

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #118

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

May 1, 2014 10:30 a.m.

BOSTON EXHIBITION AND CONVENTION CENTER

415 Summer Street, Room 102

Boston, Massachusetts

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

2

3 CHAIRMAN CROSBY: Welcome,
4 everybody. I am pleased to call to order
5 public meeting number 118 of the Mass. Gaming
6 Commission being held again at the Boston
7 Convention Center at about a couple of minutes
8 after 9:30.

9 COMMISSIONER ZUNIGA: 10:30.

10 CHAIRMAN CROSBY: I'm sorry, after
11 10:30. Thank you.

12 The first two items on the agenda
13 are to discuss the premises of the gaming
14 establishment for which the two Region A
15 applicants seek approval. But there have been
16 some developments recently that I need to bring
17 up. Late yesterday, yesterday afternoon about,
18 I think, 4:00 we received a letter from the
19 city requesting a one-week extension in the
20 negotiation -- in the time between now and the
21 time we would hold this meeting, in other
22 words, a one-week extension on the negotiating
23 process that we are in now.

24 The letter I want to read to you

1 says: Dear Chairman Crosby and Massachusetts
2 Gaming Commissioners, the city of Boston (the
3 city) requests the Mass. Gaming Commission
4 postpone its public meeting scheduled to be held
5 May 1, 2014 at 10:30 AM to determine the
6 premises of the gaming establishment for which
7 Mohegan Sun Massachusetts, LLC seeks approval
8 in its RFA-2 application, and determine the
9 premises of the gaming establishment for which
10 Wynn Mass., LLC seeks approval in its RFA-2
11 application.

12 The city respectfully requests this
13 postponement of no less than seven days in
14 order to determine what action, if any, the
15 city is required to take in accordance with the
16 gaming applicants and applicable law and other
17 relevant provisions in General Law Chapter 23,
18 the Gaming Act. And the city makes this
19 request so that the city has an adequate
20 opportunity to review new information which may
21 be forthcoming from the applicants and evaluate
22 such information accordingly.

23 The city would appreciate receiving
24 your concurrence to its request for a

1 postponement today. -- That was yesterday and
2 was obviously not possible. -- Thank you for
3 your immediate attention to this important
4 matter of public interest. Very truly yours,
5 Elizabeth Dello Russo, Senior Assistant
6 Corporation Counsel.

7 That letter was followed an hour or
8 two later by a call from the Governor to me
9 requesting that we do give due consideration to
10 the city's request and encouraging us to grant
11 the one-week request. I just want to find my
12 notes.

13 He felt strongly that it is in
14 everybody's interest to have this resolved in a
15 negotiated and amicable way. And, and I want
16 to characterize his point of view as carefully
17 as possible, so this is close to a direct
18 quote, he had talked to Mayor Walsh, and he
19 believes, he the Governor, believes that the
20 parties are close enough that it is worth
21 giving the process another week.

22 I said that we would take it under
23 advisement. Obviously, I'm only one member of
24 the Commission. I did tell the Commissioners

1 last night about the Governor's call in order
2 that they would have time to think about it.
3 We have not deliberated on it for reasons which
4 you all know.

5 We also have the fact that we have a
6 number of parties who have submitted briefs and
7 who are here today to testify. And we need to
8 think about what is equitable for them as we
9 also think about what we do on this request.

10 So, before we get into the original
11 anticipated topics, I throw it open for
12 discussion on principally the question of
13 whether we should grant the week. And
14 secondarily, how we handle appropriately the
15 folks who are here in the expectation of
16 participating in the process.

17 COMMISSIONER ZUNIGA: I'd like to
18 mention something. This is not the first
19 letter or the first comment like this that we
20 get from the city. But it is certainly the
21 first time that we hear from the Governor,
22 obviously.

23 CHAIRMAN CROSBY: And I would like
24 to emphasize that. This is the first time I

1 have ever heard from the Governor.

2 COMMISSIONER ZUNIGA: So, this
3 probably really makes it a unique and worthy of
4 consideration situation. But if I read -- I've
5 read and reread the letter from the city, there
6 is not a lot in there that would lead us to
7 believe that there is something significantly
8 new. I would just like to get your thoughts,
9 Mr. Chairman, as to whether some of that is
10 maybe in fact the case.

11 CHAIRMAN CROSBY: As to?

12 COMMISSIONER ZUNIGA: Well, they do
13 say that they need time to review new
14 information, which to their credit they have
15 been asking for a long time and that's great.
16 There appears to be -- If there is new
17 information in their view then that's
18 fantastic. But would a week satisfy this new
19 information is fundamentally my question, the
20 review of that new information?

21 CHAIRMAN CROSBY: I don't know
22 anything more than you do. I think the
23 Governor's perception having spoken to the
24 Mayor, which none of us have, the Governor's

1 perception was two things. One is he believes
2 strongly and I think we all agree with this
3 that this process is meant to be a negotiated
4 process between and among the various parties.

5 Whether it's host or surrounding,
6 either one is a negotiated process.
7 Arbitration and court actions are undesirable
8 to the extent that they can be avoided. I
9 think that was part of what motivated him. And
10 as I read, he, I believe, believes that the
11 parties are close enough that it warrants
12 another week of conversation, a week of time, I
13 should say. But that's really all I have to
14 conclude.

15 The city, the request was for not
16 less than a week. I assume they didn't pick
17 that number without reason. So, I could only
18 conclude that the city has some confidence that
19 that week would do the job whatever job it is.
20 They don't articulate what they think the
21 outcome is of that week.

22 COMMISSIONER CAMERON: Mr. Chair,
23 you in particular have said all along that a
24 negotiated agreement between the parties is

1 absolutely the best way to go. I've always
2 agreed with you on that and those statements.
3 I think this may be an example. It is a
4 respectful letter from the city asking for our
5 consideration in this matter. And it is not a
6 long extension. And the information that folks
7 are talking to one another and negotiating with
8 one another certainly is a good thing, part of
9 our process.

10 So, this isn't something that we
11 haven't done before in circumstances. So, I'd
12 be in favor of giving them a week in
13 consideration of conversations that are going
14 on. And realizing that the best decisions are
15 made by the parties involved.

16 COMMISSIONER STEBBINS: I would echo
17 Commissioner Cameron's thought. At some point,
18 we understand that these relationships need to
19 have a life beyond just the initial licensing
20 process. Surrounding community agreements,
21 host community agreements are an arrangement
22 for more than just five or six months. They're
23 an arrangement for anywhere from five to 15
24 years.

1 This might be an opportunity to kind
2 of further those good relationships between a
3 community and our two applicants so that in the
4 future they'll maintain this opportunity to
5 have a good working relationship together.

6 I think, Mr. Chairman, to your
7 second question if I heard you correctly, we
8 certainly have a number of the parties here
9 that wanted to be heard on this issue. And I
10 certainly would entertain, invite them to stay
11 and continue to offer testimony regardless of
12 whether we decide to grant this extension or
13 not. But I would be in favor of it.

14 CHAIRMAN CROSBY: Commissioner
15 McHugh?

16 COMMISSIONER MCHUGH: I think this.
17 There is a deadline. Today is the deadline.
18 We've set deadlines in the past. Deadlines are
19 important. They are important because they are
20 deadlines. And they are important because they
21 are prods to action.

22 As a deadline approaches, people
23 tend to think more concretely about the matters
24 that are in dispute and often reach some kind

1 of a solution. But deadlines aren't absolutes.

2 We had the initial deadlines for a
3 variety of things set up so that we could get
4 the license fees into the state coffers before
5 the end of this fiscal year, and thus
6 accommodate the budget planning that had gone
7 on last fall. For a variety of reasons, that's
8 proven to be impossible. So, we no longer have
9 that functional deadline ahead of us. And it
10 seems to me that a deadline that we set for
11 making a decision today is a useful tool, but
12 does not have a life in and of itself.

13 The request for an extension is
14 short. It's a one-week request for an
15 extension. The request was made by the city
16 and it was made by the Governor. We've got a
17 request by highest elected official in the
18 Commonwealth and the highest elected official
19 in the Commonwealth's major city.

20 And it's backed by an assertion that
21 progress has been made toward an amicable
22 resolution of the issues that now divide the
23 city and the applicants. And I think we have
24 to, for the reasons that Commissioner Stebbins

1 said, allow that ongoing process to improve.

2 We can also, it seems to me Mr.
3 Chairman and colleagues, use the one-week time
4 to perhaps work with the applicant,
5 particularly Suffolk Downs with respect to the
6 terms of the lease that people have inquired
7 about, see if the entire lease needs to be
8 maintained as a trade secret, or whether there
9 are portions of it that can be released so that
10 people can see some of the primary terms of
11 that lease and clear up some of the mystery
12 that surrounds that. So, we can use it for
13 that purpose as well.

14 And it seems to me that granting the
15 continuance really does nobody any harm with
16 the possible exception of the No Eastie Casino
17 folks who are volunteers, who have other
18 things, who are prepared and have been prepared
19 to come here today and present their testimony.
20 But I think with respect to them and with
21 respect to the others who are here today to
22 offer testimony that we could offer them the
23 opportunity to do that today.

24 The city is not here. But the city

1 will have an opportunity to read a transcript
2 and look at the video of what was said today.
3 They can come back next week as well. So, I
4 think we can accommodate them as best we can,
5 given the fact that we didn't get this request
6 until close to 5:00 last night.

7 So, for all those reasons, I would
8 be in favor of allowing the request for a one-
9 week continuance, as it were, and using the
10 time profitably for ourselves and hearing from
11 those who wish to speak today as well.

12 COMMISSIONER ZUNIGA: It looks like
13 we might have a majority already, but I really
14 hope -- And I'm going to say this probably just
15 for the record, but obviously for our audience.
16 I really hope that the city recognizes that
17 this Commission, the staff and many of the
18 other parties here have been acting in nothing
19 but good-faith. And this is really, if we
20 grant this extension, is yet another example of
21 that.

22 I am not suggesting that the city
23 has acted in anything close to bad faith, but
24 it would really help everybody if we don't get

1 letters at 5:00 or 4:00 the day before our
2 meeting. We are constrained for very good
3 reasons, notably the open public meeting and
4 the public purpose to put items on our agenda
5 two days in advance. And there's nothing that
6 can prevent anybody from doing at least a
7 little bit of planning around that.

8 This is partly my point about this
9 not being the first time either. So, I really
10 would hope that that is at least recognized but
11 I would of course join the majority and grant
12 the extension.

13 CHAIRMAN CROSBY: I think your point
14 about that we've been referring to the document
15 between Mohegan Sun and Suffolk Downs or
16 Sterling Suffolk, LLC I think it is as the
17 lease. And as I understand it, it's not a
18 lease. It's a lot of things. It stands as a
19 document, which for the time being serves
20 multiple purposes, but it anticipates that
21 there will be a separate lease at some time and
22 a completed lease. And this is not a completed
23 lease.

24 We have been considering all of the

1 documents pertaining to the land transactions
2 as similar and as fundamentally confidential
3 documents. And I think for the most part that
4 is a reasonable agreement. But this is a
5 differentiateable document from the option
6 agreements, for example, that Wynn and MGM have
7 on their properties.

8 And with giving everybody sufficient
9 notice, we don't want to just do this
10 differently without giving people a heads-up.
11 And there are certainly, I'm sure, things in
12 that agreement which deserve to be protected
13 and appropriately redacted. But I think that
14 this week will be constructively used if we get
15 those redactions done ASAP, agree on what the
16 appropriate redactions and get the document out
17 there. So, that's an important benefit I think
18 of the time.

19 Second point, just sort of my own
20 spin on what others have said, we have
21 considered one of our primary jobs throughout
22 this process, going way back to when
23 Springfield decided to set up its own vetting
24 process, we have considered it one of our jobs

1 to try to facilitate the relationships between
2 the communities and the applicants.

3 One of our very first hires was an
4 ombudsman whose practically full-time job has
5 been to work those relationships. And we have
6 been exceedingly deferential to the local
7 control and local oversight role that is in the
8 legislation and as anticipated. And I think
9 this is consistent with that action
10 particularly since I think nobody's ox gets
11 gored seriously with the extension.

12 Then the third point, and this is
13 nontrivial, obviously, for the record, I have
14 never spoken to the Governor ever since the
15 press event when I was announced nearly two
16 years ago or I guess two years ago. He has
17 never contacted me about this at all or
18 anything else.

19 The fact that he would consider it
20 important enough suggests to me that his
21 conviction about the value of an amicable
22 solution and negotiated party based solution
23 and the likelihood of that occurring is great
24 enough that he would take a fairly unusual

1 step. So, that's meaningful to me. So, taken
2 all together I would recommend that we grant
3 the, how would we frame it -- What did you call
4 it?

5 COMMISSIONER MCHUGH: I called it a
6 continuance but that's holder from a different
7 life. An extension we could call it.

8 CHAIRMAN CROSBY: Right, so
9 extension.

10 COMMISSIONER ZUNIGA: Do we further
11 discuss Commissioner Stebbins's point about
12 whether we allow or permit the speakers, the
13 parties anybody who submitted briefs perhaps
14 would be optional at this point. I don't know.

15 CHAIRMAN CROSBY: Yes, I would
16 completely agree. And I don't think there's
17 any disagreement. I think folks have come here
18 prepared to speak. Anybody that wants to -- If
19 this all gets resolved in the next week and
20 there's no need for us to have this meeting
21 then all to the good. If it doesn't get
22 resolved in the next week then we will
23 reconvene. And if the folks who are here want
24 to give their testimony now and wouldn't

1 preclude them from re-testifying if new issues
2 were raised between now and the end of the
3 week. So, yes, I would agree with Commissioner
4 Stebbins on that. Does anybody disagree with
5 that?

6 COMMISSIONER MCHUGH: Could I just
7 put one point on -- one of my pieces of my
8 thinking about granting this and that is that
9 the Governor's call is important to me in
10 thinking about that, and his statement of
11 belief that the parties would benefit from this
12 because they are close. But it's also
13 important that that was a telephone call about
14 a matter of process and not a matter of
15 substance.

16 It seems to me that the Governor is
17 putting his weight behind a process designed to
18 lead to an amicable agreement is an important
19 point to take into account.

20 Insofar as a matter of substance was
21 concerned, I think we wouldn't have had that
22 conversation. I don't think he would have
23 called. And if he called, I'm sure that none
24 of us would've answered that call.

1 CHAIRMAN CROSBY: Let me just
2 reinforce that. There was no discussion about
3 whether Boston was a host community or a
4 surrounding community. There was no discussion
5 about any of the substantive issues that we
6 have to deal with.

7 It was only his weighing in that he
8 thought that the extension was a good idea.
9 That was the only topic of discussion. That's
10 an important point to make.

11 Do you want to frame it,
12 Commissioner McHugh, make the motion?

13 COMMISSIONER MCHUGH: I'd move Mr.
14 Chairman that the Commission grant the city of
15 Boston's request for an extension of the
16 deadline for making the determination as to the
17 location of the gaming establishment proposed
18 by the Wynn and Mohegan Sun applicants. And
19 extend the date for making that decision until
20 Thursday, a week from today.

21 CHAIRMAN CROSBY: Second?

22 COMMISSIONER CAMERON: I second.

23 CHAIRMAN CROSBY: Any further
24 discussion? All in favor signify by saying

1 aye. Aye.

2 COMMISSIONER MCHUGH: Aye.

3 COMMISSIONER CAMERON: Aye.

4 COMMISSIONER ZUNIGA: Aye.

5 COMMISSIONER STEBBINS: Aye.

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

8 The next or what was to be the first
9 on the agenda was testimony relative to the
10 gaming establishment for which Mohegan Sun, LLC
11 seeks approval. I have some prepared remarks
12 for the process. I think I won't bother going
13 through those because we are not going to do
14 today what they thought we were going to do
15 when we prepared that.

16 So, I think I will leave it a little
17 informal and simply invite, first of all,
18 anybody who submitted either a brief or a reply
19 brief who is interested in testifying on that
20 issue today on Mohegan Sun, please to come
21 forward starting with the applicant.

22 COMMISSIONER MCHUGH: Recognizing, I
23 take it, is implicit in that that if they
24 prefer to defer it to next week or prefer to do

1 some now and do it next week that's their
2 right.

3 CHAIRMAN CROSBY: Correct.

4 MR. CONROY: Thank you, Chairman.
5 I'm Kevin Conroy from the law firm Foley Hoag.
6 I represent Mohegan Sun. We're going to defer
7 nearly all of our testimony today.

8 I did just want to quickly mention
9 the issue of the binding lease agreement that
10 we have with Sterling Suffolk. That is a
11 binding document. It is the equivalent of a
12 lease. And we are very happy to work with the
13 Commission this week on figuring out which
14 portions of that document should be released.

15 We will say though it's a binding
16 document, similar to the document that Wynn has
17 to purchase its property in Everett and a
18 portion of Boston. And we would encourage that
19 the Commission consider requiring both parties
20 to release portions of their binding
21 agreements.

22 CHAIRMAN CROSBY: Okay.

23 COMMISSIONER CAMERON: Thank you.

24 CHAIRMAN CROSBY: I appreciate that

1 point. So, Mohegan, I think No Eastie was the
2 other party that submitted a brief and/or reply
3 brief.

4 MR. CAMERON: Good morning,
5 Commissioners.

6 MR. MYERS: Good morning. Just for
7 the record, Celeste Myers, No Eastie Casino.
8 I'll start us off and then hand you over to
9 Matt Cameron. Just to register again for the
10 record, naturally I'm incredulous that we are
11 here. The language in law seemed pretty clear.
12 The roadmap seemed pretty clear. Despite all
13 odds, we were successful in our mission to pull
14 out a no vote in East Boston. So, naturally,
15 surprised that we're here.

16 One thing that I cannot state
17 enough, and I think everybody knows this is
18 that what we're experiencing right now is a lot
19 of fancy legal machinations trying to extract
20 Suffolk Downs from East Boston and extract East
21 Boston and the city of Boston from impacts of a
22 Suffolk Downs casino. There's simply no way to
23 do that. In a parallel, while we're on the
24 subject, no way to extract Charlestown from the

1 impacts of an Everett casino.

2 What we've also learned through this
3 experience is that the developers will do an
4 awful lot to have things come around their way.
5 In Everett, we've seen some really creative re-
6 imaginations of the law -- I'm sorry, in Revere
7 a lot of creative re-imaginings of the law
8 and in Everett some really creative land deals.

9 And at the end of the day, it still
10 remains that what we've seen, the only folks
11 remaining consistent and the only folks towing
12 the line are the residents, the folks that have
13 followed the law. We have met every benchmark,
14 every high point, every requirement of us.
15 We've conducted ourselves to the standards that
16 you all have set and still have not yielded the
17 results.

18 I guess the key message I'd like to
19 share with Mayor Walsh as he takes the next
20 week to prepare and to negotiate with Mohegan
21 Sun is that what we've learned through our
22 experience is that there is no reason to expect
23 more or to expect that the developers, the
24 negotiators, the landowners with all of their

1 backroom deals including this secret lease that
2 you've conceded Commissioner -- Chairman Crosby
3 that is much more than just a lease. That
4 really is kind of the crux of their
5 negotiation, the crux of their continued
6 investment in this process.

7 And what we've learned is that the
8 reason why folks at every level have been so
9 easy -- so quick to dismiss the resounding vote
10 of no in East Boston, proxy for the city of
11 Boston as enabled by the city council is
12 because people don't feel like they're in any
13 imminent legal, political or financial danger
14 from our little ragtag group, our little
15 scrappy group as we've been called.

16 And it's a caution to Mayor Walsh
17 and the city of Boston and any host community
18 or surrounding community that's entering into
19 an agreement with any of these entities that
20 unless you're prepared to litigate from now
21 into perpetuity, there is no way, no way to
22 guarantee that any of these agreements will be
23 upheld.

24 Just as a point of clarification, as

1 we're hoping Mayor Walsh is continuing to march
2 to secure a host community status for the city
3 of Boston, for a Revere development and ideally
4 an Everett development as well, I just have one
5 question because we've been the victim of a lot
6 of perceived ambiguity in the law, should we be
7 fortunate enough to have the city of Boston
8 granted a host community, is it true that as a
9 means or a mechanism to divest ourselves from
10 the conversation that is to say if we want to
11 tell the developers no, no, thank you. We're
12 not interested, we've already spoken, must it
13 go to a vote? Must a vote be conducted in
14 order to divest of the negotiation process?

15 CHAIRMAN CROSBY: If Boston is a
16 host community, is that what you're asking?

17 MS. MYERS: Yes.

18 CHAIRMAN CROSBY: If it were
19 determined that Boston were a host community,
20 would it require a vote? Is that what you're
21 asking?

22 MS. MYERS: Right.

23 CHAIRMAN CROSBY: I think we know
24 the answer to that. I think the answer is yes.

1 MS. MYERS: It must go to a vote.
2 How is Boston different than Holyoke? That's
3 where I get stuck. The 23-year-old mayor of
4 Holyoke refused to negotiate with developers
5 and the conversation was over. What would be
6 different in Boston?

7 COMMISSIONER MCHUGH: I think we're
8 getting into hypotheticals now.

9 MS. MYERS: Well, it's not a
10 hypothetical.

11 COMMISSIONER MCHUGH: It is a
12 hypothetical, Ms. Myers. We don't have an
13 issue of front of us. I am, as one
14 Commissioner, very reluctant to get into
15 speculation about a complex piece of
16 legislation and its application to a discrete
17 set of facts without knowing what the facts
18 are. And I understand your eagerness for an
19 answer, but you have able Counsel here. I
20 don't think the Commission -- I as one
21 Commissioner am not prepared to make a
22 definitive judgment on those kinds of questions
23 today.

24 MS. MYERS: Sure. Here's where I'm

1 coming from with this question. Now with all
2 due respect, we have every reason to believe by
3 the language on both the East Boston and Revere
4 ballots and the language in the legislation
5 that a no vote in any community would at the
6 very least have put this on the back burner for
7 six months. We would have just been beginning
8 conversations about any continued development
9 at Suffolk Downs.

10 My concern is that folks have
11 already seen this process fail. We said no.
12 There are plans to go ahead 100 miles an hour.
13 And my concern is that should we get granted
14 host community status and it goes to a vote,
15 folks are going to feel coerced into changing
16 their vote even though they don't want a casino
17 in their community. That's my concern.

18 And if this is not the appropriate
19 venue with the press and the cameras and the
20 documentation because we've been chastised
21 before for not having appropriate documentation
22 to back up our interpretation of the law, then
23 I don't know what the appropriate venue is.
24 And I look to you for guidance for that.

1 COMMISSIONER MCHUGH: This may be
2 the appropriate venue, it's not in my view the
3 appropriate time. That's the problem because
4 we don't have concretely in front of us a set
5 of facts that we can deal with.

6 MS. MYERS: And respectfully I
7 submit that once the decision is made on host
8 community status, then that time is too late.
9 Then that time is too late. Thank you. I'm
10 going to hand it over to Matt Cameron now.

11 COMMISSIONER MCHUGH: Thank you, Ms.
12 Myers.

13 CHAIRMAN CROSBY: Let me just say I
14 don't think we can or should comment on a
15 particular hypothetical, but I do think that
16 the law is pretty clear that if an applicant
17 and a bidder -- an applicant and a municipality
18 agree -- and the governing body of an applicant
19 and a municipality -- the governing body of a
20 municipality agree that the municipality is a
21 host community that the process from there
22 forward is pretty well outlined. And I don't
23 think we think that the process is any
24 different.

1 COMMISSIONER MCHUGH: But I think
2 Ms. Myers' point, and this why I really don't
3 want to get into this conversation, I think Ms.
4 Myers' point is that there already has been a
5 vote. So, if there is a new designation of
6 Boston as a host community agreement, does the
7 old vote count. I think that's your point.
8 And I don't know the answer to that question.
9 And I don't want to decide that question today.

10 MS. MYERS: The Mayor made decide,
11 and I don't purport to know what is in his
12 head, but the Mayor may decide that he wants to
13 uphold the law -- I mean the vote of his
14 constituents. So, his goal to assert host
15 community status may be just to really confirm
16 that this can't proceed without the input and
17 without the cooperation of the city of Boston.
18 And he may decide that he wants to side with
19 his constituents.

20 COMMISSIONER MCHUGH: I understood
21 that to be the thrust of your question. I for
22 one Commissioner can't decide that today.

23 MR. CAMERON: Very briefly, I'm
24 going to keep this as brief as I can given the

1 circumstances this morning. I would say that
2 we certainly reserve the right to come back
3 depending on how things go over the week. This
4 was a surprise to us. And there's an elephant
5 in the room here that will be with us next
6 week. So, I think that we should probably wait
7 on some of these issues.

8 But I will reiterate as reiterated
9 in our brief that we endorse everything that
10 the city of Boston said as of April 17. And no
11 matter what the city of Boston says in the
12 future, that's where we stand.

13 But I do want to discuss one issue
14 that will not be changing no matter what the
15 city says or does within the next week and that
16 is the fact that the track at Suffolk Downs
17 remains an amenity for any casino built at that
18 site. This is an issue that we've been turning
19 over for a while and I know that the Commission
20 has as well.

21 I know that everyone around this
22 issue has been thinking about this and what I'm
23 about to say is not new. But I just want to
24 reiterate very, very strongly that you have a

1 casino development project that has been
2 completely built around and marketed as a
3 supplement to a racetrack. And I think that it
4 is, I'm just going to say, disingenuous for the
5 applicants to come before you in these briefs
6 and say that this is somehow just a piece of
7 property that is appended to this project as if
8 it's just an empty lot. Because this is a
9 racetrack with a long history, it's a very
10 important piece of land. It's something that
11 means a lot to us in East Boston.

12 I just cannot possibly see how this
13 is not being marketed and how this will not be
14 an amenity to any casino on that land. That
15 was a big part of the sell when they were
16 marketing both of these projects in both of the
17 elections that we have previously had on this
18 and it will continue to be.

19 And without comment, I just want to
20 make again clear that that is in any definition
21 of the word amenity that racetrack is an
22 amenity. Under the law, under commonsense,
23 under definitions that we use in everyday
24 parlance, under the real estate definition of

1 the term that's something that is a draw and
2 that is something that will continue to operate
3 co-equally with the casino project.

4 And it was that way when Caesars was
5 in charge as well. When Caesars was just going
6 to be the operator, they were going to have
7 full operational control of their half of it
8 and Suffolk Downs was going to continue
9 operational control of their half of things.

10 And we had an architect before this
11 Commission on January 22 coming before it
12 saying with some very nice pictures that this
13 track is built into the casino so the patrons
14 will be able to watch it, so they'll be able to
15 enjoy the horses while they're playing the
16 slots. That the track is actually literally he
17 used the word receiving the casino or the
18 casino's receiving the track, excuse me, the
19 other way around.

20 Talked about the design, the oval
21 and the crescent and the history and the
22 architecture. There was some really nice
23 presentation on that. And I think that that
24 was something that they wanted to get across to

1 the Commission. It's something I want to
2 reinforce today. There's just no way around
3 this basic fact. I understand there's always
4 two sides to an argument here, but this is a
5 casino at Suffolk Downs. This is what we voted
6 against. And this will continue to be what we
7 voted against. And I just don't see how we get
8 around that.

9 The other arguments as to the
10 intangibility, the other amenities in the city
11 of Boston, I do reserve the right to continue
12 to argue those. I will just mention very
13 briefly just so that it's out there that this
14 is a Boston casino. Both of these are Boston
15 casinos and we certainly are equally opposed to
16 both of them. One of them happens to be three
17 miles from my house.

18 But these are Boston casinos being
19 marketed as Boston projects. Wynn has been
20 especially enthusiastic about embracing the
21 city of Boston and we certainly appreciate
22 that, but it's without our consent. This is
23 something I understand as argued in the
24 applicant's briefs that the city of Boston does

1 not own Massport. It does not own the
2 highways. It does not own the airport.

3 But host community status isn't
4 about necessarily the structures. It isn't
5 about the buildings. It isn't about all of
6 that other stuff. It's about the people who
7 live there and how they are going to be
8 affected. And that's when you look down at the
9 Commission's regulations as to defining what a
10 surrounding community is that is the focus is
11 on the impact on the people.

12 There's a mention as to commute back
13 and forth to the site, which in this case is
14 literally stepping over a line. This is far
15 more than a surrounding community. We are
16 essentially going to be hosting a casino
17 whether or not we want to. And I would just
18 really appreciate, I know that we all would, if
19 the Commission would recognize that, because
20 we've been hearing a lot of talk about how this
21 is a Revere only project, it's an Everett only
22 project.

23 And geographically within the exact
24 inches of this project, setting aside the track

1 even as an argument maybe that's true. We
2 don't even know. Maybe that's true. But what
3 matters here is how this thing is being sold to
4 the public and being marketed and that is as a
5 Boston community project.

6 I just think that it would be
7 absolutely egregious for this to go forward in
8 the absence of consent or cooperation from the
9 city of Boston in the face of a vote in which
10 we've already said that we don't want it. In
11 the face of polling in Charlestown which
12 suggests at this point 35 percent support for a
13 casino in Everett. I think that that would be
14 absolutely -- I'm going to say unfortunate.

15 But that's our position. Again, we
16 do reserve the right to come back. I don't
17 want to use all of my time here. But that is
18 how we briefed it and that is where we stand.
19 Again, we do endorse what the city had to say
20 as of April 17.

21 COMMISSIONER MCHUGH: Thank you.

22 COMMISSIONER CAMERON: Thank you.

23 MR. CAMERON: Thank you.

24 CHAIRMAN CROSBY: Thank you. Also

1 the city of Revere had weighed in in writing.

2 Welcome.

3 MR. FALK: Thank you, Mr. Chairman,
4 Brian Falk from the law firm Mirick O'Connell,
5 special counsel to the city of Revere. The
6 city of Revere would like to defer its
7 testimony to next week.

8 CHAIRMAN CROSBY: Okay.

9 COMMISSIONER MCHUGH: Thank you.

10 COMMISSIONER CAMERON: Thank you.

11 CHAIRMAN CROSBY: Thank you. That's
12 it, right, for the Mohegan Sun. The next item
13 was to determine the premises of the gaming
14 establishment for which Wynn Mass., LLC seeks
15 approval in its RFA-2 application. And there
16 was a brief submitted by Wynn, if you would
17 like to come forward.

18 COMMISSIONER ZUNIGA: While Mr.
19 Starr gets settled, I just want to make a
20 disclosure that Mr. Starr in the past provided
21 advice to the School Building Authority where I
22 was a director. The advice came to the
23 executive director and the board. But I am
24 familiar with his work personally.

1 CHAIRMAN CROSBY: Okay.

2 MR. STARR: Thank you Mr. Zuniga.

3 Good morning, Mr. Chairman. Tony Starr from
4 the Mintz Levin law firm on behalf of Wynn
5 Mass., LLC. We will defer our presentation
6 that had been intended for this morning until
7 next Thursday, May 8.

8 Wynn Mass. objects to this
9 postponement or continuance. It has come as a
10 complete surprise to Wynn. We had no notice of
11 this until we arrived at 10:30 this morning and
12 you disclosed the fact that you had received a
13 letter at 4:00 yesterday afternoon.

14 We did not receive a copy of that
15 letter. And I can tell you from Wynn's
16 perspective we have had no such conversations
17 with the city nor is there any pending new
18 information related to the issue of determining
19 the premises of the gaming establishment for
20 which Wynn Mass., LLC seeks approval in its
21 RFA-2 application.

22 CHAIRMAN CROSBY: Excuse me.
23 According to this letter, Steve Tocco from ML
24 Strategies was copied. We believed that you

1 had notice.

2 MR. STARR: I appreciate that. I am
3 the counsel of record for Wynn Mass., LLC in
4 connection with this proceeding. And I would
5 ask that if anybody is providing correspondence
6 or communication in writing regarding this
7 proceeding where I have an appearance on
8 record, I would ask that I receive it in a
9 timely manner. And I did not receive it. I am
10 the counsel of record. I have the appearance
11 for Wynn on this.

12 My final request for clarification,
13 Mr. Chairman, from the Commission is that the
14 only aspect that is being continued is the
15 event of the hearing itself. The rest of the
16 rules and procedures that you carefully laid
17 out three weeks ago, which Wynn has complied
18 with will be adhered to.

19 And by that I mean there is no
20 change in how the agenda was set up for today.
21 There will be no new written submissions by
22 entities who did not follow the filing
23 requirements of April 17 and April 24.

24 And finally, you also made clear

1 that only those entities who filed on either
2 April 17 or April 24 would be allowed to speak
3 on May 1. In fairness to the applicant, I
4 would ask confirmation that those procedures
5 which you thoughtfully put in place would be
6 respected for the May 8 hearing.

7 COMMISSIONER MCHUGH: Yes. There is
8 nothing that changes from those procedures.

9 CHAIRMAN CROSBY: Right. We had
10 encouraged the city -- We had offered the city
11 an opportunity to speak today. And that would
12 presumably still be the case. They did submit,
13 as you know, they submitted a document. And we
14 did offer them the opportunity to speak today.

15 MR. STARR: The ground rules that
16 you set said that no person or group will be
17 permitted to address the Commission unless they
18 have submitted a brief. I did not see a brief
19 from the city. They submitted an opposition to
20 the proceeding not a substantive brief.

21 So, if they want to come and speak,
22 and talk about their belief that you don't have
23 the authority to do what you intend to do,
24 that's your decision. But in fairness to my

1 client, you put all parties on notice that if
2 you wanted to come forward on May 1 and make a
3 substantive position you would put it in
4 writing affirmatively on April 17 and then a
5 reply on April 24.

6 You left open the window that if an
7 entity chose not to make an affirmative
8 presentation on the 17th they could reply on
9 the 24th. We provided a writing on the 17th.
10 The city chose not to file a written response
11 to our presentation on the 24th.

12 And I think it would be prejudicial
13 if you then allowed the city or any other
14 entity who had not responded in writing to come
15 here on the eighth and bring up arguments that
16 had not been put in writing so that the
17 applicant had an opportunity between the 24th
18 and the first to be prepared to address them.

19 COMMISSIONER MCHUGH: We certainly
20 hear your point.

21 MR. STARR: Thank you.

22 CHAIRMAN CROSBY: No Eastie had
23 responded on both cases.

24 MR. CAMERON: For the record, we

1 will be deferring everything on that, but I
2 just want to put on the record.

3 CHAIRMAN CROSBY: Okay. Then at
4 this point, we will suspend the rest of that
5 any further consideration of these issues until
6 a week from today.

7 COMMISSIONER MCHUGH: And we will
8 repost.

9 CHAIRMAN CROSBY: Yes, repost and so
10 forth. I guess we should just go on to the
11 rest of our agenda. I think maybe in
12 anticipation of the circumstances, we should
13 take a quick break and then reconvene and carry
14 on with the rest of the agenda in five or 10
15 minutes.

16

17 (A recess was taken)

18

19 CHAIRMAN CROSBY: We are reconvening
20 public meeting number 118 at about 11:35. We
21 are to item number four, approval of the
22 minutes, Commissioner McHugh.

23

24 COMMISSIONER MCHUGH: We have, Mr.
Chairman, two sets of minutes in the book. And

1 as soon as I find them in my electronic book I
2 will move for their adoption.

3 COMMISSIONER ZUNIGA: I have a quick
4 comment on the second set of minutes. Maybe we
5 can approve them separately, Commissioner.

6 COMMISSIONER MCHUGH: Yes. I was
7 going to move for them separately. The first
8 set is the minutes of March 6, 2014. They are
9 in the book, in the meeting book, I'd move
10 their adoption as of their appearing with the
11 customary reservation of the power to make
12 typographical and other mechanical corrections.

13 CHAIRMAN CROSBY: Do we have a
14 second?

15 COMMISSIONER CAMERON: Second.

16 CHAIRMAN CROSBY: And do we have a
17 discussion? On page three, in the italics
18 motion in the middle, it starts out saying --.

19 COMMISSIONER MCHUGH: 2:24 PM?

20 CHAIRMAN CROSBY: At 11:57 PM --
21 12:14 PM, sorry, at the top of the page.

22 COMMISSIONER MCHUGH: 12:14, right.

23 CHAIRMAN CROSBY: In the middle it
24 says and replacing that final sentence with a

1 sentence that reads, this says that the
2 arbitrators may make adjustments. Does this
3 accurately say what your motion said?

4 COMMISSIONER MCHUGH: Yes, that was
5 the motion that I made.

6 CHAIRMAN CROSBY: So, we struck the
7 final sentence --

8 COMMISSIONER MCHUGH: -- of the
9 handbook.

10 CHAIRMAN CROSBY: -- of the handbook
11 and replaced it with the sentence that says the
12 arbitrators may make adjustments?

13 COMMISSIONER MCHUGH: Yes.

14 CHAIRMAN CROSBY: I thought we
15 removed to the right of the arbitrators to make
16 adjustments.

17 COMMISSIONER MCHUGH: I will be
18 guided -- My recollection was that this is what
19 we did, but I'll be guided by the collective
20 memory of the Commission.

21 COMMISSIONER ZUNIGA: What would
22 appear to me the key here is to remove the
23 direct conflict. The adjustments were very
24 limited and narrow still on the fundamental

1 inconsistencies --

2 CHAIRMAN CROSBY: I thought
3 Commissioner McHugh that your intention was to
4 remove the flexibility that the arbitrator had
5 to make changes because we thought the
6 authority we give them was kind of vague.

7 COMMISSIONER MCHUGH: And broad.

8 CHAIRMAN CROSBY: And broad. And
9 replace that with our right to review for the
10 purpose of fundamental inconsistency.

11 COMMISSIONER MCHUGH: Yes. And this
12 sentence, the new sentence is a much narrower
13 grant of authority to the arbitrators than
14 previously existed. And we're not limited by
15 this.

16 CHAIRMAN CROSBY: I understand that.
17 But you did mean to give -- So, there's are two
18 parties that get to do a fundamentally
19 inconsistent review?

20 COMMISSIONER MCHUGH: No, no.
21 Direct conflict is different than fundamentally
22 inconsistent. Fundamentally inconsistent is
23 broader, i.e., if the statute says you may not
24 do something and the award says you may do

1 something, there's a direct conflict -- I mean
2 the best and final offer says you may do
3 something that's a direct conflict. And the
4 arbitrator can change it. But apart from that
5 the arbitrator has no power to make corrections
6 and distinctions.

7 CHAIRMAN CROSBY: I didn't realize
8 that's what you were doing. But you know what
9 your motion was. So, that's fine. Any other
10 discussion on this set of minutes? All in
11 favor, aye.

12 COMMISSIONER MCHUGH: Aye.

13 COMMISSIONER CAMERON: Aye.

14 COMMISSIONER ZUNIGA: Aye.

15 COMMISSIONER STEBBINS: Aye.

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

18 COMMISSIONER MCHUGH: All right.
19 The next set of minutes is on page 274 of the
20 meeting materials. And it is the minutes of
21 April 17, 2014. And I would move that they be
22 adopted in the form presented in the meeting
23 book with again the customary reservation of
24 rights for typographical and mechanical errors.

1 CHAIRMAN CROSBY: Second?

2 COMMISSIONER CAMERON: Second.

3 CHAIRMAN CROSBY: Discussion,
4 Commissioner?

5 COMMISSIONER ZUNIGA: Yes. I would
6 like to direct your attention to the hour of
7 10:35 AM.

8 COMMISSIONER MCHUGH: 10:35?

9 COMMISSIONER ZUNIGA: 10:35, page
10 two. A little stylistic, but I think would be
11 helpful to insert halfway through the sentence
12 there where it reads that Commissioner Zuniga
13 presented and the Commission discussed, I would
14 like to insert the exclusion and inclusion of
15 certain costs in the definition of minimal
16 capital investment.

17 CHAIRMAN CROSBY: Sounds good. Any
18 other discussion? Wasn't this the meeting
19 where we did the first draft of my memo?
20 There's no mention of that the legislative
21 changes memo?

22 COMMISSIONER ZUNIGA: No, that was a
23 previous one.

24 CHAIRMAN CROSBY: Was that a

1 previous one?

2 COMMISSIONER MCHUGH: I thought that
3 was an earlier meeting. This is the last
4 meeting. We didn't discuss it at the last
5 meeting to my recollection.

6 COMMISSIONER ZUNIGA: This meeting
7 was here. Where you presented the memo was at
8 the Hynes Convention Center.

9 CHAIRMAN CROSBY: Does anybody have
10 the agenda for the 117th meeting, happen to
11 have it?

12 COMMISSIONER MCHUGH: No.

13 CHAIRMAN CROSBY: Well, if I'm
14 wrong, I'm wrong. You summarized this, right?
15 Was this the meeting we talked about the
16 legislative changes memo?

17 MR. SHTATNOV: No.

18 CHAIRMAN CROSBY: No, okay. Never
19 mind.

20 COMMISSIONER CAMERON: Artem knows.

21 CHAIRMAN CROSBY: Yes, no second
22 guessing. All in favor --

23 COMMISSIONER MCHUGH: Aye.

24 COMMISSIONER CAMERON: Aye.

1 COMMISSIONER ZUNIGA: Aye.

2 COMMISSIONER STEBBINS: Aye.

3 CHAIRMAN CROSBY: -- as amended, aye
4 too. So, no no's. All in favor, unanimous.
5 I'm losing my head.

6 COMMISSIONER MCHUGH: You're not
7 alone.

8 CHAIRMAN CROSBY: So, we are going
9 to item number -- Are we going to skip ahead?
10 -- to administration, right with Director Day.

11 MR. DAY: We are ready earlier than
12 anticipated. Good morning still, Chairman
13 Crosby and Commissioners. Just have a few
14 topics for general administrative update that
15 I'd like to let you know about.

16 First, on the personnel side, our
17 human resources office and our Horse Racing
18 Division has filled 25 positions. We have four
19 open positions. One of those is our desktop
20 support specialist. And we understand we have
21 a good pool of candidates there. I know our IT
22 group, as small as they are, not in stature but
23 in numbers, are very excited about the
24 possibility to get some additional assistance.

1 And after a lengthy search, we have
2 also been very fortunate to recruit, pending
3 background, a gaming agent assistant director
4 with about 30 years of experience. So, we
5 think this staff addition, we are confident it
6 will work out. The timing of that addition
7 will be really great for us to move forward
8 with internal controls, surveillance and
9 basically everything that pertains to on-site
10 regulations. So, we're really watching this
11 process as we move forward. And hopefully we
12 can actually have somebody board around the
13 middle of May.

14 I'd also like to update you, we are
15 beginning tomorrow with the review of the
16 financial policies that the Commission had
17 previously authorized with interviews and
18 drafting policies. And then we also anticipate
19 -- we started on the comparison of the travel
20 policies project as well last week. So, that
21 is now underway.

22 In addition, we have started our
23 expanded development of our personnel policy,
24 our compensation analysis, evaluation system,

1 our HR strategy and improvements. This process
2 we anticipate will be about a four-month
3 process. And that is also all underway. So,
4 all three of those policy steps that we had
5 talked about have been moved forward and are
6 now going forward as we had planned.

7 We are also completing the initial
8 research concerning the central management
9 system that collects regulatory and financial
10 data of our slots play in the Commonwealth.
11 And we've had a team of our staff visited, I
12 think, three states at this point and actually
13 looked at the systems, talked with the
14 regulatory authorities and the private
15 suppliers about those systems. And we think
16 they are moving forward with the planning
17 process on that issue.

18 We also have our contractor and our
19 staff team are still working on the development
20 of our licensing management system with the
21 current part of project. At the same time,
22 we've asked them to start building what we are
23 confident we're going to need is the second
24 phase of project. The first one gets it

1 operational so we can basically move forward
2 with the data licensing system. The second one
3 is designed to bring in all of the parts that
4 will be necessary to support it.

5 And of course, we'll have the slot
6 regulations up that our staff will be asking
7 approval to start the formal process this
8 morning. And if we're fortunate with that
9 we'll be looking at surveillance and internal
10 controls in May.

11 We've also made some significant
12 progress on development of our high performance
13 plan and project. This project will provide us
14 a solid foundation of shared goals, supporting
15 goals, actions and measurements. And we hope
16 to be able to have the Commission hear more
17 about that project as we move on later this
18 month.

19 At that point, Mr. Chairman that was
20 my short report. And I think that brings us to
21 your memorandum and the potential changes for
22 23K unless the Commission has any questions of
23 me.

24 CHAIRMAN CROSBY: Do we want to do

1 your topic first? Are you all right for time?

2 That would be item 5d.

3 Whenever it was, I guess it was a
4 month ago, we reviewed a memorandum that
5 represented my thoughts and the thoughts
6 compiled in conjunction with the legal staff
7 about the variety of legislative issues that
8 have been raised mostly by our bidders, but
9 also by a few other people.

10 We talked about a number of them and
11 either agreed or disagreed and a little more
12 work needed to be done. I've now rewritten the
13 memo pursuant to what we discussed and to that
14 further work. And it is in draft still, but it
15 is addressed to all the leadership, the
16 Governor and the leadership of the Legislature
17 and the appropriate committees.

18 I think I should run through this
19 and make sure that we are on board. There are
20 some decisions still to be made. I just want
21 to point out that at this stage of the game,
22 our plan is to treat the Category 1 license
23 awards exactly as we treated the Category 2
24 license award. And that is to make this if we

1 do pick an awardee that we will offer the
2 license to them under the terms and conditions
3 of the law as it presently stands.

4 If someone disagrees or won't accept
5 some of those, we have never discussed what we
6 would do. So, at the moment, we are only
7 talking about awarding the license on the law
8 as it stands.

9 If there are issues, we'll cross
10 that bridge when we get to it. But we did want
11 to advise the Legislature on our opinion about
12 which of these issues needed to be addressed by
13 the Legislature. And if they did need to be
14 addressed by the Legislature what our
15 recommendation would be.

16 The first issue we talked about ad
17 nauseum, which is the implications of the
18 repeal legislation. There's been concern about
19 a whole host of costs that would be triggered
20 by an award including the one-time licensing
21 fee, the slot machine fees, the assessment for
22 operating costs, the Public Health Trust Fund
23 and a variety of costs associated with
24 construction schedules and construction, the 10

1 percent investment deposit.

2 We have given ourselves the
3 flexibility in our regs. to deal with these
4 should we decide that we need to. If somebody
5 takes the position as some have intimated that
6 they might that they cannot accept for example
7 putting down an \$85 million nonrefundable
8 deposit with the repeal still at issue, we've
9 given ourselves the tools to deal with that.
10 We don't need legislative help. Whether we
11 will do that or not remains to be seen, but we
12 have the tools to deal with it if we need to.

13 There are some other costs
14 contingent project site payments, certain kinds
15 of construction costs, if you get moving on the
16 project, costs associated with the host
17 community and surrounding community agreements.
18 Those are beyond our control.

19 But our recommendation here is that
20 MGM said that we might be able to give them
21 some guidance on these issues. Our conclusion
22 to the Legislature and the Governor would be
23 that we have not yet pursued what if any
24 guidance we could provide here, but we do not

1 believe that legislative action is required or
2 appropriate in helping to deal with these
3 issues. I think we agreed on that last time.

4 The next is the tax rate. They want
5 assurances that the tax rates won't be changed.
6 We think the Legislature probably cannot bind a
7 future Legislature. Furthermore, in virtually
8 all other jurisdictions, the tax rate is
9 subject to change by the Legislature at any
10 time. And taken together, our recommendation
11 would be that it's our view that it is unlikely
12 that the present Legislature can or would bind
13 a future Legislature vis-à-vis guaranteeing the
14 present tax rate. But in any event, the tax
15 rate is not our responsibility.

16 COMMISSIONER ZUNIGA: Mr. Chairman
17 did you skip over number two?

18 CHAIRMAN CROSBY: Oh, I did. I'm
19 sorry. The on-site daycare problem, I think we
20 did talk about this before. MGM and Wynn, I
21 think, read that the law requires on-site
22 daycare. We think that is not what the law
23 does. It does say, a close reading it is clear
24 that providing a facility is not a requirement

1 but rather something that the Commission may
2 consider in deciding whether to award a
3 license.

4 And we conclude we believe the
5 Commission can address this issue through its
6 regulatory authority and will not require
7 legislative action. Okay on that one?

8 Tax rates we talked about. License
9 parameters, somewhat similar to the tax rate
10 issue. There is concern that was expressed,
11 particularly by MGM that the Category 2 license
12 holder could theoretically by the Legislature
13 be given the right to do table games. And they
14 ask for relief from us including reducing the
15 table game rates for possibly for the Category
16 1. In any event, those are totally beyond our
17 control.

18 The Commission does not have the
19 authority relative to setting the tax rate or
20 reducing the Category 1 table game rates. We
21 also believe it's unlikely that the Legislature
22 can or would bind a future Legislature.
23 Accordingly, we do not believe that either
24 Commission or legislative action is called for

1 on this issue at this point, although the
2 Commission will consider establishing a
3 position in favor of no changes to the key
4 licensing parameters during the 15-year license
5 period.

6 It isn't up to us but we could take
7 the position, I think it's worth thinking
8 about, whether we would like to pass some kind
9 of statement saying we think that's
10 appropriate. But that's not on the table at
11 the moment.

12 COMMISSIONER MCHUGH: Why?

13 CHAIRMAN CROSBY: Why is it not on
14 the table at the moment?

15 COMMISSIONER MCHUGH: Yes, in terms
16 of a recommendation to the Legislature. I'm
17 sorry. I know we discussed this before --

18 CHAIRMAN CROSBY: No, that's all
19 right.

20 COMMISSIONER MCHUGH: -- in terms of
21 a recommendation to the Legislature.

22 CHAIRMAN CROSBY: So, you're
23 suggesting why don't we take that position
24 right now?

1 COMMISSIONER MCHUGH: Right.

2 CHAIRMAN CROSBY: I would be okay
3 with that. I think we've all kind of
4 indirectly talked about the fact that -- We've
5 said it repeatedly about Internet gaming. It's
6 not fair to bring Internet gaming while our
7 licensees just think they know what the lay of
8 the land is. They need to be at the table.
9 And I think we've said it so that colloquially
10 and informally relative to the tax rate and the
11 status of the Category 2 licensee and so forth.

12 So, I would be perfectly happy to
13 change that to say however, it is our
14 recommendation to the Legislature that there
15 not be any material changes in the key
16 parameters.

17 COMMISSIONER STEBBINS: I would
18 encourage that. Especially as the environmenta
19 in the Northeast gets a lot more competitive, I
20 think for our operators to have some sense of
21 the lay of the landscape for the next 15 years
22 would be a benefit to them and ultimately a
23 benefit to the Commonwealth.

24 CHAIRMAN CROSBY: Okay, good.

1 COMMISSIONER ZUNIGA: Is the chief
2 concern appears here as written to be live
3 table games. Was there anything in what we
4 received relative to electronic table games,
5 Mr. Chairman?

6 CHAIRMAN CROSBY: I don't think so.

7 COMMISSIONER MCHUGH: I wanted to
8 take up that topic when we get to Mr. Glennon.
9 That picture at the end of his presentation
10 raises that issue.

11 CHAIRMAN CROSBY: Okay. We agree.
12 You're comfortable making that change?

13 COMMISSIONER CAMERON: Maybe we can
14 say substantive changes, because we don't know
15 what the next 15 years. This industry changes
16 constantly. So, for us to say no changes at
17 all for 15 years.

18 CHAIRMAN CROSBY: I would change it
19 to say material changes to key licensing
20 parameters.

21 COMMISSIONER MCHUGH: Right, right.
22 And certainly slots only as opposed to table
23 games is a key licensing parameter.

24 CHAIRMAN CROSBY: Okay, good. I'll

1 make that change. Number five is the cap. ex.
2 parameter. Wynn and MGM interpreted this as
3 requiring 3.5 percent every year. That is not
4 what the law says.

5 We can waive that if it's part of an
6 overall cap. plan. And I think we talked about
7 this last time. Our recommendation for this,
8 we believe that the Commission can handle this
9 issue in its regulations. And there is no need
10 for legislative action.

11 I did add the parenthetical, it's
12 not clear to us what the Legislature meant by
13 net gaming revenues derived from the
14 establishment. Net gaming revenues is not a
15 defined term. And if they wanted to clarify
16 it, fine. If not, we will define it ourselves.

17 COMMISSIONER ZUNIGA: This wouldn't
18 change to the recommendation ultimately, but
19 there is also a timing element or a timing
20 discussion relative to capital expenditures.
21 Pragmatically, there's no need to do a lot of
22 capital expenditures years two and three on
23 real estate. The building is new.

24 A 3.5 percent capital reserve

1 overall there's a lot more significance in my
2 view and experience as it depreciates certainly
3 over time. And I know that's implicit here on
4 a multiyear. There's language here relative to
5 multiyear investment.

6 If nothing else, I think our
7 applicants should be assured that I for one do
8 not believe that there is any implicit
9 requirement here to start doing a lot of
10 capital expenditures on the front-end years of
11 the life of a real estate asset. Obviously,
12 there is very useful lives and depreciable
13 lives in many of the components of the real
14 estate assets, but I just wanted to mention
15 that there's really a timing element here that
16 I think is very relevant.

17 CHAIRMAN CROSBY: Right, I agree
18 with that. We've got some time on this. This
19 is something we will have to get to in our
20 regs. is how do we deal with this and what is
21 net gaming revenue and so forth.

22 Number six is the issue of on-site
23 space for mental health treatments and problem
24 gaming. The Wynn read this to think that it

1 was required that they provide comprehensive
2 substance abuse, compulsive gambling and mental
3 health counseling and treatment services. We
4 think that's not what it says.

5 The licensee is required to provide
6 "complimentary on-site space". It doesn't say
7 how much or for what. The services that would
8 in that space, if any, would be determined by
9 the Commission. So, our conclusion here is we
10 believe that this issue can be managed within
11 the Commission's regulatory authority and does
12 not require legislative action.

13 Gratuities item number seven, this
14 is a section of the law that requires tips to
15 be pooled by dealers, and gives the Commission
16 the authority to determine how tips and
17 gratuities should be distributed. And that no
18 supervisory folks should be in that pool.

19 Wynn had proposed that this be
20 changed. The unions recommended that they not
21 be changed. We broke it down into two issues.
22 First of all, there is a concern about who
23 should actually do the determination of how the
24 pool gets split up. And although it suggests

1 that we have that authority, we conclude with
2 Todd's help that that means we also have the
3 authority to delegate it to the owner, to the
4 licensee or the licensee and the labor union,
5 or whoever if we want to.

6 So, if we think that's the proper
7 practice or if Wynn for example persuades us,
8 if they're the licensee that that's the proper
9 practice, we have the authority to do that
10 without any legislative change.

11 There is the issue that there
12 apparently are some categories of employees who
13 sort of help in the pits, help with the
14 dealers. They are not supervisors. They are
15 not management. And in some models, they may
16 get a piece of the tips. But our bottom line
17 after talking to our consultants and to some of
18 the operators and so forth was that this was
19 not a big enough deal. That issue was not a
20 big enough deal to warrant legislative action
21 particularly given the Legislature's
22 unwillingness to do anything other than the
23 most critical matters.

24 So, we add addressing this issue,

1 this latter issue would require legislative
2 action. However, it does not seem to the
3 Commission that this is an important enough
4 issue for the Legislature to take action.

5 COMMISSIONER MCHUGH: I don't
6 understand, Mr. Chairman, what the antecedent
7 for this is.

8 CHAIRMAN CROSBY: It follows
9 secondly is the antecedent.

10 COMMISSIONER MCHUGH: I think then
11 that the sentence would be clarified if we said
12 the distribution of tips to non-dealers instead
13 of this.

14 CHAIRMAN CROSBY: Okay.

15 COMMISSIONER MCHUGH: The other
16 issue I thought was that there are some
17 categories of dealers who by tradition, even in
18 places where tips are pooled are typically
19 exempt from the pooling requirement. Poker
20 dealers I think were one category. And I
21 thought that was part of though not all of the
22 Wynn interest's suggestion here.

23 Their basic position was they know
24 how this should be done. They do it very

1 successfully. That's no doubt true. But
2 that's not what the Legislature thought and
3 that's fine too. But there are these
4 categories of dealers and I think it's mainly
5 poker dealers who keep their own tips for a
6 variety of reasons that have to do with -- that
7 makes some sense.

8 So, I don't know if we want to
9 recommend that the Legislature allow us to
10 decide what tips should be pooled or not or
11 delegate that to collective bargaining
12 agreements to take into account that
13 possibility. This as presently written it's
14 all dealers for all games.

15 CHAIRMAN CROSBY: The research we
16 did on this, the labor unions were unanimous
17 against making this change.

18 COMMISSIONER MCHUGH: Making any
19 change to the pooling requirement.

20 CHAIRMAN CROSBY: To this statute --

21 COMMISSIONER MCHUGH: Right.

22 CHAIRMAN CROSBY: -- to this
23 section. The other applicants and outsiders
24 that we've talked to, I think it may be that

1 Wynn does have some relatively unique proposal
2 -- plan of dealing with this. It seemed to be
3 a Wynn idiosyncratic -- If you're nodding Ms.
4 Krum. But Wynn has this feeling. It was only
5 Wynn who pushed it. It didn't seem to us that
6 that brought it to the level of recommending a
7 legislative change.

8 COMMISSIONER MCHUGH: In general, I
9 don't disagree with that but I just do wonder
10 about -- Director Day, am I correct that
11 typically when there is a pooling protocol
12 poker dealers are exempt from that?

13 MR. DAY: Commissioner McHugh, as a
14 matter of fact, oftentimes that is the case.
15 As we were talking about this, it seems like
16 the law is clear about the pooling. Then it
17 seems as well to provide the Commission, at
18 least my impression, the ability to write
19 regulations to define the rest of those
20 individual elements, including the concern
21 about the person that might not actually be a
22 supervisor or a dealer.

23 And it also, as Commissioner Crosby
24 stated, I think it also provides the Commission

1 the ability to delegate or defer the actual
2 development of these specifics. I think it
3 would be possible for the Commission to put in
4 some guidelines or some direction into the
5 regulation, because we are doing that in some
6 other areas like internal controls. We'll
7 define what the areas are, but we won't
8 necessarily list every specific step that the
9 licensee has to take.

10 Ant it seems like to me that this
11 language would provide the Commission the same
12 ability to deal a little more particularly with
13 the different cases that there might be and the
14 different operators.

15 But the no supervisory -- the
16 exclusion of supervisors from that tipping
17 process I think is a strength to the statute
18 and I would encourage --

19 COMMISSIONER MCHUGH: That's been an
20 ongoing issue across the board in Massachusetts
21 and the focus of a lot of litigation over the
22 last 10 years. So, this is consistent with the
23 way the -- This exclusion of supervisors is
24 consistent with that approach.

1 MR. DAY: My bottom line, because I
2 circle the wagons on occasion is that I would
3 concur that it doesn't need legislative change
4 either.

5 CHAIRMAN CROSBY: I think actually,
6 now that I think about it, it's probably within
7 our authority to say to a particular licensee
8 if you want to pool everything and then give it
9 back in the way that it was -- in other words,
10 unpool in the way you distribute it, you can do
11 that which would in effect exclude the poker
12 dealers if they wanted to because that's the
13 method of distribution. So, you could require
14 it to be pooled. And then you could
15 redistribute it however you want including in
16 such a fashion that the poker dealers got back
17 whatever they --

18 COMMISSIONER CAMERON: But that
19 would be negotiated, right? You're saying --

20 CHAIRMAN CROSBY: I'm just saying we
21 would have the ability to delegate that either
22 to the licensee or to the licensee and the
23 unions, however they chose to do it.

24 COMMISSIONER MCHUGH: Bottom line is

1 we could deal with it by regulations.

2 CHAIRMAN CROSBY: Bottom line is we
3 could deal with it -- I'm not saying how we
4 would deal with it. I'm just saying I think we
5 can pretty much cover any option in our regs.

6 COMMISSIONER MCHUGH: Okay.

7 CHAIRMAN CROSBY: Okay. The next
8 issue is reports on complimentary services.
9 This is complicated and I hope I can do this
10 justice. Nobody really understood exactly what
11 this -- at first what this was about.

12 The law requires us to get quarterly
13 reports on all complimentary services offered
14 or engaged in by the gaming licensee. And at
15 first, both Wynn and MGM said this is
16 administratively clumsy, inconsistent with
17 other jurisdictions and an invasion of privacy.
18 It would be anonymized data, so I don't think
19 the privacy issue is a concern.

20 But New Jersey does have virtually
21 the same requirement. And I've talked with
22 their people and they do have some uses for the
23 data. Michael and Carroll, our gaming
24 consultants thought they couldn't figure out

1 what you would do with the data.

2 In Pennsylvania, there is not a
3 requirement to make a report but they are
4 required to keep an audit trail in order that
5 the Commission can from time to time audit the
6 complimentary services. And the reason
7 Pennsylvania said that they do that is because
8 they want to make sure that there aren't comps.
9 being given to somebody's brother or somebody
10 that shouldn't be getting comps. But that does
11 not -- They require an audit trail, which I
12 imagine is there as a matter of course. And
13 Pennsylvania occasionally does audit to see how
14 the comp. services were distributed.

15 The New Jersey taxes complimentary
16 play. They don't care about complimentary
17 drinks and stuff although they are recorded.
18 They count complimentary play, slots play as
19 part of gross gaming revenues. So, they get a
20 tax on complimentary slots play up to \$90
21 million. Anything above \$90 million is not
22 considered part of gross gaming revenue and is
23 not taxed by the state.

24 It's complicated reasoning how that

1 came about. It was a statute that was put in
2 to try to equalize the playing field when
3 Pennsylvania came along and didn't tax
4 complimentary play. So, it's a little bit
5 idiosyncratic. They think there may be some
6 law enforcement uses too and they're checking
7 into that and haven't gotten back to me on
8 this.

9 So, I don't know. Where are we on
10 taxing complimentary play? Have we dealt with
11 that issue?

12 MR. DAY: Not at this point, but I
13 think it is an issue that as we develop the
14 whole net gaming side that that taxing part is
15 something we want to look at.

16 COMMISSIONER ZUNIGA: From a
17 financial standpoint, and the way our
18 consultants read sections that apply to this in
19 the statute, we have the flexibility to let the
20 applicants offer free play, which would not be
21 taxed. We also have the flexibility by
22 regulation to limit if we wanted that free
23 play, which is the way many other jurisdictions
24 deal with that. They could put a cap by

1 different means.

2 COMMISSIONER MCHUGH: Is there any
3 concern that the complimentary whatever's show
4 up as a deduction of gross gaming revenues?

5 COMMISSIONER ZUNIGA: You mean play
6 or beverage and food?

7 COMMISSIONER MCHUGH: Everything.

8 CHAIRMAN CROSBY: I presume it would
9 be listed at their cost. It wouldn't be a -
10 No, it wouldn't be a deduction of gross gaming
11 revenue, no.

12 MR. DAY: Mr. Chairman, I think it
13 depends on how the Commission chooses to write
14 the regulation on the calculation as we move
15 forward. But I think that there are some
16 practices that that would be a deduction before
17 taxes. I think it's just -- that's why as we
18 move forward, it's how the Commission treats
19 complimentary services, complimentary play will
20 have an effect.

21 COMMISSIONER MCHUGH: Right.
22 Complimentary play and maybe complimentary
23 other things, rooms, meals.

24 MR. DAY: Complimentary services,

1 yes.

2 CHAIRMAN CROSBY: There's also the
3 issue for reward card customers. We are pretty
4 sure that the operators know everything that
5 they get. But for non-reward card customers
6 they may well not have a record of the free
7 drinks that they got or other such things.

8 So, implementing this would be
9 tricky for non-reward cards holders. Where I
10 come down is that this seems like to require
11 this as it's written is if not a big project
12 for them, it is for us. We'll be getting these
13 massive reports every quarter and have minimal
14 use for it. And I don't think we are far
15 enough along to really know exactly what -- to
16 wit, we're not sure how we're going to handle
17 free play. But this does have some
18 implications for regulation, appropriate
19 regulation.

20 This is one where I thought
21 legislative change would make sense to give us
22 the right, in other words, the Commission may
23 require gaming licensees to submit quarterly
24 reports rather than gaming licensees shall.

1 So, we would have the time to think this
2 through and figure out where we want to come
3 down.

4 COMMISSIONER MCHUGH: And the draft
5 regulations that are consistent with the goals
6 we're trying to achieve rather than just get a
7 data dump that we have to then filter through.

8 CHAIRMAN CROSBY: Correct.

9 COMMISSIONER MCHUGH: Right. I
10 agree with that.

11 COMMISSIONER CAMERON: I do as well.

12 COMMISSIONER ZUNIGA: I agree. This
13 doesn't change the conclusion, but are we
14 comfortable that we are talking about free play
15 here as well? Because the way I always read
16 this section was that it was limited to
17 services or items, complimentary items.

18 I don't know if free play could be
19 characterized as fitting within any of those.
20 And that was my point. Because I think there
21 is very different things when it comes to free
22 play or everything else that could be offered
23 complimentary.

24 CHAIRMAN CROSBY: The New Jersey

1 statute clearly, which this appears to be what
2 this is modeled after, clearly includes free
3 play. That's what it's all about.

4 COMMISSIONER ZUNIGA: I am honing in
5 on the specific letters here where it says
6 services, complimentary services and then
7 further the report may also include any
8 services or items, etc., etc.

9 Anyway, I also as an additional
10 point, I think it would appear to me that
11 Pennsylvania's approach is very logical, an
12 audit trail rather than a report. The ability
13 or the access, which again we may be able to
14 decide by regulation but that's a lot more
15 effective in my view than what you mentioned,
16 Mr. Chairman, just getting these reports and
17 going somewhere.

18 CHAIRMAN CROSBY: Right. So, you're
19 saying the amendment would say this Commission
20 may require licensees to submit quarterly
21 reports or take such other actions -

22 CHIARMAN CROSBY: -- add that.

23 COMMISSIONER ZUNIGA: Maintain
24 records, etc.

1 COMMISSIONER MCHUGH: As long as an
2 alternative, so we still have the power to ask
3 for some reports.

4 CHAIRMAN CROSBY: Right.

5 COMMISSIONER CAMERON: Doesn't may
6 cover that in order for us to have the ability?

7 COMMISSIONER ZUNIGA: It does.

8 CHAIRMAN CROSBY: It says we may
9 require them to submit quarterly reports. It
10 doesn't say anything about just maintain
11 records.

12 COMMISSIONER CAMERON: So, be more
13 specific.

14 CHAIRMAN CROSBY: Yes. Do we want
15 to raise the issue about whether services means
16 free play? If we don't raise it, we get to
17 determine it.

18 COMMISSIONER ZUNIGA: My point here,
19 until today I always assumed that services did
20 not include free play.

21 COMMISSIONER MCHUGH: What would
22 services include?

23 COMMISSIONER ZUNIGA: Food, drinks,
24 rooms because it's also items. This goes back

1 to your question, Commissioner, about gross
2 gaming revenue. Free play clearly has an
3 effect on gross gaming revenue. It gets
4 deducted. Other complimentary items are not
5 necessarily as directly tied with gross gaming
6 revenue.

7 COMMISSIONER MCHUGH: That's right.
8 I understand that distinction.

9 CHAIRMAN CROSBY: I understand your
10 point. I think you could read this to not
11 include free play. It's a legitimate point.
12 Should we ask for clarification or should we
13 just define it ourselves? Less is more, I
14 think, here. The more nuanced we get, the less
15 likely we are to get a response.

16 COMMISSIONER MCHUGH: Yes. And if
17 we say the Commission may require reports and
18 audit trail -- and documents, I think that
19 gives us running room.

20 CHAIRMAN CROSBY: We are doing lots
21 of defining what they meant by such and such.
22 And to single this one out, I think we're
23 probably better to let us decide it ourselves.
24 But I think it's yet to be decided. I think

1 what you're saying is a perfectly reasonable
2 way.

3 The next one is cashless wagering.
4 There's a typo. I said costless wagering by
5 accident. Director Day I had not seen that.

6 COMMISSIONER MCHUGH: That would be
7 a new one.

8 CHAIRMAN CROSBY: Costless wagering.

9 COMMISSIONER MCHUGH: Not one many
10 people would be reaching out for.

11 CHAIRMAN CROSBY: It might be
12 something that the consumers would really flock
13 to.

14 It took us a long time to figure
15 out. Nobody knew exactly what was being talked
16 about here, and we're still not entirely sure.

17 As our regs. are now being drafted
18 and Director Day pointed this out to me, there
19 are sections which talk about cashless
20 wagering. And it's not clear whether that
21 means going to an ATM and getting some money or
22 whether it means an independent standalone
23 system. It's just not clear exactly to us even
24 I think as we're drafting our regs. we are not

1 100 percent sure what we are referring to,
2 right? It's still being evolved.

3 But none of our applicants said that
4 they are going to do cashless wagering. Our
5 present licensee and the applicants we spoke to
6 all said we're not going to do cashless
7 wagering, so this doesn't matter to us. So,
8 our conclusion was that we don't see a reason
9 for legislative action on this because it
10 doesn't seem to be impinging on anybody as best
11 we can understand it.

12 And there was no further comment
13 from anybody other than what was originally
14 submitted with the applications back in
15 January. That's where that -- My
16 recommendation would be that we don't see any
17 reason for legislative action at this stage of
18 the game.

19 There's also the issue of the
20 monthly reports. Is that this one, yes. This
21 would require a monthly report to the reward
22 cards holder of their gambling record, their
23 wins and losses. There was some objection to
24 that not huge. But the law is very clear that

1 at the time of signing up to become a rewards
2 card holder you may choose not to participate
3 and there are any number of other ways to get
4 out of the system if you are in it.

5 So, it seems to me that the reward
6 card managers can really manage that pretty
7 carefully. If people want it, then the law is
8 there. They have it. And I think people can
9 get it now if they ask for it. But the
10 managers of the system can make it very clear
11 to people whether they want this or not. They
12 can control, the licensees can pretty well
13 control that transaction. So, we felt that we
14 shouldn't try to mess with the reports. So,
15 bottom line was on this section that we take no
16 stand that there would be no recommendation for
17 change.

18 COMMISSIONER ZUNIGA: I would
19 concur. I did want to talk a little bit about
20 in this section 29, the first part implies an
21 opt in rather than an opt out. And I don't
22 know if this was part of what our applicants
23 have flagged as a concern, but further down
24 that section you could assume that it's a

1 requirement as opposed to an opt in.

2 CHAIRMAN CROSBY: Where in the
3 sentence it says a gaming licensee who
4 implemented such a program shall not only
5 report to the Commission the amount of money
6 spent and lost and who participated in cashless
7 wagering system?

8 COMMISSIONER ZUNIGA: Yes.

9 CHAIRMAN CROSBY: That's reports to
10 us. That's not report to the consumer.

11 COMMISSIONER MCHUGH: This is all
12 hypothetical, right? Nobody plans to do this.

13 COMMISSIONER ZUNIGA: If it's
14 cashless, right?

15 CHAIRMAN CROSBY: No. In the middle
16 it says the gaming establishment shall issue to
17 each patron who has been issued a rewards card
18 or who participates in a cashless wagering
19 system a monthly statement mailed to the
20 patron's home. So, they conflate. They start
21 out talking about cashless wagering system and
22 then all of a sudden, they're talking about
23 rewards cards holders as well.

24 COMMISSIONER ZUNIGA: That's right.

1 CHAIRMAN CROSBY: So, a rewards card
2 holder may opt out at the point of becoming a
3 rewards card holder or anytime thereafter.

4 COMMISSIONER ZUNIGA: And if I
5 remember correctly, at least one applicant
6 mentioned could it be the other way around.
7 Could it be an opt in as opposed to an opt out?

8 CHAIRMAN CROSBY: I think it could
9 be. And my position on this is, as I said, is
10 less is more. I think these are smart folks.
11 They can manage it however they want to. I
12 would think rather than try to get into --

13 COMMISSIONER ZUNIGA: -- too
14 granular.

15 CHAIRMAN CROSBY: -- too granular,
16 yes.

17 COMMISSIONER ZUNIGA: That's what
18 regulations are for, I suppose.

19 CHAIRMAN CROSBY: True, good point.
20 Okay on that one? Number 10, this is basically
21 the requirement that if any payment is made at
22 the moment, the standard would be \$600, to a
23 winner that before the payment is made, the
24 licensee has to hold -- check a database and

1 make sure they're not deadbeat dads or unpaid
2 taxes.

3 This is done in a number of other
4 jurisdictions. Operators are not crazy about
5 being in that role, but others are too, banks
6 are too in other various respects. And I think
7 we tend to think that public policy objective
8 here is an appropriate one.

9 The problem is that Massachusetts
10 does not have the capacity to do a web portal
11 to do an online check and won't for some period
12 of time. They say a year or so.

13 Our present licensee, Penn, has said
14 if we want them to they will take a thumb drive
15 every week and check it. But that will leave
16 the possibility that somebody -- that the thumb
17 drive, first of all, isn't up-to-date but also
18 that somebody has paid up and we pull back
19 their money and embarrass them in the public
20 and that's not a good thing, obviously. It's
21 not going to happen very often, but it probably
22 will happen once in a while.

23 So, we could do this. DOR, I think,
24 is willing to work with us on this. The

1 question is do we want to recommend that we do
2 it on this as best we can with some kind of a
3 weekly report? Or do we want to recommend to
4 the Legislature that we wait until the web
5 portal is available and then implement this
6 reg., this requirement?

7 COMMISSIONER MCHUGH: I would
8 strongly favor the latter. The former isn't
9 going to work. It's going to lead to mistakes.
10 It's going to lead to payments to the number
11 one deadbeat dad. And it simply isn't going to
12 work.

13 COMMISSIONER CAMERON: I would
14 concur. My experience with kind of regulating
15 gun purchases before the system is in place
16 where you had the automatic checks and the
17 portal was there, it was very problematic.
18 Until that system is built, I think it is
19 really difficult. There will be many mistakes.

20 COMMISSIONER ZUNIGA: Our financial
21 consultants have flagged this as a real
22 operational concern if they had to keep people
23 waiting. Technology these days could be such a
24 great aid in this process. And it would occur

1 to me that it sounds like DOR may not be far
2 from that future state.

3 CHAIRMAN CROSBY: I am sure they'll
4 have it in place. It's a high degree of
5 likelihood that it will be in place when the
6 casinos come online. The question is whether
7 it's online in time for the Category 2.

8 MR. GLENNON: Can I interrupt and
9 just talk to this for a moment? In discussions
10 with the technology people at the Department of
11 Revenue, they're open to maybe even a quicker
12 track to provide something to be able to allow
13 an online inquiry based on Social Security
14 numbers. To that end, we've had conversations
15 with them. They are going to talk hopefully
16 next week to the compliance people at Penn
17 about what Penn is doing in other jurisdictions
18 and see what we can do about providing an
19 inquiry that goes to both tax delinquents and
20 people that owe child support.

21 CHAIRMAN CROSBY: Would this be to
22 some real-time database or would this be to
23 some database which is updated?

24 MR. GLENNON: It would -- DOR would

1 expose a URL, which Penn could use to do just
2 an inquiry that would just return information.
3 It could be yes, this person owes and then
4 there that might need to be follow-up that kind
5 of a thing.

6 CHAIRMAN CROSBY: But it would be a
7 real-time database?

8 MR. GLENNON: It would be. It would
9 be updated. Real-time meaning they may flush
10 data into it overnight and you're going to
11 inquire against it for the most current. It's
12 going to be current. It's not going to be a
13 refreshed data set. It will be online. It
14 will be maintained by DOR. Their technical
15 people are talking to the Penn people. And I
16 think they're going to look to give us a
17 solution. I can't say it's going to be in less
18 than a year, but the way they're going about
19 it, it very well could be.

20 COMMISSIONER STEBBINS: I agree with
21 your point. I'd love to see the technology
22 available where it is real-time. Certainly
23 understand we don't want to embarrass somebody
24 in line in front of their peers or friends or

1 whatever.

2 My biggest worry is more of an
3 optical concern of before we have a system in
4 place, when the top 10 scofflaws or the
5 deadbeat dad or tax scofflaw walks in, walks
6 out with his big wagger. And if we can't even
7 identify the top 10 worst offenders I think
8 would be a huge black-eye for us and for our
9 licensee.

10 MR. GLENNON: I also want to say we
11 want to refrain from using -- DOR specifically
12 requested we refrain from using the term
13 deadbeat dad for it because their agency is
14 trying to work on it. So, I respectfully --

15 COMMISSIONER STEBBINS: Somebody who
16 owes somebody money.

17 MR. GLENNON: Yes.

18 CHAIRMAN CROSBY: Child-support
19 money.

20 COMMISSIONER ZUNIGA: Is this one of
21 the earlier -- Elsewhere or in an earlier
22 version of a memo you had, the \$600 figure
23 appears in multiple instances. This is another
24 one. Is the current thinking that the

1 threshold would be equivalent for all of them?

2 CHAIRMAN CROSBY: Yes. Every place
3 the \$600 threshold -- And it should be clear in
4 here if it isn't.

5 COMMISSIONER CAMERON: It's clear.
6 You do have it.

7 CHAIRMAN CROSBY: Every \$600
8 threshold would switch to the federal standard
9 of \$1200.

10 COMMISSIONER CAMERON: You explain
11 that at the end.

12 COMMISSIONER ZUNIGA: Thank you.

13 MR. DAY: Commissioners, the idea
14 that you were moving forward with is the idea
15 to go forward with it when there's proper
16 automation to allow that to take place. It
17 still match what John was saying relative to
18 the current inquiries.

19 CHAIRMAN CROSBY: If there is a
20 chance, a decent chance, not a certainty but a
21 decent chance that they'll be up and running
22 when the Category 2 license, when Plainridge
23 operates, and if Plainridge is prepared to do a
24 jerry-rigged system for a while if need be --

1 They don't want to do it particularly, but
2 they're not strenuously opposed to it. -- then
3 we really don't need to change this, because it
4 certainly will be.

5 It might happen in the course of the
6 first six months of Plainridge operations that
7 maybe there's a mistake made. But it's
8 probably going to be maybe twice and we
9 wouldn't have to try to get another change
10 made.

11 COMMISSIONER CAMERON: The Penn
12 officials that were in this week expressed
13 concern about it, and said if they had to of
14 course they would do it, but they saw it as
15 problematic, the thumb drive kind of thing. I
16 don't know what the harm would be in just
17 asking this will go into effect when the
18 technology is there. So, that may or may not
19 be before.

20 CHAIRMAN CROSBY: I could go either
21 way.

22 MR. GLENNON: For the sensitivity of
23 the data, the thumb drive idea is a bad idea.
24 We really don't want data. We don't want to

1 possess the data. We really want DOR to expose
2 it through a portal and then they will maintain
3 it. And we'll have an inquiry based on Social
4 Security number. That's the best way to do it.
5 This is the type of information that you don't
6 want on a thumb drive or even being sent
7 around.

8 CHAIRMAN CROSBY: Forget the thumb
9 drive. You could still do it that they just
10 access a database which is updated every week
11 not every day. I could go either way. Do you
12 guys have a preference?

13 COMMISSIONER MCHUGH: This talks
14 about -- The question posed here is do we want
15 to recommend a jerry-rigged system as opposed
16 to postponing it until a web portal is
17 available. I would be in favor of the latter.
18 So, that when this, even if it's an interim web
19 portal or an interim solution that ties into a
20 reasonably current database, when that's
21 available this requirement would kick in but
22 not before.

23 Because I think any other, a book, a
24 thumb drive, any other kind of system (A) is

1 bound to fail. And is going to put us in the
2 possession of a lot of data that we don't want
3 to have.

4 I don't know how we express that in
5 legislative language.

6 CHAIRMAN CROSBY: I'll follow up on
7 that. So, we'll go with -- I realize the
8 question isn't very well framed, but we'll go
9 with the real-time, wait until the real-time
10 capacity is there.

11 COMMISSIONER ZUNIGA: And integrity
12 where we don't take ownership of the data.

13 CHAIRMAN CROSBY: Commissioner
14 Stebbins has twice now recommended that they
15 send over the list of the worst people so we
16 don't end up the front page of the paper.

17 COMMISSIONER STEBBINS: I want to
18 see the technology. This is going to be a very
19 simplistic hypothetical. If we were operating
20 a bank and John Dillinger comes in, would we
21 say, oh, we can't report him because he's not
22 on our list?

23 COMMISSIONER CAMERON: But how do
24 you distinguish? You owe X amount. You owe Y

1 amount.

2 COMMISSIONER STEBBINS: I know, I
3 know.

4 COMMISSIONER CAMERON: So, we charge
5 you. We don't charge you. I think that's not
6 a direction we want to go in.

7 COMMISSIONER STEBBINS: But we
8 balance that against the embarrassment of we're
9 letting somebody who owes somebody money, I
10 won't make the common reference, and letting
11 that person walk out the door because
12 technology --

13 CHAIRMAN CROSBY: I hate to say it.
14 I'm afraid it would reflect more on DOR than on
15 us.

16 We can't reasonably do this until we
17 have a real-time database. And there isn't a
18 real-time database.

19 COMMISSIONER STEBBINS: That's a
20 good point.

21 CHAIRMAN CROSBY: And they were
22 going to try to get it done on time. This is
23 all further incentive for them to try to get it
24 done by -- They're talking June now. So, we're

1 talking more than a year. Penn National's
2 talking June. So, they're talking 13 months
3 from now.

4 COMMISSIONER MCHUGH: This may be
5 academic, but it's still a good idea.

6 CHAIRMAN CROSBY: Okay. Number 11,
7 this is reports of winnings. This is not the
8 withholding issue. This is simply sending
9 reports to the Department of Transitional
10 Assistance, which is Welfare basically the old
11 Welfare and to the unpaid childcare agency,
12 which is the Department of Revenue. The IV-D
13 agency is the peculiar way of referring to DOR.

14 Those two agencies would know who
15 have been big winners. We would always try to
16 change this to \$1200. And we hope that all of
17 the thresholds will change to \$1200. Beyond
18 that we think -- I think and having talked
19 about it with others that this is a reasonable
20 requirement. And other than changing the
21 threshold, we would not recommend legislative
22 intervention. Go ahead, Todd.

23 MR. GROSSMAN: Just one other thing
24 along the threshold line, I think you also need

1 to narrow it to the winnings whether it's \$600
2 or \$1200 and subject to withholding or
3 reporting under section 62B, which you are
4 about to get to. Otherwise, you would require
5 the gaming operators to report on winnings that
6 they have no record of otherwise.

7 So, in order to harmonize the three
8 sections that involve these tax implications, I
9 think you need to limit the six or \$1200
10 however it is to only those winnings which are
11 subject withholding or reporting under section
12 62B.

13 CHAIRMAN CROSBY: Which mean slot
14 winnings.

15 MR. GROSSMAN: Slot or table in the
16 exotic case.

17 CHAIRMAN CROSBY: Right.

18 COMMISSIONER ZUNIGA: Exotic bets on
19 table games.

20 MR. GROSSMAN: Under federal law,
21 there's the 300 to 1 for \$5000. They don't
22 refer to them as exotic.

23 COMMISSIONER ZUNIGA: 62B of the
24 federal?

1 MR. GROSSMAN: The state law.

2 CHAIRMAN CROSBY: The state law,
3 because the state law incorporates the federal
4 law, which ends up saying only slots winnings.

5 COMMISSIONER ZUNIGA: Yes.

6 CHAIRMAN CROSBY: Okay. I didn't
7 realize that's where you were coming down, but
8 that's fine. You're saying we want to
9 harmonize this with the federal standard both
10 as to the threshold and as to the definition of
11 winnings.

12 MR. GROSSMAN: Yes. But I think you
13 really want to harmonize section 51 and 52 with
14 section 62B section 2 which is the
15 Massachusetts General Law. And everything in
16 section 62B references the federal law. So, we
17 are just really harmonizing 51 and 52 with 62B,
18 which is really the engine that drives the
19 whole tax issue in Massachusetts.

20 MR. DAY: That's basically 10, 11,
21 13 on this sheet.

22 MR. GROSSMAN: It's number 13 on the
23 next page.

24 CHAIRMAN CROSBY: Right. Is

1 everybody following all of that?

2 COMMISSIONER CAMERON: You'll help
3 the Chairman make that correction.

4 MR. GROSSMAN: Yes, I took tax in
5 law school.

6 COMMISSIONER MCHUGH: Did you? I
7 did too, once.

8 CHAIRMAN CROSBY: This is incorrect.
9 We'll change the 600 and we will harmonize the
10 nature of which winnings we are talking about.

11 MR. GROSSMAN: Which are subject to
12 withholding or reporting under 62B section 2.

13 CHAIRMAN CROSBY: Yes. What was
14 that, and withholding subject to?

15 MR. GROSSMAN: Withholding or
16 reporting under Chapter 62B section 2.

17 CHAIRMAN CROSBY: And that's because
18 table game winnings are virtually impossible to
19 track as to the winnings.

20 MR. GROSSMAN: That's right,
21 although there are some instances, which we'll
22 get into on number 13 where they are under
23 federal law withholdable -- subject to
24 withholding, I should say. So, all we're

1 really saying is that when there is a tax event
2 then the casino will obviously have a record of
3 it. And those are the events they have to
4 report to DOR and DTA and others.

5 CHAIRMAN CROSBY: Right. Okay. Got
6 it. Number 12 is the assessment concern that
7 MGM I guess at least and Wynn, I guess both
8 don't like the operating costs being assessed
9 on them, the open-ended operating costs. Don't
10 like the assessment at all, and in particular
11 don't like the open-ended assessment. They
12 don't like the open-ended Public Health Trust
13 Fund and recommended a variety of changes.

14 I think that we think that having
15 the ability to assess our operating costs on
16 the operators rather than going to the
17 Legislature is one of the strengths of the law.
18 And that's why the Legislature did it the way
19 they did it. And we have never expressed any
20 interest nor do I think we would anticipate
21 increasing the Public Health Trust Fund. That
22 will also be funded by monies from gross gaming
23 revenues.

24 So, I think our position would be

1 that we think this system is right. We have
2 agreed already to talk with our licensees to
3 set up some kind of committee structure with
4 our licensees so that they have an oversight --
5 not an oversight role but they have an
6 informational and advisory role on our
7 expenses.

8 We don't just willy-nilly send them
9 a bill. We're going to set up a group of our
10 licensees who will get to go over our budgets
11 with us and have to have a hand in us
12 determining reasonableness. But I don't think
13 that either we or the Legislature would be
14 interested in making these changes.

15 COMMISSIONER MCHUGH: I think
16 there'll only be four licensees at the most.
17 And having them participate in some way in
18 oversight, advice is really important. And I
19 think that with that and the power of public
20 opinion --

21 CHAIRMAN CROSBY: -- of our free
22 press going after our lavish lifestyles.

23 COMMISSIONER MCHUGH: Right. It's
24 there. It's a check and it's an important

1 check. So, I think that would -- suffice I do
2 agree that this is an important independence
3 keeping provision.

4 COMMISSIONER ZUNIGA: I would agree
5 as well. I would just also mention that in
6 addition and in parallel to the idea of
7 establishing a group, an advisory group and
8 review group, Director Day, Derek Lennon, our
9 CFO working on benchmarking and comparing and
10 testing real hard our costs with those of other
11 regulatory agencies in our position in other
12 states.

13 There are usually a lot of
14 differences but that's exactly what we're
15 working on. There's many benchmarks that we
16 will be looking at presently as early as this
17 late June when we present our budget to this
18 body. There's measures around percent of gross
19 gaming revenues. There's measures relative to
20 total cost per FTE.

21 So, there is a lot that we have been
22 thinking about that is important to underscore
23 here. I don't know that we want to put it all
24 under in a memo to the Legislature, but if

1 nothing else as long as somebody understands
2 that we are being very careful and deliberate
3 about this, I think it's important.

4 CHAIRMAN CROSBY: Yes.

5 COMMISSIONER MCHUGH: We are also
6 working getting to a stage, are we not, where
7 we're posting on monthly or some periodic basis
8 all of our expenses.

9 MR. DAY: We are already posting
10 that, but in the future we are going to have as
11 the Commission moves forward and approves a
12 budget that's broken down by division, it would
13 be a lot clearer and a lot better detail.

14 COMMISSIONER MCHUGH: Right.

15 CHAIRMAN CROSBY: Okay. Thirteen we
16 talked about at length before because we
17 already submitted that recommendation to the
18 Legislature. And we have to move on this.
19 Because the Legislature can only fix the \$600
20 issue until they can fix all of the \$600
21 issues. So, that's one of the reasons why we
22 need to hustle this memo out to them. So,
23 we've dealt with this.

24 I did forget to mention and I do put

1 it in the cover memo that Mohegan Sun -- I'm
2 mentioning Wynn and MGM because they were the
3 ones who submitted most of these concerns. MGM
4 did submit a letter -- I'm sorry, Mohegan Sun
5 has said that they are supportive of the
6 legislation as it stands and didn't raise any
7 of the issues here. They proposed working with
8 in simplifying a couple of them but they didn't
9 object to any of the sections as they stand.

10 Number 14, parity of the tax rate,
11 this is again another issue that really is not
12 within our control. Wynn and MGM are concerned
13 if there is a tribal casino they might come in
14 at a lower tax rate, possibly 17 percent,
15 possibly zero. And that that would be
16 problematic for the other license holders. We
17 clearly agree with that.

18 We understand that it's a problem,
19 but certainly controlling the tax rate has got
20 nothing to do with us. We can't change the tax
21 rate. So, we can't address this issue. But in
22 any event I think we are also sort of stuck
23 with being able to do nothing more than wait
24 judicially and transparently for the two

1 processes, the commercial process and the
2 tribal process, to work their way out.

3 I try to make it clear that we fully
4 well understand that there are real, real
5 serious conflicts of interest here but it's not
6 anything that we can recommend to the
7 Legislature that they try to address at this
8 point.

9 COMMISSIONER MCHUGH: Yes. I think
10 this is another one that really would benefit
11 from applying -- creating a policy based on a
12 known set of facts rather than on hypothetical.
13 There'd be time enough to try and fix things if
14 they're terribly broken as the result of
15 anything that happens down the road.

16 CHAIRMAN CROSBY: Right. Chapter 15
17 is credit. It says no person other than the
18 gaming licensee shall issue credit to a patron
19 in the gaming establishment.

20 MGM read this to possibly preclude
21 the availability of ATMs. As Todd and I talked
22 about it, we don't think that each time you use
23 a credit card or a debit card that you're being
24 issued credit. You're being issued credit when

1 you get your credit card or your debit card.

2 So that we would not interpret this
3 to preclude being ATMs in the facility. And
4 therefore I don't think there's need for any
5 legislative action.

6 COMMISSIONER MCHUGH: Certainly,
7 when you use a debit card you're not being
8 issued credit on each withdrawal. Why aren't
9 you being issued -- If I go charge something on
10 a credit card, it's money that I don't have.
11 The credit card company is paying a debt that
12 I've incurred, and then coming and collecting a
13 debt from me each month.

14 COMMISSIONER CAMERON: But you have
15 an approved limit. They've looked at your
16 finances and they've taken the risk that you
17 have the ability to pay up to X amount and
18 that's your limit.

19 COMMISSIONER MCHUGH: Yes.

20 COMMISSIONER ZUNIGA: You also --

21 COMMISSIONER MCHUGH: But to have a
22 line of credit and against that line of credit
23 I'm incurring debts. If my line of credit is
24 \$1000 and I don't use it, I have no debt.

1 CHAIRMAN CROSBY: You don't have
2 debt, but you do have credit.

3 COMMISSIONER MCHUGH: I have credit,
4 but when I go out to dinner and pay \$300 for 20
5 people then I have a debt of \$300. We can go
6 on and on on this, but I just wonder how this
7 approach to what an extension of credit -- how
8 this approach to extension of credit ties into
9 the gaming framework that we are developing.

10 CHAIRMAN CROSBY: I think it's
11 different. I don't think it does.

12 COMMISSIONER MCHUGH: If we take the
13 position that there is no -- If you get the
14 \$1000 line of credit or the \$10,000 line of
15 credit and each debt that you incur on that
16 line is not a separate extension of credit,
17 would that be consistent with the gaming
18 framework that Mark is trying to develop
19 ultimately or do we have to make it consistent
20 with that?

21 CHAIRMAN CROSBY: Can we kick the
22 can down the road on this? We can interpret
23 credit however we think it needs to be
24 interpreted. If we think for some reason or

1 other that it should be interpreted to mean use
2 of a debit card or a credit card then that's
3 our judgment and we can use it. If we want to
4 interpret it to not mean that we cannot mean
5 that.

6 COMMISSIONER MCHUGH: Then that
7 would require a revision of the last sentence
8 in the second paragraph because that --

9 CHAIRMAN CROSBY: Which paragraph
10 are you talking about?

11 COMMISSIONER MCHUGH: The second
12 paragraph of number 15, the second sentence of
13 your memo because that says we've made a
14 determination as to what --

15 CHAIRMAN CROSBY: I see what you're
16 saying.

17 COMMISSIONER MCHUGH: I would be
18 perfectly happy to say that we don't need --
19 that we can handle this by regulation and we
20 don't need any legislation. I would be
21 perfectly happy to say that. But I am troubled
22 by saying that we've decided that the
23 establishment of the line of credit is all that
24 counts.

1 COMMISSIONER ZUNIGA: Is it fair to
2 read that this may have been intended towards
3 actual people because it says no person.
4 Trying to preclude individuals from operating
5 in a gaming establishment?

6 CHAIRMAN CROSBY: They've repeatedly
7 used person to mean entities.

8 COMMISSIONER ZUNIGA: Entities as
9 well?

10 CHAIRMAN CROSBY: As entities, yes.

11 COMMISSIONER MCHUGH: The general
12 definition section of the General Laws says a
13 person is an entity.

14 CHAIRMAN CROSBY: I think so does
15 this statute. I think it's pretty clear in my
16 view. I know it's not in yours. Just because
17 it is in mine doesn't make it so, but I do
18 agree and Todd and I talked about this at some
19 length that the credit issuance happens at the
20 time you get your credit limit. You are then
21 using the credit that you have been issued from
22 time to time when you do transactions.

23 Whether that's inconsistent that
24 something Mark is trying to work on, I don't

1 know. We can double-check on that. But if it
2 isn't, then I think we should -- I think it's
3 okay to put this definition there. I think
4 this is what issuing credit means. I don't
5 think every time you use your credit card you
6 are being issued credit.

7 COMMISSIONER ZUNIGA: I agree with
8 that. Under the view that you take,
9 Commissioner, would somebody paying the
10 restaurant bill in the gaming establishment
11 would also constitute the issuance of credit?

12 CHAIRMAN CROSBY: Paying what?

13 COMMISSIONER ZUNIGA: Paying your
14 restaurant bill with a credit card.

15 COMMISSIONER MCHUGH: Yes, that
16 would be an issuance of credit.

17 COMMISSIONER ZUNIGA: So, you
18 couldn't effectively pay with a credit card
19 under the definition -- These would not only
20 apply to ATMs and credit advances, it would
21 also apply to restaurant transactions,
22 conceivably.

23 CHAIRMAN CROSBY: Well, we could
24 write it differently. If we were trying to

1 implement what Commissioner McHugh is saying --

2 COMMISSIONER ZUNIGA: That's my
3 point.

4 COMMISSIONER CAMERON: I don't see
5 it that way either.

6 CHAIRMAN CROSBY: We could say for
7 cash. -- It would be hard. What if you just
8 want to go use the ATM and get cash. You're
9 not using the ATM to get cash to go to the slot
10 machine. You're just going to get cash because
11 you need some cash.

12 MR. DAY: Commissioners, if I could
13 just be of help. It's actually, I hate to say
14 it's either way, but it is practically
15 speaking. My direct experience with it is the
16 use of a card you couldn't use a card at the
17 gaming table or at a machine, a credit card or
18 a debit card, either one. But on the other
19 hand, you could go to the cage and get cash
20 directly to go out and gamble with.

21 But that's an application of
22 regulation, which is what Commissioner McHugh
23 is actually speaking to is the Commission I
24 think here can actually deal with what its

1 intent is via regulation, how it wants to
2 interpret that. Because on the other hand,
3 responsible gaming framework and those concerns
4 do revolve somewhat as well around the use of
5 credit card. So, it's something that is
6 treated at least in my experience in different
7 ways in different jurisdictions.

8 CHAIRMAN CROSBY: But the question
9 is whether submitting this sentence to the
10 Legislature puts us in a position of having
11 said something which is inconsistent with what
12 Mark is trying to accomplish in the framework
13 and that we might be agree to try to
14 accomplish.

15 MR. DAY: I thought it was what
16 Commissioner McHugh was saying was since the
17 Commission does not interpret this section to
18 preclude such a transactions was basically
19 saying encourage not to reach that conclusion
20 and just the last part, which is no legislative
21 action is required if we can do by regulations.
22 I thought that was where Commissioner McHugh
23 was going.

24 CHAIRMAN CROSBY: It is.

1 COMMISSIONER MCHUGH: That's what my
2 recommendation would be. The Commission could
3 handle the issue by regulation, no legislative
4 action is required. If we want to define by
5 regulation what the first part of that sentence
6 says, then we've got the power to do that.

7 CHAIRMAN CROSBY: In I think all of
8 these we explain at least briefly what our
9 thought process is. We don't just say no
10 legislative action required. We say why. And
11 this would be idiosyncratic.

12 It seems to me we ought to just
13 check with Mark and make sure that we're not
14 saying something that is going to get in his
15 way. And if it is, we'll have to think of a
16 different way to say it. And if it isn't, we
17 do it the way it's said here.

18 Is it okay to say as long as it
19 doesn't compromise work that Mark is doing that
20 we might agree with to go forward like this.

21 COMMISSIONER CAMERON: Yes.

22 COMMISSIONER ZUNIGA: Yes, that's
23 fine.

24 MR. DAY: From my perspective and

1 just to answer that question is that it does --
2 it says does not interpret the section to
3 preclude such transactions. And I am making no
4 conclusion whether the Commission wishes to
5 authorize use of credit cards or not authorize
6 use of credit cards in gaming but that part may
7 restrict that conclusion as to how the
8 Commission wants to come down on the use of
9 credit cards in an establishment.

10 I'm not saying what you're talking
11 about is unusual. Actually, my experience in
12 what you're talking about, I'm just saying that
13 it is handled in a different ways if the
14 Commission wants to leave itself that
15 flexibility.

16 COMMISSIONER MCHUGH: What about if
17 we just took out the parenthetical? I realize
18 that I'm being obstreperous but I am concerned
19 about the role of credit cards in the casinos.
20 And I would not -- and we haven't really
21 fleshed out all of the thoughts, to say nothing
22 of the regulations, dealing how we're going to
23 permit the use of credit card in casinos.

24 And I'd hate to do something here

1 that puts us on record as defining something
2 that may later bind us in other contexts. And
3 if we said since the Commission does not
4 interpret this section to preclude such a
5 transaction no legislative action is required
6 and the Commission can handle the issue through
7 promulgation of regulations.

8 COMMISSIONER ZUNIGA: That works for
9 me.

10 CHAIRMAN CROSBY: I would go with
11 that. I wouldn't want to be in a position of
12 interpreting this to mean something I don't
13 believe it means.

14 COMMISSIONER MCHUGH: I understand.
15 This goes into the kicking the can down the
16 road kind of thing so that we at least see what
17 the can looks like.

18 CHAIRMAN CROSBY: Okay. So, 15
19 without the parenthetical.

20 COMMISSIONER MCHUGH: Right.

21 CHAIRMAN CROSBY: Okay.

22 COMMISSIONER ZUNIGA: Can I mention
23 something to 14?

24 CHAIRMAN CROSBY: Yes.

1 COMMISSIONER ZUNIGA: This doesn't
2 change necessarily the conclusion, but an
3 alternative to parity on tax rate is parity on
4 minimum capital investment, which the tribal
5 process does not set forth.

6 I don't know that the Legislature
7 would take any action on that but may go a
8 little bit further to explain that there's
9 another factor in the formula here and that's
10 the minimum capital investment. It's not just
11 a difference between tax rates but the fact
12 that the tribe does not have a minimum capital
13 investment.

14 CHAIRMAN CROSBY: Are you suggesting
15 that we do something here?

16 COMMISSIONER ZUNIGA: Perhaps
17 explain the context. This presumes that other
18 things are equal and it's only the tax rate
19 that's different, but other things are not all
20 equal.

21 CHAIRMAN CROSBY: Nobody's raised
22 that. What we're doing is dealing with issues
23 that have been raised by people. And nobody's
24 raised the issue of the capital, the differing

1 cap. ex.

2 COMMISSIONER ZUNIGA: I think
3 they're related.

4 CHAIRMAN CROSBY: If you want to
5 give me a sentence or two, I'd be happy to add
6 it in there to enhance that paragraph.

7 COMMISSIONER ZUNIGA: I'll think
8 about it and give it to you. Does that work?

9 CHAIRMAN CROSBY: Sure, absolutely,
10 yes, I didn't mean right this second. I meant
11 later on.

12 Sixteen is the much discussed CORI
13 modifications. We do agree with groups who
14 have expressed concern to us that the regs.
15 with the automatic disqualifiers are too rigid
16 to accomplish other important public policy
17 objectives. So, Commissioner Stebbins and
18 Director Griffin with the help I'm sure of the
19 lawyers and Todd, I think, have recommended
20 that we modify 16(b) as shown here.

21 The gist of that does bring the
22 statute in compliance with the modifications
23 we've been talking about. Whether it's the
24 right way to do it and the language is exactly

1 right, I'm not sure. That what I was just
2 throwing open for everybody.

3 Are we accomplishing as well we can
4 what we are trying to accomplish with this
5 particular language?

6 COMMISSIONER STEBBINS: I think that
7 the language that Todd has helped us draft is
8 consistent, I guess. One minor issue is
9 whether we need to strengthen the language by
10 saying that that person has completed their
11 sentence, whether that's a necessary addition.

12 COMMISSIONER CAMERON: Wouldn't it
13 be hard to prove rehabilitation without
14 completing your sentence?

15 COMMISSIONER STEBBINS: That's a
16 good point.

17 COMMISSIONER CAMERON: What we're
18 saying here is we're talking about the service,
19 the gaming service employee, right? But we say
20 it in a way that talks about every other
21 category rather than that.

22 MR. GROSSMAN: That's true, although
23 I would just add that it also covers, and I
24 wanted to raise this, vendors. This would also

1 allow the Commission discretion to consider
2 rehabilitation for any vendor or vendor
3 qualifier. So, it is a little more expansive
4 than just the gaming service employees.

5 COMMISSIONER CAMERON: Okay.

6 COMMISSIONER STEBBINS: But I think
7 it still leaves us the flexibility to look at
8 rehabilitation as well as the other criteria in
9 which we can disqualify a licensee or a
10 registrant.

11 MR. GROSSMAN: Right.

12 COMMISSIONER MCHUGH: I agree with
13 this approach. I think it's a good approach.
14 I wonder though if the last part of the
15 sentence, which begins on the line reading
16 Commission shall consider. It ends with
17 whether such conviction should not be an
18 automatic disqualification under this section.

19 I wonder if it wouldn't be better to
20 say and whether such conviction should be a
21 disqualification under this section. And I say
22 that for two reasons. Should not be means that
23 presumptively that the disqualification remains
24 in place unless the applicant shows that it

1 should not be a disqualification.

2 And secondly, by use of the word
3 automatic disqualification it simply answers
4 the per se question. It doesn't appear to give
5 the Commission the discretionary power it
6 needs. And it seems to me that if you just say
7 whether such conviction should be a
8 disqualification under this section, it allows
9 the Commission to exercise its discretion to
10 the fullest extent of what all of the people
11 who talk to us are asking for.

12 CHAIRMAN CROSBY: I've been
13 wrestling with the presumption issue. And I
14 haven't been able to articulate it very well.
15 But that does go towards -- rather than
16 somebody in this circumstance having to prove
17 that they're not a bad guy, can we presume that
18 they're not a bad guy but we can determine that
19 they are from their record?

20 And you're taking at least a half
21 step in that direction. So, I sort of like
22 that better. It still puts the burden if
23 you're applicant -- other than these other
24 applicants, there's still a burden on you to

1 demonstrate your rehabilitation. But taking
2 out the negative does sort of make it sound
3 like you're not trying to rebut a presumption.

4 COMMISSIONER CAMERON: Does that
5 flag it though? Does that flag the
6 application? I'm just not sure. You're saying
7 the individual still has to demonstrate
8 rehabilitation.

9 CHAIRMAN CROSBY: Right.

10 COMMISSIONER MCHUGH: Right. But
11 you're not going to presume that the automatic
12 disqualification remains in place, unless and
13 until they show both rehabilitation and why,
14 given rehabilitation, the automatic
15 disqualification ought to be displaced. You've
16 got to prove rehabilitation and then the
17 Commission considers whether it should be a
18 disqualification.

19 CHAIRMAN CROSBY: I'm not sure in
20 the practical reality whether it's really a
21 different.

22 COMMISSIONER ZUNIGA: I think it is.
23 And I agree with Commissioner McHugh. I can
24 imagine a scenario where a lot of case is done

1 through the many interpretations. So, I would
2 agree with this.

3 CHAIRMAN CROSBY: I do too. I'm not
4 sure how significant it is, but either way I am
5 in favor of it. Are you all right with that,
6 Todd?

7 MR. GROSSMAN: Sure. I'm sorry,
8 could you just repeat the recommended language?

9 COMMISSIONER MCHUGH: Beginning with
10 whether, the sentence would read whether such
11 conviction should be a disqualification.

12 CHAIRMAN CROSBY: I didn't realize
13 you were taking out automatic too. Okay.
14 That's it. Thank you. I guess we need a vote
15 that with the amendments as discussed whether I
16 can be directed to submit this to the
17 appropriate party.

18 COMMISSIONER ZUNIGA: This clearly
19 goes to the stylistic, but I would mention
20 perhaps re-ordering the number here to put at
21 the forefront the topics that we do recommend
22 action and leave at the end all the ones that
23 we don't.

24 CHAIRMAN CROSBY: That's a good

1 idea. That crystallized something that's been
2 in the back of my mind. Yes, exactly right.
3 Thank you. That's very helpful.

4 COMMISSIONER ZUNIGA: These are
5 important readers and their time is valuable,
6 and hit them with the important things at the
7 beginning.

8 CHAIRMAN CROSBY: Absolutely right.
9 I'll do that. Any other thoughts? Do you want
10 to make a motion?

11 COMMISSIONER ZUNIGA: I would move
12 that the Commission authorize Chairman Crosby
13 to present the recommendations as outlined in
14 the memorandum in the packet of the Commission
15 with the edits resulting from this discussion.
16 I did mention submitting to the Legislature.

17 COMMISSIONER CAMERON: Second.

18 CHAIRMAN CROSBY: Any further
19 discussion?

20 COMMISSIONER MCHUGH: I'd just like
21 to say that I want to thank the Chair. A lot
22 of work went into this very, very helpful
23 document, easy to read to understand, lots of
24 work. And I just wanted to thank you.

1 CHAIRMAN CROSBY: I'm delighted to
2 take all of the credit but unfortunately I
3 didn't do all of the work.

4 COMMISSIONER CAMERON: But you led
5 the project.

6 CHAIRMAN CROSBY: Thank you.

7 COMMISSIONER STEBBINS: To add to
8 that, a lot of -- It shows that we are being
9 responsive and hearing the opinions not only of
10 our applicants but also from other interested
11 stakeholder groups. It's just not one
12 discussion that we're taking up on one person's
13 behalf but a number of other interested
14 parties.

15 CHAIRMAN CROSBY: Right. Thank you.
16 All in favor, aye.

17 COMMISSIONER MCHUGH: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER STEBBINS: Aye.

21 CHAIRMAN CROSBY: Opposed? The ayes
22 have it unanimously.

23 All right. We are to 5d. That was
24 5c, I guess, Commissioner McHugh.

1 COMMISSIONER MCHUGH: 5d deals with
2 -- Let me back up. Everybody is familiar with
3 the fact that we have five sections to the
4 application, the RFA-2 application. And one of
5 those sections deals with building and site
6 design.

7 We have a very, very able and
8 thoughtful building and site design advisory
9 group that's advising me. That's the section
10 for which I am responsible. And we have been
11 meeting regularly and intensively since the
12 RFA-2 applications were filed.

13 It is clear however, that in the
14 context of the architecture and layout of the
15 buildings and structures and other features
16 that the applicants have proposed that there is
17 a great deal of room for expression of views.
18 And there are a number of standards that
19 architects use to evaluate buildings and
20 structures and the layout and the framework
21 within which they exist.

22 Some of those criteria were laid out
23 in the white paper we received from the local
24 American Institute of Architects chapter early

1 on in our progress. Others are laid out in
2 textbooks. Others are laid out in essays by
3 designers of casinos and other structures and
4 facilities.

5 But it's clear that the application
6 of those principles to various designs is a
7 matter that involves some judgment, some
8 perspective, some expertise, some familiarity
9 with good characteristics. Characteristics
10 that can be improved, characteristics that are
11 not terribly helpful. So, I have thought and
12 discussed with some members of the group the
13 desirability of seeking public comment on the
14 designs that have been presented to us thus
15 far.

16 We used to have a rich architectural
17 criticism function in our daily newspapers. We
18 no longer have that. We had some really good
19 architectural critics whose judgments are not
20 binding. Nobody's judgments are binding. Our
21 judgment is in the end the one that's binding.
22 But I thought that it would be helpful simply
23 to seek public input on the architectural
24 design that has been proposed for these various

1 facilities, and thought we could do that
2 through a posting and a request for public
3 comment.

4 It would be public. Everybody would
5 see it. And see if we got any thoughtful
6 insights from people about the proposals.

7 The layout, the sections, the
8 elevations are now part of the public component
9 of the applications. They're available to
10 everybody.

11 CHAIRMAN CROSBY: That's all
12 available on our website.

13 COMMISSIONER MCHUGH: Available on
14 the website. So, there's a basis for judgments
15 made by people in the community, architectural
16 people who are interested in what's being
17 presented, thoughts that may inform us. And
18 all of this would be part of the public record.
19 So, there would be nothing that would detract
20 from the transparency of our process.

21 So, I thought that I would present
22 to you today the thought that we ought to
23 invite comment on those designs. We could
24 draft language that more specifically describes

1 what we're looking for. And I'd like to have
2 the building and site design group help with
3 that draft. But the idea would be to draft
4 this and seek public comment, public input on
5 those designs.

6 We have a wealth in this community
7 of thoughtful people who are accomplished in
8 this area. And it seems to me we ought to take
9 advantage of that and use or not use what we
10 hear from these thoughtful people as one lens
11 through which to look at what we're being asked
12 to evaluate and decide. That's the proposal
13 and I put it forward to all of you.

14 COMMISSIONER CAMERON: I think it
15 makes sense. We receive so much public comment
16 that are usually on things like impact and not
17 the design excellence. All of the impacts are
18 usually the comments we receive.

19 So, I think this is a very good idea
20 because it would be something really important
21 to the all of the communities of what the
22 building looks like and what people think of
23 it. So, I think it's a good idea.

24 COMMISSIONER STEBBINS: I agree with

1 that. I think it's an interesting aspect of
2 our review and consideration in the public
3 process that we're going through. It's clear
4 somewhere in the statute the language about
5 making sure that the facility fits within the
6 context of the environment. I'm certainly
7 probably not a good judge of that.

8 But I think what was interesting was
9 we went through the host community hearing in
10 Springfield, the number of people that stepped
11 up and didn't necessarily talk about the
12 comments we usually hear about related to
13 traffic and impacts around the neighborhood.
14 But they were truly interested in how the
15 facility was going to be integrated with
16 historic buildings, potentially historic
17 buildings that were part of the footprint. And
18 it was an interesting positive discussion to
19 have coming from folks that are going to be
20 living near or adjacent to a facility.

21 So, I think it's a good exercise for
22 us to go through. Do you have an idea of how
23 long you want to keep a comment period open
24 for?

1 COMMISSIONER MCHUGH: No. I would
2 think we've got lots of time, not lots of time,
3 but we've got time before we have to make the
4 final decisions and presentations. But I would
5 think six weeks, four to six weeks.

6 CHAIRMAN CROSBY: For Region A that
7 would be no problem. For Region B, we don't
8 have a competitive situation there but we --

9 COMMISSIONER MCHUGH: I was thinking
10 more of Region A, but you're right. For Region
11 B it would have to be shorter. It would be
12 about three weeks or so. We can adjust that.
13 Yes, three weeks or so.

14 CHAIRMAN CROSBY: Time enough to get
15 into your team's pipeline basically.

16 COMMISSIONER MCHUGH: This is not a
17 straw poll. This is a did you think of this
18 kind of commentary.

19 CHAIRMAN CROSBY: I think it's a
20 great idea too. I've always been surprised
21 that we haven't gotten comment on the designs,
22 yay or nay. So, I think it would be really
23 interesting.

24 It's a more subjective. As you made

1 clear, it's not totally a subjective matter,
2 what is good design and what isn't. But there
3 is a degree of subjectivity and taste involved
4 in it. And I think these are going to be
5 significant phenomena, physical structures in
6 our community.

7 The one in Everett will be visible
8 to the world. And the one in Revere has
9 dramatic design elements associated with it.
10 So, I think having some kind of public comment
11 would be quite interesting. I don't think we
12 need a vote on that, right?

13 COMMISSIONER MCHUGH: I don't think
14 so.

15 CHAIRMAN CROSBY: Okay, good.

16 COMMISSIONER ZUNIGA: Are we
17 planning to go through?

18 CHAIRMAN CROSBY: I was just going
19 to raise this question. It's now 1:15. We
20 have six and seven yet to do. How long are we
21 talking for six and seven and should we take a
22 lunch break?

23 MR. DAY: Six will be short and I
24 think the slot regulation depends on how much

1 discussion the Commission might anticipate.

2 COMMISSIONER MCHUGH: This slot
3 discussion is to put these out for the formal
4 comment process, right? We're not deciding on
5 that now. This is we've looked at them before.
6 We've made comments to you, John.

7 MR. GLENNON: We will be raising the
8 policy issues, which we haven't discussed in
9 any detail for your consideration today. I
10 think that discussion needs to -- before we
11 begin the formal. Anything the Commission
12 needs to decide on needs to be weighed in on
13 today. So, we will be having that discussion.

14 COMMISSIONER MCHUGH: Do you have an
15 idea how long?

16 MR. GLENNON: I think there may be a
17 couple things that there will be some dialogue
18 on, but I think we've been through most of the
19 substantive issues. And I don't think there's
20 going to be anything that's going to take a
21 real long time, frankly.

22 MR. DAY: Item six, it's amendments
23 that we need move through to the formal process
24 as well.

1 CHAIRMAN CROSBY: I'm happy to do
2 whatever.

3 COMMISSIONER CAMERON: It sounds like
4 we could get through this and we could hold off
5 a on lunch break, but maybe we could take a
6 five-minute break.

7 CHAIRMAN CROSBY: We are definitely
8 going to do that. Does that work for you guys?

9 COMMISSIONER ZUINGA: That's fine.

10 CHAIRMAN CROSBY: So, we will take a
11 brief break and then we'll try to get done
12 before a late lunch.

13

14 (A recess was taken)

15

16 CHAIRMAN CROSBY: We are ready to
17 reconvene the 118th meeting at about 1:25. And
18 we will go to item six, legal reports Executive
19 Director Day.

20 MR. DAY: Yes. I know Deputy
21 Counsel Grossman is behind me somewhere. So,
22 he'll be working his way here. What we have is
23 we were before the Commission just a few weeks
24 ago. We talked about the need for a new

1 qualifier process in the licensing regiment.
2 And essentially, that's what we're here for
3 today.

4 We would look, if possible, a vote
5 to begin the formal process for these
6 amendments. These are amendments to the
7 regulations. They're not entirely new. They
8 establish a new qualifier process, the forms,
9 investigation and determined by the Commission.
10 So, kind of go through that process just to add
11 them into the process that we have at this
12 point.

13 Besides the formal process
14 authorization, I think we also need to look at
15 the SBIS that may go with it. And ask the
16 Commission to consider whether Deputy Counsel
17 Grossman could draft that up and file it, if
18 you could delegate him that authority.

19 With that I think if you would like
20 to go through the specifics of the proposed
21 amendments, I'll turn that over to Mr.
22 Grossman.

23 MR. GROSSMAN: Thank you. I don't
24 think there's a tremendous amount of areas that

1 need to be necessarily outlined, unless there
2 are questions. Ultimately, as Rick said, we've
3 just expanded the existing qualifier section to
4 include new qualifiers.

5 There presently exists requirements
6 for gaming applicants or gaming licensees as it
7 is to notify the Commission of any prospective
8 new financial sources and new qualifiers. So,
9 that remains in place.

10 All this does is it expands the
11 existing language that was put in place for the
12 RFA-1 process and includes post RFA-2, new
13 qualifiers if you will. So, that if there is a
14 new qualifier just as before they come to the
15 Commission. The Commission refers it to the
16 IEB. IEB conducts an investigation. Sections
17 12 and 16 of Chapter 23K are still in play.
18 Those are the suitability standards.

19 And then ultimately, just as before,
20 the IEB will develop a report and bring it
21 before the Commission at which point the
22 Commission can either elect to pursue a public
23 meeting or an adjudicatory proceeding to decide
24 whether to approve of the new qualifier.

1 We did modify the backend of the
2 process as it pertains to the decision between
3 a public meeting and an adjudicatory hearing so
4 that there's full discretion. We removed the
5 language that talks about the notice having to
6 come from the applicant as to whether they want
7 a public meeting or an adjudicatory proceeding.

8 There was some thought that that
9 process, just the notice part and the 30-day
10 part added some confusion. So, we removed that
11 and we just say that the Commission will decide
12 whether it's going to have a public meeting or
13 an adjudicatory proceeding.

14 Other than that, there is nothing in
15 there, I don't think, that I'd want to bring to
16 your attention specifically. As far as
17 sections 116 and 101, they were merely just
18 being modified to recognize the expansion to
19 new qualifiers. I think that's the long and
20 short of this proposal.

21 CHAIRMAN CROSBY: So, these are
22 where now in the process?

23 MR. GROSSMAN: They are brand-new,
24 right before you here for the first time.

1 CHAIRMAN CROSBY: But they're going
2 out for the normal comment period? Do these
3 amendments have to go out for the normal
4 comment period?

5 MR. GROSSMAN: They do. Prior to
6 adoption, of course, we have to submit them to
7 the Secretary of the Commonwealth and the Local
8 Government Advisory Council.

9 So, in lieu of offering public
10 comment upfront before you start to move it
11 through the process, our recommendation here as
12 it will be with the slots regs. at this point
13 is to authorize the staff to begin moving these
14 through the promulgation process to a public
15 hearing, which would be in about five or six
16 weeks from now, depending upon the publication
17 schedule of the Secretary.

18 MR. DAY: Isn't there in that
19 process there's 21 days of public comment.

20 MR. GROSSMAN: Yes, that's right.
21 So, there's two weeks for submission to the
22 Local Government Advisory Council. Then
23 there's a 21-day period they have to be
24 submitted to the newspapers and to the

1 Secretary of the Commonwealth prior to the
2 public hearing. At which point, we could
3 solicit public comment on our website and
4 otherwise.

5 And just to pick up on the small
6 business impact statement comment, it seems to
7 me that neither of these two, and I would
8 include the slots recommendation implicate
9 small business issues that I can think of off
10 the top of my head. In which case, I think it
11 would be relatively easy to draft a small
12 business impact statement outlining what the
13 issues are.

14 If we were to have that authority
15 delegated to us, we could file that along with
16 the appropriate notices or we could bring it
17 back before you at your next meeting to take a
18 look at.

19 MR. DAY: Mr. Chairman, I might add
20 that you're use to in many cases we'll bring a
21 draft before you first. The slots regs. have
22 gone through that process and actually have
23 gone through an informal public comment period
24 as well. As these are just amendments that we

1 have previously talked about and are pretty
2 short and direct, we thought it would be
3 advisable just to move forward with that part
4 of the formal process.

5 CHAIRMAN CROSBY: That seems totally
6 reasonable to me.

7 COMMISSIONER CAMERON: I see no
8 issue about. It's the same process used for a
9 qualifier other than the one piece which will
10 eliminate confusion, so, noncontroversial.

11 COMMISSIONER MCHUGH: I do have one
12 question and that is with 115.04. We had under
13 the old provision presumptively you have an
14 adjudicatory hearing on qualifications. But if
15 there was an unqualified -- unconditional --
16 The Bureau recommended an unconditional
17 positive determination for suitability, then we
18 could have simply a public hearing. And we did
19 that with a number of RFA-1 qualifiers.

20 Now we have it set up so that the
21 Commission can use the public hearing process
22 even if the Bureau does not unconditionally
23 recommend a positive determination of
24 suitability, if the Bureau has not raised any

1 "complex concerns relative to suitability" in
2 the report.

3 I don't know what complex concerns
4 me. And what might be complex to the Bureau --
5 not complex to the Bureau or the Commission
6 might nonetheless raise issues that the
7 qualifier deems important to disprove in an
8 adversary hearing, in an adjudicatory hearing.
9 So, I am not certain why we are doing that.

10 CHAIRMAN CROSBY: Where is the
11 language you just read? Where did that come
12 from.

13 COMMISSIONER MCHUGH: Page two, page
14 316 of the materials, page two of the
15 regulations at the bottom. It's section
16 115.04. It's the last sentence in 115.04(1),
17 and then new two and three are the adjudicatory
18 proceeding and the public hearing.

19 So, I just put a question mark
20 there. I have a suggestion but first I'd like
21 to find out what the basis for doing this is.

22 COMMISSIONER ZUNIGA: It is
23 discretionary, right? The Commission may.

24 COMMISSIONER MCHUGH: I understand

1 the Commission may, but under the previous set
2 of regulations the Commission could only use
3 the public hearing process as opposed to the
4 adjudicatory process if the Bureau recommended
5 unconditionally a positive determination.

6 Under that safeguard for an
7 adjudicatory hearing, negative findings or
8 negative facts contained in the Bureau's report
9 and gave the person who was the subject of
10 those negative findings an opportunity to come
11 in and disprove them in an adjudicatory
12 proceeding with examination and cross-
13 examination, which is an important safeguard.
14 And there may be reputational pieces that are
15 here that are not disqualifying but are
16 tarnishing. That's the basis for my question.

17 COMMISSIONER CAMERON: I know the
18 first round we did this, we always used the
19 adjudicatory process when there was an issue
20 that may not have been disqualifying but it was
21 an issue that we needed to explore and maybe
22 have a better understanding of. So, people did
23 have that opportunity.

24 So, I didn't read this as a way of

1 saying oh, no, let's just use the public
2 hearing process more often, because I didn't
3 see any evidence of that the first time out.

4 COMMISSIONER MCHUGH: Well, the
5 trigger is complex concerns relative to
6 suitability. I don't know what that is.
7 Anyway, I asked the question and then we keep
8 talking and so you can't answer it.

9 MR. GROSSMAN: The real crux of the
10 issue here was the 30-day notice requirement.
11 That's where we started from when we started
12 looking at this provision. And if memory
13 serves, in each case where the Commission held
14 an adjudicatory hearing, it wasn't on the
15 request of the applicant, we, the Commission,
16 decided that there was going to be an
17 adjudicatory proceeding.

18 CHAIRMAN CROSBY: Which nixed the
19 30-day.

20 MR. GROSSMAN: That was our
21 argument. In some cases, we got some pushback,
22 mild as it may have been, from some folks that
23 they are entitled to 30 days. And we said no,
24 you're not. That is only if we don't say

1 there's going to be an adjudicatory hearing,
2 then you have 30 days with which to exercise
3 that option.

4 The bottom line is, as you're
5 pointing out Commissioner McHugh, I don't think
6 this is a huge issue. This is really just
7 intended to remove that 30-day notice issue.
8 The complex language, I don't disagree. In
9 fact, I guess I'd say I agree that it may be
10 somewhat imprecise.

11 It was just intended really to give
12 the Commission flexibility to decide and a
13 standard against which to apply it to when you
14 were going to have a public hearing versus an
15 adjudicatory proceeding. Though it seemed as
16 though in any instance in which there were
17 concerns, you would always have an adjudicatory
18 proceeding.

19 And certainly if the applicant, if
20 you will, wanted an adjudicatory proceeding, we
21 would always allow that. That was the
22 intention and perhaps we didn't express that as
23 clearly as we may have.

24 COMMISSIONER MCHUGH: Two responses,

1 if the 30-day requirement is a problem then the
2 direct way to deal with that would be to fix
3 the 30 days. But the second thing you said I
4 would be fine with if we changed the trigger to
5 the qualifier's consent, then I wouldn't have
6 any problem with this.

7 So, if we took out the last sentence
8 of 115.04(1) and said the Commission may
9 utilize the public hearing process instead of
10 the adjudicatory process with the qualifier's
11 consent, then that would safeguard the
12 qualifier's rights to contest stains that were
13 not necessarily a disqualifier.

14 CHAIRMAN CROSBY: Where is the
15 applicant right to ask for an adjudicatory
16 hearing now?

17 COMMISSIONER MCHUGH: There isn't
18 one.

19 CHAIRMAN CROSBY: There isn't one.
20 Why did we eliminate that?

21 COMMISSIONER MCHUGH: The way this
22 is set up now is that the Commission decides
23 whether there's going to be an adjudicatory
24 hearing or a public hearing. Before there was

1 always the presumption.

2 CHAIRMAN CROSBY: It's presumed to
3 be an adjudicatory hearing unless the
4 Commission agree. Okay, got it.

5 COMMISSIONER MCHUGH: Yes.

6 CHAIRMAN CROSBY: What you're saying
7 is whether you need to say this literally or
8 not, the Commission may only utilize the public
9 hearing process if the applicant agrees or the
10 qualifier agrees.

11 COMMISSIONER MCHUGH: Yes.

12 CHAIRMAN CROSBY: Okay, I get that.
13 I'm not sure that you shouldn't add the word
14 only in that case, because I'm not sure it says
15 that without the word only. I got it. Okay.

16 COMMISSIONER MCHUGH: Does that make
17 sense?

18 MR. GROSSMAN: Absolutely.

19 COMMISSIONER ZUNIGA: This applies
20 only to qualifiers?

21 MR. GROSSMAN: And applicants too
22 for Region C, this would apply to Region C.

23 CHAIRMAN CROSBY: Great.

24 COMMISSIONER MCHUGH: I think these

1 are good changes.

2 CHAIRMAN CROSBY: Okay, Mr. Glennon.

3 MR. DAY: We need a vote to move
4 that forward.

5 CHAIRMAN CROSBY: Commissioner
6 McHugh?

7 COMMISSIONER MCHUGH: I move that
8 with the modification to 115.04(1) just
9 described that the Commission approve the
10 regulations -- the new qualifier amendments to
11 the regulations and approve them for submission
12 to the formal adoption process including the
13 public comment proceedings.

14 COMMISSIONER STEBBINS: Second.

15 MR. DAY: Commissioner McHugh, may I
16 ask a question. Would you also consider
17 allowing us to submit the small business impact
18 with this section?

19 COMMISSIONER MCHUGH: Yes and to
20 authorize the staff to submit the requisite
21 small business impact report.

22 MR. DAY: Thank you, Sir.

23 CHAIRMAN CROSBY: Second that as
24 well?

1 COMMISSIONER STEBBINS: I'll second
2 that as well.

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

5 COMMISSIONER MCHUGH: Aye.

6 COMMISSIONER CAMERON: Aye.

7 COMMISSIONER ZUNIGA: Aye.

8 COMMISSIONER STEBBINS: Aye.

9 CHAIRMAN CROSBY: Opposed? The ayes
10 have it unanimously. All right, Mr. CIO.

11 MR. GLENNON: Thank you, Mr.
12 Chairman. So happy to be appearing before you
13 before 4:00 in the afternoon.

14 On March 6 we appeared before you
15 and presented a first draft of regulations
16 relative to electronic gaming devices and
17 electronic gaming equipment, approval of slot
18 machines, electronic gaming equipment and
19 testing laboratories, and the possession and
20 transportation of slot machines.

21 In the intervening weeks, we have
22 continued collaborative discussions about the
23 initial draft with our first licensee, Penn
24 National Gaming, commission industry

1 consultants, electronic gaming device
2 manufacturers including Bally and IGT,
3 independent testing laboratories GLI and BMM,
4 and regulators in other similar jurisdictions.
5 We've also received written feedback from the
6 Association of Gaming Equipment Manufacturers
7 or AGEM.

8 On April 17 we submitted for your
9 consideration a second draft and posted to our
10 website for informal comments. Today, we bring
11 forward that second draft for policy
12 discussion.

13 This version includes substantive
14 changes from the first iteration based on our
15 own internal review and the input from the
16 various industry segments I just mentioned.

17 I very much appreciate and want to
18 acknowledge the support that I've received from
19 staff Attorney Artem Shtatnov, Deputy General
20 Counsel Todd Grossman and Commissioner McHugh
21 in refining the second draft before you here
22 today.

23 And at this point, I'm going to turn
24 over the discussion to Attorney Shtatnov who

1 will take us through the policy issues that are
2 highlighted in the draft that the Commission
3 may want to discuss or weigh in on. Artem?

4 MR. SHTATNOV: Thank you, John.
5 Commissioners, before you you have the latest
6 draft of the gaming device regulations as well
7 as a red-lined version of those regulations
8 that specifies the changes that I made since
9 the prior draft that we presented.

10 I'd like to go over a few the
11 important areas in here that are highlighted.
12 I'm going to go pretty quickly. So, if there's
13 anything the Commission would like to discuss
14 we can go into more detail in those areas.

15 On the first page, I highlighted the
16 80 percent, which is the minimum return to
17 player that we're going to require. We used to
18 have it at 85 percent but after discussions
19 with other parties, we determined that 80
20 percent might be better to not to prevent some
21 traditional games from being played.

22 CHAIRMAN CROSBY: Did you say it
23 used to be 85?

24 MR. GLENNON: It used to be 85.

1 CHAIRMAN CROSBY: Here it says
2 replacing 75?

3 MR. SHTATNOV: In our prior
4 recommendation, it was 85 percent.

5 COMMISSIONER ZUNIGA: The number 80
6 was 85.

7 CHAIRMAN CROSBY: Oh, I see. Okay.

8 COMMISSIONER ZUNIGA: We changed the
9 standard.

10 COMMISSIONER MCHUGH: And the basis
11 for that?

12 MR. SHTATNOV: In order to not
13 restrict some of the more traditional games
14 that do have a return to player on some of the
15 hands that are below 85 percent.

16 COMMISSIONER ZUNIGA: So, the
17 requirement while beneficial to the player
18 seemingly would eliminate certain games
19 effectively because of the different odds?

20 MR. SHTATNOV: Yes.

21 COMMISSIONER MCHUGH: Okay.

22 MR. SHTATNOV: So, on the following
23 page, paragraph three goes into how are we
24 going to define a slot machine that has

1 multiple gaming positions, whether or not you
2 want to define that machine as a single slot
3 machine or as one slot machine per each
4 position. This will have an effect on the
5 Category 2 applicants who are limited by the
6 1250 limitation on the number of slot machines
7 they can possess.

8 COMMISSIONER MCHUGH: Okay. This
9 deals with the situation in which you have a
10 single unit, but five chairs say around that
11 unit. It's mostly going to show up in
12 electronic table games, isn't it?

13 MR. SHTATNOV: Yes.

14 COMMISSIONER MCHUGH: And that's
15 what the picture at the end is designed to
16 show. At the end of the presentation is a
17 picture of an electronic table game. There it
18 is.

19 MR. GLENNON: It's at Twin Rivers.
20 It's just an example of an electronic table
21 game. Does not have any dealer human
22 intervention. It's a six-position device.

23 For the purposes of defining slot
24 machine, we're considering each player position

1 to be a slot machine -- So, in the case of this
2 -- for discussion purposes. So, in the case of
3 this device six positions, six cash in, cash
4 out. It counts as six slot machines.

5 COMMISSIONER MCHUGH: How is that
6 dealt with in other jurisdictions? I had a
7 question whether that was a slot machine at
8 all. But I take it under our definition it
9 clearly is because there is no human
10 intervention in the process.

11 MR. GLENNON: I think those are the
12 two criteria which we use. One, there is no
13 human intervention. You can see the dealer is
14 an avatar or whatever. And the fact just to
15 define the metric, a player position was going
16 to be a slot machine. And I think in talking
17 with Artem, in Penn's application called out
18 both that they would have 1250 slot machines
19 and 1250 player positions.

20 CHAIRMAN CROSBY: So, this is
21 compatible with their application.

22 MR. GLENNON: It is. But it's also
23 an interpretation, right? You need a metric.
24 The slot machine is the only thing that

1 mentioned in our enabling legislation. And we
2 also have a slot machine limit for the Category
3 2. So, we had to find a way of accounting for
4 that machine. It's obviously up to the
5 Commission to make a determination. And I've
6 had some conversations with Commissioner Zuniga
7 about the revenue if we were to interpret it
8 differently would be different.

9 COMMISSIONER MCHUGH: Yes. We have
10 a \$600 tax, annual tax on a slot machine. So,
11 that device would have a \$3000 annual tax under
12 this definition, right?

13 COMMISSIONER ZUNIGA: Yes. But the
14 most significant revenue that I am thinking
15 about is the 49 percent that comes for each one
16 of the seats let alone the machine.

17 MR. GLENNON: So, if you interpreted
18 this as one that would give the opportunity to
19 Penn to put in more than 1250 player positions.

20 COMMISSIONER MCHUGH: Right. But
21 how would it affect the 49 percent?

22 COMMISSIONER ZUNIGA: There's more.

23 CHAIRMAN CROSBY: There's more money
24 at five positions than one.

1 COMMISSIONER MCHUGH: Why?

2 COMMISSIONER ZUNIGA: There's five
3 players as opposed to one.

4 COMMISSIONER MCHUGH: It's 49
5 percent of gross gaming revenues for the place
6 not for each machine.

7 MR. GLENNON: You effectively have
8 more machines.

9 CHAIRMAN CROSBY: But if you have
10 1600 machines instead of 1250 because a bunch
11 of them have five seats.

12 COMMISSIONER MCHUGH: But that's
13 just definitional, the money is still the same.

14 CHAIRMAN CROSBY: Not if you don't
15 permit them. If you count this as one, then
16 the 1250 machines is going to give you 1400
17 some larger number of positions of an
18 individual sitting there putting in their
19 quarters.

20 COMMISSIONER MCHUGH: But the
21 quarters are still going to be --

22 CHAIRMAN CROSBY: The quarters are
23 the same but you don't have as many gaming
24 positions.

1 COMMISSIONER MCHUGH: But you're
2 taxing gross gaming revenues not machines,
3 except for the annual tax where you're taxing
4 machines at 600 bucks a pop. But the 49
5 percent is on gross gaming revenues whether you
6 have 500 machines by definition or 2500
7 machines by definition. The money is the same.

8 COMMISSIONER ZUNIGA: But there will
9 be more money the more positions that you have,
10 more people are putting in money.

11 CHAIRMAN CROSBY: The more bottoms
12 in chairs --

13 COMMISSIONER MCHUGH: I understand
14 that. This is a very interesting but probably
15 entirely irrelevant discussion.

16 CHAIRMAN CROSBY: That machine will
17 produce the same amount of gross gaming revenue
18 whether it's counted as one or five.

19 COMMISSIONER MCHUGH: That's right.

20 CHAIRMAN CROSBY: The machine will
21 produce the same amount of gross gaming revenue
22 whether it's counted as one or five. But the
23 building will produce more gaming revenue, more
24 gross gaming revenue if it's considered one.

1 COMMISSIONER MCHUGH: Okay, okay. I
2 got it.

3 CHAIRMAN CROSBY: You're right about
4 the machine. The machine doesn't change the
5 gross revenue, but the building does.

6 COMMISSIONER MCHUGH: Light dawns in
7 Marblehead.

8 COMMISSIONER ZUNIGA: I've had some
9 of those discussions and there's a real revenue
10 differential here between the applicants. And
11 we are in a uniquely -- There's also the
12 difference between the categories because of
13 the tax rate. If the Commission is ever
14 interested, and I am going to suggest that we
15 are, in giving the applicants some leeway as to
16 the mix on these six-person machine, clearly we
17 would want that on the Category 2, because the
18 Commonwealth collects 49 of any additional
19 dollar there.

20 On the flip side, there was a real
21 intent of capping by the Legislature of capping
22 the activity, let's just put it that way, for
23 the slots license. So, I think when you talk
24 about hypotheticals, I would like some leeway

1 but not such that results in 2000 positions.

2 That would clearly not be the intention.

3 CHAIRMAN CROSBY: But you would be
4 okay with 1257 but not 2000?

5 COMMISSIONER ZUNIGA: Right to some
6 percentage.

7 COMMISSIONER MCHUGH: Are you
8 proposing a change to three?

9 COMMISSIONER ZUNIGA: Yes, that we
10 at least discuss a change or some leeway for
11 the operator. The economics are there is not a
12 straight formula as I can interpret it.

13 There's different costs of some of these
14 machines. There's different economics.

15 For example, you highlighted a
16 blackjack type table. But there's a lot of
17 popularity with poker, for example, and for the
18 house in which case we are, there's not a lot
19 of profitability in poker because it's just not
20 the way the economics work out. The house
21 takes a commission of a lot of what's wagered.
22 But I think allowing some flexibility with some
23 limit could provide the operator a little bit
24 more leeway in the mix that they are able to

1 offer.

2 But you did ask, Commissioner, what
3 happens in other jurisdictions. And their
4 statutes are different. I'm familiar with
5 Maryland. They count up to six, I think. They
6 have a maximum of a multiple of six in terms
7 of --

8 CHAIRMAN CROSBY: Per machine.

9 COMMISSIONER ZUNIGA: -- per
10 machine, six seats per machine. There's
11 actually machines that can seat more than six,
12 but they drew the line at six. But the
13 economics there are different. They actually
14 own the machines and lease them to the
15 operator, if I'm not mistaken, for which they
16 get the bulk of the economic benefit. And
17 there is no restriction there on how many
18 machines the operator can have.

19 CHAIRMAN CROSBY: It seems to me
20 that if by your definition, the Legislature was
21 probably meaning 1250 seats. And if Penn who
22 bid was thinking it meant 1250 seats and our
23 other applicants who are going to be competing
24 with these folks presumed it was 1250 seats

1 that we'd be pushing the envelope pretty hard
2 to make it more than 1250 seats.

3 If it was generally an issue, if
4 Penn came in and said here's our proposal and
5 we're assuming that it permits multiple seats
6 at each machine then that would be on thing.
7 But it sounds like your sense is and the facts
8 are that is a pretty uniform conviction that
9 one means one. And it would be pretty much us
10 making up the whole cloth if one means one and
11 a half.

12 COMMISSIONER ZUNIGA: I don't fully
13 agree but I don't fully disagree either. I
14 think from some of the comments we had from
15 other applicants when they applied for this
16 that was something we were able to glean that
17 this was potentially a really beneficial
18 flexibility.

19 I would also argue that there is a
20 real time differential here that I'm mostly
21 thinking about which is a time period in which
22 there are no table games in the Commonwealth
23 live table games because the Category 1s take
24 time to come online.

1 So, there could very well be a
2 benefit to us and the operator and no
3 complaints from the other licensees during a
4 period in which the other categories are not
5 online. So, I've even thought and brought this
6 up with Todd and John whether we could craft
7 something relative to a timing exception.

8 We have a waiver process for our
9 regulations all together. So, we could always
10 find ourselves if Penn decided that this was
11 worthwhile to have a request for a waiver on
12 our regulations at any point.

13 CHAIRMAN CROSBY: I think that's an
14 interesting idea. What about considering
15 between now and the time the first Category 1
16 license opens, license holder opens that we
17 would permit a different interpretation? And
18 the motivation would be to maximize the
19 revenues and to some limited extent the jobs to
20 the Commonwealth and not doing damage to the
21 competitive environment with our Category 1
22 applicants. I think that's an interesting
23 idea.

24 COMMISSIONER CAMERON: Isn't it

1 difficult though to provide a benefit and then
2 take it away? I think that's difficult at
3 best.

4 CHAIRMAN CROSBY: The benefit being
5 the revenue?

6 COMMISSIONER CAMERON: Right now as
7 long as there's no one else open you can do X,
8 but as soon as someone comes online, it's gone.
9 You can't do it anymore.

10 CHAIRMAN CROSBY: My guess is that
11 they would be in favor.

12 COMMISSIONER ZUNIGA: They would
13 have to make an economic calculation. Do I
14 buy, lease or commit to something like this
15 only for two years. If it's worthwhile, they
16 might. If it's not, they might not.

17 I think there's an argument that we
18 could make relative to specifically electronic
19 table games. We could see them as in direct
20 competition even though I'm told they're not
21 fully in direct competition with live table
22 games. That the people who patronize table
23 games prefer the livelihood.

24 But on the flip side there is also

1 many patrons prefer electronic table games as a
2 way to learn and get comfortable with the games
3 before they try live table games.

4 COMMISSIONER CAMERON: They prefer
5 the avatar.

6 COMMISSIONER ZUNIGA: For some
7 period of time until they get comfortable with
8 the speed and company of other players.

9 COMMISSIONER CAMERON: That's
10 interesting.

11 COMMISSIONER MCHUGH: I have
12 difficulty changing a definition because of
13 competition, i.e., it's a single machine now
14 but as soon as there's competition it's five
15 machines.

16 CHAIRMAN CROSBY: I'd say it's the
17 other way around. We'd say it's a single
18 machine forever, but we waive the consent until
19 another licensee opens.

20 COMMISSIONER MCHUGH: That's a way
21 of disguising what we're doing, but yes. I
22 have difficulty with that. And the
23 contribution to our operating revenues changes
24 potentially dramatically with that change.

1 CHAIRMAN CROSBY: Right.

2 COMMISSIONER MCHUGH: Right?

3 CHAIRMAN CROSBY: Well, not
4 necessarily only if Penn National decided to
5 act on it. If they decided it was in their
6 economic interest to act on that waiver, yes,
7 you would be right.

8 COMMISSIONER MCHUGH: Then during
9 the interim between now and the time that the
10 casinos opened, the casino's share of our
11 operating revenues would be lower than it would
12 be when the casinos opened.

13 COMMISSIONER ZUNIGA: I'm not sure I
14 follow that.

15 COMMISSIONER MCHUGH: Because our
16 operating revenues, the assessment is per
17 gaming position. And a gaming position is
18 defined as a seat or standing position at a
19 game. So, the statutory definition of a gaming
20 position would have that machine have five
21 gaming positions however else we --

22 CHAIRMAN CROSBY: Let's assume that
23 what you're saying is right.

24 COMMISSIONER MCHUGH: I do assume

1 that.

2 COMMISSIONER ZUNIGA: The statute is
3 not definite --

4 COMMISSIONER MCHUGH: Yes, it is.

5 COMMISSIONER ZUNIGA: -- on position
6 versus machine.

7 COMMISSIONER MCHUGH: I'm sorry.
8 I'm reading the statute. It says a gaming
9 position "a designated seat or standing
10 position where a patron of a gaming
11 establishment can play a game". That sounds
12 pretty clear to me.

13 COMMISSIONER ZUNIGA: Yes. Can we
14 go to the 1250 cap for the Category 2, what is
15 that 1250 cap on?

16 CHAIRMAN CROSBY: Is it gaming
17 positions or is it something else?

18 COMMISSIONER MCHUGH: I think it's
19 machines. I think that's true.

20 COMMISSIONER ZUNIGA: That's right.
21 Hence, the ambiguity.

22 COMMISSIONER MCHUGH: No, not the
23 ambiguity in the contribution to our operating
24 revenues, because it says the contribution

1 shall be assessed annually on gaming licensees
2 under this Chapter in proportion to the number
3 of gaming positions.

4 COMMISSIONER ZUNIGA: That's not the
5 one I'm worried about.

6 CHAIRMAN CROSBY: That's right. So,
7 we're going to change the number of gaming
8 positions. So, that would mean yes, if Penn
9 National decided to accept this waiver, they'd
10 be paying a larger share of whatever. So what?

11 COMMISSIONER MCHUGH: I don't know.

12 CHAIRMAN CROSBY: They don't have to
13 do it. If the arithmetic works for them, the
14 1250 seats is the way they want to go, that's
15 up to them. But it does seem to me that the
16 Racehorse Development Fund would benefit from
17 it substantially. The Commonwealth might very
18 well. We've had our consultants -- This is
19 beyond my education level. I would want
20 comment on this from our other applicants and
21 others. But I think it's a really interesting
22 idea.

23 COMMISSIONER CAMERON: I would want
24 comment too, because it would seem to me that

1 the only decision can't be the dollars. Is
2 there something we're missing here? The only
3 reason we'd change this is because it would be
4 an economic advantage. And I just wonder if
5 that is the only consideration here.

6 COMMISSIONER MCHUGH: Maybe it is.

7 COMMISSIONER CAMERON: Maybe it is.

8 I don't know.

9 COMMISSIONER MCHUGH: I'd like to
10 get some comments on this too.

11 CHAIRMAN CROSBY: I think it's a
12 really interesting idea. And I think we should
13 ask folks like these and Penn National to give
14 us their thoughts. So, let's resolve -- let's
15 leave this one open.

16 Good thing we didn't take that lunch
17 break, right?

18 MR. GLENNON: It's good
19 conversation.

20 CHAIRMAN CROSBY: Good conversation.

21 MR. GLENNON: I knew this one would
22 have it.

23 MR. SHTATNOV: The next paragraph --

24 CHAIRMAN CROSBY: Could you try to

1 pick it up a little bit, Artem? This is taking
2 too long.

3 MR. SHTATNOV: The next paragraph,
4 paragraph four on page 324 that tries to solve
5 a potential problem that we may have if we do
6 collect a large amount of data from every slot
7 machine. In the highlighted section, we try to
8 say that we are going to be reviewing the data
9 to some extent but we're not obligated to
10 continuously review it and make sure there's no
11 problems in it whatsoever, just to avoid any
12 potential liabilities.

13 On the next page, the highlighted
14 portion we removed the restriction on cash and
15 coins. So, a slot machine can accept cash and
16 coins, but we are still restricting the debit
17 cards and credit cards that are accepted
18 directly at the machine.

19 COMMISSIONER ZUNIGA: I'm sorry.
20 What was that section, Artem?

21 MR. SHTATNOV: Section 143.04
22 paragraph two.

23 COMMISSIONER ZUNIGA: What is the
24 page?

1 MR. SHTATNOV: Page 325 -- 326, I'm
2 sorry.

3 COMMISSIONER ZUNIGA: What's other
4 jurisdictions, what's the mix from other
5 places, do we know?

6 MR. GLENNON: I believe that most
7 slot machines don't accept a credit card or a
8 debit card at this point.

9 MR. DAY: That's right.

10 MR. GLENNON: This was the section
11 that had the bill acceptor language, which we
12 took out.

13 COMMISSIONER ZUNIGA: But they do
14 accept bill acceptors.

15 MR. DAY: Usually, the most common
16 would be bill acceptors and/or tickets, but not
17 direct debit card or credit card.

18 COMMISSIONER ZUNIGA: Understood.

19 MR. GLENNON: The other concern was
20 EBT cards. We wanted to make sure that no
21 cards that are issued with the benefit program
22 dollars on them are used in the facility.

23 MR. SHTATNOV: Jumping two pages
24 ahead to section 143.16 the first paragraph.

1 This specifies that we are going to require the
2 G2S protocol in all gaming devices that are
3 implemented after January 1, 2017.

4 Before January 1, 2017, we will
5 accept any device as long as it meets the
6 requirements that we have listed out here.
7 These requirements are just to allow us to
8 monitor those devices and properly regulate the
9 gaming establishment.

10 COMMISSIONER CAMERON: How is this a
11 change? I'm trying to remember.

12 MR. SHTATNOV: Before we had a
13 specific requirement to only accept G2S
14 protocol version 2.1. And we received comment
15 that that may be too restrictive as the
16 protocol changes often and it would prevent
17 prior protocols from being use even if they
18 were equally good for our purposes.

19 Also, before we didn't have a
20 grandfathering in of devices that were
21 implemented before January 1, 2017. That was a
22 cutoff date after which all devices currently
23 in use had to be G2S. Now any device prior to
24 January 1, 2017 can still continue to be used.

1 MR. GLENNON: That was an
2 accommodation in our discussions with Penn so
3 they wouldn't have restrictions putting in
4 devices.

5 COMMISSIONER ZUNIGA: What about the
6 Category 1 applicants, this date clearly would
7 benefit Penn but if the Category 1 applicants
8 take a while to construct and get some of this
9 approved does that effectively mean that those
10 applicants would be effectively required --

11 MR. GLENNON: I think the rollout of
12 those facilities is far enough in the future
13 that we're expecting that they would bring in
14 and deploy only games that provided the G2S
15 protocol.

16 COMMISSIONER ZUNIGA: I know you've
17 actually explained this twice, so I am going to
18 ask for a third time. Summarize the G2S
19 protocol evolution, if you will, and what is
20 does to certain manufacturers versus others.

21 MR. GLENNON: The traditional
22 protocol is called the slot accounting system.
23 It's the protocol for all legacy machines. The
24 150,000 in Las Vegas all give off slot

1 accounting system SAS data. It's older and the
2 ability to connect and manage these slot
3 machines using software is much enhanced with
4 G2S.

5 Back in 2006, the Gaming Standards
6 Association started the process of working with
7 manufacturers to come up with a common set of
8 protocols that could be implemented across the
9 industry. And that's what this is. So, it
10 basically helps manage the end-point machines,
11 know what software is on them, be able to get
12 information in real-time about the status of
13 the machines.

14 There are conversions. SAS, it can
15 be made to look like G2S. And there are
16 accommodations because the industry is in
17 transition. And I think we've taken that into
18 consideration by giving a period of time.

19 But I think for our purposes,
20 collecting the data that comes out of these
21 endpoint devices is going to give us the
22 ability to regulate better. It's going to give
23 us an enhanced ability to understand what is
24 happening at each of these devices and also to

1 work with the operators to better manage them.

2 So, I think the richer set of data
3 that comes out of G2S is what we're looking
4 for. And I think there are issues, because
5 retrofitting some of the lower tier
6 manufacturers that don't have the wherewithal
7 to be able to do this engineering. That's the
8 reason AGEM has objected on their behalf.

9 They may not have in their roadmaps
10 have a movement towards the standard. But I
11 think the standard is important, so that's the
12 reason we put it in, and that's kind of the
13 history. Does that answer your question?

14 COMMISSIONER ZUNIGA: It does very
15 well. It's the smaller manufacturers that have
16 the disadvantage, if you will, because their
17 evolution to the G2S protocol is perhaps
18 sliding compared to the bigger manufacturers.

19 MR. GLENNON: Even the top-tier
20 manufacturers have been slow to go to the
21 standard, because a lot of their intellectual
22 property is in proprietary processing. So, I
23 think IGT is the most adopted. And then as you
24 go on down the line, others in the top five to

1 10 are moving this way. It's been slow.
2 Again, they started in 2006. It's still
3 ongoing.

4 COMMISSIONER ZUNIGA: Right. We
5 could always modify any of this between now and
6 2017. But we're not worried that before then
7 -- that this would give particular advantage to
8 a very few entities that manufacture?

9 MR. GLENNON: I hope it would not.

10 MR. SHTATNOV: So, going forward now
11 to page 334 of the packet, the next highlighted
12 section is paragraph three on that page. So,
13 when the independent testing lab issues reports
14 to us laying out the testing that they
15 conducted and all of the inter-operations of
16 the device that report may not necessarily
17 remain confidential under the public records
18 laws.

19 So, we need to figure out a way to
20 ensure that we get sufficient information in
21 the testing lab as well as be able to keep the
22 inter-operations confidential to not harm the
23 gaming device vendor.

24 COMMISSIONER ZUNIGA: How does the

1 gaming device's integrities harmed potentially?

2 MR. SHTATNOV: Because some of the
3 gaming devices contain trade secrets in terms
4 of what kind of payouts to give at what times,
5 what the probabilities are. And if that kind
6 of information went public, it would be very
7 difficult for us to attract the gaming vendors
8 to sell their machines in Massachusetts.

9 CHAIRMAN CROSBY: Okay.

10 COMMISSIONER CAMERON: Thank you.

11 MR. SHTATNOV: Next highlighted
12 paragraph, paragraph five is the question of
13 reciprocity and when we're going to accept the
14 testing conducted by another party or in a
15 different jurisdiction for purposes of
16 permitting a gaming device in Massachusetts.

17 As currently written, if an
18 independent testing lab conducts a test in
19 Massachusetts then any other independent
20 testing lab in Massachusetts can rely on the
21 results of that test. Also, we have our
22 reliance on independent testing lab results
23 that are conducted outside of Massachusetts as
24 long as it certifies that the results are

1 reliable.

2 Finally, we have a provision here
3 that says if a device is in use in another
4 jurisdiction for at least six months and it's
5 performed in conformance with the data then
6 that device can also be used in Massachusetts
7 without additional testing above that.

8 COMMISSIONER MCHUGH: That's a
9 common practice, right?

10 MR. SHTATNOV: It is.

11 CHAIRMAN CROSBY: Can we do the same
12 thing for background checks?

13 MR. SHTATNOV: So, the common
14 practice is to allow the independent testing
15 lab to rely on testing conducted by another lab
16 in the same state. Some jurisdictions also
17 have a list of approved other jurisdictions
18 that they want to allow reliance on.

19 But we have had some pushback on any
20 devices that were operating in a different
21 jurisdiction for six months because even though
22 they may have been operating there and they may
23 have been operating perfectly fine and nothing
24 went wrong that might not give us sufficient

1 data to make a determination. And also they
2 may have been operating under certain
3 conditions of which we are not aware when
4 permitting the device.

5 COMMISSIONER MCHUGH: So, who's
6 giving us the pushback?

7 MR. SHTATNOV: It wasn't really
8 pushback, they were just pointing out a
9 potential problem with this approach.

10 MR. GLENNON: I think we're trying
11 to allow for sharing of data and not being
12 redundant and not having to retest. It is very
13 unlikely, given the relationship that the two
14 major players in this space have that there's
15 going to be a lot of sharing or dependence on
16 each other's results.

17 I think we're trying to provide for
18 it here. I think we're being more open to the
19 process. My guess is this will not be taken
20 advantage of. And that based on feedback we've
21 had from the labs, they would be reluctant to
22 use a competitor's results a part of their
23 certification to operate in this jurisdiction.

24 COMMISSIONER MCHUGH: Okay.

1 MR. SHTATNOV: On the following page
2 we get into the fees associated with
3 permitting. Currently, we have set a \$500
4 application fee for the permit, and then we're
5 going to assess the remainder of our costs onto
6 our gaming vendor.

7 For the certification process to
8 certify an independent testing lab to conduct
9 testing on our behalf, we have set an initial
10 application fee for that certification at \$5000
11 so that we can conduct the necessary background
12 investigations in addition to determining
13 whether or not the lab is qualified. And if
14 any of fees go over, we are going to bill it
15 back to the independent testing lab as well.

16 COMMISSIONER ZUNIGA: When we talk
17 about -- I'm looking at the \$500 figure here
18 for permitting a gaming device. If an
19 applicant wants -- Is that a physical device?

20 MR. GLENNON: No. So, the
21 permitting is for the software image being
22 tested or the configuration, so to speak. It
23 would be what are we testing on the platform.
24 And the permitting would be for the instance.

1 Then they could bring in and register as many
2 devices that use that instance as they wanted
3 at no cost. The registration would be asset
4 management. The permitting would be the \$500
5 fee for permitting and testing that
6 configuration of software and relevant
7 platform.

8 COMMISSIONER ZUNIGA: Right. But
9 every time we test or retest the permit fee
10 applies?

11 MR. GLENNON: It does, yes. A
12 change like that -- That's kind of a baseline
13 because depending upon the complexity of the
14 test there may be more or less effort required.

15 COMMISSIONER CAMERON: These numbers
16 change from the last draft?

17 MR. SHTATNOV: No, they're the same.
18 We did implement the \$5000 application fee for
19 the independent testing lab certification
20 though.

21 CHAIRMAN CROSBY: Does the issue of
22 the Commission having the wherewithal to
23 determine public hearing and adjudicatory
24 proceeding, Commissioner McHugh, does that

1 cause you concern?

2 MR. GLENNON: I believe the same
3 language you discussed earlier is in our regs.
4 And I think we'll just have to come to the same
5 resolution. Todd is that --

6 CHAIRMAN CROSBY: So, you'd make it
7 the same standards for adjudicatory versus --
8 So, the presumption is adjudicatory unless we
9 get the consent of the applicant?

10 MR. GLENNON: I think we were going
11 to say if there were no problems we'd do a
12 public hearing. If there were problems --
13 however you changed it. The idea was to make
14 easy and wouldn't have to be a full
15 adjudicatory proceeding if there was a clear
16 suitability to certify.

17 COMMISSIONER MCHUGH: It should be
18 the same.

19 CHAIRMAN CROSBY: So, we'll make
20 that the same, okay.

21 MR. GLENNON: Yes, we'll make it the
22 same.

23 MR. SHTATNOV: So, additionally to
24 the initial \$5000 application fee for

1 independent testing labs, we have an annual
2 renewal fee of \$2000. This is just to cover
3 any expenses that we incur over the year to
4 make sure that the lab is in compliance.

5 And I believe that is all that we
6 had unless there's any additional questions.

7 MR. GLENNON: At this point, we
8 would ask for you to vote this to move it along
9 in the formal process that Todd described
10 earlier. We do have some letters and comments
11 which we'll include in the consideration of
12 whatever else comes in during that period. But
13 we'd appreciate your consideration.

14 COMMISSIONER ZUNIGA: I talked to
15 you about it briefly before, John, we have for
16 the moment deferred regulations as they apply
17 to slot standards that had to do with the
18 responsible gaming features until such time
19 that we got the responsible gaming framework
20 really established.

21 MR. GLENNON: Yes. So, we initially
22 put in some placeholders to have that
23 discussion. But in discussions with Mark, we
24 agreed that he will bring forward his

1 responsible gaming framework. And any
2 technological implications, if there's
3 something we need to build into our technical
4 standards and regulations that we'll do so at
5 that time.

6 COMMISSIONER ZUNIGA: Great, thank
7 you.

8 CHAIRMAN CROSBY: Okay. Terrific.

9 COMMISSIONER MCHUGH: I think we
10 need a motion.

11 CHAIRMAN CROSBY: To go forward.

12 COMMISSIONER MCHUGH: Same motion as
13 we had before move to approve the draft
14 regulations with the amendments we've just
15 described, approve them for commencement of the
16 formal approval process including sending the
17 letters to the small business impact statement.

18 COMMISSIONER CAMERON: Second.

19 CHAIRMAN CROSBY: Further
20 discussion?

21 COMMISSIONER ZUNIGA: And with
22 specific request for comment relative to the
23 section that -- the count of the gaming --

24 CHAIRMAN CROSBY: Yes, that's a

1 good --

2 COMMISSIONER MCHUGH: -- highlight
3 that.

4 CHAIRMAN CROSBY: We do want to make
5 sure that we get the request out. I'm sure
6 people are watching, but that's important.

7 COMMISSIONER STEBBINS: Is the small
8 business impact statement any different because
9 we're talking about fees?

10 MR. GROSSMAN: I think it depends
11 who you are assessing the fee upon. Here I
12 don't think anyone involved in the manufacture
13 of slot machines really would qualify as a
14 small business. So, I don't think there would
15 be much of an impact.

16 MR. GLENNON: I think the testing
17 laboratories are also big enough that they
18 wouldn't be considered small businesses.

19 CHAIRMAN CROSBY: Okay. And further
20 discussion? All in favor, aye.

21 COMMISSIONER MCHUGH: Aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER STEBBINS: Aye.

1 CHAIRMAN CROSBY: Opposed? The ayes
2 have it unanimously.

3 COMMISSIONER MCHUGH: That's another
4 significant step forward. These are
5 complicated regulations.

6 CHAIRMAN CROSBY: I'm incredibly
7 impressed with both you guys that you've
8 learned so much about this stuff so quickly,
9 both of you.

10 MR. GLENNON: As we say in
11 Massachusetts, wicked smart.

12 CHAIRMAN CROSBY: Thank you. That
13 is everything on our agenda. I think we are
14 ready for a motion to adjourn.

15 COMMISSIONER MCHUGH: So moved.

16 CHAIRMAN CROSBY: All in favor, aye.

17 COMMISSIONER MCHUGH: Aye.

18 COMMISSIONER CAMERON: Aye.

19 COMMISSIONER ZUNIGA: Aye.

20 COMMISSIONER STEBBINS: Aye.

21 CHAIRMAN CROSBY: And we will
22 reconvene tomorrow at 10:30 same place, same
23 time. Thank you.

24 (Meeting adjourned at 2:25 p.m.)

- 1 ATTACHMENTS:
- 2 1. Massachusetts Gaming Commission May 1,
3 2014 Updated Notice of Meeting and Agenda
 - 4 2. Submitted Briefs and Responses Regarding
5 Determination of the Premises of the
6 Gaming Establishment
 - 7 3. Massachusetts Gaming Commission
8 March 6, 2014 Meeting Minutes
 - 9 4. Massachusetts Gaming Commission
10 April 17, 2014 Meeting Minutes
 - 11 5. Massachusetts Gaming Commission 4/25/2014
12 Memorandum Regarding Request from Casino
13 Applicants and Others for Changes in
14 Expanded Gaming Legislation with
15 Attachments
 - 16 6. DRAFT 205 CMR 115.00
 - 17 7. DRAFT 205 CMR 116.00
 - 18 8. DRAFT 205 CMR 101.00
 - 19 9. DRAFT 205 CMR 143.00
 - 20 10. DRAFT 205 CMR 144.00
 - 21 11. DRAFT 205 CMR 145.00
 - 22 9. DRAFT 205 CMR 143.00 (red-lined)
 - 23 10. DRAFT 205 CMR 144.00 (red-lined)
 - 24 11. DRAFT 205 CMR 145.00

1 GUEST SPEAKERS:

2 Matthew Cameron, No Eastie Casino

3 Kevin Conroy, Esq., Foley Hoag (Mohegan Sun)

4 Brian Falk, Esq., Mirick O'Connell (City of
5 Revere)

6 Celeste Myers, No Eastie Casino

7 Tony Starr, Esq., Mintz Levin (Wynn Resorts)

8

9 MASSACHUSETTS GAMING COMMISSION STAFF:

10 Catherine Blue, General Counsel

11 Richard Day, Executive Director

12 John Glennon, Chief Information Officer

13 Todd Grossman, Deputy General Counsel

14 Artem Shtatnov, Staff Attorney

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 4th day of May, 2014.

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