

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

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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:

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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