

THE COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS GAMING COMMISSION  
PUBLIC MEETING #127

COMMISSIONERS:

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

July 2, 2014 10:30 a.m.

Bunker Hill Community College  
250 Rutherford Avenue, Room A300  
Charlestown, Massachusetts

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

2

3

4 COMMISSIONER MCHUGH: I am going to  
5 call to order -- Good morning, ladies and  
6 gentlemen. I'm going to call to order the 127th  
7 public meeting of Massachusetts Gaming  
8 Commission. Good morning to you all.

9 Before we start, I want to just say  
10 a few remarks to set the stage for the meeting  
11 and the agenda and why we are here. We called  
12 this meeting to discuss the city of Boston's  
13 motion to stop all proceedings regarding  
14 issuance of a Category 1 gaming licensing in  
15 Region A until after the outcome of the November  
16 4 ballot initiative.

17 By way of what is now largely  
18 familiar background, the Legislature granted the  
19 Commission all powers necessary or convenient to  
20 carry out the purposes of General Laws 23K the  
21 Expanded Gaming legislation. Chapter 23K  
22 provides that that power and authority to be  
23 broadly construed in order to allow the  
24 Commission to implement, administer, enforce the

1 gaming laws.

2           Pursuant to Chapter 23K, the  
3 Commission is the sole entity with the authority  
4 to issue licenses and is required to issue --  
5 consider issuance of one slots parlor license  
6 and one expanded gaming licensing in Regions A,  
7 B and C. We're now focused on Region A, which  
8 is the eastern part of Massachusetts, the  
9 northeastern part of Massachusetts, and more  
10 specifically because of the identity of the two  
11 applicants, the Greater Boston area.

12           On June 24, the Massachusetts  
13 Supreme Judicial Court announced its decision in  
14 the case of Abdow against the Attorney General,  
15 a result of which the question of whether to  
16 make expanded gaming as defined in Chapter 23K  
17 illegal. It will be placed before the voters of  
18 the Commonwealth as part of the ballot for a  
19 statewide initiative vote on November 4.

20           On June 27, three days after the  
21 SJC's decision, the city of Boston filed a  
22 motion to stay all proceedings, not simply a  
23 motion to stay issuance of the license but a  
24 motion to stay all proceedings regarding

1 issuance of a Region A license until after the  
2 November 4 vote.

3           The city alleges that a stay is  
4 necessary to prevent Boston from incurring  
5 considerable expenditures of time, money and  
6 effort in connection with the license  
7 proceedings, in particular for the negotiation  
8 or arbitration of a surrounding community  
9 agreement with both of the Region A applicants.  
10 All other surrounding communities in Region A  
11 have completed those surrounding community  
12 agreements.

13           The focus of this meeting then will  
14 be whether the Commission should grant the  
15 city's request and motion for a stay of the  
16 proceedings. As it frequently has done, the  
17 Commission has solicited public input before  
18 making its decision. And as part of the June 27  
19 notice for this meeting as well as postings on  
20 the Commission's website, the Commission  
21 outlined the process by which it would receive  
22 public comment.

23           The process was designed to ensure  
24 that comment would be received in a fair but a

1 uniform manner. And in addition to the public  
2 comment, the Commission invited a representative  
3 from the city of Boston, the city of Everett,  
4 the city of Revere, Mohegan Sun Massachusetts,  
5 LLC and Wynn MA, LLC, the entities that would be  
6 most directly impacted by the grant or denial of  
7 the requested stay to appear before the  
8 Commission and offer comments on the motion.  
9 Each representative has been allotted 15 minutes  
10 in which to make comments.

11 In reviewing the motion before it,  
12 the Commission may ask any questions, review and  
13 consider any documents or any other sources of  
14 information including comments received as part  
15 of the request for public input.

16 After the oral presentations, the  
17 Commission will discuss what it's heard, what  
18 it's received in writing and may make a decision  
19 immediately or defer a decision until a later  
20 date.

21 We've set the auditorium up so that  
22 everybody can be seen by each other and be seen  
23 by the audience at the same time. So, I would  
24 ask representatives of the city of Boston, the

1 city of Everett, the city of Revere, Mohegan Sun  
2 and Wynn MA, LLC to take a seat here and we will  
3 proceed in that fashion. We've received a  
4 requested for two representatives of the city  
5 and I think we have some chance sufficient  
6 chairs for both.

7 Do any of the Commissioners have  
8 any introductory remarks or comments before we  
9 begin? If not, then if I might, let me turn to  
10 the city of Boston for its presentation, Mr.  
11 O'Flaherty.

12 MR. O'FLAHERTY: Good morning, Mr.  
13 Chairman and through you to the Commissioners.  
14 As the Commission is aware from its opening  
15 introductory comments, the city has moved for a  
16 stay of all regulatory proceedings in Region A  
17 in light of the SJC's opinion in Abdo versus  
18 Attorney General. In that decision, as you are  
19 all aware, the matter of the initiative petition  
20 to prohibit casino gambling is headed to the  
21 ballot in November. As a result of that voters  
22 in the Commonwealth will decide whether to  
23 appeal or endorse the enhanced Gaming Act this  
24 fall. The vote will occur on November 4, which

1 is four months away.

2           The current status of Boston's  
3 discussions with the applicants is as follows:  
4 Boston has engaged in negotiations with both  
5 applicants. Boston has not reached an agreement  
6 with either applicant. One of the parties,  
7 Wynn, the proponent has sent notice to initiate  
8 arbitration to commence today. The arbitration  
9 period with Mohegan has been scheduled as well.

10           The city has sent a letter to both  
11 applicants stating that given its pending motion  
12 to stay, it is refraining from the arbitration  
13 process until the Commission decides the motion.  
14 In determining whether to grant such a stay, as  
15 Your Honor knows and as the Commission members  
16 know as well, the standard used by the courts in  
17 analogous situations is instructive.

18           The courts apply a four-part  
19 analysis. What is the likelihood of success?  
20 What is the irreparable harm if no stay is  
21 granted? The balance of harms to the parties  
22 involved and the public interest. One of the  
23 most compelling reasons to grant the city's  
24 motion is that the city will suffer irreparable

1 harm without a stay of these proceedings.

2           If there is no stay of the  
3 proceedings and if expanded gaming is repealed  
4 in November, the entire licensing proceedings  
5 will be rendered moot. This means that the city  
6 will have needlessly expended significant  
7 amounts of money, time and effort engaging in  
8 negotiations and arbitrations with the  
9 applicants. Arbitration especially is time-  
10 consuming and very costly.

11           If no stay is granted and if the  
12 repeal measure passes in November, the city will  
13 have no remedy to recoup any of the funds it  
14 will have expended. It is our position that  
15 this constitutes irreparable harm and should  
16 weigh heavily in favor of a stay. A stay is in  
17 the public interest as well because any action  
18 the city takes with respect to negotiation may  
19 unfairly impact the voters in November.

20           In contrast to the irreparable harm  
21 the city will suffer if there is no stay, the  
22 applicants and the Commission will suffer no  
23 prejudice if a stay is granted. The stay would  
24 create only a short delay of four months until



1 the November 4 elections.

2           If the repeal measure fails in  
3 November, the parties can resume the proceedings  
4 immediately resulting in no prejudice. The  
5 applicants are well-heeled entities and will  
6 continue to generate revenue in their respective  
7 businesses over the next four months. In fact,  
8 they may wish to spend funds on campaigning  
9 against the repeal measure during this time.

10           Moreover, a stay would only delay  
11 the regulatory proceedings before the  
12 Commission. The applicants are free to continue  
13 other work on their casino proposals such as  
14 environmental assessment and permitting. The  
15 host community agreements with Revere and  
16 Everett would also stay in effect. And finally,  
17 the Commission would suffer no prejudice due to  
18 a stay because it has flexibility over its  
19 timeline, which it has itself publicly  
20 acknowledged. Therefore, the balance of the  
21 harms in this instance weigh in the favor of  
22 granting a stay.

23           What would be the likelihood of  
24 success in this case, in the repeal of expanded

1 gaming? If expanded gaming is likely to be  
2 repealed then this factor would favor granting a  
3 stay. The public support has been up-and-down  
4 on the Gaming Act and lately some would argue  
5 with certain polls, it's on a downward  
6 trajectory. Polling has shown support for the  
7 repeal measure in some instances steadily  
8 climbing over time, but most polls showing a  
9 dead heat.

10 One poll conducted by Suffolk  
11 University and the Boston Herald last month  
12 showed that 40 percent of likely voters  
13 disapproved of casinos as opposed to 37 percent  
14 who approved. Given this trend, it is likely  
15 that opposition will continue to grow making it  
16 likely, not certain, but likely that the repeal  
17 measure will pass.

18 Public interest. Boston's funds are  
19 public funds. So, it is in the public interest  
20 to spend them judiciously. If these funds were  
21 spent on proceedings that rendered moot by a  
22 vote for repeal in November, they will be lost  
23 forever to the detriment of the public. If  
24 there is no stay of the proceedings and if

1 Boston enters into any agreements with the  
2 applicants, the terms of the agreements may  
3 impact the voters' decision one way or the  
4 other.

5           It would be more prudent for a stay  
6 to preserve the status quo until the voters have  
7 had a chance to voice their opinions at the  
8 polls. In the memorandum that we provided you,  
9 we were unable to find any Massachusetts cases  
10 on point. But we did find cases from California  
11 involving citizens' referenda that have held in  
12 favor of staying proceedings and preserving the  
13 status quo until voters have had their say.

14           Today, you will hear from the  
15 proponents, both proponents and in front of the  
16 pleadings that have been presented in front of  
17 the Commission that a stay of the Category 1  
18 license proceedings in Region A is contrary to  
19 Article 48 of the Massachusetts Constitution. I  
20 believe that that is incorrect and counsel in  
21 our review of this matter believes that the city  
22 is not seeking a suspension of General Law  
23 Chapter 23K. The city is only seeking a  
24 suspension of the licensing proceedings with

1 respect to Category 1 proceedings in Region A.

2           You will hear proponents argue that  
3 the four factor test under 205 CMR 102.03(4)(a)  
4 controls. This is incorrect because the city is  
5 not seeking a variance of regulations.

6           The city is seeking a stay pending  
7 the outcome of the initiative petition in  
8 November which could render the entire licensing  
9 proceedings moot.

10           This is analogous to seeking a stay  
11 of legal proceedings pending a future event  
12 which is why the test used by the courts to  
13 consider stays is instructive.

14           You will hear the proponents argue  
15 quite possibly that the Commission has the power  
16 to delay deadlines and concede that they have  
17 the power to delay deadlines in the licensing  
18 proceeding. A four-month delay will not render  
19 the proponents' applications unreliable. If it  
20 did then the soundness of the application was  
21 questionable to begin with.

22           The public interest is served by the  
23 voters having their say. The citizens of East  
24 Boston and Charlestown will finally be able to

1 vote on whether they want a casino in their  
2 community. In fact, it is the applicants in  
3 continually objecting to Boston's assertion of  
4 host community status who have consistently  
5 worked against the ability of the people to  
6 vote.

7           Moreover, Mohegan Sun and Wynn's  
8 public interest argument is premised on the  
9 assumption that the Commission will grant a  
10 Category 1 license in Region A. This is  
11 speculative. The Commission is not required to  
12 grant a license. The proponents will argue that  
13 the initiative petition will not pass relying on  
14 polls from earlier this year. However, it'll be  
15 interesting to hear if we hear of the downward  
16 trend in the same matter when they speak.

17           One poll conducted by Western New  
18 England University Polling Institute showed  
19 statewide support for casinos by a 60 to 33  
20 margin. The cases that will be cited by the  
21 proponents regarding irreparable harm are  
22 inapplicable to our facts, because the courts  
23 were addressing the expenses and costs to  
24 private for-cost companies.

1           The city of Boston is a  
2 municipality. We are funded by the taxpayers.  
3 And the expense and burdens the city incurs are  
4 at the expense of the public. Once again, the  
5 proponents' arguments with respect to harm that  
6 other parties may suffer are premised on the  
7 assumption that the Commission will grant a  
8 license at all, and specifically to one of them  
9 or the other.

10           The city of Revere's budget cannot  
11 depend on the award of the license to Mohegan  
12 Sun whether or not a stay is granted as well as  
13 the city of Everett. On the other hand, the  
14 costs and the potential impact to the city of  
15 Boston are real and immediate if the stay is not  
16 granted.

17           COMMISSIONER MCHUGH: Could I  
18 interrupt for just a second, Mr. O'Flaherty. We  
19 are broadcasting this so that people who aren't  
20 here can see what is going on with the  
21 proceedings. And the screen down here just went  
22 blank. So, I want to see if the broadcast feed  
23 is still up. It is? Okay. Sorry for the  
24 interruption. Go ahead.

1           MR. O'FLAHERTY: In conclusion, the  
2 city of Boston will be irreparably harmed as  
3 will the electorate as any actions could be  
4 construed as potentially influencing the vote in  
5 November.

6           If a license issues or licenses  
7 issue and agreements are signed before the vote,  
8 then the question has to be asked whether that  
9 ballot question will be compromised. Each of  
10 the four factors that the courts weigh when  
11 considering a stay are in favor of granting a  
12 stay of all Category 1 license proceedings in  
13 Region A. The city respectfully requests the  
14 Commission to grant its motion to stay. Thank  
15 you, Mr. Chairman.

16           COMMISSIONER MCHUGH: Sir, thank  
17 you. Questions for Mr. O'Flaherty? I have some  
18 questions but I'm going to wait until the end  
19 and come back with questions at the end.

20           COMMISSIONER CAMERON: I will do the  
21 same.

22           COMMISSIONER MCHUGH: Okay. All  
23 right. The next in the order that we've chosen  
24 alphabetical and hierarchical, Everett is next.

1           THE HON. CARLO DIMARIA: Thank you,  
2 Commissioner and members of the Commission. I'm  
3 going to share my presentation or my time with  
4 my counsel from Kopelman and Paige, Jonathan  
5 Silverstein. I'm going to be very brief.

6           I'm probably the only one on this  
7 panel who is not an attorney. So, they'll take  
8 up most of the time. So, I'm going to be very  
9 brief. Mr. O'Flaherty made one good point that  
10 the people of Charlestown, the people of East  
11 Boston will have the opportunity to vote.

12           If I'm a voter in one of those  
13 communities, I think I would want to know where  
14 the casinos going to be sited. That will impact  
15 my vote, where it's going to be sited. I think  
16 we have a great opportunity here to go into the  
17 November election people knowing where the  
18 casinos are going to be sited and they may have  
19 certain reasons.

20           People who are environmentalists may  
21 want see that the Monsanto site gets cleaned up.  
22 People who are in favor of other things that the  
23 Revere application has may want to see that go  
24 there and have a reason to vote for it there.



1           People who are in different  
2 surrounding communities have different reasons  
3 to vote for an application or not to vote for  
4 it. I think we have a great opportunity here.

5           People in Everett voted over a year  
6 ago, been dotting their I's and crossing their  
7 T's and waiting for the day in September that  
8 they are going to get to know if they're getting  
9 a license or not.

10           To keep belaboring this and putting  
11 it off, it sends a bad message to people in the  
12 Commonwealth that we can't get our act together.  
13 I think this is great that you're allowing us to  
14 speak today. I don't see the harm that is  
15 caused by awarding the license. We've time and  
16 time again, I know we've tried to deal with  
17 Boston and negotiate a surrounding community  
18 agreement. There's a great opportunity to be  
19 able to negotiate two surrounding community  
20 agreements.

21           I think let's just get this process  
22 going. Let's vote for this license in  
23 September. Why keep waiting? If it doesn't  
24 pass -- So, we talk about the polls. We all

1 know polls. As soon as people start spending  
2 money, it changes people's minds. There's a  
3 reason why we passed gaming in the Commonwealth,  
4 because 60 to 70 percent of the people from  
5 Massachusetts were going to Connecticut to game.  
6 That's revenue that could be in our state that  
7 was going elsewhere.

8           Once that is put back out there,  
9 once people know that \$200 million of the gaming  
10 revenues are used to offset this year's budget  
11 that's going to be cuts in services to residents  
12 in the Commonwealth. I think once that all of  
13 that information is put out there, these polls  
14 are all going to change.

15           So, I feel as the only elected  
16 official currently in office, other than Mr.  
17 O'Flaherty who served in office, I think people  
18 are disheartened to know that this process is  
19 keep going on and on. That's maybe why there is  
20 voter fatigue out there.

21           I say we get this going. We've done  
22 all of our work in Everett. We've done what  
23 you've asked us to do. We've gone above and  
24 beyond. We'd like to know if we're going to get

1 the license in September, not wait until  
2 November because it affects how we are going to  
3 operate in the next couple of months after that.

4 If I could invite Jonathan  
5 Silverstein from Kopelman and Paige whose been  
6 representing the city of Everett for the last  
7 few years now, but the last year on our host  
8 community agreement and all of our dealings with  
9 the casino, thank you, Mr. Chairman. Thank you  
10 for your time this morning.

11 COMMISSIONER MCHUGH: Mr. Mayor,  
12 thank you. Mr. Silverstein, you have 10 minutes  
13 of unexpired time.

14 MR. SILVERSTEIN: Thank you,  
15 Commissioner. Again, thanks for the opportunity  
16 to speak to this matter today.

17 I want to begin by suggesting to the  
18 Commission that the standard articulated in the  
19 city of Boston's motion is not the appropriate  
20 standard. I think under that standard, the  
21 motion should still be denied. But Mr.  
22 O'Flaherty suggested that the appropriate  
23 standard is the standard applied for stays in  
24 litigation. Litigation as the Commission knows

1 is an adjudicatory process.

2           The Commission could not have been  
3 more clear in its regulations that the Phase 2  
4 licensing process is not an adjudicatory  
5 process. It said it explicitly in its  
6 regulations. It said it's a legislative process  
7 and then administrative process.

8           The Commission has set a schedule.  
9 And I would suggest that its schedule is much  
10 more analogous to its rulemaking and regulatory  
11 process than it is to litigation. If the city  
12 wants the Commission to vary from that schedule,  
13 I would suggest that the appropriate standard to  
14 apply would be the Commission's variance  
15 standard.

16           And that standard requires a finding  
17 -- a demonstration by the movant and then a  
18 finding by the Commission that granting the  
19 variance or the waiver would not interfere with  
20 the Commission's fulfillment of its functions.  
21 And I would suggest that the effect of granting  
22 the city of Boston's motion here would be just  
23 the opposite.

24           It would substantially interfere

1 further with the Commission's fulfillment of one  
2 of its core functions, the issuance of a license  
3 in Region A, which I think is probably the most  
4 watched region, the most watched license that  
5 this Commission has been addressing statewide.

6           So, I would suggest that the  
7 appropriate standard is your waiver standard in  
8 your regulations. And under that standard there  
9 is absolutely no doubt that the motion should be  
10 denied.

11           Now let's assume for argument's sake  
12 that the appropriate standard is the four-part  
13 test that's articulated in litigation. First of  
14 all, there is absolutely no irreparable harm to  
15 the city of Boston. Irreparable harm has been  
16 repeatedly, and there's case law longer than my  
17 arm that says it cannot be financial in nature.  
18 That is all that the city of Boston has  
19 articulated, financial harm. That they're going  
20 to have to spend money on this process.

21           Well, respectfully I understand that  
22 the city of Boston is a very important city in  
23 Massachusetts, but every other community, every  
24 other surrounding community in this Commonwealth

1 has gone through the process of either  
2 negotiating a surrounding community agreement or  
3 if unable to do so, arbitrating a surrounding  
4 community agreement. And I don't think that  
5 Boston is so special that it should be exempt  
6 from that process. And it is not irreparable  
7 harm to be forced or required to undergo the  
8 process that every other surrounding community  
9 has undergone.

10           And the financial harm that Boston  
11 cites is not irreparable. Even if it were  
12 cognizable harm under the standard, it's not  
13 irreparable. Why, because the statute and your  
14 regulations clearly state that a surrounding  
15 community is entitled to recover exactly those  
16 reasonable consulting fees that it expends in  
17 the process of negotiating or arbitrating a  
18 surrounding community agreement from the  
19 applicant. And that's been done repeatedly.  
20 And it can be done through the involuntary  
21 disbursement process or it can be done through  
22 the arbitration process.

23           And I can speak to that from  
24 experience having included exactly that

1 provision. Commissioner McHugh tweaked it a  
2 little bit in West Springfield with respect to  
3 the MGM proposal. So, it's not a cognizable  
4 harm and it's not an irreparable harm.

5           On the flip side, I think the harm  
6 to the Commonwealth, to the applicants and to  
7 the potential host communities are extensive,  
8 are irreparable and are substantial. Boston  
9 refers to this as just a mere four-month delay.  
10 It's a mere additional four-month delay. The  
11 city of Boston has advocated strongly and  
12 repeatedly on its behalf before this Commission.

13           And that prior advocacy repeatedly  
14 asserting host community status, repeatedly  
15 being rebuffed by the Commission has resulted in  
16 its own delays. So, it's not just four months.  
17 It's just an additional four months. But the  
18 four months I suggest is of a very substantial  
19 nature in its impact on the applicants and the  
20 communities and the Commonwealth.

21           Just by way of example, that four  
22 months delaying commencement of operations if  
23 the license goes to Wynn Everett, that four  
24 months translates into over \$8 million of lost

1 host community payments to the city of Everett,  
2 unrecoverable. There is no process for the city  
3 to recover that.

4           There's no process for Wynn or  
5 Mohegan if they get the license to recover the  
6 lost profits, lost revenues that that delay  
7 would engender. There's no process for the  
8 Commonwealth to recover the tens, possibly  
9 hundred million dollars of lost revenue that  
10 these delays will result in in terms of reduced  
11 gaming tax revenue.

12           There's no ability for the  
13 individuals who would be employed at these  
14 facilities to get back their jobs and the  
15 employment that they would have for that four  
16 months and the other months of delay caused by  
17 the city of Boston's prior efforts.

18           So, I would suggest that if we're  
19 going to be balancing harms, financial or  
20 otherwise, there's absolutely no harm to Boston  
21 by denial of their request and is substantial  
22 harm to every other stakeholder in this process.

23           I want to also note that there's  
24 nothing new here. It's not a surprise that



1 there may be repeal question on the ballot in  
2 November. Everyone has known about this for a  
3 long time. And every stakeholder, every  
4 surrounding community, every applicant, the  
5 Commission itself haven't buried their heads in  
6 the sand in hope that it would go away.

7           As the Supreme Judicial Court noted  
8 in its Abdow decision, everyone understood  
9 coming into this process that there is a risk of  
10 repeal. There's a risk that if it fails now, in  
11 five years it could come back. For the  
12 Commission to be paralyzed in its core function  
13 of licensing the Region A Category 1 facility I  
14 think makes absolutely no sense.

15           With that I'll rest and refer the  
16 Commission to my written comments and happy to  
17 answer any questions. Thank you.

18           COMMISSIONER MCHUGH: All right.  
19 Thank you, Mr. Silverstein. Questions from  
20 members? You're going to save some for the end.

21           COMMISSIONER ZUNIGA: Yes.

22           COMMISSIONER MCHUGH: All right.  
23 Fine. Thank you. We'll hear next from the city  
24 of Revere, Mr. Falk.

1           MR. FALK: Thank you, Commissioners.  
2 Brian Falk from the law firm Mirick, O'Connell,  
3 special counsel to the city of Revere.

4           The city of Revere appreciates this  
5 opportunity but is disappointed to appear before  
6 you yet again to discuss a topic initiated by  
7 the city of Boston completely unrelated to the  
8 merits of the Region A licensing process. Two  
9 months ago Boston asked the Commission to  
10 determine if it was a host community to two  
11 projects located completely outside of its  
12 borders in neighboring cities.

13           Now as just one of many surrounding  
14 communities to these projects, Boston asked the  
15 Commission to ignore its statutory duties and  
16 suspend the licensing process for several more  
17 months. Revere opposes this latest attempt by  
18 Boston to further delay the licensing process at  
19 the expense of everyone else.

20           Revere submitted its written  
21 comments yesterday and also agrees with the  
22 written comments submitted by Mohegan Sun.  
23 Perhaps for the first and only time, Revere  
24 finds itself in complete agreement with the city

1 of Everett and with Wynn in their written  
2 comments.

3 COMMISSIONER MCHUGH: Well, that's  
4 progress.

5 MR. FALK: In summary, Revere finds  
6 of Boston's motion is procedurally out of order  
7 given the clear variance criteria set forth in  
8 the Gaming Commission's regulations.

9 Revere finds that Boston's motion is  
10 contrary to the initiative petition process set  
11 forth under Article 48 of the state  
12 Constitution, which does not compel an  
13 administrative agency such as the gaming  
14 Commission to ignore statutory duties pending a  
15 referendum vote.

16 Assuming for the sake of argument  
17 that Boston has put forth the correct legal  
18 standard, Boston's motion should still be  
19 denied. First, Boston asked the Gaming  
20 Commission to act as a political pundit and  
21 predict the outcome of the November referendum  
22 four months in advance.

23 The Gaming Commission has no legal  
24 basis to gauge the likelihood of success in

1 November and should not base this important  
2 decision on current opinion polls. Most recent  
3 opinion polls currently favor a no-vote in  
4 November, fact omitted from Boston's motion.

5           Boston next asserts irreparable  
6 harms if the Gaming Commission does not suspend  
7 the Region A licensing process. Those harms are  
8 concerning fees and expenses associated with  
9 Boston's surrounding committee negotiations.  
10 However, most of these costs, if not all as  
11 mentioned by Attorney Silverstein, are subject  
12 to reimbursement from the two applicants and  
13 from the Gaming Commission's grants. It doesn't  
14 render them irreparable harms.

15           Boston's motion also glosses over a  
16 major element of its stated legal standard,  
17 which is the balance of harms among the parties.  
18 Boston's stated harms are largely subject to  
19 reimbursement. Revere's harms are not.

20           Aside from the delay of tens of  
21 millions of dollars in tax revenue, thousands of  
22 jobs, a delay would also cost short-term  
23 irreparable harms to Revere. Under Revere's  
24 host community agreement, Revere will receive an

1 initial payment from Mohegan Sun of \$6 million  
2 within 30 days of the license award. That's  
3 equivalent to 3.75 percent of Revere's current  
4 operating budget.

5           If the license award date comes  
6 after the November election sometime next year,  
7 Revere cannot build this payment into its tax  
8 rate. Meaning homeowners and businesses in  
9 Revere will pay a higher share of taxes than  
10 would otherwise be the case. Revere cannot  
11 refund these taxes once the \$6 million payment  
12 arrives late.

13           Late payment may also affect the  
14 city's bond ratings, increasing the cost to  
15 borrow for needed municipal projects. All of  
16 these harms would be irreparable and not subject  
17 to reimbursement. For sense of scale, Revere's  
18 \$6 million payment is equivalent to 3.7 percent  
19 of our operating budget. For Boston to face the  
20 same comparable harm to its \$2.7 billion budget,  
21 its unreimbursed negotiation expenses would need  
22 to total about \$101 million.

23           In addition, Revere will receive \$2  
24 million from Mohegan Sun within 30 days of their

1 financing date. This money will reimburse  
2 Revere for renovations to its football stadium.  
3 If the license award date comes after the  
4 November election, Revere will not be able to  
5 retire its existing debt to the stadium project  
6 costing additional interest, tying up the city's  
7 borrowing capacity. Again, these harms are not  
8 subject to reimbursement.

9           With respect to the time and  
10 resources of city officials, Revere officials  
11 have spent countless hours meeting with Mohegan  
12 Sun representatives on permitting matters to  
13 prepare for the award of a license. Every time  
14 the license award day is pushed back, schedules,  
15 bid documents and weeks of work must be amended.  
16 Revere has a strong team but not a deep bench.  
17 Time spent by our officials dealing with  
18 licensing delays takes time away from other  
19 important matters.

20           The other harm to Revere concerns  
21 lost economic development opportunities. Revere  
22 anticipates significant economic development  
23 investment in the form of ancillary projects  
24 near Mohegan Sun and Revere Beach if the license

1 is awarded. But selling Revere to developers  
2 gets harder and harder each time the award date  
3 changes.

4           Our economic development director,  
5 John Festa who is with us here today, has seen  
6 developers walk away due to uncertainties in the  
7 licensing process. Delaying the license award  
8 yet again will force potential developers to  
9 decide between waiting indefinitely for a  
10 license award or pursuing opportunities outside  
11 of Revere. Given Revere's financial  
12 constraints, a single lost economic development  
13 opportunity is one too many and irreparable  
14 harm.

15           Delaying casino development and  
16 ancillary projects also delays Revere's revenue  
17 from these projects. Given Revere's financial  
18 situation, this is an irreparable harm. It  
19 hurts Revere's existing residential and  
20 commercial taxpayers.

21           In contrast, our economic  
22 development director's counterpart in Boston,  
23 the multi-million dollar Boston Redevelopment  
24 Authority may preside over billions of new

1 development, regardless where the Region A  
2 casino is located.

3 Finally, Boston suggests that the  
4 public interest requires the suspension of the  
5 licensing process. To the contrary, if voters  
6 are to make an informed decision in November,  
7 they should know the location of the Region A  
8 casino, likely the most lucrative of the license  
9 awards.

10 Voters should see the Expanded  
11 Gaming Act implemented in real-time not  
12 suspended unnecessarily after two of the four  
13 licenses have been awarded. It's unfair of  
14 Boston to ask the Gaming Commission to ignore  
15 its statutory duties in order to influence the  
16 vote in November. Such action would clearly go  
17 against the public interest.

18 Revere urges the Gaming Commission  
19 to keep the licensing process on track and deny  
20 Boston's motion. Thank you.

21 COMMISSIONER MCHUGH: All right, Mr.  
22 Falk. Thank you. Colleagues, any questions for  
23 Mr. Falk? All right. Let's proceed now to  
24 Mohegan Sun, Mr. Barnett.



1           MR. BARNETT: Thank you,  
2 Commissioner McHugh, Commissioners. I'm happy  
3 to be here today. I appreciate the opportunity  
4 to speak on behalf of Mohegan Sun. I'm Bruce  
5 Barnett from the law firm of DLA Piper.

6           The Expanded Gaming Act is the law  
7 of Massachusetts. It was enacted by the  
8 Legislature. It was signed by the Governor.  
9 It's been in effect for over two and a half  
10 years. It was not done on a whim, to say the  
11 least. It is the product of a very careful  
12 legislative weighing of all of the factors  
13 involved in producing a decision.

14           The Legislature established the  
15 policy of the state to be in favor of the jobs,  
16 the revenues, the ancillary economic development  
17 and activities that expanded gaming will spur  
18 while providing for unprecedented mitigation at  
19 the community and social impacts.

20           This Commission is the creature of  
21 that legislation. It's charged with  
22 implementing the statute. It's been moving as  
23 quickly as it can to bring those benefits to the  
24 people of Massachusetts. I'm sure you don't

1 need me to remind you of the many, many times  
2 the Commission has been criticized for acting  
3 too slow by people in the press or public  
4 discourse.

5           But you moved as quickly as prudence  
6 allows in light of the many and complex tasks  
7 that the Legislature gave to you. But the city  
8 of Boston now asks that you suspend the  
9 licensing process for Region A for more than  
10 four months for a reason that has nothing to do  
11 with careful implementation of the statute.  
12 Rather, at least with respect to Region A, the  
13 city asks for the Commission behave as if the  
14 statute were different, as if the referendum had  
15 already passed as if Chapter 23K and the other  
16 relevant statutes had already been amended.

17           The law that would be approved if  
18 the petition were succeeded on the ballot in  
19 November is brief. It amends existing law.  
20 Technically, it doesn't repeal Chapter 23K yet  
21 in the second of its two substantive sections,  
22 it provides that the Commission is prohibited  
23 from accepting or evaluating or approving any  
24 application for an expanded gaming license.

1           As I said, Boston asks the  
2 Commission to assume that the amendments  
3 proposed by the initiative petition have already  
4 been in effect and that it cease its review,  
5 evaluation and action on the Region A petitions.  
6 Doing so is contrary to the Commission's  
7 legislative mandate to implement the Gaming Act  
8 and bring its benefits to Massachusetts. And  
9 Mohegan Sun asks that you deny the request.

10           Giving anticipatory effect to the  
11 initiative petition and suspending the operation  
12 of Chapter 23K at least with respect to Region A  
13 is also contrary to the carefully balanced  
14 approach of Article 48 of the amendments of the  
15 Massachusetts Constitution.

16           In making this comment, which is put  
17 forth in more detail in our written submission  
18 submitted yesterday, we're not saying that there  
19 would be a technical violation of Article 48 if  
20 a stay were granted. Article 48 doesn't govern  
21 the Commission. But Article 48 does, we submit,  
22 represent a careful consideration of the effect  
23 of the exercise of popular legislative action on  
24 existing duly enacted laws in Massachusetts.

1           You may have noted that in my  
2 comments so far today, I've tried to be careful  
3 to say initiative petition not referendum. The  
4 ballot question for November is popularly  
5 referred to as a referendum in the press, by  
6 those of us involved in the process, by me in my  
7 own casual conversations, but it's not. As a  
8 constitutional matter, it's an initiative  
9 petition. The distinction is set forth in  
10 Article 48, which governs both of them.

11           The initiative is the power of a  
12 group of voters to submit either a  
13 constitutional amendment or a new proposed law  
14 to the rest of the electorate at an election. A  
15 referendum is the power of a group of voters to  
16 submit a law that has already been enacted by  
17 the Legislature to the voters for approval or  
18 rejection.

19           The constitutional distinction is  
20 relevant to the question before the Commission  
21 today because Article 48 provides for the  
22 suspension of the operation of a law that is  
23 subject to a referendum but not for suspending  
24 the operation of a law that would be changed if

1 an initiative were passed.

2           Newly enacted statutes can be  
3 suspended pending a referendum because they've  
4 never been in effect. In fact, the reason why  
5 Massachusetts statutes take effect 90 days after  
6 they've been enacted by the Legislature and  
7 signed by the Governor is to allow time for  
8 someone to bring such a referendum petition.

9           But the balancing goes further than  
10 that, because not all laws that are subject to  
11 the referendum provisions are capable of being  
12 suspended. First of all, the petition has to  
13 ask for a suspension. Here the people who  
14 signed the petition to put the initiative  
15 petition on this November's ballot were not  
16 asked to support a suspension of the law pending  
17 the vote.

18           Also, the suspension provisions  
19 don't apply in the event that the law under  
20 review or subject to change was enacted as an  
21 emergency law as this one does.

22           So, the Article 48 point is this.  
23 The framers of that provision of the  
24 Massachusetts Constitution struck a careful

1 balance, carefully contemplated as to when a  
2 vowed reenacted law should be suspended pending  
3 a vote through popular legislative mechanisms.  
4 It's possible for a referendum. It's not  
5 possible for an initiative petition. And  
6 granting Boston's request would be contrary to  
7 that balance.

8           But the request not only asks for  
9 the Commission to suspend the statute it's  
10 charged with implementing, it also seeks a  
11 variance from the Commission's duly enacted  
12 regulations. The city of Boston says no, it's  
13 not a variance. It's a stay. Well, on its  
14 face, they don't call it a variance. But there  
15 is no way to implement the stay without altering  
16 the deadline set forth in the Commission's  
17 regulations for the surrounding community  
18 process.

19           The content of the motion, the  
20 content of the letter that was submitted on  
21 Monday by the city of Boston to both the  
22 applicants and copied to the Commission, and the  
23 content of their comments here today made clear  
24 that the concern, the object their stay is to

1 forestall the required actions on their part to  
2 go through the surrounding community process.

3           And you've heard already this  
4 morning some of the requirements of a variance  
5 from this Commission, and you're obviously well  
6 aware of them from having dealt with many, but  
7 to frame them in the light of the request before  
8 you, in order to find a variance warranted from  
9 those regulations, you have to find that each of  
10 the following is true.

11           Granting a stay must be consistent  
12 with the purposes of Chapter 23K. Granting a  
13 stay must not interfere with the ability of the  
14 Commission to fulfill its duties. Granting a  
15 stay must not adversely affect the public  
16 interest. And failure to grant a stay must  
17 guard substantial hardships.

18           Each of those, not just one or a  
19 combination or majority on balance, your  
20 regulations require each of those requirements  
21 be met. I think what I and others have already  
22 said today demonstrate that the city does meet  
23 either the first two criteria for a variance.

24           As to the purposes of 23K,

1 unnecessarily delaying the benefits of expanded  
2 gaming jobs, tax revenue, ancillary economic  
3 activity and development is antithetical to the  
4 purposes of the statute. It's not just not  
5 consistent with them, it's directly opposed to  
6 them.

7           And it follows that the stay would  
8 interfere with the Commission's duties, which is  
9 to implement the statute and bring those  
10 benefits to the people of Massachusetts.

11           The city made a reference to the  
12 reliability of applications, which I believe is  
13 a reference to a comment -- part of our comments  
14 with respect to potential staleness of the  
15 applications if the stay were granted. And the  
16 point we're making there is this.

17           The applications were filed on  
18 December 31, 2013. You know better than anybody  
19 how complicated there are and how in-depth. You  
20 know they were in the works for some time before  
21 that. When they were filed, it was anticipated  
22 by the Commission through its public statements  
23 that the award decisions for both Region A and  
24 Region B on the Category 1 licenses would be



1 made by the end of May.

2           Then it was delayed a month to the  
3 end of June because of the need to replace a  
4 contractor in the surrounding community petition  
5 process. Then it was delayed to mid-August and  
6 then to the end of August, early September  
7 timeframe we're currently working on as a result  
8 of proceedings related to Boston's status and  
9 extensions requested by the city.

10           If we have the stay now and nothing  
11 is done by either the Commission or the  
12 applicants with respect to the licensing process  
13 until after the November election, we're going  
14 to be into 2015 at the earliest before you could  
15 possibly be granting a license. Why do I say  
16 that?

17           We sit here at the beginning of July  
18 and there's two to two and a half months of  
19 activity left, intense activity on the part of  
20 both the Commission and the others in the  
21 process to get to the current September, mid-  
22 September timeframe. So, you tack that onto the  
23 end after the November election. We're talking  
24 into January.

1           And frankly, we don't know that the  
2 process between where we are now and getting to  
3 the designation or the award of the Region A  
4 license will be as smooth as perhaps it's been  
5 in other regions or as we might hope it would  
6 be. The Region A process has been different all  
7 along the way. And granting the stay would  
8 forestall getting to the unfolding of that  
9 process to see what lies in store for us.

10           And when you talk about evaluating  
11 and ruling on applications that have been  
12 sitting for over a year, I think it's fair to  
13 question in a way then that it wouldn't be  
14 appropriate to do yet is all of the information,  
15 all of the projections, the economic analyses  
16 that are built into those still appropriate?  
17 Would the Commission feel the need to solicit  
18 updates, refreshments, redo work that its  
19 consultants have already done at that point to  
20 bring them into currency. I think that is a  
21 reasonable thing to consider.

22           On the public interest point, others  
23 have spoken about it. I want to make a couple  
24 of additional points. One, the Commission is

1 well aware of the impact of the licensing fees  
2 on the state budget process. Originally, the  
3 plan and the hope was that the licensing fees  
4 would be collected and for use in the state in  
5 the fiscal year that ended two days ago.  
6 Unfortunately, that didn't happen.

7           The Legislature has just reached a  
8 budget deal, according to the press, which  
9 assumes tens of millions of dollars of casino  
10 licensing fees will be available. And I think  
11 for the reasons I just spoke about, if the stay  
12 is granted it begins to introduce a risk that  
13 the licensing fees may not be collected even in  
14 fiscal year 2015, by the end of next year, as  
15 again, we don't know what lies ahead of us on  
16 the Region A licensing path.

17           A point not made in our paper is on  
18 the public interest argument that I wanted to  
19 mention this morning was that there is a direct  
20 effect on the Commission's finances, I think, of  
21 a stay. That is if you assume that an agreement  
22 would be reached with either of the Region A  
23 applicants if the Commission determines at least  
24 one of them is worthy of getting a license, if

1 you assume an agreement is reached that is akin  
2 to the agreement that was entered into last  
3 week, the week before with MGM, as I understand  
4 it, that agreement called for more or less  
5 immediate payment for Commission operating  
6 expenses that was made before the election given  
7 if the award would be now after the granted the  
8 election. If the licensing process is stopped  
9 now, there is no possibility of that sort of  
10 agreement being reached anytime soon.

11 I'm looking down to skip things that  
12 other speakers have already said. But on the  
13 interest of the voters, I think there is  
14 something else that deserves to be said. In  
15 general, there have been many commenters both at  
16 this table and through the Commission's comment  
17 functions that talk about getting more  
18 information to people. And I think that cannot  
19 be understated, the importance of that.

20 Many questions have arisen during  
21 the course of this process. The law has been in  
22 ways being implemented for two and half years  
23 now. With respect to the Region A license,  
24 questions have arisen -- We list some of them in

1 our papers. -- on all sorts of topics. Are the  
2 revenue projections going to come to bear? Are  
3 the impacts going to be what they say they are?  
4 Are the applicants suitable? Who are the people  
5 who own land? Who is going to be involved in  
6 the process?

7 All of these things are out there.  
8 They're pending. People have them in their  
9 minds but they don't know what the Commission's  
10 answers are to those questions. Right or wrong,  
11 that is whether the answers are right or wrong,  
12 or whether people will agree with them or not, I  
13 think they're making an assessment of the  
14 statute itself, they deserve to have those  
15 answers before them.

16 And I'll close with just a brief  
17 word on the likelihood of success argument.  
18 I've gotten this far without saying anything  
19 about the prospects for the petition at the  
20 polls that Boston contends the polls are  
21 relevant because likelihood of success is part  
22 of the appropriate legal analysis. I've stated  
23 before, and along with the other commenters  
24 here, we disagree that that is the right legal

1 analysis.

2           Even if they got the legal standard  
3 correct and the likelihood of success is proper,  
4 there's just no basis for concluding that the  
5 initiative petition will succeed on the ballot  
6 in November. You were asked whether we hear  
7 anything about more recent polls than perhaps  
8 the two-week old ones that we cited in our  
9 papers. And this morning WBUR obliged and it  
10 speaks also to the trend.

11           They are reporting that their poll  
12 today shows 56 percent of the people in  
13 Massachusetts support retaining casinos and 38  
14 percent disapprove. And the trend that they  
15 found in their polls conducted by one news  
16 organization or by one polling entity on behalf  
17 of one news organization are all in the  
18 direction of continued support. March 2014 a  
19 three point difference, 46 percent support, 43  
20 percent opposed the casino gaming. Two months  
21 later May 2014, 49 percent support 39 percent  
22 opposed, a 10 point spread.

23           COMMISSIONER MCHUGH: That's 15  
24 minutes. So, if you'd wind up now I'd be

1 grateful. Thank you.

2 MR. BARNETT: And today's poll that  
3 they're reporting almost 20 points in favor of  
4 retaining casinos 56 to 38.

5 COMMISSIONER MCHUGH: Thank you  
6 very much.

7 MR. BARNETT: Thank you.

8 COMMISSIONER MCHUGH: Mr. Starr.

9 MR. STARR: Thank you, Judge McHugh.

10 Good morning, members of this Commission. As  
11 the Commission knows, my name is Tony Starr. I'm  
12 from the law firm of Mintz, Levin, and I  
13 represent Wynn MA, LLC. On behalf of Wynn MA,  
14 thank you very much for the opportunity to  
15 appear today to address these important issues  
16 raised by the city's motion.

17 For my purposes, I think that  
18 Counsel before me has explained to why the  
19 standard that the city has asked you to consider  
20 is inappropriate. I share that from a legal  
21 point of view. But for purposes of our  
22 presentation today, I will accept their  
23 arguments as being the right standard for  
24 purposes of the discussion. And then I'll take

1 you through each of the four of the arguments  
2 that the city advances and explain to you why  
3 each of those four as suggested by the city  
4 fails.

5           Let's take the first argument of the  
6 city. I'm reading directly from their motion  
7 now. The city will have to devote considerable  
8 costs including legal fees as well as time and  
9 other resources from City Hall to negotiate  
10 and/or arbitrate agreements with the applicants.  
11 Not true.

12           The statutory negotiation period  
13 with Wynn ended on June 25. It had been  
14 extended from June 16 to the 25th, by nine days,  
15 to help support the ongoing negotiations by use  
16 of the Flex. If that negotiation period has  
17 ended, while Wynn would welcome the chance to  
18 reach a surrounding community agreement  
19 consensually with the city. That negotiation  
20 period has ended. There is no more costs there.

21           We are now into the phase of  
22 arbitration. As has been said before, on behalf  
23 of my client I sent notice of arbitration last  
24 Thursday. It starts the five-day window in



1 which the parties are to select arbitrators and  
2 exchange their BAFOs.

3           The arbitration process which you  
4 have set out in your regulatory proceedings in  
5 which you know I have now participated in twice  
6 in the last six weeks, so I know quite well that  
7 process with Chelsea in Somerville. It is  
8 expeditious. It is efficient. And it is  
9 relatively inexpensive. It will start within  
10 just a few days. If you restart the clock, we  
11 will be in arbitration in a matter of days.

12           It must be complete by your rules in  
13 20 days. If Boston agrees with Wynn on a single  
14 arbitrator, Wynn pays for the entire cost of  
15 that arbitrator. If the parties are unable to  
16 agree on a single arbitrator and there is a  
17 three-arbitrator panel, Wynn pays two-thirds of  
18 the expense of the arbitrator.

19           The 20-day period that you've set up  
20 realistically would only allow for three or four  
21 days of hearings. In both cases with Chelsea  
22 and Somerville that's exactly what we had, three  
23 days of hearings, full days of hearings and an  
24 opportunity for closing arguments. It is not a

1 costly proceeding.

2           And Boston, as you know, has an  
3 office of gaming accountability. I would  
4 suggest to the Commission after at least 10  
5 months since early September 2013 when the issue  
6 of Boston as a surrounding community first came  
7 before this Commission, they are well prepared  
8 to present whatever evidence they have to an  
9 arbitrator or a panel in support of their  
10 position on impacts. By design, it is not a  
11 costly process.

12           And by the way, as has been said  
13 before, contrary to Boston's claim a four-month  
14 delay does harm to the other stakeholders. In  
15 the case of Wynn, there are commitments to  
16 employees, to consultants, land acquisition  
17 option payments, possible renegotiation of  
18 options and so forth. And as been said before,  
19 no opportunity for Wynn to get those expenses  
20 back.

21           And by the way, the harm to Boston  
22 in participating in the regulatory mandated  
23 arbitration process is not only relatively  
24 minimal, it's not irreparable harm. It's

1 economic harm, which as the courts have held  
2 repeatedly is not irreparable harm. And it's  
3 their standard. That's what they've asked to be  
4 judged by.

5           Their second argument a stay is in  
6 the public interest because any action the city  
7 takes with respect to the ongoing negotiation,  
8 an arbitration process may unfairly impact  
9 voters. Not true.

10           And by the way, the city provides  
11 absolutely no explanation or support for this  
12 conclusionary statement. Wynn would suggest  
13 that the city's position in that regard makes no  
14 sense. Providing more certainty to the voters  
15 as to which applicant if either will receive the  
16 license, where the casino will be located, what  
17 the economic benefits and mitigation payments  
18 will be will help but not hurt voters.

19           I turn the clock back 225 years to  
20 Thomas Jefferson. Here's what he said:  
21 Whenever the people are well-informed, they can  
22 be trusted with their own government.

23           It's not just to 225 years ago. On  
24 July 1, Dr. Clyde Barrow, a name I believe

1 you're familiar with, Director of the Center for  
2 Policy Analysis released a statement. And I'd  
3 like to read a couple of comments from that. He  
4 said that even though the Massachusetts  
5 licensing process has been slow, the Commission  
6 succeeded in encouraging and spurring  
7 competition regionally and statewide during the  
8 past three years.

9           And I quote now, "Casino developers  
10 came to Massachusetts because the Commission was  
11 aggressive, vocal and determined to create a  
12 truly competitive process. The main goal of the  
13 Massachusetts Expanded Gaming Act was to spur  
14 economic growth statewide and in each of the  
15 state's major regions. And the Commission  
16 recognized that only a truly competitive process  
17 would achieve those results."

18           But Barrow cautioned that "with a  
19 November referendum now scheduled the entire  
20 process and its success rests on how the  
21 Commission decides the Greater Boston Region A  
22 license, as well as its willingness to more  
23 aggressively promote the Southeastern  
24 Massachusetts Region C commercial license or

1 continue to hold the Mashpee Wampanoag Tribe's  
2 casino interests as privilege."

3           Barrows said that. And here's  
4 what's the important part of this quote, "The  
5 time has come for the Commission to make final  
6 decision in Greater Boston Region A and in  
7 Southeastern Massachusetts Region C that fulfill  
8 the intent of the gaming law by creating  
9 thousands of new jobs and up to 150 occupations  
10 at all levels of the skill matrix and that  
11 require employees at all levels of educational  
12 attainment."

13           Barrow observed, "For the last three  
14 years, the public discussion has been a lopsided  
15 monologue about mitigation payments, land deals,  
16 mitigation and background investigations while  
17 continual delays in the process have shifted the  
18 economic benefits from casino gaming into the  
19 background of an indeterminate future. The  
20 Commission should make its two remaining  
21 licensing decisions before the November  
22 referendum because voters should be armed with  
23 the knowledge to cast a fully informed vote no  
24 matter how they now intend to vote."

1           Wynn agrees with Dr. Barrow. Voters  
2 would benefit from more knowledge about where  
3 the Region A casino will be located and what the  
4 economic benefits would be. And a better  
5 informed electorate surely serves the public  
6 interest.

7           To the contrary, the public interest  
8 is certainly not served by treating Boston  
9 differently from the many other surrounding  
10 communities. I believe nearly 30 in number who  
11 have participated in the surrounding community  
12 process. It is not in the public interest to  
13 treat Boston differently from those communities.

14           The third argument the city  
15 advances, recent reports have shown that support  
16 for the expanded gambling has waned since the  
17 enactment of the Enhanced Gaming Act making it  
18 likely that expanded gaming will be repealed. I  
19 see no merit to that argument. The Commission  
20 has a statutory duty to proceed forward and  
21 fulfill its statutory mandate.

22           Boston's suggestion that interim  
23 polling results should inform the Commission on  
24 how and when it should perform its duty

1 authorized duties and obligations is totally  
2 inappropriate. The idea that the Commission  
3 should suspend its work that is authorized by  
4 statute and regulation to do because of  
5 unspecified recent reports is frivolous. And I  
6 might add, as I think Mr. Barnett mentioned,  
7 just today WBUR poll results -- And I brought  
8 the article. -- were released.

9           And exactly as Mr. Barnett said, a  
10 week after the state's highest court paved the  
11 way for a repeal of the casino law to go on the  
12 November ballot, a new WBUR poll suggest that  
13 gambling proponents will begin such a highly  
14 anticipated voter initiative with clear popular  
15 support. Fifty-six percent of respondents said  
16 they approve of locating casinos in  
17 Massachusetts while 38 percent said they  
18 disapprove.

19           Let's go to their fourth argument.  
20 They write other courts that have considered the  
21 merits of granting stays in the face of upcoming  
22 citizens' referendum have found in favor of  
23 protecting the voters' rights and suspending  
24 intervening action that potentially could be

1 rendered moot or reversed by the outcome at the  
2 ballot box. Again, not true.

3           Unable to find any support for their  
4 position in Massachusetts, they go 3000 miles  
5 away to California. And they provide you with  
6 two decisions from California. Mr. Barnett in  
7 his letter and Wynn in the opposition memo that  
8 I submitted pointed out to you why both of those  
9 California cases are simply not on point.

10           In the first case, the Assembly  
11 versus Deukmejian case, the court granted the  
12 plaintiff's motion to stay because the  
13 California Constitution expressly required it,  
14 not the case here. The second case they cited,  
15 Lindelli versus Town of San Anselmo, the court  
16 granted the stay because the stay provision  
17 appeared in the elections code which is the  
18 underlying legislation. The stay provision  
19 there stated, and I quote: "When an ordinance  
20 is the subject of a referendum petition, it  
21 shall not take effect until the majority of  
22 voters voted on the referendum approved the  
23 ordinance." Again, not the case here.

24           As more fully explained in our memo,



1 as eloquently explained by Attorney Barnett  
2 today, there is a difference in the  
3 Massachusetts Constitution between a referendum  
4 petition and an initiative petition. This is an  
5 initiative petition. There is no request in the  
6 initiative petition for a stay. The city is  
7 essentially asking you to do something which the  
8 petition itself didn't ask for. We believe the  
9 request in that regard is inconsistent with the  
10 Massachusetts Constitution.

11 For the reasons that I just shared  
12 with you, for the reasons advanced today by  
13 counsel for the Mohegan Sun, Revere and Everett,  
14 for reasons set forth in our opposition memo and  
15 the thoughtful analysis in particular provided  
16 by the city of Everett in its July 1 comment  
17 letter to you and at today's hearings, Wynn  
18 believes that Boston's motion should be denied.  
19 It should be denied today.

20 The surrounding community  
21 arbitration between Wynn and Boston should  
22 proceed. And the Commission should continue its  
23 good and hard work on the Region A Category 1  
24 gaming license. Thank you for your time today.

1           COMMISSIONER MCHUGH: All right, Mr.  
2 Starr, thank you. Now I know that I certainly  
3 have some questions and I know my colleagues  
4 have some questions. But Mr. O'Flaherty, you  
5 had some unused time. So, I am going to give  
6 you five minutes more. This isn't stoppage time  
7 or extended time. It's unused time. And if  
8 you'd like to take advantage of that five  
9 minutes I'll give that to you before we begin  
10 with some questions.

11           MR. O'FLAHERTY: Thank you very much  
12 Mr. Chairman. We certainly will. And Attorney  
13 Tom Frongillo would like to make a few points if  
14 that is acceptable to you, Mr. Chairman.

15           COMMISSIONER MCHUGH: Mr. Frongillo.

16           MR. FRONGILLO: Thank you. What we  
17 just heard from the city of Everett, the city of  
18 Revere and the two applicants is that they are  
19 afraid of democracy. The Supreme Judicial Court  
20 has made it clear that the voters will decide  
21 this issue in 120 days, four months.

22           If it were 30 days, would they be  
23 sitting at the table? If it were 60 would they  
24 be saying that they are irreparably harmed? If

1 it were 90, would they actually be here making  
2 these arguments? And the answer is no.

3           What they're trying to do, they want  
4 you to the issue a license to influence the  
5 result of the vote. And the Supreme Judicial  
6 Court has said this is a decision of the voters.  
7 The status of the proceedings should be halted.  
8 The voters have plenty of information right now.  
9 Do we reasonably or credibly that the voters in  
10 the Commonwealth of Massachusetts don't know  
11 what comprises the Everett that Wynn is  
12 proposing or the Mohegan Sun on at Suffolk  
13 Downs?

14           There's been public hearing.  
15 There's been transcripts. They've been  
16 televised. There's plenty of information for  
17 the voters to engage in educated voting on the  
18 issue.

19           These applicants and these cities  
20 don't want democracy to take place with the  
21 status quo. It's a red herring for Everett and  
22 Revere to come up here before you and to talk  
23 about the monetary loss that they're going to  
24 suffer with a four-month delay. That assumes

1 they're getting a license.

2           They're not going to lose a penny  
3 unless a license is issued. If the voters come  
4 out and say we repeal the law, then where is  
5 their \$8 million of lost taxation money, or  
6 workers not getting jobs or all of the other  
7 maladies that they claim are going to happen  
8 over the next 120 days, nothing.

9           And reimbursement to the city of  
10 Boston, where does that come from? As I  
11 understand it, there is a gaming revenue fund  
12 under section 59 of the statute. And under  
13 section 61 there is a community mitigation fund  
14 all of which are premised on a license being  
15 issued and the Commonwealth getting taxes based  
16 revenues generated, which all may be moot in 120  
17 days.

18           The lawyers have misstated the test  
19 for irreparable injury. They all know that it  
20 isn't just a question if money were there to  
21 compensate the moving party that the moving  
22 party therefore has no irreparable harm.

23           The issue is there an adequate  
24 remedy at law? And there is no money here to

1 reimburse Boston. If there is a repeal, who's  
2 going to pay Boston? Are they going to? Is  
3 Wynn going to write a check to Boston and say by  
4 the way that expensive arbitration, which has  
5 been grossly understated as to what it's going  
6 to cost the city of Boston if it participates in  
7 it, it will gladly foot the bill for your  
8 experts that are going to talk about the impact  
9 of this casino on \$100 million dollar  
10 transportation renovation of Sullivan Square.  
11 Are they going to pay for our consultants and  
12 our experts and the lawyers to prepare those  
13 arguments? And the answer is they have no  
14 intention to do that.

15           There is no credible reimbursement  
16 to the city. And there's absolutely no harm to  
17 them to wait 120 days. It's no different than  
18 if they waited 90, 60 or 30. They have no  
19 credible argument to let democracy take place  
20 and to let the voters have their say.

21           So, the concept that the city of  
22 Boston's costs are minimal is just factually or  
23 it represents a fundamental misunderstanding of  
24 what these applicants think would happen at an

1 arbitration on behalf of the city. There is no  
2 compensation for Boston.

3           Boston is the largest municipality  
4 by far in the Commonwealth of Massachusetts. It  
5 is the capital. It is the city that will be the  
6 most impacted, even more so than Everett and  
7 Revere by the development of a casino. It has  
8 the most voters. And those voters deserve a  
9 right to have an unimpeded path that is  
10 uninfluenced by the spending of millions of  
11 dollars or the issuance of a license to decide  
12 what they think is proper. And it puts no harm  
13 on anyone to wait.

14           COMMISSIONER MCHUGH: Thank you very  
15 much, Sir. All right. We've heard now from  
16 each of those who would be most directly  
17 impacted by this. Questions from the  
18 Commissioners.

19           COMMISSIONER ZUNIGA: Yes, I do.  
20 Mr. Frongillo or Attorney O'Flaherty, are you  
21 familiar with some of the arbitration results  
22 from other surrounding communities and the best  
23 and final offers that have been rendered to  
24 date?

1           MR. O'FLAHERTY: Yes, however we  
2 don't feel that they have any impact on our  
3 position.

4           COMMISSIONER ZUNIGA: Well, I'm  
5 getting to the point about reimbursement of  
6 reasonable attorney's fees. Because as Attorney  
7 Silverstein alluded to, the best and final  
8 offers generally contained the reimbursement  
9 after the arbitration process of reasonable  
10 attorney fees spent by the city.

11           MR. O'FLAHERTY: Well, we have  
12 certainly -- While we understand the issue of  
13 attorney fees, I think that is certainly an  
14 argument that has been put forth in the  
15 documents that we've submitted to you in the  
16 form of our motion. However, part two of that,  
17 which was not referenced by any of my colleagues  
18 up here is that the city feels the irreparable  
19 harm also applies to the voters.

20           And that the voters should have  
21 unimpeded path, as Attorney Frongillo suggested,  
22 to having a vote in November that is undecided  
23 by anybody prior. So, the irreparable harm also  
24 not only involves the monetary issues but also

1 the irreparable harm to the voters because in  
2 essence they could be influenced by any change  
3 that takes place in terms of the licensing  
4 process whether you grant it or do not grant it.  
5 That could influence voters.

6 In particular, it could influence  
7 voters in East Boston or Charlestown. And part  
8 of our argument is that that will irreparably  
9 harm the right of the people to vote as was  
10 explicitly expressed in the Abdow decision by  
11 the Supreme Judicial Court.

12 COMMISSIONER ZUNIGA: How does more  
13 information does irreparable harm? More  
14 information, specifically I'm talking about the  
15 results of a surrounding community agreement if  
16 this process is to go forward?

17 MR. O'FLAHERTY: I don't understand  
18 the question.

19 COMMISSIONER ZUNIGA: I don't know  
20 what you mean by irreparable harm to the voters  
21 in the scenario where either a surrounding  
22 community agreement is reached or an arbitration  
23 result is also reached that then is put forth to  
24 the voters.



1           MR. O'FLAHERTY: I think  
2 Commissioner, to answer your question, it's a  
3 very commonsense answer. The average person who  
4 is aware that the Supreme Judicial Court has  
5 just asked the people to vote on whether casino  
6 gaming should proceed in Massachusetts or not is  
7 confused by whether or not a licensing process  
8 granting that right should take place when in  
9 120 days the people will be making a decision.  
10 I have had it referred to me by one constituent  
11 as putting the cart in front of the horse.

12           COMMISSIONER ZUNIGA: We've heard  
13 that before.

14           MR. O'FLAHERTY: So, to answer your  
15 question, I think the average person would like  
16 to know why the Commonwealth of Massachusetts  
17 through its administrative agency appointed by  
18 the Legislature is still engaged in a process  
19 given the gravity of the Abdow decision, the  
20 unprecedented situation that the Commonwealth is  
21 in given the Abdow decision and your process  
22 that you've engaged in for quite some time. And  
23 the average person, I believe, commonsense would  
24 dictate would want to see a vote in November

1 before any of these proceedings go on,  
2 regardless of the statutory mandate or not.

3 COMMISSIONER ZUNIGA: Even though  
4 it's the law currently.

5 MR. O'FLAHERTY: The law on casino  
6 gaming will be decided in November. The law  
7 currently.

8 COMMISSIONER ZUNIGA: Currently.

9 MR. O'FLAHERTY: Currently, and I  
10 understand that. And that is the trepidation  
11 that the city of Boston has had even in  
12 participating this morning, because we  
13 understand your mandate. We understand  
14 statutorily what you're trying to achieve.

15 And in fairness to us, it puts us in  
16 a very difficult position if we're assuming that  
17 our motion will be accepted and viewed  
18 impartially and decided impartially. And  
19 hopefully you'll understand that trepidation  
20 that we are facing given the knowledge that you  
21 are pursuing the statutory objectives, however  
22 it's our feeling given the Abdow decision that  
23 that supersedes what you have in front of you.

24 That the will of the people to

1 decide this issue in November at this particular  
2 point in uncharted waters, first impression for  
3 the Commonwealth requires a halt, requires the  
4 people to vote. And if they so choose to go  
5 forward then we proceed. Nobody is harmed if we  
6 do that.

7           The people of Everett have had their  
8 vote. The people of Revere have had their vote.  
9 There are host community agreements in place.  
10 The people will not be harmed in those  
11 respective areas. The Commonwealth will not be  
12 harmed if a mere 120 days, a timeout is taken  
13 and we see what the people have to say in  
14 November.

15           COMMISSIONER MCHUGH: Let me follow  
16 up on that. Let me come back to Commissioner  
17 Zuniga's question. How are the people adversely  
18 impacted by knowing what the terms of a  
19 surrounding community agreement are? He asked  
20 the question of how does more information harm  
21 the voter and voting process.

22           The impact of allowing the  
23 surrounding community process to go forward now  
24 would be to have a surrounding community

1 agreement, either by agreement or by arbitration  
2 but shortly and well before the election took  
3 place. So, people would no longer insofar as  
4 surrounding community agreements are concerned  
5 be dealing with an abstraction, they'd be  
6 dealing with something that's concrete. How  
7 does that hurt the process?

8 MR. O'FLAHERTY: Let me speculative,  
9 if I may, Mr. Chairman. Let's assume that the  
10 city of Boston were to arrive at a surrounding  
11 community agreement with one of the proponents.  
12 Perhaps there could be some constituents in the  
13 city that would view that as being favorable to  
14 the city and therefore by influence their vote  
15 in November.

16 COMMISSIONER MCHUGH: And where is  
17 the harm from that?

18 MR. O'FLAHERTY: The harm should be  
19 as far as we're concerned that the voter should  
20 make their own decisions. That the Abdow  
21 decision has asked this to be put in front of  
22 the people in November. And the proponents  
23 certainly, as well as the opposition that are  
24 out there will engage in a process this November

1 that's going to be plenty of information for the  
2 voters.

3           COMMISSIONER MCHUGH: I understand,  
4 Mr. O'Flaherty. And I'm not trying to cross-  
5 examine you. I'm just trying to understand.  
6 I'm not sure I understand how giving voters an  
7 additional piece of information -- Surely, as  
8 you've said those who have carefully followed  
9 this process know what the proposals are.

10           But how does helping them understand  
11 by executing a surrounding community agreement  
12 which has the terms of the relationship, the  
13 terms of the traffic mitigation, the terms of  
14 the monies that flow to the city, how does that  
15 harm them when they go at the polls? Some maybe  
16 say this is great. This changes my mind. I  
17 think this is a good idea. Some might say this  
18 is a lousy surrounding community agreement. I  
19 was in favor of this thing generally, but I  
20 don't like this so I'm going to vote against it.  
21 Either way it's additional information for  
22 people to make a judgment about.

23           MR. O'FLAHERTY: It could be also  
24 negative information.

1                   COMMISSIONER MCHUGH: Absolutely.

2                   MR. O'FLAHERTY: So, I think it's  
3 speculative to decide how the voter is going to  
4 view that particular question that you're asking  
5 me. With all due respect, Mr. Chairman, it's up  
6 to the individual voter to answer that very  
7 question themselves in November.

8                   COMMISSIONER MCHUGH: Yes,  
9 absolutely. I guess I've made my point. Let's  
10 go to the licensing decision. The arrangement  
11 that was made with MGM was not a license  
12 issuance. It was a license designation. There  
13 were contingencies.

14                   But I ask you the same question.  
15 How does letting the voters of the city and of  
16 the region, and of the region, the surrounding  
17 communities because others are impacted by  
18 whatever goes on in Revere and in Everett, how  
19 does letting the regional voters and the city  
20 voters know what the shape and location of the  
21 gaming establishment is going to be, how does  
22 that harm them?

23                   And let me give it one other. I'm  
24 going to make this too windy a question, but

1 everybody knows what the proposals are with  
2 respect to the two applicants. Nobody knows at  
3 the moment, because frankly the Commission  
4 doesn't know what the conditions are. So,  
5 people can look at the proposals and say this is  
6 going to be a mess in one way or another.

7           But by the time the Commission gets  
8 finished it may not be a mess, one would hope it  
9 wouldn't be a mess and people would have that  
10 information. Mess or not they would know. Now  
11 I do put a question mark there.

12           MR. FRONGILLO: If a license is  
13 issued, the voters know who got the license.  
14 And there can be tremendous pressure applied by  
15 those who are in favor of the license. Unions,  
16 workers whoever it is that says you're going to  
17 take my job from me if you don't vote in favor  
18 of this. And it's improper.

19           The court right now has said it's up  
20 to the voters to vote. And for us to move  
21 forward and to basically take the ball over the  
22 goal line and say Everett wins or Revere wins  
23 creates maybe a huge disincentive for people who  
24 lost to stay home that would otherwise vote.

1                   And also creates a huge incentive  
2 for the winning party to go out and bang on  
3 doors and make a lot of noise about what the  
4 impact is going to be because the license has  
5 already been granted. That you're going to be  
6 taking food off my table. I've got a job there.  
7 I've been promised this. And right now, our  
8 court has said people have the right to vote.  
9 There is no reason, there is no reason at all to  
10 issue a license before this vote.

11                   COMMISSIONER MCHUGH: I know. I  
12 hear that.

13                   MR. FRONGILLO: There's no  
14 compelling reason to do it.

15                   COMMISSIONER MCHUGH: I know that's  
16 your position, Mr. Frongillo. I'm just trying  
17 to ask questions so I can understand it better.

18                   If a license is designated, and as I  
19 say it is unlikely that a license will actually  
20 issue before the referendum, but a license is  
21 designated then those who are not in favor of  
22 that license, in fact view it as a bad thing  
23 would be energized to go out and vote against  
24 the whole deal.



1           There would be a vote energized to  
2 go out and vote in favor of the initiative.  
3 Likewise, those who think this is really good  
4 and this is a good thing would be energized to  
5 go out and vote against the initiative for that  
6 very reason. Doesn't it balance out? I don't  
7 see how it skews it. It may energize voters.  
8 But I don't see how it skews voters.

9           MR. FRONGILLO: If no license is  
10 issued, people are going to vote based on the  
11 information available to them right now.

12           COMMISSIONER MCHUGH: Yes, Sir. And  
13 that's a possibility that may come of the  
14 Commission's process but that's a possibility.

15           MR. FRONGILLO: And there are  
16 different variables at play if no license is  
17 issued. I think we all would acknowledge that.

18           COMMISSIONER MCHUGH: Right. Let me  
19 ask another question, if I might. And I've  
20 taken this over, but I'll relinquish it in a  
21 minute.

22           This is for Mr. O'Flaherty, your  
23 June 26 letter says, and I'm quoting in part now  
24 from the second paragraph if you have it in

1 front of you. If not, I'll quote it accurately.  
2 "If casino gambling is prohibited the issue of  
3 Category 1 gaming licenses in Region A will be  
4 moot. If it is allowed, I remain hopeful that  
5 the citizens of Boston will be able to vote on  
6 whether or not they approve of the pending  
7 casino proposals in Region A.

8 What does that second sentence mean?

9 MR. O'FLAHERTY: I believe what it  
10 states, Mr. Chairman.

11 COMMISSIONER MCHUGH: Okay, let me  
12 sharpen my question. If the initiative is  
13 rejected by the voters, is it the city's  
14 intention to find a way to have a vote in Boston  
15 before any license issues?

16 MR. O'FLAHERTY: Mr. Chairman, we're  
17 not stipulating whether we're a surrounding  
18 community or a host community. As you well  
19 know, it is Boston's position that in both  
20 proponents, in dealing with both proponents that  
21 Boston is a host community.

22 As the law requires, the existing  
23 law, if we are designated a host community  
24 whether by this Commission or by another court

1 in another jurisdiction then if it is a host  
2 community a vote is required in that particular  
3 section of the city.

4 COMMISSIONER MCHUGH: So, I think I  
5 understand the position now. So, the bottom  
6 line here is that if the -- And really, I'm  
7 trying to find out what the endgame is, because  
8 I think everybody would benefit by knowing what  
9 the endgame is. The Commission would, the  
10 applicants would, the citizens of Boston I can't  
11 speak for them though I am one. If the  
12 initiative is rejected then the city will still  
13 claim host community status and seek to have a  
14 vote.

15 MR. O'FLAHERTY: That remains to be  
16 determined, Mr. Chairman.

17 COMMISSIONER MCHUGH: My concern  
18 here then with the request for a stay is  
19 amplified because it seems to me that the  
20 position of the city is that if the initiative  
21 fails, we are going to be back where we were  
22 last December when we started with the city's  
23 contention that it was a host community.

24 And insofar as the Commission is

1 concerned, that train has left the station. The  
2 Commission has made its decision. I recognize  
3 that the city disagrees with it. I understand  
4 that. But insofar as the Commission is  
5 concerned that decision has been made. It's not  
6 going to change.

7           So, to say today that you wait four  
8 months and then we go back to where we were last  
9 December and try to figure out how, where, in  
10 what form, under what circumstances we can find  
11 a vote for the city means that we are facing a  
12 delay of untold months of time.

13           MR. O'FLAHERTY: That is assuming  
14 that that would be our position at that time,  
15 Mr. Chairman. And to answer, if I may, some of  
16 the representations that you've made.

17           COMMISSIONER MCHUGH: Surely -- I'm  
18 sorry?

19           MR. O'FLAHERTY: If I may answer  
20 some of the representations that you've made.

21           COMMISSIONER MCHUGH: Yes, Sir.  
22 Surely.

23           MR. O'FLAHERTY: This Commission  
24 itself has indicated that we are in an

1 atmosphere of uncertainty. So, when you talk  
2 about going back in time to a previous time, I  
3 think what you're leaving out of the equation  
4 respectfully is the Abdow decision. That has  
5 put this Commission, it has put this  
6 Commonwealth in uncharted waters, uncharted  
7 territory.

8           And it's part of your statutory  
9 ability to recognize that and to decide whether  
10 or not this Commission and your process and what  
11 you are engaged in, given the vote in November,  
12 requires you to continue or requires a pause of  
13 a mere 120 days so that the voters can decide  
14 whether or not what your original statutory  
15 obligations are then going to continue or not.

16           A stay means the status quo, Mr.  
17 Chairman, nothing changes. There will be no  
18 harm to Everett or Revere. As I've indicated,  
19 their vote will still be good. The host  
20 agreements and the status still applies.

21           In terms of the representations that  
22 there will be harm to the Commonwealth, the  
23 Mass. Gaming Commission itself or the proponents  
24 if there is a delay until November, if one were

1 to argue that the state is being deprived of  
2 money here and the licensing fees, it's only a  
3 delay of a couple of months. The monies are  
4 available in the Rainy Day fund. If the  
5 Commonwealth needs that money, they can dip into  
6 it. If licensing goes forward and casino gaming  
7 proceeds, they will be paid their money back.

8           So, I respectfully suggest that the  
9 SJC's rationale to have a vote should be viewed  
10 as a condition precedent to what you're doing  
11 here in these proceedings, respectfully.

12           COMMISSIONER MCHUGH: All right. I  
13 understand your position, Mr. O'Flaherty. Thank  
14 you. Let me ask about one other letter on a  
15 related but not directly connected topic, and  
16 that's your letter of June 30, 2014. And the  
17 last paragraph of that letter that has to do  
18 with the arbitration proceedings.

19           The last paragraph of that letter  
20 you -- This is a letter, to set the stage that  
21 came in response to Mr. Starr's letter to you  
22 saying that arbitration was commencing and he  
23 was moving forward. The specific details are  
24 not relevant. And he sent that pursuant to the

1 Commission's regulations and timelines embodied  
2 in those regulations.

3           The last paragraph of your letter  
4 says in light of its pending motion to stay,  
5 that's this motion that we're talking about here  
6 today, the city considers all negotiations and  
7 arbitration deadlines with respect to potential  
8 agreements with Wynn MA, LLC and Mohegan Sun  
9 Massachusetts, LLC to be suspended until the  
10 Commission renders its decision. Pending the  
11 outcome of the city's motion, the city presently  
12 does not intend to participate in negotiation  
13 and arbitration regarding the surrounding  
14 community issues.

15           How did things get suspended?

16           MR. O'FLAHERTY: Respectfully, Mr.  
17 Chairman, there was a unilateral decision on our  
18 behalf given the nature of the proceedings that  
19 we've participated in thus far. How  
20 respectfully we feel the city of Boston has been  
21 treated thus far and respectfully maintaining  
22 and asserting potential rights and privileges  
23 that we will exert at a later time.

24           COMMISSIONER MCHUGH: So, the city

1 simply decided that the regulations didn't apply  
2 anymore.

3 MR. O'FLAHERTY: Given the enormous  
4 change in circumstances, given the Abdow  
5 decision, we respectfully hope that you agree  
6 with our rationale that there should be a  
7 suspension of discussions, a suspension of  
8 arbitration so that the fundamental right to  
9 vote can be exercised under Article 48 of the  
10 people of the Commonwealth of Massachusetts.

11 COMMISSIONER MCHUGH: I hear you,  
12 Mr. O'Flaherty. And I understand your desire  
13 understandably is that we agree with you. But  
14 I'm concerned about the position that the city  
15 is taking that it has the ability to make  
16 unilateral decisions that suspend the  
17 regulations that apply to every other  
18 municipality and every other applicant in the  
19 Commonwealth.

20 This is reminiscent with all due  
21 respect, and I do say this respectfully because  
22 I want this to be a conversation not a  
23 confrontation. It's reminiscent of the city's  
24 declaration that it was a host community,



1 another unilateral declaration.

2           And I am troubled by the thought  
3 that regardless of what the voters do in  
4 November, the Commission and the citizens of  
5 surrounding communities and the citizens of  
6 Boston are going to be faced with a situation in  
7 which the city will then make up its mind as to  
8 what it's going to do -- Maybe it doesn't want  
9 these things under any circumstances. -- and  
10 unilaterally proceed in an effort to make  
11 whatever desire it has at the moment to come  
12 true.

13           MR. O'FLAHERTY: Mr. Chairman,  
14 respectfully, I suggest that that's speculative.  
15 That is not our position at the current moment.  
16 Our position at the current moment, and we hope  
17 that you'll agree with us because we truly feel  
18 that the people, the average person in  
19 Massachusetts agrees with us and our position  
20 that this issue should be stayed until the  
21 people have voted on this matter.

22           At that particular point, if the  
23 people decide that this is going forward then  
24 the city of Boston will have a position. If the

1 people reject this and decide that it should not  
2 go forward then the city of Boston will have a  
3 position. To engage, and I say this  
4 respectfully Mr. Chairman, with back-and-forth  
5 speculation on what that means for us, as I said  
6 earlier, is putting the cart in front of the  
7 horse.

8                   COMMISSIONER MCHUGH: I'm going to  
9 close this. I don't want to prolong it, but I  
10 remain concerned and I say this respectfully too  
11 that in assessing the desirability, the utility  
12 of a stay, the Commission look down the road and  
13 see what's ahead of it. And the only way it can  
14 make predictions in terms of its regulatory  
15 responsibilities looking down the road is to  
16 look in the rearview mirror and see what's gone  
17 on thus far. So, it's for that reason that I  
18 raise that question.

19                   MR. O'FLAHERTY: I understand. And  
20 Mr. Chairman, to aid you in that thought process  
21 and your colleagues I think it's fair from our  
22 position that, as I indicated earlier, that once  
23 the people decide this issue in November it can  
24 change thoughts that currently exist. It can

1 change current methods and processes. There's a  
2 whole lot that's riding on that vote in  
3 November.

4 And respectfully, it's our position  
5 that the matter should be stayed until that  
6 decision has been made.

7 COMMISSIONER MCHUGH: That point I  
8 clearly understand. All right. Commissioner  
9 Cameron.

10 COMMISSIONER CAMERON: I had one  
11 question for Mr. O'Flaherty. You're asking us  
12 to -- You're telling us that your constituents  
13 agree with you that they would like to see this  
14 matter stayed. I'm just asking you to clarify  
15 that because one matter -- I too am struggling  
16 with your argument about the voters, and how  
17 more information is not helpful to them.

18 I don't want to repeat what my  
19 colleagues have said but one issue, we read all  
20 of the comments. And in this particular matter  
21 the city of Boston, the residents are never shy  
22 to come out to hearings, and speak to us, which  
23 we appreciate or to make comments, to write to  
24 us.

1           And in this particular request for  
2 comment, we received over 300 comments all of  
3 them, all of them in support of moving forward  
4 with the process, one undecided that I read.  
5 One was not sure how we should proceed.  
6 Everyone else was in favor of us moving forward.

7           Last week alone we had hearings in  
8 both Revere and in Everett in which many  
9 citizens of Boston came to testify. Charlestown  
10 in particular wanted more information. They  
11 wanted to know more about traffic mitigation.  
12 They wanted more information in order to be  
13 either accepting or not accepting of the  
14 project. That's the kind of information we  
15 could provide by proceeding with the licensing  
16 process.

17           Just you made the assertion that  
18 your constituents agreed with you and I'm just  
19 not seeing evidence of it.

20           MR. O'FLAHERTY: Madam Commissioner,  
21 when I was referring to constituents, I wasn't  
22 referring to my constituents. I was merely  
23 referring to my trip to a local coffee shop  
24 where in my previous life I was an elected

1 official. Five gentlemen in particular had  
2 every problem in this world solved that sat in  
3 that corner of the coffee shop.

4           And the other morning when I went in  
5 for my coffee I was called over by those five  
6 gentlemen. All five of them, by the way, casino  
7 advocates and supporters who gave me a very hard  
8 time in my previous career on my particular  
9 issues on these matters.

10           And all five of them agreed, all  
11 five of them agreed that it made sense that  
12 there should be a say in the proceedings until  
13 the people vote. These are average working men.  
14 No fancy degrees or titles, just average guys,  
15 most of them retired. That is what I base my  
16 representations on.

17           To comment further on specifically  
18 how my constituents feel that's outside of my  
19 bailiwick now that I am no longer an elected  
20 official. The one thing I can say is the Mayor  
21 of the city of Boston has been consistent  
22 throughout this entire process given his  
23 legislative career, his votes on these  
24 particular matters.

1           But assuming the role of Mayor he  
2 has been consistent that the people in East  
3 Boston and Charlestown should have a right to  
4 vote on this matter. The fact that the Supreme  
5 Judicial Court of Massachusetts has given that  
6 right in the Abdow decision to the people of the  
7 entire Commonwealth of Massachusetts has been a  
8 sigh of relief that the people will finally have  
9 a vote on this matter, not only in East Boston  
10 and Charlestown but in all of the 350 other  
11 municipalities in our Commonwealth.

12           COMMISSIONER ZUNIGA: But doesn't  
13 reaching a surrounding community agreement give  
14 those constituents that luxury? If you reach  
15 the surrounding community agreement in one of  
16 the areas and were forced into arbitration or  
17 went into arbitration that whatever the result  
18 of that would inform those very voters for whom  
19 you are advocating a vote.

20           MR. O'FLAHERTY: Perhaps some,  
21 Commissioner, but perhaps maybe not with others.  
22 It is pure speculation. That speculation will  
23 be resolved with that vote in November.

24           COMMISSIONER MCHUGH: Anything

1 further?

2                   COMMISSIONER STEBBINS: I have a  
3 couple of questions for the city, just a few and  
4 they're somewhat not connected but some  
5 information I'm curious about. The city points  
6 to extenuating cost of time, money and effort by  
7 the city. Have you been able to even come up  
8 with a rough estimate to help give us an idea of  
9 what the costs are that the city would have to  
10 bear?

11                   MR. O'FLAHERTY: I can't give you an  
12 exact estimate today, but I can say the word  
13 substantial would apply.

14                   COMMISSIONER STEBBINS: Okay. Was  
15 there any thought or discussion within City Hall  
16 is to suggesting that this Commission stay its  
17 activities during the proceedings of the Abdow  
18 case? I believe the arguments were heard back  
19 in May and obviously the decision rendered in  
20 June. I'm probably one of the minority in the  
21 room who is not a lawyer, but is there a legal  
22 explanation from the city as to why not ask for  
23 the stay until that case was decided?

24                   MR. O'FLAHERTY: Any representations

1 that would've been paid by the city at that  
2 particular time would again, and I hate to keep  
3 using this word and I do apologize, pure  
4 speculation.

5           COMMISSIONER STEBBINS: Two other  
6 quick questions. And please, I'm not familiar  
7 with the operations of the city of Boston, but  
8 from time to time I do hear about proposals  
9 being issued by the BRA, for instance, to  
10 redevelop a certain parcel of property. And I'm  
11 assuming because of the attractiveness of an  
12 investment in the city of Boston, the potential  
13 return on that investment you get multiple  
14 applicants.

15           Is there somewhat of a business-  
16 friendly approach that it might be helpful to,  
17 as we've learned, as we've tried to move as fast  
18 as we can, try to select a winner, a bidder so  
19 that one the project can proceed but you also in  
20 essence give the other bidders the opportunity  
21 to move on? Is that not a position that the  
22 Commission should also subscribe to that if we  
23 make a decision, we give one other venture who  
24 wasn't the lucky bidder the chance to move on



1 and continue their other business pursuits  
2 instead of holding them up over this additional  
3 four-month period?

4 MR. O'FLAHERTY: I think that would  
5 be a factor for you and your colleagues to  
6 consider Commissioner. For the city, we  
7 recognize that the proponents here as I referred  
8 to them earlier, and I did not mean to do that  
9 disrespectfully, but they are well-heeled  
10 entities. They make a lot of money. They  
11 understand the process that they are engaged in.  
12 In fact, some of them have gone into other  
13 communities, have left other communities, have  
14 stayed in other communities.

15 They're aware of the process.  
16 They're aware of the costs. They're aware of  
17 the investment. And they're aware of the loss  
18 of that investment if such a scenario as you  
19 described occurs.

20 COMMISSIONER STEBBINS: Is there any  
21 suggestion today that if you're asking us to  
22 stay our process that our applicants should  
23 suspend a number of the activities that they are  
24 proceeding with such as filing with the

1 Environmental Affairs secretary of the final  
2 environment impact report?

3 MR. O'FLAHERTY: Nothing that we're  
4 suggesting would prohibit the proponents from  
5 continuing the process. All we're asking is  
6 that you and your colleagues stay your judgment  
7 in this matter until the Abdow decision and the  
8 vote that's required because of that decision  
9 takes place.

10 Nothing that we're asking for would  
11 prohibit the proponents from continuing to  
12 engage in from a business perspective whatever  
13 they need to do in anticipation of that  
14 including campaigning, I imagine, very strongly  
15 on that vote in November.

16 COMMISSIONER STEBBINS: Okay. Thank  
17 you.

18 COMMISSIONER MCHUGH: All right.  
19 Any further questions? Thank you all very much  
20 for those helpful presentations. All right.  
21 Let's turn to a discussion. Who wants to start?

22 COMMISSIONER ZUNIGA: Let me mention  
23 something that was a little bit on my mind.  
24 There is a principle in the Gaming Act contained

1 in the Gaming Act relative to host communities  
2 that puts the matter to the voters in which, as  
3 the legislation actually is very specific, it's  
4 not the question as to whether to have casinos  
5 or not. It is the question as to whether the  
6 voter approves for a casino in a particular  
7 location. And the Gaming Act also requires that  
8 the host community agreement be posted on the  
9 website prior to the call for the election,  
10 which has to happen within 60 to 90 days.

11           So, the principle as I read it is  
12 that the voter in the host community who is  
13 going to go vote as to whether they want a  
14 casino or not will be informed by the host  
15 community agreement, the financial benefits, the  
16 location, the mitigation monies, the monies that  
17 go to the different funds, how those funds are  
18 to be used etc., etc.

19           The situation that we find ourselves  
20 with in Boston at this juncture, given all of  
21 the complications about implementing the law  
22 that were referenced earlier, in my opinion  
23 almost mirror that host community principle. In  
24 which if a surrounding community agreement is

1 reached, either negotiated or arbitrated, those  
2 host community -- those surrounding community  
3 agreements, the terms of those agreements will  
4 be available to everybody in this case for  
5 actually a period almost like 60 to 90 days.

6           Just if we assume that arbitration  
7 commenced today, and we can talk about that  
8 later, if the clock is reset, etc., the latest  
9 of a binding arbitration result will be a month  
10 from now which would be towards early August.  
11 And with a November petition or election that  
12 would be almost 90 days, which is exactly the  
13 same as was provided for to host communities.

14           So, when Boston has asked about this  
15 both the notion that they are a host community  
16 -- And I know we've talked about that. I  
17 thought we had solved that issue a while ago. --  
18 this would be unique in my view for the citizens  
19 of Boston and the region and of course the  
20 Commonwealth to benefit from the 90 days that is  
21 afforded to the voters in terms of understanding  
22 the surrounding community agreement that is  
23 either reached or arrived to because of  
24 arbitration.

1           So, I'm looking forward to hearing  
2 more points about it, but I don't see how the  
3 public interest is not served by this  
4 continuing. That's a double negative, I  
5 realize. I think the public interest is served  
6 by continuing with the proceedings because we  
7 will likely arrive to a surrounding community or  
8 two surrounding agreements with enough time for  
9 the voters to make a judgment as to how -- as to  
10 what they think.

11           COMMISSIONER MCHUGH: That goes into  
12 the more information is better overall. That's  
13 just a particular example. Of course, it's not  
14 a binding vote and that of course is the  
15 difference. But that's basically another aspect  
16 of more information is better.

17           And it's hard to understand how more  
18 information would adversely impact. I  
19 understand.

20           COMMISSIONER ZUNIGA: There's  
21 another element in comparison that was talked  
22 little bit about here in terms of probability of  
23 something happening or not, and regulations  
24 applying to a lot of other communities. There's

1 a number of surrounding communities, and I  
2 remember Category 2 surrounding communities that  
3 went through the process of negotiating a  
4 surrounding community agreement where the  
5 chances of getting effectively an operation  
6 nearby were less than 50 percent. I would argue  
7 they were 33 percent. We had three applicants  
8 in the case of Category 2.

9 I would argue that they were even  
10 less than 33 percent because we were not  
11 compelled -- we were not required to issue a  
12 license, for example. But because of the  
13 significance of such a development going through  
14 the process regardless of the chances of that  
15 coming to fruition is also a very important  
16 principal in the Gaming Act. Because prior to  
17 the award of the license, those surrounding  
18 community agreements need to be reached in place  
19 because the award of the license really changes  
20 the dynamics of how those negotiations could  
21 eventually come to fruition.

22 COMMISSIONER MCHUGH: All right.

23 Other thoughts, Commissioner Cameron?

24 COMMISSIONER CAMERON: Yes. Of all

1 of the arguments Boston has made, the one that  
2 was most compelling to me was harm to a voter.  
3 I just don't see how more information is harmful  
4 to any voter in the Commonwealth.

5 In fact, I really see a benefit to  
6 more information that's traffic mitigation  
7 that's surrounding community agreements. That's  
8 listening to presentations about each aspect of  
9 this proposal. I've seen how beneficial it was  
10 in our other award decisions.

11 So, that's the issue that gave me  
12 pause and it's the issue that I just, after  
13 listening to everyone and all of the folks  
14 around the Commonwealth, I believe that more  
15 information is helpful to every voter. And I  
16 see that issue as the most important one that  
17 we're looking at here today.

18 COMMISSIONER MCHUGH: Commissioner  
19 Stebbins?

20 COMMISSIONER STEBBINS: I also join  
21 with you in talking about more information is  
22 better. If you can draw comparisons with the  
23 state of Ohio when expanded gaming was  
24 introduced in Ohio, for several years to try to

1 pass referendums that weren't site-specific, but  
2 just ask voters do you support expanded gaming  
3 in the state of Ohio. And all of those went  
4 down to defeat. And I'm not suggesting this any  
5 type of forecast for what may or may not happen  
6 in November.

7           Proponents will argue, and I think  
8 rightly so, that when they actually began to  
9 define where the locations were almost by  
10 geographical latitude and longitude, where  
11 building was going to go, expanded gaming  
12 passed. Some would argue that because voters  
13 knew that it potentially wasn't going to be in  
14 their backyard but was actually going to be  
15 community A, it was more information for them to  
16 have when they approached the voting booth. I  
17 think for that reason moving ahead with our  
18 evaluation process I think is critical to the  
19 voters.

20           Secondly, I think moving ahead with  
21 our process again because we have two very  
22 competitive applicants, we have two applicants  
23 that have business ventures elsewhere, I think  
24 we do them a favor by allowing them to complete



1 this process with us if they aren't selected and  
2 allowing them to continue on.

3 I understand that the applicants are  
4 probably well-heeled financially but they have  
5 shareholders who would probably encourage them  
6 to spend -- find every way to spend a dollar  
7 less if they had that opportunity. So, I don't  
8 see any reason that both the voters and our  
9 applicants don't benefit from moving this  
10 process ahead.

11 COMMISSIONER MCHUGH: I have a  
12 number of thoughts that emerged out of listening  
13 to the presentations this morning and reading  
14 the submissions last night.

15 The first is sort of a  
16 constitutional overlay and I don't want to spend  
17 much time on it because it's not dispositive.  
18 But there is under the Article 48, the  
19 constitutional provision, there is a provision  
20 for stopping the existence and efficacy of  
21 existing legislation. And that is the  
22 referendum process.

23 And that process is designed to stop  
24 legislation at the outset before it gets

1 underway if certain criteria are met and let the  
2 people take a look at it and decide whether they  
3 want that legislation to go forward or not.

4 That's not the process we're using now.

5           We're in an initiative process,  
6 which has a very different track and doesn't  
7 have a stay provision. What does that mean?  
8 Does that determine the outcome, it doesn't.  
9 But it gives a sort of constitutional overlay  
10 the way that founders, or those who amended the  
11 founders were, thought government ought to work.  
12 That is if you can stop legislation's efficacy  
13 in operation before it gets underway all well  
14 and good. Have a vote on it before it moves  
15 forward.

16           But otherwise, the legislation  
17 presumptively moves forward. The operation is  
18 in effect and you carry it out until the people  
19 say no. So, that's sort of a backdrop against  
20 which I look at the city's request. It doesn't  
21 mean that we're prohibited from giving it but it  
22 does inform the kind of overall social order,  
23 for me at least, that we ought to think about as  
24 we make that decision.

1           The second thing is that we have a  
2 series of regulations and a series of timelines  
3 and a series of steps that we've laid out in an  
4 effort to make this thing work. We've pushed  
5 those back to be sure once before at the request  
6 of the city, actually at the intervention of the  
7 city. But we also have a procedure for  
8 requesting waivers.

9           The city hasn't asked for a waiver.  
10 It's just declared that it's not going to  
11 proceed with the outlines of our regulations  
12 pending our decision on this motion.

13           In my view, the conditions for a  
14 waiver, the unasked for waiver aren't met. And  
15 it's important to consider for the second, for  
16 me at least, the second of those conditions  
17 which is the grant of the request for a waiver  
18 won't interfere with the Commission's ability to  
19 fill its duties.

20           Those duties include not only the  
21 city of Boston, they include Region A and they  
22 include Region C. We've already taken care of  
23 Region B and we've taken care of the slots  
24 parlor. And we've set up these current

1 deadlines for Region A in part so that the  
2 unsuccessful applicant in Region A will have an  
3 opportunity to participate in the Region C  
4 process if it wishes to do so as soon as it  
5 learns that it's not the successful bidder here.  
6 Whether or not they do is up to them.

7           But we have to keep our eye on  
8 Region C, a region that we're having difficulty  
9 quite frankly in getting the market to respond  
10 to. Because it's in Region C that the highest  
11 unemployment rate in the state exists. And the  
12 jobs and the promise of jobs in that region is  
13 an important part of our overall duties.

14           So, the suspension of this process  
15 here has an impact on our ability to deal  
16 effectively with Region C. Region C has other  
17 problems and other issues. And presents a  
18 complicated picture, but that's at least one  
19 aspect of that picture.

20           We've talked about proceeding now  
21 will have a positive impact on the initiative  
22 process. And I agree with all of you about  
23 that. And in addition to that, I am still at a  
24 loss as to what the endgame is. I don't know

1 what's going to happen if the initiative fails.

2 I don't know.

3           And I don't know because the city  
4 tells us today that it doesn't know. So, it is  
5 hard to make judgments about the benefits of  
6 waiting when you don't know what is going to  
7 happen, at least with respect to one important  
8 participant, if one result of the initiative  
9 process occurs.

10           In addition to that, it that seems  
11 to me far-fetched perhaps but possible one  
12 always hopes that proceeding now may produce a  
13 result that's acceptable to the city. The  
14 Commission could decide to award neither  
15 license. That wouldn't please those sitting in  
16 the front row, but it might be acceptable to the  
17 city. The Commission might pick a candidate, an  
18 applicant that it prefers and then work out even  
19 after the process were finished, there's nothing  
20 that prohibits working things out, smoothing off  
21 some rough edges.

22           The Commission may make a  
23 provisional award. And a provisional award is  
24 all that's likely, and attach conditions that

1 the city and in particular the residents for a  
2 particular area find acceptable, it meets the  
3 problems that they have. So, that is a  
4 particular possibility.

5 As I said, proceeding now makes good  
6 sense, it seems to me, because we just don't  
7 know. It's good public policy because we just  
8 don't know what is going to happen from the  
9 city's standpoint when this all comes to an end.

10 We've designated the city as a  
11 surrounding community. I understand the city's  
12 disagreement with that. They've made that  
13 perfectly clear. But that designation isn't  
14 going to change. And if the city disagrees with  
15 that then a legislative remedy is the logical  
16 way to deal with it. This is the procedure.  
17 This is the process. This is the laws. We  
18 understand it. Maybe the law wasn't designed  
19 for this kind of environment, these kinds of  
20 things. There's some other remedy, but that's  
21 not going to change.

22 So, as I look at it overall, the  
23 November 4 vote contains one of two possible  
24 paths for the Commission to go down. One is the

1 path that exists if the initiative is  
2 successful. And that path is quite simple and  
3 quite short. We figure out how to gracefully  
4 fold up our tent and move away.

5           The second path is to move forward  
6 swiftly with the licensing process to realize  
7 the potential that the Legislature thought it --  
8 with which the Legislature believed it was  
9 filled. And it seems to me we need to plan for  
10 both tracks and adjust ourselves and our  
11 approach to this immediate question with both of  
12 those tracks in mind.

13           That's why I think that it is not  
14 appropriate at this stage to grant a stay, but  
15 instead it is appropriate to move forward and  
16 proceed with our licensing process. Any other  
17 thoughts, Commissioner Zuniga?

18           COMMISSIONER ZUNIGA: I would agree  
19 with that. The one thing that I want to just  
20 emphasize for our audience is that in the case  
21 of proceeding, as we seem to be coalescing, more  
22 information will be better for the public  
23 interest not to the outcome of the petition.

24           I make no judgment as to whether --

1 we make no judgment I suggest as to whether more  
2 information will favor one applicant, either  
3 applicant or the repeal, the eventual repeal. I  
4 am all for additional information will inform  
5 the voter. The voter will make the judgment  
6 with better information and then the voter will  
7 decide what the outcome will be.

8           COMMISSIONER CAMERON: We don't  
9 always agree, frankly, but I do agree with both  
10 my colleagues, all three actually in their  
11 comments as well as the path to move forward  
12 that Commissioner McHugh just outlined. I agree  
13 with all of his points. And in fact that moving  
14 forward with our licensing process is the  
15 prudent way to proceed for all of those reasons  
16 already stated.

17           COMMISSIONER MCHUGH: All right. I  
18 think we're ready with that discussion for a  
19 motion. Would somebody care to make a motion?

20           COMMISSIONER ZUNIGA: Sure, I will  
21 be happy to. I would move, Mr. Chair, that this  
22 Commission deny the motion requested by the city  
23 of Boston for a stay in the licensing process  
24 and continue with our process as stipulated in



1 our regulations.

2 COMMISSIONER MCHUGH: Is there a  
3 second to that?

4 COMMISSIONER CAMERON: Second.

5 COMMISSIONER MCHUGH: Discussion,  
6 further discussion?

7 COMMISSIONER ZUNIGA: We should also  
8 think about timing of our arbitration  
9 proceedings because they were --

10 COMMISSIONER MCHUGH: I'd like to  
11 deal with that separately.

12 COMMISSIONER ZUNIGA: Separately,  
13 okay.

14 COMMISSIONER MCHUGH: Further  
15 discussion? All in favor, aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER STEBBINS: Aye.

19 COMMISSIONER MCHUGH: The ayes have  
20 it unanimously. The motion is denied. That  
21 does bring the question that Commissioner Zuniga  
22 addressed and that is the question of how to  
23 proceed with the arbitrations.

24 The arbitration deadline under our

1 rules has arrived. And in fact the process was  
2 started. Commissioner Zuniga, do you have some  
3 thoughts?

4 COMMISSIONER ZUNIGA: Yes. The  
5 deadline if I'm -- Maybe I could have Counsel  
6 Blue to remind us of the dates, but there were a  
7 couple of Flex-14 days that were different. But  
8 we are effectively today for both applicants we  
9 are no longer in the negotiation period; is that  
10 a fair statement?

11 MS. BLUE: That is correct.

12 COMMISSIONER ZUNIGA: And the  
13 arbitration proceedings for at least one of them  
14 would have started last Friday?

15 MS. BLUE: They are in the process  
16 of picking an arbitrator now.

17 COMMISSIONER ZUNIGA: They would be  
18 in the process of picking an arbitrator for  
19 which they have five days to do so. But those  
20 five days would be ending today?

21 MR. ZIEMBA: For the Wynn/Boston  
22 negotiations the fifth day is today. And for  
23 the Mohegan Sun and the city of Boston  
24 arbitration/negotiations that fifth day would be

1 Monday.

2 COMMISSIONER ZUNIGA: Next Monday?

3 MR. ZIEMBA: Correct, next Monday.

4 COMMISSIONER ZUNIGA: Which includes  
5 a holiday in there. I would be in favor of  
6 "resetting the clock" relative to that as of  
7 today on the picking the arbitrator for both  
8 applicants with the understanding of course that  
9 even picking an arbitrator or commencing  
10 arbitration doesn't preclude the parties from  
11 reaching an agreement, a negotiated agreement if  
12 they were already on their way to reaching one  
13 or not.

14 COMMISSIONER MCHUGH: If we reset  
15 the clock to start the process today, really the  
16 whole process under whatever the regulation is,  
17 we'll find it, what do we do with the remaining  
18 Flex-14 time? What do we do with remaining  
19 Flex- 14 time?

20 COMMISSIONER ZUNIGA: And they have  
21 different days remaining, right?

22 COMMISSIONER MCHUGH: Right.

23 COMMISSIONER ZUNIGA: That's a  
24 wrinkle.

1           COMMISSIONER MCHUGH:  It's not  
2 necessarily a reason not to reset the time, but  
3 it's something we have to take into account.

4           COMMISSIONER ZUNIGA:  Well, the  
5 complicating factor is that our process --  
6 arriving to a decision is always determined by  
7 the latest party to arrive at a decision whether  
8 it's negotiated or arbitrated on.

9           MR. ZIEMBA:  So, as of today for  
10 Flex-14 days, the Wynn applicant has utilized  
11 nine days and the Mohegan Sun applicant has  
12 utilized 11 days.  I'm not counting obviously  
13 the days between the Boston motion and today as  
14 those days were not voluntarily agreed to by  
15 both parties.

16           COMMISSIONER MCHUGH:  One option is  
17 to say we would reset the time to start today.  
18 And the regulation is 205 CMR 125.01(c).  Reset  
19 the time to start that process today and then  
20 since we have to approve and further use of  
21 Flex-14 time announce that it's going to be only  
22 in the rarest of circumstances that we do that.  
23 And just plan not to allow anymore Flex-14 time,  
24 unless there are extraordinary circumstances.

1           COMMISSIONER ZUNIGA: I am fine with  
2 that.

3           COMMISSIONER CAMERON: I know there  
4 are issues in other arbitration. And it is the  
5 summer with an arbitrator having an issue around  
6 some other event or vacation. I'm just  
7 wondering if -- I have no issue with someone  
8 using that time that's allotted to them in the  
9 appropriate circumstance. I don't know that  
10 they have to be extraordinary.

11           COMMISSIONER MCHUGH: Well, I've got  
12 my eye again on the goal line. And we've got a  
13 schedule now that is pretty tight but pretty  
14 well thought out that we spent a lot of time  
15 thinking out. And that was what I was trying to  
16 assure that we could keep on track of. We just  
17 had a long and productive and thoughtful morning  
18 about moving forward. And I would like to make  
19 a certain that we create an environment where we  
20 move forward with certainty from this point  
21 forward.

22           COMMISSIONER CAMERON: I would agree  
23 with that other than when I think of  
24 extraordinary, if there really is an issue

1 beyond both parties' control, if it's reasonable  
2 -- There's only a few days left for each  
3 applicant.

4 COMMISSIONER MCHUGH: We have Flex-  
5 14 will approve if it's really important.

6 COMMISSIONER CAMERON: Thank you,  
7 Commissioner.

8 COMMISSIONER MCHUGH: Then under  
9 those circumstances that's what I would be in  
10 favor of. I recognize that the city didn't ask  
11 for a waiver. I realize that it simply declared  
12 that the regulations were inoperative, but in  
13 order to avoid any possible confusion that arose  
14 out of that it seems to me we just reset the  
15 clock by five days. We move forward and we  
16 don't deviate from that from this point forward.

17 MR. ZIEMBA: Commissioner, would it  
18 make sense for me to give the specific date by  
19 which the parties would have to submit their  
20 best and finals?

21 COMMISSIONER MCHUGH: Surely under  
22 that scenario.

23 MR. ZIEMBA: If the Commission wants  
24 to reset the date under our regulations, the

1 parties have five working days to submit their  
2 best and finals and choose arbitrators. Given  
3 the Fourth of July holiday on Friday that would  
4 bring us to next Thursday, July 10.

5 COMMISSIONER ZUNIGA: So, it's five  
6 working days.

7 MR. ZIEMBA: Five working days.

8 COMMISSIONER ZUNIGA: Anything under  
9 seven days is working days in our regulations,  
10 yes.

11 COMMISSIONER MCHUGH: If we do this,  
12 we could post on the website a revised schedule  
13 that would take into account those dates and  
14 have everybody be aware of what the dates are.  
15 Okay.

16 There are reasons not to do that but  
17 there are reasons to do it that I find more  
18 persuasive. I think that eliminating any  
19 possible confusion that arose from the  
20 declaration would be a helpful thing. So, I  
21 support that. Any other thoughts?

22 COMMISSIONER ZUNIGA: Do we need to  
23 move on that?

24 COMMISSIONER MCHUGH: Yes, we do

1 need take a vote on that because it's an  
2 alteration of our regulations.

3 COMMISSIONER ZUNIGA: I could gladly  
4 make a move if I get the actual regulation or  
5 deadline.

6 MS. BLUE: It's 205 CMR  
7 125.01(6)(c).

8 COMMISSIONER ZUNIGA: Which provided  
9 for the beginning of arbitration proceedings as  
10 of June 27?

11 MR. ZIEMBA: There were different  
12 dates in the Flex-14.

13 COMMISSIONER MCHUGH: We could have  
14 a motion that have the starting point for that  
15 set of regulations be today.

16 COMMISSIONER ZUNIGA: So, on that  
17 note, I will move, Mr. Chairman, that this  
18 Commission amends its regulation contained in  
19 125.01(6)(c) to reflect the beginning of  
20 arbitration proceedings as of today.

21 MR. ZIEMBA: Technically, today  
22 would be the last day of negotiations. The  
23 first day of arbitration would begin July 3, the  
24 first of the five days putting us to next



1 Thursday, the 10th.

2 COMMISSIONER ZUNIGA: To amend the  
3 date contained to the conclusion of the  
4 negotiation proceedings as of today.

5 COMMISSIONER MCHUGH: Okay.

6 COMMISSIONER CAMERON: Second.

7 COMMISSIONER MCHUGH: Any further  
8 discussion? We're not amending the regulation,  
9 we are amending the implementation of the  
10 regulation. We're amending the implementation  
11 of the regulation to start, to make today the  
12 last day of the negotiation period with the  
13 arbitration procedures starting tomorrow is what  
14 I take from your motion. Okay. All right. All  
15 in favor, aye.

16 COMMISSIONER CAMERON: Aye.

17 COMMISSIONER ZUNIGA: Aye.

18 COMMISSIONER STEBBINS: Aye.

19 COMMISSIONER MCHUGH: The ayes have  
20 it unanimously. And that motion is carried. I  
21 think that's all of the business that was  
22 mentioned on the agenda.

23 COMMISSIONER CAMERON: Motion to  
24 adjourn.

1 COMMISSIONER ZUNIGA: Second.

2 COMMISSIONER MCHUGH: All in favor.

3 There will be no discussion of that. Aye.

4 COMMISSIONER CAMERON: Aye.

5 COMMISSIONER ZUNIGA: Aye.

6 COMMISSIONER STEBBINS: Aye.

7 COMMISSIONER MCHUGH: The motion is

8 carried. Thank you all.

9

10 (Meeting concluded at 12:43 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 ATTACHMENTS:

- 2 1. Massachusetts Gaming Commission July 2,  
3 2014 Notice of Meeting and Agenda

4

5 GUEST SPEAKERS:

6 CITY OF BOSTON:

7 Eugene L. O'Flaherty, Esq., Corporation Counsel

8 Thomas c. Frongillo, Esq., Fish and Richardson

9

10 CITY OF EVERETT:

11 Mayor Carlo DiMaria

12 Jonathan Silverstein, Esq., Kopelman Paige

13

14 CITY OF REVERE:

15 Brian Falk, Esq., Mirick O'Connell

16

17 MOHEGAN SUN MASSACHUSETTS:

18 Bruce S. Barnett, Esq., DLA Piper

19

20 WYNN MA, LLC:

21 Samuel M. Tony Starr, Esq., Mintz Levin

22 MASSACHUSETTS GAMING COMMISSION STAFF:

23 Catherine Blue, General Counsel

24 John Ziemba, Ombudsman

## C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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 3rd day of July, 2014.

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