

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #120

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

May 8, 2014 1:05 p.m.

BOSTON EXHIBITION AND CONVENTION CENTER

415 Summer Street, Room 151

Boston, Massachusetts

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

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3 CHAIRMAN CROSBY: I am pleased to
4 call to order the 120th meeting of the
5 Massachusetts Gaming Commission about 1:00,
6 1:05 in our customary location at the Boston
7 Convention Center.

8 Before we start, I want to read a
9 statement. I have said repeatedly over my two
10 years as Chair of the Gaming Commission that
11 the single highest priority for our work is
12 that we protect the integrity of the decision-
13 making process. And I've also said repeatedly
14 that the appearance of integrity as well as the
15 reality of integrity is critical.

16 Over the past several months, my
17 behavior and my judgment concerning the parties
18 to the Region A decision has been questioned,
19 sometimes in good-faith sometimes in bad-
20 faith. Frankly, neither I nor any of the
21 Commissioners have any doubt about my ability
22 to be impartial in the decision-making process.
23 But the compounding of these issues has now
24 gotten to the point where my participation in

1 the decision-making process has become a
2 distraction and a potential threat to the
3 critical appearance of our total impartiality.

4 I want to take this opportunity to
5 note the extraordinary amount of hard work and
6 dedication that's resulted in the considerable
7 progress and accomplishment achieved by the
8 Commission and by our staff since we embarked
9 on the implementation of an incredibly complex
10 licensing process in the establishment of a new
11 state agency.

12 I will not allow anything to
13 distract or to discredit all of that
14 comprehensive effort. Therefore, I have
15 decided to recuse myself from any further
16 involvement in any of the issues concerning the
17 licensing decision for Region A. For those
18 discussions, Commissioner Jim McHugh will act
19 as Chairman of the Commission and my decision
20 will have no impact on the schedule for Region
21 A.

22 In all other respects, I will
23 continue to serve in the role as Chair of the
24 Gaming Commission and I look forward to being a

1 part of its ongoing and important work.

2 COMMISSIONER MCHUGH: Mr. Chairman,
3 I understand why you're doing this. I regret
4 the need that you perceive to do this. I said
5 before and I say again that I have no doubt
6 whatsoever, having worked with you extensively
7 over the past two years on a daily basis, in
8 your ability to be impartial, in your focus on
9 the best interests of the people of the
10 Commonwealth and the effort that you have made
11 to bring the Commission to where it is today,
12 and on your visceral belief in the necessity to
13 achieve the goals the Legislature so carefully
14 set out in the legislation.

15 I understand why you're doing this.
16 I regret the need that you see to do this. And
17 we'll move on in your absence.

18 CHAIRMAN CROSBY: Thanks very much.
19 We are going to take very quick break while the
20 temporary Chair gets organized. And we will
21 reconvene with four Commissioners in just a
22 very few minutes. Thank you all very much.

23

24 (A recess was taken)

1 COMMISSIONER MCHUGH: I would like
2 to call to order the meeting and proceed with
3 the agenda that we set out for today.

4 The first item on that agenda is the
5 issue of the petition of the Wynn Mass. with
6 respect to the arbitration proceedings with the
7 city of Somerville. General Counsel Blue,
8 would you care to set that up for us, please.

9 MS. BLUE: Thank you, Commissioners.
10 The Commission has before it today a petition
11 for failure to participate in binding
12 arbitration filed by Wynn Mass., LLC against
13 the city of Somerville. The city of Somerville
14 has filed a response to Wynn's petition. Both
15 documents are in the Commission's packet.

16 The petition is filed pursuant to
17 the Commission's regulation 125.01(6). Both
18 parties have been advised that the Commission
19 will not accept further filings on the matter
20 or take testimony today. However,
21 representatives of the parties are here. And
22 the Commission may ask questions of those
23 representatives if it so chooses.

24 Wynn's petition alleges that

1 Somerville is failing to participate in
2 arbitration because Somerville has proposed the
3 appointment of an arbitrator to the panel of
4 arbitrators that Wynn believes does not meet
5 the neutral and independent standard required
6 under Commission regulations. Wynn is
7 requesting that the Commission order Somerville
8 to withdraw its proposed arbitrator and appoint
9 an arbitrator who is neutral and independent.

10 The Commission regulations do not
11 define neutral an independent. The
12 Commission's arbitrator handbook, however,
13 requires each arbitrator must be neutral and
14 independent, free of bias and conflicts of
15 interest and capable of discharging their
16 responsibilities within the expedited schedule
17 required by the Gaming Act.

18 Arbitrators who live in the
19 surrounding community or who have any current
20 financial or business interest in the
21 applicant, the host community or any of the
22 applicant surrounding communities are not
23 eligible to act as arbitrators. The arbitrator
24 should disclose to the parties whether they

1 have or have had any ongoing or past financial
2 or business interest in the applicant or its
3 qualifiers, the host community, the surrounding
4 communities or any law firm or consultant
5 representing any of them.

6 The arbitrator should also disclose
7 any relationship, experience or background
8 information that may affect or appear to affect
9 the arbitrator's ability to be impartial, and
10 the parties' belief that the arbitrator will be
11 able to render a fair decision.

12 Under 205 125.01(6) in the event
13 that a community fails to participate in the
14 arbitration process, the Commission may deem
15 the community to have waived its surrounding
16 community status.

17 Under section 1 of Chapter 23K the
18 Commission has ability to construe the power
19 and authority granted to it as broadly as
20 necessary for the implementation,
21 administration and enforcement of Chapter 23K.
22 This grants the Commission the authority to
23 provide a remedy to address the matters raised
24 in the petition and the Commission is not

1 limited only to the remedy of deeming the
2 surrounding community designation status as
3 waived.

4 The case law in Massachusetts
5 follows generally the federal case law on the
6 standard for disqualifying an arbitrator based
7 upon bias. The case law requires that evidence
8 of bias must be direct, definite and capable of
9 demonstration, not remote, uncertain or
10 speculative. Federal case says that
11 arbitrators are not held to the same standard
12 of impartiality as judges.

13 The parties have provided filings or
14 arguments as to why or why not Somerville's
15 proposed arbitrator is or is not neutral and
16 independent. The Commission after review of
17 those findings and deliberation can render a
18 decision regarding Wynn's petition and if
19 necessary fashion an appropriate remedy.

20 COMMISSIONER MCHUGH: All right.
21 Thank you very much. Are there any questions
22 for General Counsel Blue? At the heart of this
23 is a single arbitrator, Mr. Foy, whose
24 impartiality has been questioned by the Wynn

1 interests. It is at his qualifications to
2 serve as an arbitrator because of his past
3 relationship with the city of Somerville that
4 that petition is directed. Do I summarize that
5 issue fairly?

6 MS. BLUE: That is correct.

7 COMMISSIONER MCHUGH: And his
8 relationship with the city of Somerville, his
9 past relationship is a part of the record
10 today, the meeting packet that's available to
11 everybody. And I've looked at it and I'm sure
12 all of the other Commissioners have looked at
13 that. And the arguments of counsel on both
14 sides are there as well.

15 So, I guess I would begin by asking
16 whether there were any questions -- I guess I
17 already asked that question. -- of General
18 Counsel Blue.

19 COMMISSIONER ZUNIGA: To your point,
20 Commissioner, about the prior relationship. It
21 has two elements, doesn't it? Mr. Foy has
22 participated in the past doing some work for
23 the city directly and getting compensated,
24 although there is not a current relationship,

1 if I am not mistaken.

2 MS. BLUE: That is my understanding
3 from what was filed, yes

4 COMMISSIONER ZUNIGA: But there is a
5 second element too. Mr. Foy did participate in
6 other capacities relative to the Assembly
7 Square task force. Remind me the right name of
8 that.

9 MS. BLUE: I believe that's what it
10 was, yes, he did participate.

11 COMMISSIONER MCHUGH: He
12 participated as a mediator between opposing
13 interests with respect to Assembly Square
14 according to his resume, if I'm reading that
15 correctly.

16 MS. BLUE: I think that is correct.

17 COMMISSIONER MCHUGH: So, he was not
18 a partisan in that. He was an impartial
19 mediator in that instance. And the record is
20 clear that he says that he has no continuing
21 current interest or arrangements with the city
22 of Somerville.

23 COMMISSIONER CAMERON: Nor does he
24 live in the city.

1 MS. BLUE: That's right. He does
2 not live in the city of Somerville. He did
3 disclose that he has a son that lives there but
4 he himself does not live there.

5 COMMISSIONER CAMERON: That is
6 standard for the arbitrator is slightly
7 different than that of a judge as you explained
8 to me. There is not the same standard. It's
9 just not the same, the level of what would be
10 considered neutral and what would not are
11 slightly different.

12 MS. BLUE: It is a different
13 standard. Judges have a much higher standard
14 of impartiality. The understanding with
15 arbitrators is that they tend to be business
16 people. They are involved in the market in
17 which they work or function. And that they
18 will certainly have more knowledge and more
19 contact with the market in which they work.

20 COMMISSIONER ZUNIGA: If the past
21 few minutes are any indication, this Commission
22 and this whole process held to quite a large
23 standard, right -- quite a high standard I
24 should say.

1 COMMISSIONER MCHUGH: It is. There
2 is no question about that. The question is not
3 though the Commission's standard for self-
4 governance. The question is what is to be
5 expected from an arbitrator whom one of the
6 parties hires to be part of the arbitration
7 process.

8 I think we don't want to blend over
9 and impose a different -- Well, that's
10 something to discuss. We don't want to
11 necessarily impose different standards on
12 arbitrators than normally the standards
13 require.

14 We've set out in a handbook what the
15 standards are. That's there. We haven't
16 articulated what the standards are in the past
17 in any detail that focuses on a specific
18 individual, but it seems to me we ought to
19 think carefully about imposing standards that
20 we have on arbitrators.

21 COMMISSIONER CAMERON: Certainly,
22 the reason for a third arbitrator would be
23 because there is not total consensus with
24 either one or necessarily the two that were

1 selected by both sides. So, the third
2 arbitrator, there needs to be a consensus or
3 the Commission gets involved.

4 MS. BLUE: Our regulations provide
5 that the parties can agree to go with a single
6 arbitrator. They have not agreed to do that
7 here. They're going with a panel. So, the
8 Commission could say that each arbitrator
9 that's been proposed will follow the
10 regulations and potentially pick a third
11 arbitrator. In the case where a third
12 arbitrator can't be agreed to by the parties,
13 the Commission can designate a third.

14 COMMISSIONER MCHUGH: Let me say
15 that I see two issues here. I see one of
16 substance and one of disclosure. We haven't
17 talked about this before, but there may be
18 other instances in which this same issue is
19 going to arise.

20 There are situations in which the
21 arbitrator chosen by each side in a three-party
22 arbitration situation is not neutral. And
23 there's a whole way of dealing with that, a
24 whole process for arbitration that involves

1 that. We have set out in our regulations
2 however that neutral arbitrators are required.
3 So, the question is what is a neutral
4 arbitrator?

5 And a neutral arbitrator is one who
6 is able not only to be neutral with respect to
7 the issues but neutral with respect to the
8 process. And it seems to me that -- And I'm
9 going to get a little legalistic here for a
10 second and quote from a decision from the
11 Supreme Court of the United States that I
12 thought was particularly helpful.

13 It's a concurring opinion by Justice
14 White in an old case. It was decided in 1968
15 in which his vote and that of Justice Marshall
16 was necessary for the decision. So, it's an
17 important concurring opinion. And he said the
18 court does not decide today that arbitrators
19 are to be held to the standards of judicial
20 decorum of Article 3 judges or indeed of any
21 judges. It is often because they are men --
22 Men it says, but men and women of course. -- of
23 affairs not a part but of the marketplace that
24 they are effect in their adjudicatory function.

1 It means that arbitrators are not automatically
2 disqualified by a business relationship with
3 the parties before them if both parties are
4 informed of the relationship in advance or if
5 they're unaware of the facts but the
6 relationship is trivial. I see no reason
7 automatically to disqualify the best informed
8 and most capable of the potential arbitrators.

9 Massachusetts law follows the same
10 theme. That is a theme that initially looks at
11 disclosure. And I find that most of the cases
12 in which an arbitration award has been upset
13 because of lack of impartiality are cases in
14 which there's been no disclosure upfront.

15 Our handbook talks about disclosure.
16 The ABA code of ethics for arbitrators says,
17 and I'm going to quote again that "if an
18 arbitrator is requested to withdraw by all
19 parties, the arbitrator must do so. If an
20 arbitrator is requested to withdraw by less
21 than all of the parties because of an alleged
22 partiality, the arbitrator should withdraw
23 unless either of the following circumstances
24 exists." The first doesn't apply, but the

1 second does. "In the absence of applicable
2 procedures, if the arbitrator after carefully
3 considering the matter determines that the
4 reason for the challenge is not substantial and
5 that he or she can nevertheless act and decide
6 the case fairly and impartially."

7 That ties right back to Justice
8 White's approach to this process. The
9 arbitrator first decides whether he or she can
10 approach the process fairly and impartially.
11 If he or she can then there's an opportunity
12 perhaps for a second look thereafter. One may
13 wonder why an arbitrator would want to get
14 himself or herself into a situation in which
15 the stability of the resulting award would be
16 less than ideal.

17 But be that as it may, the process
18 looks at an arbitrator first deciding whether
19 he or she in fact can proceed and articulating
20 the reasons for that decision. And then moving
21 forward to see what results from the
22 arbitration proceedings. That ties in with the
23 approach we've taken in our arbitrators
24 handbook.

1 So, I think for me at least, the
2 disclosure piece and then the ultimate results
3 piece are both important. And that's how I
4 look at how we weave our way through this.

5 COMMISSIONER ZUNIGA: One thing
6 though, our process has this arbitration be for
7 many reasons, has the decision of the
8 arbitrators to go with one or another of the
9 best and final offers. There are many reasons,
10 expediency was one of them that we decided to
11 set that up.

12 The arbitrator or arbitrators don't
13 have a lot of leeway in terms of negotiating or
14 trying to come to the most optimal solution,
15 which strikes me would be the model under
16 everything that you just read clearly applies.

17 My question is given the way that we
18 have set up this arbitration process, is there
19 a higher bar as we think of these disclosures
20 or expectations of expertise versus the
21 neutrality that we need to consider?

22 COMMISSIONER MCHUGH: We certainly
23 should consider that. That's an important
24 consideration. But it's also important to keep

1 our eye on the ball. And the ball here is a
2 motion to find that Somerville is not
3 participating fairly in their arbitration
4 process -- I'm paraphrasing. -- because it's
5 appointed Mr. Foy to be their arbitrator.
6 That's the ultimate focus.

7 And it seems to me that that
8 framework for analysis, whatever the ultimate
9 result is, does come into play in deciding the
10 answer to that question. That's a little
11 legalistic, but a lot of things can happen
12 during the course of the arbitration. And the
13 preference is, it seems to me and I would
14 advocate that our preference be to let it run
15 its course with the disclosure.

16 Mr. Foy may say after taking a
17 second look, he doesn't think he can fairly
18 participate or should fairly participate.
19 That's entirely possible. He may participate
20 and the decision's unanimous. A lot of things
21 can happen in the process.

22 But the established way of
23 proceeding in this area is to let the
24 arbitrator have the first crack at deciding

1 whether he or she should participate.

2 COMMISSIONER ZUNIGA: I thought he
3 had already done that.

4 MS. BLUE: There is in your packet a
5 disclosure form that he filed where he did
6 indicate he believes he can participate and be
7 impartial and fair.

8 COMMISSIONER MCHUGH: So, if that is
9 so, it seems to me that that needs to be on the
10 record or made part of the record of the
11 arbitration proceedings and then they go
12 forward unless we decide to cut it off now.

13 COMMISSIONER CAMERON: Commissioner
14 McHugh, that was very helpful, very helpful to
15 me to hear it in a direct sense with a very
16 similar process to what we're engaged with
17 here. I am persuaded and comfortable that we
18 can move forward. That to make the
19 determination that he is not neutral, I think
20 the standards have been met. I am comfortable
21 with moving forward and there will be a third
22 arbitrator.

23 COMMISSIONER STEBBINS: I am
24 comfortable with moving forward as well. I

1 will keep my fingers crossed as whether the
2 parties can find the third arbitrator.

3 COMMISSIONER ZUNIGA: Well, we could
4 decide that we could appoint the third one
5 ourselves, could we not?

6 COMMISSIONER MCHUGH: Only if we
7 conclude that they're not participating in the
8 process; isn't that right?

9 MS. BLUE: We would give them an
10 opportunity to try to do that first. I would
11 suggest a certain number of days to pick a
12 third. And in the event they can't then our
13 regulations allow us to pick the third.

14 COMMISSIONER MCHUGH: Yes. If the
15 two are at an impasse, then we can step in.
16 That's right. But we don't have the ability
17 just to jump in right now and pick a third
18 arbitrator.

19 COMMISSIONER STEBBINS: Is there a
20 certain number of days that kind of fit within
21 our schedule within the Flex 14 that they have
22 the window to operate in that we would suggest
23 -- not suggest but give them a tight timeframe?

24 MS. BLUE: The regulations talk

1 about five days. So, we would suggest five
2 days for the two arbitrators to pick the third
3 arbitrator. And then to come back to the
4 Commission if they are unable to do that.

5 COMMISSIONER STEBBINS: It sounds
6 like a reasonable window.

7 COMMISSIONER CAMERON: I think it's
8 important to let the process work out.
9 Hopefully, they'll be able to decide. And if
10 not then we'll do that.

11 COMMISSIONER ZUNIGA: I will
12 disagree, but it sounds like it's a three to
13 one decision.

14 COMMISSIONER MCHUGH: So, I would
15 move -- I think we've really exhausted the
16 issue here.

17 So, I would move that the petition
18 of the Wynn interests to determine that
19 Somerville has failed to participate in the
20 surrounding community arbitration be denied for
21 the reasons set out in the discussion that
22 we've just had. Is there a second to that
23 motion?

24 COMMISSIONER CAMERON: Second.

1 COMMISSIONER MCHUGH: All in favor,
2 aye.

3 COMMISSIONER CAMERON: Aye.

4 COMMISSIONER STEBBINS: Aye.

5 COMMISSIONER MCHUGH: All opposed?

6 COMMISSIONER ZUNIGA: Nay.

7 COMMISSIONER MCHUGH: The ayes have
8 it three to one. And the objection, of course,
9 of the Wynn interests to that decision is
10 noted, the rights such as they are, are saved.

11 MS. BLUE: Commissioners, I would
12 ask that you approve a delegation of authority
13 to staff to appoint the third arbitrator in the
14 event that the parties are unable to do so.

15 COMMISSIONER STEBBINS: I would move
16 that the Commission grant our General Counsel
17 the authority to appoint a third arbitrator if
18 within a five-day window the two parties cannot
19 agree on a third arbitrator.

20 COMMISSIONER MCHUGH: All right.
21 Any discussion on that? Yes, there is
22 discussion on that, mine. This would be after
23 you got notice of an impasse.

24 MS. BLUE: That's right. And it

1 would be for this particular situation, I would
2 not ask the Commission to make this as an
3 overall grant at this point. But in this
4 situation, given our meeting schedule, it may
5 be helpful to keep the process moving if we do
6 that.

7 COMMISSIONER MCHUGH: And obviously
8 we would urge the two to pick an agreeable
9 third.

10 MS. BLUE: Yes.

11 COMMISSIONER MCHUGH: Okay. I got
12 it. Any further discussion?

13 COMMISSIONER ZUNIGA: No. I think
14 it would be very helpful if we grant that
15 authority given our meeting schedule and the
16 need to move it expeditiously.

17 COMMISSIONER MCHUGH: Okay. So,
18 there's a second for that motion, is there?

19 COMMISSIONER ZUNIGA: There is.

20 COMMISSIONER MCHUGH: Any further
21 discussion? All in favor, aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER STEBBINS: Aye.

1 COMMISSIONER MCHUGH: So, delegation
2 to the General Counsel to pick a third
3 arbitrator in the event that there is an
4 impasse between the other two is approved.

5 That brings us then to items four
6 and five on the agenda. And item four calls
7 for the Commission to determine the premises of
8 the gaming establishment for which Mohegan Sun,
9 Massachusetts --

10 MS. BLUE: Mr. Chairman, we have
11 item three, the Flex 14 update. I think it
12 will only take a minute or so. Mr. Ziemba will
13 present on that.

14 COMMISSIONER MCHUGH: I moved too
15 quickly, didn't I.

16 MR. ZIEMBA: I think I can constrain
17 myself to one minute, actually.

18 COMMISSIONER MCHUGH: Good.

19 MR. ZIEMBA: I am pleased to report
20 that what we are calling the Flex 14 plan has
21 proved to be a very beneficial tool in helping
22 parties enable themselves to resolve a number
23 of different issues regarding timetables,
24 regarding ability to continue to negotiate.

1 All or soon to be all of those parties that are
2 in arbitration will be utilizing Flex 14 within
3 a matter of days. So, in regard to that tool,
4 I think that that's been a really beneficial
5 one.

6 In your packet, there is a proposal
7 by Counsel Blue and I to provide further
8 flexibility beyond that that we've already
9 granted. As Commissioners know, we have the
10 ability to add 14 days to the schedule to allow
11 parties to conduct their arbitrations to
12 continue negotiations.

13 But there is a subset that has come
14 up in recent days that wasn't contemplated in
15 the memorandum that we put before the
16 Commission. And notably, even though the
17 parties can extend their arbitrations by 14
18 days, there's nothing specified in there
19 regarding the deadline for the filing of the
20 fundamental inconsistency petitions.

21 And we believe that it would make
22 sense for parties to be able to file those at a
23 later date if they both agree so long as that
24 there is enough time for the Commission staff

1 to review those petitions in advance of the end
2 of their arbitration proceedings, and as long
3 as those objections are made before the conduct
4 of any hearings by the arbitrators.

5 As we've seen in the Western Mass.
6 region, the FIPs objections had somewhat of a
7 role in what was determined by the arbitrators.
8 So, as long as those two prerequisites are met,
9 we believe we should have the further
10 flexibility to provide that additional
11 flexibility.

12 COMMISSIONER MCHUGH: This would
13 only be if both sides agree. So, one side
14 couldn't shorten in effect the response time of
15 the other.

16 MR. ZIEMBA: That's correct.

17 COMMISSIONER MCHUGH: Discussion?

18 COMMISSIONER CAMERON: I think it's
19 reasonable to add more flexibility to the
20 Flexible 14.

21 MR. ZIEMBA: There is just one other
22 thing that I'll note. We had some time
23 constraints on when the parties had to notify
24 us when they'll be utilizing Flex 14.

1 Specifically, for the stay of the beginning of
2 arbitration, we had the day prior to the date
3 for the selection of arbitrators and the filing
4 of best and final offers. We don't believe
5 that that additional day is necessary. If they
6 need to do it on the actual day of the
7 selection of arbitrators and best and finals,
8 we would certainly grant it if it's in the
9 interest of both parties.

10 COMMISSIONER MCHUGH: All right.
11 Any discussion? Does somebody want to make a
12 motion?

13 COMMISSIONER CAMERON: I move to
14 accept the changes outlined in the memo by
15 Ombudsman Ziemba and General Counsel Blue
16 amended on May 8.

17 COMMISSIONER STEBBINS: Second.

18 COMMISSIONER MCHUGH: And the
19 purpose of course is to give additional
20 flexibility that Mr. Ziemba just described.
21 All right. All in favor, aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER ZUNIGA: Aye.

24 COMMISSIONER STEBBINS: Aye.

1 COMMISSIONER MCHUGH: All opposed?
2 The ayes have it unanimously.

3 All right. That does bring us to
4 the items four and five on the agenda. I want
5 to just set the stage a little bit for those
6 items.

7 Item four calls for the Commission
8 to determine the premises of the gaming
9 establishment for which Mohegan Sun
10 Massachusetts, LLC seeks approval in its RFA-2
11 application. Item five calls for the
12 Commission to determine the premises of the
13 gaming establishment for which Wynn Mass., LLC
14 seeks approval in its RFA-2 application.

15 I want to outline for a second
16 process that the Commission has engaged in up
17 to this point and some of the history that has
18 brought us here today. That history and that
19 process identifies some of the salient issues
20 that face us in making these decisions.

21 In creating the Commission, the
22 Legislature granted to the Commission all
23 powers necessary or convenient to carry out and
24 effectuate the purposes of the statute.

1 Further, Chapter 23K provides that the power
2 and authority granted to the Commission shall
3 be construed broadly and as broadly as
4 necessary for the implementation,
5 administration and enforcement of the gaming
6 law. To that end, Commission is empowered to
7 define the premises of a gaming establishment.

8 In accordance with 23K section 2, a
9 gaming establishment is, and I'm quoting now,
10 "the premises approved under a gaming license."
11 And a gaming license is, quoting again, "a
12 license issued by the Commission that permits
13 the licensee to operate a gaming
14 establishment."

15 Pursuant to Chapter 23K section 19,
16 the Commission is the sole entity with
17 authority to issue a Category 1 gaming license.
18 And accordingly, it's the sole entity with
19 authority to determine what a gaming
20 establishment is. Ordinarily, the Commission
21 would make that determination as part of the
22 final award of a gaming license. Indeed, it
23 has to do so because in the license it has to
24 set out what it is that it's licensing.

1 In this instance however, the city
2 of Boston has filed a declaration stating that
3 it is a host community under the gaming law as
4 to each of the two applicants' premises in
5 Region A, the Wynn premises and the proposed
6 Mohegan Sun premises.

7 Accordingly, the only way to address
8 the issue is to advance the gaming
9 establishment determination and make that
10 determination for both of the applicants in
11 Region A now. Of course, the licensing process
12 continues. Issues as we have seen can change.
13 So, nothing is final in a final sense until the
14 license actually issues.

15 But this determination that's before
16 us today is one that's designed to set in place
17 a series of steps, regardless of which track is
18 taken, that necessarily need time in order to
19 succeed. So, this determination is when made
20 going to set the course for the immediate
21 future and presumably for the end.

22 By law, no host community
23 determination can be made without first
24 determining what a gaming establishment is.

1 That's because the term gaming establishment is
2 contained within the definition of host
3 community. Specifically, the definition of
4 host community in Chapter 23K section 2
5 provides that it is, and here again I quote
6 once more, "a municipality in which a gaming
7 establishment is located or in which an
8 applicant has proposed locating a gaming
9 establishment."

10 In order to determine where a gaming
11 establishment is located though, we must first
12 determine what it is. Once the gaming
13 establishment is determined, its evident
14 location will organically lead to a
15 determination as to what the host community or
16 communities are.

17 The focus of this hearing then will
18 be on the term gaming establishment. The term
19 is defined in section 2 of Chapter 23K as,
20 quoting once more, "the premises approved under
21 a gaming license which includes a gaming area
22 and any other nongaming structure related to
23 the gaming area and may include but shall not
24 be limited to hotels, restaurants or other

1 amenities."

2 As it has frequently done, the
3 Commission solicited public input to assist its
4 thinking as it makes these determinations. In
5 its April 3, 2014 meeting, the Commission
6 outlined the process by which it would take
7 public comment. That process was designed to
8 ensure that any member of the public would be
9 able to offer input and comment in a fair but
10 uniform manner.

11 To that end to ensure that the
12 comments would be presented in a format that
13 would be most helpful to the Commission, the
14 Commission solicited comments in the form of
15 legal briefs that addressed either or both of
16 the two questions posed.

17 The initial briefs were due by April
18 17. And briefs were submitted by No Eastie
19 Casino, Mohegan Sun Mass., LLC, Wynn Mass., LLC
20 and the city of Revere. The city of Boston
21 submitted a letter discussing other issues.
22 And all of these submissions were posted on the
23 Commission's website.

24 The Commission then allowed anybody

1 who desired an opportunity to submit a reply
2 brief by April 24. Those briefs were to be
3 limited to the issues raised in one of the
4 initial briefs. No Eastie Casino submitted a
5 reply brief, which was posted on the
6 Commission's website. Each Commissioner has
7 received and reviewed each brief as well as the
8 reply brief.

9 The process set out by the
10 Commission provided that the city of Boston and
11 the Region A applicants for a gaming license
12 would be invited to offer an oral presentation
13 to the Commission at today's public hearing if
14 they had submitted a brief or reply brief.
15 Both Region A applicants have submitted a brief
16 and accordingly are invited here today. And
17 although the city of Boston did not technically
18 submit a brief or reply brief, they were
19 invited to present today as well. The
20 Commission will also invite No Eastie Casino
21 and the city of Revere to make oral
22 presentations since they submitted briefs in
23 the manner requested.

24 Oral presentations by any group

1 should be confined to the questions on the
2 table today, defining the premises of the
3 gaming establishment for the Mohegan Sun
4 proposal and the Wynn proposal and the content
5 of the submitted briefs.

6 Speakers representing a municipality
7 or applicant will be allotted 30 minutes for
8 their oral presentation, while other speakers
9 will be allotted 15 minutes. The Commission
10 may allow speakers more time if it's helpful to
11 clarify an issue and the parties may split
12 their time if they choose to do so.

13 For purposes of the record of this
14 meeting, the Commission takes notice of the
15 contents of the RFA-2 application submitted by
16 Mohegan Sun and by Wynn.

17 After the oral presentations, the
18 Commission will discuss each of the questions
19 and make determinations as to what the gaming
20 establishments are and where they are located.
21 Effectively, this will resolve the inquiry
22 raised by the city of Boston relative to its
23 host community status. Shortly thereafter, the
24 Commission will issue written findings that

1 describe the respective gaming establishments
2 for the projects the applicants have proposed.

3 Now there's one other thing and that
4 is that last week when we postponed this
5 meeting to today -- It was supposed to be last
6 week, as most people in attendance will recall.
7 -- we postponed it to today at the request of
8 the city and the request of the Governor
9 supporting the city. And I said that we would
10 make an effort to see to it, if we could, that
11 the master lease agreement and the Wynn option
12 agreement be posted on our website before
13 today's meeting. I did that because there has
14 been some discussion of both of those. And
15 both of those documents had been granted
16 confidential status at the applicants' request
17 when the initial applications were filed.

18 Under our regulations, the
19 applicants therefore have 14 days to object
20 after we make a determination that some parts
21 of the documents are not to remain private any
22 longer. Up until yesterday, both agreed --
23 both asserted those rights to take the 14 days
24 to make the objection.

1 Last night, as I understand it, the
2 Mohegan Sun interest waived their objection.
3 So, that in mostly unredacted form will be
4 published as part of the Mohegan Sun
5 application tomorrow. The Wynn interests have
6 not waived, as is their right. So, it will
7 take a little bit longer to get that posted.

8 The Commission however, has taken a
9 look at both of those documents. There is only
10 one portion of the Mohegan Sun application that
11 bears on the issues that face us today. And
12 only one portion at least in my view that bears
13 on the Wynn application today.

14 The Wynn application piece was
15 discussed at some length at our meeting of
16 September 4. So, that is already out in the
17 public view. And we've asked both sides, both
18 parties to be prepared to discuss both of those
19 provisions here today. As I say, the Mohegan
20 Sun piece will be available tomorrow.

21 So, that ends my preliminaries.
22 Does anybody else have any preliminaries that
23 they want to put on the table? Okay. So,
24 we'll invite the presenters to speak in the

1 following order. We'd invite the city that's
2 teed up and ready to go to speak first. We'd
3 invite the city of Revere to go second -- I'm
4 sorry Mohegan Sun to go second.

5 I think what we'll do to make this
6 most comprehensible is to give the city an
7 opportunity to speak first, as I said to
8 address and tailor any arguments to each of the
9 two. We'll have that followed then by the
10 applicant. So, you have two opportunities.
11 You don't need to take a half hour for each.
12 But you'll have two opportunities and then an
13 immediate response from the applicant.

14 So, we'll go city, Mohegan Sun, city
15 of Revere and then No Eastie Casino. And then
16 you'll have another chance to talk about the
17 Wynn process. If No Eastie Casino wants to be
18 heard again, that'll be fine. And the Wynn
19 interest will have a chance to talk there as
20 well.

21 And I think we'll do all of those
22 together. Then we'll have a discussion as to
23 how we proceed when we've heard those
24 discussions. So, Counsel O'Flaherty, Mr.

1 Frongillo I see that you're here today. And
2 the floor is yours.

3 MR. O'FLAHERTY: Good afternoon,
4 Commissioner and Mr. Chairman and through you
5 to the Commission. Attorney Frongillo will be
6 making arguments this afternoon on behalf of
7 the city of Boston.

8 COMMISSIONER MCHUGH: All right.
9 Thank you Mr. O'Flaherty. Mr. Frongillo.

10 MR. FRONGILLO: Thank you,
11 Commissioner McHugh. Section 15 subsection 13
12 of the Act specifically provides that there can
13 be more than one host community for a gaming
14 establishment. And as the Commission is well
15 aware, both Boston and Revere were host
16 communities to the initial Sterling Suffolk
17 proposal to develop a casino at Suffolk Downs.

18 And it is really not surprising
19 given the location and configuration of Suffolk
20 Downs and the nature of the proposal. The
21 parcel, as you know, has about 161 acres.
22 About three-quarters of Suffolk Downs is
23 located in East Boston. The racetrack
24 straddles the line. And about two-thirds of

1 the racetrack is in East Boston.

2 In the first proposal, the casino
3 buildings were all located in East Boston. And
4 the structures for the racetrack such as the
5 horse barns were located in Revere. A vital
6 and critical part of the initial proposal was
7 horse racing. And though the casino structures
8 were not in Revere, Revere nonetheless was a
9 host community.

10 Turning now to the second proposal,
11 the one that's relevant that's before you, but
12 I mention these points by way of comparison.
13 The second proposal really mirrors the first
14 proposal. Mohegan has stepped in in the place
15 of Sterling Suffolk as the applicant and also
16 has assumed the role of the operator that
17 Caesars Palace had in the first proposal. But
18 the proposed development in our view really
19 simply recycles and rearranges the first casino
20 proposal.

21 And there are truly remarkable
22 similarities between the two. In the second
23 proposal, the locations are simply flipped.
24 The buildings are placed in Revere. And the

1 proposal seeks to move the stables and the
2 horse barns over to the East Boston side as
3 well as the grandstands. The racetrack as I
4 noted was such a key and integral part of their
5 first proposal, and it remains an integral and
6 inseparable part of the proposed gaming
7 establishment.

8 It really is the distinguishing
9 feature of this proposal. It's unquestionably
10 an amenity under section 2 of the Act.

11 It's a nongaming structure. It's
12 related to the gaming area. And most of the
13 racetrack, about two-thirds of it, the stables
14 and the grandstands, are going to be in East
15 Boston. The gaming establishment for the
16 Mohegan Sun proposal includes all of Suffolk
17 Downs, most of which is in East Boston. And
18 this point alone renders Boston a host
19 community.

20 Secondly, the business arrangement
21 between Mohegan and Sterling Suffolk provides a
22 compelling independent basis for Boston's host
23 community status. Commissioner McHugh, you
24 mentioned that the ground lease will be posted

1 or it may actually already be posted. We have
2 a somewhat heavily redacted copy of the ground
3 lease. But it's dated November 27, 2013
4 between Mohegan and Sterling Suffolk.

5 And in this ground lease, Sterling
6 Suffolk is leasing property in Revere at
7 Suffolk Downs to Mohegan Sun. But quite
8 importantly, as noted in footnote one of the
9 ground lease, the parties acknowledge that
10 Mohegan will manage the racetrack. And that is
11 discussed in more detail on page nine, the
12 section entitled Mohegan Sun to operate
13 racetrack.

14 On page seven of the ground lease,
15 it further indicates that Sterling Suffolk is
16 going to participate in the gaming profits from
17 the gambling operation in Revere. And on
18 January 9, 2014, Sterling Suffolk notified you
19 in writing that Suffolk Downs is committed to
20 continue horse racing for the 15-year duration
21 of the license if it's granted to Mohegan Sun.

22 So, analysis of this ground lease
23 provides you with really conclusive proof that
24 Mohegan and Sterling Suffolk are joint ventures

1 and that the gaming establishment includes all
2 of Suffolk Downs.

3 A couple of final points that also
4 have some bearing on the host community issue
5 is that parking and primary access to the
6 casino. The road access presently, the vast
7 majority of the road access to the casino is
8 going to come through East Boston, Tomasello
9 Drive. And that's located on the gaming
10 establishment, which in our view includes
11 Suffolk Downs in East Boston.

12 Even the host community agreement
13 with Revere severely restricts egress, leaving
14 the casino onto the streets of Revere. So, the
15 fact and reality of this is that when people
16 come and go to this particular project, if it's
17 approved, they're going to be traveling the
18 vast majority of them through East Boston. And
19 many of them are going to be parking in East
20 Boston at Suffolk Downs both to attend
21 functions at the track, which is an amenity,
22 and at the casino.

23 And while it is true that Mohegan
24 and Sterling Suffolk are engaged in efforts to

1 try to expand land and relocate Furlong Drive
2 to provide additional access, at the moment
3 that's all speculative. And you're being
4 called upon to make a determination to draw the
5 boundaries of the gaming establishment now. It
6 can't be based on speculative facts.

7 You are within a short period of
8 time, as I understand it, of being prepared to
9 issue a license. And the time now has come.
10 The facts are before you. And these
11 developments with respect to access have not
12 yet taken place.

13 So, I think when you step back and
14 you look at what happened at Suffolk Downs, and
15 it all happened very quickly, the initial
16 proponent applicant likely did not expect that
17 East Boston would vote it down. A substitute
18 proposal was prepared within about a month.
19 And there wasn't a lot of time to radically
20 change issues that existed in the first
21 instance.

22 This is still a project for a casino
23 and a racetrack at Suffolk Downs. The gaming
24 establishment includes about 160 acres. And it

1 really is unquestionable under section 2 that
2 that racetrack is an amenity. It is
3 inextricably -- It is the leading feature of
4 this proposal. And for all of these reasons we
5 feel that you when you go back and you look at
6 the ground lease and you look at the profit-
7 sharing. You look at the fact that Mohegan is
8 going to be running the racetrack and the
9 racing operations, it's quite clear. It's a
10 joint venture encompassing all of Suffolk
11 Downs. And we respectfully ask that you vote
12 unanimously that the gaming establishment
13 includes Boston as a host community as to
14 Suffolk Downs and the Mohegan Sun proposal.

15 COMMISSIONER MCHUGH: All right, Mr.
16 Frongillo. Thank you, Sir. Questions for Mr.
17 Frongillo?

18 I have a couple. I recognize you
19 can't undo history, but suppose the first plan
20 had never existed. Suppose this was the first
21 plan. What would your position be then?

22 MR. FRONGILLO: I still think that
23 the obligation of the Commission is to go back
24 to the statutory definition in section 2, and

1 to look at what the gaming establishment is
2 what the amenity would be.

3 And this ground lease ties the
4 properties together. And the ground lease has
5 got the casino operator running the racetrack.
6 It's got the landlord for the 160 plus acres of
7 land sharing in profit for the gaming
8 operation.

9 And I think that these facts
10 irrespective of the first proposal puts you in
11 a position when you apply, as I know you will,
12 the clear language of section 2, the result is
13 the same.

14 COMMISSIONER MCHUGH: Well, let's
15 split those two apart. A profit-sharing
16 arrangement of some kind is not an uncommon
17 feature of a commercial lease, is it?

18 MR. FRONGILLO: No.

19 COMMISSIONER MCHUGH: So, profit-
20 sharing by itself doesn't differentiate this
21 from any other commercial lease. It's the
22 horse racing piece that really is the difficult
23 piece.

24 So, let's focus for a second on the

1 concept of an amenity. An amenity, and I think
2 you focused on this in your description, an
3 amenity is something that enhances the value of
4 the sort of dominant estate, if you will, to
5 use jargon. But doesn't it also imply that if
6 there's an amenity that the thing being
7 enhanced, in this case the casino, has control
8 over the thing that enhances the value? In a
9 loose sense, you could say that the skyline of
10 the city of Boston was an amenity. And
11 sometimes in fact that is used in loose terms.

12 MR. FRONGILLO: I wouldn't agree
13 with that proposition because I think it goes
14 too far. I think that an amenity, which has to
15 be a nongaming structure, could be absolutely
16 owned and controlled by a different entity.
17 But it's the tying back of that amenity to the
18 patrons that are going to be using the casino.

19 And so that is the other, the
20 connecting point in the statute. It has to be
21 in relation to the casino. So, if for example,
22 the casino wants to offer for its patrons as in
23 the case of Wynn, live entertainment with
24 special guest such as singers as they do in Las

1 Vegas where they have exclusivity over certain
2 people who will come and sing only for Wynn,
3 but they don't have a facility large enough to
4 fill the venue, this is a considerable amenity
5 for the patrons who to come to the casino who
6 could then go to the TD Garden and go to a
7 concert, whether it's a comedian performing or
8 a well-known band or singer.

9 And the same is true for the Boston
10 Symphony Orchestra. The Boston Symphony
11 Orchestra is housed at Symphony Hall, a
12 structure, a nongaming structure as is of
13 course the TD Garden. And Wynn is not going to
14 control the Boston Symphony Hall by any stretch
15 of imagination. But it is offering its patrons
16 a very special opportunity to engage in
17 watching the Boston Symphony Orchestra or the
18 Boston Pops.

19 We don't by the way, and I should
20 say and I know that this an issue that's been a
21 bit of an issue over time well before I got
22 involved in this about the underlying
23 documentation, we don't have these partnership
24 agreements. They haven't been provided to us.

1 We've seen them described in the RFA. So,
2 we're familiar conceptually with what they are
3 and what they mean. We are also of course
4 aware of how Wynn's operation is run in Las
5 Vegas. And how the entertainment venue is
6 central to the operation in and of itself.

7 In fact, in the RFA that you have
8 filed, Wynn states that 65 percent of its
9 revenue is generated by nongaming amenities.
10 And I'm segueing here because I'm answering
11 your question, Commissioner McHugh, but they
12 don't have to control the actual physical
13 structure. If they have an agreement such as a
14 partnership agreement to use it and to profit
15 and to serve their patrons and to generate the
16 type of profit that they have represented they
17 generate from nongaming, 65 percent, then that
18 has to be considered an amenity.

19 And it certainly is not simply cross
20 marketing within the city of Boston. It's not
21 like somebody earned a few points at the gaming
22 and can use the points at the local supermarket
23 or at a restaurant or something like that,
24 which might be promoting local businesses in

1 the area. This is a very, very different type
2 of partnership arrangement, which I'll address
3 in more detail when we discuss the Wynn host
4 community status issue.

5 COMMISSIONER MCHUGH: All right. I
6 look forward to that. What do you do with
7 section 15(3) which requires that the applicant
8 own or acquire within 60 days after a license
9 has been awarded the land where the gaming
10 establishment is proposed to be constructed
11 provided that ownership shall include a tenancy
12 for a term of years under a lease that extends
13 not less than 60 years beyond the term of the
14 gaming license issued under this chapter?

15 MR. FRONGILLO: I am not sure of
16 your precise question.

17 COMMISSIONER MCHUGH: How does that
18 clause, i.e., this ties back to my question,
19 Mr. Frongillo, really about control, how does
20 that requirement affect your assessment of the
21 meaning of amenity?

22 MR. FRONGILLO: I don't think it
23 changes anything. I think all of these
24 proposals are conditional upon the issuance of

1 the license and then the closing of the deal.

2 COMMISSIONER MCHUGH: I know, but
3 the acquisition of the land where the gaming
4 establishment is proposed to be constructed,
5 doesn't that say really if you've got the
6 gaming establishment, the gaming area and the
7 amenities, it's got to be on the land
8 controlled either through fee ownership or
9 through a lease by the applicant. And the
10 applicant has 60 days to do it.

11 So, that we're not talking about
12 places where you may have a cross marketing
13 agreement or some kind of an arrangement.
14 We're talking about a physical location that
15 the applicant controls. That bleeds back into
16 the question that I asked you whether in this
17 case at least amenity doesn't carry with it the
18 essence of control.

19 MR. FRONGILLO: I still don't think
20 that that changes the analysis of an amenity.

21 COMMISSIONER MCHUGH: Okay. I hear
22 you. Let me ask you one more, if I might. I
23 think there's only one more. No, that does it.
24 I may have some more for you later. But I

1 think what I'll do is give my colleagues a
2 chance to ask questions. And then we'll hear
3 from the next person.

4 MR. FRONGILLO: I would like to make
5 clear that before the city embarked on joining
6 the process, we didn't file as you know a brief
7 and affidavits and materials. We weren't
8 really sure what we were going to do. We were
9 looking at all of our options. And host
10 community issues are, I think, complex.

11 The statute may be written in a
12 fairly simple form, but the actual underlying
13 issues can be intensely factual. And one of
14 the problems that we had -- And I want to speak
15 candidly and frankly with you about this
16 because I would like this to be a discussion,
17 was that we were concerned that we didn't have
18 access to all of the information and details.

19 As those of you that have been
20 involved in any type of litigation or a formal
21 adjudicatory process permitting discovery,
22 generally you can find out what went on. You
23 can get the documents. You can get the
24 partnership agreements. You can see the

1 emails. You can find out all the details you
2 need to to be able to fully vet an issue.

3 And I'd like to recognize the fact
4 that we have not engaged in that process. We
5 wished that we had the opportunity to do that.
6 We have prepared in fact extensive affidavits.
7 We have looked at many, many issues such as
8 permitting, zoning and they can't all be
9 discussed obviously within a 30-minute
10 timeframe. But we did look at this quite
11 seriously.

12 We had some concern obviously about
13 the process. We had some issues concerning
14 jurisdiction, because we know there are some
15 gaps in the statute. And Massachusetts does
16 have a provision for determining the status of
17 parties under a statute, a very expressed
18 statutory right to seek a declaratory judgment
19 to have your status determined as the former
20 judge is well aware under General Law Chapter
21 231A section 2.

22 So, we've thought about a lot of
23 these issues long and hard along with the team
24 of Nutter, McClennen and Fish. Bill Kennedy

1 and Mary Marshall are here as well as my
2 colleagues Ariel Raphael and Caroline Simons.
3 And we're prepared to answer and discuss every
4 aspect of these issues that you have. And it
5 may take more than 30 minutes. You may want to
6 confine it to 30 minutes. You may think that
7 that's plenty. But we have looked at this long
8 and hard.

9 And there are legal authorities.
10 Again, if you don't want to discuss all of that
11 I understand it, because you gave the
12 opportunity to submit a brief and we didn't.
13 We weren't sure what we were going to do and
14 that's why we don't have all of these
15 materials. In fairness to the applicants, they
16 haven't read all of our arguments on these
17 points. And they've tried to do the best they
18 can based on statements that we've previously
19 made.

20 COMMISSIONER MCHUGH: All right, Mr.
21 Frongillo, thank you for your candor in that
22 regard, Sir. Let's move onto the next step and
23 see where we go. The next step would be to
24 hear from representatives of Mohegan Sun and of

1 course we'll come back to you for the
2 presentation with respect to Wynn.

3 Good afternoon, gentlemen. Mr.
4 Conroy I take it you're going to take the lead.

5 MR. CONROY: I will introduce the
6 team. Thank you, Commissioner. I am Kevin
7 Conroy from the firm of Foley Hoag representing
8 Mohegan Sun. With me is Charlie Baker from the
9 firm DLA Piper representing Sterling Suffolk.
10 We decided to save the Commission some time
11 today, and the city of Revere is going to
12 present with us. That's Brian Falk from the
13 law firm of Mirick O'Connell representing the
14 city of Revere.

15 Next to him is David Rome, the
16 General Counsel at Mohegan Sun and then Bruce
17 Barnett from the law firm DLA Piper. Again,
18 we're going to try to keep this brief, mix the
19 time that Mohegan Sun and the city of Revere
20 had.

21 First, I want to thank Catherine
22 Blue and Todd Grossman. Commissioner last
23 week, you gave us a challenge. You mentioned
24 that you would like to see and like to have a

1 discussion about the racetrack provision in the
2 binding agreement.

3 I think you also indicated to us
4 that you would like the public to have the
5 ability to view that document. Catherine, Todd
6 and the Mohegan Sun team had a fair number of
7 negotiations this past week. We are very, very
8 happy that we came to an agreement and that
9 document is going to be released to the public.
10 We are pleased that document is going to be
11 released to the public as soon as possible. We
12 know that was a goal of yours and the
13 Commission's. And thank you Catherine and Todd
14 for your efforts in that.

15 Charlie Baker is going to talk a
16 little bit about the racetrack provision that
17 is in the binding agreement. I know that's
18 something that you talked specifically you
19 wanted to hear some about today, Commissioner.
20 I'm going to just start, talk a little bit
21 about Mohegan Sun.

22 We talked a little bit earlier about
23 the definition of a gaming establishment and
24 I'm not going to read that again, but

1 consistent with that, the entire Mohegan Sun
2 facility is in Revere. Our RFA-2 application
3 clearly describes it. We have a 99-year lease
4 with Sterling Suffolk. And that document is
5 going to be released tomorrow.

6 Mohegan Sun is the tenant. Sterling
7 Suffolk is the landlord. The plan of that
8 leased premises clearly states that our
9 premises is in Revere. We've leased 40 acres
10 in Revere. Now Sterling Suffolk certainly owns
11 more land. Mr. Frongillo talked about that.
12 It owns land joining the Revere portion of the
13 property that we have leased. And that land is
14 in Boston.

15 It comes to no surprise to anybody
16 there's a racetrack on that provision of land
17 in Boston. And I think everybody also knows
18 that our landlord, Mohegan Sun's landlord,
19 Sterling Suffolk they at one time were an
20 applicant for a Region A casino.

21 But the task for the Commission
22 today is to figure out what Mohegan Sun's
23 gaming premises is. And what Sterling
24 Suffolk's gaming premises was does not reflect

1 on that. And what our project is is gaming
2 areas, two hotels, food and beverage, retail,
3 entertainment venues, meeting and conference
4 space, a spa, structured parking. All of those
5 structures are in Revere consistent with our
6 binding terms of our lease.

7 Our entrance to our casino at the
8 intersection of Furlong and Tomasello Drive
9 there will be a sign there. That sign and that
10 roadway lead up to our casino. Our entrance is
11 in Revere.

12 The primary access road to our
13 facility from a public way is along Furlong
14 Drive coming off Route 1A. That is in Revere.
15 We also have a pedestrian entrance that comes
16 because of our public transportation access
17 that is at the intersection of Winthrop Ave.
18 and Washburn Ave. right next to the Beachmont T
19 station that is in Revere.

20 Finally, it's not clear whether
21 water and sewer connections deal with the
22 definition of what is a host community or a
23 gaming establishment, but our water and sewer
24 connections are all in Revere.

1 Now let me talk a little bit about
2 the racetrack and this question about whether
3 the racetrack is an amenity. I think the best
4 way to look at this is to actually do what Mr.
5 Frongillo did, which is let's look at what
6 Sterling Suffolk's prior proposal did and let's
7 look at what the Mohegan Sun proposal did.

8 Sterling Suffolk's proposal, the
9 racetrack and the casino were the same. The
10 casino was in the racetrack. The casino and
11 the racetrack were intertwined. They were
12 together. They were the same structure. They
13 were part of each other.

14 Mohegan Sun's proposal is much, much
15 different. There's a clear separation between
16 the racetrack and the casino. First, the
17 casino and the racetrack are on separate,
18 legally separate properties. We are leasing a
19 property in Revere. And Mohegan Sun will have
20 control over that property. The racetrack
21 property is legally separate from Mohegan Sun's
22 property. That gets to your point,
23 Commissioner, about 15(3).

24 Second, there is a significant

1 distance between the entrance of our casino and
2 the entrance of the racetrack. There is about
3 a half-mile. A casino patron will have to walk
4 out the door, walk a half-mile to get to the
5 racetrack. And to put that a little bit in
6 perspective, Commissioners, your office is on
7 State Street. I think it's 84 State Street.
8 You walk out your door and you walk all of the
9 way to TD Bank North Garden that's about a
10 half-mile. It's a little bit longer, but about
11 a half-mile. That is the distance one of our
12 patrons will need to walk in order to get to
13 the racetrack.

14 Finally, you've got 17,000 pages of
15 documents related in our RFA-2 application.
16 Many those pages, some of those pages talk
17 about how we're going to market this casino.
18 We talk about how we're going to market our
19 boutique hotel, how we're going to market our
20 main hotel. We talk about how we are going to
21 market our casino. We talk about how we're
22 going to market our spa and how this is all
23 going to work together. We talk about how
24 we're going to work with Revere Beach.

1 Nowhere in those documents do we
2 talk about a marketing agreement with the
3 racetrack. We are not planning to include the
4 racetrack in our promotions. We are not
5 planning to advertise the racetrack in our
6 promotions. And the 17,000 pages that we've
7 given you in that RFA-2 application make that
8 clear.

9 So, I know Commissioner you want to
10 talk a little bit about the racetrack provision
11 that is in our binding agreement. I'm going to
12 turn it over to Charlie Baker from Sterling
13 Suffolk to talk about that.

14 COMMISSIONER MCHUGH: Before you do
15 that, Mr. Conroy, no that's fine. That's fine.
16 Go ahead.

17 MR. BAKER: Thank you, Mr. Chairman.
18 So, we had a conversation with your General
19 Counsel to prepare for this meeting. She
20 raised the fact that at least a Commissioner
21 had a question about the provision in the
22 binding agreement called the racetrack
23 provision.

24 And what we told her was look, we

1 clearly wrote this agreement knowing what the
2 underlying law and structure was, and knowing
3 that we would not want to put anything in this
4 agreement that made the racetrack part of the
5 gaming establishment. The Mohegan gaming
6 establishment is solely the leasehold premises,
7 which is solely in Revere. The provision in
8 question gave us the right, gave Sterling
9 Suffolk the right to ask Mohegan at some future
10 date to manage the racetrack. Not to own it,
11 it would definitely be owned by Sterling
12 Suffolk. That right to manage would have to be
13 approved by you the Gaming Commission.

14 COMMISSIONER MCHUGH: To ask isn't
15 quite right, to put management.

16 MR. BAKER: But it's an option.

17 COMMISSIONER MCHUGH: That's why
18 it's a put. It's an option on your part. It's
19 not a two-way option.

20 MR. BAKER: That's correct. We
21 obviously submitted this document to you on
22 December 2. We never thought that anyone would
23 view this as somehow combining the two
24 facilities.

1 When we heard Catherine's point that
2 there had been a question raised about this, we
3 simply told her it was not a material part of
4 the document and by mutual consent the parties
5 have stricken it. So, we don't believe it
6 makes the racetrack part of the gaming
7 establishment. It was not our intent to do so.

8 There's a big difference between
9 owning and controlling an operation and being a
10 manager. Most office buildings and hotels in
11 Boston are owned by one person and managed by
12 another. It doesn't change who the owner is.
13 It certainly doesn't change who the applicant
14 is for the Revere only Mohegan casino.

15 But in the interest of clearing this
16 issue up, the provision has been stricken from
17 the agreement. We later filed a letter,
18 Sterling filed a letter with Catherine
19 clarifying this matter and clarifying the
20 relationship of the provision and the racetrack
21 to the application, Mohegan's application.

22 COMMISSIONER MCHUGH: What do you
23 say to Mr. Frongillo's contention that -- maybe
24 it's my gloss on Mr. Frongillo's contention

1 that control of an amenity is an essential
2 ingredient of amenity status.

3 MR. BAKER: I believe your point
4 about 15(3) is correct.

5 COMMISSIONER MCHUGH: No, I'm not
6 talking about 15(3). I'm talking about the
7 concept of amenity, which goes back to what is
8 a gaming establishment. A gaming establishment
9 is the gaming area and amenities that the --

10 MR. BAKER: I believe that the
11 amenity has to be part of whatever real
12 property the gaming applicant controls. I
13 don't see any other way to read that.

14 COMMISSIONER MCHUGH: I see. 15(3)
15 is a defining part of gaming establishment.

16 MR. BAKER: I don't see, and we've
17 obviously thought about this a lot, we've been
18 dealing with this on behalf of different
19 applicants. I just don't see any reading where
20 someone can have an amenity that's part of the
21 gaming establishment if the amenity is not in
22 the gaming establishment. And the applicant
23 has to own and control the gaming
24 establishment. So, I just don't see another

1 reading.

2 There are plenty of amenities to the
3 Mohegan Casino that they will never control.
4 There's Revere Beach where they're looking to
5 do a partnership with DCR and having concerts.

6 COMMISSIONER MCHUGH: I know but
7 that's amenity in a loose sense. That is
8 amenity in sort of an advertising brochures
9 sense. We're talking about amenity in the
10 context of the statute. Amenity which triggers
11 potentially at least, the registration
12 requirement for everybody who works there.

13 MR. BAKER: Sure. The racetrack is
14 and always will be separately owned by Sterling
15 Suffolk Racecourse, LLC. And it is not part of
16 any real property which Mohegan has any right
17 to control or take actions upon.

18 There was an option that Sterling
19 could have used to require Mohegan to manage
20 the facility. It was clear to us that that was
21 creating confusion. It's been gone. It's
22 removed.

23 COMMISSIONER MCHUGH: What about
24 footnote one?

1 MR. BAKER: Footnote one just makes
2 clear that they don't have any obligation --

3 COMMISSIONER MCHUGH: Who is the
4 they?

5 MR. BAKER: -- they, Mohegan has no
6 obligation to pay racetrack losses. Those are
7 Sterling's obligation unless that first
8 provision, unless that option were exercised.
9 The option no longer can be exercised.

10 COMMISSIONER MCHUGH: Timeout.
11 Which option?

12 MR. BAKER: Sterling's option to ask
13 Mohegan --

14 COMMISSIONER MCHUGH: -- to put to
15 Mohegan. Let's be clear. People will be able
16 to read it tomorrow but let's be clear.

17 MR. BAKER: I don't think it's a
18 put, Sir. With all due respect, a put is they
19 get to own it. They don't.

20 COMMISSIONER MCHUGH: No. You put
21 the operation, you have the right to put the
22 operation to Mohegan Sun. You have the right
23 to require them to operate the track.

24 Now I recognize your position that

1 it's gone. It's no force and effect. You've
2 withdrawn it. But properly characterized, it's
3 a put of operating responsibility. It's in
4 that sense that I'm using put not in a stock
5 sense, because it's a one-way option.

6 MR. BAKER: I guess I'm not going to
7 argue about the use of the word put. But what
8 I would say is that with that option put gone,
9 all footnote one now says is that any losses at
10 the racetrack are Sterling's. That is in fact
11 the case.

12 COMMISSIONER MCHUGH: All right.
13 Questions from my colleagues?

14 COMMISSIONER ZUNIGA: Remind us what
15 is the amount of acres that Mohegan is leasing.

16 MR. CONROY: We are leasing 40
17 acres.

18 COMMISSIONER ZUNIGA: Are all of
19 those 40 acres, all of the property in Revere?

20 MR. CONROY: Yes.

21 COMMISSIONER ZUNIGA: Is there
22 anymore property of Suffolk Downs that also
23 sits in Revere that is not being leased?

24 MR. BAKER: The answer is yes.

1 There is a portion of the racetrack that is in
2 Revere.

3 COMMISSIONER ZUNIGA: So, on the
4 site plan where the racetrack curves around
5 that is not being leased by Mohegan?

6 MR. BAKER: It is not being leased
7 by Mohegan Sun. Any portion of the property
8 whether it's in Boston or Revere that's
9 necessary to operate the racetrack is remaining
10 with Sterling Suffolk.

11 COMMISSIONER ZUNIGA: Thank you.

12 COMMISSIONER MCHUGH: Other
13 questions from Commissioners?

14 COMMISSIONER STEBBINS: Just a quick
15 question, Attorney Conroy you talked in the
16 RFA-2 application has really made no reference
17 to the marketing of the racetrack as something
18 to do I guess when you visit Mohegan Sun,
19 Massachusetts.

20 I'm trying to understand when you
21 came before us to make a 90-minute opening
22 presentation, there was certainly substantial
23 material in that presentation. We heard from
24 racetrack employees. We saw pictures of

1 horses. Help me understand the relationship
2 between where the RFA-2 application is in the
3 content of that presentation.

4 MR. CONROY: Thank you for that
5 question, Commissioner. It's a really good
6 one. We think when you go to the definition of
7 amenity, the question is whether the gaming
8 area is related to the amenity.

9 When I talk about marketing, the
10 fact that we're not marketing the racetrack to
11 me is an indication that this isn't our gaming
12 area. It's not related to the racetrack.

13 Your question I view as separate,
14 which is there is no doubt and we've made it
15 clear to you and Sterling Suffolk has made
16 clear to you that if Mohegan Sun gets a
17 license, Sterling Suffolk has said that those
18 profits that come from the lease that we have
19 with them, those profits are going to help
20 maintain that racetrack. And they are going to
21 keep that racetrack open for 15 years.

22 So, that they are going to use the
23 profits that they get from this lease. We will
24 be making payments to them consistent with the

1 commercial that we have with them. And that
2 those payments are going to help them maintain
3 this racetrack. And they are going to keep
4 that racetrack open for 15 years.

5 So, that doesn't create an amenity.
6 Our landlord is going to use the profits they
7 get from the lease that we have in order to
8 keep this racetrack open, in order to keep
9 those jobs going.

10 COMMISSIONER STEBBINS: Okay. Thank
11 you.

12 COMMISSIONER MCHUGH: Other
13 questions? All right, let's hear then from the
14 city, the city of Revere. We have many cities.

15 MR. FALK: Thank you, Commissioners.
16 As noted by Mohegan Sun's representatives,
17 Revere is the only municipality in the
18 Commonwealth that meets the statutory
19 definition of host community for Mohegan Sun's
20 proposed gaming establishment.

21 Revere is not a host in name only.
22 The city's host community agreement intends
23 that Revere will be the sole host for the
24 project and will provide all essential

1 municipal services to the project. The primary
2 and secondary driveways to the project are
3 located off of public ways located entirely
4 within the municipal boundaries of Revere.
5 Public transportation stations serving the
6 project including the Beachmont Blue Line
7 Station and Winthrop Avenue stops for the 119
8 bus are located entirely within Revere.

9 As requested by the applicant, all
10 water and sewer service to the project will be
11 provided by Revere without relying on
12 neighboring municipalities.

13 Finally, police and emergency
14 services will be provided by the Revere police
15 department and fire department with not
16 expected increase in mutual aid calls. For
17 these reasons and for the reasons stated by
18 Mohegan Sun's representatives, the city of
19 Revere respectfully requests that the
20 Commission confirm Revere's status as the sole
21 host community for Mohegan Sun's proposed
22 gaming establishment.

23 Before I close, I want to make some
24 comments about process from Revere's

1 perspective. I'm glad to see that Mohegan Sun
2 has publicly released its binding agreement.
3 It speaks to their ongoing efforts towards full
4 transparency. As Commissioner McHugh
5 mentioned, the comparable documents for the
6 Wynn project remain undisclosed.

7 Frankly, I don't understand how you
8 can reach a decision on Boston's status without
9 resolving --

10 COMMISSIONER MCHUGH: Now you are
11 here to talk about Mohegan Sun. And I'd
12 request that you focus on Mohegan Sun.
13 Competitive argument I think is out of order at
14 this stage.

15 MR. FALK: It speaks to the process,
16 Commissioner McHugh --

17 COMMISSIONER MCHUGH: I understand.

18 MR. FALK: -- in terms of where
19 Mohegan Sun is and where Wynn is.

20 COMMISSIONER MCHUGH: I understand
21 that, but we're not talking about a competitive
22 fight here. There will be other platforms for
23 that. We are talking about the issues as to
24 whether or not Mohegan Sun -- whether not

1 Revere is the sole host community for Mohegan
2 Sun and not about what other people have done
3 or haven't done to comply with our procedural
4 requirements.

5 MR. FALK: But we're subject to the
6 same process.

7 COMMISSIONER MCHUGH: I don't want
8 to get more strong than that, Sir. But you are
9 out of order.

10 MR. FALK: Thank you.

11 COMMISSIONER MCHUGH: All right.
12 Thank you very much. The representatives of No
13 Eastie Casino would you like to be heard today?
14 We have in mind of course your remarks from the
15 last occasion, but you are here and we look
16 forward to hearing from you.

17 MS. MEYERS: Good afternoon,
18 Commissioners.

19 COMMISSIONER MCHUGH: Good
20 afternoon.

21 MS. MEYERS: Thank you for having us
22 here today. As you described, we did give some
23 pretty robust testimony last week. So, we'd
24 just like to take the opportunity to hit a few

1 high points, not the least of which to thank
2 the city of Boston for their testimony and
3 their continued stance that you cannot extract
4 East Boston from the impacts of a Suffolk Downs
5 casino.

6 A quick little Google on my
7 smartphone yielded that the definition for a
8 host is a person, place or company that
9 provides services or resources, etc. I have
10 expressed a great deal of frustration at an
11 inability to always being able to wrap my hands
12 around cut and dry responses and definitions
13 for elements of the process.

14 I think this is one juncture where
15 we got it right the first time. When you
16 talked about the initial application process
17 and the initial proposal for a Suffolk Downs
18 casino we more than cordially included Revere
19 in the process because they would be definitely
20 majorly impacted.

21 The same is true of East Boston. If
22 you look at some of these other developments in
23 Western Massachusetts and other regions, you
24 can argue that the sites where the traffic is

1 coming and going and where the burden of
2 development and access and the like isn't
3 necessarily felt as much as it would be in a
4 Revere destination casino.

5 There is no way that you can have
6 25,000 to 35,000 vehicles with all of their
7 passengers on a daily basis heading to a
8 Suffolk Downs casino without impacting East
9 Boston, Chelsea, Winthrop and all the
10 surrounding communities. If that were the
11 case, I'm sure that the developers would have
12 no problem seeing that they described that
13 every element of this development proposal
14 resides in Revere, if went ahead and put a
15 brick wall across 1A between East Boston and
16 Revere. And we put a brick wall in the middle
17 of my street, Bennington Street, which is right
18 behind Suffolk Downs. If that were the case,
19 I'll go ahead and I'll get the bricks tomorrow
20 if that would save me from the impacts.

21 Then the other piece that I just
22 want to hit on is they made a valiant effort of
23 saying how there is no way that it's been
24 marketed that Suffolk Downs would be part of

1 this, however, it was very, very crux of their
2 campaign. It was the very, very source of the
3 heartstrings that they were pulling now.

4 They were pushing for the nostalgia,
5 for the jobs. Even the heart of the
6 disingenuous attempts by Chip Tuttle with his
7 letter describing that they intend to stay in
8 business for at least 15 years. As far as I'm
9 concerned, that's the equivalent to a love
10 letter. I can write you a love letter saying I
11 will love you forever at least 15 years but you
12 can't hold me to that. The way we could've
13 held Suffolk Downs --

14 COMMISSIONER MCHUGH: You weren't
15 planning to do that, were you?

16 MS. MEYERS: I think you will be
17 sick of me by the time this is over. The only
18 way that Suffolk Downs could've been held to
19 any such declaration was via the mechanisms
20 that already exist within this legislation,
21 within host community agreements and within
22 ballots and the like.

23 They extracted themselves very
24 deliberately from that process. The handed

1 over the application to Mohegan Sun to divest
2 themselves of that responsibility. And to say
3 that anything else is true, is just
4 disingenuous.

5 So all along, these folks have been
6 fighting to have it both ways. Either they are
7 connected to Suffolk Downs or they're not. If
8 they're not connected to Suffolk Downs, then
9 the campaign was a sham, the election was a
10 sham. And that's a whole other can of worms
11 that we'll be getting into. And I'm glad to
12 fight that fight too. But I'll hand it over to
13 Matt Cameron now. Thank you.

14 MR. CAMERON: Good afternoon,
15 Commissioners. Very briefly, I commend the
16 city of Boston for their outstanding
17 presentation. And I certainly don't want to
18 reiterate the points that have been made. They
19 were very well done. We already got into the
20 issue of the track at the last hearing. But I
21 do want to respond to a few things that have
22 been presented today by Mohegan Sun. I spend
23 most of my day job fighting the American
24 immigration system and that's an uphill battle

1 if there ever was one. I understand a tough
2 argument when I hear one. I don't understand a
3 lot of what we heard today.

4 I'm going to be pointing out page 12
5 of Mohegan Sun's brief covers everything that
6 has just been discussed by Mohegan Sun
7 regarding the track for the last maybe 15
8 minutes of their presentation when they were
9 trying as hard as they possibly can, and I
10 appreciate the efforts, to disentangle
11 themselves from this piece of property.

12 COMMISSIONER MCHUGH: Subparagraph
13 D, section D, is that what you are referring
14 to?

15 MR. CAMERON: That's right. I would
16 just point out this paragraph is the entirety
17 of their argument on paper. It refers to the
18 racetrack -- In fact the word racetrack is not
19 used anywhere in here. It refers to the
20 racetrack as Sterling Suffolk's property in
21 East Boston.

22 It describes how this property
23 necessarily abuts the remainder of Sterling
24 Suffolk's land, the remainder of Sterling

1 Suffolk's land. You would never know from this
2 description what was on that land.

3 But we know full well what is on
4 that land because that's been the central issue
5 is this entire casino campaign for the last
6 four years. Since the very beginning, since
7 before the legislation was written with the
8 intent of putting a casino at Suffolk Downs, it
9 has been with this track in mind.

10 We don't have a problem with that,
11 but I think that it's best that the parties
12 acknowledge that that is what is central to
13 this entire discussion. And for them to come
14 now and to say -- They've actually openly told
15 this Commission just a few minutes ago they
16 told the Commission that they went out of their
17 way to try write a lease agreement which would
18 disentangle them from the Mohegan Sun property
19 and which would skirt this law, which would
20 actually get around the requirements that they
21 not have an amenity on their property in East
22 Boston, which I'm sorry to say again -- No,
23 actually I'm not sorry to say again, which East
24 Boston actually and the city of Boston has

1 actually resoundingly already told this
2 Commission it doesn't want a casino. And the
3 entire purpose of this lease agreement is to
4 make sure that we get one.

5 By the way, this lease agreement, I
6 have not yet seen. The public has not yet
7 seen. We will be seeing it tomorrow. And I
8 certainly appreciate Commissioner McHugh your
9 efforts in making sure it gets out there. And
10 I appreciate that now the applicants are
11 working with us to get it out.

12 But we have just had, I will point
13 out, a discussion on the record about a
14 document that only the parties have seen. And
15 in fact the city of Boston is telling us
16 they've only seen a redacted version of. It's
17 an absolutely essential document central to
18 this question. And we haven't seen it.

19 So, I'm surprised to hear some of
20 these provisions. I'm absolutely shocked to
21 hear that it says on the first page of the
22 lease agreement that Mohegan Sun is going to be
23 running the track, because that's certainly not
24 what we've been told for the last six months.

1 We've been told that Mohegan Sun
2 would be a tenant, and that Suffolk Downs would
3 be a landlord. I would not allow my landlord
4 to run my business. I'm doing a bad enough job
5 of it myself. I would never allow my landlord
6 to step in and run my business.

7 Again, I'll reserve until I actually
8 see the lease, and I appreciate that it's
9 coming out tomorrow, but certainly it would've
10 been helpful for the purposes of this hearing
11 to know what was it in before because it is
12 absolutely essential, despite Mohegan Sun's
13 attempts to distance themselves from the piece
14 of property that has been the central crux of
15 this application.

16 It is essential to understanding
17 whether or not we are to be hosting a casino.
18 And of course our default argument, no matter
19 what, is that we will be hosting a casino. But
20 I think that the applicants rightly recognize
21 that this is their weakest argument. It's the
22 thing they spent the least time on in their
23 brief. As an appellate judge, certainly,
24 Commissioner McHugh, you recognize often your

1 last argument is your worst, not always but
2 often. And it's rightfully the thing that
3 we're talking about the most today, because it
4 is the single most important argument in this
5 particular application as to whether or not the
6 city of Boston will be hosting a casino.

7 Else wise, I just want to point out
8 that this is a regional project. Twenty-five
9 percent of the predicted patrons will be coming
10 directly from Suffolk County, 25 percent from
11 Chelsea, from Revere, from the city of Boston.
12 Fifty-one percent will be coming from Norfolk
13 County, Essex County and Middlesex County. And
14 only three percent, by what I understand and
15 I'm not very good at numbers, but what I see in
16 the RFA-2, three percent will be coming from
17 outside of New England.

18 This is a regional project. It
19 deserves a regional vote. It deserves an
20 understanding that this is different in kind as
21 we have said in our brief, different in kind
22 from any of the other proposals in that it
23 includes any number of municipalities that are
24 around. The most important and the largest and

1 the one that will be the most directly impacted
2 being the city of Boston. Again, we really
3 appreciate the city's efforts on our behalf to
4 defend our vote and to make sure that we get
5 the host community status that we rightfully
6 deserve.

7 Otherwise, I think we'll reserve the
8 remainder of our argument as to the less
9 tangible benefits after we've heard from the
10 Wynn applicants.

11 COMMISSIONER MCHUGH: All right.
12 Thank you. I want to make it clear of course
13 that the Commission has seen these documents.
14 I had hoped as we said that they'd be up and
15 posted so everybody could see them. But I
16 believe they should be and they will be. But
17 the Commission surely has seen them. So, we're
18 not moving in the dark.

19 MR. CAMERON: I certainly appreciate
20 that, Commissioner. But I do want to point out
21 we made a public records request for them last
22 month.

23 COMMISSIONER MCHUGH: That's right.
24 And we have taken the position that those were

1 trade secrets. We've looked at it again.
2 We've revised that determination. And when we
3 revised the determination, they have 14 days to
4 object. So, we're trying to do this by the
5 rules that are fair to everybody.

6 MR. CAMERON: And we thank you for
7 that much appreciated.

8 COMMISSIONER MCHUGH: All right.
9 Thank you very much. Now I think that we will
10 move to the Wynn presentation and then go
11 through this scenario again, unless anybody
12 wants to take a brief pause.

13 COMMISSIONER ZUNIGA: Five-minute
14 break.

15 COMMISSIONER MCHUGH: Okay, a five-
16 minute break.

17

18 (A recess was taken)

19

20 COMMISSIONER MCHUGH: I would like
21 to reconvene the proceedings if we might,
22 please. Mr. Frongillo, Mr. O'Flaherty, let's
23 pick up where you left off, Sir. The floor is
24 yours this time with respect to Wynn.

1 MR. FRONGILLO: Thank you. The host
2 community issue with Wynn is a significantly
3 different than the one with Mohegan, and
4 actually starts at a different place. We are
5 tasked here with determining what the gaming
6 establishment is. But with Wynn, the first
7 question is is there in fact even a valid
8 gaming establishment as opposed to determining
9 simply its boundaries or parameters.

10 What I mean by that it has to do
11 with an issue that you raised on Friday and
12 unfortunately an issue that has surfaced in
13 this case. And it's got to do with the
14 validity of land deal with FRB Everett and
15 whether in fact there is even a valid gaming
16 establishment for the Wynn applicant.

17 I'm sure when you undertook your
18 responsibilities a couple years ago, with the
19 expectation of perhaps Commissioner Cameron,
20 none of you were expecting that you would run
21 into this type of situation that arose. What
22 I'm speaking about specifically is the FBT
23 Everett ownership of the land and the issues
24 that became the subject of your hearing last

1 December. But unfortunately, those issues do
2 impact whether or not there is a valid gaming
3 establishment. And I'll address them briefly.

4 If there is no enforceable or valid
5 option agreement between FBT Everett and Wynn,
6 there is no gaming establishment. And there
7 are issues here that we believe you need to
8 consider in ruling on this.

9 In the report that was submitted
10 last week by Director Wells, she expressed her
11 grave concern about the cast of characters who
12 own FBT Everett. In section 14A of the Act
13 requires the Commission to render a suitability
14 determination for all parties, persons or
15 entities that have an ownership interest in the
16 gaming establishment. FBT Everett owns the
17 gaming establishment as defined by Wynn. They
18 are collecting about \$100,000 a month so we've
19 been told. And that has been going on for
20 probably about a year and half, which would be
21 about \$1.5 million that has been paid.

22 With the revision or the ninth
23 amendment to the option agreement, which we
24 have not seen, we've only read about it, that

1 document indicates that there has been as a
2 result of the proceeding in December an
3 adjustment in the purchase price from \$70
4 million down to \$35 million with a specific
5 allocation of \$10 million of that for
6 environmental purposes.

7 But the report that was issued by
8 the Bureau contained a vast amount of
9 compelling evidence that the owners of FBT
10 Everett attempted to perpetrate a fraud upon
11 this Commission by not disclosing certain
12 ownership interests of people or at least one
13 who was a convicted felon.

14 And we know that from the prison
15 tape recordings, they used an LLC according to
16 Mr. Lightbody in his discussions with Mr.
17 Bufalino to hide his ownership interest. None
18 of these individuals Mr. Gattineri, Lohnes or
19 DeNunzio came forward to discuss this or
20 address it with you.

21 Then the investigation commenced.
22 During the investigation, a number of
23 individuals exercised their Fifth Amendment
24 right. There was a discovery of the backdating

1 of an operating agreement and backdating of
2 other transfers of interests. There was widely
3 conflicting testimony about what the facts
4 were. And I think it's fair to say as
5 summarized in the Bureau report, there was an
6 attempt to obstruct an investigation.

7 COMMISSIONER ZUNIGA: Mr. Frongillo,
8 these are all facts that we know. This
9 Commission was probably the first one to learn
10 about all of those facts.

11 MR. FRONGILLO: Correct.

12 COMMISISONER ZUNIGA: Where are we
13 going with this?

14 MR. FRONTILLO: What these facts
15 mean is whether or not you can render a
16 suitability determination of FBT Everett under
17 section 14A because they have a financial
18 interest in this land.

19 And the statute makes it mandatory.
20 They have been getting paid \$100,000 a month.
21 They will get paid a substantial amount of
22 money. They will make between a three to 400
23 percent profit on their \$8 million investment
24 if this license is awarded and Wynn gets the

1 casino and the sale goes through.

2 What I am saying, Commissioner, is
3 that the evidence that you have before you and
4 the referral that you made to the United States
5 Attorney's office, to the Attorney General of
6 Massachusetts and to the Suffolk County DA's
7 office is indicative of the fact that you
8 cannot find the FBT Everett owners to be
9 suitable. And they are required to be suitable
10 for the application to go forward.

11 And there is a burden placed under
12 section 12 of the statute on the applicant to
13 demonstrate the integrity and the honesty of
14 other parties required to be determined
15 suitable.

16 And I also note that you have broad
17 discretion under section 4 subsection 11 to
18 require the suitability of all business
19 associates of the applicant. And I think that
20 Chairman Crosby made the point well in his
21 opening comments that the real purpose of the
22 function here of the regulatory body is to
23 maintain the public confidence in the process
24 and the integrity of the process.

1 And the evidence that is in the
2 Bureau report is quite clear that there has
3 been underlying criminal ownership and that the
4 people that are involved that are still in the
5 chain of ownership that are going to profit
6 handsomely that tried to defraud this
7 Commission and obstruct its investigation
8 cannot possibly be deemed to be suitable under
9 the law.

10 And what that does to the option
11 agreement is in Massachusetts agreements that
12 violate public policy or which are illegal are
13 void and unenforceable. And in this particular
14 matter, because the gaming statute has specific
15 provisions in it to rid this process of people
16 involved in criminal behavior, but not just
17 criminal behavior a pattern of conduct that
18 would be deemed to be unlawful whether
19 prosecuted or not.

20 And I submit that under section 38
21 of this statute under the Gaming Act when you
22 review it, and I'm sure you already have, you
23 may have had criminal matters that were
24 perpetrated in these proceedings by people who

1 are going to handsomely profit.

2 So, there is a question about the
3 legal validity of this ninth amended agreement.
4 And I understand that the Commission when faced
5 with this issue, which nobody expected would
6 happen, nobody was expecting that these prison
7 tapes would be revealed, attempted to cure the
8 situation in the best way possible. And also
9 with the understanding that competition amongst
10 applicants is important, because with
11 competition, the best proposal will be forced
12 to come forward.

13 So, with the difficult situation
14 that you were faced with and with an attempt to
15 try to eliminate the so-called taint, what ends
16 up happening unfortunately is that people who
17 attempted to defraud you and who obstructed
18 your investigation get to make a three to 400
19 percent profit on an investment if a casino is
20 awarded in Everett.

21 You might say well, why does all of
22 this matter to Boston? The fact of the matter
23 is this, when any applicant, any applicant
24 comes forward and files an application and the

1 city is an adjoining community, whether it's a
2 surrounding community or a host community,
3 because the way both of these proposals -- they
4 were literally casting shadows into the streets
5 of Boston, they were right on the border, the
6 city of Boston had to spend hundreds of
7 thousands of dollars with consultants and legal
8 advice to analyze the impacts of these
9 proposals so that either a host community
10 agreement or a surrounding community agreement
11 could be entered into. And that the city would
12 have a basis to negotiate.

13 So, the city has statutory standing.
14 They are deemed to be an aggrieved party.
15 There is even a set-aside in the statute
16 authorizing, I believe, it is \$40- or \$50,000
17 to be given to the surrounding communities or
18 host communities to determine the impacts of
19 these proposed projects.

20 And in this case for example for
21 this particular applicant, there is \$100
22 million project to alleviate traffic in
23 Charlestown and straighten out a long-term
24 problem at Sullivan Square. That is directly

1 impacted by this. And to properly analyze what
2 those impacts were, the city had to expend
3 significant resources. And the problem is is
4 that a group of people attempted to hide a
5 disqualifying factor from you so that they
6 could make a handsome profit.

7 And another measure you tried to
8 impose to add some integrity to this was the
9 certification issue. The problem with that
10 unfortunately, was that the people that you
11 were asking to certify under oath that they and
12 only they were the owners were people that you
13 had already determined because of evidence in
14 the Bureau report weren't trustworthy.

15 Now we have the situation that was
16 addressed on Friday afternoon that the third
17 certification, which really was a fairly
18 minimal requirement imposed, you tell us you're
19 the owners and the only owners and nobody else
20 is going to profit from this. It hasn't been
21 forthcoming.

22 So, the question about whether you
23 even have a gaming establishment in our view we
24 don't believe FBT Everett can be deemed

1 suitable under the statute. If they're not
2 deemed suitable that ends and disqualifies the
3 applicant.

4 But in addition to that we believe
5 that the contract between the applicant and FBT
6 Everett violates public policy including the
7 policy of the Gaming Act.

8 So, we begin from a different point
9 with Wynn. And the question was asked, I
10 believe, by Commissioner Cameron about whether
11 the applicant had any involvement in this and
12 what proof was there regarding that? And the
13 answer was that the applicant did not as far as
14 the Bureau was concerned.

15 While that may be an appropriate
16 issue for federal law enforcement that are
17 actively conducting a grand jury investigation
18 about this, there is a corollary question that
19 was not asked and should have been asked. And
20 that was could this have been avoided and
21 should it have been avoided? And the answer is
22 a resounding yes.

23 The applicant has an affirmative
24 obligation under this statute to conduct an

1 investigation of its associates, affiliates,
2 business associates to determine their
3 integrity and their suitability as required by
4 the law. There is a burden of proof placed on
5 the applicant to do that. This is a casino.
6 Due diligence needs to be done on these types
7 of people with whom there has been no prior
8 relationship whatsoever.

9 The applicant was proposing a \$1.5
10 billion project on a \$75 million piece of land.
11 And when questioned by your outside counsel, my
12 former colleague and very capable lawyer Mr.
13 Mackey, when he questioned about what the
14 diligence was done, it was to review the 12
15 pages of public filings with the Secretary of
16 State on the LLC, which as we all know tell you
17 nothing about the ownership. They only tell
18 you who the managers are.

19 And in fact, Charlie Lightbody in
20 his tape-recording made it very clear why they
21 used the LLC, to hide ownership. So, you need
22 to peel back a layer of the onion. And in a
23 deal of this magnitude, and I've been involved
24 in many, the type of due diligence that is

1 required because after all going forward this
2 is supposed to net the applicant billions of
3 dollars, is to use the machinery that you have,
4 all of the former law enforcement people and
5 Navy SEALs, and people that were former high-
6 level government officials to conduct extensive
7 due diligence of who you're dealing with.

8 And when the General Counsel of Wynn
9 was asked what was done, it was to check on
10 what was on file with Secretary of State. And
11 this whole thing could have been obviated with
12 a simple request for the operating agreement of
13 the LLC. The operating agreement, and
14 legitimate LLCs all have operating agreements,
15 they tell you who the owners are. They tell
16 you what the capital contributions are. And
17 they reveal information about the company. All
18 that needed to be done was a simple request.
19 Let us see your operating agreement.

20 Now if there was no operating
21 agreement, immediately a big red flag would
22 have gone up as to the legitimacy of the
23 entity. And it was known to the applicant from
24 outset, because the Boston Business Journal ran

1 an article before the option agreement was even
2 signed that one of the founders of at FBT
3 Everett was a convicted felon.

4 And the diligence that was done on
5 that was to ask Mr. DeNunzio what happened to
6 his interest. He sold it. He's out. Not who
7 did he sell it to. Or let me see where that
8 interest went. And based on the Bureau report,
9 we now know part of it went to Charlie
10 Lightbody.

11 So, with minimal even basic due
12 diligence done in November or December before
13 this even got down the road, it could have been
14 determined who the owners were of FBT Everett.
15 It's required under the statute that that type
16 of investigation be done. And instead, and the
17 Wynn representative, the General Counsel came
18 before you and said we did extensive due
19 diligence. We did all of this, and we did all
20 of that. And it basically boiled down to
21 looking at 12 pieces of paper on file with the
22 Secretary of State that anybody in here could
23 click onto a website and review. And they say
24 nothing about ownership.

1 You wouldn't even buy a \$200,000
2 condominium without knowing who the owners were
3 or the owner. But this project went forward.
4 And Boston spent a lot of money and continues
5 to spend a lot of money. And there's a
6 question right now about the legitimacy of that
7 contract.

8 So, we start our argument by saying
9 that we would like you to look and investigate
10 this. And we know you've investigated the
11 underlying facts. We quite frankly believe
12 that based on the evidence before you and the
13 fact that you've referred the matter for
14 criminal investigation and possible prosecution
15 that you can't possibly determine that the FBT
16 Everett owners are suitable. And they
17 shouldn't be entitled to earn a penny of profit
18 on this. Not one red cent for what they've
19 done.

20 I now want to turn to assuming that
21 there is a valid agreement, I will turn to the
22 issues about host community directly about host
23 community. When the RFA-1 was filed back in
24 January 2013, there was only one way in and one

1 way out to the former Monsanto Chemical site.
2 It was Horizon Way. You had to use Horizon
3 Way. And about 60 percent of it is in Boston.

4 Today, as we sit here and are
5 deliberating what is the gaming establishment,
6 there is still only one way in and one way out
7 and that is using Horizon Way.

8 Back at the hearing on September 4,
9 the city of Boston came forward and the law
10 firm of Goodwin Procter made a presentation and
11 showed you some promotional materials that Wynn
12 had used at various meetings leading up to the
13 host community agreement and the vote in
14 Everett. And those promotional materials,
15 which granted were early in the process,
16 unquestionably showed the inclusion of land in
17 Boston. You have them as part of the record
18 before you. They were color photographs from
19 that September 4 meeting.

20 After that, Everett entered into a
21 host community agreement in which it was dated
22 April 19, 2013. The host community agreement
23 between Wynn and Everett has a description of
24 the site. It actually has an attachment. It's

1 a one-page attachment, Exhibit A to the host
2 community agreement. And it clearly shows
3 Horizon Way on the property.

4 The host community agreement also
5 discussed a proposed new driveway proximate to
6 Horizon Way without much by way of specifics.
7 The host community agreement never said that
8 Horizon Way was going to be abandoned. And it
9 never said in there, and I'm sure when you
10 review it, you will see that the proposed
11 driveway requires the purchase of any
12 additional land or easements.

13 It also doesn't say that the new
14 driveway is conditional. It says it's going to
15 happen. It still hasn't happened. The land
16 that would be needed for the driveway as we now
17 know it to be, we don't know if that's what was
18 contemplated back in April 2013, but the land
19 as we now know it to be still hasn't been
20 acquired. Yet the people of Everett were led
21 to believe that it's going to happen. This is
22 the new driveway not the proposed one that's a
23 conditional one.

24 So, the vote went forward on June

1 22. And the ballot question that the people of
2 Everett were asked to answer said the
3 following: Shall the city of Everett permit
4 the operation of a gaming establishment
5 licensed by the Massachusetts Gaming Commission
6 to be located at property located on Horizon
7 Way, off Lower Broadway in Everett formerly
8 known as the Monsanto Chemical site. That's
9 the question they were asked.

10 It includes Horizon Way. And it
11 describes the former Monsanto Chemical site.
12 We all know in this room that the former
13 Monsanto Chemical site includes five to eight
14 acres of land in the city of Boston. There is
15 no delineation here, well, a parcel C has been
16 cut off and given to another Wynn entity or
17 anything like that. It's the former Monsanto
18 Chemical site.

19 So, anybody who picks this up and
20 reads it will believe that Horizon Way is part
21 of the gaming establishment and the former
22 Monsanto property, which includes land in
23 Boston and a lot of it is part of the gaming
24 establishment. And that's what the people of

1 Everett voted on.

2 But then things changed after that.
3 That was June 22. And the city first came
4 before you on this issue on September 4. But
5 Wynn at this point began to become the
6 proponent of an altered design, a design that
7 would come through the side boundary solely
8 through Everett onto properties that included
9 land with the MBTA.

10 It was Wynn's objective at that
11 point and they stated it very clearly at this
12 hearing that they were going to try to carve
13 out every piece of Boston that they possibly
14 could so that this site will be located
15 exclusively in Everett. That's not what the
16 voters voted on. Nowhere does it say that on
17 the ballot.

18 But the proposed access in all of
19 the fancy drawings that you've seen about how
20 this is going to happen, and you you've even
21 heard now that it may be -- Because things
22 haven't fallen the way they were anticipated
23 to, maybe it's the third certification not
24 being signed that now there's this proposal to

1 take it all by eminent domain.

2 The fact of the matter is it hasn't
3 happened yet. There is still only one way in
4 and one way out. And that is a road, a private
5 road that is in part in Boston.

6 And on February 11, 2014, Mass. DOT
7 even submitted a letter commenting on the draft
8 environmental impact report expressing
9 reservations about this proposal.

10 So, the whole question of the gaming
11 establishment and host community status it
12 unquestionably has to be based on facts not
13 speculation, not conjecture, not hypothetical
14 plans that have not materialized.

15 COMMISSIONER MCHUGH: But Mr.
16 Frongillo, you've been going on and I've been
17 listening carefully to what you've said. Under
18 the statute, the applicant is required to
19 acquire the land that it proposes to put the
20 gaming establishment on within 60 days after
21 the award of the license.

22 It doesn't have to have it in-hand
23 when it files the license. It doesn't have to
24 have it in-hand when it begins to appear before

1 the Commission. It doesn't have to have it in-
2 hand today. It does have to have it in hand 60
3 days after the license is awarded.

4 And the Commission is perfectly
5 capable of imposing a condition on the license
6 that it conform to the application that's been
7 specified in the filing that the applicant
8 makes.

9 So, while all of this is interesting
10 and all of it is wish we had a little bit more
11 advanced notice of it, but here we are. All of
12 it is a matter of record, one way or the other.
13 But it's not for 60 days after the license
14 issue that it all has to come together.

15 MR. FRONGILLO: But there does have
16 to be site control. And site control is
17 supposed to happen at the time of the RFA-2
18 filing.

19 COMMISSIONER MCHUGH: Site control
20 in the sense of ownership?

21 MR. FRONGILLO: Well, I think in
22 this situation there's not even a signed
23 agreement that we've seen. We have requested
24 this information. It's one thing to have it

1 under control but to execute on --

2 COMMISSIONER MCHUGH: What provision
3 of the statute are you --

4 MR. FRONGILLO: It's a regulation,
5 site control regulation. I don't have it at my
6 fingertips, but I can provide it to you in a
7 letter.

8 COMMISSIONER MCHUGH: That will be
9 fine. I'm sure we have it as well.

10 MR. FRONGILLO: I might be able to
11 provide it for you while we are still here.

12 COMMISSIONER MCHUGH: The statute
13 surely does not require -- okay, I've made my
14 point. I've asked my question it was somewhat
15 rhetorical, but it is an important touchstone.

16 MR. FRONGILLO: I believe that it
17 is. Without question we know what the statute
18 says, but also a decision has to be made on a
19 license. And there have been promises have
20 been made but nothing has been consummated.

21 COMMISSIONER MCHUGH: Yes, Sir. But
22 we're not awarding a license today.

23 MR. FRONGILLO: I understand.

24 COMMISSIONER MCHUGH: I know you

1 know that. And we know that.

2 MR. FRONGILLO: I understand.

3 Correct. So, the practical implications of
4 where we are today if you had to rule on what
5 you have in front of you is there's one way in
6 and there's one way out. And that place is
7 Horizon Way. And that is in Boston.

8 And there have been some briefing on
9 this issue of what does that mean if there is
10 access that is one community that provides
11 access to a development in a second community.
12 And this has been briefed, I believe, by the
13 Wynn folks.

14 While I think under the Gaming Act
15 it would be natural for you to look for
16 supporting case law to help get guidance on how
17 do you figure this out. It's a complex issue.
18 Boston is saying that the only access point is
19 in Boston and that's the only way in. And yet
20 the statute really doesn't directly address
21 this. And there's no guidance with case law
22 because the statute is new and these issues
23 have not arisen.

24 But there is analogous property law,

1 and this after all involves property, which
2 deals with access. There are a line of cases
3 decided by the Supreme Judicial Court. I'll
4 say them and give you the citations. We can
5 also put it in a follow-up letter if that would
6 be easier. The Town of Brookline versus Co-Ray
7 Realty Company 326 Mass. 206 1950, Harrison
8 versus Building Inspector of Braintree 350
9 Mass. 559 1966 and Beale versus Planning Board
10 of Rockland 423 Mass. 690 1996.

11 These cases are analogous zoning
12 cases that have bearing on the issue before
13 you. And they basically stand for a simple
14 rule and that is if the access to a use is
15 considered to be an extension of the use -- Let
16 me put that in a different way because that may
17 seem somewhat opaque.

18 If private land in one city is used
19 to provide access to a development in a second
20 city then the use of the land in the second
21 city must be an allowed use in the first city
22 where the access road is.

23 COMMISSIONER MCHUGH: But those are
24 zoning cases.

1 MR. FRONGILLOW: They are zoning
2 cases.

3 COMMISSIONER MCHUGH: This is not a
4 zoning case.

5 MR. FRONGILLO: But what this means
6 is that in Boston, Boston does not recognize at
7 this time casino gambling at the location where
8 Horizon Way is. If that is the only access
9 point to the casino, it takes on the use of the
10 casino. Boston does not permit a casino use
11 which means that that road cannot be used.

12 COMMISSIONER MCHUGH: Then the
13 zoning board will deny a necessary permit. It
14 doesn't spill over into awarding a license.

15 MR. FRONGILLO: It doesn't spill
16 into Everett, but what it says is that Horizon
17 Way can't be used.

18 COMMISSIONER MCHUGH: It doesn't
19 spill over into a licensing decision. The
20 licensee is still required to comply to get all
21 of the permits from the zoning and planning
22 board and everybody else. So, it may be that
23 there's a problem there but it doesn't affect
24 the licensing.

1 MR. FRONGILLO: The licensee has to
2 prove that they have access to the facility.

3 COMMISSIONER MCHUGH: No question
4 about it.

5 MR. FRONGILLO: If the only access
6 road cannot be used because of zoning purposes
7 then there is no access. That is the legal
8 issue.

9 Wynn has argued that that can't
10 possibly be the case. There is a criminal case
11 where the Legislature enacted a statute that
12 overrides the second statute of the
13 Legislature. Totally irrelevant. There is no
14 conflict between the Supreme Judicial Court
15 opinions and the Gaming Act. They don't
16 collide at all.

17 They simply have to do with whether
18 or not the land can be used. The site control
19 regulation is 205 CMR 119.01 section 41. In
20 addition, what we do know from the Wynn
21 application that even if the projected road
22 that they would like to be able to use were
23 used, they need permitting in Boston. They
24 need curb cuts. They need to widen roads in

1 Boston to make left-hand turns into that. Even
2 the drawings that we've seen that our experts
3 have analyzed show that property in Boston has
4 to be taken for the road to be able to provide
5 the adequate safety access.

6 In addition, the draft environmental
7 report indicates that there are -- they call it
8 substantial off-site roadway improvements.

9 It's Boston's view that the permitting, the
10 access, the changes that need to be made are
11 inextricably linked to the front door of the
12 proposed casino. And they're part of it. They
13 cannot be considered to be separate.

14 Let me now turn -- That's why there
15 is land in Boston. And Boston provides the
16 only access which is why Boston is a host
17 community if in fact there is a valid gaming
18 establishment.

19 Let me turn to the amenities and
20 I'll be brief because I think we've talked
21 about this in the prior discussion. Wynn's
22 RFA-2 indicates that it has some significant
23 amenities that are located in Boston. It's
24 identified two of them. And I had mentioned to

1 you earlier that these types of nongaming
2 amenities are big revenue generators for the
3 applicant.

4 And in this case TD Garden and the
5 Boston Symphony Hall, BSO, are defined or
6 they're included in section 4-15 of the RFA-2.
7 And they're called gaming establishment of high
8 caliber with quality amenities in partnership
9 with local facilities.

10 Wynn's quote on its discussion about
11 the TD Garden and the Boston Symphony is as
12 follows, first of all we know they're nongaming
13 structures: Wynn's strategy is not to compete
14 with existing sports and entertainment venues
15 in the region. The goal is to feed them. This
16 is why Wynn has partnered with TD Garden, the
17 Boston Symphony Orchestra and other iconic
18 locations to serve as its de facto sporting and
19 entertainment locations, section 33-33 at 104
20 of the RFA-2.

21 And it's clear that these amenities,
22 the TD Garden and the Symphony are directly
23 related to the gaming area. They're going to
24 serve the patrons. This is the whole Wynn

1 image. This is a Boston casino not an Everett
2 casino. That is how it's going to be promoted.
3 We are going to have strategic partnership
4 alliances with well-known venues, structures in
5 Boston.

6 COMMISSIONER MCHUGH: Isn't that
7 what the statute is designed to do? The
8 statute is full of injunctions to reach out and
9 lift all boats and get everybody involved in
10 this, make strategic partnerships. All of the
11 slots parlor applicants did that. The slots
12 licensee had, I think, by the time we awarded
13 the license, some 60 cross marketing agreements
14 with places including Gillette Stadium. That
15 was all designed to fulfill the statutory
16 objective.

17 MR. FRONGILLO: The cross marketing
18 point obviously the statute encourages that.
19 And it's a good thing.

20 COMMISSIONER MCHUGH: Because the
21 statute is designed to promote jobs and
22 revenue. If you can get people into -- I
23 thought the statute was designed, if you can
24 get people in here to go to the BSO, get people

1 in here to go to BSO and do a little gambling
2 while they're here.

3 MR. CONROY: No doubt about it.
4 These are partnerships. They're not simply
5 supporting local arrangements. As I mentioned
6 in my prior remarks when you fill the TD Garden
7 because of an entertainer, a celebrity, a well-
8 known performer, and you put thousands of
9 people in the seat -- and it generates
10 tremendous revenue, the bulk of your revenue.
11 We're not talking about a small percentage.
12 We're not talking about helping out the little
13 guy. We are talking about these partnerships
14 generating significant revenue for the
15 applicant.

16 COMMISSIONER ZUNIGA: I've looked at
17 the financials. They are not revenue
18 generators. They are actually liability. They
19 work the other way. The applicant actually
20 enters into an agreement by which they promise
21 to bring some of their clients. But let's move
22 onto your next point.

23 MR. FRONGILLO: Well, it's our view
24 that these types of partnerships, these two are

1 amenities and they're located in Boston.

2 There's one other point I want to
3 make. And I know I've used probably well more
4 than my time. And I thank you for graciously
5 listening to me. The water shuttle that has
6 been proposed. It's an access point. It is an
7 access point projected to about three percent
8 of the people that are going to be visiting the
9 casino.

10 It begins in Everett. It will cross
11 Boston waters, but it is an exclusive shuttle
12 to Boston venues only. That too is an amenity
13 for the patrons. Here's where the locations of
14 the water shuttle are, the USS Constitution,
15 the TD Bank Garden North End, Faneuil Hall, the
16 aquarium, financial district, the seaport
17 innovation district and Logan airport. None of
18 these venues are in Everett. They're all in
19 Boston.

20 This is an attempt according to Wynn
21 to connect its patrons with historical,
22 cultural and entertainment attractions in
23 Boston. While we feel that that also -- that
24 the dredging and everything that is going to

1 have to happen, we've had some experts looking
2 at this issue. We haven't completed the
3 analysis, which is costly. We believe that
4 part of the former Monsanto site, which is
5 submerged is going to have to be dredged for
6 this in Boston for this to work.

7 In any event, we believe that the
8 shuttle, the TD Garden, the partnership
9 arrangement with the BSO are amenities located
10 in Boston. We believe that the access, the
11 only access that you have before you other than
12 conjecture and hypothetical situations is in
13 Boston.

14 But more fundamentally I don't think
15 you have a gaming establishment period. You
16 don't have a valid agreement for one. You
17 can't find FBT Everett to be suitable. And
18 that agreement with them is null and void. It
19 violates public policy. So, all of these other
20 issues really are superlative at that point.
21 You don't even need to reach them if you
22 address directly the issue of the land
23 agreement.

24 COMMISSIONER MCHUGH: All right.

1 Mr. Frongillo, thank you, Sir. The Wynn
2 interests have an opportunity to be heard. I
3 want to say something before you actually
4 start. If you want to take your place that's
5 fine. Pardon me?

6 MR. STARR: Did you want to hear the
7 presentation from No Eastie?

8 COMMISSIONER MCHUGH: I'm sorry, did
9 you want to speak again? Take the time that
10 you want. That was my bad.

11 I'm going to ask you to go next,
12 please. The essence of your remarks was heard
13 last time but I would like to hear them. And
14 I'll explain why in a second.

15 MS. MEYERS: Thank you for this
16 opportunity to speak on this issue and we'll
17 only take a few minutes. Attorney Frongillo
18 pointed out in kind of the crux of his argument
19 that Horizon Way is the only point of access.
20 I'll submit to you that it's much more than
21 that. It's a funnel. It's a funnel.

22 And access points will be coming
23 multiple fold through the city of Boston from
24 93 North, from 93 South. To get the perception

1 that that one tiny access point is
2 inconsequential, it's kind of a key to the
3 whole equation. Again, it would rely on the
4 city of Boston to a great deal for host
5 amenities for resources and services and the
6 like.

7 The other element that he touched on
8 is the arrangement that Wynn, even other
9 developers plan to have relations with points
10 of interest throughout the city. Now we all
11 know that those relationships will be
12 reciprocal. As much as it's an amenity to
13 folks that are guests at the casino, it will
14 also be a draw to folks that are already
15 funneling into the city of Boston to spend
16 their tourism dollars.

17 There will be notifications. There
18 will be placards. There will be all kinds of
19 marketing, cross marketing that folks will know
20 even if their intention is to maybe hit a show
21 in the theater district, by the way we can pick
22 the shuttle up right here too. That's going to
23 be draining a lot of resources, financial and
24 otherwise from the city of Boston. That

1 further cements the indication that the city of
2 Boston will be a host community for a Wynn
3 casino.

4 I just want to take another minute
5 just to veer a little bit off the beaten path.
6 I think we know that I'm not necessarily right
7 on with my talking points, but it struck me all
8 the many days that I have come here and I've
9 stared at your banner with the mission
10 statement to introduce the Commonwealth to the
11 successful and ethical development of expanded
12 gaming.

13 I would argue that my experience has
14 been and many within my organization and other
15 organizations and developers and proponents
16 alike that we've kind of gone far off the
17 beaten path of kind of the written roadmap.
18 And I feel like we're at a juncture where we
19 are desperately trying to successfully, to use
20 that term loosely, to install a casino in the
21 first pass.

22 This is our first try here in the
23 Commonwealth of Massachusetts. We have pushed
24 deadlines. We have let benchmarks go. We have

1 ventured into really murky unchartered waters
2 in an attempt to successfully and ethically
3 install a casino in Massachusetts.

4 We've argued and submitted that the
5 legislation and the language are guidelines to
6 be interpreted by developers, proponents,
7 opponents and certainly you Commissioners. I
8 don't know where, and maybe Matt can dig up the
9 precise segments of the legislation that says a
10 casino has to be installed in every region in
11 the first pass. That we have to bend over
12 backwards, slide deadlines, forgo hitting high
13 points and benchmarks and make a myriad of
14 exceptions so that in the first pass we have to
15 install a casino in the Commonwealth.

16 And I'd just like you folks to think
17 about that a little bit as you consider the
18 applications, as you consider all of the major
19 gaps and loopholes and elements that are still
20 missing from these applications. That's all.
21 Thank you.

22 COMMISSIONER MCHUGH: Thank you.

23 MR. CAMERON: Very briefly. As this
24 Commission is aware, we are a volunteer

1 organization. Our focus has been in our
2 backyard in East Boston. Certainly, we've been
3 following the Wynn application with interest.
4 Like perhaps some others in this room, I own a
5 small piece of Boston, about 1000 square feet
6 of it. I'm a tax payer. I drive in the city
7 of Boston. I've lived almost entirely all of
8 my life at this point in the city of Boston.

9 And I'm very concerned about what's
10 happening at our borders, literally at our
11 borders. Attorney Frongillo has already
12 covered, beautifully covered the issues that
13 most concern us especially as to the
14 suitability of this application. But I do just
15 want to touch on the fact that as has been
16 stated that these applicants are relying upon
17 the city of Boston to market, to promote, to
18 maintain this casino. That is the entire
19 purpose of it.

20 I'd just like to read into the
21 record very briefly a blog post posted by one
22 of several astro-turf groups supporting the
23 Everett casino.

24 COMMISSIONER MCHUGH: This is a

1 what?

2 MR. CAMERON: A blog post, a web
3 blog. This is dated April 28. I won't read
4 the whole thing, but it exclusively mentions
5 and it mentions I will be fair, sites all over
6 Massachusetts, but it focuses on sites such as
7 the MFA.

8 COMMISSIONER MCHUGH: I'm not sure
9 of the context.

10 MR. CAMERON: This is a promotional
11 campaign.

12 COMMISSIONER MCHUGH: Who published
13 it?

14 MR. CAMERON: This is an associate
15 of the Wynn. It's called Everett United.

16 COMMISSIONER MCHUGH: What's the
17 entity?

18 MR. CAMERON: Everett United.

19 COMMISSIONER MCHUGH: Everett
20 United.

21 MR. CAMERON: They are a paid
22 promotional group.

23 I don't have to read too much of it.
24 It's easily findable but they're promoting this

1 project, and again this is just one of many,
2 many comments in this direction that can be
3 found and we've cited in our brief directly
4 that come before this Commission in fact.
5 They're promoting Boston sport teams. They're
6 promoting the MFA. They're promoting
7 Massachusetts reputation as a medical center.
8 They actually mention Saudi sheiks coming in
9 for appendectomies.

10 And those are all things that we're
11 very proud of. The problem is that all of
12 these things are being marketed and promoted
13 and put out into the public without our
14 consent. And all we're asking is for the
15 opportunity to have that consent.

16 I live in East Boston, but I think
17 the voters of Charlestown certainly should have
18 the opportunity to say something about their
19 reputations and certainly their backyards being
20 entangled with this project. I mentioned last
21 time I live about three miles from the Suffolk
22 Downs site. I live about five miles from the
23 Everett site as Mr. Wynn's helicopter flies.
24 And I would very much like to see a casino-free

1 Boston. That's why I got into this.

2 The name of our group certainly
3 suggests that we're concerned for East Boston,
4 but we're concerned for all of Region A. I
5 happen to believe that the Supreme Judicial
6 Court is about to allow the repeal question on
7 the ballot in November. It's my opinion. The
8 argument was just heard earlier this week. I'm
9 sorry to say that I think that the Revere
10 project -- the Suffolk Downs project, pardon
11 me, will be Exhibit A and that this project
12 will be Exhibit B when that repeal question
13 goes in front of the voters, not to any fault
14 of this Commission necessarily. I think it's
15 really just a fault of the law, which is
16 shortsighted, hastily drafted and put through
17 at the last possible opportunity.

18 Again, I understand that's not what
19 we're here to talk about. Very quickly, what
20 we've been discussing this entry point, which I
21 think is absolutely crucial as it is for the
22 Suffolk Downs project as well. Because how you
23 get to a place certainly has everything to do
24 with how it's going to operate.

1 Essentially, the city of Everett is
2 asking the city of Boston for an easement
3 that's what I would say. More so than a zoning
4 question, it seems like it's an easement.
5 They're asking do you mind if several thousand
6 people drive across your already crowded
7 highways, your already crowded land. I think
8 of course any time you ask for an easement, you
9 actually have to go through that process and
10 ask the landowner if they mind having it driven
11 over.

12 We're just here to say that the city
13 of Boston should have that opportunity. And
14 I'm not going to expound anymore on the
15 incredible work that legal team has already
16 done in their research and presentation but
17 that's what we have to say.

18 COMMISSIONER MCHUGH: Thank you both
19 very much as always. Before we start, let me
20 say that one of the -- probably the primary
21 reason we set out the process that we set out,
22 the process for exchange of briefs was so that
23 nobody would be caught by surprise with respect
24 to things that were made at these hearings.

1 This is an extremely important part
2 of the process. And it's one in which a lot of
3 interests are at stake. So, that's why we set
4 out the process that we did. We varied from
5 that process to invite the city of Boston to
6 come and present arguments even though it
7 hadn't filed a brief, believing that the
8 arguments it was about to make or would likely
9 make were arguments that were well known.

10 With respect to the last argument, I
11 must say that I heard some things for the first
12 time that I hadn't thought about, at least in
13 that context in which they were put. It may be
14 that you heard things for the first time at
15 least in a context that you hadn't thought
16 about.

17 So, if you need some time,
18 reasonably short time, to respond in writing to
19 things that were said, I am inclined with my
20 colleagues' consent if they agree, to give you
21 that time. You don't have to decide that this
22 minute, but I would like to have you decide
23 before these proceedings adjourn. With that, I
24 will turn it over to you Mr. Weld or Mr. Starr.

1 MR. STARR: Thank you, Commissioner
2 McHugh. Like you, I believe in notice and
3 process. I made that point last week.

4 COMMISSIONER MCHUGH: You did.

5 MR. STARR: And I respect greatly
6 your decision to allow the city of Boston to
7 make their presentation today. They chose not
8 to present a brief on April 17. They chose not
9 to file a reply brief on April 24. What they
10 did send you on April 17 was a criticism of
11 your process. We are prepared today to go
12 forward with our presentation. We did hear a
13 few things for the first time.

14 What I'm going to do is to divide
15 the presentation, Commissioners, between myself
16 and my colleague, Mr. Weld, my partner. I will
17 try and answer the question which I thought we
18 were here today which is the location of the
19 gaming establishment. I thought that's what we
20 were here today to do. And I'll answer. Mr.
21 Weld will pick up on some of Mr. Frongillo's
22 preliminary remarks in his first 25 minutes.
23 I'll pick up on the backend of it.

24 We have a PowerPoint today. Jenny,

1 does the Commission have a copy of it as well?

2 COMMISSIONER MCHUGH: Yes.

3 MR. STARR: Also, I would note
4 Commissioners that at counsel table with me is
5 Mr. DelSalvio who as you know is Senior Vice
6 President of Development from Wynn Resorts and
7 also Dan Gaquin my partner, and my colleague
8 Jenny McCarthy who I will rely on to make sure
9 the slideshow goes correctly because I don't
10 have the competence to do that.

11 So, we are here today to present on
12 the premises of Wynn's proposed gaming
13 establishment. This is the question that you
14 asked us to address when you issued your
15 procedures early in April. Determine the
16 premises of the gaming establishment for which
17 Wynn Mass., LLC seeks approval in its December
18 31, 2013 RFA-2 application.

19 In response to this question we
20 submitted a memo on April 17. We attached to
21 the memo the affidavits of Attorney Gaquin, of
22 Attorney Krum and Attorney McCarthy all of
23 which had attachments to them. Those
24 affidavits included what we thought were the

1 pertinent pages from the RFA-2 application,
2 although we appreciate that you took note in
3 your original order that you were going to take
4 note of the application so we didn't have to
5 give it back to you. But we clipped some pages
6 to the affidavits that we thought were relevant
7 and important.

8 And we also attached some pertinent
9 correspondence as well as some key parts of the
10 transcript from September 4 where as
11 Commissioner McHugh has mentioned you first
12 took up this issue.

13 And we gave the chronology from
14 after September 4. And I don't intend to use
15 my time today going through that chronology.
16 It's set out in the brief. I think it's
17 important, but you have it there.

18 Instead in answering the question
19 presented, we start our analysis with the
20 Gaming Act, because that's where we believe the
21 proper answer to the question will be found.
22 And the Gaming Act and in particular the
23 critical definitions, most critical definition
24 is what we're here for today. The gaming

1 establishment first and foremost, the premises
2 approved under a gaming license which includes
3 a gaming area and any other nongaming structure
4 related to the gaming area and may include but
5 shall not be limited to hotels, restaurants or
6 other amenities.

7 There are two other definitions that
8 I think are related. I think one of them
9 Commissioner McHugh you read earlier in your
10 introductory remarks, the definition of a host
11 community. It's a municipality in which a
12 gaming establishment is located or in which an
13 applicant has proposed locating a gaming
14 establishment.

15 But there's a second definition,
16 which is also critical here, because we heard
17 an enormous amount in the last 50 minutes about
18 access. It's a word I heard a lot from the
19 last two or three speakers. Surrounding
20 communities, municipalities in proximity to a
21 host community which the Commission determines
22 experience or are likely to experience impacts
23 from the development or operation of a gaming
24 establishment including municipalities from

1 which the transportation infrastructure
2 provides ready access to an existing or
3 proposed gaming establishment.

4 As demonstrated from Wynn's site
5 plan, which is presented in answer to question
6 4-79 in the application and the accompanying
7 attachments, Wynn's entire gaming establishment
8 is located in Everett.

9 In the next slide you'll see this is
10 our answer, Wynn's answer to 4-79. I apologize
11 that the print is quite small, but this
12 identifies the project site, which is entirely
13 located in Everett. Then we attached a
14 conceptual site plan. This is the conceptual
15 site plan included in our application. We
16 showed it to the Commission at the September 4,
17 2013 hearing. As I said, we included it in our
18 application. It has been provided to Boston.
19 And it is unchanged. This shows our gaming
20 establishment and our gaming establishment site
21 are totally in Everett.

22 We also included in our RFA the 1942
23 land court plan showing the boundary of parcel
24 B. Parcel B, which is the parcel on which

1 Wynn's gaming establishment will be located has
2 existed in its current configuration since at
3 least 1942. And on the next slide what I did
4 was I simply turned the slide, turned the plan
5 so that parcel B is oriented in the same way
6 that I think you're used to seeing it and as it
7 will appear in the next several slides as we
8 begin to show you where on parcel B we have
9 located our gaming establishment.

10 So, turning from the RFA itself to
11 several graphics, which I have created to
12 clearly illustrate the location of the gaming
13 establishment on parcel B in Everett, I show
14 you this slide. And I ask you to take careful
15 note here of the city of Everett, Boston
16 boundary line, which clearly separates parcel B
17 and parcel C.

18 The parcel boundary, which is right
19 there. This is the parcel boundary and it's
20 also the municipal boundary right along here.
21 My red pointer is showing it. That's a
22 critical boundary to keep in mind as we go
23 forward.

24 On the next slide, we show you

1 Wynn's gaming establishment site, which is the
2 land on which the gaming establishment is
3 located. This is an important place to pause.
4 I'm going to use two terms here, gaming
5 establishment and gaming establishment site.

6 As we set forth in our prehearing
7 memo, the gaming establishment site is an area
8 greater than the gaming establishment itself.
9 I would refer you to page six of our memo. I
10 want to read from page six of our memo where we
11 drew the Commission's attention to this.

12 Our interpretation is supported by
13 the Commission's use of a different term
14 "gaming establishment site" to describe an area
15 greater than the gaming establishment in the
16 RFA-2 application. And we provide a couple of
17 examples for that. First, question 4-4 of the
18 RFA-2 application asks, and I quote "provide a
19 color rendering of the gaming establishment and
20 all structures located on the gaming
21 establishment site". And I've attached that as
22 Exhibit 14 to the McCarthy affidavit.

23 And then question 4.4-11 of the
24 application asks a similar question. Describe

1 the restaurants, retail spaces, bars, lounges
2 and other nongaming amenities located within
3 the boundaries of the gaming establishment site
4 along with the names of their proposed
5 operators".

6 For Wynn the Commission's use of the
7 term gaming establishment site in the RFA-2
8 application evidenced the Commission's intent
9 to distinguish between the broader term gaming
10 establishment site, which includes the land
11 owned by the applicant upon which it proposes
12 to build its gaming establishment and the more
13 narrow term the gaming establishment, which
14 includes the gaming area and other nongaming
15 structures related to the gaming area.

16 And remember we were asked today to
17 determine the premises of the gaming
18 establishment. So, if we could turn to the
19 next slide, please. Let's focus now on the
20 gaming establishment itself. We are going to
21 turn out attention from the gaming
22 establishment site to the gaming establishment.
23 I read this definition earlier. The gaming
24 establishment is the premises approved under a

1 gaming license which includes a gaming area and
2 any other nongaming structure related to the
3 gaming area and may include but shall not be
4 limited to hotels, restaurants or other
5 amenities. It's right from the statute.

6 The word premises as we noted in our
7 memo is not defined in the Gaming Act. We
8 suggested a couple of possible definitions for
9 the word premises. Of course, we have
10 Webster's Collegiate Dictionary definition, the
11 premises being a building and the land it is
12 on. Another definition might be the definition
13 you might find in normal real estate parlance.
14 The word premises or lease premises is used to
15 describe the actual space within a building
16 leased to a tenant whereas mortgage premises is
17 used to describe the real property pledged to
18 secure an obligation.

19 But from Wynn's perspective, we
20 think looking at the plain and unambiguous
21 language of the statute, the correct definition
22 is the premises of the gaming establishment is
23 meant to include the gaming area and all other
24 nongaming structures related to the gaming

1 area.

2 And for Wynn, the gaming area and
3 all other nongaming structures related to the
4 gaming area will include our gaming area, our
5 hotel, our restaurants, our bars and lounges,
6 the nightclubs, the retail spaces, the spas,
7 the meeting and the convention spaces. That
8 for Wynn is the gaming area and the other
9 nongaming structures.

10 And I'm going to use some graphics
11 now to illustrate exactly where these
12 components fit on the gaming establishment
13 site. This next slide shows the entire gaming
14 establishment site. And in yellow, and in
15 yellow it shows the location of the gaming
16 establishment on that site, all of which is in
17 Everett. Obviously, because of how this slide
18 is, you can see the city of Boston boundary
19 line and so forth. Please don't misinterpret
20 what I'm saying here.

21 The gaming establishment site is
22 parcel B, which is a subset of that slide. So,
23 that you have context, I included obviously
24 where the city of Boston and the city of

1 Everett come together. And you'll see once
2 again, as I showed before the property line,
3 which is also the municipal boundary line. The
4 yellow in there is the location of the gaming
5 establishment on that site.

6 Next slide, please. Now we're going
7 to start to break it down and show you the
8 components of our gaming establishment and
9 piece by piece. I'm going to show you a series
10 of slides that illustrate these components of
11 Wynn's gaming establishment as defined under
12 the Act and the location of these components on
13 the gaming establishment site.

14 The first step is to illustrate the
15 gaming area. That's the first thing that the
16 definition says. Here you can see in sort of a
17 light shade of purple that's the location of
18 our gaming area. Next slide in red we have the
19 location of the hotel. Because this is a slide
20 of the second floor, it's over the gaming area.
21 You no longer see on this slide the gaming
22 area.

23 Next slide, please. We've added the
24 restaurants and the bars and the lounges, but

1 of course since we are now back on the first
2 floor, you have the gaming area in the light
3 purple color. And in the reddish color, you
4 have the restaurants and so forth.

5 Next slide, please. We are still on
6 the first floor. We've added to the gaming
7 area and the restaurants, we've now added in
8 the dark blue color the retail areas. These
9 would be the stores. Next slide, please.

10 Still staying on the first floor, we add the
11 back of the house plan that's in gray and it's
12 the upper right-hand corner. There are a
13 couple of elements to the left of the gaming
14 area as well.

15 We return to the second-floor to
16 show the spa which is located over the gaming
17 area and the restaurants. Also, on the second
18 floor in yellow we add the convention space,
19 which is a ballroom and a meeting room. Then
20 the final slide of this series shows the
21 second-floor back of the house including such
22 things as service area, kitchen, laundry, etc.
23 These last group of slides illustrate what Wynn
24 believes to be the gaming establishment. It is

1 all in Everett.

2 But even if we proceed to add other
3 nonstructure amenities, other nonstructure
4 amenities located on the gaming establishment
5 site, it will not change the conclusion. It's
6 all still in Everett.

7 So for example, if you chose a
8 broader interpretation of the word premises to
9 include nonstructure amenities that might add
10 in our planned harbor walk, our planned docks
11 or our planned internal roadways. Wynn does
12 not believe that this is the correct definition
13 for a gaming establishment. But should the
14 Commission believe that you need to take these
15 other nongaming structures into account, it
16 will not change the ultimate determination
17 because all of that is solely in Everett.

18 The next slide will illustrate that.
19 Here we've added, as you can see the dock in
20 brown. It might be actually in white. The
21 dock is here. We've added some internal
22 roadways here. We've added what we call on
23 this slide, and it's really not a correct
24 designation, it's called here an amphitheater,

1 but it's really just some tiered outdoor
2 seating in the grass. But as you can see when
3 you add these additional elements, you are
4 still completely in Everett and you are
5 completely on the gaming establishment site in
6 Everett.

7 This next slide shows from Wynn's
8 perspective the built out gaming establishment
9 site. And when you look at this slide, you can
10 clearly see the municipal boundary line. I put
11 that in before to let you know it was coming.
12 Here it is the red boundary line. This is the
13 municipal boundary line between Everett and the
14 city of Boston. It's also the property line.
15 And the gaming establishment is located on the
16 gaming establishment site. And that is solely
17 in Everett.

18 This slide shows in yellow what Wynn
19 believes to be the gaming establishment site.
20 Once again, the red line shows the municipal
21 boundary line. The gaming establishment is
22 solely in Everett.

23 Now turning to host community. The
24 Act defines host community as a municipality in

1 which a gaming establishment is located or
2 which an applicant has proposed locating a
3 gaming establishment. Because Everett is the
4 municipality in which Wynn has proposed
5 locating its gaming establishment, Everett is
6 the host community.

7 In No Eastie's reply brief, they
8 made two arguments in their reply brief. And
9 they to some extent reiterated them last
10 Thursday and again today with respect to the
11 Wynn casino.

12 First, No Eastie argued that Horizon
13 Way should be considered part of Wynn's gaming
14 establishment site. Then secondly, they argued
15 that it was inequitable for municipalities that
16 are in very close proximity to a gaming
17 establishment not to be deemed host
18 communities. And I'll take each of those up in
19 turn.

20 First, let's talk about Horizon Way.
21 Horizon Way is not part of Wynn's gaming
22 establishment site. As a matter of law,
23 Horizon Way cannot be part of Wynn's gaming
24 establishment site because other abutters have

1 rights to Horizon Way.

2 Let's be clear about what Horizon
3 Way is and what it isn't. And we outline this
4 in our brief. Jenny, it may help the
5 Commission and I'll put back up another slide,
6 if we could go to page 11 where you'll actually
7 have a picture of Horizon Way.

8 Here is slide 11. And you can see
9 Horizon Way right there. Horizon Way is a
10 public and private way that provides access to
11 the Wynn site. It is approximately 400 feet
12 long and about 50 feet wide. It is a public
13 way where it begins at the intersection of
14 Alford in Boston right there and Broadway in
15 Everett.

16 And in fact, the Boston/Everett
17 boundary line bisects Horizon Way right down
18 the middle for the first about 150 feet, right
19 where my pointer is there. It starts right
20 here, right where the two streets come
21 together. And then it heads up in this way.

22 The remaining 250 feet of Horizon
23 Way is exclusively in Everett. And Horizon Way
24 abuts the gaming establishment site in Everett

1 not in Boston. You see the Boston property
2 line ends there, right there. Then the balance
3 of it is all in Everett.

4 Wynn does not and cannot control or
5 own Horizon Way. It's a separate legal entity
6 from the Wynn parcel. Other abutters such as
7 the MBTA, which owns property over here, they
8 have rights in the Way. Wynn can't change the
9 legal character of Horizon Way. It's not
10 Wynn's now, nor can it be.

11 Horizon Way is a part public, part
12 private way that provides ready access to
13 Wynn's gaming establishment site. If you turn,
14 Jenny, back to slide 32, I highlight ready
15 access, because those words aren't mine. Ready
16 access comes right out of the definition of
17 surrounding community.

18 If we can look at the next slide,
19 surrounding communities, municipalities in
20 proximity to a host community which the
21 Commission determines experience or are likely
22 to experience impacts from the development or
23 operation of a gaming establishment including
24 municipalities from which the transportation

1 infrastructure provides ready access to an
2 existing or proposed gaming establishment.

3 Horizon Way provides ready access to
4 the Wynn site. Ready access confers
5 surrounding community status. It does not
6 confer host community status. No Eastie set --

7 COMMISSIONER MCHUGH: Let me just
8 break in here. You're not proposing to use
9 that for access, if I understand you correctly,
10 in any event. Is that right or wrong?

11 MR. STARR: Horizon Way?

12 COMMISSIONER MCHUGH: Horizon Way.

13 MR. STARR: In the application, and
14 this was previewed at the hearing in
15 September --

16 COMMISSIONER MCHUGH: I know but
17 that September is a long time ago.

18 MR. STARR: The preferred access
19 would not be through Horizon Way. But that
20 would be through the completion of a series of
21 transactions and agreements on properties in
22 Everett including with the MBTA. And if that
23 is successful that would be the access. And
24 Horizon Way, you're absolutely right, would not

1 be an access to the site.

2 The only reason I bring this up to
3 the Commission is that if we had everything in
4 place, which we don't, but we are working
5 toward it, if we had everything in place then
6 of course our access would be completely in
7 Everett and the city of Boston and No Eastie
8 would not be able to advance this argument.

9 So, I guess the argument because
10 that's the one they advanced. They advanced
11 the Horizon Way argument. But it's of no
12 matter to what we're talking about today.
13 Because access is not siting of the gaming
14 establishment. Access goes to surrounding
15 community. So, even if we were to examine the
16 Wynn application through the lens of access
17 from Horizon Way, it doesn't change the
18 conclusion that the Wynn gaming establishment
19 premises are in Everett.

20 Boston may appropriately be a
21 surrounding community because of its proximity
22 and because Horizon Way, which starts in both
23 Boston and Everett, but as I said before, it
24 quickly becomes exclusively in Everett. And

1 that's where it ultimately reaches our site.

2 The second argument that No Eastie
3 advanced was the proximity argument. And as I
4 understood their argument, they said because
5 it's so close to the border then it must be a
6 host community.

7 And I would suggest to the
8 Commission that if the Legislature, which
9 drafted an extremely comprehensive plan had
10 intended for communities that were very close
11 to a gaming establishment to be host
12 communities, the Gaming Act would reflect that.
13 It doesn't.

14 The Gaming Act and regulations
15 establish an extensive process for mitigation
16 of significant impacts to surrounding
17 communities. And proximity is a factor in that
18 analysis. Proximity confers surrounding
19 community status not host status.

20 Last week at the hearing, No
21 Eastie's Counsel made a statement. I have the
22 transcript here. And I apologize it's hard to
23 read. I want to read the quote, the first part
24 of it. And what Counsel said was: But host

1 community status isn't about necessarily the
2 structures. It isn't about the buildings. It
3 isn't about all of that other stuff. It's
4 about the people who live there and how they
5 are going to be affected.

6 But the problem with that passionate
7 argument is it ignores the plain language of
8 the definitions set forth for host community in
9 the Gaming Act and the regulations. Let's take
10 a look at those definitions again. Chapter 23K
11 section 2, host community, a municipality in
12 which a gaming establishment is located or on
13 which an applicant has proposed locating a
14 gaming establishment.

15 Wynn is not proposing to locate its
16 gaming establishment in Boston. It is
17 proposing to locate its gaming establishment in
18 Everett.

19 And the Commission's regulations
20 actually provide some reiteration of the
21 definition from the Act. Host community, and
22 I'm reading from 205 CMR 123.01, host community
23 is a municipality in which a gaming
24 establishment is located or on which an

1 applicant has proposed locating a gaming
2 establishment. That's very similar to the
3 statutory definition. But more language is
4 added, provided however that if a proposed
5 gaming establishment is situated in two or more
6 cities or towns, each shall be a host community
7 for purposes of Chapter 23K.

8 The additional language clearly
9 reinforces that the critical factor is where
10 the gaming establishment is located or
11 situated. And in our case, the gaming
12 establishment is located or situated in
13 Everett, not in Boston.

14 In summary, the location of the
15 proposed gaming establishment determines host
16 community establishment. The gaming
17 establishment includes the gaming area,
18 buildings and structures. And Wynn's proposed
19 gaming establishment is located in Everett.

20 Mr. Frongillo, as I said at my
21 introductory remarks, had a couple of comments
22 which I would like to address. And then when
23 I'm done with my presentation, my partner Mr.
24 Weld will address the balance of it.

1 One of the things he said, he
2 focused on was that I think he said that 65
3 percent of the revenues were from amenities.
4 As if to say that the Boston Garden and the BSO
5 all of a sudden is contributing 65 percent of
6 the revenues.

7 What the application said was at the
8 Wynn Las Vegas facility, Wynn generates 60
9 percent of its total revenue from nongaming
10 sources. Now nongaming sources are all inside
11 the building. They're all located at the site.
12 That's Wynn's hotel. It's Wynn's dining
13 facilities. It's Wynn's retail facilities.
14 It's Wynn's meeting facilities.

15 This is not the case where in Las
16 Vegas for example, if Wynn decided to buy some
17 tickets at the performing arts center known in
18 Las Vegas, I believe, it's known as the Smith
19 Performing Arts Center, if Wynn chose to buy
20 some tickets for a guest to go attend there
21 that's not Wynn revenue. That's a cost to
22 Wynn.

23 Similarly, exactly as you pointed
24 out, Commissioner Zuniga, this is not a source

1 of revenue for Wynn. It's a cost. These are
2 not revenue generators for the applicant. They
3 actually cost us money.

4 We did attach to the Krum affidavit,
5 and I apologize for taking time on something,
6 which I think is so quickly dismissed, and
7 Commissioner McHugh you were exactly on point,
8 the Act -- As I think your word was and I can't
9 remember your word. -- encourages, but you had
10 an even better word for it, the Act encourages
11 applicants such as Wynn to enter into these
12 types of cross marketing agreements to promote
13 businesses at places like the BSO and at the TD
14 Garden. These are cross marketing agreements.

15 They're exactly what Wynn did. We
16 are encouraged to do that. And in our brief,
17 we attached the BSO arrangement. The letter of
18 intent. This is what Wynn agreed to do. Wynn
19 will be a Chairman Circle Sponsor for the
20 December 12, 2013 Company Christmas at the
21 Pops. Wynn will host a reception for BSO
22 artists and other participants following the
23 performance by Keith Lockhart and the Boston
24 Pops Esplanade Orchestra at the Smith Center in

1 Las Vegas on November 17, 2013.

2 Subject to obtaining a license to
3 develop the project, Wynn will sponsor the 2014
4 Christmas at the Pops. Subject to obtaining a
5 license to develop the project, Wynn will
6 sponsor the 2015 Christmas at the Pops. We
7 attached a letter from the TD Garden.

8 The TD Garden sent a letter to
9 Catherine Blue, General Counsel. Please be
10 advised that in December 2013 Delaware North
11 Companies entered into a sponsorship agreement
12 with Wynn pursuant to which Wynn sponsored the
13 2013 Boston Bruins holiday toy drive. The
14 Garden and Wynn are independent contractors and
15 neither party has any ownership interest or
16 control over the other party.

17 Mr. Frongillo also said one way in
18 and one way out and that is in Boston. That's
19 not true. I've shown you the slide. Horizon
20 Way, if he was talking about Horizon Way, abuts
21 the property in Everett. It starts in both
22 Everett and Boston at that intersection. The
23 boundary line bisects the road. And then after
24 about 150 feet it is exclusively in Everett.

1 We did receive yesterday from
2 General Counsel Blue a request to address
3 certain matters. And I appreciate that email
4 and I'd like to read it so that you can see why
5 I'm now addressing this. This was sent
6 yesterday afternoon to my client.

7 The third paragraph of the email
8 reads: At tomorrow's Commission hearing
9 regarding the determination of the premises of
10 the gaming establishment for which applicant
11 seeks approval, representatives of the
12 applicant should be prepared to discuss any
13 option agreements held by the applicant or any
14 applicant affiliate for property located in the
15 city of Boston and how those options may or may
16 not relate to the premises of the proposed
17 gaming establishment.

18 With that in mind, I want to show
19 you the next slide. Now on this slide, it
20 should've been in green. It doesn't show quite
21 as well, but in any event, here is Wynn's
22 gaming establishment site. Here is parcel B.
23 Then we have parcel C parcel in red right there
24 and then the TEV Realty Trust parcel. Those

1 two sort of pinkish brown shaded parcels are
2 under option to a Wynn affiliate. And they are
3 located in Boston.

4 For completeness, although General
5 Counsel Blue didn't ask, I've also included two
6 parcels in yellow, which are completely in
7 Everett on which Wynn itself, the applicant has
8 an option on those two in yellow. These two
9 here in reddish brown, they're under option to
10 a Wynn affiliate. And they are located in
11 Boston.

12 Now let me tell you a little bit
13 about each one, again responding directly to
14 what General Counsel Blue asked. First, I'll
15 focus on parcel B. And I will remind you that
16 Wynn provided information -- I'm sorry parcel C
17 at the September 4, 2013 hearing.

18 The owner of the property is FBT
19 Everett Realty, LLC, which is also the owner
20 and seller of the gaming establishment site
21 known as parcel B. Wynn controls under an
22 option agreement through a Wynn affiliate
23 Everett Property, LLC. The purpose of this
24 parcel, the parcel is owned by the owner and

1 seller of the gaming establishment site. And
2 like any prudent developer, Wynn believes it is
3 prudent to control an immediately adjacent
4 parcel.

5 There are no structures, gaming or
6 nongaming, planned for this parcel. In fact,
7 the parcel consists mostly of land under water
8 and a mud flat. So, construction on the parcel
9 is really not practical in any case. And I'll
10 illustrate that although you can see the text
11 here, open water, open water, edge of water.

12 But let's go to the next slide so
13 you get a sense of the water. Virtually all of
14 parcel C, 80 percent of it is all the blue.
15 That's all water. Likewise a fair bit of
16 parcel B is water as well. The boundary line
17 is in the middle of the water.

18 While we leave that slide up, I'll
19 provide the same information on the second
20 parcel, which I've identified on the slide as
21 TEV Realty Trust. Wynn controls this through
22 an option agreement through a Wynn affiliate,
23 Everett Property, LLC. This option agreement
24 was entered into in January 2014.

1 Wynn believes as with the other
2 parcel, it is prudent to control property
3 immediately abutting the existing right-of-way
4 which could provide access to the gaming
5 establishment site. There are no structures,
6 gaming or nongaming, planned for this parcel.
7 I believe currently there is unused vacant
8 building on the parcel.

9 Jenny, if we could turn to the next
10 slide. Actually, before I close with this, I'm
11 reminded that Mr. Frongillo did bring up the
12 Beale case. That was the case where he talked
13 about access. I once again have to commend
14 Commissioner McHugh. I am not sure that I
15 could do a better job distinguishing the case
16 than I believe you did in your questioning.

17 We briefed that case because we
18 anticipated based on a letter they had sent in
19 March that it might be raised. It's fully
20 addressed in our brief. But in summary,
21 Boston's argument fails for three reasons as
22 Commissioner McHugh pointed out. It's a zoning
23 case. Also, critically in Beale, the developer
24 was creating a new private road and therefore

1 needed planning board approval.

2 Here, unlike Beale, Horizon Way, if
3 that's what the city of Boston is pointing to
4 is an existing road. And the only approval
5 required from Boston to expand the Way, if any,
6 is approval from the public improvements
7 commission, which does not have general zoning
8 authority.

9 And we also point out that the
10 Legislature is presumed to be aware of the
11 prior state of the law. And therefore, we
12 believe the well-drafted Gaming Act in this
13 instance would trump the Beale case.

14 So, the question that I thought we
15 were answering today was to determine the
16 premises of the gaming establishment for which
17 Wynn Mass., LLC seeks approval in its December
18 31, 2013 RFA-2 application.

19 As I hope you will conclude from my
20 presentation and our memo and the affidavits,
21 Wynn's entire gaming establishment is located
22 in Everett. Therefore Everett is the only host
23 community.

24 And I will close with this slide

1 again. Here once again in yellow is the
2 location of Wynn's gaming establishment. That
3 proposed gaming establishment is located solely
4 in Everett and not in Boston. And I would ask
5 Mr. Weld now to address Mr. Frongillo's
6 preliminary remarks.

7 COMMISSIONER MCHUGH: All right.
8 Thank you, Mr. Starr. Mr. Weld.

9 MR. WELD: Thank you, Commissioner.
10 Mr. Frongillo referred to two hearings held in
11 2013 by the Commission. One, I believe, was on
12 September 4, and the other on December 13. I
13 was present and acted as counsel for Wynn on
14 both of those occasions. So, I'd just like to
15 address those two hearings and the issues that
16 they involved.

17 The September 4 hearing was held to
18 address very much the same question as is on
19 the agenda today, namely the location of the
20 premises of the Wynn proposal, which determines
21 the question of host community.

22 Counsel for the city of Boston on
23 that occasion demonstrated what she called some
24 images of the project on which certain land

1 located in the city of Boston had been shaded
2 in green, and suggested or intimated that this
3 indicated that land in the city of Boston was
4 part of the project. Commissioner Zuniga
5 correctly asked her was it the city's position
6 that artists' renderings or early marketing
7 materials would take precedence over the actual
8 application? And the city said no, no, of
9 course not.

10 And the upshot of that the hearing
11 was that the then suggestion by the city of
12 Boston that it was entitled to host community
13 status kind of fell away of its own weight with
14 some encouragement from the Commission that the
15 parties go out and try to get on the same page
16 on this.

17 And from that point on, the
18 discussion was about surrounding community
19 status for Boston and the benefits attendant on
20 that. A lot of the same verbiage, argument was
21 heard there about ready access. And that's
22 fine, but that's relevant to surrounding
23 community status not to host community status.
24 And we went over that ground again and again at

1 that hearing.

2 I don't think at that hearing the
3 arguments that the TD Garden and BSO marketing
4 arrangements made them amenities within --
5 sufficient to suggest that Boston should be
6 host community status. But in addition to the
7 point that the amenities have to be on the
8 premises, I think the implication of your
9 question, Commissioner McHugh, about section
10 15(3) suggests that -- well, let me put it
11 this way. It would be hard even for Steve Wynn
12 and Wynn Resorts to acquire Boston Garden and
13 the Boston Symphony Hall within 60 days of
14 receiving a license. So, I think that's
15 another statutory implication that makes that
16 argument fall away.

17 The other hearing was on December
18 13, more or less, 2013. At that hearing, we
19 did address the sellers issue, sellers of land
20 issue. Around that time, the Commission on the
21 basis of exhaustive proceedings appropriately
22 found applicant Wynn to be suitable. And found
23 all of the people who needed under the statute
24 to be suitable to be suitable.

1 The Commission did hold hearings on
2 whether a procedure worked out by Wynn with
3 respect to the sellers of land was appropriate.
4 And that was essentially to reduce the purchase
5 price for the land from I believe it was \$75
6 million down to an amount that would
7 approximate fair market value. And I believe
8 that value was testified to by Wynn's expert to
9 be \$35 million perhaps less \$10 million for
10 costs of remediation.

11 So, that the casino premium -- the
12 Commission, I think, found the casino premium
13 had been squeezed out of the commercial
14 transaction between Wynn and the sellers of
15 the land. The Commission did have certain
16 requirements, which we've been working
17 diligently to satisfy. And I'm confident that
18 long before the Commission is at the license
19 stage here, all of those requirements will have
20 been met to the satisfaction of the Commission.

21 There's a couple ways in which that
22 could be done. And we are working on the
23 easiest way first. And I think we will be
24 successful there. But if that's not successful

1 for whatever reason, then we will proceed to a
2 slightly more time consuming method of doing
3 that. But I think that will be laid to rest as
4 well.

5 If the Commissioners have any other
6 questions about what happened at either of
7 those two hearings, I'm happy to test my
8 recollection.

9 COMMISSIONER MCHUGH: No. I have no
10 questions. I have a distinct recollection that
11 at the second hearing there was a
12 straightforward way laid out to deal with the
13 FBT issue. And that straightforward way
14 remains in effect. So, I know effort and focus
15 is being placed on --

16 MR. WELD: Yes. The straightforward
17 way is what I was just referring to as the
18 easiest way, literal compliance.

19 COMMISSIONER MCHUGH: Any questions
20 for Mr. Weld? That concludes the
21 presentations. Thank you very much.

22 MR. STARR: Commissioner McHugh?

23 COMMISSIONER MCHUGH: I'm sorry, Mr.
24 Starr.

1 COMMISSIONER ZUNIGA: He is probably
2 going to address -- Was this relative to -- We
3 gave them the option to respond to what we
4 heard here today that you hadn't heard before.
5 Do you want to address that?

6 MR. STARR: That's exactly what I
7 was going to ask what the process was for me to
8 have a chance to speak with my client. And
9 then let the Commission know if I'd like to
10 take you up on that very kind offer to address
11 a couple of the issues which we were hearing,
12 at least in this context for the first time
13 this afternoon.

14 COMMISSIONER MCHUGH: All right.
15 Then let me talk now among the four of us here
16 of course so that you can see about the next
17 steps. And is your client available to make
18 that kind of a decision immediately or would
19 you need time to make that decision, Mr. Starr?

20 MR. STARR: We could make the
21 decision promptly. At a recess, we could
22 certainly make that decision and then get right
23 back to the Commission.

24 COMMISSIONER MCHUGH: Okay. So,

1 here is a proposal that I have. I've been
2 thinking about process and how we move forward
3 from here.

4 We had anticipated making this
5 decision a week ago. We didn't for reasons
6 that are now neither here nor there. We have
7 had presentations by all of the parties here
8 today. And it's a good thing that Mr.
9 Frongillo talked about a discussion. That's
10 the level at which this ought to be. And we're
11 grateful for continued participation from --
12 thoughtful participation from No Eastie Casino,
13 delighted that the city is here. Got good
14 presentations from the applicants. The time
15 has come, it seems to me, for a decision.

16 On the other hand, and this is a
17 modest qualifier, it seems to me that the
18 thoughtful arguments that have been presented
19 by all sides require a thoughtful written
20 response. So, what I would propose subject to
21 your thoughts is that we make a decision in
22 principle here today. And that we follow that
23 decision in principle with a written decision
24 -- We have a meeting week from now. -- in

1 which we spell out and formally approve the
2 decision in principle with a more extended
3 statement of the reasons for it next week.

4 At the same time next week, we take
5 up the question of whether to waive the
6 requirement that the arbitration and
7 negotiation clock starts ticking the moment we
8 issue that decision, because that's a matter of
9 independent concern for me.

10 I'm not sure which way I ultimately
11 come out on that, which way we will all come
12 out on that. But I would like to discuss that
13 issue next week when we decide the matter
14 formally. So, I simply start the discussion by
15 throwing that out as a proposal to see what the
16 thought is about that.

17 COMMISSIONER STEBBINS: So, you're
18 suggesting some type of preliminary ruling on
19 the two questions before us about the
20 definition of the gaming establishment with a
21 more formal reply, report to be approved by us
22 a week from today.

23 COMMISSIONER MCHUGH: Yes. Really a
24 decision in principle today. An outcome and

1 the basic structure of the reasons for the
2 outcome. Then a formal written decision next
3 week.

4 I suggest that because otherwise it
5 is very difficult in this open meeting context
6 to draft a decision and get everybody's input.
7 So, that it's conceivable if we don't do it
8 that way we come here next week with a draft,
9 thoughtfully prepared by the staff as they
10 always do as to which we have a variety of
11 disagreements and we can't do it. So, if they
12 have a target to shoot at, I think we are much
13 more likely to get the formal decision done
14 next week. But everybody will know today what
15 it is.

16 COMMISSIONER CAMERON: Commissioner,
17 where does the decision by the applicant and
18 whether or not they want to respond in writing
19 fit into your scenario?

20 COMMISSIONER MCHUGH: I would
21 suggest we take a recess. We need a recess
22 anyway and give them time to decide whether
23 they want to reply. And if they want to reply,
24 we can adjust the schedule slightly in order to

1 get that reply. That would be the proposal.

2 COMMISSIONER CAMERON: We will
3 recess.

4 COMMISSIONER ZUNIGA: That's fine by
5 me.

6 COMMISSIONER STEBBINS: I'm okay
7 with it.

8 COMMISSIONER MCHUGH: The consensus
9 is that is the way we are planning to go. So,
10 we'll take this time, I know the hour is late,
11 but I do think we need to move this forward at
12 this stage. So, we'll take a 10-minute recess
13 and then resume.

14

15 (A recess was taken)

16

17 COMMISSIONER MCHUGH: I'd like to
18 resume the hearing now, please. Let's bring
19 this to a conclusion. It's been a long day for
20 everybody. I'm grateful for everybody's
21 patience and participation. Mr. Starr.

22 MR. STARR: Thank you, Commissioner
23 McHugh, for the opportunity to speak with my
24 client. And we have conferred. And we are

1 pleased to go forward with the hearing this
2 afternoon. And we do not need any additional
3 time to provide additional information. We
4 thank the Commissioners for making that offer
5 but we are all set.

6 COMMISSIONER MCHUGH: All right, Mr.
7 Starr. Thank you. Now I neglected before to
8 extend the same offer to Mohegan Sun. Mr.
9 Conroy, I asked Attorney Grossman to tell you
10 that that was an oversight on my part and
11 extend the same offer to you.

12 MR. CONROY: Thank you,
13 Commissioner. We will also waive the
14 opportunity to file anything additional and ask
15 you to go ahead as well. Thank you for the
16 opportunity, Commissioner.

17 COMMISSIONER MCHUGH: So, the
18 discussion that we propose to have then is a
19 discussion in which we talk about the central
20 points as we see them based on the briefs, on
21 the materials that were presented here today,
22 the oral argument -- the oral presentations I
23 should say. Outline a basis in principle for a
24 decision, make that decision and vote on it.

1 The vote will be a preliminary but a
2 binding vote. And then ask staff to draft a
3 statement that incorporates the principles in
4 greater details so that there is a more formal
5 written decision. Bring that back to the
6 Commission for ratification really next
7 Thursday at our regularly scheduled meeting.
8 Then discuss at the same time whether the clock
9 starts ticking if there needs to be a clock
10 ticking. That will depend on the decision
11 itself. So, with that as outline, who wants to
12 begin?

13 COMMISSIONER ZUNIGA: Are we
14 starting with Mohegan or Wynn?

15 COMMISSIONER MCHUGH: Let's start
16 with Mohegan because you suggested that.

17 COMMISSIONER ZUNIGA: Then I would
18 cede that opportunity to someone else.

19 COMMISSIONER CAMERON: I don't mind
20 starting. I spent a lot of time with our legal
21 staff really making sure I understood the
22 issues, making sure I understood the
23 definitions. I listened very closely today to
24 everyone's point of views.

1 Spending a lot of time in public
2 safety, I know that a good attorney will make
3 the argument no matter what that is. But there
4 were a lot of good points made today. I think
5 really the crux of this whole matter is what is
6 that gaming establishment.

7 And I do believe the definition is
8 pretty clear. It is in which community is that
9 gaming establishment. And I'm convinced after
10 listening to everyone's arguments today that
11 Mohegan Sun's gaming establishment is in
12 Revere.

13 I think one piece in the lease was
14 confusing. That has been removed, which I am
15 also persuaded that Suffolk Downs will be
16 running the track, will be operating, owning
17 the track and not Mohegan Sun. And I agree
18 with No Eastie. I agree with the city of
19 Boston. There are lots of impacts for the city
20 of Boston, a great amount of impacts. But I
21 believe those can be handled in a surrounding
22 community agreement. And that is mandated
23 before we issue a license. And we expect that
24 to happen of course. So, those are my comments

1 on Mohegan and where their establishment is
2 located.

3 COMMISSIONER MCHUGH: All right.
4 That is the thrust of the issue before us.
5 Commissioner Zuniga.

6 COMMISSIONER ZUNIGA: I agree. I
7 think there's a lot of factors already outlined
8 in the presentations. The ownership is
9 different. The lease provides for only those
10 premises to be leased that are in Revere.
11 Mohegan is not leasing any of the premises that
12 pertain to the track, for example. I am
13 persuaded by the presentation.

14 I also have thought about the
15 determination that this Commission has relative
16 to structures that are related to a gaming
17 establishment, which would then constitute an
18 amenity. I view that part of the statute as a
19 decision we have that could be motivated by our
20 need to or desire to have jurisdiction over
21 those premises whether it's for security or
22 safety reasons. And in this case we already
23 have jurisdiction over the track so long as
24 Suffolk Downs continues to be a racing

1 licensee.

2 So for those reasons, I am convinced
3 by the presentations here by the applicant.

4 And I believe the gaming establishment to be
5 like they described it in Revere.

6 COMMISSIONER MCHUGH: Commissioner
7 Stebbins.

8 COMMISSIONER STEBBINS: I also, as
9 Commissioner Cameron pointed out, looked at the
10 definition of the gaming establishment. And
11 the key terminology within that definition is
12 really what we are authorized to license, a
13 gaming license not a racing license but a
14 gaming license.

15 I understood the information
16 presented. I understood the information, the
17 comments from the city of Revere that this
18 entire facility, this gaming establishment will
19 be within the city boundaries regardless of how
20 close in proximity. And we know it is.

21 And certainly, I agree with
22 Commissioner Cameron's point about the fact
23 that the city of Boston will be impacted. And
24 that is the crux of why the legislation put in

1 the provisions to protect surrounding
2 communities.

3 The issue is raised, I believe, by
4 -- and I just want to address it as a point --
5 representatives from the No Eastie group with
6 respect to our seeming to rush to make a
7 license award. I think this Commission has
8 always been mindful of the language to say that
9 we could license up to one. And at some point
10 in the process, we may find that the
11 applications that are before us are not worthy
12 of receiving a license.

13 But it is a process that continues
14 to play itself out. There are new details that
15 we review. There's clarification questions
16 that we ask of our applicants as we go forward.
17 There's testimony that we take from residents
18 in both the host communities and the
19 surrounding communities.

20 So with that in mind, I think this
21 Commission remains aware of our
22 responsibilities that we are moving a process
23 along. It's funny sometimes they say we are
24 moving too slow. Other times say we're moving

1 too fast. But I think we are still trying to
2 be thorough throughout this application
3 process, again, with the ultimate decision of
4 whether we actually award one or not.

5 But I too also find that Mohegan Sun
6 Massachusetts application for a gaming
7 establishment does reside and fit within the
8 boundaries of the city of Revere.

9 COMMISSIONER MCHUGH: I start with
10 the proposition that we are bound by the
11 legislative definitions. I think we all agree
12 with that. And it seems to me as much as that
13 is reinforced, it sometimes is obscured at
14 least even for me and for other members of the
15 Commission, I think.

16 So, it's useful to go back and
17 remember what they are. A gaming establishment
18 that's what we're here to decide today. A
19 gaming establishment is the premises approved
20 under a gaming license which includes a gaming
21 area and any other nongaming structure related
22 to the gaming area and may include but shall
23 not be limited to hotels, restaurants and other
24 amenities.

1 In this context, the definitional
2 focus on amenities for me has to refer to
3 amenities, structures, things that enhance the
4 value of the main structure, the casino and are
5 under the casino's control. Section 15(3)
6 requires the applicant to own or acquire within
7 60 days after a license has been awarded the
8 land where the gaming establishment is proposed
9 to be constructed.

10 So, if you can't acquire or don't
11 acquire or don't have any intent to acquire the
12 land where the amenities, which are by
13 definition part of the gaming establishment are
14 located, it's not part of the gaming
15 establishment. That is particularly important
16 in the case of the Mohegan Sun application,
17 because it is clearly taking advantage of the
18 landlord's racetrack.

19 But the landlord controls the
20 racetrack. Mohegan Sun controls the gaming
21 facility. And striking from the lease the
22 operating provisions makes sure that that stays
23 the same. The Commission can also ensure that
24 that stays the same. And that's not just a fig

1 leaf. That is to ensure that there is
2 independent operation and independent thinking
3 about the two properties.

4 It's clear that a landlord can take
5 advantage of and participate in the profits of
6 the tenant and leasee. That's common in many
7 commercial agreements. But the tenant does not
8 get to control the landlord's operation. So,
9 it seems to me that that is something that the
10 Commission needs to think about and ensures is
11 perpetuated.

12 Then once you get to those
13 definitions and apply those definitions to the
14 facts, the host community is a municipality in
15 which a gaming establishment is located or in
16 which the applicant has proposed locating a
17 gaming establishment. That one is one that has
18 been, I think, obscured in some of the
19 arguments that we've heard.

20 It is true that these are designed
21 to be regional facilities, but the Legislature
22 in its wisdom defined the host community in
23 geographical terms, not an impact terms.
24 Defined surrounding community in impact terms.

1 Defined host communities in geographical terms.
2 And it didn't say that the gaming establishment
3 had to have a 100-foot or one-mile setback into
4 the host community. It didn't set any setback
5 requirements. It simply said that the host
6 community is the community in which the gaming
7 establishment is located.

8 A different statute would've had a
9 different result, but this is the statute that
10 the Legislature passed. This is the statute
11 that we're bound by. This is the statute that
12 we have to work with. And that was something
13 that the Legislature obviously and carefully
14 considered.

15 So, it seems to me that when one
16 looks at the definition of what a gaming
17 establishment is, looks at it in the context of
18 the ownership requirements, I might add the
19 registration requirements because the statute
20 provides the employees of a gaming
21 establishment have to be registered with the
22 Commission, and then looks at the host
23 community, the Mohegan Sun gaming establishment
24 is located exclusively in Revere. So, that's

1 how I too would decide that issue.

2 All right. Let's turn then to the
3 Wynn application.

4 COMMISSIONER CAMERON: I'll start
5 again. Again, listening closely to everyone's
6 comments, everyone's arguments here today, I'd
7 like to start by saying I continue to be
8 concerned about the land deal. As I share the
9 concern of our Director of Investigations, but
10 I do look at that as a separate matter. One
11 that has yet to be resolved. We are not
12 licensing today. We are here to determine the
13 gaming establishment. So, I do see a
14 separation with those two.

15 And with regard to the gaming
16 establishment, I was not convinced with the
17 argument that cross marketing agreements and
18 the usage of facilities in Boston or
19 transportation in Boston then leads us to
20 believe they are amenities and part of the
21 gaming establishment. And we've had those
22 conversations.

23 I know the primary access is not to
24 come through Boston when it comes to the

1 entrance to the Wynn facility, but I know the
2 secondary option does. But I'm still not
3 convinced that Horizon Way is part of the
4 gaming establishment. I know there've been a
5 lot of conversations about that but I do not
6 believe that would be part of the gaming
7 establishment.

8 For the reasons I stated earlier, I
9 am convinced that Wynn's gaming establishment
10 is solely within Everett and not Boston.
11 Although again, tremendous impacts, and the
12 proper way for those to be addressed would be
13 through a surrounding community agreement.

14 COMMISSIONER STEBBINS: To discuss
15 the Wynn gaming establishment, first of all, I
16 appreciated seeing once again the outline of
17 the property. I for one would certainly
18 consider the proposed amphitheater, docks, etc.
19 that you own and manage is also part of the
20 gaming establishment and certainly an amenity.
21 Your docks are going to be used to get people
22 to and from the water shuttle up to the
23 building, but that's my opinion, again,
24 although those still reside within the

1 boundaries of the city of Everett.

2 Like Commissioner Cameron, I
3 appreciate the city of Boston's concerns about
4 suitability of the current property owners, but
5 as we have always talked about suitability is
6 ongoing. And as you saw in our last review of
7 the Category 2 applications, we had an update
8 on suitability of all the applicants and their
9 related parties prior to our final deliberation
10 on their license applications.

11 I know this is also where the city
12 of Boston touched specifically on the
13 amenities. Obviously, they mentioned the
14 relationship with TD Bank and with Boston
15 Symphony Orchestra. I also again fall onto the
16 side of the argument with respect to these
17 amenities, one not only the argument of the
18 actual ownership of these facilities, but I do
19 harken back to the statute.

20 As you get through the purposes of
21 the statute, I believe, in section one after
22 they talked about how the Commission shall
23 conduct itself and that we need to protect the
24 lottery, the immediate next section relates to

1 how these resort facilities need to have a
2 positive impact on surrounding businesses.
3 They need to maximize the assets, the cultural
4 and social assets of the Commonwealth of
5 Massachusetts.

6 I think the Legislature and the
7 Governor and this Commission have always talked
8 about the fact that we do not want these
9 facilities to be walled off fortresses. And if
10 that openness and that relationship with the
11 community around it and the neighborhood around
12 it is part of the requirement of the
13 application, it's part of the priorities of the
14 statute, I didn't think it was intended to
15 necessarily have every amenity or location of
16 an amenity be considered part of a host
17 community.

18 So, with that I also glean from the
19 presentation and the arguments that the gaming
20 establishment as it meets the definition for
21 the Wynn proposal does fall within the property
22 boundaries of the city of Everett.

23 COMMISSIONER MCHUGH: Commissioner
24 Zuniga.

1 COMMISSIONER ZUNIGA: I agree with
2 all of that. I would put a fine point on the
3 following, the suitability that we made, the
4 determination of suitability on Phase 1, which
5 is ongoing is one of Wynn, the applicant. I
6 think that's very important to underscore.

7 Also, Commissioner McHugh has
8 already alluded through his questioning about
9 control or ownership of the land, the statute
10 gives 60 days after the award of the license.
11 So, clearly the statute envisioned that there
12 was no need for anybody to make a purchase
13 upfront in order to be able to compete in the
14 evaluation of a license. That's key to several
15 of the arguments that Attorney Frongillo made.

16 I guess we already made the point,
17 but the cross marketing agreements are costs as
18 I mentioned, liability. They are not by any
19 stretch -- They are the opposite of what's
20 characterized as revenue generators. And they
21 are very much in mind and it's with the spirit
22 and the letter of the statute relative to using
23 the existing assets of the Commonwealth, not
24 just the city of Boston.

1 So, I am persuaded by the arguments
2 from Mr. Starr relative to the plans, the
3 access. I don't believe that the existing
4 Horizon Way constitutes any part of the gaming
5 establishment as proposed. I would therefore
6 agree with my colleagues.

7 COMMISSIONER MCHUGH: I said a
8 number of things based on the definitions a
9 minute ago in respect to the Mohegan Sun
10 application. The same definitional pathway
11 through this issue applies to Wynn. And I'm
12 not going to repeat it all.

13 I do put to one side however the FBT
14 issue. My colleagues have said there remains a
15 concern about that. But I put it to one side
16 because we had a hearing on that. We came up
17 with a remedy. A remedy that reduced the price
18 to what the owners of that property would be
19 able to sell the property to anybody for.

20 Obviously, one can differ with
21 appraisers' appraisals. But the idea was --
22 And that appraisal was a very, very thorough
23 appraisal. That appraisal was designed to look
24 at what you could sell that property to a big

1 box developer like the developers who have used
2 the adjacent parcel or some other entity to use
3 for in a nongaming context.

4 So, they come into the deal with an
5 asset that they're prepared to sell to the Wynn
6 interests. They come in with an asset of that
7 value before the casino premium takes over and
8 that's what they get. They don't get a casino
9 premium. That was the theory underlying that.

10 We've referred that what we found to
11 the very able and thoughtful thorough law
12 enforcement agencies. We referred it to the
13 District Attorney, the Attorney General and the
14 US Attorney. And asked the Bureau and the
15 Bureau has cooperated to the best of my
16 knowledge with all of them in whatever further
17 inquiries and undertakings they want to
18 undergo.

19 But the Bureau separated out that
20 part of the deal from the suitability of Wynn.
21 And why did they do that? Because suitability
22 under our statute and regulations applies to
23 those who are going to be involved in the
24 operation of the gaming facility. These are

1 sellers, vendors, one-time vendors. They are
2 not, they don't and they won't have an ongoing
3 role in operation of the facility.

4 So, that I put to one side. I
5 recognize the concern. But I put it to one for
6 that reason. Having put it to one side, I then
7 go through that definitional matrix that I
8 talked about before and focus, as my colleagues
9 did, on the requirements of section 15(3) that
10 the applicant own or acquire within 60 days
11 after the license is issued the property on
12 which they propose to build the gaming
13 establishment.

14 That's put in there for a purpose.
15 Everybody who has applied, I think, for all of
16 these licenses with one possible exception has
17 had option deals that were contingent on
18 getting a license. That was thoughtfully put
19 into the statute to allow people to build a
20 possible acquisition, a site. And then execute
21 on the site and put up in some cases the
22 hundreds of millions of dollars the purchase of
23 the site would take, not in this case but in
24 some cases, and not have to go out of pocket

1 and speculate as an inducement for people to
2 apply. It's a perfectly sound financial
3 approach.

4 So, that part means that the fact
5 that the precise contours of all of the land
6 that are included in the application have not
7 yet been firmed up does not mean that the
8 application is fatally flawed.

9 So, for all those reasons, I
10 conclude that the gaming establishment proposed
11 by Wynn Mass., LLC is in the city of Everett
12 exclusively and not in the city of Boston. And
13 that is the issue that we here to decide.

14 It follows as a consequence, I think
15 from both of those decisions that the city of
16 Boston which has contingently applied to be a
17 surrounding community is a surrounding
18 community with respect to both of those
19 applications.

20 Do we have any further business?

21 COMMISSIONER ZUNIGA: That sounds
22 like an agreement in principle.

23 COMMISSIONER MCHUGH: That is a
24 decision in principle. Those are the main

1 points, main pillars on which the decision is
2 based. As I say, the formal decision will be
3 forthcoming. But I would like if we have no
4 further discussion to take a vote to adopt that
5 decision in principle and ask the staff to
6 prepare a report for our approval at the next
7 meeting that incorporates those points and that
8 outcome.

9 COMMISSIONER CAMERON: So moved.

10 COMMISSIONER STEBBINS: Second.

11 COMMISSIONER MCHUGH: All in favor?

12 COMMISSIONER CAMERON: Aye.

13 COMMISSIONER ZUNIGA: Aye

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER MCHUGH: Aye, the ayes
16 have it unanimously. Do I hear a motion to
17 adjourn?

18 COMMISSIONER ZUNIGA: So moved.

19 COMMISSIONER MCHUGH: All in favor,
20 aye.

21 COMMISSIONER CAMERON: Aye.

22 COMMISSIONER ZUNIGA: Aye

23 COMMISSIONER STEBBINS: Aye.

24 COMMISSIONER MCHUGH: We are

1 adjourned.

2

3 (Meeting adjourned at 5:15 p.m.)

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9 ATTACHMENTS:

- 10 1. Massachusetts Gaming Commission May 8,
11 2014 Notice of Meeting and Agenda
- 12 2. May 1, 2014 Mintz Levin Letter Regarding
13 City of Somerville, MA and Wynn MA, LLC,
14 Surrounding Community Arbitration with
15 Enclosures
- 16 3. Massachusetts Gaming Commission
17 April 18, 2014 Memorandum as amended May
18 8, 2014 Regarding Region A Arbitration
19 Extension Requests
- 20 4. Submitted Briefs and Responses Regarding
21 Determination of the Premises of the
22 Gaming Establishment

23

24

1 GUEST SPEAKERS:

2 Thomas Frongillo, Fish and Richardson (city of
3 Boston)

4

5 Kevin Conroy, Esq., Foley Hoag (Mohegan Sun)

6 Charlie Baker, III, Esq., DLA Piper (Sterling
7 Suffolk)

8 Brian Falk, Esq., Mirick O'Connell (City of
9 Revere)

10

11 Matthew Cameron, No Eastie Casino

12 Celeste Meyers, No Eastie Casino

13

14 Samuel M. Starr, Esq., Mintz Levin (Wynn Resorts)

15 William Weld, Mintz Levin (Wynn Resorts)

16

17 MASSACHUSETTS GAMING COMMISSION STAFF:

18 Catherine Blue, General Counsel

19 John Ziemba, Ombudsman

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 12th day of May, 2014.

LAURIE J. JORDAN	My Commission expires:
Notary Public	May 11, 2018