down to three or whatever the case
3 may be, we have to fundamentally be convinced that
4 that proposal is viable, not just because it's the
5 highest bid but because they have a plan. They
6 have a strategy. And they have done any number of
7 other things that makes that project viable.

8 I think it's the same analysis over
9 here with a different flavor of competition. That
10 competition was always there that the Mashpee
11 could eventually one day in the future, we don't
12 know when, and I guess that's the crux of it, obtain
13 land into trust and conduct Class II gaming.

14 I think you alluded to this earlier
15 that option is two casinos in that region. That's
16 effectively what we're talking about. Whether
17 the license that we would be awarding in that
18 region is viable with the eventual presence of a
19 second casino.

20 It's not as if we would then say no, we
21 only wanted one casino and now we're going to go
22 over here. I think that's fundamentally
23 different.

24 CHAIRMAN CROSBY: I totally agree with

1 you, but not everybody does.

2 COMMISSIONER CAMERON: I don't see it
3 as the same.

4 COMMISSIONER MCHUGH: Should we do
5 something like agree that we will ask for public
6 comment for the next two weeks on why we should or
7 should not open Region C to commercial RFPs with
8 the Commission taking into account in deciding
9 whether to issue a commercial license to an
10 applicant the economic and other circumstances as
11 they exist at the time of the licensing decision
12 in light of the statutory objectives that governs
13 expanded gaming in the Commonwealth.

14 CHAIRMAN CROSBY: Yes.

15 COMMISSIONER CAMERON: I think that's
16 well phrased.

17 CHAIRMAN CROSBY: Just leave that as a
18 sense.

19 COMMISSIONER MCHUGH: Is there any
20 reason why we shouldn't do that?

21 CHAIRMAN CROSBY: Yes, but --

22 COMMISSIONER MCHUGH: Do we agree that
23 we should do that?

24 COMMISSIONER ZUNIGA: I'd be voting no

1 on that, but that's just for the record.

2 CHAIRMAN CROSBY: I think we're having
3 a sense that yes that is what we're going to do.

4 COMMISSIONER MCHUGH: That is the
5 question that we will put up on the website. And
6 we will invite comments at MGC Gaming in the normal
7 fashion with whatever we want to put in the subject
8 line to get those into the right pocket. And we
9 can review them and revisit this in two weeks.

10 CHAIRMAN CROSBY: In the meantime, I
11 think in the interest of time, we ought to be
12 thinking about if we do go down this road, which
13 all of us I think think is a good idea and unless
14 something dramatic happens we will be pursuing,
15 for that reason, we ought to start thinking about
16 the process ASAP since the whole idea is not to fall
17 further behind.

18 COMMISSIONER MCHUGH: Right, right.
19 And we could come back in two weeks with a
20 contingent process to vote on that day so to get
21 this moving forward if that's the direction in
22 which we go.

23 CHAIRMAN CROSBY: Okay. Anybody else
24 got anything to talk about? Long day's work. Do

1 I have a motion?

2 COMMISSIONER MCHUGH: Move to
3 adjourn.

4 CHAIRMAN CROSBY: All in favor, aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER CAMERON: Aye

8 COMMISSIONER MCHUGH: Aye.

9 CHAIRMAN CROSBY: Meeting is
10 adjourned.

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12 (Meeting adjourned at 2:43 p.m.)

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ATTACHMENTS:

1. Massachusetts Gaming Commission April 4, 2013 Notice of Meeting and Agenda
2. Massachusetts Gaming Commission March 12, 2013 Meeting Minutes
3. Massachusetts Gaming Commission March 14, 2013 Meeting Minutes
4. Massachusetts Gaming Commission March 21, 2013 Meeting Minutes
5. Massachusetts Gaming Commission RPA Election Chart
6. Massachusetts Gaming Commission 3/27/2013 Summary Schedule Update
7. Massachusetts Gaming Commission Master Schedule Category 2 Licensing Schedule Scenarios
8. Report of the Massachusetts Gaming Commission to the Senate and House of Representatives Pursuant to Chapter 194, Section 104 of the Acts of 2011, Analyzing the Commonwealth's Pari-Mutuel and Simulcasting Laws, with Recommendations as to Their Efficacy and Need to be Replaced

1 ATTACHMENTS(continued):

2 9. Text of Chapter 194 Section 91 and Section 2.6
3 of Compact

4 10. Proposed New Chapter

5 11. April 4, 2013 Memorandum Regarding Hearing
6 Officer for Racing

7 12. Division of Racing Quarterly Report - April
8 4, 2013

9 13. March 28, 2013 Letter From Todd & Weld, LLP
10 Regarding Region C

11 14. April 1, 2013 Letter from Shefsky & Froelich
12 Regarding Region C

13 15. Massachusetts Gaming Commission Region C
14 Suggested Issues for MGC Discussion

15

16 SPEAKERS:

17

18 Catherine Blue, General Counsel

19 Dr. Jennifer Durenberger, Director of Racing

20 David Murray, Racing Division Consultant

21 John Ziemba, Ombudsman

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C E R T I F I C A T E

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

I, Laurie J. Jordan, further certify that the
foregoing is in compliance with the Administrative
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otherwise interested in the outcome of this
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WITNESS MY HAND this 8th day of April, 2013.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018

