

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS GAMING COMMISSION
PUBLIC MEETING #122

CHAIRMAN

Stephen P. Crosby

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

May 29, 2014 10:30 a.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 107A

Boston, Massachusetts

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

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3 CHAIRMAN CROSBY: I'm calling to
4 order the 122nd meeting of the Massachusetts
5 Gaming Commission once again at the Boston
6 Convention Center at about 10:30 in the
7 morning. As usual, the first item on the
8 agenda is approval of minutes, Commissioner
9 McHugh.

10 COMMISSIONER MCHUGH: The minutes,
11 colleagues, are in the packet. This time I
12 actually have a suggested correction and that's
13 at page three, 1:50 PM. I should have caught
14 this before. General Counsel Blue presented
15 the decision in principle relative to the
16 premises. That presentation was of the draft
17 decision. The decision in principle was made
18 the week earlier. What was presented at that
19 meeting was the draft decision. So, I will
20 change in principle to the draft decision
21 relative -- the draft written decision relative
22 to the premises. But with that correction and
23 any others that --

24 CHAIRMAN CROSBY: There's also a

1 typo at 10:36. It doesn't matter, but the word
2 Commissions in the fourth line needs an
3 apostrophe.

4 COMMISSIONER MCHUGH: Okay. So,
5 with my substantive correction and any others
6 that anybody has -- Does anybody have any other
7 correction?

8 COMMISSIONER STEBBINS: Just one
9 quick correction under that same 10:36 entry we
10 refer to Penn National and Turner Gaming.

11 COMMISSIONER MCHUGH: Turner Gaming,
12 yes.

13 COMMISSIONER STEBBINS: Unless
14 they're venturing off into another line of
15 work.

16 COMMISSIONER MCHUGH: Yes, something
17 they haven't told us about. That is a
18 substantive correction. We'll make that as
19 well. So, with those corrections then and any
20 other typographical or mechanical things that
21 arise on a further reading, I'd move that the
22 Commission approve the minutes of the May 15
23 meeting as presented in the packet.

24 COMMISSIONER STEBBINS: Second.

1 CHAIRMAN CROSBY: All in favor, aye.

2 COMMISSIONER MCHUGH: Aye.

3 COMMISSIONER CAMERON: Aye.

4 COMMISSIONER ZUNIGA: Aye.

5 COMMISSIONER STEBBINS: Aye.

6 CHAIRMAN CROSBY: Opposed? The ayes

7 have it unanimously. Next up is Design

8 Excellence Comments, Commissioner McHugh, do

9 you want to introduce?

10 COMMISSIONER MCHUGH: I do, thanks,

11 Mr. Chairman. We some time ago posted on our

12 website a request for comments as to the

13 exterior design of the three applicants'

14 proposals, the two in Region A and the one in

15 Region B, an ask for comment on those

16 proposals.

17 We've gotten and are including in

18 the packet today about 30 pages of comments

19 that we've gotten from the general public. But

20 the American Institute of Architects, which was

21 very helpful to us in the beginning by running

22 a forum at which we got a lot of really

23 thoughtful ideas about design and design

24 concepts, once again has reached out and has

1 suggested doing a collaborative undertaking, a
2 collaborative process that would yield some
3 comments for us. So, I asked John Nunnari,
4 the Executive Director to give us a brief
5 synopsis of what he planned to do and talk to
6 us today about it.

7 I should add that given the
8 timelines, he and I talked, I think, a week ago
9 or a week and half ago. And the deadline for
10 Springfield comments was coming up very
11 quickly.

12 The posted deadline was May 27 on
13 Tuesday. And I asked him if he would be
14 prepared to go ahead or his group would be
15 prepared to go ahead and I would ask my
16 colleagues to expand the deadline to May 30,
17 which is tomorrow, in order to give them time
18 to do what they wanted to do and give us some
19 comments. So, before we are finished, I'd like
20 to do that formally and see if everybody is in
21 agreement.

22 But then without further ado, let me
23 ask John Nunnari to talk to us about the
24 proposal and thanks for being here and thanks

1 for reaching out.

2 MR. NUNNARI: Thank you. For the
3 record my name is John Nunnari. I'm the
4 Executive Director of the Massachusetts chapter
5 of the American Institute of Architects. It's
6 good to see you all again.

7 What I thought I would do today is
8 just sort of walk through the process that we
9 were envisioning as a way of organizing a
10 professional response to your request.

11 Looking at the timelines in working
12 with Commissioner McHugh, we sort of set up
13 two-step process. One specifically to deal
14 with Springfield because we knew that had a
15 much shorter timeframe, and another process for
16 the Everett and Revere proposals.

17 The outline that you have in front
18 of you talks about review format and rules of
19 conversation. And I won't read from that.
20 I'll just sort of walk you through the concept
21 that we are planning on using. And then I can
22 talk to you a little bit about yesterday, the
23 group that we got together to talk about
24 Springfield.

1 So, the review format itself in
2 talking with my board, we decided to go with a
3 format that is sort of typical for anyone that
4 goes to school or works in the design
5 profession. It's a process that we use that I
6 suppose is probably similar to a lot of other
7 professions. I'm sure there's variations on
8 what I'm about to describe.

9 The process that we generally use,
10 and I'll just use when you're in college as a
11 way to understand the process. When you're in
12 college you're going to school for
13 architecture, you take architectural studios.
14 What generally happens is during your studio
15 you'll have two reviews.

16 Both of those reviews will be done
17 in a way where at the beginning of the semester
18 you are given a project. Let's say it's a
19 museum. Halfway through the semester, your
20 professor will say this is the stopping point.
21 You are going to pin all of your drawings up on
22 a wall. You're going to put all of your models
23 on display. And the professor will go out and
24 get a group of peers. It's usually other

1 architects or other professors.

2 And it goes by many names. Some
3 call it a jury. Some call it a design review.
4 Some call it a crit. But it's all basically
5 the same thing where you as the proponent stand
6 up and you talk about what your design scheme
7 is. And you use your drawings and your models
8 to explain what it is you are trying to do.
9 And you usually have about a half hour or so to
10 explain what you're doing.

11 And then at the end of that the peer
12 reviewers comment. And at the midterm or at
13 the halfway point, the point of that review is
14 to take those comments and then work for the
15 rest of the semester either incorporating the
16 comments that you heard into your design or
17 defending why you heard a certain comment and
18 you don't feel that fits in your project. And
19 you prepare yourself to defend that.

20 Then at the end of the semester is
21 what's called a final jury, a final review, a
22 final crit, whatever you want to call it where
23 the same thing happens. And all of your
24 drawings up on the wall, get all of your models

1 out, all of your sketches. A group of peers
2 that the professor has brought in and the same
3 process occurs. You describe what you're doing
4 and then the folks that are listening react to
5 what you have done.

6 That process extends into the
7 professional services at any architectural or
8 engineering firm where a project is being
9 designed in concept or schematic design or
10 design development. The drawings and models
11 will be put up on the wall. People will come
12 in and comment. And it's usually a way to help
13 catch things in design that you weren't looking
14 at or even change your design if need be if
15 others are just not seeing what you're trying
16 to do.

17 So, we sort of took that concept and
18 decided that would probably be the best
19 approach in order to gather a group of
20 professionals to look at the drawings and all
21 of the information that's in the applications
22 and to give them something to react to.

23 That being said, what we grappled
24 with as a board was whether we should use that

1 traditional model in the strictest of sense
2 whereas we as AIA would reach out to the design
3 proponents of the three casinos or the three
4 proposals and ask them to come in and present
5 to us. Or do we do the opposite and not ask
6 them to come in but simply react to the same
7 information that's been made available to the
8 general public.

9 And what we decided was in fairness
10 it would be best not to ask the proponents to
11 come in and present their ideas to us that we
12 should just react to the information that's
13 been made available to the general public. But
14 that being said there was also a discussion
15 that said that we should at least inform the
16 three proponents that we're planning on doing
17 this. And if they would like to attend,
18 they're welcome to attend so that they can
19 listen to the comments that are being made.

20 The thought might be they might hear
21 some things that might help them further down
22 the road in their designs. So, that was the
23 basic idea.

24 Originally, when we were thinking

1 this through originally, we wanted to apply
2 this to all three projects, Springfield,
3 Everett and Revere. But given the timing, we
4 realized we wouldn't have enough time to really
5 do that. So, we set up a separate process
6 specifically for Springfield, which we actually
7 did yesterday.

8 And that process will truly be a --
9 It was an organization of design professionals,
10 but the comments that will be submitted will be
11 submitted as a group of design professionals as
12 opposed to comments specifically endorsed by
13 AIA Massachusetts. The reason being, quite
14 frankly, the timing.

15 The process that we have set up that
16 I have just described we will do -- we will
17 able to collect the comments, edit them. The
18 board will be able to review them and then
19 agree on them. And then we will submit them on
20 the Everett and Revere proposal. We weren't
21 able to do that same process. There just
22 wasn't enough time to make that happen for the
23 Springfield project.

24 So, what we did was yesterday we

1 gathered a group of professionals. We pinned
2 up all of the drawings. We walked through all
3 of the drawings and collected the comments.
4 And I have a first draft of that which I can
5 share some of the comments with you if you
6 would like. But I'm in the process of editing
7 it for grammatical errors and making sure that
8 everybody agrees with the comments that were
9 written. And I will have those submitted to
10 you for tomorrow.

11 For the Everett and Revere
12 proposals, we are looking to gather the group
13 of individuals somewhere during the week of
14 June 16 to the 20th. What we will have is a
15 nine-member jury, which will be three members
16 from each of the three chapters in the state.
17 But we will also be inviting any and all AIA
18 members to attend the session so that they can
19 listen and they can also feel free to add
20 comments.

21 We will have the discussion
22 moderated. The moderator will be there simply
23 to stop the conversation, which you might
24 imagine in a design conversation could be

1 pretty free ranging. The moderator will be
2 really there to keep us on focused so we can
3 stop at things like comments about the site,
4 comments on the exterior facade, comments on
5 the plans, comments on section and really kind
6 of keep us on track.

7 So, we will be doing that again
8 somewhere during the week of June 16 to the
9 20th. We'll collect the comments. We'll edit
10 them, put them into written form and then get
11 them submitted to you by June 30.

12 With that that essentially is the
13 process we plan to use. We are hoping that the
14 Commission sees that as a beneficial process to
15 you. We are certainly open to any suggestions
16 you may have.

17 Obviously, we'll let you know what
18 the date of the actual review will be,
19 understanding issues of quorum and public
20 meetings. We will simply say that you are more
21 than welcome to attend. And if you all want to
22 attend, we just need to make sure that we do it
23 properly so that the meeting is put up as a
24 public notice and all of the legal requirements

1 of such a meeting. So, we at least make that
2 offer.

3 COMMISSIONER ZUNIGA: Thank you, Mr.
4 Nunnari. I guess you are all assuming that
5 there's value in this process prior to the
6 award of the license, which is why you're
7 talking about timelines the way you're talking
8 about them. But isn't there also some value to
9 a process like this after the license has been
10 awarded?

11 MR. NUNNARI: Absolutely. In our
12 Springfield comments that's exactly what we
13 suggest, which is what was submitted although
14 are called schematic designs and some of them
15 are, in looking at the proposals, some of the
16 proposals are schematics. Some are little more
17 concept. And the reality is this is a long
18 process of designing and building a building.

19 And there's a local review process
20 that still must be gone through the planning
21 boards, the zoning boards, the conservation
22 commissions. And what we suggest at least in
23 the Springfield comments is making sure that
24 those processes occur and making sure that the

1 Gaming Commission is aware of those processes.

2 Because what can happen during
3 planning board reviews, zoning board reviews,
4 con. comm. reviews is designs change. And what
5 you are signing off on let's say on the
6 Springfield project in two weeks, a year and a
7 half later once it's finally done with
8 permitting and starting construction might be,
9 I wouldn't say considerably different but it
10 will be different, because there will be
11 restrictions that will be put on the project
12 that are local restrictions as opposed to any
13 conditions you may put on the license in terms
14 of the design.

15 COMMISSIONER ZUNIGA: Actually, I've
16 sat through a process like this. I understood
17 it to be referred to as a pinup just like you
18 said that the architect or the team of
19 architects would pin up all of their drawings
20 and present to a group of peers their concept.
21 And I think it's actually very educational for
22 all of the participants but especially was for
23 me when I sat just as a spectator.

24 And I want to pick up something you

1 did mention, which is in my estimation there is
2 a lot of rich discussion that happens between
3 the architect who proposes something, who
4 explains their concept with their drawings and
5 the back-and-forth. And it's even richer when
6 you do it a second time just like you described
7 when the design has evolved.

8 So, it occurs to me that by looking
9 at the deadline prior to the award of the
10 license and looking to see how the dates are
11 limited, and your suggestion that because of
12 that the applicant would not be present, we
13 would be missing -- not we, but everybody would
14 be missing that richness of back-and-forth.
15 And I understand where your board is coming
16 from in terms of meeting the deadline and
17 providing comments prior to the award of the
18 license.

19 But I wonder if we would be better
20 served having that process after the award of
21 the license in both instances and have that
22 rich discussion more than once.

23 MR. NUNNARI: You can absolutely.
24 What we were trying to be cognizant of was we

1 didn't want our, what we'll call, process to be
2 viewed by the Commission or by the proponents
3 as any type of additional process that they
4 would need to go through prior to June 30.

5 So, the question became how do you
6 sort of thread that needle. And we thought the
7 best way to thread that needle was by simply
8 reaching out to the firms to let them know that
9 we were doing it, but we as AIA Massachusetts
10 certainly have no authority to make them attend
11 a design review.

12 And we were leery about just simply
13 coming to you and saying well if you want to us
14 to use this process then we need your help.
15 And you need to tell them that they need to
16 come to this design review, because again that
17 would be a process on top of a process that you
18 have already established. And we didn't want
19 to do that. So, our thought was this would be
20 the best way to do it is to invite them to let
21 them come and listen.

22 Now we certainly would be open to if
23 the Commission was interested in looking at a
24 longer timeframe and saying over the next year

1 and a half while they're going through their
2 local process which will have sort of design
3 reviews embedded in that local process, if the
4 Commission wants to have its own sort of,
5 whether you want to call it a design review or
6 at least just an update from the proponents as
7 to where they are in their design and what the
8 design now looks like and have them talk about
9 why this may have changed or that may have
10 changed, or why this has been added, I
11 absolutely think that that would be of benefit
12 to you and to the proponents and to the
13 communities that they're going in.

14 Because one of the things that came
15 out of the discussions in Springfield yesterday
16 was just looking at the proposal, which is
17 basically taking three blocks and turning it
18 into one and the closing of some streets. Some
19 people who are urban designers were looking at
20 that and really questioning why given
21 experience of urban designers today looking
22 across the country at projects that have been
23 done where streets have been closed, one of the
24 comments was that's a bad idea.

1 Traffic actually helps create
2 vitality. And by closing off streets and
3 stopping traffic, you start to lose some of the
4 urban feel that you might have. And although
5 there's an understanding of why you do this to
6 allow for pedestrian access, when there's no
7 pedestrians there, quite frankly you just have
8 very large open spaces that look empty.
9 Probably the best example I can give you that
10 you all know is Boston City Hall. It's a huge
11 plaza, looks great when there's people there,
12 but when there's no one there, it looks a
13 little empty.

14 So, we're not talking that there's
15 any sort of open spaces like that in the
16 Springfield proposal, but that's the same
17 concept of saying when there's cars, there's
18 vitality. People are walking on the sidewalks
19 and in the streets and it helps.

20 So, there was some concern about the
21 closing of Howard Street completely and the
22 loss of Bliss Street, although Bliss Street
23 seemed to be a little less of a concern than
24 Howard Street. But those are the things that

1 come up during design review. And those are
2 the things that the designers can look, take
3 into account and go back to the drawings and
4 say maybe there's a better way to do this.

5 Because design while you're putting
6 things pen to paper that's the time to do it.
7 The time not to do it, as Jennifer will tell
8 you, is during construction.

9 COMMISSIONER ZUNIGA: Right. I
10 understand the point, but I'm just going to go
11 out on a limb here and maybe the architect and
12 the team from MGM has a really legitimate
13 reason to close that street.

14 MR. NUNNARI: Absolutely.

15 COMMISSIONER ZUNIGA: It's something
16 totally unrelated to vitality and maybe
17 security or constructability. And all of that
18 gets weighed in, and in the back-and-forth
19 becomes a lot more rich.

20 MR. NUNNARI: A lot of times, and it
21 happens quite often, the peer reviewers will
22 look at the drawings and say horrible idea, but
23 once it's presented everybody understands.
24 Because there's nothing written telling you why

1 they did exactly that but once they understand
2 they say, oh, okay. Yes, that makes a lot more
3 sense.

4 So yes, if we had our druthers, we
5 would much prefer to have a true traditional
6 design jury where all three proponents are
7 presenting and then we can react to that. But
8 again, given the timeframes, given our concern
9 that we didn't want to create another process
10 or something that could be viewed as another
11 process, we ended up deciding to go to the
12 course we suggested.

13 And we are open. If the Commission
14 wants to talk about ways to bring in the three
15 folks or after June 30 and tomorrow's deadline,
16 we're certainly open to doing that.

17 COMMISSIONER STEBBINS: John, I had
18 a quick question. First of all, let me start
19 off by thanking you and your organization. You
20 guys engaged with us and reached out to us
21 pretty early on in this process, and certainly
22 volunteered and contributed a lot of your time.

23 As you are looking at the drawings,
24 the conceptualls, how much do you take into play

1 where these facilities are actually going to be
2 located? There's verbiage in the statute which
3 talks about blending in with the surroundings
4 or being compatible with the surrounding, how
5 have you melded that into your process?

6 MR. NUNNARI: It will be more
7 formalized certainly when we have the nine-
8 member jury and the moderator sort of helping
9 us focus on those exact issues. But I can say
10 yesterday during the Springfield discussions
11 that it was brought up. And there was a
12 concern, quite frankly that the design for the
13 Springfield project right now seems to be a
14 very inward looking design.

15 They've taken three blocks. They've
16 kind of focused everything in towards Howard
17 Street, the parking garage, all of the retail,
18 the pool, the ice-skating rink, so on and so
19 forth. And the concern was you have three
20 streets, four streets surrounding it. And the
21 concern was how are you interacting with those?

22 And there wasn't a lot of comfort
23 that the current design really truly was
24 interacting with the communities around. One

1 of the comments specifically was on, I believe,
2 it was Union Street where you sort of walk down
3 the street, there's a lot of retail. Then you
4 kind of hit the parking garage. And then you
5 walk for a long way, you're at a parking garage
6 and then south of that is the Basketball of the
7 Hall of Fame and other urban amenities. And
8 the concern was you're walking down that street
9 it's not very pedestrian friendly.

10 And one of the suggestions was that
11 maybe the ground floor of the parking should be
12 dedicated to retail to continue the pedestrian
13 way and to truly give you a tie-in to what is
14 south of the development and what's east and
15 what's north.

16 So, they're looking at it and we are
17 certainly looking at it. And I think that
18 yesterday's conversation was a little more
19 freewheeling. And that was the first
20 conversations that came up. But because we
21 didn't have a moderator and because we had put
22 this together so quickly, we just sort of
23 gathered whatever people were saying.

24 But I think if we can use the

1 process that we've described with the nine-
2 member jury and a moderator, we can be a little
3 more focused on saying okay, for the next 20
4 minutes or a half-hour we're going to focus on
5 site selection. And what are all of the issues
6 related to the site selection.

7 The next half-hour we are going to
8 focus purely on the elevations and do they make
9 sense? Do the material selections make sense?
10 How are they interplaying with each other?

11 Maybe we'll spend a half-hour on
12 plan. Does the plan actually make sense? Are
13 the adjacencies that are being suggested make
14 sense or would there be a better arrangement?
15 And what are the adjacencies not only in the
16 building but to the surrounding community?

17 So, all those things will be taken
18 into consideration. I can't say they were
19 fully take into consideration on yesterday's
20 comments, again just because of the timing.

21 COMMISSIONER STEBBINS: Thank you.

22 CHAIRMAN CROSBY: Was MGM there
23 yesterday?

24 MR. NUNNARI: No.

1 COMMISSIONER MCHUGH: This started
2 out and remains an invitation to the public and
3 segments of the public to make comments. More
4 information, it seems to me, notwithstanding
5 your thoughtful suggestion Commissioner Zuniga,
6 is it seems to me better us. So that both
7 approaches might be a good thing.

8 And whatever information we get from
9 a thoughtful group of organized professionals
10 is, it seems to me, helpful in our overall
11 evaluation particularly of the site design
12 component of the applications. It doesn't mean
13 we're going to agree with everything. Some
14 things are fixed.

15 Given where we are, people aren't
16 going to go to a new site if that group comes
17 up with a suggestion that the site isn't the
18 best site in Massachusetts.

19 But it seems to me it's helpful in
20 looking at things and inconceivably making
21 suggestions or having conditions or otherwise.
22 And that this process is a way that's designed
23 to get it, to get that additional comment from
24 informed professionals. Making it clear that

1 these comments are public comments that will
2 have weight as comments from informed
3 observers, but are not binding on the
4 Commission. This is not an official Commission
5 exercise. Nobody is required to participate or
6 attend, but we welcome the input that we'll get
7 from a group of thoughtful volunteers.

8 And it seems to me if we do it that
9 way and then after we make the licensing
10 decision, revisit how the AIA might be helpful
11 in conjunction with the design team for the
12 licensee or the license award designee, we'd
13 have the best of both worlds.

14 CHAIRMAN CROSBY: How do you feel
15 about the possibility of AIA simply saying to
16 the bidders that they would be welcome to make
17 a presentation if they wanted so you'd have
18 that opportunity to incorporate the iterative?

19 COMMISSIONER MCHUGH: I guess my
20 instinct is, given the realities of where we
21 are and the understandable concerns that the
22 applicants have as the decision-making process
23 draws clear, I would hate to do anything that
24 -- interject another thing that any applicant

1 could use as a lever or thinks they could use
2 as a lever or that they thought they might be
3 penalized for not participating in.

4 I think we ought to just stand clear
5 of that and say the AIA is going to do what
6 every other member of the public has the
7 ability to do and take a look at the
8 applications and the material and information
9 that's there and give us their thoughts,
10 recognizing the limitations. But I think the
11 cost of interjecting what may appear to some to
12 be pressure or another step in the process is
13 too high.

14 COMMISSIONER CAMERON: I would
15 agree. And I think your group was thoughtful
16 and I want to thank you for this input. I
17 think it will add value to the process and not
18 create a new process. And I think your group
19 was wise to realize that that would not be a
20 good thing to add more to a process this time.
21 But I do believe you will add great value as
22 professionals. And I think that's always
23 helpful.

24 I was wondering, John, if you've

1 ever done this for another large project in the
2 Commonwealth, something similar?

3 MR. NUNNARI: We, as AIA
4 Massachusetts, nothing quite like this. What
5 we do have is, for instance, one of our local
6 chapters, the Boston Society of Architects,
7 which is just across the bridge there which is
8 where we had the casino forum, they do do this
9 on a yearly basis because there's a huge amount
10 of awards that go out every year. The most
11 prestigious being what's called the Harleston
12 Parker award.

13 They use the same process. It's a
14 jury. People submit in. That process actually
15 is a process much more like what we are
16 proposing where people submit their projects
17 in. And then it's reviewed by a jury and your
18 projects stands on your submission. So, you
19 have no opportunity to defend what you've done.

20 But that being said, there are other
21 projects that are more local to the Eastern
22 Massachusetts area, which is where the BSA's
23 region is that they do do juries on projects
24 like that. Maybe not as large as something

1 like this. But the reality is there are very
2 few projects in Massachusetts that have a
3 minimum of \$500 million threshold for
4 construction. So, quite often you don't have
5 projects quite this large. But the BSA has
6 done things like this in the past, yes.

7 COMMISSIONER CAMERON: Thank you.

8 CHAIRMAN CROSBY: Anything else?

9 So, we're good to go with the process. This is
10 great. I would add in my two cents worth for
11 appreciating how you guys have pitched in
12 multiple times now. Thank you.

13 MR. NUNNARI: Thank you. I
14 appreciate it. I will certainly touch base
15 with you once we have a firm date set and a
16 location for the review. Again, you are more
17 than welcome to attend. I'll let you know
18 early enough that if you decide members do want
19 to attend, we can go through the process to
20 make sure we've dotted the I's and crossed the
21 T's legally.

22 COMMISSIONER MCHUGH: Great, John,
23 thank you very much.

24 CHAIRMAN CROSBY: Thank you.

1 COMMISSIONER ZUNIGA: Thank you.

2 COMMISSIONER MCHUGH: Let me just
3 before you leave by consensus propose that the
4 date for comments on the Springfield proposal,
5 for everybody be extended to May 30. It's
6 something that we don't need a formal vote, but
7 I take it we all agree. And I think we have
8 already posted in anticipation of or will post
9 that on the website so that everybody's got the
10 same opportunity. Thank you very much, John.

11 MR. NUNNARI: Thank you.

12 CHAIRMAN CROSBY: Okay. Executive
13 Director Day.

14 MR. DAY: Mr. Chairman,
15 Commissioners, good morning. As we start out
16 here this morning, I would like to just take us
17 to sort of an administrative topic. We have
18 the evaluation and decision process in
19 scheduling for Region B. And it seems like it
20 might be appropriate for us to just take a few
21 minutes and talk about what that schedule is
22 going to be because it will be a little bit
23 complex. So, I thought I'd just review it
24 quickly with the Commissioners and make sure we

1 are still on the same track.

2 We anticipate at this point June 10
3 through June 13 that the Commission would take
4 on the evaluation and determination process for
5 Region B or Springfield, the MGM project. The
6 process would begin on Tuesday. It would then
7 go Tuesday the 10th for the evaluation reports.

8 The Commissioners would then in turn
9 as they did in the slot parlor examination go
10 through each one of the different segments that
11 they are responsible for in those reports. The
12 process would continue with discussion, finish
13 the reports if necessary on Wednesday. And
14 then depending on where the Commission is at,
15 you would proceed with possibly a decision in
16 principle with conditions at which time would
17 provide opportunity for the licensees to work
18 with staff and work towards coming before the
19 Commission again later on in the week.

20 With that process, Thursday would be
21 set aside for a Commission meeting. That
22 Commission meeting would be in Boston as
23 opposed to the evaluation process, which I
24 should have made clear is planned to be in

1 Springfield. Then with the Commission meeting
2 that agenda will be posted separately, will not
3 be posted with the agenda for the evaluation
4 and award process.

5 The Commission would plan to return
6 to Springfield on Friday for the final
7 determination. I just thought we'd at least
8 try that. It may take a couple of times before
9 everybody gets used to that schedule, but I
10 thought at least it might work.

11 CHAIRMAN CROSBY: Yes, I'm glad you
12 did that. I think it's important. And I think
13 Elaine we want to make sure that this gets out
14 for press and public.

15 Just to reiterate it Tuesday and
16 Wednesday the ninth and 10th will be public
17 meetings held at Springfield for the purpose of
18 evaluating and deliberating upon the Region B
19 application.

20 COMMISSIONER ZUNIGA: It's Tuesday
21 the 10th and Wednesday the 11th.

22 CHAIRMAN CROSBY: What did I say?

23 COMMISSIONER ZUNIGA: The ninth.

24 CHAIRMAN CROSBY: I'm sorry. Thank

1 you. The 10th and 11th, Tuesday and Wednesday,
2 June 10 and 11. Thursday we will be back in
3 Boston to have our regular meeting with sort of
4 the understanding that perhaps the staff will
5 be in discussions with the applicant about the
6 conditions and so forth and the tentative
7 award. And then the final decision will be in
8 the morning of Friday the 13th where we will be
9 back in Springfield.

10 COMMISSIONER MCHUGH: I hear that.
11 But I would recommend that as we post that
12 schedule that's what we're thinking about. But
13 it's conceivable that we would need more time
14 for discussion. So, the meeting on the 12th
15 somehow we ought to take account of the fact
16 that we might need that time for a discussion
17 of the proposal. As we look at things now, we
18 don't know.

19 CHAIRMAN CROSBY: I agree with that.

20 COMMISSIONER MCHUGH: And we need to
21 be flexible to accommodate that time.

22 CHAIRMAN CROSBY: So, when we post
23 these various events, we just need to make sure
24 that the language gives us the flexibility to

1 extend virtually any of those days,
2 particularly the point about Thursday. We
3 could open that up for deliberation if we need
4 to. That's a good point. Does that make
5 sense? Great. Thank you.

6 MR. DAY: Thank you, Commissioners.
7 The first item that I have up with the
8 Director's report this morning is a Penn
9 project schedule. That's under tab 4a in the
10 information that you received.

11 I would like to just address it
12 briefly. What we are here this morning for is
13 basically pursuant to 205 CMR 135.02(2). And
14 that's one of the regulations the Commission
15 adopted. It states something similar. I might
16 leave a few words out.

17 But the Commission shall approve a
18 project schedule for each gaming licensee.

19 That the schedule for the gaming
20 licensee will include the capital investment in
21 its gaming establishment and related
22 infrastructure, which includes a major design
23 and construction stages in those. Then it goes
24 on with including things like design

1 deliverables, landscaping, long lead items,
2 insulation, interior finish, commissioning of
3 the gaming equipment and technology systems.

4 So, what we have this morning is I
5 think the Commission had a very rich discussion
6 about this being the first project that the
7 Commission has to consider, and exactly how
8 that process would move forward. We also
9 understand that Penn National Gaming was really
10 already going forward as they had to to meet
11 their project timetables. So, the discussions
12 sort of determined I think that this was a work
13 in process.

14 As we move forward, really the
15 information the Commission would need and the
16 how and when were something that we needed to
17 continue to develop while we worked with Penn
18 for this project approval.

19 With that in mind, this morning
20 we've got representatives from Penn National
21 Gaming, I think Turner Construction as well and
22 of course our project manager firm with
23 Jennifer Pinck and her team. I'll just refer
24 this right to them.

1 MS. PINCK: Good morning,
2 Commissioners. Today we have -- I have here
3 with me, I'll introduce them, Bill Perry from
4 Perry Associates on the MGC OPM as a scheduling
5 expert. We call him a scheduling guru. John
6 Rauen and Mike McGrew from Penn National. And
7 I believe next to them is Emil Giordano with
8 Turner.

9 We've been working with them on
10 their schedule development. And what we have
11 today is a preliminary schedule. And I am
12 going to turn this directly over to Penn to
13 talk about the schedule. Then Bill Perry and I
14 are available to add comment.

15 You will see in our report in your
16 packet that we have reviewed the preliminary
17 schedule and have some comments. But we are
18 available once or while Penn is talking if you
19 have questions that you want us to answer.

20 MR. RAUEN: Thank you, Jennifer.
21 Good morning, Commissioners. My name is Jack
22 Rauen. I'm Vice President of Development for
23 Penn National Gaming. I had the opportunity to
24 be with guys before on diversity matters. And

1 it's good to be here today on schedule.

2 We have, as is in your packet,
3 prepared a summary project schedule for your
4 review and consideration. We have provided
5 certain details supporting that schedule to
6 Jennifer Pinck and her team. And I know
7 they've submitted a report, also in your
8 package, on our schedule.

9 We've commenced an active working
10 relationship with Pinck. We have a blossoming
11 structure in place now for regular reviews of
12 schedule, schedule progress, schedule issues.
13 And a process for timely notification from us
14 to Pinck of any problems we encounter with the
15 schedule.

16 So, what you have today in front of
17 you is the good attempt to always get things on
18 one page. So, we prepared this in executive
19 fashion and in a milestone format.
20 Essentially, what this schedule shows is that
21 we view the completion of site work, the
22 parking garage, the casino building and the
23 racing building and the off-site traffic
24 improvements all coming together to support a

1 June 2015 opening to the public.

2 Both Penn and Turner, our
3 construction manager, believe this schedule is
4 achievable, aggressive but achievable. And our
5 comfort level with the schedule comes from a
6 variety of different perspectives. As we told
7 you in the past, we inherited a design that was
8 in certain parts complete. So, we have the
9 ability for a quick start from a design and a
10 permitting standpoint.

11 We have a parking garage that is
12 already 75 percent complete. We have Turner's
13 knowledge and expertise in building in this
14 particular market. And we've recently had
15 some very fruitful meetings with MassDOT on
16 where we take the issue of off-site traffic
17 improvements. That's a critical path item
18 here. And recently, we've had good meetings
19 with MassDOT and we think the road is a little
20 more clearer on that subject right now.

21 So, for those reasons that gives us
22 a comfort level when we start looking towards
23 June 2015 opening. That's the overview. Now
24 we'll take you through some of the details.

1 And please along the way if your
2 have questions stop us at any time. We will
3 start with permitting and design and where we
4 are with Michael McGrew.

5 COMMISSIONER ZUNIGA: Actually, I
6 have couple questions just for the terminology.
7 You talk about the clubhouse, the critical path
8 going through the permitting of the clubhouse.
9 You also talk about the gaming building and
10 there's also narrative relative to the casino
11 building and the simulcast building.

12 Can you help just understand where
13 you're using similar terminology or they're all
14 separate buildings?

15 MR. RAUEN: There are three separate
16 structures. The racing building that exists
17 today. And we're going to open up the back end
18 of that racing building because that becomes
19 the connection to the casino.

20 So, there's the racing building that
21 exists today. There's a big empty space right
22 now where we will build the casino structure
23 and tie that into the racing building. Then to
24 its right is a 75-percent completed parking

1 garage. That parking garage will tie into the
2 casino building as well.

3 COMMISSIONER ZUNIGA: So, what is
4 the clubhouse?

5 MR. RAUEN: The clubhouse right now
6 is live racing, simulcast racing today.

7 COMMISSIONER ZUNIGA: So, it's the
8 existing structure.

9 MR. RAUEN: It's an existing
10 structure. And those functions would continue.
11 And then we would also have a restaurant added
12 as part of that to serve both racing and the
13 casino. So, we have two buildings today with a
14 hole in the middle. And we'll fill the whole.

15 COMMISSIONER MCHUGH: It sounds
16 simple.

17 MR. RAUEN: In that respect, it is.

18 CHAIRMAN CROSBY: Also, just before
19 you get started, I'm curious the relationship
20 between you and Pinck, therefore between you
21 and us, how does that compare to other sites
22 where you've worked?

23 MR. RAUEN: Brand-new.

24 CHAIRMAN CROSBY: You haven't had

1 that kind of an owner's representative
2 relationship?

3 MR. RAUEN: No.

4 CHAIRMAN CROSBY: Does it feel
5 manageable? Does it feel onerous? Does it
6 feel constructive? What's your thoughts?

7 MR. RAUEN: All of those. I think
8 we're off to a good start. I think we first
9 and foremost recognize they have a job to do.
10 They have an important job to do for you. And
11 we respect that. And we give it a high regard.
12 And that's how we are approaching it.

13 But it is new ground for us. We've
14 never had an owner's -- We're always the
15 owner's rep. In this case, we have them as
16 owner's rep. And we know there's a variety of
17 subjects we have to work collaboratively on.
18 And I think we're off to a good start.

19 CHAIRMAN CROSBY: This is just me
20 talking personally. I can't, obviously, speak
21 for the rest of the Commission, but from my
22 stand point we want to be very sensitive to not
23 over regulating, to not over dithering, to not
24 over bothering but we also want to be sensitive

1 to make sure that we hit the critical time and
2 public policy objectives that we are targeting.

3 So, I think a candid interaction
4 back and forth is helpful. I know we've made
5 this point to Jennifer and I'm sure she
6 sympathizes with it, but just speaking as a
7 former businessman, I really want us to be
8 sensitive to not over meddling. And if there
9 are differences of opinion about what's over
10 meddling, let's be candid and talk about it.

11 MS. PINCK: I would say and I think
12 I tried to make this point when we actually
13 submitted our proposals some number of months
14 ago, we really do want to strike a balance
15 because we're not actually owner's
16 representatives.

17 We are oversight project managers.
18 And there's a really big difference in my mind.
19 When we're an owner's representative, we are
20 charged with getting it done. Right now that's
21 their job. So, we're doing monitoring and
22 compliance. And I do think we want to strike a
23 balance.

24 We need to provide you the

1 information. You've got the assurance you
2 don't want surprises to come your way. And we
3 want to let them do their job. So, we're very,
4 very -- I am personally and so is my staff very
5 respectful and conscious of threading that
6 needle.

7 CHAIRMAN CROSBY: Right. And just
8 one last thing on this point. We would not
9 have picked Penn National if we didn't have a
10 lot of confidence in the quality and integrity
11 of their work. And there's a high degree of
12 alignment between our objectives and yours,
13 certainly with respect to schedule.

14 They're not perfectly aligned, but
15 there's a high degree of alignment. And we
16 wouldn't have picked you guys if we didn't
17 believe you would act accordingly. That's part
18 of what should lend to the sense of balance
19 here.

20 MR. RAUEN: I think in this case,
21 Pinck has an important job to do. And I am for
22 the Penn side particularly pleased that
23 independently we reached the same conclusion in
24 two words. The schedule's achievable but it's

1 aggressive. So, I think we're off to a very
2 good and collaborative start. And we're
3 committed to make it go that way.

4 CHAIRMAN CROSBY: Okay, great.
5 Thanks.

6 MR. RAUEN: So, we'll talk a bit
7 about where we are with design and permitting
8 with Michael.

9 MR. MCGREW: Thank you so much,
10 Commissioners. Glad to be here and report on
11 our design and permitting. As you're aware,
12 we've come quite a ways with design as we're
13 well into design and also have a lot of permits
14 in place.

15 Design areas complete is the site
16 work obviously gives us full access to the
17 site. Also, the casino building and core shell
18 have been designed and are in for permitting.
19 The remaining design areas to be completed at
20 the end of July, which is basically most of the
21 fit-outs.

22 The fit-outs and the parking garage
23 where the office spaces for the back of house.
24 Also, in the gaming building, the MEP interior

1 fit-out is also scheduled for the end of July
2 along with the racing building MEP and fit-out
3 that is also scheduled for the end of July.
4 That will basically be our design and put in
5 for permit.

6 Then following the permits, we
7 basically have permits in place to get us
8 through July. And we're soon expecting and
9 final stages of getting the shell and core
10 permit issued so that we can continue to get
11 the shell and core and get us enclosed by the
12 end of November.

13 And then as far as that will allow
14 us uninterrupted work all of the way through
15 the completion of the project. So, we feel
16 like we are well along on the permitting and
17 design side. And everything is in place to
18 have continuous work on through the completion.

19 That's where we're at on the design.
20 And I'd like to turn it over to the
21 construction to give Turner and let them allow
22 their comments on the construction schedule.

23 MR. RAUEN: A quick comment. There
24 are quite a few responsibilities for us. And

1 we're trying to get our arms around all of
2 them. But we do know that there's an upcoming
3 design review that must take place. And were
4 you speaking of that Jennifer or the internal
5 one we have going on? The external one?

6 MS. PINCK: With the OPM team so
7 that we can do our due diligence on that.

8 MR. RAUEN: It's one of the many
9 things we're collaborating with Pinck on in
10 terms of our design and floor layout. And like
11 Michael said, the good thing about I think what
12 we inherited in this project is a design that
13 allowed us to get off to a quick start. We've
14 got design in-hand and permits in-hand to cover
15 work for quite a while.

16 And we expect by the end of August
17 to have all of the permits we need to complete
18 the physical construction. In that respect, we
19 think we're off to a good start. Now for Emil
20 will talk about construction.

21 MR. GIORDIANO: Thank you, Jack.
22 Good morning. In terms of the current status
23 of the work, the foundation for the new section
24 of the building, as Jack said that fills in

1 between the existing building and the garage,
2 the footings are about 75 percent done.
3 Actually, today we're starting our first
4 foundation wall pours, which is right on
5 schedule.

6 And then looking from there, we're
7 going to try and get all of the underground
8 plumbing in within the casino footprint before
9 we start the actual metal structure itself,
10 which is scheduled for the end of June. You
11 might not see that on the schedule if you
12 looked at it in detail. But we're going to try
13 and get that work done ahead of time so we
14 don't have to deal with it at a later date.

15 So, our milestone for erecting the
16 casino building itself is right at the end of
17 June. We're going to work straight through
18 that to get it tight in November to the
19 weather. So that we can provide some heat and
20 then do all of the finishes.

21 In terms of our bidding and awards,
22 we've awarded about 20 percent of the work,
23 about \$20 million worth of work. It's been
24 going well. Just on the side, about \$5.5

1 million of that has gone to M and WBE firms,
2 which is about 28 percent which we are very
3 happy with.

4 CHAIRMAN CROSBY: Five million is 48
5 percent of 20?

6 COMMISSIONER MCHUGH: 28 percent.

7 CHAIRMAN CROSBY: 28 percent you
8 said, sorry. I misunderstood, sorry.

9 MR. GIORDIANO: I think my math is
10 right. Then in terms of our major project
11 milestones, which is the way I like to look at
12 it, again we want the building enclosed for the
13 winter, which we are planning on November.
14 We'd like to do better than that knowing that
15 we are in New England but we're pretty
16 comfortable with November '14.

17 We are scheduled to get, as Mike and
18 Jack said, the balance of the gaming building,
19 the casino, mechanical drawings, electrical,
20 plumbing and the interior fit-out of that
21 building at the end of June, the interior
22 drawings for the casino at the end of July.

23 And we feel working with those
24 dates, we shouldn't have any problem getting

1 the building ready for slot machine delivery in
2 April '15, which would give us occupancy for
3 the casino in June '15 and occupancy of the
4 garage in February '15. Questions?

5 CHAIRMAN CROSBY: When you look at
6 this, are there particular risk factors? Are
7 there things that if there's going to be
8 problems can you predict where they are? Are
9 there critical links that are particularly
10 vulnerable?

11 MR. GIORDIANO: Within the schedule
12 itself, we don't see that. But if you look out
13 the window here and you see all of those
14 cranes, we are working hard to make the job --
15 not that it's not attractive, but we want to
16 educate the subcontractor market on the job and
17 get them interested so that the first they
18 don't see is an RFP for a number.

19 And we've been trying to do that not
20 only with the subs that we deal with every day
21 but with the MWBE subs. And we're also, not to
22 go on a different path, but trying very hard to
23 try and find some veteran owned businesses that
24 we can involve also.

1 CHAIRMAN CROSBY: Was that by way of
2 saying there's so much work out there that it's
3 hard to find subcontractors?

4 MR. GIORDIANO: We want to make sure
5 that that does not happen.

6 CHAIRMAN CROSBY: Wow, that's
7 interesting.

8 MR. GIORDIANO: You're considering
9 three projects almost a billion dollars that we
10 want to make sure that we're ahead of that
11 curve.

12 CHAIRMAN CROSBY: Interesting.

13 COMMISSIONER MCHUGH: Could you
14 expand? The point you just made I find
15 fascinating. You're trying to educate the subs
16 so they don't just look at a number.

17 MR. GIORDIANO: Yes.

18 COMMISSIONER MCHUGH: Can you expand
19 on that?

20 CHAIRMAN CROSBY: You mean comp them
21 something, some of the slots?

22 COMMISSIONER MCHUGH: No, no.

23 MR. GIORDIANO: No, no, no. We
24 really do this with any of the clients that we

1 work for. We have a database of thousands of
2 subcontractors. We don't just hit the button
3 and say all of these plumbing subcontractors
4 are going to bid your job. We know what their
5 capacity is. We know the jobs that they're
6 working on. We keep very close track of that,
7 because it's a pretty parochial market in
8 Boston.

9 And there aren't a lot of subs that
10 have the financial and manpower capacity to do
11 a lot of these jobs. We not only monitor what
12 we do, we monitor what our competition does.
13 So, we want to make sure that subs know that
14 the Plainridge casino is coming. They're going
15 to be bidding it and we want them to give us a
16 competitive numbers.

17 COMMISSIONER MCHUGH: Fascinating.
18 Thank you.

19 COMMISSIONER ZUNIGA: Is it fair to
20 say, just to continue answering the Chairman's
21 questions relative to the risk factors that
22 it's really the critical path as it's outlined
23 here. It's really only summarized, and I look
24 forward to more detail on that. And it's

1 especially activities and constraints in that
2 critical path that Penn cannot control.

3 Those are I would argue the biggest
4 risk factors. Some of them have to do with
5 permitting, for example. And they recognize
6 and they have made progress in that regard, but
7 it's not all done obviously because this is a
8 design build project. So, that will be coming.
9 I would put us in that category as well.

10 MR. RAUEN: I'm glad you said that.

11 COMMISSIONER ZUNIGA: This is
12 important.

13 CHAIRMAN CROSBY: We're looking for
14 candor here.

15 COMMISSIONER ZUNIGA: It's a big
16 risk factor. Requirements that we don't have
17 yet relative to slot standards or delivery or
18 etc., are likely to have an impact in the
19 critical path or in the overall project.

20 And by the way, that's a big role of
21 our own OPM to tell us where we are lagging or
22 having an effect that might be detrimental to
23 other of our priorities. And I think that's
24 important to note.

1 MS. PINCK: And that's why today
2 this really is a preliminary schedule. Because
3 in the many, many pages that make up the detail
4 of this high-level schedule, it doesn't yet
5 have all of the detail that we want to see
6 which shows the linkage between the things that
7 you have to approve and the time for you to
8 approve it so that we can be forecasting your
9 role. Because we don't want you to be the one
10 that are unavailable or not left enough time to
11 do the things you need to do so they open.

12 And thank you for pointing it out.
13 And that is one of the reasons why this is
14 preliminary. It doesn't yet include those
15 things.

16 CHAIRMAN CROSBY: Yes, that's a
17 really good point Commissioner. Thank you for
18 pointing that out.

19 COMMISSIONER ZUNIGA: Thank you. I
20 was also going to ask the design review comment
21 that you made, was that the July date that you
22 mentioned about the structure?

23 MR. RAUEN: July was when our
24 interior design was going to be complete. I

1 think you're referring to something else. We
2 have a design review process.

3 COMMISSIONER ZUNIGA: Yes.

4 MS. PINCK: We need to sit down with
5 the design professionals on our team with Penn
6 and look at where they are and forecast what
7 they, the design professionals, need to look at
8 and when they're going to be available so that
9 we can do the due diligence on compliance with
10 the conditions.

11 And I know that's one of the topics
12 we talked about earlier, what are we looking
13 for compliance with. But we'll know it when we
14 see it. But we want to sit down and make sure
15 that everybody is focused on the same things,
16 especially because their approach is this
17 design build fast-track. So, construction is
18 going on while design is going on.

19 So, we want to catch these at the
20 right time for that review to happen. That's
21 what their first meeting is really to look at
22 where you're at and put a working schedule
23 together for those reviews.

24 MR. RAUEN: I guess probably one of

1 the good parts that came out this particular
2 schedule is what we have up here, and I know
3 it's hard to read, we tried our best get it all
4 on one page, but we pointed out a couple of
5 regulatory approvals that are always pretty
6 standard to us.

7 Is there going to be a state slot
8 monitoring system? If so, then we need to get
9 the design and the details so we can be ahead
10 of that process. Gaming equipment, slot
11 machine, surveillance systems, we targeted a
12 couple of those. And the interaction we've had
13 with Jennifer and her team has identified that
14 as an area where we need to do more. I think
15 we need to be far more robust here and come up
16 with a more complete list of what it is we need
17 from you so that you guys aren't part of the
18 critical path. And we think we can do that.

19 CHAIRMAN CROSBY: Yes, that's really
20 important. And I really appreciate
21 Commissioner Zuniga bringing this up. We have
22 our own critical path chart like this of our
23 development of thousands of pages of regs. And
24 Executive Director Day is leading that whole

1 project. We need to make absolutely sure we
2 make sure those interlock. It's really a good
3 point.

4 Do you have a soft opening kind of
5 phenomenon or how do you handle that? Opening
6 day looks it's June 26.

7 MR. RAUEN: We didn't at this point
8 mean to be date specific. It's kind of hard in
9 Primavera. You ultimately end up in the middle
10 or to the left or right of the cell. We don't
11 mean to be date specific at this point.

12 Our goal right now is June. And we
13 think that's achievable whether it's early,
14 middle, late, not quite sure yet. And as to
15 that process, customarily we have a play date
16 type of opening if you want to call that a soft
17 opening. And then once all of the regulatory
18 hurdles are cleared, we open full and complete.
19 I suspect that will be the case here.

20 CHAIRMAN CROSBY: Great.

21 MR. MCGREW: I just want to mention
22 one of the things that you asked about was
23 unforeseen things that come up that are
24 challenging to get the schedule done. The

1 schedule we use is a very live tool. As detail
2 comes available to us, we plug it into the
3 schedule.

4 And if it flags something that's a
5 risk whether it's a procurement item, something
6 that's going to come in on time, it does flag
7 that, showing it up in the schedule. Then we
8 can take action sooner to make sure that it
9 doesn't become a problem or become part of the
10 critical path and try to control that.
11 Sometimes your critical path changes as well
12 and then you got to be flexible enough after
13 that and then get it back in line.

14 So, this is a live tool. We look at
15 it every week. We put in accurate information
16 as it comes available. Then that rolls up into
17 the system and then helps us manage the
18 critical path. So, it's a live tool. We use
19 it all of the way to the end. So, it's a very
20 useful tool as well.

21 MR. RAUEN: Emil does speak to
22 another challenge in this project that we
23 haven't seen elsewhere. There is a very active
24 construction market going on here and not just

1 in Boston but in the region. Far more so than
2 we are used to seeing.

3 CHAIRMAN CROSBY: Really?

4 MR. RAUEN: Yes. While we're
5 cognizant of that and certainly glad to have
6 Turner's help and expertise in this market,
7 we'll keep an eye on that as a critical path
8 item. But so far from the owner's side, we've
9 issued \$20 million worth of subcontracts.

10 We are pleased with the variety of
11 bids. We are pleased with the financial
12 results of those bids, the diversity results of
13 those bids. So, so far okay, but it is a very
14 active market out there. There are cranes all
15 over the place and we are certainly cognizant
16 of that.

17 Any other questions on the on-site
18 construction? We wanted to talk about off-site
19 a bit.

20 CHAIRMAN CROSBY: Go ahead.

21 MR. RAUEN: In addition to what we
22 have to do on-site, there are some off-site
23 improvements mostly traffic that are in our
24 plans as well. As a follow-up to the MEPA

1 process of a few months ago and at the
2 direction of MassDOT, we completed a road
3 safety audit of all of the local area roadways
4 around our facility.

5 Those documents have been compiled
6 and given to MassDOT. We've had some recent
7 meetings with MassDOT. And that particular
8 road safety audit offered up a variety of
9 recommendations from small to big as to how we
10 deal with traffic in the area and the impact of
11 all of that traffic.

12 Right now, MassDOT has told us that
13 we can expect what is called the MEPA 61
14 findings, section 61 findings in June, sometime
15 during June. That's important to us because
16 that's MassDOT's writing as to what is required
17 for us to do with respect to traffic
18 improvements and what we need to get done by
19 the time we open.

20 So, we've had a very productive
21 meeting with them recently. They've I guess
22 outlined a very broad direction and committed
23 to get us the 61 findings sometime in June,
24 which is important, because then we would take

1 those to design, take those improvements to
2 permitting, look to do some of that work in the
3 fall of this year before winter conditions
4 come. And do the rest of that work in the
5 spring of next year prior to us opening.

6 So, that's the off-site traffic and
7 the ball is now in MassDOT's court to give us
8 formal direction on what needs to be done, do
9 it in the form of MEPA section 61 findings.
10 And give us a plan as to which of those
11 improvements need to be done before we open.

12 COMMISSIONER ZUNIGA: Have there
13 been discussions or are those ongoing relative
14 to the alternative of the median cut?

15 MR. RAUEN: The median break --

16 COMMISSIONER ZUNIGA: The media
17 break.

18 MR. RAUEN: -- I guess has three
19 pieces to it. One is the actual median break
20 itself turning into our property and allowing a
21 left turn out of our property. The median
22 break also has some work to the southbound off-
23 ramp of Interstate 495. And then it has two
24 traffic signals.

1 So, those specific components were
2 one of the 33 recommendations in the road
3 safety audit. Now we're not sure at this point
4 whether all of those will be in the first phase
5 of work that MassDOT wants done or a later
6 phase. That we're not sure.

7 But the concept that MassDOT threw
8 out to us was in June we'll give you the
9 section 61 findings, which tells you what you
10 have to do. Then we as part of the host and
11 surrounding community agreements have to do
12 some baseline studies before we open. And once
13 we open, we will do some post opening traffic
14 monitoring.

15 And at a six-month interval compare
16 the baseline and the traffic results. That
17 will then tell us if there is remaining work to
18 be done. Right now, that's what we're
19 expecting. We don't believe the median break,
20 any of those components will be in the first
21 phase of work. That's our understanding.

22 COMMISSIONER ZUNIGA: Okay. You
23 believe MassDOT is not going to require those
24 improvements in order to facilitate the median

1 cut.

2 MR. RAUEN: In the first phase of
3 work that's needed for us to open, our
4 understanding is the median break will not be
5 in there.

6 In the meantime, we are going to and
7 MassDOT was very open-minded to this that we
8 would continue on our nickel and at our risk
9 with the design and the permitting of the
10 median break and its related components. So,
11 that if they are required post opening, we're
12 in a position to act quickly. And we intend to
13 do that.

14 CHAIRMAN CROSBY: Anybody else?

15 COMMISSIONER MCHUGH: No, this
16 sounds very good.

17 CHAIRMAN CROSBY: Yes, great.

18 MR. RAUEN: Besides construction, we
19 also have to fit-out the building and provide a
20 varied number of things. So, I'll let Michael
21 comment on that for a second.

22 MR. MCGREW: In addition to the
23 design and construction, we'd also turn the
24 building over to operations which includes

1 making sure the building is fit-out. So, we're
2 in charge of making sure slot machines are
3 procured, IT systems, furniture, fixtures, AV
4 program, other operating equipment that's
5 needed to run the casino. We work with
6 operation as they get online and to make sure
7 that we have the building fit-out for them and
8 get it up and running for them. So, that when
9 we turn the keys over to them, the engine is
10 running. So, we have a lot of that to get
11 done.

12 That goes on through the whole
13 project. Most of it is going to be finishing
14 up. As we get towards the end of the project,
15 the design specifications go through December
16 and then the actual fit-out will happen come
17 spring and all of the way up to opening. And
18 that pretty much concludes --

19 MR. RAUEN: There's a couple of
20 other sections to the schedule that we gave
21 you. One is the host and surrounding community
22 agreements.

23 We have one host community and
24 several surrounding community agreements. They

1 each require us to do varied things prior to
2 opening and after we open. We tried to
3 articulate on the schedule several of the
4 general requirements to perform baseline
5 traffic and other studies, attend local
6 meetings and provide progress on our project.
7 Emphasize local hiring and prepare a
8 responsible gaming program.

9 So, there are quite a few host and
10 surrounding community requirements. We've put
11 a few on this schedule. And another part of
12 our dialogue with Pinck is that this is an area
13 we probably should provide some more detail on
14 as well.

15 COMMISSIONER ZUNIGA: Who was that?
16 Did you mean the Commission?

17 MR. RAUEN: No. We would work with
18 Pinck to provide more detail on the various
19 requirements of the host and surrounding
20 community agreements. We've given you a
21 general list of them on here, but there are
22 more.

23 The final part of the schedule
24 related to regulatory approvals. And I think

1 we touched on that before. We tried to
2 identify a few that are critical from you, but
3 there are others. And in the coming month
4 we'll work with Pinck and provide more detail
5 in that area.

6
7 That is pretty much the schedule.
8 I know we've taken a few of your questions,
9 happy to entertain any others.

10 CHAIRMAN CROSBY: Do you see
11 anything on those regulatory where those marks
12 are, any of them there that's problematic with
13 respect to our reg. development?

14 MR. DAY: There looks to be from a
15 couple of the dates a little bit difference of
16 understanding, but I think more or less it's
17 just a matter of clarification when they
18 anticipate to do some of the things. And we
19 should get that as the process moves forward.

20 CHAIRMAN CROSBY: Okay. Great. Any
21 other questions? Thank you very much.

22 MR. RAUEN: Thank you very much.

23 COMMISSIONER MCHUGH: Thank you.

24 COMMISSIONER CAMERON: Thank you.

COMMISSIONER ZUNIGA: Thank you.

1 COMMISSIONER ZUNIGA: Our regs. have
2 us approving a schedule at some point. Remind
3 me.

4 MR. DAY: That's correct. And what
5 we're discussing, if the Commission felt it
6 appropriate, is possibly a preliminary approval
7 at this point. Then have the parties come back
8 possibly around June 22 for final approval, if
9 that works for you.

10 COMMISSIONER ZUNIGA: Okay. That
11 works.

12 COMMISSIONER MCHUGH: Do we need a
13 vote for that for preliminary approval?

14 MR. DAY: Yes, I would say so, but I
15 will defer to the Commission.

16 CHAIRMAN CROSBY: What was that?
17 I'm sorry. Is it something we need to do now?

18 COMMISSIONER MCHUGH: Yes. The
19 Director is saying we should have a preliminary
20 -- take a vote to preliminarily approve the
21 project's schedule submitted to us by
22 Plainridge Park Casino. And have them return
23 on the 22nd of June for a final approval or a
24 further approval of the project schedule.

1 MR. DAY: I would just change that
2 to 26th of June.

3 CHAIRMAN CROSBY: Is that a so
4 moved?

5 COMMISSIONER MCHUGH: So moved.

6 COMMISSIONER CAMERON: Second.

7 CHAIRMAN CROSBY: Any further
8 discussion? All in favor, aye.

9 COMMISSIONER MCHUGH: Aye.

10 COMMISSIONER CAMERON: Aye.

11 COMMISSIONER ZUNIGA: Aye.

12 COMMISSIONER STEBBINS: Aye.

13 CHAIRMAN CROSBY: Opposed? The ayes
14 have it unanimously. I do have one question
15 for Consultant Pinck. What is limited float?

16 MS. PINCK: Limited float, in the
17 schedule float is free time is sort of one way
18 to look at it.

19 CHAIRMAN CROSBY: Cushion.

20 MS. PINCK: It's cushion. If
21 there's no float in a schedule it means that if
22 just one activity on the critical path slips a
23 day the end slips a day. So, limited float
24 means there's not much. That's why we think

1 it's an aggressive schedule.

2 CHAIRMAN CROSBY: That's the
3 aggressive part. Great. Thank you all very
4 much.

5 We're going to take a quick break.
6 We'll be back in about five minutes.

7

8 (A recess was taken)

9

10 CHAIRMAN CROSBY: We're back to
11 business for the 122nd meeting at about 11:55.
12 We are back to Executive Director Day.

13 MR. DAY: Thank you, Mr. Chairman.
14 I'll refer the Commission to tab 4b. And the
15 next topic is our initial fiscal year 2015
16 budget recommendations. I might add as we move
17 forward in this topic, at least from my
18 perspective, excited to talk about the budget.
19 And this is a significant development in our
20 organizational growth. So, we look forward to
21 going through the budget and moving forward
22 with that process as the Commission continues
23 in its work.

24 What we have today is intended to

1 provide an opportunity for review and
2 discussion on the way to gaining hopeful
3 approval for that budget by the Commission
4 before, of course, the end of this fiscal year.
5 I would like to take just a minute, because the
6 budget does represent several firsts for the
7 Commission.

8 It's the first budget that was
9 prepared under the process described in 205 CMR
10 121 that the Commission enacted. It is the
11 first budget to be assessed on gaming
12 licensees. It's also the first time we
13 compared the budget to our peer agencies. And
14 it's the first budget designed at a division
15 level, which will improve our accountability
16 and control over expenditures and planned
17 resources as we move forward.

18 I might note a couple of other items
19 with the budget is that it will be available on
20 our website. And I think as we've talked about
21 before, the expenses are already available and
22 updated monthly; is that correct? So that the
23 expenditures can be viewed over the website.

24 In addition, according to the

1 regulations, I think it's probably important to
2 point out in case there are folks that might be
3 interested, is the Public Health Trust Fund fee
4 is scheduled to be in in fiscal year 2016. So,
5 it's not part of this budget in case somebody
6 goes looking in that budget and was wondering
7 where that specific item is.

8 In addition, once we have our
9 licensees, we do plan to develop a process to
10 involve them in the formulation of each annual
11 budget. We had some initial discussions. And
12 I think there's a general agreement that the
13 licensees would like to participate. And we'll
14 see as the Commission continues to make its
15 decisions and its award of licenses.

16 One thing I didn't mention a
17 particular first that is important, which this
18 is our first budget prepared by our CFAO Derek
19 Lennon and his staff. One of those is Agnes
20 who is right next to me. So, I wanted to point
21 that out as well.

22 I think Derek started with
23 interviews with each one of our directors and
24 worked with them to develop budgets with other

1 agencies, and has steadily built this project
2 and culminating in discussions in particular
3 with each of the Commissioners.

4 With that I'd like to turn the
5 budget presentation over to Derek Lennon.
6 Derek.

7 MR. LENNON: Thank you. Good
8 morning and thank you for the opportunity to
9 present MGC's FY15 initial budget.
10 Accompanying me is Agnes Beaulieu who was
11 instrumental in helping to develop the spending
12 recommendations. Maria Bottari from my staff
13 was not able to make it. She's back doing work
14 today, but she was instrumental in helping to
15 develop the revenue projections that accompany
16 the spending.

17 One item I want to note before I
18 start this presentation, the memo is off a
19 little bit. In my final meetings and
20 discussions and guidance, I found that I put a
21 mistake in that would recommend we assess the
22 full cost of slots on licensees. Our
23 regulations don't allow for that. So, in
24 Region A in particular we likely won't award

1 until September. So, I wouldn't be able to
2 assess the full slot fee. It's --

3 CHAIRMAN CROSBY: Prorated?

4 MR. LENNON: -- prorated by day.

5 So, that may drive down our revenue estimates
6 by close to half a million dollars depending on
7 when it happens. We may actually assess a
8 little more, or depending on your
9 recommendations, we may cut more costs from
10 this budget and the assessment could be around
11 the same.

12 I just wanted to note that going
13 into it, the memo and my last recommendations
14 on the end are incorrect and contradictory to
15 regulation. I also want to apologize because
16 my talking points are going to stick pretty
17 close to the memo. I try not to do that but
18 given the topic, given that this will be
19 assessed on the industry, I think it's pretty
20 important to stick to as many points that are
21 written in the memo for the public perspective.

22 So, you have in your packets a
23 budget memo that attempts to articulate some of
24 the major or anticipated costs to the

1 Commission, whether the Commission's FY15
2 anticipated costs are reasonable as compared to
3 a few other jurisdictions. And what the
4 anticipated assessment will be on the gaming
5 licensees in Massachusetts.

6 The total projected budget for FY15
7 is \$29.3 million. That's comprised of both
8 gaming operations, which we're estimating costs
9 of about \$24.5 million and Racing Division
10 operations which we're estimating at about \$4.8
11 million.

12 Later on in this presentation I'll
13 review two other regulatory jurisdictions'
14 costs for commercial casino oversight to
15 compare them to what Massachusetts costs will
16 be.

17 205 CMR 121 requires that the
18 Commission assess the difference between its
19 anticipated revenues and anticipated
20 expenditures for gaming operations on
21 licensees. Also, later in this memo I'll show
22 that we have \$24.5 million in costs. And the
23 net revenues initially I have in the memo are
24 projected at \$4.1 million.

1 Most likely those will drop to \$3.6
2 million or \$3.7 million based on what I told
3 you at the beginning of this, which would lead
4 to an assessment of about \$20.4 and \$20.8 or
5 \$20.9 million. So, once again, I'm sorry that
6 the memo's off my talking points. And I will
7 adjust the memo to hopefully to repost to the
8 website.

9 The Racing Division's budget is
10 funded through a portion of wagering, daily
11 licensing fees and \$750,000 assessment on
12 racing licensees. What you'll see is that in
13 FY15 the cost for the Racing Division will
14 outpace their annual revenues. Luckily, we
15 have a balance built up in that account to get
16 us through FY15, but we'll have to take a look
17 at whether we want to continue spending at that
18 high level or based on the decisions made in
19 the unstable environment for racing in
20 Massachusetts whether we just cut back
21 drastically.

22 CHAIRMAN CROSBY: But that's a
23 decision for 2016.

24 MR. LENNON: That's a decision for

1 2016. But you'll see it's \$800,000 -- spending
2 is \$800,000 above revenues coming in. And on a
3 \$2 million budget that would be a substantial
4 cut that we'd have to experience in FY'16.

5 CHAIRMAN CROSBY: Right.

6 MR. LENNON: Then the last pieces
7 that I'll deal with is the Commission budget,
8 as Director Day pointed out, will be allocated
9 out to each division. The divisions will be
10 responsible for tracking and managing to that
11 budget, which I think will be good in many
12 ways.

13 One, it takes some of the pressure
14 off of finance office of always having to
15 answer do we have available. And two, it gives
16 the directors some discretion on how they
17 manage their funds. And as items come up, they
18 can prioritize whether what their initial plan
19 is with what their current needs are for their
20 division.

21 So, under the comparison piece to
22 make sure that Massachusetts is still within
23 reason with other jurisdictions, we realize
24 that our role is twofold. First, to provide a

1 comprehensive regulatory environment for gaming
2 in Massachusetts. But we also need to provide
3 a competitive business environment to our
4 licensees.

5 In effort to make that our business
6 environment is competitive, we compared our
7 budget with Michigan's and Pennsylvania's
8 costs. And when we compared them, we looked at
9 just their costs for commercial casino
10 operations. We took out tribal gaming. We
11 took out racing. We just wanted to make sure
12 what we're assessing is somewhat of an apples
13 to apples comparison.

14 And that's a difficult comparison to
15 make because legislation from state to state
16 differs. So, the main areas that we looked at
17 for comparison were the total budget for the
18 gaming commissions or control boards, the
19 number of FTEs, the total cost of FTEs, which
20 includes fringe benefits, contract costs and
21 those become a good comparison of what those
22 costs are compared to full-time costs.

23 And then looked at the other costs
24 of providing a regulatory environment like

1 state police, the Attorney General's office,
2 problem gambling, whether there's a full- or
3 part-time Commission, and whether those costs
4 are built into the Commission's budget. If
5 they're not, how are they funded?

6 In addition, we looked at facilities
7 monitored, total amount of revenue generated
8 for state budget purposes and the CPI change
9 over the last 30 years of each region. That
10 will help to put in perspective what
11 Massachusetts dollars are for cost of
12 regulating in those other jurisdictions.

13 This information is summarized in
14 the chart on pages two and three of this memo.
15 And I'll just walk through some of the details
16 of that. Please stop me, I'm reading so I'm
17 not looking up. Just let me, know.

18 The total budget for Massachusetts
19 for FY15 is anticipated will be \$24.5 million.
20 And that's generated from an assessment that's
21 a result between the difference between the
22 anticipated budget and the anticipated
23 revenues. Michigan's FY14 budget -- They
24 didn't have their '15 numbers developed and

1 Pennsylvania didn't either. So, I had to go
2 off of their '14 numbers. Michigan is \$24.5
3 million and it comes from an annual assessment
4 on operators.

5 That is direct in their legislation.
6 That assessment started at \$25 million and it
7 grows with the CPI for Detroit. So, currently
8 that assessment is at \$33 million and is
9 divided by the number of operators in the
10 region. They have three operators in that
11 area. So, they get an \$11 million assessment
12 each from the Gaming Control Board.

13 The balance of that \$33 million
14 since the Gaming Control Board is only pulling
15 \$24.5 million of it goes to other state budget
16 purposes. Even though their costs are down at
17 24.5 the operators don't get off at that cost.
18 It still comes in at \$33 million and the state
19 pulls the balance of that.

20 Pennsylvania is funded at \$36.9
21 million. And that comes from a 1.5 percent
22 assessment on gross gaming revenues. And they
23 have some fees that are built into that. But
24 that 36.9, as you'll see later on in the memo

1 is just the cost of the Gaming Control Board.
2 There are other costs that go into the
3 regulatory environment. And the total 1.5
4 percent assessment is closer to \$70 million.

5 The FTE comparison, in Massachusetts
6 we are projecting to have 73 by the end of
7 FY15. That's comprised of 46 current staff, 23
8 new FTEs that we'll add at differing times
9 throughout the year and four interns. That
10 with the fringe load, it's going to be about
11 \$6.5 million.

12 Michigan has 116 FTEs costing
13 approximately \$10 million. And Pennsylvania
14 has 315 FTEs that cost approximately \$30.1
15 million.

16 Contracted costs as the chart
17 indicates, Pennsylvania does not have as many
18 contract costs built into its budget as
19 Massachusetts and Michigan. A lot of that has
20 to do with the way the regulatory environment
21 is funded in Pennsylvania.

22 In Massachusetts and Michigan, the
23 cost of the Attorney General's office, the
24 state police and problem gambling, at least in

1 FY15 for Massachusetts are built into the
2 agency's base budget. While in Pennsylvania,
3 it's funded from -- The problem gambling is
4 funded from the 53 percent tax assessment on
5 slot operations. And then the state police,
6 Attorney General's office and Department of
7 Revenue are actually -- they have a portion
8 built in or funded out of the 1.5 percent
9 assessment. So, that's how you start building
10 up to the \$70 million for the costs in
11 Pennsylvania.

12 Other interesting features that we
13 looked at is Massachusetts funds a full-time
14 Commission, similar to Pennsylvania, where
15 Michigan's commissioners are part-time. So, we
16 have \$2 million built into our base budget --
17 That's not just salaries. -- for the
18 Commissioners. There's also an \$800,000 item
19 in there for Region C reviews. So, if we do
20 have applicants in Region C -- and that's a
21 revenue neutral piece, because we pull in the
22 revenue from the applicants to pay for the
23 reviews.

24 CHAIRMAN CROSBY: So, on an ongoing

1 basis it's only \$1.2 million?

2 MR. LENNON: Yes, it's \$1.2 million
3 and that includes support staff too.

4 CHAIRMAN CROSBY: Right, these
5 meetings and so forth.

6 MR. LENNON: Yes. So, taking all of
7 that into consideration -- I'm sorry. The
8 other piece that I want to point out is
9 Pennsylvania has a central monitoring system
10 built into the cost that it assess on
11 operators. We are proposing one. We know the
12 Commission hasn't voted on it. We know that
13 there is some interest on whether we would go
14 down that path. That was just brought up in
15 the previous conversation. But we are
16 proposing to have a central monitoring system.
17 Michigan chose not to.

18 So, those are some of the
19 characteristics that we had taken -- make us a
20 little different.

21 CHAIRMAN CROSBY: Michigan has three
22 facilities?

23 MR. LENNON: Michigan has three
24 facilities all in Detroit.

1 CHAIRMAN CROSBY: But they have
2 racing too.

3 MR. LENNON: They also have racing.

4 CHAIRMAN CROSBY: Did you pull that
5 out?

6 MR. LENNON: Yes. These numbers
7 only include the cost of commercial casino
8 operations. There's no tribal gaming in there.
9 There is no racing in there.

10 COMMISSIONER ZUNIGA: But the gaming
11 commission there oversees racing and tribal --
12 has some jurisdiction over the tribal
13 operations, right? It that correct?

14 MR. LENNON: Correct. Taking all of
15 that information into account to figure out
16 what the total cost of the regulatory
17 environment is and what is borne by the gaming
18 industry, in Massachusetts we are proposing
19 \$24.5 million for a budget, which we then take
20 out our net revenues and assess.

21 In Michigan, the cost of the
22 regulatory environment is \$24.5 million but
23 they are still assessed at \$33 million. And in
24 Pennsylvania about \$69.9 million because the

1 cost of the state police is added to it, the
2 cost of the Attorney General's office, the cost
3 of a central monitoring system and the cost of
4 DOR all come out of that 1.5 of gross gaming
5 revenue.

6 CHAIRMAN CROSBY: The central
7 monitoring isn't annual, is it?

8 MR. LENNON: What's that?

9 COMMISSIONER ZUNIGA: Yes.

10 CHAIRMAN CROSBY: It's annual?

11 MR. LENNON: It's annual.

12 CHAIRMAN CROSBY: \$7 million
13 annually?

14 MR. LENNON: Yes.

15 CHAIRMAN CROSBY: Yikes.

16 MR. LENNON: They're monitoring 12
17 facilities there. And there's a possibility of
18 another two coming on. And it's a 24-hour
19 operation. And they bring in \$1.4 billion of
20 revenue. So, when you look at \$7 million to
21 verify -- This is another piece that we've
22 learned as we've gone about our travel with
23 central monitoring systems.

24 Slots revenue is anywhere between 85

1 to 92 percent of an operation's total revenue.
2 If you look at the cost to verify that and to
3 have public security knowing that the dollars
4 coming in are right and that they are accurate
5 and there's a second set of eyes, is a
6 relatively low fee to track all of that money
7 coming in.

8 And you're not just doing an audit.
9 Most audits are random. They're based on some
10 sort of risk assessment. And you never get to
11 see every single machine. With a central
12 monitoring system, you'll see every single
13 machine every single day what it pulled in.
14 You'll see what the play was on it. You'll see
15 the payout. And you'll be able to calculate
16 your difference and the tax on it.

17 Some other jurisdictions actually
18 pull from the casino operators what their slot
19 system -- slot accounting system is showing.
20 So, you can see a side-by-side comparison to
21 see where you're having differing opinions.
22 That's where you'd send your investigations
23 unit out or your financial investigators out to
24 see did something go wrong with the machine?

1 Is the software wrong? And that's just on the
2 financial side.

3 On the regulatory side, you get to
4 see everything that's happening in that
5 machine. You make sure that every piece of
6 software is updated. You make sure that every
7 single piece of software was approved by our
8 testing labs. That they're working with the
9 right components within a machine so you don't
10 get a malfunction. So, it provides -- I hate
11 to say. -- a safer environment for not only the
12 patrons but also for the Commonwealth and what
13 we're getting back from it.

14 COMMISSIONER ZUNIGA: But it's also
15 fair to say that the cost of the centralized
16 monitoring system is proportional, not
17 directly, but it's mostly proportional to the
18 amount of machines and gaming revenues that are
19 occurring in any one state.

20 MR. LENNON: So, there are two
21 different ways to build other cost. And we've
22 seen it in our travels where we've looked at
23 other monitoring systems. You can either do it
24 as a piece of gross gaming revenue or you can

1 set a flat fee per month and you get a steady
2 staffing pattern.

3 When you set it as a portion of
4 gross gaming revenue, if gaming revenue goes
5 down you still have that many machines to
6 monitor. And you start seeing the assistance
7 from the contract cut back a little bit. So,
8 your central monitoring system may start off
9 with five or six people in the operations
10 center to begin with on each shift. And you
11 may see it start dropping down to three or
12 four. Then you're not doing as much monitoring
13 of the system as would be.

14 Or you may not get the latest
15 software upgrades or the patches to the
16 software of your system. So, there's two ways.
17 So, you can do it that way proportional to
18 gross gaming revenue. Or if you're risk
19 averse, you'd go with a flat monthly fee for
20 this many facilities and this many slot
21 machines.

22 CHAIRMAN CROSBY: Just one other
23 question, does this total revenue generated
24 that's the tax revenue to the state, right?

1 MR. LENNON: That's the tax revenue
2 to the state.

3 CHAIRMAN CROSBY: So, Michigan only
4 generates \$115 million.

5 MR. LENNON: The state only pulled
6 in 8.1 percent of gross gaming revenue. The
7 city of Detroit actually pulled in another 12.9
8 percent almost 13 percent. Then there's a
9 municipal service fee assessment of another
10 1.25 percent. But the state budget purposes
11 only gets 8.1 percent of that gross gaming
12 revenue. That's why the chart can be a little
13 misleading and I wanted to stick to the talking
14 points.

15 CHAIRMAN CROSBY: Yes, thank you.

16 MR. LENNON: The \$300 million that
17 we have is what's posted on our website. I
18 know that HLT has come back with some differing
19 numbers that are actually more favorable than
20 \$300 million when we get the full two casinos.
21 So, I'm trying to stick to what's been posted
22 out.

23 CHAIRMAN CROSBY: Great.

24 COMMISSIONER ZUNIGA: What would

1 Michigan be if you included what the city gets
2 and the municipal, is it probably double?

3 CHAIRMAN CROSBY: More than double.

4 MR. LENNON: It's more than double
5 because you've got 115 and then you've got
6 another 12.9 almost 13 percent. They would
7 probably be closer to 300.

8 COMMISSIONER ZUNIGA: Very
9 comparable to our projection.

10 MR. LENNON: Yes, but their tax rate
11 would be lower because we're at 25 percent on
12 slots -- 25 percent on full resort casinos and
13 40 percent on the slots, which is coming back.
14 Where they're only at about -- they don't
15 differentiate. They're only at about 21, 22
16 percent.

17 And then if you look at just for tax
18 purposes how Pennsylvania generates it, they
19 take 53 percent of slots, whether it's a slot
20 parlor or whether it's a full resort casino.
21 The slots operation is taxed at 53 percent.
22 And table games is taxed at 14 percent.

23 I apologize for veering a little bit
24 there. We looked at CPI changes over the last

1 30 years to determine -- and I chose the CPI
2 index versus a cost-of-living index because a
3 lot of people don't necessarily agree with
4 cost-of-living indexes. And saying wages here
5 you can't really compare, there's housing you
6 can't really compare.

7 CPI is used to inflate a lot of
8 contracts, deflate contracts. So, it's the
9 cost of a good in one place compared to the
10 cost of a good in another place for a certain
11 group of earners. If you look at those
12 changes, Massachusetts has grown seven percent
13 more than the Philadelphia area. And I chose
14 the Philadelphia area in Pennsylvania because
15 that cost index grew faster than the Pittsburgh
16 index. So, I wanted to give us as favorable
17 comparison as possible. If you compare it to
18 the Detroit area, which has a separate index
19 and that's where the three casinos are, we grew
20 24 percent faster than that area.

21 Michigan's \$24.5 million budget in
22 Massachusetts dollars would equate to about
23 \$30.4 million. And Pennsylvania's \$69.9
24 million budget would equate to about 74.8 in

1 Massachusetts dollars.

2 So, you've got a bunch of statistics
3 here. You've got a bunch of stuff flying
4 around. At the end of the day, what it
5 basically says is we're not an outlier. The
6 way we're funded -- Well, our contract costs
7 are upside down compared to FTEs. We may have
8 some differences in how the legislation was
9 written, the amount of revenue we're bringing
10 in compared to other places, our costs are not
11 huge outliers that we're projecting for FY15.

12 COMMISSIONER MCHUGH: Let me just
13 comment on that point. It seems to me that is
14 an important point. And in fact, if I
15 understand the bottom line, the impact on the
16 regulated industry in terms of assessments will
17 be 21 for us. And for the same number, roughly
18 the same number of licensees in Michigan, it's
19 33.

20 MR. LENNON: Correct.

21 COMMISSIONER MCHUGH: So, we're two
22 thirds -- I mean there are other differences
23 but that underscores your point that we are not
24 an outlier in terms of the regulation.

1 MR. LENNON: Yes.

2 COMMISSIONER MCHUGH: I think that's
3 an excellent report. And I'm delighted that we
4 are proceeding down in this precise way and
5 that we will be able to publish all of this and
6 then show actual expenditures against the
7 projections. I think that's a great process.

8 I thought I understood central
9 monitoring though. And from your description,
10 I'm beginning to think that I don't. I thought
11 that central monitoring really meant that you
12 had a computer bank that was continuously
13 acquiring data from each of the machines being
14 monitored. And that that data was there to
15 examine if the revenues reported by the
16 licensee were we wanted to check those. Or if
17 there was a malfunction, a claim malfunction in
18 some machine or if some other need to go to the
19 databank existed.

20 But otherwise, these machines would
21 simply be sitting there quietly acquiring all
22 of this data and keeping it for whatever set
23 period of time we built into it. But I gather
24 that's not what happens.

1 MR. LENNON: That's one of the
2 functions of it. You always have a repository
3 of information of what happened on each machine
4 in case there is a complaint.

5 COMMISSIONER MCHUGH: But I gather
6 from your description that we contract this out
7 to somebody else and they have a group of
8 employees sitting there all of the time?

9 MR. LENNON: At the beginning that's
10 how it would operate, because we wouldn't be
11 staff to understand the software. We are
12 looking at working into the RFR the ability for
13 us to take over that operation and monitor.

14 Because one of the things that
15 central monitoring system does in a lot of
16 other jurisdictions is it makes sure that the
17 right version of software is operating on each
18 machine. So, there can't be -- it limits the
19 amount of malfunctions. It helps to track the
20 asset movement on the floor.

21 Most regulations and ours will
22 probably be similar will track each time a
23 device is moved or a new game is put into a
24 machine. That has to be entered -- That would

1 be entered into our central monitoring system.
2 Then it would reach out to the machines all
3 given a different IP address. And probably our
4 CIO would be the better person to explain that.

5 COMMISSIONER MCHUGH: I understand
6 in a general sense. And I don't mean to get
7 too far down in the weeds, although I may
8 suggest at some point we have a more in-depth
9 discussion of what this involves. Because
10 frankly I don't understand now, and now is not
11 the time to deal with it. If we can budget for
12 it and then decrease the budget if that's
13 necessary. I don't understand the need for
14 five or six people to be sitting there all of
15 the time watching these machines but there
16 probably is a reason. And I would like at some
17 point to find out about that.

18 CHAIRMAN CROSBY: I'd like to be
19 involved in that conversation too for other
20 reasons. Maybe Rick if you could work
21 something out with John and Derek and whenever
22 the time is right, I'd be really interested in
23 that too.

24 COMMISSIONER MCHUGH: There were two

1 other observations that I had. One of those
2 two to the point you've already made that we're
3 upside down on contracted services. And that's
4 understandable at the moment.

5 MR. LENNON: Yes, we're a new
6 organization.

7 COMMISSIONER MCHUGH: We're trying
8 to build an organization. We need the
9 expertise. But it doesn't seem to me that it's
10 too early to begin thinking about as we are
11 contracting out or going outside our own agency
12 for help in various fields whether now is the
13 appropriate time to be thinking about bringing
14 that in-house.

15 There are some areas that I can
16 think of right now that it seems to me it's
17 worthwhile asking that question. There are
18 some that are going to engender costs that are
19 offset by fees so that there will be a wash.
20 And that's a short time phenomenon as well.

21 But it seems to me we need to begin
22 to think about that with some rigor right now
23 so we can make projections and begin to cut
24 down that number. Because I think there are

1 some things we can do more cheaply in-house.

2 The second thing, the second
3 observation is that the problem gaming budget
4 is the second largest -- well, the third-
5 largest. Full-time equivalents is number two.
6 Contracted services is number one. But the
7 third largest about \$4 million is problem
8 gaming. And that really is a robust number.
9 That's 20 percent of the fee assessment is
10 going to that area.

11 And is, I think, something that
12 demonstrates the seriousness with which we take
13 that particular aspect of our regulatory
14 regime. And I think that's worth noting. It's
15 not the same as in some other budgets, but
16 whether or not it were, it is an important
17 commitment and ought to be noted.

18 CHAIRMAN CROSBY: Other comments?

19 COMMISSIONER ZUNIGA: Yes. Let me
20 just mention. I've been appraised of the
21 budget development. Do you want to just react
22 to Commissioner McHugh's --

23 MR. LENNON: No, I have a few other
24 sections. That was just the initial

1 comparison. So, I wanted to walk through the
2 assessment piece.

3 COMMISSIONER MCHUGH: I'm sorry. I
4 jumped the gun.

5 MR. LENNON: No, that's okay. I
6 just wanted to make sure I got through these,
7 because there are a few important point I want
8 to get to, if this was an overall comment.

9 COMMISSIONER ZUNIGA: I did have an
10 overall comment. I've been appraised of this
11 effort. I actually started a little bit on my
12 own and had too many other things to take care
13 of. And Derek and others took it much further
14 in the detail review on comparison to other
15 gaming commissions.

16 I would note that they looked at not
17 just Michigan and Pennsylvania. They chose
18 these two because there's a lot of good data
19 and reasons for the comparison. For example,
20 it would be almost impossible to compare
21 ourselves with Nevada for example just given
22 the size and history or New Jersey for that
23 matter.

24 But one of the metrics that I find

1 very helpful and this is just my opinion, is a
2 comparison to the gross gaming revenues.
3 Because that's really the level of business
4 that we'll have -- that is intrinsic to the
5 operations to this state. Pennsylvania does
6 that to the order of 1.5 percent of gross
7 gaming revenues.

8 MR. LENNON: That's what their
9 assessment is, but their costs are actually
10 closer to 1.8 or 1.9 percent of gross gaming
11 revenue. What happens is they've been
12 assessing that 1.5 percent for years. And
13 unlike us, our legislation where if we have
14 excess money at the end of the year, we have to
15 use it towards the next -- offset the next
16 year's assessment. Theirs stays in that Gaming
17 Control Fund. So, they're actually spending at
18 a clip of about 1.8, 1.9 percent and only
19 bringing in 1.5. So, at some point they're
20 going to have to increase that assessment.

21 COMMISSIONER ZUNIGA: Right.

22 MR. LENNON: Or cut back operations.

23 COMMISSIONER ZUNIGA: But they're
24 also a fully mature operation. They're fully

1 staffed, etc. I would argue that that's a
2 number that we should really continue to
3 monitor ourselves and compare ourselves to the
4 level of activity. By necessity, we have to
5 front load this assessment. There's no gaming
6 revenue yet in the state. But that's the way
7 we were set up and we will have to continue.
8 But I think it's a very important number.

9 Just to dovetail with what
10 Commissioner McHugh was alluding to relative to
11 the mix between contract and in-house, some of
12 the line items here, the large line items that
13 you call out are likely to increase for this
14 Commission. I'm talking FTEs, Attorney
15 General, problem gambling even. \$3.9 million
16 is just this coming year. State police, etc.
17 with the exception of the contracted costs.

18 So, as some of these items increase,
19 again by necessity because of the level of
20 maturity that we're in, the one offset, the big
21 offset that could really help us to keep tabs
22 on an overall budget is how much we bring in-
23 house from contracted costs.

24 It's going to be a periodic

1 decrease. It's not going to be a sudden
2 elimination of our large portion. But that's
3 something that I and the staff continue to look
4 at as we make decisions. Especially day after
5 day make decisions as what to get done with the
6 mix of whether we can do it in-house, contract
7 out with all of the other elements that go into
8 decision making.

9 CHAIRMAN CROSBY: Go ahead Derek.

10 MR. LENNON: So, I'll try to speed
11 through this.

12 COMMISSIONER MCHUGH: No, this is
13 important.

14 MR. LENNON: Under the assessment
15 piece, the Commission is authorized through
16 section 56 of Chapter 23K to assess the
17 difference between its projected costs and
18 projected revenues to licensees of gaming
19 establishments.

20 That process is implemented further
21 through 205 CMR 121. In order to reach this
22 figure, the MGC conducted meetings with each
23 division or bureau to determine what their need
24 would be for providing a regulatory environment

1 in FY15.

2 The requests were then further
3 analyzed by Enrique, the Treasurer -- As he
4 alluded to, he was part of these discussions.
5 -- Executive Director Day and me for supporting
6 documentation and further reasonableness test.

7 Then the finance department also met
8 with the licensing division and the IEB to
9 determine what fees were authorized to collect
10 next year and what we think the volume of those
11 fees will be. And we used applications, past
12 experience from other gaming commissions to
13 generate these revenue estimates. We'll be
14 tracking those closely throughout the year to
15 make sure that our estimates are on track.

16 The resulting costs and revenue
17 reflected on the table on page five and six
18 shown by cost category and revenues of what
19 we're projecting for FY15 are at a high level.
20 If you want more granular, we can provide that
21 for you, but we just tried to stay at the high
22 level.

23 And I'll list out some of the cost
24 elements first. There's \$6 million projected

1 in consultant costs. And I'll just hit some of
2 the high notes in that \$6 million. I'm not
3 going to go through every single contract that
4 we're projecting to have for next year.

5 But we have outside counsel services
6 of about \$800,000, oversight project management
7 services for three operations at about \$1.7
8 million, development of a high-performance
9 organization at \$480,000. \$1.2 for Region C
10 investigations and reviews. Once again that is
11 a revenue neutral. We bring in money to offset
12 those costs. So, if we have don't those, it
13 doesn't alter the assessment. It will just
14 drive our total dollar down and our total
15 revenues down.

16 \$1.1 million for financial
17 investigation and background checks for vendors
18 and gaming employees, and \$450,000 for
19 responsible gaming branding. Actually, I
20 transcribed those numbers. It's a \$540,000
21 figure. \$2.9 million for operational services,
22 and those are basically \$1.8 million MOU with
23 the state police. That covers the cost of our
24 current troopers.

1 The state police have been very
2 gracious to us. They been absorbing those
3 costs except for overtime up until next year.
4 Then they will start billing us now that we
5 have a revenue stream coming in. That also
6 includes 10 troopers starting in the last
7 quarter of next fiscal year to cover the
8 operations out at Plainville.

9 So, we're bringing those in in the
10 last quarter so we can actually train them,
11 have them ready for the opening that's
12 projected for June. And the state police have
13 been very nice about that. They already have
14 those troopers in their class. They're going
15 to pick up the costs for them until April. So,
16 it's been a good working relationship.

17 And then there's another \$800,000
18 set aside as an estimate for the AG's office.
19 Once again, we've worked closely with the AG's
20 office. They put in a request for a \$1.8
21 million budget for next year, but talking
22 through some of the things that have happened,
23 they'll likely get some money in the state
24 budget of about \$400,000 that can help drop

1 that down.

2 While they have some needs for
3 infrastructure and creating their office, those
4 probably won't be annualized out this year.
5 They won't be able to get lease right away for
6 July 1.

7 And one item I want to point out is
8 we don't approve their budget. This is just a
9 placeholder I put in. The way the law reads,
10 and it's section 9 of Chapter 194 of the
11 Expanded Gaming Act, says that they basically
12 can bill us up to \$3 million in cost. And as
13 long as those costs aren't duplicated and they
14 are supporting the -- I think it's specifically
15 they're called out in section 9C of Chapter
16 194. As long as they're operating on those
17 costs we have to pay those costs. So, the
18 \$800,000 is just a plug, but I think it's a
19 reasonable plug based on money they're getting
20 in the state budget. And some of their startup
21 costs they won't be able to fully annualize.
22 The 1.8 was an annualized cost for this year.

23 Another big item expenditure is the
24 state aid and grants, which is about \$3.8

1 million. And a lot of that is the problem
2 gambling. It's the baseline study and the
3 cohort study. We also have a \$700,000 figure
4 put in for Region C community grants that are
5 run by our Ombudsman's office. That's a
6 revenue neutral item.

7 It doesn't help with the assessment.
8 If we don't have \$700,000 in grants, we don't
9 bill \$700,000. So, whatever that item is, it
10 will just drop the revenue numbers down and the
11 spending numbers down.

12 Then we have IT costs of \$3.9
13 million. A large piece of which are the phase
14 two of the licensing system. We have a plug-in
15 of that for \$1 million. We have a \$200,000
16 carry forward from the change order that you
17 approved this year for the phase one of the
18 licensing system. Then there's \$1.7 million
19 built in in case we decide to go with a central
20 monitoring system. If we decide not to do that
21 the assessment goes down by that amount.

22 On the revenue side of the equation,
23 all of the fees we verified that we actually
24 have regulations for. And they're for

1 employees, vendors, slot machines. The Region
2 A slot machine item, I'll have to drop down.
3 And the Region A slot machine figure was based
4 on the lower of the two requests. It has no
5 indication on which you guys will choose. I
6 just went with the lower of the two to go with
7 the worst-case area.

8 If we have the higher of the slots
9 number come in, then our assessment may go down
10 by a little bit. But I wanted to present the
11 worst-case scenario here.

12 And as you'll also notice, we are
13 going to repay the \$17.5 million that we took
14 of the \$25 million initial licensing fee for
15 the Category 2 slots facility. We're looking
16 at probably spending \$3.5 million of that this
17 year. \$14 million will balance into next year.
18 And then I have a line item that would net out
19 that \$3.5 million as a \$17.5 million transfer
20 to the Community Mitigation Fund once we bring
21 in the Category 1 licensing fees.

22 We would time that by the end of
23 fiscal year because as you'll see later on, I'm
24 recommending we don't assess until we have

1 actual licensees awarded for Region A and B.

2 Any questions on the costs and the assessment?

3 CHAIRMAN CROSBY: No.

4 MR. LENNON: Then the final piece is
5 more of an update. In FY15, the Commission
6 asked that we develop our budget by division
7 and assign a division, track it and be able to
8 report that level. We will be able to do that.

9 The best place to see how this will
10 impact our spending bottom line is the Gaming
11 Control Fund, appropriation 10500001. You'll
12 see there are 12 separate divisions that add up
13 to the \$24.5 million budget. Each division
14 will be given its own budget and will actually
15 load it into the state accounting system so we
16 can track contracts and expenditures against
17 it.

18 The features that we'll be using in
19 the Massachusetts Management Accounting and
20 Reporting System will be the expense budget
21 feature. So, we won't even have to do ad hoc
22 querying. It's a built-in table right into the
23 accounting system. A lot of other state
24 agencies use it. I found it to be very helpful

1 to track budgets. That's just one way we can
2 slice the data.

3 The tables on page seven and eight
4 of the memo show total budgets allocated to
5 each division. I'll just highlight some of the
6 areas. The memo goes into deeper detail, but
7 I'll just highlight under administration and
8 finance there's a \$750,000 item for office
9 space and the potential move we'll be going
10 through. There's the \$1.7 million item that I
11 talked about for oversight project management.

12 All of those costs will fall under
13 the A and F budget. Legal division will host
14 the outside counsel of \$800,000. The MOU for
15 the AG's office will also fall under the legal
16 division. The Executive Director will be
17 hosting the high-performing agency project.
18 The problem gambling division will have \$3
19 million for the baseline and cohort study,
20 another \$540,000 for the responsible gaming
21 branding and staffing of on-site centers.

22 And the IEB will have \$1.1 million
23 cost I spoke earlier for the investigations of
24 Region C and the gaming employee licenses and

1 the \$1.8 million MOU with the state police.

2 Also loaded in the IEB budget is a
3 \$250,000 training item. And that will be to
4 train the financial investigators as well as
5 the gaming agents to move away from consulting
6 costs.

7 So, we want our own staff performing
8 financial investigations. We want our own
9 staff performing the background checks, which
10 the state police have taken over a good piece
11 of and doing the work on the floor so we don't
12 have to rely on consultants.

13 So, it's rather short money spent to
14 get off of a \$1.1 million fee. That's where
15 the investigations will actually start adding
16 revenue to us. And they won't be revenue
17 neutral. They'll be adding to our bottom line
18 because we won't have that cost flowing out.

19 I don't want to be remiss. I want
20 to talk to the Racing Division Oversight and
21 Trust Fund. Total expenditures in FY15 are
22 anticipated to be about \$2 million with 1.5 of
23 that coming from full-time and seasonal costs
24 and the lab testing costs. Once you get past

1 those main items, there's not much built into
2 the Racing Division budget. So, to cut back is
3 really you either cut back on testing or you
4 cut back on staff. So, it's a really staff
5 intensive budget.

6 Then on the revenue side we deflated
7 revenues from what we're anticipating this year
8 by about five percent. And the reason we did
9 that was because that's the change we saw in
10 the FY'13 revenues compared to what came in in
11 FY'12. It's about the best we could see. And
12 Jennifer said that's similar to what she's
13 seeing across the rest of the Racing Divisions.
14 We could have a great year and see higher
15 revenues come in, but most likely these numbers
16 are pretty close to what we'll actually see
17 happening.

18 And you'll also notice under the
19 Racing Division that the \$1.2 million carry
20 forward in the revenue section. That's why we
21 are starting off so well on our revenue side.
22 But if you look at where we'll end up, we're
23 only going to end up with \$400,000 carrying
24 into next year. So, that's where we get our

1 eat in of about \$800,000 where our costs are
2 exceeding our revenues.

3 The balance of the racing
4 appropriations are transfers from daily
5 wagering. And those go to promotional and
6 capital improvement trust funds, which the
7 Commission has to approve any projects out of
8 it. You've already approved projects out of
9 both of the Plainville and the Suffolk one.

10 What mainly happens is when money
11 builds up in there, the licensees call up and
12 say can we get some reimbursement for what
13 we've already spent. We can only spend what
14 they've already committed for projects.

15 So, in conclusion, staff is
16 proposing an FY15 budget \$29.3 million for the
17 Gaming Commission, \$24.5 million to support
18 commercial casino and slot parlor operations,
19 \$4.8 million to support the Racing Division.
20 And what we're looking for is your guidance on
21 either further developing these
22 recommendations, do you want a flat cut of 10
23 percent, 20 percent and see what those numbers
24 come back at?

1 Would you like to put it out to the
2 public comment, which is another key thing to
3 do. Or do you want to just approve it now,
4 which I think is highly unlikely.

5 I also have the following
6 recommendations that we should delay assessing
7 the costs until the Region A and B licensees
8 are determined. We should assess the full year
9 share of the assessment on the licensees once
10 they are determined. And that is allowed under
11 805. For FY14 and '15 we did build that
12 capacity in. We didn't have to do it within 30
13 days of the budget being passed. We can do it
14 even retroactively.

15 Then my final one is that we should
16 assess the 600 slot machine fee for the full-
17 year cost once the licensee is determined if
18 it's before July 1. And for anyone after July
19 1, it should be prorated on a daily basis. I
20 think that's the easiest way.

21 CHAIRMAN CROSBY: Okay. Thank you
22 any other comments or reactions.

23 COMMISSIONER ZUNIGA: Remind me, and
24 I know I've asked you this question before, but

1 are you considering the indirect costs for the
2 Commonwealth?

3 MR. LENNON: I do not have indirect
4 costs built into this. The only place I have
5 indirect costs built in are for agencies like
6 DPH that have requested that that be built-in.
7 That would be 10 percent. I think we have a
8 good argument to make that the indirect cost
9 rate shouldn't apply to us. We don't have a
10 state budgeted item.

11 COMMISSIONER ZUNIGA: Altogether?

12 MR. LENNON: As far as the SWICAP
13 goes.

14 COMMISSIONER ZUNIGA: Go Derek.

15 MR. LENNON: And we've actually made
16 that case the last two years.

17 COMMISSIONER ZUNIGA: We have but it
18 was a temporary case.

19 MR. LENNON: And it is for every
20 agency, but I think we have a good argument to
21 be made. No revenue is coming in for the
22 licensees. To hit another 10 percent on all of
23 the personnel and contracting costs is a rather
24 tough thing to ask for especially when no money

1 is coming in.

2 COMMISSIONER ZUNIGA: Right.

3 CHAIRMAN CROSBY: Let us know if we
4 can help on that one.

5 MR. LENNON: Okay, I will.

6 COMMISSIONER ZUNIGA: You can help,
7 you of all people.

8 CHAIRMAN CROSBY: I certainly don't
9 see any need for an arbitrary exercise to say
10 what does it look like if you take out 10
11 percent or whether you take out 20 percent. I
12 think the process you've gone through I think
13 you've worked with the department heads. And I
14 think the numbers are pretty well scrubbed.
15 They're pretty rational. The comparison is
16 really good. I think the memo is really well
17 done.

18 And it was important to all of us
19 that we make sure that we are in the ballpark
20 with similar agencies and we clearly are. So,
21 I don't see any need to go through that kind of
22 an exercise.

23 I do think the comment portion is
24 important probably just because that's the way

1 we run this operation. But also we have talked
2 about having our licensees have a chance just
3 sort of out of good faith take a look here. At
4 the moment we have one licensee. I do think
5 whenever the time is right in the process,
6 maybe around now, it would be important to give
7 them a chance to take a look at it and give us
8 their feedback.

9 As far as broader public comment
10 that's sort of standard operating procedure
11 around here. So, I think we probably want to
12 do that.

13 COMMISSIONER ZUNIGA: I would agree
14 with all of that. I think that coming up with
15 a number to decrease it by across-the-board may
16 be too difficult to come up with. The way you
17 built in the budget is really by looking at
18 what we need and what we feel is appropriate
19 and prudent.

20 But there are a couple of items here
21 -- I would be prepared to approve this now or
22 soon before June 30, for example, if we feel
23 there needs to be more discussion.

24 But there are a couple of items

1 here, large-ticket items that we were just
2 talking about like the centralized monitoring
3 system or other items like the high-performance
4 project. There's ongoing big-ticket items
5 relative to the research project that it's
6 implicit but I'll mention it, you would come
7 back for actual approval of those items to this
8 Commission prior to making the commitment once
9 we have let's say a better number or even
10 before then as we are scoping out the
11 alternatives say on many of these large-ticket
12 items.

13 So, on that note, there's a few that
14 may merit further discussion. They don't have
15 to, as Commissioner McHugh said, would have to
16 be approved prior to even June 30. We could
17 approve a budget on the general notion of
18 having a total number but come back to several
19 of the items that we feel are necessary to have
20 further discussions.

21 COMMISSIONER MCHUGH: You're
22 suggesting an approval on a not to exceed basis
23 and then drilling down to specific items. I
24 would like to have the comments from the

1 licensee, maybe comments from all of the
2 applicants, but certainly from the licensee
3 before we do anything because I would like to
4 reflect on those comments. And there are a
5 couple of specific --

6 COMMISSIONER ZUNIGA: Areas?

7 COMMISSIONER MCHUGH: Well, I was
8 thinking about how to characterize it --
9 specific budget items that may require
10 increased revenue. But I would like to do some
11 just conversations with the department heads
12 before I talk about that.

13 So, I think if we get comments from
14 the public and get comments from the licensee
15 at least perhaps the applicants and by the time
16 we're ready to take the next step, I'll be
17 ready either to ask that something be included
18 in the next session we deal with this or be
19 prepared to take into account the comments and
20 proceed on a not to exceed basis.

21 MR. DAY: Commissioners, just one
22 note is that I think as we were talking about
23 it, I do agree that the concept of having it
24 out for public comment probably until the next

1 June 12 meeting makes sense. I think it fits
2 with what the Commission has done with most
3 everything that's come before it.

4 The other question is there's a lot
5 of discussion on central monitoring. We do
6 have and Penn asked and we've encouraged them
7 to send in. So, we received a piece of
8 correspondence from them on central monitoring.
9 So, it seems like to me it would make sense to
10 come back at the next meeting, talk in some
11 more detail about that before the Commission
12 reaches a conclusion.

13 The other area that I had noted was
14 the concept of contract staff versus actual
15 staff positions. So, I was anticipating we
16 could kind of go back, retake a look at what
17 we've got so far and then come back and have
18 some additional discussions probably in between
19 time with the Commissioners but also with the
20 Commission at the next meeting.

21 And then maybe that will be helpful
22 as far as being able to feel that we've gone
23 far enough for the approval of the budget.
24 Excuse me, hard for me to say approval of the

1 budget.

2 But anyway, I think those steps at
3 least. And if there's some other areas that
4 the Commissioners may want some additional
5 information discussed, I could just add those
6 to the list as well.

7 COMMISSIONER MCHUGH: Okay. That
8 sounds like a good plan as far as I'm
9 concerned.

10 CHAIRMAN CROSBY: Yes, I agree.

11 COMMISSIONER ZUNIGA: Sounds good.

12 COMMISSIONER CAMERON: I just wanted
13 to commend CFO Lennon. I think this is an
14 excellent job. I had a chance to discuss it
15 with you yesterday. And very impressed with
16 your subject matter knowledge. You're
17 apologizing and you're giving others credit
18 which is terrific to give others, especially
19 your staff. But I just wanted to say that this
20 a lot of work.

21 You're very knowledgeable about all
22 of these issues which helped educate me,
23 frankly. The contract, if we can be prepared
24 to do some of this work in-house sooner rather

1 than later, I think it's a benefit to all of
2 us. So, that is one area that I in looking at
3 this stuff that we could kind of rethink if in
4 fact we could be prepared sooner to do some of
5 those, to conduct whether it be investigations
6 or other things. I think that is a benefit to
7 us. But thank you for this. It's an excellent
8 document.

9 MR. LENNON: Thank you. And I do
10 want to point out that it was an agency
11 Commission wide task. I only look good because
12 the other directors have educated me on what
13 they need to do with their units. And they
14 came very prepared to justify each dollar that
15 they were going to spend and why we need it for
16 the regulatory environment. So, I think that's
17 a reflection of the information that was
18 provided to me.

19 COMMISSIONER MCHUGH: Well, you're a
20 good student.

21 CHAIRMAN CROSBY: So, we don't need
22 a vote. We're just going to go ahead
23 informally on this, put it out and then hone in
24 on it in a couple of weeks.

1 COMMISSIONER MCHUGH: Right.

2 CHAIRMAN CROSBY: Great.

3 MR. LENNON: Thank you.

4 COMMISSIONER STEBBINS: Thanks

5 Derek.

6 COMMISSIONER MCHUGH: Thanks very

7 much.

8 COMMISSIONER ZUNIGA: Thank you.

9 CHAIRMAN CROSBY: Director Day,
10 anything else?

11 MR. DAY: That's the end of my
12 report.

13 CHAIRMAN CROSBY: I think we will
14 stop for a lunch break. I think we ordered
15 sandwiches. So, can we be back in 40 minutes
16 do you think? So, we'll convene again at 1:30.

17

18 (A recess was taken)

19

20 CHAIRMAN CROSBY: We are ready to
21 reconvene. Where is everybody? Commissioners,
22 there is one item that I wanted to bring up,
23 which is not on the agenda because it just came
24 up yesterday, but I think it's something that

1 we should deal with quickly. It's relatively
2 minor, straightforward.

3 When we were doing the final edits
4 on the legislative memorandum, Commissioner
5 Zuniga suggested that it was important to put
6 in a sentence into that letter to the
7 Legislature that highlighted the negative
8 consequences to the Commission and the positive
9 consequences to our competitor states if \$600
10 threshold issue for withholding was not
11 changed.

12 When we put that sentence in, we
13 focused on the impact and the relationship with
14 Connecticut not on all of the states. Which
15 all of the states Rhode Island, Maine,
16 Connecticut and New York were all mentioned in
17 our original analysis as being states that
18 would probably benefit if we didn't correct
19 this.

20 So, we inadvertently just focused on
21 Connecticut which was prejudicial or appeared
22 to be prejudicial to the folks in Connecticut.
23 So, my suggestion is simply that we strike that
24 sentence, put back in the reference to all four

1 states that are in the attachment. We did
2 attach our original memorandum on the \$600 to
3 the letter to the Legislature. So, we just
4 make the reference. Commissioner Zuniga's
5 sentence would refer to all four states rather
6 than just the one.

7 I don't think this necessarily
8 involves a vote, but I just wanted to highlight
9 that since it was brought to our attention
10 yesterday.

11 COMMISSIONER ZUNIGA: I would agree
12 with that. And we did have a lot of
13 discussions prior to the last meeting, the one
14 that preceded the letter. There were several
15 other meetings in the past, in my recollection,
16 all over a year where at least from my
17 perspective that was a big part. The
18 competitive nature of all of the states around
19 us is a big impetus towards that \$600
20 threshold.

21 CHAIRMAN CROSBY: Right, which was
22 the point we were trying to make in the
23 sentence.

24 COMMISSIONER MCHUGH: That

1 discussion actually started in the context of
2 racing last summer when this was first
3 implemented in the racing world and generated
4 some energy on the part of horse racing
5 aficionados and customers.

6 Let me just say one other thing
7 about this that I think ought to be clear, and
8 that is that in my view at least a Commission
9 vote on a set of recommendations is a vote on
10 the recommendations. It's not necessarily a
11 vote on every single word in the document that
12 accompanies the regulations.

13 It is a vote that the
14 recommendations no substantive modifications of
15 the proposals we voted on can be changed. But
16 it's not a vote on every word and every comma
17 and every punctuation mark in the document that
18 we approve. And inevitably in the editing
19 process either something has to be changed or
20 some thought that is non-substantive comes up
21 and is addressed. So, I don't think that's
22 anything out of the ordinary.

23 And I frankly only glanced at the
24 final version when it went out. But I saw this

1 and thought that sort of anti competitive
2 problem was what we were getting at. And
3 that's how I read it. So, I just think for
4 general principles that that ought to be clear.

5 CHAIRMAN CROSBY: We have subjected
6 ourselves to such an extraordinary level of
7 transparency that our every word is parsed and
8 double checked. And it's an incredibly
9 difficult standard to try to adhere to. And we
10 do have to retain some flexibility. Having
11 said that there was a misimpression created,
12 which was inadvertent. So, we will make that
13 amendment and resend the letter.

14 We are then to item number five
15 horse racing, Director Jennifer Durenberger.

16 DR. DURENBERGER: Good afternoon.
17 Live racing is going on in the Commonwealth at
18 both our thoroughbred licensee and our harness
19 licensee.

20 I'm happy to report that out at
21 Plainridge, construction on the new facility
22 and training and racing seem to be getting
23 along in harmony. This is good news. It's
24 always a concern with projects of that scale

1 going on in proximity to horses. So, that's
2 good news.

3 I'd like to report that yesterday
4 the communications division unveiled a number
5 of website enhancements designed to educate
6 about our regulatory programs and provide
7 transparency surrounding specifically our
8 equine drug testing programs. They did a
9 fantastic job on that.

10 They made my job very easy. I just
11 basically told them what I was looking for.
12 And they came up with the product. So, it
13 looks great. And so far we've had nothing but
14 positive feedback on that. So, we look forward
15 to growing the information that's available
16 there. But we're starting out with a pretty
17 good library already of information that's
18 available.

19 Next week, I'm going to be updating
20 The Jockey Club's thoroughbred safety committee
21 on the regulatory initiatives that this
22 Commission has advanced since you've assumed
23 oversight of the industry here. The industry
24 has taken note, Commissioners, of your

1 commitment. And this invitation is just one
2 indication of that.

3 Then we've had a request for
4 clarification on the process involving the Race
5 Horse Development Fund and the committee that
6 is charged with making recommendations about
7 the split. And I think that's the piece where
8 we need the clarification.

9 So, I'll just step back really
10 quickly and say that Chapter 23K section 60
11 established a Horse Racing Committee that was
12 charged with determining -- I guess the word
13 recommendation appears in that section about
14 three different times. But the committee
15 determines the percentage split of the Race
16 Horse Development Fund, how much should go to
17 the thoroughbred licensee, how much should go
18 to the standardbred licensee, whoever they may
19 be. And I think there's been some confusion as
20 to whether or not that's advisory or what the
21 actual process is.

22 So, my understanding and
23 Commissioner Cameron is the representative, so
24 correct me if I'm going the wrong way, but I

1 think that the committee comes up with its
2 recommendation. It files that with the
3 Legislature 30 days in advance of bringing it
4 before the Commission. And then it's brought
5 to the Commission. Then any changes to that
6 percentage split come up in the future have to
7 go back through that committee. Is that --

8 COMMISSIONER CAMERON: You're
9 accurate. It is not advisory. And we are very
10 close to -- We meet monthly. And we are very
11 close, we hope by the end of June, to have
12 that decision.

13 CHAIRMAN CROSBY: Remind me who all
14 are on that committee.

15 COMMISSIONER CAMERON: There is a
16 representative from each of the industries
17 That's Frank Frazzoli representing
18 thoroughbred. And we have Peter Goldberg
19 representing the harness. There's a
20 representative from the Treasurer's office. I
21 represent the Gaming Commission. We started
22 out with one representative that was appointed
23 by the Governor to chair. That individual
24 after several months ended up resigning from

1 the committee.

2 And we were fortunate enough to
3 after several months to have a new chair.
4 That's Dr. Debbie Kochevar who is the Dean out
5 at the Tufts Veterinary School. And because
6 after the license actually at Penn, I think our
7 work became real to people or there was a
8 renewed interest in the work.

9 So, we now have several. It's
10 certainly an open public meeting every time we
11 meet. And we do have a number of folks that
12 attend our meetings now. In fact, we have
13 another meeting tomorrow afternoon at one
14 o'clock. And we'll be continuing our work.

15 One of the things that we did was a
16 survey of trying to verify how many farms there
17 really are in the Commonwealth, how many active
18 working farms and how many horses on each side.
19 It's a very difficult job. We used vet
20 students to complete that work but there was
21 still some -- the results were not as
22 comprehensive as we would have liked because of
23 the fact that lots of folks just did not
24 respond to phone calls and visits to help us

1 with that survey.

2 But having said that, we think we
3 have somewhat accurate numbers and we hired a
4 doctor who is an economist, I believe. She's
5 very connected to the racing industry.

6 CHAIRMAN CROSBY: This is Martha Ray
7 or something like that?

8 COMMISSIONER CAMERON: Dr. Ray, yes.
9 She has been -- We sent her all of the data.
10 And she has given us some recommendations of
11 which we will be discussing tomorrow. And we
12 are close to coming up with -- And we wanted to
13 do it based on the numbers, based on real
14 information, real data. So, we are close to
15 coming forth with a decision on how those
16 monies should be split.

17 Lots of public comments every month
18 about the issues. We encourage that. And
19 certainly, Dr. Durenberger has been of great
20 assistance to us as well with these matters.

21 CHAIRMAN CROSBY: So, it's a five
22 person committee of which you are one voting
23 member?

24 COMMISSIONER CAMERON: Correct.

1 CHAIRMAN CROSBY: Well, I completely
2 misunderstood that that's for sure.

3 COMMISSIONER CAMERON: I didn't
4 realize you didn't understand.

5 CHAIRMAN CROSBY: Yes. It was
6 nobody's fault. I just was thinking this was
7 yet another advisory committee that we were
8 working with. Okay. Thank you. That's very
9 helpful.

10 DR. DURENBERGER: That should do for
11 the administrative update, unless there were
12 any questions about anything administrative.

13 We can move onto item 5b which is
14 horse welfare values. The last time we came
15 before you, which gosh feels like a year ago, I
16 outlined some of the new initiatives at the
17 operational level that are going on at the
18 tracks this year. Then I presented to you a
19 number of asks related in particular to
20 welfare.

21 We had three items that came out of
22 that discussion that were put out for public
23 comment. So, in your packet there is a memo
24 that I've basically put together which has some

1 review. It talks about the three items that we
2 requested public comment on.

3 One is whether the Commission should
4 consider endorsement of a set of welfare
5 guidelines. One is whether as part of the
6 regular rulemaking process that's going to
7 begin this summer with licensing and licensee
8 duties we should include an affirmative duty on
9 licensees to report conduct detrimental to
10 welfare.

11 And then there was an informational
12 item on a national racing compact and whether
13 or not the Commission should consider
14 supporting that and learning more about it at
15 least in the initial stages.

16 So, in your packet is a summary. We
17 did receive three public comments. The public
18 comments came in from the International
19 Federation of Horseracing Authorities. That
20 would be the global body regulatory trade
21 association, if you will, the global
22 counterpart to what we refer to as RCI, Racing
23 Commissioners International, the National
24 Thoroughbred Racing Association Safety and

1 Integrity Alliance and Suffolk Downs. So,
2 those comments are there for you. All three
3 respondents did comment on all three of the
4 items that were out for public comment.

5
6 And I think what we'll do is we'll
7 start with the item that requires your
8 attention which is whether the Commission
9 should consider endorsement of a set of welfare
10 guidelines. So, we gave you four different
11 approaches that regulatory bodies in other
12 parts of the world have used toward welfare
13 issues.

14 My recommendation is that we look at
15 the International Group of Specialists Racing
16 Veterinarians. This is an international group.
17 They produced a welfare guidelines for horse
18 racing document that appears actually twice in
19 your packet now. This is the set of guidelines
20 that appears to be in majority practice in most
21 of the rest of the world.

22 We think that after reviewing the
23 different guidelines that are in here, we think
24 that it addresses the areas that are
appropriate and within this Commission's

1 purview. So, my recommendation would be that
2 if it so pleased you to consider passing the
3 resolution that is included in your packet and
4 endorsing that set of guidelines.

5 I'm happy to answer any questions
6 about the resolution or the guidelines
7 themselves.

8 COMMISSIONER MCHUGH: This is a
9 thoughtful memorandum, but I did have a couple
10 questions. One on the third page of your
11 memorandum in the our current recommendation
12 section, the parenthetical notes that breeding
13 and aftercare are not a prominent feature of
14 those proposed guidelines.

15 They do mention aftercare. They do
16 mention making sure the animals have a nice
17 place to live after they're finished. But my
18 question is why do we have to just take a set
19 of guidelines or why are you recommending that
20 we take a set of guidelines rather than
21 building on a set to include the things in
22 which you think we have some deficiencies?

23 DR. DURENBERGER: I have two answers
24 to that.

1 COMMISSIONER MCHUGH: I'm open to
2 hearing them.

3 DR. DURENBERGER: The first one
4 would be this would be a jumping off point
5 starting here. And then building from this I
6 think is certainly something that I had
7 envisioned. We are going to be trying to put
8 together basically a mission statement, a
9 strategic plan to hopefully publish in
10 conjunction with the Race Horse Development
11 Fund recommendations. So, part of that
12 strategic vision would be other things that we
13 can do that we can move beyond just the
14 racetrack.

15 So, before and after. So, breeding
16 and aftercare I think would be part of the
17 strategic vision that we would be bringing
18 forth to you later this year. So, this would
19 be the building block and then we would perhaps
20 bookend it with the before and afters.

21 And the second part is I am also
22 mindful of the fact that there is another
23 statute that the Department of Agriculture is
24 charged with enforcing. And that's chapter

1 128. That is the statute that covers breeding
2 in Massachusetts. So, there is some disconnect
3 there. That's not the way that it is in every
4 state.

5 In some states, the racing
6 commission is charged with both. So, I was a
7 little bit mindful of this Commission's scope
8 and purpose.

9 COMMISSIONER MCHUGH: Why then, the
10 second question, an international rather than a
11 national standard?

12 DR. DURENBERGER: We don't have a
13 national standard to point to.

14 COMMISSIONER MCHUGH: Pardon me?

15 DR. DURENBERGER: We didn't have a
16 national --

17 COMMISSIONER MCHUGH: This is
18 comprehensive enough?

19 DR. DURENBERGER: Correct.

20 COMMISSIONER MCHUGH: Finally,
21 maybe, why a resolution rather than a
22 regulation?

23 DR. DURENBERGER: Guidelines are a
24 little fuzzy. We have regulations that

1 address, squarely address some welfare related
2 issues. When you get into those kinds of
3 regulations, you really need to have science to
4 back it up. You need to have some kind of
5 metrics to determine whether or not there's a
6 violation.

7 So, to the extent that we can do
8 that we are incorporating regulations in our
9 set that is coming before you this summer. It
10 gets a little bit difficult to decide how you
11 enforce some of these guidelines. And we do
12 have occupational licensees that are charged
13 with care, custody and control which are
14 welfare related issues. So, we do feel like
15 the burden is on them.

16 In terms of determining whether or
17 not there are violations that without science
18 to determine, without some kind of metric to
19 determine yes there is a violation, no there's
20 not, it gets a little sticky. I think that the
21 folks in law enforcement find this as well when
22 they go out and investigate suspected cases of
23 either animal cruelty or animal neglect. I
24 think that without some clear-cut guidelines it

1 make enforcement difficult.

2 And we are mindful of having
3 regulations that can't be properly enforced are
4 as problematic as not having regulations at
5 all.

6 COMMISSIONER MCHUGH: I understand
7 that, and probably worse. And I understand
8 your concern about the enforceability of a lot
9 of these things. But what about a regulation
10 that required every licensee or every category
11 of person to read and acknowledge familiarity
12 with these guidelines?

13 DR. DURENBERGER: That's a great
14 idea.

15 COMMISSIONER MCHUGH: And therefore
16 not only demonstrate that we're behind this as
17 a mission statement, but drive it down to the
18 operational level so that everybody has to,
19 within a defined class has to acknowledge that
20 they've read it and is familiar with its
21 content.

22 DR. DURENBERGER: That's a great
23 idea. I will take that by the teeth, if you
24 will, by the horns. We do as part of the

1 licensing package that's coming up, there is a
2 recommendation, a model rule right now that
3 requires four hours of continuing ed. for
4 trainers. This would certainly fall within
5 that type of educational statement, but that's
6 only trainers. And that doesn't cover our
7 licensees. So, that might be something to
8 consider broadening that scope.

9 COMMISSIONER MCHUGH: I think this
10 is a great initiative, but I'd really like to
11 put in place something that was more than a
12 feel-good. I don't mean to diminish the
13 strength of a resolution, but something that
14 really said we're serious about this and we
15 have a mechanism for making sure that you're
16 serious about it too.

17 DR. DURENBERGER: Thank you,
18 Commissioner. I like that idea.

19 CHAIRMAN CROSBY: Explain to me,
20 there are guidelines which couldn't be
21 regulations because we couldn't really know how
22 to enforce them. Do we want guidelines that
23 aren't enforceable that aren't backed up by
24 science for which there is no metric? I don't

1 quite understand that.

2 DR. DURENBERGER: We either have in
3 place now or we will be proposing this summer
4 regulations for those pieces of these
5 guidelines that we can assess that we have some
6 way to assess. The guidelines they guide us.
7 They're not a directive. They're one step
8 short of a directive. So, it's more of a
9 philosophical approach. It's a commitment. I
10 heard Commissioner McHugh use that word.

11 So, to the extent that there are
12 things in here that can be enforced, we intend
13 to enforce them. But we think that using the
14 guidelines as an overarching principle I think
15 is important.

16 COMMISSIONER MCHUGH: There's an
17 example, if I could just pick one example, this
18 is why I agreed with Commissioner (SIC)
19 Durenberger. It's on page two is rest periods.
20 Long journeys should be planned carefully and
21 horses allowed regular rest periods and access
22 to water. There's a host of value judgment and
23 discretionary things in there. It's almost
24 impossible to find a violation of that.

1 CHAIRMAN CROSBY: As it stands,
2 right.

3 DR. DURENBERGER: Husbandry is the
4 word we use in animal science. It's guidelines
5 for husbandry. That's the word in animal
6 science. It's good husbandry.

7 COMMISSIONER CAMERON: But I think
8 endorsing the guidelines does send a message
9 that this is something we're serious about and
10 we're moving in this direction and regulations
11 will follow.

12 I see all of the public comments
13 were all in favor of supporting this. The
14 three public comments were all in favor of
15 endorsing the welfare guidelines. So, I think
16 it's a great idea.

17 CHAIRMAN CROSBY: Why would others
18 have not done this? You mentioned that we may
19 be the first racing jurisdiction in the US to
20 formally endorse a set of welfare guidelines,
21 which is very cool. But why?

22 DR. DURENBERGER: I think the
23 consciousness in North America, I think this
24 has been less of an issue in sort of the

1 industry consciousness than it has been in
2 other parts of the world for a host of reasons,
3 a host of political reasons, a host of the
4 antecedent event reasons. And I think that
5 it's just reaching the public consciousness
6 now.

7 And I think there's also some
8 reluctance. When I speak with other
9 regulators, there's some reluctance because
10 these aren't necessarily enforceable. Is it
11 appropriate for a Commission to get involved in
12 telling people what to do with their horses is
13 kind of the colloquial response is what I hear.

14 So, that would be my best guess at
15 that answer. There may be other reasons out
16 there but I don't know of any.

17 COMMISSIONER CAMERON: It's been in
18 the forefront, right, of late? There's been
19 instances and stories written about animals
20 that their welfare possibly wasn't at the top
21 of the list. I don't know if it's any
22 different than concussions in football.

23 CHAIRMAN CROSBY: I know. I'm just
24 surprised that nobody else -- It seems unusual.

1 DR. DURENBERGER: I think we do have
2 on page three of these guidelines kind of the
3 flipside of what kinds of things are
4 enforceable. Almost everything on page three
5 we actually have existing regulations that by
6 the way parallel the recommendations in the
7 guidelines.

8 We have regulations that discuss the
9 veterinary inspections. We have regulations
10 describing when horses can start. Surgical
11 procedures, there's a number of enumerated
12 procedures that either they can't have or have
13 to be reported. We have regulations about
14 bleeders. We have regulations we use 120 days
15 here on pregnant mares. So, page three is an
16 example where perhaps the thought was well, we
17 already addressed these things so why would we
18 need to talk about guidelines.

19 CHAIRMAN CROSBY: Did you include a
20 motion? Is there a drafted motion?

21 DR. DURENBERGER: There is. There
22 is a resolution that comes at the end of the
23 memo which I see doesn't have page numbers on
24 it, so probably eight or nine pages in to item

1 5b(i).

2 CHAIRMAN CROSBY: Got it, the
3 whereas, right. Commissioner Cameron do you
4 want to propose it?

5 COMMISSIONER CAMERON: I make a
6 motion that we endorse the welfare guidelines
7 established, and I'm not going to get this
8 acronym right, the IGSRV, which is the
9 veterinarian's guidelines, that we endorse
10 that.

11 CHAIRMAN CROSBY: Second?

12 COMMISSIONER ZUNIGA: Second.

13 COMMISSIONER MCHUGH: Could I offer
14 a friendly amendment --

15 COMMISSIONER CAMERON: Of course.

16 COMMISSIONER MCHUGH: -- that we tag
17 onto the end of your motion and that we ask the
18 Racing Division to return at a time in the near
19 future with a proposed regulation designed to
20 ensure that appropriate racetrack personnel are
21 familiar with the content of these guidelines.

22 CHAIRMAN CROSBY: Sounds good. You
23 all right with that?

24 COMMISSIONER CAMERON: Absolutely.

1 CHAIRMAN CROSBY: Any further
2 discussion? All in favor of the motion as
3 amended say aye. Aye.

4 COMMISSIONER MCHUGH: Aye.

5 COMMISSIONER CAMERON: Aye.

6 COMMISSIONER ZUNIGA: Aye.

7 COMMISSIONER STEBBINS: Aye.

8 CHAIRMAN CROSBY: Opposed? The ayes
9 have it unanimously.

10 DR. DURENBERGER: Thank you,
11 Commissioners. The next item is the other two
12 items that were put out for public comment
13 which was whether or not we would include an
14 affirmative duty on licensees to report conduct
15 detrimental to welfare. We have a regular
16 rulemaking process we're going to be initiating
17 in June or July, and whether or not we would
18 include that affirmative duty.

19
20 And what I've done in the memo is
21 pointed out that under the existing model rules
22 structure -- Actually, let me back up. Under
23 the existing Massachusetts rule structure,
24 there is a duty on licensee to ensure the
welfare of their care. And there is a duty on

1 licensees, all licensees to report suspected
2 violations of that to racing officials -- I'm
3 sorry, that racing officials have to report
4 that to the stewards. So, the duty right now
5 is on not all occupational licensees but on
6 those that are charged as racing officials.

7
8 The existing model rules structure
9 extends that to all licensees. So, all
10 licensees under the model rules structure are
11 bound to report suspected violations of rules
12 or if they know that a rule violation may
13 occur. So, the duty already exists under the
14 model rule structure that we'll be proposing to
15 you.

16 The question that I have is those
17 two regulations when read together, we see that
18 as conferring this duty, but they're spaced
19 apart in the regulations. There's a number of
20 things that come in between those two
21 provisions. The question I have is is it
22 appropriate right after we put the duty on
23 people to look after the welfare of their
24 horses to have a friendly reminder right next
to it, following that regulation which puts a

1 duty squarely on the licensees to report
2 suspected violations of conduct detrimental to
3 welfare?

4 That is my recommendation. And I
5 think I have some proposed language there for
6 you.

7 COMMISSIONER MCHUGH: Could I ask
8 first of all who are the licensees? Are the
9 hot walkers licensees?

10 DR. DURENBERGER: They are. So, if
11 you have access to the restricted area, which
12 is the stable area, you are an occupational
13 licensee. There are some front side employees
14 as well, but occupational licensees, this is
15 folks on the backside.

16 COMMISSIONER MCHUGH: It's all 1400
17 of the licensed people.

18 DR. DURENBERGER: Actually, we have
19 3200 between the two facilities.

20 COMMISSIONER MCHUGH: 3200, okay. I
21 hear you. Then the second question is what's
22 the standard? You talked about suspected
23 maltreatment of animals, but the ARCI rule
24 talks about knowledge of a violation of the

1 rules not just suspicion of mistreatment.

2 Knowledge is a much tighter
3 standard. And I think your proposal is that a
4 licensee shall report to the stewards any
5 knowledge that a violation of Rule A has
6 occurred. So, we're talking now about
7 knowledge, right, not suspicion?

8 DR. DURENBERGER: On the racetrack,
9 and you'll appreciate this Judge, on the
10 racetrack we try to use the word suspicion in
11 general because there is a board of stewards or
12 judges that alleged rule violations are
13 reported to. So, technically the violation
14 isn't a violation until there's been a finding
15 of fact. So, this is a little bit of
16 semantics. So, I look to your judgment on
17 this.

18 COMMISSIONER MCHUGH: With all due
19 respect, I don't think it's semantics. I think
20 it's a standard, because the duty is either the
21 duty to report suspected violations or the duty
22 is the duty to report knowledge of violations.
23 And those are very different obligations on the
24 part of the licensee.

1 And as I read this, you're talking
2 about a requirement to report knowledge not a
3 requirement to report suspicion. If you have
4 knowledge, you're required to report, not if
5 you suspect but don't have knowledge.

6 Knowledge is actual knowledge, you
7 know it. You've witnessed it. And I don't
8 want to go into all of the permutations of
9 knowledge. But knowledge is much different
10 than suspicion. I take it that's what we're --

11 DR. DURENBERGER: Which is more
12 appropriate? In your eyes, which would be more
13 appropriate?

14 COMMISSIONER MCHUGH: It seems to me
15 that knowledge would be because it's a tighter
16 net. It's an easier standard to enforce. It's
17 not an easy standard to enforce, but it's a lot
18 easier than suspicion. And suspicion, if we're
19 going to deal with suspicion then do we deal
20 with a subjective standard or an objective
21 standard? You should've known. So, I would
22 greatly favor knowledge, which is what you're
23 proposing here.

24 CHAIRMAN CROSBY: Well, she's got it

1 two ways. In the paragraph up above, she says
2 we'll have a regulation specifically
3 highlighting affirmative duty on all racing to
4 report suspected instances of conduct
5 detrimental.

6 COMMISSIONER MCHUGH: I know that.
7 And that's why I'm honing in on that.

8 CHAIRMAN CROSBY: I don't think she
9 was consciously making a decision between
10 knowledge and suspicion.

11 DR. DURENBERGER: No. I think
12 actually when I used the word semantics, I
13 certainly didn't mean to say that the
14 difference between knowledge and suspicion was
15 semantics.

16 But the language that we tend to use
17 -- So, right now under the existing system if
18 somebody has -- whether they have suspicion or
19 knowledge, they would go to the board of
20 stewards or judges and say this is what I
21 witnessed, whatever they would say. The
22 veterinarian, the regulatory veterinarian is
23 dispatched to look into that.

24 And they make the determination that

1 yes there is an issue, no there is not an
2 issue. So, I think I probably used the word
3 suspected in my memo just because that's the
4 semantic of the racetrack, is we always try to
5 say you don't determine whether or not there is
6 a violation. That's for the stewards or
7 judges.

8 The rules both the model rule and
9 the one I propose do use the word knowledge.
10 So, I appreciate the discussion of the
11 difference because there certainly is a
12 difference.

13 COMMISSIONER MCHUGH: The ARCI uses
14 knowledge, right?

15 DR. DURENBERGER: It does yes. And
16 we mirrored that. We just wanted to draw it
17 out and put it in proximity to the duty to
18 provide welfare.

19 COMMISSIONER MCHUGH: So, I would
20 recommend that if we go this route, we adopt
21 the language as it is in part B of the our
22 current recommendation section.

23 And that brings me to the last three
24 words though, because as written this says the

1 licensee shall report to the stewards any
2 knowledge that he/she has that a violation of
3 Rule A has occurred or may occur. What's the
4 or may occur?

5 DR. DURENBERGER: Can I use a
6 graphic example --

7 COMMISSISONER MCHUGH: Yes.

8 DR. DURENBERGER: -- because these
9 are the things that we deal with. I was at one
10 of our facilities the other day. And there was
11 a horse who was not behaving well and
12 representing a danger to other licensees. And
13 when the horse went back to the barn, it was
14 overheard that they were going to have the
15 horse euthanized. So, that would be someone
16 reported that and they had knowledge of that
17 that was about to occur.

18 COMMISSIONER MCHUGH: Okay. Again,
19 I'm worried about the breadth of the word may.
20 And again, I don't think it's semantics because
21 we're going to hold people to a standard. They
22 could get their license revoked. They could be
23 ejected from the track for violating these
24 rules.

1 CHAIRMAN CROSBY: On the other hand,
2 you have an interest -- The reason for doing
3 this is trying to get cast a wide net. There
4 is another side to the argument that
5 encouraging people to come forward with
6 suspicions is constructive. There's two sides
7 to that.

8 COMMISSIONER ZUNIGA: It is
9 constructive but it's not a duty, right?

10 COMMISSIONER MCHUGH: No. I think
11 encouraging people to come forward and
12 penalizing them for not coming forward is a
13 worthwhile goal. The main point I am concerned
14 though about due process, basically.

15 And knowledge that something may
16 occur strikes me as at the far end of any
17 concept of due process. How is that to be
18 judged? Is that had to be judged by a
19 subjective belief on the part of the person?

20 So, I would prefer substituting some
21 objective language like has occurred or is
22 reasonably likely to occur. That allows you to
23 use an objective standard. What would a
24 reasonable person with knowledge of these facts

1 believe? And that is a manageable standard, it
2 seems to me. It's one that's used in other
3 context all of the time. And it takes away a
4 lot of the discretion that might otherwise
5 exist and really put people at risk for losing
6 their license for things that were they thought
7 reasonably were only remote possibilities, but
8 somebody else thought fell under the may
9 category.

10 CHAIRMAN CROSBY: What standards are
11 used in other areas of the law where there are
12 reporting duties like child abuse or other
13 crimes? Is there a model to look to?

14 COMMISSIONER MCHUGH: Well, in the
15 Cannons of Ethics legal and judicial it's a
16 knowledge of violations.

17 CHAIRMAN CROSBY: If you're an
18 officer of the court, you have a duty to report
19 if you have knowledge, but you don't have a
20 duty to report if you have a suspicion?

21 COMMISSIONER MCHUGH: Yes. And in
22 some cases, I've forgotten what the exact
23 language of the rule is, but it's a duty to
24 report not only if you have knowledge but if

1 the violation affects the person's fitness to
2 practice law. I think that's what it is. I
3 haven't looked at it recently. But it's a
4 fairly tight standard.

5 COMMISSIONER CAMERON: It's very
6 similar in law enforcement, although very
7 difficult to enforce.

8 COMMISSIONER CAMERON: I don't think
9 that the modification I suggested makes it
10 easier to enforce. This is a hard thing to
11 enforce.

12 COMMISSIONER CAMERON: Yes.

13 CHAIRMAN CROSBY: What's similar in
14 law enforcement?

15 COMMISSIONER CAMERON: The duty to
16 report.

17 CHAIRMAN CROSBY: A crime?

18 COMMISSIONER CAMERON: Well, no. A
19 lot of time it's misconduct by another officer.

20 CHAIRMAN CROSBY: By another
21 officer.

22 COMMISSIONER CAMERON: Yes, yes.
23 And that's what we're talking about here
24 basically is possibly one trainer providing

1 information about behavior by another trainer.

2 CHAIRMAN CROSBY: In the New Jersey
3 State Police, you don't have a duty to report
4 if you suspect something but you do have a duty
5 to report if --

6 COMMISSIONER CAMERON: I'd have to
7 look at the language, information and belief.
8 You have to look at the exact language.

9 I understand the point. And I agree
10 that that would make it easier or harder. It
11 probably is better language just to clarify and
12 what does that mean may.

13 CHAIRMAN CROSBY: Why do we want to
14 discourage reporting? The danger in it being
15 the softer suspicion or may is, I guess, the
16 danger is that people would report too much?

17 COMMISSIONER MCHUGH: That may be a
18 danger, but I'm primarily concerned with
19 individual rights and liberties. You create
20 some vague standard that gives to the law
21 enforcers the right to decide whether what you
22 saw and overheard meant cruel treatment may
23 occur. It doesn't even make any difference
24 that it didn't in fact occur. So, you're

1 ejected, you're out.

2 CHAIRMAN CROSBY: Who's out, the guy
3 who reported it?

4 COMMISSIONER MCHUGH: NO, the guy
5 who failed to report it.

6 CHAIRMAN CROSBY: The guy who failed
7 to report it.

8 COMMISSIONER MCHUGH: Two guys
9 overhear a conversation. One reports it and the
10 other doesn't report it. And the guy who
11 doesn't report it didn't believe that a
12 violation may occur.

13 He knew Joe. And he knew Joe kids
14 around. So, the other guy reports it. So, now
15 Joe didn't report it. So, not Joe is brought
16 in before the stewards on grounds that he
17 violated the rules by not reporting something
18 that may occur. The stewards say well, you
19 should have reported it because it may occur,
20 out you go. That's not good.

21 I don't think we should give anybody
22 the discretion to reach that kind of a result.
23 So, if you talk about reasonably likely that's
24 not a panacea. It's still a standard that

1 requires some judgment. But it's a tighter
2 standard that both encourages reporting and
3 protects individual liberties in a better way,
4 I think.

5 CHAIRMAN CROSBY: What's the same
6 analysis to the worse of knowledge or suspect?
7 Why is it not better to not cast a wider net
8 for suspicion?

9 COMMISSIONER ZUNIGA: It's the same
10 thing.

11 COMMISSIONER MCHUGH: It's
12 essentially the same thing. How do you know?
13 How do you prove that a person suspected
14 something? But you should have suspected this.

15 CHAIRMAN CROSBY: I'm not exactly
16 sure where I come down on this, but I think
17 we're talking about the wrong end of this.
18 This is not about giving tools to penalize
19 people for not reporting. This is about
20 setting up a system which encourages reporting.

21 COMMISSIONER MCHUGH: They're two
22 halves to the same coin. We're encouraging
23 reporting by penalizing non-reporting. And
24 you're penalizing non-reporting in a way that

1 deprives people of their livelihood
2 potentially.

3 So, you take a look at how we're
4 going to encourage people to report and
5 penalize them for not reporting in a way that
6 is both productive of reports and fair to the
7 person upon whom you place the burden. That's
8 the balance I'm trying to strike here so it
9 seems to me.

10 CHAIRMAN CROSBY: Under this rule if
11 we adopted this rule --

12 DR. DURENBERGER: We'll be including
13 this rule in the set of rules that we propose
14 to you this summer.

15 CHAIRMAN CROSBY: I realize we're
16 ahead of ourselves here a little bit. Nobody
17 is going to spend any time trying to figure
18 out, except bad-faith and you can't deal with
19 bad faith, they're going to figure out a bad-
20 faith way get somebody. But people aren't
21 going to be spending time going around trying
22 to figure out who failed to report things.
23 That just doesn't make any sense.

24 COMMISSIONER CAMERON: It does

1 happen. If three people are there as witnesses
2 to something and one person reports that can
3 lead to questioning based on their failure to
4 report, investigation based on their failure to
5 report. It's quite common in law enforcement.

6 CHAIRMAN CROSBY: Investigations on
7 failure to report.

8 COMMISSIONER CAMERON: Because
9 something occurred, behavior that one person
10 witnessing it deems to be illegal or whatever
11 the case may be. And when you're doing an
12 investigation, who else was there? Why didn't
13 you -- you saw that why didn't you report that?
14 You have a duty. So, it's not uncommon.

15 COMMISSIONER MCHUGH: And there's
16 some celebrated cases in Massachusetts in the
17 legal and judicial system for failure to
18 report.

19 If you're going to set up a
20 regulatory framework that includes failure to
21 report you're going to want to enforce that.
22 So, the question is what is it that you're
23 going to enforce?

24 CHAIRMAN CROSBY: What do you think,

1 Jennifer, about the policy discussion about
2 should this be a broad net or not? From the
3 standpoint of trying to accomplish the purpose
4 of keeping the horses safe rather than catching
5 the liars.

6 DR. DURENBERGER: So, how this is
7 envisioned to work -- Here's the good news.
8 We'll have some good news in horse racing
9 today. The number of cases, welfare cases that
10 go before stewards and judges where a finding
11 of fact it's been determined that there was a
12 violation -- there was a conduct detrimental to
13 welfare is miniscule.

14 I've been in racing 23 years and I
15 can think of three of them. Actually, they all
16 wound up being referred to assistant DAs and
17 were criminally prosecuted. And I've been on
18 racetrack 22 or 23 years.

19 So, as we envision this, this would
20 be if there were ever a case that was
21 prosecuted successfully and then it came to
22 light that someone else had knowledge of that
23 then we would look at this. That was how I
24 envisioned it.

1 CHAIRMAN CROSBY: So, this really
2 isn't about trying to find more cases -- This
3 isn't really about protecting the horses more.
4 This is really about having a better system to
5 investigate them or something.

6 I thought what this was designed to
7 do was to substantially increase the likelihood
8 that horses will not be mistreated. But it
9 sounds like that really isn't what you're
10 getting at here.

11 DR. DURENBERGER: That it would be a
12 demonstration of our commitment to prosecuting
13 welfare cases. So, highlighting the duty here
14 in proximity to the duty to look after the
15 welfare.

16 And the idea would be again it's
17 very rare to have a finding that there was
18 conduct detrimental to welfare, but the one I
19 can think of in particular in another
20 jurisdiction, there were two trainers, one on
21 each end of the shed row. And the trainer at
22 the other end of the shed row certainly knew
23 what was going on at this end of the shed row.
24 And that horse -- Well, there was a criminal

1 finding that that horse was being abused for
2 about two weeks longer than probably would've
3 happened had the other person come forward.

4 COMMISSIONER CAMERON: Would you
5 agree though that there probably should be many
6 more cases than two or three in 22 years? And
7 if in fact people looked at this as a
8 responsibility, and it's a cultural change,
9 then there would be more information that could
10 lead to more findings.

11 DR. DURENBERGER: Yes. I hope there
12 wouldn't be many more cases, but I hope that
13 any existing cases would be found out.

14 The other question, Judge, I have
15 this is model rule language. So, as you know,
16 I'm on the model rules committee with RCI. So,
17 the has occurred or may occur if you're
18 interested in my making a suggestion about
19 changing may occur in general to reasonably
20 likely to occur where it appears in the model
21 rules, I'd be happy to bring that forward to
22 that committee this summer. Because the point
23 is well taken.

24 COMMISSIONER MCHUGH: I would much

1 prefer that kind of a rule, yes. Whether or
2 not they do it, I would prefer that for us.

3 COMMISSIONER ZUNIGA: I would just
4 point out, Mr. Chairman, that a rule like this
5 also has a deterrent effect hopefully.
6 Regardless of how many actual incidents occur
7 and how many of those incidents are reported or
8 not, the mere prospect that something could be
9 reported because it's an active -- it's a duty
10 of anybody who witnesses something to report
11 it, should at least in theory serve as a
12 deterrent for bad behavior.

13 Much like audits serve the purpose
14 of compliance, a small number of audits that
15 the IRS conducts, they don't need to conduct
16 100 percent because a lot of people comply.

17 DR. DURENBERGER: The fellow at the
18 other end of the shed row when questioned by
19 the stewards said that he didn't say anything
20 because he didn't think it was any of his
21 business. So, having this rule in place
22 would've changed that.

23 CHAIRMAN CROSBY: Right.

24 COMMISSIONER ZUNIGA: Right. The

1 active duty again also has a deterrent factor.

2 CHAIRMAN CROSBY: Does anybody else
3 have feelings about -- We're not going to adopt
4 this today anyway. It's just a discussion
5 we're going to take back.

6 DR. DURENBERGER: But a good one.

7 COMMISSIONER CAMERON: It's a good
8 direction to go in. And I do believe that's a
9 good change, the reasonableness standard.

10 CHAIRMAN CROSBY: Anything else?

11 COMMISSIONER MCHUGH: What's the
12 next step the, Director?

13 DR. DURENBERGER: So, we're
14 finalizing our packet of the rule changes that
15 we're going to bring to you. It'll be a pretty
16 comprehensive package. And it incorporates
17 three model rule chapters, duties of licensees,
18 both association licensees, occupational
19 licensees and racing officials.

20 CHAIRMAN CROSBY: Which committee is
21 it that's working on this? Is it the same
22 committee we were talking about earlier?

23 DR. DURENBERGER: This is me, the
24 Racing Division.

1 CHAIRMAN CROSBY: I thought you said
2 you were going to take this back to a
3 committee.

4 DR. DURENBERGER: So, the language
5 that appears in the memo is model rule language
6 from Racing Commissioners International.

7 CHAIRMAN CROSBY: Okay. What was
8 the name of the committee, Gayle, that you were
9 on?

10 COMMISSIONER CAMERON: The Horse
11 Racing Committee which is part of the law.

12 CHAIRMAN CROSBY: I just need the
13 name of it.

14 COMMISSIONER ZUNIGA: Horse Racing
15 Development monies.

16 COMMISSIONER CAMERON: Correct, but
17 it's the Horse Racing Committee.

18 CHAIRMAN CROSBY: Okay, next.

19 DR. DURENBERGER: So, the third
20 piece that we had out for public comment was
21 pretty quick and dirty which is that National
22 Racing Regulatory Compact, which again, I'm not
23 really the subject matter expert on this. We
24 have subject matter experts poised to come in

1 and speak with the Commission about this.

2 This is something that requires
3 legislative change because to join the compact
4 that has to go through the Legislature. So,
5 it's a big undertaking. And I had the feedback
6 from you that it was something you were
7 interested in learning more about. The public
8 comments also supported that.

9 So, we are planning this fall to
10 bring in some folks to talk to you. And you
11 can learn more about the nuts and bolts and the
12 process and what the other states that have
13 joined what they've done so far.

14 CHAIRMAN CROSBY: I would agree with
15 that, but I would say it's relatively low on
16 the priority list for stuff you're working on.

17 DR. DURENBERGER: Yes. Then the
18 last item on the division of racing agenda
19 today is another request from Suffolk to amend
20 their live racing schedule.

21 We did this last year you'll recall,
22 the Tuesdays in June which are the fourth day,
23 if you will, of a four-day race week. The
24 existing horse supply right now just isn't

1 where it needs to be. Typically, later in the
2 year we get more horses in Massachusetts from
3 which we can draw entries. So, the request is
4 to cancel the four Tuesdays in June which I did
5 have the delegated authority to approve. So, I
6 did that of course subject to being rescheduled
7 later in the season.

8 CHAIRMAN CROSBY: You've done it.
9 You're just letting us know.

10 COMMISSIONER CAMERON: Thank you for
11 that update.

12 DR. DURENBERGER: And that would
13 conclude the Racing Division report.

14 CHAIRMAN CROSBY: Thank you very
15 much.

16 COMMISSIONER MCHUGH: Thank you very
17 much.

18 COMMISSIONER ZUNIGA: Thank you.

19 DR. DURENBERGER: Thanks for the
20 feedback.

21 CHAIRMAN CROSBY: General Counsel
22 Blue.

23 MS. BLUE: It's actually Director
24 Wells and Attorney Lillios.

1 MS. WELLS: Good afternoon,
2 Commissioners.

3 COMMISSIONER CAMERON: Good
4 afternoon.

5 CHAIRMAN CROSBY: Good afternoon.

6 COMMISSIONER STEBBINS: Good
7 afternoon.

8 MS. WELLS: So, in your packet and
9 on the agenda for this afternoon, we have
10 consideration of the draft surveillance regs.
11 205 CMR 141.

12 These are in draft form as of right
13 now and they will be posted for public comment.
14 So, this is somewhat of an update for the
15 Commission that these are moving forward. The
16 drafting team consisted of internally MGC legal
17 including Attorney Lillios and Attorney
18 Grossman, the consulting team and the IEB. We
19 included in that our new assistant director,
20 Bruce Band, who is scheduled to start on
21 Monday.

22 He generously reviewed some of these
23 regs. for us. He's got 30 plus years of the
24 gaming experience with significant expertise in

1 surveillance. And he will be available for the
2 Commissioners to ask any questions on some of
3 the specifics on that. He has a more boots on
4 the ground knowledge of surveillance systems,
5 what's needed and what is helpful. He'll be
6 available starting Monday when he starts at the
7 Commission.

8 I just want to point out some of the
9 highlights in the regulations. I know you have
10 a copy before you. I won't get into too much
11 detail. But generally it includes a
12 requirement that licensees submit a plan, a
13 surveillance plan which must be approved by the
14 Massachusetts Gaming Commission before opening.

15 The regulations include flexibility
16 for the licensee to utilize new technology. We
17 recognize that video and recording equipment
18 are changing all of the time. We've included
19 that in the draft regulations. The regulations
20 require that the Commission, which includes the
21 staff, have access to the surveillance system
22 including an on-site Commission monitoring room
23 and off-site Commission monitoring. So,
24 hopeful we'll be able to monitor the casino

1 locations from a specific area of the Gaming
2 Commission where we have our offices.

3 The regs. also give minimum
4 equipment specifications to ensure the quality
5 of the system. They define areas to be
6 monitored and recorded. This ensures
7 sufficient coverage for regulatory as well as
8 public safety purposes.

9 The surveillance plan must also
10 incorporate additional features including
11 adequate emergency power systems, preventative
12 maintenance programs, connection to gaming
13 enforcement alarm systems, a photo library
14 which would be updated regularly of all
15 employees. Updated operational blueprints,
16 monitoring room surveillance log, a 30-day
17 retention of recordings and continuous lighting
18 of monitored areas among other provisions.

19 Notice must be given to the
20 Massachusetts Gaming Commission of any changes
21 to their surveillance plan. The regs. also
22 require the independence of the surveillance
23 department. So, there are certain provisions
24 whereby if someone wants to move from one area

1 of work in the casino to the surveillance
2 department there is sort of a cooling off
3 period, which ensures a separate and sort of
4 independent nature of that surveillance
5 department.

6 And there's also limited access to
7 the monitoring room. So, not everybody can
8 come into the monitoring room. There's
9 specific requirements for that. We expect now
10 that these are being posted that we may have
11 comments. Then we can review these further and
12 discuss that with the Commissioners.

13 So, given that this is only several
14 pages long, I'm free to answer any questions
15 that you may have at this time. Or if you
16 prefer when Mr. Band starts since he has more
17 of the surveillance expertise, you can ask him
18 when he comes on board. That's the general
19 overview of the surveillance regulations that
20 we have for today. And they'll be posted and
21 then we can have further discussion.

22 CHAIRMAN CROSBY: So, these haven't
23 been commented on yet? These are now just
24 going out for comment.

1 MS. WELLS: Correct. So, these are
2 available.

3 COMMISSIONER MCHUGH: Don't we have
4 to approve them before putting them out for
5 public comment?

6 MR. DAY: Normally, we don't usually
7 do that for the first draft.

8 MS. BLUE: For the informal public
9 comment, they're not in the regular cycle yet.
10 This is just informal public comment.

11 COMMISSIONER MCHUGH: Oh, okay. Got
12 it, thanks.

13 MS. WELLS: We don't have anything
14 on the disclosure regs. I think that that's
15 coming up later Commissioner Zuniga indicated.
16 But we also have another page on regulations
17 for administrative searches which Attorney
18 Lillios can comment on.

19 MS. LILLIOS: Good afternoon. The
20 administrative aspect is 205 CMR 142. And
21 these are in the same posture, looking to put
22 these out for public comment now. This reg.
23 addresses regulatory monitoring and
24 inspections.

1 And it's authorized by Chapter 23K
2 specifically sections 1 and 4. And this sort
3 of regulatory monitoring is standard in the
4 industry and it's also common in other
5 pervasively regulated businesses where
6 warrantless inspections are a crucial part of
7 the regulatory scheme designed to further the
8 state's interests.

9 The IEB is the primary enforcement
10 agent for regulatory matters. And it's
11 expected that the IEB through its gaming agents
12 and in some instances the state police attached
13 to the IEB will be primarily responsible for
14 the monitoring of the licenses under this
15 regulatory section.

16 It's important to note that this
17 section applies to the Category 1 and Category
18 2 licensees but not to racing as racing has its
19 own regulation on this, on regulatory
20 monitoring.

21 The regulation as in draft form
22 allows for the Commission to monitor the
23 conduct of licensees and other persons with a
24 material involvement with the licensee for the

1 purpose of ensuring suitability of persons
2 working and having a material involvement
3 there. It calls for monitoring to certify
4 revenues, to conduct periodic reviews of
5 operations, for the Commission to exercise
6 oversight -- its oversight responsibilities.

7 It accords Commission access to
8 gaming equipment at the gaming establishment as
9 well as on premises where gaming equipment is
10 manufactured or distributed for use in a Mass.
11 gaming establishment. It allows for the
12 Commission to monitor the books and other
13 financial records so that they are maintained
14 in a manner that the Commission deems proper.

15 It allows the Commission to gather
16 facts and information relative to the
17 Commission's obligation to issue, suspend and
18 revoke licenses or registrations. And it
19 allows Commission access to the books and
20 records of an affiliate of a gaming licensee as
21 well.

22 Essentially, that's a summary of
23 what's in 142. And I'm prepared to answer any
24 questions that you might have.

1 CHAIRMAN CROSBY: Did you say we're
2 not going to do the disclosure piece?

3 MR. DAY: No, the disclosure piece
4 isn't ready yet.

5 CHAIRMAN CROSBY: Okay.

6 MR. DAY: Our process normally would
7 be the stage we're at here is to come forward
8 with an informal review by the Commission, sort
9 of almost a heads-up process. This is an
10 early-on look at we are in the process of
11 drafting. We'll let that go out for public
12 info. and public comment for a couple weeks and
13 then come back with a draft where in normal
14 cases where we ask the Commission's permission
15 to move forward with the formal process.

16 CHAIRMAN CROSBY: Right. Okay.

17 COMMISSIONER MCHUGH: I just had one
18 comment, one thought. And it's a generalized
19 rather than particular thought with respect to
20 the surveillance regs. Some of this
21 definitional -- 141.03 some of the particulars
22 there I wonder if we need that as opposed to
23 simply regulations that tell what we want to be
24 able to do. Maybe we do need that. But this

1 seems highly prescriptive to me, and this is
2 very quickly changing area. And I just
3 wondered whether as we think through these it
4 wouldn't be worthwhile to --

5 MS. WELLS: We did have some
6 discussion on that. And that may be when Mr.
7 Band starts we can have some informal
8 discussion with him. He can even present
9 before the Commission.

10 In his experience, his
11 recommendation was to be a little more specific
12 with the regs. in that there are different ways
13 to capture images. And his experience was that
14 if you don't set a high standard, what may
15 happen is the licensee may pick a cheaper
16 version and use the less expensive version as
17 less of a quality product.

18 So, certainly something we can
19 discuss internally. He certainly has more of
20 the technical knowledge as to why these
21 specifications make sense. And we did want to
22 have in that catchall provision about there's a
23 minimum standard if they want to enhance or
24 develop additional technology.

1 COMMISSIONER MCHUGH: Okay.

2 CHAIRMAN CROSBY: I had some similar
3 thoughts, but I thought I'd wait until he's
4 here and also until we get feedback from the
5 applicants.

6 MS. WELLS: Yes. This is an ongoing
7 discussion. We are certainly open to any
8 points on that.

9 COMMISSIONER ZUNIGA: I had a
10 question that's a subset of that. The
11 equipment that's prescribed in section 141.03,
12 is that reasonably commercially available or is
13 that something that we're pushing the latest
14 technology generally?

15 MS. WELLS: My take from the
16 conversations with Mr. Band was this is sort of
17 the higher standard but not unreasonable for
18 the market and for the licensees. But that's
19 something I would be very interested to see
20 public comment from the licensees. In reaching
21 out to the licensees, if this seems
22 unreasonable or is this pretty much standard
23 equipment they can go get it from a number of
24 vendors that sort of thing. So, I would

1 certainly be interested in that conversation.

2 COMMISSIONER ZUNIGA: I had a second
3 question. I think we are being careful in the
4 distinction between gaming establishment and
5 gaming area where we say -- or non-gaming area.
6 And there's a section relative to the
7 surveillance that the non-gaming area -- I'm
8 specifically looking at --

9 MS. WELLS: Subsection C?

10 COMMISSIONER ZUNIGA: Subsection C,
11 yes, page four includes parking areas for
12 example of the gaming establishment.

13 MS. WELLS: Yes.

14 COMMISSIONER ZUNIGA: Is that meant
15 to be very broad in terms of coverage?

16 MS. WELLS: Yes. That's more of a
17 public safety issue in the parking areas. And
18 then the entrances in the public areas when
19 you're tracking an individual through the
20 casino, if you have some kind of interest for
21 law enforcement or regulatory purposes, he
22 indicated that was particularly important
23 because that's where you're going to lose them
24 is when they're coming in and out of the arcade

1 area.

2 COMMISSIONER ZUNIGA: Or I'll put it
3 this way, the coverage in the gaming area is
4 probably pretty intense. It's 100 percent
5 coverage, I guess, multiple areas, multiple
6 cameras different zoom angles whatever. That
7 may not necessarily be the case in all of the
8 public areas.

9 MS. WELLS: Correct.

10 COMMISSIONER ZUNIGA: We need some
11 emphasis just because of the activities that
12 you described where it's not meant to be the
13 same obviously.

14 MS. WELLS: Correct. And that's why
15 there's more specifics with the gaming floor
16 itself and this is more sort of effective and
17 clandestine. So, people don't know there are
18 the cameras, even though there are cameras in
19 gaming establishments. I think that's common
20 sense. So, they can't disable them or cover
21 them if they're going to be effective. But
22 it's not to the same detail level.

23 COMMISSIONER STEBBINS: Karen is
24 there, just building off the question about

1 parking areas. Is there any requirement that
2 we add some type of obligation to have some
3 license plate recognition type surveillance?

4 MS. WELLS: We've talked a lot about
5 the LPR technology. And from my prior
6 position, I have a lot of interest in the LPR
7 technology as part of the plan. We had
8 discussions even with the Penn licensee about
9 using that. And my expectation is we would be
10 using that. And it can be extremely effective.

11 COMMISSIONER CAMERON: Both of the
12 applicants, when I traveled to Las Vegas last
13 week with Commissioner Zuniga, utilized that,
14 and were very proud to show us how it worked,
15 how effective it was. And we were able to see
16 firsthand. That was a really good tool.

17 COMMISSIONER MCHUGH: Effective in
18 what sense?

19 COMMISSIONER ZUNIGA: It's
20 automatic. It's very automatic.

21 COMMISSIONER MCHUGH: I understand
22 that it works. That's a start.

23 COMMISSIONER CAMERON: There was
24 some criminal activity in particular that they

1 were able to detect the vehicle of the
2 individual because of the license plate
3 technology. It certainly helped with law-
4 enforcement efforts. Those were the examples
5 we were shown.

6 COMMISSIONER STEBBINS: Before the
7 person gets onto the gaming establishment
8 floor.

9 COMMISSIONER MCHUGH: Pardon me?

10 COMMISSIONER STEBBINS: You're
11 catching the person, I'm assuming before they
12 get into the gaming establishment.

13 COMMISSIONER ZUNIGA: There may be a
14 license plate that reported for whatever. And
15 the software recognizes the license plate and
16 matches it to the database and alerts the
17 person responsible.

18 COMMISSIONER MCHUGH: I understand
19 how it works. I was asking a broader question.

20 CHAIRMAN CROSBY: What does it
21 accomplish?

22 COMMISSIONER MCHUGH: What does it
23 accomplish and at what cost? But that's a
24 conversation for a later time.

1 MS. WELLS: There are very
2 interesting -- I've been part of many
3 conversations about the privacy interest and
4 retention of data and more than happy to have a
5 further conversation about that. It's actually
6 very interesting. And there are some ways to
7 limit any intrusiveness of the technology. And
8 we should consider those.

9 COMMISSIONER CAMERON: Very similar
10 to a look-up kind of a thing where you need a
11 law enforcement purpose.

12 MS. WELLS: Right. And there's a
13 hotlist. It doesn't necessarily alert unless
14 there's a reason to alert. There's a lot of
15 information on there.

16 COMMISSIONER MCHUGH: Okay. That
17 will be a good discussion.

18 Ms. WELLS: Yes.

19 COMMISSIONER STEBBINS: I had a
20 question in the second set of draft regs.
21 139.08, minutes of meetings of boards and
22 committees, why do we need that.

23 CHAIRMAN CROSBY: That's the
24 disclosure. I had the same question. Is that

1 two weeks from now the disclosure?

2 MR. DAY: We may bring it back in a
3 group with the rest of the internal control.

4 CHAIRMAN CROSBY: All right.
5 Anything else, Director Wells?

6 MS. WELLS: No, Sir.

7 CHAIRMAN CROSBY: Any other
8 questions for her? Thank you.

9 COMMISSIONER MCHUGH: Thank you very
10 much.

11 COMMISSIONER CAMERON: Thank you
12 both.

13 MS. BLUE: We have Attorney Grossman
14 here to discuss the ATM question which is the
15 next item on the agenda.

16 MR. GROSSMAN: Good afternoon. It
17 was recently brought to our attention that
18 there are provisions of the banking laws that
19 may affect the ability of ATMs to be placed in
20 gaming establishments.

21 There's language specifically in
22 Chapter 167B sections 1 and 3 of the General
23 Laws that affect this issue. The applicable
24 language says that no electronic branch, which

1 means an ATM, shall be located upon premises
2 where there occurs legalized gambling other
3 than a state lottery. That language appears to
4 have been put in the General Laws in 1994. It
5 is overseen by the Division of Banks, which is
6 a state agency. And we have reached out to
7 them to discuss their take on that provision
8 and its applicability.

9 So, until that time I think it is
10 better that we not get too deep into the
11 meaning of the language of that particular
12 section and how it may affect the use of ATMs
13 at the gaming establishments. But we hope to
14 be able to report back to you in the near
15 future.

16 CHAIRMAN CROSBY: I talked to the
17 banking commissioner yesterday, I think, just
18 to sort of set up a working relationship as you
19 have with the General Counsel. And they were
20 meeting, I think, yesterday to have their
21 conversation.

22 I suggested that it'd be great if
23 this could be worked out through regs.,
24 mutually satisfactory regs., but there was no

1 substantive discussion yet. But then I asked
2 that we get together with them, you and I get
3 together with them as soon as they're able.
4 So, I hope we'll be hearing from them soon.

5 MR. GROSSMAN: Great.

6 COMMISSIONER ZUNIGA: '94, I thought
7 it was older than that.

8 MR. GROSSMAN: My quick research
9 showed that it was 1994.

10 COMMISSIONER ZUNIGA: It obviously
11 when passed only applied to racing
12 establishments.

13 MR. GROSSMAN: That's right.

14 CHAIRMAN CROSBY: Okay.

15 COMMISSIONER CAMERON: Thank you.

16 COMMISSIONER MCHUGH: Thank you.

17 CHAIRMAN CROSBY: Next General
18 Counsel Blue.

19 MS. BLUE: The Commission requested
20 staff to review the current state of the law to
21 determine the standard of review for what we
22 call DBEs, disadvantaged business enterprises.
23 And that term includes the minority business
24 enterprises, woman business enterprises and the

1 veteran business enterprises that we've been
2 talking about, and the enforcement mechanisms
3 that would be available to the Commission in
4 setting goals for those programs.

5 Under Chapter 23K sections 15 and
6 18, our licensees are required to create
7 programs for approval by the Commission that
8 address goals for DBEs. And these are
9 particularly in the areas of design and
10 construction and then in the provision of goods
11 and services.

12 So, we did research on the current
13 state of the law. And the current state of the
14 law requires that DBE programs must be narrowly
15 tailored. They have to be narrowly tailored to
16 address past harms. The past harm being some
17 form of discrimination. Strict quotas are not
18 allowed.

19 Goals are acceptable if it can be
20 shown that they are necessary to remediate past
21 discrimination. The goals must be based on
22 evidence of such discrimination. And the
23 common way to develop that evidence is through
24 a disparity study at least as it applies to the

1 construction industry. That's where it's been
2 most commonly used.

3 I understand that we have done those
4 studies, other agencies in the Commonwealth
5 have done those studies. And in fact that
6 MassDOT is conducting a disparity study now in
7 design construction, professional services and
8 the concession industry. So, we may want to
9 reach out to DOT to discuss the outcome of
10 their studies on that.

11 Some examples of narrowly tailored
12 programs are programs that are based on
13 disparity studies. Opportunities to encourage
14 DBEs to participate such as job fairs,
15 networking events, inspection and auditing
16 programs by area agencies to confirm that bona
17 fide DBEs are being used on licensed projects.
18 And to have waivers, allow waivers when good
19 faith efforts of DBE participation are
20 attempted but potentially unsuccessful.

21 The Commission further asked staff
22 to review enforcement mechanisms. Effective
23 enforcement is dependent upon clear goals and
24 monitoring. The goals should be set by the

1 licensee and approved by the Commission. They
2 should be flexible and they should have some
3 ranges within them. Monitoring consists of
4 self-reporting by the licensee, regular
5 inspections by the Commission and audits of
6 licensee records.

7 The Commission has created the
8 necessary regulations and put a team in place
9 to begin the monitoring process. That is part
10 of what Pinck is doing now in the monitoring
11 project. Enforcement begins with the process
12 of working with the licensing to mutually
13 resolve issues.

14 And many of the programs that are
15 currently in place involve things such as
16 initial meetings, conciliation processes,
17 requiring additional information from a
18 licensee who fails to meet their goals or
19 requiring a new plan to meet the goals. If
20 good-faith attempts are shown by the licensee
21 and the goals cannot be met, plans also require
22 the modification or changes in those goals.

23 The Commission has all of its
24 authority under 23K to levy fines if there are

1 violations that continue and are unremediated.
2 And to go as far as to suspend or revoke
3 licenses where the Commission has evidence to
4 support that.

5 But I think what we've seen and
6 we've looked at MassPort's program for example,
7 usually there is a lot of interaction between
8 the agency and the licensee in terms of how the
9 goals are established, how they're monitored,
10 where the progress is. And many attempts to
11 try to find ways to meet those goals where
12 possible. So, if there are any questions I'm
13 happy to answer them.

14 COMMISSIONER MCHUGH: Don't the
15 disparity studies have to be done in the domain
16 for which the regulator's responsible?

17 MS. BLUE: They can, but sometimes
18 if they're done on a Commonwealth-wide basis in
19 particular industries, it's possible to use
20 some of those.

21 COMMISSIONER MCHUGH: But we don't
22 have now a gaming industry.

23 MS. BLUE: That's correct.

24 COMMISSIONER MCHUGH: So, we have to

1 somehow address that either through finding a
2 comparable disparity study that's already been
3 conducted or we have to do one ourselves or are
4 there other alternatives?

5 MS. BLUE: That's one of the reasons
6 it's easier in the construction industry. And
7 I think that's where they've been used the most
8 often is because construction has had a number
9 of disparity studies, and we've done that in
10 the Commonwealth.

11 In terms of the industry as a whole,
12 we could look to other jurisdictions. But
13 you're right, it is generally -- The study
14 needs to be designed to remedy past
15 discrimination in that industry in that area.

16 COMMISSIONER MCHUGH: So, when we
17 get to the staffing of casinos, we're going to
18 have to do something about that in order to
19 justify an affirmative action plan.

20 MS. BLUE: We probably will, yes.

21 COMMISSIONER MCHUGH: And I think
22 that's really important to keep in mind. And I
23 know that you're thinking about that and
24 working on what we'll have to do.

1 CHAIRMAN CROSBY: Does it have to be
2 that narrow? Does it have to be a disparity in
3 that industry in that area; is that what you
4 said?

5 MS. BLUE: In order to make the
6 program narrowly tailored, what we're seeing in
7 the case is the fact that there has been past
8 discrimination in general is not enough to
9 really justify goals in all situations. So, I
10 think what we're seeing when we look at the
11 case law is studies that are confined to
12 particular industries in particular places.
13 That's one way to do it.

14 The other way to do is to have more
15 broad general goals that you work on and you
16 try to establish. And you create other
17 programs that feed into it like job fairs, like
18 networking events. Other states have done
19 things, for example, they've had legislation
20 where they have set up projects where an agency
21 can loan money to a small business to
22 participate in their procurements. Or they
23 provide consulting services to help small
24 businesses grow.

1 Those are some of the more detailed
2 programs that are legislatively created. But
3 they have to be very narrowly tailored. So,
4 when we get past construction, we're going to
5 want to look more closely at what information
6 we have to base the goals upon.

7 CHAIRMAN CROSBY: I would think the
8 hospitality industry and the retail industry,
9 both of which our licensees are in probably
10 would have disparity studies. That's worth
11 looking into.

12 MS. BLUE: They might. We could
13 certainly look at that. Those would be two
14 comparable industries to what we're doing.

15 CHAIRMAN CROSBY: Tourism.

16 MS. BLUE: Tourism, yes.

17 COMMISSIONER MCHUGH: At least the
18 current licensee is going to want to begin
19 thinking about staffing no later than the end
20 of the year. So, this is a next step kind of
21 thing we've got to keep track of.

22 COMMISSIONER STEBBINS: Catherine,
23 how do we balance disparity studies versus what
24 a licensee or an applicant is committing to in

1 the host and surrounding community agreements?

2 MS. BLUE: That's a very unique
3 situation that we have because we do have
4 commitments that are made to other entities
5 besides us. So, we have a process to monitor
6 commitments made in host and surrounding
7 community agreements. And then we would
8 balance that against the commitments they make
9 to us in their overall plan.

10 I think it's going to be a very new
11 experience for us to balance those. That's
12 really what we're going to need to do. And I
13 imagine we will get some feedback from our
14 licensees as to how that's working, what kinds
15 of concerns they have, what are they finding.
16 What is a subset of their communities that
17 they're looking towards to fulfill those goals.

18 COMMISSIONER STEBBINS: Okay.

19 CHAIRMAN CROSBY: What is the law on
20 the issue of using if you call it affirmative
21 action or diversity strategies or having
22 diversity goals and objectives out of a
23 conviction that a diverse workforce is a better
24 product, produces a better product? That the

1 institution is better off having a diverse
2 workforce, not necessarily to remedy past
3 disparities but because there is an affirmative
4 value in a diverse workforce?

5 MS. BLUE: The law encourages
6 diversity. And they encourage it through any
7 kind of mechanism short of very strict goals or
8 quotas. So, that's where the situation where
9 you develop a diverse hiring pool when you're
10 going to hire for a certain position. When you
11 go out and conduct job fairs, when you post
12 your positions across various networking sites
13 that some of which reach out to different
14 groups. All of those things are fine. But as
15 you get close to a very defined goal or quota
16 then the law doesn't accommodate that.

17 CHAIRMAN CROSBY: Where do we fall
18 on that continuum? We are talking about having
19 probably -- We certainly do in our construction
20 work and I imagine in our operations work we
21 are likely to see percentage goals. Does that
22 trigger the need for that narrow disparity
23 study? Or is that compatible with the broader
24 standard that diversity is good and here's how

1 we get there?

2 MS. BLUE: My sense on the
3 construction side is those goals supported by a
4 disparity study should be okay with the caveat
5 that we want to understand what kinds of
6 efforts are being made. We want to make sure
7 we monitor whether there are bona fide DBEs
8 being used to meet those goals, and to
9 understand if those goals can't be met what do
10 we do by granting waivers, for example, or
11 making changes in programs.

12 I think when you move away from
13 construction then those goals should be
14 flexible. They should not be hard and fast
15 types of goals, because there may not be as
16 much support if we don't have a disparity study
17 or something to support that evidence. It has
18 to be very narrowly tailored to make those
19 very, very definite goals. So, we're going to
20 want to be flexible and creative in how we get
21 a diverse workforce.

22 COMMISSIONER MCHUGH: Isn't the
23 diversity is good rationale for affirmative
24 action under some significant assault in the

1 decided Supreme Court cases at least?

2 MS. BLUE: It is.

3 COMMISSIONER MCHUGH: That's at the
4 heart of the pending Austin case; isn't it?

5 MS. BLUE: It is. Yes. The Courts
6 have come out and said past discrimination
7 doesn't really support some of these programs.
8 And diversity in general while good is not
9 enough to support some of these programs that
10 have more hard and fast goals.

11 So, I think the best way to do it is
12 to work with the licensees to encourage them to
13 get as much diversity as they can knowing that
14 we have to be flexible and they have to be
15 flexible in how they do it.

16 CHAIRMAN CROSBY: Okay. Anything
17 else?

18 MS. BLUE: No, thank you.

19 CHAIRMAN CROSBY: You're all set?
20 Let's take a 15-minute break or so and we'll
21 come back and do Region A.

22

23 (A recess was taken)

24

1 COMMISSIONER MCHUGH: I'd like to
2 resume the meeting if we could, please. We
3 finished the 15 minutes we promised. So, let's
4 move on to the last set of items on the agenda
5 which deal with in general Region A. First up,
6 Mr. Ziemba the ombudsman for an ombudsman's
7 report or Director Day? Mr. Ziemba, I was
8 right the first time.

9 MR. ZIEMBA: Good afternoon,
10 Commissioners. By way of update, we have
11 posted the new projected Region A licensing
12 schedule on our website. This is the same
13 schedule that we discussed at the last
14 Commission meeting.

15 As you recall, this estimated
16 schedule projects that the Commission could
17 issue its Region A award by September 12. This
18 award date assumes that at least one of the
19 Region A applicants goes to arbitration with
20 the city of Boston. And that that arbitration
21 takes the maximum amount allowable under our
22 regulations.

23 This September 12 date also assumes
24 that the parties utilize the maximum number of

1 so-called Flex 14 days. In the event that
2 arbitrations are not as extensive, they
3 conclude earlier or they don't use our Flex 14
4 days that the award could be issued in late
5 August, August 29 under one projection we put
6 forward last week.

7 So, further update is since the
8 Commission's last meeting --

9 COMMISSIONER MCHUGH: Could I just
10 stop there for a second if there's a reasonable
11 pause because if we don't use the Flex 14 but
12 there is arbitration, then the schedule calls
13 for an award on August 29. That's what it says
14 there.

15 MR. ZIEMBA: That is correct.

16 COMMISSIONER MCHUGH: That would
17 mean that the deliberations would be that last
18 week of August.

19 MR. ZIEMBA: Correct.

20 COMMISSIONER MCHUGH: Is that a good
21 idea or is that something we can deal with
22 later?

23 MR. ZIEMBA: We can certainly deal
24 with that later. I think that certainly

1 there's appetite on a number of parts to try to
2 move forward on this license as quickly as we
3 can. You have to balance that against the
4 public's interest in making sure that they can
5 actively watch our proceedings.

6 But I think that is something we can
7 deal with at a later date. Even though these
8 are projections, these are estimates based on a
9 number of factors. One thing we have certainly
10 seen is that dates can move forward or in the
11 other direction.

12 COMMISSIONER MCHUGH: I raise it now
13 not necessarily to get a decision, because I
14 don't think we're in a position to make a
15 decision. But I don't want people to begin to
16 get concerned about things that are fluid,
17 plastic and subject to change.

18 So, that's a date that I've got
19 certainly, I think the four of us have our eyes
20 on in terms of the time of year that the end of
21 August is and other things that people are
22 doing. So, we'll certainly keep our eye on
23 that.

24 MR. ZIEMBA: One thing to mention is

1 that assumes arbitration. That is not a
2 forgone conclusion.

3 COMMISSIONER MCHUGH: That's right.
4 That's right. That's an important point to
5 note because this collapses markedly,
6 potentially collapses markedly if there is no
7 arbitration.

8 MR. ZIEMBA: Absolutely.

9 COMMISSIONER CAMERON: Back to July,
10 would that be e accurate without arbitration?

11 COMMISSIONER STEBBINS: Early
12 August.

13 MR. ZIEMBA: Quite perhaps.

14 COMMISSIONER MCHUGH: You pick up
15 about 30 days potentially if we don't go to
16 arbitration. Okay, good. I just wanted to
17 make sure that people understood that that date
18 was there for planning purposes but it's fluid.
19 And we're going to carefully watch it and watch
20 developments around it.

21 MR. ZIEMBA: At the Commission's
22 last meeting there are some dates that were
23 fluid at that point. And I think we've now
24 confirmed the host community hearing dates, at

1 least the first of which for the 24th and 25th
2 of June. Revere on the 24th and Everett on the
3 25th.

4 The closing of such host community
5 hearings, those will be in the event that there
6 is still an outstanding negotiation or
7 arbitration with the city of Boston. Then
8 after which we could close the hearings. And
9 that could be as early as the end of July in
10 the event of an arbitration.

11 So, by way of further update, we
12 currently have --

13 COMMISSIONER MCHUGH: Could I just
14 stop you again?

15 MR. ZIEMBA: No problem.

16 COMMISSIONER MCHUGH: Have we now
17 posted those meetings?

18 MR. ZIEMBA: We have posted those
19 meetings.

20 COMMISSIONER MCHUGH: Okay. And I
21 think we posted the meeting times from 4:00 to
22 8:00. That's my recollection.

23 MR. ZIEMBA: That's correct.

24 COMMISSIONER MCHUGH: And we've

1 posted the amount of time that we're going to
2 allow each participant to talk. And that's
3 based on the average amount of time --
4 Actually, it's at the margin of the amount of
5 time that we've experienced in past meetings of
6 this type people actually took to speak.
7 That's where we got that number from in an
8 effort to ensure that as many people as
9 possible would have an opportunity to talk.

10 And I think part of the thinking in
11 that 4:00 to 8:00 posting was that we've been
12 to a number of these meetings that lasted into
13 the late hours of the evening and nobody is
14 doing very well at that time. And that we
15 would therefore be able to go back another day
16 if we had people we couldn't reach rather than
17 extend it into the evening. I think I speak
18 for all of us when I say that.

19 So, people ought to understand that,
20 understand where those numbers came from,
21 understand where the time came from. And we do
22 want to hear from everybody who has something
23 to say at those hearings.

24 MR. ZIEMBA: Commissioners,

1 obviously the members of the general public
2 should be forewarned that at the beginning of
3 all of our host community hearings there is a
4 segment under which we ask questions of the
5 applicant. And that does go for quite a period
6 of time at the beginning.

7 So, it's not that they're showing up
8 directly at 4:00 and the public can deliver
9 their remarks right then. It will take a
10 little bit of time before we go through the
11 questions.

12 COMMISSIONER MCHUGH: Right, right.

13 MR. ZIEMBA: So, by way of further
14 update, we currently have two communities that
15 are in arbitration, Chelsea and Somerville,
16 with Wynn MA, LLC. The arbitration report for
17 the Somerville/Wynn arbitration is due on June
18 9. Then if the Commission grants an extension
19 petition requested jointly by Wynn and Chelsea,
20 the Wynn/Chelsea arbitration report would also
21 be due on 9th of June.

22 I am very pleased to report that
23 yesterday we received an executed agreement
24 between Mohegan Sun and the town of Winthrop.

1 And as a result, there's no further arbitration
2 in that regard.

3 And I'm also pleased to report that
4 Mohegan Sun and the town of Saugus have entered
5 into an agreement in principle. And they are
6 just crossing T's and dotting I's, I believe.
7 And hopefully we'll have an executed agreement
8 shortly.

9 So, outside of the potential
10 arbitrations for the city of Boston, we have
11 just two remaining. Those would be concluded
12 on 9th of June before our host community hearing
13 dates.

14 COMMISSIONER MCHUGH: Very good news
15 indeed.

16 MR. ZIEMBA: One other thing I'll
17 mention is that as you know we have what we
18 call the FIPs. We are developing certainly a
19 lot of new acronyms in the state government.
20 But the FIPS hearings are the fundamentally
21 inconsistent petitions.

22 And potentially what we could do is
23 we could hold that petition hearing on 12th of
24 June at a Commission meeting. And again, there

1 is just two arbitrations outstanding.
2 Potentially, if we resolve those FIPs petitions
3 that would give the parties five working days
4 after that FIPs petition to enter into an
5 agreement, or the agreement that is reached by
6 the arbitrator's report as modified by the
7 Commission would become the final surrounding
8 community agreement by the parties. Thus
9 enabling comment on that at the host community
10 hearing.

11 COMMISSIONER ZUNIGA: Do we have a
12 petition from each of the two communities at
13 this point that are going into arbitration?

14 MR. ZIEMBA: So, we have petitions
15 for Wynn for both of the communities. We have
16 a petition from Somerville. Chelsea chose not
17 to submit a petition.

18 COMMISSIONER ZUNIGA: Okay.

19 MR. ZIEMBA: And I believe, Counsel
20 Blue, what we recommend is the same process
21 that we had for Western Mass. commentary as in
22 the parties would be allowed approximately 10
23 minutes to brief the Commission at that
24 hearing. I think that we have allowed, as

1 always in the past, parties to submit any
2 letters to the Commission, any comment letters
3 to the Commission that we would consider.

4 But I think it would probably make
5 much more sense this time around is if we tell
6 the parties in advance that if they're going to
7 submit any comment letters on the issues they
8 have to be well in advance of the meeting on
9 the 12th, certainly no later than the time when
10 we put together the Commission's packets on the
11 10th, which would be one day after the
12 conclusion of the arbitrator's report. We can
13 communicate that to the parties.

14 COMMISSIONER MCHUGH: That wouldn't
15 be a hardship because they've already filed the
16 petitions. So, it would be supporting the
17 petitions. There's nothing really new there.

18 MR. ZIEMBA: Opposing the other
19 party's petition would be the most likely
20 response.

21 MS. BLUE: That's what we're hearing
22 that mostly it will consist of objections to
23 the other party's petition.

24 COMMISSIONER MCHUGH: Right. But in

1 any event that can be prepared in advance and
2 filed if necessary.

3 MR. ZIEMBA: Right.

4 COMMISSIONER MCHUGH: I was just
5 thinking through whether one day's enough.
6 That could be going on right now.

7 MR. ZIEMBA: And you obviously get
8 into a situation if somebody submits a comment,
9 somebody else might want to comment on that
10 comment and then it could go on.

11 COMMISSIONER MCHUGH: But they could
12 do the comments verbally.

13 MR. ZIEMBA: Right. So, we
14 recommend that they do that verbally rather
15 than many filings.

16 COMMISSIONER ZUNIGA: John, in the
17 schedule we're showing June 16 for the
18 conclusion of the negotiation of the
19 surrounding community agreement. That would be
20 the last one.

21 MR. ZIEMBA: The city of Boston.

22 COMMISSIONER ZUNIGA: City of
23 Boston, and the period of arbitration is shown
24 as 20 days, 28 days?

1 MR. ZIEMBA: So, June 16 would be
2 the conclusion of a negotiation period, the
3 statutory negotiation period. With our Flex
4 14, they could extend that by an additional two
5 weeks to the 30th. Then after that date, the
6 parties would go through our arbitration period
7 of five days and 20 days and five days.

8 If we are not counting those days
9 exactly as I just described, sometimes if the
10 day falls on a Saturday or a Sunday we bump it
11 ahead to a Monday or if there's a holiday.

12 COMMISSIONER ZUNIGA: The Flex 14
13 aren't included here which is why the 8/29
14 could be September 12?

15 MR. ZIEMBA: Yes, the 8/29 was
16 without the Flex 14. And then you'll see a
17 light gray dotted line to September 12, which
18 is the Flex 14.

19 COMMISSIONER ZUNIGA: Oh, I just
20 noticed that.

21 MR. ZIEMBA: It's light.

22 COMMISSIONER ZUNIGA: It's very
23 light.

24 COMMISSIONER MCHUGH: In the

1 expectation that it won't be visible, right?

2 MR. ZIEMBA: That's right. Onto my
3 second matter. We have, as I mentioned, the
4 city of Chelsea and Wynn MA, LLC, have jointly
5 requested a variance to the Commission's
6 arbitration regulations. They are seeking an
7 additional seven days to complete their
8 arbitration.

9 These seven days are in addition to
10 14 flexible days that the parties are
11 utilizing. The parties are seeking the
12 additional days because their mutually selected
13 arbitrator has asked to schedule a closing
14 presentation on June 5 after at least three
15 days of hearings that have either occurred or
16 are about to occur.

17 They further state that pre-existing
18 travel commitments impeded their ability to
19 start the arbitration proceedings earlier.

20 With the extension, the arbitration
21 report would be due on June 9 as I stated
22 instead of June 2. Even with this extension,
23 the arbitration report would be due well prior
24 to the estimated completion of any arbitration

1 with Boston or the conclusion of the 30-day
2 statutory negotiation period between Boston and
3 the applicants, which as you mentioned
4 Commissioner, is on June 16.

5 The parties seek a variance from the
6 Commission's arbitration regulation 205 CMR
7 125.01(6)(c)(3), which sets out a 20-day period
8 arbitration proceedings. The Commission has
9 previously granted a variance to this
10 regulation at least twice, once in Region B and
11 once in this Region for Winthrop and Mohegan
12 Sun. We also granted ourselves a variance when
13 we adopted the Flex 14 policy.

14 The parties provided a statement
15 that the Commission could make the requisite
16 findings to grant the variance in that one,
17 granting the variance is consistent with the
18 purpose of the Expanded Gaming Act because it
19 will allow the parties the necessary time to
20 conclude the binding arbitration procedure that
21 will result in a surrounding community
22 agreement to mitigate the potential impacts
23 from the development of gaming establishment.

24 Two, granting the variance will not

1 interfere with the ability of the Commission or
2 its Investigations and Enforcement Bureau to
3 fulfill its duties as the duration of the
4 variance is short, seven days.

5 Granting the variance will not
6 adversely affect the public interest and will
7 enhance the public interest by providing the
8 arbitrator additional time to issue a
9 thoughtful decision.

10 And four, not granting the variance
11 would cause a substantial hardship to the
12 persons requesting the variance in that the
13 arbitrator has asked for additional time to
14 issue his report and that pre-existing travel
15 commitments interfered with the ability of the
16 parties to meet earlier. Given these reasons
17 and the unlikelihood that this extension would
18 impact the Commission's award schedule, I
19 recommend that the Commission grant this
20 variance request.

21 COMMISSIONER MCHUGH: Questions,
22 discussion?

23 COMMISSIONER CAMERON: I see no
24 reason that we don't grant the variance. It

1 doesn't affect our schedule and the reasons for
2 requesting same appear to be reasonable.

3 COMMISSIONER ZUNIGA: I would agree.
4 It's a joint request and does no harm to our
5 schedule. So, I would agree with that.

6 COMMISSIONER STEBBINS: I was ready
7 to put it into a motion. I echo my colleagues.
8 I move that the Commission grant a variance as
9 requested by the city of Chelsea and Wynn MA,
10 LLC to the time constraints of section
11 125.01(6)(c) to allow the arbitrator to issue
12 his report on June 9, 2014.

13 COMMISSIONER MCHUGH: Second?

14 COMMISSIONER ZUNIGA: Second.

15 COMMISSIONER MCHUGH: Discussion?

16 All in favor say aye. Aye.

17 COMMISSIONER CAMERON: Aye.

18 COMMISSIONER ZUNIGA: Aye.

19 COMMISSIONER STEBBINS: Aye.

20 COMMISSIONER MCHUGH: The ayes have
21 it unanimously.

22 MR. ZIEMBA: That is my report.

23 COMMISSIONER MCHUGH: All right, Mr.
24 Ombudsman. Thank you very much.

1 COMMISSIONER CAMERON: Thank you.

2 COMMISSIONER ZUNIGA: Thank you.

3 COMMISSIONER STEBBINS: Thanks,
4 John.

5 COMMISSIONER MCHUGH: Let's turn
6 now, if we might, to the final item on the
7 agenda, which is the decision-making process.
8 And this is something that we at the last
9 meeting said we would return to today. And we
10 asked the staff, particularly General Counsel
11 Blue and the legal staff to think about
12 alternatives and processes and the like and
13 make some recommendations.

14 There are really two parts to this.
15 There's a preliminary part and then the
16 substantive part. The preliminary part is that
17 given Chairman Crosby's recusal from Region A,
18 the four of us are left to make the decisions.
19 And that's obvious.

20 But in addition to that before we
21 can make the decision and before we can really
22 discuss the process, we need to deal with the
23 issue of responsibility for the overall
24 criterion in our application, evaluation of

1 that which had been committed to Chairman
2 Crosby.

3 For general information, there are
4 five criteria in our application. And each of
5 the Commissioners has been responsible for one
6 and is responsible for one. And now in Region
7 A there are four of us. So, we need to figure
8 out how to deal with that overview criterion
9 for which Chairman Crosby was responsible.
10 There are a number of ways to deal with it.
11 General Counsel Blue, I'm sure you have some
12 thoughts in that regard.

13 MS. BLUE: The legal staff looked at
14 the overview report, considered how it was
15 formatted and delivered in the last round.
16 It's very clear that the overview report has
17 significant value and was very helpful to the
18 Commission in considering it in the last
19 license award process.

20 So, it would be our suggestion that
21 the questions in the overview report be divided
22 amongst the Commissioners in accordance with
23 their area of subject matter expertise. But
24 then their review of those question be rolled

1 into one single report as it was delivered last
2 time.

3 And the Commissioners when they
4 deliver the report can deliver the sections
5 based upon their questions. But at least it
6 will come through in a unified report that when
7 we post it, people will be able to see it.
8 They'll understand the evaluations. I think it
9 will give the same kind of helpful insight to
10 that section that was obtained the last time.

11 COMMISSIONER CAMERON: So, are you
12 suggesting that we divvy up the questions based
13 on our areas of expertise but then when we give
14 the report, we would each take a section of
15 that report?

16 MS. BLUE: What we would do is we
17 would use that same report format that we used
18 last time. We would take each Commissioner's
19 review of their questions and roll it into that
20 report.

21 And yes, then when it's delivered,
22 the Commissioner who worked on those questions
23 would deliver that part of the report.

24 COMMISSIONER MCHUGH: Or the

1 Commissioner could deliver that segment of the
2 report in conjunction with his/her overall
3 report.

4 MS. BLUE: They could. I think the
5 key is as long as we have a report on that
6 section I think that's the more helpful part.
7 How it's delivered there's a lot of
8 flexibility.

9 COMMISSIONER MCHUGH: Right,
10 presentation techniques, yes. Okay.
11 Discussion of that approach? That's a
12 thoughtful approach, not the only one, but
13 that's a thoughtful approach.

14 COMMISSIONER ZUNIGA: I think
15 dividing up among the rest of us makes a lot of
16 sense. I do wonder however as to how --
17 whether dividing some of those questions in an
18 area that is not the one that each one of us is
19 responsible for may have an added benefit of
20 more understanding by each of the four of us
21 about a particular area that is outside of the
22 area that we are responsible for.

23 So, I guess I'm suggesting or
24 wondering whether flipping, in other words, not

1 by area of expertise but by rather the opposite
2 would have the added benefit of additional
3 understanding of each other's.

4 COMMISSIONER MCHUGH: To put that in
5 concrete terms. For example, I'm responsible
6 for the building and site design. That's my
7 area of responsibility. So, under your
8 thinking, I would pick something like finance
9 and economic development or something.

10 COMMISSIONER ZUNIGA: Right, one of
11 the overall categories. The unique piece about
12 the overall categories is that they are, in my
13 estimation, quite a bit of a wraparound sort of
14 higher-level. Sometimes they could be thought
15 of falling within one category, but they could
16 also fit in another one, in other words.

17 MS. BLUE: There is benefit to that
18 because it brings a different perspective to
19 that set of questions. As I was thinking it
20 through, the balance is the amount of time it
21 may take a Commissioner become familiar with an
22 area they haven't worked on, and whether that
23 adds more time or more work to the process.

24 Certainly, a fresh look from someone

1 who's not involved in it in that particular
2 question or area may bring a good perspective
3 to it.

4 COMMISSIONER STEBBINS: Is there an
5 opportunity to -- I'm thinking about how I work
6 with my group of independent evaluators. And
7 we look for somebody's expertise to be
8 essentially a lead reviewer of that certain
9 section of the economic development
10 application.

11 In following your model, perhaps a
12 Commissioner becomes a primary reviewer, a lead
13 reviewer but not to the degree that we not
14 invite review or comment or thoughts or
15 suggestions or ratings from the other three
16 Commissioners.

17 To kind of boil it down, there are
18 some questions in those nine that I think all
19 of us would have an opinion on. The final
20 question I think has to do with your thoughts
21 on encouraging and maintaining a robust gaming
22 economy in Massachusetts. I think all four of
23 us would have comments on that.

24 The branding question, how does your

1 project fit with the Massachusetts brand. All
2 four of us live in Massachusetts. We probably
3 have our own ideas about that.

4 So, to build off of your suggestion
5 with a Commissioner tackling a question which
6 dovetails with their other review of the
7 application, but I think inviting all four of
8 us to look at those answers and those replies
9 and the thoughts of the stakeholder group that
10 Chairman Crosby put together. And all kind of
11 weighing in on what a rating either for the
12 individual question should be or kind of for
13 the roll up.

14 I just think there's some
15 opportunities for all of us to kind of weigh in
16 on questions, I think to Commissioner Zuniga's
17 point, areas where we haven't necessarily
18 directly been involved, but there are certainly
19 questions that allow for us all to weigh in
20 because we probably have an opinion on some of
21 those broader questions.

22 COMMISSIONER MCHUGH: Mechanically,
23 how would that work? How do you envision that
24 working, remembering that we can only act in an

1 open meeting?

2 To put that in context, we
3 contemplate as we move forward, I think at
4 least that each Commissioner will present and
5 the other Commissioners will then discuss. And
6 the Commissioner who is presenting is
7 presenting an opinion that may or may not be
8 shared by the others. That's good, and it'll
9 be part of the discussion that we have.

10 But how would we mechanically go
11 about weighing in individually on pieces of
12 criterion one without a public meeting? That
13 certainly can take place at the public meeting.

14 COMMISSIONER STEBBINS: My thought
15 was, again, we do all of this independent
16 evaluation with the rest of the application.
17 We bring it forward into a public meeting,
18 other Commissioners ask questions, similar to
19 how we review the other four parts of the
20 application. But I think it's probably an area
21 where we all have an opportunity to kind of
22 weigh in on our opinions or thoughts on any of
23 the nine questions that are part of the general
24 overview.

1 COMMISSIONER CAMERON: I don't know
2 that I -- So, you're suggesting we do that
3 before we actually have our presentations. In
4 order for us to be able to weigh in, we'd have
5 to do it in public. Wouldn't that be kind of
6 tipping off ahead of time?

7 I think the comprehensiveness and
8 the presentations followed by deliberations all
9 in one week make the most sense to me rather
10 than trying to tackle some questions earlier,
11 which may lead someone to believe --

12 COMMISSIONER STEBBINS: No. I'm
13 suggesting that this falls within the regular
14 schedule of our open deliberations and
15 discussion. And the general overview is the
16 fifth piece of the lineup or the agenda, but
17 yet in that kind of public consideration of
18 those questions that we all have an opportunity
19 to weigh in, even though the question itself
20 might have been assigned to one individual
21 Commissioner to be a primary reviewer. I'm not
22 saying anything happens outside of the public
23 meeting process.

24 COMMISSIONER CAMERON: How is that

1 different than we did for the slots in which I
2 presented and all of you weighed in, had
3 questions or a different idea about something?
4 How would that be different? You're just
5 taking primary responsibility for laying out
6 the question and the details, not necessarily
7 thinking that everyone will take that at face
8 value.

9 I guess what I am saying is I kind
10 of like the simple approach that we split them
11 up according to our area of expertise. We take
12 responsibility and we present. To me that just
13 seems the cleanest and knowing that everyone of
14 course will weigh in.

15 COMMISSIONER MCHUGH: But there's no
16 impediment if we did that and present. Divided
17 them up in some way so that some Commissioner
18 had the initial responsibility for going
19 forward. There's no impediment to the other
20 Commissioners making whatever inquiries he or
21 she wanted beforehand to educate himself or
22 herself about the subject matter so that they
23 could weigh in with their opinions during the
24 dialogue part that would follow the

1 presentation.

2 So, it seems to me if I understand
3 it correctly that the germ of your suggestion
4 -- the kernel I should say of your suggestion.

5 COMMISSIONER STEBBINS: It sounds
6 better than germ.

7 COMMISSIONER MCHUGH: Yes, it does
8 sound better than germ. I'm sorry. The kernel
9 of your suggestion is easily accommodated and
10 makes good sense. And would add to a fuller
11 discussion. Somehow educating ourselves and
12 inquiring into the substance of those questions
13 and looking at the application materials. And
14 we'll all get a chance to review the roll up
15 report before it's actually presented as we
16 have in the past and be prepared to do that.
17 So, I think that could be accommodated.

18 COMMISSIONER STEBBINS: I apologize
19 if I didn't necessarily explain the mechanics
20 of what I had --

21 COMMISSIONER MCHUGH: No, no, no.
22 There's no apologies necessary. Just trying to
23 harmonize that because it's a good idea and
24 this is putting us into a little bit different

1 kind of territory.

2 Let's come back to Commissioner
3 Zuniga's point though about taking areas of
4 expertise and assigning things out. Areas of
5 expertise really being the areas for which one
6 is responsible already and matching up to the
7 best of our ability those areas with the areas
8 in criterion one, the nine questions in
9 criterion one as opposed to taking our own
10 areas of responsibility and finding areas in
11 criterion one that were unlike what we were
12 dealing with. That's the kernel of your
13 suggestion.

14 COMMISSIONER ZUNIGA: That's right.

15 COMMISSIONER MCHUGH: What do the
16 other Commissioners think about that?

17 COMMISSIONER ZUNIGA: Perhaps I
18 could add to that point that I have looked at
19 all of the other areas of the application with
20 less emphasis I should admit than the finance
21 section. There's a lot to analyze, etc.

22 And it occurred to me that having
23 now the added question or questions that maybe
24 in an area that overlaps a little bit but is

1 not the one that I have for one been paying a
2 lot of attention to could be beneficial to a
3 better understanding of the application
4 overall. If each of us did that it could help
5 the process without precluding any of the
6 discussion that will take place in the open
7 meeting during the presentations and eventually
8 during the deliberations.

9 As I mentioned, there is I believe
10 some overlap in a number of these questions.
11 And under that rubric, it could go several of
12 them could fall under economic development or
13 they could go under finance. If there's a
14 question there's benefit if there's different
15 assignment, if you will. And that's part of my
16 point.

17 COMMISSIONER MCHUGH: Okay. Other
18 thoughts, Commissioner Cameron, Commissioner
19 Stebbins?

20 COMMISSIONER CAMERON: I guess my
21 one concern was how tight our schedule is. For
22 example, if I had questions that have to do
23 with finance or economic development, I would
24 need to reach out to those advisors and set up

1 a separate meeting and review it and what not.
2 I see the value but I just wonder if it could
3 become burdensome to not only the advisors but
4 to the Commissioner who is learning a new area.
5 That was my only concern.

6 COMMISSIONER MCHUGH: I take
7 Commissioner Zuniga's point. And there are
8 certainly areas that overlap. In fact, some of
9 them closely parallel our areas of primary
10 responsibility.

11 I must say that I too share
12 Commissioner Cameron's concern about the time
13 available to familiarize ourselves with a new
14 area and do it justice, an entirely new area
15 and do it justice. I understand the value
16 that's there. But this is a series of
17 decisions we're going to make -- a series of
18 presentations we're going to make, I should
19 say, that are going to require an extensive
20 amount of homework in potentially a fairly
21 short amount of time.

22 If there's no arbitrations, this
23 could be on us fairly quickly and that would be
24 good for the Commonwealth and for the people of

1 the Commonwealth. And I think planning a
2 mechanism that would allow us to deal with
3 things as efficiently as circumstances may
4 require trumps what I agree is the added value
5 that potentially adheres in taking different
6 topics. And allows us at the same time to have
7 access on a single basis or two of us at a time
8 to the advisors in other areas to get ourselves
9 up to speed on areas with which we're not
10 intimately familiar.

11 So, I think the idea is intriguing,
12 but I must say that I come down I think on the
13 side of trying to find something that fits as
14 tightly as possible with what we're doing
15 already. Commissioner Stebbins?

16 COMMISSIONER STEBBINS: I'm
17 comfortable with that thought. I think
18 Commissioner Zuniga has an interesting point
19 that would really make us all completely
20 familiar with what we know is going to be a
21 competitive process. But I think in deference
22 to time, sticking with the question areas that
23 we're most familiar with may best serve us.

24 COMMISSIONER CAMERON: There's no

1 right or wrong.

2 COMMISSIONER ZUNIGA: No, there's no
3 right or wrong. The argument about the overlap
4 really falls either way. If it overlaps on one
5 side, it can overlap on the other. So, it's
6 just a matter of finding the comfort level.
7 Yes, I'm fine.

8 COMMISSIONER MCHUGH: Okay. So,
9 feeling a consensus about to break out, suppose
10 we ask General Counsel Blue to take the
11 existing categories, make an assignment. And
12 we can talk with her individually if we have
13 concerns about the assignment but prefer
14 something different. And we'll just assign it
15 to each of the Commissioners in an area that
16 most closely approximates the area for which
17 they are already responsible. And we'll just
18 get that done promptly and then we can begin
19 the process of dealing with it substantively.
20 Make sense?

21 COMMISSIONER CAMERON: Yes.

22 COMMISSIONER MCHUGH: I don't think
23 we need a formal vote on that. We can just ask
24 General Counsel Blue to do it. Okay. With

1 that then, we have that category that criterion
2 assigned.

3 Let's talk now about an overall
4 approach to a decision-making process. This of
5 course is the main topic that we wanted to talk
6 about today. That what we just did was an
7 essential ingredient of this next discussion.

8 MS. BLUE: The legal department
9 looked at the process with an eye towards what
10 are best practices and how can we build on what
11 we've learned from our prior experience. So,
12 we do have a few recommendations that we think
13 will make the flow a little bit better, make it
14 easier for the general public to understand how
15 the Commission arrives at its decision and
16 maybe puts a little more structure around it.

17 So, the first thing that we were
18 very comfortable with is we thought that the
19 report format that we used in the past was a
20 very good report format. That we should
21 continue to use that format and the
22 presentation should be made as they were prior.

23 We think that having those reports
24 available and being able to post them lets

1 folks see the level of detail and the level of
2 study and evaluation that went into the
3 questions in each section.

4 We also thought that before
5 beginning deliberations after the reports are
6 delivered but before beginning deliberations,
7 it would be good for the Commission to sit down
8 and discuss the ground rules for deliberations.
9 How you're going to proceed. Commissioners
10 being able to discuss certain concerns they may
11 have about each report whether they thought
12 they needed additional information. And that
13 could be information from staff, the
14 applicants, the independent evaluators.

15 Processes they might want to use in
16 order to decide when it's ready to take a vote.
17 Those kinds of discussions, and make it very
18 clear that these are the general ground rules
19 for your deliberations.

20 Then as you start your
21 deliberations, we think it makes sense to
22 really go through each report after it's been
23 delivered and express areas of concern,
24 potential areas where Commissioners view them

1 as maybe more important, less important. And
2 again, what kind of information do you need and
3 who would you like that information to come
4 from. That way if you do need more
5 information, you can ask staff. And we can
6 make sure the appropriate people come forward
7 to present to you.

8 We also wanted to suggest that in
9 arriving at your decision you use all of the
10 tools that are available to you under our
11 regulations. In particular regulation 205 CMR
12 118.04. In looking at that regulation, the
13 Commission has a great deal of flexibility in
14 what it can consider.

15 So, it can receive advise from staff
16 or consultants. And we've talked a little bit
17 about that. It can request additional
18 presentations from applicants. Whether they be
19 broad or narrow on a particular topic, you can
20 ask the applicants for additional
21 presentations.

22 You can require the applicants to
23 submit additional information or to amend or
24 supplement their application if it is deemed to

1 be in the best interest of the host community,
2 surrounding communities, the ILEVs, the region
3 or the Commonwealth. So, if there are
4 particular areas where you don't think you have
5 enough information, you'd like them to
6 supplement or if you think an amendment is
7 appropriate, we can ask the applicants to do
8 that pursuant to our regs.

9 You can ask staff to go back and
10 discuss potential improvements in the
11 application with the applicants. Again, as
12 long as those improvements are there to ensure
13 an economic benefit to the Commonwealth or to
14 the region, our regs. allow that to occur.

15 And then we can go back and request
16 best offers. Not final offers, but best offers
17 from the applicant as we move through to see
18 what kinds of changes you might have or again,
19 to address concerns, questions things that need
20 to be mitigated. For example, we can go back
21 and do that.

22 We also have at our disposal
23 conditions. So, once you've worked through all
24 of the information that you feel you need to

1 make a decision, then we can craft appropriate
2 conditions on the license to make sure that
3 those areas are addressed or to make changes,
4 add additional mitigation, what you think is
5 important.

6 Last time we went through and we
7 created a list based upon every report as it
8 was delivered. But these are more complex
9 projects, and they may have more and different
10 conditions. So, we'll craft those conditions.
11 Staff can discuss those with the applicants.

12 And then finally, I think, the
13 Commission should just feel comfortable that it
14 will deliberate until it's ready to vote and
15 make a decision. And how long that takes is
16 fine. But just want to keep deliberating until
17 you are comfortable. Then when you're ready
18 you can vote. And we can go through the
19 process where you vote, make the determination,
20 discuss conditions and come back and finalize
21 as we did last time.

22 So, we think it's a little more
23 structured maybe this time, but we also suggest
24 you take advantage of all of the resources that

1 you have available to you.

2 COMMISSIONER MCHUGH: That's very
3 thoughtful. Thank you.

4 COMMISSIONER ZUNIGA: Yes. Thank
5 you. The process as you outlined it begins
6 after the presentation of each of the four
7 Commissioners, correct? When we first start
8 talking about the ground rules for deliberation
9 but prior to it, and all of the tools that we
10 have at our disposal there's a natural flow in
11 terms of the amount of information that we can
12 gather.

13 All of that goes after the
14 presentation, each of the presentations; is
15 that correct?

16 MS. BLUE: After all the reports are
17 delivered, yes.

18 COMMISSIONER MCHUGH: Other
19 thoughts?

20 COMMISSIONER CAMERON: I think
21 that's very helpful. Very good, Counsel. I
22 think we were wise when we decided, and part of
23 it was our decision, part of it was the way law
24 was written I realize, we handled the smaller

1 slots first. And there are always lessons
2 learned from the process.

3 And I think you just outlined
4 several of them. And the structure is
5 important. So, I know personally, I'd be very
6 confident with that approach and the fact that
7 we're very capable of decision-making in this
8 manner.

9 COMMISSIONER MCHUGH: Commissioner
10 Stebbins, any thoughts?

11 COMMISSIONER STEBBINS: No. I
12 appreciate the fact that Catherine is reminding
13 us about the tools of the regulatory process
14 that are available to us to kind of more
15 through a deliberation process that allows us a
16 great deal of flexibility in terms of follow-
17 up, in terms of asking the applicant additional
18 questions or for more detail if we need it. I
19 think that was thoughtful and probably pretty
20 smart on somebody's part to put that into the
21 regulations.

22 COMMISSIONER MCHUGH: Who put that
23 in the regulations?

24 MS. BLUE: Mr. Grossman did.

1 COMMISSIONER ZUNIGA: I don't want
2 to speculate too much on the scenarios, but
3 suffice to say that some of the turnaround
4 could be lengthier than last time. If we're
5 asking somebody to improve their application on
6 a particular -- hopefully on something that's
7 specific and not overly broad, the turnaround
8 time could vary. So, we'll just have to deal
9 with that and perhaps cross that bridge when we
10 get there. But again, speaks to the
11 flexibility of our process.

12 MS. BLUE: I think that's definitely
13 true. And it may take a little more time to
14 get what you need.

15 COMMISSIONER ZUNIGA: But the
16 outcome would be more optimal, ideally.

17 MS. BLUE: Yes.

18 COMMISSIONER MCHUGH: I think that
19 that's a very thoughtful approach to this. The
20 primary concern that we've heard since Chairman
21 Crosby recused himself is what we do in the
22 case of a tie. How are we going to deal with
23 that?

24 And it seems to me that the course

1 you've outlined helps us approach that and
2 prevent a tie from occurring and moving our way
3 through that. It's not the first time we've
4 come to a group of four trying to make
5 important decisions. We've been operating that
6 way since last August. And we've, it seems to
7 me, not had any difficulty making decisions,
8 and have been making decisions carefully and
9 thoughtfully and deliberately. And I'm
10 confident we can do so again.

11 But we're not the only board that
12 faces an even number. From time to time boards
13 throughout the Commonwealth and elsewhere are
14 faced with situations in which because of the
15 absence of a member or members they're reduced
16 to an even number and still others that we've
17 looked at are set up that way.

18 The Pennsylvania Gaming Commission,
19 for example, has seven members. Three of whom
20 are appointed by the governor, four of whom are
21 appointed by others. But the statute says that
22 all four of the others have to agree plus one
23 appointed by the governor before the gaming
24 commission can do anything. And they've been

1 in existence for I don't know how many years.
2 And it made a number of important licensing
3 decisions.

4 There's a statute in Michigan that's
5 revealed as we were going through some of the
6 comparison processes that we talked about this
7 morning in which regional convention
8 authorities are set up with five members all of
9 whom have to agree before the regional
10 authority can do anything.

11 So, there is a process that's
12 developed for situations like this that
13 involves consensus decision-making. And it is
14 designed to get people to the kind of consensus
15 that we have repeatedly reached in the
16 decisions that we've made since we've come into
17 existence.

18 As I said one time, I think we've
19 only had a handful of decisions, maybe two
20 handfuls of decisions in the many votes we've
21 taken in which we weren't unanimous. But they
22 key in on what I think General Counsel Blue
23 just said, a process of proceeding slowly and
24 thoughtfully and listening actively to what

1 each other is saying. And taking the time that
2 we need to take in order to make sure we
3 understand the other person's point of view,
4 understand what the materials are and the like.

5 And we have a format, a presentation
6 of analyses of criteria, of thinking about
7 them, of perhaps recessing early after several
8 criteria have been explained and thinking about
9 it overnight. Moving forward, getting feedback
10 from the applicants and the cities and towns
11 that have been affected by this. At some
12 point, deciding we're ready to express a
13 preference perhaps that's not a vote but at
14 least tells which way we're leaning. And
15 talking about that, seeing why that's the case.

16 And then ultimately getting ready
17 and deciding collaboratively that we're ready
18 for a vote and we sense that we can do it.

19 We've been at this for two years
20 now. The cities and towns and applicants have
21 been at it for two years. I know all four of
22 us want to make a decision and make the best
23 decision that we can for the Commonwealth. And
24 I think that we have the power to do it. So,

1 we can use these procedures to get to a vote
2 that will result in a decision.

3 In the unlikely event, what I think
4 is the highly unlikely event that there is a
5 tie after the vote that's not the end of the
6 process. We have, as General Counsel Blue
7 pointed out, all of these tools at our
8 disposal.

9 We can get more advise from
10 consultants about things we may have
11 overlooked. We can get advice from the staff.
12 We can send the staff back to talk to the
13 applicants. We can bring the applicants in
14 here and ask them to make presentations to us.
15 We can ask them to make a different offer.

16 We can even get, we can even get if
17 we ever have to get there, we can get to a best
18 and final offer process, which is basically a
19 process in which we say to the applicants look,
20 you've sat here and you've listened to the
21 deliberations. You understand where people who
22 support your application are coming from. And
23 you also understand where the people who don't
24 support your application are coming from.

1 Take a couple of days, take some
2 reasonable period of time, come back with a
3 best and final offer to improve your
4 application. And tell us how you're going to
5 deal with the things that some people think are
6 deficiencies or difficulties with your
7 application.

8 Come back and do that. And it's
9 inconceivable to me that at that point after
10 going through those things and using those
11 tools and using the energy and collaborative
12 processes that we've developed over the past
13 couple of years, it's inconceivable to me that
14 we won't reach a decision.

15 With that I don't think we have to
16 specify, at least from my standpoint,
17 procedures and processes now. That's kind of
18 as we all have said, as General Counsel Blue
19 has said, a high-level overview of a process
20 that's not simply something we're inventing
21 that is used by many groups, many agencies,
22 many types of groups and agencies to reach
23 consensus decision-making, building on that.
24 And then using these tools at the end that we

1 have available to us to drive it home in the
2 unlikely event that we need to do that.

3 So, I'm prepared to adopt that as
4 the approach that we take. It was kind of a
5 windy soliloquy.

6 COMMISSIONER ZUNIGA: No, no. It's a
7 very important and very good summary,
8 Commissioner, which I agree entirely. You
9 reminded me of yet another example, though the
10 examples are many. New Jersey Gaming
11 Commission as I understand the history, before
12 they were the three-member board that they are
13 now, they were five. And the decision for
14 suitability had to be a decision of four, a
15 majority of four. That was a statutory
16 condition.

17 And I would draw a parallel to us in
18 the current state, which is and continues to
19 be, was always the case in order to award a
20 license, in order to make any decision this
21 board is required to get three votes. So long
22 as with everything that we have outlined here
23 in terms of tools and processes, after all we
24 were looking for a majority of three.

1 COMMISSIONER CAMERON: In addition
2 to your thoughts, speaking of New Jersey,
3 because it really is similar, they went decades
4 with a five-member Commission, there were a
5 number of times when there was an expired
6 position that was not filled for months for
7 whatever reason. And four members were always
8 able to come to consensus decisions. So, this
9 is not unique and others have worked through it
10 successfully.

11 COMMISSSIONER MCHUGH: All right.
12 Any further commentary, discussions, thoughts?
13 I don't think we need a vote on that either. I
14 think what we've done is laid out a structure
15 and a process for decision-making. We will
16 fine tune it as the beginning of the
17 deliberations occurs. And lay out the ground
18 rules, I think that's an excellent suggestion.
19 Not the ground rules, but so that everybody
20 understands what the procedure is, and it'll be
21 as we just as described it but a little bit
22 more detailed as to sequencing.

23 COMMISSIONER ZUNIGA: Can I just
24 add? One thing that we did do last time that

1 I'm assuming we will continue to do that wasn't
2 mentioned in this process was the request for
3 clarification from applicants. If at any point
4 during the presentations any one of us makes a
5 representation that is inaccurate or factually
6 incorrect, there will be of course that
7 opportunity. That's another piece of the
8 process that I think is very important.

9 MS. BLUE: We will have the same
10 procedure in place. I think this time we'll
11 just be a little more direct that they send
12 their emails or issues into John or to me so we
13 can collect them and have them all in one
14 place.

15 COMMISSIONER MCHUGH: Sure. And
16 because of the volume and complexity of the
17 material, we may want to take a little bit more
18 time in spacing out the reports to give time to
19 consider all of those things. That's the kind
20 of detail I think we clearly can work on. But
21 the goal is to have this full information flow
22 and the careful thoughtful deliberation that we
23 bring to it throughout the process in each
24 step.

1 COMMISSIONER STEBBINS: I would echo
2 that. And Commissioner McHugh, you made the
3 point of not taking the full day necessarily to
4 do presentations, but keeping our schedule
5 somewhat condensed on our presentation days to
6 allow for more of that give-and-take and back-
7 and-forth with our applicants as opposed to run
8 back to the office after five o'clock and faxes
9 going back and forth until 1:00 AM.

10 COMMISSIONER MCHUGH: Right.

11 COMMISSIONER ZUNIGA: And for the
12 record, and it perhaps goes without saying,
13 certainly our applicants know this the finance
14 group but I'm sure this applies to other groups
15 has had a number of additional requests for
16 clarifications already. I think we have are at
17 now around three to each of the applicants from
18 finance. Of course that process is not limited
19 to prior to the presentation, which is part of
20 the point here. All four Commissioners could
21 have that as one of the tools, as one of the
22 several tools as we embark prior to the
23 decision-making.

24 COMMISSIONER MCHUGH: Surely. All

1 right. Anything further then that we need to
2 say about that subject? I think we've got a
3 good approach and a good program. Anything
4 further from you General Counsel Blue?

5 MS. BLUE: No.

6 COMMISSIONER MCHUGH: Director Day?

7 MR. DAY: No, Sir.

8 COMMISSIONER MCHUGH: All right.

9 Then I think we've come to the end of a good
10 day. Is there a motion to adjourn?

11 COMMISSIONER CAMERON: Motion to
12 adjourn.

13 COMMISSIONER MCHUGH: Second?

14 COMMISSIONER ZUNIGA: Second.

15 COMMISSIONER MCHUGH: All in favor,
16 aye.

17 COMMISSIONER CAMERON: Aye.

18 COMMISSIONER ZUNIGA: Aye.

19 COMMISSIONER STEBBINS: Aye.

20 COMMISSIONER MCHUGH: The motion
21 carries unanimously. We're adjourned.

22

23 (Meeting adjourned at 4:04 p.m.)

24

- 1 ATTACHMENTS:
- 2 1. Massachusetts Gaming Commission May 29,
3 2014 Notice of Meeting and Agenda
 - 4 2. Massachusetts Gaming Commission
5 May 15, 2014 Meeting Minutes
 - 6 3. May 27, 2014 AIA Massachusetts Memorandum
7 Regarding Request Seeking Public Comment:
8 Design for Category 1 Applications
 - 9 4. Emails Regarding Public Comments on
10 Building Design of Category 1
 - 11 5. Plainridge Park Casino Project Summary
12 Schedule Submitted to MGC May 27, 2014
 - 13 6. Preliminary Schedule Review - Perry and
14 Associates, LLC
 - 15 7. May 27, 2014 Massachusetts Gaming
16 Commission Memorandum Regarding FY15
17 Initial Budget Recommendation with
18 attachments
 - 19 8. May 29, 2014 MGC Division of Racing
20 Memorandum Regarding Welfare Initiatives
21 with Attachments
 - 22 9. May 22, 2014 Suffolk Downs Letter
23 Regarding Live Racing Schedule
 - 24 10. DRAFT 205 CMR 141

1 ATTACHMENTS:

2 11. DRAFT 205 CMR 139

3 12. DRAFT 205 CMR 142

4 13. Massachusetts Gaming Commission 5-21-2014

5 Licensing Schedule Update

6 14. Wynn MA, LLC and City of Chelsea

7 Variance Request

8

9

10 GUEST SPEAKERS:

11 Michael McGrew, Penn National

12 John Nunnari, AIA Massachusetts

13 Jennifer Pinck, Pinck and Company

14 John Rauen, Penn National

15

16 MASSACHUSETTS GAMING COMMISSION STAFF:

17 Catherine Blue, General Counsel

18 Richard Day, Executive Director

19 Todd Grossman, Deputy General Counsel

20 Derek Lennon, CFAO

21 Loretta Lillios, Staff Attorney

22 Karen Wells, Director of Investigations and

23 Enforcement Bureau

24 John Ziemba, Ombudsman

C E R T I F I C A T E

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

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

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

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

WITNESS MY HAND this 2nd day of June, 2014.

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