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THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #67

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

May 16, 2013, 9:30 a.m.

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room E

1000 Washington Street

Boston, Massachusetts

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

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4 CHAIRMAN CROSBY: I pleased to call
5 to order meeting number 67, public meeting
6 number 67 of the Massachusetts Gaming
7 Commission on Thursday May 16. We are starting
8 today at 9:30 in the morning rather than 1:00.

9 The first item on the agenda was an
10 appeal from one of the applicants that we were
11 going to hear on, I guess, some issue of
12 redactions, questions about redactions. But
13 I'm advised by our General Counsel that that
14 has probably been resolved. So, we're not
15 going to have a hearing after all.

16 So, we will move right on to number
17 three, which is the approval of the minutes,
18 Secretary McHugh.

19 COMMISSIONER MCHUGH: The minutes
20 have been distributed. I have no comment on
21 the content. They are there for whatever
22 comments anybody would like to make. But I
23 would note that Artem Shtatnov, one of our
24 counsel here has finely integrated all three

1 aspects of our meeting recordkeeping, the
2 minutes, the transcript and the tape.

3 And I think this is a terrific way
4 to proceed. It will help everybody both find
5 in the transcript the parts of the transcript
6 they're interested in and will also allow
7 people to go directly to the place in the tape
8 that is also posted online, to look like live
9 at the proceedings or the part of proceedings
10 they are interested in. In addition to that,
11 he's developed a mechanism that allows him to
12 do this in less time than it was taking to
13 prepare the other minutes. So, we have picked
14 up some time and produced a better product.
15 And I think it's terrific that he's done it
16 this way.

17 CHAIRMAN CROSBY: Yes, I agree.
18 Please thank Artem for us.

19 COMMISSIONER CAMERON: Artem,
20 excellent work.

21 CHAIRMAN CROSBY: Any comments on
22 it, on the minutes?

23 COMMISSIONER ZUNIGA: I do. And I
24 concur with the integration. I do want to note

1 on page four that this may be a typographical
2 but important change where it says evaluation
3 process 10:18 a.m. Commissioners McHugh,
4 Stebbins and Zuniga have been researching the
5 different ways other organizations conduct
6 evaluations. It's perhaps Commissioners
7 Stebbins and McHugh.

8 CHAIRMAN CROSBY: Right. That's a
9 substantive catch. I think that's good.

10 COMMISSIONER ZUNIGA: I have a
11 second question or actually a comment, in the
12 timeframe that is here between 10:26 and 11:18,
13 there was discussion that is correctly
14 summarized here. But I think there is an
15 important point that is omitted from the
16 summary. It's, of course, in the transcript.
17 So, that's great. But I would like to
18 highlight it in these minutes because not
19 everybody will go through the transcript.

20 But the point I made relative to
21 making sure the important roles in the
22 decision-making and management of these
23 evaluating process are not delegated out to an
24 outside party. And I believe there was a

1 little bit of consensus to that effect, but if
2 there could be a reflection of that in the
3 summary minutes, I would appreciate that.

4 CHAIRMAN CROSBY: Either staff or
5 outside parties.

6 COMMISSIONER ZUNIGA: No, no.

7 CHAIRMAN CROSBY: We made both
8 points, I think.

9 COMMISSIONER ZUNIGA: Both points.

10 CHAIRMAN CROSBY: I think that's a
11 good suggestion.

12 COMMISSIONER ZUNIGA: That one
13 summary point. It will be reflected in the
14 transcript, of course, but I would like it
15 inserted here.

16 COMMISSIONER MCHUGH: That is an
17 important point. So, do you have some
18 suggested language there that we can all agree
19 on?

20 COMMISSIONER ZUNIGA: Sure. That I
21 made the point that we should not delegate
22 important roles, notably in the decision-making
23 out to an outside party.

24 CHAIRMAN CROSBY: Or to staff. I

1 think it was both things that were talked
2 about.

3 COMMISSIONER ZUNIGA: It was both.
4 I was most concerned about an outside party, an
5 advisor that then has a role in the decision-
6 making. And I'm talking about a significant
7 role.

8 CHAIRMAN CROSBY: Right.

9 COMMISSIONER ZUNIGA: That's what we
10 want to put in or what I want to put in.

11 COMMISSIONER MCHUGH: So, this is a
12 comment that you made not a decision that the
13 Commission made.

14 COMMISSIONER ZUNIGA: It's a comment
15 that I made, but I recall there was some
16 agreement notably by Commissioner Cameron.

17 COMMISSIONER MCHUGH: I don't think
18 there's any disagreement with the principle,
19 and I don't have the transcript fresh in my
20 mind. It's the question of what is, where is
21 the dividing line between what's permissible
22 for staff to make decisions about and what's
23 not.

24 COMMISSIONER ZUNIGA: Yes. That was

1 included of course. And I guess that will be
2 the subject of ongoing discussions. But it's
3 that principle that I wanted inserted.

4 COMMISSIONER MCHUGH: Commissioner
5 Zuniga with concurrence by other Commissioners
6 said that we have to ensure the decision-making
7 by staff or outside parties on important
8 matters -- is not delegated to outside parties
9 or staff on important matters. Important
10 matters can obviously mean different --

11 CHAIRMAN CROSBY: I think the point
12 of this was not that we doubted that. We knew
13 that. But we wanted to make sure the outside
14 world knew that. There was some concern that
15 maybe we're over delegating. And we absolutely
16 are not. I think we've been absolutely
17 explicit and foursquare about that. But we're
18 concerned about making that important point to
19 the outside world.

20 COMMISSIONER MCHUGH: Okay.

21 CHAIRMAN CROSBY: Good, thank you.
22 Anything else? Do you want to move?

23 COMMISSIONER MCHUGH: With that
24 change, the change in the 10:18 and the 10:26

1 summaries of what occurred, I would move that
2 the minutes of the May 3 meeting be approved.

3 COMMISSIONER CAMERON: Second.

4 CHAIRMAN CROSBY: All in favor, aye.

5 COMMISSIONER STEBBINS: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER CAMERON: Aye.

8 COMMISSIONER MCHUGH: Aye.

9 CHAIRMAN CROSBY: Opposed? The ayes
10 have it unanimously. I am going to suggest
11 just one thing. There are two items, the
12 Racing items and the research item, numbers
13 eight and nine, actually 10 as well, because it
14 turns out there's a last-minute item of
15 business. Eight, nine and 10, that we do those
16 before we start number seven, before we start
17 the reg. review.

18 The research, Rachel Volberg won't
19 be here until after lunch. So, we can do her
20 whenever she gets it. But I think the review
21 of the regs. is the one that could run on and
22 on and on. And I wouldn't want to run the risk
23 of not getting to eight, nine and 10. So, if
24 everybody's okay with that, I'm just going to

1 rearrange that schedule. Is that all right?

2 COMMISSIONER ZUNIGA: Yes.

3 CHAIRMAN CROSBY: Okay. So, let's
4 go to item four, Executive Director Day.

5 MR. DAY: Good morning, Chairman
6 Crosby, members of the Commission.

7 COMMISSIONER CAMERON: Good morning,
8 Executive Director Day.

9 MR. DAY: I think I'm going to see
10 if I can change this before I start. Just I
11 thought rather than start out making sure the
12 changes taking place rather than experimenting
13 with it later.

14 One thing, Chairman Crosby, I'd like
15 to thank Janice for her assistance and the
16 extra conveniences and the time that it took.

17 CHAIRMAN CROSBY: Yes. I was going
18 to say the same thing. Wherever she went,
19 because we dressed this place up a little bit.

20 MS. REILLY: Too bad we can't show
21 the world.

22 CHAIRMAN CROSBY: Right. I love the
23 nameplates and the tablecloths. I can take my
24 shoes off now and nobody will know. It's

1 great. Thank you. It looks much better. And
2 it was actually Executive Director Day's idea.
3 It was a good idea.

4 COMMISSIONER CAMERON: We might know

5 COMMISSIONER MCHUGH: It looks like
6 we might be here permanent.

7 CHAIRMAN CROSBY: Yes.

8 COMMISSIONER CAMERON: We'll let you
9 know if we know.

10 CHAIRMAN CROSBY: Okay.

11 MR. DAY: With that what I would
12 also like to briefly just a couple of things
13 going on on the general administration side.
14 We're beginning to interview candidates for the
15 Director of Licensing, which we're really
16 excited about. And we're waiting for a
17 background on finalists for the Directors of
18 Workforce Supplier Development and Research and
19 Problem Gambling. And we will be identifying
20 candidates for Chief Information Officer for
21 interviews hopefully next week.

22 CHAIRMAN CROSBY: And CFAO?

23 MR. DAY: CFAO is still with an
24 executive search firm. And they are giving us

1 some assistance to identify candidates that
2 will work for us.

3 CHAIRMAN CROSBY: It's a little bit
4 behind the CIO, apparently.

5 MR. DAY: A little bit. Partially
6 because we've asked for help from an executive
7 search firm.

8 CHAIRMAN CROSBY: Okay.

9 MR. DAY: Also, I'd like to note
10 that this of course our first attempt at a
11 regular bimonthly meeting or twice a month
12 meeting and all of the coordination and the
13 change in the process and everybody's patience
14 with it, I appreciate it. And the staff have
15 been real great about getting things ready and
16 in the packets. So, thank you very much.
17 Also, it's about my two-month anniversary,
18 short a couple of days.

19 CHAIRMAN CROSBY: Congratulations.

20 MR. DAY: But with that, I just want
21 to let you know that I've completed personal
22 individual meetings with each member of staff,
23 an orientation and discussion. It was very
24 beneficial and enjoyable for me.

1 We have a great group of people on
2 the Commission, which I think you were already
3 were aware of that. It was nice to have a
4 chance to talk with each of them. I've also
5 set meetings with the directors and with each
6 of the Commissioners. I've also had an
7 opportunity to meet with Commission staff at
8 Plainridge and Suffolk Downs and an additional
9 opportunity to meet with the Attorney General,
10 the Comptroller, the Budget Director and their
11 staffs.

12 And that's been very informational
13 for me as I'm looking to send representatives
14 to headquarters office, to meet with me,
15 introduce themselves. And it's always helpful
16 besides talking about applications to know some
17 of the faces behind those applications. And I
18 just wanted the applicants as well to know I
19 appreciate their time, effort and their
20 interest in Massachusetts in these projects.

21 CHAIRMAN CROSBY: And during the
22 same 60-period, if I'm not mistaken, you have
23 packed up and sold one house and found a new
24 one to move into.

1 MR. DAY: That's correct, yes.

2 CHAIRMAN CROSBY: Could you please
3 get to work?

4 MR. DAY: Other items, fortunately,
5 I was close to job location. So, that part I
6 didn't have to do much commuting.

7 CHAIRMAN CROSBY: Right.

8 MR. DAY: With that unless there are
9 questioned about any of those topics or any
10 others the Commissioners might have, I'll move
11 onto the public comments section. I think it
12 was about last Commission meeting we had a
13 brief discussion and I had raised the question
14 about whether it would be appropriate to
15 include a regular time for public comment in
16 the agenda.

17 And the suggestion was, Chairman, I
18 believe, from you that we posed that question
19 for Commission discussion. During that time,
20 Commissioner Stebbins has been kind enough to
21 identify for me a document, a memorandum that
22 he produced about various public comment
23 issues. But it happened to include an item
24 that had come before the Commission.

1 I don't think Commissioner Stebbins
2 was confident when it came before him if it was
3 approved or discussed. It had been a little
4 while. So, with that I thought that it does
5 speak about a public comment period. And I
6 thought it may be appropriate to start the
7 discussion with that particular language.

8 It's in your packet. And it looks
9 like this. There's a section which says MGC
10 public speak-out sessions. I don't want to
11 bore the Commission, but for the folks in the
12 audience, I just thought it might be good to
13 just to run through a short paragraph.

14 The MGC will allow an opportunity
15 for citizens and residents to address the
16 Commission during a regular business meeting.
17 Thirty minutes would be set aside each month
18 prior to the start of one of the Commission's
19 regular scheduled business meetings.
20 Interested citizens would need to sign up with
21 the MGC office by close of business day before
22 the meeting. Speakers are called by the
23 Chairman to speak in order when they are
24 registered. Each speaker would be limited to

1 three minutes -- three minutes each, though the
2 Chair has the authority to limit the amount of
3 time in order to accommodate all of those who
4 registered.

5 Are resident may also submit
6 comments at that time in written form.
7 Comments will only be directed to the
8 Commission and not included discussion about
9 other Commission officials.

10 With this, I thought it would be a
11 way to begin discussion on whether this
12 description would work for the Commission to
13 continue. If we wanted it modified by changing
14 the sign-up process at all before the meeting
15 or after the meeting. But I thought this would
16 at least give us a chance to start the
17 discussion.

18 CHAIRMAN CROSBY: Great.
19 Commissioner Stebbins? I didn't realize this
20 was written a year ago. I thought you just did
21 it, which is impressive. Do you want to
22 comment on that? Did you have then or do you
23 have now a feeling or a strong feeling?

24 COMMISSIONER STEBBINS: No. This

1 was a model I pulled off the system we had used
2 with respect to Springfield City Council. And
3 topics that anybody wished to raise could be
4 addressed to members of the Council prior to
5 the start of our regular meeting. To make sure
6 that somebody signed up, we could make sure
7 that they were afforded time to speak if they
8 had gone through that step. Certainly, I'm
9 open to revisions of it to make sure it best
10 suits our needs.

11 CHAIRMAN CROSBY: Was it just about
12 anything? So, somebody could come before the
13 City Council and just talk about anything,
14 whatever?

15 COMMISSIONER STEBBINS: Yes.

16 COMMISSIONER ZUNIGA: I'm curious.
17 Of course, then the meeting would effectively
18 start a half an hour or an hour earlier?

19 COMMISSIONER STEBBINS: Correct.

20 COMMISSIONER ZUNIGA: It's the first
21 item on the agenda. It's not as if anybody can
22 come before the actual meeting convenes.

23 CHAIRMAN CROSBY: The threshold
24 question is whether we think adding something

1 like this as a matter of course is a good idea
2 and adds something to our participatory,
3 transparent and fair aspiration.

4 And I must say, I'm not sold that it
5 does. So, let's talk about it. If we decide
6 that it is, that it does add something then we
7 can figure out how to do it. What does
8 everybody think about the idea in the abstract?

9 COMMISSIONER CAMERON: I think
10 opportunities to speak are usually a good
11 thing. I would be interested in Director Day,
12 did you have something like this in your
13 previous experience and did it work well?

14 MR. DAY: The answer to both of that
15 is yes and yes, but there are potential
16 difficulties in that whole process. Because
17 overall, I would evaluate it as a successful
18 means to make sure that if there are those who
19 have issues that they want to just address the
20 Commission about are able to come forward and
21 do that. On the other hand, there were some
22 issues that I would classify as odd for
23 purposes of this discussion.

24 COMMISSIONER MCHUGH: Very

1 diplomatic.

2 MR. DAY: The other side of it was,
3 is overall the amount of folks that came during
4 that period usually occurred if there was a
5 particular issue that people or businesses that
6 felt needed to be brought to the Commission.
7 It was not overused, I didn't find it.

8 But it was also toward the end of
9 the meeting which is a little different. We
10 did not have a sign-up process involved. From
11 my perspective, before or after, it's more, as
12 the Chair has mentioned a concept if you want
13 to have that opportunity for the public to pipe
14 in with comments at some point. And think it
15 is a good process to have at least a sign-up
16 for those comments in the back to assist the
17 Chairman, if nothing else, to make sure that
18 people are identified and have the opportunity
19 to come up if they want to come up.

20 But there are pros and cons. I
21 completely understand that. And the times that
22 I've seen it used, of course, it wasn't video
23 streaming and all of those different
24 opportunities as well. So, some of those

1 things weren't available.

2 CHAIRMAN CROSBY: Okay.

3 COMMISSIONER MCHUGH: I think of two
4 aspects to this. Is it of benefit --

5 CHAIRMAN CROSBY: Excuse me one
6 second. Are we streaming, Rob?

7 VIDEOGRAPHER: Off and on. We're
8 still working on it.

9 CHAIRMAN CROSBY: Can we put
10 something on the website that says --

11 MS. DRISCOLL: Yes.

12 CHAIRMAN CROSBY: Okay, thanks.
13 Sorry.

14 COMMISSIONER MCHUGH: Looking at it
15 from the Commission's standpoint, does this
16 process yield substantive information that
17 would be helpful to us? And what's the
18 likelihood of that? From a public standpoint,
19 does it provide an addition, symbolically at
20 least, to our determination of being
21 transparent.

22 It probably does the latter. It
23 probably doesn't yield a lot on the former
24 side. And I do think it's important to hear

1 what the public has to say, but certainly we've
2 been rigorous about reading and replying to
3 things that are sent to us by email. I think
4 the processes that we are going to discuss
5 later on today will have substantial
6 opportunities for the public to talk about
7 specific topics in the licensing process. And
8 I think we ought also be aware of other
9 opportunities as we move down the line to reach
10 out to the public, to invite people to come in
11 and talk about various topics.

12 And the decision to make those
13 invitations could be triggered by emails that
14 we get and the volume of concern about a
15 particular topic. But I think that the
16 likelihood of repetitive, narrow-focused
17 comments in an open forum is high. And I don't
18 think that the addition to our transparency
19 would be high. And I don't think the yield of
20 information to us would be high. So, I would be
21 reluctant to do this.

22 COMMISSIONER ZUNIGA: I would agree
23 with that. And I would emphasize that we have
24 -- in my estimation we have been very

1 successful in requesting and obtaining written
2 comments whenever there's a particular topic
3 that we want to hear about. We have heard a
4 lot about recently of course, but this has been
5 an ongoing process all the way back from the
6 start. So, that part is working, in my view is
7 working rather well.

8 CHAIRMAN CROSBY: I come down in the
9 same place. You said it exactly right from my
10 standpoint. Commissioner, do you feel
11 strongly?

12 COMMISSIONER STEBBINS: No.

13 CHAIRMAN CROSBY: You're laying it
14 out there as an idea, not necessarily as an
15 advocate for the idea.

16 COMMISSIONER STEBBINS: No. I think
17 at the time we were trying to -- it's certainly
18 prior to us having an ombudsman that was out
19 there talking with people in the community,
20 talking with applicants. I think probably what
21 was missing, and I guess to Commissioner
22 McHugh's point that we want to direct people
23 that wanted to come and express an opinion at a
24 public meeting as long as it was based on an

1 item on the agenda that we were considering
2 that day.

3 So, the opportunity to go before the
4 meeting started would have a little more
5 importance than to just come up and talk about
6 a general topic, kind of keeping the members of
7 the public's comments directed to our agenda.

8 CHAIRMAN CROSBY: Well, it sounds
9 like we have a consensus, probably. For the
10 time being then, let's not do this. Let's
11 stick with what we've got. And we'll always be
12 open-minded to thinking about changing as we go
13 along. But for the time being, I guess we'll
14 go ahead as we are.

15 MR. DAY: That works at being
16 helpful as we continue to work on the agendas.
17 With that, I will move onto the evaluation
18 plan, if that's acceptable.

19 I've been looking forward to talking
20 about this, because of course Commissioner
21 Stebbins and Commissioner McHugh and I have
22 been working to prepare a proposal for the
23 Commission, especially since our last meeting.
24 And they have been working on it before that

1 trying to identify sources of information and
2 resources for the Commission.

3 What I'd like to do is you have in
4 your packet without all of the scribbling on
5 it, you have the diagram. And what I'll do, if
6 it'd work for the Commissioners, since we are
7 getting close on June 13 to the suitability
8 determinations relative to the slots license,
9 Category 2, and from there we'll be accepting
10 applications, which leads us to a period of
11 evaluation and award of licenses. So, Category
12 2 will actually provide us the ability to look
13 at this timetable and then also look at it
14 relative to the Category 1 timetable as well.

15 That's why there's a lot of
16 timetable questions. I know Commissioner
17 Zuniga has helped support efforts in that way.
18 And he's available and he's got it up on the
19 screen now. As we talked under Category 2, you
20 can see the evaluation timeline here shows 72
21 days right now. But I'll try to put that in a
22 little more perspectives.

23 CHAIRMAN CROSBY: Do you have this
24 in the machine?

1 MR. DAY: No, that is not in the
2 machine.

3 CHAIRMAN CROSBY: It would be
4 interesting for those folks to see it.

5 MR. DAY: I'll just go ahead and
6 start and provide a brief explanation of what
7 the Chair has commented upon. And then ask if
8 Commissioner Stebbins and Commissioner McHugh
9 have additional items. So, let me start. What
10 we are looking at is anticipated receipt of
11 applications that come in to the Commission for
12 the Category 2 or slots licenses.

13 As those applications come in, they
14 will come in to a licensing team. That
15 licensing team will be directed by our Director
16 of Licensing. The concept of that licensing
17 team will be to actually take the documents and
18 review them for completeness, in effect. So,
19 it's a pretty straightforward opportunity but
20 it won't be at all unusual for applications to
21 come in with some parts incomplete or
22 unanswered. We can anticipate that.

23 As that takes place, they will then
24 just go through a process of notifying

1 applicants and asking for the additional
2 information or clarification. They'll take the
3 application information then and break it down
4 per category. So, as this document appears to
5 you, of course, the categories we'll be talking
6 about over and over again are from the matrix,
7 the evaluation matrix that the Commissioners
8 has already developed.

9 So, the licensing team breaks down
10 that information per the category. There are
11 five categories. Moves that to the evaluation
12 teams. And I'll come back to the evaluation
13 teams here in a minute. After that process has
14 taken place, we're guesstimating that the
15 licensing group probably about seven days from
16 receipt of application.

17 After that information goes forward
18 to the five category teams, we would propose
19 that then we'd actually have an introductory
20 public meeting. In that process, each
21 applicant would allowed about an hour -- That's
22 up to the Commission ultimately. -- to give an
23 overview of their application, which helps
24 bring in perspective what they see in the

1 applications, what their proposal is. But it's
2 not intended to be any extensive detailed
3 rendition. It's supposed to be an overview
4 from each applicant. And at that point, allows
5 the category teams and the Commission's to have
6 a perspective, that perspective when they
7 receive the information.

8 The proposal also does set up five
9 evaluation teams. The information would go
10 from licensing according to the matrix
11 category, would come to the evaluation teams.
12 Each team would receive the information
13 relative to their topic.

14 The teams are, of course, overview
15 and general, financial, economic development,
16 building and site design, and mitigation. And
17 this basically comes right from our current
18 matrix.

19 Each one of those groups estimating
20 would recommend probably no more than five
21 individuals on those groups. We are
22 recommending that those consist of a
23 Commissioner as a chair, would chair each one
24 of those groups, probably a staff member on

1 each one of those groups. Most likely would be
2 a consultant expert on each one of those
3 groups. Then interested parties, it would also
4 be a good idea possibly to borrow some
5 expertise from another state agency for the
6 purpose of evaluating these proposals. And add
7 in someone with additional expertise specific
8 to that area.

9 What it does, you might note, is it
10 shows advisory groups. So, a lot of these
11 areas are extremely complex and have technical
12 information whether it's building design,
13 environmental protection. The idea would be,
14 and I know Commissioners McHugh and Stebbins
15 are in the process of identifying expert
16 advisory or expert resources that could advise
17 the Commission.

18 So, the concept might be a firm has
19 an individual that sits on one of the five
20 teams, financial for instance. And some of the
21 details may be specific to audit or economic
22 forecast is not particularly expert with that
23 one area and would be able to refer back to the
24 resources identified that support that

1 individual. And get specific information for
2 the group to consider on that topic and bring
3 it back to the category team.

4 The idea also has a project
5 coordinator. The project coordinator would
6 help select these advisory group individuals
7 and would also participate in those category
8 groups, and assist with keeping the process
9 moving forward, providing expertise, ensuring
10 the discussion if there's areas that doesn't
11 seem to be under discussion by the particular
12 experts there, to make sure that information
13 comes forward.

14 Then would also serve a function to
15 report to me about how the process is moving
16 forward and what's ultimately --

17 CHAIRMAN CROSBY: Those would be
18 staff people, people on our staff, the project
19 coordinators?

20 MR. DAY: No. The project
21 coordinator would be contract as well. So, you
22 basically have a project coordinator that is
23 helping with the overall -- the process moving
24 forward not the decision-making about the

1 evaluation itself, the process moving forward.
2 And they can also interface with the various
3 expertises that the Commission decides to
4 involve in the process.

5 CHAIRMAN CROSBY: So, these would be
6 content specific people, people from each of
7 these with expertise in each of these five
8 areas?

9 MR. DAY: The advisory groups that's
10 what they would consist of. Then the project
11 coordinator would have -- part of the
12 expertise would be familiarity with
13 coordinating projects but also I think the
14 thought process is that individual would have
15 some of the expertises that we're looking at.
16 So, that they have some particular knowledge.
17 It might be design. So, they have some
18 knowledge to directly put forth.

19 Then it gives them a familiarity
20 that the rest of the category team may not have
21 that helps them to make sure the information is
22 being considered along the way.

23 The category teams would be
24 responsible for developing comparative ratings

1 and findings or factual statement about each
2 one of the provisions in the matrix itself.
3 That rating could be good, better, best. That
4 probably works just as good as anything else,
5 but there might be another possible way to
6 express it.

7 Along with that that the team would
8 develop factual statements that support that
9 rating. So, the product is factual statements
10 and ratings.

11 And the idea here in addition is
12 that what would happen is during the period of
13 time that the five teams, the evaluation teams
14 have the application information and are
15 working on coming up with the ratings, the
16 Commission would hold public input meetings in
17 the various areas and not wait for the host
18 public hearing but actually initiate a process.
19 And the consideration is not the entire
20 Commission but probably one or two
21 Commissioners would identify probably
22 surrounding community areas. And actually go
23 out and listen to comments not a decision-
24 making hearing at all. And bring that

1 information back that would be available to
2 these teams.

3 One of the products that the teams
4 would have would be before the host community
5 agreements, the idea would be that teams would
6 generate questions or supplemental information
7 interests that they had that wasn't included.
8 Those questions and information would go to the
9 Commissioners. The Commissioners would then,
10 of course, have the opportunity to ask those
11 questions, request additional information if
12 all of you thought it was relevant. If not you
13 could, obviously, decide to do that as well.
14 But at least those questions would be
15 available.

16 Once then the host community
17 agreements hearings were completed, the team
18 would then get back together and produce
19 comparative ratings and those factual
20 statements or findings that I've been
21 discussing.

22 CHAIRMAN CROSBY: So, when you say
23 comparative, you mean proposal A is better than
24 proposal B?

1 MR. DAY: Yes.

2 CHAIRMAN CROSBY: So, it's not just
3 ranking each proposal by how each did within
4 its criteria. It's comparing them to one
5 another as your proposal is.

6 MR. DAY: Yes, it's comparative.
7 And in here you have each one of the evaluation
8 areas as well. At the end of that particular
9 part of the process, the category teams will
10 then produce comparative ratings and those
11 factual statements and reports, which actually
12 would be conveyed to the Commission.

13 CHAIRMAN CROSBY: Right.

14 MR. DAY: At that point, all of the
15 information is with the Commissioners. And the
16 Commission would have the responsibility to
17 hold a public meeting, to receive probably
18 presentations regarding each one of those
19 reports from the teams.

20 Then as well, take the information
21 under consideration. And then come back most
22 likely at a decision-making meeting and award
23 the license. So, the information, there's no
24 screening process involved. It goes from the

1 category teams directly to the Commission.

2 In addition to that, and these
3 questions already come up, there are some
4 policy questions. I recognize there are many
5 questions around this that you may also have.
6 But if you look, one of the policy questions
7 would be, it goes back to the beginning of the
8 process when we talked about licensing,
9 screening the applications and looking for
10 completeness.

11 And one of the questions to keep in
12 mind is what action would the Commission take
13 concerning applicants who failed to provide
14 requested information or applications that are
15 not materially complete?

16 So, the Commission has a very
17 aggressive process. One thing that I didn't
18 talk about days at all but I should at least
19 touch on that. As we're anticipating seven
20 days for the administrative process with the
21 licensing group. We're talking about
22 approximately within 55 days from the
23 application receipt that the evaluation process
24 is completed and the reports are generated,

1 which leaves about two weeks for the
2 Commissioners to come up with a final decision.
3 That total is about 70 days from the receipt of
4 the application.

5 I think there are some more policy
6 questions I'll just touch on briefly. One of
7 them we are recommending -- But I wanted to
8 come back and talk about this, it's exactly
9 that. -- should the teams include a
10 Commissioner as a chair, staff, those with
11 specific expertise and appropriate consultants
12 with needed expertise. So, we are proposing
13 that back to the Commission. That's designed
14 in this proposal. We think it will be
15 effective.

16 Also, should the Commission go
17 forward with a person -- a project coordinator
18 would be responsible to help with selection of
19 advisors, participate with the teams, and
20 facilitate the process. In the next sentence
21 it should be, there's a typo there, but it's
22 the project coordinator would report to the
23 Executive Director and may have a role in
24 monitoring the applicant's progress after the

1 award.

2 And the last policy question --

3 CHAIRMAN CROSBY: Are you reading
4 from something?

5 MR. DAY: Yes, I am, a short
6 attachment. What kind of product does the
7 Commission prefer to support its task of
8 selecting an application for award of a
9 license? The proposed process produces
10 findings and ratings from the five evaluation
11 teams that are submitted directly to the
12 Commission.

13 We've had discussions about other
14 possible methods, which would be to have
15 another group consolidate those, produce a
16 consolidated version of findings, plus a
17 recommendation or a rating one, two, three,
18 four. We've talked about that method as well.
19 The top two has also been under discussion.
20 So, those are just some of the miscellaneous
21 examples.

22 In the end, in considering all of
23 those, we thought this seems to be the best
24 way. And a lot of that had to do with the

1 process of listening to the Commissioners
2 discussion about involvement in the process and
3 decision-making in the process. It seemed to
4 assure that takes place with the Commission.
5 That's my summary.

6 CHAIRMAN CROSBY: Great.
7 Commissioner McHugh and Stebbins first, do you
8 want to comment further?

9 COMMISSIONER MCHUGH: I think
10 Director Day summarized this well. There is a
11 second document that supplements this. That is
12 the chart that was initially prepared, it's
13 also labeled 4C, the chart that was modified,
14 but initially the one we've seen before.

15 It just breaks down what
16 Commissioner (SIC) Day so succinctly described
17 day-by-day. It does show, however, and this
18 chart that Director Day was talking about shows
19 how event packed these 55 days are. And that
20 the 70-day period really packs a lot of energy
21 and a lot of activity into the period from the
22 time the RFA-2 is received until the license is
23 awarded.

24 And that's an important thing to

1 keep in mind because as we cinch this down, and
2 get comfortable with whatever amounts of time
3 we take here, it will have an impact on how we
4 process the Category 1 RFA-2 both in terms of
5 whether we have the resources and whether we
6 can get the resources, if there's an overlap
7 between processing in both categories. And
8 secondly, whether the timeframes for the
9 processing the Category 1's we have, the way
10 approach the timeframes we have for processing
11 Category 1's. That's a subtopic. We really
12 need to concentrate on this first, I think.

13 The only other thing that I wanted
14 to expand on very briefly is that the public
15 input meetings are an example of what we just
16 discussed a minute ago about topical public
17 input.

18 The idea here would be to go out in
19 a relatively short period of a week -- I've
20 forgotten, Director Day how much time. -- but a
21 short period that we've allowed for that to the
22 various communities and hold one or two or
23 three if we decided hearings in which we simply
24 invited the members of the public to come in

1 and tell us what they thought.

2 We could do these, as Director Day
3 said, with one or two Commissioners going out.
4 We could do it simultaneously different places.
5 Listening, we have a transcript. And we'd have
6 notes along with the transcript to bring back
7 to the Commission and to the evaluation team so
8 that we can have the public input.

9 Then the public input would come in
10 so that when the public hearing took place, the
11 parties to which would be the applicant, the
12 host communities and the surrounding
13 communities and the live impacted entertainment
14 venues, those are the parties to the public
15 hearing, they would have the benefit of the
16 public comments to think about and we would as
17 well as they made their presentations.

18 So, we'd get the public's view. And
19 at the same time had a hearing that we can
20 manage in proportion. That's the only piece I
21 really wanted to expand.

22 MR. DAY: And seven days is correct.

23 COMMISSIONER MCHUGH: Seven days
24 for those hearings. So, we would be on the

1 road a bit during those seven days.

2 CHAIRMAN CROSBY: Go ahead.

3 COMMISSIONER ZUNIGA: I want to pick
4 up on something here. First of all, I think
5 this is a great summary and layout in general.
6 I am very much in favor of the process as laid
7 out here. These category teams with the
8 involvement of Commissioners, one Commissioner
9 I guess per team it sounds like.

10 But I want to pick up on something
11 that first ask a question and then have more
12 comments. You were thinking of one individual
13 as a project coordinator? Is that your
14 recommendation or thought?

15 MR. DAY: That's my understanding
16 and recommendation.

17 CHAIRMAN CROSBY: For each?

18 COMMISSIONER CAMERON: No, just one.

19 MR. DAY: One as a coordinator.

20 CHAIRMAN CROSBY: Oh.

21 COMMISSIONER ZUNIGA: I want to do
22 that because I want to propose an alternative.
23 I think there is a very large role for a
24 coordinating piece. I think that's fundamental

1 to this process. I think the days that we have
2 are going to be jam-packed and very intensive.
3 And if it's only one individual that is doing
4 the coordinating, that may very well be the
5 bottleneck or the critical resource. One day
6 out could be significant from that person.

7 I'm thinking that we should consider
8 whether one person from each of the teams has
9 convened periodically to a coordinating
10 committee, let's say, or in a coordinating
11 function or at least have five people, one or
12 more, I guess, come into a coordinating role.

13 CHAIRMAN CROSBY: You're going to
14 have a staff person already assigned each of
15 the five. If you had the project coordinator
16 as the top coordinator and each of those five
17 people as the coordinating team, would that
18 accomplish what you're doing? Could that
19 person serve --

20 COMMISSIONER ZUNIGA: Well, I'm
21 thinking through this. It appears to me that
22 this one coordinating person, this project
23 coordinator would have to attend each of these
24 meetings, let's say, of the category teams: is

1 that correct -- and the hearings?

2 COMMISSIONER CAMERON: No, I don't
3 think so. I like this idea. I have worked a
4 huge project with one coordinator. A really
5 good project coordinator makes the whole thing
6 come together. And it really has to do be one
7 person, I think. And part of it is keeping all
8 of the teams equally moving along and making
9 sure the right information is captured. And
10 just keeping that whole project -- It's a
11 tricky role, but it's hard to do it with more
12 than one person, I think. And they wouldn't
13 attend every meeting, but they'd keep track of
14 everything going on.

15 They may have someone helping them,
16 by the way, but they're the coordinator. And
17 I've had experience with this. With the right
18 person, it works really well, the one
19 coordinator.

20 CHAIRMAN CROSBY: Sorry, did you
21 want to --

22 COMMISSIONER ZUNIGA: Yes. I'm just
23 a little cautious that we have not identified
24 this person yet, necessarily, or have we?

1 COMMISSIONER CAMERON: It would have
2 to be a person -- There are groups. For
3 example, I did a whole promotional system and
4 the company had -- that's what that person did
5 for the company was be the project manager.
6 And they develop expertise. So, it would have
7 to be someone with experience at coordinating
8 projects. I'm just not sure where we go to get
9 that person.

10 COMMISSIONER STEBBINS: I think
11 somewhat what we envisioned was we've taking a
12 stab at drafting responsibilities and roles and
13 duties of this project coordinator position.
14 We're fully expecting it's a professional we
15 hire from the outside.

16 My original thinking was it would be
17 great to find somebody who has some broad
18 experience across hopefully the majority of the
19 five categories that we're evaluating. So,
20 it's somebody who's not just good at making
21 sure the trains running on time but somebody
22 who may be able to come in and provide some
23 food for thought and some additional questions
24 that the review team might not be considering.

1 But somebody who has a depth of experience with
2 developing projects of this size.

3 COMMISSIONER MCHUGH: I was just
4 going to pick up on that and say that one of
5 the things that we did find, recognizing
6 there's a lot of differences between this and
7 the way other entities, Department of
8 Transportation process things. We did get a
9 number of people identified to us who do
10 precisely this kind of thing. That they are
11 hired to put together a team, financial,
12 architectural, other kinds of specialties. And
13 run the project with actually much more
14 decision-making responsibility than this
15 contemplates.

16 But they have that sort of diverse
17 expertise to put it together and run it. So,
18 the people are out there and they're local, as
19 well as national, international, global.

20 MR. DAY: I think it's significant
21 that a Commissioner chairs each one of these
22 groups too, which would be a lot different if
23 that wasn't the case.

24 CHAIRMAN CROSBY: Under today's

1 schedule, day one here, RFA-2 application
2 submitted is what date?

3 COMMISSIONER ZUNIGA: For Category
4 2?

5 CHAIRMAN CROSBY: Yes.

6 COMMISSIONER ZUNIGA: We've
7 identified the possibility, we don't know how
8 realistic that actually may be that there may
9 be early applicants. But this is really the
10 deadline that we've set out for Category 2
11 August 5 -- I'm sorry October 5. And the
12 duration for evaluation, assuming all
13 applicants wait until the deadline to submit
14 their applications, is currently 58 calendar
15 days. These are in calendar days.

16 COMMISSIONER MCHUGH: So, for
17 purposes of that chart, Mr. Chairman, day one
18 is October 5.

19 CHAIRMAN CROSBY: October 5, okay.
20 And day 70 would be?

21 COMMISSIONER MCHUGH: Twelve days
22 beyond that.

23 CHAIRMAN CROSBY: Twelve days
24 beyond, so mid-December?

1 COMMISSIONER ZUNIGA: Mid-December,
2 yes.

3 CHAIRMAN CROSBY: 12/15, okay.

4 MR. ZIEMBA: Just for the record, I
5 think that that is probably a typo on that
6 schedule. October 5 is a Saturday. I believe
7 we've been utilizing October 4 for quite some
8 time.

9 CHAIRMAN CROSBY: Okay, thank you.
10 Well, I think this is a great job. And I like
11 the process. The public input meetings, are
12 they proposed to be by evaluation category or
13 for the project overall?

14 MR. DAY: It was my understanding
15 they were for the project overall.

16 CHAIRMAN CROSBY: So, it would be
17 public comment and this would be an extra
18 meeting that's not required by the statute.
19 But the hearings in host community is required
20 by the statute. And you mentioned the live
21 entertainment venues, surrounding communities,
22 host communities and bidders. Is that mandated
23 in the statute that they are the objective
24 participants?

1 COMMISSIONER MCHUGH: They are the
2 parties to the hearing, right.

3 CHAIRMAN CROSBY: Is it exclusive?

4 COMMISSIONER MCHUGH: No. We could
5 add others but those are the ones who are
6 parties. They have an opportunity and a right
7 to be present.

8 CHAIRMAN CROSBY: Right. Okay.

9 COMMISSIONER MCHUGH: We can add
10 others, but the idea here is to get the general
11 public information out early so that by the
12 time we get to that hearing, people know what
13 the issues are, the parties know what issues
14 are and can raise them.

15 MR. DAY: Mr. Chairman, just as
16 well, we've only touched briefly on the
17 experts, advisory and the potential
18 coordinator. We fully understand that as those
19 experts would be identified and then
20 potentially have a coordinator chosen, that
21 those kind of things would come back to the
22 Commission, but line up the resources and have
23 that table set. That's part of the idea is to
24 get that ready for the Commission.

1 CHAIRMAN CROSBY: Right. Are we
2 streaming? We are, great.

3 Does anybody else have other
4 questions or comments?

5 COMMISSIONER ZUNIGA: Yes. Are we
6 taking some of the policy questions one at a
7 time, because I have a comment or two about --

8 CHAIRMAN CROSBY: Go ahead. Why
9 don't you take it from the top.

10 COMMISSIONER ZUNIGA: The first one
11 here regarding some action by the Commission to
12 applicants who fail to provide requested
13 information. Perhaps it may go without saying
14 that it would be easy to distinguish what's
15 materially missing. And everybody will know
16 that when we get there. And if asked questions
17 and they are non-responsive that might be an
18 easier decision.

19 On the flipside, there may be also
20 rather straightforward to figure out what is a
21 minor cure. Maybe a page is missing, it didn't
22 transfer or cannot be read well, etc. So, of
23 course, we're talking about sort of everything
24 in the middle.

1 My thought was that at some point
2 that some of this have some fluidity, request
3 of information, additional information back,
4 etc. that the category groups make a
5 determination or a recommendation really much
6 like you're suggesting good, better, best that
7 there be a fourth one that says nonresponsive
8 in whenever piece of detail or subtopic they
9 may want to talk about or us to consider. And
10 that that is part of such process.

11 COMMISSIONER MCHUGH: That's
12 interesting. If a group said it was
13 nonresponsive, i.e., they just didn't respond
14 to a thing that applicant would stay in
15 detention with a nonresponsive rating for some
16 category.

17 COMMISSIONER ZUNIGA: For a subtopic
18 let's say.

19 COMMISSIONER MCHUGH: Then the
20 Commission would take the nonresponsiveness
21 into account when making their overall
22 decision.

23 COMMISSIONER ZUNIGA: Right, by
24 virtue of perhaps aggregating however many

1 nonresponsives or taking that nonresponsiveness
2 in the context of everything else and making a
3 decision that it was not material or maybe it
4 was and therefore it's deemed --

5 COMMISSIONER MCHUGH: That would
6 obviate the necessity for making a materiality,
7 nonmateriality determination early on and
8 kicking somebody out for an application that
9 was not material -- was missing a material
10 piece.

11 COMMISSIONER ZUNIGA: Right. Well,
12 we have to do that anyway. All I'm saying
13 is --

14 COMMISSIONER MCHUGH: I'm sorry. I
15 thought this was a substantive --

16 COMMISSIONER ZUNIGA: No, no. I
17 guess I'm think of those scenarios where it's
18 not as clear-cut. I'm thinking beyond the
19 seven days, let's say that the Director of
20 Licensing and his or her team have to review
21 completeness. Of course, if something is
22 incomplete then that may be the end of it.

23 But assume that it's not the case.
24 That there is information that was requested

1 after that or perhaps asked to be further
2 detailed and that was not further detailed or
3 whatever the case may be. After that seven-day
4 threshold, the group could make a
5 recommendation on any one of these
6 subcategories to say they were not responsive
7 in this one subcategory.

8 For example, such a group could say
9 we asked them to provide more detail and the
10 detail that they provided either in the
11 original packet or afterwards we found to be
12 insufficient, and therefore that could be
13 deemed nonresponsive.

14 COMMISSIONER MCHUGH: But what would
15 happen if at this stage where the staff looks
16 at the application and determines that it is
17 incomplete in a material way, i.e. let's just
18 take a wild hypothetical they don't have any
19 financial information. At that point, is there
20 an opportunity to cure or is it the exit door?

21 COMMISSIONER ZUNIGA: We'd have to
22 consider that and decide then I suppose.
23 Unless, we wanted to highlight what topics or
24 items have to be -- cannot be missing, let's

1 say. I'm thinking more again of the gray
2 area.

3 COMMISSIONER MCHUGH: No, I
4 understand. I understand.

5 COMMISSIONER ZUNIGA: Assume that
6 somebody submits --

7 CHAIRMAN CROSBY: I think we all
8 agree. I think Commissioner McHugh likes the
9 smaller ideas. I do too. Let's go with that.
10 I like that.

11 But I'm also with Judge McHugh on
12 the issue of at the outset, if you've got a
13 really material lapse in the application, under
14 what conditions do we permit it to be cured and
15 under what conditions do we say you're out? I
16 don't think we can wait until the time because
17 we've gone through this even with applicants in
18 Phase 1.

19 People are trying to change the
20 nature of the applicant, and we're not sure how
21 much you can change and so forth. So, I think
22 we need to have some standard. And I'm not
23 quite sure what that is, but some standard so
24 that we can pretty clear who gets a chance to

1 cure and who doesn't.

2 COMMISSIONER MCHUGH: And I agree
3 with that. And the experience in first phase
4 informs my thoughts about the second phase as
5 does the extremely tight timelines that we have
6 that we just can't give a cure opportunity I
7 think of material deficiencies that is going to
8 drag on deeply into the process because we're
9 never going to get the process finished on
10 time. So, we've got to figure out something to
11 do early on.

12 COMMISSIONER ZUNIGA: Yes, I would
13 agree. One way as we finish the form of
14 application, we could highlight specific areas
15 that any missing information from any one of
16 these or all of these topics would be
17 considered a material deficiency.

18 COMMISSIONER CAMERON: I think I'd be
19 surprised if we received applications that are
20 substantially incomplete. I think there will
21 be many minor problems. And then an
22 experienced Director of Licensing will
23 understand and have experience in how to cure
24 those issues.

1 I think many of our issues around
2 the first phase were it was new. It's a very
3 different process than has been used in other
4 jurisdictions as far as host communities and
5 votes and when do they need to know all that.
6 I think there were some things that may have
7 been just different experience.

8 I think this second phase will not
9 be that. I at least the way I anticipate this
10 would be surprised if we have an applicant
11 who's come this far in the process to have a
12 whole section that's missing and we'd have a
13 decision that that person would be out at that
14 phase. I would be surprised.

15 CHAIRMAN CROSBY: I would too, but I
16 am surprised that an RFA-1 bidder had a 20
17 percent owner that wouldn't participate in the
18 background checks. So, I think we have to be
19 prepared, I agree with you. I think it's
20 unlikely, but we have to be prepared just in
21 case.

22 What about using as a no-go standard
23 the minimum requirements under the General Law,
24 your first category here? Let me just throw

1 out a straw man. If the Director of Licensing
2 deems that there is some critical issue, and
3 I'm going to suggest that it's the minimum
4 requirements missing, they can cure through the
5 seven days. You have a right to cure through
6 the seven days. If you are still missing after
7 that seven-day period any one of those criteria
8 in the judgment of the Director of Licensing,
9 you're out. That is a decision which can be
10 appealed to us, but that's it.

11 Everything else we deal with the way
12 Commissioner Zuniga suggested. That in the
13 review, if we think that some of these other
14 categories that either not responded to all or
15 responded woefully, we take that into
16 consideration. But it's not curable, but it is
17 taken into consideration in the fashion you
18 discussed?

19 COMMISSIONER ZUNIGA: Right.

20 COMMISSIONER STEBBINS: We did
21 consider affording the project coordinator the
22 opportunity to obviously go back and clarify
23 information that was presented. But clearly
24 under Section 15 we have the basic

1 requirements, your surrounding community
2 agreements, your agreements, copy of the vote
3 from the host community, all of those things.
4 I would think within the seven-day period that
5 I would agree with you, Mr. Chairman, that
6 those should all be curable. They're in the
7 statute.

8 But moving onto the next phase where
9 we may go to the evaluation criteria and see
10 some information is missing, I want to put some
11 onus back on the applicant themselves to say
12 you want to stand up, you want to bolster your
13 application. We shouldn't be chasing you down
14 for that information. When really you're
15 trying to demonstrate the strength of your
16 application.

17 CHAIRMAN CROSBY: I agree with that
18 completely.

19 COMMISSIONER CAMERON: Yes.

20 CHAIRMAN CROSBY: Are we okay with
21 that? Does that make sense do you think to use
22 the labeled in beige, whatever that color is,
23 flesh tone minimum requirements as the non-
24 negotiable materiality, standard of

1 materiality, which is curable seven days from
2 the closing date of receipt of applications?

3 COMMISSIONER MCHUGH: I was just
4 looking through them and I think that would
5 work. I think that would work. I was just
6 running through in my own mind if it's sort of
7 a pro forma compliance, we'd ask for an
8 affirmative action plan, for example. Suppose
9 the affirmative action plan is we're going to
10 try our very best to be diverse. Then that
11 would go into the evaluation as nonresponsive.

12 COMMISSIONER ZUNIGA: Nonresponsive,
13 right, because it's not clear, it's not
14 sufficient.

15 COMMISSIONER MCHUGH: Right, but
16 it's there.

17 MR. DAY: Commissioners can I just
18 ask you a procedural question?

19 CHAIRMAN CROSBY: Sure.

20 MR. DAY: I think at the end, and I
21 don't think I mentioned this in very much
22 detail, but as the licensing group is reviewing
23 those applications and identified the no-go
24 part or the material deficient, but they may

1 also very well identify whether its affirmative
2 action plan is meeting. In my mind in the
3 normal processing methodology, they would
4 actually notify the applicant and say you have
5 X-number of days to turn in the information.

6 I think the thought was is that
7 notice would go with the information to the
8 category team. But the process would move
9 forward so there wouldn't be any delay in it.
10 And if that information when it came in, the
11 category it kind of depends on whether they
12 added it when they were requested to do whether
13 they never added it. The category team would
14 have that ability to take that into
15 consideration too in their rating.

16 But it would at least allow those
17 kind of corrections or additions to the
18 applicants the ability to fill in those parts
19 that are specifically notified. It's more of
20 an administrative process.

21 CHAIRMAN CROSBY: Yes. I prefer
22 putting our foot down. If you can't get these
23 pieces in, then you don't have any business
24 being in this game, I don't think. Why should

1 we stretch ourselves at all to accommodate what
2 would be really be negligent impractical
3 behavior. So, I would rather be pretty
4 rigorous on these are bare minimums that have
5 been in the law for a year and a half already.
6 So, I would rather do it at the end of the
7 seven days you're out.

8 MR. DAY: But those miscellaneous
9 issues?

10 CHAIRMAN CROSBY: The miscellaneous
11 issues would go ahead in the process.

12 MR. DAY: Just go ahead. We'd
13 notify them and say this little piece is
14 missing or you forgot somebody's name or
15 something like that. And then move the
16 category information forward along with the
17 letter that had been sent most likely about
18 that or do you want to just --

19 CHAIRMAN CROSBY: I see what you're
20 saying. That's an interesting --

21 MR. DAY: You want to just note the
22 deficiency.

23 COMMISSIONER CAMERON: I think that
24 they have the opportunity to correct within

1 seven days. I think there is no downside in
2 doing that. Allowing them the seven days.
3 It's not a lot of time. So, if it's really an
4 incomplete application, that would be
5 difficult. But for small things that may be
6 for whatever reason weren't supplied, I don't
7 see any problem with allowing seven days. And
8 the licensing team to immediately notify and
9 let them correct and seven days later that goes
10 to the category team.

11 MR. DAY: My thought is when the
12 licensing team was done, they would move that
13 information forward to the category team.

14 CHAIRMAN CROSBY: But you're saying
15 for things other than the threshold issues that
16 the bidder would have time after the seven
17 days.

18 MR. DAY: Correct, would have a
19 specific date. Because the category teams, the
20 evaluation teams are going to be working for a
21 while. So, it would seem like there would be a
22 reasonable ability to incorporate that kind of
23 correction in that process, as long as it
24 wasn't in those major category areas. They

1 would be on the hook to make sure they made the
2 date that was given them by the licensing
3 group.

4 COMMISSIONER CAMERON: The date that
5 we say two weeks or three weeks is what you're
6 saying then is that all of that information
7 moves forward> Is that what you're saying?

8 MR. DAY: I'm saying that the
9 overall -- The application comes in. The
10 licensing team is screening it. They identify
11 anything that's incomplete. Notify the
12 applicant that you have seven days to provide
13 it, move the information per category onto the
14 evaluation team so nothing is holding up that
15 process.

16 And along with that, the information
17 that goes over would be the letter saying you
18 forgot to add Susie to the application or this
19 seems to be missing. What's the answer? So,
20 the team would be able to continue with its
21 work and would see there is a missing document
22 in that process.

23 CHAIRMAN CROSBY: How about if we
24 had another -- How about if we had two

1 deadlines? For the material stuff, what we're
2 going to call the threshold issues that is the
3 first seven-day period. If you're not in by
4 that seven days, you're out. It's over.

5 But for nonmaterial, other kinds of
6 deficiencies, there is a second week, meaning
7 14 days from the application date because that
8 would give them a week, basically, from the end
9 of the seven days. So, if they got notified on
10 the seventh day, they'd have a week to get
11 Susie's signature. And at the end of the
12 second week, they would be dealt with in the
13 way that Commissioner Zuniga -- no more
14 corrections to fill in omissions. And it will
15 be accommodated by nonresponsive in the
16 weighting. How does that sound?

17 MR. DAY: Does that mean you want
18 the licensing group to hold the information or
19 still go ahead with the process?

20 CHAIRMAN CROSBY: No, no, go ahead
21 as soon as you're ready. That wouldn't have
22 been on day seven. It could be three if you
23 have vetted them. But bidders would know they
24 had 14, a total of 14 days to get the

1 nonmaterial omissions cured.

2 COMMISSIONER ZUNIGA: That sounds
3 good.

4 CHAIRMAN CROSBY: Okay, great.

5 COMMISSIONER MCHUGH: Just a final
6 thing. We are thinking both in the material
7 and nonmaterial omissions of complete
8 omissions, anything that's qualitative, i.e.,
9 it's there but it's junk is going to be dealt
10 with in the evaluation process as lousy or as
11 nonresponsive, correct?

12 COMMISSIONER ZUNIGA: That's
13 correct.

14 COMMISSIONER MCHUGH: We're not
15 going to make a qualitative determination as to
16 the adequacy of the information.

17 CHAIRMAN CROSBY: Using your
18 affirmative action as an example. I think
19 that's good. I think that's great.

20 Do you want to just keep going
21 through your policy questions? Have you got
22 any other questions on this?

23 COMMISSIONER ZUNIGA: I guess the
24 other one we did talk about and I guess I

1 assumed the project coordinator would be
2 attending each of these working groups. But
3 that doesn't seem to be the case. So, I'll
4 move on from that.

5 CHAIRMAN CROSBY: The one hour to
6 make the presentation, this will be this sine
7 qua non presentation of all of these massive
8 projects. And I wonder whether an hour's
9 enough. I don't know.

10 COMMISSIONER MCHUGH: We didn't
11 discuss where that number came from, but the
12 number did come from the Philadelphia
13 experience where they did have six competitors
14 for a single license. And they were given an
15 hour to come in and make their presentation.
16 There's no magic to an hour. I think that's a
17 good question.

18 The better show people, men and
19 women, do better with that kind of a press in
20 time. Maybe it's better to spread it out over
21 two days and give two hours each.

22 CHAIRMAN CROSBY: It's going to be a
23 maximum of four per license. We could do it in
24 one day if we needed to. I don't know. I'm

1 thinking out loud here. It sort of seems to me
2 like there's so much going into these things
3 and it is tactical. It isn't just something on
4 paper. You do want to see the proposals and
5 see the models and so forth.

6 COMMISSIONER MCHUGH: Right.

7 CHAIRMAN CROSBY: If I were doing
8 it, I would want a chance to really show my
9 stuff. And I think we would benefit from that.

10 COMMISSIONER MCHUGH: Right.

11 CHAIRMAN CROSBY: We would benefit
12 from the bidders having a real opportunity to
13 really show their stuff, meet the people, see
14 some of the people in the flesh.

15 COMMISSIONER MCHUGH: Right.

16 COMMISSIONER CAMERON: How do you
17 feel about 90 minutes? I think there is some
18 benefit to doing it in one day, no advantage
19 one way or the other. So, I think if we did
20 two in the morning and two in the afternoon say
21 there were four. There's a skill set involved
22 with getting to the highlights. And that's
23 important as well.

24 CHAIRMAN CROSBY: Well, I like 90

1 better than 60.

2 COMMISSIONER STEBBINS: That time
3 constraint doesn't limit the amount of time
4 that we have to make questions to an applicant.
5 It's an hour and a half for them to make a
6 presentation. We could spend another 30
7 minutes asking more detailed questions about
8 their presentations.

9 COMMISSIONER ZUNIGA: Was that the
10 expectation that we would make questions?

11 MR. DAY: At least from my
12 perspective, I would think the Commission
13 probably wouldn't want to ask questions in an
14 overview presentation because then it could
15 change the amount of information conveyed from
16 each applicant.

17 If you have a standard process -- I
18 think it was envisioned really as an
19 informational process that allows the
20 applicants to come in, I assume the evaluation
21 teams would be present. Listen to the overall
22 presentation and then go start the evaluation
23 work.

24 Later on is the host community

1 agreement discussion as well with the applicant
2 presentation that is a question-and-answer
3 process. But I think initially it would just
4 present, might have more questions from one
5 applicant, might have more time than the other
6 one.

7 CHAIRMAN CROSBY: Which applicant
8 presentation are you talking about?

9 COMMISSIONER ZUNIGA: It's there at
10 the end --

11 COMMISSIONER MCHUGH: You've got the
12 host community statutory hearing.

13 MR. DAY: Statutory host community.

14 CHAIRMAN CROSBY: Okay.

15 COMMISSIONER CAMERON: That was my
16 understanding too, now questions just a
17 presentation.

18 COMMISSIONER ZUNIGA: Just for
19 whatever it's worth, my experience when we were
20 conducting interviews when we procured bankers
21 is that everybody wanted to go last. So, we'd
22 have to think about whether we do some kind of
23 a lottery for this process by the way.

24 But if we kept it to a day, we

1 minimize that posturing perhaps, because some
2 will consider that to be the best position, I
3 guess, But if it's all done in a day --

4 CHAIRMAN CROSBY: I think an hour
5 and a half makes sense. And that gives us a
6 little bit of flexibility, because we'll all be
7 dying if it's much longer than that. All
8 right. So, 90 minutes, no questions, one day
9 order we'll figure out by lot. Great.

10 Assigning the Commissioners, I guess
11 we've got until October 5 to figure out which
12 Commissioner takes which category. So, there's
13 no pressure on that one.

14 Here's something that we talked
15 about last time and I'm still conflicting in my
16 mind. So, the evaluation teams look at let's
17 say the slots. Let's say we do indeed have
18 four proposals. Then each of the evaluation
19 teams for each of the five categories does an
20 item by item from the evaluation criteria, I
21 guess, A,B,C, good, better, best,
22 nonresponsive. And then does an overall, I
23 guess, as among the four of them what rank the
24 team thinks they are within the one category.

1 Then you'll have in effect -- Let's
2 see, you'll then have a ranking. When you
3 compile those, you'll have a ranking. Somebody
4 get three firsts and two seconds. And they
5 rank higher than the person who got two firsts
6 and one second or one first and a second.

7 So, that will suggest that there's
8 the answer. The guy who comes out on top wins.
9 Or it will suggest that there has been a
10 rational process which has put bidder A on top.
11 And how do we justify, the bidder might say,
12 that they end up not winning? So, how do we
13 manage that? How do we manage the
14 expectations? How do we not limit our own
15 flexibility? How do we play fair? How do we
16 deal with that?

17 COMMISSIONER MCHUGH: Why do we have
18 to take that compilation step? Rather than
19 take the assembled results of the five teams
20 that have them with the categories and then the
21 overall ranking of that category. And then
22 without saying automatically if you've got
23 three firsts and the other person only go two
24 firsts. You're at the top of the combined

1 list. Take a look at what it is that got the
2 firsts in because the qualitative piece, it
3 seems to me is ultimately got to drive the
4 outcome.

5 And it may be that by the time we
6 finish looking at these the drivers of our
7 ultimate decision are going to be different
8 from the drivers we would have anticipated
9 before we got into this process. So, create a
10 structure that automatically gave some kind of
11 a ranking system based on a mechanical approach
12 to who got how many firsts wouldn't necessarily
13 do the job, and would lead exactly to the
14 problem that you're talking about.

15 And if we talked our way through it
16 in a public meeting, came to a consensus as to
17 given everything we've got these are the most
18 important criteria and then went back and
19 looked at who did best under those criteria,
20 we'd be preserving our discretion and also
21 gearing our decision to what we would be
22 dealing with.

23 COMMISSIONER CAMERON: And it could
24 be that they were barely first in one category,

1 very low.

2 CHAIRMAN CROSBY: So, does the
3 evaluation team end up doing a ranking?

4 COMMISSIONER MCHUGH: Of people
5 within that category.

6 CHAIRMAN CROSBY: Within that
7 category, right. But it's not a function of
8 who got the most firsts.

9 COMMISSIONER MCHUGH: Right.

10 CHAIRMAN CROSBY: It would be a
11 subjective thing taking into consideration how
12 you did on these multiple good, better, bests.

13 COMMISSIONER MCHUGH: Right. And
14 that would be by each ranking team. And then
15 overall as we got as a Commission the results
16 of the ranking team's efforts, we'd go through
17 essentially the same process.

18 CHAIRMAN CROSBY: Right. So, you
19 would have a situation, say we have four, if
20 somebody comes in first in three of the five
21 categories and second in the other two, first
22 of all, we're not going to set that up but it
23 will be on paper.

24 COMMISSIONER MCHUGH: It will be

1 visible, right.

2 CHAIRMAN CROSBY: People will see
3 that. So, we just make it clear that this will
4 continue to be a subjective process where we
5 will consider how they did in each of the five
6 categories.

7 But in the process of fleshing it
8 out, we are free to weight however we end up
9 weighting their ones and twos and threes and so
10 forth.

11 COMMISSIONER MCHUGH: To give an
12 example, for why I think this is a good idea,
13 somebody may be head and shoulders above
14 everybody else in the financial yield category.
15 And there may be another applicant who's got
16 three firsts in the architectural design, the
17 mitigation and others. But one applicant is
18 going to give to the Commonwealth realistically
19 twice as much of a yield and create twice as
20 many jobs as the others. That's a reason for
21 not saying three first wins.

22 CHAIRMAN CROSBY: Right. Okay.
23 That makes sense.

24 COMMISSIONER ZUNIGA: I'm in

1 agreement with that. I would only edit from
2 you said, Mr. Chairman, subjective. It's
3 qualitative. The analysis will be objective,
4 but in many of these, there is a qualitative
5 nature. There's the relativeness with the
6 object of discretion of the groups. The good,
7 better, best is a tool that could be used in
8 multiple ways, but we need to have the
9 flexibility to distinguish that one is perhaps
10 head above others within the categories or
11 among the large categories. And that
12 invariably we may not know it until we see.

13 CHAIRMAN CROSBY: I think that's
14 very good. I like that. And I think it's very
15 important that it be written out in various
16 places. Everybody's here pretty much, they're
17 hearing us. There will be a tendency for
18 people to want to rank them to count them up.
19 And we want to neutralize that as quickly as
20 possible.

21 And I'd say it should be on the
22 application process and it should be maybe in
23 our regs. or at least somewhere. So, it's
24 really clear to everybody how we will do this.

1 And the qualitative nature, how that will
2 control how we will not be controlled by any
3 kind of a mechanical ranking.

4 COMMISSIONER MCHUGH: I think that
5 there's a foundation for it in the reg. now,
6 but we will have to make sure this whole
7 conversation is reflected in the regs. as we go
8 forward.

9 COMMISSIONER ZUNIGA: Are we going
10 to take this at a later time?

11 CHAIRMAN CROSBY: It's 7B.

12 COMMISSIONER ZUNIGA: There's a best
13 and final discussion where some of this bears
14 into mind and we'll just come back to this as
15 well.

16 CHAIRMAN CROSBY: Okay, good. I
17 think that was helpful. The policy question
18 should teams include a Commissioner as chairs,
19 staff, expertise, I think the answer to that is
20 clearly yes. I think we've discussed your
21 project manager coordinator idea. We like the
22 idea.

23 They ought to be on board, there's
24 no rush because this is going to be October,

1 but within a couple of months I would say in
2 advance of October so that they can begin to
3 understand what's going on here and help us set
4 up the processes and the paper flow and so
5 forth.

6 COMMISSIONER ZUNIGA: Mr. Chairman,
7 I would actually argue that in selecting and
8 forming the rest of the groups, selecting
9 advisors, it may be worthwhile identifying who
10 maybe as part of the Commission and the staff
11 in these groups prior to October.

12 CHAIRMAN CROSBY: Yes, absolutely.
13 I totally agree. I was saying 60 days, at
14 least 60 days before the closing date we should
15 have our project coordinator as well as the
16 staff and everybody else so they can start
17 working together and get warmed up.

18 The Commission will hold a public
19 hearing and consider the evaluation team
20 reports. The Commission will then hold a final
21 hearing to award the license. I guess that's
22 noncontroversial, right?

23 I see. And the only question I
24 still have is what constitutes an award for

1 triggering the payment? How do we manifest
2 that decision that then triggers the licensing
3 fee?

4 COMMISSIONER MCHUGH: The draft
5 regs. and we can talk about that when we come
6 to that say that the vote triggers the award of
7 the license. And the 30-day period starts for
8 paying \$85 million or \$25 million starts on the
9 day of the vote. We can talk about that, but
10 that's what's in the regs.

11 CHAIRMAN CROSBY: My last thing on
12 this is the regs. reflect some of the
13 evaluation criteria, not all of them. The
14 evaluation criteria probably reflects all of
15 our evaluation criteria but may not. We might
16 think of some other things as we are talking
17 about this. And I wonder, do we need to do
18 anything in the regs. or the evaluation or both
19 to make sure that we're left the freedom to
20 think about something we haven't yet thought
21 about.

22 COMMISSIONER MCHUGH: Let me deal
23 with those in that order. The regs. now and we
24 will see that as we get to them. The regs. now

1 basically say that the evaluation criteria
2 we're going to use are the major topics and the
3 major subtopics, i.e., the overview doesn't
4 have any subtopics. When we get to financial,
5 are going to be financial and then subtopics
6 include principle and capital structure. Then
7 the application will take these things in the
8 right hand column, incorporate them as evidence
9 that we need to help us figure out how we've
10 done on that subtopic.

11 The current regs. say that we are
12 going to use these evaluation criteria among
13 others, I believes. So, we left ourselves some
14 flexibility.

15 CHAIRMAN CROSBY: These criteria
16 among others, not the ones just in the regs.

17 COMMISSIONER MCHUGH: Beyond what's
18 listed in the regs. And the application will
19 have some kind of a similar caveat. That said,
20 we've got to be careful about a Pennsylvania
21 problem. And it's not fair to start -- to use
22 particularly as a dispositive criteria
23 something we never told anybody about.

24 So, if something emerges at some

1 point, we would, it seems to me at the very
2 least have to notify applicants that some issue
3 we haven't thought about it had come up, and
4 give them an opportunity to give us information
5 or not consider that criterion in the
6 evaluation process.

7 It seems to me that if something we
8 overlooked comes up, it's going to come up very
9 quickly after we get the RFA-2 applications.
10 So, as a practical matter, we'll probably would
11 to give that that kind of notice without
12 holding things up. But apart from that --

13 CHAIRMAN CROSBY: We did a lot of
14 work on this. I think it's highly unlikely
15 too. But I think we should be covered so as
16 long as the application and the regs. do give
17 us flexibility if something comes up. We can
18 deal with it at the time as long as we have the
19 flexibility to do it. And that might mean ask
20 for other people whatever. It depends on what
21 it is. I just want to make sure we have that.
22 Anything else on the 4C(i)?

23 MR. DAY: Chairman Crosby?

24 CHAIRMAN CROSBY: Yes.

1 MR. DAY: Just a question from my
2 perspective and the schedule that we've taken a
3 look at that has the 58 days there. I'm
4 assuming by the discussion the Commission is
5 pretty much acknowledging that we are going to
6 move in 70 days for that evaluation is going to
7 be moving right along. So, as we come up with
8 a master schedule discussion at the end of the
9 month, that would change those dates.

10 CHAIRMAN CROSBY: You're asking are
11 we agreeing with the 70-day plan that you
12 proposed here?

13 MR. DAY: Yes.

14 CHAIRMAN CROSBY: I think we are,
15 right?

16 COMMISSIONER CAMERON: Yes.

17 COMMISSIONER MCHUGH: Yes.

18 COMMISSIONER ZUNIGA: Yes.

19 MR. DAY: Thank you.

20 CHAIRMAN CROSBY: This is a great
21 job Commissioners and staff. It's a lot of
22 stuff. So, we are now out 4c(ii) evaluation
23 team.

24 COMMISSIONER MCHUGH: It says vote

1 here. We need to agree that this matrix 4C(i)
2 that the current evaluation criteria matrix is
3 the one that we're satisfied with. That is one
4 that we basically have seen before except in
5 the source column at the far right there are
6 some indications of where we got and adopted or
7 proposed to adopt, Commissioner Stebbins and I,
8 some changes based on outside input.

9 The changes themselves are in red
10 If there is an indication in that source column
11 of a suggestion but there is no red, it means
12 that the source suggested is taking existing
13 criteria and simply put it in a different
14 place.

15 The type that's in red are changes
16 and the initials to the right are the source.
17 MGC, of course, is us. MOTT is the Mass.
18 Office of Tourism. DI is --

19 COMMISSIONER STEBBINS: Donahue
20 Institute.

21 COMMISSIONER MCHUGH: -- Donahue
22 Institute. And CCG is the problem gaming
23 folks. DOER is Department of Environment --

24 COMMISSIONER STEBBINS: Energy

1 Resources.

2 COMMISSIONER MCHUGH: -- Energy

3 Resources.

4 CHAIRMAN CROSBY: I didn't see
5 those. Thank you.

6 COMMISSIONER MCHUGH: Again, those
7 are not new criteria so much as they are
8 additional pieces of evidence supporting the
9 criteria.

10 CHAIRMAN CROSBY: Right.

11 COMMISSIONER MCHUGH: And an
12 approach to a criteria.

13 CHAIRMAN CROSBY: And the other
14 important standard to this as we adopt this,
15 and some of us at least have talked about this,
16 is to make absolutely sure that we anticipate
17 in Region C too.

18 Because we are maintaining to the
19 applicants, prospective applicants for Region C
20 that they will be held to the same standards as
21 the applicants for A and B are.

22 COMMISSIONER MCHUGH: Right.

23 CHAIRMAN CROSBY: That means we'll
24 use this set of evaluation criteria and no

1 others.

2 COMMISSIONER MCHUGH: Right.

3 CHAIRMAN CROSBY: And I think that
4 works. The big issue obviously will be the
5 issue of the tribal casino. But there is
6 plenty of place in this evaluation criteria for
7 bidders to demonstrate their financial
8 sustainability, their relationship with pending
9 environment and so forth. So, we won't be
10 asking anything of Region C that we're not
11 asking of A and B.

12 COMMISSIONER STEBBINS: There is
13 primarily in two of the criteria area that we
14 came across where we did some consolidation.
15 But as we look at review teams where somebody
16 might be assigned to one review team but may
17 have some fall over expertise needed on another
18 review team. Traffic, for example, building
19 and site design focuses on traffic patterns
20 around the property, but yet under mitigation
21 we worry about traffic. So, you may have an
22 expert who is kind of straddling two criteria.

23 COMMISSIONER CAMERON: Be part of
24 two teams.

1 COMMISSIONER STEBBINS: Security was
2 the same way. We knew there were security
3 components in building and site design, but
4 also mitigation strategies with respect to
5 security. But we kind of combined them all
6 under the building and site design, but again,
7 we may have an expert kind of straddling two
8 review teams to analyze everything security
9 related.

10 CHAIRMAN CROSBY: Anything else?

11 COMMISSIONER ZUNIGA: I think this
12 is great. There's great additions here from
13 our friends from other organizations. I think
14 we should adopt it. There's a lot of work.

15 I would only note that there may be
16 a tweak here or there in the future. I'm
17 specifically thinking of the discount rate to
18 use for modeling. That could be something else
19 than what's here. Four percent, it can be
20 something different. And I'm sure we'll have
21 the ability to do that as we move along if we
22 have to change it.

23 CHAIRMAN CROSBY: Yes.

24 COMMISSIONER MCHUGH: I think in

1 terms of the evidence, the evidence is
2 flexible. It will be reflected ultimately in
3 the application form the criteria that's
4 important.

5 COMMISSIONER ZUNIGA: Right.

6 CHAIRMAN CROSBY: Okay. Next?

7 MR. DAY: And the evaluation teams,
8 we already covered in the makeup of those in
9 the prior discussion. Now we just consolidated
10 those.

11 CHAIRMAN CROSBY: I thought that was
12 referring to the RFPs that have to go out to
13 get consultants. Where are we in that process?

14 MR. DAY: That process is currently
15 in progress, I guess. The idea is that we go
16 about a process, it's the big we go about a
17 process of identifying the appropriate
18 expertise for each of the advisory groups.
19 Once we've assembled that, what we think and
20 for the project coordinator, then the approval
21 process would be back with the Commission.

22 They're in the process right now.
23 Commissioner Stebbins already identified that
24 he's got a draft job description, work

1 description for the coordinator. Commissioner
2 Zuniga has already got financial, identifying
3 financial interests.

4 COMMISSIONER STEBBINS: We have a
5 good strong outline for the building and site
6 design RFP. The financial advisor RFP is
7 pretty much ready to go. And then the other
8 one that we're still looking at was just the
9 foundation for the economic development
10 criteria review.

11 CHAIRMAN CROSBY: So, those don't
12 need to be approved by the Commission.
13 Technically, I think we had said that they had
14 to be out by the 17th technically to go by our
15 schedule.

16 COMMISSIONER STEBBINS: Right.

17 CHAIRMAN CROSBY: So, it sounds like
18 within a few days and one's ready to go out.

19 COMMISSIONER STEBBINS: One is ready
20 to go. And I'd say within the next week and a
21 half we'll have the other ones lined up.

22 COMMISSIONER ZUNIGA: Right. And we
23 will post them and we'll get responses. And
24 that would be ultimately approved. Last week,

1 we actually delegated that posting to Director
2 Day.

3 MR. DAY: That was my understanding
4 too in the previous meeting to move forward and
5 identify those expertise. Then when it comes
6 to the actual commitment to come back here.

7 CHAIRMAN CROSBY: Bear with your
8 aging Commissioners.

9 COMMISSIONER ZUNIGA: Only one of
10 the five.

11 COMMISSIONER STEBBINS: Speak for
12 yourself.

13 COMMISSIONER MCHUGH: I'm right
14 there.

15 CHAIRMAN CROSBY: Great. Thank you
16 very much.

17 COMMISSIONER ZUNIGA: Do we need a
18 vote for this evaluation?

19 CHAIRMAN CROSBY: I suppose we
20 should. I guess maybe Commissioner McHugh?

21 COMMISSIONER MCHUGH: I move that
22 the Commission adopt as its evaluation matrix
23 and thus the basis for constructing the
24 application and evaluating responses to the

1 RFA-2 applications the version of the matrix
2 currently embodied in 4C(i) of today's meeting
3 packet.

4 COMMISSIONER STEBBINS: Second.

5 CHAIRMAN CROSBY: Any further
6 discussion? All in favor say aye, aye.

7 COMMISSIONER STEBBINS: Aye.

8 COMMISSIONER ZUNIGA: Aye.

9 COMMISSIONER MCHUGH: Aye.

10 COMMISSIONER CAMERON: Aye.

11 CHAIRMAN CROSBY: Opposed? The ayes
12 have it unanimously. For this and other stuff
13 in today's package, you and your staff have
14 done a great job. We'll work bugs out of the
15 system about this new process but there's been
16 a ton of really good work that's been done by
17 all of you. And I appreciate it.

18 MR. DAY: Thank you.

19 CHAIRMAN CROSBY: Next up is
20 supposed to be the Ombudsman report, but I know
21 we have someone who has come from out of town.
22 Rachel, would it enhance your life if you went
23 now rather than waiting for a little while?
24 We're more than happy to have you come now if

1 you want. If you don't care and you're going
2 to be here --

3 DR. VOLBERG: I brought my computer.
4 I had planned to be here.

5 CHAIRMAN CROSBY: So, you're cool
6 one way or the other?

7 DR. VOLBERG: Yes.

8 CHAIRMAN CROSBY: We are going to do
9 you before we go through the regs. We'll spare
10 you that. Otherwise, we'll go ahead. We're
11 going to take a real quick break and then we'll
12 convene with John.

13

14 (A recess was taken)

15

16 CHAIRMAN CROSBY: We are ready to
17 reconvene. We are now to item number five on
18 our agenda, the Ombudsman's report, Ombudsman
19 Ziemba.

20 MR. ZIEMBA: Thank you, Mr.
21 Chairman. I am here today to discuss two
22 matters. One is the Phase 2 Category 1
23 application deadline comments. And two is a
24 draft Region C application process.

1 Recently, the Commission put out a
2 question for comment, which I'll read. Should
3 the Commission move its Category 1 application
4 deadline from its current projected December
5 31, 2013 date to a date at the beginning of
6 December to be able to incorporate additional
7 time needed to resolve issues such as
8 disagreements between applicants and
9 surrounding communities? Could the Commission
10 move up this Category 1 application deadline
11 even earlier perhaps to the beginning of
12 November?

13 We received numerous comments. It's
14 sort of a very wide range of comments both
15 against moving things forward and for moving
16 things forward even earlier. We received four
17 comments asking us to extend our deadline even
18 after our current December 31 deadline. We
19 received a couple of comments to stay at our
20 current December 31 deadline. We received
21 three comments supporting moving up to December
22 1 or early part of December. There was one
23 comment supporting the move to November 1. And
24 three comments asking us to move them earlier.

1 I will go over the general flavor of the
2 comments.

3 MAPC, which recommended extending
4 the deadline recommended that we should extend
5 the deadline by one month to take into account
6 time necessary to conclude surrounding
7 community agreements. And similar concerns
8 were raised by Berkeley and Medway, their
9 boards of selectmen saying that our deadline
10 should be extended because of the compressed
11 timeframe to negotiate surrounding community
12 agreements.

13 Milford, Milford board of selectmen
14 Brian Murray asked for additional time to
15 prepare the application noting that there's
16 extensive requirements. And that additional
17 time would be helpful in preparing an
18 application for the Commission. And he also
19 stressed the fact that we had an originally
20 publicized application date of December 31,
21 even though it has been a draft to date for
22 quite some time, they noted that people are
23 beginning to count on that or have counting on
24 that deadline for quite some time.

1 Similarly, from the stay at December
2 31 comments, Robert Allen on behalf of
3 Crossroads made a similar comment to the
4 Milford board of selectmen whereby they asked
5 for -- that it takes a little while to complete
6 applications. And noted that the December 31
7 deadline that has been out there for quite some
8 time.

9 Hard Rock submitted some very
10 extensive comments on why the December 31
11 deadline would be useful. Specifically, they
12 noted that it would hinder our application
13 process because it might reduce the quality of
14 the applications that we received. They noted
15 that even in our draft regulations, there are
16 very substantial categories of information that
17 need to be submitted to the Commission. And
18 that many of these require substantial
19 negotiation with outside independent parties,
20 notably surrounding communities, host
21 communities, live entertainment venues and the
22 like.

23 One thing they did mention is that
24 in addition to state processes that the time

1 that it would take to get the local zoning
2 approvals, also might warrant at least the
3 December 31 deadline. And they also noted that
4 they are likely to file something that is akin
5 to an expanded environmental notification form
6 that includes a tremendous amount of detail in
7 their proposal. And they're expecting
8 additional comment period over and above the
9 30-day ENF period that includes the comment
10 period.

11 From the support of December 1
12 grouping, the Greater Boston Labor Council
13 appreciated the Commission's efforts to move
14 forward and recommended that we continue to
15 look at efficiencies in our process.
16 Similarly, the Laborers' Local 22 made the same
17 mention. And in the City of Boston urged us to
18 support the December 1 deadline noting that
19 they have been urging the Commission to move as
20 quickly as it can in the past.

21 Support of November 1, Springfield,
22 Springfield recommended that we move forward
23 noting that it just recently executed its host
24 community agreement and will likely have its

1 referendum completed in short order. And that
2 the shorter deadline would incent surrounding
3 communities to move expeditiously in reaching
4 surrounding community agreements.

5 Notably, the comments that asked us
6 to move forward, we had very extensive comments
7 from Sterling Suffolk. We had some equally
8 robust comments from the Town of Hopkinton.
9 One represents, obviously, an applicant. And
10 one represents a surrounding community. The
11 Town of Hopkinton's comments were that we
12 should establish our deadline as early as
13 possible to provide time basically, after the
14 application to resolve surrounding community
15 disputes.

16 And then the Sterling Suffolk
17 comment period noted that there are very, very
18 substantial days that will be necessary for
19 both the potential disputes with surrounding
20 communities and also just the general reviews
21 after you take into account hearings, take into
22 account staff reviews. And that a December 31
23 deadline could push the actual award of license
24 into sometime in early spring of 2014. And

1 they noted that that is pretty close to the end
2 of the fiscal year. And then Joe Iananno also
3 recommended that we move as quickly as
4 possible.

5 CHAIRMAN CROSBY: Yes. And?

6 MR. ZIEMBA: I think that what we
7 decided that we were going to think about today
8 was that if you're looking for a recommendation
9 of moving earlier or later, I think what we
10 thought we would do is noting that Director Day
11 just gave a pretty extensive analysis of the
12 time that it would take to do all of the staff
13 work that goes into the post-application round
14 that that should be fully incorporated into our
15 decision on when we would move -- where we
16 would move the application.

17 Because it's not only the time that
18 it would take for the applicants and the
19 surrounding communities to get their issues in
20 order, but it's also how close would we be to
21 either the end of the fiscal year, or how long
22 would it take for our licensing decisions and
23 how that impacts the earlier dates.

24 CHAIRMAN CROSBY: Right. Comments,

1 reactions?

2 COMMISSIONER MCHUGH: I agree with
3 the suggestion that we ought not make that
4 decision today. That we ought to take the
5 process that we now agreed on and the days that
6 that process will take and lay it on the
7 Category 1 process. Recognizing that the
8 Category 1, we're going to have more in number.
9 And we're going to have more in complexity.

10 And there are two ways to handle
11 that. The first way is to see what it will
12 take just using the staff we currently
13 anticipate and the pieces that we currently
14 anticipate for Category 2, and see what a
15 realistic timeline is.

16 Another is to put those pieces
17 together in the shortest possible timeline and
18 see what additional staff we'll need. But one
19 way or the other, it seems to me we ought to
20 make the judgment on whether to move it forward
21 and move the deadline up earlier or leave it
22 the same. I don't think there's much
23 consideration in pushing it back, but maybe
24 there is, based on that kind of a precise

1 analysis rather than put out another date that
2 really will be problematic. And I suspect we
3 would do that in a couple of weeks.

4 CHAIRMAN CROSBY: I would be fine
5 with that. I don't think we can wait much
6 longer than a couple of weeks because people
7 really are beginning to rely on that date.

8 I must say, I've had an epiphany on
9 this. I've begun to feel pressure to make
10 judgments about this issue because of meeting
11 the budget pressure for the State. And that is
12 a mistake. And if we -- I, I'm just speaking
13 for myself. I don't want to be affected by
14 that. We have to figure out how to do this.

15 And there are good reasons not to
16 extend -- I'm sorry, not to move it up. There
17 are as many people who want us to slow down or
18 speed up. It's about 50-50 at this point. But
19 people have been relying on it. We are going
20 to have our hands unbelievably full no matter
21 what the details look like.

22 COMMISSIONER MCHUGH: Right.

23 CHAIRMAN CROSBY: If we don't get
24 the money in by this fiscal year, if the

1 Legislature needed to could borrow from the
2 rainy day fund and pay it back when the money
3 comes in. So, it's not catastrophic. And I
4 don't like having -- I was responding to the
5 wrong pressure here.

6 So, I've come to the conclusion that
7 I would not want to move it back. I would go
8 with where it was.

9 The only compelling reason to make
10 it earlier is so we have more time to get the
11 money in that fiscal year budget, which if we
12 can possibly do it, we will. But I don't think
13 that's a good enough reason to cause anybody
14 any heartburn. And I think move of a month
15 would cause a fair amount of heartburn,
16 including to us, since we're going to be so
17 swamped.

18 If everybody agreed with me, we
19 could decide today. But if not, we can wait
20 until we look at it at our next meeting.

21 COMMISSIONER ZUNIGA: I agree.
22 Trying to really finalize it in the next
23 meeting. There are important considerations in
24 terms of duration that still need to be

1 reflected here. There's a second one, which is
2 some of this Category 1 and Category 2 are
3 going to be in parallel to the resource --
4 there's going to be Category, perhaps, Category
5 1 hearings about suitability, etc. And that
6 takes resources as well, not just Commission
7 time but notably staff.

8 So, that has to be laid out with
9 more precision. And I think we have the tools
10 to do that as of today.

11 CHAIRMAN CROSBY: So, you're still
12 open to the idea of moving it back? You'd like
13 to explore whether we could make it December 1
14 rather than --

15 COMMISSIONER ZUNIGA: Yes. I think
16 I would agree also with the notion that I don't
17 know that we have the need to move it later,
18 necessarily. The point is really to try to
19 finalize a deadline as soon as possible. And I
20 think next meeting may be really the target.

21 CHAIRMAN CROSBY: So, let's set that
22 objective to decide this once and for all at
23 the next meeting. There's a lot of still, no
24 matter how hard we try, misunderstanding about

1 what's going on in this comment., particularly,
2 a lot of the area around the Milford proposal.

3 Communities, lawyers, towns, they
4 don't understand the process still. There's a
5 lot of wrong assumptions to this. We've just
6 got to keep trying to get people to understand
7 how the process really works.

8 MR. ZIEMBA: Right. Ms. Driscoll
9 and I have been discussing additional ways to
10 try to get out the message. And I think it's
11 just even more important for me to just be out
12 there as much as I possibly can, out in the
13 committees for these sessions.

14 The regional planning agency
15 sessions that we have anticipated, they're
16 about to begin soon. And that will be an
17 additional way for everyone to get information
18 about all of our procedures. And I think that
19 we noted just the other night at a forum that
20 they're beginning to become rather complex and
21 complicated.

22 So, it's quite understandable that
23 people would have questions and may not get
24 things exactly right the first time. But

1 that's why it's on us to continue to go out and
2 go out and go out and I will try to do that.

3 CHAIRMAN CROSBY: Two of these
4 letters, one was from Greenberg Tourag, who are
5 they representing, Hard Rock. And another one
6 was, I think, from maybe Hopkinton talked about
7 they have a schedule. Asking us not to change
8 the timeframe because they have a schedule
9 already.

10 And you I think or we had asked for
11 very specific feedback so we could actually see
12 what the problems were. It would be useful if
13 those two organizations would show us their
14 schedules so we can understand why they think
15 it's a problem, even though I am not in favor
16 of it anymore. Okay.

17 MR. ZIEMBA: Thank you. So, what
18 we've done is we have created a draft Region C
19 schedule. After internal discussions of staff
20 taking a look at what our current schedule was,
21 we took a look at the draft schedule that we've
22 put forward a little bit earlier this year.

23 And what we have before you is a
24 draft that can be considered. And what I do

1 note is that this draft that we have before you
2 is subject to some adjustment based on
3 considerations that may come about as we go
4 through the application process or obviously,
5 now as we take a look at some of the
6 parameters.

7 If you take a look at what we have
8 previously put out as a draft timetable, I'll
9 just share some of the big headline dates.
10 Prior to this, we had an RFA Phase 1 deadline
11 of roughly about August 2013. Again, the first
12 timetable that we put out was I think we
13 prefaced our comments this is a very, very
14 rough outline. But I think the rough outline
15 comes out to be pretty accurate when you take a
16 look at all of our existing procedures.

17 So, the RFA Phase 1 deadline,
18 originally we had an August 2013 Phase 1
19 deadline. The recommendation I'm putting
20 before you gives us an October 3 RFA Phase 1
21 deadline.

22 Suitability determinations of May
23 2014. This recommendation is right about that
24 same timeframe. It puts forward an IEB report

1 from March 23. MGC, the Commission review of
2 the IEB report 4/28. And then a final
3 suitability determination of July 8, but that's
4 after appeals, if indeed there are any appeals.

5 The Phase 2 deadline for the RFP,
6 initially there was an August 2014 timetable.
7 And this recommends an early September
8 deadline, 9/3/2014 deadline. And then a
9 licensing decision, we have December 2014. And
10 very similarly, the licensing decision is
11 December 2014 recommendation here with a range
12 of the beginning of the month 12/1 to 12/31.

13 Now this recommendation, we have a
14 sheet that puts forth a number of different
15 reasons, the benefits in this proposed
16 schedule. But what we generally did is we
17 tried to think of the difficulties that we've
18 been facing in this current round and how they
19 could be remedied in an upcoming round.

20 And we also tried to take into
21 account staffing constraints during this
22 funding round so that we wouldn't necessarily
23 impact both the current A and B applications
24 and unnecessarily complicate delay of Region C

1 application.

2 What this puts forward is a
3 reasonable period for background investigations
4 based on a likely number, a reduced number of
5 applicants. Obviously, we have no idea how
6 many applicants are out there. But given the
7 smaller geographic area, I think that's
8 probably a reasonable assumption.

9 We have 171 days for that background
10 check. This is designed to limit the impact on
11 our current background reviews by starting the
12 qualifier, the scoping meetings generally after
13 we finish our determinations of suitability for
14 the A and B rounds.

15 So, if we start the qualifier rounds
16 at September 3, that is roughly at the very end
17 of our suitability determinations, And
18 hopefully we can conclude the suitability
19 determinations earlier in August.

20 What it's designed to do is to
21 enable communities to vote on referenda after
22 our suitability reviews are completed. We've
23 all faced the issues of the awkwardness of
24 communities having to move forward on

1 referendums before there's a determination of
2 suitability. And hopefully, this would
3 alleviate that discomfort.

4 It's hopefully designed to avoid any
5 summer elections. We're hoping for elections
6 basically around June 2014. It gives
7 communities time to plan by requiring a site
8 designation fairly early in the process.

9 Now this is a new recommendation
10 that we're putting forward, which is unlike our
11 current round where there's no site designation
12 basically until the time of the application,
13 the RFA-2 application.

14 What we're asking is that applicants
15 have to designate a site after a certain period
16 of time. And what this would do is it would
17 enable greater planning by host communities,
18 potential surrounding communities so that
19 there'd be a little less confusion out there.

20 But what it does is it gives
21 applicants a little additional time to find the
22 site beyond the RFA-1 application date. So,
23 what we recommend is that we would establish a
24 site designation date of the end of the year,

1 December 31, but that the applicants would
2 begin the qualifications phase, the first phase
3 on October 3. Thereby giving them a couple of
4 months to find a site or to nail down a site if
5 they haven't done so already by October 3.

6 So, what this does is it gives at
7 least four months after that latest date, that
8 December 31 date for host communities to
9 execute a host community agreement. And it
10 gives at least eight months after that site
11 designation date for surrounding community
12 agreements.

13 And four and eight, that leaves
14 about four months between the time of the host
15 community agreement and the surrounding
16 community agreements. And hopefully that
17 enables surrounding communities to get some of
18 the technical assistance after the host
19 community agreement, if it hasn't been provided
20 earlier, to enable them to enter into
21 surrounding community agreements.

22 As I said, we can modify this a
23 little bit more quickly, depending on certain
24 circumstances. If there are fewer number of

1 bidders, if we think that some of the bidders
2 have already gone through background checks,
3 perhaps we wouldn't have to allocate the entire
4 171. But that might be a potentially
5 conservative figure if we have a great number
6 of applicants.

7 It gives to the Commission at least
8 90 days to evaluate proposals after the
9 application. That might need to be modified
10 based on Director Day's analysis. But we could
11 figure that into our planning process.
12 Potentially what we could do is move the
13 October application date a little bit earlier.

14 So, this process, it anticipates an
15 award by December 2014 consistent with our
16 earlier plan, even if there are surrounding
17 community disputes under the map that we've
18 created here. A couple of other benefits of
19 this schedule is that it provides existing
20 bidders an opportunity to apply in the event of
21 a rejected referendum before October 3.

22 So, if you have an October 3
23 deadline for us, then potentially any bidders
24 that failed in a referendum could then become

1 part of the mix, ensuring more competition for
2 Region C.

3 Then this schedule also gives time
4 to the Commission or gives the Commission the
5 benefit of being able to evaluate any progress
6 made on the Region C tribal gaming application
7 by the time of the award.

8 CHAIRMAN CROSBY: Comments,
9 thoughts?

10 COMMISSIONER CAMERON: My first
11 thought was that we were taking too much time
12 for this. That there is that consistent
13 concern out there that letting the Region fall
14 this far behind and the others are up and
15 running and establishing loyalty. So, that was
16 something that I thought made some sense, that
17 kind of a comment. That was just my one
18 thought that we could probably do this sooner
19 than this timeframe.

20 CHAIRMAN CROSBY: Others?

21 COMMISSIONER ZUNIGA: Along those
22 lines, there are specifically some things that
23 we could look at right now.

24 I think we've learned a lot in terms

1 of duration and some of this what needs to
2 happen, especially that we don't control,
3 surrounding community agreements let's say.
4 But the pieces that we do control, for example,
5 the publishing of the RFA as a first activity,
6 could we publish that earlier than what's
7 currently projected here as the last days of
8 June?

9 CHAIRMAN CROSBY: What has to be
10 changed in the RFA besides a few dates and
11 stuff? Is there any material things?

12 MR. ZIEMBA: No, not much. The
13 newly created, if it's adopted, site
14 designation policy we think would be included
15 in that. But beyond that there's not that much
16 that would need to be amended.

17 CHAIRMAN CROSBY: I agree with
18 Commissioner Zuniga and Commissioner Cameron.
19 It seems to me like we could, in gross terms,
20 we could pick up a month. Well, a very
21 important date is when they have to put up
22 their \$400,000. That's a really critical date.
23 And to me, the primary consideration is giving
24 enough time for entities that didn't know that

1 they were going to bid to get together a
2 proposal. And that's very important to our
3 whole competitive shtick.

4 So, what's enough time to give them
5 a chance to get organized? Basically, the
6 schedule now gives them six months from the
7 time we voted to open C until the time they
8 have to put up their \$400,000.

9 I think we can easily take a month
10 off of that and not compromise anybody. I
11 don't know that we can take much more than
12 that, but I think we can pick up one month and
13 starting September 1.

14 And then in the investigations, this
15 is basically the same period of time that we
16 put out for the investigations. It's six
17 months, which is what we had for the
18 investigations when we had 11 of them. So, I
19 don't know why we couldn't take that down by a
20 couple of months.

21 MR. ZIEMBA: Perhaps I could be
22 joined by Director Wells. But I raise two
23 points. The October application date was one
24 of the primary reasons for that recommendation

1 was to not interfere with our suitability
2 determinations, which will be ongoing during
3 the month of September.

4 And what we're hoping to do is do a
5 little bit more of the work on the qualifier
6 scoping meetings ourselves in that run up to
7 the application date. And if we moved the
8 application date from October of this year to
9 September, it would be right in the middle of
10 our determinations of suitability for A and B.

11 CHAIRMAN CROSBY: Those
12 determinations --

13 COMMISSIONER CAMERON: I have the
14 same point. I actually did not anticipate most
15 of them waiting until September for those
16 suitability --

17 MS. WELLS: Well, my expectation is
18 that we'll probably do Region A then Region B
19 potentially. We'll see how the reports come
20 out.

21 A lot of this is dependent upon
22 whether or not there are findings which the
23 applicant is going to object to. If I get
24 reports, I'm expecting some reports coming in

1 July, potentially one or two maybe in the
2 beginning of August. I then would review those
3 reports, submit them to the Commission. The
4 applicant gets them. There's then the process.
5 If there is a contested issue on that then I
6 will be heavily involved in the hearings
7 process, if we do that.

8 So, if that is the case, that will
9 go probably into September. So, the concern is
10 do you want to start this background
11 investigation part when the IEB is involved in
12 that process? We may not be involved in that
13 process. So, there's that unknown factor.

14 COMMISSIONER CAMERON: But the IEB
15 would be complete with their work. You may be
16 involved with the hearing --

17 MS. WELLS: I would.

18 COMMISSIONER CAMERON: But the IEB
19 investigators would be available.

20 MS. WELLS: Yes. And the consultant
21 investigators, State Police, although I would
22 expect that as part of the hearings process,
23 it's like trial prep. So, there would be
24 involvement with potential witnesses in

1 preparing and getting back up to speed. So,
2 there's that component of it.

3 COMMISSIONER CAMERON: Yes.

4 COMMISSIONER ZUNIGA: I'm actually
5 less concerned with the time, the duration of
6 that background investigation because that
7 doesn't drive this schedule.

8 What drives this schedule is the
9 amount of -- because there's float here at the
10 end of that. What drives this schedule here,
11 at least as represented here is the time and
12 duration we've given to the host and
13 surrounding communities, which we should talk
14 about, especially because if we have a site
15 determination early on that we didn't last time
16 around that could really have a positive impact
17 into the surrounding community process, one
18 that could shorten the duration.

19 So that's something that we --
20 shorten this duration, which is what is
21 currently driving the critical path in this
22 schedule here.

23 MR. ZIEMBA: We could consider
24 moving up the site determination date by a

1 month in that that basically puts communities
2 on notice of where these sites are starting
3 theoretically the negotiation phase.

4 COMMISSIONER ZUNIGA: But even if we
5 didn't move it, the fact that we are now
6 explicitly saying this is a deadline for site
7 determination in my view, that very fact could
8 really be helpful for the surrounding community
9 process because now they know officially. Now
10 they know that they have to be reaching out or
11 not to an applicant and vice versa.

12 COMMISSIONER CAMERON: I like the
13 idea of moving it up a month as well. There's
14 no reason why. We've been doing this for some
15 time now. Folks have been paying attention.
16 They kind of know what to expect. And I think
17 can be prepared to move this.

18 COMMISSIONER ZUNIGA: I think in the
19 end, this all comes down to a balance of if
20 this is ultimately very aggressive, then we
21 maybe decreasing the chance of competition,
22 which I know we also want to --

23 CHAIRMAN CROSBY: The only
24 difference, the only issue that affects the

1 amount of competition is the \$400,000 date.

2 COMMISSIONER ZUNIGA: This deadline.

3 CHAIRMAN CROSBY: But the other ones
4 don't matter how long we take. Once they're
5 in, they're in.

6 COMMISSIONER ZUNIGA: That's a good
7 point.

8 COMMISSIONER MCHUGH: On the
9 competition piece, maybe I'm stating the
10 obvious, both the 10/4 date and a month earlier
11 are going to eliminate potential competitors.

12 It's going to eliminate all of the
13 people that don't get selected in Region one
14 and Region two. Waiting for them is going to
15 push this way back. So, we probably can't do
16 that. It's going to eliminate people who lose
17 the host community votes if the host community
18 votes haven't been taken by that time.

19 So, this schedule basically says
20 with one possible exception that comes to mind
21 we're going to be looking for new people, not
22 people who are already in the game. That's the
23 consequence of this, right?

24 CHAIRMAN CROSBY: Which would've

1 been the case if we didn't --

2 COMMISSIONER MCHUGH: It may be. I
3 just wanted to make sure we don't overlook
4 that.

5 MR. ZIEMBA: Part of it is that the
6 month of October was also chosen because it'll
7 be after the referendum votes for a good number
8 of the applicants. So, potentially they could
9 get an application very, very quickly. I think
10 you're right.

11 COMMISSIONER ZUNIGA: With the
12 following sort of caveats, if there's current
13 competitors who lose in Region A or B by a
14 failure of a host community agreement
15 referendum, they've already paid the \$400,000
16 on Region B or A. So, this deadline in effect
17 is less dramatic, let's say, for those
18 applicants.

19 CHAIRMAN CROSBY: That's an
20 interesting point.

21 COMMISSIONER MCHUGH: That's
22 interesting.

23 COMMISSIONER CAMERON: I know.

24 CHAIRMAN CROSBY: Should we make the

1 decision that if you are already an applicant
2 for A and B and prior to some critical point
3 here, lose out on A or B that you may
4 automatically become -- obviously, you don't
5 need to pay another \$400,000.

6 COMMISSIONER CAMERON: And
7 suitability is complete.

8 CHAIRMAN CROSBY: Suitability is
9 complete.

10 COMMISSIONER MCHUGH: You could just
11 go right to the RFA-2 process provided you
12 disclose the place.

13 COMMISSIONER ZUNIGA: You'll have to
14 be determining the site.

15 COMMISSIONER MCHUGH: The site, you
16 could go right to the site though.

17 COMMISSIONER ZUNIGA: That would be
18 the critical deadline for them.

19 CHAIRMAN CROSBY: Right.

20 MS. WELLS: But would you also
21 include slots? If there's someone for whatever
22 reason didn't work out on a slots application,
23 would they also be in that pool, not just
24 Region A and Region B?

1 COMMISSIONER CAMERON: They've paid
2 the \$400,000 and had the suitability as well.

3 CHAIRMAN CROSBY: I would say yes.
4 I hadn't thought about that.

5 COMMISSIONER MCHUGH: But not for
6 another slots parlor.

7 COMMISSIONER ZUNIGA: No, that
8 deadline is gone.

9 COMMISSIONER CAMERON: Correct.

10 COMMISSIONER MCHUGH: But that's
11 right. That's interesting. They could go
12 right to the site designation and move one.
13 They wouldn't have to file a new RFA-1
14 application basically.

15 MR. ZIEMBA: They would likely have
16 some new qualifiers.

17 COMMISSIONER MCHUGH: Modified,
18 right.

19 MR. ZIEMBA: Yes.

20 CHAIRMAN CROSBY: That's a really
21 good point. And that really enhances the
22 competitive situation tremendously. And I
23 think that's a policy decision we absolutely
24 should make.

1 I still think that the idea, for the
2 most part your team, your consultants and staff
3 will be done. There might be some going on,
4 but for the most part, compared to what they've
5 been going through the six months prior,
6 they'll be done.

7 And in the interest of getting these
8 folks, the Region C folks going, I would
9 strongly suggest that we take one month out of
10 the pre-RFA-2, and back it up to September.
11 Pick up a month there. And then find another
12 couple of months, whether it's in the number of
13 months that we assign to the investigations or
14 whatever. So, that we move this deadline back
15 a total of 90 days.

16 COMMISSIONER MCHUGH: The final
17 deadline, award deadline.

18 CHAIRMAN CROSBY: The award deadline
19 right.

20 COMMISSIONER CAMERON: I agree.

21 MR. ZIEMBA: Mr. Chairman, just a
22 couple of suggestions while we're talking about
23 it. We had an RFA-2 deadline of 9/3,
24 potentially that could be moved forward.

1 CHAIRMAN CROSBY: RFA-2 deadline of
2 9/3/2014.

3 COMMISSIONER ZUNIGA: 9/2, but yes.

4 COMMISSIONER CAMERON: Phase 2
5 application.

6 MR. ZIEMBA: 9/2, perhaps we could
7 look at that month as a time to move things
8 forward.

9 CHAIRMAN CROSBY: Right. There's a
10 variety of places in there where we can pick up
11 two months, I think, but I think we should do
12 that, we should try to do that.

13 MR. ZIEMBA: We do have the 90 day
14 of staff review, which is inconsistent with
15 what we talked about. For 70, Director Day
16 referenced 70 total days for staff review. We
17 have 90 days here for staff review or
18 Commission review of the licenses after the
19 applications. So, it's a little bit more than
20 the 70 days but these are Category 1
21 facilities. So, that that 90 days may be
22 realistic.

23 But some of the comments that we've
24 received would indicate that the 90 days would

1 be too short based on the number of hearings we
2 would require etc., etc., etc. But potentially
3 as we get into the Category 1 schedule review,
4 we can also take a look at this particular
5 number, the 90-day number because it would be
6 entirely consistent or mostly consistent.

7 CHAIRMAN CROSBY: Right. We've
8 decided on two things, I think. One is that we
9 have a process for letting losers in A and B
10 become --

11 COMMISSIONER CAMERON: Do we really
12 want to call them that?

13 CHAIRMAN CROSBY: Non-winners.

14 COMMISSIONER CAMERON: Those who
15 were not selected for the one license.

16 COMMISSIONER MCHUGH: Even those who
17 want to hedge their bets, if they want to jump
18 into that pool. Hedging their bets, they're
19 free to do it. And they would only have
20 actually take some action by 12/1, right?

21 COMMISSIONER ZUNIGA: 12/31.

22 CHAIRMAN CROSBY: Well, let's talk
23 about that site designation thing. We have
24 said we will conduct the Region C process -- We

1 said we would conduct the evaluation as
2 identical criteria to A and B.

3 Why would we put in a requirement
4 that they designate a site when we didn't do it
5 in A and B? I mean I understand it
6 inconveniences us a little. For the most part,
7 the weird situation with Cordish is highly
8 unusual. We all agreed. Everybody except for
9 Cordish has had a site selected for months.

10 So, the likelihood that we're going
11 to need to force them to pick a site is very
12 unlikely. But if like there's an outlier like
13 Cordish was this time and they want to wait and
14 we decide it's all right, then we let them
15 wait. And by not having a site date that gives
16 all the more time to the non-winners from A and
17 B and the slots.

18 That's the one thing where they will
19 be under the gun trying to find a site. But if
20 we take that away, that gives maximum
21 opportunity for them to try to find a site. In
22 all of those context, why force everybody to
23 identify a site?

24 COMMISSIONER CAMERON: I think we'll

1 probably end up saying the same thing. It was
2 somewhat problematic for investigations,
3 because you are there going to be more
4 qualifiers? How does this is work with the
5 land and those individuals? So, that I think
6 was somewhat -- made it a little more difficult
7 in finalizing qualifiers and really
8 understanding the scope of the investigation.

9 MS. WELLS: I would agree with
10 Commissioner Cameron. Cordish worked around
11 that because what they had set up is they'd be
12 buying it outright. So, it wasn't an issue
13 where there'd be more qualifiers.

14 But if another applicant set up a
15 land deal where there was some kind of
16 percentage interest then that becomes more
17 problematic in identifying those qualifiers.
18 So, there is advantage. We can obviously work
19 with applicants. And we did that with Cordish
20 and they were responsive. And kept in contact
21 with them going along. But it is easier for me
22 if I have a set date and they know what the
23 site is.

24 COMMISSIONER MCHUGH: But here these

1 people we're talking about will all have
2 completed at least --

3 CHAIRMAN CROSBY: Most of them.

4 COMMISSIONER MCHUGH: -- most of
5 them will have completed a suitability
6 investigation. And the new qualifiers may have
7 something to do with the site but it won't be
8 the main body of new people.

9 MS. WELLS: Correct, correct. And
10 that may be a determination for the Commission.
11 If the Commission is comfortable, somewhat like
12 financial sources being identified later in the
13 process and them being screened and if they're
14 not acceptable, they cannot be involved in the
15 process. You could theoretically do that with
16 the land deal. My understanding was the
17 Commission was sort of uncomfortable with that
18 when we discussed that with Cordish.

19 CHAIRMAN CROSBY: We kept deferring,
20 I think, to your judgment on this. We were
21 ready to put a deadline down saying hey, you've
22 got to identify, until you two really would say
23 to us it's okay. They're getting there and
24 we're all right.

1 MS. WELLS: Yes.

2 CHAIRMAN CROSBY: And I think we
3 should do it the way we did before, which is if
4 they haven't identified a site, if it becomes a
5 problem for us, we say all right, you've got to
6 identify a site.

7 MS. WELLS: Okay.

8 CHAIRMAN CROSBY: And if you need to
9 put your foot down and say you've got to do it,
10 then you do it and we'll follow your lead on
11 that.

12 But rather than pick an arbitrary --

13 MS. WELLS: Right. I think that we
14 just in the interests of fairness to
15 applicants, we would need to give some lead
16 time for that so that they expect that they may
17 be coming in a reasonable amount of time just
18 for business practices.

19 CHAIRMAN CROSBY: Putting your foot
20 down?

21 MS. WELLS: Correct.

22 CHAIRMAN CROSBY: Well, you'll be
23 talking with these folks. And again, it's a
24 weird situation when you don't identify the

1 site. And people who didn't identify the site
2 realize that they made a mistake I'd say.
3 Everybody is going to, with the exception of
4 the people who are qualified, everybody is
5 going to know their sites by then. It's almost
6 certain.

7 COMMISSIONER ZUNIGA: And
8 identifying a site has two implications that I
9 can think of, major implications. One is of
10 course a determination of suitability and the
11 partners or the qualifiers who may or may not
12 be. But also the local process, the host and
13 surrounding community process.

14 So, if this extends let's say
15 because there's no deadline for site
16 determination, then our desire and current reg.
17 of not putting something in referendum until
18 applicants have been found suitable starts to
19 run against the rest of the timeline here. But
20 for that, we have an exception that Everett and
21 Springfield took advantage of. And others may
22 be able to do that as well.

23 MR. ZIEMBA: The primary reason why
24 I recommended this both from the qualifier end,

1 but really because of the impact on
2 communities.

3 There were a couple of applicants
4 that didn't have a site for quite some time.
5 And the number of different communities are
6 facing some very tight timeframes in trying to
7 determine what those local impacts are. By the
8 general rule that you can't have surrounding
9 community agreements until you have a host
10 community agreement that leaves a lot of
11 pressure to those surrounding communities.

12 CHAIRMAN CROSBY: But we will be
13 following your lead on this. Doing it this way
14 changes the rules in a way that I don't think
15 we have to. I think you guys can tell us when
16 the process is going along, if you need to have
17 a decision made for whatever reason, background
18 checks or surrounding communities, you'll tell
19 us and we'll say it's time. But rather than
20 pick an arbitrary -- that's what happened last
21 time. You guys kept saying it was all right,
22 so we said okay. But you'll tell us next time.

23 Setting an arbitrary date, unless
24 there was a really compelling reason changes

1 the rules of the road just a little and I don't
2 see any reason to do that.

3 MR. ZIEMBA: And I'm not trying to
4 be argumentative, but the final point is that
5 part of the reason why we were trying to
6 provide flexibility is that our regulations
7 didn't contemplate an earlier deadline for
8 designation of a site. So, general issues of
9 whether or not we're in compliance with the
10 regulations that was raised as an issue and I
11 think that was part of our flexibility on that.

12 CHAIRMAN CROSBY: Right. I don't
13 think it's a huge issue, but I stated my
14 opinions. I'm happy to do what everybody else
15 wants to do.

16 COMMISSIONER MCHUGH: I think we can
17 take care of that issue by modifying
18 regulations. We have a third round of
19 regulations that have to promulgate to get
20 things up and running. We'll have an
21 opportunity at that. And that's got to be done
22 soon, not tomorrow, but soon.

23 And we'll have an opportunity to
24 update existing regulations. And we can put

1 people on notice that for future license
2 applications, we may require a designation date
3 on X-number of days' notice, for example, so
4 that we cover ourselves that way in terms of
5 the fair notice.

6 So, there's a way to deal with that.
7 At the same time we take out a hard and fast
8 deadline as well. And then make that
9 designation a functional one, I mean that
10 determination a functional one.

11 CHAIRMAN CROSBY: Is everybody okay
12 with that?

13 COMMISSIONER ZUNIGA: Yes.

14 COMMISSIONER CAMERON: Yes.

15 CHAIRMAN CROSBY: It seems to me
16 that we should probably articulate the very big
17 decision we just made about letting non-winners
18 become applicants in the way we've described.
19 That's a very big deal. So, does somebody want
20 to frame that? Do you want to try to frame
21 that as a motion?

22 COMMISSIONER MCHUGH: Yes. It ought
23 to be embodied ultimately in a regulation as
24 well. We ought to modify slightly our

1 regulations. And we can do that as we move
2 down the line. But I would move that the
3 Commission allow any applicant for a Category 1
4 license in Region C who has concluded favorably
5 the suitability process with regard to an
6 application for Region A or B --

7 CHAIRMAN CROSBY: -- or slots.

8 COMMISSIONER MCHUGH: -- or slots be
9 permitted to file an RFA-1 supplemental
10 application and an RFA-2 application in Region
11 C without paying an initial \$400,000
12 application fee, but be nonetheless required to
13 pay any additional expenses required for a
14 supplemental suitability investigation with
15 respect to the Region C application.

16 CHAIRMAN CROSBY: Second?

17 COMMISSIONER CAMERON: Second.

18 COMMISSIONER ZUNIGA: Well said,
19 yes.

20 CHAIRMAN CROSBY: Just for a
21 different discussion of that, I think what we
22 talked about with Enrique's point was we're now
23 saying September 2 would be the date that they
24 would be -- the RFA-1's would be due. We're

1 saying I think we meant that we would consider
2 supplemental background RFA-1 information from
3 previously -- from non-winners later than
4 September 2.

5 We would treat that as a partial
6 changer of qualifiers not as a whole new RFA-1.
7 So, it would permit them to come in --
8 Basically, whenever they decided they were
9 going to do this, they could come in and we
10 would have to go over -- We would be modifying
11 qualifiers not taking a fresh new RFA-1 with a
12 deadline.

13 COMMISSIONER MCHUGH: I'd prefer to
14 put that in a separate motion, because if we go
15 back and try to amend the motion I just made --

16 CHAIRMAN CROSBY: That's fine. I
17 was just talking to make sure I understood what
18 we were saying. That is what we intended,
19 right? That was the whole point of Enrique's
20 observation?

21 COMMISSIONER MCHUGH: Right.

22 COMMISSIONER CAMERON: I second that
23 motion.

24 CHAIRMAN CROSBY: As amended?

1 COMMISSIONER CAMERON: No, the
2 original motion.

3 COMMISSIONER MCHUGH: There is no
4 amendments. We'll have a separate motion.

5 CHAIRMAN CROSBY: Can we just
6 clarify in the text that you meant when I
7 asked?

8 COMMISSIONER MCHUGH: No.

9 CHAIRMAN CROSBY: Okay. All right.
10 Any further discussions? Shut up Crosby. Is
11 there any further discussion? All in favor of
12 the amendment as initially read and not amended
13 -- I mean the motion, please say aye. Aye.

14 COMMISSIONER STEBBINS: Aye.

15 COMMISSIONER ZUNIGA: Aye.

16 COMMISSIONER MCHUGH: Aye.

17 COMMISSIONER CAMERON: Aye.

18 CHAIRMAN CROSBY: All opposed? The
19 ayes have it unanimously.

20 CHAIRMAN CROSBY: I can make a
21 second motion that applicants who have filed a
22 Phase-1 application in region A or B or for a
23 slots parlor and who have received a favorable
24 background investigation report be permitted in

1 Region C to file an application at a date the
2 Commission sets that is later than the date
3 applicable for Phase-1 applications by those
4 who have not participated in an application in
5 Regions A, B or for a slots parlor.

6 CHAIRMAN CROSBY: Second?

7 COMMISSIONER CAMERON: Second.

8 CHAIRMAN CROSBY: So, that would
9 enable us to at our will say to somebody okay,
10 yes, you've decided, you're fine, you've got to
11 submit the extra the people.

12 COMMISSIONER MCHUGH: And you have a
13 later application date.

14 CHAIRMAN CROSBY: RFA-1 application
15 date.

16 COMMISSIONER MCHUGH: RFA-1
17 application date.

18 CHAIRMAN CROSBY: Does that work for
19 everybody? Any of the 400 lawyers in the room
20 want to say anything about that?

21 MS. WELLS: I guess my only concern
22 is this, is if there are changes that there's
23 enough time for suitability. So, I have that
24 date on here of 1/21. They would have to

1 submit it before then, but if that gives a two-
2 month date between --

3 COMMISSIONER MCHUGH: But we're not
4 setting dates now. We could take all that into
5 account in a functional way and set a deadline.
6 All we're doing now is saying that it doesn't
7 have to be the deadline that's applicable to
8 other people.

9 MS. WELLS: Okay.

10 COMMISSIONER ZUNIGA: Because of
11 they have in effect complied with a deadline,
12 the one from Region A and B, because they
13 submitted their application and were found
14 suitable.

15 CHAIRMAN CROSBY: And we're
16 basically, I think we've agreed that we
17 basically accept changes in qualifiers almost
18 on a real-time basis. That could go on. If it
19 were a macro change that would be a problem.

20 MS. WELLS: I guess I'm just trying
21 to anticipate something we may be dealing with
22 later if there is a significant change. Some
23 of these entities have multiple partners. So,
24 what if half the partners want to do this under

1 that same entity and half of them drop out?

2 There could be that. So, let's just be aware.

3 COMMISSIONER CAMERON: So, you would
4 like us to set a date certain at some point?

5 MS. WELLS: Correct.

6 CHAIRMAN CROSBY: Any further
7 discussion on this motion? All in favor, aye.

8 COMMISSIONER STEBBINS: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER MCHUGH: Aye.

12 CHAIRMAN CROSBY: Opposed? The ayes
13 have it unanimously. Should we vote to adopt
14 this schedule? It seems to me that's pretty
15 important too. The amendments of moving the
16 RFA-1 date back to the first, give or take the
17 1st of September and shortening the award date
18 by two other further months from various places
19 in here to be done by you all, by the staff.

20 COMMISSIONER MCHUGH: Would it make
21 sense, Mr. Chairman to wait until our next
22 meeting so we can look at the RFA -- at the
23 Category 1 process for Regions A and B and this
24 at the same time and come back with a

1 consolidated plan? It's only two weeks away.
2 And it seems to me we'd benefit from actually
3 having a Region C -- we have the gross outlines
4 of it now, but a Region C plan that we could
5 actually approve and say this is it.

6 COMMISSIONER ZUNIGA: I would be in
7 favor of that. Plus there's fine-tuning that
8 we need to do on the master schedule anyway.
9 So, I would be in favor of that.

10 CHAIRMAN CROSBY: Fine. That would
11 be the 30th.

12 COMMISSIONER MCHUGH: Right.

13 CHAIRMAN CROSBY: Director Wells,
14 how long is your --

15 MS. WELLS: I'm pretty brief.

16 COMMISSIONER MCHUGH: Can I just say
17 one thing before we leave this area? This was
18 prompted, I talked to Director Driscoll about
19 this yesterday. The Region C issues about why
20 we were proceeding and how we were proceeding
21 in Region C were addressed and I think put to
22 bed in the blog that you posted on the website.

23 Something else though cropped up in
24 the reports of the hearings yesterday and that

1 is the exclusivity piece. And it's important
2 as we discuss this to recognize that nothing
3 we're doing today changes anything about the
4 Tribe's ability to pursue the tribal permits.

5 Nor does it change the exclusivity,
6 affect the exclusivity provisions of the
7 compact that's now being debated by the
8 Legislature. Because the exclusivity for
9 purposes of calculating the amount under the
10 compact that's payable turns on when and if a
11 commercial slots parlor, or a commercial
12 licensee starts operating not on anything we've
13 done thus far. Not even on our award of a
14 license to anybody. It's the commencement of
15 operations that triggers and affects the
16 payment scheme.

17 So, that's another subtlety that I
18 think in reading some of the reports that I
19 looked at yesterday is not fully comprehended
20 by everybody. And it ought to be because we
21 really are dedicated to not interfering with
22 anything the Tribe is doing as they move
23 forward.

24 CHAIRMAN CROSBY: Agreed. Let me

1 get a -- No, let's go ahead and do you, then I
2 want to talk about this afternoon.

3 MS. WELLS: I just have on my agenda
4 here the confidential information procedure.
5 Attorney Conroy I think is present and he had
6 mentioned a concern about the confidential
7 nature of supplemental documents that are being
8 requested for the investigations that are
9 proceeding.

10 So, I just wanted to publicly sort
11 of outline specifically three points. One is
12 if there is a public records request for this
13 information, I don't know if there will be or
14 not and in what capacity. We'll deal with that
15 on an individual, case-by-case basis. But
16 should there be an individual public records
17 request, notice will be given to the applicants
18 and an opportunity to be heard on the legal
19 parameters of what can and cannot be disclosed
20 in those public records request.

21 The second point is that the
22 exemptions to public records law that applies
23 to the supplemental document request just like
24 they applied to the initial applications.

1 Gaming legal outlined sort of these general
2 provisions in a letter that was sent out to the
3 applicants that had requested additional
4 reductions. Attorney Shtatnov had done an
5 excellent job and with those legal parameters.

6 So, I believe those applicants have
7 that sort of outline. Just to publicly address
8 that issue. For example, private information
9 such as personal bank account information or
10 trust information with respect to minors, those
11 things are subject to exemptions and those
12 would not be disclosed if there were a public
13 records request for that.

14 Additionally, there's specific
15 exemption for trade secrets or information that
16 would put the applicant at a competitive
17 disadvantage in the industry. So, my third
18 point is that there should be an expectation
19 that a significant portion of this information
20 would be deemed confidential based on the
21 nature of the inquiries that we're making as a
22 result of these investigations.

23 So, I just want to make sure that
24 we're managing the expectations of both the

1 applicant and the public that these are
2 personal -- there's personal information that's
3 being obtained. There's a lot of information,
4 confidential financial information that
5 pertains to corporations and would pertain to
6 their trade secrets and their competitive
7 nature in the business.

8 So, I just want to outline that for
9 anyone that may be concerned about that. And
10 if there are any questions by the
11 Commissioners, I'd be happy to address that.

12 CHAIRMAN CROSBY: Has that decision
13 satisfied people that were concerned about
14 supplemental?

15 MS. WELLS: If I get calls, we talk
16 about it on an ongoing basis. I do respect
17 that there is concern out there. Ultimately,
18 any determination we make will go through
19 legal. There will be a process. And then if
20 there's any information that's not private that
21 could be disclosed, that will happen.

22 And then if there's an appeal, if
23 someone who's requesting the information
24 doesn't like what the Commission does, they

1 have the ability to appeal it to the Secretary
2 of State. And that would be the final arbitrator
3 on that decision.

4 But based on the nature of the
5 information that we're getting, my expectation
6 is that as we pare through it, a very limited
7 amount would be disclosed.

8 CHAIRMAN CROSBY: Okay. There have
9 been two of our 11 initial bidders have come a
10 cropper. Are we still doing background checks
11 for Penn National and Cordish?

12 MS. WELLS: Yes. I have been in
13 contact with the attorney for Penn National and
14 did receive a request in writing to continue.
15 He sent some specific entities and qualifiers
16 and requested that that suitability
17 investigation continue. So, we have addressed
18 that.

19 And I also had a conversation with
20 the representative from the Cornish entity also
21 requesting that go forth. That's basically
22 done. And I expect an initial draft report
23 probably today if not tomorrow. So, that's
24 basically completed. We'll just go through the

1 process of reviewing any changes we need to
2 report before it goes to the Commission and the
3 applicant.

4 There was one other issue I wanted
5 to address with the Commission that's not on
6 the agenda. I've been assured by the
7 representative from Cordish that they are
8 continuing to pursue this Category 2 slots
9 license and there are other sites they are
10 looking at.

11 And they are representing they do
12 not anticipate additional qualifiers involved
13 in the process. If they locate an additional
14 site, they'd have the same kind of deal they
15 would have had in that Boxborough issue. So,
16 that seems to satisfy that issue. We can just
17 proceed accordingly and see what happens with
18 their plans.

19 CHAIRMAN CROSBY: Great. Okay.

20 COMMISSIONER CAMERON: Before we
21 conclude for lunch, I think Director
22 Durenberger has a very short report also, if we
23 could do that before?

24 CHAIRMAN CROSBY: Sure, Director

1 Durenberger? Thank you very much Karen and
2 John.

3 COMMISSIONER CAMERON: Thank you
4 both.

5 COMMISSIONER MCHUGH: Thank you
6 both.

7 CHAIRMAN CROSBY: Good stuff. Item
8 number eight, Racing.

9 DR. DURENBERGER: Good afternoon,
10 Mr. Chairman, Commissioners. Mr. Chair, would
11 I be able to have a guest join me at the table?

12 CHAIRMAN CROSBY: Sure.

13 DR. DURENBERGER: President Nowak,
14 would you like to join us? This is Mr. Ed
15 Nowak. It's my pleasure actually to introduce
16 him on this basis to the Commission. This is
17 one of your key stakeholders. Mr. Nowak is a
18 standardbred horseman, breeder, owner, horse
19 shower, ringmaster, horn blower and most
20 relevant for the purposes of this conversation,
21 he is the president of the Standardbred Owners
22 of Massachusetts. So, I'd like to introduce
23 him.

24 CHAIRMAN CROSBY: Welcome.

1 MR. NOWAK: Thank you.

2 COMMISSIONER MCHUGH: Welcome.
3 What's the horn blower part?

4 MR. NOWAK: Trumpet, I play a
5 fanfare trumpet at Plainridge.

6
7 (Chairman Crosby indicating horn
8 blowing)

9
10 COMMISSIONER MCHUGH: That's great.

11 COMMISSIONER ZUNIGA: I'd like to
12 see how that translates in the transcript.

13 CHAIRMAN CROSBY: Commissioner
14 toots.

15 DR. DURENBERGER: Toots his own
16 horn. This actually serves as an introduction
17 today to the agricultural statute Chapter 128,
18 which is different in a lot of states. The
19 Racing Commission or the Racing and Gaming
20 Commission manages this part of a breeders
21 program.

22 But in the Commonwealth, it does
23 appear under the agricultural statute.
24 However, there are bits and pieces that

1 interact with your role as the Gaming
2 Commission. And one of them is to approve a
3 representative group.

4 Ed comes forward and requests
5 approval to represent in this case the
6 standardbred folks in the Commonwealth to
7 administer a series of sire stakes programs as
8 well as the Mass. bred breeders program.

9 And Mr. Nowak is here to answer any
10 questions or maybe even describe it in a little
11 more detail than we did in the memo.

12 MR. NOWAK: Are there any questions
13 first? We've been the organization that has
14 been appointed annually through the then Mass.
15 State Racing Commission to administer the
16 breeding of standardbreds in Massachusetts and
17 the sire stake races program.

18 We've been doing that now since
19 1992. And I've been president of the
20 organization since 2007. The program is
21 working. And we are going forward and putting
22 together our racing dates for this year, for
23 2007, which will be in the fall -- 2013. And
24 we'd like to be reappointed as the governing

1 body of the breeding and standardbred sire
2 stakes racing.

3 DR. DURENBERGER: So, how this works
4 is it provides and incentive for folks to breed
5 their horses in Massachusetts. And there's
6 carefully delineated processes by which the
7 horses can be declared as Massachusetts bred
8 and therefore eligible for the series of races
9 and also breeders awards. So, that's the
10 interaction with racing.

11 MR. NOWAK: We have approximately 75
12 members, active breeders and another 200 plus
13 members who have shown and indicated to us an
14 interest in breeding standardbreds in
15 Massachusetts as we go forward.

16 COMMISSIONER MCHUGH: There are how
17 many breeders now here in Massachusetts?

18 MR. NOWAK: Seventy-five.

19 CHAIRMAN CROSBY: Just standardbred?

20 MR. NOWAK: Just standardbreds.

21 COMMISSIONER MCHUGH: Does anybody
22 breed standardbreds and thoroughbreds?

23 MR. NOWAK: It's take your pick.

24 Either you're a standardbred person or

1 thoroughbred.

2 COMMISSIONER MCHUGH: I see. And
3 another 200 have expressed interest in doing
4 it?

5 MR. NOWAK: Yes.

6 COMMISSIONER MCHUGH: How could
7 those people be incentivized to do it?

8 MR. NOWAK: They would be
9 incentivized if Plainridge Racecourse was
10 awarded the slots license.

11 CHAIRMAN CROSBY: You walked right
12 into that one.

13 COMMISSIONER MCHUGH: Well, I walked
14 into that one, didn't I?

15 MR. NOWAK: Thank you for that
16 question.

17 DR. DURENBERGER: Let's summarize
18 that as increased purse monies.

19 CHAIRMAN CROSBY: So, independent of
20 the Plainridge issue, the money that comes into
21 the Racehorse Stabilization Fund that will
22 materially affect these races, I assume too.

23 MR. NOWAK: It will affect the
24 purses. It will affect higher purses generate

1 more interest. And higher purses create better
2 horses, better stock. There's more of an
3 incentive to invest money in the standardbred
4 racing.

5 CHAIRMAN CROSBY: Right, right. As
6 I understand it, the money that's coming into
7 the Racehorse Stabilization Fund, once
8 everything is up and running, which will be a
9 while -- Pardon?

10 COMMISSIONER ZUNIGA: Racehorse
11 Development Fund.

12 CHAIRMAN CROSBY: What did I say
13 stabilization? Yes, Development Fund is pretty
14 much doubles purses. That amount of money that
15 can pretty much doubles purses, which is I
16 guess a pretty big deal.

17 MR. NOWAK: Yes. That would be an
18 incentive to get more people to maintain open
19 space, breed horses, which takes up a lot of
20 space, time and money.

21 DR. DURENBERGER: Considerable
22 amount of time before an owner/breeder can have
23 a return on their investment, a considerable
24 amount of time.

1 COMMISSIONER MCHUGH: I should know
2 this but do standardbreds, when do they start
3 racing?

4 MR. NOWAK: At what age?

5 COMMISSIONER MCHUGH: Yes.

6 MR. NOWAK: Two.

7 COMMISSIONER MCHUGH: At two. So,
8 that's essentially the same.

9 CHAIRMAN CROSBY: Is there anybody
10 else who wants this job?

11 MR. NOWAK: I haven't heard of
12 anybody. I'm not sure why they would want it.

13 CHAIRMAN CROSBY: I think we are
14 going to enthusiastically endorse this one.

15 COMMISSIONER CAMERON: I agree.

16 COMMISSIONER MCHUGH: I agree too.

17 CHAIRMAN CROSBY: Does somebody want
18 to make a motion?

19 COMMISSIONER ZUNIGA: Sure. I move
20 that this Commission approve the request from
21 the Standardbred Owners of Massachusetts to be
22 recognized as a duly organized representative
23 group of the standardbred breeders to
24 administer the Massachusetts standardbred

1 breeding program and sire stakes.

2 CHAIRMAN CROSBY: Second?

3 COMMISSIONER MCHUGH: Second.

4 CHAIRMAN CROSBY: Any more
5 discussion? All in favor, aye.

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER ZUNIGA: Aye.

8 COMMISSIONER CAMERON: Aye.

9 COMMISSIONER MCHUGH: Aye,
10 enthusiastically.

11 CHAIRMAN CROSBY: Ayes have it, it's
12 an enthusiastic endorsement of your
13 proposition.

14 MR. NOWAK: Thank you.

15 COMMISSIONER MCHUGH: Thank you very
16 much.

17 COMMISSIONER CAMERON: Thanks for
18 coming.

19 CHAIRMAN CROSBY: Dominic and Steve
20 say thank you. Okay. Anymore?

21 DR. DURENBERGER: That would
22 conclude my report. I really don't have an
23 administrative update today.

24 COMMISSIONER CAMERON: Thank you,

1 Director.

2 CHAIRMAN CROSBY: Thank you. It's
3 12:20. I just want to get a sense of
4 expectations about this afternoon. I have a
5 longtime scheduled board meeting that I chair
6 at 4:00. They know I may not make it. If I'm
7 going to make it, I'd have to leave here at
8 3:15.

9 So my question is, if we started at
10 1:00, Rachel will take at least a half hour,
11 maybe a little more. So, we would start 1:30
12 to 2:00 we would start the regs. Are you all
13 prepared and interested in sticking through the
14 afternoon for as long as we can? In which case
15 I would get out of my meeting.

16 COMMISSIONER MCHUGH: I think we
17 have to do that. I'm not sure how long it will
18 take. Everybody's had a chance to talk with
19 Mr. Grossman and General Counsel Blue. So, if
20 your questions are succinct, among other
21 considerations. In any event, the answer is
22 yes.

23 CHAIRMAN CROSBY: Whatever way,
24 we'll stick with it. Then I suggest that we

1 adjourn for 40 minutes and reassemble at 1:00.
2 And we will start with Dr. Volberg with the
3 research presentation.

4

5 (A recess was taken)

6

7 CHAIRMAN CROSBY: We will reconvene
8 the 67th public meeting of the Mass. Gaming
9 Commission on the 16th of May.

10 We will start out with Dr. Rachel
11 Volberg, who is the principal investigator on
12 the research project that everybody has heard
13 so much about, and the head of our team that's
14 headquartered at UMass Amherst that is doing
15 the research project. Thanks for coming down.

16 Two of us saw a good portion of
17 this. Commissioner Zuniga and I saw a good
18 portion of this, and thought that it was so
19 interesting that everybody else would like to
20 see it too. You might start out by just giving
21 us a quick status report on where the project
22 is and then take over.

23 DR. VOLBERG: A quick status report
24 is that we are underway. We have, I believe,

1 there is an interagency service agreement that
2 is being negotiated between the University and
3 the Commission.

4 We actually had already started
5 working on the project when we were notified in
6 April. So, the work on the social and economic
7 indicators, the secondary data streams that we
8 are going to be identifying and then monitoring
9 over time are in the process of being
10 identified.

11 The main focus of our activity right
12 now is on the baseline population survey,
13 because time really is of the essence if we are
14 going to get into the field and then out of the
15 field again by the time the first licenses are
16 announced. And we want to do that in order to
17 get a clean snapshot of the population before
18 anybody knows where the casinos or the slot
19 parlor are going to be.

20 We actually are very close to having
21 a final questionnaire. We still have some work
22 to do on our sampling strategy. And the NORC
23 team is working very hard to put together a
24 packet of materials for their internal ethics

1 review board. They have their ethics review.

2 And then we are going to --

3 CHAIRMAN CROSBY: This is for survey
4 ethics.

5 DR. VOLBERG: This is for survey
6 research. Any time you have anything to do
7 with doing research with human beings, you have
8 to go through an ethics review to ensure that
9 the benefits outweigh the risks of whatever
10 you're doing.

11 So, NORC has its own internal ethics
12 review board, which they will do a review of
13 all of the materials that any of the
14 respondents would sort of be presented with,
15 have to be reviewed by the board. Once the
16 NORC's IRB has approved the project to go
17 forward, then their certificate is going to be
18 included in our UMass ethics review protocol to
19 get UMass approval as well. So, we are moving
20 forward as quickly as we possibly can.

21 CHAIRMAN CROSBY: Great. Did you
22 get graduate students or did you get some help?

23 DR. VOLBERG: Yes. I have a young
24 undergraduate in the School of Public Health

1 who is helping me with scheduling. And we
2 actually are getting quite a bit of help from a
3 large number of the School of Public Health
4 graduate students. Both the master's level and
5 the doctoral level students have been helping
6 on the social impact side. And then the
7 Donahue Institute people have been working hard
8 as well.

9 CHAIRMAN CROSBY: Great. Good, very
10 exciting.

11 DR. VOLBERG: Yes, very exciting,
12 very exciting indeed. When you and
13 Commissioner Zuniga came out, we actually spent
14 an hour and a half just presenting the material
15 that I'm going to try to fly through as
16 expeditiously as possible so that you can have
17 some time for questions and discussion. So, I
18 think maybe if we sort of wait to have
19 questions at the end.

20 CHAIRMAN CROSBY: Yes, unless
21 something really important pops up.

22 DR. VOLBERG: Unless something goes
23 I can't read that or -- And I'm going to put
24 my glasses on to make sure I get all of my key

1 points read.

2 So, just to begin with, the social
3 and economic analysis of gambling impacts is a
4 major issue and has major policy implications.
5 But historically, the field has been beset with
6 methodological and theoretical problems. There's
7 been a great deal of disagreement about what
8 should be measured, about how it should be
9 measured, about what counts as an impact.

10 And so in I believe it was 2009, the
11 Canadian Consortium for Gambling Research,
12 which is a group of provincial --
13 representatives of provincial governments that
14 fund gambling research realized that a new
15 theoretical framework was needed to have an
16 impact on the field. And to be effective as a
17 framework, that it needed to be extremely well
18 thought out and it needed to exhaustively
19 include all of the literature on the topic.

20 The cover of the report here, I know
21 some of you are familiar with it. This is the
22 first thing that I came to the Commission with
23 actually when I first met with Commissioners
24 Stebbins and Zuniga. And I said, okay, there's

1 this report that's done, a review of all of the
2 literature. And they found seven studies that
3 were excellent. And 22 or 24 that were good.
4 And the rest of the 492 were pretty much
5 garbage.

6 CHAIRMAN CROSBY: That's a
7 staggering number 27 out of 492.

8 DR. VOLBERG: Out of 492, it's a
9 pretty sad commentary, but it's extremely
10 indicative of sort of the state of thinking in
11 this area.

12 So, the final report, which this is
13 the cover of it, they summarize all of the
14 findings of all of the empirical studies. And
15 they proposed a framework that made theoretical
16 sense, enshrined both economic principles and
17 social impact considerations, and it was simple
18 and straightforward to use. So, all of those
19 things are really important if you're going to
20 get people to use it.

21 And Rob mentioned in our kickoff
22 meeting that the final report has had the
23 desired impact. It's been very well accepted
24 by both the research community and by

1 governments. And in fact, it's been downloaded
2 thousands of times since it was first posted in
3 2011.

4 CHAIRMAN CROSBY: And Rob Williams,
5 the lead writer of this is the co-PI on our
6 project.

7 DR. VOLBERG: Right. And Rob and I
8 have a very long history of working together.
9 We've worked continuously on a series of
10 projects to improve methods in survey research
11 in gambling studies since 2007. So, when I saw
12 the statute, I was like oh, I think we need
13 Rob. And he was very excited to come, come
14 along.

15 So, very briefly, the principles
16 that are enshrined in this theoretical approach
17 or this theoretical framework are that many
18 impacts of gambling introduction or gambling
19 expansion are not clearly positive or negative.
20 It's important to cast an extremely wide net
21 when you're looking at impacts. And while
22 identifying the costs of problem gambling
23 treatment is fine, it's important to not apply
24 a monetized value to things like the psychic

1 trauma of being a problem gambler or suicides
2 or the leisure benefit of gambling. It's
3 important simply to report the percentage
4 change in the variable or the actual number of
5 people impacted.

6 So, rather than try and turn
7 everything into dollar signs, it's important to
8 simply recognize those impacts and make sure
9 that they're included in your framework.

10 This isn't going to be a surprise to
11 anyone, I hope, that there are very strong
12 vested interests that affect the research on
13 gambling impacts. The reason that out of those
14 492 studies only seven were excellent was that
15 so many of them especially early on were funded
16 by the industry.

17 So to sort of say, okay, we did a
18 great thing or yes, we met our promises. So,
19 industry commission studies tend to describe
20 the positive economic benefits and few costs,
21 if any, are acknowledged or admitted.

22 Government-sponsored research has a
23 greater potential for independence but these
24 studies also often have a vested interest in a

1 positive outcome either because of the
2 increased tax revenues or because as in Canada,
3 the gambling is the government. Not many
4 people sort of realize that. In many other
5 jurisdictions, the gambling, all of the legal
6 gambling is operated by the government.

7 CHAIRMAN CROSBY: Like our lottery.

8 DR. VOLBERG: Like our lottery. But
9 in Canada, it's all forms of gambling. There's
10 also the strong vested interest of the research
11 team that can consciously or unconsciously
12 collude in this kind of research because they
13 want future contracts from the funders.

14 So, it's not like anyone is free and
15 clear here. That everybody has very strong
16 stakes in how they want the research to turn
17 out. And I think from the point of view of
18 ensuring that the research is the best it can
19 be, you have to understand those interests and
20 account for them and try to ensure that they
21 don't affect the results of the study.

22 So, our sort of take away message
23 from this is that socioeconomic research
24 funding needs to come from independent agencies

1 who don't have a vested interest in the outcome
2 of the study. And I certainly think that's
3 what we have here.

4 So, the next issue is sort of what
5 do we think we should measure? And I said
6 earlier that a wide that net needed to be cast
7 to capture and report all of the economic but
8 also all of the social variables that may be
9 impacted.

10 Specifically, social and economic
11 impact studies have only measured and reported
12 on the most apparent economic impacts, the ones
13 that are easily turned into dollar signs. And
14 there's a few examples here. You can probably
15 find out more about each one of those
16 individual studies by looking in the
17 theoretical framework report because one of the
18 reasons that report is so long is because they
19 summarized each of those studies at the back of
20 the volume.

21 This is from the original report.
22 This is the economic indices. You can see that
23 most of them are things they can be value. But
24 it's important to remember or to realize that

1 some of them are things that can't necessarily
2 be valued. So, not everything on the economic
3 side can have dollar signs put to it either.
4 The social indices or indicators are the ones
5 that are much harder to put dollar values on.

6 And I wanted to add that the
7 Commission in the RFR that you issued actually
8 added categories to this list that you wanted
9 us to cover in the study here in Massachusetts.

10 For example, on the social side you
11 wanted us to look at employment, housing,
12 education, environmental issues. And on the
13 economic side, the issue of tourism was added.
14 So, we are looking at that full array of
15 indicators that are in the RFR.

16 When it comes to how to measure the
17 impacts, the traditional approaches, as I said
18 a couple of times already, is to use money as a
19 way to quantify all of the impacts. And while
20 it's appropriate for most economic changes,
21 it's rather inappropriate and often inadequate
22 for capturing many of the social impacts.

23 Some of the sort of obvious things
24 are how do you measure a suicide? Is it the

1 cost of the burying a person? What dollars can
2 you put to that?

3 But really my sort of personal
4 experience in this, not personal, but I've sat
5 in quite a number of hearings where problem
6 gamblers have come to testify in front of a
7 legislative committee. And one of the saddest
8 stories I ever was a guy in Washington who came
9 up and he said I love my wife. We had a
10 wonderful marriage. We brought up these
11 wonderful kids. But she became a problem
12 gambler. And now I have to divorce her. I
13 don't want to divorce her, but I have to
14 divorce her because otherwise I'm liable for
15 all of her debts. And it was really an eye-
16 opener I think for a lot of the legislators.

17 But from my perspective as a
18 researcher, it really points to how difficult
19 it is to sort of value or monetize personal
20 impacts like that.

21 And the point that Rob made in our
22 kickoff meeting is that this is not an issue
23 that's restricted to gambling. That there
24 actually is widespread dissatisfaction with

1 cost-benefit analysis approaches.

2 And I forget the one that you liked
3 especially, Steve. Was it the Happy Planet
4 Index in Connecticut?

5 CHAIRMAN CROSBY: Yes.

6 DR. VOLBERG: The Canadian Index of
7 Well-Being, all of these are sort of indexes
8 that try to build in ways to include these non-
9 monetary impacts.

10 So, and this is the solution that
11 the theoretical framework proposes to respond
12 to that challenge. Which is that we need to
13 use a metric that best captures each of these
14 different impacts. And for most economic
15 changes as well as some of the social changes
16 with clear monetary costs, money is the
17 appropriate metric.

18 But there are other social impacts
19 that can be captured and described in more
20 straightforward ways as a percentage change or
21 as a change in numbers.

22 So, then the next challenge is
23 aggregating the impacts, because from a
24 traditional cost-benefit analysis, you take all

1 of the positive costs and you take all of the
2 negative costs and you say this is bigger than
3 this. And there you go. It's a benefit. And
4 that's what cost-benefit analysis is designed
5 to do.

6 But the approach is problematic
7 because of the difficulties applying monetary
8 values to social changes but also because it
9 requires something to be either/or. It
10 requires something to be a benefit or something
11 to be a cost. And things can't just be changes
12 or they can't just be impacts.

13 So, the other side of the coin, of
14 course, is that these other sort of indexes
15 that try to build in the social or non-
16 quantifiable piece are theoretically more
17 satisfying but they tend to be somewhat
18 arbitrary because there's quite a bit of
19 disagreement about how you would weight the
20 economic versus the social. And also people
21 have different views about what's important
22 from a social perspective.

23 So, in terms of aggregating the
24 impacts, the monetary changes with clear costs

1 in gains can be combined. But other changes
2 are best reported as they are and not combined.
3 And what you end up with at the end is a
4 profile of impacts with different indices for
5 different impacts.

6 There is certainly value and we
7 intend to apply the relevant basic economic
8 principles to evaluate the economic impacts of
9 expanded gaming in Massachusetts. But it's
10 only going to be a true economic benefit if the
11 new form of gambling causes an influx of money
12 or assets from outside the jurisdiction,
13 increases the value of existing assets whether
14 it's housing property values or whatever it is,
15 and increases the utilization of existing
16 money. So, those are sort of the net impacts
17 that Dan Hodge talked about when he and I
18 appeared here at the end of March.

19 So, now we're going to walk through
20 a whole bunch of question marks about how you
21 do an impact assessment or some of the
22 questions that come up. So, one of the key
23 issues that comes up is how large of a
24 geographic area to assess. Because most

1 studies have looked very closely only at the
2 area where the gaming venues have been
3 introduced and they haven't really considered
4 the larger regional impacts.

5 At the very highest level, I guess,
6 we could say that it would be of interest to
7 think about how the introduction of casino
8 gaming in Massachusetts is going to affect the
9 New England region, because we have a lot of
10 other states that are adjacent. And all of
11 them are going to be maneuvering around. The
12 issue is where does Massachusetts fit in that
13 larger environment.

14 Because essentially in many cases,
15 increased financial inflow into one region
16 comes at the expense of financial outflow from
17 other regions. And in fact, as I followed the
18 debates here in Massachusetts, that recapture
19 of the 30 percent of revenues that are
20 Massachusetts people going to Foxwoods and
21 Mohegan Sun was a very important part of the
22 equation.

23 So, socioeconomic analyses in the
24 theoretical framework are intended to examine

1 the geographic magnitude of the impact and to
2 estimate both community specific impacts and
3 macro or regional impacts. And that's one of
4 the reasons why we are very interested in doing
5 these employee surveys and patron surveys and
6 license plate surveys so that we can actually
7 figure out what the geographic pieces to the
8 puzzle are.

9 Another issue is how long a time
10 span to assess. Because most of the impact
11 studies that have been done of gambling have
12 really been done after the fact. There's never
13 been a study that got a clean baseline before
14 this one.

15 But there's also the issue of the
16 length of time that it takes for all of the
17 economic and social impacts to roll out.
18 Essentially, that's unknown. Many of the
19 economic impacts are fairly immediate. You
20 know you get construction jobs. A big
21 property, you get people coming in and spending
22 money because it's exciting and you to want to
23 check it out.

24 But other even economic impacts take

1 some years to manifest. And others may even
2 reverse with time. And certainly, we've seen
3 this with Atlantic City where there was lots of
4 money for a lot of years and then boy, hard
5 times it. And Nevada too is not a recession
6 proof economy as many people had assumed it was
7 for so many years.

8 Another issue is that new gambling
9 venues are always added to existing gambling
10 opportunities even if those are illegal
11 opportunities. And there are lag effects of
12 those pre-existing opportunities that can be
13 mistaken for immediate impacts.

14 So, you need to sort of keep your
15 eye on the ball, if you will, for much longer
16 than most of the existing studies have done in
17 order to kind of watch those impacts play out
18 over time.

19 So, it's important to document prior
20 gambling opportunities and effects for several
21 years before the opening of the new venue as
22 well as for several years after.

23 And that is what we intend to do.
24 We intend to look at the impacts going back a

1 number of years. So, all of our secondary
2 indicators, we're looking at how far do we
3 think we actually need to go back. Because
4 most of the team at the kickoff meeting, I
5 think, agreed that we needed to look well
6 before the recession of 2008 to be able to get
7 more of a picture of what's been going on in
8 Massachusetts.

9 Then there are the difficulties of
10 isolating the effects of gambling. And sort of
11 these pre/post designs. So, you look before
12 the introduction and you look after the
13 introduction. That kind of research design
14 ignores the fact that there are really a
15 multitude of different forces at work they can
16 account for social and economic changes.

17 And a much stronger methodology is
18 what's called a matched control comparison
19 where the changes in the community receiving
20 the gambling venue are compared against changes
21 in the economically and socially and
22 demographically similar community that didn't
23 receive new gambling venues.

24 And the theoretical framework

1 proposes that it's important to use both
2 pre/post and control community comparisons.
3 And in fact, a lot of our discussions around
4 the sampling strategy that we've had in the
5 team have been how are we going to be able to
6 construct those control communities, because we
7 don't know what the applicants' communities are
8 going to be. We have some kind of like lose
9 guess.

10 But we need to be able to sort of
11 say, okay, of these 11 or 14 communities
12 depending on what you count in Region C, are we
13 going to look for exact matches? Are we going
14 to try to -- There's a number of discussions
15 that we've had about how we're going to do
16 that. And I think once the research director
17 is on staff and in-house, that we'll want to
18 bring him on board with those particular
19 discussions.

20 So, again there are limitations to
21 cross-sectional designs, these sort of
22 snapshots in year one and snapshot in year six.
23 But most impact studies collect these annual
24 indicators and then try to attribute changes to

1 the introduction of the new gambling activity.

2 But it's an open question because
3 you have correlational data that is things are
4 changing together, but you don't know for a
5 fact that they're linked because you don't have
6 someone saying yes, I experienced a bankruptcy
7 because of my gambling problems. So, we
8 actually are addressing that somewhat in our
9 primary data collection by getting people to
10 give us attributions of that kind. But it is a
11 challenge for doing this kind of study.

12 So, this is a series of slides about
13 impacts are specific. They are specific to
14 different segments of society. And you really
15 have to have large enough samples to be able to
16 look at important subgroups in the population
17 over time.

18 For example, if a five percent of
19 the population that we estimate could be
20 classified as problem gamblers, experiences a
21 100 percent increase in bankruptcy that change
22 is not going to be statistically significant.
23 So, that's the reason why it's very important
24 to have very large samples. And we discussed

1 this at length. But it's also important to
2 oversample subpopulations that are most at
3 risk.

4 And this is another of the issues
5 that we are dealing with in our sampling
6 strategy discussions is looking at ways to
7 essentially stratify our sample so that we are
8 oversampling geographic areas in the state
9 where we think there might be more problem
10 gamblers based on demographic and social and
11 economic indicators.

12 CHAIRMAN CROSBY: The study that
13 Marlene has just done should be helpful on that
14 score.

15 DR. VOLBERG: We can talk about the.
16 Yes, the prevalence straight that was
17 identified in this study was I think affected
18 significantly by the methodology that was used.
19 So, we're working with Marlene and Phil on sort
20 of redoing the analysis a little bit, but I
21 don't think we're going to be able to account
22 for the impact of using an online sample is
23 huge.

24 So, some of impacts are quite

1 specific to the type of gambling that's being
2 introduced. Because different types of
3 gambling are associated with different rates of
4 problem gambling. Lotteries, if you look at
5 problem gambling rates amongst past year
6 lottery players, they pretty much look the same
7 as the rest of the population because so much
8 of the population plays the lottery.

9 When you start looking at problem
10 gambling rates among Internet gamblers, the
11 prevalence rates are extremely high. That's
12 because most people who gamble on the Internet
13 are simply adding that form of gambling to a
14 much larger suite of gambling activities that
15 they do. And there's different economic
16 spinoffs associated with different types of
17 gambling.

18 Rob talked a good bit about the
19 importance of where new gambling venues are
20 located in terms of the impact on new versus
21 cannibalized job creation and revenues. But
22 also the impact on problem gambling rates in
23 the local population.

24 So, Rob is from Alberta. And he was

1 coming from a place where in Alberta there is
2 actually 29 casinos in a much larger area, but
3 much more sparsely populated than
4 Massachusetts. But this is something that
5 we've seen elsewhere. And the take away
6 message is really that it's important to
7 qualify the results as being specific to the
8 type of gambling that you're.

9 I'm just going to go very quickly
10 through these that the impacts are somewhat
11 specific to the jurisdiction. Alberta has 29
12 casinos. We're going to have three plus a slot
13 parlor. So, you need to qualify your results
14 as being specific to that jurisdiction.

15 Then also specific to the time
16 period studied. There's another study that Rob
17 and I completed last year that shows that in
18 the wake of a major introduction, you get quite
19 a steep increase in the rate of problem
20 gambling for about 10 years. And then it kind
21 of starts to diminish even if you add new forms
22 of gambling. So, we know that there are some
23 different things that are going on in
24 populations that need to be attended to.

1 This is my last slide. That in
2 terms of the theoretical framework, the results
3 need to speak to both changes from baseline and
4 changes relative to what the current situation
5 would be without gambling. And that's another
6 reason why it's very important to have not just
7 a pre-/post design, but also a case-control
8 design as well. So, that's what we are
9 currently looking at.

10 Then I have this other section of
11 the presentation, which is essentially I think
12 it was in the RFR that we were asked to
13 identify potential challenges and then propose
14 our solutions to them. So, these were some of
15 the ideas that we had.

16 This is probably the most important
17 because even though we have a big team with 14
18 people on it at the moment, this is not a study
19 that we're going to be able to do by ourselves.
20 We are going to need to establish good
21 collaborative working relationships with a lot
22 of different people around the Commonwealth.
23 And in fact, I've done more travel in
24 Massachusetts in the last two months than I

1 think I had done in the last five years.
2 Driving around to various meetings and just
3 trying to get acquainted with people who are
4 hopefully going to be interested in
5 collaborating with us.

6 We definitely need the cooperation
7 of the venue operators. That's going to be
8 critical for a great deal of the work that
9 we're going to be doing on their properties.
10 And we also are going to rely on them and on
11 the Commission, I believe, to get a wide range
12 of data about their operations, so that we
13 actually can tease out the economic impacts of
14 these venues.

15 We're going to need the cooperation
16 of everybody who's involved in problem gambling
17 treatment or prevention because that's going to
18 be critical for our ability to be able to
19 identify the numbers of people who are seeking
20 help, where they're coming from, how much that
21 treatment is costing.

22 And I would say actually the
23 treatment piece is I've been thinking that we
24 need to establish good relations with not just

1 the Department of Public Health or the Bureau
2 of Substance Abuse Services, but we actually
3 need to sort of thing more broadly about where
4 in the health system do we think problem
5 gamblers might turn up. And how can we get
6 people to effectively screen for a gambling
7 problem.

8 Whether they're coming into the
9 prison system or they're coming to their GP or
10 they're looking for some help with depression
11 medications. We know the most public gamblers
12 do not turn up for treatment for a gambling
13 problem. They turn up for a whole bunch of
14 other things.

15 And we need to think very
16 systematically about how we're going to kind of
17 capture information and feed it back into the
18 health system so that people can be effectively
19 helped.

20 And then finally, we're going to
21 need help from problem gamblers themselves
22 because that's going to be absolutely critical
23 to our ability to be able to say what's
24 happening here in Massachusetts, how does it

1 sort of array against what's known in terms of
2 best practices for the treatment of problem
3 gambling. And how can we then align what's
4 happening in Massachusetts with what we know
5 works best from an international perspective?

6 CHAIRMAN CROSBY: Rachel, on that
7 first point, you sent us I think some very
8 helpful comments on what needs to be in the
9 regs., right, which you have. That'll be in
10 the next phase of regs., right?

11 MS. BLUE: That's right.

12 CHAIRMAN CROSBY: We'll be doing
13 another set of regs. So, that's very helpful
14 that when we get to that drafting, we want to
15 make sure that you guys take a look at that.

16 DR. VOLBERG: Absolutely. And our
17 team was really excited to be able to send that
18 document to the Commission.

19 CHAIRMAN CROSBY: Great. It's
20 really helpful.

21 DR. VOLBERG: In fact, I think
22 Commissioner Zuniga said that we had until
23 tomorrow to get some additional language to
24 you.

1 COMMISSIONER ZUNIGA: Actually a lot
2 more.

3 DR. VOLBERG: Oh, a lot --

4 COMMISSIONER ZUNIGA: What the
5 Chairman is referring to is there's a third
6 phase, Phase 2B or Phase 3, more relative to
7 operations that we are already thinking about.

8 DR. VOLBERG: Okay.

9 COMMISSIONER ZUNIGA: Where a lot of
10 what you've provided -- the comments that you
11 provided may really reside. They're already
12 very helpful, but there's a lot that pertains
13 to the next phase.

14 DR. VOLBERG: Okay. That's good to
15 know because we sort of produced that document,
16 I won't say in a tearing hurry but we did it
17 very quickly. And there were a number of
18 comments that Natasha would like to add, Lori
19 Salhaney also had some comments that she would
20 like to add as well.

21 CHAIRMAN CROSBY: There's time to do
22 that.

23 DR. VOLBERG: There's time to do
24 that. That's good.

1 CHAIRMAN CROSBY: We were
2 particularly concerned about making sure that
3 -- I know the bidders have read -- the
4 applicants have read the law. So, they know
5 what's in there. But we really wanted to raise
6 their attention to it so this was not a
7 surprise to them when they find out the kind of
8 information we're looking for. The details of
9 that we've got time to flesh out.

10 DR. VOLBERG: And I think it can be
11 done. I think that the way things are rolling
12 out here in Massachusetts is pretty unique, but
13 everybody seems to be interested in being
14 cooperative and collaborative. And I think
15 that's a good place to start from.

16 CHAIRMAN CROSBY: Great.

17 DR. VOLBERG: So, I had to scratch
18 out these dates based on your earlier meeting.
19 But you can see every single one of them has a
20 question mark next to it.

21 The gambling venues opening at
22 different times really is -- I know it's a
23 challenge for you, it's really a challenge for
24 us too, because of the design that we had

1 proposed in terms of these targeted population
2 surveys. Where really we want to drill down
3 right down to the host community and adjacent
4 community level to be able to look at these
5 impacts.

6 So, we're going to this big baseline
7 survey. And we know we're going to do a big
8 follow-up replication survey once everybody has
9 been up and running for a couple of years. But
10 the challenge here is that the staggered
11 openings could result in sort of a two- to
12 three-year rollout period. And the problem
13 that creates is it's going to be necessary to
14 conduct the post evaluation after all four
15 venues have opened, and have been opened for at
16 least a year, because problem gambling screens
17 are typically 12-month screens. So, we have to
18 wait a year to actually do our survey.

19 The challenge creates -- There's the
20 methodological issue of when are we going to do
21 our follow-up survey. But then there's also
22 the challenge of trying to figure out how we're
23 going to tease out -- because we know problem
24 gambling rates increase and then decrease.

1 So, some of these communities will
2 have sort of one year of operation under their
3 belts. Another community might have three
4 years of operation under their belts. So,
5 we're going to have to be thinking very
6 strategically as we go forward, not
7 immediately, but we are aware that this is
8 going to be an issue and a challenge. So,
9 we're starting to think about how we're going
10 to kind of construct those subsequent surveys
11 so that we can actually really pin down those
12 impacts with some certitude.

13 I think this is the one where I've
14 never seen Rob Williams stopped in his tracks
15 quite so suddenly. It was a wonder to behold.
16 The issue is that because most of the social
17 and economic impact studies of gambling that
18 have been done are fairly limited in terms of
19 timeframe, many of the impacts or the full
20 impacts are typically not captured by the end
21 of the study.

22 Many of the impacts, the economic
23 impacts are fairly immediate. You're going to
24 get jobs. You're going to get revenues.

1 You're going to get tourism. And those are
2 pretty quick.

3 But for example, it often takes
4 years for competing industries to fail. So,
5 what's the impact going to be on the lottery?
6 What's the impact going to be on racing?
7 What's the impact going to be on bingo and
8 charitable activities?

9 Or for increased utilization of
10 public services and roads and sewers to result
11 in repairs. So, some of these economic impacts
12 may also reverse themselves in a resilient
13 economy as industries reposition.

14 So, there's sort of the question of
15 when you're going to stop was perhaps answered
16 by Steve when he said that it was clear or that
17 the Commission intended this study to continue
18 beyond the original six years that we had
19 proposed. And that to sort of facilitate this
20 ability to watch the impacts roll out over
21 time. I believe the phrase he used, Steve, was
22 in perpetuity.

23 CHAIRMAN CROSBY: Yes. That's what
24 the Legislature said. It's not me talking.

1 That's what the Legislature calls for and
2 provides the funding. They can always change
3 it, which could happen. But the whole idea is
4 to have something that tracks this as long as
5 we have the industry.

6 DR. VOLBERG: And I'll tell you,
7 it's like -- When I was here at the end of
8 March and I talked a little bit at the
9 beginning after Commissioner McHugh asked me to
10 speak a little bit more personally about my
11 excitement about being here, that truly is what
12 I think is a vision that I've had for many,
13 many years of how do you set up a monitoring
14 system that is going to monitor the industry
15 and make sure that the benefits are maximized
16 and the impacts, the negative impacts are
17 minimized. And the only way you can really do
18 that is to have empirical evidence that you
19 watch change over time. And then try your
20 tweaks and see what happens.

21 CHAIRMAN CROSBY: Right.
22 Absolutely.

23 DR. VOLBERG: So, yes.

24 CHAIRMAN CROSBY: Researcher's

1 nirvana.

2 DR. VOLBERG: Yes, absolutely. And
3 I have to say it's a real privilege. I'm
4 deeply honored that I'm able to be here.

5 I think I'm getting close to the end
6 here. Some of the key data may be unavailable
7 in 2018. Certain data takes longer to collect
8 and report, particularly suicide data and crime
9 data. So, we had originally proposed a subset
10 of activities that would address the crime
11 issue. There were actually contractual reasons
12 why that turned out to be not the best
13 solution. So, we do want to kind of rethink
14 that piece.

15 What we're thinking of at this point
16 is that it's going to be very important for us
17 to figure out a way to work with the relevant
18 law enforcement and criminal justice agencies
19 to be able to get the information that we would
20 like to get on crime impacts in the communities
21 and then regionally and then statewide.

22 But I think that's a conversation --
23 The data are being collected as we speak. So,
24 I think it's a conversation that can wait until

1 we are actually in the field on the survey.

2 This is another big issue is the
3 limited control comparisons. Because with the
4 exception of New Hampshire and Vermont, all of
5 the other northeastern states already have
6 casinos or slot parlors. And actually New
7 Hampshire is considering casinos.

8 We're also concerned because really
9 Vermont and New Hampshire have much smaller and
10 more rural economies. So, with the exception
11 of maybe Western Mass., it's going to be hard
12 to find a comparator for Boston, for example.
13 I think I'll leave that one.

14 So, we're trying to figure that one
15 out, the limited control comparisons. We can
16 look in other jurisdictions. We can look at
17 other US states or we can look even
18 internationally. But we have to make sure that
19 we have got a good way to make the case of why
20 we're looking at those communities. So, that's
21 the work that we're doing there.

22 The judgment of the overall impacts
23 may be somewhat subjective. I think actually
24 that's a good thing. I don't think that -- As

1 a researcher, I can interpret the data and I
2 can tell you what I think. But at the end of
3 the day, I think it's up to people to make
4 their own judgments. And different people are
5 going to make different judgments. Different
6 people are going to think that the economic
7 benefits are really important and okay, so you
8 have some social impacts that are negative.

9 Other people are going to be for
10 whatever reason, for personal reasons or moral
11 reasons, ethical reasons are going to be
12 focused on the subjective, the social impacts,
13 the negative social impacts. And they're going
14 to say all of that money, it's still not worth
15 it.

16 From my perspective, the important
17 thing is to put out in information in a number
18 of ways so that people can access it and people
19 can make those judgments themselves. So, we're
20 not just going to have a massive report that we
21 dump on your desk and say okay, here it is and
22 off we go.

23 We actually plan to develop a whole
24 communication strategy around how are we going

1 to speak to selectmen. How are we going to
2 speak to concerned citizens, fact sheets and
3 various things like that. So, we do want the
4 information to get out there. We're not just
5 going to put this in academic publications.

6 CHAIRMAN CROSBY: And we're going to
7 try to create data sets that other researchers
8 could access too, right, over the same period
9 of time.

10 DR. VOLBERG: Absolutely. Yes.
11 That's actually a part of the tasks that I
12 didn't talk about. But yes, we plan to make
13 the results and the data from this study as
14 widely available as we can. I guess that's my
15 presentation.

16 CHAIRMAN CROSBY: Great.

17 COMMISSIONER CAMERON: Thank you.

18 COMMISSIONER MCHUGH: Thank you.

19 CHAIRMAN CROSBY: Any other
20 thoughts, questions?

21 COMMISSIONER MCHUGH: Yes. I had a
22 question about your version of cost-benefit
23 analysis in a number of cases. I understand
24 the point that increase in suicides and some

1 things ought to be reported as such, percentage
2 increases.

3 But I'm concerned that there are a
4 lot of social trends today to which no cost is
5 associated -- with which no cost is associated
6 with the consequence that public policy is
7 skewed in a way that's unhelpful.

8 I think about two examples that
9 immediately come to mind. And that is our
10 method for addressing gun control and our
11 method for addressing incarceration rates. We
12 tend in the latter case to look at the cost of
13 housing somebody in a jail or prison. And we
14 tend to take a look at the costs of building
15 and the costs of staffing the prisons that we
16 fill.

17 But we totally overlook the economic
18 consequences of taking somebody out of the
19 stream of commerce for a particular period of
20 time and the ripple economic effects that has,
21 which really conceals a great deal of the true
22 costs of an incarceration policy.

23 The similar thing is true of gun
24 control. And I say this without taking one

1 side or the other. But it just seems to me to
2 have the debate, you need to have an estimate
3 of what the true costs. And in terms of the
4 way we approach gun control, we overlook the
5 economic cost of the deaths. We overlook the
6 cost of fortifying America to defend against
7 the random consequences of firearms
8 proliferation. We overlook the public health
9 costs that are socialized across our healthcare
10 system. All of those are quantifiable albeit
11 with some assumptions.

12 It's been done in other industries.
13 The seatbelt assessment was based on assigning
14 an economic value to death and injury and then
15 measuring it against the cost of putting
16 seatbelts in cars.

17 So, while I understand the need and
18 desirability of reporting an increased suicide
19 rate as an increased suicide rate, I wonder why
20 it can't have both an economic cost and a
21 social cost measured by its very existence?
22 And why in many of these categories we can't do
23 this thoughtful, thorough assessment that
24 you're planning and with some assumptions make

1 economic assessments of the costs of it.

2 Otherwise, it seems to me that all
3 of these things stay as an externality that
4 really isn't addressed in the policymaking with
5 a sharper bite I guess as it could be if some
6 economic value were assigned to it.

7 DR. VOLBERG: I guess I would
8 respond by saying that we absolutely do intend
9 to assign monetary value to everything that we
10 can reasonably do that with. So, if we have to
11 make assumptions we will certainly spell those
12 out.

13 But the theoretical framework that
14 we proposed for this study tries to take
15 account of the fact that in many of the cost-
16 benefit analyses in that traditional approach,
17 what happens is if it can't be counted then it
18 isn't counted.

19 CHAIRMAN CROSBY: Which is Jim's
20 point.

21 DR. VOLBERG: So, that's why at the
22 very least we want to sort of move these issues
23 into some kind of a balance sheet. It's
24 dangerous to turn -- It's tempting to turn

1 everything into a number, but sometimes it's
2 more important to just at least put it on the
3 table and say okay, how are we going to think
4 about this. And we certainly have the
5 economists on board to help us evaluate this.

6 COMMISSIONER MCHUGH: I hear you.
7 And I guess the only -- It's a question of
8 emphasis. And I guess the only thing in direct
9 response to what you're saying is I hope we
10 don't find too quickly that things can't be
11 counted and therefore we have to treat them
12 simply as they are.

13 I've said, I think we underestimate
14 often the costs in dollars as well as social
15 impact of things in ways that skews the public
16 debate. And I think this is a really important
17 -- I think it's really important here not to do
18 that as it is in other areas. But we have a
19 chance because you're here and we're getting in
20 on the ground floor to really take a hard look
21 at things that would inform social policy.

22 DR. VOLBERG: I guess I would say
23 that I'm not an economist. So, I kind of wish
24 I had Dan here at the table. But we fully

1 intend -- Half of our team are economists. So,
2 we definitely plan to have those discussions
3 and figure out everything that can be
4 quantified will be quantified to the extent
5 that we can make our assumptions very clear to
6 everyone what we assumed as we were making
7 those numbers.

8 CHAIRMAN CROSBY: This is a really
9 interesting conversation. But this is
10 something that we will be participating in.
11 We'll be hearing this. And we'll be able to
12 talk about it and track it and probe ourselves
13 on the points you're making.

14 COMMISSIONER ZUNIGA: I was going to
15 draw the distinction between doing one study in
16 perpetuity versus my nuanced read of that
17 notion in the legislation is that there's an
18 annual research agenda that will be funded and
19 that has funding. And we can do and we can
20 modify and Commissions after us can modify with
21 the advice of the Gaming Policy Advisory
22 Committee.

23 So, the ongoing process is
24 important, but that doesn't mean that there's

1 just this one study. There will be a number of
2 additional variables that will have to be
3 studied, restudied or modified, etc.

4 DR. VOLBERG: Yes. That's a very
5 important point is that this is just the
6 beginning of a process rather than just a
7 single point in time.

8 COMMISSIONER ZUNIGA: -- than just
9 the one thing we're measuring always.

10 CHAIRMAN CROSBY: Anybody else,
11 anything else? Thank you.

12 COMMISSIONER MCHUGH: No. Thank you
13 very much.

14 COMMISSIONER ZUNIGA: Thank you.

15 CHAIRMAN CROSBY: Great stuff.
16 Appreciate you coming in.

17 DR. VOLBERG: Should I hang around
18 for the rest of the meeting or maybe not.

19 CHAIRMAN CROSBY: You won't hurt our
20 feelings if you leave.

21 DR. VOLBERG: I'll drive back to
22 Western Mass.

23 CHAIRMAN CROSBY: Okay, Catherine
24 and General Counsel.

1 MS. REILLY: Should we do the
2 Springfield issue before we start to get into
3 the regs.?

4 CHAIRMAN CROSBY: Yes. This came in
5 this morning. I haven't read the full --

6 COMMISSIONER MCHUGH: I haven't seen
7 it. What is it?

8 CHAIRMAN CROSBY: It's basically the
9 letter from Springfield with the notice that
10 they propose. I think we're supposed to
11 approve the question, right, which is why I
12 guess it's here. This is the summary that
13 they're going to distribute and the referendum
14 question that they will issue.

15 MR. ZIEMBA: Before the Commission
16 is just the notice regarding the election
17 before suitability.

18 CHAIRMAN CROSBY: Right. Do we have
19 to approve it? We've said if they do such and
20 such then they can do it, right?

21 MR. ZIEMBA: So, our regulation
22 requires prior approval of the Commission of
23 the notice that gets sent out to voters. And
24 at the meeting where we discussed this, I think

1 what the Commission recommended was that staff
2 would have interactions with the communities.
3 And then we would present the recommendation to
4 the Commission.

5 Catherine, Todd and I have worked
6 with both the applicant and the community on
7 the language of this. And it's consistent with
8 our regulation. And we believe it accomplishes
9 the missions of the Commission.

10 COMMISSIONER MCHUGH: Is there a
11 need to do this today?

12 MR. ZIEMBA: The applicant and the
13 community want to get out some of these
14 notifications very quickly. And there's an
15 upcoming meeting of the City Council on Monday
16 to look over these documents including the
17 notice.

18 COMMISSIONER CAMERON: It's a long
19 way to say yes.

20 COMMISSIONER MCHUGH: A polite way
21 to say yes.

22 COMMISSIONER CAMERON: Very polite.

23 COMMISSIONER MCHUGH: Thoughtful way
24 to say yes.

1 CHAIRMAN CROSBY: So, the letter
2 will be sent to all voters, all registered
3 voters. And the notice gets posted? What does
4 the notice do?

5 MR. ZIEMBA: The notice will
6 accompany the letter.

7 CHAIRMAN CROSBY: It will, okay.

8 MR. ZIEMBA: Yes. Basically, the
9 letter reiterates what's included in the
10 notice. And the notice includes the specific
11 statute regarding our background
12 investigations.

13 COMMISSIONER STEBBINS: Then the
14 last item is how it will actually appear on the
15 ballot?

16 MR. ZIEMBA: That's not actually --
17 That's more informational. That is not before
18 the Commission.

19 CHAIRMAN CROSBY: Just to be clear
20 about this, the letter said, I'm just scanning
21 it, but I think the letter says with this
22 letter we are providing the ballot question,
23 which is the last page. I don't think it says
24 it's including the notice, does it?

1 MR. ZIEMBA: Yes. It's part of the
2 packet. Marty, feel free to help me out if you
3 want. The notice says please carefully read
4 the enclosed material. And all of the material
5 including the notice is included within the
6 cover letter.

7 CHAIRMAN CROSBY: Okay, fine.

8 COMMISSIONER ZUNIGA: The question
9 we don't get to approve. The question is a
10 summary of the City Solicitor.

11 MR. ZIEMBA: Yes.

12 CHAIRMAN CROSBY: All we have to
13 approve is the letter and the notice.

14 MR. ZIEMBA: If you'd like, I can
15 read from either the section of our regulations
16 that governs this.

17 CHAIRMAN CROSBY: Yes, why don't you
18 just do that.

19 MR. ZIEMBA: A host community may
20 not hold an election in accordance with MGL
21 Chapter 23, section 15.13 until the Commission
22 has issued a positive determination of
23 suitability to the applicant in accordance with
24 205 CMR 115.053 unless the following conditions

1 are satisfied prior to the request by the
2 applicant for an election in accordance with
3 205 CMR 124.02.01, the governing body of the
4 community formally approves the holding of an
5 election prior to a positive determination of
6 suitability having been issued to the applicant
7 by the Commission.

8 That has occurred in this case. And
9 then at the expense of the applicant prior to
10 the election, the community has conducted a
11 process for informing the community about the
12 Commission's determination of suitability
13 standards and procedures, which shall include
14 but not be limited to the provision of a notice
15 designed to be received by voting households
16 within the community, informing such households
17 that an election is to be held for which the
18 applicant has yet to be issued a positive
19 determination of suitability.

20 That the Commission will make its
21 determination of suitability after completing a
22 thorough background investigation of the
23 applicant, its principal operating officers and
24 investors. And that the Commission will not

1 permit the applicant or its principal operating
2 officers or investors to proceed with the
3 application unless it determines that they are
4 suitable to operate gaming facility in
5 Massachusetts. The content of the notice shall
6 be forwarded to the Commission for approval
7 prior to dissemination.

8 And I'll dispense with the rest of
9 the section. And all of the standards in the
10 language that I just referenced are included in
11 that notice.

12 CHAIRMAN CROSBY: Comments, thoughts
13 anybody?

14 COMMISSIONER MCHUGH: I think it
15 conforms to - The staff has recommended we
16 approve it. I think it conforms to the
17 requirements. It's a little legalese, but
18 unless we dictate the language, we're going to
19 get a variance of that from everybody.
20 Everybody is going to do it in slightly
21 different ways.

22 CHAIRMAN CROSBY: The notice is
23 obviously particularly legalese, but I thought
24 the letter was pretty well written, actually.

1 It comes across pretty well. So, I'd be
2 inclined to approve it. Anybody any thoughts?

3 COMMISSIONER ZUNIGA: Yes, I'm
4 inclined to. I think it conforms to the
5 standards. I read it along with the regs. And
6 I think it's in compliance with what the
7 intention was.

8 CHAIRMAN CROSBY: Can we have a
9 motion?

10 COMMISSIONER MCHUGH: I move to
11 approve the notice of compliance -- I mean the
12 City of Springfield's notice of a host
13 community election in advance of the
14 determination of suitability in the form
15 submitted to us today.

16 CHAIRMAN CROSBY: Second?

17 COMMISSIONER CAMERON: Second.

18 CHAIRMAN CROSBY: Any further
19 discussion? All in favor, aye.

20 COMMISSIONER STEBBINS: Aye.

21 COMMISSIONER ZUNIGA: Aye.

22 COMMISSIONER CAMERON: Aye.

23 COMMISSIONER MCHUGH: Aye.

24 CHAIRMAN CROSBY: Opposed? The ayes

1 have it unanimously.

2 MR. ZIEMBA: Thank you.

3 CHAIRMAN CROSBY: Thank you.

4 COMMISSIONER CAMERON: Saved the
5 best for last.

6 CHAIRMAN CROSBY: Before you start,
7 I think the audience should know that every
8 single comment that you all out there submitted
9 to us on the regs. has been put into a matrix
10 in its totality, matched up against the actual
11 -- the reg. which was being commented on.

12 And then we have a series of places
13 where Counsel of various types have made
14 recommendations.

15 So, anybody who's submitted
16 thoughts, questions, every single one of them
17 has been looked at. And you guys did a
18 phenomenal job. This is an incredible massive
19 task. And you folks and Anderson and Krieger
20 did a great job. So, take it over.

21 MS. BLUE: We have before you today
22 the final version, we hope, of the Phase-2
23 regs. I want to say the Commission before we
24 start that this charge has largely been led by

1 Mr. Grossman. He has done a masterful job in
2 putting these regs. together. So, I just want
3 to let you know he's worked very hard. And I
4 think they've turned out very, very well.

5 So, we are open to approaching this
6 discussion however you like. We can go through
7 the changes. Todd has suggested we go through
8 some of the very recent changes we made in the
9 last day or so.

10 Or we can walk through all of them,
11 whichever is your preference. I know Mr.
12 Grossman has a couple of areas he probably
13 wants to bring to your attention. We can
14 handle it whichever way is most comfortable for
15 you.

16 COMMISSIONER ZUNIGA: I was hoping
17 and making the suggestion that we perhaps take
18 broad themes one at a time, surrounding
19 community for example. And you can either give
20 a brief overview of the most recent changes or
21 rather a general overview of the approach,
22 brief discussion on recent changes, etc. and
23 have opportunity for questions rather than
24 trying to go one at a time. For one I had an

1 opportunity to do some of that already, quite a
2 bit of that already with Mr. Grossman. So, I
3 just wanted to put that suggestion out there.

4 CHAIRMAN CROSBY: That would put us
5 random back and forth.

6 COMMISSIONER ZUNIGA: Not if we did
7 a major topic, let's say, by virtue of the
8 major sections of the regulations.

9 CHAIRMAN CROSBY: I'm not quite sure
10 how we do that but I'm okay with it. I'm not
11 quite sure how you would do that.

12 COMMISSIONER STEBBINS: Would it
13 help to start with the two new pieces that you
14 gave us today?

15 MR. GROSSMAN: I think that might be
16 a -- then we can easily break it down by kind
17 of subject matter that way, which would include
18 surrounding communities, application process,
19 evaluation, things along those lines.

20 So, why don't we start with just a
21 brief bit of background to what you have before
22 you. You will see a document that is
23 multicolored, as most of our works are. And in
24 this case, aside from black there are three

1 colors.

2 The first language is in red, which
3 indicates that it's new language from that
4 which presently exists. Then you have green
5 language, which are amendments to the draft
6 based upon the written comments that we've
7 received and other review that we have
8 conducted.

9 Finally, what you have before you
10 just today are changes in blue. And they're
11 fairly minimal and I didn't copy the whole
12 packet for you, just the pages that had changes
13 that you may not have yet seen, which are
14 largely based on discussions I had and we had
15 with staff and the Commissioners themselves.

16 We are happy to walk you through
17 those changes and some of the bigger subject
18 areas so everyone has a good understanding as
19 to what the regulations say and what we they
20 think they say anyway. And certainly, as we go
21 through, if there are any comments that were
22 made that you'd like to address, we could do
23 that as well.

24 Certainly though, as the Chair

1 pointed out, all of the comments were carefully
2 reviewed and considered. They were very
3 thoughtfully done and tremendously helpful to
4 us in preparing these regulations that I think
5 cover everything we need them to cover. And
6 the comments helped us improve the readability
7 and the understandability of our language.

8 But certainly, not every comment was
9 incorporated in here. So, as we go through, if
10 there are any comments that you recall seeing
11 that aren't reflected in the draft, we're happy
12 to discuss that and why we elected not to
13 incorporate it.

14 So with that, perhaps we can start
15 with the updates to the existing regs. So,
16 that's sections 102 thru 117.

17 The first thing I would just note,
18 on page two someone had suggested perhaps that
19 we define what vulnerable populations means for
20 purposes of compulsive gambling. And I did
21 have a brief interaction or exchange with
22 Marlene from the Mass. Compulsive Gambling
23 Council.

24 And we didn't have a lot of time to

1 discuss this. So, at this point based upon her
2 comment and my recommendation would just be to
3 remove this definition. That we can certainly
4 make efforts after further communications with
5 those folks to describe perhaps via policy or
6 something what we mean by vulnerable
7 populations.

8 But it was too difficult to try to
9 craft a definition of that term on-the-fly
10 without putting some serious thought into it.
11 So, I certainly wouldn't recommend that we
12 define the term right now.

13 COMMISSIONER MCHUGH: But we have a
14 regulation that uses that term.

15 MR. GROSSMAN: That is in the
16 statute. And it basically --

17 COMMISSIONER MCHUGH: Also in the
18 reg.

19 MR. GROSSMAN: Yes. We mirrored the
20 statute in our reg. So, certainly I think we
21 will have to provide some guidance as to what
22 that means. But I don't think we're prepared
23 to do it right now.

24 I would just add to that by saying

1 the reason why we're not prepared is that there
2 is no, to my understanding, industry-standard
3 as to what a vulnerable population is. If you
4 do some research on it, you will see that there
5 are groups that have historically been
6 identified as perhaps fitting into that
7 category. But it seems to me that we might be
8 trailblazers in that area if we were to sit and
9 define what that term means here.

10 COMMISSIONER MCHUGH: I just have a
11 concern about putting a regulation in that uses
12 a term that we can't define, whether we are
13 taking the term out of the statute or inventing
14 it anew.

15 And I think we either take it out
16 both places and let the statutory term stand on
17 its own or we wrestle with the definition.
18 We've got a few more days to wrestle with the
19 definition. You could be authorized by the
20 Commission to work further on it, perhaps
21 circulate it. And if somebody seriously
22 objected that person could call a meeting
23 between now and next Thursday before we have to
24 publish these.

1 I just don't think it's a good idea
2 to publish a regulation containing a term we
3 can't define that has some consequences. So, I
4 would recommend -- I understand the difficulty
5 of it. But I'd recommend that we empower you
6 to work on a definition, even if we may have to
7 revise it at some point. Circulate it, and if
8 there's no objection we publish that as the
9 existing reg. and deal with any amendments
10 later on.

11 MR. GROSSMAN: We can certainly do
12 that.

13 COMMISSIONER CAMERON: Did Ms.
14 Warner find the term objectionable?

15 MR. GROSSMAN: I don't want to speak
16 for her. We only emailed each other really
17 briefly. But I think she just wasn't prepared
18 to kind of sign off on the language that we
19 had. Perhaps with a few more days we might be
20 able to do that.

21 COMMISSIONER MCHUGH: It's
22 ultimately up to us. We take advice and
23 guidance from the outside, but it's up to us to
24 come up with the definition. It seems to me

1 that that's what we ought to do.

2 CHAIRMAN CROSBY: Fine by me. Does
3 anybody object?

4 COMMISSIONER ZUNIGA: No, that's
5 fine.

6 CHAIRMAN CROSBY: All right. Do you
7 want to go ahead with the others?

8 MR. GROSSMAN: You'll see on page
9 four, now I am in the new packet. This is
10 section 102.06.

11 CHAIRMAN CROSBY: The packet you
12 passed out this morning?

13 MR. GROSSMAN: The small one, yes,
14 in the blue. In the matters not provided for,
15 we just clarified who would be able to utilize
16 this provision.

17 CHAIRMAN CROSBY: Right. And you
18 fixed the disbursement language in the new
19 proposal.

20 MR. GROSSMAN: So, the disbursement
21 language is section 114.03, page 24. That
22 includes the 90-day and 60-day period that
23 you'd have before the RFA-2 submission deadline
24 to apply for the involuntary disbursement of

1 funds. And this works into the whole
2 surrounding community discussion. This is a
3 critical component that we received a lot of
4 comments on this type of language.

5 So, just to clarify how this fits
6 into the process, what we have said -- As you
7 recall, of course, there are three ways in
8 which you can be designated as surrounding
9 community. You can do it by entering -- If
10 you're a community, by entering into a
11 surrounding community agreement with the
12 applicant that gets filed with the application.

13 You can get designated as a
14 surrounding community in the application by the
15 applicant. That would be for a situation in
16 which perhaps the applicant acknowledges that a
17 particular community is a surrounding
18 community. They've been working with them,
19 negotiating with them, But for whatever reason
20 couldn't execute an agreement prior to the
21 submission of the RFA-2 application.

22 So, in the event they have
23 acknowledged in the application itself that
24 this is in fact a surrounding community.

1 Assuming that that community assents to that
2 designation, then they would be a surrounding
3 community.

4 The third scenario is one in which
5 the applicant does not agree that a particular
6 community is a surrounding community. So, that
7 community petitions the Commission within 10
8 days from the filing of the application, the
9 RFA-2 application to be designated as a
10 surrounding community.

11 The applicant then has 10 days to
12 either assent or oppose to that petition. And
13 at that point, the Commission will make a
14 determination as to whether that particular
15 community is a surrounding community using all
16 of the criteria that we laid out in the
17 regulations. And we'll get to that in a moment
18 because we did make some adjustments to that as
19 well based upon comments.

20 The reason I bring that up now is
21 the community disbursement part is a critical
22 piece of all of the surrounding community
23 determinations. And there are two ways that a
24 community can obtain community disbursements.

1 The first way is by essentially the
2 assent of the applicant. The applicant can
3 certainly agree that a particular community
4 should be provided with certain funds. They
5 sign what we refer to as a letter of
6 authorization with the community for the
7 provision of certain funds for a specific
8 purpose. So, that can go on now. It is in
9 fact going on now. And in fact we have granted
10 funds for those purposes to a number of
11 communities.

12 The second way that a community can
13 obtain -- Let me just back up for a step. One
14 of the changes that we've made to the voluntary
15 community disbursement section, if you will, is
16 that we have allowed for disbursement of funds
17 to regional planning agencies. And that would
18 be only in the voluntary portion of the
19 community disbursement section.

20 That is only if the applicant agrees
21 to it. So, if the applicant agrees to provide
22 funds to the regional planning agency for
23 purposes of evaluating impacts for a particular
24 region, then they may enter into, or sign a

1 letter of authorization.

2 That does not apply to the
3 involuntary process, meaning that the regional
4 planning agency cannot petition against the
5 will of the applicant for funds.

6 So, then we get to the so-called
7 involuntary process. That language of course
8 doesn't appear in here, but it's just sort of
9 the moniker we've assigned to it. And in that
10 scenario, we say that 21 days after the
11 Commission has posted the host community
12 agreement on its website, meaning 21 days
13 essentially after the execution of a host
14 community agreement, a community can petition
15 for the disbursement of funds to study the
16 impacts and to execute an agreement.

17 And the importance of that period of
18 time, and there's no magic to that 30-day date
19 or the 21-day period, but the importance of it
20 was to encourage the parties to get together
21 and try to resolve these issues on their own.
22 And not have a community come directly to the
23 Commission seeking funds without having first
24 asked the applicant for the monies. So, that's

1 why we thought it important to include a buffer
2 period, if you will.

3 And then we included the language
4 which was based upon the public comment that
5 was on our website recently, and we got a
6 number of comments on that would allow for
7 communities to petition whether its 90 days or
8 60 days based upon whether it's a Category 1 or
9 Category 2 in the event that they're running up
10 against the RFA-2 deadline.

11 So, that's the language in blue that
12 you'll see on page 24 to account for that
13 change. Then the community has to make a
14 showing to the Commission that it meets all of
15 the criteria in the balancing test. And it's
16 essentially a two-part test where first it has
17 to demonstrate that there's a reasonable
18 likelihood that the community will be
19 designated a surrounding community. So, not
20 just any community can come in and petition.
21 They'd have to make a showing of likelihood of
22 success, if you will.

23 And then that they will not be able
24 to properly determine the impacts of the

1 proposed gaming establishment without the
2 requested funds. That outweighs the burden of
3 the actual financial costs.

4 There's actually one other element
5 that I left out that I meant to include, which
6 is that the petitioner would also have to
7 demonstrate that the request is reasonable in
8 scope. And that is in response to a number of
9 comments we received as well, which suggested
10 that this process is too open-ended.

11 So, that would give the Commission
12 the flexibility to evaluate the nature of these
13 requests and insure that they're reasonable in
14 light of the purpose of these funds, which is
15 to determine the impact of the proposed gaming
16 establishment and to negotiate community
17 mitigation agreements.

18 So, those are the changes
19 essentially that we made to the community
20 disbursements section since you've seen it
21 last. So, basically this process would start
22 or it could start really now and in any event
23 no later than whether it's either 60 days or 90
24 days prior to the RFA-2 application being

1 submitted or even within 21 days after the host
2 community agreement being executed.

3 So, though communities do only have
4 10 days after the submission of the RFA-2
5 application to submit an actual petition, they
6 have a number of months prior to that time to
7 begin the process.

8 COMMISSIONER MCHUGH: I missed
9 something. Is the part about reasonable in
10 scope in here? Where is that?

11 MR. GROSSMAN: It's not in there. I
12 think we need to add that in. So, that would
13 be on page 25. It would be in little two.

14 COMMISSIONER ZUNIGA: It's a third
15 test, right?

16 MR. GROSSMAN: Yes. It would be a
17 third element. I think it's really part of the
18 second one, but it would just clarify an
19 additional consideration that would be looked
20 at. And of course, we added the emergency
21 regulation that Mr. Ziembra just read onto
22 section 115, which starts on page 28.

23 So, there are certainly other
24 changes that we have recommended in here.

1 Those I think are the highlights.

2 COMMISSIONER MCHUGH: Can we go to
3 page 21 for a second, 108.03(2).

4 MR. GROSSMAN: Yes.

5 COMMISSIONER MCHUGH: And I'd
6 recommend in the second line taking out
7 reasonably in that you're either aware or
8 you're not aware. You're not reasonably aware.
9 And we've covered that with the blue language.

10 And I'm not sure what the green
11 language means. The request shall be
12 reasonably related to the proposed development
13 of the gaming institution establishment in
14 Massachusetts. The idea here was that if
15 somebody called up and asked for a donation to
16 the Little Wanderers Home or something, if it
17 came from a municipal official, then we wanted
18 it to be reported. I thought at least that was
19 our policy discussion and not provide some
20 direct nexus to the gaming establishment, which
21 is often difficult to determine.

22 So, if we had something that said
23 the request show that it was geographically
24 limited, the request shall have been -- I just

1 don't know what that means.

2 MR. GROSSMAN: I think you're right.
3 I think the intent is to limit the request that
4 the Commission would require to ones in
5 Massachusetts. And not that you're interested
6 in any requests these companies have received
7 worldwide.

8 COMMISSIONER MCHUGH: Right.

9 MR. GROSSMAN: I think as we
10 discussed, I think we do need to adjust that to
11 perhaps clarify that point. But that's the
12 intent of that language.

13 COMMISSIONER MCHUGH: Right.

14 MR. GROSSMAN: Not necessarily that
15 it has to be gaming related or something like
16 that.

17 COMMISSIONER MCHUGH: If somebody
18 calls up from Singapore and wants something
19 done in Singapore, we don't need to know that.

20 MR. GROSSMAN: Right.

21 COMMISSIONER MCHUGH: Let's put that
22 on the agenda for just clarifying that language
23 a little bit to make that clearer.

24 CHAIRMAN CROSBY: Are you through

1 running through the ones you were going to run
2 through?

3 MR. GROSSMAN: In this, yes.

4 CHAIRMAN CROSBY: For these little
5 recent submissions. Okay.

6 COMMISSIONER MCHUGH: Just the first
7 of the recent submissions. There's two thin
8 packages.

9 COMMISISONER CAMERON: The thinnest
10 we did, right.

11 CHAIRMAN CROSBY: So, are we looking
12 at the updates now?

13 MR. GROSSMAN: Yes. Why don't we
14 now look at the updates to 118 thru 131.

15 CHAIRMAN CROSBY: I thought we just
16 did that.

17 MR. GROSSMAN: No, that was 102 to
18 117. So, the first one we did here had to do
19 -- And this was again in response to one of the
20 questions we posed on our website and sought
21 public input on page three, 118.01. We say
22 that contemporaneous or prior to submitting the
23 RFA-2 application, the applicant shall forward
24 a copy of the completed studies and reports

1 referenced in the regulations to each of the
2 communities on the list that we've compiled.

3 So, each community will have an
4 opportunity if they haven't already conducted
5 studies to have the studies in order to make
6 their case as to whether they are or are not a
7 surrounding community.

8 CHAIRMAN CROSBY: That's fine.

9 COMMISSIONER CAMERON: Mine I think
10 was stapled incorrectly.

11 COMMISSIONER ZUNIGA: No, it's not
12 every page. It starts from three to six.

13 COMMISSIONER MCHUGH: You have two
14 of the same.

15 COMMISSIONER CAMERON: But this is
16 the thicker one.

17 COMMISSIONER MCHUGH: Go to page
18 three, the bottom of page three that's 102 thru
19 117. That's not the latest one. Look at mine.

20 COMMISSIONER CAMERON: We can share.

21 MR. GROSSMAN: We happen to have a
22 spare.

23 COMMISSIONER CAMERON: Oh, you do?
24 Thank you very much.

1 CHAIRMAN CROSBY: That doesn't seem
2 controversial to me. So, that's fine. Let's
3 go to page six.

4 MR. GROSSMAN: Okay. Page six, this
5 one someone made a comment about the fact that
6 we didn't really specify who from the applicant
7 would be required to be at the statutory public
8 hearing.

9 So, the thought was here that we add
10 language which is akin to, in legal terms, what
11 we call a 30(b)(6) deposition. Where
12 basically, the applicant would be required to
13 have someone there who has knowledge of the
14 application and is prepared to answer
15 questions.

16 Realistically speaking, it's
17 unlikely that they would have people there who
18 didn't know the answers to the questions. But
19 just to clarify that point, we're saying that
20 you have someone there who is prepared to
21 answer the questions. That's basically what
22 this language is here.

23 CHAIRMAN CROSBY: Fine, page 15.

24 MR. GROSSMAN: I think, if we may,

1 Mr. Chair, on page seven there's another
2 important -- This is in the thick packet.
3 We'll just stick with those. Just to make it
4 easy, we'll come back.

5 CHAIRMAN CROSBY: Fifteen and 16 is
6 just trivial stuff.

7 MR. GROSSMAN: Yes. So, those are
8 just clarifying the evaluation process and
9 consistent with the matrix. One of the things
10 we may want to include based on the
11 conversation today is the word overall on page
12 15, 119.03 paragraph two. The sentence right
13 before we get into the list of everything we
14 say in no particular order and without
15 assigning any particular weights, the
16 Commission will evaluate the applicants. And I
17 would suggest we add overall response on how it
18 addresses the following categories. Just to
19 address the discussion you had.

20 COMMISSIONER CAMERON: Would that be
21 a new color?

22 MR. GROSSMAN: That would probably
23 be blue.

24 CHAIRMAN CROSBY: Page 16 is little

1 stuff . Page 30, this is a change in the
2 announcement?

3 MR. GROSSMAN: Yes. This one was
4 brought about by a reread of the statute and
5 concern as to the practical effect of the
6 language we had in there in our regulation.
7 This has to do with the publication of the
8 notice of the host community agreement and the
9 summary. Initially, we read the statute to
10 require the publication of not only the summary
11 of the host community agreement, but the host
12 community agreement itself.

13 And after further thought and after
14 further reading the statute, we sensed that
15 that is not really necessarily -- I don't want
16 to call it illogical but it's not a practical
17 reading of the statute. Now that we're
18 starting to get some of these host community
19 agreements in, the concept of publishing a copy
20 of the actual agreement in the newspaper
21 doesn't seem to make a lot of sense. And it
22 doesn't seem to be perhaps what the Legislature
23 would have contemplated when it wrote that
24 section.

1 And having gone back and read the
2 statute that this regulation is based on, I
3 think the Commission could easily interpret
4 that to say that basically you just have to
5 make the host community -- the contents of the
6 host community agreement public.

7 And you do that by publishing the
8 summary clearly in a newspaper. And what we
9 have added here is that the agreement itself
10 has to be available on the municipal website.
11 It's going to be on our website. And in all
12 likelihood it will be on the applicant's
13 website, though we didn't mandate that.

14 In addition to folks who aren't
15 inclined to look at a host community agreement
16 online, we say that they have to provide notice
17 and to leave a copy of the agreement at the
18 city or town clerk's office so it's available
19 as well.

20 So, we are comfortable that that
21 satisfies the requirements of the law. I think
22 it's a more logical reading of the statute and
23 a fair adjustment. And that's based upon the
24 public comment that we received.

1 COMMISSIONER MCHUGH: I agree with
2 that analysis, but I think the Commission ought
3 to be aware that it's not the only reading of
4 the statute. That the reading that the whole
5 host community agreement had to be published is
6 another way to read that statute.

7 Ultimately, if necessary, a court
8 will decide that. The Commission in this case,
9 like in all cases, has discretion with respect
10 to the way it interprets provisions,
11 particularly ambiguous provisions. This one,
12 as Todd says, as Mr. Grossman said this
13 interpretation makes a great deal of sense.

14 Some of these host community
15 agreements could be 20 or 30 pages. And to
16 have them, the requirements that they all --
17 I've never seen that. -- they all be published
18 in a newspaper doesn't make a lot of sense.
19 They're going to be on the website. The notice
20 would require that they give the URL in the
21 notice in summary. If anybody wants a hard
22 copy, they have to be available at the clerk's
23 office. The notice would have to say that.
24 This it seems to me to be a reasonable

1 interpretation of the statute. It's not
2 without some risk.

3 CHAIRMAN CROSBY: Does this affect
4 that letter we just approved? Or does this
5 relate only to the published notice?

6 MR. GROSSMAN: This does not affect
7 the letter. That's a separate issue. But the
8 statute, in fact our reg. requires that this
9 notice be published seven days after the
10 execution of the host community agreement. So,
11 it would affect Springfield. And I don't
12 remember exactly when they executed the
13 agreement.

14 COMMISSIONER MCHUGH: That's right.
15 But there's no nexus between the letter that we
16 just approved, that's a standalone deal, and
17 this.

18 MS. BLUE: That's a separate issue.

19 CHAIRMAN CROSBY: I'm fine with it.

20 COMMISSIONER CAMERON: So am I. If
21 they want to reverse it, so be it.

22 MR. GROSSMAN: The next I think
23 important issue to discuss is the reopening of
24 mitigation agreements. That's on page 44. And

1 we did add some new language in there as well
2 based upon the public comment we've received.

3 There are competing interests at
4 play here with this provision. On the one hand
5 is the right of parties to negotiate an
6 agreement between and amongst themselves and to
7 amend it as they see fit.

8 On the other hand is the interest in
9 preserving the meaningful nature of the host
10 community election. And to the extent that we
11 allow a host community agreement to be amended
12 in any way and at any time, you could certainly
13 erode the whole meaning behind requiring the
14 election.

15 So, in an effort to mediate those
16 concerns, we've come up with this section which
17 provides for situations in which a mitigation
18 agreement not limited to a host community
19 agreement but that all agreements could be
20 reopened.

21 And the comments we received seem to
22 suggest that folks thought the opportunity we
23 provided was a little narrow. And in response
24 to that, what we are recommending is that we

1 broaden the opportunity that the parties would
2 have to reopen the agreement.

3 And we broaden it from two
4 considerations to three. The two existing ones
5 were essentially if something came up in the
6 MEPA process that was unanticipated, then they
7 could reopen the agreement. Or if something
8 came up in the permitting process that was
9 unanticipated, they could reopen the agreement.

10 So, the third one we've added on is
11 that if there is any occurrence that's likely
12 to cause a significant and material and adverse
13 impact -- And we define what a significant and
14 material adverse impact is. And we say that
15 that would be the third reason why the parties
16 could reopen an agreement.

17 There are couple of reasons why I
18 think we're okay with that and we're
19 comfortable with doing something like that.
20 The first is that to the extent that a
21 community agrees, and this is a mutual
22 reopening, then the officials from the
23 community are seemingly there to protect the
24 interests of the community, to preserve the

1 intent of the agreement. And to the extent
2 it's a host community, the reason that
3 precipitated the positive vote in the election.

4 So, if it's mutual, then that would
5 be the reasoning behind why we'd be okay with
6 it. If it's not mutual, if one party petitions
7 the Commission to reopen on the basis that
8 there's a significant and material adverse
9 impact, we wrote in some language in 127.04
10 that would require the Commission to consider
11 the reopener in light of the election. And to
12 ensure that by allowing the amendment, it would
13 not substantially change the project as it was
14 described in the host community agreement or
15 the concise summary provided as part of the
16 ballot.

17 So, it gives the Commission a
18 gatekeeper role in that regard in the event
19 that only one party thinks that the agreement
20 should be available. And I think that's a fair
21 way to go about this process. And keeping in
22 mind both of the considerations. That's why
23 we've made those recommendations.

24 CHAIRMAN CROSBY: Sounds reasonable

1 to me.

2 COMMISSIONER MCHUGH: And the
3 parties can contract out in the host community
4 agreement of this entire process.

5 MR. GROSSMAN: That's right. That's
6 a great point. In 127.02, we add in additional
7 language that's on page 44, as Commissioner
8 McHugh just mentioned. To the extent that the
9 mitigation agreement provides for it, they can
10 set up whatever system of reopening they want.

11 COMMISSIONER MCHUGH: And the
12 parties in town -- the people of the town or
13 city vote.

14 MR. GROSSMAN: I don't know if there
15 are any other blue comments.

16 CHAIRMAN CROSBY: We haven't even
17 started the 44-pager yet.

18 MR. GROSSMAN: No, we haven't. So,
19 those are all of the blue comments.

20 CHAIRMAN CROSBY: I think we ought
21 to just flip through this. I don't see any
22 other way to do it. Not that we have to go by
23 every single one. There's a lot of them
24 there's nothing to talk about or may not be

1 anything to talk about. But a number of them
2 are policy questions that are going to be
3 proposed. I guess some of you have talked with
4 Todd about this, but I haven't. Has everybody
5 talked to Todd?

6 COMMISSIONER CAMERON: Yes.

7 CHAIRMAN CROSBY: How come I didn't?
8 Am I chopped liver.

9 COMMISSIONER CAMERON: It was an
10 optional conversation.

11 COMMISSIONER STEBBINS: I had to
12 call and get on his calendar.

13 COMMISSIONER ZUNIGA: You had to get
14 on his calendar and I did first.

15 CHAIRMAN CROSBY: Geez. I blew it.
16 Well, I guess what were you going to do, were
17 you going to report back on what people said?
18 Or how would you do this?

19 MR. GROSSMAN: I think this would be
20 a good time to maybe go through the sections
21 one by one here. And I can just point out some
22 of the changes we made. If you've made
23 comments on the grid that aren't reflected in
24 here or if you have questions as to why we

1 changed certain language, we can kind of hit
2 it. But it might help to go through it section
3 by section.

4 CHAIRMAN CROSBY: Okay.

5 MR. GROSSMAN: I think by and large
6 these drafts incorporate a great deal of what
7 you see in there. With that, why don't we
8 start with --

9 MS. BLUE: 118.

10 MR. GROSSMAN: -- 118 through 131.
11 This would be the big packet now. This is the
12 one that was in the Commissioner's packet
13 today. Now we're talking about the green
14 changes.

15 I'm sorry. Before we get to the
16 green changes, if we could stop on page four
17 and just go to the administrative completeness
18 review. You discussed this issue earlier
19 today. And I think we are going to need to
20 adjust this section. And I wanted to make sure
21 I understood the Commission's decision.

22 Now we're on 118.03. It's paragraph
23 one, section C, which talks about a negative
24 determination and the ability to cure. My

1 recollection was I think that an applicant can
2 cure a deficiency within seven days only if
3 it's a material omission.

4 CHAIRMAN CROSBY: And material
5 omission is defined as the ones which are
6 legislatively mandated in the evaluation
7 criteria in the flesh colored highlight.

8 MS. BLUE: Yes, that's right.

9 MR. GROSSMAN: Right, the statutory
10 minimum requirements.

11 CHAIRMAN CROSBY: The statutory
12 minimum requirements, right.

13 COMMISSIONER ZUNIGA: Statutory
14 minimum requirements.

15 COMMISSIONER MCHUGH: Section 15.

16 MR. GROSSMAN: Or 14 days if it's
17 nonmaterial.

18 CHAIRMAN CROSBY: Right. And the
19 days run from the date of application filing,
20 from the last date of application filing.

21 COMMISSIONER ZUNIGA: And these are
22 omissions.

23 MR. GROSSMAN: Right.

24 MS. BLUE: Yes. So, we'll adjust

1 that section.

2 MR. GROSSMAN: I don't think we need
3 to go through every change unless you'd like to
4 discuss anything in particular. With that
5 said, I would draw your attention to page
6 seven. So, here we talk about when the actual
7 award of the license takes place. There was
8 some question as to what the award meant. And
9 the award is a significant moment because it
10 triggers a number of things, not the least of
11 which --

12 CHAIRMAN CROSBY: What section are
13 you in?

14 MR. GROSSMAN: This is 118.06, it's
15 number five.

16 MS. BLUE: It's six I think on the
17 copy that you have.

18 MR. GROSSMAN: Oh, I have different
19 page number seven. Of course I'm the only one
20 with a different page number seven.

21 MS. BLUE: At the very bottom of
22 page six. So, we got comments on this section
23 regarding when is the license awarded. Is it
24 awarded when you vote on it? Is it awarded

1 when the conditions are satisfied? And so the
2 change that we added to the bottom here says
3 that the license is awarded notwithstanding
4 conditions when you vote. So, it will be
5 immediate upon the vote to award.

6 COMMISSIONER CAMERON: So, the 30
7 days starts.

8 COMMISSIONER ZUNIGA: Yes. So,
9 payment is 30 days after, the clock starts
10 ticking right then.

11 MS. BLUE: And do you want to talk
12 about the changes we didn't make to
13 adjudicatory and legislative, because we got a
14 great deal of comments on this concept of
15 adjudicatory versus legislative.

16 MR. GROSSMAN: Sure. We elected not
17 to adjust that. We think our analysis is
18 correct. In fact, we discussed the actual
19 analysis in these charts here towards the back
20 if you'd like to see the actual case law.

21 COMMISSIONER CAMERON: The blue
22 book?

23 MR. GROSSMAN: It's in both the blue
24 and the red, but it's the same analysis for

1 both. Basically, we don't believe that it is
2 an adjudicatory proceeding for a number of
3 reasons. (A) it's impractical to consider it
4 that way, although you could if you wanted to,
5 I suppose. But it would lead to some
6 impractical results such as the possibility of
7 opening the proceedings to different discovery
8 mechanisms, to different avenues of appeal at
9 different times that were unintended, to cross-
10 examination of different parties, to the
11 requirement of certain notices.

12 So, there are a whole host of
13 problems that would ensue potentially if you
14 were to deem this to be an adjudicatory
15 proceeding.

16 Furthermore, it's difficult to even
17 pinpoint what you would consider the
18 adjudicatory proceeding to be. Whether that
19 would be some particular hearing or whether
20 it'd be the whole process from the moment the
21 application is submitted to the award or what
22 exactly the proceeding would be.

23 So, for those reasons in conjunction
24 with the fact that the definition of the term

1 adjudicatory proceeding in Chapter 30A says
2 that it's an adjudicatory proceeding
3 essentially if you have either a constitutional
4 right to a hearing or a statutory right to a
5 hearing.

6 And in the context of the award of
7 gaming licenses, there is neither a
8 constitutional right to a hearing nor a
9 statutory right to a hearing. So, I would
10 suggest it doesn't even meet the definition of
11 an adjudicatory proceeding. Certainly, if you
12 wanted to consider that, you could, but I don't
13 think that would be helpful to this process.

14 What you have done, of course, is
15 built in a number of protections in other
16 areas. There are multiple opportunities for
17 public comment. There are opportunities for
18 applicants to provide information. And
19 multiple opportunities for the Commission to
20 review the application in different ways, to
21 conduct hearings, to solicit input and to issue
22 a determination at the end of the day.

23 So, we are not in any way removing
24 rights or closing off the process or anything

1 like that. It's a manner in which the
2 proceeding will be handled that I think will
3 help you reach a decision in a more efficient
4 manner. One that you retain full control and
5 discretion over that you're able to ensure that
6 everyone has a right to participate in to the
7 extent that you think it appropriate.

8 And ultimately that you're able to
9 reach the best decision. And you're not
10 restricted in the other way. The two cases
11 that we cite in here, if you get a chance to
12 look at them, and I have a copy of them if
13 you'd like them, discuss these types of issues.

14 One of them involves a school, the
15 Department of Education awarding a charter
16 school a license. It was a similar process to
17 this. The court said that that was not an
18 adjudicatory proceeding. And I think that's
19 the closest case to this. And a lot of the
20 principles are discussed in those two cases I
21 cite in there.

22 So, for those reasons I think this
23 is the wise way to proceed. I think this is
24 highly defensible in any event anyone should

1 seek to challenge it for some reason. And
2 ultimately that's why we elected not to
3 recommend any adjustments to this section.

4 CHAIRMAN CROSBY: Sounds reasonable.
5 I had a question on 118.04(1). This issue
6 about the host -- referring parts of the
7 application out for review to host and
8 surrounding communities, how did you come down
9 on that?

10 MS. BLUE: We came down on that that
11 it was within your discretion to do it if you
12 wanted to or not. You weren't obligated to do
13 it. But if you thought it was going to provide
14 useful information, you certainly could, and it
15 gave you the ability to do that.

16 CHAIRMAN CROSBY: Yes. I guess
17 there's no harm in having it. Fine, okay. And
18 I forget which section it's in, it seems to be
19 referred also in 118.04, the best and final, is
20 that going to be in this? We talk about it in
21 this. It's discussed at length in here, isn't
22 it?

23 MR. GROSSMAN: In the event that
24 that's something you wanted to pursue.

1 CHAIRMAN CROSBY: Okay. Go ahead to
2 wherever you thought.

3 MR. GROSSMAN: I think one of the
4 areas that we got a number of comments on, it's
5 on page 16, paragraph three where we discuss
6 the ability of the Commission to consider the
7 proximity of the Category 2 establishment when
8 making decisions.

9 CHAIRMAN CROSBY: Which section are
10 you?

11 MS. BLUE: That's 119.03 section
12 three and it's at the very end of that
13 paragraph.

14 CHAIRMAN CROSBY: Yes.

15 MS. BLUE: We did get a fair number
16 of comments about taking into consideration
17 both the proximity of other establishment of
18 the same kind and Category 1's versus Category
19 2's.

20 So, we did add language at the end
21 of this section to say the Commission could
22 take that into consideration when they're
23 making their award.

24 CHAIRMAN CROSBY: Okay.

1 MR. GROSSMAN: Why don't we jump to
2 page 26, it's section 121 -- I'm sorry 122.04.
3 This is the capital investment section. This I
4 think is an important section. This is not a
5 section that we're necessarily advocating for.
6 It was a section though that was based on a
7 comment and we thought it would be important
8 for the Commission to take a look at language
9 like this and consider its merits.

10 It has to do with the allowance of a
11 portion of the cost associated with the
12 purchase or lease of the land that the gaming
13 establishment is located on.

14 The Commission of course has
15 determined in the first instance to exclude the
16 cost of the acquisition of land. What this
17 language does here is it would allow an
18 applicant to petition the Commission, so it's
19 not an as a right thing. They'd have to
20 petition the Commission to be allowed to
21 include up to 10 percent of the cost -- I just
22 want to make sure I got that right.

23 MS. BLUE: It's the total capital
24 investment.

1 MR. GROSSMAN: Ten percent of the
2 total capital investment may be the land
3 acquisition cost. That would essentially get
4 an applicant over the hump of the minimum
5 capital investment, whether it's the \$500
6 million or the \$125 million. And it's intended
7 only for compelling circumstances. If for some
8 reason the applicant was unable to make the
9 last couple of million dollars that they would
10 be allowed to include the land acquisition
11 costs.

12 As I said, we included it so you
13 could consider whether that is a wise way to go
14 about this process. What impact if any it
15 would have on your ultimate evaluation.
16 Whether it would advantage one party over
17 another or in fact whether it may even out the
18 playing field a bit. So, I'm certainly happy
19 to comment on it further, but perhaps I should
20 just turn this over at this point.

21 COMMISSIONER ZUNIGA: I have a
22 couple of thoughts. I guess at least I always
23 thought of it as an either/or, either the land
24 is in or it's not. It's sort of like the

1 statute really outlines. I think the
2 suggestion of a cap is an interesting one
3 because it does cap it.

4 The other piece is relative to
5 differences among our applicants, whether it's
6 somebody purchasing something initially, having
7 an advantage over another entity that already
8 owns the land, let's say. That entity could
9 itself enter into a lease agreement with
10 another entity, let's say, and be able to be on
11 par with somebody purchasing.

12 CHAIRMAN CROSBY: Enter into a lease
13 with itself?

14 COMMISSIONER ZUNIGA: With a special
15 purpose entity, let's say, which is itself.

16 CHAIRMAN CROSBY: Which is itself.

17 COMMISSIONER ZUNIGA: So,
18 conceivably this may not necessarily treat some
19 of our applicants differently. I guess we
20 would just have to think about that piece if
21 that would be acceptable.

22 CHAIRMAN CROSBY: The guiding
23 concept here, and I've been uncomfortable with
24 certain aspects of it, that I've been thinking

1 is what the Commonwealth is looking for is
2 investment that generates economic development.
3 And buying a piece of land doesn't do that.
4 That's simply exchanging value. There's no net
5 gain except for whoever sold the land.

6 So, to exempt the land seems to make
7 sense. It makes sense to exempt the land. As
8 opposed to, and we talked about this before,
9 why we're excluding construction outside of the
10 site, that one I don't understand. It just
11 doesn't make sense to me. If you have to widen
12 the highway that's outside the site and it
13 costs you \$50 million to do that that's great
14 economic development money. It's good for the
15 throughput of the road. It's \$50 million in
16 construction contracts.

17 So, if we were going to change
18 anything, I would change not counting that
19 which is outside the site as opposed to
20 changing the land.

21 COMMISSIONER ZUNIGA: A minor point
22 of clarification, that one cost is particularly
23 or specifically excluded from the Category 2
24 and per the statute. The widening of roads to

1 mitigate traffic is a cost that is not to be
2 included in the -- there's other infrastructure
3 costs. So, your point is on point.

4 CHAIRMAN CROSBY: That's a good
5 point.

6 COMMISSIONER MCHUGH: I don't
7 understand why we're doing number two, what the
8 utility of adding these things. We had a
9 discussion before that regardless of what the
10 outside the property boundary infrastructure
11 cost should be in or out, I thought these costs
12 were no value-added to the Commonwealth costs
13 and they shouldn't be included. That's sort of
14 the wedge --

15 CHAIRMAN CROSBY: Does anybody
16 disagree with that? The staff is saying they
17 wanted us to think about it again, we're
18 thinking about it.

19 COMMISSIONER CAMERON: Because there
20 were several comments, and this was almost a
21 way to split it, because you capped it, you
22 couldn't have it all. But it was a way of
23 considering all of those comments, correct?

24 MR. GROSSMAN: Right.

1 COMMISSIONER ZUNIGA: I'm initially
2 of the notion of excluding the price of the
3 land.

4 COMMISSIONER MCHUGH: That's what
5 I'm saying.

6 CHAIRMAN CROSBY: I think we all
7 are. So, forget that.

8 MR. GROSSMAN: Okay.

9 COMMISSIONER CAMERON: That will no
10 longer be green.

11 COMMISSIONER ZUNIGA: It will be
12 nonexistent.

13 COMMISSIONER MCHUGH: Nonexistent.

14 MR. GROSSMAN: Why don't we quickly
15 if we can go to page 30, it's section 124.04,
16 paragraph one. This is a strikeout. The first
17 sentence, I don't recall why we included that
18 language in the first place, but we said that
19 the host community agreement signed by the
20 governing body. Nowhere else did we mandate
21 who had to sign the host community agreement.
22 It doesn't say that in the statute.

23 And that in fact could prove
24 problematic for certain communities. So, we

1 recommend taking it out and letting the host
2 community figure out who has to sign the
3 agreement.

4 CHAIRMAN CROSBY: Okay.

5 COMMISSIONER MCHUGH: Right.

6 MR. GROSSMAN: Page 32, which is
7 section 124.07, I just wanted to note that we
8 struck out paragraph four in its entirety.
9 This was the section where the Commission could
10 refuse to accept the certified election
11 results.

12 It was suggested to us that perhaps
13 that was not a wise provision to include, in
14 that presently the General Laws include
15 provisions for the challenge of election
16 results. And that the Commission may not be
17 well equipped to attempt to evaluate certain
18 compliance.

19 And that to the extent that there is
20 a problem that is open and obvious, if you
21 will, that you ultimately hold the cards and
22 that you don't have to issue a license to a
23 particular applicant if you're aware of obvious
24 irregularities. Perhaps there isn't clear

1 support in the host community even though the
2 election was certified in here. And that that
3 was a better way to approach this issue than to
4 attempt to invalidate certified election
5 results.

6 COMMISSIONER CAMERON: Makes sense.

7 COMMISSIONER ZUNIGA: Sounds
8 reasonable.

9 CHAIRMAN CROSBY: Okay. It's 10
10 minutes after 3:00. Can we take a break? I
11 need to do a couple of things and come back in
12 15 minutes or so.

13

14 (A recess was taken)

15

16 CHAIRMAN CROSBY: We will reconvene.
17 Where were you, Attorney Grossman?

18 MR. GROSSMAN: Why don't we start
19 fresh with surrounding communities, how about
20 that.

21 MS. BLUE: Yes, 125, page 33.

22 CHAIRMAN CROSBY: 125, great.

23 COMMISSIONER CAMERON: What page?

24 MS. BLUE: Page 33 is where 125

1 begins.

2 MR. GROSSMAN: So, I guess the first
3 note I would just make is that there was some
4 confusion I think -- it's actually on page 34,
5 paragraph A, what the relation between
6 paragraph A was with letter C on the preceding
7 page. That's why we propose the change to the
8 subject heading just to make it clear that that
9 those are instructions basically for paragraph
10 C. That's all.

11 The next issue with these is on page
12 35, paragraphs C and D. People have commented
13 on these a number of times, not just during
14 this process but throughout the course of our
15 public comment process dating back to the very
16 beginning.

17 And though I think paragraph C is
18 actually well thought out and I think certainly
19 well intended, it's caused a lot of concern. I
20 think ultimately that the Commission will be
21 able to reach the same conclusions and make
22 decisions on the designation of surrounding
23 communities without this language in there
24 that's caused a great deal of concern. So, for

1 that reason really alone, I think I would
2 recommend that it be removed.

3 CHAIRMAN CROSBY: I agree.

4 MR. GROSSMAN: Similar issue with
5 paragraph D. I think we just clarified
6 paragraph D. So, we don't say that we're going
7 to be performing any type of balancing test or
8 that positive impacts may outweigh negative
9 impacts, anything along those lines. All we're
10 saying is that we're giving the Commission an
11 additional tool. And that if it's helpful in
12 making a determination, you may consider any
13 positive impacts. That's all we say here.

14 CHAIRMAN CROSBY: Great. Next?

15 MS. BLUE: Mr. Ziemba asked us to
16 mention is in terms of section two of that same
17 section 125, when we discussed this morning
18 allowing the applicant to fix any cure.
19 Basically, their application came in and it
20 wasn't all complete, we were going to give them
21 seven days to cure those items that were in the
22 beige color.

23 One of the things that we want to
24 consider is that we give the communities 10

1 days after the application to petition. So, if
2 an applicant had to cure and had seven days to
3 cure, the community would perhaps only have
4 three days in which to address the cure that
5 that applicant may have made. So, there is
6 some question in this regulation as to whether
7 that 10-day timeframe should be at all
8 extended.

9 CHAIRMAN CROSBY: Say that again.

10 MS. BLUE: So, if an application
11 came in and it was deemed to be incomplete in a
12 material way, when we talked this morning we
13 said we would give the applicant seven days to
14 cure that --

15 CHAIRMAN CROSBY: Right.

16 MS. BLUE: -- whatever was
17 incomplete. If you look at 125.01, section
18 two, the community has 10 days after the
19 application is filed to file a petition to be a
20 surrounding community.

21 If what had to be cured was
22 something that had to do with a surrounding
23 community, let's say they didn't provide a
24 study, an impact study or something that a

1 community would respond to, by having that
2 seven-day cure in this 10-day period, in theory
3 you could be saying the community really had
4 three days to figure that out.

5 That they wouldn't be to determine
6 how to file a petition because it had to wait
7 for the seven days to see what the cure was. I
8 don't know how likely that is to be an issue.
9 We may want wait and see how things progress
10 before we try to change something here. But it
11 is based on our discussion this morning, it is
12 something that's possible.

13 CHAIRMAN CROSBY: It seems to me
14 that people have misunderstood that 10-day
15 window. It's really just an administrative 10
16 days. Because the issues that are between the
17 surrounding community prospect and the bidder
18 will have been teed up by then. They're not
19 going to have to get the application, read it,
20 study it up and then decide whether they're
21 supposed to be a surrounding community.
22 They'll know to a very large extent. Ten days
23 isn't enough to do much of anything other than
24 to sort of get your paperwork together.

1 So, I've never looked at that 10
2 days as a substantive period of time which
3 gives the surrounding community prospect time
4 to study things. People have complained about
5 that 10 days and we've resisted their complaint
6 for this very reason that it's not a substitute
7 process period.

8 MS. BLUE: We did get comments about
9 that particular issue.

10 CHAIRMAN CROSBY: About it being too
11 short.

12 MS. BLUE: About that 10 days and
13 people not having enough time. So, we just
14 wanted to raise that, because our discussion
15 this morning was new and that that is something
16 we're going to add to the regulations that we
17 didn't think about before.

18 CHAIRMAN CROSBY: That's right.
19 It's a good thought. I'm not persuaded that it
20 really is material. I think the surrounding
21 communities are misunderstanding what's going
22 to be going on. They're going to know exactly
23 what their argument is well before the
24 application goes in.

1 COMMISSIONER MCHUGH: I think at
2 least some of them had a thread of suppose we
3 get stonewalled by the applicant and we don't
4 know anything until the applicant files?

5 Number one, even if they're
6 stonewalled -- In response, I think you're
7 right. Even if they're stonewalled by the
8 applicant, there's plenty of ways to get the
9 information what the proposal is.

10 Secondly, if they're stonewalled by
11 the applicant, I think the application process
12 makes pretty clear that in evaluating who gets
13 the license, we're not going to be positively
14 impressed by the stonewalling exercise.

15 CHAIRMAN CROSBY: Right. And we've
16 said that repeatedly to the prospective
17 surrounding communities.

18 COMMISSIONER MCHUGH: Right. To
19 agree, that's right.

20 CHAIRMAN CROSBY: You're agreeing
21 with the fact.

22 MS. BLUE: I think now that we have
23 the new language about the 60 and the 90 days,
24 I think what we need to do is to watch this

1 process. And if we need to make changes here,
2 we certainly can. We can do it by emergency
3 regulation or in the Phase 3 regulations, we
4 can amend it. We just need to keep an eye and
5 be cognizant of that.

6 CHAIRMAN CROSBY: Right, okay.
7 Next?

8 MR. GROSSMAN: I think the next
9 section to discuss is section 129, which is on
10 page 49 relative to the transfer of interests.

11 MS. BLUE: So, we received a few
12 comments on this section. Our sense of the
13 comments was that the people who provided
14 comments made comments based very much upon the
15 corporate structure that they have.

16 Todd and I have talked about this.
17 I think we could use some more help in crafting
18 this regulation because I'm not sure it
19 completely gets us where we need to go. The
20 regulation has been looked at by our outside
21 counsel, our gaming consultants have reviewed
22 it.

23 But I think other than setting forth
24 the idea that whatever kind of change in the

1 interest there is, the Commission has the
2 ability to approve it, I think we could
3 probably fix this and make it clearer.

4 So, our recommendation on 129 is
5 that we leave this regulation where it is right
6 now and then perhaps get some more input from
7 maybe some other kinds of legal minds and amend
8 this later.

9 I think it's important that
10 applicants understand that if there are any
11 transfers of interest, we want to approve it
12 and we want to know. But I think we can
13 probably craft this in a way that perhaps isn't
14 quite as confusing to some of the applicants
15 and covers more of the possible ways that they
16 may be structured.

17 CHAIRMAN CROSBY: I'm totally fine
18 with that. There were two issues that came up
19 a while back. One was this issue of the
20 financial institution. Why in effect does the
21 transfer to a financial institution exempt from
22 being a transfer? That was one issue that we
23 were going to try to figure out. And the other
24 one was this Commonwealth share thing. What

1 about those two issues?

2 MS. BLUE: The Commonwealth share
3 issue is in the statute.

4 CHAIRMAN CROSBY: We just got to try
5 to figure out what it meant.

6 MS. BLUE: Yes. We put it in the
7 regulation. It is part of the statute. It's
8 not entirely clear what it means. So, we could
9 probably do some more work and try to quantify
10 that.

11 In the regulation what we did was we
12 tried to get to where we thought the
13 Legislature was going, which is if there's an
14 increase in value the Legislature expects a
15 share of it. We probably can do more work
16 around that.

17 The financial interest, it is one of
18 those things that I think if we understood more
19 of the ways that that could occur, we could
20 then draft a regulation that addressed that a
21 little bit better. So, that's why we would
22 like to study it more.

23 CHAIRMAN CROSBY: So, that's part of
24 what you want to still thinking about.

1 MS. BLUE: Yes.

2 CHAIRMAN CROSBY: The way it reads,
3 it doesn't make sense to me. It seems to
4 create a major loophole that is unfair given
5 that everybody else has to go through a certain
6 process. Maybe there's some explanation for
7 that. So, I want to make sure we don't leave
8 this. Somehow we've got to figure out is there
9 some rationale for that and do we buy it?

10 MS. BLUE: Some of it is -- There's
11 a certain expectation that there will be
12 mortgages. And we saw in some of the comments,
13 if I give a mortgage on my property, do I have
14 to advise the Commission? I think there is a
15 certain piece of it that that tries to address.
16 But I think we just need to understand it and
17 understand a little better how these
18 transactions are structured.

19 CHAIRMAN CROSBY: Yes. Because the
20 issue was the mortgage holder taking ownership.
21 That's the issue. It looked like that would be
22 exempt from a transfer and that doesn't make
23 sense.

24 MS. BLUE: And that's not what we're

1 looking to do.

2 COMMISSIONER MCHUGH: I must say
3 that I am very uncomfortable promulgating 129
4 in any form. I would much prefer to reserve it
5 and do the study and then promulgate it. I
6 read the comments that were made. I read the
7 matrix assessment. I don't understand a bunch
8 of the comments. I understand what they're
9 saying, I don't understand the problem.

10 I don't understand there's a
11 reference in the Wynn comments, I think, to a
12 revision that was proposed that I don't know
13 where the revision is. I don't think any of us
14 know where the revision is.

15 MS. BLUE: No, we don't.

16 COMMISSIONER MCHUGH: There are some
17 corporate security issues raised there that I
18 don't understand, quite frankly. And so, we
19 we've got to promulgate a third set of
20 operating regulations in the near-term. And I
21 would much rather say that 129 is reserved, do
22 the research that we need to do, do the
23 consulting that we need to do and then in that
24 section promulgate some regulations.

1 I also think this Commonwealth share
2 thing is a continuing problem and we do
3 ourselves and our stakeholders a service by
4 coming up with some definition of that, even if
5 we can't -- We've got an obligation, I think,
6 to do that. And we can. But we don't have one
7 right now.

8 CHAIRMAN CROSBY: I think the law is
9 a may, so we could make the decision not to use
10 that.

11 COMMISSIONER MCHUGH: Right.

12 CHAIRMAN CROSBY: But one way or the
13 other, I think your suggestion is a very good
14 one.

15 MS. BLUE: We can do that.

16 COMMISSIONER CAMERON: It's a good
17 idea.

18 COMMISSIONER ZUNIGA: Yes. There
19 cannot be a transfer until there's an award.
20 So, we have plenty of time.

21 MS. BLUE: We can reserve the
22 section and hold it.

23 CHAIRMAN CROSBY: Great.

24 MR. GROSSMAN: I don't we think we

1 have any further comments that we wanted to
2 highlight.

3 CHAIRMAN CROSBY: All right, do you
4 want to do it on 102 thru 117?

5 MR. GROSSMAN: Sure. Why don't we
6 discuss 102.07, which is on page four.

7 MS. BLUE: It starts on four and
8 goes onto five. The heading is on four. The
9 body of the regulation is on five.

10 MR. GROSSMAN: There was some
11 comments on this section that I think it's
12 important that we try to understand what the
13 intent of it is. The intent of this section
14 was not to curtail the ability of a party who
15 has a legitimate right to appeal an action that
16 the Commission has taken. That's not what this
17 is intended for. And I don't believe it's what
18 it says.

19 What it is intended to do, however,
20 is to prevent a party from seeking to challenge
21 or enjoin something the Commission does based
22 upon a failure to act in some other instance.

23 For example, I think if for some
24 reason the Commission accepts all the RFA-2

1 applications and decides that it does not want
2 to have the Executive Director conduct a review
3 for completeness, and instead it just wants to
4 move forward with the process that under this
5 provision, you couldn't challenge the outcome
6 based upon that failure to act.

7 And that's what this is intended to
8 do, to allow the Commission the flexibility to
9 enforce its own process and not be held up by
10 challenges based upon certain discretionary
11 acts that it undertakes.

12 This does not apply to statutory
13 requirements. So, you can't just not follow a
14 statutory requirement. And the other thing we
15 did based upon comments is that we limited it
16 to 102 thru section 128, which pertains
17 basically to the award of the gaming licensing
18 and the whole surrounding community process.

19 It does not apply to the regs. that
20 we'll promulgate in the future. So, that's my
21 understanding of the intent of this provision.

22 CHAIRMAN CROSBY: Where did this
23 come from?

24 MS. BLUE: There were comments made

1 by -- There were comments in general made about
2 the ability of anyone with appropriate standing
3 to challenge the actions of the Commission.
4 And what we wanted to point out is that we're
5 not trying to prevent people from challenging
6 it, but it would be best to challenge a total
7 outcome as opposed to a particular matter along
8 the way. Because there is a great deal of
9 discretion that the Commission has to review
10 the applications, to create the process they
11 need to create. So, that's what this was
12 designed to address.

13 COMMISSIONER MCHUGH: There's a lot
14 of litigation. Let's take a situation in which
15 applicant, take the example that Todd just
16 mentioned in which an application is submitted.
17 We don't go through an administrative
18 completeness review. It goes directly to the
19 five teams.

20 The applicant is applicant A, no
21 administrative completeness and it's sent down
22 through. Applicant B who turns out to be
23 unsuccessful, challenges the ultimate award to
24 A on the ground that we didn't conduct an

1 administrative completeness review of A's
2 application before starting the process. This
3 is designed to say you can't do that.

4 And those kinds of challenges
5 typically get caught up in a fight over
6 something called standing, which turns on
7 whether or not the provision in question, in
8 this case the administrative review provision,
9 is designed to afford a right to somebody who
10 is not affected by the administrative review
11 directly. And that can take endless time to
12 figure out. And it's diversionary. And it's
13 collateral litigation. And it delays the
14 process.

15 So, this is designed to try to ward
16 that off. We might be able to make this a
17 little bit clearer to get at that issue, but
18 that's the essence of it. And it makes sense
19 to have a provision like this.

20 On the other hand, we're not saying
21 that if we fail to give somebody a statutory
22 hearing that the statute requires that that
23 person who didn't get the statutory hearing
24 they're entitled to get doesn't have the right

1 to challenge our action.

2 CHAIRMAN CROSBY: Right. That's
3 clear. But it does seem to me like what we're
4 saying is we're going to set out a set of regs.
5 that are going to inform you how we're going to
6 operate. But we don't have to operate by them.
7 And if we choose not to you don't have any
8 recourse. Now one, that example might be
9 irrelevant.

10 But what if we didn't hold the
11 public hearing, not the statutory public
12 hearing but the voluntary public hearing?
13 Somebody might say that's really substantive.
14 You said you were going to have a public
15 hearing. We were counting on it. We thought
16 that was one of the ways we were going to
17 manifest our support or lack thereof. And you
18 sideswiped us. And this would be trying to say
19 you can't appeal on that basis.

20 COMMISSIONER MCHUGH: That's right.
21 That would be.

22 COMMISSIONER ZUNIGA: But don't
23 forget that the regulation for a voluntary
24 presentation is also a may regulation. We have

1 the discretion on that other piece.

2 COMMISSIONER MCHUGH: We've got mays
3 all of the place.

4 CHAIRMAN CROSBY: But we're
5 publishing a schedule. I could think of
6 another example, I'm sure. The point is there
7 are steps that are in our regulations that are
8 meaningful on which people might rely that
9 could be significant arguably in them winning
10 or losing.

11 If there's a narrower way like you
12 were talking about, Judge, in this case to get
13 at the standing issue that might make sense.
14 It sort of feels uncomfortable. (A) it feels
15 uncomfortable to me to say this kind of broad-
16 brush thing that seems to me completely
17 prejudicial. And (B) I don't know whether we
18 can make this stick or not. This is just words
19 or can anybody can appeal this whether we say
20 this or not.

21 COMMISSIONER MCHUGH: If we use it
22 to forestall third-party issues, i.e., we
23 haven't deprived an applicant of a right that
24 these regulations give it. And we say that the

1 procedures in here that we've set out are not
2 designed to give anybody else a right. There
3 we have to take a closer look, I think, they
4 can't sue to enjoin or to challenge the
5 outcome. We can do that. And I think that
6 would be upheld.

7 We can't strip people's rights away
8 and then say you have no right to challenge us.
9 The problem really is with trying to divide --
10 figure out where the dividing line is. And you
11 know these regulations are 68 pages long, now
12 when we get finished, they'll be 140 pages
13 long. In there are plenty of opportunities to
14 find things where we didn't do exactly what we
15 said we were going to do. That's going to
16 happen.

17 So, the specter of substantial
18 efforts to stop this process for minor
19 deviations from some regulatory scheme are
20 endless, and I think would be if used a
21 substantial impediment to us getting to where
22 we wanted to go without any commensurate harm
23 being done to anybody.

24 So, it's trying to figure out where

1 that dividing line is and that's really hard.

2 CHAIRMAN CROSBY: Well, I leave it
3 to wiser heads than mine to figure that out.
4 It does seem to me that if there's a way to
5 redraft it and narrow it or somehow that it
6 would be effective and more comfortable, I'd
7 feel better.

8 MS. BLUE: We can work on that.

9 CHAIRMAN CROSBY: Okay That may
10 mean don't publish this one as it stands. Do
11 you feel that way, Jim?

12 COMMISSIONER MCHUGH: I would really
13 like to put that in the category of trying to
14 do something in the next couple of days,
15 recirculate it. And if anybody's unhappy, we
16 can have another quick hearing because I do
17 think this starts right now. The thing that
18 this is aiming at starts right now.

19 MR. GROSSMAN: We can take a look
20 at --

21 MS. BLUE: Page eight under
22 confidential information.

23 MR. GROSSMAN: This is paragraph G.

24 CHAIRMAN CROSBY: I'm sorry, which

1 section?

2 MS. BLUE: Subparagraph G on page
3 eight.

4 MR. GROSSMAN: We made an adjustment
5 here in an effort to ensure that the language
6 of our regulation is enforceable clearly in
7 accordance with the public records law.
8 Ultimately, of course we have a definition of
9 what confidential information is. And it's
10 consistent with these two sections that are
11 cited here in paragraph G.

12 And after further consideration of
13 the comments and looking at the statute, it
14 seems as though the black language that was
15 struck may be outside the bounds of what the
16 public records law allows for consideration.

17 So, in an effort to ensure that we
18 don't instill any kind of false sense of hope
19 upon anyone who submits records to us that we
20 will make this consideration, I would recommend
21 that we remove that. And we ensure that we
22 just review record submissions in accordance
23 with the public records law and our definition
24 of confidential information, which is

1 consistent with Chapter 23K.

2 CHAIRMAN CROSBY: Fine.

3 MR. GROSSMAN: I should just further
4 note that this doesn't affect any review we've
5 been doing so far. We've been doing all of our
6 review consistent with the public records law
7 and 23K as it is.

8 MS. BLUE: The next section where we
9 had green changes is page 21. And I think we
10 may have covered this already. This is the
11 mandatory disclosure of request of anything of
12 value. We looked at this when we looked at the
13 blue changes. So, in Todd's earlier update, we
14 made some changes to what you see here in this
15 language. And we'll incorporate them as we
16 discussed.

17 CHAIRMAN CROSBY: The request shall
18 have been reasonably related to the proposed
19 development of a gaming establishment.

20 COMMISSIONER MCHUGH: That's the
21 point that we need to fix.

22 MS. BLUE: Yes. We have to fix
23 that.

24 CHAIRMAN CROSBY: Oh, that's what

1 you said.

2 MS. BLUE: We're going to take out
3 reasonably and we're going to tame that a
4 little bit.

5 CHAIRMAN CROSBY: But I don't quite
6 understand even with reasonably out. I'm sorry
7 if we already discussed this. What I had
8 always had in mind is this was -- among other
9 things this was kind of giving some cover to
10 the applicants so they couldn't be held up by
11 every Tom, Dick and Harry that wanted some
12 benefit to win favor.

13 So, the request might be I want new
14 uniforms for my Little League team. Is that
15 related to the gambling?

16 COMMISSIONER MCHUGH: That's the
17 problem, Mr. Chairman. We want to know that
18 but it's not on the surface of it related.
19 What we want to exclude is the request by the
20 Las Vegas official for a Little League outfit
21 for the Las Vegas team. So, we want to
22 restrict it to Massachusetts requests that
23 could have an impact. So, we've got to figure
24 out some other way to describe.

1 CHAIRMAN CROSBY: So, you're
2 agreeing.

3 COMMISSIONER MCHUGH: Right.

4 CHAIRMAN CROSBY: Fine. The real
5 heart of it is the host community. That's
6 really the issue. You could say host or
7 surrounding communities. What I at least was
8 thinking about was really the host communities.
9 The bidders are the ones that are really
10 vulnerable to that kind of solicitation in a
11 host community. So, that would be one way to
12 go.

13 MS. BLUE: Then the last changes
14 were in section 114. I think we talked about
15 these.

16 CHAIRMAN CROSBY: What page are you
17 on?

18 MS. BLUE: 114 on page 24, this is
19 about community disbursements. We did go
20 through this, so I think we're fine.

21 CHAIRMAN CROSBY: I would say ad
22 infinitum.

23 MS. BLUE: Then 115, we added the
24 emergency regulation on holding an election

1 before suitability. We've already gone through
2 that too.

3 MR. GROSSMAN: Mr. Chair, if you
4 direct your attention to page 22, we address
5 one of the issues you raised earlier, section
6 112.02 that's the obligation to cooperate, page
7 22 paragraph two in the red.

8 CHAIRMAN CROSBY: Right. What does
9 that respond to?

10 MR. GROSSMAN: The obligation to
11 cooperate provide information relative to the
12 review of the Phase 2 application.

13 CHAIRMAN CROSBY: Yes.

14 MS. BLUE: They have an ongoing
15 obligation.

16 CHAIRMAN CROSBY: Right. Okay. let
17 me just run through a few other quick things.
18 There were some comments made about the
19 language about the status of permitting was
20 inconsistent with where the permitting might
21 actually be. This was in the City of Boston.
22 They will not have completed all municipal
23 permitting. We don't require permitting. So,
24 it's not a problem.

1 MR. GROSSMAN: That's a condition of
2 licensing.

3 MS. BLUE: Yes.

4 CHAIRMAN CROSBY: Right, okay. The
5 claim of the City of Boston that they can't be
6 forced to arbitrate. That's not an issue?

7 MS. BLUE: No.

8 COMMISSIONER MCHUGH: We've allowed
9 them now with the revision to contract out of
10 that whole arbitration proceeding. If they
11 want to put something in the agreement that
12 sets up a different way of dealing with things,
13 they're free to do it.

14 CHAIRMAN CROSBY: I was thinking
15 about the arbitration relative to surrounding
16 communities, to being a surrounding community

17 COMMISSIONER MCHUGH: That's right.
18 That's different.

19 CHAIRMAN CROSBY: I'm not going to
20 hold everybody while I run through all of my
21 notes. So, I'll look at these again, Todd, and
22 if I have anything else I wanted to ask you
23 about, we can do that.

24 MR. GROSSMAN: Okay.

1 CHAIRMAN CROSBY: Well, that wasn't
2 bad. Is that it?

3 MS. BLUE: That's all we have for
4 the comments.

5 CHAIRMAN CROSBY: Okay. We still
6 have the chart. I hope everybody who gave
7 comments will appreciate this 44-page document
8 that had every single comment reviewed and
9 thought about. We're trying to be
10 participatory, transparent and fair. And with
11 the help of you folks, you staff we're doing
12 it. So, thank you. That was great work.

13 MR. GROSSMAN: At some point, we do
14 need to discuss the small-business impact
15 statement and whether the Commission is
16 comfortable approving these regs. subject to
17 the adjustments that were discussed.

18 COMMISSIONER MCHUGH: We ought to
19 take those in separate pieces. So, why don't I
20 make a motion now that unless there's more
21 discussion about some aspect of the regs., to
22 approve the regs., sections 102 thru 129 --
23 131.

24 MS. BLUE: 131 leaving out 129.

1 COMMISSIONER MCHUGH: Leaving out
2 129. I would move that we approve the
3 regulations in the form presented to us for
4 sections 205 CMR 102 to 131 with the changes
5 we've agreed upon and reserving the right to
6 the staff to make further editorial revisions
7 that don't substantially change the meaning of
8 the regulations.

9 End of motion, beginning of
10 discussion reserving that little right
11 inevitably as the staff goes through the last
12 read before they're going to find typos, things
13 that are a little unclear but it's clear what
14 the meaning was, little sort of editorial
15 changes like that, they ought to have the right
16 to make without coming back to the Commission.
17 And then the changes we've agreed to make and
18 then the two changes that are going to be
19 circulated to the Commission are all
20 encompassed by that motion.

21 COMMISSIONER ZUNIGA: Second.

22 CHAIRMAN CROSBY: Second?

23 COMMISSIONER ZUNIGA: Yes.

24 CHAIRMAN CROSBY: And then those

1 will be -- These will be sent to who is it? Is
2 it -- What is the next step in the process?

3 MR. GROSSMAN: They just get sent to
4 the Secretary.

5 CHAIRMAN CROSBY: The Secretary on
6 the 23rd.

7 MR. GROSSMAN: Before that we'd file
8 an updated small-business impact statement.
9 And then we would file a copy of the final
10 version of the regulations. And they'd have to
11 be filed by May 24, which is next Friday. And
12 they would then become effective on June 7. It
13 runs on two-week cycle. So, it's important
14 that we get it done by next Friday.

15 CHAIRMAN CROSBY: Right. Okay. And
16 if we want to make changes after that we'd just
17 have to change our regs., right, and go through
18 the process?

19 MS. BLUE: To amend them, yes.

20 MR. GROSSMAN: Not written in stone.

21 CHAIRMAN CROSBY: You guys did a
22 great job. We made our deadline, which is
23 great.

24 COMMISSIONER ZUNIGA: I join that

1 congratulations to you and the members on the
2 greater team. Especially everybody who follows
3 us, it's clear that by the comments they're
4 very thoughtful. Usually, very well-
5 articulated and in many instances right on
6 point. So, I thank everybody.

7 CHAIRMAN CROSBY: Yes, good point.
8 By the way all in favor, aye.

9 COMMISSIONER STEBBINS: Aye.

10 COMMISSIONER ZUNIGA: Aye.

11 COMMISSIONER CAMERON: Aye.

12 COMMISSIONER MCHUGH: Aye.

13 CHAIRMAN CROSBY: All opposed? All
14 right, we have adopted the regs. as written.

15 COMMISSIONER CAMERON: Great work.

16 COMMISSIONER ZUNIGA: Thank you.

17 COMMISSIONER MCHUGH: Did you want
18 to say something about the small-business
19 statement, Todd? We have seen a draft small-
20 business -- No, we had a small-business
21 statement that accompanied the first round.
22 And we've got to update the small-business
23 impact statement. The essence of this is is
24 that there is very little small-business

1 impact, right?

2 MR. GROSSMAN: That's right. That
3 was the conclusion that was agreed upon when we
4 first filed these with the Secretary. I would
5 suggest that there is no additional impact that
6 was created by any adjustments after the public
7 hearing.

8 The law requires we submit an
9 updated small-business impact statement that we
10 will prepare. If the Commission is
11 comfortable, I recommend that authority to
12 approve the final draft be delegated to
13 Commissioner McHugh who we will work with to
14 ensure that it gets filed in a timely fashion.
15 Of course, we will circulate it to you so you
16 can see it.

17 COMMISSIONER MCHUGH: There aren't
18 significant changes from the prior one that are
19 anticipated. But there may be some minor
20 tweaks.

21 CHAIRMAN CROSBY: Does somebody want
22 to so move?

23 COMMISSIONER CAMERON: I move that
24 we follow Counsel Grossman's recommendation and

1 appoint Commissioner McHugh to make the final -
2 - to approve the final draft of that small-
3 business impact statement.

4 CHAIRMAN CROSBY: Second?

5 COMMISSIONER ZUNIGA: Second.

6 CHAIRMAN CROSBY: Any further
7 discussion? All in favor, aye.

8 COMMISSIONER STEBBINS: Aye.

9 COMMISSIONER ZUNIGA: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER MCHUGH: Aye.

12 CHAIRMAN CROSBY: Opposed? Ayes
13 have it unanimously.

14 All right. Now 41 simple steps.

15 MS. BLUE: Yes, the 41 and the 42
16 simple steps. I don't think there's any action
17 that you have to take on them. We have them
18 here for you to review. And then obviously,
19 once you've had a chance to go through it, we
20 can answer questions. I don't know that
21 everyone's been able to go through it in
22 detail.

23 CHAIRMAN CROSBY: Well, we've had
24 this for quite a while. At least we've had

1 versions of this.

2 COMMISSIONER CAMERON: A couple days
3 we've had it.

4 CHAIRMAN CROSBY: Does anybody want
5 to start? You got questions, comments?

6 COMMISSIONER ZUNIGA: I have a
7 general one that I think this is very helpful.
8 It's easy to read and understand the process.
9 It articulates well the steps. I think it's
10 great work as well.

11 CHAIRMAN CROSBY: IEB submits
12 written report step 10 says July 2013: is that
13 right?

14 MS. BLUE: Yes, that would be for
15 Category 2.

16 CHAIRMAN CROSBY: Yes, I thought it
17 was June. This is the slots. The first one
18 we're doing is slots. I thought it was June.

19 MS. BLUE: Okay.

20 CHAIRMAN CROSBY: Then it seemed to
21 me that steps 22, three, four and five ought to
22 all move up after step 17. The administrative
23 completeness and everything is the first thing
24 out of the box and the related issues. So 22,

1 three, four and five would go up between 17 and
2 18, before you get to the surrounding community
3 stuff. That is sort of the first -- It's
4 essentially the very first thing we do is the
5 administrative completeness. So, then here is
6 steps 21, MGC hears informational presentations
7 by applicants, October 16 to 18.

8 MR. GROSSMAN: Those are just dates.

9 MS. BLUE: They're not cast in
10 stone.

11 CHAIRMAN CROSBY: Well, if we're
12 going to publish this and we are, we should
13 certainly make sure that we've done the best we
14 can do. We should put all over this -- Elaine,
15 you're going to be wanting to do something with
16 this. This is best judgment draft, I think.

17 MS. DRISCOLL: Yes, but the dates
18 are different.

19 CHAIRMAN CROSBY: We should tie them
20 as best we can to (A) whatever else is out
21 there and (B) our best judgment.

22 COMMISSIONER ZUNIGA: We need to
23 make sure they're weekday. And whenever it's a
24 Gaming Commission decision, it has to be a

1 meeting scheduled.

2 CHAIRMAN CROSBY: By the way, that
3 reminds me in all of these regs. are days
4 calendar days or business days?

5 COMMISSIONER ZUNIGA: Over seven
6 days it's all calendar days, under seven -- I'm
7 sorry. Under seven it's a full week, above
8 seven it's calendar days.

9 MR. GROSSMAN: I think that's right.
10 We basically -- It's in the regulations you've
11 adopted essentially the Rules of Civil
12 Procedure relative to computation of time.

13 CHAIRMAN CROSBY: Which is it? If
14 you have seven days --

15 MR. GROSSMAN: It's every day unless
16 it's under seven in which case you exclude the
17 weekends. And then you exclude any holidays as
18 well, I believe.

19 CHAIRMAN CROSBY: So, if you say
20 seven days, it's seven business days, what we
21 would consider seven business days.

22 MR. GROSSMAN: I think that's right.

23 CHAIRMAN CROSBY: And anything above
24 seven is calendar days.

1 MR. GROSSMAN: I think that's right.

2 CHAIRMAN CROSBY: Good, well done.
3 So, the optional -- When do we plan or perhaps
4 it's now to talk about whether we're going to
5 do this best and final thing?

6 We've got it in here. We've got it
7 in here as an option. There was a lot of
8 comment on it. It seems to me that sometime
9 pretty soon, we need to tell the bidders
10 whether there's going to be a best and final
11 situation or not. It's not urgent.

12 COMMISSIONER ZUNIGA: I think the
13 process here is well laid out. First of all,
14 it's a may. And it could come on the heels of
15 narrowing down the pool from three to two or
16 four to two. And that process would also
17 entail notifying equally. Because that was
18 particular concern, notifying everybody who is
19 in the running, if you will, about what we're
20 asking them to do.

21 COMMISSIONER MCHUGH: There was some
22 comment. And the reason I agree that we need
23 to do it early is that if we said we were going
24 to do a best and final process among finalists

1 and winnow things down, people might hold back
2 expecting they have to put in more later.

3 This is in the regs. A provision
4 for it is in the regs. that we're going to
5 promulgate. If we decide to continue to
6 contemplate the possibility of doing this, it
7 seems to me we ought to adopt the position that
8 the applicants ought to assume that we're not
9 going to do it. And we will give them notice
10 if after the RFA-2's are filed we are going to
11 do it.

12 Because otherwise, we do risk people
13 holding back and then being surprised when we
14 don't do it. Or we risk them holding back and
15 having all of the bad consequences flow. So,
16 it seems to me we either say we're not going to
17 do it for Category 2, say. Or we say we're
18 going to continue it as an option, but you
19 ought to assume for planning purposes that
20 we're not going to use it.

21 COMMISSIONER ZUNIGA: What I took
22 away from here is that if the field is narrowed
23 before the best and final offer then everybody
24 has the incentive to put their best, a really

1 good proposal, whatever they consider the best
2 early on. Otherwise, they risk being narrowed
3 out of the first step, if you will.

4 COMMISSIONER CAMERON: We haven't
5 even made that decision.

6 COMMISSIONER ZUNIGA: No, we have
7 not.

8 COMMISSINER CAMERON: Didn't we
9 envision best and final only if there were two
10 that were really, really close and very, very
11 close and we were looking for some kind of a
12 way to distinguish?

13 CHAIRMAN CROSBY: I don't remember
14 that we really decided one way or the other.

15 COMMISSIONER CAMERON: We didn't
16 decide.

17 CHAIRMAN CROSBY: I don't like that
18 mechanism. I'd rather just have it straight
19 out. Give us your best shot and go all out.
20 Obviously, we will be talking to people and
21 there's room to talk to people. And that's
22 reasonable. But to have a competitive best and
23 final, it's just a process I don't like.

24 We've talked about -- I've

1 particularly talked about not pushing people
2 farther than they should go. We want them to
3 put up their best stuff, but we don't want to
4 then turn screw and get an extra million bucks
5 out of them. That's sort of what that leads to
6 that kind of -- And they're going to be sitting
7 there, oh, my God, we're this far in. We've
8 come all this way. In one way, it's good.
9 You're pushing them, but I just don't like that
10 kind of negotiating. I'm not that comfortable
11 with that mechanism. You're a professional at
12 this, so --

13 COMMISSIONER ZUNIGA: The best and
14 final works well when there's a clear financial
15 piece. When you're selling a bond and you can
16 disclose the lowest maybe the lowest doesn't
17 like it, but if you say that's going to be the
18 rules in advance they have to accept it.

19 When you have so many competing
20 interests here, the quality of a strategic
21 plan, let's say, it gets very difficult. And
22 perhaps that's really what we're all wrestling
23 with.

24 CHAIRMAN CROSBY: Do we have a

1 consensus that we would take this out and not
2 give ourselves the option?

3 COMMISSIONER MCHUGH: In some
4 senses, Category 2 is a stalking horse for
5 Category 1. I would like to take it out of
6 Category 2, get through Category 2. For the
7 minute, leave it in Category 1. It's in the
8 regs. So, we wouldn't have to change the regs.
9 And then see whether we wish we had done it. I
10 suspect we won't, but at least we have the
11 option.

12 CHAIRMAN CROSBY: It's a little bit
13 -- We can go talk to people. It just wouldn't
14 be formally plan for best and final. We can
15 always go and negotiate with bidders and say I
16 think we want to do the deal with you, but
17 you've got to do such and such. Or this is
18 inadequate on this particular angle or
19 whatever. So, it doesn't preclude us from
20 negotiating or tweaking at all.

21 COMMISSIONER ZUNIGA: I don't think
22 it does.

23 COMMISSIONER MCHUGH: Having said
24 that that raised a bunch of hackles last time

1 you said that. And we have to understand and I
2 think we all do understand we have to be
3 careful about that not to give somebody an
4 inside track or appear to give them an inside
5 track by saying where with you if just do this
6 without giving other people -- but I think we
7 understand that we've got to continue the
8 transparency through the process.

9 CHAIRMAN CROSBY: I hear that. I
10 get that. Good point. Shall we decide then
11 today that for purposes of the region two --
12 the Category 2 license that we will not conduct
13 a best and final, a formal best and final bid
14 process?

15 COMMISSIONER MCHUGH: Right.

16 CHAIRMAN CROSBY: Whether we winnow
17 down to two or not, I don't think we can decide
18 at the time. Nobody cares about that.

19 COMMISSIONER ZUNIGA: We have the
20 ability by regulation currently.

21 CHAIRMAN CROSBY: So, those two
22 should come out. Is it clear -- This says that
23 we issue a statement of findings. And that was
24 one of these things in this pile of questions I

1 was going to get to, is it clear what we have
2 to articulate in writing about our decisions
3 both pro and con? This says issues a statement
4 of findings as to how each applicant poses --
5 No, no, this is pre-decision.

6 I'm sorry this a different point.
7 MGC issues a statement of finding, number 39,
8 as to how each applicant proposes to advance
9 the objectives outlined in the General Law. I
10 don't know why we would -- I'm not sure why we
11 would be doing that. I don't know where that
12 comes from.

13 COMMISSIONER MCHUGH: That's in the
14 statute.

15 CHAIRMAN CROSBY: Prior to making
16 the decision, we have to outline, write up how
17 each one of them would and we pick from that?

18 COMMISSIONER MCHUGH: I don't think
19 that's what it says.

20 MS. BLUE: I think we have to make
21 the findings. I don't know that you're picking
22 from that. But I think what they're trying to
23 say is part of the review goes to the findings
24 you need to make to comply with the statute.

1 CHAIRMAN CROSBY: I'm sorry. I'm
2 confusing everybody including myself. Thirty-
3 eight is you make a decision. Thirty-nine is
4 you issue a statement of findings. And my
5 question is about what? How do we do 39
6 whether it's statutory or anything else?

7 COMMISSIONER ZUNIGA: About the
8 person that is selected.

9 CHAIRMAN CROSBY: I'm not sure what
10 39 means. So, that's my question.

11 COMMISSIONER MCHUGH: The statute
12 says, just to quote it because it's very close
13 to this. In determining whether an applicant
14 shall receive a gaming license, the Commission
15 shall evaluate and issue a statement of
16 findings of how each applicant proposes to
17 advance the following objectives. Then there
18 are 18 objectives listed.

19 CHAIRMAN CROSBY: So, this would be
20 before the award?

21 COMMISSIONER MCHUGH: It seems to me
22 we would accompany the award ultimately with
23 this. We would make an award,. And we would
24 say we award the license to X. Here's the

1 rationale. And in the rationale we would say
2 applicant X proposes to advance item one this
3 way, applicant Y, applicant Z proposes to
4 advance it this way. And those findings would
5 be drawn out of the subcommittee reports that
6 we would get.

7 And we would tailor that discussion
8 to support, to show why we were making the
9 decision that we've made. In the shared drive
10 that we have, there are examples of how the
11 Pennsylvania Commission has done something very
12 similar to this. And it basically goes through
13 and recites what's happened in each objective.

14 These are not the kind of findings
15 of fact that you find in a typical adjudicatory
16 proceeding, the policy decisions and the like.
17 But that would be the form.

18 CHAIRMAN CROSBY: Okay. Then again
19 we just need to double-check those dates and
20 make sure that they are all square. Step 24,
21 standard conditions to be attached to the award
22 of all gaming licenses. Are these statutorily
23 prescribed?

24 COMMISSIONER ZUNIGA: Yes, they're

1 section 21.

2 CHAIRMAN CROSBY: I see and it lists
3 them here, okay, right. Then the best and
4 final is described on page 17 is coming out.
5 All right. How did it happen that there's 42
6 simple steps for Category 1 and 41 simple steps
7 for Category 2?

8 MR. GROSSMAN: There's no bond in
9 the Category 2.

10 CHAIRMAN CROSBY: Oh, all right.

11 MR. GROSSMAN: So, that's one of the
12 simple steps.

13 MS. BLUE: I was wondering about
14 that.

15 CHAIRMAN CROSBY: Todd, you're the
16 man.

17 COMMISSIONER ZUNIGA: For Category
18 2, there's now an informational presentation at
19 the beginning and the public hearing no more,
20 right, because the second presentation was tied
21 to the best of final, correct?

22 MR. GROSSMAN: Not necessarily. I
23 think the Commission could conduct as many
24 public hearings as it wants consistent with

1 what Mr. Day discussed earlier.

2 CHAIRMAN CROSBY: On the chart it
3 appears. I don't think that's right.

4 MS. BLUE: There's a section for the
5 informational presentations, item 21.

6 COMMISSIONER ZUNIGA: Twenty-one,
7 yes.

8 MS. BLUE: And then 26 is the open
9 meeting, which is separate from the public
10 hearing to discuss progress, issues. Then
11 there is a formal public hearing after that.

12 COMMISSIONER ZUNIGA: Right.

13 MS. BLUE: And then there's a formal
14 public hearing after that. So, there's three
15 opportunities.

16 COMMISSIONER ZUNIGA: Right. But
17 the 35 presentation of best and final is now
18 deleted.

19 MR. GROSSMAN: Right. Even though
20 it wouldn't be a presentation of the best and
21 final, that step was just an opportunity for
22 the applicant to come in at the end and make
23 its final pitch. If you're still interested in
24 that concept, we could change the title from

1 best of final presentation to just final
2 presentation.

3 COMMISSIONER MCHUGH: The process
4 that we went through is described there. This
5 ought to be driving it.

6 MS. BLUE: We have to reconcile this
7 with that. We did this before we saw that.
8 So, we will look at that and incorporate that.

9 CHAIRMAN CROSBY: It's this and the
10 calendar that needs to get translated into
11 this.

12 MS. BLUE: That's right.

13 CHAIRMAN CROSBY: But it's a great
14 document. And Elaine, it sounds like we are
15 about there. They've got to do some tweaking
16 on this but you can have it.

17 Okay. Anything else? Anything else
18 on your --

19 MR. DAY: All's I was mentioning to
20 Catherine is along with reconciling the
21 evaluation process we talked about, we also
22 have the master schedule process, which we have
23 to rearrange the dates formally and it may be
24 necessary in order to reconcile the dates.

1 MS. BLUE: And that's at our next
2 meeting. So, we can roll those dates into this
3 too.

4 MR. DAY: We want to make sure they
5 are all consistent.

6 CHAIRMAN CROSBY: Okay.

7 MS. BLUE: That's all we have.

8 CHAIRMAN CROSBY: All right. I
9 think that's everything. Hard to believe. Do
10 we have a motion to adjourn?

11 COMMISSIONER MCHUGH: So moved.

12 CHAIRMAN CROSBY: Second?

13 COMMISSIONER CAMERON: Second.

14 CHAIRMAN CROSBY: All in favor, aye.

15 COMMISSIONER STEBBINS: Aye.

16 COMMISSIONER ZUNIGA: Aye.

17 COMMISSIONER CAMERON: Aye.

18 COMMISSIONER MCHUGH: Aye.

19 CHAIRMAN CROSBY: Unanimous.

20

21 (Meeting adjourned at 4:15 p.m.)

22

23

24

1 ATTACHMENTS:

- 2
- 3 1. Massachusetts Gaming Commission May 16,
4 2013 Notice of Meeting and Agenda
- 5 2. Massachusetts Gaming Commission May 3,
6 2013 Meeting Minutes
- 7 3. Massachusetts Gaming Commission July 18,
8 2012 Memorandum Regarding Meeting/Speaking
9 Request Policy and New Public Speak-Out
- 10 4. Evaluation Process - Slots Parlor
- 11 5. Category 1 and Category 2 Evaluation
12 Criteria
- 13 6. May 15, 2013 Suffolk Downs Memorandum
- 14 7. Written Comments
- 15 8. Draft Region C Schedule Potential Benefits
- 16 9. Massachusetts Gaming Commission 5-10-2013
17 Region C Draft Schedule
- 18 10. Massachusetts Gaming Commission Draft
19 Regulations
- 20 11. Draft 42 Simple Steps to Issue a Gaming
21 License - Category 1
- 22 12. Draft 41 Simple Steps to Issue a Gaming
23 License - Category 2
- 24

1 SPEAKERS:

2

3 Catherine Blue, General Counsel

4 Richard Day, Executive Director

5 Dr. Jennifer Durenberger, Director of Racing

6 Todd Grossman, Staff Attorney

7 Edward Nowak, Standardbred Breeders of

8 Massachusetts

9 Dr. Rachel Volberg, UMass Amherst

10 John Ziemba, Ombudsman

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C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 20th day of May, 2013.



LAURIE J. JORDAN
Notary Public

My Commission expires:
May 11, 2018